ARIZONA COURT OF APPEALS

DIVISION ONE

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, et al., Plaintiffs/Appellants/ Cross-Appellees, v. PEACE RELEAF CENTER I, d/b/a PATIENT ALTERNATIVE RELIEF CENTER, et al., Defendants/Appellees/ Cross-Appellants.	Court of Appeals Division One No. 1 CA-CV 21-0754 Maricopa County Superior Court No. CV2017-009033

DEFENDANTS/APPELLEES/CROSS-APPELLANTS' COMBINED ANSWERING/CROSS-OPENING BRIEF AND APPENDIX

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ANSWERING BRIEF ON APPEAL

INTRODUCTION

This appeal involves an unsuccessful attempt to build and operate a medical marijuana cultivation facility in Phoenix. After opening a dispensary in Phoenix, Defendant/Appellee/Cross-Appellant Patient Alternative Relief Center ("PARC") set about establishing a grow facility to supply its retail location. PARC, as the license holder, would own and sell the marijuana grown in its dispensary. Several investors from Chicago, through their companies Premier Consulting and Management Solutions, JJSM Real Estate, and JJSM Equipment, would own, equip, and operate the facility itself, earning money generated by PARC's sale of the product grown.

Things did not go as planned. After almost two years, the cultivation facility still was not fully operational. Without saleable product, there was no money to pay rent or management fees. Unsurprisingly, the business relationship fell apart and litigation ensued.

The parties litigated essentially to a draw. Unhappy with that result, the investors now appeal several of the superior court's post-trial rulings.

Because the superior court properly applied Arizona law to the facts in making those rulings, this Court should affirm on the appeal.

STATEMENT OF FACTS AND CASE*

I. The medical marijuana business.

A. PARC opens a dispensary.

The Arizona Medical Marijuana Act ("AMMA") effectively created a new industry in the state, bringing with it both opportunity and fierce competition. AMMA provided for only a limited number of licensed dispensaries and cultivation facilities. [*See* IR-331 at 3, ¶ 4 (APP248); *see also id.* at 8, ¶ 7 (APP253) (discussing lottery for less than 100 licenses).] Consequently, an approval to operate a medical marijuana business from the Arizona Department of Health Services ("DHS") became an extremely valuable asset. [*See* Tr. Ex. 324 at PARC00004140 (New Leaf Investor Update) (estimating value of PARC's license at $4-5 million).]

In 2011, Jeff Schaeffer formed the Arizona non-profit corporation Peace Releaf Center I, d/b/a Patient Alternative Relief Center ("PARC") for

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* Selected record items cited are included in the Appendix attached to the end of this brief, cited by page numbers (e.g., APP240), which also match the PDF page numbers and function as clickable links. Other record items are cited with "IR-" followed by the record number.

purposes of opening a medical marijuana business. [*See* IR-331 at 3, ¶¶ 5, 7 (APP248); Tr. Ex. 12 (PARC bylaws) at PREMIER000123.] On Schaeffer's application, DHS granted PARC a dispensary registration certificate and approval to operate a medical marijuana dispensary retail location at 4201 East University Drive in Phoenix. [IR-331 at 3, ¶¶ 8-9 (APP248).] PARC opened its dispensary in September of 2014. [*Id.* ¶ 10 (APP248).]

B. PARC plans a cultivation facility to support its retail location.

With its dispensary up and running, PARC turned to the next phase of its plan—building and operating a cultivation facility to supply the retail store. [*See* IR-331 at 3, ¶ 11 (APP248).] Working with three partners, Schaeffer began raising funds to acquire and build out a cultivation facility with the necessary equipment. [*Id.* at 3, 9, ¶¶ 11, 17 (APP248, APP254); 10/20/20-PM Tr. at 139:25-140:19 (APP500-01).] They formed three entities through which the facility would be acquired, constructed, and operated (collectively, the "cultivation entities"): (1) Premier Consulting and Management Solutions, LLC ("Premier"); (2) JJSM Real Estate, LLC; and (3) JJSM Equipment, LLC. [*See* IR-331 at 3-4, ¶¶ 12, 19 (APP248-49); *see also* Tr. Ex. 23 (Purchase Agreement) at PARC00003342, § 4.8 (APP298) (describing cultivation entities' activities).] Premier was formed to finance

the purchase and construction of the cultivation facility and to run it once open. [IR-331 at 9, ¶ 8 (APP254).] JJSM Real Estate would own the building, [*id.* at 4, ¶ 20 (APP249)], while JJSM Equipment would own the equipment, [*id.* at 9, ¶ 9 (APP254)].

JJSM Real Estate[1] subsequently purchased a building for the future cultivation facility in Phoenix. [*See id.* at 4, ¶¶ 20, 24 (APP249); Tr. Ex. 91 at PARC00002952 (APP343).]

II. The new investors.

A few months later, Schaeffer was introduced to Chicago attorney Richard Merel and his long-time client, Barry Missner. [*See* 10/15/20-AM Tr. at 10:4-14:4 (APP372-76).] After meeting Schaeffer and his colleague in Arizona over the summer, the two men decided to invest in the medical marijuana venture and solicit others to do the same. [*See id.*; *see generally* Tr. Ex. 91 (New Leaf Private Offering Memo) (APP340).]

A. New Leaf buys a controlling stake in the cultivation entities.

Merel and Missner formed a new entity, New Leaf Investments AZ, LLC, to hold the investment funds. [10/15/20-AM Tr. at 11:8-19 (APP373).]

[1] This brief refers to JJSM Real Estate as "JJSM," and JJSM Equipment as "JJSM Equipment."

Merel, Missner, and Schaeffer negotiated a purchase agreement under which New Leaf would buy a controlling stake (50% interest) in the cultivation entities. [Tr. Ex. 23 (Purchase Agreement) at PARC00003337, § 2 (APP293).] New Leaf also agreed to provide the cultivation entities with the remaining capital necessary to build out the cultivation facility. [*Id.* at PARC00003339, § 3.5(d)(i) (APP295) ("the Companies shall, from time to time, submit draw requests for (x) capital expenditures related to the completion of the grow facility . . .").] PARC, as the license-holder, agreed to execute three contacts with the entities: (1) a Cultivation Services Management Agreement ("Cultivation Agreement") with Premier, (2) a Building Lease with JJSM, and (3) an Equipment Lease with JJSM Equipment (collectively, the "cultivation contracts"). [*See id.* at PARC00003339, § 3.4 (APP295); *see also* Tr. Ex. 91 (New Leaf Private Offering Memo) at PARC00002950-53 (APP341-44) (describing business model).]

These contracts allowed Premier to operate the Cultivation Facility owned by JJSM, using the equipment owned by JJSM Equipment, on behalf of PARC as the licensee, without running afoul of the AMMA. [*See* Tr. Ex. 91 at PARC00002953 (APP344).] As New Leaf told its investors, PARC is "the not for profit entity that owns and controls the Arizona license to

operate a cannabis business," while the cultivation contracts "create the expected profits to the entities New Leaf invested in." [Tr. Ex. 324 (New Leaf Investor Update) at PARC00004140.] Under the parties' arrangement, Premier needed to cultivate, and PARC needed to sell, approximately $1 million worth of marijuana (about 500 pounds) per month to break even. [10/21/20-AM Tr. at 112:5-15 (APP551).]

B. The parties execute three cultivation contracts.

The parties executed the Purchase Agreement and related contracts in late December 2015 and January 2016. [*See* Tr. Ex. 23 at PARC00003335 (APP291); Tr. Ex. 24 at PREMIER000185 (APP302); Tr. Ex. 25 at PREMIER000204 (APP308); Tr. Ex. 29 at PREMIER000176 (APP315).]

The parties' arrangement depended on the revenues expected to be generated from the sale of cultivated marijuana—that was how PARC (a non-profit) would make the money to pay the cultivation entities under their agreements. [Tr. Ex. 324 at PARC00004140] (the cultivation contracts "create the expected profits to the entities New Leaf invested in"). At full capacity, the cultivation facility was designed to produce "around 3500 pounds a year, ballpark. It's meant to be run like a money printer." [10/19/20-PM Tr. at 99:8-14 (APP420).]

The cultivation facility still needed to be fully built out and staffed, however. [*See* Tr. Ex. 91 at PARC00002952 (APP343) (projecting a "10 to 12 month" lead time to "begin generating revenue from the Cultivation Center's operations"); 10/20/20-PM Tr. at 11:21-25 (APP488) (cultivation facility "wasn't completed" when new investors came on).] It also takes time to grow a crop, and marijuana plants can be particularly tricky. [Tr. Ex. 91 at PARC00002952 (APP343) ("*Assuming full operation* of the Cultivation Center, it will generally take approximately three months to generate the first marijuana harvest." (emphasis added)); *id.* at PARC00002969 (APP347) (risks to marijuana harvest "include pest infestation, molds and fungi, inadequate artificial sunlight conditions, poor soil conditions, water shortages, building problems (such as roof collapses), etc.").]

Accordingly, the parties made PARC's payment obligations under the cultivation contracts contingent upon the grow facility achieving full operation, as needed to generate the required revenue.

Cultivation Agreement. [Tr. Ex. 24 (APP302).] The Cultivation Agreement obligated Premier to manage PARC's licensed cultivation facility. Premier would be responsible for building out, staffing, managing, operating, and maintaining the cultivation facility and related medical

marijuana inventory. [*Id.* at PREMIER000185 (APP302) (Premier agrees to provide "Cultivation Management Services," including "all aspects of the management, administration and operating of a medical marijuana cultivation facility in complete compliance with the AMMA").] In exchange, PARC agreed to purchase inventory exclusively from Premier for ten years (unless Premier cannot provide adequate supplies, [*id.* at PREMIER000186, § 1(a) & PREMIER000192, § 11 (APP303, APP305)]), and to pay Premier a "management fee" tied to revenues earned on the marijuana cultivated by Premier and sold by PARC, [*id.* at PREMIER000191-92, § 9 (APP304-05)]. Thus, PARC did not owe any money under the Cultivation Agreement until PARC received and sold marijuana cultivated by Premier.

Building Lease. [Tr. Ex. 25 (APP307).] The Building Lease obligates PARC as the lessee to pay JJSM approximately $33,000 in monthly rent for the cultivation facility for a term of ten years. [*Id.* at PREMIER000204, §§ 2.1, 3.1 (APP308).] Under Lease § 3.1, however, PARC owes nothing until the facility reached full operation and achieved a "first harvest": "Tenant shall receive an abatement of the Base Rent for the period commencing on the Commencement Date until the date ('Abatement Expiration Date') of the first harvest of cannabis plants at the Premises following the date

hereof . . . ." [*Id.* at PREMIER000204-05, § 3.1 (APP308-09).] By Premier's own measure, "First harvest is when you first get clean, acceptable flower to the vault and to market." [10/19/20-PM Tr. at 122:18-20 (APP431).]

Equipment Lease. [Tr. Ex. 29 (APP315).] The Equipment Lease obligated PARC to pay a monthly rental fee of $1,000 to $2,000 to JJSM Equipment in exchange for possessing and using the facility's cultivation equipment. [*See id.* at PREMIER000176, § 2 & PREMIER000182-84 (APP315, APP321-23).] Like the Building Lease, however, PARC owes nothing under the Equipment Lease until the cultivation facility was fully operational and had produced "the first harvest of cannabis plants at the Premises." [*Id.* at PREMIER000176-77, § 2 (APP315-16).]

III. The cultivation facility.

A. Premier struggles to get the cultivation facility up and running.

Premier finished the initial buildout of the cultivation facility around September 2016 and began grow operations the next month. [10/20/20-AM Tr. at 49:5-50:7 (APP458-59) (growing began in approximately October 2016).] But Premier immediately ran into serious problems. [*See, e.g.*, 10/19/20-PM Tr. at 107:4-112:3 (APP425-30) (infrastructure and equipment issues); *id.* 103:11-104:4 (APP421-22) (exploding lights); *id.* at 142:18-144:18

(APP435-37) (powdery mildew); 10/20/20-PM Tr. at 31:14-24 (APP492) (personnel issues).] It struggled with diseased plants, staffing problems, equipment failures, and operational issues, including numerous compliance violations. [*See, e.g.*, 10/20/20-AM Tr. at 72:25-74:25 (APP464-66) (Artwohl summarizing various issues); 10/21/20-AM Tr. at 49:7-50:8 (APP543-44) (Schaeffer testifying about various problems at facility, including "[t]oo much moisture," "controls [that] were never set up correctly," and drainage problems "creating powdery mildew, problems with bugs, things that damages the crop"); 10/19/20-PM Tr. at 95:11-17 (APP419) (personnel issues); 10/20/20-AM Tr. at 78:23-79:8 (APP468-69) (compliance violations); 10/21/20-PM Tr. at 17:8-18:23 (APP559-60) (Reese testimony re issues with cultivation attempts and facility).]

According to Premier employee Ryan Reese, "the building was quite a disaster, ... There w[ere] multiple issues." [10/21/20-PM Tr. at 17:25-18:1 (APP559-60).] Indeed, Premier began a complete retrofit just to get the facility functional. [*See* 10/19/20-PM Tr. at 103:11-104:4 (APP421-22); *id.* at 107:4-112:3 (APP425-30) (describing retrofit).] Reese testified, "We were constantly—all the way 'til the end, constantly retrofitting other rooms." [10/21/20-PM Tr. at 18:4-5 (APP560).]

Premier never achieved full operation. By the time the facility shut down, the retrofit was only "halfway down." [10/20/20-AM Tr. at 46:17-18 (APP455); *see also* 10/19/20-PM Tr. at 144:8-145:15 (APP437-38).] The powdery mildew problem still hadn't been solved, either. According to Premier's grower, "my job was just to . . . make those plants very, very happy and *get it to the level to where a market-standard price was what we were retaining*, because we weren't when we had all that [powdery mildew]. *We were not anywhere near market value . . . .*" [10/20/20-AM Tr. at 45:11-16 (APP454) (emphases added).] And they still weren't there by the time the facility closed. [*See* 10/21/20-PM Tr. at 18:4-5 (APP560) ("We were constantly—all the way 'til the end, constantly retrofitting other rooms.").]

In fact, Premier's grower testified that none of the three cultivation runs was successful. [10/20/20-AM Tr. at 66:1-25 (APP462) (first attempt "wasn't successful," "as a grower, I—I wouldn't want to ingest any of that product"); *id.* at 74:2-15 (APP466) (second run infected with powdery mildew); *id.* at 77:4-7 (APP467) (third run also infected with powdery mildew).] A DHS inspection in April 2017 corroborated these failures. The inspection report noted that the cultivation facility had no harvest records

for the past six months—i.e., since October 2016. [*Id.* at 78:23-79:8 (APP468-69).]

Indeed, Premier did not deliver any marijuana flower to PARC during the entire first year of the Cultivation Agreement [*see* 10/15/20-AM Tr. at 77:14-79:18 (APP383-85) (first delivery occurred "in the early part of 2017")], much less the facility's estimated harvest capacity of 500 pounds per month [10/21/20-AM Tr. at 113:3-14 (APP552)]. In fact, during the entire course of the Agreement, Premier produced *less than nine pounds of usable marijuana flower*. [10/22/20-AM Tr. at 97:21-98:16 (APP611-12) ("Out of the 900 pounds we [sold], less than nine came from Premier.").] PARC's original founder, Jeff Schaeffer, testified that Premier never came close to its goals and never had a "first harvest":

> Q. Had the cultivation facility achieved its production goals as set forth in the projections that we looked at just a little while ago as of the time you were terminated?
>
> A. No.
>
> Q. Come even close?
>
> A. Not even close.
>
> Q. So at any time while you were overseeing the cultivation facility, was a first harvest—as you explained it to the Chicago guys and the PARC board members—ever achieved?

A. No.

[10/21/20-AM Tr. at 56:13-24 (APP550).] Absent a first harvest, PARC never owed anything under the Building Lease or Equipment Lease.

B. The business relationship falls apart.

Premier's failure to fulfill its cultivation obligations created tension between the PARC team and the Chicago investors. The PARC Board of Directors also grew increasingly concerned that Premier was operating illegally and thus putting PARC's license in jeopardy. [10/21/20-PM Tr. at 19:7-27:7 (APP561-69) (Premier employee testifying re illegal activity at facility under supervision of head grower Mike Williams); 10/20/20-PM Tr. at 64:4-8 (APP494) (admitting that Premier was "placing PARC's license in jeopardy by the illegal activity in [its] company").] In addition, DHS inspected the facility in April 2017 and found several deficiencies. [Tr. Ex. 284 (APP355-58) (ADHS statement of deficiencies).]

1. PARC votes in new directors.

PARC's Board of Directors decided to act. In April 2017, the Board voted to replace the two inexperienced board members chosen by the New Leaf investors with three qualified people—Yuri Downing, Whitney Sorrell, and Edward Glueckler. [*See* Tr. Ex. 280 (Board minutes documenting

appointments); 10/20/20-PM Tr. at 92:21-93:25 (APP498-99) (replaced board member admitting he was appointed because Merel was a family friend); 10/15/20-PM Tr. at 59:14-23 (APP390).] The Board promptly hired an outside consultant and undertook a review of the cultivation facility and contracts. [*See* 10/22/20-AM Tr. at 62:19-63:1 (APP609-10); 10/21/20-PM Tr. at 125:1-129:2 (APP570-74).]

The review and audit yielded several very concerning findings. For example, the auditor found evidence that Premier's employees had purchased illegal marijuana in California and transported it back to PARC's cultivation facility in Arizona. [IR-331 at 39-40 ("Every action indicates product being illegally brought into the facility, as well as product being illegally taken out of the facility . . . .").] The auditor warned, "This operation is so far out of compliance that the actual license holder is at risk of having the entire PARC license suspended or revoked by the AZDHS." [*Id.* at 40 (emphasis omitted).]

2. Premier belatedly claims that "first harvest" occurred and thus that PARC is in breach.

Unsurprisingly, Premier objected to Downing's addition to the Board of Directors and to the Board's review and audit of its performance.

In May of 2016, shortly after Downing was elected, JJSM's attorney sent a letter to PARC claiming for the first time that the "first harvest" had occurred six months earlier, in December 2016, and thus PARC was in default under the Building Lease. [Tr. Ex. 47 at PREMIER000029-30 (APP336-37).] The same day, Premier sent a second letter asserting that PARC was in breach of the Cultivation Agreement for refusing to accept all of the marijuana grown by Premier. [Tr. Ex. 48 at PREMIER000068-69 (APP338-39).] (JJSM Equipment never sent PARC any default notice under the Equipment Lease. [*Cf.* Tr. Exs. 47-48 (APP336, APP338).].)

PARC's counsel responded on June 9, 2017. He disputed the allegations of breach and notified the cultivation entities that PARC was terminating all three cultivation contracts. [Tr. Exs. 53-54.] The cultivation entities' attorney refused to accept the June 9, 2017 letter as an effective termination, however. [*See* Tr. Ex. 54 at PREMIER000096 (describing attempt as a "purported termination" and "improper").] Ten days later, the cultivation entities and New Leaf filed this lawsuit. [IR-1.]

IV. The lawsuit.

A. The plaintiffs sue for over $14 million in damages.

On June 19, 2017, the cultivation entities and New Leaf sued PARC; PARC's Directors Yuri Downing, Whitney Sorrell, and Edward Glueckler; and PARC's former employee Jeff Schaeffer. [IR-1.] The plaintiffs alleged 18 counts for, among other things, breach of contract, breach of the duty of good faith and fair dealing, and tortious interference. [IR-108.] But the plaintiffs' two primary claims were that (1) PARC breached the Cultivation Agreement and thus caused New Leaf to lose $13.5 million in investment returns and contributions; and (2) PARC breached the Building Lease and thus owed JJSM approximately $1.4 million in unpaid rent. [IR-566 at 6 (citing 11/15/18 Expert Report of Gary Liddicoat and Plaintiffs' Ninth Supplemental Disclosure Statement).]

PARC counterclaimed for declaratory relief/rescission, breach of contract, and breach of the duty of good faith and fair dealing. [IR-126, IR-127.] These counterclaims are not at issue on appeal.

B. DHS pulls the facility's ATO and JJSM finds a replacement tenant.

At the outset of the litigation, the plaintiffs requested a temporary restraining order to prevent PARC from terminating the cultivation

agreements or withdrawing the Approval to Operate ("ATO") granted to PARC by DHS (without which the facility could not remain open). [IR-5 at 15.] The superior court granted a limited injunction preventing PARC from terminating the contracts or withdrawing the ATO unless it gave the plaintiffs at least 21 days' notice and an opportunity to cure. [IR-20 at 6.]

The plaintiffs eventually locked PARC out of the cultivation facility entirely and refused to provide it with access or information. [*See, e.g.*, 10/22/20-AM Tr. at 56:6-59:25 (APP605-08); Tr. Ex. 57 (Downing email to Premier: "I have serious concerns about the operations of the PARC cultivation facility" and "received no response to my request for immediate access to cameras"); Tr. Ex. 58 (Merel email to Downing: "This e-mail is to also notify you that you are not permitted to enter Premier's offices without prior notice, your legal counsel present, and Premier's consent").]

Because PARC is legally required to oversee the operations at the cultivation facility as the licensee, it notified the plaintiffs that it would have to inform DHS that it could no longer certify compliance as required to maintain the facility's ATO unless it was given access. [Tr. Ex. 59.] PARC waited the requisite notice-and-cure period under the TRO before notifying

DHS that it could no longer access or monitor the facility. [*See id.*] Finally, on October 10, 2017, DHS revoked the facility's ATO. [Tr. Ex. 63.]

JJSM subsequently found a replacement tenant for the building. [*See* Tr. Ex. 37 (APP324).] On April 1, 2020, JJSM signed a new lease with the replacement tenant for even more rent than PARC would have paid. [*Id.* at PREMIER005957 (APP326).] As the Opening Brief concedes (at 12), the replacement tenant's rental obligations under the new lease "exceeded PARC's obligations under the [Building] Lease." According to PARC's initial calculations, "under the Building Lease with PARC, JJSM Real Estate could have, at most, expected to receive a total of $4,585,551.72 over the ten-year term of the lease, whereas under the new lease, however, JJSM Real Estate can expect to receive more than $14 million over the next 15 years." [IR-301 at 2.]

PARC filed a motion in limine arguing that JJSM should be precluded from introducing any evidence of damages from PARC's alleged breach of the Building Lease because the new lease's rent fully offset any liability PARC could possibly have. [IR-301 at 1-2 (cited by the opening brief at 12).] Reasoning that PARC's motion was substantive and not procedural, the

superior court denied the motion "without prejudice to evaluating the issues as part of the trial presentations." [IR-340 at 11-12.]

The superior court subsequently agreed to take supplemental briefing and hold a fair limits hearing regarding how to apply the new lease rent against PARC's liability. [*See* IR-361 at 1 (APP196).] Although the parties agreed that the excess rent from the replacement tenant would offset PARC's liability from April 2020 forward, they "dispute[d] whether PARC [was] entitled to credit from that New Lease 'excess rent' to offset what PARC owed from December 2016 through March 2020." [*Id.* at 2 (APP197).] The superior court concluded that "the approach consistent with Arizona law is to apply the excess rent to PARC's past liability." [*Id.* at 6 (APP201).]

In light of that ruling, PARC moved for summary judgment on JJSM's breach claim based on a lack of damages. [IR-371.] The superior court quickly denied the motion before any response was filed to avoid delaying the trial, noting that the parties could "revisit[] the issues raised as part of a motion for judgment as a matter of law." [IR-374 at 1 (APP203).]

At no time during any of the proceedings regarding the new lease and the rent offset issues did JJSM dispute that the excess rent from the replacement tenant would fully offset PARC's liability.

C. The case goes to trial.

By the time of trial, the plaintiffs were down to only seven of their original eighteen counts. All of New Leaf's claims were dismissed with prejudice before trial, as were all claims against PARC Directors Glueckler and Sorrell and former employee Schaeffer. [IR-294 (Schaeffer); IR-376 (New Leaf, Glueckler & Sorrell).] All that remained were the cultivation entities' claims for breach of their agreements and the related duties of good faith against PARC, and those same entities' tortious interference claims against Downing.

At the close of evidence, PARC and Downing moved for judgment as a matter of law under Rule 50(a). [10/21/20-AM Tr. at 6:10-24:18 (APP504-22) (Downing); *id.* at 24:21-33:13 (APP522-31) (PARC); 10/23/20 Tr. at 8:16-19:1 (APP617-20) (PARC); 10/22/20-AM Tr. at 3:18-20:11 (APP577-94) (both).][2] (The plaintiffs moved for Rule 50(a) relief only on PARC's counterclaims. [10/23/20 Tr. at 6:5-7 (APP615).])

[2] The Opening Brief cites (at 17-18) to withdrawn Rule 50(a) motions, not the actual motions in the record. The parties agreed to withdraw the written motions and proceed orally. [10/21/20-AM Tr. at 6:2-6 (APP504).]

The superior court denied the motions. [10/21/20-AM Tr. at 34:8-16 (APP532); 10/23/20 Tr. at 18:19-19:1 (APP619-20).] The jury returned the following verdicts:

Count	Description	Plaintiff / Defendant	Verdict
3	Breach of Cultivation Agreement	Premier / PARC	$0 to Premier
4	Breach of Lease	JJSM / PARC	$1,377,320 to JJSM
5	Breach of Equipment Lease	JJSM Equipment / PARC	$68,000 to JJSM Equipment
9	Breach of Good Faith	Premier / PARC	$0 to Premier
10	Breach of Good Faith	JJSM / PARC	$0 to JJSM
11	Breach of Good Faith	JJSM Equipment / PARC	$0 to JJSM Equipment
13	Intentional Interference	Premier / Downing	$250,000 to Premier
		JJSM Equipment / Downing	$100,000 to JJSM Equipment
Total damages:			$1,795,320

[IR-416 (APP204), IR-417 (APP205), IR-420 (APP206), IR-421 (APP207), IR-424 to IR-428 (APP208-12).]

D. The cultivation entities recover less than $70,000.

The plaintiffs, PARC, and Downing each filed post-trial motions for judgment as a matter of law or, alternatively, for new trial. [IR-489; IR-491;

IR-492; IR-508.] The superior court granted each motion in part. [IR-560 at 2-3 (APP224-25).]

The superior court granted PARC's motion for judgment as a matter of law on Counts 4 and 10 (breach of the Building Lease and associated duty of good faith) and Count 11 (breach of the Equipment Lease's duty of good faith). [*Id.* at 2 (APP224).] The court reduced the damages for Count 4 to $1 in nominal damages after finding that the new lease fully offset JJSM's damages for PARC's breach. [*Id.* at 5 (APP227).] On Counts 10 and 11, the superior court agreed that the plaintiffs failed to show a breach of the duty of good faith separate and apart from their breach of contract claims and thus entered judgment for PARC. [*Id.* at 6 (APP228).]

The superior court also granted judgment as a matter of law for Downing in part. [*Id.* at 8 (APP230).] The court agreed with Downing that the plaintiffs failed to prove any tort damages. It nonetheless concluded that because Downing allegedly interfered with the contracts by inducing their breach, the plaintiffs could also recover their breach of contract damages against Downing in tort. [*Id.* at 8 & n.4 (APP230).] Accordingly, the superior court adjusted the damages awarded to Premier and JJSM Equipment under Count 13 to correspond to the damages for breach under Counts 3 and 5,

effectively making PARC and Downing jointly and severally liable for breach. [*Id.* (APP230).]

Finally, on the plaintiffs' motion, the superior court added $1 in damages to the verdicts for Counts 3 and 9 (breach of the Cultivation Agreement and associated duty of good faith and fair dealing). [*Id.* at 11-12 (APP233-34).]

The table below shows the outcomes at trial and in the amended judgment:

Count	Description	Plaintiff / Defendant	Initial Verdict	Post-Trial Judgment
3	Breach of Cultivation Agreement	Premier / PARC	$0 to Premier	$1 to Premier
4	Breach of Lease	JJSM / PARC	$1,377,320 to JJSM	$1 to JJSM
5	Breach of Equipment Lease	JJSM Equipment / PARC	$68,000 to JJSM Equipment	$68,000 to JJSM Equipment
9	Breach of Good Faith	Premier / PARC	$0 to Premier	$1 to Premier
10	Breach of Good Faith	JJSM / PARC	$0 to JJSM	for PARC
11	Breach of Good Faith	JJSM Equipment / PARC	$0 to JJSM Equipment	for PARC
13	Intentional Interference	Premier / Downing	$250,000 to Premier	$0 to Premier
		JJSM Equipment / Downing	$100,000 to JJSM	$68,000 to JJSM Equipment,

Count	Description	Plaintiff / Defendant	Initial Verdict	Post-Trial Judgment
			Equipment	reduced by recovery on Count 5
Total damages awarded:			$1,795,320	$68,003

The superior court initially awarded $441,685 in attorneys' fees to the plaintiffs. [IR-486 at 8.] In light of their reduced success post-trial, the court also reconsidered the amount of reasonable fees and instead awarded $220,842.80. [IR-589 at 4 (APP238).]

The superior court entered an amended judgment. [IR-591 (APP240-45).] The plaintiffs, PARC, and Downing appealed. [IR-597; IR-599.]

STATEMENT OF THE ISSUES

1. Did the superior court properly grant judgment as a matter of law on JJSM's damages because the rent owed by the replacement tenant fully offsets the damages?

2. Did the superior court clearly abuse its discretion in excluding the plaintiff's hearsay evidence at trial, or by failing to instruct the jury on damages recoverable only by a dismissed party?

3. Did the superior court properly grant partial judgment as a matter of law on the plaintiffs' interference claims against Downing because they failed to prove tort damages?

4. Did the superior court abuse its discretion in determining the amount of reasonable attorneys' fees?

STANDARD OF REVIEW

This Court "review[s] de novo the trial court's grant of the motion for JMOL." *Barrett v. Harris*, 207 Ariz. 374, 377, ¶ 9 (App. 2004).

The superior court's evidentiary and jury instruction rulings are reviewed for a clear abuse of discretion and resulting prejudice. *Selby v. Savard*, 134 Ariz. 222, 227 (1982) (evidentiary rulings); *Brethauer v. Gen. Motors Corp.*, 221 Ariz. 192, 198, ¶ 24 (App. 2009) (refusal to give a jury instruction).

The Court "review[s] the reasonableness of a fee award for an abuse of discretion." *Cook v. Grebe*, 245 Ariz. 367, 370, ¶ 11 (App. 2018).

ARGUMENT SUMMARY

The superior court correctly granted judgment as a matter of law on JJSM's damages because the rent owed by the replacement tenant fully offsets JJSM's damages. (Argument § I.) Because JJSM did not provide

notice of termination under the Building Lease, it was limited to pursuing common-law remedies. (Argument § I.A.) The common law requires that the excess rent owed by the tenant replacing PARC must be credited against PARC's rental obligation. (Argument § I.B.) Because the rent owed by the replacement tenant fully offsets PARC's liability, the superior court correctly entered judgment for PARC as a matter of law on JJSM's damages. (Argument § I.C.)

Moreover, the superior court did not clearly abuse its discretion by excluding the plaintiffs' hearsay "Inventory Report" during trial (Argument § II.A), nor did it abuse its discretion by failing to instruct the jury on damages recoverable only by a party already dismissed from the case (Argument § II.B).

The superior court also did not err by granting judgment as a matter of law in part on the plaintiffs' tortious interference claims against Downing because the plaintiffs indisputably failed to prove tort damages (Argument § III.B), and interference damages may be limited to contract damages as a matter of law (Argument § III.C). Nor did the superior court abuse its discretion in determining a reasonable amount of attorneys' fees to award to the plaintiffs (Argument § IV).

ARGUMENT

I. The superior court properly granted PARC's motion for judgment as a matter of law regarding damages under the Building Lease.

The superior court correctly ruled in PARC's favor regarding JJSM's damages under the Building Lease. Under the plain terms of the Lease and Arizona law, the excess rent owed by the replacement tenant must be credited against PARC's rental liability. And because the rent owed by the replacement tenant exceeds the rent owed by PARC under the Building Lease, JJSM did not suffer any damages as a matter of law.

A. The Building Lease defines JJSM's rights and remedies in the event of default.

Although JJSM and PARC dispute the proper interpretation of the Building Lease, they agree that the Lease defines and controls the remedies available to JJSM here. (*See* Opening Br. at 24-25.) Contract interpretation is a question of law reviewed de novo. *Terrell v. Torres*, 248 Ariz. 47, 49, ¶ 13 (2020).

1. The Lease provides three options after default.

As the superior court correctly determined, the Building Lease gives the landlord three options if the tenant defaults. [IR-361 at 3 (APP198); IR-560 at 4 n.1 (APP226) (incorporating IR-361 into post-trial ruling).]

(a) Lease termination under § 17.2(a).

First, under § 17.2(a), the landlord can "terminate [the] Lease," but only "by giving to Tenant notice of Landlord's election to do so . . . ."

> (a) Landlord may terminate this Lease by giving to Tenant notice of Landlord's election to do so, in which event the Term shall end and all right, title and interest of Tenant hereunder shall expire on the date stated in such notice;

[Tr. Ex. 25 at PREMIER000215, § 17.2(a) (APP310) (highlighting added).] If the landlord proceeds under § 17.2(a), "all right, title and interest of Tenant" under the Lease terminates as of the noticed date, *id.*, and the landlord can recover "Final Damages" under § 17.5, meaning all past and future rent owed under the Lease. [*Id.* at PREMIER000216, § 17.5 (APP311).]

To invoke § 17.5, however, the landlord must expressly notify the tenant of its intent to terminate the Lease. [*Id.* at PREMIER000215, § 17.2(a) (APP310); *id.* at PREMIER000216, § 17.5 (APP311).] Engaging in conduct that implies or suggests termination is not enough. [*Id.* at PREMIER000216, § 17.4 (APP311) (conduct shall not be construed as "an election on Landlord's part to terminate this Lease, unless a written notice of such intention shall be given to Tenant").]

Summary: upon notice of termination under § 17.2(a), JJSM could kick PARC out, retake the premises, and recover all past and future rent owed under the Lease.

(b) Possession termination under § 17.2(b).

Alternatively, § 17.2(b) allows the landlord to terminate the tenant's possession of the premises "by giving notice to Tenant that Tenant's right of possession shall end."

> (b) Landlord may terminate the right of Tenant to possession of the Premises without terminating this Lease by giving notice to Tenant that Tenant's right of possession shall end on the date stated in such notice, whereupon the right of Tenant to possession of the Premises or any part thereof shall cease on the date stated in such notice; and

[*Id.* at PREMIER000215, § 17.2(b) (APP310) (highlighting added).]

In contrast to § 17.2(a), notice under § 17.2(b) ends the right to possession only; it does not terminate the Lease itself. [*Id.* at PREMIER000216, § 17.4 (APP311).] Consequently, the remedies available differ from those available for lease termination under §§ 17.2(a) and 17.5. When proceeding under § 17.2(b), the landlord may recover "Current Damages" under § 17.4, meaning "all amounts then due," plus future rent payments "as they become due." [*Id.* (APP311).] Or, the landlord may relet

the premises "for the account of Tenant" and apply the rent received from releting first to its own expenses and then to the tenant's liability. [*Id.*]

Summary: upon notice of termination of possession under § 17.2(b), JJSM could kick PARC out, retake the premises, and recover rent due from PARC through the date its possession terminated. JJSM could then periodically recover future rent from PARC as it came due, or re-let the building to someone else.

(c) Common-law enforcement under § 17.2(c).

Finally, § 17.2(c) provides a general enforcement provision:

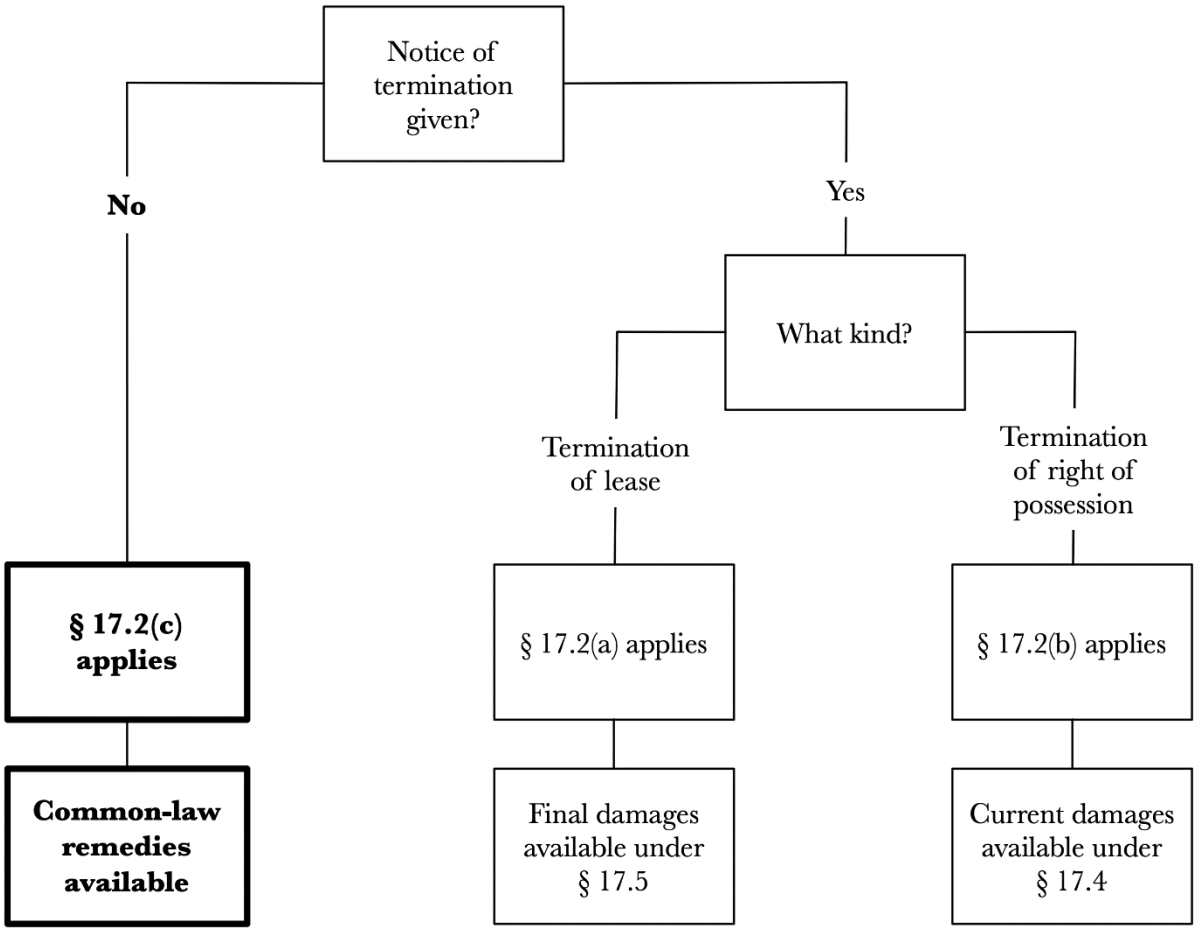
> (c) Landlord may enforce the provisions of this Lease and may enforce and protect the rights of Landlord hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of all moneys due or to become due from Tenant under any of the provisions of this Lease.

[*Id.* at PREMIER000215, § 17.2(c) (APP310).] Unlike § 17.2(a) or (b), § 17.2(c) does not require notice. But § 17.2(c) also does not trigger the specific contractual remedies available under §§ 17.4 and 17.5. Instead, it simply preserves the landlord's right to sue for specific enforcement or any other "appropriate legal or equitable remedy." [*Id.* (APP310).]

Summary: if JJSM did not give notice under §§ 17.2(a) or (b), it could pursue its rights and remedies available at common law under § 17.2(c).

2. Summary of Lease options.

In short, the Building Lease gave JJSM three options in the event of PARC's default. The rights and remedies available to it depend upon the option chosen:



B. Because JJSM proceeded under § 17.2(c), it is limited to common-law remedies.

1. JJSM never gave notice.

It is undisputed that JJSM did not notify PARC of its intent to terminate either the Building Lease or PARC's right to possession of the facility. [*See, e.g.*, 10/22/20-AM Tr. at 22:17-24:5 (APP596-98) (JJSM counsel: "Well, we—I don't deny that no termination notice was sent.").] As such, the superior court correctly ruled that JJSM "did not give notice under §§ 17.2(a) or 17.2(b)," but instead "acted under § 17.2(c)" when it sued PARC for breach of the Building Lease. [IR-361 at 4 (APP199).][3] In fact, JJSM explicitly told the superior court that it "elected the remedy set forth in Article 17.2(c) of the Building Lease." [IR-352 at 3; *see also* IR-361 at 3 (APP198).]

JJSM did not object to those findings then, nor does it challenge them now. (*See* Opening Br. at 12-13 (challenging other aspects of superior court ruling, but not its finding that JJSM did not give notice).) To the contrary, JJSM concedes that it failed to give notice under §§ 17.2(a) or (b). (*Id.* at 25-

[3] The superior court incorporated its earlier findings regarding the "offset issue" (from IR-361) into its order granting in part and denying in part PARC's renewed motion for judgment as a matter of law. [IR-560 at 4 n.1 (APP226).]

27 (offering various arguments as to why JJSM's "failure to give notice" should be ignored).) The Lease therefore limits JJSM to common-law remedies under § 17.2(c).

This is simple contract interpretation. Sections 17.4, and 17.5 both begin with the word "If":

- "*If* Landlord terminates the right of Tenant to possession of the Premises without terminating this Lease" (§ 17.4)
- "*If* this Lease is terminated by Landlord as provided for by subparagraph (a) of Section 17.2" (§ 17.5)

(Emphases added.) Each "if" statement establishes the necessary predicate for its corresponding remedy. If JJSM fails to satisfy a given predicate—here, by not providing notice—then it cannot invoke the associated remedy.

Tellingly, JJSM does not actually dispute this point. Instead, it deflects by claiming (at 24-25) that the superior court "found that the provisions of the Lease did not apply." Not so. The superior court explicitly relied on and applied the Lease's default provisions to determine that JJSM was limited to the remedies available by virtue of § 17.2(c). [IR-361 at 2-3 (APP197-98); *see also* 10/22/20-AM Tr. at 27:14-19 (APP601) (Court: "So if there is what I'll call a de facto termination of the right of possession, without that written

notice of termination, then aren't you dumped into the common law approach?" / Plaintiffs' Counsel: "Right.").]

2. Notice is a predicate to a contractual benefit, not a performance obligation.

JJSM recognizes that its failure to give notice prevents it from relying on §§ 17.4 or 17.5. But it argues that this Court should disregard this failure, for three reasons.

First, relying on the general rule that a "material breach of contract relieves the non-breaching party from the duty to perform," *Murphy Farrell Dev., LLLP v. Sourant*, 229 Ariz. 124, 133, ¶ 33 (App. 2012), JJSM argues (at 25-26) that PARC's alleged breach of the Lease discharged its obligation to give notice under §§ 17.2(a) or (b). (*Id.*)

This argument is a red herring. The superior court did not find that JJSM breached by failing to give notice of termination. Instead, it merely found that by failing to give notice of termination, JJSM had not completed the steps necessary to invoke §§ 17.4 or 17.5.

In addition, as *Murphy* explained, when the provisions in question "do not mandate any performance by" the party seeking their discharge, the other party's material breach has "no impact on the viability of [those]

provisions." *Murphy*, 229 Ariz. at 133, ¶ 33. Like in *Murphy*, the Lease's default provisions do not mandate any performance by JJSM; they merely define the remedies available to the landlord upon default and the steps required to invoke them. JJSM could give notice, or not, without breaching the Lease.

Moreover, § 17.2(a)-(b)'s notice requirements arise only if the tenant defaults—i.e., if the tenant materially breaches. The Court should reject the circular argument (at 25-26) that PARC's default excuses JJSM from providing notice *upon default*.

Second, JJSM contends (at 26-27) that its failure to give notice was a "trivial" and thus excusable breach. This argument once again conflates a predicate to a contractual benefit with performance of a contractual obligation. The Lease does not obligate JJSM to give notice of termination under §§ 17.2(a) or (b). Nor did the superior court find JJSM in breach for failing to give notice. Arguments about "breach" therefore miss the point. If the landlord does not satisfy the steps necessary to invoke the remedy, then it cannot invoke the remedy.

JJSM's third argument (at 28) about election of remedies likewise conflates two principles. Although a plaintiff may pursue alternative

remedies, a plaintiff cannot receive a remedy without establishing entitlement to that remedy in the first place. JJSM does not dispute the superior court's finding that "there is nothing in the record about proper notice." [IR-361 at 4 (APP199); *see also* 10/22/20-AM Tr. at 27:11-22 (APP601) (plaintiffs' counsel conceding that "if Plaintiffs want to say, we get the benefit of 17.4 as we Plaintiffs interpret it," they "have to comply with what 17.4 requires").]

In short, the Lease's plain text prevents JJSM from proceeding under §§ 17.4 or 17.5 because it did not give notice under §§ 17.2(a) or (b). Instead, as the superior court determined, its remedies are limited to those available at common law under § 17.2(c). [IR-361 at 4 (APP199).] "JJSMRE acted under § 17.2(c). . . . That means that general principles of contract law and commercial lease disputes apply." [*Id.* (APP199).]

C. The superior court correctly ruled that JJSM must credit excess rent from reletting against PARC's past liability.

The superior court correctly found that under common-law rules made applicable by § 17.2(c), the excess rent owed to JJSM by the new tenant must be credited against PARC's rent obligation for PARC's full Lease term. [IR-361 at 3-4 (APP198-99).]

Under the Building Lease, PARC agreed to pay about $33,000 in monthly rent to lease JJSM's property through December 2025. [Tr. Ex. 25 at PREMIER000204, §§ 2.1, 3.1 (APP308).] PARC's alleged breach gave JJSM the opportunity to replace PARC with a new tenant that agreed to pay a *higher* monthly rent—at least $70,000 a month—for the same building from April 2020 through December 2025. [Tr. Ex. 37 at PREMIER005914, -5957 (APP325, APP326).] As the superior court correctly found, any damages caused by PARC must therefore be reduced by the "extra" rent JJSM can now receive above and beyond what it could get from PARC under the bargain they originally struck.

The court's analysis relied on the fundamental premise of contract damages—here, "putting JJSMRE in the same place as if PARC performed," [IR-361 at 5 (APP200)], while also acknowledging "that a landlord's damages should not be a windfall," [*id.* (APP200) (citing *Lee Dev.*, 166 Ariz. at 478)]. With those principles in mind, the superior court turned to the narrow question at hand—whether the excess rent from reletting should be credited against PARC's past liability. Finding no factually similar Arizona cases, the superior court looked "more broadly" to other jurisdictions and to seminal treatises on the subject. [IR-361 at 5 (APP200).] After surveying various

authorities, the superior court concluded: "While courts are not uniform, the approach consistent with Arizona law is to apply the excess rent to PARC's past liability." [IR-361 at 5-6 (APP200-01).]

The superior court reaffirmed this ruling post-trial. [IR-560 at 4-5 (APP226-27).] Comparing the present values of PARC's liability (as found by the jury) and the rent owed by the new tenant through the end of PARC's lease term (December 2025), the superior court correctly found "that 'excess rent' through the term of PARC's lease (December 2025) more than covers the verdict." [*Id.* at 4 (APP226).] In other words, the rent from the new lease "puts JJSM Real Estate in the same position as if PARC performed under the contract . . . ." [*Id.* (APP226).] The superior court therefore granted "in part PARC's motion for judgment as a matter of law regarding breach of the building lease" and vacated "the portions of the judgment awarding JJSM Real Estate damages of $1,377,320.00." [*Id.* (APP226).]

This Court should affirm because the superior court correctly applied Arizona law to the facts of this case. It is well settled under Arizona law that "if a lease is not terminated, the landlord may recover unpaid rent due prior to reletting the premises and future rent due for the balance of the lease term, subject to the landlord's duty to mitigate damages by reletting the

premises." *Tempe Corp. Office Bldg. v. Ariz. Funding Servs., Inc.*, 167 Ariz. 394, 399 (App. 1991). It is also well settled that if the landlord does re-let the premises, the rent from a replacement tenant must be credited against the tenant's liability. *See, e.g., id.*; *Roosen v. Schaffer*, 127 Ariz. 346, 349 (App. 1980).

The narrow dispute here is whether the rent from reletting must be credited against the tenant's full liability, or only against its future liability from the date of reletting. Contrary to JJSM's arguments (at 33-39), the superior court correctly applied Arizona law to determine that the rent paid by the new tenant must be credited against PARC's full liability under the Lease and not just future rent.

1. Arizona applies ordinary contract principles to lease damages.

A lease is just "[a] species of contract." *Joy Enters., Inc. v. Reppel*, 112 Ariz. 42, 46 (1975). Accordingly, the damages available for breach of a lease are evaluated using settled contract principles.

Arizona follows the general rule that "[c]ontract damages are ordinarily based on the injured party's expectation interest and are intended to give him the benefit of his bargain by awarding him a sum of money that

will, to the extent possible, put him in as good a position as he would have been in had the contract been performed." Restatement (Second) of Contracts § 347, cmt. a (1981); *Ramsey v. Ariz. Registrar of Contractors*, 241 Ariz. 102, 107, ¶ 12 (App. 2016) (quoting same). Indeed, "[e]nforcing the expectation interests of the parties is one of the principal goals of remedying a breach of contract." *John Munic Enters., Inc. v. Laos*, 235 Ariz. 12, 18, ¶ 18 (App. 2014).

This "expectation" principle also means that "a party should not profit more from breach of a contract than its full performance." *Id.* ¶ 19. In a bilateral contract such as a lease, the contract damages should "equal the value of the performance . . . of both parties and not the value of the defendant's performance alone . . . ." 24 Williston on Contracts § 64:6 (4th ed.). "The aim is to yield the net amount of losses caused." *N. Ariz. Gas Serv., Inc. v. Petrolane Transp., Inc.*, 145 Ariz. 467, 478 (App. 1984).

Accordingly, when a defendant's breach frees a plaintiff from further performance and thereby "enables the injured party to acquire pecuniary advantages that he or she otherwise would not have been able to obtain," the plaintiff's damages must be reduced by that advantage." Williston § 64.3. In other words, "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). This comports with "the basic principle underlying common-law remedies," namely, "that they shall afford *only compensation for the injury suffered*." *Illinois Cent. R.R. Co. v. Crail*, 281 U.S. 57, 63 (1930) (emphasis added).

Arizona courts routinely apply these fundamental tenets, including in the commercial lease context. In *Lee Dev. Co. v. Papp*, for example, the court rejected the landlord's argument that the trial court erred by reducing its future rent damages by the current fair market rental value of the property. 166 Ariz. 471, 475 (App. 1990). Although the landlord had found a replacement tenant, the sublease expired with eight months left on the original lease term. *Id.* at 478. To determine the landlord's future rent damages, the trial court subtracted the present fair market rental value of the property from the remaining rent owed under the lease. *Id.*

The landlord argued on appeal that this was error because the property was vacant and thus no offset for the market rental value was warranted. *Id.* at 475, 478. The Court disagreed, explaining that "[d]amages for advance rent for the full term are the difference between the stipulated rental and the rental value. To hold otherwise would allow the landlord a

windfall if he succeeded in subleasing the premises after the judgment." *Id.* at 478 (citation omitted); *see also Tempe*, 167 Ariz. at 399 (adopting same rule).

The superior court analysis follows these fundamental principles. By crediting the rent from reletting against PARC's past liability, but not allowing PARC to benefit from any rent payable to JJSM after the expiration of the Building Lease in December 2025, JJSM is placed in exactly the same position it would be in had PARC continued to perform under the Lease.

2. Cases from other jurisdictions confirm the common-law rule applied by the superior court.

As the superior court noted, caselaw from other jurisdictions utilizing the same fundamental damages principles as Arizona support its conclusion that the rent from reletting must be used to offset PARC's past liability.

Indeed, "[t]here appears to be general agreement that the lessee who breaches a lease is entitled to a rent credit for any proceeds gained by the landlord from reletting during the period of the original lease term." *Wanderer v. Plainfield Carton Corp.*, 351 N.E.2d 630, 635 (Ill. Ct. App. 1976). When a landlord does not terminate the lease but reenters and relets the property for the tenant's account, "the tenant is entitled to a credit for rents received over and above those it was obligated to pay under the lease unless

the lease provides otherwise." *Centerline Inv. Co. v. Tri-Cor Indus., Inc.*, 80 S.W.3d 499, 505 (Mo. Ct. App. 2002). This excess rent credit is applied to the breaching tenant's remaining liability under the lease, as well as that which accrued "before the substitute lease was signed." *Jack I. Bender & Sons v. Tom James Co.*, 37 F.3d 640, 643 (D.C. Cir. 1994).

In such situations, "the proper test for [the landlord's] compensation is the difference between the total rent agreed upon and the total rent received for the unoccupied term of the lease from subsequent tenants." *The Way Int'l v. Ohio Ctr.*, 445 N.E.2d 1158, 1159 (Ohio Ct. App. 1982); *accord Dalamagas v. Fazzina*, 414 A.2d 494, 495 (Conn. Super. App. 1979) (affirming trial court ruling "crediting excess rents against the damages sustained by the landlord").

Like Arizona courts, these courts reason that the goal of contract damages is "to place the lessor in the position it would have occupied had no default occurred." *La Casa Nino, Inc. v. Plaza Esteban*, 762 P.2d 669, 673 (Colo. 1988). Consequently, "once a landlord does relet the abandoned premises, he can no longer hold the original tenant for the full amount of the rent, rather only for the deficiency; he must credit him with the amount

received from the reletting." *Truitt v. Evangel Temple, Inc.*, 486 A.2d 1169, 1172 (D.C. 1984).

Even decisions that ultimately do not apply such a credit recognize the common-law rule. For instance, in *Gabin v. Goldstein*, a New York court did not apply the excess rents to the original tenant's past due rent, but only because the landlord had "accept[ed] the tenants' surrender, re-enter[ed] the premises and re-let them for [the landlord's] own account." 497 N.Y.S.2d 984, 986-87 (N.Y. Civ. Ct. 1986). Unlike here, the lease's termination in *Gabin* had "released [the tenant] from further liability for rent," so the landlord was "not required to re-let the premises for the protection of the abandoning tenants." *Id.*; *accord N.J. Indus. Props., Inc. v. Y.C. & V.L., Inc.*, 495 A.2d 1320, 1328 (N.J. 1985) (agreeing that "*when the lease has been terminated at the time the property is relet for the landlord's account*, the fact that the property is leased at a higher rental than under the terminated lease does not redound to the benefit of the former tenant" (emphasis added)). But when a lease includes a reletting provision that mirrors the common law, New York courts have applied an offset credit against the breaching party's total liability. *See Iskalo Elec. Tower LLC v. Stantec Consulting Services, Inc.*, 174 A.D.3d 1420, 1423 (N.Y. App. Div. 2019) ("IET relet the premises 'for the account of

[defendant],' and thus defendant is entitled to an offset *against any damages arising from its breach* of the Electric Tower lease . . . ." (emphasis added)).

The superior court properly relied on these authorities to determine that Arizona law requires any excess rent collected from the replacement tenant during the original lease period to be credited against PARC's liability under the Building Lease. Like Arizona, these jurisdictions follow the "expectation" view of lease damages, with the aim of putting the landlord in the same position it would have been in had the tenant continued performing under the lease.

3. The superior court did not adopt authority contrary to Arizona law.

The opening brief argues (at 33-40) that the Court should reverse the superior court because it erroneously relies on authority contrary to Arizona law. None of its claims withstands scrutiny, however.

First, there is no "split of authority," as JJSM contends. The difference in outcomes among the cases results from differences in facts.

For instance, and as shown above (Argument § I.C.2), *Gabin* does not conflict with *Jack I. Bender*. *Gabin* does not reject the offset rule recognized in *Jack I. Bender;* rather, the landlord's decision to terminate the lease in *Gabin*

simply rendered that rule inapplicable. 497 N.Y.S.2d at 986-87. Moreover, more recent caselaw from New York appears to endorse the rule. *See Iskalo Elec. Tower*, 174 A.D.3d at 1423.

The same distinction applies to the supposedly contrary decisions JJSM collects (at 35 n.8). Indeed, relying on many of those same decisions, *Hargis v. Mel-Mad Corporation* acknowledged the common law rule but held "that rule is inapplicable *here where the lease is treated as surrendered or forfeited*." 730 P.2d 76, 80-81 (Wash. Ct. App. 1986) (emphasis added)). These and other decisions were also among the "other jurisdictions" the court analyzed in *N.J. Industrial Properties* before holding that "*when the lease has been terminated at the time the property is relet for the landlord's account*, the fact that the property is leased at a higher rental than under the terminated lease does not redound to the benefit of the former tenant." 495 A.2d at 1328 (emphasis added). Because JJSM did not terminate the Building Lease under § 17.2(a), the exception recognized by these decisions does not apply here.

The only decision cited by JJSM not directly addressed by *Hargis* or *N.J. Industrial Properties* is *CCS North Henry, LLC v. Tulley*, 624 N.W.2d 847 (Wisc. App. 2000). But like the opening brief's other citations, the landlord there "elected to accept surrender," which terminated the lease and allowed

the landlord "to rent the premises for its own account" with "no obligation under the common law to credit [the breaching tenant] with any rents received from [the replacement tenant]." *Id.* at 851, ¶ 14. Here, again, JJSM does not dispute that it never terminated the Building Lease in accordance with the Lease's notice requirement.

Second, JJSM suggests (at 35-36) that most of the cases applying excess rent retroactively do so only because they dealt with leases expressly requiring such an offset. Not so.

In *Dalamagas*, for example, the court first found that the common law already recognized such a rule, only after which it observed that "[t]his is bolstered by the terms of the lease agreement in this case." 414 A.2d at 495. Similarly, *Centerline* held that excess rents are to be credited against past rent obligations "unless the lease provides otherwise." 80 S.W.3d at 505. As for those decisions requiring such an offset based solely on an express lease requirement, not one suggests that the common law would require a different result. *See, e.g.*, *Fashion Place Assocs. v. Glad Rags, Inc.*, 754 P.2d 940, 941-42 (Utah 1988) (finding no statutory abandonment had occurred and applying lease terms regarding remedies when tenant vacates).

Third, JJSM's contention (at 37-38) that Arizona law does not comport with the rationale that "the purpose of damages for breach of contract is to place the non-breaching party in the position he would have been but for the breach" is simply wrong. As explained above (Argument § I.C.1), Arizona courts follow the fundamental principles of expectation for contract damages. Expectation damages exist solely "to put the injured party 'to the extent possible . . . in as good a position as he [or she] would have been in had the contract been performed.'" *Ramsey*, 241 Ariz. at 107, ¶ 12 (quoting Restatement (Second) of Contracts § 347, cmt. a). Thus, "[t]he aim is to yield the net amount of losses caused." *N. Ariz. Gas Serv., Inc. v. Petrolane Transp., Inc.*, 145 Ariz. 467, 478 (App. 1984). JJSM's position—that it gets the past rent on the old lease *plus* the new, higher rent on the new lease—violates the fundamental rule in Arizona that "a party should not profit more from breach of a contract than its full performance." *John Munic*, 235 Ariz. at 18, ¶ 19.

JJSM nevertheless argues (at 37) that the superior court should have rejected the offset rule because Arizona law does not allow damages to "be speculative or remote." But the only Arizona case it cites in support, *Coury*

Bros. Ranches, Inc. v. Ellsworth, 103 Ariz. 515 (1968), in no way suggests that rental payments under a written lease are "speculative or remote."

Moreover, as PARC discussed at length in post-trial briefing, [IR-489 at 8-11 (APP277-80)], the new tenant's promise to pay monthly rent under the new lease is no more speculative than PARC's promise to pay monthly rent under the Building Lease. Having a replacement tenant that is contractually obligated to make rental payments every month puts JJSM in the exact position it was in before PARC's breach, except that now it is contractually entitled to *even more* rent. Before PARC's breach, JJSM did not have cash for future rent; it had a contractual right to receive payments. That's the same thing it has now.

None of JJSM's out-of-state cases (at 37-38) show that the superior court's "rationale does not comport with Arizona law on contractual damages." The superior court did not err as a matter of law by refusing to follow three factually and legally distinguishable cases from other states (one of which is unpublished, and another reversed on other grounds).

Fourth, JJSM gets it backward when it claims (at 38) that the offset allows PARC to "profit" from its breach. The party who would profit from PARC's breach absent an offset is JJSM; indeed, that's why the offset is

necessary. [*See* IR-361 at 5 (APP200).] PARC, meanwhile, is in the same position as before—it is not paying rent, but also has no right to occupy or use the facility. This outcome provides PARC with no better outcome than in any other mitigation case. Meanwhile, none of the Arizona cases the opening brief cites in support address an issue even remotely similar to the one presented in this case. *See, e.g.*, *Great W. Bank v. LJC Dev., LLC*, 238 Ariz. 470, 482, ¶ 41 (App. 2015) (discussing level of proof required for lost profits); *Phx. Newspapers, Inc. v. Schmuhl*, 114 Ariz. 113, 117 (App. 1976) (discussing whether a defendant could use alleged illegality of contract to defeat claims against him).

Finally, JJSM fails to establish that "the modern trend" prohibits offsetting past rent payments, as the opening brief claims (at 39-40). It cites a single Illinois case from 1982 as evidence that Illinois courts no longer follow *Wanderer*, but more recent decisions confirm that *Wanderer* remains valid. *See, e.g.*, *Mali v. Innovative Movement Dance Co., LLC*, No. 5-19-0273, 2020 WL 1082502, at *4, ¶ 24 (Ill. Ct. App. Feb. 19, 2020) (citing *Wanderer* in limiting damages to "the difference between the rent due under the original lease and the rent [the landlord] collected from the new tenant").

Similarly, JJSM cites *Gabin*, a 1986 case, as proof that New York courts "no longer follow" the rule that a tenant is entitled to the benefit of excess rent from reletting "in the absence of a provision that points with reasonable clearness to a different construction." *Hermitage Co. v. Levine*, 162 N.E. 97, 98 (N.Y. 1928). As already discussed, however, *Gabin* does not actually conflict with the common-law rule recognized in *Hermitage*, and more recent cases embrace it. (Argument § I.C.2.) Nor does JJSM identify a single published[4] opinion by an Ohio court disavowing *The Way International*'s holding that, in cases like this one, "the proper test for [the landlord's] compensation is the difference between the total rent agreed upon and the total rent received for the unoccupied term of the lease from subsequent tenants." 445 N.E.2d

[4] Citing (at 40) two unpublished cases, JJSM suggests "modern Ohio courts no longer follow" the decision. But neither case supports this inference. *See Strip Del. L.L.C. v. Landry's Rests., Inc.*, No. 2010CA00316, 2011 WL 3587455, at *4, ¶ 26 (Ohio Ct. App. Aug. 15, 2011) (refusing to extend excess rent offset for amounts received *beyond the original lease term*); *Cocca Dev. Ltd. v. Mahoning Cnty. Bd. of Comm'rs*, No. 12 MA155, 2013 WL 5373146, at *5, ¶ 22 (Ohio Ct. App. Sept. 16, 2013) ("[T]he only amount properly considered for purposes of mitigation was the amount of rent earned from the time of the breach until the time the original lease expired."). In this case, the superior court did not credit PARC for anything after the period of PARC's original lease.

at 1159. In short, none of these cases show that the superior court's analysis of the rent offset issue is counter to "the modern trend."

This Court should affirm.

D. Sections 17.4 and 17.5 do not change the outcome.

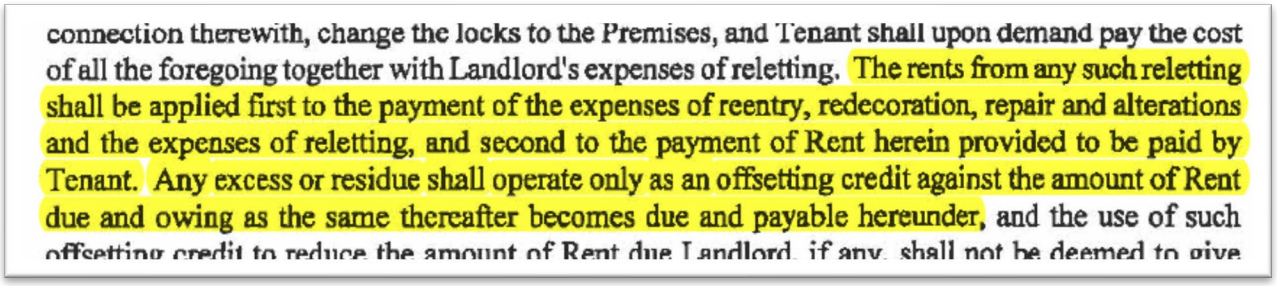
1. Section 17.4 requires the landlord to apply excess rental income to the tenant's entire obligation.

The superior court also held in the alternative that § 17.4 does not change the outcome. [IR-361 at 3-4 (APP198-99).] As explained above (Argument § I.B), the superior court correctly found that JJSM's failure to provide notice under § 17.2(b) prevents it from seeking the remedies available under § 17.4. But even if JJSM had provided the required notice, applying § 17.4 would lead to the same result. This is an independent basis on which this Court may affirm.

Upon termination of PARC's possessory rights under § 17.2(b), § 17.4 grants JJSM "the right of immediate recovery of all amounts then due" under the Building Lease and periodic recovery of future rents "as they become due." [Tr. Ex. 25 at PREMIER000216 (APP311).] Additionally, if JJSM exercises its right to relet the premises, § 17.4 requires JJSM to "relet the Premises or any part thereof *for the account of [PARC]* for such rent." [*Id.*

(APP311) (emphasis added).] Section 17.4 then specifies how (and in what order) to allocate rent paid under the replacement lease:

- "First to the payment of the expenses of reentry, redecoration, repair and alterations and the expenses of reletting";
- "[S]econd to the payment of Rent herein provided to be paid by [PARC]"; and
- Third, "[a]ny excess or residue shall operate only as an offsetting credit against the amount of Rent due and owing as the same thereafter becomes due and payable hereunder . . . ."



connection therewith, change the locks to the Premises, and Tenant shall upon demand pay the cost of all the foregoing together with Landlord's expenses of reletting. The rents from any such reletting shall be applied first to the payment of the expenses of reentry, redecoration, repair and alterations and the expenses of reletting, and second to the payment of Rent herein provided to be paid by Tenant. Any excess or residue shall operate only as an offsetting credit against the amount of Rent due and owing as the same thereafter becomes due and payable hereunder, and the use of such offsetting credit to reduce the amount of Rent due Landlord, if any, shall not be deemed to give

[*Id.* (APP311) (highlighting added).]

Given § 17.4's text and structure, the phrase "Rent herein provided to be paid by [PARC]" necessarily refers to PARC's incurred rental liability under the Lease. [*Id.* (APP311).] The accompanying phrase "shall be applied . . . to the payment of" refers to the immediate satisfaction of an existing liability. The "first" such liability is JJSM's reletting expenses, and the "second" is rent that was "to be paid" by PARC when the parties executed the Lease but, given PARC's alleged default, never was.

The ordinary meanings of "excess" and "residue" likewise affirm this three-part arrangement. Courts frequently "turn to dictionaries for their common and ordinary meaning." *Chopin v. Chopin*, 224 Ariz. 425, 428, ¶ 8 (App. 2010). "Excess" simply means "[a]n amount or quantity beyond that which is normal or sufficient." *Excess*, The American Heritage Dictionary, https://www.ahdictionary.com/word/search.html?q=excess. This is also sometimes referred to as "a surplus." *Id.* "Residue" similarly refers to "[t]he remainder of something after removal of parts or a part." *Residue*, The American Heritage Dictionary, https://www.ahdictionary.com/word/search.html?q=residue.

Before there can be "[a]ny excess or residue," then, there must be a "removal of" some amount of the rents collected under the replacement lease. *Id.* Those removals appear in the preceding sentence of § 17.4—namely, "first" JJSM's reletting expenses and "second" PARC's then-existing rental liability. Only after the removal of those sums can any excess rents then be used to create "an offsetting credit" against PARC's future rental liability. [Tr. Ex. 25 at PREMIER000216, § 17.4 (APP311).]

Section 17.4's separate creation of an "offsetting credit" underscores its distinctive purpose. Instead of saying "[a]ny excess or residue" "shall be

applied . . . to the payment of" a particular liability, § 17.4 instructs that any such remainder "shall operate as an offsetting credit" against PARC's *future* rent obligations. [Tr. Ex. 25 at PREMIER000216 (APP311).] The plain meaning of "credit" confirms this. To have a "credit" in this context is to have a "positive balance or amount remaining in a person's account," like a customer might have with a merchant after overpaying an invoice. *Credit*, The American Heritage Dictionary, https://www.ahdictionary.com/word/search.html?q=credit.

The "offsetting credit" created by § 17.4 functions the same way. Once JJSM has been reimbursed for its reletting expenses and PARC's past due rent, all rent payments received from the replacement tenant during the original lease term create a "positive balance . . . in [PARC's] account," *id.*—the same account for which JJSM "may relet the Premises"—against which JJSM may "from time to time" debit to cover future rent payments "as they become due," [Tr. Ex. 25 at PREMIER000216, § 17.4 (APP311)].

This view fits seamlessly within § 17.4's broader remedial scheme. If JJSM acts under § 17.2(b) and terminates PARC's possession but not the Lease itself, § 17.4 permits only incremental recoveries against PARC. Namely, it grants JJSM "the right to immediate recovery of all amounts *then*

due," while separately affording JJSM "the right, from time to time, to recover" future rents from PARC "as they become due" between the termination of PARC's possessory rights and the end of the lease term. [Tr. Ex. 25 at PREMIER000216, § 17.4 (APP311) (emphasis added).] If JJSM decides to enforce its rights under § 17.4, then, its recovery necessarily is limited to those sums which were "then due" when PARC's possessory rights terminated. [*Id.* (APP311).]

Section 17.4's allocation of "replacement" rents works in tandem with these rights. It vindicates JJSM's right to require PARC to pay the costs of reentering and reletting the premises "upon demand" by requiring their reimbursement "first." It recognizes JJSM's "right to immediate recovery of all amounts then due" by applying those rents "second to the payment of Rent herein provided to be paid by [PARC]". [*Id.* (APP311).] And it addresses JJSM's "right, from time to time, to recover" future rental payments "as they become due" by creating an "offsetting credit" out of "[a]ny excess or residue," from which JJSM may subsequently debit "from time to time." [*Id.* (APP311).]

The takeaway: even if JJSM had acted under § 17.2(b) instead of § 17.2(c), the result would be the same. In either case, JJSM would have been

required to relet the premises "for the account of [PARC]," which in turn would have required it to use the rents paid by the replacement tenant to offset PARC's liability for reentry and reletting expenses, existing rental liability, and future rental liability. [*Id.* (APP311).]

The superior court recognized this overlap. It correctly concluded that even under § 17.4, JJSM's decision to relet the premises would have obligated it to apply those replacement rent payments to PARC's existing "arrearage," and that any remainder "[*a*]*fter that*" arrearage was paid off "would apply toward PARC's *future* rent payments as they came due." [IR-361 at 3-4 (APP198-99).] Even if § 17.4 applies, then, the result remains the same, and this Court should affirm the superior court's ruling.

JJSM's contrary arguments on this point also lack merit. JJSM asserts (at 29) that the phrase "to be paid" refers to a future obligation. But the phrase "Rent herein provided to be paid by tenant" refers to the Rent provided "herein," i.e., the rent the tenant must pay by the lease of which § 17.4 is a part. If "to be paid" conveys a future obligation, it does so from the perspective of the parties at the lease's execution, not at the time replacement rents are collected and allocated. To hold otherwise would be to ignore the plain meaning of the phrase "shall be applied . . . to the

payment" read within the broader context of § 17.4, to disregard the separate and distinct meaning of the term "credit," and to render superfluous the separate sentence addressing the allocation of "[a]ny excess or residue."

The mere fact that JJSM holds a contrary view (at 29-30) does not render § 17.4 ambiguous. "A contract is not ambiguous just because the parties to it . . . disagree about its meaning." *In re Estate of Lamparella*, 210 Ariz. 246, 250, ¶ 21 (App. 2005). "Language in a contract is ambiguous only when it can reasonably be construed to have more than one meaning." *Id.* That is not the case here. Read as a whole, § 17.4 plainly allocates rents received under a replacement lease to three categories: (1) JJSM's reletting expenses; (2) PARC's existing rental liability; and then to (3) PARC's future rental liability.

Nor does contrary testimony by a self-interested witness alter the plain meaning of § 17.4. Parol evidence may not be introduced to create ambiguity where none previously existed; indeed, "whether contract language is reasonably susceptible to more than one interpretation so that extrinsic evidence is even admissible is a question of law for the court." *Lamparella*, 210 Ariz. at 250, ¶ 21. Thus, the superior court did not err in holding that

§ 17.4's plain meaning requires the same offset required by the common law rules. [IR-361 at 3-4 (APP198-99).]

2. JJSM waived any reliance on § 17.5.

The Court should disregard the opening brief's arguments (at 31-33 and 36-37) concerning § 17.5 because JJSM failed to preserve them.

JJSM did not assert § 17.5 in response to PARC's Rule 50(b) motion. [*See* IR-514.] JJSM thus failed to preserve this argument. *See Fendler v. Phx. Newspapers*, 130 Ariz. 475, 478 n.2 (App. 1981) (appellate court "will not consider new theories" not raised in response to motion below). Even if the § 17.5 argument had merit, the superior court did not err by granting PARC's Rule 50(b) motion after JJSM failed to raise the issue in response.

Similarly, JJSM never argued any theory about § 17.5 to the jury, so this Court should also disregard JJSM's arguments about the jury's general verdict supporting recovery under § 17.5. Its supporting citation (at 32) to IR-360 references a pretrial order, which is not a substitute for actually presenting an issue to the jury, let alone a substitute for raising the issue in response to the Rule 50(b) motion. *See Fendler*, 130 Ariz. at 478 n.2.

In short, § 17.5 is not properly before the Court on appeal.

E. The superior court did not err in ruling that the new tenant's rent fully offset PARC's obligations.

In light of the above, the superior court ruled multiple times that PARC should prevail. Before trial, it ruled that JJSM must "apply the excess rent to PARC's past liability." [IR-361 at 6 (APP201).] The court further ruled that "[i]f the excess rent applies to PARC's past missed rent, JJSMRE has no damages." [IR-361 at 5 (APP200).]

JJSM nevertheless persuaded the superior court to let the issue go to the jury, essentially to get an advisory verdict that could be reinstated if the superior court's ruling got reversed. [*See, e.g.*, 10/13/20-AM Tr. at 25:7-26:21 (APP360-61).]

Predictably, the superior court reinstated its prior ruling after trial. The court granted "PARC's motion for judgment as a matter of law," found that "[t]he excess rents from the new lease fully offset" the damages, and therefore "vacate[d] the portions of the judgment awarding JJSM Real Estate damages of $1,377,320.00." [IR-560 at 5 (APP227).]

Contrary to JJSM's argument (at 40), the superior court did not grant remittitur (which falls under Rule 59(f)(1)(A) and requires specific procedures). The Rule 59 standard in *Ritchie v. Krasner*, 221 Ariz. 288 (App.

2009), does not apply. Instead, the superior court expressly granted "judgment as a matter of law" under Rule 50(b). [IR-560 at 5 (APP227).] Under Rule 50(b), the superior court properly "decid[ed] the legal questions raised by the motion." Ariz. R. Civ. P. 50(b).

Although JJSM suggests (at 40) that this issue involves "conflicting evidence," it never identifies what evidence is in conflict. The old and new leases were admitted at trial. [Tr. Exs. 25 (APP307), 37 (APP324).] When the superior court invited briefing before trial [IR-350], JJSM did not dispute that the new rent fully offsets PARC's obligations. [*See* IR-352; IR-358.] JJSM's argument on the Rule 50(a) motion likewise did not dispute the full offset. [10/22/20-AM Tr. at 20:21-30:15 (APP594-604).] Nor did its post-judgment Rule 50(b) response. [IR-514 at 8-12.]

The superior court then invited further briefing on the rent offset calculation. [IR-537 (APP219).] By that point, the parties' dispute was extremely narrow. The only disagreement was whether the value of the rent owed under the old and new leases had to be discounted to the same "present value" date under the methodology the superior court adopted from *Jack I. Bender & Sons v. The Tom James Co.*, 37 F.3d 640, 644 (D.C. Cir. 1994). [*See* IR-549 to IR-552 (parties' position statements); 8/6/21 Tr. at 9:15-

18 (APP630) (superior court summarizing differences: "it seemed to me that PARC did adopt your expert's methodology other than, as Mr. Fraser said, we pick one date for present-value calculations.").] JJSM did not dispute that if both amounts are discounted to the same date (no matter which date), then the new rent fully offsets PARC's liability. [*See id.* (APP630).]

To make sure that the only remaining dispute was about whether to discount the rent values to the same date, the superior court specifically gave JJSM the opportunity to identify "any different methodologies, data, or assumptions" between the parties' positions. [IR-558 at 2 (APP222); *see also* 8/6/21 Tr. at 7:18-13:17 (APP628-34) (discussion re same).] JJSM agreed to this process: "That's just fine, Your Honor." [8/6/21 Tr. at 13:16 (APP634).] Then, decisively, JJSM filed a joint notice stating that no "further supplementation or an evidentiary hearing is necessary." [IR-559 at 2 (APP290).] The Court should therefore disregard JJSM's evidentiary arguments (Opening Br. 15, 21, and 40-41).

The superior court correctly ruled that both leases must be discounted "to the same point in time." [IR-560 at 4 (APP226).] That was the only dispute, and it is a question of law about how to interpret *Jack I. Bender*. There was no dispute or conflicting evidence that if the same date is used for

both leases—*regardless of which date is used*—then the new rent fully offsets the old. JJSM does not identify what evidence was in conflict. Tellingly, on appeal JJSM does not dispute that all amounts must be discounted to the same date, and does not dispute that the new rent fully offsets the old when discounted to the same date.

At bottom, the superior court's post-trial ruling merely reinstated the legal ruling it made before trial.

* * *

In sum, this Court should affirm on issue #1. The superior court correctly construed the Building Lease's terms by crediting the excess rent due under the replacement lease against PARC's liability. Because JJSM failed to give notice under §§ 17.2(a) or (b), and in fact told the superior court that it acted under § 17.2(c), common-law rules governed its available remedies. JJSM did not terminate the Building Lease by notice as required under § 17.2(a), so the common-law offset rule required JJSM to credit the rent from reletting against PARC's liability.

JJSM's failure to give notice under §§ 17.2(a) or (b) also prevents it from invoking §§ 17.4 or 17.5. But even if § 17.4 applied, the outcome would be the same. And JJSM failed to preserve any argument that § 17.5 applies to

uphold the verdict by failing to raise it in response to PARC's Rule 50(b) motion. For all these reasons, this Court should affirm the superior court's ruling granting judgment as a matter of law as to JJSM's damages for breach.

II. The superior court properly exercised its ample discretion over the admission of evidence and jury instructions.

A. The superior court correctly excluded the marijuana inventory report.

Premier contends (at 41-44) that the superior court improperly sustained PARC's hearsay and foundation objections to its "Marijuana Inventory Report" (proposed Trial Exhibit 60). "A [superior] court's rulings on the exclusion or admission of evidence will not be disturbed on appeal unless a clear abuse of discretion appears and prejudice results." *Selby*, 134 Ariz. at 227.

Premier did not dispute that the undated document is hearsay, but invoked the business records exception under Ariz. R. Evid. 803(6). The superior court sustained PARC's objections, finding that the plaintiffs' witnesses could not lay the foundation necessary for the business records exception because they lacked first-hand knowledge or familiarity with the process and procedures used to create the inventory report. [*See, e.g.*,

10/19/20-PM Tr. at 84:14-87:6 (APP415-18); 10/20/20-AM Tr. at 95:11-99:18 (APP481-85).]

The superior court denied Premier's motion for new trial on this issue, reiterating that the plaintiffs' witnesses "could not show the document was a business record under Arizona Rule of Evidence 803(6)." [IR-560 at 9 (APP231).]

This Court should affirm. Premier is not entitled to a new trial because the superior court did not clearly abuse its discretion by excluding the inventory report.

1. Premier's witnesses conceded they could not lay foundation.

As Premier acknowledges (at 42), the business records exception requires "the custodian or another qualified witness" to testify that the record was (1) "made at or near the time by—or from information transmitted by—someone with knowledge"; (2) "kept in the course of a regularly conducted activity of a business"; and that (3) "making the record was a regular practice of that activity." Ariz. R. Evid. 803(6)(A)-(D). "The principal precondition to admission of documents as business records pursuant to [Rule] 803(6) is that the records have sufficient indicia of

trustworthiness to be considered reliable." *Saks Int'l, Inc. v. M/V Export Champion*, 817 F.2d 1011, 1013 (2d Cir. 1987). Absent testimony from a qualified witness establishing all required elements, an alleged business record lacks the indicia of reliability justifying the exception. *See Taeger v. Catholic Family & Cmty. Servs.*, 196 Ariz. 285, 297, ¶ 41 (App. 1999) (trial court properly excluded alleged business record for lack of foundation where witness who laid foundation could not testify to one of the required elements of Rule 803(6)(A)-(D)).

The superior court correctly found that Premier failed to call any trial witnesses who could testify that the inventory report qualified for the business record exception.

Premier first attempted to introduce the report through the testimony of Richard Merel, one of the Chicago investors. But Merel expressly admitted that he could not establish even the first element of the business records exception:

> [Q: Y]ou cannot testify that the record was made at or near the time of the event on the document from information transmitted by anyone in particular with knowledge, correct? All correct?
>
> A. Correct.

[10/19/20-PM Tr. at 56:23-57:2 (APP410-11).] In fact, he could not even testify about how inventory records were kept:

> Q. So who kept them? And how were they kept contemporaneously with any event if they are an inventory record?
>
> A. I can't answer that. I don't know.

[*Id.* at 60:6-9 (APP414).] Consequently, Merel also could not establish that the inventory reports were prepared regularly in the ordinary course of business. [*Id.* at 84:24-87:7 (APP415-18) (discussing Merel's lack of knowledge regarding the ordinary course of business).] He could testify only about what he heard second-hand from others: "I was told that these were documents and records that were kept in the regular course of business." [*Id.* at 59:18-20 (APP413).]

The alternative witness offered by Premier, Bill Artwohl, likewise admitted that he was not familiar with how the inventory report was prepared. Even on direct examination, Artwohl admitted "I don't know how the hell they made them [the inventory reports]." [*Id.* at 133:1 (APP433).] At best, Artwohl had only peripheral knowledge. He saw the managers prepare "these reports when the money [the investors] came around," [*Id.* at 132:13 (APP432)], but these documents were not provided to

him directly, [10/20/20-AM Tr. at 25:1-16 (APP449)]. He would see them only if investors or visitors had questions during a tour: "I would see these types of documents with those gentlemen, with the people who were given a tour, and I was asked to be around if any questions were to be asked that they couldn't answer." [*Id.* at 25:12-16 (APP449).] Indeed, Artwohl told the superior court, "To be honest, Judge, they kept me away from that stuff." [10/19/20-PM Tr. at 141:6-7 (APP434).]

Although "neither the person who witnessed the matters recorded nor the person who created the record are necessary foundational witnesses," Rule 803(6) requires testimony from "someone who has personal knowledge or is otherwise familiar with how the record was prepared or with the practice of the business concerning the preparation of records of that type." 1 Ariz. Prac., Law of Evid. § 803:7 (4th ed.). [*See also* IR-560 at 9 (APP231) (quoting same).] So, for example, a jail supervisor who testified he had overseen inmate intakes for a year, was familiar with and could describe in detail the inmate booking process, and knew that such records "were routinely created as part of the normal course of business at the jail" was a qualified witness for purposes of Rule 803(6), even though he did not have first-hand knowledge about the particular record proffered. *State v.*

McCurdy, 216 Ariz. 567, 572, ¶¶ 9-12 (App. 2007) (cited at page 42 of Premier's brief). But a witness who did not know how the proffered reports were made and could not "be cross-examined concerning the methods of preparation, the qualifications of the preparer, and other relevant matters" was not "a qualified custodian" for purposes of business records exception. *Transamerica Ins. Co. v. Trout*, 145 Ariz. 355, 360–61 (App. 1985).

Here, neither of Premier's witnesses could explain how the inventory report was prepared, the procedures used to prepare it, or otherwise testify that it was Premier's regular practice to prepare inventory reports like Exhibit 60 in the ordinary course of its business. Merel "couldn't tell us how this document was prepared," didn't "know anything about the procedures used to prepare" it, and could not otherwise testify "that it was prepared by somebody with knowledge at one point or as part of a process where somebody with knowledge would have been creating it," [10/19/20-PM Tr. at 86:3-12 (APP417)]. Meanwhile, "Mr. Artwohl [was] not anywhere close to being able to talk about how this [inventory report] is created or was created" on a regular basis in the ordinary course of business. [10/20/20-AM Tr. at 99:2-3 (APP485).] The superior court therefore properly exercised its ample discretion to conclude that Premier's witnesses could not establish

the necessary foundation to show that the inventory report qualified as an exception to hearsay.

2. Premier misrepresents the superior court's ruling.

Premier cannot show that the superior court abused its discretion. "The determination of whether, in all the circumstances, business records have sufficient reliability to warrant their receipt in evidence is left to the sound discretion of the trial judge." *State v. Petzoldt*, 172 Ariz. 272, 275 (App. 1991) (*quoting Saks*, 817 F.2d at 1013). Premier does not even try to confront the superior court's findings regarding the inadequacy of its witnesses.

Premier instead tries to rebut a ruling the superior court never made. It incorrectly claims (at 42) that the superior court excluded the exhibit because the witnesses were not "the individual who created the inventory." *See also* Opening Br. at 44 (claiming "the trial court sustained the objection because Premier did not have the witness who physically prepared the inventory available to testify."). That is not what the court held.

The only support Premier offers (at 44) is the superior court's statement, "I'm going to sustain the objection." (Citing 10/19/20-PM Tr. at 142:13-14 (APP435).) But the court did not sustain the objection because Premier didn't call the report's author as a witness; it did so because

Premier's witnesses lacked even basic knowledge about how the inventory report was allegedly made, kept, or used in the ordinary course of business. (*See* Argument § II.A.1, above.)

In fact, the superior court specifically disclaimed that the person who prepared the record must testify: "I'm not saying [the witness] needs to be the one who prepared it. That's never been the case for a business record." [10/19/20-PM Tr. at 86:3-6 (APP417).] The court agreed with plaintiffs' counsel that "[n]either the person who witnessed the matters recorded nor the person who created the records are necessary foundational witnesses. We're all on the same page." [10/20/20-AM Tr. at 97:8-11 (APP483).] Premier's arguments and caselaw (at 42-43) on this undisputed point therefore do not justify reversal.

Nor does Premier's general assertion (at 43-44) that its witnesses were sufficiently qualified to testify regarding Exhibit 60 show an abuse of discretion. Premier cites (at 43-44) testimony purporting to show that Merel and Artwohl could explain the process and procedures used to regularly maintain the inventory report, but Premier does not address the superior court's contrary findings. [*Cf.* 10/19/20-PM Tr. at 84:14-87:6 (APP415-17) (rationale for sustaining objections to Merel testimony re Exhibit 60);

10/20/20-AM Tr. at 95:11-99:18 (APP481-85) (same, re Artwohl).] That is not enough to reverse the superior court's discretionary determination that, under "all the circumstances," Exhibit 60 lacked "sufficient reliability to warrant [its] receipt in evidence" as a credible business record. *Petzoldt*, 172 Ariz. at 275.

Moreover, even if Artwohl were qualified to testify about the inventory report, his testimony still could not be used to establish its admissibility. In addition to finding that he did not lay sufficient foundation, the superior court also ruled that Artwohl couldn't testify regarding the inventory report because Premier failed to properly disclose him as a damages witness under Ariz. R. Civ. P. 26.1(a)(3). [10/20/20-AM Tr. at 40:18-41:17, 84:10-93:25 (APP452-53, APP470-79).] Premier did not challenge this ruling in its motion for new trial, [*see* IR-508], and it does not challenge it on appeal, (*see* Opening Br. at 41-44). "[W]here a separate and independent ground from the one appealed supports the judgment made below, and is not challenged on appeal, the appellate court must affirm." 5 Am. Jur. 2d *Appellate Review* § 718; *see also Navajo Nation v. MacDonald*, 180 Ariz. 539, 548 (App. 1994) (failure to challenge on appeal alternative findings sufficient to uphold the superior court's judgment required affirmance).

For all these reasons, this Court should affirm the superior court's evidentiary rulings regarding the marijuana inventory report, including its denial of Premier's motion for new trial on damages.

B. Premier's jury instruction argument is waived and wrong.

Premier also contends (at 44-46) that the superior court improperly refused to instruct the jury on Premier's lost investment damages. Appellate courts "review the superior court's refusal to give a requested instruction for an abuse of discretion, but . . . will not reverse on this basis absent resulting prejudice." *Brethauer*, 221 Ariz. at 198, ¶ 24.

Premier waived this challenge, and it is wrong in any event.

1. Premier waived any objection to the instruction.

To challenge on appeal the superior court's refusal to give an instruction, the party must have properly requested the instruction and properly objected to the given instruction. Ariz. R. Civ. P. 51(d)(1)(B) ("A party may assign as error: . . . (B) a failure to give an instruction, if that party properly requested it and . . . also properly objected."). In addition, if a challenge to the superior court's failure to give an instruction turns on the sufficiency of the evidence supporting the instruction, the reviewing court "shall not consider" the issue "unless a motion for new trial was made."

A.R.S. § 12-2102(C); *see Reed v. Gershweir*, 160 Ariz. 203, 204 n.1 (App. 1989) ("Appellant did not move for a new trial and is thus precluded from raising the failure to give her instruction which necessarily requires an examination of the sufficiency of the evidence.").

"Failure to object to the given instruction in compliance with rule 51[] precludes appeal on the issue and, likewise, precludes assertion of the alleged error as a ground for a new trial." *Long v. Corvo*, 131 Ariz. 216, 217 (App. 1981). Indeed, "absent fundamental error," a "court *may not* grant a new trial based on an erroneous instruction to which no objection was raised at trial." *Mill Alley Partners v. Wallace*, 236 Ariz. 420, 423, ¶ 8 (App. 2014) (emphasis added).

Because Premier did not take any of the actions necessary to preserve its jury instruction challenge in the superior court, it has waived the issue on appeal.

First, Premier cites nothing in the record showing that it requested an instruction addressing lost investment damages, or to any record of the superior court refusing the request. Premier's opening brief must provide "references to the record on appeal where the particular issue was raised and

ruled on." ARCAP 13(a)(7)(B). Without knowing what instruction Premier supposedly requested, this Court cannot evaluate whether it was warranted.

Second, Premier also has not shown that it properly objected to the given instruction on contract damages. To the contrary, the record shows that Premier failed to object. When the superior court suggested that it modify the proposed instruction to expressly refer to "the management fees that Premier would have received under the Cultivation Agreement, had the contract been performed," counsel stated, "That's fine with Plaintiffs." [10/23/20 Tr. at 41:16-20 (APP625); *see also id.* at 40:1-2 (APP624) (plaintiffs' counsel: "I don't have any changes to contract [instruction] 17.").]

Third, Premier did not raise this issue in its motion for new trial. [*See* IR-508 at 4-10.] Because Premier contends (at 45) that sufficient evidence supported an instruction on lost investment damages, it had to move for a new trial on this basis to preserve the issue for appeal. It did not, so it "is precluded from raising the failure to give [its] instruction" on appeal. *Reed*, 160 Ariz. at 205 n.1.

In short, Premier did not take *any* of the necessary steps to preserve its jury instruction challenge on appeal. It has therefore waived the issue.

2. The evidence does not support a lost-investment instruction.

Even setting aside waiver, Premier was not entitled to an instruction on lost investment. "A trial court must give a requested instruction if (1) the evidence presented supports the instruction, (2) the instruction is proper under the law, and (3) the instruction pertains to an important issue that is not dealt with in any other instruction." *Czarnecki v. Volkswagen of Am.*, 172 Ariz. 408, 411 (App. 1991).

Premier's jury instruction argument fails at step one. "Unless an issue finds support in the evidence, it is improper to instruct the jury on it." *DeElena v. S. Pac. Co.*, 121 Ariz. 563, 569 (1979). The trial evidence cannot support a lost-investment-damages instruction in this case for two independent reasons.

First, the plaintiffs never alleged that *Premier* lost any investment money. To the contrary, their witness on this point confirmed that the only plaintiff to invest any money—and thus the only plaintiff who could possibly have any "lost investment" damages—was New Leaf Investment, LLC. He testified:

> [Q.] . . . None of those three entities that are plaintiffs in this case invested the 7.2 million. It was New Leaf that actually invested

> in those three entities. Isn't that accurate to tell this jury under oath?
>
> A. Yes.

[10/15/20-PM Tr. at 99:2-100:25 (APP391-92); *accord*, 10/20/20-PM Tr. at 63:1-6 (APP493).] But New Leaf's claims were dismissed with prejudice *before* trial, with the plaintiffs' consent. [*See* 10/13/20 Tr. at 35:14-36:25 (APP362-63); IR-376 at 2 ("New Lea[f]" claims dismissed with prejudice).] Without a plaintiff entitled to recover lost investment damages, the facts do not support giving a jury instruction on lost investment damages.

Second, Premier's counsel conceded at the close of its evidence "that based on this record, the only thing [Premier] would have would be nominal damages as to the Cultivation Agreement." [10/21/20-AM Tr. at 30:5-11 (APP528).][5] In fact, the superior court removed a proposed consequential-damages instruction after both parties agreed that there was no evidence to support it. [10/23/20 Tr. at 20:16-22:16 (APP621-23) (Plaintiffs' counsel: "I

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[5] Although Premier made this concession subject to its disagreement with earlier rulings, that disagreement concerned the exclusion of evidence regarding destroyed marijuana, not lost investment money. [*See* 10/21/20-AM Tr. at 28:18-29:23 (APP526-27).] In fact, the only damage Premier ultimately claimed at trial was its lost marijuana inventory. [*See id.* at 28:20-22 (APP526) (Premier's counsel: "We have evidence that marijuana was destroyed. . . . So we have evidence of damages.").]

don't believe there has been evidence presented on consequential damages." / Court: "So there's an instruction in there about consequential damages. That will end up coming out.").] The superior court therefore did not err by failing to instruct the jury that it could award lost investment funds as consequential damages.

3. The given instruction allowed the jury to consider lost investment damages.

In any event, the given instruction did not prevent the jury from considering lost investment damages.

The party seeking an instruction must show that "the instruction pertains to an important issue that is not dealt with in any other instruction." *Czarnecki*, 172 Ariz. at 411; *see also AMERCO v. Shoen*, 184 Ariz. 150, 159 (App. 1995) (no prejudicial error in omitting instruction where "the given instructions gave plaintiffs sufficient leeway to argue their theory of the case").

Here, contrary to Premier's suggestion (at 46), the given instructions did not limit damages to management fees. Rather, the instructions covered "the full amount of money that will reasonably and fairly compensate Premier for the damages proved by the evidence to have resulted naturally

and directly from the breach of contract." [IR-429 at 6-7 (APP264-65).] The instruction then told the jury that it "should consider" management fees, but did not limit the damages to that category. [IR-429 at 7 (APP265).] Contrary to Premier's contention, the instruction did not state that the jury should *only* consider the specified item. The given instruction thus encompasses potential lost investment damages, *see Czarnecki*, 172 Ariz. at 411, and gave Premier with "sufficient leeway" to argue for a lost investment theory of damages if it so chose, *see AMERCO*, 184 Ariz. at 159.

For all these reasons, the Court should reject Premier's argument regarding the damages instruction.

III. The superior court correctly ruled that the plaintiffs failed to prove tort damages.

The Court should reject Premier's and JJSM Equipment's claim that the superior court erred by granting Downing's Rule 50(b) motion in part because they failed to challenge all adverse ruling necessary to achieve relief.

A. Downing did not waive his challenge to the interference claims.

First, to contend that Downing waived this issue, they needed to object on this basis in their response to Downing's Rule 50(b) motion. *See Fendler*, 130 Ariz. at 478 n.2 (appellate court "will not consider new theories" not

raised in response brief to motion below). They did not do so, so they cannot assert waiver on appeal. [*See* IR-481.]

Second, this issue is a legal one that "would not have been susceptible to the introduction of further evidence, even if [Downing] had raised it at the directed verdict stage." *Standard Chartered PLC v. Price Waterhouse*, 190 Ariz. 6, 27 (App. 1996). In these circumstances, failing to move under Rule 50(a) is not an automatic waiver. *Id.*

Third, contrary to the plaintiffs' argument (at 47), Downing properly preserved this issue. Downing made an oral Rule 50(a) motion challenging the sufficiency of the evidence on tortious interference at the close of the plaintiffs' evidence. First, Downing argued that the plaintiffs could not establish tortious interference because a company cannot interfere with its own contract and the plaintiffs had not "shown that Downing did anything tortiously outside of his role as a director and president of PARC." [10/21/20-AM Tr. at 6:16-18 (APP504); *see also* IR-288 at 8-10 (agreeing that plaintiffs' tortious interference claims appeared legally untenable, but allowing them an opportunity to provide more evidence at trial).] Second, Downing argued that the plaintiffs failed to disclose, plead, or prove any interference damages at trial. [*See, e.g.*, 10/21/20-AM Tr. at 162:7-164:21

(APP553-55) (PARC's counsel: "Well, we're asking you to hold their feet to the fire on their entire damages claim, which you haven't. . . . *That was the basis of my* [*Rule 50(a)*] *motions today*, which you deferred on." (emphasis added)).] This Rule 50(a) motion sufficiently preserved Downing's ability to move under Rule 50(b).

B. The plaintiffs cannot obtain relief because the superior court found that they failed to prove tort damages.

The superior court ultimately granted Downing's motion in part, ruling that the interference damages against him could not exceed the amount of contract damages awarded to PARC.

On appeal, Premier and JJSM Equipment contend (at 46-49) that this Court should reinstate the jury verdicts awarding $250,000 and $100,000 on their tortious interference claims because the superior court erred as a matter of law by reducing those damages to match the contract damages awarded against PARC. The Court does not need to reach this issue, however, because even if they are right, the plaintiffs failed to challenge all the adverse rulings necessary to obtain relief.

"On appeal, the appellant has the burden of demonstrating to this court that there was an error committed below." *Guard v. Maricopa Cnty.*, 14

Ariz. App. 187, 188-89 (App. 1971). Thus, an "appellate court will not reverse a ruling of the trial court that rests on independent alternative grounds where the appellant challenges only one of those grounds." 5 C.J.S. *Appeal and Error* § 839. In other words, if an appellant raises an argument that would not entitle them to the relief sought, the Court may properly decline to reach it. *See, e.g.*, *Tammy M. v. Dep't of Child Safety*, 2 CA-JV 2017-0169, 2018 WL 637310, at *3 (App. Jan. 31, 2018) (declining to reach appellant's challenge to severance of her parental rights for chronic drug use where appellant failed to challenge alternative grounds given for severance); *Regal Homes, Inc. v. CNA Ins.*, 217 Ariz. 159, 170, ¶ 45 (App. 2007) (declining to reach issue where appellant failed to show that its resolution would give appellant any relief).

Here, the superior court's order on interference damages relies on two separate rulings. First, the court agreed with Downing that the plaintiffs failed to prove tort damages with "competent evidence" because rather than "calculate or quantify damages from the tortious interference," Premier and JJSM Equipment simply "invited the jury to award whatever amount the jury found appropriate." [IR-560 at 8 (APP230).]

Second, the superior court ruled that the plaintiffs could nonetheless recover something because their breach of contract damages sufficed to prove damages for the interference claims, as well. [*Id.* (APP230).] It therefore granted Downing's Rule 50(b) motion in part only.[6]

The plaintiffs challenge only the second ruling. That is not sufficient, however, because the superior court's first ruling forecloses the relief the plaintiffs seek.

Premier and JJSM Equipment ask the Court to undo the superior court order limiting the tort damages awarded ($350,000) to the amount of the contract damages proven at trial ($68,000). But even if they are right that the superior court erred in capping their interference damages, Premier and JJSM Equipment are not entitled to have the original verdicts reinstated

[6] Contrary to the plaintiffs' suggestion, this was not a remittitur. Remittitur and additur come into play only under Rule 59 when the trial judge determines "that the awarded damages are either excessive or insufficient." Ariz. R. Civ. P. 59. Downing never claimed (and the superior court never found) that the tortious interference verdicts were "excessive" under Rule 59. Rather, he argued for judgment as a matter of law under Rule 50 because the plaintiffs failed to present any competent evidence of interference damages.

because they failed to challenge the court's separate ruling that they failed to "present competent evidence" supporting those damages. [*Id.* (APP230).]

In short, the superior court correctly ruled that the plaintiffs failed to present competent evidence of tort damages. Because Premier and JJSM Equipment do not challenge this determination on appeal, they cannot have the original verdicts reinstated, even if their other argument succeeds. Consequently, the Court does not need to reach the arguments raised in § V of the Opening Brief.

C. As a matter of law, interference damages may be limited to contract damages.

The Court should also affirm on the merits. Contrary to the plaintiffs' suggestion (at 48), the superior court did not conclude that a claim for tortious interference arises out of contract. The superior court merely explained that the appropriate measure of damages in a given case depends on the contours of the interference claim alleged. [*See* IR-560 at 8 (APP230).]

In cases with appropriate facts, interference damages may be different from contractual damages. *See, e.g.*, RAJI (Civil) Commercial Torts Instruction 12 (7th ed.) ("While interference cases generally involve contracts, nevertheless interference with contract is a tort. . . . *Under*

appropriate circumstances, the plaintiff may recover damages for emotional distress, injury to reputation, or other consequential damages." (emphasis added)). But when the only evidence of interference offered by a party is "the lost benefits of the contract which were a direct and natural consequence of the breach," the damages for interference and for breach "will be coextensive." *Ross v. Holton*, 640 S.W.2d 166, 173 (Mo. Ct. App. 1982) (cited by the plaintiffs at 48 n.10).

Here, like in *Ross*, the plaintiffs sought to recover only consequential damages from the alleged interference. Although the plaintiffs initially proposed a jury instruction covering for both "the net benefit that the Plaintiff would have received had the contract been performed" as well as "consequential losses" caused by the interference, [IR-387 at 4], they conceded at trial that they had no evidence of consequential damages, [10/23/20 Tr. at 20:6-22:16 (APP621-23)]. The parties thus agreed to a final jury instruction on damages for tortious interference that directed the jury to award damages equal to "[t]he net benefit that a Plaintiff would have received had the contract been performed." [IR-429 at 9-10 (APP267-68) (Final Jury Instruction #12); *see also* 10/23/20 Tr. at 21:22-22:16 (APP622-23) (removing consequential damages from jury instructions in light of parties'

agreement that neither side presented evidence of such damages).] The plaintiffs do not challenge that instruction on appeal.

Given the undisputed evidence and agreed-upon jury instruction, the superior court did not err in concluding as a matter of law that the plaintiffs could not recover tortious interference damages beyond their contract damages. This Court should affirm.

IV. The superior court acted well within its discretion in determining the "reasonable" fee.

A. The superior court had ample discretion.

"The amount of fees is peculiarly within the trial court's discretion. Appellate courts are hesitant to second-guess the trial court on awards of attorneys' fees in view of the [trial court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Chase Bank of Ariz. v. Acosta*, 179 Ariz. 563, 574 (App. 1994) (quotation marks and citation omitted). For these reasons, the Court "review[s] the reasonableness of a fee award for an abuse of discretion." *Cook*, 245 Ariz. at 370, ¶ 11.

In a multi-party, multi-claim case, the court may consider the results when determining the reasonable fee. "[T]here is 'no precise rule or formula

for making these determinations.'" *Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 189 (App. 1983) (citation omitted). When parties achieve the results they sought, fees on "unsuccessful legal theories" can be included. *Id.* When parties achieve only "limited success, however, it would be unreasonable to award compensation for all hours expended," so the court may reduce the award. *Id.*; *see also Cook*, 245 Ariz. 371, ¶ 14 (affirming 40% reduction for partial success).

Here, the initial judgment included nearly $1.8 million in damages, and the superior court awarded the cultivation entities attorneys' fees of $462,421.74. [IR-487 at 4 (APP216).] In granting PARC's motion for judgment as a matter of law, the superior court reduced the total damages to less than $70,000. [IR-560 at 2 (APP224).]

Because the damages were reduced by 96%, the parties re-briefed the attorneys' fees issues. [IR-561 to IR-588.] The superior court properly reconsidered its attorneys' fees ruling, including analyzing anew who was the prevailing party and determining a "reasonable" amount of fees to award. [IR-589 at 2-4 (APP236-38).]

The court took "a global view of the fee awards," considered the results achieved, and found "$220,842.80 in reasonable fees." [*Id.* at 4

(APP238).] An award of attorneys' fees triple the amount recovered by the plaintiffs is well within the court's discretion, particularly when the plaintiffs sought millions and got only $68,003.

B. The superior court did not abuse its discretion.

The plaintiffs contend (at 49-50) that the superior court abused its discretion in reducing the original fee award in light of the post-trial rulings because JJSM's damages of $68,000 were not reduced and because the superior court awarded Premier nominal damages. Not so.

The plaintiffs do not contend that the new *amount* awarded by the superior court ($220,842.80) itself is an abuse of discretion. Instead, they suggest that the *reduction* is an abuse of discretion. But the first fees ruling was an interlocutory order, which "was subject to being modified or vacated at any time" after the judgment was vacated. *In re Mario L.*, 190 Ariz. 381, 383 (App. 1997). The plaintiffs have no right to rely on the earlier fee award when the superior court retained the power to revisit the issue.

Relying on *Schweiger*, the plaintiffs falsely claim (at 51) that the "Arizona law does not allow" reducing fees for reduced success. But the very next sentence of *Schweiger* confirms that "it would be unreasonable to award compensation for all hours expended" when a party did not achieve

complete success. 138 Ariz. at 189; *see also Cook*, 245 Ariz. 371, ¶ 14 (affirming 40% reduction for partial success). The plaintiffs also insist (at 51) that they "were prevailing parties," but the superior court agreed. [IR-589 at 4 (APP238) ("they prevailed").]

On appeal, the plaintiffs suggest that the superior court should have considered each claim and each plaintiff separately. But as in *Schweiger*, the plaintiffs' "affidavit fail[ed] to allocate any time between" the claims and parties, so the superior court had no basis to consider each plaintiff separately. 138 Ariz. at 189. When the plaintiffs' own fee application did not differentiate among claims and parties, they cannot now criticize the superior court for taking "a global view of the fee awards." [IR-470 at 7-8.]

The plaintiffs also insist (at 50) that some of the cultivation contracts require a fee award. But the applicable contracts, like A.R.S. § 12-341.01(A), allow a court to award only "reasonable" fees, not all fees. [Tr. Ex. 25 at PREMIER000217, § 17.8 (APP312); Tr. Ex. 29 at PREMIER000179, § 10 (APP318).] And even if a court "*must* award reasonable fees" by contract or statute, the court "may still make a determination of reasonableness." *Exodyne Props., Inc. v. City of Phx.*, 165 Ariz. 373, 380 (App. 1990) (emphasis in original). Contrary to the plaintiffs' suggestion, the superior court did not

"refuse to award" fees; it merely exercised its broad discretion to determine the "reasonable" fees. Also contrary to their suggestion, the superior court did not award fees "commensurate" with damages—the fees were more than triple the damages.

The core question the court answered on fees was "what is reasonable?" [IR-589 at 4 (APP238).] It properly exercised its broad discretion on determining the reasonable fee.

V. Disposition.

The plaintiffs request dispositions to which they are not entitled, even if the Court reverses. For example, they ask (at 52) the Court to add $5.4 million and $398,763.76 in damages, presumably related to the issues on evidence exclusion and jury instructions. But none of their motions below requested additur, and reversals on evidentiary and instructions issues do not warrant adding liability not found by the jury.

The plaintiffs also incorrectly claim (at 33 n.6) that reversing on rent offset entitles JJSM to expenses, taxes, and default fees. But the jury did not award those amounts, some of them have been expressly disclaimed [IR-527 at 5 (APP286)], the superior court denied post-trial motions on them [IR-560 at 10 (APP232)] (a ruling JJSM doesn't challenge on appeal), and JJSM is not

entitled to those amounts [IR-520 at 7-10]. The Court cannot order those amounts to be added.

REQUEST FOR FEES

Under ARCAP 21, A.R.S. §§ 12-341, 12-341.01, and 12-342, Defendants/Appellees/Cross-Appellants request fees and costs incurred on appeal.

CONCLUSION

On the plaintiffs' appeal, the Court should affirm.

OPENING BRIEF ON CROSS-APPEAL

CROSS-APPEAL INTRODUCTION

The cross-appeal focuses on two issues. First, two of the contracts (the Building and Equipment Leases) do not require rent payments until after a "first harvest" occurred. The plaintiffs claim that a first harvest occurred in December 2016, but they failed to prove this dispositive allegation. The superior court erred by refusing to grant judgment as a matter of law regarding these contracts.

Second, the superior court erred by awarding nominal damages on counts 3, 4, and 9. On counts 3 and 9, the jury found that Premier did not have any actual damage attributable to PARC's purported breaches, and declined to award nominal damages. The superior court improperly added nominal damages not awarded by the jury, which violates several procedural and substantive rules. On Count 4, the superior court found that JJSM had fully mitigated its damages and correctly entered judgment as a matter of law for PARC. But the court nevertheless awarded nominal damages to JJSM without any basis to do so. This Court should reverse the judgment on counts 3, 4, and 9, and instruct the superior court enter judgment in PARC's favor.

CROSS-APPEAL ISSUES

1. The Building and Equipment Leases require rent payments only after "first harvest." The plaintiffs alleged that a first harvest occurred in December 2016, but failed to prove this allegation at trial. Did the superior court err by denying PARC and Downing's motions for judgment as a matter of law?

2. The superior court specifically instructed the jury that it could award Premier nominal damages on its contract claims if it found that PARC breached but that Premier did not prove damages with reasonable certainty. The jury returned verdicts of $0 damages and declined to award nominal damages. Did the superior court improperly amended the judgment to award Premier nominal damages?

3. The superior court correctly found that JJSM's damages from PARC's alleged breach of the Building Lease are fully offset by the rent from reletting to a new tenant. Did the superior court improperly award JJSM nominal damages on its Building Lease claim after correctly granting PARC's motion for judgment as a matter of law on that claim?

CROSS-APPEAL STANDARD OF REVIEW

This Court "review[s] *de novo*" both a trial court's ruling on a motion for judgment as a matter of law under Rule 50, *Goodman v. Physical Res. Eng'g, Inc.*, 229 Ariz. 25, 27–28, ¶ 6 (App. 2011), "and questions involving the application and interpretation of court rules," *Duckstein v. Wolf*, 230 Ariz. 227, 231, ¶ 8 (App. 2012).

CROSS-APPEAL ARGUMENT SUMMARY

The Building Lease and Equipment Lease both made PARC's payment obligations contingent upon achieving a "first harvest" that the plaintiffs claim occurred in December 2016. (Cross-Appeal Argument § I.A.) Based on their own definition of the term, the plaintiffs provided no evidence from which a reasonable juror could conclude that the plaintiffs achieved a first harvest in December 2016. Without a first harvest, there is no breach, and PARC and Downing are entitled to judgment as a matter of law. (Cross-Appeal Argument § I.B.) But even if a first harvest had occurred, the plaintiffs did not notify PARC of its obligation to pay rent in December 2016. (Cross-Appeal Argument § I.C.) The superior court erred by summarily rejecting and ignoring these failures. (Cross-Appeal Argument § I.D.)

The superior court also erred by failing to enter judgment for PARC on Counts 3 and 9. Because actual damage is an essential element of a contract claim in Arizona, the superior court was required to enter judgment for PARC after the jury found that Premier suffered no damages. (Cross-Appeal Argument § II.A.) The superior court also lacked authority to unilaterally add nominal damages to the jury's no-damage verdict. The court improperly invoked the additur rule when the plaintiffs never asked for it, without following the procedural requirements for additur, and despite the fact that adding the nominal damages violated the unchallenged jury instructions. (Cross-Appeal Argument § II.B.)

Finally, the superior court legally erred by awarding JJSM nominal damages on Count 4. The superior court correctly found that PARC was entitled to judgment as a matter of law because JJSM had fully offset the damages that PARC's purported breach might otherwise have inflicted. It therefore had no basis to award damages of any kind. (Cross-Appeal Argument § III.)

CROSS-APPEAL ARGUMENT

I. PARC and Downing are entitled to judgment as a matter of law on Counts 4, 5 and 13.

The superior court erred by denying PARC and Downing's Rule 50(b) motions on Counts 4, 5, and 13 (breach of the Building and Equipment Leases and associated intentional interference) because the plaintiffs failed to provide evidence sufficient to establish breach as a matter of law.

On Rule 50(b), the question "is whether the evidence, if treated in the most favorable light to the verdict, is substantial enough that reasonable men could discern facts to support the verdict." *In re Schade's Estate*, 87 Ariz. 341, 344 (1960) (citation omitted). The Court should enter judgment as a matter of law when "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." *Goodman*, 229 Ariz. at 27–28, ¶ 6 (cleaned up). "In considering a JMOL motion, a trial court should apply the same test for deciding whether to grant a motion for summary judgment." *Crackel v. Allstate Ins. Co.*, 208 Ariz. 252, 259–60, ¶ 20 (App. 2004).

In other words, judgment as a matter of law is summary judgment after the parties have had one last chance to present their evidence at trial. Thus, when the uncontradicted evidence on the issues "plainly justifies their withdrawal by the trial court from consideration of the jury," the court should enter judgment under Rule 50. *Schade's Estate*, 87 Ariz. at 344; *see also Aegis of Ariz., L.L.C. v. Town of Marana*, 206 Ariz. 557, 571, ¶ 57 (App. 2003) (trial court erred in denying judgment as a matter of law where "Aegis failed to establish facts upon which relief could be granted"). As the Supreme Court has explained, "it is procedurally proper for a court to instruct a verdict in favor of a party where to have ruled otherwise would have permitted the jury to draw speculative inferences not based on probative facts." *Schade's Estate*, 87 Ariz. at 344.

This is one such case.

A. To establish breach, the plaintiffs had to prove that they reasonably declared a "first harvest" in December 2016.

The Building and Equipment Leases made PARC's payment obligations contingent upon achieving the "first harvest." Under § 3.1 of the Building Lease, "Tenant shall receive an abatement of the Base Rent for the period commencing on the Commencement Date until the date ('Abatement

Expiration Date') of the *first harvest* of cannabis plants at the Premises following the date hereof . . . ." [Tr. Ex. 25 at PREMIER000204-05, § 3.1 (APP308-09) (emphasis added).] Under § 2 of the Equipment Lease, PARC likewise owes nothing until "the *first harvest* of cannabis plants at the Premises." [Tr. Ex. 29 at PREMIER000176, § 2 (APP315) (emphasis added).]

At trial, the plaintiffs offered only one theory: that Premier achieved a "first harvest" in December 2016, which triggered PARC's obligation to pay rent. [*See* 10/14/20 Tr. at 50:10-53:4 (APP366-69) (opening statement: "you're going to hear that in December 2016, they had their first successful harvest"); 10/15/20-AM Tr. at 58:14-59:12 (APP381-82) (Merel testifying about first harvest theory).] Accordingly, if the plaintiffs did not prove that a first harvest occurred in December 2016, then PARC and Downing are entitled to judgment as a matter of law on Counts 4, 5, and 13. [*See* 10/15/20-PM Tr. at 10:19-24 (APP389) ("So like the Building Lease Agreement, was it your understanding that the rental payments under the Equipment Lease also were . . . not obligated to be paid, until the first harvest of cannabis plants?" / Merel: "Yes, correct.").] And because JJSM Equipment's tortious interference claim against Downing relied exclusively on his alleged inducement of PARC's breach, failing to prove a December 2016 first harvest

likewise entitles Downing to judgment as a matter of law on Count 13. [*See* IR-560 at 8 (APP230).]

B. No reasonable jury could find that a first harvest occurred in December 2016.

1. The plaintiffs' witness defined "first harvest" as getting clean, acceptable flower to the vault and to market.

The cultivation contracts do not define the term "first harvest." At trial, two witnesses testified about the meaning of the term. PARC's witness, Jeff Schaeffer, testified that the term "first harvest" in the cultivation contracts means achieving the first full harvest cycle—i.e., "completing the grow cycle and taking down or processing all of the eight flower rooms in the cultivation facility . . . ." [10/21/20-AM Tr. at 36:16-22 (APP534); *see also id.* at 36:23-44:20 (APP534-42).]

The plaintiffs' witness, Bill Artwohl, offered a more lenient definition than Schaeffer. He testified that the industry meaning of "[f]irst harvest is when you first get clean, acceptable flower to the vault and to market." [10/19/20-PM Tr. at 122:18-20 (APP431).] But even under his looser standard, first harvest requires more than merely getting marijuana to the blooming stage. [*Cf.* 10/14/20 Tr. at 52:16-20 (APP368) (opening statement) (at "the end of the case, after you've heard all the evidence, we're going to

ask you to . . . determine that a first harvest occurred in December of 2016, *the first time that marijuana was harvested*" (emphasis added)).]

Even under the plaintiffs' definition of first harvest, therefore, they had to show that *as of December 2016*, (1) Premier had grown "clean, acceptable flower," (2) this flower was harvested and put in the vault to dry; and (3) the dried flower made it onto retail shelves. [*See* 10/19/20-PM Tr. at 122:18-20 (APP431).]

2. The plaintiffs presented no evidence that Premier delivered clean, acceptable flower to PARC in December 2016.

No reasonable jury could find that a first harvest occurred in December 2016 based on the plaintiffs' trial evidence.

The plaintiffs offered the following evidence in support of their claim that the "first harvest" occurred in December 2016:

1. A December 13, 2016 email from Schaeffer titled "From mother room to Bloom room" and attaching photos of marijuana plants [Tr. Ex. 45 (APP329)];
2. Merel's and Missner's testimony that they relied on this email to declare a first harvest; and
3. Artwohl's testimony that Premier managed to produce marijuana flower in December of 2016.

[*See* IR-514 at 5-6.] But none of this evidence even purports to establish that Premier achieved all three elements of a "first harvest"—getting clean, acceptable flower to the vault and to market—in December 2016. It would not allow a reasonable juror to find that a first harvest had occurred.

First, the December email from Schaeffer does not say anything about a first harvest—in fact, it contains neither the word "first" nor "harvest." [*See* Tr. Ex. 45 at PREMIER003110-16 (APP329-35).] The only explanation in the email is the title itself, which says: "From mother room to Bloom room." [*Id.* at PREMIER003110 (APP329).] In other words, all that the email could possibly establish is that plants made it from one room to another—an early step that occurs long before the flower gets harvested. The email does not say or even imply that the pictured plants had been cut, dried, and delivered to PARC for sale that month. The record contains no follow-up email from Schaeffer telling anyone whether the plants even survived.

Second, both Merel and Missner testified that they declared a first harvest because Schaeffer told them that's what his email showed. According to Merel, "Jeff Schaeffer was the one that sent us the e-mail, along with pictures of the rooms that showed that the rooms were harvesting . . . He was the one that told us that we were—we had our first harvest."

[10/19/20-PM Tr. at 38:22-39:3 (APP407-08); *see also* 10/15/20-PM Tr. at 131:6-133:25 (APP395-97); 10/20/20-PM Tr. at 13:17-14:8 (APP490-91) (Missner testifying that he relied "upon others to tell [him] and provide [him] with information about whether a first harvest had occurred," mostly Schaeffer).] But neither man claimed that the email itself showed, or even supported an inference that the pictured marijuana had been harvested, dried, and delivered to the dispensary for sale in December 2016.

Indeed, Merel agreed at trial that nothing in the email said, "first harvest achieved, time for rent, anything like that[.]" [10/15/20-PM Tr. at 132:17-22 (APP396).] He also confirmed that he lacked any personal knowledge about whether any of the plants in the photos were "actually usable or salable," or even "whether Premier delivered any usable marijuana to PARC in 2017." [*Id.* at Tr. 133:14-20 (APP397); 10/19/20-AM Tr. 26:6-9 (APP403).] Thus, this testimony establishes only that JJSM purported to declare a first harvest; it says nothing at all about whether a first harvest actually occurred under the plaintiffs' own standard. Neither witness claimed to know or understand that Premier had gotten "clean, acceptable flower to the vault and to market" in December 2016. [10/19/20-PM Tr. at 122:18-20 (APP431).]

Moreover, when PARC called Schaeffer as a witness, he testified that no first harvest was ever declared, much less as early as December 2016. [*E.g.*, 10/21/20-AM Tr. at 50:19-24 (APP544).] And given that Schaeffer's salary would have "more than double[d]" once the facility accomplished a first harvest, he had "an incentive to achieve a first harvest" and, thus, testified against his own interest in admitting that none had occurred. [*Id.* at 51:25-52:14 (APP545-46); *see also* 10/20/20-PM Tr. at 76:18-78:4 (APP495-97) (Missner testifying Shaeffer would have received a "one-time bonus" and a "pay hike").] In addition, if a first harvest had occurred, the plaintiffs would have given Schaeffer that raise. But they did not, which further contradicts the plaintiffs' claim that a first harvest occurred in December 2016. [*See* 10/21/20-AM Tr. at 51:18-53:3 (APP545-47).]

Finally, although Artwohl testified that Premier completed a test run in December 2016, he did not know "what happened to it," including "if it was delivered to PARC" or "if it was thrown out." [10/20/20-AM Tr. at 67:1-13 (APP463).] Indeed, Artwohl conceded that he had "no personal knowledge that PARC was ever able to sell any marijuana or marijuana products that Premier produced." [*Id.* at 56:12-15 (APP460).]

Under the plaintiffs' own standard, "First harvest is when you first get clean, acceptable flower to the vault and to market." [10/19/20-PM Tr. at 122:18-20 (APP431).] No reasonable jury could find that JJSM reasonably declared a first harvest in December 2016 based on the evidence at trial.

C. No reasonable jury could find that PARC's payment obligations began before it received notice.

In addition, and as an independent basis for reversal, even assuming that a "first harvest" occurred in December 2016, the plaintiffs do not dispute that they did not notify PARC of the declaration at that time. Consequently, no reasonable jury could find that PARC's obligations began in December 2016.

The Building Lease requires that "[a]ll notices and demands required or desired to be given by either party to the other with respect to this Lease or the Premises shall be in writing . . . ." [Tr. Ex. 25 at PREMIER000223, Art. 25 (APP313).] So, too, does the Equipment Lease: "All notices required or permitted to be given under this Agreement shall be in writing . . . ." [Tr. Ex. 29 at PREMIER000180, § 15 (APP319).]

The plaintiffs admitted that JJSM did not notify PARC in December 2016 that the alleged "first harvest" had happened. [*E.g.*, 10/15/20-PM Tr.

at 129:10-20 (APP393) ("I don't have knowledge of any written notice that was provided to PARC advising them of the first harvest date" in December 2016); 10/19/20-PM Tr. at 38:19-22 (APP407) (testifying as to "why no written notice was provided by JJSM Real Estate to say a first harvest has occurred").] In fact, JJSM did not notify PARC of the alleged December 2016 "first harvest" for another five months, until May 2017. [*E.g.*, 10/15/20-PM Tr. at 135:6-12 (APP399) (JJSM sent "the demand for payment in—in—May [2017].").] As for JJSM Equipment, it *never* notified PARC of the alleged first harvest declaration under the Equipment Lease. [10/19/20-AM Tr. at 99:5-8 (APP404) (Q: "Did you ever provide on behalf of JJSM Equipment any five days' written notice and right to cure any default claim? That never happened, did it?" / A: " I—I—I don't think so.").]

Thus, even assuming that a first harvest occurred, the plaintiffs presented zero evidence at trial to support their theory that PARC's rental obligation began in December 2016. No reasonable jury could find that PARC had an obligation to begin paying rent in December 2016, and as a matter of law, PARC cannot breach an unproven obligation.

In sum, the plaintiffs failed to prove that PARC breached the Building and Equipment Leases by failing to begin paying rent in December 2016.

JJSM's and JJSM Equipment's failure to prove a key element of their breach-of-contract claims means that the superior court was obligated to enter judgment as a matter of law on Counts 4, 5, and 13. [*See* IR-489 at 11-14 (APP280-83).]

D. The superior court did not offer any analysis or support for its ruling on the first harvest issues.

The superior court's entire analysis of the first harvest issue under the Building Lease was as follows: "competent evidence supported the jury's verdict about a breach. The Court will not disturb that finding." [IR-560 at 3 (APP225).] The superior court did not explain what "competent evidence" existed to support the verdict. [*See id.* (APP225); *see also id.* at 5 (APP227); ("The jury agreed with Plaintiffs' argument" about "whether 'first harvest' occurred and when" for purposes of the Equipment Lease).] Meanwhile, it completely ignored JJSM's and JJSM Equipment's failure to provide written notice of their alleged first harvest declarations. Indeed, the word "notice" does not appear anywhere in the court's analysis. [*See* IR-560 at 3-5 (APP225-27).]

Nor does the plaintiffs' response to PARC's motion offer any insight. Their response also did not address the fact that their evidence falls short of

proving "first harvest" in December 2016 under their own witness's standard. Instead, they simply continued to point to the same evidence already discussed—Merel's testimony "that a first harvest occurred in December 2016" and the "December 13, 2016 e-mail from Jeff Schaeffer to Mr. Merel." [IR-514 at 5-6.]

The response did not address (much less defend) JJSM's failure to provide notice to PARC of its alleged first harvest declaration under the Building Lease until several months later. As for JJSM Equipment, its only response was to contend that PARC had argued the failure-of-notice issue to the jury, but the "jury rejected these arguments and instead agreed with the evidence JJSM Equipment presented." [*Id.* at 13.] But under the plain terms of the Equipment Lease, written notice is required. [Tr. Ex. 29 at PREMIER000180, § 15 (APP319).] JJSM Equipment never contended otherwise. In fact, JJSM Equipment offered no testimony whatsoever to explain its failure to give written notice. The jury cannot waive this plain legal requirement.

For all of these reasons, the Court should reverse and direct the superior court to enter judgment in PARC's favor as a matter of law on

Count 4 (breach of the Building Lease) and Count 5 (breach of the Equipment Lease).

II. The superior court improperly amended the jury's verdict to award Premier nominal damages after the jury found that Premier suffered no actual damage on its contract claims.

On Counts 3 and 9, the jury found that Premier suffered zero damages. [IR-416 (APP204), IR-417 (APP205).] Because proof of damages is an essential element of both claims, the superior court was obligated to enter judgment in PARC's favor. Instead, the superior court added $1 in damages that the jury did not award. The superior court had no power to do so and, in any event, did not follow the procedures necessary to award damages not found by the jury. The Court should vacate the amended judgment awarding Premier nominal damages, reverse the denial of PARC's motion for judgment as a matter of law on Counts 3 and 9, and order entry of judgment for PARC on both counts.

A. Because Premier proved no actual damages, the superior court was required to enter judgment as a matter of law for PARC.

1. Arizona law requires proof of actual damages to prevail on contract claims.

Arizona law requires proof of actual damage to prevail on contract claims. "It is well established that, in an action based on breach of contract,

the plaintiff has the burden of proving the existence of a contract, breach of the contract, and *resulting damages*." *Chartone, Inc. v. Bernini*, 207 Ariz. 162, 170, ¶ 30 (App. 2004) (emphasis added); *accord* 9 Ariz. Prac., Business Law Deskbook § 7:33 (2021-2022 ed.) ("[T]he non-breaching party *must show* . . . [d]amages resulted from the breach." (emphasis added)).

Indeed, "establishing damages" is "an essential element" of such a claim. *Bernini*, 207 Ariz. at 170, ¶ 30; *accord Cheeks v. Gen. Dynamics*, 22 F. Supp. 3d 1015, 1025 (D. Ariz. 2014) ("To recover on a breach of contract claim under Arizona law, 'a plaintiff *must show* proximately caused damages'". (emphasis added)). Arizona law accordingly limits contract damages to those "proximately caused by the breach or within the contemplation of the parties to the contract." *Thunderbird Metallurgical, Inc. v. Ariz. Testing Labs.*, 5 Ariz. App. 48, 50 (1967).

Arizona courts distinguish between "'certainty in amount' of damages" and "the *fact* of damage." *Gilmore v. Cohen*, 95 Ariz. 34, 36 (1963). The fact of damages is required for recovery. If a plaintiff proves the existence of damages, but the amount is "indefinite and cannot be estimated accurately," a plaintiff's judgment for nominal damages might be warranted. *Edwards v. Anaconda Co.*, 115 Ariz. 313, 317 (App. 1977)

(affirming nominal damages award where plaintiff proved existence but not amount of damage from data loss). If the plaintiff cannot prove "the *fact* of damage," however, the claim fails, and judgment must go for the defendant. *Gilmore*, 95 Ariz. at 36; *accord Earle M. Jorgensen Co. v. Tesmer Mfg. Co.*, 10 Ariz. App. 445, 450-51 (1969) (recovery permitted only "once the Fact of damages has been established").

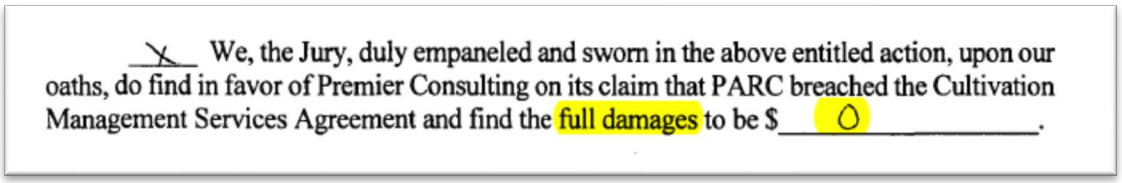
Requiring the plaintiff to prove the fact of damage promotes the "principal goals" of contract remedies. *John Munic*, 235 Ariz. at 18, ¶ 18. The principles of expectation and mitigation together limit contract damages to "no more than is necessary," Williston § 64:1, to restore the plaintiff to "as good a position as [it] would have been in had the contract been performed," *Ramsey*, 241 Ariz. at 107, ¶ 12 (quotation marks and ellipses omitted). If a breach causes no actual damage, then the plaintiff already occupies that position. In which case the plaintiff has not established an essential element of its claim, and judgment should be entered for the defendant.

2. Premier proved no damages, so PARC was entitled to judgment as a matter of law.

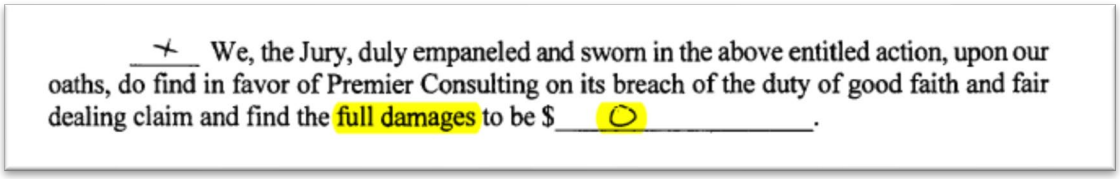
Premier did not prove any actual damages here. Premier accordingly failed to meet an "essential element" of its contract claims, and judgment should be entered for PARC.

At trial, Premier insisted that it had "shown damages" but that proving "the value of those damages" had "been difficult for us." [10/21/20-AM Tr. at 29:3-5 (APP527).] The superior court accordingly instructed the jury if that was the case—that is, if the jury agreed that Premier had proven the *fact* of damage but nevertheless found that Premier had not proven the *amount* of damages "with reasonable certainty"—it "may award" nominal damages. [IR-429 at 6-7 (APP264-65); IR-560 at 11 (APP233).] The superior court also instructed the jury that its damages award "must be the amount of money that will place Premier in the position Premier would have been in if the contract had been performed." [IR-429 at 7 (APP265).]

The jury found that Premier suffered *no damage* at all. Specifically, it found that Premier's "full damages" were "$0":



X We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Premier Consulting on its claim that PARC breached the Cultivation Management Services Agreement and find the full damages to be $ 0 .



We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Premier Consulting on its breach of the duty of good faith and fair dealing claim and find the full damages to be $ 0 .

[IR-416 (APP204), IR-417 (APP205) (highlighting added).]

PARC accordingly moved for judgment as a matter of law based on Premier's lack of actual damages. [IR-489 at 2-3 (APP271-72).] The superior court agreed with PARC that the jury's zero-damages award denoted a failure by Premier to prove actual damages. [IR-560 at 3 (APP225) ("PARC contended that Premier failed to prove actual damages for breaching this contract. Indeed, the jury found in Premier's favor but awarded $0.00 in damages.").] It nevertheless denied the motion.

The superior court erred by failing to enter judgment for PARC. "The jury could not have found in favor of [Premier] on its [contract claims] given the jury's finding of zero damages, because actual damages are an essential element of [those claims]." *Trustmark Ins. Co. v. Bank One, Ariz., N.A.*, 202 Ariz. 535, 543, ¶ 38 (App. 2002). Thus, the superior court should have entered judgment in PARC's favor.

3. The superior court based its denial of PARC's motion on an erroneous understanding of Arizona contract law.

Despite agreeing with PARC that Premier had not proven actual damages, the superior court denied PARC's Rule 50(b) motion because it found that Premier was entitled to "[a] verdict and judgment for nominal damages." [IR-560 at 3, 6 (APP225, APP228).] This was error.

The superior court's decision to enter judgment for Premier mistakes "'certainty in amount' of damages" for "the *fact* of damage." *Gilmore*, 95 Ariz. at 36. As discussed above (Cross-Appeal Argument § II.A.1), a trial court may enter judgment for nominal damages based on an "indefinite" *amount* of damages, *Edwards*, 115 Ariz. at 317, but only "when the *fact* of damage is proven," *Gilmore*, 95 Ariz. at 36. Otherwise, judgment must go for the defendant. Indeed, none of the Arizona decisions cited in either the superior court's ruling or in Premier's briefing below support entering judgment for a plaintiff absent proof of actual damage.

Other states also require proof of actual damage before judgment may be entered for the plaintiff. For instance, Oregon, like Arizona, holds that "proof of damages is an essential element of a breach of contract action." *Rizo v. U-Lane-O Credit Union*, 37 P.3d 220, 221 (Or. Ct. App. 2001); *accord*

Mioni v. Hewes, 763 P.2d 414, 417 (Or. Ct. App. 1988) ("Damage is an essential element of any breach of contract action."). Courts there accordingly hold that "[w]here neither (1) danger of prescription nor (2) substantial loss or injury nor (3) willful wrongdoing by defendant are established, . . . judgment should go for defendant straight out." *Kulm v. Coast-to-Coast Stores Central Org., Inc.*, 432 P.2d 1006, 1009 (Or. 1967) (quotation marks and citation omitted); *accord Rizo*, 37 P.3d at 221 (affirming judgment for defendant where "plaintiff suffered no damages as a result of the breach").

Simply put, "[a] breach of contract without damage is not actionable." *Patent Scaffolding Co. v. Wm. Simpson Constr. Co.*, 64 Cal. Rptr. 187, 191 (App. 1967). "A determination of liability without a corresponding finding of damages is insufficient to establish that a party has prevailed on its breach of contract claim." *Spectra Novae v. Waker Assocs., Inc.*, 914 P.2d 693, 696 (Or. Ct. App. 1996). It follows that "mere proof that there was a breach of the contract without more" cannot support a plaintiff's verdict. *Ketchum v. Albertson Bulb Gardens, Inc.*, 252 P. 523, 525 (Wash. 1927).

Here, PARC was entitled to judgment as a matter of law because "the jury's finding of zero damages" means that the jury found in PARC's favor on an essential element of Premier's contract claims. *Trustmark*, 202 Ariz. at

543, ¶ 38. The jury's zero-damages finding means that Premier did not meet its threshold burden of proving the *fact* of damage, and for that reason, the superior court erred by entering judgment in Premier's favor. This Court should reverse the superior court's denial of PARC's Rule 50(b) motion, vacate its amended judgment for Premier on Counts 3 and 9, and order that judgment be entered for PARC.

B. The superior court had no authority to add nominal damages not found by the jury.

The superior court also erred by granting Premier's request to amend the judgment to award nominal damages. "Translating legal damage into money damages is a matter peculiarly within a jury's ken." 212 Am. Jur. 2d *Damages* § 797. "Because a jury plays a vital role in our civil justice system, a trial court may not simply substitute its judgment for the jury's." *Soto v. Sacco*, 242 Ariz. 474, 477, ¶ 7 (2017). Limiting trial courts in this manner "protects the right to a jury trial under article 2, section 23, of the Arizona Constitution." *Id.*

1. The superior court gave the jury the discretion not to award nominal damages.

The final jury instructions committed the issue of awarding nominal damages to the jury's discretion. Specifically, the superior court instructed

the jury that it "may award nominal damages (such as $1.00)" on Premier's contract claims if it lacked "reasonable certainty" about the amount of Premier's damages:

> If you find that a party breached the duty of good faith and fair dealing but other party did not prove damages with reasonable certainty, then you may award nominal damages (such as $1.00).

> - If you find that PARC breached the Cultivation Agreement but that Premier did not prove damages with reasonable certainty, then you may award nominal damages to Premier (such as $1.00).

[IR-429 at 6-7 (APP264-65) (highlighting added).]

Premier did not object to the instructions' permissive language, nor did it ask the superior court to use mandatory language instead. *See* Ariz. R. Civ. P. 51(a), (c). The jury in turn exercised its discretion by electing not to award Premier nominal damages or, for that matter, any damages at all.

The final jury instructions left the question of Premier's damages—including whether to award nominal damages—to the jury's discretion. *See May*, Black's Law Dictionary (11th ed. 2019) ("To be permitted to <the plaintiff may close>."). The jury accordingly had discretion to refuse such an award, particularly after finding that Premier had suffered no actual

damages. *Lee v. Bergesen*, 364 P.2d 18, 21 (Wash. 1961) (affirming "failure to award nominal damages" where non-breaching party had not "established any right to compensatory damages."). The superior court erred by substituting its own discretion for that of the jury.

2. Premier did not request additur, and the superior court did not (and could not) order it here.

The superior court also lacked authority to unilaterally add nominal damages to the jury's zero-damages verdict. A trial court cannot *increase* a jury's "inadequate" damages award except by additur. *See* Ariz. R. Civ. P. 59(f). If a trial court "determines that the damages awarded are inadequate," Rule 59(f) permits the court to grant additur "instead of a new trial." *Zadro v. Snyder*, 11 Ariz. App. 363, 366 (1970), *rev'd in part on other grounds by Creamer v. Troiano*, 108 Ariz. 573 (1972) (interpreting previous version of rule). To grant additur is to "conditionally" grant a new trial in hopes that "the party adversely affected" will "accept[]" an "increase in damages" to avoid a new trial:

> When a motion for new trial is based on the ground that the awarded damages are either excessive or insufficient, the court may grant the new trial *conditionally* if, within the time set by the court, *the party adversely affected* by the reduction or increase in damages files a statement *accepting* the amount of damages as designated by the court.

Ariz. R. Civ. P. 59(f)(1)(A) (emphases added).

A trial court's additur authority is limited. A trial court may grant additur only "as a condition to denying a motion for new trial." *Warne Invs., Ltd. v. Higgins*, 219 Ariz. 186, 189, ¶ 5 n.1 (App. 2008). Any increase in the damages award can only be made "with the defendant's consent." *Id.* (citation omitted).

Here, the superior court could not have granted additur because Premier never asked for it and the superior court did not follow the procedures required for invoking additur. Premier's motion never mentioned additur or Rule 59(f). Instead, it relied solely on Rule 59(a)(1)(E) and 59(a)(1)(H). [IR-508 at 4-7, 11-12.] But Rule 59(a) does not authorize adding any damages or amending the judgment. It authorizes only a new trial. PARC pointed this out in response. [IR-520 at 11 ("[N]either Rule 59(a)(1)(E) nor 59(a)(1)(H) authorize the Court to unilaterally amend a jury's verdict. Rule 59(a)(1) allows the Court to order a *new trial* only.").] In reply, Premier still did not ask for additur under Rule 59(f), and it did not respond to the argument that a motion for new trial under Rule 59(a) cannot result in adding damages not found by the jury. [*See* IR-527 at 8.]

A new-trial motion is not itself a request for additur. Rule 59(a)(1) does not allow a trial court to alter a jury verdict. Nor does a new-trial motion permit a court "to direct the entry of a new judgment" for nominal damages after a jury has found none. *Investors Loan Corp. v. Long*, 166 S.E.2d 113, 118 (W.Va. 1969) (interpreting substantively similar rule). It merely allows a court to "grant a new trial" on the grounds specified in that rule. Ariz. R. Civ. P. 59(a)(1)(A)-(H).

It is similarly "well-established" that Rule 59(d)—the appropriate rule for altering or amending a judgment—cannot be used "for purposes of modifying a jury verdict." *See McDaniel v. Kleiss*, 480 S.E.2d 170, 173-74 (W.Va. 1996) (interpreting substantively similar rule). Indeed, to do so would be "tantamount to an additur," which Premier did not request here. *Davis v. Naviera Aznar S.A.*, 37 F.R.D. 223, 225 (D. Md. 1965). Premier's failure to ask for additur accordingly barred the superior court from changing the jury's verdict.

Even if Premier had requested additur, the superior court could not have ordered it here. "Arizona law clearly dictates that a court can grant additur only where the jury has awarded some damages." *Sedillo v. City of Flagstaff*, 153 Ariz. 478, 482 (App. 1987), *overruled on other grounds by Walsh v.*

Advanced Cardiac Specialists Chartered, 229 Ariz. 193 (2012). The jury awarded Premier "zero damages." *In re Estate of Hanscome*, 227 Ariz. 158, 163, ¶ 17 (App. 2011). "The court cannot grant an additur when the jury finds that the plaintiff was not damaged." *State v. Burton*, 20 Ariz. App. 491, 496 (1973). The superior court therefore would have "erred as a matter of law" if it had ordered additur here. *Hanscome*, 227 Ariz. at 163, ¶ 17.

Moreover, the superior court did not follow the procedures necessary to grant additur. "Additur is an appropriate remedy only *in lieu* of a new trial." *Hugo Boss Fashions, Inc. v. Fed. Ins. Co.*, 252 F.3d 608, 624 n.17 (2d Cir. 2001). For the superior court to have ordered additur here, therefore, it had to first "grant the new trial conditionally" and then give PARC a chance to either "accept[]" the larger award or proceed with a new trial. Ariz. R. Civ. P. 59(f)(1)(A). It did neither. Instead, the superior court unconditionally denied Premier's motion for a new trial, rendering "the alternative remedy of additur . . . unavailable." *Hugo Boss*, 252 F.3d at 624 n.17. And in any event, PARC never agreed to an additur. Even if Premier had sought additur, then, the superior court did not order it here and, because PARC never agreed to it, the court lacked authority to override the jury's verdict.

3. In any event, awarding Premier nominal damages was inappropriate here.

Even if the superior court had the authority to unilaterally award Premier nominal damages, they were still unwarranted. As discussed above (Cross-Appeal Argument § II.A.1), expectation principles limit contract remedies to no more than is necessary to restore the plaintiff to the same position as if no breach occurred.

Awarding nominal damages absent actual damages undermines these principles. Nominal damages are "the same as no damages at all." *Magma Copper Co. v. Shuster*, 118 Ariz. 151, 153 (App. 1977). "They are a mere token, signifying that the plaintiff's rights were technically invaded even though he suffered, or could prove, no loss or damage." *Id.* Contrary to the objectives of contract damages, nominal damages typically "denote a damage award that *does not compensate for loss or harm*." *Roberts v. City of Phx.*, 225 Ariz. 112, 122, ¶ 38 n.5 (App. 2010) (emphasis added).

Given their non-compensatory nature, nominal damages can only serve a limited role in Arizona contract law—namely, to credit the proven *fact* of damage where the *amount* remains uncertain. If the *amount* is "indefinite and cannot be estimated accurately," a jury *may* award nominal

damages. *Edwards*, 115 Ariz. at 317 (affirming nominal damages where plaintiff proved existence but not amount of damage). But only "when the *fact* of damage is proven." *Gilmore*, 95 Ariz. at 36. Otherwise, nominal damages are inappropriate.

Here, the jury found that Premier suffered zero damages. Premier thus had no actual damage, the indefiniteness of which might otherwise have been appropriately tokenized by a nominal damages award. Even so, the superior court awarded Premier nominal damages "not to compensate" Premier for an uncertain *amount* of damage, but to "recognize that [Premier] had an enforceable promise that [PARC] breached." [IR-560 at 12 (APP234).] This was error, and this Court should reverse.

4. The superior court's rationale for awarding nominal damages does not withstand scrutiny.

Here, the superior court unconditionally denied Premier's motion for new trial. [IR-560 at 9-10 (APP231-32) ("The Court denies Premier's motion for new trial on damages.").] But it nevertheless amended the judgment to add $1 in nominal damages.

The superior court acknowledged that "Plaintiffs did not cite authority allowing the Court to amend the judgment in this situation. But PARC also

did not cite authority prohibiting it." [*Id.* at 11 (APP233).] That gets the burden backwards. If Premier wanted the superior court to add damages not found by the jury, it had to rely on a valid procedural basis for doing so. PARC unquestionably told the superior court that the rules Premier cited (Rules 59(a)(1)(E) and 59(a)(1)(H)) do not authorize adding any damages or amending the judgment. [IR-520 at 11.]

The superior court then analogized to mandatory awards of nominal damages in § 1983 civil rights claims because "[t]hey do not require proving actual damages." [IR-560 at 11 (APP233).] But this is contrary to Arizona law.

As discussed above (Cross-Appeal Argument § II.A.1), proof of actual harm is an "essential element" of contract claims in Arizona. *Bernini*, 207 Ariz. at 170, ¶ 30. The jury found that Premier proved zero damages, which means judgment should have gone for PARC "straight out." *Kulm*, 432 P.2d at 1009 (citation omitted).

The same is true of the purportedly contrary rule in the Restatement, which Arizona courts follow "only in the absence of Arizona authority to the contrary." *Jesik v. Maricopa Cnty. Comm. Coll. Dist.*, 125 Ariz. 543, 546 (1980). Even if Restatement § 346(2) authorizes nominal damages, Arizona contract

law conditions any recovery, even for nominal damages, on proof of actual damage. (Cross-Appeal Argument § II.A.1.) The superior court accordingly misplaced its reliance on the Restatement's supposedly contrary rule.[7]

Moreover, having instructed the jury that nominal damages are discretionary rather than mandatory, the superior court could not later follow a contrary rule. [IR-429 at 6-7 (APP264-65) (jury instruction) ("may award nominal damages").] After submitting the case to the jury without any objection about the permissive nature of nominal damages, the superior court could not adopt a rule in which nominal damages are mandatory.

Finally, not even § 1983 guarantees nominal damages for every violation. It mandates nominal damages "[i]f the jury finds a constitutional violation." *Floyd v. Laws*, 929 F.2d 1390, 1402 (9th Cir. 1991). But that rule "applies only to violations of constitutional magnitude." *Walker v. Anderson Elec. Connectors*, 944 F.2d 841, 845 (11th Cir. 1991) (no nominal damages for

[7] Other authorities stop short of *mandating* nominal damages for a harmless breach. *See, e.g.*, Williston § 64:9 ("Nominal damages *may* then be awarded." (emphasis added)); 25 C.J.S. *Damages* § 24 (In an action founded on a contract, if the plaintiff establishes a contract and a breach thereof, he or she *may* recover nominal damages without proof of actual damages." (emphasis added)).

§ 1983 claim based on Title VII violation); *cf. Lowry ex rel. Crow Watson Chapel Sch. Dist.*, 540 F.3d 752, 762 (8th Cir. 2008) ("[N]ominal damages must be awarded when a plaintiff establishes a violation of the right to free speech.").

Here, a commercial breach of contract case between two companies does not have any of the hallmarks for *requiring* nominal damages. There are no constitutional issues at stake, and no greater principle to be vindicated. Simply put, even if nominal damages were permissible, they were not mandatory. The superior court erred by assuming the opposite.

* * *

In Arizona, "establishing damages" is "an essential element" of a contract claim. *Bernini*, 207 Ariz. at 170, ¶ 30. The jury found that Premier suffered zero damage. It follows that PARC is entitled to judgment as a matter of law, and that Premier is entitled to nothing, not even nominal damages. This Court should reverse the superior court's orders denying PARC's Rule 50(b) motion and granting Premier's request to amend the judgment to add nominal damages, vacate its amended judgment for Premier on Counts 3 and 9, and order that judgment be entered for PARC.

III. The superior court improperly awarded JJSM nominal damages on its breach of lease claim after correctly granting PARC's renewed motion for judgment as a matter of law on that claim.

On JJSM's claim for breach of the Building Lease (Count 4), the superior court correctly held that the new tenant's rent more than offset any liability PARC had. (Argument §§ I.C., I.E., above). Because the rent from the new tenant "fully offset[s]" PARC's liability, the superior court correctly held that JJSM "has no compensable damages." [IR-560 at 5 (APP227).] Accordingly, the superior court correctly granted PARC's Rule 50(b) motion for judgment as a matter of law, vacated the jury's award, and entered judgment "for PARC and against JJSM Real Estate." [IR-591 at 3, ¶ 18 (APP242).]

The superior court nevertheless added $1 in damages, despite having granted the Rule 50(b) motion and entering judgment in PARC's favor on Count 4. It did so without explaining its reasoning. In fact, it mentioned the $1 in nominal damages only in the summary of the ruling. [IR-560 at 2 (APP224).] The superior court offered no authority for awarding $1 in damages despite entering judgment for PARC, and it provided no discussion or other explanation.

The superior court erred by adding $1 in damages. Instead, the superior court should have granted judgment as a matter of law in full, as PARC's Rule 50(b) motion requested. [IR-489 at 5-10.] This Court should vacate the $1 damages award.

In a claim for breach of a lease, if the new rent fully offsets the tenant's liability, the landlord's claim fails, and the tenant is entitled to clean judgment. "Unless the total detriment suffered, whether by loss of rentals or consequential damages, exceeds the amount to be received under the new lease there is in fact no detriment, and hence no [actual] damages." *Willis v. Soda Shoppes of Cal.*, 184 Cal. Rptr. 761, 765 (1982). This means that "judgment should go for defendant straight out." *Kulm*, 432 P.2d at 1009 (citation omitted); *see also French v. GTE Comm'n Sys. Corp.*, 570 So.2d 1240, 1242-43 (Ala. Ct. App. 1990) (affirming summary judgment for defendant when plaintiff fully mitigated damages).

This result makes sense. As discussed above (Cross-Appeal Argument § II.A.1), Arizona law makes actual damage an "essential element" of a contract claim. *Bernini*, 207 Ariz. at 170, ¶ 30. Absent actual damages, "[t]here is no basis for nominal damages." *Dean Vincent v. Krimm*, 591 P.2d 740, 743 (Or. 1979).

Here, the superior court found that JJSM "has no compensable damages." [IR-560 at 5 (APP227).] Indeed, JJSM does not dispute the court's math in finding that the excess rents collected under the replacement lease "fully offset" its damages from PARC's purported breach of the building lease. [*Id.* at 4-5 (APP226-27).] Because JJSM suffered no actual damage, it was not entitled to judgment in its favor, "even for nominal damages." *Ketchum*, 252 P. at 525. The superior court erred as a matter of law by awarding nominal damages even as it entered judgment for PARC.

Neither the superior court's ruling nor JJSM's briefing below cites any authority permitting an award of nominal damages where the non-breaching party has fully offset its damages. Nor do they explain how nominal damages may properly be awarded to JJSM despite being the party against whom judgment was entered. In fact, JJSM did not even ask the court to award nominal damages if it granted PARC's Rule 50(b) motion.

Awarding JJSM nominal damages undermines the limited purpose that such awards serve under Arizona contract law. As discussed above (Cross-Appeal Argument §§ II.A.1., II.B.3.), nominal damages are non-compensatory and may be awarded for breach of contract only when "the *fact* of damage" has been proven, but the *amount* remains uncertain. *Gilmore*,

95 Ariz. at 36. However, as the superior court found, the excess rents collected under the replacement lease "fully offset" the damages that PARC's breach might otherwise have inflicted. [IR-560 at 4-5 (APP226-27).] JJSM therefore "has no compensable damages" [*Id.* at 5 (APP227)] "and hence no [actual] damages." *Willis*, 184 Cal. Rptr. at 765. Thus, there is no actual damage to be tokenized by a nominal damages award.

Awarding nominal damages here also runs afoul of more fundamental contract principles. As discussed above (Cross-Appeal Argument § II.A.1), expectation and mitigation limit contract remedies to no more than is necessary to restore the plaintiff to the same position as if no breach occurred. A non-breaching party "simply cannot recover those damages that it could have avoided"—or in this case, did avoid. Williston § 64:31. Such damages "will be considered either as not having been caused by the defendant's wrong or as not being chargeable against the defendant." *Id.* Indeed, where, as here, a non-breaching party could have (or does) fully offset the damages a breach might otherwise occasion, "the chain of causation [is] broken and the loss resulting thereafter [is] suffered through [the non-breaching party's] own act." *Coury Bros. Ranches*, 103 Ariz. at 520.

In other words, avoidable (or avoided) damages are not actual damages and, thus, provide no basis for a nominal damages award.

In sum, the superior court legally erred by awarding JJSM nominal damages on Count 4 despite entering judgment "for PARC and against JJSM Real Estate." [IR-591 at 3, ¶ 18 (APP242).] JJSM "fully offset" the damages that PARC's breach might otherwise have inflicted. It therefore had "no compensable damages" and, by extension, no actual damage for a nominal damages award to credit. [IR-560 at 5 (APP227).] This Court should vacate the superior court's nominal damages award on Count 4 and order entry of judgment for PARC "straight out." *Kulm*, 432 P.2d at 1009 (citation omitted).

CROSS-APPEAL REQUEST FOR FEES

PARC requests its fees and costs incurred on cross-appeal under ARCAP 21, A.R.S. §§ 12-341, 12-341.01, and 12-342.

CROSS-APPEAL CONCLUSION

On the cross-appeal, the Court should reverse and vacate on Counts 4, 5, and 13 because the plaintiffs failed to prove that a first harvest occurred in December 2016 and did not notify PARC of their alleged declaration in December 2016. The Court should also reverse and vacate the nominal damages awards on Counts 3, 4, and 9, and instruct the superior court to

enter judgment for PARC on those claims. Finally, if the Court grants any relief on the cross-appeal, then it should also vacate the award of attorneys' fees and costs and remand for the superior court to consider fees and costs in light of the revised disposition.

RESPECTFULLY SUBMITTED this 18th day of May, 2022.

OSBORN MALEDON, P.A.

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* The appendix page number matches the electronic PDF page number. Counsel has added emphasis to selected pages in this Appendix using yellow highlighting to assist the Court with its review of the record. Some record items included in the Appendix contain only a limited excerpt, indicated by a dagger (†). This Appendix complies with the bookmarking requirements of ARCAP 13.1(d)(3).

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PREMIER CONSULTING ET AL VS PEACE RELEAF ET AL

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2.	CERTIFICATE OF ARBITRATION	Jun. 19, 2017
3.	CIVIL COVER SHEET	Jun. 19, 2017
4.	MOTION FOR EXPEDITED RELIEF ON APPLICATION FOR TEMPORARY RESTRAINING ORDER (WITH NOTICE) AND PRELIMINARY INJUNCTION	Jun. 19, 2017
5.	PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER (WITH NOTICE) AND A PRELIMINARY INJUNCTION	Jun. 19, 2017
6.	ORDER TO SHOW CAUSE WHY A TEMPORARY RESTRAINING ORDER SHOULD NOT ISSUE	Jun. 20, 2017
7.	NOTICE OF APPEARANCE	Jun. 23, 2017
8.	NOTICE OF CHANGE OF JUDGE	Jun. 23, 2017
9.	CREDIT MEMO	Jun. 26, 2017
10.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Jun. 27, 2017
11.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Jun. 27, 2017
12.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Jun. 27, 2017
13.	SUMMONS	Jun. 27, 2017
14.	SUMMONS	Jun. 27, 2017
15.	SUMMONS	Jun. 27, 2017
16.	**ME: CASE REASSIGNED [06/28/2017]**	**Jun. 29, 2017**
17.	ACCEPTANCE OF SERVICE ON BEHALF OF DEFENDANTS YURIKINO CENIT DOWNING AND EDWARD GLUECKLER	Jun. 30, 2017
18.	**ME: HEARING CONTINUED [06/29/2017]**	**Jul. 3, 2017**
19.	DEFENDANTS' RESPONSE TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER (WITH NOTICE) AND A PRELIMINARY INJUNCTION	Jul. 8, 2017
20.	ORDER GRANTING PRELIMINARY INJUNCTION	Jul. 18, 2017

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21.	**ME: MATTER UNDER ADVISEMENT [07/14/2017]**	**Jul. 20, 2017**
22.	EXHIBIT WORKSHEET HD 07/14/2017	Aug. 1, 2017
23.	APPLICATION FOR ENTRY OF DEFAULT JUDGMENT AGAINST DEFENDANTS	Aug. 24, 2017
24.	(PART 1 OF 3) DECLARATION OF JEFFREY C. MATURA IN SUPPORT OF APPLICATION FOR ENTRY OF DEFAULT JUDGMENT AGAINST DEFENDANTS	Aug. 24, 2017
25.	(PART 2 OF 3) DECLARATION OF JEFFREY C. MATURA IN SUPPORT OF APPLICATION FOR ENTRY OF DEFAULT JUDGMENT AGAINST DEFENDANTS	Aug. 24, 2017
26.	(PART 3 OF 3) DECLARATION OF JEFFREY C. MATURA IN SUPPORT OF APPLICATION FOR ENTRY OF DEFAULT JUDGMENT AGAINST DEFENDANTS	Aug. 24, 2017
27.	**ME: ORDER ENTERED BY COURT [08/29/2017]**	**Aug. 30, 2017**
28.	MOTION TO DISMISS DEFENDANTS YURIKINO DOWNING, EDWARD GLUECKLER, JANE DOE GLUECKLER, WHITNEY SORRELL AND JANE DOE SORRELL	Aug. 30, 2017
29.	(PART 1 OF 2) VERIFIED APPLICATION FOR APPOINTMENT OF RECEIVER OVER PEACE RELEFT CENTER I, DBA PATIENT ALTERNATIVE RELIEF CENTER	Sep. 1, 2017
30.	(PART 2 OF 2) VERIFIED APPLICATION FOR APPOINTMENT OF RECEIVER OVER PEACE RELEFT CENTER I, DBA PATIENT ALTERNATIVE RELIEF CENTER	Sep. 1, 2017
31.	VERIFIED ANSWER	Sep. 8, 2017
32.	**ME: ORDER ENTERED BY COURT [09/08/2017]**	**Sep. 12, 2017**
33.	(PART 1 OF 2) APPLICATION FOR APPOINTMENT OF RECEIVER OVER PEACE RELEAF CENTER I, DBA PATIENT ALTERNATIVE RELIEF CENTER	Sep. 13, 2017
34.	(PART 2 OF 2) APPLICATION FOR APPOINTMENT OF RECEIVER OVER PEACE RELEAF CENTER I, DBA PATIENT ALTERNATIVE RELIEF CENTER	Sep. 13, 2017
35.	(PART 1 OF 2) NOTICE OF SERVICE OF APPLICATION FOR APPOINTMENT OF RECEIVER OVER PEACE RELEAF CENTER I, DBA PATIENT ALTERNATIVE RELIEF CENTER	Sep. 15, 2017

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No.	Document Name	Filed Date
36.	(PART 2 OF 2) NOTICE OF SERVICE OF APPLICATION FOR APPOINTMENT OF RECEIVER OVER PEACE RELEAF CENTER I, DBA PATIENT ALTERNATIVE RELIEF CENTER	Sep. 15, 2017
37.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Sep. 15, 2017
38.	PLAINTIFFS' RESPONSE TO MOTION TO DISMISS DEFENDANTS YURIKINO DOWNING, EDWARD GLUECKLER, JANE DOE GLUECKLER, WHITNEY SORRELL, AND JANE DOE SORRELL	Sep. 18, 2017
39.	(PART 1 OF 2) EMERGENCY MOTION TO DISSOLVE PRELIMINARY INJUNCTION AND PERMIT DEFENDANT PATIENT ALTERNATIVE RELIEF CENTER TO TERMINATE ALL CONTRACTS WITH PLAINTIFFS	Sep. 19, 2017
40.	(PART 2 OF 2) EMERGENCY MOTION TO DISSOLVE PRELIMINARY INJUNCTION AND PERMIT DEFENDANT PATIENT ALTERNATIVE RELIEF CENTER TO TERMINATE ALL CONTRACTS WITH PLAINTIFFS	Sep. 19, 2017
41.	**ME: HEARING SET [09/26/2017]**	**Sep. 28, 2017**
42.	DEFENDANTS' RESPONSE TO PLAINTIFFS' APPLICATION FOR APPOINTMENT OF RECEIVER OVER PATIENT ALTERNATIVE RELIEF CENTER	Oct. 2, 2017
43.	DEFENDANTS MOTION TO STRIKE PLAINTIFFS' APPLICATION FOR APPOINTMENT OF RECEIVER OVER PEACE RELEAF CENTER I, DBA PATIENT ALTERNATIVE RELIEF CENTER AND TO VACATE ANY EVIDENTIARY HEARING ON THE SAME	Oct. 2, 2017
44.	(PART 1 OF 2) PLAINTIFFS' RESPONSE TO DEFENDANTS' EMERGENCY MOTION TO DISSOLVE PRELIMINARY INJUNCTION AND PERMIT DEFENDANT PATIENT ALTERNATIVE RELIEF CENTER TO TERMINATE ALL CONTRACTS WITH PLAINTIFFS	Oct. 10, 2017
45.	(PART 1 OF 2) PLAINTIFFS' RESPONSE TO DEFENDANTS' EMERGENCY MOTION TO DISSOLVE PRELIMINARY INJUNCTION AND PERMIT DEFENDANT PATIENT ALTERNATIVE RELIEF CENTER TO TERMINATE ALL CONTRACTS WITH PLAINTIFFS	Oct. 10, 2017
46.	(PART 1 OF 2) PLAINTIFFS' ERMERGENCY MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT AND SANCTIONED FOR VIOLATING THIS COURT'S INJUNCTION BY: (1) TERMINATING THE APPROVAL TO OPERATE; AND (2) CANCELLING THE DISPENSARY AGENT ...	Oct. 11, 2017

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No.	Document Name	Filed Date
47.	(PART 2 OF 2) PLAINTIFFS' ERMERGENCY MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT AND SANCTIONED FOR VIOLATING THIS COURT'S INJUNCTION BY: (1) TERMINATING THE APPROVAL TO OPERATE; AND (2) CANCELLING THE DISPENSARY AGENT ...	Oct. 11, 2017
48.	**ME: ORDER ENTERED BY COURT [10/13/2017]**	**Oct. 16, 2017**
49.	PLAINTIFFS' REPLY TO SUPPORT APPLICATION FOR APPOINTMENT OF RECEIVER OVER PATIENT ALTERNATIVE RELIEF CENTER	Oct. 16, 2017
50.	MOTION TO EXPEDITE BRIEFING AND RULING ON EMERGENCY MOTION TO RESCHEDULE AND EXPAND EVIDENTIARY HEARING OR, ALTERNATIVELY, TO ALLOW TELEPHONIC TESTIMONY	Oct. 20, 2017
51.	EMERGENCY MOTION TO RESCHEDULE AND EXPAND EVIDENTIARY HEARING OR, ALTERNATIVELY, TO ALLOW TELEPHONIC TESTIMONY	Oct. 20, 2017
52.	PLAINTIFFS' RESPONSE TO DEFENDANTS' EMERGENCY MOTION TO RESCHEDULE EVIDENTIARY HEARING AND OBJECTION TO TELEPHONIC TESTIMONY	Oct. 23, 2017
53.	(PART 1 OF 2) REPLY RE: EMERGENCY MOTION TO DISSOLVE PRELIMINARY INJUNCTION AND PERMIT DEFENDANT [PARC] TO TERMINATE ALL CONTRACTS WITH PLAINTIFFS	Oct. 23, 2017
54.	(PART 2 OF 2) REPLY RE: EMERGENCY MOTION TO DISSOLVE PRELIMINARY INJUNCTION AND PERMIT DEFENDANT [PARC] TO TERMINATE ALL CONTRACTS WITH PLAINTIFFS	Oct. 23, 2017
55.	REPLY RE: EMERGENCY MOTION TO RECHEDULE AND EXPAND EVIDENTIARY HEARING OR, ALTERNATIVELY, TO ALLOW TELEPHONIC TESTIMONY	Oct. 24, 2017
56.	NOTICE OF ERRATA	Oct. 25, 2017
57.	**ME: RULING [10/25/2017]**	**Oct. 26, 2017**
58.	**ME: MATTER UNDER ADVISEMENT [10/26/2017]**	**Oct. 30, 2017**
59.	DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' EMERGENCY MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT AND SANCTIONED FOR VIOLATING THIS COURT'S INJUNCTION	Oct. 30, 2017

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No.	Document Name	Filed Date
60.	(PART 1 OF 2) PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' EMERGENCY MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT AND SANCTIONED FOR VIOLATING THIS COURT'S INJUNCTION	Nov. 6, 2017
61.	(PART 2 OF 2) PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' EMERGENCY MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT AND SANCTIONED FOR VIOLATING THIS COURT'S INJUNCTION	Nov. 6, 2017
62.	**ME: UNDER ADVISEMENT RULING [11/06/2017]**	**Nov. 13, 2017**
63.	**ME: ORDER ENTERED BY COURT [11/09/2017]**	**Nov. 13, 2017**
64.	**ME: ORDER ENTERED BY COURT [11/13/2017]**	**Nov. 14, 2017**
65.	EXHIBIT WORKSHEET HD 10/26/2017	Nov. 16, 2017
66.	**ME: 150 DAY MINUTE ENTRY [11/18/2017]**	**Nov. 22, 2017**
67.	(PART 1 OF 3) PLAINTIFFS' RENEWED MOTION FOR THE APPOINTMENT OF RECEIVER OVER PARC DUE TO NEW EVIDENCE	Dec. 23, 2017
68.	(PART 2 OF 3) PLAINTIFFS' RENEWED MOTION FOR THE APPOINTMENT OF RECEIVER OVER PARC DUE TO NEW EVIDENCE	Dec. 23, 2017
69.	(PART 3 OF 3) PLAINTIFFS' RENEWED MOTION FOR THE APPOINTMENT OF RECEIVER OVER PARC DUE TO NEW EVIDENCE	Dec. 23, 2017
70.	CERIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Jan. 4, 2018
71.	JOINT REPORT	Jan. 9, 2018
72.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Jan. 11, 2018
73.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Jan. 11, 2018
74.	NOTICE OF FIRST EXTENSION OF TIME TO FILE RESPONSE TO PLAINTIFFS' RENEWED MOTION FOR THE APPOINTMENT OF RECEIVER OVER PARC DUE TO NEW EVIDENCE	Jan. 16, 2018
75.	NOTICE OF CHANGE IN FIRM NAME AND ADDRESS	Jan. 16, 2018

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No.	Document Name	Filed Date
76.	DEFENDANTS' OBJECTION TO PLAINTIFFS' "RENEWED MOTION FOR APPOINTMENT OF RECEIVER OVER PARC DUE TO NEW EVIDENCE" AND REQUEST FOR CLARIFICATION	Jan. 19, 2018
77.	**ME: RULING [01/19/2018]**	**Jan. 23, 2018**
78.	(PART 1 OF 2) PLAINTIFFS' RENEWED MOTION FOR THE APPOINTMENT OF RECEIVER OVER PARC DUE TO NEW EVIDENCE	Feb. 16, 2018
79.	(PART 2 OF 2) PLAINTIFFS' RENEWED MOTION FOR THE APPOINTMENT OF RECEIVER OVER PARC DUE TO NEW EVIDENCE	Feb. 16, 2018
80.	SCHEDULING ORDER	Feb. 23, 2018
81.	**ME: ORDER ENTERED BY COURT [02/22/2018]**	**Feb. 26, 2018**
82.	**ME: SCHEDULING CONFERENCE SET [02/22/2018]**	**Feb. 26, 2018**
83.	**ME: SETTLEMENT CONFERENCE SET [02/27/2018]**	**Feb. 27, 2018**
84.	**ME: STATUS CONFERENCE SET [02/27/2018]**	**Mar. 1, 2018**
85.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Mar. 6, 2018
86.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Mar. 6, 2018
87.	**ME: SETTLEMENT CONFERENCE SET [03/09/2018]**	**Mar. 9, 2018**
88.	**ME: CONFERENCE [03/09/2018]**	**Mar. 12, 2018**
89.	MOTION FOR EXPEDITED RELIEF ON APPLICATION FOR TEMPORARY RESTRAINING ORDER (WITH NOTICE) AND PRELIMINARY INJUNCTION	Mar. 23, 2018
90.	(PART 1 OF 2) PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT	Mar. 23, 2018
91.	(PART 2 OF 2) PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT	Mar. 23, 2018
92.	(PART 1 OF 3) PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER (WITH NOTICE) AND/OR A PRELIMINARY INJUNCTION	Mar. 23, 2018

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No.	Document Name	Filed Date
93.	(PART 2 OF 3) PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER (WITH NOTICE) AND/OR A PRELIMINARY INJUNCTION	Mar. 23, 2018
94.	(PART 3 OF 3) PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER (WITH NOTICE) AND/OR A PRELIMINARY INJUNCTION	Mar. 23, 2018
95.	ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE	Mar. 28, 2018
96.	ORDER GRANTING EXPEDITED RELEF ON APPLICATION FOR TEMPORARY RESTRAINING ORDER (WITH NOTICE AND PRELIMINARY INJUNCTION	Mar. 29, 2018
97.	**ME: RULING [03/29/2018]**	**Mar. 30, 2018**
98.	**ME: ORDER ENTERED BY COURT [03/29/2018]**	**Apr. 2, 2018**
99.	NOTICE OF SETTLEMENT CONFERENCE	Apr. 2, 2018
100.	DEFENDANTS' RESPONSE TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION AND MOTION TO QUASH SAID APPLICATION AND VACATE EVIDENTIARY HEARING	Apr. 2, 2018
101.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Apr. 2, 2018
102.	(PART 1 OF 2) PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER (WITH NOTICE) AND/OR A PRELIMINARY INJUNCTION AND RESPONSE TO MOTION TO QUASH APPLICATION AND VACATE EVIDENTIARY HEARING	Apr. 9, 2018
103.	(PART 2 OF 2) PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER (WITH NOTICE) AND/OR A PRELIMINARY INJUNCTION AND RESPONSE TO MOTION TO QUASH APPLICATION AND VACATE EVIDENTIARY HEARING	Apr. 9, 2018
104.	STIPULATION AND JOINT MOTION RE: AMENDMENT OF PLEADINGS	Apr. 9, 2018
105.	**ME: ORAL ARGUMENT SET [04/06/2018]**	**Apr. 10, 2018**
106.	EXHIBIT LIST FOR EVIDENTIARY HEARING ON PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER (WITH NOTICE) AND/OR A PRELIMINARY INJUNCTION	Apr. 10, 2018

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107.	**ME: HEARING CONTINUED [04/11/2018]**	**Apr. 16, 2018**
108.	(PART 1 OF 2) VERIFIED FIRST AMENDED COMPLAINT	Apr. 16, 2018
109.	(PART 2 OF 2) VERIFIED FIRST AMENDED COMPLAINT	Apr. 16, 2018
110.	EXHIBIT LIST FOR EVIDENTIARY HEARING ON PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER (WITH NOTICE) AND/OR A PRELIMINARY INJUNCTION	Apr. 19, 2018
111.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Apr. 19, 2018
112.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Apr. 19, 2018
113.	SUMMONS	Apr. 19, 2018
114.	REVISED EXHIBIT LIST FOR EVIDENTIARY HEARING ON PLAINTIFFS' APPLICATION FOR TEMPORARY RETRAINING ORDER (WITH NOTICE) AND/OR A PRELIMINARY INJUNCTION	Apr. 20, 2018
115.	(PART 1 OF 2) NOTICE OF FILING REPLACEMENT EXHIBIT	Apr. 24, 2018
116.	(PART 2 OF 2) NOTICE OF FILING REPLACEMENT EXHIBIT	Apr. 24, 2018
117.	NOTICE OF APPEARANCE	Apr. 26, 2018
118.	**ME: MATTER UNDER ADVISEMENT [04/23/2018]**	**Apr. 30, 2018**
119.	CREDIT MEMO	Apr. 30, 2018
120.	**ME: SCHEDULING CONFERENCE SET [05/02/2018]**	**May. 4, 2018**
121.	**ME: UNDER ADVISEMENT RULING [05/08/2018]**	**May. 9, 2018**
122.	EXHIBIT WORKSHEET HD 04/23/2018	May. 22, 2018
123.	FIRST SUPPLEMENT JOINT REPORT	Jun. 14, 2018
124.	**ME: ORDER ENTERED BY COURT [06/19/2018]**	**Jun. 20, 2018**
125.	FIRST AMENDED SCHEDULING ORDER	Jun. 20, 2018
126.	VERIFIED ANSWER TO PLAINTIFFS' VERIFIED FIRST AMENDED COMPLAINT AND VERIFIED COUNTERCLAIM OF DEFENDANT/COUNTERCLAIMANT PATIENT ALTERNATIVE RELIEF CENTER	Jun. 22, 2018

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127.	ANSWER	Jun. 25, 2018
128.	(PART 1 OF 2) DECLARATION OF JEFFREY C MATURA IN SUPPORT OF APPLICATION FOR ENTRY OF DEFAULT JUDGMENT AGIANST DEFENDANTS PEACE RELEAF CENTER I, DBA PATIENT ALERNATIVE RELIEF CENTER, PATIENT ALTERNATIVE RELIEF CENTER, YURIKINO CENIT DOWNING, WHITNEY ...	Jun. 25, 2018
129.	(PART 2 OF 2) DECLARATION OF JEFFREY C MATURA IN SUPPORT OF APPLICATION FOR ENTRY OF DEFAULT JUDGMENT AGIANST DEFENDANTS PEACE RELEAF CENTER I, DBA PATIENT ALERNATIVE RELIEF CENTER, PATIENT ALTERNATIVE RELIEF CENTER, YURIKINO CENIT DOWNING, WHITNEY ...	Jun. 25, 2018
130.	APPLICATION FOR ENTRY OF DEFAULT JUDGMENT AGAINST DEFENDANTS PEACE RELEAF CENTER I, DBA PATIENT ALTERNATIVE RELIEF CENTER, PATIENT ALTERNATIVE RELIEF CENTER, YURIKINO CENIT DOWNING, WHITNEY SORRELL, AND EDWARD GLUECKLER	Jun. 25, 2018
131.	MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO PLAINTIFF'S CONTRACTUAL CLAIMS	Jul. 5, 2018
132.	(PART 1 OF 2) SEPARATE STATEMENT OF FACTS	Jul. 5, 2018
133.	(PART 2 OF 2) SEPARATE STATEMENT OF FACTS	Jul. 5, 2018
134.	**ME: STATUS CONFERENCE SET [07/11/2018]**	**Jul. 13, 2018**
135.	MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT YURI DOWNING	Jul. 14, 2018
136.	**ME: STATUS CONFERENCE [07/13/2018]**	**Jul. 18, 2018**
137.	**ME: RULING [07/16/2018]**	**Jul. 18, 2018**
138.	**ME: WITHDRAWAL OF COUNSEL [07/25/2018]**	**Jul. 27, 2018**
139.	PLAINTIFFS/COUNTER-DEFENDANTS' VERIFIED ANSWER TO PEACE RELEAF CENTER I DBA PATIENT ALTERNATIVE RELIEF CENTER'S COUNTER-CLAIM	Jul. 27, 2018
140.	NOTICE OF FIRST EXTENSION OF TIME TO FILE RESPONSE TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO PLAINTIFFS' CONTRACTUAL CLAIMS	Aug. 8, 2018
141.	RETURNED MAIL	Aug. 8, 2018

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142.	PLAINTIFFS/COUNTERDEFENDANTS' RESPONSE TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO PLAINTIFFS' CONTRACTUAL CLAIMS	Aug. 20, 2018
143.	(PART 1 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
144.	(PART 2 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
145.	(PART 3 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
146.	(PART 4 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
147.	(PART 5 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
148.	(PART 6 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
149.	(PART 7 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
150.	(PART 8 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
151.	(PART 9 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
152.	(PART 10 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
153.	(PART 11 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018

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154.	(PART 12 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
155.	(PART 13 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
156.	(PART 14 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
157.	(PART 15 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
158.	(PART 16 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
159.	(PART 17 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
160.	(PART 18 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
161.	(PART 19 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
162.	(PART 20 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
163.	(PART 21 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
164.	(PART 22 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
165.	(PART 23 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018

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166.	(PART 24 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
167.	(PART 25 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
168.	(PART 26 OF 26) PLAINTIFFS/COUNTER-DEFENDANTS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND OPPOSING STATEMENT OF FACTS	Aug. 20, 2018
169.	DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO PLAINTIFFS' CONTRACTUAL CLAIMS	Sep. 10, 2018
170.	**ME: ORAL ARGUMENT SET [09/14/2018]**	**Sep. 18, 2018**
171.	**ME: ORAL ARGUMENT SET [09/17/2018]**	**Sep. 19, 2018**
172.	**ME: SETTLEMENT CONFERENCE SET [10/04/2018]**	**Oct. 4, 2018**
173.	NOTICE OF SUBSTITUTION AS COUNSEL WITH CONSENT	Oct. 11, 2018
174.	ORDER GRANTING SUBSTITUTION OF COUNSEL	Oct. 17, 2018
175.	STIPULATION AND JOINT MOTION TO EXPAND ORAL ARGUMENT	Dec. 11, 2018
176.	**ME: RULING [12/12/2018]**	**Dec. 13, 2018**
177.	ORDER EXPANDING ORAL ARGUMENT	Dec. 13, 2018
178.	**ME: MATTER UNDER ADVISEMENT [12/14/2018]**	**Dec. 18, 2018**
179.	**ME: UNDER ADVISEMENT RULING [12/14/2018]**	**Dec. 20, 2018**
180.	(PART 1 OF 4) MOTION FOR ALTERNATIVE SERVICE OF SUBPOENA ON ROSANNA KLAUSNER	Jan. 16, 2019
181.	(PART 2 OF 4) MOTION FOR ALTERNATIVE SERVICE OF SUBPOENA ON ROSANNA KLAUSNER	Jan. 16, 2019
182.	(PART 3 OF 4) MOTION FOR ALTERNATIVE SERVICE OF SUBPOENA ON ROSANNA KLAUSNER	Jan. 16, 2019
183.	(PART 4 OF 4) MOTION FOR ALTERNATIVE SERVICE OF SUBPOENA ON ROSANNA KLAUSNER	Jan. 16, 2019

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184.	(PART 1 OF 4) MOTION FOR ALTERNATIVE SERVICE OF SUBPOENA ON RICK KLAUSNER	Jan. 16, 2019
185.	(PART 2 OF 4) MOTION FOR ALTERNATIVE SERVICE OF SUBPOENA ON RICK KLAUSNER	Jan. 16, 2019
186.	(PART 3 OF 4) MOTION FOR ALTERNATIVE SERVICE OF SUBPOENA ON RICK KLAUSNER	Jan. 16, 2019
187.	(PART 4 OF 4) MOTION FOR ALTERNATIVE SERVICE OF SUBPOENA ON RICK KLAUSNER	Jan. 16, 2019
188.	**ME: TRIAL SETTING [01/14/2019]**	**Jan. 18, 2019**
189.	**ME: RULING [01/29/2019]**	**Jan. 30, 2019**
190.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Mar. 14, 2019
191.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Mar. 14, 2019
192.	RULE 7.1 (H) GOOD FAITH CONSULTATION CERTIFICATE	Mar. 15, 2019
193.	(PART 1 OF 2) DEFENDANTS' MOTION TO QUASH SUBPOENA DUCES TECUM	Mar. 15, 2019
194.	(PART 2 OF 2) DEFENDANTS' MOTION TO QUASH SUBPOENA DUCES TECUM	Mar. 15, 2019
195.	STIPULATION AND JOINT MOTION TO AMEND SCHEDULING ORDER	Mar. 20, 2019
196.	THIRD SCHEDULING ORDER	Mar. 25, 2019
197.	NOTICE OF APPEARNCE(SIC)	Mar. 29, 2019
198.	MOTION FOR THOMAS A. MARAZ, MARK C. DANGERFIELD, AND GALLAGHER & KENNEDY, P.A. TO WITHDRAW AS COUNSEL OF RECORD FOR JEFF AND AMY SCHAEFFER	Apr. 4, 2019
199.	(PART 1 OF 2) NOTICE OF SERVICE OF SUBPOENA ON ROSANNA KLAUSNER	Apr. 5, 2019
200.	(PART 2 OF 2) NOTICE OF SERVICE OF SUBPOENA ON ROSANNA KLAUSNER	Apr. 5, 2019
201.	(PART 1 OF 6) PLAINTIFFS' RESPONSE TO DEFENDANT PARC'S MOTION TO QUASH DOW SUBPOENA DUCES TECUM TO DAVID DOW	Apr. 5, 2019

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202.	(PART 2 OF 6) PLAINTIFFS' RESPONSE TO DEFENDANT PARC'S MOTION TO QUASH DOW SUBPOENA DUCES TECUM TO DAVID DOW	Apr. 5, 2019
203.	(PART 3 OF 6) PLAINTIFFS' RESPONSE TO DEFENDANT PARC'S MOTION TO QUASH DOW SUBPOENA DUCES TECUM TO DAVID DOW	Apr. 5, 2019
204.	(PART 4 OF 6) PLAINTIFFS' RESPONSE TO DEFENDANT PARC'S MOTION TO QUASH DOW SUBPOENA DUCES TECUM TO DAVID DOW	Apr. 5, 2019
205.	(PART 5 OF 6) PLAINTIFFS' RESPONSE TO DEFENDANT PARC'S MOTION TO QUASH DOW SUBPOENA DUCES TECUM TO DAVID DOW	Apr. 5, 2019
206.	(PART 6 OF 6) PLAINTIFFS' RESPONSE TO DEFENDANT PARC'S MOTION TO QUASH DOW SUBPOENA DUCES TECUM TO DAVID DOW	Apr. 5, 2019
207.	NOTICE OF APPEARANCE OF COUNSEL FOR DEFENDANT YURIKINO CENIT DOWNING	Apr. 10, 2019
208.	DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE TO MOTION TO QUASH SUBPOENA DUCES TECUM	Apr. 10, 2019
209.	**ME: ORDER ENTERED BY COURT [04/15/2019]**	**Apr. 16, 2019**
210.	CREDIT MEMO	Apr. 16, 2019
211.	RETURNED MAIL	Apr. 19, 2019
212.	ORDER GRANTING MOTION FOR THOMAS A. MARAZ, MARK C. DANGERFIELD AND GALLAGHER & KENNEDY, P.A. TO WITHDRAW AS COUNSEL FOR JEFF AND AMY SCHAEFFER	Apr. 29, 2019
213.	STIPULATED MOTION TO APPOINT DISCOVERY MASTER AND NOTICE OF MEET AND CONFER	Apr. 30, 2019
214.	ORDER APPOINTING SPECIAL DISCOVERY MASTER	May. 3, 2019
215.	STIPULATED MOTION TO EXTEND DEADLINE FOR SUPPLEMENTAL BRIEFING	May. 6, 2019
216.	STIPULATION AND JOINT MOTION TO AMEND SCHEDULING ORDER	May. 7, 2019
217.	**ME: STATUS CONFERENCE SET [05/08/2019]**	**May. 9, 2019**

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218.	FOURTH SCHEDULING ORDER	May. 9, 2019
219.	**ME: RULING [05/08/2019]**	**May. 10, 2019**
220.	SPECIAL MASTER DECLARATION	Jun. 5, 2019
221.	MOTION TO WITHDRAW AS ATTORNEYS FOR DEFENDANTS JEFF SCHAEFFER AND AMY SCHAEFFER WITHOUT WRITTEN CONSENT	Aug. 26, 2019
222.	ORDER FOR WITHDRAWAL OF ATTORNEYS FOR DEFENDANTS JEFF SCHAEFFER AND AMY SCHAEFFER	Sep. 26, 2019
223.	STIPULATION AND JOINT MOTION TO AMEND SCHEDULING ORDER	Sep. 27, 2019
224.	ORDER AMENDING SCHEDULING ORDER	Oct. 3, 2019
225.	NOTICE OF APPEARANCE	Oct. 25, 2019
226.	(PART 1 OF 4) PLAINTIFFS/COUNTERDEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON: (A) COUNTS III, IV, IX, X, XI, XIII, AND XIV OF FIRST AMENDED COMPLAINT; AND (B) PATIENT ALTERNATIVE RELIEF CENTER'S COUNTERCLAIMS	Dec. 6, 2019
227.	(PART 2 OF 4) PLAINTIFFS/COUNTERDEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON: (A) COUNTS III, IV, IX, X, XI, XIII, AND XIV OF FIRST AMENDED COMPLAINT; AND (B) PATIENT ALTERNATIVE RELIEF CENTER'S COUNTERCLAIMS	Dec. 6, 2019
228.	(PART 3 OF 4) PLAINTIFFS/COUNTERDEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON: (A) COUNTS III, IV, IX, X, XI, XIII, AND XIV OF FIRST AMENDED COMPLAINT; AND (B) PATIENT ALTERNATIVE RELIEF CENTER'S COUNTERCLAIMS	Dec. 6, 2019
229.	(PART 4 OF 4) PLAINTIFFS/COUNTERDEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON: (A) COUNTS III, IV, IX, X, XI, XIII, AND XIV OF FIRST AMENDED COMPLAINT; AND (B) PATIENT ALTERNATIVE RELIEF CENTER'S COUNTERCLAIMS	Dec. 6, 2019
230.	**ME: TRIAL SETTING [12/11/2019]**	**Dec. 13, 2019**
231.	DEFENDANT SCHAEFFER'S MOTION TO AMEND SCHEDULING ORDER TO PERMIT THE FILING OF A DISPOSITIVE MOTION	Dec. 17, 2019
232.	NOTICE OF FIRST EXTENSION OF TIME FOR DEFENDANTS TO FILE THEIR RESPONSES TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT	Jan. 8, 2020

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233.	(PART 1 OF 2) PLAINTIFFS/COUNTERDEFENDANTS' RESPONSE TO DEFENDANT SCHAEFFER'S MOTION TO AMEND SCHEDULING ORDER TO PERMIT THE FILING OF A DISPOSITIVE MOTION	Jan. 13, 2020
234.	(PART 2 OF 2) PLAINTIFFS/COUNTERDEFENDANTS' RESPONSE TO DEFENDANT SCHAEFFER'S MOTION TO AMEND SCHEDULING ORDER TO PERMIT THE FILING OF A DISPOSITIVE MOTION	Jan. 13, 2020
235.	**ME: RULING [01/14/2020]**	**Jan. 15, 2020**
236.	PLAINTIFFS/COUNTERDEFENDANTS' NOTICE OF CHANGE OF ADDRESS	Jan. 23, 2020
237.	NOTICE OF SECOND EXTENSION OF TIME FOR DEFENDANTS TO FILE THEIR RESPONSES TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT	Jan. 24, 2020
238.	NOTICE OF THIRD EXTENSION OF TIME FOR DEFENDANTS TO FILE THEIR RESPONSES TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT	Feb. 6, 2020
239.	NOTICE OF FOURTH EXTENSION OF TIME FOR DEFENDANTS TO FILE THEIR RESPONSES TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT	Feb. 27, 2020
240.	**ME: ORDER ENTERED BY COURT [03/09/2020]**	**Mar. 11, 2020**
241.	**ME: ORAL ARGUMENT SET [03/09/2020]**	**Mar. 11, 2020**
242.	NOTICE OF FIFTH EXTENSION OF TIME FOR DEFENDANTS TO FILE THEIR RESPONSES TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT	Mar. 27, 2020
243.	NOTICE OF SIXTH EXTENSION OF TIME FOR DEFENDANTS TO FILE THEIR RESPONSES TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT	Apr. 6, 2020
244.	NOTICE OF SEVENTH EXTENSION OF TIME FOR DEFENDANTS TO FILE THEIR RESPONSES TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT	Apr. 8, 2020
245.	(PART 1 OF 3) DEFENDANT DOWNING'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN PARC'S RESPONSE TO SAME	Apr. 13, 2020
246.	(PART 2 OF 3) DEFENDANT DOWNING'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN PARC'S RESPONSE TO SAME	Apr. 13, 2020

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247.	(PART 3 OF 3) DEFENDANT DOWNING'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN PARC'S RESPONSE TO SAME	Apr. 13, 2020
248.	DEFENDANT'S/COUNTERCLAIMT'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT	Apr. 13, 2020
249.	(PART 1 OF 2) DEFENDANT DOWNING'S MOTION TO WITHDRAW AND/OR AMEND RESPONSES UNDER ARIZ.R.CIV.P. 36(B)	Apr. 13, 2020
250.	(PART 2 OF 2) DEFENDANT DOWNING'S MOTION TO WITHDRAW AND/OR AMEND RESPONSES UNDER ARIZ.R.CIV.P. 36(B)	Apr. 13, 2020
251.	(PART 1 OF 3) PARC DEFENDANTS' CONTROVERTING AND SUPPLEMENTAL STATEMENT OF FACTS IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT	Apr. 13, 2020
252.	(PART 2 OF 3) PARC DEFENDANTS' CONTROVERTING AND SUPPLEMENTAL STATEMENT OF FACTS IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT	Apr. 13, 2020
253.	(PART 3 OF 3) PARC DEFENDANTS' CONTROVERTING AND SUPPLEMENTAL STATEMENT OF FACTS IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT	Apr. 13, 2020
254.	DEFENDANT'S/COUNTERCLAIMANT'S NOTICE OF ERRATA	Apr. 14, 2020
255.	(PART 1 OF 2) NOTICE OF ERRATA FOR DEFENDANT DOWNING'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT	Apr. 24, 2020
256.	(PART 2 OF 2) NOTICE OF ERRATA FOR DEFENDANT DOWNING'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT	Apr. 24, 2020
257.	PLAINTIFFS' NOTICE OF FIRST EXTENSION OF TIME TO FILE REPLIES TO: (1) DEFENDANT PARC'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT; AND (2) DEFENDANT DOWNING'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT	Apr. 27, 2020
258.	(PART 1 OF 2) PLAINTIFFS'/COUNTERDEFENDANTS' RESPONSE TO DEFENDANT DOWNING'S MOTION TO WITHDRAW AND/OR AMEND RESPONSES UNDER ARIZ.R.CIV.P. 36(B)	Apr. 27, 2020

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260.	PLAINTIFFS' NOTICE OF SECOND EXTENSION OF TIME TO FILE REPLIES TO: (1) DEFENDANT PARC'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT; AND (2) DEFENDANT DOWNING'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT	May. 4, 2020
261.	**ME: ORAL ARGUMENT SET [05/04/2020]**	**May. 5, 2020**
262.	NOTICE OF JOINDER	May. 5, 2020
263.	**ME: NUNC PRO TUNC ORDER [05/05/2020]**	**May. 6, 2020**
264.	**ME: ORDER ENTERED BY COURT [05/06/2020]**	**May. 7, 2020**
265.	PLAINTIFFS'/COUNTERDEFENDANTS' REPLY TO YURI DOWNING'S RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON: (A) COUNTS III, IV, V, IX, X, XI, XIII, AND XIV OF FIRST AMENDMENT COMPLAINT; AND (B) PATIENT ALTERNATIVE RELIEF CENTER'S COUNTERCLAIMS	May. 7, 2020
266.	PLAINTIFFS'/COUNTERDEFENDANTS' RESPONSE TO DEFENDANT DOWNING'S LIMITED SEPARATE STATEMENT OF FACTS	May. 7, 2020
267.	(PART 1 OF 4) PLAINTIFFS/COUNTERDEFENDANTS' MOTION TO STRIKE AND REPLY TO PARC'S CONTROVERTING STATEMENT OF FACTS TO SUPPORT MOTION FOR PARTIAL SUMMARY JUDGMENT ON: (A) COUNTS III, IV, V, IX, X, XI, XIII, AND IV OF FIRST AMENDED COMPLAINT; AND (B) ...	May. 7, 2020
268.	(PART 2 OF 4) PLAINTIFFS/COUNTERDEFENDANTS' MOTION TO STRIKE AND REPLY TO PARC'S CONTROVERTING STATEMENT OF FACTS TO SUPPORT MOTION FOR PARTIAL SUMMARY JUDGMENT ON: (A) COUNTS III, IV, V, IX, X, XI, XIII, AND IV OF FIRST AMENDED COMPLAINT; AND (B) ...	May. 7, 2020
269.	(PART 3 OF 4) PLAINTIFFS/COUNTERDEFENDANTS' MOTION TO STRIKE AND REPLY TO PARC'S CONTROVERTING STATEMENT OF FACTS TO SUPPORT MOTION FOR PARTIAL SUMMARY JUDGMENT ON: (A) COUNTS III, IV, V, IX, X, XI, XIII, AND IV OF FIRST AMENDED COMPLAINT; AND (B) ...	May. 7, 2020

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270.	(PART 4 OF 4) PLAINTIFFS/COUNTERDEFENDANTS' MOTION TO STRIKE AND REPLY TO PARC'S CONTROVERTING STATEMENT OF FACTS TO SUPPORT MOTION FOR PARTIAL SUMMARY JUDGMENT ON: (A) COUNTS III, IV, V, IX, X, XI, XIII, AND IV OF FIRST AMENDED COMPLAINT; AND (B) ...	May. 7, 2020
271.	PLAINTIFFS'/COUNTERDEFENDANTS' REPLY TO PATIENT ALTERNATIVE RELIEF CENTER'S RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON: (A) COUNTS III, IV, V, IX, X, XI, XIII, AND XIV OF FIRST AMENDMENT COMPLAINT; AND (B) PATIENT ALTERNATIVE RELIEF CENTER'S ...	May. 7, 2020
272.	**ME: ORDER ENTERED BY COURT [05/08/2020]**	**May. 11, 2020**
273.	NOTICE OF FIRST EXTENSION OF TIME FOR DEFENDANT YURI DOWNING TO FILE HIS REPLY TO MOTION TO WITHDRAW AND/OR AMEND RESPONSES UNDER ARIZ.R.CIV.P. 36(B)	May. 11, 2020
274.	**ME: ORDER ENTERED BY COURT [05/11/2020]**	**May. 12, 2020**
275.	(PART 1 OF 2) DEFENDANT DOWNING'S REPLY IN SUPPORT OF HIS MOTION TO WITHDRAW AND/OR AMEND RESPONSES UNDER ARIZ.R.CIV.P. 36(B)	May. 12, 2020
276.	(PART 2 OF 2) DEFENDANT DOWNING'S REPLY IN SUPPORT OF HIS MOTION TO WITHDRAW AND/OR AMEND RESPONSES UNDER ARIZ.R.CIV.P. 36(B)	May. 12, 2020
277.	STATEMENT REGARDING REPLY TO CONTROVERTING AND SEPARATE STATEMENT OF FACTS	May. 13, 2020
278.	**ME: ORDER ENTERED BY COURT [05/14/2020]**	**May. 15, 2020**
279.	(PART 1 OF 3) PARC'S RESPONSE TO PLAINTIFFS' MOTION TO STRIKE PARC'S CONTROVERTING AND SUPPLEMENTAL STATEMENT OF FACTS	May. 19, 2020
280.	(PART 2 OF 3) PARC'S RESPONSE TO PLAINTIFFS' MOTION TO STRIKE PARC'S CONTROVERTING AND SUPPLEMENTAL STATEMENT OF FACTS	May. 19, 2020
281.	(PART 3 OF 3) PARC'S RESPONSE TO PLAINTIFFS' MOTION TO STRIKE PARC'S CONTROVERTING AND SUPPLEMENTAL STATEMENT OF FACTS	May. 19, 2020
282.	(PART 1 OF 3) PLAINTIFFS' REPLY TO SUPPORT MOTION TO STRIKE PARC'S CONTROVERTING AND SUPPLEMENTAL STATEMENT OF FACTS	May. 21, 2020

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284.	(PART 3 OF 3) PLAINTIFFS' REPLY TO SUPPORT MOTION TO STRIKE PARC'S CONTROVERTING AND SUPPLEMENTAL STATEMENT OF FACTS	May. 21, 2020
285.	PARC'S MOTION TO STRIKE PLAINTIFFS' REPLY TO SUPPORT MOTION TO STRIKE PARC'S CONTROVERTING AND SUPPLEMENTAL STATEMENT OF FACTS	May. 21, 2020
286.	**ME: ORAL ARGUMENT SET [05/22/2020]**	**May. 26, 2020**
287.	**ME: MATTER UNDER ADVISEMENT [05/28/2020]**	**May. 29, 2020**
288.	**ME: UNDER ADVISEMENT RULING [05/28/2020]**	**May. 29, 2020**
289.	NOTICE OF APPEARANCE OF KEVIN C. BARRETT	Jun. 1, 2020
290.	**ME: STATUS CONFERENCE [06/19/2020]**	**Jun. 23, 2020**
291.	(PART 1 OF 2) PLAINTIFFS' MOTION TO CONTINUE TRIAL DATE DUE TO HEALTH CONCERNS RELATED TO COVID-19 PANDEMIC	Jun. 23, 2020
292.	(PART 2 OF 2) PLAINTIFFS' MOTION TO CONTINUE TRIAL DATE DUE TO HEALTH CONCERNS RELATED TO COVID-19 PANDEMIC	Jun. 23, 2020
293.	PLAINTIFFS' REQUEST FOR TELEPHONIC STATUS CONFERENCE	Jun. 23, 2020
294.	STIPULATION TO DISMISS ALL CLAIMS AGAINST DEFENDANTS JEFF AND AMY SCHAEFFER	Jun. 24, 2020
295.	PLAINTIFFS' MOTION IN LIMINE NO. 1 RE: ARGUMENTS OR EVIDENCE THAT PLAINTIFFS' COUNSEL WAS ALLEGEDLY INVOLVED IN, OR COVERED-UP, THE TRANSPORTATION OF MARIJUANA FROM CALIFORNIA TO ARIZONA	Jun. 24, 2020
296.	PLAINTIFFS' SUPPLEMENT TO MOTION TO CONTINUE TRIAL DATE DUE TO HEALTH CONCERNS RELATED TO COVID-19 PANDEMIC	Jun. 24, 2020
297.	DEFENDANT DOWNING'S MOTION IN LIMINE #1: ARIZ. R. EVID. 609(B); EXCLUSION OF PRIOR FELONY CONVICTIONS	Jun. 24, 2020

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299.	(PART 2 OF 2) PLAINTIFFS' MOTION IN LIMINE NO. 2 RE: TESTIMONY FROM RYAN REESE REGARDING COMMUNICATIONS WITH PREMIER'S COUNSEL DURING INVESTIGATION INTO THE TRANSPORTATION OF MARIJUANA FROM CALIFORNIA TO ARIZONA	Jun. 24, 2020
300.	PARC DEFENDANT'S MOTION IN LIMINE NO. 1 RE: TESTIMONY OF GARY LIDDICOAT	Jun. 24, 2020
301.	PARC DEFENDANT'S MOTION IN LIMINE NO. 3 RE: EVIDENCE OF DAMAGES ALLEGEDLY SUFFERED BY JJSM REAL ESTATE FUND, LLC	Jun. 24, 2020
302.	PARC DEFENDANT'S MOTION IN LIMINE NO. 2 RE: EVIDENCE OF VALUE OF DESTROYED MARIJUANA	Jun. 24, 2020
303.	ORDER	Jun. 25, 2020
304.	**ME: STATUS CONFERENCE SET [06/24/2020]**	**Jun. 26, 2020**
305.	**ME: ORDER ENTERED BY COURT [06/25/2020]**	**Jun. 26, 2020**
306.	**ME: STATUS CONFERENCE [06/26/2020]**	**Jun. 29, 2020**
307.	PARC DEFENDANT'S REVISED MOTION IN LIMINE NO. 3 RE: EVIDENCE OF DAMAGES ALLEGEDLY SUFFERED BY JJSM REAL ESTATE FUND, LLC	Jun. 30, 2020
308.	PARC DEFENDANT'S REVISED MOTION IN LIMINE NO. 1 RE: TESTIMONY OF GARY LIDDICOAT	Jun. 30, 2020
309.	**ME: CASE STATUS MINUTE ENTRY [07/08/2020]**	**Jul. 9, 2020**
310.	PLAINTIFFS' RESPONSE TO PARC'S MOTION IN LIMINE NO. 1 RE: TESTIMONY OF GARY LIDDICOAT	Jul. 9, 2020
311.	(PART 1 OF 5) PLAINTIFFS' RESPONSE TO PARC'S MOTION IN LIMINE NO. RE: EVIDENCE OF VALUE OF DESTROYED MARIJUANA	Jul. 9, 2020
312.	(PART 2 OF 5) PLAINTIFFS' RESPONSE TO PARC'S MOTION IN LIMINE NO. RE: EVIDENCE OF VALUE OF DESTROYED MARIJUANA	Jul. 9, 2020

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316.	(PART 1 OF 2) PLAINTIFFS' RESPONSE TO PARC'S MOTION IN LIMINE NO. 3 RE: EVIDENCE OF DAMAGES ALLEGENY SUFFERED BY JJSM REAL ESTATE FUND, LLC	Jul. 9, 2020
317.	(PART 2 OF 2) PLAINTIFFS' RESPONSE TO PARC'S MOTION IN LIMINE NO. 3 RE: EVIDENCE OF DAMAGES ALLEGENY SUFFERED BY JJSM REAL ESTATE FUND, LLC	Jul. 9, 2020
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319.	(PART 2 OF 6) PLAINTIFFS' RESPONSE TO DEFENDANT DOWNING'S MOTION IN LIMINE NO. 1 RE: EXCLUSION OF PRIOR FELONY CONVICTIONS	Jul. 9, 2020
320.	(PART 3 OF 6) PLAINTIFFS' RESPONSE TO DEFENDANT DOWNING'S MOTION IN LIMINE NO. 1 RE: EXCLUSION OF PRIOR FELONY CONVICTIONS	Jul. 9, 2020
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322.	(PART 5 OF 6) PLAINTIFFS' RESPONSE TO DEFENDANT DOWNING'S MOTION IN LIMINE NO. 1 RE: EXCLUSION OF PRIOR FELONY CONVICTIONS	Jul. 9, 2020
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324.	DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION IN LIMINE NO. 2 RE: TESTIMONY FROM RYAN REESE REGARDING COMMUNICATIONS WITH PREMIER'S COUNSEL DURING INVESTIGATION INTO THE TRANSPORTATION OF MARIJUANA FROM CALIFORNIA TO ARIZONA	Jul. 9, 2020

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326.	DEFENDANTS' COUNSEL'S STATEMENT RE: COMPLIANCE WITH E.R. 3.7	Jul. 14, 2020
327.	(PART 1 OF 3) PLAINTIFFS' STATEMENT REGARDING ETHICAL RULE 3.7(A)	Jul. 14, 2020
328.	(PART 2 OF 3) PLAINTIFFS' STATEMENT REGARDING ETHICAL RULE 3.7(A)	Jul. 14, 2020
329.	(PART 3 OF 3) PLAINTIFFS' STATEMENT REGARDING ETHICAL RULE 3.7(A)	Jul. 14, 2020
330.	JOINT PROPOSED VOIR DIRE QUESTIONS	Jul. 15, 2020
331.	JOINT PRETRIAL STATEMENT	Jul. 15, 2020
332.	PARC DEFENDANTS' SEPARATE JURY INSTRUCTIONS	Jul. 15, 2020
333.	JURY INSTRUCTIONS	Jul. 15, 2020
334.	VERDICT FORMS	Jul. 15, 2020
335.	DEFENDANTS' VERDICT FORMS	Jul. 15, 2020
336.	PARC'S MOTION FOR PARTIAL RECONSIDERATION OF THE COURT'S MAY 29, 2020 MINUTE ENTRY	Jul. 16, 2020
337.	WITNESS INFORMATION FORM	Jul. 20, 2020
338.	**ME: RULING [07/21/2020]**	**Jul. 22, 2020**
339.	JOINT PROPOSED MODIFIED RAJI PRELIMINARY JURY INSTRUCTION NO. 14	Jul. 24, 2020
340.	**ME: PRETRIAL CONFERENCE [07/24/2020]**	**Jul. 27, 2020**
341.	**ME: STATUS CONFERENCE SET [08/03/2020]**	**Aug. 4, 2020**
342.	APPLICATION FOR SUBSTITUTION OF COUNSEL WITH CONSENT	Aug. 5, 2020
343.	REQUEST FOR COURT REPORTER	Aug. 10, 2020

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345.	**ME: SUBSTITUTION OF COUNSEL [08/10/2020]**	**Aug. 11, 2020**
346.	**ME: ORDER ENTERED BY COURT [08/11/2020]**	**Aug. 12, 2020**
347.	**ME: PRETRIAL CONFERENCE SET [08/12/2020]**	**Aug. 13, 2020**
348.	**ME: PRETRIAL CONFERENCE [08/18/2020]**	**Aug. 19, 2020**
349.	**ME: HEARING SET [08/06/2020]**	**Aug. 21, 2020**
350.	**ME: HEARING [08/19/2020]**	**Aug. 21, 2020**
351.	**ME: CASE STATUS MINUTE ENTRY [08/21/2020]**	**Aug. 24, 2020**
352.	(PART 1 OF 2) PLAINTIFFS' MEMORANDUM REGARDING EFFECT OF NEW LEASE ON JJSM REAL ESTATE'S CLAIM FOR DAMAGES AGAINST PARC	Aug. 28, 2020
353.	(PART 2 OF 2) PLAINTIFFS' MEMORANDUM REGARDING EFFECT OF NEW LEASE ON JJSM REAL ESTATE'S CLAIM FOR DAMAGES AGAINST PARC	Aug. 28, 2020
354.	DEFENDANTS' MOTION IN LIMINE NO. 4 RE: TESTIMONY ABOUT THE ALLEGED VALUE OF THE DESTROYED MARIJUANA	Aug. 31, 2020
355.	PARC'S OPENING BRIEF RE: EFFECT OF NEW LEASE ON JJSM REAL ESTATE'S CLAIM FOR DAMAGES UNDER THE BUILDING LEASE	Aug. 31, 2020
356.	(PART 1 OF 2) PLAINTIFFS' RESPONSE TO PARC'S MOTION IN LIMINE NO. 4 RE: TESTIMONY ABOUT THE ALLEGED VALUE OF THE DESTROYED MARIJUANA	Sep. 4, 2020
357.	(PART 2 OF 2) PLAINTIFFS' RESPONSE TO PARC'S MOTION IN LIMINE NO. 4 RE: TESTIMONY ABOUT THE ALLEGED VALUE OF THE DESTROYED MARIJUANA	Sep. 4, 2020
358.	PLAINTIFFS' REPLY MEMORANDUM REGARDING EFFECT OF THE NEW LEASE ON JJSM REAL ESTATE'S CLAIM FOR DAMAGES AGAINST PARC	Sep. 4, 2020
359.	PARC'S RESPONSE BRIEF RE: EFFECT OF NEW LEASE ON JJSM REAL ESTATE'S CLAIM FOR DAMAGES UNDER THE BUILDING LEASE	Sep. 8, 2020
360.	**ME: PRETRIAL CONFERENCE [09/25/2020]**	**Sep. 29, 2020**

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No.	Document Name	Filed Date
361.	**ME: UNDER ADVISEMENT RULING [09/28/2020]**	**Sep. 29, 2020**
362.	PLAINTIFFS' MOTION TO STAY TRIAL AND ALL OTHER PROCEEDINGS PENDING RESOLUTION OF PETITION FOR SPECIAL ACTION	Sep. 30, 2020
363.	**ME: RULING [09/30/2020]**	**Oct. 1, 2020**
364.	(PART 1 OF 2) DEFENDANTS' MOTION TO ADD EXHIBITS TO TRIAL LIST	Oct. 2, 2020
365.	(PART 2 OF 2) DEFENDANTS' MOTION TO ADD EXHIBITS TO TRIAL LIST	Oct. 2, 2020
366.	PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO ADD EXHIBITS TO TRIAL LIST.	Oct. 5, 2020
367.	REPLY IN SUPPORT OF DEFENDANTS' MOTION TO ADD EXHIBITS TO TRIAL LIST	Oct. 6, 2020
368.	**ME: RULING [10/07/2020]**	**Oct. 8, 2020**
369.	**ME: CONFERENCE [10/08/2020]**	**Oct. 9, 2020**
370.	**ME: STATUS CONFERENCE SET [10/08/2020]**	**Oct. 9, 2020**
371.	DEFENDANTS' MOTION RE: LACK OF PROOF OF DAMAGES FOR PLAINTIFFS' PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC AND JJSM EQUIPMENT FUND, LLC	Oct. 9, 2020
372.	**ME: CASE STATUS MINUTE ENTRY [10/09/2020]**	**Oct. 12, 2020**
373.	**ME: ORAL ARGUMENT SET [10/09/2020]**	**Oct. 12, 2020**
374.	**ME: RULING [10/12/2020]**	**Oct. 13, 2020**
375.	**ME: ORDER ENTERED BY COURT [10/13/2020]**	**Oct. 14, 2020**
376.	**ME: MATTER UNDER ADVISEMENT [10/13/2020]**	**Oct. 14, 2020**
377.	PRELIMINARY JURY INSTRUCTIONS	Oct. 14, 2020
378.	**ME: RULING [10/14/2020]**	**Oct. 15, 2020**
379.	ORIGINAL DEPOSITION OF BRADFORD MARTIN BECK TAKEN 10/30/2019	Oct. 15, 2020

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380.	(PART 1 OF 2) ORIGINAL DEPOSITION RICHARD MEREL TAKEN 10/28/2019	Oct. 15, 2020
381.	(PART 2 OF 2) ORIGINAL DEPOSITION RICHARD MEREL TAKEN 10/28/2019	Oct. 15, 2020
382.	(PART 1 OF 2) ORIGINAL DEPOSITION RICHARD MEREL TAKEN 10/28/2019	Oct. 15, 2020
383.	(PART 2 OF 2) ORIGINAL DEPOSITION RICHARD MEREL TAKEN 10/28/2019	Oct. 15, 2020
384.	**ME: CONFERENCE [10/13/2020]**	**Oct. 19, 2020**
385.	**ME: TRIAL [10/14/2020]**	**Oct. 19, 2020**
386.	**ME: STATUS CONFERENCE SET [10/16/2020]**	**Oct. 19, 2020**
387.	PLAINTIFFS' PROPOSED JURY INSTRUCTIONS REGARDING DAMAGES FOR AFFIRMATIVE CLAIMS	Oct. 19, 2020
388.	ORIGINAL DEPOSITION OF JOHN VATISTAS TAKEN 12/04/2019	Oct. 19, 2020
389.	ORIGINAL DEPOSITION OF BRADFORD MARTIN BECK TAKEN 03/16/2020	Oct. 19, 2020
390.	(PART 1 OF 2) ORIGINAL DEPOSITION OF BARRY MISSNER TAKEN 11/19/2019	Oct. 19, 2020
391.	(PART 2 OF 2) ORIGINAL DEPOSITION OF BARRY MISSNER TAKEN 11/19/2019	Oct. 19, 2020
392.	(PART 1 OF 2) ORIGINAL DEPOSITION OF JEFF SCHAEFFER TAKEN 08/13/2019	Oct. 19, 2020
393.	(PART 2 OF 2) ORIGINAL DEPOSITION OF JEFF SCHAEFFER TAKEN 08/13/2019	Oct. 19, 2020
394.	**ME: TRIAL [10/15/2020]**	**Oct. 20, 2020**
395.	**ME: CASE DISMISSED - PARTIAL [10/16/2020]**	**Oct. 20, 2020**
396.	JUROR QUESTION #1	Oct. 20, 2020
397.	**ME: TRIAL [10/19/2020]**	**Oct. 21, 2020**
398.	**ME: CONFERENCE [10/19/2020]**	**Oct. 21, 2020**

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No.	Document Name	Filed Date
399.	DEFENDANT YURIKINO DOWNING'S MOTION FOR JUDGMENT AS A MATTER OF LAW AS TO COUNTS XIII AND XIV	Oct. 21, 2020
400.	PARC'S MOTION FOR JUDGMENT AS A MATER OF LAW AS TO COUNT XI	Oct. 21, 2020
401.	PARC'S MOTION FOR JUDGMENT AS A MATTER OF LAW AS TO COUNT III	Oct. 21, 2020
402.	DEFENDANT PARC'S MOTION FOR JUDGMENT AS A MATTER OF LAW ON JJSM EQUIPMENT FUND, LLC'S CLAIM FOR BREACH OF CONTRACT	Oct. 21, 2020
403.	DEFENDANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW AS TO COUNT IX	Oct. 21, 2020
404.	DEFENDANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW AS TO COUNT X	Oct. 21, 2020
405.	PARC'S MOTION FOR JUDGMENT AS A MATTER OF LAW AS TO COUNT IV	Oct. 21, 2020
406.	**ME: HEARING CONTINUED [10/21/2020]**	**Oct. 22, 2020**
407.	DEFENDANTS' PROPOSED REVISIONS TO THE COURT'S DRAFT FINAL JURY INSTRUCTIONS AND DEFENDANTS' PROPOSED ADDITIONAL JURY INSTRUCTIONS	Oct. 22, 2020
408.	JUROR QUESTION #2	Oct. 22, 2020
409.	JUROR QUESTION #3	Oct. 22, 2020
410.	JUROR QUESTION #4	Oct. 22, 2020
411.	**ME: TRIAL [10/20/2020]**	**Oct. 23, 2020**
412.	**ME: TRIAL [10/21/2020]**	**Oct. 23, 2020**
413.	**ME: HEARING [10/22/2020]**	**Oct. 23, 2020**
414.	**ME: TRIAL [10/22/2020]**	**Oct. 26, 2020**
415.	**ME: CONFERENCE [10/23/2020]**	**Oct. 26, 2020**
416.	JURY VERDICT FORM #1 - SIGNED	Oct. 26, 2020
417.	JURY VERDICT FORM #2 - SIGNED	Oct. 26, 2020

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418.	JURY VERDICT FORM #3 - SIGNED	Oct. 26, 2020
419.	JURY VERDICT FORM #4 - SIGNED	Oct. 26, 2020
420.	JURY VERDICT FORM #5 - SIGNED	Oct. 26, 2020
421.	JURY VERDICT FORM #6 - SIGNED	Oct. 26, 2020
422.	JURY VERDICT FORM #7 - SIGNED	Oct. 26, 2020
423.	JURY VERDICT FORM #8 - SIGNED	Oct. 26, 2020
424.	JURY VERDICT FORM #9 - SIGNED	Oct. 26, 2020
425.	JURY VERDICT FORM #10 - SIGNED	Oct. 26, 2020
426.	JURY VERDICT FORM #11 - SIGNED	Oct. 26, 2020
427.	JURY VERDICT FORM #12 - SIGNED	Oct. 26, 2020
428.	JURY VERDICT FORM #13 - SIGNED	Oct. 26, 2020
429.	FINAL JURY INSTRUCTIONS	Oct. 26, 2020
430.	TRIAL / HEARING WORKSHEET	Oct. 26, 2020
431.	**ME: TRIAL [10/26/2020]**	**Oct. 28, 2020**
432.	**ME: CASE STATUS MINUTE ENTRY [10/26/2020]**	**Oct. 28, 2020**
433.	JUDGMENT FOR JURY FEES	Oct. 28, 2020
434.	EMAIL DATED 10/26/2020	Oct. 28, 2020
435.	EXHIBIT WORKSHEET HD 10/12/2020	Nov. 5, 2020
436.	EXHIBIT WORKSHEET HD 10/12/2020	Nov. 5, 2020
437.	PLAINTIFFS' VERIFIED STATEMENT OF COSTS	Nov. 16, 2020
438.	(PART 1 OF 4) PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS	Nov. 16, 2020
439.	(PART 2 OF 4) PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS	Nov. 16, 2020

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No.	Document Name	Filed Date
440.	(PART 3 OF 4) PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS	Nov. 16, 2020
441.	(PART 4 OF 4) PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS	Nov. 16, 2020
442.	PLAINTIFFS' NOTICE OF LODGING PROPOSED FORM OF JUDGMENT	Nov. 16, 2020
443.	PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS	Nov. 16, 2020
444.	COURT OF APPEALS LETTER OF TRANSMITTAL DATED 11/20/2020	Nov. 20, 2020
445.	COURT OF APPEALS ORDER DECLINING SPECIAL ACTION JURISDICTION AND REQUEST FOR STAY	Nov. 20, 2020
446.	NOTICE OF FIRST EXTENSION OF TIME FOR DEFENDANTS TO FILE 1) OBJECTIONS TO PLAINTIFFS' PROPOSED FORM OF JUDGMENT 2) RESPONSES TO PLAINTIFFS' APPLICATION FOR ATTORYNEYS FEES AND COSTS	Nov. 30, 2020
447.	DEFENDANTS' OBJECTIONS TO PLAINTIFFS' STATEMENT OF COSTS	Dec. 1, 2020
448.	NOTICE OF SECOND EXTENSION OF TIME FOR DEFENDANTS TO FILE OBJECTIONS TO PLAINTIFFS' PROPOSED FORM OF JUDGMENT	Dec. 2, 2020
449.	PLAINTIFFS' REPLY TO SUPPORT VERIFIED STATEMENT OF COSTS	Dec. 7, 2020
450.	DEFENDANTS' OBJECTIONS TO PLAINTIFFS' PROPOSED FORM OF JUDGMENT	Dec. 9, 2020
451.	DEFENDANTS' MOTION TO STAY PROCEDDINGS ON PLAINTIFFS' APPLICATION FOR FEES AND COSTS AND PROPOSED FORM OF JUDGMENT	Dec. 11, 2020
452.	**ME: RULING [12/14/2020]**	**Dec. 15, 2020**
453.	(PART 1 OF 2) PLAINTIFFS' REPLY TO DEFENDANTS' OBJECTIONS TO PLAINTIFFS' PROPOSED FORM OF JUDGMENT	Dec. 15, 2020
454.	(PART 2 OF 2) PLAINTIFFS' REPLY TO DEFENDANTS' OBJECTIONS TO PLAINTIFFS' PROPOSED FORM OF JUDGMENT	Dec. 15, 2020

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455.	NOTICE OF THIRD EXTENSION OF TIME FOR DEFENDANTS TO FILE THEIR RESPONSE TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS	Jan. 11, 2021
456.	**ME: CASE STATUS MINUTE ENTRY [01/12/2021]**	**Jan. 13, 2021**
457.	NOTICE OF FOURTH EXTENSION OF TIME FOR DEFENDANTS TO FILE THEIR RESPONSE TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS	Jan. 18, 2021
458.	(PART 1 OF 3) DEFENDANTS' RESPONSE AND OBJECTIONS TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS	Jan. 27, 2021
459.	(PART 2 OF 3) DEFENDANTS' RESPONSE AND OBJECTIONS TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS	Jan. 27, 2021
460.	(PART 3 OF 3) DEFENDANTS' RESPONSE AND OBJECTIONS TO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS	Jan. 27, 2021
461.	DEFENDANTS' NOTICE OF ERRATA	Jan. 27, 2021
462.	(PART 1 OF 2) PLAINTIFFS' BRIEF REGARDING JURY VERDICT FORM #12 ON JJSM REAL ESTATE'S INTERFERENCE WITH CONTRACT CLAIM AGAINST YURI DOWNING	Jan. 27, 2021
463.	(PART 2 OF 2) PLAINTIFFS' BRIEF REGARDING JURY VERDICT FORM #12 ON JJSM REAL ESTATE'S INTERFERENCE WITH CONTRACT CLAIM AGAINST YURI DOWNING	Jan. 27, 2021
464.	DEFENDANTS' OPENING BRIEF ON ISSUE OF OMITTED VERDICT FORM	Jan. 27, 2021
465.	DEFENDANTS' NOTICE OF ERRATA	Jan. 28, 2021
466.	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPENING BRIEF ON ISSUE OF OMITTED VERDICT FORM	Feb. 3, 2021
467.	DEFENDANTS' RESPONSE RE JURY VERDICT FORM #12	Feb. 3, 2021
468.	NOTICE OF FIRST EXTENSION OF TIME TO FILE REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS.	Feb. 4, 2021
469.	**ME: ORAL ARGUMENT SET [02/11/2021]**	**Feb. 12, 2021**
470.	(PART 1 OF 3) PLAINTIFFS' REPLY TO SUPPORT MOTION FOR ATTORNEYS' FEES AND COSTS	Feb. 16, 2021

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471.	(PART 2 OF 3) PLAINTIFFS' REPLY TO SUPPORT MOTION FOR ATTORNEYS' FEES AND COSTS	Feb. 16, 2021
472.	(PART 3 OF 3) PLAINTIFFS' REPLY TO SUPPORT MOTION FOR ATTORNEYS' FEES AND COSTS	Feb. 16, 2021
473.	DEFENDANT'S MOTION FOR LEAVE TO FILE POST-TRIAL BRIEFING IN EXCESS OF PAGE LIMIT IN ARIZ. R. CIV. P. 7.1(A)(2)	Feb. 19, 2021
474.	PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR LEAVE TO FILE POST-TRIAL BRIEFING IN EXCESS FOF PAGE LIMIT IN ARIZ. R. CIV. P. 7.1(A)(2)	Feb. 22, 2021
475.	**ME: ORDER ENTERED BY COURT [02/23/2021]**	**Feb. 25, 2021**
476.	**ME: MATTER UNDER ADVISEMENT [02/25/2021]**	**Feb. 26, 2021**
477.	(PART 1 OF 2) DEFENDANT DOWNING'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Mar. 5, 2021
478.	(PART 2 OF 2) DEFENDANT DOWNING'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Mar. 5, 2021
479.	(PART 1 OF 2) DEFENDANT PARC'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Mar. 5, 2021
480.	(PART 2 OF 2) DEFENDANT PARC'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Mar. 5, 2021
481.	(PART 1 OF 2) DEFENDANT DOWNING'S REVISED RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Mar. 6, 2021
482.	(PART 2 OF 2) DEFENDANT DOWNING'S REVISED RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Mar. 6, 2021
483.	(PART 1 OF 2) DEFENDANT PARC'S REVISED RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Mar. 6, 2021
484.	(PART 2 OF 2) DEFENDANT PARC'S REVISED RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Mar. 6, 2021

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485.	**ME: ORDER ENTERED BY COURT [03/12/2021]**	**Mar. 15, 2021**
486.	**ME: UNDER ADVISEMENT RULING [03/15/2021]**	**Mar. 16, 2021**
487.	JUDGMENT	Mar. 17, 2021
488.	NOTICE OF LIMITED-SCOPE APPEARANCE	Mar. 25, 2021
489.	(PART 1 OF 2) DEFENDANT PARC'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Mar. 25, 2021
490.	(PART 2 OF 2) DEFENDANT PARC'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Mar. 25, 2021
491.	(PART 1 OF 2) DEFENDANT DOWNING'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Mar. 25, 2021
492.	(PART 2 OF 2) DEFENDANT DOWNING'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Mar. 25, 2021
493.	JJSM REAL ESTATE'S APPLICATION FOR WRIT OF GARNISHMENT (NON-EARNINGS)	Mar. 25, 2021
494.	JJSM EQUIPMENT FUND'S APPLICATION FOR WRIT OF GARNISHMENT (NON-EARNINGS)	Mar. 25, 2021
495.	JJSM REAL ESTATE'S APPLICATION FOR WRIT OF GARNISHMENT (NON-EARNINGS)	Mar. 25, 2021
496.	JJSM EQUIPMENT FUND'S APPLICATION FOR WRIT OF GARNISHMENT (NON-EARNINGS)	Mar. 25, 2021
497.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Mar. 29, 2021
498.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	Mar. 29, 2021
499.	JJSM REAL ESTATE FUND'S WRIT OF GARNISHMENT AND SUMMONS (NON-EARNINGS)	Mar. 29, 2021
500.	JJSM EQUIPMENT FUND'S WRIT OF GARNISHMENT AND SUMMONS (NON-EARNINGS)	Mar. 29, 2021
501.	JJSM EQUIPMENT FUND'S NOTICE WITHDRAWING APPLICATION FOR WRIT OF GARNISHMENT (NON-EARNINGS)	Mar. 31, 2021

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No.	Document Name	Filed Date
502.	JJSM REAL ESTATE'S NOTICE WITHDRAWING APPLICATION FOR WRIT OF GARNISHMENT (NON-EARNINGS)	Mar. 31, 2021
503.	JJSM EQUIPMENT FUND'S NOTICE WITHDRAWING APPLICATION FOR WRIT OF GARNISHMENT (NON-EARNINGS)	Mar. 31, 2021
504.	PARC'S MOTION TO SET SUPERSEDEAS BOND	Apr. 1, 2021
505.	JJSM REAL ESTATE'S NOTICE WITHDRAWING APPLICATION FOR WRIT OF GARNISHMENT (NON-EARNINGS)	Apr. 1, 2021
506.	STIPULATION TO FILE UNDER SEAL	Apr. 1, 2021
507.	YURIKINO DOWNING'S MOTION TO SET SUPERSEDEAS BOND	Apr. 1, 2021
508.	(PART 1 OF 2) PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE ALTERNATIVE, MOTION FOR NEW TRIAL REGARDING DAMAGES	Apr. 1, 2021
509.	(PART 2 OF 2) PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE ALTERNATIVE, MOTION FOR NEW TRIAL REGARDING DAMAGES	Apr. 1, 2021
510.	**ME: ORDER ENTERED BY COURT [04/02/2021]**	**Apr. 6, 2021**
511.	NOTICE OF FIRST EXTENSION OF TIME FOR PLAINTIFFS TO FILE RESPONSES TO DEFENDANTS' RENEWED MOTIONS FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTIONS FOR NEW TRIAL	Apr. 6, 2021
512.	***SEALED*** ORIGINAL SEALED DOCUMENT (DECLARATION OF YURIKINO CENIT DOWNING IN SUPP)	Apr. 7, 2021
513.	**ME: ORDER ENTERED BY COURT [04/13/2021]**	**Apr. 14, 2021**
514.	(PART 1 OR 2) PLAINTIFFS' RESPONSE TO DEFENDANT PARC'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Apr. 14, 2021
515.	(PART 2 OR 2) PLAINTIFFS' RESPONSE TO DEFENDANT PARC'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Apr. 14, 2021
516.	(PART 1 OF 2) PLAINTIFFS' RESPONSE TO YURIKINO DOWNING'S MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Apr. 14, 2021

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517.	(PART 2 OF 2) PLAINTIFFS' RESPONSE TO YURIKINO DOWNING'S MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	Apr. 14, 2021
518.	PLAINTIFFS' RESPONSE TO PARC'S MOTION TO SET SUPERSEDEAS BOND	Apr. 15, 2021
519.	PLAINTIFFS' RESPONSE TO YURIKINO DOWNING'S MOTION TO SET SUPERSEDEAS BOND	Apr. 15, 2021
520.	(PART 1 OF 2) RESPONSE TO PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL REGARDING DAMAGES	Apr. 20, 2021
521.	(PART 2 OF 2) RESPONSE TO PLAINTIFFS' MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL REGARDING DAMAGES	Apr. 20, 2021
522.	NOTICE OF FIRST EXTENSION OF TIME TO FILE REPLIES IN SUPPORT OF DEFENDANTS' RENEWED MOTIONS FOR JUDGMENT AS A MTATTER OF LAW OR, ALTERNATIVELY, MOTIONS FOR NEW TRIAL	Apr. 22, 2021
523.	JOINT STATUS REPORT OF PENDING MOTIONS PURSUANT TO THE COURT'S APRIL 14, 2021 MINUTE ENTRY ORDER	Apr. 23, 2021
524.	NOTICE OF FIRST EXTENSION OF TIME FOR PLAINTIFFS TO FILE REPLY TO MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL REGARDING DAMAGES	Apr. 26, 2021
525.	DEFENDANT PARC'S REPLY IN SUPPORT OF MOTION TO SET SUPERSEDEAS BOND	Apr. 27, 2021
526.	DEFENDANT DOWNING'S REPLY IN SUPPORT OF MOTION TO SET SUPERSEDEAS BOND	Apr. 27, 2021
527.	PLAINTIFFS' REPLY TO SUPPORT MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE ALTERNATIVE, MOTION FOR NEW TRIAL REGARDING DAMAGES	May. 4, 2021
528.	**ME: HEARING SET [05/04/2021]**	**May. 5, 2021**
529.	**ME: ORDER ENTERED BY COURT [05/04/2021]**	**May. 6, 2021**
530.	SECOND JOINT STATUS REPORT ON PENDING MOTIONS PURSUANT TO THE COURT'S APRIL 14, 2021 MINUTE ENTRY ORDER	May. 6, 2021

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531.	(PART 1 OF 2) DEFENDANT PARC'S REPLY IN SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	May. 10, 2021
532.	(PART 2 OF 2) DEFENDANT PARC'S REPLY IN SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	May. 10, 2021
533.	(PART 1 OF 2) DEFENDANT DOWNING'S REPLY IN SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	May. 10, 2021
534.	(PART 2 OF 2) DEFENDANT DOWNING'S REPLY IN SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	May. 10, 2021
535.	(PART 1 OF 2) UNOPPOSED MOTION FOR LEAVE TO FILE CORRECTED REPLY IN SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW	May. 11, 2021
536.	(PART 2 OF 2) UNOPPOSED MOTION FOR LEAVE TO FILE CORRECTED REPLY IN SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW	May. 11, 2021
537.	**ME: ORDER ENTERED BY COURT [05/11/2021]**	**May. 12, 2021**
538.	ORDER GRANTING UNOPPOSED MOTION FOR LEAVE TO FILE CORRECTED REPLY IN SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW	May. 14, 2021
539.	(PART 1 OF 2) DEFENDANT PARC'S CORRECTED REPLY IN SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	May. 14, 2021
540.	(PART 2 OF 2) DEFENDANT PARC'S CORRECTED REPLY IN SUPPORT OF RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL	May. 14, 2021
541.	THIRD JOINT STATUS REPORT ON PENDING MOTIONS PURSUANT TO THE COURT'S APRIL 14, 2021 MINUTE ENTRY ORDER	May. 19, 2021
542.	STIPULATION TO EXTEND TIME TO FILE POSITION STATEMENTS RE RENT OFFSET	May. 26, 2021
543.	STIPULATION AND JOINT MOTION TO EXTEND TIME TO MAKE INITIAL AND FINAL DISCLOSURE OF DOCUMENTS AND WITNESSES	May. 27, 2021
544.	**ME: ORDER ENTERED BY COURT [05/27/2021]**	**May. 28, 2021**

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No.	Document Name	Filed Date
545.	**ME: ORAL ARGUMENT SET [05/28/2021]**	**Jun. 1, 2021**
546.	ORDER EXTENDING TIME TO FILE POSITION STATEMENTS RE RENT OFFSET	Jun. 1, 2021
547.	**ME: ORAL ARGUMENT RESET [06/02/2021]**	**Jun. 3, 2021**
548.	JOINT PREHEARING STATEMENT FOR JUNE 17, 2021 ORAL ARGUMENT ON DEFENDANT DOWNING'S MOTION TO SET SUPERSEDEAS BOND	Jun. 8, 2021
549.	(PART 1 OF 2) PLAINTIFFS' SEPARATE STATEMENT REGARDING RENT CALCULATIONS.	Jun. 14, 2021
550.	(PART 2 OF 2) PLAINTIFFS' SEPARATE STATEMENT REGARDING RENT CALCULATIONS.	Jun. 14, 2021
551.	(PART 1 OF 2) DEFENDANT PARC'S POSITION STATEMENT VALUE OF RENTS	Jun. 14, 2021
552.	(PART 2 OF 2) DEFENDANT PARC'S POSITION STATEMENT VALUE OF RENTS	Jun. 14, 2021
553.	**ME: MATTER UNDER ADVISEMENT [06/17/2021]**	**Jun. 18, 2021**
554.	**ME: UNDER ADVISEMENT RULING [06/17/2021]**	**Jun. 18, 2021**
555.	RETURNED MAIL	Jun. 21, 2021
556.	EXHIBIT WORKSHEET HD 06/17/2021	Jun. 22, 2021
557.	REQUEST FOR COURT REPORTER AT AUGUST 6, 2021 ORAL ARGUMENT	Jul. 23, 2021
558.	**ME: MATTER UNDER ADVISEMENT [08/06/2021]**	**Aug. 10, 2021**
559.	JOINT NOTICE REGARDING PRESENT VALUE CALCULATIONS	Aug. 20, 2021
560.	**ME: UNDER ADVISEMENT RULING [08/25/2021]**	**Aug. 26, 2021**
561.	JOINT STATEMENT RE REMAINING MATTERS	Sep. 3, 2021
562.	**ME: ORDER ENTERED BY COURT [09/09/2021]**	**Sep. 10, 2021**
563.	SUPREME COURT LETTER DATED 09/14/2021	Sep. 14, 2021
564.	DEFENDANT PARC'S STATEMENT OF COSTS	Sep. 27, 2021

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No.	Document Name	Filed Date
565.	STIPULATION REGARDING REVISED SUPERSEDEAS BOND AMOUNT	Sep. 27, 2021
566.	(PART 1 OF 2) DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS OR, ALTERNATIVELY, MOTION TO AMEND PRIOR AWARD	Sep. 27, 2021
567.	(PART 2 OF 2) DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS OR, ALTERNATIVELY, MOTION TO AMEND PRIOR AWARD	Sep. 27, 2021
568.	(PART 1 OF 2) NOTICE OF LODGING PROPOSED FORM OF AMENDED JUDGMENT	Sep. 27, 2021
569.	(PART 2 OF 2) NOTICE OF LODGING PROPOSED FORM OF AMENDED JUDGMENT	Sep. 27, 2021
570.	PLAINTIFFS' OBJECTIONS TO DEFENDANTS' STATEMENT NOF(SIC) COSTS	Oct. 18, 2021
571.	(PART 1 OF 2) PLAINTIFFS' NOTICE OF LODGING PROPOSED FORM OF AMENDED JUDGMENT	Oct. 18, 2021
572.	(PART 2 OF 2) PLAINTIFFS' NOTICE OF LODGING PROPOSED FORM OF AMENDED JUDGMENT	Oct. 18, 2021
573.	(PART 1 OF 5) PLAINTIFFS' RESPONSE TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS OR ALTERNATIVELY, MOTION TO AMEND PRIOR AWARD	Oct. 18, 2021
574.	(PART 2 OF 5) PLAINTIFFS' RESPONSE TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS OR ALTERNATIVELY, MOTION TO AMEND PRIOR AWARD	Oct. 18, 2021
575.	(PART 3 OF 5) PLAINTIFFS' RESPONSE TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS OR ALTERNATIVELY, MOTION TO AMEND PRIOR AWARD	Oct. 18, 2021
576.	(PART 4 OF 5) PLAINTIFFS' RESPONSE TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS OR ALTERNATIVELY, MOTION TO AMEND PRIOR AWARD	Oct. 18, 2021
577.	(PART 5 OF 5) PLAINTIFFS' RESPONSE TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS OR ALTERNATIVELY, MOTION TO AMEND PRIOR AWARD	Oct. 18, 2021
578.	PLAINTIFFS' OBJECTIONS TO DEFENDANTS' PROPOSED FORM OF AMENDED JUDGMENT	Oct. 18, 2021

PREMIER CONSULTING ET AL VS PEACE RELEAF ET AL

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MAR Case # CV2017-009033

No.	Document Name	Filed Date
579.	**ME: ORDER ENTERED BY COURT [10/19/2021]**	**Oct. 20, 2021**
580.	(PART 1 OF 5) PLAINTIFFS' RESPONSE TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS OR ALTERNATIVELY, MOTION TO AMEND PRIOR AWARD	Oct. 20, 2021
581.	(PART 2 OF 5) PLAINTIFFS' RESPONSE TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS OR ALTERNATIVELY, MOTION TO AMEND PRIOR AWARD	Oct. 20, 2021
582.	(PART 3 OF 5) PLAINTIFFS' RESPONSE TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS OR ALTERNATIVELY, MOTION TO AMEND PRIOR AWARD	Oct. 20, 2021
583.	(PART 4 OF 5) PLAINTIFFS' RESPONSE TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS OR ALTERNATIVELY, MOTION TO AMEND PRIOR AWARD	Oct. 20, 2021
584.	(PART 5 OF 5) PLAINTIFFS' RESPONSE TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS OR ALTERNATIVELY, MOTION TO AMEND PRIOR AWARD	Oct. 20, 2021
585.	REPLY IN SUPPORT OF PROPOSED FORM OF AMENDED JUDGMENT	Oct. 25, 2021
586.	DEFENDANTS' REPLY IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES AND COSTS OR, ALTERNATIVELY, MOTION TO AMEND PRIOR AWARD	Nov. 1, 2021
587.	(PART 1 OF 2) DEFENDANT PARC'S REPLY IN SUPPORT OF STATEMENT OF COSTS	Nov. 1, 2021
588.	(PART 2 OF 2) DEFENDANT PARC'S REPLY IN SUPPORT OF STATEMENT OF COSTS	Nov. 1, 2021
589.	**ME: RULING [11/01/2021]**	**Nov. 2, 2021**
590.	ORDER SETTING SUPERSEDEAS BOND FOR PARC	Nov. 2, 2021
591.	AMENDED JUDGMENT	Nov. 2, 2021
592.	**ME: ORDER ENTERED BY COURT [11/02/2021]**	**Nov. 3, 2021**
593.	NOTICE OF ASSOCIATION OF COUNSEL	Nov. 10, 2021
594.	STIPULATION REGARDING REDUCED SUPERSEDEAS BOND AMOUNT	Nov. 15, 2021

PREMIER CONSULTING ET AL VS PEACE RELEAF ET AL

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No.	Document Name	Filed Date
595.	NOTICE OF JOINDER	Nov. 15, 2021
596.	ORDER SETTING REDUCED SUPERSEDEAS BOND FOR PARC	Nov. 19, 2021
597.	(PART 1 OF 2) NOTICE OF APPEAL	Nov. 24, 2021
598.	(PART 2 OF 2) NOTICE OF APPEAL	Nov. 24, 2021
599.	NOTICE OF APPEAL	Dec. 1, 2021
600.	NOTICE OF DEPOSIT WITH THE COURT	Dec. 1, 2021
601.	NOTICE OF POSTING CASH SUPERSEDEAS BOND	Dec. 2, 2021
602.	NOTICE OF DESIGNATION OF TRANSCRIPTS	Dec. 7, 2021

APPEAL COUNT: 1

RE: CASE: UNKNOWN

DUE DATE: 12/22/2021

CAPTION: PREMIER CONSULTING ET AL VS PEACE RELEAF ET AL

EXHIBIT(S): HD 7/14/2017 - LIST # 1 2 IN A MANILA ENVELOPE

HD 10/26/2017 - LIST # 1 2 3 4 5 6 7 9 17 18 IN A MANILA ENVELOPE

HD 04/23/2018 - LIST # 1 2 4 5 6 7 17 18 19 20 21 22 23 25 26 29 30 31 32 34 35 36 IN A MANILA ENVELOPE

HD 10/12/2020 - LIST # 12 23 24 25 26 27 28 29 30 32 33 35 37 39 45 46 47 48 50 51 53 54 55 56 57 58 59 60 61 62 63 64 76 91 95 96 160 262 264 265 277 283 284 285 286 287 291 294 295 296 297 314 315 316 324 325 326 IN A BOX

HD 06/17/2021 - LIST # 1 2 4 5 6 7 8 9 10 11 IN A MANILA ENVELOPE

LOCATION ONLY: NONE

PREMIER CONSULTING ET AL VS PEACE RELEAF ET AL

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SEALED DOCUMENT: ORIGINAL SEALED DOCUMENTS INCLUDED IN INDEX OF RECORD

DEPOSITION(S): ORIGINAL DEPOSITIONS INCLUDED IN INDEX OF RECORD

TRANSCRIPT(S): NONE

COMPILED BY: danielle.garcia on December 22, 2021; [2.5-17026.63] \\ntfsnas\c2c\C2C-3\CV2017-009033\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

Clerk of the Superior Court
*** Electronically Filed ***
09/29/2020 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-009033 09/28/2020

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
D. Tapia
Deputy

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS L L C, et al. KEVIN C BARRETT

v.

PEACE RELEAF CENTER I, et al. DENNIS I WILENCHIK

JUDGE J. SMITH

MINUTE ENTRY

As part of Fair Limits Proceedings, the parties agreed to some additional, limited briefing. [*See* Maricopa Cty. Super. Ct. Admin. Order No. 2020-072 (dated 07/13/2020) (describing Fair Limits Proceedings).]

I. THE EFFECT OF JJSM REAL ESTATE'S NEW LEASE OF THE BUILDING.

This motion essentially is one for summary judgment about the effect of JJSM Real Estate entering into New Lease. PARC denied owing any rent and argued that the "first harvest" (which would trigger its rent obligation) never occurred. For this motion only, however, the Court assumes some liability for breaching the building lease exists. The Court also is not addressing whether JJSMRE reasonably mitigated damages before New Lease.

JJSMRE leased the cultivation facility to PARC for a term of January 2016 through December 2025. Rent was $33,000.00 per month with three percent annual increases. Rent was not due until the "first harvest." JJSMRE argued that first harvest occurred December 18, 2016. JJSMRE sent PARC notice of default on May 19, 2017. PARC did not cure the alleged default. JJSMRE signed New Lease with New Tenant in 2020 for a term from April 2020 through July

2035. The rent under New Lease is $70,000.00 per month through March 2025; the rent increases in April 2025 and again in April 2030.

Rent under New Lease is more than double that under the PARC lease. The parties dispute whether PARC is entitled to credit from that New Lease "excess rent" to offset what PARC owed from December 2016 through March 2020. PARC argued that it gets credit for the excess rent; JJSMRE argued that the excess rent applies only to PARC's rent due after April 2020 when New Lease started.

Neither side offered extrinsic evidence about the parties' intent or understanding. They pointed only to the Real Estate Lease. Like any contract, "leases are to be construed so to give effect to the intent of the parties; all of the clauses must be considered and given effect in relation to each other." *Roosen v. Schaffer*, 127 Ariz. 346, 348, 621 P.2d 33, 35 (App. 1980). The Court interprets a document as a whole, to avoid making any part superfluous, and to harmonize different parts.[1]

A. General Legal Principles And This Lease.

Typically, "if a lease is not terminated, the landlord may recover unpaid rent due prior to reletting the premises and future rent due for the balance of the lease term, subject to the landlord's duty to mitigate damages by reletting the premises." *Tempe Corp. Office Bldg. v. Ariz. Funding Servs., Inc.*, 167 Ariz. 394, 399, 807 P.2d 1130, 1135 (App. 1991). The landlord may seek actual damages through trial and after. "[D]amages accruing after trial should be limited to the difference between the stipulated rental and the fair rental value of the premises." *Id.* at 399 n.2, 807 P.2d at 1135 n.2; *see also Wingate v. Gin*, 148 Ariz. 289, 291, 714 P.2d 459, 461 (App. 1985) (landlord must use reasonable efforts to mitigate by reletting).

Arizona follows common law principles for commercial leases. A landlord has three options if a tenant breaches: (1) terminate the lease and retake possession for the landlord's exclusive use, (2) retake possession for the tenant's account, leaving the tenant responsible for the difference between the stated rent and rent from reletting, and (3) "take no action and sue the tenant as each installment of rent matures or for all the rents due when the lease expires." 25 WILLISTON ON CONTRACTS § 66:86 (4th ed. May 2020 Update). The landlord may also recover consequential damages, such as costs of reletting. *Id.*

[1] *See, e.g.*, ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 167 (the "whole-text canon"), 174 (the "surplusage canon"), 180 ("harmonious-reading canon") (2012).

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No Arizona appellate opinion addresses whether a landlord that received excess rents from a replacement tenant must apply them toward the defaulting tenant's past liability. But *Tempe Corporate* reiterated that the Court must consider the lease, too. So the Court reviewed this lease to see if a provision governed.

The Real Estate Lease gave JJSMRE three options if PARC defaulted:

1. JJSMRE could terminate the lease, which would end PARC's rights under it. [Real Estate Lease § 17.2(a).] PARC would be liable for lost rent and associated expenses through termination. PARC also would be liable for the present value of future rent that exceeded the future fair rental value. [*Id.* § 17.5.]

2. JJSMRE could terminate PARC's right to possess the property. [*Id.* § 17.2(b).] JJSMRE would be entitled to "immediate recovery of all amounts then due hereunder." [*Id.* § 17.4.] It would not release PARC from responsibility for all rent through the term. JJSMRE could relet on PARC's behalf, however, setting off the new rent against JJSMRE's expenses and PARC's rent. [*Id.*]

3. The third option was to bring suit, "including [to recover] all moneys due or to become due from Tenant under any of the provisions of this Lease." [*Id.* § 17.2(c).]

JJSMRE did not give written notice to terminate the lease or terminate PARC's right to possession, though. JJSMRE said it took the third option under § 17.2(c), which then allowed it to use § 17.4. [Pls'. Memo. (filed 08/28/2020) at 3:19-20.] JJSMRE also argued that the parties' course of dealing showed a termination of possession. But it did not point to authority allowing the Court to eliminate the notice requirement here.

The rent under New Lease exceeded PARC's rent. Relying on § 17.4, JJSMRE argued that it need not credit PARC with any New Lease payments for PARC's liability through March 2020. But § 17.4 ("Current Damages") applies if JJSMRE terminated PARC's right to possession through notice, which JJSMRE did not do. That is enough to find § 17.4 inapplicable. Also, JJSMRE said it acted under § 17.2(c), but § 17.2(b) is the provision that would allow JJSMRE to use § 17.4.

Even if § 17.4 applied, it would not operate as JJSMRE argued. Under it, JJSMRE was entitled to recover "all amounts then due hereunder." JJSMRE could relet and recover any reletting costs from PARC (or apply new rents toward them). JJSMRE had to apply new rents first toward reletting costs and "second to the payment of Rent herein provided to be paid by Tenant." By the time JJSMRE relet to New Tenant, PARC already owed several months' rent. JJSMRE had to apply new rent toward that arrearage. *After that*, any "excess or residue" would apply toward

PARC's *future* rent payments as they came due. PARC never would "be entitled to a credit on its indebtedness to Landlord in excess of the aggregate sum" under the Real Estate Lease.

Section 17.4 preserves PARC's potential liability for the entire term's full rent. That is different than terminating the lease. Terminating it would entitle JJSMRE to the amount the future stated rent exceeded the future fair value rent. Terminating also requires calculating the present value of those amounts (§ 17.5). In contrast, § 17.4 allows JJSMRE to sue many times to recover the difference between this lease's rent and any future rent from reletting.

JJSMRE also argued that § 17.5 governed if § 17.4 did not. But § 17.5 also required notice by JJSMRE—notice of terminating the lease under § 17.2(a). Again, JJSMRE disclaimed relying on § 17.2(a), and there is nothing in the record about proper notice.

JJSMRE acted under § 17.2(c). It did not give notice under §§ 17.2(a) or 17.2(b). That means that general principles of contract law and commercial lease disputes apply.

B. JJSMRE Must Offset "Excess Rent" Under New Lease Against PARC's Liability.

Because this effectively is a summary judgment motion, the Court presumes that PARC breached the Real Estate Lease. Arguably, PARC abandoned the premises. Based on this record, JJSMRE went into the premises and tried to relet them. "Where the parties to a lease do some act so inconsistent with the relationship of landlord and tenant as to imply that they both agree to consider the lease at an end, and to yield up the estate, a cancellation of the lease under the principles of estoppel occurs." *Lee Dev. Co. v. Papp*, 166 Ariz. 471, 477, 803 P.2d 464, 470 (App. 1990). But "[t]he intent of the landlord in accepting the abandonment is a question of fact for the trier of fact." *Id.* Thus, the Court also assumes that a jury could find that JJSMRE did not accept the abandonment.

It usually is a fact question whether a tenant abandoned the property and the landlord retook it. *E.g.*, *Lee Dev. Co.*, 166 Ariz. at 477, 803 P.2d at 470; *Riggs v. Murdock*, 10 Ariz. App. 248, 251, 458 P.2d 115, 118 (1969). The situation is unique because Premier ran the cultivation operations in that building. It is not as if PARC occupied the building, packed up its equipment, and abandoned the premises. Instead, JJSMRE's lawyer sent the default letter in May 2017. PARC ostensibly terminated the Real Estate Lease via letter in June 2017. Plaintiffs filed suit in June 2017 but did not ask to terminate the lease or PARC's right to possession. PARC argued that Plaintiffs locked out PARC's executives in August and October 2017.

It seems that the damages would be approximately $1 million if PARC's rent obligation went through March 2020. That is the last month before New Lease began. New Tenant's excess

rent through December 2025 (the end of the original term) will more than cover that $1 million, though. If the excess rent applies to PARC's past missed rent, JJSMRE has no damages.

JJSMRE relied on § 17.2(c), so it had common law remedies for a commercial lease breach. JJSMRE could relet the property, reasonably mitigate damages, and sue PARC. *Tempe Corp. Office Bldg.*, 167 Ariz. at 399, 807 P.2d at 1135 (describing landlord's options when lease not terminated). Our Court of Appeals also explained that a landlord's damages should not be a windfall. *See Lee Dev. Co.*, 166 Ariz. at 478, 803 P.2d at 471 (discussing damages for tenant's future rent). That gets us to the point of contract damages—putting JJSMRE in the same place as if PARC performed.

JJSMRE will collect excess rent from New Tenant. PARC argued that JJSMRE must apply that excess rent to PARC's past liability. JJSMRE disagreed. No controlling Arizona authority exists, so the Court looked more broadly.

A tenant "who breaches a lease is entitled to a rent credit for any proceeds gained by the landlord from reletting during the period of the original lease term." *Wanderer v. Plainfield Carton Corp.*, 351 N.E.2d 630, 635 (Ill. App. Ct. 1976). That landlord relet and received more than it would have under the original lease. "[T]he landlord would be entitled to recover only his actual losses" and the excess rent from the new tenant "would be applied to the credit of" the defaulted tenant. *Id.* The Court of Appeals for the District of Columbia reached the same conclusion. "[W]hen a landlord benefits financially from abandonment of the premises by the original tenant, he suffers no damages, and is not entitled to recover any money from that tenant." *Truitt v. Evangel Temple, Inc.*, 486 A.2d 1169, 1172 (D.C. 1984). That court offset the excess rent against the past liability. Other cases adopt that principle, too. *See, e.g., Roger E. Herst Revocable Trust v. Blinds to Go (U.S.) Inc.*, 2011 WL 6409129, *26-27 (D. Md. Dec. 20, 2011) (defaulting tenant entitled to credit for excess rent from new tenant); *La Casa Niño, Inc. v. Plaza Esteban*, 762 P.2d 669, 672 (Colo. 1988) (defaulting tenant entitled to offset new tenant's "entry premium" against its arrearages); *Dalamagas v. Fazzina*, 414 A.2d 494, 495 (Conn. Super. Ct. 1979) (landlord had to apply excess rent toward back rent while property vacant); *Centerline Inv. Co. v. Tri-Cor Indus., Inc.*, 80 S.W.3d 499, 504-05 (Mo. Ct. App. 2002) (defaulting tenant entitled to credit excess rent toward its liability).

Contract damages should put the landlord in the same position as if the tenant performed. A landlord who relets on the tenant's behalf for a higher rent must offset the excess rent against the defaulting tenant's damages. If the landlord relets for a higher rent, "the abandoning tenant is entitled to offset the additional rent against the amount of rent owed for the period that the premises remained vacant before being relet to the new tenant." 86 AM. JUR. TRIALS, *Landlord's Recovery of Rent After Abandonment or Surrender of Leased Premises* § 26 (2002 & Aug. 2020 Update).

This view is not unanimous. An opinion that JJSMRE cited involved a landlord that terminated the lease and reentered the property. *N.J. Indus. Props., Inc. v. Y.C. & V.L., Inc.*, 495 A.2d 1320, 1322 (N.J. 1985). The landlord relet the property four months later and sought that missed rent. "This action was premised on the survival clause in paragraph 25 of the lease, which extends the tenant's liability beyond the time that the lease was expressly terminated." *Id.*[2] Washington also follows this approach. *Hargis v. Mel-Mad Corp.*, 730 P.2d 76, 81 (Wash. Ct. App. 1986) (defaulting tenant not entitled to credit for excess rent).[3]

While courts are not uniform, the approach consistent with Arizona law is to apply the excess rent to PARC's past liability. Of course, JJSMRE may apply excess rent toward its reletting expenses before crediting anything to PARC. Applying the excess rent in this way gives JJSMRE the benefit of its bargain with PARC but not a windfall.

It is also is an improper windfall to PARC to apply *all* New Lease rent to PARC's liability. PARC's original term went through December 2025, but New Lease is through July 2035. PARC is not entitled to benefit from, or offset, New Lease rent from January 2026 forward. If New Tenant's payments through December 2025 completely offset PARC's liability, then JJSMRE cannot recover more from PARC. But if New Tenant's payments through December 2025 do not offset PARC's liability, then JJSMRE has a claim against PARC.

This creates some uncertainty if New Tenant breaches before the end of PARC's original term. If that occurs, then JJSMRE seems entitled to seek relief from PARC (up to PARC's rent, anyway). This may be by relief from any judgment under Arizona Rule of Civil Procedure 60(b)(6). Alternatively, we could treat JJSMRE's claims as arising each month PARC's rent is due. If New Tenant is performing, its payment offsets PARC's liability; if New Tenant breaches, JJSMRE would have a claim against PARC. This may require post-verdict briefing so any final judgment is correct.

While this ruling addresses JJSMRE's compensatory damages, it does not determine who is the successful party for any fee award under the Real Estate Lease or A.R.S. § 12-341.01. The parties did not brief that issue.

II. THE SUFFICIENCY OF EVIDENCE OF THE DESTROYED MARIJUANA.

[2] That opinion was a 4-3 split of that court. The dissent criticized the majority's reliance on property law principles when the current trend relied on general contract principles. General contract principles award damages to put the landlord in the same position as if the tenant performed.

[3] JJSMRE cited a Ninth Circuit memorandum decision applying this authority to a Washington dispute.

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This is similar to PARC's motion *in limine* number 2, which also addressed the value of the destroyed marijuana. The Court explained that it will evaluate at trial Premier's disclosures and foundation for the rolling vault inventory.

Arizona Rule of Civil Procedure 26.1(a)(7) requires a party to disclose "a computation and measure of each category of damages," the documents and testimony supporting the computation(s), and the witnesses "the disclosing party expects to call at trial to testify on damages . . . ." Until the Liddicoat report, Plaintiffs always disclosed that they did not know and had not calculated their damages. They added, "Plaintiffs intend to supplement this disclosure." They also noted that the damages necessary to compensate Plaintiffs were "unknown at this time and may not be known until further discovery is performed . . . ." After the Liddicoat report, Plaintiffs disclosed that they sought *those* disclosed damages.

Plaintiffs' Response asserted (at 4:1-2), "Premier also disclosed throughout this litigation several witnesses *to testify about the destroyed marijuana and its value*." (Emphasis added.) But that italicized language never appeared in any of Plaintiffs' disclosure statements. Instead, Plaintiffs gave banal disclosures of witnesses—often only one sentence—suggesting they may testify about "Premier's operations" or "Plaintiffs' damages." No disclosure mentioned the value of the destroyed marijuana, that a witness would discuss that topic, or how Premier calculated that value. Likewise, Jared Toogood's declaration did not address those issues.

The parties would have avoided this dispute if Plaintiffs' disclosures included a sentence tying damages from the destroyed marijuana to the vault inventory. Similarly, however, PARC knew that Plaintiffs' damages disclosures allegedly were deficient but did not raise the issue with Plaintiffs. The Court ruled on September 25, 2020, that PARC may depose Jared Toogood and Bill Artwohl before trial. That is the appropriate remedy for now. The Court may address other issues as part of a motion for judgment as a matter of law or other post-verdict briefing.

As the Court mentioned in the earlier *in limine* ruling, Plaintiffs must establish foundation before anyone discusses the rolling vault inventory's contents. It will not suffice for a witness to blurt out a value figure without proper foundation. For example, Merel testified in his October 2019 deposition that he based his estimate on information from others.

IT IS SO ORDERED.

Clerk of the Superior Court
*** Electronically Filed ***
10/13/2020 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-009033 10/12/2020

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
D. Tapia
Deputy

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS L L C, et al. KEVIN C BARRETT

v.

PEACE RELEAF CENTER I, et al. DENNIS I WILENCHIK

JUDGE J. SMITH

MINUTE ENTRY

The Court considered Defendants' Motion re: Lack of Proof of Damages for Plaintiffs Premier Consulting and Management Solutions, LLC and JJSM Equipment Fund, LLC (filed 10/09/2020). Effectively, the Motion is one for summary judgment. The time for briefing has not yet expired. The Court is ruling now because trial begins October 14, 2020.

IT IS ORDERED denying the Motion. Of course, this does not preclude revisiting the issues raised as part of a motion for judgment as a matter of law.

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

Premier Consulting & Management Solutions, LLC **vs.** **Peace Releaf Center I (d/b/a Patient Alternative Relief Center)**	**Case No. CV 2017-009033** **JURY VERDICT FORM #1** Honorable James D. Smith

On Premier's Breach of Contract Claim,

(Check next to the applicable verdict.)

__X__ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Premier Consulting on its claim that PARC breached the Cultivation Management Services Agreement and find the full damages to be $__0__.

_____ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of PARC on Premier Consulting's claim for breach of the Cultivation Management Services Agreement

(1) _____ (Juror initials) _____ (Juror #)

(2) _____ (Juror initials) _____ (Juror #)

(3) _____ (Juror initials) _____ (Juror #)

(4) _____ (Juror initials) _____ (Juror #)

(5) _____ (Juror initials) _____ (Juror #)

(6) _____ (Juror initials) _____ (Juror #)

(7) _____ (Juror initials) _____ (Juror #)

If unanimous only foreperson initial: SEF (Foreperson initials) 1 (Juror #)

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

Premier Consulting & Management Solutions, LLC **vs.** **Peace Releaf Center I (d/b/a Patient Alternative Relief Center)**	**Case No. CV 2017-009033** **JURY VERDICT FORM #2** Honorable James D. Smith

On Premier's Breach of the Duty of Good Faith and Fair Dealing Claim,

Check next to the applicable verdict.)

__X__ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Premier Consulting on its breach of the duty of good faith and fair dealing claim and find the full damages to be $__0__.

_____ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of PARC on Premier Consulting's claim for breach of the duty of good faith and fair dealing claim.

(1) _____ (Juror initials) _____ (Juror #)

(2) _____ (Juror initials) _____ (Juror #)

(3) _____ (Juror initials) _____ (Juror #)

(4) _____ (Juror initials) _____ (Juror #)

(5) _____ (Juror initials) _____ (Juror #)

(6) _____ (Juror initials) _____ (Juror #)

(7) _____ (Juror initials) _____ (Juror #)

If unanimous only foreperson initial: SEF (Foreperson initials) 3 (Juror #)

CLERK OF THE SUPERIOR COURT
FILED
10/26/2020 5:08 pm
R. McKinley, Deputy

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

Premier Consulting & Management Solutions, LLC **vs.** **Peace Releaf Center I (d/b/a Patient Alternative Relief Center)**	**Case No. CV 2017-009033** **JURY VERDICT FORM #5** Honorable James D. Smith

On JJSM Real Estate's Breach of Contract Claim,

(Check next to the applicable verdict.)

__X__ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of JJSM Real Estate on its claim that PARC breached the Single Tenant Industrial Building Lease and find the full damages to be:

Damages:	$ 1,377,320.00
Rent from replacement tenant, if any, that should reduce damages:	($ 0)

_____ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of PARC on JJSM Real Estate's claim that PARC breached the Single Tenant Industrial Building Lease.

(1) _____ (Juror initials) _____ (Juror #)

(2) _____ (Juror initia.s) _____ (Juror #)

(3) _____ (Juror initials) _____ (Juror #)

(4) _____ (Juror initials) _____ (Juror #)

(5) _____ (Juror initials) _____ (Juror #)

(6) _____ (Juror initials) _____ (Juror #)

(7) _____ (Juror initials) _____ (Juror #)

If unanimous only foreperson initial: SEF (Foreperson initials) 3 (Juror #)

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

Premier Consulting & Management Solutions, LLC **vs.** **Peace Releaf Center I (d/b/a Patient Alternative Relief Center)**	**Case No. CV 2017-009033** **JURY VERDICT FORM #6** Honorable James D. Smith

On JJSM Real Estate's Breach of the Duty of Good Faith and Fair Dealing Claim,

(Check next to the applicable verdict.)

__X__ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of JJSM Real Estate on its claim that PARC breached the duty of good faith and fair dealing and find the full damages to be:

Damages:	$ 0
Rent from replacement tenant, if any, that should reduce damages:	($ 0)

(1) _____ (Juror initials) _____ (Juror #)

(2) _____ (Juror initials) _____ (Juror #)

(3) _____ (Juror initials) _____ (Juror #)

(4) _____ (Juror initials) _____ (Juror #)

(5) _____ (Juror initials) _____ (Juror #)

(6) _____ (Juror initials) _____ (Juror #)

(7) _____ (Juror initials) _____ (Juror #)

If unanimous only foreperson initial: SEF (Foreperson initials) 3 (Juror #)

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

Premier Consulting & Management Solutions, LLC **vs.** **Peace Releaf Center I (d/b/a Patient Alternative Relief Center)**	**Case No. CV 2017-009033** **JURY VERDICT FORM #9** Honorable James D. Smith

On JJSM Equipment's Breach of Contract Claim,

(Check next to the applicable verdict.)

X We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of JJSM Equipment on its claim that PARC breached the Equipment Lease and find the full damages to be $ 68,000.00 .

_____ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of PARC on JJSM Equipment's claim for breach of the Equipment Lease.

(1) _____ (Juror initials) _____ (Juror #)

(2) _____ (Juror initials) _____ (Juror #)

(3) _____ (Juror initials) _____ (Juror #)

(4) _____ (Juror initials) _____ (Juror #)

(5) _____ (Juror initials) _____ (Juror #)

(6) _____ (Juror initials) _____ (Juror #)

(7) _____ (Juror initials) _____ (Juror #)

If unanimous only foreperson initial: SEF (Foreperson initials) 5 (Juror #)

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

Premier Consulting & Management Solutions, LLC **vs.** **Peace Releaf Center I (d/b/a Patient Alternative Relief Center)**	**Case No. CV 2017-009033** **JURY VERDICT FORM #10** Honorable James D. Smith

On JJSM Equipment's Breach of the Duty of Good Faith and Fair Dealing Claim,

(Check next to the applicable verdict)

__X__ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of JJSM Equipment on its breach of the duty of good faith and fair dealing claim and find the full damages to be $__0__.

_____ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of PARC on JJSM Equipment's claim for breach of the duty of good faith and fair dealing claim.

(1) _____ (Juror initials) _____ (Juror #)

(2) _____ (Juror initials) _____ (Juror #)

(3) _____ (Juror initials) _____ (Juror #)

(4) _____ (Juror initials) _____ (Juror #)

(5) _____ (Juror initials) _____ (Juror #)

(6) _____ (Juror initials) _____ (Juror #)

(7) _____ (Juror initials) _____ (Juror #)

If unanimous only foreperson initial: SEF (Foreperson initials) 3 (Juror #)

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

Premier Consulting & Management Solutions, LLC **vs.** **Peace Releaf Center I (d/b/a Patient Alternative Relief Center)**	**Case No. CV 2017-009033** **JURY VERDICT FORM #11** Honorable James D. Smith

On Premier's Improper Interference With Contract Claim,

(Check next to the applicable verdict.)

__X__ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Premier Consulting on its claim that Yuri Downing improperly interfered with the Cultivation Management Services Agreement and find the full damages to be $ 125,000.00 .

_____ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Yuri Downing on Premier Consulting's claim for improper interference.

(1) _____ (Juror initials) _____ (Juror #)

(2) _____ (Juror initials) _____ (Juror #)

(3) _____ (Juror initials) _____ (Juror #)

(4) _____ (Juror initials) _____ (Juror #)

(5) _____ (Juror initials) _____ (Juror #)

(6) _____ (Juror initials) _____ (Juror #)

(7) _____ (Juror initials) _____ (Juror #)

If unanimous only foreperson initial: SFF (Foreperson initials) 3 (Juror #)

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

Premier Consulting & Management Solutions, LLC **vs.** **Peace Releaf Center I (d/b/a Patient Alternative Relief Center)**	**Case No. CV 2017-009033** **JURY VERDICT FORM #12** Honorable James D. Smith

On Premier's Improper Interference With Contract Claim,

(Check next to the applicable verdict.)

__X__ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Premier Consulting on its claim that Yuri Downing improperly interfered with the Cultivation Management Services Agreement and find the full damages to be $ 125,000.00 .

_____ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Yuri Downing on Premier Consulting's claim for improper interference.

(1) _____ (Juror initials) _____ (Juror #)

(2) _____ (Juror initials) _____ (Juror #)

(3) _____ (Juror initials) _____ (Juror #)

(4) _____ (Juror initials) _____ (Juror #)

(5) _____ (Juror initials) _____ (Juror #)

(6) _____ (Juror initials) _____ (Juror #)

(7) _____ (Juror initials) _____ (Juror #)

If unanimous only foreperson initial: SEF (Foreperson initials) 3 (Juror #)

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

Premier Consulting & Management Solutions, LLC **vs.** **Peace Releaf Center I (d/b/a Patient Alternative Relief Center)**	**Case No. CV 2017-009033** **JURY VERDICT FORM #13** Honorable James D. Smith

On JJSM Equipment's Improper Interference With Contract Claim,

(Check next to the applicable verdict.)

__X__ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of JJSM Equipment on its claim that Yuri Downing improperly interfered with the Equipment Lease and find the full damages to be $__100,000.00__.

_____ We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Yuri Downing on JJSM Equipment's claim for improper interference.

(1) _____ (Juror initials) _____ (Juror #)

(2) _____ (Juror initials) _____ (Juror #)

(3) _____ (Juror initials) _____ (Juror #)

(4) _____ (Juror initials) _____ (Juror #)

(5) _____ (Juror initials) _____ (Juror #)

(6) _____ (Juror initials) _____ (Juror #)

(7) _____ (Juror initials) _____ (Juror #)

If unanimous only foreperson initial: SEF (Foreperson initials) 3 (Juror #)

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Attorneys for Plaintiffs/Counterdefendants

ARIZONA SUPERIOR COURT

MARICOPA COUNTY

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, et al., Plaintiffs, v. PEACE RELEAF CENTER I, dba PATIENT ALTERNATIVE RELIEF CENTER, et al., Defendants. AND RELATED COUNTERCLAIMS	Case No. CV2017-009033 JUDGMENT (Honorable James D. Smith)

Following the jury trial and verdict returned October 26, 2020, the Court enters judgment.

I. CLAIMS RESOLVED BEFORE TRIAL.

1. Plaintiffs' claims for declaratory and injunctive relief (Counts I and II), are dismissed with prejudice.

2. Premier Consulting and Management Solutions, LLC's ("Premier") claim for breach of warranty against Patient Alternative Relief Center, Inc. ("PARC") (Count VI), is dismissed with prejudice.

3. JJSM Real Estate Fund, LLC's claim for breach of warranty against PARC (Count VII) is dismissed with prejudice.

4. JJSM Equipment Fund, LLC's claim for breach of warranty against PARC (Count VIII) is dismissed with prejudice.

5. Plaintiffs' Count XII (unjust enrichment) is dismissed with prejudice.

6. Plaintiffs' claims for intentional interference (Count XIII) and tortious interference (XIV) against Defendants Whitney Sorrell and Edward Glueckler are dismissed with prejudice.

7. Plaintiffs' Count XV (breach of good faith against Jeff Schaeffer) is dismissed with prejudice by those parties' stipulation.

8. Plaintiffs' Count XVI (aiding and abetting bad faith) is dismissed with prejudice.

9. Plaintiffs' Count XVII (fraud against Jeff Schaeffer) is dismissed with prejudice by those parties' stipulation.

10. Plaintiffs' Count XVIII (conspiracy to commit fraud) is dismissed with prejudice.

11. PARC's counterclaim for declaratory relief/rescission (Counterclaim Count I) is dismissed with prejudice.

12. On PARC's counterclaim for breach of contract against JJSM Equipment (under Counterclaim Count II), judgment is entered for JJSM Equipment.

13. On PARC's counterclaim for breach of duty of good faith and fair dealing against JJSM Equipment (under Counterclaim Count III), judgment is entered for JJSM Equipment.

II. CLAIMS AND COUNTERCLAIMS INVOLVING PREMIER AND PARC.

14. On Plaintiff Premier Consulting and Management Solutions, LLC's ("Premier") breach of contract claim against Defendant Patient Alternative Relief Center, Inc. ("PARC") regarding the Cultivation Agreement, judgment is entered for Premier and against PARC for $0.00.

15. On Premier's breach of duty of good faith and fair dealing claim against PARC, judgment is entered for Premier and against PARC for $0.00.

16. On PARC's breach of contract counterclaim against Premier regarding the Cultivation Agreement, judgment is entered for Premier and against PARC.

17. On PARC's breach of duty of good faith and fair dealing counterclaim against Premier, judgment is entered for Premier and against PARC.

III. CLAIMS AND COUNTERCLAIMS INVOLVING JJSM REAL ESTATE AND PARC.

18. On Plaintiff JJSM Real Estate Fund, LLC's ("JJSM Real Estate") breach of contract claim against PARC regarding the Building Lease, judgment is entered for JJSM Real Estate and against PARC for $1,377,320.00.

19. On Plaintiff JJSM Real Estate's breach of duty of good faith and fair dealing claim against PARC, judgment is entered for JJSM Real Estate and against PARC for $0.00.

20. On PARC's breach of contract counterclaim against JJSM Real Estate regarding the Building Lease, judgment is entered for JJSM Real Estate and against PARC.

21. On PARC's breach of duty of good faith and fair dealing counterclaim against JJSM Real Estate, judgment is entered for JJSM Real Estate and against PARC.

IV. CLAIMS INVOLVING JJSM EQUIPMENT FUND AND PARC.

22. On Plaintiff JJSM Equipment Fund, LLC's ("JJSM Equipment") breach of contract claim against PARC regarding the Equipment Lease, judgment is entered for JJSM Equipment and against PARC for $68,000.00.

23. On Plaintiff JJSM Equipment's breach of duty of good faith and fair dealing claim against PARC, judgment is entered for JJSM Equipment and against PARC for $0.00.

24. On PARC's breach of contract counterclaim against JJSM Equipment regarding the Equipment Lease, judgment is entered for JJSM Equipment and against PARC.

25. On PARC's breach of duty of good faith and fair dealing counterclaim against JJSM Equipment, judgment is entered for JJSM Equipment and against PARC.

V. CLAIMS AGAINST YURI DOWNING.

26. On Premier's interference with contract claim against Defendant Yuri Downing regarding the Cultivation Agreement, judgment is entered for Premier and against Downing for $250,000.00 (verdict forms nos. 11 and 12).

27. On JJSM Equipment's interference with contract claim against Downing regarding the Equipment Lease, judgment is entered for JJSM Equipment and against Downing for $100,000.00.

VI. FEES, COSTS, INTEREST.

28. Under the Building Lease and Equipment Lease, and under A.R.S. § 12-341.01, the Court awards Plaintiffs reasonable attorneys' fees against PARC of $462,421.74.

29. Under A.R.S. §§ 12-332 and § 12-341, the Court awards Plaintiffs taxable costs against PARC and Downing, jointly and severally, of $7001.55.

30. Amounts awarded against PARC and Downing accrue simple 4.25% annual interest from the date of this judgment until satisfied.

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

eSignature Page 1 of 1

Filing ID: 12657980 Case Number: CV2017-009033
Original Filing ID: 12224425

Granted with Modifications

/S/ James Smith Date: 3/16/2021
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2017-009033 SIGNATURE DATE: 3/16/2021

E-FILING ID #: 12657980 FILED DATE: 3/17/2021 8:00:00 AM

DENNIS I WILENCHIK

KEVIN C BARRETT

MARICOPA COUNTY CREDITOR
NO ADDRESS ON RECORD

RICK KLAUSNER
NO ADDRESS ON RECORD

COURT ADMIN-CIVIL-ARB DESK

Clerk of the Superior Court
*** Electronically Filed ***
05/12/2021 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-009033 05/11/2021

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
K. Treftz
Deputy

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS L L C, et al.

KEVIN C BARRETT

v.

PEACE RELEAF CENTER I, et al.

DENNIS I WILENCHIK

HAYLEIGH S CRAWFORD
ERIC M FRASER
WEST VALLEY NATIONAL BANK
C/O STAT AGENT JOSEPH M PARKER
PARKER LAW TEAM 2141 E
HIGHLAND AVE STE A100
PHOENIX AZ 85016
JUDGE J. SMITH

MINUTE ENTRY

The Court is reviewing post-trial briefs. One issue is the effect of JJSM Real Estate re-letting the building to a new tenant for a term through July 2035. The original term with PARC was through December 2025. In an earlier minute entry, the Court accepted the methodology in *Jack I. Bender & Sons v. The Tom James Co.*, 37 F.3d 640, 644 (D.C. Cir. 1994). That is, apply the new rents but only through the original term (December 2025). Discount the original rent and the new rent to the date of PARC's breach. Under that approach, would the new rent from re-letting completely offset JJSM Real Estate's damages? The Court understands that JJSM Real Estate disagrees with the propriety of this approach. The Court is not requesting or allowing additional briefing on that issue. Instead, the Court only wants to know the parties' positions on this accounting exercise.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-009033 05/11/2021

IT IS ORDERED that counsel must confer about the value of rents under the new lease but only through December 2025 (*i.e.*, the original term with PARC). If they agree that the new rent under that approach completely offsets JJSM Real Estate's damages, then they must file a joint statement acknowledging that agreement. If they disagree, then the parties must file brief statements explaining their calculations. The joint statement or separate statements are due within 14 days of the Clerk filing this order.

Clerk of the Superior Court
*** Electronically Filed ***
08/10/2021 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-009033 08/06/2021

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
L. Gilbert
Deputy

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS L L C, et al.

KEVIN C BARRETT

v.

PEACE RELEAF CENTER I, et al.

DENNIS I WILENCHIK

ERIC M FRASER
JUDGE J. SMITH

MINUTE ENTRY

ECB 814

3:00 p.m. This is the time set for a virtual Oral Argument on Defendant Downing's Renewed Motion for Judgment as a Matter of Law or Alternatively, Motion for New Trial (filed 03/25/2021), Defendant Patient Alternative Relief Center's ("PARC") Renewed Motion for Judgment as a Matter of Law or Alternatively, Motion for New Trial (filed 03/25/2021), and Plaintiffs' Motion for Judgment as a Matter of Law or in the Alternative, Motion for New Trial Regarding Damages (filed 04/01/2021). The following parties/counsel are present virtually through Court Connect or GoToMeeting:

- Plaintiffs are represented by counsel, Jeffrey Matura, appearing on behalf of counsel of record, Kevin C. Barrett
- Defendants are represented by counsel, Hayleigh Crawford and Eric M. Fraser

Discussion is held regarding how analyses were made on present value calculations of "excess rent" compared to the verdict/judgment.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-009033 08/06/2021

IT IS ORDERED that, no later than noon on August 13, 2021, Plaintiffs shall advise PARC what they believe to be any different methodologies, data, or assumptions relied upon. The parties will advise the Court no later than August 20, 2021, if they contend that supplementing the record or an evidentiary hearing is necessary. Upon receipt of the parties' notice, this matter will be deemed submitted and taken under advisement.

3:49 p.m. Matter concludes.

Clerk of the Superior Court
*** Electronically Filed ***
08/26/2021 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-009033 08/25/2021

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
K. Treftz
Deputy

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS L L C, et al.

KEVIN C BARRETT

v.

PEACE RELEAF CENTER I, et al.

DENNIS I WILENCHIK

HAYLEIGH S CRAWFORD
ERIC M FRASER
JUDGE J. SMITH

MINUTE ENTRY

The Court considered the parties' competing post-judgment motions:

- Defendant PARC's Renewed Motion for Judgment as a Matter of law or, Alternatively, Motion for new Trial (filed 03/25/2021);
- Defendant Downing's Renewed Motion for Judgment as a Matter of law or, Alternatively, Motion for new Trial (filed 03/25/2021); and
- Plaintiffs' Motion for Judgment as a Matter of law or, in the Alternative, Motion for new Trial Regarding Damages (filed 04/01/2021).

For the renewed JMOL motions, "[t]he evidence is to be viewed in the light most favorable to upholding the verdict. If reasonable minds could differ on the evidence in support of the verdict, the motion should be denied." DANIEL J. MCAULIFFE & SHIRLEY J. MCAULIFFE, ARIZONA PRACTICE: ARIZONA CIVIL RULES HANDBOOK 758 (2021) (citation omitted).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-009033 08/25/2021

The motions for new trial often challenged evidentiary rulings. "Rulings on the admission or exclusion of evidence will not be disturbed absent an abuse of the trial court's discretion that resulted in prejudice to the moving party." *Id.* at 891; *see also, e.g.*, *Cavallo v. Phx. Health Plans, Inc.*, 250 Ariz. 525, 536 ¶ 43, 482 P.3d 404, 415 (App. 2021) (party seeking new trial based on excluded evidence must establish prejudice); *Mammo v. State*, 138 Ariz. 528, 533, 675 P.2d 1357, 1362 (App. 1983) (trial court properly denied request for new trial; "[e]ven assuming this evidence was improperly admitted, it is not of a prejudicial nature requiring a new trial."). The party seeking a new trial must show that "the court's evidentiary rulings were clearly erroneous and that they were prejudicial such that it can be reasonably concluded that with or without such evidence, there would have been a contrary result." *Live Face On Web, LLC v. Integrity Sols. Grp., Inc.*, 421 F. Supp. 3d 1051, 1064 (D. Colo. 2019) (quotation marks omitted).

Summary of Rulings:

1. PARC's Renewed Motion for JMOL or New Trial:

The Court denies this Motion other than:

- The Court vacates the judgment for $1,377,320.00 for JJSM Real Estate on its breach of contract claim. JJSM Real Estate fully offset its alleged damages for PARC's breach of the building lease. Any judgment on this claim for JJSM Real Estate is limited to nominal damages.
- The Court grants judgment as a matter of law for PARC on JJSM Real Estate's and JJSM Equipment Fund's claims for breach of the covenant of good faith and fair dealing.

2. Downing's Renewed Motion for JMOL or New Trial.

The Court denies this motion other than:

- As a matter of law, damages against Downing for tortious interference cannot exceed the contract damages awarded to Premier ($0.00) and JJSM Equipment Fund ($68,000.00).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-009033 08/25/2021

3. Plaintiffs' Motion for JMOL or New Trial.

The Court denies this motion other than:

- The Court will amend the judgment to award $1.00 in nominal damages for (1) Premier's breach of contract claim against PARC and (2) Premier's breach of covenant of good faith and fair dealing claim against PARC.

I. PARC'S RENEWED MOTION FOR JMOL OR NEW TRIAL.

A. Arguments About The Cultivation Agreement.

PARC contended that Premier failed to prove actual damages for breaching this contract. Indeed, the jury found in Premier's favor but awarded $0.00 in damages. Nominal damages are permissible for contract claims, though. "If the breach caused no loss or if the amount of the loss is not proved under the rules stated in this Chapter, a small sum fixed without regard to the amount of loss will be awarded as nominal damages." RESTATEMENT (SECOND) OF CONTRACTS § 346 (1981); *see also, e.g.*, *Gilmore v. Cohen*, 95 Ariz. 34, 37, 386 P.2d 81, 83 (1963) (affirming nominal contract damages when plaintiff failed to prove damages with reasonable certainty); *Edwards v. Anaconda Co.*, 115 Ariz. 313, 317, 565 P.2d 190, 194 (App. 1977) (affirming judgment with nominal damages when damages "were indefinite and cannot be estimated accurately."); 24 WILLISTON ON CONTRACTS § 64:9 (4th ed. May 2021 update). A verdict and judgment for nominal contract damages is appropriate.

PARC next argued that Premier failed to prove breach. The Court must view the evidence in the light most favorable to upholding the verdict. But PARC effectively asked the Court to substitute its view of the evidence in place of the jury's. The jury heard the evidence and concluded that Premier proved a breach. The Court will not disturb that finding; competent evidence supports it.

B. Arguments About The Building Lease.

PARC asserted that JJSM Real Estate failed to prove breach. As with the Cultivation Agreement, competent evidence supported the jury's verdict about a breach. The Court will not disturb that finding.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-009033 08/25/2021

The real issue is whether JJSM Real Estate has any damages after reletting the building.[1] It does not. JJSM Real Estate leased the building to a new tenant in 2020. That new rent is more than twice PARC's rent. And that "excess rent" through the term of PARC's lease (December 2025) more than covers the verdict. It puts JJSM Real Estate in the same position as if PARC performed under the contract—that is the point of contract remedies. And "the contractual damage rule" is that "no one shall profit more from the breach of an obligation than from its full performance." *Grover v. Ratliff*, 120 Ariz. 368, 370, 586 P.2d 213, 215 (App. 1978) (quotation marks omitted).

The Court recently asked the parties to compare present values of JJSM Real Estate's damages to the excess rent through 2025 (the term of PARC's lease). *See Jack I. Bender & Sons v. The Tom James Co.*, 37 F.3d 640, 644 (D.C. Cir. 1994) (using that methodology). The Court agrees with PARC that the present value calculation must reduce PARC's rent and the new tenant's rent to the same point in time. Under that approach, the new rents fully offset JJSM Real Estate's damages. [*See* Def. PARC's Position Statement Value Rents (filed 06/14/2021); Pl.'s Separate Statement Regarding Rent Calculations (filed 06/14/2021).]

The parties' briefing in 2020 addressed landlords' obligation to offset excess rent against defaulting tenants' liability. JJSM Real Estate cited cases finding that landlords don't have that obligation. Contrary authority, however, is more persuasive.[2] PARC benefiting from reletting the building rewards PARC's bad conduct (according to JJSM Real Estate). True in some respect.

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[1] PARC did not waive the issue. Plaintiffs did not cite authority requiring PARC to seek summary judgment to preserve the issue. The Court's Minute Entry (filed 09/29/2020) analyzes this offset issue. That Minute Entry is important to understand this ruling.

[2] *See, e.g., Jack I. Bender & Sons*, 37 F.3d at 644 (landlord's "net gain" from replacement lease "would handily exceed" lost rent when property vacant; affirming judgment for tenant); *Roger E. Herst Revocable Trust v. Blinds to Go (U.S.) Inc.*, 2011 WL 6409129, *26-27 (D. Md. Dec. 20, 2011) (defaulting tenant entitled to credit for excess rent from new tenant); *La Casa Niño, Inc. v. Plaza Esteban*, 762 P.2d 669, 672 (Colo. 1988) (defaulting tenant entitled to offset new tenant's "entry premium" against its arrearages); *Dalamagas v. Fazzina*, 414 A.2d 494, 495 (Conn. Super. Ct. 1979) (landlord had to apply excess rent toward back rent while property vacant); *Truitt v. Evangel Temple, Inc.*, 486 A.2d 1169, 1172 (D.C. 1984) ("[W]hen a landlord benefits financially from abandonment of the premises by the original tenant, he suffers no damages, and is not entitled to recover any money from that tenant."); *Wanderer v. Plainfield Carton Corp.*, 351 N.E.2d 630, 635 (Ill. App. Ct. 1976) (breaching tenant "entitled to a rent credit for any proceeds gained by the landlord from reletting during the period of the original lease term."); *Centerline Inv. Co. v. Tri-Cor Indus., Inc.*, 80 S.W.3d 499, 504-05 (Mo. Ct. App. 2002) (defaulting tenant entitled to credit excess rent toward its liability).

But not applying the excess rent to PARC's liability creates a windfall for JJSM Real Estate; it would receive the excess rent *and* damages.

The Court grants in part PARC's motion for judgment as a matter of law regarding breach of the building lease. The excess rents from the new lease fully offset PARC's missed payments; JJSM Real Estate has no compensable damages. The Court vacates the portions of the judgment awarding JJSM Real Estate damages of $1,377,320.00.

C. Arguments About The Equipment Lease.

PARC contended that it could terminate the equipment lease any time. Its June 2017 correspondence terminated the lease, so it did not breach. But the equipment lease referred to a party's right to terminate only in § 10. There, JJSM Equipment Fund could terminate if an event of default occurred. The equipment lease does not give PARC an early termination right. If the jury interpreted the parties' agreement that way, then it could conclude that PARC breached. The Court will not substitute its view of the evidence for the jury's.

Likewise, whether "first harvest" occurred and when was for the jury. First harvest triggered the rent obligation. The jury agreed with Plaintiffs' argument.

The Court reaches the same conclusion about damages and mitigation. The jury accepted JJSM Equipment Fund's theory and evidence of damages. It also rejected PARC's theory and evidence about its mitigation defense.

D. Arguments About Breaching The Covenant Of Good Faith And Fair Dealing.

Plaintiffs had to base these claims on something other than straightforward breaches of contracts' terms. *See, e.g.*, *Ipro Tech LLC v. Sun West Mortg. Co.*, 2019 WL 2106417, *3 (D. Ariz. Mar. 21, 2019); *Shaw v. CitiMortgage, Inc.*, 201 F. Supp. 3d 1222, 1252 (D. Nev. 2016); *Linde, LLC v. Valley Protein, LLC*, 2019 WL 3035551, *13 (E.D. Cal. July 11, 2019); *Kuroda v. SPJS Holdings, L.L.C.*, 971 A.2d 872, 888 (Del. Ch. 2009). The Court turns to whether Plaintiffs did so.

Plaintiffs argued in Response (at 15:1-16:18) that PARC canceling the Approval To Operate breached the covenant. The jury apparently agreed. But terminating the ATO affected only the cultivation agreement and Premier's ability to handle marijuana. Indeed, Merel's testimony reiterated that only Premier needed the ATO:

> Q. When *Premier* was cultivating at the cultivation facility, did *it* have an Approval to Operate from the state?

A. Yes.

Q. Sir, do you know whether PARC eventually terminated that Approval to Operate *for Premier*?

A. Yes.

[Pls.' Resp. Exs. at 62 (emphasis added).] And Merel referred only to "Premier's business operations" *vis-à-vis* the terminated ATO. [*Id.* at 66-67.]

The Court accepts the jury's conclusion that PARC breached the covenant by terminating the ATO, but that breach affected only Premier under Plaintiffs' theory. JJSM Real Estate leased a building *to PARC*; JJSM Equipment Fund leased equipment *to PARC*. Those Plaintiffs did not need the ATO for their contracts with PARC. After all, PARC always had authority to cultivate and sell medical marijuana; PARC did not have to hire Premier or any other vendor to do so. Terminating the ATO cannot support this claim as to JJSM Real Estate or JJSM Equipment Fund. PARC is entitled to JMOL on those claims.

We are left with a verdict and judgment for Premier for $0.00 against PARC on the covenant of good faith claim. Can this judgment stand with a $0.00 damages award?

Breach of the covenant is a breach of contract claim. It ensures parties receive the benefits they contracted for. *See, e.g., Wells Fargo Bank, N.A. v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 490 ¶ 59, 38 P.3d 12, 28 (2002). And "[o]rdinary contract damages" are the "proper measure of damages for this breach." *United Dairymen of Ariz. v. Schugg*, 212 Ariz. 133, 139 ¶ 21, 128 P.3d 756, 762 (App. 2006).

The Court discussed authority allowing nominal damages for breaches of contract. Breaching this covenant is a contract claim. Thus, nominal damages are available for it. *See, e.g., Grove City Veterinary Serv., LLC v. Charter Pracs. Int'l*, LLC, 2016 WL 8731781, *19 (D. Colo. Feb. 5, 2016) (nominal damages available), *recommendations adopted by* 2016 WL 8711508 (D. Colo. Mar. 11, 2016).

PARC raised a *Noerr-Pennington* argument in its Reply. *Contra* Ariz. R. Civ. P. 7.1(a)(3). Evaluating that argument would require more analysis than the few lines PARC provided. That is particularly true regarding a business communicating with a regulatory agency that oversees it. That is different than the First Amendment concerns *Noerr-Pennington* cases usually present. The Court will not address this argument that PARC sprinkled in its reply.

E. PARC's New Trial Arguments.

PARC contended that the evidence did not support the verdicts and that the verdicts were contrary to law. The Court granted relief as appropriate when ruling on the renewed motion for JMOL. Otherwise, the Court rejects the argument.

PARC also argued that the trial was unfair based on how Plaintiffs referred to Downing's conviction. But PARC/Downing did not object at trial. "Where the misconduct occurs during the argument of counsel, the objection may be waived if not made at the time the misconduct occurs." DANIEL J. MCAULIFFE & SHIRLEY J. MCAULIFFE, ARIZONA PRACTICE: ARIZONA CIVIL RULES HANDBOOK 888 (2021). In one case, a plaintiff's lawyer's "reference to 'companies' was a blatant, deliberate, and indefensible reference to insurance." *Copeland v. City of Yuma*, 160 Ariz. 307, 309, 772 P.2d 1160, 1162 (App. 1989). Nonetheless, "defendants have waived the chance to raise the issue of misconduct on appeal. Defendants failed to object at the time of argument." *Id.*[3]

PARC also argued for a new trial because of Plaintiffs' alleged disclosure violations. But PARC long knew of Plaintiffs' putative non-disclosures. Instead of moving to compel before trial, PARC asked trial witnesses about missing information. PARC made a strategic decision. This is unlike *Solimeno v. Yonan*, 224 Ariz. 74, 80 ¶ 23, 227 P.3d 481, 487 (App. 2010), where a party wanted to use its undisclosed information at trial.

Last, PARC complained that Bill Artwohl changed his testimony at trial about what equipment he sold. First, PARC had Artwohl's deposition and could impeach him with the change; this happens nearly every trial. Second, Artwohl's testimony addressed a minor point.

II. DOWNING'S RENEWED MOTION FOR JMOL OR NEW TRIAL.

The jury instructions noted the heightened proof for tortious interference claims because of Downing's position with PARC. The jury found that Plaintiffs met that burden. Competent evidence supports those findings, and the Court will not disturb them.

[3] PARC/Downing's authority is distinguishable. In it, a lawyer referred to a "soulless corporation reaching out to take money from the pocket of defendant." *Sadler v. Ariz. Flour Mills Co.*, 58 Ariz. 486, 489, 121 P.2d 412, 413 (1942) (quotation marks omitted). The lawyer also referred to a witness as "Merrill, alias Gonzales" even though the witness had legally changed his name to Merrill. *Id.* (quotation marks omitted). "There was no evidence in the record to sustain either of these statements or insinuations." *Id.*

The tortious interference verdicts and judgment against Downing were (1) $250,000.00 for Premier and (2) $100,000.00 for JJSM Equipment Fund. Downing argued that Plaintiffs did not prove such damages.

Like most tort claims, tortious interference requires proving injury. That is, proof "that the breach or disruption caused the plaintiff's damages." RESTATEMENT (THIRD) OF TORTS § 17 cmt. m. Typically, those are the breach of contract damages. *Id.* "The basic measure of actual damages for tortious interference with contract is the same as the measure of damages for breach of the contract interfered with, to put the plaintiff in the same economic position he would have been in had the contract interfered with been actually performed." *Am. Nat'l Petroleum Co. v. Transcon. Gas Pipe Line Corp.*, 798 S.W.2d 274, 278 (Tex. 1990); *see also Fishkin v. Susquehanna Partners, G.P.*, 563 F. Supp. 2d 547, 590 (E.D. Pa. 2008) ("the measure of damages for a tortious interference claim is the same as the measure of damages for the underlying breach.").[4]

That means Plaintiffs had to present competent evidence of damages for these claims. But Plaintiffs did not. They invited the jury to award whatever amount the jury found appropriate. Plaintiffs did not calculate or quantify damages from the tortious interference.

Thus, the damages against Downing for tortious interference cannot exceed the damages for the underlying breaches of contract. The jury awarded Premier $0.00 and JJSM Equipment Fund $68,000.00. The record does not justify greater damage awards against Downing. The Court will grant Downing's JMOL motion in part; the damages against him will be the same as the damages against PARC for the breaches.[5]

Plaintiffs suggested that disgorgement from Downing *could* be available and support these verdicts. That is true. *See* RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR ECONOMIC HARM § 17 cmt. m; RESTATEMENT (THIRD) OF RESTITUTION & UNJUST ENRICHMENT § 44. But Plaintiffs never presented that theory or asked for that instruction. [*See* Jury Instructions (filed 07/15/2020) at 4:1 (Plaintiffs requested RAJI Commercial Torts 12); J. Proposed Modified RAJI Preliminary Jury Instruction No. 14 (filed 07/24/2020).] Likewise, Plaintiffs pointed to *their* alleged damages

[4] Other damages could result. For example, the tortious conduct—separate from the breach—may cause a plaintiff to expend more to find an alternate supplier. But Plaintiffs did not assert or prove such other damages.

[5] Any recovery from PARC should reduce what Plaintiffs may recover from Downing. *See, e.g., Midwest Precision Servs., Inc. v. PTM Indus. Corp.*, 887 F.2d 1128, 1138-39 (1st Cir. 1989); RESTATEMENT (THIRD) OF TORTS § 17 cmt. b; RESTATEMENT (SECOND) OF TORTS § 774A(2). This principle confirms that tortious interference damages generally cannot exceed the underlying breach of contract damages. Otherwise, we would not be concerned about preventing double recovery.

in the Joint Pretrial Statement (filed 07/15/2020) (at 26:14-15), not restitution or disgorgement from Downing.

Downing argued that Plaintiffs improperly referred to his criminal conviction. Like PARC, Downing failed to object during trial; he waived the argument.

III. PLAINTIFFS' MOTION FOR JMOL OR NEW TRIAL.

A. JJSM Real Estate's Motion For JMOL Against Downing.

The parties and the Court addressed the unfortunate situation about Verdict Form 12. [*See* Min. Entry (filed 03/16/2021).] JJSM Real Estate revisited the issue in this Motion, which is an understandable step to preserve the record. That earlier Minute Entry explained the Court's view on the issue.

The Court denies JJSM Real Estate's motion for JMOL against Downing.

B. Premier's Motion For New Trial On Damages.

The jury found for Premier on its contract and duty of good faith and fair dealing claims and awarded $0.00 in damages. Premier argued that the jury had to award damages because PARC did not contest Premier's evidence. But a jury is not required to accept any evidence, even "undisputed" evidence. The jury could have concluded that Premier proved those breaches but did not reliably prove damages.

Premier also argued that the Court erred by excluding Trial Exhibit 60, which was a putative inventory report. The Court concluded that Richard Merel and Bill Artwohl could not show the document was a business record under Arizona Rule of Evidence 803(6). "The requisite foundation must . . . be established by someone who has personal knowledge or is otherwise familiar with how the record was prepared or with the practice of the business concerning the preparation of records of that type." SHIRLEY J. MCAULIFFE, ARIZONA PRACTICE: LAW OF EVIDENCE § 803:7 (4th ed. Mar. 2021 update). The rule's requirements "disqualify records that are generated, or come to rest in an organization's files, haphazardly, rather than through a systematic, routinized process." 30B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE: EVIDENCE § 6864 (2021 ed. Apr. 2021 update). "[T]he source of information . . . must be a person who has personal knowledge, which means the kind of firsthand information that Rule 602 requires for testifying witnesses." 4 CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, FEDERAL EVIDENCE § 8:78 (4th ed. May 2021 update) (footnote omitted). Plaintiffs did not satisfy the business records exception.

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The Court denies Premier's motion for new trial on damages.

C. JJSM Real Estate's Motion For New Trial On Damages Against PARC.

JJSM Real Estate argued that it properly disclosed and proved the late fees and real estate taxes associated with the breached building lease. JJSM Real Estate withdrew its arguments about real estate taxes in its Reply (at 5:7-11). The Court sustained PARC's objections to this information at trial and does not see a reason to grant a new trial.

The Court denies JJSM Real Estate's motion for new trial on damages for late fees.

D. Plaintiffs' Motion For New Trial Regarding Earnest Money Agreement With The Klausners.

The Court concluded Plaintiffs had not properly disclosed the theory of Downing using the earnest money agreement to "sell" PARC's board seats to the Klausners. That alleged plan included canceling contracts with Plaintiffs. The Court excluded an exhibit and struck testimony about it.

True, Plaintiffs had disclosed the document. But Plaintiffs said nothing about the earnest money agreement or canceling contracts with Plaintiffs to sell board seats to the Klausners in Plaintiffs' disclosures. [Exs. at 97-99, Pls.' Mot. (filed 04/01/2021).] Plaintiffs disclosed only that "Rick Klausner and Roseanna Klausner were added as Directors of PARC" in November 2017 and Downing removed them about two months later. Plaintiffs noted in their Reply (at 7) that their 2019 summary judgment motion raised this theory. But Plaintiffs did not point the Court to the summary judgment motion when the issue arose at trial.

Even if the Court erred excluding the earnest money agreement, Plaintiffs must also show prejudice. Plaintiffs did not.

Plaintiffs argued that excluding the earnest money agreement "preclude[ed] them from using" it "to justify additional damages against Downing." [Pls.' Reply at 8:4-5.] That is, the jury may have awarded more to Plaintiffs if they knew Downing received $500,000.00 from the Klausners. But that money does not represent injury to Plaintiffs; it is a benefit to Downing. Excluding the document did not prejudice Plaintiffs because it did not support Plaintiffs' damages theory.

Tortious interference is to compensate an injured plaintiff. The claim requires "resultant damage to the party whose relationship or expectancy has been disrupted." *Dube v. Likins*, 216 Ariz. 406, 411 ¶ 8, 167 P.3d 93, 98 (App. 2007) (quotation marks omitted). It "requires a showing

. . . that the breach or disruption *caused the plaintiff's damages*." RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR ECONOMIC HARM § 17 cmt. m (emphasis added); *see also* RAJI (Civil) 6th (2017), Commercial Torts 12, *Interference With Contract or Business Expectancy (Damages)*. The Klausners paying Downing would not be injury to Plaintiffs, though. And the Court discussed earlier why disgorgement from Downing does not apply.

Excluding the earnest money agreement did not prejudice Plaintiffs. At best, it related to a disgorgement theory that Plaintiffs did not disclose, did not include in the joint pretrial statement, and did not ask for an instruction about.

E. Plaintiffs' Motion To Amend The Judgment Regarding Nominal Damages.

The jury found in Premier's favor on its breach of contract claim against PARC. It also found in favor of each Plaintiff on its breach of the covenant of good faith and fair dealing claim. The jury awarded $0.00 for each claim, though. That was despite the instructions about nominal damages: "If you find that a party breached the duty of good faith and fair dealing but [the] other party did not prove damages with reasonable certainty, then you may award nominal damages (such as $1.00)." [Final Instructions (filed 10/26/2020) at 6; *accord id.* at 7 (direct damages re: cultivation agreement, building lease).]

Plaintiffs asked the Court to amend the judgment to award $1.00 in nominal damages for the affected claims. Plaintiffs did not cite authority allowing the Court to amend the judgment in this situation. But PARC also did not cite authority prohibiting it.

When a claim requires *actual* damages, it seems that courts disapprove of such measures. "[T]he district court erred in overriding the jury's $0 damages verdict and awarding $1 in nominal damages in this case." *Monster Energy Co. v. Integrated Supply Network, LLC*, 821 F. App'x 730, 734 (9th Cir. 2020) (trademark and trade dress claims). But trademark infringement under the Lanham Act disgorges a defendant's profits and awards actual damages plus a reasonable royalty. 15 U.S.C. § 1117(a).

In contrast, courts often amend judgments where the claim does not require proof of actual damages. For example, courts do so in § 1983 actions to award $1.00. *E.g., Lowry ex rel. Crow v. Watson Chapel Sch. Dist.*, 540 F.3d 752, 761 (8th Cir. 2008) (district court did not abuse discretion amending judgment to $1.00 nominal damages in § 1983 action; jury awarded $0.00); *Floyd v. L.*, 929 F.2d 1390, 1402 (9th Cir. 1991) (§ 1983 action; court must enter judgment of $1.00 although jury awarded $0.00).

Nominal damages for a contract claim are more like the mandatory awards in § 1983 claims. They do not require proving actual damages. *See, e.g.*, RESTATEMENT (SECOND) OF

CONTRACTS § 346. "[T]he injured party will nevertheless get judgment for nominal damages, a small sum usually fixed by judicial practice in the jurisdiction in which the action is brought." *Id.* cmt. b. Nominal damages recognize that a party had an enforceable promise that the opposing party breached; they are not to compensate.

The Court will amend the judgment to award $1.00 in nominal damages for (1) Premier's breach of contract claim against PARC and (2) Premier's breach of covenant of good faith and fair dealing claim against PARC. As described earlier, however, JJSM Real Estate's and JJSM Equipment Fund's breach of covenant of good faith and fair dealing claims against PARC do not survive.

IT IS SO ORDERED.

Counsel must confer about this order's effects. If they believe it justifies reevaluating fee/cost awards, then they should try to agree on a briefing schedule. They also should discuss timing to submit proposed signed orders giving effect to these rulings. *See* ARCAP 9(e)(1) (time for notice of appeal begins running from signed order disposing of motions). The parties must file a short, joint statement by **September 10, 2021**, outlining whether they agree on these topics and other procedural issues they believe the Court must address before entering a signed order.

Clerk of the Superior Court
*** Electronically Filed ***
11/02/2021 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-009033 11/01/2021

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
K. Treftz
Deputy

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS L L C, et al.

KEVIN C BARRETT

v.

PEACE RELEAF CENTER I, et al.

DENNIS I WILENCHIK

HAYLEIGH S CRAWFORD
ERIC M FRASER
WEST VALLEY NATIONAL BANK
C/O STAT AGENT JOSEPH M PARKER
PARKER LAW TEAM 2141 E
HIGHLAND AVE STE A100
PHOENIX AZ 85016
JEFFREY C MATURA
JUDGE J. SMITH

MINUTE ENTRY

The Court considered Defendants' Application for Attorneys' Fees and Costs or, Alternatively, Motion to Amend Prior Award (filed 09/27/2021).

I. ATTORNEYS' FEES.

Yuri Downing is not entitled to attorneys' fees, regardless of whether he is the prevailing party. A.R.S. § 12-341.01 does not apply to the tortious interference claims against him. *E.g.*, *Elizabeth M. Entertainment L.L.C. v. Whitcomb*, 2020 WL 428653, *5 ¶ 27 (Ariz. Ct. App. Jan.

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28, 2020) (mem.); *Fitzhugh v. Princeton Ins. Co.*, 2019 WL 548040, *3 ¶ 17 (Ariz. Ct. App. Feb. 12, 2019) (mem.).

IT IS ORDERED denying Downing's request for attorneys' fees.

So the Court evaluates only PARC's request for attorneys' fees. PARC is not only a Defendant, though. It also is a Counterclaimant. PARC pressed claims against Premier for breaching the Cultivation Agreement and the implied covenant of good faith and fair dealing. The same is true regarding JJSM Real Estate and the Building Lease. And the Court granted summary judgment against PARC on claims that JJSM Equipment Fund breached the Equipment Lease and implied covenant.

Two paths to attorneys' fees exist here. The first are fee-shifting provisions in the Building Lease (§ 17.8) and the Equipment Lease (§ 10). Both refer to awards of "reasonable" attorneys' fees.

"Unlike fees awarded under A.R.S. § 12-341.01(A), the court lacks discretion to refuse to award fees under [a] contractual provision." *Chase Bank of Ariz. v. Acosta*, 179 Ariz. 563, 575, 880 P.2d 1109, 1121 (App. 1994). "[C]ontracts for payment of attorneys' fees are enforced in accordance with the terms of the contract." *McDowell Mtn. Ranch Cmty. Ass'n v. Simons*, 216 Ariz. 266, 269, ¶ 14, 165 P.3d 667, 670 (App. 2007) (quotations omitted). "Assuming that the fees requested were facially reasonable, [the opposing party] then ha[s] the burden to show that they were clearly excessive. If such a showing is not made, then the [requesting party] is entitled to receive its full attorneys' fees." *Id.* ¶ 20; *accord, e.g., A. Miner Contracting, Inc. v. Toho-Tolani Cty. Improvement Dist.*, 233 Ariz. 249, 261-62 ¶¶ 40-43, 311 P.3d 1062, 1074-75 (App. 2013).

The Cultivation Agreement did not include a fee-shifting provision. A.R.S. § 12-341.01 could apply, though.

The Court has substantial discretion to determine the successful party under A.R.S. § 12-341.01. *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, 334 ¶ 35, 214 P.3d 415, 422 (App. 2009) (quotations omitted). Also, "the court may determine that a party is the successful party even when the recovery finally obtained is significantly reduced from the recovery sought." ARIZONA ATTORNEY'S FEE MANUAL § 2.7 at 2-22 (Bruce E. Meyerson & Patricia K. Norris eds., State Bar of Arizona 6th ed. 2017). And "[t]o qualify as a successful party under A.R.S. § 12-341.01(A), it is not necessary that a party recover a monetary judgment . . . ." *Id.* § 2.6.2 at 2-22.

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When a case involves mixed results for multiple parties with multiple claims, the Court uses a "totality of the litigation approach." *Id.* § 2.7.1 at 2-23.

The jury returned these verdicts (successful party in **bold**):

Claim/Counterclaim	Party Pursing	Verdict
Breach of contract against PARC	Premier	**Premier**, $0.00
Breach of implied covenant against PARC	Premier	**Premier**, $0.00
Breach of contract against Premier	PARC	**Premier**
Breach of implied covenant against Premier	PARC	**Premier**
Breach of contract against PARC	JJSM Real Estate	**JJSM Real Estate**, $1,377,320.00 (but the Court reduced to nominal damages).
Breach of implied covenant against PARC	JJSM Real Estate	**JJSM Real Estate**, $0.00
Breach of contract against JJSM Real Estate	PARC	**JJSM Real Estate**
Breach of implied covenant against JJSM Real Estate	PARC	**JJSM Real Estate**
Breach of contract against Premier	JJSM Equipment Fund	**JJSM Equipment Fund**, $68,000.00
Breach of implied covenant against Premier	JJSM Equipment Fund	**JJSM Equipment Fund**, $0.00

The jury did not return one verdict in PARC's favor. That is not dispositive, of course, but it is impossible to ignore.

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The Court found that JJSM Real Estate's breach of contract claim did not produce viable damages—rent from the new tenant starting in April 2021 fully offset any damages. [Min. Entry (filed 08/26/2021).] But the jury also rejected PARC's affirmative defense of failure-to-mitigate. Thus, the Court cannot criticize JJSM Real Estate for pressing the claims from June 2017 until it re-let the property. And while the Court ruled against JJSM Real Estate regarding its damages from the breached Building Lease, controlling Arizona law on the topic does not exist. It was not frivolous or unreasonable for JJSM Real Estate to pursue the matter.

The Court originally awarded Plaintiffs reasonable attorneys' fees of $441,685.61 and taxable costs of $7001.55. [Min. Entry (filed 03/16/2021).] Much of that analysis remains intact despite the post-trial rulings; the Court adopts that analysis here, too. *See, e.g.*, *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 570, 694 P.2d 1181, 1184 (1985) (factors to consider for fee awards); *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 187, 673 P.2d 927, 931 (App. 1983). The significant changes are (1) the slashing of the verdict on JJSM Real Estate's claim and (2) JMOL for PARC on JJSM Real Estate's and JJSM Equipment Fund's implied covenant claims. That is, Plaintiffs prevailed on less relief requested than before the post-trial motions.

Admittedly, calculating the fee award is not simple. JJSM Equipment Fund and JJSM Real Estate are entitled to "reasonable" fees under their contracts. And the Court may award Premier "reasonable" fees under § 12-341.01(A). But what is reasonable?

It is difficult because it is impossible to segregate certain fees as relating to specific contract claims. The witnesses and documents applied to almost everything. The same is true of requests for provisional remedies years ago. The Court cannot think of a meaningful way to decide that specific depositions, discovery, motions, or trial strategy applied only to certain claims.

Thus, the Court takes a global view of the fee awards. Plaintiffs succeeded less following post-trial motions. The damages decreased substantially, but they prevailed, nonetheless. With that in mind, the Court reduces its earlier fee award by 50%. The revised judgment here will award Plaintiffs $220,842.80 in reasonable fees against PARC.

IT IS ORDERED awarding JJSM Real Estate and JJSM Equipment fees under the fee-shifting provisions and awarding Premier fees under A.R.S. § 12-341.01 against PARC. The total award is $220,842.80.

II. COSTS.

The award of taxable costs is straightforward after the fee analysis. "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. 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 will not alter its earlier taxable cost award. [*See* Min. Entry (filed 03/16/2021).]

IT IS ORDERED awarding Plaintiffs taxable costs of $7001.55, jointly and severally against Defendants PARC and Yuri Downing.

Granted with Modifications
See eSignature page

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ARIZONA SUPERIOR COURT

MARICOPA COUNTY

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, et al., Plaintiffs, vs. PEACE RELEAF CENTER I, d/b/a PATIENT ALTERNATIVE RELIEF CENTER, an Arizona nonprofit corporation, et al., Defendants. AND RELATED COUNTERCLAIMS	No. CV2017-009033 AMENDED JUDGMENT (Assigned to the Hon. James Smith)

Following the jury trial and verdict returned October 26, 2020, and rulings on post-trial motions, the Court enters judgment.

I. CLAIMS RESOLVED BEFORE TRIAL.

1. Plaintiffs' claims for declaratory and injunctive relief (Counts I and II), are dismissed with prejudice.

2. Premier Consulting and Management Solutions, LLC's ("Premier") claim for breach of warranty against Patient Alternative Relief Center, Inc. ("PARC") (Count VI), is dismissed with prejudice.

3. JJSM Real Estate Fund, LLC's claim for breach of warranty against PARC (Count VII) is dismissed with prejudice.

4. JJSM Equipment Fund, LLC's claim for breach of warranty against PARC (Count VIII) is dismissed with prejudice.

5. Plaintiffs' Count XII (unjust enrichment) is dismissed with prejudice.

6. Plaintiffs' claims for intentional interference (Count XIII) and tortious interference (XIV) against Defendants Whitney Sorrell and Edward Glueckler are dismissed with prejudice.

7. Plaintiffs' Count XV (breach of good faith against Jeff Schaeffer) is dismissed with prejudice by those parties' stipulation.

8. Plaintiffs' Count XVI (aiding and abetting bad faith) is dismissed with prejudice.

9. Plaintiffs' Count XVII (fraud against Jeff Schaeffer) is dismissed with prejudice by those parties' stipulation.

10. Plaintiffs' Count XVIII (conspiracy to commit fraud) is dismissed with prejudice.

11. PARC's counterclaim for declaratory relief/rescission (Counterclaim Count I) is dismissed with prejudice.

12. On PARC's counterclaim for breach of contract against JJSM Equipment (under Counterclaim Count II), judgment is entered for JJSM Equipment.

13. On PARC's counterclaim for breach of duty of good faith and fair dealing against JJSM Equipment (under Counterclaim Count III), judgment is entered for JJSM Equipment.

II. CLAIMS AND COUNTERCLAIMS INVOLVING PREMIER AND PARC.

14. On Plaintiff Premier Consulting and Management Solutions, LLC's ("Premier") breach of contract claim against Defendant Patient Alternative Relief Center, Inc. ("PARC") regarding the Cultivation Agreement, judgment is entered for Premier and against PARC for nominal damages of $1.00.

15. On Premier's breach of duty of good faith and fair dealing claim against PARC, judgment is entered for Premier and against PARC for nominal damages of $1.00.

16. On PARC's breach of contract counterclaim against Premier regarding the Cultivation Agreement, judgment is entered for Premier and against PARC.

17. On PARC's breach of duty of good faith and fair dealing counterclaim against Premier, judgment is entered for Premier and against PARC.

III. CLAIMS AND COUNTERCLAIMS INVOLVING JJSM REAL ESTATE AND PARC.

18. On Plaintiff JJSM Real Estate Fund, LLC's ("JJSM Real Estate") breach of contract claim against PARC regarding the Building Lease, judgment is entered for PARC and against JJSM Real Estate for nominal damages of $1.00.

19. On Plaintiff JJSM Real Estate's breach of duty of good faith and fair dealing claim against PARC, judgment is entered for PARC and against JJSM Real Estate.

20. On PARC's breach of contract counterclaim against JJSM Real Estate regarding the Building Lease, judgment is entered for JJSM Real Estate and against PARC.

21. On PARC's breach of duty of good faith and fair dealing counterclaim against JJSM Real Estate, judgment is entered for JJSM Real Estate and against PARC.

IV. CLAIMS INVOLVING JJSM EQUIPMENT FUND AND PARC.

22. On Plaintiff JJSM Equipment Fund, LLC's ("JJSM Equipment") breach of contract claim against PARC regarding the Equipment Lease, judgment is entered for JJSM Equipment and against PARC for $68,000.00.

23. On Plaintiff JJSM Equipment's breach of duty of good faith and fair dealing claim against PARC, judgment is entered for PARC and against JJSM Equipment.

24. On PARC's breach of contract counterclaim against JJSM Equipment regarding the Equipment Lease, judgment is entered for JJSM Equipment and against PARC.

25. On PARC's breach of duty of good faith and fair dealing counterclaim against JJSM Equipment, judgment is entered for JJSM Equipment and against PARC.

V. CLAIMS AGAINST YURI DOWNING.

26. On Premier's interference with contract claim against Defendant Yuri Downing regarding the Cultivation Agreement, judgment is entered for Premier and against Downing for $0.00.

27. On JJSM Real Estate's interference with contract claim against Defendant Yuri Downing, judgment is entered for Downing and against JJSM Real Estate.

28. On JJSM Equipment's interference with contract claim against Downing regarding the Equipment Lease, judgment is entered for JJSM Equipment and against Downing for $68,000.00.

VI. FEES, COSTS, INTEREST.

29. The Court awards attorneys' fees of $220,842.80 in favor of Plaintiffs and against PARC.

30. The Court awards taxable costs of $7001.55 in favor of Plaintiffs and against PARC and Downing, jointly and severally.

31. Amounts awarded in this judgment accrue simple 4.25% annual interest from the date of this judgment until satisfied.

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

eSignature Page 1 of 1

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Granted with Modifications

/S/ James Smith Date: 11/1/2021
Judicial Officer of Superior Court

ENDORSEMENT PAGE

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ARIZONA SUPERIOR COURT

MARICOPA COUNTY

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, an Arizona limited liability company; JJSM REAL ESTATE FUND, LLC, an Arizona limited liability company; JJSM EQUIPMENT FUND, LLC, an Arizona limited liability company, NEW LEAF INVESTMENT AZ, LLC, A Delaware limited liability company

Plaintiffs,

v.

PEACE RELEAF CENTER I, dba PATIENT ALTERNATIVE RELIEF CENTER, an Arizona nonprofit corporation; PATIENT ALTERNATIVE RELIEF CENTER, an Arizona nonprofit corporation; YURIKINO CENIT DOWNING and JANE DOE DOWNING, husband and wife and Arizona residents; WHITNEY SORRELL and Jane Doe Sorrell, husband and wife and Arizona residents; EDWARD GLUECKLER and Jane Doe Glueckler, husband and wife and Arizona residents; JEFF SCHAEFFER and AMY SCHAEFFER, husband and wife, BLACK AND WHITE ENTITIES 1-10; JOHN AND JANE DOES A-Z,

Defendants.

Case No. CV2017-009033

JOINT PRETRIAL STATEMENT

(Assigned to the Hon. James Smith)

PATIENT ALTERNATIVE RELIEF CENTER, an Arizona nonprofit corporation,

Counterclaimant,

v.

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, an Arizona limited liability company; JJSM REAL ESTATE FUND, LLC, an Arizona limited liability company; JJSM EQUIPMENT FUND, LLC, an Arizona limited liability company,

Counterdefendants.

Pursuant to Arizona Civil Procedure Rule 16(f) and the Court's December 13, 2019 Order, Plaintiffs/Counter-Defendants Premier Consulting and Management Solutions, LLC ("Premier"), JJSM Real Estate Fund, LLC ("JJSM Real Estate"), JJSM Equipment Fund, LLC ("JJSM Equipment Fund"), and New Leaf Investment AZ, LLC ("New Leaf") (collectively "Plaintiffs"), Defendant/Counterclaimant Peace Releaf Center I formally dba Patient Alternative Relief Center ("PARC"), and Defendants Yurikino Cenit Downing ("Downing"), Whitney Sorrell and his wife (collectively "Sorrell"), and Edward Glueckler and his wife (collectively "Glueckler") (collectively with PARC, "Defendants") submit the following Joint Pretrial Statement.

I. STIPULATIONS OF MATERIAL FACT AND APPLICABLE LAW.

A. Stipulated Material Facts Deemed Admitted by the Parties

1. In compliance with the Arizona Medical Marijuana Act and the Arizona Department of Health Services Medical Marijuana Program, PARC operates a licensed medical marijuana retail dispensary located at 4201 East University Drive, Phoenix, Arizona 85034.

2. In November 2010, the citizens of the State of Arizona passed and adopted Proposition 203, a voter initiative, which later became known as the Arizona Medical Marijuana Act ("the AMMA"). Governor Brewer signed the AMMA into law on December 14, 2010.

3. The AMMA states the citizens' position that modern medical research has confirmed beneficial uses for marijuana to treat or alleviate pain, nausea, and other symptoms

associated with a variety of debilitating medical conditions. Arizona citizens further declared that the AMMA would enhance their "health and welfare" by, in part, protecting medical marijuana patients from arrest and prosecution related to their use of medical marijuana.

4. The AMMA provides for a limited number of highly regulated medical marijuana dispensaries and cultivation facilities. Stringent cultivation facility license regulations include, but are not limited to, full vetting of the facility, reasonable zoning restrictions, comprehensive background checks, inventory control, and other items.

5. On February 16, 2011, the Articles of Incorporation for PARC were filed with the Arizona Corporation Commission. As an Arizona nonprofit corporation, PARC is controlled by its Board of Directors.

6. The original members of PARC's Board of Directors were Amy Shaeffer, Deborah Kaminski, and Richard Brock.

7. Mr. Jeff Schaeffer put together the documentation necessary for PARC to apply for a medical marijuana license from the Arizona Department of Health Services.

8. PARC was issued a dispensary registration certificate in the South Mountain Community Health Analysis Area #071. Its certificate is identified as Certificate ID No. 00000091DCWY00555666.

9. PARC subsequently applied and received from the Arizona Department of Health Services ("DHS") approval to operate a medical marijuana dispensary retail location at 4201 East University Drive, Phoenix, Arizona 85034 ("the Dispensary").

10. The Dispensary opened in September of 2014.

11. Also in September 2014, Mr. Schaeffer and Mr. Brad Beck decided to seek out investors to assist with funding the purchase and construction of a cultivation facility that would serve the Dispensary.

12. On September 11, 2014, Articles of Organization were filed for Premier Consulting and Management Solutions, LLC ("Premier").

13. Premier had four members when it was initially created in 2014: SteveCo, LLC, JillCo, LLC, MRCo, LLC, and JeffsCo, LLC.

14. SteveCo, LLC was a Delaware limited liability company owned and controlled exclusively by Steve Morales.

15. MRCo, LLC was a Delaware limited liability company owned and controlled exclusively by Marlene Rosenburg.

16. JillCo., LLC was a Delaware limited liability controlled owned and controlled exclusively by Brad Beck.

17. JeffsCo, LLC was a Delaware limited liability company owned and controlled exclusively by Jeff Schaeffer.

18. Each member of Premier held a twenty-five percent (25%) membership interest in Premier.

19. The members of Premier also formed JJSM Real Estate Fund, LLC ("JJSM Real Estate") and JJSM Equipment Fund, LLC ("JJSM Equipment") in October 2014.

20. JJSM Real Estate was formed to own the real estate on which the cultivation facility was to be located and operated.

21. On May 8, 2015, Nicholas Bartoni served as the Vice President and Secretary of PARC. He was also a member of its Board of Directors.

22. On April 15, 2016, Michael Zimmerman was added to the Board of Directors for PARC.

23. On or about December 23, 2015, Cynthia Oehme (as PARC's President and Director) and Nicholas Bartoni (as PARC's Vice President, Secretary, and a Director) signed a Cultivation Management Services Agreement with Premier ("Cultivation Agreement") on behalf of PARC.

24. The location of the cultivation facility was 15 North 57th Drive, Phoenix, Arizona 85043.

25. DHS inspected the cultivation facility and approved its operation.

26. On or about December 23, 2015, Cynthia Oehme (as PARC's President and a Director) signed a Single-Tenant Industrial Building Lease with JJSM Real Estate ("Building Lease") on behalf of PARC.

27. PARC has not paid to JJSM Real Estate the base rent, the security deposit, taxes, or any other fees and costs set forth in the Building Lease.

28. In January 2016, Cynthia Oehme (as PARC's President and a Director) signed an Equipment Lease Agreement with JJSM Equipment ("the Equipment Lease") on behalf of PARC.

29. Pursuant to Section 2(a) and Exhibit B of the Equipment Lease, PARC was to pay rent to JJSM Equipment in the amount of $1,000.00 per month for the first 12 months following the Abatement Expiration Date, and then $2,000.00 per month thereafter during the term of the Equipment Lease.

30. Pursuant to Section 2(b) of the Equipment Lease, PARC was to pay to JJSM Equipment all charges, levees, personal property taxes, and annual license fees for the use and operation of the equipment after the Abatement Expiration Date

31. Pursuant to Section 3 of the Equipment Lease, PARC was to pay to JJSM Equipment all costs to repair, maintain, operate, and obtain insurance for the equipment after the Abatement Expiration Date.

32. PARC has not paid the rent or any other fees and costs stated in the Equipment Lease.

33. On June 9, 2017, PARC sent a letter (through its counsel) to Premier, in which it purported to immediately terminate the Cultivation Agreement, the Building Lease, and the Equipment Lease.

34. On June 16, 2017, PARC sent another letter (through its counsel) threatening to cancel the cultivation facility's Approval to Operate with DHS.

B. Undisputed Issues of Law Stipulated to by the Parties:

1. DHS was granted rulemaking authority with regard to the AMMA. The current regulations that DHS adopted are contained within the Arizona Administrative Code from R9-17-101 through R9-17-323.

2. Pursuant to R9-17-309, any application by a dispensary to change or add a cultivation facility grants DHS with the authority to inspect that facility. If DHS approves the application following an inspection, DHS issues an approval notice to the dispensary, thereby certifying that the cultivation facility is approved ("Approval to Operate").

3. Pursuant to R9-17-316, a dispensary shall only acquire marijuana from its cultivation facility, another licensed medical marijuana dispensary located within the State of Arizona, or a qualifying patient or designated caregiver that DHS authorized to cultivate marijuana.

4. Without an Approval to Operate, the cultivation facility cannot legally operate under the AMMA or DHS' regulations.

II. CONTESTED ISSUES OF FACT AND LAW THAT THE PARTIES AGREE ARE MATERIAL OR APPLICABLE.

A. Agreed-Upon Contested Issues of Material Fact

1. What is the meaning of "first harvest" in the Building Lease and Equipment Lease?

a. Plaintiffs claim the clear and unambiguous term "first harvest" should be interpreted pursuant to its plain meaning and that parole evidence is improper to define the term. Nevertheless, the Building and Equipment Lease state that "the determination as to when the first harvest of cannabis plants at the Premises has occurred shall be determined in the sole but reasonable discretion of the Landlord." Jeff Schaeffer had a minority interest in the JJSM Real Estate and JJSM Equipment and does not speak for the Landlord when determining and interpreting the meaning of "first harvest."

b. Defendants claim it was their understanding—based on their reliance on statements made to them by Jeff Schaeffer as an authorized representative, owner and agent of Premier, JJSM Equipment and JJSM Real Estate—that Plaintiffs agreed and intended the term "first harvest" was meant refer to that point in time when the cultivation facility was capable of producing enough marijuana in a perpetual, sustainable fashion week after week to support sales at the PARC dispensary that would generate enough revenue to allow PARC to pay all of the rents and other payments contemplated under the Cultivation Agreement, Building Lease and Equipment Lease.

2. Did a first harvest occur such that PARC was obligated to pay rents, fees, etc. under the Building Lease and Equipment Lease and if so, when did it occur?

a. Plaintiffs claim the first harvest occurred on December 18, 2016, and that multiple harvests occurred after this date all obligating PARC to pay rent, fees and other items under the Building Lease and Equipment Lease.

b. Defendants claim there was no first harvest at any time and that Premier never produced any significant amounts of saleable marijuana during 2017.

B. Agreed-Upon Contested Issues of Law

Re: The Cultivation Agreement

1. None.

Re: The Building Lease

1. Did PARC owe any rents or other payments to JJSM Real Estate under the Building Lease as of May 19, 2017?

Re: The Equipment Lease

1. Did PARC owe any rents or other payments to JJSM Equipment under the Equipment Lease as of May 19, 2017?

III. SEPARATE STATEMENTS BY EACH PARTY OF OTHER ISSUES OF FACT AND LAW THAT THE PARTY BELIEVES ARE MATERIAL.

A. Plaintiffs' Separate Issues of Fact.

1. A cultivation facility is also required to have and use policies and procedures that DHS approves related to inventory control, security, sanitation, and equipment. Similar to the dispensary's retail location, the cultivation facility is highly regulated by DHS to ensure the safe and proper harvest, cultivation, and sale of medical marijuana.

2. In 2011, Jeff Schaeffer and non-party Brad Beck agreed to apply for a dispensary registration certificate issued by DHS and pursuant to the AMMA. Mr. Beck agreed to provide the financial backing and Mr. Schaeffer agreed to contribute "sweat equity."

3. In furtherance of this agreement, Mr. Schaeffer and Mr. Beck formed PARC to use as the applicant for the dispensary registration certificate. Mr. Schaeffer and Mr. Beck also agreed that they would not personally serve on the Board of Directors of PARC; rather, they would designate different individuals to serve on the Board of Directors.

4. The original members of PARC's Board of Directors were Amy Shaeffer, Deborah Kaminski, and Richard Brock. Mr. Schaeffer and Mr. Beck selected these individuals as part of their prior agreement on how to structure PARC. None of these individuals invested money to establish, operate, or run PARC.

5. As evidence of his agreement with Mr. Schaeffer, Mr. Beck invested rent money for properties, paid for special use permit, zoning efforts and other items so that PARC could apply for a medical marijuana dispensary license.

6. On March 16, 2012, Cynthia Oehme was added as a member of PARC's Board of Directors. Ms. Oehme also did not contribute her time, efforts, or funds to establish, operate, or run PARC.

7. In August 2012, DHS held a lottery, in which it allocated 99 dispensary registration certificates to qualified applicants. Only the recipients of these certificates could apply to DHS to open a medical marijuana dispensary and cultivation facility.

8. Premier was formed to fund the purchase and construction of the cultivation facility that would serve the Dispensary. It would also operate as the exclusive manager of PARC.

9. JJSM Equipment Fund, LLC was formed to own the equipment that was used at the cultivation facility.

10. Premier invested several million dollars to build-out a cultivation facility to serve as the exclusive provider of marijuana and marijuana products to PARC.

11. The members of Premier each had the power and authority to select an individual to serve on the Board of Directors for PARC.

12. Steve Morales selected Nicole Perry to serve on PARC's Board of Directors.

13. Marlene Rosenburg selected David Yono to serve on PARC's Board of Directors.

14. Jeff Schaeffer selected Amy Schaeffer to serve on PARC's Board of Directors.

15. Brad Beck selected David Forman to serve on PARC's Board of Directors.

16. Nicholas Bartoni was added as a member of the Board of Directors at the direction of Jeff Schaeffer.

17. Before the build out of the cultivation center was complete, in the autumn of 2015, Mr. Beck and Mr. Schaeffer approached New Leaf about investing in Premier, JJSM Real Estate, LLC, JJSM Equipment Fund, LLC, and PARC by buying out the membership interests owned by Mr. Morales and Ms. Rosenburg.

18. Jeff Schaeffer made representations to New Leaf that, by investing in Premier, JJSM Real Estate, LLC, and JJSM Equipment Fund, LLC, New Leaf would have the power and authority to select an individual to serve on the Board of Directors for PARC.

19. Jeff Schaeffer made representations to New Leaf that PARC would amend its Bylaws to state that the consent of the individual who New Leaf selected to serve on the Board of Directors would be required for any major decisions, including all decisions regarding the cultivation facility for the Dispensary and the Cultivation and Management Services agreement between Premier and PARC.

20. Jeff Schaeffer made representations to New Leaf that the cultivation facility would continue to serve as the exclusive provider for marijuana and marijuana products to PARC.

21. Jeff Schaeffer made representations to New Leaf that Premier and PARC would execute an agreement when New Leaf funded its investment that would automatically renew for ten years.

22. Jeff Schaeffer made representations to New Leaf that JJSM Real Estate, LLC and PARC would execute a lease agreement for the property housing the cultivation facility.

23. Based on these representations, New Leaf agreed to invest in Premier, JJSM Real Estate, LLC, JJSM Equipment Fund, LLC, and PARC by purchasing the membership interests owned by Mr. Morales and Ms. Rosenburg.

24. Specifically, New Leaf agreed to pay- and did in fact pay- $1,300,000 for 50% of the outstanding membership interests of JJSM Real Estate, LLC, $350,000 for 50% of the outstanding membership interests of JJSM Equipment, LLC and $5,428,000 for 47% of the outstanding membership interests for Premier for a total investment of $7,078,000.

25. On December 23, 2015, New Leaf funded its total investment of $7,078,000 to purchase the membership interests in Premier, JJSM Real Estate, LLC, and JJSM Equipment Fund, LLC, and to select an individual to serve on the Board of Directors for PARC, whose consent would be needed to make any major decisions related to the Cultivation and Management Services Agreement.

26. Michael Zimmerman was the individual selected by New Leaf to serve on the Board of Directors for PARC.

27. In November 2016, New Leaf invested an additional $726,000.00 to bring its membership interest in Premier up to 50%.

28. Consistent with the representations made by Jeff Schaeffer and New Leaf's funding, any decisions by the Board of Directors for PARC related to the Cultivation and

Management Services between PARC and Premier required Michael Zimmerman's consent and approval.

29. Jeff Schaeffer did not make any capital contributions to PARC, Premier, JJSM Real Estate, LLC, or JJSM Equipment Fund, LLC.

30. Yuri Downing did not invest any time, money, or effort to establish the Dispensary or the cultivation facility.

31. On April 10, 2017, Yuri Downing executed a Dispensary Management Services Agreement between PARC and Angel Shark, LLC.

32. Yuri Downing controls Angel Shark, LLC through other entities. Yuri Downing's Linked-In page also states he is a founder of Angel Shark Advisors.

33. Edward Glueckler also has a management role with Angel Shark, LLC.

34. Michael Zimmerman did not vote to approve the Dispensary Management Services Agreement between PARC and Angel Shark, LLC and did not vote to cancel the Cultivation and Management Services Agreement between PARC and Premier.

35. The Board of Directors for PARC did not have a meeting to approve the Dispensary Management Services Agreement between PARC and Angel Shark, LLC, and the execution of this agreement was contrary to the Bylaws for PARC.

36. On April 14, 2017, Yuri Downing noticed a meeting of the PARC Board of Directors to remove all the other officers and Directors of PARC, including Michael Zimmerman.

37. On December 23, 2015, PARC entered into a Cultivation Management Services Agreement with Premier ("Cultivation Agreement").

38. PARC's legal counsel drafted the Cultivation Agreement and provided a copy to Premier to review and sign.

39. The Cultivation Agreement created an exclusive relationship between PARC and Premier, in which Premier managed all aspects of a cultivation facility on behalf of PARC in exchange for payment for services rendered.

40. The Cultivation Agreement contained the following provisions regarding its term:

A. The term of the Cultivation Agreement commenced on December 23, 2015 and continues "for a period of ten (10) years . . . and shall automatically renew for one (1) additional ten (10) year term."

B. Either part can terminate the Cultivation Agreement in the event of a "material breach" by the other party, which "remains uncured followed thirty (30) days' written notice thereof by the non-breaching party . . . ."

41. Pursuant to the Cultivation Agreement, Premier agreed to provide certain cultivation management services to PARC, including the following:

A. Implement the cultivation facility's business plan, security policies, inventory and quality control policies, and all other policies and procedures.

B. Pay all costs and expenses related to the acquisition, occupation, development, build-out, management, and operations of the cultivation facility and its infrastructure.

C. Ensure the quality, safety, and security of the cultivation facility and associated products, including providing product testing at industry standards for all products grown and developed for PARC.

D. Manage and perform product transport and security operations related to the cultivation facility in full compliance with DHS rules and regulations.

E. Collect payment for wholesale transactions with other dispensaries if in cash and transport, with appropriate security, and deposit that cash at PARC's desired location.

F. Hire, train, and evaluate personnel and independent contractors to work at the cultivation facility.

PARC and cancelling the contracts among PARC, Premier, JJSM Real Estate, LLC, and JJSM Equipment Fund, LLC.

78. Yuri Downing and Jeff Schaeffer conspired and agreed to "sell" PARC's Board of Director seats to third-parties (including Yuri Downing) in exchange for millions of dollars and to deprive New Leaf of its investment. Although Yuri Downing was not an officer or director of PARC, he conspired with Jeff Schaeffer to facilitate a meeting for the Board of Directors for PARC on April 7, 2017.

79. On April 7, 2017, and consistent with his secret deal with Jeff Schaeffer, Yuri Downing appointed himself as the President of PARC and Whitney Sorrell and Edward Glueckler as member of PARC's Board of Directors.

80. The execution of the Dispensary Management Services Agreement between PARC and Angel Shark, LLC is an act of self-dealing by Yuri Downing and Edward Glueckler.

81. None of the assertions in PARC's June 9, 2017 termination letter have any merit in fact or law, but rather are PARC's attempt (through its new Board of Directors) to try and avoid its payment obligations to Premier, as set forth in the Cultivation Agreement, and the exclusive contractual relationship that the Cultivation Agreement creates with Premier until at least December 2025.

82. The assertions in the June 9, 2017 termination letter are also contrary to PARC's previous requests to Premier to renegotiate the Cultivation Agreement, during which PARC never contended that the Cultivation Agreement was invalid, illegal, or any other excuse that PARC has now created.

83. The true reason why PARC terminated the Cultivation Agreement is to try and gain a better economic advantage and better terms from Premier.

84. With respect to the Building Lease and the Equipment Lease, PARC asserted that, because these agreements "were also predicated on Premier's management of the dispensary operations," the Building Lease and Equipment Lease "are void as well." This assertion does not

product just delivered by Premier and found it to be completely unusable because in was damp, smelled bad and had powdery mildew on it. She and other PARC employees deemed the Premier product unsalable and unfit for human consumption, so she advised the PARC President of this and he instructed her to try to salvage and use whatever she could from the delivery.

69. Ms. Gote sent samples of the marijuana from that delivery to an independent lab, C4 Laboratories, for testing and evaluation.

70. PARC also retained the services of Tyler Burke, an experienced cultivation compliance auditor, to perform a compliance audit on the records of Premier.

71. Hope Jones, PhD, Chief Scientific Officer for C4 Laboratories concluded that the samples of marijuana she reviewed indicated the presence of powdery mildew.

72. Dr. Jones recommended PARC follow up with a thorough investigation of the cultivation facility to determine the severity of the disease.

73. Tyler Burke's findings from his compliance audit were also significantly troubling, as he identified numerous recording inconsistencies by Premier employees and noncompliance with the rules and regulations set forth by the ADHS.

74. Specifically, Tyler Burke found:

a. Premier was not conducting monthly inventory audits as required by AMMA and ADHS rules;

b. Premier was not identifying users of the BioTrack System (used to track the creation, production, and conversion of marijuana onsite) as required by AMMA and ADHS rules;

c. Premier was making excessive inventory adjustments (which he stated "strongly indicates illegal activity" and/or "extreme incompetence");

d. Evidence of "extremely questionable inventory creation" regarding 97 lbs. of product transferred to the facility (which, in his opinion, was "cause enough for license revocation");

e. Evidence of "questionable plant creation and destruction/deletion;"

f. "improper harvest documentation with extremely questionable yield statistics."

75. Ultimately, Tyler Burke concluded:

> **I must stress the extreme importance for the need to conduct an immediate onsite inventory audit and inspection** to review physical inventory, destruction, logs, and all camera footage before any further alterations can be made. **The inventory management actions outlined within this document present actions that are extremely indicative of illegal activity**. Product is created and deleted with no regard to documentation or compliance, withy documentation of events that is often times 1 sentence or even just a few words. **Every action indicates product being illegally brought into the facility,** as well as product being illegally taken out of the facility, often times as a higher-grade product such as BHO Shatter. **This operation is so far out of compliance that the actual license holder is at risk of having the entire PARC license suspended or revoked by the AZDHS.** If compliance is held with such little regard, I have no doubt that other illegal and noncompliant behavior is happening.

76. Based on the foregoing issues, as well as Plaintiffs' unreasonable assertion that PARC was in default of the Contracts, PARC sent a letter dated June 9, 2017, notifying Plaintiffs that Premier's performance was unacceptable and that the Cultivation Agreement violated the Arizona Medical Marijuana Act, A.R.S. § 36-2801 et seq., and Arizona's not for profit corporation laws. In that letter, PARC gave notice of its termination of the Contracts.

77. That same date, June 9, 2017, Jeff Matura issued a letter to Mike Williams advising him that he had been terminated from his position as head grower for Premier. However, Connor Sullivan, Phil Deitel and Ryan Reese (who also participated in the illegal conduct), were not terminated and continued to work for Premier.

78. Neither Premier nor its attorney ever disclosed to PARC, the police or ADHS anything about the illegal purchases of marijuana by Premier employees in May 2017.

79. Shortly after receiving the PARC's June 9, 2017 letter, Plaintiffs responded and denied that the June 9, 2017 letter was an effective termination. Thereafter, Plaintiffs filed this

lawsuit and asked the Court to issue a preliminary injunction to prevent PARC from terminating the Contracts.

80. On July 18, 2017, the Court issued a limited preliminary injunction, enjoining PARC from canceling or withdrawing any Authority to Operate ("ATO") granted by the Arizona Department of Health Services for the Cultivation Facility without first providing Plaintiffs with an opportunity to cure as required by the underlying contracts and/or providing 21-days' notice. The Court also stated that there were questions as to whether PARC's termination letter had any effect at all and ordered that it would have no retroactive effect with respect to the preliminary injunction.

81. Thus, Plaintiffs continued to assert that the Contracts were still in force and they continued to operate as though the Contracts were still in effect for months after receiving the letter from PARC's attorney dated June 9, 2017.

82. Shortly after the Court entered the preliminary injunction, in late July 2017, Kyle Schaeffer ("Kyle"), a recently terminated employee of Premier who had worked at the cultivation facility, sent an email to PARC's President, in which Kyle revealed his personal knowledge of "all types of illegal activities" which had been going on at the facility over the past six (6) months.

83. Kyle stated that two Premier employees, Michael Williams and Ryan Reese (Premier's facility manager) had sent a subordinate, Connor Sullivan, by commercial jet to California with instructions and funds to make an illicit and illegal purchase of 200 pounds of marijuana.

84. According to Kyle, Messrs. Williams and Reese then sent another employee in a rental vehicle to California to transport the marijuana purchased by Mr. Sullivan, but they could only fit about 60 pounds of it into the rental car.

85. After the marijuana was transported back to the cultivation facility in Arizona, Sullivan then extracted marijuana oil from it and processed it for sale by Premier.

XI. SETTLEMENT EFFORTS.

The parties have participated in two settlement conferences, both of which were unsuccessful at resolving any claims. Plaintiffs recently dismissed all claims against Defendants Jeff and Amy Schaeffer.

Dated on July 15, 2020.

BARRETT & MATURA, P.C.

By: /s/ Jeffrey C. Matura
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RADER MAYROSE, LLP

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Attorney for Yurikino Downing

ORIGINAL of the foregoing filed on July 15, 2020 with:

Clerk of the Court
Maricopa County Superior Court
Phoenix, Arizona

Premier Consulting & Management Solutions, LLC

v.

Peace Releaf Center I (d/b/a Patient Alternative Relief Center)

No. CV2017-009033

FINAL JURY
INSTRUCTIONS

result of the promises or conduct of the other party; and any other evidence that sheds light on the parties' intent.

(Contract #27) Construction Against the Party Choosing the Words

You may find that what the parties intended a particular written provision to mean is not clear to you even after you determined and considered the surrounding facts and circumstances. If, and only if, you determined and considered the facts and circumstances surrounding the formation of the contract and still cannot determine which of the possible, reasonable meanings the parties intended, you should apply the following rule of law:

In choosing between the possible meanings of language in a written agreement, the meaning that operates against the interests of the party who supplied the words is generally the preferred meaning.

(Contract #16) Good Faith and Fair Dealing

A party to a contract has a duty to act fairly and in good faith. This duty is implied by law and need not be in writing.

This duty requires that neither party do anything that prevents the other party from receiving the benefits of their agreement.

If you find that one party to a contract has breached the duty of good faith and fair dealing, then the other party is entitled to recover damages proved by the evidence to have resulted naturally and directly from the breach.

If you find that a party breached the duty of good faith and fair dealing but other party did not prove damages with reasonable certainty, then you may award nominal damages (such as $1.00).

(Contract #17) Measure of Direct Damages (Breach of Contract)

If you find that PARC is liable to Premier for breach of the Cultivation Agreement, you must then decide the

full amount of money that will reasonably and fairly compensate Premier for the damages proved by the evidence to have resulted naturally and directly from the breach of contract. The damages you award for breach of contract must be the amount of money that will place Premier in the position Premier would have been in if the contract had been performed. To determine those damages, you should consider the following:

- The management fees that Premier would have received under the Cultivation Agreement had the contract been performed.

- If you find that PARC breached the Cultivation Agreement but that Premier did not prove damages with reasonable certainty, then you may award nominal damages to Premier (such as $1.00).

(Contract #17) Measure of Direct Damages (Breach of Contract)

If you find that (1) Premier is liable to PARC for breach of the Cultivation Agreement or (2) JJSM Real Estate is liable to PARC for breach of the Building Lease, you must then decide the full amount of money that will reasonably and fairly compensate PARC for the damages proved by the evidence to have resulted naturally and directly from the breach of contract. The damages you award for breach of contract must be the amount of money that will place PARC in the position PARC would have been in if the contracts had been performed.

- If you find that Premier or JJSM Real Estate breached their contracts but that PARC did not prove damages with reasonable certainty, then you may award nominal damages to PARC (such as $1.00).

Landlord's Damages for Breach or Termination of Commercial Lease

If JJSM Real Estate proves that PARC breached the Building Lease, then you must calculate JJSM Real Estate's damages.

JJSM Real Estate claims that its damages are missed rent from when the lease required PARC to pay rent until the replacement tenant began paying.

If you find that PARC breached the building lease, then you will decide if you should deduct the rent from the replacement tenant against JJSM Real Estate's damages. Any rent to deduct from JJSM Real Estate's damages is limited to rent exceeding PARC's rent that the replacement tenant will pay during the term of PARC's building lease with JJSM Real Estate. This will be clear on the verdict form.

(Contract #35) Mitigation of Damages for Past Rent

JJSM Real Estate cannot recover any damages that could have been avoided through reasonable efforts to find a new tenant. If you find that JJSM Real Estate failed to make reasonable efforts to find a new tenant, the damages for past rent must be reduced by the amount JJSM Real Estate could have avoided through reasonable efforts. PARC must prove:

1. JJSM Real Estate did not make reasonable efforts to find a new tenant;
2. If JJSM Real Estate had acted reasonably, it is probable that a new tenant could have been found; and
3. The amount of damages JJSM Real Estate could have avoided through reasonable efforts.

(Contract #17) Measure of Direct Damages (Breach of Contract)

If you find that PARC is liable to JJSM Equipment for breach of the Equipment Lease, you must then decide the full amount of money that will reasonably and fairly compensate JJSM Equipment for the damages proved by the evidence to have resulted naturally and directly from the breach of contract. The damages you award for breach of contract must be the amount of money that will place JJSM Equipment in the position JJSM Equipment would have been in if the contract had been performed. To determine those damages, you should consider the following:

- The rent that JJSM Equipment would have received had the contract been performed.

(Contract #23) Mitigation of Damages

PARC claims that JJSM Equipment did not make reasonable efforts to prevent or reduce damages.

JJSM Equipment cannot recover for any damages that could have been prevented or reduced through reasonable efforts. PARC must prove:

1. JJSM Equipment did not make reasonable efforts to prevent or reduce damages;
2. If JJSM Equipment had acted reasonably, JJSM Equipment could have prevented or reduced damages; and
3. The amount of JJSM Equipment's damages that could have been prevented or reduced through reasonable efforts.

(Commercial Torts #11) Interference With Contract or Business Expectancy

Each Plaintiff claims that Yurikino Downing improperly interfered with that Plaintiff's contract with PARC.

To establish this claim, each Plaintiff must prove:

1. That Plaintiff had a contract with PARC;
2. Mr. Downing knew about the contract;
3. Mr. Downing intentionally interfered with the contract with PARC, which caused a breach or termination of that relationship;
4. Mr. Downing's conduct was improper;
5. Mr. Downing was motivated entirely by personal gain at PARC's expense; and
6. That Plaintiff suffered damage caused by the breach or termination of the contract with PARC.

Evaluate these claims separately for each Plaintiff: Premier, JJSM Real Estate, and JJSM Equipment.

(Commercial Torts #12) Interference With Contract or Business Expectancy (Damages)

If you find that Yurikino Downing improperly interfered with a Plaintiff's contract with PARC, you must

then decide the full amount of money that will reasonably and fairly compensate that Plaintiff for the following elements of damages proved by the evidence to have resulted from the interference with the contract:

1. The net benefit that a Plaintiff would have received had the contract been performed.

Evaluate this issue separately for each Plaintiff: Premier, JJSM Real Estate, and JJSM Equipment.

Jury Foreperson

The case will soon be submitted to you for decision. When you go to the jury room you will choose a foreperson.

The role of jury foreperson is important, but please remember that the foreperson's opinion about the case is not more important than that of the other jurors. The opinions of each juror count equally.

The jury foreperson's responsibilities include the following:

1. Make sure every member of the jury is present during all discussions and deliberations.

2. Make sure that the deliberations are conducted respectfully and that all issues are fully discussed. The discussions should be open and free so that every juror may participate.

3. All jurors should be allowed to state their views about the case and what they think the verdict should be and why.

4. The foreperson should count the votes to ensure that every juror has voted.

5. If you reach a verdict, the foreperson should make sure the verdict form is filled out correctly.

6. If the jury reaches a verdict, the foreperson will inform the bailiff. When the jury returns to the courtroom, the foreperson will bring the signed or unsigned verdict forms as well as any question forms that may have been used.

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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, et al.,

Plaintiffs,

vs.

PEACE RELEAF CENTER I, d/b/a PATIENT ALTERNATIVE RELIEF CENTER, an Arizona nonprofit corporation, et al.,

Defendants.

AND RELATED COUNTERCLAIMS

Case No. CV2017-009033

DEFENDANT PARC'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, MOTION FOR NEW TRIAL

(Assigned to the Hon. James Smith)

Defendant Peace Releaf Center I ("PARC") renews its motion for entry of judgment as a matter of law under Ariz. R. Civ. P. 50(b) on the plaintiffs' claims for breach of contract (Counts 3-5) and breach of the duty of good faith and fair dealing (Counts 9-11). In the alternative, PARC moves for a new trial. *See* Ariz. R. Civ. P. 50(b)(2) & 59.

At trial, PARC moved for judgment as a matter of law under Rule 50(a) on the plaintiffs' claims for breach of contract and breach of the duty of good faith. The Court denied those motions and the jury returned the following verdicts against PARC:

Count	Description	Plaintiff / Defendant	Verdict	Damages Awarded
3	Breach of Cultivation Agreement	Premier/ PARC	for Premier	$0
4	Breach of Lease	JJSM Real Estate/ PARC	for JJSM Real Estate	$1,377,320
5	Breach of Equipment Lease	JJSM Equipment/ PARC	for JJSM Equipment	$68,000
9	Breach of Good Faith	Premier/ PARC	for Premier	$0
10	Breach of Good Faith	JJSM Real Estate/ PARC	for JJSM Real Estate	$0
11	Breach of Good Faith	JJSM Equipment/ PARC	for JJSM Equipment	$0

The jury's verdicts on Counts 3-5 and 9-11 must be overturned and judgment entered in PARC's favor because the plaintiffs failed to prove either damages or breach, both of which are essential elements of their claims. The plaintiffs also improperly relied on the same conduct to support both their breach of contract and bad faith claims. In addition, the evidence confirms that JJSM Equipment failed to mitigate its damages. The Court should therefore direct entry of judgment in PARC's favor as a matter of law under Rule 50(b) on Counts 3-5 and 9-11. In the alternative, the Court should order a new trial under Rules 50(b)(2) and 59(a).

ARGUMENT

Rule 50. The Court may enter judgment as a matter of law if "a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on [an] issue."

Ariz. R. Civ. P. 50(a); *see also* Ariz. R. Civ. P. 50(a)(1)(B) (when a party has not presented sufficient evidence to prevail on an issue, the court may "grant a motion for judgment as a matter of law against [it] on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue"). The Court should grant the motion under the same circumstances it would grant a motion for summary judgment. *Roberson v. Wal-Mart Stores, Inc.*, 202 Ariz. 286, 290, ¶ 14 (App. 2002).

Rule 59. The Court may grant a new trial for "any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial," because of "error in the admission or rejection of evidence, errors in giving or refusing jury instructions, or other errors of law at the trial or during the action," if the verdict "is not supported by the evidence or is contrary to law," or due to "excessive or insufficient damages," among other reasons. Ariz. R. Civ. P. 59(a)(1)(A), (E)-(F), (H). "The greatest possible discretion is given the trial court with respect to its ruling on a motion for new trial because, like the jury, it has had the opportunity to hear evidence and observe the demeanor of witnesses." *Smith v. Johnson*, 183 Ariz. 38, 40-41 (App. 1995).

These rules give the "trial court . . . the opportunity to correct any asserted defects before error may be raised on appeal." *Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994).

I. PARC is entitled to judgment as a matter of law on Count 3 for breach of the Cultivation Agreement.

A. Premier failed to prove damages.

"[T]he *plaintiff has the burden of proving* the existence of the contract, its breach *and the resulting damages*." *Graham v. Asbury*, 112 Ariz. 184, 185 (1975) (emphases added). A breach of contract claim fails without proof of damages. *See Chartone, Inc. v. Bernini*, 207 Ariz. 162, 170, ¶ 30 (App. 2004). Because Premier failed to prove that PARC's alleged breach of the Cultivation Agreement caused any damages, its claim fails.

At trial, Premier argued that "[w]e've shown damages. It's just the value of those damages that's been difficult for us." EX112 (10/21 am, 29:3-5). The Court thus instructed the jury that it could award nominal damages if it found Premier was damaged but failed to prove the damages amount with reasonable certainty. EX178 (10/26 Tr., 12:11-14); *see*

also EX112 (10/21 am, 29:11-14). But the jury declined to award even nominal damages, meaning Premier failed to prove it was damaged at all, *see Guirguis v. Patel*, 1 CA-CV 19-0598, 2020 WL 7024344, at *4, ¶ 22 (Ariz. App. Nov. 24, 2020) (mem.) ("Defendants successfully defended Plaintiffs' breach of contract claim because the jury awarded no damages."). That verdict is consistent with the lack of damages evidence at trial. *See, e.g.*, EX107-11, EX113-16 (10/21 am, 24:21-28:14, 30:20-33:13); EX187 (Trial Ex. 24 (Cultivation Agreement) at § 2) (all marijuana remains PARC's "sole and exclusive property"). Thus, the Court should enter judgment in PARC's favor on Count 3.

B. Premier failed to prove breach.

Premier's failure to prove breach also provides an independent basis for judgment. *See Graham*, 112 Ariz. at 185 ("the plaintiff has the burden of proving . . . breach"). Premier alleged that PARC breached the Cultivation Agreement by (1) failing to pay for saleable marijuana; (2) denying reciprocal access to the Dispensary; and (3) attempting to terminate on June 9, 2017. EX002 (Joint Pretrial Statement ("JPTS") at 20, ¶¶ 4-6). But no evidence would allow a reasonable jury to find that PARC breached in these ways.

1. PARC paid Premier for all saleable marijuana delivered.

First, Premier never proved that PARC failed to pay for saleable marijuana—uncontroverted testimony confirmed that Premier received full payment for the 8.9 pounds of marijuana it was able to produce and deliver. Bob Chilton testified that PARC received two deliveries of saleable product, and that PARC paid Premier for both. EX157-64 (10/22 am, 91:5-98:2); *accord*, EX143-45 (10/21 pm, 130:18-132:13). The plaintiffs didn't elicit any contrary testimony or argue otherwise. EX128-42 (10/21 pm, 110:23-124:19). No evidence allows a jury to find that PARC failed to pay Premier for saleable marijuana.

2. PARC did not breach the "reciprocal access" requirement.

Second, Premier did not even attempt to prove at trial that PARC wrongfully denied it access to the Dispensary under § 16 of the Cultivation Agreement: "Reciprocal Access to Facilities and Operations. The Parties agree to provide access to, and reasonable work space as necessary, within their respective facilities for compliance oversight." EX188

(Trial Ex. 24 at § 16). Nor can it prove that fact, for two reasons.

First, it is undisputed that Premier and PARC both denied the other access to their respective facilities. "Reciprocal" means "mutual" or "[c]orresponding; equivalent." *Reciprocal*, Black's Law Dictionary (11th ed. 2019). Premier continued to deny PARC access to the cultivation facility, *see* EX127 (10/21 pm, 55:6-10), so it cannot complain that PARC denying it access to the retail store was anything other than "reciprocal." Indeed, Premier's only trial evidence on this issue (a letter from counsel) confirms the parties gave each other corresponding levels of access. The letter asks PARC's lawyer to call "to discuss *Premier* providing reasonable access *to PARC* at the cultivation facility, *as well as PARC* providing reasonable access *to Premie*r at the retail dispensary location." EX220 (Trial Ex. 54) (emphases added). The next day, PARC's lawyer responded that there was no "legal basis" for Premier's request. Trial Ex. 55 at PREMIER000099. Premier never replied to explain its access right. Instead, Premier sued three days later. These letters thus confirm that the parties continued to provide each other with the same level of access—i.e., none.

Second, the "reciprocal" access required under the Cultivation Agreement is for "compliance oversight" purposes, not any purpose. EX188 (Trial Ex. 24 at § 16). Premier never requested access for compliance purposes, EX220 (Trial Ex. 54) (requesting only to discuss reciprocal access). Thus, the evidence at trial shows that *Premier* breached the access requirement—not PARC. No reasonable jury could find for Premier on this basis.

3. Ineffective termination does not breach Cultivation Agreement.

Third, the June 9, 2017 letter from PARC to Premier cannot be a breach because the parties agree the letter did not terminate the agreement. *See, e.g.*, EX046 (10/15 pm, 102:20-25) (Premier did not accept the purported termination). As Premier previously argued, the letter was ineffective because it did not offer an opportunity to cure. Moreover, plaintiff witness Richard Merel testified that PARC never sought to enforce the letter as a termination; the parties simply disregarded it. EX059 (10/19 am, 5:8-21). Under the Cultivation Agreement's plain terms, an ineffective termination notice is neither a default

nor a breach. EX187 (Trial Ex. 24 at § 1(c)).

In sum, Premier presented no evidence that would allow a reasonable jury to find that Premier established the elements of damages or breach of the Cultivation Agreement, both of which are necessary to prove breach of contract. *See Graham*, 112 Ariz. at 185. PARC is therefore entitled to judgment in its favor as a matter of law on Count 3.

II. PARC is entitled to judgment on Count 4 for breach of the Lease.

A. JJSM Real Estate cannot prove that it suffered any damages.

As an initial matter, the verdict in favor of JJSM Real Estate on its breach of contract claim must be overturned because PARC's alleged breach allowed JJSM Real Estate to lease the property to a new tenant for a much higher rental rate. The new tenant's rental obligation for the remainder of PARC's lease term more than offsets any unpaid rent from PARC. Thus, JJSM Real Estate has suffered no damage and has no actionable claim as a matter of law. *See Graham*, 112 Ariz. at 185; Ariz. R. Civ. P. 50(a)(1)(B).

This Court already reached the correct legal conclusion on this issue. It previously ruled that: (1) damages are an essential element of a breach of contract claim, *see, e.g.*, EX019-20 (10/13 Tr., 23:21-24:1)[1]; (2) JJSM Real Estate must "apply the excess rent [paid by the new tenant] to PARC's past liability," 9/29/20 Order at 6; and (3) "[i]f the excess rent applies to PARC's past missed rent, JJSMRE has no damages," *id.* at 5. These rulings were sufficient to enter judgment for PARC on Count 4. The Court nevertheless let the jury consider the claim—including whether to offset excess rent against PARC's rent—on the theory that having an advisory jury verdict may streamline proceedings post-appeal. *See* EX020-22 (10/13 Tr., 24:3-26:21); EX017-18 (*id.* at 21:25-22:22) (arguing that the Court could simply wait to adjust the award post-trial to reflect the new lease's impact); 10/19/20 Order at 2 ("the JJSM Real Estate aspect will remain without prejudice to motion practice the Court anticipates receiving following evidentiary presentations"). The jury ultimately entered a verdict in favor of JJSM Real Estate and found the "full damages" to be

[1] The plaintiffs don't dispute this fundamental point. EX019 ("COURT: Don't you need to have evidence on every element of the claim, and an essential element of a breach of contract claim is damages, right? [PLAINTIFFS' COUNSEL]: Absolutely.").

$1,377,320. Verdict Form #5. In direct conflict with the Court's earlier ruling, the jury credited $0 in rent from the replacement tenant towards these damages. *See id*.

This Court's pre-trial ruling on this issue is correct. Whether the new tenant's rent should be credited towards PARC's liability is a legal question dependent upon JJSM Real Estate's election of remedies, *see* 86 Am. Jur. Trials 1, § 5 ("the way in which the landlord decides to respond to the tenant's abandonment will have a significant effect on the landlord's right to recover rent under the lease"), so the jury never should have been asked the question. PARC is thus entitled to judgment on Count 4 notwithstanding the verdict.

JJSM Real Estate sued PARC for breach under § 17.2(c) of the Lease, under which "general principles of contract law and commercial lease disputes apply." 9/29/20 Order at 4.[2] The common law gives commercial landlords three options when "a tenant breaches a lease by vacating or abandoning the premises prior to expiration of the lease term," including: (1) maintain the lease and sue for rent as it comes due; (2) maintain the lease and sue for all rent due when the term ends; or (3) retake possession of the property, relet the premises, and sue the tenant for the difference between the rent due under the lease and the amount received from the new tenant. 52A C.J.S. Landlord & Tenant § 1238; *accord*, *Tempe Corp. Office Bldg. v. Ariz. Funding Servs., Inc.*, 167 Ariz. 394, 399 (App. 1991) ("if a lease is not terminated, the landlord may recover unpaid rent due prior to reletting the premises and future rent due for the balance of the lease term, subject to the landlord's duty to mitigate damages by reletting the premises.").

JJSM Real Estate took the third option here. Thus, JJSM Real Estate's remedy was to relet the property, reasonably mitigate damages, and sue PARC for any difference. *See Tempe Corp. Office Bldg.*, 167 Ariz. at 399. JJSM Real Estate complied with the first two steps by reletting the property and mitigating damages, but then it sued PARC for the full Lease balance, rather than the difference owed. That is improper as a matter of law.

Leases are just contracts. 11 Corbin on Contracts § 57.11 at 678 ("Corbin"). And

[2] Although other Lease provisions allow JJSM Real Estate to recover the full balance of accrued and future rent, without any offset for rent from a replacement tenant, JJSM Real Estate did not pursue a remedy under those provisions. 9/29/20 Order at 3-4.

"[c]ontract damages are ordinarily based on the injured party's expectation interest and are intended to give him the benefit of his bargain by awarding him a sum of money that will, to the extent possible, put him in as good a position as he would have been in had the contract been performed." Restatement (Second) of Contracts § 347 (1981); *cf. John Munic Enters., Inc. v. Laos*, 235 Ariz. 12, 18, ¶ 18 (App. 2014) ("Enforcing the expectation interests of the parties is one of the principal goals of remedying a breach of contract."). In addition, "the basic principle underlying common-law remedies [is] that they shall afford *only compensation for the injury suffered*." *Illinois Cent. R. Co. v. Crail*, 281 U.S. 57, 63 (1930) (emphasis added). That means "gains that the injured party could have made by reasonable effort and without risk of substantial loss or injury by reason of opportunities that would not have been available to the nonbreaching party but for the other party's breach are deducted from the amount that the plaintiff could otherwise recover." 11 Corbin § 57.11 at 671; *accord* 24 Williston on Contracts § 64:3 (4th ed.) ("Williston") (when a breach frees a plaintiff from further performance and thus "enables the injured party to acquire pecuniary advantages that he or she otherwise would not have been able to obtain," any damages must be reduced by that advantage).

In this case, JJSM Real Estate and PARC struck a bargain whereby PARC would pay about $33,000 per month to lease JJSM Real Estate's property through December 2025. PARC's alleged breach of that bargain gave JJSM Real Estate the opportunity to replace PARC with a new tenant agreed to pay *more* rent—at least $70,000/month—from April 2020 through December 2025. EX206, -09 (Trial Ex. 37 at PREMIER005914, -5957). "A plaintiff is entitled to be made whole, but not more than whole, and where the parties have entered into a contract, being 'made whole' means realizing the benefit of the bargain that they struck." 24 Williston § 64:1 (citation omitted). Thus, any damages caused by PARC must be reduced by the "extra" rent JJSM Real Estate can now receive beyond what it could get under the original bargain.

When PARC's rental liability for the period before the new tenant took possession (December 2016 to March 2020) is reduced by the excess rent coming in from the new

tenant, JJSM Real Estate is actually better off than it was before because the excess rent more than covers any liability. Absent any actual financial injury, JJSM Real Estate cannot recover any contract damages. *Illinois Cent. R. Co.*, 281 U.S. at 63 ("the basic principle underlying common-law remedies [is] that they shall afford only compensation for the injury suffered"). And without damages, JJSM Real Estate cannot prevail on its Lease breach claim. *See, e.g. Chartone*, 207 Ariz. at 170, ¶ 30 (plaintiffs have the "burden of establishing damages as an essential element of their breach-of-contract claim").

JJSM Real Estate previously argued that PARC should not receive an offset for the new tenant's rent because JJSM Real Estate hasn't actually been paid those amounts yet. *See* EX017-18 (10/13 Tr., 21:18-22:17). But that ignores the purpose of contract damages—to put the non-breaching party back in the position it was in before the breach. 24 Williston § 64.1. Having a replacement tenant that is contractually obligated to make rental payments every month puts JJSM Real Estate in the exact position it was in before PARC's breach, except that now it is contractually entitled to *even more* rent. Before PARC's breach, JJSM Real Estate did not have cash for future rent; it had a contractual right to receive payments. That's what it has now.

In *In re Phar-Mor, Inc.*, 336 B.R. 326, 334 (Bankr. N.D. Ohio 2006), the court rejected a similar argument in a case involving an equipment lease. In that case, the original lessee, Phar-Mor, declared bankruptcy and defaulted on the lease. *Id.* at 328-29. The lessors re-let the equipment to a new lessee (Snyder) on the same terms, thereby fully mitigating their damages. *Id.* at 329, 334. But then Snyder also declared bankruptcy and defaulted. *Id.* at 330-31. Applying settled contract principles,[3] the court rejected the lessor's attempt to recover from Phar-Mor under the original lease. *Id.* at 333-35. It reasoned that the lessors "had the ability to evaluate Snyder as a lessee and require some kind of security or different lease terms to attempt to protect themselves from damages that might result from a possible breach of contract by Snyder," yet "made their own business decision to enter into the

[3] The court cited the mitigation principles from Restatement (Second) of Contracts § 350, which Arizona likewise follows, *see W. Pinal Family Health Ctr., Inc. v. McBryde*, 162 Ariz. 546, 549 (App. 1989) (applying Restatement § 350).

Snyder Leases on the terms set forth therein." *Id.* at 334. If the court allowed the lessors to pursue damages against Phar-Mor upon Snyder's default, "the effect would be as if [Phar-Mor] was a guarantee or co-debtor with Snyder," even though Phar-Mor never guaranteed anything. *Id.* Accordingly, the court held that "[Phar-Mor]'s duties under the original leases were not revived when the mitigation failed." *Id.*

Of course, the duty to mitigate does not require JJSM Real Estate to accept a less-desirable replacement tenant—it remained free to make its own business decision about whether to lease to a new tenant and on what terms. *See McBryde*, 162 Ariz. at 549 ("the mitigation doctrine only requires that the party seeking relief engage in reasonable efforts to avoid further damages, without exposing the party to 'undue risk, burden or humiliation.'" (citation omitted); *Phar-Mor*, 336 B.R. at 335 ("Lessors made their own business decisions and assured themselves about the ability of Snyder to perform" when they "entered into new leases with Snyder"). But even if it did, JJSM Real Estate does not suggest that its new tenant is less creditworthy or qualified than PARC. Thus, JJSM Real Estate is in the very same place it was before: with its property leased to a tenant under a contractual obligation to pay monthly rent.

This also explains why JJSM Real Estate's hypotheticals about a future default by the new tenant are red herrings. Like the original lessee in *Phar-Mor*, PARC did not secure its rental payments under the Lease with a guarantee, so JJSM Real Estate is not entitled to treat PARC as a guarantor of the new tenant's rent, either. Said another way, if the new tenant defaults, JJSM Real Estate is not in a worse position than it would have been if PARC were still the tenant. It is in the very same position, except that now the obligor is the new tenant instead of PARC. *Cf. Phar-More*, 336 B.R. at 335 ("By entering into the Snyder Leases, Lessors replaced [Phar-Mor] with Snyder as a new obligor for the equipment during the original lease term.").

Moreover, the mitigation doctrine already accounts for PARC's future rent obligations. JJSM Real Estate is better off in this case because the new tenant signed a new lease at a higher rent. But if the new tenant's rent were lower, PARC would still owe JJSM

Real Estate for the difference. JJSM Real Estate cannot get both the benefit of a new tenant's higher rent under a replacement lease *and* a contingent guarantee of payment at PARC's lower rate in the event of the new tenant's default. This violates the fundamental principle underlying common law contract damages. *See, e.g., Ill. Cent. R. Co.*, 281 U.S. at 63 (damages award should have been based on wholesale, not retail, price of undelivered goods where the plaintiff had not incurred the costs of delivery to retail customers or earned a retail profit on any resale contracts).

For these reasons, JJSM Real Estate cannot establish that it suffered damages from PARC's alleged breach. The Court should enter judgment for PARC on Count 4.

B. JJSM Real Estate failed to prove breach.

JJSM Real Estate's failure to prove breach of the Building Lease provides yet another basis for judgment as a matter of law. At trial, JJSM Real Estate claimed that PARC breached the Lease by (1) purporting to terminate the Lease in June 2017; and (2) failing to pay amounts demanded by JJSM Real Estate in its May 19, 2017 letter. *See* EX003 (JPTS at 21, ¶¶ 9-10). But JJSM Real Estate failed to prove that either of these actions constituted a breach of the Lease.

1. Ineffective termination is not a breach.

First, PARC's termination letter in June is not a material breach under the plain terms of the Lease. Although *actually* terminating without providing the required notice would breach the Lease's terms, *see* EX194 (Trial Ex. 25 at § 31.18) (allowing tenant to terminate on six months' advance notice), an ineffective termination without adequate notice is not a breach—it's a nullity. Indeed, the trial evidence confirmed that both parties treated this letter as ineffective. EX059 (10/19 am, 5:8-21). PARC never sought to enforce it and JJSM Real Estate continued (and still continues) to attempt to enforce the Lease against PARC. *See, e.g., id.*; EX046 (10/15 pm, 102:20-25).

JJSM Real Estate cannot have it both ways. Either the letter terminated the Lease in June 2017 (without notice and thus in breach of the Lease terms) and PARC's obligations thereunder terminated, as well, or the letter did not terminate the Lease (and thus did not

constitute a breach) and PARC remained liable for future rent, subject to the landlord's duty to mitigate.[4] In this case, JJSM Real Estate admitted that the Lease was not terminated by PARC's June 2017 letter. Thus, that letter cannot form the basis of its breach of contract claim.

2. The trial evidence confirmed that PARC had no obligation to pay rent from December 2016 to May 2017.

Second, Premier presented no evidence that would provide a reasonable jury with "a legally sufficient evidentiary basis to find" that PARC breached the Lease by failing to pay rent from December 2015 to May 2016. Ariz. R. Civ. P. 50(a)(1)(B). The parties agree that PARC's obligation to make rent payments began only once a "first harvest" of saleable marijuana occurred at the premises, as "determined in the sole, *but reasonable* discretion of the Landlord [JJSM Real Estate]." EX191-92 (Trial Ex. 25 at § 3.1) (emphasis added). According to the plaintiffs, the "first harvest" occurred at the facility in December 2016. But the plaintiffs' only documentary evidence of this alleged "first harvest" is an email from Jeff Schaeffer titled "From mother room to Bloom room" with photos of marijuana plants. EX210-16 (Trial Ex. 45). That email does not indicate that the photos reflect a "first harvest"—in fact, neither "first" nor "harvest" appears anywhere in it. The only explanation in the email is the title itself, which says: "From mother room to Bloom room." EX210. In other words, all that email shows is that plants made it from one room to another.

Nonetheless, after "receiving this email in December of 2016" from Jeff Schaeffer, Richard Merel "declare[d] that a first harvest had occurred." EX040 (10/15 am, 58:14-17). Merel could not personally explain how or why the email showed that a first harvest had occurred; instead, he claimed that Schaeffer told him that this was a first harvest. *See, e.g.*, EX049-53 (10/15 pm, 131:19-135:1). The plaintiffs could have called Schaeffer as a witness to corroborate that claim, but they chose not to. Instead, *PARC* called Schaeffer, who testified that no first harvest was ever declared. *E.g.*, EX118 (10/21 am, 50:19-24). And given that Schaeffer's salary would have doubled once there were a first harvest, his testimony squarely undercuts Merel's contrary hearsay claim. *See* EX119-21 (*id.* at 51:18-

[4] If JJSM Real Estate claims the June 2017 letter *did* terminate the Lease, it can recover only the rent owed through termination (about $181,000). *See* EX217-18 (Trial Ex. 47).

53:3). (The plaintiffs also never gave Schaeffer that raise, thus contradicting their own claim of a first harvest. *Id*.) Moreover, Merel's claim finds zero support in the document evidence produced in this case. Aside from a single letter from their lawyer sent almost six months later, the plaintiffs have not produced even one document or subsequent communication confirming that a first harvest happened in December 2016. EX048-49 (10/15 pm, 130:23-131:5). No reasonable jury could find that inadmissible, uncorroborated hearsay and an email stating "From mother room to Bloom room" prove that JJSM Real Estate reasonably declared a first harvest.

Furthermore, even if this evidence could suffice as prima facie evidence of a "first harvest," the rebuttal evidence squarely refutes it. At trial, Bill Artwohl was the only plaintiff witness that could testify based on personal knowledge regarding the meaning of "first harvest." He explained, "As a consultant, I am all over the country on new builds, all over the country on new builds. *First harvest is when you first get clean, acceptable flower to the vault and to market*." EX082 (10/19 pm, 122:17-20) (emphasis added). Yet the plaintiffs' witnesses admitted that they did not know whether Premier had produced any clean, acceptable flower that made it to market in December 2016. EX082 (*id.* at 122:21-24) (Artwhol testimony: "Q. Okay. And did that happen at the Premier facility? / A. I know that it went to vault. I can't vouch that it went to market . . . ."); EX094-95 (10/20 pm, 13:17-14:8) (Missener relied solely on Schaeffer to declare "first harvest").

For example, Merel admitted that he had no idea whether the marijuana in the photos attached to Jeff Schaefer's email (the sole basis upon which JJSM Real Estate "declared" a first harvest, *see* EX040 (10/15 am, 58:14-17) made it to the vault or to market. EX049-53 (10/15 pm, 131:19-135:1); EX079 (10/19 pm, 8:8-14). And Merel admitted that it would not be reasonable to declare a first harvest if JJSM Real Estate had no evidence that any saleable marijuana had been produced, which it did not. EX079-80 (10/19 pm, 8:15-9:5). Thus, under the plaintiffs' own definition of "first harvest," they did not prove that a first harvest occurred.

JJSM Real Estate's subsequent conduct further confirms that no "first harvest"

triggered PARC's rental obligations in December 2016. The Lease requires that any notices or demands be in writing. EX193 (Trial Ex. 25 at Art. 25) ("All notices and demands required or desired to be given by either party to the other with respect to this Lease or the Premises shall be in writing . . . ."). JJSM Real Estate admitted at trial that it did not give PARC timely written notice of the "first harvest" declaration. *E.g.*, EX047 (10/15 pm, 129:10-20) ("I don't have knowledge of any written notice that was provided to PARC advising them of the first harvest date."); EX50, EX52-53 (*id.* at 132:4-13, 134:18-135:4) (confirming JJSM Real Estate failed to notify PARC of its alleged "first harvest" decision). In fact, it did not notify PARC of its alleged "first harvest" declaration for another five months, in May 2017. *See* EX217-18 (Trial Ex. 47). Absent a first harvest and written notification of the same, PARC had no obligation to pay rent and thus did not breach the Lease by not paying rent from December 2016 to May 2017.

In sum, JJSM Real Estate failed to prove that PARC breached the Lease by sending an ineffective termination notice or by failing to pay rent from December 2016 to May 2017. Its failure to prove a key element of its breach of contract claims means that the Court should enter judgment as a matter of law in PARC's favor on Count 4.

III. PARC is entitled to judgment on Count 5 for breach of the Equipment Lease.

A. JJSM Equipment failed to prove breach.

The Court should also enter judgment in PARC's favor on JJSM Equipment's claim for breach of the Equipment Lease because JJSM Equipment failed to prove breach. Much like JJSM Real Estate's claim for breach of the Building Lease, JJSM Equipment alleged that PARC breached the Equipment Lease by (1) purporting to terminate the Equipment Lease on June 17, 2017; and (2) failing to pay rental fees due. *See* EX003 (JPTS at 21, ¶¶ 9-10). But, also like JJSM Real Estate's flawed breach claim, JJSM Equipment failed to establish that this conduct constituted a breach of the parties' agreement.

1. The Equipment Lease does not preclude early termination.

In contrast to the Cultivation Agreement and Building Lease, the Equipment Lease contains no notice requirement for early termination. *Compare* EX187 (Cultivation

Agreement at § 1(c)) *and* EX194 (Building Lease at § 31.18), *with* EX196, -99 (Equipment Lease at §§ 1(a), 10). Thus, although PARC's notice on June 17, 2017 was ineffective to terminate the Cultivation Agreement or Building Lease, it *was* an effective termination of the Equipment Lease. *See* EX063-65 (10/19 am, 96:1-98:11); EX150-51 (10/22 am, 11:22-12:3). And under the Equipment Lease's plain terms, early termination is not a breach, nor is there any penalty for doing so. To the contrary, the Equipment Lease specifies what counts as an "event of default" and early termination is not included. EX199 (Trial Ex. 29 at § 10). That makes sense, since other parts of the agreement expressly contemplate early termination as an option. *See* EX196 (*id.* § 1(a)) ("The term of this Lease shall commence upon the Effective Date and shall continue until December 31, 2025 . . . , *unless earlier terminated* . . . ."); EX196 (*id.* § 1(b)) (giving renewal option, "[p]rovided this Lease *has not been terminated*"); EX199-200 (*id.* § 13) ("Upon expiration *or termination* of this Lease . . ."") (all emphases added). Thus, PARC's termination of the Equipment Lease cannot support JJSM Equipment's breach claim as a matter of law.

2. The evidence confirms PARC had no obligation to pay rental fees.

Because PARC's June 2017 termination letter cannot be a breach of the Equipment Lease, that leaves JJSM Equipment with its claim that PARC breached by failing to pay rental fees due thereunder. Like the Building Lease, however, PARC's rental obligations under the Equipment Lease do not arise until there has been a "first harvest." EX196-97 (Trial Ex. 29 at § 2(a)). For the same reasons discussed in § II.B.2, the plaintiffs cannot prove that PARC's rental obligations came due because they failed to prove that a "first harvest" occurred and that they notified PARC in writing of the same. Consequently, under the Equipment Lease's plain terms, PARC's rent remained abated. JJSM Equipment thus failed to prove that PARC's failure to pay rent fees was a breach of the Equipment Lease.

3. No default because JJSM Equipment never gave notice.

Finally, JJSM Equipment's breach claim also fails because it never provided PARC with notice of default, as required by the Equipment Lease. Section 10(a) of the Equipment Lease provides that the "Lessee's failure to pay any Base Rent . . . owed to Lessor hereunder when due, and such failure continues for five (5) days after Lessor's written

DATED this 25th day of March, 2021.

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ARIZONA SUPERIOR COURT

MARICOPA COUNTY

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, et al.,

Plaintiffs,

v.

PEACE RELEAF CENTER I, dba PATIENT ALTERNATIVE RELIEF CENTER, et al.,

Defendants.

AND RELATED COUNTERCLAIMS

Case No. CV2017-009033

PLAINTIFFS' REPLY TO SUPPORT MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE ALTERNATIVE, MOTION FOR NEW TRIAL REGARDING DAMAGES

(Assigned to Judge Smith)

Plaintiffs Premier Consulting and Management Solutions, JJSM Real Estate Fund, and JJSM Equipment Fund (collectively, "Plaintiffs") submit this reply to support their Motion for Judgment As a Matter of Law Or, In the Alternative, Motion for New Trial Regarding Damages ("Motion"). Defendants PARC and Yuri Downing raise several arguments in their response motion. Each argument is addressed below.

new trial to Premier on its damages against PARC and permit Premier to introduce the Inventory Report as evidence.

III. JJSM REAL ESTATE IS ENTITLED TO A NEW TRIAL AGAINST PARC REGARDING DAMAGES.

JJSM Real Estate requested a new trial against PARC regarding damages on two issues: real estate taxes and late fees. Each is addressed below.

A. Real Estate Taxes.

Based upon the trial transcript that PARC references in its response motion during arguments on final jury instructions, JJSM Real Estate withdraws its request for a new trial on real estate taxes. Although Plaintiffs' counsel does not recall this specific exchange, it does not contest what is stated within the transcript.

B. Late Fees.

Richard Merel testified about the late fees PARC owed under the Building Lease. *See* October 15, 2020 Trial Testimony of Richard Merel, at p. 69, lines 16-22, attached as Exhibit 3 to Plaintiffs' Motion, at 29; *see also* October 19 Trial Testimony of Richard Merel, at p. 45, line 19 to p. 46, line 7, attached as Exhibit 6 to Plaintiffs' Motion, at 47-48. Merel's testimony referenced Section 31.8 in the Building Lease, which stated that, if PARC failed to pay monthly rent within 10 days from when due, PARC was liable for a late fee of 5% of the unpaid amount. *See* Building Lease, at Section 38.1, attached as Exhibit 8 to Plaintiffs' Motion, at 88. PARC did not present any witnesses or evidence to counter Merel's testimony or to suggest that Section 38.1 did not apply.

PARC instead argues that Plaintiffs failed to disclose the amount of the late fees, and were therefore precluded from seeking late fees as damages. As discussed in Plaintiffs' Motion, this argument fails for several reasons. First, Plaintiffs disclosed Merel to testify about Plaintiffs' damages and also disclosed that Plaintiffs sought damages "in an amount to fully and fairly compensate Plaintiffs for the damages incurred as a result of Defendants' wrongful conduct."

10 to Plaintiffs' Motion, at 134. It was therefore improper for the Court to sustain Downing's disclosure objection during trial because Downing waived that objection.

The Court's error also prejudiced Plaintiffs by precluding them from using the Earnest Money Agreement to justify additional damages against Downing. If the jury were able to consider the fact that Downing used the Earnest Money Agreement to benefit himself by an additional $500,000, the jury may have awarded Plaintiffs even more damages than already awarded on the interference with contract claims. The Court should therefore grant a new trial to Plaintiffs on this issue under Rule 59(a)(1)(F).

V. IN THE ALTERNATIVE, THE COURT SHOULD AMEND THE JUDGMENT TO AWARD NOMINAL DAMAGES OF AT LEAST $1.00.

The Court instructed the jury on nominal damages with respect to each of Plaintiffs' claims. The Court's instruction was clear: if the jury concluded that PARC was liable to a Plaintiff, but a Plaintiff "did not prove damages with reasonable certainty," the jury was to award nominal damages, such as $1.00. *See* October 26, 2020 Trial Transcript, at p. 11, lines 17-20, and p, 12, lines 11-14, attached as Exhibit 13 to Plaintiffs' Motion, at 206-207. The jury therefore had the following options: (i) find in favor of a Plaintiff and award damages; (ii) find in favor of a Plaintiff and award nominal damages of at least $1.00; or (iii) find in favor of PARC.

The jury found in favor of Premier on its breach of contract claim against PARC and in favor of all Plaintiffs on their breach of duty of good faith and fair dealing claims against PARC. Yet, the jury did not award any damages on these claims. *See* Verdict Form Nos. 1, 2, 6, and 10, attached as Exhibit 2 to Plaintiffs' Motion, at 9-10, 14, 18. The Court then entered judgment consistent with the jury's verdicts. *See* Judgment, dated March 17, 2021. The Court should therefore either order a new trial on damages for Premier and Plaintiffs on these claims, or amend the judgment to award nominal damages of at least $1.00.

VI. CONCLUSION.

For the reasons set forth above and in Plaintiffs' Motion, Plaintiffs request that the Court amend the judgment to award JJSM Real Estate damages on its interference with contract claim against Downing; grant a new trial on damages regarding Premier's claims against PARC, JJSM Real Estate's breach of contract claim against PARC, and Plaintiffs' claims against Downing; and/or amend the judgment to award nominal damages to Plaintiffs against PARC.

Dated on May 4, 2021.

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ARIZONA SUPERIOR COURT

MARICOPA COUNTY

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, et al., Plaintiffs, v. PEACE RELEAF CENTER I, dba PATIENT ALTERNATIVE RELIEF CENTER, et al., Defendants. AND RELATED COUNTERCLAIMS	Case No. CV2017-009033 **JOINT NOTICE REGARDING PRESENT VALUE CALCULATIONS** (Assigned to Judge Smith)

Pursuant to the Court's August 6, 2021 Minute Entry, the parties submit the following joint notice regarding present value calculations.

After consultation among counsel, the parties agree that their respective positions regarding the methodologies, data, and assumptions relied upon to calculate the present value of rent calculations are already set forth in their prior position statements. *See* Plaintiffs' Separate Statement Regarding Rent Calculations and Defendant PARC's Position Statement Value of Rents, both filed on June 14, 2021. Plaintiffs do note a typographical error in their Separate

Statement. On page 3, line 19, the word "not" should be inserted between "is" and "appropriate" such that the sentence reads: "It is not appropriate to discount the damages award because it is a post judgment certainty and not an uncertain amount." Other than fixing this typographical error, and because the parties agree that they have already set forth their respective positions, the parties do not believe that any further supplementation or an evidentiary hearing is necessary.

Dated on August 20, 2021.

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MEMBERSHIP INTEREST PURCHASE AGREEMENT

BY AND AMONG

NEW LEAF INVESTMENT AZ, LLC
AS THE PURCHASER,

AND

JJSM REAL ESTATE FUND, LLC,
JJSM EQUIPMENT FUND, LLC AND
PREMIER CONSULTING AND MANAGEMENT SERVICES, LLC
AS THE SELLER,

AND

JILLCO, LLC, AND
JEFFSCO, LLC
AS THE FOUNDERS

DECEMBER 23, 2015

LIST OF EXHIBITS AND SCHEDULES

EXHIBITS

Exhibit A – Pro Forma Capitalization

Schedule 2.1 – Closing Date Payments

Schedule 4.3 – Capitalization

Schedule 4.6 – Liabilities

MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (this "***Agreement***") is made and entered into as of December 23, 2015 (the ***"Closing Date"***), by and among New Leaf Investment AZ, LLC, a Delaware limited liability company (the "***Purchaser***"), JJSM Real Estate Fund, LLC, an Arizona limited liability company ("***JJSM Real Estate***"), JJSM Equipment, LLC, an Arizona limited liability company ("***JJSM Equipment***"), Premier Consulting and Management Services, LLC, an Arizona limited liability company ("***PCMS***," and, together with JJSM Real Estate and JJSM Equipment, the "***Companies***"), JeffsCo, LLC, a Delaware limited liability company (***"JeffsCo"***), JillCo, LLC, a Delaware limited liability company ("***JillCo***", and together with JeffsCo, the ***"Founders"***).

RECITALS

WHEREAS, each of the Companies desires to issue and sell, and the Purchaser desires to purchase, membership interests in each such entities as more specifically set forth in Section 2.1, below;

WHEREAS, simultaneously herewith, the Companies desire to (a) repay (i) certain outstanding indebtedness described in that certain Forbearance Agreement dated as of October 14, 2015 ("Forbearance Agreement") by and among the Companies and MrCo, LLC (***"MrCo"***) (such repayment transaction described in part (a)(i), the ***"Loan Repayment"***), and (ii) $33,000 (the ***"Beck Repayment Amount"***) owed to Brad Beck in connection with certain working capital advances (such repayment transaction described in part (a)(ii), the ***"Beck Repayment"***) and (b) redeem all of the membership interests that SteveCo, LLC, a Delaware limited liability company (***"SteveCo"***), and MrCo, LLC, a Delaware limited liability company (***"MrCo"***), hold in the Companies (such transactions described in part (b), collectively, the ***"Redemption"***);

WHEREAS, after giving effect to the Redemption, the Founders shall own 100% of the membership interests in the Companies;

WHEREAS, as an inducement to Purchaser to consummate the transactions contemplated by this Agreement, the Founders desire to make those representations, warranties, covenants and other agreements as set forth herein, without which Purchaser would not have entered into this Agreement; and

WHEREAS, upon the simultaneous consummation of the Redemption and this Agreement, the equity capitalizations of the Companies shall be as set forth on Exhibit A;

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **DEFINITIONS.** Capitalized terms used herein shall have their respective definitions as set forth herein, wherever defined.

2. SALE AND PURCHASE.

2.1 Sale and Purchase. Subject to the terms and conditions below, the Companies hereby sell and issue to the Purchaser membership interests in each of the Companies (together, the "***Purchased Interests***") as follows:

(a) JJSM Real Estate issues and sells to the Purchaser 50% of the issued and outstanding membership interests of JJSM Real Estate, for a purchase price of $1,300,000 (the ***"JJSM RE Purchase Price"***), payable by to or for the benefit of JJSM Real Estate in accordance with the wire instructions set forth on Schedule 2.1 or as provided in Section 3.4(c);

(b) JJSM Equipment issues and sells to the Purchaser 50% of the issued and outstanding membership interests of JJSM Equipment, for a purchase price of $350,000 (the ***"JJSM Equipment Purchase Price"***), payable to or for the benefit of JJSM Equipment in accordance with the wire instructions set forth on Schedule 2.1 or as provided in Section 3.4(c); and

(c) PCMS issues and sells to the Purchaser 47% of the issued and outstanding membership interests of PCMS, for a purchase price of $ $5,428,000 (the ***"PCMS Purchase Price,"*** and collectively with the JJSM RE Purchase Price and the JJSM Equipment Purchase Price, the ***"Purchase Price"***), payable to or for the benefit of PCMS in accordance with the wire instructions set forth on Schedule 2.1 or as provided in Section 3.4(c).

3. CLOSING, DELIVERY AND PAYMENT. The closing (the ***"Closing"***) of the sale and purchase of the Purchased Interests shall take place at such time and place as the parties mutually agree as follows. For the avoidance of doubt, the Companies acknowledge and agree that the payment of (a) the Loan Repayment Proceeds (as hereinafter defined), (b) the MrCo Redemption Proceeds (as hereinafter defined), (c) the SteveCo Redemption Proceeds (as hereinafter defined), (c) the Beck Repayment Proceeds and (d) payments made pursuant to Section 3.5(d) constitute part of the Purchase Price, and hereby direct that the same be paid on the Companies` behalf as set forth in Section 3.5 and in accordance with Schedule 2.1.

3.1 Delivery of Forbearance Agreement Signature Pages and Loan Repayment Proceeds into Escrow. Prior to the execution hereof and consummation of the transactions contemplated hereby (the ***"Purchase Transactions"***), each of the applicable parties shall have delivered or caused to be delivered into an escrow account no. 39002672-039 at Fidelity National Title Agency (the ***"MrCo Escrow"***), the following:

(a) the Companies shall have caused one or more executed documents that evidence the release of the liens as security for loans described in the Forbearance Agreement in form and substance satisfactory to the Purchaser to be delivered into the MrCo Escrow; and

(b) the Purchaser shall have caused $3,766,718.09 (the ***"Loan Repayment Proceeds"***) to be delivered into the MrCo Escrow.

3.2 Delivery of MrCo Redemption Signature Pages and MrCo Redemption Proceeds into Escrow. Prior to the execution hereof and consummation of the Purchase Transactions, each of the applicable parties shall have delivered or caused to be delivered into the MrCo Escrow, the following:

(a) the Companies shall have caused one or more executed documents that effect the Redemption of MrCo (and not, for the avoidance of doubt, of SteveCo), which shall include an assignment of membership interests in the Companies by MrCo in form and substance satisfactory to the Purchaser, to be delivered into the MrCo Escrow, to be released in accordance with Section 3.5; and

(b) the Purchaser shall have caused $3,000 (the ***"MrCo Redemption Proceeds"***) to be delivered into the MrCo Escrow, to be released from escrow in accordance with Section 3.5.

3.3 Delivery of SteveCo Redemption Signature Pages and SteveCo Redemption Proceeds. Prior to the execution hereof and consummation of the Purchase Transactions, each of the applicable parties shall have delivered or caused to be delivered the following:

(a) the Companies shall have caused one or more signed documents that effect the Redemption of SteveCo (and not, for the avoidance of doubt, MrCo), which shall include an assignment of membership interests in the Companies by SteveCo in form and substance satisfactory to the Purchaser, to be delivered to David A. Joffe, Esq. and Lawrence J. Feller, Esq. in escrow, to be released to the Companies following confirmation of payment in accordance with Section 3.5; and

(b) the Purchaser shall wire $100,000 (the ***"SteveCo Redemption Proceeds"***) to be wired to SteveCo or its designee in accordance with Section 3.5.

3.4 Delivery of Certain other Signature Pages. Prior to the execution hereof and the consummation of the Purchase Transactions, each of the parties shall have delivered to one another, via pdf, fully executed counterparts of the following, to be held in escrow by the recipient pending release in connection with the Closing (collectively with the documents contemplated by Section 3.1(a), Section 3.2(a) and Section 3.3(a) hereof, the ***"Transaction Agreements"***):

(a) a Cultivation and Management Services Agreement between PCMS and Peace Releaf Center I d/b/a Patient Alternative Relief Center, in form and substance satisfactory to the Purchaser;

(b) amended and restated operating agreements, in form and substance satisfactory to the Purchaser, for each of the Companies; and

(c) such other documents as any of the Purchaser may reasonably require in connection herewith.

Notwithstanding the foregoing, the Purchaser reserves the right, in its sole discretion, to waive any of the foregoing conditions set forth in this Section 3.4.

3.5 Release of Certain Payments; Execution of the Transaction Agreements. Upon confirmation that all of the Transaction Agreements have been duly signed and delivered in accordance with this Section 3, then:

(a) the Loan Repayment Proceeds and the MrCo Redemption Proceeds shall be released from the MrCo Escrow in accordance with the terms of the MrCo Escrow escrow instructions;

(b) the SteveCo Redemption Proceeds shall be delivered to SteveCo or its designee in accordance with the wire transfer instructions on Schedule 2.1;

(c) the Beck Repayment Amount shall be delivered to Brad Beck in accordance with the wire transfer instructions on Schedule 2.1;

(d) the remaining unpaid portion of the Purchase Price shall be paid as follows:

(i) the Companies shall, from time to time, submit draw requests for (x) capital expenditures related to the completion of the grow facility as more fully described in the exhibits to that Owners Construction Escrow Trust and Disbursing Agreement ("Disbursing Agreement") bearing Escrow Trust No.:5587 between JJSM Real Estate, LLC, Chicago Title as

Escrow Trustee ("Escrow Trustee") and Solera Homes, LLC, as general, and (y) operating expenditures to the Purchaser by written request in reasonable detail regarding the intended use of such proposed draw.

(ii) Once the Escrow Trustee has confirmed its receipt of all necessary documentation per the terms of the Disbursing Agreement further to any draw request described in Section 3.5(d)(i)(x), the Purchaser shall promptly deposit with Escrow Trustee by wire transfer in accordance with wire instructions in the Disbursing Agreement the amount set forth in the draw request, to be disbursed to or on behalf of the Companies in accordance with instructions that the Companies and General Contractor shall have provided to the Escrow Trustee. For the avoidance of doubt, any such fundings with the Escrow Trustee shall constitute payment of a portion of the Purchase Price equal to the amount of such fundings.

(iii) Once the Purchaser has confirmed its receipt of reasonable detail satisfactory to the Purchaser in its reasonable discretion in connection with any draw request described in Section 3.5(d)(i)(y), the Purchaser shall promptly fund the amount set forth in such draw request to the Companies per their joint written direction. For the avoidance of doubt, any such fundings to the Companies shall constitute payment of a portion of the Purchase Price equal to the amount of such fundings.

(iv) Upon the Companies' providing to the Purchaser written notice of the achievement by Peace Releaf Center I d/b/a Patient Alternative Relief Center, an Arizona nonprofit corporation of an Approval to Operate from the Arizona Department of Health Services, the remaining portion of the Purchase Price not paid pursuant to Sections 3.5(a), (b), (c), (d)(i), (d)(ii) or (d)(iii) shall be promptly paid to the Companies in accordance with wire instructions provided in writing to the Purchaser.

Notwithstanding anything to the contrary set forth herein, the Transaction Agreements shall be deemed automatically executed, and the Purchase Transactions shall be deemed consummated, automatically upon the occurrence of the releases and deliveries set forth in Section 3.5(a), (b) and (c).

4. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANIES AND THE FOUNDERS.** Each of the Companies and the Founders hereby represents and warrants, jointly and severally, the following to the Purchaser.

4.1 Organization, Good Standing and Qualification. Each of the Companies is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arizona. Each of the Companies has all requisite limited liability company power and authority to: (a) own and operate its properties and assets; (b) to execute and deliver this Agreement each of the other Transaction Agreements to which it is a party; (c) to issue and sell the Purchased Interests; (d) to carry out the provisions of this Agreement and each of the other Transaction Agreements; and (e) to carry on its business as presently conducted and as presently proposed to be conducted. Each of the Companies is duly qualified and is authorized to do business and is in good standing as a foreign corporation in all jurisdictions in which the nature of its activities and of its properties (both owned and leased) makes such qualification necessary.

4.2 Subsidiaries. None of the Companies presently owns or controls any equity security or other interest of any other corporation, limited partnership or other business entity. None of the Companies is a participant in any joint venture, partnership or similar arrangement.

4.3 Capitalization. Schedule 4.3 sets forth a true and complete list of the members of each of the Companies immediately prior to the Closing (without giving effect to the Redemption) and the membership interests of each of the Companies held by such members at such time. Except as set forth

on Schedule 4.3, or in any operating agreements of the Companies effective prior to the execution of the Transaction Agreements, no subscription, warrant, option or other right (including conversion or preemptive rights and rights of first refusal), proxies or membership interest holder agreements or agreements of any kind or commitment to purchase or acquire from any of the Companies any membership interests of any class or series, or any other securities of any of each of the Companies, is authorized or outstanding. All of the outstanding membership interests of each of the Companies: (i) were duly and validly authorized and issued, fully paid and non-assessable; (ii) were issued in accordance with the registration or qualification provisions of the Securities Act of 1933, as it may be amended from time to time (the "***Securities Act***") and any relevant state securities laws, or pursuant to valid exemptions therefrom; and (iii) were issued free and clear of all preemptive or similar rights. Other than in connection with the Redemption, none of the Companies has any obligation (contingent or otherwise) to purchase or redeem any of its outstanding membership interests or other securities. Upon consummation of the Redemption (prior to giving effect to the transactions contemplated hereby), the Founders will collectively own 100% of the issued and outstanding membership interests of the Companies.

4.4 Authorization; Binding Obligations. Following the consummation of the Redemption, all limited liability company action on the part of the Companies necessary for the authorization of this Agreement and the other Transaction Agreements, the performance of all obligations of the Companies hereunder and thereunder and the authorization, sale, issuance and delivery of the Purchased Interests have been taken. Upon Closing, the Transaction Agreements are valid and binding obligations of the Companies enforceable in accordance with their terms, except: (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally; and (b) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies. Except as set forth in operating agreements of the Companies effective prior to the execution of the Transaction Agreements, the sale of the Purchased Interests is not subject to any preemptive rights or rights of first refusal.

4.5 Offering; Valid Issuance of Membership Interests. Subject to the truth and accuracy of the Purchaser's representations set forth in this Agreement, the offer, sale and issuance of the Purchased Interests as contemplated by this Agreement are exempt from the registration requirements of any applicable state and federal securities laws, and none of the Companies nor any authorized agent acting on any of their behalves will take any action hereafter that would cause the loss of such exemption. The Purchased Interests, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement, will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under the Transaction Agreements, applicable state and federal securities laws and free and clear of any liens or encumbrances. Assuming the accuracy of the representations of the Purchasers in Section 5 of this Agreement and subject to the filing of all required federal and state securities laws filings (if any), the Purchased Interests will be issued in compliance with all applicable federal and state securities laws.

4.6 Liabilities. Except as reflected on Schedule 4.6, the Companies have no liabilities and no contingent liabilities, other than those which would in no way be material to the business operations of the Companies.

4.7 Obligations to Related Parties. Upon the consummation of the Loan Repayment, the Redemption and the Beck Repayment, none of the members of the Companies, or any of their affiliates, is indebted to any of the Companies, nor is any Company indebted to any of its members or any of their affiliates. None of the members of the Companies, or any of their affiliates, have any direct or indirect ownership interest in any firm or corporation with which the Companies or any of them is affiliated or with which the Companies or any of them has a business relationship, or any firm or corporation which competes with any of the Companies, other than passive investments in publicly traded companies (representing less than 2% of such company), which may compete with the Companies. Upon the consummation of the Loan Repayment and the Redemption, none of the Companies is a guarantor or

indemnitor of any indebtedness of any other person, firm or corporation.

4.8 Books and Records. Since their inception none of the Companies have engaged in an income generating business, their activities being primarily limited to acquisition of equipment, work on completion of the grow facility, legal matters, and related matters in preparation for further funding and ability to act upon the Premier Cultivation Agreement with PARC. Receipts have been limited to capital contributions. Receipts and expenses have been recorded and maintained on a spreadsheet, which is accurate in all material respects. Data from such spreadsheet was input into a QuickBooks program. The QuickBooks data was provided to the Companies' accountant who reviewed the data and made or suggested adjustments so that accurate tax returns could be completed and the records and accountings were sufficient for such purposes. Copies of the data were provided to members of the Companies who reviewed and approved such information. The Companies have not generated financial statements or balance sheets.

4.9 Financial Projections. The business plan and budget have been prepared in good faith and are based on reasonable assumptions, but are subject to unknown contingencies as this is a start-up business.

4.10 Title to Properties and Assets; Liens, Etc. Each Company has good and marketable title to its properties and assets, in each case subject to no mortgage, pledge, lien, lease, encumbrance or charge, other than: (a) those resulting from taxes which have not yet become delinquent; (b) minor liens and encumbrances which do not materially detract from the value of the property subject thereto or materially impair the operations of such Company (the "***Liens***"); and (c) Liens that shall be terminated upon the Loan Repayment. With respect to any property or assets that the Companies lease, the Companies are in compliance with such leases, and hold valid leasehold interests to such property or assets free of any liens, claims or encumbrances other than to the lessors of such property or assets. All facilities, machinery, equipment, fixtures, vehicles and other properties owned, leased or used by the Companies are in good operating condition and repair (subject to reasonable wear and tear) and are reasonably fit and usable for the purposes for which they are being used. The Companies are in compliance with all material terms of each lease to which any of them is a party or is otherwise bound. Except for the real property now owned by JJSM Real Property, as of the Closing, the Companies do not own any real property.

4.11 Litigation. There is no action, suit, proceeding or investigation: (a) pending or currently threatened against the Companies; or (b) pending or threatened against any present or former employee, member, manager, consultant or director of the Companies, other than as relate to the Loan Repayment and the Redemption (collectively, the ***"Disputes"***); provided that upon the consummation of the transactions contemplated by this Agreement, including the Loan Repayment and the Redemption, the Disputes shall be fully and finally resolved. There is no basis for any action, suit, proceeding or investigation against the Companies or against present or former employee, member, manager, consultant or director of the Companies. The Companies are not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Companies currently pending or which the Companies intend to initiate.

4.12 Taxes. The Companies have timely filed, or will timely file, all federal, state, county, local and foreign tax returns due on or before the Closing Date and has paid or will pay all taxes required to be paid with respect to such tax returns prior to the time they become delinquent. The Companies have made an adequate accrual or reserve, if any is necessary, for the payment of taxes with respect to the period beginning subsequent to the last of such periods required to be so accrued or reserved up to and including the Closing Date. The Companies are not delinquent in the payment of any tax, and no deficiencies for any tax, assessment or governmental charge have been claimed, proposed, assessed or threatened. There are no liens on the assets of the Companies for unpaid taxes, except for liens relating to

IN WITNESS WHEREOF, the undersigned has executed this **MEMBERSHIP INTEREST PURCHASE AGREEMENT** as of the date first identified above.

COMPANIES:

JJSM Real Estate Fund, LLC, an Arizona limited liability company

By: _____
Print Name: Jeff Schaeffer
Title: Manager

Address: 12425 N. 80th Pl
Scottsdale, AZ 85260
Email: jeff@parcdispensary.com

JJSM Equipment Fund, LLC, an Arizona limited liability company

By: _____
Print Name: Jeff Schaeffer
Title: manager

Address: 12425 N. 80th Pl
Scottsdale, AZ 85260
Email: jeff@parcdispensary.com

Premier Consulting and Management Services, LLC, an Arizona limited liability company

By: _____
Print Name: Jeff Schaeffer
Title: manager

Address: 12425 N. 80th Pl
Scottsdale, AZ 85260
Email: jeff@parcdispensary.com

IN WITNESS WHEREOF, the undersigned has executed this **MEMBERSHIP INTEREST PURCHASE AGREEMENT** as of the date first identified above.

PURCHASER

New Leaf Investment AZ, LLC, a Delaware limited liability company

By: New Leaf AZ Management, LLC, its Manager

By: MAZ Investment Management, LLC, its Manager

By: _____
Its: Richard Merel, its Manager

By: MEA Investment Management, L.L.C., its Manager

By: _____
Its: Barry Missner, its Manager

Address:

c/o Richard A. Merel
Garfield & Merel, Ltd.
Two Prudential Plaza, Suite 1300
180 North Stetson
Chicago, Illinois, 60601
Email: rmerel@garfield-merel.com

and

c/o Barry Missner
The Missner Group
1700 Higgins Road
Des Plaines, Illinois 60018
Email: bmissner@missnergroup.com

IN WITNESS WHEREOF, the undersigned has executed this **MEMBERSHIP INTEREST PURCHASE AGREEMENT** as of the date first identified above.

PURCHASER

New Leaf Investment AZ, LLC, a Delaware limited liability company

By: New Leaf AZ Management, LLC, its Manager

By: MAZ Investment Management, LLC, its Manager

By:_____
Its: Richard Merel, its Manager

By: MEA Investment Management, L.L.C., its Manager

By:_____
Its: Barry Missner, its Manager

Address:

c/o Richard A. Merel
Garfield & Merel, Ltd.
Two Prudential Plaza, Suite 1300
180 North Stetson
Chicago, Illinois, 60601
Email: rmerel@garfield-merel.com

and

c/o Barry Missner
The Missner Group
1700 Higgins Road
Des Plaines, Illinois 60018
Email: bmissner@missnergroup.com

EXECUTION VERSION

CULTIVATION MANAGEMENT SERVICES AGREEMENT

This Cultivation Management Services Agreement (the "Agreement") is entered into on this 23rd day of December, 2015 (the "Effective Date"), by and between, PEACE RELEAF CENTER I d/b/a PATIENT ALTERNATIVE RELIEF CENTER, an Arizona nonprofit corporation, with its principal place of business located at 12425 North 80th Place, Scottsdale, Arizona 85260 ("PARC"), and PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, a Arizona limited liability company, with its principal place of business located at 15025 N. 74th Street, Scottsdale, Arizona 85260 ("PREMIER" or the "Manager") (hereinafter collectively referred to as the "Parties" or individually as the "Party").

RECITALS

WHEREAS, pursuant to and in compliance with Title 9; Chapter 17 Department of Health Services Medical Marijuana Program (the "DHS Rules") and A.R.S. § 36-2801 et seq., as amended from time to time (the "Act") (the DHS Rules and the Act collectively referred to herein as the "AMMA"), the Arizona Department of Health Services ("DHS") awarded PARC a Medical Marijuana Dispensary Registration Certificate;

WHEREAS, PARC operates the Patient Alternative Relief Center Medical Marijuana Dispensary located at 4201 E. University Drive, Phoenix, Arizona 85034 (the "Dispensary"), pursuant to Medical Marijuana Registration Certificate ID No. 00000091DCWY00555666, in the South Mountain Community Health Analysis Area #071 (the "Dispensary License");

WHEREAS, pursuant to the AMMA, PARC is authorized to cultivate, harvest, infuse, process and prepare medical marijuana ("Marijuana") and produce manufactured and derivative edible and non-edible products which contain Marijuana (collectively referred to herein as "Marijuana Products") for sale at its Dispensary or to any other duly licensed medical marijuana dispensary in the State of Arizona;

WHEREAS, the Manager is engaged in the business of, among other things, providing administrative, operational, advisory and management services relative to (i) cultivation site construction and improvements; (ii) financial management of cultivation operations; (iii) development and production of quality infused, manufactured and derivative medical marijuana products, both edible and non-edible, for ease of consumption by qualifying patients seeking alternative modes of ingesting medical marijuana; (iv) logistics management, product procurement, and product inventory management; (v) selection, negotiation and assistance with the procurement of third party products and services used in cultivation operations; (vi) engaging, training, managing and evaluating personnel and contractors for cultivation operations; (vii) cultivation and production of quality medical marijuana strains for effectiveness and treatment of specific debilitating medical conditions and qualifying patient desirability; and (viii) all aspects of the management, administration and operating of a medical marijuana cultivation facility in complete compliance with the AMMA and all other applicable rules, regulations and requirements (collectively, the "Cultivation Management Services");

WHEREAS, PARC desires to engage the Manager to exclusively provide the Cultivation Management Services to PARC, directly through its own personnel, which may include

employees, independent contractors and/or volunteers, at its authorized cultivation facility located at 15 N. 57th Drive Phoenix, Arizona 85043 (together with any other authorized cultivation facility or facilities of PARC, from time to time, being collectively referred to herein as the "Cultivation Facility"), and the Manager desires to so provide; and

WHEREAS, the Parties desire to set forth in this Agreement the terms and conditions pursuant to which PARC will engage the Manager as an independent contractor, to render the Cultivation Management Services relative to the Cultivation Facility.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, obligations and provisions set forth herein, the Parties hereto agree as follows:

1. Term; Termination.

(a) Term of Agreement. This Agreement shall commence on the Effective Date and continue for a period of ten (10) years (the "Initial Term") and shall automatically renew for one (1) additional ten (10) year term ("Subsequent Term", and collectively with the Initial Term and any extension as may be agreed to pursuant to the following sentence, the "Term"). As may be mutually agreed to in writing, the Parties may elect to renew this Agreement beyond the Initial Term and the Subsequent Term or negotiate the terms and conditions of a new agreement for additional terms.

(b) Right of First Refusal. Notwithstanding Section 1(a), following the Term, PARC hereby grants to the Manager a right of first refusal to perform management services substantially similar to the Cultivation Management Services on terms substantially identical to those proposed by any other third party (the "Right of First Refusal"). PARC shall provide the Manager with written notice of (i) its intention to engage a third party to perform management services substantially similar to the Cultivation Management Services, (ii) a description of such services and (iii) the other material terms of such proposed engagement (each such notice, a "Services Notice"). The Manager shall have 30 days (the "Exercise Period") after delivery of a Services Notice to deliver to PARC a written proposal to provide the services set forth in the Services Notice on substantially identical terms to those set forth in the Services Notice (such written proposal, the "Exercise Notice"). If the Manager does not timely deliver an Exercise Notice to PARC, then PARC shall be free to engage a third party during the ninety days after the expiration of the Exercise Period on the terms set forth in the Services Notice. If the Manager does timely deliver an Exercise Notice to PARC, then the Manager and PARC shall, promptly thereafter and in good faith, negotiate and enter into an agreement memorializing the terms of the agreement to provide such services. If PARC does not engage a third party during 90 days after the expiration of the Exercise Period, then PARC shall be obligated to deliver a new Services Notice and otherwise be subject to the terms of this Section 1(b) prior to entering into any agreement for such services with a third party.

compliance with local and state regulations and rules, as well as the AMMA (collectively referred to herein as the "Dispensary Costs and Expenses").

9. Management Fees. The Parties acknowledge and agree as good and valuable compensation for the Manager rendering the Cultivation Management Services, pursuant to this Agreement, on behalf of PARC, PARC shall pay to the Manager the Management Fees (defined herein) described in this Section 9. The Parties have determined in an effort to ensure the Manager is compensated at the current fair market value for the Cultivation Management Services described herein, and taking into account the Cultivation Facility Costs and Expenses and the Dispensary Costs and Expenses, which each Party shall incur, the Management Fees which PARC shall pay to the Manager for the cultivation, harvest, preparation, production and transportation of Marijuana and Marijuana Products, which PARC shall sell on a retail basis verses a wholesale basis, requires a different computation and valuation. However, in complete compliance with the AMMA, nothing contained herein shall be construed to be profit sharing or any other profit splitting which would violate PARC's nonprofit status. The Parties acknowledge and agree the Management Fees which PARC shall pay to the Manager are described as follows:

(a) Retail Management Fee. The Parties acknowledge and agree as good and valuable consideration for the Cultivation Management Services that the Manager shall render on behalf of PARC, PARC shall pay the Manager a retail management fee (the "Retail Management Fee") for all product sold directly to registered patients at the PARC Dispensary equal to the Adjusted Revenues from the sales of such products (including, without limitation, Marijuana and Marijuana Products). As used herein, "Adjusted Revenues" means the gross revenues from the sale of products (including, without limitation, Marijuana and Marijuana Products); provided, that in the case of Marijuana and Marijuana Products, such gross revenues shall be calculated assuming such products had been sold to patients at a retail price per-pound equal to the average per-pound wholesale price at which PARC sold its Marijuana and Marijuana Products to other licensed dispensaries in the previous calendar month, discounted by 10%. For the avoidance of doubt, PARC shall be entitled to that portion of the gross revenues from the sale of products in excess of the Adjusted Revenues. The Parties agree PARC shall remit payment of the Retail Management Fee to the Manager on the last day of each calendar month for products sold and delivered in that month (the "RMF Payment Date"). The Parties further agree if PARC fails to submit payment of the Retail Management Fee to the Manager on or before the RMF Payment Date, interest at an annual rate of ten percent (10%) shall begin accruing until such time as payment is submitted in full.

(b) Wholesale Management Fee. The Parties acknowledge and agree as good and valuable compensation for the Cultivation Management Services which the Manager shall render on behalf of PARC for the wholesale sale of Marijuana and Marijuana Products sold on a wholesale basis to other duly licensed dispensaries in the State of Arizona, PARC shall pay the Manager Ninety Percent (90%) of the gross revenues from such sales, while PARC shall retain the remaining Ten Percent (10%) in an effort to offset its Dispensary Costs and Expenses (the "Wholesale Management Fee"). The Parties agree PARC shall remit payment of the Wholesale Management Fee to the Manager on the last day of each calendar month for all Products sold wholesale in that month (the "WMF Payment Date"). The Parties further agree if PARC fails to

submit payment of the Wholesale Management Fee to the Manager on or before the WMF Payment Date, interest at an annual rate of ten percent (10%) shall begin accruing until such time as payment is submitted in full.

The management fees described in the aforementioned (a) and (b) shall sometimes collectively be referred to herein as the "Management Fees". The Parties also acknowledge and agree the Management Fees, may, from time to time, be amended by the Parties mutual written agreement to reflect the evolving needs of the Parties.

10. Management Fees upon Termination. Upon the termination of this Agreement for any reason, the Parties shall audit the production stage of all Marijuana and/or Marijuana Products for which Cultivation Management Services have begun, but which have not been completed therefore otherwise entitling the Manager to a Management Fee(s) pursuant to Section 9 hereof (collectively, the "Termination Product"). The Parties shall work to fairly distinguish between the value of such Management Services that have been performed with regard to the Termination Product prior to the termination of this Agreement (the "Pre-Termination Cultivation Service Fee") and the value of the Management Services which have yet to be performed with regard to the Termination Product (the "Post Termination Management Fee"). It is the intent of the Parties that the sum of the Pre-Termination Management Fee and the Pre-Termination Management Fee shall equal the collective Management Fees which would have been due to the Manager pursuant to Section 9 hereof, but for the termination of this Agreement. PARC shall pay to the Manager the Pre-Termination Management Fees at such time that such Management Fees with regard to the Termination Product would have been payable to the Manager, but for the termination of this Agreement.

11. PARC Contractual Commitment. The Parties acknowledge and agree, the Manager shall be PARC's sole and exclusive provider of Cultivation Management Services. Notwithstanding the foregoing, however, that in the event the Manager's provision of the Cultivation Management Services in accordance with the terms hereof does not result in the production of Marijuana and Marijuana Products sufficient to meet PARC's needs and product requirements during the Term, PARC retains the right to then purchase Marijuana and Marijuana Products from any other duly licensed dispensary within the State of Arizona, until such time as the Cultivation Management Services are producing sufficient Marijuana and Marijuana Products, reasonably sufficient to meet PARC's needs and requirements (in terms of amount and quality), at which point PARC shall cease to purchase Marijuana and Marijuana Products from other duly licensed dispensaries.

12. Overproduction of Marijuana. If the Manager cultivates and produces more Marijuana than PARC may sell at its Dispensary, PARC will take whatever actions are necessary to sell the excess Marijuana at its Dispensary or to any registered dispensaries in the State of Arizona. The Parties acknowledge and agree the risk of overproduction of Marijuana shall be borne mutually by the Parties.

13. Books and Accounting. The Parties mutually acknowledge and agree to provide the other Party with reasonable access to its accounting, books, records, and financials, at the

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

PARC:

PEACE RELEAF CENTER I
d/b/a PATIENT ALTERNATIVE RELIEF CENTER,
an Arizona nonprofit corporation

By: _____
Name: Cynthia Oehme
Its: President and Director

By: _____
Name: Nicholas Bartoni
Its: Vice President, Secretary and Director

MANAGER:

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC,
an Arizona limited liability company

By its Co-Managers:

By: _____
Name: Jeff Schaeffer, Co-Manager

By: _____
Name: Bradford Beck, Co-Manager

SINGLE-TENANT

INDUSTRIAL BUILDING LEASE

Between

JJSM Real Estate Fund, LLC
an Arizona limited liability company

Landlord

and

Peace Relief Center I,
an Arizona not for profit corporation

Tenant

Dated: December 23, 2015

INDUSTRIAL BUILDING LEASE

THIS INDUSTRIAL BUILDING LEASE (this "Lease") is made and entered into as of the 23rd day of December, 2015 by and between JJSM Real Estate Fund, LLC, an Arizona limited liability company ("Landlord"), and Peace Relief Center I, an Arizona not for profit corporation ("Tenant").

ARTICLE 1
GRANT OF LEASE; PREMISES

Landlord, for and in consideration of the rents herein reserved and of the covenants herein contained on the part of Tenant to be performed, hereby leases to Tenant, and Tenant hereby leases from Landlord, the premises containing approximately 34,567 square feet as outlined on the floor plan attached hereto as Exhibit A and by this reference made a part hereof ("Premises") in the building located at 15 North 57th Drive, Phoenix, Arizona (the "Building"). The Building is located on the real property described in Exhibit A-1 attached hereto and by this reference made a part hereof (the "Real Property").

ARTICLE 2
TERM; POSSESSION

2.1 **Term**. The term of this Lease ("Term") shall commence on January 1,2016, (the "Commencement Date") and shall expire on December 31, 2025, (the "Expiration Date"), unless sooner terminated or renewed as provided herein.

2.2 **Lease Year Defined**. As used in this Lease, the term "Lease Year" shall mean (a) if the Commencement Date is the first day of a calendar month, the twelve (12) month period commencing on the Commencement Date, or (b) if the Commencement Date is not the first day of a calendar month, the period commencing on the Commencement Date and ending on the last day of the twelfth (12th) complete calendar month of the Term, and, in either case, each succeeding twelve (12) month period thereafter which falls in whole or in part during the Term. Tenant agrees not to interfere with Landlord's construction of the Improvements.

ARTICLE 3
BASE RENT

3.1 **Base Rent**. Tenant shall pay an annual base rent ("Base Rent") in the amount of $400,000 and monthly base rent ("Monthly Base Rent") in the amount of $33,333 for the first Lease Year , in advance, on the first day of the Term and on the first day of each and every calendar month thereafter, and at the same rate for fractions of a month if the Term shall begin on any day except the first day of a calendar month or shall end on any day except the last day of a calendar month. Base Rent shall increase by 3% each Lease Year thereafter. Tenant shall receive an abatement of the Base

Rent for the period commencing on the Commencement Date until the date ("Abatement Expiration Date") of the first harvest of cannabis plants at the Premises following the date hereof; provided, Base Rent for the 45-day period immediately following the date of the first harvest of cannabis plants at the Premises shall not be due and payable until the 45th day following the date of the first harvest of cannabis plants at the Premises (the determination as to when the first harvest of cannabis plants at the Premises has occurred shall be determined in the sole but reasonable discretion of Landlord). Tenant shall be responsible for all costs and expenses associated with the Premises from and after the Commencement Date other than Expenses and Taxes for which Tenant shall not become responsible until the Abatement Expiration Date.

3.2 **Manner of Payment**. Base Rent, Rent Adjustments (as hereinafter defined), Rent Adjustment Deposits (as hereinafter defined) and all other amounts becoming due from Tenant to Landlord hereunder (collectively, "Rent") shall be paid in lawful money of the United States of America to Landlord at the office of Landlord or as otherwise designated from time to time by written notice from Landlord to Tenant. The payment of Rent hereunder is independent of each and every other covenant and agreement contained in this Lease, and Rent shall be paid without any setoff, abatement, counterclaim or deduction whatsoever except as may be expressly provided herein. Tenant may, at its option, pay the Monthly Base Rent electronically through account clearing house (ACH) deductions to its bank account.

ARTICLE 4
ABSOLUTE NET LEASE

4.1 **Obligation to Pay all Taxes, Expenses and Capital Improvements**. In addition to paying the Base Rent specified in Section 3.1 hereof, Tenant shall also be directly responsible for all Expenses and Taxes (as hereinafter defined) as well as any and all other costs, charges, capital expenditures, structural or non-structural in nature, in connection with the ownership, use and management of the Property, it being the intent and understanding of Landlord and Tenant that this Lease is an "Absolute Net" lease wherein the Tenant is responsible for all costs, expenses, charges and fees, of every kind and nature whatsoever, incurred in connection with the ownership, use and operation of the Premises and Real Property.

4.2 **Definitions**. As used in this Lease,

(a) "Expenses" shall mean and include any and all costs and expenses paid or incurred in connection with owning, managing, operating and maintaining the Building; all of the systems located therein including, but not limited to, maintenance of the fire suppression system; the HVAC, electrical, plumbing and other systems, the land legally described on Exhibit A-1 attached hereto and made a part hereof including all paved areas and landscaping and truck courts (the "Land") and the personal property used in conjunction therewith (the Building and the Land being collectively referred to as the "Real Property," and the Real Property and such personalty being collectively referred to as the "Project"),

(d) failure by Tenant to observe or perform any other covenant, agreement, condition or provision of this Lease, if such failure shall continue for thirty (30) days after notice thereof from Landlord to Tenant or such longer period as is necessary so long as Tenant commences to cure such default within said thirty (30) day period and diligently and continuously prosecutes said cure to completion;

(e) the levy upon under writ of execution or the attachment by legal process of the leasehold interest of Tenant, or the filing or creation of a lien with respect to such leasehold interest, which lien shall not be released or discharged within thirty (30) days from the date of such filing;

(f) Tenant becomes insolvent or bankrupt, or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver for Tenant or for the major part of its property;

(g) a trustee or receiver is appointed for Tenant or for the major part of its property and is not discharged within sixty (60) days after such appointment; or

(h) bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors, are instituted (i) by Tenant or (ii) against Tenant and are allowed against it or are consented to by it or are not dismissed within sixty (60) days after such institution.

17.2 **Rights and Remedies of Landlord**. If a Default occurs, Landlord shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative and shall not operate to exclude or deprive Landlord of any other right or remedy allowed it by law or in equity:

(a) Landlord may terminate this Lease by giving to Tenant notice of Landlord's election to do so, in which event the Term shall end and all right, title and interest of Tenant hereunder shall expire on the date stated in such notice;

(b) Landlord may terminate the right of Tenant to possession of the Premises without terminating this Lease by giving notice to Tenant that Tenant's right of possession shall end on the date stated in such notice, whereupon the right of Tenant to possession of the Premises or any part thereof shall cease on the date stated in such notice; and

(c) Landlord may enforce the provisions of this Lease and may enforce and protect the rights of Landlord hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of all moneys due or to become due from Tenant under any of the provisions of this Lease.

17.3 **Right to Re-Enter**. If Landlord exercises either of the remedies provided for in subparagraphs (a) and (b) of the foregoing Section 17.2, Tenant shall surrender possession and vacate the Premises and immediately deliver possession thereof to Landlord, and Landlord may re-enter and take complete and peaceful possession of the Premises, with or without process of law, full and complete license so to do being hereby granted to Landlord, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without relinquishing Landlord's right to Rent or any other right given to Landlord hereunder or by operation of law.

17.4 **Current Damages**. If Landlord terminates the right of Tenant to possession of the Premises without terminating this Lease, Landlord shall have the right to immediate recovery of all amounts then due hereunder. Such termination of possession shall not release Tenant, in whole or in part, from Tenant's obligation to pay the Rent hereunder for the full Term, and Landlord shall have the right, from time to time, to recover from Tenant, and Tenant shall remain liable for, all Base Rent, Rent Adjustments and any other sums accruing as they become due under this Lease during the period from the date of such notice of termination of possession to the stated end of the Term. In any such case, Landlord may relet the Premises or any part thereof for the account of Tenant for such rent, for such time (which may be for a term extending beyond the Term) and upon such terms as Landlord shall determine and collect the rents from such reletting. Landlord shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant relative to such reletting. Also, in any such case, Landlord may make repairs, alterations and additions in or to the Premises and redecorate the same to the extent deemed by Landlord necessary or desirable and, in connection therewith, change the locks to the Premises, and Tenant shall upon demand pay the cost of all the foregoing together with Landlord's expenses of reletting. The rents from any such reletting shall be applied first to the payment of the expenses of reentry, redecoration, repair and alterations and the expenses of reletting, and second to the payment of Rent herein provided to be paid by Tenant. Any excess or residue shall operate only as an offsetting credit against the amount of Rent due and owing as the same thereafter becomes due and payable hereunder, and the use of such offsetting credit to reduce the amount of Rent due Landlord, if any, shall not be deemed to give Tenant any right, title or interest in or to such excess or residue, and any such excess or residue shall belong to Landlord solely, and in no event shall Tenant be entitled to a credit on its indebtedness to Landlord in excess of the aggregate sum (including Base Rent and Rent Adjustments) which would have been paid by Tenant for the period for which the credit to Tenant is being determined, had no Default occurred. No such reentry or repossession, repairs, alterations and additions or reletting shall be construed as an eviction or ouster of Tenant or as an election on Landlord's part to terminate this Lease, unless a written notice of such intention shall be given to Tenant, or shall operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, and Landlord may, at any time and from time to time, sue and recover judgment for any deficiencies from time to time remaining after the application from time to time of the proceeds of any such reletting.

17.5 **Final Damages**. If this Lease is terminated by Landlord as provided for by subparagraph (a) of Section 17.2, Landlord shall be entitled to recover from Tenant all Rent accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Tenant or for which Tenant is liable or in respect of which Tenant has agreed to indemnify Landlord under any of the provisions of this Lease, which may be then owing and unpaid,

and all costs and expenses, including court costs and attorneys' fees, incurred by Landlord in the enforcement of its rights and remedies hereunder, and, in addition, Landlord shall be entitled to recover as damages for loss of the bargain and not as a penalty; (a) the unamortized portion of any brokerage commissions paid by Landlord as a result of this Lease; (b) the aggregate sum which at the time of such termination represents the excess, if any, of the present value of the aggregate rents which would have been payable after the termination date had this Lease not been terminated; including, without limitation, Base Rent at the annual rate or respective annual rates for the remainder of the Term and the amount projected by Landlord to represent Rent Adjustments for the remainder of the Term over the then-present value of the then-aggregate fair rental value of the Premises for the balance of the Term, such present worth to be computed in each case on the basis of a six percent (6%) per annum discount from the respective dates upon which such rentals would have been payable hereunder had this Lease not been terminated; and (c) any damages in addition thereto, including reasonable attorneys' fees and court costs, which Landlord shall have sustained by reason of the breach of any of the covenants of this Lease other than for the payment of Rent. Notwithstanding any of the foregoing, Landlord shall have the obligation to use commercially reasonable efforts to mitigate its damages.

17.6 **Removal of Personal Property**. All property of Tenant removed from the Premises by Landlord pursuant to any provisions of this Lease or of law may be handled, removed or stored by Landlord at the cost and expense of Tenant and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay Landlord for all expenses incurred by Landlord in such removal and storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. All such property not removed from the Premises or retaken from storage by Tenant within thirty (30) days after the end of the Term, however terminated, shall, at Landlord's option, be conclusively deemed to have been conveyed by Tenant to Landlord as by bill of sale without further payment or credit by Landlord to Tenant and without further storage costs payable by Tenant.

Notwithstanding anything contained herein to the contrary, with respect to the exercise of any of Landlord's remedies, Landlord shall not be entitled to assert any lien, security interest or other possessory right to any marijuana products and any such products shall be returned to PARC. Landlord's remedies shall further be subject to and limited to applicable Arizona laws governing Medical Marijuana.

17.8 **Attorneys' Fees**. A defaulting party shall pay the non-defaulting party's reasonable costs, charges and expenses, including reasonable court costs and reasonable attorneys' fees, incurred in enforcing the defaulting party's obligations under this Lease.

ARTICLE 18
SUBORDINATION

ARTICLE 24
REAL ESTATE BROKERS

None

ARTICLE 25
NOTICES

All notices and demands required or desired to be given by either party to the other with respect to this Lease or the Premises shall be in writing and shall be delivered personally, sent by overnight courier service, prepaid, or sent by United States registered or certified mail, return receipt requested, postage prepaid, and addressed as herein provided. Notices to or demands upon Tenant shall be addressed to Tenant at 4201 University Drive, Phoenix, Arizona, Attn: Jeffrey Schaeffer. Notices to or demands upon Landlord shall be addressed to Landlord in care of c/o Barry Missner, The Missner Group, 1700 Higgins Road, Des Plaines, Illinois 60018 and c/o Richard A. Merel, Garfield & Merel, Ltd., Two Prudential Plaza, Suite 1300, 180 North Stetson, Chicago, Illinois, 60601, with a copy to Horwood Marcus & Berk Chtd., 500 W. Madison Street, Suite 3700, Chicago, Illinois 60661. Notices and demands shall be deemed given and served (a) upon receipt or refusal after delivery by a national overnight courier service. Either party may change its address for receipt of notices by giving notice of such change to the other party in accordance herewith. Notices and demands from Landlord to Tenant may be signed by Landlord, the managing agent for the Real Property or the agent of any of them.

ARTICLE 26
HAZARDOUS SUBSTANCES

26.1 **Defined Terms**.

(a) "Claim" shall mean and include any demand, cause of action, proceeding or suit (i) for damages (actual or punitive), losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement, (ii) for the costs of site investigations, feasibility studies, information requests, health or risk assessments or Response actions, and (iii) for enforcing insurance, contribution or indemnification agreements.

(b) "Environmental Laws" shall mean and include all federal, state and local statutes, ordinances, regulations and rules relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq. and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 et seq.; the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.; the Noise Control Act, 42 U.S.C. Section 4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Resource

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date first written above.

LANDLORD:

JJSM Real Estate Fund, LLC
an Arizona limited liability company

By: _____
Jeff Schaeffer, Manager

TENANT:

Peace Relief Center I,
an Arizona not for profit corporation

By: Cynthia Dehne
Its: DIRECTOR/PRESIDENT

EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT, (the "**Lease**") made as of January __, 2016 ("**Effective Date**"), by and between **JJSM Equipment Fund, LLC**, an Arizona limited liability company, hereinafter referred to as "**Lessor**", and **Peace Relief Center I**, an Arizona not for profit corporation, hereinafter referred to as "**Lessee**". This Lease shall be subject to the terms and conditions as hereinafter set forth, all of which the Lessee acknowledges to have read.

The Lessor does hereby agree to lease to the Lessee that certain equipment set forth and described in the Schedule attached hereto and marked "**Exhibit A**", incorporated by reference thereto as a part hereof (the "**Assets**").

The Lessee agrees to accept the lease of the Assets to be located at premises commonly known as 15 North 57th Drive, Phoenix, Arizona (the "**Premises**"). The Lessee herewith acknowledges that it has inspected the Assets at its present location, has fully examined the same, and does hereby agree to effect this Equipment Lease Agreement on a "where is", "as is" basis, to take full and total responsibility for the Assets on that basis, as of the Effective Date; provided, that Lessee shall not be deemed to have approved of the condition of such Assets until it has inspected such Assets, which inspection shall take place within 10 days after installation, City and State inspections of the Premises and receipt of an Affidavit to Operate the Premises from governmental authorities, failing any written notice of defects from Lessee to Lessor during such 10 day period, Lessee shall be deemed to have accepted such Assets on an "as is" "where is" basis. Subject to the terms of this paragraph, Lessee hereby unconditionally accepts the Assets for all purposes of this Lease.

1. **Term; Renewal**

(a) The term of this Lease shall commence upon the Effective Date and shall continue until December 31, 2025 (such period, the "**Term**"), unless earlier terminated or renewed in accordance herewith. Lessee shall have exclusive use, possession and control of the Assets during the Term. Further, Lessee shall assume complete responsibility for the operation of the Assets during the Term and until the Assets are accepted by the Lessor upon expiration of the Term.

(b) Provided this Lease has not been terminated and if Lessee at the time of exercising its option under this Section 1(b) is not in default, after notice and the applicable grace period, under any of the terms, covenants and conditions of this Lease, then Lessee shall have the right and option to renew this Lease for two (2) consecutive terms of ten (10) years each, provided that Lessee shall notify Lessor in writing at least six (6) months prior to the expiration of the original term or extended term that Lessee exercises its option to so renew, in which event this Lease shall be renewed for said additional period upon the same terms and conditions as are provided herein, except that the annual and monthly rentals for said periods shall be increased by three percent (3%) every year commencing in the first year of the first extended term.

2. **Rent.**

(a) Commencing on the Effective Date, and on the first day of each month thereafter, Lessee covenants to pay to Lessor monthly rent payments in accordance with the Rental Schedule attached hereto as "**Exhibit B**" and incorporated herein (the "**Base Rent**"). Notwithstanding the foregoing, Lessee shall receive an abatement of Base Rent for the period commencing on the Effective Date until the date ("Abatement Expiration Date") of the first harvest of cannabis plants at the Premises following the date hereof; provided, Base Rent for the 45-day period immediately following the date of the first harvest of cannabis plants at the Premises shall not be due and payable until the 45th day following the date of the

first harvest of cannabis plants at the Premises (the determination as to when the first harvest of cannabis plants at the Premises has occurred shall be determined in the sole but reasonable discretion of Lessor).

(b) Lessee shall also pay as additional rent and shall discharge when due all charges, levees and other obligations of Lessor, including but not limited to, personal property taxes and annual license fees for the use and operation of the Assets, arising hereunder and pursuant hereto. Lessee shall deliver to Lessor copies of paid receipts for all such obligations ("**Additional Rent**"). Notwithstanding the foregoing, Tenant shall not be responsible for Additional Rent until the Abatement Expiration Date.

(c) All Base Rent and Additional Rent shall be paid to Lessor at its address set forth in this Lease or as otherwise directed by Lessor in writing.

3. **Costs.** Lessee shall be responsible for all costs including, but not limited to, the cost of repairs made to the Assets, costs of maintaining the Assets, permitting costs, license fees, operating expenses, expenses associated with compliance pursuant to Section 6 of this Lease, expenses associated with insurance and taxes pursuant to Section 7 of this Lease, and any other expenses incurred in the operation of the Assets (the "**Asset Expenses**"). Lessee shall reimburse Lessor for all Asset Expenses incurred within fourteen (14) days of receipt of an invoice evidencing such Asset Expenses.

4. **Title and Use.**

(a) The Assets shall at all times during this Lease be the sole and exclusive property of Lessor. Lessee hereby acknowledges that Lessor is the owner of the Assets and Lessee shall acquire no ownership, title or other property rights in the Assets by reason of this Lease. Lessee shall at its expense protect and defend Lessor's title against all persons or entities claiming against or through Lessee, at all times keeping the Assets free from any legal process or encumbrance whatsoever including, but not limited to, liens, attachments, levies and executions, and shall give Lessor immediate written notice thereof and shall indemnify Lessor from any loss caused thereby. Lessor shall have the option, but not the obligation, to cause any such legal process or encumbrance to be released and discharged, and in the event such actions are taken by Lessor, Lessee shall reimburse Lessor for any amounts expended, including reasonable attorney's fees, within seven (7) days after receipt of an invoice thereof, and the failure to make such reimbursement when due shall be deemed an Event of Default under Section 10.

(b) Lessee shall cause the Assets to be operated, in accordance with the applicable vendor's or manufacturer's manual of instructions, by competent and qualified personnel, and will not use, maintain, or store the Assets in violation of any applicable regulatory laws or regulations of any governmental agency.

(c) Lessee shall utilize the Assets for the sole purpose of the business activities of Lessee.

5. **Risk of Loss, Repairs and Replacements.** Lessee expressly assumes all risk of loss, damage, theft or destruction of the Assets, commencing on the Effective Date and ending upon redelivery of the Assets to Lessor. Lessee shall pay for all loss of and damage to the Assets, unless such loss or damage is caused by the willful or negligent acts of Lessor. Lessee agrees to immediately notify Lessor if there is any loss, damage, theft or destruction of any Assets. No loss, damage, theft or destruction of any of the Assets shall relieve Lessee from any of its obligations under this Lease. Lessee shall make the Assets available to Lessor for inspection as requested by Lessor from time to time. Lessee shall be responsible for paying the costs of all repairs and replacements with regard to the Assets. All Assets, attachments, accessories and repairs at any time made to or placed upon the Assets or any

replacement thereof, shall become part of the Assets and shall immediately become the property of Lessor for all purposes.

6. **Compliance.** Lessee shall ensure that the operation of the Assets during the Term is fully compliant with any and all applicable laws and regulations. Lessee shall procure and maintain all licenses and permits required by local, state, or federal authorities with respect to the Assets and the business of the Lessee. Lessee's failure to comply with any applicable laws or regulations, shall constitute an Event of Default under Section 10. Further, Lessee agrees to fully and forever indemnify and hold harmless Lessor for any damages, costs or expenses arising from Lessee's non-compliance with applicable local, state and federal laws or regulations, which indemnification shall survive the expiration or termination of this Lease.

7. **Insurance and Taxes.**

(a) Lessee shall, during the continuance of this Lease, keep each item of the Assets insured against all risks of loss, including, but not limited to, burglary, theft, fire, windstorm, explosion, riot, riot attending a strike, civil commotion, vandalism, all risks covered by so-called extended coverage endorsements, and such other risks ordinarily insured against by other owners or users of such equipment in similar businesses, and shall likewise obtain public liability insurance for bodily injury and for property damage, and all such insurance shall be in such form and amounts, and with such insurance companies as shall be satisfactory to Lessor. All insurance policies shall name each of Lessee, Lessor, and Lessor's lender (if any), as named insured parties and copies of the policies and receipts for the payment of the premiums shall, upon receipt by Lessee, be furnished to Lessor. Each damage policy insuring against loss of or damage to the Assets shall provide for payment of all losses directly to Lessor. Each policy shall provide that it shall not be cancelled without thirty (30) days' prior written notice to Lessor.

(b) Lessee shall further pay all taxes, charges and assessments imposed upon the Assets by any governmental entity or agency, together with all interest, late charges, penalties and collection fees, if any. Lessee shall file all returns required therefore and furnish copies to Lessor.

(c) In case of any failure on the part of Lessee to procure and maintain insurance, or to pay taxes, fees and similar charges, as all hereinbefore specified, Lessor, shall have an option, but not the obligation, after reasonable notice to Lessee, to effect such insurance, or pay such taxes, fees, or similar charges, as the case may be, the cost of all of which shall be immediately reimbursed by Lessee to Lessor upon demand.

8. **Indemnity.** Lessee assumes liability for and shall indemnify, protect, save and keep harmless Lessor, its assigns, agents, servants and beneficiaries from and against all losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including reasonable attorney's fees, of whatsoever kind and nature imposed upon, incurred by, or asserted against Lessor, or any other party so protected in any way relating to or arising out of this Lease or of the installation, deinstallation, delivery, return, manufacture, purchase, lease, possession, use or other control (including patent or other infringements), condition, operation or maintenance of the Assets, except for such losses, damages, penalties, claims, actions, suits, cost expenses and disbursements, which arise out of the Lessor's acts or omissions constituting gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. The indemnities contained in this Section shall continue in full force and effect, notwithstanding the expiration or termination of this Lease.

9. **Assignability.** Without Lessor's prior written consent, Lessee shall not assign, transfer, sublet, lend, hypothecate, or pledge this Lease, or attempt in any mannerly order to dispose of the Assets or any part thereof, or permit the Assets to be used by anyone other than Lessee or Lessee's

employees. No such assignment or transfer by Lessee, shall in any manner impair, diminish or relieve the Lessee of any of its obligations under this Lease.

10. **Default.** The following events shall constitute an **"Event of Default"** by the Lessee hereunder:

(a) Lessee's failure to pay any Base Rent, Additional Rent, Asset Expenses or any other amount owed to Lessor hereunder when due, and such failure continues for five (5) days after Lessor's written notice of the same.

(b) Lessee's breach of any other term of this Lease and such breach, if curable, is not cured within thirty (30) days of Lessor's written notice of the same.

(c) Lessee's dissolution, termination of existence, insolvency, the appointment of a receiver for all or any part of the property of Lessee, any Lessee assignment for the benefit of its creditors, Lessee's filing a petition of bankruptcy, the commencement of any proceedings by or against Lessee under any bankruptcy or insolvency law or any laws relating to the relief of debtors, and any readjustment of indebtedness or reorganization of Lessee.

Should an Event of Default by Lessee occur, Lessor will have the immediate right, at its discretion and without further notice, demand or hearing, to: A) immediately repossess any and all Assets, wherever the Assets are located; B) recover from Lessee all costs and expenses incurred by Lessor in enforcing this Lease and any sums due hereunder, including reasonable attorneys' fees; and C) terminate this Lease and recover all other applicable damages available at law or in equity.

11. **Representations and Covenants of Lessee.** Lessee covenants, represents and warrants to Lessor that:

(a) Lessee is a not for profit corporation duly organized, validly existing and in good standing under the laws of the State of Arizona and has all requisite power and authority to own its properties, to carry on its business as now being conducted, to execute and deliver this Lease, and the agreements contemplated herein, to perform and to consummate the transactions contemplated hereby and thereby.

(b) Neither the execution of this Lease, nor the performance of its terms, shall result in any breach of, or constitute a default under, or violation of, Lessee's articles of incorporation, bylaws, or any agreement to which Lessee is a party or by which Lessee is bound.

(c) No approval, consent or withholding of objection is required from any governmental authority with respect to the entering into, or performance of the lease by Lessee.

12. **Binding Effect.** This Lease shall be binding upon and shall inure to the benefit of each of the parties hereto, and their respective successors and assigns.

13. **Termination.** Upon expiration or termination of this Lease, Lessee shall deliver to Lessor the Assets in good working order and repair, reasonable wear and tear excepted. Lessee shall

retain full responsibility upon termination of this Lease to remove all of its identification devices from the Assets.

14. Waiver. Forbearance on the part of Lessor to exercise any right or remedy available hereunder upon Lessee's breach of the terms, covenants and conditions of this Lease or Lessor's failure to demand the punctual performance thereof shall not be deemed a waiver: (a) of such right or remedies; (b) of the requirement of punctual performance; or (c) of any subsequent breach or default on the part of Lessee. Any waiver of any default by Lessor must be in a writing signed by Lessor and shall relate on to such specifically identified default and only for such specified instance and in no event shall constitute a waiver of any other default or any other instance of the same default.

15. Notices. All notices required or permitted to be given under this Agreement shall be in writing and delivered personally, by overnight air courier service, or by U.S. certified mail, return receipt requested, postage prepaid, to the parties at their respective addresses set forth below; and the same shall be effective upon receipt if delivered personally, one business day after depositing with an overnight air courier for next business day delivery, or two business days after depositing in the U.S. mail. Notices to Lessee shall be sent to 15 N. 57 Drive, Phoenix, Arizona 85043. Notices to Lessor shall be sent to the following address: (i) c/o Richard Merel, Two Prudential Plaza, 180 N. Stetson Avenue, Suite 1300, Chicago, Illinois 60601, (ii) c/o Barry Missner, 1700 W. Higgins Road, Suite 400, Des Plaines, Illinois 60018, (iii) c/o Jeff Schaeffer and Brad Beck, 4201 University Drive, Phoenix, Arizona 85043, in each case with a copy to Horwood Marcus & Berk Chartered, 500 W. Madison Street, Suite 3700, Chicago, Illinois 60661, Attn: Lawrence J. Feller, Esq. and David A. Joffe, P.C., 3636 N. Central, Suite 700, Phoenix, Arizona 85012, Attn: David A. Joffe, Esq.

16. Entire Agreement. This Lease contains the entire agreement between the parties, and may not be amended or altered, except by a writing signed by both parties.

17. Time of Essence. Time is of the essence of this Lease.

18. Jury Waiver. The parties knowingly and voluntarily agree to waive any right to trial by jury for any dispute related to or arising out of this Lease.

19. Counterparts. This Lease may be executed in counterparts and signatures received via facsimile, PDF or similar means shall be deemed to be original signatures.

[remainder of page left blank; signature pages follow]

IN WITNESS WHEREOF, the undersigned does hereby execute this Equipment Lease Agreement the date first above written.

LESSEE:

PEACE RELIEF CENTER I, an Arizona not for profit corporation

By: Cynthia Orme
Name: CYNTHIA ORME
Title: DIRECTOR / PRESIDENT

LESSOR:

JJSM EQUIPMENT FUND, LLC, an Arizona limited liability company

By: [signature]
Name: Jeff Schaefer
Title: Manager

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Exhibit A
Assets

(See attached)

Government Auction	Generator	$ 45,000.00
Hyper logic,Galcon	Water system/ feeding	$ 95,000.00
Equipment		
Lift Right	Scissor lift	$ 5,900.00
Applied Process	Pressure washer (steam)	$ 7,690.00
Amerinda	Trimmers purchased 3 twister trimmers, need 3 more (9 total)	$ 36,840.00
Amerinda	Hydro Equipment	$ 3,215.45
Air Liquide (19,792 refunded after 1 year)	Co2 vessel	$ 67,840.00
GGS Structures	Rolling Tables	$ 55,728.00
	mis IT server rack ect	$ 2,000.00
	Phones voip	$ 3,000.00
	Tools / latters	$ 6,000.00
	shop truck	$ 15,000.00
	plant label printer / label printer	$ 10,000.00
	fork lift	$ 9,000.00
	Extractor	$ 160,000.00
Supplies		
Growlite	lights	$ 249,507.00
	clothing for employees	$ 4,000.00
TOTALS:		$ 775,720.45

Exhibit B
Base Rent

$1000 per month for the first 12 months following the Abatement Expiration Date; and
$2000 per month for the remaining term of the Lease

LEASE

DATED

April 1, 2020

by and between

JJSM Real Estate Fund, LLC,
an Arizona limited liability company

and

CNCTD LLC
an Arizona limited liability company

LEASE AGREEMENT

This Lease Agreement (this "Lease"), dated and effective as of April 1, 2020 (the "**Commencement Date**"), is made between JJSM Real Estate Fund, LLC, an Arizona limited liability company ("**Landlord**"), and CNCTD LLC, an Arizona limited liability company ("**Tenant**").

RECITAL

A. WHEREAS, Landlord wishes to lease to Tenant, and Tenant desires to lease from Landlord, the Premises (defined in Section 1 below) located at 15 N 57th Drive, Phoenix, Arizona (the "**Building**"), pursuant to the terms and conditions of this Lease, as detailed below.

AGREEMENT

NOW, THEREFORE, Landlord and Tenant, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, agree as follows:

1. Lease of Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises generally as shown on Exhibit A attached hereto, including shafts, cable runs, mechanical spaces, rooftop areas, landscaping, parking facilities, private drives and other improvements and appurtenances related thereto (including the Building), for use by Tenant in accordance with the Permitted Use (as defined below) and no other uses (collectively, the "**Premises**"). Within thirty (30) days of the Commencement Date, Landlord shall remove all of the equipment and personal property described on Schedule 1 hereto at its sole expense. Any equipment and/or personal property not removed by Landlord as provided in the immediately preceding sentence shall be deemed irrevocably and unconditionally surrendered and abandoned by Landlord. Tenant may utilize the Equipment in operating its business within the Premises. Landlord makes no representation or warranty regarding the Equipment, its condition or operational capabilities. Tenant shall be responsible, at its sole cost and expense, for repairing, maintaining and replacing, as is necessary, any portion of the Equipment as determined by Tenant in its commercially reasonable judgment. In the event Tenant replaces any of the Equipment, such replacement shall be of equal or better quality and capability as the Equipment replaced. The Equipment, including any replacements thereof, shall remain the sole property of Landlord.

2. Basic Lease Provisions. For convenience of the parties, certain basic provisions of this Lease are set forth herein. The provisions set forth herein are subject to the remaining terms and conditions of this Lease and are to be interpreted in light of such remaining terms and conditions.

2.1. Commencing on August 1, 2020 (the "**Rent Commencement Date**"), Tenant shall pay the monthly Rent as set forth on Schedule 2.1 attached hereto and made a part hereof ("**Rent**"). Concurrently with its execution of this Lease, Tenant shall pre-pay $75,000.00 of its Rent payment for August, 2020, which shall be credited against the Rent due for such month and any following months if applicable. The foregoing and anything in Schedule 2.1 to the contrary, Tenant's Rent payable shall be abated by Fifty Percent (50%) commencing on August 1, 2020 and continuing through the earlier to occur of: (i) December 31, 2020, or (ii) the date Tenant offers product cultivated on the Premises for wholesale or retail sale, through any form or medium including, without limitation, in-store, telephonic or online sales.

2.2. Security Deposit: Tenant shall deposit the following amounts in the following manner as partial security to Landlord of the fulfillment of Tenant's obligations under this Lease: (i) $100,000.00 concurrently with Tenant's execution of this Lease; (ii) $150,000.00 paid to Landlord on or before June 1, 2020; and, (iii) $250,000.00 payable on or before August 1, 2020, provided such $250,000.00 payment shall only be paid if Tenant has not received each of the Entitlements (defined below) prior to August 1, 2020. Upon Tenant's receipt of an Approval to Operate ("**ATO**") from the Arizona Department of Health Services, a certificate of occupancy for the Premises and the satisfaction of governmental requirements to occupy the Premises in accordance with the Permitted Use (collectively, the "**Entitlements**"), the Security Deposit shall be reduced to $250,000. One year after the issuance of the ATO, the Security Deposit shall be reduced to $100,000, provided Tenant has not been in default under this Lease during such period. Any transfer by Landlord to Tenant representing a decrease in security deposit pursuant to this section shall be sent by Landlord, together with written notice of the same to Tenant, within ten (10) days of the applicable conditions

Schedule 2.1

Monthly Rent:	**Months** (commencing on and Inclusive of the Rent Commencement Date)	**Monthly Net Absolute Rent**
	1–60 (subject to Abatement as set forth in Section 2.1 of Lease)	$70,000.00
	61-120	$78,750.00
	121-180	$88,593.75.00

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease on the day and year first above written.

LANDLORD:

JJSM Real Estate Fund, LLC,
an Arizona limited liability company

By: _____
Name: Barry Missner, Manager of Manager
Title: _____

TENANT:

CNCTD LLC
an Arizona limited liability company

By: Connected International, Inc.
a Delaware corporation
Its: Member

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease on the day and year first above written.

LANDLORD:

JJSM Real Estate Fund, LLC,
an Arizona limited liability company

By: _____
Name: Barry Missner Manager of Manager
Title: _____

TENANT:

CNCTD LLC
an Arizona limited liability company

By: Connected International, Inc.
a Delaware corporation
Its: Member

By: _____
Name: Sam Ghods
Title: CEO

From: Jeff Schaeffer <jeff@parcdispensary.com>
Sent: Tuesday, December 13, 2016 2:56 PM
To: 'Brad Beck' <bradbeck313@gmail.com>; Barry Missner <bmissner@missnergroup.com>; Richard A. Merel <rmerel@garfield-merel.com>
Cc: 'Glen Missner' <GMissner@missnergroup.com>
Subject: From mother room to Bloom room

PARC
4201 East University
Phoenix, AZ 85034
Jeff Schaeffer
Executive Director
jeff@parcdispensary.com
602-437-1645
602-438-4383 - fax
480-227-9118 - Cell

GRAIF BARRETT & MATURA, P.C

Jeffrey C. Matura
Direct: 602-792-5721
jmatura@gbmlawpc.com
Admitted in Arizona

May 19, 2017

Via Facsimile & U.S. Mail

Dennis Wilenchik
Wilenchik & Bartness
2810 North Third Street
Phoenix, Arizona 85004

Re: JJSM Real Estate Fund, LLC adv. Peace Releaf Center I
Lease Agreement

Dear Mr. Wilenchik:

I represent JJSM Real Estate Fund, LLC ("JJSM"). I understand that you represent Yuri Downing, who is a Board member of Peace Releaf Center I, d/b/a Patient Alternative Relief Center ("PARC"). If I am incorrect about your representation of Mr. Downing and PARC, please let me know.

This letter is regarding a Single Tenant Industrial Building Lease ("Lease Agreement") that JJSM and PARC entered into on December 23, 2015 for the premises located at 15 North 57th Drive, Phoenix, Arizona ("Premises"). A copy of the Lease Agreement is attached to this letter. Pursuant to Section 3.1 of the Lease Agreement, PARC agreed to pay base rent in the amount of $33,333 per month. Rent was abated from January 1, 2016 until the date of the first harvest of cannabis plants at the Premises. Pursuant to Section 27.1, PARC was to also pay a security deposit to JJSM in the amount of $66,667, with $33,333 payable within 14 days after the first harvest, and the remaining $33,333 payable within 45 days after the first harvest.

The first harvest at the Premises occurred on December 18, 2016. Yet, PARC has failed to pay the monthly base rent and security deposit. The following sums are currently due and owing to JJSM:

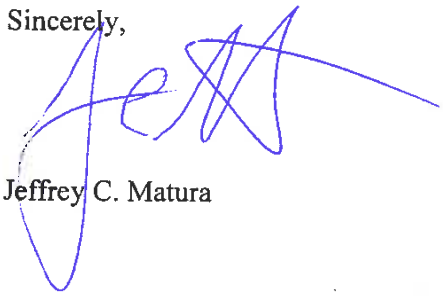
Rent from December 18 to December 31, 2016:	$13,978.35
Rent from January 1 through May 31, 2017:	$166,665.00
Security Deposit:	$66,667.00
Total Due:	**$247,310.35**

PARC's failure to timely and fully pay these amounts is a default of the Lease Agreement. Pursuant to Section 17.1(a), JJSM hereby provides PARC with its one-time opportunity to cure its default by paying all amounts due and owing within five days of this letter. If PARC fails to timely and fully cure its default, JJSM reserves its right to pursue all remedies available to it in the Lease Agreement.

Finally, this letter also rescinds all verbal discussions between JJSM and PARC regarding any offsets of rent against any amounts due to PARC under a separate Cultivation Management Services Agreement entered into between different parties. Pursuant Section 31.2 of the Lease Agreement, any modifications to the Lease Agreement must be in writing and signed by JJSM.

If you would like to discuss any issue raised in this letter, please give me a call at 602-792-5721.

Sincerely,



Jeffrey C. Matura

JCM/ch
Attachment
4821-5615-4185

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Dennis Wilenchik
Wilenchik & Bartness
2810 North Third Street
Phoenix, Arizona 85004

Re: Premier Consulting and Management Solutions, LLC adv. Peace Releaf Center I
Cultivation Management Services Agreement

Dear Mr. Wilenchik:

I represent Premier Consulting and Management Solutions, LLC. I understand that you represent Yuri Downing, who is a Board member of Peace Releaf Center I, d/b/a Patient Alternative Relief Center ("PARC"). If I am incorrect about your representation of Mr. Downing, please let me know.

This letter is regarding the Cultivation Management Services Agreement ("Agreement") that Premier and PARC entered into on December 23, 2015. A copy of the Agreement is attached to this letter. The Agreement created an exclusive relationship, in which PARC agreed to use Premier as its sole source for all Marijuana and Marijuana Products (collectively "Product") (as those terms are defined in the Agreement) to sell at its dispensary retail location and on a wholesale basis to other licensed medical marijuana dispensaries within the State of Arizona. In Section 11 of the Agreement, PARC acknowledged and agreed that Premier "shall be PARC's sole and exclusive provider of Cultivation Management Services." The initial term of the Agreement is 10 years, which then automatically renews for an additional 10-year term. In Section 12 of the Agreement, PARC is further obligated to take whatever actions are necessary to sell at its dispensary or to other dispensaries any overproduction of the Product.

Premier has advised PARC that it has Product ready for distribution and sale. Premier therefore requested that PARC take delivery of the Product and sell it at its dispensary or on a wholesale basis to other dispensaries. PARC has refused to accept delivery of the Product, and has further refused to take any action to sell the Product at its dispensary or on a wholesale basis.

PARC's conduct is breach of the Agreement and is causing irreparable harm and damages to Premier.

Pursuant to Section 24 of the Agreement, this letter shall constitute the required written 30-day's notice regarding a controversy under the Agreement, as described above. Please be further advised that, if PARC fails to immediately comply with all the terms and conditions of the Agreement, including accepting all the Product that Premier produces and selling that Product at PARC's dispensary or to other dispensaries on a wholesale basis, Premier will suffer immediate and irreparable injury and will seek injunctive and equitable relief against PARC and anyone who participated in the breach.

Because litigation is anticipated, this letter is to also demand that PARC, Mr. Downing, the other Board members, and anyone who is working for or on behalf of PARC not delete or destroy any paper or electronic document related to PARC, the Agreement, Premier, and PARC's business operations. The term "document" is all-encompassing and includes, but is not limited to, all e-mails and their attachments, Word documents, reports, drafts, memos, notes, instant messages, text messages, voicemail messages, and spreadsheets, regardless of whether the document has been printed or resides on-line or off-line in any electronic medium, including on a home or work computer, a local area network, a company-wide server, in the "cloud" environment, or on a zip drive, USB thumb drive, CD, DVD, laptop, notebook, mobile electronic tablet such as iPads, Surface, etc., smartphone, or other similar devices. Please advise Mr. Downing and PARC regarding their obligations to comply with this litigation hold, as well as the sanctions for not complying.

If you would like to discuss any issue raised in this letter, please give me a call at 602-792-5721.

Sincerely,

Jeffrey C. Matura

JCM/ch
Attachment
4850-1778-2345

CONFIDENTIAL PRIVATE OFFERING MEMORANDUM
NEW LEAF INVESTMENTS AZ, LLC

Up to 72,000 Class A Units at $100 per Unit
December 15, 2015

THE OFFERING

New Leaf Investments AZ, LLC, a Delaware limited liability company (the "LLC"), hereby offers, pursuant to the offering (this "Offering") contemplated by this Private Offering Memorandum (this "Memorandum"), up to Seventy-Two Thousand Class A Units[1] in the LLC (for an aggregate offering price of $7,200,000), at an offering price of One Hundred Dollars ($100) per Class A Unit.

The LLC reserves the right to reject any prospective investor's subscription ("Subscription") and to allot to any investor who subscribes for Class A Units ("investor" or "Subscriber") less than the number of Class A Units subscribed for. The LLC intends to require that each investor subscribe for no less than $100,000 worth of Class A Units but reserves the right, in its sole discretion, to accept Subscriptions of lesser amounts.

Persons interested in acquiring Class A Units must: (i) complete and sign the signature page to the Subscription Agreement and deliver the same to the Manager (as defined herein) at the following address:

c/o The Missner Group, LLC
1700 Higgins Road
Des Plaines, Illinois 60018
Attention: Barry Missner
Email: bmissner@missnergroup.com,

(ii) deliver a check in the amount proposed to be invested ("Subscription Amount") to the Manager or coordinate with the Manager for the delivery of the Subscription Amount to the LLC by wire transfer and (iii) sign and deliver to the Manager a counterpart signature page to the Limited Liability Company Agreement of the LLC.

BASIC TRANSACTION INFORMATION

The LLC is a Delaware limited liability company formed to purchase equity in each of JJSM Equipment Fund, LLC, an Arizona limited liability company ("JJSM Equipment"), JJSM Real Estate Fund, LLC, an Arizona limited liability company ("JJSM Real Estate") and Premier Consulting and Management Solutions, LLC ("PCMS," and, together with JJSM Equipment and JJSM Real Estate, the "Project Entities"). Together with Peace Releaf Center I, an Arizona nonprofit corporation ("PARC"), the Project Entities operate or own assets related to an Arizona medical marijuana dispensary and will operate a cultivation operation (the "Project").

The Manager of the LLC is New Leaf AZ Management, LLC, a Delaware limited liability company ("we" or the "Manager"). Richard Merel and Barry Missner control the Manager. Biographies of Mr. Merel and Mr. Missner (the "Management Team") are attached hereto as Exhibit A. The Manager is the sole decision maker on behalf of the LLC.

[1] "Class A Units" is defined in the Limited Liability Company Agreement of the LLC ("LLC Agreement"). Other capitalized terms used herein but not defined in this Memorandum have the meanings set forth in the LLC Agreement.

The LLC has or intends to enter into a Unit Purchase Agreement (the "Purchase Agreement") by and among the LLC, the Project Entities and certain members of the Project Entities (the "Project Founders"), pursuant to which the LLC will purchase from the Project Entities those units of membership interest (the "Project Equity") for an aggregate purchase price of approximately [2]$7,200,000 (the "Purchase Price"), broken down as follows:

- JJSM Real Estate shall issue and sell to the LLC units of membership interest representing 50% of the issued and outstanding units of membership interest of JJSM Real Estate at such time, for $1,100,00;

- JSM Equipment shall issue and sell to the LLC units of membership interest representing 50% of the issued and outstanding units of membership interest of JJSM Equipment at such time, for $500,000; and

- PCMS shall issue and sell to the LLC units of membership interest, representing 47% of the issued and outstanding units of membership interest of PCMS at such time, for $5,600,000.

The Project Entities are currently owned and primarily managed by the Project Founders, some of whom will continue to own and operate the Project after the close of the purchase of the Project Equity. The biography of Jeff Schaeffer, the Project Founder with primary responsibility for operating the Project, is included on Exhibit A attached hereto.

The Purchase Agreement is a typical purchase agreement for transactions of this type, with representations and warranties made by both the Project Entities and the Project Founders. In the case of certain breaches of the Purchase Agreement, the Project Founders are bound to indemnify the LLC.

Pursuant to this Offering, investors are being offered the opportunity to purchase Class A Units in the LLC. Class A Unitholders shall, on a pro rata basis, be entitled to first priority distributions of 100% of Available Cash, up to an amount necessary to provide such Class A Unitholders with aggregate distributions in an amount equal to 10% of the total amount of Capital Contributions made by all Class A Unitholders. Second, such Class A Unitholders shall be entitled to receive second priority distributions of 80% of Available Cash, up to an amount necessary to reduce the Class A Unitholders' Invested Capital balances to zero. Thereafter, the Class A Unitholders shall share pro rata in distributions of 50% of Available Cash. For a more detailed summary of the distribution structure of the LLC, see the section entitled "Distributions of Available Cash" under the heading "Summary of Limited Liability Company Agreement."

INVESTMENT AND BUSINESS SUMMARY

The Project Entities and PARC together operate or own assets related to the Project, which is an Arizona medical marijuana dispensary and cultivation operation. Upon the close of the purchase of the Project Equity, the LLC will become a member of each of JJSM Real Estate,

[2] The Purchase Agreement has not been finalized, and the Purchase Price and any breakdown of the Purchase Price between the Project Entities is subject to change.

JJSM Equipment and PCMS and, as such, will become party to the limited liability company agreements of each such entity.

The LLC intends to require each Project Entity to amended and restate its limited liability company agreement as a condition to closing the purchase of the Project Equity to provide that the LLC will have, among other things, a right to a priority on distributions made by each Project Entity. For example, pursuant to such JJSM Real Estate amended and restated limited liability company agreement, the LLC contemplates that it will have priority, pro rata with one of the Project Founders, on JJSM Real Estate's distributions of proceeds from the sale or refinancing of the Cultivation Center. The amendments to the limited liability company agreements of the Project Entitles are still being negotiated, and there is no guarantee that the LLC will be successful in obtaining all desired rights within the Project Entities. See the section of this Memorandum titled "Risk Factors."

The Project initially involves the completion of construction of the cultivation center ("Cultivation Center"), which is anticipated to be completed approximately six months following the close of the purchase of the Project Equity. After construction of the Cultivation Center, the Project Entities will start the process of manufacturing the marijuana for sale to the Project dispensary and to other dispensaries in Arizona. Assuming full operation of the Cultivation Center, it will generally take approximately three months to generate the first marijuana harvest. Based upon information from the LLC's negotiations with the Project Entities, the LLC estimates that the Project may begin generating revenue from the Cultivation Center's operations approximately 10 to 12 months following the close of the purchase of the Project Equity. See the section of this Memorandum entitled "Risk Factors."

JJSM Real Estate owns the land where the Cultivation Center will be located, at 15 North 57th Drive, Phoenix, Arizona 85043 (the "Cultivation Property"). JJSM Real Estate purchased the Cultivation Property in 2014. Following completeion of the Cultivation Center, PARC intends to lease the Cultivation Center from JJSM Real Estate.

The Project's marijuana dispensary ("Dispensary") is located at 4201 E. University Drive, Phoenix, Arizona, 85034. PARC leases the Dispensary pursuant to a Commercial Lease (the "Dispensary Lease"). On August 1, 2015, the term of the Dispensary Lease was extended through October 1, 2018.

PARC is the owner of the Medical Marijuana Registration Certificate ID No.00000091DCWY00555666, which is required to operate the Dispensary. As of the date of this Memorandum, the Arizona Medical Marijuana Act ties cultivation of medical marijuana to dispensaries by definition, and requires a dispensary to provide the address of an additional cultivation location, if any, when applying for a registration. PARC's current Dispensary License specifies that it is not licensed to cultivate at the Dispensary location. The Project Entities and PARC contemplate that PARC will be granted authority to cultivate at the Cultivation Center after the completion of the Cultivation Center and its subsequent inspection by the Arizona Department of Health (the "Cultivation Center Inspection").

Under the Arizona Medical Marijuana Act, a medical marijuana dispensary registered with the Arizona Department of Health Services must be operated on a not-for-profit basis. Thus, PARC holds the license to operate the Dispensary and will, if the Cultivation Center Inspection is successful, the entity granted authority to cultivate at the Cultivation Center. PARC and PCMS intend to enter into a Cultivation Management Services Agreement, pursuant to which PCMS will exclusively provide PARC with management services related to the Dispensary and Cultivation Center operations (the "Management Services Agreement"). In consideration of PCMS's provision of management services, PARC will pay PCMS (i) a "Retail Management Fee," which is equal to the Adjusted Revenues from the sale of products, with "Adjusted Revenues" meaning gross revenues from the sale of products, calculated assuming such products have been sold to Dispensary patients at a retail price per-pound equal to the average per-pound wholesale price at which PARC sold its products to other licensed dispensaries in the previous calendar month, discounted by 10%; and (ii) a "Wholesale Management Fee" in the amount of 90% of the gross revenue from the wholesale of medical marijuana to other licensed dispensaries in Arizona (together with the Retail Management Fee, the "Project Management Fees"). PARC will be responsible for all costs and expenses incurred by the Dispensary and the Cultivation Center. PARC also retains sole and exclusive operation, management and control of the sale of all marijuana products, separate and apart from any management services provided by PCMS. The LLC intends to make the execution of the Management Services Agreement a closing condition to the LLC's purchase of the Project Equity. The form of Management Services Agreement is attached hereto as Exhibit E. Please note that Exhibit E is not currently in effect, is attached in draft form only and is subject to change subsequent to the date of this Memorandum. There is no guarantee that the final form of Management Services Agreement will be beneficial to PCMS and/or to the LLC, as a member of PCMS. See the section of this Memorandum titled "Risk Factors."

After completion of the Cultivation Center, the Project will be a producer, wholesaler and retailer of medical marijuana in Arizona.

PROJECTED FINANCIAL INFORMATION

The estimated sources, uses, budget and projected cash flows of the LLC are attached hereto as Exhibit B (together with any other financial information referenced herein or otherwise provided by the Manager, "Projections").

THE PROJECTIONS HAVE NOT BEEN PREPARED WITH A VIEW TOWARD COMPLIANCE WITH ANY PUBLISHED GUIDELINES OF ANY REGULATORY OR PROFESSIONAL AGENCY, NOR HAVE THEY BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. NO INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT OR OTHER EXPERTS HAVE COMPILED, EXAMINED, REVIEWED, OR APPLIED ANY AGREED UPON PROCEDURES TO THE PROJECTIONS OR OTHER FINANCIAL INFORMATION.

THE PROJECTIONS ARE BASED ON NUMEROUS ASSUMPTIONS, MANY CONCERNING FACTORS OVER WHICH THE MANAGER HAS NO CONTROL, AND, ACCORDINGLY, THE PROJECTIONS ARE NOT GUARANTEED OR WARRANTED. SEE "RISK FACTORS – FORWARD LOOKING STATEMENTS." THE LLC, THE MANAGER,

Specific Remedies Provided in LLC Agreement:	Each Unitholder is bound by certain provisions which govern the enforcement of the LLC Agreement. In particular, each Unitholder must agree that all actions or proceedings in any way, manner or respect, arising out of or related to the LLC Agreement will be litigated only in courts located in Cook County, Chicago, Illinois, and waives any right to trial by jury.

RISK FACTORS

PROSPECTIVE INVESTORS CONSIDERING THE PURCHASE OF CLASS A UNITS SHOULD RECOGNIZE THAT THERE ARE CERTAIN RISKS INHERENT IN THE OWNERSHIP OF LIMITED LIABILITY COMPANY INTERESTS IN ANY LIMITED LIABILITY COMPANY, INCLUDING LOSSES FROM RISKS WHICH MAY BE ECONOMICALLY UNINSURABLE. PERSONS WHO DO NOT HAVE THE FINANCIAL ABILITY TO PURCHASE AND HOLD THE CLASS A UNITS FOR AN INDEFINITE PERIOD SHOULD NOT PURCHASE CLASS A UNITS. PROSPECTIVE INVESTORS SHOULD CAREFULLY CONSIDER THEIR PARTICULAR FINANCIAL SITUATION IN EVALUATING THE RISKS INVOLVED IN THE PURCHASE OF THE CLASS A UNITS, WHICH RISKS INCLUDE, AMONG OTHERS, THE RISKS DESCRIBED BELOW.

RISKS RELATED TO THE LLC'S INVESTMENT IN THE PROJECT ENTITIES

Marijuana Remains Illegal under Federal Law

The LLC's sole purpose is to invest in the Project Entities and to operate and deal with the Project. The Project is a medical marijuana dispensary and cultivation center and, as of the date of this Memorandum, marijuana remains illegal under federal law. It is a Schedule-I controlled substance. Even in those jurisdictions in which the use of medical marijuana has been legalized at the state level, its prescription is a violation of federal law. The United States Supreme Court has ruled in *United States v. Oakland Cannabis Buyers' Coop*. and *Gonzales v. Raich* that it is the federal government that has the right to regulate and criminalize marijuana, even for medical purposes. Therefore, federal law criminalizing the use of marijuana trumps state laws that legalize its use for medicinal purposes. At present, many states are not deterred by the federal law, maintaining existing laws and passing new ones in this area. This may be because the Obama administration has made a policy decision to allow states to implement these laws and not prosecute anyone operating in accordance with applicable state law. However, we face another presidential election cycle in 2016, and a new administration could introduce a less favorable policy. A change in the federal attitude towards enforcement could cripple the industry and if this industry was unable to operate, we would lose our ability to operate. Moreover, a change in the federal attitude towards enforcement could result in the federal law enforcement seizing the assets and business of Project Entities and PARC, which would result in a complete loss for the LLC, as a member of the Project Entities. Additionally, the federal government could look to extend enforcement of the anti-drug laws against people who are assisting the medical marijuana industry, including our investors and finance sources.

Laws and Regulations Affecting the Medical Marijuana Industry are Constantly Changing

Local, state and federal medical marijuana laws and regulations are broad in scope and they are subject to evolving interpretations, which could require us to incur substantial costs associated with compliance or to alter one or more of our sales or marketing practices. In addition, violations of these laws, or allegations of such violations, could disrupt the Project and result in a material adverse effect on our revenues, profitability, and financial condition. Any disruption of the Project would, in turn, also disrupt the LLC.

In addition, it is possible that regulations may be enacted in the future that will be directly applicable to the Project, its products and, in turn, the LLC. The LLC cannot predict the nature of any future laws, regulations, interpretations or applications, nor can we determine what effect additional governmental regulations or administrative policies and procedures, when and if promulgated, could have the Project and the LLC. These potential effects could include, however, requirements for the revisions to our products to meet new standards, the recall or discontinuance of certain products, or additional record keeping and reporting requirements. Any or all of these requirements could have a material adverse effect on the LLC's business, financial condition and results of operations.

The Alternative Medicine Industry Faces Strong Opposition

Many believe that well-funded, significant businesses may have a strong economic opposition to the medical marijuana industry as currently formed. For example, the medical marijuana industry could face a material threat from the pharmaceutical industry should marijuana displace other drugs or simply encroach upon the pharmaceutical industry's market share for compounds such as marijuana and its component parts. The pharmaceutical industry is well funded with a strong and experienced lobby that eclipses the funding of the medical marijuana movement. Any inroads the pharmaceutical industry makes in halting or rolling back the medical marijuana movement could have a detrimental impact on the market for the Project's products and thus on the Project's, and the LLC's, business, operations and financial condition.

Financing Risks

Because the cultivation, sale and use of marijuana is illegal under federal law, conventional financing from financial institutions may not be available for the Project or the Project Entities. Accordingly, any financing for any portion of the Project, including financing related to the real estate and construction of the Cultivation Center, will likely need to be procured through private financing. Private financing is typically more expensive than conventional financing. This could decrease any profits of the Project and, in turn, decrease any amounts realized by the LLC as a member of the Project Entities.

Banking Difficulties

As discussed above, the cultivation, sale and use of marijuana is illegal under federal law. Therefore, there is a compelling argument that banks cannot accept for deposit funds from the

drug trade and therefore would not be able to do business with the Project. As such, the Project Entities may have trouble finding a bank willing to accept their business. There can be no assurance that banks in Arizona currently or in the future will decide to do business with medical marijuana growers or retailers, or that in the absence of legislation state and federal banking regulators will not strictly enforce current prohibitions on banks handling funds generated from an activity that is illegal under federal law. This may make it difficult for the Project to open accounts, use the service of banks and otherwise transact business, which in turn may negatively affect the LLC.

Increased Risk of Crime Due to Banking Difficulties

As discussed above, banks may be reluctant to open depositary accounts for medical marijuana growers and dispensaries because of their illegal nature under federal law. Therefore, transactions between our vendors and customers may need to be effected in cash. The prospect of significant amounts of cash on hand at the Project's facilities or in transit to its vendors may be enticing to criminals and criminal enterprises. Recent reports from other states where marijuana sales are legal (per the state's laws) have indicated that there have been a significant number of thefts and attempted thefts of at marijuana dispensaries. If such a theft were to occur, the Project Entities, and in turn the LLC, might experience short-term cash flow problems and may need to seek additional financing. The Project Entities may not hire security personnel for the Project sites, and, even if the Project Entities do hire security personnel, there can be no guaranty that such measures will prevent or reduce the amount of crime that may occur related to the Project.

The Project's Product Itself may be a Target of Theft

The illicit drug trade deals heavily in the sale of marijuana for recreational users. Accordingly, the Project's product may be the target of theft. There can be no guarantees that theft will be entirely prevented. Theft may include a large-scale theft in the form of a break-in, as well small-scale theft by employees. The Project may also experience product theft while transporting products to its customers. Theft of a significant amount of its product, whether internally or externally, could have a serious impact on the Project's ability to supply product which would, in turn, materially and adversely affect the Project's, and the LLC's, business, margins and results of operations.

Agricultural Risks

Like all crops, marijuana plants are subject to the risks. Those risks include pest infestation, molds and fungi, inadequate artificial sunlight conditions, poor soil conditions, water shortages, building problems (such as roof collapses), etc. There is no guaranty that Project Entities will be successful in eliminating all, or any, risks marijuana plants are subject to. If the Project Entities cannot regularly and effectively grow mature, adult marijuana plants, its business, and the performance of the LLC, will materially suffer.

The Project may have Difficulty Obtaining Insurance

Because marijuana is illegal under federal law, it may be difficult for the Project to obtain commercial and general liability insurance for its operations. Alternatively, if it is able to find a company willing to insure its operations, such insurance may be prohibitively expensive. If the Project is unable to insure its facilities and products, a fire, crop disease or other calamity might result in a catastrophic loss. Such an uninsured loss could materially and adversely affect the Projects ability to operate our business and could result in a total loss to the Project Entities, which in turn would negatively affect the LLC.

No Guarantee of Licensing Renewals

Dispensary center licenses are subject to annual renewal under the Arizona law. Renewal of a license is not guaranteed. There may be many reasons why a license is not renewed by the state. There can be no guaranty that PARC, which holds the cultivation license on behalf of the cultivation center, will be successful in getting the license renewed every year (or in any year). If PARC's license is not renewed at some point in the future, the Project would be out of business. If that were to happen, there can be no guarantee that the LLC will be able to return some or any of the members' investments.

No Guarantee that the Project will Receive Authority to Cultivate

As stated previously, the Dispensary License currently provides that PARC is not authorized to cultivate at any location in Arizona. After completing the construction of the Cultivation Center, PARC and the Project Entities intend to have the Arizona Department of Health conduct the Cultivation Center Inspection, as required by Arizona law. If the Cultivation Center Inspection is successful, the Arizona Department of Health will likely authorize PARC to begin cultivation at the Cultivation Center. There is no guarantee, however, that the Cultivation Center Inspection will be successful, and if it is unsuccessful, the Project will not be able to cultivate medical marijuana at the Cultivation Center. This would not only result in a loss of revenue from the sale of medical marijuana cultivated at the Cultivation Center, but it would also limit the Project's ability to recoup any costs expended in constructing the Cultivation Center. Additionally, PARC will have to procure medical marijuana for its Dispensary customers from other sources, which will likely be more costly than if PARC was able to procure such products from the Cultivation Center. All of the foregoing would likely have a negative effect on the Project Entities and, as a result, would likely have a negative effect on the LLC as well.

The Project's Business is Dependent on a Limited Number of Customers

The Project is licensed to sell medical marijuana throughout the state of Arizona. Under Arizona's current laws, the Arizona Department of Health Services may only issue one nonprofit medical marijuana dispensary registration certificate for every ten pharmacy permits issued by the Arizona State Board of Pharmacy. The competition to sell the Project's products will likely be intense. There can be no guaranty that any business the Project's obtains will be sufficient to support its operations. Moreover, because the Project will not be permitted to sell its product outside of the state, any inability to attract business within Arizona cannot be overcome by expanding our sales territory. If the foregoing occurs, it will likely have a negative impact on the LLC.

Any Litigation related to the Project Entities or the Project may have an Adverse Impact on the LLC

The Project may be subject to litigation from dispensary customers or from patients. Risks associated with legal liability are difficult to assess and quantify, and their existence and magnitude can remain unknown for significant periods of time. The amounts the LLC, pursuant to the terms and conditions of the limited liability company agreements of each Project Entity, may have to pay to indemnify the management of the Project Entities should they be subject to legal action based on their service to the Project Entities could have a material adverse effect on the LLC's financial condition, results of operations and liquidity.

Competition

The LLC's primary purpose will be to own the Project Equity. The Project faces competition from existing and potential future cultivation and dispensary centers, some of which may have greater or better financial resources, personnel, operating experience, marketing and/or facilities than those associated with the Project, and some of which may be beneficially owned, directly or indirectly, by the Management Team and their family members or other Affiliates.

Risks of Real Property Ownership

JJSM Real Estate owns the Cultivation Property, which the Project intends to use to operate the Cultivation Center. As such, the LLC's investment in JJSM Real Estate will carry with it the risks incident to the ownership of a real property. Risks incident to the ownership of real property include many events and factors that are outside the control of the Manager. Such factors include, without limitation, general conditions in the real estate industry; market conditions; local and national economic and social conditions; the cost and availability of borrowed capital; availability of financing; unexpected expenditures for repair and maintenance; laws and legislation; governmental rules and regulations; fiscal policies and local and federal tax laws; supply and demand for real estate; competition from similar properties; interest rates; taxes; unfavorable easement adjustments; environmental factors; fires and natural disasters; hazardous material laws and occurrences; uninsured losses; effects of inflation; the physical condition of the Cultivation Property; and other risks.

Risks related to Construction of the Cultivation Center

The Cultivation Center has not been constructed. The LLC expects that the Cultivation Center will be completed approximately six months following the close of the purchase of the Project Equity. Any construction process includes a number of risk factors wholly or largely outside of the control of the Project Entities and the LLC. These include but are not limited to severe disruption in the financial industry, unavoidable cost overruns, the availability of qualified contractors, subcontractors or suppliers, insolvency of such companies during the construction process, other legal disputes with contractors, the availability of construction materials, local or national strikes in the construction trades or supply industries and the availability of fuel or other forms of energy. Additionally, there is no guarantee that construction of the Cultivation Center

will be completed within the expected time frame or budget. Any significant delays or increases in cost could have a material adverse impact on the status of the Project and, as such, could negatively impact the LLC.

Limited Resources of the LLC; Property as Sole Asset of the LLC

The LLC is a newly formed Delaware limited liability company formed specifically to acquire the Project Equity. Accordingly, the LLC has limited financial resources. The only asset of the LLC will be the Project Equity. Accordingly, the profitability of the LLC will be entirely dependent upon the execution of the proposed business plan relative to the Project.

Reliance on the Project Founders

While the LLC expects to have certain voting and management rights within the Project Entities, the success of the Project is dependent on the experience, relationships and expertise of the Project Founders. The loss of services of any one or more of such Project Founders may have an adverse effect upon the Project and, in turn, on the financial prospects of the LLC.

The LLC may have Limited Rights within the Project Entities

The LLC will be a member of each of the Project Entities and, as such, will be a party to the respective limited liability company agreements of each Project Entity. The amended and restated limited liability company agreements of each of the Project Entities have yet to be negotiated between the LLC and each of the Project Entities. Depending on the terms of the limited liability company agreement and other governance documents of each Project Entity, the LLC may have limited, or no, voting rights as a member of each Project Entity. The LLC expects to negotiate certain voting and approval rights in connection with its purchase of the Project Equity, but there can be no guarantee that the Project Entities will be amicable to granting the LLC such rights. Additionally, the LLC will not hold a majority interest in any of the Project Entities.

The Structure of the Project may be Detrimental to the Project and the LLC

Currently, PARC holds the license to operate the Dispensary and will, if the Cultivation Center Inspection is successful, be the entity authorized to cultivate at the Cultivation Center. PARC is a non-profit corporation which is controlled by a board of directors consisting of four individuals who are not affiliated with or accountable to the Project Entities or the LLC. The Project Entities have no control over PARC or its operations. If the members of the PARC board of directors were ever to make any decisions regarding PARC's operations, including how PARC utilizes the Dispensary and Cultivation Center (if granted) licenses, which had a negative impact on one or more of the Project Entities, the Project Entities would have no recourse. Any negative consequences within the Project Entities will also likely have negative consequences within the LLC.

The Management Services Agreement and the Purchase Agreement are not Currently Effective

Under the Arizona Medical Marijuana Act, a medical marijuana dispensary registered with the Arizona Department of Health Services must be operated on a not-for-profit basis. As such, PARC holds the license to operate the Dispensary and will, if the Cultivation Center Inspection is successful, be the entity authorized to cultivate at the Cultivation Center, and revenues resulting from the Dispensary and Cultivation Center operations will flow to PARC. The LLC has no ownership interest or management control in PARC. Currently, the LLC contemplates that PARC and PCMS will enter into the Management Services Agreement, pursuant to which PCMS will provide PARC with management services related to the Dispensary and Cultivation Center operations in consideration for PARC's payment of the Project Management Fees. The LLC contemplates that the Project Management Fees will make up a substantial portion of the Project's overall revenue. The Management Services Agreement (including the amount of the Project Management Fees) is still being negotiated and, as such, the LLC cannot guarantee that PCMS will successfully negotiate a beneficial or fair deal for PCMS. The LLC intends to make the execution of the Management Services Agreement a closing condition to the LLC's purchase of the Project Equity, but the LLC cannot guarantee that the Project Entities will agree to such a closing condition. Any negative deal under the Management Services Agreement, if it is even actually entered into between PCMS and PARC, could also have a negative consequences within the LLC, as a member of PCMS. Further, there is no guarantee that the Management Services Agreement and PARC's payment of the Project Management Fees thereunder will not be interpreted as profit sharing between the entities, which jeopardize PARC's non-profit status and ability to hold license to operate the Dispensary.

Similarly, the LLC has not yet finalized its negotiations with the Project Entities and the Project Founders for the LLC's purchase of the Project Equity pursuant to the Purchase Agreement. The LLC cannot guarantee that the Purchase Agreement will contain the representations, warranties, covenants, indemnities and/or other rights that the LLC intends to negotiate for the LLC.

No Review of Arizona Law

The LLC and its principals have not engaged any legal counsel located in Arizona or otherwise to perform any research or advise the LLC in any respect regarding any Arizona laws, including, without limitation, the Arizona Medical Marijuana Act, the Arizona Nonprofit Corporation Act or any other Arizona statute related to corporations or limited liability companies. There is no guarantee that, without limitation, the Project, the Project Entities or the LLC's investment in the Project Entities have been or will be consummated in accordance with all applicable requirements under the laws of Arizona, or the laws or regulations of any other state or regulatory agency which may have jurisdiction over the Project, the Project Entities or the LLC. Each potential investor should review the proposed structure of the Project, the Project Entities and the LLC, and the transactions currently contemplated to be undertaken by the foregoing, with such potential investor's independent legal, tax and other advisors.

RISKS RELATED TO THE LLC

The LLC has No Operating History

The LLC has no operating history and may not succeed. The LLC is subject to all risks inherent in a developing business enterprise. The Project Equity will be the LLC's sole asset, and the

EXHIBIT B

Projections

Go to Previous View

Go to Table of Contents - Appendix

Consolidated Cash Flow Forecast - New Leaf Investments AZ, LLC

Premier Consulting and Management Solutions	**Year 1**		**Year 2**		**Year 3**		**Year 4**	
Sales	$ 6,228,000	100%	$ 15,417,000	100%	$ 16,956,000	100%	$ 18,657,000	100%
Cost of Sales	$ (1,332,000)	21%	$ (2,808,000)	18%	$ (3,042,000)	18%	$ (3,294,000)	18%
General and Administrative Expenses	$ (1,881,000)	30%	$ (2,420,000)	16%	$ (2,560,000)	15%	$ (2,780,000)	15%
Reserves	$ (500,000)	8%	$ (500,000)	3%	$ (500,000)	3%	$ (500,000)	3%
Revenue Retained by PARC	$ (622,800)	10%	$ (1,541,700)	10%	$ (1,695,600)	10%	$ (1,865,700)	10%
Premier Cash Flow	**$ 1,892,200**	**30%**	**$ 8,147,300**	**53%**	**$ 9,158,400**	**54%**	**$ 10,217,300**	**55%**

Real Estate 15 N. 57th Dr., Phoenix, AZ	**Year 1**	**Year 2**	**Year 3**	**Year 4**
Triple Net Rent	$ 195,000	$ 410,000	$ 430,000	$ 450,000
Misc. Non Pass-through Expense	$ (10,000)	$ 11,000	$ (12,100)	$ 13,310
Real Estate Operating Income	**$ 185,000**	**$ 421,000**	**$ 417,900**	**$ 463,310**
Consolidated Operating Income	**2,077,200**	**8,568,300**	**9,576,300**	**10,680,610**

	Year 1	**Year 2**	**Year 3**	**Year 4**
New Leaf Investments AZ, LLC Cash flows	$ 981,834	$ 4,039,731	$ 4,513,398	$ 5,033,786
Asset Management Fee	$ (72,000)	$ (72,000)	$ (72,000)	$ (72,000)
Professional Fees	$ (50,000)	$ (50,000)	$ (50,000)	$ (50,000)
Travel	$ (10,000)	$ (10,000)	$ (10,000)	$ (10,000)
Reserve	$ (25,000)	$ (25,000)	$ (25,000)	$ (25,000)
Available for Distribution	$ 824,834	$ 3,882,731	$ 4,356,398	$ 4,876,786

Class A Member Distribution (Investors)	**Year 1**	**Year 2**	**Year 3**	**Year 4**
Priority Distribution (first $720,000 of distribution)	$720,000			
80% of Available Cash Until Invested Capital Balance is $0	$83,867	$3,106,185	$3,289,948	
50% of Available Cash after return of Invested Capital			$533,225	$2,438,393
Total Distribution to Class A Members	**$803,867**	**$3,106,185**	**$3,823,173**	**$2,438,393**
Return on Investment	**11.16%**	**43.14%**	**53.10%**	**33.87%**
Class B Member Distribution	**$ 20,967**	**$ 776,546**	**$ 533,225**	**$ 2,438,393**

Notes to Consolidated Cash Flow Forecast - New Leaf Investments AZ, LLC

-YR 1 commences January 1, 2016

-Premier Consulting and Management Solutions ("Premier") sales represent the combined fees received from the sale of marijuana products manufactured by Premier and sold by the Together with Peace Relief Center ("PARC") dispensary and those sold to third party dispensaries. Pursuant to the Cultivation Management Services Agreement (the "Management Agreement") between PARC and Premier, PARC will retain 10% of gross sales made by Premier to other licensed dispensaries in the State of Arizona as a wholesale management fee and Premier will be paid 90% of adjusted gross sales (as defined in the Management Agreement) made directly by PARC as a retail management fee

-YR 1 assumes no revenue to Premier during the first six (6) months. General and Administrative for the first six (6) months are capitalized and not reflected in Consolidated Cash Flow Forecast

-Premier will sign a triple net lease with JJSM Real Estate Fund ("JJSM") for a term of 10 years. Rent in YR 1 is based on six (6) months free net rent to Premier to complete construction and ramp up operations. Rent escalates 3% annually. Premier owns 50% of the membership interest in JJSM

-New Leaf New Investments AZ, LLC cash flows represent 47% of Premier Cash Flow and 50% of Real Estate Operating Income

ARIZONA DEPARTMENT OF HEALTH SERVICES

LICENSING

May 1, 2017

Yuri Downing, Principal Officer/Board Member
Patient Alternative Relief Center
4201 E University Dr.
Phoenix, AZ 85034

Certificate Number: 00000091DCWY00555666

RE: Statement of Deficiencies

Dear Mr. Downing:

Enclosed are Statements of Deficiencies for the recent inspection of your Dispensary and Dispensary's cultivation site.

Pursuant to R9-17-309(E), the dispensary shall provide a Statement of Correction ("written notification") to the Department outlining the specific steps the Dispensary has taken to correct each deficiency noted, and must include the following:

1. How the deficiency has been corrected, on both a temporary and permanent basis.
2. The date the deficiency was corrected.
3. If applicable, copies of any additions to, or revisions of, required documents.

An example of an acceptable Statement of Correction is attached to this letter.

The Statement of Correction must be returned to the Medical Marijuana Dispensary Program within 20 working days. If the Statement of Correction is not received by May 30, 2017, further action may be taken.

If you have questions or need additional information, please contact your Inspector(s) at the Medical Marijuana Dispensary Program at (602) 364-0857 or via e-mail at m2dispensaries@azdhs.gov

Thank you,

Medical Marijuana Dispensary Program
Arizona Department of Health Services

Enclosure(s)

ADHS Medical Marijuana Program | STATEMENT OF DEFICIENCIES | Printed: 5/1/2017

CERTIFICATE NUMBER:
00000091DCWY00555666

FACILITY TYPE: Dispensary

INSPECTION TYPE: Compliance

INSPECTION DATE: 04/26/2017

FACILITY:
Patient Alternative Relief Center
4201 E University Dr
Phoenix, AZ 85034

INSPECTOR(S):
Doreen Call
Peggy Lahren

DEFICIENCY	SUMMARY OF DEFICIENCY
TECHINICAL ASSISTANCE: R9-17-316.C.6: When receiving edible food products from another dispensary, the receiving dispensary needs to ensure the required information in this rule are provided. It is also the responsibility of the receiving dispensary to know what information is required when receiving edible food products. In this instance, the amount and strain of the medical marijuana used to infuse the edible food product. The following deficiencies were noted during the compliance inspection conducted on 4/26/2017.	
ICS114 **R9-17-316.C.5** A dispensary shall establish and implement an inventory control system for the dispensary's medical marijuana that documents, for providing medical marijuana to another dispensary, b. the name and registry identification number of the other dispensary	**Based upon:** Surveyor's observation, the Dispensary failed to include the legal business name of the acquiring Dispensary. One of one reviewed record was missing this information.
EFP172 **R9-17-319.A** A dispensary that prepares, sells, or dispenses marijuana-infused edible food products shall, before preparing, selling, or dispensing marijuana-infused edible food products 3. obtain and maintain at the dispensary a copy of the current written authorization to prepare marijuana-infused edible food products from the dispensary that prepares the marijuana-infused edible products	**Based upon:** Surveyor's observation, the Dispensary failed to obtain a copy of the current written authorization letter from the edible producing dispensary. One letter out of five was missing.

ADHS Medical Marijuana Program | STATEMENT OF DEFICIENCIES | Printed: 5/1/2017

CERTIFICATE NUMBER:
00000091DCWY00555666

FACILITY TYPE: Cultivation site

INSPECTION TYPE: Compliance

INSPECTION DATE: 04/26/2017

FACILITY:
Patient Alternative Relief Center
15 N 57th Dr
Phoenix, AZ 85043

INSPECTOR(S):
Doreen Call
Peggy Lahren

DEFICIENCY	SUMMARY OF DEFICIENCY
The following deficiencies were noted during the compliance inspection conducted on 04/26/2017.	
ICS105 **R9-17-316.C.4** A dispensary shall establish and implement an inventory control system for the dispensary's medical marijuana that documents, for each batch of marijuana cultivated, f. a list of all chemical additives, including nonorganic pesticides, herbicides, and fertilizers used in the cultivation,	**Based upon:** Surveyor's observation, the Dispensary's cultivation site failed to include the list of additives used during the cultivation of the medical marijuana in the inventory control.
ICS112 **R9-17-316.C.4.h** A dispensary shall establish and implement an inventory control system for the dispensary's medical marijuana that documents, for each batch of marijuana cultivated, harvest information including: i. date of harvest, ii. final processed usable marijuana yield weight, and iii. name and registry identification number of the dispensary agent responsible for the harvest.	**Based upon:** Surveyor's observation, the Dispensary's cultivation site did not have harvest records for any harvest's completed for the past six months.
ICS113 **R9-17-316.C.4.i** A dispensary shall establish and implement an inventory control system for the dispensary's medical marijuana that documents, for each batch of marijuana cultivated, the disposal of medical marijuana that is not usable marijuana including the iii. method of disposal, and iv. name and registry identification number of the dispensary agent responsible for the disposal.	**Based upon:** Surveyor's observation, the Dispensary's cultivation site failed to include the method of disposal and the name of the responsible Dispensary agent for the disposal for the past six months.

CS177 **R9-17-320.A** A dispensary shall ensure that any building or equipment used by a dispensary for the cultivation, harvest, preparation, packaging, storage, infusion, or sale of medical marijuana is maintained in a clean and sanitary condition, 1. Medical marijuana in the process of production, preparation, manufacture, packing, storage, sale, distribution, or transportation is protected from flies, dust, dirt, and all other contamination,	**Based upon:** Surveyor's observation, the Dispensary's cultivation site is using 2X4's as a drying rack for the medical marijuana. The 2x4's were covered in sticky sap. The floor in the preparation room needs to be sealed.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, ET AL., Plaintiffs, vs. PEACE RELEAF CENTER I, ET AL., Defendants.	No. CV 2017-009033

Phoenix, Arizona
October 13, 2020
9:29 a.m.

BEFORE THE HONORABLE JAMES D. SMITH

TRANSCRIPT OF PROCEEDINGS

Oral Argument

Proceedings recorded by electronic sound recording; transcript produced by eScribers, LLC.

NICOLE FERGUSON
Transcriptionist
CDLT-149

maybe their license is gone.

Who knows what happens down the road. We're down this right now. We're down this. This is a completely different conversation we're having if we've been paid back in full already, but we haven't been. All we're seeking is that gap time.

THE COURT: So you get a judgment.

MR. SWENSEN: Your Honor --

THE COURT: You get a judgment now. Again, let's assume it's $1.5 million. And I say, no, you're wrong because you've got that earlier ruling; you don't have any damages. Then you sit around for 18 months while you're up at the court of appeals, and then the court of --

MR. MATURA: Well, Judge, you wouldn't say we're wrong. I just -- I mean --

THE COURT: Yeah.

MR. MATURA: I think we -- I'm sorry, Judge, to interrupt. I apologize.

THE COURT: No, no. That -- no, go ahead. What -- go ahead and finish your thoughts.

MR. MATURA: I know that -- yeah, I know. We're all trying to think this through, so I apologize for interrupting you. But if -- you wouldn't say, you're wrong. I think what you would say is, the evidence that -- and your decision is that we have mitigated the damages that the jury awarded us

based up on future rents that we will receive.

And then we take -- we take that decision up to the court of appeals and say, we think that we should be entitled to collect this money for the prior rent. The court of appeals says we're right. We now have a judgment we can collect upon. Court of appeals says you're right, we're wrong; well, then your ruling would then remain that we mitigated those damages of future rent.

If the new tenant makes all those future rents, we never are allowed, under the law, to collect against PARC. If there's a breach by new tenant, then your ruling kicks back into play that says we can now go after PARC. It seems to me now all the dominos are aligned up correctly, everyone knows what the playing field is, no one's prejudiced, PARC doesn't have to pay us unless there was debt in a breach in the future; that is the way that this issue should be resolved. We all know what the landscape is.

THE COURT: I guess I've never heard of, "For the sake of efficiency", having a jury decide an issue if I've already concluded that in the central element of a claim is missing.

MR. MATURA: You haven't, Your Honor, you haven't. You haven't said we have no damages. You've said our damages are mitigated by future payments, that's different. That's different. If we'd already been paid back in full, already,

guess there'd still a breach, right? There would still be a -- well, maybe I need to think about it. Maybe I should just stop talking now. I'll reserve that.

MR. SWENSEN: But you know we can't be sitting here arguing how many angels can dance on the head of a pin. We have a ruling, and the ruling should be enforced. And the ruling says that JJSM Real Estate does not have damages; therefore, it has no claim.

It can't prove one of the elements of its claim, and it shouldn't be allowed to sit there and ask the jury to come up with some advisory ruling on whether or not a breach occurred. It's just -- there is no breach. It's -- there's no claim.

THE COURT: Oh. Okay. So as I said, I'm going to try to evaluate the issue on law, and I'll let everybody know later this afternoon if I come up with a grand answer. So let's move on to New Lease. So is there a reason not to enter -- dismiss New Lease's claims, Mr. Matura?

MR. MATURA: No, Your Honor. We are not pursing any New Leaf claims, or whatever -- yeah, whatever the mechanism is to resolve those claims is fine. As well as, I know Mr. Swensen raised the -- in an email to me that I just haven't been able to get back to you yet. You can probably imagine, my life's been kind of crazy. But we're not seeking any relief against the other two individuals, Mr. Glueckler and Mr.

Sorrell, so they could be handled as well with the New Lease dismissal.

THE COURT: Right. Okay. So we'll indicate that New Lease claims are dismissed with prejudice. And was every Plaintiff, at one point, pursing claims against Mr. -- I don't have the spelling -- was it Gueckler -- Glueckler and Mr. Sorrell, were all Plaintiffs pursuing claims against those gentlemen, Mr. Matura?

MR. MATURA: It was -- I don't believe New Lease was, Your Honor.

THE COURT: Okay.

MR. MATURA: I may need to double check, but I don't believe New Lease was.

MR. SWENSEN: They were.

MR. MATURA: Oh. Okay. So then they were.

THE COURT: Okay. So -- well, we're dismissing all of New Lease claims with prejudice, and then we're dismissing all Plaintiffs' claims against Mr. Sorrell, S-O-R-R-E-L-L, right? And then I'm trying -- I have my trial folder in front of me. I'm just not seeing Mr. Glueckler's name. Will somebody give me the correct spelling of Glueckler or --

MR. SWENSEN: G-L-U-E-C-K-L-E-R.

THE COURT: Okay. So all Plaintiffs' claims against Mrs. Glueckler and Sorrell are dismissed with prejudice, too. Okay. So that's easy. All right. Then there's issue about

MR. MATURA: Okay. All right.

THE COURT: Anything else while we're on the phone? Anything else from Plaintiffs?

MR. BARRETT: No, Your Honor.

THE COURT: Okay. Anything else from --

MR. MATURA: No, Your Honor.

THE COURT: Anything else from the Defense?

MR. SWENSEN: No. Thank you, Your Honor.

THE COURT: Okay. All right. Thank you, everybody. As I get more information, I'll share it with you as soon as I'm able to.

MR. MATURA: All right. Thank you.

THE COURT: Okay. Thank you.

MR. SWENSEN: Appreciate it. Bye-bye.

(Proceedings concluded at 10:35 a.m.)

IN THE SUPERIOR COURT OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In the Matter re:

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, a Arizona limited liability company; JJSM EQUIPMENT FUND, LLC, an Arizona limited liability company; NEW LEAF INVESTMENT AZ, LLC, a Delaware limited liability company,

Plaintiffs,

vs.

CV2017-009033

PEACE RELEAF CENTER I dba PATIENT ALTERNATIVE RELIEF CENTER, an Arizona nonprofit corporation; YURIKINO CENIT DOWNING and JANE DOE DOWNING, husband and wife and Arizona residents; WHITNEY SORRELL and JANE DOE SORRELL, husband and wife and Arizona residents; EDWARD GLUECKLER and JANE DOE GLUECKLER, husband and wife and Arizona residents; JEFF SCHAEFFER and AMY SCHAEFFER, husband and wife, BLACK AND WHITE ENTITIES 1-10; JOHN AND JANE DOES A-Z,

Defendants.

Phoenix, Arizona
Wednesday, October 14, 2020, 11:30 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TRIAL (DAY 1)
BEFORE: THE HONORABLE JAMES SMITH

REPORTED BY:
LUZ FRANCO, RMR, CRR
Certificate No. 50591

(Copy)

mentioned, we had two other contracts we're talking about, the Building Lease and the Equipment Rental Lease.

Both of those contracts were entered into at the same time, and the building rental contract was for about $33,000 a month. It had some specifics and escalators and some other things. Round numbers for introductory purposes, about 33 grand a month. The Equipment Lease started off about a thousand dollars a month and escalated up about $2,000 a month after a year.

In both of those contracts, however, the obligation to pay was abated, or was paused, until there was a first harvest.

You guys are going to be hearing a lot about first harvest. You're going to be hearing a whole lot about that because it's the triggering obligation for the lease to be paid and -- and the Equipment Lease -- the Rental and Equipment Lease to be paid.

Now, what does first harvest mean?

Well, cultivation of marijuana is a process. There's a cycle that goes into it. You're going to be hearing from a grower named Bill Artwohl. I think you're going to like him. He's quite a character.

He's going to come in and explain a lot about -- he'll call himself a plant nerd. He's a grower. He'll explain a little bit about the cycle of marijuana,

how it grows, how it starts from a seed or a mother plant that you clone, and it's going to go through a teen process, and it's going to mature, and it's going to flower, and it's going to be dried.

There's a cycle. It's an 8-week cycle, and not coincidentally, the facilities that were set up at Premier for growing were eight separate grow groups.

Now, why would that be?

Well, obviously you want to have constant production. Each room is another part of the cycle, and every room can start, right? So you have a full production if everything is up and running.

Now, they did get stuff up and running, and you're going to hear that in December of 2016, they had their first successful harvest. They had gone from mother room to bloom room, and that they had started their seeds and their cuttings, and they've grown, and they had harvested, kind of a big deal. That happened again in December of 2016.

At that point, the obligations under the building contract and the equipment contract were triggered, and PARC needed to start paying.

Now, they didn't pay. Now, you're going to hear from PARC. I believe they're going to take the position that, well, there was never a first harvest.

You're probably sitting there to yourself thinking, how can that be?

You're going to hear testimony from Bill about what first harvest means in the industry. You're going to hear testimony from the New Leaf and the Chicago guys about what they thought the contract meant, and you're going to hear and see evidence for yourself that marijuana was successfully grown in December of 2016.

Now, PARC is going to tell you that no, no, no, we didn't think that first harvest meant the first time marijuana was ever harvested at the facility.

They're going to tell you, we thought that first harvest meant that once all eight rooms were up and going and production was 100 percent, that's the first harvest.

Ultimately, the end of the case, after you've heard all the evidence, we're going to ask you to conclude differently, determine that a first harvest occurred in December of 2016, the first time that marijuana was harvested.

All right. And with respect to the Building Lease and the Equipment Lease, I don't really have that much to say, at least for opening, because I kind of explained a little before. They're pretty simple contracts.

There was a first harvest, they needed to start to pay, and they didn't. They didn't pay anything on the Equipment Lease, and that Equipment Lease, as I said, was about $200,000 in total.

I do want to say a little more about the Building Lease, though. The building lease had that same first harvest term to start triggering obligations. However, you're also going to hear evidence that Premier has now gone out, and they lease the property to someone else. We would call that mitigation of damages. And, actually, that's not only are you supposed to do that, you -- you have to do that.

You're going to hear some testimony that says that some new tenants have signed on, and I believe it was in April of 2020, and that these new tenants may have started paying rent a couple months ago in August of 2020.

So, when we're talking about what Premier is going to ask you to do, they're really going to ask you to pay rent or award damages from the amount of rent from the time the obligations were triggered to pay in December of 2016 and when somebody else started paying the rent in August of 2020. The damages stopped there and don't go on. But that number, again, about 1.5 million. Those two contracts are fairly simple, and I don't think we need to

Everybody tomorrow.

(Whereupon proceedings are concluded.)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PREMIER CONSULTING And MANAGEMENT SOLUTIONS, et.al., Plaintiffs, vs. PEACE RELEAF CENTER I, et.al., Defendants.	CV 2017-009033

Phoenix, Arizona
October 15, 2020

BEFORE THE HONORABLE JAMES D. SMITH

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Trial - AM Session)

PREPARED FOR:
COPY

MICHELE KALEY, CSR, RPR
Certified Court Reporter #50512
(480) 558-6620

Arizona, in the Arizona medical marijuana market.

Is that fair?

A. Yes.

Q. Was there any particular reason why you and your business partners decided to look at the Arizona medical marijuana market, as opposed to any other state's market?

A. Well, the reason why this all came up was, in June of 2015, one of my, one of our -- one of my clients and friends, a guy named Eddie Adler who worked as a, who was a partner with the Missner Group knew that I was involved in a marijuana business in Illinois. He had an old childhood friend, Brad Beck, who lived in Scottsdale. He knew that I had a home in Scottsdale that I spent some of the winter in.

And, apparently, he had some discussions with Brad Beck who had, I guess had spoken to him and said that they were looking for an injection of new equity to assist in building out a cultivation facility that was partially under construction in Phoenix. I said, yeah, I'd be more than happy to meet with him when I was out there.

When I was out in Arizona, I met with Brad Beck and Jeff Schaeffer. They showed us the cultivation facility at 57th Street. I was very

impressed. And as a result of that, I contacted some of the other people that were involved in Grassroots, the project in Illinois. Some people flew out, subsequently and met Jeff and Brad, toured the facility; and we decided that there was a real interest in pursuing a business transaction with Jeff and Brett.

Q. All right. Mr. Merel, let me back up a few steps here before we get too far. After -- after you decided to come into the Arizona market via some investment, it's my understanding that a company called New Leaf Investment AZ was created.

Are you familiar with that company?

A. Yes.

Q. Can you describe for the jury what New Leaf Investment AZ is as a company?

A. It's a limited liability company that our attorneys formed as the investment vehicle to invest in the new deal in Arizona.

Q. So if I understand you, sir -- and, Mr. Merel, if you don't mind, can you look at the camera, as opposed to the screen next to you? There you go. I know it's a little awkward.

A. I'm sorry.

Q. Yeah. I'm not someone good to look at. Don't

look at me. Look at the camera.
A. Okay.
Q. Thank you. I know this is awkward. We're just going to have to get through.
A. Okay.
Q. So if I understand you, sir -- and please correct me if I'm wrong. We're trying to move along here. When you and your business partners decided to make an investment into the Arizona medical marijuana market, am I correct that investment came through the entity known as New Leaf Investment AZ?
A. Correct.
Q. Okay. Before we get into the nitty-gritty details about the money, can you just tell the jury -- if you recall, sir, how much money did you raise with your business partners to invest ultimately into PARC through New Leaf Investment AZ?
A. I believe we originally raised about 7.2 or $7.3 million from all of our investors.
Q. Okay. Now when -- I want to move now to you learning more about PARC before you actually make the investment. And I think what you told us a few minutes ago is that, based upon a relationship that someone had with Brad Beck, that you traveled to Arizona to view the facilities of PARC; is that

correct?

A. Yes.

Q. Okay. Can you just go back into that, not in a ton of detail. But can you just walk through that a little bit more and tell the jury, when you first came to Arizona, what did you see about PARC? What did you learn in doing your due diligence?

A. Well, I initially -- as I said, I initially met with Brad and Jeff back in June after it looked like there was a serious interest. I then flew out again a number of times. Our two major investors were a guy named James Ferris (phonetic) and Roy Languin (phonetic) -- who each invested over $2 million of the $7.2 million -- also made arrangements to fly out. I can't remember what time, you know, when over the summer. But I believe it was over the summer.

Myself, Jim Ferris, Roy Languin, and Barry Missner, all four of us flew out to Scottsdale. We spent a couple of days meeting with Brad and Jeff, touring the facility on 57th Street. We toured the dispensary that was in Phoenix.

We spent two or three days really getting comfortable with Brad and Jeff and, again, seeing the operation of the dispensary which, you know, was very

impressive, and also walking through the partially-constructed grow facility with Jeff and Brad and, again, being pretty impressed with the presentation that both of them had made to us.

Q. Mr. Merel, what was your understanding -- let me see. I'm getting some feedback. Hold on a second. No. It seems to have gone away.

Mr. Merel, what was your understanding of the financial condition of PARC prior to your group's investment into that business?

A. Well, we were told when we were having these meetings, we were told by Jeff and Brad that they had a --

MR. WILENCHIK: Excuse me, your Honor.

THE COURT: Hold on, Mr. Merel. We've got an objection. Hold on.

MR. WILENCHIK: This is technically hearsay.

THE COURT: It is hearsay.

MR. MATURA: Yeah.

THE COURT: So --

MR. MATURA: I agree.

Q. So, Mr. Merel, I want to stay away from what other people told you. As you know, that's hearsay in a court of law.

So what I'm just asking for is what your

THE COURT: Yeah.
COURT TECHNOLOGY PERSONNEL: I'm sorry. We're having some FTR audio problems, so I'm going to check it out. And then, potentially, we might have to reboot the rack. That would not get us off GoToMeeting.
THE COURT: It would not disconnect GoToMeeting?
COURT TECHNOLOGY PERSONNEL: It wouldn't disconnect the individual computers.
THE COURT: Okay.
COURT TECHNOLOGY PERSONNEL: What I would have to do is redial from this.
THE COURT: All right. All right. We'll take a quick break while we see if the technology gets fixed.
(Recess taken.)
THE COURT: Okay. Everybody, have a seat, please. We're back in CV 2017-009033. The jury has returned.
We're ready to continue with Mr. Merel's direct examination. So, Counsel, go ahead.
MR. MATURA: Thank you, your Honor.
Q. Mr. Merel, I'm going to bring up Exhibit 45, which has now been admitted into evidence.

Okay. Do you see that, sir?
A. Yes.
Q. Let me see if -- okay. Does that help?
A. Yes.
Q. Okay. Sir, this is -- is this an email, sir? Is that what this exhibit is?
A. Yes.
Q. Okay. It appears it's -- do you see it's from Jeff Schaeffer? Do you see that?
A. Yes.
Q. And what email address did he send it to you from?
A. I'm sorry. What? He sent it to my email address.
Q. Okay. Do you see it's from Jeff@parcdispensary?
A. Yes. Jeff@parcdispensary.com.
Q. And was this sent to you on December 13th, 2016?
A. Yes.
Q. And do you see the subject line, sir? What does that say?
A. From mother room to bloom room.
Q. Let me go down to Mr. Schaeffer's signature block. Do you see his signature block?

A. Yes.
Q. Is this email sent -- is the signature block executive director of PARC.
Do you see that?
A. Yes.
Q. Okay. Let me go back to normal size. Sir, I'm going to go to the next page. No, strike that.
Do you remember receiving this email back in December of 2016?
A. I'm sorry. Can you say that again?
Q. Do you remember receiving this email? Can you hear me?
A. I'm sorry. Can you repeat it?
Q. Sure. Do you remember receiving this email?
A. Yes.
Q. Okay. Now I'm going to go to the next page of this email, and it has a picture.
Do you see that?
A. Yes, I do.
Q. Do you know what that picture is intended to depict?
MR. WILENCHIK: Objection, your Honor. How could he know what Mr. Schaeffer was depicting or not depicting?
THE COURT: Mr. Merel, what did you understand

that photograph to depict?
THE WITNESS: It's a photograph of one of our grow rooms that appears to be, contains bloomed pants throughout the grow room.
Q. BY MR. MATURA: And, Mr. Merel, when you say, "grow room," is that in the cultivation facility?
A. Yes.
Q. Another picture. Do you see that picture, sir?
A. Yes.
Q. What is your understanding of --
A. That's another picture of one of the grow rooms with fully-bloomed plants in the room.
Q. Do you see the next picture, sir?
A. Yes.
Q. What is your understanding of what that is supposed to show?
A. That is a picture of the mother room in the cultivation facility from which those, I guess, plants are used as the clones for producing plants in the grow rooms.
Q. Another picture, sir. Is -- do you know what this is intended to depict or what your understanding is?
A. Yeah. I think it's a picture of the same --

it's just another picture of plants in the mother room.

Q. Another picture, sir. What's your understanding of that?

A. Is another picture of plants in the mother room.

Q. Final picture.

A. Another picture of fully-bloomed plants in one of the grow rooms.

Q. Now upon receiving this email in December of 2016, did JJSM Real Estate -- or did you declare that first harvest had occurred?

A. I'm sorry. Can you say that again.

Q. Sure. Let me see if I can speak up perhaps. Upon receiving this email in December of 2016, did you declare that a first harvest had occurred?

A. Yes.

Q. Now, sir, do you remember earlier we talked about the rent? And do you remember the language that -- I'm paraphrasing -- that the rent was triggered by a first harvest.

Do you remember looking at that earlier?

A. Yes.

Q. Okay. And do you remember, also, the language we looked at that the security deposit was triggered

by the first harvest?
A. Yes.
Q. Now after declaring a first harvest, did PARC pay either any rent or security deposit thereafter?
MR. WILENCHIK: Objection, your Honor. There's no foundation as to how this was declared, who it was declared to, whether there was anything ever sent to PARC. Zero foundation.
THE COURT: Overruled.
Q. BY MR. MATURA: You can go ahead and answer.
A. No. PARC never paid any rent or any portion of the security deposit.
MR. WILENCHIK: I repeat my objection. There's no foundation as to whether PARC has ever sent anything to pay it.
THE COURT: Overruled.
Q. BY MR. MATURA: Now, Mr. Merel, I want to pull up the Lease Agreement again, and I want to look at another provision. This is Exhibit 25. And I am going to go to page 15, the PDF page 15. We'll go down to Article 17.1.
Do you see Article 17.1 on your screen?
A. Yes.
Q. Do you see where it says, "Events of Default"?
A. Yes.

product sufficient to meet PARC's needs, then PARC retains the right to purchase marijuana products from other dispensaries until such time as Premier has produced enough marijuana and marijuana products sufficient to meet PARC's needs at its dispensary.

Q. Now, sir, after the marijuana was grown in December of 2016, did Premier deliver that to PARC for sale?

A. We did deliver some product.

MR. WILENCHIK: Objection, your Honor. Foundation, please.

THE COURT: Can you lay a foundation?

MR. MATURA: Sure.

Q. Sir, are you aware whether Premier, at any point in time, in -- well, strike that.

Are you aware of whether Premier delivered marijuana products to PARC for sale in late 2016, early 2017?

A. Yes.

Q. How are you aware of that? How do you know?

A. Based upon my conversations with Ryan Reese and other employees at Premier.

Q. Okay. And who -- what was Ryan Reese's position? What was his job?

A. Ryan Reese was an employee of Premier that

had, you know, different responsibilities, including some of the bookkeeping. But near the end of his tenure, he was kind of the guy that was kind of overseeing the operation of the facility after Jeff Schaeffer left Premier.

Q. Now when -- do you know, sir, whether PARC sold the product in this timeframe -- late '16, early 2017 -- whether PARC sold that product that Premier delivered?

MR. WILENCHIK: Objection, your Honor. There's no evidence of any product it delivered from this. Foundation, and it would be hearsay.

THE COURT: Why don't you see if you can lay some foundation for how this witness would know whether PARC sold any marijuana.

MR. WILENCHIK: Well, if it was delivered was the earlier question.

MR. MATURA: Well, I just asked him if he knows. That's a foundational question.

THE COURT: So when did Mr. Reese tell him this.

MR. MATURA: All right.

MR. WILENCHIK: Excuse me, your Honor. He hasn't laid any foundation that any was even produced, except for hearsay. Now he's going and assuming facts

not in evidence that there was something produced as to whether it was sold.

THE COURT: I just want a timing of when the conversation occurred.

MR. MATURA: Sure, yeah.

Q. Mr. Merel, can you give us your best recollection of when you spoke to Mr. Reese about the delivery of product from Premier to PARC for sale?

A. I believe in February or March of 2000 -- I forget the date. Let me get the years right. I think it's 2016.

Q. Well, sir, let's get clear on our dates. The email that we looked at earlier from Jeff Schaeffer with the pictures, that was December of 2016.

Does that help you with your recollection on dates?

A. Oh, I'm sorry. It would have been in -- it would have been in the early part of 2017.

Q. Okay. Do you have any knowledge, sir, as to whether PARC sold the product that was delivered to it by Premier?

MR. WILENCHIK: Objection, your Honor. Is he asking him for personal knowledge?

THE COURT: So, ladies and gentlemen of the jury, Mr. Merel has testified about information he

received -- he says he received from Ryan Reese about Premier delivering marijuana to PARC.

That is not being offered, and you cannot accept it for the truth of the matter asserted. That is, you cannot accept it for the truth of the fact that Premier actually delivered marijuana to PARC. You can use it to the extent you believe appropriate to do so to explain why Mr. Merel has that belief.

Do you want to move on to the next question about PARC?

Q. BY MR. MATURA: Well, my next question, sir, is -- Mr. Merel, do you have any knowledge as to whether PARC paid a management fee to Premier with respect to delivery of marijuana?

A. I believe that --

MR. WILENCHIK: Again, your Honor. That's a yes or no.

THE WITNESS: -- some of the product that we delivered.

THE COURT: Hold on, sir.

MR. WILENCHIK: Excuse me.

THE COURT: Why don't you just answer yes or no whether you have any knowledge of whether PARC paid a management fee.

THE WITNESS: I'm sorry. Can you say that

Any other housekeeping issues from Plaintiff's side before we adjourn?

MR. MATURA: No.

THE COURT: Now you all should be back at 1:15 so we can make sure everything is up and running, as well. Same with defense counsel.

I would -- okay. Anything -- any housekeeping items from the defense side?

Okay. Please reiterate to Mr. Vatistas to come in through the side door which I think now is propped open. Yeah. Because he left early through the back, which is fine. The jury's not back there. But I don't want him to get into the habit of coming in and out and walking through the jury as it's assembled back there.

MR. WILENCHIK: I'll mention it.

THE COURT: All right. Thank you. We're adjourned.

(Matter concluded.)

IN THE SUPERIOR COURT OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In the Matter re: PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, a Arizona limited liability company; JJSM EQUIPMENT FUND, LLC, an Arizona limited liability company; NEW LEAF INVESTMENT AZ, LLC, a Delaware limited liability company, Plaintiffs, vs. PEACE RELEAF CENTER I dba PATIENT ALTERNATIVE RELIEF CENTER, an Arizona nonprofit corporation; YURIKINO CENIT DOWNING and JANE DOE DOWNING, husband and wife and Arizona residents; WHITNEY SORRELL and JANE DOE SORRELL, husband and wife and Arizona residents; EDWARD GLUECKLER and JANE DOE GLUECKLER, husband and wife and Arizona residents; JEFF SCHAEFFER and AMY SCHAEFFER, husband and wife, BLACK AND WHITE ENTITIES 1-10; JOHN AND JANE DOES A-Z, Defendants.	CV2017-009033

Phoenix, Arizona
Thursday, October 15, 2020, 1:30 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TRIAL (DAY 2)
BEFORE: THE HONORABLE JAMES SMITH

REPORTED BY:
LUZ FRANCO, RMR, CRR
Certificate No. 50591

(Copy)

the effective date, the monthly rental payment that was listed in the equipment section.

Q. Okay. Let me -- let me do it this way, sir. Let's go to -- let's look at this language together. The first sentence says, commencing on the effective date and for the first day of each month thereafter, lessee -- do you understand that lessee is PARC?

A. Yes.

Q. The lessee covenants to pay lessor monthly rent payments in accordance with the rental schedule attached as Exhibit B.

We'll look at that in a second.

Then if you go down a sentence or two, it says that rent commences -- or that rent is abated from the effective date until the date of the first harvest of cannabis plants.

Do you see that language?

A. Yes, I do.

Q. So like the Building Lease Agreement, was it your understanding that the rental payments under the Equipment Lease also were abated or, you know, paused, if you will, not -- not obligated to be paid, until the first harvest of cannabis plants?

A. Yes, correct.

Q. This is Exhibit B to the agreement, which is page

Would that be correct so far?

A. Yes.

Q. Fiduciary duties means to most people who aren't lawyers the highest duty that you can think of as a lawyer, correct?

A. Yes.

Q. They don't owe that duty when they sit on a board of PARC to your companies, do they?

A. No.

Q. So they have a high fiduciary duty as board members to do what's in the best interest of PARC, correct?

A. Yes.

Q. And that would include Yuri Downing when he became a member of the board of PARC and a president, correct?

A. Yes.

Q. That would include Ed Glueckler, a lawyer, who also became a member of the board, correct?

A. Yes.

Q. That would include Whitney Sorrell, a local lawyer also that became a member of the board, correct?

A. Yes.

Q. So their representations verbally to you about how they so-called controlled the board members, you knew

A. Yes.

Q. Okay. You said that 7.2 million dollars on direct exam was invested, but none of these three parties that are now plaintiffs invested 7.2 million dollars anything, did they?

A. I'm sorry? Say that again.

Q. Did you testify about a 7.2 million dollar investment, sir, on direct examination with Mr. Matura?

A. Yes, I did. I testified that we raised 7.2 million dollars from our investors.

Q. My question was, none of the three plaintiffs in this lawsuit now invested any of that 7.2 million dollars, true?

I'm sorry?

A. I would say I -- I don't think that's true. The money was raised, and these entities were established. Funds went into these entities that were established for this transaction.

Q. Sir, the party that's raising that money was New Leaf as we just saw in the offering memorandum; isn't that true?

A. Yes. The money was raised pursuant to the offering memorandum.

Q. By New Leaf, correct?

A. Correct.

Q. And New Leaf is not a plaintiff in this case.
Do you understand that? At this point.
A. I am, yes.
Q. It's dismissed.
That's what you testified to, correct?
A. Correct.
Q. So neither Premier or JJSM Real Estate or JJSM Equipment ever invested, that you can show this jury, as we speak, 7.2 million dollars in anything.
Isn't that a true statement?
A. I believed that those three, as I testified in cross -- in direct, those three entities were funded by money that came in from New Leaf Investments.
Q. Okay. So now can you answer my question directly?
None of those three entities that are plaintiffs in this case invested the 7.2 million. It was New Leaf that actually invested in those three entities.
Isn't that accurate to tell this jury under oath?
A. Yes.
Q. Thank you.
And New Leaf is not a party to this lawsuit, as we speak, correct?
A. Correct.

documents you received was the notice in May that was sent to your office making a demand for past-due rent --

Q. Okay.

A. -- based upon the first harvest date of December 2016.

Q. And, again, if I asked you that question, I sincerely apologize really because I didn't. I asked you, in December of '16, sir -- are you with me?

A. Yeah.

Q. In December of '16, since it was so important that that declaration be declared not just between you and Mr. Missner, but the party that you're expecting to pay the rent, where in December of '16 do you have any document that shows that in December of '16, you notified PARC that the first harvest had been achieved, how you were defining it, and that it was now incumbent upon PARC to start paying rent?

A. I don't have knowledge of any written notice that was provided to PARC advising them of the first harvest date.

Q. Would you agree that would seem to be pretty important if you're later going to declare somebody in default as of December that at least they be notified of that at that time rather than five months later? Would that seem fair, if it were true?

A. Yes, I do think it was -- yes, I do think it was fair in the way that we acted and responded with respect to the first harvest.

Q. But that wasn't my question, sir, was it?

My question was, wouldn't it be fair that in December, aside from you and Missner talking about it on the phone somehow, which I have no record of, that you notify the party that you're later going to claim was in default? Wouldn't that seem pretty obvious and fair to put them on notice at that time, that you declared the first harvest, and their obligation to pay rent began?

A. No, I don't --

Q. Oh, all right.

A. -- because I believe that the e-mail --

Q. No. No. I didn't ask you what you believe, sir. You said no.

A. The e-mail --

THE COURT: So, Mr. Merel -- Mr. Merel, his question was, did you think that would be fair? And you said no. So you've answered his question.

MR. WILENCHIK: Thank you.

BY MR. WILENCHIK:

Q. All right. So the first time the jury would see anything about whether you placed PARC on notice of your belief was in May, meaning obviously -- now let's go

through it -- that not in December, not in the entire month of January, February, the entire month, March, April, and throughout the portion of May before your letter, correct? I'm getting that correct, right?

A. Yes, correct.

Q. Now, in that document that counsel presented --

MR. WILENCHIK: Where's that document here? Do I have it in front of me, the one with the pictures or whatever?

MR. SWENSEN: Twenty-five.

MR. WILENCHIK: Exhibit 25. Thank you. A lot of paperwork here.

BY MR. WILENCHIK:

Q. Exhibit 25, sir, do you recall that document shown to you on direct?

A. Yeah.

THE CLERK: Counsel, it's 45.

MR. SWENSEN: Oh, 45. I'm sorry.

MR. WILENCHIK: Forty-five. I thought I had it here. Thank you.

BY MR. WILENCHIK:

Q. Do you remember this document, sir?

A. I'm sorry. Which -- which document? Which exhibit number was it?

Q. Forty-five. The one with the nice pictures.

A. Okay.
Q. And you remember it?
A. Yeah, I see it.
Q. In fact, sir, when you received this, you didn't notify PARC. We've just established that you believe that now it's clear that the first harvest had occurred, right, obviously, right?
A. Right. We were being told --
Q. Right?
A. -- by Jeff Schaeffer that that's true.
Q. Is that true or false? I'm sorry to be rude with you.
A. Correct.
Q. Thank you.
And so Jeff Schaeffer was your man on the ground. He was in charge of the operation, not you.
And is there anywhere on here -- because maybe I missed it -- that says, guess what, first harvest achieved, time for rent, anything like that?
A. No.
Q. Nothing like that?
A. No.
Q. And yet he would've known that the first harvest was an important threshold for the reason that rent would then start on PARC's behalf, right?

A. Yes.
Q. And isn't it true, sir, that you didn't take these photos, right?
A. No, I didn't take the photos.
Q. Right.
And you don't know exactly what they're of. The best person to tell us that would be Jeff Schaeffer, right?
A. Correct.
Q. And you don't know, in fact, or do you know, whether any of these plants were actually part of a test run that Mr. Schaeffer ran in December, early December?
A. No, I don't know.
Q. And you don't know whether any of these plants are actually usable or salable either, do you, from personal knowledge?
A. Well, I do know based on information that was conveyed to us by Jeff Schaeffer and Ryan Reese.
Q. And the question was --
A. But yes.
Q. -- do you have any personal knowledge to offer this jury on whether any of this stuff was, in fact, usable or salable?
The answer is no, you do not, correct?
A. That's correct.

Q. You don't know, in fact, whether any of this marijuana that was in these pictures even survived, do you?

A. I could only tell you from Jeff Schaeffer and Ryan Reese's conveyance --

Q. And that's fine.

A. -- of it that it was.

Q. And guess what? Those two --

A. The conversation --

Q. Those two are going to testify in this case.

Do you understand that? As to what these photos are actually depicting and whether any of this marijuana was usable, salable, or died and was part of a test run, not part of any kind of first harvest, as they defined it?

MR. MATURA: This isn't a question, Your Honor. This is testimony about Mr. Wilenchik.

THE COURT: Can you rephrase it --

MR. WILENCHIK: Sure.

THE COURT: -- Counsel?

BY MR. WILENCHIK:

Q. You just told us what those people are going to say.

Would you think that they might be better witnesses for this jury than you?

A. Yes.

Q. Okay. And so from mother room to bloom room does doesn't mean first harvest achieved, true?

A. No, not true in my mind.

Q. Oh, in your mind.

Okay. Well, let's move on. And is this jury, to your knowledge, ever going to see any invoice or demand for payment of rent from JJSM Real Estate or JJSM Equipment following this December 13th e-mail from Jeff Schaeffer before May 19th?

A. Yes. You received the demand for payment in -- in -- in May.

Q. Did you understand my question, sir?

A. -- that's already come in.

Q. Did you understand my question? Do you want me to repeat it? I'll repeat it.

A. Yeah. Please do.

Q. My question was, is there any invoice -- you understand what I mean by invoice, right?

A. Yes.

Q. A request for payment.

That was sent to PARC for payment of the rent, or any other amounts you're claiming here were due, between December 13th, since that's the date you claim is the first harvest, and the May 19th letter that we know

you sent through your lawyer putting our client in default retroactively to December of '16 and asking for --

A. No.

Q. -- $250,000?

A. No.

Q. Now, do you know what BioTrack is?

A. Yes. My understanding is that -- well, to answer that. Yes, I have a limited knowledge of BioTrack.

Q. Do you understand, as a remedies provision that's in the Cultivation Agreement, paragraphs 9 and 10, that deal with what happens upon a termination for any reason, any reason at all?

A. I know there's provisions in the agreement that address that, yes.

Q. And that's paragraphs 9 and 10, right?

A. Well, again, I don't have it in front of me. So I -- if you're telling me that those are the sections, then I believe you, Counsel.

Q. Okay. Thank you.

So that's what your remedy is in the event that our client somehow breached in December and continued to breach every month thereafter through May, even though they were never notified, never invoiced, at all, each of those months, you -- the remedy would be set out in the contract, right?

hours, so...

* * * * *

IN THE SUPERIOR COURT OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In the Matter re: PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, a Arizona limited liability company; JJSM EQUIPMENT FUND, LLC, an Arizona limited liability company; NEW LEAF INVESTMENT AZ, LLC, a Delaware limited liability company, Plaintiffs, vs. PEACE RELEAF CENTER I dba PATIENT ALTERNATIVE RELIEF CENTER, an Arizona nonprofit corporation; YURIKINO CENIT DOWNING and JANE DOE DOWNING, husband and wife and Arizona residents; WHITNEY SORRELL and JANE DOE SORRELL, husband and wife and Arizona residents; EDWARD GLUECKLER and JANE DOE GLUECKLER, husband and wife and Arizona residents; JEFF SCHAEFFER and AMY SCHAEFFER, husband and wife, BLACK AND WHITE ENTITIES 1-10; JOHN AND JANE DOES A-Z, Defendants.	CV2017-009033

Phoenix, Arizona
Monday, October 19, 2020, 9:30 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TRIAL (DAY 3)
BEFORE: THE HONORABLE JAMES SMITH

REPORTED BY:
LUZ FRANCO, RMR, CRR
Certificate No. 50591

(Copy)

you've seen directly. Okay? Do you follow me?
A. Yes.
Q. Directly, not based on hearsay on others that might testify here. Okay? Are we okay on that?
A. We're okay on that.
Q. Okay. So you don't have any personal knowledge whether Premier delivered any usable marijuana to PARC in 2017 or, if it did, how much, correct?
A. Correct.
Q. And plaintiffs have never produced any trip reports of deliveries to PARC, have they?
A. I can't answer that. I have no personal knowledge one way or the other.
Q. Thank you.
You don't know if any manifests documenting any such deliveries were prepared and were kept and produced to us, correct?
A. Other than the e-mail correspondence that existed between the parties, correct.
Q. Okay. Listen to my question again. Let me back up.
Do you know what a manifest is in a -- in a business?
A. I have a -- a -- a general sense.
Q. All right. What's your general sense? I'll take

And, in fact, sir, the contract also provides, in paragraph 10, that if a lessee fails to pay any rent when due and such failure continues for five days after lessor's written notice of the same, et cetera.

Did you ever provide on behalf of JJSM Equipment any five days' written notice and right to cure any default claim? That never happened, did it?

A. I -- I -- I don't think so.

Q. Okay. So you retained the equipment. You can't tell us what efforts were made to mitigate.

This equipment was originally valued by you at $775,000 as part of that lease, right?

A. Well, to answer your question, I can tell you of my efforts to mitigate, but you don't let me.

Q. Sir, I can only go by what you provided in disclosure in this case, and so yes, I do not want you testifying about anything other than that. That's the rules. Okay. So --

A. Yes.

Q. -- so I come back to my question. You value that equipment originally as part of the lease as $775,000, right?

A. Correct.

Q. What was that based on?

A. It was based on the information that Jeff

All right. We'll take our break.

(Lunch recess.)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PREMIER CONSULTING And MANAGEMENT SOLUTIONS, et.al., Plaintiffs, vs. PEACE RELEAF CENTER I, et.al., Defendants.	CV 2017-009033

Phoenix, Arizona
October 19, 2020

BEFORE THE HONORABLE JAMES D. SMITH

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Trial - PM Session)

PREPARED FOR:
COPY

MICHELE KALEY, CSR, RPR
Certified Court Reporter #50512
(480) 558-6620

Q. BY MR. MATURA: One last question about Mr. Zimmerman, and then we'll move on. Were you, Mr. Merel, given any notice by PARC, anyone on behalf of PARC that Mr. Zimmerman was going to be removed from the board before he was removed?

A. No.

Q. Now you were asked a lot of questions during your cross examination about the concept of first harvest. I'm sure you remember all of those questions, right?

A. Yes.

Q. Okay. At one point in time, you were asked whether, why JJSM Real Estate, in December of 2016, did not provide any written notice to PARC that a first harvest had occurred. Do you remember -- I'm summarizing somewhat, but do you remember those questions?

A. Yes.

Q. Okay. Can you just explain to the jury why no written notice was provided by JJSM Real Estate to say a first harvest has occurred?

A. There was no reason to. Jeff Schaeffer was the one that sent us the e-mail, along with pictures of the rooms that showed that the rooms were harvesting.

Q. And let me --
A. He was the one that told us that we were -- we had our first harvest.
MR. MATURA: And, sir, let me pull up just very quickly that e-mail again.
It's Exhibit 45, your Honor. It's already in evidence.
THE COURT: Mr. Barrett's computer is the one that's displaying, isn't it?
MR. MATURA: Yes. I've got it though, your Honor. It will just take me a second to pull it up. It should pop up right now.
Q. And Mr. Merel, is this the e-mail that we were referring to? We looked at this earlier.
A. Yes.
Q. Okay. And this is from Jeff Schaeffer. And can you just confirm for the record that he sent that to you? Excuse me. Let me --
A. Yes.
Q. Hold on. Let me get his signature block. That he sent it to you from -- as the executive director of PARC? Is that what that says?
A. Yes, it does.
Q. Okay. Now subsequent to this time, again, this e-mail -- we'll take this down. Mr. Merel, that

when this discussion was made. And at or around that time is when Barry Missner and I took over as managers of the operation after Jeff Schaeffer and Brad Beck were no longer acting as managers of Premier.

Q. Now you were not a custodian of these documents, correct?

A. That's correct.

Q. And you don't know whether, whoever prepared them, prepared them at or contemporaneous with any business activity, correct?

A. I don't have personal knowledge, that's correct.

Q. Okay. And how many of these did you receive then?

A. I don't recall exactly.

Q. How many of them did you actually produce to us?

A. You'd have to take a look at the exhibit list. I can't tell you.

Q. All right. And this document, you don't know then was made at or near the time of the events documented, correct?

A. No, not correct. I believe I testified that I received this Inventory Report from Ryan Reese and then forwarded it to my attorney to forward --

Q. Okay.
A. -- to your office.
Q. Please listen to my question, sir. Because if that was my question, I apologize. But I don't think it was.
The question was specifically, you didn't take down any of the information on that document. Are we clear on that?
A. That's -- yes, that's correct.
Q. And you don't know whether or not, whoever did take it down -- and you don't even know if that was Ryan Reese, correct?
A. No. I believe it was Ryan Reese.
Q. But you don't know it was Ryan Reese that actually made any notations on that document at all, correct?
A. Correct.
Q. And you don't know, therefore, whoever did was doing so pursuant to some contemporaneous account of something going on at that time that was noted, correct?
A. Correct.
Q. And, therefore, you cannot testify that the record was made at or near the time of the event on the document from information transmitted by anyone in

particular with knowledge, correct? All correct?
A. Correct.
Q. You also can't testify that the record was kept in the course of a regularly-conducted activity that the company had to document contemporaneous with the event, correct?
A. No, I don't believe that's correct.
Q. Okay. So tell me what testimony you have that anything on that document was kept in the course of a regularly-conducted business activity at the time of the event depicted on the document? What evidence do you have to offer on that?
A. In my capacity as manager, I believe I testified that I had numerous conversations on a routine basis with Ryan Reese who was managing and operating the business on a daily basis regarding the preparation of reports, including inventory reports of the company.
Q. You just told us, sir, you don't know if Ryan Reese made any of those entries, didn't you? Or has that changed now?
A. I said I can't tell you that I actually saw him prepare the document.
Q. You don't know that he did prepare --
A. But I testified of routine conversations that

I did have with Ryan Reese with regard to records.
Q. Okay.
A. And inventory reports.
Q. I understand that, sir. But that's not my question, again. My question is, you don't know that he prepared -- you told us -- anything on that record. You don't know if the record was kept in the course of a regularly-conducted activity or business or contemporaneously with the event that is part of the business operations of the company to make at the time, correct?
A. No. I think I testified that I did believe that these were prepared in the regular course.
Q. Sir.
A. Based upon my conversations with Ryan Reese.
Q. Again, sir --
A. That's my -- that's my personal knowledge.
Q. Okay. As far as your beliefs are concerned, sir, as we discussed earlier in my cross examination, I don't want to know what your belief is right now. I want to know what your personal knowledge is.
You have no personal knowledge that any record or depiction on that document was kept in the course of a regularly-conducted activity of the business because you don't know who prepared it. You don't

know who wrote those items. And you don't even know what those items were necessarily intended to depict at the time they were written, correct?

A. Again, I have testified --

Q. Is that true, sir.

A. -- what my personal knowledge is with regard to the preparation of the reports.

Q. Okay. So the answer to my question is, yes, to all of the above, right?

A. Yes.

Q. Okay. And you also don't know that the record was a regular practice of activity at any particular time when any contemporaneous event was occurring, right? It could have been prepared, in other words, at any time based on prior information to be a self-serving document, right?

A. Again, based on my routine conversations with Ryan Reese, I was told that these were documents and records that were kept in the regular course of business.

Q. So he used that term with you?

A. In so many words, yes.

Q. Well, when you say, "in so many words," he's going to be here. Are you telling me that he told you that those documents were kept in the regular course

of business, yes or no?
A. Yes.
Q. You're testifying under oath that's what he told you?
A. Yes.
Q. So who kept them? And how were they kept contemporaneously with any event if they are an inventory record?
A. I can't answer that. I don't know.
Q. And is there anything on those documents that indicates any quality or testing of any kind of any of those items at any time?
A. No.
Q. Your Honor.
A. They are inventory reports.
Q. Right. Which could be made up at any time, right?
A. I can't answer this question.
Q. Well, let me ask this.
A. I don't know what you mean by that.
Q. Well, do you know what BioTrack software does, that it generates reports?
A. Yes.
Q. And this isn't a BioTrack-generated contemporaneous report, is it?

anything as to why any of those agreements didn't proceed forward in the negotiations. At a minimum, we were entitled to that because it's relevant, highly relevant to this case when he's seeking damages.

And so I would ask the Court to not only give the instruction, but just point out that we don't have any information about the nature of those deals, whether they resulted in a contract, what their terms were at all produced, period.

THE COURT: I'm going to give a corrective instruction when the jury comes back.

MR. MATURA: Your Honor.

THE COURT: Yes.

MR. MATURA: Can I move on to a different topic very quickly --

THE COURT: Okay.

MR. MATURA: -- on the business record exception.

THE COURT: Yes.

MR. MATURA: Okay. As I read Arizona case law -- and I'm happy to provide you with a cited if you want it.

THE COURT: Uh-huh.

MR. MATURA: Here's what the Arizona Court of Appeals has said. Quote, "There's no requirement that

the person whose firsthand knowledge was the basis for the document he identified, so long as it was the business entity's regular practice to get information from such a person."

So the fact that Mr. Merel doesn't know who created that Inventory Report is not a factor in the business record exception. That doesn't disqualify it as a business record.

THE COURT: It doesn't need to be the person, but it needs to be somebody who says: I know how this business operates, and I know these are our protocols.

So if I ran Report X, Y, Z, I know that Johnny down in sales or somebody with the equivalent position of Johnny down in sales would have gathered this data and entered them into this form as part of Johnny's job. Mr. Merel couldn't do anything like that.

MR. WILENCHIK: At or near the time of the event, no less.

MR. MATURA: Okay. But I want to make that clear. That the law is, I think, differently than what was discussed during Mr. Wilenchik's voir dire. And I don't know the basis for your ruling, other than you say it doesn't qualify as a business record.

THE COURT: Yeah. I mean, 803.6 has some specific criteria you need to meet.

MR. WILENCHIK: And I was reading right from it.

THE COURT: He couldn't tell us how this document was prepared. I'm not saying he needs to be the one who prepared it. That's never been the case for a business record.

MR. MATURA: No.

THE COURT: But he doesn't know anything about the procedures used to prepare this document. And he doesn't know that it was prepared by somebody with knowledge at one point or as part of a process where somebody with knowledge would have been creating it.

MR. MATURA: Your Honor, I just wanted to make the record that Mr. Merel does not know, under the law -- under Arizona law, he doesn't have to know.

MR. WILENCHIK: Excuse me, your Honor. Mr. Artwohl is out there, I think, and listening to everything we're saying.

THE COURT: Will somebody just have him go stand on the other side of the hallway or something.

MR. MATURA: I just wanted to make the record.

THE COURT: One of the lawyers. Not Mr. Vatistas.

No, he doesn't need to be the one. You don't need the person who created the business record, but

it needs to be somebody who knows how the business operates and how the business goes about creating those business records. He doesn't even know that. He doesn't know about the business's operation that you're saying supports the notion that this is a business record.

MR. MATURA: That's fine, your Honor.

MR. WILENCHIK: Can I use the rest room, and Mr. Swensen?

THE COURT: Yeah. We're going to take a break.

MR. MATURA: I just wanted to clarify that, for the record. I under your reasoning. I just wanted to clarify.

THE COURT: Okay. So we'll take a break, as well.

(Recess taken.)

THE COURT: All right. Everybody have a seat. We're back in CV 20 17-009033. The jury has returned.

One thing, ladies and gentlemen, there was some testimony from Mr. Merel about a couple of contracts regarding the building. No evidence, no documents have been produced about any contracts regarding the sale of the building. So you can draw any inferences you want or that you think are

Q. Did you know Mike Williams before you met him at work?
A. No. No.
Q. Did your job responsibilities change over time. I think you described a little bit about what you did to start?
A. Yes.
Q. Did that stay that way the whole time?
A. No. They changed. They changed.
Q. How did they change?
A. When Richard left, it was a free-for-all. I remember when Richard -- when he left, he said, you guys are all going to fight for power and it's going to very sad. And that's exactly what happened. Everybody amongst the team wanted to be the big bad grower who was running eight rooms and all of this stuff. There was fighting in and amongst the team.
My job changed from managing A Tech, managing room or one room to making sure that every plant in that facility was doing what it was supposed to. Another gentleman was running the nursery and the propagation room. He was overseeing that. I was overseeing the flower, and we just leaned on each other. And we had the guys underneath us listen to us and do what they were telling them.

A. Yeah.
Q. -- that we're talking about?
A. Yeah. So I know I know that building like the back of my hand. There's eight flower rooms. Each flower room had three tables in it. They are five feet wide by 45 feet long with 112 plants per table, okay.

So there's over 300 plants in these rooms. The rooms spit out about 70 to 80 pounds of flower when they are running right. That's about 3500 pounds a year, ballpark. It's meant to be run like a money printer. It's an extremely tight facility, gorgeous facility with a lot of money in it; and it's meant to be run like that.

It's a gorgeous place with a lot of potential. But if you don't understand what it's built for and you don't have your hands on the wheel, it will run you over.

Q. How many different rooms were set up at the facility?
A. There was eight flower rooms, one propagation room where we would have the plants that were tissue putting on roots, and then we had a teen and a mother room. So, roughly, in production of -- we call it canopy where the plants actually grow, we had just

plants that are to be cut and reproduced asexually. So we know that these plants are desirable. We know these plants are female. And we know that we want to replicate them, and that's what they are there for. We are growing a hedge of plants. We take a cutting off the top. We propagate them asexually. And now we've got a bunch of exact replicas of these plants.

Q. Okay.

A. And this was an early picture.

Q. Well, that's --

A. This was an early picture.

Q. Okay. Just by looking at it, can you tell when it was taken?

A. Yeah.

Q. Tell me --

A. Because of the lights.

Q. Okay. Tell me about that.

A. Those lights were never in operation past when the building got its kinks settled out. Those were the first lamps originally installed. They were -- they had voltage discrepancies. They were exploding. They have landed on me. They have landed on the tables, melted through the tables.

I have had some instances with those lamps that I can't forget. So I look at that, and I know

right away that was in the very beginning. That was before the first retrofit. And that was even before we found out what was going on with those bulbs or those fixtures, the whole fixture.

Q. So the earlier e-mail that it's attached to indicates that Jeff Schaeffer sent these pictures to Brad Beck and Barry Missner and Richard Merel on December 13th, 2016.

Does that fit in with the timeline of what you're referring?

A. Yeah, that -- because, yeah. Yeah, because I got hired the back of that summer. I would have been there for maybe four months. And we had plants in there. Yeah, that's right.

Q. I would --

A. That's ballpark.

Q. I am going --

A. That's ballpark.

Q. -- to take a look at the next page. Is that another picture of another mother room?

A. Same room, different angle. It's down towards the cutting table here on the right. I know right where that was taken.

Q. Okay. If you'll turn to the next page, can you describe what that picture is?

A. That's a propagation room. So these are green Uline Racks. These are asexual babies. These are take a clip off the mother. We stab it in a propagation media. And they are to sit there for seven to ten days to get a root.

Q. Okay.

A. And, again, that is very early stages because I know which room that is. That room wasn't operational for much longer after Richard left.

Q. Okay.

A. So, again, very early pictures.

Q. Go ahead to next one. Is that another picture of a propagation room?

A. Similar thing. I can't tell you exactly what room it is because it seems very close, but it would seem that it's the same room. But the same thing's going on.

Q. Okay.

A. What you've got there is you had two rooms, and there was a middle wall with a door in it. And this was all the same stuff. We were doing the same snuff it, so I just don't know which side of the door that was on.

Q. All right. What about the next picture?

A. That is on the northside of the room, same

thing. If you're looking at it the way you see on this camera here, there's a door right here, which leads into the previous pictures.

Q. Okay.

A. And then there's a door right here. So same thing. Same things's occurring here.

Q. Last picture. Is that another mother room picture?

A. It goes back to the mother room. Actually, that I cannot say is the mother room because I don't ever remember us bearing plants in there. That seems to be room eight of a flower room. And the reason I can tell you is because this method right here was never done in a mother room ever.

Q. So this is a flower room?

A. Yes, sir. I can tell you this was never done in a mother room because this -- what you're seeing here is a bunch of substrate on a table. We put the plants in coco slabs and different types of slabs. The temperature got very, very hot on the top of the slabs. Roots won't go into a substrate when it's very, very hot. They start to die.

So what Richard did is he called an audible on the line to save the plants and keep them living. And he put this stuff over the top to drop the temperature

down and to get the roots to come out and get them to start up taking water again. It's very, very messy. It's very, very unsightly. It worked.

Q. Well, let me just follow up on that a little bit. Were there -- at the time you were there, were there some problems or difficulty faced in how you were going about the grow?

A. Yes, sir.

Q. Tell me -- let's, at least, start exploring a little bit. Tell me about some of the problems you were having?

A. A lot of it, 99 percent of it was infrastructure that was overlooked and not adequately tested before it was put in place.

Q. Now would those be things that were sort of in place and set up before you got there?

A. One hundred percent.

Q. Okay.

A. Hard line stuff that you got engineers putting in, electricians putting in under the impression that they were doing the -- putting in the rights parts and doing a good job. It wasn't the case. I mean, the first thing that comes to my mind is, I'm real good with irrigation. And you run 200 feet of line, and you don't reduce the diameter of that line, you're

losing pressure quickly.

And then I've got 312 emitters in these rooms, and I need every piece of pressure I can get. And I'm looking at the design going, who did this. There's one. There's -- I can literally talk until the cows come home about small tweaks that needed to be done in that building that were overlooked from the start.

Q. Do you know who made those initial decisions in design decisions?

A. I don't know for sure. I don't know for sure. But there was arguments and stuff about those repairs, as I was there. I tried to stay as far away from those meetings when they came in. But I caught a little bit of them. And it was the original designers of that building that were getting yelled at a lot.

Q. And who were the originally designers?

A. This one guy was named Sheldon. I don't know his last name. But he was getting a lot of shit. Excuse me my language. And it was for stuff like that. It was for, why aren't we -- why don't we have high metal, why don't we have high voltage contacts in the circuit breakers, or in the electrical boxes?

Why are they melting? Why do we have grounds on transformers above grow rooms that shock employees? Why do we have live grounds. Why do we have booster

fans and chain units that pull water out of the motor housing? I mean, you know, it just didn't make sense for a guy who says he's an engineer or these people who say they were engineers. And this kid who is fresh out of college who knew a little bit, and I could see it as clear as day.

Q. What were the problems with the lights? You mentioned -- you can take down 45, if you want.

You had mentioned you had some problems with the lights in the mother room, initially. What were the problems and what did you do to fix them?

A. When we first saw it, we had bulbs exploding. When the bulbs explode, they are very, very hot. And they were -- it was a concern. They were melting plastic tables. They were melting irrigation lines. And the water would spray up and melt more bulbs. And if you have water hit a hot light, it will explode.

So there were just all of these little scary things that were happening. The growers couldn't identify it. I couldn't identify it. We were all working together, taking notes to see which lights weren't coming on, if there was a pattern. Because we would go in some mornings and some lights would be off. We couldn't develop a pattern.

And, again, these plants are extremely,

extremely sensitive. So we're all cannabis guys. We're all scared. They finally got some people in who were smarter than us, electricians or something. And they tested the units, and they said there were too many connections from the ballast to the light bulb. That was the summary. There was too many connections in there. There was a voltage discrepancy.

When the charge hit -- got to the point of emission, it wasn't what it was supposed to be and it was causing all of these problems: Bulbs exploding. Some ballasts were flickering on and off. It was a nightmare. So voltage discrepancies are what I was told.

Q. What did you guys do to fix it?

A. We ripped them all out. We ripped them all out, and we put Gavita double-ended 1000 watts in. They're real expensive bulbs that pull a lot of energy, but they are industry standard butt-kickers. They are really strong.

Q. Now did you participate in the solution to solve this problem?

A. Yes, sir.

Q. Tell me what you did.

A. Being the plant person, they would bounce this stuff off us all the time. When the guys came in with

the meters from, I think it was -- I don't know if it was Hortilux, or it may have been from Barron or somebody. But we were right there with them. And we were telling them: This is what we want. We're not getting the power out of these bulbs. We have dead air space above here.

If you look at these pictures, the fixture's very, very large. So there's a dead air pocket up there. And in controlled-environment agriculture, you don't want microclimates. We were actively inputting all the time with the retrofit.

But it came to a point where they were, okay. Guys, how much are these? And they said it was $117 thousands dollars to redo the whole room. It was really big numbers. They are $900 a bulb or a fixture, and there was 30 per room. We got pushback.

But we were actively involved with every retrofit in there, the growers and I. And it was, more or less, like, if I guys want this, we'll give you half of it. And we'll see if you can do anything with you. And if you prove that you're doing good, then we'll give you the rest of the money.

De-hues are the first thing that come to my mind, dehumidification. We said we had done the calcs. We put this much water in the room. We need

to get this much water out of the room. This is going down the drain. Okay, here's a little bit of money to help. See if you can make it work. Okay.

Q. Were you able to start solving the problems?

A. Yes, yes, yes.

Q. Was it a slow process?

A. Yes, yes, but we got it. I mean, we got it. It was a multifaceted issue.

Q. Tell me a little bit about Jeff Schaeffer. What was his position, as far as you knew?

A. Jeff, I didn't know Jeff until probably like -- I don't know -- maybe a month working there, a couple of weeks working there. And he showed up, and I was told he was a person of very big importance. And he was the guy leading PARC. He was the guy over at PARC who was going to be over at the grow a lot.

And okay, cool. Again, I'm focusing on plants. When I realized that it was a little bit bigger than him just popping in once in a while was when I learned he had a big office in the back there, and that was his office. I mean, he had the biggest office in the grow. It was huge.

Q. All right.

A. He was never there.

Q. Do you know what he did?

THE COURT: That's a different question. That's a different question. You just asked him if he understood first harvest to have a particular meaning in the industry. That's a different issue than what they actually did and grew at the facility.

So I'm going to sustain the objection, unless you can lay foundation about how he would know what first harvest is for this contract and these contracts.

MR. BARRETT: Okay.

Q. You indicated -- well, you indicated that you understood -- you know what the term "first harvest" is, right?

A. Yes, sir.

Q. Okay. Can you tell us how you know what the term "first harvest" means?

A. As a consultant, I am all over the country on new builds, all over the country on new builds. First harvest is when you first get clean, acceptable flower to the vault and to market.

Q. Okay. And did that happen at the Premier facility?

A. I know that it went to vault. I can't vouch that it went to market because that was not allowed to -- I wasn't allowed to have that knowledge. But I

Q. Okay. So when the investors would come around, you would make these -- you would get these production schedules. And were they accurate? When you saw them, did they accurately reflect what was going on?

THE COURT: Hold on. Hold on.

MR. SWENSEN: Objection, your Honor. There's no foundation for what was -- he didn't put this in there, didn't author this report. He has no idea.

THE COURT: Overruled. You can answer.

THE WITNESS: Repeat the question. I'm sorry.

Q. BY MR. BARRETT: Sure. My question is that -- you've got these reports when the money came around?

A. Yes, sir.

Q. And you knew that they came from Ryan or somebody at the front. Do you know how they prepared them? I mean, do you know, did they go to --

A. Well --

Q. -- like, an Excel spreadsheet or a printer?

A. I don't know if they went to an Excel spreadsheet, but they would ask these questions all the time. Hey, Bill, how many True Power? How many Green Crack? How many slips do we have in the ten, twenties? How many were lost?

And I would give the raw data for them to make

these. I don't know how the hell they made them. But I know that they were asking me questions all the time that I -- now I can see why they were asking me these questions because these papers would come around. I mean, it was a running inventory.

Q. Okay.

A. And then only the guys that were in with the plants would have the knowledge of. So they would come in and ask us without trying to annoy us because the back of the house was usually working pretty quick. But we definitely gave the information -- me and other staff members included -- to make these lists.

Q. Okay. And so this one is dated on June 21st, 2017. Do you have any reason to believe that this doesn't accurately represent the factual information that was there?

A. I don't, no.

Q. And if you took a look over it, does it seem to, at least --

A. Yeah.

Q. -- seem like it's accurate in terms -- I know you wouldn't remember --

A. No. I mean --

Q. -- on a daily basis?

further.

THE COURT: Sir, would you ever see exhibits like -- or documents like Exhibit 160 and be asked to comment on whether they were accurate or inaccurate to offer corrections?

THE WITNESS: No. No. To be honest, Judge, they kept me away from that stuff.

THE COURT: Before you were involved in this litigation as a witness, had you ever seen something like Exhibit 160?

THE WITNESS: Yes.

THE COURT: How often would you see this?

THE WITNESS: Like I said, when the money came around. I mean, maybe once a month. Maybe two times a month. I mean, they were offering around there a lot.

THE COURT: So --

THE WITNESS: And I mean, they were on their -- I had -- we all had desks next to each other. And they would have paperwork on there, and I'd see these things. And they would reference me and ask me a couple of things, and I would see them. But I knew that what they were showing me, I helped make.

THE COURT: So were you seeing them as part of your job? Or were you seeing them just because other

people were there looking at them, and you saw the people looking at them.

THE WITNESS: Yeah.

THE COURT: The latter?

THE WITNESS: Yes, sir.

THE COURT: Okay.

THE WITNESS: The latter. And they weren't -- I could ask a question about them, and "yeah, okay, Bill, whatever." But I was strictly over the shoulder, yes, sir.

THE COURT: Any follow-up?

MR. BARRETT: No.

THE COURT: I'm going to sustain the objection.

CONTINUING DIRECT EXAMINATION

BY MR. BARRETT:

Q. I want to switch gears a little bit. We talked a little bit in your direct about the powdery mildew that was going on there.

Do you remember that problem?

A. Yes, sir.

Q. Could you just describe very briefly for the jury what the problem was?

A. Powdery mildew is a fungal pathogen that rears

its head when the condition are right. Everyone in this room right now has it in their hair and their beard, you know. You get what I'm saying.

Q. Yes.

A. When the environment produces conditions for it to reproduce, it will do so. In grow rooms, you have to be careful because they are a great place for those things to reproduce because they are warm and moist.

So in horticulture, you really have to watch after your environmental controls, your set points, and the varieties that you choose to cultivate because it all matters. It all greatly matters. And when you have a lot of powdery mildew on flower, it cannot be used for smokable flower. It has one destiny, and that's extracts. And even that can be up for debate. Some people will completely destroy the flower.

It's a serious problem, but it can be controlled.

Q. So tell me about what you guys were doing to control the problem at the facility?

A. When Mike Williams arrived, we were not allowed to do anything, other than spray oxidizers, such as ZeroTol. We didn't have hypochlorous acid at the time, but we were trying to.

Oxidizers, they don't change environmental conditions. They just change -- some of them change the pH on the leaf surface. Some of them oxidize the pathogen right upon contact. There are all these different things. The bottom line is they are band-aids. They do not attack the root cause of the issue.

So once we were able to express that and get people to listen to us and understand that the environment in the room needs to change, we bought dehumidification. We bought four Quest units per room. They were 2500 bucks per room. And we were only allowed to get them for a couple of rooms.

We started growing in those rooms, showing that the plants could do well under the new build-out. And while that was occurring, while we were gaining momentum horticulturally, the ATO was taken and we were shut down.

Q. At the -- so you were aware, at some point, that the ATO was pulled, right?

A. Yes.

Q. And --

A. Yes.

Q. But if I understood what you just said is that you felt like you guys were well on the way to solving

the problem?

A. We were. I know we were. We were isolating the right varieties. We had the correct light in there, the right light intensity. We had those other light bulbs out, and we were going. They looked good.

Q. So at the time the ATO was pulled, you were confident that you could really ramp up production?

A. And that's how it broke my heart, yeah.

Q. So you felt like you had solved the problems and you were ready to start pumping out product?

A. We had four other rooms to retrofit. And we were -- as soon as we could show the boss, you know, the money; that we could produce material at a high level with our retrofit, we thought we were off to the races. We never got there.

Q. You had testified just a couple of minutes ago about the powdery mildew. Was it on everything or just some things?

A. Just the plants that were susceptible. And we only had a few varieties at the time that could -- that were resistant to it. So pretty much every plant that was in there that was in flower had it. When the plant's in vegetative state, it's much more resilient and we can do things to it that inhibit the growth. And flower is damn near everywhere.

THE COURT: They have no hearings tomorrow?
THE CLERK: No, Judge. They have everything completely blocked for us.
THE COURT: Oh, they do? Bless their hearts. Okay. So it sounds like you can leave stuff.
Obviously, there are cleaning crews that come in, so be mindful of that. Don't leave anything valuable. Cleaning crews may move stuff around, so just keep that in mind if you leave something.
Anything else housekeeping wise from Plaintiff's perspective?
MR. BARRETT: No, your Honor.
THE COURT: Okay. Anything else housekeeping wise from the defense perspective?
MR. SWENSEN: No, your Honor.
THE COURT: Okay. We'll see everybody back here tomorrow morning. Thank you. We're adjourned.
MR. WILENCHIK: Thank you.
MR. SWENSEN: Thank you.
(Matter concluded.)

IN THE SUPERIOR COURT OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In the Matter re: PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, a Arizona limited liability company; JJSM EQUIPMENT FUND, LLC, an Arizona limited liability company; NEW LEAF INVESTMENT AZ, LLC, a Delaware limited liability company, Plaintiffs, vs. PEACE RELEAF CENTER I dba PATIENT ALTERNATIVE RELIEF CENTER, an Arizona nonprofit corporation; YURIKINO CENIT DOWNING and JANE DOE DOWNING, husband and wife and Arizona residents; WHITNEY SORRELL and JANE DOE SORRELL, husband and wife and Arizona residents; EDWARD GLUECKLER and JANE DOE GLUECKLER, husband and wife and Arizona residents; JEFF SCHAEFFER and AMY SCHAEFFER, husband and wife, BLACK AND WHITE ENTITIES 1-10; JOHN AND JANE DOES A-Z, Defendants.	CV2017-009033

Phoenix, Arizona
Tuesday, October 20, 2020, 9:30 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TRIAL (DAY 4)
BEFORE: THE HONORABLE JAMES SMITH

REPORTED BY:
LUZ FRANCO, RMR, CRR
Certificate No. 50591

(Copy)

Phoenix, Arizona
October 20, 2020

(The following proceedings are had in open court:)

THE COURT: Good morning. We are back in CV2017-009033.

The jury is present, as are counsel, and we're ready to continue with the direct examination of Mr. Artwohl.

Counsel, go ahead.

MR. BARRETT: Thank you, Your Honor.

CONTINUING DIRECT EXAMINATION

BY MR. BARRETT:

Q. Good morning, Bill. How you doing?

A. I'm good.

Q. Thanks for coming back.

A. Yes, sir.

Q. Yesterday, when we were wrapping up your testimony, we were just talking about when the ATO was pulled.

Do you remember that?

A. Yes.

Q. And I -- if I understood your testimony correctly, it was that you found out that night; is that right?
A. Uh-huh.
Q. And then --
THE COURT: I'm sorry. Is that yes?
THE WITNESS: Yes.
BY MR. BARRETT:
Q. Thank you.
A. Yes.
Q. And then you went back into the facility the next day, correct?
A. Yes.
Q. And was there anything left at the facility with respect to plants or anything like that at the time you went?
A. No, sir.
Q. Do you know what happened to all of them?
A. I don't physically know, because I didn't see firsthand, but I was told that --
MR. SWENSEN: Objection, Your Honor.
THE COURT: Hold on, sir.
MR. SWENSEN: Calls for hearsay.
THE COURT: Sustained.
BY MR. BARRETT:

Q. Okay. Let me put it this way. You understood that once the ATO was pulled, you were no longer allowed to have any of the plants in there anymore, correct?

A. Living plants and any dry plant material, resins, anything of resin-containing material was gone, everything.

Q. And -- and, when you went back to the facility the next day, you didn't see any of those materials there?

A. No, sir.

Q. Okay. I believe that yesterday when we were wrapping up, you said that there were -- you and three other people were hired or -- or stayed on; is that correct?

A. We -- we were -- yes. We were allowed to have our jobs, only four of us, and each of us oversaw respective different areas.

Q. What -- do you remember who they were?

A. It was Ryan Reese, Jared Toogood, myself, and a gentleman named Mike Sipple.

Q. Okay. And what was going to be your -- what were you going to be doing?

A. Very unclear. It was very unclear. We didn't know if we were all going to lose our jobs in the next seven days. We did not know.

We were told by management to stay busy, and

know, I said earlier, I don't know what the hydro equipment means. Well, it says right on here, HyperLogic Galcon. That's -- the HyperLogic was the RO system. That's a $18,000 RO system. You got to pick it up with a forklift. These are items that are big, big, big.

Q. To the best of your knowledge, is anything that you sold, as you've described, anything that is contained in this exhibit?

A. No, sir. No, sir. Nope.

Q. All right, Bill. If you could then turn to Exhibit 60, please.

MR. BARRETT: This has not been admitted, so please do not publish.

MR. SWENSEN: Kevin, which one?

MR. BARRETT: Sixty.

MR. SWENSEN: Sixty?

BY MR. BARRETT:

Q. All right. You got that exhibit in front of you, Bill?

A. Yes, sir. Yes, sir.

Q. All right. You can turn past the first page. That's an e-mail between Mr. Matura and Mr. Swensen.

Take a look at that next page. It's a colored chart, right?

A. Yes.

Q. Have you seen this document before?
A. Yes.
Q. Where -- do you know what this document is?
A. It's another one of these rolling inventories.
Q. Okay. We may have talked about this before -- or yesterday, Bill, so I want to follow up a little bit.
Is this something you would normally see when you were working at the facility?
A. Yes.
Q. Okay. Do you know --
A. Periodically, yes.
Q. It was a yes.
And do you know who prepared this?
A. I know it would be one of two gentlemen. I don't know for a fact, but it would've been one of two people.
Q. Which of the two gentlemen would've prepared it?
A. It would've been Ryan Reese or Jason Crowder.
Q. Okay. And --
MR. SWENSEN: Objection, Your Honor. Again, we went through this yesterday, same type of thing. This witness has no personal knowledge.
THE COURT: Okay. See if -- he's got to lay -- he's got to lay foundation. Okay.
MR. BARRETT: Right.
THE COURT: Okay. See if you can lay

foundation for how he would know who prepared it.

MR. BARRETT: We're going to talk about the foundation and some of the -- and this will refresh his recollection as to some of the items there.

THE COURT: I'm sorry. You're going to refresh his recollection about some of the items that were there? Is that --

MR. BARRETT: We'll lay -- we'll lay the foundation, Your Honor.

BY MR. BARRETT:

Q. All right. So maybe let's -- if you can turn to the next page of the document. Can you tell me the difference between the two rolling inventories there?

A. The difference in these --

MR. SWENSEN: Objection, Your Honor.

THE COURT: Hold on. We've got an objection.

MR. SWENSEN: He's asking him to testify about a document that he knows nothing -- he doesn't know how it was prepared, who prepared it. It's all hearsay.

THE COURT: Okay. So let's not have speaking objections from now on.

MR. SWENSEN: Okay.

THE COURT: Foundation and hearsay.

Okay. What -- what is it we're going to

hear that --

MR. BARRETT: He's comparing the two. That's going to help him lay the foundation, Your Honor.

THE COURT: Okay. So let's just have him -- he can look at it, and you can ask him to refresh his recollection, but let's not have him testify from a document that's not in evidence yet.

MR. BARRETT: Yes, Your Honor.

BY MR. BARRETT:

Q. All right, Bill. Let's back up so you can go to that front page again. Let's talk a little bit more about -- about the -- the document itself.

You indicated that you thought one of two people would've created it, right?

A. Yes, sir.

Q. And how do you know that?

A. Because I would compile information and give them to one of those two people to -- to make these documents --

Q. Okay.

A. -- because I was the one in here with the flower. Concentrates, that's not an extraction thing. I know very little to zero about the concentrates.

The flower, that -- those information -- that information of what we had in running inventory in

the -- in the growing side, that came directly from me, directly from me and my -- my people running those plants.

So, you know, I look at this first page here, and it has information about Bubba OG -- excuse me, the Bubba OG, the Green Crack.

MR. SWENSEN: Objection, Your Honor. He's testifying about a document that is hearsay.

THE COURT: I don't want you to read from the document yet.

THE WITNESS: Okay.

THE COURT: Okay?

MR. SWENSEN: And I also believe it's improper for -- to try to refresh his recollection using a document that is hearsay that he has no foundation for.

THE COURT: Okay. Overruled as to efforts to refresh his recollection.

So you're trying to refresh his recollection?

MR. BARRETT: We're just working on foundation right now, Your Honor.

THE COURT: Okay. Go ahead.

BY MR. BARRETT:

Q. All right. Bill, we were talking a little bit about how you know how these documents were created. Okay?

Q. So you would -- after you would -- after you would provide the inventory, the inventory information to -- to -- to Ryan or Jason, you would later on get these documents?

A. I would -- I would -- I would see them, yes.

Q. Okay. And how would you see them? When would you get them?

A. Like I said yesterday, there would be people coming in of value that needed to be shown what was going on, what we were doing.

Some of them were -- a lot of them were repeat visitors. Some of them were new people. And I would see these types of documents with those gentlemen, with the people who were given a tour, and I was asked to be around if any questions were to be asked that they couldn't answer.

Q. And so you saw these documents, and you knew that they were prepared in the regular course of business when the money would come around?

A. Yeah.

Q. And --

A. Yes.

Q. -- when the money would come around, you would see that they would be used and provided to --

A. They were present. They had all types of fancy

packets, and these were in those packets.

Q. Okay. Did you see Ryan or Jason give these documents to the money?

A. I wouldn't say, like here it is, but they were directly looking at it together. It was a group.

Q. Right.

And so you -- whereas you didn't necessarily see them actually -- did you ever see them, like, typing it into the computer?

A. No, but, I mean, I went to go see Jason to offer him lunch. He's always sitting at his damn computer.

Q. Right.

A. So... And I knew that's what he did.

Q. And so you knew that it was his job to prepare things like --

A. Yes, sir.

Q. -- this document?

A. Yes, sir.

Q. And so, when you saw the documents that were being distributed to the money, you knew that Jason prepared them?

A. Yes.

MR. BARRETT: Move to admit the evidence, Your Honor. It's a business record.

THE COURT: Any objection?

MR. SWENSEN: Objection, Your Honor. Still foundation. And I'd like to voir dire the witness, if I may.

THE COURT: Okay. So he's going to ask you a few questions.

THE WITNESS: Yes, sir.

VOIR DIRE EXAMINATION

BY MR. SWENSEN:

Q. Bill, you stated you never physically saw Jason input any of these numbers that you gave him, correct?

A. Yes, sir.

Q. And you admitted yesterday, when I questioned you, that the official record for what's in the -- in the inventory, what is being produced, is BioTrack, correct?

A. Yes, sir.

Q. So -- and you don't know whether the numbers in this exhibit match the BioTrack numbers, do you?

A. I can't -- no, I don't.

Q. And -- and you can't say that you actually saw this specific spreadsheet. You see ones like it, is what I hear you say?

A. I've seen many like this, yes, sir.

Q. Okay. You can't speak to this specific one with

sold, correct?

A. Yes, sir.

Q. And through your experience, you have an understanding of the value of the different strains that you sell, correct?

A. Yes, sir.

Q. And --

A. Quality.

Q. And, as part of that experience, you have experience knowing that there's a difference in value between product that has the PM on it and product that does not have the PM, correct?

A. Yes, sir.

Q. Okay. And, in your experience, can you at least give a percentage difference as to the value of the -- the product with and without PM?

THE COURT: Hold on.

MR. SWENSEN: Objection, Your Honor. He was not disclosed as being a valuation expert; and, secondly, it's not relevant to any of the issues under the contract.

THE COURT: Okay. Give me a second to look at your disclosure.

You need stand by, ladies and gentlemen of the jury, as well as the witness.

Did you explore this at his deposition, by

the way?

MR. BARRETT: He -- well, I -- I can -- I can tell you what happened. He was put up to talk about value. He just was not asked --

THE COURT: Did you explore this at his deposition?

MR. BARRETT: I didn't ask him any questions at his deposition. He was prevented to answer questions --

THE COURT: So the answer -- the answer is no, you did not explore --

MR. BARRETT: No.

THE COURT: -- this at his deposition?

MR. BARRETT: No.

THE COURT: Okay. Thank you.

I'm going to sustain the objection on disclosure grounds.

BY MR. BARRETT:

Q. Bill, did you -- when you were talking with -- with Ryan and -- and Jason, did you guys have discussions about what the products were being sold for?

A. In regards to, like, if they were going to be made shatter or if they stayed flower? Is that what you're asking?

Q. Well, did you -- did you talk about that?

the fact that you thought that they could be selling it for more than they were?

A. I -- I -- I can't say that. I -- I -- I -- I can't say that, because I didn't know. I didn't know. I could only have a ballpark of what the -- the market was doing in regards to cannabis.

I didn't -- I wasn't able to tie that to what we were doing, and they kept me so far out of it that I was, like, I'm not going to start putting my nose in places where I know I'm going to get spotted.

You know, my job was just to make those bags smell really, really good and make those plants very, very happy and get it to the level to where a market-standard price was what we were retaining, because we weren't when we had all that PM. We were not anywhere near market value, you know, and -- and I could gather that much.

Q. But, I think, if I understand your testimony then, you said that you felt that you had -- you know, you had rooms that you were -- had come close to eradicating the problem?

A. Yes, sir. Yes, sir.

MR. SWENSEN: Objection. Leading and also --

THE COURT: It is sustained on leading. So we're going to strike that answer.

If you'd like follow up with a different question, Counsel.

BY MR. BARRETT:

Q. So, from what you just said, you -- did you do something to address the -- the PM problem?

A. Yes.

Q. And did you feel like you had addressed the PM problem?

A. Yes, and we were making great headway.

Q. And would you say that the PM problem was eradicated at -- at the time the ATO was pulled?

A. I would say we were right there. We were right there, and I mean -- and I'm saying we were right there is because we had plants growing in flower with no PM presence.

MR. BARRETT: One moment, Your Honor.

THE WITNESS: And the retrofit was halfway down.

THE COURT: And, so the record is clear, I think everybody in the room understands, but "PM" refers to powdery mildew, correct?

THE WITNESS: Yes, sir. Yes, sir. It's a fungus.

MR. BARRETT: No further questions, Your Honor.

THE COURT: Okay. Any cross?

MR. SWENSEN: Oh, yes. Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SWENSEN:

Q. Hi, Bill.

A. Hello.

Q. I'm Tyler Swensen, and I'm one of the attorneys for the defendants. You and I met a couple weeks ago at your deposition.

Do you recall?

A. Yes, sir.

Q. Okay. And I'm probably going to be referencing your deposition as we go through this.

A. Okay.

Q. So, hopefully, you remember some of the things that were discussed there.

THE COURT: Is there a copy to provide him if you're going to be asking him stuff about his deposition?

MR. SWENSEN: We -- yes, we have a copy of it.

THE COURT: Do you want to give it to him?

MR. SWENSEN: Sure.

May I approach?

THE COURT: Yes.

Go behind the court reporter, please.

And you could just set that down for now, sir.

BY MR. SWENSEN:

Q. All right. So you started working for -- and can you hear me okay?

A. Yes, sir.

Q. Okay.

A. Yes, sir.

Q. Let me put this on just so the jury can hear me, too.

Okay. You started working for Premier sometime in the summer of 2016, correct?

A. Yes, sir. Yes, sir.

Q. And you quit working for Premier sometime in the summer of 2019 after you got into a huge argument with Missner's brother, Glen, correct?

A. Yes, sir. Disagreement, yes, sir.

Q. I believe you described him in your deposition as being a pain in the ass?

A. Yes, very much so.

Q. Hard guy to work for?

A. Very.

Q. So I want to kind of break up your work experience for Premier.

If I understand your testimony, the first couple of months that you worked for Premier, you were what you called a finisher?

A. An A tech, in the words of the head grower, his common language, a finisher.

Q. Well, I guess what I'm going there -- where I'm going there is I'm saying, during that first couple of months, you were busy finishing building out the facility?

A. Yes, sir.

Q. You weren't growing any plants?

A. Yes, sir, you're right, tables, this, that, and the other.

Q. Okay. So then you moved into the time when you were trying to grow plants?

A. Yes, sir.

Q. Okay. And that's when you were an A tech?

A. Yes. And I -- I was titled A tech from the start, but yes.

Q. Okay. But I'll -- I'll use that term to describe that period of time.

A. Sounds good.

Q. And that ran from approximately, what, October

2016 'til October 2017?

A. About that.

You're referring to the A tech, like, position?

Q. Right.

A. Yeah, ballpark, yes.

Q. The growing, yeah.

A. Yes. When -- when Mike -- Mr. Williams came, things changed a little bit, but it was -- yes.

Q. Okay. And then after the ATO was canceled in October of 2017 --

A. Uh-huh.

Q. -- then you morphed into kind of a caretaker role --

A. Exactly.

Q. -- for the premises?

A. Yes, sir.

Q. Okay. So, if I use those terms, finisher, A tech --

A. I'll track you.

Q. -- you'll track me.

Caretaker, you'll track me?

A. Yes, sir.

Q. Okay. Now, when you were working as an A tech --

A. Uh-huh.

that?
A. No. That sounds like it makes sense to me. No.
Q. Okay.
A. Yeah.
Q. So you -- while you're an A tech, you weren't involved in billing PARC for management fees, right?
A. No, sir. No, sir.
Q. No.
And you weren't involved in trying to collect any management fees on behalf of Premier?
A. No, sir.
Q. Okay. And do you -- and you have no personal knowledge that PARC was ever able to sell any marijuana or marijuana products that Premier produced?
A. I do not have personal knowledge, no.
Q. No?
A. No.
Q. So you don't have any personal knowledge of whether Premier was ever even entitled to any management fees under its contract, do you?
A. I don't. I don't. I kept so far away from all that.
Q. And you don't have any personal knowledge that PARC ever failed or refused to pay Premier management fees for any of Premier's products that PARC sold?

wouldn't it?

A. It would, yeah. They need to be documented. They need to be --

Q. And --

A. In the hemp world, it's the same thing. So it would need to be documented.

Q. Is that -- is that something, to your knowledge, that PARC could've lost its license over?

A. I'm not sure if they could've lost their license, but it's -- I -- I know from being a hemp license holder myself, everything must be documented. You do not bring source material in from another grower or another license holder, another nursery, without documentation.

So, again, I stayed out of a lot of things later on by choice, but, in the beginning, it wasn't by choice. I wasn't to -- to be privileged with certain information. I was to grow.

And I say that with that attitude, because I was a young guy fresh out of college, and they wanted me to do what I did best, and that was grow.

Q. Yeah.

A. So yeah.

Q. So you testified at your deposition that -- and I'm paraphrasing --

A. Uh-huh.

Q. -- that the first attempt to trying to cultivate marijuana at the facility, basically, was unsuccessful; it didn't work?

A. We got plants with resin in the vault as far as the grower goes, not the quality we're looking for at all. At all.

Q. It wasn't quantity you would want?

A. Say again.

Q. It wasn't quantity either?

A. I mean, we -- there was -- it's hard to say that because, like, you know, resin has value even when contaminated because you can -- you can separate it.

So, for me as a grower, I -- I wouldn't want to ingest any of that product. I wouldn't want to do anything other than have it extracted and get on with the next plants. I don't deem it, as a grower, as, wow, we were a success. As growing plants with resin on it that had some type of monetary value, that was successful.

Q. Okay.

A. But as a grower, the quality, no, sir.

Q. But the ultimate goal here was to provide premium quality flower to PARC to sell to patients, right?

A. Yes, sir.

Q. So, in that regard, it wasn't successful?

A. You are right, yes, sir.

Q. Okay. And you don't know what happened to the results or what -- what was ultimately harvested in December of 2016, right?

A. I don't know what happened to the stuff physically, no. When I went upstairs, I didn't -- no. I was so quick to get past it, man.

Q. Okay. And you don't know if it was --

A. I --

Q. You don't know if it was delivered to PARC?

A. Nothing.

Q. You don't know if it was thrown out? You don't know what happened to it?

A. No, sir.

Q. Okay. And I believe Jeff Schaeffer referred to that as a test run, that first run.

You might disagree with that assessment.

THE COURT: Hold on. I've got -- hold on. We've got an objection.

MR. BARRETT: Objection. Foundation. That's not in evidence.

THE COURT: Okay. Why -- why don't we go without prefacing the comment --

MR. SWENSEN: Okay.

THE COURT: -- and just ask the question.

BY MR. SWENSEN:

that size as a grower.

So I don't know how that -- it's just a fact of the matter, because I remember looking at the electrical bills and going, that makes sense.

And I remember looking at the water bills and literally asking the guys, Ryan and stuff, how in the hell is this so cheap because I know how much they're putting in these tanks. He goes, it's incredibly cheap over here.

We called the state. They said we have three wells that feed that facility that, you know, industrial part from different times of the year, you get different qualities of water different times of the year, but we couldn't -- I couldn't gather on why it was so damn cheap.

Q. Yeah.

All right. Well --

A. That's all I'm trying to say.

Q. Yeah.

Let's -- but you were saying the electrical bills, though, would be massive, if you're running all those --

A. If all eight rooms are running, it's almost 30,000 a month.

Q. Okay. And these problems didn't just get solved

overnight, did they?

A. No.

Q. In fact, I believe you testified that, for example, the irrigation system was still not working correctly until the summer of 2017 when you yourself went in and made changes, correct?

A. Yep.

Q. Okay.

A. Yes, sir. Yes, sir.

Q. And you testified that bulbs were burning out and falling on you and other people and on the plants and --

A. Yes, sir, melting tables, melting lights, yes, sir.

Q. And issues with the breakers exploding?

A. The lights exploded. The breakers, they -- they tended to melt. You looked in there, and they'd get black.

Q. Okay.

A. And the electricians were saying the next step is a fire, so...

Q. So, in addition to all of that or, perhaps, because some of those problems, you were having serious issues with powdery mildew in early 2017, correct?

A. Yes.

Q. Okay.

A. Yes.
Q. And what I'm going to refer to as kind of second run -- the first run ended in December. You started up again.
The second run went 'til about March, correct?
A. Yeah, about. About.
Q. Yeah.
And, in March, there were thousands of plants destroyed, weren't there, because of the powdery mildew?
A. Yeah. It was a lot of plants, you know, that I don't know, but lots of plants --
Q. Yeah.
A. -- were -- were deemed unusable.
Q. And, by then, Mike Williams was there, wasn't he?
A. Yes.
Q. And he basically wanted to start over?
A. Yes.
Q. Clean house?
A. Yes.
Q. Okay. But even -- well, tell -- tell the jury, there were steps taken, correct, to try to clear the mold?
A. By Mike -- by Mike, yeah. He allowed us to only spray oxidizers, though, and oxidizers, like I'd mentioned

And -- and it was from that material, wasn't it?

A. Yeah. I can't argue it. Yeah. I saw it. Yeah.

Q. So that -- that third attempt was also infested with powdery mildew?

THE COURT: Is that a yes?

THE WITNESS: Yes, sir. And just to speak to the hort side of it, I mean, when we have --

BY MR. SWENSEN:

Q. Well, there's not a question, and I don't want to be rude, but I want to move through my questions.

A. Okay. Sorry.

Q. Okay? Thanks.

A. No problem.

Q. All right. And, in that same time period, ADHS came out and did an inspection, correct, in April of 2017?

A. I don't know exactly, but they did one inspection, yes.

Q. Okay.

A. When I was -- yes.

Q. I want you to take a look at Exhibit 284, if you would. I believe that's already in evidence.

A. Okay.

Q. Okay. I'm also going to try to bring that up on the screen so you and the jury can see it.

There we are. Do you see that? That's Exhibit --

A. Yeah. I got it right here.

Q. -- Exhibit 284, right?

A. Yes, sir.

Q. And you can see that's a -- that's a letter from ADHS to Yuri Downing, dated May 1st, 2017, correct?

A. Yes, sir.

Q. Okay. And it states -- it's re Statement of Deficiencies.

Do you see that?

A. Yes.

Q. It says, enclosed are Statements of Deficiencies for the recent inspection of your dispensary site.

And that was the -- the -- that was the inspection that was done April 26th, 2017, correct?

A. Yes, sir.

Q. Okay. If we go down in this document, it goes through. There's the inspection date, and this is the Statement of Deficiencies.

Do you see that?

A. Yes, sir.

Q. Okay. And on the second page of the Statement, it says, based upon surveyor's observation, the dispensary's cultivation site did not have harvest records

for any harvests completed for the past six months.

Do you see that?

A. Yes, sir.

Q. So, in other words, the inspector got there and could not find any harvest records dating back from April 26th, back six months, which would put us in, what, October?

A. Yeah. That's the start of the -- yeah.

Q. Okay. And Ryan Reese sent a letter to Yuri Downing. It was in response. It's Exhibit 50, if you have that.

THE COURT: It's probably a different binder. It will also be on the screen.

THE WITNESS: I'll just -- Yeah.

THE COURT: Do you want to show him on --

THE WITNESS: I'll just watch this.

MR. SWENSEN: Yeah, I can show him on the screen. I'll pull that up.

Q. This is the audit response letter?

A. Okay.

Q. I'll zoom that out in just a second. There we go.

And this is in response to -- and you can see again it's the -- it has to do with that inspection on 4/26, 2017, correct?

Okay. So time check, I've got plaintiffs with 9 hours, 26 minutes -- these are now total times -- defendants with eight hours, 39 minutes total. So...

Yes?

MR. BARRETT: Oh, I was just --

THE COURT: Were you just standing to stretch? Okay.

MR. BARRETT: Sorry. Didn't mean to distract you.

THE COURT: No. No. No. No. No. I didn't know if anybody wanted to make a statement.

Okay. So our record is clear with respect to -- I don't recall the exhibit number -- the rolling inventory, what have you --

MR. BARRETT: Sixty.

THE COURT: -- Exhibit 60.

MR. BARRETT: Yeah.

THE COURT: So my difficulties are that the witness, Mr. Artwohl, said Jason and Ryan were in a different room of the building. He did not interact with them in terms of how they actually prepared the documents. He knows he gave them plant information.

He did not establish anything about how values got into that document or what datasets they used to create values.

He admitted he doesn't know anything about concentrates. Exhibit 60 has a lot of information about concentrates in it. And he doesn't know anything about how weights were derived post-cult- -- or post-harvest.

And then to the notion of the fact that Mr. Artwohl, or any witness, maybe the disclosure doesn't refer to it, but somebody didn't ask a question at the deposition.

Death just falls right into Northwest Bank versus Symington, where the Court said, if he had only asked the right question, I gladly would've given him the answer, and the Court made clear that doesn't suffice for disclosure.

So, for both sides, I mean, these rules will apply equally, but I don't want to have to make the record every time. If the argument about a sufficiency of disclosure is they didn't ask him a question in a deposition and I've only got a one-sentence disclosure or two-sentence disclosure, it is very unlikely that's going to suffice, and that will go both ways.

MR. BARRETT: May I be heard, Your Honor?

THE COURT: Yes.

MR. BARRETT: Two points. Let's address the disclosure one first. Here's the -- the reason that I'm struggling with that is that big picture, what happened is

there was a motion to exclude witnesses because of lack of disclosure, right?

THE COURT: Right.

MR. BARRETT: They were -- we were --

THE COURT: There's a motion --

MR. BARRETT: -- damages and Bill.

THE COURT: Right. There's a motion in limine saying plaintiffs don't have admissible information about the value of the destroyed marijuana.

MR. BARRETT: Right.

And there was a discussion about the adequacy of Bill's disclosure, right?

THE COURT: Yes.

MR. BARRETT: Okay. And so, in your -- in response, you didn't strike the witness. You said, put him up for deposition --

THE COURT: Right.

MR. BARRETT: Right?

-- to answer the questions that they want to ask.

THE COURT: No. It was -- the point was not to then say, go fish and figure out what he has to say. The point was you, plaintiffs, had said Exhibit 60 is where we are going to prove the value the destroyed marijuana. So we have evidence to get where we need to

be.

So I was going to allow them in deposition, or depositions, two people, but it was all coming back to Exhibit 60. It was not then the notion of you guys, defendants, you need to figure out what it is Mr. Artwohl and Mr. Toogood may or may not say. It was all tied into Exhibit 60 because that's what plaintiffs said carried their burden.

MR. BARRETT: Right. I understand that.

THE COURT: Okay.

MR. BARRETT: But I don't -- but let me be clear. The deposition wasn't just about Exhibit 60. If it was, it would've been about three minutes long.

There was -- we were there for an hour-and-a-half. They got the opportunity to cure whatever disclosure defects you think there were with respect to Bill's testimony because he was put up to answer questions about value. Right?

THE COURT: No. He was put up to answer questions about Exhibit 60 because Exhibit 60 was plaintiffs' document that you guys pointed to in the briefing to say, we've met our burden to show the value of the destroyed marijuana.

It doesn't suffice to then say, if defendants had asked him, are you an expert in business

valuation, this is the value of our enter enterprise that were destroyed, if defendants had asked him, well, how much would 40 grams of Bubba OG be or Green Crack or Monkey Grape or Ancient OG or the Great Stomper OG, if they'd only asked him that, he would've gladly told them that he knows the values of those things.

If that were the intended use of Mr. Artwohl, then, certainly, plaintiffs knew they needed to disclose: Mr. Artwohl will discuss the valuation of various strains in -- whenever this was created.

MR. BARRETT: I apologize, Your Honor. There must have been some confusion then about why Mr. Artwohl was put up.

If -- if -- I guess if we would had known that he was only there to answer questions about document 60 we would've objected to any other questions that were asked.

But they got to ask a lot of other questions that don't relate to Exhibit 60. So, in my mind, that cures the -- the disclosure defect because there was a fight over whether he was properly disclosed.

THE COURT: Right.

MR. BARRETT: They had the opportunity to depose him and ask him whatever they wanted to, including the valuation, which is why he was there. I don't --

THE COURT: So if they had -- the final question had been, Mr. Artwohl, do you have anything else to say, and he said no, would that have been it?

MR. BARRETT: Well, no. But that's -- that catch-all question isn't the same as we're putting him up because we think he's somebody that can disclose information about damages, and then they don't ask any question about damages.

You can't go back to the disclosure and say, well, I'm going to go look at the disclosure that I've already found to be insufficient but allowed to be cured with a deposition and still say that there's an improper disclosure.

THE COURT: So where, other than Exhibit 60, did plaintiffs ever say hooey the value of the destroyed marijuana?

MR. BARRETT: When we were talking and arguing about the motions in limine, we said, this is a person who had information about, not only the document, but the -- the information in the document.

THE COURT: So other than him talking about how the document was created or the underlying sources for it, you think the burden is then on the opposing party to try to ferret out what it is this witness is going to say as opposed to your affirmative obligation to disclose

that?

MR. BARRETT: I -- I think that, again, whereas the -- you have already ruled that the disclosures were insufficient but cured that defect by making us put him up for a deposition, and when we put him up for the deposition, it was under the understanding that he was going to talk about damages.

THE COURT: So, if they never asked the right question, they would've just been stuck, and they wouldn't even know what questions to ask because your disclosure was one sentence.

THE WITNESS: Well, but -- understood, Your Honor, and we keep going back to the disclosure, and I understand that, but what was the whole purpose of having his deposition if they weren't going to be able to ask more questions?

THE COURT: To ask him about Exhibit 60.

MR. BARRETT: Right. And --

THE COURT: And the source --

MR. BARRETT: And then the source information, right?

THE COURT: Right. To -- Exhibit 60, not to then say, we're now going to turn you into a valu- -- marijuana valuation expert on everything.

It would be to say, plaintiffs have put

forth Exhibit 60 to say how much the marijuana -- the destroyed marijuana was worth.

MR. BARRETT: Right.

THE COURT: We want to figure out what you have to say about this exhibit that says the marijuana was worth -- I'm going to make up a number -- $450,000, or whatever it is.

But if your notion was, and now we're going to have Bill Artwohl say, I can tell you how much per gram these different strains went for when that document was created or at any time, that's a real different disclosure, and that's a real different issue than what we talked about.

MR. BARRETT: Well, I would disagree because if he's -- if he's the one that provides the information that goes into the document -- and I think his testimony was is that he has information about -- and had discussions with -- with Ryan and Jason about the -- the -- what things were being sold for, what their value was, he has that information that he's provided that went into 60.

THE COURT: I disagree that he ever said anything about him providing input to Ryan or Jason about valuations and what was going to end up in Exhibit 60 or elsewhere.

At most, he made passing reference to some sort of fleeting conversations that he may have had, but, if you think you elicited testimony from him where he said, I gave them data about pricing or value that went into Exhibit 60, I don't think the record supports that.

MR. BARRETT: I -- I would suggest that I -- I could get that information out of him if I would've been allowed to question him that way, but there was an objection, and you -- if I remember correctly --

THE COURT: So you think if you ask him, did you tell Ryan and Jason what dollar values to ascribe to different strains, he would say he gave them that information?

MR. BARRETT: I think he could testify about discussions he had about what things were selling for, yes. Beyond that, I think it's --

THE COURT: Not -- not what things were selling for. What data he gave them about prices, because I don't want him to come in and say, I've surveyed the marketplace, or I understand what was going on in the retail end.

I'm expecting if he gives that information, it would be him saying, I've told the people who created Exhibit 60 what dollar values to ascribe to different strains.

Do you think he's going to do that?
MR. BARRETT: I don't think he'll go that far, no.
THE COURT: Okay. All right.
MR. BARRETT: I think what he will say is that I had discussions about what they were selling it for and what it could be sold for and -- and -- and --
THE COURT: Then why not bring in the people who actually sold it?
MR. BARRETT: Well, there's a difference between -- he's working on the wholesale side as opposed to the retail side.
So his information is going to be, when I grow 50 pounds of Ancient OG, this is what -- and it's clean, it's going to be worth about this much, and, if it's not, it's going to be worth this much, because it's got the PM on it, and he can talk about the difference in value.
THE COURT: So I guess I'm just struggling to understand, if you thought he was going to say anything more about Exhibit 60 and the data in Exhibit 60, why didn't you ever disclose that he was the source of dollar figures or anything like that?
MR. BARRETT: Again, I can't -- I can't speak beyond what was enclosed in additional disclosure.

My understanding was is that that was going to be cured by putting him up for deposition, and that we weren't going to be locked with the one sentence in here because it wouldn't make sense to do that.

MR. SWENSEN: If I may.

THE COURT: So --

MR. SWENSEN: Okay.

THE COURT: So, if that was the notion and they went through and they asked him about -- they asked him about a lot of stuff, lights, ballasts, powdery mildew, all sorts of stuff, but they also asked him, what do you know about what went on when it was shipped over to PARC, if PARC accepted anything, et cetera, et cetera.

So, if you thought he was then -- that they had not covered a topic of his, I will say expertise, of dollar values, why wouldn't you, or whomever was at the deposition, then say, Mr. Artwohl, I have some follow-up questions about other data?

MR. BARRETT: Again, I was at the deposition --

THE COURT: Okay.

MR. BARRETT: -- and I didn't think it was incumbent upon us to elicit the information. It was simply based upon why he was being put up, being given the opportunity to be deposed about whatever they wanted to

ask him before ge got up on the stand. That was the cure of the -- of the disclosure problem.

MR. SWENSEN: If I may, Your Honor, I think I can shorten up this.

THE COURT: All right.

MR. SWENSEN: All right. I asked Mr. Artwohl, in his deposition, if he was ever involved in producing any --

THE COURT: Will you take this off, because they may hear this. Thank you.

MR. SWENSEN: I asked him if he was involved in producing any inventory reports. I asked him if he'd seen such reports. He said no. So I had no reason to follow along on that after he said he had no involvement in producing it.

Besides that fact, you heard him testify that what he was being asked about by Mr. Reese and Mr. Toogood is about living plants in production.

This is a rolling vault inventory that has nothing on it, except for finished product, allegedly, and he's already testified he didn't weigh or measure any of that. He had nothing to do -- well, he just handed it over.

So he doesn't know anything about this document, zero, and none of the information in here

come -- came from him telling them, oh, we got these many plants growing in this room, which is all he did.

THE COURT: Anything you thought you wanted to add?

MR. BARRETT: I'm sorry?

THE COURT: Anything else you thought you wanted to add?

MR. BARRETT: Well, the only issue, too, is that I -- I understand about -- I think -- I do have an additional concern about the -- the business records exception, because everybody is making it sound like, and when you're talking about the elements, that they have to be intimately involved with every piece of the information on there.

And that's not the business exception rule. It's that they just have to know how the document was created, and I think he laid that foundation by saying, I gave this information to these guys, I know it was their job to create these type of documents, and I know that they created these documents because I saw -- I saw them, I saw them handing it around to me. It was regularly done.

MR. SWENSEN: And, if -- if this was -- if this was a room status sheet showing what's in -- in cultivation and being grown, I wouldn't necessarily

disagree with that. That's not what this is. This was a rolling vault inventory, and nothing that he gave them in terms of information ended up on here.

THE COURT: Okay. I'll just --

MR. SWENSEN: So...

THE COURT: -- tell you the Civil Rules Handbook, 2020 edition, page 1,254.

Neither the person who witnessed the matters recorded nor the person who created the records are necessary foundational witnesses.

We're all on the same page.

The requisite foundation must, however, be established by someone who has personal knowledge or is otherwise familiar with how the record was prepared or when the practice of the business concerning the preparation of records of that type.

I don't think you get there with him because he admitted so much that went on outside of his presence, and you didn't establish anything about how he knows how they went about creating those forms -- or that exhibit other than, I gave them some plant information.

MR. BARRETT: Right. But I -- I -- I would agree -- I don't think you're interpreting that right, Your Honor, because it doesn't mean that he has to stand over them and watch him put it in himself.

THE COURT: I'm not even saying that.

MR. BARRETT: Well, how --

THE COURT: I agree.

MR. BARRETT: If somebody goes into the back room behind them and puts in that data and prints it out and brings it out, they haven't seen how it's created, but they -- and that --

THE COURT: How does he know that?

Every other time anybody has tried to lay a business records exception, they've brought in a witness who knows how the process operates.

He or she doesn't actually see somebody data input, but that person -- that witness would say, I'm the executive vice president or whatever, my title is at Acme, Inc. We have a process in place where the claims manager will receive information from a claimant and input it into the X, Y, Z system. That produces a report that is then forwarded to the field claims representative who uses it to do this and so.

Or if somebody is talking about, this is our sales information, I am whatever, the director of sales, I know how this process works, the field points of sale machines automatically send the data to our centralized Acme system, then my subordinate creates a monthly report pulling the data from the Acme system and provides that

report to me.

Mr. Artwohl is not anywhere close to being able to talk about how this is created or was created.

MR. BARRETT: I'm not sure that that's an analogous situation, because I think it's much --

THE COURT: Okay. You've made your record then.

MR. BARRETT: It's much simpler than that. He gave them the information. He knows it's his job to prepare those records, and the records were, in fact, prepared.

THE COURT: Okay.

MR. BARRETT: I think that satisfies the -- the longer string that you just said.

THE COURT: Okay. You -- you've made your record.

MR. BARRETT: Thank you.

THE COURT: We're beating a dead horse.

MR. SWENSEN: Again, the information he testified he gave them is nowhere in this report.

THE COURT: All right. So we're going --

MR. BARRETT: What --

THE COURT: Yes?

MR. BARRETT: Based upon what Mr. Swensen just said, I think Exhibit 160 then can be admitted

perspective?

MR. BARRETT: No, Your Honor.

THE COURT: Anything from defense?

MR. WILENCHIK: No.

THE COURT: Okay. We'll take our lunch recess. Thank you.

(Lunch recess.)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, et.al., Plaintiffs, vs. PEACE RELEAF CENTER I, et.al., Defendants.	CV 2017-009033

Phoenix, Arizona
October 20, 2020

BEFORE THE HONORABLE JAMES D. SMITH

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Trial - PM Session)

PREPARED FOR:
COPY

MICHELE KALEY, CSR, RPR
Certified Court Reporter #50512
(480) 558-6620

that PARC had already had open -- and we had that dinner.

And so that was about, you know, one and a half days of us kind of locked hips going through everything to understand the people and the investment.

Q. And do you recall, Mr. Missner, anything that Jeff Schaeffer told you during this initial meet-and-greet about his relationship to PARC or his involvement with PARC as a dispensary license holder?

A. It was -- to us, it was one and the same. I mean, he was PARC. So there wasn't really a distinction. When we had that meeting, there was no concept of this company and that company. They were selling us to invest in this business. Not in a particular silo versus another silo. It was, we are PARC and this is the investment opportunity.

Q. Do you remember walking through the cultivation facility during that initial visit?

A. I remember going through that building.

Q. Do you recall any impressions you had about the cultivation facility?

A. Well, at the time, it wasn't completed. So to me, at that time, what they needed money for was to complete the cultivation facility. So they had

started, my recollection is they had -- it looks as though a construction job that had started, but hadn't been completed. And it was much, much closer to the front end of a construction job.

So that's an area I had more expertise in because it's an industrial building, and these are things that we lease and improve all of the time. But it was far from a cultivation facility at that time.

Q. Now did you participate, in any way, in the drafting of the contracts between the three entities and PARC? Like, for example, the Building Lease Agreement or the Equipment Lease Agreement or the Cultivation Agreement?

A. I wasn't -- I wasn't directly tasked with having those. Obviously, I'm not a lawyer, so I didn't draft them directly. I think -- if the question is, was I involved in the production of those with the attorneys? That was more Rick's domain than mine.

Q. All right. Fair enough. You've read the contracts. Is that fair?

A. That's fair.

Q. And do you understand, sir, that there are certain responsibilities on each side of those contracts? You know, for example, the building lease,

JJSM Real Estate has responsibilities and PARC has responsibilities.

Have you read them through that lens?

A. Yes. I have reviewed those contracts --

Q. Okay.

A. -- from that lens.

Q. Now do you have knowledge, sir, that, with respect to the two lease agreements -- so we're talking the Building Lease and the Equipment Lease, not the Cultivation Agreement. With respect to the two lease agreements, do you have knowledge that PARC's responsibility to pay rent under those lease agreements was triggered by a term in the agreement called "first harvest."

Do you have that knowledge?

A. I do.

Q. Okay. And you're not -- you're not someone that has the foundation or the knowledge to tell the jury what a, quote, unquote, first harvest means, are you?

A. Not in an absolute sense.

Q. Right.

A. No.

Q. All right. Now, however, did you rely upon others to tell you and provide you with information

about whether a first harvest had occurred?
A. Yes.
Q. Okay. And can you just tell the jury, who would some of those people be that you are relying upon to receive information from?
A. Well, one of the -- at the time, the party that was providing most of the information was Jeff Schaeffer.
Q. Now do you remember, sir, in December of 2016 -- so to just get your mind right on the timeframe, December of 2016, do you remember receiving an email from Jeff Schaeffer with pictures of the cultivation facility?
A. I do.
Q. And just so we're all looking at the same thing, let me pull up that email. It's Exhibit 45, which is admitted, your Honor.
And, Mr. Missner, it's going to show up on your screen in a second. But you also have books next to you if you prefer?
A. No. This is okay.
Q. Okay. If we can pull up and publish Exhibit 45. It will be Holly's computer. I'm sorry it will be Holly.
A. Can I get a little closer?

that would be '18 and '19. And then you would have January, February, March, April, May, June, July, seven months of 2020 at 2000. So that would be another 14 thousand.

So if you aggregate it, all of what I just babbled out, you would come up with $75 thousand.

Q. We can take that down. Thank you, Holly. Okay.

I want to switch topics on you again Mr. Missner. You mentioned a name -- a gentleman by the name of Mike Williams.

Do you know that name?

A. I do.

Q. Okay. When did you first learn about Mike Williams?

A. I probably learned about him in January of that year.

Q. Of which year, do you remember?

A. Of 2017. And -- but it kind of came to a head on Superbowl Sunday. I think, once our head grower had packed up and left on some dispute with Jeff Schaeffer, there was immediately emails that they were having someone come down, look at the facility, provide us advice. I think that that was Mike. And then by Superbowl Sunday -- and I just remember it

Q. When I say salvage your investment, let's be clear about this. New Leaf, you know, is not a party in this lawsuit either, right?
A. Correct.
Q. They are the ones with the investment, right?
A. Correct.
Q. So let's stick to the three accounts that are a party to this case; Premier, JJSM Equipment and Real Estate, okay?
A. Okay.
Q. So neither -- any of those had an investment in that building per se, correct? That was all New Leaf?
A. That's correct.
Q. So let's stick to the facts. Now you understood that you would have to find a new dispensary in order to continue on with any kind of operation at all? That's all I was asking.
A. No. I think you asked something different.
Q. Okay. Fine. I'm at fault. So I'll ask it this way. You would have to find a new dispensary to continue business. Is that simple enough?
A. If we were to have -- if PARC's license were to have been lost, as you --
Q. Yes.

A. -- as you stated, yes.
Q. Yes.
A. The answer is yes.
Q. Yes. And you were placing PARC's license in jeopardy by the illegal activity in your company, whether you knew it or claimed to know it or not, right?
A. That's correct.
Q. And you don't know when Mr. Beck found out about it, do you?
A. I only know the date which he called me in August.
Q. So the answer to my question, sir, is what? Yes? I don't know?
A. I don't know.
Q. Thank you. Now Ryan Reese didn't have any authority to issue money out of the account either, did he? And you know that, right?
A. That's correct.
Q. But you told us on direct examination that you thought Ryan Reese was the one who issued the money.
Did I get that right?
A. That's correct.
Q. The only one who would have had authority, other than you and Merel, would have been who, sir?

A. That was my answer.
Q. So the truth is, sir, if we believe your testimony then, you clearly admitted that you did fire Williams based on the illegal activity as I had been stating. And in fact, we know that you terminated him in early June, which means you would have had to have known about that illegal activity before you fired him.
Isn't that clear to you now?
A. It's not what happened.
Q. Is that clear to you now or not?
A. It's clear what you're reading in the testimony from the deposition, yes.
Q. And that's your testimony, not mine, right?
A. That is my testimony.
Q. Now let me just ask a couple of other questions, and then we'll be done.
If Mr. Schaeffer had ever determined or declared or told you that the first harvest was reached, he would get an additional hike in his pay, wouldn't he?
A. There was a bonus, I believe, not a hike in his pay.
Q. Okay. Even better. There was a bonus from $10 thousand that he was currently making a month to

25 thousand, plus he would get 25 percent of rent and a percent of management fees, right?

A. I don't think that's correct.

Q. Okay. Well, you tell us. I'll take your word. Tell us exactly what more he would get if that first harvest were achieved?

A. So there were two pay structures.

Q. Just tell us how much more he would get.

THE COURT: You asked him a question, and --

MR. WILENCHIK: I did.

THE COURT: -- and he's answering the question.

MR. WILENCHIK: The question is, how much more.

THE COURT: He's allowed to answer. Go ahead, sir.

THE WITNESS: So I think you conflated two things that he was getting. He got a one-time bonus for the first harvest. I don't recall what that was. He also was, had negotiated a pay hike that, when revenues to Premier exceeded -- and I can't tell you the number -- a certain threshold, his pay went up by the amount that you were referencing. So they were separate thresholds.

Q. BY MR. WILENCHIK: It would be in his best

interest to produce as much marijuana and be happy that he did for that reason.

Would you agree with that much?

A. Yes.

Q. And the one-time bonus that you just told the jury, under oath, he would get, isn't it a fact -- when the first harvest was achieved, isn't it a fact that he never asked for it, and you never gave him -- your company -- any first bonus for a first harvest being achieved.

Isn't that true?

A. I don't recall whether he did or didn't ask for it, so I can't answer that yes or no.

Q. Answer the second part. You know you didn't give him any such bonus. There's no evidence of it.

You haven't produced one document on it, correct?

A. I'm not certain that's true either.

Q. Well, you're not certain of a lot of things. But my question is --

MR. MATURA: Your Honor, again, it's argumentative.

THE COURT: Sustained.

MR. WILENCHIK: My question was.

THE COURT: Counsel, no. Hold on, Counsel.

MICHAEL ZIMMERMAN: Michael Zimmerman, M-i-c-h-a-e-l, Z-i-m-m-e-r-m-a-n.

THE CLERK: Raise your right hand.

THE COURT: Sir, please have a seat on the witness stand.

MR. BARRETT: I'm sorry, your Honor. Did you want to address something about Mr. Missner staying in the courtroom?

THE COURT: So Mr. Missner is remaining in the courtroom. I take it Defendants are not planning on calling him in their case in chief.

MR. WILENCHIK: (Shakes head left to right.)

THE COURT: Okay.

MICHAEL ZIMMERMAN,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BARRETT:

Q. Good afternoon Mr. Zimmerman thanks for coming in today. Doug by Michael, Mike, what do you go by?

A. Mike is fine.

Q. Mike. Mike, can you tell the jury just a little bit about yourself, your background?

A. I currently own some restaurants in the Phoenix area.
Q. Let me interrupt you real quick. I'm sorry. You can take your mask off. You're the lucky one in the courtroom who gets to do that.
A. I am currently an owner of some restaurants in the Phoenix area. I have lived in Arizona for about ten years. I've been in construction in restaurants for most of that. And I grew up in the Chicago land area and moved out here in about my 30s to pursue new ventures.
Q. At one point, you were appointed and did sit on the board of PARC; is that correct?
A. That's correct.
Q. Can you -- can you just explain to the jury briefly how it is that you came to sit on the board of PARC?
A. Yeah. Rick Merel is a longtime family friend and needed someone to represent his company out here in Arizona.
Q. Did you have a discussion with Rick about kind of what he expected of you?
A. Just briefly. That he was starting this new venture. He had an agreement with a dispensary and wanted me to represent him. That's about it.

A. In the dispensary -- because we were not producing our own goods, you can't write off anything, basically. So the taxes were extremely high.
Q. Okay. And you pay sales tax?
A. Sales tax.
Q. You have to collect sales tax?
A. Sales tax monthly and income tax yearly.
Q. And you paid income tax or did you -- and did you have to pay any taxes to the federal government?
A. I'm sorry?
Q. You have to pay federal taxes?
A. Yes, sir.
Q. How much was that in a percentage basis?
A. Oh, a percentage base, 45, 50 percent.
Q. Of?
A. Of gross sales.
Q. And what about transaction privilege taxes?
A. We pay monthly taxes of up to 8.6 percent, what it was at the time.
Q. And that's, again, on gross sales?
A. On gross sales.
Q. But you were managing to break even is what you were saying?
A. Yes, sir.
Q. Now at some point, did you want to expand and

have a cultivation facility associated with a dispensary?

A. We did. We had -- I had planned for that from the very beginning. But because of expenses, it was something we couldn't do at the time in the beginning.

Q. And when was there a time when you formed any companies to start a cultivation business?

A. I formed three companies; Premier Consulting and Management Solutions, JJSM Real Estate, and JJSM Equipment Fund.

Q. And what was your percentage ownership in those companies?

A. Twenty-five percent.

Q. And who else were your partners?

A. In the beginning, it was Brad Beck, Steve Morales, and Marlene Rosenthal -- Rosenburg. I'm sorry.

Q. Rosenburg, okay. And you each had 25 percent?

A. Yes, sir.

Q. And did you own that personally or through a company?

A. Through my LLC, JeffCo.

Q. Okay. And did the other partners have LLCs, as well?

A. The same. Mr. Beck was under JillCo and Steve

MR. BARRETT: Thank you, your Honor.
THE COURT: In 814 to start.
MR. BARRETT: In 814 at 8:45.
THE COURT: 814 at 8:45.
(Matter concluded.)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, et.al., Plaintiffs, vs. PEACE RELEAF CENTER I, et.al., Defendants.	CV 2017-009033

Phoenix, Arizona
October 21, 2020

BEFORE THE HONORABLE JAMES D. SMITH

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Trial - PM Session)

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not going to rely on anything in the written motions.

THE COURT: All right. So we'll deem defendants motions for judgment as a matter of law -- the written ones filed this morning -- as withdrawn. So then we'll turn it over to defense counsel for any argument.

So each side, you're going to have about 15 minutes this morning because we need to get downstairs and get set up.

MR. WILENCHIK: Your Honor, first, let me start with the Downing motion. And for the interest of time only, I'll just hit the highlights and impose this Court's previous order itself about these substantial hurdles that would have to be overcome, which have not been overcome.

Namely, they have not shown that Downing did anything tortiously outside of his role as a director and president of PARC for PARC's best interest. They haven't shown he did anything illegally. They haven't shown anything solely and entirely -- as the case law talks about, the Restatement -- for personal gain at the corporation's expense.

They haven't done anything. They just threw Downing in as a defendant for the fun of it, I guess, because I don't understand why he's in here

personally. PARC is a party. It's a breach of contract case. And whatever claims they had against Mr. Downing when Mr. Schaeffer was in for this alleged, you know, conspiracy of whatever, that is gone.

And that's a problem we've got with this whole case right now. They dumped a lot of claims and what we're left with is a breach of contract case. There's no basis for any claim and no evidence of any claim against Yuri Downing. That's the first motion.

THE COURT: You know, why don't just go one at a time I.

MR. MATURA: Go back and forth.

THE COURT: That probably makes sense.

MR. MATURA: Sure. Thank you, your Honor. It's just out of habit to stand I'm.

THE COURT: Whatever you're more comfortable doing.

MR. MATURA: Okay. So here's the elements that we have to show to sustain our burden at this point in time on the intentional interference with the contract claim.

Number one. Plaintiffs had a contract with PARC. Undisputed.

Number two. Yuri Downing knew about those

contracts prior to becoming a member, board member of PARC. That's now undisputed based upon the testimony of Michael Zimmerman.

If you remember, your Honor, Michael Zimmerman showed up on April 7th. Yuri Downing was not a board member. Yuri Downing handed him several agenda items. One of those was for a meeting a week later on April 14th.

One of the line items in the agenda was discussion of contracts. So if Yuri Downing prepared those, gave them to Michael Zimmerman before Yuri Downing was a board member, we know, therefore -- at least the jury can presume -- that Yuri Downing knew about the contracts before becoming a member of PARC. That's sufficient evidence to establish that fact, at least to present to the jury number.

Number three. Downing intentionally interfered with the contract. Again, intensive fact question. We've got evidence of what happened at that board meeting. We also know that, shortly thereafter, he did terminate the contracts.

And then the conduct was improper. Again, that's a jury question to decide, whether the conduct was improper. The key factual scenario for the intentional interference claim is that Yuri Downing

knew about the contract and took action before he was a board member, which is different than what the defendants have argued, that you can't interfere with a contract with yourself.

Well, he wasn't with himself yet. He wasn't a board member of PARC. That's the summary of our argument. I'm happy to go into more.

THE COURT: What's the timing of when the contract was terminated -- contracts were terminated then vis-à-vis Downing's position with PARC.

MR. MATURA: Well, when the interference occurs, not when the termination itself occurs? The termination occurs when we get the letter from Mr. Wilenchik's office in June. So it's after April, obviously.

THE COURT: Well, how could you interfere with a contract, other than terminating it?

MR. MATURA: Well, you can stop complying with it. You can take steps to terminate it. I mean, there are items that are interference that don't necessarily equate to termination.

THE COURT: So what evidence have you put on showing that PARC did anything to the stop complying or breach the agreement or do anything improper before Downing became a board member or officer of PARC?

MR. MATURA: Well, we -- the focus is on Yuri Downing's conduct first.
THE COURT: Right. But he needs to do something that interferes with the contract, right.
MR. MATURA: Correct.
THE COURT: So what happened before he became a board member or officer of PARC? He had a board meeting.
MR. MATURA: He had a board meeting.
THE COURT: And this is something we are going to talk about.
MR. MATURA: Sure. He had a board meeting.
THE COURT: Okay.
MR. MATURA: So we think the facts established he knew about the contract before the board meeting.
THE COURT: Okay. But what improper conduct occurred? I mean, I don't think even Mr. Zimmerman said anything untoward occurred at that first board meeting. They just voted to put Downing on the board. I don't recall Mr. Zimmerman saying, and by the way, at that first board meeting before Downing had a position with the company, he said we're going to stick it to him.
MR. MATURA: Sure.
THE COURT: My words, not his.

MR. MATURA: No, I don't think Zimmerman said that either, your Honor.
THE COURT: Okay.
MR. MATURA: But there's evidence that, after that board meeting, the next meeting that --
THE COURT: After that board meeting, Downing was a member of the board.
MR. MATURA: No. I understand.
THE COURT: Okay.
MR. MATURA: I understand. And I can't remember the exact date -- it was a week or two later -- that he had the meeting with Richard Merel in Scottsdale or wherever it was, here in town.
THE COURT: Right. And Downing was a board member then, right.
MR. MATURA: No. I agree.
THE COURT: All right.
MR. MATURA: I'm not disputing that. But the fact that the jury can conclude is that, when Yuri Downing was sitting there on April 7th -- not a board member -- when he had an agenda item saying discuss contracts. And then a week or whatever it was, ten days later, he meeting with Richard Merel saying, we're not complying with the contracts, there's at least enough evidence there to suggest that was

already in his mind before he became a board member.
THE COURT: But if there's no conduct, if he just says, this is my plan -- I mean, he figuratively says inside his head, this is my plan -- as devious as it may be, but he doesn't take any concrete steps to effectuate that plan until after he becomes an officer or director, you think that suffices?
MR. MATURA: That can be interference, sure. The interference doesn't have to be the termination.
THE COURT: How do you interfere if it's just an internal conversation?
MR. MATURA: Not comply with it.
THE COURT: Again, how did they not comply with it before he became an officer or director of PARC?
MR. MATURA: They --
THE COURT: And what role did he play in that noncompliance?
MR. MATURA: Well, before he became involved with PARC, he played no role. I mean -- I shouldn't say that. Before he showed up on the scene in March and April of 2017, he played no role, obviously.
I'm not sure I track your question because if, if -- if we know that Yuri Downing knew about the contracts before being a board member, if we know he

then has a meeting with Rick Merel a week or whatever it was, two weeks later saying these contracts are done -- I'm summarizing, of course -- we're not going to comply the contracts, that's enough evidence to infer, for the jury to infer that he, that he, he -- you know, whatever the elements I said here, that he -- contracts, knew about them, and interference.

Now your question to me is, well, how did he interfere? When did he terminate? That's when he was a board member. We don't deny that, your Honor. Because that's the timing that was laid out. But I don't think the termination has to be the interference. Not complying with the contract is interference itself.

THE COURT: So what is the noncompliance --

MR. MATURA: Not paying.

THE COURT: Let me finish the question.

MR. MATURA: Sorry. Sorry.

THE COURT: Before Yuri Downing became an officer or director, what evidence shows Yuri Downing played any role in that noncompliance?

MR. MATURA: Well, so -- okay. I understand your question. Before Yuri Downing shows up on the scene, the noncompliance is nonpayment.

Okay. We don't allege that he had anything to

do with that.

THE COURT: Okay.

MR. MATURA: Yuri Downing shows up on the scene. And the noncompliance is nonpayment and then termination. So --

THE COURT: But they had already been failing to pay before he became an officer or director, right?

MR. MATURA: That is true.

THE COURT: Okay.

MR. MATURA: They don't deny that. So I guess what you're suggesting is, does there have to be something, like more interference or more noncompliance that he caused I guess is what you're suggesting.

Is that the question you're getting to, is how did Yuri Downing add to the noncompliance?

THE COURT: Well, I mean, again, the definition of the claim is tortious interferes. So how did he interfere if PARC was already breaching from your perspective before he became an officer or director and then that same breach simply continued after he became an officer or director. And then he terminated, but he terminated when he was an officer or director.

MR. MATURA: He did. He did terminate when he

was an officer or director. But, your Honor, I don't think the claim is that narrow. I think that the claim is -- because it's really trying to get into the mind of Yuri Downing. That's what the claim is.

Did he intentionally interfere with contracts that he knew about before he entered into the board position of PARC? And so that's why I feel like we have enough evidence to establish that he, in his mind, he intentionally interfered with those contracts.

THE COURT: But it's almost like an inchoate crime that you're describing. If I think I am going to interfere with Mr. Matura's attorney/client relationship with PARC -- or I'm sorry, Premier. And all I do is think about it, but I don't take any action and I don't do anything, how have I interfered with that relationship?

MR. MATURA: Well, you -- okay. Fair point. Let's now go back to the facts here.

THE COURT: Okay.

MR. MATURA: You remove -- you remove the individual who Premier, Plaintiffs put on the board to be there, you know, designee on the board, on the board position. Because when he, when the vote was taken to remove Zimmerman -- well, let me back up one

step.
THE COURT: That was the week after. Wasn't that at the meeting a week after Downing became a board member and officer?
MR. MATURA: Yes, I think you're right.
THE COURT: Okay.
MR. MATURA: You're right. I'm sorry. My fault. But when Yuri votes himself on the board.
THE COURT: He didn't vote. The other board members voted.
MR. MATURA: No. They all voted. That was the testimony. They all voted.
THE COURT: So how did his vote count?
MR. MATURA: Right. I agree.
THE COURT: Okay. So --
MR. MATURA: I would agree.
THE COURT: Okay. So exclude Yuri Downing's vote.
MR. MATURA: Well, then he's not bored member.
THE COURT: No, his individual vote. The rest of the board members are there, including Mr. Zimmerman, and he accedes to Mr. Downing becoming a board member.
So what other conduct do we have that Mr. Downing did that was improper before he became a

board member? I'm sorry. I should complete the sentence.

MR. MATURA: I understand. I understand, your Honor. Well, again, I'll just go back. I don't have much more to add than what I've said.

The elements of the claim, I think that April 14th agenda item that was given to Mr. Zimmerman on April 7th shows, as well as the fact that we know what Mr. Downing did with the contracts that we've presented so far, is sufficient evidence for the jury to, at least, conclude that he knew about the contract beforehand. They were valid contracts. And he interfered with them. You can interfere -- and, also, your Honor, part of the interference is for personal gain.

And there's been evidence that there's been -- he interfered with them, and now we start talking about termination for personal gain. And so you, if you're sitting on a board, even if he's a board member -- and he was a board member at the time -- that doesn't somehow absolve you from intentional interference. The reason why you eventually terminate in this case is for your own personal gain.

THE COURT: Solely for his benefit to the detriment of PARC.

MR. MATURA: Right.
THE COURT: So the byproduct is that he's going to benefit, it's also going to benefit PARC. Hey, we've got a bad deal with Premier and JJSM. I'm going to form Angel Shark. I'll benefit but, by the way, we're also -- it's going to bleed down to PARC's benefit too because, instead of paying X amount, we're going to pay less than X to them.
MR. MATURA: Well --
THE COURT: So does that suffice?
MR. MATURA: I am not, I don't think that's been --
THE COURT: Okay.
MR. MATURA: Right. To his benefit to the detriment of PARC, right?
THE COURT: Yeah. But I guess what evidence is there that it was detrimental to PARC to enter into any agreement with Angel Shark? Because I don't have any details about what the agreement is with Angel Shark.
MR. MATURA: No. I haven't -- that hasn't been brought into evidence by either side yet.
MR. WILENCHIK: It's irrelevant.
THE COURT: Well, I'm just trying to figure out if they need to show that it was -- Downing's

actions were solely to benefit himself and to PARC's detriment.

MR. WILENCHIK: Right.

THE COURT: Don't Plaintiffs need to show that whatever deal they got with Angel Shark was worse for them? I mean, what if the evidence were that the deal with Angel Shark were better?

MR. WILENCHIK: Judge, can I just be heard on one issue on Angel Shark?

THE COURT: Let him answer that question.

MR. WILENCHIK: Because I think it's --

MR. MATURA: So --

THE COURT: Let him answer.

MR. MATURA: So just to make sure I understand your question, your Honor.

THE COURT: Yeah.

MR. MATURA: I know -- I'm trying to be efficient with the time.

THE COURT: Sure.

MR. MATURA: Can you just repeat your question? I think what you're saying is what if the deal with Angel Shark was better for --

THE COURT: PARC.

MR. MATURA: -- PARC.

THE COURT: Right.

MR. MATURA: Okay. So they are getting management services for a dollar or whatever it is, right, instead of paying all the rent they were supposed to pay us, whatever it is.

THE COURT: Right, yeah.

MR. MATURA: Your Honor, I would need to research that issue to see what the case law says we are obligated to show on that. I don't know off the top of my head. I know that one way to kind of exempt out, well, he was part of PARC is that he interfered with the contract for his sole benefit.

THE COURT: Okay.

MR. MATURA: I don't have a working knowledge of what the law says on the other side of that equation, which is the detriment of PARC.

THE COURT: Okay. So --

MR. MATURA: So that's something I would need to submit to you in writing.

THE COURT: So what did you want to say, Mr. Wilenchik.

MR. WILENCHIK: Thank you, Judge. Just a couple of final points.

First of all, this myth that Mr. Downing could even begin to terminate a contract by himself is just that. It's false. The evidence has actually shown to

the contrary; that the bylaws require board members, not Mr. Downing as the president, to be able to take any authorized action, to do anything to, quote, terminate any contract.

Even if the evidence proves there was a termination, which I'm assuming just for the sake of our discussion, he can't do it alone, number one. Mr. Zimmerman testified specifically that there was no discussion of the terms of any contracts at the meeting, the first meeting to put that to rest.

And Angel Shark, with all due respect to the Court, has nothing to do with this. Angel Shark is the dispensary's management company. It's nothing to do with the management of the cultivation facility, so that is irrelevant. And it hasn't even shown anything about Angel Shark in the case or that it was Mr. Downing's company or that he profited from it, even if the facts were different, but I'll avow to the Court.

And they had every right to remove Mr. Zimmerman from his post per the bylaws, and he admitted that. Mr. Downing never said -- and they never called him as a witness to say that he profited one penny from any of this personally to the exclusion of the company, or that he did anything that was to

his own personal gain or benefit to the exclusion of the company. He never said, contrary to what was just stated, the contracts were done.

THE COURT: I'm sorry. He never said that the contracts were done?

MR. WILENCHIK: Right.

THE COURT: Oh, that he terminated them?

MR. WILENCHIK: Yeah.

THE COURT: I got it.

MR. WILENCHIK: Yeah, he didn't testify to any of that. They didn't even call him, so he couldn't.

And, anyway, the contracts were, according to them, terminated after he was on the board. It was a board decision. There's no evidence of interference or wrongful interference whatsoever. In fact, at the meeting that was referred to, Mr. Merel testified that Yuri Downing did not terminate the contracts at that meeting.

Mr. Missner testified that the subsequent meeting he had with Mr. Downing, Mr. Downing did not terminate any contracts. He merely stated -- and I quote -- I had a feeling, I had a feeling that he might do that after the meeting. After the meeting.

So there's no evidence that any reasonable or responsible juror could find that Yuri Downing

intentionally, wrongfully interfered with any contract for his own personal gain to the exclusion of the company's interest or that he profited at all, let alone exclusively.

And I'll just, finally, so I can get on to the other ones adopt the Court's own minute entry where the Court put this issue in the field and said: You guys are aware of the law. You're aware now of my thoughts on it. This is how I read it. And you have a substantial hurdle to overcome. But, you know, if you want to try do that, that's fine. That's what trials are for, I guess.

And the Court decided in its own wisdom that they could put on whatever case they wanted, knowing the risk. And they did. And this applies to all of these motions. They are fully aware of all of these risks. They have decided to try these cases knowing all of those risks, that the Court set out these hurdles using the case law and everything else and the Court's own feeling on it.

And I didn't see anything, with all due respect to everyone here, that came out at the trial itself, which is why I'm here now, particularly now as to Mr. Downing, that changed anything the Court had previously said.

So I respectfully ask that Mr. Downing, the case against Mr. Downing, the one remaining count where he alone is singled out -- not the other board members, not Mr. Schaeffer for any wrongful activity of that.

And I'll finally just conclude by saying, I don't know how you can release all of the other board members that voted the same way that Mr. Downing did when you have no evidence presented. You didn't even call the other board members to testify that -- or Mr. Zimmerman, for that matter -- to say Yuri Downing had this secret plot. And it was him alone and he was pushing it. And he said, if you don't sign off on this, I'm going to do something nefarious.

There is no evidence of that because it's not true. And they didn't present one scintilla of evidence to even infer. There's just no evidence as to Yuri Downing that they really put on at all.

THE COURT: Let's move quickly to the other motions.

MR. WILENCHIK: Okay. The next one I'd like to touch on, your Honor, is the Premier claim under the Cultivation Agreement.

Here, too -- again, in the interest of time only -- I think the Court was taking notes, so I won't

belabor it. There was no testimony offered whatsoever under paragraphs nine and ten -- this is a contract claim. It's not a tort claim. And under a contract claim, you have to have specific evidence of what damages flowed from the breach.

They didn't call an expert. They didn't have any foundation at all as to testing, labeling, and inventorying of any records that were introduced, let alone admitted. They have no witness who testified, knowing, again, the risk that this was a major substantial issue that they needed to prove.

Mr. Merel himself admitted, in his own testimony at deposition that was brought out, that he knew he had to prove this issue. He said he relied upon Toogood and Artwohl. Artwohl is the only witness that testified.

And Artwohl had no ability to determine either the amount in inventory, the amount that was salable or out usable or proffered to delivery for PARC in any way, shape, or form. No knowledge of anything in the vault. No knowledge of how much flower was there. No testimony at all, not even any involvement with the spreadsheets that they later created in violation of AMMA, which -- as the Court heard -- BioTrack is the way to do it. Even Artwohl admitted that.

They didn't even introduce BioTrack records. They introduced inventory records. They introduced even videos, which is shocking. I won't belabor that point, except to the jury, if this goes forward on any other count.

But not to have videos when they had them in every single room and they were asked to preserve them to show what was there, to show what was usable, to have an expert come in, somebody from DEA, somebody from someplace, even someone on their own side who actually went and looked at this stuff. Not one witness was called.

I can go on and on as you can appreciate, but I won't. I think the Court understands the issue. We filed our motion right, you know, before trial on this. You remember on the weekend. The Court denied it and said at the end, you guys can re-raise this if they don't produce such evidence. They haven't. They've completely, utterly failed to produce any evidence of damages that any reasonable juror or any Court of Appeals could uphold as to a specific damage amount and the basis for it and foundation for it. Zero.

And I don't care what kind of discussion you have. No evidence of that ever came in. It's

completely lacking, and there would be absolutely no basis whatsoever for an award that any jury could make just picking numbers out of the air. Nothing about what was even usable or salable under paragraph nine. That's the standard. It's paragraphs nine and ten. All of this other stuff about 75 million and all kinds of numbers thrown about -- 600 thousand -- anecdotally false, not substantiated by any evidence at trial. It should not come in because it was shown that they are just numbers pulled out of thin air.

And this Court knows that that's not sufficient. It's speculative and conjectural, entirely without any foundation for it. And no juror could find that any number that Mr. Merel even tried to throw out. And he's the only witness that did. And even he couldn't specify the basis for it or what number actually would be a proper number.

Just one second, your Honor.

THE COURT: Kandi, what do we have tomorrow morning?

THE BAILIFF: Let me check.

MR. WILENCHIK: Oh, your Honor, finally, you know what's frustrating for us is they didn't even call their owns witnesses. Ryan Reese worked for them, okay. And Toogood worked for them. And

Toogood, as Artwohl said, was the guy who really knew more about the inventory, the binders, and all of that stuff than he did.

He tried valiantly -- I'm sure at their request -- to try to sneak in some evidence by saying, oh, of course, marijuana is worth more in one condition than another. Well, what does that have to do with the ultimate issue here? Zero.

The fact remains, there's no evidence to support any jury verdict. And it would be entirely conjectural and speculative, to say the least. Given the Court warned them of this and said you would revisit it after trial, and they still did nothing to shore it up. Thank you.

MR. MATURA: I'll try to be brief, your Honor. On this issue, again, we have to look at what the elements are and do we have enough evidence to get a past that line on Rule 50 Motion.

We have the contract. We have evidence of breach. We have evidence that marijuana was destroyed. Bill Artwohl testified about 3000 plants were destroyed. So we have evidence of damages. The question is do we have evidence of value of damages? I think that's what the question really is on this contract.

And, Judge, the Court knows where our discussions have been, what our efforts have been to get evidence in about value of damages. But we've shown damages. It's just the value of those damages that's been difficult for us. But even if you assume, even if you assume everything Mr. Wilenchik said is true, the jury -- and we put this in our proposed jury instructions with the case law, et cetera -- can award us nominal damages.

And the standard there -- and I know the Court knows this. But if the jury were to conclude that Premier established damages, but has not proven the amount of damages with reasonable certainty, the jury can also award -- or can award nominal damages against Premier and against PARC. And the case cites are in our proposed jury instructions.

So we've met the elements; contract, breach, damages. Question is the value of those damages. And we think there's enough to go to the jury. If nothing else, they are entitled, under the law, to award nominal damages if they were to agree with Mr. Wilenchik's argument that we haven't established a value.

MR. WILENCHIK: Finally, your Honor --

THE COURT: Wait. Hold on, please.

MR. WILENCHIK: Oh, I'm sorry.

THE COURT: So I guess I'm not -- are Plaintiffs, or is Premier conceding that, based on this record -- I know you disagree with the rulings -- that based on this record, the only thing you would have would be nominal damages as to the Cultivation Agreement?

MR. MATURA: Based upon the record currently before the Court today.

THE COURT: Right.

MR. MATURA: And, yes. As you said, I have to say as lawyer, subject to our disagreement with the rulings.

THE COURT: Sure, yeah.

MR. MATURA: I don't dispute that we have not been able to elicit testimony about value. So I don't dispute that as of right now.

THE COURT: All right. Mr. Wilenchik, what did you want to add?

MR. WILENCHIK: Well, thank you. I just want to say, finally, the testimony of value is not, quote, difficult. It was nonexistent.

And I don't believe -- I don't have the case law here at my fingerprints. And, again, with the time, I don't believe -- and if I'm wrong on this, the

Court will obviously correct me -- that you can get nominal damages in a breach of contract case as a matter of right. I believe that applies to tort cases, in my experience, at least. I'm not familiar with the cases he's talking about right now.

But my recollection is, for example, defamation cases, per se, things like that, you can get nominal damages awarded. Some were early 1983 claims and so forth. I've never heard, in 43 years -- and if I'm wrong on this, I'll stand corrected. But I've never seen, in 43 years of doing this, anybody asking for nominal damages when they haven't proven any damages in a breach of contract claim that, again, has to be specified what your damages are.

They have never even disclosed what their damages are, let alone proven them. The Court gave them that latitude, with all due respect to the Court, to do that at trial. They couldn't even do it at trial by calling Toogood or Artwohl to testify about it. And they simply haven't produced one iota.

And under nine and ten, under the very contract that Merel admitted is the standard, they don't have any evidence of usable, salable marijuana, what that would be sold at, what the wholesale value would be. None of that. So how can you establish a

damage? The way to do it was to call an expert.

The way to do it was to test it at the time, video it, establish that it even existed. And then after that hurdle, to establish what the value was through expert testimony, which they didn't present, and then to present to the jury some basis for their award and conclusion. They can't just throw up in front of the jury and say, well, we said we have some damage, but we don't know what it is and allow them, in a contract case, to just wildly pick any number they feel like. And what is a nominal damage? Is that a dollar? Is it two dollars? Is it five dollars? I don't have a clue.

Judge, this is done. This was written when you wrote your order. And they haven't done anything to correct it at all. Now I'm not responsible for Mr. Toogood.

And by the way, finally, this wasn't their marijuana, by the way. It was PARC's marijuana. And so they cannot testify to a value they know, unless they are an owner. That's the standard rule, and I won't waste your time with all of the cites.

THE COURT: They didn't even -- nobody on the other side did, right?

MR. WILENCHIK: That's right.

THE COURT: Neither Mr. Merel, nor Mr. Missner said, I can do that.

MR. WILENCHIK: They couldn't if they wanted to. But they didn't even try by calling somebody from PARC or an expert or anybody to do it.

And, frankly, we're calling their witnesses. We're calling Mr. Reese, Mr. Schaeffer. These should be their witnesses to establish the first harvest, et cetera. To establish what was there at the time at the end. And they call some low level grower, Mr. Artwohl, who doesn't have a clue about any of that to try to do that to waste everybody's time.

That claim should be gone for Premier.

THE COURT: Okay. All right. We're going to have to get downstairs, so we can be in -- so we'll be back here tomorrow at 8:30 to talk about other motions.

And you're going to be on a clock. I'm going to bring the chess clock because we've got to get through this. We've got an 8:45 tomorrow. So we'll go from 8:30 until 8:45. And then I'm going to have telephonic hearing at 8:45. Then you may have another ten minutes after that telephonic hearing tomorrow.

MR. WILENCHIK: Well, can I just ask one last question?

THE COURT: Yes.

MR. WILENCHIK: So I'm sure, at this point, the Court has some feelings about all, at least two of the motions that we just argued. And rather than waste time down there, is the Court not in a position then to rule on those based on all the evidence you've heard.

THE COURT: As to two I've heard, I'm going to submit to the jury, subject to me later deciding the legal issues presented. So that's on Premier's, the motion about Premier's contract claim and Plaintiff's tortious interference claims against Downing.

I think everybody recognizes there are some issues with Downing. But I'm going to submit them to the jury, subject to me later deciding the legal questions presented.

So we'll see everybody downstairs, and then we'll be back here tomorrow morning at 8:30.

MR. MATURA: Thank you, your Honor.

(Recess taken.)

THE COURT: Okay. Good morning, everybody. Have a seat please. Welcome back.

This is CV 2017-009033. The jury has returned. And we are ready to continue with the examination of Mr. Schaeffer.

Counsel.

MR. SWENSEN: Yes.

JEFFREY SCOTT SCHAEFFER,
called as a witness herein, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SWENSEN:

Q. Yes. Can you hear me okay, Jeff?

A. Yes, sir.

Q. Okay. I don't have a microphone, so I'm going to try to speak up. If anyone on the jury can't hear, please let us know.

Mr. Schaeffer, you weren't here for opening statements. But in that, Mr. Barrett kind of colloquially referred to Mr. Merel, Mr. Missner, and their investors and the Chicago guys.

If I use that term refer to them, will you understand who I'm talking about?

A. Yes, sir.

Q. Now I think you said yesterday that, after the PARC dispensary opened in or around 2013, were charged with supervising and overseeing its operations; is that right?

A. Yes.
Q. And what was your position and title in terms of the cultivation facility after the Chicago guys got involved in late 2015?
A. I was the managing partner. I was to run the grow facility also.
Q. You were to run it?
A. Yes, everything. I was to oversee everything.
Q. I'm sorry?
A. I was to oversee everything.
THE COURT: Yeah. Pull it up. There you go. Perfect.
THE WITNESS: Sorry.
THE COURT: Just make sure to keep your voice up.
Q. BY MR. SWENSEN: And you said yesterday that a harvest, in your mind, was completing the grow cycle and taking down or processing all of the eight flower rooms in the cultivation facility, but not necessarily all at once.
Is that -- am I saying that correctly?
A. Correct.
Q. And your goal was to complete that cycle six times a year?
A. Correct.

Q. So you would get a crop out of each room six times a year?
A. Yes.
Q. Okay. So I want to take a look -- I want you to take a look at Exhibit B to Exhibit 91 that's already in evidence. I'm going to pull that up on my screen. Thank you.
Okay. And it's titled projections. Do you see that?
A. Yes, yes.
Q. I want to go down here to this portion. This table is titled Consolidated Cash Flow Forecast.
Do you see that?
A. Yes.
Q. Did you prepare this cash flow forecast?
A. Yes.
Q. Okay. Now this shows projected sales revenues for Premier. Now I'll go ahead and highlight that for Premier Consulting, all right, for year one at $6,228,000; is that correct?
A. Correct.
Q. Okay. And it says here that PARC would retain $622,800. Do you see that?
A. Yes.
Q. And that would be ten percent of --

A. Yes.
Q. -- Premier's figure, correct?
A. Yes.
Q. Okay. Now it also says here that the rent to be paid in year one was 195 thousand, right?
A. Yes.
Q. And how many months of rent does that represent under the building lease?
A. Right around six months.
Q. Is this 33,333 a month, right?
A. It's a little less than six months.
Q. Okay. Now I want you to look -- I want to look at the notes that follow on the next page. Hold on. Let's go down here on this next page. And I'm going to make that just a little bit bigger, okay.
And you prepared these notes too, right?
A. Yes.
Q. Okay. And those tie back to the previous table, correct?
A. Yes.
Q. So you assumed that year one would start on January 1, 2016?
A. Assumed, yes.
Q. Okay. And the next box down explains what?
A. How Premier will be receive combined fees from

the sale of marijuana manufactured by Premier and sold together with Peace Releaf Center and sold to other dispensaries.

Q. Okay. So in laymen's terms, what, it talks about wholesale management fees and retail management fees right here, correct?

A. Correct.

Q. This wasn't -- this wasn't Premier's product, was it?

A. No.

Q. Marijuana belonged to PARC?

A. Correct, the license holder.

Q. So Premier wasn't able to sell any of this by itself, was it?

A. No. It had to all be sold through the dispensary.

Q. And if we go down here to the next box, it says: Year one assumes no revenue during the first six months.

Am I reading that right?

A. Yes, sir.

Q. And why was that?

A. Time to break in the building and learn what we could produce.

Q. All right. And that is in the next box. It

says here: Year one rent is based on six months free net rent to Premier to complete construction and ramp up operations, right?

A. Correct.

Q. So the year one sales figure on the previous page -- let's go back up to that -- that $6,228,000, that was based on an assumption that you would be producing only six months out of that year.

Is that a fair statement?

A. Correct.

Q. And what was the, what was the sales figure derived from in terms of -- did you have an assumption about how much Premier was going to get in terms of a per pound price of marijuana?

A. Yeah. The calculations were figured on a pound per light growing and then a cost per pound.

Q. Okay. But in terms of the revenues, what were you assuming would be received for each pound?

A. Well, wholesale pricing was, at the time, I think around $2800 a pound.

MR. SWENSEN: $2800 a pound. Your Honor, would it be all right for me to bring up a calculator on the screen?

THE COURT: Yes.

Q. BY MR. SWENSEN: All right. Let me pull up

the calculator here.

So what I'm hearing you say is you've got $6,228,000 -- whoops, oh, that was right. Yeah, $6,228,000 divided by, you said $2800 per pound?

A. I think so.

Q. So you were projecting that, in six months, you would produce a little over 2200 pounds of marijuana?

A. Yes.

Q. That was the goal?

A. Yes.

Q. And if we divide that by six, that works out to about 370 pounds in each month, correct?

A. Right.

Q. And when you said down here in your notes that this was, that there was six months allowed to ramp up operations, you weren't expecting to just be able to snap your fingers and go into full production, were you?

A. No.

Q. It needed to be a process, didn't it?

A. Yes.

Q. Okay. And did you anticipate that there would be some growing going on during that first six months?

A. Yes.

Q. But there would be no revenue necessarily associated with that?
A. No.
Q. Trying to work out the kinks in the operation?
A. That, and producing enough plants to fill the rooms.
Q. Okay. And so in looking at all of this, does that now -- sir, is that all fully consistent with your definition of when a first harvest happens under the contracts in this case?
A. I'm sorry. I don't understand the question.
Q. Could this be the fact that you said, okay, we need to be -- we're going to be up to full production in six months, producing 370 pounds a month, and that's when the rent kicks in?
A. Correct.
Q. Is that all correct?
A. Correct.
Q. All right. And that would be what you defined as a first harvest?
A. Correct.
Q. That when you were able to reach that production level?
A. Yes.
Q. Okay. Did you explain that to the Chicago

guys when they were doing these contracts?
A. Many times.
Q. So you explained that to Missner and Merel?
A. Yes. That's how they invested their money.
Q. And did you explain it to the PARC board members?
A. Yes.
Q. What did you tell them, the PARC board members?
A. The exact words I don't remember. But I explained the process, opening the building, how long it would take to fill the rooms.
Q. Okay. Let me be a little more specific. What did you tell them about when PARC would be responsible for paying rent?
A. Roughly, the beginning of the summer of that year.
Q. Okay.
A. Six months in.
Q. But did you explain to them that it was based off of Premier reaching a certain production level?
A. Explained it was off of a full harvest, and that we would have money to pay the rent and other costs.
Q. Okay. So when Premier got to the point it

could harvest eight rooms in sequence and was up to production goals, that's when first harvest should be declared?

A. Correct.

Q. All right. And you designed the building lease on behalf of JJSM Real Estate, correct?

A. Yes.

Q. And you have authority to do that?

A. Yes.

Q. And when you signed it, your understanding and intent of when a first harvest could be reasonably declared is what you just told the jury?

A. Yes.

Q. And you told, and you -- your understanding was that PARC would not be required to pay any rent or other charges under the building lease until that first harvest, as you defined it, occurred?

A. Right.

Q. Fair statement?

A. Correct.

MR. SWENSEN: Okay. Okay. Take me down.

THE BAILIFF: Okay.

Q. BY MR. SWENSEN: So we've heard -- the jury's heard testimony in this case regarding first harvest. But let me just ask you, were you able to get started

Q. Or another shot of the clone room?
A. Yes.
Q. Okay. Another shot of the clone room?
A. Yes, sir.
Q. Okay. And, finally, we have this picture.
A. Yes.
Q. What is that?
A. That is a test room. That is a room where tables were filled up with coco that is not designed for that room.
Q. And why do you say it's not designed for that room?
A. The rooms were designed to be grown with a material called Grodan, which is a mime material that comes in a -- we were going to use a six-inch block. The clone goes in the block and the plant grows out of that. This is tables that were filled with coco. It was an experiment. And because there was so much coco in there and there was so much moisture, it created an incredible amount of problems.
Q. Okay. What kind of problems?
A. Too much moisture. The air-conditioning could not handle it. The controls were never set up correctly. The light controls didn't work. The first couple of rooms, the lights went off in the middle of

the night, which stunted the growth of the plants which we had to skill.

Water was dripping down the side of the wall because the air-conditioning units above were not pitched high enough, and the water wasn't draining out. It backed up down, and the water was dripping down the sides of the walls creating powdery mildew, problems with bugs, things that damaged the crop.

Q. Now let me just ask you a very direct question. Was any flower, marijuana flower produced out of this room in December '16 that was ever delivered to PARC for sale?

A. No.

Q. What happened to the marijuana that came out of there?

A. It was destroyed.

Q. Because it wasn't usable?

A. Correct.

Q. And so if -- if I were to tell you that Mr. Merel and Mr. Missner have testified that what happened there in December of 2016, they determined, at some point between the two of them, was a first harvest, would you agree with that determination?

A. No. That is incorrect.

Q. Okay. And -- okay. You can take me down.

Just a moment.

So let me ask you, sir, you were -- did you have anything built into your contract that gave you any kind of incentives for achieving a first harvest?

THE COURT: Hold on a second. I am able to see the display. Are Plaintiffs counsel able to able to see the display?

THE WITNESS: I am.

THE COURT: You, okay?

THE WITNESS: It just says, Jeff Schaeffer outline.

THE COURT: Yeah. So let's go on here.

MR. MATURA: I am not plugged in.

MR. SWENSEN: I'll just unplug.

THE COURT: Why don't you just disconnect. Okay. There you go. I apologize. I stepped on your question.

Q. BY MR. SWENSEN: All right. Was there -- you had a contract with Premier as -- your title again was the project manager for the cultivation?

A. I was the managing partner.

Q. Managing partner. And you were being compensated for fulfilling that role?

A. Yes. I was also an employee of the company.

Q. And was your compensation, in any way, tied to

achieving a first harvest?
A. Yeah. My compensation hadn't changed for several years, and it was going to more than double after that.
Q. Okay. Was there a bonus built in that you were going to be paid?
A. There was bonuses to the growers. My -- I was not a bonus, but my salary was going to go substantially higher.
Q. Once a first harvest was achieved?
A. Correct.
Q. So you would have an incentive to achieve a first harvest, correct?
A. Yes.
Q. And tell me again who defined that term on behalf of the three entities; Premier, JJSM Real Estate and JJSM Equipment? Was that you?
A. Yes.
Q. And did Mr. Merel or Mr. Missner ever dispute your definition?
A. No.
Q. All right. And so did they ever pay you, increase your salary off of December of 2016, based on what they are saying was a first harvest?
A. No.

Q. Did they ever tell you that they had determined that was first harvest?
A. No.
Q. So after destroying the marijuana that was produced in December of 2016, what happened next?
A. We started over.
Q. You started over in January?
A. Well, each room -- yeah, we were taking a room down. We would scrub it down and replant it. So --
Q. All right.
A. -- if it says in December, then it would have been a week later.
Q. And so marijuana takes about how long to go from beginning to final product?
A. Once it's put into this bloom room, it's eight to ten weeks.
Q. So that would put us into some time in March?
A. Correct.
Q. And on the second run, were there problems with that second run?
A. I wasn't there to see it. So, again, it was room by room. So the first room was a test. The second room -- all of the rooms were planted. So we would plant a room, wait a week, plant a room, wait a week, plant a room, wait a week.

They were all done in that test mode. The first room did not come out at all correctly. The second and third rooms, I believe that the lights came on in the middle of the night when it was in the dark cycle, which stunted the growth of the plant. So they would not grow any higher, and we ended up killing those plants.

Q. Now at some point in that timeframe, you were fired as managing partner of the cultivation. True?

A. I was.

Q. When did that occur, approximately?

A. Some time in February.

Q. Okay. February 2017?

A. 2017.

Q. And do you recall being sued by New Leaf and Premier in March of 2017?

A. I was.

Q. And where was that lawsuit filed?

A. In Cook County, Illinois.

Q. And do you recall what the allegations were that the -- that New Leaf and Premier were making against you in that complaint?

A. They were blaming me for the, what was going on at the grow and the damages from that.

Q. And --

A. And the overages in purchasing, in building out the building.
Q. And did they say -- to your recollection, did they say in anywhere in that complaint that you had achieved a first harvest?
A. No, I don't believe so.
MR. SWENSEN: May I approach the witness and show him a copy to refresh his recollection.
THE COURT: Well, he hasn't said he doesn't recall anything yet.
MR. SWENSEN: Well, I want to ask him if this will help refresh his recollection of what was alleged against him in the complaint.
THE COURT: He hasn't said he doesn't recall anything yet.
MR. SWENSEN: Okay.
Q. Do you recall, sir, them alleging in the complaint against you that your --
MR. MATURA: Objection, your Honor. This is going to be a leading question.
THE COURT: Let's finish the question, at least.
MR. MATURA: I understand.
Q. BY MR. SWENSEN: Sir, were there allegations that you had failed in your duties?

A. Yes.
Q. And were there allegations that your failure to do your duties had resulted in severe delays in the productions and operations of the cultivation facility?
A. Yes.
Q. And whether or not that was your fault, is it true that the cultivation facility hadn't come anywhere close to achieving its production goals?
MR. MATURA: Objection, your Honor. Leading.
THE COURT: Sustained. Can you rephrase that.
MR. SWENSEN: Okay.
Q. Had the cultivation facility achieved its production goals as set forth in the projections that we looked at just a little while ago as of the time you were terminated?
A. No.
Q. Come even close?
A. Not even close.
Q. So at any time while you were overseeing the cultivation facility, was a first harvest -- as you explained it to the Chicago guys and the PARC board members -- ever achieved?
A. No.
Q. And after Yuri Downing and Ed Glueckler and

in order to pay it's rent and the other expenses under these contracts, based on that ten cent -- that ten percent holdback?

A. I'm sorry. Can you say that one more time?

Q. Okay. Do you have any how many pounds per month of Premier's products PARC would have to sell in order for that ten percent holdback that it kept to offset the additional rent and other charges that PARC would have to pay, the additional expenses?

A. Probably, close to a million dollars in sales.

Q. Each month?

A. Each month.

Q. Each month, okay. And in terms of pounds of marijuana, what is that at current market rates?

A. Five hundred pounds.

Q. Okay.

A. I don't have my calculator, but around 500 pounds.

Q. Okay. Was, when you were working --

THE COURT: There's a little tissue.

THE WITNESS: Yeah. Thank you. I have a little drip.

THE COURT: Sorry. The plexiglass.

THE WITNESS: Thank you.

THE COURT: Go ahead and take the box.

THE WITNESS: Thank you. It's a little cold in here.

Q. BY MR. SWENSEN: And when you were running the cultivation, sir, it never came anywhere close to producing 500 pounds of marijuana the whole time you were there, did it?

A. No.

Q. But that's -- those are the kind of numbers you were using to project when a first harvest would occur, correct?

A. Correct.

Q. When Premier was capable of sustaining that level of production?

A. Yes, sir.

Q. So PARC could then pay the extra expenses?

A. Yes, sir.

Q. Okay. So Mr. Matura asked you some questions. I just want to clear some things up.

You said that PARC took steps to set up a cultivation facility. That's not accurate, is it? You were not a board member of PARC, right?

A. Correct.

Q. PARC didn't invest any money in JJSM Real Estate or Premier or any of those companies, right?

A. Correct.

figure out the fact that you've never disclosed any documents supporting these numbers and that this says hundreds of thousands of dollars.

So I held their feet to the fire about this vault inventory. It's only fair that I do the same thing to you. Yes.

MR. WILENCHIK: Well, we're asking you to hold their feet to the fire on their entire damages claim, which you haven't. And that's what he was referring to. That was the basis of my motions today, which you deferred on.

With all due respect, if you are going to play the field equally, that's fine. But you haven't.

THE COURT: So their fees of saying, the rent per month was this. They haven't paid for that. So that's a matter of somebody saying $33 thousand this month or these months equals X. That's a mechanical calculation.

MR. WILENCHIK: Well, it is insofar as it goes, yes. Not a present value of it. And secondly, that's on one aspect of the case. We understand that issue. But there are other damages claims in this case, as well, as you know, that required disclosure and so forth. And that's why --

THE COURT: So for their equipment rental,

it's $1000 a month or $2000 a month. I agree that, unless -- the only thing you could feasibly have for Yuri Downing is the same contract damages, unless you're telling me you've disclosed some other damages somewhere from Yuri Downing's alleged tortious interference. Then I presume I'm not going to see in closing from them, and our damages from Yuri Downing's tortious interference are an additional -- I'll make up a number -- $1.2 million or whatever it is. If that hasn't been disclosed, it's not coming in.

MR. WILENCHIK: Well, it hasn't. And --

THE COURT: So they are not going to say that.

MR. WILENCHIK: -- the Cultivation Agreement either.

THE COURT: So they haven't disclosed anything on the Cultivation Agreement.

MR. WILENCHIK: No. That's the whole point. That's the valuation issue.

THE COURT: Right. And that's based on -- well, the Cultivation Agreement is based on a percentage of sales, right?

MR. WILENCHIK: It has to be under paragraph nine, usable marijuana identified as inventory, which hasn't been done. No valuation given. No wholesale valuation. No testimony that there was anything

available. Period. That's what I was trying to argue this morning.

THE COURT: So I presume they are going to have difficulty in closing putting up a viable number.

MR. WILENCHIK: I know. But there shouldn't be a closing is my point.

THE COURT: Okay. So, again, right now, I am still retaining the right to rule on the legal issue.

MR. WILENCHIK: Okay.

THE COURT: So I would hope we all appreciate the practical effect of having a jury here. And if we go up to the Court of Appeals and something happens, then rather than a retrial, it may be better off if --

MR. WILENCHIK: I understand your point.

THE COURT: -- a decision's made.

MR. WILENCHIK: I understand your point. But just, finally, I don't think it's so much -- I guess we could quibble about it, but I'm not so sure it's a legal issue as it is a failure of proof issue on their claim. That's why we make a directed verdict for JMOL.

THE COURT: I mean --

MR. WILENCHIK: Because --

THE COURT: Essentially, summary judgment.

MR. WILENCHIK: Yeah. I mean --

THE COURT: Do they have evidence to support an essential element of their claims?
MR. WILENCHIK: That's correct.
THE COURT: That's something I can revisit --
MR. WILENCHIK: All right.
THE COURT: -- in my capacity, is to say afterward --
MR. WILENCHIK: All right.
THE COURT: -- if we get a judgment or verdict back, say, yeah or nay.
MR. WILENCHIK: Well, yeah. But I'm just saying it shouldn't go to the jury, but that's fine. You know, if you want to pare the case down, that's fine. If you don't, that's fine too. I'm just saying that what's good for the goose is good for the gander.
THE COURT: All right. So I think that's good enough. So we've got our other -- I'm sorry. Who was next?
MR. WILENCHIK: Mr. Reese.
THE COURT: Mr. Reese. Mr. Reese is in the building or is available at --
MR. WILENCHIK: I think somebody said --
THE COURT: Okay. I mean, obviously, we don't need him now. But when the time comes, we'll get him in.

Okay. We'll go ahead and take our lunch break.

MR. WILENCHIK: Okay. Thanks.

(Matter concluded.)

IN THE SUPERIOR COURT OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In the Matter re: PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, LLC, a Arizona limited liability company; JJSM EQUIPMENT FUND, LLC, an Arizona limited liability company; NEW LEAF INVESTMENT AZ, LLC, a Delaware limited liability company, Plaintiffs, vs. PEACE RELEAF CENTER I dba PATIENT ALTERNATIVE RELIEF CENTER, an Arizona nonprofit corporation; YURIKINO CENIT DOWNING and JANE DOE DOWNING, husband and wife and Arizona residents; WHITNEY SORRELL and JANE DOE SORRELL, husband and wife and Arizona residents; EDWARD GLUECKLER and JANE DOE GLUECKLER, husband and wife and Arizona residents; JEFF SCHAEFFER and AMY SCHAEFFER, husband and wife, BLACK AND WHITE ENTITIES 1-10; JOHN AND JANE DOES A-Z, Defendants.	CV2017-009033

Phoenix, Arizona
Tuesday, October 21, 2020, 1:30 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TRIAL (DAY 5)
BEFORE: THE HONORABLE JAMES SMITH

REPORTED BY:
LUZ FRANCO, RMR, CRR
Certificate No. 50591

(Copy)

THE COURT: What did you disclose him for? Anything?

Stand by, sir.

MR. SWENSEN: It would be on page 27 of our second supplemental disclosure statement.

THE COURT: Sustained.

BY MR. SWENSEN:

Q. You testified that -- I think you just testified a minute ago that the -- the cultivation or the attempts to cultivate marijuana had a lot of problems with mold and powdery mildew; is that true?

A. Yes, sir, that's true.

Q. And that was during the entire time you were there?

A. Yes, sir.

Q. Were there also problems with the facility itself in terms of the infrastructure?

A. Yes, there was.

Q. Such as?

A. Improper -- the lighting -- the lights were exploding. The coding that they used for the walls was actually rubbing off and getting in the product.

There was multiple HVAC issues with our chiller. Rooms were going hot. Rooms were going cold. I mean, it was -- it was -- the building was quite a

disaster, sir. There was multiple issues.

And, again -- and then Mr. Hurley, of course, took it on himself -- he'd cut in the building, he was retrofitting it. We were constantly -- all the way 'til the end, constantly retrofitting other rooms.

Q. And Mr. Hurley, I understand, left toward the end of 2016; is that correct?

A. Correct.

Q. Okay. Do you know why he left?

A. So, when the issues with Mr. Schaeffer and Mr. Missner, basically as partners, and he was getting fired for cause, Richard Hurley had reached out to them as I was speaking with him and tried to say, well, let me go ahead and take over the business, I want a percentage, I want some ownership, and I'll do this.

And then when they -- I don't know if it was -- which one of the partners talked to him and basically said, this is not going to happen, you know, we're not going to give you ownership as you try and push Mr. Schaeffer out.

He basically walked away. He literally grabbed his passport and his assistant, Thomas Ogburn, and walked away and went back to China.

Q. After Rick Hurley left, did someone else come in and take his place?

A. Yes. There was a vacancy for a little bit, and then between Brad Beck, Richard Merel, and Barry Missner, they hired a gentleman by the name of Mike Williams to be the -- I think his title was actually COO at that point. That's what he pronounced himself as, as the operations manager.

Q. And do you know where Mike Williams came from?

A. He came from California. Apparently, he was big out there. He had grows himself in California around Napa and was very, very prominent in the California cannabis scene.

Q. And, to your knowledge, did -- did Mr. Williams ever bring any marijuana or marijuana-related products from California to Arizona?

A. Yes. He brought a bunch of seeds, genetics that were seeds themselves, as well as sometime during -- he actually had an -- extraction equipment so -- that they used to actually make the concentrates.

He actually sent Connor Sullivan and Phil Deitel because I paid for the U-Haul out of company funds. They drove the U-Haul from here to one of his grows in California and brought back extraction equipment, that was Mike Williams, into the facility to go ahead and start the extraction process --

Q. Okay.

A. -- if the company had not bought in yet.
Q. And was that extraction equipment new, used?
A. It was used and -- it was used equipment that he had, that he had used and ran product and stuff through with California and then brought it over to be utilized in the Arizona facility.
Q. Do you know if that extraction equipment had any concentrates in it when it came into the facility?
A. Yes, sir, because that was a huge of contention. There was -- again, I'm not a grower -- residual oils that actually had some product that was in there. When the stuff came into out warehouse, they had to clean it.

We had actually had -- one of the contentions that Mr. Sullivan had brought up was, technically, it was product that you crossed state lines with, obviously, you know, THC, which is against the law. So -- and that was a huge point of contention.
Q. And bringing in seeds and -- and other plant materials, was that also against the law?
A. From my knowledge, after the fact, again, I'm in the business side, but yes, you're not allowed. You have to obtain the genetics that have to be in Arizona from a licensed caregiver or another dispensary. You're not allowed to bring anything in, to include seeds, from outside the state of Arizona.

Q. But, at the time, you didn't know that?
A. No, I did not know that, sir. Mr. Williams had told me -- you know, when I did ask him after the fact -- because we ended up -- I'm trying to remember the term -- popping seeds is what the grower's calling it -- they actually started grow -- putting these genetics in place.
And I was like, hey, what -- is this kosher? And he said, absolutely. He said, this is -- this is what happens. We need new genetics because the genetics that we got a long time again ago with Mr. Schaeffer were horrible, and he said, this is the best way for us to actually go ahead and make new product for Arizona that's going to be able to sell.
Q. So he actually used those California seeds and --
A. Yes. We -- and, again, I say "we," the -- the company, they went and produced and popped these seeds, as they call it, and grew little baby plants to be used from the seeds that Mike Williams brought in California because before --
Q. Were those -- were those plants used for cloning, do you know?
A. I don't remember whether they were used for cloning or not. Again, you know, how they managed all that back there, it wasn't really in my wheelhouse to know what they did back there.

Q. Okay. I want to talk about a -- a specific instance -- an incident that occurred right around the beginning of May in 2017 involving Mr. Williams and Connor Sullivan and Phil Deitel.

Are you aware of a purchase that occurred around May 9th of 2017?

A. Yes, sir.

Q. And I want to show you -- one moment. Let me find it.

THE COURT: Is this something that's admitted?

MR. SWENSEN: I believe it is. I think it's been stipulated to, Your Honor. It's the -- the ledger from --

THE COURT: What exhibit number?

MR. SWENSEN: I'm looking for it right now.

THE COURT: You're able to look on this.

THE WITNESS: Thank you, sir.

BY MR. SWENSEN:

Q. There's been testimony, sir, about a transfer of $20,000 from Premier's account via wire transfer on May 9th, 2017, to Connor Sullivan in California.

Are you familiar with that transaction?

A. Yes, sir, I am.

Q. Okay. Were you involved in sending that wire?

A. Yes, I was.
Q. And why did you send that money?
A. To save a gentleman's life. He called me and --
Q. When you say "he," who are we talking about?
A. Sorry. Connor Sullivan called me and said that he was at gunpoint by Hell's Angels, while Mike Williams had sent him there to pick up this product, and to save his life, there was money needed to be transferred. I wired it to Connor to save his life.
Q. So -- I want to show you what's been marked as -- it's been introduced into evidence as Exhibit 76, sir.
THE COURT: It's not admitted yet.
MR. SWENSEN: Oh, don't -- okay.
THE COURT: But it's plaintiffs' exhibit.
So I take -- any objection to 76?
MR. BARRETT: Yeah. There's no objection to it, so it's --
THE COURT: Okay. Seventy-six is admitted.
MR. SWENSEN: Okay. Thank you.
THE COURT: So now you'll be able see it, sir.
THE WITNESS: Yes, sir.
MR. SWENSEN: It's going to be brought up on the screen.
BY MR. SWENSEN:

Q. Okay. There is -- this was described or disclosed to us as the general ledger -- the general ledger of Premier for May 2017.

Did you have occasion to see the general ledger of the company?

A. Yes, I did.

Q. Okay. And you can see on that line that shows an outgoing transfer of $20,000 to Connor Sullivan on May 9th.

Is that the transfer we're talking about?

A. Yes, sir.

Q. And you're saying that was sent because -- well, what was your understanding, from what Connor Sullivan told you, as to what the situation was?

A. That he called me in a panic, said that Mike Williams was supposed to meet him to, basically, buy not genetics, but buy marijuana there. What do they call it? Trim, I think, is what they call it.

And Mike was up in Napa. He didn't come down with Connor, all this stuff, and Mike -- or Connor called saying, Mike -- pardon my French -- but Mike, fucked me, and I'm sitting here with a gun pointed from Hell's Angels, I need this money, or I'm going to die. And I could hear -- and so, I mean, this whole dramatic -- I'm not going to let an employee die. I didn't know all

this stuff, and so I wired the money to save his life.

Q. Okay. And, to your knowledge, did Mr. Sullivan return back to the facility with that marijuana?

A. No.

MR. BARRETT: Objection. Calls for speculation.

MR. SWENSEN: I asked him. It's his knowledge.

THE COURT: Go ahead and answer if you know. Don't -- don't guess. If the answer is no, you don't know, just limit it to that.

THE WITNESS: I -- say the question one more time just so I can make sure.

BY MR. SWENSEN:

Q. To your knowledge, did Connor Sullivan then return back to Arizona to the -- to the Premier cultivation with that marijuana from the Hell's Angels?

A. I'm not sure.

Q. Okay. But if he had, would it have -- would it have been recorded on the video cameras at the facility?

A. Yeah, I believe so.

Q. They're on all the time, correct?

A. Yes, sir.

Q. Okay. Now, after this happened, did you talk to any of the owners, Brad Beck, Barry Missner, Rick Merel?

A. I tried to contact Brad Beck. He was, I think, in Mexico, and I was not able to get ahold of him.

Q. Okay. But -- and, at some point, did anyone talk to you about what had happened?

A. Yeah. So, shortly after Brad came back to the -- back in town, he'd called me back a couple days later. He came back.

Mike Williams was on his way back from California. We had a meeting in the office, in my office there. Brad came and talked to me, and we started talking. I mean, I was furious. I was furious with Mr. Williams.

And Brad -- first thing he said when he walked in was -- to me was, I can't believe -- or, excuse me, I believe he said, shit -- sorry -- shit did not go down the way I planned to. And I said, what -- what's going on? And he said, well, let's wait for Mike. Mike will be here in a little bit, and let's talk this out.

Q. Okay. I want to make sure heard you right.

A. And this was the first time I talked to any of the partners about what was going on, and it would've been him.

Q. Brad Beck said, shit, didn't go down the way I planned it?

A. Yes.

Q. What did you grab -- what did you take from that statement by him?

A. That there was something going on, you know, between him and Mr. Williams that, obviously, I didn't know about.

Q. And that Brad Beck did know about?

A. Yes, sir.

Q. Okay. Was -- was there any kind of an investigation done into that incident by Premier?

A. Yes. After Mr. Downing --

MR. BARRETT: Objection, Your Honor. This was a subject of a motion in limine as the contents of the investigation by Premier.

THE COURT: Okay. So right now -- we need to be delicate about how we get to whatever the information is.

MR. SWENSEN: Okay.

THE COURT: We don't want you to disclose anything you may have talked about with any lawyers for Premier right now.

THE WITNESS: Okay.

THE COURT: So we're going to have -- counsel, if you need to use leading questions, go ahead and use leading questions.

MR. SWENSEN: Okay.

Q. Good afternoon, Ms. Gote-Henry. May I just refer to you as Jennifer?

A. That's fine.

Q. Okay. Jennifer, I think you can take your mask off?

A. Oh, I can back here?

Q. Yeah.

A. Okay.

Q. There you go.

A. Thanks.

Q. So what -- where are you currently employed?

A. So I am part owner of Rain Strategies which is a management company that manages the dispensary.

Q. Which dispensary?

A. The Patient Alternative Relief Center.

Q. So your company, Rain Strategies, manages the PARC dispensary?

A. That's correct.

Q. How long has Rain Strategies been managing that dispensary?

A. Since June 1st, 2017.

Q. June 1st.

And is that the first time that you began working with the PARC dispensary was June 1st, 2017?

A. I was actually contacted by the president of the

board in -- I believe it was late May to help with the Statement of Corrections for an AZ DHS inspection that took place at the Premier grow on April, I think it was the 26th.

Q. And did you assist with preparing that response to the deficiency letter from ADHS?

A. Yes, I did. I also wrote the policies and procedures for it, as well.

Q. And there's been discussion in here -- well, did you help Ryan Reese with that?

A. No.

Q. Okay. The -- one of the deficiencies noted was the lack of harvest binders; is that correct?

A. That is correct.

Q. And that's -- it's important to keep those harvest binders, isn't it?

A. Yes.

Q. Why?

A. To be compliant in Arizona, you have to track everything that goes in and out, every plant that is grown and every plant that is cut down, and we need to have all of the records for the harvest dates and the batches and the weights that were taken care of.

Q. And how long have you been involved in the marijuana industry?

A. I've been involved in the marijuana industry in Arizona since March of 2013.

Q. And if you can describe your work experience for the -- for the jury from that point?

A. Sure. I started out as a trimmer in 2013. Then got promoted to a facility manager in 2014, and I managed 35,000 square feet of cultivation.

We produced about 6,000 pounds annually. Then I also worked on building out a 17,000 square foot facility up north, and that one produced about 24 hundred pounds annually.

I've been a wholesale broker from 2015 to 2017. I probably produced and sold over 10,000 pounds in the state.

I've also done a lot of compliance, too. So, when we first started, not a lot of the -- the owners understood all the rules and how to set up all the policies and procedures. So I've worked with a lot of different dispensaries on compliance, policies and procedures, AZ DHS, inspections, all of it.

Q. And if -- do you know when you got your dispensary agent card under the PARC license?

A. Yes. It was April 11th, 2017.

Q. Is that when you started providing your expertise to -- to PARC?

A. So I -- yeah. I mean, what I was hired -- what I was going to be hired to do is to come in and help buy products for the dispensary and then assist with any policies and procedures, little correction things that they needed to do originally. I was going to go out and find them the product to sell on the shelves.

Q. Okay. And -- but that role changed at some point, correct?

A. It did.

Q. And what -- when was that, and what changed?

A. It changed June 1st is when -- when we started really managing the dispensary. It was a mess. There was terrible product on the shelves. The sales were awful. It was mismanaged. So the director asked us -- asked us to come in and -- and fix it up, and, you know, boost sales and make it a nice dispensary.

Q. As part of that process, coming in and trying to correct problems, what did you do?

A. We did a lot. We went through the vaults. We interviewed -- re-interviewed staff. We worked on training staff. We bought new product, higher-quality product, and created, you know, different sales. We -- we did the marketing. I called a lot of my connections in the industry and asked them if they could, you know, give us some product on -- on loan for, you know, almost 30

days because there was nothing. There was no money, there was no good product in the dispensary.

Q. Did you review any documents or records of the dispensary at that time?

A. Yes.

Q. What?

A. I reviewed everything that we could at the dispensary at that time.

Q. Did you ever tour the cultivation facility ran by Premier?

A. No.

Q. Did you look at any records or documents associated with marijuana or deliveries from Premier?

A. Yes.

Q. I'm going to show you Exhibit 315 that's been marked into evidence. We'll bring that up for you. I want you to see -- want to know if you're familiar with this document. Let's just take a look at that first page.

MR. SWENSEN: Can you blow that up a little.

THE WITNESS: Yes, I'm familiar with this document.

BY MR. SWENSEN:

Q. Do you -- do you recognize that?

A. Uh-huh.

THE COURT: Sorry. Is that a yes?

So please be here at about 9:55 tomorrow so that we can start at 10 o'clock. Okay? Please remember the admonition while you're out. Thank you.

(Whereupon the jury panel is excused from the courtroom.)

THE COURT: The jury has stepped out, and the witness is stepping out.

(Whereupon the witness is excused from the courtroom.)

THE COURT: We'll have argument at 9 o'clock tomorrow on the remaining JMOL motions.

I've got plaintiffs with 6 hours, 17 minutes remaining; defendants with 3 hours, 53 minutes remaining.

* * * * *

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, et.al., Plaintiffs, vs. PEACE RELEAF CENTER I, et.al., Defendants.	CV 2017-009033

Phoenix, Arizona
October 22, 2020

BEFORE THE HONORABLE JAMES D. SMITH

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Trial - AM Session)

PREPARED FOR:
COPY

MICHELE KALEY, CSR, RPR
Certified Court Reporter #50512
(480) 558-6620

Phoenix, Arizona
October 22, 2020

P R O C E E D I N G S

(Whereupon, the following proceedings commenced in open court.)

THE COURT: This is CV 2017-009033, Premier v. PARC. Will Counsel state their appearances, please.

MR. MATURA: Good morning, your Honor. Jeff Matura on behalf of Plaintiffs with Kevin Barrett and Melissa England.

MR. WILENCHIK: Dennis Wilenchik, your Honor, for PARC and Downing. And Mr. Vatistas is present.

THE COURT: Okay. Good morning. Okay. Did somebody just join?

THE BAILIFF: No.

THE COURT: And we've got Daisy on the phone?

THE BAILIFF: Uh-huh.

THE COURT: Okay. This is the time for argument on the remaining motions judgment as a matter of law from Defendants. So I planned on each side getting about 20 mints to present what they think I needed to hear.

So with that, we'll turn it over to defense counsel.

MR. WILENCHIK: Thank you, your Honor. I'll

go through these as quickly as I can. Let's start with the Cultivation Agreement, please.

THE COURT: Okay.

MR. WILENCHIK: First of all, there's no evidence presented under contracts paragraphs nine and ten, which are the applicable provisions for specific remedies for the breach of contract.

I know we've heard stuff tossed out about 75 million and all kinds of other numbers alluded to. But that is what the measure of damages is in this case. And they had to show what was in inventory, what was its value that what is salable and usable. And, essentially, none of that testimony came out at all.

This jury would be doing nothing, but speculating completely on all of those critical issues. And, again, without repeating the substance for our motion on Mr. Artwohl that the Court said you would consider again at this time, without repeating all of that, let me just hit some of the quick highlights and then I'll go on to the next one.

No expert. No expert. No testimony from any expert about what was witnessed when they knew there was going to be a lawsuit. They knew they were going to file a lawsuit. They knew it was a critical time.

And no expert, no testimony by anyone of what was there at the time. No indication at all of what was in the vault; i.e., this supposed flower.

They destroyed this, again, without videos, without testing, without an expert, without any testimony from any qualified witness that could testify in this trial -- or did -- about what was in inventory. And let alone, whether it was usable or salable, which is required under paragraph nine.

No BioTrack records whatsoever were introduced or even produced to us. No inventory records. No binders as -- that they knew, as of April when DHS came in and they were required. None. As I said, no videos, which is almost shocking to me that they would have destroyed videos after being told not to.

And, clearly, there was illegal marijuana in the facility. And if there wasn't, then they had the burden, obligation, whatever words you want to choose to let us go in there, inspect it, and determine that. But they didn't. So there's no way to know what product was usable, salable, fit for human consumption.

And so that's, bottom line, why this Court has to, in my opinion, has no choice but to grant a directed verdict on the Cultivation Agreement. Even

if they could prove a breach of the agreement, which they can't, a prior breach, since there was none, other than their barring my client from entry, inspection, which they all admitted was important under regulations, even before they bought into this business, they understood that from the offering memorandum.

THE COURT: So no BioTrack data ever got disclosed?

MR. WILENCHIK: No. And none has been produced in this case as an exhibit or testified about.

THE COURT: Okay. I just inferred it didn't play any role in the case, but I didn't realize none had ever been produced. Okay. Sorry.

MR. WILENCHIK: Right. We brought that out. We actually brought that out. I said, where's the BioTrack information. None has been produced. Nobody testified that it was. And in fact, Mr. Merel couldn't tell me that it was because it wasn't.

THE COURT: I just didn't realize --

MR. WILENCHIK: I'm sorry.

THE COURT: -- that nothing had even been disclosed.

MR. WILENCHIK: No.

THE COURT: Okay. Got it.

MR. WILENCHIK: No. It's incredible. And they even admitted it was critical. Even Artwohl admitted that, their only witness. So do you want me to go on to the next one?

THE COURT: Yeah.

MR. WILENCHIK: Sure. So let's talk quickly about the real estate lease. Again, without repeating all of the stuff, you know, that your Honor has determined previously and repeating all of that, let's just hit some of the highlights.

There's full mitigation here. There's no question about it. They have a ten-year additional lease that the jury understands at this point. They haven't been damaged one penny, as we speak. There's no default on the new lease. If there were, maybe they might have a cause of action at that time. But they don't today. It would be totally speculative and, frankly, would result in double damages as it is brought out if they got a judgment in this case.

And I asked the question, simply: Well, what happened then, Mr. Merel?

And there's no answer to that because it's a silly proposition. They don't have a damage today. It's entirely conjectural and speculative. They have

a ten-year additional lease. And there's a full, full mitigation. And, and to make matters even worse, during the two and a half years that they sat around doing nothing, doing nothing -- no listing, no costar, no LoopNet, no anything, no advertising, no contact with any other dispensaries that obviously would want a facility like that as part of their portfolio to get discounts -- even he admitted it would be a valuable lease to anybody like that, and yet he admitted he did nothing to contact any dispensary at all. Nothing. Zero.

So they want all of those months' rent. And yet they are, not only going to recover all of those months' rent as we speak, but worse, they did nothing to mitigate their damages that the evidence showed. Zero.

And furthermore, as a matter of law, there was no default here. The evidence is clear -- I'll keep this as short as I can -- but the evidence is clear that there was no first harvest. There was nobody that could testify that had any foundation to testify a, quote, first harvest is intended by the language in that agreement was meant.

In fact, Missner and Merel know nothing about that. They don't even know what it means. The

language came from Jeff Schaeffer, we now know, but it didn't come from them. We know that from the direct case. They allegedly determined this somewhere in their office in secret. Give me a break. Six months later, for the first time, they tell anyone, anyone, even their own people don't know that there's an alleged first harvest. It's a lie. And it really is.

It was done in, in, in -- through the letter in May because of the meetings with Yuri Downing. They didn't like him and they declared, suddenly, a default. That default is bogus. There's nothing to support a first harvest. There's not one word anywhere in any document or thousands of emails we're now told of any first harvest being determined. Nothing. Zero.

They didn't produce any witness on it. We had to produce, as you know now, Jeff Schaeffer who is the guy on the ground who knew. These guys in Chicago had no clue. The only document they presented doesn't even say a first harvest has been achieved at all because it wasn't.

THE COURT: So I understand your arguments, but how much of that is something for to you present to the jury now to say first harvest, based on reasonable determination or sole discretion

reasonably --

MR. WILENCHIK: Yes.

THE COURT: And, ladies and gentlemen, there's no, there's no -- they said there were emails back and forth. There are no emails. There's nothing else. I mean, I understand your point. But how much of that is first to say, ladies and gentlemen of the jury, it's --

MR. WILENCHIK: Sure.

THE COURT: -- untenable.

MR. WILENCHIK: My answer is very simple, your Honor. Ordinarily, I would agree with the Court that reasonableness is generally a jury determination. But not in this case.

And the reason is because there's also a caveat to that rule. And that is that -- where no reasonable juror could find that, based on the evidence presented, that it's reasonable to declare a first harvest six months after the fact and not tell anybody about it and then retroactively claim you're in default and you owe us $250 thousand is not, by anyone's definition in any court in this country, reasonable.

And to never tell even your own people, great, break out the bottle of champagne, like I said, we've

got a first harvest. No one knew it, except these two guys in secret allegedly with no corroboration whatsoever in their office conveniently saying that now. Where's the evidence? Where's the corroboration?

No reasonable juror could possibly find that that's reasonable to do that -- zero -- particularly, given the fact that they had no evidence, no evidence of any first harvest that, as Schaeffer defined it, being achieved. That's not a first harvest. Every plant was destroyed. It was a test run, and they don't have any evidence to the contrary. They didn't have any evidence, period.

They didn't even say Jeff Schaeffer told them it was a first harvest. It's just something they declared on their own in secret. It's ridiculous.

So let me go on quickly. There's no mitigation efforts, again, for the two and a half years that they claim this rent for. No offer is shown here. No listing is shown. No meetings, negotiations, contacts, telephone slips, nothing.

And this is true also of the Equipment Lease, as well. There's no damage on the Equipment Lease. At best, if they claim the June letter was a termination notice, then it terminated that lease and

there's maybe five or six months tops that they could possibly argue at a thousand dollars a month as a damage. Period.

And that lease, if the Court looks at it, requires a default notice to be provided. They never provide it for the specific terms of that lease ever. They have no right to declare a default. And in fact, they have no damages. Even if they could, which they couldn't -- but they had no damages. Even the 75 thousand we heard about on their best-case scenario because they gave away 775 thousand or so in value of the equipment.

They didn't testify the equipment went down in value. They didn't testify to any value, as a matter of fact. The only evidence we could possibly have would be the 775 on the original valuation. Whether there's true or not, that's what we have to live with. But here's the point. They gave that away. They donated it to the real estate company, supposedly a separate company. And they have to live with that statement because they gave it a way to a third party.

And there's no bill of sale. There's no consideration whatsoever that they provided in this case for that giveaway. And the most they could claim is that somehow it became part of, according to them,

the real estate lease is what I heard. And, therefore, they essentially donated it, the real estate company to the new lessee.

And you cannot find one thing in that lease that delineates or describes any values attributed, ascribed for paid for as part of their lease, other than the fact that it was given as part of the lease. Not even negotiation documents saying we need to this equipment to pay you the rent. Zero. Zero provided.

As you know, we found out about the lease. They didn't even provide it. We had to demand it and get it after we accidentally found out they leased, they had leased it. But they provided nothing in that regard. And here's the whole point of that. They have to credit us $775 thousand, if anything, now for -- if they are going to seek anything under that lease.

They haven't credited us for that 775 thousand that the real estate company got from the equipment company based on our default. And so they got to live with that. So not only do they have no damage, they actually should be crediting us with 775 under the real estate lease because, basically, they are telling us now we got the benefit of this equipment and we gave it away to the new lessee with no consideration.

But they have never credited that money.

This case, your Honor, this case -- and I'll try to be generous -- is a farce. It was brought for the reason that was brought out on direct, as you saw. It wasn't brought for the money. It's not about the money. And Mr. Merel admitted that. Because there are no damages in this case. There's none under the Cultivation Agreement at all that they could prove, even though he said he knew he had to prove it at trial. And he didn't.

And Mr. Artwohl didn't do it for them. And no spreadsheet has been admitted. Even if it were, it's not an inventory record that's reliable. But it's not worth talking about because it wasn't ever admitted. They have no evidence under the Cultivation Agreement. Under the real estate lease, they have no evidence that they've done anything but going to make a lot of money on that lease as a result of this alleged termination.

And under the Equipment Lease, at most, they have 5000 or 6000 in damage on their best case scenario. And they don't have that because they also sold, remember, equipment. And I'll conclude with that -- well, I have a few minutes, but let me just conclude with that point.

We heard in this case that they sold equipment. Now they couldn't sell that equipment, but for our alleged termination or breach. Not for them to sell any equipment in there. They were able to do that, even if it was Jeff Schaeffer's equipment, by virtue of the fact that they locked us out and they breached our agreement. And then they sold that equipment.

Did we even get a disclosure on any of that? Nothing. Nothing. Mr. Artwohl testified at his deposition, under oath, it was ten grand. Now we've heard other numbers. Who knows what the real number is because we have no disclosure on it. Not one solitary piece of paper, bill of sale, check, anything to show us how much equipment was sold. We have to rely now on their good graces to tell us. And now we have two witnesses, as you know, who disagree on the amount, including Mr. Artwohl who testified to it. Now it became eight, rather than ten.

Judge, that's the problem with the failure to disclose. We don't know anything. We don't know any negotiations about any of the this stuff, about the leases. But we do know that they have no damage, even with all of that said. Zero.

Now this case, in my humble opinion, with all

due respect to the Court -- and I know it's a difficult job and I apologize because I do understand that, and I want to thank you for your efforts in this case. I know it's not been easy. And I apologize if I tend to get a little upset at times, but it's just my nature.

But I will tell you, I think in this case, there's no question in my mind that a directed verdict is absolutely -- if there ever was a case -- appropriate to be done. There is no fact that any reasonable juror could find as to any damage in this case whatsoever.

And I'm happy to answer any questions with the little time I have left because I'm confident that there is no such evidence in this case on any of these three agreements.

And, finally, they tried to bring out all kinds of stuff beyond these three agreements, all kinds of irrelevant questions that really have nothing do with this case about New Leaf, about, you know, the claim against Schaeffer and Downing, nothing to do but shiny objects, red herrings. These are the three agreements they are suing on only.

And, finally, on the duty of good faith, let me just say that there's nothing more that they

presented in this on trial the duty of good faith that I heard that goes anywhere beyond the declared breaches of contract themselves with the company. And I argued that on Downing, but let me repeat it now.

There's no additional evidence that I listened to before carefully that establishes anything, other than a simple breach of contract case. There's no duty of good faith and fair dealing here that, as a matter of law, should be allowed based on the fact that the only thing they presented was actual alleged breaches of contract itself.

And for that reason, I would ask that all of the counts honestly be dismissed at this time. Thank you so much.

THE COURT: Isn't the breach of covenant and of good faith and fair dealing based on pulling the ATO, as opposed to explicit breaches of the agreement? I believe that's their theory, but do you disagree that's their theory.

MR. WILENCHIK: You know, to be very candid, I don't know what their theory is, honest to God. But let's take that as their theory.

The pulling of the ATO under the contract is required if they don't allow possession. They have never allowed possession of the premises. There's no

dispute about that. It's a fact. An undisputed fact. They never allowed -- at any time was the evidence -- any possession. And they blocked it when they understood that we had a right to enter the premises and to inspect.

That's a complete breach of contract itself. It says right in there we have a right to the use an occupancy. And we also have the inspect under the Cultivation Agreement, as well. So if their argument is the ATO was pulled, first of all, there's no evidence we pulled it. No evidence we pulled it. We don't have the power to pull any ATO. That's the Department of Health Services decision by the way, and there was no evidence on any of that.

So any evidence that we could pull even an ATO was not introduced because we can't. That's DHS's decision. Now could we explain to DHS? Of course. But that's DHS's determination. That's why they came out with the DEA and decided to shut the operation down. How that becomes a breach of the duty of good faith and fair dealing when we know there's illegal activity and they won't let us inspect -- and we know it's been admitted there's illegal activity, and we don't know how much of that marijuana has been tainted.

I don't know what else anybody could do. So how could a reasonable juror find that that's a breach of the duty of good faith and fair dealing really? I can't even fathom it, honestly. And I know I'm an advocate, but I can't understand that at all. I don't understand what this case has been about, other than bad faith to try to bring PARC to its knees. That's a not-for-profit company. What's the point of that? Except what Mr. Merel himself admitted. It's not about money. That's not what case has ever been about really. It's beyond that, as he said.

So there's no damage. They know that. And they are pursuing this doggedly for no good purpose and good faith that I can see. And with all due respect it counsel. And their clients have no intention of proceeding in good faith at all in this case.

And, frankly, I can't understand how this Court could allow any of that to go to the jury. I'm happy to debate it because I don't understand it. There's no facts that a reasonable juror could find that there's damages or there's any duty of good faith that was breached. By trying to check on our marijuana? That's our product that they prevented us from looking at. There's no dispute about that.

Whatever other things you want to say about it, there's no dispute. They never allowed access. No dispute ADHS pulled it upon their inspection with the DEA. No testing. How could you not pull it? No records. No testing. Notwithstanding they said they were going to start keeping records in April, none have been produced. None have been found.

How could you not pull it? As a matter of public policy you would have to do it as to DHS. This case is a joke. And it really is. And this Court should stop it right here.

THE COURT: All right. Plaintiffs.

MR. MATURA: Thank you, your Honor. We discussed the Cultivation Agreement yesterday. I'm just going to -- I don't want to repeat what we talked about yesterday, so I'll just renew what I said yesterday on the Cultivation Agreement because we talked all about. I want it move, spend my time talking about the Lease Agreement and then the Duty of Good Faith and Fair Dealing.

So on the Building Lease, I think its undisputed. They might even stipulate that they breached the Lease Agreement by not paying. The evidence presented is no payments were ever made under the Building Lease Agreement. That's undisputed.

THE COURT: Well, yeah, I think it's undisputed. They didn't pay, but they --

MR. MATURA: Right.

THE COURT: -- but they dispute first harvest.

MR. MATURA: So let's get there in sequencing.

THE COURT: Okay.

MR. MATURA: The first step is, they never paid. The second step is, were they required to pay? And the triggering event there is the first harvest.

Now we presented evidence -- you heard it, we all heard it -- about first harvest. Who gets to make that decision? It's not a defined term. We, therefore, go to the operating agreement of JJSM Real Estate. It's a majority of the manager decision. Two of the three managers decided it. That's sufficient under the operating agreement.

So you have no payment. You have evidence that a first harvest was established. We have -- so really what the -- and then we have damages. You can calculate damages. Rick Merel did it. It's just math. An X number of amount per month times Y months, and it comes out to about roughly $1.5 million.

I think what their argument is based upon is what we've all been talking about for about a month now, which is, well, the new lease offsets these

damages. So you don't really have damages. I think that's the basis of the motion here today.

Now I'm going to be a little bit repetitive about what we talked about over the last month, but I think it's important just to remind the Court about how we view this issue. I think the case law is clear. The first place you look on any offset is to the language of the lease itself. And I still think the lease language is clear. Maybe not well written. But if you cut through it, I think it's pretty clear. And I just want to spent a minute looking at the language.

THE COURT: And this is 17.4.

MR. MATURA: 17.4.

THE COURT: So where's the notice of termination that kicks that provision into --

MR. MATURA: Well, there's not a notice of termination, your Honor? But it has to be either 17.4 or 17.5.

THE COURT: Or the common law.

MR. MATURA: But it's 17.2 is what -- I'm sorry -- 17 point, yeah 17.2. You have A, B, C, if you remember.

THE COURT: Okay.

MR. MATURA: And up above, it says you can do

all or none or any combination of A, B or C. And even if we -- so 17.4 is there was no termination. We would release it on their behalf. 17.5 is there's a termination, if you remember that.

THE COURT: Right.

MR. MATURA: Okay. And so, and so even -- so if you look at the lease language itself though in 17.4, we believe we should be focused on 17.4. I'll get to the common law in just a second.

THE COURT: Which required a termination of the tenant's right of possession.

MR. MATURA: Of possession.

THE COURT: Right.

MR. MATURA: Correct.

THE COURT: Which required a written termination notice sent to the appropriate recipients in the appropriate manner, right?

MR. MATURA: Well, yes, it does.

THE COURT: Okay. And so then where is that termination.

MR. MATURA: Well, we don't have that termination notice, your Honor. But I don't think there's ever been a dispute that their possession was terminated.

THE COURT: Well, I guess I'm not sure how you

get to benefit from a provision that says you must send a termination notice without sending a termination notice.

MR. MATURA: Well, we -- I don't deny that no termination notice was sent. But they don't deny that they were terminating possession either. I mean, it was -- this is not a disputed fact, in my opinion, that they were -- that their possession was terminated. But let me just --

THE COURT: Okay.

MR. MATURA: I understand your point, your Honor. Let me move on. The language itself talks about -- well, let me approach it this way. They can't have it both ways. They can't say the lease is terminated, and we get the benefit of an offset from a new lease. I'm not aware of any -- certainly, not the provision of the Lease Agreement -- I'm not aware of any case law. And even, I know we've gone back and forth on case law a lot. I'm not aware of any case law that says the lease terminated and you still get the benefit of an offset. You only get the benefit of offset if the landlord is leasing it on your behalf.

THE COURT: Right.

MR. MATURA: And so they really want it both ways. They want to say the lease was terminated.

They terminated it. We terminated it. Someone terminated it. Oh, and we still get the offset language, the offset benefit. It doesn't work that way. They only get to make the argument of offset if they agree that 17.4 applies, terminated possession only. You can't have it both ways.

THE COURT: I guess I disagree that the contract provision governs. So, certainly, under the common law the landlord has, essentially, three approaches. Do nothing. Sue every month or every time a payment is due. Terminate the lease. And then you get whatever post-termination rent you're entitled to that exceeds the fair market value of the rental for the premises for the remainder of the term.

Three, terminate right of possession. And then you have an obligation certainly to mitigate damages, re-let on behalf of the tenant. And then you get the delta between whatever you re-let it for and the lease amount. So those are all common law things that exist without regard to the agreement, to the contract itself.

MR. MATURA: That's right.

THE COURT: So you can do all of those, but you're saying 17.4 --

MR. MATURA: Well --

THE COURT: -- applies.
MR. MATURA: Put it aside.
THE COURT: Okay. So forget 17.4 for now, okay.
MR. MATURA: Fine. Same discussion though.
THE COURT: Got it.
MR. MATURA: So let's forget the language.
THE COURT: Okay.
MR. MATURA: Same discussion though. The common law is the same. I mean, the -- I said forget the language.
THE COURT: Sure.
MR. MATURA: But the language essentially tracks the common law. In other words, under the common law, your option three which is we terminate possession only --
THE COURT: Right.
MR. MATURA: -- and then we have an obligation to release it on their behalf. And then you have the offsetting analysis that happens.
THE COURT: Right.
MR. MATURA: That only happens if the agreement's not terminated, right. If the agreement's terminated, our damages are capped at that gap in time. And they are off the hook for anything in the

future, and we are not releasing it on their behalf.

They have been in here for four or five days now at trial arguing, lease terminated. So they don't get the benefit of the offset, even under their theory on this issue.

THE COURT: I guess, certainly, we disagree. And you've seen, obviously, my ruling. One, I disagree with your interpretation of 17.4, even if it applies.

MR. MATURA: I understand.

THE COURT: Two, if Plaintiffs want to say, we get the benefit of 17.4 as we Plaintiffs interpret it, then don't you have to comply with what 17.4 requires, which is a written notice of termination. So if there is what I'll call a de facto termination of the right of possession, without that written notice of termination, then aren't you dumped into the common law approach?

MR. MATURA: Right. But it's the same analysis under the common law. I don't think the common law approach analysis is different than whether we were going 17.4 versus 17.5, right, because --

THE COURT: Well, then that gets us to the -- you cited the Washington case and the New Jersey case that says, hey, Landlord gets the benefit of what I'd

phrase as excess rent.
MR. MATURA: Right.
THE COURT: And then I said you have the DC Court of Appeals.
MR. MATURA: Sure.
THE COURT: You've got Missouri.
MR. MATURA: Yeah.
THE COURT: You've got other cases.
MR. MATURA: Sure.
THE COURT: But I mean, we can keep having the same conversation.
MR. MATURA: No. I'm making a record. I know I'm not going to change your mind today.
THE COURT: Yeah.
MR. MATURA: I know what your thought is. I just want to maybe express my thoughts.
THE COURT: Sure. Okay.
MR. MATURA: But let me just finish expressing those, and I'll move on. We also have the RAJI jury instructions, okay. It's the RAJI Civil Fifth Contract 34, which talks about the same issue. Because this whole conversation and the argument by defendants that somehow they would be entitled to a directed verdict on this issue, frankly, your Honor, it's entirely premature because we don't -- there are

some threshold questions. Even the RAJI says it.

RAJI, first paragraph: If the lease terminated, this is how you calculate damages.

RAJI second paragraph: If not terminated, this is how you calculate damages.

There are threshold questions to be decided before this issue even becomes ripe.

I also, I do have a, I don't know, I'll say concern -- please don't take offense to that -- about how you view this issue with respect to what we're telling tenants out there and incentivizing them. We're, essentially, telling tenants, in the last year of your lease, breach. Don't pay. Landlord has a duty to mitigate.

You know, eventually, you know, presumably lease rates over time go up. They are going to go sign a longer lease because no commercial tenant is going to sign a one-year lease. Or, excuse me, no commercial landlord is going to sign a one-year lease. And, hey, Tenant, you can sit back, breach, not pay. And Landlord has to mitigate. Eventually, that lease will pay them more. You're off scot-free.

Just from a broad public policy perspective, it doesn't make logical sense to me. I think it also very much violates the principal finality of

judgments.

THE COURT: Okay.

MR. MATURA: As a plaintiff, a non-breaching plaintiff -- if we establish first harvest with the jury, we are a non-breaching landlord. And somehow we have to then hope our new tenant pays us in the future.

And if they don't in month 26, okay, we sue PARC. Well, then the new tenant pays again for a while. Then they breach again in month 34. Well, we've got to sue PARC again. We've got to reopen this judgment. It very much, in my opinion, violates the principle of the finality of judgment. So I just want to make that point. You can do whatever -- think about it, I guess.

On the Equipment Lease, I'm not sure I fully understand their argument. I think their argument is some type of duty to mitigate, I guess. We know the burden is on them to prove that mitigation is probable. There's been evidence presented on the Equipment Lease. Number one, never paid, of course.

Number two, Bill Artwohl talked about you can't sell a water system that's hard-lined into the building. And that's the equipment that they were talking about and the extraction machine and some

A. The one -- yes. These batches that came up positive for powdery mildew all went back.
Q. Okay. Now do you know when this lawsuit was filed?
A. No.
Q. Well, I want you to just assume for the purpose of my next question that Premier filed this lawsuit on June 19th, 2017, okay. At any time after June 19th, 2017, did you attempt to enter the cultivation facility on 57th Drive that was being managed by Premier under PARC's license?
A. Yes.
Q. When did that occur?
A. I received an email from the president of the board that I was to lead a team to go to the Premier cultivation facility and perform an audit, slash, inspection on the BioTrack records, interview the employees, and figure out the work flows and the roles and responsibilities, review camera footage, review caregiver donation records for any plants that would have come into the building, and then to reconcile any conversion logs; so if a pound came in, a pound went out, and where it went to.
Q. Okay. And do you know when, what day you went to the facility?

A. I think it was August 28th or 29th.
Q. Of 2017?
A. Yes.
Q. Okay. And you mentioned going with a team. So who was with you?
A. So with me was Chelsea Mulligan, Tyler Burke, Alana and CJ. There were, like, four or five of us.
Q. And were you able to conduct this inspection audit that Yuri Downing had asked you to do?
A. No.
Q. Why?
A. Premier never let us in and called the police. And the police showed up and advised us to leave.
Q. So you weren't able to even get inside the facility to look at any of the records or anything?
A. No.
Q. And they, I thought you -- did you say that the police were called?
A. Yes.
Q. Was -- were the Premier people threatening to have you arrested?
MR. BARRETT: Objection. Calls for speculation.
THE COURT: Limit it to whatever you heard, ma'am.

Q. BY MR. SWENSEN: Well, what were you told, why the police were there?
A. I was told that Premier had called the police, and they didn't want us to come in the building.
Q. Did the police ask you to leave?
A. Yes.
MR. SWENSEN: I'm going to show you Exhibit 59. Don't show the jury yet.
THE COURT: Fifty-nine is in evidence.
MR. SWENSEN: It's already in evidence? Okay. I'm sorry. Go ahead and bring that up then so everybody can see it. Rotate it.
Q. Okay. Now I just want to check the date and time in the upper left-hand corner there. This is an email that I sent to -- go ahead and blow that up, please. No, the time and date, from, to, all of that. There you go. No. Just the top corner, please. Thank you.
This is an email which was sent by me to Mr. Matura over here on August 29th, 2017, at 9:57 a.m. Were you out there at the Premier facility in the morning before 9:57?
A. I think so.
Q. Okay. So now if we look at the body of the email, I'm telling Mr. Matura that I had just been

informed that: Premier's employees are not only refusing to grant Yuri Downing access to the cultivation facility, they are actually threatening to have him arrested for trespass.

Now Yuri -- was Yuri there?

A. Yes.

Q. Okay. And so that did occur then on August 29th in the morning of 2017 that you went there with Yuri and your team and you were threatened with being arrested for trespassing and told to leave the property by the police, correct?

A. Yes.

Q. And you see that I point out to Plaintiff's counsel: This is an outrageous and clear breach of the Cultivation Agreement and that the marijuana and marijuana products located at the cultivation facility are the sole property of PARC. And Mr. Downing has every right to inspect PARC's property and investigate allegations of illegal conduct.

That's what you were trying to do, wasn't it, trying to investigate allegations of illegal conduct that day?

A. Yes.

Q. But you were stopped from doing that?

A. Correct.

CROSS EXAMINATION

BY MR. BARRETT:

Q. Good morning, Ms. Gote-Henry. How are you doing this morning?

A. Hello. Good.

Q. I actually don't have very many questions, but I do want to hop around a little bit. Can you -- first, you've obtained DA cards in the past. You know what I'm talking about when I say that, right?

A. Yes.

Q. Okay. Do you know how long it takes to get one of your DA cards?

A. It depends if you already have a DA card for another dispensary. If you have one for another dispensary, it can take 24 to 48 hours.

Q. Okay. And if you don't have one for another dispensary, how long does it take?

A. About five to seven days.

Q. Okay. I think you had mentioned that you first started as a consultant for PARC in the first quarter of 2017; is that correct?

A. Correct.

Q. Do you recall when you were first contacted by anybody on behalf of PARC?

A. It was in April, probably around -- I don't

know. Some time in April.
Q. And were you -- was Rain Strategies formed at that time? And were you contacted on behalf of Rain or just in your individual capacity?
A. No. Just in my individual capacity.
Q. And were you employed at that time?
A. Yes, I was employed at that time.
Q. What were you doing?
A. I was working with a startup company to build out a dispensary, and I was doing wholesales at the time too.
Q. Okay. So you had your DA card with that other company?
A. Yes.
Q. Who contacted you on behalf of PARC?
A. Yuri Downing.
Q. Okay. Were you -- did you meet with anybody else on behalf of PARC, any other member of the board or officer?
A. No.
Q. Did you -- were you interviewed by anybody else?
A. No.
Q. You received your DA card from PARC on April 11th, 2017; is that correct?

A. Of the flower that was delivered, 60 pounds were delivered on June 1st. Approximately, five to six weeks later, nearly 50 pounds, 48.9 -- somewhere in there -- was returned.

Q. Okay. What about the concentrates or the other products?

A. Some of the -- many of the concentrates were returned also.

Q. Okay.

A. To my knowledge. I don't remember that number off the top of my head without seeing the document.

Q. All right. And so then this third -- the third line item on this exhibit up here, what does that represent?

A. The third one is dated August 16th, 8/16. And that represents payment for the sales of product between July 1 and the end of July.

Q. Okay. And --

A. Which would have been paid the first week of August.

Q. Okay. So what's the -- let's just break it down and make it simple for the jury. What's the total amount of salable product that PARC received in 2017 from Premier that was actually sold by PARC?

A. Of flower, it was 8.9 pounds, just under nine

pounds of salable product that was sold that was not returned.

Q. And how much flower did PARC sell in 2017?

A. On average, PARC would sell 75 pounds per month. So PARC used over 900 pounds -- it sold 900 pounds of flower in 2017.

Q. And of that 900 pounds, you're saying approximately 14 pounds came from Premier?

A. Less than ten, 8.9.

Q. Oh, 8.9, I'm sorry. Yeah, 8.9 pounds came from Premier. And everything else was purchased from other cultivations or other dispensaries.

A. Correct. Out of the 900 pounds we used, less than nine came from Premier. The balance was purchased on the wholesale market from other cultivation operations.

Q. Okay. We've heard some testimony about BioTrack and another, another tracking system used by your dispensary.

What's the name of that?

A. MJ Freeway.

Q. MJ Freeway?

A. Correct.

Q. Can you explain -- do you know both of those systems?

prejudice or confuse the jury. They won't be able to make heads or tails of why that's even in evidence because it really has no value for anything. Why even bring it in? If you want to refer to his testimony about BioTrack numbers and such, then they can do that in closing. The document doesn't --

THE COURT: Well, my concern is whether you opened the door because you spent a fair amount of time with this guy discussing a document that you now want to walk away from. So it was weird to me at all that you raised it. I wouldn't have done that, but you did.

And I need to figure out if you have opened the door to something. So I'm going to ponder that over lunch, okay. So we'll take our break.

MR. BARRETT: Thank you, your Honor.

(Matter concluded.)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS, et.al., Plaintiffs, vs. PEACE RELEAF CENTER I, et.al., Defendants.	CV 2017-009033

Phoenix, Arizona
October 23, 2020

BEFORE THE HONORABLE JAMES D. SMITH

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Oral Argument)

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MR. SWENSEN: With the admission of those exhibits, Defendants rest.

THE COURT: Okay. All right. So, yes, go ahead.

MR. MATURA: Thank you, your Honor. So if Defendants rest, I would like it make a Rule 50 Motion on their counterclaims.

THE COURT: Okay. Go ahead.

MR. MATURA: Should I do that now? Is that okay?

THE COURT: Yes.

MR. MATURA: Okay. I'll be brief, your Honor.

THE COURT: Sure.

MR. MATURA: So they have two counterclaims. They have Breach of Contract Counterclaim and the Breach of Duty of Good Faith and Fair Dealing Counterclaim. I'll take them in sequence.

On the breach of contract counterclaim, they can't establish that counterclaim because they have no evidence of damages. And they can't have evidence of damages because they never disclosed any evidence of damages. Even if they did disclose evidence of damages, which they didn't, they have no testimony of damages.

As we talked about one day this week, they are

really just 12-341.01 damages that they are seeking. There is no evidence that the counterclaim is any different than just a defense of the affirmative claims being brought against PARC.

I don't need to repeat the case law to you. I would just adopt the case law that you read into the record -- I think it was two days ago -- which makes clear on this issue that it's not a separate, what they are alleging is not a separate counterclaim for breach of contract, but rather a defense to the affirmative contract claims.

The fees that they are seeking, their only disclosed damages is some reference to fees. That will be dealt with at the end on the prevailing party issue or a contract provision. That applies to all three of the contracts, and so we'd ask the Court to enter judgment as a matter of law in Plaintiff's favor on Defendant's Breach of Contract Counterclaims.

THE COURT: So are they in the same boat you are about nominal damages?

MR. MATURA: I don't think they are, your Honor, because they are, it's not -- they don't have an affirmative claim. They call it a counterclaim, but what they seek is really just prevailing party fees for their damages. They don't seek -- where we

have claims where part of the damage component of those claims might just be nominal damages, they don't have a claim. They have a defense. They call it a counterclaim, but it's really just a defense to the affirmative claims. So it's not the damages. The most they could ever receive would be prevailing party fees at the end of this case.

THE COURT: Well, aren't they saying that JJSM Real Estate breached by either denying access or not ensuring access to the leased premises? And Premier breached by -- I guess, Premier also would have denied access under their theory. I don't know if Premier failing to provide salable marijuana is a breach. It just means Premier doesn't get money, I believe, but I don't know.

Why don't we turn it over to the defense. What's your take on that issue?

MR. WILENCHIK: Well, they prevented us from selling product at a discount. But I agree with the Court, to move this along, I find it kind of ironic to say the least that they would even raise this issue, given the fact that they have no damages on their side of the case and they asked for nominals. And what's good for the goose is good for the gander.

So if we didn't provide all of our damage

calculations, they didn't either. Maybe both parties are entitled to nominal damages, and we're all wasting our time here; but that's the way it is, aside from the attorney's fees, which I won't repeat. That's where I think both sides may be on all of those claims. But, frankly, I don't think they have any damages at all.

But I want to renew my motion before I forget at the close of the case. I think I do have to do that.

THE COURT: Uh-huh.

MR. WILENCHIK: And so I hereby renew our Motion for Judgment as a Matter of Law. Excuse me one second, your Honor.

(Discussion off the record.)

MR. WILENCHIK: Yeah, it's the same issue. All of the parties arguably testified that they had damages. Neither one of them really, other than Vatistas, who said there was maybe 700 thousand -- that was stricken -- and saying just a couple of hundred. I don't know if that was stricken or not, to be candid, but it doesn't matter.

Both parties basically said they had damages. Neither party really did anything to calculate them that was introduced into evidence. And so I think

from investigating, failing to cooperate in the investigation seems to be in the joint pretrial.

All right. Any other JMOL arguments from Plaintiffs?

MR. MATURA: No, your Honor. There's only two claims pending.

I do want to let the Court and the record know that Kevin Barrett is now on the bridge line.

THE COURT: Okay.

MR. MATURA: He had a hearing at a different courthouse.

THE COURT: Okay.

MR. MATURA: So he's just going to be on the phone.

THE COURT: Okay. Thank you.

MR. BARRETT: Good morning, your Honor. I've been here most of the time, but I did want to make my appearance.

THE COURT: Sure. Good morning. All right. So I'm going to submit the issues to the jury subject to any later ruling on the legal issues presented in Plaintiff's two motions for judgment as a matter of law.

MR. WILENCHIK: And, again, you're denying my renewed motion?

THE COURT: Yes.
MR. WILENCHIK: Just for the record?
THE COURT: Yes.
MR. WILENCHIK: With the same caveat, I suppose.
THE COURT: Yes.
MR. WILENCHIK: Okay. Thank you.
THE COURT: Okay. So I do need to figure out damages issues though for our instructions. I think this conversation we just had confirms that Defendants are down to nominal damages for its claims. Is that fair?
MR. WILENCHIK: Yeah. That's -- I think they are too.
THE COURT: Yeah. Well, I think -- but do defendants disagree with what defendants are seeking in terms of damages? Not seeking, but what I've concluded is perhaps permissible.
MR. WILENCHIK: Well, let me answer this question.
THE COURT: Yeah.
MR. WILENCHIK: Yes. There is no -- again, there is no specific amount that was --
THE COURT: Okay.
MR. WILENCHIK: -- introduced over objection.

I'm trying to just remember if Vatistas said it or it came out that it was disclosed for a couple hundred thousand at the time it was disclosed. I'm not sure of that to be very honest with you.

THE COURT: Okay.

MR. WILENCHIK: But I think that's, if the Court's going to take the consistent position --

THE COURT: Yeah.

MR. WILENCHIK: -- that, in a contract action, which I think is appropriate, the parties have to specify their damages on a tort claim, then I think both sides are on that same boat.

THE COURT: Okay. So I'll address the instructions on Defendant's counterclaims to include nominal damages language.

Then I don't think anybody provided evidence of any consequential damages. Do Plaintiffs disagree, from your perspective, about what you presented?

MR. MATURA: I'm sorry, your Honor.

THE COURT: Sure.

MR. MATURA: You can count this time against me. I am just thinking for a second.

MR. WILENCHIK: Are we counting time today?

THE COURT: I am nothing, if not diligent about tracking time.

MR. WILENCHIK: All right. Is this going against our time?
THE COURT: Not your time. It's going against Plaintiff's time.
MR. WILENCHIK: No, no, no. Are we counting time for today?
THE COURT: Yes.
MR. WILENCHIK: For jury instructions?
THE COURT: Yeah. Because we've got two hours, and both sides can be a little verbose.
MR. WILENCHIK: No, no. I'm just asking because I want to reserve time for my final argument.
THE COURT: Oh, not against your trial time.
MR. WILENCHIK: Oh.
THE COURT: No, no, no, no, no. I'm sorry.
MR. WILENCHIK: Oh, you understand.
THE COURT: Yeah.
MR. MATURA: All right. Your Honor, I just wanted to double check. As you can imagine, I've got a lot going through my mind.
THE COURT: Yeah.
MR. MATURA: I don't believe there has been evidence presented on consequential damages.
THE COURT: Okay.
MR. MATURA: Unless I'm perhaps missing

something off the top of my head, but I don't think so.

THE COURT: All right. I don't recall any such evidence, as well. So I think Defendants would agree based on, again, the nominal discussions we've been having. The defendants didn't present evidence of consequential damages.

MR. WILENCHIK: I don't think either party, for the record, did.

THE COURT: Yeah.

MR. WILENCHIK: And evidence of consequential damages has to be conflated by the parties. There's no such testimony, so I agree.

THE COURT: Okay. So there's an instruction in there about consequential damages. That will end up coming out.

MR. SWENSEN: Now, your Honor, did you receive our redline version of --

THE COURT: Yes.

MR. SWENSEN: Okay. I think we redlined that one out.

THE COURT: Yes. Okay. So then we get to another question I had. So I thought Plaintiff's bad faith arguments were based only on pulling the ATO. But are you saying it's also the -- was it the June

based upon our discussion this morning already, I don't have any changes to contract 17.

MR. SWENSEN: I think our only addition here -- well, yeah.

THE COURT: You've proposed changing 17?

MR. SWENSEN: Yeah. I've proposed changes, and let me explain why.

THE COURT: Yeah.

MR. SWENSEN: What we're dealing with here, your Honor -- and this is all they've ever disclosed. All they've ever testified to is the value of the marijuana, quote, unquote, that was in the facility as of October 10th, 2017 when the ATO was pulled.

And they tried to go beyond that, and you told them not to go back into this $75 million, whatever the lost profits or potential revenues or all of that other stuff. So they are limited to the value of the marijuana. But that marijuana has no value to Premier, unless they can show that it would have resulted in the payment of their fees under paragraphs nine and ten of the Cultivation Agreement.

They are not the owners of the marijuana. They were not damaged by this instruction directly. Okay. They didn't own it, so it wasn't property of theirs that got seized and destroyed. The only way

they could show that they were damaged was to show that this marijuana was legally sourced and that it could be used and sold to patients through the PARC dispensary or through other dispensaries. And had it been sold, it would have resulted in management fees back to Premier.

And that's really the standard that should be reflected in the instruction because that's what they have to prove under the contract. And if -- paragraphs nine and ten are very clear about that. They are supposed to get these management fees that they would have gotten if the contract had not been terminated. It's, basically, that same but-for kind of language. And therefore, I think the instruction needs to reflect that reality.

THE COURT: Okay. So what if I change that first bullet point to say the management fees that Premier would have received under the Cultivation Agreement, had the contract been performed.

MR. MATURA: That's fine with Plaintiffs.

MR. SWENSEN: Yes. That works.

THE COURT: Okay. So I'll do that.

MR. SWENSEN: Okay.

THE COURT: All right.

MR. MATURA: Then, your Honor, the next one I

MR. WILENCHIK: Yeah, yes, okay.
THE COURT: Okay. All right. We'll see everybody Monday morning.
MR. WILENCHIK: Thanks so much.
THE COURT: Have a good evening.
MR. WILENCHIK: You too.
(Matter concluded.)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PREMIER CONSULTING AND MANAGEMENT SOLUTIONS LLC, et al.,	)	
Plaintiffs,	)	
vs.	)	CV2017-009033
PEACE RELEAF CENTER I, et al,	)	
Defendants.	)	

Phoenix, Arizona
August 6, 2021

BEFORE THE HONORABLE JAMES D. SMITH

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Oral Argument

PREPARED FOR:
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ANDRES E. ANAYA RPR
Certified Court Reporter # 50964

you'd want to have the experts' answer to know which spreadsheet you should follow.

So it seems to me, if -- on the excess rent issue, regardless of what you decide with respect to the post-judgment briefs, I don't think it's done. Well, maybe I shouldn't say that. If you find in my favor, I think it's done. If you find in PARC's favor, I don't think it's done.

So I just wanted to raise that issue with the Court and maybe talk about if you have any questions or thoughts on that issue.

THE COURT: Have you broached this topic yet with PARC's counsel?

MR. MATURA: I don't know that Eric and Hayleigh and I -- I'm not so sure we've drilled down that far, so I'm happy to kind of pass the floor to them if they want to comment at this time.

MR. FRASER: Sure. Your Honor, so a couple of quick things. You know, I don't think this is an evidentiary issue because I don't think this is about the spreadsheets.

We met and conferred a lot on this issue. We really took your order to heart and we had a few different phone calls.

As part of that process, we tried to narrow

down the number of disputes we have. And I think at this point, there's really only one dispute on the rent offset issue, again, assuming the legal analysis that Your Honor put in the order. And that's really the -- the date that we're discounting to.

And our position is really simple. It's just: They have to be the same date. They have to discount everything to the same date. You can't mix and match and have some things undiscounted and other -- and comparing that to a discounted number. You have to pick the same date.

And so we've prepared two spreadsheets, one of which uses what we think are the right dates, the other one uses the dates proposed by the plaintiffs. But again, discounting all values to the exact same date.

And I don't think there's any dispute about those spreadsheets that I'm aware of. Mr. Matura can correct me if I'm wrong. It's really a question of law for the Court which is the right date.

I don't think that's an expert issue. I don't think we need testimony on that. I don't think we need any kind of evidentiary hearing about that. I don't think it's about the spreadsheets.

So my proposal is if you issue your ruling that addresses all of the various issues that both sides

have put in their motions -- their post-trial motions, at that point, we could submit an improvised proposed form of judgment.

And we do think that the prevailing party for attorney's fees may change based on the outcome of your rulings. Of course, I don't think anyone can address that now because we don't know exactly what your rulings are in all of the various issues. But I think it's quite likely that the prevailing party analysis would change.

So my recommendation is for you to resolve all issues, including the rent offset issue on the papers, and then allow the parties time to submit proposed form of judgment and analysis on the prevailing party for attorney's fees.

THE COURT: Mr. Matura, when I looked at what the parties submitted, it seemed to me that PARC did adopt your expert's methodology other than, as Mr. Fraser said, we pick one date for present-value calculations.

What do you think we would use in evidentiary hearing for to resolve on that topic?

MR. MATURA: Well, as I look at it, and I'll be the first to admit on this, I'll just fill in that some of this gets quite complicated.

You know, our -- I'm just looking at our submission here, see if I can cite you to the right

paragraph.

Well, I guess, Judge, maybe I would put it this way: If there's no disagreement or questions by the Court on the time value of money calculations that the experts have used and perhaps they did fully adopt -- let me pull it up real quick.

Just looking at the two different spreadsheets.

So here's my -- here's my concern, Judge, is that they're -- and please, Eric or Hayleigh, correct me if I'm misreading your charts here. But even -- using -- their chart, using our analysis, doesn't come to the same spot as our chart.

And so that's what I think needs to be resolved. And maybe the Court thinks it can resolve it just by sliding the date of when the calculation should start, but it seemed to me as I read it, that there was still some disagreements between the two experts about how to do the calculation.

Maybe I'm misreading it, and I'll admit that if I am, but that was my understanding of reading the two different submissions.

THE COURT: I don't have them in my substantial binder, but I -- and it's been a while since I've read them, so I also apologize if I'm -- if my

recollection's off. I thought that PARC's expert said, I'm gonna adopt the data and methodology that plaintiff's expert used, but I'll just reduce both of them to the same date, and I'll give you two different dates to pick, Court. But as long as we use one date for both figures, it more than offsets the damages.

But if somebody thinks I'm wrong, I'm not offended and we don't necessarily need to decide it today. If people feel like let's measure twice and cut once, then we'll take a few days and let everybody go back and see if we're recalling things correctly or incorrectly.

MR. MATURA: Judge, if I may just real quick. I do feel a little -- I'm not sure what the word is. Maybe unprepared not to discuss it today. But I feel like when we did the expert submissions -- and we did, and the parties worked really hard to get on the same page, we really did. Maybe for the first time in this case, like, all counsel worked on the same page to get to the right spot.

But there's still some disagreement between the experts, and I would feel more comfortable on this issue being able to perhaps supplement what we've provided to you so that I can go back to my expert and more fully explain to you in paper why there might still be a disagreement. Maybe that will generate a question as to

whether we need an evidentiary hearing or not.

I just -- I feel a little bit inadequate or unprepared, based upon the submissions so far to think that that issue has not been fully presented to you.

THE COURT: Okay. What are your --

MR. FRASER: Your Honor, if I could be heard for just a moment. I hear what Mr. Matura's saying, and I agree, we've worked very well together to try to limit the focus -- or the number of disputes on that issue.

These were submitted a couple months ago in June, and so I think our position is if -- if the plaintiffs disagreed with the calculations that were done, you know, kind of accepting the methodology that we set forth in the brief, there have been two months that have gone by in which they could've said something, either to us or to the Court.

I do think you accurately summarized, Your Honor, the analysis that was done, which is adopting every single assumption except the discount date. That's what we did. Every other assumption, every other number is the same as what the plaintiffs used. Again, if they think we -- our expert made a mathematical error in running the calculations, I would have thought that that would've come up sometime in the last two months.

THE COURT: Mr. Matura, why don't we have you by -- let's say noon on the 13th.

If you've identified issues where you think they're either different methodologies or different data used, different assumptions, let PARC's counsel know.

And then if there are differences, we need you guys to confer in good faith to say, Oh, I see why you thought that, but let me tell you why that didn't happen.

And then at that point, at least I think everybody will be better prepared to say yes, we do need to add a little bit more to the record, but we can do it with either supplemental declarations or if plaintiffs still think no, we need to have an evidentiary hearing, at least we'll all be shooting to the same target, I think, in that event.

MR. MATURA: That's just fine, Your Honor. We're happy to do that.

THE COURT: Okay. So then moving beyond that, I suppose I can go through kind of what I've noted as I've looked through it -- looked through the papers and let Mr. Matura know where I think maybe some questions arose and let you tell me why I'm wrong or what I'm missing.

So bear with me, and I'll thumb through my notes, which are not short 'cause your papers are pretty

All right. Thank you, everybody. Have a good weekend.

(Whereupon the Court stands adjourned.)