JAMS ARBITRATION CASE REFERENCE NO. 1130009693

Jordan, Kylae, **Claimant/Cross-Respondent,** **and** **Long, Jeffrey Landon, et al.,** **Respondents/ Cross Claimants.**	**PHASE 1 INTERIM AWARD**

The Arbitrator now issues his Phase 1, Interim Award, following conclusion of the instant arbitration (Phase 1) and all required briefing.[1] It was agreed on the record that the merits of entitlement to damages will be addressed in this Phase 1 interim award, subject to a Phase 2 which may determine the prevailing party and related costs issues, including punitive damages, unless the parties otherwise are able to dispose of the matter, after issuance of this Phase 1 interim award.

REPRESENTATION OF PARTIES

Scott E. Radcliffe, Esq (Alves Radcliffe LLP). representing claimant and counter-respondent Kylae Jordan, and Matthew T. Arvizu, Esq. (Solomon Ward Seidenwurm & Smith LLP) representing respondents Jeffrey Landon Long, an individual, Linda Long, an individual, Daniel Long, an individual, Marie Csech, an individual, THE LONG FAMILY TRUST, ICON HOLDINGS, INC., a California Corporation, INFUSION FACTORY, LLC, a California Limited Liability Company. and counter-claimant ICON HOLDINGS, INC. a California Corporation.[2]

PLEADINGS

As set out in the opening brief of claimant, Claimant's First Amended Complaint[3] asserts three different theories of fraud: (1) securities fraud; (2) common law fraud; and (3) negligent misrepresentation; but the First Amended Complaint (FAC) also addresses non-fraud claims, including claims of breach of fiduciary duty, breach of contract, breach of the implied covenant of good faith and

[1] On April 29, 2024, at a status conference hearing, the parties agreed to the Exhibits, per joint stipulation, which then concluded, formally, the Phase 1 hearing save for briefing.

[2] At the Arbitration hearing and prior, various parties are noted as having been dismissed from the litigation; these include Danial Long, Marie Csech, and THE LONG FAMILY TRUST As the Claimant's opening brief appears to concede, only Landon Long, Linda Long, Infusion Factory LLC and ICON Holdings, Inc are addressed in this litigation.

[3] The first amended complaint (FAC) (JAMS Access No. 594113) is incorporated by this reference.

fair dealing, *inter alia*. Notably, a claim of fraud is alleged based on alleged violations of California Corporations Code sections 25501, 25504 and 25504.1, *inter alia*, which is alleged to provide "joint and several liability" as to Landon Long and Linda Long. It is alleged that, *inter alia*, the parties are "alter egos of one another and a unity of interest and ownership exists among them." (FAC para. 13) It is further alleged that ICON and Infusion were formed with insufficient capitalization that was inadequate for the business in which ICON and Infusion were engaged, and created as a device to avoid liability. Various of the causes of action are alleged against ICON alone, Landon Long alone, Landon Long and Linda Long[4], Linda Long alone, etc. (although each cause of action is alleged to incorporate all preceding paragraphs of the pleading). The seventh cause of action is brought by claimant derivatively on behalf of ICON against Landon and Linda, and some against Infusion Factory, etc. Attached to the first amended complaint as Exhibit A is the "TERMS OF PROPOSED $500K INVESTMENT IN ICON HOLDINGS, INC."[5] Exhibit B is the ICON "HOLDER RIGHT AGREEMENT" and Exhibit C is the ICON HOLDINGS, INC. "SERIES A PREFERRED STOCK PURCHASE AGREEMENT."

The "ANSWER TO ARBITRATION DEMAND" filed July 29, 2021, asserts a general denial, and twenty-five affirmative defenses. Additionally, on July 29, 2021, INFUSION FACTORY, LLC and ICON[6] filed a counter-claim against Jordan for the following causes of action: (1) Misappropriation of Trade Secrets (Civ. Code Sections 3426 *et seq*); (2) Conversion; (3) Breach of Contract; (4) Breach of Implied Covenant of Good Faith and Fair Dealing; (5) Intentional Interference with Contractual Relations; (6) Intentional Interference with Prospective Economic Advantage; (7) Unfair Competition (Bus. & Prof. Code Section 17200 *et seq*.); and (8) Declaratory Relief. Claimant and cross-respondent Jordan filed an Answer denying ICON's claims and listed fifty-six affirmative defenses.[7] It is alleged, in

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[4] For clarity and ease of reference, the Arbitrator may, throughout this interim award, refer to Landon Long and Linda Long in their individual capacity by their first names, intending no disrespect. Similarly, the Arbitrator may also refer to Infusion Factory as "IF" and Kylae Jordan as "Jordan".

[5]Claimant Jordan was to receive "3,000,000 shares of Series A Preferred (the **Lead Investor Shares**"). Parenthetically, Linda Long testified that Jordan fulfilled his obligation under the stock purchase agreement (Ex. 505) (TR pp. 50-51; 12/01) and the company would be obligated to deliver a stock certificate (TR p. 51; 12/01) Other shareholders got their stock certificates. (*Id.*) Linda stated she did not know if Jordan received his certificate. She agreed the company had an obligation to give him his original stock certificate. (*Id.* p. 53) Jordan testified he has never received his stock certificate, although he demanded it. (TR p. 118; 12/01) Linda testified that pre-litigation Jordan never asked her for it. (TR p. 213; 2/5/24) It was in the safe; when asked why she had not given it to him, she testified "It wasn't mine to give. It was Landon's to give." (TR p. 231; 2/5) Linda maintained that despite her title of "secretary" of the corporation she did not give Jordan his certificate, and agreed that under the Stock Purchase agreement, the company was obligated to deliver to Jordan his shares. (*Id.* p. 232)

[6] ICON HOLDINGS, INC. and INFUSION FACTORY, LLC filed a counterclaim against claimant.

[7] Under California law, a complaint and a cross-complaint are, for most purposes, treated as independent actions. (*McLellan v. McLellan* (1972) 23 Cal.App.3d 343, 353.) "Procedurally, a cross-complaint is a separate pleading and represents a separate cause of action from that which may be stated in the complaint." (*City of Cypress v. New Amsterdam Cas. Co.* (1968) 259 Cal.App.2d 219, 223].) Where there are both a complaint and a cross-complaint there are actually two separate actions

part, that Jordan is an investor in Icon, a professional services company directly supporting Infusion Factory LLC, a California State Licensed and Permitted Cannabis Manufacturing Services Company. It is alleged (para. 1) "Since at least January 2019, while consulting for Infusion, Jordan covertly worked on behalf of Infusion's then-customer, Grapefruit Boulevard Investments ("GBI"), diverting company business prospects, selling company secrets, self-dealing, establishing self-owned products and services and ultimately sabotaging Infusion's operations for his own personal benefit. In this "moonlighting" capacity, Jordan not only brazenly referred Infusion's then-current and (in his words) "potential customer[s]" to GBI using his Infusion email account, he also packaged and disclosed Infusion's trade secrets to GBI for his own personal benefits." In doing so he is alleged to have breached the confidentiality terms in the Holder Rights Agreement.[44]

The arbitrator will not recite the allegations of the various pleadings in granular detail save as may be relevant to the analysis portion of the case, infra.

THE ARBITRATION PROCEEDINGS AND WITNESS TESTIMONY

As set out in part in Scheduling Order No. 1, this matter is a stipulated arbitration proceeding[8] and arbitrability of the entire dispute is undisputed. The demand for arbitration was filed by counsel for the claimant on July 15, 2021.

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pending and the issues joined on the cross-complaint are completely severable from the issues under the original complaint and answer. (*McDonald Candy Co. v. Lashus* (1962) 200 Cal.App.2d 63, 67; *Shearer v. United California Theatres* (1955) 133 Cal.App.2d 720, 724; *Security Pacific National Bank v. Adamo* (1983) 142 Cal. App. 3d 492, 496.) The Arbitrator notes that counter-claims and cross-complaints are synonymous terms.

[8] *See* also "Agreement to Arbitrate Disputes" wherein the Recitals state, in pertinent part "WHEREAS, JORDAN and ICON entered into a series of written agreements in May 2018, including a Holder Rights Agreement, a Series A Preferred Stock Purchase Agreement, a Consulting Agreement, and other related agreements incorporated therein (the "May 2018 Agreements"). WHEREAS, JORDAN filed a complaint in the California Superior Court for the County of Sacramento against ICON, INFUSION, and the LONGS, entitled *Jordan v. Long et al*., Case No. 34-2021-00298009, alleging eighteen causes of action based in part on the May 2018 Agreements (the "Superior Court Action"). WHEREAS, without abrogating, modifying, or substituting any provisions of the May 2018 Agreements, and without waiving or releasing any other claims or rights the Parties may have as of the date of this Agreement, the Parties have agreed to voluntarily enter into this Agreement to arbitrate all claims or controversies by and among the Parties."[emphasis added] This agreement was signed by the parties in late June 2021. (*See* JAMS ref. number 118440) It is also noted that both the Holder Agreement (Section 4.1) and Purchase Agreement (Section 6.1) state in relevant part that "Any controversy between the Parties involving the construction or application of any of the terms, provisions, validity, termination, or conditions of the Agreement and the Related Agreements shall be submitted to arbitration. Arbitration will comply with and be governed by the provisions of the California Arbitration Act. The Parties will each appoint one person to hear and determine the dispute. If the two persons so appointed are unable to agree, then those persons will select a third impartial arbitrator whose decision will be final and conclusive upon both parties. Each party shall bear all costs and expenses incurred in arbitration. […] This arbitration Agreement is binding upon each of the Parties, their principals, successors, assigns and affiliates."

The relevant pleadings are contained in the file. Each party submitted damages claims (and amended claims) which are on file in JAMS Access, and are incorporated by reference in this Interim Award as if set forth herein.[9]

The Arbitrator is bound to follow California substantive law in this proceeding. (para. 6, Scheduling Order No. 1) The parties agreed that "the Arbitration will be conducted in accordance with the JAMS Comprehensive Arbitration Rules and Procedures."

Phase 1 of the arbitration commenced on November 27, 2023[10] at the Sacramento JAMS Resolution offices and continued through December 1, 2023, and then, for one additional day, on February 5, 2024, at which point the parties rested their respective cases subject to a determination of the evidence submitted. On April 29, 2024 (status conference), the parties agreed to the admission of all evidence set out in the stipulated "Joint Exhibit List", which was filed on April 30, 2024.[11] As noted in Scheduling Order No. 4, "Upon the filing of the stipulation re exhibits, Phase 1 is closed subject to the filing of the initial closing briefs and rebuttal briefs (due 10 days after the submittal of the initial briefing). As further noted in that scheduling order, "the parties stipulated at today's hearing, and agree that the Arbitrator may have until fifty (50) days after the concurrent filing of the Rebuttal briefs to submit the Award as to Phase 1 of the arbitration.

Other housekeeping matters were addressed; the parties again stipulated and agreed that Marie

Ms. Csech, Daniel Long, and THE LONG FAMILY TRUST are no longer parties to the action." All required briefing having been submitted, the matter now is ripe for decision on the Phase 1 of the arbitration.

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[9] Obviously, each party, for its affirmative claims and defenses must satisfy their respective burden of proof. Generally, the "burden of producing evidence" is a party's obligation to present evidence to support its claim [Evid Code § 110; *see Grant v. Ratliff* (2008) 164 Cal.App.4th 1304, 1310.] The "burden of proof" is a party's obligation to establish by evidence a required degree of belief concerning a fact in the mind of the trier of fact or the court [Evid Code § 115]. The terms "burden of proof" and "burden of persuasion" are used interchangeably and are synonymous (*Sargent Fletcher, Inc. v. Able Corp.* (2003) 110 Cal. App. 4th 1658, 1666–1667). For example, under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that it is more probable than not that the claim is true. (*See*, e.g., CACI 200; *see also In re Angelia P.* (1981) 28 Cal.3d 908, 918); *Glage v. Hawes Firearms Co.* (1990) 225 Cal. App. 3d 314, 325; 1 Witkin, Cal. Evid. 5th Burden § 36 (2022).)

[10] The proceedings were reported by Scarpelli Court Reporting Services, by Deanna M. Keppel and Pamela R. Katros (Dec. 1)

[11] A stipulation is defined as an agreement between or among counsel for adverse parties in which the latter do not participate. (See Black's Law Dictionary (4th rev. ed. (1968)) p. 1586; 1 Witkin, Cal. Procedure (2d ed. 1970) Attorneys, § 124, p. 137.) Both stipulations and admissions of facts are specifically provided for in rule 34.1 (Rules of Proc. of the State Bar) and have all the essential characteristics of mutual contract. A stipulation entered into by the parties concerning a material fact "should be viewed as a contract or agreement that is to be interpreted pursuant to contract principles." "...a stipulation relating to a pending judicial proceeding, made by a party to the proceeding or the party's attorney, is binding without consideration..." Black's Law Dictionary (9th ed. 2009).

At the outset of the hearing, *in limine* motions were addressed.[12]

The following witnesses were called and sworn to testify, either in person or via Zoom format: Jeffrey Landon Long, Ken Mierzwinski, Ed Gines, Andy Foor, David Crouch, Linda Long, Lena Joleen Tanner, and Gareth Kylae Jordan The parties further stipulated that the deposition transcript of Jennifer Jiminez would be received in evidence[13], and judicial notice, pursuant to agreement of the parties, is taken of Sacramento City Ordinance 5.150.150 and 5.150.160[14]

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[12] Ruling on *in Limine* motions: MIL #1 of claimant to exclude evidence of alleged lost profits or diverted potential customers was denied without prejudice, the Arbitrator inquiring "is not having that information the same as admitting that no information exists at all?" The issue was left open for later determination. The issue was not, however, raised during the hearing again. Parenthetically, while there was some testimonial evidence that certain customers were diverted, there was no expert or forensic testimony establishing the nature or numerical extent of any diversion of customers or of any specific monetary amount attributed to such claim of diversion. Also, during the course of the hearing, no such evidence was quantified. The following exchange between counsel and Mr. Long is emblematic:

Q. BY MR. RADCLIFFE: Do you have any information to know whether or not the businesses and individuals that are listed in paragraphs 29 through 77 of your counterclaim ever retained Grapefruit Boulevard, yes or no?

A. I do not have that information. I do not have that information.

No one from GBI testified to the issue, and aside from Landon Long's claim of diversion, no material evidence was adduced to this claim.

MIL #2 of claimant addressed excluding the liquidated damages claims of counter-respondent. As noted in the Scheduling Order the parties previously agreed that *no liquidated damages are being sought*. There was extensive argument on the MIL prior to commencement of witness testimony.

Parenthetically, despite the Arbitrator granting the motion but "leaving the door open" to allow respondent/counter claimant to address these claims during the arbitration, it was not materially raised again during the entirety of the Phase 1 of the evidentiary hearing.

MIL #3 of clamant was denied without prejudice. This was sought to exclude evidence of opinions from Respondents' expert Jennifer Jiminez. Pursuant to the motion, "Ms. Jiminez, a bookkeeper with limited experience, provided minimal tax preparation for ICON and Infusion Factory and filed their tax returns in July 2023 for years 2018 through 2022. Ms. Jiminez was deposed on November 10, 2023 and testified she has not been retained in this case and will not be offering any opinions."

MIL #4 of claimant was also addressed, to preclude use of the tax returns other than to say they had been filed, "at least at this point." Respondents' motion *in limine* #1 was to exclude evidence by claimant of his business dealings with GBI, as an evidentiary sanction. The Arbitrator ruled to address the issue (of adverse inference) at the end of Phase 1, as relevant in assessing Mr. Jordan's credibility. The motion was otherwise denied without prejudice. Again, parenthetically, this was never raised in the Phase 1 case in chief. No motion was made to preclude. Respondent's MIL #2 was denied without prejudice; however, again, the issue addressed in the MIL was not reached at the hearing on the Phase 1.

As the scheduling order demonstrates, the parties agreed at the CMC on April 29, 2024 to remove any claims of liquidated damages from the instant arbitration. Further, on November 27, 2023, counsel lodged the deposition transcripts (vol. 1 and 2) of David Crouch, Ken Mierzwinski, Ed Gines, Jennifer Jiminez, Landon Long, individually, and as the PMK of ICON and Infusion Factory and Linda Long.

[13] The Jiminez deposition was taken on November 10, 2023, and a transcript lodged with JAMS Access. As noted, the parties stipulated to the transcript being received in evidence. Ms. Jiminez was not called to testify. In contrast with Ms. Tanner, Ms. Jiminez was not qualified as an expert witness, and offered no formal opinions.

[14] Section 5.150.150 Payment of taxes reads "In addition to any fees established and imposed pursuant to this chapter, all cannabis businesses are required to pay all applicable taxes, including the business operations tax pursuant to title 3 and sales tax pursuant to state law. (Ord. 2017-0046 § 1) Section 5.150.160 Maintenance of business records, reads:

OVERVIEW AND CONTENTIONS

As argued, the evidence and pleadings reflect that Claimant Kylae Jordan is an investor in Icon, a "services company" directly supporting Infusion Factory LLC. In February 2018, Andy Foor, a friend of Claimant, told him that he was about to start working in sales for a legalized cannabis manufacturing company called Infusion Factory. Mr. Foor told Claimant that Infusion Factory was owned by Landon Long who was a former coworker a decade earlier at a financial technology company called "X-Ignite". He described Landon Long (hereinafter "Landon") as an excellent worker and marketer, 'impressive" and an excellent promoter. Landon told Foor he had a master's degree.[15] Landon Long told Foor he was looking to "grow" the company with investors. Foor told Claimant that Infusion Factory was looking for investors and offered to set up an introductory call with Mr. Long. As Foor describes it, he got Jordan and Landon together and "stepped away" so they could make a decision. Foor started with Infusion Factory (hereinafter IF) in 2018 as the director of sales. (*see also* Ex. 531)

Thus, as Foor described it he brokered an introduction between Claimant (hereinafter "Jordan") and Landon. Landon represented to Jordan that he was a cannabis expert and had worked with legislators and government officials to draft cannabis regulations. He held himself as having extensive contacts with government officials and being a foremost authority on the legalization of cannabis. Landon said that Infusion Factory had the State's first types 'N4' license, an extensive list of clients in contract that it was manufacturing for including some of the biggest names in the cannabis industry. Starting around

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"A. A cannabis business must maintain the following business records for at least three years on the site and must produce them to the city within 24 hours of receipt of the city's request:

1. The name, address, and telephone numbers of the owner and landlord of the property.

2. The name, date of birth, address, and telephone number of each manager and staff of the cannabis business; the date each was hired; and the nature of each manager's and staff's participation in the cannabis business.

3. A written accounting of all income and expenditures of the cannabis business, including, but not limited to, cash and in-kind transactions.

4. A copy of the cannabis business' commercial general liability insurance policy and all other insurance policies related to the operation of the business.

5. A copy of the cannabis business' most recent year's financial statement and tax return.

6. An inventory record documenting the dates and amounts of cannabis received at the site, the daily amounts of cannabis on the site, and the daily amounts of cannabis sold, distributed, and transported from the site.

7. The name, address, and telephone numbers of the owners and officers of the cannabis business; and the nature of the ownership interest in, and control of, the cannabis business.

8. A log detailing the arming and disarming of its alarm system, including the dates and times the alarm is armed and disarmed, the individuals who armed and disarmed the alarm, and the reasons the alarm was armed or disarmed.

B. A cannabis business shall report any loss, damage, or destruction of these records to the city manager within 24 hours of the loss, damage, or destruction. (Ord. 2022-0006 § 3; Ord. 2019-0041 § 3; Ord. 2017-0046 § 1)"

[15] Foor testified he later found out this was false. Foor himself had no previous experience in cannabis or the cannabis industry.

2012, Landon represented that he, with his mother, Linda had owned a company in Newark called VaporPenz. Landon designed vapor accessories for the smoke shop industry, "specific to cannabis use." (TR p. 75; 11/28/2023) As that was growing, they started receiving requests for flavored E-Liquids (nicotine) to replace smoking (*Id.* p. 76) At VaporPenz Landon was approached to solubilize cannabinoids, e.g. CBD. (*Id.* pp. 79-81) As he testified, they launched CBD products for other brands/customer (e.g. Original 420 brand), their first manufacturing client, and they started getting clients who wanted them to make products for them. Landon states that they became experts on how to safely mix and control dangerous substances (nicotine) from a manufacturing perspective and the CBD side as well. He noted they were working out of a garage in Fremont. (Id p. 84) They continued expanding contract manufacturing and selling VaporPenz products. In 2014-2015 they started getting inquiries about THC and concentrates for THC were starting to become available (*Id.* p. 85)[16]

Landon described VaporPenz as a family owned and run small business. (TR p. 84; 11/28/2023) Linda Long was in charge of memorializing the sales and expenses of VaporPenz throughout its existence. He said that they were transitioning VaporPenz into Infusion Factory and moving the business from Newark to Sacramento to work under Sacramento's (and California's) newly enacted recreational cannabis laws. He said that VaporPenz sold smoke and vape products and legalized medicinal cannabis. Landon represented that VaporPenz provided an advantage for him to bring over existing clients who were purchasing legalized medicinal cannabis and now had become licensed to do recreational sales. Landon stated Infusion was consistently generating $120,000 in monthly sales and it needed an injection of capital to expand its operations and take advantage of being the first to the market. He informed Claimant that ICON Holdings, Inc. was a holdings and management company for Infusion Factory. He was the CEO and Linda was the Secretary who was in charge of the books and records (although the "prospectus", Ex. 531, describes her role as "Operations Director."). Landon testified that Linda was the "general manager" and he did not know why she was listed on Ex. 531 as the Operations Director (TR,

[16] Landon testified that in 2014, medicinal use of cannabis was permitted, but it was not until 2018 that recreational use was permitted. Parenthetically, the Arbitrator notes that on November 5, 1996, the California electors approved an initiative adding Cal. Health & Safety Code § 11362.5, the Compassionate Use Act of 1996. Cal. Health & Safety Code § 11362.5(d) provided that Cal. Health & Safety Code § 11357, criminalizing the possession of marijuana, and Cal. Health & Safety Code § 11358, criminalizing the cultivation of marijuana, did not apply to a patient, or to a patient's primary caregiver, who possessed or cultivated marijuana for medical purposes. Presently, cannabis is legal in the state for both medicinal and adult recreational use. As noted by Landon, the main statute for cannabis businesses is called the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA). MAUCRSA sets up a basic framework for licensing, oversight and enforcement related to cannabis businesses.

p. 132; 11/27/2023). Any investment would need to be made into ICON and for the benefit of Infusion Factory.

Claimant asserts that in late February, Landon provided Claimant with a nine-page prospectus that he had prepared for investors.[17] The prospectus contained detailed information including a list of current clients. It included specific monthly figures of past sales and expenses, sales revenue for current customers, new customer revenue generated, membership revenue generated, expenses, and State and Federal taxes. Using current and prior sales, the prospectus showed what Landon reasonably projected would be the sales and expenses for each month in 2018, and annually from 2018 through 2022. The prospectus stated that it reasonably projected 2018 would result in $2,9812,122 in sales. The prospectus provided no disclaimers. At no time did Respondents provide Claimant with updated actual numbers before his investment which would have shown that Infusion Factory had grossly inflated the figures provided to Claimant.

Foor believes Jordan invested in ICON around May of 2018. As noted, prior to investing, Foor received an "investor deck" (Ex. 531; *see* also Ex. 597) from Landon, who asked him to send it along to Jordan. Landon made specific representations to Jordan prior to investing as well.

Based on Landon's representations, the prospectus, and Landon's purported expertise and existing clientele, Claimant trusted that the information provided to him was accurate and reliable and the investment appeared sound. It was agreed that Claimant would invest $500,000 in ICON for the benefit of expanding Infusion Factory's operations and equipment purchases. In turn, Claimant would receive 3 million Series A Preferred Stock in ICON. The investment transaction was memorialized by a series of documents and both sides were represented by separate counsel in the transaction.

Respondents and Counter-claimants argue the decline of Icon and Infusion was directly caused by Claimant 's detailed and methodical scheme to defraud the company and left the Companies insolvent, by moonlighting with a competitor and diverting the Companies' trade secrets. Respondents argue Claimant funneled leads of potential customers, actual customers, and other trade secret information to Respondents' competitors to benefit himself financially.

[17] Landon testified that he did not provide Jordan with the "alleged" prospectus, that was not included in the many investment documents that Jordan ultimately signed, nor was it created for investment purposes. He testified that he provided Jordan with a "Master stack" of documents, which were all of the requested documents prior to investment. (TR, p. 60, see also Ex. 244; 11/28/2023) Landon stated the "master stack" represented a "culmination of the documents" representing Jordan investment. (TR p. 169; 11/28/2023) It was noted the prospectus or PowerPoint was not part of the Master Stack. (*Id.* p. 170) And Landon stated that at no time while he and Jordan discussed the investment was there discussion about the current sales of IF (*Id.* p. 170) The Arbitrator is not persuaded that Landon made no representations; indeed, the then-current sales and customers and prospective sales are all addressed in the prospectus that Landon prepared and caused to be disseminated to Jordan

SUMMARY OF TESTIMONY AND RELEVANT EVIDENCE[18]

Jeffrey Landon Long was sworn to testify.-He was initially called to testify as an adverse witness by claimant's counsel. He has a Bachelor's of Science degree in "manage economics", but no degree in biology or chemistry; he has no master's degree. After other employment, in 2009 he worked with "X-Ignite", a "financial technology" firm and, among other roles, was in marketing there. After that he started a company based in Newark, California called "VaporPenz" which made smoke and vaping products for the smoke industry. As he testified, they designed hardware and products for the smokeless tobacco industry, which included "chemistry related to E liquids, like vapor products." He was CEO of VaporPenz, and his mother and father were also members of that business. Linda Long charted sales and expenses during that company's existence and did the same for IF and ICON. VaporPenz stopped business in or about 2016, and he formed "Infusion Factory" (IF) in July of 2016. ICON, the management company, was formed in September of 2017. Both were registered with the Secretary of State.

Landon testified he is an expert in cannabis, with experience in policy and formulation, and has worked with local legislatures to formulate cannabis law; this included at the local and state levels of government. He testified that in 2018, he was aware of the laws at the state level, the regulations being implemented at the departmental level of the state, as well as code at municipal levels. He noted the laws and regulations were "in flux" and noted that he worked with the State, the California Department of Public Health and directly with its director and a number of local municipalities. He noted that although legalization was made in 2018, the laws "came out prior to that" about 18 months before they were enacted. He did "his best" so he could advise legislatures and government officials.

In Infusion Factory (IF) he has been the "owner" at all times; his mother was the "general manager"; he does not recall representing on investment documents that she was a director of operations. Landon took some junior college classes in accounting but has never worked in an accounting firm, has never prepared a balance sheet or income statement, has never prepared an income statement, profit and loss statement or tax returns for a business. He stated he had no accounting experience other than preparing entries of sale and expenses. He stated his mother, Linda, has no accounting experience either.

[18] The Arbitrator will endeavor to summarize testimony, but it would be unduly consumptive of time and resources to do so in granular detail, the transcripts being the best evidence of testimony. Further, to the extent quotation marks are used, the Arbitrator only does so to reflect his shorthand notes where quotations are shown, and may also reflect parts of the rough transcripts provided to the Arbitrator. To reiterate, in order to conserve resources, some testimony will not be addressed except by way of analysis. The Arbitrator does endeavor to be as accurate as possible in addressing testimony of the witnesses.

At VaporPenz he and his mother were running the business on a "day to day" basis with few employees, one of whom was Michael Rugani. Another was Juan Gonzalez.[19]

Rugani and Gonzalez came up with the Longs to the Sacramento area in 2018, to work with Infusion Factory. Landon testified that one of the reasons for move to Sacramento was that it was "pro cannabis". Landon and Linda were members of Infusion Factory; both were shareholders in ICON, along with Daniel Long, Landon's father. As Landon stated, IF, along with another entity (Infusion Wellness) were set up to comply with Prop 215; as new regulations were enacted at the state level, Infusion Wellness was discontinued (it never did any business whatsoever, per Landon), and Infusion Factory was set up to be the licensing entity for the "new recreational cannabis industry."

Landon testified that under the pre-2018 medicinal cannabis laws, cannabis could not be sold for a profit; however, he testified that VaporPenz was selling THC cannabis products. (Rough TR, p. 14; 11/27/2023) VaporPenz had no licenses to sell cannabis with THC. Landon was asked if VaporPenz was acting "illegally"; his response "That could be your characterization of it." (TR p. 16; 11/27/2023) He later stated that it was a "gray area." Linda Long testified that there were illegal THC sales at VaporPenz. While it is not an issue directly relevant to the case, it does appear that VaporPenz was engaging in recreational THC sales prior to the legalization of such sales in California. Landon ultimately conceded the point. (TR, p. 19; 11/27/2023) In later testimony he indicated VaporPenz was acquired through the "acquisition" on a date he could not recall; he acknowledged that illicit THC sales by VaporPenz prior to 2018 led to clients for Infusion Factory's recreational sales when it started up. (TR, p. 95; 11/27/2023.)

Landon stated that in business, it is important to be accurate in representations, honest and transparent, and that the information he provides needs to be reliable. He knew that if people were relying on that information, it was his obligation to give them the "best available" correct information.

On January 1, 2018, Infusion Factory had one of the first type N infusion licenses in the state. Landon testified that he drafted with the State the first concepts of the shared facility license. (TR p. 34; 11/27/2023) An "S-license" is a shared facility designation, and an additional endorsement of the manufacturing license, although he stated it was its own distinct license. IF had the N license with the S endorsement. Significantly, as explained by Landon, the S license is added to the type N; "The California Department of Public Health cannabis division would assess the facility and then authorize [S-license] you to perform work as a shared facility." Basically, to allow other licensees to co-locate their

[19] While Mr. Rugani's name came up with some frequency, he was not called as a witness during the Arbitration hearing. Neither was Mr. Gonzalez.

licenses/manufacturing within the facility. (TR pp. 33-34; 11/27/2023) Landon appeared very knowledgeable in reference to the laws, licenses and permitting and related issues (e.g. city licenses, conditional use permits, business operating permits and all related laws and regulations)[20] As pertaining to the "shared facility" structure, he described himself as the "Godfather of that structure." (TR p. 49; 11/27/2023)[21] He testified the state license gave one overarching approval to participate in the cannabis stream of commerce, "allowed you to buy, sell, trade and move through the supply chain cannabis products." (TR p. 39; 11/27/2023)

The issue of licensing was a critical issue in the Arbitration. Landon conceded that at the time Infusion Factory had its S-license it would not be working with unlicensed customers. (TR p. 221; 11/29/20230) This tracks Foor's and Jordan's testimony, to the same effect. Landon stated that IF was working with "anyone that had a license..." (*Id.*) He stated that IF was allowed to do development work with anyone once they "put in the application we do development work for them until they were licensed." (TR p. 222; 11/29) Under the S-license, development work would be done at the IF facility. (*Id.*)

VaporPenz had never gotten a cannabis license from the state or its local jurisdiction.[22] In the 2016-2017 timeframe, Landon described doing all his work under VaporPenz, although ICON and IF were registered, but he stated they were predominantly "shelf" companies, with no business. (TR p. 90; 11/28/2023) After Prop 64 passed, Landon testified he was consulting with a state department and providing input to "make sure the industry would be set up on a healthy way." (*Id.* p. 101) He decided to take his companies off the shelf; Infusion Factory received a temporary manufacturing license "Medicinal Cannabis Products" (Ex. 317) with an effective date of January 1, 2018 issued by the State

[20] Landon detailed all compliance efforts and stated that IF never operated without a license. (TR pp. 235-248; 11/28)

[21] Landon noted that he had to make projections about what the "legal structure" would be of the companies, he determined to register different entities to support a singular operation ["...that's what we did registering companies to support that."](TR p 89; 11/28/2023) He gave thought to the dual business (ICON and IF) model.

[22] Exhibit 518 is a series of emails. One email is from Landon to Andy Foor relating to a "question to ckph last Tuesday" (Bates 000320) and commences with "Hello Vivian". Landon states in the email "We are a contract manufacturer working to make products for other licensees. We get daily calls from Unlicensed Brand Owners (UBOs) or former 215 companies that are wanting us to "assume their brand" and produce their products under our state license. The UBOs would market, sell and otherwise participate in the stream of commerce, would place orders for and sell products, but would never touch or receive the cannabis containing goods. [] Our understanding of the regulations have caused us to continuously decline these opportunities as the UBOs are non-licensees. After a site visit from CDPH Compliance & Inspection Chief Bruce and CDPH NorCal Inspection Supervisor Renee, it was specifically confirmed that "we are not permitted to engage in contracts regarding cannabis products with non-licensees". We have been towing [sic] the line on that official guidance and have been declining opportunity after opportunity." The email goes on to state "Unfortunately, almost all of our competitors are doing the exact opposite."

Department of Public Health, Manufactured Cannabis Safety Branch, . The address shown on the license is in Newark, Ca. Landon testified that at that time Infusion Factory (IF) was doing no business, "It was all being booked under VaporPenz." (*Id.* p. 102) Now that he had operating authorization from the state (*Id.* p. 104), in January of 2018, VaporPenz' lease was up, and he had been looking around California for an acceptable site "per the laws" to participate in cannabis. (*Id.* p. 103) Landon stated that he "assisted" Sacramento in the same way he had assisted the state and CDPH in creating regulations and in "going through all of our relevant processes with all the department. (*Id.* pp. 103-104) They had located an industrially zoned facility on Luther Drive in Sacramento for their operations, with a conditional use permit (CUP) in place, although Landon stated there was a CUP hearing on changing the land use to cannabis (*Id.* p. 105). He testified the CUP took "a year and a half" to resolve. (*Id.* p. 106) He stated that at the time of Jordan's investment the CUP was still pending. (*Id.*) He testified that he briefed Jordan on all of the progress. (*Id.* p. 107) There were numerous other departments to address. (*Id.* p. 105)

Landon was questioned on the email of June 12, 2018 (Ex 518), stating it was a request for clarification, because he was "always trying to get clarification about what was and wasn't allowed." (*Id.* p. 158; 11/27/2023). Ex. 518, Bates 00036 is an email from Andy Foor to the Department also seeking clarification of the issue, noting that unlicensed businesses who have "no plans to be licensed" are hearing from department employees that they do not require a license if they are not physically touching the products. Landon agreed with his email's contents, "That's what it states" (*Id.* p. 160; 11/27) and seemingly again confirming that the company did not work with unlicensed clients. As he stated, "We would service licensed clients." (*Id.*) He also alluded to the S-license.

Landon was asked about GBI working with unlicensed clients "to make an unlicensed client licensed" (*Id.* p. 161) and testified he did not know what GBI did or not do. He, however, testified that IF booked a normalized order with GBI and Andy and Jordan booked orders with "Sugar Stoned" through GBI, which was a licensed client. However, he also testified he was unaware Sugar Stoned was affiliated with GBI (PR pp. 223-224; 11/29/2023) He stated he felt GBI was a competitor to Infusion Factory (Id). Jordan testified that he did not see GBI as a "competitor" and that it did not offer manufacturing like IF (TR. p 189; 12/01) Despite that, Landon stated that GBI had products/brands that they would manufacture through Infusion Factory (*Id.*) He stated that these were "normalized customers". (*Id.*) The testimony as to GBI from Landon is contradictory in this regard; while he seems aware of GBI and that IF would manufacture GBI's brand products, he disclaims much information about GBI, shrugs off the meeting at the IF location with the Yourists and simply states that GBI was

"an account that was managed by Andy", while also stating that he was directly involved in managing leads and prospective customers. It strains credulity to suggest that Landon was not aware of GBI or that its products were being manufactured by IF. In other testimony it is seen that GBI is invoiced (Sugar Stoned). Foor testified Grapefruit (GBI) provided a different service than IF; they had their own extraction license. This would allow IF to manufacture their brands/products. Also, it is noted that Landon was asked about "Rainbow Dream", a product which he conceded "was a brand of GBI's at this juncture" and a client of IF. (TR p. 224; 11/29). This lends credence to the fact that Landon was aware GBI was having work (manufacture) done at IF. He did not know, however, that Rainbow Dreams was partially owned by Jordan, according to his testimony (*Id.*)

Landon stated he never authorized IF personnel to do "free work" for GBI. (*Id.*) He never authorized free packaging to be given to GBI and never authorized any IF personnel to give SOPs to GBI. (*Id.*) Landon testified that SOPs, "principally the same SOPS" that were sold to Cannabis Sativas (White Rabbit) were obtained by GBI. (TR p. 225; 11/29). He testified that he had "sold the entire SOP set" and cookbooks but it was sold as a "trade secret non exclusively", which meant he could sell it again and again. (*Id.*) He stated that he never sold it again, so "it was my most coveted trade secrets." (TR p. 228; 11/29) Landon found out that other SOP were given to GBI (Ex. 205) without his authorization. He received no compensation for those. He understood that Jordan solicited "our head chef" to "make a cartridge dosing and production SOP", and he solicited "Kristi" the heading of marketing at IF to make SOPs for tableting. (TR p. 227; 11/29). On this point, Jordan testified that the Holders Rights Agreement restricted his release of company confidential information as did the Consulting Agreement and the NDA. (TR p. 175; 12/01; *see* Exs. 244, 335, 346) Jordan denied having access to any of IF's SOPs. (*Id.* p. 179) He and Foor did have access to IF's in bound sale leads because these were generated from the website that he built. Jordan did note that GBI was owed its SOPs for the Rainbow Dreams product. (TR p. 93; 2/5/24) As Jordan testified the SOPs are owned by every customer and something they pay for, but the dosage calculations would be proprietary to IF. (*Id.*) Preproduction agreements signed by the customer state that the SOPs are owned by the customer, and which includes the ingredients. (*see* also TR p. 95; 2/5/24) As Jordan explained it, Rainbow Dreams was not a product designed by IF or Landon; GBI designed it and were entitled to their SOPs, but this did not include dosing calculations. (TR p. 96) Parenthetically the Rainbow Dreams preproduction agreements were never addressed in the documentary evidence, either as a "form" or as specifically relating to any production of product. Jordan testified that preproduction agreements were reviewed by Landon (TR p. 164; 2/5) However, one such agreement was produced on the Sugar Stoned project (Ex. 643). This is a "Pre-Services Project Proposal"

dated December 10, 2018. Of note, it is signed by Bradley Yourist, "CEO" and Andy Foor. "Parties" are listed as IF and Grapefruit Boulevard Investment, Inc. d.b.a. Sugar Stoned ("Company" or "Sugar Stoned.") Under "Infusion Factory Overview" it is stated that IF "offers legal license to license manufacturing services for a range of cannabis containing products. "Under "Client Overview" it is stated "Sugar Stoned is wholly owned by the Company [GBI] who is a licensed seller of cannabis and other product lines, with plans of servicing a range of clients and customers with multiple product lines. The Company is positioned to be a top tier licensed seller in the state and offers high quality compliant cannabis products. Company is currently developing supportive brands and products to include in their retail offerings." The "Scope" of the contract is stated: "Through exploratory conversations, meetings, and emails, INFA and Company have identified several areas of opportunity. Specifically, Company wishes to contract services from Infusion Factory manufacturing gummies with six skus [stock keeping units] of hybrid. ..." "Pre-Intake Review states, in part, that packaging and components for the Company's packaging stack is being designed, created and supplied to INFA... Compliance labels and branding for the Company's packaging is being supplied to INFA by the Company. A sample batch will be done for time trial testing and for variance." The agreement addresses SOPs and there is a section "Gummies with 6 SKUS 1 potency Hybrid", which states, in part that "The Company wishes to utilize the INFA fulfillment team to create Gummies. INFA shall intake current packaging and packaging SOPs for review for compliance. INFA Shall also provide two sample cycles consisting of ...A batch level Pre-Production sample run utilizing the SOPS for size, consistency and smell. "The agreement notes both parties shall review and sign Infa's extended mNDA. A $5,000 payment is reflected under the "Terms & Guiding Documents" section of the contract. Again, this document suggests that IF was aware of GBI at least as of December 2018. Jordan stated this was a "standard document" that all pre-production customers would have to sign. SOP validation is noted (TR p. 134; 2/5/24) Jordan outlined the procedure used. (*Id.* pp. 135-136)

Landon testified he never authorized any Infusion Factory employees to send potential Infusion Factory customers to Grapefruit. (TR p. 228; 11/29). He was not aware of any agreement between GBI and IF to that effect. He states that he first found out that "potential customers were being diverted to Grapefruit" in discovery investigation related to this litigation. (*Id.*)

The CEO of the company that purchased the White Rabbit SOP (Cannabis Sativa) called Landon in May of 2019 inquiring of a possible investment in IF (Ex. 334) (TR p. 229; 11/29) given the fact that the "factory had come online and he had interest in producing the IP "that he had purchased, and investing in IF. (*Id.* pp. 229-230). Other examples are noted in testimony.

Landon testified that he had met Andy Foor when he worked at X-Ignite, and Foor was head of sales. Landon was in marketing at that time. Prior to 2018 Landon realized the company needed someone in sales and offered Foor a position. He stated Foor was "well qualified" but "knows now" that Foor had no prior cannabis experience. Foor started in January of 2018. Landon was introduced to Kylae Jordan by Foor; Landon had told Foor that IF was looking for investors, and Foor told him Jordan could be such an investor. There was an initial phone call with Jordan in about February 2018, and Jordan's investment ($500k) in the company was made in May of 2018. Landon stated that he contemplated investors investing $2 million in the business.[23]

Landon stated that there were countless versions of the "investor dec" (TR p. 117; 11/28/2023) that Foor asked to share with his "buddy", whom Landon later learned was Jordan. In later testimony Landon stated there were "several variations" of the investor dec. (*Id.* pp. 121-122) Landon states that he had no subsequent conversations with Jordan about any investor dec. (*Id.* p. 119) and Jordan never raised the investor dec with him. He does not know what "version" of the investor dec was shown to Mr. Jordan, but he identified Ex. 531 as the "PowerPoint that we saw." (*Id*.)

After February 12, 2018, an investor discussion between Landon and Jordan was organized by Mr. Foor. (*Id.* p. 131) They discussed "the broad opportunity, what we were doing, where we were

[23]Exhibit 70 is a series of text communications between Landon and Andy Foor, and Landon states he is looking for a good sales manager. (Ex. 70 p. 1) Landon testified that in February of 2018 he was hunting for investors (TR p. 115; 11/28/2023) and in text communications with Foor (see Ex. 70 p. 3 of 3) and in conversation, Landon confirmed with Foor that the "investment hunt" was still open. Foor asked Landon to share the "investor dec" (Ex. 531) with his "buddy" (Jordan). Landon responded "Yes, absolutely. $500k would be a big help right now. Not everything we need but would give us the booster rocket we need for now." It must be noted that in other testimony addressed in this Interim Award, Landon stated he "never provided [] to investors" the exhibit (531) (TR p. 106; 11/27/ 2023). When asked if it was "provided to investors or not, by anybody", he testified "not by me." (*Id*.). He stated he does not recall asking Foor to send Ex. 531 to Jordan. Landon stated there were a "range of PowerPoint" on the company's internal Google drive and Foor "selected one of them." (*Id.* p. 117) Landon never discussed the PowerPoint with Jordan (*Id.* p. 121)

In terms of investment sought, Landon stated that in February 2018 he was looking for $2m "for this facility" to support the needs of the company (*Id* p. 116). He stated he had had numerous conversations with other investors. Other than "our family" he never got any more than Mr. Jordan (*Id.* p. 118) He stated that the original funding for VaporPenz came from himself and his parents. He assessed that over 2 years he would need about $2.5m of investment to "achieve this gross revenue trajectory" shown in the prospectus/investor dec; he stated that for 2018 $2m would be "required" to "kick off that trajectory." (*Id.* p. 122) The projections shown in Exhibit 531 and Ex. 597 do not tether the 2018 projections or the five-year projections to any specific investment amount or disclose that the projections are contingent on a certain level of investor investment. The only reference to investment dollars is seen at Ex. 531, p. 03264 which states "We are seeking great Investment Partners for a $2.5 Private Placement..." Yet, Landon testified that "...the gross revenue potential I indicated there [in the PowerPoint/prospectus] were based on certain assumptions of marketing and equipment and personnel and so on...." (*Id.* pp. 122-123; *see also* p. 151)

Kylae Jordan addressed this in his testimony; he had discussions with Landon wherein Landon said he was trying to attract between two and two and a half million dollars in investments. (TR p. 81; 12/01) If he acquired $2 million, this would change the revenue projections, and he would update projections based on investment received. As Jordan explained, he perceived the numbers on the investor deck were irrelevant to the numbers shown; if a $2 million investment was made it would change the numbers shown, and make them higher. (*Id.* p. 82).

going....” (*Id.*) He does not specifically recall discussing “pre-money” investment with Jordan, but states “...it was in generality the conversation we had many times.” (*Id*.) Landon testified that Jordan represented he had invested in other opportunities, had other businesses and “very invested in the cannabis space and he wanted to make additional investments.” (*Id.* p. 132) Jordan “active” involvement in the business was discussed; someone who wanted to participate in the business, but not on the initial phone call. (*Id.* p. 133). Landon stated that shortly before the close of the “round” Jordan and his attorney came to him and “mandated that he be employed as a consultant with the company”[24] (meaning ICON and IF “collectively”) (*Id.*) On February 16, 2018, (Ex. 26) Jordan texted Landon, thanking him for an informative phone call, and saying “...please send me anything else you have on hand currently that is investor related.”[25]

[24] In later testimony, Landon stated that even though Jordan “mandated” being a consultant, he was looking forward to his “contributions as our technology director.” (TR p. 162; 11/28/2023) Landon testified he and Jordan discussed Jordan’s expertise and abilities. (*Id*. p. 164) Landon testified that accounting systems were part of the discussion of Jordan’s abilities. (See also TR p. 272; 11/29) Landon stated it was discussed that “we needed systems for inbound leads, for handling sales prospects, sales process, corresponding operations and accounting of all of that activity.” (*Id.*) It is noted that accounting systems related to sales prospects, and the like and “accounting of all of that activity” does not suggest Jordan was in charge of the daily accounts or ledgers of the companies vis-à-vis monies in and out or normal accounting work, which was Linda Long’s purview. Otherwise, it would have been superfluous for the entities to have hired Gines. The Arbitrator rejects the suggestion that Jordan represented he had the skills to create an accounting software program (see TR p. 272; 11/29i) and failed to do so.

Landon testified that Jordan hired consultants at company expense to do the work (*Id.* pp. 164-165). The Arbitrator was not directed during the Phase 1 or in the briefs to any invoice or evidence showing that Jordan hired consultants to do his work or what that “work” was, although in testimony Jordan stated he hired Diane Apao, a computer programmer to assist in implementing software and programs into a website. (TR p. 122; 12/01). While Landon stated he objected to Jordan hiring consultants, no evidence of objection to the alleged hiring was presented. (TR p. 275; 11/29) Jordan stated that Landon was aware of Apao’s consulting and expressed no concerns. (TR p. 122; 12/01) Certainly Gines did not say Jordan hired him, nor did Crouch or Merzwinski. The bulk of testimony from various witnesses suggests Jordan was not in charge of any tax related “accounting”.

Landon further testified that his assessment (chart of accounts) (TR p. 175; 11/28/2023), was an internal assessment. (*Id.*) COGS was not part of the assessment (*Id.* p. 178) and there was no profit and loss (*Id.*). Although there was testimony regarding Jordan’s “agreement” to create underlying financial records (*Id.* p. 179) there is no credible evidence that Jordan was involved in any financial records or tax accounting thereof. Again, Landon stated that Jordan has access to the “entire drive”, “all the accounting, bank statements and all the relevant financial information that was available at that time.” (TR p. 179; 11/28) This is a disputed material fact in the testimony.

[25] Landon testified that Jordan was provided with “all information” he asked for; the inquiry in Ex. 26 requested all “investor related materials”, which arguably would have included the various iterations of the investor dec documents, and any information relating to VaporPenz sales. Landon testified that he provided further documents that Helene Pretsky asked for (*Id.* pp. 134-135) Nonetheless, Landon testified that he was never made aware of documents that Jordan or his attorney wanted. (*Id.* p. 135) Landon further stated that he discussed tax returns, NDA, copies of the lease, etc. (*Id.*) and he provided “everything we had on that.” (*Id.*) VaporPenz tax returns were made available; and it was discussed the “shelf” status of ICON and IF, so there were no tax filings for them. Jordan did not “have an issue” with that. (*Id.* p. 136) Landon testified he told Jordan “all the revenue was in VaporPenz” (*Id.*) He further testified that “prior to his investment” Jordan was afforded access to “all of the documents they request and bank records and all of those items” which were in a consolidated directory (*Id.* p. 147) After his investment, Jordan was given “full administrative access” to the entire directory, “everything.” (*Id.*) According to Landon this occurred on May 14, 2018 (Ex. 3) (TR p. 159; 11/28/2023)

Landon testified he told Jordan about all the employees in the company. Landon denies telling Jordan that Linda was an accountant or a certified bookkeeper, or had any significant experience in accounting or finance. (*Id.* p. 168) In later testimony Landon alluded to Linda as competent and prior accountants (Moore Financial Services) (*Id.* p 185) for VaporPenz. (*Id.* p. 184). Unfortunately, Moore would not do business with a cannabis entity although it had been doing business with VaporPenz. (*Id.* p. 186) Bregante was engaged in 2019. (*Id.* p. 188) Landon was aware that Moore would not do cannabis accounting work; and it appears that he was aware of that at the time of Jordan's investment in IF. It appears that ICON and the entities were without accounting assistance for over 20 months. (TR p. 266; 11/29)

Landon denied that ICON and IF were insolvent in February of 2018 through May of 2018, and stated that they paid their bills. He stated that IF did not have bank statements, however, and it was doing sales before Jordan's May investment. Deposits on those sales, he explained, were "cash" or "utilizing expenses through any of the accounts[26] that we had." (TR, p. 101; 11/27/2023). When asked if he disclosed "all that to Mr. Jordan", Landon stated that he "disclosed every piece of information he requested." (TR, p. 102; 11/27/2023) But, as the witness concedes, he did not disclose to Jordan the amount of sales that were received in cash in January, February, March or April of 2018. (TR p. 102; 11/27/2023)

In December 2017, Landon stated that his companies had obtained their lease for their facility. On March 18, 2018, (Ex. 639) Landon emailed Jordan. He stated that they had just moved up the production equipment and other materials from VaporPenz up to Sacramento to start IF. Although IF was authorized by the State from January 1, 2018, to commence work in the stream of commerce, it took time to set up the facility. City permitting was addressed; he stated he was one of the advisors to the City. He was aware of the City's law and regulations. He also noted that the City of Sacramento cannabis chief Joe Devlin was aware of "our activities" and authorized them. Landon testified IF had an operating authorization "from the powers that be" which was "preemptive in all instances." (TR p. 54; 11/27/2023) He was vague on the nature of the municipal permitting process, noting that permits are "sometimes [] reflected in a permit, sometimes is reflected in an email."(TR, p. 44; 11/27/2023) Landon states he does not remember when he started doing cannabis work in the facility (TR p. 43;11/27/2023) He does indicate that they "immediately set up two production environments". He described these as ready in the

[26] Landon testified that at the outset, IF did not have its own bank accounts (and hence no records of such) because there were no accounts available. No FDIC insured banks would touch cannabis anywhere. (TR p. 71; 11/28/2023)

first few days of January, and later testified that production from these stated in January "at some point." (TR, p. 48; 11/27/2023) Some of the production clients he was manufacturing for had been with VaporPenz. As to the issue of the date of a "first sale", Landon could not say when Infusion Factory's first sale took place; he could not recall if it was in 2018, 2017 or 2016. (TR p. 90; 11/27/2023) However, he thought for "no reason" it was not possible that IF was doing sales in 2017. (*Id.* p. 91) When asked if he was doing "illicit sales" under Infusion Factory prior to 2018, Landon testified that he did not recall. (*Id.*)[27]

A final permit from the city was described as an "accumulation" of every single department signing off on its inspections, and these do not all happen on the same day. He described having a provisional permit from the city to allow initial manufacturing, in early 2018 and described that all permits were "provisional" with differing expiration periods that changed over time. One requirement of obtaining a cannabis permit was payment of taxes. Landon admitted one had to pay local (City), state and federal taxes or else the company could be subject to revocation or suspension. Among other numerous requirements it was important for IF to pay its taxes or risk penalties. Landon testified that IF was never penalized or suspended by the City; that he had continuous operating authorization from the city with one one-week exception. While he notes no suspensions, he stated he did not know how many violations IF had ["... violations are a dime a dozen."] (TR, p. 53; 11/27/2023) He noted that every department within the City had their own code books and violations and it was his job to continuously perform corrective actions and attempt to come into compliance with every single one. He acknowledged violations but not suspensions. He acknowledged expired permits but maintained that he always had operating authorization from either the Chief or the assistant chief of cannabis.[28] The witness was then

[27] Exhibit 563 was shown to Landon Long, and it was represented that counsel obtained it from subpoenas of his accountants; he could not identify the document's preparation, although it is noted as having been printed with a "file name: VPZ to INFA CONVERSION." The exhibit is in evidence and the Arbitrator considers it for its weight; the document appears to record 2015, 2016 and 2017 sales for each month of each year, for VaporPenz and Infusion Factory. In 2015 IF is shown as having over $192,000 in sales, in 2016 Infusion Factory sales equal $199,237.30 and in 2017, IF sales were in excess of $448,600. Landon was asked if this document shows that they were tracking illicit sales of THC products by Infusion Factory up to the time THC became legalized in 2018; Landon testified "We were not. That's not what this document is." (TR p. 93; 11/272023.) Landon stated he could not explain why Infusion Factory shows on the document for 2015 through 2017, when no sales were supposedly occurring. Indeed, Landon testified that Infusion Factory wasn't even founded or in concept at those times. (TR p. 94; 11/27/2023) Landon could simply not explain the document, who produced it or where it came from (*Id.* at p. 96).

[28] During questioning, Ex. 516 was addressed (a letter dated October 3, 2023, from the Solomon Ward firm and received in evidence); box 24 on page 5 represents respondents' license from the City never expired and was never suspended. It is also noted (box 2) that ICON bylaws, resolutions and minutes of meeting 2017 through "current" do not exist ("No documents exist.")

presented with an email with multiple "dates sent" (Ex. 554; Bates #Jordan02806) from the City of Sacramento Revenue Division stating, "The e-mail serves as notice that we have not received the business tax payment for INFUSION FACTORY LLC and your certificate is expired as of DATE EXPIRED." The dates the email was sent are reflected on the exhibit and span from 6/22/2021, and multiple months thereafter until 1/17/2023. Various delinquency notices are part of this exhibit. (*see, Id.* Bates #s 3807-3822). Landon states that these were problems "with the tax office not the cannabis office." (TR p. 58; 11/27/2023) Yet, there is evidence of an email dated August 17, 2020 from Landon to David Crouch of Bregante (CPA) in which Landon states "The City of Sac Cannabis Office will not release/issue our 2020/2021 Business Operating Permit until our INFA Balance Sheet, PnL and/or Tax Filings are submitted. We are operating without a city cannabis operating permit at this time, which expired on 05.20.20." It is further noted that "Shared members in limbo: Our shared facility members licenses have not and will not be renewed until the INFA submission are made and cleared." Among other items in this email, it is noted that Landon received one notice from the IRS "over a year ago stating that I owe them +/- $100k. As we have discussed this is due to the INFA/ICON revenue overstatement filed for 2018." Landon conceded his businesses had not filed federal taxes for 2018 or 2019 as of August 2020. He further testified that no finalized profit and loss statements, balance sheets, or income statements were prepared for the businesses until Jennifer Jiminez was retained in 2023.

Landon has always been CEO of ICON Holding Inc. Linda, his mother, was the secretary of the company. ICON never entered any bylaws (TR, pp. 67-68; 11/27/2023; *see* also Fn. 28, *supra*.) ICON never issued minutes of corporate meetings, no corporate resolutions have been entered, and he did not know if there had been any waivers of meetings. Landon testified he did not recall ever giving any shareholders notice of a meeting planned by the corporation. Landon appointed himself CEO of IF (he was also President of ICON). It was not memorialized in any documents, or "anything" to his knowledge. He testified he did not know of any documents appointing a board of directors. There have been no amendments to the Articles of Incorporation since the amended and restated Articles of Incorporation of ICON Holdings. Jordan testified that he had no objection to decision making "happening in person." (TR p. 156; 12/01) He never made a demand that IF or ICON hold formal meetings or issue meeting minutes. (*Id.*) This of course begs the question whether a shareholder must demand that the corporation observe corporate formalities or somehow waives the right to assert failure to observe them. No authority is presented, or argument is made in the briefs to this effect, and the arbitrator does not find any basis in the evidence to suggest this issue is seriously espoused.

The testimony turned to the accounting services sought for ICON and IF; the first accounting professionals retained were Ed Gines of Strategic FCOs and David Crouch of Bregante around September of 2019. Before that, from January of 2018 to September of 2019 no professionals in accounting had been retained. As Landon noted, their "historical" accountant opted out of cannabis work. He and his mother were not able to create any financial statements, so the businesses were operating without accounting professionals "looking after it". After Gines and Bregante (Crouch) ended their services, the companies turned to Mr. Ken Mierzwinski but that ended in August of 2021. In January 2023, according to Landon, Jennifer Jiminez was provided bank records, credit card statements and journal entries and was asked to assist to prepare taxes. Ms. Jiminez' testimony was to the contrary in terms of what she was provided. Nonetheless, Landon testified that he and Linda spent eight to ten hours a day for 3 months to provide each bank statement, credit card statement, every available cash record, and made sure that it was entered inside the new ledger. (TR p. 226; 11/28).[29]

Landon stated that "Bregante and Ed [Gines] burned years, months trying to get things right and didn't." (TR p. 226, 11/28) He indicated he never got a chart of accounts from Bregante. (TR p. 276; 11/28) Landon conceded he had never done a "cannabis specific chart of accounts that would be compliant with 2018 regulations." (*Id.*) He stated he hired bookkeepers to do that, (*Id.*) but it appears that bookkeepers, other than Linda, were not hired for over 20 months since the start of ICON.

Landon testified that he believed Ms. Jiminez had cannabis experience. That is contrary to Jiminez' deposition testimony (Depo p. 30, p. 36) where she stated she had no prior cannabis experience. Landon further stated that they kept nothing from Jiminez, providing her with "everything" that was made available to them. (TR p. 234; 11/28)

Testimony was elicited regarding a McClaren[30] vehicle allegedly purchased by Landon. Landon testified that he never purchased a McLaren; that his best friend Isaac Harrosh was the son of the late Joe Harrosh, a "billionaire", found a McLaren for Landon "to drive." (TR p. 251; 11/28) Landon testified that Isaac paid for a McClaren vehicle (approximately $245,000) for Landon to drive. Landon stated that

[29]It is noted by the Arbitrator that while Landon testified that all the financial information was "on the drive" at ICON/IF for Jordan to access for such financial information, it apparent that any such information was not in a form that one might easily profits, expenses, losses and the like. By Landon's admission he and Linda took 3 months working eight to ten hour days to get the information for Jiminez. Even if one believes that Jordan had access to such information it again strain credulity that he would have been able to comprehend it. Landon testified "I don't know his [Jordan's] skill and ability," (TR p. 276; 11/29) but the overarching point is the documents supposedly available to Jordan, and other employee and shareholders such as Foor, were not in a form that an investor or shareholder would be able to determine the financial condition of the companies.

[30] Although no testimony was received regarding what a "McLaren" is, McLaren Automotive is a British luxury automotive manufacturer, selling exotic sports cars. Wikipedia.

when Isaac asked for the vehicle back, he gave it back. (Id p. 253; 11/28) He testified that he paid Isaac nothing for the loan of the vehicle and paid him nothing whatsoever. Isaac did not appear at the hearing to testify and no declaration or deposition was proffered from Isaac. Parenthetically, Linda Long was aware Landon was driving a McLaren in 2019 or 2020, after the first one "burned up." (TR p. 55; 12/01).

An extraordinary amount of testimony centered on two exhibits—Ex. 597, a seven foot blow up of a document that Landon Long prepared[31], and Exhibit 531, a "prospectus" or PowerPoint which Landon stated he "never provided [] to investors." (TR p. 106; 11/27/ 2023). When asked if it was "provided to investors or not, by anybody", he testified "not by me." (*Id.*) He stated he does not recall asking Foor to send Ex. 531 to Jordan. As is noted below, Mr. Foor testified that Landon gave the document to him to share with Jordan. In later testimony, Landon testified the prospectus/PowerPoint was "provided to him [Jordan] at some point." (*Id.* p. 112)

In any event, Landon testified that he prepared the numbers/projections in Ex. 531 (Bates #s 03265-02366).[32] He was asked "...Is it important to give a potential investor accurate information?" Answer "Yes". (*Id.* p. 108) He understood he had an obligation to fully disclose all material information (*Id.*) "Yes, I disclosed every document that he requested." When asked if he had an obligation to actually disclose all the information whether Jordan asked for it or not, the witness evaded the answer (*Id.* p. 109) Landon testified that, as to Exhibit 531, he had no idea "when this was provided or who provided it to him or when this was drafted..." (*Id.* at pp. 109-110) Addressing Ex. 531 (Bates 03266), "2018 Projections", current customer revenue is shown at $2,981,122 on the document. Landon stated, "I don't know what that cell is." (*Id.* p. 110) Yet, he testified that he "prepared these numbers" seen at Bates 3265 from which Bates 3266 appears to have been crafted (NB: while the membership revenue of $244,000 appears on both sheets, the current customer revenue on Bates 03265 is shown at $2,747,918 projected for 2018 and on page 03266 the same category shows a different number of $2,981,122; similarly the taxes projected on page 03265 and 03266 are different as well (TR pp. 123-124; 11/27/2023)). Landon testified that 03265 contained a hyperlink "for full pro forma" but if the document was provided in paper form that link obviously would not be available. (*Id.* pp. 126-127) VaporPenz finances or revenue is not mentioned. However, Landon stated that customers of VaporPenz came over to Infusion Factory (TR p.

[31] Landon was asked when he created the chart (Ex. 597) and testified it could "not have been finalized" before December of 2021; of course, Ex. 531, shown to Jordan in February of 2018, contains a "FIVE YEAR PROJECTIONS" page. (03265)

[32] It is noted that Ex. 247 was created by Landon (TR p. 6; 11/30) and contains data from which Ex. 597 was created (see, e.g., p. 2, ICON002664) Landon stated he started creating this in November of 2020, and it was never given to Jordan prior to his investment (TR p. 6; 11/30). A comparison of the

5; 11/30) and it was not a secret (*Id.* p. 6). He testified that the inclusion of VaporPenz into Icon and IF was disclosed to Jordan before his purchase. (*Id.*) Nonetheless, Jordan testified that the Longs represented to him in discussions that on January 1, 2018, IF had customers and they were already doing production. (TR p 167; 2/5/2024)

The income (current customer revenue) shown on Ex. 531, p. 03266 is $74,000 for January 2018; however, looking at Ex. 597, the real revenue reflected is approximately $35,580, less than half of the amount seen in Ex. 531 (*see* also Ex. 247 p. 2). Landon testified "That's what it says." Landon testified that these numbers for January 2018 were actually payment receipts from VaporPenz (TR p. 109; 11/28/2023), which was "consumed" by ICON in the purchase agreement; all of VaporPenz, assets and equipment, transferred to ICON (the management company, not IF). (*Id.*)

The Arbitrator notes the question "And what gave you [Landon] an understanding of how Infusion Factory would do once it gained all of its entitlements? Where did you get your information from? The answer: "We pulled information from everywhere we possibly could to get some gauge on where the industry was going to go. And it was speculative by everyone..." (TR p. 114; 11/28/2023) The Arbitrator would note that the word "speculative" is not seen in Ex. 531, although the word "projections" may suggest future outcomes, based on more than guesswork and generally build on forecasting previously done. Parenthetically, in business it is commonly understood that a financial projection shows the expected revenues, expenses, and cash flows of a business over a forecast period, often based on existing data. This forecast may be used internally as the basis for a more detailed budget, or it may be presented to outsiders.

In February 2018, Ex. 531, Bates 03266 shows current customer revenue of $125,550 whereas Ex. 597, which purports to show actual receivables reflects about $54,000. Each of the entries until May are disparate between Ex. 531 and Ex. 597. This is best illustrated in Ex. 640, in evidence and Landon testified that there were differences, with lower "real" numbers, which Landon stated was commensurate with the resources we had available to deploy. (*Id.* p. 117)[33] Ex. 531, at Bates 03262 represented a list of "Customers"; Ex. 597 reflected customers as well and questioning center, in part on the facts that Dr.

[33] In the 2016-2017 period, Landon states that "gray market" had a change in definition. He defined "gray" market as having "some element of formality or legality". Up to 2015, he testified, MAUCRSA regulation were not "as well defined as recreational became to be." (TR. p. 92; 11/28/2023) Landon's testimony suggested that despite the illegality the industry continued to grow. (*Id*. p. 93) As time progressed, cannabis regulations were being developed and "were starting to launch" (*Id.* p. 93) He was involved in that legislative process, doing work at the state capital (*Id.* pp. 94-97) Pre-2018 (2016-2017 time frame) he was doing work with cannabis, developing their own products and brands, "which we did successfully." (*Id.* p. 98) Once Prop 64 became law, "it goes down into the departments for them to write regulations and statutes to support the laws..." (*Id.* p. 99)

Robb was listed as a customer in Ex. 531 (Eagles Brand by Dr. Robb) which was disseminated to Jordan in February of 2018, yet on Ex. 597, Dr. Robb's first sale was recorded in June of 2018. Landon testified "we may have done work months prior" and been paid in June; but Landon conceded revenue from Dr. Robb was not recognized until June and no sales transpired in February of 2018 (*Id.* p. 127; 11/27/2023) Similarly, Dr. Kerklaan was listed as a Customer in Ex. 531 and Ex. 597 shows revenue from Dr. Kerklaan in January 2018 and March and April but no sales thereafter. Indeed, Landon testified that Dr. Kerklaan was no longer a customer as of April of 2018. (*Id.* p. 128) Similar testimony was elicited as to many of the listed customers on Ex. 597, reflecting that sales did not occur until, in many cases, later in 2018 or 2019. Other representations in the Exhibit (531) were addressed; at Bates 03267, Landon was asked about the represented structure. Under "Infusion Factory" it is noted, in part, "Cannabis Accounting w/ 280E Taxation" and, below the heading, "Icon Streamlines Accounting, Governance and Resources into Operating Companies". (*Id.* p. 133) On Exhibit 597, in January of 2018 four receipts of sales are recorded from Dr. Kerklaan, Gold Coast Gardens, Treatwell, and Wunderfruit and the total sales shown are $35,581.73. Dr. Kerklaan's last sale was in April of 2018. Landon believes all sales are reflected in the document. Parenthetically, Dr. Kerklaan had been a client of VaporPenz.[34] This issue of revenue between VaporPenz and/or IF became one of contention, with Landon stating, in certain testimony, that IF had no income before May or 2018 and then conceding there was income (*see* e.g. Ex. 597). Landon conceded the January 2018 $35,581 figure was "a good approximation" of what IF earned that month. (TR p. 251; 11/29/2023) He then conceded the succeeding months were also good approximations of revenue by the "combined entities." (*Id.* pp. 251-252). But the prospectus makes no such distinction. Landon could not say how much of the January 2018 sales seen in the prospectus were attributable to VaporPenz. (*Id.*) He gave the same answer as to February, March, April and May. The following testimony is illustrative: Q. So if you don't know, how is an investor going to know? Answer: I don't know. (TR. p. 253; 11/29) Landon testified the numbers in Ex. 597 were "projections" ; when asked about January of 2018, which had already passed, Landon stated he did not know when the projection was made. (TR p. 256; 11/29) He said the same as to the months seen on the prospectus (*Id.*) Landon later testified the "projections" were predicated on a $2 million investment. Despite Foor stating

[34]It is noted that the prospectus never tethers the projections to a certain amount of investor dollars. While it notes (Bates 03264) that "We are seeking great Investment Partners for a $2.5M Private Placement Offering a combination of Equity, Debt, Financing and Cross-Partnership $500K minimum investment." It must also be noted that the "FIVE YEAR PROJECTIONS" (Bates 03265) seems to address "Phased Expansions". There is no suggestion that the numbers projected would change if, say, $2m was not raised in the first year.

that Landon ok'd providing the prospectus to Jordan, Landon stated that he did not provide it to Jordan, did not discuss it with him, and did not meet with Jordan about it. (TR p. 257; 11/29) He stated he did not know when it was presented. (*Id.*) Landon stated he saw no disclosure in the prospectus as to how the sales projections were calculated. (*Id.* pp. 257-258) The witness alluded to the "hyperlink" *see* in Ex. 531 at p. 03265; the Arbitrator was not presented any documents purporting to be the hyperlinked materials and such materials were not moved into evidence. (*See*, e.g., TR pp. 260-261; 11/29) As is noted herein, Landon did not recall in deposition testimony whether such hyperlinked documents existed. (*Id.* p. 261) In a deposition response, Landon stated he "...didn't provide any back end because we never provided any back end calculations." (TR p. 262; 11/29). Reference is made to a February 16, 2018 email (Ex 523) from Jordan to Landon referencing an "informative phone call" and a related email (Ex. 524) from Jordan to Landon dated Feb. 20, 2018 asking about the "spreadsheet"; it is stated "The spreadsheet, Is the first year listed accurate and already happened? Or is that based off last year moving forward? .... I was just recalling that I don't know where the projection originated from." (p. Jordan 01713, Ex 524). Landon testified that Jordan "had access to the spreadsheet" and stated that it was one of the "hyperlinked" documents in the prospectus. (TR p. 272; 11/29) Again, no such documents were entered into evidence as such and Landon testified he had produced "all the documents" he had in this action. Landon stated the hyperlink included bank statements, but no bank statement would be evident in any alleged hyperlinked materials because IF had no bank statements in 2018 or 2019. (TR p. 19; 11/30)

The prospectus/PowerPoint was addressed in depth, as were certain terms including "Membership Revenue" which Landon defined. He testified that "We provided one of two things. Services and manufacturing and membership where we had the shared facility and that would be for fees related [to] people locating their licenses in our facility." (*Id.* p. 118) On that topic, Landon stated that in doing his projections of sales, as stated in the PowerPoint/prospectus, he did not consider that the structure he had set up for the share license was cost prohibitive for potential customers. (TR p. 273; 11/29) He did not recall how many potential customers would be able to afford it. (Id). In addressing this in later testimony on re-direct examination, Landon testified that there were three different tiers of membership "to make it as affordable and attainable as possible." (TR p. 9; 11/30) Landon stated that there was no financial advantage to IF by sending customers to GBI (*Id.* p. 10) This ignores the fact that unlicensed "customers" would not be permitted to work with Infusion Factory under the structure. As Mr. Foor testified some potential customers viewed the structure as difficult; Landon had a "hard rule" that IF would only work "license to license." (*See*, e.g., Ex. 518) That rule never changed, according to

all the witnesses. Landon chose a licensing "path" for IF that required a shared license (S-license) as an alternative licensing path for prospective customers.[35]

In any event, it is apparent that the actual revenue and the stated number in Ex. 531 were far different, with the actual numbers being significantly lower, even as to months (e.g January) where the numbers should have been known. VaporPenz revenue is not directly addressed or disclosed in the documents, although it appears to be the bulk of initial income into ICON was generated there.[36] It is noted that the numbers are "to the dollar" on the prospectus; as previously noted, Landon never discussed these numbers with Jordan, maintaining that he never provided it or discussed it. Taxes, both state and municipal, are listed (Bates 3265) at $478,407; Landon did not "remember the origination of that." (TR p. 120, 11/27/2023) He conceded there was no accountant at the time helping the companies at all. When asked if the numbers on the projection were pure speculation, Landon stated "It was a multi-varied analysis but we can call them projections." (TR, p. 121; 11/27/2023) The Arbitrator will not address each number on the projections in the Exhibits on which Landon was examined for the sake of brevity. In deposition testimony Landon stated that he did not "recall at this juncture in time" whether there were any such documents. (TR p. 261; 11/29)

Although Jordan invested $500K, the evidence shows $492,500 for the investment into ICON, which accounted for certain costs agreed to by the parties. (*Id.* pp. 136-137) As Landon acknowledged, ICON received its part of the deal from Jordan.[37] Jordan was supposed to have received his stock

[35] Jordan testified "Every customer had to have a license, or they would be part of the S-license if they were doing copacking inside." (TR p. 138; 2/5/24)

[36] As is noted in this Interim Award, VaporPenz is shown as part of the "business structure "on Ex. 531 (p. 03267), and it is stated that "Icon to own VaporPenz, CheckPoint, Infusion Factory & All Non-Cannabis Equities. Icon Streamlines Accounting, Governance and Resources into Operating Companies." VaporPenz, on the document, is, presumably, doing "**All Physical Products**", while IF is listed as "**All Cannabis Products**".

[37]In questioning, Ex. 630 was addressed, which are Wells Fargo Bank checking statements from ICON Holdings, the first being in May of 2018; Bates 2987-2988 of the exhibits shows deposits and credits of $493,000. On May 24, Jordan's deposit is shown, and on the same day $13,000 was transferred to VaporPenz, which supposedly was acquired/wrapped into ICON and not doing business. Landon stated that VaporPenz "still had expenses that still needed to be paid." (TR p. 165; 11/27/2023) Landon does not recall if he told Jordan that part of his investment was being used to pay off the debts of VaporPenz. However, on direct examination (TR p. 62; 11/28/2023) Landon testified that the liabilities for VaporPenz were disclosed to Jordan prior to his investment (*Id.*) He testified that it was Jordan and his attorney Helene Pretsky who required Vapor Penz to be wrapped up into ICON. As Landon testified, Jordan knew about VaporPenz and its operation prior to investing. (*Id.* p. 68) Jordan's testimony is to the contrary; he testified that he understood VaporPenz had wound down and their debt would be paid by IF in the future (TR p. 178; 2/5/2024) He testified he understood his investment was to be used for the expansion of IF; "At no time did we ever talk about me paying for previous debt..." (*Id.*) Landon stated that Jordan's investment money went to operational expenses, build-out equipment, Phase 2 permits and other costs and reserves. (TR p. 6; 11/29/2023). "Jordan further stated that his money was used on costs and expenses (e.g., reimbursement of Linda Long's expenses incurred) that he never was never informed of or agreed to."

certificates immediately after, but he did not.[38] Stock certificates were not provided by counsel (Tyler McQuillan) until October of 2018. (*Id.* p. 138) These were signed by Landon and Linda and dated October 10, 2018. This information was not provided to Jordan until October of 2023, in discovery in this arbitration. (*Id.* p. 139) Jordan had previously asked for his stock certificates. (*Id.* p. 140) He was never provided them, even up to the hearing of the arbitration. Landon testified that (Ex. 342) the stock certificates of Jordan for his ICON shares were "found" by Linda after the lease was terminated, and Linda was going through boxes for discovery production in this litigation. (TR. pp. 254-255; 11/28) Before the lease terminated, the certificates had been stored in the "left safe" which contained "historical samples, important paperwork...[s]ometimes bulk cash that didn't belong in the right safe." (TR p. 255; 11/28) This seems to contradict testimony by Landon that Jordan and others had "full access" to all financial documentation or other trade secret information. Only he and Linda had access to the safe. Landon testified that Jordan never asked for a copy of his stock certificates prior to the litigation. (TR p. 256; 11/28) Landon has never denied Jordan's investor status in ICON (*Id.*)

The issue of access to IF's and ICON's records is contested with Landon stating that Jordan and Foor had essentially "naked" (full) access and both Foor and Jordan stating they did not. Landon testified that he did not restrict Foor's access to the records of IF until the point of termination in December of 2020. (TR p. 234; 11/29) Landon testified that at the time that the prospectus ("investment documents") were given to Jordan, Foor had "full, open and complete" access to IF's records. (*Id.* at p. 235.) Jordan's testimony is to the contrary.

And, again, Landon testified that he does not recall any documentation showing his appointment as President or his mother as Secretary, or any board of directors' authorization to issue stock certificates or take any corporate action. (*Id.* p. 143).

The cross-examination addressed the counterclaim filed in the arbitration. (Ex 512) Paragraph 68 alleges that in June of 2019, Jordan diverted Cannabis Sativa Inc (CBDAS) to GBI, that CBDS is "a historical customer of Infusion dating back to before the employment of Foor and Jordan" and that CBDS had purchased the SOPs, formulas, brands and trade secrets for the production of tablets and infused breath sprays under the brand name White Rabbit." Landon testified that CBDS was a customer of VaporPenz. Such historical sales information was not provided to Jordan, Landon stating "It was VaporPenz, not Infusion" (*Id.* p. 177) but it bears noting that Landon noted that VaporPenz was acquired

[38] Landon stated that Jordan's investment money went to operational expenses, build-out equipment, Phase 2 permits and other costs and reserves. (TR p. 6; 11/29/2023) Jordan contends it was represented by Landon that his monies would be used to expand the business through the purchase of new machinery which would increase capacity and in the hiring of employees, not paying off debts.

by ICON, and is actually shown as part of the structure of ICON in the "prospectus"[39] (Ex. 531, Bates 03267). Yet, Landon stated that CBDS was not an historical customer of Infusion, as alleged in the counterclaim. He noted that CBDS had officially and previously purchased from VaporPenz (which was "assumed" by ICON) the SOPs, formulas, brands, and trade secrets under the brand name "White Rabbit." (*Id.* p. 178-179) Landon testified that Jordan had an undisclosed employment with GBI and he believed that Jordan was diverting customers to GBI for GBI's benefit or Jordan's benefit. Landon agreed that GBI was a customer of Infusion Factory in December of 2018, but testified immediately thereafter "GBI as far as I was aware was not a customer." (*Id.* p. 180) This testimony was inconsistent, and Landon stated thereafter that he did not recall the chronology of that. "Andy and Kylae was handling those sales", again suggesting GBI was involved in sales with IF. Ex. 590 is an email dated February 25, 2019, from Landon to Jordan asking for a list/ spreadsheet of all new inquiries/ new customer pursuits that have come into Infusion Factory in the last 90 days. Ex. 590, Bates 000366 reflects that Jordan noted Grapefruit Boulevard Street Investment dba Sugar Stoned on the new client list he and Foor were working on, along with Daniel Yourist's name and email address. First contact was noted as December 2018.[40] Ex. 621, an email from Jordan on March 1, 2019, informed Landon that GBI was going to be doing an Altoids, two flavor and start preproduction in two to three weeks. (*Id.* pp. 183-185; 11/27/2023) Landon was asked about a meeting with the Yourists (owners of GBI) at the IF facility in April of 2019; he "said hello to them in the lobby for less than five minutes." He stated they were present to "meet with Andy Foor." He could have sat in on that meeting, but he had other things to attend to. He trusted Any and Kylae to do the sale. At the least this would suggest he knew of GBI. He stated there were just "general hellos" in that 5-minute meeting, and he did not know who they were. None of this persuades

[39] Landon testified that despite ICON absorbing/acquiring VaporPenz monies were transferred to VaporPenz account because VaporPenz still had preexisting expenses, including "all of our payroll, all prior expenses, and in that account and the payment standard, expenses are still over at VaporPenz." (TR. p. 4, 11/29) He stated that "we still had payroll over at VaporPenz because we hadn't established a payroll account for Icon." That account was finally established in 2018 (*Id.*) (See, e.g., Exs. 204, 205) However, it is noted that (Ex. 244 "Master Stack") the document, dated January 1, 2018, assigns Landon's interest in VaporPenz to ICON, before Jordan's introduction to IF. Landon had testified that prior to Jordan's investment IF had no sales and prior to Jordan's investment VaporPenz had all sales (TR p. 245; 11/29). In deposition testimony, he stated that IF started operating in January 2018. (*Id.*) Contrary to Landon's testimony he had stated in deposition there was "revenue" in IF as of January. He later testified that all sales were "booked in Infusion Factory" (TR p. 249; 11/29). These are shown in Ex. 597, the "big board".

[40] Jordan met Brad Yourist through a meet-up group in Los Angeles interested in the cannabis industry. (TR pp. 8-9; 2/5/2024) He was introduced to Sugar Stoned through Brad Yourist. At the meet-up event Sugar Stoned was demonstrating its "gummy" product. That was Jordan first introduction to Sugar Stoned. He understood Sugar Stoned was not licensed, but were acquired by GBI for IP licensing so they could have their product made at Infusion Factory. (*Id.* p. 10) Sugar Stoned was a gummy brand that IF produced. (*See*, Ex. 160 p. 323) In the email it was noted that payment coming into ICON could not reference "cannabis names"; as described by Jordan, Landon said "Sugar Stoned" would trigger the bank "so it needed to be Grapefruit Boulevard who was representing them." This was in December of 2018.

the Arbitrator that Landon was not aware of GBI as an entity, or its status as a customer. Other emails were addressed as well. Ex. 553 appears to be a text, from Landon to Andy, inquiring about the licensee name for Sugar Stoned "distro"; in response it is stated that Kylae is getting confirmation, and reference is then made to Grapefruit. This did not refresh Landon's recall that Grapefruit was doing business with IF in May of 2019. Turning to Ex. 597, the chart shows that Grapefruit did over $28,900 in sales with IF in August 2019. Landon stated, "I don't know which client it was for." (*Id.* p. 188) He later testified that the $29,000 payment by GBI for "normal manufacturing for a normal client." (*Id.* p. 190) Sugar Stoned, a GBI brand, did over $11,000 in sales in February of 2019. (*Id.* p. 189) Landon testified IF got revenue from GBI. (*Id.* p. 190)

The issue of GBI and its relationship to Jordan and IF is one of the central issues in dispute in the case; Landon states that he did not know GBI was a client of IF, there were no text messages with GBI principals discussing IF sending them clients. (TR p. 10; 11/30) In Jordan's testimony it is claimed that Landon was well aware of Sugar Stoned and GBI's relationship to the Sugar Stoned product, and invoices will bear that out.

Landon testified that if Jordan were sending IF SOPs to GBI that would violate his agreements with ICON and IF. (*Id.*) He also stated that Jordan's sending of "customers" to GBI would violate the agreements. The Arbitrator would note that it is important to distinguish between actual "customers" of IF and potential customers with inquiries.[41] In any event, Landon stated on re-cross-examination that it was generally accurate that Jordan would violate his agreements if he referred "potential customers to GBI." (TR p. 20; 11/30). Landon attempted to characterize Jordan as an employee and/or "owner" but conceded Jordan was a shareholder and consultant of the company. (*Id.* p. 21)[42]

Landon testified that in July or August of 2019 there was a problem with some of the manufacturing at IF for the benefit of GBI. Landon investigated the problem. He reviewed the records relating to the production to try to pinpoint the variance and find the root cause. Landon blamed Jordan for the debacle, stating his activities with GBI were not disclosed. Interestingly, Ex. 537 is an August 22, 2019 email from Jordan to Landon, stating "I'm extremely embarrassed and upset by grapefruit. I

[41] This point is underscored in Landon's testimony, where he was asked if there was one "actual retained customer" that Jordan sent to GBI vs. "prospective customers". Landon stated Cannabis Sativa Inc. was one such customer; no documentation was provided at the hearing to support this statement, however.

[42]Ex. 511 is the "Consulting Agreement" dated June 1, 2018, between ICON and Jordan, and signed by the parties. Paragraph 7 of the agreement states that the "Contractor understands that Contractor is an independent contractor and that nothing contained in this Agreement creates a partnership, joint venture, employer/employee, principal and agent, or any similar relationship between the parties. ..." Being shown the document Landon testified his recollection was not refreshed that Jordan was not an employee. (TR p. 23; 11/30) This was the only consulting agreement entered into (*Id.* p. 24)

thought I was bringing you a long term customer ...I accept responsibility for their actions as it's my account. I am very sorry they ruined this relationship." The responses from Landon are reflected as well, along with other emails. One of the emails contains a screen shot of a GBI communication to Jordan stating that, among other things, "At inception you positioned us bc of your relationship with InFa. ...you and your associate demanded on getting a 3 percent "rip" on... You breached your duty of loyalty to us..." Landon responded to Jordan's transmission of the GBI text. When asked, Landon testified that he does not remember "internalizing" the text from Jordan. His response to Jordan's email was not one of outrage and betrayal. Indeed, the email exchange is civil, even empathetic (*see* e.g. Ex 537) When Jordan sent a copy of the highly charged Yourist email to Landon in October of 2019, accusing Jordan of mendacity and "abandoning" Grapefruit, and stating "At inception you positioned us bc of your relationship with InFa. That was the only value you brought", mentioning "Rainbow Dreams" Landon's response was "wow, ...WOW.(etc.)," not mentioning shock or surprise at the affiliation between Jordan and GBI, but rather expressing surprise over the conduct of the Yourists. In various text messages, Jordan stated that Landon "laughed off" the Yourists threats. (TR p. 154, 2/5/24) Jordan testified that after the blow-up in August 2019, Landon never criticized him. (TR p. 152; 2/5/24)

Turning back to the counterclaim, and the claims that Jordan diverted clients or prospective clients of IF, Landon was questioned about Vera Wellness, who, it is alleged in the counterclaim (Counterclaim, para. 37) was diverted to GBI. (*See* also Ex. 628) In February 2019, Triscka Malia (the company's compliance expert, *inter alia*.) emailed to state that Vera was "proposing a licensing deal which as we know is expressly forbidden in the regs. The terms are also pretty insane." (*Id.*) On February 27 Foor states "hard pass, terrible deal." (*Id.* p. 207; 11/27/2023) Malia agreed. Jordan testified there had been a phone call and discussion with Landon and Andy Foor about Vera Wellness' products being made in another state, and the S-licensure option was discussed with Vera, but if "that didn't happen immediately" to give them to GBI to at least allow IF to do the manufacture. (TR p. 48-49; 2/5/2024) Jordan recalled that IF had "passed" on them, citing a terrible "deal". Landon was not aware of Vera Wellness' license status, and stated that "I'm in charge of leads and review of prospective clients." But, he had previously testified that "Andy and Kylae" were responsible for sales and he declined a meeting with the Yourists at his own facility because it was "Andy's" client. Indeed, while testifying as to Vera, Landon stated "It was up to my team to make the decision about what clients and leads were viable" (*Id.* p. 208; 11 /27/2023) which runs counter to other testimony, noted above, in which he stated it was he

[Landon] who was "in charge of leads and review of prospective clients." (TR p. 204; 11/27/2023).[43] These inconsistencies are difficult to reconcile. Jordan's testimony (TR p. 49-50; 2/5/24) suggests that Landon was involved in discussions with Jordan regarding Vera, and further stated that no emails were sent because these were "in house" discussions, followed by Jordan discussing the issue with Vera. (*Id.*) Similarly, Landon disclaimed that GBI was a customer of IF, but it clearly had done business with IF, and by his testimony he was in charge of leads and review of prospective clients. Yet, within a few minutes of testifying being in charge of leads, he stated "I wasn't managing leads..." (TR. p. 205; 11/27/2023) And later, Landon testified that he did not dispute Foor's and Malia's concern over Vera Wellness, and left it up to them to figure out what deals IF should do or not ["That's their job."] (*Id.* p. 209; 11/27/2023).

A number of companies were alleged in the counterclaim (paras. 29-77) to have been diverted. Landon stated that he has information that they were diverted *but does not know what business they did or did not do with GBI* (*Id.* p. 210; 11/27/2023) But when asked if he has "any information" whether those companies alleged in the counterclaim ever retained GBI, he stated "I do not have that information." (*Id.* p. 211; 11/27/2023)

Landon testified that in the transition from VaporPenz to ICON and IF, the "formulations and SOPs"[44] that he had crafted were very important. They were "trade secret" and also important from a compliance perspective (TR p. 10; 11/29). SOPs were required, he stated, for manufacturing, for the operation of each piece of equipment, and that each piece of equipment and procedure required a training log, usage log and maintenance log. (TR p. 11; 11/29). Landon testified that SOPs can be bought and sold, and that dissemination to customers/competitors would be "extraordinarily damaging." (*Id.*) Landon stated that he had entered into an agreement to sell intellectual property, prior to ICON/IF, which he formulated while at VaporPenz. (TR p. 12; 11/29) The purchaser was Cannabis Sativa, Inc. and they paid $200,000 in cash and stock for the proprietary information.[45] That purchase date was April 14,

[43] Despite stating that IF would not accept unlicensed client and that Vera Wellness was described as a poor deal by his sales manager and compliance officer, and despite that Landon did not respond to those comments by Foor and Malia, he maintained that Jordan diverted them ["I would not agree that he didn't make an attempt to divert them."] (TR p. 209; 11/7/2023)

[44] Landon testified that "formulations and SOPs" are manufacturing procedures, and mixing procedures which he described as "proprietary cookbooks which were the formulations for every SKU product" (TR p. 10; 11/29) He stated that the "cookbooks would generate mix sheets and you did all of that, produced it, controlled the logging of all the data associated with that, have the team manufacture it. It was our trade secret bread and butter." (*Id.*) In earlier testimony, Landon stated "The SOP is the production process and supporting things like the cookbooks." (TR p. 228; 11/29/2023)

[45]This number is to be contrasted with the number seen in Ex. 559, wherein it is stated that White Rabbit was sold for $150K.

2017. (Ex. 335) Ex. 345 (June 1. 2018) and Ex. 346 (May 28, 2018) was addressed; this is the Consulting Agreement, and Mutual NDA. Included in these agreements with Jordan was agreement to protect confidential information that Jordan would come in contact with. (TR p. 13; 11/30). Provisions in the exhibits included protection from disclosure of any information created by, discovered, or developed by or made known to Jordan during his relationship with the company, and covers the SOPs and formulations of IF. (TR p. 14; 11/29)

By way of additional background, it was developed that Jordan was being paid a monthly salary as an independent consultant under a consulting agreement (*Id.* p. 191) Since Jordan lived in LA, it was agreed he would come into the factory every several weeks. Jordan was supposed to provide E commerce services (technology systems). (*Id.* p. 192) but Landon testified this did not happen. In early 2019, Jordan informed the Longs that he wanted to go part time. His salary of $6k per month was reduced to $3k per month. Jordan resigned in August of 2020 as a consultant. (TR p. 223; 11/27/2023) Jordan told Landon he wanted to resign to free up money for the business and was not able to commit as much time. (*Id.*) At that point Jordan would have been "just a shareholder."

Landon was asked whether Jordan told him that he would be working part time for Grapefruit Boulevard, and stated "I do not recall that." (*Id.* p. 193; 11/27/2023) Jordan admitted he started negotiating an employment agreement with GBI in about March of 2019. In April 2019 he entered into a confidential employment agreement with GBI. (Ex. 21) (TR p. 180-182). Jordan's agreement with GBI recited he would devote his "entire" business time and energy exclusively to the performance of his duties at GBI. Jordan attempted to clarify this pertained to "branding and manufacture" which was to be done at Infusion Factory. (p. 189) Jordan testified he took a reduction in pay at IF after a discussion with Landon because of the amount of time he was spending on GBI and that "they [GBI] should be paying me for the work I'm doing on their product that .... would influence and build Infusion Factory's net worth." (*Id.* p. 191) Jordan noted that a customer would either be working through IF through the S-license program [or they had their own cannabis license], <u>or</u> they would be working with GBI using it's licensing "path." (*Id.* p. 192) Again, Jordan maintained that the latter "path" would lead to IF manufacturing the product of the customer. As he testified, the customer needed "licensing coverage" (*Id.*)

Jordan did not see GBI as a competitor and stated they do not offer manufacturing services. Jordan stated that GBI is an oil extractor and did not have the capacity to produce their own products

(two types of manufacturing licenses)[46]; according to Jordan GBI wanted an agreement with IF for all manufacturing to be done at IF. (TR p. 190; 12/01) On this point, Jordan stated that "at no time to my knowledge in the five months that [I was] working with Grapefruit were they trying to acquire their own manufacturing services." (TR p. 16; 2/5/24) No credible evidence was presented that GBI could or did manufacture edibles or vape products, *inter alia*.[47] Similarly, testimony from Jordan suggested it was a licensed "oil" extraction company, but this was not otherwise confirmed by any request for judicial notice of specific licensure, or by the testimony of any knowledgeable witness.

The issue of diversion of customers was addressed at length in Jordan's testimony. Jordan testified there is a distinction between a prospective customer and a customer. (*Id.* p. 193) Unlicensed prospects are not customers. (*Id.* p. 194). As testified to by Jordan, a call from such an "UBO" prospect leads to a "walk through" of the S-license program with the prospect; if they did not agree with that approach, "the alternative licensing path was Grapefruit Boulevard." (*Id.* p. 196) He stated he would not send a client or prospective client to GBI first. (*Id.* pp. 196-197) He noted that some people were interested in obtaining their own license, and Landon had created a 105-page documents to walk people through the S-license path and another document assisting them on the steps needed to get their own license. Jordan testimony on this issue was extensive, on cross-examination. He noted that potential customers for GBI and IF included unlicensed persons/entities. He noted there was a "priority" (*Id.* p. 198): the "first" were IF customers, "and if we lost the opportunity with the customer" they would refer them to GBI to try to get them back to IF as a manufacturer. And again, the witness stated that GBI did not offer manufacturing. (*Id.* p. 199)[48] Parenthetically, there was no direct (or circumstantial) evidence that GBI could manufacture "in house". At the time he was at GBI, he testified that he was handling "all

[46] The types of licensure were not fully fleshed out in any testimony or evidence. The type of licensure held by GBI was not introduced by way of a request for judicial notice of official documentation or otherwise, save for Landon's testimony as to IF. It is therefore not clear exactly what type of license GBI possessed (e.g., Type 6 or 7 or Type N) A Type N (infusion of products and packaging and labeling) was noted in testimony as was the Type S involving manufacturers working in shared use facilities and extracting cannabis for use in products, or make products through infusion and package and label. The Arbitrator understands the Department of Cannabis Control issues licenses based on the type of cannabis activity the business is performing.

[47] Exhibit 163 contains a press release regarding GBI obtaining a controlling interest in Lake Victoria Mining Company in December of 2018, and described the company operations. An objection was sustained to this press release. "Simply because information is on the Internet does not mean that it is not reasonably subject to dispute." (*Huitt v. Southern California Gas Co.* (2010) 188 Cal.App.4th 1586, 1605, fn. 10 [116 Cal. Rptr. 3d 453].) The Arbitrator was not presented with any authentication or other evidence regarding the authenticity of the document, or the truthfulness and trustworthiness of the information contained therein.

[48]The term "onboarding" was addressed in testimony and defined by Jordan as a form of "projection" which entailed looking at a proposed product, figuring out a pricing structure, if they can make the product at IF, and the likelihood of them being able to sell the product. This is described best, perhaps, as a pre-production validation process. (TR pp. 199-201; 12/01)

of Grapefruit's brand and production" and "handling Infusion Factory's call as well..." (*Id.* pp. 205-206) Jordan denied diversion ["No one was diverted to grapefruit. Customers were offered the S-license program, and our second avenue to pursue the company was through Grapefruit."] (*Id.* p. 208) The way Jordan saw it, either avenue could benefit IF, if the customer declined the S-license path. (*Id.* p. 209) Jordan maintained IF/Landon was aware of this and that the fact that Sugar Stoned was already producing product at IF, through GBI, shows Landon "knew who grapefruit was". (*Id.*) Parenthetically, Ex. 166, an email from Jordan to Ryan Erving, an IF employee, references GBI handling unlicensed "folks" and getting their product manufactured at IF. (*Id.* p. 210). Much of later cross-examination centered on similar themes and will not be summarized in granular detail herein. Jordan is consistent in stating that Landon was aware of GBI and its affiliation as an alternative "path", *inter alia*, while Landon is equally consistent that this was not discussed. Jordan describes Landon and IF as having an "ongoing relationship with Grapefruit", e.g., with Sugar Stoned, and accepting money from Grapefruit, and invoicing them. (*Id.* at p. 223)

Rainbow Dreams was a GBI "brand" which Jordan helped GBI create. (*Id.*) He was to get a percentage based on sales of the product, and other specified remuneration.[49] Jordan testified that this was "not a secret" to IF. (*Id.* p. 181) He states he disclosed this Landon and Linda. (*Id.* p. 183) Jordan admitted "putting in the trash"/ deleting / "scrubbing" emails related to Grapefruit on the IF server. (*Id.* pp. 183-184) These emails were in relation to the Rainbow Dreams line and production. (*Id.* p. 185) (*See,* Ex. 350) In later testimony, Jordan testified that he threw only one email "in the trash" intentionally, "and that was the email where I spoke poorly about Landon and did not want him to read it." (TR p. 22; 2/5/24) Parenthetically, the email was not fully deleted from the server and was available at the hearing.

Landon did not recall Jordan explaining that he was working on getting unlicensed customers to be licensed through GBI, and directing manufacturing to Infusion. While he stated that it would have been "inappropriate" for Jordan, Andy or Juan Gonzalez or Mike Rugani to work outside the company, Landon also knew that Juan and Mike "had contracts outside of the company" but was not aware of them doing any free-lancing. (*Id.* p. 194; 11/27/2023) Landon testified that Jordan's activities with GBI were undisclosed and stated he did not recall Jordan saying that he would be working for GBI part-time in addition to ICON. (*Id.* pp. 193-196; 11/27/2023). He did state that in early 2019, Jordan wanted to go to "part time"; Landon did not recall the reason Jordan gave, and Jordan's salary went down to $3,000 per

[49] Jordan testified he ultimately received no shares in Grapefruit and other than his salary received no other remuneration.

month. (TR p. 192-193; 11/27) Landon testified he was unaware Triska or Iris were working outside of IF. (TR pp. 194-195; 11/27)

Landon denies taking money out of the company for his own use, save for his salary. (TR. p. 8; 11/29/2023)

Infusion Factory, as a cannabis factory, closed down in 2023, and is doing no operations ["...no manufacturing activity or anything..."] (TR p. 72; 11/27/2023; *see* also p. 237; 11/29/2023) Landon stated that his intent is to dissolve ICON after this litigation is concluded. He testified that the termination of IF was primarily "diversion of our future. Months upon months of the diversion of potential business opportunities." (TR p. 236; 11/29) Next is "continuous underperformance of sales". (*Id.* p. 237), coupled with costs occasioned by the litigation which diverted resources from the company.

Linda Kay Long ("Linda") was called to testify. Linda attended Junior College but did not graduate, and engaged in several endeavors, including an over 20-year career as a real estate agent, before going to work at VaporPenz about 2012 or 2013. (TR p. 42; 11/30) She testified that her son Landon worked under her briefly, as a licensed real estate agent. They worked in "partnership" (TR p. 44; 11/30). She and her son have worked together for 20 years in various endeavors, as a "team". She testified they are close.

Landon was the owner of VaporPenz (an LLC) and she was a member of the LLC along with Dan, her husband, all of whom ran VaporPenz. Dan was just an investor in the company, not day-to-day. Linda was a day-to-day worker, and was in charge of, among other things, overseeing employees. She detailed also doing payroll, buying materials, and being Landon's "right hand woman." (TR p. 48; 11/30) She was in charge of recording sales and expenses of VaporPenz, and did these things until it closed. She was the only one responsible for those roles. (*Id.* at p. 49; *see* also TR p. 9; 12/01) She understood it was important to memorialize all sales and expenses to have an accurate picture of the business' operations. (*Id.*) She was, by her account, "pretty good" recording sales and expenses month by month. (TR p. 9; 12/01) She testified she has no accounting experience at all, (*Id.*) has never prepared a balance sheet, never prepared a profit and loss statement, never prepared tax returns for a business or a general ledger. She has no training in accounting or in generally accepted accounting principles and has never read or interpreted IRS section 280E (TR p. 50; 11/30) or has done a business valuation.

Michael Rugani was one such employee she oversaw, whom she characterized as Landon's friend, and Linda's friend and she considers him to be "family." Vapor Penz was located in the Bay

Area, and when they moved to Sacramento, Rugani came with them. Another employee was Juan Gonzalez; both Rugani and Ganzalez did production and packaging. (TR p. 38; 11/30)[50]

At VaporPenz an accounting firm was being utilized, Moore Financial, and they prepared the tax returns for VaporPenz every year, based on the sales and expenses of the business. Moore also had a bookkeeper who assisted in the accounting for VaporPenz. Linda does not have the experience to be a bookkeeper. (TR p. 52; 11/30) She worked "grueling" hours at VaporPenz for six years, for a low wage to support her son and the business. When at IF, she continued the same wage (about $1,000 a week), as did Landon (who made approximately $100,000 per year). When she started with ICON and IF ("the company") she was doing the same memorialization of sales and expenses, oversaw payroll, hiring employees, signing checks, was a signatory of the bank accounts, had the ability to charge on the corporate credit card, issue checks to employees, among other things. At VaporPenz her title was office manager or operations manager; Landon was CEO. She reported to her son and took instruction from him. The same kind of relationship carried through to ICON and IF. However, Moore Financial was not the accounting firm at the company. She thinks she contacted Moore about doing the company's work in the first quarter of 2019 (TR. p. 60; 11/30). She had contacted Moore to say they "had moved to Sacramento to transition into cannabis" and that the books were "ready" for Moore to work on. Moore declined to do the work, (TR p. 61; 11/30) because cannabis was involved. Linda testified that VaporPenz "wasn't a cannabis company" and only "did CBD and THC." (TR p. 62; 11/30) Moore expressed that cannabis tax would be a new practice area he did not want to learn. (*Id.* p. 63) She admitted that at VaporPenz, they sold products with THC starting the latter part of 2017, and she knew that was not legal. (*Id.*) Linda later testified that she was not "sure" that VaporPenz wasn't selling THC products in 2015 or 2016. (TR p. 69; 11/30) Linda testified she did not recall.

[50] Generally, corporate formalities are the steps a corporation or LLC must take to maintain its legal separation from its owners and the benefits that come with that status. These formalities can vary depending on state laws, business bylaws, and business structure type. If a business owner fails to comply with corporate formalities, they may be held personally liable for any losses or risks incurred by the corporation. Broadly, formalities make one's business separate and distinct from one's personal matters. For example, a business should always operate entirely separate bank accounts (and credit cards) for the business, in the business' name. The business should maintain accurate financial records for the business (again, separate and apart from personal records). Officers (if a corporation or LLC) or managers (LLC) should maintain their fiduciary duties to the business (that is, they should not be putting their personal best interests ahead of the interests of the business). The business should follow its corporate bylaws (or, if an LLC, its operating agreement). Importantly, the business should hold regular corporate meetings (usually annually) to conduct its business. For a corporation, these annual meetings are both of shareholders (primarily to elect directors) and of directors (primarily to elect officers). Meeting minutes which reflect the business of the meeting should be prepared and signed by a corporate officer (or a consent to action in lieu of a meeting.)

She had many conversations about the illegal nature of those sales with Landon. (*Id.* p. 64). She reported the sales for such products as revenue, but had no discussion with Moore about paying taxes on cannabis products; it was simply treated as regular sales. (TR p 66; 11/30) She knew such sales were illegal before 2018. Linda stated that they (she and Landon) were getting ready for legal cannabis and doing "R & D". Prior to 2018 she had minimal experience with cannabis or the cannabis industry and relied on her son to guide her and the company with how best to operate (TR p. 67; 11/30) She understood Landon was an expert in cannabis in the 2017-2018 time frame, and understood that he had been involved in cannabis, either in business or personally, for 20 years.

She stated that IF did not do any sales between 2016 and the end of 2017 and was "sure" of that. (TR p. 69; 11/30) In deposition testimony she had stated she did not recall. (TR p. 70; 11/30)

Linda contributed personal funds to the business, for supplies and other materials. She did not always use the company credit card, and if she used her own card, she would seek reimbursement from the company. She and her husband put $110,000 into the company, with a promissory note in return in 2017. (TR p. 74; 11/30)

Linda does not recall meeting Kylae Jordan in the time frame of January 1, 2018, to May 24, 2018 (the date of Jordan's investment). She later stated "I know I didn't meet him" before May 2018. (TR p. 8; 12/01) She does not recall speaking with him or emailing him. But she did have "some" discussions with Landon about bringing on investors (TR p. 76; 11/30). Most of the time Landon spoke with his father about that. When COVID hit in March of 2020, she elected to stay and work from home. (*Id.*) Dan Long became more active in the business, doing "onsite stuff." (TR p. 77; 11/30) That maintained for her time at the company except for the last "six months or so" when she came back in full time. Nonetheless, even while at home she continued her work overseeing employees, taking "charge" when Landon was not around, *inter alia*.

The company had numerous safes; all the "share people" (licensees manufacturing at IF) had a safe, for secured storage. The company itself had three safes; one in the production area and was used for storage of commodities like oil (she never used that safe); of the other two safes, one was used "everyday" for things like petty cash. The third safe was used for storage of important documents and "any additional money." (TR p. 79; 11/30) Linda stated that she, Landon, Andy and Mike Rugani had access to the three safes. (TR p. 211; 2/5/24) She does not believe that Jordan had access to the safe containing his stock certificate. (*Id.* p. 213) Linda was in charge of receiving cash and distributing cash to employees who needed to be paid and vendors. (TR p. 80; 11/30) She does not recall taking cash home. Linda indicated the City had a limit of cash on hand in excess of $40,000, but was not "sure." (TR

p. 81; 11/30) There were times, however, where cash would be taken off site, and it would "go to the bank." She stated that more than $40,000, the cash would be taken out and "sometimes" put in an ICON bank account. (TR p. 212; 2/5/24) She also stated there were no cash deposits for the first two years (2018/19) for Infusion Factory. ICON would receive cash payments. (TR p. 81; 11/30) She noted that if the amount was over the limit allowed it "couldn't stay in the facility." (*Id.*) She was not aware of reporting requirements (*Id.* p. 82) for cash receipts of more than $10,000.[51] She testified that no Form 8300 "might not have" been filed and that she "didn't know". (*Id.*)

Ms. Long was, as she states she later "learned", the corporate secretary for ICON starting in 2018. (TR p. 4; 12/1/2023) Landon was president. (*Id.*) Linda was not aware, prior to the filing of the suit, what a corporate secretary was or what functions one performs. She did not enter into corporate resolutions or sign off on any (TR p. 6; 12/1), nor did the company hold meetings or send out minutes, or issue notice of meetings. (*Id.*) No formal meetings were held where an agenda was prepared or notice of a formal meeting was given. (*Id.* pp. 6-7) Typically the meetings she had were with Landon. No waiver of notice of meetings, or notice entitled waiver of meetings were issued.[52]

Of note, Linda testified that she and Landon "were the two people responsible for filing the tax returns for any applicable year for ICON or Infusion." (TR p. 8; 12/1) She also testified that between January 1, 2018, and May 24, 2018 (the date of Jordan's investment) she was "the one keeping track of the sales and expenses...." (*Id.* at p. 9) She stated the business (ICON and IF) were solvent and able to pay their bills. They had no trouble paying bills.

An expense report in the amount of $45,991.22 was generated from Icon Holdings (Ex. 624) dated June 26, 2018, showing "expenses" from February 17 to June 18, 2018, and signed by Linda and approved by Landon, which was to repay certain monies that she had advanced for the benefit of the companies. (TR p. 9; 12/01) This report encompassed all expenses before and after Jordan's

[51] If a first payment is more than $10,000, the business must file Form 8300 within 15 days. A Form 8300 must be filed for each separate transaction that exceeds the $10,000 in cash limit. However, only the recipient of the funds is required to file a Form 8300 with the IRS. Any transactions that occur between a payer and the recipient in a 24-hour period are considered related transactions.

[52] Landon testified that when he was preparing the information seen on Ex. 247 in November 2020, and after attending a holiday party where 20 CEOs provided "stories of revenue that had beaten, double, tripled their expectations that year", and IF had not done that, he concluded "there was something up with our sales effort..." (TR p. 7; 11/30) He testified that the sales team was not meeting their expectations and there was a "significant difference between what they were projecting and what we were expecting." (*Id*.) There was no testimony, save that of Andy Foor, of any of the sales team, nor any evidence of what the sales team "projected" or even if the sales team performed any projections. Indeed, Landon testified that it was he who performed projections. Landon states that when he concluded there was a sales problem he immediately "took it to Kylae." (*Id.* at p. 8)

investment.[53] (TR p. 12; 12/01) As Linda noted, Infusion factory had no banking, and so she would use her own card. She stated it was "convenient" for her to do so (*Id.* p. 11; 12/01) She did state there were cash sales in the time period of January 1 to May 24, 2018, as well as monies being deposited into the ICON bank account. (*Id.* p. 10) As noted in testimony there were questions regarding payments (and reimbursements); there were "payroll" payments in March and May of 2018 totaling $15,000, as well as over $7000 for the lease and related payment—as Ms. Long testified, these were, along with the other charges seen in Ex. 624 such as food, hotel expenses, and the like, paid out of Jordan's investment. (TR p. 25; 12/01) Linda never spoke with Jordan about the money she was being reimbursed. (TR pp. 27-28;12/01) She does not know if Jordan was given Ex. 624, but it is clear he was not shown by Linda any of the charges prior to his investment, since Linda had no contact with Jordan before his investment. (*Id.*) She believes he "received something" because she was told so (*Id.*) but never saw what Jordan was allegedly given, and stated she had no way of knowing that because she "didn't deal with Kylae." (*Id.* pp. 28-29) Linda stated the company did not reimburse her before May 24th "probably because I didn't ask for it." However, in deposition, she testified she was "holding the funds out" to make sure "we were liquid." (TR p. 30; 12/01) She could not recall what the cash reserves of the company were at the time prior to Jordan's investment (Id p. 31). The import of Linda testimony on this point suggests that money was tight, and there were insufficient funds to pay the expenses at that point in time, until Jordan's investment monies were paid into the company.

The questioning shifted to Ex. 559, which Linda prepared and shows income received for each month from January of 2014 to July 2019 (TR p. 31; 12/01). She testified that these were input by her, without any other assistance, and were never revised. The information comes from spreadsheets she prepared. She showed this to Landon, and both she and Landon had access to these numbers "at all times" before Jordan invested. (*Id*. p. 32) Entries were done on a monthly basis. On the 2016 "line" it is noted "Vapor dies because of new laws"; to the right of that comment, in a date range that is not clear, it is stated "Sold White Rabbit $150K" and "moved to Sacramento." Linda testified that VaporPenz did

[53]Ms. Long's testimony became somewhat confused; although stating that the expense report was all inclusive for the time period, she also stated that there "probably were" other expense reports accounting for supplies she would purchase. (TR p 13; 12/01) The Arbitrator will not address in granular detail the questioning regarding the various items in the exhibits and refers counsel to the transcript. A few items merit discussion. There is a $4000 charge for "payroll" dated 2/6/2018 which Linda could not explain, since she testified the company was operating, solvent, and taking in revenue from sales. Other payroll charges for March 23, and May 9 are seen on the document. Also seen is a $10,000 entry on April 17, denominated "Landon Operating Capital" and "Landon paid." Linda did not know what that was for (TR p. 21-22; 12/01) and did not recall why she was being reimbursed for something Landon paid. On May 9, 2018, an expense of $7,298 is seen for "Luther Lease and CAM's". This was noted as rent for the IF facility and Linda stated she "did not know" why she was personally paying rent for the company (but getting reimbursed.) TR p. 22; 12/01)

not cease in 2016, but testified the vapor industry was dying due to new regulations. (TR p. 33; 12/01) She again conceded that marijuana and CBD sales were being done before they moved to Sacramento (TR pp. 34-35; 12/01) She understood[54] it was illegal that marijuana with THC could not exist on the same property with CBD products. (*Id.*) She took no action when she found out that was the case. (*Id.* p. 36). Ex. 559 reflects January 2018 sales at $30,589.77, which Linda stated were "sales that Infusion Factory had been doing." (TR p. 36; 12/01)[55] She later clarified that payments seen in the early part of 2018 were payments from VaporPenz customers (recall that VaporPenz was absorbed into the company) (TR p. 37; 12/01) Indeed, she testified that the $30,589 number was "only VaporPenz sales" but they had moved to Luther, so it was recorded as an IF "sale." (TR p. 37; 12/01) She then testified that the sales seen in, for example, January 2018 were "tail offs" from VaporPenz and whatever IF was doing. (*Id.* pp. 37-38). In deposition she had been asked about the January 2018 sales number ($30,589) and testified that she did not know whether January would reflect the beginning of sales "exclusively" to IF. (*Id.*) In deposition, she was not sure if "we had some run over from VaporPenz..." (*Id.*) Again, Linda's testimony in this area of inquiry was inconsistent and confusing at times. Nonetheless she stated that January to April 2018 numbers (as seen on Ex 559) would reflect all the sales that were done by IF and "some extra" from VaporPenz. (TR pp. 38-39; 12/01) She subscribed to the question: "And so if you wanted to know the sales prior to Mr. Jordan's investment, you could let him know by showing him this document, Exhibit 559, and they would be to the penny correct; true? A. True." (TR p. 39; 12/01)[56]

[54] Ms. Long's testimony on what she understood and when she understood it was not clear; she testified (TR pp. 35-36; 12/01) that did not know "at that time" that CBD and THC sales could not coexist under State regulations. She thinks she learned this "through conversations" with people at work. (*Id.*)

[55] It does not escape notice that the PowerPoint/prospectus which Foor shared with Jordan shows sales in January of 2018 to be $74,000. Landon and Linda had actual knowledge of the precise sales for January or 2018; it is not clear why the actual sales figures were not given to Jordan or incorporated into Ex 531. The Arbitrator understands Landon's claim that he never shared the prospectus with Jordan, but Landon prepared it, and Foor testified that Landon gave his approval to share it with Jordan. The Arbitrator finds it credible that Foor was given Landon's ok, as the evidence shows the company was in need of both investors and money in early 2018. The prospectus document itself (Jordan 03261) references January 1, 2018 as a "light switch moment" for the market; this alone suggests the prospectus was generated after January 1, 2018 and hence the actual numbers for January could have been reflected. Even if it was not, this would then lead to the conclusion that untrue statements were made in the document, or material facts were omitted that would make the document misleading to a prospective investor. It is also the case that Exhibit 559 does not break out sales between VaporPenz and IF. There is inconsistent testimony as to the amount of sales IF did vs. VaporPenz before Jordan's May investment and none of these facts were disclosed to Jordan. For example, Linda testified that the January to April sales "were in the Infusion Factory facility" (TR p. 37; 12/01) but explained they were payments from VaporPenz clients. (*Id.*) Ex. 559 reflects other sale numbers for February, March, and April inter alia, all of which are widely disparate from the Ex. 531 "projections". (Jordan 03266)

[56] Exhibit 599 was addressed at length and, in sum, was explained by Linda as showing cash in and out of the safe. She called it a "cash ledger". (TR p. 39, 41; 12/01) She did not utilize QuickBooks or Excel as it would have been more work for her. No cash transaction documents for 2018 were identified, and Linda stated she did not know where they would be. (TR p 41; 12/01) Exhibit 561 is an Excel spreadsheet which she prepared showing sales and expenses. On this document, entries are seen for 2018. The first several line, dated January 18, 2018, related to "Dr. Kerklaan" and "cash deposits to safe". (Ex. 561,

Exhibit 563 reflects sales by both VaporPenz and Infusion Factory in 2016 and 2017, which appears contradicted by certain testimony of Landon, and THC sales were not permitted until 2018. Linda testified that the amounts seen on the exhibit actually reflect all VaporPenz sales, and that they were "trying to decide" what would be vapor sales and what would be cannabis (TRC) sales; the logical conclusion is that the then-illegal cannabis sales were "attributed" to "Infusion Factory" although there were no actual sales by them per se. (TR p. 47; 12/01). Linda stated the name "Infusion Factory" on the exhibit was a "place holder" (*Id.*) Saliently, Linda testified that exhibit 563 was available before Jordan's investment and that it could have been provided to Jordan ("I suppose so.") (TR pp. 49-50; 12/01)

Linda Long stated she had seen notices from the FTB that the company needed to file its taxes. (TR p. 54; 12/01) She stated that she worked, or tried to work, with Ed Gines and was the primary person between she and Landon to get information to Gines.

Linda stated she had no understanding prior to this litigation that Jordan was working with GBI (TR p 205; 2/5/24) It "surprised" her to find that out. (*Id.* p. 206) She felt Jordan was "keeping secrets." She "thought" Jordan was "coming on board to help us find our bookkeeping and taxes and everything." (TR p. 215, 2/5/25) Parenthetically, this part of her testimony is not credible; at no time in her testimony did she suggest she sat down with Jordan to "go over the books," or to have him take over any of her bookkeeping functions, which she stated was solely her purview. When she states "find" our bookkeeping and taxes, she elaborated that when Jordan was brought on, she was excited, and she states he told her there would be "no problem trying to find somebody to do this." (TR p. 215; 2/5) She later made plain that Jordan was "to help" to find companies to do accounting work, according to what Landon told her. (*Id.* p. 228; 2/5). But she later stated that when Jordan came on, she thought Moore Financial

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Strategic CFOs, Inc. 001150) These sales, as stated by Linda, were for VaporPenz for CBD products (TR pp. 42-43; 12/01) Production continues with VaporPenz for several months as Linda testified. Linda was asked whether there were no sales from Infusion Factory prior to May 24, 2018, and believed they had done a "short run" for W Vapes "when we first got there, but I can't say completely so." (*Id.*) But in deposition testimony read into the record, Linda agreed that there were no sales from Infusion Factory prior to May 24, 2018. (TR p. 44; 12/01) She conceded there would be no other documents (save for the exhibit 599) would have shown sales of IF transacted at that time. Linda then stated that prior to May 24, 2018 she believed that Infusion had not done any sales. (*Id.*) Linda was next shown Ex. 563, a computer spread sheet she believes she prepared. (TR p. 45; 12/01) This exhibit shows revenue from 2016 month by month; there are two salient columns: a column for VaporPenz and a separate column for Infusion Factory. Yearly income for 2016 shows $525,630.75 in VaporPenz sales and $199,237.30 in Infusion Factory sales for a total of $724,868.05 for the year. The same exhibit also shows 2017. In April of 2018 there is a notation in the right-hand margin showing "Sold White Rabbit." In 2017, VaporPenz revenue is much reduced with annual sales reflected of approximately $37,500, but in 2017 Infusion Factory is shown with sales at almost $450,000. It appears without dispute that Infusion Factory" (IF) was formed in July of 2016. ICON, the management company, was formed in September of 2017. Both were registered with the Secretary of State. It appears without dispute that it was not until January 2018 that recreational use was permitted and legalized. In any event Linda testified that while the numbers are accurate in the exhibit 563, the use of "Infusion Factory" is not, and the name was there as a "place holder" for THC / cannabis sales. (TR p. 47; 12/01)

was going to be doing the work. (*Id.* p. 229) Taken as a whole this part of Linda's testimony makes scant sense. There did not appear to be a need for accounting in 2018 since Moore was supposed to do it. (*Id.* p. 229) Linda could not have been "excited" that Jordan was being brought in (in 2018) to "figure out" who was to do the books and taxes.[57] There is no persuasive evidence that Jordan was tasked to "find" anyone to help with the books; to the contrary, all the accounting persons testifying stated their main contacts were with Linda and Landon. Nonetheless Linda maintained he never "did this" and "He wouldn't even show up to some of the meetings [with financial people]" (*Id.* p. 216) She stated, "Landon put him on board so he could see everything." (Id pp. 217-218) She claims Jordan had access to all financial information "in the cloud" from the outset; she then states that Jordan never raised any issue about the company's accounts, a seeming contradiction for someone she claims was tasked with all the bookkeeping and taxes. (Id) On this point Linda states "We would make appointments with accountants and so forth so that we could start discussing the details of how to get this all resolved. And sometimes he [Jordan] would show up for them and sometimes he wouldn't." (*Id.* p 219). This is again contradictory to the claim that Jordan was tasked to "find" someone to help with the books. Those contacts all appear to have been initiated by Landon or Linda. Linda had no idea what Jordan's investment was spent on (Id p. 219) It is also stated by Linda that Bregante was the first accountant that ICON and IF engaged. That was in April of 2019, almost a year after Jordan's investment (*Id.* at p. 220) and Linda stated that it was Landon who was referred by a friend. (*Id.*) Again, Jordan is not mentioned in this engagement. (*Id.* pp. 220-221) she also noted that Bregante would ask she or Landon (not Jordan) for additional documents. (*Id.* p. 221) She stated she would give them what they needed.

Linda's attention was turned to Exhibit 220, a "Balance Sheet Prev Year Comparison", referencing an entry of $180,437.51 re cash in safe. The document appears to address 2018 and 2019 but was prepared on January 15, 2021 (each page bears this date). Linda denied ever having that much cash in the safe. She was critical of this exhibit, and noted that Landon would have calls with Ed Gines, and she would be in the office with him on the call, to assist with questions. She recalls Landon and Jordan proposed to terminate Gines, and she agreed. (p. 223)

Linda stated she was not aware of a "business relationship" whereby IF would send nonlicensed customers to Grapefruit. (*Id.* p. 224) She testified that Landon never told her prior to March of 2021 that he was aware of Jordan's involvement with GBI. (*Id.* at p. 234), but it appears reasonably clear that

[57] As the testimony developed Landon and Linda did not start looking for other accountants until early 2019, when they discovered Moore would not do cannabis related work. (*Id.* p. 229) Previously Linda stated she anticipated Moore doing the work and contacted them in the first quarter of 2019.

Landon knew of Sugar Stoned, and invoices and other corporate documents show that "Grapefruit" was known to IF and Landon. She was not aware Jordan sent SOPs to Grapefruit. She was not aware Jordan sent "customers" to Grapefruit. (*Id.* p. 225) She testified that Landon drives a Prius and does not have a McLaren car. (p. 227)

Linda stated she had no involvement in the preparation of the prospectus (Ex. 531) and did not discuss it with Landon. (*Id.* p. 239)

Andrew Scott ("Andy") Foor was sworn to testify. He started with Infusion Factory (IF) in January of 2018 and was hired as Director of Sales. His background was in sales but never before in cannabis. He understood that the laws were changing in the state and that California was about to allow legalization of recreational cannabis sales. He and Landon had known each other at another firm (X-Ignite) where Landon was Director of Marketing, had kept in touch, and around early January of 2018, Landon Long reached out to him.[58] He thought highly of Landon. Initially, he was paid in cash, and then, after they "officially started" was paid by checks from ICON. Foor also had shares in the company. Foor knew Kylae Jordan since high school and had kept in touch over the years. Foor testified that he thought of the business as an opportunity he thought would be big, "a trillion dollar industry in California", and upon legalization there would be a large market. He stated that he and Jordan have "tried to hop in on opportunities" over the years.

As Foor testified, at some point he spoke with Landon about Infusion Factory needing investors to grow; he "thought about Kylae and had brokered an introduction." Foor spoke with Jordan and Landon and then allowed the two to each "make a decision." He was not otherwise involved in the lead up to Jordan's investment in May of 2018; he did testify that he got an investor "deck" which he identified (Ex 531) from Landon and was allowed by Landon to share it with Jordan. He does not believe that he had discussion with Jordan about the "guts" of the document.

Foor was asked about access to financial documents by persons within the company (Infusion Factory server), and he denied that everyone had access to such documents[59], and stated that he did not ever have access to any of the company's daily, monthly, or annual sales.[60] He never had access to the

[58] Landon notes that he and Foor started conversations before January 1, 2018; he had worked with Foor previously and described him as skilled at sales (TR p. 114; 11/28/2023) Landon states that Foor's intended role was head of sales at IF. (*Id.* p. 115)

[59] This is contradicted by Landon's testimony that Jordan and "any staff member" had access to binders of bank records and internal documents. (TR p. 173; 11/28/2023). Similarly, Jordan's testimony suggested he did not have full access.

[60] Landon testified that he did not restrict Foor's access to the records of IF until the point of termination in December of 2020. (TR p. 234; 11/29) At the time that the prospectus ("investment documents") were given to Jordan, Foor had "full, open and complete" access to IF's records. (*Id.* at p. 235)

company's bank statements, or credit card statements. He never had access to such documents for VaporPenz, a company he understood Landon had owned prior to 2018. He visited the VaporPenz facility in late 2017; Landon explained that they were doing "gray market" cannabis sales.[61]

Foor admits that the company (IF) had a good book of business to start with, including customers from VaporPenz, people coming through the doors, and "some events."

Foor stated that his lack of access to financial information hindered his ability to do his job, particularly in the context of pricing.[62] As explained, IF was marketing the manufacture of cannabis products in a licensed environment. The issue of licensing featured prominently throughout the hearing. Foor testified that that challenges in bringing on customers to IF was "predominantly whether they're licensed." (Rough TR, p. 137, 11/29/2023) According to Foor, that would be the first question when a prospective customer walked through the door. Foor testified that Landon had a "hard rule" that IF would only work "license to license." (See, e.g. Ex. 518; Ex. 170 ["Lastly, we only work with license-to-license operators."]) That rule never changed while he was at IF. Landon chose a licensing "path" for IF that required a shared license (S-license) as an alternative licensing path for prospective customers. Landon testified that a type S license is a shared license "which means that when [licensed customers] they put in their application, they don't have to do any of that work They can reference all of our approvals, all of our documents..." (TR. p. 138; 11/28/2023) Members in an S-license pay "a small fee" and get to use of Infusion Factory's entitlements and investments on day one. (Id) He "crafted" this so that customers who did not have the resources or time to set up all the facility infrastructure would be able to "reference all of that in their application and get going as cheaply and easy as possible, "referring to the N-license. (*Id.* p. 139) *Once the customer's license was approved* "that's when their lease [with IF] kicked in." (*Id.*) When Jordan came on board there had been no S-licenses issued by IF to that point. (*Id.* p. 141)

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[61] The issue of sales, from January to May 2018 was addressed to the witness on direct examination. Exhibit 531 clearly reflects "Infusion Factory" and "2018 Projections (*see* e.g., p. 03266) and "current customer revenue"; Landon testified these numbers came from VaporPenz clients. Prior to Infusion Factory becoming licensed and permitted, all of his sales were being booked under VaporPenz. (TR p. 107; 11/28/2023) Landon asserted that it was no secret and disclosed to Jordan prior to his investment.

[62] Foor was highly critical of Landon and Linda Long on pricing decisions, noting that he had nothing to do with pricing-indeed, he testified that Landon would price out the job and "we would quote it back as a per unit price to the customer" (Ibid, p. 150); he stated that pricing would change mid-manufacture (*see* TR, pp 147-150) causing conflicts with customers and dissatisfaction by customers. Foor was instructed to convey new pricing to customers after they had already agreed on a price for a product. Foor stated that "product was held hostage because the prices changed and they [customers] needed to come up with additional money", which made repeat business problematic. For his part, Landon testified that "initially" Foor had no authority to create prices as he lacked experience, but "over time" he was given that authority. (TR p. 235; 11/29) Interestingly Landon stated that "So it's clear that while he was great at sales, he needed additional training [in pricing] in the early months." (*Id.* at p. 236). This testimony should be contrasted with Landon's testimony regarding Foor's "months and months" (TR p. 233; 11/29) of underperformance leading to his decision to terminate Foor.

In contrast, Foor described the process as "difficult" for prospective unlicensed customers; Landon charged an entrance fee or participation fee or "green fee" of between $10,000 and $20,000. A second part of that was a quarterly "minimum" that could require customers to pay up to $30,000 per quarter in manufacturing. He stated there was rent on top of that, and the manufacturing was to be done through IF. Foor stated "not many people decided to go down that route." (TR, p. 140; 11/29/2023). Nonetheless, he testified that "at first" the company was successful in bringing in revenue. David Crouch, a CPA retained to assist in preparing tax returns, testified that Infusion Factory as a "contract manufacturing facility" was, in his experience, unique, "where they had the ability to share their license and had other *licensees* come in and utilize their facility." (TR, p. 146; 11/30/2023) Landon Long's testimony is to the same effect; he testified that his goal was to be a leading contract manufacturer "so we would provide services to other **licensees** in the state...." (TR p. 113; 11/28/2023) [emphasis added] To be clear, actual licensed customers did not need the S-license; only unlicensed customers would require the S-license "path."

Foor was familiar with a company called Grapefruit Boulevard, Inc and Brad and Dan Yourist. According to Foor they were a licensed "extractor" of oils in the Los Angeles area. He denied that GBI was a competitor of Infusion Factory. As he testified, GBI did no manufacturing or co-packaging. But they were licensed, and their particular goal was to acquire IP and licensing agreements and seek profit from unlicensed customers, whom they would "cover" under their license. For his part, Jordan stated that IF does not "do"" packaging but they would help the customer procure packaging. (TR p. 27; 2/5/24) As explained by Foor, Grapefruit (GBI) provided a different service than IF; Grapefruit had their own extraction license, so they could provide their own cannabis products and they also provided some unlicensed customers a licensed IP agreement for unlicensed brands in order to "bring them under their licensing umbrella so they could then manufacture at other facilities." (Ibid, p. 141.) According to Foor, these unlicensed customers were not the same type of customers IF was trying to get; these were customers who had passed on Infusion Factory's S-license (TR p. 171) because they found it cost prohibitive or did not want that type of relationship with IF.

Both parties see the relationship between GBI and IF differently. For example, Ex. 87 shows emails from Joshua Katz re "Dad Grass/Friends & Family Brands" regarding an introduction to the Yourists (Dan and Brad) at GBI. On July 11, 2019, Foor "@infusionfactory.com" emailed Dan and Brad Yourist, with an introduction to Joshua, Ben and Kevin from Dad Grass & Friends Family Brands." This email was the subject of cross-examination and direct examination; it notes "They are looking for a little information around what it takes to bring products to market as well as options on licensing and

IP/licensing. I provided them with a few licensing options and wanted to connect them with your team as well..." (Ex. 87 p 3 of 4). Foor testified that Dad Grass, to the best of his knowledge, had passed on IF's S-license, but that "Either way their manufacturing was going to get done at Infusion Factory." (TR, p. 174, 11/29/2023).[63] Landon's testimony is to the contrary. However, as Foor stated, if a prospective customer were to call, IF would ask "Are you licensed?" If they were, IF could help them. If not, the "S-license" program was offered; if the customer passed on that, Foor states that prospective customers were told that there was another licensing path through some "partners with Infusion Factory at Grapefruit, and that they've done work like this with other brands and we would connect them." (Ibid. pp. 176-177) Landon's testimony is generally consistent with Foor's testimony; Landon testified that IF had the "shared program *specifically for any unlicensed clients*." (TR p. 204; 11/27/2023) [emphasis added] But he stated that that program required monthly production requirements, a membership fee to join the S-license program and additional fees, some of which varied from $5k to $20k . (*Id.* pp 204-205; 11/29)

In regard to the manufacturing being at IF, Foor testified that if a prospective customer was not licensed and they did not want to participate in the shared license (S-license) then GBI had "some sort of system" where the customer could be somehow covered under GBI's license or an IP agreement or GBI would acquire a certain percentage of the brand's equity (e.g., that of the prospective customer) GBI would do what it did to "Sugar Stoned", described as a "pilot customer", work out an arrangement with the unlicensed customer (e.g., revenue share, licensing, some sort of acquisition) and then that would allow the customer to use GBI's license to have their products manufactured in Infusion Factory, and then sold at market.

He discussed with Landon Long "many times" about unlicensed prospective customers going to GBI. Landon met with Dan and Brad, according to Foor, at the IF facility, and Foor testified that he and Landon discussed some of the brands GBI was working with, such as "Sugar Stone." Foor testified Landon Long was aware, for example, that CBDS was to be introduced to GBI. Again, Foor stated that there would be an IP licensing agreement between GBI and "an unlicensed brand" (thereby creating a form of "licensure") but Infusion Factory did the manufacturing on its premises ("multiple runs"). As Foor explained, this would allow unlicensed customers (who Infusion Factory would turn away due to

[63] Exhibit 100 was referenced; on the same date of the July 11 email re Dad Grass (see Ex. 87), Foor emailed to Dan Yourist, cc to Jordan and Brad Yourist stating that Dad Grass was "looking for more info before they decide between pursuing an "S" here (Infusion Factory) or look for other avenues" which undercuts Foor's testimony that a customer would have had to "pass" on the S-license before it was referred to GBI. Foor stated that this e-mail "reads" like they were given the S-license information. Dad Grass was unlicensed, and had they gone the S-license route they would have been able to manufacture at IF, but the S-license would have included various fees and commitments outlined in Foor's testimony.

lack of licensure and refusal to go the S-license IF was offering) to make a deal with GBI, which was licensed, and then have that work come back to Infusion Factory for manufacture. GBI had no manufacturing facilities, "so it was a safe place to send the unlicensed people because they would come back and have their manufacturing work done at Infusion Factory."[64] (Ibid. at p. 142.) Landon and he discussed this and Foor stated Landon was in agreement with this approach. Foor stated that he was aware of the projects IF was doing with GBI, and was aware of some of the brands they were trying to get licensed coverage with. (TR p. 180 11/29/2023).

The salient testimony of Foor noted that Landon had no objections to this arrangement because if an unlicensed prospective customer passed on the "S-license" it was not a viable customer of IF under Landon's hard rule of "license to license." So, sending such a prospect to GBI ensured that IF would at least have the opportunity to manufacture the product and earn money in that way. Foor stated he would always offer the S-license to prospects, and if rejected, he would send them to GBI.

Foor was aware that at some point in time Jordan started working for GBI, and stated "that was not a secret at Infusion Factory." (TR p. 150, 11/29/2023.) Foor testified it was known that Jordan was doing consulting work "for bringing jobs back to Infusion Factory." (Ibid. p. 151.) When Jordan went half time at IF, it was understood Jordan was consulting, "and his job was to work on the unlicensed brands to bring them back to Infusion Factory one they were licensed for manufacturing." Foor stated that it was discussed with the Longs that Jordan was bringing in business through GBI from unlicensed businesses, and he stated that Landon and Linda understood that Jordan was working for GBI ("I would believe so" and it "would be fair that they knew.") When asked if such referrals would inure to the benefit of Jordan (e.g. suggesting Jordan had a percentage of all customers brought into GBI), Foor stated he was not aware of any percentage Jordan had in GBI and did not know what Jordan's consulting work with GBI consisted of. He denied receiving a percentage of business referred to GBI.

Foor was asked about "Rainbow Dreams", a cannabis product he described as a vape cartridge run manufactured by Infusion Factory. Exhibit 85 reflects a total "run" cost of $168,357. 36 and reflects a "6% split to sales team & Andy." Foor states he never received any money from GBI, and the exhibit

[64] Foor testified that if the "S-license" was passed on, the referral to GBI was intended to benefit IF, who was to do the manufacture, "100 percent of the time." (TR p. 207). He does not believe there was anything in writing between Landon and GBI on that. This is, perhaps, best exemplified in Jordan's testimony wherein he stated that unlicensed prospective customers cannot pay money to Infusion Factory for manufacture; "You have to be licensed. If you're not able to afford $25,000 or you flat say, no, I'm not going to commit to producing $120,000 a year in services, they're not a customer of Infusion Factory and I'm missing out on an opportunity. So the alternate licensing path requires no money up front, but they give up 51 percent of their business [to GBI]. Now, whether they want to do that or not and that makes financial sense to them, that's up to them and Grapefruit, but the end result is the product is still made at Infusion Factory and we get a second chance at a lost opportunity." (TR pp. 122-123; 2/5)

had never been shared with him. Foor testified that he had received a consulting proposal written by Jordan for GBI, but never worked with them or received money from them.[65] Foor was asked about an email (Ex. 147) about Two River Labs, and noted the customer (GBI) is "really starting to panic." And reference is made to pushing GBI ahead of other Infusion Factory orders for a quicker turnaround. This issue addressed potency testing that came back "off" of what Infusion Factory's internal calculations had been, and created a significant problem for IF, as GBI was threatening to sue. Landon "was involved in this." (TR p. 213) Foor asked the testing lab (Matt) to put this issue ahead of some other tests in the queue to get results faster. (*Id.*) It appeared this was part of the "Rainbow Dreams" product. The Yourists threatened Foor and his family over the alleged mistake. According to Foor he was terminated "for financial reasons" by Landon in December of 2020. He was terminated via text message. Landon testified that "underperformance" was the reason for his termination. (TR p. 233; 11/29)

Lena Joleen Tanner testified as a retained expert for claimant and counsel stipulated to her qualifications.[66] She is a CPA and a certified fraud examiner. She testified that the ·financial statements

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[65]Parenthetically, no one from GBI testified at the hearing. Ex. 43 is a proposed consulting agreement with GBI which Foor denies entering into. Foor denied influencing pricing. Some strong cross-examination centered on the proposed agreement (*see* e.g., TR pp. 186-187, 11/29/2023) but Foor stated that the work "off the clock" was done after the customer had already put a security deposit down on the job at Infusion Factory, and his goal was to keep production going at IF.

[66] In evaluating expert witness testimony, the Arbitrator takes note of the following:

CACI 219: Expert Witness Testimony

During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in the expert's field of expertise even if the expert has not witnessed any of the events involved in the trial.

You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony. In deciding whether to believe an expert's testimony, you should consider:

a. The expert's training and experience;

b. The facts the expert relied on; and

c. The reasons for the expert's opinion.

CACI 221: Conflicting Expert Testimony

If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the experts' qualifications.

The Arbitrator would further note that, as applicable to all witnesses testifying, unless a statute requires additional evidence, the direct evidence of one witness who is entitled to full credit is sufficient to prove any fact. (Ev.C. 411.) Thus, the testimony of a witness normally cannot be disregarded. Unless impeached or contradicted by other testimony or by an inference deducible from the facts proved, or unless it is inherently improbable, the court must accept it as true. (*See Sweeney v. Metropolitan Life Ins. Co.* (1937) 30 C.A.2d Supp. 767, 771, [where witnesses to accident were not contradicted or impeached, "neither the jury nor the court had the privilege of arbitrarily disregarding the positive evidence of actual occurrences"]; *Evje v. City Title Ins. Co.* (1953) 120 C.A.2d 488, 492, 261 P.2d 279; *People v. Allen* (1985) 165 C.A.3d 616, 623, 211 C.R. 837 ["absent physical impossibility or inherent improbability, the testimony of a single eyewitness is sufficient to sustain a criminal conviction"]; *People v. Leigh* (1985) 168 C.A.3d 217, 221; 7 Wigmore (Chadbourn Rev.) § 2034; 2 McCormick 6th, § 338; 81 Am.Jur.2d (2004 ed.), Witnesses §§ 999, 1002; BAJI, No. 2.01; CACI, No. 5003 [sufficiency of testimony of one witness]; CALJIC, No. 2.27; 62 A.L.R.2d 1191 [credibility of witness giving uncontradicted testimony as

or general ledgers that were utilized in the preparation of the tax returns by Ms. Jiminez cannot be relied upon in that they lack accuracy and overall integrity and the financial results that are produced are not reflective of the actual financial position of Infusion Factory.[67]As the witness testified, "the general·

matter for court or jury].) Parenthetically, the same rule applies to the testimony of expert witnesses. (See Wirz v. Wirz (1950) 96 C.A.2d 171, 176; *Krause v. Apodaca* (1960) 186 C.A.2d 413, 417.)

See also Evidence Code § 411, which states "Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact."

[67] Ms. Tanner stated that she had only received tax returns from Infusion Factory at the time of her testimony. This is roughly consistent with Ms. Jiminez' testimony that the tax returns were prepared by her in 2023, as noted in her testimony described below. Tanner was a retained expert for Claimant. She specializes in litigation support related to shareholder disputes, partnership disputes, contract disputes inter alia. She is a CPA and obtained her license in 2009. She is also accredited in business valuation, a special credential awarded to a CPA who specializes in business valuations. She is also a certified fraud examiner (since 2014). She has been involved in prepared financial statement, and has been recognized as an expert in the field of forensic accounting.

Ms. Jiminez deposition dated November 10, 2023, was submitted for the arbitrator's decision per stipulation and agreement of the parties. She was not presented as an expert witness at the Arbitration; indeed, counsel for respondents/counter-claimants did not ask a question at her deposition. The deposition testimony reflects her life and work experience,she received her AA degree in 2014 and had no other formal education. She described doing part-time bookkeeping work for a bowling alley, including working for the owner's "nonprofit" ("Choose Folsom") and did not return to full time work until 2018, and continued working as a bookkeeper, finance manager, and then accounting manager and presently Director of operations and finance for Choose Folsom. . She testified in her deposition that she never prepared tax returns for Choose Folsom, but has prepared profit and loss statements and balance sheets. She has done this since 2018. As of late 2021 she is an "enrolled agent" with the IRS, which allows her to process tax returns "and make extra money on the ride." She noted she has had side jobs for family and friends doing bookkeeping and tax preparation. IF and ICON was her first experience with a cannabis company; she was introduced to the Longs by Daniel Artherton, someone who had referred work to her previously, who asked if she was interested in taking on a client who needed "financials put together in order to prepare tax returns." She has never done an audit for any company at any time. Interestingly, Landon's testimony suggested that his understanding was that Jiminez and her husband were "cultivators" of marijuana, licensed in the state, and that "she has done their work...as well as other cannabis entities." (TR p. 229; 11/28) In any event Jiminez was not called to testify at the hearing, and her deposition did not reflect any questions asked by respondents' counsel on these issues.

She testified she had only known Artherton since 2021. Ms. Jiminez stated she had no accounting experience related to cannabis before the Longs, IF and ICON. She stated that it was Artherton who was actually hired by the Longs and the companies, and she subcontracted with Artherton to do the work. She stated she was contacted in mid-2022 but did no work for the Longs and IF and ICON until 2023. She stated she finished she work for them in July of 2023. Jiminez stated she was never paid for preparing tax returns for the Longs and IF and ICON. She billed roughly $1,100 for her services, although in later testimony she stated it was $800. Her services consisted on preparing financial statements; she stated she filed tax returns for ICON for 2018, but not for IF, tax returns for both companies in 2019, 2020, 2021 and 2022. Landon testified that he understood that Jiminez filed for both companies all current, past and amended tax returns previously not filed with the IRS. (TR p. 233; 11/28).

She did prepare a balance sheet and a profit-and-loss statement for both Icon and Infusion for the years addressed above. When she met with the Longs, they advised her that they had not filed tax returns from 2018 on. She prepared no tax returns or financial statement for IF or ICON for 2016 or 2017. She was not asked to file tax returns for IF in 2018. She understood that penalties and interest would accrue for late filing, but she did not calculate that the penalties and interest would be. To do her work for the years mentioned, she was provided the underlying figures of what their sales or expenses were, and she performed the tax returns in reliance upon what they told her the numbers were. As she testified, she relied on their calculations, e.g. the cost of goods sold. She testified (Depo p. 12) the Longs provided her with the GL accounts and totals, but she did not receive bank statements or any kind of supporting documents. Landon Long disagreed with that characterization (TR p. 86; 11/27/2023)

She stated that she relied upon the Longs for determining what were direct and indirect costs for purposes of calculating cost of goods sold for all the years she did her work. Ms. Jiminez was not aware of Landon or Linda's experience in accounting. They told her that they had had "prior accounting professionals" before her and were not happy with their work. She had

·ledger that is being utilized to prepare financial statements is really not a general ledger.· It's just a ·transaction listing.· There's no opening balance, no ·ending balance for each account.· And to -- where you can look at all the ins and outs of each -- each account that is -- that would be on a typical general ledger, ·that summarizes all the ins and outs of that account to arrive at the ending balance which is then summarized and rolled up into your balance sheet and your profit and loss statement. For the purposes of my findings, when I say financial statements, I'm referring to the balance sheet and the profit and loss statement. And I've seen no evidence that -- that the bank accounts that have been summarized in this – this transaction listing have been reconciled. I've seen no evidence of that in the documentation that I've reviewed.· I also -- I believe that this is just an attempt by Landon and Linda to summarize the financial -- to capture all the financial transactions of the company. Now, when you're reviewing this general ledger it's apparent that this is actually a general ledger that encompasses -- when I say general ledger in quotes because again I believe it's a transactional listing, this is basically all transactions for Icon Holdings, Infusion Factory, and VaporPenz." (TR p. 223, 11/30/2023).

In addressing the "Prospectus",[68] provided to Mr. Jordan the witness stated she was "was asked to determine if the projections that were reflected in this prospectus were consistent with -- well, what I was looking for to see if they were consistent with current and historical sales.· Specifically, there is a document or a spreadsheet that has been prepared by Mr. Long that represents the -- the sales of the company from – Scott is there a possibility to tell me what Exhibit Number
Exhibit Number. Q.· · · ·597.

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heard of Bregante through Landon Long, who represented had done their accounting work before Jiminez. She never reviewed any of Bregante's work. She was unaware of a company called Strategic CFOs or an individual there named Ed Gines. She was unaware of a company called Relief Accounting and never heard of Ken Merzwinski. The Longs told her that they had not filed tax returns because they were not pleased and/or did not approve of the accounting done prior.

Ms. Jiminez was not aware of a "McLaren Bridge Loan" and the Longs never discussed with her the purchase of a McLaren sports car.

Kylae Jordan was, according to his testimony, never provided with any tax returns for any of the businesses. (TR p. 118; 12/01)

It is clear from her testimony that Ms. Jiminez was not a trained accountant, much less a CPA, and she was not called by the Longs to testify, nor was she called as an expert witness. The Arbitrator gives her testimony the weight it merits.

[68] Ms. Tanner called Ex. 531 a "prospectus", and Landon called it a "PowerPoint"; much discussion was engendered regarding this document. Tanner noted that it is a "prospectus" because the document summarizes the inner workings of the company giving current and projected financial results. And her understanding was that it was being presented to potential investors, "so that is why I called it a prospectus." As noted, Mr. Foor testified it was given to him by Landon Long to give to Jordan as a prospective investor. The commonly understood definition is that it is a document that provides details about an offering to investors, or, as the Merriam-Webster definition describes, "a preliminary printed statement that describes an enterprise (such as a business or publication) and that is distributed to prospective buyers, investors, or participants." In this case, the Arbitrator finds that Exhibit 531 is a "prospectus".

As Tanner stated, “So in reviewing these records in conjunction with the prospectus, my findings are as follows: So, the overarching purpose of the prospectus is to summarize the company's business and to provide the investor a snapshot of the company's inner workings and a glimpse of their financial status with projected future earnings based upon whatever investment may be made. And I want to make sure it's understood that I understand that a prospectus is meant to be forward looking with -- with respect to both assumptions and projections. I understand that. However, if there's representations of what would be current or actual earnings of the -- of the company or historical earnings, those -- it is -- assuming the parties are operating in good faith, then there is an expectation of -- expectation or duty of transparency and full disclosure.” Ibid TR (rough) p. 246. Tanner stated that she understood that the prospectus was received by Jordan in February of 2018, and that “the company received its license in January of 2018”. She stated that there had been no analysis as to the accuracy of the information (sales numbers she reviewed) on the historical revenues, but some revenue took place in VaporPenz and some in IF. Turning to Ex. 531 (the “prospectus”) and Exhibit 597, the witness noted discrepancies and what she testified was a “misrepresentation of the actual revenues received by an overstatement of $446,769.” As testified, the total actual revenues for 2018 at $660,645, which is about 22 percent of what the prospectus asserts. Tanner opined there was a failure to disclose financial information. She further stated that she did not feel there were financial statements that have been produced “that can be relied upon.” She stated the shareholder agreement with the company basically stated that the company would maintain true and accurate records in accordance with generally accepted accounting principles (GAAP). (Ex. 504, 505, Shareholder Right Agreement and Series A Preferred Stock Purchase Agreement, respectively) As the witness stated, the shareholder agreement calls for financial statements, and to the date of her testimony she has not seen financial statements that meet generally accepted accounting principle, nor has she seen a set of financial statement that are prepared on a non-GAAP basis; in sum, she testified she has seen nothing that reflects the current position of the company. As she stated that section 2.1(b) also states that the company will provide at the end of each fiscal year a copy of ·the financial statements or furnish them to the ·shareholders of the company. And she had not seen financial statements that have been provided to the shareholders. Such statements are “imperative” and she sees none were made.

She does note that the cannabis business is unique. It does require more “granular categorization of expenses”, and there are challenges that a cannabis business is faced with in that it is largely cash

based,[69] which leads to the need for extensive ledgers, cash ledgers, and tracking of the expenses and keeping records of those cash disbursements. In this case, the witness had concerns over accuracy because the companies were "doing everything in retrospect" and were not tracking or keeping accurate records as they went along. She was critical with regards to the balance sheet, as reflected in the tax returns (prepared in 2023) in that no liabilities are reflected. Tanner noted the tax returns prepared by Jiminez did not reflect "the SBA loan or any of that." Tanner was critical of Jiminez' work.

David Crouch was called to testify. He is currently employed as a managing partner (since 2019) with Bregante and company, a CPA firm that does tax accounting audit services. He achieved his CPA in 2017. He joined the firm in 2008 as a staff accountant, and worked on cannabis businesses when he joined Bregante and even prior to joining. The firm employs between 20 and 30 licensed CPA professionals. The firm has been involved in cannabis accounting since approximately 2005, and about 20% of their current business is related to cannabis. Bregante was retained by ICON and IF in September of 2019. Crouch testified that his firm's scope of service for cannabis entities involved helping them to compliance in filing income tax returns, property tax returns for personal property statements and accounting assistance. They also "clean up" inventory accounting, cost of goods sold accounting and general consulting.

By 2019, he had worked with 100 different entities related to cannabis and had filed about 200 tax return related to cannabis companies. He has worked with cultivator entities, distributors, retailers, licensed manufacturers and ancillary cannabis businesses. He estimated that his was one of the top five firms dealing with cannabis in the Bay Area. He was familiar with IRS code section 280E[70] for doing accounting for cannabis entities. According to this witness, as of September of 2019, he had prepared 150 tax returns for cannabis entities, each of which had a 280E element involved, and they worked to

[69] On the issue of cash, Landon stated that handwritten notes were maintained on the "cash log" in the safe and these would show times cash would enter or leave the safe. Infusion was obtaining cash payments due to restrictions on banking in the cannabis sphere. Landon described cannabis as a largely cash business. (TR pp. 174-175; 11/28/2023)

[70] Broadly, at the federal level, cannabis and derivative products with a THC concentration over 0.3 percent are Schedule I substances under the Controlled Substances Act (CSA) of 1970. Therefore, cannabis and cannabis products exceeding this threshold are illegal to grow, possess, or sell under federal law. Marijuana's status as a Schedule I substance at the federal level has ramifications for cannabis policy at the state level. For example, cannabis businesses must pay taxes on all their revenue without the benefit of using their business expenses to reduce their taxable income under Section 280E of the Internal Revenue Code. Section 280E states that businesses engaging in the trafficking of a Schedule I or II controlled substance are prohibited from taking tax deductions or credits. It has been noted that many cannabis businesses in "legal states" must operate as cash-only enterprises, since some banks are wary of transacting with businesses that are not in compliance with federal law. Crouch testified that it is substantially harder in a cash intensive business to maintain accounting records than it is with a business that takes credit cards and has banking privileges. He did note that California does not conform to the bonus depreciation rules that the federal government allows. California allows 280E expenses that the federal government does not.

prepare returns, and worked with the clients on their 280E adjustments. (TR, p. 92; 11/30/2023) However, his firm did not do audits in the cannabis industry. He did note that on the draft return he prepared "they did have a balance due of ... $6,000 of California tax based on the $70,000 of income." (TR p. 156; 11/30/2023)[71]

Bregante was engaged to provide services to VaporPenz, ICON and Infusion Factory. By the time he had met with Landon, VaporPenz closed and was no longer in operation, and Bregante was asked to file a final tax return for them "with minimal to no activity" for 2018. Crouch testified that he never had conversations about any allocation of "historical sales" between VaporPenz and Infusion Factory because there was no correlation; VaporPenz was the remnants of the Longs prior business "and he understood sales stopped in 2017, and Infusion was the new business." (TR p. 198; 11/30/2023) ICON and IF was just starting out in 2018 in the cannabis sector, and his firm was tasked with looking at their accounting records to try to get them "up to speed." (TR p. 97, 11/30/2023) This included "help them with their chart of accounts, help them with getting the accounting...established" and looking to see what they had for a general accounting ledger. (Ibid.) Once ICON and IF had sufficient accounting records, Bregante was to file their tax returns. However, as Crouch testified, Bregante does not do any bookkeeping; if the client needs that service, they refer them out to another service provider, as bookkeeping can be prohibitively expense at their rate. In the case of ICON and IF, Bregante referred them to Ed Gines for bookkeeping work. Crouch had worked with Gines before and thought Gines would be a good referral, as he was familiar with his work on other clients and "was comfortable with his skills under GAAP." Crouch believed Gines to be more than qualified to assist with the work on ICON and IF. Crouch testified that he had no problems or criticisms of Gines work for ICON or IF, even as he noted that they faced time constraints in the 2018 timeframe[72] to file the 2018 tax return. As Crouch

[71] Crouch noted there is a required California minimum tax of $800. He testified that the SFTB had contacted Bregante looking for payment. He does not know if payment was made. (TR, p. 169; 11/30/2023) By that time, he had advised that Bregante had withdrawn from representation of the clients.

[72] Bregante was engaged in September of 2019, and had been asked to file 2018 returns for ICON and IF, and the deadline from the IRS for filing would be October 15, 2019. As Crouch testified, there was a "short window" to get the work done. He had met with Landon in June of 2019 and he and Gines met with Landon in August to "..make sure he understood what Ed needed to do" and to make sure Ed Gines was familiar with the business. He explained to Landon the short time frame, but Landon and Linda assured them that would be able to provide Ed with the necessary information and financials to allow for timely filing of the return. Landon and/or Linda were looking for a chart of accounts, which would classify items for accounting (e.g. cash accounts, bank accounts, expense accounts and the like). Crouch stated that in the August visit, he and Gines went to the facility, and it seemed professional "for licensing", but the accounting records he and Gines were shown consisted to "lists of transaction" in Excel; they did not have any set of established accounting, and no QuickBooks. Gines was to establish that as well creating actual records of accounting and a "system". As Crouch explained it, Bregante provided Gines "with a kind of a basic chart of accounts to go off of for the cannabis industry..." and after Gines was to complete the data entry portion and "built the actual accounting records" he would work to assist Bregante in categorizing different

testified, to the extent some things were not adequately summarized or broken out, Gines went back and worked with "Landon to try to breaks thing up so from my point of view, by the time Ed had finished what he had worked with Landon to do for the '18 or 19 financials it seemed like Ed had prepared sufficient information based on the information he had." (TR, p. 99; 11/30/2023).

Crouch noted, however, that while the Longs were responsive "for the most part" there were some gaps toward the end of September and October, where there would be a one or two week gap between responses and would "hold up" Gines and Bregante's work. This was a busy time for his firm, with "hundreds" of returns needed to be finalized and prepared by October 15th.

As he noted, the accounting for ICON and IF was disorganized.[73] His firm was not given any of the underlying financials for the businesses (e.g. checks, invoices). Gines was to be working on that end of things, to organize the accounting, financial statements, and prepare balance sheets, etc. preparatory to getting the tax returns prepared by Bregante, and filed. In later testimony Crouch made it plain that when Bregante was engaged in 2019 "there were no books and records of the company. It was just an assortment of ledgers that he had put together", essentially just a compilation of sales and expense. (TR p. 136; 11/30/2023) Crouch stated this was not an accounting system at all and there was no general ledger until Gines "created one." (*Id.*) He was unable to reconcile intercompany transactions because of lack of explanation from the Longs.

Crouch stated that his firm's services stopped at the end of 2020 due to lack of payment for services[74] and "non-responsiveness." As Crouch testified, "And so we, essentially, worked on preparing some draft returns for the Longs for the 2018 and 2019 years, after Ed Gines had gone through, had finished his portion of the accounting work recollection we had gone through and made some suggestions for some reclassifications listed out some open items that we still had and had made some proposals for what the management fees could be charged back and forth to the companies[75], and [what] the 280E

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accounts and categories. Crouch stated that he did not recall ever providing Bregante's chart of accounts directly to ICON and IF.

When he met the Longs, Crouch described the records of the facilities as "incomplete" and there was not much organization in the accounting. He described it as one of the five most disorganized accounting he had ever seen in the cannabis industry. He later testified the Longs were "in the process of trying" to establish procedures for accounting, but he perceived they were nonexistent. (TR p. 112, 11/30/2023)

[73] In his experience with the industry, particularly in the early years following legalization, cannabis companies' books and records were often in disarray.

[74] Crouch stated that Bregante invoiced the entities about $49,000, of which about $30,000 remained outstanding.

[75] The issue of management fees as between ICON and IF was addressed in some depth. As Crouch testified, in cannabis companies, a common structure was to have the entity that owns the license be subject to 280E for tax purposes and records all cannabis sale and purchases; the "management" or holding company would not have the license, would not be "directly touching the plants" or owning the products or materials, and the management company would be able to establish a banking

adjustments could look like, at that point in time we provided the link to the Longs and at that point there was no response for another probably month or two and we also made mention in that last email that we would not do any further work ·at this point until we had some resolution on the past due balances." (TR, p. 105, 11/30/2023) Crouch reached out to the Longs in January of 2021 and provided some documents they had requested, and told them Bregante would not be providing services until the bills were paid or a payment plan addressed. Although he reached out a number of times after that, Bregante had marked the client as "inactive" and stopped pursuing collections or communication.

Crouch further noted that the licenses for either ICON or IF had been suspended with the state. When his firm got involved with cannabis enterprises, his firm kept track of the database the State of California published through the Bureau of Cannabis Control showing new license regulations, suspensions of licenses, and expired licenses via e-mail notification sent out by the State. He did see "at one point" (2020 or 2021) that ICON and IF were listed on the suspended or expired category. He understood that a suspension would not let them do business. He also understood (Ex. 567) from Landon that his permits with the City of Sacramento had been expired since May of 2020. He stated that this caused his firm to "work more diligently" to get the information complete. However, he noted that even as of 2021, this remained an issue.

Crouch noted that he had "relied" on the representations of the Long in attempting to do his job. He was aware that no tax returns had been filed since the inception of ICON or IF. In checking with the State, he noted that the companies were actually formed in 2016 (for IF) or 2017 (for ICON)[76], and even if there had been no activity they were still required to file returns.

He stated that each entity had failed to file federal and state returns since their inception, and in succeeding years, up to 2019.[77] Potential penalties are associated with failure to file. Crouch was not

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account, make deposits, write checks, do payroll, etc. (TR pp. 186-189; 11/30/2023) Landon Long addressed the management services and consulting agreement between ICON and IF; he stated the purpose of this agreement was to memorialize the relationship, "where you have a primary operating company that is a management company and another company that does cannabis activities..." (TR p. 70; 11/28/2023) He testified this was disclosed to Jordan. (*Id.*) In the instant case, ICON was the "management" company (see e.g. Ex. 505 "Management Services and Consulting Agreement" which allows for compensation to ICON at an amount "TBD" (sec. 1.2)) , and IF the licensed company. Management fees to ICON would be a source of revenue to ICON from IF, along with other sources (e.g. ICON, Crouch believes, was leasing the building and acquiring equipment, with related "large" expense due to depreciation). The fees would impact both companies, tax-wise. Ex. 259 was shown the witness and addressed management fee amount; in this exhibit yet other numbers were addressed for income. (TR, p. 190; 11/30/2023) Crouch noted that the Longs wanted a higher, "more aggressive" management fee, and he wanted them to substantiate the reasons for this. The Arbitrator would note that there was no evidence that the dollar fees for management by ICON were ever determined in writing in the management services and consulting agreement.

[76] It was stipulated that Icon was established in 2017 and Infusion Factory in 2016. (TR p. 73; 11/28/2023)

[77] Ex. 505, "ICON HOLDINGS, INC., Kylae Jordan Series A Preferred Stock Purchase Agreement" (SPA) section 3.18 states: "Compliance with Laws; Licenses and Permits", (a) Except for those laws of the United States federal government

aware of any illicit sale of THC products prior to 2018; he stated that to his understanding VaporPenz had nothing to do with the cannabis industry (TR p. 114, 11/30/2023)

Crouch stated that "skeletal" tax returns (which he later denominated "estimated returns") were filed by the October 15, 2019 deadline for both ICON and Infusion, based on late-received information from the Longs, and they discussed with Landon that to preserve him from further penalties for not paying taxes or filing tax returns, Bregante would take the information that was available and file a return with "rounded" estimated numbers" and attach statements to the returns stating these were "estimates" and that the returns would be amended at "a later date." According to Crouch, Landon told Bregante at that time that "the information was not correct" and that the data showed "too much income" and that a lot of information was "missing." Crouch conceded that the 2018 returns provided no "substantive information" and the intent was to file amended returns at a later time. Bregante never filed any amended returns for 2018, nor for any years after that, for either ICON or IF. He noted that while the skeletal returns were filed with the state and federal government, the so-called "amended" returns were given to the Longs "solely" and never filed. (TR p. 159; 11/30/2023) He later testified that if Landon had told

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and the instrumentalities or agencies thereof, including but not limited to the Drug Enforcement Agency, and state and federal governments relating to cannabis, the Company is not in violation of any applicable statute, rule, regulation, order or restriction of any domestic or foreign government or any instrumentality or agency thereof in respect of the conduct of its business or the ownership of its properties, which violation would materially and adversely affect the business, assets, liabilities, financial condition, operations or prospects of the Company. ..." Landon testified that tax returns had not been filed. (TR p. 146; 11/27/2023) (see also 3. 14) Landon agreed that "tax returns were not filed at that time." (May 24, 2018) (*Id.* p. 146) 3.21 of Ex. 505 references "Full Disclosure" which states that the company has provided purchaser with all information requested by purchaser in connection with purchaser's decision to Purchase shares. Landon disagrees that he did not provide full disclosure to Jordan. (*Id.* p. 149) He states the company provided Jordan with "all information requested by purchaser." (*Id.*) He was further asked about section 3.21 in which it is stated "Neither this Agreement, the exhibits hereto nor the Related Agreements contain any untrue statement of a material fact nor, to the Company's knowledge, omit to state a material fact necessary in order to make the statements contained herein or therein not misleading." Landon conceded that tax returns and payments were not filed in contravention of the stock purchase agreement. (*Id.* p. 149) It is also noted, in testimony, that there had been five months of sales in the company preceding the date of the SPA, and that Schedule 2 to the SPA does not show any of the accounts for Infusion Factory. (*Id.* p. 151) Nor does it show any for ICON. (*Id.*) Landon seemed to suggest Jordan's investment was a pre-money investment, despite 5 months of reported "earnings", (*Id.* p. 151) and defined that as investment made prior to the generation of revenue, not based on performance of the company. (Id; see also TR p. 113; 11/28/2023) Nowhere was this disclosed in the SPA or otherwise in writing, but Landon testified it was stated "in conversations." (*Id.*) Landon stated such conversations were "in relation to that PowerPoint" (*Id.* p. 152) but it is to be noted that he had testified he did not recall such conversations, and stated he had no part in sharing the PowerPoint. On these points, Landon's testimony was seemingly contradictory. Ultimately, it appears that no accounts or dollars in the bank were reflected in the SPA. Landon testified that reimbursement to Linda out of Jordan's investment in excess of $40,000 was not disclosed to Jordan.

Before Jordan invested Landon admits IF had done no sales; it was all "booked under VaporPenz." (TR p.113; 11/28/2023) Landon again defined the term "pre-money" as being an investment made ahead of the company generating revenue, and because IF had not been generating income "it was all under VaporPenz." (*Id.*) The Arbitrator would note that, traditionally, a pre-money investment (or pre-money valuation) is the estimated value of a company before it receives new capital from investors; and it is a means for investor to gauge a company's current value and decide whether to invest. Generally, pre-money valuation is lower than post-money valuation, which includes invested capital. However Landon again stated that he discussed this with Jordan prior to his investment. (*Id.*)

him that the amended returns could be filed, he would have been prepared to file them. In later testimony he noted that the Longs failure to pay fees factored into the issue (TR, p. 176; 11/30/2023)

While he does not recall being contacted by the IRS, he was contacted by the State Franchise Tax Board, and the IRS was acknowledged to have received the estimated return. Crouch then testified that the IRS and the FTB were instructing that tax returns and payments be made immediately for outstanding years, which meant (for IF) 2016 to 2019, and for ICON, 2017-2019. Landon provided Bregante with delinquent notices for non-filed returns and for unpaid tax. Yet, he noted that there was substantial income, which would have generated a significant tax liability. (TR p. 127-128; 11/30/2023)[78] The Longs disputed the numbers and maintained there were inaccuracies in the accounting done by Gines. Crouch reviewed at least some of Gines work; all the QuickBook entries was the work "of Ed and his team..." Crouch noted the concern over "double reporting" and testified that it was his "belief" Gines had corrected those errors, but Landon continued stating there was incomplete and missing information.[79] In 2019 and thereafter, he understood that IF and ICON disputed how certain expenses were identified.

This witness repeatedly noted that transactions were not reported properly and/or missing. He stated that the returns were not filed (in this, the question posed appears to mean the amended returns and Crouch testified there were "draft amended returns" that were not filed) because of the Longs "inability to provide us complete information." In later testimony, Crouch testified the amended returns were never finished because of the "back and forth" with Gines and the Longs to get things reclassified. Crouch stated the Long were never satisfied with the final results. (TR, p. 163; 11/30/2023)

In sum, he was not critical of Gines work and stated that Gines was able to complete his work "to the best of his ability with the information he was provided." He stated that he had no criticism "of

[78] The issue of income and tax liability was discussed at length and engendered dispute and what appears to be sometimes contradictory testimony by the witness. Crouch noted that while the estimated returns ("skeletal") showed income tax liability, "the returns that we filed shows zero in the taxable income so the financial statements would have shown a profit but we agreed that we would show expenses equal to revenue..." (TR p. 152, 11/30/2023) He testified that if the IRS accepted the returns "as is" he would be surprised if the companies had tax liability. Yet, one point is clear regardless of the tax owed: for years no tax returns had been filed by ICON or IF, predating Jordan's investment.

[79] Crouch testified that Gines provided Bregante with some bookkeeping work, including QuickBook files; he stated that Bregante "spotted" some issues with the data, including inaccurate placement of accounts, which he discussed with Gines. Because this was spotted at the time the skeletal returns were filed, on October 14th, there was little time to get into the details, per Crouch. But after the estimated returns were filed, time was spent by Bregante to look at the transactions in detail, and some dual entries were reported for income that was increasing the entities' revenue. Crouch stated that once these were identified and removed, what remained was trying to identify transaction that were not reported, and these, according to the witness, would only be possible to identify if the Longs "were to provide us with information that supported them." (TR, pp. 151-153; 11/30/2023) .

the final product" and nothing stood out to Bregante as inherently wrong that Gines and his team had done. (TR p. 163; 11/30/2023) Crouch testified he believed the Longs were not satisfied with Gines work "he had finished so far" and Gines provided Crouch/Bregante a copy of the QuickBooks files "so we could at least have something to start with..." (TR, p 161; 11/30/2023) However, he made clear this was a courtesy by Gines, and Crouch did not provide the QuickBooks materials to Landon, as it was not a "source document" of Landon's. (TR p. 179; 11/30/2023). Crouch stated Bregante was not in control of being able to provide copies of Gines work to Landon; "that was between him and Ed to figure out their disputes and get that settled." (Ibid.) Landon was critical of work done by Gines and Bregante. (TR p. 204; 11/28) Landon stated that it was "typical" that Bregante would not respond to inquiries. (TR p. 213; 11/28) Further, Gines refused to provide "us our QuickBooks file." (TR p. 205; 11/28). Landon stated that after he and Kylae had a call with Gines, Kyle called Landon back and said "we got to fire this guy", and he agreed. (TR p. 206; 11/28) Jordan testified that he and Landon discussed terminating Gines, as he was "blocking our access to QuickBooks." (TR p. 162-163; 12/01). Landon stated that Bregante confirmed there were "issues." (*Id.*) Jordan testified that he was never denied involvement in financial discussions by Landon. (*Id.* p. 168)

Crouch had few interactions with Kylae Jordan; on one occasion he was introduced to Jordan, and he recalls an interaction where Jordan tried to offer assistance to get outstanding invoices and payments issues resolved. Crouch recalls Jordan wanted to see some financial statements and some records of the company. He also wanted to see the final tax returns. These were the only interactions Crouch recalled.[80] He testified he never understood that Kylae Jordan had any role in accounting for the

[80] In contrast, Landon states that Jordan was "looped in" to discussions between Landon and David Crouch. Of note, the emails demonstrating that Jordan was involved with the accounting issues commence approximately 2 years after his investment. As of March 2020, Jordan asked to be added into "payroll discussions" and he was. (TR p. 161; 12/01) In testimony Jordan stated that his "access" did not begin until April of 2020 as to what financial information was available. (TR p 174; 12/01) Various exhibits address this issue: Landon was shown a series of email (*see* Ex. 256 pp. 1-7). On this exhibit of seven page, the first email is dated April 13, 2020 sent by David Crouch to Landon, cc to Linda and Lakshmi Kesaraju (Jordan is not seen); the next email is dated May 1, 2020 at 11:34 a.m. from Landon to Crouch, cc Linda and Lakshmi (Jordan is not a recipient) and the topic was the 2018 and 2019 "filings"; the next email is on May 1 at 11:44 a.m. from Crouch to Landon, cc Lind and Lakshmi (Ordan is not a recipient). The next email is a May 26, 2020 email at 2:40 p.m. from Landon to Lakshmi Kesaraju and David Crouch, with a cc to Linda and Jordan, "Subject: Re: Checking in." (ICON004901) The next email in this chain is a May 26, 2020, 3:24 p.m. email from Laksmi Kesaraju at Bregante to Landon and David Crouch, with a "cc" to Linda Long and Kylae Jordan inviting "you to a scheduled Zoom meeting." (ICON004901) The last email in this exhibit (ICON004907) is dated June 1, 2020 from Landon to Jordan and Linda with a "FYI- Landon" and "Invite" is noted. Ex.257 is an email dated June 5, 2020 to Crouch and Lakshmi, "cc" to Linda and Kylae Jordan noting that "in order to renew our permits, the City of Sacramento is requesting the following documents: 1. An annual budget of projected income and expenses for 2020; 2. A copy of the 2018 Profit and loss statement; 3. A copy of the 2019 Profit and loss statement; 4. A copy of the 2018 Federal and state income taxes [sic]; 5. A copy of the 2019 Federal and State income taxes. [sic]" Ex. 258 is also a series of emails; the June 11, 2020 email from Landon to Crouch does not include Jordan, nor does the June 16 or June 22, 12:55 p.m. email. June 22 emails (2:12 p.m. and 2:38 p.m.) do not include Jordan. Jordan is copied on a June 26, 2:40 p.m. email from Landon the Crouch discussing "chatting on Monday." (p. ICON004923)

companies; he never talked with him or dealt with him on "any accounting aspects." (TR, p. 182; 11/30/2023). He stated he never had any substantive accounting conversations with Mr. Jordan. He confirmed that he would have had to have authorization from Landon to do so, and his belief was that Jordan was a "limited partial partner" and he did not feel comfortable sharing financial information without Landon's approval. This contradicts Landon's testimony that Jordan was participating fully in conversations with Bregante (TR. p. 196; 11/28) Landon testified that Jordan "participated in phone calls and some emails." (*Id.*) For his part Jordan testified that he was not involved in any financial related meetings until late 2019, and stated that he contacted Crouch in 2020 for information, but was told Crouch was not "allowed to give it to me." (TR p. 117; 12/01) Jordan recalls two Zoom meetings with Bregante, and less than ten emails (TR p. 157; 12/01) The preponderance of the testimony is persuasive that Jordan was not brought into the financial discussions, as Landon states he was. This is supported by the various accountants, as well as Foor's and Jordan's testimony, and, to an extent, that of Linda Long.

Crouch understands that ICON and IF moved to another accountant after their association with Bregante ended. He did not know Mr. Ken Mierzwinski. Landon stated that he lost confidence in Bregante and Gines, and was trying to find "options". (TR p. 214, 11/28)

Ken Mierzwinski Relief Accounting CFO Services) testified in the Arbitration. He is a CPA, since 2006, but a long-time accountant prior to obtaining his CPA, and has two business: one for audits and reviews for nonprofits and the other works with cannabis companies. As he noted, cannabis accounting isn't much different than other accounting-- the only difference is certain deductions on the federal side, one can take or not take.

He testified he prepares tax returns for cannabis businesses. He initially had discussions with Landon and Linda in January of 2021, but in March of 2021 he was formally engaged by IF and ICON. In February of 2021, he advised Landon and Linda that Bregante's work was problematic, because he

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Exhibit 259 is a July 15, 2020 email from Crouch to Landon and Linda (Jordan is not a recipient noted) discussing the 2018 and 2019 amended returns, for ICON and IF and stating "we are not going to be able to complete" the returns. Jordan's name does not appear on the exhibit, nor does it appear on Ex. 259, an email from Landon to Crouch, discussing "our phone call" and getting the ICON and IF books "wrapped up ASAP." Jordan's name appears sporadically., and in subsequent exhibits (e.g. Ex. 264) it is seen once in four emails. On cross-examination Landon stated that he had "included" Jordan on emails with accountants. (TR p. 25; 11/30) Yet there is correspondence between Jordan and Landon where Jordan expressed concerns about where the money was going, (Ex. 604) and in that email dated March 27, 2020 communicated that "from here going forward I want the actual financial access and books so I can see how we are losing so much so fast and that I'm not able to account for the extreme changes in our volume in cash on hand I'm not interested in moving forward without this information." Jordan wrote he wanted to be included in all "financials going forward." Landon texted Linda to have ADP payroll reports for YTD 2020 put on a "drive" and share them with Jordan, and noted Landon was "adding Kylae on our ongoing conversations on staff expenses and valuations." (TR p. 30; 11/30) Landon was unable to point to any documentation showing that Jordan had full access to the books and records or financials of the companies. (TR p. 33; 11/30)

looked at their chart of accounts and saw no inventory on it;[81] he never spoke with Bregante, however.[82] He did state that Linda Long sent him her bookkeeping for various months, which she herself prepared. As the witness explained the IRS is strict on inventory because inventory shuffles out the cost of goods sold, and the IRS wants to see that you are recording the inventory correctly; he states that he never saw any of the inventory recorded correctly for IF or ICON, as he had not "gotten that far" in his work.

Prior to 2021, he had worked with cannabis companies[83], doing accounting work, audits and tax returns. These companies included cultivators, distributors and manufacturers. When he was engaged by the Longs, he was told that they had a prior CPA who was not "doing the work" and that they had records from 2018 through 2021, and they needed "bookkeeping done for that" in order to get the tax returns done, because none had been done. Although he initially spoke with both Landon and Linda, his main contact was through Linda Long. This witness stopped doing services for them in August of 2021 because he was not getting paid. He never received any compensation from the Longs or the entities. In contrast, Landon testified that Mierzwinski was paid a $6,000 retainer through Linda Long's "personal bank account" (TR. p 235; 11/28)

[81] In other testimony Mierzwinski that he did not receive documents from Bregante (although he stated Landon showed him a chart of accounts, which he stated looked "fine" but was not very detailed), nor did he actually receive a chart of accounts, and noted that he was not satisfied from what he heard from Landon that Bregante was not doing anything. He stated that there was "no reason for me to ask for their [Bregante] records or even speak to them.... So I went back to square one." (Rough Transcript p. 33-34, 11/28/2023) In further testimony, the witness stated that he did not believe Landon or Linda gave him "anything prepared by Bregante", except for a chart of accounts he "briefly scanned through it because Landon said he had redone the chart of accounts and he wanted me to look at it." (Ibid.) This aspect of the witness' testimony was vague. He never looked at Bregante's work because Landon said they had not done anything. He later explained in his testimony that he simply assumed Bregante work was problematic based on Landon's representation of Bregante's work. Interestingly, Mr. Gines stated that he "improved" upon the chart of accounts Landon Long had, but later clarified he could not recall if there was a preexisting chart of accounts or if he "started from scratch.".

[82]For his part Mr. Crouch noted that as of February 2021, Bregante had not prepared estimated returns so "there was no inventory—there was really no inventory shown on the returns that we prepared." (TR p. 194; 11/30/2023) He noted there were different ways of showing inventory, and he felt Mierzwinski's comment (Ex. 302) had no merit.

[83] Mierzwinski testified as to "Prop 215." Parenthetically, in 1996, California voters approved Proposition 215, the Compassionate Use Act of 1996, which exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for medicinal use. (Health & Saf. Code, § 11362.5.1) In 2003, the California Legislature enacted Senate Bill 420, the Medical Marijuana Program Act, which clarified requirements related to medical marijuana. Pursuant to the legislation, the Office of the Attorney General is required to adopt "guidelines to ensure the security and non-diversion of cannabis grown for medicinal use by patients qualified under the Compassionate Use Act." (§ 11362.81, subd. (d).) As Mierzwinski testified, under Prop 215, cannabis companies set up a separate noncannabis company as a "management company to run through payroll and things like that", in conjunction with the "strictly" cannabis company. When he was retained this two-company model was "not very popular anymore" and he told clients that "was not the best way to go."

Mierzwinki's testimony does not address Kylae Jordan, although Landon states he discussed with Kylae Jordan and Linda going forward with Mierzwinski after concerns with Gines and Bregante became acute. (TR p. 219; 11/28)

Nonetheless, when he was initially approached, he was told by Linda and Landon that there had been a prior CPA, one David Crouch with Bregante & Company (with whom Mierzwinski never spoke). Mierzwinski does not know if Crouch was given full access to IF and ICON's books or not. In any event, Mierzwinski understood that the work Bregante or its people did was not done, and they were terminated. He himself received a "link" to the records from Landon, but he stated he did not get to the point to be able to start using those records. He had not finished the data entry, did not do bank reconciliations, and did not "code everything." He did note that Linda had provided Excel sheets which showed what Linda had coded. As stated, "they were recording case in and cash out" but he had "major problems with the way they were doing it." As Mierzwinski testified "They had nothing in QuickBooks at all." (Rough TR, p. 48; 11/28/2023) This was detailed in the testimony. As he stated, "Everything was coming into the noncannabis company, and I was told to record revenue on the cannabis company and there was no way I could because all that money had been spent in different areas." He testified that this adversely affected the Longs ability to prepare proper financial statements. He noted there were a lot of descriptions missing on items. He stated he never got to doing the bookkeeping and CFO services for the Longs and IF and ICON. Linda Long was specifically concerned about not having the tax returns done. Both Landon and Linda expressed concern that if they did not have the financial statements and tax returns done their cannabis licenses might not be renewed.

The Longs told Mierzwinski that the significant amount of money in ICON was "petty cash" to pay bills. But he stated that is not what petty cash is. He perceived that Landon was not responding appropriately to his concerns, and he came to believe that IF and/or ICON were doing "things" to reduce their tax obligations—a big issue being overinflating the cost of goods sold (COGS), which would lower net income. When asked if he understood the Longs were trying to minimize their tax consequences, he stated, that jumped out to him because "everything was being recorded to COGS instead of going to inventory first and then doing the COGS adjustment."

He felt they were doing it improperly, and came to believe that the books and records the Longs provided did not properly or accurately represent the true state of the books and records of the entities. Recording of expenses were on "Linda's spreadsheets." He described the situation as "a mess", with no bank reconciliations from 2018. He felt that Landon did not understand the bookkeeping (Ex. 611). At

that point the relationship ceased.[84] He never conducted an audit for IF or ICON, and testified he never reviewed the underlying "source documents", e.g. financial information provided to him. When asked why he had not, he explained the steps he would have to go through to enter "everything" entered in QuickBooks, get the explanations for the items (there were none given to him, and descriptions were missing) before bank reconciliations and financial statements could be produced. He testified that Linda Long's records were merely cash in and cash out; Linda told him that she and Landon had "notes" for the transactions, and she would have to "go back" and she would be able to supply explanations.[85]

Ed Gines was sworn to testify. He is not a CPA, but is a private accountant. At the time of the hearing, he had been in business for over 20 years, and was involved in "tax readiness, audit readiness, and financial management readiness." He stated this included working in accounting positions or finance positions, preparation of financial statements, general ledgers, and tax returns in close association with CPAs. He was asked to be involved in the Longs business by David Crouch, the managing owner of Bregante,[86] who referred the Longs to him. Gines is the owner of Strategic CFOs, which opened in 2016[87], and which primarily does "accounting cleanup." His firm was retained by ICON and IF about September of 2019, and the firm's services ended in March of 2020. The primary reason for the end of services was lack of payment but he cited "lack of communication" by the business owners, whom he referred to as "Landon and Linda Long". When his firm was retained, he noted that the firm had two domestic employees and also nonemployees (CPAs) based in the Philippines for accounting purposes. Landon testified that he was not aware Gines was offshoring work, but acceded that was part of the contract he signed with Gines (TR p. 278; 11/29). Two such non-employees worked on IF and ICON accounting, along with "Meena", a domestic employee. Gines himself would supervise the work, "as best [he] could." He felt the CPAs in the Philippines were "more than qualified" to do the work. He testified that he did not have to be a CPA to monitor a CPA, and that "if you have enough experience

[84] Mr. Mierzwinski noted that his work was impacted by a triple heart bypass, which delayed his ability to work, causing "a bit of a delay". Linda Long continued to push him to get the work done due to concerns over the delayed tax returns. He noted that Linda and he worked closely together, and that Linda was "doing the bookkeeping."

[85] Mierzwinski waffled on a few points; he seemed to consistently say that he did not receive the information he needed to do his work, but stated that some information was given (e.g. some explanations for items). He could not say "one way or the other" if cash was missing, but his testimony on this also seemed contradictory. Later in testimony he testified he did no analysis to see if money was missing.

[86] Gines stated that he had a successful relationship with Bregante and had worked with them four or five times before the Longs engagement. The testimony of Gines appears to suggest that he worked with Bregante's clients to "get them to a certain level" (wherein Gines would prepare the "financials") where Bregante could then prepare the tax returns. He understood that Bregante was relying on his (Gines) work product in order to do their tax preparation.

[87] Gines testified he "stepped away" from accounting for a period of time and reentered the field in or about 2013-2014.

and understand audit procedure and understand the flow of monies, you can do your job without a designation." (Rough TR, p. 98, 11/29/2023)

Gines entered into a contract with ICON Holdings (although he testified that "verbally" the work extended to IF and VaporPenz) for accounting services (Ex. 558). This included a provision on assignment, in which it is stated the client is aware that outsourcing to the Philippines of work would occur. He expressed to the Longs that work would be outsourced to the Philippines. They had no objection.

Gines testified that he went with David Crouch to look at the Infusion Factory facility and met with Landon and Linda Long. He himself went out to the Sacramento facility three times. He observed "lot of binders of papers", approximately five to eight thick binders. The binders included invoices, handwritten reconciliations, and back statement; he testified that he perceived this was their accounting system.[88] Linda participated more in the accounting end than Landon, and he perceived she was primarily responsible for the accounting at the companies. The witness testified that Linda had a lot of yellow pads of paper, but "quality [was] minimal." (Rough TR p. 71, 11/29/2023)

Gines testified as to scope of work. He stated that "a lot of intercompany transactions" would have to be cleaned up to obtain clarity on which entity made what profit or losses; he did not believe they (the entities) had a good quality set of books. He believes he either used existing QuickBooks files or started their QuickBooks file. He stated that the books and records given to his firm were "atrocious" because the reconciliations and the ledgers were handwritten and chaotic, although the Longs tried to be compliant. He stated that a system of accounts like he saw "will not succeed over years and years." He agreed that there were virtually no accounting policies or procedures in places. There was no general ledger, which he described as the "backbone" of the system and essential to the creation of financial statements and to showing account balances. Without a balance sheet one would not be able to see the financial health of the company at any given time. He stated the Excel was not acceptable accounting software. Gines stated that when he saw the records (binders) of the company he could not decipher what the financial status of the company was, or determine their liabilities, and he discussed his concerns with the Longs. He never did an audit of their financials, and he understood that ICON and IF had been registered with the State with appropriate licenses and that they had obligations under the tax codes of California and the IRS to file returns. As Gines noted, even though cannabis was a "new industry" the

[88] In later testimony he stated he received bank statements, invoices and handwritten cash logs, and payroll checks, along with 10 to 15 thick binders of invoices. He did not see many invoices from vendors or purchase orders, because his experience led him to believe it was a "handshake" business with "minimal controls in place" and with no paper to substantiate it.

same basic bookkeeping and accounting principles apply. Gines also testified as to failures to comply with certain government forms by the companies and possible consequences.

Returning to scope of work, parenthetically, he was also asked to "clean up "the books and records of VaporPenz. He testified that Linda Long was in charge of keeping the books and records of all transactions. None of the entities were ever in compliance with GAAP at any time. In any event, he was to "clean up the books" for those years in which no tax returns had been filed. He testified he was never able to complete the assignment. One reason was that the company had a cash account that would be very difficult to reconcile. Indeed, he was never able to finalize any financial statements for IF, ICON or VaporPenz. He stated that he had little confidence in the underlying data provided by the Longs.[89]

He testified as to "ask Landon notes" which he kept, and stated that as accounting questions arose, he would add a note to "ask Landon", in order to received verification or proof that an item was an expense or cash reduction, for example. One "ask Landon" note related to an unresolved transaction addressing entries of a credit for $689,000 and a balance of a negative $689,000.[90] In sum, he stated that he was looking for documentation and information to substantiate unaccounted for transactions. He stated that it was "more than likely" he never got the information he was seeking (Rough TR p. 58, 11/29/2023) In deposition testimony read into the record at the hearing, he conceded that he never received the paperwork "to clear those uncleared transactions or unresolved transactions." (Ibid.) Indeed, he stated that at no time until his services ceased had he ever got the documents he needed to do his work. He testified that he made all reasonable efforts to get all documents and information to get the job done. He testified he was not comfortable producing final P & L or balance sheets for the entities (IF and ICON) because he did not have a high confidence level based on the information (or lack thereof) he was being provided by the Longs. (Rough TR pp. 59-60, 11/29/2023) Gines testified he was never

[89] Some examples of concerns are set forth in Gines' testimony. In documentation provided by the Longs for the years 2015, 2016 and 2017, there is reference to VaporPenz monthly sale, and also Infusion Factory (IF) monthly sales. But, as stated, if IF had not been formed before 2016 and sales are reflected for IF in 2015, that would generate concerns as to accuracy of data. "Unresolved transactions" are noted.

[90] Various numbers were addressed in relationship to cash in "the safe" or not. These included numbers in the $700,000 range (see, e.g. Ex. 578) and, later, in the $180,000 range (see e.g. Ex. 580); Gines testified to the "reduction" during the involved period and agreed that the roughly $180,000 number was a more "accurate" January 2021 statement. While he stated that the roughly $500,000 difference does not reflect that the company drained its cash safe, he added that any reconciliation of the numbers would require "literally going into the safe" on December 31, and counting the cash which he stated he did not do. His testimony was equivocal as to whether he was denied the opportunity or not. He did state that when the $732,000 number was put on the balance sheet in July of 2020, that would have been a figure provided by the Longs at that time, and that would have meant that the $732,000 number was the cash on hand. (Rough TR p. 120, 11/29/2023) Again, it must be noted that there was quite a bit of equivocation by the witness on these figures, and he consistently stated that further information was going to be required to get to an accurate number(s).

paid for the bulk of his work (he advised that some monies were paid) and wrote off a number of invoices; the Longs ceased communication with him.

Gines described that in the 2018-2019 timeframe, cannabis was an illicit federal business where banking was disallowed, and compliance with accounting regulations was problematic in a "frontier pioneer market." He found Landon Long to be compliant with cannabis regulations "outside of accounting", making best effort to run a business as best he could. He stated the Longs were responsive to him "as best they could". He testified that the Longs brought his firm in with the hopes of being compliant from an accounting standpoint and cleaning up the books and records. .

Gines spoke with Claimant Jordan several times about his investment, and perhaps other matters (he was vague on specifics). He did state that Jordan had no active role on the accounting side, and Gines never asked Jordan for information relevant to Gines bookkeeping efforts. This testimony, too, does not support the claim that Jordan was participating in the accounting issues, as testified by Landon. Jordan testified he was on one Zoom call with Landon and Gines and saw a "snapshot" of the book, telling him there was indeed work product. (TR pp. 117-118; 12/01)

The witness noted that VaporPenz was one of the entities he was tasked with work for the Longs, but that engagement was "limited in scope" because VaporPenz did not have a lot of activity. He believed that it was an LLC, "standalone."

While Gines believed that Landon and Linda were trying their best, and that he did not see fraud, he conceded that to find fraud there would have to be an audit, and no audit was done. Intercompany transactions had to be reconciled because they were recorded in the wrong accounts.

Gareth Kylae Jordan was sworn to testify on December 1, 2023, and his testimony continued into a later date of February 5, 2024. Jordan graduated from Cal State Northridge with a Bachelor Science in Business Administration in 2001. He has no further formal education. He lives in Los Angeles, and has never lived in Sacramento. (TR p. 58; 12/01) He has no background working for accounting companies and has no degree in accounting. Jordan testified he never represented to Landon that he had any accounting experience. (*Id.* p. 59) He has worked for three eCommerce companies, before starting his own company which dealt with garage door remote devices. He had that company for 17 years, and it employed Jordan and one other employee. He presently has a company, "Press On Products" which makes jukebox remote devices for the video game and amusement industry.

Jordan invested roughly $500,000 in ICON. These funds came from the sale of residential real property in Los Angeles. He was looking to potentially invest money following that sale and was introduced by his friend Andy Foor to Landon Long. Foor had just started working at IF. Foor told Jordan

that he was working for Landon at a company called Infusion Factory, that cannabis was a new and emerging market and was regulated (*Id.* pp. 60-61), that IF had already gotten a license and Sacramento had a lot of business. He understood Landon was the "first mover" in cannabis manufacturing in Northern California (*Id.* p 62) Foor put him in contact with Landon to discuss investing. First contact was a call in the February/March 2018 time frame. Jordan, Landon and Foor were on the call together. As Jordan testified "Andy had sent me a prospectus that they were using for investors, and on the call with Landon we discussed the investor deck[91] that was about Infusion Factory." (*Id.* a p. 62) It was discussed that Landon was looking for a business partner, not just "dumb money" and Landon stated he had passed on larger investors because they want too much of a percentage of the company. Landon wanted someone actively involved in the company. (*Id.* p. 63) Jordan stated he reviewed the investor deck, "every page" (Id p. 64) and discussed it with Landon. He understood the purpose of the document to be "the next iteration of their business", that IF was the cannabis company and the regulated market and the deck was a representation of their current position. (*Id.*) Page Jordan03262 was addressed in the exhibit (Exhibit 531) regarding "customers and pipeline" and Jordan testified the information given was significant and important in that "it would give them a massive running head start with these customers and these projects starting in January of 2018, so they had a significant advantage. "(*Id.* p. 65) Landon, in the first call, stated these were his customers and there were products "coming online" and the prospectus showed "where they were currently at." (*Id*.) Jordan received an "e-copy" of the prospectus. At page 03265 of the exhibit there is a "hyperlink" on that page. The page itself is entitled "FIVE YEAR PROJECTIONS". Jordan clicked on the hyperlink and stated that he found building plan and layouts, licenses, and such, but no financial information. He stated it was "restricted access at the time." (*Id.* p. 66) He testified he saw nothing about actual sales IF was doing. Page 03266 of the Exhibit is entitled "2018 PROJECTIONS" and he reviewed this document. He identified the exhibit introduced in evidence as the same information he was given on the e-copy. (*Id.* p. 67) Jordan stated that this gave him "the understanding of where Infusion Factory was and where it was going." (*Id.* p. 67) He further stated that with investment "it showed where they could end up going with expansion." (*Id.*)

Jordan stated that he understood "Current Customer Revenue" to mean booked revenue that they had already collected. (*Id.*) He understood that numbers for months that had not yet occurred were projections, but stated that during the first phone call and on follow-up calls, Landon would discuss how

[91] Jordan testified "they refer to it as an investor deck that was made on PowerPoint that they would send to prospective investors" (TR p. 63; 12/01) Jordan identified Ex. 531 as the "investor deck" he received from Mr. Foor.

cannabis took 3 to 6 months to set up a production run, "so several of these months were already booked in advance " at the facility (*Id.* p 68) When addressing later months in 2018 (*see* 03266, Ex. 531) and whether those were "booked" or not, Jordan stated that during his investment "period" and upon his visit in April to the Luther Drive facility he discussed with Landon how production worked, Landon stating that it would take several months to book out time; in short Jordan did not know which month(s) were an approximation of actually "booked" or filled in time on the schedule but stated that it was apparent to him that the numbers shown on the prospectus for June, July and August 2018 were already booked. (*Id.* pp. 72-73). At the April 2018 meeting with Landon and Linda he saw the facility for the first time. Landon gave Jordan a tour, with Linda present. This was the only time Jordan had a conversation with Linda before he invested. (TR p. 147; 12/01) Landon showed Jordan binders of their customers, invoices for their customers, packaging, displays with packaging from customers, and showed Jordan a current production run with Dr. K, with "thousands of boxes." (*Id.* p. 74) Landon showed him the licenses and explained the effort it took to obtain those and stay abreast of the cannabis laws. Landon explained he was CEO of the companies. (*Id.* p. 74) Linda was Landon's "right hand woman" involved in numerous tasks (*Id.*) After this visit Jordan came away feeling that Landon was expert on compliance and the relevant laws of cannabis. "He was on top of it." (Id p. 75). It was impressive to Jordan that he was seeing actual production of product during his visit (Dr. K) and this cemented his impression that the investor deck was accurate (Id), there was actual production and production schedules.[92] He relied on the "investor deck" in investing. He also did some due diligence and received permission from Landon to speak to some clients of the company. He called Dr. Robb, whose name appears on the prospectus (pg. 03262) Dr. Robb had positive things to say about Landon and their experience with him, and confirmed they were a current customer. (*Id.* p. 76) Jordan and Landon also discussed Dr. Kerklaan and W Vapes, in a cursory way (*Id.* at p. 79) Dr. Kerklaan was Landon's largest customer, and that was the first production run that Jordan saw in April, during his visit.

Jordan stated that Landon explained the structure of the companies, and the role of ICON. He was told that since IF was an "all-cash business" they needed to get banking and the only way to do that

[92] When he reviewed the prospectus (Ex. 531) at p. 03262, Jordan noted the "PROJECTS", and understood that these were "future projects" (TR p. 80; 12/01), that Landon was working on for the expansion of IF. Jordan testified that London was trying to acquire Caliva as a customer and was trying to figure out where he could make CBD in a second location, because co-location (of CBD and THC) was not permitted. Jordan did not understand that "PROJECTS" meant current customers generating revenue.

was to establish a holding company for banking purposes (ICON) so they could accept wires and have bank statements.

Landon showed Jordan contracts or invoices for production runs to be done in the future, prior to him investing in the company. He stated he was shown IF current invoices for W Vapes and TreatWell, as well as quotes going out for future job. (*Id.* at p. 69) Jordan stated this was important to him as this showed a six-figure revenue stream "almost on day one." (TR p. 69; 12/01) Other than his own businesses, Jordan had never invested in any other businesses before. Jordan was not knowledgeable in cannabis; he only knew that CBD was legal and that cannabis/THC had just become legal (*Id.* p 70) as a recreational drug. He did not understand the regulatory framework that various public entities had been implementing.

Landon's credentials were impressive to Jordan, which proved important in Jordan's investment. Landon represented that he was a year or two ahead of time as opposed to competitors working with regulatory entities, that he was a compliance expert, appeared to know all the rules and regulations about cannabis, even before it became legal. Landon stated he worked with "Joe Devlin" who was involved in regulation. Landon stated he was the "Godfather" of the S-license, which was important to Jordan as an alternate income stream. In short Jordan understood that "all companies have risks" but Landon's knowledge and expertise gave Jordan confidence in his decision to invest (*Id.* pp. 71-72) In regards to the S-license, Jordan testified that he did not understand the concept initially. (*Id.* p. 83; 12/01) But the issue of working with unlicensed customers was addressed. According to Jordan, Landon said he would not work with unlicensed customers under his license. (TR pp. 95-96; 12/01) "He would not take unlicensed customers under Infusion Factory's license." (*Id.*) This was a critical point and seems undisputed by both sides.

Relevant to that issue, Jordan testified that he discussed with the Yourists an arrangement whereby unlicensed prospective customers that were interested in Infusion Factory could go and attempt to obtain production through Grapefruit. (*Id.* p. 108) IF would not work with them as they were unlicensed and not "S-licensed." Jordan described it as alternative licensing path through Grapefruit that would then ultimately come back to IF for manufacturing. (*Id.* p. 108) In that vein, Jordan testified that he referred prospective customers to GBI, *if* they passed on the S-license. (*Id.* p. 108)[93] He discussed

[93] The arbitrator would note that according to the testimony of Landon and Foor, among others, unlicensed customers would not be allowed to work with Infusion Factory, but the S-license process would have permitted that customer to be licensed under the law, and manufacture through IF. And, according to Jordan, already licensed customers would have no need for Grapefruit [parenthetically, or the S-license process]. (TR p. 198; 12/01) Jordan did state that unlicensed customers are "potential customers" who are "walked through the S-license program" every time; if they did not agree with the S-license

this with the Longs (*Id.* p. 109) and "they agreed to it." (*Id.*) As Jordan stated: unlicensed customers were treated the same way; they were offered the shared facility option. Many of them passed on it because it was unaffordable.[94] IF, according to Jordan, adjusted the pricing model "at some point" and they started getting S-license customers but for those who did not or could not afford the structure, he would be referred to Grapefruit. "I would work with them at Grapefruit to see if we could get their product manufactured at Infusion Factory after Grapefruit took either their percentage" of that company or made some sort of IP "arrangement." (*Id.* p. 109) As Jordan stated, many prospective unlicensed customers passed on the S-license as cost prohibitive. (*Id.*) Jordan testified that once one of these customers passed on the S-license and was referred to GBI, the "expectation", "their (GBI's) only option" was to do the manufacture at IF. (*Id.* at p. 110) When asked why this was their only option, Jordan stated that in Los Angeles no one was manufacturing in LA until late 2019, so IF was their cheapest, best option and the pricing for them "worked." Also, GBI were already manufacturing "Sugar Stoned" branded products through IF, and were happy with the service at IF. Testimony was addressed to practices and emails addressing these issues; in sum, GBI offered a different licensing path than IF, but Jordan's expectation was that GBI would be sending its customers products to IF for manufacture.

Before investing Jordan had asked for tax returns for the prior two years (*Id.* p. 84) but never got those documents. Both Landon and Linda stated that ICON was a new company so there was no tax to be filed yet and VaporPenz had wound down and they were not finished filing their taxes, "so there was no way for me to get it yet." (TR p. 85; 12/01) He did receive copies of the licenses he asked to see, and the lease and proof of monies invested in the company. (*Id.* p. 86) He was never told that Infusion had sales prior to 2018. (*Id.* p. 87) He was not shown Exhibit 559 and was not informed of its existence. He testified it would be important to know that because it would have given him a better picture of where they were before they started IF. (*Id.* at pp. 87-88) It had been represented to him that the company (VaporPenz) was only doing medicinal sales.

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structure at IF "the alternative licensing path was Grapefruit." As the bulk of evidence appears to suggest the S-license permitted the "license to license" structure mandated by Landon.

[94] In addressing the S-license, there was much testimony. Jordan testified about one such client (Awakened Tropicals; *see* Ex. 163) (TR p. 14; 2/5/24) in which the two "paths" are at issue; as Jordan testified at length, his alleged practice was to offer unlicensed prospective customers the S-license, and if they passed on that to refer them to GBI, and ultimately manufacturing at IF. With Awakened Tropicals, it was noted that they had not passed on the S-license, yet Jordan was discussing GBI's alternative. Jordan noted there had been "many weeks" of phone calls in advance of the email trying to get them through the S-license process (*Id.* p. 14) Regardless, he noted "Grapefruit may turn out to be a faster method to achieve his objectives and get into the marketplace by next month." (*Id.*) Jordan noted that when Awakened Tropical learned it would take six months to get an S-license that deterred them, as well as the pricing" which at that time was $25,000. (*Id.*)

Parenthetically, Jordan denies representing to Landon that he had substantial experience in private placement transactions, but admits that the documents he signed state he had such experience and that he bore the economic risk of his investment. (TR pp. 127-128, 130; 12/01)

And Jordan ultimately did invest in the company. Jordan felt Landon was knowledgeable and well informed in the cannabis industry (TR p. 88; 12/01) and had a running start with production runs and six figure monthly income with their customers. (*Id.* p. 89.) Their "first mover advantage" was a selling point to him (*Id.* p. 89) He understood that his investment dollars would be applied to Infusion Factory, ICON simply being the holding company for banking. At the April meeting Landon discussed the needs of the business for expansion—more employees, and the need for a "pre-roll" machine that was critical because "they were turning away business" (*Id.* pp. 76-78)

Jordan stated he relied on Landon's representations before entering the agreement. (*Id.* p. 89) He relied on the prospectus in investing. (*Id.*) He later testified that had he known of the actual sales figures versus those seen in Exhibit 531, and had he known that his investment would be going to reimbursement to Mrs. Long, he would not have invested his money. (TR p. 123; 12/01) He expected his money would be used for equipment and business expansion. He stated the current customers listed on the prospectus were represented to him as "real time real money coming in" and if he had known that was not true, he would not have invested. (*Id.* p. 124)

Jordan testified he noted on the prospectus the names "VaporPenz" and "Check Point Services" and discussed this with Landon who said that VaporPenz was his previous "wound down" company in the Bay Area (which was to go under ICON Holdings), and it was the "seed money" used to start Infusion Factory. He understood VaporPenz customers were coming into the business. (TR p. 125; 12/01) He understood VaporPenz did vapor hardware and equipment, packaging and medicinal cannabis. (*Id.* p. 78) Landon told Jordan there were taking VaporPenz book of business and would be able to grow it substantially by selling THC on the legalized market. (*Id.* p. 78) Jordan states he did not understand that VaporPenz was doing any illicit sales of THC prior to 2018. He was not told that his investment was to be used to pay off debts or liabilities of VaporPenz (TR p. 92; 12/01) Had he known this, he stated, it would have altered his investment entirely—he was looking to invest for the expansion of a company, "not pay off debt from a company that I'm not investing in." (TR p. 92; 12/01) And he did not contemplate paying off hotel charges, food, or other payment reflected in Exhibit 624. He and Landon discussed the purchase of the pre-roll machine ($100,000), Landon wanted to hire new employees and expand the business (TR p. 95; 12/01) Landon represented the phones were "ringing off the hooks" with people looking for manufacturing. (*Id.*) And he thought his money was going to that.

Regarding Jordan's access to financial information, the parties stand in sharp contrast. Jordan states that prior to his investment he was never provided by anyone any financial document "that were on a server." (*Id.* ap. 88) He was not provided with Linda's spreadsheets. In late 2018 or early 2019 he became concerned over the finances of the companies (IF and ICON). (*Id.* p. 112; 12/01) Jordan thought they were going to be using QuickBooks and ADP for direct deposit and tracking purposes and Linda represented that to him (Id) He asked when they would start doing quarterly, monthly and yearly accountings so he could "see where we were at..." (*Id.* p. 113) Jordan inquired a number of times for financial information, such as profit and loss, balance sheets, quarterly sales and the like. (*Id.* p. 113) He testified the information he was getting was not satisfactory. Jordan stated that he sat down in the IF offices and asked for the information. The various agreements called for accounting to be provided. In early 2019, he started to become "scared." (p. 115) He was told the accountants were "working on it" and that they did not have financial records. They offered to show him bank statements, but he noted "It's a cash-based business" and he could see money going in and out of the safe.[95] (p. 116) He was provided no data on sales per month because he stated he had no access (TR p. 116; 12/01) He would not agree that the Long never withheld company financial documents from him (*Id.* p. 147)

Jordan entered into a consulting agreement with the company; he described his role as helping with "lead generation online" (TR p. 96; 12/01) and stated that people were contacting Infusion Factory through their website, and he had eCommerce experience, so it was a way for him to be involved in the company and provide a service he thought they needed. (*Id.*) Emails describe him in that capacity. He considered himself an independent contractor. He was never tasked to prepare "accounting software." (*Id.* pp. 96-97) The Consulting Agreement discusses his scope of work and the word "accounting" is used; Jordan testified that he understood that to refer to accounting of how many "hits" the website would get; as he testified "accounting activity on a website is completely different than an accounting system for the business." (*Id.*) He testified he never thought he would be doing financial accounting. He was not asked by the Longs to do any accounting related work. (TR p.99; 12/01) This issue was addressed in cross-examination of Jordan; he was responsible under his consulting agreement (Ex. 345) for design and development, etc. of various things; under "information operating systems" accounting systems is

[95] Jordan described that IF would get $70,000 or $80,000 in cash from Caliva, who became their largest customer, and that would be put in the "vault" Deposits were made for pre-production and that would indicate continuous revenue coming in, but he testified he did not what the expenses were, and he could not get an "accurate read" on the financial situation. (TR pp. 116-117; 12/01)

listed, which he testified was part of the website design work. (TR. p. 150; 12/01)[96] As stated, the "accounting" was to account for the number of customers "hitting" the website, for example. (*Id.* at p. 151) He maintained he had no responsibility for any financial accounting. (*Id.* p. 151)

Under the consulting agreement he was paid $6,000 per month, and that ultimately changed around February 2019 and the Longs agreed (*Id.* p. 101). Jordan had introduced Brad Yourist from Grapefruit Boulevard to Infusion Factory. As Jordan testified "Sugar Stoned" was his first concern; Sugar Stoned was an unlicensed brand working through Grapefruit under their brand. IF started doing business with Grapefruit in late December or early January of 2019 and they wanted to bring their own product, Rainbow Dreams, in to IF. Jordan testified that Rainbow Dreams was not his product. (TR p. 60; 2/5/2024) His interest was to "have the product produced at Infusion Factory" and sold in the State. (*Id.*) He stated he was performing "an inordinate amount of time of their [GBI's] preproduction" of Rainbow Dreams, so he asked to go to work for Grapefruit part time and decrease his time with IF, with a decrease in his remuneration. (*Id.* p. 98) He believes this discussion with the Longs occurred in February or March 2019. (*Id.* p. 99) Jordan states he discussed with the Longs his intention to work with GBI in that time frame. (*Id.* p. 100). He stated that the Longs clearly understood he wanted to work with GBI and they agreed. (*Id.* p. 102) This was discussed with Andy Foor along with the Longs. Jordan testified that Rainbow Dreams was a product they wanted to bring on the market, was labor intensive and required his time and energy; he felt GBI should be paying him for the work being provided to them on "their project." (TR pp. 99-100; 12/01) Jordan never received sales commissions from Grapefruit (*Id.* p. 103). Jordan's relationship with the Yourists may best be described as contentious, but ultimately not an issue for resolution in this Arbitration.

Jordan was to get a commission on sales of Rainbow Dreams ["If I were to help them sell it, yes."] (TR. p. 226; 12/01; *see* also TR p. 60; 2/5/24) He stated that he was at GBI "only five months and that never happened." (*Id.* p. 60) On cross-examination, Jordan was shown Ex. 130, a May 8, 2019, email from him to Bad and Dan Yourist: "I am good either way, having a meeting with Jessica and Chantel at 8pm tomorrow night. Chantel accepted our offer of 4k a month for 2 months and then possible fulltime work, but no guarantees Jessica and the three others want equity, I said nope, can't do it. 3% rips a must for the sales team, can take it from the pool. Here's how this works so we don't create animosity or unwarranted competition for accounts…The sales team will split ALL sales across the entire state at 3%.

[96] In later testimony, Jordan stated that he later added to his consulting work obligations, when he became S-license manager. (TR p. 130; 2/5/24)

So, it's a team effort, and if someone is lagging the team will help them or kick them off the team. My % is no part of the group 3%, so I will be sharing it 6 ways and working out a bonus for me end of year should I pull this off and create us a competitive brand. If not, then, this is still our best shot at creating a brand out of thin air! Andy will be the only sole 3% extra for 12 months and cannot know what we are doing as Landon is about to create his own line of products and we must keep everything we are doing a complete secret and mystery. WE don't want him copying us, or asking me to help do it for him. My position is I know nothing, and have nothing to do with distro or sales. Andy doesn't know either and I am ok with that for now. Too much to lose if anyone else discovers our plan. Jordan explained this as "future brands they were looking to make. (*Id.* at p. 227). This email does not portray Jordan in a positive light vis-à-vis his claim that Landon was kept apprised of his relationship with GBI. Indeed, Jordan stated that two or three years into the future, he was planning on making "future brands" "after infusion Factory.") (TR p. 227; 12/01). Similarly, (Ex. 143) in a July 31, 2019 email to Foor entitled "first pass at consulting email", Jordan drafted a consulting plan, allegedly "for the future" centering on Mr. Foor. He described it as a "first pass." (TR p. 57; 2/5/24). Landon was not apprised of this. In this email Jordan was asking Foor to "cut Grapefruit a break on all thing Infusion Factory." (*Id.*) To be fair, this sentence also states, in further detail, "cut us a break on all things Infusion factory would charge full rate for like compliance checking sugar stoned, packaging on vapes, sugar stoned again and again, and semi free mockups on products like gummies, vape trials, and the like? While again not painting Jordan in a positive way, this email does suggest that IF was certainly aware of GBI and the work its brands were doing at IF. More significantly, however, the email details that "Don" (a customer of GBI) was supposed to be in the pre-production stage, but, as stated, "[he] cannot move forward without GBI licensing them so this work cannot be billed because Infusion factory won't allow for the work til there is a license…" This again confirms the "license to license" model at IF, but also appears to confirm that IF is mentioned because work would be done there (manufacturing).

A great deal of testimony centered on the SOPs issue, the thrust of the examination suggesting that Jordan had violated confidentiality and stolen information that was proprietary to IF and/or Landon.[97] Jordan testified that SOPs are confidential and valuable. Exhibit 54 is an email from Iris

[97] As is noted elsewhere in this Award, section 3 of the Manufacturing Services Agreement form (Ex. 641) makes clear " The Confidential Information, including but not limited to proprietary manufacturing processes, recipes, methods, equipment design, and other intellectual property owned or developed by Customer is owned exclusively by Customer and Manufacturer shall have no rights of ownership in, or use of (except for such limited use as is required to perform its obligations under this Agreement) Customer's intellectual property or proprietary processes methods, recipes, or formulas." While Jordan was not able to state that a prior version of the agreement contained identical language, it was in the agreement that the customer "owns the SOP and that was always part of the manufacturing agreement." (TR pp. 139-140; 2/5/24)

Arrieta, an Infusion "chef"; this June 6, 2019 email notes: Subject "Rainbow Vapes-Updated SOP" and "Attachments: Grapefruit SOP's FINALdocx." Jordan testified Iris got these SOPs from Grapefruit. He stated nothing was stolen from IF. The purpose of the SOP attached is detailed at page 3 of the exhibits, and notes that it will "outline the detailed process in which Grapefruit, LLC distillate is flavored for consumption through inhalation with attention being paid to the emulsification of terpenes, and the effect of heat on terpenes and cannabis potency." Jordan testified that every customer makes a $5,000 deposit, but every customer is different as to how far along they are with a product. (*Id.* p. 230) Infusion would charge customers who do not have a fully developed product, and "charges them and creates the SOPs for them and creates the process and actually helps them finish their product." (*Id.*) The email addressed the Rainbow Dreams product line; as Jordan testified it was a completely finished product "and the only thing they needed were their ingredients list back and the order of dominance for the product they created." (*Id.*)[98] Jordan repeatedly testified Rainbow Dreams was GBI's product and they paid him to make sure their product was fulfilled at Infusion Factory (TR. p 103; 2/5) As described, a customer would pay to have IF produce the SOP for the product and produce the product. (*Id.* p. 231; 12/1/23) Infusion Factory would, under the hypothetical addressed at the hearing, own the process of how to actually make the product. (*Id.* p. 232) "That would be their intellectual property." As to Rainbow Dreams, Grapefruit invented that product and Jordan testified that it was given to IF "fully formulized" (TR p 110; 2/5) with the packaging and IF developed the samples and "did the actual run for them." (p. 233) Jordan testified Iris made the Rainbow Dreams product samples from GBI's recipe. The recipe is the SOP. (Id p. 235) In this case, it was GBI's "5 percent terpene sunset sherbert." And it was to be created with GBI's oil. (*Id.* p. 236) Jordan purchased that terpene and had it delivered to IF. (*Id.*) Jordan testified that GBI was supposed to have reimbursed him but they did not and he filed a labor board dispute. (*Id.* p. 237) Jordan testified that GBI paid Infusion Factory a $5,000 preproduction deposit. Ex. 165 is an email from Triscka Mallia, the Packaging and Compliance Director at IF, to James Jordan and Kylae Jordan on IF "letterhead". The email concerns distillate, and she asked the extractor to invoice

[98] Jordan testified that Dan and Brad Yourist "made the flavors and the actual product and brought it to us [IF]" for Iris to make the samples quicker, for a trade show upcoming. He notes that she created the samples at Infusion Factory based on what Grapefruit gave to her, e.g. the flavors and ratios. (TR p 67; 2/5/2024) Jordan maintained the Rainbow Dreams samples went through Infusion Factory (preproduction $5,000 fee addressed in testimony) (*Id.*) He admitted that this "jumped the line" (around June of 2019) and this fact was not transmitted to Landon. However, the samples were "on the books" at IF as coming from GBI. (TR pp. 69-70; 2/5/24) Jordan testified that making the samples quicker meant the "lab would have to test them quicker." (TR p. 70) GBI paid for the lab. Jordan claims that "no one did anything that Infusion Factory wasn't aware of or Infusion Factory wasn't paid for." (*Id.*) It appears that lab related "mistakes" led to the samples not being ready for the "summer launch", infuriating the Yourists. (TR. p. 103; 2/5).

Grapefruit directly. "They will have the invoice to us tomorrow morning with wire instructions." Jordan testified that while he paid for the terpenes,[99] Triscka sourced the oil for Rainbow Dreams,[100] something he described as a "common practice at Infusion Factory." (p. 240) "We get paid if we source the oil for our customers." Iris was the "head chef" at IF. (*Id.*) Jordan believes he paid for her services for the Rainbow Dreams project. (*See* Ex. 184, and pg. 8 (ICON000483)) Jordan testified that IF did manufacture the Rainbow Dreams product, preproduction. (*Id.* p. 242) In regard to this product, it was stated the customer (GBI) had the idea, the creation, the flavors, the ratios already worked out." (*Id.* pp 242-243). They needed help with packaging, and artwork and ratios in the product (*Id.* p. 242) According to Jordan what GBI wanted to know "was can you make sure our samples work so we don't waste our $5,000 deposit..." (*Id.* p. 243) Jordan maintains that GBI and IF signed an NDA and preproduction agreement, allegedly with Landon at IF. (p. 244) Regardless, Jordan testified that the invoices exist, and money was wired from Grapefruit. (*Id.*) A series of questions about Jordan's relationship with GBI and IF is detailed in the transcript. (Id pp. 245-246.) In other testimony, Landon's knowledge of GBI's involvement with IF is addressed. In February 2019, (Ex. 164) Jordan testified that a prospective customer, Topanga Harvest, expressed interest in manufacturing cannabis infused muffins (TR p. 21; 2/5/24) Jordan stated that IF did not have any ovens to produce the muffins, and there was discussion about S-licensure and a commitment by the prospective customer to make enough product to justify the purchase of ovens. On this, Jordan stated that there was direct interaction between Brad Yourist and Landon; Landon asked Brad if he would purchase the ovens "as part of this negotiation." Landon did not want to buy ovens for one customer, so part of the "deal" was that if the customer did not take the S-license, Grapefruit would purchase the ovens for Topanga's product to be made at IF, and GBI would

[99] Jordan stated that when GBI paid the $5,000 on the preproduction agreement on Rainbow Dreams and a schedule had been set up to make GBI's product at IF, money from GBI for the terpenes "wasn't going to make it in time" which would have taken them out of the queue on the production schedule. Jordan testified that the "simplest solution, since I was working for them [GBI]" was for him to buy the terpenes. He did that, and he had the terpenes shipped to Iris at IF, so they could keep the production schedule for "summer release." (TR p. 89; 2/5/24) Jordan stated GBI was paying a lot of money to IF to make the product, so he wanted to keep them on schedule. (*Id.* p. 90) Jordan states that he told Landon he "floated" the money for the terpenes, and Jordan claims Landon told him where to buy the terpenes from. The terpenes were shipped to Iris at the Infusion Factory address. (*Id.* p. 91).

[100] Jordan testified regarding an email (Ex. 167) addressing Triscka's compensation for repping GBI's oil. Jordan testified that the Yourists wanted the customers of IF to use their oil on their products. They also wanted Triscka to sell GBI's oil outside of IF and want to give her a commission in the same way Landon was." (TR. p. 29; 2/5/24) Triscka also handled packaging along with compliance as part of her duties. Jordan testified that he, Landon and Triscka discussed Grapefruit's oil and if they could use it with current customers. (*Id.* p. 30) There was discussion between the three, in the IF offices about Triscka doing wholesaling of oil for Brad and Dan and getting a commission, as she was with Landon and IF. (see TR pp. 29-33) Parenthetically, Triscka was a "lead" in speaking with GBI about oil and packaging. (*Id.* p. 33)

"cover the licensing." (TR p. 21; 2/5/24)[101] If believed, this would further be evidence that Landon was aware of the symbiotic relationship between IF and GBI (in the event the S-license was passed on). This is exemplified in Jordan's testimony (TR p. 63; 2/5/24) wherein Jordan testified that Rainbow Dreams was in the process of being manufactured at IF, and GBI wanted to create other brands like "Canoids" that they "wanted help with sales on." Prior to the falling out in August of 2019, Jordan testified that 20,000 tins was made and "showed up at Infusion Factory" but they never went further. (TR p. 111, 2/5) Jordan stated that Landon was "involved in the process of making Rainbow Dreams" and made "their dosing calculations and was involved in the entire process of making their product." (TR p. 63; 2/5/24) The dosing calculations were never given to GBI, per Jordan (TR p. 87; 2/5/24), only their ingredients for their packaging. In additional questioning, it was again claimed that he never went to Landon to discuss Rainbow Dreams, but Jordan testified "That's impossible. Mike Rugani was the one making the product. Landon assigned Mike Rugani to be in charge of it." (Id at pp. 64-65). It appears these were "samples". (TR p. 66; 2/5/24)[102]

Jordan detailed a "blow up" with Grapefruit over a lab testing that created animosity. (*Id.* p. 247) Various threatening emails from GBIs owners are addressed in testimony. (TR pp. 99-100; 2/5/24) As is detailed in this Award, and in the evidence, the genesis of the "blow up" centers around a "lab error." (TR p. 100; 2/5) As a preface, GBI wanted its Rainbow Dreams product manufactured at IF; Iris, the "head chef" at IF was asked to do this work, and this project "jumped the line" over other projects at IF. It was then to be sent to the "lab" for testing. Jordan testified the "production" failed testing. (TR p. 71; 2/5/24) Jordan claimed the "mistake" was IF's and "covered up" a $660 charge for retesting. (Id) so as not to recharge the customer, and did not bring this to Landon's attention. It later appears in testimony that it was not IF's mistake after all but rather an "oil topping issue" (TR pp. 71-75). As detailed by Jordan the lab testing showed two failures, but the third testing at the lab showed the Rainbow Dreams product passed all testing. By then, according to Jordan, the damage had been done. (TR pp. 102-103).

[101] This was not addressed in Landon Long's testimony, nor was he called in rebuttal on the issue presented, following the presentation of Jordan's testimony.

[102] Ex. 642 was addressed. This is a "Service Order" dated May 30, 2019, Customer Id is "GFFT2019" and "Customer Name is "Grapefruit Investments." It is on IF letterhead. The "Type N" and "Type S" license is referenced. The "Client license #" is noted as being "on file" The work is for 500 units of Rainbow Dreams-Mango and 500 units of Rainbow Dreams-Durbin. Under "Notes" it states "Please see Iris for SOPs and percentage of terpes...." Of note, Landon's signature is seen at the bottom, with a June 13, 2019 date with a notation "Reissued No Date Changed." Again, this reflects that Rainbow Dreams was known to Landon and its affiliation with Grapefruit. Jordan testified none of the work done for GBI was intended to be kept secret. (TR p. 160; 2/5)

The product was not ready for GBI's "summer launch" and by August 30, the Yourists were "pissed." (*Id.*) Even though the "lab" had made the mistake, it soured relationships between various parties.
Jordan quit working with GBI August 30, 2019. He testified that Landon was aware of all this; "Landon was standing there with me when it all happened and we had phone calls with Grapefruit where they screamed at us, yes, I told Landon." (*Id.*) Prefatorily, Jordan testified that on August 29, (Ex. 126) Dan Yourist was asking for manufacturing "alternatives" [parenthetically this supports the argument that GBI was manufacturing solely through IF] because during that conversation, Landon told them [Yourists] to "go pound sand." (TR p. 105) "He wasn't interested in working with them after they yelled and threatened a lawsuit..." (*Id.*) On August 29, Landon told Jordan he would not be working on Rainbow Dreams any longer. (*Id.* p 106) And he informed GBI that he would no longer be working on their products. (Id) Later, Landon, according to Jordan, did not want to transmit the Rainbow Dreams SOPs to the Yourists after that, over Jordan's objection. Jordan asked Christie to send the SOPs to Grapefruit after he was threatened. Again, Jordan stated that in the preproduction agreement[103] they were entitled to their SOPs back for packaging (TR p. 104), but Landon "wanted to hold it over their heads and withhold that information from them." (Id). While Jordan said he did his best to mend fences between the two entities, it was to his financial advantage to do so, given his investment.

Jordan's testimony was directed to Ex 192, an October 14, 2019 email from Jordan to Landon expressing his upset with what appears to be the blowup with the Yourists and letting Landon and Andy down; Jordan stated in testimony this upset related to his mother lending $20,000 and GBI's disclaimer of knowing her, the Yourists threats of physical violence, and had they waited for the ultimate lab results nothing would have happened. (TR p. 113; 2/5) He felt he let "Landon down" because Rainbow Dreams was "his project", he had invested in IF and wanted it to succeed. (*Id.* p. 114) And, that he brought them in as a customer, and they were threatening suit. (*Id.*)

[103] Jordan testified he has seen the preproduction agreement for Rainbow Drams and a production agreement. (TR p. 113; 2/5) The issue of a preproduction contract is detailed in this Award and explained by Jordan (TR pp. 130-133; Ex. 643). Ex. 641, a form manufacturing services agreement, was addressed. Jordan had testified that the customer (e.g. GBI) owned the SOP it created. Para. 5 of the "form" agreement (Ex. 641) states: "a. Customer's Intellectual Property. The Confidential Information, including but not limited to proprietary manufacturing processes, recipes, methods, equipment design, and other intellectual property owned or developed by Customer is owned exclusively by Customer and Manufacturer shall have no rights of ownership in, or use of (except for such limited use as is required to perform its obligations under this Agreement) Customer's intellectual property or proprietary processes methods, recipes, or formulas." And, under para. 18 "CONFIDENTIAL INFORMATION", subd. B (non-disclosure covenants) ii, it is stated "Except as otherwise set forth in this Agreement, all Confidential Information supplied by the Disclosing Party shall remain the property of the Disclosing Party, and will be promptly returned by the Receiving Party upon receipt of written request." Once a preproduction is finished the client signs the production agreement. (TR p. 137; 2/5)

In sum, Jordan noted that until GBI there was no alternative licensing path for unlicensed persons save the S-license path; 90 % of calls into the company were from unlicensed persons and if the S-license pathway was rejected, there was no recourse; Jordan was concerned they were turning away too many potential customers and they were desperately seeking to increase revenue. (TR p. 144; 2/5/24) He consistently claimed he was trying to protect the company and his investment by having the product produced at Infusion Factory via Grapefruit, if the customer was not already licensed or declined the S-license. He denied trying to undermine IF. (*Id.* p. 145) Jordan stated that after litigation was initiated about March 2021, he lost access to his emails with IF. (*Id.* p. 148)

ANALYSIS AND AUTHORITY

The Arbitrator is charged with determining significant questions of law and complex and contrasting questions of fact in coming to a conclusion on this Interim Award.

Claimant's Claims are set forth in the First Amended Complaint, filed in JAMS Access. These claims include fraud, aiding and abetting fraud[104], violation of California Corporations code section 25401,[105] violation of Corporations code section 25504 and 25504.1, negligent misrepresentation, breach

[104] The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." (5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 676, p. 778; *see also* Civ. Code, § 1709; *Molko v. Holy Spirit Assn.* (1988) 46 Cal. 3d 1092, 1108 [252 Cal. Rptr. 122, 762 P.2d 46])

[105] The Corporate Securities Act of 1968 created an entirely new area of statutory liability dealing with fraudulent practices in securities transactions. Corp. Code, sections 25400, 25401, 25402.) § 25401 states: " It is unlawful for any person to offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading. "Corporations Code Section 25019 defines a "security" which includes an extensive list of qualifying securities including Claimant's investment agreements and the purchase of shares in ICON Holdings, Inc Section 25017 defines what constitutes a "sale", "offer" or "offer to sell." This includes under subd. (b) . "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value."

§ 25501 provides "Any person who violates Section 25401 shall be liable to the person who purchases a security from, or sells a security to, that person, who may sue either for rescission or for damages (if the plaintiff or the defendant, as the case may be, no longer owns the security), unless the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know (or if the defendant had exercised reasonable care, would not have known) of the untruth or omission. Upon rescission, a purchaser may recover the consideration paid for the security, plus interest at the legal rate, less the amount of any income received on the security, upon tender of the security. Upon rescission, a seller may recover the security, upon tender of the consideration paid for the security plus interest at the legal rate, less the amount of any income received by the defendant on the security. Damages recoverable under this section by a purchaser shall be an amount equal to the difference between (a) the price at which the security was bought plus interest at the legal rate from the date of purchase and (b) the value of the security at the time it was disposed of by the plaintiff plus the amount of any income received on the security by the plaintiff. Damages recoverable under this section by a seller shall be an amount equal to the difference between (1) the value of the security at the time of the filing of the complaint plus the amount of any income received by the defendant on the security and (2) the price at which the security was sold plus interest at the legal rate from the date of sale. Any tender specified in this section may be made at any time before entry of judgment. In addition to the relief described above, the court shall award reasonable attorney's fees and costs to a prevailing purchaser or seller who succeeds in establishing a right to the relief provided by this section."

of fiduciary duty as to ICON, various breach of contract claims (8th cause of action v. ICON re Holder Rights Agreement); 10th cause of action vs. ICON re Preferred Stock Purchase agreement) , breach of the implied covenant of good faith and fair dealing (vs ICON on the Holder Rights Agreement and the Preferred Stock Purchase Agreement), *inter alia*.

Similarly, the Respondents' ICON HOLDINGS, INC. and INFUSION FACTORY, LLC's counterclaims claim misappropriation of trade secrets, conversion, breach of contract, breach of the covenant of good faith and fair dealing, intentional interference with contractual relations and with prospective economic relations, unfair competition and declaratory relief.

Each party has raised certain affirmative defenses.[106]

Each of the claims, and relevant defenses, will be addressed herein to the extent it is argued in the closing briefs.

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§ 25504. Provides for joint and several liability and states: "Every person who directly or indirectly controls a person liable under Section 25501 or 25503, every partner in a firm so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status or performing similar functions, every employee of a person so liable who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless the other person who is so liable had no knowledge of or reasonable grounds to believe in the existence of the facts by reason of which the liability is alleged to exist."

Section 25504.1 is part of the Corporate Securities Law of 1968 (§ 25000 et seq.) and also addresses joint and several liability, and states: "Any person who materially assists in any violation of Section 25110, 25120, 25130, 25133, or 25401, or a condition of qualification under Chapter 2 (commencing with Section 25110) of Part 2 of this division imposed pursuant to Section 25141, or a condition of qualification under Chapter 3 (commencing with Section 25120) of Part 2 of this division imposed pursuant to Section 25141, or an order suspending trading issued pursuant to Section 25219, with intent to deceive or defraud, is jointly and severally liable with any other person liable under this chapter for such violation."

§ 25506 set forth the relevant limitations period. Under subd. (b) For proceedings commencing on or after January 1, 2005, no action shall be maintained to enforce any liability created under Section 25500, 25501, or 25502 (or Section 25504 or Section 25504.1 insofar as they related to those sections) unless brought before the expiration of five years after the act or transaction constituting the violation or the expiration of two years after the discovery by the plaintiff of the facts constituting the violation, whichever shall first expire.

Thus, section 25401 claims have a two-year limitations periods after the discovery by plaintiff of the facts constituting the violation. Cal. Corp. Code § 25506. For negligent misrepresentation Cal. Code Civ. P. § 339 provides for two years. Fraud/intentional misrepresentation is governed by §338 (3 years from the date plaintiff discovers or reasonably could have discovered facts constituting fraud).

[106] In addition to asserting a denial, an answer or response may assert any "new matters" constituting a defense, commonly called "affirmative defenses." [Civ. Proc. Code, § 431.30(b)(2); In re Quantification Settlement Agreement Cases, (2011) 201 Cal. App. 4th 758, 812; s*ee Advantec Group, Inc. v. Edwin's Plumbing Co., Inc.*, (2007) 153 Cal.App.4th 621, 627. This is to be contrasted with affirmative claims for relief or damages. In short, an affirmative defense alleges the existence of additional facts that would reduce or defeat the plaintiff's right to recovery even if the allegations of the complaint are found to be true. [*FPI Development, Inc. v. Nakashima,* (1991) 231 Cal.App.3d 367, 383–385; 3 Witkin, California Procedure (5th ed. 2008), Pleading § 1081. A party bears the burden of proof for each of its affirmative defenses. (*Peregrine Funding, Inc. v. Sheppard Mullin Richter &Hampton LLP*, 133 Cal. App. 4th 658, 676; *Meacham v. Knolls Atomic Power laboratory* (2008) 554 U.S. 84, 93; *Jessen v. Mentor Corp* (2008) 158 Cal.App.4th 1480, 1483-1485; *see also Carachure v. Scott* (2021) 70 Cal.App.5th 16, 23; Evid. Code § 500.)

SECURITIES FRAUD UNDER CORPORATE CODE SECTION 25400 *et seq*.

In claimant/counter-respondent's Rebuttal brief, it is stated that "Jordan's case is primarily one for securities fraud." (p. 1) Here, Claimant argues in order to establish a cause of action under Corp. Code Section 25401, plaintiff must plead and prove that "there was a sale or purchase of stock in California by fraudulent untrue statements or by omitting material facts that would by omission make the statements misleading." It is further asserted "Sections 25401 and 25501 differ from common law negligent misrepresentation in that: "(1) proof of reliance is not required"; (2) "although the fact misrepresented or omitted must be 'material,' no proof of causation is required;" and (3) "plaintiff need not plead defendant's negligence." (*See Bowden v. Robinson* (1977) 67 Cal.App.3d 705, 714-716.) This relaxed standard is consistent with a "legislative intent to provide for actions and remedies for corporate securities victims far less burdensome than those available under common law." (*Id.*) This provision applies even if the issuance of the securities was exempt from qualification under the Corporate Securities Law. (*See People v. Smith* (1989) 215 Cal.App.3d 230, 237.)" Parenthetically, Bowden further states that "Nowhere in the aforementioned statutory scheme is there any suggestion that the Legislature intended to abolish either type of common law fraud. On the contrary, by express provision in section 25510 the Legislature states its intent as follows: "Except as explicitly provided in this chapter, no civil liability in favor of any private party shall arise against any person by implication from or as a result of the violation of any provision of this law or any rule or order hereunder. Nothing in this chapter shall limit any liability which may exist by virtue of any other statute or under common law if this law were not in effect." (Italics added.)

Section 25006 states: "'Fraud,' 'deceit,' and 'defraud' are not limited to common law fraud or deceit." Sections 25510 and 25006 express a clear legislative intent for the Corporate Securities Law of 1968 to supplement common law causes of action, not to repudiate them. (*See Olson, supra,* at p. 98, note 133; 2 Ballantine & Sterling, Cal. Corporation Laws, §§ 463.02[2]-463.03, pp. 932.36–932.41.)" *Id.* at p. 716.

Claimant argues that Respondents sold Claimant 3,000,0000 shares in ICON for $500,000. The offering and eventual sale of the shares were done verbally and in writing. In February, Respondents provided Claimant a prospectus to evaluate a potential investment in ICON. (See Ex. 531) Landon testified he prepared the prospectus. (*See* TR 11/27/2023 at 107:25) The prospectus was provided to Claimant by Andy Foor at the direction of Landon. (*See* TR 11/29/2023 at 131:6-19) After many discussions, emails, and a meeting in Sacramento, Claimant invested. (*See* Ex. 505) The terms of Claimant's investment were memorialized in two written agreements. The first was the ICON Holdings,

Inc. Series A Preferred Stock Purchase Agreement ("SPA") (*See* Ex. 505). The second was the ICON Holdings, Inc. Holders Rights Agreement ("HRA"). (*See* Ex. 504.) The written agreements were dated May 18 and 24 2018, respectively. Each agreement was signed by Landon, on behalf of ICON, and Claimant. Claimant's purchase of shares ("stock") in ICON qualifies as a "security" pursuant to Corporate Code Section 25019.4 The prospectus, SPA, and HRA, as well as oral communications provided by Respondents to Claimant, are each separate "means" of communication that each provide for independent basis for establishing liability for false or misleading statements under Section 25401."

For the reasons expressed in Claimant's brief and based on the evidence presented, the Arbitrator must conclude that Landon Long is liable for the violation under Corporations Code section 25400 *et seq*. The Arbitrator finds credible and persuasive evidence showing that the prospectus was given to Foor by Landon Long for dissemination to Jordan, after Foor introduced Jordan to Landon, and it was understood that Landon and ICON/IF required investors to grow its business. The January numbers were inflated and there were material omissions in disclosing the company's customers, and actual sales. The Arbitrator is less sanguine about the sales projected into the future, as projections are inherently speculative. Thus, it is beyond dispute that the other months and years numbers were projections, but they painted a more than rosy picture of future sales and customers (some of which Landon knew were no longer customers). Landon argued that he did not disseminate the prospectus and did not give it to Jordan. The Arbitrator is not persuaded. Foor is believable on the point; he was hired as a sales manager, discussed with Landon the need for investors, referred Jordan and Landon authorized the prospectus to be given to Jordan. Landon Long made numerous false and misleading statements under Corp. Code Section 25401. Sections 25401 and 25501 impose liability only on the actual seller of the security in privity with Claimant, or here, ICON. (*Apollo Capital Fund, LLC v. Roth Capital Partners, LLC*, (2007) 158 Cal.App.4th 226, 253–54.) Thus, under Claimant's third cause of action, liability is established against ICON under Section 25501.

ICON's and Landon's liability under the corporations codes in question does not definitively answer the questions of Linda Long's liability. Claimant argues that Respondents "attempt to portray her as an innocent, uninvolved, and passive partner with her son unaware of what he was doing when soliciting investors." It is argued that "Linda is liable as a control person under Corp. Code Section 25501 and 25504 and as an aider and abettor under Corp. Code Section 25504.1. To understand the depth of Linda's true involvement in this scheme, the history and circumstances leading up to 2018 investment cannot be ignored." The Arbitrator notes that Linda (and her husband who is not a party) invested in VaporPenz and was involved in the day-to-day operations of VaproPenz and ICON/IF. She was the

corporate secretary for ICON and a member of IF. She also knew about the illicit sales of THC/cannabis products through VaporPenz when that business was operating in Newark. The facts relating to Linda's involvement in the companies are well addressed in the claimant's rebuttal brief. That does not end the inquiry.

Section 25501 establishes civil liability for a violation of section 25401. The liability created by section 25501 is sometimes referred to as primary or direct because it applies to a person who is directly or primarily responsible for violating section 25401 as a consequence of selling or buying securities by means of misrepresentations or omissions of material fact. (*See Moss v. Kroner* (2011) 197 Cal.App.4th 860, 873, 129 Cal.Rptr.3d 220.)

In addition to primary civil liability established in section 25501, the Legislature extended civil liability for a violation of section 25401 to specified secondary actors who assist in the primary violation. (*Moss v. Kroner, supra,* 197 Cal.App.4th at p. 873, 129 Cal.Rptr.3d 220.) Section 25504 extends secondary liability to certain agents, associates, and affiliates of the primary violator, including persons who control the primary violator as well as broker-dealers and employees of the primary violator who materially aid in the transaction constituting the violation. (§ 25504.) As relevant here, secondary liability is also created under section 25504.1, which provides in pertinent part that "[a]ny person who materially assists in any violation of Section ... 25401 ... with intent to deceive or defraud, is jointly and severally liable with any other person liable under this chapter for such violation." Section 25504.1 imposes what is sometimes referred to as aider and abettor liability. (*See Marsh & Volk*, Practice Under the Cal. Securities Laws (rev. ed. 2012) § 14.03[4][d], p. 14–26 (*Marsh & Volk*).)

It is also generally understood that the purpose of the Act's civil liability provisions "is to create statutory liability that eliminates some of the elements of common law fraud, but balances this expansion of liability by placing other restrictions on recovery." (*California Amplifier, Inc. v. RLI Ins. Co., supra,* 94 Cal.App.4th at p. 109, 113 Cal.Rptr.2d 915.) "While intending to minimize securities fraud, the drafters of the Act were also cognizant of the dangers of casting the net of civil liability too broadly." (*Department of Corporations v. Superior Court* (2007) 153 Cal.App.4th 916, 929, 63 Cal.Rptr.3d 624.) According to the principal drafters of the Act, the Legislature chose to specify the elements of a statutory cause of action in detail and "decided to make it clear that the judiciary is not authorized to invent causes of action inconsistent with or additional to those provided in the statute." (*Marsh & Volk, supra*, § 14.02[1], p. 14–15.) Thus, in section 25510 the Legislature provided that, "Except as explicitly provided in this chapter, no civil liability in favor of any private party shall arise against any person by implication from or as a result of the violation of any provision of this law or any rule or order

hereunder." "The purpose of this provision is to prevent the courts from using other provisions of the statute to create implied causes of action, as has happened in the federal courts in connection with the developments under Rule 10b–5...." (*Marsh & Volk, supra,* § 14.02[1], p. 14–15, fn. omitted.) However, the same section also clarifies that the Act does not limit any common law or statutory liability that would exist if the Act were not in effect. (§ 25510.)

Scope of Aiding and Abetting Liability as to Linda Long

Section 25504.1 makes a person jointly and severally liable for a violation of section 25401 if that person "materially assists in [the] violation of Section ... 25401 ... with the intent to deceive or defraud." In this case, the parties have divergent views on what constitutes material assistance in the violation. To determine the meaning of the "material assistance" component of section 25504.1, we turn to well settled rules of statutory construction.

The Arbitrator's task is to ascertain the Legislature's intent. " 'We begin with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in the statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent.' [Citations.] The plain meaning controls if there is no ambiguity in the statutory language." (*People v. Cornett* (2012) 53 Cal.4th 1261, 1265, 139 Cal.Rptr.3d 837, 274 P.3d 456.) If the statute is susceptible to more than one interpretation, we may consider various extrinsic aids, such as the legislative history, public policy concerns, and the statutory scheme of which the statute is a part. (Ibid.) We construe the statute according to its purpose and by harmonizing it with related sections of the Act to the extent possible. (*California Amplifier, Inc. v. RLI Ins. Co.* (2001) 94 Cal.App.4th 102, 107–108, 113 Cal.Rptr.2d 915.)

The plain language of section 25504.1 makes clear that a person must have materially assisted in the securities law violation. Therefore, for purposes of section 25504.1, it is not enough that a person provided material assistance in a larger scheme to defraud if that person had no role or involvement in the part of the scheme that constituted a violation of the securities laws. Here, the primary violation is selling or offering to sell a security by means of false and misleading statements, in violation of section 25401. To support liability under section 25504.1 for such a violation, there must be evidence demonstrating how Linda Long assisted in the act of selling or offering to sell securities by means of false and misleading statements. Such assistance may take the form of aiding in the preparation of offering documents relied upon by investors, communicating misrepresentations directly to investors, or otherwise playing a material, facilitating role in the act of selling or attempting to sell the securities by means of misrepresentations or omissions of material fact. There may be other acts that constitute

material assistance under the statute, but they must involve some aspect of the securities law violation.

A review of the statutory scheme governing civil liability under the Act supports this interpretation of the material assistance component of section 25504.1. In section 25504, secondary liability is imposed upon, for example, broker-dealers and employees of the primary violator who "materially aid in the act or transaction constituting the violation" if they have knowledge of, or reasonable grounds to know, of the facts giving rise to the statutory violation. In *Apollo Capital Fund LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 70 Cal.Rptr.3d 199, the Court of Appeal considered whether a complaint stated a cause of action under section 25504 against a broker-dealer. The court held that merely playing an active role in a securities offering was insufficient for purposes of the material aid requirement of section 25504. (*Apollo, supra,* at p. 256, 70 Cal.Rptr.3d 199.) Instead, the broker-dealer must have materially aided in the violation, which in that case was the primary violator's sales of securities by means of false or misleading statements in the offering documents. (Ibid.)

Unlike section 25504, which requires some sort of control person, employee, or agency relationship with the primary violator, section 25504.1 imposes collateral liability upon persons who materially assist in a violation of section 25401 regardless of their business or legal relationship to the primary violator. (*See Marsh & Volk, supra,* § 14.03[4][d], p. 14–26.) While section 25504.1 expands the reach of secondary liability to persons not otherwise liable under section 25504, it also requires a greater showing to impose joint and several liability upon aiders and abettors. For example, section 25504.1 requires that an aider and abettor must have acted with "intent to deceive or defraud." By contrast, an employee or broker-dealer may be liable under section 25504 merely if they knew or had reason to know of the facts constituting the violation. Further, whereas section 25504 requires that a person "materially aid[ ] in the act or transaction constituting the violation," section 25504.1 is arguably even more stringent because it requires material assistance in the actual violation.

The requirements for aider and abettor liability are understandably stricter than for control person or agent liability because of the potential to impose joint and several liability upon persons with a more attenuated relationship with the primary violator. When the statutory scheme is viewed as a whole, therefore, it cannot be the case that aider and abettor liability in section 25504.1 applies to a broader spectrum of aid or assistance than secondary liability applicable to control persons, employees, and agents in section 25504. As the court held in Apollo, section 25504 requires that a person materially aid not just in the transaction but in the violation itself. (*Apollo, supra,* 158 Cal.App.4th at p. 223, 70 Cal.Rptr.3d 147.) Section 25504.1 requires no less. (*See* Respondent's Post-Hearing Reply Brief, p. 6.)

A close of examination of Linda Long's involvement does not reflect the material aid required

to impose liability on her for the securities clams; while she was closely working with her son, there is no evidence that she played any part in disseminating the prospectus (even if she was the genesis of some numbers seen in the prospectus), creating the SPA or HRA, speaking with Jordan prior to his investment in May 2018, persuading his investment or giving him misleading information about his investment. The Arbitrator is not persuaded that Linda Long bears liability under the statutory scheme.

The Arbitrator does not ignore the argument that there were misrepresentations found in the Series A Purchase agreement and the Holders' Rights Agreement. These provide a basis for liability against ICON and Landon Long. There were untrue statements made, as reflected in the evidence, regarding the status of tax returns, annual reports and the like. Again, however, the Arbitrator is not persuaded Claimant carried his burden as to Linda Long.

Two critical defenses are raised which must be addressed: the statute of limitations and that of parol evidence. However, the Arbitrator will also first address the mention of the "business judgment" rule in relation to the retention of accounting "professionals." At the outset, it is apparent the "business judgment" rule does not apply, and even if it did, there was a failure of proof on its application. The business judgment rule is " 'a judicial policy of deference to the business judgment of corporate directors in the exercise of their broad discretion in making corporate decisions.' " (*Barnes v. State Farm Mutual Auto. Ins. Co.* (1993), 16 Cal. App. 4th 365, 378; *Gaillard v. Natomas Co.*, (1989), 208 Cal. App. 3d 1250, 1263.) The rule is based on the premise that those to whom the management of a business organization has been entrusted, and not the courts, are best able to judge whether a particular act or transaction is helpful to the conduct of the organization's affairs or expedient for the attainment of its purposes. (*Barnes, supra,* 16 Cal. App. 4th at p. 378; *Eldridge v. Tymshare, In*c. (1986) 186 Cal. App. 3d 767, 776 [230 Cal. Rptr. 815].) The rule establishes a presumption that directors' decisions are based on sound business judgment, and it prohibits courts from interfering in business decisions made by the directors in good faith and in the absence of a conflict of interest. (*Katz v. Chevron Corp.* (1994) 22 Cal. App. 4th 1352, 1366 [27 Cal. Rptr. 2d 681]; *Barnes, supra,* 16 Cal. App. 4th at pp. 379-380.) As the claimant's rebuttal brief asserts, "Here, however, the issue is not that Respondents took a disputed action and they should be able to rely on professionals. More aptly, the issue is that Respondents did not hire professionals to start with and then once they were retained, they repeatedly fired each professional who provided them accounting and tax advice. Respondents did not rely on the advice of professionals that was subsequently questioned. In fact, the opposite is true. They unilaterally fired accounting professionals when they did not like their advice and did so without any basis to do so other than their own, unqualified opinions. Respondents failed to pay each accounting professional and Ken Mierzwinski

refused to work with Respondents because they would not follow his instructions and they insisted on improper accounting methods." The defense of the business judgment rule does not apply.

PAROL EVIDENCE

First, the parol evidence rule is first asserted and alluded to in the Respondents post hearing brief; in any event it would not apply to bar evidence of fraud or misrepresentation.

The parol evidence rule protects the integrity of written contracts by making their terms the exclusive evidence of the parties' agreement. However, an established exception to the rule allows a party to present extrinsic evidence to show that the agreement was tainted by fraud. The parol evidence rule is codified in Code of Civil Procedure section 1856 and Civil Code section 1625. It provides that when parties enter an integrated written agreement, extrinsic evidence may not be relied upon to alter or add to the terms of the writing. (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 343 [9 Cal. Rptr. 3d 97, 83 P.3d 497] "An integrated agreement is a writing or writings constituting a final expression of one or more terms of an agreement." (Rest.2d Contracts, § 209, subd. (1); s*ee Alling v. Universal Manufacturing Corp.* (1992) 5 Cal.App.4th 1412, 1433 [7 Cal. Rptr. 2d 718].) There is no dispute in this case that the parties' agreement was integrated.

Although the parol evidence rule results in the exclusion of evidence, it is not a rule of evidence but one of substantive law. (*Casa Herrera, supra,* 32 Cal.4th at p. 343.) It is founded on the principle that when the parties put all the terms of their agreement in writing, the writing itself becomes the agreement. The written terms supersede statements made during the negotiations. Extrinsic evidence of the agreement's terms is thus irrelevant, and cannot be relied upon. (Casa Herrera, at p. 344.) "[T]he parol evidence rule, unlike the statute of frauds, does not merely serve an evidentiary purpose; it determines the enforceable and incontrovertible terms of an integrated written agreement." (*Id.* at p. 345; cf. *Sterling v. Taylor* (2007) 40 Cal.4th 757, 766 [55 Cal. Rptr. 3d 116, 152 P.3d 420] [explaining evidentiary function of statute of frauds].) The purpose of the rule is to ensure that the parties' final understanding, deliberately expressed in writing, is not subject to change. (Casa Herrera, at p. 345)

Section 1856, subdivision (f) establishes a broad exception to the operation of the parol evidence rule: "Where the validity of the agreement is the fact in dispute, this section does not exclude evidence relevant to that issue." This provision rests on the principle that the parol evidence rule, intended to protect the terms of a valid written contract, should not bar evidence challenging the validity of the agreement itself. "Evidence to prove that the instrument is void or voidable for mistake, fraud, duress, undue influence, illegality, alteration, lack of consideration, or another invalidating cause is admissible. This evidence does not contradict the terms of an effective integration, because it shows that the

purported instrument has no legal effect." (2 Witkin, Cal. Evidence (5th ed. 2012) Documentary Evidence, § 97, p. 242; *see id.*, §§ 66, 72, pp. 206, 211.) The fraud exception is expressly stated in section 1856, subdivision (g): "See claimant's rebuttal brief, p. 8. Parol evidence is always admissible to prove fraud, and it was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.

Claimant's Rebuttal brief argues this argument can be "summarily dismissed." The Arbitrator agrees. As stated, "...disclaimers and integration clauses do not bar proof of fraudulent representations with the rationale being that a party cannot be allowed to insulate itself from the consequences of its own fraud. [*See Ron Greenspan Volkswagen, Inc. v. Ford Motor Land Develop. Corp.* (1995) 32 Cal.App.4th 985, 991-993; *Continental Airlines, Inc. v. McDonnell Douglas Corp*. (1989) 216 Cal.App.3d 388, 416-424; and *Danzig v. Jack Grynberg & Assocs.* (1984) 161 Cal.App.3d 1128, 1138.) Further, evidence of fraudulent promises that are directly at variance with the terms of an integrated writing is not barred by the parol evidence rule. (*See Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Ass'n* (2013) 55 Cal.4th 1169, 1179-1182; *see also Julius Castle Restaurant Inc. v. Payne* (2013) 216 CA4th 1423, 1440-1441.) Evidence of fraudulent promises contrary to a written agreement may be admissible on a fraudulent concealment theory: i.e., the promisor was under a duty to disclose its true intention (not to perform its promise). ([*Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 612-613; Nissan Motor Acceptance Cases (2021) 63 Cal.App.5th 793, 826-829.)" (Claimant's Rebuttal brief, p. 8)

STATUTE OF LIMITATIONS

The defense of the statute of limitations is pleaded in the respondents' answer, and is not raised in any of the briefing until the Respondents' and counter-claimants' post-hearing reply brief. In sum, this argument (p. 2 of the Reply brief) argues that the securities law claims are barred by the statute of limitations. In support of this claim, the brief correctly cites to Corp. Code section 25506 (b), which sets forth the controlling statute of limitations. As argued, "At the earliest, Jordan initiated his claim against Icon on March 22, 2021, when he filed a complaint in Sacramento County Superior Court. However, Jordan's investment in the Companies was finalized in May 2018 – nearly 3 years prior to Jordan's filing. (TE 505, pp. 14.) At arbitration, it was undisputed that from May 2018 to February 2019, Jordan was substantially involved in the Companies' operations." It is argued that Jordan "beginning in 2018" had knowledge of the companies' sales, customer revenue, tax-filing status, and the fact that Infusion Factory was not conducting sales prior to its licensing in 2018, and knew that the companies did not have a

formal accountant or bookkeeper. As argued, "These claims needed to be asserted in 2020[107], 2 years after Jordan was integrated into the Companies' operations." It should be emphasized that Jordan denied being substantially involved in the companies' operations, particularly when it came to financial matters. (*see* Jordan testimony summary, *supra*.)[108]

Inquiry notice arises in a securities action when circumstances suggest to an investor of ordinary intelligence the possibility that he has been defrauded. (*Dodds v. Cigna Securities, Inc.* (2d Cir.1993) 12 F.3d 346, 350.) In the vernacular of the securities laws, "[s]uch circumstances are often analogized to 'storm warnings.'" (*Id*., citing *Cook v. Avien, Inc.* (1st Cir.1978) 573 F.2d 685, 697.) Storm warnings may be found whenever there is "'any financial, legal, or other data, such as public disclosures in the media about the financial condition of the corporation'" that would tend to alert a reasonable person to the likelihood of fraud. (I*n re Infonet Services Corp. Securities Litigation* (C.D.Cal.2003) 310 F.Supp.2d 1106, 1113–1114.)

It is argued that inquiry notice is sufficient to trigger the running of statute of limitations for claims of violation of California Securities Law. (Reply brief p. 3) "Inquiry notice—often called 'storm warnings' in the securities context—gives rise to a duty of inquiry 'when the circumstances would suggest to an investor of ordinary intelligence the probability that she has been defrauded.' [Citations.] In such circumstances, the imputation of knowledge will be timed in one of two ways: (i) '[i]f the investor makes no inquiry once the duty arises, knowledge will be imputed as of the date the duty arose'; and (ii) if some inquiry is made, 'we will impute knowledge of what an investor in the exercise of reasonable

[107] The Arbitrator is not persuaded, and dismisses the argument that the 2 year statute commenced at the time of Jordan's "integration" into the company. (See Reply Brief of Respondents, p. 3) Exhibit 511 is the "CONSULTING AGREEMENT", fully executed and dated June 1, 2018. Exhibit A to the agreement sets forth the services Jordan was to provide; these include the design, development, maintenance, stability and reporting (inter alia) for website core system design and related propagation and maintenance and development, information and operation systems, which include enterprise resource planning, customer retention and management, HR management, Store and sales systems, regulatory and compliance systems, communication systems, (SMS, Email, Phone, Messaging), "accounting" systems (in this regard the Arbitrator looks to the entirety of the documents to ascertain the meaning as well as evidence explaining the term, and finds that "accounting" does not relate to financial accounting information but rather the accounting related to the "Information and Operation Systems" as explained by Jordan.) Para. 1 of the Agreement, "Consulting Services" are defined by Exhibit A, and financial accounting is not one of the services referenced; it is not made part of the "Information and Operation Systems." This conclusion is bolstered by the fact that Landon and Linda/ICON failed to retain any accounting professionals until August 2019. There was no accounting system in place for nearly the first twenty months of business, although there were representations that Linda was recording financial information.

[108] Although not necessary to the Arbitrator's decision herein, there is a facial basis for equitable tolling to apply (although it does not factor into the analysis). To establish that equitable tolling applies, a plaintiff must prove the following elements: "fraudulent conduct by the defendant resulting in concealment of the operative facts, failure of the plaintiff to discover the operative facts that are the basis of its cause of action within the limitations period, and due diligence by the plaintiff until discovery of those facts." (*Sagehorn v. Engle* (2006) 141 Cal.App.4th 452, 460-461.)

diligence[ ] should have discovered concerning the fraud, and in such cases the limitations period begins to run from the date such inquiry should have revealed the fraud.' [Citation.]" (*Lentell v. Merrill Lynch & Co., Inc.* (2d Cir.2005) 396 F.3d 161, 168.) Thus, once placed on inquiry notice by storm warnings, an investor must perform a reasonable investigation into the possibility of fraud. (*Bamberg v. SG Cowen* (D.Mass.2002) 236 F.Supp.2d 79, 85.) An investor who fails to fulfill this duty of inquiry will be charged with the knowledge of what an investor in the exercise of reasonable diligence would have discovered concerning the fraud, and this knowledge is imputed as of the date a diligent investigation would have turned up evidence sufficient to establish a cause of action. (*Berry v. Valence Technology, Inc.* (9th Cir.1999) 175 F.3d 699, 704, 706 & fn. 9.)" *Deveny v. Entropin, Inc.* (2006) 139 Cal. App. 4th 408.

The statute of limitation is an affirmative defense, and the affirmative defense that the statute of limitations has run is for the arbitrator... to decide." *Wagner Const. Co. v. Pacific Mechanical Corp.* (2007) 41 C4th 19, 23, 58 CR3d 434, 436. The party raising the affirmative defense bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal v. Great Western Fin. Securities Corp.* (1996)14 Cal. 4th 394,413." First, the Arbitrator does not find Respondents have met their burden. While arguing in the Reply brief that there is no evidence ICON made a misrepresentation or omitted a material fact, the argument on the SOL asserts that Jordan was on inquiry notice tax documents had not been prepared and he was never provided quarterly or annual "GAAP compliant" financial statements. That, by itself, does not establish a basis to conclude fraud or bad conduct. There is evidence from Respondents that Jordan was privy to all financial information from the outset of his investment, while Jordan (and other witnesses) testified to the contrary, stating that they did not have such access. The Arbitrator finds persuasive the testimony of Jordan and Foor on the issue that full access to financial information was not given. Jordan spent substantial time in Los Angeles and was in the Infusion Factory part-time. Linda Long kept financial data in paper, yellow notebooks, variously described by the accountants who testified as a "mess" and Jordan testified he did not have full access to the records. He continued to work at IF until 2021. Landon was asked when he created the chart (Ex. 597) and testified it could "not have been finalized" before December of 2021, giving rise to the question of when Jordan could have understood the finances of the company before then; of course, Ex. 531, shown to Jordan in February of 2018, contains a "FIVE YEAR PROJECTIONS" page. (03265)

It is not detailed precisely when Jordan should have noticed "storm warnings" such that would trigger inquiry notice of securities violations. The Arbitrator simply finds that Respondents have not met their burden to establish that the statute of limitations expired. Indeed, the Respondents' own post-

hearing brief concedes "that the Companies were thriving until 2020, when Jordan's pilfering of the Companies started to show effects." (p. 12) This does not support the argument that storm warnings should have triggered inquiry earlier. The filing of the complaint in 2021 was timely.

COMMON LAW FRAUD and AIDING AND ABETTING FRAUD

Claimant's first cause of action alleges fraud[109] against Landon and his second cause of action alleges aiding abetting fraud[110] against both Landon and Linda. Claimant alleges that Landon intentionally misrepresented, concealed and failed to disclose material information as alleged above in an effort to induce Claimant into investing in ICON. Claimant alleges that Landon and Linda knowingly assisted one another and participated in furtherance of the fraud.

For many of the same reasons as noted in reference to the securities violation, the Arbitrator concludes Landon is liable for intentional misrepresentation (fraud)[111]; he misrepresented the soundness of ICON in the lead-up to Jordan's investment, without disclosing that over $40,000 of the monies Jordan was to invest was to be used to pay back Linda for expenses she incurred. In retrospect, while Linda testified at the hearing that the company was at all times solvent, it is not made clear that it was. There was an absence of credible evidence showing that ICON and IF were appropriately capitalized at the time Jordan was considering his investment (and then investing). Landon exaggerated or misled Plaintiff in regard to Infusion's ability to generate revenue as it did not have the resources, equipment or personnel necessary to achieve the level of production and income as represented in the prospectus. In that regard, Landon misrepresented IF's existing customer base and its asserted continuous sources of revenue going forward. While projections are inherently speculative, in business they are predicted on

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[109] The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." (5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 676, p. 778; see also Civ. Code, § 1709; *Molko v. Holy Spirit Assn.* (1988) 46 Cal. 3d 1092, 1108 [252 Cal. Rptr. 122, 762 P.2d 46]

[110] The Arbitrator addresses the proper standard for imposing liability for aiding and abetting a tort. In *Casey v. U.S. Bank National Assn.*, (2005) 127 Cal.App.4th 1138, 26 Cal.Rptr.3d 401, 405, the court acknowledged that "California has adopted the common law rule" that "[l]iability may ... be imposed on one who aids and abets the commission of an intentional tort if the person ... knows the other's conduct constitutes a breach of a duty and gives substantial assistance or encouragement to the other to so act." (emphasis added) (quoting *Fiol v. Doellstedt*, 50 Cal.App.4th 1318, 58 Cal.Rptr.2d 308, 312 (1996)); *see also River Colony Estates Gen. P'ship v. Bayview Financial Trading Group, Inc.*, 287 F.Supp.2d 1213, 1225 (S.D.Cal.2003) ("A party can be liable for aiding and abetting an intentional tort if ... an individual is aware that the other's conduct constitutes a breach of duty and provides substantial assistance or encouragement to the other to so act."); *Lomita Land & Water Co. v. Robinson*, 154 Cal. 36, 97 P. 10, 15 (1908) ("The words 'aid and abet' as thus used have a well-understood meaning, and may fairly be construed to imply an intentional participation with knowledge of the object to be attained.") (emphasis added). The court in Casey specified that to satisfy the knowledge prong, the defendant must have "actual knowledge of the specific primary wrong the defendant substantially assisted." *Casey*, at pp. 1145-1146. The actual knowledge standard does require more than a vague suspicion of wrongdoing.

[111] Proof of reliance is not required under Corp. Code sections 25401 and 25501.

past performance, and Landon misrepresented that past performance. The Arbitrator will not detail each fact to support the claim, save to refer the parties to the Claimant's briefing and the above summary of testimony. Jordan relied on the materials misrepresentations, and would not have invested had he known the true facts. And, as is undisputed, he invested money in ICON.[112]

While Linda assisted Landon and was his "right hand woman", was the Secretary of ICON and participated in the running of the business, the evidence does not support the claim that she intentionally misrepresented to or concealed from Kylae Jordan any information. The Arbitrator must conclude that Linda Long is not liable for fraud or aiding and abetting fraud. There was scant evidence that Linda Long made any representations to Jordan about the business, much less deceived him in any statement made.

NEGLIGENT MISREPRESENTATION

Negligent misrepresentation is sometimes considered a distinct tort, but California statutes classify it as a form of deceit. Under Civil Code section 1710(2), negligent misrepresentation is "the assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true." The only significant difference from the standpoint of pleading is in the element of "scienter." If the plaintiff cannot truthfully allege actual knowledge of falsity, he or she may set forth facts showing

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[112] It is perhaps relevant to note that an action for promissory fraud may lie where a defendant/respondent fraudulently induces the plaintiff/claimant to enter into a contract. (*Chelini v. Nieri* (1948) 32 Cal.2d 480, 487 [196 P.2d 915] ["tort of deceit" adequately pled where plaintiff alleges "defendant intended to and did induce plaintiff to employ him by making promises . . . he did not intend to (since he knew he could not) perform" (fn. omitted)]; *Kuchta v. Allied Builders Corp.* (1971) 21 Cal. App. 3d 541, 549 [98 Cal. Rptr. 588], citing *Horn v. Guaranty Chevrolet Motors* (1969) 270 Cal. App. 2d 477, 484 [75 Cal. Rptr. 871]; *Squires Dept. Store, Inc. v. Dudum* (1953) 115 Cal. App.2d 320, 323 [252 P.2d 418].) In such cases, the plaintiff's claim does not depend upon whether the defendant's promise is ultimately enforceable as a contract. "If it is enforceable, the [plaintiff] . . . has a cause of action in tort as an alternative at least, and perhaps in some instances in addition to his cause of action on the contract." (Rest. 2d Torts, § 530, subd. (1), com. c., p. 65, cited with approval in *Tenzer v. Superscope, Inc.* (1985) 39 Cal. 3d 18, 29 [216 Cal. Rptr. 130, 702 P.2d 212].) Recovery, however, may be limited by the rule against double recovery of tort and contract compensatory damages. (*Tavaglione v. Billing*s (1993) 4 Cal. 4th 1150, 1159 [17 Cal. Rptr. 2d 608, 847 P.2d 574].)

In that regard, a party to a contract has two different remedies when it has been injured by a breach of contract or fraud and lacks the ability or desire to keep the contract alive. (*Akin v. Certain Underwriters at Lloyd's London* (2006) 140 Cal.App.4th 291, 296, 44 Cal.Rptr.3d 284 (*Akin*).) The party may disaffirm the contract, treating it as rescinded, and recover damages resulting from the rescission. (Ibid.) Alternatively, the party may affirm the contract, treating it as repudiated, and recover damages for breach of contract or fraud. (Ibid.) Thus, rescission and damages are alternative remedies. (*Akin, supra*, 140 Cal.App.4th at p. 296, 44 Cal.Rptr.3d 284.)

A party may seek rescission or damages for breach of contract or fraud "in the event rescission cannot be obtained" in the same action. (*Williams v. Marshall* (1951) 37 Cal.2d 445, 457, 235 P.2d 372 [defrauded vendee], citing *Bancroft v. Woodward* (1920) 183 Cal. 99, 190 P. 445; *Walters v. Marler* (1978) 83 Cal.App.3d 1, 16, 147 Cal.Rptr. 655 [breach of contract], disapproved on another ground in *Gray v. Don Miller & Associates, Inc.* (1984) 35 Cal.3d 498, 505–507, 198 Cal.Rptr. 551, 674 P.2d 253.) But "[t]he election of one remedy bars recovery under the other." (Akin, at p. 296, 44 Cal.Rptr.3d 284, citing *Alder v. Drudis* (1947) 30 Cal.2d 372, 383, 182 P.2d 195.)

that the representation was made without reasonable ground for believing it to be true. (*Gagne v. Bertran* (1954) 43 C.2d 481,487, 488.)

Claimant's arguments are persuasive as to Landon; negligent misrepresentation does not require knowledge of falsity. A defendant who makes false statements "honestly believing that they are true, but without reasonable ground for such belief, ... may be liable for negligent misrepresentation." *Bowden v. Robinson* (1977) 67 Cal.App.3d 705, 715. As to Linda Long the same reasoning applies to deny relief to claimant against Linda Long on this basis.

BREACH OF FIDUCIARY DUTIES RE LANDON AND LINDA LONG

Jordan's seventh cause of action asserts a claim of Breach of Fiduciary Duty against Landon and Linda on behalf of the corporation based on the same facts as discussed above. Landon served as the CEO of ICON and Linda the Secretary and as such owed the company and Claimant as a minority shareholder a fiduciary duty. Director liability is predicated upon concepts of gross negligence. (*Katz v. Chevron Corp.* (1994) 22 Cal. App. 4th 1352, 1366.) The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach. *Slovensky v. Friedma*n (2006) 142 Cal.App.4th 1518, 1534; *see* also CACI No. 4100 *et seq.*

Where a director's actions or lack of actions are the subject of dispute, the directors' burden of showing reasonable grounds for believing a threat to corporate policy and effectiveness exists may be satisfied "by showing good faith and reasonable investigation." (*Id.* at 1367.) Linda and Landon both violated their fiduciary duties to ICON as a result of gross mismanagement of the business, self-dealing, misappropriation of assets, and misleading their shareholder, the Claimant. First, contrary to their contractual obligations, they failed to retain any accounting professionals until August 2019. There was no accounting system in place for nearly the first twenty months of business and ICON was unable to comply with its obligations to provide financial statements to Claimant under the SPA. (*See* Ex. 517, TR 11/28/2023 at pp. 13-14, 24-26; TR 11/29/2023 at 116; TR 11/30 at 101.) Respondents grossly mismanaged the books and records during this time, failed to record funds (TR 11/30 at124:14-126:10), commingled funds between ICON, Infusion Factory and VaporPenz, failed to file tax returns or pay taxes (TR 11/30 at 126:11-128:18), and refused to follow the direction of all three accounting professionals they retained. The accountants all testified that Respondents failed to provide them necessary information to perform their work. Linda Long is not exempt from this claim; she had a fiduciary obligation to ICON and the claimant. The Arbitrator refers to the testimony of the accounting professionals in the hearing, and that of Landon and Linda Long and claimant. The evidence includes

the representations in the prospectus, inter alia. A fiduciary relation in law is ordinarily synonymous with a confidential relation. (*Herbert v. Lankershim* (1937) 9 Cal.2d 409, 483; *see Wolf v. Superior* Court (2003) 107 Cal.App.4th 25, 29.) A fiduciary relationship is any relation existing between parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party. Such a relation ordinarily arises where a confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence." (*Gilman v. Dalby* (3d DCA 2009) 176 Cal. App. 4th 606, 613.[113] Landon and Linda both violated their fiduciary duty to Claimant.

BREACH OF CONTRACT and BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING VS. ICON

Claimant asserts breach of contract claims against ICON based on the HRA. Claimant further asserts causes of action based on the SPA. To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff. (*Richman v. Hartley* (2014) 224 Cal. App. 4th 1182, 1186.)

There is also an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement.

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[113] One alleged breach of fiduciary duty is the diversion of funds allegedly used by Landon to purchase a McLaren sports car. The evidence is mixed and often circumstantial on this point; as Claimant's brief asserts "Landon, through the use of his best friend Isaac Harrosh, acting as straw man, used company funds to purchase a McLaren. First, it is undisputed that Landon was on title. (See Ex. 555.) While the retail purchase order identifies only Isaac, Landon's home address in El Dorado Hills is the only address used for the purchase order and on the certificate of title. (*Id.* at Jordan 3823 and 3826.) The documents also show that Isaac was immediately taken off title after the purchase leaving Landon the sole owner. (See Ex. 555 at Jordan 3828.) Conspicuously absent from this arbitration was Mr. Harrosh who could have testified to support Landon's alleged version of events had it in fact been the truth. (See Vol. 3 at 281:15-283:8.) Mr. Harrosh's absence from these proceedings speaks volumes." It is also stated that ICON's records subpoenaed from Relief Accounting includes a ledger entry for "Shareholder Loan—JLL McLaren Bridge Loan." (Ex. 561) (Claimant Ex. 555 (as series of records from Lamborghini Newport Beach) shows the purchaser's name to be Isaac Harrosh, but with Landon' address listed. As the evidence suggests Harrosh purchased an initial McLaren for Landon to drive but it was destroyed in a fire. This appears to be supported by a check from McLaren Newport Beach dated December 28, 2020, in the amount of $245,000 made payable to "Isaac Harrosh" at an address in Pleasanton California. (Jordan 03824; Ex 555) The TRADE/PURCHASES DISCLOSURE FORM (Jordan 03825) again shows Harrosh's name and his personal address in Pleasanton. The certificate of title reflects Landon and Harrosh both as registered owners. (Jordan 03826) Other documents are seen in the exhibit but are equivocal as to a purchase by Landon. While testimony (or even a deposition) from Isaac Harrosh would be desirable to address the ambiguity, the Arbitrator cannot conclude on the evidence presented that Landon actually purchased the vehicle; Landon stated that Harrosh is wealthy and a "best friend" and purchased the vehicle, and allowed Landon to drive it until Harrosh asked for it back (which he allegedly did and the vehicle was returned). Linda stated Landon drove a Prius and never owned a McLaren. The Arbitrator finds insufficient evidence to support this claim of diversion of assets for a McLaren vehicle.

Given the Arbitrator's findings on the Phase 1 (liability) it appears unnecessary to address the additional claims of unaccounted for funds, otherwise. The Arbitrator perceives no need to address each argument raised by counsel.

(*See* CACI 325 and *Comunale v. Traders & Gen. Ins. Co.,* (1958) 50 Cal. 2d 654, 657.)

As is seen in the evidence, ICON breached numerous sections of the SPA and HRA, many of which Respondents do not dispute. The Arbitrator finds in Claimant's favor on the breach of contract claims and breach of the implied covenant claims.

ULTRA VIRES / ALTER EGO

Claimant argues "ICON was formed when it filed its articles of incorporation ("AOI") on September 17, 2017, by its incorporator Mitch Abdallah. (*See* Ex. 502.) The AOI do not name any directors. Where the AOI do not list any directors, the bylaws must be adopted by the incorporator Corporate Code Section 210 provides that if initial directors have not been named in the articles, the incorporator is the sole person with corporate authority. If there are no board of directors listed in the AOI, the only means to appoint directors is for the incorporator to adopt bylaws. [*See* Corp. Code Section 212(a); *Canal Oil Co. v. National Oil Co.,* (1937) 19 Cal. App. 2d 524, 537; *see* also 1 Cal. Transactions Forms--Bus. Entities § 5:3.] Here, Respondents testified that ICON never entered into any bylaws and that Landon and Linda self-appointed themselves as officers. (*See* TR 11/27/2023 at 67:3-68:8 and 69:7-70:3) It is without dispute that there are no documents authorizing their appointment. Consequently, Landon and Linda had no authority for any actions taken in the name of ICON at any time including entering into the SPA, HRA, issuing shares or accepting Claimant's monies in the name of ICON. All of the actions taken in the name of ICON since inception were ultra vires and a legal nullity. (*See Huber v. Jackson* (2009) 175 Cal. App. 4th 663, 683.) This constitutes a further breach of the warranties and representations contained in the SPA and HRA and serves as an additional basis for a finding of alter ego ..." (Claimant Closing Brief p. 14).

Under the common law, an application of the alter ego doctrine allows a court to disregard the corporate entity and treat the corporation's acts as if they were done by the party actually controlling the corporation. (*Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809, 824.)

The alter ego doctrine is an equitable principle that elevates substance over form in order to prevent an inequitable result arising from unjustifiably observing a corporation's separate existence. (*Id.*) The doctrine is applied, and a party other than the corporation is liable for the corporation's acts, when recognition of the corporate structure would "sanction a fraud or promote injustice." (*Id.*)

In California, two conditions must be met before the alter ego doctrine will be invoked. (Sonora *Diamond Corp. v. Superior Ct.* (2000) 83 Cal. App. 4th 523, 538.) First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. (*Id.*) Second there must be an inequitable

result if the acts in question are treated as those of the corporation alone. (*Id.*) To determine unity of interest, there must be a showing that there was a commingling of assets, use of the corporation as a shell, inadequacy of capitalization, a disregard of corporate formalities, and an inequitable result. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538-539) "Among the factors to be considered in applying the doctrine are commingling of funds and other assets of the two entities, the holding out by one entity that it is liable for the debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, and use of one as a mere shell or conduit for the affairs of the other." (*Id.*) Other factors which have been described in the case law include inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers. (*Id.*) The essence of the alter ego doctrine is not that the individual shareholder becomes the corporation, but that the individual shareholder is liable for the actions of the corporation. (*Mesler v. Bragg Management Co*. (1985) 39 Cal.3d 290, 300.)

There is a basis to find Landon and Linda responsible under the alter ego doctrine. Here, there is ample evidence for a finding of alter ego liability.[114] First, there is a unity of interest as Landon and Linda operated the entities and were corporate officers/managers controlling both entities. The entities did not observe corporate formalities and Landon testified that the businesses were all one evolving continuous business. The companies did not pay state or federal taxes and there was no properly

[114] Generally, a corporation is regarded as a legal entity separate and distinct from its stockholders, officers and directors. Under the alter ego doctrine, however, where a corporation is used by an individual or individuals, or by another corporation, to perpetrate fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court (or Arbitrator) may disregard the corporate entity and treat the corporation's acts as if they were done by the persons actually controlling the corporation....' [Citation.]" (*Robbins v. Blecher* (1997) 52 Cal.App.4th 886, 892, 60 Cal.Rptr.2d 815.) When a court does so, it is said to have "pierced the corporate veil." Admittedly, the corporate form will be disregarded only in narrowly defined circumstances." (*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 301). In California, common principles apply regardless of whether the alleged alter ego is based on piercing the corporate veil to attach liability to a shareholder or to hold a corporation liable as part of a single enterprise. In both cases, "[t]he law as to whether courts will pierce the corporate veil is easy to state but difficult to apply." (*Talbot v. Fresno-Pacific Corp.* (1960) 181 Cal.App.2d 425, 432, 5 Cal.Rptr. 361.) Because it is founded on equitable principles, application of the alter ego "is not made to depend upon prior decisions involving factual situations which appear to be similar.... 'It is the general rule that the conditions under which a corporate entity may be disregarded vary according to the circumstances of each case.'" (*McLoughlin v. L. Bloom Sons Co., Inc., supra,* 206 Cal.App.2d at p. 853, 24 Cal.Rptr. 311; *see Stark v. Coker* (1942) 20 Cal.2d 839, 846, 129 P.2d 390; *Jack Farenbaugh & Son v. Belmont Construction, Inc.* (1987) 194 Cal.App.3d 1023, 1033, 240 Cal.Rptr. 78.) Whether the evidence has established that the corporate veil should be ignored is primarily a question of fact which should not be disturbed when supported by substantial evidence. (J*ack Farenbaugh & Son v. Belmont Construction, Inc.,* (1987) 194 Cal. App.3d, 1023, 1032. "Factors for the trial court to consider include the commingling of funds and assets of the two entities, identical equitable ownership in the two entities, use of the same offices and employees, disregard of corporate formalities, identical directors and officers, and use of one as a mere shell or conduit for the affairs of the other. [Citation.] 'No one characteristic governs, but the courts must look at all the circumstances to determine whether the doctrine should be applied. [Citation.]' [Citation.]" (*Troyk v. Farmers Group, Inc*. (2009) 171 Cal.App.4th 1305, 1341–1342, 90 Cal.Rptr.3d 589; accord *Wehlage v. EmpRes Healthcare, Inc.* (N.D.Cal.2011) 791 F.Supp.2d 774, 782.) It is apparent that most, if not all, of the factors apply under the facts presented in this arbitration.

appointed officers and directors. As was noted by Linda, there were also no minutes of meetings or shareholder meetings. Both companies are out of business and insolvent.

As testified to by the accountants, finances were commingled, and record keeping was atrocious. It would be an inequitable result if the acts in question arising from the malfeasance of Linda and Landon are treated as those of the corporation alone. The Arbitrator concludes that Landon and Linda should be declared the alter egos of ICON and Infusion Factory.

CLAIMANT'S DAMAGES

As is set out in Claimant's Closing Brief, "Claimant seeks rescission of his investment plus interest. Specifically, Corporate Code Sections 25500-25502 establish a private remedy for damages. Any person who violates Section 25401 is liable to any person who purchased or sold a security from him for either rescission or for damages (if the security is no longer owned) including interest. (*See* Corp. Code Section 25501.) An award of interest is mandatory at the legal rate of seven percent. (*See Boam v. Trident Financial Corp.* (1992) 6 Cal.App.4 th 738, 742-743 at footnote 4.) Claimant is entitled to the same relief pursuant to Civil Code Sections 1688 and 1689 which govern statutory rescission." (Closing Brief p. 15). As set out in this Interim Award, Claimant has established liability for securities fraud under Section 25401 against ICON, and Landon. They are individually and jointly liable for Claimant's damages. (*See* Corp. Code Section 255501, 25504, and 25504.1.) There are bases (as set out, *supra*) for liability as against Linda and Infusion Factory as well. Claimant requests to rescind[115] the agreements and be awarded the return of his $500,000 investment plus mandatory interest at seven percent since the date of his investment on May 24, 2018. Simple interest at seven percent through May 24, 2024, is $210,000.[116] The Arbitrator concludes such an Award is appropriate.

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[115] The Arbitrator would observe that a party to a contract has two different remedies when it has been injured by a breach of contract or fraud and lacks the ability or desire to keep the contract alive. (*Akin v. Certain Underwriters at Lloyd's London* (2006) 140 Cal.App.4th 291, 296, 44 Cal.Rptr.3d 284) The party may disaffirm the contract, treating it as rescinded, and recover damages resulting from the rescission. (Ibid.) Alternatively, the party may affirm the contract, treating it as repudiated, and recover damages for breach of contract or fraud. (Ibid.) Rescission and damages are alternative remedies. (*Akin, supra,* 140 Cal.App.4th at p. 296, 44 Cal.Rptr.3d 284.)

Thus, a party may seek rescission or damages for breach of contract or fraud "in the event rescission cannot be obtained" in the same action. (*Williams v. Marshall* (1951) 37 Cal.2d 445, 457, 235 P.2d 372 [defrauded vendee], citing *Bancroft v. Woodward* (1920) 183 Cal. 99, 190 P. 445; Walters v. Marler (1978) 83 Cal.App.3d 1, 16, 147 Cal.Rptr. 655 [breach of contract], disapproved on another ground in *Gray v. Don Miller & Associates, Inc.* (1984) 35 Cal.3d 498, 505–507, 198 Cal.Rptr. 551, 674 P.2d 253.) But "[t]he election of one remedy bars recovery under the other." (*Akin,* at p. 296, 44 Cal.Rptr.3d 284, citing *Alder v. Drudis* (1947) 30 Cal.2d 372, 383, 182 P.2d 195.) Claimant will be required to elect.

[116] The Arbitrator finds, based on the facts, no basis for the defense of "failure to mitigate" (third affirmative defense in the Answer to Arbitration Demand) . It is argued that "Jordan failed to do anything to mitigate his damages. Despite having access to the Companies' financials, Jordan never once complained about the Companies' financial situation until his relationship with Landon soured. Instead, he did nothing." Again, it is noted that "the Companies were thriving until 2020..." (Closing Brief p. 12). It bears noting that Jordan's damages are his invested dollars. Precisely what could have been mitigated,

There is also evidence to conclude that respondent Landon is liable for punitive damages, based on the evidence showing that he has fraudulently misrepresented the investment, and continued to do so, as set forth herein. Any such entitlement and the amount thereof shall be addressed, as agreed by the parties in a Phase 2 hearing. A CMC may be held to address this prior to any second phase.[117]

RESPONDENTS' COUNTERCLAIMS

As is noted elsewhere in this Award, ICON Holdings, Inc. filed its counterclaim against Kylae Jordan. The claims include misappropriation of trade secrets, conversion, breach of contract and breach of the covenant of good faith and fair dealing, intentional interference with contractual relations and with prospective economic advantage, unfair competition and declaratory relief.

Counterclaimant, as does claimant in his claims, has the burden of proving its claims.

In its closing brief Counterclaimant makes several arguments—first, Jordan should be precluded from arguing against misappropriation given his discovery misconduct; secondly, Jordan stole trade secrets, and, finally, Jordan sabotaged the companies' business relationships.

The Arbitrator will not spend overly long in addressing these claims.

As to the first claim, that Jordan's conduct in deleting email(s) from the server preclude any defense to the misappropriation claim, the Arbitrator notes that while the conduct was improvident and thoughtless, there was no showing that the emails (which remained on ICON's server) caused injury to ICON. Further, this claim is not a "cause of action" but a form of discovery sanction, unjustified under the facts presented. Indeed, as noted above, it was the subject of an *in limine* motion denied without prejudice. (*see*, fn. 12, *supra*). Counsel never raised the issue again in the hearing, until after the close of the evidence of phase 1.

On the claim that Jordan stole trade secrets, that claim is denied. There was a failure of proof on the issue. It would have been appropriate for Landon to have outlined how the SOPs, which were outlined by Jordan as being GBI's property, were stolen from Landon's SOP for White Rabbit. It might

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or how mitigation is shown to exist under the fact is not clearly stated in the arguments of counterclaimant. Jordan invested $500,000 through misrepresentations about the companies' condition, capitalization, customers and the like. Even if he had learned of the financial condition of the companies, it is not set out what he could have done to mitigate his damages. In asserting the defense, ICON has the burden of proof, and has not sustained it. Failure to mitigate damages, is a matter of affirmative defense that must be pleaded and proved, (*Baruh v. Kuhl* (1963) 213 Cal.App.2d 266, 273),

Similarly, the Arbitrator rejects any claim of waiver that claimant has waived the right to damages.

[117] California courts traditionally look to three factors in assessing punitive damages: (1) the reprehensibility of the conduct; (2) the amount of punitive damages to have a deterrent effect on the Defendant; and (3) a reasonable relationship between the punitive damages and the injury actually suffered. BAJI 14.71 and 14.72.2; *Neal v. Farmers Ins. Exchange*, 21 Cal.3d 910, 928, 148Cal.Rptr. 389, 399, 582 P.2d 980 (1978)

have been appropriate to bring in evidence from the Yourists showing that the SOPs they allegedly provided to IF were copied from SOPs provided to them from Jordan. Landon is an acknowledged expert in cannabis laws and in the chemistry of his products. Yet, there was no testimony to support the claim of theft by Jordan nor testimony linking the SOPs provided by GBI to the SOPs for White Rabbit. Iris could have been called to testify (she was not); there could have been expert evidence on the issue, but there was not. The Arbitrator finds that ICON has not sustained its burden of proof on the claim. The Arbitrator finds Jordan persuasive (*see* Jordan's testimony summarized above) that the SOPs were Grapefruit's work product and manufactured at IF, per a long-standing relationship between IF and Grapefruit.

The final claim is that Jordan, a $500,000 investor in ICON, sabotaged ICON and Infusion Factory's business by diverting "customers" to Grapefruit. This claim is denied. As is noted in the testimony, Landon insisted on license-to-license for a customer to actually become a customer. As is detailed at length above, and in the testimony, the S-license process allowed this to occur, but it was expensive and time-consuming to some prospective customers seeking to manufacture cannabis products. As detailed by Jordan, and to recap, when a prospective unlicensed customer declined the S-license he would send them to GBI, who had an alternative approach, but which allowed for licensure of that customer with GBI, such that GBI could send the product of that customer (under GBI's license) to Infusion Factory for manufacture. Landon knew or clearly should have known of Grapefruit and the Yourists—he was manufacturing "Sugar Stoned" for GBI (its name is on the invoice) and he was introduced to the Yourists at the IF facility in Sacramento. "Rainbow Dreams" was invoiced to Grapefruit, among other facts showing IF was well aware of GBI, and there is evidence clearly evidencing (*see*, e.g., Foor's testimony) that Grapefruit and IF had a symbiotic relationship. The Arbitrator finds that Jordan is persuasive on the point; it is clear that GBI had no ability to manufacture the product—Infusion had that licensure and ability and Jordan's aim was to ensure that if a "prospective" customer of Infusion Factory could not become an actual customer (either by being licensed itself or utilizing the S-license path) then Infusion would at least get the manufacturing revenues by introducing that prospect to GBI, and having Infusion obtain revenue through the manufacturing process.

Separately, the claims are denied on the basis that no damages have been proven to accrue from the alleged acts of Jordan. Landon was specifically asked if he had any information to support Respondents' claims that Jordan diverted any customer information as listed in paragraphs 29 through 77 of Respondents' counter-claim. Landon testified: "I do not have that information. I do not have that

information." (*See* TR 11/27/2023 at 210:23-211:4) For the same reasons as stated above, the counterclaims for misappropriation, conversion, breach of contract, breach of covenant of good faith and fair dealing, interference with prospective economic advantage and intentional interference with contractual relationships are found to be without merit.

CONCLUSION

Claimant shall recover damages, as stated herein.

Counterclaimant's claims are denied in their entirety, and they shall not recover damages from cross-respondent/Claimant.

The parties shall proceed consistent with this Phase 1 ruling, and the applicable scheduling order(s) in this matter. A FINAL AWARD shall issue after the Phase 2 hearing, or any subsequent settlement, or the parties shall schedule a case management conference to address the Phase 2 hearing and any related issues remaining for determination.

Dated: July 8, 2024

David I. Brown

Hon. David I. Brown (Ret.)
Arbitrator


EXHIBIT

JAMS ARBITRATION CASE REFERENCE NO. 1130009693

Jordan, Kylae, **Claimant,** **and** **Long, Jeffrey Landon, et al.,** **Respondents.**	**Ruling on Claimant's Request for Clarification of Certain Issues Related to Punitive Damages**

Background

Counsel for Claimant seeks clarification of two matters related to the issuance of the Phase 1 Interim Award.[1] As set out in the letter, "The Award found that Landon and ICON are liable to Claimant for securities fraud pursuant to Corporations Code Section 25501 and 25504. (*See* Award at p. 80.) Further, the Award states, "There is also evidence to conclude that Respondent Landon is liable for punitive damages[2], based on the evidence showing that he has fraudulently misrepresented the

[1] *See* Alves Radcliffe letter of July 19, 2024

[2] As addressed in Scheduling Order No. 3 dated November 13, 2023, and agreed by the parties, "...an Interim Award will be filed and served by the Arbitrator. The Interim Award shall state the reasons on which the decision of the arbitrator is based. The award may be served by regular mail unless any party requests, in writing, service by certified mail in accordance with Cal. Code of Civil Procedure Section 1283.6. The Interim Award will be filed in JAMS Access. Promptly following the filing and service of the Interim Award, a further preliminary and scheduling conference will be held to discuss whether there is a need to set the timing for any further briefing, or a Phase II Hearing, to address costs and attorney fees allocations, or the amount of punitive damages, should those matters remain relevant as a result of the first hearing. Within 30 days after any further briefing has been submitted, or any Phase II Hearing held, the arbitrator shall issue a Final Award." It is therefore clear that the Phase 1 was to (and did) address whether a factual basis exists upon which a punitive damages award may be predicated. As the Interim Award determines there is such a factual basis for the imposition of such damages. However, the entitlement and amount of such damages are to be addressed in a Phase 2 hearing. As counsel are aware, punitive damages are awarded in the discretion of the trier of fact in addition to general and special damages for the sake of example. While the Award addresses the predicate for such damages, it did not address the amount, if any, of such damages. That is for the Phase 2 of the hearing. The Arbitrator wished to remove any ambiguity from the Award; as is noted at the outset of the Phase 1 Interim Award, "The Arbitrator now issues his Phase 1, Interim Award, following conclusion of the instant arbitration (Phase 1) and all required briefing. **It was agreed on the record that the merits of entitlement to damages will be addressed in this Phase 1 interim award, subject to a Phase 2 which may determine the prevailing party and related costs issues, including punitive damages, ..."** (p. 1 Interim Award) [emphasis added] The "entitlement" to punitive damages was addressed and decided in the Phase 1 Interim Award, but the entitlement of any specific amount is to be addressed in Phase 2. The sentence in the Award stating that "Any such entitlement and the amount thereof shall be addressed, as agreed by the parties in a Phase 2 hearing" (p. 96 Interim Award) was merely meant to make clear that entitlement to any specific amount of such damages, if any is awarded, awaits the Arbitrator's determination in the Phase 2 of the hearing. This should clarify the concern raised in footnote 1 of Respondents' opposition brief.

investment, and continued to do so, as set forth herein." (Award at p. 96, lines 1-3.) It is further asserted, "The Award found that Landon was acting in the course and scope of his role as CEO of ICON when he fraudulently misrepresented the investment to Claimant and thereafter. This serves as the basis for punitive damages against Landon. **No one else made any representations to Claimant.** Thus, since Landon and ICON are both liable for securities fraud based solely on Landon's actions, and because Landon is subject to punitive damages for conduct that occurred in his role as CEO, it seems reasonably apparent and logically necessary that ICON would also be subject to punitive damages. Claimant requests clarification on this issue." [emphasis added]

The letter of July 19 did not mention Linda Long. It concluded by stating that Claimant requested permission to issue discovery to Mr. Long to determine financial condition pursuant to CCP section 3295.

Subsequently, the Arbitrator conducted a case management conference on August 7, 2024 (see Scheduling Order No. 5). The Order states, in pertinent part, "Addressing the July 19, 2024 letter of Mr. Radcliffe, which was not opposed by Respondents, the Arbitrator concludes that ICON is liable along with Landon Long for punitive damages under the common law fraud and aiding and abetting claims. Properly pled and proven claims for fraud and aiding and abetting fraud do allow for punitive damages to be imposed. *See In re First Alliance Mortgage*, 471 F.3d at 977 (demonstrating that punitive damages may be warranted on an aiding-and-abetting fraud claim where there is a finding of intent or otherwise "despicable" conduct.) However, Claimant also asserted that Linda Long should be held liable for punitive damages; that assertion was not addressed in the letter. Precedent to any amendment to the Phase 1 ruling, it was determined that Claimant's request that Linda Long be included should be subject to proper briefing; the parties agreed that Claimant may file a short (2 pages or less) brief on the issue by August 14, 2024; Mr. Arvizu may file an opposition brief by August 23, 2024. No Reply briefing shall be permitted; the Arbitrator shall rule on the papers whether to include Linda Long on the punitive damage claims. In any event, following the Arbitrator's determination, the Interim Award shall be amended to address Landon Long's exposure as noted above. If the Arbitrator concludes Linda Long is, or is not, so liable for punitive damages, the amendment will address that as well."[3]

[3] It is clear that the Arbitrator may clarify an Interim Award; analogously, CCP section 1283.4 requires that an award "include a determination of all the questions submitted to the arbitrators the decision of which is necessary in order to determine the controversy." In light of this duty, courts have inferred that when a putatively final arbitration award (and it bears noting that the instant award is not a final award but an Interim Award) omits resolution of an issue necessary to decide the parties' controversy, the arbitrator retains power to amend the award to address the undecided issue. (*Delaney v. Dahl* (2002) 99 Cal.App.4th 647, 657–658; *Century City Medical Plaza v. Sperling, Isaacs & Eisenberg* (2001) 86 Cal.App.4th 865, 879–

The Arbitrator has reviewed the briefs of the parties and now rules on the issues presented. No further argument shall be permitted on these issues, and the parties shall endeavor to schedule a Phase 2 hearing as stated herein. To the extent that this Ruling addresses the Interim Award, it shall be incorporated by reference into the Interim Award.

CONTENTIONS OF THE PARTIES

LANDON LONG

As is noted, the Arbitrator has concluded that the Award failed to address ICON's liability, coincident with Landon Long, for punitive damages under the common law fraud and aiding and abetting claims. This conclusion, as stated in Scheduling Order No. 5, is not contested. And it is established that a corporation may be liable for an award of exemplary damages for the acts of those whom it has placed in charge of its affairs, and who constitute, for the purposes of dealing with other parties, the corporation itself. (*See, e.g. Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 67 ["(A) corporation may be liable for punitive damages only for malicious acts done by its agents and with the knowledge or under the direction of its corporate officials having the power to bind the corporation . . . ."] To explain these terms, *Lowe v. Yolo County etc. Water Co.* (1910) 157 Cal. 503, 108 P. 297, is cited. There the court said (*Id.*, at pp. 510-511, 108 P. at p. 300): "It is not disputed, of course, that a corporation may be held guilty of malice or oppression by reason of acts of those whom it has placed in charge of its affairs and who 'constitute, to all purposes of dealing with others, the corporation.'" (*See Maynard v. F.F. Ins. Co.*, 34 Cal. 54, 91 Am.Dec. 672.) As detailed in the Interim Award, Landon was, for all intents and purposes, the brains, body and soul of ICON, and directed its actions.

LINDA LONG

Claimant's brief requests punitive damages as against Linda Long "as alter ego of ICON Holdings, Inc." As noted in the Claimant's brief "The Award did not find Linda liable on Claimant's fraud claims on the basis that "while she was working closely with her son, there is no evidence that she played any part in disseminating the prospectus, creating the SPA or HRA, speaking to Jordan prior to his investment in May 2018, persuading his investment or giving him misleading information about his investment."(Award at 84.)" (Brief, p. 2, ll. 6-10).

882.) As the Supreme Court has noted, this retention of authority stems from the statutory obligation to decide all issues within the scope of the arbitrator's assignment. It flows as well from the policy underlying that duty: "[T]he fundamental purpose of contractual arbitration is to finally resolve all of the issues submitted by the parties as expeditiously as possible [citation], without the time and expense burdens associated with formal judicial litigation." (*Century City, supra*. at p. 882; *see Heinlich v. Shuji* (2019) 7 Cal. 5th 350, 364.) As noted in *Heinlich*, "Indeed, "[f]ailure to find on all issues submitted is ... a statutory ground for vacating an award." (*Banks v. Milwaukee Ins. Co.* (1966) 247 Cal.App.2d 34, 38.)

Claimant further argues, "Second, although the Award found that Linda did not participate with Landon in fraudulently inducing Claimant pre-investment, Linda did, post-investment, engage in numerous instances of malfeasance and is liable to Claimant for Breach of Fiduciary Duty. Also, post-investment, Linda ratified Landon and ICON's conduct with her malfeasance as discussed in the Award and as noted above. She personally and financially benefited from actions she knew were improper such as improperly reimbursing herself $45,991, or 1/10 of the investment, immediately after Claimant's investment and without his knowledge. (*See* Award at fn 37 and 53 and p. 38.) Linda violated her fiduciary obligation to Claimant and ICON which also provides a basis for punitive damages as Linda is guilty of "malice" as defined by C.C. § 3294(a)(1). As the alter ego of ICON and one who engaged in malfeasance, punitive damages are appropriate to punish and deter Linda for her post-investment conduct which she is liable for." (Brief, p. 3, ll. 6-25). There are other arguments made which, for the sake of brevity, will not be repeated in toto herein.

For their part, Respondents argue that "To support a finding that Linda is liable for punitive damages under Civil Code section 3294, clear and convincing evidence must show Linda acted maliciously in breaching her fiduciary duty (the only direct claim against Linda that Jordan prevailed on). There is no evidence that Linda either intended to cause Jordan injury, or that Linda committed despicable conduct with a willful and conscious disregard of the rights and safety of others. (Civ. Code § 3294(c)(1).) Awarding punitive damages against Linda on this record vitiates the legislative purpose of exemplary damages. California case law is clear that a finding of punitive damages requires not only that the act complained of be willful or intentional, but it also be accompanied by aggravating circumstances, amounting to malice. (*Ebaugh v. Rabkin* (1972) 22 Cal.App.3d 891, 894 ("Mere spite or ill will is not sufficient; and mere negligence, even gross negligence is not sufficient to justify an award of punitive damages.")." It is further stated that "Jordan's request does not identify any act committed by Linda amounting to malice, but instead offers a conclusory statement that Linda is guilty of malice because the Award determines she violated her fiduciary obligations. That is not enough. Moreover, the Award and Jordan's post-award letters confirm that Linda did not commit the conduct supporting punitive damages – "the evidence does not support that [Linda] intentionally misrepresented or concealed from Kylae Jordan any information. . . There was scant evidence that Linda Long made any representations to Jordan about the business, much less deceived him in any statement made." (Award at pg. 90.) Jordan's July 19, 2024 letter confirms "[n]o one else [aside from Landon] made any

representations to Claimant." Thus, Linda's actions do not support a punitive damages award." (Opp. Brief pp. 2-3).

Again, the Arbitrator will not reproduce all the arguments in full, but it is to be noted that Respondents further argue that "Scheduling Order No. 5 states that ICON is liable as Landon's alter ego for purposes of punitive damages under common law fraud and aiding and abetting claims. Initially, Jordan seeks to use reverse veil piercing to hold ICON – and by extension Linda – responsible for Landon's potential punitive liability arising from fraud and aiding and abetting fraud claims. This theory is prohibited by California law. (*Postal Instant Press, Inc. v. Kaswa Corp.* (2008) 162 Cal.App.4 th1510, 513 (the corporate veil will not be pierced to satisfy the debt of an individual shareholder).) Thus, alter ego is not a basis to enforce punitive damage liability on Linda. Furthermore, a punitive damage award must be based on Linda's individual conduct. Punitive damages are rooted in equity and when a trier of fact is assessing punitive damages against joint tortfeasors, the finder of fact must measure and apportion the exemplary damages so that "the punishment fit[s] the offense." (*Thomson v. Catalina* (1928) 205 Cal.402, 406.) As stated above, the Arbitrator already determined that Linda did not commit the acts giving rise to potential punitive damages." (*Id.*)

Finally, it is argued, "Jordan's ratification and equitable estoppel arguments also fail. Neither ratification nor equitable estoppel is a stand-alone reason to impose punitive damages. There is no evidence that Linda subsequently ratified Landon's "fraudulent misrepresentation." (*Coughenour v. Del Taco, LLC* (2020) 57 Cal.App.5th 740, 749 (An inherent element of ratification is that the party to be charged has full knowledge of what the agent was doing).) And the Award finds that Linda did not participate in Jordan's investment, so equitable estoppel is not applicable. (*McClain v. Bercut-Richards Packing Co.* (1944) 64 Cal.App.2d 420,425 (equitable estoppel requires conduct of the estopped party which was intended to be acted on).)

ANALYSIS AND CONCLUSION

Punitive damages are permissible on a showing of conduct amounting to "oppression, fraud, or malice." (Civ. Code, § 3294, subd. (a).) Analogously, section 3295 authorizes discovery of a defendant's financial condition in an action seeking punitive damages only when the court is satisfied the plaintiff has established a "substantial probability" of success on the claim for punitive damages. While that threshold was established to the Arbitrator's satisfaction as to Landon (and ICON), the Interim Award did not make a similar determination as to Linda, and the Arbitrator is not persuaded that his findings, as amply outlined in the Interim Award, are incorrect, or require revision or reconsideration.

The request to modify/clarify the Phase 1 Interim Award to find that Linda Long, as alter ego of ICON, satisfies the predicate acts to impose punitive damages, is denied.

This Ruling shall be attached to the Phase 1 Interim Award as Exhibit A, and incorporated by this reference as if fully set forth herein.

As noted herein, the parties shall schedule a CMC to address the Phase 2 hearing date(s) and FINAL AWARD, which hearing shall set a date for the hearing, and any pre-hearing procedures and post-hearing procedures to be observed, and the format of the hearing.

Dated: August 30, 2024

David I. Brown

Hon. David I. Brown (Ret.)
Arbitrator