

File No. C124-01-45034

**THE KING'S BENCH
Winnipeg Centre**

BETWEEN:

TobaGrown, Inc and TobaRolling, Inc.

Plaintiffs

and

**Jesse Denton, Tim Doerkson,
Kief Cannabis Company, Ltd. and Lucky Ventures, Ltd.**

Defendants

STATEMENT OF CLAIM

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FILED FEB 16 2024

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STATEMENT OF CLAIM

TO THE DEFENDANT:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the King's Bench Rules, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$750.00 for costs and have the costs assessed by the court.

FEB 16 2024

Date: _____

Issued _____

D. GRENKOW
DEPUTY REGISTRAR
COURT OF KING'S BENCH
FOR MANITOBA
Deputy Registrar

To: Kief Cannabis Company, Ltd., and to
Lucky Ventures Ltd., and to
Jesse Denton, and to
Tim Doerkson
All Defendants c/o Alexandre Mireault, counsel
MLT Aikins LLP
30th Floor - 360 Main Street
Winnipeg, MB R3C 4G1

COURT OF KING'S BENCH
MAIN FLOOR - 408 YORK AVENUE
WINNIPEG, MANITOBA R3C 0P9
CANADA

CLAIM

1. Plaintiffs claim general damages, in an amount to be determined by this Honourable Court, on account of damage and loss suffered because of Defendants' actions.
2. Plaintiffs claim special and/or punitive damages, in an amount to be determined by this Honourable Court, on account of damage and loss suffered because of Defendants' actions.
3. Alternatively, Plaintiffs claim that Defendants should be compelled to specifically perform their contractual obligations to Defendants.
4. Alternatively, Plaintiffs claim that Defendants pay to Plaintiffs an amount, to be determined by this Honourable Court, on account of the doctrines of *quantum meruit*, *unjust enrichment*, and/or *quantum valebat*.
5. Alternatively, Plaintiffs claim that this Honourable Court should create a constructive trust over Defendants' assets and/or enter an Order granting such other and further injunctive relief.
6. Plaintiffs claim pre and post judgment interest pursuant to the *Court of King's Bench Act, Part XIV, C.C.S.M., c C280*.
7. Plaintiffs claim costs, including special costs.
8. Plaintiffs claim such further and other relief to which it might be entitled and to which this Honourable Court determines just.

FACTS

9. Plaintiff TobaGrown, Inc. (“TobaGrown”) is a Manitoba corporation.
10. Plaintiff TobaRolling, Inc. (“TobaRolling”) is a Manitoba corporation.
11. Jesse Lavoie (“Lavoie”) is a Manitoba businessman and a director of TobaGrown and of TobaRolling.
12. TobaGrown is the parent company of TobaRolling. TobaGrown owns intellectual property including various cannabis flower brands that are available in a variety of stock-keeping units (SKUs) in Manitoba and elsewhere. TobaRolling is subsidiary of TobaGrown that, at the time of the events complained of, provided packaging and distribution services for over 25 cannabis brands, including TobaGrown’s flower brand and SKUs.
13. TobaGrown also owns and/or has title to and/or a possessory interest in certain property (the “TobaGrown Property”) related to the cannabis industry that is currently being held by, and upon information and belief, being used by Defendants including, without limitation:
 - a. 50 kilograms of cannabis;
 - b. A semi-automatic excise stamp dispensing machine;
 - c. various storage bins, stainless steel tables, rolling shelves and packaging materials.

14. All of the TobaGrown Property was purchased and paid for by TobaGrown.

15. TobaRolling also acted as a packager and distributor for various other cannabis brands, helping those brands and companies obtain access to the Manitoba cannabis market. TobaGrown and TobaRolling were solely responsible for pitching, onboarding and managing every client in TobaRolling's portfolio of brands. TobaGrown and TobaRolling will be collectively referred to as the "Toba Companies".

16. Defendant Kief Cannabis Company, Ltd. ("Kief") is a Manitoba corporation.

17. Defendant Lucky Ventures, Ltd. ("Lucky Ventures") is a Manitoba corporation formed in August 2023 by Defendant Jesse Denton. The owners of Lucky Ventures were intended to be TobaGrown, Doerkson, Denton and, later, Kief, all as more fully described below but, unknown to Plaintiffs, Denton caused the incorporation to occur without any distribution of shares to TobaGrown.

18. Upon information and belief, Lucky Ventures and/or Kief purports to own intellectual property, including a cannabis brand distributed in Manitoba known as "Lucky Stash" and is selling and collecting proceeds from the sale of Lucky Stash branded and related cannabis and cannabis products.

19. Defendant Jesse Denton ("Denton") is a Manitoba businessman and the principal of, and a shareholder in, Kief. Denton is also the incorporator of, a director of, and shareholder in, Lucky Ventures.

20. Kief is a producer and processor of cannabis licensed by Health Canada and the Canada Revenue Agency to, among other things, grow, package and sell cannabis to various buyers including the Province of Manitoba.

21. Defendant Tim Doerkson (“Doerkson”) is a Manitoba businessman. Upon information and belief, Doerkson has a working relationship with Lucky Ventures and/or Kief pursuant to which Doerkson is collecting proceeds from Lucky Ventures’ and/or Kief’s sales of Lucky Stash branded cannabis and cannabis products.

THE INITIAL KIEF / TOBAGROWN RELATIONSHIP

22. In early 2022, Denton approached Lavoie about starting a business relationship between the Toba Companies and Kief pursuant to which TobaRolling would distribute TobaGrown and other branded cannabis products from the Kief License and facility from companies that the Toba Companies identified and created relationships with.

23. At that time, TobaRolling was negotiating a relationship with Natural Earth Craft Cannabis (“Natural Earth”), a Health Canada licensed micro-cultivator and micro-processor, which Doerkson was a shareholder in. Pursuant to that relationship, TobaRolling would supply staff and expertise to package and distribute Natural Earth’s branded cannabis products at the Natural Earth facility and to also package and distribute TobaGrown’s brands and other cannabis brands from third party producers. In return, Natural Earth would own thirty percent (30%) of the non-voting shares in TobaRolling as long as Natural Earth was a TobaRolling client.

24. Micro-processors of cannabis such as Natural Earth have a limit, imposed by law, on the total annual volume of cannabis products that may be processed (600

kilograms per year). Standard processors, such as Kief, do not have any annual limits, which means that standard processors are able to package and distribute a much greater volume of cannabis and consequently, important to the Toba Companies, a wider variety of brands and volume of products.

25. When Lavoie presented Doerkson with the proposition that Denton/Kief had made, including the fact that Kief was a standard processor with no kilogram per year limitation, Doerkson expressed unease about the power Kief would have over TobaRolling, that Natural Earth/Doerkson had been told that Denton had a history of malicious acts towards staff and partners and that Kief was known to be financially unstable.

26. Despite these reservations, based upon representations made by Denton individually and on behalf of Kief, on or about April 17 2022, the Toba Companies, Lavoie and Kief entered into an agreement to, generally, allow the Toba Companies “full open door access” to work within the Kief licensed facility to package and distribute branded cannabis products of Kief, TobaGrown and the cannabis products of other brands represented by the Toba Companies (the “Distribution Agreement”). TobaRolling agreed to pay Kief a fee of \$0.15 per gram of cannabis sold through the Kief license (except for Kief branded product, for which Kief would not charge that fee) and further agreed that while Kief was a client of TobaRolling it would be entitled to ownership of ten percent (10%) of non-voting shares in TobaRolling.

27. Denton personally trained Lavoie on proper quality assurance related paperwork, Canada Revenue Agency monthly report preparation, Health Canada monthly report preparation and Kief’s Standard Operating Procedures.

28. Denton set biweekly meetings with Lavoie to go over all sales, packaged amounts, paperwork and other records to ensure that Denton had time to review materials before submitting required monthly reports to the Canada Revenue Agency and Health Canada. In addition, Denton created live tracking folders and Google Sheets that he and Kief maintained control of for the duration of the relationship.

29. Denton also set up a monthly meeting with Lavoie to do a final review of all quality assurance release paperwork and information of all sold batches. During these meetings Denton would submit the required monthly reports to CRA and Health Canada.

30. Denton also ensured that all communication between Lavoie and Kief's Quality Assurance Person (a position mandated by Health Canada) was restricted and ensured that Lavoie included Denton on all messages, to provide Denton with full oversight of the operation. Denton also created Quality Assurance folders online which he maintained full oversight over.

31. One of Lavoie's duties was to funnel all the financial information for the entire operation into Google Sheets, which were then sent to Denton and Kief's accountant on a weekly basis. Denton was insistent that he and Kief's accountant should have 3 - 5 business days to review financial data every week prior to issuing payments. Upon review of this information on a weekly basis, Denton would write cheques from Kief's account. This provided Denton with live data of the entire operation and full control of the flow of funds.

32. During the onboarding process, as sales of TobaRolling products began generating revenues for Kief, multiple third parties approached Lavoie, including various shareholders in Kief, to warn of the uneasy financial status of Kief and how Denton had

been avoiding providing the Kief shareholders with updates due to lack of any appreciable sales or revenue prior to the inception of the Distribution Agreement. Lavoie was concerned but believed that TobaRolling would generate substantial revenues and that the business model he had built would be successful for all parties.

33. TobaGrown, TobaRolling and its associated brands were, in fact, very successful and generated millions of dollars in revenue for Kief in the first year of the Distribution Agreement. The Toba Companies also directly provided funds to Kief to enable Kief to launch its own recreational flower brand, which TobaRolling packaged and distributed at cost.

THE LUCKY STASH JOINT VENTURE

34. In or about July, 2022, Lavoie and Doerkson contemplated launching a cannabis brand called "Lucky Stash" into the Manitoba market. They had learned that another cannabis company, Canopy Growth Corporation (at that time the largest cannabis company in Canada) was pulling its popular value cannabis brand "Simple Stash" out of the Manitoba market and both saw an opportunity to fill the gap in the market with a new, but similarly named, brand.

35. An initial hindrance to the viability of this new Lucky Stash brand was the \$0.15 per gram of sold cannabis fee that Kief was charging TobaRolling to operate in Kief's building.

36. Lavoie, due to his existing relationship with Denton and Kief because of the Distribution Agreement, suggested that Kief would be a valuable addition to the joint

venture as an equal partner with the request that Kief to not charge any license fees to the joint venture, as Kief would benefit from an ownership interest in Lucky Ventures.

37. Doerskon was extremely hesitant to involve Denton and Kief, as Doerskon did not trust Denton, saying that Denton's reputation was not positive and expressing concern that Denton/Kief would have too much power over TobaGrown, TobaRolling and Lucky Stash because of Denton's ability to control the use of Kief's facility and Health Canada licensing.

38. Despite these reservations, Doerskon, Lavoie and Denton met during the summer of 2022 to discuss the proposed joint venture. Denton was very impressed by the potential revenues and advised the other parties that he would prefer to personally own one-third of the joint venture rather than have it owned by Kief, texting Lavoie on September 30, 2022: "I'll cash in personally on lucky. Let Kief have toba. Will be good to show shareholders."

39. Denton also explored options on how to structure the cash flow from Kief to Denton to avoid Kief's shareholders knowing of his personal profit from Lucky Stash, texting Lavoie on September 16, 2022: "That's why I wanted to pick a company name that kept Lucky in it. Less flags when money is on statements since it's just another brand we're processing for and working with"

40. Doerkson decided not to offer his ownership interest in the Joint Venture to Natural Earth, emailing Lavoie from Doerkson's Natural Earth email address on October 4, 2022: "As you are both aware, Natural Earth will own the shares in tobarolling, and to me that really is a gift i've given to my partners, and am not willing to share any more of my non natural earth efforts and successes with others who aren't contributing, or

interested in being a part of the particular mission (whatever that mission may be depending on the venture).” Doerkson also falsely represented to the other parties that his relationship with Natural Earth did not contain any non-compete provisions.

41. Lavoie repeatedly expressed to Denton and Doerkson that not involving their respective companies created a risk of complications for the joint venture, but his advice was ultimately disregarded by both.

42. Ultimately, in or around September, 2022, TobaGrown, Doerkson and Denton agreed (the “Joint Venture Agreement”) to enter into a joint venture to create and distribute Lucky Stash branded cannabis and cannabis products (the “Lucky Stash Joint Venture” or the “Joint Venture”).

43. The essential terms of the Joint Venture were:

- a. Each of TobaGrown, Doerkson and Denton would own and control one-third (33.33%) of the Joint Venture;
- b. Denton would cause Kief to distribute the cannabis products at a \$0.00 fee rate, meaning Kief would not be paid to distribute Lucky Stash branded products;
- c. TobaGrown would lend the Joint Venture the start-up capital, acquire the cannabis to be used in the brand via TobaGrown’s unique and pre-existing relationship with Safari Flower (as more fully described below), provide all of the packaging and distribution at cost, promote the brand and assume primary marketing, sales and bookkeeping responsibilities as

well as supplying the staff to physically package the Joint Venture's products;

- d. Doerkson would assist with the marketing and sales of the Joint Venture's branded products; and,
- e. All major decisions of the Joint Venture would be made unanimously.
- f. Because space and time at the Kief facility was limited, work on the Joint Venture's products would defer the needs of any third-party brands that TobaRolling packaged and distributed.

44. The Joint Venture immediately began to undertake preparations toward launch including developing a logo, choosing packaging and acquiring the cannabis to be sold under the brand.

45. It was agreed by all parties that Lavoie would personally handle the books, invoicing and payment breakdowns for Lucky. On December 14, 2022, Lavoie shared the live tracking accounting sheet for Lucky Ventures with Denton, Kief and Doerkson (the "Lucky Venture Accounting Sheet"). The Lucky Venture Accounting Sheet tracked all revenue, purchase, payouts, debts and other financial dealings of the Joint Venture. Denton then asked Lavoie to share the Lucky Venture Accounting Sheet with Olaf Jones, an accounting firm that represented Kief Cannabis and Jesse Denton, and Lavoie did so.

46. The Lucky Venture Accounting Sheet was used by the Joint Venture, Denton, Lavoie and Doerkson from December 14, 2022 until November 7, 2023, when Lavoie was frozen out of the Joint Venture by the Defendants, as more fully described below.

TOBAGROWN ACQUIRES CANNABIS FOR THE JOINT VENTURE

47. TobaGrown and Lavoie had a pre-existing and very strong relationship with Safari Flower Company (“Safari”) because Safari had supplied cannabis for TobaGrown’s first project: Canada’s first not-for-profit cannabis product with all the profits from sales going to multiple Manitoba local charities.

48. That project was a success, and Lavoie and Safari had entered into discussions about Safari supplying cannabis for another line of TobaGrown products, in addition to the Manitoba grown flower Lavoie was in the process of acquiring for the Toba Companies. Prior to agreeing to enter the Joint Venture, Lavoie had intended to use the Safari flower in TobaGrown’s brand “TobaStash.” Instead, and in reliance on the representations made with respect to the Joint Venture by Denton and Doerkson, Lavoie caused that cannabis to be made available to the Joint Venture and caused TobaGrown to give up the “TobaStash” business opportunity.

49. Lavoie, thus, was able to secure access to hundreds of kilograms of cannabis from Safari at favorable wholesale prices, paid on consignment, for use by the Joint Venture. This, in turn, allowed the Joint Venture to price its products at the low/value end of the cannabis market and to thereby grow sales dramatically.

50. Both Doerkson and Denton repeatedly acknowledged that the Safari opportunity that Lavoie secured for the Joint Venture was unprecedented and a critically important

aspect of the Joint Venture. As a result of the significant contribution that this cannabis sourcing arrangement provided to the Joint Venture, each of Denton, Doerkson and Lavoie agreed that TobaGrown would receive an additional bonus on any cannabis flower that was purchased for the Joint Venture below \$1.00 per gram.

51. The majority of the flower purchased from Safari for the Joint Venture was at \$1.00 per gram, however between January 18, 2023 and June 6, 2023, 410,190 grams were purchased between \$0.80-0.90 per gram, meaning TobaGrown was owed the full difference between \$1.00 to the \$0.80-0.90 for over 410,190 grams. TobaGrown has yet to be paid that bonus and is owed \$41,019.00 by Defendants as a result (the "Cannabis Bonus Payment").

TOBAGROWN LOANS STARTUP FUNDS TO THE JOINT VENTURE

52. In addition to securing the cannabis for the Joint Venture, TobaGrown provided a start up loan by advancing over \$100,000 to the Joint Venture to cover the initial packaging, labour and shipping of the Lucky Stash brand (the "TobaGrown Loan"). The TobaGrown Loan balance due grew and reduced over time, as TobaGrown incurred additional costs on behalf of the Joint Venture and was, from time to time, repaid sums out of sales by the Joint Venture.

53. The current amount owed by the Defendants to TobaGrown on the TobaGrown Loan is \$128,262.00.

THE JOINT VENTURE LAUNCHES LUCKY STASH

54. On October 4, 2022, the Joint Venture launched the Lucky Stash brand in Manitoba. As agreed, Denton caused Kief to use its Health Canada licensing to distribute the Joint Venture's products for no licensing fee. TobaGrown provided the TobaGrown Loan, obtained the cannabis for the Joint Venture and provided the packaging and distribution staff.

55. The Lucky Stash brand was immediately very successful.

56. Shortly after the launch, the Joint Venture, Kief and TobaGrown were confronted by representatives of Natural Earth due to Doerkson's decision to not offer Natural Earth his interest in the Joint Venture, despite having, upon information and belief, a shareholders' agreement and non-compete that required him to do so. Doerkson did not advise Denton or TobaGrown/Lavoie about this non-compete until the summer of 2023, after Natural Earth complained to Denton and Lavoie directly and made further complaints to the regulatory authorities.

57. Denton and Lavoie were able to work together to minimize the impact of Natural Earth's public complaints on the reputations of TobaGrown and Kief, and to deal with various Canada Revenue Agency and Health Canada inspections that followed Natural Earth's complaints to those agencies.

58. Despite these issues, the Lucky Stash brand was successful and the Joint Venture's profits began to be distributed among TobaGrown, Denton and Doerkson consistent with their respective one-third interests in the Joint Venture.

59. After months of sales, however, it became clear to all parties that Doerkson was not contributing his agreed upon time and effort to the Joint Venture. Denton and Lavoie

discussed Doerkson's role by email and text message, in addition to in person meetings. Denton became insistent on reducing Doerkson's share of profits in the Joint Venture, telling Lavoie, about Doerkson, that: "This guy can't just sip whiskey, do podcasts and expect $\frac{1}{3}$ of Lucky."

60. In addition, Denton was increasingly concerned that Kief's lack of any financial interest in the Joint Venture, coupled with his causing Kief to charge no fees to the Joint Venture, would create problems with his investors in Kief should they become aware of the arrangement. Finally, the parties recognized that TobaGrown's contribution to the success of the Joint Venture was disproportionately high compared to the other members.

61. On or around May 25, 2023 Denton, Doerkson and Lavoie (for TobaGrown) unanimously agreed to alter the terms of the Joint Venture to address these concerns. The parties agreed to continue to each own one-third of the Joint Venture, but to restructure the profit distribution percentages of the Joint Venture as follows:

- a. TobaGrown: 36.67%
- b. Denton: 26.66%
- c. Doerkson: 26.66%
- d. Kief: 10.01%

TOBAROLLING AND KIEF MERGE

62. As TobaRolling's processing and distribution business grew, physical and other limitations at the Kief facility began to manifest. In addition, the success of the

TobaGrown/TobaRolling brands was such that it was generating revenue for Kief disproportionate to Kief's contributions and Lavoie, with full knowledge of Denton and Kief, began to explore the possibility of distributing TobaGrown products via other Health Canada licensed processors serving the Manitoba market.

63. Lavoie approached Rogue Processing (a Health Canada licensed processor) to potentially acquire their physical assets via a merger with TobaRolling. Simultaneously, Lavoie was approached by Delta 9 (another licensed processor) with a merger offer. These proposals were designed to acquire physical licensed space to expand the TobaRolling business operations.

64. Denton became very concerned that Kief's revenue would sharply decline, as all of the TobaGrown and TobaRolling revenue was on Kief's license and books, and, together with Lucky Stash, represented over 95% of the total revenue to Kief.

65. After having a high-level discussion on February 3, 2023, Lavoie wrote Denton an email on February 4, 2023 containing an offer for Kief to merge with TobaRolling as equal partners, among other terms.

66. Denton responded positively the same day and suggested a dinner meeting to finalize the details.

67. Denton and Lavoie met at Brown's Social House on February 11, 2023 to discuss the merger between Kief and TobaRolling. Both Denton and Lavoie agreed that a merger between TobaRolling and Kief would happen and shook hands with plans to meet again in March 2023 to discuss further. The terms agreed upon were that the division of ownership would either be equal or, if TobaRolling could successfully merge

with Rogue Processing, then the merger between TobaRolling and Kief would be 60/40 in favour of TobaRolling.

68. After subsequent discussions in person, Lavoie created and shared a live term sheet with Denton on March 26, 2023 (the “Merger Term Sheet”). The parties agreed that both would add their desires and comments to this Merger Term Sheet and then would meet in person May 2023 to discuss.

69. On April 8, 2023, Lavoie messaged Denton “Pumped to get this JV done so we both feel secure and can just focus on crushing it together”, to which Denton responded on the same day: “Yeah man I already feel secure. You should too. None of what has come to date, or what is coming in the future happens without us both”. This was consistent with many other statements and representations made by Denton to Lavoie about the future of the relationship.

70. Denton and Lavoie met at Denton’s home on May 6, 2023 and spent over four hours discussing and modifying the Merger Term Sheet until they reached an agreement (the “Merger Agreement”). Denton, on behalf of Kief, and Lavoie, on behalf of TobaRolling, shook hands on the Merger Agreement thus creating the new enterprise (the “New Company”) and agreed that the parties would begin acting on it immediately.

71. The Merger Agreement contained the following terms:

- a. A new operating corporation would eventually be formed, with a 50/50 share distribution split between TobaRolling and Kief, to memorialize the New Company’s existence.

- b. All revenues generated by Kief and TobaRolling would be paid to the new corporation once it was formed and profits distributed equally between the two parties.
- c. Kief would cease charging the \$0.15 per gram fee on TobaGrown and TobaRolling products, would provide the New Company with unrestricted use of the Kief processing and sales licenses, plus access to additional non-cultivation space within the Kief facility. Kief would also relinquish its ownership of ten percent (10%) of TobaRolling.
- d. Kief would change their Doing Business As name to "TobaRolling", so that Manitoba Liquor & Lotteries ("MBLL", the regulator of cannabis in Manitoba) would display "TobaRolling" on the order platform.
- e. The value of Kief's flower brands and TobaGrown's flower brands would not be part of the New Company but if an offer was made to acquire the entire portfolio, the parties would hire multiple evaluators to assign a fair market value to the respective brands, which would then be apportioned to each of Kief and TobaGrown respectively.
- f. Kief and TobaGrown would maintain full ownership of all intellectual property and control over the use of their own flower brands, but each companies' brand would use the New Company for processing and distribution, at cost, and would use the New Company's sales force at the then-existing commission rate of four percent (4%).

g. If an offer were made to acquire the New Company, the value of Kief's Health Canada and CRA licensing, plus the value of its facility, would be independently evaluated and that value would be assigned to the New Company.

72. These terms were, in large part, implemented immediately, including, but not limited to, reducing the fees that TobaRolling was charging Kief to package and distribute Kief branded products to TobaRolling's cost, and Kief removing its fees on TobaGrown's branded products.

73. Both Denton and Lavoie agreed that they would be public about the merger. This included Denton and Lavoie explaining the merger via email and in person to companies that the New Company was negotiating with including, but not limited to, Canopy Growth, BZAM, Tilray, Heritage, Stigma Grow, Safari and others. Denton and Lavoie also had multiple meetings with the MBLL where the merger was announced. Finally, Denton also met with the three investors of TobaGrown and made representations to them assuring them of the stability of Kief and the terms of the Merger Agreement.

74. The parties agreed that Lavoie would cause an agreement in writing to be prepared memorializing the terms of the Merger Agreement.

75. On Friday, July 7, 2023 Lavoie presented Denton with a copy of the written document in person. Denton was excited to see it, and said he'd review it and get right back to Lavoie. Ultimately Denton did not do so though the parties continued acting consistently with the terms of the Merger Agreement.

KIEF AND DENTON UNILATERALLY TERMINATE THE AGREEMENTS AND PREVENT PLAINTIFFS ACCESS TO THE FACILITY

76. On November 7, 2023, Kief unilaterally terminated the Distribution Agreement and the relationship between the parties without prior notice.

77. In the months leading up to November 7, 2023, there were no written or verbal warnings to Lavoie or the Toba Companies from Kief or Denton that either Kief or Denton was considering terminating the Distribution Agreement.

78. To the contrary, weekly calls between Kief/Denton and TobaRolling/Lavoie had been ongoing for months to further strengthen the relationship and to ensure Denton and Kief had a full understanding of TobaRolling's operations. Indeed, the parties had been working together on obtaining a Distribution License, a new type of licensing required by MBLL for licensed processors such as Kief to engage in distribution of cannabis products directly to retail stores in the province. Obtaining this Distribution License was critical to the continued viability of the TobaRolling business model. Work on this issue had progressed to the point that the Toba Companies had relinquished the business opportunities presented by possible mergers with Delta-9 and/or Rouge Processing.

79. On November 7, 2023, Denton and Lavoie were conducting the monthly telephone call about Kief's required reporting to the Canada Revenue Agency. During these regular calls, Lavoie provided Denton with all required documentation for Kief's monthly submission. At the end of this call, after Denton had extracted all the information Kief required from Lavoie, Denton said "one more thing" and proceeded to terminate the relationship and advised that TobaGrown, TobaRolling and its employees would no longer be given access to the Kief facility.

80. This unilateral and unexpected termination put the Toba Companies' continued existence as a going concern in substantial jeopardy.

81. By terminating TobaRolling's ability to conduct business and removing access to the facility, Kief/Denton blocked the ability of TobaRolling's clients to have their cannabis continued to be packaged, marketed and distributed by TobaRolling in Manitoba as a precursor to doing so was the use of Kief's Health Canada processing and sales licenses. Kief/Denton also prevented TobaRolling from obtaining a Distribution License from MBL until December 2024, the next date on which Manitoba would accept new applications for licensing.

82. Kief/Denton falsely represented to TobaRolling's clients that they would need to have their cannabis repackaged due to lack of Quality Assurance paperwork, despite Kief actually having all of the paperwork and never seeking any additional documents from TobaRolling. Eventually, after the clients questioned why the products remained in stores if there was insufficient Quality Assurance paperwork, Denton acknowledged his representations were untrue and no repackaging was required. By this point, however, most of these clients had already repackaged the cannabis products, effectively blocking the Toba Companies' ability to recoup those expenditures directly from the clients.

83. On or about November 7, 2023, contemporaneous with Denton/Kief's decision to terminate the TobaRolling Distribution Agreement, Denton, Kief and Doerkson unilaterally TobaGrown out of the Joint Venture and seized the business opportunity for themselves and/or Lucky Ventures, despite Denton verbally representing and promising to Lavoie/TobaGrown on November 7 that: "you are a founder of Lucky, I have no intention to cut you out".

84. It quickly became clear, however, that Denton's representation was false and that Defendants had every intention to and, in fact, did freeze TobaGrown out of the Lucky Stash Joint Venture and, instead, appropriated that business opportunity for Defendants.

85. As a result, on November 26, 2023, Lavoie advised Denton that he did not agree to any further use of the Lucky Stash brand by the Joint Venture or anyone else until such time as the parties were able to resolve the situation.

86. Despite this, on November 29, 2023, Denton caused Kief and/or Lucky Ventures to resume sales and distribution of Lucky Stash branded products.

87. Upon information and belief, \$156,800 of Lucky Stash branded products were sold from November 29, 2023 to Dec 20, 2023. No portion of the profits due and owing to TobaGrown from those sales have been paid and no amounts have been paid to TobaGrown since then.

88. Upon information and belief, Lucky Stash branded products continue to be sold in the Manitoba cannabis market by Kief and/or Lucky Ventures through and including the date of filing of this Statement of Claim.

89. Lavoie, subsequent to the termination of TobaGrown's interest in the Joint Venture, learned that Denton caused Lucky Ventures to be incorporated on or about August 31, 2023 and, upon information and belief, has caused Lucky Ventures to assume ownership of the Lucky Stash branded products, intellectual property and profits, all of which were properly owned by the Joint Venture.

90. Lavoie also learned that Kief improperly used all of TobaRolling's client names and sales data to apply for the Manitoba Distribution License on behalf of Kief, despite having terminated the relationship with TobaRolling and, therefore, with all of those clients.

91. TobaRolling, in an effort to salvage its business, had also applied for a Distribution License but, due to having no licensed facility to operate from, was refused licensing by the MBLL and TobaRolling's clients ultimately were forced to enter into relationships with other distributors in Manitoba.

CAUSES OF ACTION

Breach of Contract – Distribution Agreement

92. TobaRolling and Kief are parties to the Distribution Agreement, a valid and binding contract.

93. Kief breached that contract.

94. Kief's breaches of contract caused damages to TobaRolling for which Kief is liable to TobaRolling.

Breach of Contract – Merger Agreement

95. TobaRolling and Kief are parties to the Merger Agreement, a valid and binding contract.

96. Kief breached that contract.

97. Kief's breaches of contract caused damages to TobaRolling for which Kief is liable to TobaRolling.

98. Alternatively, the breaches of contract are such that TobaRolling is entitled to specific performance.

Breach of Contract – Joint Venture

99. Denton, Doerkson and TobaGrown are parties to the Joint Venture Agreement, a valid and binding contract.

100. Each of Denton and Doerkson breached that contract.

101. These breaches of contract caused damages to TobaGrown for which Denton and Doerkson are liable to TobaGrown.

102. Alternatively, the breaches of contract are such that TobaGrown is entitled to specific performance.

103. In the alternative, to the extent that Kief claims any interest in the Joint Venture and/or Lucky Stash branded products, then Kief breached the contract with TobaGrown, causing damages to TobaGrown for which Kief is liable.

Fraudulent Misrepresentation / Civil Fraud

104. Denton, individually and on behalf of Kief, made false representations to Plaintiffs.

105. Denton knew that his representations were false and/or made the representations recklessly.

106. Plaintiffs relied on these false representations to their detriment and, as a result, suffered damages for which Denton and/or Kief is liable.

Breach of Fiduciary Duty – Denton

107. Denton has fiduciary obligations to the Joint Venture, including to TobaGrown as a member of that Joint Venture.

108. Denton had the discretion to act in certain ways in relation to the Joint Venture's business operations and had the ability to affect the legal and business interests of the Joint Venture, including those of TobaGrown as a member of the Joint Venture.

109. The Joint Venture and TobaGrown were and are vulnerable to Denton as a fiduciary that holds that power.

110. Denton violated his fiduciary duties to the Joint Venture and TobaGrown and, as a result, the Joint Venture and/or TobaGrown suffered damages for which Denton is liable.

Unjust Enrichment – All Defendants

111. Defendants have been enriched by receipt of benefit or benefits from TobaGrown.

112. Defendants' enrichment was at the expense of TobaGrown.

113. It would be unjust to allow Defendants to retain the benefit(s).

Illegal Conspiracy to Injure – All Defendants

114. Defendants have entered into an agreement (the “Conspiracy”) to do an unlawful act or to achieve an unlawful purpose, or, alternatively, to do a lawful act by unlawful means.

115. A purpose of the Conspiracy was to cause injury to the Toba Companies or, alternatively, the members of the Conspiracy knew or should have known that injury to the Toba Companies would result.

116. The Toba Companies have been injured by the Conspiracy and Defendants are liable to the Toba Companies for damages.

Trade Libel – Defendants

117. Defendants made false statements about Plaintiffs with the intent to harm Plaintiffs and/or without lawful justification and for a dishonest or improper purpose.

118. These false statements caused damages to Plaintiffs for which Defendants should be held liable.

Intentional Interference with Economic Interests – Defendants

119. Defendants acted with an intent to injure the economic interests of the Plaintiffs.

120. This interference was with the Plaintiffs’ business and/or contractual relations and/or expectancies.

121. The interference was committed by illegal means and/or unlawful act(s) that Defendants were not at liberty to do.

122. The interference caused damages to the Plaintiffs for which Defendants are liable.

Conversion – Kief

123. Kief engaged in a wrongful taking of the property of the Plaintiffs.

124. Kief appropriated and/or disposed of the Plaintiffs' property without Plaintiffs' consent and with the intent to deny Plaintiffs' title and/or possessory interests to the property.

125. Kief should be compelled to disgorge the property or, alternatively, to pay Plaintiffs damages as a result of this conversion.

Conversion – Lucky Ventures

126. Lucky Ventures engaged in a wrongful taking of the property of the Plaintiffs.

127. Lucky Ventures appropriated and/or disposed of the property of the Plaintiffs without the Plaintiffs' consent and with the intent to deny their title and/or possessory interests.

128. Lucky Ventures should be compelled to disgorge the property or, alternatively, to pay Plaintiffs damages because of this conversion.

Feb 16, 2024

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