AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal
(Denver, Colorado)

AAA Case No. 01-17-0007-2991

JOSH GINSBERG, and
RHETT JORDAN,

Claimants and Counter-Respondents

v.

BRIGHTSTAR, LLC,
PETER KNOBEL,

Respondents and Counterclaimants
and

NR PARENTCO, LLC,
THE DANDELION, LLC, and
BOULDER RX LLC,

Respondents.

ARBITRATION DECISION ON THE CLAIMS AND AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement set forth in the Fifth Amended and Restated Limited Liability Company Operating Agreement for Native Roots (as those terms are defined below) dated as of March 28, 2017, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby issue this Interim Award, as follows.

Parties

Claimant Josh Ginsberg is represented by Tom Wallerstein, Amit Rana Arthur Cirulnick and Whitney Tolar of the Venable LLP firm. Claimant Rhett Jordan is represented by Christopher Dawes, Rochelle Gomez, Rhonda Hanshe and Esther Lee of the Fox Rothschild LLP firm. Respondents Brightstar, LLC and Peter Knobel are represented by Harold Haddon, Jenny Braun and Ty Gee of the Haddon Morgan & Foreman, PC firm and David Kaplan of the Stimson Stancil LaBranche Hubbard LLC firm. Respondents NR Parentco LLC, the Dandelion, LLC and Boulder RX LLC are represented by Steven Levine and Jeffery Whitney of the Husch Blackwell LLP firm.

Background

The Proceedings. This arbitration was commenced by Ginsberg[1] in December 2017. Jordan properly joined as a Claimant. All Respondents properly joined at various times; Knobel objected to my jurisdiction. In September 2018, this proceeding was stayed pursuant to a Settlement Agreement (Hearing Exhibit 169, referred to in this Decision as the "**Settlement Agreement**"). Ultimately, the settlement process collapsed, and this proceeding re-commenced in late 2019 or early 2020. Following extensive pre-trial proceedings, a hearing on the claims was held from March 16, 2021, through April 1, 2021. This Arbitration Decision on the Claims and Award ("**Decision**") is my award on the claims of the parties and is final in its scope. After a future hearing on the issue of the rights of the parties for reasonable and necessary attorney fees and costs payable by Native Roots under Section 12 of the Operating Agreement, as defined below ("**Fees/Cost Hearing**"), I will also enter an award on that issue. Together, the two interim awards will constitute the Final Award as provided in AAA Rule 47 and the Colorado Uniform Arbitration Act ("**CUAA**").

Basis for my Decision. The parties have requested that I issue a "reasoned award" as provided in AAA Rule R-45. Collectively the parties have tendered to me extensive proposed findings of fact and conclusions of law. I have not expressly adopted any of these proposed findings and conclusions. Moreover, there is no requirement that I mine the record and state detailed factual findings or legal conclusions, and, with the exceptions referred to in this Decision, I have not done so. Instead, in order to render this Decision, I have relied upon my own review of the very extensive record[2] and upon such submissions and evidence that I consider admissible and necessary to explain my reasoning. Pursuant to AAA Rule R-47, I am empowered to "grant any remedy or relief that the arbitrator deems just and equitable within the scope of the agreement of the parties…." Cases interpreting the CUAA confirm this flexibility and the finality of an arbitrator's award. *See, e.g., Magenis v. Bruner*, 187 P.3d 1222 (Colo. App. 2008) and the cases cited in that decision. The parties specifically agreed that this arbitration shall be conducted in accordance with the AAA commercial arbitration rules and that they "will abide by all decisions and awards" rendered in the arbitration. The CUAA and cases interpreting it are part of the applicable "internal laws" of Colorado.

The factual findings and legal rulings in this Decision are fully supported by the record, exhibits and testimony that I determine to be relevant and credible.

General Rulings

[1]In most instances in this Decision, I will refer to individuals only by their surname. I mean no disrespect, but simply want to avoid unnecessary repetition of descriptions/titles such as "Mr."

[2]Hundreds of pleadings, motions and other papers have been filed by the parties and ruled on by me, including issuance by me of more than 30 Supplemental Orders. I granted the parties virtually unlimited discovery so that they could explore the factual and legal bases for claims and defenses, and, as noted above, this matter was tried over a number of days, resulting in nearly 4,000 pages of transcribed testimony. For trial the parties identified nearly 1,000 documents that they deemed relevant; approximately 300 exhibits were admitted at trial.

The Parties and Their Duty. The three Colorado limited liability companies that are Respondents are NR Parentco, LLC ("**Parentco**"), The Dandelion, LLC ("**Dandelion**") and Boulder RX LLC ("**Boulder RX**"), each of which was formed pursuant to a Joint Venture Agreement, dated November 15, 2013, among Rhett Jordan ("**Jordan**"), Josh Ginsberg ("**Ginsberg**"), Brightstar, LLC ("**Brightstar**") and several entities owned variously by Ginsberg, Jordan and Brightstar (Hearing Exhibit 75). The sole member of Brightstar is Peter Knobel ("**Knobel**").

The Fifth Amended and Restated Limited Liability Company Operating Agreement of Parentco (Hearing Exhibit 7) is the controlling Operating Agreement for that entity. The parties stipulated that the Operating Agreements of Dandelion and Boulder RX are identical to the Parentco Operating Agreement in all material respects. Throughout this proceeding all parties have used the term "**Operating Agreement**" to mean Hearing Exhibit 7 and the term "**Native Roots**" to mean these three entities collectively. In this Decision I continue to use those terms as they have been used by the parties except when I refer specifically to a Respondent.

Native Roots was formed in November 2013 with three members, Ginsberg, Jordan and Brightstar ("**Members**").[3] Although Native Roots was formed as a limited liability company, throughout this proceeding the parties and their counsel repeatedly referred to the members as partners; the same is true of many of the exhibits. In fact, as specifically provided in section 4.3 of the Operating Agreement, the members directly own, as tenants in partnership, proportionate undivided interests in "all Company Property," defined as all assets, real and personal, owned by Native Roots.[4]

In addition to the foregoing, in a closely held entity such as Native Roots, equity provides that the relationship among the members should be treated as a relationship among partners. *See Colt v. Mt. Princeton Trout Club*, 78 P.3d 1115, 1119 (Colo. App. 2003), an analogous decision relating to closely-held corporations. "Partners in a business enterprise owe to one another the highest duty of loyalty; they stand in a relationship of trust and confidence to each other and are bound by standards of good conduct and square dealing . . . . Each partner has the right to demand and expect from the other a full, fair, open and honest disclosure of everything affecting the relationship." *Hooper v. Yoder*, 737 P.2d 852, 859 (Colo. 1987).

Ruling: as a matter of law and in accordance with fundamental concepts of equity, I rule that the Members of Native Roots are bound by the standards set forth in the preceding paragraph, owe to each other and to Native Roots the highest degree of fidelity,

[3]There are three other individuals identified in Hearing Exhibit 7 as contingent members. Since the contingency has not occurred, I have disregarded these individuals as Members of Native Roots.

[4]This is a modification of the general rule that a member of a limited liability company has no interest in the property of the entity, but rather only has a personal property interest in the company. *Meyer v. Haskett*, 251 P.3d 1287 (Colo. App. 2010). Such a modification is permissible and binding on the Members. C.R.S. §7-80-108(1)(a).

loyalty, trust, faith and confidence, and are required to exercise their utmost good faith and cannot use their power in bad faith or for their individual advantage, referred to in this Decision as the "Inter-Member Duties."

This ruling and the Inter-Member Duties shall be applicable to the issues decided by me in this Decision, as more fully discussed in the following sections of the Decision.

Jurisdiction Over Knobel. In my Supplemental Order No. 8, I held that Knobel individually is bound by the arbitration provision in the Operating Agreement for the reasons discussed in that Supplemental Order, including the guidance provided by the Colorado Supreme Court in *N.A. Rugby Union LLC. v. United States Rugby Football Union*, 442 P.3d 859 (Colo. 2019). Several of the theories for binding a non-signatory to an arbitration discussed in *N.A. Rugby* have been established in this proceeding.

The Settlement Agreement, signed by Knobel individually, specifically incorporated the arbitration provision in the Operating Agreement and made it binding on the parties signing the Settlement Agreement. When the disputes arose in 2020 regarding the request by Brightstar/Knobel for an order requiring Ginsberg and Jordan to sign a merger agreement with Trulieve, Ginsberg and Jordan contended that their execution of the Settlement Agreement (but not the provision in the Settlement Agreement requiring arbitration) had been induced fraudulently.

Brightstar/Knobel disputed the contention of fraudulent inducement, and in early 2020 Brightstar and *Knobel individually* filed in this proceeding their "emergency motion" to enforce the Settlement Agreement; both also subsequently filed "Claims Against Ginsberg and Jordan." In each instance Knobel specifically invoked this arbitration agreement and my jurisdiction, and ultimately sought a "reasoned award" by me with respect to his claims.

Ruling: I reaffirm my ruling in Supplemental Order No. 8 and rule that Knobel is subject to my arbitrable jurisdiction and is bound by my Decision.

Knobel and Brightstar/Alter Ego. Claimants contend that Knobel is the alter ego of Brightstar. Knobel disputes this contention. However, the record is replete with documentation and statements by Knobel establishing that Knobel solely and completely dominated the acts and omissions of Brightstar, either directly or through his factotum Boord and others servile to him. In documents and statements, Knobel characterized himself as being Brightstar, and he signed a variety of documents as a "member" of Native Roots. This is exemplified by one, of many, instances: On June 12, 2017, Brightstar notified Ginsberg that Brightstar/Knobel was exercising the shotgun rights in Section 7.8 of the Operating Agreement. Shortly thereafter, Knobel sent an email to a principal of Privateer in which he expressly confirms his alter ego status, stating "*I* am

the majority owner of Native Roots and *I* wanted to reach out to you as *I* am currently buying out one of my partners…." (Hearing Ex. 19, emphasis supplied). To resolve any doubt, Knobel in this proceeding, bluntly testified under oath that "I am Brightstar."

Knobel's statements also provide additional support for the findings above that: (a) Knobel is a party to the arbitration agreement and is bound by my Decision, and (b) the members of Native Roots recognized their relationship as "partners" and therefore are bound by Inter-Member Duties.

It would be inconsistent with the well-established facts and further would be grossly inequitable to find that Knobel is separate from Brightstar. I reject Knobel's contention that he is protected from liability because only his totally controlled limited liability company and not he, was involved in the acts and omissions subject to this arbitration, many of which violated the Inter-Member Duties.

Ruling: I rule that Knobel and Brightstar are indistinguishable from each other, and Knobel is the alter ego of Brightstar. As such Knobel is personally bound by this Decision and is jointly and severally liable for any damages awarded to Claimants in this Decision. Thus, in this Decision when I use the term "Brightstar/Knobel" I mean Brightstar and Knobel both individually and as a unitary party in this proceeding.

Real Estate used in Native Roots' Operations. The record clearly established that the acquisition, improvement and leasing of virtually all of the locations in which Native Roots conducts its business were funded by Native Roots, primarily with loans obtained from Brightstar which bear substantial interest. Native Roots has maintained such properties, has obtained and paid for insurance on them and has paid the related real property taxes and assessments.

In most instances, record title to properties that were acquired ("**Owned Real Property**") has been held in numerous limited liability companies which in turn are owned, directly or indirectly, by Brightstar/Knobel (*see, e.g.,* Hearing Exhibit 10). All or part of the Owned Real Property originally was listed as an asset of Native Roots on its books. In 2017 some of those assets were moved from the Native Roots books to Knobel's books for tax purposes favorable to him.

[5]Boord is an attorney who in certain instances purported to act on behalf of all of the Members of Brightstar. His conflicts of interests were never waived by Jordan or Ginsberg. In addition to that ethical breach, Boord admittedly forged documents and signatures on documents supposedly binding on Native Roots and its Members but not approved by Ginsberg and Jordan as required by the Operating Agreement. He admitted to signing documents on behalf of both sides of a transaction and to back-dating documents to "paper the file" at a time when the IRS audit was pending, His misconduct was pervasive. More critically, it is incontrovertible that his true loyalty was to Brightstar/Knobel, and, in virtually all instances, his conduct was that of a sycophant, dedicated to advancing

Boord had innumerable conflicts of interest,[5] but he indisputably represented the interests of Brightstar/Knobel throughout the period of the relationship among Brightstar/Knobel, Jordan and Ginsberg. Neither Boord nor Knobel ever disclaimed that Boord was acting as the attorney and agent of Brightstar/Knobel with Knobel's approval. In fact, in the Operating Agreement for Brightstar (Hearing Exhibit 91, at Article 5.5), Boord expressly is appointed as agent for Brightstar and is vested with unlimited authority to act on its behalf.[6] Boord also is appointed as agent for the Members (*i.e.,* Knobel) with a similarly unlimited scope of authority. It is black-letter law that "[t]he acts or statements of an agent performed within the scope of his real or apparent authority are binding upon the principal, regardless of whether the principal has actual knowledge of the agent's act." *Life Inv'rs Ins. Co. v. Smith*, 833 P.2d 864, 868 (Colo. App. 1992).

The record establishes that beneficial ownership of the Owned Real Property was vested in Native Roots (except for the Eagle-Vail store, characterized by Boord as "never part of the joint venture" because that property was owned by Knobel "prior to this partnership") (Hearing Exhibit 925). In correspondence with Ginsberg's attorney during the "shotgun period" Boord repeatedly confirmed that once Brightstar's interest was acquired and the Brightstar Loan repaid, legal title to the Owned Real Property would be transferred to Native Roots.[7] In correspondence to Privateer in October 2018 (Hearing Exhibit 81), Boord acknowledged that at least $20 million of real property had been kept off of Native Roots' balance sheet and put on Knobel's balance sheet so he could take advantage of depreciation, but "[i]n reality, those asserts are held by Peter on behalf of Native Roots." Boord's statements, representations and actions are binding on Brightstar/Knobel.

Boord drafted the Second Amended and Restated Loan Agreement[8] to provide, *inter alia,* that title to the real property then titled in entities owned by Brightstar/Knobel would be transferred to Native Roots upon payment of the Brightstar Loan (Hearing Exhibit 108). This

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Knobel's interests. I find that any testimony by Boord that could have even a conceivable adverse impact on Knobel is not credible. *See,* discussion in Ruling number 8, *infra*)

[6]Brightstar is a manager-managed LLC. In Article 5.1 of the Brightstar Operating Agreement, Knobel, as the sole Member, designated Boord as the initial Manager of Brightstar. Although Knobel signed a number of documents as Manager of Brightstar, there is no evidence that he was designated as Manager or that Boord was replaced as Manager. This is but one more example of Knobel's complete disregard of legal niceties – he simply and unabashedly dominated and controlled Brightstar. Without any doubt, he was the alter ego of Brightstar.

[7]Near the end of the shotgun period Ginsberg's attorney prepared an "Acknowledgement to First Amended and Restated Loan Agreement" for signature by Knobel on behalf of the parties to that Loan Agreement (*see* Hearing Exhibits 122 and 125). This Acknowledgement was required by Surterra in order to confirm the agreement that legal title to the properties would be transferred to Native Roots upon payment of the Brightstar Loan. Knobel refused to sign the Acknowledgement. However, when Boord drafted the Second Amended and Restated Loan Agreement, he included provisions that, in material respects, parroted the Acknowledgement, and Knobel signed (or Boord signed on his behalf) the Second Amended and Restated Loan Agreement.

[8]Together with other related documents, all back-dated as of June 7, 2017, but not actually signed (or forged) by Boord until March 2018.

modified the provision in the First Amended and Restated Loan Agreement (Hearing Exhibit 10) that when the Brightstar Loan is paid, the real property would be transferred proportionately to the Members. The change was of obvious benefit to Knobel since it would cut off Ginsberg's (and Jordan's) individual right to retain a percentage interest in the real property after the Brightstar Loan is repaid even if they did not own any interest in Native Roots.

Finally, in the Settlement Agreement Ginsberg, Jordan, Knobel, Brightstar and Native Roots acknowledged the following: (a) The Real Estate used in connection with the business of Parentco, Dandelion and Boulder RX (sometimes referred to as the NR Entities in the Settlement Agreement) listed on Schedule B "is held for the benefit of the Native Roots Entities and its members even though held in separate legal entities" and (b) the Canadian operations (called "Other Interests") are owned by Knobel, directly or indirectly and "have been developed or operated" with Native Roots' personnel and intellectual property, and the parties agreed that the Other Interests "are to be held for the benefit of the Native Roots Entities and its members."

Importantly, in Section 5 of the Settlement Agreement, the parties specifically agreed that "*for all purposes, whether or not a Sale [of the NR Entities] occurs*, the parties will be deemed to own the NR Entities, the Real estate, the Licensing Holding Entities and the Other Interests . . . without regard to who holds legal title to such assets and the holder of legal title will be deemed to hold as nominees for all other parties with an interest therein." Further, "as part of a Sale, *or otherwise*, the parties agree to take all actions needed to evidence such ownership and nominee status. . .." (Emphasis supplied)

As discussed above, Ginsberg and Jordan asserted that the Settlement Agreement had been fraudulently induced because of non-disclosure of the signing of the Privateer/Brightstar LOI a year before the Settlement Agreement was signed. Brightstar/Knobel denied any fraudulent inducement. I set a separate hearing to determine the enforceability of the Settlement Agreement. By correspondence to me dated May 1, 2020, Gee informed me that Brightstar and Knobel "no longer wish to defend the validity of the Settlement Agreement." . . . [we] "simply agree with the claimants that the Settlement Agreement is invalid and unenforceable." Notably, however, none of the parties to the Settlement Agreement, including Brightstar and Knobel, has ever contended that the "acknowledgements" and "agreements" described above are inaccurate or inapplicable. In fact, as they relate to the real property, they are quite consistent with the other statements and representations by Boord and Knobel described above.

Ruling: I rule that the real property used in the operations of Native Roots (with the exception for the Eagle-Vail store), legal title to which is vested in the entities owned or controlled by Brightstar/Knobel, is beneficially owned by Native Roots. Accordingly, the value of such real property properly should be included in determining the enterprise value of Native Roots as of dates material to this proceeding.

Specific Rulings on Claims

1. Claimants' claims against Native Roots. Neither Claimant seeks monetary damages against Native Roots. Rather, they complain that Native Roots breached a duty (fiduciary, implied duty of good faith, etc.) owed to them by cooperating with, or actively assisting, Brightstar/Knobel in the various breaches by Brightstar/Knobel described in the Rulings in this Decision. Even assuming arguendo that Native Roots had any of the claimed fiduciary or other duties to Claimants, their theories of Native Roots' liability for breach of duty are vague at best and neither has provided any evidence of any specific loss or damage resulting from a breach of duty by Native Roots or any evidence of any such improper *discrete* cooperation by Native Roots that was not the result of the exercise of control by Brightstar/Knobel.[9]

Ruling: I rule in favor of Native Roots and against Claimants on their claims of breach of duty.[10]

2. Ginsberg's claim for unpaid salary. Ginsberg claims damages for salary that was not paid to him by Native Roots for the period beginning shortly after the expiration of the shotgun period. Hearing Exhibit 392 is an email from Knobel to Brown, Amanda Price and Boord in which Knobel states: "*I* never approved a salary for Josh." He then noted that any discussion regarding salary for Ginsberg was dependent on Ginsberg's continued employment by Native Roots, and he is no longer employed. Finally, he stated that:

> The loan agreement and the Company's operating agreement both give *me* the authority to direct the finances of the company. Authorizing (or de-authorizing) a salary falls within that authority. Accordingly, *I* am de-authorizing Josh's salary effective as of the date he stopped working full time for the company. (Emphasis supplied).

This email is further evidence of the alter ego relationship between Knobel and Brightstar. But to the point of Ginsberg's claim for unpaid salary, this email shows (a) that there was no evidence of Ginsberg's contractual right to employment for a set time or for payment of salary to

[9]The evidence establishes that Native Roots was dominated and controlled by Brightstar as its majority Member, and that Knobel individually dominated and controlled Brightstar as its alter ego. Thus, a claim against Native Roots for its acts and omissions, acting through Brightstar as its majority Member, is duplicative of the same claim against Brightstar/Knobel. This duplication of claims is cumulative, and the claims are resolved in my Rulings in this Decision relating to Brightstar/Knobel.

[10]This ruling does not address Claimants' request for declaratory judgment and injunctive relief. *See* discussion at Ruling number 8 below.

him, and (b) that Brightstar (actually Knobel), as the controller of the financial affairs of Native Roots,[11] considered Ginsberg's employment to be at will and terminable by Native Roots at the direction of Brightstar/Knobel without cause. Ginsberg provided no evidence of a contractual obligation of Native Roots to continue his employment for a specified time. Colorado law holds that "In the absence of an express or implied term of employment, the presumption of at will employment determines the nature and terminability of the employment relationship." *Dorman v. Petrol Aspen, Inc*., 914 P.2d 909 (Colo. 1996). Ginsberg argues that Section 9.1(i) of the Operating Agreement requires approval of a Majority of the Members to terminate his employment. However, Section 9.1 only *authorizes* a Majority of the Members to employ or terminate the employment of any employee of the Company. Section 9.1 does not trump the presumption under Colorado law that Ginsberg's employment was at will and does not make the non-payment of his salary wrongful.

Ruling: I rule in favor of Native Roots and Brightstar/Knobel and against Ginsberg on his claim for unpaid salary.

3. Claimants' claims regarding Canadian activities, depreciation, Lord Jones, etc. Both Claimants seek damages resulting from the acts and omissions of Brightstar/Knobel that (a) deprived Native Roots of ownership of the so-called Garden Variety operations in Canada, and (b) misused Native Roots' assets, personnel and intellectual property in such operations (improper stock transfer, inadequate management agreement, non-collection of fees, etc.) in violation of Section 13.13 of the Operating Agreement.

Both Claimants also seek damages resulting from (a) renegotiation of the Lord Jones agreement; (b) deprivation of depreciation deductions by usurpation by Brightstar/Knobel of such deductions properly attributable to Native Roots' real property assets as belonging to Brightstar/Knobel; (c) conversion of Native Roots to C corporation status for Brightstar/Knobel's benefit; and (d) entering into impermissible agreements for bonuses for Boord and Brown upon change of control.

I do not address the merits of these claims in detail because they plainly are derivative in nature. A derivative claim is one in which someone with an ownership interest in an entity brings a claim on the entity's behalf for an injury to that entity. To determine if a claim is derivative, I must determine who suffered the alleged harm and who would receive the benefit of any remedy. *First Horizon Merchant Servs., Inc. v. Wellspring Capital Mgmt., LLC*, 166 P.3d 166 (Colo. App. 2007). In this case I find that that Native Roots, not Claimants, suffered the harms and would receive the benefit of any remedy.

[11]Section 3.5 of the Operating Agreement provides that "Until the Brightstar Loan is fully repaid, the finances, accounting and record keeping for the Company shall be managed and directed by Brightstar LLC."

Brightstar/Knobel also assert that, in any event, Claimants have no standing to bring a derivative action because they did not comply with the requirements of C.R.S. §7-80-713, *et seq*. governing derivative actions in the context of a limited liability company or C.R.C.P. 23.1. It certainly could be argued that compliance with those requirements would be a fruitless act due to the control of Native Roots by Brightstar/Knobel. And cases in other jurisdictions have held that where the limited liability company is closely held, as is Native Roots, an individual member has special standing to bring a derivative action. However, whether the Claimants had *standing* to bring a derivative action on behalf of Native Roots is irrelevant because they did not assert any claims on behalf of Native Roots. Rather, Ginsberg and Jordan seek direct individual damages measured by (a) calculating the damages allegedly suffered by Native Roots, and (b) multiplying such calculated damages by their respective percentage ownership interests. Claimants did not claim to suffer discrete individual damages. separate and distinct from the injury to Native Roots or the other Member (Brightstar/Knobel). *Young v. Bush*, 277 P.3d 916 (Colo. App. 2012).[12]

In summary, there may be merit to some, or even all, of the claims for damages to Native Roots caused by these acts or omissions of Brightstar/Knobel. However, Claimants did not assert claims for such damages on behalf of Native Roots. Claimants individually are not entitled to an award of a percentage of any such damages.

Ruling: These claims are derivative, and I rule against Claimants and in favor of Brightstar/Knobel on these claims.

4. Ginsberg's claim of intentional interference. Ginsberg posits his claim of intentional interference by Brightstar/Knobel on theories of intentional interference with contract (the Operating Agreement) and intentional interference with prospective business relation or advantage. Ginsberg's claim of intentional interference with the Operating Agreement is not viable for several reasons.[13] Ginsberg ultimately claimed damages for breach of the Operating Agreement by Brightstar/Knobel as well as for the tort of interference with prospective business relation or advantage.

[12]As noted, Claimants make no claim for damages on behalf of Native Roots. Even if they had, the fact that Claimants own an undivided percentage of the assets of Native Roots as tenants in partnership, or that I have ruled that Native Roots equitably should be considered a partnership, does not grant to Claimants standing to bring a derivative action on behalf of Native Roots. *Adams v. Land Servs, Inc*., 194 P.3d 429 (Colo. App. 2008).

[13]Numerous cases establish that a party to a contract cannot assert a claim of tortious interference with that contract by another party to the contract – the claim lies in breach of the contract. In addition, I rule that the economic loss rule bars the tort claim. Ginsberg contends that the decision in *McWhinney Centerra Lifestyle Ctr. LLC v. Poag & McEwen Lifestyle Centers-Centerra, LLC*, 486 P.3d 439 (Colo. App. 2021), vitiating the economic loss rule on the facts in that dispute, should control on that issue in this case. The division of the Court of Appeals deciding *McWhinney* acknowledged that its decision was inconsistent with decisions by other divisions of the Court and that the status of law in Colorado regarding the economic loss rule is unsettled. In any event, the remainder of my Decision on Ginsberg's interference claims essentially renders this issue moot.

Critical to Ginsberg's success on his tort claim, are the requirements that he prove (a) that the interference by Brightstar/Knobel was improper and intentional, (b) that the interference prevented formation of a contract between Ginsberg and either Privateer or Surterra, and (c) "there is a reasonable likelihood or probability that a contract would have resulted; there must be something beyond a mere hope." *Integrity Med. Mgmt., LLC v. Surgical Ctr. at Premier, LLC*, 234 F. Supp. 3d 1085, 1098 (D. Colo. 2017), quoting *MDM Grp. Assocs., Inc. v. CX Reinsurance Co.*, 165 P.3d 882, 886 (Colo. App. 2007) and other applicable cases.

The record teems with evidence that Brightstar/Knobel, and particularly Knobel individually, intentionally took numerous actions to interfere with the possible formation of a contract between Ginsberg and Privateer or Surterra. At a minimum, such actions were improper and grossly breached the Inter-Member Duties owed to Ginsberg. I reject the contention by Brightstar/Knobel that their actions merely constituted permissible fair competition between business competitors. Thus, Ginsberg unquestionably proved the first element of his interference claim.

I find that there was no evidence to establish that interference by Brightstar/Knobel was the actual reason no contract was formed.[14] This second element of the claim could have been established by testimony of the appropriate representatives of Surterra or Privateer. Although representatives of Surterra or Privateer were listed by Ginsberg as witnesses to be called at the Hearing, none was called to testify, and no exhibit established this key fact.

Ginsberg also failed to prove the third element of his claim: that achieving a contract with either Privateer or Surterra was reasonably likely. The evidence, as shown in the numerous letters of intent exchanged with them during the shotgun period, established that the salient terms of a contract with either of them were not finally agreed and were subject to additional negotiation. Without reasonable certainty of the terms of a prospective contract, this element of the tort is not proved and the calculation of damages for breach of contract would be impermissibly speculative.

Despite my finding of undisputed evidence that Brightstar/Knobel interfered with Ginsberg's attempts to achieve a contract with Privateer or Surterra, repeatedly violating the Inter-Member Duties, and thereby breaching the Operating Agreement, I rule that Ginsberg failed to satisfy his burden of proof for his claims of interference.

Ruling: I rule in favor of Brightstar/Knobel and against Ginsberg on his claims of intentional interference with contract and intentional interference with prospective business relation or advantage.

[14]There could have been multiple other reasons, for example the determination by Privateer or Surterra that Colorado law imposed unacceptable restrictions on foreign ownership, or that the economic terms ultimately were unacceptable. Thus, the actual reason for failure to achieve agreement on the terms is speculative.

5. Claimants' claim under Section 3.6 of the Operating Agreement for failure to pay Claimants' income taxes when due. Section 3.6 of the Operating Agreement provides a circuitous procedure for Native Roots' collection and payment of Members' income tax: Native Roots was to collect from its distributable cash the amount needed to pay the estimated income tax liabilities and use such funds to pay down the Brightstar Loan. Then Native Roots would re-borrow from Brightstar the amount due for income taxes and pay those liabilities "when due." If Brightstar "fails to redistribute" (loan?) the funds needed to pay the Members' income tax liability when due, it is a "non-curable" default and Brightstar shall "immediately forfeit" its Membership interest in Native Roots for no additional consideration. Except for 2015 taxes, this procedure was abandoned, and each year thereafter Brightstar directly paid the Members' income taxes until Native Roots was converted to a C corporation and its income no longer passed through to the Members.[15]

Testimony established that payment of Members' income taxes was critical for at least two reasons. First, Ginsberg and Jordan lacked the funds needed to pay income taxes incurred with respect to the Native Roots income that was passed through to them, and unless their income taxes were paid, they would have to dissociate from Native Roots. Second, as provided in Section 6.7 of the Operating Agreement, the licensing, and therefore the business, of Native Roots had to be "protected at all expense." Non-payment of Members' income taxes could lead to serious consequences under the rules of Colorado's Marijuana Enforcement Division ("**MED**"), including loss of licensure.

The date when income taxes become "due" is April 15 of each year, and a permitted extension for filing a tax return does not extend the due date. *See*, 26 USC §2151. The 2015 taxes were not paid until October 2016. The 2016 taxes were not paid until June 2017. A portion of the 2017 taxes was not paid when due. (Hearing Exhibit 42). However, there is no evidence that either Ginsberg or Jordan suffered any penalty, were charged interest or suffered any prejudice as a result of any late payment. There is no evidence that Native Roots suffered any disruption of its business or that MED took any adverse action due to any late payment. The calculation of income to be passed through to Ginsberg and Jordan apparently was complicated because of the issues relating to disallowance of certain deductions under 26 USC §280E and 26 USC §199A. Apparently, for that reason in November of 2016 and 2019 Ginsberg and Jordan consented to late payment of income taxes for 2015 and 2018. (Hearing Exhibits103 and 868).

Brightstar/Knobel contend that the remedy of automatic forfeiture in Section 3.6 of the Operating Agreement is unenforceable as against public policy. I reject that contention in the context of forfeiture under Section 3.6. However, I find that because neither Ginsberg nor Jordan was damaged or prejudiced in any respect for the late payment of their income taxes, and Native Roots' business was not subjected to any adverse action of MED or otherwise prejudiced,

[15]Section 3.6 provided that a Supermajority of Members could determine an alternative method for payment of Members' income tax liability. There was no evidence of a Supermajority vote, but the Native Roots Members and Brightstar/Knobel simply followed, without objection, the method by which Brightstar directly paid the Members' income taxes.

the remedy of automatic forfeiture is disproportionate to the lack of any harm suffered by Ginsberg, Jordan or Native Roots and therefore is inequitable. Moreover, the consents by Ginsberg and Jordan constitute a waiver of any late payment in those years and implies acquiescence to late payment so long as they suffer no prejudice.

Ruling: I rule in favor of Brightstar/Knobel and against Ginsberg and Jordan on their claims of breach of Section 3.6 of the Operating Agreement.

6. Brightstar/Knobel's counterclaim against Ginsberg for breach Section 7.8 of the Operating Agreement (shotgun). Brightstar/Knobel claim that Ginsberg violated the shotgun provision because he failed, by the end of the shotgun period, to deposit $8.75 million (plus an amount equal to Brightstar's income tax liability) in escrow for the benefit of Brightstar. Brightstar/Knobel do not claim any damages from this purported breach. Rather, they request that I "order Ginsberg to accept the $2 million and relinquish his membership interest to Brightstar" (*see* paragraph 1 of "Brightstar's and Knobel's Compliance with Paragraph 7 of the Revised Modified Scheduling Order" filed February 19, 2021).

In Ruling number 4 above, I ruled that Brightstar/Knobel intentionally breached the Operating Agreement by various wrongful actions during the shotgun period. The breaches of contract by Brightstar/Knobel occurred before Ginsberg had any obligation to deposit his "counter-shotgun" funds in escrow. The prior material breach by Brightstar/Knobel relieved Ginsberg of any obligation to deposit funds in escrow at the end of the shotgun or relinquish to Brightstar his interest in Native Roots.

Ruling: I rule in favor of Ginsberg and against Brightstar/Knobel on the claim of Ginsberg's breach of Section 7.8 of the Operating Agreement.

7. Claimants' claim for breach of Section 7.2 of the Operating Agreement (ROFO).

As pertinent to the Claimants' ROFO-related claims, Section 7.2 of the Operating Agreement provides:

> If a member *proposes to initiate a sale* of all or a portion of his Membership Interest to an Unrelated Third Patry (a Proposed Sale"), the selling Member must first deliver to the other Members prior written *notice of the intent to do so* (the "Proposed Sale Notice"). Such Proposed Sale Notice shall be in the form of a binding offer by the selling Member to the non-selling Members for the sale of all or a portion of its Membership Interest. The non-selling Members shall have a period of ten (10) days from the date they receive the Proposed Sale Notice … to irrevocably and unconditionally elect to exercise the right of first offer to

> purchase the selling Member's Membership Interest on the terms and conditions set forth in the Proposed Sale Notice…. (Emphasis supplied).

This provision is unambiguous. Nonetheless, Brightstar/Knobel contend that Section 7.2 could be applicable only if Brightstar/Knobel and Privateer actually entered into a binding written agreement to transfer the Brightstar/Knobel Membership. I reject this contention.

Brightstar/Knobel's execution of the August 25, 2017, document (Hearing Exhibit 138, the so-called "**Secret LOI**") conclusively establishes that Brightstar/Knobel voluntarily *proposed* to initiate a sale to Privateer, and the Secret LOI is, after all, a letter of *intent* specifically establishing Brightstar/Knobel's *intent*.[16] That is all that was required to initiate Claimants' right of first offer under Section 7.2 to purchase Brightstar/Knobel's interest in the "Companies" on the terms and conditions set forth in the Secret LOI.[17] The purchase price is pegged at $22 million (subject to reduction if Brightstar/Knobel acquires Ginsberg's interest pursuant to the shotgun for less than $2 million), and is payable on specified terms.[18]

The Secret LOI grants Privateer exclusivity and provides that the Secret LOI will not be disclosed to third parties, including specifically "Ginsberg and the other Members of Companies." Of course, the record is undisputed that Brightstar/Knobel never disclosed the Secret LOI to Ginsberg or Jordan and never provided a Proposed Sale Notice to them. They only discovered its existence when, nearly two years later, they learned that Privateer's successor in interest had commenced litigation in Washington to enforce the Secret LOI. Irrefutably, by their actions with respect to the Secret LOI, Brightstar/Knoble blatantly breached the Intra-Member Duties owed to Ginsberg and Jordan under Section 7.2 of the Operating Agreement, entitling them to damages.

Many Colorado decisions hold that for breach of contract the injured party may recover damages that appropriately enforce that party's expectations created by the agreement – the

[16]In fact, Brightstar/Knobel's intent actually may have been formed much earlier. Hearing Exhibit 380 is an email from Brendan Kennedy, Privateer's principal, to Knobel dated August 25, 2017, the date the Secret LOI was signed. Kennedy states: "No one can know that we are talking. No one can know we have done this deal for months." Knobel did not refute this.

[17]The term "Companies" is defined in the Secret LOI as the three entities comprising Native Roots and their respective subsidiaries and affiliates held by or controlled by Brightstar/Knobel, including, but not limited to, the numerous limited liability companies listed in Schedule 1 which hold legal title to the real property at which Native Roots conducts its business. To make it clear, the Secret LOI states that the assets intended to be sold include not only the Companies, but also the "real property, leases and debt under the First Amended and Restated Loan Agreement."

[18] Actually, the purchase price of $22 million was for the purchase by Privateeer of Brightstar/Knobel's 70% interest in Native Roots *plus* the purchase of Ginsberg's 16% interest, which Brightstar/Knobel planned to acquire pursuant to the shotgun offer. Simple math shows that the proportionate price for just the Brightstar/Knobel interest would be $22 million minus $3.52 million (16% of $22 million). Nonetheless, Ginsberg and Jordan contend that in calculating their damages, $20 million should be deducted from the purchase price to determine their net loss since the remaining $2 million related to the purchase of Ginsberg's interest. I find that $20 million is a reasonable factor for calculation of their damages.

benefit of the bargain. *See, e.g*. *Giampapa v. Am. Family Mut. Ins. Co*., 64 P.3d 230 (Colo. 2003).

In addition, the long-standing rule in Colorado is that "[a]lthough an award of damages cannot be based on mere speculation or conjecture, once the fact of damage has been established with the requisite degree of certainty, uncertainty as to the amount of damages will not bar recovery." *Tull v. Gundersons, Inc.*, 709 P.2d 940, 943 (Colo. 1985); mathematical certainty is not required. *Peterson v. Colorado Potato Flake & Mfg. Co*., 435 P.2d 237 (Colo. 1967). A different rule would reward the wrongdoer.

Here, the proof of damages is forthright. The $22 million purchase price, payable on the terms set forth in the Secret LOI, established the terms for the ROFO under Section 7.2. Brightstar/Knobel specifically agreed that Ginsberg and Jordan had the right to purchase the Brightstar/Knobel interest for that price. The denial of that right was an intentional breach of contract by Brightstar/Knobel, resulting in damage to Ginsberg and Jordan.

I find that $120.4 million was the value of the Brightstar/Knobel interest as of August 25, 2017, the date the Secret LOI was signed.[19] Thus, I rule that the total expectation damages are $120.4 million less $20 million (*see* fn. 18), or $100.4 million, and that such damages were suffered by Ginsberg and Jordan in the ratio of their membership interests.

I reject the contention by Brightstar/Knobel that, in order to determine their net loss, Ginsberg and Jordan should be required to deduct not only the purchase price payable under the Secret LOI, but also the cost they *might* incur in financing the purchase. Even if such a deduction should be required in some circumstances, here it was Brightstar/Knobel's willful breach of Section 7.2 that precluded Ginsberg and Jordan from seeking any financing and causes any uncertainty in their proof of damages. If they did not receive the ROFO, how could they have sought any needed financing and tendered acceptance? It is appropriate for me to take into account the willfulness of the breach by Brightstar/Knobel and their intentional refusal to disclose even the existence of the Secret LOI when it was signed and for nearly two years thereafter. I rule that the burden of proof with respect to any deduction for financing properly is imposed on Brightstar/Knobel, and they failed to present any evidence of what the cost or terms of financing might be in order to satisfy that burden of proof. *See,* Restatement (Second) Contracts § 352.

Brightstar/Knobel merely presume that if Ginsberg had to arrange financing to provide the $8.75 million to exercise his rights under the shotgun, he and Jordan would have to finance

[19] FTI estimated the value of the Brightstar/Knobel interest as of August 25, 2017, to be $120.4 million (70% of $172 million, the estimated enterprise value of Native Roots on that date). Its valuation of Native Roots properly included the value attributable to Native Roots' real estate (see my ruling on this issue, *supra*). David Hall's estimate incorrectly excluded the value of the Native Roots real estate and did not materially dispute the valuation methods used by FTI. Various other third-party expressions/opinions of value of Native Roots were presented as evidence, some of which were the valuation of Native Roots materially higher than $172 million. I find that the valuation of $120.4 million for the Brightstar/Knobel interest is a reasonable basis for computation of the damages suffered by Ginsberg and Jordan.

the purchase price under the Secret LOI. This presumption, in the absence of any evidence from Brightstar/Knobel, would improperly benefit Brightstar/Knobel, guilty of willful breach of contract and their intentional and continuous violation of their Inter-Member Duties owed to Ginsberg and Jordan. All doubts regarding calculation of damages must be resolved against the party in breach of the contract. *Id.*

I also reject Brightstar/Knobel's truly absurd argument that Ginsberg violated Section 7.2 because, after Brightstar/Knobel triggered the shotgun, Ginsberg entered into negotiations for potential financing, the terms of which might involve a transfer of all or part of Ginsberg's interest, and Ginsberg failed to give Brightstar/Knobel a Prosed Sale Notice, triggering Brightstar/Knobel's ROFO. Section 7.2 cannot reasonably be interpreted to apply to Ginsberg's efforts to seek financing after Brightstar/Knobel triggered the shotgun.

Ruling: On their claim for breach of contract, specifically breach of the Right of First Offer set forth in Section 7.2 of the Operating Agreement, I rule in favor of Ginsberg and Jordan and against Brightstar/Knobel.

Award: Brightstar and Knobel, individually, are jointly and severally liable for, and shall pay: (a) $53.6 million to Ginsberg for his damages; (b) $46.9 million to Jordan for his damages; (c) plus, as provided by C.R.S. § 5-12-102, or in the alternative as a matter of equity, interest on the amount of each Claimant's damages at the rate of 8%, compounded annually for the period beginning August 25, 2017, and ending on the earlier of the date of payment or the date judgment is entered confirming this award; plus (d) post-judgment interest in the amount determined by the court confirming this award.

8. Declaratory Judgment and Injunctive relief with respect to the purported default in 2020 and attempted foreclosure by Brightstar/Knobel. By a letter to Boord, Brown and Native Roots, dated May 15, 2020 (Hearing Exhibit 922), counsel for Brightstar/Knobel, invoking the provisions of the Second Amended and Restated Loan Agreement:

> (a) declared that Native Roots, as Borrower of the Brightstar Loan, was in default of the Second Amended and Restated Agreement (the stated default was Native Roots' inability to pay debts as they become due, an event of bankruptcy);
>
> (b) stated that Brightstar/Knobel accelerated the Brightstar Loan and intended to foreclose on the agreements executed by Ginsberg and Knobel pledging their Membership interests in Native Roots as collateral for the Brightstar Loan ("Pledged Interests"); and
>
> (c) demanded that "immediately" Native Roots identify Brightstar as the "record beneficial owner" [sic] of the Pledged Interests and treat Brightstar as having the rights,

privileges, options and powers relating to the Pledged Interests, including all voting and other rights related to the Pledged Interests.

Later that very same day, Boord, purporting to act in his capacity as "Chief Strategy Officer" of Native Roots,[20] sent an email (Hearing Exhibit 368) to Knobel, Brown and various attorneys acting on behalf of Brightstar/Knobel. Boord stated: "We [Native Roots] are in receipt of the Brightstar Default Notice dated today . . . we are in receipt of Brightstar's confirmation that it will indemnify, defend and hold harmless Native Roots and its employees and officers in any litigation or action brought by Mr. Ginsberg or Mr. Jordan in connection with Native Roots' execution of Brightstar's foreclosure on their interests." Without consulting with either Ginsberg or Jordan, Boord further stated that: "Native Roots shall act in accordance with Brightstar's requests set forth in its Default Notice."

On June 4, 2020, Ginsberg filed a Motion for Preliminary Injunction or TRO. In the Motion, Ginsberg provided substantial evidence that the claim that Native Roots was unable to pay its debts as they became due was false. The falsity is confirmed by the fact that in May 2020 Native Roots had issued a Confidential Information Memorandum (Hearing Exhibit 352) touting that it had significant net assets and was solvent with continued and improving operations. Further, in his Motion, Ginsberg correctly pointed out that Section 18.s. of the Second Amended and Restated Loan Agreement provides that, so long as Brightstar had a voting interest sufficient to obstruct a majority vote by the Members of Native Roots (as was the case then and remains to be the case now), Brightstar is estopped from making a default claim against Native Roots "based on a breach of *any* of the provisions of this Loan Agreement." (Emphasis supplied).

Jordan joined in the Motion. Brightstar/Knobel and Native Roots objected, contending that my arbitral jurisdiction did not extend to issues relating to the Brightstar Loan and the claimed default. Brightstar/Knobel commenced a proceeding in the Boulder County District Court contesting my jurisdiction.

Astonishingly, Boord submitted a Declaration (Hearing Exhibit 341) in the Boulder County proceeding (again in his self-appointed capacity as Chief Strategy Officer of Native Roots) stating that, because Section 14.h. of the Second Amended and Restated Loan Agreement provides an exception to the estoppel if the default was an act of bankruptcy, Brightstar was "most likely not estopped" from declaring the default. He swore *under oath* that he was "personally involved" in negotiation of the Seconded Amended and Restated Loan Agreement and that the inclusion of Section 18.s. (which has no bankruptcy exception to the estoppel) was either a mistake or a drafting error that did not reflect the intention of the parties.

[20]There is no evidence in the record identifying the position of title "Chief Strategy Officer" of Native Roots or establishing the scope of the authority of any person purporting to hold of such title. Boord testified that he did not discuss such title with Ginsberg, Jordan or even Knobel and did not know how they learned that he supposedly held it. During his testimony, Boord was shown an excerpt from Knobel's deposition where Knobel testified that he "laughed" when he heard of the term. Boord simply arrogated to himself the title and any supposed authority to act under in that position. Boord's actions in reliance on that "title" simply were not authorized and, as discussed in the accompanying text, were fraudulent.

Boord's Declaration is total hogwash and a fraud on the court. In the arbitration Hearing Boord testified that he drafted and back dated the Second Amended and Restated Loan Agreement, signed (or forged) Knobel's signature on behalf of Brightstar and signed as "Member and authorized agent" of the three Native Roots entities. In fact, Boord was a "member" of Native Roots only in the most technical sense (he testified that he was a "springing" member and the contingency to his becoming a true Member never occurred) and, in any event any acts by the Members of Native Roots must be authorized by the vote of a majority or super majority of them (*See*, Sections 5.1 and 9.1 of Hearing Exhibit 7). Nothing in the record establishes Boord as the "agent" of Native Roots, and at the Hearing Knobel specifically testified that Boord was *not* an agent of Native Roots. Even more critically, there is absolutely no evidence that there were any "negotiations" of the Second Amended and Restated Loan Agreement. At the Hearing Boord testified that none of the Members knew he was signing the Second Amended and Restated Loan Agreement, and that Ginsberg and Jordan did not approve the Second Amended and Restated Loan Agreement.

In short, Boord's actions, including his Declaration, although total claptrap, show beyond doubt Boord was a toady of Knobel, ready to do anything for the benefit of Brightstar/Knobel, including lying in sworn statements to the court, to achieve Brightstar/Knobel's misappropriation of Ginsberg's and Jordan's interest in Native Roots through foreclosure of the pledges of their Membership interests.

Ultimately, three courts, including the Colorado Supreme Court, rejected Brightstar/Knobel's assertion that I had no jurisdiction. As of June 5, 2020, I issued a TRO, which was converted to a Preliminary Injunction as of June 18, 2020, enjoining Native Roots and Knobel from:

> (a) declaring the Brightstar Loan in default;
>
> (b) exercising or enforcing any purported remedies Brightstar may claim to have under Loan Documents related to or evidencing the Brightstar Loan, the Promissory Note, Loan Agreement and Pledges, including specifically those remedies asserted in the letters dated May 15, 2020, from Brownstein Hyatt Farber Schreck to Ryan Brown, Jon Boord, Native Roots, Mr. Jordan and Mr. Ginsberg declaring the Brightstar Loan to be in default;
>
> (c) disposing of collateral securing the Brightstar Loan as described in the undated Notification of Public Disposition of Collateral at a sale on June 24, 2020, or by any other means at any other time;

(d) modifying in any respect the terms of the Brightstar Loan or the Loan Agreement; and

(e) interfering with the rights of Mr. Ginsberg or Mr. Jordan under the terms of the Operating Agreements.

By its terms, the Preliminary Injunction continues in effect until my further order, as set forth below.

Ruling: (a) I rule that the May 15, 2020, declaration of default was a pretextual effort by Brightstar/Knobel, tainted by fraud, to misappropriate Ginsberg's and Jordan's Membership interests in Native Roots. Accordingly, I rule that the declaration of default, and all actions taken with respect to it, were void.

(b) I rule that the Preliminary Injunction entered by me on June 18, 2020, shall be converted to an Permanent Injunction by which Native Roots and Knobel are enjoined from taking the same actions set forth in the Preliminary Injunction; *provided, however*, that if and when Brightstar/Knobel no longer has the voting power to obstruct a Majority vote of the Members of Native Roots, paragraphs (a), (b) and (c) of this Permanent Injunction shall no longer enjoin such actions if taken in good faith and not in violation of the Inter-Member Duties owed to Ginsberg and Jordan. This Permanent Injunction shall continue in effect until entry by me, or entry by a court having jurisdiction, of a further order modifying or vacating it.

9. Affirmative Defenses. Brightstar/Knobel asserted nearly 30 affirmative defenses. Native Roots also asserted various affirmative defenses. I considered the defenses in reaching this Decision, and many of the defenses are resolved in my rulings.

Ruling: To the extent that the affirmative defenses asserted by Brightstar/Knobel or by Native Roots are not resolved and governed by my Rulings in this Decision, they are denied.

10. Additional Claims by the parties. One or more of the parties assert claims that arguably may be in addition to the specific claims upon which I have issued Rulings in this Decision. Many of such additional claims are duplicative and often non-specific. I find that these claims are subsumed in the claims upon which I have ruled.

Ruling: To the extent that any of the claims of a party that are not subsumed and resolved and governed by the claims upon which I have ruled, the claims are denied.

This Award is entered effective August 11, 2021 and shall remain in full force and effect until such time as it is consolidated with the award in the Fees/Costs Hearing, which together will constitute the final Award.

/s/ J. Lawrence Hamil
J. Lawrence Hamil, Arbitrator