

FEB 22 2023

David W. Slayton, Executive Officer/Clerk of Court
By: K. Mason, Deputy

1
2 **SUPERIOR COURT OF CALIFORNIA**
3 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
4 **DEPARTMENT 53**

5
6 SHAHROUZ DARVISH, et al.;
7 Plaintiffs,

8 vs.

9
10 COREY ROGAN, et al.;
11 Defendants.

Case No.: 21STCV23209

Hearing Date: February 22, 2023

Time: 10:00 a.m.

~~TENTATIVE~~ ORDER RE:

DEFENDANTS' DEMURRER TO SECOND
AMENDED COMPLAINT

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14 **MOVING PARTIES:** Defendants Corey Rogan, Rogan Enterprises, LLC, and SOHO
Mgmt., LLC

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16 **RESPONDING PARTIES:** Plaintiffs Shahrouz Darvish, Richard Jasminski, and Michael
17 Simonian

18 **Demurrer to Second Amended Complaint**

19 The court considered the moving, opposition, and reply papers filed in connection with
20 this demurrer.

21 **BACKGROUND**

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23 Plaintiffs Shahrouz Darvish, Richard Jasminski, and Michael Simonian ("Plaintiffs")
24 filed this action on June 22, 2021. Plaintiffs filed the operative Second Amended Complaint on
25 October 24, 2022, against defendants Corey Rogan ("Rogan"), Rogan Enterprises, LLC, and
26 SOHO Mgmt. LLC (collectively, "Defendants").

27 Plaintiffs allege eight causes of action for (1) breach of contract; (2) breach of
28 partnership; (3) breach of fiduciary duty; (4) intentional interference with prospective economic

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1 advantage; (5) fraud (Civil Code section 1572); (6) breach of the covenant of good faith and fair
2 dealing; (7) unfair competition (Business and Professions Code section 17200); and (8) civil
3 recovery for receipt of stolen property (Penal Code section 496).

4 Defendants move the court for an order sustaining their demurrer to each cause of action
5 alleged by Plaintiffs.

6 **REQUEST FOR JUDICIAL NOTICE**

7 As to Exhibit 1, the court grants Defendants' request for judicial notice as to the Limited
8 Liability Company Agreement of CDLA5 Holdings LLC, dated August 31, 2019, because it is
9 attached to the Second Amended Complaint. (Evid. Code, § 452, subd. (d).) The court denies
10 Defendants' request for judicial notice as to the Management Services Agreement, dated August
11 27, 2019, as an improper subject for judicial notice. (*The Travelers Indemnity Co. of*
12 *Connecticut v. Navigators Specialty Ins. Co.* (2021) 70 Cal.App.5th 341, 354-355 [the existence
13 of a contract between private parties cannot be established by judicial notice because the
14 existence and terms of a private agreement are not facts that are not reasonably subject to dispute
15 and that can be determined by indisputable accuracy].)

16 The court grants Defendants' requests for judicial notice as to Exhibits 2 and 3. (Evid.
17 Code, § 452, subd. (b).)

18 **DEMURRER**

19 The court sustains Rogan's demurrer to Plaintiffs' first cause of action for breach of
20 contract because it does not state facts sufficient to constitute a cause of action since this cause of
21 action is based on the enforcement of a contract that is illegal and therefore unenforceable.
22 (Code Civ. Proc., § 430.10, subd. (e).)

23 "Where a contract has but a single object, and such object is unlawful, whether in whole
24 or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly
25 unascertainable, the entire contract is void." (Civ. Code, § 1598.) " "[N]o principle of law is
26 better settled than that a party to an illegal contract cannot come into a court of law and ask to
27 have his illegal objects carried out.' " [Citation.] The courts 'generally will not enforce an
28

1 illegal bargain or lend their assistance to a party who seeks compensation for an illegal act.”
2 (*Yoo v. Jho* (2007) 147 Cal.App.4th 1249, 1255.)

3 On August 31, 2019, the parties executed the document entitled Limited Liability
4 Company Agreement of CDLA5 Holdings, LLC, a Limited Liability Company (the “Operating
5 Agreement”). (SAC ¶ 14; SAC Ex. A, Operating Agreement.) Plaintiffs allege that they
6 organized CDLA5 Holdings, LLC (“CDLA5”) “with the business purpose of obtaining a Type
7 10 cannabis retail license and opening and operating a cannabis retail store in the city of Los
8 Angeles.” (SAC ¶ 12.) To be eligible for and receive a Type 10 cannabis retailer license, an
9 applicant must have an individual owner that is a verified Social Equity Applicant. (SAC ¶ 11.)
10 In August 2019, the City of Los Angeles Department of Cannabis Regulations verified defendant
11 Rogan as a Social Equity Applicant based on his (1) low-income status, and (2) residence in an
12 area that was disproportionately negatively impacted by restrictive cannabis laws in the past.
13 (SAC ¶ 13.) The parties thereafter executed the Operating Agreement to operate their cannabis
14 business. (SAC ¶ 14; SAC Ex. A.)

15 The court finds that, because Plaintiffs have alleged that the purpose of the Operating
16 Agreement was to organize and operate a cannabis business by obtaining a Type 10 license
17 pursuant to the Social Equity Program, the Operating Agreement was required to comply with
18 the terms of the program. The court finds that the Operating Agreement (1) includes provisions
19 that are in violation of the requirements of the Social Equity Program, as set forth in the Los
20 Angeles Municipal Code, and the Business and Professions Code, and (2) excludes a provision
21 required by the Los Angeles Municipal Code.

22 As set forth above, Plaintiffs allege that they formed CDLA5 for the purpose of obtaining
23 a Type 10 cannabis retail license pursuant to the Social Equity Program. (SAC ¶¶ 11-12.) To
24 obtain this license, an applicant must have an individual owner that is a Social Equity Applicant.
25 (SAC ¶ 11.) A Social Equity Applicant is classified as a Tier 1 Social Equity Individual
26 Applicant (“Tier 1 Applicant”) if, at the time of applying for a license, they meet the following
27 criteria: (1) low-income and prior California cannabis arrest or conviction, or (2) low-income and
28 a minimum of five years’ cumulative residency in a Disproportionately Impacted area. (LAMC

1 Chapter X, Art. 4, § 104.20, subd. (a)(1)(4).) A Social Equity Applicant is classified as a Tier 2
2 Social Equity Individual Applicant (“Tier 2 Applicant”) if, at the time of applying for a license,
3 they meet the following criteria: (1) low-income and a minimum of five years’ cumulative
4 residency in a disproportionately impacted area, or (2) a minimum of 10 years’ cumulative
5 residency in a disproportionately impacted area. (LAMC Chapter X, Art. 4, § 104.20, subd.
6 (a)(1)(5).) A Tier 1 Applicant shall own no less than 51 percent equity share in the person to
7 whom a license is issued.¹ (LAMC Chapter X, Art. 4, § 104.20, subd. (a)(2)(i).) “Equity share”
8 is specifically defined to include various rights. (LAMC Chapter X, Art. 4, § 104.20, subd.
9 (a)(2)(ii).)

10 The court finds that the Operating Agreement contains four terms that are in violation of
11 the Los Angeles Municipal Code and Business and Professions Code.

12 First, a Social Equity Individual Applicant shall receive “[a]t least their Equity Share
13 percent of the voting rights on all business decisions, including, but not limited to, long-term
14 decisions, daily business operations, retention and supervision of the executive team, managers,
15 and management companies, and the implementation of policies.” (LAMC Chapter X, Art. 4, §
16 104.20, subd. (a)(2)(ii)(3)(A).) However, the Operating Agreement provides that each
17 member—including defendant Rogan—“shall each have one Vote equal to the Vote of each
18 other Member, regardless of the Member’s share of Membership Interest in the Company.”
19 (SAC Ex. A, Operating Agreement, § III, subd. (G)(1).)

20 Thus, defendant Rogan, despite being a Social Equity Individual Applicant, was given
21 one-sixth voting rights instead of his equity share percent (i.e., 51 percent) of the voting rights.
22 (SAC Ex. A, Operating Agreement, § III, subd. (A) [defining the “Members” to include six
23 individuals].) Further, the Operating Agreement provides that Rogan is the only non-managing
24

25 ¹ Plaintiffs have not alleged whether Rogan was a Tier 1 Applicant or Tier 2 Applicant. The facts alleged establish
26 that Rogan may have been identified as either a Tier 1 Applicant or Tier 2 Applicant. (SAC ¶ 14 [Rogan was
27 verified as Social Equity Applicant based both on low-income status and residence in a disproportionately impacted
28 area]; LAMC Chapter X, Art. 4, § 104.20, subds. (a)(1)(4), (a)(1)(5) [providing that an individual could be classified
as Tier 1 or Tier 2 if the same two criteria are met: (1) low-income and (2) a minimum of five years’ cumulative
residency in a disproportionately impacted area].) However, Plaintiffs have also pleaded that Rogan was 51 percent
owner of CDLA5, which is a characteristic of a Tier 1 Applicant. (LAMC Chapter X, Art. 4, § 104.20, subd.
(a)(2)(i) [providing that a Tier 1 Applicant shall own no less than 51 percent equity share, while a Tier 2 Applicant
shall own no less than 33 1/3 percent equity share].)

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1 member, and therefore is the only member that is not responsible for running the management
2 and operation of the business in violation of this provision. (SAC Ex. A, Operating Agreement,
3 § III, subd. (E) [provision that (1) states that Managing Members “shall be responsible for
4 running the management and operation of the business” and (2) defines Rogan to be a non-
5 managing member].)

6 Second, a Social Equity Individual Applicant shall receive (1) “[a]t least their Equity
7 Share percent” of the distribution of profits paid to the owners; (2) 100 percent of the value of
8 each share of stock owned by them in the event that the stock is sold; and (3) both (i) at least
9 their equity percent of the retained earnings of the Social Equity Applicant and (ii) 100 percent
10 of the unencumbered value of each share of stock, member interest, or partnership interest owned
11 in the event of dissolution of the company. (LAMC Chapter X, Art. 4, § 104.20, subd.
12 (a)(2)(ii)(2).) However, the Operating Agreement provides that the managing members—i.e., all
13 members aside from defendant Rogan—“have the authority to fix the compensation of individual
14 Members.” (SAC Ex. A, Operating Agreement, § III, subd. (K).) Thus, the Operating
15 Agreement does not provide for defendant Rogan’s receipt of 51 percent of the distribution of
16 profits and retained earnings.

17 Third, all owners are required to incorporate an addendum into any operating agreement
18 that includes the following language: “To the extent that any provision of this agreement, or part
19 thereof, is or may be construed to be inconsistent with or in violation of the “Equity Share”
20 requirements set forth in Los Angeles Municipal Code section 104.20, such provision(s) shall be
21 ineffective, unenforceable, and null and void.” (LAMC Chapter X, Art. 4, § 104.20, subd.
22 (a)(2)(iii)(4).) The Operating Agreement does not include this language. (SAC Ex. A, Operating
23 Agreement.)

24 Finally, the Operating Agreement includes an unenforceable non-compete clause
25 providing that each member “shall refrain from competing with the Company in the conduct of
26 the Company’s business unless a majority, by individual vote, of the Members excluding the
27 interested Member, consents thereto.” (SAC Ex. A, Operating Agreement, § III subd. (I)(2).)
28 “[E]very contract by which anyone is restrained from engaging in a lawful profession, trade, or

1 business of any kind is to that extent void” except where (1) a person sells the goodwill of a
2 business, or (2) a partner agrees not to compete in anticipation of dissolution of a partnership.
3 (Bus. & Prof. Code, §§ 16600, 16601, 16602; *Kelton v. Stravinski* (2006) 138 Cal.App.4th 941,
4 946.) Plaintiffs do not allege facts establishing that the non-complete clause was executed in
5 either situation. The court therefore finds that this provision is void and unenforceable.

6 The parties dispute whether the court can sever the unenforceable terms set forth above.
7 “Where a contract has several distinct objects, of which one at least is lawful, and one at least is
8 unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.” (Civ.
9 Code, § 1599.) “Civil Code section 1599 grants courts the power, not the duty, to sever contracts
10 in order to avoid an inequitable windfall or preserve a contractual relationship where doing so
11 would not condone illegality.” (*Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974,
12 992.) To determine whether severance is available, “[t]he overarching inquiry is whether “ ‘the
13 interests of justice . . . would be furthered’ ” by severance.” (*Id.* at p. 996.) Courts must look to
14 the purposes of the contract; “[i]f the central purpose of the contract is tainted with illegality,
15 then the contract as a whole cannot be enforced.” (*Ibid.*)

16 Plaintiffs have alleged, as set forth above, that the purpose of the Operating Agreement
17 was (1) to organize and operate a cannabis business (i.e., CDLA5) by (2) obtaining a Type 10
18 cannabis retail license, and opening and operating the cannabis retail store in Los Angeles, which
19 (3) required Plaintiffs to have an individual owner that is a verified Social Equity Applicant in
20 order to qualify for the Social Equity Program. (SAC ¶¶ 15, 11-12.) The court therefore finds
21 that the central purpose of the Operating Agreement was to obtain a license under the Social
22 Equity Program, with which Plaintiffs were obligated to comply, and to operate a cannabis retail
23 store using that license. The court has found that the Operating Agreement contains numerous
24 terms that violate provisions of the Social Equity Program, and also violate the Business and
25 Professions Code. The court finds significant that the provisions in the Operating Agreement
26 that violate these laws concern management rights, distribution of profits and earnings, and
27 voting rights. Defendants argue, and the court agrees, that the illegal provisions permeate the
28 Operating Agreement “because they are fundamental to the operation of the LLC.” (Demurrer,

1 p. 9:11-14.) The court finds that the Operating Agreement's single object is unlawful, cannot be
2 severed, and is therefore void and unenforceable. (Civ. Code, § 1598; *Marathon Entertainment,*
3 *Inc., supra*, 42 Cal.4th at p. 991, fn. 9 ["Civil Code section 1598 codifies the companion
4 principle for when severability is infeasible".])

5 The court therefore finds that Plaintiffs cannot base their breach of contract cause of
6 action on, and request the court to enforce, the unlawful and unenforceable Operating
7 Agreement. (*Yoo, supra*, 147 Cal.App.4th at p. 1255 [the courts will not enforce an illegal
8 bargain].)

9 The court sustains Rogan's demurrer to Plaintiffs' second cause of action for breach of
10 partnership because it does not state facts sufficient to constitute a cause of action. (Code Civ.
11 Proc., § 430.10, subd. (e).) This cause of action alleges the existence of a partnership that is
12 based on the same purpose and agreement as the Operating Agreement (i.e., to own and operate a
13 cannabis retail store by obtaining a Type 10 cannabis retail license pursuant to the Social Equity
14 Program) and is therefore unenforceable for the same reasons set forth above in connection with
15 the first cause of action. (SAC ¶¶ 11-12, 46-47.)

16 The court sustains Rogan's demurrer to Plaintiffs' third cause of action for breach of
17 fiduciary duty because it does not state facts sufficient to constitute a cause of action since it is
18 based on the existence of (1) a partnership that the court has determined is alleged to have been
19 formed based on the same unlawful agreement as set forth in the second cause of action, and (2)
20 the Operating Agreement that the court has determined is unlawful and therefore unenforceable
21 as set forth in the first cause of action. (Code Civ. Proc., § 430.10, subd. (e); SAC ¶¶ 50-51
22 [alleging that Rogan owed duties to (1) Plaintiffs because he "was a partner in business with
23 Plaintiffs" and (2) CDLA5 since he was a member thereof].)

24 The court sustains Defendants' demurrer to Plaintiffs' fourth cause of action for
25 intentional interference with prospective economic advantage because it does not state facts
26 sufficient to constitute a cause of action since (1) it is based on the economic relationship created
27 by the Operating Agreement which the court has determined is unlawful and therefore
28 unenforceable (SAC ¶ 55), and (2) Plaintiffs do not allege the existence of an economic

1 relationship that contains the probability of future economic benefit to Plaintiffs between
2 Plaintiffs “and some *third party*,” instead alleging the existence of an economic relationship
3 between Plaintiffs and Rogan (SAC ¶ 55.) (Code Civ. Proc., § 430.10, subd. (e); *Roy Allan*
4 *Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 513 [elements of cause of
5 action for intentional interference with prospective economic advantage].)

6 The court sustains Rogan’s demurrer to Plaintiffs’ fifth cause of action for fraud because
7 it does not state facts sufficient to constitute a cause of action since the false promise of which
8 Plaintiffs complain is based on the same alleged agreement to carry on the cannabis retail store
9 by obtaining a license pursuant to the Social Equity Program, which the court has determined is
10 unlawful and therefore unenforceable for the reasons set forth above. (Code Civ. Proc.,
11 § 430.10, subd. (e); SAC ¶¶ 61, 63 [alleging that Rogan made promises to Plaintiffs when
12 entering the agreement and “to perform under the Operating Agreement”].)

13 The court sustains Rogan’s demurrer to Plaintiffs’ sixth cause of action for breach of the
14 covenant of good faith and fair dealing because it does not state facts sufficient to constitute a
15 cause of action since this covenant is alleged to be implied in the Operating Agreement, which
16 the court has determined is unlawful and therefore unenforceable for the reasons set forth above.
17 (Code Civ. Proc., § 430.10, subd. (e); SAC ¶¶ 68-72.)

18 The court sustains Defendants’ demurrer to Plaintiffs’ seventh cause of action for unfair
19 competition pursuant to Business and Professions Code section 17200 because it does not state
20 facts sufficient to constitute a cause of action since (1) Plaintiffs do not allege, with the requisite
21 particularity, facts establishing that Defendants’ conduct constitutes an unlawful, unfair, or
22 fraudulent business act or practice within the meaning of Business and Professions Code section
23 17200, and (2) to the extent that Plaintiffs base this cause of action on conduct concerning any
24 agreement to operate a cannabis retail store by obtaining a license pursuant to the Social Equity
25 Program, the court has determined that such agreement is an illegal contract and is therefore
26 unenforceable. (Code Civ. Proc., § 430.10, subd. (e); Bus. & Prof. Code, § 17200.)

27 The court sustains Defendants’ demurrer to Plaintiffs’ eighth case of action for civil
28 recovery for receipt of stolen property pursuant to California Penal Code section 496 because it

1 does not state facts sufficient to constitute a cause of action since Plaintiffs have not alleged facts
2 establishing that Defendants wrongfully obtained (1) real property, or (2) personal property such
3 as money, goods, chattels, things in action, and evidences of debt. (Code Civ. Proc., § 430.10,
4 subd. (e); Pen. Code, § 7, subds. (10) [providing that in the Penal Code, “property” includes both
5 real and personal property] (11) [defining real property to be coextensive with lands, tenements,
6 and hereditaments], (12) [defining personal property to include money, goods, chattels, things in
7 action, and evidences of debt]; *People v. Gonzalez* (2017) 2 Cal.5th 858, 872 [explaining that
8 Penal Code defines property to include both real and personal property as set forth in section 7].)

9 The court overrules Defendants’ demurrer to constructive trust because it is improper to
10 demur to a remedy requested in a prayer for relief. (*Caldera Pharmaceuticals, Inc. v. Regents of*
11 *University of California* (2012) 205 Cal.App.4th 338, 368.)

12 The burden is on the plaintiff “to articulate how it could amend its pleading to render it
13 sufficient.” (*Palm Springs Villas II Homeowners Assn., Inc. v. Parth* (2016) 248 Cal.App.4th
14 268, 290.) To satisfy that burden, a plaintiff “must show in what manner he can amend his
15 complaint and how that amendment will change the legal effect of his pleading.” (*Goodman v.*
16 *Kennedy* (1976) 18 Cal.3d 335, 349.) The court finds that Plaintiffs have not met their burden to
17 show in what manner they can amend their complaint and how that amendment will change the
18 legal effect of their pleading as to each cause of action. The court therefore sustains Defendants’
19 demurrer without leave to amend.

20 **ORDER**

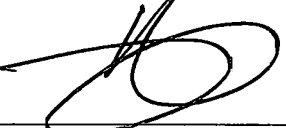
21 The court sustains defendants Corey Rogan, Rogan Enterprises, LLC, and SOHO Mgmt.
22 LLC’s demurrer to plaintiffs Shahrouz Darvish, Richard Jasminski, and Michael Simonian’s
23 Second Amended Complaint without leave to amend.

24 The court orders defendants Corey Rogan, Rogan Enterprises, LLC, and SOHO Mgmt.
25 LLC to lodge and serve a proposed order of dismissal of the Second Amended Complaint filed
26 by plaintiffs Shahrouz Darvish, Richard Jasminski, and Michael Simonian within 10 days of the
27 date of this order pursuant to Code of Civil Procedure section 581, subdivision (f)(1).
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1 The court orders defendants Corey Rogan, Rogan Enterprises, LLC, and SCHO Mgmt.
2 LLC to give notice of this ruling.

3 IT IS SO ORDERED.

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5 DATED: February 22, 2023

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8 Robert B. Broadbelt III
9 Judge of the Superior Court

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