

1 **RAINES FELDMAN LLP**
Miles J. Feldman (Bar No. 173383)
2 mfeldman@raineslaw.com
Laith D. Mosely (Bar No. 250832)
3 lmosely@raineslaw.com
1800 Avenue of the Stars, 12th Floor
4 Los Angeles, California 90067
Telephone: (310) 440-4100
5 Facsimile: (310) 691-1943

6 **HARRISON LAW & MEDIATION**
Susan L. Harrison (Bar No. 105779)
7 Susan@HLMattorneys.com
1500 Rosecrans Ave., Suite 500
8 Manhattan Beach, CA 90266
Telephone: (310) 541-6400
9

10 Attorneys for WILLIAM SZYMCZAK,
998 & 1030 PARTNERS, LLC,
11 DAYSPRING FARMS LLC, and
OG INVESTORS LLC, individually and
12 derivatively

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN LUIS OBISPO
15

16 WILLIAM SZYMCZAK; 998 & 1030
17 PARTNERS, LLC; DAYSPRING FARMS
LLC; OG INVESTORS LLC, on behalf of
18 itself and derivatively on behalf of
DAYSPRING FARMS CULTIVATION
19 LLC; 6860 DAYSPRING LLC; 6860
CULTIVATION LLC; 530 DAYSPRING
20 LLC; 530 CULTIVATION LLC; 8901
DAYSPRING LLC; 8901 CULTIVATION
21 LLC; NHC GROVER BEACH LLC;
NATURAL HEALING CENTER LLC;
22 and 13350 RIVER ROAD LLC,

23 Plaintiffs,

24 v.

25 HELIOS DAYSPRING; HELIOS
MANAGEMENT GROUP LLC; 7510
LOVR LLC; HS AG HOLDINGS LLC;
26 AG INVESTMENT HOLDINGS, LLC;
PATRICK ADEL GIRGIS; ADEL
27 GIRGIS; INNOVATIVE INVESTMENTS
PBK LLC; SARWAR PAYIND; 8901 PB,
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**ELECTRONICALLY
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8/17/2020 8:04 AM**

SAN LUIS OBISPO SUPERIOR COURT

BY: 

Case No.: 20CV-0436

Assigned for all purposes to the Hon.

COMPLAINT FOR:

1. Breach of Contract
2. Anticipatory Breach of Contract
3. Breach of Member's Duty of Good Faith and Fair Dealing
4. Breach of Manager's Fiduciary Duty / Duty of Loyalty
5. Breach of Manager's Duty of Care
6. Fraud (Concealment)
7. Accounting
8. Declaratory Relief
9. Removal of Helios Dayspring, 7510 LOVR LLC, and NHC Grover Beach LLC as Manager of Limited Liability Companies
10. Appointment of Receiver and Injunctive Relief

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LLC; VMG HOLDINGS, LLC;
VALNETTE GARCIA,
and DOES 1 – 100, inclusive.

Defendants,
and

DAYSRING FARMS CULTIVATION
LLC; 6860 DAYSRING LLC; 6860
CULTIVATION LLC; 530 DAYSRING
LLC; 530 CULTIVATION LLC; 8901
DAYSRING LLC; 8901 CULTIVATION
LLC; NHC GROVER BEACH LLC;
NATURAL HEALING CENTER LLC;
and 13350 RIVER ROAD LLC,

Nominal Defendants.

- 11. Breach of Contract – HS AG Holdings LLC
- 12. Breach of Contract – HS AG Holdings LLC
- 13. Financial Elder Abuse

1 Plaintiff William Szymczak (“Szymczak”), 998 & 1030 Partners, LLC
2 (“998&1030”), Dayspring Farms, LLC (“Dayspring Farms”) and OG Investors
3 LLC (“OG Investors”) acting individually and derivatively on behalf of
4 Dayspring Farms Cultivation LLC, 6860 Dayspring LLC, 6860 Cultivation
5 LLC, 530 Dayspring LLC, 530 Cultivation LLC, 8901 Dayspring LLC, 8901
6 Cultivation LLC, NHC Grover Beach LLC, Natural Healing Center LLC and
7 13350 River Road LLC (collectively “Plaintiffs”) allege the following:
8

9 **INTRODUCTION**

10 1. William Szymczak is an 81 year-old who was financially taken
11 advantage of by Helios Dayspring — an unscrupulous con-man in the cannabis
12 industry. Szymczak has had a long and distinguished career in affordable
13 housing and development. As a businessman with experience in real estate he
14 grew interested in the burgeoning regulated cannabis industry, and the related
15 real estate opportunities offered by this new business in San Luis Obispo
16 County (“the County”).

17 2. The County enacted rules and regulations regarding Conditional
18 Use Permits (“CUPs”) that limited the number of available permits for
19 cannabis operations, and in so doing made the existing permits potentially far
20 more valuable. To invest in this industry and in the County, Szymczak needed
21 to work with someone who had already obtained such permits; someone
22 trustworthy; someone with strong relationships in the community; someone
23 who had extensive experience in the cannabis industry from seed to dispensary
24 retail.

25 3. Szymczak believed he had found that person in Helios “Bobby”
26 Dayspring (“Dayspring”). Dayspring already had access to at least eleven of
27 the 144 available CUPs in the County. Those CUPs could be transferred to
28 other larger and more lucrative sites and operations.

1 4. Dayspring claimed that he was a capable professional in the
2 cannabis industry with experience and knowledge of the business at all levels.

3 5. Dayspring assured Szymczak that he was meticulous and ethical
4 in his business dealings.

5 6. Dayspring also noted that he was specially situated through his
6 local relationships to work effectively with the appropriate regulatory,
7 permitting, and licensing committees and the key officials.

8 7. Szymczak believed Dayspring and invested over \$17,000,000 into
9 acquiring the land and funding the operations. Szymczak and Dayspring both
10 formed and used companies specifically for these businesses that were
11 governed by integrated operating agreements. Almost all day-to-day cannabis
12 business, however, was managed by Dayspring.

13 8. Dayspring claimed that he had invested millions of dollars of his
14 own money into the companies in which he shared membership interests with
15 Szymczak, and Dayspring repeatedly insisted that he was doing everything he
16 possibly could to make the companies profitable and successful.

17 9. Szymczak believed Dayspring and relied on the seemingly robust
18 sales — averaging over \$2,000,000 per month at the Natural Healing Center
19 dispensary — in deciding to continue to fund and financially support the
20 businesses. In fact, as minority members defaulted on obligations, Szymczak
21 was forced to and did even cover additional obligations and expenses.

22 10. But recently the curtain started to lift as Szymczak became aware
23 that Dayspring's home was searched by authorities and that he was facing
24 substantial IRS issues, and a new Chief Financial Officer, Jim Clancy, began to
25 corral and provide the relevant financial data Dayspring had hidden. To
26 Szymczak's shock and horror, it is now clear that Dayspring has been looting
27 the companies all along.

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1 11. Millions of dollars in tax obligations are late and penalties will
2 likely apply. Moreover, Dayspring has not reserved sufficient funds to cover
3 the taxes and costs of the operations.

4 12. It is now clear that the shortfall is due to Dayspring's
5 misappropriation of many millions of dollars as he secretly funnelled funds
6 from the Natural Healing Center LLC (in which Szymczak does hold an
7 interest through Plaintiff OG Investors), to Dayspring's other businesses in
8 which Szymczak does not hold any interest.

9 13. For example, Dayspring advanced \$1,753,094.27 to NHC
10 Lemoore (an entity in which Szymczak has no direct or indirect interest) from
11 Natural Healing Center LLC.

12 14. Similarly, Dayspring advanced \$1,505,122.39 to Orcutt Holdings
13 (again an entity in which Szymczak has no direct or indirect interest) from
14 Natural Healing Center, LLC.

15 15. Dayspring has paid hundreds of thousands of dollars from Natural
16 Healing Center to settle legal disputes that he did not disclose to Szymczak and
17 also used that company's funds to engage lawyers for Dayspring's other
18 personal and troubling entanglements with the Internal Revenue Service and
19 the Federal Bureau of Investigation.

20 16. Dayspring's use of these funds was highly improper and also in
21 direct violation of applicable Operating Agreements.

22 17. Furthermore, Dayspring has taken well over one million dollars in
23 cash from the business — in 2020 alone — without making any pro rata
24 distributions to other members, including but not limited to taking a
25 distribution on January 8, 2020 for \$325,863.38 and another distribution on
26 January 17, 2020, for \$695,000.00.

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1 25. Plaintiff OG Investors is a California limited liability company,
2 doing business in the County of San Luis Obispo, State of California.

3 26. Plaintiff 998 & 1030 Partners LLC (“998&1030”) is a California
4 limited liability company, doing business in the County of San Luis Obispo,
5 State of California. Plaintiff Szymczak is its Manager.

6 27. Plaintiff Dayspring Farms LLC (“Dayspring Farms”) is a
7 California limited liability company, doing business in the County of San Luis
8 Obispo. Plaintiff Szymczak is and, for all relevant times alleged herein, was
9 its Manager.

10 28. Plaintiff OG Investors is a member of, and sues derivatively on
11 behalf of, Dayspring Farms Cultivation LLC, NHC Grover Beach LLC,
12 Natural Healing Center LLC, 6860 Dayspring LLC, 6860 Cultivation LLC,
13 530 Dayspring LLC, 530 Cultivation LLC, 8901 Dayspring LLC, 8901
14 Cultivation LLC, and 13350 River Road LLC each of which are California
15 limited liability companies, doing business in the County of San Luis Obispo,
16 State of California (collectively, the “Companies”).

17 29. Defendant 7510 LOVR LLC (“7510 LOVR”), is a California
18 limited liability company, doing business in the County of San Luis Obispo,
19 State of California. Defendant Dayspring is its Manager.

20 30. Defendant Helios Dayspring is an individual residing in and doing
21 business in the County of San Luis Obispo, State of California.

22 31. Defendant Helios Management Group LLC is a California limited
23 liability company doing business in the County of San Luis Obispo, State of
24 California. Helios Dayspring is its Manager.

25 32. Sarwar Payind (“Payind”) is a resident of California, doing
26 business in the County of San Luis Obispo, State of California.

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1 33. Defendant HS AG Holdings, LLC (“HS AG Holdings”), is a
2 California limited liability company, doing business in the County of San Luis
3 Obispo, State of California. Payind is its Manager.

4 34. Patrick Adel Girgis (“Patrick Girgis”) is a resident of California,
5 doing business in the County of San Luis Obispo, State of California.

6 35. AG Investment Holdings, LLC (“AG Investment Holdings”) is a
7 California limited liability company, doing business in the county of San Luis
8 Obispo, State of California. Patrick Girgis is its Manager.

9 36. Adel Girgis is a resident of California, doing business in the
10 County of San Luis Obispo, State of California and is the father of Patrick
11 Girgis. Adel Girgis is also a Manager of AG Investment Holdings.

12 37. Innovative Investments P.B.K., LLC (“Innovative Investments
13 P.B.K.”) is a California limited liability company, doing business in the county
14 of San Luis Obispo, State of California. Patrick Adel Girgis is its Manager.

15 38. 8901 PB, LLC, is a California limited liability company, doing
16 business in the county of San Luis Obispo, State of California. Patrick Adel
17 Girgis is its Manager. Collectively, Payind, HS AG Holdings, Patrick Girgis,
18 Adel Girgis, AG Investment Holdings, and Innovative Investments P.B.K. are
19 referred to as the “Girgis–Payind Defendants.”

20 39. Valnette Garcia is an individual residing in and doing business in
21 the County of San Luis Obispo, State of California, whom Szymczak
22 understands is the long time girlfriend of Dayspring.

23 40. VMG Holdings, LLC, is a California limited liability company,
24 doing business in the county of San Luis Obispo, State of California. Valnette
25 Garcia is its Manager.

26 41. Plaintiffs are informed and believe and based thereon allege that
27 pursuant to Code of Civil Procedure §474, the fictitiously named cross-
28 defendants sued herein as does 1 through 100, inclusive, and each of them,

1 were in some manner responsible or legally liable for the actions, events,
2 transactions and occurrences alleged herein. The true names and capacities of
3 such fictitiously named cross-defendants whether individual, corporate,
4 associate or otherwise, are presently unknown to plaintiff, and plaintiff will
5 seek leave of court to amend the complaint to assert the true names and
6 capacities of such fictitiously named defendants when the same have been
7 ascertained. For convenience, each reference to a named defendant herein
8 shall also refer to the DOE defendants, and each of them.

9 42. Plaintiffs are informed and believe, and on that basis allege, that
10 at all times mentioned herein, the defendants, including the DOE defendants,
11 and each of them, were acting in concert or participation with one another, and
12 were joint participants and/or collaborators in the acts complained of, and were
13 the agents, servants, employees, representatives, partners, subsidiaries,
14 affiliates, joint-ventures or alter-egos of each other, and in doing the things
15 herein alleged, were acting within the full course and scope of such
16 relationship, and with the full knowledge, authorization, consent and
17 ratification, either express or implied, of each of the other defendants.

18 43. Plaintiff is informed and believes, and on that basis alleges, that
19 each of the defendants named herein as a DOE is in some way responsible for
20 the acts and events alleged herein.

21
22 **FACTS COMMON TO ALL CAUSES OF ACTION**

23 44. Since California legalized the sale and cultivation of cannabis and
24 began regulating the industry, many cannabis-related businesses have started to
25 take advantage of the opportunities offered by the emerging industry. During
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1 the present COVID-19 pandemic, cannabis companies are designated as
2 “essential.”¹

3 45. Following approval of a San Luis Obispo County (“County”)
4 referendum on cannabis cultivation and sale, owners of existing cannabis sites
5 were permitted to apply for a conditional use permit on or before December
6 31, 2018. Applicants could apply on their existing site or could apply on a new
7 or replacement site. Defendant Dayspring had ownership in at least eleven
8 such sites located within the County. Dayspring sought to transfer his
9 entitlements from his existing sites to larger and more profitable sites for
10 growing and selling cannabis. He needed investors to make that happen.

11 46. Lured in by Dayspring’s apparent experience, knowledge, and
12 connections in the industry, Szymczak, individually and through OG Investors,
13 invested many millions of dollars into various limited liability companies with
14 Dayspring, who primarily conducted business through one of the entity
15 defendants, 7510 LOVR. The Girgis–Payind Defendants have also made
16 smaller investments in these entities through their own companies. Companies
17 were formed to purchase real property and separate companies were formed to
18 operate, cultivate, and sell cannabis within the County.

19 47. At all relevant times herein, plaintiff OG Investors, defendant
20 7510 LOVR, and Innovative Investments PBK LLC were and are the members
21 of the following entities: Dayspring Farms LLC, Dayspring Farms Cultivation
22 LLC, 6860 Dayspring LLC, 6860 Cultivation LLC, 530 Dayspring LLC and
23 530 Cultivation LLC; at all relevant times, Dayspring has been the manager
24 of Dayspring Farms Cultivation LLC, 6860 Dayspring LLC, 6860 Cultivation
25 LLC, 530 Dayspring LLC and 530 Cultivation LLC.

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28 ¹ <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>

1 48. At all relevant times herein, plaintiff OG Investors, defendant
2 7510 LOVR, HS AG Holdings LLC, and 8901 PB LLC were and are the
3 members of the following entities: 8901 Cultivation LLC and 8901 Dayspring
4 LLC; at all relevant times, Dayspring was and is the manager of both of these
5 entities.

6 49. At all relevant times herein, plaintiff OG Investors, defendant
7 7510 LOVR, and HS AG Holdings LLC were and are the members of the
8 following entity: 13350 River Road LLC at all relevant times, 7510 LOVR was
9 and is the manager of this entity.

10 50. At all times relevant hereto, 7510 LOVR , William Szymczak,
11 AG Investment Holdings LLC, and VMG Holdings LLC were and are the
12 members of 998&1030. At all relevant times, Szymczak was and is the
13 manager of 998&1030. 998 & 1030 LLC owns commercial real property with
14 two separate buildings, one of which it leases to a retail cannabis dispensary
15 which is being leased and operated by NHC Grover Beach LLC and/or Natural
16 Healing Center LLC.

17 51. At all times relevant hereto, 7510 LOVR, OG Investors, AG
18 Investment Holding LLC, and VMG Holdings LLC were and are the members
19 of NHC Grover Beach LLC. 7510 LOVR is NHC Grover Beach LLC's
20 Manager.

21 52. At all times relevant hereto, the sole member and manager of
22 Natural Healing Center LLC is NHC Grover Beach LLC. Natural Healing
23 Center LLC was formed to operate a cannabis dispensary in the City of Grover
24 Beach, State of California. As the manager of NHC Grover Beach LLC,
25 which is itself the manager of Natural Healing Center LLC, 7510 LOVR
26 (whose manager is Dayspring) is the *de facto* manager of Natural Healing
27 Center LLC. Plaintiffs are informed and believe, and thereon allege that the
28 cannabis dispensary operated by NHC Grover Beach LLC and/or Natural

1 Healing Center LLC (the “NHC Dispensary Entities”) generates substantial
2 income.

3 53. Each of the Companies is governed by, or is believed to be
4 governed by, a written operating agreement that was signed by each member of
5 each of the Companies (the “Operating Agreements”).

6 54. Plaintiffs are informed and believe that Dayspring has
7 misappropriated millions of dollars from the cannabis dispensary owned and
8 operated by the NHC Dispensary Entities as well as from the sale of the
9 harvests generated from the avocado farm operated by Dayspring Farms
10 Cultivation LLC. Plaintiffs are further informed and believe that Dayspring
11 has purchased and sold products to the Companies by and from his wholly
12 owned entities on self-serving terms that are unfavorable to the Companies, but
13 benefit Dayspring and his separate entities, and detrimental to the Companies
14 and their members, including OG Investors.

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16 **FACTS RELATED TO DERIVATIVE ACTION**

17 55. Plaintiff OG Investors can only act by majority consent and lacks
18 a majority consent in Companies to obtain a vote to have the Companies sue
19 the Defendants in this action; Dayspring controls the interests necessary to
20 reach majority consent.

21 56. In light of the foregoing, any demand on Defendants to bring this
22 action on the derivative claim against themselves and their manager,
23 Dayspring, would be futile. Plaintiff OG Investors and Defendants are
24 deadlocked and plaintiff OG Investors cannot take any action, including any
25 decision about bringing a lawsuit, without the consent of defendant 7510
26 LOVR which is owned and controlled by Dayspring. This lawsuit directly
27 implicates 7510 LOVR and Dayspring’s misconduct. Therefore, Dayspring
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1 cannot exercise independent judgment and any demand on the Companies to
2 bring this action would be futile.

3
4 **FIRST CAUSE OF ACTION**

5 **(Breach of Contract)**

6 **(By OG Investors, LLC, derivatively through the Companies Against
7 7510 LOVR LLC, Helios Dayspring and DOES 1-10)**

8 57. Plaintiff realleges and incorporates by this reference each and all
9 of the allegations set forth in Paragraph 1 through 56 as though fully set forth
10 herein.

11 58. Article III of the Operating Agreements governs capitalization;
12 Article IV of the Operating Agreements governs allocations and distributions
13 from the Companies; and Article V governs management of the companies.

14 59. Pursuant to Article IV, all Net Cash Flow from the Companies is
15 to be paid to the members of each of the Companies in the order of priority and
16 percentages set forth in the Operating Agreements.

17 60. Article V of the Operating Agreements governs management of
18 the Companies, including the manager's compensation for each of the
19 Companies. Section 5.5 of the Operating Agreements provides, in part, that
20 the manager of each entity shall not make any expenditure or incur any liability
21 on behalf of the Companies in excess of \$10,000 which is not identified in any
22 budget consented to by the members of the Companies or separately provided
23 to the members of the Companies on an annual basis.

24 61. Dayspring and/or 7510 LOVR, as the manager of each of the
25 Companies, has breached the Operating Agreements for the Companies by
26 misappropriating millions of dollars from the cannabis dispensary owned and
27 operated by the NHC Dispensary Entities as well as from the sale of the
28 harvests generated from the avocado farm operated by Dayspring Farms
Cultivation LLC. Plaintiffs are further informed and believe that Dayspring or

1 7510 LOVR has purchased and sold products to the Companies by and from
2 his separately owned and affiliated entities on less than favorable terms to the
3 Companies, but benefiting Dayspring or 7510 LOVR and their affiliated
4 entities, at a detriment to the Companies and their members, including OG
5 Investors . Dayspring or 7510 LOVR was not entitled to these funds as a
6 manager or member of the Companies pursuant to the terms of the Operating
7 Agreements.

8 62. Dayspring and/or 7510 LOVR's breaches also include, but are not
9 limited to 5.5(iv) of the Operating Agreement for NHC Grover Beach LLC,
10 when Dayspring caused NHC Grover Beach to pay a settlement in the amount
11 of \$200,000 on March 12, 2020, without obtaining the written approval of a
12 Majority of Members, and without even informing OG Investors of the dispute
13 or the proposed settlement.

14 63. Plaintiff OG Investors has performed all conditions, covenants
15 and promises required to be performed on its part in accordance with the terms
16 of the Operating Agreements, except where waived or otherwise excused.

17 64. As a direct and foreseeable result of the breaches of the Operating
18 Agreements by Dayspring and/or 7510 LOVR, Plaintiffs have been damaged
19 in an amount according to proof at the time of trial and within the jurisdiction
20 of this Court.

21 **SECOND CAUSE OF ACTION**
22 **(Anticipatory Breach of Contract)**
23 **(Against 7510 LOVR LLC and Does 11-20)**

24 65. Plaintiffs reallege and incorporate by this reference each and all of
25 the allegations set forth in Paragraph 1 through 64 as though fully set forth
26 herein.

26 66. Plaintiff OG Investors, defendant 7510 LOVR, and Innovative
27 Investments PBK LLC entered into written operating agreements for the
28 following California limited liability companies: (1) 6860 Dayspring LLC,

1 (2) 6860 Cultivation LLC, (3) 530 Dayspring LLC, (4) 530 Cultivation LLC,
2 (5) Dayspring Farms, LLC, and (6) Dayspring Farms Cultivation LLC.

3 67. Plaintiff OG Investors, defendant 7510 LOVR, HS AG Holdings
4 LLC, and 8901 PB LLC entered into written operating agreements for the
5 following companies: (1) 8901 Dayspring LLC, and (2) 8901 Cultivation LLC.

6 68. 6860 Dayspring LLC, 6860 Cultivation LLC, 530 Dayspring
7 LLC, 530 Cultivation LLC, Dayspring Farms Cultivation LLC, 8901
8 Dayspring LLC, and 8901 Cultivation LLC may be collectively known as the
9 “Assignment Companies.” The written operating agreements for the
10 Assignment Companies may collectively be known as the “Operating
11 Agreements for the Assignment Companies.”

12 69. The Operating Agreements provide at Article X that each
13 company had a specified deadline (the “Permitting Deadline”) to obtain the
14 necessary land use permits for growing and cultivating cannabis on the real
15 property owned by certain of the Assignment Companies (the “Permitting
16 Requirements”).

17 70. On or about July 1, 2019, the Operating Agreements for the
18 Assignment Companies were amended by a written amendment
19 (“Amendment”) which provides that the Permitting Deadline was extended to
20 June 30, 2020. Further, the Amendment provides that if OG Investors receives
21 cumulative distributions of net income from the Assignment Companies equal
22 to \$12,468,862 or more by the Permitting Deadline, the Permitting
23 Requirement would be deemed to be satisfied.

24 71. As of the extended Permitting Deadline, OG Investors had not
25 received cumulative distributions of net income from the Assignment
26 Companies equal to at least \$12,468,862 and none of the Assignment
27 Companies achieved the Permitting Requirement by the Permitting Deadline.

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1 72. Consequently, the Operating Agreements for the Assignment
2 Companies, provide very specific actions that defendant 7510 LOVR is
3 required to take if the Permitting Requirement was not met by the Permitting
4 Deadline. Pursuant to Article X of the Operating Agreements for the
5 Assignment Companies, 7510 LOVR had the option of either paying cash to
6 OG Investors on or before July 30, 2020 on the terms and conditions set forth
7 in Section 10.1(ii) of the Operating Agreements for the Assignment Companies
8 (the “Cash Payments”) or within 30 days after July 30, 2020, 7510 LOVR must
9 assign all of its right, title and interest in and to each of the Assignment
10 Companies to OG Investors on the terms and conditions set forth in Section
11 10.1(ii) of the Operating Agreements for the Assignment Companies (the
12 “Assignment Option”).

13 73. Defendant 7510 LOVR failed to make the cash payment by July
14 30, 2020, and as a result, is required to execute assignments of its interests in
15 the Assignment Companies to plaintiff OG Investors on or before August 29,
16 2020. On July 24, 2020, counsel for plaintiff OG Investors sent a letter to
17 counsel for Defendants demanding that Defendants either make the required
18 cash payment by July 30, 2020 (which they failed to do), or execute
19 assignments of 7510 LOVR’s interests in the Assignment Companies to
20 plaintiff OG Investors by August 29, 2020. The July 24, 2020 letter included
21 assignments to be executed by 7510 LOVR. In reply correspondence, legal
22 counsel for defendants 7510 LOVR and Dayspring stated that they would
23 refuse to execute the required assignments by August 29, 2020, or at any other
24 time.

25 74. The Operating Agreements for the Assignment Companies
26 provide, at Article 11.7 that 7510 LOVR “shall promptly execute and deliver
27 any and all additional documents, instruments, notices, and other assurances,
28 and shall do any and all other acts and things reasonably necessary in

1 connection with the performance of their respective obligations under the
2 subject operating agreements and to carry out the intent of the parties.” The
3 Operating Agreements for the Assignment Companies also include a “time is
4 of the essence” provision at paragraph 11.13.

5 75. Plaintiff OG Investors has performed all conditions, covenants
6 and promises required to be performed on its part in accordance with the terms
7 of the Operating Agreements for the Assignment Companies.

8 76. Defendant 7510 LOVR has anticipatorily breached the Operating
9 Agreements for the Assignment Companies by stating in correspondence from
10 its counsel that it would not assign its interests in the Assignment Companies
11 to OG Investors by August 29, 2020 or at any other time.

12 77. As a direct and foreseeable result of the anticipatory breaches of
13 the Operating Agreements for the Assignment Companies by 7510 LOVR,
14 plaintiff OG Investors has been damaged in an amount according to proof
15 within the jurisdiction of this Court.

16 78. Due to 7510 LOVR’s anticipatory breaches of the Operating
17 Agreements for the Operating Companies as alleged herein, plaintiff OG
18 Investors has suffered, and is continuing to suffer, monetary damages in an
19 amount according to proof at the time of trial, and within the jurisdiction of
20 this Court.

21 79. Further, plaintiff OG Investors is entitled to specific performance
22 of 7510 LOVR’s obligations under the Operating Agreement for the
23 Assignment Companies, including the execution of assignment documents,
24 assigning its right, title and interest in the Assignment Companies to plaintiff
25 OG Investors.

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1 **THIRD CAUSE OF ACTION**
2 **(For Breach of Manager’s Fiduciary Duty / Duty of Loyalty**
3 **against Dayspring, 7510 LOVR LLC, NHC Grover Beach LLC**
4 **and DOES 21-30)**

5 80. Plaintiffs adopt, reallege, and by this reference incorporate,
6 paragraphs 1 through 79, inclusive, hereinabove, as though set forth in full.

7 81. Dayspring is the manager of: Dayspring Farms Cultivation LLC,
8 6860 Dayspring LLC, 6860 Cultivation LLC, 530 Dayspring LLC and 530
9 Cultivation LLC, 8901 Cultivation LLC, and 8910 Dayspring LLC. 7510
10 LOVR, a company owned and controlled by Dayspring is the manager of
11 13350 River Road LLC and Dayspring Farms Cultivation LLC. NHC Grover
12 Beach LLC, a company managed by Dayspring, is manager of Natural Healing
13 Centers LLC. Dayspring, 7510 LOVR and NHC Grover Beach LLC may
14 collectively be referred to herein as the “Managers.”

15 82. The Managers owe fiduciary duties of loyalty to the Companies
16 they manage and their members pursuant to California statutory and common
17 law, including, without limitation, Corporations Code section 17704.09(b).

18 83. The Managers have breached those fiduciary duties by, among
19 other things, engaging in the acts set forth hereinabove for the purpose of
20 enriching themselves at the expense of Plaintiffs, without a care or concern for
21 whether Plaintiffs were harmed in the process.

22 84. As a result of the aforementioned conduct, the Companies have
23 been systematically damaged and looted over the years and continuing to the
24 present, by the Managers who have misappropriated millions of dollars which
25 should have been for the benefit of the Companies and their members,
26 including Plaintiff OG Investors, and engaged in business dealings between the
27 Companies and the Managers’ own separately owned business entities,
28 compelled the Companies to engage in business dealings which were not at

1 market rate, to their detriment and to the Managers' own benefit and the
2 benefit of their separately owned companies, and to the detriment of plaintiff
3 OG Investors.

4 85. Plaintiffs are informed and believe and based thereon allege that
5 the above-alleged actions of the Managers are the products of self-dealing and
6 self-interest and are not, and never were, the product of a valid exercise of
7 business judgment.

8 86. Further, Plaintiffs are informed and believe and based thereon
9 allege that the above- alleged actions of the Managers were the products of
10 intentional or, at a minimum, reckless or grossly negligent mismanagement of
11 the Companies.

12 87. As a direct, natural and proximate result of the breaches of
13 fiduciary duty by the Managers, Plaintiffs seek damages in an amount not yet
14 presently ascertainable, according to proof at trial, in an amount equal to the
15 harm caused by the Managers to Plaintiffs.

16 88. Plaintiffs are informed and believe and based thereon allege that
17 the Managers undertook the actions set forth herein above willfully,
18 despicably and wantonly, with fraud, malice and oppression and with
19 conscious disregard of the rights of Plaintiffs, and in doing the things herein
20 alleged was guilty of fraud, oppression and malice. Such conduct by the
21 Managers, constitutes a tortious breach of fiduciary duties and justifies the
22 award of exemplary and punitive damages in an amount necessary and
23 appropriate to punish the Managers and to deter further misconduct.

24 **FOURTH CAUSE OF ACTION**
25 **(For Breach of Manager's Duty of Care against Dayspring, 7510 LOVR**
26 **LLC and NHC Grover Beach LLC and DOES 31-40)**

26 89. Plaintiffs adopt, reallege, and by this reference incorporate,
27 paragraphs 1 through 88, inclusive, hereinabove, as though set forth in full.
28

1 90. The Managers owe duties of care to the Companies they manage
2 and their members, including OG Investors, pursuant to California statutory
3 and common law, including, without limitation, Corporations Code section
4 17704.09(c).

5 91. The Managers have breached those duties of care by engaging in
6 the conduct described herein.

7 92. As a result of the aforementioned conduct, the Companies have
8 been systematically damaged and looted over the years and continuing to the
9 present, by the Managers in that, among other things, they have
10 misappropriated millions of dollars which should have been for the benefit of
11 the Companies and their members, including Plaintiff OG Investors, and
12 engaged in business dealings between the Companies and the Managers' own
13 separately owned business entities were not at market rate or commercially
14 reasonable to their detriment and to the Managers' own benefit and the benefit
15 of their separately owned companies, and to the detriment of plaintiff OG
16 Investors.

17 93. Plaintiffs are informed and believe and based thereon allege that
18 the above allegations of the Managers are the products of self-dealing and self-
19 interest and are not, and never were, the product of a valid exercise of business
20 judgment.

21 94. Further, Plaintiffs are informed and believe and based thereon
22 allege that the above-alleged actions of the Managers were the products of
23 intentional or, at a minimum, reckless, grossly negligent or negligent
24 mismanagement of the Companies.

25 95. As a direct, natural and proximate result of the breaches of the
26 manager's standard of care by the Managers, Plaintiffs seek damages in an
27 amount not yet presently ascertainable, according to proof at trial, in an
28 amount equal to all of the harm caused by the Managers.

1 OG Investors if 7510 LOVR failed to comply with the Permitting
2 Requirements by the Permitting Deadline.

3 106. Dayspring also took steps designed to prevent OG Investors and
4 its member and manager Szymczak from discovering his actions by, among
5 other things, failing to prepare and provide books and records for extended
6 time periods.

7 107. By reason of Dayspring and 7510 LOVR's fiduciary duty to OG
8 Investors, as the manager of the Companies, OG Investors and its member and
9 manager Szymczak relied upon Dayspring to deal fairly and honestly with it in
10 his capacity as its fiduciary, and OG Investors's reliance was reasonable and
11 justified.

12 108. Had the concealed facts been disclosed by Dayspring to
13 Szymczak, OG Investors would never have executed the Operating
14 Agreements and never would have invested money with Dayspring or his
15 entities.

16 109. By reason of the foregoing, OG Investors has sustained damages
17 in an amount to be determined at trial and Dayspring's conduct was a
18 substantial factor in causing OG Investors's harm.

19 110. The activities of Dayspring described above to mislead and
20 deceive OG Investors, including regarding its right to share in the profits
21 generated by their business enterprise, were willful and malicious, oppressive
22 and taken in conscious disregard of OG Investors's rights. OG Investors is
23 therefore entitled to punitive and exemplary damages against Dayspring in an
24 amount sufficient to punish and deter him from similar future conduct.

25 ///

26 ///

27 ///

28

SEVENTH CAUSE OF ACTION
(For an Accounting)
(Against all Defendants and Does 1-100)

1
2
3 111. Plaintiffs reallege and incorporate by this reference each and all of
4 the allegations set forth in Paragraph 1 through 110, as though fully set forth
5 herein.

6 112. Plaintiff OG Investors is a member of the Companies. As a result
7 of Dayspring's financial misappropriations and efforts to hide the evidence of
8 its misappropriations from OG Investors, Plaintiffs are entitled to an
9 accounting from Defendants, which are required to cooperate with such
10 accounting of the books and records of Dayspring, the Companies, Helios
11 Management LLC and any other entity which is owned and controlled by
12 Dayspring through which Dayspring perpetuated his misappropriations from
13 the Companies.

14 113. Despite numerous demands therefore, Dayspring, the Companies,
15 and Helios Management LLC have failed and refused, and continue to fail and
16 refuse, to provide OG Investors with proper, accurate, and complete
17 accountings reflecting all profits derived from the Companies' assets and they
18 have further failed and refused, and continue to fail and refuse, to allow OG
19 Investor to inspect the books and records of Dayspring, Helios Management
20 LLC and the Companies, and any other entity which is owned and controlled
21 by Dayspring through which Dayspring perpetuated his misappropriations
22 from the Companies.

23 114. The amount of all the assets and liabilities of the Dayspring,
24 Helios Management LLC, the Companies, and any other entity which is owned
25 and controlled by Dayspring through which Dayspring perpetuated his
26 misappropriations from the Companies is unknown to OG investors and cannot
27 be ascertained without an accounting of the profits, losses and expenditures
28 that occurred during the time Dayspring conducted his misappropriations.

1 **NINTH CAUSE OF ACTION**
2 **(For Removal of Manager)**
3 **(Against Dayspring, 7510 LOVR LLC and**
4 **NHC Grover Beach LLC and Does 1-100)**

4 120. Plaintiffs adopt, reallege, and by this reference incorporate,
5 paragraphs 1 through 119, inclusive as though set forth in full.

6 121. As the manager of the Companies according to the Operating
7 Agreements, Dayspring, directly and indirectly through the entities he controls,
8 7510 LOVR and NHC Grover Beach LLC, has taken complete control of the
9 management of the Companies at all relevant times and continuing to the
10 present and acts as their manager or *de facto* manager.

11 122. Dayspring is the manager of: Dayspring Farms Cultivation LLC,
12 6860 Dayspring LLC, 6860 Cultivation LLC, 530 Dayspring LLC and 530
13 Cultivation LLC, 8901 Cultivation LLC, and 8910 Dayspring LLC. 7510
14 LOVR, a company owned and controlled by Dayspring is the manager of
15 13350 River Road LLC and Dayspring Farms Cultivation LLC. NHC Grover
16 Beach LLC, a company managed by Dayspring, is manager of Natural Healing
17 Centers LLC.

18 123. As set forth herein, Plaintiffs are informed and believe and based
19 thereon allege that the Court must remove the Managers as the manager of the
20 Companies that each one manages, as set forth hereinabove, pursuant to
21 Section 5.1 of the Operating Agreements on the basis that the Managers have
22 materially damaged the Companies and their members, including Plaintiff OG
23 Investors through their fraud, breach of fiduciary duty or intentional felonious
24 activity involving moral turpitude, as more fully set forth herein.

25 124. Plaintiffs are informed and believe and based thereon allege that
26 the Managers will continue to engage in this same improper conduct if
27 permitted to continue to serve as manager of the Companies and that unless
28 they are removed as managers by this Court, the assets of Companies will

1 continue to be eroded by the Managers, such that removal is necessary to
2 preserve such assets.

3 125. Plaintiffs are informed and believe and based thereon allege that
4 they do not have alternative means to effectively and timely remove the
5 Managers as managers because, among other things, if the Court declines to
6 appoint a receiver to manage and take control of the Companies, the Managers
7 cannot be removed as manager by any other means, to the extreme detriment of
8 the Plaintiffs.

9
10 **TENTH CAUSE OF ACTION**

11 **(Appointment of a Receiver and Injunctive Relief to
12 Aid in the Appointment of a Receiver)**

13 **(against Dayspring Farms Cultivation LLC, Natural Healing Center LLC,
14 NHC Grover Beach LLC, Dayspring, 7510 LOVR LLC and DOES 1-100).**

15 126. Plaintiffs adopt, reallege, and by this reference incorporate,
16 paragraphs 1 through 125, inclusive as though set forth in full.

17 127. Plaintiffs seek the appointment of a receiver over NHC Grover
18 Beach LLC, Dayspring Farms Cultivation LLC and Natural Healing Center
19 LLC (“Receivership Companies”). Plaintiffs are informed and believe, and
20 thereon allege that unless a receiver is appointed by this Court to take
21 possession of, to care for, to manage and to operate the assets of the
22 Receivership Companies that Dayspring, as the manager of the Companies will
23 continue to breach the operating agreements for the Receivership Companies,
24 misappropriate funds from the Receivership Companies, fail to account for the
25 income and expenses of the Receivership Companies and that OG Investors’
26 interests under the terms of the operating agreements for the Receivership
27 Companies will be lost, impaired and/or materially prejudiced and injured.
28 Plaintiffs are also informed and believe, and thereon allege that the failure to
appoint a receiver over the Receivership Companies will likely lead to the loss,

1 dissipation or destruction of the files, records and assets of the Receivership
2 Companies during the pendency of this litigation resulting in further damage to
3 Plaintiffs' rights, interests and entitlements.

4 128. Plaintiffs request the issuance of a temporary restraining order,
5 preliminary and permanent injunction enjoining Defendants, and each of them,
6 along with their agents, servants and employees, and all persons acting under,
7 in concert with, or for them from: destroying, deleting, transferring or
8 disposing of any of the books, records, accounts, or assets of the Receivership
9 Companies, and requiring that Defendants produce for inspection, forensic
10 examination and copying all the records and books of the Receivership
11 Companies, and all documents, evidencing the current location of all assets
12 belonging to the Receivership Companies, as well as the current location of all
13 assets of the Receivership Companies disposed of, converted or used by
14 Defendants, and cooperate in full with the receiver appointed by the Court.

15
16 **ELEVENTH CAUSE OF ACTION**

17 **(Breach of Contract – HS AG Holdings LLC)**
18 **(Against HS AG Holdings LLC and Does 1-100)**

19 129. Plaintiffs adopt, reallege, and by this reference incorporate,
20 paragraphs 1 through 128, inclusive as though set forth in full.

21 130. 7510 LOVR, OG Investors and HS AG Holdings LLC (“HS AG”)
22 are the members (“13350 Members”) of 13350 River Road LLC, a California
23 limited liability company pursuant to an Amended and Restated Operating
24 Agreement, entered into as of October 16, 2019 (“13350 Operating
25 Agreement”).

26 131. The 13350 Operating Agreement requires the 13350 Members to
27 make certain capital contributions to 13350 River Road LLC and to River
28 Road Cultivation LLC.

1 132. HS AG has not paid its share of the additional capital
2 contributions required to be made by the 13350 Members, and as of June 8,
3 2020, the shortfall in HS AG's required capital contributions totals \$17,138.
4 The capital shortfall was advanced by 7510 LOVR and OG Investors on pro-
5 rata basis according to their respective percentage interests and constitutes a
6 breach by HS AG of the 13350 Operating Agreement.

7 133. The 13350 River Road LLC Operating Agreement also requires
8 HS AG and OG Investors to make certain interest payments on a note. HS AG
9 has breached the 13350 Operating Agreement by failing to pay its share of the
10 interest payments on the note, and as of June 8, 2020, the shortfall in HG AG's
11 required interest payments on the note totals \$17,062 and as of September 1,
12 2020 will total \$25,593.

13 134. The 13350 Operating Agreement further requires HS AG and OG
14 Investors to pay the outstanding principal balance of the note on or before the
15 maturity date of September 1, 2020. AS AG has advised OG Investors that it
16 is unable or unwilling to pay the outstanding principal balance of the note and
17 has thus anticipatorily breached the Operating Agreement in the sum of
18 \$350,000.

19 135. Plaintiff OG Investors has performed all conditions, covenants
20 and promises required to be performed on its part in accordance with the terms
21 of the 13350 Operating Agreement.

22 136. Defendant HS AG has breached the 13350 Operating Agreement
23 by failing to pay the required sums under the 13350 Operating Agreement.

24 137. As a direct and foreseeable result of the breaches of the 13350
25 Operating Agreement by HS AG, plaintiff OG Investors has been damaged in
26 an amount according to proof at the time of trial and within the jurisdiction of
27 this Court.

28

1 144. Plaintiff OG Investors has performed all conditions, covenants
2 and promises required to be performed on its part in accordance with the terms
3 of the 8901 Operating Agreement.

4 145. Defendant HS AG has breached the 8901 Operating Agreement
5 by failing to pay the required sums due under the 8901 Operating Agreement.

6 146. As a direct and foreseeable result of the breaches of the 8901
7 Operating Agreement by HS AG, plaintiff OG Investors has been damaged in
8 an amount according to proof at the time of trial and within the jurisdiction of
9 this Court.

10 147. Further, plaintiff OG Investors is entitled to specific performance
11 of the 8901 Operating Agreement, including the execution of an Amendment
12 transferring a portion of HS AG's rights, title and interests in 8901 Dayspring
13 to OG Investors ("8901 Amendment").

14 148. Specific performance, in this instance, requires that the Manager
15 of 8901 PB LLC (Patrick Girgis) also sign the 8901 Amendment.

16 **THIRTEENTH CAUSE OF ACTION**

17 **(Financial Elder Abuse)**

18 **(By Szymczak Against Dayspring, Defendants, and Does 1-100)**

19 149. Plaintiff adopts, realleges, and by this reference incorporates,
20 paragraphs 1 through 148, inclusive as though set forth in full.

21 150. This cause of action is brought pursuant to California Welfare &
22 Institutions Act §§ 15600 *et seq.* (the Elder Abuse and Dependent Adult
23 Protection Act).

24 151. At the time of Dayspring's, Defendants, and Does' wrongful
25 misappropriation of funds, such acts were taken with the intent of defrauding
26 Szymczak. Funds were taken from Szymczak with the intention of converting
27 them for Dayspring's and Does' own purposes. These acts were in breach of
28

1 the fiduciary obligations owed to Szymczak, through fraudulent concealment,
2 and breaches contractual obligations. At all relevant times herein Szymczak is
3 and was an “elder” as defined by Welfare & Institutions Code § 15610.27 and
4 is, therefore, entitled to the statutory protections from financial abuse provided
5 by Welfare & Institutions Code § 15610.30.

6 152. As a result of Dayspring’s, Defendants’, and Does’ conduct,
7 Szymczak has suffered damages, including general and economic damages, in
8 an amount according to proof at trial. Plaintiff, if successful in this action, is
9 therefore entitled to recover such fees and costs from Defendant under the
10 provisions of Welfare and Institutions Code § 15657.5(a).

11 153. In committing the actions and conduct described above,
12 Dayspring and Does acted with recklessness, oppression, fraud, and malice,
13 and Szymczak is therefore entitled to an award of exemplary or punitive
14 damages pursuant to Welfare and Institutions Code § 15657.5 and Civil Code
15 § 3294 and treble damages pursuant to Civil Code § 3345.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray for relief as follows:

18 **ON THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH,**
19 **ELEVENTH, TWELFTH, AND THIRTEENTH CAUSES OF ACTION**

- 20 1. For damages in an amount to be proven at trial;
21 2. For interest at the legal rate;

22 **ON THE FIRST, ELEVENTH, AND TWELFTH CAUSES OF**
23 **ACTION**

24 3. For specific performance of the subject operating agreements,
25 including the assignment of 7510 LOVR LLC’s right, title and interest in the
26 Companies to plaintiff OG Investors LLC and for the assignment of HS AG
27 Holdings LLC’s interest in 13350 River Road LLC as set forth in the operating
28

1 agreement for 13350 River Road LLC, and the assignment of HS AG
2 Holding's LLC's interest in 8901 Dayspring LLC as set for in the 8901
3 Amendment.

4 **ON THE THIRD, FOURTH, FIFTH AND SIXTH AND**
5 **THIRTEENTH CAUSES OF ACTION**

6 4. For punitive damages;

7 **ON THE SEVENTH CAUSE OF ACTION**

8 5. For an accounting;

9 **ON THE EIGHTH CAUSE OF ACTION**

10 6. For a declaration of the rights, duties and obligations of Plaintiffs
11 and Defendants.

12 **ON THE NINTH CAUSE OF ACTION**

13 7. For removal of Helios Dayspring as manager of the Companies

14 **ON THE TENTH CAUSE OF ACTION**

15 8. For appointment of a receiver and for injunctive relieve to aid in
16 the appointment of a receiver.

17 **ON THE THIRTEENTH CAUSE OF ACTION**

18 9. For attorneys' fees and treble damages.

19 **ON ALL CAUSES OF ACTION**

20 10. For such other and further relief as the Court may deem just and
21 proper.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs hereby demand a trial by jury on all issues so triable.

24
25 Dated: August 17, 2020

26 By: 

27 Miles Feldman
28 Laith Mosely
Susan L. Harrison
Attorneys for Plaintiffs