DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED November 20, 2024 7:38 PM FILING ID: 7B1A33F828AA4 CASE NUMBER: 2024CV30763
Plaintiffs: ROSS BERMAN, an individual; JASON H. KARP, an individual; IMJ I LLC, a Delaware limited liability company; RACHEL FARBER REVOCABLE TRUST, STEPHEN FARBER REVOCABLE TRUST, and RED CLOUD CAPITAL, LLC, a Connecticut limited liability company; **Plaintiff-Intervenors:** TREVOR GALLUP, an individual; and LYNN HONDERD, an individual, **v.** **Defendants:** BELLROCK BRANDS, INC., a British Columbia corporation, BRB DB HOLDINGS, INC., a Delaware corporation, BRB MARY'S HOLDINGS CORP., a Delaware corporation, DIXIE BRANDS (USA) INC., a Delaware corporation, MARY'S OPERATIONS, LLC, a Colorado limited liability company, MARY'S PETS, LLC, a Colorado limited liability company, MARY'S NUTRITIONALS, LLC, a Colorado limited liability company, DB FINANCE, NEVADA, LLC, a Nevada limited liability company, and DB OKLAHOMA, LLC, a Colorado limited liability company.	□ COURT USE ONLY □ Case Number: 2024CV30763 Division: 466
Attorneys for Plaintiffs Ross Berman, Jason H. Karp, IMJ I LLC, Rachel Farber Revocable Trust, Stephen Farber Revocable Trust, and Red Cloud Capital, LLC **Akerman LLP** Adam L. Massaro (Reg. No. 42812) 1900 16th Street, Suite 950 Denver, CO 80202 Telephone: (303) 260-7712 Facsimile: (303) 260-7714 adam.massaro@akerman.com	

ANSWER

Plaintiffs Ross Berman, Jason H. Karp, IMJ I LLC, Rachel Farber Revocable Trust, Stephen Farber Revocable Trust, and Red Cloud Capital, LLC (each, a Plaintiff and, collectively, "Plaintiffs"), by and through their attorneys, hereby submit this Joint Answer to Intervenors' Joint Complaint in Intervention:[1]

ANSWER

PARTIES, JURISDICTION, AND VENUE

The Plaintiffs in Intervention

1. **Plaintiffs in Intervention founded and were the first employees of Mary's Brands, the company that eventually became the Defendant Companies in this litigation**

Deny.

2. Plaintiff in Intervention Trevor Gallup, an individual, is a resident of Colorado.

Admit upon information and belief.

3. Plaintiff in Intervention Lynn Honderd, an individual, is a resident of Colorado.

Admit upon information and belief.

The Plaintiffs

4. **Plaintiffs are purportedly secured creditors of Defendants that seek to foreclose on their Collateral (defined below), Plaintiffs consist of: Ross Berman ("Berman") is a resident of the State of Florida. b. Jason H. Karp ("Karp") is a resident of the State of Texas. c. IMJ I LLC ("IMJ I") is a Delaware limited liability company, with its principal place of business in Florida. d. Rachel Farber Revocable Trust ("Rachel Trust") is a trust formed under the laws of the State of Florida. e. Stephen Farber Revocable Trust ("Stephen Trust") is a trust formed under the laws of the State of Florida. Red Cloud Capital, LLC ("Red Cloud ") is a limited liability company, with its principal place of business in the State of Connecticut.**

[1] The Intervenors' complaint was not separately filed or served after the Court granted them limited intervention. Accordingly, no responsive pleading deadline was triggered. Intervenors then filed an amended complaint, which this Court struck. After the Court struck the amended complaint, Plaintiffs and Intervenors mutually agreed to a response deadline of November 20, 2024 to the Intervenors' original complaint.

Plaintiffs are secured and allegation number 4 reflects where they were formed and do business.

5. Berman, Karp, IMJ I, Rachel Trust, Stephen Trust, and Red Cloud are collectively referred to herein as "Plaintiffs."

This paragraph contains no allegations or otherwise, such that no response is required. To the extent a response is required, admit that Berman, Karp, IMJ I, Rachel Trust, Stephen Trust, and Red Cloud are collectively referred to by Intervenors as "Plaintiffs" in the Complaint in Intervention.

The Defendants

6. Defendants generally operate in the cannabis space and consist of branded packaging of goods. Defendants are most known for the brands "Mary's Medicinals," which operates in the health and wellness segment, and "Dixie" a brand centered on infused edibles.

Admitted that Defendants operate in the cannabis space with multiple brands. Plaintiffs are without sufficient information to admit or deny the rest and therefore deny.

7. Defendants consist of the following entities:

a. **Bellrock Brands Inc. ("Bellrock"), a British Columbia corporation, with its principal place of business at 4990 Oakland Street, Denver, Colorado 80239.**
b. **BRB DB Holdings ("BRB DB Holdings"), Inc., a Delaware corporation, with its principal place of business at 4990 Oakland Street, Denver, Colorado 80239.**
c. **BRB Mary's Holdings Corp. ("BRB Mary's Holding"), a Delaware corporation, with its principal place of business at 4990 Oakland Street, Denver, Colorado 80239.**
d. **Dixie Brands (USA) Inc. ("Dixie"), a Delaware corporation, with its principal place of business at 4990 Oakland Street, Denver, Colorado 80239.**
e. **Mary's Operations, LLC ("Mary's Operation"), a Colorado limited liability company, with its principal place of business at 3251 Revere St Ste 200, Aurora, CO 80011.**
f. **Mary's Pets, LLC ("Mary's Pets"), a Colorado limited liability company, with its principal place of business at 3251 Revere St Ste 200, Aurora, CO 80011.**
g. **Mary's Nutritional's, LLC ("Mary's Nutritional's"), a Colorado limited liability company, with its principal place of business at 3251 Revere St Ste 200, Aurora, CO 80011.**
h. **DB Finance, Nevada, LLC ("DB Finance"), a Nevada limited liability company, with it is principal place of business at 18 North Carson Street #208, Carson City, NV, 89701.**

i. DB Oklahoma, LLC ("DB Oklahoma"), a Colorado limited liability company, with its principal place of business at 3251 Revere St Ste 200, Aurora, CO 80011.

Plaintiffs admit that Defendants consist of the entities listed in Paragraphs 7(a) through 7(i), though deny that all principal places of business for the same are accurately stated.

8. Bellrock, BRB DB Holdings, BRB Mary's Holding, Dixie, Mary's Operation, Mary's Pets, Mary's Nutritional's, DB Finance, and DB Oklahoma are collectively referred to herein as "Defendants" or "Defendant Companies."

This paragraph contains no allegations or otherwise, such that no response is required. To the extent a response is required, admit that all Defendants are collectively referred to as "Defendants" or "Defendant Companies" in the Complaint in Intervention.

Jurisdiction and Venue

9. This Court has jurisdiction over all parties as well as the subject matter in this action. C.R.S. § 13-1-124.

Admit.

10. Venue is proper in this Court pursuant to C.R.C.P. 98(c).

Admit.

11. Jurisdiction and venue are also proper in this Court because the parties to the Notes and Agreements at issue in this case have waived their right to arbitration.

Plaintiffs admit that venue is proper, but otherwise deny any other allegation. The remaining allegations are legal conclusions, and the Agreements at issue speak for themselves. Plaintiffs deny waiver of any right.

GENERAL ALLEGATIONS

I. Ms. Honderd's Founding of Mary's Brands and Sale of Ms. Honderd's and Mr. Gallup's Respective Membership Interests under Duress

This heading improperly contains multiple allegations, makes extensive legal conclusions and, thus, no response is required. To the extent a response to this paragraph is otherwise required, deny.

12. Lynn Honderd co-founded the Mary's Brands of products in 2013 as a startup company in Colorado and grew the business until they offered a full range of hemp and cannabis products in Colorado, throughout the country, and in Canada.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

13. Ms. Honderd spent fifteen years in senior positions at banking and investment firms, working on marketing strategy and initial public offering execution across diverse sectors, before founding Mary's Brands and becoming its Chief Operating Officer.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

14. Trevor Gallup was a co-owner of Mary's Brands and worked as Director of Sales. Mr. Gallup is also Ms. Honderd's husband.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

15. Mary's Brands grew enormously under Ms. Honderd and Mr. Gallup's leadership. Mary's Brands grew to over 70 employees and averaged 75 percent year over year growth for three straight years going into 2019. Ms. Honderd and Mr. Gallup were instrumental in the valuation of the sale of the company at $100 million in 2019, amounting to a five-times multiple of revenue.

Plaintiffs have insufficient information to admit or deny the allegations set forth in this paragraph and therefore deny them.

16. In early 2019, Mr. Gallup was falsely accused by an affiliate of BR Brands of engaging in activities that could be illegal under federal and state law.

Plaintiffs have insufficient information to admit or deny all remaining allegations in this paragraph and therefore deny them.

17. Mr. Gallup denies that he ever engaged in illegal activities, but nevertheless feared that BR Brands and its principals had fabricated and were willing to fabricate evidence against him in order to remove him from Mary's Brands.

Plaintiffs have insufficient information to admit or deny the allegations set forth in this paragraph and therefore deny them.

18. As a result of these accusations, Ms. Honderd was forced to vote Mr. Gallup off of the Board of Directors of Mary's Brands.

Plaintiffs have insufficient information to admit or deny the allegations set forth in this paragraph and therefore deny them.

19. The Mary's Brand Board of Directors then voted to remove Ms. Honderd as CEO and created an Interim CEO position for her with extremely limited powers. Ms. Honderd, as the face of Mary's Brands, was required to execute an employment agreement and to remain as Interim CEO in order for BR Brands to continue to raise capital to finalize the sale of the Companies in May 2019.

Plaintiffs have insufficient information to admit or deny the allegations set forth in this paragraph and therefore deny them.

20. Mr. Gallup was threatened with possible criminal prosecution if he and Ms. Honderd did not sell their ownership interests in Mary's Brands.

Plaintiffs have insufficient information to admit or deny the allegations set forth in this paragraph and therefore deny them.

21. These threats of legal reprisals constituted continuing duress.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

22. On May 1, 2019, Mr. Gallup and Ms. Honderd entered into a deal to sell their respective ownership interests in the Defendant Companies. Each of them executed a Membership Interest Redemption Agreement and Subordinated Promissory Note. *See* Exhibit A for Mr. Gallup's Agreement and Note ("Gallup Agreement"). *See* Exhibit B for Ms. Honderd's Agreement and Note ("Honderd Agreement").

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

23. The Defendant Companies were the primary drafters of both Mr. Gallup's and Ms. Honderd's Agreement and Note.

Plaintiffs have insufficient information to admit or deny the allegations set forth in this paragraph and therefore deny them.

II. The Gallup Agreement and Note's Terms Render It Void and/or Voidable

This heading contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

24. Pursuant to §1.1 of the Gallup Agreement, each of the Defendant Companies purchased from Mr. Gallup, and Mr. Gallup sold his Membership Interests in each Company for a total price of $3,490,235.00, as evidenced by the Gallup Note.

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

25. Section 1 of the Gallup Note provided for 7% per annum simple interest from the date of the Note, May 13, 2019, paid in accordance with Section 2 of the Note.

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

26. Section 2 of the Gallup Agreement Note required the Defendant Companies to make payments to Mr. Gallup as follows:

> **a. $990,235 on July 1, 2019**
>
> **b. Beginning on April 30, 2020 and continuing on each Quarter Year Period End occurring thereafter until Note is paid in full, [Defendant Companies] shall make quarterly interest payments equal to the total amount of interest earned and not previously paid with respect to such quarterly period then ended within five(5) Business Days after each such applicable Quarter Year Period End; and**
>
> **c. All unpaid principal and accrued but unpaid interest under this Note (including, for the avoidance of doubt, interest accruing from the date hereof through January 31, 2020 which is not paid pursuant to Section 2(b) or otherwise) shall become immediately due and payable on the first to occur of (a) the Maturity Date, (b) a Sale of the Company and (c) an IPO.**

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

27. The Gallup Agreement is illusory as written because the Gallup Note could never mature, subject to the sole discretion of the Defendant Companies.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

28. The Maturity Date is defined in Section 3c of the Gallup Note as:

> **the five (5) year anniversary of the original issuance date of this Note; provided that if the Board of Managers of [Companies] reasonably determines in good faith that the repayment of this Note (i) is not permitted by or could cause a breach or event of default under any financing agreement to which [Companies are] a party (including with respect to any Senior Debt), (ii) after giving effect to the repayment of this Note [one of the Companies] would become insolvent or would not otherwise be able to pay its respective debts as they become due in the ordinary course of business, then [Companies] shall be entitled, upon delivery of written notice to [Mr. Gallup], to extend the Maturity Date until the date which is twenty (20) days following the date on which**

such repayment would not be restricted by the foregoing clauses (i), (ii) and (iii); further provided that in the event Maker extends the Maturity Date pursuant to this Section 3c., interest shall accrue at a rate of 10% per annum simple interest until all unpaid principal and accrued but unpaid interest under this Note has been paid."

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

29. The Maturity Date contemplated in the Gallup Note would have been May 13, 2024, absent an extension pursuant to the terms of Section 3c.

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

30. The extension provisions of Section 3c of the Gallup Note has had and continues to have the effect of allowing the Companies to indefinitely extend the maturity date of the Note and delay payments to Mr. Gallup for an unspecified period, making both the Gallup Note and Agreement illusory and invalid.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

31. The extension provisions of Section 3c of the Gallup Note has had and continues to have the effect of allowing the Companies to indefinitely extend the maturity date of the Note and delay payments to Mr. Gallup for an unspecified period, making both the Gallup Note and Agreement illusory and invalid.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

32. The Subordination clause in section 4 of the Note provides that:

Subordination. Holder hereby covenants and agrees that, notwithstanding anything to the contrary contained in this Note, the payment of all the obligations of Maker to Holder evidenced by or incurred pursuant to this Note (the "Subordinated Debt") shall be unsecured and subordinate and subject in right and time of payment, to the full payment and satisfaction of all the of the obligations of Maker and each of its Subsidiaries and Affiliates ("Senior Debt"). Each holder of Senior Debt, whether now outstanding or hereafter created, incurred, assumed or guaranteed, shall be deemed to have acquired Senior Debt in reliance upon the provisions contained in this Note. Holder hereby covenants and agrees to provide any additional

> **subordination agreements required by the holders of any Senior Debt. Holder further agrees and covenants that such Holder will not accelerate, ask, demand, sue for, take or receive from Maker, by setoff or in any other manner, the whole or any part of the Subordinated Debt, including, without limitation, the taking of any negotiable instruments evidencing such amounts, nor any security for any of the Subordinated Debt, unless and until all of the Senior Debts shall have been fully and indefeasibly paid and satisfied in cash and all financing commitments and arrangements among Maker and any holders of the Senior Debt have each been terminated. This paragraph constitutes a "subordination agreement" as such term is contemplated by, and used in, Section 510(a) of the Bankruptcy Code.**

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

33. Mr. Gallup has not been asked to provide any additional subordination agreements after the execution of the Note.

Defendants have insufficient information to admit or deny this allegation and therefore deny.

34. The Subordination provision provides that all future Makers are assumed to have read and relied upon the Gallup Note in their decision to hold debt of the Defendant Companies.

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

35. The Subordination provision in the Note has the effect of allowing any future debt, in any amount, to become automatically senior to Mr. Gallup's Debt.

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

36. The Subordination provision in the Gallup Note, if enforced, would impermissibly preclude Mr. Gallup from exercising his First Amendment right to petition the court to redress his grievances.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

37. The illusory nature of the payment promises contained within the Gallup Agreement and Note constitute failures of consideration.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

38. The Companies have not complied with the requirements to provide written notice in order to extend the Maturity Date of the Gallup Note. However, because they have failed to pay when the Note was accelerated after the sale of the Companies, as discussed in further detail in Section IV below, and have stopped making quarterly interest payments, it is clear that the Companies do not intend to comply with the Maturity Date provisions in order to pay Mr. Gallup upon the Note's maturity as required.

This paragraph improperly and imprecisely contains multiple allegations and legal conclusions to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

39. Upon passage of the May 13, 2024 Maturity Date without full payment pursuant to Section 3c of the Note, Mr. Gallup will supplement his complaint to include claims for this additional breach of the Agreement and Note a needed.

This paragraph contains no allegations or otherwise, such that no response is required. To the extent a response is required, deny.

III. The Honderd Agreement and Note's Terms.

This paragraph contains no allegations or otherwise, such that no response is required.

40. Pursuant to §1.1 of the Honderd Agreement, each of the Defendant Companies purchased from Ms. Honderd, and Ms. Honderd sold her Membership Interests in each Company for $100,000 in cash payable at closing and delivery of a Note with a principal amount equal to $6,003,384.

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

41. Section 1 of the Honderd Note provided for 7.5% per annum simple interest from the date of the Note, May 10, 2019, paid in accordance with Section 2 of the Note.

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

42. Section 2 of the Honderd Note required the Defendant Companies to make payments to Ms. Honderd as follows:

a. $1,500,000 on June 15, 2019;
b. Quarterly cash interest payments beginning on the latter to occur of either the first fiscal quarter year end date after a "Company No Cause Termination Event" under Ms. Honderd's Employment Agreement, and March 31, 2022;
c. Interest shall be due and payable to Holder during the Extension Period as provided in Section 3(D) below; and
d. All unpaid principal and accrued but unpaid interest under this Note shall become immediately due and payable on the first to occur of (a) the Maturity Date, (b) a Sale of the Company and (c) an IPO.

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

43. The Maturity Date is defined in Section 3(E) of the Honderd Note as the five (5) year anniversary of the original issuance date of this Note

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

44. The Honderd Note provides for an Extension Period under the Maturity Date clause, Section 3(E) that allow the Companies to extend the Maturity Date until the earlier to occur of (x) the six (6) year anniversary of the original issuance date of this Note, and (y) the date which is twenty (20) days following the date on which repayment would not be restricted pursuant to specified conditions within the Maturity Date.

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

45. The Maturity Date contemplated in the Honderd Note is May 10, 2024, absent an extension pursuant to the terms of Section 3(E).

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

46. The Honderd Note is illusory because its Subordination clause prevents Ms. Honderd from enforcing any rights under the Note.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

47. The Subordination clause in section 4 of the Honderd Note provides that:

> **Subordination. Holder hereby covenants and agrees that, notwithstanding anything to the contrary contained in this Note, the payment of all the obligations of Maker to Holder evidenced by or incurred pursuant to this Note (the "Subordinated Debt") shall be unsecured and subordinate and subject in right and time of payment, to the full payment and satisfaction of all the of the obligations of Maker and each of its Subsidiaries and Affiliates related to any Senior Debt. Each holder of Senior Debt, whether now outstanding or hereafter created, incurred, assumed or guaranteed, shall be deemed to have acquired Senior Debt in reliance upon the provisions contained in this Note. Holder hereby covenants and agrees to provide any additional subordination agreements required by the holders of any Senior Debt. Holder further agrees and covenants that such Holder will not accelerate, ask, demand, sue for, take or receive from Maker, by setoff or in any other manner, the whole or any part of the Subordinated Debt, including, without limitation, the taking of any negotiable instruments evidencing such amounts, nor any security for any of the Subordinated Debt, unless and until all of the Senior Debts shall have been fully and indefeasibly paid and satisfied in cash and all financing commitments and arrangements among Maker and any holders of the Senior Debt have each been terminated. This paragraph constitutes a "subordination agreement" as such term is contemplated by, and used in, Section 510(a) of the Bankruptcy Code.**

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

48. Ms. Honderd has not been asked to provide any additional subordination agreements after the execution of the Honderd Note.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

49. The Subordination provision provides that all future Makers are assumed to have read and relied upon the Honderd Note in their decision to hold debt of the Defendant Companies.

The document language referenced in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

50. The Subordination provision in the Note has the effect of allowing any future debt, in any amount, to become automatically senior to Ms. Honderd's Debt.

The document language referenced in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny

51. The Subordination provision in the Honderd Note, if enforced, would impermissibly preclude Ms. Honderd from exercising her First Amendment right to petition the court to redress her grievances.

The document language referenced in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny

52. The Companies have not complied with the requirements to provide written notice in order to extend the Maturity Date of the Honderd Note, however, because they have failed to pay when the Note was accelerated after the sale of the Companies, and have stopped making quarterly interest payments, it is clear that the Companies do not intend to comply with the Maturity Date provisions in order to pay Ms. Honderd upon the Note's maturity as required.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

53. Upon passage of the May 10, 2024 Maturity Date without full payment pursuant to Section 3c of the Note, Ms. Honderd will supplement her complaint to include claims for this additional breach of the Agreement and Note as needed.

This paragraph contains no allegations or otherwise, such that no response is required. To the extent a response is required, admit that Honderd has stated that she will supplement her complaint.

IV. The Sale of the Companies

This paragraph contains no allegations or otherwise, such that no response is required.

54. Soon after entering into the Gallup and Honderd Agreements and Notes, the Companies became a target for acquisition, which Ms. Honderd, Mr. Gallup, and the Companies had contemplated as a likely scenario at the time they executed their Agreement and Note.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

55. On October 31, 2020, BR Brands LLC ("BR Brands"), the holding company for the Companies, and Dixie Brands Inc. ("Dixie") announced the closing of their merger transaction.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

56. Dixie is an Independent Third Party as defined in the Note.

This paragraph contains a legal conclusion, and the document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required, deny.

57. The October 31, 2020 transaction constituted a "Sale of the Company" under both Mr. Gallup's and Ms. Honderd's Notes and triggered their respective rights relative to a Sale of the Company under each Note

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

58. The Gallup Note provides that a Sale of the Company is defined as:

> **The merger, consolidation or conversion of the Company or BR Brands, or a sale or other disposition of assets of the Company or BR Brands, or sale or other disposition of equity ownership interests, or other transaction, in a single or series of related transactions, in each case, pursuant to which any Independent Third Party acquires all or substantially all of the assets of, or equity ownership interests in, the Company or BR Brands.**

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

59. The Honderd Note provides that a Sale of the Company is defined as:

> **"Sale of the Company" means any transaction or series of transactions pursuant to which any Independent Third Party or group of related Independent Third Parties (other than Rose Capital Fund I, L.P., Rose Capital Fund I GP, LLC, Rose Management Group LLC, Rose Investment Group LLC, Infinity and their respective Affiliates) in the aggregate acquire(s) directly or indirectly all or substantially all of the assets, determined on a consolidated basis, of Company or of BR Brands.**

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

60. The Companies and BR Brands were sold during the reverse takeover and merger, and the new entity formed is Defendant BellRock.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

61. The reverse takeover and merger transaction also constituted an Initial Public Offering (IPO) as that term is defined in the Honderd Note, Section 2D(c).

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

62 BellRock is a successor or assign of the Companies and BR Brands as defined in the Gallup Agreement, Section 10.6 and in the Honderd Agreement, Section 10.6.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

63. Dixie admitted the transaction constituted a "Sale of the Company" in its Supplement to the Management Information Circular dated June 8, 2020 for the Annual and Special Meeting of Shareholders of Dixie Brands Inc. to be held on July 14, 2020. That circular noted that shareholders were asked to pass the following ordinary resolution:

> **The acquisition by Dixie Brands Inc. (the "Corporation") from BR Brands, LLC, or one or more affiliates thereof (collectively, "BRB"), of (i) all of the outstanding shares of common stock of BRB Mary's Holding Corp.**

This paragraph improperly and imprecisely contains multiple allegations, and legal conclusions to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

64. Public statements by former BR Brands Chairman (and Chairman of the newly formed BellRock Brands, Inc.), Mr. Andrew Schweibold confirmed that the transaction constituted a Sale of the Company under the Note when he was quoted as follows:

> **We are pleased to announce the upcoming closing of the business combination of BR Brands and Dixie. This transformative transaction was the result of a long-term strategic and value focused approach to building a dominant house of brands within the cannabis sector**

This paragraph improperly and imprecisely contains multiple allegations, and legal conclusions to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

65. The Management Information Circular, combined with Mr. Schweibold's public pronouncements, constitute admissions that the transaction triggered Mr. Gallup's rights and Ms. Honderd's rights under their respective Notes.

This paragraph improperly and imprecisely contains multiple allegations, and legal conclusions to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

66. All unpaid principal and accrued but unpaid interest under the Gallup Note became immediately due and payable to Mr. Gallup on October 31, 2020, pursuant to Section 2c of the Gallup Note.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

67. All unpaid principal and accrued but unpaid interest under the Honderd Note became immediately due and payable to Ms. Honderd on October 31, 2020, pursuant to Section 2(D) of the Honderd Note.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

68. The Defendant Companies have not paid Mr. Gallup or Ms. Honderd, in violation of each of their Agreements and their respective Notes

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

69. Instead, the Defendant Companies have denied that a Sale of the Company even took place, in contravention of their own admissions and the plain terms of both Agreements and Notes.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

70. The Defendant Companies breached the Gallup and Honderd Agreements and Notes in a manner that reflects both a fundamental failure of consideration and a breach of the duty of good faith and fair dealing.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

71. The Defendant Companies have also been unjustly enriched by the receipt of Mr. Gallup's membership interests in the Companies, for which the Companies have not adequately paid him.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

72. The Defendant Companies have also been unjustly enriched by the receipt of Ms. Honderd's membership interests in the Companies, for which the Companies have not adequately paid her.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

V. Fraudulent Transfers and Preferential Payments to Insiders and Resulting Failures to Pay Ms. Honderd and Mr. Gallup.

This heading contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

73. On information and belief, after the merger and while the Notes were still outstanding, the Companies have taken on debt from corporate insiders and have agreed to pay these insiders commercially unreasonable amounts in interest. These interest payments and secured obligations have prevented the Companies from meeting their obligations under the Gallup and Honderd Agreements and Notes.

This paragraph improperly and imprecisely contains multiple allegations, and legal conclusions to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

74. As examples, on information and belief, the Companies and/or BellRock took on $500,000.00 in debt to an entity called DMR2013 Gift Trust in 2020 and then repaid it, including payments of a high rate of interest, in 2021

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

75. Upon information and belief, the Companies and/or BellRock also took on $1,550,000.00 in debt to an entity called RCFI in 2020, which it repaid including a high rate of interest, in 2021.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

76. Upon information and belief, all of these entities were comprised of corporate insiders.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

77. Upon information and belief, the Defendant Companies also made payments to individual corporate insiders of at least $1,000,000 in 2020 and 2021.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

78. In April 2021, the Defendant Companies obtained a bridge loan from "HumanCo" as part of proposed purchase of BellRock by HumanCo. This bridge loan was supposed to be wrapped into the closing of the purchase, but the purchase deal collapsed after Dixie Brands was de-listed from the Canadian stock exchange in August 2021.

Deny.

79. HumanCo is an entity owned and/or controlled by Plaintiffs Berman and Karp.

Deny.

80. This bridge loan and note are reflected as Plaintiffs Exhibits A and B to their Complaint.

Admit that Exhibit A and B reflect financing provided to the Defendant companies. The terms on the financing contained in the exhibits speak for themselves. Otherwise, deny.

81. According to the First Amendment to Secured Promissory Note, Andrew Schweibold contributed $500,000 of principal on the original bridge loan, and the HumanCo Plaintiffs contributed $3,500,000. See Plaintiffs' Complaint Exhibit D, Recitals.

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required the allegations in this paragraph are denied.

82. On information and belief, upon receipt of the bridge loan in the principal amount of $4,000,000.00 from HumanCo in April 2021, the Companies and/or BellRock paid off the DMR2013 Gift Trust and RCFI notes. Other debts, including Mr. Gallup's and Ms. Honderd's remained unpaid.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

83. The HumanCo Plaintiffs and Mr. Schweibold had actual knowledge of Ms. Honderd and Mr. Gallup's respective Agreements and Notes at the time they entered into the bridge loan. They also had actual knowledge of the default under each of the Gallup and Honderd Agreements and Notes as a result of the sale of the Defendant Companies.

Deny.

84. The creation of the security interest in favor of the HumanCo Plaintiffs and Mr. Schweibold had the effect of depleting the assets of the Defendant Companies to the prejudice of its unsecured creditors, including Mr. Gallup and Ms. Honderd.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

85. Because the bridge loan transaction included Mr. Schweibold, a corporate insider, it was collusive in nature.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

86. The security interest for the bridge loan was made without receiving a reasonably equivalent value in exchange because the security interest granted included

substantially all of the Defendant Companies assets, including the intellectual property and membership interests that had been obtained from Ms. Honderd and Mr. Gallup without proper compensation.

Deny.

87. The Defendant Companies were either already insolvent or became insolvent as a result of the granting of the security interest related to the bridge loan.

Deny.

88. The bridge loan from HumanCo came due in April 2022. Rather than foreclose the bridge loan, HumanCo brought in its own management team, West 4th Holdings, sometime around April 2022.

Deny.

89. Upon information and belief, West 4th Holdings has ownership interests in the Defendant Companies. Upon information and belief, the new management team continued to make preferential payments to creditors who were corporate insiders, influenced by its own ownership interests.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny..

90. The bridge loan was amended in April 2022 to explicitly remove Mr. Schweibold from the transaction. See Plaintiffs' Complaint Exhibit D, Recitals. This revision appears to constitute an attempt by the HumanCo Plaintiffs to cure the defective nature of the original bridge loan fraudulent transfer.

The referenced document speaks for itself. To the extent a response is required, deny.

91. However, the same issues remain with respect to the HumanCo Plaintiffs' secured interest. The transaction was undertaken with actual knowledge of the Honderd and Gallup Notes, as well as the knowledge of the effect of the prior sale of the Defendant Companies.

Deny.

92. The HumanCo Plaintiffs' retained control of the Defendant Companies after the amended Note.

Deny.

VI. Additional Problematic Transactions

This paragraph contains no allegations or otherwise, such that no response is required. To the extent a response is required, deny.

93. On September 19, 2022, BellRock announced that its subsidiary, Ironton Properties, LLC, which is the real property-owning entity of Mary's Brand's retail store locations in Denver, had sold its Denver real property in order in part to repay private lenders, who upon information and belief, were insiders:

> **BellRock Brands Announces Sale of Property, Retires Debt.**
>
> **DENVER, Colo., Sept. 19, 2022 /CNW/ - BellRock Brands Inc. ("BellRock" or the "Company") (CSE: BRCK.U), an industry-leading cannabis consumer packaged goods ("CPG") and intellectual property platform, announces that its subsidiary, Ironton Properties, LLC ("Ironton"), has finalized the sale of its Denver real property (the "Property") to a third party buyer for $2.5 million (USD). Approximately $2.0 million (USD) of proceeds from the sale were used to fully repay a Promissory Note entered into in May of 2022. The remaining proceeds, after fees and other costs associated with the Property sale, will be used to pay down a portion of a $3.85 million Secured Promissory Note held by a consortium of private lenders.**

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

94. On April 11, 2023, BellRock also announced via press release that it had entered into a new, short term promissory note at a high rate of interest with a creditor in the amount of $861,757.00 and had used the proceeds of the loan to repay a consortium of private lenders:

> **BellRock Brands Secures Financing As It Pursues Repayment and Reorganization of Its Debt; Announces Departure of General Counsel.**
>
> **AURORA, Colo., April 11, 2023 /CNW/ - BellRock Brands Inc. ("BellRock" or the "Company") (CSE: BRCK.U), an industry-leading cannabis consumer packaged goods ("CPG") and intellectual property platform, announced today that it has entered into a secured promissory note (the "Promissory Note") in the amount of $861,757.00 (USD) and the related security agreement (the "Security Agreement") with High Street Capital Partners, LLC ("HSCP"), which carries an interest rate of 25% and a maturity date of November 17, 2023. The Promissory note was issued in conjunction with a partial repayment of the Company's obligations to a consortium of private lenders whose Note matured in early January of 2023 (the "Private Lenders Note"), as previously agreed among the Company, HSCP and the consortium of private lenders on September 19, 2022 when the Company announced the sale of its Denver real property. The Security Agreement entered into by the Company and its wholly owned**

> **subsidiaries grants a continuing security interest to HSCP in the Company's and subsidiary's assets.**
>
> **The Promissory Note is part of the Company's ongoing efforts to reorganize its maturing debt and reduce its interest expense as it continues to pursue several cash flow-enhancing measures. Although proceeds from the Promissory Note will not fully satisfy the Company's obligations under the Private Lenders Note that matured in early January 2023, BellRock maintains positive relations with the consortium and is actively working on additional measures to address its obligations under the Private Lenders Note.**

The document quoted in this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

95. Since Mr. Gallup and Ms. Honderd sold their membership interest in the Companies, the Defendant Companies have taken on additional notes with a principal amount of nearly $15,000,000.00. These notes have interest rates ranging from 13% to 35% per annum, and have unpaid accrued interest of over $9,000,000.00 as of September 30, 2023.

This paragraph improperly contains multiple allegations, makes extensive legal conclusions and, thus, no response is required. To the extent a response to this paragraph is otherwise required, deny.

96. These debts were incurred between 2020 through 2023, after the default of the Gallup and Honderd Notes as a result of the sale of the Defendant Companies without full payment of the remaining unpaid principal and interest on each respective Note.

This paragraph improperly contains multiple allegations, makes extensive legal conclusions and, thus, no response is required. Moreover, Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

97. Upon information and belief, the Defendant Companies have executed at least some of these transfers in favor of insiders.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny

98. Upon information and belief, the Defendant Companies have purposefully created debt that they have then paid off prior to making payments due to Mr. Gallup and Ms. Honderd under their respective Notes. It is unknown whether these debts were made in exchange for equivalent consideration.

This paragraph improperly contains multiple allegations, makes extensive legal conclusions and, thus, no response is required. To the extent a response to this paragraph is otherwise required, deny.

99. In its January 2024 monthly corporate disclosure, BellRock stated:

> **Provide a general overview and discussion of the activities of management.**
>
> **In addition to growing and expanding its product offering and geographical presence in new markets, the Issuer's management continues to work with West 4th Holdings to improve its capital structure and increase profitability. In particular, the Issuer and its debt holders are exploring various alternatives to restructure its debt obligations. The objective of these alternatives is to considerably reduce the Issuer's debt load while minimizing disruptions to day-to day-operations.**

This paragraph improperly contains multiple allegations, makes extensive legal conclusions and, thus, no response is required. To the extent a response to this paragraph is otherwise required, deny.

100. The January 2024 monthly corporate disclosure indicates that the Companies and/or BellRock have continued to restructure their debt obligations in a manner that ignores the debts owed to Mr. Gallup and Ms. Honderd.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

101. The Defendant Companies made Quarter Year Period End payments due and owing to Mr. Gallup pursuant to Section 2 of the Note from May 2019 through April 30, 2023.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

102. However, on July 31, 2023, and continuing thereafter, the Defendant Companies failed to make Quarter Year Period End payments to Mr. Gallup as required by Section 2b of the Note, a separate instance of breach under the Agreement and default under the Note.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

VII. Purportedly Secured Interests to Subsequent Creditors Not Currently Parties to the Action that May be Necessary for a Complete Resolution

This paragraph contains no allegations or otherwise, such that no response is required.

103. All of the Plaintiffs have filed UCC Financing Statements and have asserted that they are secured creditors.

Admit.

104. Several additional individuals and entities who appear to be related to the Plaintiffs' group have filed UCC Financing Statements and have asserted that they are secured creditors of the Defendant Companies, but these additional creditors have not been named as parties in the litigation.

Plaintiffs admit that other creditors have filed UCC Financing Statements as well. Otherwise, denied.

105. Additionally, Rise Investments International II Series 7, LLC, an entity with a mailing address of 3333 Piedmont Rd. NE, Suite 2000, Atlanta, Georgia 30305, filed a UCC Financing Statement with the Colorado Secretary of State on August 26, 2022, document number 20222087883, as a secured creditor against BellRock Brands, Inc. with stated collateral on "All property, assets and undertaking of Debtor, whether now or hereafter acquired, and wherever located." Rise Investments International II Series 7, LLC has not been named a party in the litigation.

Admit that Rise filed the referenced UCC financing statement and is not a named party in this litigation. The document quoted in the remainder of this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

106. High Street Capital Partners, LLC, an entity with a mailing address of 366 Madison Avenue, 11th Floor, New York, New York, 10017, filed a UCC Financing Statement with the Colorado Secretary of State on April 13, 2023, document number 20232035679, as a secured creditor against all of the Defendant Companies, with a stated secured interest in a $5,700,000 Senior Secured Convertible Note, as well as almost three million shares of a blend preferred and common stock in BRB DB Holdings, Inc. High Street Capital Partners, LLC has not been named a party in the litigation.

Admit that High Street filed the referenced UCC financing statement and is not a named party in this litigation. The document quoted in the remainder of this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

107. According to the Plaintiffs Complaint, the High Street Capital Partners, LLC group and the Plaintiffs entered into a "Multi-Party Settlement Agreement" dated Sept 30, 2022, as well as a separate Intercreditor Agreement. The terms of these agreements are currently unknown, but they may have an effect on the creditor status of both the Plaintiff group and the High Street Capital Partners, LLC group.

The documents referenced in this paragraph speak for themselves, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the referenced documents, deny.

108. Plaintiffs Berman and Karp, along with BellRock Brands' Chairman at the time Andrew Schweibold, filed a UCC Financing Statement with the Colorado Secretary of State on April 30, 2021, document number 202120041093, as secured creditors against BellRock Brands, Inc. and BRB DB Holdings, Inc., with a stated secured interest in various

amounts of shares of common and preferred stock in several of the Defendant entities, as well as in three other subsidiaries of BRB DB Holdings, Inc. not presently named in this suit. Mr. Schweibold has not been named a party in the litigation.

Admit that Berman, Karp and Schweibold filed the referenced UCC financing statements and that Schweibold is not a named party in this litigation. The document quoted in the remainder of this paragraph speaks for itself, such that no response is required. To the extent a response to this paragraph is otherwise required and the allegations in this paragraph are inconsistent with the quoted document, deny.

109. Upon information and belief, West 4th Holdings, which has been named Receiver-Manager on behalf of the Defendant Companies, has a controlling interest in the Defendant Companies, which may affect its ability to act impartially as Receiver-Manager.

Deny.

CLAIMS FOR RELIEF
FIRST CLAIM FOR RELIEF
(Duress – Gallup and Honderd Agreements and Notes – Against Defendant Companies)

110. Plaintiffs in Intervention incorporate by reference all previous allegations as if fully set forth herein.

This paragraph contains no allegations or otherwise, such that no response is required.

111. Representatives of BR Brands and the Defendant Companies made improper threats of potential federal criminal prosecution against Mr. Gallup.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

112. Mr. Gallup did not commit the alleged criminal activity, but nonetheless feared becoming embroiled in criminal proceedings.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

113. BR Brands' threats were made for the purpose of inducing Mr. Gallup and Ms. Honderd to sign their respective Notes and Agreements, to induce Ms. Honderd to sign her employment agreement as Interim CEO, as well as to take other actions that removed Mr. Gallup and Ms. Honderd from ownership and control over Mary's Brands.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

114. The threat of potential criminal prosecution left both Mr. Gallup and Ms. Honderd with no reasonable alternative but to sign the Gallup Note and Agreement and the Honderd Note and Agreement and to take other actions that resulted in their relinquishing control of Mary's Brands to BR Brands and ultimately to the Defendant Companies.

Plaintiffs have insufficient information to admit or deny this allegation and therefore deny.

115. The resulting Gallup Note and Agreement and the Honderd Note and Agreement were not made on fair terms.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

116. The Gallup Note and Agreement and the Honderd Note and Agreement were made under duress.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

117. The duress continued for at least as long as the potential for criminal prosecution remained a threat.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

118. The Honderd Note and Agreement and the Gallup Note and Agreement are each voidable as a result of the duress alleged herein.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny,

119. Plaintiffs in Intervention seek rescission of the Honderd Note and Agreement and the Gallup Note and Agreement as a result of the duresses alleged herein.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

SECOND CLAIM FOR RELIEF
(Void Contract – Illusory and Unconscionable – Gallup Agreement and Note – Against Defendant Companies)

120. Mr. Gallup incorporates by reference all previous allegations as if fully set forth herein.

This paragraph contains no allegations or otherwise, such that no response is required.

121. Mr. Gallup and the Companies entered into the Gallup Agreement and Note setting out certain rights and obligations of the parties.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny

122. The Gallup Agreement and Note contains terms that make performance entirely optional for the Defendant Companies.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

123. Specifically, the Maturity Date provisions within the Gallup Note allow the Defendant Companies to indefinitely extend the maturity date of the Gallup Note at the complete discretion of the Defendant Companies.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

124. The Gallup Note therefore lacks consideration and is illusory.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

125. Further, the Gallup Agreement and Note are unconscionable contracts.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny

126. The Gallup Note and Agreement was entered into in circumstances upon which the Defendant Companies were in a position of highly unequal bargaining power as a result of the threat of criminal prosecution they had made against Mr. Gallup.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

127. The Gallup Agreement and Note contain overly harsh one-sided terms that are unduly favorable to the Defendant Companies at the expense of Mr. Gallup, are not commercially reasonable, and lack substantive fairness.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

128. Mr. Gallup seeks to void the Gallup Agreement and Note on the basis of its illusory consideration and/or the basis of its unconscionability in order to return the parties to the status quo ante.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny

THIRD CLAIM FOR RELIEF
(In the Alternative – Breach of Contract – Gallup Agreement and Note – Against Defendant Companies)

129. Mr. Gallup incorporates by reference all previous allegations as if fully set forth herein.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

130. Mr. Gallup and the Companies entered into the Gallup Agreement and Note setting out certain rights and obligations of the parties.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

131. The Defendant Companies are successors or assigns of the Companies as defined in the Agreement, Section 10.6.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

132. The Gallup Agreement and Note is a valid contract.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

133. At all times, Mr. Gallup has fully performed his obligations under the Gallup Agreement and Note.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

134. The Defendant Companies breached the Gallup Agreement and Note by, among other things:

a. failing to fully pay the accelerated amounts due under the Note upon the Sale of the Company;
b. failing to make Quarter Year Period End payments as they became due under the Note;
c. assigning or otherwise transferring the Note to the Defendant Companies without assuming responsibility for the Companies' obligations under the Note;
d. entering into debt with corporate insiders in a manner which affected the Defendant Companies' ability to pay amounts owed to Mr. Gallup; and

e. breaching the covenant of good faith and fair dealing as more fully described below;'

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

135. As a direct and proximate result of the Defendant Companies' breaches of the Gallup Agreement and Note, Mr. Gallup has suffered damages in an amount to be proven at trial.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

FOURTH CLAIM FOR RELIEF
(In the Alternative – Breach of Contract – Honderd Agreement and Note – Against Defendant Companies)

136. Ms. Honderd incorporates by reference all previous allegations as if fully set forth herein.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

137. Ms. Honderd and the Companies entered into the Honderd Agreement and Note setting out certain rights and obligations of the parties.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

138. The Defendant Companies are successors or assigns of the Companies as defined in the Honderd Agreement, Section 10.6.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

139. The Honderd Agreement and Note is a valid contract.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

140. At all times, Ms. Honderd has fully performed her obligations under the Honderd Agreement and Note.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

141. The Defendant Companies breached the Honderd Agreement and Note by, among other things:

a. failing to fully pay the accelerated amounts due under the Note upon the Sale of the Company;
b. failing to fully pay the accelerated amounts due under the Note upon an initial public offering (IPO);
c. assigning or otherwise transferring the Note to the Defendant Companies without assuming responsibility for the Companies' obligations under the Note;
d. entering into debt with corporate insiders in a manner which affected the Defendant Companies' ability to pay amounts owed to Ms. Honderd; and
e. breaching the covenant of good faith and fair dealing as more fully described below;

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

142. As a direct and proximate result of the Defendant Companies' breaches of the Honderd Agreement and Note, Ms. Honderd has suffered damages in an amount to be proven at trial.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

FIFTH CLAIM FOR RELIEF
(In the Alternative – Breach of the Covenant of Good Faith and Fair Dealing – Gallup Agreement and Note – Against Defendant Companies)

143. Mr. Gallup incorporates by reference all previous allegations as if fully set forth herein.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

144. The Gallup Agreement and Note is a valid and enforceable agreement between Mr. Gallup and the Defendant Companies as successors or assigns.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

145. The Defendant Companies owed certain duties and obligations to Mr. Gallup, including the obligation to act in a reasonable manner in performing the Gallup Agreement and to refrain from acting outside of accepted commercial practices to deprive Mr. Gallup of the benefits of the Gallup Agreement and Note.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

146. The contractual relationship between Mr. Gallup and the Defendant Companies was supported by valuable consideration, and Mr. Gallup substantially performed his obligations under the Gallup Agreement.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

147. The Defendant Companies failed to act in good faith and to deal fairly with Mr. Gallup through their actions set forth herein and described above.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

148. The Defendant Companies' actions were for purposes unrelated to the agreed common purpose and reasonable expectations of the Parties as stated in the Gallup Agreement and Note.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

149. Among other things, the Defendant Companies:

a. Failed to acknowledge the Sale of the Companies and the attendant acceleration of all principal and interest due under the Note in October 2020.

b. Refused and continue to refuse payment to Mr. Gallup for Quarter End Payments due pursuant to the Note.

c. Upon information and belief, engaged in preferential transactions with corporate insiders of the Defendant Companies in order to pay themselves high rates of interest to their own benefit and avoid payments due to Mr. Gallup under the Note to his detriment.

d. Upon information and belief, engaged in fraudulent transfers of security interests in favor of subsequent creditors for the purpose of frustrating Mr. Gallup's claims as creditor after acceleration of the Gallup Note in October 2020.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

150. These breaches by the Defendant Companies of the covenant of good faith and fair dealing caused damages to Mr. Gallup in an amount to be proven at trial.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

SIXTH CLAIM FOR RELIEF
(In the Alternative – Breach of Covenant of Good Faith and Fair Dealing – Honderd Agreement and Note – Against Defendant Companies)

151. Ms. Honderd incorporates by reference all previous allegations as if fully set forth herein.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

152. he Honderd Agreement and Note is a valid and enforceable agreement between Ms. Honderd and the Defendant Companies as successors or assigns.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

153 The Defendant Companies owed certain duties and obligations to Ms. Honderd, including the obligation to act in a reasonable manner in performing the Honderd Agreement and to refrain from acting outside of accepted commercial practices to deprive Ms. Honderd of the benefits of the Honderd Agreement and Note.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

154. The contractual relationship between Ms. Honderd and the Defendant Companies was supported by valuable consideration, and Ms. Honderd substantially performed her obligations under the Gallup Agreement.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

155. The Defendant Companies failed to act in good faith and to deal fairly with MS. Honderd through their actions set forth herein and described above.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

156. The Defendant Companies' actions were for purposes unrelated to the agreed common purpose and reasonable expectations of the Parties as stated in the Honderd Agreement and Note.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

157. Among other things, the Defendant Companies:

e. Failed to acknowledge the Sale of the Companies and the attendant acceleration of all principal and interest due under the Note in October 2020.
f. Upon information and belief, engaged in preferential transactions with corporate insiders of the Defendant Companies in order to pay themselves high rates of interest to their own benefit and avoid payments due to Ms. Honderd under the Note to her detriment.
g. Upon information and belief, engaged in fraudulent transfers of security interests in favor of subsequent creditors for the purpose of frustrating Ms. Honderd's claims as creditor after acceleration of the Honderd Note in October 2020.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

158. These breaches by the Defendant Companies of the covenant of good faith and fair dealing caused damages to Ms. Honderd in an amount to be proven at trial.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

SEVENTH CLAIM FOR RELIEF
(In the Alternative – Unjust Enrichment – Against Defendants)

159. Plaintiffs in Intervention incorporate by reference all previous allegations as if fully set forth herein.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

160. Mr. Gallup and Ms. Honderd, at each of their expense, conferred a substantial benefit upon the Defendant Companies, by transferring their Membership Interests to the Defendant Companies.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

161. The Defendant Companies received the benefit of Mr. Gallup's and Ms. Honderd's respective ownership interest in the Companies, yet took deliberate and intentional steps to frustrate Mr. Gallup's and Ms. Honderd's positions as debtholders of the Defendant Companies entitled to repayment of each of their Notes.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

162. It would be inequitable for the Defendant Companies to retain the benefit of Mr. Gallup's and Ms. Honderd's ownership interests without paying their value.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

163. Plaintiffs in Intervention have been damaged by the Defendant Companies' actions in an amount to be proven at trial.

Pursuant to the Intervention Order and Stipulation, Intervenors were only granted limited intervention rights and the ability to pursue Claims 1, 2 and 8 of their Joint Complaint. As such, no response to this paragraph is required.

EIGHTH CLAIM FOR RELIEF
(Violation of the Colorado Uniform Fraudulent Transfer Act –
Against Plaintiffs and Defendants)

164. Plaintiffs in Intervention incorporate by reference all previous allegations as if fully set forth herein.

This paragraph contains no allegations or otherwise, such that no response is required.

165. Defendants transferred a security interest in favor of Plaintiffs in April 2021 as part of the bridge loan financing, thereby encumbering the Defendant Companies and all of their assets and intellectual property.

Plaintiffs admit that they have a perfected security interest in Defendants as further set forth in Plaintiffs' complaint. Otherwise, deny.

166. Plaintiffs in Intervention at all relevant times were creditors of the Defendant Companies as defined by C.R.S. § 38-8-102(5).

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

167. Defendant Companies were insolvent or became insolvent at the time of the execution security interests related to the bridge loan financing, as defined by C.R.S. § 38-8-103.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny

168. The Defendant Companies are debtors, as defined by C.R.S. § 38-8-102(7).

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

169. Plaintiffs are affiliates and/or insiders, as defined by C.R.S. § 38-8-102(1) and (8).

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

170. Defendants transferred the security interest to Plaintiffs and encumbered the Defendant Companies with the actual intent to hinder, delay, and defraud Ms. Honderd and Mr. Gallup.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

171. Defendants encumbered the Defendant Companies without receiving reasonably equivalent value for the security interest transferred to Plaintiffs.

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

172. At the time of the transfer of the security interest to Plaintiffs, Defendants knew that the Gallup Note and the Honderd Note were in default and fully due and payable. At that time, Defendants also knew they could not enforce the subordination provisions of the Honderd and Gallup Notes and they had no right to take on purportedly senior secured debt.

Deny.

173. Plaintiffs did not take the security interest in good faith.

Deny

174. At the time of the transfer of the security interest, Plaintiffs knew that the Gallup Note and the Honderd Note were in default. Plaintiffs knew that those Notes were fully due and payable, and that the subordination provisions of those Notes were no longer enforceable due to Defendants' material breach and that Defendants had no right to take on purportedly senior secured debt.

Deny.

175. Because Honderd and Gallup were the founders of Mary's Brands and the source of all its assets and intellectual property, Plaintiffs also knew that the collateral underlying the security interest in Defendant Companies was at risk due to the material breach of the Notes.

Deny.

176. The secured interest of the Plaintiffs in the Defendant Companies should be set aside and avoided per C.R.S. Section 38-8-108(1)(a).

This paragraph contains a legal conclusion to which no response is required. To the extent a response to this paragraph is otherwise required, deny.

General Denial

Defendants deny any allegation not expressly admitted.

Defenses

1. Intervenors fail to state a claim.

2. Intervenors' Claims are barred by all applicable statutes of limitations and statutes of repose.

3. Intervenors' claims are barred by laches.

4. Intervenors' Complaint is barred by the doctrine of unclean hands and *in pari delicto*.

5. Intervenors' are estopped from seeking relief due to their own acts or omissions with reference to the subject matter of the Complaint.

6. Intervenors have waived any right to recovery against Plaintiffs in light of their own acts or omissions.

7. Intervenors claims are barred by failure to mitigate.

8. All alleged transfers, to the extent actually received by Plaintiffs, were taken for value and in good faith, as provided by Colo. Rev. Stat. Section 38-8-109. They are thus not avoidable or recoverable as against any of the Plaintiffs, and Plaintiffs are entitled (i) to retain the alleged transfers, (ii) to a lien on the alleged transfers, and (iii) to a reduction in the amount of any alleged liability, in each case to the extent of any value or consideration provided or caused to be provided by any Plaintiff to the Defendants.

9. The transfers at issue were in the ordinary course.

10. Damages alleged in each claim for relief were exclusively caused or contributed to by the negligence or other acts or omissions of other, persons, or entities, whether parties to the action or not, and that said negligence or other acts or omissions were an intervening and superseding cause of damages, if any, and that such intervening and superseding forces were unforeseeable, independent, intervening actions breaking the chain of causation and barring recovery by

Intervenors.

11. The Complaint fails to state a claim on which relief can be granted because it fails to sufficiently trace the alleged funds at issue from Defendant to Plaintiffs and to sufficiently plead that any particular Plaintiff actually received any particular transfer.

12. The Intervenors fail to allege the fundamental and well-established requirements of a fraudulent transfer claim. The Complaint fails to state a claim on which relief can be granted because it fails to properly plead the elements required for the avoidance of the Defendants obligations to Plaintiffs. Absent an action to avoid the Defendants obligations to pay what was owed to Plaintiffs under state and federal law, the transfers were all made on account of antecedent debts.

13. Intervenors are not entitled to any equitable remedy, including rescission, because they have not exhausted their legal remedies and have not, in any event, pleaded facts sufficient to justify such remedies, nor could they.

14. Each claim for recovery of a fraudulent transfer is barred in whole or in part (whether by virtue of the "value" defense, setoff, recoupment or equitable adjustment) because, to the extent any alleged transfers were actually received by any Plaintiff, the Plaintiff received such transfer in good faith, without knowledge of the alleged fraud, and in payment of an antecedent debt, in whole or in part, on account of obligations owed by the Defendant for, *inter alia,* (i) amounts due contractually; (ii) rescission remedies, including damages and interest for fraud and misrepresentation pursuant to federal and state law; (iii) inflation or the time value of money, generally; (iv) other damages; (v) unjust enrichment; (vi) money had and received; and/or (vii) any other reason or cause.

15. Even if Intervenors were entitled to the return of some or all of the alleged transfers, they are not entitled to interest from the date of each alleged transfer or any other date, or to the recovery of attorneys' fees.

16. Intervenors must adjust Plaintiffs' alleged liability to provide Plaintiffs with a credit for inflation, time value of money and other similar economic factors.

17. Any recovery by the Intervenors is subject to credits, setoff and/or recoupment.

18. Intervenors lack standing.

19. Plaintiffs reserve the right to assert any additional defenses to Intervenors' claims at a later time.

WHEREFORE, Plaintiffs request the following relief with respect to the Intervenors' Joint Complaint:

A. That Intervenors take nothing by way of the Complaint;

B. For an award in Plaintiffs' favor on the Complaint, and against Intervenors, and for an award of costs of suit incurred herein, including attorney's fees to the extent allowed by applicable contract or law; and

C. For such other and further relief as the Court deems just and proper.

Dated: November 20, 2024.

AKERMAN LLP

s/ Adam L. Massaro
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on November 20, 2024, I filed and served via Colorado Courts E-Filing a true and correct copy of the foregoing on all counsel of record.

s/ Adam L. Massaro
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