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Jmîchaele Keller

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Jmîchaele Keller, an individual,

Plaintiff,

vs.

STEEP HILL, INC., a Delaware corporation, STEEP HILL HOLDING COMPANY, INC., a Delaware corporation, ANDREW HOWARD ROSENSTEIN, an individual, MERIDA CAPITAL PARTNERS LP, a limited partnership, MERIDA CAPITAL PARTNERS II, LP, a limited partnership, MERIDA ADVISOR, LLC, a limited liability company, MERIDA MANAGER II LLC, a limited liability company, MITCH BRYAN BARUCHOWITZ, an individual, JEFFREY M. MONAT, an individual, IRA SERVICES TRUST COMPANY, CFBO JEFFREY MONAT, a trust, STEPHEN JOSEPH FINFER, an individual, SJF CONSULTING, LLC, a

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Superior Court of California,
County of San Francisco

02/28/2020
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Deputy Clerk

CASE NO. CGC-20-581952

Amended Complaint – Derivative
and Direct Claims

1. DECLARATORY RELIEF
2. BREACH OF FIDUCIARY DUTY
3. ABUSE OF CONTROL
4. CORPORATE WASTE
5. AIDING AND ABETTING BREACH
6. CONSPIRACY TO BREACH OF FIDUCIARY DUTY

limited liability company, BRETT ADAM FINKELSTEIN, an individual, JANE WRIGHT-MITCHELL, an individual, SCOTT D. CATHCART, an individual, RICHARD JACINTO II, an individual, IRA SERVICES TRUST COMPANY CFBO RICHARD JACINTO II ROTH IRA ACCT #115447, a trust, LIBERTY TRUST COMPANY LTD CFBO RICHARD JACINTO II IRA #TC005850, a trust, MITCHELL KULICK, an individual, JASON ADLER, an individual, ARTICLE ELEVENTH TRUST U/W ALAN SLIFKA F/B/O RANDY SLIFKA, a trust, RANDY SLIFKA, an individual, GOTHAM GREEN FUND 1, L.P., a limited partnership, GOTHAM GREEN FUND 1 (Q), L.P., a limited partnership, REGGIE GAUDINO, an individual, DONALD LAND, an individual, BRIAN BRANDLEY, an individual, KRISTOPHER MARSH, an individual, GREEN ANALYTICS MD, LLC, a Maryland limited liability company, GREEN ANALYTICS NORTH, LLC, a Pennsylvania limited liability company, CHRISTOPHER HASHIOKA, an individual, CEH INVESTMENTS LP, a limited partnership, PATRICE PISINSKI ANGLE, an individual, JAMES LESLIE ANGLE, an individual, MARK HOFFMAN, an individual, LESLIE HOFFMAN, an individual, SOLIDUM CAPITAL ADVISORS LLC, a limited liability company, SAMUEL BERAN, an individual, JOSHUA GREENWALD, an individual, ORA SUCOV, an individual, JOSHUA WALDMAN, an individual, BAR CAPITAL, LLC, a limited liability company, ANAND G. SHAHI, an individual, LCM OP 127 DELAWARE LLC, a limited liability company, CHANDRESHWAR SHAHI, an individual, and DOES 1 THROUGH 100, inclusive,

Defendants.

7. INTENTIONAL MISREPRESENTATION OF PREFERRED AND COMMON STOCK OWNERSHIP

8. NEGLIGENT MISREPRESENTATION OF PREFERRED AND COMMON STOCK OWNERSHIP

9. INTENTIONAL MISREPRESENTATION OR RIGHT TO VOTE BY PROXY

10. NEGLIGENT MISREPRESENTATION OF RIGHT TO VOTE BY PROXY

11. FRAUD-CONCEALMENT

12. BREACH OF FIDUCIARY DUTY (SCIENCE LEADERSHIP)

13. AIDING AND ABETTING BREACH OF FIDUCIARY DUTY (SCIENCE LEADERSHIP)

14. CONSPIRACY TO BREACH OF FIDUCIARY DUTY (SCIENCE LEADERSHIP)

15. BREACH OF FIDUCIARY DUTY (Direct)

16. BREACH OF FIDUCIARY DUTY (Direct)

17. UNJUST ENRICHMENT

18. DECLARATORY RELIEF

JURY TRIAL DEMANDED

PLAINTIFF ALLEGES AS FOLLOWS.

I. INTRODUCTION

Cannabis is becoming an economic force, and more legal. Someone, somewhere, is going to do this work—to figure out how to modify weed with the same ease that Monsanto tweaks corn. And if Steep

Hill can be there helping crack the code, it stands to fundamentally change how the \$40 billion pot industry works.

- “A New Crop of Marijuana Geneticists Sets Out to Build Better Weed,” Wired Magazine, April 20, 2016

1. Steep Hill, Inc. was the world's leading cannabis science and technology company with significant footprints in lab testing, research and development, licensing, genetics and remote testing. Steep Hill's foundation was built on testing and analyzing medical and recreational marijuana to ensure compliance with public safety standards. In 2008, Steep Hill opened the first commercial cannabis lab in the United States and had been on the cutting-edge since its inception. Steep Hill was expanding throughout the United States and globally until a cabal of directors, officers, and shareholders devised and carried out a scheme to ouster its CEO and board chairman. Thereafter—in a matter of months—they ran the company into the ground. As a result, Steep Hill suffered crippling setbacks that deprived it of the opportunity to “crack the code” and become the Monsanto of the cannabis-science industry, all the while the conspirators squandered somewhere between \$75 million and \$200 million of shareholder value.

2. Keller, Steep Hill’s CEO and until September 25, 2019, Chair of its board of directors, resisted the actions undertaken by and at the behest of Defendants that he and others within Steep Hill (including then-Steep Hill CFO Timothy Cowart) believed to be contrary to the best interests of Steep Hill, the stockholders, and Steep Hill’s creditors. Retaliation by Defendants, and in particular Mitch Baruchowitz, Andrew Rosenstein, and Jeffrey Monat, was both swift and extreme, resulting in an exodus of executive and technical talent to the profound detriment of Steep Hill. Keller was stripped of his board position. Despite Keller’s irrefutable contractual right to a board position and board observer, he was denied information, denied access to records, and affirmatively sidelined from the governance of the company. The disassociation of Keller and the actions taken to accomplish it were carried out in accordance with explicit instructions from Baruchowitz, Rosenstein, and Monat, with the willing and affirmative participation of Richard Jacinto, Steven Finfer, Brett Finkelstein, and Jane Wright-Mitchell. The records obtained through an independent investigation funded personally by

1 Keller make the following unquestionably clear.

2 3. The conspiracy to take over Steep Hill was conceived as early as March 2018
3 around the time Defendant Andrew H. Rosenstein was elected to the board of directors. In the
4 first of two attempts, Rosenstein and Scott Cathcart attempted to take over ownership of Steep
5 Hill through a secret takeover bid that they engineered through a company called SH Worldwide
6 Corp. The SH Worldwide proposed acquisition would have given SH Worldwide, Cathcart, and
7 Rosenstein complete control of Steep Hill and substantially decreased the value of Steep Hill's
8 entire shareholder base. The existing shareholders would have received only 40% of the new
9 company with a value of only \$10,000,000, seven times lower than a recent market-based Series
10 A-2 valuation of \$75,000,000 that Steep Hill had received only a few weeks prior.

11 4. After that plan failed, Merida Capital Partners and its Managing Partner, Mitch
12 Baruchowitz, led a subsequent effort among the Defendants to acquire as much of Steep Hill's
13 value by depriving it from the minority shareholders through a freeze-out merger.

14 5. To accomplish their goal, the cabal first had to get rid of Plaintiff Jmîchaele Keller,
15 Steep Hill's CEO and chairman of the board, and Tim Cowart, the company's CFO. The plan
16 they concocted was to dilute Keller's common-stock ownership and voting power and then
17 squeeze him out.

18 6. The first step of the freeze-out plan came to fruition between August 21, 2018,
19 when Keller was removed as CEO to be replaced by Rosenstein, and September 25, 2018, when
20 Keller was ousted from Steep Hill's board. Keller's ouster was accomplished through a three-
21 step process, which ultimately was invalid because it violated Delaware General Corporation
22 law, Steep Hill's bylaws, and contractual and operative agreements.

23 7. First, Merida Capital Partners, acting through Rosenstein, the eventual chairman of
24 Steep Hill's Board, Jeffrey Monat, and a long list of others—Jane Wright-Mitchell, the
25 company's former general counsel; Mitch Kulick, another former Steep Hill general counsel;
26 Mitch Baruchowitz; Richard Jacinto; Randy Slifka, David Rosenthal; Jason Adler; and another
27 of Steep Hill's institutional investors, Gotham Green—sought to dilute Keller's majority
28 ownership by convincing certain preferred stockholders to convert their stock into common.

Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and the other participants appeared to be successful in their efforts to dilute Keller; however, in reality many of the attempted conversions were invalid. Second, the cabal sought to convince the new putative common-stockholders to execute a proxy in favor of Merida Capital Partners, which would vote to ouster Keller. As with the attempted conversion, many of the proxies were invalid. The final step in the plan was for the shareholders to act by written consent to vote Keller off the board.

8. Defendants, believing that they had sufficient votes, installed a new board consisting of Defendants Brett Finkelstein, Stephen Finfer, Mitch Baruchowitz, and Jeff Monat (the “Contested Board” and along with Rosenstein and the other Defendant-officers collectively, “Contested Management”). Monat, who was already a board member, became chairman of the Contested Board. Tim Cowart who was already director remained on the board for the time being.

9. Nevertheless, because of a series of procedural improprieties in the conversion and proxies, Defendants never actually had sufficient votes to act by written consent. In their haste to conduct their take-over, the Defendants only had between 22.75% of the votes, at the minimum, to 48.65%, at the most. They never had a majority. Consequently, every action taken by Contested Management is invalid.

10. In the aftermath of Keller’s ouster, Steep Hill’s Contested Management engaged in a series of acts that caused substantial damage to the shareholders. Such acts included selling off key assets—such as the genetics-related intellectual property and the genetics team—that Steep Hill had developed over many years and which solidified its leading position in cannabis genetics. Contested Management also dismantled Steep Hill’s proprietary MyLab software and its development team that gave Steep Hill a competitive edge over its competition, positioned Steep Hill to scientifically dominate the emerging global cannabis import-export market, and served as a source of continuing Revenue from the Company’s licensees that were scattered throughout the United States and internationally.

11. Contested Management also entered into a settlement agreement with Cathcart—who had sued Steep Hill after separating from the company—that granted him a non-dilutable

1 5% (minus one share) of Steep Hill, Inc., or its “successor in interest.” Nevertheless, the
2 attempted grant is invalid because Contested Management had no authority to provide it or even
3 enter the settlement agreement. The provision granting Cathcart equity of Steep Hill’s successor
4 in interest, on information and belief, was so management could include Cathcart in the freeze-
5 out merger (and protect him from having his interest diluted)—at the expense of Steep Hill’s
6 existing shareholders.

7 12. Additionally, members of the Contested Management team attempted to deprive
8 the company of revenues and enrich themselves. For example, Rosenstein was also the CEO of
9 two of Steep Hill’s licensees, Defendants Green Analytics MD and Green Analytics North LLC.
10 Those licensees owed Steep Hill more than a quarter of a million dollars, but Rosenstein used his
11 position as the CEO of Steep Hill to avoid having to pay those license fees. Rosenstein also used
12 his inside position within Steep Hill, in collusion with the Contested Board, to obtain a third
13 license for the State of New Jersey in a non-arms-length transaction that damaged Steep Hill and
14 its stockholders.

15 13. Amidst all of this, prior leadership along with Contested Management discovered a
16 rampant fraud scheme among the key science leadership—Defendants Reggie Gaudino, Donald
17 Land, Brian Brandley, and others—to conceal the fact that the testing methods they developed
18 and implemented could not test for the presence and quantity of certain pesticides and other
19 harmful substances that were regulated by California’s Bureau of Cannabis Control. That same
20 science leadership had been deceiving Steep Hill’s the non-scientific senior management, Steep
21 Hill’s customers, and government regulators, by authorizing and approving certificates of
22 analysis that fraudulently reported lower levels of these dangerous pesticides than what they
23 really contained. In doing so, Gaudino, Land, and Brandley put the public in grave danger, and
24 damaged the reputation of Steep Hill. Because of Contested Management’s grossly negligent
25 handling of the matter, the lab was eventually shut down by BCC resulting in tremendous loss of
26 revenue and diminution of Steep Hill’s Value. Had Contested Management acted prudently, that
27 loss of value could have been avoided. What is more, despite the damage to Steep Hill,
28 Contested Management has steadfastly refused to take any action to hold the scientific leadership

1 accountable for their tortious actions.

2 14. Contested Management’s efforts to wrest control of Steep Hill have accomplished
3 nothing except to bring to ruin a company that had the market-leading position, technical skill,
4 and competitive advantages to play a major role in the burgeoning cannabis industry—and with
5 it capture a large share of the industry’s revenues. In their greed, Defendants reduced a \$200
6 million valuation to nearly nothing

7 15. For these reasons and those stated below, Plaintiff seeks among other things
8 money damages to compensate them for their losses, money damages to restore enterprise value
9 to Steep Hill, a realignment of Steep Hill’s capital structure prior to the invalid conversions, and
10 the disgorgement of fees and other payments made by Steep Hill as the result of Defendants’
11 breaches of fiduciary duty and the recovery of licensee fees and accounts receivable due and
12 payable from Defendants and other entities. Because the actions complained of were taken in bad
13 faith, in violation of the duty of loyalty owed to Steep Hill, its stockholders, and its creditors by
14 each of the Defendants, and in some instances in violation of Steep Hill’s organizational
15 documents and agreements, the claims asserted fall outside the exculpatory scope of 8 Del C. §
16 102(b)(7).

17 16. Plaintiff brings this lawsuit against the contested officers and directors of Steep
18 Hill for their mismanagement of Steep Hill and for the abandonment of their duties as
19 fiduciaries. The action is appropriate at this time because Defendants’ acts, omissions, and
20 breaches have eviscerated nearly all of Steep Hill’s enterprise value and challenged the
21 assumption that Steep Hill will even remain a going concern.

22 **II. NATURE OF THE ACTION**

23 **A. Invalid Action by Written Consent**

24 17. Plaintiff brings this action comprising direct and derivative claims against Steep
25 Hill, the contested Board of Directors, and the contested officers, seeking a declaration under
26 Delaware General Corporation Law sections 225 and 228(c) as to the invalidity and
27 ineffectiveness of all actions taken by written consent by Steep Hill’s common stockholders
28 delivered to Steep Hill on September 25, 2018 (the “Action by Consent”), which actions

1 included the purported and improper removal of Plaintiff Keller from the Board and the
2 installment of the Contested Board.

3 18. Specifically, Contested Management took the improper actions by written consent
4 by way of proxies in favor of Merida Capital Partners LP, but many of the proxies were defective
5 and such defects invalidated the proxies; consequently, there was an insufficient number of
6 voting shares to act by consent. Numerous proxies were issued in connection with Contested
7 Management's scheme to convince holders of preferred stock to convert their stock into shares of
8 Steep Hill's common stock. Some of those proxies were invalid because they were issued before
9 the applicable preferred-stockholder had even attempted to convert to common stock. Others
10 were invalid because the conversions themselves were invalid. Plaintiff is seeking a
11 determination that these proxies and conversions were invalid.

12 19. Because of the invalid conversions and proxies, Plaintiff seeks a determination that
13 all actions taken on September 25, 2018, by written consent based on those proxies are void.
14 Furthermore, the actions taken by written consent were the product of a breach of the fiduciary
15 duties that the Board of Directors and officers owed to Plaintiff Keller in his capacity as a
16 director and the majority stockholder.

17 **B. Breaches of Fiduciary Duty**

18 20. It has been the law in Delaware that directors have a fiduciary relationship and a
19 duty to act in the best interests of all shareholders, including minority shareholders. *See, e.g.,*
20 *Mills Acq. Co. v. Macmillan, Inc.*, 559 A.2d 1261, 1280 (Del. 1989) and *In re Nine Sys. Corp.*
21 *S'holders Litig.*, 2014 Del. Ch. LEXIS 171, at *68-70 (Ch. Sep. 4, 2014) citing *Williamson v.*
22 *Cox Communs., Inc.*, 2006 Del. Ch. LEXIS 111 (2006). Fiduciary duties owed by directors and
23 officers are the duties of loyalty, due care, and in some contexts, good faith. *In re Walt Disney*
24 *Co. Derivative Litig.*, 907 A.2d 693, 745-746 (2005). Corporate officers owe fiduciary duties
25 that are identical to those owed by corporate directors. *Gantler v. Stephens*, 965 A.2d 695, 708
26 (Del. 2009).

27 21. The duty of loyalty requires Defendants to put the interests of the company, Steep
28 Hill, above their own personal pecuniary interests. The fiduciary duty of loyalty is defined in

1 “strict and unyielding terms” as follows:

2 Corporate officers and directors are not permitted to use their
3 position of trust and confidence to further their private interests. . . .

4 A public policy, existing through the years, and derived from a
5 profound knowledge of human characteristics and motives, has
6 established a rule that demands of a corporate officer or director,
7 peremptorily and inexorably, the most scrupulous observance of his
8 duty, not only affirmatively to protect the interests of the corporation
9 committed to his charge, but also to refrain from doing anything that
10 would work injury to the corporation, or to deprive it of profit or
11 advantage which his skill and ability might properly bring to it, or
12 to enable it to make in the reasonable and lawful exercise of its
13 powers. The rule that requires an undivided and unselfish loyalty to
14 the corporation demands that there be no conflict between duty and
15 self-interest.

16 22. *In re Walt Disney Co. Derivative Litig.* at 750-751 (citing *Guth v. Loft, Inc.*, 5 A.2d
17 503, 510 (1939)). Moreover, “[t]here is no safe-harbor for divided loyalties in Delaware.”
18 *Weinberger v. Uop*, 457 A.2d 701, 710 (1981) (internal quotations omitted). The duty of loyalty,
19 in essence, “mandates that the best interest of the corporation and its shareholders take[]
20 precedence over any interest possessed by a director, officer or controlling shareholder and not
21 shared by the stockholders generally.” *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 361
22 (1993) (citing *Pogostin v. Rice*, 480 A.2d 619, 624 (Del. 1984)).

23 23. Here, Defendants have a fiduciary duty to act in the best interests of Steep Hill and
24 its shareholders - treating their interests with the same care and attention as they would their own
25 interests. Defendants breached that duty by putting their own positions in the Company above
26 the best interests of the Company itself.

27 24. Defendants also owe Steep Hill both a duty of due care. Due care requires
28 Defendants to act in a prudent manner and in the best interests of the company, with all of the

1 information available to them. *Graham v. Allis-Chalmers Mfg. Co.*, 188 A.2d 125, 130 (Del.
2 1963). Defendants breached that duty of care by engaging in gross mismanagement of Steep
3 Hill, treating Steep Hill as their personal piggybank by issuing an unauthorized grants of Steep
4 Hill Stock, options, and warrants, and failing to hold the Science Leadership accountable for
5 damage they caused in covering-up problems in the testing lab that were harmful to the public
6 and to the shareholders.

7 25. For these reasons and as set forth more fully herein, Plaintiff seeks to enjoin the
8 Defendants from continuing to manage Steep Hill in the same manner going forward. Dramatic
9 corporate governance and management policy and procedural changes are required to put Steep
10 Hill on a path to undo the damage caused by Defendants. Plaintiff, on behalf of Steep Hill, also
11 seeks monetary damages from the Individual Defendants who abandoned their fiduciary duties
12 and should now be held accountable for the financial and reputational harm suffered by Steep
13 Hill and its shareholders.

14 **C. Corporate Governance And Mismanagement**

15 26. Notwithstanding Steep Hill's position in the growing cannabis-testing market,
16 through systematic and routine mismanagement, incompetence, and corporate malfeasance,
17 Defendants have driven Steep Hill's performance and valuation into the ground.

18 27. For example, when Contested Management shut-down the Mylab software system
19 and fired the MyLab software development team (without any Board approval to do so),
20 Contested Management intentionally put Steep Hill in breach of its licensing agreements by
21 blocking Steep Hill from providing a Laboratory Information Management System as required
22 by the Licensing Agreements benefitting Contested Management and other Defendants by the
23 avoidance of paying significant future, contractually obligated, license fees to Steep Hill.

24 28. In addition to mismanaging the Company's operations, Defendants have exhibited
25 a chronic failure to observe proper corporate governance procedures and protocols. Neither
26 Rosenstein nor Monat would agree to abide by Steep Hill's Code of Business Conduct and
27 Ethics, and Steep Hill's Related Party Transactions Policy. What is more, Defendants flagrantly
28 violated those policies, such as divulging confidential Steep Hill proprietary information to

competitors and potential acquirors, as set forth more specifically in this Amended Complaint.

Conflicted Defendants engaged in acts benefitting their own pecuniary interests at the expense of Steep Hill. For example, Andrew Rosenstein did not require Defendants Green Analytics MD and Green Analytics North, LLC—companies in which he also holds majority-ownership interests—to pay licensing fees that they owed to Steep Hill.

29. When Rosenstein took over as Interim CEO on August 21, 2018, Rosenstein’s labs owed Steep Hill \$164,717.94. By October 30, 2018, the amount Green Analytics MD and Green Analytics North owed to Steep Hill had grown to \$202,149.55. As of the date of filing this Amended Complaint, on information and belief, Green Analytics should have paid Steep Hill a contractually required minimum of \$341,149.55, plus accrued interest., which they have not paid because Rosenstein will not collect these delinquent payments from his labs.

30. Ultimately, the market of cannabis growers and distributors have made it clear that it does not believe that Contested Management is competent to manage the affairs and direction of the Company. On August 2018—mere weeks before the Contested Board wrongfully removed Keller from the board—monthly revenue of Steep Hill was nearly \$700,000 per month. Since that time, Steep Hill’s monthly revenues have not exceeded \$100,000.



31. Plaintiff alleges, on information and belief, that this precipitous decline is due to the mismanagement of the Company by Defendants, and their attempts to disenfranchise Company stockholders and entrench themselves.

D. The Merida Freeze-Out Plan

32. Beginning on or before June 9, 2018, and continuing throughout 2018 and 2019, Merida, Baruchowitz, Monat, and other Merida-related parties (the “Merida Defendants”) launched a plan to extract more value from Steep Hill—for its own personal pecuniary interests—at the expense of the dis-favored existing minority-preferred and -common shareholders that would culminate in an unfair freeze-out merger. In order to set the stage for the freeze-out, the Merida Defendants first had to devalue the equity of the shareholder and concentrate as much of the equity into Merida’s hands.

33. Merida’s plan was built on four steps. First, Merida II made a new investment of a million dollars on June 26, 2018. After doing so, Merida was able to elect Monat to Steep Hill’s board. Second, even though there was a term sheet governing future investment into Steep Hill, Merida forced Steep Hill to renegotiate each capital infusion under a new term sheet, on terms that were increasingly better for Merida and increasingly worse for Steep Hill’s minority shareholders. Often, Merida would offer to infuse equity if management took certain actions but then renege on the promise to invest. With each capital infusion, Merida—with the aid of Monat acting in Merida, not Steep Hill’s best interest—would devalue the existing shareholders’ interests.

34. Third, the Merida Defendants needed to get Keller out of the way because he was the biggest impediment to the Merida Defendants’ achieving their objective of misappropriating value from the minority shareholders. The fourth and final step in the plan, on information and belief, is Merida’s plan to conduct a freeze-out merger by merging Steep Hill into Defendant Steep Hill Holding.

35. Defendants’ wrongful conduct breached their duty of loyalty by putting their own financial position in the Company above the best interests of the Company and the minority-shareholders.

E. Shareholder Oppression regarding the Unauthorized Equity Grant to Cathcart

36. Cathcart, who was at one time, Steep Hill’s Chief Global Expansion offer, separated from the company over a dispute involving his entitlement to a grant of equity that he wanted to be part of his compensation package. Cathcart could no longer be involved with Steep Hill after refusing to submit a bad-actor questionnaire required under Rule 506(d) of the Securities and Exchange Commission’s Regulation D. In its efforts to raise capital, Steep Hill primarily relied on the registration exemptions under Rule 506. Those exemptions are not available, however, if the offering includes a “bad actor” that is engaging or has engaged in a “bad act.” Cathcart refused to complete the Rule 506 questionnaire. Consequently, he was separated from Steep Hill and filed a lawsuit against the company and various individuals, including Keller.

37. Contested Management recently settled the case on behalf of itself (but not Keller who is entitled to indemnity as a former officer and director). In the settlement, Contested Management granted Cathcart a non-dilutable 5% (minus one share) of Steep Hill, Inc. “or its successor in interest.” Nevertheless, the grant is invalid because Contested Management had no authority to provide that grant of equity to Cathcart, and the grant infringed the rights of all of Steep Hill’s existing investors, devaluing their ownership interests and subjecting the company to liability. Additionally, the provision granting Cathcart equity of Steep Hill’s successor in interest, on information and belief, was so management could include Cathcart in the Merida-led plan to conduct a freeze-out merger—at the expense of Steep Hill’s existing shareholders.

38. Plaintiff seeks a declaration that the purported stock issuance that was wrongfully caused by the Contested Directors on March 7, 2019, was invalid and ineffective.

F. Pesticide-Testing Fraud

39. Around April 2018, Steep Hill’s Chief Science Officer, Chief Scientific Consultant, Chief Lab Officer, and Lab Production Manager (collectively, the “Science Leadership”) had discovered a defect in their cannabis testing methods such that the lab could not accurately detect the presence or quantify the amount of seven or more different chemicals

1 and compounds that were dangerous to human life—all of them pesticides. Each of these
2 pesticides was to be restricted under phase two of California’s Bureau of Cannabis Control’s
3 (“BCC”) safety regulations, which phase-two testing was set to commence beginning on July 1,
4 2018. Under the required testing, no inhalable cannabis or cannabis product could be sold unless
5 a representative sample of the cannabis goods had undergone and passed all BCC’s required
6 testing. The required testing included a scheduled list of chemicals and compounds, and each
7 tested substance is referred to non-specifically as an “analyte.” After a sample was tested, a lab
8 was required to prepare a certificate of analysis (“CoA”) signed by both the Chief Lab Officer
9 and the Lab Production Manager that certified the lab results and identified the presence and
10 amounts of each of the required analytes and a conclusion as to whether the sample complied
11 with BCC regulations or not. Under the regulations, Steep Hill was required to provide the CoA
12 to both the seller/distributor (Steep Hill’s customer) and BCC.

13 40. Instead of advising the remainder of the non-technical senior management of this
14 testing deficiency, the Science Leadership consistently assured the non-technical senior
15 management that the lab was capable of accurately testing all of the analytes that BCC required
16 to be tested under the regulations. Throughout the spring and summer of 2018, the Science
17 Leadership continued to deceive and mislead the non-technical management about the lab’s
18 testing capabilities and compliance with BCC’s regulations. (In fact, the Science Leadership
19 prevented non-technical management’s ability to discover this information by denying them
20 access to the lab.)

21 41. After phase-two testing commenced on July 1, 2018, and despite the assurances
22 that the Science Leadership had made, the lab was not in compliance. Rather the Science
23 Leadership doubled down on their efforts to conceal the problem. The Science Leadership
24 deceived non-technical management, BCC, Steep Hill’s customers, and the public by continuing
25 to conceal the testing defect and then issuing fraudulent CoAs that had been certified as accurate
26 by both the Chief Lab Officer and Lab Production Manager. In many cases, the CoAs falsely
27 reported that a sample did not contain the presence of any of 10 pesticides in quantities that
28 exceeded the safety limits, when, in fact, the samples contained one or more of them at levels

1 that the California regulators deemed to be dangerous to humans. In such a case, the customer
2 would receive a fraudulent CoA confirming compliance with safety standards—a copy of which
3 was also submitted to BCC per the regulations—when in fact the sample contained dangerous
4 levels of one or more of the seven pesticides.

5 42. Upon discovery that the lab was issuing fraudulent CoAs, the unauthorized
6 management mishandled the investigation and report to California’s Bureau of Cannabis Control
7 (“BCC”), mislead BCC investigators regarding the nature and cause of the defective testing, and
8 failed to take legal action against members of the Science Leadership: defendants Reggie
9 Gaudino (Chief Science Officer), Donald Land (Chief Scientific Consultant), and Brian Brandley
10 (for their breaches of fiduciary duties to Steep Hill, fraud, gross negligence, and other tortious
11 conduct).

12 43. As a result of the unauthorized management’s mishandling of the investigation and
13 reporting to BCC, the Lab was shut down, Steep Hill’s revenues plummeted, Steep Hill suffered
14 great harm to its reputation for reliability, which is absolutely crucial for the success of a
15 cannabis testing lab, and Steep Hill’s investors have all been harmed by the resulting diminution
16 in Steep Hill’s value.

17 **III. JURISDICTION & VENUE**

18 44. This Court has personal jurisdiction over Defendants because they are residents of,
19 are doing business within the State of California, or both.

20 45. Venue is proper in this county in accordance with Section 395(a) of the California
21 Code of Civil Procedure because one or more Defendants reside in this county.

22 **IV. THE PARTIES**

23 **A. The Plaintiffs**

24 46. Plaintiff Jmichaële Keller (“Keller”), a resident of the Netherlands, is the owner of
25 1,942,376 shares of Steep Hill stock. Plaintiff acquired his shares of Steep Hill in 2015, 2016,
26 2017, and 2018. Keller has continuously owned his Steep Hill stock at all times relevant to this
27 Amended Complaint, continues to be a Steep Hill shareholder today, and intends to remain a
28 Steep Hill shareholder.

1 47. Plaintiff's allegations in this Amended Complaint are made upon personal
2 knowledge as to each of them and his acts, and upon information and belief as to all other
3 allegations.

4 **B. The Nominal Defendant**

5 48. Nominal Defendant Steep Hill, Inc. is a Delaware corporation with its corporate
6 headquarters at 1005 Parker St, Berkeley, CA 94710. Steep Hill is named in this Amended
7 Complaint as a nominal defendant in its derivative capacity, and the shareholders' derivative
8 claims asserted herein are brought on its behalf. Steep Hill is headquartered and conducts the
9 vast majority of its operations in California. Steep Hill is regulated by, among other agencies, the
10 California Bureau of Cannabis Control.

11 49. In 2008, Steep Hill—then known as Steep Hill Labs, Inc. until its name was
12 changed on March 19, 2018—opened the first commercial cannabis laboratory in the United
13 States. Until the actions giving rise to this Amended Complaint, Steep Hill has been a global
14 leader in cannabis science and technology. Steep Hill's business consists of lab testing, remote
15 testing, research and development regarding cannabis genetics, software development of
16 cannabis-laboratory management tools, and licensing.

17 **C. The Individual Defendants**

18 50. Defendant Andrew H. Rosenstein was appointed to Steep Hill's board of directors
19 on March 30, 2018, and directed business to and did business in the County of San Francisco,
20 State of California. At some point after joining the board of directors, Rosenstein conceived of
21 and launched a plan to ouster plaintiff Keller from the company. Rosenstein and his co-
22 Defendants carried out a scheme that ultimately resulted in Keller being removed from his role
23 as CEO and later removed from his seat on the board of directors. Rosenstein used his strategic
24 position in Steep Hill and his powers for his personal advantage and to the detriment of the
25 stockholders and creditors. He violated his obligations to keep proprietary Steep Hill
26 information confidential. He acted despite the significance of substantial conflicts of interest and
27 breached his duty of loyalty to Steep Hill by, among other things, mismanaging and covering up
28 the true nature of the pesticide fraud carried out by Steep Hill's chief scientists, enabling a

1 settlement of Cathcart's lawsuit that granted Cathcart equity, which management did not have
2 the right to issue, and by failing to collect hundreds of thousands of dollars of accounts
3 receivable from Green Analytics, which companies Rosenstein owns.

4 51. Merida Capital Partners LP ("Merida Capital I"), at all times mentioned herein, is
5 and was a limited partnership organized and existing under the laws of the State of Delaware and
6 directed business to and did business in the County of San Francisco, State of California. Merida
7 Capital I engaged in a scheme to devalue Steep Hill and dilute the ownership of the minority
8 shareholders through a planned freeze-out merger with an entity known as Steep Hill Holding
9 Company, Inc.

10 52. Merida Capital Partners II, LP ("Merida Capital II"), at all times mentioned herein,
11 is and was a limited partnership organized and existing under the laws of the State of Delaware
12 and directed business to and did business in the County of San Francisco, State of California.
13 Merida Capital II engaged in a scheme to devalue Steep Hill and dilute the ownership of the
14 minority shareholders through a planned freeze-out merger with an entity known as Steep Hill
15 Holding Company, Inc.

16 53. Merida Advisor, LLC ("Merida Advisor"), at all times mentioned herein, is and
17 was a limited liability company organized and existing under the laws of the State of Delaware
18 and directed business to and did business in the County of San Francisco, State of California.
19 Merida Advisor engaged in a scheme to devalue Steep Hill and dilute the ownership of the
20 minority shareholders through a planned freeze-out merger with an entity known as Steep Hill
21 Holding Company, Inc.

22 54. Merida Manager II LLC ("Merida Manager"), at all times mentioned herein, is and
23 was a limited liability company organized and existing under the laws of the State of Delaware
24 and directed business to and did business in the County of San Francisco, State of California.
25 Merida Advisor engaged in a scheme to devalue Steep Hill and dilute the ownership of the
26 minority shareholders through a planned freeze-out merger with an entity known as Steep Hill
27 Holding Company, Inc.

28 55. At all times mentioned herein, Merida Capital I approved or ratified the acts of its

agents, Merida Capital II, Merida Advisor, and Merida Manager. At all times mentioned herein, Merida Capital II, Merida Advisor, and Merida Manager were acting as the agents for and on behalf of Merida Capital I and each other; commingled the funds and other assets of Merida Capital I with their own funds and assets in conducting business through Merida Capital I; failed to segregate Merida Capital I's funds from their own funds; diverted Merida Capital I's funds and assets for their own use; treated Merida Capital I funds and assets as their own; failed to maintain minutes or other adequate corporate records for Merida Capital I, Merida Capital II, Merida Advisor, or Merida Manager; failed to adequately capitalize or insure Merida Capital I, Merida Capital II, Merida Advisor, or Merida Manager to meet anticipated obligations; failed to maintain adequate corporate assets to meet the anticipated obligations of Merida Capital I, Merida Capital II, Merida Advisor, and Merida Manager; used Merida Capital I as a "mere shell," instrumentality or conduit for their own personal affairs; used Merida Capital I to enter into contracts for their own benefit; diverted Merida Capital I assets to the detriment of creditors, so as to concentrate the assets, including the value of Merida Capital I as an ongoing business in themselves while leaving the liabilities in Merida Capital I; and used the name "Merida Capital Partners LP" interchangeably with the names Merida, Merida Capital Partners LP, Merida Capital Partners II, LP, Merida Advisor, LLC, Merida Manager, and others intentionally to confuse parties with whom they dealt and to hide the true capacity in which they were contracting in an effort to avoid performance and as a shield against personal liability. Therefore, to recognize the corporate separateness of Merida Capital I from Merida Capital II, Merida Advisor, Merida Manager, or each of them, would perpetrate a fraud and would be inequitable, and thus, Merida Capital II, Merida Advisor, and Merida Manager should be treated as the alter egos of Merida Capital I and the corporate entity of Merida Capital I should be disregarded as a cover for fraud as alleged herein.

56. Merida Capital I, Merida Capital II, Merida Advisor, and Merida Manager are sometimes referred to herein collectively as "Merida Capital."

57. Merida forced Steep Hill to enter into a consulting agreement with Merida, under which Steep Hill's board (at the time unknowingly) delegated duties and obligations of the board

1 to Merida such that Merida itself was in full operational control of Steep Hill such that Steep Hill
2 was effectively operated by Merida's board.

3 58. At all times mentioned herein, Defendant Mitch Baruchowitz serves and has
4 served as the Managing Partner of both Merida Capital I, and Merida Capital II, and based on
5 certain improper actions and inequitable behavior described in the Amended Complaint, now
6 claims to be a member of Steep Hill's Board. He directed business to and did business in the
7 County of San Francisco, State of California.

8 59. On information and belief Baruchowitz is a seasoned cannabis-industry
9 entrepreneur, consultant, and investor and holds himself out as a national expert regarding the
10 licensing regimes governing each state where cannabis is legal, including Colorado, Connecticut,
11 Minnesota, Maryland, and Pennsylvania cannabis regulators and regulations. On information
12 and belief, at all times mentioned herein, Baruchowitz was specifically authorized, directed, or
13 participated in the tortious conduct alleged herein, or specifically knew, or reasonably should
14 have known that an activity under his control could injure Plaintiff and negligently failed to take
15 appropriate action to avoid the harm. An ordinarily prudent person, knowing what Baruchowitz
16 knew at the time, would not have acted similarly under the circumstances. He colluded with
17 Rosenstein and other Defendants to remove Keller as CEO, oust Keller and Cowart from Steep
18 Hill's board, purposefully withheld financial information from shareholders despite a fiduciary
19 obligation to do so, and he engaged in a scheme to devalue Steep Hill and dilute the ownership
20 of the minority shareholders through a planned freeze-out merger with an entity known as Steep
21 Hill Holding Company, Inc.

22 60. At all times mentioned herein, Merida Capital I approved or ratified the acts of its
23 agent, Baruchowitz. At all times mentioned herein, Baruchowitz was acting as the agent for and
24 on behalf of Merida Capital I; commingled the funds and other assets of Merida Capital I with
25 his own funds and assets in conducting business through Merida Capital I; failed to segregate
26 Merida Capital I's funds from his own funds; diverted Merida Capital I's funds and assets for his
27 own use; treated Merida Capital I funds and assets as their own; failed to maintain minutes or
28 other adequate corporate records for Merida Capital I; failed to adequately capitalize or insure

Merida Capital I to meet anticipated obligations; failed to maintain adequate corporate assets to meet the anticipated obligations of Merida Capital I; used Merida Capital I as a “mere shell,” instrumentality or conduit for his own personal affairs; used Merida Capital I to enter into contracts for his own benefit; diverted Merida Capital I assets to the detriment of creditors, so as to concentrate the assets, including the value of Merida Capital I as an ongoing business in himself while leaving the liabilities in Merida Capital I; and used the name "Merida Capital Partners LP" interchangeably with the names Merida, Merida Capital Partners LP, Merida Capital Partners II, LP, Merida Advisor, LLC, and others intentionally to confuse parties with whom they dealt and to hide the true capacity in which they were contracting in an effort to avoid performance and as a shield against personal liability. Therefore, to recognize the corporate separateness of Merida Capital I from Baruchowitz, would perpetrate a fraud and would be inequitable, and thus, Baruchowitz should be treated as the alter ego of Merida Capital I and the corporate entity of Merida Capital I should be disregarded as a cover for fraud as alleged herein.

61. At all times mentioned herein, Merida Capital II approved or ratified the acts of its agent, Baruchowitz. At all times mentioned herein, Baruchowitz was acting as the agent for and on behalf of Merida Capital II; commingled the funds and other assets of Merida Capital II with his own funds and assets in conducting business through Merida Capital II; failed to segregate Merida Capital II’s funds from his own funds; diverted Merida Capital II’s funds and assets for his own use; treated Merida Capital II funds and assets as their own; failed to maintain minutes or other adequate corporate records for Merida Capital II; failed to adequately capitalize or insure Merida Capital II to meet anticipated obligations; failed to maintain adequate corporate assets to meet the anticipated obligations of Merida Capital II; used Merida Capital II as a “mere shell,” instrumentality or conduit for his own personal affairs; used Merida Capital II to enter into contracts for his own benefit; diverted Merida Capital II assets to the detriment of creditors, so as to concentrate the assets, including the value of Merida Capital II as an ongoing business in himself while leaving the liabilities in Merida Capital II; and used the name "Merida Capital Partners II, LP" interchangeably with the names Merida, Merida Capital Partners LP, Merida

Capital Partners II, LP, Merida Advisor, LLC, and others intentionally to confuse parties with whom they dealt and to hide the true capacity in which they were contracting in an effort to avoid performance and as a shield against personal liability. Therefore, to recognize the corporate separateness of Merida Capital II from Baruchowitz, would perpetrate a fraud and would be inequitable, and thus, Baruchowitz should be treated as the alter ego of Merida Capital II and the corporate entity of Merida Capital II should be disregarded as a cover for fraud as alleged herein.

62. At all times material to this Action, Defendant Jeffrey M. Monat was (and continues to be) a director of Steep Hill. Monat serves and, and at all times mentioned herein, has served as a partner in both Merida Capital I, and Merida Capital II. On information and belief, Monat is a seasoned cannabis-industry investor who began investing in 2013 with Defendant Baruchowitz. Monat has been an investment professional for over 15 years, with experience in mergers and acquisitions, public-market investments, and hedge fund management, including long/short equity hedge funds and event-driven hedge funds. He directed business to and did business in the County of San Francisco, State of California. Monat is also a shareholder who holds his shares through Defendant IRA Services Trust Company, CFBO Jeffrey Monat.

63. On information and belief, at all times mentioned herein, Monat was specifically authorized, directed, or participated in the tortious conduct alleged herein, or specifically knew, or reasonably should have known that an activity under his control could injure Plaintiff and negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person, knowing what Monat knew at the time, would not have acted similarly under the circumstances.

64. Monat is a shareholder who holds his shares through Defendant IRA Services Trust Company, CFBO Jeffrey Monat. Monat and co-Defendants carried out a scheme that ultimately resulted in Keller being removed from his role as CEO and later removed from his seat on the board of directors. Monat used his strategic position on Steep Hill's board and his powers to benefit himself and Merida Capital and to the detriment of the stockholders and creditors.

65. At all times mentioned herein, Merida Capital I approved or ratified the acts of its

1 agent, Monat. At all times mentioned herein, Monat was acting as the agent for and on behalf of
2 Merida Capital I; commingled the funds and other assets of Merida Capital I with his own funds
3 and assets in conducting business through Merida Capital I; failed to segregate Merida Capital
4 I's funds from his own funds; diverted Merida Capital I's funds and assets for his own use;
5 treated Merida Capital I funds and assets as their own; failed to maintain minutes or other
6 adequate corporate records for Merida Capital I; failed to adequately capitalize or insure Merida
7 Capital I to meet anticipated obligations; failed to maintain adequate corporate assets to meet the
8 anticipated obligations of Merida Capital I; used Merida Capital I as a "mere shell,"
9 instrumentality or conduit for his own personal affairs; used Merida Capital I to enter into
10 contracts for his own benefit; diverted Merida Capital I assets to the detriment of creditors, so as
11 to concentrate the assets, including the value of Merida Capital I as an ongoing business in
12 himself while leaving the liabilities in Merida Capital I; and used the name "Merida Capital
13 Partners LP" interchangeably with the names Merida, Merida Capital Partners LP, Merida
14 Capital Partners II, LP, Merida Advisor, LLC, and others intentionally to confuse parties with
15 whom they dealt and to hide the true capacity in which they were contracting in an effort to
16 avoid performance and as a shield against personal liability. Therefore, to recognize the
17 corporate separateness of Merida Capital I from Monat, would perpetrate a fraud and would be
18 inequitable, and thus, Monat should be treated as the alter ego of Merida Capital I and the
19 corporate entity of Merida Capital I should be disregarded as a cover for fraud as alleged herein.

20 66. At all times mentioned herein, Merida Capital II approved or ratified the acts of its
21 agent, Monat. At all times mentioned herein, Monat was acting as the agent for and on behalf of
22 Merida Capital II; commingled the funds and other assets of Merida Capital II with his own
23 funds and assets in conducting business through Merida Capital II; failed to segregate Merida
24 Capital II's funds from his own funds; diverted Merida Capital II's funds and assets for his own
25 use; treated Merida Capital II funds and assets as their own; failed to maintain minutes or other
26 adequate corporate records for Merida Capital II; failed to adequately capitalize or insure Merida
27 Capital II to meet anticipated obligations; failed to maintain adequate corporate assets to meet
28 the anticipated obligations of Merida Capital II; used Merida Capital II as a "mere shell,"

instrumentality or conduit for his own personal affairs; used Merida Capital II to enter into contracts for his own benefit; diverted Merida Capital II assets to the detriment of creditors, so as to concentrate the assets, including the value of Merida Capital II as an ongoing business in himself while leaving the liabilities in Merida Capital II; and used the name "Merida Capital Partners II, LP" interchangeably with the names Merida, Merida Capital Partners LP, Merida Capital Partners II, LP, Merida Advisor, LLC, and others intentionally to confuse parties with whom they dealt and to hide the true capacity in which they were contracting in an effort to avoid performance and as a shield against personal liability. Therefore, to recognize the corporate separateness of Merida Capital II from Monat, would perpetrate a fraud and would be inequitable, and thus, Monat should be treated as the alter ego of Merida Capital II and the corporate entity of Merida Capital II should be disregarded as a cover for fraud as alleged herein.

67. Defendant Stephen J. Finfer was at one time a contested director of Steep Hill. Finfer is a resident of California and directed business to and did business in the County of San Francisco, State of California.

68. Based on certain improper actions and inequitable behavior described in this Amended Complaint, Finfer claims to be a member of the Board. On information and belief, at all times mentioned herein, Finfer was specifically authorized, directed, or participated in the tortious conduct alleged herein, or specifically knew, or reasonably should have known that an activity under his control could injure Plaintiff and negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person, knowing what Finfer knew at the time, would not have acted similarly under the circumstances. Finfer and co-Defendants carried out a scheme that ultimately resulted in Keller being removed from his role as CEO and later removed from his seat on the board of directors. Finfer used his strategic position on Steep Hill's board and his powers to benefit himself and Merida Capital and to the detriment of the stockholders and creditors.

69. Finfer is also shareholder who holds his shares through Defendant SJF Consulting, LLC.

70. At all times mentioned herein, Merida Capital I approved or ratified the acts of its

1 agent, Finfer. At all times mentioned herein, Finfer was acting as the agent for and on behalf of
2 Merida Capital I; commingled the funds and other assets of Merida Capital I with his own funds
3 and assets in conducting business through Merida Capital I; failed to segregate Merida Capital
4 I's funds from his own funds; diverted Merida Capital I's funds and assets for his own use;
5 treated Merida Capital I funds and assets as their own; failed to maintain minutes or other
6 adequate corporate records for Merida Capital I; failed to adequately capitalize or insure Merida
7 Capital I to meet anticipated obligations; failed to maintain adequate corporate assets to meet the
8 anticipated obligations of Merida Capital I; used Merida Capital I as a "mere shell,"
9 instrumentality or conduit for his own personal affairs; used Merida Capital I to enter into
10 contracts for his own benefit; diverted Merida Capital I assets to the detriment of creditors, so as
11 to concentrate the assets, including the value of Merida Capital I as an ongoing business in
12 himself while leaving the liabilities in Merida Capital I; and used the name "Merida Capital
13 Partners LP" interchangeably with the names Merida, Merida Capital Partners LP, Merida
14 Capital Partners II, LP, Merida Advisor, LLC, and others intentionally to confuse parties with
15 whom they dealt and to hide the true capacity in which they were contracting in an effort to
16 avoid performance and as a shield against personal liability. Therefore, to recognize the
17 corporate separateness of Merida Capital I from Finfer, would perpetrate a fraud and would be
18 inequitable, and thus, Finfer should be treated as the alter ego of Merida Capital I and the
19 corporate entity of Merida Capital I should be disregarded as a cover for fraud as alleged herein.

20 71. At all times mentioned herein, Merida Capital II approved or ratified the acts of its
21 agent, Finfer. At all times mentioned herein, Finfer was acting as the agent for and on behalf of
22 Merida Capital II; commingled the funds and other assets of Merida Capital II with his own
23 funds and assets in conducting business through Merida Capital II; failed to segregate Merida
24 Capital II's funds from his own funds; diverted Merida Capital II's funds and assets for his own
25 use; treated Merida Capital II funds and assets as their own; failed to maintain minutes or other
26 adequate corporate records for Merida Capital II; failed to adequately capitalize or insure Merida
27 Capital II to meet anticipated obligations; failed to maintain adequate corporate assets to meet
28 the anticipated obligations of Merida Capital II; used Merida Capital II as a "mere shell,"

instrumentality or conduit for his own personal affairs; used Merida Capital II to enter into contracts for his own benefit; diverted Merida Capital II assets to the detriment of creditors, so as to concentrate the assets, including the value of Merida Capital II as an ongoing business in himself while leaving the liabilities in Merida Capital II; and used the name "Merida Capital Partners II, LP" interchangeably with the names Merida, Merida Capital Partners LP, Merida Capital Partners II, LP, Merida Advisor, LLC, and others intentionally to confuse parties with whom they dealt and to hide the true capacity in which they were contracting in an effort to avoid performance and as a shield against personal liability. Therefore, to recognize the corporate separateness of Merida Capital II from Finfer, would perpetrate a fraud and would be inequitable, and thus, Finfer should be treated as the alter ego of Merida Capital II and the corporate entity of Merida Capital II should be disregarded as a cover for fraud as alleged herein.

72. Defendant Brett A. Finkelstein was a contested director of Steep Hill. He directed business to and did business in the County of San Francisco, State of California.

73. Based on certain improper actions and inequitable behavior described in this Amended Complaint, Finkelstein claims to be a member of the Board. On information and belief, at all times mentioned herein, Finkelstein was specifically authorized, directed, or participated in the tortious conduct alleged herein, or specifically knew, or reasonably should have known that an activity under his control could injure Plaintiff and negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person, knowing what Finkelstein knew at the time, would not have acted similarly under the circumstances. Finkelstein and co-Defendants carried out a scheme that ultimately resulted in Keller being removed from his role as CEO and later removed from his seat on the board of directors. Finfer used his strategic position on Steep Hill's board and his powers to benefit himself and Merida Capital and to the detriment of the stockholders and creditors.

74. At all times mentioned herein, Merida Capital I approved or ratified the acts of its agent, Finkelstein. At all times mentioned herein, Finkelstein was acting as the agent for and on behalf of Merida Capital I; commingled the funds and other assets of Merida Capital I with his own funds and assets in conducting business through Merida Capital I; failed to segregate

Merida Capital I's funds from his own funds; diverted Merida Capital I's funds and assets for his own use; treated Merida Capital I funds and assets as their own; failed to maintain minutes or other adequate corporate records for Merida Capital I; failed to adequately capitalize or insure Merida Capital I to meet anticipated obligations; failed to maintain adequate corporate assets to meet the anticipated obligations of Merida Capital I; used Merida Capital I as a "mere shell," instrumentality or conduit for his own personal affairs; used Merida Capital I to enter into contracts for his own benefit; diverted Merida Capital I assets to the detriment of creditors, so as to concentrate the assets, including the value of Merida Capital I as an ongoing business in himself while leaving the liabilities in Merida Capital I; and used the name "Merida Capital Partners LP" interchangeably with the names Merida, Merida Capital Partners LP, Merida Capital Partners II, LP, Merida Advisor, LLC, and others intentionally to confuse parties with whom they dealt and to hide the true capacity in which they were contracting in an effort to avoid performance and as a shield against personal liability. Therefore, to recognize the corporate separateness of Merida Capital I from Finkelstein, would perpetrate a fraud and would be inequitable, and thus, Finkelstein should be treated as the alter ego of Merida Capital I and the corporate entity of Merida Capital I should be disregarded as a cover for fraud as alleged herein.

75. At all times mentioned herein, Merida Capital II approved or ratified the acts of its agent, Finkelstein. At all times mentioned herein, Finkelstein was acting as the agent for and on behalf of Merida Capital II; commingled the funds and other assets of Merida Capital II with his own funds and assets in conducting business through Merida Capital II; failed to segregate Merida Capital II's funds from his own funds; diverted Merida Capital II's funds and assets for his own use; treated Merida Capital II funds and assets as their own; failed to maintain minutes or other adequate corporate records for Merida Capital II; failed to adequately capitalize or insure Merida Capital II to meet anticipated obligations; failed to maintain adequate corporate assets to meet the anticipated obligations of Merida Capital II; used Merida Capital II as a "mere shell," instrumentality or conduit for his own personal affairs; used Merida Capital II to enter into contracts for his own benefit; diverted Merida Capital II assets to the detriment of creditors, so as to concentrate the assets, including the value of Merida Capital II as an ongoing business in

1 himself while leaving the liabilities in Merida Capital II; and used the name "Merida Capital
2 Partners II, LP" interchangeably with the names Merida, Merida Capital Partners LP, Merida
3 Capital Partners II, LP, Merida Advisor, LLC, and others intentionally to confuse parties with
4 whom they dealt and to hide the true capacity in which they were contracting in an effort to
5 avoid performance and as a shield against personal liability. Therefore, to recognize the
6 corporate separateness of Merida Capital II from Finkelstein, would perpetrate a fraud and would
7 be inequitable, and thus, Finkelstein should be treated as the alter ego of Merida Capital II and
8 the corporate entity of Merida Capital II should be disregarded as a cover for fraud as alleged
9 herein.

10 76. Jane Wright-Mitchell served as Steep Hill's general counsel and legal consultant,
11 and she directed business to and did business in the County of San Francisco, State of California.
12 On information and belief, at all times mentioned herein, Wright-Mitchell was specifically
13 authorized, directed, or participated in the tortious conduct alleged herein, or specifically knew,
14 or reasonably should have known that an activity under her control could injure Plaintiff and
15 negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person,
16 knowing what Wright-Mitchell knew at the time, would not have acted similarly under the
17 circumstances.

18 77. Wright-Mitchell and co-Defendants carried out a scheme that ultimately resulted in
19 Keller being removed from his role as CEO and later removed from his seat on the board of
20 directors. Wright-Mitchell used her strategic position and access to Steep Hill's board and her
21 powers to benefit herself and to the detriment of the stockholders and creditors.

22 78. Scott D. Cathcart is an individual who resides in Marin County, California. He
23 directed business to and did business in the County of San Francisco, State of California.

24 79. He was, at one time, Steep Hill's Chief Global Expansion officer. Cathcart
25 separated from Steep Hill after learning that he was not eligible to receive equity in Steep Hill,
26 which was not part of his original compensation package. He refused to execute a bad-actor
27 questionnaire under Rule 506(d) of the Securities and Exchange Commission's Regulation D. In
28 its efforts to raise capital, Steep Hill primarily relied on the registration exemptions under Rule

506. That exemption is not available, however, if the offering includes a “bad actor” that is engaging or has engaged in a “bad act.” On information and belief, Cathcart would have been deemed a bad actor and could not sign the questionnaire. Consequently, he separated from Steep Hill and filed a lawsuit that the company recently settled, wherein Defendants awarded Cathcart non-dilutable equity without authority and which violated the rights of Steep Hill’s investors.

80. Defendant Richard Jacinto II is both a former and current Steep Hill director and a stockholder who holds his shares through Defendant IRA Services Trust Company CFBO Richard Jacinto II Roth IRA ACCT #115447 and Defendant Liberty Trust Company Ltd CFBO Richard Jacinto II IRA #TC005850. He directed business to and did business in the County of San Francisco, State of California.

81. Jacinto and co-Defendants carried out a scheme that ultimately resulted in Keller being removed from his role as CEO and later removed from his seat on the board of directors. Jacinto used his strategic position with Steep Hill and his powers to benefit himself and Merida Capital and to the detriment of the stockholders and creditors.

82. On information and belief, at all times mentioned herein, Jacinto was specifically authorized, directed, or participated in the tortious conduct alleged herein, or specifically knew, or reasonably should have known that an activity under his control could injure Plaintiff and negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person, knowing what Jacinto knew at the time, would not have acted similarly under the circumstances.

83. Mitchell Kulick is a former general counsel of Steep Hill and he directed business to and did business in the County of San Francisco, State of California. On information and belief, at all times mentioned herein, Kulick was specifically authorized, directed, or participated in the tortious conduct alleged herein, or specifically knew, or reasonably should have known that an activity under his control could injure Plaintiff and negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person, knowing what Kulick knew at the time, would not have acted similarly under the circumstances. Kulick and co-Defendants carried out a scheme that ultimately resulted in Keller being removed from his role as CEO and later removed from his seat on the board of directors.

84. Jason Adler is a Steep Hill stockholder who directed business to and did business in the County of San Francisco, State of California. On information and belief, at all times mentioned herein, Adler was specifically authorized, directed, or participated in the tortious conduct alleged herein, or specifically knew, or reasonably should have known that an activity under his control could injure Plaintiff and negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person, knowing what Adler knew at the time, would not have acted similarly under the circumstances. Adler and co-Defendants carried out a scheme that ultimately resulted in Keller being removed from his role as CEO and later removed from his seat on the board of directors.

85. Randy Slifka is a Steep Hill stockholder who holds his shares through Defendant Article Eleventh Trust U/W Alan Slifka F/B/O Randy Slifka. He directed business to and did business in the County of San Francisco, State of California. On information and belief, Slifka was a board observer. On information and belief, at all times mentioned herein, Slifka was specifically authorized, directed, or participated in the tortious conduct alleged herein, or specifically knew, or reasonably should have known that an activity under his control could injure Plaintiff and negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person, knowing what Slifka knew at the time, would not have acted similarly under the circumstances. Slifka and co-Defendants carried out a scheme that ultimately resulted in Keller being removed from his role as CEO and later removed from his seat on the board of directors.

86. Defendant Gotham Green Fund 1, L.P. (“Gotham Green”) is a Steep Hill stockholder, which directed business to and did business in the County of San Francisco, State of California. On information and belief, at all times mentioned herein, Gotham Green was specifically authorized, directed, or participated in the tortious conduct alleged herein, or specifically knew, or reasonably should have known that an activity under his control could injure Plaintiff and negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person, knowing what Gotham Green knew at the time, would not have acted similarly under the circumstances.

87. Defendant Gotham Green Fund 1 (Q), L.P. (“Gotham Green Q”), is a Steep Hill

debtholder, which directed business to and did business in the County of San Francisco, State of California. On information and belief, at all times mentioned herein, Gotham Green Q was specifically authorized, directed, or participated in the tortious conduct alleged herein, or specifically knew, or reasonably should have known that an activity under his control could injure Plaintiff and negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person, knowing what Gotham Green knew at the time, would not have acted similarly under the circumstances.

88. Steep Hill Holding Company, Inc. (“SH Holding”) is and was a corporation organized and existing under the laws of Delaware. SH Holding is, on information and belief, a “sham” corporation, created for the purpose of confusing investors and consumers and hiding assets and is merely a continuation of Steep Hill. Furthermore, on information and belief, Steep Hill and SH Holding share the same or substantially the same owners, officers, or directors.

89. Reggie Gaudino (“Gaudino”) was Steep Hill’s Chief Science Officer, president, and a resident of California. Along with Donald Land, Brandley, and Kristofer Marsh, Gaudino concealed the fact that the testing protocols they designed could not accurately test for the presence or quantity of various pesticides and chemical contaminants that California’s BCC concluded were too dangerous for humans to consume. Then he engaged in scheme to deceive the Steep Hill’s other senior management, customers, BCC, and the public by issuing CoAs that falsely reported lower amounts of these dangerous contaminants such that cannabis samples passed testing that should not have. On information and belief, at all times mentioned herein, Gaudino specifically authorized and directed others, and also directly participated in the tortious conduct alleged herein, or specifically knew, or reasonably should have known that an activity under his control could injure Plaintiff and negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person, knowing what Gaudino knew at the time, would not have acted similarly under the circumstances.

90. Donald Land (“Land”) is Steep Hill’s Chief Scientific Consultant and a resident of California. Along with Gaudino, Brandley, and Kristofer Marsh, Land concealed the fact that the testing protocols they designed could not accurately test for the presence or quantity of

1 various pesticides and chemical contaminants that California's BCC concluded were too
2 dangerous for humans to consume. Then he engaged in scheme to deceive the Steep Hill's other
3 senior management, customers, BCC, and the public by issuing CoAs that falsely reported lower
4 amounts of these dangerous contaminants such that cannabis samples passed testing that should
5 not have. On information and belief, at all times mentioned herein, Land was specifically
6 authorized, directed, or participated in the tortious conduct alleged herein, or specifically knew,
7 or reasonably should have known that an activity under his control could injure Plaintiff and
8 negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person,
9 knowing what Land knew at the time, would not have acted similarly under the circumstances.

10 91. Brian Brandley ("Brandley") was Steep Hill's Chief Lab Officer at all times
11 material to this Amended Complaint and a resident of California. Along with Gaudino, Land,
12 and Kristofer Marsh, Brandley concealed the fact that the testing protocols they designed could
13 not accurately test for the presence or quantity of various pesticides and chemical contaminants
14 that California's BCC concluded were too dangerous for humans to consume. Then he engaged
15 in scheme to deceive the Steep Hill's other senior management, customers, BCC, and the public
16 by (via his personal signature) and issuing CoAs that falsely reported lower amounts of these
17 dangerous contaminants such that cannabis samples passed testing that should not have. On
18 information and belief, at all times mentioned herein, Brandley was specifically authorized,
19 directed, or participated in the tortious conduct alleged herein, or specifically knew, or
20 reasonably should have known that an activity under his control could injure Plaintiff and
21 negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person,
22 knowing what Brandley knew at the time, would not have acted similarly under the
23 circumstances.

24 92. Kristofer Marsh ("Marsh") was Steep Hill's Lab Production Manager at all times
25 material to this Amended Complaint and a resident of California. Along with Gaudino, Land,
26 and Brandley, Marsh concealed the fact that the testing protocols they designed could not
27 accurately test for the presence or quantity of various pesticides and chemical contaminants that
28 California's BCC concluded were too dangerous for humans to consume. Then he engaged in

1 scheme to deceive the Steep Hill’s other senior management, customers, BCC, and the public by
2 (via his personal signature) and issuing CoAs that falsely reported lower amounts of these
3 dangerous contaminants such that cannabis samples passed testing that should not have. On
4 information and belief, at all times mentioned herein, Marsh was specifically authorized,
5 directed, or participated in the tortious conduct alleged herein, or specifically knew, or
6 reasonably should have known that an activity under his control could injure Plaintiff and
7 negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person,
8 knowing what Brandley knew at the time, would not have acted similarly under the
9 circumstances

10 93. Green Analytics MD, LLC at all times mentioned herein, is and was a limited
11 liability company organized and existing under the laws of the State of Maryland and directed
12 business to and did business in the County of San Francisco, State of California. On information
13 and belief Rosenstein is the CEO and holds a controlling-interest in Green Analytics MD. Green
14 Analytics MD was a Steep Hill licensee at all times material to this Amended Complaint.

15 94. Green Analytics North, LLC dba Steep Hill Pennsylvania (“Green Analytics
16 North”), at all times mentioned herein, is and was a limited liability company organized and
17 existing under the laws of the State of Pennsylvania and directed business to and did business in
18 the County of San Francisco, State of California. On information and belief Rosenstein is the
19 CEO and holds a controlling-interest in Green Analytics North. Green Analytics North was a
20 Steep Hill licensee at all times material to this Amended Complaint.

21 95. At all times mentioned herein, Green Analytics MD approved or ratified the acts of
22 its agent, Green Analytics North, LLC. At all times mentioned herein, Green Analytics North,
23 LLC was acting as the agent for and on behalf of Green Analytics MD; commingled the funds
24 and other assets of Green Analytics MD with his own funds and assets in conducting business
25 through Green Analytics MD; failed to segregate Green Analytics MD’s funds from his own
26 funds; diverted Green Analytics MD’s funds and assets for his own use; treated Green Analytics
27 MD funds and assets as their own; failed to maintain minutes or other adequate corporate records
28 for Green Analytics MD; failed to adequately capitalize or insure Green Analytics MD to meet

1 anticipated obligations; failed to maintain adequate corporate assets to meet the anticipated
2 obligations of Green Analytics MD; used Green Analytics MD as a “mere shell,” instrumentality
3 or conduit for his own personal affairs; used Green Analytics MD to enter into contracts for his
4 own benefit; diverted Green Analytics MD assets to the detriment of creditors, so as to
5 concentrate the assets, including the value of Green Analytics MD as an ongoing business in
6 himself while leaving the liabilities in Green Analytics MD; and used the name "Merida Capital
7 Partners LP" interchangeably with the names Merida, Merida Capital Partners LP, Merida
8 Capital Partners II, LP, Merida Advisor, LLC, and others intentionally to confuse parties with
9 whom they dealt and to hide the true capacity in which they were contracting in an effort to
10 avoid performance and as a shield against personal liability. Therefore, to recognize the
11 corporate separateness of Green Analytics MD from Green Analytics North, LLC, would
12 perpetrate a fraud and would be inequitable, and thus, Green Analytics North, LLC should be
13 treated as the alter ego of Green Analytics MD and the corporate entity of Green Analytics MD
14 should be disregarded as a cover for fraud as alleged herein.

15 96. Green Analytics MD and Green Analytics North are sometimes referred to herein
16 collectively as “Green Analytics.”

17 97. Christopher Hashioka is a Steep Hill stockholder who directed business to and did
18 business in the County of San Francisco, State of California. On information and belief, at all
19 times mentioned herein, Hashioka was specifically authorized, directed, or participated in the
20 tortious conduct alleged herein, or specifically knew, or reasonably should have known that an
21 activity under his control could injure Plaintiff and negligently failed to take appropriate action
22 to avoid the harm. An ordinarily prudent person, knowing what Hashioka knew at the time,
23 would not have acted similarly under the circumstances. Hashioka and co-Defendants carried
24 out a scheme that ultimately resulted in Keller being removed from his role as CEO and later
25 removed from his seat on the board of directors.

26 98. CEH Investments LP is a Steep Hill stockholder, which directed business to and
27 did business in the County of San Francisco, State of California. On information and belief, at
28 all times mentioned herein, CEH Investments LP was specifically authorized, directed, or

1 participated in the tortious conduct alleged herein, or specifically knew, or reasonably should
2 have known that an activity under its control could injure Plaintiff and negligently failed to take
3 appropriate action to avoid the harm. An ordinarily prudent person, knowing what CEH
4 Investments LP knew at the time, would not have acted similarly under the circumstances.

5 99. Patrice Pisinski Angle is a Steep Hill stockholder who directed business to and did
6 business in the County of San Francisco, State of California. On information and belief, at all
7 times mentioned herein, Patrice Pisinski Angle was specifically authorized, directed, or
8 participated in the tortious conduct alleged herein, or specifically knew, or reasonably should
9 have known that an activity under her control could injure Plaintiff and negligently failed to take
10 appropriate action to avoid the harm. An ordinarily prudent person, knowing what Patrice
11 Pisinski Angle knew at the time, would not have acted similarly under the circumstances.

12 Patrice Pisinski Angle and co-Defendants carried out a scheme that ultimately resulted in Keller
13 being removed from his role as CEO and later removed from his seat on the board of directors.

14 100. James Leslie Angle is a Steep Hill stockholder who directed business to and did
15 business in the County of San Francisco, State of California. On information and belief, at all
16 times mentioned herein, James Leslie Angle was specifically authorized, directed, or participated
17 in the tortious conduct alleged herein, or specifically knew, or reasonably should have known
18 that an activity under his control could injure Plaintiff and negligently failed to take appropriate
19 action to avoid the harm. An ordinarily prudent person, knowing what James Leslie Angle knew
20 at the time, would not have acted similarly under the circumstances. James Leslie Angle and co-
21 Defendants carried out a scheme that ultimately resulted in Keller being removed from his role
22 as CEO and later removed from his seat on the board of directors.

23 101. Mark Hoffman is a Steep Hill stockholder who directed business to and did
24 business in the County of San Francisco, State of California. On information and belief, at all
25 times mentioned herein, Mark Hoffman was specifically authorized, directed, or participated in
26 the tortious conduct alleged herein, or specifically knew, or reasonably should have known that
27 an activity under his control could injure Plaintiff and negligently failed to take appropriate
28 action to avoid the harm. An ordinarily prudent person, knowing what Mark Hoffman knew at

1 the time, would not have acted similarly under the circumstances. Mark Hoffman and co-
2 Defendants carried out a scheme that ultimately resulted in Keller being removed from his role
3 as CEO and later removed from his seat on the board of directors.

4 102. Leslie Hoffman is a Steep Hill stockholder who directed business to and did
5 business in the County of San Francisco, State of California. On information and belief, at all
6 times mentioned herein, Leslie Hoffman was specifically authorized, directed, or participated in
7 the tortious conduct alleged herein, or specifically knew, or reasonably should have known that
8 an activity under her control could injure Plaintiff and negligently failed to take appropriate
9 action to avoid the harm. An ordinarily prudent person, knowing what Leslie Hoffman knew at
10 the time, would not have acted similarly under the circumstances. Leslie Hoffman and co-
11 Defendants carried out a scheme that ultimately resulted in Keller being removed from his role
12 as CEO and later removed from his seat on the board of directors.

13 103. Solidum Capital Advisors LLC is a Steep Hill stockholder, which directed
14 business to and did business in the County of San Francisco, State of California. On information
15 and belief, at all times mentioned herein, Solidum Capital Advisors LLC was specifically
16 authorized, directed, or participated in the tortious conduct alleged herein, or specifically knew,
17 or reasonably should have known that an activity under its control could injure Plaintiff and
18 negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person,
19 knowing what Solidum Capital Advisors LLC knew at the time, would not have acted similarly
20 under the circumstances.

21 104. Samuel Beran is a Steep Hill stockholder who directed business to and did
22 business in the County of San Francisco, State of California. On information and belief, at all
23 times mentioned herein, Samuel Beran was specifically authorized, directed, or participated in
24 the tortious conduct alleged herein, or specifically knew, or reasonably should have known that
25 an activity under his control could injure Plaintiff and negligently failed to take appropriate
26 action to avoid the harm. An ordinarily prudent person, knowing what Samuel Beran knew at the
27 time, would not have acted similarly under the circumstances. Samuel Beran and co-Defendants
28 carried out a scheme that ultimately resulted in Keller being removed from his role as CEO and

1 later removed from his seat on the board of directors.

2 105. Joshua Greenwald is a Steep Hill stockholder who directed business to and did
3 business in the County of San Francisco, State of California. On information and belief, at all
4 times mentioned herein, Joshua Greenwald was specifically authorized, directed, or participated
5 in the tortious conduct alleged herein, or specifically knew, or reasonably should have known
6 that an activity under his control could injure Plaintiff and negligently failed to take appropriate
7 action to avoid the harm. An ordinarily prudent person, knowing what Joshua Greenwald knew
8 at the time, would not have acted similarly under the circumstances. Joshua Greenwald and co-
9 Defendants carried out a scheme that ultimately resulted in Keller being removed from his role
10 as CEO and later removed from his seat on the board of directors.

11 106. Ora Sucov is a Steep Hill stockholder who directed business to and did business in
12 the County of San Francisco, State of California. On information and belief, at all times
13 mentioned herein, Ora Sucov was specifically authorized, directed, or participated in the tortious
14 conduct alleged herein, or specifically knew, or reasonably should have known that an activity
15 under his control could injure Plaintiff and negligently failed to take appropriate action to avoid
16 the harm. An ordinarily prudent person, knowing what Ora Sucov knew at the time, would not
17 have acted similarly under the circumstances. Ora Sucov and co-Defendants carried out a
18 scheme that ultimately resulted in Keller being removed from his role as CEO and later removed
19 from his seat on the board of directors.

20 107. Joshua Waldman is a Steep Hill stockholder who directed business to and did
21 business in the County of San Francisco, State of California. On information and belief, at all
22 times mentioned herein, Joshua Waldman was specifically authorized, directed, or participated in
23 the tortious conduct alleged herein, or specifically knew, or reasonably should have known that
24 an activity under his control could injure Plaintiff and negligently failed to take appropriate
25 action to avoid the harm. An ordinarily prudent person, knowing what Joshua Waldman knew at
26 the time, would not have acted similarly under the circumstances. Joshua Waldman and co-
27 Defendants carried out a scheme that ultimately resulted in Keller being removed from his role
28 as CEO and later removed from his seat on the board of directors.

1 108. Bar Capital, LLC is a Steep Hill stockholder, which directed business to and did
2 business in the County of San Francisco, State of California. On information and belief, at all
3 times mentioned herein, Bar Capital, LLC was specifically authorized, directed, or participated
4 in the tortious conduct alleged herein, or specifically knew, or reasonably should have known
5 that an activity under its control could injure Plaintiff and negligently failed to take appropriate
6 action to avoid the harm. An ordinarily prudent person, knowing what Bar Capital, LLC knew at
7 the time, would not have acted similarly under the circumstances.

8 109. Anand G. Shahi is a Steep Hill stockholder who directed business to and did
9 business in the County of San Francisco, State of California. On information and belief, at all
10 times mentioned herein, Anand G. Shahi was specifically authorized, directed, or participated in
11 the tortious conduct alleged herein, or specifically knew, or reasonably should have known that
12 an activity under his control could injure Plaintiff and negligently failed to take appropriate
13 action to avoid the harm. An ordinarily prudent person, knowing what Anand G. Shahi knew at
14 the time, would not have acted similarly under the circumstances. Anand G. Shahi and co-
15 Defendants carried out a scheme that ultimately resulted in Keller being removed from his role
16 as CEO and later removed from his seat on the board of directors.

17 110. LCM OP 127 Delaware LLC is a Steep Hill stockholder, which directed business
18 to and did business in the County of San Francisco, State of California. On information and
19 belief, at all times mentioned herein, LCM OP 127 Delaware LLC was specifically authorized,
20 directed, or participated in the tortious conduct alleged herein, or specifically knew, or
21 reasonably should have known that an activity under its control could injure Plaintiff and
22 negligently failed to take appropriate action to avoid the harm. An ordinarily prudent person,
23 knowing what LCM OP 127 Delaware LLC knew at the time, would not have acted similarly
24 under the circumstances.

25 111. Chandreshwar Shahi is a Steep Hill stockholder who directed business to and did
26 business in the County of San Francisco, State of California. On information and belief, at all
27 times mentioned herein, Chandreshwar Shahi was specifically authorized, directed, or
28 participated in the tortious conduct alleged herein, or specifically knew, or reasonably should

1 have known that an activity under his control could injure Plaintiff and negligently failed to take
2 appropriate action to avoid the harm. An ordinarily prudent person, knowing what Chandreshwar
3 Shahi knew at the time, would not have acted similarly under the circumstances. Chandreshwar
4 Shahi and co-Defendants carried out a scheme that ultimately resulted in Keller being removed
5 from his role as CEO and later removed from his seat on the board of directors.

6 **D. Doe Allegations**

7 112. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants and Does 1 to 50, inclusive, and each of them, were the agents, joint
9 venturers, partners, representatives, or employees of each other and, in doing (or failing to do)
10 the things alleged herein, were acting within the course, purpose, and scope of their agency, joint
11 venture, partnership, representation, or employment. The acts, omissions, and conduct alleged
12 herein of each such defendant were known to, authorized, and ratified by each such other
13 Defendant. It is further alleged, in the alternative, that some or each of the Defendants acted at
14 times independently of all other Defendants to cause damage and injury to Plaintiff.

15 113. Plaintiff is presently unaware of the true names and capacities of the defendants
16 sued herein as Does 1 through 100, inclusive, and therefore sues each of those defendants by
17 fictitious names. Plaintiff will seek leave to amend this complaint to allege the true name and
18 capacity of each Doe defendant when ascertained. For convenience, all references herein to
19 “Defendants” shall be deemed to include all fictitiously named defendants, and each of them,
20 unless otherwise specifically alleged. Plaintiff alleges on information and belief that each Doe
21 defendant is, in some manner, legally responsible for the acts alleged in this Amended Complaint
22 and has proximately caused harm and injury to Plaintiff.

23 114. All references hereafter to “Defendants” shall be deemed to include all Defendants,
24 and each of them, unless otherwise specifically alleged.

25 **V. FACTUAL ALLEGATIONS**

26 **A. Defendants' Freeze-Out Merger Plan**

27 115. The initial attempt to wrest control of Steep Hill and any economic value away
28 from Steep Hill’s existing shareholders occurred in the late Spring through early summer of

1 2018.

2 116. During that period, Rosenstein concealed from the board that he was conducting
3 negotiations for an acquisition of Steep Hill with one of Steep Hill's licensees—SH Worldwide.
4 On information and belief, Rosenstein communicated confidential information to SH
5 Worldwide's Chief Executive Officer Brett Whittington about Steep Hill's financial and
6 operating condition. Upon information and belief, Rosenstein later entered into a non-disclosure
7 agreement with SH Worldwide that prevented SH Worldwide representatives from speaking to
8 any representative of Steep Hill other than Rosenstein about the potential acquisition.

9 117. Rosenstein concealed information about his discussions with SH Worldwide from
10 the board, including concealing the information he provided to SH Worldwide about Steep Hill.

11 118. When Rosenstein finally revealed that he was negotiating with SH Worldwide and
12 that SH Worldwide had made an offer to acquire Steep Hill, it was clear why he was operating
13 under a cloud of secrecy: the proposed acquisition would have given SH Worldwide, Rosenstein,
14 and Cathcart complete control of Steep Hill. It also would have wiped out Steep Hill's existing
15 shareholders. Rosenstein promoted the deal as being "amazing," even though it would be
16 detrimental to the shareholders.

17 119. After the failed attempt to merge with SH Worldwide, Defendants, led by
18 Rosenstein, developed an alternative plan. Under this plan Rosenstein and the Merida
19 Defendants—Merida Capital, Baruchowitz, Monat, Finfer, and Finkelstein—led an effort to oust
20 existing management and then freeze-out the existing shareholders. The first step was Merida's
21 systematic effort to devalue Steep Hill in order to misappropriate more control over the
22 company.

23 120. Starting in roughly June 2018, Merida manipulated and co-opted the process
24 through which Steep Hill was seeking to obtain additional investor financing. On June 9, 2018,
25 Keller had an exploratory call with Baruchowitz regarding a possible Merida investment in Steep
26 Hill's Series A-2 stock offering.

27 121. While it seemed promising at first because Merida would take on a more active
28 role in Steep Hill's strategic plan, little did Plaintiff know that this offer by Baruchowitz would

1 be the beginning of a bait and switch ploy that would ultimately lead to the devaluation and
2 misappropriation of Steep Hill, Inc. by the Merida and its representatives.

3 122. Merida, through Baruchowitz, began with a promising offer with no pre-
4 conditions, but subtly and steadily started adding more and more onerous conditions and
5 insisting that Steep Hill make decisions to accept the steadily-changing term sheets within hours
6 of receiving them.

7 123. On June 24, 2018, concerned about Baruchowitz's continual changes and
8 downgrading of Merida Capital's term sheets, Plaintiff decided to present Steep Hill's board with
9 an offer to provide \$1,000,000 of desperately needed cash to allow Steep Hill to seek better
10 offers from other investors including the existing shareholders; to increase transparency with the
11 shareholders by removing an obstacle that Rosenstein had imposed, which kept Keller and others
12 from informing existing stockholders of the Company's financial position; and to prevent
13 Baruchowitz and Merida from forcing Steep Hill into a cash crunch and endangering Steep Hill's
14 very existence.

15 124. While the material terms of Keller's June 24 offer to infuse additional capital into
16 Steep Hill was more favorable to Steep Hill than Merida's was, Rosenstein still pressed the board
17 to accept Merida's offer.

18 125. Through the Merida deal Keller was induced to surrender a board seat that he
19 controlled in exchange for Merida agreeing to infuse \$4 million in cash into Steep Hill—but
20 Merida never intended to follow through with it. Merida provided roughly \$1M of the promised
21 \$4 million, which as Keller advised the board would happen, pushed Steep Hill into a cash crisis
22 in July of 2018. When Steep Hill was at great risk of not making payroll, Merida refused to
23 provide the capital it had originally falsely promised to provide unless Steep Hill agreed to
24 reduce the strike price for Merida's options and warrants.

25 126. With each infusion of cash, Merida misappropriated more control over Steep Hill.
26 Merida even went so far as to take control from Steep Hill's board with respect to
27 communicating with own shareholders, and eventually with the public.

28 127. The next step in Merida's plan to misappropriate control of Steep Hill involved

attempting to remove Keller from management.

B. Invalid Action by Written Consent

1. The Scheme to Oust Keller

128. On September 25, 2018, Steep Hill's common shareholders purported to remove Plaintiff Keller as a director of Steep Hill by way of Action by Written Consent. Steep Hill's Board was composed of directors elected by the Common Stockholders and those elected by the Preferred Stockholders. Keller served at the behest of the Common Stockholders. While he could be removed by a majority vote of the Common Stockholders, Keller held a controlling interest in Steep Hill's Common Stock.

129. Therefore, in order to effectuate the removal, a sufficient number of new common shareholders would have to be found to dilute Keller's controlling interest. Readily available was a group of potential common shareholders: Steep Hill's preferred shareholders, who could convert their shares to Common Stock. Contested Management attempted to convince enough Preferred stockholders to do exactly that, and then take action by written consent to ouster Keller and reconstitute the board under Baruchowitz's control.

130. Contested Management conducted a secret campaign to discredit Keller and in the eyes of the existing common and the preferred stockholders, such that those investors would willingly agree to give up their valuable preferred stock for less valuable common stock to participate in Contested Management scheme to remove Keller from Steep Hill's Board. Once Contested Management was able to persuade the preferred stockholders to convert to common shares, Contested Management hastily and secretly acted.

131. On September 25, 2018, Monat transmitted a series of materials that purported effected this transaction. First, Monat sent Keller, Cowart, Rosenstein, Baruchowitz, Jonathon Ain, Arinze Ike, and Kristen P. Klemper a set of Notices of Conversion of Shares of Preferred Stock of Steep Hill, Inc. (the "Notices of Conversion"), by which a number of Steep Hill's former Convertible Noteholders, now putative Preferred stockholders purported to convert to common stockholders. He also transmitted to the same recipients a set of proxies (the

1 “Proxies”), by which Merida would act on behalf of itself and all the putative newly-converted
2 common stockholders (the “Conversion Shares”). Finally, Monat transmitted, again to the same
3 recipients, a set of documents purporting to be an action by written consent of by a majority of
4 the common stock whereby Contested Management would oust Keller from the board and install
5 a new board that Baruchowitz would control.

6 132. This purported action was motivated by a corrupt purpose and was both
7 procedurally and substantively flawed.

8
9 *2. Invalid Note Conversions*

10 133. In 2017, Steep Hill obtained financing by issuing Convertible Notes (“Convertible
11 Note”). The Convertible Notes allowed the holder the right to convert the note into a certain
12 amount of Steep Hill Preferred Stock.

13 134. Among other things required to convert the Convertible Notes to Preferred Stock,
14 the Convertible Noteholders were required to execute Steep Hill’s Series A-1 Preferred Stock
15 Purchase Agreement & Exhibits (“A-1 Preferred Stock Purchase Agreements”). They also had
16 to execute the Series A-1 Voting Agreement (the “Voting Agreement”).

17 135. Several of the putative Conversion Stockholders never executed the applicable A-1
18 Preferred Stock Purchase Agreements. Additionally, certain Conversion Stockholders did not
19 execute the Voting Agreement.

20 *3. Invalid Preferred Conversions*

21 136. The Notices of Conversion were intended to convert the applicable noteholders’
22 Series A-1 Preferred Shares into Common Shares. Many of the conversions were not effective,
23 though, as a result of a variety of reasons including the following:

24 A As stated above, because a number of the noteholders failed to execute the
25 A-1 Preferred Stock Purchase Agreements, those noteholders never converted their notes
26 to Preferred Shares and, thus, had nothing to convert to Common Stock.

27 B In some cases where the putative converting shareholder actually had
28 executed the A-1 Preferred Stock Purchase Agreement, the noteholder was not correctly

identified in the Notice of Conversion, which invalidated those Notices of Conversion.

C In some cases, the Notices of Conversion were not signed by the person who was authorized to execute the Notice of Conversion, which invalidated those Notices of Conversion.

D In some cases, the Notices of Conversion were not notarized as required to covert, which invalidated those Notices of Conversion.

4. Invalid Merida Proxies

137. Without realizing that numerous conversions were invalid, Contested Management carried on with their plan to consolidate control of Steep Hill's board into Merida's hands, but soliciting proxies (the "Proxy" or "Proxies") from the putative Conversion Shareholders.

138. The Proxies collected and transmitted by Monat purported to appoint Merida Capital Partners, LP proxy for the putative Conversion Shareholders. The proxy authorized Merida to act as the putative stockholder's proxy for any shareholder action. Like the Note-Conversion, the proxies were riddled with procedural and substantive defects that rendered many of them invalid.

139. First, the Proxy form misstated the company name.

140. Second, numerous Proxies were invalid because they lacked a notarial acknowledgement.

141. Third, a significant number of the Proxies submitted on the behalf of the putative Common Shareholders were not valid because the underlying Notices of Conversion were not valid as described above.

142. Fourth, a number of Proxies issued by the putative Converting Stockholders had effective dates before the Conversion Time, which invalidated the applicable Proxies. "Conversion Time," a defined term in the Convertible Notes, is the record date that the converted shares are deemed issued an outstanding.

The close of business on the date of receipt by the transfer agent (or
by the Corporation if the Corporation serves as its own transfer

agent) of such notice and, if applicable, certificates (or lost certificate affidavit and agreement) shall be the time of conversion (the “Conversion Time”), and the shares of Common Stock issuable upon conversion of the specified shares shall be deemed to be outstanding of record as of such date.

143. A Preferred Stockholder converting to Common Stock cannot grant a Proxy for Common Shares that the Preferred Stockholder did not own. On information and belief, Contested Management was so anxious to seize control of Steep Hill, they did not wait for the Convertible Noteholders or Preferred Stockholders to even attempt to convert to Common Stock.

5. Invalid Action by Written Consent

144. Through the Actions by Written Consent, a putative majority of the common stockholders acting under Section 1.2 and 1.4 of the Voting Agreement sought to take the following actions:

A remove Keller as a director of Steep Hill and from any Board committees on which he served;

B electing Finkelstein, Finfer, and Baruchowitz as Common Directors (under the authority provided by Section 1.4(b) of the Voting Agreement);

C ratified certain acts and omissions attributable to Steep Hill by its directors, stockholder, officers, employees, and agents particularly including those “in connection with or relating to the foregoing resolutions”; and

D authorized Steep Hill’s officers to take all acts and steps as may be necessary, advisable, or convenient for the purpose of carrying out the foregoing resolutions.

145. Participants in the purported Action by Written Consent consisted of common stockholders who had previously invested in Steep Hill’s Common Stock (“Pre-Conversion Common Stockholders”) along with the purported Conversion Stockholders. While the legal authority for acting by Written Consent was derived from the Voting Agreement, the Pre-

1 Conversion Common Stockholders were not parties to that agreement, which invalidates any of
2 those votes cast in favor of the Action by Written Consent.

3 146. The votes cast in the Action by Written Consent by the Conversion Stockholders
4 were not valid or lawful as well. None of the Conversion Shareholders, with the exception of
5 Merida Capital Partners II, LP, executed the Voting Agreement. Consequently, their votes in
6 favor of the Action by Written Consent are invalid and unlawful.

7 147. As all of the Proxies were invalid, the votes cast by Merida on the behalf of the
8 Preferred Proxy Holders in the Action by Written Consent were also invalid and unlawful.

9 148. As a result of the fraud, deceit and the unlawful actions taken by the Defendants
10 collectively, the supposed Majority Common Holders of Steep Hill, Inc., did not in fact hold a
11 majority of the Steep Hill, Inc. Common Stock. In fact, the claimed Majority Common Holders
12 only held at most a number of shares of Common Stock representing 48.65% of Steep Hill's
13 outstanding Common Stock, and as little as a number of shares representing 22.75% of the
14 outstanding Common Stock. As such the Action by Written Consent was invalid and unlawful
15 because it was not backed by a majority vote.

16 149. The consequence of the unlawful actions collectively taken by the Defendants
17 results in all resolutions adopted in the Action by Written Consent being rendered unlawful,
18 invalid and reversed as if they had never been adopted.

19
20 *6. Keller Notice of Deficiency*

21 150. The very day that Monat sent the Notice of Conversion, Proxies, and Action by
22 Written Consent, Keller sent an e-mail raising objections to the Action by Written Consent and
23 notifying Contested Management that a significant number of voting shares were not valid and
24 could not be tallied in the vote. He also demanded an analysis to determine the legitimacy of the
25 Action by Written Consent under Section 3.2 of Steep Hill's Amended & Restated Bylaws.
26 Under that Bylaw, until the legitimacy of the vote is determined, Contested Management may
27 take no action. Keller sent this message to Cowart, Jason Bartlett, Rosenstein, Finfer,
28 Finkelstein, Monat, Baruchowitz, along with Merida's legal representatives Jonathon Ain,

Arinze Ike and Kristen P. Klemper of Kleinberg, Kaplan, Wolff & Cohen, P.C.

151. The only response to his e-mail that Keller received was a dismissive email message from Monat:

Please be advised that pursuant to the Action by Written Consent you no longer hold any management role with the Company, nor do you sit on the Board. Accordingly, you should immediately cease and desist from making representations to the contrary.

As a shareholder, you can rest assured that the Company's Board has the interest of all shareholders in mind and will continue to represent the interests of those shareholders with their full effort and attention.

152. Not a single recipient of Keller's e-mail responded. Not a single recipient of Keller's e-mail took any action to investigate or resolve the questions raised the Notice Regarding the Written Consent.

C. Freeze Out Plans Move Forward

153. With Keller presumably out of the way, Defendants have been steadily marching forward on their plan to freeze out Steep Hill's shareholders.

154. On April 2019, Steep Hill's Contested Management sent a letter to individuals who lent Steep Hill \$4 million in October of 2018 ("2018 Note Holders"). In the letter to the 2018 Note Holders, Contested Management advised that the Contested Board was evaluating a change of control of the company:

Please note that the Company's Board of Directors is currently evaluating strategic alternatives that may result in a sale of the Company, a change of control of the Company and/or a public listing of the Company to maximize the value of the Company's business for the Company's stockholders (the "Evaluation"), and there are no assurances that (i) the Evaluation will result in a transaction or transactions or (ii) with respect to the timing of any decisions regarding the Evaluation.

1 155. A separate letter sent to the shareholders; however, did not include any reference
2 to the plans to pursue strategic alternatives. One shareholder who was also a noteholder received
3 both letters. She sent an e-mail message to Contested Management along with Steep Hill's other
4 shareholders objecting to Contested Management's failure to advise the stockholders of the
5 contemplated change of control. The shareholder also requested information about the reasons
6 for the non-disclosure to the stockholder and the nature of Contested Management's plans. As of
7 the date of this Amended Complaint, Contested Management has not responded to that request
8 for information.

9 156. The final component of Defendants plan to freeze-out the existing shareholders
10 occurred on or about August 26, 2019, when, on information and belief, Contested Management
11 organized a new Delaware corporation: defendant Steep Hill Holding Company, Inc. Contested
12 Management has never disclosed this company to the Shareholders.

13 157. A Steep Hill shareholder discovered the public filing of Steep Hill Holding
14 Company's articles of incorporation. That shareholder sent an e-mail message to Contested
15 Management along with Steep Hill's shareholders inquiring about the purpose of the formation
16 of Steep Hill Holding Company, but Contested Management did not respond to the shareholder's
17 request.

18 158. Steep Hill Holding Company's articles of incorporation include at least three
19 provisions necessary to accomplish Defendant's freeze-out. There are two classes of common
20 stock (A and F). The Class F stock has super-majority voting rights—by a margin of 10 to 1—
21 over Class A stock. The board of directors of Steep Hill Holding Company shall be chosen
22 exclusively by the Class F shareholders. Additionally, Steep Hill Holding company's articles of
23 incorporation give its board the power to issue preferred stock in their absolute discretion,
24 including the payment of dividends, voting rights, conversion privileges and liquidation
25 preferences.

26 159. On information and belief, Defendants plan to acquire Class F stock for themselves
27 and provide Steep Hill's existing investors the Class A stock. Doing would effectively wipe-out
28 all the value of Steep Hill's current shareholders.

D. Contested Board Mismanagement

160. Steep Hill's Contested Board repeatedly and systematically failed to provide oversight into Steep Hill's operations. Such failures, include but are not unlimited to, failing to properly prepare for the expiration of the lease for Steep Hill's flagship lab in Berkeley, California; allowing Steep Hill officers and agents to misappropriate Steep Hill assets; enabling and rubber-stamping self-dealing transactions with corporate executives that caused significant harm to Steep Hill and its shareholders; failing to provide information to shareholders, which prevented them from properly overseeing the Contested Board; and allowing executives continued misrepresentations to be made to shareholders.

161. Contested Management also failed to provide required information to Steep Hill's shareholders, particularly financial information.

162. Article 15 of Steep Hill's Bylaws require that the company's board of directors issue an annual report to the shareholders not later than 120 days after the close of the company's fiscal year. At a minimum, the annual report required Steep Hill to provide a balance sheet, income statement, and statement of changes in financial position, all for the current reporting period.

163. For example, even after the deadline to provide the 2018 annual report elapsed, Contested Management failed to provide shareholders the report.

164. On November 27, 2019, a specific demand was made on Contested Management to comply with its obligation to provide the annual report. Contested Management neither responded to that demand nor provided the annual report.

165. As the filing of this Amended Complaint Contested Management has failed and refused to provide the annual report.

166. Beyond failing to provide information, Contested Management actively provided disinformation to the shareholders in order to conceal Contested Management, particularly the Merida Defendants' plans.

167. Between late September 2018 throughout 2019, Contested Management continually made misrepresentations to the shareholders. The misrepresentations covered such

subjects as the status of Steep Hill’s labor force, its laboratory operations, the new Berkeley lab, an ISO audit, market conditions, the status of the shareholders’ investment in the company, and the status of Steep Hill’s customer base. A sample of the misrepresentations between September 28, 2018 and April 2, 2019 made by Rosenstein on behalf of Steep Hill follow:

Category	Sept 28 2018	Oct 19 2018	Nov 27 2018	Dec 18 2018	April 2, 2019
Employees	“I am now even more confident that we can succeed due to Steep Hill’s talented and dedicated employees”	“Lastly, Steep Hill has some exciting news regarding the growth of its talented Science Team”		“we now have a fantastic team in place”	“Realizing that the laboratory workforce was part of the company’s operating troubles, we have turned over more than 60% of the staff”
Lab Operations	“We are currently testing process corrections and have arrived at a failsafe method, but this method decreases throughput by approximately 40% versus previous estimates. This failsafe will be operational in the coming week to begin running customer samples.”	“First and foremost, our Science Team has solved the deficiency we encountered in our pesticide testing methodology will and we resume normal business operations early next week”	“Going forward, we will be a focused, leaner, and more nimble company that is ready to adjust to the rapidly evolving challenges of the cannabis testing space”	“We finally have infrastructure and the scientific team in place to create a production-based lab that can ramp up our volume over the next six months”	“the task for the lab team will be to build efficiencies in the testing process to grow margins and compress the timeline to achieve positive cash flow”
New Lab	“Given planned expansion in our production	“We are also finalizing our search for a new production-	“and we are focused on finalizing a new headquarters	“securing a larger lab facility to accommodate the anticipated	“we have identified a new lab / headquarters location for

Category	Sept 28 2018	Oct 19 2018	Nov 27 2018	Dec 18 2018	April 2, 2019
	facility.”	focused laboratory location	and lab location within the next several weeks”	customer needs in 2019”	the company”
ISO Audit		“We will continue to work through the ISO process [sic] and I anticipate we will be fully compliant by the end of this calendar year.”	“we had a very positive audit for ISO 17025”	“We are well on our way to completing our accreditation process with ISO 10725”	“We anticipate having our final Accreditation audit for ISO 17025 by Q3 2019”
Market	“I am confident that we can grow our market share materially over the next several months as our operations normalize.”		“create a successful testing ramp-up as we reclaim market share in the California market”.	“We now have the infrastructure necessary and proper plan in place to compete and win in the large and lucrative California market.”	“With incremental capital, management is confident that we can create the revenue growth necessary to regain our position as a leading testing lab in California.”
Investment	“raise \$3 million of new investment capital which will be used to create a production-focused lab operation, materially upgrade our physical testing facilities and provide the necessary working capital to sustain the	“pleased to announce that we have commenced the offering of up to four million dollars in Senior Promissory Notes”		“we are excited to announce that the Board has expanded our latest note offering from \$4 million to \$6 million.”	“an additional capital raise through the issuance of up to an additional \$4 million Promissory Notes in 2019”

Category	Sept 28 2018	Oct 19 2018	Nov 27 2018	Dec 18 2018	April 2, 2019
	Company until it reaches profitability.”				
Customers	We have market-leading clients like Cura, Kiva and Papa & Barkley	While the delay in our regulatory testing has been challenging to our business and to our customers, I am pleased to report that several of our largest clients have indicated that they intend to continue to test with Steep Hill as we enter the critical Fall harvest season.			We are rapidly regaining testing clients thanks to the efforts of a fantastic salesforce and the help of Merida, Gotham Green and other industry network connections

168. These representations and forecasts, as of the time of this Amended Complaint, are all false. On information and belief, they were false when made and Contested Management knew or should have known they were false.

169. Steep Hill’s Contested Management issued securities (the 2018 and 2019 notes) based on some or all of these misrepresentations. And, on information and belief, numerous investors who purchased these securities relied on Contested Management’s representations.

170. On May 8, 2019, Shareholders were asked to provide consent to amend the Articles of Incorporation so that company management could increase the number of common shares in order to pay Cathcart his 5% of the Company for which it had settled for (the increase for Cathcart was not disclosed however).

171. Rosenstein continued to make misrepresentations (see May 14, 2019 investor letter) about the status of the lab and progress being made in order to convince shareholders to modify the Articles to increase the number of shares. By misrepresenting that the Company had

1 undergone its turnaround, Management deceived shareholders into approving an increase in
2 shares it otherwise would not have done.

3 172. In addition, during the time of these misrepresentations, the Company continued to
4 raise debt financing from the Company's existing shareholders. This debt was provided with
5 increasing amounts of warrants – which served to both dilute nonparticipating shareholders as
6 well as provide debt investors with an equity instrument which would prove ultimately worthless
7 due to the Company' mismanagement.

8 173. The Contested Board failed to prepare for the expiration of the termination of
9 Steep Hill's flagship laboratory's lease, which was to expire in December 2019. Contested
10 Management had known about the lease expiration well in advance of that date, since they took
11 over control of the company in September of 2018.

12 174. In August 2019, Rosenstein provided an investor update indicating that Steep Hill
13 management was in the process of moving into a new laboratory in Berkeley “just a few blocks
14 away” from the current site. Additionally, Rosenstein represented to shareholders that
15 management was “being very careful in our planning and execution of the move to ensure that
16 there is minimal, if any, disruption to the business.” He even represented to Steep Hill's
17 shareholders that Steep Hill's management had “undertaken a diligence search over the past six
18 months” for a location that would give Steep Hill “significantly more space to allow for future
19 expansion.” Finally, Rosenstein represented that he would be sending the investors a detailed
20 update “in the coming weeks.” Rosenstein never provided any further update.

21 175. Despite those representations, as of mid-November 2019, no building permits had
22 been filed with the City of Berkeley for a cannabis laboratory anytime in the prior twelve
23 months. Moreover, on information and belief, Steep Hill had not filed for the required
24 Administrative Use Permit with the City of Berkeley. After a concerned shareholder inquired on
25 the status of the lab on November 17, Contested Management finally filed for their permit on
26 November 19 and indicated to shareholders that they had obtained a 90-day extension on the
27 lease of the original flagship lab. As a result of Defendants' wrongful conduct, Steep Hill has
28 suffered and continued to suffer damages, all in an amount to be determined according to proof

1 at trial. For example, on information and belief, the 90-day extension was obtained at a
2 significant premium on monthly rents. Thus, by failing to act on opening the new lab, Contested
3 Management further squandered resources of Steep Hill by having to pay excessive rents in order
4 to obtain an extension.

5 176. Additionally, Contested Management misappropriated Steep Hill assets, engaged
6 in transactions that violated Steep Hill's Related Party Transaction and Code of Business
7 Conduct and Ethics policies.

8 **E. Unauthorized Equity Grant to Cathcart**

9 177. Starting in early 2018, Steep Hill was planning to conduct a Series A Preferred
10 Stock Offering pursuant to the Securities and Exchange Commission's Regulation D. On July
11 10, 2013, the SEC adopted bad-actor disqualification provisions for Rule 506 of Regulation D.
12 Consequently, under Rule 506(d), an offering is disqualified from relying on Rule 506(b) and
13 506(c) of Regulation D if the issuer or any other person covered by Rule 506(d) has a relevant
14 criminal conviction, regulatory or court order, or other disqualifying event that occurred on or
15 after September 23, 2013. Under Rule 506(e), for disqualifying events that occurred before
16 September 23, 2013, issuers could still rely on Rule 506, but would have to comply with certain
17 disclosure provisions of Rule 506(e).

18 178. Steep Hill management concluded that all directors, C-level officers, high-level
19 consultants would have to complete a confidential Rule 506 disqualification event questionnaire.
20 Cathcart was among the Steep Hill personnel required to complete the questionnaire.

21 179. All of Steep Hill's relevant employees and consultants, with the notable exception
22 of Cathcart, promptly signed the Confidential Rule 506 Disqualification Event Questionnaire
23 without issue.

24 180. From February 15, 2018, until he was terminated on March 3, 2018, Cathcart
25 ignored all reminders and requests to complete and return the Rule 506 Questionnaire.

26 181. On information and belief, Cathcart would not complete the Rule 506
27 disqualification event questionnaire because he believed he would have to disclose potentially
28 disqualifying events from his past.

182. Rather than completing the Rule 506 disqualification questionnaire, Cathcart began taking actions that violated his duties of due care and loyalty to Steep Hill.

183. On February 18, 2018, Cathcart on his own accord and with no authorization to do so, canceled four Steep Hill License Agreements that had been entered into with SH Worldwide subsidiaries: CannTest Switzerland Corp; CannTest UK Corp; CannTest France Corp; and CannTest Italy Corp. These cancelled licenses collectively would have generated \$400,000 in revenue to Steep Hill in 2018 alone.

184. In an e-mail to Keller, Cathcart admitted he had cancelled these license agreements, not to advance the interests of Steep Hill or otherwise benefit Steep Hill, but for the benefit of SH Worldwide.

185. He later agreed that he would have the licenses reissued.

186. On information and belief, Cathcart never reinstated the licenses with SH Worldwide. Consequently, Steep Hill lost substantial license revenues and continues to lose revenues from Cathcart's actions.

187. On March 3, 2018, Steep Hill terminated its relationship with Cathcart.

188. On March 14, 2018, a mere ten days after Cathcart was terminated he filed a 57-page complaint against Steep Hill and other defendants in San Francisco Superior Court bearing case number CGC-18-565002.

189. Contested Management began taking on the decision-making involving the Cathcart lawsuit as of August and September 2018.

190. On information and belief, Contested Management negligently managed the Cathcart lawsuit causing substantial damage to Steep Hill and the shareholders.

191. On or about March 7, 2019, Contested Management entered into a settlement wherein, among other things, Contested Management granted Cathcart a fixed, fully diluted five-percent interest in Steep Hill—or any successor to Steep Hill. The Proposed Final Judgment and Order read, in pertinent part as follows:

Within thirty (30) days of the entry of this Final Judgment, Steep Hill, or its successor in interest, shall issue to Cathcart a certain

number of common shares of stock sufficient to bring Mr. Cathcart's shares to a total of 5% of the total then-outstanding shares, accounting for all classes of stock and the effective conversion of convertible notes then-existing as if they were converted (on a fully-diluted basis), minus one (-1) share. In conjunction with Steep Hill's (or its successor in interest's) issuance of said stock shares to Cathcart, Steep Hill, or its successor in interest, shall provide Cathcart with a Stock Certificate (of other legally acceptable form) evidencing such shares, and Steep Hill, or its successor in interest, shall enter the correct number of shares owned by Cathcart on its Cap Table, and/or other corporate documentation showing the ownership of Steep Hill, or its successor in interest.

Within thirty (30) days of the final entry of this Final Judgment, Steep Hill, or its successor in interest, shall provide Cathcart all information, financial information, and/or :financial reports provided generally to stockholders, and all information, financials and reports required to ensure compliance with this Final Judgment.

192. Under the Cathcart settlement agreement, Contested Management negligently gave Cathcart more cash and equity than he could have obtained even if he had he prevailed on the lawsuit.

193. Moreover, on information and belief, Contested Management's grant of 587,023 shares of common stock with a value of approximately \$3 million was unauthorized grant of equity in violation of the company's articles of incorporation and the rights of Steep Hill's existing shareholders.

194. Contested Management attempted to cure the violation of Steep Hill's Articles of Incorporation by seeking shareholder approval to amend the articles of incorporation. Steep Hill's contested CFO, Nigel Stobart, sent an e-mail message to the shareholders on May 8, 2019, seeking consent to amend the articles to authorize additional shares of common stock, but failed

1 to disclose that the increase was being used to fund a settlement with Cathcart.

2 195. Ultimately, the entire settlement is unauthorized because Contested Management
3 did not have the authority to act on behalf of Steep Hill.

4 **F. Rosenstein's Conflicts of Interest**

5 196. Throughout his tenure as a board member and interim CEO of Steep Hill,
6 Rosenstein used Steep Hill to serve his own personal benefit at the detriment of Steep Hill and its
7 shareholders. In one example, he used his position as an executive officer of Steep Hill to
8 misappropriate Steep Hill assets and to enable Green Analytics to avoid paying licensing fees to
9 Steep Hill.

10 197. In September 2018, Steep Hill's Finance Department discovered that after Merida
11 appointed Rosenstein as interim CEO, Rosenstein secretly instructed Steep Hill's Lab Support
12 Manager, David Phife, to transfer Steep Hill, Inc. assets to Green Analytics MD.

13 198. The assets that Rosenstein misappropriated included expensive replacement parts
14 for a Shimadzu Gas Chromatograph Mass Spectrometer, including a repeller assembly and an
15 ion box. The misappropriated parts were required to enable a mass spectrometer instrument to
16 perform the scientific tests required of a cannabis testing lab.

17 199. On information and belief, Rosenstein engaged in the misappropriation after the
18 Shimadzu Corporation placed Green Analytics MD on a credit hold for non-payment of various
19 purchases totaling \$314,000. Unable to pay its bill with Shimadzu, Rosenstein used his new
20 position as Steep Hill's CEO to plunder the company for his own benefit.

21 200. Rosenstein did not stop there, though. When he took over as interim CEO, the
22 Green Analytics labs collectively owed Steep Hill \$164,717.94 in unpaid licensing fees.

23 201. Green Analytics did not pay those licensing fees.

24 202. On information and belief, Rosenstein prevented Steep Hill from engaging in any
25 efforts to collect the unpaid licensing fees.

26 203. By October 30, 2018, the unpaid license fees increased to \$202,149.55.

27 204. On information and belief, Rosenstein continued to prevent Steep Hill from
28 engaging in any efforts to collect the unpaid licensing fees.

1 205. At some point after November 14, 2018, the Green Analytics’ unpaid license fees
2 was mysteriously removed from Steep Hill’s accounts payable report, and the debt disappeared
3 from Steep Hill’s financial books and records, without ever reflecting a payment of the debt.
4 Additionally, the debt was not listed on the Disclosure Schedule for the 2019 notes.

5 206. By the date of this Amended Complaint, Green Analytics should have paid Steep
6 Hill at least the contractually-required minimum license fee of approximately \$444,650.55. On
7 information and belief, the Green Analytics entities still have not paid the past-due licensing
8 fees.

9 207. As part of Steep Hill’s national and global licensing operation, the company
10 intended to have licensee in every state in which the sale of cannabis was legal. Company
11 management had established a target license fee for each state.

12 208. Steep Hill did not have a licensee in New Jersey, where cannabis is legal for
13 medicinal use, but wanted to find a licensee in the state. The target license price for New Jersey
14 was set by management at \$380,000. That price was set because of Steep Hill management’s
15 belief that the New Jersey market was likely to be “one of the largest cannabis markets in the
16 Eastern United States.”

17 209. In another act of blatant self-dealing, Steep Rosenstein, licensed the New Jersey
18 rights to himself. In his April 2, 2019, letter to Steep Hill’s shareholders, Rosenstein wrote “an
19 investment group of which I am a member recently acquired the Steep Hill license for the state
20 of New Jersey.” He further noted that this was in addition to the other licenses that his
21 investment groups currently hold for the states of Pennsylvania and Maryland.

22 210. Rosenstein did not disclose to the shareholders that the Pennsylvania and Maryland
23 licensees—Green Analytics—were seriously delinquent in their licensing obligations to Steep
24 Hill and that, on information and belief, Rosenstein was enabling Green Analytics to avoid
25 paying its debts to Steep Hill.

26 211. Rosenstein through his letter claimed that his license “acquisition was undertaken
27 at an arms’ length after seeking competing bids from other parties and vetted independently by
28 the Steep Hill board.” On information and belief all three of these statements were

misrepresentations. The Contested Board was nothing more than a rubber-stamp for
Rosenstein's actions.

212. As of May 2019, at least one Steep Hill Shareholder was concerned the self-dealing transaction had harmed Steep Hill. But Contested Management refused to provide any information to the shareholders such as (1) the amount Rosenstein paid for the license, (2) who approved the license, (3) what other offers were solicited from third-parties, and (4) how the terms of the New Jersey license compare with Rosenstein's other licenses (Maryland and Pennsylvania). Despite numerous requests from several shareholders, Contested Management refused to provide this information to the shareholders. By restricting access to financial information from shareholders, Rosenstein was concealing information that should have been disclosed so that his self-dealing would remain hidden from view.

213. Rather, Rosenstein, in his letter to shareholders of May 14, 2019, boasted that "between myself and my partners, we have invested over \$800,000 in the company over the last several years" in order to provide shareholder comfort that he, like them, was in similar circumstances. Nevertheless, his actual investment in Steep Hill, Inc. was only \$70,000, far less than he represented.

A On information and belief, Rosenstein's investment group did not pay the target license price to Steep Hill for the license or the price that otherwise reflected the fair market value of the license.

B On information and belief, Contested Management did not seek any bids from bona fide third-parties.

C On information and belief, Contested Management did not independently vet the acquisition agreement with Rosenstein's investment group.

D On information and belief, Rosenstein's investment group did not acquire the license through an arms' length transaction.

214. Because Steep Hill's Board long-ago recognized that certain transactions—such as Rosenstein's acquisition of the New Jersey license—present a heightened risk of conflicts of interest, it had adopted a Related Party Transactions Policy that was in place at all times material

1 to this Amended Complaint. Under the Related Party Transactions Policy, all transactions
2 between Steep Hill and any person who is or was (within a defined period of time) an executive
3 officer, director or nominee for director, a 5%-or-greater shareholder, or a family member of any
4 such person, were subject to review, approval, or ratification in accordance with the specific
5 procedures defined in the policy.

6 215. Rosenstein's self-dealing acquisition violated Steep Hill's Related Party
7 Transaction Policy. Contested Management failed to review, approve, or ratify the transaction in
8 accordance with the Related Party Transaction Policy.

9 216. Rosenstein also violated Steep Hill's "Code of Business Conduct and Ethics"
10 policy, under which all Steep Hill employees were required to report any activity that would
11 cause or appear to cause a conflict of interest on the employee's part to his or her supervisor or
12 the Independent Board Representative appointed by the Board.

13 217. Contested Management knew or consciously disregarded Rosenstein's conflicts of
14 interest and knew or consciously disregarded its obligation to the shareholders to solicit offers
15 from potential third-party licensees in order to maximize the value of the license and maximize
16 revenues to Steep Hill.

17 **G. The Science Leadership Fraud & Coverup**

18 *1. Background*

19
20 218. Beginning at least in April 2018 and through the end of Keller's tenure,
21 unbeknownst to him or other members of his team, the leadership of the testing lab—Defendants
22 Reggie Gaudino, Donald Land, and Brian Brandley—were conspiring to deceive Steep Hill's
23 non-technical management, customers, state regulators, and the public by concealing the
24 *complete failure* of the testing protocols—protocols which they developed, implemented, and
25 represented as suitable—to conduct tests required established by California's Bureau of
26 Cannabis Control ("BCC").

27 219. Because of the protocols they established, the lab was simply incapable of
28 performing tests for the presence and quantity of pesticides and other harmful substances

regulated by BCC. Yet instead of resolving the problem, reporting any issue to management, they chose instead to actively fabricate results, fraudulently representing to customers (and BCC) in signed certificates of analysis that the samples they tested were clear of those substances (or had low, acceptable levels) when, in fact, the lab had no clue whether that was true.

220. Keller's sense of betrayal, after he eventually became aware of this fraudulent scheme, was overwhelming. Keller had staked not only Steep Hill's reputation on being the gold standard in testing cannabis products, but also his own. Keller traveled the nation and the world giving presentations to industry groups, state regulators, and federal legislators on Capitol Hill about proper industry standards and widespread fraud and abuse by cannabis "labs." Ridding the industry of the serious perils of contaminated cannabis products was not just a professional goal for Keller; it was also a deeply personal calling. Keller had a near-fatal experience in 2016, when he ingested a CBD tincture that he was unaware was contaminated and immediately lost consciousness and fell, evading a likely lethal blow to the head by centimeters. He escaped that experience with his life and with a renewed and crystalized passion for patient safety, particularly through accuracy and truthfulness in cannabis testing, and made it part of his mission to reform his industry, calling out bad-actor labs that regularly accepted kickbacks in exchange for falsifying reports on the safety of the products they tested. Had Keller been aware of the carefully concealed scheme in his own backyard, he would have immediately ceased operations, informed all affected parties, removed all individuals who were involved or aware, and rectified the testing protocols before resuming any lab functions.

221. The actions and active falsehoods of Gaudino, Land, and Brandley put the public in grave danger and damaged the reputation of Steep Hill, potentially irreparably. When it discovered the deception, BCC shut the lab down entirely, resulting in tremendous loss of revenue to Steep Hill. Despite the damage, Contested Management has steadfastly refused to take any action to hold the scientific leadership accountable for their tortious actions.

2. Science Leadership Defrauded Management, Customers, BCC, and the Public

222. At least as early as April 2018, Steep Hill's Chief Science Officer Reggie Gaudino,

Chief Scientific Consultant Donald Land, Chief Lab Officer Brian Brandley, and Lab Production Manager Kris Marsh (collectively, the “Science Leadership”) discovered and concealed a defect in the cannabis testing protocols they developed and implemented.

223. The lab could not accurately detect or quantify seven or more different chemicals and compounds found in pesticides that were unsafe for human ingestion. Each of these pesticides were restricted under phases one and two of BCC’s safety regulations, the latter which was set to commence July 1, 2018. Under these regulations, no cannabis product could be sold unless a representative sample of the good had passed the required testing, which included testing for a list of chemicals and compounds referred to as “analytes.” After testing a sample, a lab was required to prepare a certificate of analysis (“CoA”) identifying the presence and amounts of each of the scheduled analytes and certifying whether the sample complied with the regulations. The lab was required to provide the CoA to both the seller/distributor (Steep Hill’s customer) and BCC.

224. On April 9, 2018, Gaudino and Land communicated to the scientific staff that they knew and were concerned about the lab’s complete inability to test for Chlordane or for several other prohibited pesticides that Steep Hill was engaged by clients to test for under the BCC regulations.

225. Despite the fact that they were aware of this inability, Science Leadership actively deceived other members of senior management, confirming that the lab could begin testing for pesticides they knew it had no ability to test for.

226. On May 28, 2018, Land stated that they were “ready to accept customer pesticide requests” including for the chemicals he knew they could not test and proposed “offering an effective start date of Monday [June] 21st,” even before the July start date for phase two testing.

227. On June 28, 2018, however, at Land’s direction, Suha Kasey emailed Caleb King (VP of Scientific Operations for Steep Hill Hawaii), Land, Marsh, Dominique Ardura, and Arielle Chu, admitting that there were seven pesticides that “could not be resolved” by the Berkeley lab and inquiring “how you were able to achieve” testing for five of them in the Hawaii lab.

228. After phase two testing commenced and despite the assurances that the Science Leadership had made, the lab was not in compliance. Rather the science officers doubled down on their efforts to conceal the problem. The Science Team deceived non-technical management, BCC, Steep Hill’s customers, and the public by continuing to conceal the testing defect and then issuing fraudulent CoAs. In many cases, the CoAs falsely certified that a sample did not contain the presence of any of seven or more pesticides in quantities that exceeded the safety limits, when, in fact, the samples contained one or more of them at levels BCC deemed to be dangerous to humans. In such a case, the customer would receive a fraudulent CoA certifying compliance with safety standards—a copy of which was also submitted to BCC per the regulations—when in fact the sample contained dangerous levels of one or more of these pesticides.

229. On July 31, 2018, Marsh scheduled a meeting with Land, Gaudino, Kasey, and Ardura, along with other scientists, during which, upon information and belief, the group discussed how to address the lab’s inability to test the seven pesticides required to be tested under BCC regulations. The group decided to try to resolve the deficiency *while continuing to issue falsified regulatory certificates of analysis* (“CoAs”). The group recognized that if the lab could not test all of the pesticides, it would not be able to accept any samples and would shut down. This decision was concealed from senior management above Gaudino or Brandley (who reported to Gaudino).

230. As the lab continued to falsify reports and fail to test for the required substances, Gaudino knew that he and Brandley were at risk for their role in perpetrating the pesticide fraud. He wrote to Cowart and Joshua Keller on August 2, 2018, what would happen if he was named in a suit against Steep Hill and whether he was “covered by the company” because “this shit with the BCC is making me a little nervous.” Two weeks later, after receiving no response, he followed in writing up, stating that “I’d really like an answer. It’s the subject of insurance on people like me and Brian, since in any lawsuit, its likely Brian, I or both of us will also be named. Are we covered? can [sic] you guys give me an answer or an idea of how that works?”

231. On or about August 17, 2018, Land stated in writing again that the lab was not capable of meeting the requirements for three of the pesticide analytes, including Chlordane.

1 This fact was well known by Land, Brandley, Gaudino, and Marsh before the lab fraudulently
2 passed three samples on August 21 and 22 that should have failed for Chlordane contamination.
3 Both Brandley and Marsh had signed the CoAs, certifying that the results provided therein were
4 true and accurate. During their tenure at Steep Hill, Brandley and Marsh had fraudulently signed
5 and certified over L119 CoAs indicating (falsely) that the lab was accurately testing and
6 reporting pesticides.

7 232. Around this same time period, an unrelated error by Marsh had caused incorrect
8 reporting to customer Max Cain Farms.

9 233. When this was discovered, Rosenstein unilaterally sent letters alerting both Max
10 Cain and BCC about the error and falsely attributing the problem to a Steep Hill computer
11 software calculation error.

12 234. Merida had appointed Rosenstein to the Interim CEO role just nine days prior to
13 him sending this letter on August 31, 2018. Rosenstein had not conducted any investigation into
14 the facts surrounding the Max Cain issue. His complete lack of judgment in sending a false letter
15 on a hair-trigger basis proved to be disastrous to both the near-term profitability and long-term
16 viability of Steep Hill—a disaster which Merida and Rosenstein would later take advantage of
17 for their own personal gain.

18 235. BCC immediately responded to the letter on the same day, asking for the best
19 phone number to call and stating that they “have some questions.” On Tuesday, September 4,
20 BCC inspectors showed up unannounced at the lab. While their visit was triggered by
21 Rosenstein’s letter regarding the Max Cain samples, they quickly discovered a much more
22 widespread and dangerous issue with the lab’s pesticide testing. The investigators discovered
23 that there were “No Peaks” present in the method results that would indicate the presence of
24 certain pesticides, indicating not that the pesticides were not present but rather that the presence
25 of those pesticides had not been tested at all.

26 236. Upon discovery of the lab’s inability to test certain pesticides (not because of the
27 issue that led to the Rosenstein letter), BCC shut down the lab on September 5, 2018, just three
28 business days after the letter was sent. In a Notice to Comply, BCC instructed: “Steep Hill shall

1 cease all regulatory compliance testing until Steep Hill can test for all analytes prescribed in
2 CCR, title 16, chapter 6, section 5715”

3 237. As a result of Rosenstein’s lack of sound business judgment and his rash decision
4 to send the false August 31 letters to Max Cain and BCC without investigating any of the
5 surrounding facts, Steep Hill effectively lost its entire customer base for regulatory testing. Steep
6 Hill’s expanding revenue and profitability under previous management fell off a cliff after
7 Rosenstein took over.

8 238. As the scrutiny regarding Steep Hill’s pesticide testing failure continued to
9 increase, Brandley abruptly resigned as Chief Lab Officer on September 10, 2018 without notice.
10 Brandley stated in his exit interview that “I have ‘Chief’ in my title you know, and that means I
11 have liability for the things that are under my direction and I no longer want to bear that kind of
12 responsibility.” Clearly, Brandley was aware of the effect of his actions along with those of the
13 employees under his direct supervision and control, in addition to Land and Gaudino. At the
14 time, Brandley reported to Gaudino, who was also aware of the truth.

15 239. On September 11, 2018, Land admitted in an email to Rosenstein, Gaudino, and
16 Will Bankert of the Shimadzu Corp that there were seven pesticides that Steep Hill could not
17 test.

18 240. On September 19, 2018, Land sent an email to Rosenstein and Gaudino stating: “It
19 turns out that there are a couple of analytes that I was told were working on the LC's that are
20 actually not.”

21 241. On September 20, 2018, Dominique Ardura, a Steep Hill Lab Analyst at the
22 Berkeley lab, announced her resignation as well. Ardura made several comments in her exit
23 interview that were indicative of the growing pressure regarding Steep Hill’s pesticide issue,
24 including that “it happened a lot of times that problems were discussed during [lab] meetings but
25 that nothing happened after that,” and that “the pesticide problem has been known for a while
26 now.”

27 242. On September 21, 2018, Land admitted that there had been ten pesticides that the
28 Steep Hill Berkeley lab could not test.

245. Abernethy also stated: “We sent [BCC] formal letters at the end of August. Brian sent those over and they called him within 15 minutes. They were in the office on that next Tuesday. When they were looking at the calibration data on the computer with Marsh, they noticed that the peaks weren’t there. That’s how they realized and that’s why they told us to stop testing.”

246. Magadi Tebogo-Maruping (“Maggie”), a Lab Technician, stated on September 26, regarding her awareness of the pesticide testing issue: “Well, Don told me that he was working on it for like two months, chipping away at it, then there was the whole BCC letter thing. I would assume like two to three months ago.” It is clear that Land was aware the lab could not test for certain pesticides and that he had been “chipping away at it” as early as the June 21st meeting that he scheduled.

247. By this point, Rosenstein had begun leading the coverup effort. On September 25,
2018, he contacted Blake Williams, BCC Special Investigator, in a letter approved by Gaudino,
Land, and Mitchell, which continued to conceal the truth behind the fraud that caused the issues
BCC had uncovered.

248. Under BCC's Readopted Emergency Regulations § 5036, Rosenstein was required to report to BCC any theft, loss, or criminal activity within 24 hours of discovery. Rosenstein failed to report to either BCC or local law enforcement either the criminal activity or the

1 discovery of unauthorized alteration of records in violation of § 5036.

2 249. Instead of reporting, on September 12, 2018, two days after Brandley resigned,
3 Rosenstein called a town meeting with all Steep Hill employees, where he began to spin his false
4 narrative. By this point, Rosenstein knew the truth surrounding the fraud. However, during the
5 course of the meeting, which was recorded for distribution to employees who could not attend,
6 Rosenstein made numerous patently false and alarming statements regarding the pesticide fraud
7 scheme, including that Steep Hill “had to hold off on doing compliance samples” when in fact
8 BCC had shut the lab down; that the very people who created and fraudulently concealed the
9 problem were trying to diligently solve it; that it wasn’t a “terribly big deal”; and that he “would
10 like to ask you to move on.” He heaped praise and compliments on Land and Gaudino
11 throughout the meeting. Even if he had never known about Land and Gaudino’s concealment,
12 these statements would be shocking: at the very least, Land and Gaudino’s incompetence had
13 caused BCC to shut down the lab. In reality, it was not only their incompetence but also their
14 fraudulent concealment that caused Steep Hill immeasurable harm.

15 250. In the course of Cowart’s investigation of the potential fraud, Cowart had asked
16 the company’s Information Technology employee, David Tucker, to review the Slack messages
17 and emails of potentially involved employees to see if evidence could be uncovered. Rosenstein
18 countermanded this direction and obstructed the investigation, prohibiting Tucker from looking
19 at employee emails.

20 251. On September 27, 2018, after multiple requests by Cowart to investigate,
21 Rosenstein finally established a laboratory compliance committee. Unfortunately, it was highly
22 unlikely that this committee would uncover and rectify the real fraud, since Rosenstein appointed
23 to it *two of the main perpetrators of the fraud*, Land and Gaudino. Even after Rosenstein knew
24 the truth, these were the two individuals he tasked with ensuring that Steep Hill maintained its
25 “moral compass.” This supposed compliance committee did exactly what Rosenstein intended it
26 to do: absolutely nothing. The committee never even convened.

27 252. Cowart brought additional evidence of the fraud to Rosenstein’s attention on
28 September 28, forwarding him several emails he and Tucker had discovered documenting the

1 fraud. Cowart received no response and suspected that Rosenstein had become involved in the
2 coverup. He brought the issue to the attention of Board Chairman Monat. Cowart's
3 conversation with Monat also left him concerned that the Chair was kicking the can down the
4 road and intending to slow-walk the investigation.

5 253. On September 28, 2018, Rosenstein sent an email to all Steep Hill shareholders in
6 which he again misrepresented the truth, falsely implying that some sort of cooperative effort
7 between Steep Hill and BCC led to a pause in regulatory testing when, in reality, BCC shut down
8 the lab without notice. He also misled the investors by stating that the "failsafe will be
9 operational in the coming week to begin running customer samples" when, in reality, the lab was
10 not able to resume operations until nearly three months later, in December.

11 254. On October 19, Rosenstein sent another misleading letter to shareholders, falsely
12 informing them that the "Science Team has solved the deficiency we encountered in our
13 pesticide testing methodology and we will resume normal business operations early next week."

14 255. Rosenstein again misled shareholders in connection with the 2018 Note Purchase
15 Agreement disclosures with defective dates between October 25, 2018 and December 6, 2018,
16 downplaying the severity of BCC's shutdown of the lab, which ultimately cost Steep Hill
17 approximately \$3.5 million dollars in lost testing revenue from September through the end of
18 2018. No mention was made of the underlying testing fraud or any investigation that Steep Hill
19 had conducted or intended to undertake to surface the truth.

20 256. On December 18, 2018, Rosenstein sent yet another misleading letter to
21 shareholders, intentionally omitting Keller and Cowart (and share-holding members of their
22 respective families) from the recipient list. He falsely represented in this letter that the "previous
23 management team" had failed to address "issues with our ability to meet California state
24 regulations on the pesticide limits." Rosenstein was well aware that Science Leadership had
25 actively concealed and misrepresented the lab's pesticide testing capabilities from Cowart, Jeremy
26 Keller, and the rest of previous management.

27 257. Rosenstein's false narrative continued after the lab reopened as well, including in
28 another misleading shareholder letter in May 2019, in which he deceived shareholders and

1 potential investors into approving the senior debt financing.

2
3 *4. Keller is an Advocate for Cannabis Consumer Safety and Lab Accuracy and*
4 *Transparency*

5 258. Throughout 2016, 2017, and 2018, Keller made a series of in-depth public and
6 private presentations on cannabis safety, particularly focusing on best practices and standards for
7 ensuring ethics and transparency in labs and helping regulatory bodies rid the industry of bad-
8 actor labs that endangered the public through manipulating and selling favorable test results.

9 259. In connection with this work, he spoke at the National Cannabis Industry
10 Association Business Summit & Expo; the Cannabis Quality Strategies and Solution Summit; the
11 U.S. Congressional Cannabis Caucus Capitol Hill Briefing entitled Science of Safe Cannabis: A
12 Regulatory Primer; the 2nd Annual Cannabis Compliance Summit (which he chaired); the
13 Canna-Tech UK Accelerate Cannabis Innovation in London; the Canna-Tech Cannabis
14 Innovation Summit in Tel Aviv; CannaWest 2018 - Compliance, Testing & Product Safety
15 (which he also chaired).

16 260. His presentation topics included “Under the Microscope – State Oversight for
17 Cannabis Labs”; “When Regulations Don’t Work: A Case Study in Lab Proficiency”; “Ensuring
18 Patient Safety in the Cannabis Supply Chain”; “Lab Testing in a Regulated Market”; “Write the
19 Federal Regulations Now”; and “The Politics of Testing: Standardization, Pricing and Insider
20 Truths.”

21 261. Many federal, state, local, and foreign regulators and legislators attended Keller’s
22 presentations throughout this time, and he was considered a trusted and sought-after expert in
23 this field around the world. Keller publicly promoted the Steep Hill Code of Ethics as a gold
24 standard to be adhered to in cannabis labs globally.

25 262. Indeed, when BCC released its proposed regulations in 2017, Keller provided
26 multiple comments and proposed revisions in an attempt to assist BCC in rectifying several
27 issues with the pesticide testing regulations that made accurate and useful testing for
28 contaminants difficult. These comments included opinions on the likelihood of contaminated
plants reaching consumers and placing consumers at risk through the complete lack of residual

263. Keller's zeal for the topics of consumer safety and cannabis lab transparency and ethics is not born solely out of his professional commitment to Steep Hill's excellence. This is also personal for him. Keller utilizes medical CBD for treatment of gastrointestinal conditions that have troubled him since adolescence, and CBD is the only treatment that he has found eases his ailment. In 2016, however, Keller was given a CBD tincture that was contaminated, and upon ingesting it he immediately lost consciousness and collapsed to the ground in his bathroom, and the impact of his head striking against the stone edge of his bathtub severed his ear in half. Had he fallen at a slightly different angle, he may not have been able to survive the impact to his brain.

264. From this point on, Keller focused his public mission more directly and passionately at the issue of public safety through accurate and transparent lab testing for cannabis contaminants, knowing that lax procedures had nearly cost him his life and resolved to save others from that potential fate.

265. Keller staked both his professional reputation and his personal passion on eradicating bad actors in the cannabis testing lab industry. Had he become aware of his own lab's shocking falsification of reports and failure to adequately test for contaminants, he would have sprung into action immediately.

VI. DEMAND ALLEGATIONS

266. Plaintiff brings this action derivatively in the right of and for the benefit of Steep Hill to redress injuries suffered and to be suffered by Steep Hill as a result of the Defendants' breaches of fiduciary duty, abuse of control, and gross mismanagement. Plaintiff and his counsel will adequately and fairly represent the interests of Steep Hill in enforcing and prosecuting its rights.¹

267. Plaintiff was a shareholder of Steep Hill at the time of the wrongdoing complained of, has continuously been shareholders, and are current shareholders.

¹ The originally-filed complaint erroneously stated that “prior to filing, Plaintiffs, through their counsel, delivered a copy of the complaint to Steep Hill.”

1 268. Based upon Contested Management, the Science Leadership, and the remaining
2 Defendants' acts and omissions in direct violation of their fiduciary duties of due care, loyalty,
3 and good faith, a pre-suit demand on the Steep Hill Contested Board to bring the claims asserted
4 in this action is excused as a futile and useless act. Steep Hill's Contested Board members
5 personally engaged in, conducted, and benefitted from the wrongdoing alleged in this Amended
6 Complaint and it was Steep Hill's Contested Management who oversaw Steep Hill and its culture
7 of corruption.

8 269. Plaintiff has not made any demand on the Contested Board to investigate and
9 prosecute the wrongdoing alleged herein. Such a demand is excused because: (i) making a
10 demand would be a futile and useless act because the Contested Directors are not able to conduct
11 an independent and objective investigation of the alleged wrongdoing; and (ii) the wrongful
12 conduct of defendants is not subject to protection under the business judgment rule. Moreover,
13 the Contested Directors have ignored repeated shareholder requests to provide information to
14 investors. Under such circumstances, the demand requirement is excused since making such a
15 demand on the Contested Board would be futile. *Aronson v. Lewis*, 473 A.2d at 814 (1984).

16 270. At the time this derivative lawsuit was commenced, upon information and belief,
17 Steep Hill's Contested Board consisted of four directors. All of the directors served on the
18 Contested Board during the period that Steep Hill was engaged in the wrongdoing alleged in this
19 Amended Complaint, as well as authorizing or recklessly ignoring that wrongful conduct.

20 271. All of the Contested Directors were board members after the September 25, 2018,
21 Action by Written Consent, when Steep Hill attempted ouster Keller. All of the contested
22 directors are potentially liable to Steep Hill and also they cannot be trusted to appropriately
23 adjudicate this case as they are all aware of the wrongdoing committed earlier by Monat,
24 Baruchowitz, and Rosenstein, and the remaining directors are affiliated with Merida, and they
25 intend to condone and continue such misconduct. Furthermore, the Contested Directors have
26 demonstrated no intention of changing Steep Hill's corporate culture, practices, and policies that
27 have resulted in the devastating losses Steep Hill has incurred.

28 272. Monat is a defendant in this action, and therefore must be assumed to be incapable

1 of exercising independent and disinterested judgment on the issue of whether to cause Steep Hill
2 to sue him. Baruchowitz is a defendant in this action, and therefore must be assumed to be
3 incapable of exercising independent and disinterested judgment on the issue of whether to cause
4 Steep Hill to sue him. Finfer is a defendant in this action, and therefore must be assumed to be
5 incapable of exercising independent and disinterested judgment on the issue of whether to cause
6 Steep Hill to sue him. Finkelstein is a defendant in this action, and therefore must be assumed to
7 be incapable of exercising independent and disinterested judgment on the issue of whether to
8 cause Steep Hill to sue him.

9 273. Defendants Monat, Baruchowitz, Finfer, and Finkelstein cannot consider a demand
10 because their decision to operate Steep Hill in violation of the law is not a protected business
11 decision and they all face a substantial likelihood of liability for breaching their duty of loyalty.

12 274. Despite Monat, Baruchowitz, Finfer, and Finkelstein having knowledge of the
13 history of misconduct and mismanagement by them, the Contested Board has failed and refused
14 to seek recovery for Steep Hill for any of the misconduct alleged herein.

15 275. The directors cannot be relied upon to reach a truly independent decision whether
16 to commence the demanded action against themselves and the officers responsible for the
17 misconduct alleged in this Amended Complaint because, among other things, the Contested
18 Board is currently dominated by the Defendants, who were personally and directly involved in
19 the acts of mismanagement, abuse of control and waste alleged and who each approved the
20 actions complained of, and to whose directives and views the Contested Board has consistently
21 acceded and will continue to accede.

22 276. The contested directors' domination of Steep Hill's board of directors inhibit the
23 board's ability to validly exercise their business judgment and render them incapable of reaching
24 an independent decision whether to accept any demand by plaintiff to address the wrongs
25 detailed herein, as exemplified by their rejection of Keller's request to reconsider and evaluate
26 the propriety of the Action by Written on the same day—September 25, 2018—Monat provided
27 him notice of it.

28 277. A majority of the directors received personal and financial benefits while they

caused or permitted the Company to engage in the extensive misconduct detailed in this Amended Complaint. The members of the Contested Board are biased and cannot appropriately and fairly adjudicate any demand on the Board.

FIRST CAUSE OF ACTION
(Declaratory Relief Under DGLC §§ 225 and 228)

278. Plaintiff incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1 to 277, inclusive.

279. Delaware General Corporation Law section 228(c) provides that a corporate action by written consent is not valid unless signed by a sufficient number of shareholders to take the action under Delaware law, the company's bylaws, or applicable voting agreements.

No written consent shall be effective to take the corporate action referred to therein unless written consents signed by a sufficient number of holders or members to take action are delivered to the corporation in the manner required by this section within 60 days of the first date on which a written consent is so delivered to the corporation. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made, if evidence of such instruction or provision is provided to the corporation. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective.

280. The Action by Written Consent was not signed by a sufficient number of shareholders to take the actions set forth therein. There were insufficient votes because certain of the Proxies on which Defendants relied were invalid.

281. Accordingly, Plaintiff is entitled to a declaration under Delaware General Corporation Law section 225 that all actions taken on September 25, 2018, by written consent based on those proxies are void.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty)

(Derivatively asserted against Merida Capital Partners LP, Merida Capital Partners II, LP, Merida Advisor, LLC, Merida Manager II LLC, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell)

282. Plaintiff incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1 to 277, inclusive.

283. Defendants, as Steep Hill's directors and officers (or controlling principals of Steep Hill's, were and are required to use their abilities to control and manage Steep Hill in a fair, just and equitable manner in order to ensure that the Company complied with applicable laws and contractual obligations, to refrain from abusing their positions of control, and not to favor their own interests at the expense of Steep Hill. Defendants violated their fiduciary duties to Steep Hill, including without limitation their duties of care, good faith, honesty and loyalty.

284. The wrongful conduct particularized herein was not due to an honest error in judgment, but rather to Defendants' gross mismanagement, bad faith, or reckless disregard of the rights and interests of Steep Hill, its shareholders and its customers and for acting without the reasonable and ordinary care which they owed Steep Hill.

285. As a result of the foregoing, Defendants have participated in harming Steep Hill and have breached fiduciary duties owed to Steep Hill. Defendants knowingly aided, encouraged, cooperated or participated in, and substantially assisted the other Defendants in the breaches of their fiduciary duties.

286. By reason of the foregoing, Steep Hill has sustained and will continue to sustain damages and injuries for which it has no adequate remedy at law.

THIRD CAUSE OF ACTION

(Abuse of Control)

(Derivatively asserted against Merida Capital Partners LP, Merida Capital Partners II, LP, Merida Advisor, LLC, Merida Manager II LLC, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell)

287. Plaintiff incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1 to 277, inclusive.

288. By virtue of their positions and financial holdings in Steep Hill, Defendants

1 exercised control over Steep Hill and its operations, and owed duties as controlling persons to
2 Steep Hill not to use their positions of control within the Company for their own personal
3 interests and contrary to the interest of Steep Hill.

4 289. Defendants' conduct amounts to an abuse of their control of Steep Hill, in violation
5 of their obligations to Steep Hill. Defendants knowingly aided, encouraged, cooperated or
6 participated in, and substantially assisted the other Defendants in their abuse of control.

7 290. As a result of Defendants' abuse of control, Steep Hill has sustained and will
8 continue to sustain damages and injuries for which it has no adequate remedy at law.

9
10 **FOURTH CAUSE OF ACTION**

(Corporate Waste)

11 (Derivatively asserted against Merida Capital Partners LP, Merida Capital Partners II, LP,
12 Merida Advisor, LLC, Merida Manager II LLC, Baruchowitz, Monat, Rosenstein, Finfer,
Finkelstein, and Wright-Mitchell)

13 291. Plaintiff incorporates by reference as though fully set forth herein the allegations
14 contained in Paragraphs 1 to 277, inclusive.

15 292. As alleged in detail Defendants had a fiduciary duty to exercise good faith and
16 diligence in the administration of the affairs of Steep Hill and in the use and preservation of its
17 property and assets, and the highest obligation of fair dealings.

18 293. Defendants also wasted Steep Hill's corporate assets. For example, Defendants
19 paid increasing levels of rent to operate its prior lab due to an inability to move forward with a
20 new laboratory location; it has issued substantial credits and refunds to customers as a result of
21 lost samples due to improper handling and tracking of test samples; and its mishandling of the
22 Steep Hill Washington Divestiture and closure of Steep Hill New Mexico.

23 294. As a result of Defendants' actions, Steep Hill has suffered losses and incurred
24 substantial costs in investigating and defending itself against pending actions. Steep Hill also has
25 to incur the substantial costs of conducting internal investigations, as well as the costs of dealing
26 with investigations by regulatory agencies.

27 295. As a result of Defendants' wrongful conduct, Steep Hill has suffered and continued
28 to suffer damages, all in an amount to be determined according to proof at trial.

FIFTH CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duty)

(Derivatively asserted against Jacinto, IRA Services Trust Company CFBO Richard Jacinto II Roth IRA ACCT #115447, Liberty Trust Company LTD CFBO Richard Jacinto II IRA #TC005850, SJF Consulting, LLC, Slifka, Gotham Green Fund 1, L.P., Gotham Green Fund 1 (Q), L.P., Adler, Kulick, and Does 1-10)

296. Plaintiff incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1 to 277, inclusive.

297. Jacinto, SJF Consulting, LLC, Slifka, Gotham Green Fund 1, L.P., Adler, and Kulick ("Abetting Defendants") and Does 1 to 10 were aware that Merida Capital Partners LP, Merida Capital Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell ("Fiduciary Defendants") owed duties of due care, loyalty, and good faith to Steep Hill.

298. Abetting Defendants and Does 1 to 10 had knowledge that the conduct of Fiduciary Defendants as alleged herein would constitute a breach of their (Fiduciary Defendants') duty to Steep Hill.

299. Abetting Defendants and Does 1 to 10 substantially assisted or encouraged Fiduciary Defendants to breach their duties to Steep Hill.

300. As a direct and proximate result of aiding and abetting this tortious conduct, Steep Hill has been injured in an amount to be proven at trial, which amount exceeds this Court's jurisdictional minimum.

301. In aiding and abetting the Fiduciary Defendants' breach of fiduciary duties to Steep Hill, for the reasons detailed in this Amended Complaint, Abetting Defendants and Does 1 to 10's conduct was despicable and Steep Hill is therefore entitled to punitive damages in an amount to be determined at trial and amounts sufficient to punish each of the Abetting Defendants and Does 1 to 10.

SIXTH CAUSE OF ACTION

(Conspiracy to Breach of Fiduciary Duty)

(Derivatively asserted against Jacinto, IRA Services Trust Company CFBO Richard Jacinto II Roth IRA ACCT #115447, Liberty Trust Company LTD CFBO Richard Jacinto II IRA #TC005850, SJF Consulting, LLC, Slifka, Gotham Green Fund 1, L.P., Gotham Green Fund 1 (Q), L.P., Adler, Kulick, and Does 1-10)

302. Plaintiff incorporates by reference as though fully set forth herein the allegations

1 contained in Paragraphs 1 to 277, inclusive.

2 303. Jacinto, SJF Consulting, LLC, Slifka, Gotham Green Fund 1, L.P., Adler, and
3 Kulick (“Abetting Defendants”) and Does 11 to 20 were aware that Merida Capital Partners LP,
4 Merida Capital Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-
5 Mitchell (“Fiduciary Defendants”) owed duties of due care, loyalty, and good faith to Steep Hill.

6 304. Abetting Defendants and Does 11 to 20 had knowledge that the conduct of
7 Fiduciary Defendants’ as alleged herein would constitute a breach of their Fiduciary Defendants’
8 duty to Steep Hill.

9 305. Abetting Defendants and Does 11 to 20 conspired with Fiduciary Defendants to
10 breach Fiduciary Defendants’ fiduciary duties to Steep Hill, and to engage in the tortious acts
11 alleged in this Amended Complaint.

12 306. In furtherance of that conspiracy, Abetting Defendants and Does 11 to 20 took acts
13 as alleged in this Amended Complaint to accomplish that conspiratorial purpose and intended
14 result.

15 307. As a direct and proximate result of this tortious conduct, Steep Hill has been
16 injured in an amount to be proven at trial, which amount exceeds this Court’s jurisdictional
17 minimum.

18 308. In conspiring to breach Fiduciary Defendants’ fiduciary duties to Steep Hill, for
19 the reasons detailed in this Amended Complaint, Abetting Defendants and Does 11 to 20’s
20 conduct was despicable and Steep Hill is therefore entitled to punitive damages in an amount to
21 be determined at trial, in an amount sufficient to punish each of Abetting Defendants and Does
22 11 to 20.

23 **SEVENTH CAUSE OF ACTION**

24 (Intentional Misrepresentation of Preferred and Common Stock Ownership)
25 (Asserted against SJF Consulting, LLC, Stephen Finfer, Article Eleventh Trust, Gotham Green
Fund, Merida Capital Partners LP, and Richard Jacinto)

26 309. Plaintiff incorporates by reference as though fully set forth herein the allegations
27 contained in Paragraphs 1 to 277, inclusive.

28 310. SJF Consulting, LLC, Stephen Finfer, Article Eleventh Trust, Gotham Green Fund,

Merida Capital Partners LP, and Richard Jacinto misrepresented their status as holders of Series A-1 Preferred Stock of the Steep Hill and, subsequently, as holders of Common Stock of Steep Hill when, in fact, they had never executed the requisite documents to effectuate the conversions.

311. To convert the Convertible Notes to Preferred Stock, the noteholders were required to execute either the applicable A-1 Preferred Stock Purchase Agreements.

312. These Defendants failed to fully execute the requisite Purchase Agreements such that they never converted their Convertible Notes to Preferred Stock of Steep Hill.

313. Despite knowing that they never executed the Purchase Agreements and never converted their Convertible Notes to Preferred Shares, SJF Consulting, LLC, Stephen Finfer, Article Eleventh Trust, Gotham Green Fund, Merida Capital Partners LP, and Richard Jacinto each executed a “Notice of Conversion of Shares of Preferred Stock of Steep Hill, Inc.” by which they misrepresented that they had the requisite ownership over shares of Preferred Stock to convert said shares into Common Shares and, from there, to vote (directly or by proxy) in the Action by Written Consent to do the following:

A remove Keller as a director of Steep Hill and from any Board committees on which he served;

B elect Finkelstein, Finfer, and Baruchowitz as Common Directors;

C ratify certain acts and omissions attributable to Steep Hill by its directors, stockholders, officers, employees, and agents, particularly including those “in connection with or relating to the foregoing resolutions”; and

D authorize Steep Hill’s officers to take all acts and steps as may be necessary, advisable, or convenient for purpose of carrying out the foregoing resolutions.

314. These Defendants intended Keller to rely on these misrepresentations.

315. In relinquishing his positions as a director of Steep Hill and member of Board committees, Keller reasonably relied on SJF Consulting, LLC, Stephen Finfer, Article Eleventh Trust, Gotham Green Fund, Merida Capital Partners LP, and Richard Jacinto’s misrepresentations and subsequent vote.

316. As a direct and proximate result of this tortious conduct, Plaintiff Keller has been

1 injured in an amount to be proven at trial, which amount exceeds this Court's jurisdictional
2 minimum.

3 317. For the reasons detailed in this Amended Complaint, SJF Consulting, LLC,
4 Stephen Finfer, Article Eleventh Trust, Gotham Green Fund, Merida Capital Partners LP, and
5 Richard Jacinto engaged in fraudulent and despicable conduct and Keller is therefore entitled to
6 punitive damages in an amount to be determined at trial, in an amount sufficient to punish each
7 of SJF Consulting, LLC, Stephen Finfer, Article Eleventh Trust, Gotham Green Fund, Merida
8 Capital Partners LP, and Richard Jacinto.

9
10 **EIGHTH CAUSE OF ACTION**

11 (Negligent Misrepresentation of Preferred and Common Stock Ownership)
(Asserted against SJF Consulting, LLC, Stephen Finfer, Article Eleventh Trust, Gotham Green
12 Fund, Merida Capital Partners LP, and Richard Jacinto)

13 318. Plaintiff incorporates by reference as though fully set forth herein the allegations
14 contained in Paragraphs 1 to 277, inclusive.

15 319. SJF Consulting, LLC, Stephen Finfer, Article Eleventh Trust, Gotham Green Fund,
16 Merida Capital Partners LP, and Richard Jacinto misrepresented their status as holders of Series
17 A-1 Preferred Stock of the Steep Hill and, subsequently, as holders of Common Stock of Steep
18 Hill when, in fact, they had never executed the requisite documents to effectuate the conversions.

19 320. To convert the Convertible Notes to Preferred Stock, the noteholders were required
20 to execute either the applicable A-1 Preferred Stock Purchase Agreements.

21 321. These Defendants failed to fully execute the requisite Purchase Agreements such
22 that they never converted their Convertible Notes to Preferred Stock of Steep Hill.

23 322. SJF Consulting, LLC, Stephen Finfer, Article Eleventh Trust, Gotham Green Fund,
24 Merida Capital Partners LP, and Richard Jacinto each executed a "Notice of Conversion of
25 Shares of Preferred Stock of Steep Hill, Inc." by which they misrepresented that they had the
26 requisite ownership over shares of Preferred Stock to convert said shares into Common Shares
27 and, from there, to vote (directly or by proxy) in the Action by Written Consent to do the
28 following:

1. remove Keller as a director of Steep Hill and from any Board committees on which he

served; elect Finkelstein, Finfer, and Baruchowitz as Common Directors;

2. ratify certain acts and omissions attributable to Steep Hill by its directors, stockholders, officers, employees, and agents, particularly including those “in connection with or relating to the foregoing resolutions”; and

3. authorize Steep Hill’s officers to take all acts and steps as may be necessary, advisable, or convenient for purpose of carrying out the foregoing resolutions.

323. That although SJF Consulting, LLC, Stephen Finfer, Article Eleventh Trust, Gotham Green Fund, Merida Capital Partners LP, Richard Jacinto, or any of them, may have honestly believed that the representation was true, they had no reasonable grounds for believing the representation was true when they made them.

324. SJF Consulting, LLC, Stephen Finfer, Article Eleventh Trust, Gotham Green Fund, Merida Capital Partners LP, and Richard Jacinto intended Keller to rely on these misrepresentations.

325. In relinquishing his positions as a director of Steep Hill and member of Board committees, Keller reasonably relied on these Defendants’ misrepresentations and subsequent vote.

326. As a direct and proximate result of this tortious conduct, Plaintiff Keller has been injured in an amount to be proven at trial, which amount exceeds this Court’s jurisdictional minimum.

327. For the reasons detailed in this Amended Complaint, SJF Consulting, LLC, Stephen Finfer, Article Eleventh Trust, Gotham Green Fund, Merida Capital Partners LP, and Richard Jacinto engaged in fraudulent and despicable conduct and Keller is therefore entitled to punitive damages in an amount to be determined at trial, in an amount sufficient to punish each of SJF Consulting, LLC, Stephen Finfer, Article Eleventh Trust, Gotham Green Fund, Merida Capital Partners LP, and Richard Jacinto.

NINTH CAUSE OF ACTION
(Intentional Misrepresentation of Right to Vote by Proxy)
(Asserted against Does 21-30)

1 328. Plaintiff incorporates by reference as though fully set forth herein the allegations
2 contained in Paragraphs 1 to 277, inclusive.

3 329. Does 21 to 30 misrepresented their status as holders of Common Stock at the time
4 they executed Proxy Votes when, in fact, they did not have such voting rights because they had
5 not yet converted their Preferred Stock to Common Stock.

6 330. On or about August 31, 2018, Does 21 to 30 executed the Steep Hill Labs, Inc.
7 Proxy, which declared that each such Doe Defendant was a Common Shareholder of Steep Hill
8 Labs, Inc. and that, as a common shareholder. Under the Proxy, Does 21 to 30 appointed Merida
9 as his proxy “for any shareholder actions Merida, or its affiliates or assignees deems in the best
10 interests of shareholders . . . [.]”

11 331. At the time that they executed their respective Proxies, Does 21 to 30 knew that
12 they had not yet converted their Preferred Shares to Common Shares under the terms of the
13 Convertible Notes, as their Notices of Conversion had not yet been received by the transfer agent
14 or Corporation per the terms of the Convertible Notes.

15 332. Further, as to those Doe Defendants who never validly converted their Convertible
16 Notes to Preferred Shares, and thus could not possibly have converted their non-existent
17 Preferred Shares to Common Shares, they, too knew that they were not Common Shareholders
18 regardless of timing.

19 333. Accordingly, Does 21 to 30 knew that their Proxies were premised on fraudulent
20 misrepresentations regarding their status – or lack thereof – as Common Shareholders.

21 334. As a direct result of the fraudulent Proxies issued by the Does 21 to 30, Merida
22 voted in the Action by Written Consent to:

23 A remove Keller as a director of Steep Hill and from any Board committees
24 on which he served;

25 B elect Finkelstein, Finfer, and Baruchowitz as Common Directors;

26 C ratify certain acts and omissions attributable to Steep Hill by its directors,
27 stockholders, officers, employees, and agents, particularly including those “in connection
28 with or relating to the foregoing resolutions”; and

D authorize Steep Hill's officers to take all acts and steps as may be necessary, advisable, or convenient for purpose of carrying out the foregoing resolutions.

335. Does 21 to 30 intended Keller to rely on these misrepresentations.

336. In relinquishing his positions as a director of Steep Hill and member of Board committees, Keller reasonably relied on Does 21 to 30's misrepresentations and subsequent vote.

337. As a direct and proximate result of this tortious conduct, Plaintiff Keller has been injured in an amount to be proven at trial, which amount exceeds this Court's jurisdictional minimum.

338. For the reasons detailed in this Amended Complaint, Does 21 to 30 engaged in fraudulent and despicable conduct and Keller is therefore entitled to punitive damages in an amount to be determined at trial, in an amount sufficient to punish each of Does 21 to 30.

TENTH CAUSE OF ACTION

(Negligent Misrepresentation of Right to Vote by Proxy)
(Asserted against and Christopher Hashioka, CEH Investments LP, Patrice Pisinski Angle, James Leslie Angle, Mark Hoffman, Leslie Hoffman, Solidum Capital Advisors LLC, Samuel Beran, Joshua Greenwald, Ora Sucov, Joshua Waldman, Bar Capital, LLC, Anand G. Shahi, LCM OP 127 Delaware LLC, Chandreshwar Shahi, and Does 31-40)

339. Plaintiff incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1 to 277, inclusive.

340. Christopher Hashioka, CEH Investments LP, Patrice Pisinski Angle, James Leslie Angle, Mark Hoffman, Leslie Hoffman, Solidum Capital Advisors LLC, Samuel Beran, Joshua Greenwald, Ora Sucov, Joshua Waldman, Bar Capital, LLC, Anand G. Shahi, LCM OP 127 Delaware LLC, Chandreshwar Shahi, and Does 31-40 ("Proxy Voting Defendants") misrepresented their status as holders of Common Stock at the time they executed Proxy Votes when, in fact, they did not have such voting rights because they had not yet converted their Preferred Stock to Common Stock.

341. On or about August 31, 2018, these Proxy Voting Defendants executed the Steep Hill Labs, Inc. Proxy, which declared that each such Proxy Voting Defendant was a Common Shareholder of Steep Hill Labs, Inc. and that, as a common shareholder. Under the Proxy, these Proxy Voting Defendants appointed Merida as his proxy "for any shareholder actions Merida, or

its affiliates or assignees deems in the best interests of shareholders . . . [.]”

342. At the time that they executed their respective Proxies, these Proxy Voting Defendants knew or should have known that they had not yet converted their Preferred Shares to Common Shares under the terms of the Convertible Notes, as their Notices of Conversion had not yet been received by the transfer agent or Corporation per the terms of the Convertible Notes.

343. Further, as to those Proxy Voting Defendants who never validly converted their Convertible Notes to Preferred Shares, and thus could not possibly have converted their non-existent Preferred Shares to Common Shares, they, too knew or should have known that they were not Common Shareholders regardless of timing.

344. Accordingly, these Proxy Voting Defendants knew or should have known that their Proxies were premised on fraudulent misrepresentations regarding their status – or lack thereof – as Common Shareholders.

345. As a direct result of the fraudulent Proxies issued by these Proxy Voting Defendants, Merida voted in the Action by Written Consent to:

A remove Keller as a director of Steep Hill and from any Board committees on which he served;

B elect Finkelstein, Finfer, and Baruchowitz as Common Directors;

C ratify certain acts and omissions attributable to Steep Hill by its directors, stockholders, officers, employees, and agents, particularly including those “in connection with or relating to the foregoing resolutions”; and

D authorize Steep Hill’s officers to take all acts and steps as may be necessary, advisable, or convenient for purpose of carrying out the foregoing resolutions.

346. That although these Proxy Voting Defendants may have honestly believed that the representation was true, these Proxy Voting Defendants had no reasonable grounds for believing the representation was true when these Proxy Voting Defendants signed the proxies.

347. These Proxy Voting Defendants intended Keller to rely on these misrepresentations.

348. In relinquishing his positions as a director of Steep Hill and member of Board

committees, Keller reasonably relied on these Proxy Voting Defendants' misrepresentations and subsequent vote.

349. As a direct and proximate result of this tortious conduct, Plaintiff Keller has been injured in an amount to be proven at trial, which amount exceeds this Court's jurisdictional minimum.

350. For the reasons detailed in this Amended Complaint, these Proxy Voting Defendants engaged in fraudulent and despicable conduct and Keller is therefore entitled to punitive damages in an amount to be determined at trial, in an amount sufficient to punish each of these Proxy Voting Defendants.

ELEVENTH CAUSE OF ACTION

(Fraud - Concealment)

(Derivatively asserted against Reggie Gaudino, Donald Land, Brian Brandley, and Kristofer Marsh)

351. Plaintiff incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1 to 114, inclusive, 218 to 265, inclusive, and 266 to 277, inclusive.

352. Each of Reggie Gaudino, Donald Land, and Brian Brandley were fiduciaries of Steep Hill.

353. Defendants intentionally failed to disclose certain facts to Plaintiff Keller or Steep Hill as alleged in paragraphs 1 to 277.

354. Defendants disclosed some select facts to Steep Hill but intentionally failed to disclose other facts, making the disclosure deceptive as alleged in paragraphs 218 to 265.

355. Defendants intentionally failed to disclose certain facts that were known only to each of them but that Steep Hill could not have discovered as alleged in paragraphs 218 to 265.

356. Defendants prevented Steep Hill or Plaintiff from discovering certain facts as alleged in paragraphs 218 to 265.

357. Plaintiff did not know of the concealed fact(s);

358. Defendants intended to deceive Keller, senior management, and Steep Hill by concealing the facts.

359. Had the omitted information been disclosed, Keller and Steep Hill reasonably

1 would have acted to remedy the testing deficiencies in the lab in a transparent and prudent
2 method.

3 360. As a direct and proximate result of this tortious conduct, Steep Hill has been
4 injured in an amount to be proven at trial, which amount exceeds this Court's jurisdictional
5 minimum.

6 361. Defendants' concealment was a substantial factor in causing Steep Hill's harm.

7 362. For the reasons detailed in this Amended Complaint, Defendants engaged in
8 fraudulent and despicable conduct and Steep Hill is therefore entitled to punitive damages in an
9 amount to be determined at trial, in an amount sufficient to punish each of them.

10 **TWELFTH CAUSE OF ACTION**

11 (Breach of Fiduciary Duty)

12 (Derivatively asserted against Reggie Gaudino, Donald Land, Brian Brandley, Kristofer Marsh)

13 363. Plaintiff incorporates by reference as though fully set forth herein the allegations
14 contained in Paragraphs 1 to 114, inclusive, 218 to 265, inclusive, and 266 to 277, inclusive.

15 364. Defendants, as members of Steep Hill's Science Leadership, were and are required
16 to use their abilities to control and manage Steep Hill's labs in a safe and scientifically valid
17 manner in order to ensure that the Company complied with applicable laws and contractual
18 obligations, to avoid risk injury to the public and damage to Steep Hill's reputation for scientific
19 integrity, and not to favor their own interests at the expense of Steep Hill. Defendants violated
20 their fiduciary duties to Steep Hill, including without limitation their duties of care, good faith,
21 honesty and loyalty.

22 365. The wrongful conduct particularized herein was not due to an honest error in
23 judgment, but rather to Defendants' gross mismanagement, bad faith, or reckless disregard of the
24 rights and interests of Steep Hill, its shareholders and its customers and for acting without the
25 reasonable and ordinary care that they owed Steep Hill.

26 366. As a result of the foregoing, Defendants have participated in harming Steep Hill
27 and have breached fiduciary duties owed to Steep Hill. Defendants knowingly aided,
28 encouraged, cooperated or participated in, and substantially assisted the other Defendants in the

breaches of their fiduciary duties.

367. By reason of the foregoing, Steep Hill has sustained and will continue to sustain damages and injuries for which it has no adequate remedy at law.

THIRTEENTH CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duty)

(Derivatively asserted against Merida Capital Partners LP, Merida Capital Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell and Does 41 to 50)

368. Plaintiff incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1 to 114, inclusive, 218 to 265, inclusive, and 266 to 277, inclusive.

369. Merida Capital Partners LP, Merida Capital Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell and Does 41 to 50 were aware that members of the Science Leadership owed duties of due care, loyalty, and good faith to Steep Hill.

370. Merida Capital Partners LP, Merida Capital Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell and Does 41 to 50 had knowledge that the conduct of members of the Science Leadership as alleged herein would constitute a breach of the Science Leadership's duty to Steep Hill.

371. Merida Capital Partners LP, Merida Capital Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell and Does 41 to 50 substantially assisted or encouraged members of the Science Leadership to breach their duties to Steep Hill.

372. As a direct and proximate result of aiding and abetting this tortious conduct, Steep Hill has been injured in an amount to be proven at trial, which amount exceeds this Court's jurisdictional minimum.

373. In aiding and abetting the Science Leadership's breach of fiduciary duty to Steep Hill, for the reasons detailed in this Amended Complaint, Merida Capital Partners LP, Merida Capital Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell and Does 41 to 50's conduct was despicable and Steep Hill is therefore entitled to punitive damages in an amount to be determined at trial and amounts sufficient to punish each of

Merida Capital Partners LP, Merida Capital Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell and Does 41 to 50.

FOURTEENTH CAUSE OF ACTION

(Conspiracy to Breach of Fiduciary Duty)

(Derivatively Against Merida Capital Partners LP, Merida Capital Partners II, LP, Merida Advisor, LLC, Merida Manager II LLC, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell and Does 51-60)

374. Plaintiff incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1 to 114, inclusive, 218 to 265, inclusive, and 266 to 277, inclusive.

375. Merida Capital Partners LP, Merida Capital Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell and Does 51 to 60 were aware that the Science Leadership owed duties of due care, loyalty, and good faith to Steep Hill.

376. Merida Capital Partners LP, Merida Capital Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell and Does 51 to 60 had knowledge that the conduct of the Science Leadership as alleged herein would constitute a breach of the Science Leadership's duty to Steep Hill.

377. Merida Capital Partners LP, Merida Capital Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell and Does 51 to 60 conspired with the Science Leadership to breach the Science Leadership's fiduciary duties to Steep Hill, and to engage in the tortious acts alleged in this Amended Complaint.

378. In furtherance of that conspiracy, Merida Capital Partners LP, Merida Capital Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell and Does 51 to 60 took acts as alleged in this Amended Complaint to accomplish that conspiratorial purpose and intended result.

379. As a direct and proximate result of this tortious conduct, Steep Hill has been injured in an amount to be proven at trial, which amount exceeds this Court's jurisdictional minimum.

380. In conspiring to breach the Science Leadership's fiduciary duties to Steep Hill, for the reasons detailed in this Amended Complaint, Merida Capital Partners LP, Merida Capital

Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell and Does 51 to 60's conduct was despicable and Steep Hill is therefore entitled to punitive damages in an amount to be determined at trial, in an amount sufficient to punish each of Merida Capital Partners LP, Merida Capital Partners II, LP, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-Mitchell and Does 51 to 60.

FIFTEENTH CAUSE OF ACTION

(Breach of Fiduciary Duty)

(Asserted against Merida Capital Partners LP, Merida Capital Partners II, LP, Merida Advisor, LLC, Merida Manager II LLC, Baruchowitz, Monat, Rosenstein, Finfer, and Finkelstein)

381. Plaintiff incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1 to 277, inclusive.

382. Defendant Merida at all times relevant to this Count exercised actual control over Steep Hill and its governance apparatus, and as such owed Steep Hill and each Steep Hill shareholder the highest obligations of due care and loyalty, and the subsidiary duties of good faith and candor.

383. Defendants Baruchowitz, Monat, Rosenstein, Finfer, and Finkelstein at all times relevant to this cause of action were Steep Hill directors, and as such owed Steep Hill and each Steep Hill shareholder the highest obligations of due care and loyalty, and the subsidiary duties of good faith and candor.

384. Defendants Merida, Baruchowitz, Monat, Rosenstein, Finfer, and Finkelstein, together in concert and each individually, breached the obligations and duties owed to Steep Hill's shareholders by:

A manipulating numerous Steep Hill shareholders with false and misleading information to agree to an ouster of Keller in order for Merida to obtain effective control over Steep Hill;

B removing Keller from the board and taking control over Steep Hill and its board even though the vote to ouster Keller was invalid and ineffective;

C intentionally creating a cash crisis within Steep Hill in violation of Merida's funding obligations for the purpose of reinforcing Merida's effective control

1 over Steep Hill, preventing Steep Hill's board from considering or seeking out alternative
2 funding options, rendering Steep Hill's board incapable of negotiating meaningfully with
3 Merida over the terms of the various Merida term sheets, forcing Steep Hill to cede hard
4 control, and coercing Steep Hill's board and stockholders to accept under duress plainly
5 unfavorable funding terms;

6 D failing to disclose Merida's dual loyalties, and in particular its covert plan
7 to engage in a freeze-out merger against the interests of Steep Hill's stockholders; and

8 E forcing on Steep Hill and its non-controlling shareholders funding terms
9 favorable to Merida that materially damaged the company and its prospects and
10 materially impaired Plaintiff's equity interest in Steep Hill.

11 385. These breaches and the direct and reasonably foreseeable consequences of these
12 breaches have caused substantial damage to Plaintiff.

13 386. The misconduct complained of violates the duty of loyalty, was perpetrated in bad
14 faith, and otherwise falls outside the exculpatory scope of 8 Del. C. § 102(b)(7).

15 **SIXTEENTH CAUSE OF ACTION**

16 (Breach of Fiduciary Duty)

17 (Asserted against Merida Capital Partners LP, Merida Capital Partners II, LP, Merida Advisor,
18 LLC, Merida Manager II LLC, Baruchowitz, Monat, Rosenstein, Finfer, Finkelstein, and Wright-
19 Mitchell)

20 387. Plaintiff incorporates by reference as though fully set forth herein the allegations
21 contained in Paragraphs 1 to 277, inclusive.

22 388. Defendant Merida at all times relevant to this Count exercised actual control over
23 Steep Hill and its governance apparatus, and as such owed Steep Hill and each Steep Hill
24 shareholder the highest obligations of due care and loyalty, and the subsidiary duties of good
25 faith and candor.

26 389. Defendants Baruchowitz, Monat, Rosenstein, Finfer, and Finkelstein at all times
27 relevant to this cause of action were Steep Hill directors, and as such owed Steep Hill and each
28 Steep Hill shareholder the highest obligations of due care and loyalty, and the subsidiary duties
of good faith and candor.

390. Defendants Rosenstein and Wright-Mitchell, in addition to being Steep Hill directors, were officers of Steep Hill, and as such owed Steep Hill and each Steep Hill shareholder the highest obligations of due care and loyalty, and the subsidiary duties of good faith and candor.

391. Defendants, together in concert and each individually depending on the challenged transaction, breached the obligations and duties owed to Steep Hill's shareholders in the following respects, among others:

A Merida, through Rosenstein, Monat, Baruchowitz Finfer, and Finkelstein with the support of Wright-Mitchell, dismantled and re-tooled Steep Hill's governance structure in ways violating Steep Hill's governing contracts and which served Merida's interests to the material detriment of the company. Actions taken include, but by no means are limited to, freezing Mr. Keller, the sole representative on the Steep Hill board reporting to the minority investors, out of his contractually-guaranteed board position; replacing the board of directors - the constituency of which is dictated in part by Steep Hill's corporate contracts - with an crew of Merida insiders consisting of Baruchowitz, Monat, Finfer, an Finkelstein, which functions completely in the dark and has at all times acted in ways inimical to the interests of Steep Hill's minority shareholders; disregarding governance formalities, including board updates and delivery of financial materials. These measures were taken to and did prevent: (i) systemic oversight of Merida within the governance structure of the company, (ii) opposition to Merida by unaffiliated directors; and (iii) any meaningful checks whatsoever on Merida's exercise of absolute and unchecked control over the corporate machinery;

B Defendants engaged in or otherwise facilitated self-interested transactions in violation of fiduciary duties and Steep Hill's governing contracts, including transactions that affected the capital structure of the company to the direct detriment of Steep Hill's minority shareholders. By way of example only, the grant of 599,196 Employee Stock Options to Merida by the Contested Board in order to preclude other Series A-2 investors from receiving the same financial terms, while at the same time

wiping out the Employee Stock Option Plan, the grant of 500,000 Warrants to Merida in connection with the 2018 Notes at a strike price of \$1.00, well below the current Series A-2 share price of \$5.186, and the unwarranted 4x multiplication of the 500,000 Warrants to 2,000,000 Warrants with an even lower strike price of \$0.5131 under the Revised 2018 Notes for the benefit of the Defendants and the distribution of a fully diluted 5% of Steep Hill's stock less one share to Cathcart; and

C Defendants have pursued other activities that improperly elevated constituent interests over the interest of Steep Hill, to the detriment of Steep Hill's minority shareholders.

392. These breaches and the direct and reasonably foreseeable consequences of these breaches have caused substantial damage to Steep Hill's shareholders.

393. The misconduct complained of violates the duty of loyalty, was perpetrated in bad faith, and otherwise falls outside the exculpatory scope of 8 Del. C. § 102(b)(7).

SEVENTEENTH CAUSE OF ACTION

(Unjust Enrichment)

(Derivatively asserted against Rosenstein, Monat, Jane Wright-Mitchell, Reggie Gaudino, Donald Land, Brian Brandley)

394. Plaintiff incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1-277, inclusive.

395. Defendants derived compensation, fees and other benefits from Steep Hill and were otherwise unjustly enriched during the time in which the wrongful practices occurred, to the detriment of Steep Hill. Defendants profited by engaging in the wrongful conduct set forth in the Amended Complaint above. Defendants also wrongfully converted funds belonging to Steep Hill.

396. Defendants' enrichment is directly and causally related to the detriment of Steep Hill.

397. These benefits were accepted by Defendants under such circumstances that it would be inequitable for it to be retained without payment. As alleged above, Defendants breached their fiduciary duties or abused their positions of control to Steep Hill and therefore

Defendants are not justified to retain the benefits conferred upon them.

EIGHTEENTH CAUSE OF ACTION
(Declaratory Relief)
(Derivatively asserted against Cathcart)

398. Plaintiff incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1 to 277, inclusive.

399. An actual controversy has arisen and now exists between Steep Hill and the Cathcart. As described above, Plaintiff contends that the settlement agreement that the Contested Board entered with Defendant Cathcart on or about March 7, 2019 in the lawsuit Cathcart filed against Steep Hill in San Francisco Superior Court, bearing case number CGC-18-565002, was invalid because the Contested Board had no authority to enter the settlement agreement.

400. A judicial determination of these issues and of the respective rights of Steep Hill and Defendant Cathcart is necessary and appropriate at this time under the circumstances because the grant of equity, significant cash payments, and other provisions of the settlement agreement have harmed Steep Hill and its stockholders as alleged herein. A judicial determination is necessary to cancel or prevent the issuance of any equity to Cathcart under the invalid settlement agreement.

PRAYER

WHEREFORE, Plaintiffs, on behalf of themselves and Steep Hill, pray for judgment as follows:

1. A declaration that all actions taken on September 25, 2018, by written consent are void;
2. A declaration that the actions taken by written consent were the product of a breach of the fiduciary duties that the Board of Directors and officers owed to Plaintiff Keller in his capacity as a director and the majority stockholder;
3. A Declaration that all actions taken by the Contested Board on and after September 25, 2018 are void;
4. Money damages to compensate Steep Hill for its losses and to restore enterprise

- value;
5. Money damages to compensate Plaintiffs for their losses;
 6. Awarding punitive and exemplary damages in an amount to be proven at trial;
 7. Equitable relief in the form of a realignment of Steep Hill's capital structure to the status quo before the invalid preferred stock to common stock conversions and the invalid vote;
 8. Equitable relief in the form of the disgorgement of fees, warrants, equity or other value paid or conveyed to any Defendant as a result of or in connection with a breach of fiduciary duty;
 9. Awarding Plaintiffs' costs of suit incurred herein, including any properly awardable attorneys' fees;
 10. Awarding pre-judgment interest, as well as reasonable attorneys' fees and other costs; and
 11. Awarding such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial as to all causes of action triable by jury.

DATED: February 28, 2020

PRYOR CASHMAN, LLP

By: 

Thomas H. Vidal
Benjamin S. Akley
Mary Balzer

Heather Feuer (*proc hac vice* application forthcoming)
ATTORNEYS FOR JMICHAEL KELLER