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**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

DANIEL MCNEFF, an individual,
LEGALLY MINE, LLC, a Utah limited
liability company,

Plaintiffs,

v.

AMMON MCNEFF, an individual, and
MATTHEW MCNEFF, an individual,

Defendants.

***EX PARTE* MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Case No.: 200401232

Judge: James Taylor

COME NOW, Plaintiffs Daniel McNeff (hereinafter “Dan” or “Daniel”) and Legally Mine, LLC (“Legally Mine” or the “Company”), by and through their counsel of record, Thomas W. Seiler and Perris E. Nelson of Seiler, Anderson, Fife & Marshall, LC, and, pursuant to Rules 7 and 65A of the Utah Rules of Civil Procedure, respectfully move the Court *ex parte* to issue a temporary restraining order and preliminary injunction requiring Defendants to immediately relinquish and deliver to Legally Mine and/or its authorized representative(s): 1) the occupation and control of Legally Mine’s office building at 1335 East 750 North, Orem, Utah 84097, which the Defendants entered and took control of in the dark of night between close of business on

October 15, 2020, and early morning hours of Friday, October 16, 2020;¹ 2) title to and full administrative control over (including, without limitation, delivery of all usernames and passwords) the following systems (a) Chargify, (b) 1Wire, (c) Advanced Payment Solutions (Orien), (d) NMI, (e) iQ, (f) Google Suite, and (g) Legally Mine's website (collectively herein the "Administrative Systems"), which Defendants were ordered to do by the Tribunal, Mark F. James, Esq., Arbitrator, on March 12, 2020 and multiple times thereafter. The Court should further enjoin Ammon and Matthew from entering or being within one hundred (100) yards of Legally Mine's offices and from contacting, communicating with any client or potential client, employee, member, or independent contractor of Legally Mine for the reasons set forth herein or from representing to anyone that the Defendants are individually or collectively managers or have any management authority over Legally Mine. Additionally, Plaintiffs request that the Court order that Lindsey Thompson be the manager of Legally Mine until further order of the Court.

Plaintiffs further request that this Court schedule a preliminary injunction hearing as soon as possible in this matter, and in no event later than the expiration day of the temporary restraining order sought herein.

INTRODUCTION

Dan owns 79% of Legally Mine. Ammon owns 11% of Legally Mine. Matthew owns 10% of Legally Mine. Ammon and Matthew seized control of Legally Mine's offices at 1335 East 750 North, Orem, Utah 84097, locked out Legally Mine's 79% owner and its employees and have sent termination letters to many employees. *See* footnote 1. Ammon and Matthew were ordered by the

¹ Late last night (October 18, 2020) the Defendants agreed not to re-enter the office building, but only if no Legally Mine employees entered the office building until further order of this Court and if Defendants' security company could remain in the parking lot and have access to the office building to use the restroom. Legally Mine is currently shut out of the office building and Defendants have shut Legally Mine employees off of their emails and phones.

Arbitrator to deliver all control of computer delivered services (Administrative Services), but Ammon retains control.

STATEMENT OF FACTS

1. Legally Mine is a company providing tax, asset protection, and financial strategy advice to discerning clients. (Ammon McNeff's and Matthew McNeff's September 18, 2020, Motion for Temporary Restraining Order filed in Civil No. 190401633 (herein "Denied TRO")), p. 3, ¶ 2).

2. In 2009, Dan formed Legally Mine as a single member Utah limited liability company.

3. As of January of 2019, Dan had given Ammon an 11% interest in Legally Mine and Dan had given Matt a 10% interest in Legally Mine. *See* Ex. "A" to "Petition and Motion to Vacate Tribunal's Final Decision and Award in Part . . ." ("Petition and Motion") [Dkt. No. 1], Amended and Restated Operating Agreement of Legally Mine, LLC. On July 6, 7, 2020, the Arbitrator held that Dan and the Defendants continued to hold those percentage ownership interests. *See* Final Decision and Award (at times, "Final Award"), attached hereto as **Exhibit "A"**.

4. In January, 2019, Dan and his sons, Ammon and Matt, entered into the Amended and Restated Operating Agreement of Legally Mine, LLC ("Operating Agreement"). *See* Ex. "A" to Petition and Motion.

5. On November 20, 2019, Defendants filed their Verified Complaint in the Arbitration matter, asserting twelve (12) claims for relief. *See* Ex. "I" to Petition and Motion.

6. During the Arbitration, on March 3, 2020, Defendants filed their Emergency Motion for Injunction and Request for Fees (“Emergency Motion”), a copy of which is attached hereto as **Exhibit “B”**.

7. The Emergency Motion followed, and was in response to, an email from Dan to Defendants, wherein Dan, as the Managing Member of Legally Mine, instructed Defendants, *inter alia*, to “vacate their offices at Legally Mine as well as their current responsibilities with respect to Legally Mine and Medisource Marketing.” A copy of the foregoing email is attached hereto as **Exhibit “C”**.

8. Dan’s email further specifically instructed Petitioners to “give to [REDACTED] any and all administrative names and passwords so responsibilities for these can be taken by others. This would include all information to items such as the security system, email accounts, google drive, websites and The American Express loan.” *Id.*

9. Ammon and Matthew’s Emergency Motion asserted that Dan’s email instructions constituted retaliation and sought to enjoin Dan from taking such action. *See generally* Ex. “B”.

10. In its March 4, 2020, Memorandum Decision and Order Denying Emergency Motion for Injunction and Request for Fees; Order Re Meeting with Special Master (“Order”), the arbitration Tribunal denied the Defendants’ Emergency Motion, ruling as follows:

While my prior order precluded Daniel McNeff from firing Ammon McNeff and/or Matthew McNeff, it did not prohibit the manager of Legally Mine, acting within the broad powers granted him under the operating agreement, from assigning Ammon and/or Matthew offices in a different location or from changing their duties and/or responsibilities. Rather, it narrowly precluded Daniel McNeff from terminating Ammon and Matthew’s employment. I do not find the conduct about which Claimants complain to violate my prior orders.

A copy of the foregoing Order is attached hereto as **Exhibit “D”**.

11. When Defendants vacated their offices at Legally Mine as of March 9, 2020, they left their offices locked and took their keys with them, necessitating the services of a locksmith in order to gain access to same. *See* Motion to Enforce Tribunal's March 4, 2020 Memorandum Decision and Order, p. 3, ¶ 8, attached hereto as **Exhibit "E"**.

12. Upon vacating their offices at Legally Mine, Defendants took with them computers that are property of Legally Mine. *Id.* at ¶ 9.

13. Also upon vacating their offices at Legally Mine, Defendants took with them key fobs to the Legally Mine's offices in Orem, as well as the extra key fobs used as replacements. *Id.* at ¶ 10.

14. Despite the Managing Member's directive, neither Ammon nor Matthew provided their passwords or other information for control of: 1) the office's security system, 2) the American Express loan, 3) merchant account services, and 4) Legally Mine Google accounts, including the Gmail and Google spreadsheets. *Id.* at ¶ 11.

15. On March 23, 2020, the Tribunal ordered:

Respondent Daniel McNeff has filed an '**Emergency Motion to Gain Control of Legally Mine's Websites.**' That motion is granted. To the extent that Claimants, or either of them, has/have any control over Legally Mine's email (Gmail) accounts and/or websites, Claimants are ordered immediately to deliver to Respondent and/or Jonathon Madson all such control, including any and all information and documents necessary to control Legally Mine's email (Gmail) accounts and websites.

See Emergency Motion to Gain Control of Legally Mine's Websites and Order Addressing, attached hereto respectively as **Exhibit "F"** and **Exhibit "G"**.

16. On March 23, 2020, the Defendants filed with the Arbitration Tribunal "Claimants' Statement Regarding March 23, 2020, Order" which represented to the Tribunal that Defendants

had taken painstaking efforts to ensure compliance with all recent Orders of the Arbitrator. *See Exhibit “H”*.

17. On April 2, 2020, the Tribunal issued the “Order Addressing Allegations that Claimants have not Complied with Prior Tribunal Orders Addressing Turn-Over of Administrative Control and Authority,” attached hereto as **Exhibit “I”**. Therein is the following Order:

1. On or before 5:00 p.m., MDST on Monday, April 5, 2020, Claimants and Respondent shall email a statement (the “Statement”) to the Arbitrator setting forth their/his position regarding whether as of 5:00 p.m. MDST on April 5, 2020, [REDACTED] [REDACTED] has, or has not, received administrative control (“Control”) of the above account/systems as previously ordered.

18. In the April 2, 2020, Order, Tribunal identified what the Tribunal’s March 23, 2020, and April 1, 2020, Orders required:

Those orders required that Claimants deliver to Legally Mine’s IT Coordinator, J [REDACTED] [REDACTED] administrative control over Legally Mine’s email (Gmail) accounts, On the Clock system, security alarm system, and other administrative systems.

Id. at 1.

19. On April 6, 2020, Tribunal entered an Order which states, in pertinent part:

The Tribunal does note, however, that any further actions by Claimants to interfere with the day-to-day operations of Legally Mine may result in the Tribunal vacating its injunction prohibiting the termination of Claimants’ employment at Legally Mine.

See Order Addressing Respondent’ Motion to Enjoin Claimants from Instructing Legally Mine Contractors and Employees, 1, attached hereto as **Exhibit “J”**.

20. On April 6, 2020, the Tribunal entered another Order which stated in part:

3. Claimants are to have no control over or access to any Legally Mine emails other than their own emails. If they have not already done so, Claimants shall immediately deliver to Legally Mine’s IT Coordinator,

██████████ full administrative control and authority over Legally Mine's email (Gmail) accounts, On the Clock, security alarm system(s) and "Top Tier Admin," to the extent that Claimants control "Top Tier Admin." Claimants shall be given until 5:00 p.m. MDST on Monday, April 6, 2020, to remove all documents or communications that are privileged as between Claimants, on the one hand, and their legal counsel, on the other hand, prior to transferring administrative access to Respondent's IT Director.

4. Respondent shall not have access and shall not cause or allow anyone else to access the email accounts and/or Google Suite Accounts of either of the Claimants, and the Tribunal reaffirms its prior order that Claimants are not to have access or cause or allow anyone else to access any email accounts or Google-suite accounts of any current or former employee or independent contractor of Legally Mine."

See Order Following April 1, 2020, Status Conference, p. 2, ¶ 3, attached hereto as **Exhibit "K"**.

21. Mr. James presided over a six-day final Arbitration Hearing spanning May 27-29 and June 3-6, 2020. *See* Final Award, Ex. "A".

22. On July 6, 2020, the Tribunal provided the parties with its Final Decision and Award. *Id.*

23. It was not until after the Final Award that Dan and Legally Mine discovered Ammon McNeff kept Super Admin control (and continues to keep control) over Legally Mine's Google Gmail Suite Accounts after Monday, April 6, 2020. *See generally* Declaration of ██████████ (██████████ Decl."), attached hereto as **Exhibit "L"**. Although ██████████ was given the title "Super Admin" by Ammon McNeff, that was done by Ammon McNeff without actually giving ██████████ (Legally Mine's IT Coordinator) the associated access level. *See id.* at ¶¶ 3-9. Ammon McNeff created a custom Admin role that Ammon McNeff conveniently titled "Super Admin" in assigning to ██████████ a custom role rather than the genuine Super Admin role. *Id.* Ammon McNeff has retained the ability to perform actions whereby he can exclude ██████████ and Lindsey Thompson (President of Legally Mine) from control of the Google

Suite accounts. *Id.* Ammon McNeff has now excluded most or all Legally Mine employees from their email accounts and phone system.

24. [REDACTED] Legally Mine's IT personnel, has been able to 100% confirm that Ammon McNeff still has the ability to make high level administrative changes to Legally Mine's Google G Suite Accounts. *Id.* at ¶ 7.

25. Ammon McNeff has retained control over Legally Mine's account with Chargify, a service that helps Legally Mine manage its recurring revenue client accounts (\$300,000-\$400,000 in revenue per month). *See Declaration of [REDACTED] Decl.*"), ¶ 3, attached hereto as **Exhibit "M"**; *see also Declaration of [REDACTED] Decl.*"), ¶¶ 3-5, attached hereto as **Exhibit "N"**. For example, if a customer credit card is declined, Chargify will automatically reach out to the client to get an updated card. If the client does not respond, Chargify will notify them a few more times and then send a letter and take more aggressive collections actions if needed. Chargify provides a valuable service to Legally Mine in this regard. [REDACTED] Decl., ¶ 5.

26. Legally Mine needs to transfer its merchant account from Orion to FigPay because the fees associated with Orion's services are no longer competitive and Orion is unwilling to offer lower rates. [REDACTED] Decl., ¶ 3, n.1. A change in merchant accounts would not only save the Company thousands of dollars in fees every month, but it would also free up approximately \$500,000 held in a reserve account by Orion. *Id.*; *see also [REDACTED] Decl.*, ¶ 5. In light of the financial strain the COVID-19 pandemic has placed on the Company, these savings and additional funds are needed now more than ever. [REDACTED] Decl., ¶ 10.

27. Legally Mine cannot transition its credit card processing to FigPay, or anyone else, without the cooperation of Chargify. *Id.* at ¶ 6; ████████ Decl., ¶ 5. If Legally Mine was to stop using Orion for its credit card processing, Chargify's system would assume that all of the customer accounts are declining payment and will automatically start sending out collection letters and other notices to paid up clients. ████████ Decl., ¶ 6. This will likely cause confusion and frustration for Legally Mine's clients, who would have already been billed through the new credit card processor (i.e., FigPay). *Id.* Legally Mine is concerned this would lead to mass cancellations of its services. *Id.*

28. Ammon has represented to Chargify that he is the owner of the account, therefore Chargify will not work with Legally Mine in making the transition to FigPay. *Id.* at ¶ 7. This applies to the other Administrative Systems, including 1Wire, Legally Mine's phone provider. Filed simultaneously herewith is an audio recording of Lindsey Thompson attempting (unsuccessfully) to gain control of Legally Mine's 1Wire account. The representative states that either Ammon or Matthew have to call in to make any changes to the account.

29. The email from Courtney Schoonover of Chargify to Ammon McNeff (attached hereto as **Exhibit "O"**) shows that Chargify only recognizes Ammon McNeff as the owner of Legally Mine's Chargify account. Exhibit "O" further confirms that Ammon McNeff never relinquished control of Legally Mine's Chargify account as ordered by the arbitration Tribunal.

30. While Chargify has competitors that offer similar services, Legally Mine cannot migrate its client information/database to a competitor service without cooperation from Chargify. Unilateral migration would require hours of manual data entry, with the probability of human error. ████████ Decl., ¶ 8; *see also* ████████ Decl., ¶ 4. Additionally, Chargify updates and makes changes

to Legally Mine's clients' credit card and contact information routinely, but stores that updated information internally and does not provide it to Legally Mine. *Id.* This applies to approximately 32% of Legally Mine's recurring-revenue clients. *Id.* Without this information (which Chargify currently refuses to provide because of Ammon's "ownership"), a significant portion of Legally Mine's recurring monthly revenue will be lost if it is not run through Orion (which will create cash flow problems). *Id.* While Legally Mine could reach out to its clients individually to obtain this updated information, such a process would require an immense amount of manhours and could result in a number of cancellations in the process. *Id.*

31. It is important to note that Chargify's services can function with any credit card processor, including FigPay. [REDACTED] Decl., ¶ 9. With cooperation from Chargify, the transition from Orion to FigPay would be seamless and Legally Mine's customers would not experience any account interruptions or inconvenience. *Id.* However, because Ammon is essentially holding the Chargify account hostage, Legally Mine cannot change merchant accounts without a large investment of manhours and the risk of cancellations from irritated clients. *Id.*

32. Ammon has control and "ownership" over the Company's Advanced Payment Solutions (Orion) account, which, prior to 2019, was in [REDACTED] name, but which was changed without Mr. [REDACTED] prior knowledge or consent. [REDACTED] Decl., ¶ 11.

33. In addition to the foregoing systems, Ammon has retained control over, and claims ownership of, the Company's NMI and iQ accounts. Ammon's claim of ownership over these (and all of the foregoing services and systems) has resulted in a lack of cooperation on the part of those companies with Legally Mine. Without full control over its administrative systems, Legally Mine cannot properly function or carry on its business. *See* Second Declaration of Lindsey Thompson

(“2d. Thompson Decl.”), ¶ 3, filed simultaneously herewith; *see also* Second Declaration of [REDACTED] [REDACTED] (“2d. [REDACTED] Decl.”), ¶ 8, filed simultaneously herewith.

34. On Friday, September 25, 2020, counsel for Dan and Legally Mine emailed the Arbitrator and informed him that “Ammon McNeff still has not delivered control of Legally Mine’s Gmail accounts[,] which you ordered him to do in your March 12, 2020, Order.” *See* email exchange, attached hereto as **Exhibit “P”**.

35. Later that same day the arbitrator responded to counsel’s email stating,

I am not going to issue further rulings. That said, on the issue Mr. Seiler raises, I do want to be clear that *it was my intent in the context of my March 12, 2020 order that Ammon and Matt would transfer full control over Legally Mine’s Gmail accounts to Legally Mine. Candidly, that is not only how I intended the order, but how I still would interpret the order. If that has not happened, I suppose the issue can be raised with the district court . . .*

At this point, I believe my jurisdiction has ended and will simply wish the parties the best of luck going forward.

Ex. “P” (emphasis added).

36. Effective September 21, 2020, Ammon and Matthew were terminated as employees of Legally Mine by Lindsey Thompson, Legally Mine’s President. *See* email from Lindsey Thompson to Ammon McNeff, attached as Exhibit “B” to the Thomson Decl.²

37. Plaintiffs’ termination saves the Company \$280,000 in its annual payroll obligations, plus expenses related to vehicles, phones and benefits. *See* Thompson Decl., ¶ 12.

38. In the dark of night and between close of business on October 15 and the early morning hours of Friday, October 16, 2020, Ammon and Matthew entered Legally Mine’s offices

² As already set forth and supported in other pleadings, the Arbitrator instructed, “until a new manager is in place as set forth in the Final Award, the president of Legally Mine will be responsible for day to day decisions.” *See* email from Mark James, dated 7/7/2020, attached as Exhibit “A” to the Thompson Decl.

and seized physical control of the office, the furniture and equipment and other assets while Dan and [REDACTED] were out of town. Since seizing control, Defendants have actively excluded certain employees and have purported to terminate other employees. 2d. Thompson Decl., ¶ 4; see also 2d. [REDACTED] Decl., ¶¶ 3-7 (describing Defendants' brazen actions vis-à-vis the purported terminations and exclusion of said employees from the premises).

39. Ammon and Matthew may claim they have a right to enter the premises as its tenants, however, such a claim would be incorrect. Legally Mine is the tenant under a certain Commercial Lease, which is attached hereto as **Exhibit "Q"**. The Commercial Lease is personally guaranteed by Dan, not Ammon or Matthew.

40. In entering the premises, Ammon and Matthew were accompanied by [REDACTED] whose employment with Legally Mine was terminated on August 5, 2020. 2d. Thompson Decl., ¶ 5.

41. Ammon and Matthew have taken control over the entirety of Legally Mine's offices, including the area where its checks are housed. *Id.* at ¶ 7.

42. Also on October 16, 2020, Martin [REDACTED] called [REDACTED] [REDACTED] one of Legally Mine's tax clients at around 10:00 am to confirm their appointment scheduled for later that day. *See* Declaration of Martin [REDACTED] ¶ 3, filed simultaneously herewith. When Mr. [REDACTED] introduced himself to Ms. Block, she said someone introducing themselves as the son of the owner called her earlier in the day and told her the appointment was cancelled because there were problems with the business. *Id.*

43. Ammon has hijacked Legally Mine's phone system. Legally Mine has two telephone numbers listed on its website: (801) 375-2453 and (855) 361-2686. The first of the two

numbers goes to a recording message stating, “I’m sorry. The number you have dialed is not in service at this time. 31005. The number you have dialed is not in service. Please check the number” The second of the two numbers leads the caller to the following recorded message: “Thank you for calling Legally Mine. Due to some issues related to Covid-19, our offices are currently closed, but should reopen on Monday. Thank you.” *Id.* at ¶ 7. Audio recordings of the foregoing messages are being filed concurrently herewith.

44. Late last night (October 18, 2020) the Defendants agreed not to re-enter the office building, but only if no Legally Mine employees entered the office building until further order of this Court and if Defendants’ security company could remain in the parking lot and have access to the office building to use the restroom. Legally Mine is currently shut out of the office building and Defendants have shut Legally Mine employees off of their emails and phones. 2d. Thompson Decl., ¶ 8.

45. Defendants have disconnected many of Legally Mine’s computers and moved the computers from employees work stations to a large room in the office building. Defendants forced entry into Lindsey Thompson’s locked office in the office building, breaking the door frame. *See id.* at ¶ 9.

ARGUMENT

I. TEMPORARY RESTRAINING ORDERS, GENERALLY.

Rule 65A of the Utah Rules of Civil Procedure specifically provides that a restraining order or preliminary injunction may issue only upon a showing by the applicant that:

- (1) The applicant will suffer irreparable harm unless the order or injunction issues;
- (2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;

- (3) The order or injunction, if issued, would not be adverse to the public interest;
and
- (4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

Id. at (e) (emphasis added). The foregoing requirements have been referred to by Utah courts as necessary “elements,” *all* of which must be met for injunctive relief to issue. *Utah Med. Prod., Inc. v. Searcy*, 958 P.2d 228, 231 (Utah 1998).

Further, Utah courts have long since recognized that the “highly extraordinary and drastic injunctive procedure” must be “sparingly and cautiously . . . employed,” and only “where the party has no adequate legal remedy.” *Sutton v. Marvidikis*, 6 Utah 2d 238, 240, 310 P.2d 735, 736 (1957); *Anderson v. Granite Sch. Dist.*, 17 Utah 2d 405, 407, 413 P.2d 597, 599 (1966). Because it is an instrument of equity, “[a] mandatory injunction will never be granted where it might operate inequitably or oppressively,” *Salt Lake Cty. v. Kartchner*, 552 P.2d 136, 140 (Utah 1976), or where the harm is “compensable in monetary damages.” *Osguthorpe v. ASC Utah, Inc.*, 2015 UT 89, ¶ 40, 365 P.3d 1201, 1210. Its purpose is “to ‘preserve the status quo pending the outcome of the case.’” *Hunsaker v. Kersh*, 1999 UT 106, ¶ 8, 991 P.2d 67, 69; *see also Zagg, Inc. v. Harmer*, 2015 UT App 52, ¶ 8, 345 P.3d 1273, 1275 (“[A]n injunction serves to ‘preserve the status quo pending the outcome of the case.’”).

While the movant bears the burden of proving all four elements, “[i]rreparable harm ‘is generally considered the most important’ of the ‘ground[s] for injunctive relief.’ A party suffers irreparable harm if it ‘cannot be adequately compensated in damages’ or sustains ‘damages [that] cannot be compensable in money.’” *Timber Lakes Prop. Owners Ass’n v. Cowan*, 2019 UT App 160, ¶ 24, 451 P.3d 277, 286 (internal citations omitted); *see also Osguthorpe v. ASC Utah, Inc.*,

2015 UT 89, ¶ 35, 365 P.3d 1201, 1208–09 (“Injunctive relief is available only upon a showing of irreparable harm, *or in other words harm that cannot adequately be compensated through money damages.*” (emphasis added)). Stated differently, “‘irreparable injury,’ is defined as ‘a harm that a court would be unable to remedy even if the movant would prevail in the final adjudication.’” *Johnson v. Hermes Assocs., Ltd.*, 2005 UT 82, ¶ 18, 128 P.3d 1151, 1157.

Irreparable harm inheres, and “[i]njunctive relief is commonly granted where an exclusive business . . . is unlawfully invaded.” *Strawberry Elec. Serv. Dist. v. Spanish Fork City*, 918 P.2d 870, 881 (Utah 1996) (“When invaded, the business bears irreparable injury for which there is no adequate remedy at law; “[m]onetary damages would be difficult and perhaps impossible to ascertain, and [the business] would be forced to bring continuing and successive lawsuits for damages.”). In the context of a business, “[i]rreparable injury may include ‘different types of losses that are often difficult to quantify, including lost sales[,] . . . erosion in reputation and brand distinction[,]’ . . . loss of goodwill, damage to reputation, and loss of business opportunities.” *In re BRCA1-, BRCA2-Based Hereditary Cancer Test Patent Litig.*, 3 F. Supp. 3d 1213, 1249 (D. Utah), *aff’d* and remanded sub nom. *In re BRCA1- & BRCA2-Based Hereditary Cancer Test Patent Litig.*, 774 F.3d 755 (Fed. Cir. 2014) (internal citations omitted); *see also Kodiak Cakes LLC v. Cont’l Mills, Inc.*, 358 F. Supp. 3d 1219, 1236 (D. Utah 2019) (holding that “‘loss of customers, loss of goodwill, and further erosion of [a business’s] competitive position’ are ‘the types of factors that district courts should consider when deciding whether a plaintiff has shown a sufficient probability of irreparable harm.’”). Indeed, “the right to carry on a lawful business is a valuable right which a court of equity will protect against unwarranted interference or undue obstruction.” *Paramount Pictures v. Leader Press*, 106 F.2d 229, 231 (10th Cir. 1939).

“Although ‘injunctive relief is an anticipatory remedy purposed to prevent the perpetration of a threatened wrong or to compel the cessation of a continuing one,’ ‘the threatened injury must be a real and immediate injury, not an abstract injury or one that is conjectural or hypothetical’” *Timber Lakes*, 451 P.3d. at 286 (internal citations omitted). “For this reason, a court will not exercise its power to grant injunctive relief to allay a mere apprehension of injury at an indefinite future time.” *Id.* (cleaned up).

III. PLAINTIFFS’ TRO SHOULD BE GRANTED.

The present Motion meets the foregoing standards as follows:

A. Legally Mine is being irreparably harmed.

Despite multiple orders from the arbitration Tribunal that Ammon and Matthew deliver full control over Legally Mine’s Gmail and other administrative accounts to Legally Mine, Ammon’s and Matthew’s false representations to the Tribunal that they had delivered full control to Legally Mine—and the Tribunal’s recent statement that a full relinquishment was, in fact, his intent—Ammon and Matthew have refused to comply. As set forth above, Ammon and Matthew have retained control over, and have asserted ownership of, at least the following systems/accounts: (a) Chargify, (b) 1Wire, (c) Advanced Payment Solutions (Orien), (d) NMI, (e) iQ, and (f) Google Suite. Ammon has actively discouraged the foregoing services from working or cooperating with Legally Mine, claiming sole ownership for himself. These representations are presently preventing Legally Mine from changing the provider of its merchant account services, a change which would save the Company thousands every month and free up around a half million dollars in funds held in reserve by the current merchant account processor.

Every day Ammon and Matthew retain control over these systems, Legally Mine is prevented from realizing the foregoing benefits. Perhaps more importantly, Ammon's claimed ownership of the Company's Chargify account (and others) has separated Legally Mine from client accounts and payment information. Chargify stores this data that belongs to Legally Mine and is necessary to its continued operations. Defendants' obstruction of Legally Mine's access and control over its own administrative systems is not something that can be easily quantified or reduced to money damages. The Court cannot rewind the clock and award Legally Mine the days of access it has lost, but it can stop the bleeding moving forward by restoring such access.

A second, more compelling irreparable injury, is Defendants' actual physical invasion of Legally Mine's offices and the disruption they have caused in so doing. As already set forth, invasion of a business is irreparable harm according to the Utah Supreme Court. Defendants' invasion is also significant because it substantially disrupts the status quo. Ammon and Matthew were terminated effective September 21, 2020. Before that, they were removed from the 1335 East 750 North, Orem, Utah, Legally Mine offices, by the then Managing Member of Legally Mine in March of 2020, a decision that was sanctioned and upheld by the arbitrator when Defendants claimed wrongful retaliation. As such, they have no lawful or legitimate business on the premises, notwithstanding their minority ownership.

Whereas Defendants argued adamantly before this Court that Dan and others had disrupted the status quo, in violation of the arbitrator's Final Decision and Award, which they claimed cautions the parties against taking any action "to change status quo pending appointment of a new manager pursuant to the Final Award," Defendants have forced themselves onto the premises and have purported to take control of Legally Mine's place of business by excluding certain employees

and claiming to fire others. Defendants have used self-help to occupy Legally Mine's offices. Further, Defendants brought with them previously-terminated Company employees and have given them access to Company records and information. Ammon has also hijacked Legally Mine's phone system, causing its two phone numbers to lead callers to prerecorded messages. One of the messages claims the office is closed until Monday. In unilaterally declaring Legally Mine's place of business closed and in excluding certain Legally Mine employees, Ammon has directly caused a loss of business opportunities, which is a specific category of irreparable harm. Defendants' coup must be put down swiftly by this Court.

Defendants may claim they are lawfully entitled to access the building as its tenants, however, such a claim is false. As shown by the Commercial Lease, Legally Mine is the only "Tenant" identified therein. Daniel McNeff, not Ammon or Matthew, is the personal guarantor for the Commercial Lease. Defendants have no contractual rights in the premises. Their minority ownership of Legally Mine does not make them tenants under the lease.

The disruption caused by Defendants' actions cannot be remedied by dollars and cents. Their occupancy of Legally Mine's offices is a "self-help" attempt at "taking control," which violates the Final Decision and Award's proscribed procedure for selecting a manager. The Arbitrator specifically said that neither of the Defendants should be the manager of Legally Mine. *See* Order Addressing (1) Motion for Order to Show Cause Re: Chargify; and (2) Motion to Appoint Managing Member, attached hereto as **Exhibit "S"** ("the Tribunal does not believe that it would be appropriate for either of Claimants to act as Manager of Legally Mine, and the Tribunal set forth in its Amended Final Order in this matter a mechanism for seeking and obtaining

appointment of a manager of Legally Mine in the event Respondent, on the one hand, and Claimants, on the other hand, could not agree on the identity of a new manager.”).

The notices placed by Defendants at the entrance of Legally Mine’s office building brazenly and falsely claim that Defendants are the “only owners with management authority of Legally Mine.” Defendants have no such management authority, and their requests for appointment as such, both before the arbitration Tribunal and this Court, have been denied. (Defendants’ recent actions reveal that the denials of their requests to manage Legally Mine were wholly appropriate.) Defendants cannot be allowed to seize control of the Company in violation of both the Final Decision and Award and Operating Agreement. Because of their conduct, the Court should immediately enjoin Ammon and Matthew from entering or being within one hundred (100) yards of Legally Mine’s offices.

B. The Threatened Injury to Legally Mine Outweighs Any Potential Injury to Ammon and Matthew.

The injury to Legally Mine substantially outweighs whatever damage an injunction may cause to Ammon and Matthew. Relinquishment of control over Legally Mine systems as ordered by the Arbitrator does not harm Ammon or Matthew, who are not the owners of those accounts or services (regardless of who initially set up the account). Injunctive relief related to these systems would be wholly consonant with the arbitrator’s stated intent that his multiple prior orders contemplated the “*transfer [of] full control over*” said systems. In giving the arbitrator’s prior orders effect, and requiring compliance, neither Ammon nor Matthew can claim any cognizable harm. With respect to Ammon and Matthew’s recent occupation of Legally Mine’s offices, accepting (*arguendo*) Ammon and Matthew’s interpretation of the Final Decision and Award, the

parties are already prohibited from disturbing the status quo. Indeed, the purpose of injunctive relief is to preserve the same, pending the careful resolution of the parties' claims. *Zagg, Inc. v. Harmer*, 2015 UT App 52, ¶ 8, 345 P.3d 1273, 1275. Because, as set forth previously herein, Defendants have no cognizable right to enter the premises (either as tenants or otherwise) nor do they have any legitimate business to conduct therein, injunctive relief would not harm them. If anything, injunctive relief would restore the status quo and prevent Ammon and Matthew from exercising managerial control over the Company (something they are not allowed to do under the Final Decision and Award).

C. Plaintiffs Proposed Injunction is Not Contrary to the Public Interest.

Utah courts have “recognize[d] that in some instances the public good may outweigh the injuries to private rights, and thus allow the court in its discretion to refuse an injunction.” *Shaw v. Salt Lake Cty.*, 119 Utah 50, 60, 224 P.2d 1037, 1041–42 (1950). Here, the public good favors injunctive relief.

Legally Mine owns the systems it seeks controls of, which the arbitrator's several orders acknowledges. With specific regard to Chargify, Legally Mine pays for the service, is the owner of the destination bank account, and owns the client database that Chargify manages. Ammon's claim that he is the owner because he was the one to initially set the account up (which he placed in his name for reasons unknown) is ingenuine. The public interest in vindicating and protecting property rights weighs in favor of granting the relief sought herein.

Likewise, as the sole Tenant of the premises, Legally Mine has the right to possess and enjoy the same, which necessarily includes the right to exclude trespassers and other third parties, including Ammon and Matthew. *Osguthorpe v. Wolf Mountain Resorts, L.C.*, 2010 UT 29, ¶ 25,

232 P.3d 999, 1007 (“A lease conveys an interest in land and transfers possession. . . . [And] one with a possessory interest has the right and intention to exclude other members of society in general from any present occupation of the land.” (cleaned up)). The public has an interest in seeing contracts honored and a lessee’s leasehold interests vindicated.

D. Plaintiffs are Substantially Likely to Prevail on the Merits.

While Plaintiffs have not, at this juncture, brought any claims related to the categories of relief contained herein, the issues presented herein are serious issues which should be the subject of further litigation if not resolved by way of preliminary injunction while the Court assists the parties in the selection of a replacement Managing Member.

In addition, if and when such claims are brought, Legally Mine is substantially likely to prevail on the merits of such claims. As already set forth, Legally Mine seeks to take control of its own systems; systems it pays for and which houses its clients’ information. Ammon’s claim of ownership to the same because he was the one who (on behalf of Legally Mine) set up the account(s) is threadbare and cannot withstand judicial scrutiny. Further, if Legally Mine were to bring a claim to exclude (or evict) Ammon and Matthew from the premises, it would, as the sole Tenant under the Commercial Lease, very likely prevail. As explained above, Legally Mine’s leasehold interest give it the power to exclude others, including Ammon and Matthew.

IV. IN THE EVENT THAT THE TRO ISSUES, PLAINTIFFS SHOULD BE EXCUSED FROM THE REQUIREMENT OF PROVIDING SECURITY.

Ordinarily, a court requires a party to post a security before that court issues a temporary restraining order or preliminary injunction. *See* Utah R. Civ. P. 65A(c)(1). Rule 65A states: “The amount of security shall not establish or limit the amount of costs, including reasonable attorney fees incurred *in connection with* the restraining order or preliminary injunction, or damages that may be awarded to a party who is found to have been wrongfully restrained or enjoined.” Utah R. Civ. P. 65A(c)(2) (emphasis added). Additionally, the Utah Supreme Court has held: “If

... it is found that the injunction was wrongfully issued, the enjoined party has an action for costs and damages incurred *as a result of the wrongfully issued injunction.*” *Mountain States Tel. & Tel. Co. v. Atkin, Wright & Miles, Chartered*, 681 P.2d 1258, 1262 (Utah 1984) (emphasis added).

IKON Office Sols., Inc. v. Crook, 2000 UT App 217, ¶ 12, 6 P.3d 1143, 1146 (emphases added).

The purpose of the security requirement of Rule 65A is to ensure that if it is later determined that the TRO or preliminary injunction was incorrectly issued, that the injured party has recourse for such loss. *Id.*

Here, as already explained, Defendants will not be harmed by injunctive relief. *See Corp. of Pres. of Church of Jesus Christ of Latter-day Saints v. Wallace*, 573 P.2d 1285, 1287 (Utah 1978), (holding the trial judge has wide discretion in the matter of requiring security, and “if there is an absence of proof showing a likelihood of harm, certainly no bond is necessary.”). The narrow categories of relief requested by Plaintiffs either simply confirm and seek to enforce the arbitration Tribunal’s several prior orders or restore what has been the status quo since March of this year when Defendants were re-officed. Because a security is required for purposes of compensating a party that was wrongfully restrained to their detriment, requiring security in this case would not serve its intended purposes. As such, the ordinary requirement can be dispensed of on the facts presented.

If the Court does require a security, it should not exceed \$20,000.

CONCLUSION

Because Plaintiffs have shown through their evidentiary submissions a palpable irreparable harm, that the damage to Legally Mine is greater than any potential damage to Defendants if a TRO were to issue, that injunctive relief is consonant with the public interest, and a substantial likelihood of prevailing in their claims if litigation is necessary, the Court should grant their Motion

and enter an order requiring Defendants to immediately relinquish and deliver to Legally Mine and/or its authorized representative(s) title to and full administrative control over the Company's Administrative Systems. The Court should further enjoin Ammon and Matthew from entering or being within one hundred (100) yards of Legally Mine's offices, or from representing to anyone that the Defendants are individually or collectively managers or have any management authority over Legally Mine. Additionally, Plaintiffs request that the Court order that Lindsey Thompson be the manager of Legally Mine until further order of the Court

RESPECTFULLY SUBMITTED this 19th day of October, 2020.

SEILER, ANDERSON, FIFE & MARSHALL, LC

/s/ Thomas W. Seiler

THOMAS W. SEILER

PERRIS E. NELSON

Attorneys for Daniel McNeff and Legally Mine, LLC

CERTIFICATE OF DELIVERY

I certify that prior to electronically filing the foregoing **MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**, I verified through my electronic service provider that the following were registered e-filers, and will therefore receive a copy of the foregoing when it is filed electronically on October 19, 2020:

Steven R. Sumsion
Cameron S. Christensen
SUMSION BUSINESS LAW
Attorneys for Plaintiffs

/s/ Perris E. Nelson

PERRIS E. NELSON