

05/28/2024

Sandy Erhardt

CLERK

Gallatin County District Court

STATE OF MONTANA

By: Alexandra Gardner

DC-16-2024-0000357-IN

McElyea, Rienne H.

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Attorney for Plaintiff

**MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT,
GALLATIN COUNTY**

STATE OF MONTANA,

Plaintiff,

v.

BYRON GRUBER, ESQ.,

Defendant.

Cause No.: DC-16-2024-0000357-IN

District Judge: Judge Rienne H. McElyea

Department 2

**MOTION AND AFFIDAVIT FOR
ORDER GRANTING LEAVE TO
FILE INFORMATION DIRECTLY
IN DISTRICT COURT**

STATE OF MONTANA)

:

County of Gallatin)

W. Adam Duerk, Special Deputy Gallatin County Attorney, moves the Court for leave to file an Information directly in District Court pursuant to Mont. Code Ann. § 46-11-201 and, after first being duly sworn upon oath, deposes and says:

That he is the duly appointed, qualified and acting Special Deputy County Attorney in and for the county of Gallatin and the State of Montana herein and acting in this capacity he is familiar with the investigation relating to the above-named Defendant.

That Venue is proper in Gallatin County, pursuant to Mont. Code Ann. § 46-3-112(2) and/or § 46-3-114.

That Securities Investigator/Examiner Ryan Sullivan has made a full and careful investigation of all the facts and circumstances surrounding this matter, so far as they are known or ascertainable, Affiant has reviewed the investigative materials, law enforcement reports, emails and other correspondence, financial records and related documents relevant to the investigation of the defendants, and Affiant believes it a proper case for the filing of an Information and for this reason, and none other, that the foregoing motion is made.

That the following information is based on a portion of the information obtained in this investigation. Your Affiant only submits sufficient information to establish probable cause, and alleges, based on information and belief, that the Defendant has committed the offenses of:

COUNT 1(a): OPERATING A PYRAMID PROMOTIONAL SCHEME, a felony in violation of Mont. Code Ann. §§ 30-10-325(1) and 30-10-321;

Or in the Alternative to Count 1(a) is Count 1(b)

COUNT 1(b): CONSPIRACY TO OPERATE A PYRAMID PROMOTIONAL SCHEME, a felony, in violation of Mont. Code Ann. §§ 30-10-325(1) and 45-4-102; and

COUNT 2(a): SECURITIES FRAUD: FRAUDULENT PRACTICES (common scheme), a felony in violation of Mont. Code Ann. §§ 30-10-301(1) and 30-10-321;

Or in the Alternative to Count 2(a) is Count 2(b)

COUNT 2(b): CONSPIRACY TO COMMIT SECURITIES FRAUD: FRAUDULENT PRACTICES (common scheme), a felony in violation Montana Law, namely Mont. Code Ann. §§ 30-10-301(1) and 45-4-102; and

COUNT 3(a): OPERATING AS A COMMODITIES DEALER WITHOUT A LICENSE, a felony in violation of Mont. Code Ann. §§ 80-4-428(1) and 45-2-302;

Or in the Alternative to Count 3(a) is Count 3(b)

COUNT 3(b): CONSPIRACY TO OPERATE AS A COMMODITIES DEALER WITHOUT A LICENSE, a felony in violation of Mont. Code Ann. §§ 80-4-428(1) and 45-4-102; and

COUNT 4(a): FORGERY (common scheme), a felony in violation of Mont. Code Ann. §§ 45-6-325 and 45-2-302;

Or in the Alternative to Count 4(a) is Count 4(b)

COUNT 4(b): CONSPIRACY TO COMMIT FORGERY (common scheme), a felony in violation of Mont. Code Ann. §§ 45-6-325 and 45-4-102; and

COUNT 5(a): FALSE CLAIM TO A PUBLIC AGENCY, a felony in violation of Mont. Code Ann. §§ 45-7-210 and 45-2-302;

Or in the Alternative to Count 5(a) is Count 5(b)

COUNT 5(b): CONSPIRACY TO MAKE A FALSE CLAIM TO A PUBLIC AGENCY, a felony in violation of Mont. Code Ann. §§ 45-7-210 and 45-4-102;

COUNT 6(a): THEFT (common scheme) a felony in violation of Mont. Code Ann. §§ 45-6-301(2) and 45-2-302;

Or in the Alternative to Count 6(a) is Count 6(b)

COUNT 6(b): CONSPIRACY TO COMMIT THEFT (common scheme)
a felony in violation of Mont. Code Ann. §§ 45-6-301(2) and 45-4-102.

There are four defendants related to this matter. The State is filing charges against BYRON GRUBER, ESQ., MICHAEL RABB, ESQ., JASON BRADLEY CROSS and EUGENE ELFRANK as co-defendants. The State requests that the cases be assigned to the same judge and that these cases be joined pursuant to Montana Code Annotated § 46-11-404(4). Section 46-11-404(4) permits the joining of two or more defendants in the same Information if they are alleged to have participated in the same transaction constituting an offense or offenses. "The expedition of the administration of justice, the conservation of judicial time, and the minimization of burdens for jurors and witnesses is well-served by the joinder of the two defendants." *State v. Dess*, 207 Mont. 468,474,674, P.2d 502, 505-06 (1984). "Joint trials speed the administration of criminal justice, conserve judicial time, lessen the burden on prospective jurors and obviate the necessity of recalling witnesses." *State v. Strain*, 190 Mont. 44, 55,618 P.2d 331,338 (1980).

The following facts as set forth in the law enforcement reports, if true, constitute sufficient probable cause to justify the filing of the charges:

General Allegations

At all times material to this affidavit:

1. On or about April 10, 2019, and continuing through July 1, 2020, at Daniels County, Roosevelt County, Richland County, McCone County, Gallatin County, Teton County, and Lincoln County, in Montana and elsewhere both within and outside the State of Montana, the defendant BYRON GRUBER, ESQ., along with codefendants MICHAEL RABB, JASON CROSS and EUGENE ELFRANK, committed the offenses as set forth below.

2. Defendant MICHAEL RABB, Esq. was a resident of Gallatin County, Montana, a shareholder of and legal counsel for Isotex Health, LLC. RABB became a part owner of Isotex on or about August 22, 2019.

3. Defendant BYRON GRUBER, Esq. was a resident of Gallatin County, Montana, a Shareholder, “Director of Legal/Compliance” and “Lead Counsel” for Isotex Health, LLC. GRUBER became a part owner of Isotex on or about August 22, 2019. Records from the Montana State Bar indicate GRUBER was not admitted to practice law in Montana until September 29, 2020.

4. Defendant JASON BRADLEY CROSS was a resident of Texas and a shareholder, manager and director of Isotex Health, LLC.

5. Defendant EUGENE ELFRANK was a resident of Washington and a shareholder, manager and director of Isotex Health, LLC.

6. Isotex Health, LLC (“Isotex”), was a business located in the City of McKinney, Texas. During the events described herein, MICHAEL RABB, BYRON GRUBER, JASON BRADLEY CROSS, and EUGENE ELFRANK, (collectively, “defendants”) were individually and together, owners and agents of Isotex.

7. Greg Walker was the principal of the business entity SMGB, LLC, a Delaware limited liability company formed for the purpose of loaning money to Isotex.

8. Dan Brown is the principal of the business entities Kootenai TEC, LLC and Real Estate Investments 2019, LLC.

9. Kootenai Tec, LLC, is a limited liability company registered in the State of Louisiana and licensed to do business in the State of Montana. Kootenai owns a large commercial building in Libby, Montana.

10. Real Estate Investment 2019, LLC is a limited liability company registered in the State of Louisiana that has conducted business in the State of Montana.

Cannabis, Hemp and CBD in Montana

11. Hemp – defined as a Commodity in Montana - is a variety of the cannabis plant, which is cultivated for its durable fibers, low levels of tetrahydrocannabinol (THC - the compound that produces psychoactive effects in humans), and higher levels of Cannabidiol (CBD). CBD is one of many natural compounds found in hemp and *cannabis sativa* plants. “CBD extract” refers to the process and form that comes from removing the sought-after CBD from the flowering plant. “CBD isolate” contains 99% CBD and no THC whatsoever. “Hemp biomass” refers to the organic materials of the hemp plant that are left over after the flowers have been harvested. Although not found in the levels present in the hemp flower, CBD can be extracted from hemp leaves, which can be integrated into various consumer products, including CBD oils, lotions, and edible items.

12. The legal and economic landscape related to cannabis laws has changed drastically in both Montana and the United States over the last two decades. In 2009, Montana enacted *SJ 20*, urging Congress to eliminate federal restrictions on domestic hemp production. In 2014, and again in 2018, the United States Congress took steps to “legalize” the cultivation of hemp. In 2014, the Agriculture Improvement Act distinguished hemp from marijuana by defining hemp as cannabis *Sativa L* plant with no more than 0.3% THC on a dry weight basis. The 2014 Act

permitted limited cultivation of hemp and authorized the states' Department of Agriculture to oversee and regulate hemp pilot programs.

13. The Agricultural Improvement Act of 2018 was even more expansive. This Act permitted the transportation of hemp-based products across state lines and eased or eliminated restrictions on the use, sale, transportation, and possession of hemp-derived products, if that production was in compliance with the law.

14. In response to these national changes, the Montana Department of Agriculture amended five of its hemp laws in 2019 to reflect the Agricultural Improvement Act. (*See Montana Administrative Register Notice 4-19-253, 1/25/19 amending A.R.M. 4.12.3104 and 4.19.101-4.19.104*).

15. These legislative acts signaled a bonanza in Montana by ringing the opening bell of a new economy based on the cultivation, production, and distribution of legalized hemp products. As with the sudden opening of any new economic frontier, a host of prospectors, speculators, and investors leapt at the new opportunities to turn a profit.

Isotex Health, LLC

16. ISOTEX HEALTH, LLC, according to materials provided to prospective investors by defendants, stated the following:

“Isotex Health, LLC, is poised to become a major leader in the production of CBD isolate. Isotex Health, LLC, has

purchase orders for large quantities that it needs to begin to fulfill for our clients. It will take 5-6 months to complete our processing facility, but in the meantime we have Biomass Agreements to purchase the materials needed for our Tolling Agreements, so multiple facilities can produce small amounts of CBD Isolate at multiple locations and combine them to fulfill our larger contracts. This will keep the clients satisfied and create cash flow while we build our processing lines.”

17. Beginning on or about April 10, 2019, and continuing until on or about July 2020, at Daniels County, Roosevelt County, Richland County, McCone County, Gallatin County, Teton County, Lincoln County, in Montana and elsewhere both within and outside the State of Montana, the above-named defendants, did knowingly conspire, combine, confederate, and agree among themselves and with other unindicted and uncharged co-conspirators:

OBJECT OF THE CONSPIRACY

18. To knowingly defraud Montana farmers, individual investors, the Lincoln County Port Authority, the State of Montana, creditors, lenders, contractors and lessors - of money, assets, goods, services, real property, goodwill and support - for the personal gain of the conspirators by committing offenses against the laws of the State of Montana, to wit: Operating a Pyramid Promotional (“Ponzi”) Scheme (Mont. Code Ann. §30-10-325(1)); Securities Fraud (common scheme)(Mont. Code Ann. § 30-10-201); Operating as a Commodities Dealer without a License (Mont.

Code Ann. § 80-4-428); Theft (common scheme)(Mont. Code Ann. §§ 45-6-301(1); 45-6-315(1)-(4)); Forgery (Mont. Code Ann. § 45-6-325); False Claims to a Public Agency (Mont. Code Ann. § 45-7-210), and aiding and abetting the same (Mont. Code Ann. §§ 30-10-321 and 45-2-302), all in violation of Montana law.

19. It was a purpose of the conspiracy for the defendants to move the base, focus and scope of their operations from Texas to Montana, thereby distancing themselves from earlier fraudulent schemes centered in Texas and elsewhere.

20. It was a purpose of the conspiracy for the defendants to enrich themselves unlawfully and unjustly by obtaining money and assets from victim farmers, investors, local vendors, contractors, and the State of Montana by means of materially false and fraudulent pretenses, representations and promises.

21. It was a purpose of the conspiracy for the defendants to defraud the State of Montana and the Lincoln County Port Authority by obtaining the benefit of State funds, benefits, and tax breaks to further defendants' objectives.

22. It was a purpose of the conspiracy for the defendants to conceal and misrepresent the ongoing schemes perpetrated by the conspirators, thereby avoiding detection and enriching defendants.

23. It was a purpose of the conspiracy for the defendants to conceal and misrepresent the true financial condition of Isotex; the status of Isotex' financial

records, purchase orders, customer lists, investor interest and investment funds; Isotex' assets and liabilities; the status of Isotex collateral; liens or encumbrances on Isotex collateral; the status of crop insurance; weather conditions and their effect on the Isotex hemp crops; the status of Isotex hemp extraction and grow-operations projects; the existence, quantity and quality of Isotex hemp crops; Isotex' licensure and registration status as a Commodities Dealer with the Montana Department of Agriculture; Isotex' licensure and registration with the Montana Commissioner of Securities and Insurance; Isotex' lawyers' licensure status as members of the Montana State Bar, and past or pending litigation involving Isotex and its principals, all in order to avoid detection of the defendant's fraudulent acts, thereby prolonging the period of the schemes to defraud and increasing the personal benefits of the defendant conspirators.

MANNER AND MEANS OF THE CONSPIRACY

The following manner and means, among others, were used by defendants, RABB, GRUBER, CROSS and ELFRANK, to effectuate and perpetuate the conspiracy set forth above:

24. It was part of the conspiracy that the defendants (conspirators hereafter) were aware of the true financial condition of Isotex and its operations at all times material to this Information.

25. It was part of the conspiracy that the conspirators concealed the full extent of their knowledge of the financial condition and status of Isotex operations and withheld information regarding the full extent of Isotex's financial condition and operations from farmers, investors, potential investors, vendors, contractors, creditors and the State of Montana.

26. It was part of the conspiracy that conspirators used their position within the company to obtain investor funds using Isotex' claimed assets as collateral, State funds, and to spend Isotex' investor funds for their own personal benefit.

27. It was part of the conspiracy that the conspirators falsely described, concealed from, and failed to reveal to investors, potential investors, farmers, vendors, contractors, creditors and the State of Montana, the full extent and nature of Isotex operations, assets, liabilities, and financial transactions.

28. It was part of the conspiracy that conspirators created "security agreements," "secured interests," "collateral," "surety bonds," "promissory notes," "bailment contracts," certificates of authenticity, Letters of Intent, commodity investment contracts and other types of secured interests and securities in order to obtain loans, licensure, State funds and investment funds to purchase hemp crops, hemp processing equipment, consulting services, hemp seeds, farming services and

other operational costs and to pay for leases, rents, goods, and other services related to Isotex' hemp projects in Montana.

29. It was part of the conspiracy that the conspirators, in the course of obtaining grants, loans, licensure and investor funds for Isotex' hemp projects in Montana, made false statements and submitted false information to investors, potential investors, farmers, vendors, contractors, creditors and the State of Montana.

30. It was part of the conspiracy that the conspirators converted Isotex funds and assets into personal benefits, to include: personal credit card charges, travel expenses, entertainment expenses and other improper disbursements of Isotex funds.

31. It was part of the conspiracy that the conspirators used and threatened employees, investors, vendors and contractors with "RICO" litigation and other lawsuits as a tactic to quell dissent, propagate untruths, cause delay, and improperly advance the goals of the co-conspirators.

32. It was part of the conspiracy that the conspirators improperly used an attorney IOLTA account to transfer Isotex funds.

33. It was part of the conspiracy that the conspirators forged, manipulated, and altered documents, records, financial statements, crop insurance information,

Letters of Interest, production contracts, purchase orders, information regarding crop conditions and hemp lab test results in order to present false information, conceal information, and otherwise represent that Isotex was in a more favorable financial position than what was true in fact. By misrepresenting these facts, the conspirators were able to obtain loans, investor funds, farmers' services, vendor contracts, service contracts, licensure, grant funds, tax breaks and other favorable treatment from investors, potential investors, vendors, contractors, creditors and the State of Montana.

OVERT ACTS

In furtherance of the conspiracy and to affect its objects, the defendants GRUBER, RABB, CROSS and ELFRANK, individually and together with their codendants and coconspirators committed numerous overt acts in the State of Montana and elsewhere, including but not limited to the following:

The Isotex Scheme to Defraud

34. Beginning on or about April 10, 2019, and continuing until July 1, 2020, Isotex and the defendants named herein, orchestrated a promotional investment scheme related to the cultivation, harvest, production, and distillation of hemp crops to support the production of Cannabidiol (CBD) oil from hemp biomass and isolates.

35. At one time Isotex' company motto was: "*Seed to Hempire.*"

36. Isotex itself was formed in Texas in 2018. As Isotex changed over time, the scope of defendant's investment scheme also changed.

37. Although several individual's acts referenced herein occurred prior to April, 2019, the allegations in this Information relate to the defendants' Ponzi scheme that took place in Montana from on or about April 10, 2019, and continuing until on or about July 1, 2020, involving investors SMGB, Kootenai Tec, LLC, Real Estate Investment 2019, LLC, and other individuals and entities named herein.

38. At all times relevant to this Information, Isotex' webpage and promotional materials noted that Isotex was "building the largest North American seed-to-sale manufacturing facility" for the production of CBD oils and isolates in Libby, Montana.

39. Through pitch meetings, phone calls, in person meetings, emails and the transmission of marketing materials, all defendants named herein represented to potential investors that Isotex was a lucrative hemp and CBD business with sales contracts, purchase orders, and letters of intent with various industry partners totaling billions of dollars.

40. There were three distinct rounds of investors in Isotex' promotional scheme.

41. The first round of Isotex investors initially invested money in late 2018.

42. James Mattingly, a Texas Poker Player, was a first-round investor in Isotex. Defendants told Mattingly and other first round investors that they would receive up to 120% return on investment and that the investment funds would be used to purchase industrial hemp biomass, which in turn would be planted, harvested, and sold for profit. On November 15, 2018, Mattingly made a wire transfer of \$300,000 through a personal bank account which was then transferred to an Isotex bank account on November 16, 2018.

43. Defendants brought the second round of investors into Isotex from April 24 through September 9, 2019. Greg Walker and SMGB LLC were the primary investors in this round. Defendants made substantially the same representations about Isotex' communicated to prior investors to Walker and the second-round investors. On April 19, 2019, SMGB LLC agreed to loan Isotex \$3M. In August 2019, SMGB LLC agreed to a second loan to defendants and Isotex of \$3.05M. These amounts were also paid to Isotex through GRUBER's IOLTA account.

44. The third round of investors bought into Isotex from September through November 8, 2019. Daniel B. Brown, Kootenai Tec LLC and Real Estate Investment 2019, LLC (REI 2019), were the primary investors in Isotex' third round. On October 8, 2019, Dan Brown communicated to defendants that he would wire

\$1.8M to Isotex through GRUBER's IOLTA Account. Brown also invested millions of dollars in Isotex through purchase of the Stinger building in Libby, Montana and multiple payments to vendors, contracts and manufacturers of hemp processing equipment and other tools all for Isotex' benefit at various times through the fall of 2019.

45. Isotex paid earlier round investors with funds obtained from later rounds, rather than from any profits or other income from the sale of CBD oil or distillates. Isotex sold no significant quantities of distillates at any time material to this Information.

46. The acts alleged herein, which occurred in the State of Montana from April 10, 2019, through July 1, 2020, related to the defendants' scheme to defraud the second and third rounds of investors, Montana farmers, contractors, vendors, and the State of Montana. These rounds are separate and distinct from the defendants' earlier conduct in Texas, as they involve a different time frame, different personnel, different locations, different co-conspirators, different victims, different objectives, different specific overt acts, different methods of operation and different substantive offenses.

***The Montana Ponzi Scheme:
The Second Round Investors - Greg Walker and SMGB, LLC***

47. By April 19, 2019, Isotex had already obtained an excess of \$2M from first-round investors.

48. In early 2019, defendants CROSS and ELFRANK were introduced to Investor Recruiter Joseph Cooper. Cooper entered into an agreement to bring investors to Isotex in exchange for monthly payments and a ten percent interest in the company. As part of his agreement, Cooper approached investor Greg Walker about investing in Isotex through a short-term loan.

49. Isotex later reneged on this agreement with Cooper through nonpayment. Cooper later sued.

50. From April 10, 2019, and continuing until on or about July 2020, Cooper, and defendants CROSS, ELFRANK, RABB and GRUBER represented to Walker and the second and third rounds of investors that there were hundreds of millions of dollars in potential profits in Isotex; that Isotex had secured appropriate financing to carry out its goal of establishing a hemp grow-operation and extraction project in Montana and that there was urgency in obtaining investors in the project.

51. In early 2019, after signing a non-disclosure agreement, Greg Walker, on behalf of his investor group, reviewed Isotex' financial projections and purported financing agreements related to hemp biomass.

52. During communications about Isotex' financial condition, Defendant CROSS assured Walker and other investors that Isotex had secured a twenty-five-million-dollar loan. The information about the \$25M loan was false.

53. Defendants communicated this misrepresentation from April 10 through July 2019 to various investors.

54. On or about March 1, 2019, Isotex published an "Executive Summary" about its plan to harvest industrial hemp in Montana in an effort to mass produce CBD extract and other hemp byproduct for sale across the United States and into Canada.

55. Defendants used statements in this Executive Summary to promote Isotex' scheme in communications with second and third-round investors from April 19, 2019, through November 9, 2020.

56. This Executive Summary was published over Jason Cross's name, listing him as the "Managing Member ISOTEX Health, LLC."

57. The Executive Summary as well as Isotex' promotional literature and other financial information that CROSS shared with Walker, investor Dan Brown, and investor James Mattingly and all three rounds of investors were used in defendants' efforts to fund the Isotex scheme.

58. There are many false statements and misrepresentations in Isotex's

Executive Summary and promotional literature, to wit:

- a. Isotex had Letters of Interest showing potential sales of \$5.2 billion dollars;
- b. Isotex represented that current purchase orders "now total \$5.4 billion;"
- c. Isotex represented that existing purchase orders from DOGO Consulting LLC, MONOCEROS LLC, Neovorun LLC, Aloha Services and Perfecta Herbal Extracts, Inc., totaled \$5.4 billion;
- d. Isotex represented it had contracted 6 farmers across Montana to farm over 50,000 acres of industrial hemp;
- e. Isotex projected sales of \$1.5B by Year 2 of operation;
- f. Isotex had experience in the hemp industry;
- g. Isotex had "developed in conjunction with some farms in Oregon, genetics for a special seed. This seed is called the BOAX Seed."
- h. "After multiple offers we were able to have the River Authority come in and make a deal for both the seller and us for a total of 2.25 million."
- i. "We already have our farming registration and we are already licensed to do this business in Montana."

59. On April 10, 2019, Greg Walker emailed CROSS and ELFRANK about his investor's anticipated loan to Isotex of \$3M.

60. In that email, Walker mentioned that the agreement must include insurance for Isotex hemp crop, and that Walker and his group would need a copy of the insurance policy proposal.

61. In response to Walker's email, and at all times relevant between April 10, 2019, and November 8, 2019, defendants CROSS, ELFRANK, GRUBER and RABB falsely represented that Isotex hemp crops were covered by crop insurance.

SMGB, LLC, Invests in Isotex through Gruber's IOLTA Account

62. On April 19, 2019, Walker formed SMGB, LLC, for the specific purpose of loaning investor money to Isotex.

63. GRUBER and RABB drafted the loan documents between Walker, his investment group and Isotex. These loan documents included promissory notes, "security agreements" and other representations about collateral.

64. Between April 24, 2019, and September 9, 2019, under the terms of these agreements, Walker and his investor group paid Isotex approximately six million dollars (\$6,050,000) in nineteen installments according to Isotex' General Ledger.

65. In April 2019, GRUBER and CROSS had directed that all investor funds should be paid into an IOLTA account in Texas with GRUBER listed as the

account holder for BB&T IOLTA account number *****5131, with a routing number of *****7694.

66. According to Isotex' General Ledger, on or about April 24, 2019, and continuing until September 9, 2019, SMGB, LLC, made 19 fund transfers totaling \$6.05M into GRUBER's IOLTA account. These funds were then deposited into Isotex' Legacy Bank account, ending in account number *****1028.

67. GRUBER was not licensed to practice law in Montana or Texas when these IOLTA transactions occurred.

68. As part of the second round of Isotex' promotional investment scheme, the Isotex defendants specifically represented to Walker and his investment group that defendants intended to process CBD isolate from hemp that Isotex had contracted with Montana farmers to plant, cultivate, and produce.

69. Isotex presented the second round of investors with projections of hundreds of millions in profits.

70. Isotex assured this round of investors that it had secured a \$25 million loan from a recognized hedge fund.

71. However, as of the time SMGB, LLC, and the second round investors advanced funds, defendants had failed to advise the second round investors that Isotex had breached its agreements with first round investors, that at least one Isotex

shareholder had filed for bankruptcy, that litigation against Isotex was looming, that prior rounds of investors had expressed dissatisfaction to Isotex shareholders, that Isotex had not been able to finalize sales and lease agreements for production equipment and hemp processing facilities, that Isotex had no Commodities Dealer license nor any other form of hemp grower license; that Isotex had not produced any hemp distillate, biomass or any other hemp products suitable for sale, that Isotex had not obtained investor-requested crop insurance as promised, and that Isotex was in a state of growing financial distress.

72. At all times relevant to this affidavit, Defendants concealed the aforementioned material information from second and third round investors, the Lincoln County Port Authority, the Montana Department of Commerce, and the State of Montana.

The Montana Farmers: Isotex' Grow-Operation near Choteau, Scobey and Poplar, Montana

73. By late May 2019, Isotex had entered into agreements with Montana farmers W.H., J.H., A.C., S.A. and M.A. to grow approximately 13,500 acres of hemp in exchange for a down payments in excess of seven hundred and fifty thousand dollars (\$750,000) (farmers' agreements).

74. On or about April 5, 2019, CROSS executed an Isotex Agreement with Farmers S.A. and M.A. (the Choteau area farmers).

75. On or about May 28, 2019, CROSS executed an Isotex Agreement with Farmers W.H., J.H., A.C.(the Poplar and Scobey area farmers).

76. Contrary to Isotex' promotional materials, the total acreage for all Montana farms was less than the 50,000+ acres.

77. The Isotex agreements with the Montana Farmers were drafted by RABB and sent to CROSS, GRUBER, and ELFRANK, for review, and to the farmers for their review and signatures.

78. The agreements with the Poplar farmers named all defendants as individuals to be notified in the event of default on the agreements.

Commodities and Securities Interests included in Farmer Agreements

79. The farmers' agreements stated that all seeds to be used in the production of hemp biomass in Poplar and Choteau remained the property of Isotex.

80. Isotex purchased these certified "BOAX" seeds from Gary Crossan Farms, LLC, in Shedd, Oregon pursuant to a Seed Purchase Contract signed April 12, 2019.

81. At the time the foregoing farmers' agreements were signed, Isotex lacked a hemp processor license, a commodity dealer license, or any provisional processor license to produce CBD isolate as required by the Montana Department of Agriculture.

82. Emails from the Department of Agriculture and between all named defendants show each individual was aware of the fact that Isotex lacked these licenses at the time these farmers' agreements were signed.

83. The terms of these agreements were Commodity Investment Contracts pursuant to Montana Law at Mont. Code. Ann. §§ 30-10-103(6)(a) and (b). To wit:

- a. A "Commodity Investment Contract" means any agreement or contract for the purchase or sale of one or more commodities, primarily for investment purposes and not for use or consumption by the purchaser.
- b. A Commodity Investment Contract does not require immediate delivery or receipt of the commodities themselves.

84. As part of some of the various farmer agreements, Isotex suggested paying the Montana farmers contingent fees upon harvest.

85. As a further term of these agreements, Isotex also represented that Isotex would provide the farmers with a "surety bond" related to the hemp crops.

86. By the nature of these agreements themselves, these farmers' agreements required Isotex' to file a security bond with the State of Montana pursuant to M.C.A. § 80-4-604.

87. By August 2019, defendants had received both written and oral communication from the Montana Department of Agriculture about these security

bond requirements. Further, the Department of Agriculture communicated to defendants that in order for Isotex to obtain a hemp processing license, Isotex needed to own the hemp crop in its entirety without any liens or security interests assigned naming the crop as collateral. Isotex ultimately disregarded this requirement in multiple ways.

88. Beginning on August 1, 2019, and continuing until on or about October 1, 2019, defendants RABB and GRUBER communicated with the Montana farmers that they must sign revised contracts, which acknowledged their agreements did not include a term related to the security interests (a surety bond) in the hemp crop – contrary to M.C.A. § 80-4-604.

89. The farmers were reluctant to modify the original agreements. Two of the farmers (S.A. and J.H.) objected to the removal of the security interest term.

90. GRUBER threatened the farmers with litigation if they did not agree to the revised contract without the security interest.

91. Eventually, all the farmers signed amendments to the agreement on or about September 26, 2019, and continuing through October 1, 2019.

92. On September 27, 2019, in an email to the farmers, CROSS expressed the contingent and speculative nature of these agreements, and that Isotex' goal of growing hemp was primarily for investment purposes:

“We want to make sure everyone gets what they need since our company, farmers, and investors are all tied together to the success of all of this.”

***Isotex Never Posted a Security Bond or
Obtained a Commodity Dealer License***

93. Despite defendants’ representations, they never obtained a Commodity Dealer license.

94. Defendants GRUBER and RABB, aided and abetted by CROSS and ELFRANK, purposely and knowingly acted and operated as Commodities Dealers without a license by engaging in the business or as part of the business participated in buying, brokering, exchanging, negotiating or soliciting the sale, resale, exchange, bailment or transfer of any agricultural commodity in the State of Montana (that being hemp seeds, hemp crop and hemp biomass), including online transactions of agricultural commodities grown in Montana.

95. To wit, the defendants entered into “Bailment Contracts” and other agreements and participated in various transactions with hemp growers S.A., M.A., J.H., A.C., and W.H. and investors J.M and D.B. related to the planting, growing, harvesting, transfer and delivery of more than \$30,000 worth of hemp crops from producers during a licensing year, without first having obtained or sought a commodity dealers license from the Montana Department of Agriculture or satisfied the application requirements set forth under § 80-4-601 M.C.A.

96. Isotex, through defendants, contracted with multiple farmers beginning on or about April 5 and continuing until on or about May 28, 2019, in Choteau, Roosevelt, Richland, McCone, and Daniels Counties, Montana, to grow hemp for a total amount far in excess of \$30,000, with a total projected profit amount in excess of \$6M USD.

97. The contracts were titled and structured to be “bailment” contracts.

98. Bailment contracts totaling over \$30,000 in aggregate require a commodity dealers license pursuant to §§ 80-4-401 and 80-4-601.

99. At no time prior to entering into multiple contracts with growers, did Isotex have a Commodity Dealers license or file a surety bond or its equivalent with the Montana Department of Agriculture payable to the State.

100. The Montana Department of Agriculture became aware of the Isotex contracts in the spring of 2019 and sought to get Isotex into compliance with Montana law. Compliance would have required several million dollars in bonding given Isotex’ financial status according to the Montana Department of Agriculture.

101. On April 16, 2019, the Bureau Chief for the Commodity Program at the Montana Department of Agriculture contacted JASON CROSS by telephone and informed him that Isotex was required to be a Montana Commodity Dealer based on

reports of the contracts Isotex had executed and was attempting to execute with Montana farmers.

102. On or about April 29, 2019, the Bureau for the Commodity Program again reached out to Isotex through Bruce Avellanet and offered to help him with the Commodity Dealer license process.

103. On or about April 29, 2019, Andy Gray, the Commodity Services Bureau Chief received a call from the Rabb Law Firm requesting 3 hemp licensee applications with legal locations.

104. On May 28, 2019, Isotex executed a contract to grow hemp crops in Daniels County with Scobey area farmers J.H., W.H., and A.C.

105. Beginning on or about September 26, 2019, and continuing until October 1, 2019, Isotex, through defendant RABB, modified its agreements with Choteau farmers S.A. and M.A. and Scobey and Poplar area farmers J.H., W.H., and A.C. by obtaining farmers signatures on what RABB titled a “Hemp Producer Acknowledgment.”

106. On October 2, 2019, Isotex, through Defendant RABB, acknowledged in writing that it lacked a Commodity Dealers License at the time it entered into contracts with the farmers/growers in the spring of 2019.

107. Isotex lacked the financial documentation and/or resources to come into compliance with Montana law regarding Commodity Dealers licensure.

108. Despite multiple written and oral warnings by the State of Montana in 2019 and 2020, at no time did Isotex remedy its failures to comply with Montana law related to operating as a commodities dealer without a license, and at no time did Isotex acquire a Commodity Dealer License from the Department of Agriculture.

Isotex Investor Meeting in Montana at the Choteau Hemp Farm

109. In July of 2019, the defendants organized and hosted several investor meetings in Choteau, Montana for a site visit of Isotex' grow-operation.

110. An email dated July 20, 2019, to CROSS and ELFRANK from the Investment group led by Greg Walker (SMGB, LLC) notified defendants that approximately eleven potential investors planned to arrive in Great Falls the week of July 22 to tour a farm outside of Shelby, MT.

111. That July 20 email informed CROSS and ELFRANK that questions about crop insurance from investors might come up during the visit to Montana.

112. A prior string of email communications dated July 8, 2019, between CROSS, RABB, GRUBER, and Cooper discussed the potential need for crop insurance and perfecting a security interest related to specific parcels of land.

113. On or about July 24, 2019, eleven investors visited the Choteau farm. Defendants and their agents showed investors what appeared to be an abundant hemp crop at the Choteau farm.

114. The Isotex defendants assured these investors that the other Isotex farms in Montana enjoyed similar crop conditions.

115. However, in truth and fact, conditions at the farm in Poplar, Montana had poor crop germination, a fact known to all Isotex defendants at that time.

116. To encourage further investment in Isotex, defendants pledged to the investors that any agreement to fund Isotex would include a security interest in the hemp crop grown at the Scobey and Poplar farms. However, pledging a security interest to multiple parties for the same crop and failing to advise investors of priority liens would constitute securities fraud pursuant to M.C.A. § 30-10-301(1)(b) and (c).

117. Isotex represented that the additional funding would be used to pay seed vendors and farmers.

118. Based on the defendants' representations, Walker and his investment group subsequently agreed to provide a second group of payments of the \$6.05M ultimately loaned by SMGB, LLC to Isotex.

119. Beginning on or about August 16, 2019, SMGB, LLC, forwarded approximately \$3M more in investor funds to Isotex according to a "Modification

Agreement” between Isotex and SMGB, LLC, signed by CROSS and Greg Walker on or about September 14, 2020.

120. Isotex’ General Ledger shows nineteen (19) deposits from SMGB, LLC, to Isotex through the IOLTA Trust Account during the period from April 24, 2019, to September 9, 2019, totaling \$6,050,000 (\$6.05M). Isotex’ ledger describes these payments as “Loan – SMGB.”

121. Despite defendants’ representations and agreements with investors, CROSS, ELFRANK, GRUBER and RABB diverted part of round two and three investor funds to Isotex owner draws, travel and entertainment.

First-Tier Isotex Investor James Mattingly warned not to Jeopardize a “\$6M deal” before Second-Tier Investor Meeting in Choteau

122. Immediately before investors visited the fields in Choteau, Defendant GRUBER had threatened a disillusioned first-round investor to “keep his mouth shut.”

123. James Mattingly was a first-round investor who, on or about November 15, 2018, had wired \$300,000 to Isotex.

124. Mattingly, according to the terms of his investment agreement, was to receive periodic payments from Isotex under a “consulting agreement” signed on November 18, 2018.

125. On May 7, 2019, Mattingly contacted CROSS, ELFRANK, GRUBER and RABB regarding Isotex' default on its payment obligations under the "consulting agreement."

126. CROSS had provided assurances to Mattingly that he would be compensated by Isotex, and that he would be given access to Isotex business and financial records.

127. Earlier in the spring of 2019, CROSS had told Mattingly that Isotex was growing hemp in greenhouses located in Eureka, Montana, and that Isotex had a processing facility operated in Libby and that Isotex had purchased a "ranch."

128. In May 2019, Mattingly, along with a former Isotex owner Nick Book, drove from Texas to Libby, Montana, to observe the state of Isotex' hemp processing operations.

129. During their trip, Book and Mattingly learned that Isotex' representations were false: The Isotex processing plant was an empty building; no Isotex greenhouses existed, and the Isotex "ranch" had a *For Sale* sign posted out front.

130. Although the defendants had taken steps towards closing each of these deals, none of the three transactions were completed: Isotex had paid earnest money towards the purchase of a processing facility, but lacked funds to close on the

transaction; Isotex had communicated with a local realtor regarding the *potential* to grow hemp in Lincoln County, Montana, but no greenhouses existed; Isotex had engaged in negotiations for the purchase of a ranch, but lacked funds to complete the purchase.

Gruber Threatens Mattingly and reveals Isotex as a Ponzi Scheme

131. After learning of defendants' misrepresentations, Mattingly sent an email alerting the defendants that he planned to notify the other investors of Cross' misrepresentations and that the investors were being defrauded.

132. On or about June 28, 2019, Mattingly emailed CROSS to advise him that if Mattingly did not receive acknowledgment of his email by July 1, 2019, by 12 pm, the email would be forwarded to other Isotex investors.

133. Immediately after Mattingly sent his email, defendant GRUBER spoke with Mattingly by telephone in a conversation that was recorded (with GRUBER's knowledge).

134. In that recorded phone call from on or about June 28, 2019, GRUBER threatened Mattingly personally and with litigation if Mattingly did not "shut up" and leave the money he had invested in Isotex.

135. GRUBER told Mattingly that he had two options.

Option 1: "You can shut the f up, and let us do our job, and make some f***ing money and pay you... Option number two James is not***

so good for you. If you don't shut the f up and stop talking to Nick Book and whomever else, and if you threaten the forward momentum of this company, we're going to take every step possible step to ensure that you don't get a dime from this company...***

136. GRUBER then informed Mattingly:

"Well, you've got ten seconds to choose "A" or "B" before I hang up, and then I'm going to f your world up."***

137. In response to GRUBER's threats, Mattingly indicated on the call that he would not divest from Isotex. However, Mattingly still had questions about Isotex.

138. After learning of Mattingly's decision, GRUBER made the following representations in response to Mattingly's questions:

a. MATTINGLY: ***"Do you have insurance on those crops?"***

GRUBER: ***"Yes. Of course. Yes."***

b. MATTINGLY: ***"So Jason Cross told me that those fields were of a street value of \$500 million, is that true?"***

GRUBER: ***"I would say that's probably accurate. Yeah."***

c. MATTINGLY: ***"So has there been any biomass since I've invested in this deal that has been turned into isolate?"***

d. GRUBER: ***"The lab in Kentucky states. They have stated that, yes, the biomass has been turned into isolate, and that they're saving it and holding it for us..."***

139. On that call, GRUBER also stated how Isotex planned to pay Mattingly for his investment, indicating that he would be paid from funds obtained from *later investors*, rather than profits or income from the Isotex business venture received for the production and sale of CBD isolate. At the time of GRUBER's phone call with Mattingly, Isotex had not processed any CBD oil or isolate for sale; had not harvested or sold any hemp biomass; and had not received any profits from an underlying business venture related to the production or sale of CBD oil or distillate.

140. GRUBER's statements indicate Mattingly would be paid from the proceeds of a large sum of investor money:

"Listen, I'm telling you right now that we're going to pay you on your original contract the 120 percent. It's going to be a lump sum payment, all of it, every last thing that you're owed. Okay? And it's going to be paid the minute that we have the six million dollars, which is the smallest of all of them, the minute that comes through.

But you have to understand there is so much going on behind the scenes to get this deal done. And just so you know, here's what's going on. We're trying to structure an investment document for the buying and selling of the biomass which is currently being grown in Montana - and we're -

I mean, this is what's taking our time, and it's going back and forth with the other attorneys and the investor, and the broker that's got the investor, to go back and forth, and make sure that this document is exactly what they want. They're giving us \$6,000,000 towards the purchase of this biomass.

This is the smallest deal James, the smallest deal. So we don't have it yet. So that's why I'm saying please don't do anything to jeopardize all of these deals coming in..."

141. As GRUBER stated at the time of the June 28, 2019, phone call, Isotex was anticipating the next installment of second-round investor SMGB, LLC's payments for a total of approximately \$6M.

142. SMGB's next payment was wired through Isotex' IOLTA Trust Account on or about July 19, 2019, according to Isotex' General Ledger.

143. Regardless of their precise source, Isotex payments to Mattingly based on his November 15, 2018, investment of \$300,000 came from Isotex' funds obtained from other investors – not the production of CBD oil or distillate.

144. A person may not conduct or promote or cause to be promoted a pyramid promotional scheme in Montana.

145. From on or about November 15, 2018, and continuing until July 14, 2020, defendants BYRON GRUBER, MICHAEL RABB, JASON CROSS and EUGENE ELFRANK, willfully, knowingly and purposely, conducted, promoted, or caused to be promoted a pyramid promotional scheme - that being Isotex Health, LLC - a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or other persons induced to participate in the sales plan or operation by the participant, as set forth in § 30-10-324(7)(a), M.C.A.

146. A pyramid promotional scheme includes a Ponzi scheme, in which a person makes payments to investors from anything of value, including anything of purported value, obtained from later investors, rather than from any profits or other income of an underlying or purported underlying business venture, as set forth § 30-10-324(7)(b), M.C.A.

147. All named defendants willfully violated the provisions of § 30-10-325 M.C.A. by knowingly and purposely inducing investors B.A., G.W., J.G., K.J., M.B., Greg Walker, Dan Brown, SMGB, LLC, Real Estate Investment 2019, LLC, Kootenai Tec, LLC, and others to make payments in excess of \$6M which would then be used to pay prior investors, including James Mattingly his principal investment of \$300,000 plus 120% interest.

148. Defendant BYRON GRUBER admitted as much. GRUBER told Mattingly in the recorded phone call from June 28, 2019, that Isotex and its principals intended to repay Mattingly for his investment along with additional sums at the time Isotex received later contributions of other investment funds from other investors, those being Dan Brown, Kootenai Tec, LLC, and Real Estate Investment, LLC.

149. At no time did Isotex have sufficient capital, funding, production contracts or any other type of contracts or agreements, operational production

equipment or facilities, an isolate laboratory, sufficient quantities of hemp crop, biomass, or product of any kind sufficient to produce the CBD isolate in the amounts promised to Isotex investors by defendants.

150. At no time did Isotex produce or sell any significant quantities of CBD isolate, nor did Isotex use any funds from the sale of CBD isolate sufficient to repay investors the sums provided.

151. These investor funds were repaid with money not from the sale of CBD isolate, but from subsequent rounds of investor money into Isotex.

Crop Insurance and Hemp Crop Damage in Montana

152. After the phone call between GRUBER and Mattingly, but prior to the meeting in Choteau with the second round of investors, email correspondence between CROSS, ELFRANK, GRUBER and RABB reveals a discussion about crop insurance. As noted above, defendants had repeatedly discussed the topic of the importance of crop insurance.

153. On July 8, 2019, defendants communicated by email that since there had been no specific questions from investors about crop insurance prior to the Choteau farm tour, that issue was not a high priority at Isotex: “[Because investors] have not asked for any insurance we are not worrying about that at this time.”

154. After the investor visit to the Choteau farm, two significant weather events damaged Isotex crops in July and September 2019.

155. On July 29, 2019, a hailstorm damaged the hemp crop in Poplar, Montana.

156. On July 30, 2019, Poplar Farmer W.H. notified defendants and their agents that his crop suffered hail damage.

157. On September 23, 2019, the National Weather Service announced the possibility of a 100-year snowstorm to occur across various parts of Montana on or about Sept. 28, 2019.

158. Prior to the September storm, but after learning of the forecast, Isotex employee Carson Byers learned of a large snowstorm in the forecast for the Choteau area.

159. Byers recommended to defendants to harvest the hemp before the snow arrived to save the crop.

160. CROSS directed Byers to leave the crop alone so that the CBD levels would increase.

161. Weather associated with that storm system, predominantly hail, largely destroyed Isotex's hemp crops in Montana.

162. CROSS, aided and abetted by ELFRANK, RABB and GRUBER, advised Isotex employees not to discuss the storm with investors both before and after its occurrence or they would be terminated.

163. On or about September 27, 2019, CROSS sent an email to investor Greg Walker in which he represented to Walker:

“Forgot to tell you we have [crop] coverage till Oct. 1st for Hail and excessive moisture, would rather just have the crops instead of having to do a claim but know that we are covered and maybe let your clients know... everyone needs to relax please. Thank you!”

164. On or about September 27, based on CROSS’s express instructions to tell other investors that the crops were insured, Walker forwarded CROSS’s September 27 email to investor Dan Brown.

165. After the storm occurred, CROSS, ELFRANK, RABB and GRUBER, together and individually, hid the storm’s full impact from lenders and potential investors, and made misrepresentations that Isotex’ crop was insured.

166. CROSS falsely represented to investor Brown that the storm in Montana only caused minimal damage to the hemp crop.

167. Defendants had at one point discussed paying a bond for crop insurance but failed to pay premiums. Thus, Isotex’ hemp crop was never “insured.”

168. Emails from December 4-30, 2019, between CROSS, ELFRANK, GRUBER, RABB, Cooper, and Kevin McCarthy at IBTX Property & Casualty

Insurance, City Bank, and the Windmark Crop Division, confirm this. These emails show that the defendants discussed potential terms of obtaining crop insurance coverage and reflected that Isotex's crops were not insured at any point prior to receipt of investor funds.

169. In an email dated December 31, 2019, from GRUBER to RABB, CROSS, ELFRANK and Cooper, GRUBER stated:

“I was under the impression that we never actually went through with crop insurance. They have sent a signed application for insurance, but I have never seen a policy or actual statement of coverage.”

170. At no time did defendants ever obtain crop insurance that provided insurance coverage for the loss of the hemp crops in Poplar, Scobey, or Choteau.

171. On April 12, 2020, related to a civil lawsuit, ELFRANK signed an Affidavit accusing co-defendants CROSS, RABB, and GRUBER of:

“deliberately induc[ing] investors by assuring them that their investment was safe from all potential harm, by repeatedly representing the crops were covered by ‘all risk crop insurance’ and by making representations and warranties as to the existence of paid all risk insurance.”

Legal and Financial Difficulties at Isotex

172. Problems with investors, employees, vendors, contractors, the Montana Department of Agriculture, and the State of Montana were ongoing at Isotex through 2019. Some of these problems devolved into the filing of liens and litigation.

173. On August 2, 2019, in an email ultimately shared with all defendants, Gary Crossan emailed CROSS and ELFRANK, stating that Crossan Farms intended to file a crop lien pursuant to Mont. Code Ann. §§ 71-3-701-705 in order to secure their interest in seed Crossan supplied to Isotex in Montana.

174. On or about August 14, 2019, CROSS responded to Crossan's email, stating that Isotex was working on "taking care" of paying balances due to Crossan Farms, and that "[n]ot everyone in our company needs to be on your email."

175. Defendants ELFRANK, GRUBER and RABB were cc'd on these emails, indicating that all four defendants were aware of these seed liens.

176. On August 15, 2019, RABB sent an email to Cooper, ELFRANK and CROSS notifying them that he would be submitting a commodities application and license fee to the Montana Department of Agriculture, and that the:

"attorneys for the department have warned me that if we do not get our license quickly it may impose a \$100,000 fine. So I can't impress the urgency of the situation enough."

At no time did the Isotex defendants ever obtain the required Commodity Dealer's License despite express warning issued by the Montana Department of Agriculture.

177. Aside from Isotex' lien and licensure struggles, some conflicts resulted in active litigation. The following cases were ongoing at different times before Isotex received funds from the various rounds of investors:

- a. *Eugene Fred Elfrank*, Chapter 13, U.S. Bankruptcy Court, Case No. 3:17-BK-34061 (Oregon, 10/30/2017)
- b. *Sky Hemp v. Isotex Health, LLC*, Commonwealth of Kentucky, Fayette Circuit Court, Case No. 19-CI-02183 (Filed June 14, 2019) (Breach of Contract, Conversion, Unjust Enrichment; Fraudulent Misrepresentation and Civil Conspiracy claims against Isotex for alleged unauthorized conversion of \$575,000 of hemp biomass).
- c. *Joseph M. Cooper v. Isotex Health LLC, SMGB, LLC, Jason Cross, Eugene Frank, Greg Walker et al.*, 191st Judicial District Court of Dallas County, Texas Cause No. DC-19-14479 (filed September 13, 2019) (Breach of contract).

178. Information about these lawsuits, the lack of crop insurance, lien issues and failure to obtain licensure as a Commodities Dealer were not listed as potential liabilities on Isotex' financial statements, nor were they disclosed to potential investors, the Lincoln County Port Authority or the State of Montana Department of Commerce. Notably, all of the foregoing issues occurred prior to Isotex obtaining funds from investor Dan Brown, Kootenai Tec, LLC, or Real Estate Investment 2019, LLC and the third-round investors.

The Third Tier Investors – Daniel B. Brown, Kootenai TEC, LLC, and Real Estate Investment 2019 LLC

179. In the late summer and fall of 2019, Isotex had moved on to another round of investors.

180. Daniel B. Brown was the primary investor for Isotex' third round.

181. On or about Sept. 18, 2019, law firms in Louisiana and Montana emailed RABB and GRUBER about the potential for a Security Agreement and financing statement intended to provide Isotex investor Dan Brown with a secured interest in the hemp crop.

182. On or about September 19, 2019, Kootenai Tec., LLC and Isotex executed a Promissory Note. The note provided that Kootenai Tec, LLC would immediately fund three million dollars (\$3M USD) and an additional four million dollars (\$4M USD) upon execution of all remaining documents contemplated by the parties. These documents included a Lease, a Commission Agreement, A Brokerage Agreement, and "Security" Agreements.

183. The Promissory Note of September 19 contemplated the inclusion of three exhibits: 1) a schedule of the equipment purchased; 2) Isotex' budget and schedule for financing, and 3) Isotex's insurance commitments. However, Isotex did not provide the exhibits as referenced in the Promissory Note.

184. On September 18, Great Falls, MT, attorney C.M., sent an email to the Louisiana attorneys stating that his office “*researched UCC lien filings against Isotex, and did not find any. However, that does not mean there are not other liens filed against the crops by the grower/farmer’s lender, etc.*”

185. In order to conduct a search for other liens, attorney C.W. communicated he would need information related to the landowners in order to search for other potential liens and finish the draft security agreement.

186. However, attorney C.W. apparently never learned of Crossan Farms’ seed lien notice of August 2, 2019, nor did Isotex inform attorney C.W. or Dan Brown of the lien granted by Isotex on August 16, 2019, to SMGB, LLC, to crops in the Poplar area.

Lab Test Results Related to Isotex Hemp Crop Samples

187. On or about September 17, 2019, CROSS sent investor Dan Brown an email related to “Stillwater Labs Test Results” representing that Isotex hemp sample “sent directly from the field” had a CBD content of “14.8.” CROSS further stated “Yee haw! [...] This is absolutely fantastic news! Call me with questions!” This email included attachments from Stillwater Labs.

188. These test results were not true representations of Isotex’ hemp CBD content. The actual sample results from September 15, 2019, showed CBD content

of 3.4% and 11.5% for two samples. The “total cannabinoids” for the second sample was 14.8% - but not the CBD content. The test results forwarded to Dan Brown also included forged alterations pursuant to M.C.A. § 45-6-325, in that they deleted information about toxic metals, pesticides, the presence of microbials and whether the presence of these substances indicated a failed lab test due to unacceptable levels of these agents.

189. In terms of CBD levels in the lab samples, the Montana farmers in both the Scobey and Choteau areas (S.A. and A.C.), who learned about some of defendants’ representations about CBD content indicate that the original lab results were nowhere near as high as 14.8% CBD content.

190. Furthermore, according to a former employee of Isotex Health, LLC, (J.C.) the CBD content of Isotex hemp biomass had been manipulated to artificially inflate CBD levels by mixing Isotex biomass with biomass from a Colorado based company with CBD content of approximately 12-14%. According to this former employee, the ratio of Isotex biomass to Colorado biomass was approximately 20-40% Isotex/60-80% Colorado. G.R., another Isotex employee, was apparently aware of this process as well.

191. Regardless of these issues, false representations that Isotex CBD content had reached “14.8%” were used by CROSS and defendants to induce Dan Brown and the third round of investors to provide funds to Isotex.

192. On or about September 15, 2019, and December 3, 2019, Defendant CROSS, aided and abetted by ELFRANK, RABB and GRUBER, with the purpose to defraud, knowingly and without authority, altered documents, or other objects apparently capable of being used to defraud another in a manner that it purports to have been made by another or at another time or with different provisions, and/or issues or delivers the document knowing it to have been thus made or altered.

193. To wit: On or about September 15, 2019, and again on December 9, 2019, Defendant JASON CROSS altered, or caused to be altered Stillwater Lab Reports for six samples of Isotex Hemp with all defendants’ knowledge.

194. On or about September 15, 2019, the Stillwater Lab Report for two hemp samples were altered at CROSS’ direction by deleting arsenic content, deleting Terpenes Data, and deleting the presence of pesticides, heavy metals and microbials.

195. On or about September 17, 2019, CROSS emailed investor Dan Brown, attaching the altered crop samples, and further misrepresented the CBD content as containing 14.8% CBD.

196. On or about December 9, 2019, the Stillwater Lab Report for four hemp samples were altered at CROSS' direction by deleting arsenic content resulting in "FAILED" tests, deleting Terpenes Data, and deleting the presence of pesticides, heavy metals and microbials.

197. The forgery in this instance was part of a common scheme and/or the value of the property obtained or attempted to be obtained exceeded \$5,000, that being over \$1M in investor funds from individuals associated with Kootenai Tec, LLC, REI 2019 and other potential investors in Isotex, including investor Dan Brown.

The September 26, 2019, Security Agreement

198. Ultimately, the agreement signed by CROSS and Dan Brown on September 26, 2019, listed Isotex as the Grantor and Kootenai Tec, LLC, as the Grantee under the terms of the "Agricultural Security Agreement."

199. The Security Agreement itself represented that Isotex granted a security interest in "All industrial hemp, crops, related farm product and/or agricultural commodities, caused to be planted, growing or grown, harvested/cultivated by Grantor or which are caused to be planted, growing or grown, harvested/cultivated on the real property described and stated in Exhibit 1 hereto (the Poplar, MT area crops in Richland and McCone Counties), consisting of

approximately 3,265.38 acres and 5,000,000 dried pounds of manufactured hemp crop.”

200. The Security Agreement further represented that Grantor “*is the absolute owner of the Collateral, free and clear of all liens and encumbrances except for the liens of this Agreement.*” Furthermore, the Agreement stated that the Collateral identified (the hemp crops) would not be encumbered, transferred or disposed of in any way without the prior written consent of the Grantee. These representations were false. Multiple parties held liens and encumbrances on the same Collateral.

201. The Security Agreement also promised that care and preservation of the Collateral would occur in accordance with best practices and that Grantor would promptly give Grantee written notice of any disease, destruction or depreciation in value of, or any damage to the crops. These representations were also false, as crops had already suffered damage, and defendants concealed this fact.

202. Defendants further represented that the Collateral “will have a CBD content of 10% or higher”; that “Grantor shall procure and maintain all risks insurance, “including such other insurance as Grantee may reasonably require with respect to the Collateral” as well as other assurances that insurance on the Collateral

would be maintained. These representations were also false when defendants made them.

203. Specifically, all material terms in the Security Agreement related to hemp crop being unencumbered, undamaged, insured, and with a CBD content of 10% or higher, were false. To wit: Crossan Farms announced its intent to file liens on the seeds (and the crop they produced in Poplar) as of August 2, 2019; SMGB, LLC, already had liens on the same Poplar area crops in Richland and McCone Counties; no crop insurance on the Collateral was ever obtained; no accurate notice of storm damage or destruction or depreciation of crop value was reported by Isotex; and the CBD content of the crops did not meet or exceed 10%.

204. On or about September 26, 2019, RABB created, reviewed, and approved the Security Agreement; CROSS signed the Agreement as Isotex's Managing member; and RABB emailed the Agreement to CROSS and GRUBER both prior to and after signatures were obtained by Brown and Isotex members.

205. Exhibit 1 to the Isotex-Kootenai TEC, LLC Security Agreement listed several parcels of the Montana farmland outside Poplar, Montana, in Richland and McCone Counties.

206. On October 8, 2019, Dan Brown emailed CROSS that a wire transfer “will go out today” for \$1.9M to the IOLTA account in GRUBER’s name for the remaining “equipment/operating costs needed for finalizing harvest.”

207. In total, Dan Brown, through Kootenai Tec, LLC, advanced approximately \$1.9M to or on behalf of Isotex pursuant to the September 19, 2019, Promissory Note and Loan Agreement.

208. In addition, Brown, through Real Estate Investment 2019, LLC, advanced additional sums to purchase the Stinger building in Libby, Montana, and to pay Improvement Costs and to purchase equipment for Isotex’ use. The amount that Brown advanced for these purposes totaled approximately \$5.1M.

Gruber Threatens Isotex Employee Carson Byers

209. Real Estate Investment, LLC, sent its agent, Jeb McDaniels, to visit Montana to observe the crops at the Isotex grow-operation in Poplar.

210. Defendant ELFRANK instructed Isotex employee Carson Byers to get Jeb McDaniels intoxicated so that he would not visit the hemp fields or see the crop damage.

211. Carson Byers refused to participate in the scheme to keep the crop damage a secret.

212. Accordingly, Byers had reason to distrust Isotex principals and the plan to conceal the crop damage from McDaniels. Byers refused to conceal facts from McDaniels.

213. As a result, McDaniels, Real Estate Investment 2019, LLC, and Investor Dan Brown learned that the Poplar field suffered severe hail damage close in time to the execution of the Security Agreement signed September 26, 2019, and asked defendants for assurances regarding crop insurance.

214. Subsequently, Isotex fired employee Carson Byers.

Investor Notice of Default and Isotex' Financial Records

215. On November 8, 2019, Investor Dan Brown, Kootenai Tec., LLC, and Real Estate Investment 2019, LLC, through Montana counsel, gave formal notice of default under all agreements and exercised their rights to repayment in kind requesting the delivery of five million pounds of hemp.

216. As outlined in their agreements with Isotex, Real Estate Investment 2019, LLC, requested Isotex to provide to it Isotex financial statements.

217. On Dec. 7, 2019, after substantial delay, Isotex sent the financial statements to Real Estate Investment 2019, LLC.

218. Isotex' financial statements showed that Isotex was insolvent.

219. Isotex' financial statements suggested that although the company had generated approximately four million dollars (\$4M), they also revealed that Isotex had approximately twenty-five million dollars (\$25M) in liabilities.

220. By comparing Isotex financial statements with Real Estate Investment 2019, LLC's records, it appeared that the Isotex defendants removed over one million dollars in investor funds and paid over two hundred thousand dollars (\$200,000) in travel and entertainment from Isotex' accounts.

221. "Isotex Health Balance Sheet" for the time frame of December 2018 to December 2019 did not list consulting and lease obligations to Dan Brown, Kootenai Tec, LLC, or Real Estate Investment 2019, LLC, of over \$30M.

222. "Isotex Health Balance Sheet" as of July 2019 showed that Isotex reported it had paid almost \$20M for "Total Work in Process" related to "CBD Supplies, Farmer Payments and Seeds."

223. This same Financial Statement did not book over \$2M of liabilities to Isotex' vendors.

224. An Isotex Profit & Loss statement from January through June 2019 did not accurately reflect cash payments to Isotex investors.

225. According to Isotex' employees with knowledge of Isotex's true financial status, Isotex earlier putative "financial statements," forwarded to investors

to demonstrate Isotex financial health, were not a true representation of Isotex' Assets and Liabilities.

226. Brown also uncovered the following information: an equipment manufacturer had not been paid despite REI 2019 funds advanced for this purpose; Isotex' processing equipment in Libby was only partially installed and was not operational; a subcontractor for an Isotex equipment manager had not been paid; a building improvement contractor for a heating and cooling system had not been paid; at least one vendor claimed that Defendant ELFRANK diverted wire payments to CROSS and Isotex that were intended to pay the vendor; and Isotex had made late lease payments and had defaulted on the terms of its Promissory Notes.

227. As provided in their agreements related to default, both REI 2019 and Kootenai Tec, LLC, exercised their rights to repayment in kind, requesting the delivery of five million pounds of dried hemp. This hemp was never surrendered by Isotex.

228. On January 27, 2020, an email from Cooper to CROSS and ELFRANK regarding Isotex' financial statements stated that contingent liabilities "must be disclosed." Furthermore, in this email Cooper noted that "Isotex must correctly disclose all liabilities on the balance sheet."

229. On Jan. 7, 2020, GRUBER had admitted in a letter that Isotex lacked any hemp that met the criteria for production which Isotex had claimed to possess in discussions with investors.

230. This January 27 email also noted that Isotex still did not have crop insurance: “The insurance is not the last thing we are waiting for.”

231. Based on the preceding paragraphs, defendants knowingly made misrepresentations to Kootenai Tec, LLC, Real Estate Investment 2019, LLC, as well as individual investors Dan Brown and James Mattingly.

232. To wit, from on or about April 10, 2019, to November 8, 2019, all defendants misrepresented to investors and others that Isotex’ hemp grow-operation and extraction project were financially viable, that all liabilities had been adequately disclosed, that Isotex was a licensed, bonded Commodities Dealer, that hemp biomass was ready for production, and that all hemp crop was secured by insurance. Isotex internal emails acknowledge these misrepresentations.

Defendants Conduct amounted to Securities Fraud

233. From on or about May 28, 2019, through July 1, 2020, defendants, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into or from this state, employed a device, scheme, or artifice to defraud; made untrue statements of a material fact or omitted to state a material fact necessary in

order to make the statements made in light of the circumstances under which they were made, not misleading, and; engaged in acts, practices and a course of business that operates or would operate as a fraud or deceit on any person.

234. The “common scheme” in this case refers to a series of acts or omissions resulting in a pecuniary loss to the victim of at least \$1,500, or \$1,500 in value, motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated omission of the same offense or that affects the same person or the same persons or the property of the same person or persons. M.C.A. § 45-2-101.

235. To wit: Defendants offered and sold “Security Interests” as part of the funding agreements with investors SMGB, LLC, and Kootenai Tec, LLC, referenced herein. The Isotex funding agreements contain terms indicating evidence of indebtedness and debenture which are defined as Securities under Montana Law. *See M.C.A. § 30-10-103(24)(a).*

236. On or about September 26, 2019, Isotex entered into an “Agricultural Security Agreement” with Dan Brown and Kootenai Tec, LLC, in which Isotex sold a security interest in Hemp biomass to Dan Brown’s company:

“For valuable consideration, Grantor [Isotex] grants to Grantee [Kootenai Tec] a security interest in the Collateral to secure indebtedness and agrees that Grantee shall have the rights stated in

this Agreement with respect to the Collateral, in addition to all other rights which Grantee may have by law.”

That collateral included all Isotex’ hemp crops and agricultural commodities currently being grown in Montana.

237. On or about September 26, 2019, this document was circulated between defendants, RABB, GRUBER, and CROSS via email.

238. The September 26, 2019 “Agricultural Security Agreement” was similar to another “Security Agreement” executed by Isotex on August 16, 2019, with SMGB, LLC, related to a Promissory Note.

239. The SMGB Security Agreement of August 16, 2019 – titled “Second Amended and Restated Promissory Note” – shows that Isotex, in exchange for the funds advanced by SMGB, “grants a lien to secure repayment of the Note in portions of the growing crops located in various counties in Montana as more specifically described herein.” That property was more specifically described in a document titled “Security Agreement” which was attached to the Promissory Note. That property description clarified that SMGB would have a security interest in all hemp crops grown or harvested in Daniels County, Montana.

240. All defendants had knowledge of Isotex’ offers of these Security Interests to investors and the false statements used to solicit investor interest.

241. As set forth in preceding paragraphs, defendants made untrue statements of material facts to investor Dan Brown, and all SMGB, LLC, investors regarding Isotex financial status, Licensure Status, Past Investor Contributions, Potential Customer Agreements, Existence of Letters of Intent, and Production Contracts, as set forth in the Isotex Executive Summary of March 2019 and in other promotional materials, letters, emails, investor meetings, phone calls and communicated by defendants both orally and in writing that was materially false as set forth throughout this charging document. These false statements and material misrepresentations included:

- a. Isotex had Letters of Interest showing potential sales of \$5.2 billion dollars;
- b. Isotex represented that current purchase orders “now total \$5.4 billion;”
- c. Isotex represented that existing purchase orders from DOGO Consulting LLC, MONOCEROS LLC, Neovorum LLC, Aloha Services and Perfecta Herbal Extracts, Inc., totaled \$5.4 billion;
- d. Isotex projected sales of \$1.5B by Year 2 of operation;
- e. Isotex had experience in the hemp industry;
- f. Isotex had “developed in conjunction with some farms in Oregon, genetics for a special seed. This seed is called the BOAX Seed.”
- g. “Isotex has contracted 6 farmers across the state of Montana to farm over 50,000 acres of industrial hemp.”

- h. "After multiple offers we were able to have the River Authority come in and make a deal for both the seller and us for a total of 2.25 million."
- i. "We already have our farming registration and we are already licensed to do this business in Montana."
- j. Isotex had obtained a Commodity Dealers license.
- k. Isotex would post a bond with the State of Montana to insure hemp farmers S.A., M.A., J.H., A.C., and W.H. in Choteau, Poplar and Scobey would have a surety bond related to the crops they grew.
- l. Isotex had obtained crop insurance that provided coverage for all Isotex hemp crops in Montana.
- m. Isotex hemp crops and biomass were not subject to any prior liens.
- n. Isotex Health, LLC and all of its shareholders and managers were financially solvent.
- o. There were no liabilities to disclose to potential investors such as active or pending litigation against Isotex or its shareholders and managers.

242. In addition to the foregoing false statements, at all times relevant to this affidavit, all defendants omitted to state the following material facts to investors, the Lincoln County Port Authority and representatives of the State of Montana: Defendants failed to advise the second and third round investors that Isotex had breached its agreements with first round investors, that at least one Isotex shareholder had filed for bankruptcy in 2018, that litigation against Isotex was

looming, that prior rounds of investors had expressed dissatisfaction to Isotex shareholders, that Isotex had not been able to finalize sales and lease agreements for production equipment and hemp processing facilities, that Isotex had no Commodities Dealer license; that Isotex lacked a hemp grower license of any kind until late 2019; that Isotex had never posted a bond with the State of Montana pursuant to their obligations as a Commodities Dealer; that Isotex had not produced any hemp distillate, biomass or any other hemp products suitable for sale, that Isotex had not obtained investor-requested crop insurance as promised by the defendants, that Isotex hemp crops had been damaged by weather events in Summer and Autumn of 2019, that Isotex funds had been misused and misappropriated by defendants, that Stillwater Lab Reports had been altered and CBD contents misrepresented, and that Isotex was in a state of growing financial distress.

243. In addition to the above false statements and omissions, defendants engaged in acts, practices and a course of business that operated or would operate as a fraud or deceit on any person. To wit: at no time during Isotex existence, did it ever produce any CBD isolate or product for sale or distribution, nor was it ever capable of providing any legal return on investments promised. Furthermore, on or about September 26, 2019, and continuing until October 1, 2019, defendants through GRUBER and RABB told farmers that they would not be paid, and might be sued,

if farmers S.A., M.A., J.H., A.C., and W.H. refused to sign an addendum to their grower contracts with Isotex acknowledging that Isotex was not a commodity dealer and did not have a commodity dealer bond related to hemp crops in Choteau and Poplar, Montana.

False Claims against the State of Montana

244. On January 27, 2020, the Governor's Office announced almost \$1.4M in funding to "Create Jobs and Grow Main Street Businesses."

245. A press release from the State of Montana Newsroom announced that the Big Sky Trust Fund and Workforce Training Grants would support the creation of jobs across Montana through a series of grants. See <https://news.mt.gov/Formers-Governors/governor-bullock-announces-almost-14-million-in-funding-to-create-jobs-and-grow-main-street-businesses>

246. On or about September 30, 2019, the Isotex defendants, through CROSS, had applied for an economic development grant with the Kootenai River Economic Development Council, which processed Isotex' application with the Montana Board of Investment.

247. As part of Isotex' grant application, the defendants submitted a proposed business plan; bios of key Isotex management personnel (including

CROSS, ELFRANK and GRUBER); proof of investment into the project; and a letter indicating Isotex' financial solvency.

248. These grant application documents contained false representations, to wit:

- a. ***“IH [Isotex Health] has sourced significant equipment from global suppliers (investment of approximately \$6 million) which will provide the eligible use, reimbursement and proof of match of this grant application.”***
- b. ***“In late 2018 and early 2019 the company negotiated seed and farming contracts for approximately 13,500 acres in eastern Montana. IH became a bonded commodity broker.”***
- c. ***“The target market for Isotex’s industrial hemp by-products is primarily Fortune 100 Companies.”***

249. On or about December 15, 2019, Defendant CROSS, with defendants' knowledge, attested to the accuracy of these statements by signing the Certification page of this grant application and submitting it to the Lincoln County Port Authority.

250. On or about December 18, 2019, the Lincoln County Port Authority submitted Isotex' grant application, which included Isotex' false statements above, to the State of Montana.

251. From September 1, 2019 through February 12, 2020 defendants knowingly presented or caused to be presented for payment a false or fraudulent claim, or for the purpose of concealing, avoiding or decreasing an obligation, a bill,

account, voucher or writing to a public agency, public servant or contractor authorized to allow or pay valid claims to a public agency.

252. Defendants' claim was knowingly submitted with the value of the claim exceeding \$1,500.

253. Defendants knowingly presented or caused to be presented written materials to the Lincoln County Port Authority, which then processed Isotex' application with the Montana Board of Investment and the State of Montana.

254. Defendants submitted these claims to receive state grant funds from the Big Sky Trust Fund and Workforce Training Grants available through the Lincoln County Port Authority related to a Governor's Initiative to "Create Jobs and Grow Main Street Businesses."

255. On or about January 21, 2020, Isotex Health, LLC, was awarded state grant funds through the Lincoln County Port Authority by the State of Montana in the amount of "up to \$307,500."

256. The Montana Office of the Governor congratulated the Lincoln County Port Authority on the award to assist Isotex, LLC to "***purchase equipment that will enable the business to create 41 net new BSTF eligible jobs within one year.***" The Governor's office announced that "Isotex Health, LLC, will be manufacturing Cannabidiol (CBD) isolate."

257. On February 12, 2020, the Department of Commerce notified the Lincoln County Port Authority that the award of BSTF Job Creation funds had been withdrawn by the State of Montana based on an email from the Port Authority's Executive Director asking that the grant application be withdrawn.

Isotex leaves Libby, Montana and takes Processing Equipment

258. On or about January 23, 2020, Isotex vacated the Stinger building in Libby, Montana. Defendants, through agents of Isotex, took with them all hemp product, processing equipment, biomass, and the building's fixtures, including all secured collateral referenced in the Security Agreement with REI 2019.

259. Defendants also took property paid for with investor funds with them.

260. To wit, defendants obtained control over the commodities of hemp seed, hemp crop and hemp biomass grown by farmers S.A., M. A., J.H., A.C. and W. H., with hemp seeds provided by Gary Crossan Farms, with a value in excess of \$10,000 and all subject to liens, security interests, promissory notes, bailment contracts and other contractual promises re same made by defendants to investors J.M. G.W. and D.B..

261. Defendants removed hemp seeds, biomass and crops from the Stinger building and deprived owners of their use.

262. Amounts involved in thefts committed pursuant to a common scheme (as described above in this affidavit and at M.C.A. § 45-2-101) or the same transaction, whether from the same person or several persons, may be aggregated in determining the values of the property. A person convicted of the theft of property exceeding \$5,000 in value or as part of a common scheme faces increased penalties for theft.

Agreement among Defendants regarding the Conspiracy's Object


263. Each defendant, individually and together, acted with the purpose that a criminal offense be committed, and agreed among themselves to the commission of the offenses of Operating a Pyramid Promotional Scheme (M.C.A. § 30-10-325(1)); Securities Fraud (M.C.A. § 30-10-301(1)); Operating as a Commodities Dealer without a License (M.C.A. § 80-4-428(1)); False Claims to Public Agency (§ 45-7-210); Forgery (M.C.A. § 45-6-325) and Theft (M.C.A. § 45-6-301(2) and aiding and abetting the same pursuant to § 30-10-321 and § 45-2-302.

264. Both overt and covert acts in furtherance of this criminal agreement were in fact committed by the defendants, as set forth in this affidavit. *Supra.*

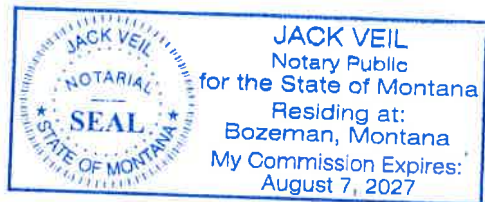
WHEREFORE, the undersigned moves this Court for an Order granting leave to file an Information directly in District Court charging the above-named Defendant


with the felony offenses listed above in Counts 1(a) through 6(b) as more particularly set forth herein.

Respectfully submitted this 28th day of May, 2024.

By: 
W. Adam Duerk
Special Deputy Gallatin County Attorney

SUBSCRIBED AND SWORN TO before me this 28 day of May, 2024.




Notary Public for the State of Montana