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10/10/2019

Teresa Furnish, Harrison Circuit Clerk

COMMONWEALTH OF KENTUCKY  
CIRCUIT COURT OF HARRISON COUNTY  
CIVIL ACTION NO. 19-CI-\_\_\_\_\_

FURNWOOD FARM, LLC,  
HERITAGE BIOMASS, LLC,  
DOUG DUNAWAY,  
JOSEPH ADAM YAZELL, and  
DANIEL W. FURNISH

PLAINTIFFS

v.

GENCANNA GLOBAL USA, INC., a foreign corporation,  
Serve: GenCanna Global USA, Inc. via long-arm statute  
Kentucky Secretary of State  
Summons Branch  
700 Capital Avenue, Suite 86  
Frankfort, KY 40601

Serve: Gary Broadbent, Esq.  
GenCanna Global USA, Inc.  
321 Venable Road, Suite 2  
Winchester, KY 40391

MATTHEW "MATTY" MANGONE-MIRANDA,  
Serve: Matthew Mangonc-Miranda  
101 Rickard Lane  
Winchester, KY 40391

CHRIS "MAC" MACALUSO,  
Serve: GenCanna Global USA, Inc.  
321 Venable Court, Suite 2  
Winchester, KY 40391

ROBERTO FELIPE,  
Serve: Roberto Felipe  
120 Summit at Fritz Farm Blvd.  
Apartment #216  
Lexington, KY 40517

ALEX GREEN, and  
Serve: Alex Green  
120 Summit at Fritz Farm Blvd.  
Apartment #313  
Lexington, KY 40517

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**JONATHAN DAY**

Serve: Jonathan Day  
GenCanna Global USA, Inc.  
321 Venable Court, Suite 2  
Winchester, KY 40391

**DEFENDANTS**

**COMPLAINT**

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The Plaintiffs, by counsel, allege and state as follows against the Defendants:

**I. PARTIES**

1. The Plaintiff, Furnwood Farm, LLC ("Furnwood Farm"), is a Kentucky limited liability corporation with its principal place of business in Cynthiana, Harrison County, Kentucky. Furnwood Farm and its members are engaged as a grower and farmer in various agribusiness operations including the growing of industrial hemp. At all times relevant herein, Furnwood Farm held a License, through its member Lewis Benjamin Furnish, Jr., issued by the Kentucky Department of Agriculture ("KDA") permitting participation in the Industrial Hemp Research Pilot Program operated by the Commonwealth of Kentucky.

2. The Plaintiff, Heritage Biomass, LLC ("Heritage Biomass"), is a Kentucky limited liability corporation with its principal place of business in Cynthiana, Harrison County, Kentucky. Heritage Biomass was created to engage in the receipt, drying, storage, marketing, and sale of industrial hemp and its biomass derivatives. Though an active corporation, it has yet to engage in the business for which it was created.

3. The Plaintiff, Doug Dunaway ("Dunaway"), is a citizen and resident of Harrison County where he is engaged as a grower and farmer in various agribusiness operations including the growing of industrial hemp. At all times relevant herein, Dunaway held a License issued by

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the Kentucky Department of Agriculture ("KDA") permitting participation in the Industrial Hemp Research Pilot Program operated by the Commonwealth of Kentucky.

4. The Plaintiff, Joseph Adam Yazell ("Yazell"), is a citizen and resident of Harrison County where he is engaged as a grower and farmer in various agribusiness operations including the growing of industrial hemp. At all times relevant herein, Yazell held a License issued by the Kentucky Department of Agriculture ("KDA") permitting participation in the Industrial Hemp Research Pilot Program operated by the Commonwealth of Kentucky.

5. The Plaintiff, Daniel W. Furnish, is a citizen and resident of Harrison County where he is engaged as a grower and farmer in various agribusiness operations including the growing of industrial hemp. At all times relevant herein, Dan Furnish held a License issued by the Kentucky Department of Agriculture ("KDA") permitting participation in the Industrial Hemp Research Pilot Program operated by the Commonwealth of Kentucky.

6. The Defendant, GenCanna Global USA, Inc. ("GenCanna Global"), is a foreign corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Winchester, Clark County, Kentucky where it operates facilities engaged in the hemp industry including various derivative operations such as the distillation and production of CBD oil from biomass consisting of harvested, dried and processed hemp plants.

7. The Defendant, Matthew Mangone-Miranda ("Matty"), upon information and belief, is a citizen and resident of Clark County, Kentucky. Matty is the Chief Executive Officer of GenCanna Global. At all times relevant herein, he acted as an officer, employee and/or agent of GenCanna Global.

8. The Defendant, Chris Macaluso ("Mac"), upon information and belief, is a citizen and resident of Fayette County, Kentucky. Mac is the Executive Vice-President of Biomass

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Production of GenCanna Global. At all times relevant herein, he acted as an officer, employee and/or agent of GenCanna Global.

9. The Defendant, Roberto Felipe ("Felipe"), upon information and belief, is a citizen and resident of Fayette County, Kentucky. Felipe is the Strategic Group Growth Director of GenCanna Global. At all times relevant herein, he acted as an officer, employee and/or agent of GenCanna Global.

10. The Defendant, Alex Green ("Alex"), upon information and belief, is a citizen and resident of Fayette County, Kentucky. Alex is an employee and agent of GenCanna Global. At all times relevant herein, he acted as an officer, employee and/or agent of GenCanna Global.

11. The Defendant, Jonathan Day ("Day"), upon information and belief, is a citizen and resident of Madison County, Kentucky. Day is the Growers Representative of GenCanna Global, who was assigned by GenCanna Global to be its direct contact on behalf of it in its dealings with Furnwood Farm and the non-corporate Plaintiffs. At all times relevant herein, he acted as an officer, employee and/or agent of GenCanna Global.

## II. JURISDICTION AND VENUE

12. This is an action arising from a contractual relationship existing between Furnwood Farm and GenCanna Global regarding the growing, harvesting, drying and storage of industrial hemp for the 2019 Hemp Season. The Plaintiffs are asserting both legal and equitable claims against the Defendants based in contract, tort, and equity. These claims far exceed the jurisdictional minimum of the Circuit Courts of the Commonwealth under KRS 23A.010 while also triggering the equitable powers vested in the Circuit Courts.

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13. The Circuit Courts of Kentucky have personal jurisdiction over each of the individual Defendants by virtue of their being either a resident of the Commonwealth or they engage in the business and activities on behalf of GenCanna in its dealings with the Plaintiffs which took place within three Counties (Harrison, Bourbon, and Clark); and, over GenCanna Global by virtue of its being registered and authorized by the Secretary of State to engage in business activities in the Commonwealth which it did with the Plaintiffs.

14. The Circuit Court of Harrison County enjoys venue of this action pursuant to KRS 452.450 and 452.460(1).

### III. ALLEGATIONS OF FACT

#### 1. The Industrial Hemp Market in Kentucky

15. Prior to 2013, hemp in any variety or method was effectively illegal to grow in the United States due to it being in the same plant family as marijuana though different species in that family; and that both contain the psychoactive chemical THC - though in significantly lower amounts. Cultivars used in hemp production contain minimal trace amounts of THC by dry weight, less than .3%, while marijuana contains a THC range of 10% to 15% by dry weight.

16. The presence of the chemical THC in both marijuana and hemp led to strict regulation which effectively outlawed the growing of hemp. Prior to hemp being listed on the federal Marijuana Tax Act of 1937 and then the federal Controlled Substances Act of 1970 (Kentucky has its own CSA which parallels the federal law), hemp production was a mainstay of Kentucky agribusiness. By the time of the enactment of the Marijuana Tax Act, Kentucky was the largest producer of hemp in the US and was typically grown on the same farms that were also growing tobacco.

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17. Due in large part to the 1998 Multi-State settlement with cigarette manufacturers and the related subsequent federal legislation which abolished the tobacco's price support system in return for a "buy out", farmers in Kentucky who had grown and depended upon tobacco as an annual crop began seeking other revenue producing farm products.

18. Though efforts to decriminalize the raising of hemp as a crop began in the early 1990s, this movement gained significant impetus in the early 2000s. The dramatic decrease in tobacco growers and annual pounds of tobacco grown, and the consequences on local and regional economics in areas in which substantial pounds of tobacco were grown and sold, led to an economic opportunity for the potential growing, processing and sale of hemp as a cash crop. The growing and production of the crop became known as "industrial hemp".

19. In 2013, the Kentucky Legislature passed the first law designed to open up the growing of hemp by farmers. It created a statutory structure that de-listed hemp as a controlled substance, created an infrastructure for hemp pilot projects, devised a simple licensing procedure for growers and "processors, handlers and brokers" while vesting ultimate control of the agribusiness aspect of the newly developing hemp market in the Kentucky Department of Agriculture ("KDA").

20. In 2014, Congress enacted the 2014 Farm Bill. This created an exemption for the growing and processing of hemp in "pilot research programs" administered with universities and state agriculture departments in states that had legalized hemp as a legal crop. This legislation was a "first step" inasmuch as the farmers who could grow hemp and entities that could process hemp into forms that could be marketed (seed, fiber and oil) remained highly regulated with controlled numbers of market players.

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21. Due to the bureaucratic unwillingness of the Federal government to similarly remove hemp and hemp products from the federal Controlled Substances Act and to permit the growing of hemp outside of the context of a research pilot program affiliated with a university, further legislation was necessary before hemp could realize its economic potential in rural economies.

22. Even so, beginning with the 2014 Crop Year, growers began obtaining licenses from the Kentucky Department of Agriculture, entering into agreements with "processors," or otherwise began taking part in the new hemp market created by the 2014 Farm Bill.

23. The specific allegations relating to the participation of Furnwood Farm in the new hemp market will be set out in the next section of the Complaint.

24. There are multiple reasons for the attractiveness of hemp as a cash crop to Kentucky farmers. Hemp is farmed similarly to tobacco: planting of seedlings, the farm practices deployed in the growing season, harvesting by machine or hand (depending upon ultimate use), drying, and storing. Farming skills already developed, and machines and buildings used are nearly identical between tobacco and hemp. The amount of land needed for growing the crops is the same. And, unlike most all other cash crops, hemp is a plant which can be processed into a myriad of derivative forms and materials from its seeds, fibers, and oils. These include uses such as: fabric, building materials, paper, cosmetics, health food, biofuels, medications, pharmaceutical research, and seeds.

25. In particular relevance to this action, cannabidiol oil ("CBD") has mushroomed into a significant international agri-market. Cannibidiol is better known under the market term CBD Oil. This liquid derivative product is extracted from harvested hemp which then is processed and refined via a highly technical method using CO2, butane, or ethanol that extracts the CBD oil from

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the biomass of the harvested and dried hemp. The CBD oil is then marketed and sold for a variety of uses. The signage advising consumers that products containing "CBD oil" have become ubiquitous nearly everywhere in Kentucky and likely the Nation.

26. So, both current and former tobacco growers already have the land, experience, tradition, and now legislation to permit Kentucky farmers to grow, process and market hemp as a cash crop.

27. The next step in the expansion of the hemp market was passage of the 2018 Farm Bill that became law in 2019. The 2018 Farm Bill took hemp off of the federal Controlled Substances Act, removed the requirement that hemp could only be grown in the context of university related research programs, legalizes CBD oil so long as derived from hemp regulated by the states, and opened up the National Crop Insurance program to hemp farmers.

28. Even though the 2018 Farm Bill removes hemp from the controlled substance list, no person can grow, handle, or process hemp plants, viable seed, leaf or floral materials without a hemp license issued by the Kentucky Department of Agriculture. A separate license is still required for a grower and a "processor/handler/broker".

29. 2019 is the sixth year in which hemp has been lawfully grown. The growth of the market has been substantial. In 2015, year 2, there were approximately 150 grower licenses issued, 1700 acres approved for hemp production, and five processors; and, in 2019, the Department issued 1,034 grower licenses, 43,000 acres approved for hemp production, and 120 processors.

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## 2. Furnwood Farm Participation in the Hemp Market

30. Furnwood Farm is operated by its two members: Lewis Benjamin Furnish, Jr. ("Ben") and Lewis Benjamin Furnish III ("Lewis"). Kendall Furnish Henson ("Kendall"), daughter of Lewis and sister of Ben, also works at Furnwood Farm where she is primarily engaged in the "white collar" operation of the business including direct dealings with third-parties, including GenCanna Global.

31. Amongst other crops and livestock operations, Furnwood Farm has successfully grown an annual tobacco crop, both before and since the sea change in the tobacco market between 1998 and 2004. At the time it entered the hemp market in 2015, Furnwood Farm had substantial expertise in the growing and selling of tobacco as a crop, but, like any other farmer in Kentucky, had no experience in farming hemp.

32. Furnwood Farm has obtained a grower license for each Crop Year since the 2015 inaugural year through the current 2019 Crop Year.

33. "201\_Crop Year" is used herein to generally describe the time period during which relationships between a grower and producer/handler/broker are negotiated and agreed upon, the delivery of plant material to the grower which is planted and farmed on the land of the grower through harvest, and various interactions between the licensees and the Kentucky Department of Agriculture.

34. In Crop Year 2015, Furnwood Farm contracted with Atalo Holdings, Inc. to grow ten acres of hemp for seed. Furnwood Farm was paid as agreed and gained substantial experience in the growing of industrial hemp as a cash crop. Furnwood Farm produced both seed and fiber while gaining more experience and enhancing their reputation in the growing Kentucky hemp market.

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35. In Crop Year 2016, Furnwood Farm first entered into an agreement with GenCanna Global for growing twenty-five acres of hemp. The agreement was oral with no signed document. Steve Bevan, Mike Kelly and Tom Ramsey (the latter two are no longer with GenCanna Global), were the primary contacts to Furnwood Farm for GenCanna Global. GenCanna Global provided plants grown from cuttings which are delivered in a form called "germplasm". This takes the form of rooted soil bound cutting. GenCanna Global granted a limited one-year agreement to Furnwood Farm to cultivate the crop from the "germplasm." The cuttings were selected by GenCanna Global to maintain the genetic integrity of the plant so that the germplasm is also referred to as a "clone."

36. The process for the crop was that: GenCanna Global delivered the cuttings in plastic trays; the plants were then planted by Furnwood Farm on their KDA approved acreage with setter machines as used with vegetables; the plants were planted on raised plastic mulch beds and were cared for in the field until GenCanna requested a harvest date for each acreage plot; the mature plants were then hand harvested, run through a chopper provided by GenCanna Global and the harvested hemp (known as "biomass") was delivered to GenCanna Global in GenCanna Global owned plastic crates at its location in Winchester, Kentucky. The harvested biomass was then put through a drying process which both weighed the harvested crop and via lab sampling determined the percentage of CBD oil in the plants.

37. In Crop Year 2016, Furnwood Farm made all required crop reports to KDA, arranged for KDA to take samples for THC analysis so the crop would be lawful under the applicable statutes and regulations, and responded to inquiries made by employees and agents of GenCanna Global about the health and progress of the crop.

38. For every year that Furnwood Farm grew hemp under an agreement with GenCanna Global, Furnwood Farm was considered the owner of the crop from the time that the

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plantings were delivered until the harvested hemp was delivered to and accepted by GenCanna Global.

39. Furnwood Farm was paid three dollars a plant that was delivered to GenCanna Global at harvest. Furnwood Farm viewed it as a successful year: it had nearly doubled the acreage of hemp and was timely paid as agreed.

40. In Crop Year 2017, Furnwood Farm again entered into an agreement with GenCanna Global with an increase in acreage to forty. This was the first agreement that was reduced to a fully executed contract. The growing and harvesting process was the same as Crop Year 2016. Tom Ramsey and Giles Shell were the primary contacts to GenCanna Global for Furnwood Farm. There were discussions related to both agronomic differences of opinion and the party or person who would pay Furnwood Farm or the crop at harvest.

41. In Crop Year 2017, the initial agreement was that GenCanna Global would pay Furnwood Farm on the same terms as 2016 - three dollars per plant delivered at harvest. But, by mid-season GenCanna Global, for reasons not shared with Furnwood Farm, arranged for the non-party Elemental Processing and Shells Hemp to purchase the hemp crop and that the hemp crop would be delivered to Elemental Processing and Shells Hemp instead of GenCanna Global.

42. Furnwood Farm fully performed as agreed, including contacts and reporting with KDA. The substitution of GenCanna Global with Elemental Processing and Shells Hemp led to a delay in the final payment, which ended up being a lesser amount. Furnwood received two dollars per plant versus the agreed upon three dollars per plant.

43. In Crop Year 2018, Furnwood Farm again entered into an agreement with GenCanna Global with an increase in acreage to seventy-two. Tom Ramsey was the initial primary contact to GenCanna Global for Furnwood Farm who was replaced by Chris Macaluso ("Mac")

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upon Tom's departure from GenCanna Global. This agreement was reduced to a fully executed contract.

44. The written agreement between Furnwood Farm and GenCanna Global signed on April 11, 2018, differed from Crop Year 2017 in the pricing mechanism used to calculate the amount GenCanna Global paid Furnwood Farm for its hemp crop grown from the GenCanna Global germplasm. The payment set out a price structure based on the average pound per dry weight of a hemp plant that escalated in price as the weight increased. Furnwood Farm accepted the pricing plan proposed by GenCanna without any negotiation.

45. During the growing season, there was substantially more contact between GenCanna Global, primarily through Mac and to a lesser extent Matty, and Furnwood Farm, primarily through Ben and Kendall.

46. As a result of the farming practices and efforts of Furnwood Farm and the good quality germplasm provided by GenCanna Global, which mirrored the good quality of 2016 and 2017, the 2018 Crop year resulted in a high yield of hemp by dry weight.

47. During that season, Furnwood advised GenCanna Global several times by text and in meetings that the yield would again be strong. The purpose was to be sure that GenCanna Global could plan for a significant payment for the crop belonging to Furnwood Farm since there was a new pricing structure in place devised by GenCanna Global. Matty, on behalf of GenCanna Global, expressly stated he understood and that GenCanna Global was prepared to make the payments.

48. The amount owed to Furnwood Farm by GenCanna Global at the end of the season following the weighing of the dry hemp biomass was \$1.8 million. Matty did not want to pay that amount and claimed a mistake had been made in the contract. This led to a meeting at GenCanna Global in Winchester between Ben and Kendall on behalf of Furnwood Farm, another unrelated

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grower and Matty and Mac acting for GenCanna Global. At the conclusion of the lengthy meeting, Mac suggested that \$1.8 million was due. Matty agreed to pay Furnwood Farm the \$1.8 million price per the contract pay schedule. There were separate discussions with the unrelated grower, Kenneth, the did not relate to Furnwood Farm.

3. The Furnwood Farm and GenCanna Global Agreement for the 2019 Crop Year

49. Despite the dispute over the price to be paid for the 2018 Crop Year, Furnwood Farm and GenCanna Global agreed that the year had been a success given the number of pounds yielded on the seventy-two acres which directly correlated with the amount of CBD oil GenCanna Global could extract and sell on the market.

50. This success led to a meeting in January 2019, between Ben of Furnwood Farm and Matty, Mac and Alex Green ("Green") of GenCanna Global. Furnwood Farm was interested in expanding the relationship between the parties. Furnwood Farm sought to provide both added value to GenCanna Global while also growing its operation given the opportunities arising in the quickly developing hemp agribusiness.

51. Matty requested that Ben work up a proposal for GenCanna Global to consider.

52. On February 26, 2019, a meeting was held at the offices of GenCanna Global in Winchester. The attendees were: Ben and Kendall for Furnwood Farm and Matty for GenCanna Global.

53. At this meeting, Furnwood Farm and GenCanna Global agreed on the outlines of what would be a joint venture or stand-alone contract. The proposal from Furnwood Farm was it would purchase or build a building in Cynthiana and set it up as a receiving station for growers to deliver harvested hemp biomass; dry the delivered hemp, mill and grade it, and obtain samples to

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determine the percentage of CBD oil in the biomass; and, then deliver the dried biomass to GenCanna in Winchester. The amount of hemp production would be increased by Furnwood Farm and could include other growers. The rationale explained to GenCanna Global by Furnwood Farm outlined the advantages of having a network of growers, such as a pollen free zone, minimal management of the farming network, and a more efficient drying process on a set number of acres. Furnwood Farm would gain by being paid a fee for the drying and transporting process and enlarging its footprint in the emerging Kentucky hemp grower and processor roles in the market. GenCanna Global was also interested in Furnwood Farm drying for other GenCanna Global growers in surrounding counties which would help ease their drying burden and benefit local growers.

54. GenCanna Global responded by offering to enlarge the scope of the Furnwood Farm proposal by: turning the drying facility into a kind of "joint venture" in which both GenCanna Global and Furnwood would dedicate capital; and, Furnwood Farm would purchase the building, and GenCanna Global would purchase a large multi-phase hemp drying machine manufactured by IEC Thermo, nicknamed "Big Blue," to be used in the new facility to dry the harvested, wet hemp biomass. This would, along with the facility in Winchester, enlarge capacity for drying the wet hemp so that the number of acres for hemp production using GenCanna Global germplasm could be increased.

55. Later that Spring, Furnwood Farm learned of a project in Western Kentucky in which GenCanna Global was building a new construction drying facility to accept hemp biomass from growers in that region of Kentucky. This project is now the subject of litigation in which Furnwood Farm has no involvement beyond a general interest in how it impacts GenCanna

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Global's financial situation as a credible business partner and its reputation as a player in the Kentucky hemp market.

56. GenCanna Global also proposed that Furnwood Farm increase its acreage under production from seventy-two farmed in the 2018 Crop Year to 500 acres under cultivation in 2019. Furnwood Farm and GenCanna Global agreed that Furnwood Farm would deliver one million pounds of dried biomass – seven times more than 2018.

57. This proposed increase in acreage and total produced pounds also corresponded to the significant increase in total Kentucky-wide acreage under hemp cultivation contracted by GenCanna Global. The 2018 total average for GenCanna Global was 1000-1200 acres and it proposed to increase that to 7,000 acres in 2019; Matty advised Ben and Kendall that the addition of another drying facility in Harrison County integrated into the strategy of increasing total hemp production in 2019. GenCanna Global advised Furnwood Farm that it anticipated cost savings and realized efficiencies at the processor level which should increase revenue and profitability.

58. GenCanna explained if this proposal became the accepted structure, then there would be two separate written agreements mutually dependent on each other, and executed at the same time prior to the delivery of any GenCanna Global germplasm for the 2019 Crop Year: a growers agreement and a drying agreement.

59. In the context of this structure, GenCanna Global also proposed a different price system for payment. Following negotiations on the price term at the meeting, the parties agreed to: a straight per pound of dry weight multiplied by the percentage of CBD oil in the biomass. The example used was \$1.80/pound of dry biomass at 8% CBD by sample testing which equated to \$14.40/pound. Assuming a crop of 1,000 pounds of dry weight, then the price paid to the grower for his/her crop would be \$14,400. Furnwood Farm would then be paid by GenCanna Global under

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the drying agreement via a markup on the \$1.80 per pound flat rate not to exceed an additional twenty cents to take the per pound rate to \$2.00.

60. Furnwood Farm accepted the proposal made by GenCanna at this meeting. Furnwood Farm relied upon this offer made by GenCanna Global, and believed it had an enforceable contract that would reduce these essential terms to a writing to be signed later after unessential terms and details had been resolved. The essential terms that were agreed upon at this meeting: same process – quality plant material delivered to Furnwood Farm through harvest as in prior years but the hemp biomass dried at the new facility and the milled and graded biomass delivered to GenCanna Global; increase acres under cultivation to 500 with a target goal of one million pounds; new price structure for the purchase of the growers' crop; Furnwood Farm purchase a building and operate a new drying facility with GenCanna Global to provide the drying machine; and, the new relationship to be governed by two separate yet mutually dependent agreements executed at the same time and prior to delivery of any germplasm to Furnwood Farm in 2019.

61. At the meeting, Furnwood Farm and GenCanna Global discussed a punch-list of items that needed to be completed before the agreements could be signed. These were: whether Furnwood Farm would need a KDA processor license; how many growers will Furnwood Farm need to bring in to reach the increased average and pound production targets; will Furnwood Farm be paid a total amount for the entire crop and then payment made to the new participating growers or would each new grower contract directly with GenCanna Global; how does GenCanna Global want the dried hemp biomass delivered to it, i.e. bales, loose truckload, etc; and which party would take the initial oar in drafting the two agreements.

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62. Though the written agreements were still to be drafted and minor terms to be identified and resolved, the oral agreement reached at the February 26, 2019, meeting bound the parties via a meeting of the minds on the essential terms.

63. Furnwood Farm relied upon the representations of GenCanna Global made at the meeting, and began acting in reliance on those representations and that an enforceable agreement had been reached.

64. Based on the course of dealing between the parties prior to this date, including the success in working through issues in both 2017 and 2018, there was no indication or evidence that the representations made by Matty on behalf of GenCanna Global were true, accurate and that Matty had the authority to enter into an agreement.

65. In reliance upon this oral agreement, Furnwood Farm began ticking off its checklist.

#### 4. Heritage Biomass and the Purchase of a Building for a Drying Facility

66. Furnwood Farm concluded that to operate the new drying facility it would need a processor license from the KDA. It further concluded that the best way from a corporate structure view was to form a new corporate entity to operate the drying facility.

67. To that end, it formed Heritage Biomass, LCC ("Heritage Biomass") in May, 2019, for the primary purpose of operating the drying facility.

68. On behalf of Heritage Biomass, Ben and Kendall applied to KDA for a processor license which was issued.

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69. Following the February 26, 2019, meeting, Furnwood Farm immediately began scouting for a suitable building to purchase in the Cynthiana area from which to operate the drying facility.

70. On March 19, 2019, Kendall informed Matty of a building located in Cynthiana that Furnwood Farm had identified for purchase, and required GenCanna Global to inspect it and confirm it was suitable and could house the IEC Thermo drying machine.

71. The building was a vacant tobacco storage facility owned by the non-party Burley Co-Op Association. The listing broker was the non-party Whalen and Company and its agent John Whalen.

72. On March 19, 2019, Kendall and the non-party Hootie Thompson ("Hootie"), representing GenCanna Global at the instruction of Matty, met at the building to meet the real estate agent John Whalen and tour the building. Matty also informed GenCanna Global employee Mike Barrett to "keep this [building] on your radar".

73. The building was deemed suitable, GenCanna Global performed an initial zoning analysis which comported with the planned use of the building as a drying facility.

74. On March 22, 2019, Furnwood Farm, with the endorsement of GenCanna Global, decided to make an offer to the owner, and discussed details of the offer with John Whalen and Matty.

75. That same day, Dustin Hawkins ("Hawkins") at 3:41 pm emailed with no comment a copy of a signed Offer to Purchase Contract to Kendall which was already signed by Matty on behalf of GenCanna Global. This was the first time that Furnwood Farm realized that GenCanna Global sought to participate in the purchase of the building. The email address used by Dustin was: "dustin.hawkins@gencanna.com".

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76. The "Buyer" on the signed form Offer to Purchase was identified as "Kendall Henson, Lewis B. Furnish, Jr., GenCanna Global". This meant that Matty had made the offer to purchase the building on behalf of GenCanna Global and a member and employee/agent of Furnwood Farm without authority.

77. Prior to the offer being accepted by the deadline of March 23, 2019, at 6:00 pm, Matty emailed non-party Dan Claycamp ("Claycamp"), a GenCanna employee, and Roberto Felipe ("Felipe") requesting that Claycamp connect with Kendall and Dustin to begin due diligence at the building given the proposed closing date of June 4, 2019.

78. Copied on the Matty's email of March 23, 2019, was Dustin, but at a different email address: "dustin.hawkins@trifectares.com".

79. The seller, Burley Co-Op Association, accepted the written offer.

80. On March 26, 2019, per the request of Matty, a small group consisting of Hawkins, Claycamp and Kendall met at the Burley Co-Op building to develop a "due diligence punch-list" and split up the assignments for each item.

81. After this meeting, and prior to the GenCanna Global employees/agents completing their assigned tasks, Matty stopped communicating in late April-early May about the purchase of the building. Furnwood Farm completed the necessary tasks as it had always viewed the February 26, 2019, Agreement as the parties acknowledging Furnwood Farm would be the sole purchaser and that GenCanna Global would provide the drying machine.

82. For this reason, no red flag went up indicating that GenCanna Global had misrepresented its intentions in entering into the Agreement of February 26, 2019, and so Furnwood Farm had no qualms with agreeing with the Offer to Purchase signed by Matty and then

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proceeding with a purchase in May, 2019. Furnwood Farm believed this would be its sole obligation.

83. During May 2019, Heritage Biomass was formally formed and registered with the Office of the Secretary of State.

84. On June 17, 2019, Heritage Biomass was forced to close on the property despite GenCanna Global's inability or simple refusal to provide a drying contract - the key reason that Furnwood Farm first agreed to purchase property, open and operate a drying facility in Cynthiana.

85. As will be plead later, GenCanna Global fraudulently misrepresented numerous material facts to induce Furnwood Farm to enter into the February 26, 2019, Agreement and to continue to work with GenCanna Global in the 2019 Crop Year: principally that GenCanna Global intended to perform as agreed on February 26, 2019, to facilitate the opening of the Cynthiana drying facility and that Furnwood Farm would be paid for its 500 acre crop using the new formula which included Furnwood Farm delivering dried, milled and graded biomass to GenCanna Global none of which happened as a sole result of GenCanna Global's refusal to comply with the Agreement. Upon information and belief, Furnwood Farm believes GenCanna Global never intended to perform as it agreed on February 26, 2019 and in fact misrepresented it would. GenCanna Global essentially sucked Furnwood Farm into its sham plan.

86. A consequence of these misrepresentations is that Furnwood Farm, acting through Heritage Biomass, purchased the building but never opened the drying facility as a direct result of the fraudulent conduct of GenCanna Global.

87. GenCanna Global never performed as it agreed when it intentionally failed to both provide the drying machine, "Big Blue" for the new Cynthiana drying facility and cooperate with

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Furnwood Farm, acting through Heritage Biomass, in the opening and operation of the new drying facility in Cynthiana.

88. As a direct case of GenCanna Global's misrepresentations which induced reliance by Furnwood Farm, the building was ultimately leased out to a third party so that Furnwood Farm, acting through Heritage Biomass, mitigated its damages but still sustained real economic losses: lost profits in not being able to open and operate the drying facility, lost business opportunity to expand its footprint in the Kentucky hemp market, the costs of acquiring the property and then being forced to lease it to a third party, and not being paid for the 2019 Crop Year biomass under the new formula.

#### 5. The Sham: A Bait and Switch Growers Contract

89. Since proposing the idea of an expanded relationship to GenCanna Global in January 2019, Ben had begun approaching other growers and other farmers who desired to get involved in hemp production with GenCanna Global

90. Following the February 26, 2019, meeting, Ben worked out agreements with three other growers to reach the total of 500 acres on which to grow hemp germplasm supplied by GenCanna Global.

91. Ben entered into oral agreements with three other farmers, and who agreed to the following acreages (this includes the amount of acreage grown by Furnwood Farm):

- > Doug Dunaway ("Dunaway"): 121.3 acres
- > Josch Adam Yazell ("Yazell"): 104.4 acres
- > Daniel W. Furnish ("Dan Furnish"): 68.3 acres
- > Furnwood Farm: 197.1 acres

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92. This group is called the Furnwood Grower Group ("FGG"). Its cumulative total is 491.1 acres. These three grower/farmers are all Plaintiffs herein.

93. The oral agreement reached by Furnwood Farm with the three new growers was: Furnwood Farm would direct GenCanna Global on where GenCanna Global was to deliver its germplasm; the harvested wet hemp was to be delivered to Heritage Biomass for drying and then delivery to GenCanna; Furnwood Farm would receive all payments from GenCanna for each grower's crop and then pay those funds directly to the grower; the price would be \$1.80 a pound of dry weight plus the CBD percentage using the new formula; if any of the three new farmers in the FGG paid a part of the expenses for the operation of the new drying facility then that grower would receive a share of the "drying cost add on" paid to Heritage Biomass by GenCanna Global (the twenty cents per pound added to the grower price for drying/milling/grading); and, the new grower would follow the same delivery of germplasm to harvest process followed by Furnwood Farm including handling all reporting to KDA.

94. All of the new growers, Dunaway, Yazell and Dan Furnish agreed to the proposal made by Furnwood Farm. All of these growers were disclosed to and approved by GenCanna Global.

95. On March 13, 2019, Kendall held two separate phone conversations with GenCanna Global to begin implementing the February 26, 2019, Agreement.

96. Kendall and Mac discussed the size of the Furnwood Farm contract being 350% bigger than the other grower contracts, and the planning for the number of days the drying process would take at the new facility.

97. Kendall and Matty discussed various technical aspects of the plants and the number of varieties, the target goals of the crop including moisture level of 12%, CBD target of 8% but a

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goal of 10%, the "Big Blue" drying machine would not be moved into the new facility for four months (August), a new punch-list of follow up meetings and issues to be resolved, and the due diligence to be done on the purchase of the Burley Co-Op building.

98. On March 22, 2019, Kendall emailed Matty a list of agreed terms from these two teleconferences.

99. Later on the evening of March 22, 2019, Matty emailed Kendall to confirm the agreed upon terms: the 2019 FGG; a three year term with increasing number of acres in cultivation each year; grower contracts to be consistent with the contract to cover Furnwood Farm and other growers in Kentucky not affiliated with the FGG; the timing of payments following acceptance of the dried biomass from Heritage Biomass; the purchase of the "Big Blue" dryer for the Cynthiana facility by GenCanna Global; and the ownership and operating structure of the Cynthiana drying facility depending upon whether GenCanna would be an owner of the building and the equity structure of the operation. The key terms from the February 26, 2019, meeting were affirmed by both GenCanna Global and Furnwood Farm. Matty advised that the agreement was ready to be documented and referred to the lawyers of each party to perform that task.

100. On March 1, 2019, counsel for GenCanna Global emailed a draft terms sheet to form the basis for the discussion at a Webex Meeting scheduled for the next day.

101. On March 2, 2019, a Webex Meeting was held. Counsel for GenCanna Global, counsel for Furnwood Farm, Kendall, Lewis, and Alex Green ("Green") for GenCanna Global. The purpose of the call was to begin documenting the oral agreement reached by GenCanna Global and Furnwood Farm. The document prepared by GenCanna Global counsel reflected the new price formula and delivery of dried/milled/graded biomass to GenCanna Global by Furnwood Farm

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(Heritage Biomass had not been created yet). The issue of charging Furnwood Farm for the germplasm was new and required substantial discussion.

102. A new draft dated April 2, 2019, was emailed to Furnwood Farm. It included the drying and delivery provisions but noted those would be contained in the separate drying agreement soon to be prepared.

103. Furnwood Farm counsel passed along the changes and comments made by Kendall to counsel for GenCanna Global.

104. On April 30, 2019, Felipe emailed the newest draft of the grower agreement to Kendall. It repeated that one of its responsibilities was to “[p]ay Grower for harvested and dried Biomass accepted by GenCanna as set out below”; and, that Furnwood Farm would “[h]arvest, dry, (pursuant to a companion “Drying Agreement”), mill, and package the Biomass from the cultivated plants that meets the Biomass Specifications and make it available to GenCanna for testing, acceptance, and shipment.” It also repeated the precise price formula agreed upon at the February 26, 2019, meeting.

105. On May 3, 2019, counsel for Furnwood Farm emailed a red-line of the April 30, 2019, version sent by Felipe containing changes and comments to that draft to counsel for GenCanna Global.

106. On May 9, 2019, Felipe sent a clean copy of the current draft to Kendall which incorporated some of the changes proposed by Furnwood Farm. It maintained the exact language concerning GenCanna having the biomass delivered to it after being dried and processed at the Cynthiana drying facility. The companion drying agreement had still not been drafted despite several requests and questions about that agreement from Furnwood Farm. Kendall telephoned separately both Felipe and Matty to inform GenCanna Global that Furnwood Farm accepted the

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terms of the written document received by her on May 9, 2019 and requesting the separate drying agreement.

107. On May 19, 2019, Kendall raised the concerns about the lack of a drying agreement in an email to Felipe. He responded the next day advising "Matty . . . wants to set a meeting with you to go through the additional language to find a good common ground that's comfortable for you guys. I will connect with him today [May 20] to get some days that might work for the when he's back." Felipe went on to advise that Matty was "excited to bring the relationship forward and get signed up together with you guys."

108. As of May 20, 2019, GenCanna had not provided a drying agreement to Furnwood Farm to review, but nevertheless continued to represent that such an agreement would be forthcoming and that the drying agreement was still a part of the Agreement.

109. As will be plead later herein, these were intentional material misrepresentations of material fact were designed by GenCanna Global to force Furnwood Farm and the FGG to sign the grower agreement that had been effectively finalized without providing a drying agreement. The drying piece of the Agreement reached on February 26, 2019, was critical to the overall agreement.

110. Based on prior years, GenCanna Global typically begins making deliveries of germplasm in late May so that planting in the field can begin promptly.

111. By June 5, 2019, GenCanna had made no delivery of germplasm to the FGG. This led to a string of texts between Kendall and Felipe, Kendall and Matty, and Kendall and Mac from that date through the signing of an onerous, one-sided growers contract by Furnwood Farms on June 25, 2019. This failure to deliver any germplasm was contemporaneous with the failure of

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GenCanna Global to provide the drying agreement while making a litany of excuses for the delay - nearly a new excuse with each "not ready yet" text or phone call from GenCanna Global.

112. In a text from Matty to Kendall on June 4, 2019 responding to the FGG concern about lack of germplasm, Matty stated, "[FGG] will get {germplasm} in concert with other planned deliveries in a fair process. [GenCanna Global's employees who prepare the cuttings for placement in the germplasm] is focused on simply getting them healthy and cut. We will have good plants [germplasm] for you. Thank you." This dismissive text was yet another in the lengthening litany of misrepresentation of material fact.

113. Despite this representation of Matty, GenCanna Global provided very few cuttings to the FGG. Rather, nearly all of the germplasm provided to the FGG were seedlings. This form of plant proved to be low quality, subject to stunted growth or dying in the field, leaving large gaps in the plots, and significantly impacted what is expected to be a low weight of biomass for Crop Year 2019.

114. By June 10, 2019, Furnwood Farm needed a signed grower and drying agreement to be able to close on the Cynthiana property. Kendall continued to text Matty and Felipe requesting signed documents. This was becoming urgent as Heritage Biomass was set to close on the Cynthiana property on June 17, 2019. Despite the pleas, GenCanna Global failed to ever produce a drying contract, much less by the closing date.

115. In a stunning text sent by Matty late on June 10, 2019 to Kendall, following numerous other texts from Kendall to Matty, Felipe and Mac, requesting a phone call (not made), confirmation that "Big Blue" would be delivered and in place by the time the drying began, and confirmation of the drying agreement, Matty wrote: "Ok here's the deal on my end. Need to make sure I can use funds to pay you. And if I cannot I need to make a solid plan b. As discussed wed

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(sic) need until tomorrow to figure it out. If you have to pull out on the building that's fine. We can handle the drying of 500 acres etc no problem. It's not how we would prefer to do it but it's a solution, If we can get everything right then we proceed as planned. Call u soon. I have a call @ 11-12. Call u soon as done."

116. Until this point there had been no indication that GenCanna Global was not prepared to follow through with its Agreement on February 26, 2019. Not only did this significantly impair the FGG's plans for the 2019 Crop year, but exposed Heritage Biomass, and therefore Furnwood Farm, to liability to the Burley Co-Op if the building failed to close.

117. Matty did not make the call to Kendall after his 11-12 call on June 19, 2019, as promised, despite being advised of the obvious consequence of liability to the Burley Co-Op for Heritage Biomass if not able to close.

118. On June 13, 2019, in response to another status inquiry from Kendall, Matty stated, "All good. We don't have a [drying contract] bc I'm working through the \$ nuances however that will not interfere with our mutual potential success." Another misrepresentation of material fact. This is the first time "money nuances" was invoked as a reason for delay, and the statement that it would not interfere with potential success misrepresented that GenCanna had no intention of providing Furnwood Farm with a drying agreement to be executed simultaneously with the growers agreement.

119. On June 16, 2019, Kendall texted Matty requesting a commitment in writing prior to the closing on June 17, 2019, that "Big Blue" would be delivered and operable at the Cynthiana drying facility. Matty did not respond.

120. Receiving no response from Matty on June 16, 2019, Kendall texted Felipe asking if there was any news on a commitment on "Big Blue" or the drying agreement. Felipe indicated

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he had been unable to connect with Matty. This was no more than additional efforts to put off Furnwood Farm and not perform as GenCanna Global had previously agreed to do thus continuing its plan of a sham.

121. On June 20, 2019, Felipe, Alex Green, and Matty, representing GenCanna Global, met with Ben and Kendall of Furnwood Farm and the FGG. GenCanna Global advised that: the drying contract was held up due to working out a deal with a third-party investor and that transaction needed to be documented before the drying contract could be completed; the delivery of germplasm would not be delayed should the grower and drying contracts not be executed; and, that any further questions on the drying contract should be sent to Mac and Felipe.

122. That same day, Kendall texted Felipe and Mac questions related to the drying contract. No response from GenCanna Global was ever sent. In response, Felipe emailed Kendall which resent an email he had sent her on May 11, 2019, in which he stated that GenCanna agreed to the repayment of the "genetics schedule" so long as the CBD percentage was as expected, that it desired to have Heritage Biomass take more delivery of biomass to be dried by Heritage Biomass, and that further steps needed to be considered to insure that any remediation costs to re-clean the biomass of herbicides and pesticides if necessary by GenCanna Global would be recoverable, and that GenCanna Global anticipated having this language for possible remediation placed in the dryer agreement being worked on by its attorneys. This is a misrepresentation of a material fact in that it is unlikely any attorney was working on the drying agreement inasmuch as no such agreement in any form, draft or final, was ever provided to Furnwood Farm or Heritage Biomass at any time prior to the filing of this action.

123. On June 20, 2019, GenCanna Global informed the FGG that no germplasm would be delivered until the grower contract was executed.

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124. On June 23, 2019, instead of the written grower contract and drying agreement that had been fully negotiated to reflect the February 26, 2019 Agreement, Mac emailed Kendall the grower contract that GenCanna demanded be signed prior to the FGG receiving any germplasm for the 2019 Crop Year.

125. The new grower contract was one in which Furnwood Farm had not seen previously and contained terms Furnwood Farm had not been afforded an opportunity to negotiate - terms that were apples and oranges as compared to the oral terms agreed upon on February 26, 2019, later confirmed in emails in March 2019, and the written agreement the parties negotiated from April 2 through the end of May, 2019 that had been accepted by Furnwood Farm following the final draft's delivery by email on May 19, 2019.

126. The grower agreement presented to Furnwood Farm by GenCanna on June 23, 2019, as a "take it or leave it" was no more than a common criminal or fraudster's "bait and switch" technique - an utter sham.

127. Worse, given Furnwood Farm's commitment to participation in the hemp market for the 2019 Crop Year and its commitments to the other members in the FGG, it had no choice but to accede to the "grower agreement" foisted on it by GenCanna Global.

128. Modern farming operations are like any other business - small or large. They make both long and short-term plans. A decision to grow hemp as a KDA licensee is a serious commitment of time, money, resources and effort that takes careful planning in relation to capital investment, crop choice, labor needs, and other considerations. An investment that Furnwood Farm decided upon before it even began doing business with GenCanna Global when it secured a grower license from KDA in the program's inaugural year.

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129. GenCanna Global was no stranger to dealing with farmers and growers. They had been in the market since at least 2015 and dealt with farmers and growers on a daily basis in growing its own presence in the Kentucky hemp market. GenCanna Global knew, or should have known, that operating an agribusiness is a result of careful planning and husbandry. GenCanna Global's choice to spring an un-negotiated, unseen, and unexpected new grower agreement on Furnwood Farm and the FGG at the very moment that germplasm was to be delivered, left Furnwood Farm and the FGG with no bargaining power and victims of undue influence and unfair dealing.

130. Despite this knowledge, GenCanna Global acted anyway in its own self-interest, ignoring its commitments that Furnwood Farm and the FGG had relied upon, and made it clear that the entire time from its January 2019, meeting with Ben until June 25, 2019, was an exercise in fraud and deception. The new grower agreement, which is attached as Exhibit A, is horrific. The key terms in this so-called "agreement" are:

> The price paid for the crop grown and owned by Furnwood Farm and the FGG bears no relation to the prior agreed upon rate. Instead, it sets out a tiered system from 1 to 10, with 1 being the lowest acceptable average dry weight per plant of .25 a pound up to any amount greater than 1.36 at pound; and, the per acre price based on the average per plant pound ranges at the low mark of \$6,000 an acre to the high point of \$9,375 an acre. To demonstrate the inequity of this system, in 2018 Furnwood Farm produced dry weight resulting in a \$1.8 million price on 72 acres. Under the new pricing system, Furnwood Farm is capped at \$1.8 million assuming the average plant is at or above 1.376 pounds. The quality of the plants delivered make reaching that amount highly unlikely. It is anticipated that the average plant in 2019 Crop Year may be under .051 pounds, \$7,000 an acre, and could even be under the floor of .250.

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> The new grower agreement contains no language requiring the wet hemp to be delivered and dried at the new Cynthiana drying facility . . . it is totally absent from the document. Instead, all of the wet biomass must be delivered to GenCanna Global where it will be dried/milled and weighed with no ability for Furnwood Farm or the FGG to verify that weight.

> If the average weight is under .025, then GenCanna Global is not required to accept the biomass, and, if it does, then GenCanna Global can unilaterally set the price per pound to be paid or simply make no payment to Furnwood Farm or the FGG while prohibiting Furnwood Farm and the FGG to sale the rejected biomass to any third-party.

131. Under the new grower agreement that Furnwood Farm was forced to sign, the price has been significantly lowered beyond what the parties contemplated when negotiations took place between them in January - February 2019.

132. Backed into a corner with no viable option to plant a substitute crop, or seek an arrangement with a different processor, or walk away, Furnwood Farm on behalf of itself and the FGG executed the June 25, 2019, grower agreement.

133. On June 24, 2019, in an attempt to force Furnwood Farm and the FGG to sign the grower agreement emailed only one day prior, Mac emailed Kendall a proposed Exhibit F to be attached to the grower agreement that outlined a drying agreement to be put into effect if GenCanna Global and Furnwood Farm agree to enter into "Biomass drying and milling services arrangement." However, this only becomes effective if GenCanna Global agrees to allow Furnwood Farm to operate a drying facility. Essentially, then, Exhibit F to the grower agreement is a dead letter as it is plain that GenCanna Global has never had any intention to have any biomass dried by Heritage Biomass.

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134. Once the reality of what had occurred hit, Furnwood Farm executed the new proposed grower agreement on June 25, 2019, in order to continue to participate in the Kentucky hemp industry and protect its own efforts and those of the FGG.

135. Over the next two months, GenCanna Global and Furnwood Farm continued to discuss via text and phone calls a drying agreement.

136. GenCanna Global, as late as a meeting on July 25, 2019, at GenCanna Global's facility in Winchester, continued to tell Furnwood Farm that the drying would be performed by Heritage Biomass in Cynthiana. Matty agreed that he and Mac would meet Furnwood Farm at the Burley Co-Op building the next week to assess the facility again as a drying location. As a result of this meeting, Furnwood Farm began efforts to arrange for alternate types of machines such as balers and connex dryers.

137. Also in this meeting, GenCanna Global admitted that the quality of the plants was "terrible" and would impact the yield which would impact the price paid to Furnwood Farm and the FGG under the terms of the signed growers agreement.

138. Unsurprisingly, the proposed follow-up meeting at the Co-Op building never occurred.

139. During the 2019 Crop Year, Jonathan Day functioned as a Grower Representative for GenCanna Global. Starting in late August 2019, Day was introduced to the FGG as their Grower Representative. As poor plant quality issues arose he primarily began visiting the plots under hemp cultivation, inspecting the crop and then advising GenCanna Global superiors of the growing season progress.

140. Day also confirmed that the plants provided in the germplasm were of poor quality and not as agreed under the terms of the Growers Contract executed on June 25, 2019. Ben

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suggested that GenCanna was likely to reject the biomass, pay a rate below the floor of the price list (less than .250/pounds), and then sell the biomass or the CBD derived from it on the open market. Day shrugged his shoulders and stated he would not be surprised.

141. Finally, on August 31, 2019, Mac on behalf of GenCanna Global sent an email to Ben advising there would be an early harvest, and that the mechanism for harvesting and delivery would be in accord with the Grower Agreement signed on June 25, 2019.

142. GenCanna Global, for reasons it has yet to articulate, fraudulently induced Furnwood Farm to enter into the February 26, 2019 Agreement to grow hemp using GenCanna Global germplasm and then operate as a processor to dry the biomass produced by the FGG. The fraudulent plan ultimately came to fruition when GenCanna Global accrued so much leverage to itself that it was effectively able to force Furnwood Farm and the FGG to enter the Grower Agreement executed on June 25, 2019. Even worse, GenCanna Global continued to force Furnwood Farm and the FGG to perform under the terms of that onerous June 25, 2019, Agreement and accept germplasm of inferior quality that failed to even meet the requirements of the June 25, 2019, Agreement. This caused Furnwood Farm and the FGG to sustain potentially catastrophic losses on the current 2019 Crop Year.

#### 6. The Current Status of the 2019 Crop Year

143. A majority of the KDA approved plots being grown with GenCanna Global germplasm have been sampled for THC levels by KDA, and so ready for harvest and within a regulatory KDA imposed deadline.

144. Furnwood Farm and the FGG have begun to harvest the crop.

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145. The crop will be poor this year due to the condition of the material at the time it was delivered despite Furnwood Farm and the FGG working and using best farm practices.

146. Because of the conduct of GenCanna Global coupled by the poor crop yield, the FGG will refuse to deliver the biomass to be yielded by the harvest. Instead, the FGG will retain possession, and harvest and house the hemp and maintain it in storage pending further orders from the Court given the equities at stake.

#### IV. CLAIMS FOR RELIEF

##### 1. The Sham: Fraudulent Misrepresentation and Concealment

147. Plaintiffs incorporate as if fully set forth herein paragraphs 15 through 146.

148. The Defendants, all acting as agents, officers or employees of GenCanna Global made multiple material misrepresentations and concealments of past, present and future material facts that have been detailed as to speaker, time, and place in Section III of the Complaint, principally that GenCanna Global represented that it would perform as agreed in the February 26, 2019, Agreement supported by its conduct from that point through the end of August, 2019.

149. At the times these statements were made, GenCanna Global knew the statements were false or recklessly made such statements or failed to reveal facts it hid, had no intention of performing as it claimed in its Agreement, and induced the Plaintiffs to reasonably rely on those representations and concealments of material facts in entering into the Agreement of February 26, 2019, and June 25, 2019.

150. Given the conduct of GenCanna Global and its agent co-Defendants in forcing Furnwood Farm and the FGG to sign the June 25, 2019 Grower Contract, and the position of Furnwood Farm and the FGG of being commercially unable to refuse to sign that contract,

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GenCanna Global and its co-Defendant agents perpetrated a sham in which it deliberately made false representations and concealment of material facts as to an agreement on February 26, 2019, which it intended to breach, and in fact did breach, at a time in the future.

151. As a result of those misrepresentations and concealment of material facts, the Plaintiffs suffered damages including, but not limited to: diminution of the payments owed to them for contracting with GenCanna Global for the 2019 Crop Year; the total poundage is less than it should have been had the agreed upon germplasm been provided to Plaintiffs; and in other ways.

152. As a result of those misrepresentations and concealment of material facts, the Plaintiffs Furnwood Farm and Heritage Biomass suffered damages including, but not limited to: lost profits from the operation of the Cynthiana drying facility which was never opened; lost opportunities for expanding their presence in the Kentucky hemp market by being unable to open the drying facility as reasonably expected; costs and losses in the purchase of the Burley Co-Op building; and in other ways.

## 2. Negligent Misrepresentation

153. Plaintiffs incorporate as if fully set forth herein paragraphs 15 through 146. This claim for Negligent Misrepresentation is an alternative theory. The Plaintiffs believe the facts will meet the clear and convincing proof standard that GenCanna Global conceived and executed a fraudulent scam scheme in its dealings with Furnwood Farm and, derivatively, the FGG.

154. GenCanna Global in the course of its business dealings with the Plaintiffs had a pecuniary interest in the subject matter of those dealings, namely to secure an agreement with Furnwood Farm and the FGG to execute a grower agreement for the purpose of growing hemp

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using GenCanna Global germplasm which it would later purchase and convert to products it could then sell on the market.

155. As detailed in Section III of this Complaint, GenCanna Global provided false information to Furnwood Farm, Heritage Biomass and the FGG to guide them in their decision making in this transaction.

156. In transmitting this information to Furnwood Farm, Heritage Biomass and the FGG, GenCanna Global and its agents failed to exercise reasonable care in communicating that information.

157. Furnwood Farm, Heritage Biomass and the FGG justifiably relied upon that false information causing them to sustain damages.

### 3. Breach of Contract

158. Plaintiffs incorporate as if fully set forth herein paragraphs 15 through 146.

159. There are two contracts at issue here: the February 26, 2019 oral Agreement confirmed in texts and acceptance by Furnwood Farm of the May 19, 2019, written draft; and, the June 25, 2019, written Grower Agreement.

160. The February 26, 2019, contract was enforceable and represented a meeting of the minds. The terms as to performance, obligations, and price were agreed upon, and were supported by mutual consideration and obligations to each other.

161. GenCanna Global breached its promise by refusing to perform as agreed and unilaterally forcing Furnwood Farm and the FGG to execute the June 25, 2019, Grower Agreement; and, forcing Heritage Biomass to proceed with the purchase of a building while not

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performing its obligations so that the Cynthiana drying facility would become operational. The precise nature of the breaches are set forth in detail in Section III of the Complaint.

162. As a result of the breach of the February 26, 2019, Agreement, the Plaintiffs have suffered and sustained damages,

163. Though the June 25, 2019, Grower Agreement was secured by fraud, undue influence, and inequitable conduct in operating a sham, GenCanna Global even breached this Agreement by failing to provide quality germplasm as it agreed to do so.

164. As a result of the breaches of the June 25, 2019 Grower Contract, the Plaintiffs sustained damages.

#### 4. Equitable Remedy

165. Plaintiffs incorporate as if fully set forth herein paragraphs 15 through 146.

166. The conduct of GenCanna Global and its agents, as detailed in Section III of this Complaint, are so reprehensible that the Court should exercise its equitable powers and permit the Plaintiffs to move forward with harvesting, drying and storing the 2019 crop and retain possession of the harvested biomass until such time that the Court is able to adjudicate what to do with the proceeds from that crop during the pendency of this litigation.

WHEREFORE, the Plaintiffs respectfully demand the following relief:

1. Judgment for compensatory and contractual damages against the Defendants, jointly and severally, for an amount in excess of the jurisdictional minimum of this Court;
2. Punitive damages in an amount to be determined by a jury against each Defendant under Claim for Relief 1;

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3. Equitable relief permitting the Plaintiffs to retain possession of the biomass produced from the 2019 Crop Year;

4. Taxable costs;

5. Trial by jury;

6. Attorney's fees if allowable under law and appropriate;

7. Any other relief the Court deems just and proper.

This the 11th day of October, 2019.

*s/ Scott White*

SCOTT WHITE

DAN CARMAN

Carman Fullerton, PLLC

271 W. Short Street, Suite 101

Lexington, KY 40507

Phone: (859) 961-0060

Fax: (859) 223-0581

[swhite@carmanfullerton.com](mailto:swhite@carmanfullerton.com)

*Counsel for Plaintiffs*

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CERTIFICATE OF SERVICE

Though not required of a Complaint, it is hereby certified that a true and correct copy was transmitted to the following parties, by the method(s) described below, on the 11th day of October,

2019:

Gary M. Broadbent, Esq.  
GenCanna Global USA, Inc.  
321 Venable Road, Suite 2  
Winchester, KY 40391  
Via email: [gbroadbent@gencanna.com](mailto:gbroadbent@gencanna.com); Via USPS certified mail  
*In-house Counsel for GenCanna, Courtesy Copy*

Aryeh L. Kaplan, Esq.  
Pillsbury Shaw Winthrop  
600 Brickell Avenue  
Miami, FL 33131  
Via email: [aryeh.kaplan@pillsburylaw.com](mailto:aryeh.kaplan@pillsburylaw.com); Via USPS certified mail  
*Counsel for GenCanna, Courtesy Copy*

s/ Scott White  
SCOTT WHITE  
*Counsel for Plaintiffs*

Presiding Judge: HON. JAY DELANEY (618318)

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