UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A.R.I. AGENT, LLC, a Delaware limited liability company, LIGHTS OUT ENTERPRISES INC., a Delaware corporation, and LIGHTS OUT HOLDINGS LLC, a Wyoming limited liability company,	:	
Plaintiffs,	:	Civil Action No.: 1:26-cv-03778-JAV
-against-	:	Oral Argument Requested
SHAWNE MERRIMAN, individually, and as Trustee of Trust: M250124, and LIGHTS OUT HOLDINGS LLC, a California limited liability company,	:	
Defendants,	:	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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Plaintiffs A.R.I. Agent, LLC ("ARI"), Lights Out Enterprises, Inc. ("LOE"), and Lights Out Holdings, LLC, a Wyoming limited liability company ("LOHWY") (collectively, "Plaintiffs"), submit this Memorandum of Law in Support of their Motion for Partial Summary Judgment on Counts IX and X of their Second Amended Complaint [DE 079] (the "Second Amended Complaint") against Defendants Shawne Merriman ("Merriman"), both individually and as Trustee of Trust M250124 (the "Trust"), and Lights Out Holdings, LLC, a California limited liability company ("LOH California") (collectively, "Defendants").

SUMMARY OF THE ARGUMENT[1]

Defendant Shawne Merriman, while in control of Lights Out Enterprises, Inc.,[2] obtained more than $2,000,000 in debt financing from ARI through deception. He concealed that he had previously pledged the same "Lights Out" brand assets securing ARI's loans to secure a personal debt[3] and misrepresented which of his companies owned those assets. Merriman personally

[1] All capitalized terms not otherwise defined herein are defined in Plaintiffs' Rule 56.1 Statement.

[2] The financing began with the Loan and Security Agreement, dated May 13, 2024, under which Lights Out XF, Inc. ("LXF") was the original borrower. Thereafter, on December 31, 2024, to provide ARI with further assurances that the loan obligations would be honored, Merriman executed Joinder No. 1 to the Loan and Security Agreement (the "Joinder"). Acting on behalf of multiple affiliated entities, Merriman added through the Joinder the following as guarantors to the Loan and Security Agreement: LOHWY, Lights Out Pro, LLC, Lights Out Sports, LLC, and M250124 LLC ("M250124") (collectively, together with LXF, the "Loan Parties"). Subsequently, on March 4, 2025, M250124 was converted to Lights Out Enterprises, Inc. ("LOE") under Delaware law, and the other Loan Parties remained wholly owned subsidiaries of the converted entity.

[3] Fraudulent double-pledging of collateral can give rise to federal criminal charges, including bank fraud and wire fraud. *See, e.g.*, U.S. Attorney's Office for the Southern District of New York, *CEO, CFO, COO Charged in Connection with Billion-Dollar Collapse of Tricolor Auto* (Dec. 17, 2025), DOJ Press Release, available at https://www.justice.gov/usao-sdny/pr/ceo-cfo-coo-charged-connection-billion-dollar-collapse-tricolor-auto (describing criminal charges arising from an alleged scheme to fraudulently pledge the same collateral to multiple lenders). A.R.I. separately alleges that Merriman concealed overlapping security interests in Lights Out Enterprises' assets and subsequently pledged those assets to a third creditor while the A.R.I. loans were in default.

guaranteed the loans while concealing a pending wrongful death action that subsequently resulted in a $4,000,000 judgment against him arising from the drugging and death of Kimberly Fattorini ("Fattorini").[4] When the Loan Parties defaulted under Merriman's control, he left millions unpaid, dishonored his guaranty and sought to obstruct the creditor protections he had agreed to provide. He now invokes his own misrepresentations to challenge ARI's contractual rights.

This Motion does not ask the Court to untangle all of Merriman's misconduct. Rather, it seeks resolution of two discrete claims established by the documentary record. On **Count IX**, ARI seeks declarations that it validly exercised its contractual governance and Warrant rights following the defaults, acquired approximately 84% of LOE's outstanding equity, and removed Merriman from all positions of authority. On **Count X**, ARI seeks a declaration that the Intellectual Property pledged as collateral is subject to ARI's valid, perfected, first-priority security interest, enforceable through foreclosure or other disposition.

Over nearly two years, ARI advanced more than $2,000,000 to the Loan Parties in reliance on Merriman's representations and the financing documents. Merriman and his Trust guaranteed the obligations. What Merriman concealed was equally material: (i) a preexisting lien securing a personal loan from Shamir Mamdani against overlapping Intellectual Property; (ii) the pending Fattorini wrongful death action (and resulting $4,000,000 judgment), bearing directly on his guaranty; and (iii) that the pledged Intellectual Property was registered to a separate, identically

[4] On July 19, 2019, the parents of Kimberly Fattorini sued Merriman for wrongful death, alleging that he participated in the events surrounding their daughter's drugging with GHB, commonly known as a date-rape drug, and her death. On December 5, 2025, the Los Angeles Superior Court ruled that a $4,000,000 judgment would be entered against him. *Fattorini v. Merriman*, Case No. 19STCV25769 (Cal. Super. Ct., Los Angeles Cnty.). *See* Statement of Facts § D, *infra*.

named *Lights Out Holdings, LLC* (*i.e.*, LOH California) rather than the Wyoming entity, LOHWY, he identified in the collateral documents.

In September 2025, the Loan Parties failed to make a required $300,000 principal payment and subsequently stopped paying interest. Its last payment was September 5, 2025. More than fourteen months later, over $3,500,000 remains outstanding, and the defaults remain uncured.

ARI's creditor protections were negotiated and documented with the benefit of legal counsel, including Merriman's longtime counsel – Andrew Skale ("Skale") of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. ("Mintz Levin") – well before default. The Loan and Security Agreement ("LSA"), Guaranties, and related documents granted ARI governance and voting rights upon an Event of Default, while separate Warrants entitled ARI to acquire equity. After accelerating the obligations in January 2026, ARI exercised those rights through documented corporate actions, removed Merriman from LOE's and LXF's governance, and acquired 53,051,836 shares, representing approximately 84% of its outstanding equity.

Count IX presents no genuine dispute of material fact. The defaults – principally, Merriman's undisputed and massive payment default – occurred; the financing documents authorized ARI's exercise of its proxy rights; LOE completed the corporate actions removing Merriman from its management; and ARI exercised its Warrants. Merriman's refusal to recognize the consequences of the agreements he executed does not invalidate any of these actions. Plaintiffs are entitled to a declaration confirming ARI's controlling ownership and governance authority and Merriman's lack of authority to act for Lights Out.

Count X likewise turns on the documents Merriman executed and his own admissions. Merriman signed a perfection certificate identifying LOHWY as an intellectual property holding company. He also signed an intellectual property security agreement purporting to pledge those

assets. In subsequent Nevada litigation,[5] Merriman admitted that ARI's loan "was secured by the Company's assets including intellectual property" and argued that ARI should pursue remedies against that collateral. Yet, as noted above, the Intellectual Property was registered to LOH California, instead of LOHWY. The existence of LOH California was never disclosed by Merriman to ARI. LOH California was not a Loan Party. Merriman cannot exploit that discrepancy to defeat the security interest he represented had been granted.

These issues require prompt resolution. Merriman remains liable under a $4,000,000 wrongful death judgment and has repeatedly threatened bankruptcy, while more than $3,500,000 in obligations to ARI remains unpaid. Continued uncertainty over LOE's governance and Intellectual Property undermines the value of the business and ARI's collateral. Plaintiffs respectfully request partial summary judgment on **Counts IX** and **X**, leaving their remaining claims for subsequent adjudication.[6]

[5] Represented by Ross C. Goodman, Merriman sued ARI earlier this year in Nevada state court for a declaratory judgment and other relief, alleging that ARI's exercise of its contractual remedies was unconscionable. *See Merriman v. A.R.I. Agent, LLC*, No. A-26-937793-B (Nev. Dist. Ct., Clark Cnty.). After ARI served, and then filed, a motion for sanctions against Merriman and Goodman under Nevada Rule of Civil Procedure 11, Merriman stipulated to dismiss the action without prejudice. *See* Statement of Facts § H, infra.

[6] In addition to Counts IX and X, the Second Amended Complaint asserts claims against Merriman and the Trust for breach of the Guaranties (Count I), breach of the implied covenant of good faith and fair dealing (Count II), and fraud, fraudulent inducement, and fraudulent concealment (Count III); claims against Merriman for defamation (Count IV), tortious interference with contract (Count V), and tortious interference with prospective business relations (Count VI); and claims against Merriman and the Trust for unjust enrichment as to the unrepaid loan proceeds (Count VII) and the proceeds of the Intellectual Property (Count VIII), a constructive trust over the Intellectual Property proceeds (Count XI), and an accounting (Count XII). Those claims are not at issue on this Motion.

I. STATEMENT OF FACTS

A. Merriman Seeks Financing and Represents That the Collateral is Unencumbered

In 2023, Merriman sought financing from ARI for LXF. Declaration of Zack Ellison (the "Ellison Declaration"),[7] ¶ 5. During diligence from February through May 2024, ARI requested information about LXF's indebtedness, affiliates, collateral ownership, and existing liens. *Id.*, ¶ 6.

On March 29, 2024, approximately six weeks before ARI funded the original loan, Merriman executed a Perfection Certificate and Legal Diligence Request (the "Original Perfection Certificate"). *See* Original Perfection Certificate.[8] The Original Perfection Certificate was provided as part of ARI's pre-closing diligence and identified Andrew Skale of Mintz Levin as legal counsel for LXF in connection with the financing. *See* Ellison Declaration, ¶ 8; *see also* Original Perfection Certificate, § 15.

The representations that Merriman made were false and omitted a material preexisting obligation. Ellison Declaration, ¶ 9. On January 3, 2024, more than four months before ARI disbursed capital to LXF, Merriman had executed a $190,000 promissory note in favor of Shamir Mamdani (the "Mamdani Note"), a personal obligation that Merriman secured by pledging company collateral that substantially overlapped with the Intellectual Property and other collateral later pledged to ARI. *See* Mamdani Note;[9] *see also* LSA.[10] Merriman and his counsel at Mintz Levin did not identify the Mamdani Note, any lien or encumbrance on the Intellectual Property, or any personal obligation secured by company assets. Ellison Declaration, ¶ 11. Nor did Merriman

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[7] Attached as **Exhibit A** to the Declaration of Daniel P. Filor (the "Filor Declaration").

[8] Attached as **Exhibit B** to the Filor Declaration.

[9] Attached as **Exhibit C** to the Filor Declaration.

[10] Attached as **Exhibit D** to the Filor Declaration.

disclose the material details of the wrongful-death action then pending against him. *Id.*, ¶ 12. Had Merriman answered truthfully, ARI would not have proceeded with the financing. *Id.*, ¶ 13.

B. The Loan and Security Agreement, the Guaranties, and the Grant of Security Interest in the Intellectual Property

By July 15, 2024, ARI had advanced $1,000,000 to LXF. Ellison Declaration, ¶ 14. The LSA required monthly principal payments, defined nonpayment as an Event of Default, and conditioned funding on delivery of an Intellectual Property Security Agreement (the "IPSA")[11] and stock purchase Warrant.[12] *See* LSA, §§ 2.2, 8.1, and 3.1.

The LSA granted ARI a security interest in collateral including LXF's copyrights, trademarks, and patents. *See* LSA, §§ 5.2, 6.7. LXF represented that it held good title to the collateral, free of liens other than permitted liens, and that ARI's security interest was first-priority and perfected. *Id.*, §§ 5.2, 4.2. Upon an Event of Default, the LSA also authorized ARI, as attorney-in-fact, to take actions necessary or advisable to preserve and protect the collateral. *Id.*, § 9.2.

When Merriman sought additional financing in October 2024, ARI requested further disclosures concerning affiliated entities. Ellison Declaration, ¶ 19. On October 15, 2024, Merriman executed a perfection certificate for LXF, certifying that its contents were accurate and that ARI could rely on them. *See* Perfection Certificate, LXF.[13] The certificate did not identify the Mamdani Note or any related encumbrance. *Id.*, at ¶ 20.

Between December 23 and December 31, 2024, Merriman executed additional loan amendments, joinders, guaranties, and collateral documents involving M250124 LLC (which was

[11] Attached as **Exhibit I** to the Filor Declaration.

[12] Attached as **Exhibit K** to the Filor Declaration.

[13] Attached as **Exhibit G** to the Filor Declaration.

subsequently converted to LOE), LOHWY, Lights Out Pro LLC, and Lights Out Sports LLC. *See, e.g.*, Joinder No.1 to Loan and Security Agreement;[14]; Merriman Guaranty;[15] IPSA; LOHWY Perfection Certificate.[16] Merriman and the Trust provided guaranties and voting-proxy rights exercisable upon default. *See* Merriman Guaranty, § 4.2(a); *see also* Trust Guaranty,[17] § 4.2(a). LXF issued a common-stock Warrant in May 2024, and LOE subsequently issued an amended and restated preferred-stock Warrant in August 2025. *See* Warrant to Purchase Common Stock.

Critically, Merriman executed LOHWY's December 31, 2024 Perfection Certificate (the "LOHWY Perfection Certificate"), identifying its business as a "Holding company for Intellectual Property." Its intellectual property schedule listed trademarks including "Lights Out," "The Ultimate Fan Zone," and "Lights Out Sports TV," together with a copyright, under the ownership name "Lights Out Holdings LLC," without distinguishing between the Wyoming and California entities. *See* LOHY, Perfection Certificate, § 2, Exhibit A. The indebtedness and encumbrance schedules identified none. *See id.* Merriman certified that the disclosures were accurate and acknowledged ARI's right to rely on them. *Id.*, at 14.

That same day, Merriman executed the Intellectual Property Security Agreement (the "IPSA") on behalf of LOHWY, purporting to grant ARI a security interest in the identified Intellectual Property. *See* IPSA. The agreement was recorded with the United States Patent and Trademark Office ("USPTO") on January 13, 2025. *See* Notice of Recordation.[18]

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[14] Attached as **Exhibit E** to the Filor Declaration.

[15] Attached as **Exhibit H** to the Filor Declaration.

[16] Attached as **Exhibit F** to the Filor Declaration.

[17] Attached as **Exhibit J** to the Filor Declaration.

[18] Attached as **Exhibit L** to the Filor Declaration.

C. Merriman and the Loan Parties Were Represented by Their Own Counsel Throughout the Financing

For more than fifteen years, Merriman has been represented by Mintz Levin in matters involving the "Lights Out" brand and associated Intellectual Property, including trademark litigation against Nike and Under Armour. Ellison Declaration, ¶ 27. In connection with ARI's financing, Merriman and the Loan Parties engaged three law firms: Mintz Levin, E.W. TURK, and LegalScale LLP. *Id.*, ¶ 28.

Mintz Levin's longstanding involvement is particularly significant because its representation concerned the very Intellectual Property subsequently pledged as collateral to ARI. Ellison Declaration, ¶ 29. On March 29, 2024, approximately six weeks before ARI advanced capital, Merriman expressly identified his longtime Mintz Levin attorney, Andrew Skale, as LXF's legal counsel in the Original Perfection Certificate. *See* Original Perfection Certificate. The LSA separately designates Mintz Levin, Attention: Andrew Skale, as a recipient of legal notices. LSA, § 10.

The December 31, 2024 Perfection Certificate for M250124 LLC (noting again that this entity was subsequently converted to LOE) identified Evan W. Turk of E.W. TURK as counsel, while LOHWY's separate Perfection Certificate identified Mehak Rashid of LegalScale LLP as counsel. *Compare* M2501024 LLC, Perfection Certificate,[19] § 15 *to* LOHWY, Perfection Certificate. LegalScale's billing records document work on the December 2024 loan amendments, joinders, entity documentation, IPSA, and various perfection certificates delivered to ARI. Ellison Declaration, ¶ 33.

[19] Attached as **Exhibit M** to the Filor Declaration.

The collateral disclosures, guaranties, voting proxies, warrants, and other creditor protections were documented in financing transactions in which Merriman and the Loan Parties identified experienced legal counsel from three different firms, including one – Mintz Levin – that had frequently represented Merriman and the Lights Out Loan Parties' collateral in complex commercial litigation dating back more than a decade. *Id.*, ¶ 34. These protections were negotiated and established before the defaults giving rise to this action. *Id.*, ¶ 35. ARI's subsequent exercise of its contractual rights was therefore an exercise of preexisting, documented creditor protections, not an attempt to impose new rights after the parties' relationship deteriorated. *Id.*, ¶ 36.

D. The Loan Parties Default While Merriman Conceals a $4,000,000 Judgment Against Him

On September 25, 2025, the Loan Parties failed to repay $300,000 in matured principal. Ellison Declaration, ¶ 37. The November 25, 2025 Fifth Amendment to Loan and Security Agreement and Forbearance Agreement (the "Fifth Amendment") acknowledged that default and unpaid October and November interest, granted forbearance through December 31, and required payment of outstanding October–December interest on December 1. *See* Fifth Amendment, at 1, § 1.3.5.[20] Neither the Loan Parties nor the guarantors made that payment. Ellison Declaration, ¶ 39.

Merriman also had not disclosed material details of the wrongful death action brought by Kimberly Fattorini's parents in July 2019. *Id.*, ¶ 40. Their Complaint asserted claims including battery, violation of California's Drug Dealer Liability Act, and negligence, and alleged that Merriman participated in events surrounding Kimberly's drugging with GHB, commonly known

[20] Attached as **Exhibit O** to the Filor Declaration.

as a date-rape drug, and her subsequent death. *See* Complaint, Fattorini Matter.[21] On December 5, 2025, the Los Angeles Superior Court ruled that a $4,000,000 judgment would be entered against Merriman and other defendants jointly and severally. Merriman did not disclose that ruling to ARI. *See* Order, Fattorini Matter.[22]

On December 11, 2025, Merriman requested another $500,000 from ARI, including approximately $240,000 to pay Mamdani. Ellison Declaration, ¶ 43. ARI circulated a proposed additional financing and forbearance agreement on December 12. *Id.*, ¶ 44.

On December 16, 2025, Merriman rejected ARI's proposed Sixth Amendment and Forbearance Agreement and told ARI's Chief Investment Officer that bankruptcy was "inevitable." *Id.*, ¶ 45.

On January 1, 2026, Merriman rejected a further ARI proposal by email, directing that all future correspondence be sent to his bankruptcy counsel "as we move forward with the bankruptcy filings." *See* E-Mail Chain (Jan. 1, 2026).[23] These were not idle threats: Merriman had filed a Chapter 13 petition in November 2018. *See* Pet. for Bankruptcy, Case 2:18-bk-23173-VZ (Bankr. C.D. Cal. Nov. 18, 2018).[24]

E. ARI Exercises Its Contractual Governance and Warrant Rights

On January 2, 2026, ARI notified the Loan Parties, Merriman, and the Trust of the defaults and accelerated the outstanding obligations. *See* Notice of Default.[25] Exercising its contractual

[21] Attached as **Exhibit P** to the Filor Declaration.

[22] Attached as **Exhibit Q** to the Filor Declaration.

[23] Attached as **Exhibit R** to the Filor Declaration.

[24] Attached as **Exhibit S** to the Filor Declaration.

[25] Attached as **Exhibit T** to the Filor Declaration.

voting proxies over a majority of LOE's shares, ARI executed a stockholder written consent removing Merriman as a director. *See* Action by Written Consent of the Stockholders of Lights Out Enterprises, Inc. (Jan. 2, 2026).[26] On January 5, LOE's stockholders ratified those actions, and its board unanimously removed Merriman from all corporate offices, declaring that he had "no authority to act on behalf of the Company in any capacity." *See* Written Consent of the Stockholders of Lights Out Enterprises, Inc. (Jan. 5, 2026);[27] *see also* Action by Unanimous Consent of the Board of Directors,[28] § 2.

ARI also exercised its rights under LOE's Amended and Restated Warrant to Purchase Preferred Stock, issued August 27, 2025. *See* Notice of Exercise (Jan. 5, 2026).[29] Through notices of exercise dated January 3 and January 5, 2026, ARI acquired 53,051,836 shares at the agreed exercise price of $0.01 per share, paying approximately $530,518 in new equity capital. *See, e.g.*, *Id.*, Notice of Exercise (Jan. 3, 2026).[30] Following those exercises, ARI owned approximately 84% of LOE's 63,296,691 outstanding shares. Ellison Declaration, ¶ 53.

F. Merriman and Mintz Levin Obstruct ARI's Control of LOE

Having exercised its contractual control rights and acquired majority ownership, ARI moved to assume management of LOE, stabilize its operations, and implement a strategy to preserve and grow the enterprise's value. Ellison Declaration, ¶ 54. Rather than seeking to liquidate the business or dispose of its assets, ARI intended to continue operating LOE as a going

[26] Attached as **Exhibit U** to the Filor Declaration.

[27] Attached as **Exhibit V** to the Filor Declaration.

[28] Attached as **Exhibit W** to the Filor Declaration.

[29] Attached as **Exhibit X** to the Filor Declaration.

[30] Attached as **Exhibit Y** to the Filor Declaration.

concern and capitalize on the commercial opportunities underlying its original investment. *Id.*, ¶ 55.

On January 8, 2026, ARI publicly announced its acquisition of a controlling majority interest in LOE in a Business Wire press release entitled "A.R.I. Acquires Controlling Majority Interest in Lights Out Sports." *Id.*, ¶ 56; *see also A.R.I. Acquires Controlling Majority Interest in Lights Out Sports*.[31] The announcement outlined ARI's plans to expand Lights Out Xtreme Fighting, capitalize on its recently announced multi-year media rights agreement with ESPN and Disney+, grow its streaming television platform, and develop new sponsorships and strategic partnerships. Ellison Declaration, ¶ 57.

However, Merriman, assisted by Skale of Mintz Levin, sought to prevent ARI from exercising its contractual rights. *Id.*, ¶ 58. Between January 4 and January 11, 2026, Merriman repeatedly contacted Ellison, leaving at least six voicemail messages urging him to bypass counsel, dismissing the lawyers' involvement as "a waste of time" and "running up a tab," and declaring that he was "not taking anything back to [his] attorney." *Id.*, ¶ 59. As the messages progressed, Merriman warned Ellison that he did not understand the "ramifications," that he was "about to open a can of worms," and that the consequences would not be "good." *Id.*

On January 9, 2026, the day after ARI's public announcement, Skale escalated those threats substantially by threatening litigation unless ARI surrendered its contractual rights. In an email to ARI's counsel, Skale accused ARI of "unlawful activity regarding Lights Out" and attached a draft complaint that Merriman intended to file "along with an immediate request for a TRO." *See* E-

[31] httpts:/www.businesswire.com/news/home/20260108388142/en/A.R.I.-Acquires-Controlling-Majority-Interest-in-Lights-Out-Sports (last visited Nov. 18, 2026).

Mail Chain (Jan. 9, 2026).[32] Skale offered to "hold off filing the complaint" only if ARI agreed to inform its contacts "that Shawne is still CEO of Lights Out," and "cease and desist from pursuit of any remedies under the loan agreement." Skale demanded a response by the end of that day. *See id.*

Skale thus demanded that ARI relinquish governance and ownership rights already exercised under the financing documents, publicly recognize Merriman as CEO despite his removal, and abandon its contractual remedies without repayment of the outstanding obligations. Ellison Declaration, ¶ 61. Skale's demands were not reconcilable with the reality of the situation. *Id.*, ¶ 62.

Two days later, on January 11, 2026, Merriman left another voicemail describing the dispute as a "nuclear situation," using the word "nuclear" eight times, and warning Ellison that the consequences would extend to his "future," "partners," "board," and "investors." *Id.*, ¶ 63. These statements were not confined to a disagreement over the interpretation of financing documents. *Id.*, ¶ 64. Merriman expressly threatened consequences for Ellison's professional relationships and reputation if ARI continued exercising its contractual rights. *Id.*

The resulting interference materially disrupted ARI's efforts to restore LOE's operations. *Id.*, ¶ 65. ARI was compelled to reassess its operational strategy and consider alternative means of protecting the value of its investment, including foreclosure upon and disposition of the pledged collateral. *Id.*, ¶ 66.

On January 19, 2026, ARI was forced to pause Lights Out's operations due to Merriman's and Mintz Levin's interference. *Id.*, ¶ 67. Rather than devote its resources to developing LOE's commercial opportunities, ARI was forced to address Merriman's continued assertions of

[32] Attached as **Exhibit Z** to the Filor Declaration.

management authority, threats of litigation, and refusal to recognize ARI's contractual control. *Id.*, ¶ 68.

G. ARI's Investigation Reveals That Merriman Concealed the Actual Ownership of the Intellectual Property Pledged as Collateral

In January 2026, as ARI evaluated enforcement options, its counsel at Troutman Pepper Locke investigated the pledged intellectual property. Ellison Declaration, ¶ 69. Its review of USPTO records around January 12 revealed – *for the first time* – that Merriman controlled two entities that were both named *Lights Out Holdings LLC*: LOHWY, which had executed ARI's collateral documents, and a separate company, LOH California. *Id.*, ¶ 70.

The LOHWY Perfection Certificate identified LOHWY as a "Holding company for Intellectual Property" and attached schedules identifying registered marks under the undifferentiated name "Lights Out Holdings LLC." LOHWY Perfection Certificate, § 2, Exhibit A. Merriman signed the related security agreement for LOHWY. *Id.*, at 14. But USPTO records identified LOH California – *not* LOHWY – as the registered owner of the intellectual property. LOH California had not executed ARI's security agreement. *See* Composite USPTO Records.[33]

The practical consequences of the undisclosed ownership by LOH California were severe. Ellison Declaration, ¶ 73. ARI had advanced millions of dollars in reliance on representations that its financing was secured by the Lights Out Intellectual Property. *Id.* Yet when ARI sought to evaluate enforcement of its collateral remedies following default, it discovered that a fundamental defect in the collateral structure had materially impaired ARI's ability to establish and enforce the Intellectual Property security interest it had bargained for. *Id.*, ¶ 74.

[33] Attached as **Composite Exhibit AA** to the Filor Declaration.

The discrepancy compounded the previously undisclosed Mamdani Note, which purported to encumber overlapping assets. *Id.*, ¶ 75. Most importantly, it prohibited ARI from enforcing its rights to collateral.[34] *Id.*, ¶ 76.

H. Merriman Files the Nevada Action That was Subsequently Dismissed

On January 22, 2026, Merriman, represented by Ross C. Goodman ("Goodman") of Goodman Law Group, commenced an action[35] against ARI in Nevada state court, notwithstanding the mandatory New York forum-selection clause in the LSA and related loan documents. Complaint, Nevada Action.[36] Merriman's own Verified Complaint acknowledged that Lights Out had "missed three (3) months of interest payments between October and December 2025," yet asserted that ARI "does not have any management or ownership rights in the Company." *Id.*, ¶¶ 19, 20.

Merriman's central theory was that ARI could not exercise its negotiated governance and warrant rights and instead was limited to remedies against its collateral. *See generally id.* His Verified Complaint asserted that the proxy and attorney-in-fact provisions "are security devices intended to protect collateral value, not grants of managerial authority or ownership rights," and accused ARI of breaching the LSA by "not taking commercially reasonable steps to dispose of the collateral." *Id.*, ¶¶ 26, 28. Merriman thus demanded that ARI pursue collateral remedies while concealing the ownership discrepancy affecting the very Intellectual Property he had pledged as collateral. Ellison Declaration, ¶ 81. He repeated these positions in his application for injunctive

[34] Acquiring 84% of LOE did not itself transfer intellectual property registered to the separate California entity.

[35] *Merriman v. A.R.I. Agent, LLC*, No. A-26-937793-B (Nev. Dist. Ct., Clark Cnty.) (the "Nevada Action").

[36] Attached as **Exhibit BB** to the Filor Declaration.

relief and opposition to ARI's motion to dismiss. *See, e.g.*, Nevada Action, Application for Temporary Restraining Order and Motion for Preliminary Injunction;[37] Nevada Action, Opposition to Motion to Dismiss.[38] On April 13, 2026, the Nevada court denied ARI's motion to dismiss. Nevada Action, Order (April 13, 2026).

ARI notified Goodman on March 9 and April 2, 2026, that Merriman's representations contradicted the executed financing documents. Ellison Declaration, ¶ 82. Neither Goodman nor Merriman corrected them. *Id.* On May 19, ARI served a motion seeking sanctions against Goodman and Merriman under Nevada Rule of Civil Procedure 11, providing the required 21-day opportunity to withdraw or correct the challenged contentions. *See* Nevada Action, Defendants' Motion for Sanctions.[39] When they declined, ARI filed the motion on June 10, seeking dismissal with prejudice and attorneys' fees. *Id.*

On June 16, 2026, six days after ARI filed its sanctions motion, Merriman stipulated to dismiss the Nevada Action without prejudice, withdrawing all pending motions. Ellison Declaration, ¶ 84. The court entered the dismissal order on June 17 without ruling on sanctions. Nevada Action, Order (June 17, 2026).[40]

[37] Attached as **Exhibit CC** to the Filor Declaration.

[38] Attached as **Exhibit DD** to the Filor Declaration.

[39] Attached as **Exhibit EE** to the Filor Declaration.

[40] Attached as **Exhibit FF** to the Filor Declaration.

I. Merriman and Mintz Levin Publicly Attack ARI and its Founder

Merriman and Mintz Levin also carried their accusations into the public domain. Ellison Declaration, ¶ 86. On February 4, 2026, ML Strategies, LLC, the government relations and strategic consulting affiliate of Mintz Levin, issued a press release accusing ARI and its founder of taking "completely unauthorized actions" and attempting to "wrongfully take over" LOE.[41]

The release identified Merriman as LOE's owner and CEO despite his removal from management and ARI's majority ownership position; characterized admitted payment defaults as disputed; asserted that Merriman had made continual efforts to repay the debt; and claimed that LOE's valuation vastly exceeded the outstanding obligations. *Id.*

Most significantly, it portrayed ARI's valid exercise of its contractual governance and warrant rights as an unlawful takeover undertaken without foreclosure or court approval. *Id.* The release from Mintz Levin publicly amplified the same misrepresentations advanced by Andrew Skale and subsequently by Goodman, while omitting the contractual rights and corporate actions underlying ARI's control. *See id.*

The sequence is unmistakable: Merriman threatened ARI's reputation and business relationships; Mintz Levin's Skale threatened litigation unless ARI surrendered its contractual rights; Goodman filed suit in Nevada advancing substantially the same positions; and a Mintz

[41] See *Lights Out® Enterprises Owner Shawne Merriman Files Lawsuit Against Zack Ellison's Applied Real Intelligence, Seeking In*, EIN Presswire (Feb. 4, 2026), https://www.einpresswire.com/article/888716989/lights-out-enterprises-owner-shawne-merriman-files-lawsuit-against-zack-ellison-s-applied-real-intelligence-seeking-in (identifying ML Strategies, LLC as the source of the release; accusing ARI and Ellison of "completely unauthorized actions" and attempting to "wrongfully take over" Lights Out Enterprises; falsely identifying Merriman as its owner and CEO; and identifying Ross Goodman as Merriman's litigation counsel); *see also* ML Strategies, https://www.mlstrategies.com/ (describing its affiliation with Mintz Levin). Attached as **Exhibit GG** to the Filor Declaration.

Levin organization publicly disseminated accusations attacking ARI's exercise of those rights. Ellison Declaration, ¶ 89. Merriman then refused repeated opportunities to correct the challenged Nevada filings and agreed to dismiss his lawsuit only after ARI filed its sanctions motion. *Id.*

Rather than devote its resources to operating LOE and recovering its investment, ARI was forced to defend litigation and address public attacks arising from Merriman's refusal to honor his contractual obligations. *Id.*, ¶ 90. ARI seeks to recover the resulting expenses as "Lender Expenses" under the LSA and related loan documents. *Id.*

II. LEGAL ARGUMENT

A. Legal Standard

"A party is entitled to summary judgment when there is no 'genuine dispute as to any material fact' and the undisputed facts warrant judgment for the moving party as a matter of law." *Estate of Richards by Stephens v. City of New York*, 1:18-cv-11287, 2024 WL 3607220 at *3 (S.D.N.Y. July 31, 2024) (quoting Fed. R. Civ. P. 56(a)); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). A "material fact" is one that "might affect the outcome of the suit under the governing [substantive] law," and a dispute as to that fact is "genuine" if "the evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. The moving party bears the initial burden of establishing the absence of any genuine dispute of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Once the moving party has done so, to survive summary judgment the nonmoving party "must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 250.

Measured by this familiar standard, Plaintiffs are entitled to summary judgment on Counts IX (Declaratory Judgment – Governance Authority), and X (Declaratory Judgment – Intellectual Property) of their Second Amended Complaint.

B. Plaintiffs Are Entitled to Summary Judgment on Count IX

Count IX of the Second Amended Complaint seeks a declaration that (1) ARI validly exercised rights that were triggered by Events of Default under the Loan Agreements; (2) that ARI validly exercised its Warrants and thereby acquired approximately 84% of the outstanding equity of LOE; and (3) that Merriman has no authority to act on behalf of LOE. *See* Second Amended Complaint, ¶¶ 302-310.

"Under the Declaratory Judgment Act, courts may issue a declaratory judgment only '[i]n a case of actual controversy.'" *In re Pierson Lakes Homeowners Ass'n, Inc.*, 636 B.R. 574, 579 (Bankr. S.D.N.Y. 2022) (quoting 28 U.S.C. § 2201(a)). "The question to be asked 'is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *Id.* at 579-80 (quoting *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007)). "Courts may properly address declaratory actions through a motion for summary judgment, which are subject to the same Rule 56(a) standard as any other motion for summary judgment." *Bank Leumi USA v. Ehrlich*, 98 F. Supp. 3d 637, 657 (S.D.N.Y. 2015); *see also Peter Mayer Publishers Inc. v. Shilovskaya*, 11 F. Supp. 3d 421, 424 (S.D.N.Y. 2014) ("'A court may properly address the merits of a declaratory judgment action through a motion for summary judgment.'") (quoting *Middlesex Ins. Co. v. Mara*, 699 F. Supp. 2d 439, 444 (D. Conn. 2010)).

Here, there is an actual and substantial controversy between Plaintiffs and Merriman on the issues raised by Count IX. Merriman's filings in the Nevada Action make clear that he contends that ARI did not validly exercise its rights upon the Events of Default, that ARI did not validly exercise its Warrants, and that Merriman maintains authority to act on behalf of LOE. As set forth in Count IX, Plaintiffs contend the opposite. These issues are of sufficient immediacy because ARI

is unable, as a practical matter, to operate LOE's business while uncertainty surrounds the fundamental issues of ownership and control over LOE.

i. It Is Undisputed That Events of Default Occurred, and the Plain Language of the Loan Documents Permitted ARI to Exercise the Proxy Rights upon an Event of Default

It is undisputed that the LSA and the other loan documents required, among other things, repayment in the form of monthly payments by the Loan Parties, or Merriman and/or the Trust as Guarantors. It is also undisputed that the Loan Parties failed to make the Three Hundred Thousand Dollars ($300,000) principal payment due in September 2025, and also failed to make any of the required monthly interest payments since October 2025, which constitute Events of Default under the LSA and the other loan documents. *See* LSA, § 8.1. Under their respective Guaranty Agreements, Merriman and the Trust granted ARI proxy rights, including the right to vote their pledged equity interests in LOE, upon the occurrence of any Event of Default. Merriman Guaranty 1, § 2.1; Trust Guaranty, § 2.1.

On January 2, 2026, ARI provided formal notice of the occurrence of Events of Default – including, but not limited to, those based on the failed repayments discussed above – and acceleration of the obligations. *See* Notice of Default. After providing this notice of default, ARI, acting through its proxy rights over both the Trust and Merriman, removed Merriman from his position as a Director of LOE. Ellison Declaration, ¶ 50.

In sum, it is undisputed that Events of Default occurred, and the parties' agreements unambiguously give ARI the right to invoke its proxy rights upon an Event of Default. Therefore, Plaintiffs are entitled to a declaration that ARI's exercise of its proxy rights was valid. *See DAOL Rexmark Union Station LLC v. Union Station Sole Member, LLC*, 772 F. Supp. 3d 373, 402-05 (S.D.N.Y. 2025) (granting declaratory judgment recognizing mezzanine lender's proper execution

of rights when Event of Default had occurred, lender acted as attorney-in-fact of debtor, and debtor refused to recognize legal effect of lender's actions).

ii. It Is Undisputed That ARI Exercised Its Warrants, Validly Resulting in ARI's Acquisition of Approximately 84% of the Outstanding Equity of Lights Out

"Duly executed stock warrants are contracts entitling the holder to purchase a specified number of shares of stock for a specific price during a designated time period," and they are "enforceable according to their terms." *Reiss v. Fin. Performance Corp.*, 97 N.Y.2d 195, 198 (2001). New York courts accordingly grant summary judgment declaring that warrants are valid and binding obligations the issuer must honor when, as here, the holder exercised them in accordance with their terms. *Accord Crede CG III, Ltd. v. Tanzanian Gold Corp.*, 180 A.D.3d 409, 410 (1st Dep't 2020); *Brio Capital, L.P. v. Sanswire Corp.*, 34 Misc. 3d 1205(A), 946 N.Y.S.2d 65 (Sup. Ct. N.Y. Cnty. 2011). *See also Beninati v. F.D.I.C.*, 55 F. Supp. 2d 141, 148 (E.D.N.Y. 1999) (finding that lender properly sold stock pledged to it as collateral upon the occurrence of an event of default).

That is what occurred here. As detailed above, LOE issued ARI the August 2025 Amended and Restated Warrant to Purchase Preferred Stock, and ARI exercised those Warrants in accordance with their terms by delivering Notices of Exercise on January 3 and January 5, 2026, resulting in its ownership of 53,051,836 of LOE's 63,296,691 shares. Ellison Declaration ¶ 53. Plaintiffs are therefore entitled to a declaration that ARI's exercise of certain of its Warrants on January 3 and January 5, 2026 validly resulted in ARI's acquisition of approximately 84% of the outstanding equity of LOE.

iii. It Is Undisputed That Merriman No Longer Has Authority to Act on Behalf of Lights Out

While New York law controls this litigation, Delaware law controls the internal governance of LOE as it is a Delaware registered company. Per Delaware Title 8 Section 141(k), "[a]ny director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors…"

Delaware law expressly permits stockholders to effect such a removal by written consent in lieu of a meeting, *see* 8 Del. C. § 228(a); *Kurz v. Holbrook*, 989 A.2d 140, 159–60 (Del. Ch. 2010), *aff'd in part, rev'd in part on other grounds sub nom. Crown EMAK Partners, LLC v. Kurz*, 992 A.2d 377 (Del. 2010), and a proxy holder may execute that consent on the stockholder's behalf. *Kurz*, 989 A.2d at 165 (citing 8 Del. C. § 212(b)).

As noted above, on January 2, 2026, ARI via its Proxy Rights over both Merriman and the Trust (who together formed the majority shareholders of LOE at such time), executed an Action by Written Consent of the Stockholders of Lights Out Enterprises, Inc., removing Merriman from his position as Director of LOE. Action by Written Consent of the Stockholders of Lights Out Enterprises, Inc. (Jan. 2, 2026). Accordingly, as of January 2, 2026, Merriman was no longer a Director of LOE. *Id.*

Based on these undisputed facts, Plaintiffs are entitled to a declaration that Merriman has no authority to act on behalf of LOE in any capacity. *See Ravindran v. GLAS Trust Company LLC* 327 A.3d 1061 (Del. 2024) (affirming determination under 8 Del. C. § 225 that, after event of default, lenders' agent validly took control of pledged shares and acted by written consent to remove borrower's sole director and install its designee).

C. Plaintiffs Are Entitled to Summary Judgment on Count X

Count X seeks a declaration that the Intellectual Property, including all trademarks, trade names, service marks, and associated goodwill, is subject to ARI's valid, perfected, first-priority security interest whether record title is held by LOHWY or LOH California, and that ARI, as senior secured party, may exercise its remedies against it, including by foreclosure or other disposition. *See* Second Amended Complaint ¶¶ 311–317.

The discrepancy in recorded ownership of the Intellectual Property has created a concrete and immediate controversy concerning the ownership and enforceability of the Intellectual Property rights upon which LOE's ongoing business depends. ARI has engaged in a course of conduct evidencing its definite intention and apparent ability to commence or continue commercial use of those assets. *See Starter Corp. v. Converse, Inc.*, 84 F.3d 592, 595–96 (2d Cir. 1996) (finding that "imminent intention and ability test" applied to requests for declaratory relief regarding trademarks).

Accordingly, ARI seeks a declaratory judgment that the Intellectual Property was validly pledged to it under the LSA, the other loan documents, Perfection Certificates, and IPSA, together with such reformation and other equitable relief as may be necessary to give effect to the parties' intended collateral arrangement. This result is required for multiple independent reasons, as set forth below.

i. The Court Should Enter a Declaratory Judgment That, as the Parties' Loan Documents Provided, the Intellectual Property Is Pledged to ARI

New York law provides that, in cases involving unilateral mistake, reformation may be available where the parties reached an agreement but, unknown to one party and known to the other, who misled the first, the resulting writing failed to express their agreement. *Chimart Assocs. v. Paul*, 66 N.Y.2d 570, 573 (1986).

To obtain reformation based on fraud or mistake, the party seeking relief must establish by clear and convincing evidence both the grounds for reformation and the agreement the parties actually reached. *George Backer Mgmt. Corp. v. Acme Quilting Co.*, 46 N.Y.2d 211, 219 (1978); *Amend v. Hurley*, 293 N.Y. 587, 595 (1944). Extrinsic evidence may be considered to establish that the written instrument does not accurately reflect that agreement. *Chimart*, 66 N.Y.2d at 573. Although "[a] bare claim of unilateral mistake" will not support reformation, a unilateral mistake induced by the other party's fraud will. *Barclay Arms, Inc. v. Barclay Arms Assocs.*, 74 N.Y.2d 644, 646–47 (1989). And New York courts grant summary judgment reforming loan documents to correct the misidentification of a party where the surrounding loan documents establish the parties' actual agreement and the obligor accepted the loan proceeds. *See VNB N.Y. Corp. v. Chatham Partners, LLC*, 125 A.D.3d 517, 517–18 (1st Dep't 2015) (reforming guaranty to correct name of borrower, and holding that guarantors ratified it by accepting the benefit of loan proceeds).

This is not a "bare claim of unilateral mistake." *Barclay Arms*, 74 N.Y.2d at 646. Merriman is the sole member of LOH California. Ellison Declaration, ¶ 70. He signed the Perfection Certificate and the IPSA on behalf of LOHWY, represented that LOHWY owned the Intellectual Property, and he alone knew that record title stood in the name of LOH California. *See* IPSA. New York courts reform an instrument that misidentifies the party intended to be bound where the other

side knew of the error and continued to accept the benefits of the arrangement, *see Hilgreen v. Pollard Excavating, Inc.*, 210 A.D.3d 1344, 1347–48 (3d Dep't 2022), and grant reformation where a party seeks to exploit a writing that plainly does not reflect the parties' bargain, *see Food Serv. Mktg., Inc. v. Nat'l Foods, Inc.*, 225 A.D.2d 477, 477–78 (1st Dep't 1996). The equities point the same way: Merriman controlled both entities, received the benefit of more than $2,000,000 in capital, and cannot now convert his own nondisclosure into a defense against the very security interest he represented had been granted.

In addition, the evidence of the parties' intended collateral arrangement is substantial and undisputed. The LSA and the other loan documents expressly contemplated security in the Intellectual Property; the IPSA and Perfection Certificates documented that arrangement; and Merriman himself admitted that the financing was secured by LOE's and the other Loan Parties' assets, including without limitation, its Intellectual Property. *See e.g.* LSA; IPSA; LOHWY Perfection Certificate; Nevada Action, Complaint, ¶¶ 17-20.

ARI's primary position is that these agreements should be enforced according to their intended terms. Alternatively, if the Court concludes that the identification of LOHWY rather than LOH California prevents enforcement of the Intellectual Property collateral arrangements as written, Plaintiffs seek appropriate equitable relief to address the discrepancy resulting from Merriman's misrepresentations. Such relief would give effect to the collateral arrangement the parties actually negotiated, rather than create a new agreement.

Accordingly, Plaintiffs request a declaratory judgment establishing their rights in the Intellectual Property under the LSA and other loan documents and, to the extent necessary, appropriate equitable relief giving effect to the parties' intended collateral arrangement.

ii. Merriman Has Admitted That the Intellectual Property Was Pledged as Collateral

Merriman has already admitted, in a verified pleading, the fact on which Count X turns. In his Verified Complaint in the Nevada Action, Merriman alleged that "the loan was secured by the Company's assets including intellectual property." Those factual allegations are admissions that may be received as evidence in this action, *see MF Global Holdings Ltd. v. PricewaterhouseCoopers LLP*, 199 F. Supp. 3d 818, 838 n.12 (S.D.N.Y. 2016) (judicial admissions in one case may be treated as evidentiary admissions in another); *Hausler v. JP Morgan Chase Bank, N.A.*, 127 F. Supp. 3d 17, 37 (S.D.N.Y. 2015) (court may consider judicial admission as evidence in another case), and they confirm there is no genuine dispute that the Intellectual Property was pledged to secure ARI's loans. Nevada Action, Complaint, ¶¶ 17-20.

iii. Merriman and Those in Privity with Him Are Judicially Estopped from Claiming the Intellectual Property Was Not Pledged as Collateral

Still another independent reason to grant summary judgment for Plaintiffs on Count X is the doctrine of judicial estoppel. "The doctrine of judicial estoppel prevents a party from asserting a factual position in one legal proceeding that is contrary to a position that it successfully advanced in another proceeding." *Rodal v. Anesthesia Group of Onondaga, P.C.*, 369 F.3d 113, 118 (2d Cir. 2004). Even within the context of a single case, "[j]udicial estoppel 'prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.'" *Sewell v. 1199 Nat. Ben. Fund for Health and Human Services*, 187 F. App'x 36, 40 (2d Cir. 2006) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001)). "[I]n evaluating whether to apply the doctrine of judicial estoppel, courts generally look for the existence of three factors: (1) that a party's new position is 'clearly inconsistent' with its earlier position, (2) that the party seeking to assert this new position previously persuaded a court to accept its earlier

position, and (3) that the party 'would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.'" *Intellivision v. Microsoft Corp.*, 484 F. App'x 616, 619 (2d Cir. 2012) (quoting *New Hampshire*, 532 U.S. at 750-51).

In *Intellivision*, the Second Circuit found judicial estoppel applied where: (1) a corporate plaintiff represented itself as the real party in interest and counsel made "representations about [the corporate plaintiff]'s ownership and assignment of the patent applications"; (2) in opposition to a motion for summary judgment, the corporate entity took the contrary position that the real parties in interest were actually its individual members; and (3) the court previously had relied on the corporate plaintiff's original position in denying defendant's motion to dismiss. *See* 484 F. App'x 616, at 618-19. In support of its decision, the Second Circuit explained that "[t]he district court adopted plaintiffs' representations, and denied [defendant]'s motion to dismiss…" *Id.* at 620.

The case here is strikingly similar. In the Nevada Action, Merriman alleged that "Lights Out Holdings owns the Intellectual property and trademarks to the 'Lights Out' brand," and that "the loan was secured by the Company's assets including intellectual property." Nevada Action, Complaint, ¶¶ 12, 18. Merriman then built his case on that security, alleging that ARI's remedy was a "commercially reasonable disposition of collateral" and that the proxy provisions were merely "security devices intended to protect collateral value." *Id.*, ¶¶ 22, 26. The Nevada court accepted Merriman's position, denying ARI's motion to dismiss. *See* Nevada Action, Order (April 13, 2026).

Thus, as in *Intellivision*, any attempt by Merriman, or those in privity with him, to reverse course in the instant action, and claim for the first time that the Intellectual Property was not pledged to ARI as collateral for the Loan Agreements is subject to judicial estoppel. Merriman should not be permitted to use the distinction between two identically named entities under his

own control, a distinction he alone knew and never disclosed, to defeat the security interest he represented had been granted, after relying on that same security to defeat ARI's positions in Nevada. That is precisely the "unfair advantage" the doctrine exists to prevent. *Intellivision*, 484 F. App'x at 619. The same is true of LOH California, of which Merriman is the sole member. Ellison Declaration, ¶ 70; *See Platt as co-trustees of Platt Family Artwork Trust v. Michaan*, 695 F. Supp. 3d 420, 445-46 (S.D.N.Y. 2023) (applying judicial estoppel to a party based on a position taken in a prior proceeding by a privy who was not a party to the instant action, and explaining that the doctrine "applies to parties or their privies in a prior proceeding.").

Accordingly, Merriman and those in privity with him – which includes LOH California – should be judicially estopped from claiming the Intellectual Property was not pledged to ARI as collateral.

III. CONCLUSION

WHEREFORE, Plaintiffs respectfully request this Honorable Court enter grant their instant Motion and enter an Order as set forth in the accompanying Notice of Motion for Partial Summary Judgment.

Dated: November 19, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2026, I caused a copy of the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which then sent a notice of filing (NEF) to the parties of record.

/s/ Daniel Filor

CERTIFICATE OF WORD COUNT

Undersigned counsel hereby certifies that the word count for this Motion, exclusive of the Table of Authority, Table of Contents, and Caption, is 8,625.

/s/ Daniel Filor

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A.R.I. AGENT, LLC, a Delaware limited liability company, LIGHTS OUT ENTERPRISES INC., a Delaware corporation, and LIGHTS OUT HOLDINGS LLC, a Wyoming limited liability company,	:	
Plaintiffs,	:	Civil Action No.: 1:26-cv-03778-JAV
-against-	:	
SHAWNE MERRIMAN, individually, and as Trustee of Trust M250124, and LIGHTS OUT HOLDINGS LLC, a California limited liability company,	:	
Defendants,	:	

SECOND AMENDED COMPLAINT

Plaintiffs A.R.I. Agent, LLC, a Delaware limited liability company ("A.R.I."), Lights Out Enterprises Inc., a Delaware corporation ("Lights Out Enterprises" or the "Company"), and Lights Out Holdings LLC, a Wyoming limited liability company ("Lights Out Holdings (WY)") (collectively, "Plaintiffs"), by and through their undersigned attorneys, bring this action against Shawne Merriman ("Merriman"), individually, and as Trustee of Trust M250124 (the "Trust"), and Lights Out Holdings LLC, a California limited liability company ("Lights Out Holdings (CA)") (collectively, "Defendants"), and allege as follows:

INTRODUCTION

1. This case begins with a simple fact: Ex-NFL player Shawne Merriman took millions of dollars in financing from A.R.I. and has not repaid a single cent. What follows is not a routine default or simple contract dispute, but a deliberate, coordinated, multi-step scheme by

Merriman to commit fraud, coercion, misrepresentation, and obstruction – all designed to avoid repayment and accountability. Merriman's conduct includes, among other things:

- **Failure to Repay:** Merriman took more than $2 million in financing from A.R.I., personally guaranteed the accompanying payment and reporting obligations, and now owes A.R.I. more than $2.5 million in total amounts due as of this filing.
- **Total Payment Default:** Neither Merriman nor the Trust has made a single payment of any kind – principal, interest, or fees – for more than 12 months.
- **Financial Collapse Through Mismanagement:** Merriman ran the Company into the ground, resulting in sustained operating losses, collapsing revenue, near-zero liquidity, and an inability to meet basic obligations.
- **Approximately $500,000 in Unpaid Vendor Obligations:** Under Merriman's management, the Company accumulated approximately $500,000 in aged accounts payable to critical vendors and maxed out its corporate credit cards. A.R.I. did not discover the extent of those unpaid obligations until after assuming control of the Company.
- **Concealment of Material Liabilities:** Merriman hid pre-existing debts, including a personal obligation secured by Company assets, at the time he obtained financing.
- **Undisclosed Personal Financial Distress:** Merriman failed to disclose that a $4 million judgment had been entered against him in connection with a wrongful death lawsuit, despite providing personal guaranties to A.R.I. and representing his ability to satisfy those obligations.
- **Misappropriation of Loan Proceeds:** Merriman used A.R.I.'s loan proceeds to pay his personal debt in direct violation of the parties' loan agreement.

- **Multiple Pledges of the Same Collateral:** Merriman pledged the same Company assets to multiple creditors without disclosure, impairing A.R.I.'s secured position.
- **Unauthorized Additional Debt:** Merriman incurred new secured debt in violation of the parties' loan agreement.
- **Self-Dealing Transactions:** Merriman caused Company value and commercial opportunities to be used for his personal benefit rather than for the Company.
- **Threats of Bankruptcy:** Merriman repeatedly warned that bankruptcy was "inevitable," increasing pressure on A.R.I. while refusing to repay the debt.
- **Attempts to Extract Additional Capital:** Merriman sought additional funding even while acknowledging that proceeds would be used to pay Merriman's personal obligations.
- **Coercion and Threats:** Merriman issued threats directed at A.R.I. and its principals in an effort to intimidate and disrupt their lawful asset recovery efforts.
- **Improper Litigation in the Wrong Forum:** Merriman filed suit in Nevada in direct violation of a mandatory, contractual New York forum-selection clause.
- **Defamation and Public Misrepresentation:** Merriman falsely represented that he remained in control of the Company and misled vendors, partners, and the public.
- **Obstruction of Lawful Enforcement:** Merriman used litigation, misinformation, and pressure tactics to block A.R.I. from exercising its contractual rights.
- **Concealed and Unpaid Tax Liabilities:** Under Merriman's management, the Company failed to satisfy material tax obligations, allowing a substantial past-due

balance to accumulate. Merriman never disclosed these unpaid obligations to A.R.I., and they only came to light after A.R.I. assumed control of the Company.

These are not isolated acts by Merriman. They form a pattern of misconduct designed to extract capital, conceal risk, and avoid repayment. The facts set forth below show how Merriman obtained financing through misrepresentation, violated the agreements governing that financing, and then attempted to evade repayment by obstructing A.R.I.'s contractual rights at every stage.

Merriman's conduct has caused substantial damages to A.R.I. and Lights Out Enterprises, including loss of collateral value, destruction of enterprise value, and significant out-of-pocket losses.

A. The Loan Agreement and Warrants.

2. In May 2024, A.R.I., through Chief Investment Officer Zack Ellison ("Ellison"), acted as administrative and collateral agent for certain lenders (the "Lenders") that loaned nearly $1 million (the "Loan") to Lights Out XF, Inc. ("Lights Out XF") – a company founded by Merriman in the mixed martial arts and entertainment space – pursuant to a Loan and Security Agreement and related documents (the "Original Loan Agreement")[1]. The Original Loan Agreement, the Joinder, the Guaranties, the Warrants, and the other agreements, certificates, and instruments delivered in connection therewith are referred to herein as the "Loan Documents." Lights Out XF was the original borrower under the Original Loan Agreement, which imposed various payment and reporting obligations (the "Obligations"):

- **Payment Obligations.** Repayment of all principal, accrued interest, fees, expenses, and other amounts due;

[1] The initial Loan grew to $2 million in principal across eight fundings and five amendments, as explained below.

- **Reporting Covenants.** Delivery of monthly, quarterly, and annual financial statements, compliance certificates, and other required financial and operational information;
- **Representations and Warranties.** Representations that Lights Out XF's financial statements fairly present their financial condition and do not omit any material liabilities;
- **Indebtedness Covenant.** Restriction on incurring indebtedness other than permitted indebtedness under the Original Loan Agreement;
- **Collateral.** Grant of a continuing, first-priority security interest in substantially all assets of Lights Out XF, including inventory, equipment, accounts, equity interests, and proceeds thereof (collectively, the "Collateral");
- **Governing Law.** The Original Loan Agreement is governed by New York law and contains a consent-to-jurisdiction provision whereby the parties submitted to the exclusive jurisdiction of the State and Federal courts in New York County, New York.

3. Failure to abide by any of the Obligations constituted, or could constitute, an Event of Default under the Original Loan Agreement.

4. Additionally, on May 13, 2024, Lights Out XF issued A.R.I., for the benefit of the lenders, a warrant to purchase common stock in Lights Out XF in connection with the Original Loan Agreement of that same date. Equity participation in the form of warrants was part of the negotiated consideration for A.R.I.'s extension of early-stage credit.

B. Merriman's Undisclosed Obligations and A.R.I.'s Tightening of Controls.

5. In the fourth quarter of 2024, A.R.I. identified material deficiencies in Merriman's financial controls and use of the Loan proceeds.

6. Specifically, Lights Out XF was in default through non-compliance with several reporting Obligations, including the delivery of financial statements, compliance certificates, and related financial reporting.

7. Before A.R.I. made its first Loan, Merriman had entered into a $190,000 promissory note with Shamir Mamdani (the "Mamdani Note"), a personal debt that predated A.R.I.'s financing and purported to grant Mamdani rights in Company assets and revenues. Merriman did not disclose the Mamdani Note during A.R.I.'s pre-closing diligence or before A.R.I. extended the Loan, despite A.R.I.'s inquiries concerning existing indebtedness, liens, encumbrances, and the ownership and availability of the Collateral.

8. The Mamdani Note was therefore not a liability that arose after A.R.I. made its Loan. It existed beforehand. Merriman nevertheless represented that the Collateral was available to secure A.R.I.'s Loan on a first-priority basis, accepted A.R.I.'s financing without disclosing the competing rights he had already purported to grant Mamdani, and caused Company funds to be used to service the undisclosed obligation. This was not an isolated reporting failure. The concealed Mamdani Note directly contradicted Merriman's representations concerning existing indebtedness, the absence of unpermitted liens and encumbrances, the availability of the Collateral to secure A.R.I.'s Loan, and the completeness and accuracy of the information provided to A.R.I.

9. To address the Company's reporting deficiencies and inadequate financial controls without immediately resorting to formal remedies, A.R.I. recommended the termination of Lights Out XF's chief financial officer ("CFO") and assisted Lights Out in engaging an independent financial services firm, Graphite Financial ("Graphite").

10. Graphite Financial provided outsourced accounting services, including: (i) a fractional CFO service for Lights Out XF, (ii) comprehensive review of Lights Out XF's books and records, (iii) assistance in implementing improved financial controls and reporting procedures, and (iv) management of the company's vendor payments.

C. Subsequent Amendments to the Original Loan Agreement.

11. Following an extended period of negotiations—spanning nearly three months and undertaken in response to Lights Out XF's ongoing non-compliance—the parties executed amendments to the Original Loan Agreement, with the first amendment executed on December 23, 2024. The Original Loan Agreement, as amended, is referred to herein as the "Loan Agreement."

12. Lights Out XF's repeated non-compliance and defaults, as described above, made it necessary for A.R.I. to enter into a series of amendments to the Loan Agreement. In order to avoid immediate enforcement and provide the Company with additional time and liquidity, A.R.I. agreed to provide a series of financial accommodations, waivers, and forbearance. Each such accommodation was compelled by Lights Out XF's defaults and was conditioned on: (i) Lights Out XF and the guarantors that were, from time to time, joined as Loan Parties to the Loan Agreement (as defined in the Loan Agreement) reaffirming their Obligations, (ii) acknowledging existing defaults, and (iii) granting A.R.I. additional contractual protections, as described below.

13. Under the Loan Agreement, all provisions of the Original Loan Agreement remained in full force and effect and Lights Out XF's Obligations continued to be valid and enforceable.

D. The Joinder: Expansion of Guarantors and Collateral.

14. In October 2024, Merriman asked for more money. In fact, Merriman warned Ellison in November that Lights Out XF would shut down without additional funding. Upon A.R.I.'s review of Lights Out XF's books and records, Ellison discovered a number of inconsistencies, including previously undisclosed cash movements, including recurring payments to Shamir Mamdani, whose relationship to Merriman and Lights Out XF and the purpose of the payments had not been disclosed or explained. At this time, Lights Out XF was in default under the Loan Agreement. Not wanting to incur a total loss on its investment, A.R.I. made a concerted effort to revive the Company.

15. Ellison therefore introduced Merriman to representatives of Graphite Financial on November 13, 2024, as set forth above.

16. Thus, to provide A.R.I. with further assurances that the Obligations would be honored, Merriman executed Joinder No. 1 to the Loan and Security Agreement (the "Joinder") on December 31, 2024. Acting on behalf of multiple affiliated entities, Merriman added the following as guarantors to the Loan Agreement: Lights Out Holdings (WY), Lights Out Pro LLC ("Lights Out Pro"), Lights Out Sports LLC ("Lights Out Sports"), and M250124 LLC ("M250124") (together with Lights Out XF, the "Loan Parties"). M250124 was converted to Lights Out Enterprises under Delaware law, on March 4, 2025.

17. Through the Joinder, each of these entities became a Loan Party and agreed to be bound by the following provisions:

- **Guaranty Obligation.** Each newly joined Loan Party agreed to become an additional guarantor under the Loan Agreement, jointly and severally liable for all Obligations, with the same force and effect as if originally named therein;

- **Assumption of Loan Obligations.** Each newly joined Loan Party expressly assumed and agreed to be bound by all terms of the Loan Agreement, including applicable representations, warranties, and covenants;
- **Collateral Grant.** Each newly joined Loan Party granted A.R.I. a continuing security interest in its own collateral, thereby expanding A.R.I.'s Collateral package;
- **Continuation of Lien.** A.R.I.'s lien on the Collateral remains in effect until all payment Obligations are satisfied in full, notwithstanding termination of the Joinder;
- **Representations and Warranties.** Each newly joined Loan Party reaffirmed that the representations and warranties in the Loan Agreement were true and correct in all material respects as of the date of execution;
- **Governing Law.** The Joinder is governed by New York law and incorporates the Loan Agreement's mandatory forum-selection provisions, pursuant to which each Loan Party agreed to submit to the exclusive jurisdiction of the State and Federal courts located in New York County, New York.

E. Personal Guaranties: Providing Absolute Payment Obligations and Control Rights.

18. On December 31, 2024, A.R.I. obtained personal guaranties from Merriman (the "Merriman Guaranty") and the Trust (the "Trust Guaranty," together with the Merriman Guaranty, the "Guaranties"). The Guaranties contained the following provisions, among others:

- **Guaranty of Obligations.** Merriman and the Trust absolutely, unconditionally, and irrevocably guaranteed the full and punctual payment of all payment

Obligations, and Merriman became ***personally liable for all amounts due*** under the Loan Agreement;

- **Immediate Enforceability.** The Guaranties are guaranties of payment, not collection, rendering Merriman and the Trust immediately liable upon default without any requirement that A.R.I. first pursue remedies against the Borrower or any collateral;
- **Collateral and Subordination.** Merriman and the Trust pledged a security interest in any entity, subsidiary, or affiliate of Lights Out Enterprises, thereby expanding the previously defined Collateral package to include, among other assets, valuable intellectual property, including ownership of the valuable "Lights Out" mark (the "Intellectual Property");
- **Restrictive Covenants.** Merriman and the Trust agreed to binding restrictive covenants, including non-disparagement, non-competition, non-solicitation, and confidentiality obligations (the "Restrictive Covenants");
- **Proxy Rights.** Upon an Event of Default under the Loan Agreement, Joinder, or the Guaranties, Merriman and the Trust granted A.R.I. an irrevocable proxy and a power of attorney over the pledged equity interests (the "Proxy Rights"), including the right to vote such interests and exercise all associated governance rights, effectively enabling A.R.I. to immediately assume governance control over the Loan Parties and their assets upon default;
- **Governing Law.** The Guaranties are governed by New York law, as they incorporate the governing law provision of the Loan Agreement.

F. The Intellectual Property.

19. In connection with the Guaranties and the broader December 2024 Collateral package, Merriman represented that the Intellectual Property was owned by Lights Out Holdings (WY). To document and perfect A.R.I.'s security interest in that Intellectual Property, on December 31, 2024, Lights Out Holdings (WY), acting through Merriman as its authorized signatory, executed:

(i) A Perfection Certificate and Legal Diligence Request (the "Perfection Certificate"), representing and warranting that Lights Out Holdings (WY) owned the Intellectual Property; and

(ii) An Intellectual Property Security Agreement (the "IP Security Agreement"), granting A.R.I. all of Lights Out Holdings (WY)'s right, title, and interest in the Intellectual Property.

20. The IP Security Agreement was recorded with, and confirmed by, the United States Patent and Trademark Office ("USPTO") on January 13, 2025.

21. In May 2025, in reliance on Merriman's assurances and his pledge of these high-value security interests, A.R.I. invested an additional $250,000 in Lights Out Enterprises, initially structured as an equity investment and subsequently converted into debt and incorporated into the payment Obligations under the Loan Agreement. In connection with that investment, Ellison joined the Board of Directors of Lights Out Enterprises (the "Board").

G. The Amended Merriman Guaranty.

22. On June 29, 2025, Merriman executed an amendment to the Merriman Guaranty, which amended and restated the original Merriman Guaranty.

23. The amended Merriman Guaranty was required in connection with subsequent amendments to the Loan Agreement, additional advances of capital by A.R.I., and A.R.I.'s requirement that Merriman reaffirm all of his personal credit support for the payment Obligations.

24. The amended Merriman Guaranty did not extinguish, release, or novate any of Merriman's Obligations. To the contrary, it reaffirmed and continued those Obligations in full force and effect.

25. Most critically, Merriman expressly acknowledged in the amended Merriman Guaranty the scope of his personal liability, including approximately $1.8 million in principal, plus all accrued interest, fees, and other amounts due under the Loan Agreement.

H. The Warrant.

26. On August 27, 2025, Merriman executed an additional warrant on behalf of Lights Out Enterprises (the "Warrant").

27. The Warrant granted A.R.I. an independent right to acquire equity directly from Lights Out Enterprises, with its economics tied to the ratio of the total outstanding payment Obligations under the Loan Agreement to the Company's enterprise value. Importantly, A.R.I.'s right to exercise the Warrant was not contingent upon the occurrence of any Event of Default and could be exercised in its discretion. As structured, the Warrant increased A.R.I.'s equity position as leverage rose, providing enhanced downside protection while preserving meaningful upside.

28. In connection with the Warrant, Merriman expressly acknowledged that the outstanding payment Obligations under the Loan Agreement exceeded $2.1 million as of August 27, 2025.

I. Payment Defaults Under the Loan Agreement.

29. On September 25, 2025, Lights Out XF failed to repay $300,000 in matured principal when due.

30. Thereafter, Lights Out XF failed to make required monthly interest payments, constituting a continuing Event of Default under the Loan Agreement.

J. Unauthorized Indebtedness and Additional Breaches.

31. In or around early November 2025, and without disclosure to A.R.I., Merriman caused the Loan Parties to incur additional secured indebtedness in favor of Nader Sobh and Trident Marketing & Development Consulting, LLC ("Trident") (the "Trident Loan").

32. The Trident Loan directly violated the Loan Agreement's prohibitions on unauthorized indebtedness and liens on Collateral and further impaired A.R.I.'s bargained-for first-priority security position.

K. The Forbearance Agreement and Acknowledgment of Defaults.

33. In the weeks that followed, Lights Out Enterprises' distress escalated rapidly. On November 25, 2025, after extensive negotiations that started immediately after the September 25, 2025 payment default, the Loan Parties entered into a forbearance agreement (the "Forbearance Agreement").

34. In the Forbearance Agreement, Merriman expressly acknowledged that multiple Events of Default under the Loan Agreement had occurred and were continuing, including payment defaults, covenant breaches, reporting failures, and the inability to pay debts as they became due.

35. The Loan Parties thereafter promptly breached the Forbearance Agreement by failing to: (i) make required payments, and (ii) comply with the forbearance period covenants.

L. Concealed Personal Liability and Continued Capital Requests.

36. On December 5, 2025, and unbeknownst to A.R.I., a $4 million judgment was entered against Merriman personally in connection with a wrongful death action (the "Fattorini Judgment"), which arose out of the death of Playboy model, Kimberly Fattorini, who was found to have alcohol and multiple drugs in her system (including GHB, a common date-rape drug) at the time of her death.

37. Just six days later, on December 11, 2025, Merriman requested an additional $500,000 in financing from A.R.I., explaining that approximately $240,000 of those funds was needed to pay Mamdani – thereby confirming, in his own words, that A.R.I.'s capital was being used to service the very debt he had concealed at the inception of the Loan Agreement.

38. On December 16, 2025, Merriman rejected the financing package and told Ellison that bankruptcy was "inevitable."

M. A.R.I.'s Execution of Governance Rights.

39. In early January 2026, faced with ongoing non-payment, repeated Events of Default, and explicit threats of bankruptcy, A.R.I. exercised the contractual remedies expressly provided in the Loan Agreement, including acceleration of the payment Obligations, enforcement of the Proxy Rights to effectuate governance changes, and exercise of the Warrant to acquire a controlling equity position in Lights Out Enterprises.

40. Then, only *after* assuming control of Lights Out Enterprises did A.R.I. begin to uncover the full extent of Merriman's misconduct and concealment, including severe undisclosed financial distress, as described more fully below.

N. Merriman's Threatening and Coercive Communications Following Loss of Control.

41. Upon losing control of the Company, Merriman – both directly and through counsel at law firm Mintz Levin, including Andrew Skale – delivered a series of escalating and threatening communications to Ellison and A.R.I.'s counsel.

42. The communications included voicemail messages in which Merriman threatened litigation, referred to a "nuclear" situation eight times, and warned of consequences to Ellison's "future," "partners," "board," and "investors."

O. The Nevada Action and Merriman's Breaches of the Restrictive Covenants.

43. Ultimately, Merriman – who had already driven Lights Out Enterprises into collapse and concealed its true financial condition – turned on the very lender that had provided the only outside capital the business had ever received.

44. Rather than cooperate in preserving Lights Out Enterprises' value, in late January 2026, Merriman sought to block it by improperly filing a lawsuit in Nevada state court in direct violation of the Loan Agreement's mandatory New York forum-selection clause (the "Nevada Action"), attempting to challenge the very contractual rights and remedies to which he had expressly agreed.

45. At or around the same time, Merriman issued unauthorized public statements in Lights Out Enterprises' name, falsely attributing the litigation to "Lights Out Enterprises" rather than to himself individually (despite the fact that Merriman is the only plaintiff in the Nevada Action), in an effort to mislead vendors, sponsors, and business partners and to interfere with A.R.I.'s stabilization efforts – all in violation of the Restrictive Covenants and particularly the non-disparagement provision.

46. In particular, Merriman has publicly misrepresented – on Fox News Digital, social media, and through press releases – that he still controls, or should control, Lights Out Enterprises.

47. Moreover, Merriman continues to associate himself with the "Lights Out" brand, profiting off the Intellectual Property through his public appearances, social media, and promotion of legacy apparel. In fact, as of this filing, a simple LinkedIn search reveals that Merriman continues to hold himself out as "CEO" of the "Lights Out Brand," along with a link to www.ShopLightsOut.com where apparel bearing the "Lights Out" mark is offered for sale.

P. Merriman's Mismanagement and Misconduct.

48. The severe financial distress of Lights Out Enterprises was the direct result of Merriman's inability to manage the Company. Under Merriman's control, the Loan Parties missed Loan payments, breached financial covenants, failed to deliver required financial reporting, and ultimately became unable to pay their debts as they came due. As discussed further below, Merriman's mismanagement of the Company resulted in a nearly 50% reduction in year-over-year revenue in 2025. Lights Out Enterprises also reported losses of nearly $900,000 in fiscal year 2024, which increased to reported losses of more than $1.3 million in fiscal year 2025.

49. Rather than confront his management failures or disclose them to A.R.I., Merriman engaged in a pattern of tortious and fraudulent conduct that concealed and compounded them. Despite receiving millions from A.R.I., Merriman caused Lights Out Enterprises' collapse through a course of misconduct that included: (1) diversion of Loan proceeds to unauthorized personal debts, (2) fraudulent concealment of Lights Out Enterprises' true financial condition, (3) undisclosed pledging of the same Collateral to multiple creditors, and (4) the failure to pay, and concealment of, material tax obligations of the Company, exposing the Company to penalties, interest, and enforcement action.

Q. Merriman's Personal Liability.

50. Merriman and the Trust are personally liable under the Guaranties.

51. Merriman has failed to make a single payment since September 5, 2025. Thus, as of the date of this filing, Merriman owes A.R.I. more than $2.5 million in outstanding payment Obligations.

52. Ultimately, Merriman accepted millions of dollars in financing from A.R.I., defaulted numerous times, and – as of this filing – has not made a single payment in more than eight months, even while threatening imminent bankruptcy on multiple occasions. Yet, when A.R.I. exercised the very contractual rights Merriman had expressly agreed to, he did not comply—he retaliated. Merriman filed a lawsuit in an improper forum, misled the public, and issued threats designed to intimidate A.R.I. and disrupt its efforts to stabilize operations and preserve the value of Lights Out Enterprises. In short, after taking A.R.I.'s capital and refusing to repay any of it, Merriman sought to avoid accountability by attacking the very rights he had granted.

R. This Action Is Brought to Enforce Contractual Rights in the Agreed Forum.

53. Plaintiffs bring this action in New York – the exclusive forum Merriman expressly agreed to, and the very forum he attempted to evade – to enforce their contractual and collateral rights, recover damages where applicable, and halt Merriman's ongoing misconduct.

54. A.R.I. brings this action in its capacity as administrative agent and collateral agent for the Lenders, and is the real party in interest as to each claim asserted herein. The Loan Documents were made with A.R.I., and in A.R.I.'s name, for the Lenders' benefit—the promise to pay runs to "[A.R.I.] Agent, for the ratable benefit of Lenders," the Collateral was pledged "to [A.R.I.] Agent, for itself and the ratable benefit of Lenders," the equity and other collateral pledged under the Guaranties was pledged "to [A.R.I.] Agent (for the ratable benefit of itself and the Lenders)," the Proxy Rights and the Warrants run to A.R.I.; and on default it is A.R.I. that applies

proceeds to the Obligations for the ratable benefit of Lenders. Under Section 12.18(a) of the Loan Agreement, each Lender "appoints [A.R.I.] Agent to act on behalf of Lenders as administrative agent and collateral agent under this Agreement and the other Loan Documents, and to hold and enforce any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations." Section 12.18 is "solely for the benefit of [A.R.I.] Agent and Lenders," and "no Loan Party nor any other Person shall have any rights as a third party beneficiary" of its provisions. Section 12.16 likewise confers no "benefits, rights or remedies . . . on any persons other than the express parties" to the Loan Agreement.

55. A.R.I. Senior Secured Growth Credit Fund, LP ("Credit Fund") is the sole Lender, and it claims no interest in the subject matter of this action separate from the interests A.R.I. asserts here for its ratable benefit. Credit Fund holds no Lien, Proxy Rights, or Warrant of its own, and has asserted no claim and commenced no proceeding against any Defendant on the Loan Documents. Nor could it. Under Section 12.18(n), "[a]nything in this Agreement or any other Loan Document to the contrary notwithstanding," no Lender "shall take any action to protect or enforce its rights arising out of this Agreement or any other Loan Document . . . without first obtaining the prior written consent of [A.R.I.] Agent." Complete relief can therefore be accorded among the existing parties, and Defendants face no risk of double or inconsistent obligations—every dollar A.R.I. recovers is applied to the Obligations for the Lenders' ratable benefit, and Defendants' liability is reduced dollar-for-dollar. Moreover, Credit Fund is not a party to the Guaranties or the Joinder; the agreements on which Counts I and IX through XII depend, A.R.I. executed each solely in its capacity as administrative agent and collateral agent, and no Lender was a signatory to either. Whatever interest Credit Fund holds in the subject matter of this action it holds through A.R.I. as its appointed agent, that interest is adequately represented by A.R.I. in

this action, and it cannot as a practical matter be impaired by a disposition of an action in which A.R.I. is prosecuting those very interests.

56. Credit Fund has expressly entrusted A.R.I., as administrative and collateral agent, with the administration, protection, and enforcement of the rights arising under the Loan Documents and the Liens securing the Obligations. Credit Fund therefore does not possess an interest in the subject matter of this action that is independent of the agency relationship through which A.R.I. is contractually charged with protecting and enforcing those rights. Any adjudication of the claims asserted herein will be prosecuted by the contractually designated agent responsible for protecting those interests, and Credit Fund's interests will be adequately represented by A.R.I. without requiring Credit Fund to participate separately in this action.

57. Further, A.R.I. is the party: (1) that solicited, received, and evaluated the representations, warranties, certificates, financial statements, and diligence responses described herein; (2) that conducted the underwriting, collateral, and credit analysis that preceded each extension of credit, each amendment, and each forbearance; (3) that made the decision to lend, to continue lending, and to forbear; and (4) that holds, in its own name, the liens and security interests that Merriman's conduct impaired.

58. Lights Out Enterprises brings this action in its own capacity as the Company injured by Merriman's post-removal misconduct, including his unauthorized statements in the Company's name, false assertions of continuing authority over the Company, interference with the Company's business relationships and operations, and unauthorized exploitation of Intellectual Property and goodwill associated with the Lights Out brand. Lights Out Enterprises is entitled to seek damages, declaratory relief, injunctive relief, and other equitable remedies necessary to protect the Company and its assets.

59. Lights Out Holdings (WY) brings this action in its own capacity as the entity in which the Intellectual Property securing A.R.I.'s rights under the Loan Agreement, the Joinder, the Perfection Certificate, and the IP Security Agreement properly belongs. Lights Out Holdings (WY) is aligned with A.R.I. and Lights Out Enterprises in seeking declaratory relief confirming the ownership and location of the Intellectual Property and A.R.I.'s perfected first-priority security interest in that Collateral.

THE PARTIES

60. Plaintiff A.R.I. is a Delaware limited liability company. The sole member (Ellison) is a citizen of Florida. A.R.I. is therefore a citizen of Florida.

61. Plaintiff Lights Out Enterprises is a Delaware corporation with its principal place of business in Florida. Lights Out Enterprises is therefore a citizen of Delaware and Florida.

62. Plaintiff Lights Out Holdings (WY) is a Wyoming limited liability company. Its sole member is Lights Out Enterprises, a Delaware corporation with its principal place of business in Florida. Lights Out Holdings (WY) is therefore a citizen of Delaware and Florida.

63. Defendant Merriman is an individual residing in Clark County, Nevada, and is therefore a citizen of Nevada.

64. Merriman is sued in his capacity as sole trustee of the Trust. Merriman is a citizen of Nevada, and therefore the relevant citizenship is Nevada.

65. Defendant Lights Out Holdings LLC (CA) is a California limited liability company. The sole member is Merriman. Therefore, Lights Out Holdings (CA) is a citizen of Nevada.

JURISDICTION AND VENUE

66. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiffs and Defendants and

the amount in controversy exceeds $75,000, exclusive of interest and costs. Plaintiffs are citizens of Delaware and Florida. Defendants are citizens of Nevada.

67. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and the parties' forum-selection agreements. The Original Loan Agreement provides that each Loan Party:

> "[S]ubmits to the exclusive jurisdiction of the State and Federal courts in New York County, New York." Later amendments further provide that "[a]ll judicial proceedings brought by any party hereto arising out of or relating to this [Agreement], or any obligations hereunder and thereunder, shall be brought in the courts of the State of New York located in the City of New York, Borough of Manhattan, or in the United States District Court for the Southern District of New York."

68. Merriman, the Trust, and the Loan Parties consented to personal jurisdiction in New York through the forum-selection and consent-to-jurisdiction provisions in the Loan Agreement. The Loan Agreement provides that each Loan Party "expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court," and "waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens." Merriman and the Trust also consented to personal jurisdiction through the Guaranties. Personal jurisdiction over Lights Out Holdings (CA) is proper because Plaintiffs' declaratory-judgment claim against Lights Out Holdings (CA) arises from its claimed or possible record title to the Intellectual Property that Merriman represented was owned by Lights Out Holdings (WY), pledged as collateral under New York-governed loan and collateral documents, and subject to A.R.I.'s perfected first-priority security interest.

GENERAL ALLEGATIONS

I. BACKGROUND AND THE LOAN AGREEMENT.

A. The Parties' Initial Relationship.

69. A.R.I. is a private investment firm based in Florida that provides senior secured financing to early-stage and development-stage companies. A.R.I.'s sole member (Ellison) serves as Chief Investment Officer and oversees A.R.I.'s investment activities.

70. Ellison met Defendant Merriman at an investment conference in or around 2022.

71. Thereafter, in 2023, Merriman affirmatively approached Ellison seeking financing for his then-company, Lights Out XF.

72. After conducting diligence and engaging in negotiations, A.R.I. agreed to provide senior secured financing to Lights Out XF to support its operations and growth.

73. A.R.I.'s diligence preceded the existence of any agreement between the parties. Between approximately February and May 2024, A.R.I., through Ellison, requested and received from Merriman information concerning Lights Out XF's then-existing secured and unsecured indebtedness, the encumbrance status of its assets, and the ownership of the "Lights Out" Intellectual Property.

74. Merriman did not identify the Mamdani Note. He did not identify any lien or encumbrance on the Intellectual Property. He did not identify any personal obligation of his own secured by Company assets.

75. At this time, no contract existed between A.R.I. and Merriman, between A.R.I. and Lights Out XF, or between A.R.I. and any Loan Party. Merriman's statements are not contained in, incorporated into, or the subject of any agreement between the parties. Had Merriman answered truthfully, A.R.I. would not have proceeded to negotiate or execute the Original Loan Agreement, as explained below.

B. The Original Loan Agreement.

76. On May 13, 2024, A.R.I. and Lights Out XF entered into the Original Loan Agreement. At the time of execution, Lights Out XF was the sole borrower.[2]

77. The Original Loan Agreement provided for an initial Loan commitment of $950,000. On July 15, 2024, pursuant to a written disbursement letter executed by Merriman, that commitment was upsized to $1,000,000.

78. Under the Original Loan Agreement, Lights Out XF "unconditionally promise[d] to pay [A.R.I.] . . . the outstanding principal amount of all Loans, accrued and unpaid interest, fees and charges thereon and all other amounts owing hereunder as and when due."

79. The Original Loan Agreement also imposed a series of payment and non-financial Obligations on Lights Out XF, designed to protect A.R.I.'s position as senior secured lender, including:

80. ***Payment Obligations.*** Lights Out XF agreed to make consecutive monthly payments on the principal amount and accrued interest, and to pay all fees, costs, and expenses due under the Original Loan Agreement. Upon acceleration following an Event of Default, Lights Out XF was required to pay all outstanding principal, accrued and unpaid interest, and all fees, costs, and expenses thereunder.

81. ***Reporting Covenants.*** Lights Out XF agreed to deliver monthly financial statements, monthly compliance certificates, bank account statements, and other required financial and operational information.

82. ***Representations and Warranties.*** Lights Out XF represented and warranted that its financial statements "fairly present[ed] in all material respects" its financial condition and that "there are no material liabilities (including any contingent liabilities) which are not reflected in

[2] Lights Out Enterprises and other affiliated entities had not yet joined as Loan Parties.

such financial statements." Lights Out XF further represented that it had good title to the Collateral, "free and clear of any and all Liens except Permitted Liens," and that no representation or warranty contained any untrue statement or omitted any material fact necessary to make the statements not misleading.

83. ***Indebtedness Covenant.*** Lights Out XF agreed not to incur any indebtedness other than permitted indebtedness expressly authorized under the Original Loan Agreement, and not to create, incur, allow, or suffer any unauthorized liens on its property or the Collateral.

84. ***Collateral.*** Lights Out XF granted A.R.I. a continuing security interest in substantially all of its assets, including inventory, equipment, accounts, equity interests, intellectual property, and proceeds thereof, and represented that A.R.I.'s security interest "is and shall at all times continue to be a first priority perfected security interest," subject only to permitted liens.

85. ***Lender Expenses.*** A.R.I. is entitled to "all audit fees and expenses, costs, and expenses ***(including reasonable attorneys' fees and expenses)*** of [A.R.I.] and Lenders for preparing, amending, negotiating, administering, ***defending and enforcing the [Original Loan Agreement]*** . . . or otherwise incurred with respect to a Loan Party." (Emphasis added). The Loan Parties further agreed to indemnify A.R.I. for "all losses or expenses (including Lender Expenses) in any way suffered, incurred, or paid by [A.R.I.] as a result of, following from, consequential to, or arising from transactions among [A.R.I.], Lenders and Loan Parties ***(including reasonable attorneys' fees and expenses)***." (Emphasis added).

86. ***Governing Law and Forum.*** The Original Loan Agreement is governed by New York law and contains an exclusive forum-selection provision designating the State and Federal

courts in New York County, New York as the exclusive venue for disputes arising out of or relating to the Original Loan Agreement.

87. The Original Loan Agreement defined an Event of Default to include, among other things, failure to pay any payment Obligations when due, failure to comply with specified covenants, Lights Out XF's inability to pay its debts as they became due, and the breach of any representation or warranty.

88. On the same day the Original Loan Agreement was executed, Lights Out XF issued A.R.I. a Warrant to Purchase Common Stock in Lights Out XF. Equity participation in the form of warrants was an express component of the negotiated economic consideration for A.R.I.'s extension of early-stage credit.

II. A.R.I.'S DISCOVERY OF FINANCIAL CONTROL ISSUES AND IMPLEMENTATION OF ENHANCED OVERSIGHT.

A. Merriman's Request for Additional Capital.

89. Within approximately five months of the initial May 2024 Loan, Merriman returned to A.R.I. requesting additional capital to continue Lights Out XF's operations and meet the company's financial commitments.

90. At the same time Merriman was requesting additional funding, Lights Out XF was in non-compliance with several of its reporting Obligations under the Original Loan Agreement, including the delivery of financial statements, compliance certificates, and related financial reporting.

B. Discovery of Unexplained Payments and Reporting Deficiencies.

91. As A.R.I. evaluated Merriman's request for additional capital and attempted to understand Lights Out XF's financial condition, A.R.I. discovered unexplained payments and cash

movements that had not been identified in the financial information and disclosures previously provided to A.R.I.

92. The compliance and financial materials furnished to A.R.I. during this period reflected recurring payments to third parties whose purpose and underlying obligations had not been disclosed to A.R.I. Those materials did not disclose that certain payments related to a personal promissory note Merriman had executed before A.R.I.'s Loan or that Merriman had purported to grant rights in Company assets and revenues in connection with that obligation.

93. Those previously unexplained payments raised serious concerns regarding Lights Out XF's use of Loan proceeds, its financial controls and reporting practices, and the completeness of the information Merriman had provided to A.R.I., and prompted A.R.I. to undertake additional financial diligence and to impose enhanced oversight over Lights Out XF's financial operations.

94. A.R.I. conditioned the contemplated amendment and Loan increase on receiving information about the Company and its affiliated entities. On October 14, 2024, hours after receiving a set of delinquent compliance certificates from Brian Payne ("Payne"), the then-CFO of Lights Out XF, Ellison advised Payne in writing that A.R.I. needed to know all of the Company's business entities and could not proceed without that information. Payne responded that he was not involved in the other entities and that Merriman would have to supply them. On October 24, 2024, Ellison wrote directly to Merriman and Payne that A.R.I.'s counsel required specific information about the corporate entities in order to complete the amendment and the increase in the Loan, and asked for the Company's counsel so the request could be handled directly. When the information was still outstanding on October 28, 2024, Ellison wrote again, stating that A.R.I. needed the information before the amendment could be processed, and copied A.R.I.'s

outside counsel so the attorneys could communicate directly. Merriman personally responded to that request the same day.

95. On October 15, 2024, in partial response, the Company's outside counsel furnished a completed Perfection Certificate and Legal Diligence Request for a single entity, Lights Out Sports LLC, a Wyoming limited liability company (the "October 2024 Certificate"), which Merriman executed as Manager. It disclosed one parent entity and identified no other affiliated entity. Merriman represented that the information in it was "true and correct as of the date hereof" and acknowledged that A.R.I. "and its affiliates are entitled to rely upon such information and presume it is correct in every respect." The October 2024 Certificate did not disclose the Mamdani Note or any personal obligation of Merriman purportedly secured by Company assets.

96. A.R.I. had no knowledge of the Mamdani Note at any time before October 2024, and did not learn of the Note itself in October 2024. What A.R.I. saw in October 2024 was a payee name and payments it could not explain. Merriman did not disclose the terms of the Mamdani Note until in or about March 2025, and A.R.I. did not obtain or review the executed Note, its terms, or the collateral it purported to encumber until January 2026. Except where this Complaint expressly alleges otherwise, allegations that the Mamdani Note was "undisclosed" or "concealed" refer to the period before Merriman's disclosure in or about March 2025.

97. At no point during 2024 did Merriman disclose the details of the Mamdani Note, its terms, or the rights it purported to grant in Company assets and revenues. The contemplated transaction did not close on October 30, 2024. A.R.I. continued its diligence and restructuring efforts for two further months, ultimately requiring additional Loan Parties, guaranties, collateral, and financial oversight before completing the December 2024 Restructuring.

C. Termination of the CFO and Engagement of Independent Financial Oversight.

98. In or about November 2024, Merriman and Payne furnished A.R.I. with projected financial statements that omitted material expenses A.R.I. knew the Company was incurring. When Ellison asked why those expenses had been excluded, Payne stated that the Company would not be in compliance with its financial covenants if all expenses were included. A.R.I. thereafter called for Payne's termination.

99. In response to these discoveries, and in an effort to bring Lights Out XF into compliance with the Original Loan Agreement without resorting to formal default remedies, A.R.I. suggested that Lights Out XF terminate the individual then responsible for overseeing the company's internal financial management.

100. Concurrently, on November 13, 2024, Ellison introduced Merriman to representatives of Graphite Financial to discuss potential outsourced financial services for Lights Out XF. Lights Out XF subsequently engaged Graphite as an independent outsourced financial services provider to: (i) serve as fractional CFO, (ii) review Lights Out XF's books and records, (iii) assist in implementing improved financial controls and reporting procedures, and (iv) manage Lights Out XF's vendor payments.

101. On November 20, 2024, Ellison also introduced Merriman to representatives of LegalScale LLP ("LegalScale") regarding a potential engagement to provide corporate, governance, and compliance counsel to Lights Out XF. Lights Out XF subsequently engaged LegalScale as corporate counsel. Merriman was separately represented by his own outside counsel during this period, including in connection with A.R.I.'s October 2024 diligence requests.

102. These steps – the engagement of independent financial oversight and the introduction of outside corporate counsel – were undertaken in good faith to stabilize Lights Out

XF's financial operations, improve transparency, and bring the company into compliance with its Obligations under the Original Loan Agreement.

III. THE DECEMBER 2024 RESTRUCTURING: AMENDMENTS, JOINDER, GUARANTIES, AND IP COLLATERAL.

103. Because Lights Out XF continued to require additional capital while remaining in non-compliance with several Obligations, A.R.I. required additional credit support, additional guarantors, and additional collateral as a condition to providing further financial accommodations. Thus, on December 31, 2024, the parties executed an integrated package of amendments, the Joinder, the Guaranties, and Intellectual Property security documents (collectively, the "December 2024 Restructuring").

A. The Loan Agreement Amendments.

104. Beginning on December 23, 2024, A.R.I., Lights Out XF, and the other applicable parties executed amendments to the Original Loan Agreement. Through those amendments, A.R.I. provided additional financial accommodations, waivers, or forbearances in exchange for reaffirmations, acknowledgments of existing defaults where applicable, and additional protections for A.R.I.

105. Under the Loan Agreement, all provisions of the Original Loan Agreement remained in full force and effect, and the Loan Parties' Obligations continued to be valid and enforceable.

B. The Joinder Adding Guarantors to the Loan Agreement.

106. On December 31, 2024, in order to extend the benefit of A.R.I.'s financing – and the corresponding Obligations – to Lights Out XF's affiliated entities, Merriman executed the Joinder as CEO on behalf of several additional companies as Loan Parties: Lights Out Holdings

(WY), Lights Out Pro, Lights Out Sports, and M250124. The Joinder recited that the additional Loan Parties were "required to become parties to the Loan Agreement."

107. M250124 was subsequently converted to Lights Out Enterprises under Delaware law on March 4, 2025, and Lights Out XF, Lights Out Holdings (WY), Lights Out Pro, and Lights Out Sports remained wholly-owned subsidiaries of the converted entity (Lights Out Enterprises).

108. Through the Joinder, the additional Loan Parties "agree[d] to become a party to the Loan Documents as a Guarantor thereunder with the same force and effect as if originally named as a Guarantor therein."

109. Each New Guarantor "ratifie[d] and reaffirm[ed] each provision" of the Loan Documents, "including without limitation all of the representations and warranties set forth in Article 5 of the Loan Agreement and all of the financial covenants set forth in Section 6.10 of the Loan Agreement, as applicable to such New Guarantor."

110. The Joinder also expanded A.R.I.'s Collateral package. Each Loan Party "grant[ed] and pledge[d] to [A.R.I.] a continuing security interest in the Collateral in order to secure prompt repayment of any and all Obligations and to secure prompt performance by the Guarantors of the covenants and duties under the [Loan Agreement]." The Joinder warranted that the security interest "constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in Collateral."

111. In the Joinder, each newly joined Loan Party expressly reaffirmed the representations and warranties of the Original Loan Agreement, including the no-undisclosed-liabilities representation, the representation that the Collateral was free and clear of unpermitted liens, and the representation that no written statement contained any untrue statement or material omission. Those representations were false when made because, as of December 31, 2024, Lights

Out XF was in non-compliance with several reporting Obligations, the Mamdani Note remained outstanding and purported to grant Mamdani rights in assets and revenues that substantially overlapped with the Collateral pledged to A.R.I., without any disclosed release, subordination, or satisfaction of those purported rights, and Loan proceeds had been, and continued to be, applied to liabilities outside the uses permitted by the Loan Agreement.

112. A.R.I. required and obtained those representations precisely because it was entitled to a first-priority position free of undisclosed encumbrances, and it accepted them without knowledge of the Mamdani Note, which Merriman had still not disclosed.

113. Finally, the Joinder is governed by New York law and provides that "THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK." By incorporating the Original Loan Agreement's terms in full, the Joinder also subjected each Loan Party to the Loan Agreement's exclusive New York forum-selection provision.

C. The Merriman and Trust Guaranties.

114. Also on December 31, 2024, A.R.I. received personal guaranties from Merriman and from the Trust (with Merriman executing as Trustee).

115. The Guaranties contained the following provisions, among others:

116. Merriman and the Trust each "absolutely, unconditionally, and irrevocably" guaranteed, as a primary obligor and not merely as a surety, the full and punctual payment and performance of all payment Obligations. Merriman and the Trust thereby became personally liable for all Obligations under the Loan Agreement.

117. The Guaranties are guaranties of payment and not merely collection, allowing A.R.I. to enforce them directly against Merriman and the Trust without first pursuing the Borrower or any Collateral.

118. Merriman and the Trust pledged, as Collateral for the Guaranties, all of the equity that they owned in the Loan Parties, and other entities, as applicable. Upon the occurrence of any Event of Default under the Loan Agreement, the Joinder, or the Guaranties, Merriman and the Trust each granted A.R.I. an "IRREVOCABLE proxy" that became effective automatically and authorized A.R.I. to exercise "all voting, corporate and other rights" pertaining to the pledged equity "as if it were the absolute owner thereof." (emphasis in original). The Proxy Rights effectively enabled A.R.I. to exercise governance rights associated with the pledged equity interests upon an Event of Default.

119. Further, Merriman and the Trust also pledged their owned or beneficially held equity interests and related collateral as security for the Guaranties.

120. Separately, as part of the same December 2024 Collateral package, Lights Out Holdings (WY) granted A.R.I. a security interest in the Intellectual Property, including the valuable "Lights Out" mark and related trademarks, trade names, service marks, and associated goodwill.

121. Merriman and the Trust expressly agreed to the Restrictive Covenants, including non-disparagement, non-competition, non-solicitation, non-interference, and confidentiality provisions. Merriman expressly acknowledged that any breach of the Restrictive Covenants would cause "irreparable damages" and that A.R.I. would be "entitled to obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy," without the posting of any bond.

122. The Guaranties are governed by New York law, incorporating the governing law provision of the Loan Agreement.

D. The Perfection Certificate and IP Security Agreement.

123. Through the December 2024 Collateral package, A.R.I. acquired a security interest in the Intellectual Property, which Merriman represented was held by Lights Out Holdings (WY). To document and perfect that security interest, on December 31, 2024, Lights Out Holdings (WY), acting through Merriman as its authorized signatory, executed two additional documents:

124. First, Lights Out Holdings (WY) executed the Perfection Certificate, in which it represented and warranted that Lights Out Holdings (WY) owned the Intellectual Property. A.R.I. required the Perfection Certificate as a condition of its diligence and as a precondition to accepting the December 2024 Collateral package. The Perfection Certificate is not an operative grant of any security interest—the IP Security Agreement performs that function—and it contains no covenant, promise, or undertaking of future performance. It states facts, as of the date of its delivery, concerning the ownership and status of assets.

125. Second, Lights Out Holdings (WY) executed the IP Security Agreement, granting A.R.I. all of Lights Out Holdings (WY)'s right, title, and interest in the Intellectual Property as security under the Loan Agreement.

126. The IP Security Agreement was recorded with, and confirmed by, the USPTO on January 13, 2025.

127. Throughout the lending relationship that followed, Merriman represented and warranted to A.R.I. that the Intellectual Property was held by Lights Out Holdings (WY) and was available to secure A.R.I.'s Loan on a first-priority basis. A.R.I. thus extended additional credit,

accepted the IP Security Agreement, and made each subsequent advance and accommodation in reliance on those representations.

128. Moreover, the Intellectual Property was a high-value asset. A 2022 valuation analysis prepared by Nevium Intellectual Property Consultants – commissioned by Merriman as owner of Lights Out Holdings (WY) – estimated the value of the "Lights Out" Intellectual Property portfolio at approximately $2.6 million as of February 11, 2022.

IV. ELLISON JOINS THE BOARD AND A.R.I. MAKES ADDITIONAL EQUITY INVESTMENT.

129. By May 2025, in reliance on Merriman's continuing assurances and the high-value security interests pledged in connection with the December 2024 restructuring, A.R.I. invested an additional $250,000 in Lights Out Enterprises, initially structured as equity and subsequently converted into debt and incorporated into the Obligations under the Loan Agreement.

130. In connection with that investment – and as part of A.R.I.'s efforts to provide oversight and protect its capital in light of the financial-control issues that had previously emerged – Merriman agreed to grant A.R.I. board-level oversight and approved Ellison's appointment to the Board of Directors.

131. On May 7, 2025, Merriman and the Trust, as controlling stockholders of Lights Out Enterprises at the time, executed a written consent expressly confirming the appointment of two directors to the Board: "CEO Director Shawne Merriman" and "Independent Director Zack Ellison." Following that action, the Board consisted of Merriman and Ellison, with a third director seat remaining vacant.

V. THE AMENDED MERRIMAN GUARANTY AND MERRIMAN'S ACKNOWLEDGMENT OF $1.8 MILLION IN PERSONAL LIABILITY.

132. By mid-2025, after additional advances and amendments, A.R.I. required Merriman to reaffirm and amend his personal guaranty as a condition to further accommodation and continued credit support.

133. On June 29, 2025, in connection with those subsequent amendments and additional financial accommodations, Merriman executed an amendment to the Merriman Guaranty.

134. Following this amendment, Merriman remained personally liable for all Obligations on the same absolute, unconditional, and irrevocable terms as the original Merriman Guaranty.

135. The significance of the amendment to the Merriman Guaranty was its express acknowledgment of the amount of Merriman's personal liability (at the time): approximately $1.8 million in principal, plus accrued interest, fees, and other amounts due.

VI. THE WARRANT AND MERRIMAN'S ACKNOWLEDGMENT OF ADDITIONAL INDEBTEDNESS.

136. Between May 2024 and August 2025, A.R.I. funded eight separate capital disbursements across six loan tranches in response to Merriman's repeated requests for additional capital, bringing total payment Obligations under the Loan Agreement to more than $2.1 million. In connection with those advances and the related amendments, the Loan Parties issued A.R.I., for the benefit of the lenders, warrants in May 2024, December 2024, June 2025, and August 2025.

137. On August 27, 2025, Merriman executed the Warrant.

138. The Warrant materially expanded A.R.I.'s equity protection. Specifically, it granted A.R.I. an independent right to acquire equity directly from Lights Out Enterprises based on the amount of outstanding payment Obligations and Lights Out Enterprises' enterprise value, and it provided A.R.I. with substantially greater upside and downside protection as the Loan Parties' indebtedness increased.

139. The Warrant expressly acknowledged that the total outstanding payment Obligations under the Loan Agreement equaled $2,108,643.50 as of August 27, 2025.

140. The Warrant's exercise right was expressly independent of default. It could be exercised at A.R.I.'s election regardless of whether an Event of Default had occurred, regardless of any governance change, and regardless of Lights Out Enterprises' financial condition.

141. Lights Out Enterprises further covenanted in the Warrant that it would "at all times" reserve sufficient authorized shares to permit the Warrant's full exercise.

VII. THE PAYMENT DEFAULTS, THE UNDISCLOSED TRIDENT LOAN, AND THE FORBEARANCE AGREEMENT.

A. The September 2025 Payment Default.

142. On September 25, 2025, the Loan Parties failed to repay $300,000 in matured principal under the Loan Agreement.

143. The Loan Parties thereafter failed to make required interest payments. Further, the Loan Parties have since failed to comply with monthly financial statement, compliance certificate, and bank account statement requirements, as well as the financial covenants relating to liquidity, performance to plan, and leverage.

B. The Undisclosed Trident Loan.

144. On or about November 7, 2025 – after the Loan Parties had already failed to repay $300,000 in principal and while multiple interest payment defaults were accruing – Merriman caused the Loan Parties to incur additional secured indebtedness from an individual named Nader H. Sobh and his company, Trident.

145. The Trident Loan was purportedly secured by accounts receivable, ticket sales, sponsorship revenue, streaming rights, and intellectual property, all of which substantially overlapped with Collateral already pledged to A.R.I. on a first-priority basis.

146. Merriman did not disclose the Trident Loan to A.R.I. Instead, the Trident Loan was incurred in direct violation of the Loan Agreement's prohibition on additional indebtedness, its prohibition on additional liens on the Collateral, and Merriman's obligation to maintain A.R.I.'s first-priority security interest.

C. The November 2025 Forbearance Agreement.

147. After nearly two months of negotiations and numerous drafts exchanged between the parties, on November 25, 2025, the Loan Parties entered into the Forbearance Agreement. Merriman executed the Forbearance Agreement personally and on behalf of each Loan Party.

148. In the Forbearance Agreement, Merriman and the Loan Parties expressly acknowledged that multiple Events of Default had occurred and were continuing, including, without limitation: (i) payment defaults, (ii) reporting failures, (iii) covenant breaches, and (iv) the inability to pay debts as they became due.

149. The Forbearance Agreement further acknowledged that the total outstanding payment Obligations under the Loan Agreement exceeded $2.1 million as of that date, and that, by reason of those Events of Default, **A.R.I. was** "**entitled to exercise any and all default-related rights and remedies**" under the Loan Agreement and applicable law.

150. The Forbearance Agreement was expressly limited in duration, conditional, non-waiving, and automatically terminated upon noncompliance, at which point A.R.I.'s full enforcement rights were restored without further notice.

151. The Loan Parties promptly breached the Forbearance Agreement by failing to make required payments and by failing to comply with the various covenants set forth therein, causing the forbearance period to terminate.

VIII. A.R.I.'S CONTINUED ACCOMMODATION EFFORTS, MERRIMAN'S CONFIRMATION OF THE MAMDANI NOTE, AND THE FATTORINI JUDGMENT.

A. A.R.I.'s First December 2025 Accommodation Proposal.

152. Even after the Forbearance Agreement failed, A.R.I. continued to pursue a consensual resolution in an effort to save the relationship. On December 10 and 11, 2025, Ellison communicated directly with Merriman and Lights Out Enterprises director Ed Pokorny regarding a proposed accommodation intended to stabilize Lights Out Enterprises and provide additional time for fundraising.

153. A.R.I. initially proposed to increase the loan balance by approximately $325,000 in order to cover accrued interest, legal expenses, and forbearance fees through March 31, 2026, and to defer principal payments until April 1, 2026.

154. During the December 11, 2025 discussion, however, Merriman indicated that $325,000 would not be sufficient and requested that the additional financing be increased to $500,000. In explaining the need for the additional $175,000, Merriman told Ellison that approximately $240,000 was needed to pay Mamdani – thereby confirming, in his own words, that the Mamdani obligation remained outstanding and that Merriman was seeking A.R.I. financing to pay it.

155. On December 12, 2025, consistent with those discussions, A.R.I.'s counsel circulated a redlined draft of a proposed Sixth Amendment and Forbearance Agreement reflecting approximately $500,000 of additional financing and providing for a forbearance period through March 31, 2026.

B. Merriman's December 16, 2025, Rejection and Bankruptcy Threat.

156. On December 16, 2025, Ellison spoke with Merriman, who rejected the proposed Sixth Amendment and Forbearance Agreement and stated that he believed bankruptcy was "inevitable" and that he intended to pursue a bankruptcy filing as early as Friday, December 19,

2025. Based on the manner of the conversation, Ellison understood Merriman to be referring to both a potential bankruptcy filing by Lights Out Enterprises and a personal bankruptcy by Merriman.

C. The Fattorini Judgment.

157. Unbeknownst to A.R.I., on December 5, 2025, a $4 million judgment had been entered against Merriman personally in connection with a wrongful death action arising from the death of Kimberly Fattorini, a Playboy model who was found to have alcohol and multiple drugs in her system, including GHB (a common date-rape drug), at the time of her death.

158. The Fattorini Judgment was a material adverse development affecting Merriman's financial condition and his capacity to perform under the Merriman Guaranty. At no point did Merriman disclose the Fattorini Judgment to A.R.I.

D. A.R.I.'s Second December 2025 Accommodation Proposal.

159. Notwithstanding Merriman's December 16, 2025 bankruptcy threat, A.R.I. continued to explore alternatives that could stabilize Lights Out Enterprises and avoid an insolvency filing. On December 30, 2025, Ellison sent an email to Merriman, Pokorny, and counsel for the parties (including counsel from the law firm of Mintz Levin and counsel from LegalScale) outlining a further accommodation proposal.

160. Under that proposal, A.R.I. offered to capitalize approximately $175,000 of accrued interest and legal expenses into the Loan balance (comprising $86,220.09 of accrued contractual interest for the fourth quarter of 2025 and $88,779.91 of substantially discounted legal expenses) rather than requiring an immediate cash payment. In the proposal, A.R.I. expressly declined to charge any default interest, fees, penalties, or other charges that it was contractually entitled to impose at that time.

E. Merriman's January 1, 2026, Rejection and Confirmation of Bankruptcy Plans.

161. On January 1, 2026, Merriman rejected the December 30 proposal by email. Merriman directed that all future communications be sent to David Zolkin, stating: "Given where things stand, please direct all future documents and correspondence to David Zolkin as we move forward with the bankruptcy filings." At the time, Zolkin was identified as legal counsel involved in advising Merriman in connection with potential bankruptcy matters.

162. Merriman's stated intent to pursue bankruptcy proceedings was not hypothetical. In November 2018, Merriman filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code. In light of that prior filing, his threats in late 2025 and early 2026 to place the Company into bankruptcy were credible and materially increased the risk to A.R.I.'s recovery.

IX. ACCELERATION, EXERCISE OF THE PROXY RIGHTS, AND EXERCISE OF THE WARRANT.

163. By January 2, 2026, the Loan Parties remained in continuing default under the Loan Agreement, and the Forbearance Agreement had failed as a direct result of Merriman's refusal and inability to comply with its terms. Merriman had rejected two separate accommodation proposals from A.R.I. and had affirmatively communicated his intent to pursue bankruptcy. Under these circumstances – created by Merriman's own actions and inactions – A.R.I. had no practical alternative but to exercise its contractual rights and remedies in order to protect its Collateral and preserve enterprise value.

A. The Notice of Default and Acceleration.

164. On January 2, 2026, A.R.I. issued a formal Notice of Default to the Loan Parties identifying multiple continuing Events of Default, including: (i) the failure to repay $300,000 in matured principal due in September 2025; (ii) failure to make required interest payments from October through December 2025; (iii) failure to pay required forbearance fees; (iv) repeated

reporting and covenant breaches; (v) the inability to pay debts as they became due; and (vi) breaches of the Forbearance Agreement.

165. The Notice of Default accelerated all outstanding payment Obligations and demanded immediate payment.

B. Exercise of the Proxy Rights and Removal of Merriman.

166. Following acceleration, A.R.I. exercised the Proxy Rights granted by Merriman and the Trust under the Guaranties. On January 2, 2026, A.R.I. executed an Action by Written Consent of Stockholders pursuant to Delaware General Corporation Law ("DGCL") Section 228. The Stockholder Consent removed Merriman as a director and confirmed Ellison as the sole remaining director.

167. On January 5, 2026, Lights Out Enterprises' stockholders executed a further Written Consent expressly ratifying the January 2, 2026 governance actions.

168. The newly constituted Board then executed a Unanimous Written Consent under DGCL Section 141(f), removing Merriman from all corporate offices, expressly providing that "Shawne Merriman has and shall have no authority to act on behalf of the Company in any capacity," and appointing Ellison as interim President, Treasurer, and Secretary.

C. Exercise of the Warrant.

169. Contemporaneously with the exercise of the Proxy Rights, A.R.I. exercised the Warrant in two contractually authorized tranches on January 2, 2026, and January 5, 2026, paying more than $530,000 in new cash equity capital to Lights Out Enterprises at the agreed-upon exercise price. A.R.I. exercised the Warrant, and paid that consideration, without knowledge of the Company's true financial condition, without knowledge of the Trident Loan, without knowledge of the Fattorini Judgment, and without knowledge that the Intellectual Property may

have been held, controlled, and exploited by or through Lights Out Holdings (CA).[3] At the time of exercise, A.R.I. understood the Company's financial condition to be as Merriman had represented it, and the exercise price A.R.I. paid was determined by reference to an enterprise value derived from financial information Merriman had furnished. Had A.R.I. known of the truth, it would not have exercised the Warrant and would not have paid more than $530,000 in new cash equity capital into the Company.

170. Pursuant to the Warrant's formula, the shares issued upon exercise represented approximately 84% of Lights Out Enterprises' outstanding equity, while Merriman and his Trust, collectively, retained approximately 16%. The Warrant exercises were subsequently ratified by stockholder action.

X. A.R.I.'S DISCOVERY OF MERRIMAN'S FRAUDULENT CONDUCT.

171. On January 8, 2026, A.R.I. publicly announced its intent to operate Lights Out Enterprises, proceed with upcoming events – including a live martial arts event scheduled for broadcast on ESPN on February 7, 2026 – and expand the platform and enterprise value.

172. And yet, only after assuming control of Lights Out Enterprises did A.R.I. begin to uncover the true extent of Merriman's misconduct and concealment. The financial condition Merriman had represented to A.R.I., and the Collateral package Merriman had pledged to A.R.I., bore little resemblance to reality.

A. Severe and Previously Undisclosed Financial Distress.

[3] Defendant Merriman has since admitted in submissions filed in related litigation in Nevada that the Lights Out IP was included in the Collateral pledged under the Loan Documents. Plaintiffs reserve all rights in the instant action to rely on such admissions in support of the assertion of estoppel against Defendants and any other applicable legal arguments.

173. Upon assuming control, A.R.I. discovered that Lights Out Enterprises had $237 in cash on hand. The Company's bank records reflected three days of negative balances during December 2025 and four days of negative balances during November 2025.

174. A.R.I. further discovered that, in four separate months during 2025 (February, March, April, and November), the Company's operating account would have been negative if not for the additional capital provided by A.R.I. and the Trident Loan that Merriman had concealed.

175. At all relevant times, Lights Out Enterprises operated with no meaningful full-time workforce. Ed Pokorny was nominally "full-time" as CFO and COO – as set forth in an employment contract with Lights Out Enterprises executed on June 30, 2025 – but, under Merriman's mismanagement, had not been paid for months. The Company otherwise relied entirely on third-party vendors and independent contractors for operational support and had no committed sources of external capital other than the financing provided by A.R.I.

176. A.R.I. further discovered that Lights Out Enterprises had approximately $500,000 in aged accounts payable to critical vendors and maxed out its corporate credit cards.

B. Catastrophic Revenue Decline.

177. The financial results that Merriman had refused to reveal to A.R.I. showed that Lights Out Enterprises' revenue had collapsed during 2025. The Company generated approximately $1.0 million in total revenue in fiscal year 2024, but only approximately $532,979 in total revenue in fiscal year 2025 – a year-over-year decline of approximately 47%.

178. The Company's operating performance – which was withheld from A.R.I. prior to exercise of control rights – had deteriorated materially under Merriman's management. Lights Out Enterprises reported losses of approximately $894,021 in fiscal year 2024, which widened to over $1.3 million in fiscal year 2025 – an increase in losses of nearly 50% year-over-year. This

accelerating loss trajectory reflected a business that was not stabilizing under Merriman, but instead deteriorating despite A.R.I.'s continued capital infusions.

179. These figures stood in stark contrast to the projections underlying the 2022 Nevium valuation analysis Merriman had commissioned, which had assumed approximately $45 million in 2025 annual revenue. The Company's actual 2025 revenue of approximately $532,979 represented barely 1% of the revenue Merriman had projected, falling catastrophically short of expectations under Merriman's management.

180. A.R.I. also reviewed an independent 409A valuation analysis prepared by Scalar Advisors, LLC dated August 31, 2025, which had been engaged by Merriman. Scalar concluded that Lights Out Enterprises' enterprise value was approximately $2.8 million and, after subtracting outstanding payment Obligations of $2,108,644 (at the time), that the Company's equity value was approximately $691,357.

C. An Unsustainable Self-Dealing Event-Based Business Model.

181. A.R.I. also uncovered evidence indicating the Company's primary revenue source – hosting live fight events – was structurally unprofitable as operated under Merriman's management. Although Lights Out Enterprises had certain event-related relationships, including the ESPN Contract and a sponsorship and operational relationship with Office Beacon LLC ("Office Beacon"), those relationships did not provide sufficient committed, predictable revenue to make the business self-sustaining. This was not a function of market conditions – which were quite favorable given increasing valuations of sports-related properties – but of the manner in which Merriman ineffectually structured and operated the Company's core business.

182. A.R.I. further learned that Merriman caused the Company to provide valuable advertising and promotional opportunities to Office Beacon in connection with Lights Out

Enterprises events in exchange for services that were provided to Merriman personally, rather than to the Company. As a result, Company assets and commercial opportunities were used to benefit Merriman individually, while Lights Out Enterprises received little or no corresponding economic benefit. This non-arm's-length arrangement further undermined the Company's ability to generate revenue and contributed to its ongoing financial deterioration.

183. The costs of producing live fight events (including venue expenses, production costs, and related operational expenditures) generally exceeded the total revenue generated from ticket sales, ESPN media payments, and any sponsorships by approximately $50,000 or more per event. As a result, each additional event the Company produced increased its operating losses.

184. A.R.I. further discovered that Merriman caused Company funds, including A.R.I.'s Loan proceeds, to be used to promote and enhance his personal brand and business activities, rather than for the benefit of Lights Out Enterprises. The economic benefits of those expenditures were realized by Merriman individually and were not returned to the Company, even as Lights Out Enterprises continued to incur substantial operating losses and remained fully dependent on external capital. This diversion of Company resources for personal gain occurred while the Company was financially deteriorating and unable to sustain its core operations.

185. Ultimately, Lights Out Enterprises was not, in fact, a functioning independent business. It was a marketing tool for Merriman individually that was wholly dependent on A.R.I.'s capital to remain operational.

D. Undisclosed and Unpaid Tax Liabilities.

186. After assuming control, A.R.I. received a tax bill issued to the Company in the amount of $171,733.75, which reflected a past-due balance of approximately $123,753.96. The past-due balance accrued during periods preceding A.R.I.'s assumption of control – that is, during

periods in which Merriman exercised exclusive control over the Company's financial affairs, books and records, and tax-compliance functions. The discovery of this unpaid tax liability further impaired A.R.I.'s Collateral and the value of the equity interest A.R.I. had acquired through its exercise of the Warrant, and required, and will require, A.R.I. to expend additional resources to stabilize the Company.

187. At no point did Merriman disclose to A.R.I. the existence of any unpaid tax liability of the Company, the accumulation of any past-due tax balance, or any related penalties or interest. To the contrary, throughout the lending relationship Merriman represented that the Company's financial statements fairly presented its financial condition and that no material liabilities had been omitted.

188. The unpaid tax liability is another material liability that Merriman concealed from A.R.I. in breach of the Loan Agreement, the Joinder, and the Guaranties.

189. The unpaid tax liability also constitutes further evidence of Merriman's mismanagement of the Company. The timely satisfaction of tax obligations is a fundamental obligation of any operating business. Merriman's failure to satisfy those obligations – while at the same time diverting Loan proceeds to service his personal debts – is consistent with the broader pattern of self-dealing, concealment, and disregard for the Company's solvency described herein.

190. The unpaid tax liability has caused, and will continue to cause, direct and substantial harm to Plaintiffs, including: (i) exposure to additional penalties and interest as the balance ages; (ii) the risk of a tax-authority enforcement action; (iii) the time, expense, and professional fees required to investigate, reconstruct, and address the liability, given the incomplete books and records Merriman left behind; and (iv) the further impairment of A.R.I.'s ability to stabilize the Company and preserve enterprise value.

191. A.R.I. cannot reasonably be required to satisfy tax obligations on behalf of an entity whose books and records were left incomplete by Merriman and whose ownership remains the subject of dispute manufactured by Merriman through the Nevada Action. Merriman's mismanagement caused these liabilities to accrue, and Merriman — not A.R.I. — bears responsibility for them under the Loan Agreement, the Guaranties, and applicable law.

XI. MERRIMAN'S POST-REMOVAL MISCONDUCT.

192. Upon realizing that he had lost control of Lights Out Enterprises, Merriman launched a coordinated campaign of coercion, threats, public misrepresentation, and forum-shopping designed to pressure A.R.I. into abandoning the contractual rights that Merriman himself had expressly granted.

A. Merriman's Threatening Voicemails to Ellison.

193. Between January 4, 2026, and January 11, 2026, Merriman called Ellison multiple times and left at least six voicemail messages urging Ellison to bypass counsel and engage in "off the record" discussions. Merriman characterized the involvement of attorneys as a "waste of time" and "running up a tab" and stated that "this can't happen through attorneys" and that he was "not taking anything back to [his] attorney."

194. As the voicemails progressed, Merriman's tone escalated to direct threats. He warned Ellison that he did not understand the "ramifications" of the situation and that Ellison was "about to open a can of worms." He warned Ellison that the consequences would not be "good."

195. On January 9, 2026, through his counsel Andrew Skale of Mintz Levin (counsel to Merriman and original counsel to Lights Out XF on the Loan Agreement), Merriman threatened to file an action against A.R.I. in Nevada.

196. In the same January 9, 2026 communication, Skale demanded that A.R.I. cease exercising its contractual rights under the Loan Agreement and reverse its governance actions relating to Lights Out.

197. Specifically, Skale stated that if A.R.I. complied with his client's demands, Merriman would "hold off filing the complaint." In exchange, Skale demanded that A.R.I. "cease any further interference with our client's ownership rights in Lights Out, send a message to those he contacted stating that Shawne is still CEO of Lights Out, and ***cease and desist from pursuit of any remedies under the loan agreement***."

198. Skale's email requested that A.R.I. respond by the end of the same day so that the proposed arrangement could be finalized "over the weekend."

199. This January 9, 2026 communication was sent the day after A.R.I. issued its press release announcing its acquisition of Lights Out Enterprises, within days of A.R.I.'s exercise of its contractual governance rights under the Loan Agreement, and while A.R.I. was communicating with vendors, contractors, and industry participants in an effort to stabilize the Company's operations and prepare for a February 7, 2026 live event to be broadcast on ESPN.

200. On January 11, 2026, Merriman left a voicemail in which he repeatedly described what he called a "nuclear situation" – using the word "nuclear" eight separate times – and warned that the consequences of the dispute would affect Ellison's "future," "partners," "board," and "investors."

201. But for the threats and interference by Merriman and Skale, A.R.I. would have continued its efforts to stabilize and operate Lights Out Enterprises, including moving forward with the planned February 7, 2026 live event and maintaining relationships with vendors, contractors, and counterparties. Instead, Merriman's threatening communications and Skale's

demands – which included instructing A.R.I. to cease exercising its contractual rights, reverse governance actions, and publicly misrepresent the Company's leadership – created substantial legal, operational, and reputational risk. As a direct result, A.R.I. was forced to pause operations just eight days later on January 19, 2026, as vendors, partners, and counterparties were placed in a position of uncertainty regarding authority, control, and the legitimacy of A.R.I.'s actions.

B. Filing the Nevada Action in Violation of the Forum-Selection Clause.

202. Rather than honor the New York forum-selection clause to which he had repeatedly agreed, Merriman filed suit in Nevada state court – *Shawne Merriman v. A.R.I. Agent, LLC, et al.*, Case No. A-26-937793-B (Eighth Judicial District Court, Clark County, Nevada) – in direct violation of the Loan Agreement's mandatory exclusive forum-selection clause.

203. Merriman is the sole plaintiff in the Nevada Action. In that action, he sought emergency injunctive relief seeking to undo A.R.I.'s exercise of its contractual rights, which was denied.

204. In the course of the Nevada Action, Merriman has expressly acknowledged through multiple filings that the Intellectual Property is A.R.I.'s Collateral under the Loan Agreement and the Guaranties.

C. Unauthorized Public Statements and Defamation.

205. Beginning in January 2026, Merriman caused or directed the issuance of public communications falsely representing that the Nevada Action had been brought by "Lights Out Enterprises" – rather than by Merriman individually – and falsely representing that Merriman remained an officer and authorized representative of Lights Out Enterprises. The statements were false: Merriman is the sole plaintiff in the Nevada Action, and Merriman had been removed from all officer, director, and managerial positions on January 2-5, 2026.

206. On February 4, 2026, a press release titled "Lights Out Enterprises Owner Shawne Merriman Files Lawsuit Against Zach Ellison's Applied Real Intelligence" was distributed through EIN Presswire and republished by The National Law Review. The release described A.R.I.'s lawful exercise of contractual rights as a "wrongful takeover" and asserted that A.R.I. had attempted to assert control "without completing a lawful foreclosure process or obtaining court approval."

207. On February 13, 2026, a PR Newswire release titled "Applied Real Intelligence Is Sued by Shawne Merriman's Lights Out Enterprises; Injunction and Damages Sought" was disseminated and republished by Morningstar. That release again characterized A.R.I.'s actions as a "Wrongful Takeover of the Company" and represented that "Lights Out Enterprises and CEO Shawne Merriman filed a lawsuit" – falsely portraying Merriman as the Company's CEO and falsely portraying the Company itself as a plaintiff.

208. On February 20, 2026, a further PR Newswire release titled "Lights Out Enterprises Moves for Sanctions Alleging Applied Real Intelligence Is Concealing Identities of Its Limited Partners" was issued. The release publicly accused A.R.I. of misconduct in connection with routine federal jurisdictional proceedings, falsely portraying standard partnership-citizenship requirements as evidence of wrongdoing. It further misrepresented the nature of the action by suggesting that Lights Out Enterprises was the plaintiff, when in fact the claims were brought solely by Merriman – thereby creating the false impression that the Company itself was pursuing claims against A.R.I. and amplifying confusion among counterparties and the market.

209. On February 25, 2026, Fox News published an article titled "Ex-NFL star Shawne Merriman loses control of MMA company, legal battle ensues." In that article, Merriman publicly claimed that A.R.I.'s exercise of its contractual rights was "instant" and improper, stating that he

was "literally being removed from the board" and had been "strong armed," and asserting that A.R.I.'s actions were "unnecessary."

210. In the same Fox News article, Merriman further represented that he and the Company "had every intention of making things right," and that doing so "wasn't even an option." These statements were false and misleading. At the time they were made, Merriman had already failed to cure multiple Events of Default, had not made an interest payment in nearly six months, had breached the Forbearance Agreement, had rejected multiple accommodation proposals from A.R.I., and had expressly communicated his intent to pursue bankruptcy.

211. The article further reported Merriman's position that, although "some signed paperwork… may allow [A.R.I.] to do some things," those agreements did not authorize the governance actions taken – directly contradicting the express terms of the Loan Agreement, Guaranties, and Warrant.

212. The Fox News article also repeated statements attributed to Merriman and his representatives asserting that A.R.I. lacked "management or ownership rights" in Lights Out Enterprises and that the proxy and attorney-in-fact provisions were merely "security devices" that did not permit A.R.I. to assume control of the Company.

213. These statements were false. As described herein, Merriman had expressly granted A.R.I. governance rights upon default and agreed to equity ownership rights through the Warrant, which A.R.I. lawfully exercised.

214. On March 26, 2026 – months after his removal from all officer, director, and managerial positions – Merriman appeared as a featured speaker at a New York industry conference (CTV Live! NY), where he was identified and promoted as "CEO" of Lights Out Sports

while simultaneously holding himself out as "CEO" of the "Lights Out Brand," despite having no authority to act on behalf of either.

215. Merriman has also publicly held himself out as the continuing leader of "Lights Out" through his social-media presence and continuing commercial activities. As of the date of this filing, Merriman's LinkedIn profile holds him out as "CEO" of the "Lights Out Brand" and includes a link to www.ShopLightsOut.com, where customers can purchase apparel utilizing the "Lights Out" mark.

216. These statements were not isolated or inadvertent. They were part of a sustained, public-facing narrative advanced by Merriman across press releases, national media, industry events, and his own social media accounts, in which he falsely portrayed himself as the continuing Chief Executive Officer of Lights Out and denied A.R.I.'s contractual authority and ownership rights.

217. At the time Merriman made these statements, there was no ambiguity as to control. A.R.I. had lawfully accelerated the debt, exercised its Proxy Rights, removed Merriman from all positions, and acquired a controlling equity interest through the Warrant. Merriman knew he lacked authority to act on behalf of the Company. His statements to the contrary were knowingly false and made with reckless disregard for the truth.

218. The purpose and effect of these statements was to disrupt A.R.I.'s lawful exercise of control. By injecting false claims of authority into the market, Merriman created uncertainty among vendors, sponsors, media partners, and other counterparties regarding who controlled the Company and who had the authority to bind it.

219. That confusion caused real and immediate harm. At the very moment A.R.I. was working to stabilize operations, preserve relationships, and execute on a nationally broadcast

ESPN event, Merriman's statements undermined A.R.I.'s credibility, impaired its ability to act decisively on behalf of the Company, and jeopardized critical commercial relationships necessary to keep the business operating.

220. The harm extended beyond the Company itself. Merriman's conduct damaged A.R.I.'s reputation as a secured lender and counterparty, cast doubt on the enforceability of its contractual rights, and impaired its ability to raise capital and deploy that capital into new investments. In the private credit market – where it is paramount to attract, deploy, and enforce capital allocations – these statements struck at the core of A.R.I.'s business.

221. In short, Merriman did not merely breach his agreements. After defaulting under the Loan Agreement and granting A.R.I. contractual rights to assume control, he publicly contradicted those same agreements by asserting that A.R.I. lacked the authority he had expressly provided. In doing so, he interfered with A.R.I.'s contractual rights, undermined its credibility in the marketplace, and caused substantial and ongoing harm to both A.R.I. and Lights Out Enterprises.

E. Continued Unauthorized Exploitation of the Intellectual Property.

222. Following his removal, Merriman has continued to use, exploit, and derive personal economic benefit from the Intellectual Property – Collateral encumbered by A.R.I.'s perfected first-priority security interest – without authorization and in derogation of A.R.I.'s rights as senior secured party and majority equity holder. Merriman has continued to associate himself with the "Lights Out" brand in his public appearances, social media, and apparel business, profiting off the Intellectual Property while refusing to satisfy his payment Obligations to A.R.I.

223. In addition, Mintz Levin has represented Merriman on multiple trademark infringement cases relating to the "Lights Out" brand, including suits against Nike, The Vermont

Teddy Bear Company, Comedy Central, Spike (TV), Storm Products, Lawson, Under Armour, and Fanatics, among others. Merriman thus has, and will continue to benefit from (both directly and indirectly) his wrongful exploitation of the Intellectual Property.

XII. MERRIMAN'S INTERFERENCE WITH THE ESPN CONTRACT AND OTHER LIGHTS OUT BUSINESS RELATIONSHIPS.

224. At the time A.R.I. assumed control of Lights Out Enterprises, the Company maintained active contractual relationships and prospective business opportunities, including a binding agreement with ESPN (the "ESPN Contract") for the broadcast of live martial arts events scheduled for February 7, 2026, March 7, 2026, and 11 events per year for three years. The ESPN Contract represented a commercially significant media-distribution opportunity that was central to the Company's revenue generation, brand positioning, and long-term enterprise value.

225. The Company also had an existing sponsorship and operational-services relationship with Office Beacon, which had served as one of three primary on-canvas sponsors at the Company's December 2025 event. On January 6, 2026 – after A.R.I. had assumed control – Office Beacon's Founder and CEO, Pranav Dalal, expressed support for the transition in management and indicated his interest in continuing the relationship. Following that initial outreach, Ellison, acting in his leadership capacity at Lights Out XF, engaged with Office Beacon to clarify the scope of services and align on a go-forward operational and billing structure. Office Beacon responded on January 13, 2026, requesting confirmation of scope and invoicing arrangements. A.R.I. provided a detailed follow-up on January 29, 2026, and subsequently sent additional follow-up communications on February 3 and February 5, 2026. Office Beacon did not respond to any of those communications.

226. Upon information and belief, this abrupt cessation of communication occurred after Merriman began issuing false public statements regarding control of Lights Out Enterprises and

after A.R.I. was forced to pause the Company's operations due to Merriman's interference. As a result, Lights Out Enterprises was unable to continue or expand its relationship with Office Beacon, causing the loss of a key sponsor and operational partner.

227. Following his removal, Merriman engaged in a coordinated course of conduct designed to undermine A.R.I.'s control of the Company and disrupt its operations. This conduct included issuing false public statements regarding control of the Company, asserting that A.R.I. lacked authority to operate the business, initiating litigation in violation of the governing agreements, and communicating inconsistent and unauthorized positions to counterparties.

228. As a direct and foreseeable result of Merriman's conduct, the Company's staff and counterparties – including vendors, sponsors, and media partners – were placed in a state of uncertainty regarding who had authority to act on behalf of the Company. This uncertainty materially impaired A.R.I.'s ability to confirm event logistics, secure vendor performance, and maintain sponsor and broadcast relationships necessary to proceed with the scheduled events.

229. On January 19, 2026, A.R.I. was forced to pause Lights Out Enterprises' operations. That decision was not driven by market conditions, but by the combination of: (i) the severely distressed financial condition in which Merriman had left the Company and (ii) the disruption and uncertainty caused by Merriman's and Skale's direct threats and interference following Merriman's removal. As a result, the February 7, 2026 and March 7, 2026 ESPN-broadcast events were cancelled and all events were put on hold.

230. The loss of the ESPN Contract caused substantial and immediate harm to Lights Out Enterprises, including the loss of an internationally televised media opportunity, disruption of planned events, loss of sponsorship and event-related revenue, and damage to the Company's brand and enterprise value.

231. Merriman's conduct also caused substantial harm to A.R.I. By interfering with A.R.I.'s ability to operate the Company and execute on the ESPN Contract, Merriman impaired A.R.I.'s collateral, undermined its efforts to stabilize and grow the business, damaged its credibility and brand, and caused significant economic loss in connection with its investment.

XIII. OUTSTANDING OBLIGATIONS AND CONTINUING DEFAULT.

232. Neither Merriman, the Trust, nor any other Loan Party has made any payment of any kind to A.R.I. since September 5, 2025 – more than eight months prior to this filing.

233. As of the date of this filing, the outstanding payment Obligations under the Loan Agreement exceed $2.5 million, inclusive of principal, accrued interest, and recoverable expenses, and continue to accrue additional interest, fees, costs, and recoverable enforcement expenses, including A.R.I.'s attorneys' fees in response to the Nevada Action.

234. Merriman and the Trust are personally liable for the full amount of the payment Obligations under the Guaranties, which are absolute, unconditional, and enforceable without first resort to any Collateral.

235. Merriman's failure to satisfy the payment Obligations is occurring against the backdrop of severe personal financial distress. In addition to his liability under the Merriman Guaranty, Merriman is personally liable for a $4 million judgment arising from the Fattorini matter. He has also defaulted on other debts, including the Mamdani Note (with approximately $240,000 outstanding as of December 2025) and the Trident Loan, as evidenced by a February 15, 2026 demand letter from counsel to those creditors.

236. Merriman's continued non-payment, combined with his broader pattern of defaults and financial distress, materially increases the risk to A.R.I.'s recovery and underscores the necessity of immediate judicial intervention.

CAUSES OF ACTION

COUNT I
BREACH OF CONTRACT - THE GUARANTIES

(Against Merriman and the Trust by A.R.I.)

237. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 - 236 as if fully alleged herein.

238. Pursuant to the Guaranties, Merriman and the Trust absolutely, unconditionally, and irrevocably guaranteed the full and punctual payment and performance of the payment Obligations.

239. The Merriman Guaranty also contains Restrictive Covenants, including non-disparagement, non-competition, non-interference, and confidentiality provisions. Merriman acknowledged that breach of those covenants would cause irreparable harm and entitle A.R.I. to injunctive relief without the posting of a bond.

240. A.R.I. fully performed its commitments under the Loan Agreement. As a result of the funding provided, together with accrued interest, fees, and enforcement costs, the payment Obligations now exceed $2.5 million.

241. Multiple Events of Default occurred under the Loan Agreement, and A.R.I. validly accelerated the payment Obligations on January 2, 2026. Merriman and the Trust have failed and refused to satisfy the accelerated payment Obligations, which exceed $2.5 million and continue to accrue interest, fees, costs, and recoverable expenses.

242. Merriman further breached the Restrictive Covenants by making false, misleading, and disparaging statements regarding A.R.I., Lights Out Enterprises, and their respective officers, directors, and business partners, including by issuing public communications falsely attributed to "Lights Out Enterprises" and by making false statements to vendors, sponsors, counterparties, and members of the media concerning A.R.I.'s governance actions and authority.

243. Further, the Loan Agreement and the Guaranties require payment of all "Lender Expenses," including attorneys' fees and costs, and obligate Merriman and the Trust to pay or reimburse A.R.I. for all costs and expenses incurred in collecting or enforcing the Obligations (including A.R.I.'s defense of the Nevada Action).

244. As a direct and proximate result of Merriman's and the Trust's breaches of their respective Guaranties, A.R.I. has suffered damages in an amount to be proven at trial, but not less than $2.5 million, plus accrued interest, fees, costs, expenses, and attorneys' fees recoverable under the Loan Agreement and the Guaranties.

245. Additionally, as a direct and proximate result of Merriman's breaches of the Restrictive Covenants, A.R.I. has suffered further damages, including harm to reputation, disruption of business operations, impairment of vendor and counterparty relationships, and loss of business opportunities, in an amount to be proven at trial.

246. A.R.I. has no adequate remedy at law for Merriman's ongoing breaches of the Restrictive Covenants and is entitled to equitable relief, including specific performance and injunctive relief, without the posting of any bond, as expressly provided in the Guaranties, along with A.R.I.'s attorneys' fees in defense of the Nevada Action.

COUNT II
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(Against Merriman and the Trust by A.R.I.)

247. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 - 236 as if fully alleged herein.

248. Implied in the Guaranties is a covenant of good faith and fair dealing under New York law. Separate from Merriman's and the Trust's express failure to satisfy the payment Obligations, Merriman acted to deprive A.R.I. of the benefit of the Guaranties by taking steps

designed to impair A.R.I.'s post-default ability to preserve and realize upon the credit support that Merriman had pledged.

249. Among other things, Merriman concealed competing interests affecting the same Collateral base, caused Loan proceeds to be diverted to undisclosed commitments, and, after default, used threats, unauthorized public statements, and litigation in a contractually prohibited forum to frustrate A.R.I.'s ability to exercise the Collateral, Proxy Rights, governance, and enforcement rights that formed part of the bargained-for credit support.

250. Merriman's conduct frustrated A.R.I.'s reasonable expectations under the integrated Loan Agreement and deprived A.R.I. of the benefits of the Guaranties.

251. As a direct and proximate result of Merriman's and the Trust's breaches of the implied covenant of good faith and fair dealing, A.R.I. has suffered damages in an amount to be proven at trial, including attorneys' fees recoverable under the Loan Agreement and the Guaranties.

COUNT III
FRAUD, FRAUDULENT INDUCEMENT, AND FRAUDULENT CONCEALMENT
(Against Merriman and the Trust by A.R.I.)

252. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 - 236 as if fully alleged herein.

253. Separate and apart from Count I—which seeks payment of Obligations that Merriman and the Trust promised to pay and have not paid—this Count seeks, among other relief, A.R.I.'s out-of-pocket losses caused by Merriman's knowing misstatements of fact and by his concealment of facts that he had an independent duty to disclose.

254. Beginning before A.R.I.'s entry into the Original Loan Agreement in May 2024, and continuing thereafter, Merriman made material misrepresentations of then-existing fact and

material omissions to A.R.I. that were intended to, and did, induce A.R.I. to extend and continue extending credit to Lights Out XF and, later, Lights Out Enterprises and the other Loan Parties, to accept Merriman's and the Trust's personal credit support, to forbear from exercising its remedies, and to refrain from discovering the true financial condition of the business and the impairment of its Collateral. Merriman's fraudulent conduct is separate and apart from his contractual breaches per the following:

(i) The fraudulent conduct alleged in this Count is not a failure to keep a promise. Merriman's Obligation under the Guaranties is an obligation to pay money. Here, Merriman knowingly misstated and concealed facts that existed at the time he spoke, for the purpose of obtaining money that A.R.I. would never have parted with had it known the truth.

(ii) Merriman's misrepresentations and concealed facts described below are actionable independently of any contract for three separate reasons, each sufficient standing alone. First, certain of the misrepresentations were made *before* any contract existed between A.R.I. and Merriman or between A.R.I. and any Loan Party, in the course of A.R.I.'s pre-closing diligence, and are contained in no agreement between the parties. Second, certain of the concealed facts are governed by no provision of the Loan Agreement, the Joinder, or the Guaranties, including (1) Merriman's own personal financial condition, (2) the entry of the $4 million Fattorini Judgment against Merriman personally, and (3) the ownership, control, and exploitation of the Intellectual Property by Lights Out Holdings (CA), an entity that is not a Loan Party, granted A.R.I. no security interest, and is a party to none of the agreements. Third, certain of the misrepresentations induced A.R.I. to relinquish rights it had

already accrued and to accept collateral documentation it would otherwise have rejected. A.R.I.'s right to accelerate and enforce arose upon the September 25, 2025 payment default; Merriman obtained A.R.I.'s agreement to forbear from exercising that right on November 25, 2025 while concealing the Trident Loan he had incurred eighteen days earlier. Separately, A.R.I. accepted the Perfection Certificate and executed the IP Security Agreement on December 31, 2024 in reliance on certifications that were false when made. No count of this Complaint pleads breach of the Perfection Certificate or the IP Security Agreement, and the wrong alleged as to the forbearance is not that Merriman failed to perform it, but that he procured A.R.I.'s surrender of an accrued remedy by concealment.

(iii) The representations, warranties, and certifications described below were statements of then-existing fact, not promises of future performance. Each was false when made and each was known by Merriman to be false when he made it. The distinction is material because the falsity of these statements—not a subsequent failure to perform a contractual promise—is what caused A.R.I. to part with money, accept or retain purported Collateral, relinquish accrued enforcement rights, and make subsequent advances and investments that it otherwise would not have made.

255. The misrepresentations and omissions include the following:

(i) ***Pre-closing diligence misrepresentations (February-May 2024).*** A.R.I. conducted diligence before agreeing to lend. In the course of that diligence, and in response to A.R.I.'s specific inquiries, Merriman furnished A.R.I. with financial information concerning Lights Out XF and made representations to Ellison concerning the Company's then-existing secured and unsecured indebtedness; the

absence of encumbrances on the "Lights Out" Intellectual Property; and the ownership of that Intellectual Property. Those representations were false when made for the reasons set forth below. They were made *before* the Original Loan Agreement existed, they are contained in no agreement between the parties, and they were the inducement for A.R.I.'s decision to lend.

(ii) ***The October 2024 diligence demands.*** In October 2024, as a condition of the amendment and Loan increase Merriman was seeking, A.R.I. expressly and repeatedly demanded information concerning the Company's affiliated entities and financial condition, escalating the request to counsel on both sides. Merriman received those demands personally and responded to them personally. On October 15, 2024 he executed the October 2024 Certificate as Manager of Lights Out Sports LLC, warranting that the information furnished was "true and correct as of the date hereof" and acknowledging A.R.I.'s entitlement to "rely upon such information and presume it is correct in every respect." At no point did he disclose the details of the Mamdani Note or reveal the rights he had purported to grant Mamdani in Company assets and revenues. Merriman's silence in the face of A.R.I.'s specific inquiries, while soliciting additional credit, was a knowing concealment of facts he had a duty to disclose.

(iii) ***Concealment of the Mamdani Note.*** On January 3, 2024—approximately four months *before* the Original Loan Agreement was executed—Merriman entered into, or caused to be entered into, a promissory note in favor of Shamir Mamdani in the original principal amount of $190,000. The Mamdani Note was Merriman's own personal obligation, and Merriman pledged Company collateral to secure it.

Merriman knew of the Mamdani Note, its amount, and the assets it encumbered because it was his own debt and he pledged the collateral securing it. The Mamdani Note purported to grant rights in assets and revenues that substantially overlapped with the Collateral that Merriman represented was available to A.R.I. on a first-priority basis, including the Intellectual Property. Merriman did not disclose the Mamdani Note to A.R.I. at any time before or at the closing of the Original Loan Agreement on May 13, 2024, and did not disclose it in response to A.R.I.'s diligence inquiries concerning existing indebtedness and encumbrances. The Mamdani obligation was first affirmatively disclosed to A.R.I. in connection with the Series Seed financing process on or about March 26, 2025. On April 2, 2025, Ellison confronted Merriman about the Mamdani debt. Merriman responded that the Company's historical financial records made it "easy to track the money went there," characterized the matter as "little petty shit," stated that he was working on a plan "to remove all debt," and then asked Ellison: "Zack are you saying you didn't know anything about this loan?"

(iv) ***Misrepresentations regarding the Collateral and Intellectual Property.*** Before the execution of the Original Loan Agreement on May 13, 2024, Merriman represented that the Collateral (including the "Lights Out" Intellectual Property) was unencumbered, owned by Lights Out Holdings LLC (WY), and available to secure A.R.I.'s Loan on a first-priority basis. Those representations were false when made—the Mamdani Note already purportedly encumbered substantially the same assets, including the Intellectual Property, and the Intellectual Property was not owned by Lights Out Holdings (WY). Merriman repeated and reaffirmed the

ownership and first-priority representations in connection with the December 2024 Restructuring and the Guaranties, and they remained false as to the ownership, control, and exploitation of the Intellectual Property—and as to the purported encumbrance created by the Mamdani Note, all of which Merriman continued to conceal.

(v) ***The Joinder bring-down representation.*** Under the Joinder, each New Guarantor—acting through Merriman as Chief Executive Officer—separately "represent[ed] and warrant[ed] that each of the representations and warranties contained in the Loan Documents applicable to it is true and correct in all material respects . . . on and as the date hereof as if made on and as of such date." That was a representation of then-existing fact, made as of December 31, 2024. It was false when made, and Merriman knew it was false, because the Loan Parties were then in non-compliance with reporting Obligations, the Intellectual Property was not owned by Lights Out Holdings (WY), and the Collateral was not free of unpermitted Liens.

(vi) ***The Perfection Certificate.*** The Perfection Certificate, including the Legal Diligence Request, is a diligence instrument, delivered to A.R.I. at A.R.I.'s request and for A.R.I.'s use in evaluating and perfecting its collateral position. In it, Lights Out Holdings (WY), acting through Merriman as its authorized signatory, certified as a matter of then-existing fact that the "Lights Out" trademarks and related Intellectual Property listed on Exhibit A thereto were owned by "LIGHTS OUT HOLDINGS LLC"—the name the Perfection Certificate defines as Lights Out Holdings (WY). That certification may have been false when made because the

Intellectual Property may have been held, controlled, or exploited by or through Lights Out Holdings (CA), an entity bearing an identical name that is not a Loan Party, that granted A.R.I. no security interest, and that is a party to none of the agreements. A.R.I., through its counsel at DLA Piper, accepted the December 2024 Collateral package, executed the IP Security Agreement, recorded it with the USPTO on January 13, 2025, and extended the additional credit that accompanied that package, in reliance on that certification. The Perfection Certificate is not an operative grant of any security interest, contains no covenant or promise of future performance, and states only then-existing facts. No count of this Complaint pleads a breach of the Perfection Certificate.

(vii) ***Concealment of the Trident Loan.*** On or about November 7, 2025 (while the Loan Parties were already in default to A.R.I.), Merriman caused the Loan Parties to incur additional secured indebtedness from Trident, purportedly secured by accounts receivable, ticket sales, sponsorship revenue, streaming rights, and intellectual property overlapping with A.R.I.'s perfected first-lien Collateral under the Loan Agreement, all without disclosure to A.R.I. Eighteen days later, on November 25, 2025, and still without knowledge of the Trident Loan, A.R.I. executed the Fifth Amendment to Loan and Security Agreement and Forbearance Agreement (the "Fifth Amendment and Forbearance Agreement"), following nearly two months of negotiation and numerous exchanged drafts. Merriman executed that agreement personally and on behalf of each Loan Party. Merriman did not disclose the Trident Loan during those negotiations, at execution, or at any time thereafter. A.R.I. learned of it only after this dispute arose.

(viii) ***Concealment of the Fattorini Judgment.*** On December 5, 2025, a $4 million judgment was entered against Merriman personally, a material adverse development affecting his financial condition and his capacity as a guarantor. Merriman concealed the judgment from A.R.I. while, just six days later, requesting an additional $500,000 in financing from A.R.I. Merriman necessarily knew of the Fattorini Judgment because he was the judgment debtor. The $4 million judgment was a material fact concerning Merriman's personal financial condition and his ability to satisfy the Obligations he had personally guaranteed to A.R.I. Merriman nevertheless concealed the judgment from A.R.I. On December 11, 2025—just six days after its entry—Merriman solicited an additional $500,000 in financing from A.R.I. without disclosing the judgment. Had A.R.I. known that a $4 million judgment had just been entered against its personal guarantor, it would not have considered extending him or the Loan Parties additional credit.

(ix) ***Concealment of Lights Out Enterprises' true financial condition.*** Throughout the lending relationship, Merriman concealed material facts regarding Lights Out Enterprises' financial condition, including: (i) approximately $500,000 in aged accounts payable to critical vendors; (ii) the Company's near-zero liquidity, including a cash balance of $237 as of December 31, 2025 and recurring negative account balances throughout 2025; (iii) the absence of any meaningful committed sponsorship, advertising, or contracted commercial revenue; (iv) that the costs of producing live events routinely exceeded total revenue by approximately $50,000 or more per event, resulting in increasing operating losses; (v) a year-over-year revenue decline of nearly 50% in 2025 with losses exceeding $1.3 million; (vi)

unpaid tax obligations of the Company, including a past-due balance of approximately $123,753.96 that accrued during periods of Merriman's control, and as part of a total balance of $171,733.75; and (vii) that Lights Out Enterprises was not a functioning independent business but was wholly dependent on A.R.I.'s capital to remain operational. Merriman was the sole source of this information. A.R.I. had no independent access to the Company's books, records, ledgers, or bank accounts except through Merriman and his agents.

(x) ***Diversion of Loan proceeds.*** From the closing of the Original Loan Agreement on May 13, 2024 onward, Merriman directed A.R.I.'s Loan proceeds to satisfy debts under the then-undisclosed Mamdani Note, and to fund payments to entities and debts that were not parties to the Loan Agreement, contrary to the permitted uses of proceeds and without A.R.I.'s knowledge or consent. Even after A.R.I. identified the unexplained payments in October 2024 and demanded an accounting of the Company's finances and entities, Merriman continued to direct A.R.I.'s capital to service the Mamdani Note and other obligations outside the permitted uses.

(xi) ***The Trust.*** Merriman is the sole trustee of the Trust and its sole decision-maker. He executed the Trust Guaranty on December 31, 2024 in that capacity, and every act and communication of the Trust described in this Count was performed by Merriman as trustee. Merriman's knowledge of each fact described above is accordingly the knowledge of the Trust. The Trust is accordingly chargeable with the misrepresentations and concealment alleged in this Count. Merriman's concealment of the Mamdani Note preceded the Trust Guaranty by nearly a year,

and Merriman did not disclose its existence to A.R.I. A.R.I. accepted the Trust as a source of credit support, and accepted the equity interests the Trust pledged, in ignorance of the Mamdani Note and the encumbrance it placed on substantially the same assets, the true ownership and control of the Intellectual Property, and of the Loan Parties' true financial condition.

256. Merriman owed A.R.I. a duty to disclose the facts described above that existed independently of, and would have existed in the absence of, any contract between the parties. A.R.I. does not rely upon the reporting or disclosure covenants of the Loan Agreement, the Joinder, or the Guaranties as the source of Defendants' duties alleged in this Count. Said duties arose from the following, independently:

a. ***Superior knowledge and special facts.*** Each concealed fact was peculiarly within Merriman's own knowledge and was not available to A.R.I. through the exercise of reasonable diligence. Merriman signed the Mamdani Note; he caused the Trident Loan; he was the Fattorini Judgment debtor; and he alone controlled the Company's books, records, and bank accounts. Merriman knew that A.R.I. was acting on the basis of mistaken knowledge as to the facts that remained undisclosed at each relevant time—in extending credit, in accepting the December 2024 Collateral package, in forbearing, and in proposing further accommodation.

b. ***Partial disclosure.*** Merriman elected to speak to A.R.I. about the very subjects he concealed. He answered A.R.I.'s diligence inquiries about existing indebtedness and encumbrances; he furnished financial information about the Company; he described the ownership and status of the Intellectual Property;

and, in the November and December 2025 negotiations, he described the Company's liquidity, its prospects, and his own capacity to support the Obligations. Having chosen to speak, Merriman assumed a duty to speak fully and truthfully and not to convey a materially misleading half-truth.

c. ***Affirmative acts of concealment.*** Merriman did not merely stay silent. He directed A.R.I.'s own Loan proceeds to service the concealed Mamdani Note, so that the payments that would have revealed the liability were made from A.R.I.'s money and were not reflected in any disclosure to A.R.I. The Company's bank records disclosed payments to Mamdani but did not disclose what those payments represented. Merriman, who knew the nature of his own obligation, did not disclose that Mamdani was his personal creditor, that the payments related to a pre-existing promissory note, or that the Note purported to grant Mamdani rights in Company assets and revenues. In December 2025, Merriman solicited $500,000 in new money from A.R.I. while concealing both the Trident Loan he had incurred a month earlier and the $4 million Fattorini Judgment entered against him six days before.

d. ***Defendants' general duty.*** Independent of the foregoing, Merriman owed A.R.I. the duty, owed by every person to every other, to refrain from knowingly making false statements of existing fact for the purpose of inducing another to part with money or property. That duty attached before any contract existed between Merriman and A.R.I., and it did not arise from any contract.

257. Each of the misrepresentations and omissions described above was material. Had A.R.I. known the true facts, it would not have entered into the Loan Agreement, would not have

extended additional credit, would not have agreed to the Forbearance Agreement, and would not have refrained from earlier enforcement of its rights and remedies. Specifically, and without limitation:

a. Had A.R.I. known of the Mamdani Note, of the encumbrance it placed on the Collateral, or of the true ownership and control of the Intellectual Property, A.R.I. would not have executed the Original Loan Agreement on May 13, 2024 and would not have funded any portion of the initial $950,000 commitment;

b. Had A.R.I. known those same facts, it would not have upsized the commitment to $1,000,000 on July 15, 2024;

c. Had A.R.I. known that the Intellectual Property listed on Exhibit A to the Perfection Certificate was not owned by Lights Out Holdings (WY), that the Mamdani Note purported to encumber Collateral being pledged to A.R.I., or that the Loan Parties' financial condition was as later revealed, it would not have accepted the December 31, 2024 Collateral package—the Joinder, the Guaranties, the Perfection Certificate, and the IP Security Agreement—or extended the additional credit that accompanied it;

d. Had A.R.I. known the true ownership and control of the Intellectual Property and the Loan Parties' true financial condition, it would not have made the additional $250,000 investment in Lights Out Enterprises in May 2025, which was subsequently converted into debt and incorporated into the payment Obligations (A.R.I. does not seek that sum as damages in this Count);

e. Had A.R.I. known of the Trident Loan or of the Loan Parties' true financial condition, it would not have entered into the Fifth Amendment and Forbearance

Agreement on November 25, 2025, and would instead have exercised its remedies at that time, when its collateral position was materially better than it later became;

f. Had A.R.I. known of the Trident Loan, of the Fattorini Judgment, or of the Loan Parties' true financial condition, it would not have proposed, negotiated, or circulated the December 2025 accommodation or the draft Sixth Amendment, and would not have incurred the professional fees and expenses required for same; and

g. Had A.R.I. known of the Loan Parties' true financial condition, of the Trident Loan, of the Fattorini Judgment, or of the true ownership and control of the Intellectual Property, it would not have exercised the Warrant on January 2 and January 5, 2026 and would not have paid more than $530,000 in new cash equity capital into the Company.

258. Merriman's misrepresentations and omissions were made knowingly and intentionally, or, at a minimum, with reckless disregard for the truth. They were undertaken to induce A.R.I. to enter into the Loan Agreement and Guaranties, extend additional credit, delay enforcement, and refrain from discovering the impairment of its Collateral. Merriman's knowledge and intent are established by, among other things, the following facts:

a. The Mamdani Note was Merriman's own personal obligation, entered into on January 3, 2024 and secured by Company collateral that Merriman himself pledged. He therefore knew of its existence, its amount, and the assets it encumbered when he made contrary representations to A.R.I. four months later, and again when the Loan Parties reaffirmed those representations on December

31, 2024. Merriman's knowledge was complete from January 3, 2024 forward, and he withheld it through the December 2024 Restructuring, notwithstanding A.R.I.'s express requests for information about the Company's entities and finances;

b. Merriman personally directed the application of A.R.I.'s Loan proceeds to service the Mamdani Note—an act that both misused the proceeds and operated to conceal the existence of the liability, and which he continued thereafter without disclosure to A.R.I.;

c. Merriman personally caused the Loan Parties to incur the Trident Loan on or about November 7, 2025, and therefore knew of it when he negotiated and executed the Forbearance Agreement eighteen days later without disclosing it;

d. Merriman was the judgment debtor in the Fattorini action and therefore knew on December 5, 2025 that a $4 million judgment had been entered against him when, six days later, he solicited $500,000 in additional financing from A.R.I.;

e. On December 11, 2025, Merriman told Ellison that approximately $240,000 of the requested financing was needed to pay Mamdani, confirming his continuing knowledge of the obligation and his intention to use additional A.R.I. financing to address it; and

f. Merriman had both motive and opportunity. He was the founder, sole officer, sole director, and controlling equity holder of the Loan Parties; he alone controlled their books, records, and reporting to A.R.I.; and each successive misstatement was necessary to obtain the next advance, to postpone

enforcement against Collateral he had already impaired, and to defer the personal liability he had assumed under the Guaranties.

259. A.R.I. reasonably and justifiably relied on Merriman's misrepresentations and on his knowing omission of material facts that he was obligated to disclose. In reliance, A.R.I. entered into the Loan Agreement, refrained from earlier enforcement actions, engaged in forbearance and accommodation efforts, and incurred substantial legal, administrative, and related costs.

260. A.R.I.'s reliance was justifiable. A.R.I. did not accept Merriman's statements passively. It conducted diligence before agreeing to lend; it required and obtained a Perfection Certificate and Legal Diligence Request directed to the very matters Merriman misrepresented; it conducted lien and judgment searches; it required, obtained, and recorded an IP Security Agreement with the USPTO through counsel at DLA Piper; it imposed a monthly financial-reporting and compliance-certificate regime as a condition of credit; and, after identifying unexplained payments in October 2024 and demanding information Merriman did not provide, it called for the termination of the individual responsible for the Company's internal financial management and arranged for the engagement of an independent outsourced financial services provider. The facts Merriman concealed were not ascertainable through that diligence and were peculiarly within his knowledge.

261. A.R.I.'s reliance remained justifiable after October 2024. When A.R.I. identified payments it could not explain, it did not accept Merriman's silence. It demanded an accounting of the Company's entities and finances, escalated the demand three times over two weeks, brought its own counsel into the request, withheld the amendment and Loan increase Merriman was seeking, called for the termination of the officer responsible for the Company's financial reporting, arranged for an independent outsourced financial services provider to take over the Company's

books and vendor payments, introduced additional corporate and compliance counsel, and conditioned any further accommodation on new guarantors, new collateral, and personal guaranties. A.R.I. obtained written representations and warranties directed to the very matters at issue, and Merriman expressly acknowledged in writing that A.R.I. "and its affiliates are entitled to rely upon such information and presume it is correct in every respect." The facts Merriman continued to conceal — the terms and collateral reach of the Mamdani Note, the true ownership of the Intellectual Property, the Trident Loan, the Fattorini Judgment, and the Company's true financial condition — were not ascertainable through that diligence, were not disclosed in response to A.R.I.'s direct inquiries, and remained peculiarly within Merriman's knowledge.

262. The representations, warranties, certificates, financial statements, and diligence responses described above were addressed and delivered to A.R.I., and A.R.I. relied upon them in conducting its own credit, collateral, and financial analysis of the Loan Parties and of Merriman and the Trust as guarantors. No provision of the Loan Agreement, the Joinder, or the Guaranties disclaims A.R.I.'s reliance on representations made to it by the Loan Parties, by Merriman, or by the Trust.

263. As a direct and proximate result of Merriman's fraud and fraudulent concealment, A.R.I. has suffered out-of-pocket losses that are separate from, and are not recoverable as, the contract damages sought in Count I. Count I seeks the Obligations that Merriman and the Trust promised to pay. The damages sought here amount to A.R.I.'s damages *even if the Obligations were paid in full*. They include, without limitation:

a. More than $530,000 in new cash equity capital that A.R.I. paid to Lights Out Enterprises on January 2 and January 5, 2026 in exercising the Warrant. That payment was not a Loan, is not part of the Obligations, and is not principal,

interest, fees, or Lender Expenses. A.R.I. paid that sum for equity in a company that Merriman knew to be, in fact, insolvent—holding only $237 in cash, carrying approximately $500,000 in aged and unpaid accounts payable to critical vendors who have since demanded payment, carrying an undisclosed past-due tax balance, and generating revenue that had declined approximately 47% year over year;

b. Third-party liabilities that must be satisfied because of the concealed facts, including the Company's past-due tax obligations of approximately $123,753.96 that accrued during Merriman's control, within a total balance of $171,733.75, together with accrued penalties and interest thereon. These sums are owed to taxing authorities, not to A.R.I. under any agreement, and A.R.I. has been required to fund or absorb them as a direct result of the concealment;

c. Approximately $500,000 in aged and unpaid accounts payable to critical vendors that accumulated during Merriman's control and were not disclosed to A.R.I. before it exercised the Warrant and assumed control of the Company. Since A.R.I. assumed control, vendors have demanded payment of these past-due obligations, requiring A.R.I. and the Company to investigate, reconcile, negotiate, and address liabilities incurred under Merriman's management. These vendor obligations materially exceeded the liabilities disclosed to A.R.I., impaired the value of the Company and the equity A.R.I. acquired, and constitute additional losses arising from the concealed financial condition of the Company;

d. The costs of investigating, defending, and resolving the competing lien and priority claims created by the concealed Mamdani Note and the concealed Trident Loan, including in connection with the February 15, 2026 demand letter from counsel to those creditors. But for Merriman's concealment, there would be no competing claimants and no priority dispute; these are losses caused by the fraud and are not amounts "owing" under any agreement;

e. The diminution in the realizable value of the security A.R.I. bargained for. The collateral position A.R.I. accepted was worth materially less on the day it was granted than the position Merriman represented, because the same assets were already encumbered. That loss of security value is a measure distinct from the unpaid debt;

f. The loss A.R.I. sustained by forbearing rather than enforcing. Had Merriman disclosed the Trident Loan before November 25, 2025, A.R.I. would not have entered into the Fifth Amendment and Forbearance Agreement and would instead have accelerated and exercised its remedies at a time when the Collateral had not yet been further encumbered, further depleted, or further impaired. The difference between what A.R.I. would have realized on enforcement in November 2025 and what remained available to it thereafter is a loss caused by the concealment, and is not an amount owing under any agreement;

g. The costs of investigating and reconstructing the Loan Parties' undisclosed liabilities and the misapplication of Loan proceeds—an exercise made necessary only by the concealment itself; and

h. The professional fees, advisory costs, and transaction expenses A.R.I. incurred in negotiating and documenting the Fifth Amendment and Forbearance Agreement and the proposed Sixth Amendment—accommodations it would never have proposed or negotiated had it known of the Trident Loan or the Fattorini Judgment.

i. A.R.I. does not seek in this Count the unpaid principal, interest, and fees that constitute the Obligations sued upon in Count I. To the extent any portion of the losses described above is contended to be recoverable as Obligations or as Lender Expenses under the Loan Agreement or the Guaranties, A.R.I. pleads those losses in the alternative as damages caused by Merriman's fraud, as permitted by Rule 8(d)(2) of the Federal Rules of Civil Procedure. The cash equity capital paid by A.R.I. in January 2026 is not an Obligation under the Loan Agreement, did not constitute a loan advance, and did not increase the indebtedness owed by any Loan Party or guarantor. A.R.I. alleges that it made that payment because of Merriman's continuing concealment and misrepresentations concerning the Company's financial condition, liabilities, and Collateral and that A.R.I. would not have made the payment had those facts been disclosed. That loss is therefore alleged as an out-of-pocket loss independently caused by the fraud, rather than as a measure of the contractual debt.

264. Merriman's conduct was gross, wanton, and willful, and was undertaken with a high degree of moral culpability and conscious disregard for A.R.I.'s rights, warranting an award of punitive damages.

265. =This was not an isolated misstatement. Over a period of more than eighteen months, Merriman concealed a pre-existing personal liability from A.R.I. at inception; caused Company funds to be used to service that undisclosed obligation; represented and certified that valuable Intellectual Property was owned by the Wyoming Loan Party when it remained titled to Merriman's California entity; pledged or purported to pledge the same assets to at least three creditors without disclosure; incurred new secured indebtedness while already in default and just eighteen days before executing a forbearance agreement he induced A.R.I. to sign without knowledge of that debt; concealed a $4 million personal judgment while soliciting $500,000 in additional financing six days later; certified compliance in writing while knowingly in non-compliance; and, when confronted, threatened bankruptcy as leverage rather than providing full disclosure. Merriman did so while represented by counsel, including when A.R.I. pressed for complete corporate and entity information in October 2024, and continued to do so while A.R.I.'s capital was the Company's principal means of remaining operational

COUNT IV
DEFAMATION
(Against Merriman by A.R.I. and Lights Out Enterprises)

266. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 – 236 as if fully alleged herein.

267. Following the January 2-5, 2026 governance actions, Merriman published false statements of fact to third parties – including vendors, sponsors, employees, counterparties, members of the media, and the general public – by issuing public communications falsely representing that the litigation against A.R.I. was brought by "Lights Out Enterprises" rather than by Merriman individually, and by holding himself out as the CEO, or other authorized representative, of Lights Out Enterprises in communications with such third parties.

268. On February 13, 2026, Merriman caused a public statement to be issued through PR Newswire, which was subsequently republished by Morningstar, stating that "Lights Out Enterprises and CEO Shawne Merriman filed a lawsuit" against A.R.I. This statement falsely represented that Lights Out Enterprises, rather than Merriman individually, had brought litigation against A.R.I.

269. Merriman also made additional false and defamatory statements to third parties, including through national media, industry events, and social media, falsely representing that he remained the CEO, or an authorized representative, of Lights Out Enterprises. These statements include, without limitation, statements published in the February 25, 2026 Fox News Digital article, statements made in connection with the March 26, 2026 CTV Live! NY conference, and statements disseminated through Merriman's social media accounts, all of which are described in detail above.

270. At the time these statements were made, Merriman had been removed from all officer, director, and managerial positions and A.R.I. had become the majority equity holder, as described above. The Nevada Action was filed by Merriman individually as the sole plaintiff. Merriman therefore knew the statements were false, and thus he acted with malice when made, or he acted with reckless disregard for their truth. Further, his statements tended to expose Plaintiffs to public contempt, ridicule, aversion, and disgrace in the minds of business, financial, and investment partners and vendors.

271. Additionally, Merriman's reputation had been materially damaged following the Fattorini Judgment, thus his continued and improper holding out as CEO of Lights Out Enterprises harmed the Company's reputation.

272. As a direct and proximate result of Merriman's defamatory statements, Plaintiffs have suffered special damages, including reputational harm, disruption of stabilization and restructuring efforts, damage to vendor, sponsor, and counterparty relationships, the forced pause of Lights Out Enterprises' operations, and the loss of significant business opportunities. Losses include, without limitation, the loss of the ESPN Contract and the Office Beacon relationship. Merriman's statements have also harmed A.R.I. directly by undermining its credibility in the private credit and investment markets, impairing its ability to attract capital from existing and prospective investors, and interfering with its ability to deploy capital into new investments, all of which has caused additional damages to be proven at trial.

COUNT V
TORTIOUS INTERFERENCE WITH CONTRACT
(Against Merriman by Lights Out Enterprises)

273. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 - 236 as if fully alleged herein.

274. Lights Out Enterprises had valid, binding, and commercially significant contractual relationships with third parties, including a multi-year license agreement with ESPN (the "ESPN Contract") for the exclusive distribution of Lights Out events across digital and broadcast platforms through December 31, 2028. The ESPN Contract provided for recurring event broadcasts, established a long-term media distribution platform for the Company, and represented a critical driver of revenue, brand visibility, and enterprise value.

275. In addition, Lights Out Enterprises maintained agreements with vendors, production partners, venues, and service providers necessary to produce and operate its events.

276. Following Merriman's removal, he intentionally and without justification interfered with Lights Out Enterprises' contractual relationships, including by issuing

unauthorized communications purporting to be from or on behalf of "Lights Out Enterprises" and falsely representing that Lights Out Enterprises itself was engaged in litigation against A.R.I.

277. Merriman's interference caused one or more counterparties, including Eduardo Pokorny, to refuse performance, suspend performance, or terminate their relationship with Lights Out Enterprises. Pokorny served as the Company's Chief Financial Officer and Chief Operating Officer and was a critical executive responsible for core business operations, including sourcing and securing the ESPN Contract. On January 19, 2026, Pokorny formally terminated his relationship with the Company, stating that, in light of the Company's directive to cease operations, "continued engagement [was] no longer possible" and that he considered the agreement "materially breached and repudiated." His departure resulted in the immediate loss of key operational leadership and the executive most directly responsible for the Company's primary media relationship, materially impairing Lights Out Enterprises' ability to execute scheduled events and preserve enterprise value.

278. As a direct and proximate result of Merriman's tortious interference, Lights Out Enterprises has suffered damages in an amount to be proven at trial, including attorneys' fees recoverable under the Loan Agreement and the Guaranties.

COUNT VI
TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS
(Against Merriman by Lights Out Enterprises)

279. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 - 236 as if fully alleged herein.

280. Using capital provided by A.R.I. under the Loan Agreement, Lights Out Enterprises developed a portfolio of media, technology, and event-driven assets intended to generate revenue and enterprise value. While these assets were real and operational in certain respects, they were

incomplete, dependent on third-party relationships, and had not yet been fully commercialized at the time A.R.I. assumed control.

281. The realization of value from these assets required cooperation from Merriman, including the transfer of contracts, counterparty relationships, Intellectual Property, and operational information necessary to engage with sponsors, media partners, and service providers. Had Merriman complied with his contractual and governance requirements following the January 2–5, 2026 transition, A.R.I. could have stabilized operations and advanced these initiatives toward monetization, with a reasonable probability of generating revenue and increasing enterprise value.

282. Among the Company's most significant assets was its proprietary media platform, LightsOutSportsTV.com, which was actively distributing live and on-demand sports content and served as a direct-to-consumer channel for the Company's events, highlights, and related programming. The platform provided a scalable avenue for audience growth, content monetization, and brand expansion, and represented a valuable owned-media asset independent of third-party broadcast relationships.

283. LightsOutSportsTV.com was distributed across major connected-TV platforms, including Roku, AppleTV, GoogleTV, FireTV, LG, Samsung, and Vizio, and had entered into commercial partnerships, including a February 26, 2025 agreement with Gameday Hospitality to produce and distribute "The Ultimate Fan Zone," a multi-market live content series spanning more than 20 NFL markets. These capabilities positioned the platform to deliver scalable distribution, sponsorship activation, and revenue generation.

284. The Company also maintained a specific and identifiable business relationship and economic opportunity involving the development and commercialization of sensor-enabled "ShotTracker" gloves. This technology integration was designed to deliver real-time performance

data for broadcast, fan engagement, and potential betting and analytics applications, creating a differentiated media and sponsorship product with significant commercial potential.

285. In addition, Lights Out Enterprises maintained relationships with third-party technology partners, including PTF Lab, which provided artificial intelligence and computer vision capabilities enabling dynamic, in-broadcast advertising and enhanced monetization of media rights.

286. Each constituted a concrete business opportunity with a reasonable probability of economic benefit to Lights Out Enterprises. Merriman had knowledge of these prospective relationships by virtue of his prior role as an officer and director of Lights Out Enterprises.

287. Following the January 2-5, 2026 governance actions, Merriman intentionally, and through wrongful means, interfered with these prospective business relationships with the purpose of harming Lights Out Enterprises. Merriman misrepresented his authority by holding himself out as CEO of Lights Out Enterprises in communications with third parties and at industry events and by publishing false and misleading statements portraying A.R.I.'s lawful exercise of its contractual and governance rights as improper or illegitimate.

288. As a direct and proximate result of Merriman's tortious interference, prospective business relations were disrupted or terminated, planned events and commercial opportunities were delayed or cancelled, counterparties declined to engage or continue discussions, and Lights Out Enterprises has suffered damages, including lost revenue and business opportunities, in an amount to be proven at trial, including attorneys' fees recoverable under the Loan Agreement and the Guaranties.

COUNT VII
UNJUST ENRICHMENT – UNREPAID LOAN PROCEEDS
(Against Merriman and the Trust - Pled in the Alternative by A.R.I.)

289. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 - 236 as if fully alleged herein.

290. This claim is pleaded in the alternative to A.R.I.'s contract-based claims, and applies to the extent that any of the agreements governing the parties' relationship are found to be invalid, unenforceable, or otherwise inapplicable.

291. Merriman was enriched at A.R.I.'s expense by receiving the benefit of A.R.I.'s financing and accommodations, by using Loan proceeds to satisfy undisclosed debts, and then by failing to repay these amounts.

292. Equity and good conscience cannot permit Merriman to retain these benefits without making restitution to A.R.I. A.R.I. is entitled to restitution and disgorgement of all benefits unjustly obtained by Merriman, in an amount to be proven at trial, including attorneys' fees recoverable under the Loan Agreement and the Guaranties.

COUNT VIII
UNJUST ENRICHMENT – IP PROCEEDS
(Against Merriman and the Trust – Pled in the Alternative by A.R.I. and Lights Out Enterprises)

293. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1- 236 as if fully alleged herein.

294. This claim is pleaded in the alternative to A.R.I.'s contract-based claims, and applies to the extent that any of the agreements governing the parties' relationship are found to be invalid, unenforceable, or otherwise inapplicable.

295. Following the January 2 through January 5, 2026 governance actions described above, Merriman was removed from all officer, director, and managerial positions with Lights Out Enterprises and had no authority to act on behalf of, speak for, or commercially exploit Lights Out Enterprises or the "Lights Out" brand for his own personal benefit.

296. The Intellectual Property – including the "Lights Out" trademarks, trade names, service marks, brand identity, and associated goodwill – constituted valuable Collateral encumbered by A.R.I.'s perfected first-priority security interest and valuable enterprise property associated with Lights Out Enterprises and its affiliated business operations.

297. Notwithstanding his removal and the termination of his authority, Merriman has continued to use, exploit, promote, trade on, and associate himself with the Intellectual Property and the goodwill of the "Lights Out" brand, including through public appearances, social media, commercial activity, apparel-related activity, and other public-facing uses of the "Lights Out" name and brand.

298. Upon information and belief, since January 5, 2026, Merriman has earned, received, retained, or otherwise obtained revenues, profits, fees, compensation, promotional value, business opportunities, goodwill, or other economic benefits derived from his unauthorized use, exploitation, or association with the Intellectual Property and the "Lights Out" brand.

299. Merriman obtained those benefits at Plaintiffs' expense. A.R.I. was deprived of the benefit of its bargained-for Collateral, security interest, and enforcement rights, and Lights Out Enterprises was deprived of the value, goodwill, business opportunities, and proceeds associated with its own enterprise identity and brand-related rights.

300. Equity and good conscience do not permit Merriman to retain any revenues, profits, fees, compensation, promotional value, business opportunities, goodwill, or other economic benefits derived from his unauthorized post-removal exploitation of the Intellectual Property, particularly where Merriman had no authority to exploit the Intellectual Property for his own benefit after his removal and after A.R.I. exercised its contractual rights under the Loan Agreement, Guaranties, Proxy Rights, and Warrant.

301. Plaintiffs are therefore entitled to restitution and disgorgement of all revenues, profits, fees, compensation, promotional value, business opportunities, goodwill, and other economic benefits Merriman earned, received, retained, or otherwise obtained since January 5, 2026, through his unauthorized use, exploitation, or association with the Intellectual Property and the "Lights Out" brand, in an amount to be proven at trial, including attorneys' fees recoverable under the Loan Agreement and the Guaranties.

COUNT IX
DECLARATORY JUDGMENT – GOVERNANCE AUTHORITY
(Against Merriman and the Trust by A.R.I.)

302. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 - 236 as if fully alleged herein.

303. An actual, justiciable controversy exists between A.R.I. and Defendants Merriman and the Trust regarding: (i) the validity of A.R.I.'s exercise of its rights under the Loan Agreement and the Guaranties, including its exercise of the Proxy Rights and the Warrant; (ii) Merriman's continuing claim to authority to act on behalf of Lights Out Enterprises notwithstanding his removal; and (iii) the legal effect of any actions taken by Merriman purporting to bind or represent Lights Out Enterprises after his removal.

304. Upon the occurrence of Events of Default, the Proxy Rights became effective automatically, as described above. Multiple Events of Default occurred and were continuing, as expressly acknowledged by the Loan Parties in the Forbearance Agreement.

305. On January 2, 2026, following acceleration of the payment Obligations, A.R.I. exercised the Proxy Rights.

306. Separate from its Proxy Rights, A.R.I. also exercised the Warrant on January 2 and January 5, 2026, resulting in A.R.I.'s acquisition of approximately 84% of the outstanding equity of Lights Out Enterprises.

307. Merriman was thereafter removed from all corporate positions, as set forth above.

308. Notwithstanding his removal, Merriman has continued to assert authority over Lights Out Enterprises, including by representing himself to third parties as CEO of Lights Out Enterprises, issuing communications purporting to be on behalf of Lights Out Enterprises, and otherwise interfering with operations and governance. Merriman's conduct has created uncertainty and confusion regarding his asserted authority and the validity of A.R.I.'s exercise of its contractual and equity rights.

309. A judicial declaration is necessary to resolve the controversy between A.R.I., Merriman, and the Trust and to eliminate uncertainty regarding the validity of A.R.I.'s actions and Merriman's continuing claims of authority.

310. A.R.I. accordingly seeks a declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that:

(i) A.R.I. validly exercised its rights under the Loan Agreement and the Guaranties, including the Proxy Rights, upon the occurrence of Events of Default;

(ii) A.R.I.'s exercise of the Warrant on January 2 and January 5, 2026, validly resulted in A.R.I.'s acquisition of approximately 84% of the outstanding equity of Lights Out Enterprises;

(iii) Merriman has no authority to act on behalf of Lights Out Enterprises in any capacity, and any actions taken by Merriman purporting to bind, represent, or speak for Lights Out Enterprises are unauthorized and without legal effect; and

(iv) Any continued assertion by Merriman of authority over Lights Out Enterprises – including by representing himself as its CEO, issuing communications purporting to be on behalf of Lights Out Enterprises, or causing litigation to be filed in its name – is contrary to the rights of A.R.I. as established under the Loan Agreement, the Guaranties, the Warrant, and Delaware law.

COUNT X
DECLARATORY JUDGMENT – INTELLECTUAL PROPERTY
(Against Merriman, the Trust, and Lights Out Holdings (CA) by A.R.I., Lights Out Enterprises, and Lights Out Holdings (WY))

311. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 - 236 as if fully alleged herein.

312. An actual, justiciable controversy exists between Plaintiffs and Defendants regarding which entity owns and holds title to the Intellectual Property – including the trademarks, trade names, service marks, and associated goodwill related to the "Lights Out" brand – and accordingly, which entity's assets are subject to A.R.I.'s perfected first-priority security interest under the Loan Agreement, the Perfection Certificate, and the IP Security Agreement.

313. On December 31, 2024, Lights Out Holdings (WY), along with several other Lights Out-affiliated entities that were later reorganized under Lights Out Enterprises, executed the Joinder, becoming Loan Parties and granting A.R.I. a continuing first-priority security interest in the Collateral. Throughout the lending relationship, Merriman represented and warranted to A.R.I. that the Intellectual Property was held by Lights Out Holdings (WY) - and was available to secure A.R.I.'s Loan on a first-priority basis. A.R.I. extended credit, accepted the IP Security Agreement, and made each subsequent advance and accommodation in reliance on those representations.

314. Upon information and belief, Lights Out Holdings (CA), an entity controlled by Merriman, may hold or claim record title to some or all of the Intellectual Property, even though

it did not execute the Joinder or IP Security Agreement and did not grant A.R.I. a security interest. Any such claim to record title directly affects A.R.I.'s rights under the New York-governed Loan Agreement, Joinder, Guaranties, Perfection Certificate, and IP Security Agreement, and creates a live controversy regarding ownership, title, and A.R.I.'s Collateral rights.

315. Merriman has expressly acknowledged through multiple filings in the Nevada Action that the Intellectual Property is A.R.I.'s Collateral under the Loan Agreement and the Guaranties.

316. A judicial declaration is therefore necessary to resolve this controversy, eliminate uncertainty regarding the location and ownership of the Intellectual Property, and enable A.R.I. to exercise its rights as senior secured party with respect to the Collateral, including by foreclosure or other lawful disposition.

317. Plaintiffs accordingly seek a declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that:

(i) The Intellectual Property – including all trademarks, trade names, service marks, and associated goodwill related to the "Lights Out" brand – is held by Lights Out Holdings (WY), or, to the extent any record title is held by Lights Out Holdings (CA), such title is subject to A.R.I.'s superior rights and remedies as senior secured party;

(ii) A.R.I. holds a valid, perfected, first-priority security interest in such Intellectual Property pursuant to the Loan Agreement, the Joinder, the Guaranties, the Perfection Certificate, and the IP Security Agreement;

(iii) To the extent any portion of the Intellectual Property is presently titled in the name of Lights Out Holdings (CA) or any other entity, such titling does not defeat,

subordinate, or otherwise impair A.R.I.'s perfected first-priority security interest, which attached to the Intellectual Property when granted by Lights Out Holdings (WY) and remains in full force and effect;

(iv) Any transfer or purported transfer of the Intellectual Property, whether before or after the execution of the Perfection Certificate or the IP Security Agreement, was made in violation of the Loan Agreement's negative pledge covenants, without A.R.I.'s knowledge or consent, and is void or voidable as against A.R.I.; and

(v) A.R.I., as senior secured party, is entitled to exercise its rights and remedies with respect to the Intellectual Property, including by foreclosure or other disposition under applicable law, and to require Lights Out Holdings (CA) to take all actions necessary to give effect to A.R.I.'s rights, including any actions necessary to confirm or restore record title in Lights Out Holdings (WY).

COUNT XI
CONSTRUCTIVE TRUST – INTELLECTUAL PROPERTY
(Against Merriman and the Trust by A.R.I. and Lights Out Enterprises)

318. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 - 236 as if fully alleged herein.

319. The Intellectual Property – including the trademarks, trade names, service marks, and associated goodwill related to the "Lights Out" brand – is encumbered by A.R.I.'s perfected first-priority security interest under the Loan Agreement and the IP Security Agreement.

320. Following Merriman's removal from all officer, director, and managerial positions, as described above, he had no right, license, or authority to use, exploit, or derive economic benefit from the Intellectual Property.

321. Notwithstanding the termination of his authority and A.R.I.'s perfected security interest, Merriman has continued to use, exploit, and derive personal economic benefit from the Collateral, including the Intellectual Property, and the goodwill associated with the "Lights Out" brand (including benefiting from trademark infringement suits against third parties). Merriman continues to hold himself out as an executive of Lights Out Enterprises at public-facing events and to vendors, partners, and the public. Merriman has thereby earned, received, or otherwise obtained revenue, fees, compensation, business opportunities, and other economic benefits derived from his unauthorized exploitation of the IP Proceeds.

322. The IP Proceeds were obtained through Merriman's unauthorized use of property encumbered by A.R.I.'s perfected first-priority security interest, in derogation of A.R.I.'s rights as senior secured party and as the controlling majority equity holder of Lights Out Enterprises. In equity and good conscience, Merriman cannot retain the IP Proceeds free of A.R.I.'s rights as senior secured party and controlling majority equity holder.

323. The Guaranties, Perfection Certificate, and IP Security Agreement were executed as part of an integrated Collateral package through which Merriman and the Loan Parties represented that the Intellectual Property secured A.R.I.'s payment Obligations and induced A.R.I. to extend and continue extending credit, enter into the Forbearance Agreement, and accept the Intellectual Property as Collateral. Merriman's continued unauthorized exploitation of the Intellectual Property after his removal therefore unjustly permits him to retain benefits derived from the Collateral that he and the relevant Loan Parties represented and agreed would secure A.R.I.'s interests.

324. The IP Proceeds constitute specific, identifiable property to the extent they consist of monies, accounts, receivables, fees, compensation, revenues, distributions, or other assets

traceable to Merriman's unauthorized use of the Intellectual Property and the associated goodwill of the "Lights Out" brand. To the extent Merriman derived non-monetary benefits, business opportunities, goodwill, or other economic advantages from unauthorized use of the Intellectual Property, those benefits further support an accounting, disgorgement, and equitable relief, including a constructive trust over any identifiable proceeds or assets traceable to those benefits.

325. Accordingly, A.R.I. and Lights Out Enterprises are entitled to the imposition of a constructive trust over the IP Proceeds, and over any property, accounts, receivables, compensation, revenues, or other assets in which the IP Proceeds have been deposited, invested, transferred, or commingled, together with an accounting, disgorgement, and such other equitable relief as may be necessary to prevent Merriman from retaining benefits derived from his unauthorized exploitation of the Intellectual Property.

COUNT XII
ACCOUNTING
(Against Merriman and the Trust by A.R.I. and Lights Out Enterprises)

326. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 - 236 as if fully alleged herein.

327. As set forth above, Merriman and the Trust owed numerous contractual Obligations to A.R.I. and Lights Out Enterprises. Specifically, Merriman and the Trust owed confidentiality obligations, set forth in the Restrictive Covenants and elsewhere, to A.R.I. as senior-secured creditor of the Collateral. Further, Merriman owes duties to Lights Out Enterprises as a former fiduciary of the Company.

328. Following his removal from all officer, director, and managerial positions with Lights Out Enterprises on January 2-5, 2026, Merriman has continued to use, exploit, and derive personal economic benefit from the Intellectual Property – including the "Lights Out" trademarks,

trade names, service marks, and associated goodwill – without authorization and in derogation of A.R.I.'s perfected first-priority security interest and Lights Out Enterprises' ownership rights.

329. The full nature and extent of Merriman's unauthorized use of the Intellectual Property, and the revenues, profits, fees, compensation, and other economic benefits derived therefrom, are presently within Merriman's exclusive knowledge and control, and are not ascertainable by A.R.I. without a full and complete accounting.

330. A.R.I. and Lights Out Enterprises are entitled to an accounting from Merriman and the Trust of all revenues, profits, income, fees, compensation, and other economic benefits that Merriman and the Trust have earned, received, or otherwise obtained through his unauthorized use and exploitation of the Intellectual Property from January 5, 2026 through the date of judgment, including but not limited to: (i) all revenues generated from the use of the "Lights Out" brand at events, appearances, or promotional activities; (ii) all sponsorship, advertising, licensing, or endorsement revenues associated with the Intellectual Property; (iii) all fees, compensation, or other remuneration received by Merriman in connection with any activities conducted under the "Lights Out" name or brand; and (iv) any other revenues or economic benefits derived from the Intellectual Property.

331. An accounting is necessary to determine the full measure of Plaintiffs' damages and to support the imposition of a constructive trust over the IP Proceeds. Without an accounting, Plaintiffs will be unable to ascertain the extent of Merriman and the Trust's unjust enrichment or to trace the IP Proceeds to identifiable assets.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor, against Defendants, and grant the following relief as applicable:

1. Actual damages in an amount to be proven at trial, including all outstanding principal, accrued and unpaid interest, fees, costs, and expenses under the Loan Agreement, and all consequential damages arising from undisclosed liabilities accruing under Merriman's management, including the Company's unpaid tax obligations;
2. Damages for breach of the Guaranties, including damages arising from Merriman's breach of the Restrictive Covenants;
3. Damages for fraud, fraudulent inducement, and fraudulent concealment, in an amount to be proven at trial, which are separate and apart from A.R.I.'s entitlement to damages for Defendants' contract breaches;
4. Damages for breach of the implied covenant of good faith and fair dealing;
5. Damages for defamation, including reputational harm and economic losses;
6. Damages for tortious interference with contract and tortious interference with prospective business relations;
7. Restitution and disgorgement on the applicable unjust enrichment claims, including disgorgement of post-removal revenues, profits, fees, compensation, promotional value, business opportunities, goodwill, and other economic benefits derived from Merriman's unauthorized use, exploitation, or association with the Intellectual Property and the "Lights Out" brand;
8. Punitive damages for fraud, in an amount to be determined at trial, based on Merriman's willful, wanton, malicious, and intentional conduct undertaken with reckless disregard for Plaintiffs' rights, and on the sustained, multi-year, multi-creditor course of concealment, self-dealing, and diversion of Loan proceeds described above, which reflect a high degree of moral culpability;

9. Declaratory relief as set forth in Counts IX and X;

10. Imposition of a constructive trust over the IP Proceeds, and over any property, accounts, receivables, compensation, revenues, or other assets in which the IP Proceeds have been deposited, invested, transferred, or commingled, together with an accounting and disgorgement of all such IP Proceeds;

11. Preliminary and permanent injunctive relief: (i) enjoining Merriman from violating the Restrictive Covenants in the Guaranties; (ii) enjoining Merriman from holding himself out as an officer, director, or authorized representative of Lights Out Enterprises; (iii) enjoining Merriman from issuing public statements on behalf of Lights Out Enterprises; (iv) enforcing the Loan Agreement's forum-selection clause by requiring Merriman to dismiss or stay the Nevada Action, or otherwise prohibiting Merriman from prosecuting claims covered by the forum-selection clause outside the contractually selected forum; and (v) enjoining Merriman from disseminating additional false and defamatory statements about A.R.I.

12. An order directing Merriman to provide Plaintiffs with a full and complete accounting of all revenues, profits, income, fees, compensation, and other economic benefits earned, received, or obtained through his unauthorized use of the Intellectual Property from January 5, 2026 through the date of judgment;

13. Pre-judgment and post-judgment interest at the maximum legal rate;

14. Attorneys' fees and costs of this enforcement action and A.R.I.'s defense of the Nevada Action as expressly provided under the Loan Agreement and the Guaranties; and

15. Such other and further relief as this Court deems just and proper.

Dated: September 18, 2026 Respectfully submitted,

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, I caused a copy of the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which then sent a notice of filing (NEF) to the parties of record.

/s/ Daniel Filor