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