

Plaintiff,

v.

HTG VENTURES, LLC; JOHN T.
LEWIS, JR.; TIMOTHY KENSINGER;
JAMES P. LEWIS; HARVEST TRADING
GROUP, INC.; and HARVEST TRADING
GROUP TECHNOLOGIES, INC.,

Defendants.

and

PROMERA HEALTH, LLC.

Nominal Defendant.

ANSWER TO VERIFIED COMPLAINT AND FIRST AMENDED COUNTERCLAIM

Defendants HTG Ventures, LLC (“HTG Ventures”), John T. Lewis, Jr., Timothy Kensinger, James P. Lewis, Harvest Trading Group, Inc. (“HTG Inc.”), and Harvest Trading Group Technologies, Inc. (“HTG Tech”) (collectively, “Defendants”), hereby answer the Verified Complaint of Plaintiff Vireo Systems, Inc. (“Vireo”) as follows:

1. Defendants admit the allegations contained in Paragraph 1.
2. Defendants admit the allegations contained in Paragraph 2.
3. Defendants admit the allegations contained in Paragraph 3.
4. Defendants admit the allegations contained in Paragraph 4.

9. The allegations contained in Paragraph 9 are admitted in part and denied in part. Defendants admit only that HTG Ventures is the controlling member of ProMera and that pursuant to ProMera's Operating Agreement, Defendants John Lewis and Kensinger were at relevant times the managers of ProMera, which is manager-managed. The remaining allegations in Paragraph 9 contain legal conclusions and argument to which no response is required. To the extent the allegations are deemed to be factual, Defendants deny the allegations contained in Paragraph 9.

10. The allegations in Paragraph 10 contain legal conclusions to which no response is required. To the extent the allegations are deemed to be factual, Defendants deny the allegations contained in Paragraph 10.

11. The allegations in Paragraph 11 contain legal conclusions to which no response is required.

12. The allegations in Paragraph 12 contain legal conclusions to which no response is required. To the extent the allegations are deemed to be factual, Defendants deny the allegations contained in Paragraph 12.

13. Defendants admit the allegations contained in Paragraph 13.

14. Defendants deny the allegations contained in Paragraph 14 as stated, and specifically deny that Vireo is the holder of the registered trademark CON-CRET®. To the contrary, ProMera is the holder of the registered trademark CON-CRET®.

purposes for which ProMera was formed, but specifically deny that this was the sole purpose. By way of further answer, Defendants state that ProMera was formed for the reasons described in the Operating Agreement.

18. Defendants admit the allegations contained in Paragraph 18.

19. Defendants admit that the document attached to Vireo's Complaint as Exhibit 1 appears to be a true and correct copy of the Operating Agreement.

20. Defendants admit the allegations contained in Paragraph 20.

21. Defendants admit only that Mark Faulkner was a manager of ProMera until he resigned on March 12, 2015. Defendants deny the remaining allegations contained in Paragraph 21.

22. Responding to Paragraph 22, Defendants state that the Operating Agreement is a document which speaks for itself, and admit that the quoted language appears therein.

23. Responding to Paragraph 23, Defendants state that the Operating Agreement is a document which speaks for itself, and admit that the quoted language appears therein.

24. Responding to Paragraph 24, Defendants state that the Operating Agreement is a document which speaks for itself, and admit that the quoted language appears therein.

25. Defendants deny the allegations contained in Paragraph 25 as stated. Defendants state that the Operating Agreement is a document which speaks for itself, and admit that the quoted language appears therein, and specifically authorizes entry of the PDMA, which

allegations in Paragraph 25 contain legal conclusions and argument to which no response is required. To the extent the remaining allegations are deemed factual, Defendants deny the remaining allegations contained in Paragraph 25, and specifically deny that Defendants' conduct was improper, contrary to the terms of the PDMA or Operating Agreement, or unbeknownst to Vireo or its principal, Mark Faulkner. To the contrary, Defendants state that during the life of the PDMA, HTG Inc. and HTG Tech were compensated for services rendered in connection with the sale of ProMera products. HTG Inc.'s expenses included compensating John Lewis, James Lewis, and Tim Kensinger for their substantial efforts to sell the ProMera products. This arrangement did not deprive ProMera of any income to which it was entitled. Further responding, Vireo and its principal, Mark Faulkner, were aware of and consented to compensating HTG Inc. and HTG Tech for the services these entities provided with respect to the sale of ProMera products. The PDMA expressly contemplates that ProMera will "market and distribute the Branded Products through [HTG Inc.] and Harvest Direct, LLC" and provides that "ProMera, Harvest, other Affiliates of ProMera, or other distributors approved by ProMera shall be authorized to sell, market and distribute the Branded Products under the direction of ProMera and in accordance with the terms of this Agreement." PDMA Recital M, § 2.2. The PDMA also provides that "ProMera is solely responsible for all expenses incurred in connection with its marketing, advertising and distribution activities[.]" PDMA § 3.2. Vireo explicitly agreed that the Harvest entities were authorized to market, sell and distribute ProMera's products

went into business with Harvest because Harvest had the financial, sales, distribution, fulfillment, and administrative capabilities to sell ProMera products, but Vireo either: (a) did not really expect Harvest to do the work Harvest was engaged to perform, or (b) did not expect Harvest to be paid for the work it performed. Moreover, Vireo and its principal, Mark Faulkner, were aware, at least as early as 2011, that ProMera paid fees and commissions to HTG Inc. and HTG Tech.

26. Defendants admit the allegations contained in Paragraph 26.

27. Defendants admit that on March 22, 2011 Vireo and ProMera entered into the PDMA, state that the PDMA is a document which speaks for itself, and admit that the quoted language appears therein. By way of further answer, PDMA Recital M, states in full that: “This Agreement memorializes the parties’ understanding of the Oral Agreement, memorializing the current structure of the transaction as well as restructuring it. ProMera has the resources to market and distribute the Branded Products through Harvest Trading Group, Inc. and Harvest Direct, LLC (collectively ‘Harvest’), which are affiliates of ProMera (‘Affiliates’).”

28. Defendants admit that the document attached to Vireo’s Complaint as Exhibit 2 appears to be a true and correct copy of the PDMA and the amendment thereto.

29. The allegations contained in Paragraph 29 and footnote 1 are admitted in part and denied in part. Defendants admit only that Vireo purported to terminate the PDMA on February 4, 2015. Defendants deny that ProMera violated the PDMA in any way. Responding to footnote

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