

DISTRICT COURT, DENVER COUNTY STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202	DATE FILED: May 24, 2022 12:55 PM FILING ID: 9036004541954 CASE NUMBER: 2022CV31451
Plaintiff: UNIVERSAL HERBS, LLC, by and through GARY SCHWARTZ in his capacity as Court-Appointed Receiver v. Defendant: TITAN HEALTH, LLC	COURT USE ONLY
<i>Attorneys for Plaintiff:</i> John A. Chanin, Reg. No. 20749 Katherine A. Roush, Reg. No. 39267 Jason M. Spitalnick, Reg. No. 51037 Foster Graham Milstein & Calisher LLP 360 S. Garfield Street, 6 th Floor Denver, Colorado 80209 Phone: (303)333-9810 Fax: (303)333-9786 Email: jchanin@fostergraham.com ; kroush@fostergraham.com ; jspitalnick@fostergraham.com	Case No.: 2022CV031451 Division:
AFFIDAVIT OF GARY SCHWARTZ	

STATE OF COLORADO
COUNTY OF DENVER

I, Gary Schwartz, being duly sworn, say as follows:

1. I am the Court appointed Receiver for the Receivership Assets of Defendants Mark Ray (“Ray”), Reva Stachniw (“Stachniw”), Custom Consulting & Product Services, LLC (“Custom Consulting”), RM Farm & Livestock, LLC (“RM”), MR Cattle Production Services, LLC (“MR Cattle”), Sunshine Enterprises (“Sunshine”), Universal Herbs, LLC (“Universal”), DBC Limited, LLC (“DBC”) (collectively, the “Receivership Defendants”) in the case titled *Chan v. Ray et al*, in the District Court for the City and County of Denver, Case No. 19CV33770 (the “Receivership Case”).

2. In the Receivership Case, the Plaintiff, the Colorado Securities Commissioner, has made allegations that the Ray Defendants and others were operating a fraudulent investment scheme involving both alleged cattle trading a wholesale marijuana trading.

3. I was appointed as Receiver over Ray, Custom Consulting, MR Cattle, Universal and DBC and their respective properties and assets, and interests and management rights in in related affiliated and subsidiary businesses (the “Estate”) on September 30, 2019 via a Stipulated Order Appointing Receiver. As Receiver, I am tasked with preserving the assets of the Estate for the benefit of the victims of the Receivership Defendants’ fraudulent investment scheme.

4. I have served as a Court-appointed Receiver for troubled entities over 25 times. I hold an owner’s badge and temporary court appointee badge from the MED (which permits me to

serve as Receiver for cannabis companies) and have served as a Receiver for medical and/or retail marijuana businesses at least 3 times.

5. Plaintiff Universal is a licensed marijuana business with three locations in the Denver area – a recreational and medical grow facility, and two dispensaries that sell both recreational and medical marijuana products. In total, Universal has six state MED licenses and six local (E&L) licenses.

6. Upon my appointment as Receiver over the Estate, I immediately took over Universal's operation. This included reviewing and collecting all available records in the Universal Herbs offices and trying to piece together Universal's financial situation, including identifying all debts and liabilities.

7. As Receiver, one of my main duties as Receiver was to sell Universal to generate assets for the Estate. In or about May 2020, Universal (via myself as Receiver over Universal and the Estate) and Titan Health LLC ("Titan") entered into a series of agreements memorializing a transaction pursuant to which Titan purchased certain assets and properties of Universal for a total purchase price of \$4,000,000 ("Purchase Price").

8. The sale of Universal's assets and property to Titan was done via an Asset Purchase Agreement ("APA"). Titan also executed two secured notes and security agreements as part of its purchase of Universal's assets (the "\$2.25M Note" and "\$1M Note" and, together, the "Secured Notes").

9. The Secured Notes obligate Titan to make monthly payments to Universal. The Secured Notes are secured by perfected security interests in all assets transferred to Titan pursuant to the APA, including without limitation all MED and E&L licenses and all profits generated from the assets (the "Secured Collateral").

10. Titan failed to make one or more monthly payments due to Universal under the Secured Notes. In February, 2022, Universal sent Titan a notice of default as required by the APA, but Titan failed to cure its defaults. Therefore, Universal sent Titan a notice of uncured default on March 22, 2022 putting Titan on notice that Titan had committed uncurable defaults of its obligations under the Secured Notes, and that the debt under the Secured Notes had accelerated per the terms of the Secured Notes.

11. Titan currently owes Universal \$1,902,745.53 under the \$2.25M Note, consisting of \$1,712,140.14 in principal, \$131,891.38 in interest, and \$58,714.01 in late fees.

12. Titan currently owes Universal \$773,733.36 under the \$1M Note, consisting of \$700,000.03 in principal, \$53,733.33 in interest, and \$20,000 in late fees.

13. Over the past five months, Titan's majority owner and manager John Kaweske has repeatedly represented that Titan was going to cure its defaults and continue payment on the Secured Notes, despite these commitments.

14. Most recently, Kaweske, on behalf of Titan, committed to making a \$200,000 payment on the Secured Notes no later than April 20, 2022, with the remaining outstanding balance owed on the Secured Notes to the Receiver within 90 days of said payment. But, instead of making the \$200,000 payment as promised on April 20, 2022, the deadline was extended to April 30, 2022, and then simply failed to make any payment on April 30, 2022 or anytime thereafter. Rather than acknowledging this latest missed deadline, Kaweske failed to communicate after his missed deadline.

15. In addition to being in default with Universal under the APA and Secured Notes, Titan is currently in default with the landlord of the grow facility. Per my recent and direct communication with that landlord, Titan owes at least \$90,000 in back rent. The landlord of the grow facility has told he that if payment was not made by Friday, May 20, 2022, he would begin the eviction process. If this were to occur, this would put the licenses for the grow operation in jeopardy of being revoked.

16. If the licenses for the grow operation are revoked, that will significantly diminish the value of Universal's Secured Collateral.

17. Titan is also in default of its lease in one of its two retail dispensaries. I do not currently know the amount owed nor the length of Titan's delinquency. However, the minority owners of Titan have indicated to me that the landlord of this location is also in the process of evicting Titan from the location. Again, if this were to occur, the retail license for this location would be revoked, further diminishing the value of Universal's Secured Collateral.

18. I also understand that Titan owes various material amounts to numerous taxing authorities, including \$284,772.70 to the State of Colorado, and an unknown amount to the City and County of Denver. This debt further puts Titan's licenses in danger of being revoked.

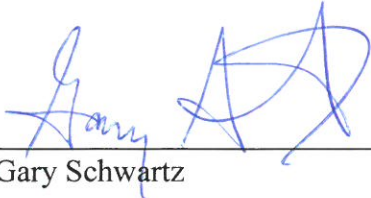
19. I also just discovered that Titan, through Kaweske, took out a loan from a third party in the amount of \$1.6MM and pledged the Titan assets as collateral for said loan, even though Universal already has a secured interest in all of the business assets of Titan, as these assets are a part of the Secured Collateral.

20. I have also learned that Kaweske has directed employees at the grow facility to begin destroying plants and dismantle operations as early as Monday, May 23, 2022. as part of the sale to Titan and the related promissory notes. Kaweske himself confirmed to me via email on Friday, May 20, 2022 that he was planning on shutting down the grow operation immediately.

21. Finally, Kaweske's business partners and minority owners of Titan have accused Kaweske of transferring significant amounts of flower and other Titan inventory to other Kaweske related entities without any or proper consideration.

22. All of these actions pose a real and immediate threat to Titan and to the value of the Secured Collateral.

DATED this 23rd day of May 2022.

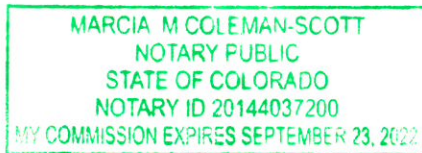



Gary Schwartz

Subscribed and sworn to before me this 23rd day of May 2022, by Gary Schwartz

Witness my hand and official seal.

My commission expires September 23, 2022.





Notary Public