

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-00942-MEH

SENSORIA, LLC, directly on its own behalf and derivatively on behalf of  
CLOVER TOP HOLDINGS, INC., a Delaware corporation;  
GORDON MORTON;  
ROGER AND ROBIN SMITH;  
DENNIS AND LAURA GRIMMER;  
GREENHOUSE 5, LLC;  
AARON GARRITY;  
GARRETT SCHIFFMAN;  
LANCE SCHIFFMAN;  
KENNETH D. HOUSE; and  
MARC LESSER,

Plaintiffs,

v.

JOHN D. KAWESKE;  
CHRISTOPHER S. PETERSON;  
CLOVER TOP HOLDINGS, INC., a Delaware corporation;  
CLOVER TOP HOLDINGS, a Colorado corporation;  
AJC INDUSTRIES, LLC;  
DURANGO MANAGEMENT, LLC;  
SUNLIFE AG, LLC;  
MMJ 95, LLC;  
TWEEDLEAF LLC, a Colorado limited liability company;  
TWEEDLEAF, LLC, a Delaware limited liability company;  
LIFESTREAM HOLDINGS, LLC;  
ORDWAY FARMS, LLC;  
NORTH STAR HOLDINGS a/k/a NORTH STAR HOLDINGS, INC.;  
MANUEL WELBY EVANGELISTA a/k/a WELBY EVANGELISTA;  
DJDW, LLC;  
JW COLORADO, LLC;  
JW ORDWAY, LLC;  
JW TRINIDAD, LLC;  
BRIAN TANNENBAUM;  
TANNENBAUM & TROST, LLC, f/k/a TANNENBAUM,  
TROST & BURK, LLC; and  
DOES 1-100,

Defendants.

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**ORDER**

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**Michael E. Hegarty, United States Magistrate Judge.**

Before the Court are the Motion to Dismiss (ECF 215) by Defendants John Kaweske

(“Kaweske”) and entities related to him (“Kaweske Entities”) and the Motion to Dismiss (ECF 216) by Defendants Welby Evangelista, North Star Holdings, LLC, and DJDW, LLC (“Evangelista Defendants”). The Motions are fully briefed, and the Court finds that oral argument will not materially assist in their adjudication. For the reasons that follow, the Motions are granted in part and denied in part.

## **BACKGROUND**

### **I. Alleged Facts**

For purposes of this ruling, the Court accepts as true the factual allegations—but not any legal conclusions, bare assertions, or conclusory allegations—that Plaintiffs raise in their Third Amended Complaint (“TAC”). ECF 206. *See generally Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (accepting as true a plaintiff’s factual allegations for purposes of Fed. R. Civ. P. 12(b)(6) analysis).

#### **A. The Creation of the Clover Top Holdings, Inc. Investment Vehicle**

Defendant John D. Kaweske (“Kaweske”) is a citizen of Colorado. ECF 206 at ¶ 11. He was subject of four administrative proceedings and three lawsuits regarding inappropriate dealings with client funds or securities transactions. *Id.* at ¶ 48. He expended great effort to hide his identity and that history. *Id.* at ¶¶ 49-51. Defendant Christopher S. Peterson (“Peterson”) is a citizen of either Colorado or Arizona. *Id.* at ¶ 12.

At issue in this lawsuit is Clover Top Holdings, Inc. which Kaweske, Peterson, and Peterson’s wife incorporated in September 2015. *Id.* at ¶¶ 34. They were its majority owners and served as its officers. *Id.* at ¶¶ 34-36. Clover Top Holdings, Inc. is a Delaware corporation. *Id.* at ¶ 13. Its principal place of business was in Colorado (*id.*), although it was not registered to do business in Colorado until September 22, 2017 (*id.* at ¶¶ 52(a), 94). It no longer is an active corporation. *Id.* at ¶¶ 111-114.

Kaweske, Peterson, and Peterson’s wife formed Clover Top Holdings, Inc. “to engage in all legal aspects of the cannabis business, beginning in Colorado and expanding elsewhere as the business grew and as state and federal laws changed across the country.” *Id.* at ¶ 34. In October 2015, Clover Top Holdings, Inc. acquired TweedLeaf Delaware, which possessed the federal trademark and service mark registrations for the “TWEEDLEAF” word and drawing. *Id.* at ¶¶ 55-56.

On October 30, 2015, Clover Top Holdings, Inc. retained Brian Tannenbaum, Esq. of Tannenbaum, Trost & Burk, LLC (the law firm’s name at the time) to provide legal services “regarding the purchase and/or sale of certain marijuana licenses” as well as “any other services [that it] may request from time to time.” *Id.* at ¶ 58. Clover Top Holdings, Inc. retained the Tannenbaum Defendants “for both cannabis and corporate law.” *Id.* at ¶ 59. Kaweske oversaw all cultivation operations for Clover Top Holdings, Inc. as well as company finances, taxes, licenses, and legal matters in tandem with the Tannenbaum Defendants. Peterson managed dispensary operations, patient care, and online/offline marketing for the TweedLeaf business. *Id.* at ¶ 72.

In January 2016, Clover Top Holdings, Inc. bought “two real estate holdings in Colorado Springs, one a retail building and the other a warehouse.” *Id.* at ¶ 61. On January 26, 2016, Durango Management, LLC (“Durango”) was created to hold properties and leases for Clover Top Holdings, Inc. as its real estate management company. *Id.* at ¶ 62. On February 1, 2016, “Durango purchased the two real estate holdings that were subject of Clover Top [Holdings, Inc.’s] January 2016 contract.” *Id.* at ¶ 63. On March 11, 2016, Durango leased one of the properties to AJC Industries, LLC d/b/a Front Range Alternative Medicines and d/b/a FRAM (“AJC”). *Id.* at ¶ 66. Kaweske is AJC’s sole member. *Id.* at ¶ 15. An appraiser did not regard it as an arms-length transaction. *Id.* at ¶ 66.

In March 2016, Clover Top Holdings, Inc. purchased two existing marijuana licenses from AJC. *Id.* at ¶ 64. The Tannenbaum Defendants assisted with the transaction. *Id.* At the time, Kaweske was the only Clover Top Holdings, Inc. principal who had the Colorado residency required for a marijuana license. *Id.* at ¶ 65.

### **B. The Initial Investments**

In late 2015, Kaweske and Peterson solicited Peterson’s sister, Robin Smith, and her husband, Roger Smith, to invest in Clover Top Holdings, Inc. Kaweske and Peterson portrayed Clover Top Holdings, Inc. as the parent corporation for all future cannabis operations and brands, and they reassured the Smiths that the operation was on the “up and up.” Kaweske and Peterson emphasized that they had multiple business licenses and trademarks (including a federal trademark) for their operations and products. Based on those representations, the Smiths invested \$50,000 in Clover Top Holdings, Inc. in October 2015. *Id.* at ¶ 37. The Smiths are citizens of California. *Id.* at ¶ 4.

Between January and March of 2016, Kaweske and Peterson solicited Plaintiff Gordon Morton (“Morton”) to invest in Clover Top Holdings, Inc. *Id.* at ¶ 38. They portrayed it as “the holding company or the ‘mother ship’ for all cannabis-related entities, technologies, and brands in Colorado and expanding beyond Colorado as its success grew.” *Id.* at ¶ 39. The greater enterprise would include “dispensaries, grow operations, extraction technologies, intellectual property, other future ancillary entities, and all similar services and businesses.” *Id.* Clover Top Holdings, Inc.’s shareholders would receive the profits as well as “prompt repayment of initial investments and distributions.” *Id.* at ¶¶ 39, 52.

To Morton and other investors, Kaweske emphasized his extensive experience, expertise, and special knowledge in the field and highlighted the legal nature of the venture and its anticipated

nationwide expansion. *Id.* at ¶¶ 38, 45. The implication was that Clover Top Holdings, Inc.’s operations were or would become lawful under federal law. Nor did Kaweske and Peterson honor their representations to run the entity for Plaintiffs’ benefit. *Id.* at ¶ 52.

Written materials explained that Clover Top Holdings, Inc. was “established to make investments and operate businesses in the burgeoning legal cannabis industry” and for creating “a national brand for medicinal dispensaries, online store and cannabis and hemp-based products.” *Id.* at ¶ 40. Clover Top Holdings, Inc. was described as a Delaware corporation based in Colorado Springs. It owns “an existing medical marijuana commercial location as well as a cannabis cultivation facility and is integrating a second fully operational and licensed medicinal cannabis business into the newly purchased locations.” *Id.* Its existing business “generates between \$60,000–\$80,000 per month in gross revenues.” *Id.* It has an “11,000 square foot cultivation facility, which is capable of growing over 4,000 plants and producing in excess of \$400,000 a month of wholesale cannabis.” *Id.* It owns a “medical marijuana dispensary located in a prime retail location” and will open “a new medical dispensary chain called TweedLeaf™.” *Id.* Lastly, Clover Top Holdings, Inc.’s assets include intellectual property as well as proprietary hemp- and CBD-based products “that are currently legal to sell nationwide.” *Id.*

On April 4, 2016, Morton paid \$100,000 for 100,000 shares. Kaweske told him that he was the first outside investor. The investment was made pursuant to a Subscription Agreement for Preferred Shares. *Id.* at ¶ 41.

Contemporaneously, Kaweske and Peterson were soliciting additional investors. Garrett Schiffman, Lance Schiffman, and Aaron Garrity received the same written materials as Morton as well as the assurance that Kaweske and Peterson already had business licenses for their various operations. Garrett Schiffman and Lance Schiffman each paid \$60,000 for Clover Top Holdings,

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