SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
West Justice Center
8141 13th Street
Westminster, CA 92683

SHORT TITLE: Route Four LLC vs. Burkhart

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: **30-2020-01129185-CU-BC-WJC**

I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 05/09/25 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Westminster, California on 5/9/25. Following standard court practice the mailing will occur at Sacramento, California on 5/12/25.

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I certify that I am not a party to this cause. I certify that that the following document(s), Minute Order dated 05/09/25, was transmitted electronically by an Orange County Superior Court email server on May 9, 2025, at 7:36:41 AM PDT. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

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CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
WEST JUSTICE CENTER

MINUTE ORDER

DATE: 05/09/2025 TIME: 07:30:00 AM DEPT: W02

JUDICIAL OFFICER PRESIDING: Carmen Luege
CLERK: R. Coates
REPORTER/ERM:
BAILIFF/COURT ATTENDANT:

CASE NO: **30-2020-01129185-CU-BC-WJC** CASE INIT.DATE: 02/03/2020
CASE TITLE: **Route Four LLC vs. Burkhart**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

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EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 4/11/2025 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

RULING: Route Four LLC v. Burkahart, et. al. Case No. 2020-01129185 (consolidated with 2020-01130231)

This is mainly a breach of contract case arising out of an asset purchase agreement between plaintiff Route Four LLC (Route Four) and defendants Brandon Burkhart (Burkhart), Amberlee Rails (Rails), and Canop Holdings, Inc. f/k/a Hydroponics, Inc. Canop Holdings, Inc., with Burkhart as the primary owner/operator, was in the business of selling agricultural equipment to large cannabis growers, as well as to small end-users of cannabis, and supplied other hydroponics retail stores with product. As part of its operation, Canop Holdings, Inc. operated two brick-and-mortar hydroponic stores in the Inland Empire.

On 7/13/18, Route Four purchased from Canop Holdings, Inc. the two Inland Empire brick-and-mortar retail stores that sold air purification systems, ventilation systems, grow-light bulbs, grow-light reflectors, lighting accessories, hydroponics equipment, and soil nutrients, as well as the inventory, goodwill, and the name Hydroponics, Inc. After the purchase, Route Four continued to operate the two retail stores under the name Hydroponics, Inc. To purchase these assets, Route Four and Defendants entered into an Asset Purchase Agreement (“APA”) for an initial purchase price of $3,350,000 plus a subsequent earnout payment dependent on performance.

In connection with the APA, Route Four and Burkhart also entered into a consulting agreement under which Burkhart (primary owner/operator of Canop/Hydroponics Inc.) would receive consulting fees of $36,000 for a period of three years. Rails, who is Burkhart’s sister and was also involved in the stores’ operations, also signed a consulting agreement which entitled her to monthly payments in the sum of $1,500 per month.

On 2/3/20, Route Four filed an action, Case No. 2020-01129185, alleging Burkhart, Rails and Canop Holdings, Inc. breached the APA and associated consulting agreements in a variety of ways. Subsequently, Route Four amended the complaint multiple times. The operative pleading appears to be the Third Amended Complaint filed on 4/14/22. Relevant to the issue before the Court is the allegation that, after the sale of Hydroponics, Inc. to Route Fourt, Burkhart and Rails began competing with Route Four's business in violation of the non-compete clause in the APA, Section 9.2. The consulting agreement signed by Rails also included the non-compete language in the APA, Section 9.2.

The alleged violations of Section 9.2 relate to the operations of two other businesses by Burkhart and Rails: Luxx Lighting (Luxx) and Athena Products (Athena). At the time the parties negotiated and executed the APA, Burkhart owned fifty percent of Luxx – a company that developed and patented an artificial lighting system that resulted in an accelerated growth of indoor cannabis plants increasing revenues for cannabis growers. Burkhart was also involved in the development of soil nutrients for indoor cannabis agricultural operations and created the Athena brand to market these nutrients. At the time the parties negotiated the APA, Athena was at its early stages and not as developed as Luxx.

Prior to signing the APA, Route Four representatives were generally aware that: Burkhart had an ownership interest in Luxx; Rails provided administrative services to Luxx and Athena; and the Hydroponics, Inc. retail stores sold Luxx lights which were prominently advertised at the retail stores Route Four representatives visited during the APA negotiations. However, as more fully discussed below, Route Four representatives did not know the full extent of Burkhart's interest in Luxx or his intentions as to the future operations of Luxx and Athena.

The APA contains a non-compete provision, Section 9.2, which is the centerpiece of this initial phase 1 of the trial. Route Four's position is that pursuant to Section 9.2 of the APA, Burkhart could not engage in the retail sale or distribution of hydroponics products in California or Washington, and that Burkhart violated this prohibition when Luxx sold its lighting equipment directly to large growers and other end-users in these two states soon after closing the deal. Route Four's argument is simple: the phrase in Section 9.2, "each Seller agrees that . . . he or it will not . . . engage . . . in hydroponics retail, distribution or services in the states of California and Washington" means what it says based on the ordinary meaning of the words "retail" and "distribution."

Burkhart and Rails disagree. They testified that Section 9.2 only prohibited Burkhart's ability to open new hydroponics retail stores in California and Washington. (See also Defendants' Trial Brief, page 4:6-13 [ROA 1260]; Defendants' Closing Brief, page 1:6-9 [ROA 1327].) As Burkhart further explained, selling Luxx lighting and Athena nutrients to end-users and growers in California and Washington was not prohibited by Section 9.2 because Luxx and Athena are not retailers or distributors of hydroponic products -- they are manufacturers. Burkhart believes that as long as each manufacturer is only selling one product (Luxx selling lights and Athena nutrients), as opposed to an array of hydroponic products, the manufacturer is not in the retail or distribution business.

"The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. . . . mutual intention . . . is determined by objective manifestations of the parties' intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties. " (Morey v. Vannucci (1998) 64 Cal. App.4th 904, 912 [citations omitted].)

Where the meaning of the words used in a contract is disputed, the trial court must provisionally receive any proffered extrinsic evidence which is relevant to show whether the contract is reasonably susceptible of a particular meaning.(Beard v. Goodrich (2003) 110 Cal.App.4th 1031, 1037; Morey v. Vannucci ,supra at 912).

In phase 1 of the trial, the Court provisionally received extrinsic evidence to determine whether the words

"retail" and "distribution" used in Section 9.2 are reasonably susceptible to the meanings urged by Route Four and Burkhart. In other words, does the extrinsic evidence show that "there [is] more than one possible meaning to which the language of the contract is yet reasonably susceptible." (Morey v. Vannucci, Id.; Wolf v. Superior Court (2004) 114 Cal.App.4th 1343 (as modified on denial of reh'g (Feb. 19, 2004)) [the court provisionally receives all credible evidence concerning the parties' intentions to determine whether the language is "reasonably susceptible" to the interpretation urged by the parties. If considering the extrinsic evidence the court decides the language is "reasonably susceptible" to the interpretation urged, the extrinsic evidence is then admitted to aid the trier of fact (judge or jury) in the second step—interpreting the contract].)

The rules of contract interpretation provide that, "Where the parties have reduced their agreement to writing, their mutual intention is to be determined, whenever possible, from the language of the writing alone.' [Citations.] 'Contract formation is governed by objective manifestations, not the subjective intent of any individual involved. [Citations.] The test is "what the outward manifestations of consent would lead a reasonable person to believe." [Citation.]' [Citation.]" (Allen v. Smith (2002) 94 Cal.App.4th 1270, 1277.) The question, then is not, what [the party] subjectively intended, but what a reasonable person would believe the parties intended." (Beard v. Goodrich (2003) 110 Cal.App.4th 1031, 1037.)

In deciding the issue of whether the language is ambiguous, the Court turns first to the words of Section 9.2 because "[t]he words of a contractual provision will be interpreted in their ordinary and popular sense, unless used by the parties in a technical sense or given a special meaning by usage." (Id.). As Beard further explained, "if the meaning a layperson would ascribe to contract language is not ambiguous, we apply that meaning." (Id., citing [Santisas v. Goodin (1998) 17 Cal.4th 599, 608, 71; and see Civ.Code, § 1644].)

Route Four relies on the ordinary and common meaning of the terms "retail sales" and "distribution" in support of its position that the language of Section 9.2 is not ambiguous. The common and ordinary meaning of these words are reflected in the definitions of these terms in dictionaries. The Cambridge English Dictionary defines the term distribution, as used in the context of commerce, as **"**the process of transporting products from a manufacturer, storing them, and selling them to different stores and customers." (Ex. 85)**.**

Black's Law Dictionary (12th edition, 2024) also offers the following definitions for terms addressed by the parties during their testimony: (1) retail means "the sale of goods or commodities to ultimate consumers, as opposed to the sale for further distribution or processing. Cf Wholesale; (2) wholesale is "the sale of goods . . . to a retailer for resale, and not to the ultimate consumer. Cf. retail;" (3) distributor is "a wholesaler, jobber, or other manufacturer or supplier that sells chiefly to retailers and commercial users;" the term "distribution channel" refers to "several routes through which a manufacturer's or distributor's goods are marketed."

The defense contends that in the hydroponics industry, the definition of the term distribution is much narrower than in the world of commerce generally. Thus, they argue that the word "retail" and "distribution" in the APA has a more nuanced meaning based on customary usage or technical definitions that apply in the industry. Thus, Burkhart testified that when Luxx sells the lights to cannabis growers and supplies retail stores with Luxx lighting, Luxx is not engaged in the business of distribution. To be a distributor, Burkhart elaborated, the entity has to be selling a full array of hydroponics equipment (lights, irrigation systems, ventilation systems, pots, tables) and multiple brands. He applied the same analysis to Athena, i.e., Athena manufactures soil nutrients for indoor plants but Athena does not produce a full array of hydroponics products. Thus, neither Luxx or Athena were in the retail or distribution business.

A usage is habitual or customary when it has "such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to a particular agreement." (Rest.2d, Contracts § 219). "The more general and well-established a usage is, the stronger is the inference that a party knew of or had reason to know of it. Similarly, the fact that a usage is reasonable may tend to show

that the parties contracted with reference to it or that a particular party knew or had reason to know of it. Where the parties in fact agree to a usage, there is no general requirement that their usage seem reasonable to others; but where there is no agreement only a reasonable usage supplies an omitted term. What is reasonable for this purpose depends on the circumstances ....” (Binder v. Aetna Life Ins. Co. (1999) 75 Cal.App.4th 832, 853.) For custom and usage to be applied in the interpretation of a contract, one party must know or have reason to know that the other party intends it to govern, or it must be so generally known that a person should be aware of it. (Miller v. German See & Plant Co. (1924) 193 C. 62, 69.) Applying this standard, the defense did not establish that Burkhart’s understanding of the meaning of the words retail and distribution is habitual or customary in the hydroponics industry.

There is no question that the ordinary meaning of the term distribution as used in commerce involves the sale of the product being distributed. One way a manufacturer of a product places the product in the marketplace is to sell it. The manufacture may sell its products to wholesale distributors, or it could sell the product to retail brick-and-mortar stores for resale to end-users. Nowadays manufacturers can also establish a presence on the internet and directly sell to end-users. Thus, the Defendants’ position that Luxx was not “distributing” lights in California and Washington because it is a manufacturer of the product is illogical as it defies the reality of the modern world of commerce. Not surprisingly, Burkhart’s testimony as to the meaning of the terms retail, distribution, and distributor lacked clarity and sometimes changed depending on the question and who asked. His convoluted explanations undermined his position that in the hydroponics industry these terms have a meaning, other than what applies in the general world of commerce, that is habitual or customary.

In addition, throughout his testimony Burkhart emphasized that Kenneth Alston (Alston), the founder of Route Four and lead APA negotiator, was not in the hydroponics business and had never played any role as a cannabis grower, retailer, or user of hydroponics products. This means that when Burkhart negotiated the APA, he knew that Alston was not familiar with the nuanced definition of the term distribution which Burkhart claims is customary in the hydroponics industry. Thus, even if the Court accepted as true Burkhart’s testimony that the terms “retail” and “distribution” has the industry meaning he ascribes, Burkhart had to communicate to Alston the industry’s customary meaning of those words otherwise the parties would not reach a meeting of the minds. Yet, during the three-month period the parties were negotiating the APA, including the language in Section 9.2, the defense did not provide any text, email, letter, or any other corroborating evidence to show that Burkhart or his team communicated to Alston, or any other Route Four representatives, the usage and custom meaning of the terms “retail” and “distribution” Burkhart described in his testimony.

This lack of evidence is particularly troubling because during the negotiations of the APA, only Burkhart knew that he owned fifty percent of Luxx and that the other fifty percent interest belonged to the owner of Jungle Boys, which Burkhart described as the largest, best known cannabis grower in California and beyond. Notably, during the due diligence period, Burkhart provided Route Four a list of the major customers who purchased product from the Hydroponic Inc. stores and the Jungle Boys were included on that list. Burkhart testified that the owner of Jungle Boys invested funds to develop Luxx lighting because he understood the lights caused the cannabis plants to grow faster, resulting in increased revenues for cannabis’ growers. Both Burkhart and the owner of Jungle Boys intended to use their connections and name recognition in the cannabis indoor farming industry to market and sell the lighting equipment they created to the large growers in the country. As Burkhart testified, California and Washington are home to the largest cannabis agricultural operations. The practical effect of the Burkhart/Jungle Boys investment is that Burkhart’s objective became the distribution of Luxx lighting, and Jungle Boys no longer had to buy Luxx lighting from Route Four’s stores as it had access to the lights directly from Luxx – the company it owned with Burkhart.

During the three months of negotiations between Burkhart and Alston, only Burkhart knew the plans he had to market and distribute Luxx lighting. Yet, Burkhart did not explain this to Alston or the due diligence team. Neither did Burkhart propose language in Section 9.2 of the APA to make clear that he intended to continue to sell Luxx lighting to large growers and end-users through Luxx. Throughout the due diligence

period, Burkhart and Rails provided limited information about Luxx and Athena, minimizing the significance of these enterprises and how it would affect the business Route Four intended to purchase. Only after the deal closed did Route Four investors figure out that Burkhart intended to sell hydroponic products (Luxx lighting and Athena nutrients) in Washington and California through the companies he founded and owned -- Luxx and Athena.

Finally, the meaning Burkhart wishes to attribute to Section 9.2 makes little sense considering the consulting agreement Route Four and Burkhart signed as part of the APA, which required Route Fourt to pay Burkhart $36,000 per month for his consulting services. The point of the consulting agreement was to assist Route Four in making the Hydroponics Inc. stores successful expecting that Burkhart would use his knowledge of and connections in the hydroponics industry to benefit Route Four. Had Route Four known that Burkhart intended to sell Luxx lighting and Athena nutrients in Washington and California, there would have been no point in paying Burkhart a consulting fee as Burkhart would be competing with Route Four to sell lighting equipment and nutrients to large growers, as Burkhart had done when he owned the Hydroponics Inc. stores.

To the extent defense counsel argues that the APA is invalid or unlawful because it restrains Luxx and Athena from selling their products, the Court rejects this argument. The APA does not refrain Luxx or Athena's ability to do business in California or Washington. Section 9.2 only restricted Burkhart from having an interest in a business that sells, i.e. "distributes" hydroponics products in California and Washington for a period of five years. It is Burkhart's conduct that the non-compete clause is meant to restrain not the operations of Luxx and Athena. After signing the APA, Burkhart and Rails could have divested their interest in these companies and thereby avoid conduct that could be considered a violation of Section 9.2.

Having considered the totality of the evidence presented, it appears to the Court that during the negotiations of the APA, the parties used the terms "retail" and "distribution" based on the ordinary meaning of the words in commerce. Burkhart conceived the nuanced definitions of these terms after the Route Four deal closed and he wanted to continue to market and sell Luxx lighting to large growers in California and Washington.

For all the foregoing reasons, this Court finds that the phrase in Section 9.2, "each Seller agrees that . . . he or it will not . . . engage . . . in hydroponics retail, distribution or services in the states of California and Washington", the terms "retail" and "distribution" are not "reasonably susceptible" to the interpretation urged by Defendants. Accordingly, there is no ambiguity in the language of Section 9.2. Thus, in phase 2 of the trial, Defendants cannot present extrinsic evidence to the trier of fact (judge or jury) on the meaning of Section 9.2 of the APA.