

DISTRICT COURT OF APPEAL OF FLORIDA  
SIXTH DISTRICT

CASE NO.: 6D23-4193  
L.T. CASE NO.: 2021-CA-002217-O

DWAYNE DUNDORE

*Appellant*

v.

KHRYSOS GLOBAL, INC., LEIGH DUNDORE, DUSTIN DUNDORE,  
YOUNGEVITY INTERNATIONAL, INC., KHRYSOS INDUSTRIES,  
INC., SMASH CUSTOMS, INC., DAVID BRISKIE, YVONNE  
DUNDORE, et al.

*Appellees*

**YOUNGEVITY INTERNATIONAL, INC.  
AND KHRYSOS INDUSTRIES, INC.'S  
ANSWER BRIEF**

---

*On Appeal from the Circuit Court of the Ninth  
Judicial Circuit in and for Orange County, Florida*

---

COLE SCOTT & KISSANE, P.A.  
*Counsel for Appellees*  
Tower Place, Suite 400  
1900 Summit Tower Boulevard  
Orlando, Florida 32810  
Telephone (321) 972-0071  
Facsimile (321) 972-0099  
[therese.savona@csklegal.com](mailto:therese.savona@csklegal.com)

**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES .....	iv
INTRODUCTION .....	1
STATEMENT OF THE CASE AND FACTS.....	2
<i>Youngevity Also Acquired Smash Customs</i> .....	5
<i>Khrysos Industries’ Products and Customers</i> .....	5
<i>The Phantom Companies</i> .....	6
<i>The Overlap of Khrysos Industries and Phantom X</i> .....	6
<i>Litigation Ensues</i> .....	7
<i>Requests for Admissions</i> .....	8
<i>Youngevity’s First Motion for Summary Judgment</i> .....	11
<i>Youngevity’s Second Motion for Summary Judgment</i> .....	18
<i>Youngevity’s Third Motion for Summary Judgment</i> .....	21
SUMMARY OF THE ARGUMENT .....	24
STANDARD OF REVIEW.....	27
ARGUMENT .....	31
I. DUNDORE CANNOT APPEAL COUNTERCLAIMS III AND IV. ....	31
II. THE TRIAL COURT ACTED WITHIN ITS DISCRETION TO DENY DUNDORE’S MOTION TO SET ASIDE SOME OF HIS ADMISSIONS. ....	32

III. THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT IN FAVOR OF YOUNGEVITY FOR COUNTERCLAIM III FOR FRAUDULENT INDUCEMENT.....	39
A. Neither Dundore’s affidavit nor Acosta’s affidavit create genuine issues of material fact.....	39
B. Assuming this Court can address this issue, the doctrine of waiver does not preclude summary judgment in favor of Youngevity for fraudulent inducement.....	45
C. Assuming this Court can address this issue, Youngevity relied on Dundore’s oral and written fraudulent misrepresentations prior to entering the Purchase Agreement. ....	47
IV. THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT IN FAVOR OF YOUNGEVITY ON COUNT I OF DUNDORE’S FIRST AMENDED COMPLAINT REGARDING DUNDORE’S BREACH OF THE EMPLOYMENT AGREEMENT. ....	49
A. No genuine issues of disputed fact. ....	49
B. Dundore does not identify what restrictive covenant he believes would not serve a legitimate business purpose, or otherwise meet his burden to show why this Court should reverse.....	52
V. DUNDORE DOES NOT MEET HIS BURDEN ON APPEAL TO SHOW WHY THE TRIAL COURT ERRED IN GRANTING YOUNGEVITY SUMMARY JUDGMENT ON COUNTS I AND III. ....	55
VI. THE TRIAL COURT CORRECTLY RELIED ON BRISKIE’S DECLARATION WHEN GRANTING YOUNGEVITY SUMMARY JUDGMENT ON COUNTS VI AND IX AND COUNTERCLAIMS I, VII, AND X. ....	58

VII. DUNDORE FAILED TO PRESERVE ANY CHALLENGE TO THE TRIAL COURT’S DAMAGE AWARD; EVEN IF CONSIDERED, THE TRIAL COURT’S DAMAGE AWARD IS SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE. .... 62

CONCLUSION ..... 68

CERTIFICATE OF SERVICE..... 69

SERVICE LIST..... 70

CERTIFICATE OF COMPLIANCE ..... 71

**TABLE OF AUTHORITIES**

Page

**Cases**

*Alamagan Corp. v. Daniels Group, Inc.*, 809 So. 2d 22 (Fla. 3d DCA 2002) ..... 45, 48, 51

*Alvarez v. Cooper Tire & Rubber Co.*, 75 So. 3d 789 (Fla. 4th DCA 2011) ..... 27, 59

*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) ..... 28, 29

*Ansaarie v. First Coast Cardiovascular Institute, P.A.*, 252 So. 3d 287 (Fla. 1st DCA 2018) ..... 52

*Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150 (Fla. 1979)..... passim

*Asset Mgmt. Consultants of Va., Inc. v. City of Tamarac*, 913 So. 2d 1179 (Fla. 4th DCA 2005)..... 22, 33, 36

*Baskin v. Griffith*, 127 So. 2d 467 (Fla. 1st DCA 1961)..... 28

*Baya v. Revitz*, 281 So. 2d 521 (Fla. 3d DCA 1973) ..... 31

*Benn v. Key West Propane Gas Corp.*, 72 So. 2d 910 (Fla. 1954) ..... 46

*Beverage Cannery, Inc. v. E.D. Green Corp.*, 291 So. 2d 193 (Fla. 1974)..... 59

*Bombardier Aerospace Corp. v. Signature Flight Support Corp.*, 123 So. 3d 138 (Fla. 5th DCA 2013) ..... 51

*Boulos v. Yung Sheng Xiamen Yong Chem. Indus. Co.*, 855 So. 2d 665 (Fla. 4th DCA 2003)..... 65, 66

<i>Bowman v. Kingsland Dev., Inc.</i> , 432 So. 2d 660 (Fla. 5th DCA 1983) .....	65, 66
<i>Butler v. Yusem</i> , 44 So. 3d 102 (Fla. 2010) .....	39
<i>Canakarlis v. Canakarlis</i> , 382 So. 2d 1197 (Fla. 1980) .....	27
<i>Carlin v. State</i> , 939 So. 2d 245 (Fla. 1st DCA 2006) .....	27, 32
<i>Cascante v. 50 State Security Serv., Inc.</i> , 300 So. 3d 283 (Fla. 3rd DCA 2019) .....	29, 41
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986) .....	28, 30
<i>Clemens v. Namnum</i> , 233 So. 3d 1146 (Fla. 4th DCA 2017) .....	37
<i>DeAtley v. McKinley</i> , 497 So. 2d 962 (Fla. 1st DCA 1986) .....	33
<i>Duest v. Dugger</i> , 555 So. 2d 849 (Fla. 1990) .....	passim
<i>Ellis v. England</i> , 432 F.3d 1321 (11th Cir. 2005) .....	29
<i>Englezios v. Batmasian</i> , 593 So. 2d 1077 (Fla. 4th DCA 1992) .....	48
<i>Environmental Servs., Inc. v. Carter</i> , 9 So. 3d 1258 (Fla. 5th DCA 2009) .....	53
<i>Godwin v. State</i> , 593 So. 2d 211 (Fla. 1992) .....	31
<i>Gromann v. Avatar Property &amp; Cas. Ins. Co.</i> , 345 So. 3d 298 (Fla. 4th DCA 2022) .....	58
<i>Hammond v. State</i> , 34 So. 3d 58 (Fla. 4th DCA 2010) .....	passim
<i>Harpold v. Stock</i> , 65 So. 2d 477 (Fla. 1953) .....	46
<i>Hartford Fire Ins. Co. v. Controltec, Inc.</i> , 561 So. 2d 1334 (Fla. 5th DCA 1990) .....	65, 66

<i>Herzog v. Herzog</i> , 346 So. 2d 56 (Fla. 1977) .....	30
<i>Huertas v. Avatar Property &amp; Cas. Ins. Co.</i> , 333 So. 3d 767 (Fla. 4th DCA 2022) .....	59
<i>Ibarra v. Ross Dress for Less, Inc.</i> , 350 So. 3d 465 (Fla. 3d DCA 2022) .....	29
<i>In re Amends. to Fla. R. Civ. P. 1.510</i> , 317 So. 3d 72 (Fla. 2021) .....	28
<i>In re Amends. to Fla. R. of Civ. P. 1.510</i> , 309 So. 3d 192 (Fla. 2020) .....	28, 29
<i>In re Forfeiture of 1982 Ford Mustang</i> , 725 So. 2d 382 (Fla. 2d DCA 1998) .....	37
<i>K.E.L. Title Ins. Agency, Inc. v. CIT Technology Financing Servs., Inc.</i> , 58 So. 3d 369 (Fla. 5th DCA 2011) .....	42
<i>Kinchla v. Ran Investments, LLC</i> , 49 Fla. L. Weekly D1840, 2024 WL 4096229 (Fla. 6th DCA Sept. 6, 2024) .....	49
<i>Landers v. Milton</i> , 370 So. 2d 368 (Fla. 1979) .....	41, 42
<i>Leonardo v. State Farm Fire &amp; Cas. Co.</i> , 675 So. 2d 176 (Fla. 4th DCA 1996) .....	46
<i>Margolis v. Klein</i> , 184 So. 2d 205 (Fla. 3d DCA 1966) .....	45, 48, 51
<i>Martin v. Brown</i> , 566 So. 2d 890 (Fla. 4th DCA 1990).....	44, 70
<i>Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.</i> , 475 U.S. 574 (1986) .....	29
<i>Mazzoni Farms, Inc. v. E.I. DuPont De Nemours &amp; Co.</i> , 761 So. 2d 306 (Fla. 2000) .....	57

<i>Melody Tours, Inc. v. Granville Mkt. Letter, Inc.</i> , 413 So. 2d 450 (Fla. 5th DCA 1982) .....	37
<i>Miccosukee Tribe v. S. Fla. Water Mgmt. Dist.</i> , 48 So. 3d 811 (Fla. 2010).....	passim
<i>Montgomery v. Dep't of Health &amp; Rehab. Servs.</i> , 468 So. 2d 1014 (Fla. 1st DCA 1985) .....	32
<i>Morgan v. Thomson</i> , 427 So. 2d 1134 (Fla. 5th DCA 1983) .....	34, 40
<i>Ocean Comm'ns, Inc. v. Bubeck</i> , 956 So. 2d 1222 (Fla. 4th DCA 2007) .....	66
<i>Panzer v. O'Neal</i> , 198 So. 3d 663 (Fla. 2d DCA 2015).....	41
<i>Pickell v. Lennar Homes, LLC</i> , 372 So. 3d 1279 (Fla. 6th DCA 2023) .....	27
<i>Pierce v. Anglin</i> , 721 So. 2d 781 (Fla. 1st DCA 1998) .....	65
<i>Progressive Exp. Ins. Co. v. Camillo</i> , 80 So. 3d 394 (Fla. 4th DCA 2012) .....	38, 59, 61
<i>Ramos v. Growing Together, Inc.</i> , 672 So. 2d 103 (Fla. 4th DCA 1996) .....	33
<i>Romeo v. Romeo</i> , 907 So. 2d 1279 (Fla. 2d DCA 2005).....	40, 56
<i>Ruiz v. Wendy's Trucking, LLC</i> , 357 So. 3d 292 (Fla. 2d DCA 2023) .....	58
<i>Scott v. Harris</i> , 550 U.S. 372 (2007).....	29
<i>Shands Teaching Hosp. &amp; Clinics, Inc. v. Mercury Ins. Co.</i> , 97 So. 3d 204 (Fla. 2012).....	62
<i>Shanks v. Bergerman</i> , 334 So. 3d 681 (Fla. 2d DCA 2022).....	28

<i>Sher v. Liberty Mut. Ins. Co.</i> , 557 So. 2d 638 (Fla. 3d DCA 1990) .....	33
<i>Shere v. State</i> , 742 So. 2d 215 (Fla. 1999) .....	passim
<i>Stolzenberg v. Forte Towers S, Inc.</i> , 430 So. 2d 558 (Fla. 3d DCA 1983) .....	40
<i>Sunset Harbour Condo. Ass'n v. Robbins</i> , 914 So. 2d 925 (Fla. 2005) .....	62, 64
<i>Taylor Woodrow Homes Florida, Inc. v. 4/46-A Corp.</i> , 850 So. 2d 536 (Fla. 5th DCA 2003).....	47
<i>The Fla. Bar v. Greene</i> , 926 So. 2d 1195 (Fla. 2006) .....	28
<i>Trobaugh v. Trobaugh</i> , 81 So. 2d 629 (Fla. 1955).....	30
<i>Turner v. Allen</i> , 389 So. 2d 686 (Fla. 5th DCA 1980).....	63
<i>United Auto. Ins. Co. v. W. Hollywood Pain &amp; Rehabilitation Center</i> , 162 So. 3d 98 (Fla. 4th DCA 2014).....	33
<i>United Bonding Ins. Co. v. Dura-Stress, Inc.</i> , 243 So. 2d 244 (Fla. 2d DCA 1971).....	59
<i>Volusia County v. Aberdeen at Ormond Beach</i> , 760 So. 2d 126 (Fla. 2000).....	27
<i>Wells Fargo Bank, N.A. v. Shelton</i> , 223 So. 3d 414 (Fla. 5th DCA 2017) .....	35
<i>Wells Fargo Bank, Nat. Ass'n v. Voorhees</i> , 194 So. 3d 448 (Fla. 2d DCA 2016) .....	33
<i>Wohl v. State</i> , 480 So. 2d 639 (Fla. 1985) .....	34
<i>Wright v. State</i> , 48 Fla. L. Weekly D1895, 2023 WL 6166569 (Fla. 6th DCA Sept. 22, 2023).....	62

*Zurstrassen v. Stonier*, 786 So. 2d 65 (Fla. 4th DCA 2001)..... 45

**Statutes**

§ 542.335, Fla. Stat. .... 15, 52, 53

**Rules**

Fla. R. Civ. P. 1.370 ..... 32, 33

Fla. R. Civ. P. 1.510 ..... 58

## **INTRODUCTION**

This case involves a multi-million-dollar business acquisition “gone wrong.” Appellant, Dwayne Dundore (“Dundore”), seeks review of three orders granting summary judgment on direct and counterclaims against him and in favor of Appellees, Youngevity International, Inc. (“Youngevity”) and Khrysos Industries, Inc. (“Khrysos Industries”) (collectively, “Youngevity”) after the trial court found Dundore fraudulent induced Youngevity into acquiring his company. In granting summary judgment, the trial court relied on Dundore’s admissions and Youngevity’s uncontroverted evidence. For the reasons discussed below, this Court should affirm.

Citations to Dundore’s Initial Brief are referenced as “IB.” followed by any appropriate page numbers. Citations to the Record on Appeal are referenced as “R.” followed by any appropriate PDF reader page numbers.

## **STATEMENT OF THE CASE AND FACTS**

Khrysos Global, Inc. was a hemp and cannabis equipment manufacturer that operated post-processing and packing facilities. (R. 4182-83). Dundore created Khrysos Global and was its President. (R. 4182-83).

In late 2018, Youngevity and Dundore entered negotiations with the intent that Youngevity would purchase Khrysos Global's assets. (R. 4043, 4183). These discussions occurred between Dundore and Dave Briskie, Youngevity's President and Chief Financial Officer. (R. 4183).

Negotiations continued into early 2019 when Dundore advised Briskie that Khrysos Global maintained a sales pipeline and book of business worth more than \$65 million. (R. 4043, 4183). Dundore provided Youngevity with a "HVT Sales Pipeline" showing Khrysos Global's book of business as \$67,084,642.00. (R. 4183, 4192-93). As a result of these representations, Youngevity formed Khrysos Industries, Inc. to be a hemp and CBD business in preparation for purchasing substantially all of Khrysos Global's assets. (R. 4184-85). This purchase occurred when Youngevity, Dundore, Khrysos Global, and other entities entered into an Asset and Equity Purchase

Agreement (“Purchase Agreement”), which included the HVT Sales Pipeline chart provided by Dundore. (R. 4183-84).

After entering into the Purchase Agreement, Youngevity provided revenue and profit projections to Khrysos Industries investors and potential investors, projecting a conservative gross revenue projection of \$61,025,000.00 for 2020 based on Dundore’s HVT Sales Pipeline chart. (R. 4185, 4195). This projection would have yielded a net profit of \$20,626,500.00 for Khrysos Industries for 2020. (R. 4185, 4195). Based on these projections, Youngevity and its subsidiaries invested more than \$12,588,969.00 into Khrysos Industries. (R. 4186).

As part of Youngevity’s acquisition of Khrysos Global, Dundore entered into an Employment Agreement and became President of Khrysos Industries from February 2019 through September 2020. (R. 4086-96, 4187). The Employment Agreement included a duty of loyalty that prohibited Dundore from “directly or indirectly engag[ing] in any employment or business activity which is directly or indirectly competitive with, or would otherwise conflict with, [his] employment” with Khrysos Industries. (R. 4091). The agreement further included non-solicitation provisions to prohibit soliciting or attempting to

solicit any of Youngevity's employees, consultants, contractors, or potential customers. (R. 4091).

Based on Dundore's representations that led Youngevity into acquiring Khrysos Global's assets and entering into the Purchase Agreement, Youngevity believed it was acquiring a business that had more than a \$65 million sales pipeline that required large investments to fulfill that high of a demand. (R. 4186-87). However, in May 2020, Youngevity learned that Dundore's statements and representations of Khrysos Global's worth were false. (R. 4043, 4185). At that time, Youngevity also learned that the purported sales being made and invoiced by Khrysos Industries under Dundore's direction were not legitimate. (R. 4043, 4185). Youngevity had already invested approximately \$12,588,969.00 into Khrysos Industries, which Dundore personally benefited from. (R. 4184, 4186, 4189-90). Briskie attested that Dundore's malfeasance required Youngevity to write-off \$15,292,000.00 of the original \$16 million purchase price due Khrysos Industries inability to generate revenue related to expectations. (R. 4185-86). Khrysos Industries had operating losses of \$20,023,000.00 and \$9,745,000.00 in 2019 and 2020, respectively. (R. 4185).

### *Youngevity Also Acquired Smash Customs*

Khrysos Global also included a d/b/a called Smash Customs, which was engaged in car repairs and modifications and located on the same property as Khrysos Global. (R. 4847). At the time of the Purchase Agreement, Smash Customs included numerous automobiles, which Youngevity acquired. (R. 4848). After Youngevity acquired Khrysos Global's assets, Dundore became President of Smash Customs and his son, Dustin Dundore ("Dustin"), became Vice President (collectively, "the Dundores"). (R. 4848).

In March 2020, Khrysos Industries created Smash Customs, Inc., identifying Dundore as President and Dustin as Vice President, as well as Briskie and Stephen Wallach as officers and directors of Smash Customs, Inc. (R. 4849, 4872-73). Then, in August 2020, Dundore unilaterally removed Briskie and Wallach as officers and directors of Smash Customs, Inc. without their prior approval. (R. 4849, 4875-79).

### *Khrysos Industries' Products and Customers*

During Dundore's tenure as President, Khrysos Industries was involved in the production and sale of CBD products, including lotions and gummies. (R. 4206-07). Nephron Pharmaceuticals

Corporation (“Nephron”) purchased various hemp and CBD products from Khrysos Industries, including “Delta 8 THC (a strain of CBD) and other CBD Gummies, Black Gold CBD, CBD bath products, and CBD lip balm.” (R. 4188, 4213-19).

*The Phantom Companies*<sup>1</sup>

In April 2019, and while employed as President of Khrysos Industries, Dundore created Phantom Industries, Inc. (“Phantom Industries”). (R. 4197-98). Additionally, in July 2020, and while still employed as President of Khrysos Industries, Dundore created Phantom X Industries, Inc. (“Phantom X”) and was listed as its President. (R. 4200-01). Phantom X sold and manufactured exclusively hemp derived products, including CBD gummies, Delta 8 gummies, and baked goods with CBD. (R. 4209), in direct competition with Khrysos Industries.

*The Overlap of Khrysos Industries and Phantom X*

One of Khrysos Industries’ employees was Yaneysis Acosta, who was employed from May 2020 through August 2020. (R. 4189).

---

<sup>1</sup> Phantom Industries and Phantom X will be collectively referred to as the “Phantom Companies.”

According to Acosta's affidavit, Dundore induced Acosta to resign from Khrysos Industries and work at Phantom X. (R. 4043, 4189).

In September 2020, Briskie learned that Nephron, who purchased product from Khrysos Industries, also purchased CBD Black Gold and Delta 8 gummies from Phantom X. (R. 4188-89). Dundore, while serving as Khrysos Industries President, facilitated Nephron's transactions with Phantom. (R. 4189, 4221-25). The products Nephron purchased from Phantom X were similar to those Nephron purchased from Khrysos Industries. (R. 4189, 4227-31). Youngevity terminated Dundore's employment in September 2020. (R. 4849).

### *Litigation Ensues*

Dundore and related parties sued Youngevity, Khrysos Industries, and other parties alleging nine different causes of action, including:

- Count I – breach of the Purchase Agreement for Khrysos Industries' and Youngevity's purported failure to make capital contributions and pay cash required by the Purchase Agreement;
- Count III – breach of the Employment Agreement when Khrysos Industries terminated Dundore;
- Count VI – conversion of personal property alleging Khrysos Industries stole Dundore's tools and automobiles at the Smash Customs facility;

- Count IX – writ of replevin to obtain the personal property Khrysos Industries allegedly stole.

(R. 199-315).

Youngevity and Khrysos Industries filed counterclaims against Dundore, alleging:

- Counterclaim I – declaratory judgment that the Dundores controlled Smash Customs, Inc.;
- Counterclaim III – fraudulent inducement by Dundore alleging Dundore fraudulently induced Youngevity into entering the Purchase Agreement and investing millions of dollars into Khrysos;
- Counterclaim IV – breach of the Employment Agreement by Dundore, specifically the duty of loyalty, non-solicitation, and non-compete provisions;
- Counterclaim VII – conversion of personal property of Youngevity, including automobiles, that Youngevity acquired when it purchased Smash Customs from Dundore;
- Counterclaim X – unjust enrichment of the Dundores because they used more than \$250,000.00 of Youngevity’s resources to acquire and/or improve their personal automobiles while President and Vice President of Smash Customs.

(R. 1178-1528).<sup>2</sup>

### *Requests for Admissions*

In April 2022, Youngevity and Khrysos Industries served requests for admissions (“RFAs”) on Khrysos Global, Dundore, Dustin, and Leigh Dundore (“Leigh”). (R. 4924-5147). Each failed to

---

<sup>2</sup> Any additional claims and counterclaims were otherwise resolved by the parties and not a part of this appeal.

respond to the RFAs. (R. 4037-4180, 4924-5147). Only Dundore subsequently moved to set aside his admissions. (R. 4244-49). The trial court denied Dundore's motion to set aside: "Despite the presence of counsel, Mr. Dundore did not respond to the [RFAs] nor seek an extension of time to respond. Rather, Mr. Dundore waited nearly two months – and only after [Youngevity] moved to use his admissions as summary judgment against him – to move set aside his admissions." (R. 4546-47). Thus, the trial court found that Dundore failed to show good cause to set aside his admissions and that Youngevity "- would be unfairly prejudiced if the Court granted Mr. Dundore's request." (R. 4547).

The following pertinent admissions were deemed admitted by the trial court:<sup>3</sup>

- Dundore negotiated the terms of the Purchase Agreement on behalf of Khrysos Global and related parties.
- During these negotiations in January 2019, Dundore stated to Briskie that Khrysos Global maintained an annual book of business over \$65 million.
- Khrysos Global only had a *de minimis* book of business that was far below \$65 million.
- Dundore knew that Khrysos Global did not have a book of business worth more than \$65 million when he made the false representations to Briskie.

---

<sup>3</sup> Other admissions were deemed admitted but they are not addressed in Dundore's Initial Brief.

- Dundore represented to Khrysos Industries, Youngevity, and Briskie that Khrysos Global had a book of business of more than \$65 million annually to induce Youngevity to enter into the Purchase Agreement.
- Dundore owed fiduciary duties and duties of loyalty to Khrysos Industries when acting as its President from February 8, 2019, through September 17, 2020.
- Dundore breached his fiduciary duties and duties of loyalty owed to Khrysos Industries.
- Dundore's breach of these duties damaged Khrysos Industries.
- As President of Khrysos Industries, Dundore induced Acosta to resign from Khrysos Industries.
- Phantom X engaged in business that directly competed with Youngevity's and Khrysos Industries' business interests.
- On July 6, 2020, Dundore was the President of Phantom X.
- Dundore's position as Phantom X's President breached both the Purchase Agreement and the Employment Agreement.
- In July 2019, Dundore and others created a new company to create and manufacture hemp and CBD products to compete with Khrysos Industries.
- Khrysos Industries and Youngevity own the trademarks for "Black Gold," "Khrysos", and "Khrysos Industries."
- Dundore willfully and intentionally misappropriated these trademarks to confuse customers, including Nephron, into believing that Dundore and Phantom X were affiliated with Khrysos Industries, which damaged Khrysos Industries.
- While serving as President of Khrysos Industries, Dundore misappropriated its facilities to process crude oil owned by Bioprocessing Corp. into valuable CBD, and then sold the CBD through Phantom X in competition with Khrysos Industries and without paying Khrysos Industries for processing the crude oil.
- Dundore was bound by the Confidentiality and non-compete clauses in the Purchase Agreement and breached those clauses which damaged Khrysos Industries.
- Dundore was bound by the Employment Agreement and breached the Employment Agreement which damaged Khrysos Industries.

(R. 4043-45, 4546-47, 4600-01).

*Youngevity's First Motion for Summary Judgment*

Youngevity moved for summary judgment on Counterclaims III and IV for fraudulent inducement and breach of the Employment Agreement. (R. 4012-36). On the fraudulent inducement counterclaim, Youngevity provided evidence showing that Dundore misrepresented Khrysos Global's \$65 million sales pipeline and book of business during negotiations causing Youngevity to acquire Khrysos Global, invest in Khrysos Industries, and eventually led to Khrysos Industries suffering operating losses of \$20,023,000.00 in 2019 and \$9,745,000.00 in 2020. (R. 4015-19, 4025-31).

Regarding the breach of the Employment Agreement counterclaim, Youngevity relied on sworn statements by Briskie, deposition testimony from Nephron and Phantom X employees, Secretary of State Filings, and admissions from discovery that Dundore breached the duty of loyalty based on his involvement with Phantom Industries and Phantom X by creating the Phantom Companies that were in direct competition with Khrysos Industries with Dundore acting as President for Khrysos Industries, Phantom Industries, and Phantom X simultaneously and contemporaneously.

(R. 4019-22, 4031-35). Youngevity also argued that Dundore breached the non-solicitation provision of the Employment Agreement by inducing Acosta to resign from Khrysos Industries while Dundore was its President. (R. 4022-23, 4031-35).

Dundore responded in opposition that genuine issues of material fact existed as set forth by affidavits by Dundore and Acosta. (R. 4250-70, 4272). Dundore also argued that Youngevity's counterclaim for fraudulent inducement was barred by the doctrine of waiver, Youngevity could not demonstrate reliance on Dundore's misrepresentations because they were contradicted by the subsequent agreed Purchase Agreement, and because Youngevity could not enforce restrictive covenants that do not meet a legitimate business purpose. (R. 4291-96).

Youngevity replied that the duty of loyalty and non-solicitation provisions were valid provisions in the Employment Agreement, Dundore breached those provisions, and the affidavits provided by Dundore and Acosta were unsupported, self-serving, and contradicted by record evidence. (R. 4401-4411).

The trial court granted summary judgment in favor of Youngevity on these counterclaims and awarded \$20,915,507.66 in

damages. (R. 4597-4612). In reaching this conclusion, the trial court relied on Dundore's admissions. (R. 4601). As to Counterclaim III for fraudulent inducement, Dundore's admissions in Nos. 1 through 5 of Youngevity's RFAs "conclusively establish[ed] that [Dundore] made knowingly false statements relating to Khrysos Global's sales pipeline and book of business to induce Youngevity into acquiring the assets of Khrysos Global." (R. 4602). Additionally, Dundore "falsely stated that Khrysos Global maintained a book of business worth more than \$65 million to induce Youngevity into entering into the Purchase Agreement, and he knew that statement was false because Khrysos Global had only a *de minimis* book of business." (R. 4602). Dundore also "provided Youngevity with HVT Sales Pipeline document stating that Khrysos Global has a book of business worth \$67,084,642.00" which was incorporated by the parties into the Purchase Agreement. (R. 4602). It was not until May 2020 when Youngevity performed an audit that it learned Dundore's statements were false and discovered that "Khrysos Global invoices created at Dundore's direction were illegitimate." (R. 4602-03).

The trial court explained that liability was established for Counterclaim III for fraudulent inducement regarding the Purchase

Agreement, entitling Youngevity to “recover benefit of the bargain or out [of] pocket damages.” (R. 4603). The trial court noted that Dundore “did not dispute Youngevity’s benefit of the bargain damage calculations in response to the MSJ or at the hearing on the MSJ.” (R. 4603). Rather, the undisputed evidence proved Youngevity incurred \$20,626,500.00 benefit of the bargain damages in 2020 alone based on Briskie’s “projections for its Khrysos Industries hemp and CBD business to investors and potential investors.” (R. 4604). This analysis utilized “a then-conservative gross revenue projection of \$61,025,000.00, based on Dundore’s representations that Khrysos Global had a sales pipeline and book of business worth more than \$65 million.” (R. 4604). Therefore, the trial court found Youngevity “suffered at least \$20,626,500.00” in damages due to Dundore’s fraudulent inducement and awarded those damages to Youngevity for Counterclaim III. (R. 4603, 4611).<sup>4</sup> Dundore did not dispute or provide any evidence disputing Youngevity’s damages.

The trial court also granted summary judgment on Youngevity’s Counterclaim IV for breach of employment agreement based on

---

<sup>4</sup> The trial court later clarified that this award was to Youngevity only, and not Khrysos. (R. 6497).

Dundore's involvement with the Phantom Companies and inducing Acosta to resign from Khrysos Industries and work with Dundore at Phantom X. (R. 4604). The trial court found Dundore's action violated certain provisions of the Employment Agreement, including the Duty of Loyalty and Non-Solicitation provisions. (R. 4605). The trial court rejected Dundore's argument that these provisions were invalid under section 542.335, Florida Statutes. (R. 4605). Still, the trial court found that even if the statutory section applied, the provisions were enforceable and consistent with Florida's public policy favoring enforcement of reasonable covenants not to compete. (R. 4605-06).

Additionally, the trial court provided its factual basis for how Dundore breached the Duty of Loyalty provision, citing Dundore's admission and uncontroverted testimony proving that the Phantom Companies were in competition with Youngevity. (R. 4607). Furthermore, during Dundore's time as President of Khrysos Industries, he became President of the Phantom Companies. (R. 4607). During that time, the Phantom Companies and Khrysos Industries "sold CBD products contemporaneously to Khrysos Industries customer Nephron Pharmaceuticals." (R. 4607-08). The trial court rejected Dundore's argument that the Phantom

Companies were not in “direct” competition with Khrysos Industries as unsupported because Dundore admitted, and did not dispute, that “while Dundore was serving as the Khrysos Industries and the Phantom Companies, they all sold similar CBD product[s] to the same customer, Nephron Pharmaceuticals.” (R. 4608). The trial court found Dundore’s affidavit was “self-serving, unsupported by any documentary evidence, and contradicted by all documentary evidence in the record.” (R. 4608).

The trial court also explained that Dundore breached the Non-Solicitation provision, which was supported by Dundore’s admission and Acosta’s affidavit stating that that while employed as President of Khrysos Industries, Dundore induced Acosta to resign from Khrysos Industries to work at Phantom X. (R. 4609).

Lastly, the trial court awarded \$289,007.66 in restitution to Youngevity since the facts were undisputed that Dundore “began breaching his Employment Agreement on April 24, 2019, when he became President of Phantom Industries Inc. and that \$289,007.66 was the salary paid to Dundore from the time of breach.” (R. 4610). The Employment Agreement provided that, should Youngevity successfully bring an action under the Employment Agreement,

regardless of whether the success is in whole or in part, Youngevity would be “entitled to an award of all costs, including reasonable attorney’s fees.” (R. 4610-11). The trial court noted that “Dundore did not dispute Youngevity’s right to recover restitution, restitution calculation, or [the] right to attorney’s fees and costs in opposition to the MSJ or at oral argument.” (R. 4611-12). The trial court later clarified that Khryosos, and not Youngevity, was entitled to recover these restitution damages. (R. 6497).

Dundore moved for rehearing asserting the trial court did not consider certain affidavits and exhibits that would demonstrate disputed issues of material facts. (R. 4617-21). Youngevity responded that the rehearing request was procedurally improper and failed on the merits. (R. 4644-52). The trial court denied Dundore’s motion for rehearing. (R. 4662-63).

The parties subsequently negotiated and settled the amount of damages and attorney’s fees Youngevity and Khryosos Industries were entitled to under this Order. The trial court thus entered an Agreed Order and Judgment granting a monetary award against Dundore (“Agreed Order”). (R. 4691-94). This included language regarding the parties’ agreement that “Youngevity shall recover from [Dundore] the

total sum of \$20,950,000.00, which is inclusive of all damages, attorney's fees, and costs" alleged in Counterclaims III and IV. (R. 4692). The parties and the court subsequently amended the Agreed Order to clarify the amount of damages owed separately to Youngevity and Khrysos Industries ("Second Agreed Order"). (R. 6495-98).

*Youngevity's Second Motion for Summary Judgment*

Youngevity then moved for summary judgment on Counts I and III of the First Amended Complaint against Khrysos Global, Leigh, Dustin, and Dundore. (R. 4734-54). Only Dundore opposed, arguing the trial court could not rely on his admissions, that his affidavit showed disputed material facts, and that Youngevity breached the Employment Agreement. (R. 5180-97). No response was filed by Leigh or Dustin. Youngevity replied that its summary judgment should be treated as undisputed since Leigh and Khrysos Global failed to respond. (R. 5409-10). Additionally, Youngevity argued the undisputed facts showed Dundore fraudulently induced Youngevity to enter into the Purchase Agreement, there were no disputed material facts for Count I for breach of the Purchase Agreement, and

that there were no disputed material facts for Dundore's claim that Youngevity breached the Employment Agreement. (R. 5410-19).

The trial court granted summary judgment in favor of Youngevity and against Dundore regarding Counts I and III. (R. 6413-22). Regarding Dundore's failure to respond to Youngevity's RFAs, the court noted that it previously relied on Dundore's admission in part when it granted summary judgment on Youngevity's Counterclaims III and IV. (R. 6416). The trial court again recognized Dundore's failure to respond to these RFAs, as conceded by Dundore in his response. (R. 6416). The trial court explained that Dundore did not cite any "record evidence in this response that contradicts his admissions" and found "the only evidence relied on by [Dundore] is his affidavits" which the court further determined were insufficient to create a genuine dispute of material fact. (R. 6416).

Additionally, as to Count I, the trial court found no genuine dispute of material fact based on prior admissions, record evidence, and the court's order granting the first summary judgment. (R. 6416-17). The court found a valid contract did not exist since the collective plaintiffs admitted that they collectively breached the Purchase Agreement. (R. 6417). The collective plaintiffs admitted "(1) falsely

maintaining Khrysos Global's book of business was worth more than \$65 million when it was not[;] (2) knowingly making false statements regarding the sales pipeline and book of business to include Youngevity to enter into the [Purchase Agreement]; and (3) breaching the [Purchase Agreement]." (R. 6418). The court further noted its prior findings that Dundore fraudulently induced Youngevity to purchase Khrysos Global's assets which rendered the Purchase Agreement "voidable" by Youngevity, the defrauded party. (R. 6418). Therefore, because a valid contract did not exist, summary judgment was entered in favor of Youngevity on Count I. (R. 6419).

As to Count III for breach of the Employment Agreement, the trial court found that Dundore's employment was terminated "for cause." (R. 6419). The trial court noted that Dundore did not dispute that he was bound by the Employment Agreement and that the agreement was a valid, enforceable contract. (R. 6419). Additionally, Dundore did not dispute the validity of both the Duty of Loyalty and Non-Solicitation provisions within the Employment Agreement, which the trial court previously found valid. (R. 6420). The trial court reinforced its prior ruling that Dundore materially breached the Employment Agreement when serving as President of Phantom

Industries, a direct competitor of Khrysos Industries. (R. 6420). In doing so, the court relied on Dundore's admissions that Khrysos Industries and the Phantom Companies sold similar CBD products to Nephron while Dundore was the president of both Khrysos Industries and the Phantom Companies. (R. 6420). The court also relied on testimony by Alexis Creech, a former employee of Khrysos Industries and current employee of Phantom X, that Khrysos Industries and the Phantom Companies "both sell CBD products, including CBD gummies and other consumables." (R. 6420). The trial court reiterated that because Dundore's affidavit was "self-serving, unsupported, and contradicted by all documentary evidence in the record", it could not create a material issue of fact regarding Dundore's breach of the of the Duty of Loyalty provision. (R. 6420). Lastly, the trial court found Dundore breached the Non-Solicitation provision as evidenced by Dundore's admissions previously relied on by the court that Dundore induced Acosta to resign from Khrysos Industries and work for Phantom X. (R. 6421).

*Youngevity's Third Motion for Summary Judgment*

Lastly, Youngevity moved for summary judgment on Counts VI and IX, and Counterclaims I, VII, and X. (R. 4826-45). This motion

addressed the claims related to Smash Customs, Dundore's position in that company, and property that was acquired by Youngevity as part of the Purchase Agreement. (R. 4826-45). Youngevity relied on an affidavit by Briskie and admissions by the Dundores. Dundore responded that Briskie's affidavit was deficient, record evidence contradicted his admissions, and Youngevity failed to demonstrate the Dundores were sole owners for Smash Customs, Inc. (R. 5383-5401). Youngevity replied that summary judgment was proper on the admissions, Dundore failed to contradict the admission or raise a genuine dispute of material fact, and Briskie's affidavit was admissible. (R. 5421-31).

The trial court granted Youngevity summary judgment on all counts and counterclaims. (R. 6394-6412). The trial court explained that it could decide summary judgment motions on RFAs. (R. 6397) (citing *Business Court Procedures Asset Mgmt. Consultants of Va., Inc. v. City of Tamarac*, 913 So. 2d 1179 (Fla. 4th DCA 2005) and *Business Court Procedures* 5.5). It noted that the Dundores conceded they failed to respond to the RFAs and that, regardless, the Dundores failed to identify any record evidence contradicting the admissions. (R. 6397-98). The trial court found Youngevity's summary judgment

supported not only by the admissions but also by Briskie's affidavit and its attachments. (R. 6398). The trial court found that the Dundores' affidavits did not contradict their admissions, raise genuine disputes of material fact, and were conclusory. (R. 6399-6400). Regarding Briskie's affidavit, the trial court found that documentary evidence was submitted to support the sworn statements and that Briskie could testify regarding work performed by Youngevity since he holds an executive position within the company, regardless of whether he personally prepared the financial analysis. (R. 6406). This appeal follows. (R. 6684-6752).

## **SUMMARY OF THE ARGUMENT**

This Court should affirm the issues properly before this Court. Dundore does not meet his burden on appeal to demonstrate why this Court should reverse several summary judgment orders predicated on Dundore's admissions, affidavits, deposition testimony, and exhibits. While Dundore raises several issues on appeal, none are availing, and some are procedurally barred. Despite the numerous arguments presented on appeal, Dundore fails to present admissible record evidence.

Issue I. Dundore cannot seek review of Counterclaims III and IV. The parties previously entered into a settlement and consent judgment regarding the award of almost \$21 million on these claims. This agreement and the Agreed Orders moot any objection raised on appeal regarding these damages.

Issue II. The trial court acted within its discretion to deny Dundore's motion to set aside his admissions. After Dundore failed to respond to the RFAs, Youngevity relied on these admissions to move for summary judgment. As a result, Youngevity would have been prejudiced if the admissions were set aside.

Issue III. The trial court correctly granted summary judgment on the fraudulent inducement claim since Dundore did not present any admissible evidence to create any genuine issue of material fact. As the trial court explained, Dundore's and Acosta's affidavits do not create a genuine issue of material fact and are speculative, conclusory, and self-serving. Dundore cannot defeat these rulings on appeal by raising issues not ruled on by the trial court and does not otherwise meet his burden on appeal.

Issue IV. No genuine issue of material fact exists regarding Dundore's breach of the Employment Agreement. The trial court found the Employment Agreement was a valid, enforceable contract. Dundore does not acknowledge this finding, his admissions as relied on by the trial court, or the trial court's findings related to the conclusory affidavits presented by Dundore and Acosta.

Issue V. The trial court correctly granted summary judgment on Counts I and III. Dundore did not cite any record evidence to the trial court to show material issues of fact. On appeal, Dundore does not meet his burden to show reversible error or clarify what record he relies on. Instead, admissions by Dundore, Leigh, and Khrysos Global show the Purchase Agreement was breached.

Issue VI. Dundore does not show any error that occurred related to summary judgment in favor of Youngevity on Counts VI and IX and Counterclaims I, VII, and X. While Dundore challenges two paragraphs in Briskie's declaration regarding the structure of Smash Customs, he overlooks the additional record evidence relied on by the trial court regarding the Dundores' executive position within Smash Customs. Because the trial court's findings are supported by record evidence and Dundore makes no argument regarding the trial court's rulings, this Court should affirm.

Issue VII. Assuming this Court can even address Dundore's argument regarding damages, this is not preserved. Dundore made no objection in the trial court that the awarded damages were unliquidated. Dundore's position on appeal also contradicts his position in the trial court where he did not dispute Youngevity's right to recover or calculation of the restitution damages.

## **STANDARD OF REVIEW**

Issue I: Whether a case is moot is an issue of law which this Court reviews *de novo*. *Carlin v. State*, 939 So. 2d 245, 246 (Fla. 1st DCA 2006).<sup>5</sup>

Issue II: A trial court's decision on a discovery motion is reviewed for an abuse of discretion. *Alvarez v. Cooper Tire & Rubber Co.*, 75 So. 3d 789 (Fla. 4th DCA 2011). "A trial court is given wide discretion in dealing with discovery matters, and unless there is a clear abuse of that discretion, the appellate court will not disturb the trial court's order." *Id.*; see *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980) (defining abuse of judicial discretion).

Issues III-VI: A trial court's decision to grant a motion for summary judgment is reviewed *de novo*. *Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126, 130 (Fla. 2000); *Pickell v. Lennar Homes, LLC*, 372 So. 3d 1279, 1281 (Fla. 6th DCA 2023).

"[T]he correct test for the existence of a genuine factual dispute is whether 'the evidence is such that a reasonable jury could return

---

<sup>5</sup> Youngevity adds this issue for consideration by the Court. All remaining numbered issues track the order of issues in Dundore's Initial Brief.

a verdict for the nonmoving party.” *In re Amends. to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 75 (Fla. 2021) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). Indeed, the function of the summary judgment rule “is to avoid the expense and delay of trials when all the facts are admitted or a party is unable to support a fact contention by any competent evidence.” *Baskin v. Griffith*, 127 So. 2d 467, 473 (Fla. 1st DCA 1961). This furthers one of the principal purposes of the summary judgment rule, which is to “isolate and dispose of factually unsupported claims or defenses.” *In re Amends. to Fla. R. of Civ. P. 1.510*, 309 So. 3d 192, 194 (Fla. 2020) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)).

While “[s]ummary judgment is designed to test the sufficiency of the evidence to determine if there is sufficient evidence at issue to justify a trial or formal hearing on the issues raised in the pleadings,” *The Fla. Bar v. Greene*, 926 So. 2d 1195, 1200 (Fla. 2006), it is not “intended to weigh and resolve genuine issues of a material fact, but only identify whether such issues exist.” *Shanks v. Bergerman*, 334 So. 3d 681, 686 (Fla. 2d DCA 2022). “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt

that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380 (2007); see *Ibarra v. Ross Dress for Less, Inc.*, 350 So. 3d 465, 467–68 (Fla. 3d DCA 2022). Crucially, a trial court’s decision to reject affidavits as conclusory is reviewed only for an abuse of discretion. See *Cascante v. 50 State Security Serv., Inc.*, 300 So. 3d 283, 288 (Fla. 3rd DCA 2019) (finding “no abuse of discretion in the rejection by the trial court of appellants’ conclusory expert affidavit”).

As such, when contesting a motion for summary judgment, an opposing party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *In re Amends. to Fla. R. of Civ. P. 1.510*, 309 So. 3d at 193 (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.” *Anderson*, 477 U.S. at 252. Similarly, “mere conclusions and unsupported factual allegations are legally insufficient to defeat a summary judgment motion.” *Ellis v. England*, 432 F.3d 1321, 1326 (11th Cir. 2005). When the non-moving party bears the burden of proof, the moving party only needs

to show the absence of evidence supporting the non-moving party's case. *Celotex Corp.*, 477 U.S. at 325.

Issue VII: When damages are supported by competent substantial evidence, the appellate court must affirm the trial court's finding. *Trobaugh v. Trobaugh*, 81 So. 2d 629, 629 (Fla. 1955). Additionally, the trial court's findings of fact come to this Court with a presumption of correctness. *Herzog v. Herzog*, 346 So. 2d 56, 58 (Fla. 1977).

## **ARGUMENT**

### **I. DUNDORE CANNOT APPEAL COUNTERCLAIMS III AND IV.**

Dundore appeals numerous orders, including the trial court's order granting summary judgment on Counterclaims III and IV. (R. 6685). However, subsequent to those summary judgment orders, the Parties negotiated and settled the damages arising from those summary judgment orders. The Parties' two Agreed Orders evidence a *settlement and agreement by the parties* that Youngevity was entitled to approximately \$21 million in damages awarded by the trial court and related attorney's fees and costs. (R. 4692, 6495-98). Dundore cannot now appeal from his own settlement and consent judgments. *Baya v. Revitz*, 281 So. 2d 521, 522 (Fla. 3d DCA 1973).

Furthermore, any issue related to the summary judgment order on Counterclaims III and IV is moot. The parties negotiated and reached a settlement and stipulated agreement on those two causes of action, memorialized in the Agreed Orders and Judgments, and any controversy on Counterclaims III and IV "has [therefore] been so fully resolved that a judicial determination can have no actual effect." *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992). It is not the role of a court to provide "opinions on moot questions, or to declare

principles or rules of law which cannot affect the matter in issue.” *Montgomery v. Dep't of Health & Rehab. Servs.*, 468 So. 2d 1014, 1016-17 (Fla. 1st DCA 1985); *see, e.g., Carlin v. State*, 939 So. 2d 245, 247 (Fla. 1st DCA 2006) (dismissing appeal as moot). Because the Agreed Order and Second Agreed Order are agreements by the parties equating to a settlement or consent judgment, Dundore cannot now complain of the damages related to Counterclaims III and IV or the summary judgment orders giving rise to those damages.

## **II. THE TRIAL COURT ACTED WITHIN ITS DISCRETION TO DENY DUNDORE’S MOTION TO SET ASIDE SOME OF HIS ADMISSIONS.**

Requests for admissions that go unanswered are deemed admitted. Fla. R. Civ. P. 1.370(a). “Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” Fla. R. Civ. P. 1.370(b). A withdrawal or amendment may be permitted by the trial court “when the presentation of the merits of the action will be subserved by it and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits.” Fla. R. Civ. P. 1.370(b). A liberal standard applies that “favors amendment in most

cases in order to allow disposition on the merits.” *Ramos v. Growing Together, Inc.*, 672 So. 2d 103, 104 (Fla. 4th DCA 1996). However, “even that standard has its limits.” *Asset Mgmt. Consultants of Va., Inc. v. City of Tamarac*, 913 So. 2d 1179, 1181 (Fla. 4th DCA 2005).

A party may move to set aside or withdraw admissions. Fla. R. Civ. P. 1.370(b). “Denial of relief from technical admissions is an abuse of discretion [only] when the record contains evidence that contradicts the admissions **and** the opposing party has not shown it would be prejudiced by the withdrawal of the admissions.” *Wells Fargo Bank, Nat. Ass'n v. Voorhees*, 194 So. 3d 448, 451 (Fla. 2d DCA 2016) (emphasis added); see *United Auto. Ins. Co. v. W. Hollywood Pain & Rehabilitation Center*, 162 So. 3d 98, 100 (Fla. 4th DCA 2014). Only when the record is “replete with evidence contradicting the admissions created by [the non-answering party’s] failure to file a timely response,” summary judgment is inappropriate. *Sher v. Liberty Mut. Ins. Co.*, 557 So. 2d 638, 639 (Fla. 3d DCA 1990). Additionally, relying solely on the pleadings is insufficient to grant summary judgment where admissions went unanswered. *Sher*, 557 So. 2d at 639; *DeAtley v. McKinley*, 497 So. 2d 962, 963 (Fla. 1st DCA 1986).

Further, “[n]o motion, no relief, no error.” *Morgan v. Thomson*, 427 So. 2d 1134, 1135 (Fla. 5th DCA 1983).

On appeal, Dundore carries the “burden of demonstrating that the record and evidence fail to support the lower court’s conclusions.” *Miccosukee Tribe v. S. Fla. Water Mgmt. Dist.*, 48 So. 3d 811, 817 (Fla. 2010) (citing *Wohl v. State*, 480 So. 2d 639, 641 (Fla. 1985)); see also *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). “The purpose of an appellate brief is to present arguments in support of the points on appeal. Merely making reference to arguments below without further elucidation does not suffice to preserve issues, and these claims are deemed to have been waived.” *Duest v. Dugger*, 555 So. 2d 849, 852 (Fla. 1990). Arguments that are not fully briefed are insufficient for appellate review and deemed abandoned. See *Shere v. State*, 742 So. 2d 215, 217 n.6 (Fla. 1999). In this same vein, when only conclusory arguments are made, they “are insufficiently presented for review and are waived.” *Hammond v. State*, 34 So. 3d 58, 59 (Fla. 4th DCA 2010).

Yet, Dundore does little more than reiterate statements made in his motion to set aside the admissions. (IB. 22). Dundore fails to cite any record evidence contradicting the admissions. This is

insufficient for Dundore to meet his burden on appeal. *See Duest*, 555 So. 2d at 852. Aside from setting forth the legal standard, Dundore presents mere conclusory statements on this issue, including advising this Court that “[t]he case is still early in discovery” even though the case is no longer at the discovery stage, much less the trial court stage. (IB. 22); *Shere*, 742 So. 2d at 217 n.6; *Hammond*, 34 So. 3d at 59.

Still, the trial court acted in its discretion to deny Dundore’s motion to set aside the admissions. The trial court could rely on Dundore’s admissions because no record evidence contradicted these admissions and because Dundore failed to comply with the Business Court’s local procedural rules. (R. 4449).

Furthermore, Youngevity would have been prejudiced if the admissions were withdrawn. Youngevity relied on these admissions in moving for summary judgment. *See, e.g., Wells Fargo Bank, N.A. v. Shelton*, 223 So. 3d 414, 416-17 (Fla. 5th DCA 2017) (reversing summary judgment where Wells Fargo did not respond to admissions, took over a year to recognize the missed deadline, and Shelton “continued to pursue discovery during that time, suggesting a lack of reliance on those technical admissions”). Youngevity moved

for summary judgment on the admissions prior to Dundore seeking relief, expressly relying on the admissions. *See id.*; (R. 4012-4036, 4244-4249). Youngevity provided a declaration stating that it would have postponed its summary judgment efforts if Dundore timely responded to the RFAs and would have conducted additional discovery, including deposing Daniel Bundrick, the individual who purchased CBD product from Khrysos Industries and from Phantom X on behalf of Nephron. (R. 4451-52, 4461). Bundrick would have been able to provide material information related to Youngevity's claim that Dundore breached the Employment Agreement, as well as speak to Dundore's claim that Youngevity breached the same agreement. (R. 4452, 4461).

Additionally, the trial court did not abuse its discretion in denying Dundore's request to set aside the admissions when Dundore retained new counsel and, a month later, Youngevity's summary judgment was filed. *See Asset Mgmt. Consultants*, 913 So. 2d 1181 (explaining that less than three months was a sufficient amount of time for new counsel to move to withdraw or amend admissions). Furthermore, the trial court issued the Case Management Order in January 2022, six months prior to Dundore's

motion to set aside the admissions, which closed the pleadings in April 2022, set the deadlines for expert discovery and close of discovery, and set trial for July 3, 2023. (R. 4453). This was not a case where Dundore moved to set aside admissions and pleadings remained open and the case was yet to be set for trial. *See, e.g., Clemens v. Namnum*, 233 So. 3d 1146, 1148-49 (Fla. 4th DCA 2017) (finding opposing party not prejudiced by allowing admissions to be amended when, at the time of the amendment, “pleadings were not closed, discovery was ongoing, and the matter was not yet set for trial”); *Melody Tours, Inc. v. Granville Mkt. Letter, Inc.*, 413 So. 2d 450, 451 (Fla. 5th DCA 1982) (same).

This case also did not involve sworn testimony and other discovery responses by the party failing to timely respond to admissions that would have otherwise contradicted the technical admissions. *See In re Forfeiture of 1982 Ford Mustang*, 725 So. 2d 382, 385 (Fla. 2d DCA 1998). Rather, Dundore responded by providing an affidavit that was conclusory and unsupported by other record evidence, failed to identify what record evidence contradicted the otherwise deemed admissions, and failed to provide proposed responses to the RFAs. (R. 4456-57). Even considering Dundore’s

affidavit, this would not create a genuine issue of material fact since “conclusory self-serving statements which are framed in terms only of conclusions of law are not sufficient to either raise a genuine issue of material fact or prove the non-existence of a genuine issue of material fact.” *Progressive Exp. Ins. Co. v. Camillo*, 80 So. 3d 394, 399 (Fla. 4th DCA 2012).

In sum, Dundore presents nothing more than numerous legal principles related to relief from RFAs. This, and a few misplaced conclusive statements, are insufficient to show that the trial court abused its discretion in denying Dundore’s motion to set aside his admissions. See *Miccosukee Tribe*, 48 So. 3d at 817; *Applegate*, 377 So. 2d at 1152; *Hammond*, 34 So. 3d at 59. Even still, this Court should affirm since Youngevity demonstrated it would be prejudiced, its motion for summary judgment was already filed, the pleadings were closed, the case was set for trial, and no other record evidence contradicted the admissions but for Dundore’s self-serving affidavit that was provided in lieu of proposed responses to the RFAs.

### **III. THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT IN FAVOR OF YOUNGVEITY FOR COUNTERCLAIM III FOR FRAUDULENT INDUCEMENT.**

This Court should affirm the trial court's ruling on the fraudulent inducement counterclaim. To prove a claim for fraudulent inducement, a plaintiff must prove four elements: "(1) a false statement concerning a material fact; (2) the representor's knowledge that the representation is false; (3) an intention that the representation induced another to act on it; and (4) consequent injury by the party acting in reliance on the representation." *Butler v. Yusem*, 44 So. 3d 102, 105 (Fla. 2010).

#### A. Neither Dundore's affidavit nor Acosta's affidavit create genuine issues of material fact.

In his Initial Brief, Dundore's argument on this point refers loosely to affidavits by Dundore and Acosta. (IB. 23-33). The majority of the argument uses a citation to "(R: 4250-4296)." This includes Acosta's affidavit (R. 4250-55), Dundore's affidavit (R. 4256-70) and Dundore's Response to Youngveity's summary judgment motion on Counterclaims III and IV. (R. 4271-96). No distinction or differentiation is made as to which affidavit Dundore references, or if it is relying on argument in the response to the summary judgment

motion as opposed to actual record evidence. *See Miccosukee Tribe*, 48 So. 3d at 817; *Duest*, 555 So. 2d at 852; *Applegate*, 377 So. 2d at 1152. To the extent Dundore is referencing on arguments presented by counsel in the Response, this does not constitute as evidence. *Romeo v. Romeo*, 907 So. 2d 1279, 1284 (Fla. 2d DCA 2005). Dundore later indicates that his affidavit, and not Acosta's, "clearly contradicts the factual basis" relied on by Youngevity. (IB. 32); *see* (R. 4287). All other portions of Dundore's argument mirror the statements in his response. *Compare* (IB. 32-33) *with* (R. 4287).

Turning to the merits of the argument, Dundore does not demonstrate why this Court should reverse based on Dundore's and Acosta's affidavits. Affidavits opposing a summary judgment motion that are "based entirely upon speculation, surmise and conjecture, are inadmissible at trial and legally insufficient to create a disputed issue of fact in opposition to a motion for summary judgment." *Morgan v. Cont'l Cas. Co.*, 382 So. 2d 351, 353 (Fla. 3d DCA 1980). Alleging conclusions of law without supporting facts do not transform an affidavit into evidence creating genuine issues of material fact. *Stolzenberg v. Forte Towers S, Inc.*, 430 So. 2d 558, 559 (Fla. 3d DCA 1983); *see also Panzera v. O'Neal*, 198 So. 3d 663, 665 (Fla. 2d DCA

2015) (finding “purely speculative lay opinion testimony, which was not admissible evidence and cannot be relied on to create a material issue of fact”). The trial court’s decision to reject affidavits as conclusory is reviewed for an abuse of discretion. *Cascante*, 300 So. 3d at 288.

Acosta’s affidavit addressed Phantom Industries and Phantom X, whether Dundore breached the Purchase Agreement, whether Dundore induced Acosta to leave Khrysos Industries and the purported meeting with White-DeCoste LLC. (R. 4250-55). Nothing in Acosta’s affidavit discusses evidence or information that would contradict or counter the fraudulent inducement claims or demonstrate a material issue exists on this claim that should be submitted to a jury. *See supra*, Standard of Review for Issues III-VI. Furthermore, Acosta’s affidavit and sworn statements would not create a genuine issue of material fact as they were self-serving statements contradicted by other documentary evidence. *Landers v. Milton*, 370 So. 2d 368, 370 (Fla. 1979) (finding that affidavits that were “based largely on supposition” were inadequate to raise fact issue to preclude summary judgment); *K.E.L. Title Ins. Agency, Inc. v. CIT Technology Financing Servs., Inc.*, 58 So. 3d 369, 370 (Fla. 5th

DCA 2011) (affirming summary judgment since “Appellant’s affidavit was merely conclusory in nature and insufficient to raise a genuine issue of material fact”).

Similarly, Dundore’s statements in his affidavit are self-serving and contradicted by other documentary evidence. *See Landers*, 370 So. 2d at 370; *K.E.L. Title*, 58 So. 3d at 370. The trial court specifically found that “Dundore’s statements in his affidavit are self-serving, unsupported by any documentary evidence, and contradicted by all documentary evidence in the record.” (R. 4608). Both Dundore and Acosta’s affidavits even include verbatim language related to Dundore’s involvement with Phantom X and whether Dundore breached the Purchase Agreement. (R. 4265-67).

When Youngevity moved for summary judgment on its fraudulent inducement counterclaim, it provided evidence to show that Dundore’s representations regarding a material fact were false, Dundore knew they were false, Dundore intended for this false representation to induce Youngevity to act in investing into Khrysos, and Youngevity was injured as a result. Dundore admitted that he “falsely stated that Khrysos Global maintained a book of business worth more than \$65 million to induce Youngevity into entering to

the [Purchase Agreement], and he knew that statement was false because Khrysos Global had only a *de minimis* book of business. (R. 4602); *see* (R. 4043) (Youngevity to Dundore RFAs). Additionally, Dundore provided Youngevity with the HVT Sales Pipeline document, incorporated into the Purchase Agreement, that purported to show that Khrysos Global had a book of business worth \$67,084,642.00. (R. 4602); *see* (R. 4183-84) (Briskie declaration); (R. 4192-93) (HVT Sales Pipeline chart); (R. 1214-1485) (Purchase Agreement). On appeal, Dundore does not challenge the trial court's findings related to his admissions of making knowingly false statements. He also does not address the information provided in the HVT Sales Pipeline document

Additionally, the trial court found that Youngevity determined Dundore's statements to be false when Youngevity conducted an audit in May 2020 and learned that Dundore directed illegitimate invoices to be created on behalf of Khrysos Global. (R. 4602-03); *see* (R. 4185) (Briskie declaration). This also remains unchallenged on appeal, along with the trial court's conclusion that Dundore admitted that "Khrysos Global had only a *de minimis* book of business when Dundore made the sales pipeline representations, and Youngevity

relied on those representations when acquiring the assets of Khrysos Global.” (R. 4603); *see* (R. 4043) (Youngevity to Dundore RFAs); (R. 4184-85) (Briskie declaration).

Likewise, Dundore failed to challenge the proposed benefit of the bargain<sup>6</sup> damage calculation when responding to the summary judgment. (R. 4603). Youngevity incurred “benefit of the bargain” damages in the amount of \$20,626,500.00 in 2020 alone based on the incorrect representations by Dundore that Khrysos Global had over a \$61 million gross revenue projection. (R. 4185) (Briskie declaration) (R. 4195) (Khrysos Industries projected statement of income). Dundore also did not dispute or challenge Youngevity’s entitlement to restitution damages in the amount of \$289,007.66. (R. 4611).<sup>7</sup> Since Dundore does not meet his burden on appeal, this Court should affirm summary judgment in favor of Youngevity on Counterclaims III and IV.

---

<sup>6</sup> “Benefit of the bargain” damages award “the difference between the actual value of the property and its value had the alleged facts regarding it been true.” *Martin v. Brown*, 566 So. 2d 890, 891 (Fla. 4th DCA 1990).

<sup>7</sup> The trial court’s damage award is discussed in Issue VII.

B. Assuming this Court can address this issue, the doctrine of waiver does not preclude summary judgment in favor of Youngevity for fraudulent inducement.

Dundore's argument related to waiver cannot be addressed by this Court. "An appellate court may not decide issues that were not ruled on by a trial court in the first instance." *Alamagan Corp. v. Daniels Group, Inc.*, 809 So. 2d 22, 26 (Fla. 3d DCA 2002); see *Margolis v. Klein*, 184 So. 2d 205, 206 (Fla. 3d DCA 1966) ("It is elementary that before a trial judge will be held in error, he must be presented with an opportunity to rule on the matter before him."). Since Dundore does not demonstrate that the trial court ever ruled on this argument, this Court cannot rule on this issue in the first instance.

Even if considered, Dundore does not meet his burden on appeal on this issue. "Waiver of fraud can occur where a party should have discovered the fraud through ordinary diligence." *Zurstrassen v. Stonier*, 786 So. 2d 65, 70 (Fla. 4th DCA 2001). The doctrine of waiver can apply where the following elements are met: "(1) the existence at the time of the waiver of a right, privilege, advantage, or benefit which may be waived; (2) the actual or constructive knowledge of the right; and (3) the intention to relinquish the right." *Leonardo v. State Farm*

*Fire & Cas. Co.*, 675 So. 2d 176, 178 (Fla. 4th DCA 1996). “This court and the courts generally hold that the execution of a new contract respecting a former transaction waives any claim based on fraud.” *Harpold v. Stock*, 65 So. 2d 477, 478 (Fla. 1953); see *Benn v. Key West Propane Gas Corp.*, 72 So. 2d 910, 913 (Fla. 1954).

However, these legal principles alone do not require this Court to reverse since Dundore cannot meet his burden on appeal. See *Miccosukee Tribe*, 48 So. 3d at 817; *Duest*, 555 So. 2d at 852; *Applegate*, 377 So. 2d at 1152; *Hammond*, 34 So. 3d at 59. Dundore does nothing more than repeat verbatim the same sentiments presented in his Response to the summary judgment motion on this issue. (IB. 33-34); (R. 4291-92). These conclusory positions do not offer any elucidation on the positions advanced, why the trial court was incorrect, or what new contract was entered into by Youngevity that would supersede the Purchase Agreement. *Hammond*, 34 So. 3d at 59. Moreover, the passive statement that affidavits by Dundore and Acosta present triable issues since “Counter-Plaintiffs knew or should reasonably have known all the pertinent facts constituting the alleged fraudulent activities at the time the [E]mployment [A]greement was executed” sheds no light on this issue. (IB. 33-34).

Dundore's argument is also defeated by the Purchase Agreement itself because the primary fraudulent statement Youngevity relied upon—the HVT Sales Pipeline document—was incorporated into the Purchase Agreement.

Additionally, the Employment Agreement did not serve as grounds for the fraudulent inducement counterclaim; rather, the Purchase Agreement was its focus. (R. 1201-02) (Counterclaim III – Fraudulent Inducement against Dundore). Due to these numerous shortcomings, summary judgment should stand.

C. Assuming this Court can address this issue, Youngevity relied on Dundore's oral and written fraudulent misrepresentations prior to entering the Purchase Agreement.

Lastly, Dundore argues summary judgment on Youngevity's counterclaim for fraudulent inducement was error because his oral misrepresentations were subsequently refuted by the written Purchase Agreement. (IB. 34-35). Dundore is correct that "a party may not recover in fraud for an alleged false statement when proper disclosure of the truth is subsequently revealed in a written agreement between the parties." *Taylor Woodrow Homes Florida, Inc. v. 4/46-A Corp.*, 850 So. 2d 536, 542-43 (Fla. 5th DCA 2003); see

*Englezios v. Batmasian*, 593 So. 2d 1077 1078 (Fla. 4th DCA 1992) (same).

However, Dundore overlooks that the statement and representations Youngevity relied on were not only oral statements but also written ones as well. The HVT Sales Pipeline document was provided by Dundore and was a schedule to the Purchase Agreement. (R. 1183, 4183-84). This stated that Khrysos Global had over \$67 million in the pipeline that extended past 2019. (R. 4191-93). And, like the waiver argument in the preceding Subsection B., Dundore makes no effort to show the trial court ruled on this argument. See *Alamagan Corp.*, 809 So. 2d at 26; *Margolis*, 184 So. 2d at 206. Not only does Dundore fail to meet his burden on appeal on this basis and others, but also it is not clear if this Court can even reach this argument.

**IV. THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT IN FAVOR OF YOUNGEVITY ON COUNT I OF DUNDORE'S FIRST AMENDED COMPLAINT REGARDING DUNDORE'S BREACH OF THE EMPLOYMENT AGREEMENT.**

Dundore seeks this Court's review of the trial court's summary judgment granted in favor of Youngevity for Count I related to the breach of the Employment Agreement. The parties agree that a breach of contract requires proof of three elements: the existence of a valid contract, a material breach of that contract, and resulting damages. *Kinchla v. Ran Investments, LLC*, 49 Fla. L. Weekly D1840, 2024 WL 4096229 at \*3 (Fla. 6th DCA Sept. 6, 2024). For the reasons discussed below, this Court should affirm since there is no genuine issue of material fact to prevent summary judgment on Dundore's breach of the Employment Agreement.

A. No genuine issues of disputed fact.

Dundore does not meet his burden on appeal to show that the trial court erred in granting summary judgment, or in relying on prior admissions to do so. Dundore does not address the trial court's decision to rely on prior admissions, record evidence, and prior rulings to arrive at the conclusion that a valid, enforceable contract, i.e. the Employment Agreement, existed. (R. 6417-18). These

admissions were made not only by Dundore but also by Khrysos Global and Leigh<sup>8</sup> and established that the plaintiffs collectively breached the Purchase Agreement, falsely maintaining Khrysos Global's book of business as \$65 million when it was not, and knowingly making false statement regarding the sales pipeline. (R. 4043, 5018, 5041, 5103, 6418). In other words, Dundore ignores the trial court's ruling and grounds for granting summary judgment and merely repeats the same position set forth in his Response. (R. 5180-97).

Dundore also ignores the trial court's determination that his affidavit was self-serving and insufficient to create issues of fact to circumvent summary judgment. (R. 6417). Even if the trial court was incorrect to rely on the admissions by Dundore, admissions by Leigh and Khrysos Global admitted the same facts as Dundore's admissions. (R. 5416). And, neither Leigh nor Khrysos Global moved to set these admissions aside or otherwise supplied supplemental responses. (R. 5416); *see* (R. 4244-4249) (motion to set aside Dundore's admissions only).

---

<sup>8</sup> Neither Khrysos Global nor Leigh ever moved to set aside their admissions.

Instead, on appeal, Dundore provides the same arguments he filed below, with no further insight. *Miccosukee Tribe*, 48 So. 3d at 817; *Duest*, 555 So. 2d at 852; *Applegate*, 377 So. 2d at 1152. Dundore also relies on case law that is factually and legally inapplicable. *Bombardier Aerospace Corp. v. Signature Flight Support Corp.*, 123 So. 3d 138 (Fla. 5th DCA 2013) (determining when breach of contract claim accrued and whether damages were properly awarded based on a pre-trial demand).

Like other shortcomings previously noted, Dundore does not address the trial court's ruling on these issues or reasons supporting summary judgment. *See Alamagan Corp.*, 809 So. 2d at 26; *Margolis*, 184 So. 2d at 206. For example, Dundore argues that the Employment Agreement was a restrictive covenant he was required to sign and that "there is an issue as to whether the restrictive covenant serves a legitimate business purpose." (IB. 37); *see* (R. 5195). In granting summary judgment and explaining its factual and legal basis for doing so, the trial court did not discuss or rule on this issue. *See Alamagan Corp.*, 809 So. 2d at 26; *Margolis*, 184 So. 2d at 206. This Court cannot on appeal address an issue not ruled on by the trial court. Moreover, Dundore does not advocate that it was error

for the trial court to *not* rule on this argument. Instead, he submits that the evidence is in dispute related to several legal issues. (IB. 37-39). For these reasons, this Court should affirm.

B. Dundore does not identify what restrictive covenant he believes would not serve a legitimate business purpose, or otherwise meet his burden to show why this Court should reverse.

Like other arguments and positions on appeal, Dundore repeats the same argument presented below regarding the ability for Youngevity to enforce restrictive covenants since Dundore believes the covenants do not meet a legitimate business purpose. (IB. 39-41). Youngevity agrees to the plain language of section 542.335, Florida Statutes regarding valid restrictive covenants and the validity of restrictive covenants in the employment context. *See* § 542.335, Fla. Stat.; *Ansaarie v. First Coast Cardiovascular Institute, P.A.*, 252 So. 3d 287, 290 (Fla. 1st DCA 2018). Other than setting forth these legal principles, Dundore offers three conclusory statements for his “argument” that summary judgment should not have been granted. (IB. 39, 41). This is insufficient for Dundore to meet his burden, for Youngevity to respond to, and for this Court to do anything other than affirm the trial court’s ruling. *See Miccosukee Tribe*, 48 So. 3d

at 817; *Duest*, 555 So. 2d at 852; *Applegate*, 377 So. 2d at 1152; *Hammond*, 34 So. 3d at 59.

Still, section 542.335 is inapplicable. This statutory provision only applies to post-employment activity. See *Environmental Servs., Inc. v. Carter*, 9 So. 3d 1258, 1261-62 (Fla. 5th DCA 2009); *Rollins, Inc. v. Parker*, 755 So. 2d 839, 841 (Fla. 5th DCA 2000). Even though Dundore argues against the application of a restrictive covenant, it is unclear what restrictive covenant Dundore relies on. *Shere*, 742 So. 2d at 217 n.6; *Duest*, 555 So. 2d at 852. This section of his Initial Brief does not reference what restrictive covenant Dundore believes should not be enforced or what contract Dundore is arguing under. *Shere*, 742 So. 2d at 217 n.6; *Duest*, 555 So. 2d at 852.

Even if this Court considers this argument despite these shortcomings and assumes Dundore is arguing under the Employment Agreement, Florida “favors enforcement of reasonable covenants not to compete.” *Family Heritage Life Ins. Co. of Am. v. Combined Ins. Co. of Am.*, 319 So. 3d 680, 685 (Fla. 3d DCA 2021); see, e.g., *Austin v. Mid State Fire Equip. of Cent. Fla.*, 727 So. 2d 1097, 1098 (Fla. 5th DCA 1999) (“Although Austin contends that Mid State failed to prove a legitimate business interest in the identity of its

customers or in its pricing information, we find no error in the trial court's determination that Mid State established such an interest. Accordingly, the court properly enjoined Austin from soliciting customers and disclosing pricing information.”). And an employer’s relationship with its employees is a legitimate business interest. *Balasco v. Gulf Auto Holding, Inc.*, 707 So. 2d 858, 860 (Fla. 2d DCA 1998) (finding agreement that prohibited sales manager from soliciting or influencing other employees to leave automobile dealership for two years following manager’s resignation was presumptively reasonable and necessary to protect substantial investment dealership made in specialized training of its sales staff and furthered legitimate business interests of promoting productivity and maintaining competent and specialized sale team, and thus, was enforceable).

Further, Dundore provides no legal argument. *Miccosukee Tribe*, 48 So. 3d at 817; *Shere*, 742 So. 2d at 217 n.6; *Duest*, 555 So. 2d at 852; *Applegate*, 377 So. 2d at 1152; *Hammond*, 34 So. 3d at 59. Dundore also provides no information or citations that would show that a genuine issue of material fact was present to demonstrate summary judgment was improper. *Miccosukee Tribe*, 48

So. 3d at 817; *Shere*, 742 So. 2d at 217 n.6; *Duest*, 555 So. 2d at 852; *Applegate*, 377 So. 2d at 1152; *Hammond*, 34 So. 3d at 59. This Court should affirm.

**V. DUNDORE DOES NOT MEET HIS BURDEN ON APPEAL TO SHOW WHY THE TRIAL COURT ERRED IN GRANTING YOUNGEVITY SUMMARY JUDGMENT ON COUNTS I AND III.**

In Issue IV of his Initial Brief, Dundore calls for reversal since record evidence shows Youngevity breached the Purchase Agreement first. (IB. 41-44). Dundore submits that his affidavit contradicts his prior admissions. (IB. 41-42). However, Dundore fails to acknowledge the trial court's ruling that it relied on Dundore's admission in granting summary judgment on Counterclaims II and IV and again on Counts I and III. (R. 6416). Dundore also ignores the trial court's finding that Dundore's response failed to cite any record evidence in support of his position, failed to cite evidence contradicting his admissions, and that his affidavit was insufficient to create a genuine issue of material fact. (R. 6416-17). Instead, Dundore cites to factual positions using a citation to "(R: 4250-4296)" which includes Acosta's affidavit (R. 4250-55), Dundore's affidavit (R. 4256-70), and Dundore's Response to Youngevity's summary judgment motion on Counterclaims III and IV. (R. 4271-96). No distinction or

differentiation is made as to which affidavit this is references, or if it is relying on argument in the response to the summary judgment motion as opposed to actual record evidence. *Shere*, 742 So. 2d at 217 n.6; *Duest*, 555 So. 2d at 852. To the extent Dundore is referencing arguments presented by counsel in the Response, this does not constitute evidence. *Romeo*, 907 So. 2d at 1284. The only other record citation is to “(R: 199-315)” which references the First Amended Complaint. In other words, the only references are to documents not considered evidence, or affidavits that were determined to be self-serving. (R. 4608). None of these are grounds to support reversal of summary judgment.

On the merits, this Court should affirm the trial court’s decision that Count I of Dundore’s First Amended Complaint. Dundore alleged that Youngevity failed to make capital contributions pursuant to the Purchase Agreement and that Khrysos International failed to pay cash as required by the Purchase Agreement. (R. 208-09). Dundore admitted he breached the Purchase Agreement when he failed to respond to the admissions. (R. 4043, 5018, 6418). Even if this Court looked passed Dundore’s admissions, other parties including Leigh and Khrysos Global also admitted the Purchase Agreement was

breached, and these parties never moved to set aside the admissions. (R. 5041, 5103, 6418). Further, even though Dundore moved to set aside his admissions, he did not provide alternative responses to the RFAs for the trial court to rely upon, even if the trial court had granted Dundore's motion to set aside his admissions. Thus, all plaintiffs admitted to: "(1) falsely maintaining Khrysos Global's book of business was worth more than \$65 million when it was not (2) knowingly making false statements regarding the sales pipeline and book of business to induce Youngevity to enter into the [Purchase Agreement]; and (3) breaching the [Purchase Agreement]." (R. 6418).

Dundore takes no issue with the trial court relying on its prior findings that Dundore "knowingly made false statements related to Khrysos Global's sales pipeline and book of business to induce Youngevity into acquiring the assets of Khrysos Global" and that Youngevity did, in fact, rely on those misrepresentations when entering into the Purchase Agreement. (R. 6418). Dundore also does not challenge the trial court's finding that Dundore's inducement rendered the Purchase Agreement voidable by Youngevity, the defrauded party. (R. 6418) (citing *Mazzoni Farms, Inc. v. E.I. DuPont De Nemours & Co.*, 761 So. 2d 306, 313 (Fla. 2000)). Because he did

not present these arguments initially, Dundore cannot take issue with these rulings for the first time in his Reply Brief. *Ruiz v. Wendy's Trucking, LLC*, 357 So. 3d 292, 304 (Fla. 2d DCA 2023). Overall, Dundore's recitation of facts from his affidavit and Acosta's affidavit are not sufficient to show why, on appeal, this Court should disagree with the trial court's decision to grant summary judgment in favor of Youngevity on this point. *Duest*, 555 So. 2d at 852. This Court should affirm.

**VI. THE TRIAL COURT CORRECTLY RELIED ON BRISKIE'S DECLARATION WHEN GRANTING YOUNGEVITY SUMMARY JUDGMENT ON COUNTS VI AND IX AND COUNTERCLAIMS I, VII, AND X.**

A motion for summary judgment can be supported or opposed by affidavits or declarations. Fla. R. Civ. P. 1.510(c). However, these sworn statements "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fla. R. Civ. P. 1.510(c)(4); *see Gromann v. Avatar Property & Cas. Ins. Co.*, 345 So. 3d 298, 300 (Fla. 4th DCA 2022). Affidavits or declarations that do not comply with these requirements are legally insufficient

and do not support summary judgment. *Huertas v. Avatar Property & Cas. Ins. Co.*, 333 So. 3d 767, 771 (Fla. 4th DCA 2022).

When providing sworn statements on behalf of a corporation, an officer of a corporation may provide an affidavit on behalf of the corporation without having to “state the sources of his knowledge, or information and belief.” *United Bonding Ins. Co. v. Dura-Stress, Inc.*, 243 So. 2d 244, 246 (Fla. 2d DCA 1971), *approved by Beverage Canners, Inc. v. E.D. Green Corp.*, 291 So. 2d 193 (Fla. 1974). “[A]n affidavit does not need to state that it is based on personal knowledge where the affiant is shown to be in a position where he would necessarily possess the knowledge.” *Alvarez v. Fla. Ins. Guar. Ass’n, Inc.*, 661 So. 2d 1230, 1232 (Fla. 3d DCA 1995) (affirming trial court decision to admit evidence at trial in affidavit that detailed practices and procedures and reflected that affiant’s position allowed her to be familiar with those practices and procedures). The individual attesting to the information can have the requisite personal knowledge even by reviewing certain information within the corporation. *See Progressive*, 80 So. 3d 394, 399 (Fla. 4th DCA 2012).

Here, Briskie’s declaration in support of Youngevity’s summary judgment motion on Counts VI and IX and Counterclaims I, VII, and

X was admissible. Briskie attested that all of his statement were “based on my personal knowledge unless stated upon information.” (R. 4847). He advised of his positions in Youngevity, which include President and Chief Investment Officer. (R. 4847).

On appeal, and below, Dundore only challenges Paragraphs 10 and 11 of Briskie’s declaration. (IB. 45-47); (R. 5393-95). Paragraph 10 stated that Dundore and his son, Dustin Dundore, “operated Smash Customs without oversight from [Briskie] or other Youngevity executives” which included running the day-to-day operation at Smash Customs, delegating “work to the Smash Customs employees, and the autonomy to use Smash Customs equipment and funds in whichever manner they chose.” (R. 4848). Paragraph 11 stated that Youngevity learned that Dundore and his son “used Smash Customs’ resources, including labor, equipment, parts, and funds, to improve their personal automobiles without reimbursing Smash Customs,” which totaled at least \$245,924.70. (R. 4848-49).

Dundore’s challenge to these paragraphs in Briskie’s declaration misses the mark. Dundore ignores the trial court’s finding that it need not rely on Briskie’s knowledge of the structure of Smash Customs since the record also included documents from

Florida's Secretary of State showing that Dundore filed Articles of Amendment to Articles of Incorporation for Smash Customs in July 2020 which removed Briskie and another Youngevity executive as officers of Smash Customs. (R. 6401). In other words, Dundore and his son were the sole officers and directors of Smash Customs during pertinent times at issue for this claim. (R. 6401).

Furthermore, Dundore's challenge fails because Youngevity submitted documentary evidence supporting Briskie's declaration. (R. 5429, 5436-6322). Dundore does not dispute the admissibility of this evidence. The trial court thus found that Youngevity submitted documentary data to support Briskie's statements and that Briskie can testify work performed by Youngevity based on his position as an executive for Youngevity. (R. 6406); *see Progressive*, 80 So. 3d 399.

Even if the trial court incorrectly relied on Briskie's declaration, this Court should still affirm because Dundore only challenged Paragraphs 10 and 11 of Briskie's declaration. Those paragraphs only addressed the damages component of Youngevity's Counterclaim X for unjust enrichment and would not impact or otherwise alter the trial court's ruling on Dundore's claims for conversion and writ of replevin, and Youngevity's counterclaims for

conversion and declaratory judgment. *See Wright v. State*, 48 Fla. L. Weekly D1895, 2023 WL 6166569 at \*1, n.2 (Fla. 6th DCA Sept. 22, 2023) (quoting *Shands Teaching Hosp. & Clinics, Inc. v. Mercury Ins. Co.*, 97 So. 3d 204, 212 (Fla. 2012)). Because Dundore presents no argument to address the specific rulings by the trial court, does not demonstrate a basis for reversal, or otherwise meet his burden on appeal, this Court should affirm.

**VII. DUNDORE FAILED TO PRESERVE ANY CHALLENGE TO THE TRIAL COURT’S DAMAGE AWARD; EVEN IF CONSIDERED, THE TRIAL COURT’S DAMAGE AWARD IS SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE.**

Because of the Agreed Order, the parties reached a settlement and a consent judgment was entered regarding the amount of damages. *See supra* Issue I. Furthermore, this Court should not reach Dundore’s last issue regarding whether the damages were unliquidated because Dundore never raised it in the trial court. *See Sunset Harbour Condo. Ass’n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005) (“In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal

argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved.”).

The trial court’s order granting summary judgment on Counterclaims III and IV identified the amount of damages to be awarded to Youngevity. (R. 4611-12). While Dundore moved for rehearing from this order, Dundore did not challenge whether the damages were liquidated or unliquidated. (R. 4617-21). At the end of litigation, the trial court entered Final Judgment and again identified the amount of damages to be awarded to Youngevity in an Agreed Order and Judgment. (R. 6495-98). No rehearing or other motion was filed to challenge whether the trial court could award damages to Youngevity. Moreover, this case did not involve a default judgment, or entry of damages without notice and an opportunity to be heard. *Turner v. Allen*, 389 So. 2d 686 (Fla. 5th DCA 1980) (“Even if the default had been properly entered against Turner he was entitled to receive notice of the order setting a hearing on damages prior to entry of a final judgment because the claim involved unliquidated damages.”).

On appeal, Dundore makes no attempt to highlight where in the extensive record on appeal an objection or argument was presented

to the trial court on this issue. See *Sunset Harbour*, 914 So. 2d at 928; see also *Miccosukee Tribe*, 48 So. 3d at 817; *Applegate*, 377 So. 2d at 1152. Aside from citing legal principles and providing a few conclusory statements, Dundore does not show that the damages awarded by the trial - \$20,626,500.00 based on projected book of business in 2020 for fraudulent inducement (Counterclaim III) and \$289,007.66 for restitution for breach of the Employment Agreement (Counterclaim IV) – were unliquidated. *Miccosukee Tribe*, 48 So. 3d at 817; *Shere*, 742 So. 2d at 217 n.6; *Duest*, 555 So. 2d at 852; *Applegate*, 377 So. 2d at 1152; *Hammond*, 34 So. 3d at 59. Dundore cannot meet his burden on appeal for reversal of a damage award over \$20 million when the argument was raised impermissibly for the first time on appeal. See *Sunset Harbour*, 914 So. 2d at 928. Dundore also cannot prevail because, through two Agreed Orders and Judgments, Dundore consented to a final damages amount.

Even if this Court reaches the merits of this issue, this Court should still affirm. Liquidated damages can be determined “with exactness from the cause of action as pleaded, by an arithmetical calculation or by application of definite rules of law.” *Boulos v. Yung Sheng Xiamen Yong Chem. Indus. Co.*, 855 So. 2d 665, 667 (Fla. 4th

DCA 2003). “In a contractual setting, liquidated damages exist when a specific sum of money has been expressly stipulated or agreed to by the parties for recovery by either party following a breach of the contract by the other.” *Hartford Fire Ins. Co. v. Controltec, Inc.*, 561 So. 2d 1334, 1335 (Fla. 5th DCA 1990); *see Bowman v. Kingsland Dev., Inc.*, 432 So. 2d 660, 662–63 (Fla. 5th DCA 1983) (“Since every negotiable instrument must be an unconditional promise or order to pay a sum certain in money . . . actions for the sums directly due on negotiable instruments are, by definition, actions for liquidated damages.”) (internal quotations and citations omitted).

On the contrary, “damages are not liquidated if the ascertainment of their exact sum requires the taking of testimony to ascertain facts upon which to base a value judgment.” *Bowman v. Kingsland Dev., Inc.*, 432 So. 2d 660, 663 (Fla. 5th DCA 1983). Unliquidated damages require a determination by a jury. *See Pierce v. Anglin*, 721 So. 2d 781, 783 (Fla. 1st DCA 1998).

Here, the trial court relied on competent substantial evidence to arrive at the \$20,626,500.00 for the projected book of business in 2020 by way of Briskie’s declaration and the Khrysos Global projected statement of income, both provided by Dundore to

Youngevity. (R. 4185, 4195, 4604). Based on Dundore's representations that Khrysos Global had a \$65 million sales pipeline and book of business, Khrysos Industries would have earned \$20,626,500.00 in net profit for 2020 if Dundore's representations were correct. (R. 4185, 4195, 4604); *see Boulos*, 855 So. 2d at 667; *Hartford Fire Ins.*, 561 So. 2d at 1335; *Bowman*, 432 So. 2d at 662-63. On appeal, Dundore does not challenge these calculations or the representations he made related to these calculations, or that it should not have been awarded. *See Shere*, 742 So. 2d at 217 n.6; *Hammond*, 34 So. 3d at 59. Dundore also does not mention the Agreed Order and Second Agreed Order stipulated by the parties for almost \$21 million. *See supra* Issue I.

The trial court also relied on competent substantial evidence to determine restitution damages in the amount of \$289,007.66. The trial court could provide restitution "when there has been a breach of an express contract" which, in this case, was Dundore's breach of the Employment Agreement. *Ocean Comm'ns, Inc. v. Bubeck*, 956 So. 2d 1222, 1225 (Fla. 4th DCA 2007). The trial court found it was undisputed that Dundore began breaching the Employment Agreement on April 24, 2019, when he became President of Phantom

Industries. (R. 4610); *see* (R. 4197-98) (Phantom Industries' Articles of Incorporation); (R. 4100) (Yvonne Dundore's RFAs to Dundore that were deemed admitted). The trial court employed mathematical calculations related to the salary Youngevity paid to Dundore on or after April 24, 2019, in the amount of \$289,007.66 and arrived at this amount based on Briskie's declaration. (R. 4189-90, 4610). The trial court also noted that Dundore did not dispute Youngevity's right to recover restitution or the restitution calculation. (R. 4611). Similarly, on appeal, Dundore does not challenge Youngevity's entitlement to restitution, only that the trial court awarded damages. (IB. 47). Dundore fails to mention that the information provided to the trial court and relied on for the calculations came from his own representations to Youngevity. *Miccosukee Tribe*, 48 So. 3d at 817; *Shere*, 742 So. 2d at 217 n.6; *Duest*, 555 So. 2d at 852; *Applegate*, 377 So. 2d at 1152; *Hammond*, 34 So. 3d at 59. Therefore, even if this Court considers the merits of this case, this Court should affirm.

## **CONCLUSION**

Based on the factual and legal arguments previously set forth, Appellees, Youngevity International, Inc. and Khrysos Industries, Inc., respectfully request this Court dismiss the arguments related to Counterclaims III and IV as moot and affirm all remaining orders granting summary judgment in Youngevity's favor.

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that on this 31st day of October, 2024, a true and correct copy of the foregoing was electronically filed with the Sixth District Court of Appeal by using the Florida Courts e-Filing Portal, therefore furnished via E-mail to all parties listed in the below **Service List.**

Respectfully submitted,

COLE, SCOTT & KISSANE, P.A.  
*Counsel for Appellees, Youngevity  
International, Inc. and Khrysos  
Industries, Inc.*  
Tower Place, Suite 400  
1900 Summit Tower Boulevard  
Orlando, Florida 32810  
Telephone (321) 972-0071  
Facsimile (321) 972-0099  
E-mail: [therese.savona@csklegal.com](mailto:therese.savona@csklegal.com)  
E-mail: [emily.fernandez@csklegal.com](mailto:emily.fernandez@csklegal.com)

By: /s/ Therese A. Savona  
THERESE A. SAVONA, B.C.S.  
FBN: 077618

## **SERVICE LIST**

**Martin A. Pedata, Esq.**

120 R. Rich Avenue  
DeLand, FL 32720

[Topfighter@me.com](mailto:Topfighter@me.com)

*Counsel for Appellant, Dwayne Dundore*

**Eric Awerbuch, Esq.**

Emord & Associates, PC  
2730 S. Val Vista Drive  
Building 6, Suite 133  
Gilbert, AZ 85295

*Counsel for Appellee, Youngevity International, Inc.*

**Allan A. Joseph, Esq.**

**Miguel J. Chamorro, Esq.**

Fuerst Ittleman David & Joseph

[ajoseph@fidjlaw.com](mailto:ajoseph@fidjlaw.com); [mchamorro@fidjlaw.com](mailto:mchamorro@fidjlaw.com);

[lcabrera@fidjlaw.com](mailto:lcabrera@fidjlaw.com)

SunTrust International Center  
One SE Third Avenue, Suite 1800  
Miami, FL 33131

*Counsel for Appellees, Khrysos Global, Inc., Leigh Dundore, Dustin Dundore and Dwayne Dundore*

**Lori K. Mans, Esq.**

**Phillip J. Harris, Esq.**

Jackson Lewis, P.C.

[TampaDocketing@jacksonlewis.com](mailto:TampaDocketing@jacksonlewis.com);

[denise.dawson@jacksonlewis.com](mailto:denise.dawson@jacksonlewis.com); [Phillip.Harris@jacksonlewis.com](mailto:Phillip.Harris@jacksonlewis.com),

[richard.margulies@jacksonlewis.com](mailto:richard.margulies@jacksonlewis.com); [lori.mans@jacksonlewis.com](mailto:lori.mans@jacksonlewis.com),

100 South Ashley Street, Suite 2200

Tampa, FL 33602

*Counsel for Appellees, Ariana Almodovar and Joshua Carmona*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Fla. R. App. P. 9.045(b), the undersigned counsel hereby certifies that this brief was submitted in Bookman Old Style 14-point font. This brief also complies with the word count limit requirements, excluding the parts exempted by Fla. R. App. P. 9.045(e).

By: /s/ Therese A. Savona  
THERESE A. SAVONA, B.C.S.  
FBN: 077618