



**The Business Court of Texas,
Third Division**

ES3 MINERALS, LLC,

Plaintiff/Counter-Defendant,

v.

NICHOLAS KREINES, *et al.*,

Defendants/Counter-Plaintiffs.

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Cause No. 24-BC03B-0005

FINAL JUDGMENT

On February 23, 2026, this case was called to trial.

Plaintiff ES3 Minerals, LLC (“ES3”), appeared through its corporate representative and by its counsel of record and announced ready.

Defendants Nicholas Kreines, individually and as trustee and beneficiary of the Nicholas and Sara Kreines Trust (“Kreines”), Liberty Mineral Partners, LLC (“LMP”), David Ryan (“Ryan”), NAK Resources Inc. (“NAK”), Jettie Rangel/Jettie Jennings (“Jennings”), and CGR Oil and Gas, LLC (“CGR”) appeared through their respective representatives and counsel of record and announced ready.

A jury consisting of twelve qualified jurors, having been previously demanded, was duly impaneled and sworn in by the Court. The case proceeded to trial and the jury heard the evidence and arguments of counsel. On March 9, 2026, the jury returned a verdict and made findings that the Court received, accepted, filed, and entered of record. The questions submitted to the jury and the jury’s answers are attached as Exhibit “A” and are incorporated by reference into this judgment. Pursuant to the agreement of the parties, the Court considered and determined the issue of attorneys’ fees, expenses, and costs.

Following the trial the parties agreed to a briefing schedule for post-trial motions and the following motions were filed by the parties, were responded to, and were heard on April 29, 2026:

- Defendant's Motion for Judgment Notwithstanding the Verdict—and, in the Alternative—Defendant's Motion to Disregard Jury Findings;
- ES3 Minerals, LLC's Motion for Entry of Judgment;
- Defendants' Motion for Entry of Judgment on the Verdict;
- ES3 Minerals, LLC's Motion for Award of Attorney's Fees, Costs, and Other Expenses; and
- Plaintiff ES3 Minerals, LLC's Motion for Permanent Injunctive Relief.

The Court renders judgment on the verdict. The Court renders judgment in favor of ES3 against Kreines, LMP, Ryan, NAK, Jennings, and CGR. The Court further renders judgment that Defendants take nothing on their claims against ES3.

The Court orders that ES3 recover from Kreines, LMP, Ryan, NAK, and Jennings, jointly and severally, and Kreines, LMP, Ryan, NAK, and Jennings are ordered to immediately pay to ES3, the following amounts:

1. The sum of \$44,399,688 in actual damages;
2. Prejudgment interest on actual damages in the amount of \$5,263,187.67, calculated as simple interest at the rate of 6.75 percent on \$44,399,688 from September 18, 2024 through June 21, 2026;
3. Reasonable and necessary attorney fees in the amount of \$2,107,944.57; and
4. Post-judgment interest on the monetary sums awarded to ES3 in this paragraph at the rate of 6.75 percent per annum, compounded annually, from and after the date of this judgment until it is satisfied.

The Court further orders that ES3 recover from Defendants, and Defendants are ordered to immediately pay to ES3, exemplary damages in the following amounts:

1. \$2,000,000 from Liberty Mineral Partners LLC to ES3;
2. \$2,000,000 from David Ryan to ES3;
3. \$2,000,000 from Nicholas Kreines to ES3;
4. \$2,000,000 from NAK Resources Inc. to ES3;
5. \$1,000,000 from Jettie Jennings to ES3; and

6. As to each as to their amount, post-judgment interest on the monetary sums awarded to ES3 in this paragraph at the rate of 6.75 percent per annum, compounded annually, from and after the date of this judgment until it is satisfied.

The Court further orders that ES3 recover from Kreines, and Kreines is ordered to immediately pay to ES3, the following amounts:¹

1. Reasonable and necessary costs in the amount of \$178,278.76;² and
2. Post-judgment interest on the monetary sums awarded to ES3 in this paragraph at the rate of 6.75 percent per annum, compounded annually, from and after the date of this judgment until it is satisfied.

The Court further orders that ES3 recover from Ryan, and Ryan is ordered to immediately pay to ES3, the following amounts:

1. Reasonable and necessary costs in the amount of \$ 178,278.76 and
2. Post-judgment interest on the monetary sums awarded to ES3 in this paragraph at the rate of 6.75 percent per annum, compounded annually, from and after the date of this judgment until it is satisfied.

The Court further orders that ES3 recover from Kreines, and Kreines is ordered to immediately pay to ES3, the following amounts:

1. Reasonable and necessary attorney fees in the amount of \$28,679.52; and
2. Post-judgment interest on the monetary sums awarded to ES3 in this paragraph at the rate of 6.75 percent per annum, compounded annually, from and after the date of this judgment until it is satisfied.

The Court further orders that ES3 recover from LMP, and LMP is ordered to immediately pay to ES3, the following amounts:

1. Reasonable and necessary attorney fees in the amount of \$28,679.52; and
2. Post-judgment interest on the monetary sums awarded to ES3 in this paragraph at the rate of 6.75 percent per annum, compounded annually, from and after the date of this judgment until it is satisfied.

¹ While ES3 prevailed on Question 16 and the jury awarded \$2,130,000 against Defendant Kreines and \$2,130,000 against Defendant Ryan, the judgment amount does not include those two monetary awards as the Court finds it would constitute double recovery.

² The Court denies ES3's request for Everlaw platform e-discovery costs.

The Court further orders that ES3 recover from Defendants, and Defendants are ordered to immediately pay ES3, the following amounts:

1. All costs of court as provided for by Tex. R. Civ. P. 131, et seq.; and
2. Post-judgment interest on the monetary sums awarded to ES3 in this paragraph at the rate of 6.75 percent per annum, compounded annually, from and after the date of this judgment until it is satisfied.

The Court further conditionally orders that ES3 recover from Defendants, and Defendants are ordered to pay ES3, appellate attorneys fees in the following amounts:

1. \$96,250 for briefing in the court of appeals, if any;
2. \$47,500 for oral argument in the court of appeals, if any;
3. \$57,750 for a response to a petition for review in the Supreme Court of Texas, if any;
4. \$96,250 for briefing on the merits in the Supreme Court of Texas, if any; and
5. \$59,375 for oral argument in the Supreme Court of Texas, if any.

On the basis of the record and the jury's verdict, the Court further finds:

A. Wrongful Act.

The jury's findings of misappropriation of ES3's trade secrets, breach of confidentiality agreements, and breach of fiduciary duty, and the record establish a wrongful act.

Additionally, the jury found that Defendant Kreines's transfer of

- 1000 shares of NAK Resources, Inc.
- Morgan Stanley Accounts and
- Bank of America Checking and Savings Accounts

were transferred with actual intent to hinder, delay or defraud ES3 and occurred within a reasonable time after Kreines transferred the assets to the Nicholas and Sarah Kreines Trust.³

³ See Jury Charge Questions 24 and 25.

The jury also found that Defendants Liberty Mineral Partners, LLC, CGR Oil and Gas, LLC, and NAK Resources, Inc. transferred the following assets with actual intent to hinder, delay or defraud ES3 within a reasonable time after LMP/Liberty transferred the assets to CGR and NAK.⁴

County	Effective Date	Grantor	Grantees	Bates
Dawson	11/01/2024	LMP/Liberty	CGR; NAK	NAK003628
Dawson	12/01/2024	LMP/Liberty	CGR; NAK	NAK003636

The specified transfers establish wrongful acts.

B. Imminent Harm.

ES3 has sufficiently shown imminent harm. LMP is a direct competitor of ES3. Importantly, ES3 has shown Defendants possess ES3's Trade Secrets and Confidential Information, both terms are defined below under "Definitions" (Section E) and used herein. ES3 has further shown that Defendants are operating a competing business using ES3's Trade Secrets and Confidential Information.⁵

LMP's script, which is an almost identical copy of ES3's trade-secret script, was used to train LMP producers. LMP's Gold Digger software, which the jury found to be misappropriated from ES3's Rainmaker software, was used for training of every LMP producer, and utilized by LMP producers for deals since it became operational in April 2024. Kreines oversees pricing at LMP, and Kreines maintained ES3's trade secret pricing data in his private Dropbox and on his computer. The evidence reflected ES3's buyer list was located on LMP's Google Drive and Kreines had access to ES3's trade secret buyer information contained in ES3's documents located in Kreines's private Dropbox. Kreines also maintained buyer information for LMP using spreadsheets that specifically note which buyers bought from ES3.

Defendants have engaged in a settled course of conduct regarding the possession and use of ES3's Trade Secrets and Confidential Information.

The operation of a competing business using misappropriated information harms ES3 by depriving it of the exclusive use of its Trade Secrets and Confidential Information,

⁴ See Jury Charge Questions 26 and 27.

⁵ See *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200 (Tex. App.—Fort Worth 2005, no pet.) ("When a defendant possesses trade secrets and is in a position to use them, harm to the trade secret owner may be presumed").

diverting potential customers, and interfering with the effectiveness of ES3's Trade Secrets. The Court finds unless enjoined, TUTSA Defendants will continue to use the Gold Digger software, sales script, buyer information, and historical pricing data to compete directly against ES3. Thus, ES3 faces imminent harm without the relief specified below.

In addition to the course of conduct described, the jury found that Defendants Liberty Mineral Partners, LLC, CGR Oil and Gas, LLC, Kreines, NAK Resources, Inc., with actual intent to hinder, delay or defraud ES3, engaged in unlawful transfers as to the stocks, accounts, and real property itemized in Paragraph A.⁶ Additionally, the amount of the judgment and Defendants' indication that this amount is several multiples of their net worth, and given ES3's potentially limited recourse,⁷ the Court finds ES3 is likely to suffer imminent harm without relief as to the property itemized in Paragraph A.

C. Irreparable Injury and Inadequacy of Monetary Damages.

ES3 has sufficiently shown irreparable injury and the inadequacy of money damages by establishing that it has trade secrets, Defendants are in the possession of ES3's trade secrets, and that the Defendants will probably use the trade secrets to compete with ES3. Further ES3 has suffered the loss of the exclusive use of ES3's Trade Secrets and Confidential Information. The Court finds that ES3 will suffer an irreparable injury without the relief below.

Monetary damages cannot fully compensate ES3 for the loss of competitive position in the marketplace, and the erosion of its competitive advantage if a competitor were allowed to compete against it using ES3's Trade Secrets and Confidential Information (as defined below). The Court finds that ES3 intended to maintain its Trade Secrets and Confidential Information (as defined below) for its exclusive use and never intended to disclose, license, or otherwise provide them to any third party. The Court finds that monetary damages alone would not fully compensate for the misappropriation of ES3's Trade Secrets and Confidential Information (as defined below).

As to the transfers, the jury found that Defendants Liberty Mineral Partners, LLC, CGR Oil and Gas, LLC, Kreines, NAK Resources, Inc., with actual intent to hinder, delay or defraud ES3, engaged in unlawful transfers as to the itemized stocks, accounts, and real property.⁸ Additionally, in view of Defendants indication that this amount is several

⁶ See *Huynh v. Blanchard*, 694 S.W. 3d 648, 679 (Tex. 2024) (“[w]hen the jury finds [past] violations occurring and continuing up to or near the date of the trial, the trial court may, in equity, determine that the defendant has engaged in a settled course of conduct and may assume that it will continue, absent clear proof to the contrary.”).

⁷ See *KCM Financial v. Bradshaw* 457 S.W. 3d 70, 87 (Tex. 2015).

⁸ *Supra* ¶ A.

multiples of their net worth,⁹ and ES3's potentially limited recourse,¹⁰ the Court finds ES3 is likely to suffer irreparable injury and that the specific transfers in Paragraph A should be preserved.

D. Balance of Equities.

The balance of equities favors ES3. Defendants have no legitimate hardship from being prohibited from using property they do not own. The public interest is served by property rights being protected and the Defendants not benefitting from their wrongful acts. Additionally, the itemized property, the jury found, was transferred with actual intent to hinder, delay or defraud ES3. Thus, weighing the harms imposed, the Court finds the balance of equities favors ES3.

E. Definitions.

For purposes of this Permanent Injunction, the term "Confidential Information" is defined as the following items acquired in the course and scope of activities for ES3:

- ES3's business strategies or plans,
- ES3's sales and/or marketing strategies and techniques,
- ES3's research and development information regarding existing and prospective products and services,
- ES3's financial statements and data,
- ES3's pricing and cost information,
- ES3's billing information,
- ES3's personnel files and employee evaluations,
- ES3's payroll and commission structures and rates,
- ES3's computer programs and software developed by or for ES3,
- ES3's custom enhancements to commercial software,
- ES3's computer access passwords, or
- ES3 information and material provided to ES3 by third parties containing disclosure restrictions.

⁹ Def s.' Resp. to ES3's Mot. for Permanent Injunctive Relief P. 5.

¹⁰ See generally *KCM Fin. LLC v. Bradshaw*, 457 S.W. 3d 70 (Tex. 2015).

For purposes of this Permanent Injunction “Trade Secrets” means the trade secrets found by the Jury in its March 9, 2026 verdict more specifically defined below:

- (1) ES3's Rainmaker software specifications and functionality consisting of:
 - (a) ES3's non-public calculations using publicly available data sources whether or not combined with internal non-public data such as ES3's BO to PO calculation or Defendants' PPO calculation derived from BO to PO;
 - (b) ES3's sequential workflow and information presentation structure that includes the calculations tied to the information identified in ES3's script; or
 - (c) ES3's methods for determining price of specific mineral interests;
- (2) ES3's sales techniques as expressed in ES3's sales script, including use of ES3's BO to PO calculation or Defendants' PPO calculation derived from BO to PO;
- (3) ES3's compilation of buyer information, consisting of customer lists, contact information for key decision-makers, details of historical mineral interest purchases, and negotiated contract terms;
- (4) ES3's historical pricing financial data; and
- (5) ES3's integrated business methodology for acquiring and selling mineral rights consisting of items (1) through (4) above.

It is therefore **ORDERED** as follows:

Defendants Ryan, Kreines, Rangel, LMP, NAK, and CGR, together with their respective officers, agents, servants, employees, attorneys, and all persons acting in concert or participation with any of them who receive actual notice of this Final Judgment, are hereby permanently enjoined from:

- a) Disclosing, using, duplicating, or publishing any of ES3's Trade Secrets, as defined above;
- b) Disclosing, using, duplicating, or publishing information and materials that contain ES3's Trade Secrets, including the Gold Digger software, LMP's Areas of Mutual Interest Agreements with PRP MIDLAND BASIN LLC or MESA ROYALTIES III HOLDINGS, LLC, and any materials obtained from ES3 containing non-public pricing information, or documents obtained from ES3 containing non-public buyer information;
- c) Using the Rainmaker software, using the Gold Digger software, or using any software derived from either Rainmaker or Gold Digger software platforms. In the case of Gold Digger this includes any software derived from the same or similar design specifications or other documents describing it, or that has any ES3 pricing information placed into it; and

- d) Modifying any software platform to contain any of ES3's Trade Secrets.

Defendant Kreines, together with his agents, servants, employees, and all persons acting in concert or participation with him who receive actual notice of this Final Judgment, is hereby permanently enjoined from disclosing, using, communicating, duplicating, publishing, or otherwise reproducing any of ES3's Confidential Information as defined above.

Defendant Ryan, together with his agents, servants, employees, and all persons acting in concert or participation with him who receive actual notice of this Final Judgment, is hereby permanently enjoined from disclosing, using, communicating, duplicating, publishing, or otherwise reproducing any of ES3's Confidential Information as defined above.

Within seventy-five (75) days of the date of this Final Judgment, Defendants Ryan, Kreines, Rangel, LMP, NAK, and CGR shall take all actions necessary to implement and comply with the following:

- a) Utilizing their own forensic expert, prepare a log of devices, servers or cloud servers, online service accounts, or any other place where information is stored in each Defendant's care, custody, or control. This log shall include a detailed description specifying all the above locations that contain Prohibited Materials as defined herein. "Prohibited Materials" are ES3's Trade Secrets and ES3's Confidential Information, and also include the Gold Digger software and any data contained within Gold Digger. Defendants shall provide a copy of the log to ES3;
- b) Return all Prohibited Materials and all information, documents, software, records, or any other tangible or electronic information in their possession containing ES3's Trade Secrets and Confidential Information to ES3 and destroy any copies in Defendants' possession;
- c) To the extent return of the Prohibited Materials is impracticable, Defendants shall destroy those materials and all copies of those materials. Defendants must provide a log detailing the materials that were destroyed, including a general description or the file name and the digital or physical location of the materials. Any digital materials that are destroyed should specifically describe where they were stored within the device, server, account or other location;

- d) Execute and file with this Court a sworn certification confirming full compliance with items (a), (b), and (c) above and certifying that the Defendant is not aware of any other Prohibited Materials outside the care, custody, or control of ES3 or if they are aware, the name of the person or entity that has possession of the Prohibited Materials. In the case of LMP, the sworn certification will come from each employee and independent contractor who has accessed the Gold Digger; and
- e) Pay for the cost above activities in items (a) through (d).

Texas Uniform Fraudulent Transfer Act

The Court further **ORDERS** that:

(a) Defendants Liberty Mineral Partners, LLC, CGR Oil and Gas, LLC, and NAK Resources, Inc., pursuant to Section 24.008(a)(2)–(3) of the Texas Business and Commerce Code providing for “provisional remedies against the asset transferred” and “an injunction against further disposition,” are enjoined against disposition, waste, dissipation, or transfer of the assets identified in the chart below and spending any royalty payments received in connection with those mineral interests, if any, until further order of this Court.

County	Effective Date	Grantor	Grantees	Bates
Dawson	11/01/2024	LMP/Liberty	CGR; NAK	NAK003628
Dawson	12/01/2024	LMP/Liberty	CGR; NAK	NAK003636

(b) The following transfers by Defendants Nicholas Kreines and/or NAK Resources into the Nicholas and Sara Kreines Trust of the following property:

- 1,000 shares of NAK Resources, Inc.;
- Morgan Stanley Accounts; and
- Bank of America Accounts,

are avoided pursuant to Section 24.008(a)(1) of the Texas Business and Commerce Code. In addition, pursuant to Section 24.008(a)(2)–(3), Nicholas Kreines and NAK Resources, Inc. are enjoined from

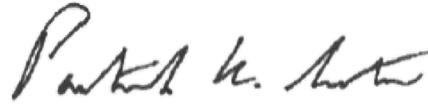
waste or dissipation of the Morgan Stanley Accounts and Bank of America Accounts until further order of this Court. The Morgan Stanley Accounts and Bank of America Accounts may be used only to the extent they are required for necessary and reasonable personal or business expenses.

The transfer of the 1,000 shares of NAK Resources, Inc. are further enjoined from disposition, waste, dissipation, or transfer until further order of this Court.

It is further ordered that all relief not expressly granted herein is denied.

It is further ordered that this judgment is enforceable upon entry and all writs and processes necessary or appropriate for the enforcement or collection of this judgment may issue as necessary.

This judgment is final, disposes of all issues and all parties, and is appealable.

A handwritten signature in dark ink, appearing to read "Patrick K. Sweeten", is written above a horizontal line.

PATRICK K. SWEETEN
Judge of the Texas Business Court
Third Division

DATED: June 22, 2026

Exhibit A

The Business Court of Texas,
Third Division

ES3 MINERALS, LLC,

Plaintiff/Counter-Defendant,

v.

NICHOLAS KREINES, ET AL.

Defendants/Counter-Plaintiffs.

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Cause No. 24-BC03B-0005

JURY CHARGE

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told

otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

7. The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

8. A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

9. In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

10. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

11. Do not answer questions by drawing straws or by any method of chance.

12. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

13. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

14. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the

taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

PARTIES

1. "LMP" or "Liberty" means Defendant Liberty Mineral Partners, LLC.
2. "Ryan" means Defendant David Ryan.
3. "Kreines" means Defendant Nicholas Kreines, individually and as trustee and beneficiary of the Nicholas and Sara Kreines Trust.
4. "NAK" means Defendant NAK Resources Inc.
5. "Rangel" or "Jennings" means Defendant Jettie Rangel or Jettie Jennings.
6. "CGR" means Defendant CGR Oil and Gas, LLC.
7. "Defendant" or "Defendants" means one or more of the following individuals or entities: LMP/Liberty, Kreines, Ryan, Rangel/Jennings, NAK, and CGR.
8. "ES3" means Plaintiff ES3 Minerals, LLC.
9. "Person" means an individual, partnership, corporation, association, or other group, however organized.

QUESTION 1 – Trade Secret Ownership

Did ES3 own a trade secret in the information listed below?

“Own” means to have rightful, legal, or equitable title to, or the right to enforce rights in, a trade secret.

“Trade secret” means information, including any formula, compilation, program, method, technique, process, financial data, or list of actual or potential customers that—

1. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
2. is the subject of reasonable measures by the owner under the circumstances to maintain its secrecy.

“Proper means” are discovery by independent development or any other means that is not improper.

“Improper means” include:

1. Theft; or
2. Misrepresentation; or
3. Breach or inducement of a breach of a duty to maintain secrecy, to limit use, or to prohibit discovery of a trade secret.

Answer “Yes” or “No” for each:

ANSWER

- A. ES3’s Rainmaker software specifications and functionality.
- B. ES3’s sales techniques as expressed in ES3’s script.
- C. ES3’s compilation of buyer information, consisting of customer lists, contact information for key decision makers, the details of historical mineral interest purchases, and negotiated contract terms.
- D. ES3’s historical pricing financial data.

yes

yes

yes

yes

E. ES3's integrated business methodology for acquiring and selling mineral rights, consisting of ES3's Rainmaker software specifications and functionality, script, buyer information, and pricing data (Answer this Question only if you answered "Yes" to all of Questions 1A, 1B, 1C, and 1D).

yes

If you answered "Yes" for any part of Question 1, then answer the following question as to that part. Otherwise, do not answer the following question.

QUESTION 2 – Trade Secret Misappropriation

Did any of the Defendants misappropriate any of the trade secrets that you found were owned by ES3 in Question 1?

To find misappropriation of a trade secret, you must find that the Defendant:

1. Disclosed or used the trade secret without ES3's express or implied consent, and that the Defendant used improper means to acquire knowledge of the trade secret; or
2. Disclosed or used the trade secret without ES3's express or implied consent, and that the Defendant, at the time of the disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was derived from or through a person who had used improper means to acquire it; or
3. Disclosed or used the trade secret without ES3's express or implied consent, and that the Defendant, at the time of the disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
4. Disclosed or used the trade secret without ES3's express or implied consent, and that the Defendant, at the time of the disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was derived from or through a person who owed a duty to ES3 to maintain its secrecy or limit its use.

"Improper means" include:

1. Theft; or
2. Misrepresentation; or
3. Breach or inducement of a breach of a duty to maintain secrecy, to limit use, or to prohibit discovery of a trade secret.

"Use" of the trade secret means commercial use for the purpose of profit, and includes use likely to injure the secret's owner, enrich the defendant, or aid the defendant in its own research and development.

An employee may use general knowledge, skills, and experience obtained

through previous employment to compete with the former employer. A former employee, however, may not use confidential or proprietary information acquired during the employment relationship in a manner adverse to his former employer.

Answer "Yes" or "No" for each Defendant and each trade secret.

A. ES3's Rainmaker software specifications and functionality (answer this Question only if you answered "Yes" to Question 1A).

1. LMP/Liberty	<u>yes</u>	4. NAK	<u>yes</u>
2. Ryan	<u>yes</u>	5. Rangel/Jennings	<u>yes</u>
3. Kreines	<u>yes</u>		

B. ES3's sales techniques as expressed in ES3's script (answer this Question only if you answered "Yes" to Question 1B).

1. LMP/Liberty	<u>yes</u>	4. NAK	<u>yes</u>
2. Ryan	<u>yes</u>	5. Rangel/Jennings	<u>yes</u>
3. Kreines	<u>yes</u>		

C. ES3's compilation of buyer information, consisting of customer lists, contact information for key decision makers, the details of historical mineral interest purchases, and negotiated contract terms (answer this Question only if you answered "Yes" to Question 1C).

1. LMP/Liberty	<u>yes</u>	4. NAK	<u>yes</u>
2. Ryan	<u>yes</u>	5. Rangel/Jennings	<u>yes</u>
3. Kreines	<u>yes</u>		

D. ES3's historical pricing financial data (answer this Question only if you answered "Yes" to Question 1D).

1. LMP/Liberty	<u>yes</u>	3. Kreines	<u>yes</u>
2. Ryan	<u>yes</u>	4. NAK	<u>yes</u>

5. Rangel/Jennings yes

E. ES3's integrated business methodology for acquiring and selling mineral rights, consisting of ES3's Rainmaker software specifications and functionality, script, buyer information, and pricing data (Answer this Question only if you answered "Yes" to Question 1E. If you answered "No" to Question 2A, 2B, 2C, or 2D as to any Defendant, do not answer this question as to that Defendant).

1. LMP/Liberty yes

4. NAK yes

2. Ryan yes

5. Rangel/Jennings yes

3. Kreines yes

If you answered "Yes" as to any Defendant in Question 2A, then answer the following question as to that part. Otherwise, do not answer the following question.

QUESTION 3A – Trade Secret Damages (Rainmaker)

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ES3 for its damages, if any, that were caused by the misappropriation of ES3's Rainmaker software specifications and functionality?

Do not add any amount for interest on damages, if any.

"Defendants' profits" means Defendants' revenues that resulted from the misappropriation minus the necessary expenses incurred to produce the revenues.

Answer separately in dollars and cents for damages, if any.

Defendants' profits earned from the misappropriation. \$ 3,600,000

The price that a willing buyer and a willing seller would have agreed upon, at the time of the misappropriation, as a fair price for the Defendants' use of ES3's Rainmaker software specifications and functionality. \$ ~~10,000,000~~ 10,177,675

Development costs that Defendants avoided by the misappropriation.
\$ 800,000

If you answered "Yes" as to any Defendant in Question 2B, then answer the following question as to that part. Otherwise, do not answer the following question.

QUESTION 3B – Trade Secret Damages - Script

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ES3 for its damages, if any, that were caused by the misappropriation of ES3's sales techniques as expressed in ES3's script?

Do not add any amount for interest on damages, if any.

"Defendants' profits" means Defendants' revenues that resulted from the misappropriation minus the necessary expenses incurred to produce the revenues.

Answer in dollars and cents for damages, if any.

Defendants' profits earned from the misappropriation. \$ 2,500,000

If you answered "Yes" as to any Defendant in Question 2C, then answer the following question as to that part. Otherwise, do not answer the following question.

QUESTION 3C – Trade Secret Damages – Buyer List

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ES3 for its damages, if any, that were caused by the misappropriation of ES3's compilation of buyer information, consisting of customer lists, contact information for key decision makers, the details of historical mineral interest purchases, and negotiated contract terms?

Do not add any amount for interest on damages, if any.

"Defendants' profits" means Defendants' revenues that resulted from the misappropriation minus the necessary expenses incurred to produce the revenues.

Answer in dollars and cents for damages, if any.

Defendants' profits earned from the misappropriation. \$ 1,300,000

If you answered "Yes" as to any Defendant in Question 2D, then answer the following question as to that part. Otherwise, do not answer the following question.

QUESTION 3D – Trade Secret Damages – Pricing Data

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ES3 for its damages, if any, that were caused by the misappropriation of ES3's historical pricing financial data?

Do not add any amount for interest on damages, if any.

"Defendants' profits" means Defendants' revenues that resulted from the misappropriation minus the necessary expenses incurred to produce the revenues.

Answer in dollars and cents for damages, if any.

Defendants' profits earned from the misappropriation. \$ 5,000,000

If you answered "Yes" as to any Defendant in Question 2E, then answer the following question as to that part. Otherwise, do not answer the following question.

QUESTION 3E – Trade Secret Damages – Integrated Business Methodology

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ES3 for its damages, if any, that were caused by the misappropriation of ES3's integrated business methodology for acquiring and selling mineral rights, consisting of ES3's Rainmaker software specifications and functionality, script, buyer information, and pricing data?

Do not add any amount for interest on damages, if any.

1. The value that a reasonably prudent investor would have paid for the integrated business methodology for acquiring and selling mineral rights, consisting of ES3's rainmaker software specification and functionality, script, buyer information, and pricing data, at the time of the misappropriation.

\$ 40,425,470

If you answered "Yes" to any part of Question 2 (Trade Secret Misappropriation) and awarded damages in Question 3 (Trade Secret Damages), then answer the following question as to that part. Otherwise, do not answer the following question.

QUESTION 4 – Percentage of Responsibility

With respect to each Defendant that you found misappropriated the trade secrets described below and caused or contributed to cause the damages you found, find the percentage attributable to each Defendant:

You should only assign percentages to those Defendants you found misappropriated the trade secrets described in Question 2 (Trade Secret Misappropriation) and caused or contributed to cause damages. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable is not necessarily measured by the number of acts or omissions found.

- A. The misappropriation of ES3's Rainmaker software specifications and functionality (Only assign a percentage to a Defendant if you answered "Yes" as to that Defendant in Question 2A).

1.	LMP/Liberty	<u>24</u>	%
2.	Ryan	<u>24</u>	%
3.	Kreines	<u>23</u>	%
4.	NAK	<u>22</u>	%
5.	Rangel/Jennings	<u>7</u>	%
			Total 100%

- B. The misappropriation of ES3's sales techniques as expressed in ES3's script (Only assign a percentage to a Defendant if you answered "Yes" as to that Defendant in Question 2B).

1.	LMP/Liberty	<u>24</u>	%
2.	Ryan	<u>24</u>	%
3.	Kreines	<u>23</u>	%
4.	NAK	<u>22</u>	%
5.	Rangel/Jennings	<u>7</u>	%
			Total 100%

- C. ES3's compilation of buyer information, consisting of customer lists, contact information for key decision makers, the details of historical mineral interest purchases, and negotiated contract terms (Only assign a percentage to a Defendant if you answered "Yes" as to that Defendant in Question 2C).

1.	LMP/Liberty	<u>24</u> %
2.	Ryan	<u>24</u> %
3.	Kreines	<u>23</u> %
4.	NAK	<u>22</u> %
5.	Rangel/Jennings	<u>7</u> %
		Total 100%

- D. ES3's historical pricing financial data (Only assign a percentage to a Defendant if you answered "Yes" as to that Defendant in Question 2D).

1.	LMP/Liberty	<u>24</u> %
2.	Ryan	<u>24</u> %
3.	Kreines	<u>23</u> %
4.	NAK	<u>22</u> %
5.	Rangel/Jennings	<u>7</u> %
		Total 100%

- E. ES3's integrated business methodology for acquiring and selling mineral rights, consisting of ES3's Rainmaker software specifications and functionality, script, buyer information, and pricing data (Only assign a percentage to a Defendant if you answered "Yes" as to that Defendant in Question 2E).

1.	LMP/Liberty	<u>24</u> %
2.	Ryan	<u>24</u> %
3.	Kreines	<u>23</u> %
4.	NAK	<u>22</u> %
5.	Rangel/Jennings	<u>7</u> %
		Total 100%

If you answered "Yes" to any part of Question 2 (Trade Secret Misappropriation) and awarded damages in Questions 3 (Trade Secret Damages), then answer the following question as to that part. Otherwise, do not answer the following question.

QUESTION 5 – Acting in Concert

Did Defendants act in concert with respect to the misappropriation of trade secrets you found in Question 2 (Trade Secret Misappropriation)?

To answer "yes," you must find that the Defendants acted in concert with one another, with the specific intent to do harm to ES3, to knowingly:

1. steal a trade secret,
2. make a copy of an article representing a trade secret, or
3. communicate or transmit a trade secret.

A Defendant acts with specific intent to do harm with respect to the nature of the Defendant's conduct and the result of the Defendant's conduct when it is the Defendant's conscious effort or desire to engage in the conduct for the purpose of doing substantial harm to others.

Answer "Yes" or "No."

A. Misappropriating ES3's Rainmaker software specifications and functionality.

- | | | | |
|----------------|------------|--------------------|------------|
| 1. LMP/Liberty | <u>yes</u> | 4. NAK | <u>yes</u> |
| 2. Ryan | <u>yes</u> | 5. Rangel/Jennings | <u>yes</u> |
| 3. Kreines | <u>yes</u> | | |

B. Misappropriating ES3's sales techniques as expressed in ES3's script.

- | | | | |
|----------------|------------|--------------------|------------|
| 1. LMP/Liberty | <u>yes</u> | 4. NAK | <u>yes</u> |
| 2. Ryan | <u>yes</u> | 5. Rangel/Jennings | <u>yes</u> |
| 3. Kreines | <u>yes</u> | | |

C. Misappropriating ES3's compilation of buyer information, consisting of customer lists, contact information for key decision makers, the details of historical mineral interest purchases, and negotiated contract terms.

1. LMP/Liberty yes

4. NAK yes

2. Ryan yes

5. Rangel/Jennings yes

3. Kreines yes

D. Misappropriating ES3's historical pricing financial data.

1. LMP/Liberty yes

4. NAK yes

2. Ryan yes

5. Rangel/Jennings yes

3. Kreines yes

E. Misappropriating ES3's integrated business methodology for acquiring and selling mineral rights, consisting of ES3's Rainmaker software specifications and functionality, script, buyer information, and pricing data.

1. LMP/Liberty yes

4. NAK yes

2. Ryan yes

5. Rangel/Jennings yes

3. Kreines yes

Answer the following question regarding a Defendant only if you unanimously answered "Yes" to any part of Question 2 (Trade Secret Misappropriation) regarding that Defendant. Otherwise, do not answer the following question.

To answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

QUESTION NO. 6 – Willful and Malicious Misappropriation

Do you find by clear and convincing evidence that the harm you found in Questions 3A through 3E, if any, to ES3, resulted from the willful and malicious misappropriation of trade secrets by any Defendant?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Willful and malicious misappropriation" means intentional misappropriation resulting from the conscious disregard of the rights of the owner of the trade secret.

Answer "Yes" or "No" as to each Defendant listed below:

- | | | | |
|----------------|------------|--------------------|------------|
| 1. LMP/Liberty | <u>yes</u> | 4. NAK | <u>yes</u> |
| 2. Ryan | <u>yes</u> | 5. Rangel/Jennings | <u>yes</u> |
| 3. Kreines | <u>yes</u> | | |

Answer the following question regarding a Defendant only if you unanimously answered "Yes" to Question 6 (Willful and Malicious Misappropriation) regarding that Defendant. Otherwise, do not answer the following question regarding that Defendant.

You are instructed that, in order for you to find exemplary damages, your answer to the question regarding the amount of such damages must be unanimous.

QUESTION NO. 7 – Exemplary Damages

What sum of money, if any, if paid now in cash, should be assessed against each Defendant and awarded to ES3 as exemplary damages, if any, for the conduct found in response to Question 6 (Willful and Malicious Misappropriation)?

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are:

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of the named Defendant.
4. The situation and sensibilities of the parties concerned.
5. The extent to which the conduct offends a public sense of justice and propriety.
6. The net worth of the named Defendant.

Answer in dollars and cents, if any.

- | | |
|--------------------|---------------------|
| 1. LMP/Liberty | \$ <u>2,000,000</u> |
| 2. Ryan | \$ <u>2,000,000</u> |
| 3. Kreines | \$ <u>2,000,000</u> |
| 4. NAK | \$ <u>2,000,000</u> |
| 5. Rangel/Jennings | \$ <u>1,000,000</u> |

The following definitions apply to Questions 8-12:

- A. "AMI" means Area of Mutual Interest.
- B. "Hatch" means Hatch Resources LLC.
- C. "Mesa" means Mesa Vista Royalties, LLC, and Mesa Royalties III Holdings, LLC, and related entities.

QUESTION 8 – Noncompliance with Fiduciary Duty

While employed by ES3, Kreines owed ES3 a duty to:

- 1. act primarily for the benefit of ES3 in matters connected with his employment,
- 2. fully and fairly disclose all important information to ES3 in matters connected to ES3's business, and
- 3. make reasonable use of the confidence placed in him by ES3.

In addition, while employed by ES3, Kreines owed ES3 a duty to refrain from:

- 1. carrying away or misappropriating ES3's confidential information,
- 2. soliciting ES3's customers for a competing business,
- 3. placing his own interests before ES3's, using his position or resources at ES3 to gain a benefit for himself at the expense of ES3 by using ES3's resources or employees for personal gain, or acting for his own interests by a course of conduct designed to hurt ES3,
- 4. accepting compensation or arranging future compensation from a competing company for efforts performed without ES3's consent.

A high-level managerial employee owes his employer a fiduciary duty to act solely for the employer's benefit with regard to the responsibilities assigned to him. Thus, the employee cannot solicit the company's customers while still working for the company.

However, the employee does not owe an absolute duty of loyalty to the company. The law does not preclude the employee from making preparations for a future competing business venture, nor do such preparations necessarily constitute a breach of a fiduciary duty. The employee can properly plan to compete with his employer and can take active steps to do so while still

employed by that employer. The employee has no general duty to disclose his plans to the employer; he can secretly join with other employees in the endeavor without violating any duty to the employer, and after resigning from his employment, the employee can actively compete with the former employer.

In answering this question, do not consider confidential information that you found was a trade secret in your answers to Question No. 1, if any.

Answer "Yes" or "No":

Did Kreines fail to comply with his fiduciary duty:

- A. With respect to the deal between LMP and Hatch for minerals in Ward County yes
- B. With respect to the AMI Agreement between LMP and Mesa no
- C. With respect to the development of LMP's Gold Digger software yes
- D. With respect to the competitive use of ES3's confidential information. yes

If you answered "Yes" to any part of Question 8 (Noncompliance with Fiduciary Duty), then answer the following question as to that part. Otherwise, do not answer the following question as to that part.

QUESTION 9 – Fiduciary Duty Damages

What amount of profits, if any, were the natural, probable, and foreseeable result of Kreines's failure or failures to comply with his fiduciary duty to ES3?

Do not consider confidential information that you found was a trade secret in your answers to Question No. 1, if any.

"Kreines' profits" means Kreines' revenues that resulted from the breach of fiduciary duty minus the necessary expenses incurred to produce the revenues.

Answer in dollars and cents, if any.

- A. Kreines' profits that resulted from the deal between LMP/Liberty and Hatch for minerals in Ward County. \$ 150,398
- B. Kreines' profits that resulted from the AMI Agreement between LMP/Liberty and Mesa. \$ 0
- C. Kreines' profits that resulted from Kreines's assistance in developing LMP/Liberty's Gold Digger software. \$ 1,620,000
- D. Kreines' profits that resulted from the competitive use of ES3's confidential information. \$ 1,620,000

If you answered "Yes" to any part of Question 8 (Noncompliance with Fiduciary Duty) and the corresponding part of Question 9 (Fiduciary Duty Damages), then answer the following question as to that part. Otherwise, do not answer the following question as to that part.

QUESTION 10 – Fiduciary Duty Conspiracy

Were any of the Defendants part of a conspiracy that damaged ES3?

To be part of a conspiracy, the Defendant must have had knowledge of, agreed to, and intended for Kreines to fail to comply with his fiduciary duty to ES3, and Kreines must have acted in furtherance of that objective resulting in damages to ES3. One or more persons involved in the conspiracy must have performed some act or acts to further the conspiracy.

For a conspiracy to arise, it must be shown that from the inception of the combination or agreement the party intended to cause the injury or was aware of the harm likely to result from the wrongful conduct.

Wrongful acts that occurred before the conspiracy do not tack onto the conspiracy.

Answer "Yes" or "No" as to each of the following:

- A. With respect to the deal between LMP and Hatch for minerals in Ward County. (Answer only if you answered "Yes" to Question 8.A. Otherwise, proceed to Question 10.B.)

1. LMP/Liberty	<u>yes</u>	4. NAK	<u>yes</u>
2. Ryan	<u>yes</u>	5. Rangel/Jennings	<u>yes</u>
3. Kreines	<u>yes</u>		

- B. With respect to the AMI Agreement between LMP and Mesa. (Answer only if you answered "Yes" to Question 8.B. Otherwise, proceed to Question 10.C.)

1. LMP/Liberty	_____	4. NAK	_____
2. Ryan	_____	5. Rangel/Jennings	_____
3. Kreines	_____		

C. With respect to the development of LMP's Gold Digger software. (Answer only if you answered "Yes" to Question 8.C. Otherwise, proceed to Question 10.D.)

1. LMP/Liberty yes

4. NAK yes

2. Ryan yes

5. Rangel/Jennings yes

3. Kreines yes

D. With respect to the competitive use of ES3's confidential information. When answering this question, do not consider any information you found to be a trade secret in Question 1. (Answer only if you answered "Yes" to Question 8.D. Otherwise, proceed to Question 11).

1. LMP/Liberty yes

4. NAK yes

2. Ryan yes

5. Rangel/Jennings yes

3. Kreines yes

If you answered "Yes" to any part of Question 10 (Fiduciary Duty Conspiracy), then answer the following question as to that part. Otherwise, do not answer the following question as to that part.

QUESTION 11 – Conspiracy Damages

What amount of profits, if any, were the natural, probable, and foreseeable result of Kreines's failure or failures to comply with his fiduciary duty to ES3?

Do not consider confidential information that you found was a trade secret in your answers to Question No. 1, if any.

"Defendants' profits" means Defendants' revenues that resulted from the breach of fiduciary duty minus the necessary expenses incurred to produce the revenues.

Only consider profits associated with Defendants that you found were part of the conspiracy in Question 10, if any.

Answer in dollars and cents, if any.

- A. Defendants' profits that resulted from the deal between LMP/Liberty and Hatch for minerals in Ward County. \$ 334,218
- B. Defendants' profits that resulted from the AMI Agreement between LMP/Liberty and Mesa. \$ 0
- C. Defendants' profits that resulted from Kreines's assistance in developing LMP/Liberty's Gold Digger software. \$ 3,640,000
- D. Defendants' profits that resulted from the competitive use of ES3's confidential information. \$ 3,640,000

If you answered "Yes" to any part of Question 8 (Noncompliance with Fiduciary Duty) and the corresponding part of Question 10 (Fiduciary Duty Conspiracy) and awarded damages in the corresponding part of Question 11 (Conspiracy Damages), then answer the following question as to that part. Otherwise, do not answer the following question.

You should only assign percentages to those Defendants you found knowingly participated in a Conspiracy in Question 10 (Fiduciary Duty Conspiracy) and caused or contributed to cause damages. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable is not necessarily measured by the number of acts or omissions found.

QUESTION 12 – Percentage of Responsibility

With respect to each Defendant that you found conspired as to the each breach described below and caused or contributed to cause the damages you found, find the percentage caused by:

A. Defendants' profits that resulted from the deal between LMP and Hatch for minerals in Ward County.

1.	LMP/Liberty	<u>24</u>	%
2.	Ryan	<u>24</u>	%
3.	Kreines	<u>23</u>	%
4.	NAK	<u>22</u>	%
5.	Rangel/Jennings	<u>7</u>	%
		Total 100%	

B. Defendants' profits that resulted from the AMI Agreement between LMP and Mesa.

1.	LMP/Liberty	<u>0</u>	%
2.	Ryan	<u>0</u>	%
3.	Kreines	<u>0</u>	%
4.	NAK	<u>0</u>	%
5.	Rangel/Jennings	<u>0</u>	%

Total 100%

C. Defendants' profits that resulted from Kreines's assistance in developing LMP's Gold Digger software.

1.	LMP/Liberty	<u>24</u>	%
2.	Ryan	<u>24</u>	%
3.	Kreines	<u>23</u>	%
4.	NAK	<u>22</u>	%
5.	Rangel/Jennings	<u>7</u>	%
		Total 100%	

D. Defendants' profits that resulted from the competitive use of ES3's confidential information.

1.	LMP/Liberty	<u>24</u>	%
2.	Ryan	<u>24</u>	%
3.	Kreines	<u>23</u>	%
4.	NAK	<u>22</u>	%
5.	Rangel/Jennings	<u>7</u>	%
		Total 100%	

Answer the following question as to Kreines only if you unanimously answered "Yes" to any part of Question 8 (Noncompliance with Fiduciary Duty).

Answer the following question as to another Defendant only if you unanimously answered "Yes" as to that Defendant in Question 10 (Fiduciary Duty Conspiracy). Otherwise, do not answer the following question regarding that Defendant.

To answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

QUESTION 13 -- Malice

Do you find by clear and convincing evidence that the harm you found in Questions 9 and 11, if any, to ES3 resulted from malice?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means specific intent by the Defendant to cause substantial injury or harm to ES3.

Answer "Yes" or "No" as to each Defendant listed below:

1. LMP/Liberty no

4. NAK no

2. Ryan no

5. Rangel/Jennings no

3. Kreines no

Answer the following question regarding a Defendant only if you unanimously answered "Yes" to Question 13 (Malice) regarding that Defendant. Otherwise, do not answer the following question regarding that Defendant.

You are instructed that, in order for you to find exemplary damages, your answer to the question regarding the amount of such damages must be unanimous.

QUESTION 14 – Exemplary Damages

What sum of money, if any, if paid now in cash, should be assessed against each Defendant and awarded to ES3 as exemplary damages, if any, for the conduct found in response to Question 13 (Malice)?

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are:

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of the named Defendant.
4. The situation and sensibilities of the parties concerned.
5. The extent to which the conduct offends a public sense of justice and propriety.
6. The net worth of the named Defendant.

Answer in dollars and cents, if any.

- | | | | |
|----------------|---------|--------------------|---------|
| 1. LMP/Liberty | \$_____ | 4. NAK | \$_____ |
| 2. Ryan | \$_____ | 5. Rangel/Jennings | \$_____ |
| 3. Kreines | \$_____ | | |

QUESTION 15 – Noncompliance with Confidentiality Agreements

Did Kreines, Ryan or Rangel fail to comply with their Confidentiality Agreements?

“Confidentiality Agreements” means Paragraphs 1(b), 2, and 3 of Kreines, Ryan, and Rangel’s Agreements with ES3.

Answer “Yes” or “No” as to each Defendant:

1. Kreines yes
2. Ryan yes
3. Rangel/Jennings no

If you answered "Yes" to Question 15 as to any Defendant then answer the following question as to that Defendant. Otherwise, do not answer the following question.

QUESTION 16 – Contract Damages - Confidentiality

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ES3 for its damages, if any, that resulted from each Defendant's failure or failures to comply with the Confidentiality Agreement?

In answering this question, only state the damages attributable to that named Defendant's failure to comply with the agreement referenced.

Do not include in your answer any amount for interest on damages, if any.

"Lost net profits" means lost revenue minus expenses that would have been attributable to the lost business activity.

Answer separately in dollars and cents for damages, if any:

ES3's lost net profits that were a natural, probable, and foreseeable consequence of each Defendant's failure to comply with the Confidentiality Agreement.

1. Kreines \$2,130,000
2. Ryan \$2,130,000
3. Rangel/Jennings \$0

The following definitions apply to Questions 17-21:

1. "Menchaca" means Curtis Menchaca.
2. Menchaca's Confidentiality Agreement means Paragraph 1 of Menchaca's Agreement with ES3.
3. Menchaca's Noncompetition Agreement means Paragraph 2 of Menchaca's Agreement with ES3.

QUESTION 17 – Intentional Interference with Existing Contract

Did LMP/Liberty or Ryan intentionally interfere with ES3's Agreements with the persons listed below?

Interference is intentional if committed with the desire to interfere with the contract or with the belief that interference is substantially certain to result.

Interference can include conduct that prevents performance of a contract or makes performance of a contract more burdensome or difficult.

Do not consider confidential information that you found was a trade secret in your answers to Question No. 1, if any.

Answer "Yes" or "No" with respect to each of the following:

	<u>LMP/Liberty</u>	<u>Ryan</u>
1. Ryan's Agreement		
a. Confidentiality	<u>yes</u>	NA
2. Kreines's Agreement		
a. Confidentiality	<u>yes</u>	<u>yes</u>
3. Rangel/Jennings' Agreement		
a. Confidentiality	<u>no.</u>	<u>no.</u>
4. Menchaca's Agreement		
a. Confidentiality	<u>yes</u>	<u>yes</u>
b. Noncompetition	<u>yes</u>	<u>yes</u>

If you answered "Yes" Question 17 as to LMP/Liberty and any part of the Confidentiality Agreements, then answer the following question. Otherwise, do not answer the following question.

**QUESTION 18 – Intentional Interference Damages – LMP/Liberty—
Confidentiality**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ES3 for its damages, if any, proximately caused by LMP/Liberty's interference with the Confidentiality Agreements?

Do not include in your answer any amount for interest on damages, if any.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

"Lost net profits" means lost revenue minus expenses that would have been attributable to the lost business activity.

Answer in dollars and cents, if any, as to each of the following:

ES3's lost net profits that were a natural, probable, and foreseeable consequence of LMP/Liberty's interference with the Confidentiality Agreements:

- | | |
|---|---------------------|
| 1. Ryan's Confidentiality Agreement | \$ <u>3,600,000</u> |
| 2. Kreines's Confidentiality Agreement | \$ <u>3,600,000</u> |
| 3. Rangel/Jennings' Confidentiality Agreement | \$ <u>0</u> |
| 4. Menchaca's Confidentiality Agreement | \$ <u>0</u> |

If you answered "Yes" to Question 17 as to LMP and Menchaca's Non-Competition Agreement, then answer the following question. Otherwise, do not answer the following question.

QUESTION 19 – Intentional Interference Damages – LMP/Liberty—Non-Competition

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ES3 for its damages, if any, proximately caused by LMP/Liberty's interference with Menchaca's Non-Competition Agreement?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

"Lost net profits" means lost revenue minus expenses that would have been attributable to the lost business activity.

Do not include in your answer any amount for interest on damages, if any.

Answer in dollars and cents, if any:

ES3's lost net profits that were a natural, probable, and foreseeable consequence of LMP's interference with Menchaca's Noncompetition Agreement:

\$ 0

If you answered "Yes" Question 17 as to Ryan and any of the Confidentiality Agreements, then answer the following question only as to each Confidentiality Agreement for which you answered "yes." Otherwise, do not answer the following question.

QUESTION 20 – Intentional Interference Damages – Ryan/Confidentiality

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ES3 for its damages, if any, proximately caused by Ryan's interference with the Confidentiality Agreements?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

"Lost net profits" means lost revenue minus expenses that would have been attributable to the lost business activity.

Do not include in your answer any amount for interest on damages, if any.

Answer in dollars and cents, if any, as to each of the following:

ES3's lost net profits that were a natural, probable, and foreseeable consequence of Ryan's interference with:

- | | |
|---|---------------------|
| 1. Kreines' Confidentiality Agreement | \$ <u>3,600,000</u> |
| 2. Rangel/Jennings' Confidentiality Agreement | \$ <u>0</u> |
| 3. Menchaca's Confidentiality Agreement | \$ <u>0</u> |

If you answered "Yes" Question 17 as to Ryan and Menchaca's Non-Competition Agreement, then answer the following question. Otherwise, do not answer the following question.

QUESTION 21 – Intentional Interference Damages – Ryan/Non-Compete

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate ES3 for its damages, if any, proximately caused by Ryan's interference with Menchaca's Non-Competition Agreement?

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

"Lost net profits" means lost revenue minus expenses that would have been attributable to the lost business activity.

Do not include in your answer any amount for interest on damages, if any.

Answer in dollars and cents, if any, as to each of the following:

ES3's lost net profits that were a natural, probable, and foreseeable consequence of Ryan's interference with Menchaca's Non-Competition Agreement:

\$ 0



If you answered "Yes" to any part of Question 2 (Trade Secret Misappropriation) as to Kreines, then answer the following question. Otherwise, do not answer the following question.

QUESTION 22 – AGENCY; NAK

Was Kreines acting as an employee of NAK at the time of the conduct in Question 2 (Trade Secret Misappropriation)?

An "employee" is a person in the service of another with the understanding, express or implied, that such other person has the right to direct the details of the work and not merely the result to be accomplished.

Answer "Yes" or "No." yes

If you answered "Yes" to any part of Question 2 (Trade Secret Misappropriation) as to Ryan or Rangel, or if you answered "Yes" to any part of Question 17 (Intentional Interference with Existing Contract) as to Ryan, then answer the following question as to that Defendant. Otherwise, do not answer the following question as to that Defendant.

QUESTION 23- AGENCY; LMP

Were Ryan or Rangel acting as an employee of LMP at the time of the conduct in Question 2 (Trade Secret Misappropriation)?

An "employee" is a person in the service of another with the understanding, express or implied, that such other person has the right to direct the details of the work and not merely the result to be accomplished.

Answer "Yes" or "No."

A. At the time of the conduct in Question 2 (Trade Secret Misappropriation).

Ryan yes

Rangel/Jennings yes

B. At the time of the conduct in Question 17 (Intentional Interference with Existing Contracts).

Ryan yes

If you awarded damages on any claim against LMP or Kreines, then answer the following question as to that Defendant. Otherwise, do not answer the following question.

The following definitions apply to Questions 24-27:

- A. "Asset" means property of a debtor.
- B. "Claim" means a right to payment or property, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
- C. "Insider" includes:
 - a. For Kreines:
 - i. a relative of Kreines or a general partner of Kreines; or
 - ii. a corporation in which Kreines is a director, officer, or person in control.
 - b. For LMP:
 - i. a general partner of LMP; or
 - ii. a person in control of LMP.
- D. "Relative" includes a spouse.
- E. "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.
- F. In determining "actual intent," you may consider, among other factors, whether—
 - 1. The transfer was to an insider.
 - 2. The Defendant retained possession or control of the property transferred after the transfer.
 - 3. The transfer was concealed.
 - 4. Before the transfer was made, the Defendant had been sued or threatened with suit.

5. The Defendant removed or concealed assets.
 6. The transfer occurred shortly before or shortly after a substantial debt was incurred.
 7. the debtor absconded;
 8. the transfer was of substantially all the debtor's assets;
 9. the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
 10. the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred; and
 11. the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.
- G. A debtor is "insolvent" if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation. A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent.

QUESTION 24 – Fraudulent Transfers; Kreines

Did Kreines transfer any of the assets listed below to the Nicholas and Sara Kreines Trust with actual intent to hinder, delay, or defraud ES3?

Answer “Yes” or “No” for each asset:

- a. 1000 shares for NAK Resources, Inc. yes
- b. Morgan Stanley Accounts yes
- c. Bank of America Checking and Savings Accounts yes

If you answered "Yes" as to any part of Question 24 (Fraudulent Transfers; Kreines), then answer the corresponding part in the following question. Otherwise, do not answer the following Question.

QUESTION 25 – Fraudulent Transfers; Timing

Did ES3's claim or claims against Kreines arise before or within a reasonable time after Kreines transferred the assets to the Nicholas and Sara Kreines Trust?

Answer "Yes" or "No" for each asset listed below:

a. 1000 shares for NAK Resources, Inc.

yes

b. Morgan Stanley Accounts

yes

c. Bank of America Checking and Savings Accounts

yes

QUESTION 26 – Fraudulent Transfers; LMP/Liberty

Did LMP/Liberty transfer the following real property assets to CGR or NAK with actual intent to hinder, delay, or defraud ES3?

To reach a finding of fraudulent transfer as to any asset listed below, you must find that:

1. LMP/Liberty transferred the asset to CGR or NAK, and
2. LMP/Liberty did so with actual intent to hinder, delay, or defraud ES3.

Answer “Yes” or “No” for each Defendant and each asset:

Bates	County	Effective Date	Grantor	Grantees	Answer CGR	Answer NAK
NAK003628	Dawson	11/01/2024	LMP/Liberty	CGR; NAK	~~NAK~~ yes	~~NAK~~ yes
NAK003632	Dawson	08/02/2024	LMP/Liberty	CGR; NAK	~~NAK~~ no	~~NAK~~ no
NAK003636	Dawson	12/01/2024	LMP/Liberty	CGR; NAK	yes	yes
NAK003641	Glasscock	08/02/2024	LMP/Liberty	Villanueva; NAK; CGR	no	no
NAK003649	Martin	08/02/2024	LMP/Liberty	CGR; NAK	no	no
NAK003654	Dawson	09/01/2024	LMP/Liberty	CGR; NAK	no	no

If you answered “Yes” as to any part of Question 26, then answer the corresponding part in the following question. Otherwise, do not answer the following Question.

QUESTION 27 - Fraudulent Transfers; Timing

Did ES3’s claim or claims against LMP arise before or within a reasonable time after LMP/Liberty transferred the assets to CGR or NAK?

Answer “Yes” or “No” for each Defendant and each asset:

Bates	County	Effective Date	Grantor	Grantees	Answer CGR	Answer NAK
NAK003628	Dawson	11/01/2024	LMP/Liberty	CGR; NAK	yes	yes
NAK003632	Dawson	08/02/2024	LMP/Liberty	CGR; NAK	no	no
NAK003636	Dawson	12/01/2024	LMP/Liberty	CGR; NAK	yes	yes
NAK003641	Glasscock	08/02/2024	LMP/Liberty	Villanueva; NAK; CGR	no	no
NAK003649	Martin	08/02/2024	LMP/Liberty	CGR; NAK	no.	no
NAK003654	Dawson	09/01/2024	LMP/Liberty	CGR; NAK	no	no

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

- a. have the complete charge read aloud if it will be helpful to your deliberations;
- b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
- c. give written questions or comments to the bailiff who will give them to the judge;
- d. write down the answers you agree on;
- e. get the signatures for the verdict certificate; and
- f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.

2. If ten jurors agree on every answer, those ten jurors sign the verdict.

If eleven jurors agree on every answer, those eleven jurors sign the verdict.

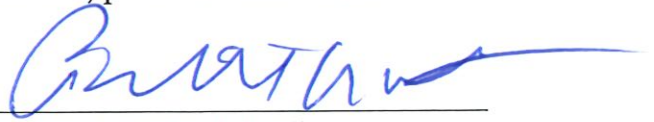
If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

4. There are some special instructions before Questions 6, 7, 13, and 14 explaining how to answer those questions. Please follow the instructions. If all

twelve of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.



JUDGE PRESIDING

Verdict Certificate

Check one:

_____ Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

✓ _____ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

Signature

Name Printed

1. <u>Hannah Erb</u>	<u>Hannah Erb</u>
2. <u>Elianny Rwerq</u>	<u>Elianny Rwerq</u>
3. <u>[Signature]</u>	<u>MAUREEN MARTIN</u>
4. <u>Vanessa Seach</u>	<u>Vanessa Seach</u>
5. <u>[Signature]</u>	<u>ERIC LERAND</u>
6. <u>James L Duncan</u>	<u>James L Duncan</u>
7. <u>Paula Campbell</u>	<u>Paula Campbell</u>
8. <u>[Signature]</u>	<u>SCOTT Linsenman</u>
9. <u>[Signature]</u>	<u>Ana C. Rodriguez Hernandez</u>
10. <u>Lois Grace Williams</u>	<u>Lois Grace Williams</u>
11. _____	_____

If you have answered Question Nos. 7 or 14, then you must sign this certificate also.

Additional Certificate

I certify that the jury was unanimous in answering the following questions. All twelve of us agreed to each of the following answers:

QUESTION 2 – Trade Secret Misappropriation

☒ Part A

☒ Part B

☒ Part C

☒ Part D

☒ Part E

☒ **QUESTION 6 – Willful and Malicious Misappropriation**

☒ **QUESTION 7 – Exemplary Damages**

QUESTION 8 – Noncompliance with Fiduciary Duty

☒ Part A

☒ Part B

☒ Part C

☒ Part D

QUESTION 11 – Conspiracy

☒ Part A

☒ Part B

☒ Part C

☒ Part D

☒ **QUESTION 13 -- Malice**

☒ **QUESTION 14 – Exemplary Damages**

The presiding juror has signed the certificate for all twelve of us.



Signature of Presiding Juror

Hannah Erb

Printed Name of Presiding Juror