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JEFF FINE
Clerk of the Superior Court
By Rebecca Merino, Deputy
Date 04/23/2020 Time 10:37:33
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----- CASE# CV2020-005013 -----
CIVIL NEW COMPLAINT 333.00

TOTAL AMOUNT 333.00
Receipt# 27757584

**IN THE SUPERIOR OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

MOLLIE MCCURDY

Plaintiff,

v.

RANDY TAYLOR CONSULTING,
LLC, an Arizona limited liability
company; HARVEST DISPENSARIES,
CULTIVATIONS AND
PRODUCTION FACILITIES, LLC; an
Arizona limited liability company;
BLACK PARTNERSHIP I-X; and XYZ
CORPORATIONS I-X,

Defendants.

Case No. CV 2020-005013

COMPLAINT

(Jury Trial Requested)

Mollie McCurdy, for her Complaint against Defendants, alleges as follows:

JURISDICTION & VENUE

1. At all times material hereto, Plaintiff Mollie McCurdy (“Plaintiff” or “Plaintiff McCurdy”) is and was a resident of Maricopa County, Arizona.
2. Upon information and belief, Defendant Randy Taylor Consulting, LLC is an Arizona corporation, doing business in Maricopa County, Arizona.
3. Harvest Dispensaries, Cultivations, and Production Facilities, LLC is an Arizona

1 limited liability company, doing business in Maricopa County, Arizona.

2
3 4. Black and White corporations I-X and XYZ Partnerships I-X are fictitious names to
4 designate unknown corporations and partnerships who may have in some manner
5 contributed to Plaintiff's injuries and damages and are liable therefor. The true names for
6 said Defendants are unknown to the Plaintiff at this time and leave of Court is sought to
7 amend this Complaint to include their true names when, and if, ascertained.
8

9 5. This Court has jurisdiction pursuant to applicable Arizona law as set forth herein.

10
11 6. Venue is proper in this Court as the parties are residents of Maricopa County,
12 Arizona and/or are doing business in Arizona and thus availing themselves to Arizona law,
13 and the events underlying this lawsuit occurred in Maricopa County, Arizona.

14
15 **GENERAL FACTUAL ALLEGATIONS**

16 7. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of
17 the proceeding paragraphs of the Complaint as if set forth fully herein.

18
19 8. In Arizona, Medical marijuana dispensaries, such as Harvest, are regulated by the
20 Arizona Medical Marijuana Act ("AMMA"), A.R.S. § 36-2801, *et seq.*, which grants
21 Arizona Department of Health Services (hereafter "AZDHS") rule-making authority to
22 regulate the medical marijuana industry.
23

24 9. Defendants Randy Taylor Consulting, LLC and Harvest Dispensaries, Cultivations
25 and Production Facilities, LLC (collectively, "Harvest"), as well as other unnamed entities,
26 jointly own and operate several medical marijuana dispensaries in the State of Arizona, and
27 in several other states across the United States.
28

1 10. Plaintiff McCurdy was hired by Harvest as a New Store Opener and Trainer
2 (referred to internally at Harvest as an “NSO”) on May 24, 2019.
3

4 11. For the first month of her employment with Harvest, Plaintiff McCurdy did not have
5 a Dispensary Agent (“DA”) card to enter the dispensaries on behalf of Harvest.
6

7 12. At that time, it was Harvest policy that only employees with valid DA card could
8 conduct work on behalf of Harvest at the dispensary.

9 13. Under Arizona law, all persons performing work or volunteering in a dispensary must
10 hold a valid DA card. *See* A.R.S. § 36-2804.01.
11

12 14. During that time when she was waiting to receive her DA card, Harvest provided
13 very minimal job training for Plaintiff McCurdy in her position as NSO.

14 15. For example, Plaintiff McCurdy received roughly sixty minutes of training with
15 Nicki Lewis (Director of Licensing), but was told several times during that training that the
16 policies she was being trained on were probably out of date, or no longer applicable.
17

18 16. Under Arizona law, dispensaries are required to develop, document and implement
19 policies and procedures regarding, among other things, personnel duties, responsibilities
20 and qualifications; personnel supervision; and, training in and adherence to confidentiality
21 requirements. *See* A.A.C. Sec. R9-17-310.
22

23 17. No such training was provided to Plaintiff McCurdy.
24

25 **A. VIOLATIONS AT TUCSON, GLENDALE, AND SCOTTSDALE HARVEST LOCATIONS**

26 18. On June 24, 2019, Plaintiff McCurdy was notified by Chantelle Elsner (Director of
27 Retail) that she was approved for a DA card in the Harvest Tucson and Tempe locations,
28

1 and that she could commence work on-site at the Tucson location.

2
3 19. While working at the Harvest Tucson location, it became clear that there were many
4 compliance issues plaguing the Tucson location, which Plaintiff McCurdy would eventually
5 discover plagued other Arizona locations, as well.

6
7 20. Beginning in June of 2019, Plaintiff McCurdy began to raise issues to upper
8 management at Harvest about violations of the AMMA at Harvest dispensary locations and
9 encapsulated in Harvest policies.

10
11 i. STORING MARIJUANA PRODUCT IN MANAGER'S OFFICE

12 21. For example, Heidi Allen, General Manager of the Harvest Tucson location, told
13 Plaintiff McCurdy that she stores marijuana products in the manager's office, but will move
14 it out of the manager's office when AZDHS performs an inspection.

15
16 22. Under Arizona law, all marijuana product must be stored in a secured area with
17 access by authorized personnel only, and with certain minimum-security equipment to deter
18 and prevent unauthorized access. *See* A.A.C. Sec. R9-17-318 and A.R.S. § 36-2806(C).

19
20 23. Upon information and belief, the manager's office at the Tucson location did not
21 meet those minimum security and access requirements.

22 24. Moving the marijuana product before and after an AZDHS inspection, also indicates
23 an intent to defraud AZDHS.

24
25 ii. LACK OF BATCH AND STRAIN INFORMATION FOR RAINBOW SHAKE

26 25. On June 28, 2019, Randall Uberecken (Head of West Coast Purchasing) e-mailed
27
28

1 employees giving them the “static (not unique) batch number” for rainbow shake¹.

2
3 26. Plaintiff McCurdy went to Alyssa Sofferin (Compliance Specialist) and informed her
4 that using static batch numbers was not compliant with the AMMA, as the medical
5 marijuana patients purchasing the rainbow shake would not be able to track and trace the
6 batch numbers associated with the strains they use to create the rainbow shake product.
7

8 27. Under Arizona law, medical marijuana provided to a patient must be labeled with,
9 among other information, the amount, strain, and batch number of medical marijuana. *See*
10 A.A.C. Sec. R9-17-317.
11

12 iii. ALLOTMENT INPUT VIOLATION

13 28. As Plaintiff McCurdy expanded her work into Harvest’s Glendale and Scottsdale
14 locations, she discovered more violations of the AMMA in those facilities as well.
15

16 29. AZDHS requires dispensaries to input medical marijuana sold by the dispensaries in
17 the Medical Marijuana Verification System (“MMVS”).

18 30. The requirements and instructions for using the MMVS are set out in the Dispensary
19 Handbook, and are considered part of the rules implemented by AZDHS under the AMMA.
20 *See* A.R.S. § 41-1001(17).
21

22 31. The Dispensary Handbook details the procedure for inputting medical marijuana
23 sold in the MMVS, including entering in quantities into the appropriate categories: Medical
24 Marijuana (the dried flower of the marijuana plant); Edibles (items sold for consumption
25

26
27
28 ¹ Shake is generally known as the small, loose pieces that fall off the cannabis dried bud.

1 that contain medical marijuana); or Non-Edibles (any non-edible items, such as
2 concentrates, sold that contain medical marijuana).

3
4 32. The AMMA also states that a qualifying patient is only allowed to purchase two and
5 one-half ounces of medical marijuana during any 14-calendar-day period. *See, e.g., A.A.C.*
6 *Sec. R9-17-314 and A.R.S. § 36-2801(1).*

7
8 33. By entering the medical marijuana product purchased into the proper categories, it
9 allows the DAs and AZDHS to ensure the patient is not receiving more medical marijuana
10 than is allowed in a 14-calendar-day period.

11
12 34. On June 29, 2019 Plaintiff McCurdy discovered Harvest was improperly training
13 employees to enter the category of “Medical Marijuana” for all medical marijuana products
14 sold, including non-flower products, such as concentrates and edibles, which should have
15 been input into the “Edibles” or “Non-Edibles” category.

16
17 35. On July 1, 2019, Rachel Abousaleh (Member of the Compliance Department under
18 the leadership of Alyssia Soffrin (West Coast Compliance Manager)) sent an e-mail to
19 Plaintiff McCurdy and others, confirming that the allotment input practices of Harvest were
20 in violation of the AMMA, noting that the allotment issue could lead to a “huge discrepancy
21 in product inventory and other compliance matters with DHS.”

22
23 36. On July 8, 2019, Alyssia Sofferin (West Coast Compliance Manager) e-mailed Ms.
24 McCurdy and other Harvest employees, instructing them not to correct the allotment issue,
25 despite the practice violating the AMMA.

26
27 iv. STORING PRODUCT IN THE CEILING
28

1 37. On July 7, 2019, Plaintiff McCurdy discovered and subsequently informed Adrienne
2 D'Aquisto (District Manager of Arizona) that marijuana product was being stored in the
3 ceiling in Harvest's Glendale dispensary because they did not have enough room in the
4 secure storage room.
5

6 38. Under Arizona law, all marijuana product must be stored in a secured area with
7 access by authorized personnel only, and with certain minimum-security equipment to deter
8 and prevent unauthorized access. *See* A.A.C. Sec. R9-17-318 and A.R.S. § 36-2806(C).
9

10 v. WEIGHT, CONVERSION AND LABELLING ISSUES
11

12 39. Plaintiff McCurdy discovered several issues in the Glendale dispensary regarding
13 weight and conversion of weights of the dried medical marijuana product which violated the
14 AMMA.
15

16 40. Plaintiff McCurdy discovered that products containing only Cannabidoil ("CBD")
17 were being sold in the lobby of the Glendale store, but were labelled with labels indicated
18 that the product contained 0.5g of medical marijuana.
19

20 41. Plaintiff McCurdy also discovered CBD products sold in the lobby of the Glendale
21 store, which contained Tetrahydrocannabinol ("THC") percentages over the amounts
22 allowed by federal and state law.
23

24 42. These products were being held in a non-secure room (the lobby), and were sold to
25 non-qualifying patients, in violation of the AMMA.

26 43. On July 8, 2019, Plaintiff McCurdy sent an e-mail to several Harvest managers,
27 informing them of these issues and several others, at the Glendale dispensary.
28

1 44. Harvest's Scottsdale, Glendale, and multiple other Harvest dispensary locations had
2 medical marijuana listed in their Point of Sale ("POS") system with the medical marijuana
3 weight listed as "zero" when that was not accurate, in violation of the AMMA. *See* A.R.S.
4 § 36-2806.02 and A.A.C. Sec. R9-17-317.
5

6 45. On July 3, 2019, Plaintiff McCurdy sent an email to Stephen Teran (General
7 Manager of Scottsdale) regarding the blank label issue.
8

9 46. On July 9, 2019, Chantelle Elsner (Director of Retail) e-mailed Plaintiff McCurdy
10 and the members of her NSO team, informing them that compliance issues in Arizona
11 should only be reported to Adrienne D'Aquisto and Alyssa Sofferin.
12

13 vi. FALSE STATEMENTS TO AZDHS REGARDING MANAGEMENT

14 47. While Plaintiff McCurdy worked in the Glendale location, Ms. Elsner and Ms.
15 D'Aquisto informed her that Harvest was going to falsely state in writing that Plaintiff
16 McCurdy was the General Manager of the Glendale location in charge of inventory.
17

18 48. AZDHS regulations require a written acknowledgment of the individual responsible
19 for overseeing the dispensary's inventory. *See* AAC Sec. R9-17-316(A).
20

21 49. Ms. McCurdy was not the General Manager of Glendale in charge of inventory, and
22 did not feel comfortable with Harvest reporting that false information to AZDHS.
23

24 50. Plaintiff McCurdy told Ms. D'Aquisto that she was not comfortable with Harvest
25 listing her as the General Manager for Glendale, not only because it was not factual, but
26 because it violated the law.

27 51. Blanca Rojas, who was the Assistant General Manager for Harvest's Havasu location
28

1 (and who would be temporarily assisting in the Glendale location), was approached by Ms.
2
3 D'Aquisto with the same request to falsely list Ms. Rojas as the General Manager of the
4 Glendale location in charge of inventory.

5 52. Upon information and belief, Ms. Rojas agreed, and Ms. Rojas was listed as the
6
7 General Manager in charge of inventory on documents submitted to AZDHS.

8 53. However, Ms. Rojas was not the General Manager of Glendale in charge of
9
10 inventory, and was travelling to and from the Glendale location from Havasu only every
11 other week.

12 **B. MISCELLANEOUS VIOLATIONS**

13 54. In addition to the store-specific violations, Plaintiff McCurdy discovered and raised
14
15 several other violations of Arizona and other state law to Harvest managers.

16 **i. FALSE ADVERTISING**

17 55. On December 7, 2019, Lisa Peru e-mailed Randall Uberecken, after discovering that
18
19 several testing results for medical marijuana flower was not yet available.

20 56. Randall Uberecken responded, directing that since third-party testing is not yet
21
22 required under Arizona law, and since Harvest needed the flower in its stores, they will
23 move forward with bringing in the flower un-tested.

24 57. Plaintiff McCurdy raised her concerns with her direct manager, Trina Keith, noting
25
26 that Harvest policy is that its flower is always third-party tested.

27 58. Plaintiff McCurdy noted that Harvest had advertised on billboards that it is "always
28
third-party tested."

1 59. Arizona law prohibits advertising that is false or fraudulent. *See* A.R.S §§ 44-1522
2 and 13-2203.
3

4 60. Despite these objections, the medical marijuana flower was still put in place in the
5 store for sale.

6 61. Upon information and belief, marijuana product is still being sold at Harvest's Urban
7 Greenhouse and all other Harvest locations that is not always third-party tested despite
8 being advertised as such.
9

10 ii. COMPLIANCE VIOLATIONS AT HARVEST EVENTS
11

12 62. On several instances, Plaintiff McCurdy witnessed or learned of public consumption
13 of medical marijuana by Harvest management in violation of Harvest's alleged policy and
14 Arizona law.
15

16 63. On August 24, 2019, Harvest held a "Grillin n' Chillin'" event where then-Director
17 of Events, Kimberley Owies, obtained medicated chocolate chips and put them in CBD-
18 infused ice cream. Ms. Owies then consumed the medicated ice cream while working at the
19 event, and offered it to Adrienne D'Aquisto (District Manager of Arizona) and other
20 Harvest employees.
21

22 64. Upon information and belief, Ms. Owies did not have a valid medical marijuana
23 patient card to obtain the medicated chocolate chips, nor was the distribution of the
24 medicated product input in the state MVSS system in violation of Arizona law. *See* A.R.S.
25 § 36-2806.
26

27 65. At no time did Ms. D'Aquisto intervene in the unlawful distribution of medical
28

1 marijuana product by Ms. Owies.

2
3 66. Ms. D'Aquisto was one of the two people to whom Plaintiff McCurdy was previously
4 told to report compliance issues.

5 67. On September 15, 2019 Harvest held a launch party to celebrate the launch of the
6 "Cookies" partnership and brand.

7
8 68. During the launch party, Harvest stored marijuana product in the office suite next
9 door to the dispensary due to the limited space available for the launch party.

10 69. Upon information and belief, the space next door did not meet security requirements
11 to store marijuana product under Arizona law, nor was it approved by AZDHS as a
12 dispensary space.

13
14 70. In November of 2019, Harvest held a Happy Hour at Pedal Haus in Tempe, Arizona
15 for its Retail and Procurement team members.

16
17 71. At the Happy Hour event, Allison Benedict (Director of Procurement) as well as
18 other Harvest employees left the venue to smoke a marijuana joint and invited Plaintiff
19 McCurdy to join them.

20
21 72. Chantelle Elsner (Director of Retail) was present with Ms. Benedict, and invited
22 Plaintiff McCurdy to join the others in smoking the joint, knowing that she would later be
23 working a shift at the Harvest Scottsdale location.

24 73. Plaintiff McCurdy declined their invitation.

25
26 74. This incident occurred after Harvest had rolled out a "drug-free workplace" policy.

27 75. Upon information and belief, this consumption occurred in a public place, in
28

1 violation of Arizona law.

2
3 **C. EVENTS IN LITTLE ROCK, ARKANSAS**

4 76. In January of 2020, Kimberly Owies, Trina Keith (Retail SOP Manager), Plaintiff
5 McCurdy and one other Harvest employee flew to Little Rock, Arkansas to help open the
6 first dispensary in that city.
7

8 77. On January 23, 2020, while in a vehicle on the way to a training event, Plaintiff
9 McCurdy was discussing that Arkansas regulations required team members to have a
10 dispensary agent card on their person to conduct business on behalf of the dispensary, which
11 they did not have at that time.
12

13 78. Ms. Owies proceeded to tell the group that while she was attending the “MJBizCon”
14 Convention in Las Vegas, Nevada with Jason Vidadi, (then- Executive Chairman of the
15 Board of Directors for Harvest), Mr. Vidadi complained to Ms. Owies and others present
16 that the only people making money in the cannabis business are the ones not in compliance.
17

18 79. Ms. Owies then shared with the group that Mr. Vidadi suggested that Harvest
19 employees should not be so rigid when it came to compliance issues so that Harvest could
20 make more money.
21

22 80. Ms. Owies used the comment by Mr. Vidadi as an opportunity to tell the group that
23 they should be more flexible and “bend a little” when it came to compliance.
24

25 81. This request by Ms. Owies came the same day as a raid by Jonesboro, Arkansas police
26 of the home of Harvest manager Nicholas Nielsen, who allegedly was growing marijuana in
27 his own home to help support Harvest cultivation operations.
28

1 82. Mr. Nielson was arrested by Jonesboro police in that raid, and faces various criminal
2
3 charges for his alleged violation of Arkansas law, which upon information and belief, was
4 conducted on behalf of Harvest.

5 **D. ARIZONA NATURAL SELECTIONS ACQUISITION**

6
7 83. In February of 2020, Harvest acquired four additional Arizona dispensary licenses.

8 84. Despite knowing that this acquisition was imminent, Harvest had not obtained the
9 requisite DA cards for its employees to assist in the acquisition.

10 85. On February 13, 2020, Plaintiff McCurdy was told that she and the rest of the store
11 operations team would have to go into the newly acquired stores to conduct an inventory
12 without the requisite DA cards required by the AMMA.

13
14 86. Plaintiff McCurdy and the store operations team were told they would be wearing
15 visitor badges to conduct Harvest business.

16
17 87. Plaintiff McCurdy and her supervisor, Trina Keith went to Terressa DeHaven
18 (Associate General Counsel and Chief Compliance Attorney) informing her that they did
19 not want to go into the newly acquired dispensaries without the required DA card.

20
21 88. Ms. DeHaven falsely told Plaintiff McCurdy that going into the dispensary with a
22 visitor badge to conduct Harvest business was a legal “gray area” and that it was her
23 professional interpretation that the AMMA did not require Harvest employees to have a
24 DA card to conduct business at the dispensary on behalf of Harvest.

25
26 89. Under A.R.S. § 36-2804.01 an employee must be registered with the department
27 before “volunteering or working” at a medical marijuana dispensary.
28

1 90. AZDHS regulations also require that a dispensary must ensure that each dispensary
2 agent has the dispensary agent's registry identification card ("DA card") in the dispensary
3 agent's immediate possession when the dispensary agent is working at the dispensary. *See*
4 A.A.C. Sec. R9-17-310(A)(6); A.A.C. Sec. R9-17-311.
5

6 91. Plaintiff McCurdy pushed back against Ms. DeHaven's interpretation, noting that
7 AZDHS has been very clear on this rule, and that she did not want to go into the dispensary
8 without the proper DA credentials and risk having drug charges on their personal criminal
9 records due to this issue.
10

11 92. Ms. DeHaven said she would provide the team with the "least risky option" and that
12 Harvest had great insurance and great attorneys that would fight the criminal charges if they
13 got caught.
14

15 93. Concerned with the request by Ms. DeHaven to break the law for Harvest by going
16 into the dispensaries without the required DA cards, Plaintiff McCurdy went to the Ron
17 McCarthy (Human Resources Director) to explain and report the issue.
18

19 94. Plaintiff McCurdy and Trina Keith then left the office for a lunch break.
20

21 95. During lunch, Plaintiff McCurdy called AZDHS on her speaker phone so Ms. Keith
22 could listen in, and spoke with an AZDHS representative.
23

24 96. The AZDHS representative confirmed that Harvest employees are not allowed to be
25 on-site at a dispensary conducting business without a DA card.
26

27 97. The AZDHS representative also confirmed that the manner in which Harvest was
28 inputting the patients' allotment into the MMVS, was improper.

1 98. Finally, the AZFHS representative confirmed that massive inventory discrepancy
2 issues, such as the ones experienced by Harvest, were unacceptable, and were required to
3 be reported to AZDHS.
4

5 99. The AZDHS representative encouraged Plaintiff McCurdy to file a report.
6

7 100. After returning to the office from lunch, Plaintiff McCurdy filed a report with
8 AZDHS regarding the allotment issue discussed with the AZDHS representative through
9 the reporting portal on the AZDHS website.
10

11 101. Shortly after filing the report, Plaintiff McCurdy stood up from her desk and
12 observed Trina Keith meeting with Chantelle Elsner in a glass-walled meeting room.

13 102. Ms. Keith was talking with Ms. Elsner and was crying, in tears.

14 103. Plaintiff McCurdy then observed Ms. Keith being escorted to the Human
15 Resources office by Ms. Elsner.
16

17 104. Ms. Elsner saw Plaintiff McCurdy watching these events and approached her,
18 asking: "Can I help you with something?"
19

20 105. Plaintiff McCurdy inquires if Ms. Keith is okay, and whether they would be
21 required to go into the acquired dispensaries without the proper DA card.

22 106. Ms. Elsner responds, "I'm well aware and I'll be dealing with you later" and
23 walked away.
24

25 107. Fearing retaliation, and no longer able to work for a company asking her to
26 violate the law and ignore multiple violations of law, Plaintiff McCurdy e-mailed Ron
27 McCarthy (Human Resources Director), and notified him that she believed she has been
28

1 constructively discharged under A.R.S. § 23-1502 and left the office.

2
3 108. One hour after leaving the office, Plaintiff McCurdy was locked out of her
4 work e-mail by Harvest management.

5 109. Upon information and belief, later that same day, Chantelle Elsner and
6 Kimberly Owies held a meeting with the remaining Harvest retail operations team, telling
7 them that Trina Keith and Mollie McCurdy were no longer employed by Harvest.
8

9 **E. HARVEST'S RESPONSE TO PLAINTIFF MCCURDY'S REPORTS OF VIOLATIONS**

10
11 110. Throughout her employment with Harvest, Plaintiff McCurdy raised dozens
12 of violations of Arizona law as well as violations of other state law and local ordinances, the
13 majority of the time in writing, but also verbally.

14
15 111. Plaintiff McCurdy's reports were met with resistance, push-back, and even
16 hostility from Harvest management.

17 112. Harvest's management felt that opening new dispensaries and "flipping"
18 newly-acquired dispensary stores into the "Harvest model" was the primary importance,
19 and that following the law, or "compliance" was secondary.
20

21 113. On many occasions, Plaintiff McCurdy attempted to follow-up on violations
22 she had reported, but was ignored, or otherwise did not receive a response to her inquiry.
23

24 114. Plaintiff McCurdy was called a "Compliance Nazi" by her supervisor
25 Chantelle Elsner, and was told to "chill out" by Ms. Elsner and other managers.

26 115. Plaintiff McCurdy was also warned to "be careful" because certain persons
27 in management at Harvest were "untouchable."
28

1 116. Plaintiff McCurdy reported those violations to her manager and other various
2
3 managers, who were unable or unwilling to make the necessary corrections.

4 117. Plaintiff McCurdy reported these ongoing issues on several occasions to
5
6 Human Resources representatives, Ron McCarthy and Samantha Pomerantz.

7 118. The Human Resources team expressed sympathy, but were unable to help,
8
9 and in fact, told Plaintiff McCurdy that they were “selling a dream [to prospective
10
11 employees] that turned out to be a nightmare.”

12 119. On January 23, 2020, Plaintiff McCurdy asked to be transferred out of the
13
14 retail department due to the retail department’s senior management “cavalier and unlawful
15
16 attitude towards maintaining compliance in our new and existing dispensaries.”

17 120. Ms. McCurdy was told by Ron McCarthy (Human Resources Director) that
18
19 she needed to return to the retail department because there were no open positions available
20
21 for her to move to.

22 121. Ms. McCurdy continued to work in the retail department until February 13,
23
24 2020, when she was asked to violate the law by working in newly acquired Harvest
25
26 dispensaries without the proper DA credentials.

27 122. On February 14, 2020, Plaintiff McCurdy contacted Ron McCarthy (Human
28
29 Resources Director) to inquire as to her status of employment with Harvest due to the fact
30
31 that she was locked out of her e-mail and had learned of the statements made by Chantelle
32
33 Elsner and Kimberly Owies to the retail team that she was no longer employed by Harvest.

34 123. Mr. McCarthy informed Plaintiff she was still an employee of Harvest and

1 that they would investigate her compliance violation complaints.

2
3 124. Harvest hired outside counsel to investigate Ms. McCurdy's claims, and Ms.
4 McCurdy participated in that investigation.

5 125. On March 18, 2020, Harvest responded to Ms. McCurdy acknowledging a
6 "few compliance issues Harvest recognizes as areas for follow-up or review" but declined
7 to admit that her other complaints violated the law.
8

9 126. Specifically, Harvest's March 18, 2020 correspondence did not address
10 whether Ms. McCurdy would be required to go on-site at another dispensary without the
11 proper DA card.
12

13 127. Harvest's March 18, 2020 correspondence invited Ms. McCurdy to return to
14 work, claiming that "Chantelle Elsner will not be in her supervisory reporting chain."
15

16 128. However, Ms. McCurdy discovered through conversations with her
17 colleagues on the retail team that Ms. Elsner was still a supervisor of the retail team, in
18 contradiction to Harvest's statements.

19 129. Ms. McCurdy declined to return to work at Harvest due to Harvest's
20 misrepresentations in its March 18, 2020 correspondence and failure to address many of the
21 violations of law she raised and/or the dismissal and downplaying of the violations she
22 raised, and their previous requests for her to break Arizona law.
23
24

25 **COUNT ONE**

26 **Violation of A.R.S. § 23-1502**

27 130. Plaintiff re-alleges and incorporates by reference the allegations set forth in
28 each of the preceding paragraphs of the Complaint as if set forth fully herein.

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131. A.R.S. § 23-1502 provides in relevant part that constructive discharge may be established where, as here, there is “evidence of objectively difficult or unpleasant working conditions to the extent that a reasonable employee would feel compelled to resign, or “evidence of outrageous conduct by the employer or a managing agent of the employer,” including conduct that “would cause a reasonable employee to feel compelled to resign.”

132. Harvest created, maintained, permitted and/or fostered the objectively difficult or unpleasant working conditions and the continuous pattern of violation of Arizona law, and asking employees to violate Arizona law.

133. Plaintiff McCurdy delivered the appropriate written notice to the appropriate representative of Harvest that a working condition exists that she believed was so objectively difficult or unpleasant that the employee felt compelled to resign or intends to resign.

134. Plaintiff McCurdy gave Harvest more than fifteen days to respond in writing to the matters she presented.

135. Defendant Harvest did not respond to all of Plaintiff McCurdy’s complaints, and dismissed and/or downplayed the remaining complaints, and falsely stated she would not have to report to the same supervisors that asked Plaintiff McCurdy to violate Arizona law.

136. In any event, Harvest waived its right to notice by failing to make the posting described in A.R.S. § 23-1502(E).

137. In any event, the provisions in A.R.S. § 23-1502(F) apply to permit Plaintiff McCurdy to bring her constructive discharge claim without prior written notice as a result

1 of the outrageous conduct by Defendants Harvest, acting through its employees and acting
2 jointly and severally, that included a continuous pattern of violation of Arizona law and
3 asking employees to violate Arizona law, all constituting conduct that would cause a
4 reasonable employee to feel compelled to resign.
5

6
7 138. Plaintiff McCurdy felt compelled to resign as a result of the objectively
8 difficult or unpleasant working conditions and did in fact resign effective March 25, 2020.

9 139. As a direct and proximate result of the actions and omissions of Defendants
10 Harvest, acting directly and vicariously through its employees, Plaintiff McCurdy lost her
11 employment, including the income she was earning from that employment, her accrued
12 benefits, and continued and continues to suffer a loss of income thereafter while she
13 attempts to obtain employment.
14

15
16 140. As a direct and proximate result of the actions and omissions of the
17 Defendants Harvest, Plaintiff McCurdy suffered loss of employment opportunities.

18 141. As a direct and proximate result of the actions and omissions of the
19 Defendants Harvest, acting jointly and severally, Plaintiff McCurdy suffered loss of quality
20 of life and disruption of relationships, experienced pain and suffering and suffered other
21 damages in an amount to be determined at trial.
22

23 142. Defendants Harvest pursued a course of conduct, knowing that it created a
24 substantial risk of significant harm to Plaintiff McCurdy and/or was taken in disregard to
25 her interest and for the motive of profit, to the extent that punitive damages are warranted.
26

27 WHEREFORE, Plaintiff McCurdy prays for judgment against Defendants Harvest as
28

1 follows:

- 2
- 3 A. For compensatory damages in an amount to be proven at trial;
- 4 B. For special damages including medical expenses incurred and to be incurred, loss
- 5 of income and loss of opportunity to earn income, loss of accrued retirement
- 6 benefits, and loss of other employment benefits.
- 7
- 8 C. For an award of punitive damages in an amount to be determined at trial;
- 9
- 10 D. For an award of attorneys' fees and costs incurred herein; and,
- 11
- 12 E. For such other and further relief as the Court deems just and proper.

13 **COUNT TWO**

14 **Violation of A.R.S. § 23-1501(C)**

15 143. Plaintiff re-alleges and incorporates by reference the allegations set forth in

16 each of the preceding paragraphs of the Complaint as if set forth fully herein.

17

18 144. Defendants Harvest jointly employed Plaintiff McCurdy for the purposes of

19 A.R.S. § 23-1501(C).

20 145. Defendants terminated Plaintiff McCurdy's employment in violation of

21 Arizona statutes in retaliation for refusing to commit an act or omission that would violate

22 the statutes and laws of the State of Arizona.

23

24 146. Defendants constructively terminated Plaintiff McCurdy's employment in

25 violation of Arizona statutes in retaliation for her disclosure in a reasonable manner to

26 persons she believed to be in a managerial or supervisory position, with the authority to

27 investigate the information she provided and to take action to prevent further violation of

28

1 the statutes and laws of this State.

2
3 147. Defendants constructively terminated Plaintiff McCurdy for her refusal to
4 commit an act or omission that would violate the statutes and laws of the State of Arizona.

5 148. The acts and omissions of Defendants Harvest caused the events that resulted
6 in the termination of Plaintiff McCurdy.

7
8 149. Defendants Harvest created, maintained, permitted and/or fostered the
9 objectively difficult or unpleasant working conditions and requests for Plaintiff McCurdy to
10 violate Arizona law.

11
12 150. As a direct and proximate result of the actions and omissions of Defendants
13 Harvest, acting directly and vicariously through its employees, Plaintiff McCurdy lost her
14 employment, including the income she was earning from that employment, her accrued
15 benefits, and continued and continues to suffer a loss of income thereafter while she
16 attempts to obtain employment.

17
18 151. As a direct and proximate result of the actions and omissions of the
19 Defendants Harvest, Plaintiff McCurdy suffered loss of employment opportunities.

20
21 152. As a direct and proximate result of the actions and omissions of the
22 Defendants Harvest, acting jointly and severally, Plaintiff McCurdy suffered loss of quality
23 of life and disruption of relationships, experienced pain and suffering and suffered other
24 damages in an amount to be determined at trial.

25
26 153. Defendants Harvest pursued a course of conduct, knowing that it created a
27 substantial risk of significant harm to Plaintiff McCurdy and/or was taken in disregard to
28

1 her interest and/or for the motive of profit, to the extent that punitive damages are
2 warranted.
3

4 WHEREFORE, Plaintiff McCurdy prays for judgment against Defendants Harvest as
5 follows:
6

- 7 A. For compensatory damages in an amount to be proven at trial;
8 B. For an award of punitive damages in an amount to be determined at trial;
9 C. For an award of attorneys' fees and costs incurred herein; and,
10 D. For such other and further relief as the Court deems just and proper.
11

12 **COUNT THREE**

13 **Wrongful Termination (Common Law)**

14 154. Plaintiff re-alleges and incorporates by reference the allegations set forth in
15 each of the preceding paragraphs of the Complaint as if set forth fully herein.

16 155. Defendants Harvest jointly employed Plaintiff McCurdy for the purposes of
17 A.R.S. § 23-1501(C).

18 156. Plaintiff was compelled by the circumstances of her employment described
19 herein, consisting of a continuous pattern of activity which violates Arizona and California
20 law by Defendants Harvest, including directing Plaintiff to violate Arizona and California
21 law, to resign her employment with Defendants Harvest.
22

23 157. The consequences of this conduct was that Defendants wrongfully terminated
24 Plaintiff McCurdy, constructively, for a bad and improper purpose, namely in and as
25 retaliation for reporting to supervisors and AZDHS the misconduct of Defendants and
26 others, including other supervisors.
27
28

1 C. For an award of attorneys' fees and costs incurred herein to the extend available
2
3 pursuant to A.R.S. § 23-1501, and any other applicable law; and,

4 D. For such other and further relief as the Court deems just and proper.
5
6
7

8 Dated this 22ND day of April, 2020.
9
10

11 **MIDTOWN LAW**

12 By: _____



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