

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 S. Tejon Colorado Springs, CO 80903	DATE FILED: November 10, 2020 3:49 PM FILING ID: CF1FF4E89835D CASE NUMBER: 2020CV31997
Plaintiff: McKeeffe Ventures, LLC v. Defendant: Whole Hemp, LLC d/b/a Folium Biosciences LLC	▲ COURT USE ONLY ▲
<i>Attorneys for Plaintiff</i> Ryan J. Klein, Esq. (#37013) SHERMAN & HOWARD, L.L.C. 90 S. Cascade Avenue, Suite 1500 Colorado Springs, CO 80903 Phone: (719) 475-2440 Fax: (719) 635-4576 Email: rklein@shermanhoward.com	Case No.: Division: Ctrm:
COMPLAINT AND JURY DEMAND	

Plaintiff McKeeffe Ventures, LLC, by and through its counsel, Sherman & Howard L.L.C., file its Complaint and Jury Demand as follows:

PARTIES AND VENUE

1. Plaintiff, McKeeffe Ventures, LLC (“McKeeffe”), is a Colorado limited liability company with its principal place of business in Pueblo County, Colorado
2. Upon information and belief, Defendant, Whole Hemp, LLC d/b/a Folium Biosciences LLC (“Whole Hemp”), is a Colorado limited liability company with its principal place of business in El Paso County, Colorado.

3. Venue is proper in this Court because Whole Hemp is resident of El Paso County, Colorado and leases between the parties elect the forum for their disputes as El Paso County, Colorado.

GENERAL ALLEGATIONS

4. McKeefe is the owner of a facility in Rocky Ford at 20094 Highway 50, Rocky Ford, Colorado 81067 (“Rocky Ford Property”).

5. William “Bill” McKnight is the Manager of McKeefe.

6. The total area of the Rocky Ford Property is approximately five acres.

7. There are two buildings on the Rocky Ford Property.

8. One building is a drying building with approximately 8,000 sq. ft., which has louvered floors and a turbo drying heater blower (“Drying Building”).

9. The other building is the main building (“Main Building”).

10. The Main Building is approximately 40,000 sq. ft.

11. The Main Building has two large freezers, one which is approximately 7,000 sq. ft. and one which is approximately 2,000 sq. ft.

12. The remainder of the Main Building is a production area.

13. One important asset of the Rocky Ford Property is the amount of electricity power located on the Rocky Ford Property.

14. The Rocky Ford Property has 1500 KVA supporting 240/480 three phase transformers.

15. Additionally, besides a large tap on the city water system, the Rocky Ford Property has three wells that are adjudicated and a large sewer system draining into the Rocky Ford lagoon.

16. Rocky Ford Property was originally used as an FDA onion processing plant.
17. McKeefe purchased the Rocky Ford Property in 2005.
18. McKeefe spent two years and one million dollars to upgrade the Rocky Ford Property to USDA/FDA (RTE) Ready to Eat meat processing plant.
19. USDA assigned an inspector to the Rocky Ford Property, who there during operation.
20. The Rocky Ford Property was operated by Colorado Blue Ribbon Foods, which was a Colorado company.
21. Colorado Blue Ribbon Foods processed meat products for several national food chains.
22. In August of 2016, the Rocky Ford Property stopped processing food when Kroger's moved their processing to New Mexico.
23. McKeefe then started looking for a new tenant.
24. In September 2018, Whole Hemp visited the Rocky Ford Property and asked to lease the Drying Building, large freezer in the Main Building, and shop area in the Main Building.
25. This area amounted to 20,400 sq. ft.
26. Whole Hemp made it very clear they were only interested in just the square feet inside the Drying Building and Main Building.
27. Whole Hemp did not want to lease any land outside the Drying Building and Main Building.
28. On September 5, 2018, McKeefe and Whole Hemp entered into the first lease ("First Lease").

29. The First Lease was for 20,400 sq. ft.

30. The monthly base rent was \$9,720.

31. The term was for one year from September 5, 2018 to September 30, 2019 with options for four more years.

32. The security deposit was \$9,720.

33. Section L.7 stated:

Initial Common Area, Maintenance and Other Charges (collectively "Additional Rent"):

(a) Monthly Electivity [sic]: Tenant shall be responsible for all utilities and services incurred in connection with the building, including natural gas service or gas delivery systems. Until a separate electric meter is installed and operational, landlord will pay \$400.00 of the total monthly electric bill.

(b) TAXES: Property Taxes attributable to the building will be prorated based on square feet of building used by Tenant.

34. Section 3 stated:

A. It is agreed that Tenant, concurrently with the execution of this Lease, shall deposit with Landlord a security deposit ("Deposit") in the amount set forth in the Lease Agreement Provision L.5. This deposit is defined as monies pledged by Tenant with Landlord as security for Tenant's faithful performance of all of the terms, conditions and covenants of this Lease to which Tenant is hereby subjected. Landlord shall have the right to use the Deposit, or so much thereof as necessary, in payment of any rental which may become in default, in reimbursement of any expense incurred by Landlord on account of a default by Tenant, and in payment of any damages incurred by Landlord by reason of Tenant's default, or, at the option of Landlord, the same may be retained by Landlord and applied in liquidation of any damages suffered by it by reason of Tenant's default. In such event, Tenant shall, upon written demand of Landlord, forthwith remit to Landlord an amount sufficient to restore said Deposit to its original amount. In the event said Deposit has not been utilized as aforesaid, and Tenant shall have fully and faithfully complied with all of the terms, conditions and covenants of this Lease, said Deposit or so much thereof as has not been utilized for said purposes, shall be refunded to Tenant, without interest, within thirty(30) days after the termination date of this Lease.

B. Landlord shall have the right to commingle said Deposit with other funds held by Landlord. Landlord shall be entitled deliver the then balance of said Deposit, if any, to the purchaser of Landlord's interest in the Premises in the event such interest be sold and thereupon Landlord shall be discharged from any further liability with respect to such deposit.

35. Section 5 stated:

Tenant covenants and agrees to use the Premises only for the purposes designated in the Lease Agreement Provisions and for such other lawful purposes as may be incidental thereto. Tenant shall, at its own cost and expense, obtain any and all licenses and permits deemed necessary or required by any City, County, State or Federal governmental agencies for such use. Tenant shall comply with all governmental laws, ordinances and regulations applicable to Tenant's use of the Premises. Tenant shall promptly comply with all Landlord and Government orders and directives for the correction, prevention, and abatement of nuisances in or upon, or connected with, the use of the Premises, all at the Tenant's sole expense. Any change in Tenant's stated use of the Premises shall not be allowed without prior consent of Landlord. Tenant is allowed to list and include within said premises additional, lawful entities that (in whole or part) it owns, creates, is a subsidiary of, is related to, has interest in, and/or was created as a part of or used for purposes of marketing, advertising or design.

36. Section 6(C) stated, "Occupancy of the Premises by Tenant shall be deemed acceptance thereof by Tenant in good and satisfactory condition and shall also be deemed Tenant's acknowledgment that the Premises were completed by Landlord in full accordance with the provisions hereof."

37. Section 7 stated:

A. All improvements to the Premises which are to be performed and paid for by Landlord are listed and described in Exhibit B, which is attached hereto and incorporated herein. Landlord shall perform such work subject to the conditions, if any, listed in said Exhibit. All other work necessary for Tenant's occupancy of the Premises shall be performed and paid for by Tenant with no right of contribution from Landlord. All of such work to be performed by Tenant must first be approved in writing by Landlord and, once so approved shall be constructed by Tenant in a good and workmanlike manner, free from any liens for labor and materials. Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any loss, liability or damage resulting from such work.

B. Tenant shall promptly pay for any improvements done initially or subsequently in or about the Premises unless otherwise specified in Exhibit "B" and will not permit or suffer any mechanics' liens to attach to the Premises, and shall promptly cause any claim for such lien to be released or to provide such security as Landlord may require, in the event Tenant desires to contest any such claim.

38. Exhibit B stated:

Landlord shall permit and allow tenant to break down walls or barriers between said leased premise to those other leased or owned premises belonging to tenant. Landlord shall further permit tenant to alter said premises in order to comply with any fire proofing, fire retardation, chemical or hazardous material or solvent protection needed by tenant in the performance of its operations and in compliance with Colorado laws, rules and Federal Environmental Acts.

Tenant will work with the landlord to establish tenant improvements that will be required, and Tenant may choose their own general contractor and architect to complete such work. All improvements will be made at Tenant's expense.

Any changes proposed to the premises must be approved by Landlord prior to construction. Landlord's approval shall not be unreasonably withheld.

39. Section 8 stated:

A. Tenant shall not make any major alterations, additions or improvements to the interior or exterior of the Premises without the prior, written, reasonable consent of Landlord with consent shall not be unreasonably withheld. Landlord reserves the right, at any time, to make any alterations to the Premises deemed necessary for their preservation. Tenant may, without the consent of Landlord, but at its own cost and expense and in a good, workmanlike manner, make such minor alterations, additions, or improvements, as it may deem advisable, without altering the basic character of Premises, make any alterations that conform with Tenant's industry or business purpose, and in each such case complying with all applicable government laws, ordinances, regulations, and requirements. Landlord's approval of any changes, editions, or alterations wanted by tenant shall not be unreasonably withheld.

B. All alterations, additions, erections, or improvements on or in the Premises at the expiration of this Lease, except trade and non-permanent fixtures, shall, at the option of the Landlord, either become a part of the Premises and remain upon and be surrendered with the Premises, or Landlord may require that the same be removed by Tenant, at Tenant's sole cost and expense. Should Tenant fail to

remove any furniture, fixtures or personal property of any kind, then the same shall be considered as abandoned and become the property of the Landlord.

C. Tenant agrees that it will properly maintain the Premises, fixtures and appurtenances, suffer no waste or injury thereto, and that it will make all repairs necessary to the Premises, fixtures and appurtenances, necessitated by the fault of the Tenant, its agents, employees, guests, invitees and licensees. All maintenance and repairs required under this Paragraph will be performed in compliance with Exhibit C. Tenant also agrees that it will surrender the Premises at the Expiration Date (or the sooner termination hereof for any reason) in as good condition as they were at the Commencement Date, ordinary wear and tear excepted.

40. Exhibit C stated, in relevant part:

Tenant agrees that Landlord shall provide only those services set forth below in this Exhibit C. Tenant agrees to procure all other services which Tenant may desire and to pay all costs for such services, without obligation by Landlord. In the event that Landlord, for the benefit of Tenant, procures special or additional services, Tenant shall reimburse Landlord for such costs immediately upon receipt by Tenant of written demand for the same from Landlord.

The following are the services to be provided by Landlord:

1. INSURANCE:

A. Tenant is responsible for insurance. Tenant shall procure all risk insurance coverage, including coverage for any loss sustained by fire, and any other reasonably necessary insurance to properly protect the Project. Such insurance shall be subject to standard exclusions.

B. For purposes of this Lease, the term "Project" is defined to mean the Premises, the building in which the Premises are located, buildings adjacent to such building (if all are owned and in combination form an office, warehouse or retail complex, with common parking areas and driveways), all real property on which such buildings are located and, whether owned or leased by Landlord, equipment utilized to maintain such buildings or real property, and all improvements to such real property including, without limitation, landscaping, driveways, curbs, gutters, underground utilities, drainage systems, monument, wall and similar signs, walkways, and similar and dissimilar improvements.

C. Tenant shall maintain the insurance required by Paragraph 14 of the General Terms and Conditions of this Lease, without contribution from or obligation of Landlord.

2. PROPERTY TAX:

Property Taxes attributable to the building will be prorated based on square feet of building used by Tenant.

3. UTILITIES:

A. Tenant shall be responsible for all utilities and services incurred in connection with the building, including natural gas service or gas delivery systems. Until a separate electric meter is installed and operational, landlord will pay \$400.00 of the total monthly electric bill.

4. REPAIRS AND MAINTENANCE:

A. Landlord shall provide regular maintenance so as to keep in good order, condition and repair, the exterior portions of the Project, including its foundations and structural aspects, except for the cost to repair any damage thereto caused by any act or negligence of Tenant, its employees, invitees, agents, licensees, contractors and all others entering the Project or the Premises with the tacit consent of Tenant. Landlord's obligation shall extend to the entire exterior and structural portions of the Project and the Premises, including, but not limited to, the roof, exterior walls, gutters, heating, ventilating, plumbing, pipes, grounds, landscaping, parking lot, and sidewalks as well as the replacement of any and all such utilities or utility equipment such as lighting fixtures. Tenant shall, at its own cost and expense, and without contribution or obligation of Landlord, keep in good repair and condition the interior of the Premises. The foregoing obligation of Tenant shall extend to the entire interior of the Premises and shall include, without limitation, janitorial, plate glass, trash removal, bathroom maintenance and cleaning, tile and carpet cleaning and repair, and maintenance, repair and cleaning of fixtures and personal property located on or within the Premises. If Tenant fails to perform any of the foregoing duties, Landlord may give Tenant written notice of such failure and if such failure is not corrected by Tenant within thirty (30) days after receipt of such notice (or within a reasonably shorter period in the case of emergency), Landlord may correct such failure and, upon receipt of an invoice for the cost of the same, Tenant shall immediately reimburse Landlord.

41. Section 14(B) stated:

Tenant shall, throughout the term of this Lease, at its sole cost and expense, provide and keep in force with a responsible insurance company, satisfactory to Landlord and to any mortgagee under a mortgage constituting a lien on the Premises, fire and extended coverage, vandalism, malicious mischief and special extended coverage insurance, in an amount adequate to cover the cost of replacement of all furniture, fixtures, alterations, decorations, inventory, goods,

merchandise, business interruption, improvements and equipment in the Premises, whether supplied or owned by Tenant or by the Landlord. Tenant shall also provide insurance against any loss or damage to all glass forming a part of the Premises, including but not limited to plate glass. Tenant also agrees to keep in full force and effect a policy of public liability and property damage insurance with respect to the Premises, hallways, sidewalks in front of the Premises, and the business operated by Tenant and any sub-tenant of Tenant in the Premises. The limits of said policy shall be no less than a half a million dollars (\$500,000.00) combined single limit coverage for both bodily injury and property damage liability. The policy(ies) of insurance required to be obtained hereunder by Tenant shall name Landlord, any person, firm or corporation designated by Landlord, and Tenant as the additional insured, and as their interest may appear, and shall state that the insurer will not cancel, modify or change the insurance without first giving the Landlord ten (10) days prior written notice. A copy of the policy or a certificate of insurance shall be delivered to Landlord prior to Tenant's occupancy of the Premises.

42. Section 17 stated:

Tenant further covenants and agrees:

A. To comply with all lawful orders, regulations, and requirements issued by any Federal, State, or Municipal government, or any department or division thereof, insofar as the same are applicable to Tenant's possession and occupancy of the Premises with the exclusion of the Tenant's use, utilization, business and operations within the Hemp industry and the extraction, manufacturing, post manufacturing, fulfillment, shipping, warehousing of Hemp and its derivatives pursuant to Colorado State law, rules and regulations. Tenant further covenants not to use the Premises for any purpose now or hereafter prohibited by the laws of the United States, the State of Colorado, or any subdivision of the foregoing, or for any unlawful or immoral purpose whatsoever. **Landlord does accept, acknowledge and agree to Tenant's use of premise for its Colorado permitted Industrial Hemp and Hemp extraction business regardless of the current state of Federal law, which would include the marketing, advertising and selling of hemp related products and finished hemp related goods or items.**

43. Section 18 stated:

A. Tenant hereby warrants to Landlord that during Tenant's possession of the Premises, as of the effective date hereof, at the Commencement Date and at all times thereafter, tenant shall comply with legal requirements, safety and Hazardous Substance protocols as to:

(1) any underground storage tanks, polychlorinated-biphenyls, Hazardous Substances or Hazardous Conditions (as defined below) or hazardous wastes placed in, on or under the Premises, whether in structures, drums, tanks, containers, sumps, lagoons, or otherwise.

(2) any engagement in the generation, use, manufacture, treatment, transportation, storage, or disposal of any Hazardous Substance in, on or under the Premises;

(3) any violation of any applicable Environmental Law (as defined below) with respect to the Premises (including permits or groundwater on, in, or under the Premises); and,

(4) All permits necessary or required by Applicable Environmental Laws in connection the operations to be conducted by Tenant, its sub-tenants and assignees, shall have been first obtained.

B. For purposes of this Lease, the term "Hazardous Substance" or "Hazardous Substances" shall mean any substance, chemical, or waste that is or shall be listed or defined as hazardous, toxic, or dangerous under Applicable Environmental Law (as defined below), any and all petroleum products.

C. For purposes of this Lease, the term "Applicable Environmental Law" shall include the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sec. 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Sec. 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq., the Clean Air Act, 42 U.S.C. Sec. 7401 et seq., the Hazardous Substances Transportation act, 49 U.S.C. Sec. 1471 et seq., the Toxic Substances Control Act, 15 U.S.C. Sec. 2601 through 2629, and the Safe Drinking Water Act, 42 U.S.C. Sec. 300f though 300j, as the same have been or may in the future be amended, and any similar state and local laws, rules, and ordinances and, in each case, the regulations implementing such statutes, laws, rules and ordinances.

D. For purposes of this Lease, "Hazardous Conditions" means any condition existing on the Premises (including groundwater on or under or about the Premises), about which a governmental agency would, under Applicable Environmental Law, require corrective action.

E. Tenant shall be solely obligated and responsible to insure that its possession of the Premises and all of its activities performed in, on, under or about the Premises shall comply with Applicable Environmental Law and shall not create a Hazardous Condition. Tenant shall be solely responsible for and shall defend and hold Landlord harmless from and against any damage or penalty resulting from Tenant's noncompliance with or violation of Applicable Environmental Law and

all injuries that may arise from its noncompliance with or violation of Applicable Environmental Law, the creation by Tenant of a Hazardous Condition or the location on the Premises of a Hazardous Substance. Without limiting the generality of the foregoing, the indemnification provided herein shall specifically cover costs incurred in connection with any investigation of site conditions which may exist after the date of execution of this Lease or any remediation, including, without limitation, studies or reports as needed or required, remedial, removal or restoration work required by any governmental authority due the presence of Hazardous Substances or a Hazardous Condition in, on, under or about the Premises or the Project where the Premises are located and which arises out of the use of the Premises or such Project by Tenant, its officers, employees, agents, invitees, clients, customers, contractors, subcontractors, and all others entering the Premises or such Project with the approval, verbal or tacit, of Tenant. Those costs, claims, damages, fines, penalties, losses and expenses for which Landlord is hereby indemnified shall be reimbursable as incurred without any requirement to wait for the ultimate outcome of any litigation, claim, or other proceeding, and Tenant shall pay the same as incurred by Landlord within fifteen (15) days after notice from Landlord to Tenant itemizing the amounts incurred by Landlord to the date of such notice. Any defense of any claim against Landlord shall be made by counsel satisfactory to Landlord. The provisions hereof shall survive the termination of this Lease.

44. Section 29 stated, in relevant part, “Any additional modification or amendment shall not be valid or binding unless expressed in writing and executed by the parties hereto in the same manner as the execution of this Lease.”

45. Section 30 stated:

Should Tenant, or any of its successors in interest, holdover the Premises, or any part thereof, after the expiration of the term of this Lease, unless otherwise agreed in writing, such holding over shall constitute and be construed as tenancy from month to month only, at a rental rate equal to double the Base Rent paid during the last month of the term of this Lease, and shall otherwise be subject to all terms and conditions of this Lease.

46. Section 38 stated:

Tenant is and has been solely responsible for verifying that the Premises are fit for Tenant's intended purposes, including, without limitation, that the zoning for the Premises allows Tenant's uses, that the Premises meet any necessary health or fire department rules or regulations, and that there is sufficient parking adjacent to the Premises to allow Tenant to properly conduct its business activities. Tenant, by

its signature hereon, acknowledges that, after conducting its own, independent investigation, the Premises are so fit for its purposes except for the Conditional Use required and in conducting such investigations and entering into this Lease, it has not relied on any representation by Landlord or its agents concerning such zoning and use restrictions or requirements.

47. Exhibit D stated, in relevant part:

4. Tenant shall, at all times, keep the Premises in a clean and sanitary condition and shall, at all times, comply with all laws, rules, regulations and ordinances which, in any manner, may effect or regulate Tenant's use, occupancy and maintenance of the Premises.

* * *

8. Tenant shall not keep in the Premises or the Project any kerosene, gasoline, or flammable or combustible fluid or material other than the solvents used in tenant's extraction operations and only then in compliance with local and state laws. Further, Tenant shall not utilize any of the foregoing on or in the Premises or the Project for heating, air conditioning, cleaning or for any other purpose, unless Tenant has first received the written consent of Landlord.

9. Tenant shall not allow any boring into the walls or floors of the Premises or the Project except for such items as a safe(s) or security measures. Tenant shall not allow any wiring to be cut, or change the location of telephone outlets or other equipment affixed to the Premises or Project unless Landlord shall first approve of the same.

* * *

12. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purposes other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein, and to the extent caused by Tenant or its employees or invitees, the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by Tenant.

* * *

21. Tenant shall give prompt written notice to Landlord of any accidents to or defects in plumbing, electrical, fixtures or heating apparatus so the same may be attended to properly.

* * *

25. It is Landlord's desire to maintain in the Building or project in the highest standard of dignity and good taste consistent with comfort and convenience for Tenant. Any action or condition not meeting this highest standard should be reported directly to Landlord.

48. On September 24, 2018, McKeefe and Whole Hemp entered into a second lease for the remainder of the Main Building ("Second Lease").

49. The Second Lease was for 27,600 sq. ft., which was for the remainder of the Main Building and no area outside the Main Building.

50. The monthly base rent was \$11,040.

51. The term was for one year from September 24, 2018 to September 33, 2019 with options for four more years.

52. The security deposit was \$11,040.

53. The Second Lease has similar provisions to the First Lease as identified above.

54. In a conversation with Richard Calzada, who is the General Counsel for Whole Hemp ("Calzada"), shortly after he signed the First Lease and Second lease, Calzada informed Mr. McKnight that Whole Hemp used water as an extraction agent for its hemp operation and did not use ethanal.

55. Soon after execution of Second Lease, Whole Hemp installed 24/7 armed guards.

56. At that point, Mr. McKnight did not feel comfortable returning onto the Rocky Ford Property until towards the fall of 2019.

57. Mr. McKnight also lives in Pueblo, Colorado, which is some distance from Rocky Ford, Colorado.

58. Later on, Mr. McKnight drove up to the Rocky Ford Property, but not onto the

Rocky Ford Property.

59. Mr. McKnight noticed the large compressor that was connected to the building was totally removed and a big blue box was in its place.

60. Mr. McKnight also noticed other pieces of equipment owned by McKeefe in the area outside the First Lease and Second Lease had been taken.

61. Finally, Whole Hemp had installed an evaporation pond in the area outside the First Lease and Second Lease.

62. In putting in an evaporation pond, Whole Hemp did not put down a liner to protect from contamination.

63. McKeefe had hundreds of freezer panels stored on the area outside the First Lease and Second Lease.

64. When Whole Hemp installed a chain link fence, it plowed through the panels and destroyed their value.

65. In October 2018, Mr. McKnight received a call from Chuck Hickey of Whole Hemp, who asked Mr. McKnight to come to Colorado Springs to meet regarding the roof of the Main Building.

66. When Mr. McKnight arrived at Whole Hemp's offices, he met with Mr. Hickey, Calzada, and Whole Hemp's Senior Facilities Manager, who was Michael Wickerham.

67. Mr. Hickey showed Mr. McKnight a picture of the roof over the main freezer showing a puddle of water.

68. Mr. McKnight told them that it is a flat roof and after a rain, there is a puddle.

69. Mr. Wickerham stated he personally examined the roof and found it in such bad

condition that the ceiling of the freezer could cave in.

70. Mr. Wickerham said he had found several leaks in the roof in other area of the building.

71. Mr. Hickey then told Mr. McKnight that the CEO of Whole Hemp demanded a new roof.

72. Mr. Hickey said the CEO of Whole Hemp had a friend who owns a commercial roofing company in Colorado Springs, and this friend, as a favor to the CEO of Whole Hemp, would put a new roof on the whole building for \$175,000.

73. The CEO of Whole Hemp offered to pay for the roof if McKeefe would reimburse Whole Hemp over 24 months with a reduction to the lease payments.

74. McKeefe agreed.

75. Mr. Hickey told Mr. McKnight the name of the commercial roofing company was Peak View Roofing.

76. Despite repeated requests, McKeefe has never received a copy of the contract from either Whole Hemp or Peak View Roofing.

77. McKeefe, however, was told by Whole Hemp that a contract had been signed.

78. Upon information and belief, some roof work was done, but McKeefe does not know who performed the work.

79. On December 10, 2019, Mr. McKnight sent a letter to Calzada informing Whole Hemp that it was his observation that the roof work had not been completed.

80. Mr. McKnight also noted it seemed the insulation above the freezer had been removed and not replaced.

81. Mr. McKnight received no response.
82. A short time later, Mr. and Mrs. McKnight went to the office of Peak View Roofing.
83. Mr. and Mrs. McKnight were given a copy of the estimate for the roof, which is what Peak View Roofing said is all they had.
84. The estimate did not include the work to replace the entire roof, but only three areas.
85. On January 6, 2020, Mr. McKnight requested an inspection by Restoteam, which is another Colorado Springs roofing company.
86. Mr. McKnight also asked Weston Burrer, a licensed architect, to examine the photos from Restoteam and give his opinion as to the roof installation meeting building code.
87. Finally, Mr. McKnight asked Will Jackson Roofing to examine the remainder of the building's roof.
88. The above inspections and opinions show there was not roof work on most of the roof, and the roof work over the east production room was installed incorrectly and using incorrect roofing material.
89. The Main Building has a large area of the roof that is metal and will require a silicon gel application.
90. One hundred gallons of silicon based gel made by the Gayco never made it to the roof and were stored in the employee locker room.
91. In a memorandum by Mr. Burrer, he referenced seeing buckets of Gayco roofing sitting in the locker room.
92. This memorandum was sent to the CEO of Whole Hemp.
93. Within 48 hours for sending the memorandum, the Main Building was broken into,

and the buckets of Gayco roofing were stolen.

94. Upon information and belief, Whole Hemp was the party who broke into the Main Building and stole the buckets of Gayco roofing.

95. Mr. McKnight came to the Rocky Ford Property on September 6, 2019.

96. September 6, 2019 was shortly before the expiration of the First Lease and Second Lease.

97. Mr. McKnight and Mrs. McKnight briefly looked at the Rocky Ford Property with Mike Kelly and Larry La Blonce.

98. McKeefe also invited its real estate broker, who is John Wickens, due to the need to get a new tenant with the First Lease and Second Lease set to expire.

99. Whole Hemp was represented by Calzada.

100. McKeefe and its representatives found the Main Building and Drying Building to be unbelievably dirty.

101. Mr. Wickens said he could not show the Rocky Ford Property given its condition.

102. On November 7, 2019, Mr. McKnight received a call from Mr. Kelly, who is McKeefe's plant manager.

103. Mr. Kelly said that while at the Rocky Ford Property, a Whole Hemp employee picked up a handful of hemp waste from the pile in the yard and lit a flame with a lighter, which caused the hemp waste to burst into flames.

104. Mr. Kelly was shocked, which is why he called Mr. McKnight right away.

105. The area where Whole Hemp piled the hemp waste was not part of the First Lease or Second Lease, and Whole Hemp never had permission to use this area.

106. Mr. McKnight immediately sent a text message to Calzada.
107. Calzada called Mr. McKnight, who referred to the area where the hemp waste was piled as a “retention area”
108. Mr. McKnight expressed his concern with the actions of Whole Hemp.
109. Calzada said, “Don’t worry, it will be gone tomorrow.”
110. Whole Hemp did not remove the hemp waste or cease its trespass the next day.
111. After the November 7, 2019 burning demonstration, Mr. McKnight started looking at the piles of hemp waste in the yard and started examining the chemical tanks used to deliver the chemicals.
112. Mr. McKnight examined more than 200 tanks, which most had their labels removed.
113. Mr. McKnight eventually found two or three tanks that still had the labels attached.
114. After the November 7th burning experiment, Mr. McKnight also started monitoring the amount of hemp waste dumped in the yard and took pictures of the piles.
115. The entire yard was used for dumping.
116. Mr. McKnight was able to see that 50,000 to 60,000 sq. ft. of ground was used for exclusively for evaporation.
117. The piles grew to a height of two to three feet high and in some places four feet high
118. While at the Rocky Ford Property on one occasion, Mr. Kelly noticed two Porta Potties were placed outside the locker room.
119. Mr. Kelly asked a Whole Hemp employee about the Porta Potties and was told the

sewer was clogged and they had a plumber coming to unclog the sewer.

120. Mr. McKnight asked Calzada for an explanation.

121. Calzada said he will check into it and get back to Mr. McKnight.

122. Calzada did not get back to Mr. McKnight.

123. Therefore, Mr. McKnight asked Mr. Kelly to check on the men's toilets and see if there was a problem.

124. Mr. Kelly reported that the men's restroom door was locked and could not get in to check on the condition.

125. When McKeefe took possession of the Rocky Ford Property on March 1, 2020, Mr. McKnight found the toilets were not in pace and there was brown stains on the floor.

126. Upon information and belief, Whole Hemp had dumped ethanal down the toilets during the term of the First Lease and Second Lease.

127. After execution of the First Lease and Second Lease, Whole Hemp wanted to move quickly into the Main Building and Drying Building.

128. However, McKeefe still had a great deal of equipment in the Main Building and Drying Building.

129. McKeefe asked Whole Hemp to move its equipment and supplies to an area where McKeefe could pick them up and move them to another property, to which Whole Hemp agreed.

130. Whole Hemp thanked McKeefe for working with them.

131. When McKeefe went to pick up the equipment, they were nowhere to be found.

132. Mr. Kelly asked Whole Hemp about the equipment, but Mr. Kelly was told they did not know anything about the equipment, which included processing equipment, steam kettles,

gondolas, compressors, evaporators, condensers, pumps, electric motors, valves, electric transformers, floor scrubbers, light fixtures, packaging machines, and control modules were all missing.

133. Upon information and belief, Whole Hemp stole all of this equipment.

134. One piece of stolen equipment, vibrating shaker, was particularly concerning.

135. A day or two before the Second Lease was signed, Phillip Chavez of Whole Hemp asked Mr. McKnight if McKeefe would sell the vibrating shaker.

136. Mr. McKnight said McKeefe would be willing to sell the vibrating shaker.

137. Mr. McKnight took pictures of the vibrating shaker and sent them to Whole Hemp.

138. Mr. McKnight never heard anything from Whole Hemp again about the vibrating shaker.

139. When McKeefe inspected the property after taking possession, Mr. McKnight and Mr. Kelly found the vibrating shaker had been disconnected and removed.

140. The value of the vibrating shaker is approximately \$51,000.00 plus shipping and installation.

141. Upon information and belief, Whole Hemp stole the vibrating shaker.

142. When the Rocky Ford Property operated as a USDA/FDA meat plant, it operated with thirty to fifty pieces of machinery running.

143. The machines required different electrical service.

144. When Mr. Kelly toured the Rocky Ford Property on September 6, 2019, he found several wiring gutters hanging open and wires hanging out, which had been caused by Whole Hemp.

145. Mr. McKnight asked Calzada for copies of all modifications to the electrical system, along with permits that were applied for and the inspection report from the state electrical inspector.

146. Calzada has refused to supply this information.

147. The Rocky Ford Property has miles and miles of electrical wiring.

148. To be able to sell the Rocky Ford Property, all wire connections and harness will have to be inspected and approved.

149. This inspection process will take at least two hundred to three hundred hours to complete and then may require rewiring areas of the network.

150. McKeefe estimates the damages associated with the electoral system to be \$48,000, all of which is the responsibility of Whole Hemp.

151. Soon after execution of Second Lease, Whole Hemp erected eight foot chain link fence around the Rocky Ford Property, which was not part of the First Lease or Second Lease.

152. After discovery of the fence, Mr. McKnight called Calzada to note that Whole Hemp did not have permission to install the fence.

153. Cazada said Whole Hemp needed the fence to protect its operation from “Crash and Dash” thieves.

154. Calzada also said Whole Hemp would leave the fence after the term of the First Lease and Second Lease.

155. Two days before Whole Hemp vacated the Main Building and Drying Building, Mr. McKnight noticed Whole Hemp was removing the fence.

156. Mr. McKnight called the Sheriff, and a Deputy came to the Rocky Ford Property.

157. A Deputy asked a representative of Whole Hemp about the fence, who said it was their fence to take.

158. The Deputy said the matter would have to be resolved by the courts.

159. Whole Hemp stole the fence as it belonged to McKeefe pursuant to the First Lease and Second Lease.

160. Whole Hemp had installed 1,955 ft of fence line, which was worth an estimated \$49,500.00.

161. When Mr. McKnight first met with Whole Hemp regarding a lease, Calzada asked if McKeefe had ever ordered a Phase One and Phase Two inspection for the Rocky Ford Property.

162. Mr. McKnight told Calzada yes, as also noted McKeefe still has a monitoring well installed on the Rocky Ford Property.

163. This monitoring well was located in an area outside the First Lease and Second Lease.

164. Mr. McKnight did not tell Calzada about a second two monitoring well on the Rocky Ford Property.

165. After taking possession of the Main Building and Drying Building, McKeefe found the metal cap was missing from the one monitoring well noted to Whole Hemp and the pipe was smashed and trash thrown down the pipe.

166. Upon information and belief, Whole Hemp intentionally damaged the monitoring well to avoid detection by McKeefe as to the activities Whole Hemp was conducting on the Rocky Ford Property.

167. When McKeefe took possession of the Main Building and Drying Building, it found

enormous amounts of trash on the Rocky Ford Property.

168. McKeefe estimates the trash will fill 40 large roll-off containers at a cost of approximately \$40,000.

169. The First Lease and Second Lease state Whole Hemp is responsible for paying property taxes and to provide insurance.

170. A copy of the prorated property tax bill was sent to Whole Hemp, but has not been paid despite repeated requests.

171. Chuck Hickey, the CFO of Whole Hemp, told Mr. McKnight that Whole Hemp would provide McKeefe with a copy of the Whole Hemp insurance policy.

172. Whole Hemp has never sent a copy of its insurance policy to McKeefe.

173. Mr. McKnight sent several letters to Calzada about the forgoing, as well as the retention of the security deposit.

174. Whole Hemp did not respond to the letters.

175. Calzada did call Mr. McKnight on one occasion after receipt of these letters.

176. In this conversation, Calzada denied Whole Hemp dumped ethanal down the toilets, but admitted Whole Hemp did dump used ethanal in the yard (which is outside the area leased in the First Lease or Second Lease).

177. When McKeefe took possession of the Rocky Ford Property on March 1, 2020, Mr. McKnight was now concerned about the dumping of ethanal outside the Main Building and Drying Building.

178. In 2020, McKeefe hired an environmental company to conduct testing of the Property to determine the presence of ethanal, which was Custom Environmental Services, Inc.

(“CES”).

179. CES sent two teams of two technicians to the Rocky Ford Property to test for ethanol in the ground.

180. CES took approximately 40 samples.

181. CES sent samples of soil from their drillings to Eurofins Test America, which is a testing company located in Cedar Falls, IA.

182. CES found the presence of ethanal on the Property.

183. CES also took many tests using an aluminum swatch that also shows alcohol being present in the dirt.

184. Those samples were all positive.

185. McKeefe asked CES to prepare a rough order estimate as to the costs of environmental remediation.

186. CES estimated McKeefe needs a \$2,000,000 reserve for site characterization and remediation, which does not include costs for off-site migration or remediation.

187. Prior to Whole Hemp’s occupancy, the Rocky Ford Property had been used as USDA/FDA meat plant with an on-site USDA inspector.

188. The Rocky Ford Property received some of the highest scores from USDA audits.

189. When the Rocky Ford Property was in production, the plant equipment was washed down ever five hours.

190. McKeefe installed epoxy floors in the main production room and cooking room.

191. McKeefe painted all walls and ceilings with an approved USDA paint.

192. McKeefe put in new flooring and fixtures in the entire office area.

193. When the Rocky Ford Property was operational as a USDA/FDA meat plant, the USDA regional inspectors used conference room.

194. When McKeefe took possession of the Rocky Ford Property on March 1, 2020, McKeefe found the major destruction to the Main Building and minor destruction to the Drying Building.

195. Some of the destruction is the following:
- a. There is an odor in the building that causes a person to cough.
 - b. The floors need a new surfacing.
 - c. The chemicals that Whole Hemp used are etched into the floors.
 - d. Hundreds of bolts are sticking up from the floors.
 - e. The bolts were used to bolt down machines.
 - f. The walls and ceilings have a film of oil.
 - g. The floor drains have been filled with concrete that will need to be opened.
 - h. A large slab of concrete was poured in east production room that must be removed.
 - i. Kitchen counters are damaged, and floors warped.
 - j. Kitchen door damaged.
 - k. Office tiles broken, and carpets stained with oil.
 - l. Large insulated refrigeration door to the cooler room has been removed and is missing.
 - m. Holes were cut in refrigeration walls.
 - n. One of the overhead doors to the shop is totally gone.

196. In 2020, McKeefe requested ServPro to prepare an estimate of the cost for demolition, repair, and reconstruction based the destruction caused by Whole Hemp.

197. ServPro estimates the costs for demolition, repair, and reconstruction is \$1,070,000.

198. Due solely to actions and inactions of Whole Hemp identified above, McKeefe has been unable to rent or sell the Rocky Ford Property.

199. McKeefe will be unable to rent or sell the Rocky Ford Property until proper roof work, demolition, repair, reconstruction, site characterization and remediation are performed.

200. McKeefe and Whole Hemp entered into a Tolling Agreement that tolled the statute of limitations from August 6, 2020 through November 10, 2020.

FIRST CLAIM FOR RELIEF
(Breach of First and Second Lease)

201. McKeefe restate and incorporate by reference the allegations contained in the paragraphs above.

202. McKeefe entered into the First Lease and Second Lease with Whole Hemp.

203. McKeefe substantially performed its obligations under the First Lease and Second Lease or was excused in performance.

204. Whole Hemp breached the First Lease and Second Lease in numerous ways, including, but not limited to, the following:

- a. Using the Rocky Ford Property for unlawful purposes.
- b. Failing to obtain any and all licenses and permits deemed necessary or required by any city, county, state or federal governmental agencies.
- c. Failing to comply with all governmental laws, ordinances and regulations applicable to Whole Hemp's use of the Rocky Ford Property.
- d. Performing work to the Rocky Ford Property without McKeefe's prior written approval.

e. Making major alterations, additions or improvements to the interior or exterior of the Main Building and Drying Building without McKeefe's prior written approval.

f. Failing to maintain the Main Building and Drying Building, fixtures and appurtenances.

g. Failing to keep in good repair and condition the interior of the Main Building and Drying Building.

h. Violating Section 17 of the First Lease and Second Lease.

i. Violating Section 18 of the First Lease and Second Lease.

j. Failing to keep the Main Building and Drying Building in a clean and sanitary condition.

k. Failing to comply, at all times, with all laws, rules, regulations and ordinances which, in any manner, may effect or regulate Whole Hemp's use, occupancy and maintenance of the Main Building and Drying Building.

l. Violating Exhibit D, Section 8.

m. Boring into the walls and/or floors of the Main Building and Drying Building.

n. Using the toilet rooms, urinals, wash bowls and other apparatus for purposes other than that for which they were constructed.

o. Dumping ethanal down the toilets.

p. Failing to pay for the required property taxes.

q. Removing the fence.

r. Failing to produce a copy of the required insurance policies.

205. To the extent there is any condition precedent, McKeefe has satisfied the condition precedent.

206. These breaches of the First Lease and Second Lease have caused damages to the McKeefe, in an amount to be determined at trial, for which Whole Hemp is liable.

SECOND CLAIM FOR RELIEF

(Trespass)

207. McKeefe restates and incorporates by reference the allegations contained in the paragraphs.

208. McKeefe was and is the owner of the Rocky Ford Property at all relevant times.

209. While McKeefe leased the Main Building and Drying Building to Whole Hemp, McKeefe did not lease areas outside the Main Building and Drying Building to Whole Hemp (“Outside Areas”).

210. Whole Hemp intentionally entered upon the Outside Areas without consent in numerous ways, including, but not limited to, the following:

- a. Dumping 200,000 to 300,000 gallons of ethanal onto the Outside Areas;
- b. Creating an evaporation pond on the Outside Areas;
- c. Stealing equipment owned by McKeefe located on the Outside Areas;
- d. Destroying a monitoring well located on the Outside Areas; and
- e. Dumping hemp waste on the Outside Areas.

211. The aforementioned caused physical damage to the Outside Areas, in an amount to be determined at trial, for which Whole Hemp is liable.

THIRD CLAIM FOR RELIEF

(Civil Theft)

212. McKeefe restates and incorporates by reference the above allegations contained in the paragraphs above.

213. Whole Hemp knowingly, intentionally, and improperly took and/or retained control over property of McKeefe without authorization.

214. Whole Hemp intended to deprive McKeefe permanently of its property.

215. McKeefe have suffered damages as a result of Whole Hemp's civil theft of McKeefe's property, in an amount to be determined at trial.

216. McKeefe is entitled to recover treble damages and costs and attorneys' fees in accordance with C.R.S. § 18-4-405.

FOURTH CLAIM FOR RELIEF
(Conversion)

217. McKeefe restates and incorporates by reference the above allegations contained in the paragraphs above.

218. Whole Hemp intentionally have exercised dominion or ownership over personal property belonging to McKeefe.

219. Whole Hemp's dominion or ownership over McKeefe's personal property has seriously interfered with McKeefe's right to control its personal property.

220. McKeefe has demanded that Whole Hemp return the converted personal property.

221. Whole Hemp has refused to return the converted personal property to McKeefe.

222. McKeefe have suffered damages proximately caused by Whole Hemp's conversion of its personal property, in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF
(Fraudulent Misrepresentation)

223. McKeefe restates and incorporates by reference the above allegations contained in the paragraphs above.

224. Whole Hemp made false representations of past or present facts associated with the roof work.

225. The facts were material.

226. At the time the representations were made, Whole Hemp knew the representations were false.

227. Whole Hemp made the representations with the intent McKeeffe would rely on the representations.

228. Plaintiffs relied on the representations by reducing the rent payments.

229. McKeeffe's reliance was justified.

230. This reliance caused damages and losses to McKeeffe, in an amount to be determined at trial, for which Whole Hemp is liable.

SIXTH CLAIM FOR RELIEF

(Promissory Estoppel)

231. McKeeffe restates and incorporates by reference the above allegations contained in the paragraphs above.

232. Whole Hemp promised McKeeffe that it would perform the promised roof work through the previously identified roofing contractor in exchange for a reduction of rent.

233. Whole Hemp should have reasonably expected that its promise would induce action by McKeeffe.

234. McKeeffe reasonably relied upon Whole Hemp's promises to its detriment.

235. Whole Hemp's promises must be enforced to prevent injustice to McKeeffe.

SEVENTH CLAIM FOR RELIEF

(Unjust Enrichment)

236. McKeeffe restates and incorporates by reference the above allegations contained in the paragraphs above.

237. Pursuant to various requests from Whole Hemp, McKeeffe provided rent reduction

in exchange for Whole Hemp's promise to have roof work performed.

238. The rent reduction was provided for the benefit of Whole Hemp, and it has retained the benefits of the rent reduction provided by McKeefe.

239. To allow Whole Hemp to retain these benefits would serve to unjustly enrich Whole Hemp.

240. An implied in law contract exists between McKeefe and Whole Hemp in an amount to be proven at trial to avoid the unjust enrichment of Whole Hemp.

EIGHTH CLAIM FOR RELIEF
(Injunctive Relief)

241. McKeefe restates and incorporates by reference the above allegations contained in the paragraphs above.

242. The First Lease and Second Lease required Whole Hemp to produce insurance policies to McKeefe.

243. Whole Hemp has not done so despite numerous requests.

244. To the extent Whole Hemp may claim it does not have resources to pay for its actions and inactions outlined above, McKeefe will have to look to relief by means of the insurance policies.

245. McKeefe seeks an injunction as to the producing of such insurance policies.

246. The facts above demonstrate McKeefe has a reasonable probability of success on the merits of this action, Whole Hemp's actions have caused and will cause irreparable harm to McKeefe that cannot be adequately compensated in damages, McKeefe does not have a plain, speedy, and adequate remedy at law, the injunctive relief sought by McKeefe will not disserve the public interest, and the balance of equities favors injunctive relief.

WHEREFORE, Plaintiffs respectfully request the Court to enter and order as follows:

- A. In favor of McKeefe and against Whole Hemp on Plaintiff's First Claim for Relief for damages in an amount to be determined at trial, plus interest costs, and attorneys' fees;
- B. In favor of McKeefe and against Whole Hemp on Plaintiff's Second Claim for Relief for damages in an amount to be determined at trial, plus interest costs, and attorneys' fees;
- C. In favor of McKeefe and against Whole Hemp on Plaintiff's Third Claim for Relief for damages in an amount to be determined at trial, plus treble damages, interest costs, and attorneys' fees;
- D. In favor of McKeefe and against Whole Hemp on Plaintiff's Fourth Claim for Relief for damages in an amount to be determined at trial, plus interest costs, and attorneys' fees;
- E. In favor of McKeefe and against Whole Hemp on Plaintiff's Fifth Claim for Relief for damages in an amount to be determined at trial, plus interest costs, and attorneys' fees;
- F. In favor of McKeefe and against Whole Hemp on Plaintiff's Sixth Claim for Relief for damages in an amount to be determined at trial, plus interest costs, and attorneys' fees;
- G. In favor of McKeefe and against Whole Hemp on Plaintiff's Seventh Claim for Relief for damages in an amount to be determined at trial, plus interest costs, and attorneys' fees;

H. In favor of McKeefe and against Whole Hemp on Plaintiff's Eighth Claim for Relief for an injunction; and

I. For such other and further relief as the Court deems just and proper.

Respectfully submitted this 10th day of November, 2020.

SHERMAN & HOWARD, L.L.C.

/s/ Ryan J. Klein

Ryan J. Klein, Esq. (#37013)

SHERMAN & HOWARD, L.L.C.

90 South Cascade Avenue, Suite 1500

Colorado Springs, CO 80903

Phone: (719) 475-2440

Fax: (719) 635-4576

Email: rklein@shermanhoward.com

Attorneys for Plaintiff