

JEFF FINE  
Clerk of the Superior Court  
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----- CASE# CV2020-092308 -----  
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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
12  
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 **Copper State Herbal Center, Inc.,**  
15 **an Arizona Corporation,**  
16  
17 **Plaintiff,**  
18  
19 **vs.**  
20  
21 **The State of Arizona; Arizona Department of**  
22 **Health Services, an Arizona State Agency;**  
23 **Cara M. Christ; Tom Salow; and Colby**  
24 **Bower,**  
25  
26 **Defendants.**

**NO. CV2020-092308**  
**COMPLAINT**  
*Assigned to:*

Plaintiff, the Copper State Herbal Center, Inc., an Arizona Corporation, ("Copper State") by and through counsel undersigned, for its for its Complaint alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Copper State is an Arizona corporation with its principal place of business in Tucson, Pima County, Arizona.
2. Defendant the State of Arizona
3. Defendant Arizona Department of Health Services is an Arizona State agency.

1 4. Defendant Director Cara M. Christ is, on information and belief, a resident of  
2 Maricopa County, Arizona.

3 5. Defendant Deputy Assistant Director of Licensing Tom Salow is, on  
4 information and belief, a resident of Maricopa County, Arizona.

5 6. Defendant Assistant Director of Policy and Intergovernmental Affairs Colby  
6 Bower is, on information and belief, a resident of Maricopa County, Arizona.

7 7. Jurisdiction in this Court is proper because Defendants conduct or reside  
8 business in Maricopa County, Arizona, and all matters relevant to these proceedings  
9 occurred in Maricopa County, Arizona.

10 8. This Court has original jurisdiction.

11 9. Venue is proper pursuant to A.R.S. §§ 12-401(1) and 12-401(5).

12 10. The Court has personal jurisdiction over the parties on account of the actions  
13 alleged herein.

14 **FACTUAL ALLEGATIONS**

15 11. Copper State holds a medical marijuana dispensary registration certificate  
16 issued by AZDHS, No. 00000058DCQU00115543.

17 12. Copper State operates a Dispensary in Tucson and prior to November 9, 2018  
18 operated an off-site cultivations facility in Phoenix.

19 13. Copper State terminated the Authority to Operate for the Phoenix offsite  
20 cultivation facility on November 9, 2018.

21 14. This site was contractually managed by an entity called True Harvest, LLC  
22 ("True Harvest").

23 15. On September 6 and 9, 2018, AZDHS conducted two surprise, meaning  
24 without prior notice, inspections of Copper State's off-site cultivation facility, which was  
25 run by True Harvest.

26 16. The surprise inspections arose from information received by AZDHS  
27 employee Estella Lugo from her second cousin, Anna Robinson, whose husband had  
28 applied to work at True Harvest. Ms. Lugo has destroyed all evidence of her conversations

1 with Ms. Robinson.

2 17. During an interview, Ms. Robinson's husband showed knowledge regarding  
3 previous compliance issues at True Harvest that Ms. Lugo improperly told him and/or his  
4 wife.

5 18. These searches were prohibited pursuant to the limited circumstances that  
6 AZDHS may inspect dispensaries allowed by the Arizona Medical Marijuana Act  
7 ("AMMA").

8 19. "Registered nonprofit medical marijuana dispensaries are subject to  
9 reasonable inspection by the department. The department shall give reasonable notice of an  
10 inspection under this subsection." A.R.S. § 36-2806(H). "A registered nonprofit medical  
11 marijuana dispensary is not subject to prosecution; search or inspection, except by the  
12 department pursuant to section 36-2806, subsection h." A.R.S. § 36-2811(E).

13 20. The Statement of Deficiencies received by Copper State from AZDHS dated  
14 September 2019 and later delivered to Copper State alleges that during the illegal searches,  
15 AZDHS personnel claimed to observe that there were employees working without  
16 dispensary agent cards (that employees must have to work there) at True Harvest, that True  
17 Harvest failed to document and report the theft of medical marijuana, that the True Harvest  
18 facility was left unlocked by personnel coming and going from the facility, that the True  
19 Harvest facility had insufficient security cameras, that True Harvest employees failed to  
20 wear proper personal protection equipment, and that the True Harvest facility was not clean  
21 and sanitary.

22 21. There is no evidence that Copper State was aware of any of these violations,  
23 while there is evidence that Copper State was actively misled by True Harvest in how True  
24 Harvest was running the facility. In a clear violation of Copper State's Due Process rights,  
25 AZDHS mandated that Copper State not to respond to the Statement of Deficiencies. The  
26 Department's own regulations mandate that the license holder must be given an opportunity  
27 to file a response to the Statement of Deficiencies. A.A.C. R9-17-309(E)(2).  
28

1           22. Copper State and True Harvest are currently engaged in litigation, where  
2 additional evidence that True Harvest actively misled Copper State regarding its operations,  
3 and purposefully ignored directions from Copper State, has recently been uncovered.

4           23. On October 16, 2018, AZDHS instituted the Case to revoke Copper State's  
5 dispensary registration certificate. The sole alleged bases for the Case all rely on the  
6 inadmissible evidence adduced during the illegal searches of the True Harvest run off-site  
7 cultivation facility in September 2018. AZDHS instituted the Case without statutory  
8 authority. Currently, AMMA only allows revocation when a dispensary transfers medical  
9 marijuana to or from a person that is not another registered dispensary, qualified patient, or  
10 registered patient's registered caregiver. A.R.S. §§ 36-2815, -2816. None of the violations  
11 allegedly observed by AZDHS personnel at True Harvest in September 2018 related to the  
12 illegal transfer of medical marijuana. In fact, there never was an improper transfer as True  
13 Harvest had properly filed a police report when some marijuana was discovered missing.

14           24. AZDHS knew in October 2018, and knows today that it overstepped its  
15 authority in seeking to revoke Copper State's dispensary registration certificate. In March  
16 2019, during the time period that the revocation proceedings had just begun in front of the  
17 Office of Administrative Hearings, Copper State became aware that there were three 2019  
18 bills pending in the Arizona Legislature (H.B. 2537, S.B. 1222, S.C.R. 1021) that either  
19 gave AZDHS the power to inspect dispensaries without notice, expanded AZDHS's ability  
20 to revoke dispensaries' registration certificates, or both.

21           25. Further, a recent report by the Arizona Auditor General dated June 25, 2019  
22 clearly stated that: (1) AZDHS failed to follow proper procedures and was wildly  
23 inconsistent in enforcing the regulations during inspections; (2) AZDHS could not conduct  
24 inspections without prior notice; and (3) AZDHS could not revoke a dispensary registration  
25 except for an illegal transfer by a dispensary until August 27, 2019. AZDHS did not dispute  
26 any of these findings and conclusions by the Auditor General, and actually agreed that  
27 AZDHS did not have statutory authority to conduct unannounced visits.

28

1           26. Pre-hearing filings regarding the revocation for hearings in front of the Office  
2 of Administrative Hearings were due on March 6, 2019. In light of its view that this was the  
3 point of no return in the revocation proceedings, Copper State alleges that this was the date  
4 its claims accrued against the State of Arizona.

5           27. On June 29, 2019, Copper State served on AZDHS and the Office of the  
6 Attorney General a Notice of Claim by personal service, all in full compliance with A.R.S.  
7 § 12-821.01.

8           28. In light of these significant problems with AZDHS's process, and after  
9 consideration of the evidence heard during the OAH hearings, Administrative Law Judge  
10 Diane Mihalsky recommended that Copper State pay a civil penalty of \$10,000 to AZDHS  
11 in an order dated October 24, 2019.

12           29. Despite this reasonable recommendation, AZDHS modified that  
13 recommendation, revoking Copper State's dispensary certificate in an order dated  
14 November 22, 2019 and received by counsel for Copper State on November 27, 2019.

15           30. That revocation is currently on appeal to the Superior Court of Arizona,  
16 Maricopa County.

17           31. The Superior Court has stayed revocation of Copper State's dispensary  
18 certificate pending resolution of the appeal because "the investigation conducted by the  
19 Department was not permitted by applicable law, which invalidates any proceeding based  
20 on what that investigation uncovered, including the Department's decision to revoke Copper  
21 State's registration certificate."

22           32. Thus, Despite the evidence adduced at trial and these additional undisputed  
23 findings that AZDHS has no legal basis from which to continue to pursue this matter,  
24 AZDHS, as directed by these individuals in a vendetta against Copper State, insists on  
25 continuing a process that, by law, it will not win.

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**COUNT I**

**(Abuse of Process)**

29. Plaintiff repeats and realleges the foregoing paragraphs as if they are fully restated herein.

30. AZDHS and its named employees have willfully abused the OAH and revocation process because they know that AZDHS cannot legally under existing law revoke Copper State's dispensary registration certificate.

31. Copper State hereby alleges that AZDHS and its employees have intentionally acted in this manner and intentionally ignored AZDHS's statutory limitations in violation of Copper State's due process and legal rights in a vendetta to put Copper State out of business, ignoring the impropriety of the method used to do so, or for some other improper purpose.

32. To date, Copper State has incurred improper interference with the conduct of its business plus hundreds of thousands of dollars in legal fees and costs in defending the Case and in the preparation of these claims.

33. Should Copper State's dispensary registration be revoked, it stands to lose millions of dollars in lost revenue and business value.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Copper State prays for the entry of judgment in its favor and against Defendants as follows:

- A. Pursuant to Counts One, for an award of damages in an amount to be proven at trial;
  - B. For an award of Plaintiff's costs and attorneys' fees incurred herein pursuant to A.R.S. § A.R.S. §§ 12-341, 12-341.01;
  - C. For pre-judgment interest and post-judgment interest at the maximum rate allowable by law; and
  - E. For an award of damages to Plaintiff in an amount to be determined at trial;
- and


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F. For an award of such other and further relief as the Court deems proper.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of March, 2020.

UDALL LAW FIRM, LLP

By   
Thomas D. Laue  
Bret S. Shaw  
Attorneys for Defendant