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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

TRUE HARVEST, LLC, an Arizona limited liability company,

Plaintiff,

vs.

THE COPPER STATE HERBAL CENTER, INC., a non-profit Arizona corporation; BRYAN W. HILL, an individual; SUSAN CAROL MAPLE, an individual; and CARA CHRIST, in her official capacity as Director of the Arizona Department of Health Services,

Defendants.

Case No.: CV 2018-014051

**APPLICATION FOR ORDER TO SHOW CAUSE HEARING**

(Eligible for Commercial Court)

Plaintiff TRUE HARVEST, LLC, by and through undersigned counsel, and pursuant to Rules 6(d) and 65 of the Arizona Rules of Civil Procedure, hereby request that this Court issue an Order requiring Defendants THE COPPER STATE HERBAL CENTER, INC. ("Copper State"), BRYAN W. HILL, SUSAN CAROL MAPLE, (collectively, Copper State, Hill and Maple are also "Copper State"), and CARA CHRIST, in her official capacity as Director of the Arizona Department of Health Services ("ADHS") (collectively, the

1 foregoing are all “Defendants”) to appear at a hearing and show cause why Plaintiff’s request  
2 for injunctive relief, as more fully detailed in Plaintiff’s verified Complaint, should not be  
3 granted.

4 This Application is supported by the following Memorandum of Points and  
5 Authorities, Plaintiff’s verified Complaint, and the entire file in this matter, all of which are  
6 incorporated herein by reference.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. APPLICATION FOR INJUNCTIVE RELIEF**

9 Immediate injunctive relief is necessary and appropriate in this matter because Copper  
10 State seeks to improperly use the power of ADHS to regulate medical marijuana in this State  
11 to effectuate a civil remedy in a contract dispute for which Copper State is required by  
12 contract to mediate and/or arbitrate. Specifically, Copper State has asked ADHS to  
13 “decertify” True Harvest as Copper State’s certified cultivation site so that it can then swoop  
14 in under the auspices of the AMMA to take possession and ownership of millions of dollars’  
15 worth of medical marijuana plants and products in inventory at the Buckeye Facility –  
16 inventory that Copper State played no role in creating – all because Copper State and True  
17 Harvest disagree on how much money True Harvest owes Copper State on two contracts.  
18 Furthermore, immediate injunctive relief is necessary and appropriate because ADHS, if it  
19 acts on Copper State’s decertification request – a request that breaches the agreements  
20 between the parties – will be using its powers abusively to meddle in a civil matter between  
21 two non-governmental entities, and will also be causing a governmental taking of private  
22 property without just compensation.

1 **II. THE FACTUAL BACKGROUND AND THE UNDERLYING LEGAL BASIS**  
2 **FOR THIS CAUSE OF ACTION**

3 The facts are as set out in the verified Complaint. The legal basis for this cause of  
4 action, that the Arizona Department of Health Services, with an assist from the other three  
5 defendants, is affecting a taking of private property without just compensation, is also set out  
6 in the verified Complaint.

7 **III. THE LAW ON PRELIMINARY INJUNCTIONS AND TEMPORARY**  
8 **RESTRAINING ORDERS**

9 This Court has the authority to grant injunctive relief pursuant to Rule 65 of the  
10 Arizona Rules of Civil Procedure. In order to obtain such relief, Plaintiff must establish: (1)  
11 a strong likelihood that it will succeed at trial on the merits; (2) the possibility of suffering  
12 irreparable injury if the requested relief is not granted; (3) that the balance of hardships  
13 favors Plaintiff; and (4) that public policy favors the injunction. *Arizona Assoc. of Providers*  
14 *for Persons with Disabilities v. State*, 223 Ariz. 6, 12 (App. 2009) (internal citations and  
15 quotations omitted); *Schoen v. Schoen*, 167 Ariz. 58, 63 (App. 1990).<sup>1</sup>

16 A court applying this standard may apply a “sliding scale.” In other words, the  
17 moving party may establish either: (1) probable success on the merits and the possibility of  
18 irreparable injury; or (2) the presence of serious questions and that the balance of hardships  
19 tips sharply in favor of the moving party. *Arizona Assoc. of Providers for Persons with*  
20 *Disabilities*, 223 Ariz. at 12.

21  
22  
23 <sup>1</sup> If the balance of hardships tips decidedly towards Plaintiff, then they need not show “a  
24 robust likelihood of his success on the merits,” but need only show “a fair chance of success  
25 on the merits” or “questions . . . serious enough to require litigation.” *Justice v. National*  
*Collegiate Athletic Assoc.*, 577 F. Supp. 356, 362 (D. Ariz. 1983).

1 Temporary restraining orders are issued to prevent irreparable injury by preserving  
2 the status quo long enough to conduct a hearing on the preliminary injunction. *Granny*  
3 *Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974).

4 **A. The Grounds for a Temporary Restraining Order**

5 This is a cause of action that is practically a text book example for issuing a  
6 temporary restraining order. In this case, the Buckeye Facility, which is full of maturing  
7 medical marijuana plants and is operated by more than 36 full-time employees, is about to go  
8 from a fully licensed, lawful medical marijuana cultivation site under Arizona law to an  
9 unlicensed facility exposed to potential criminality under state and federal law.

10 The ramifications of this transmogrification are stark. The Arizona Medical  
11 Marijuana Act, A.R.S. § 36-2801 *et seq.* (the “AMMA”), provides protection against state  
12 and federal criminal felony prosecution that otherwise might ensue for those who  
13 manufacture and sell medical marijuana. But of course, any person or entity must be  
14 operating with the proper ADHS licenses in order to fall within the protection of the AMMA.

15 As stated in the verified Complaint, on 8 November 2018, Copper State requested  
16 ADHS to decertify the Buckeye Facility as its licensed cultivation site effective at 9:00 a.m.  
17 on 9 November 2018 – this was without any advance notice to True Harvest and *after* True  
18 Harvest notified Copper State on 7 November 2018 that it had a new dispensary partner and  
19 wanted to begin the process of lawfully transferring the marijuana plants and products at the  
20 Buckeye Facility to its new dispensary partner. As of time of this filing, True Harvest’s new  
21 dispensary party has not filed the necessary paperwork to begin the process of approving the  
22 new dispensary partner and transferring the plants and products with ADHS because Copper  
23 State’s actions have cast a cloud over the Buckeye Facility’s legal status and the Department  
24 State’s actions have cast a cloud over the Buckeye Facility’s legal status and the Department  
25

1 has not indicated to Copper State or True Harvest the current legal status of the Buckeye  
2 Facility (i.e., whether it is still certified or not, and whether, regardless of the status of the  
3 Copper State ATO, the new dispensary ATO can be processed). Yet, at 9:00 a.m. on 9  
4 November 2018, Copper State showed up at the Buckeye Facility with armed police, two U-  
5 Haul trucks and a wood-chipper to remove and destroy millions of dollars' worth of  
6 inventory from the Buckeye Facility.  
7

8 As it currently stands, True Harvest believes it is properly licensed as a medical  
9 marijuana dispensary cultivation site by ADHS. Pursuant to the AMMA, for each  
10 dispensary license, in addition to being able to operate a retail dispensary and one onsite  
11 cultivation operation, the license holder is also entitled to operate one off-site cultivation site,  
12 subject to the Department's ministerial approval. While a dispensary can only operate one  
13 additional off-site cultivation facility, nothing in the AMMA prevents a commercial  
14 cultivator from being associated with more than one dispensary.  
15

16 Plaintiff has operated the Buckeye Facility as a cultivation site for Copper State since  
17 2015. It recently entered into a contract to serve as the cultivation site for another registered  
18 dispensary. Copper State's wrongfully notice to ADHS to decertify the Buckeye Facility  
19 before ADHS has issued an ATO for the Buckeye Facility to operate as a cultivation site for  
20 True Harvest's new dispensary partner puts that entire process and opportunity at risk.  
21 Moreover, if ADHS were to decertify True Harvest from Copper State before processing the  
22 request to add the new dispensary to True Harvest, it would leave the plants and products at  
23 the Buckeye Facility in a dangerous state of potential felony criminal exposure.  
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25

1 Plaintiff has a new dispensary partner standing ready to submit the proper application  
2 for ADHS to certify the Buckeye Facility as the cultivation site for that new dispensary  
3 partner. But as of the time of this filing, ADHS has not communicated its position on the  
4 current status of the Buckeye Facility and whether or not it would accept and process the  
5 new dispensary partner's application to approve the Buckeye Facility as its cultivation site.  
6 Also, the Department has not issued any written acknowledgement of the acceptance of  
7 Copper State's attempted decertification of the Buckeye Facility, or the facility's status as a  
8 result of Copper State's attempt to prematurely decertify the Buckeye Facility. These  
9 matters are still presumably undergoing substantive review by the Department, but in the  
10 meantime, True Harvest remains in legal limbo because of the uncertainty caused by Copper  
11 State's notice of decertification, and its cancellation of True Harvest's employee's DA cards  
12 and its access to MJ Freeway, the system utilized to track production and sales of medical  
13 marijuana.  
14

15 True Harvest asked Copper State to rescind its notice of decertification, and it has  
16 asked ADHS to not process that notice and to maintain True Harvest's certification to  
17 operate the Buckeye Facility until 12:01 a.m. on 3 January 2019, as Copper State previously  
18 agreed to do, or until ADHS certifies that facility as the cultivation site for True Harvest's  
19 new dispensary partner, whichever occurs first, to allow for an orderly and legal transition of  
20 the Buckeye Facility to a new dispensary partner. These requests have not been either  
21 granted or denied by either Copper State or ADHS.  
22

23 All Plaintiff seeks to do is preserve the status quo as of 7 November 2018 until this  
24 Court can rule on its request for a preliminary injunction. However, all of this would be  
25

1 mooted if the Department indicates that will complete the ministerial act of approving the  
2 certification of the Buckeye Facility for the new dispensary partner. To be fair, there are  
3 timelines set by the Arizona Administrative Code within which the Department must act, and  
4 the Department is still within the relevant timeline, but Copper State has already displayed  
5 its willingness to enrich itself at True Harvest's expense by using the AMMA as both a  
6 sword and shield, and by using an agency of the State to do its dirty work. A temporary  
7 restraining order would permit this certification matter to run its course without causing  
8 irreparable harm to Plaintiff and others, as described below.  
9

10 **B. The Grounds for a Preliminary Injunction**

11 In this case, True Harvest meets its burden for obtaining a preliminary injunction  
12 under both of the two ways of obtaining such relief.

13 The first avenue for a moving party is "probable success on the merits and the  
14 possibility of irreparable injury". *Arizona Assoc. of Providers for Persons with Disabilities*,  
15 223 Ariz. at 12.

16 Here, the State of Arizona would be destroying True Harvest's property without just  
17 compensation and without an appropriate legal justification if it were to decertify True  
18 Harvest's Buckeye Facility as Copper State's cultivation site without simultaneously  
19 approving the Buckeye Facility as the cultivation site for its new dispensary partner.  
20 Additionally, Copper State, in spite of its prior agreement to keep the Buckeye Facility as its  
21 cultivation until 12:01 a.m. on 3 January 2019 in order to support a smooth and orderly  
22 transfer of True Harvest's inventory to its new dispensary partner, refuses to rescind its  
23 November 2018 decertification request. True Harvest's only alternative to destruction of the  
24  
25

1 plants or turning the keys of the Buckeye Facility over to Copper State, would be to not  
2 destroy the plants and risk criminal felony prosecution. Additionally, since Copper State has  
3 also presumably revoked all of True Harvest's employees DA cards, the plants will die, if  
4 nothing else through inaction because no person will have lawful authority to enter the  
5 facility or possess the plants, and therefore they cannot be cared for, though arguably the  
6 owner of the Buckeye Facility, True Harvest, still possesses the plants whether present or  
7 not.  
8

9 The irreparable injury here is palpable—the threat of prosecution and the devastating  
10 loss of 46,000 square feet of repurposed industrial space filled with growing medical  
11 marijuana plants, as well as the loss of an entire workforce in the area. In this industry,  
12 neither jobs nor capable employees are as plentiful as one might think, and this type of a loss  
13 is simply not adequately remediable by damages and is irreparable. Capable employees  
14 cannot afford to, have not, and will not, wait around.  
15

16 The second avenue to justify a preliminary injunction is to show “the presence of  
17 serious questions and [that] the balance of hardships tip[s] sharply in favor of the moving  
18 party.” *Id.* It cannot be denied that True Harvest has raised serious questions. This is a  
19 situation that could be one of first impression in Arizona, which is what happens when legal  
20 plants become illegal once the clock strikes 9:00 on a particular day and a license-holding  
21 dispensary holds it contract cultivation site hostage over a contract dispute with threats of  
22 decertification. It is unclear whether the Department has dealt with such a situation as this,  
23 and it certainly appears to be one of first impression for Arizona courts.  
24  
25



1 In addition, it is hard to imagine how the balance of hardships might tip any more  
2 sharply in favor of True Harvest here. The hardship to True Harvest is spelled out above and  
3 in more detail in the verified Complaint. It is unclear what, if any, hardship the Department  
4 or Copper State would suffer simply by allowing a small additional amount of time for this  
5 licensing issue to be resolved or for the Department to process the paperwork to transfer  
6 True Harvest's plants and products to its new dispensary partner.  
7

#### 8 **IV. THE EFFORTS TO APPRISE COUNSEL FOR DEFENDANTS**

9 True Harvest's counsel emailed counsel for all the Defendants last night, informing  
10 them of True Harvest's intention to seek injunctive relief, and emailed all of them the  
11 pleadings this afternoon. Counsel attempted to speak to Copper State's counsel last night but  
12 had to leave a voice message, which was then followed up on with an email but no return  
13 call.

14 The Defendants are already aware of this issue as there have been ongoing  
15 discussions on it, as well as the request to allow the current Buckeye Facility license to  
16 remain in effect until 12:01 a.m. on 3 January 2019. However, Plaintiff submits that given  
17 the gravity of the situation, and the highly questionable nature of any harm to the  
18 Defendants, if necessary, a temporary restraining order should be granted without notice<sup>2</sup>.  
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21 <sup>2</sup> Rule 65(b)(1), Ariz. R. Civ. P. states that "the court may issue a temporary restraining order  
22 without written or oral notice to the adverse party only if: (A) specific facts in an affidavit or  
23 a verified complaint clearly show that immediate and irreparable injury, loss, or damage will  
24 likely result to the movant before the adverse party can be heard in opposition, or that prior  
25 notice will likely cause the adverse party to take action resulting in such injury, loss, or  
damage; and (B) the movant's attorney certifies in writing any efforts made to give notice or  
the reasons why it should not be required."

1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiff asks that this Court enter the requested  
3 show cause order, set a hearing on this matter as promptly as possible, and in the meantime  
4 issue a temporary restraining order to prevent the chaotic situation that is already ensuing  
5 and likely to only get worse without such a temporary restraining order. The facts and the  
6 law cry out for this extraordinary remedy in this case.

7 DATED this 13<sup>th</sup> day of November 2018.

8 **BEUS GILBERT PLLC**

9  
10 By /s/ Thomas A. Connelly

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