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DISTRICT COURT, DENVER COUNTY COLORADO Court Address: 1437 Bannock St # 256 Denver, CO 80202	
Plaintiff: BRANDAN FLORES and BRANDIE LARRABEE, individually and on behalf of all others similarly situated, v. Defendant: LIVWELL, INC., a Colorado corporation, and JOHN DOES 1-10.	▲ **COURT USE ONLY** ▲
Name: Robert J. Corry, Jr. #32705 Matthew W. Buck, #44170 Address: 437 West Colfax Ave., Suite 300 Denver, CO 80204 Telephone: 303-634-2244 Facsimile: 720-420-9084 Email: Rob@RobCorry.com Buck@RobCorry.com Name: Steven L. Woodrow #43140 Patrick H. Peluso #47642 Address: 3900 East Mexico Ave., Suite 300 Denver, CO 80210 Phone Number: 720-213-0675 email: swoodrow@woodrowpeluso.com ppeluso@woodrowpeluso.com	**Case Number:** **Ctrm.:**

PLAINTIFFS' CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

I. NATURE OF THE CASE

1. This lawsuit challenges Defendant LivWell, Inc.'s ("LivWell" or

"Defendant") use and application of Eagle 20—a dangerous fungicide that ultimately breaks down into hydrogen cyanide, a well-known poison, when it is heated with a standard cigarette lighter—that LivWell intentionally sprayed on its cannabis plants and sold to medical and recreational marijuana customers, without adequately apprising them of that fact.

2. With its voters' landmark decisions to become one of the first states to legalize both medical and recreational cannabis, Colorado has witnessed a veritable explosion in the number of cannabis grow operations, marijuana dispensaries, retail outlets, and other cannabis-based businesses engaged in the cannabis trade. Indeed, in addition to producing jobs and lucrative tax revenue,[1] Colorado's cannabis experiment has proven to be a remarkable success for many participants.

3. Like many emerging markets, however, Colorado's marijuana trade has not been issue-free. Meeting the Colorado market's seemingly-insatiable demand for cannabis and associated products has proven to be difficult for some. That is, as the industry has undergone its unprecedented and rapid growth, problems have arisen within the operations of marijuana growers who are attempting to produce and harvest plants on previously-untested scales, often

[1] http://www.theguardian.com/us-news/2015/sep/21/colorado-marijuana-tax-revenues-2015 (last visited September 20, 2015) (explaining that Colorado's marijuana medical and recreational combined tax revenues are on pace for $125 million in 2015, up from $73.5 million in 2014).

indoors. One persistent issue facing such growers is the increased prevalence of parasites, fungus, mites, bacteria, powdery mildew, and other biological agents that can infect or infest the plants themselves. Such agents can overtake entire rows and groups of plants, harming the production capacity of the plants or render the plants unmarketable. As such, ridding their grows of such agents has become a top priority for the region's largest marijuana manufacturers.

4. To combat such parasites and intruders, marijuana growers such as Defendant LivWell have turned to a variety of pesticides, fungicides, and other chemicals designed to kill or reduce the presence of fungus, mites, molds and other issues. Unfortunately for consumers, however, in the for-profit businesses' zeal to rid their plants of these biological issues, certain cannabis growers and producers—including LivWell—have applied Eagle 20 to their plants.

5. Eagle 20 is dangerous for humans and is not approved for use with tobacco products. When it is heated with a standard cigarette lighter, it breaks down and releases hydrogen cyanide. As such, persons who smoke cannabis that has been sprayed with Eagle 20 inhale the poisonous hydrogen cyanide.

6. Plaintiffs Brandan Flores ("Flores") and Brandie Larrabee ("Larrabee") (collectively referred to as the "Plaintiffs") bring this Class Action Complaint to stop Defendant's practice of using Eagle 20 and to obtain redress—

including compensation for all amounts overpaid—for all persons injured by Defendants' conduct. Plaintiffs Flores and Larrabee, for their Class Action Complaint, allege as follows upon personal knowledge as to themselves and their own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.

II. PARTIES

7. Plaintiff Flores is a natural person and domiciled in the State of Colorado, County of Denver. Flores made at least one recreational cannabis purchase from LivWell between January 2015 and April 2015.

8. Plaintiff Larrabee is a natural person and domiciled in the State of Colorado, County of Mesa. Ms. Larrabee has a brain tumor and made at least one medical cannabis purchase from LivWell between January 2015 and April 2015.

9. Defendant LivWell, Inc. is a Colorado corporation with its principal office street address as 2647 8th Avenue, Unit B, Garden City, CO 80631, United States and its principal office mailing address as 4701 Marion Street, Suite 100, Denver CO 80216. LivWell operates eleven (11) retail marijuana dispensaries and one of the largest cannabis grow facilities in the world. It projects that its 2015

revenue will exceed $80 million.[2] LivWell does business throughout the State of Colorado, including in Denver County.

10. Defendant John Does are LivWell subsidiaries, affiliates, partners, joint venturers, and other legal associations or entities owned or controlled by LiveWell who may also have liability for the marijuana sales at issue in this Complaint.

III. JURISDICTION & VENUE

11. This is an action seeking damages and injunctive and declaratory relief based on Defendant's use of Eagle 20 and its failure to disclose the same to consumers as violations of the common law. Jurisdiction is proper in this District Court, as it is a court of general jurisdiction.

12. Venue is proper in Denver County, Colorado, as Defendant's principal place of business is in Denver County, Plaintiff Flores purchased his marijuana from Defendant in Denver County, and many of the operative facts giving rise to Plaintiff's complaint occurred within Denver County.

IV. COMMON ALLEGATIONS OF FACT

A. November 7, 2000: Voters Approve Amendment 20, Allowing for

[2] J. Schroyer, "Expansion, Pesticides and Colorado's Marijuana Tax Holiday: Q&A With LivWell Owner John Lord," *available at* URL http://mjbizdaily.com/expansion-pesticides-and-colorados-marijuana-tax-holiday-qa-with-livwell-owner-john-lord/ (last visited September 20, 2015).

the Lawful Use of Medical Marijuana.

13. In November 2000, Colorado voters approved Amendment 20, which allows the use of cannabis for patients with written medical consent. CO Const. art. XVIII, §14 (2001). Under this constitutional provision, patients who have been diagnosed with a "debilitating medical condition" may possess two ounces of medicinal cannabis and may cultivate six cannabis plants, or greater amounts if medically necessary.[3]

14. Under the State Constitution, "debilitating medical condition" means:

> I. Cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome, or treatment for such conditions
> II. A chronic or debilitating disease or medical condition, or treatment for such conditions, which produces, for a specific patient, one or more of the following, and for which, in the professional opinion of the patient's physician, such condition or conditions reasonably may be alleviated by the medical use of marijuana: cachexia; severe pain; severe nausea; seizures, including those that are characteristic of epilepsy; or persistent muscle spasms, including those that are characteristic of multiple sclerosis…or
> III. [a]ny other medical condition, or treatment for such condition, approved by the state health agency, pursuant to its rule making authority or its approval of any petition submitted by a patient or physician as provided in this section.

CO Const. art. XVIII, §14(1)(a)(I)-(III) (2001).

15. Colorado medical cannabis patients may obtain their cannabis from

[3] https://en.wikipedia.org/wiki/Drug_policy_of_Colorado (last visited September 21, 2015).

themselves, other patients, a recognized caregiver, or a private, for-profit business, usually called a dispensary, and legally termed a "Center." *See* Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101 *et. seq*. Dispensaries/Centers in Colorado, including those owned and operated by Defendant LivWell, offer a range of cannabis strains with different qualities, as well as various "edibles" or food products that contain cannabis.

16. Following their diagnosis by a licensed physician, medical marijuana purchasers like Plaintiff Larrabee apply for their medical marijuana licenses and receive identification cards. Such cards (which are commonly known as "Red Cards", though more recent iterations have departed from the red coloring) are presented and "scanned" at dispensaries when medical cannabis purchases are consummated, as required by State Law. See C.R.S. §§ 12-43.3-701; 12-43.3-901(d). As such, dispensaries like Defendant LivWell should have records of all medical marijuana purchases and sales.

B. November 2012: Amendment 64 and Colorado's "Green Rush."

17. On November 6, 2012, Colorado voters approved Colorado Amendment 64, essentially legalizing cannabis for recreational use across the State, purportedly in a manner similar to alcohol (although it may not be consumed in public). CO Const. art. XVIII, §16(1)(a)(I)-(III) (2001).

18. Amendment 64 also provides for licensing of cultivation facilities, product manufacturing facilities, testing facilities, and retail stores, CO Const. art. XVIII, §16(4), and calls for the establishment of a comprehensive regulatory scheme. CO Const. art. XVIII, §16(5)(a) ("Not later than July 1, 2013, the department shall adopt regulations necessary for implementation of this section. Such regulations shall not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable….")

19. In accordance with these directives, on May 28, 2013 Governor Hickenlooper signed legislation implementing the recommendations of the Task Force on the Implementation of Amendment 64, and on September 9, 2013, the Colorado Department of Revenue adopted final regulations for recreational marijuana establishments, implementing the Colorado Retail Marijuana Code (HB 13-1317). On September 16, 2013, the Denver City Council adopted an ordinance for retail marijuana establishments.[4]

[4] *Ibid*.

20. The result has been a veritable "Green Rush."[5] When combined with medical marijuana, legal marijuana was a $700 million dollar industry in Colorado in 2014, as Colorado retailers sold $386 million of medical marijuana and $313 million for purely recreational purposes. The two segments of the market generated $63 million in tax revenue, with an additional $13 million collected in licenses and fees.[6]

21. 2015 is projected to nearly double such figures, with estimates of state tax revenues from the sale of marijuana exceeding $125 million.[7] The pace of the growth cannot be disputed. In the two years that recreational cannabis has been available for purchase, state tax revenues from marijuana sales already outpace those from the sale of alcohol. Indeed, according to recent financial data, for the

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[5] *See* A. Maqbool, "Legal marijuana: Colorado's 'Green Rush'", Aug. 2, 2014, *available at* http://www.bbc.com/news/world-us-canada-28612396 (last visited September 22, 2015) ("Earlier this year, Colorado made history by becoming the first US state to sell marijuana legally. Since then, the number of businesses offering a wide range of pot experiences has exploded, and some foresee a "Green Rush"); *see also* D. Roberts, "Colorado's unregulated marijuana grow sites persist despite legal 'green rush,'" May 23, 2014, *available at* URL http://www.theguardian.com/world/2014/may/23/colorado-unregulated-marijuana-green-rush (last visited September 22, 2015).

[6] C. Ingraham, "Colorado's legal weed market: $700 million in sales last year, $1 billion by 2016," Feb. 12, 2015, *available at* URL http://www.washingtonpost.com/news/wonkblog/wp/2015/02/12/colorados-legal-weed-market-700-million-in-sales-last-year-1-billion-by-2016/

[7] R. Grenoble, "Revenue From Colorado Marijuana Tax Expected To Double In 2015," "http://www.huffingtonpost.com/entry/colorado-marijuana-tax-revenue-2015_560053c4e4b00310edf806d3 (further explaining that "the number of stores licensed to sell recreational marijuana has greatly increased, from only a handful when retail sales began on Jan. 1, 2014, to nearly 400 now.") (last visited September 22, 2015).

yearlong period of July 2014 to June 2015, marijuana taxes netted the State of Colorado almost $70 million, while alcohol brought in just under $42 million—despite Colorado's reputation for being home to more breweries per person than almost every other State.[8]

22. Measured another way, in 2014, 4,815,650 units of marijuana edibles were sold 1,964,917 units on the medical side and 2,850,733 recreationally. The numbers on cannabis flower sales in 2014 showed 109,578 pounds sold (54.79 tons), and a growing recreational market, with 38,660 pounds sold. 2015 numbers are expected to dwarf such figures.[9]

23. Put simply, with both medical and recreational cannabis now legal in Colorado, business is booming.

C. As production demands increase, cannabis producers like LivWell have frequently turned to chemical cocktails to combat against unwanted biological infestations and other agents.

24. Whereas several years ago growing cannabis was rarely performed indoors (at least on a massive scale), today tens of thousands (if not hundreds of

[8] D. Young, "Colorado ranks among top states for most breweries per person," Apr. 25, 2013, *available at* URL http://archive.coloradoan.com/article/20130425/BREWERY/304250031/Colorado-ranks-among-top-states-most-breweries-per-person (last visited September 22, 2015).

[9] J. Steffen, "Appetite for edibles in Colorado big surprise for recreational market," Dec. 26, 2014, *available at* URL http://www.thecannabist.co/2014/12/26/marijuana-edibles-colorado-recreational-sales/26100/ (last visited September 22, 2015).

thousands) of plants are grown together in massive warehouse farming operations with tens of thousands (or more) plants housed in a single building or complex.

25. Defendant LivWell's primary cultivation facility, a giant warehouse located in Denver, Colorado, is one of the largest grows in the country, with thousands of flowering marijuana plants.[10]

26. Mass production of cannabis on such a scale and under such conditions has led to natural and foreseeable problems for marijuana growers, including protecting the plants from agents such as spider mites, mold, powdery mildew, fungus, gnats, roundworms/eelworms, and diseases and plant viruses.

27. To combat such issues, growers, including LivWell, have used a combination of chemicals and other substances designed to rid the plants of fungus, mold, and other biological or natural agents.

D. LivWell used Eagle 20—a patently dangerous fungicide that releases hydrogen cyanide when burned while smoking cannabis—in the first quarter of 2015 and likely for many months, if not years, earlier.

28. This case challenges the use of one seriously dangerous fungicide used by LivWell in at least the first three months of 2015 and potentially for months prior to that period of time: Eagle 20.

[10] D. Migoya and R. Baca, "Denver quarantines marijuana products at two businesses for pesticides," Sept. 1, 2015 *available at* URL http://www.denverpost.com/news/ci_28741294/denver-quarantines-marijuana-products-at-two-businesses-pesticides (last visited September 22, 2015).

29. The key chemical and active ingredient in Eagle 20 is myclobutanil, a systemic anti-fungal agent. That is, when myclobutanil is applied to foliage, it is readily absorbed into the circulatory system (the xylem and apoplast) of the plant, and then it is disseminated to other tissues distal from the original application site, where it will continue to circulate until it is broken down and metabolized by the plant.[11]

30. As such, the parts-per-million of myclobutanil as measured with respect to any surface residue fails to capture the plant's actual absorption of myclobutanil. Even if the surface were "clean" or "tested negative" for myclobutanil surface residue, the chemical is already within the plant itself.

31. Further, the terrestrial field dissipation half-life of myclobutanil and its primary metabolites is 92-292 days, though it may vary depending on other factors such as the amount of myclobutanil applied to the plants. That is, the EPA evaluates both the "parent fungicide" (myclobutanil) and its primary fungicide metabolites (1,2,4-triazole derivatives, and RH-9090) derived from the parent compound to determine dissipation half-life in the field, both in plant and in soil,

[11] *See* James K. Wolf *et al*., "Risks of Myclobutanil Use to Federally Threatened California Red-legged Frog Pesticide Effects Determination," Environmental Fate and Effects Division, Office of Pesticide Programs, Washington, D.C. 20460, June 17, 2009, at 10; *see also* Wang X et al., "Dissipation and residues of myclobutanil in tobacco and soil under field conditions," *Toxicology Bulletin of Environmental Contamination*, May 2012.

and establishes a half-life range. The half-life of a compound is dependent on several factors (including the type of plant being treated), but a 2009 EPA assessment determined that under typical environmental conditions and use, myclobutanil and its metabolites have a terrestrial field dissipation half-life of 92-292 days.[12]

32. To get a full picture of the science, it is important to understand that plants, including cannabis plants, metabolize myclobutanil. In the environment and in animals, myclobutanil breaks down into several similar forms of 1,2,4-triazole (free triazole, triazole acetic acid, triazole alanine, etc). Once absorbed by a plant, myclobutanil is metabolized to an intermediate form of the compound designated referred to as RH-9090 or "myclobutanil alcohol metabolite," which is also referred to as α-(3-hydroxybutyl)-α-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile), or simply "3-hydroxybutyl-myclobutanil."[13] All major myclobutanil metabolites contain the 1,2,4-triazole moiety, including the alcohol metabolite RH-9090.

33. When myclobutanil is used with respect to approved food items—

[12] *See* Wolf, *et al*, *supra*, n. 11; *see also* P. Schermerhorn and P. Golden, "Determination of 22 Triazole Compounds Including Parent Fungicides and Metabolites in Apples, Peaches, Flour, and Water by Liquid Chromatography/Tandem Mass Spectrometry," Journal of AOAC International, Vol. 88, No. 5, 2005.

[13] *See* http://www.chemspider.com/Chemical-Structure.164596.html (last visited September 22, 2015).

none of which, like cannabis, are consumed by burning the item—the EPA sets tolerances for the combined residues of myclobutanil and its alcohol metabolite. *See* 40 CFR § 180.443 ("Myclobutanil; tolerances for residues.")[14]

34. Compounds containing myclobutanil and/or 1,2,4-triazole (myclobutanil alcohol metabolite) produce hydrogen cyanide when burned. 1,2,4-triazole is a nitrile ring structure made of carbon and nitrogen ("CN"). Combustion of nitrile creates noxious gases such as hydrogen cyanide (HCN) as the CN groups separate and split off from the nitrile ring. Likewise, myclobutanil itself releases hydrogen cyanide when heated with a standard cigarette lighter.[15] Standard lighters are the most popular method used by consumers in Colorado to ignite and consume cannabis.

35. According to the Centers for Disease Control, hydrogen cyanide:

> interferes with the normal use of oxygen by nearly every organ of the body. Exposure to hydrogen cyanide (AC) can be rapidly fatal. It has

[14] *See* https://www.law.cornell.edu/cfr/text/40/180.443 (last visited September 22, 2015).

[15] F. Conrad, "Eagle 20 and Myclobutanil in the Context of Cannabis Cultivation and Consumption," May 14, 2015, available at http://www.coloradogreenlab.com/blog/eagle-20-and-myclobutanil-in-the-context-of-cannabis-cultivation-and-consumption ("myclobutanil decomposes, its triazole…cyanide…and chlorine…moieties are released and form toxic gases, including hydrogen cyanide (HCN) and hydrochloric gas (HCl). Of the three primary decomposition products formed, HCN holds the greatest concern.") (last visited September 22, 2015).

> whole-body (systemic) effects, particularly affecting those organ systems most sensitive to low oxygen levels: the central nervous system (brain), the cardiovascular system (heart and blood vessels), and the pulmonary system (lungs). Hydrogen cyanide (AC) is a chemical warfare agent (military designation, AC).[16]

36. LivWell applied Eagle 20 to thousands of its marijuana plants at its Denver cultivation facility throughout January, February, and March of 2015. On information and belief, LivWell applied Eagle 20 to its marijuana plants for many months prior to that period of time as well. LivWell applied Eagle 20 in combination with a host of other chemicals to combat issues affecting its cannabis plants. LivWell's own grow logs reflect the use of Eagle 20 in January, February, and March 2015.

37. The Colorado Department of Agriculture maintains a list of approved pesticides and fungicides. As of April 2015, Eagle 20 was not included on the list as an approved substance. On information and belief, Eagle 20 was not included on the CDA's list of approved pesticides or fungicides at any time when Defendant was using Eagle 20.

E. LivWell is caught using Eagle 20 and has thousands of plant quarantined, which are later released; LivWell meanwhile provides consumers with conflicting information regarding both the timeframe for when LivWell used Eagle 20 and the safety of

[16] http://www.cdc.gov/niosh/ershdb/emergencyresponsecard_29750038.html (last visited September 22, 2015).

marijuana that has been treated with Eagle 20.

38. On April 24, 2015, officials from the City of Denver, specifically the Department of Environmental Health, placed a "hold" on approximately 60,000 plants produced by LivWell over the use of Eagle 20.[17]

39. The hold was eventually released after the plants tested for residue within limits generally acceptable for vegetation, not for tobacco or other plants that are likely to be inhaled through heating and combustion.

40. Upon lifting the hold and allowing the 60,000 plants to be sold, LivWell's Owner, John Lord, released a statement indicating that "Testing of our finished product by an independent, state-licensed lab approved by the City of Denver showed that our products are safe – as we have always maintained." John Lord said in a statement. "We have reached an agreement with the City resulting in a release of the hold order on the tested products and all similar products."[18]

41. In September 2015 Mr. Lord repeated these statements in an interview with the Marijuana Business Daily, wherein he represented that with respect to the use of Eagle 20:

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[17] C. Venderveen, "Denver pot sales blocked over unapproved pesticides" *available at* URL http://www.9news.com/story/news/local/investigations/2015/04/28/pot-sales-blocked-over-unapproved-pesticides/26544553/ (last visited September 21, 2015).

[18] T. Mitchell, "Denver Investigated 10 Pot Grows For Use of Banned Pesticides, Holds Plants," *available at* URL "http://www.westword.com/news/denver-investigated-10-pot-grows-for-use-of-banned-pesticides-holds-plants-6654706 (last visited September 22, 2015).

We had actually changed well prior to the city placing the hold on our grow in April. We tested with… Gobi Analytical, and within a few days we had proven that we had no pesticide residue on the crop, and we were shipping again. The hold was eventually released. The city sort of came in with a sort of guilty-until-proven-innocent situation, and as I said, the testing eventually all came back negative, so it caused us an inconvenience for a few days."

42. Simply because the plants did not have "pesticide residue" does not necessarily mean that the plants were safe for inhalation. Likewise, it is unclear whether LivWell's plants tested negative for residue or simply tested below thresholds commonly accepted for vegetation that will not be heated to a point of combustion. At this time, numerous questions abound regarding the testing that was supposedly performed by Gobi Analytical.

43. In any case, Mr. Lord's representation that LivWell had ceased using Eagle 20 "well prior to the city placing the hold on our grow in April" is demonstrably false. LivWell's own grow logs show that LivWell applied Eagle 20 to thousands of its plants throughout March of 2015. His statements, and LivWell's other public statements, have given the public the false impression that LivWell's cannabis plants were safe, when in reality they had been repeatedly treated with Eagle 20 and consumers would ingest hydrogen cyanide if they smoked such

cannabis. Mr. Lord's statements have additionally had the intended effect of dissuading members of the public and consumer of LivWell's cannabis products from making further inquiry to uncover the truth about the safety (or complete lack thereof) of LivWell's products and methods.

F. Facts related to named Plaintiff Flores's claims.

44. Plaintiff Flores is a resident of Denver Colorado.

45. In or around January 2015 to March 2015, Mr. Flores purchased cannabis from a LivWell location in Denver for recreational use.

46. On information and belief, Mr. Flores's cannabis purchased from LivWell had been treated with Eagle 20.

47. Had Mr. Flores known that the marijuana he purchased had been treated with Eagle 20, he would have paid less for the cannabis in an amount reflecting the reduced value of the marijuana due to the inability to inhale it.

48. Had Mr. Flores known that the cannabis he purchased had been treated with Eagle 20, he would have not inhaled it.

49. As a result of purchasing cannabis from LivWell, Mr. Flores has suffered actual damages in the form of monies he overpaid for cannabis that was worth less than it otherwise should have been had the cannabis not be treated with Eagle 20, or had the use and effects of Eagle 20, or a warning that it not be inhaled,

been clearly disclosed on the contaminated cannabis's packaging.

G. Facts related to named Plaintiff Larrabee's claims.

50. Plaintiff Larrabee is a resident of Grand Junction, Colorado.

51. In or around January 2015 to March 2015, Ms. Larrabee purchased marijuana from a LivWell location Denver, Colorado for medicinal use. Ms. Larrabee has a brain tumor and the marijuana relieves her pain and discomfort.

52. On information and belief, Ms. Larrabee's cannabis purchased from LivWell had been treated with Eagle 20.

53. Had Ms. Larrabee known that the cannabis she purchased had been treated with Eagle 20, she would have paid less for the cannabis in an amount reflecting the reduced value of the marijuana due to the inability to inhale it.

54. Had Ms. Larrabee known that the cannabis she purchased from LivWell had been treated with Eagle 20, she would have not inhaled it.

55. As a result of purchasing marijuana from LivWell, Ms. Larrabee has suffered actual damages in the form of monies she overpaid for marijuana that was worth less than it otherwise should have been had the cannabis not be treated with Eagle 20 or had the use and effects of Eagle 20, or a warning that it not be inhaled, been clearly disclosed on the cannabis's packaging. There should be a record of Ms. Larrabee's purchase (and the purchases of class members like her) as a

medical cannabis transaction.

56. In order to redress these injuries, Plaintiffs, on behalf of themselves and classes of similarly situated individuals set forth below, bring suit for redress under the common law of the State of Colorado, which prohibits companies from concealing known dangers inherent in their products, selling products unfit for their general and specific uses, and breaching their contracts with their customers.

57. On behalf of the Class, Plaintiffs also seek an injunction requiring Defendant to cease all use of Eagle 20 and similar pesticides and fungicides and that it clearly warn all customers that such marijuana and cannabis should not be inhaled via heating it with a cigarette lighter.

V. CLASS ACTION ALLEGATIONS

58. Plaintiffs bring this action in accordance with Colorado Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of themselves and two Classes defined as follows:

> **Recreational Class**: All persons in the United States who (1) from October 5, 2012 to the date notice is sent to the Class, (2) made at least one recreational marijuana purchase from Defendant LivWell, (3) whose marijuana had been treated with Eagle 20.
>
> **Medical Class:** All persons in the United States who (1) from October 5, 2012 to the date notice is sent to the Class, (2) made at least one medical marijuana purchase from Defendant LivWell, (3) whose marijuana had been sprayed with Eagle 20.

59. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which Defendant or their parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiffs' attorneys; (4) persons who properly execute and file a timely request for exclusion from the class; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released. Plaintiffs anticipate the need to amend the class definition following appropriate discovery into class certification issues.

60. On information and belief, there are hundreds, if not thousands, of members of the Classes such that joinder of all members is impracticable.

61. There are several questions of law and fact common to the claims of the Plaintiffs and the other members of the Classes, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Class members that may be answered in a single stroke include but are not limited to the following:

(a) whether Defendant's conduct constitutes an express breach of contract or a breach of the implied covenant of good faith and fair dealing;

(b) whether Defendant made the same intentional or negligent misrepresentations to class members regarding its use of Eagle 20;

(c) whether Defendant disclosed its use of Eagle 20 to any of the Class Members;

(d) whether Defendant had a duty to warn consumers regarding the danger of Eagle 20, myclobutanil, or 1,2,4-triazole (myclobutanil alcohol metabolite);

(e) whether members of the Class are entitled to damages and the extent of such damages;

(f) whether Defendant has profited from the sale of a dangerous product under circumstances that require it to make restitution or be disgorged of its profits;

(g) whether Defendant was aided and abetted by or conspired with the John Doe defendants, and

(h) whether the Plaintiffs and other class members are entitled to injunctive and declaratory relief and the nature of such relief.

62. The factual and legal bases of Defendant's liability to Plaintiffs and to the other members of the Classes are the same, resulting in injury to the Plaintiffs and to all of the other members of the Classes, including the danger and harm associated with Eagle 20 on marijuana as well as the loss their ability to enjoy and use their marijuana. Plaintiffs and the other members of the Class have all suffered harm and damages as a result of Defendant's unlawful and wrongful use of Eagle 20. Plaintiff Flores's claims are typical of the claims of the members of the Recreational Class as all members of the Recreational Class have been similarly

affected by Defendant's wrongful conduct. Likewise, Plaintiff Larrabee, like other members of the medical Class, received tainted marijuana from Defendant that had been sprayed with Eagle 20 after making a medical marijuana purchase just like the other members of Medical Class. Plaintiffs advance the same claims and legal theories on behalf of themselves and all absent members of the Classes.

63. Plaintiffs will fairly and adequately represent and protect the interests of the other members of the Classes. Plaintiffs' claims are made in a representative capacity on behalf of the other members of the Classes. Plaintiffs have no interest antagonistic to the interests of the other members of the proposed Classes and are subject to no unique defenses. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation, including actions involving Colorado Marijuana Law and consumer class actions involving allegedly harmful products. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interest adverse to those of the other members of the Classes.

64. The suit may be maintained as a class action under Colorado Rule of Civil Procedure 23(b)(2) because Defendant has acted, and/or has refused to act, on grounds generally applicable to the Classes, thereby making appropriate final

injunctive relief. Specifically, injunctive relief is necessary and appropriate to require Defendant to discontinue using Eagle 20 on its marijuana. Likewise, Defendant has acted and fails to act on grounds generally applicable to the Plaintiffs and the other members of the Classes in using Eagle 20 and failing to disclose such use, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes.

65. In addition, this suit may be maintained as a class action under Colorado Rule of Civil Procedure 23(b)(3) because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Absent a class action, most members of the Classes would find the cost of litigating their claims to be prohibitive and will have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication. The claims asserted herein are applicable to all customers throughout the United States who purchased LivWell's marijuana that was sprayed with Eagle 20. The injury suffered by each individual class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for

members of the Classes individually to redress effectively the wrongs done to them. Even if the members of the Classes could afford such litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Likewise, no governmental enforcement can or has sought to obtain the type of redress sought here for class members.

66. Adequate notice can be given to the members of the Class directly using information maintained in Defendant's records or through notice by publication.

FIRST CAUSE OF ACTION
Breach of Contract
(Against LivWell and the John Doe Defendants on behalf of Both Classes)

67. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

68. Defendant LivWell and Plaintiffs entered into sales agreements for the purchase of marijuana in exchange for money.

69. As a material and express term of that agreement, it was understood that the marijuana may be inhaled after being heated, and that the marijuana be reasonably safe for such consumption and not poisonous.

70. LivWell breached the contract by failing to disclose that it had repeatedly applied Eagle 20 to its marijuana (and by applying such improper chemicals in the first place). While "myclobutanil" may have been listed, nothing was indicated regarding its effects or its absence from the CDA's approved list of pesticides/fungicides. Likewise, nothing was mentioned regarding 1,2,4-triazole or myclobutanil alcohol metabolite (including the alcohol metabolite RH-9090). No warning or notice was provided not to heat the marijuana using a commercial cigarette lighter or to refrain from ingesting it via inhalation as opposed to through edible consumption.

71. Had LivWell properly disclosed its use of Eagle 20 and its effects, including its release of hydrogen cyanide when heated with a lighter, Plaintiffs and the other class members would have paid substantially less than the amounts they paid and used care not to heat the marijuana with a lighter or vaporizer.

72. As such, Plaintiffs and the class members seek actual damages in amounts to be proven at trial, including sums to compensate them for all amounts they overpaid for marijuana that had been treated with Eagle 20 as opposed the

reasonable value of such marijuana, a declaration stating that Defendant's use of Eagle 20 breached the Parties' agreement, and injunctive relief requiring that Defendant refrain from using Eagle 20.

SECOND CAUSE OF ACTION
Breach of the Implied Covenant of Good Faith and Fair Dealing
(Against LivWell and the John Doe Defendants on behalf of Both Classes)

73. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

74. Implied in every contract is a covenant of good faith and fair dealing.

75. The implied covenant applies in contractual contexts such as the instant case, where one party to the agreement, namely LivWell, has discretion in the performance of its contractual duties. The agreement allowed for LivWell to, using its own discretion, select the marijuana it would make available for purchase. Likewise, only LivWell knew that some or all of its marijuana had been treated repeatedly with Eagle 20.

76. LivWell breached the implied covenant of good faith and fair dealing and abused its discretion and selecting marijuana that had been treated repeatedly with Eagle 20 to complete Plaintiffs' purchases.

77. Had LivWell properly disclosed its use of Eagle 20 and its effects, including its release of hydrogen cyanide when heated with a lighter, Plaintiffs and the other class members would have paid substantially less than the amounts they

paid and used care not to heat the marijuana with a lighter or vaporizer.

78. As such, Plaintiffs and the class members seek actual damages in amounts to be proven at trial, including sums to compensate them for all amounts they overpaid for marijuana that had been treated with Eagle 20 as opposed the reasonable value of such marijuana, a declaration stating that Defendant's use of Eagle 20 breached the Parties' agreement, and injunctive relief requiring that Defendant refrain from using Eagle 20.

THIRD CAUSE OF ACTION
Breach of Express Warranty
(Against LivWell and the John Doe Defendants
on behalf of Plaintiff Larrabee and the Medical Class)

79. Plaintiff Larrabee incorporates by reference the foregoing allegations as if fully set forth herein.

80. Plaintiff Larrabee and the Medical Class members went to LivWell seeking medical marijuana.

81. In doing so, Plaintiff Larrabee and the Medical Class members specifically selected marijuana that LivWell expressly represented and warranted was "medical" in grade and quality. Medical marijuana is often regarded as being of higher quality.

82. But unbeknownst to Larrabee or the other members of the Medical Class, LivWell had repeatedly treated its marijuana with Eagle 20, a dangerous, unapproved fungicide/pesticide that releases hydrogen cyanide when ignited.

83. As such, LivWell breached its express warranty that the marijuana was medical grade.

84. Plaintiff Larrabee and the Medical Class members seek actual damages in amounts to be proven at trial, including sums to compensate them for the diminution in value of the marijuana that they purchased, or replacement marijuana that is of actual medical grade, a declaration stating that Defendant's use of Eagle 20 breached the express warranty that the marijuana was medical grade, and injunctive relief requiring that Defendant refrain from using Eagle 20.

FOURTH CAUSE OF ACTION
Breach of Implied Warranty of Fitness For a Particular Purpose
(Against LivWell and the John Doe Defendants on behalf of the Medical Class)

85. Plaintiff Larrabee incorporates by reference the foregoing allegations as if fully set forth herein.

86. Plaintiff Larrabee and the Medical Class members went to LivWell seeking marijuana fit for medical purposes.

87. In doing so, Plaintiff Larrabee and the Medical Class members specifically selected marijuana that LivWell expressly represented and warranted

was “medical” in grade and quality. Medical marijuana is often regarded as being of higher quality, and Larrabee and the other members of the Medical Class relied on LivWell’s skill, judgment, knowledge and expertise in selecting marijuana that was supposedly fit for medical purposes.

88. But unbeknownst to Larrabee or the other members of the Medical Class, LivWell had repeatedly treated its marijuana with Eagle 20, a dangerous, unapproved fungicide/pesticide that releases hydrogen cyanide when ignited. Only LivWell knew that the supposedly medical marijuana it was supply was not fit for such a purpose.

89. As such, LivWell breached its implied warranty of fitness for a particular purpose that the marijuana was fit for medical use.

90. Plaintiff Larrabee and the Medical Class members seek actual damages in amounts to be proven at trial, including sums to compensate them for the diminution in value of the marijuana that they purchased as opposed to marijuana that was fit for medical use, or replacement marijuana that is actually fit for medical use, a declaration stating that Defendant’s use of Eagle 20 breached the warranty that the marijuana was fit for medical purposes, and injunctive relief requiring that Defendant refrain from using Eagle 20 on its supposed medical marijuana.

FIFTH CAUSE OF ACTION
Breach of Implied Warranty of Merchantability
(Against LivWell and the John Doe Defendants on behalf of Both Classes)

91. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

92. LivWell regularly sells marijuana-based products.

93. Implicit in the sale of its marijuana to its customers was a warranty of merchantability. That is, a warranty that the marijuana was fit for the ordinary purpose for which it is used.

94. The ordinary purpose of purchasing marijuana is to consume it via inhalation, most ordinarily through igniting the marijuana with a flame/cigarette lighter.

95. LivWell breached the implied warranty of merchantability by providing marijuana that was not fit for ordinary consumption in this manner. At best, and only to the extent LivWell is able to prove at trial that such consumption would have been reasonably safe, LivWell's marijuana could have been ingested by eating it, but there was no disclosure warning consumers of that fact on the product's labeling.

96. Plaintiffs the class members seek actual damages in amounts to be proven at trial, including sums to compensate them for the diminution in value of the marijuana that they purchased as opposed to marijuana that was fit for its

ordinary purpose use, or replacement marijuana that is actually fit for its ordinary purpose, a declaration stating that Defendant's use of Eagle 20 breached the warranty that the marijuana was fit for its ordinary purposes, and injunctive relief requiring that Defendant refrain from using Eagle 20 on its marijuana.

SIXTH CAUSE OF ACTION
Intentional Misrepresentation/Concealment of Material Facts
(Against LivWell and the John Doe Defendants on behalf of the Medical Class)

97. Plaintiff Larrabee incorporates by reference the foregoing allegations as if fully set forth herein.

98. LivWell expressly represented in its marketing materials present at its dispensaries at the time and locations that marijuana purchases are made that the marijuana Larrabee and the Medical Class were purchasing was of "medicinal quality" or could be considered "medical marijuana," a distinct from the strains that LivWell made available for recreational purchase. That is, separate strains, generally regarded as being of higher quality, are set aside in LivWell's dispensaries as being the "medicinal" marijuana.

99. LivWell made such representations knowing that they were false and did so with the intent that consumers would rely on the representations.

100. Larrabee and the other Medical Class members did not know that the "medical marijuana" they were purchasing was not actually medical grade due to

its having been treated with Eagle 20, and they would not have purchased such marijuana—or would have paid substantially less for it—had LivWell told the truth and disclosed its use of Eagle 20.

101. Plaintiff Larrabee and the Medical Class members seek actual damages in amounts to be proven at trial, including sums to compensate them for the diminution in value of the marijuana that they purchased as opposed to the marijuana they believed they were purchasing, a declaration stating that Defendant's use of Eagle 20 breached the warranty that the marijuana was fit for its ordinary purposes, injunctive relief requiring that Defendant refrain from using Eagle 20 on its marijuana, punitive damages, costs, and reasonable attorneys' fees.

SEVENTH CAUSE OF ACTION
Concealment of Material Facts
(Against LivWell and the John Doe Defendants on behalf Both Classes)

102. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

103. At the time that marijuana purchases were being made back when LivWell was still using Eagle 20 (at least from January 2015 – March 2015, and possibly for many months or even a year prior to January 2015), LivWell failed to disclose its use of Eagle 20 to its customers. At the time, only LivWell and its employees knew that it had applied Eagle 20 to its plants prior to sale.

104. While "myclobutanil" may have been listed, nothing was indicated regarding its effects or its absence from the CDA's approved list of pesticides/fungicides. Likewise, nothing was mentioned regarding 1,2,4-triazole or myclobutanil alcohol metabolite (including the alcohol metabolite RH-9090). No warning or notice was provided not to heat the marijuana using a commercial cigarette lighter or to refrain from ingesting it via inhalation as opposed to through potential edible consumption.

105. LivWell not only failed to disclose the true facts that were known to it, LivWell further took steps to discourage consumers from making further inquiry. In statements to the press, LivWell's owner, Mr. Lord, stated publicly that LivWell had "actually changed well prior" to the City's hold on its plants in April 2015. This was not accurate given grow logs showing the applicant of Eagle 20 in mid-March 2015. Likewise, Mr. Lord indicated that the testing on the plants came back "negative" and that there was no "residue." This would tend to mislead ordinary consumers, who are unlikely to be aware that Eagle 20, once applied, gets into the plant's system, and that residue may not be a meaningful test. Likewise, that the tests came back negative may not be accurate—it appears that the test results simply indicated that residue for Eagle 20 came back under the thresholds

recognized for Eagle 20's use on certain vegetables which are neither inhaled nor ignited prior to, and for the purposes of facilitating, such inhalation.

106. Moreover, Mr. Lord's representation that LivWell had ceased using Eagle 20 "well prior to the city placing the hold on our grow in April" is demonstrably false. LivWell's own grow logs show that LivWell applied Eagle 20 to thousands of its plants throughout March of 2015. His statements, and LivWell's other public statements, have given the public the false impression that LivWell's cannabis plants were safe, when in reality they had been repeatedly treated with Eagle 20 and consumers would ingest hydrogen cyanide if they smoked such cannabis. Mr. Lord's statements have additionally had the intended effect of dissuading members of the public and consumer of LivWell's cannabis products from making further inquiry to uncover the truth about the safety (or complete lack thereof) of LivWell's products and methods.

107. All of this information is material and Plaintiffs and the class members would have paid less for their marijuana had LivWell disclosed the true facts.

EIGHTH CAUSE OF ACTION
Unjust Enrichment/Restitution/ Disgorgement
(Against LivWell and the John Doe Defendants on behalf of Both Classes)

108. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

109. In the alternative to Plaintiff's claims for breach of contract, Defendants have obtained money from the Plaintiffs and the other class members under circumstances that are manifestly unfair, immoral, and contrary to public policy and basic notions of justice and fairness.

110. Defendants placed an unreasonably dangerous product into the market to the detriment of consumers.

111. Under such circumstances it would be unjust to allow Defendant LivWell (and the John Doe Defendants) to retain such monies.

112. As such, Plaintiffs seek an order requiring restitution of all monies paid to Defendant in excess of any amounts reasonably due the Defendants reflecting the fair value of the marijuana purchased, disgorgement of any profits made as a result of Defendant's unfair conduct as described herein, punitive damages, a payment to a *cy pres* designee to the extent class members cannot reasonably be identified, and such other relief as the Court deems reasonable and allowable under equity to redress Defendant's conduct.

NINTH CAUSE OF ACTION
Civil Conspiracy, Aiding & Abetting Misrepresentations and Concealment (Against LivWell and the John Doe Defendants on behalf of Both Classes)

113. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

114. The John Doe Defendants have aided Defendant LivWell, who in turn, through its misrepresentations and concealments, caused injuries to Plaintiffs and the Class Members.

115. The John Doe Defendants were generally aware of their role as part of the overall intentional misrepresentations and concealments at the time that they provided such support and assistance, and the defendant knowingly and substantially assists the principal violation.

116. The John Doe Defendants knew of the misrepresentations and concealed facts and helped Defendant LivWell keep such facts concealed, including the fact that Eagle 20was used on LivWell plants as recently as mid-March 2015.

117. Alternatively, LivWell teamed up with the John Doe Defendants for the unlawful purpose of selling marijuana that had been treated with Eagle 20 as if it were safe for consumption or for the lawful purpose of selling marijuana through unlawful means (*i.e.*, by cultivating it after treating it with Eagle 20). As such, LivWell and the John Doe Defendants, which are LivWell's affiliates, subsidiaries, and business partners, are jointly and severally liable for all damages and remedies sought herein by Plaintiffs and the members of both classes.

TENTH CAUSE OF ACTION
Declaratory Relief and Permanent Injunctive Relief

(Against LivWell and the John Doe Defendants on behalf of Both Classes)

118. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

119. In the event damages are insufficient to provide full relief and Plaintiffs lack an adequate remedy at law, Plaintiffs seek injunctive relief in the form of an Order prohibiting LivWell from using Eagle 20 in the future.

120. Plaintiffs and the class members have suffered irreparable injuries and harm as a result of Defendant's surreptitious use of Eagle 20.

121. The balance of the equities favors injunctive relief.

122. Defendant has acted or refused to act on grounds generally applicable to the classes as respective wholes such that injunctive relief can apply to everyone.

123. A single adjudication is necessary to avoid inconsistent orders regarding injunctive relief.

124. Plaintiffs pray for an order enjoining LivWell from using Eagle 20 or any comparable product going forward.

WHEREFORE, Plaintiffs Brandan Flores and Brandie Larrabee, on behalf of themselves and their respective classes, pray for the following relief:

1. An order certifying this case as a class action on behalf of the Classes as defined above; appointing Plaintiffs as the representatives of the Classes and appointing their attorneys' as Class Counsel;

2. An award of actual damages, including amounts equal to the sums paid for marijuana by class members over and above any amounts they should have paid;

3. An injunction requiring Defendant to cease all use of Eagle 20 and sales of marijuana products where Eagle 20 was used in the production process;

4. An Order declaring that Defendant's conduct breached its contracts and warranties, that marijuana treated with Eagle 20 is not fit for any particular medical purpose or for the ordinary purpose of inhaling it following ignition, that Defendant's actions constituted intentional misrepresentation/fraudulent concealment, the it has been unjustly enriched and should be disgorged or such profits and made to pay restitution;

5. An award of reasonable attorneys' fees and costs;

6. A *cy pres* award to an appropriate designee that is dedicated to consumer marijuana advocacy; and

7. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiffs request a trial by jury of all claims that can be so tried.

Dated: October 5, 2015

BRANDAN FLORES and BRANDIE LARRABEE, individually, and on behalf of all others similarly situated,

By: /s/ Steven L. Woodrow
One of Plaintiffs' Attorneys

Robert J. Corry, Jr. #32705
Matthew W. Buck #44170
Law Office of Corry & Associates
437 West Colfax Ave.,
Suite 300
Denver, CO 80204
303-634-2244
720-420-9084
Rob@RobCorry.com
Buck@RobCorry.com

Steven L. Woodrow #43140
Patrick H. Peluso #47642
3900 East Mexico Ave., Suite 300
Denver, CO 80210
720/357-4878
swoodrow@woodrowpeluso.com
ppeluso@woodrowpeluso.com

Counsel for Plaintiffs and the Classes