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3
4 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
5 **FOR THE COUNTY OF MULTNOMAH**

6
7 MATTHEW BOOTH, an individual,) Case No.
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Plaintiff,)
vs.)
F&H ENTERPRISE LLC, an Oregon limited)
liability company, NOEL FULLER, an)
individual, AARON HALL, an individual,)
and GARY GIROIR, an individual,)
Defendants.)

COMPLAINT
(Breach of Contract/Wage Claim; Final
Paycheck Violation – ORS 652.140;
Retaliation – ORS 652.355; Aiding and
Abetting – ORS 659A.030(1)(g); Failure to
Provide Personnel Records – ORS 652.750;
Failure to Provide Itemized Paycheck
Statement – ORS 652.610; Action for
Equitable Accounting)
NOT SUBJECT TO ARBITRATION
Prayer amount: \$261,050.00, plus attorney
fees, costs and disbursements
(Fee Authority ORS 21.160(1)(c))
JURY TRIAL REQUESTED

Plaintiff hereby states and alleges as follows:

19 **THE PARTIES AND VENUE**

20 1.

21 Plaintiff Matthew Booth (“Plaintiff”) is a resident of Multnomah County, Oregon.

22 2.

23 Defendant F&H Enterprise LLC (“defendant F&H”) is an Oregon limited liability
24 company with its principal place of business in Portland, Oregon. Defendant F&H grows
25 cannabis indoors under Oregon marijuana producer license no. 020 1002437A411.
26

27 Page 1 – COMPLAINT

28 Tim Volpert PC
610 SW Alder St., Ste 415
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(503) 703-9054

1 3.

2 Defendant Noel Fuller (“defendant Fuller”) resides in Multnomah County, Oregon.
3 Defendant Fuller was a member of defendant F&H throughout Plaintiff’s employment and is
4 currently the sole member of defendant F&H.

5 4.

6 Defendant Aaron Hall (“defendant Hall”), husband of defendant Giroir, is a prominent
7 architect and the restorer and resident of Portland’s legendary “Martini House,” who resides in
8 Multnomah County, Oregon, and was a member of defendant F&H during the entire period
9 defendant F&H employed Plaintiff.

10 5.

11 Defendant Gary Giroir (“defendant Giroir”), husband of defendant Hall, is a registered
12 nurse who resides in Multnomah County, Oregon, and was a member of defendant F&H during
13 the entire period defendant F&H employed Plaintiff.

14 6.

15 Defendant F&H is the alter ego of defendant Fuller and, when they were shareholders,
16 defendants Hall and Giroir. Defendants operated the company in a manner that left the company
17 with insufficient funds to meet its obligations to Plaintiff, comingling personal and company
18 funds and illegally diverting cannabis grown under the company’s OLCC producer license to the
19 black market, costing the company additional revenue, all while telling Plaintiff they could not
20 afford to pay him his full compensation or reimburse him for business expenses he paid from his
21 personal funds. Therefore, defendants Fuller, Hall and Giroir cannot hide behind the limited
22 liability company and are personally liable for all damages awarded Plaintiff.

23 **COMMON FACTS**

24 7.

25 Plaintiff is an experienced, master grower of cannabis. On or about April 1, 2017,
26 defendants hired Plaintiff as master grower for defendants’ indoor cannabis grow. Defendants

1 orally agreed to compensate Plaintiff at the hourly rate of \$25.00 per hour plus a bonus of twenty
2 percent (20%) of the gross revenue from sale of the cannabis crops tended by Plaintiff.

3 8.

4 Defendants told Plaintiff that they could not afford to pay his full wages each payday and
5 requested Plaintiff accept \$1,250.00 per week until defendant F&H received payment from the
6 sale of its cannabis crop, when they would pay Plaintiff the balance of his wages, as well as
7 Plaintiff's share of the gross revenue from the sale of cannabis crops. Based on defendants'
8 assurances, Plaintiff agreed to this arrangement.

9 9.

10 Plaintiff lived onsite, worked long hours and rarely took a day off. He often worked 16
11 hours or more each day and averaged at least 112 hours of work each week he was employed.
12 Therefore, Plaintiff earned wages of no less than \$2,800.00 each week (112 hours @
13 \$25.00/hour).

14 10.

15 Plaintiff worked for defendant F&H for a total of 15 weeks, until he was terminated on or
16 about July 15, 2017, because he demanded defendants pay him his compensation and
17 unreimbursed expenses. Defendants got angry, continued to refuse to pay Plaintiff his earned
18 wages, share of the sale of crops and expense reimbursement. Plaintiff was also concerned by
19 the illegal activity he witnessed defendants engage in, including selling cannabis to individuals
20 "off the books," despite the fact that none of the defendants was licensed to make retail sales of
21 cannabis, allowing an unlicensed person to set up his own illegal cannabis grow in defendants'
22 licensed grow site, and defendant Fuller illegally selling and administering steroids to individuals
23 in conjunction with defendant Fuller's fitness business, Foster Fitness, next door to the cannabis
24 grow.

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27 Page 3 – COMPLAINT

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1 11.

2 Defendant F&H paid Plaintiff only \$1,250.00 each week for all but the last two weeks
3 Plaintiff worked, always in cash with no deductions or withholdings or pay statement. Angry
4 with Plaintiff's demands for his wages, defendants refused to pay Plaintiff any wages for his last
5 two weeks of work, refused to pay Plaintiff his 20% share of the revenue from the sale of the
6 cannabis crops he tended for defendants, which Plaintiff estimates to be no less than \$25,000.00,
7 and refused to reimburse Plaintiff's business expenses.

8 12.

9 For his first 13 weeks of work for defendant F&H, Plaintiff earned a total of \$36,400.00
10 of regular wages (\$2,800.00/week x 13 weeks). During this period, defendants paid Plaintiff
11 only \$1,250.00/week for a total of \$16,250.00, leaving \$20,150.00 of unpaid wages. ($\$36,400.00$
12 $- \$16,250.00 = \$20,150.00$). In addition, defendants refused to pay Plaintiff any wages for his last
13 two weeks of work, adding an additional \$5,600.00 of unpaid regular wages. Therefore,
14 defendants owe Plaintiff wages totaling \$25,750.00.

15 13.

16 By letter mailed to defendants on November 29, 2017, Plaintiff, through his attorney,
17 demanded payment of all unpaid wages, including the unpaid bonuses, reimbursement of all
18 expenses and requested a certified copy of his personnel records, pursuant to ORS 652.750.
19 Defendants did not respond to the demand or provide Plaintiff with a copy of his personnel
20 records.

21 14.

22 Throughout his employment, Plaintiff purchased supplies needed for defendants'
23 business using his own money, totaling no less than \$7,700.00. Defendants told him the business
24 could not afford to purchase the supplies, but assured Plaintiff that he would be reimbursed when
25 the company received income from the sale of the crops. Defendants never reimbursed Plaintiff
26 for these expenses.

27 Page 4 – COMPLAINT

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1 15.

2 On at least ten occasions during his employment, Plaintiff paid temporary laborers to
3 assist in the grow operation, totaling payments of \$1,000.00. Defendants told Plaintiff that the
4 company could not afford to pay the workers, but would reimburse Plaintiff when the company
5 received income from the sale of the crops. Defendants never reimbursed Plaintiff for these
6 expenditures, despite harvesting at least three crops during Plaintiff's tenure.

7 **CLAIMS FOR RELIEF**

8 **First Claim for Relief**

9 (Breach of Contract--Unpaid Wages and Expenses)

10 16.

11 Plaintiff incorporates the allegations of paragraphs 1 – 15.

12 17.

13 Plaintiff performed all conditions precedent and obligations under the parties' agreement
14 by performing his services diligently and to the best of his abilities.

15 18.

16 Defendants breached the agreement by failing to pay Plaintiff all wages when due, failing
17 to reimburse Plaintiff for the amount Plaintiff paid casual workers and failing to reimburse
18 Plaintiff for supplies he purchased for defendants' business.

19 19.

20 As a result of defendant's breach, Plaintiff sustained damages of no less than \$50,750.00
21 in unpaid wages (including the bonus), \$1,000.00 in unreimbursed compensation Plaintiff paid to
22 the casual workers and \$7,700.00 in unreimbursed business expenses Plaintiff paid to suppliers
23 of defendant F&H.

24 20.

25 Pursuant to ORS Pursuant to ORS 652.200(2), Plaintiff is entitled to an award of his
26 reasonable attorneys' fees.

1 **Second Claim for Relief**

2 (Violation of Oregon’s Final Paycheck Statute – ORS 652.140)

3 21.

4 Plaintiff incorporates the allegations of paragraphs 1 – 20.

5 22.

6 Defendant F&H’s failure to pay Plaintiff all wages due and owing at termination of
7 employment violates ORS 652.140.

8 23.

9 Pursuant to ORS 652.150(1), Plaintiff is entitled to payment of penalty wages from
10 defendant F&H equal to an additional thirty days’ wages, which totals \$6,000.00.

11 24.

12 Pursuant to ORS 652.200(2), Plaintiff is entitled to an award of his reasonable attorneys’
13 fees.

14 **Third Claim for Relief**

15 (Retaliation – ORS 652.355(1)(a) and 659A.355(1)(a))

16 25.

17 Plaintiff incorporates the allegations of paragraphs 1 – 24.

18 26.

19 In violation of ORS 652.355(1)(a) and 659A.355(1)(a), defendants retaliated against
20 Plaintiff by firing him and refusing to pay him for his last two weeks of work, as well as all other
21 unpaid wages and expenses demanded by Plaintiff, when he complained about defendants’
22 failure to pay him all his earned wages and their illegal activity.

23 27.

24 As a result of defendants’ retaliatory action, Plaintiff suffered financial loss of
25 \$50,750.00 in unpaid wages and \$8,700.00 in unreimbursed expenses up to the date he was
26 terminated, back pay and front pay in an amount to be determined at trial but expected to be no

1 less than \$145,600.00, as well as emotional distress, humiliation and embarrassment in an
2 amount to be determined at trial, but no less than \$50,000. Based on defendants reprehensible
3 and malicious conduct and indifference to plaintiff's welfare, Plaintiff intends to amend his
4 Complaint at the appropriate time to seek punitive damages of no less than 100,000.00.

5 28.

6 Pursuant to ORS 659A.855, Plaintiff is entitled to an award of his reasonable attorneys'
7 fees.

8 **Fourth Claim for Relief**

9 (Aiding and Abetting – ORS 659A.030(1)(g))

10 (Against Defendants Fuller, Hall and Giroir Only)

11 29.

12 Plaintiff incorporates the allegations of paragraphs 1 – 28.

13 30.

14 In violation of ORS 659A.030(1)(g), defendants Fuller, Hall and Giroir aided and abetted
15 defendant F&H's retaliatory termination of plaintiff's employment for complaining about his
16 unpaid wages and defendants' illegal activities.

17 31.

18 As a result of defendants Fuller, Hall and Giroir's misconduct, Plaintiff suffered financial
19 loss of no less than \$59,450.00 in unpaid wages and unreimbursed expenses, back pay and front
20 pay in an amount to be determined at trial but expected to be no less than \$145,600.00, as well as
21 emotional distress, humiliation and embarrassment in an amount to be determined at trial, but no
22 less than \$50,000.00. Based on defendants reprehensible and malicious conduct and indifference
23 to plaintiff's welfare, Plaintiff intends to amend his Complaint at the appropriate time to seek
24 punitive damages of no less than 100,000.00.

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27 Page 7 – COMPLAINT

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1 32.

2 Pursuant to ORS 659A.855, Plaintiff is entitled to an award of his reasonable attorneys'
3 fees.

4 **Fifth Claim for Relief**

5 (Failure to Provide Personnel Records – ORS 652.750)

6 33.

7 Plaintiff incorporates the allegations of paragraphs 1 – 32.

8 34.

9 Pursuant to ORS 652.750, by letter mailed November 20, 2017, to defendant Fuller,
10 registered agent of defendant F&H, Plaintiff's attorney made a written demand on defendant
11 F&H for a certified copy of Plaintiff's personnel records. As of the date of this Complaint,
12 which is more than 45 days since the demand, defendant has not provided a copy of Plaintiff's
13 personnel records.

14 35.

15 Plaintiff requests the court enter an order requiring Defendant F&H to comply with its
16 obligations under ORS 652.750 and provide Plaintiff with a certified copy of Plaintiff's
17 personnel records without delay.

18 **Sixth Claim for Relief**

19 (Failure to Provide Itemized Statement of Deductions – ORS 652.610)

20 36.

21 Plaintiff incorporates the allegations of paragraphs 1 – 35.

22 37.

23 Defendant F&H never provided Plaintiff with an itemized statement of deductions from
24 his pay, as required by ORS 652.610.

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27 Page 8 – COMPLAINT

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1 38.

2 Pursuant to ORS 652.615, Plaintiff is entitled to an award of his actual damages to be
3 proven at trial or \$200.00, whichever is greater, and his reasonable attorneys' fees.

4 **Seventh Claim for Relief**

5 (Equitable Accounting -- Against Defendant F&H only

6 39.

7 Plaintiff incorporates the allegation of paragraphs 1 – 38.

8 40.

9 In order to determine the bonuses due Plaintiff, the court must order an accounting of
10 defendant F&H's books and records, which is necessary to determine the revenue defendant
11 received from the sale of the crops tended by Plaintiff.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for the following relief against all defendants:

- 14 1. Economic damages to be determined at trial but no less than \$205,050.00;
15 2. Noneconomic damages to be determined at trial, but no less than \$50,000.00;
16 3. Statutory penalties of \$6,000.00;
17 4. An order requiring defendant F&H to provide Plaintiff with a copy of his
18 personnel records;
19 5. An accounting of defendants' books and records;
20 6. Plaintiff's reasonable attorneys' fees, costs and disbursements; and
21 7. Such other relief as the Court deems just and proper.

22 Dated: June 21, 2018.

23 By: /s/ Timothy R. Volpert _____
24 Timothy R. Volpert, OSB #814074
25 tim@timvolpertlaw.com
26 Of Attorneys for Plaintiff Matthew Booth
27 Trial Attorney: Timothy R. Volpert, OSB #814074