

DISTRICT COURT, DOUGLAS COUNTY, COLORADO 4000 Justice Way, Ste. 2009 Castle Rock, CO 80109 Telephone: (720) 437-6200	DATE FILED: June 26, 2017 8:14 AM FILING ID: 1BCF93E87AA34 CASE NUMBER: 2017CV30106
Plaintiffs: MICHAEL MCGONIGLE, CELESTE PFEIFFER, RICHARD WIGTON, MCGONIGLE, INC., CP INVESTMENTS, LLC and COBRA, LLC v. Defendants: MICHAEL A. CONNOLLY, LARRY SHERMAN and MATT COCHRAN.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case No. 2017CV30106 Division: 3
<i>Attorney for Plaintiffs</i> Name: Ronald L. Wilcox, #13526 Address: Wilcox Law Firm, LLC 383 Corona St., Suite 401 Denver, CO 80218 Telephone No.: (303) 594-6720 Email: ron@wilcox.legal	
SECOND AMENDED COMPLAINT	

Plaintiffs Michael McGonigle, Celeste Pfeiffer, Richard Wigton, McGonigle, Inc., CP Investments, LLC and Cobra, LLC, by their attorney, and for their Second Amended Complaint state as follows:

THE PARTIES

1. Plaintiff Michael McGonigle (“McGonigle”) is a Colorado resident residing in Parker, Colorado.
2. Plaintiff Celeste Pfeiffer (“Pfeiffer”) is a Colorado resident residing in Denver, Colorado.

3. Plaintiff Richard Wigton (“Wigton”) is a Colorado resident residing in Centennial, Colorado.

4. Plaintiff McGonigle, Inc. is a Colorado corporation formed by Plaintiff McGonigle, with its principal place of business in Parker, Colorado.

5. Plaintiff CP Investments, LLC is a Colorado limited liability company formed by Plaintiff Pfeiffer, with its principal place of business in Denver, Colorado.

6. Plaintiff Cobra, LLC is a Colorado limited liability company formed by Plaintiff Wigton, with its principal place of business in Centennial, Colorado.

7. Defendant Michael A. Connolly (“Connolly”) is a Colorado resident residing in Douglas County, Colorado.

8. Defendant Larry Sherman (“Sherman”) is a Colorado resident residing in Douglas County, Colorado.

9. Defendant Matt Cochran (“Cochran”) is a Colorado resident residing in Douglas County, Colorado.

JURISDICTION AND VENUE

10. Jurisdiction and venue are proper in Douglas County pursuant to C.R.C.P. 98(c) as the defendant resides therein, and the events giving rise to the claims herein occurred in Douglas County.

GENERAL ALLEGATIONS

11. Defendant Connolly is an attorney licensed to practice law in the State of Colorado.

12. Defendant Connolly had served as the attorney for and provided legal advice to Worldwide Express, a company owned and operated by McGonigle and Pfeiffer, through November 2015. In that capacity, Connolly was provided confidential information about McGonigle and Pfeiffer, including their financial status from the sale of the company.

13. Defendant Connolly also had served as the attorney for and provided legal advice to McGonigle personally through November 2015. In that capacity, Connolly was provided confidential information about McGonigle, including his financial status.

14. In early 2016, Defendant Connolly approached McGonigle, Pfeiffer and Wigton and solicited them to invest in Teller Holdings, LLC, a Colorado limited liability company that owned 100% of BudTeller, LLC, another Colorado limited liability company. Upon information and belief, Connolly was general counsel for Teller Holdings and BudTeller, and a company formed by Connolly, Fidelity Consulting, LLC, had a 10% equity interest in Teller Holdings.

15. Defendant Connolly, along with Defendants Sherman and Cochran, met with McGonigle, Pfeiffer and Wigton and represented that, as Teller Holdings' sole source of revenue, BudTeller offered "full banking, credit card processing, cash management and compliance for the cannabis industry."

16. Defendants further represented that Budteller was "a complete set of 'seed to sale' financial services that gives cannabis growers, dispensaries, and retailers legitimate, national depository, financial institutional banking that is fully compliant with federal regulations." Defendants also represented that BudTeller provided business account banking and expanded credit card and debit card transaction processing for the cannabis industry. These services were to be made available to customers of state-licensed marijuana retail businesses through kiosks provided by BudTeller.

17. The prospect of providing banking and other financial services to the cannabis industry had substantial economic significance because of the conflict between federal and state law governing the cultivation, possession and distribution of marijuana.

18. The federal government regulates marijuana as a Schedule 1 drug through the Controlled Substance Act, 21 U.S.C. §§ 811, 812. Because the cultivation, possession and distribution of marijuana are illegal under the Controlled Substances Act, any proceeds derived from those transactions would be considered proceeds of an illegal transaction under federal law.

19. In contrast, many states, including Colorado, have legalized the cultivation, possession and distribution of marijuana in some form.

20. The continued treatment of marijuana as a controlled substance in violation of federal law has created a situation in which state-licensed marijuana businesses have been prevented from taking advantage of banking and other financial services that are subject to federal regulation and risk violating federal law by providing services to state-licensed marijuana businesses.

21. Although the Treasury Department and Department of Justice have issued guidance that would allow banks to avoid prosecution for providing services to legitimate state-licensed marijuana businesses if they comply with the guidance, most banks have been reluctant to process proceeds from the marijuana industry in potential violation of federal law. As a result, members of state-licensed marijuana businesses largely have been forced to transact all their business in cash.

22. Defendants represented to McGonigle, Pfeiffer and Wigton that "Budteller is the only company providing financial services that are compliant with these federal guidelines."

23. Thus, Defendants' representation that BudTeller had business account banking and expanded credit card and debit card transaction processing for the cannabis industry presented a significant economic advantage for state-licensed marijuana businesses and was a material inducement to invest in Teller Holdings.

24. Defendants represented that BudTeller's services were "fully functioning" and operational, that BudTeller would be profitable by July 2016 and that the current round of

financing “will get us to an exit” without the need for additional rounds of funding. Defendants further represented that the “[e]xpected timeframe of exit is within three years.” Financials provided by Connolly represented that expenses for legal and consulting services were to be \$1,000 a month for the first 24 months of operation, for a total of \$24,000.

25. Defendants also told McGonigle, Pfeiffer and Wigton that Cochran was the President of BudTeller and had “15 years of experience” at numerous businesses.

26. McGonigle, Pfeiffer and Wigton reviewed BudTeller’s website and questioned Defendants to confirm the accuracy of their representations.

27. Based on Defendants’ representations, McGonigle formed McGonigle, Inc. and Pfeiffer formed CP Investments, LLC, each of which invested \$100,000.00 in Teller Holdings in March 2016, and Wigton formed Cobra, LLC, which invested \$100,000 in Teller Holdings in May 2016. McGonigle, Inc., CP Investments and Cobra, LLC each received a 10% equity interest in Teller Holdings for their investment.

28. Shortly after having invested in Teller Holdings, Plaintiffs learned that BudTeller did not have banking services or credit card processing in place. They also learned that the kiosks provided by BudTeller to enable customers of state-licensed marijuana retail businesses access to such services were not functioning. Defendants did not disclose those material facts to McGonigle, Pfeiffer and Wigton when soliciting their investment in Teller Holdings, and Plaintiffs would not have invested in Teller Holdings if they had known of those facts.

29. Plaintiffs also learned for the first time after investing in Teller Holdings that BudTeller had signed a consulting agreement with Fidelity Consulting, LLC as of January 4, 2016, pursuant to which Fidelity Consulting was to provide BudTeller with the following “professional services: consulting, compliance and regulatory, risk management, operations, and legal related services.”

30. Defendant Connolly is listed with the Colorado Secretary of State as the registered agent for Fidelity Consulting and the individual responsible for forming the company.

31. Pursuant to its consulting agreement with BudTeller, Fidelity Consulting was to receive a fixed amount of \$12,500 per month, plus expenses. Fidelity Consulting also was to receive a five percent (5%) equity interest in BudTeller and was to be “paid a ten percent (10%) success fee in raising any capital for” Budteller.

32. Thus, expenses for legal and consulting services for BudTeller were contracted to be more than 12 times the amount Defendant Connolly represented (\$300,000 versus \$24,000) for the first 24 months of operation.

33. Plaintiffs’ investment toward the success of BudTeller as Teller Holdings’ sole source of revenue was reduced by 10% because of the undisclosed commission to be paid as a success fee for raising capital for the company.

34. Defendants did not disclose the existence of BudTeller’s consulting agreement with Fidelity Consulting, LLC or its terms to Plaintiffs when soliciting their investment in Teller

Holdings, and Plaintiffs would not have invested in Teller Holdings if they had known of those material facts.

35. Plaintiffs also were informed by Defendant Connolly after investing in Teller Holdings that Cochran was alleged to have used company funds for personal use in a job prior to joining BudTeller. Defendants did not disclose those material facts to Plaintiffs when soliciting their investment in Teller Holdings, and Plaintiffs would not have invested in Teller Holdings if they had known of those facts.

36. Despite Plaintiffs' combined investment of \$300,000 as of May 2016, BudTeller had no revenue and only \$30,000 remaining in its account by September 1, 2016.

37. BudTeller has since ceased the business operations in which Plaintiffs invested.

FIRST CLAIM FOR RELIEF

(Fraudulent Misrepresentation – All Defendants)

38. Paragraphs 1 through 37 are incorporated herein by reference.

39. Defendants made false representations of material facts as described in paragraphs 15, 16, 22 and 24 above.

40. Defendants knew of the falsity of the representations or acted with indifference as to the truth or falsity of the representations.

41. Plaintiffs did not know the representations were false.

42. Defendants made the false representations with the intent that Plaintiffs act on them.

43. Plaintiffs reasonably and justifiably relied on the false representations.

44. Plaintiffs' reliance on the false representations caused them damages.

SECOND CLAIM FOR RELIEF

(Negligent Misrepresentation – All Defendants)

45. Paragraphs 1 through 44 are incorporated herein by reference.

46. Defendants, in the course of their business or profession, made misrepresentations of material facts as described in paragraphs 15, 16, 22 and 24 above without reasonable care.

47. Defendants made the misrepresentations for the guidance of others in their business transactions.

48. Defendants made the misrepresentations with the knowledge that they would be relied upon by the Plaintiffs.

49. Plaintiffs reasonably and justifiably relied on the misrepresentations to their detriment.

50. Plaintiffs' reliance on the misrepresentations caused them damages.

THIRD CLAIM FOR RELIEF

(Fraudulent Concealment/Nondisclosure of Material Facts – All Defendants)

51. Paragraphs 1 through 50 are incorporated herein by reference.

52. Defendants concealed material existing facts as described in paragraphs 28, 29 and 31-35 above that in equity and good conscience should have been disclosed.

53. Defendants knew that the foregoing facts were being concealed.

54. Plaintiffs were ignorant that the foregoing facts were being concealed.

55. Defendants intended that Plaintiffs would act upon the concealment.

56. Plaintiffs' action on the concealment caused them damages.

FOURTH CLAIM FOR RELIEF

(Breach of Fiduciary Duties – Defendant Connolly)

57. Paragraphs 1 through 56 are incorporated herein by reference.

58. Defendant Connolly's past dealings with Plaintiffs, including his role as an attorney with respect to Plaintiffs McGonigle and Pfeiffer, gave rise to a relationship of trust and confidence between Defendant Connolly and Plaintiffs.

59. As general counsel for and having a membership interest in Teller Holdings and BudTeller, Defendant Connolly owed Plaintiffs, as prospective members of Teller Holdings, a fiduciary duty to act with an extreme measure of candor, unselfishness and good faith, and to disclose all material facts affecting the value of an interest in the company.

60. Defendant Connolly breached his fiduciary duties to Plaintiffs through the actions described above.

61. Defendant Connolly's breach of fiduciary duties caused Plaintiffs damages.

FIFTH CLAIM FOR RELIEF

(Securities Fraud – All Defendants)

62. Paragraphs 1 through 61 are incorporated herein by reference.

63. Defendants made untrue statements of fact and omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading as described in paragraphs 15, 16, 22, 24, 28, 29 and 31-35 above.

64. Defendants' statements and omissions occurred in connection with the offer, sale, or purchase of a security as described in the Subscription Agreement for Teller Holdings, LLC.

65. Defendants' untrue statements and omissions of material facts constitute a violation of C.R.S. § 11-51-501(b).

SIXTH CLAIM FOR RELIEF
(Civil Conspiracy – All Defendants)

66. Paragraphs 1 through 63 are incorporated herein by reference.

67. Defendants consciously conspired, by word or conduct, and deliberately pursued a common plan or design to defraud Plaintiffs through the unlawful misrepresentation and omission of material facts as described in paragraphs 15, 16, 22, 24, 28, 29 and 31-35 above.

68. One or more unlawful acts were performed to accomplish that goal as described in paragraphs 15, 16, 22, 24, 28, 29 and 31-35 above.

69. Defendants' actions in furtherance of their conspiracy caused Plaintiffs damages.

WHEREFORE, Plaintiffs pray for relief hereunder as follows:

- i. With respect to Plaintiffs' First Claim for Relief, compensatory damages in an amount to be determined at trial, plus pre- and post-judgment interest.
- ii. With respect to Plaintiffs' Second Claim for Relief, compensatory damages in an amount to be determined at trial, plus pre- and post-judgment interest.
- iii. With respect to Plaintiffs' Third Claim for Relief, compensatory damages in an amount to be determined at trial, plus pre- and post-judgment interest.
- iv. With respect to Plaintiffs' Fourth Claim for Relief, compensatory damages in an amount to be determined at trial, plus pre- and post-judgment interest, attorney fees and costs.
- v. With respect to Plaintiffs' Fifth Claim for Relief, compensatory damages in an amount to be determined at trial, plus pre- and post-judgment interest and attorney fees and costs pursuant to C.R.S. § 11-51-604(4).
- vi. With respect to Plaintiffs' Sixth Claim for Relief, compensatory damages in an amount to be determined at trial, plus pre- and post-judgment interest.
- vii. Such other and further relief as the court finds proper.

JURY TRIAL DEMANDED

Dated: June 26, 2017

Respectfully submitted,

s/ Ronald L. Wilcox

Ronald L. Wilcox
Attorney for Plaintiffs

Plaintiffs' Addresses:

Michael McGonigle and McGonigle, Inc.: 6448 E. Lookout Drive, Parker, CO 80138.

Celeste Pfeiffer and CP Investments, LLC: 3500 W. 17th Ave., Denver, CO 80204.

Richard Wigton and Cobra, LLC: 7128 S. Andes Circle, Centennial, CO 80016.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26^h day of June, 2017, the foregoing **SECOND AMENDED COMPLAINT** was filed and served via Colorado Courts E-filing to the following:

Troy R. Rackham, Esq.
FENNEMORE CRAIG, P.C.
1700 Lincoln Street, Suite 2400
Denver, CO 80203

/s/ Ronald L. Wilcox
