

**DISTRICT COURT, BOULDER COUNTY,
COLORADO**

1777 6th Street, Boulder, CO 80302
Telephone: (303) 441-3750

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Plaintiff:

LP CAPITAL, LLC, a Colorado limited liability company.

vs.

Defendants:

MOUNTAIN HIGH PRODUCTS, LLC, a Colorado limited liability company, d/b/a WANA BRANDS; and Nancy Whiteman, an individual.

Attorneys for Plaintiff:

Steven M. Feder #14991
Barry Boughman #14010
Karl N. Hoffman #48665
FEDER LAW FIRM
730 – 17th Street, Suite 550
Denver, CO 80202
Telephone: (303) 221-5599
Email: steve@federlawfirm.com; bo@federlawfirm.com;
karl@federlawfirm.com

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Case No.: _____

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiff LP Capital, LLC (“LP Capital”) or (“Plaintiff”), through its attorneys, Feder Law Firm, submits its Complaint against Defendants Mountain High Products, LLC (“Mountain High”) doing business as Wana Brands (“Wana”) and Nancy Whiteman (“Ms. Whiteman”) (collectively “Defendants”) as follows:

INTRODUCTION

This action is brought as a result of Defendants’ bad faith business practices and fraudulent conduct in inducing Plaintiff to provide confidential and proprietary information to Defendants in anticipation of a merger or similar business acquisition between LP Capital and Mountain High d/b/a Wana (hereinafter the “Acquisition”). In or about September 2017, Plaintiff and Defendants executed a non-disclosure agreement and conducted merger

discussions. Defendants made various promises to Plaintiff about the Acquisition, including formally announcing to Plaintiff's employees that the transaction was indeed going to occur. In reliance on promises made by Defendants, Plaintiff took various actions towards consummating the Acquisition, including providing confidential information to Defendants and allowing LP Capital's key sales and new product design employee to transfer his employment to Wana. Acting fraudulently and in bad faith, Defendants then pulled the plug on the Acquisition, while stealing and wrongfully maintaining Plaintiff's ideas, confidential information, and key personnel. Plaintiff reasonably relied on Defendants promises that they were working towards the Acquisition and suffered damages as a result. Upon information and belief, Defendants' actions were intentional and designed to destroy LP Capital's ability to compete with Defendants in the marijuana "vape" products marketplace. This action is brought to recover monetary damages from Defendants, and to enjoin Defendants from using and continuing to use the wrongfully obtained confidential information and business strategies, and from continuing to employ LP Capital's key employee.

PARTIES

1. Plaintiff LP Capital LLC is a Colorado limited liability company, with its headquarters and principal place of business in Henderson, Colorado. LP Capital owns and operates a marijuana products refinery in Adams County, Colorado. LP Capital's product lines include marijuana "distillate oil" in the form of "vape" pen cartridges and syringes, as well as "solid states" products such as shatter and waxes.

2. Defendant Mountain High d/b/a Wana is a Colorado limited liability company, with its headquarters and principal place of business in Boulder, Colorado. Wana operates a marijuana edibles operation in Boulder County. Wana had an interest in increasing its product line and exploring the "vape" business. Upon information and belief, prior to the Acquisition discussions with LP Capital, Wana was not recently involved in the vape business.

3. Nancy Whiteman is an owner and CEO of Wana. Ms. Whiteman was the lead contact for Wana in the Acquisition discussions that took place between LP Capital and Wana.

4. Plaintiff and Defendants are sometimes collectively referred to as "the Parties."

JURISDICTION AND VENUE

5. Venue is proper in this Court pursuant to C.R.C.P. 98 because Defendants are residents of Boulder County, regularly conduct business in Boulder County, and committed tortious acts in Boulder County.

6. Jurisdiction is proper in this Court pursuant to C.R.S. 13-1-124 because Defendants transacted business in this state and committed acts giving rise to this litigation within this state.

GENERAL ALLEGATIONS

7. On or about July 24, 2017, Plaintiff and Defendants began discussions concerning the Acquisition of LP Capital by Wana.

8. On or about September 5, 2017, and in conjunction with the merger discussions, Plaintiff and Defendants executed a Mutual Confidentiality Agreement, a copy of which is attached hereto as Exhibit A (“Non-Disclosure Agreement” or “NDA”).

9. Paragraphs 3-6 of the NDA prohibit the Parties from maintaining, using, or disclosing confidential information received from the other party if the Acquisition did not come to fruition.

10. Paragraph 7 of the NDA prohibits and conditions the solicitation of, and contracting relationships with, either party’s clients.

11. Paragraph 8 of the NDA prohibits and conditions the solicitation and/or hiring of either party’s employees.

12. Between July 24, 2017 and December 7, 2017, numerous discussions took place between the Parties regarding the Acquisition. During this time frame, and in furtherance of the Acquisition, and pursuant to the NDA, LP Capital shared confidential trade information and business strategies with Wana, including, but not limited to strategies for LP Capital’s vape business, business plans, marketing ideas, and other proprietary information and strategies. Based on the discussions with and information received from LP Capital, Wana indicated that it would provide LP Capital with a equity position in Wana as part of the Acquisition.

13. LP Capital’s primary business focus was its vape business. Prior to the merger discussions with Wana, the majority of LP Capital’s business planning and capital expenditures were directed to the vape line of products. In building its vape strategies, LP Capital had spent over one year and approximately \$ 2 million dollars in taking the following nonexclusive list of actions:

- A. Hiring a marketing firm;
- B. Hiring an internal marketing person for brand design, packaging, and “go to market” strategy;
- C. Hiring a chemist to work on formulation and to build and equip a lab;
- D. Hiring two industry veterans to work on hardware, production and related vape strategies;
- E. Acquiring Shift Cannabis for their industry knowledge and contracts to develop the business plan;

F. Hiring a Sales Manager and other salespeople.

14. Also, during the time frame of July – December 2017, the LP Capital and Wana discussed the transition of LP Capital’s key sales and new product design employee, Nate Mehle, from LP Capital to Wana. Wana recruited LP Capital employees to implement the new business plan and strategies it acquired from LP Capital. Not knowing of Wana’s true intentions, LP Capital allowed Mr. Mehle to leave the employ of LP Capital and become an employee of Wana, as Plaintiff believed that the parties were about to consummate the Acquisition of LP Capital by Wana.

15. In or about late October 2017, Defendant Nancy Whiteman requested to hold a meeting to take place at LP Capital’s headquarters, the sole purpose of which meeting would be to announce Wana’s plans for the Acquisition to LP Capital’s staff. The meeting took place on or about October 30, 2017, at which point Ms. Whiteman met with the entire LP Capital staff and announced the plans for Wana’s Acquisition of LP Capital to all of LP Capital’s employees.

16. Following this announcement and Defendants’ presentation of the Wana business plan to LP Capital staff, several of LP Capital’s key employees resigned. Those resigning specified the pending merger announcement and comments made by Whiteman which created uncertain security of their job as their reason for resignation.

17. After the October 30, 2017 meeting and announcement of the Acquisition by LP Capital employees, Defendants continued to represent to LP Capital, both orally and in writing, that they intended to pursue the merger transaction.

18. During the months of October and November, and into early December, upon the instructions and specific direction of Defendants, LP Capital terminated certain key employees, as Ms. Whiteman determined that certain employees would not fit in with the Wana Acquisition plan. The effect of these terminations materially injured LP Capital after Wana terminated the Acquisition.

19. Starting in early October, upon the instructions and direction of Defendants, LP Capital stopped all marketing and branding efforts and new sales relationships of its own products.

20. During the months of October to December, upon the instructions and direction of Defendants, LP Capital changed its sales and marketing strategies as Wana indicated it had other plans for LP Capital sales, which reduced revenue for the fourth quarter of 2017 and projected 2018 sales nearly by 75%, costing LP Capital millions of dollars.

21. During this time frame, Wana instructed LP Capital to cease its relationships with certain of LP Capital’s Ohio and Massachusetts partners, which LP Capital did at significant loss of future revenue. Defendants requested that LP Capital terminate these partnerships because they conflicted with Wana’s existing relationships and partnerships. LP Capital would not have terminated these relationships and partnerships if it had not relied on Wana’s actions and representations that Wana was going to proceed with the Acquisition.

22. Also, during this time frame, and in anticipation of the Acquisition, Plaintiff introduced Wana to PAX Labs, Inc. (“PAX”), a San Francisco-based firm in the business of manufacturing products and accessories for the vape products lines. Plaintiff had developed a previous business relationship with PAX and was in the process of moving towards a business venture with PAX.

23. Upon information and belief, in or about November 2017, Defendant Whiteman met directly with PAX representatives, without representatives from Plaintiff present, and solicited PAX’s business to the exclusion of Plaintiff, and shortly thereafter, PAX discontinued all communications with Plaintiff and has failed to return Plaintiff’s phone calls.

24. Suddenly, and in bad faith, on or about December 7, 2017, Defendants informed Plaintiff that they were no longer pursuing the Acquisition.

25. Upon information and belief, Wana is now implementing LP Capital’s business strategies as if they were Wana’s own ideas. Upon information and belief, prior to Wana’s discussions with LP Capital, Wana had no vape strategy, no vape planning, and no personnel allocated to a vape product line. Wana essentially entered discussions with LP Capital, feigning the intent to acquire LP Capital and combine their edibles product line with LP Capital’s vape product line for a mutually beneficial relationship. As part of, and in good faith reliance on the NDA, LP Capital shared its vape strategies and plans with the good faith belief that Wana would acquire LP Capital and run the vape product line for Wana. Instead, upon information and belief, Wana simply stole LP Capital’s ideas, acting with malice, ill-will, and in bad faith.

26. Wana fraudulently and wrongfully obtained LP Capital’s vape strategies, business plans, business relationships, and other confidential and proprietary information and ideas, and is using them to its advantage and to the detriment of LP Capital. As a result of Defendants’ actions, LP Capital has lost substantial revenue and has been severely damaged.. LP Capital estimates its damages are in excess of \$5 million dollars.

27. Wana’s actions have substantially and negatively impacted the finances, intellectual property and business opportunities of LP Capital. LP Capital relied on the actions and representations of Defendants and negotiated in good faith for the Acquisition. Defendants fraudulently mislead LP Capital into believing that Wana was going to proceed with Acquisition, when in fact, Defendants mislead Plaintiff and tricked it into providing valuable, proprietary, and confidential information to Defendants, with no intentions of proceeding with the transaction.

**FIRST CLAIM FOR RELIEF
(Breach of Contract)**

28. Plaintiff incorporates the allegations of the preceding paragraphs 1 through 27 above as if fully set forth herein.

29. Defendants signed the NDA containing non-solicitation, non-compete, nondisclosure, and confidentiality provisions set forth in paragraph 3-8 of the NDA.

30. These provisions are valid and enforceable.

31. Defendants breached the NDA by soliciting Plaintiff's employees, in bad faith, and continuing to employ Plaintiff's employees.

32. Defendants breached the NDA by disclosing and utilizing confidential information fraudulently obtained by Defendants from Plaintiff, and using such confidential information to further Defendants' business, to the detriment of Plaintiff.

33. Defendants breached the NDA by soliciting other clients and business relationships of Plaintiff, and fraudulently utilizing such client and business relationships to further Defendants' business, to the detriment of Plaintiff.

34. Defendant's breach of the NDA was willful, and in bad faith.

35. Plaintiff has been damaged as a result of Defendants' breaches in an amount to be proven at trial.

**SECOND CLAIM FOR RELIEF
(Fraudulent Inducement)**

36. Plaintiff incorporates the allegations of the preceding paragraphs 1 through 35 above as if fully set forth herein.

37. Defendants made statements and representations to Plaintiff that Defendants intended to proceed with the Acquisition.

38. At the time that Defendants made such statements and representations, Defendants did not intend to proceed with the Acquisition.

39. Defendants made such statements and representations to Plaintiff with the intent of recruiting Plaintiff's employees, stealing Plaintiff's confidential business information, marketing strategies, and business plans, and stripping Plaintiff of its ability to proceed with its business.

40. Plaintiff justifiably relied on Defendants' words, actions, and course of conduct.

41. As a direct and proximate result, Plaintiff has been damaged in an amount to be proven at trial.

**THIRD CLAIM FOR RELIEF
(Permanent Injunction)**

42. Plaintiff incorporates the allegations of the preceding paragraphs 1 through 41 above as if fully set forth herein.

43. Defendants fraudulently and wrongfully obtained confidential and proprietary business information, strategies, ideas, employee relationships, and business relationships from Plaintiff.

44. Defendants continue to use such confidential business information and relationships to their advantage, and to the detriment of Plaintiff.

45. Defendants should be permanently enjoined from using the confidential and proprietary business information, strategies, ideas, employee relationships, and business relationships wrongfully obtained from Plaintiff.

FOURTH CLAIM FOR RELIEF
(Intentional Interference with Prospective Business Advantage)

46. Plaintiff incorporates the allegations of the preceding paragraphs 1 through 45 above as if fully set forth herein.

47. An economic relationship existed between the Plaintiff and PAX, containing a probable future economic benefit or advantage to Plaintiff.

48. Defendants knew of the existence of the relationship.

49. Defendants intentionally engaged in wrongful conduct designed to interfere with or disrupt this relationship.

50. The economic relationship was interfered with or disrupted.

51. Defendants' wrongful conduct was designed to interfere with or disrupt this relationship and caused resulting damages to Plaintiff, in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment)

52. Plaintiff incorporates the allegations of the preceding paragraphs 1 through 51 above as if fully set forth herein.

53. Plaintiff has conferred benefits upon Defendants and Defendants have accepted such benefits.

54. Under the circumstances of this case, it would be inequitable to allow Defendants to retain the benefits conferred upon them by Plaintiff without payment of the reasonable value therefor.

55. Defendants have been unjustly enriched in an amount to be proven at trial.

56. Defendants should be ordered to disgorge all profits obtained as a result of their wrongful conduct, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

1. A permanent injunction, prohibiting Defendants from using the confidential and proprietary business information, vape plans, strategies, ideas, employee relationships, and business relationships wrongfully obtained from Plaintiff;
2. Damages for breach of contract, in an amount to be proven at trial;
3. Damages for fraudulent inducement, in an amount to be proven at trial;
4. Damages for Intentional Interference with Prospective Business Advantage, in an amount to be proven at trial;
5. Damages for Unjust Enrichment, including disgorgement of profits wrongfully obtained;
6. Pre- and post-judgment interest as permitted by law;
7. Attorney fees as permitted by law; and
8. Such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE

Dated this 13th day of April, 2018

Respectfully submitted,

FEDER LAW FIRM

/s/ Steven M. Feder

**Pursuant to Colo.R.Civ.P. Rule 121, § 1-26,
a duly-signed copy is on file at Feder Law Firm**

Steven M. Feder #14991

Plaintiff's Address:
9690 Dallas Street, Unit I
Henderson CO 80640