

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

SHANNON JENKINS,

Plaintiff,

v.

HARVEST HEALTH & RECREATION INC.,
EULA L. ADAMS,
MICHAEL SCOTT ATKISON,
MARK NEAL BARNARD,
ANA DUTRA,
ELROY P. SAILOR, and
STEVEN M. WHITE,

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff Shannon Jenkins (“Plaintiff”), by and through her undersigned counsel, for her complaint against defendants, alleges upon personal knowledge with respect to herself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action against Harvest Health & Recreation Inc. (“Harvest” or the “Company”) and its Board of Directors (the “Board” or the “Individual Defendants”) for violating Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 14a-9, 17 C.F.R. § 240.14a-9. By the action, Plaintiff seeks to enjoin the vote on a proposed transaction pursuant to which Trulieve Cannabis Corp. (“Trulieve”) will acquire the Company through Trulieve’s affiliates Trulieve Acquisition Corp. (“Trulieve”), Mustang MergerCo Inc. (“Merger Sub”) and Trulieve

Intermediate Holding Corp. (“Intermediate Holdco”) (the “Proposed Transaction”).¹

2. On May 10, 2021, Harvest and Trulieve jointly announced their entry into an Arrangement Agreement (the “Merger Agreement”) to sell the Company to Trulieve.² Under the terms of the Merger Agreement, each Harvest stockholder will be entitled to receive 0.1170 of a subordinate voting share of Trulieve for each Harvest share they own (the “Merger Consideration”).³

3. On July 13, 2021, Harvest filed a Schedule 14A Definitive Proxy Statement (the “Proxy Statement”) with the SEC. The Proxy Statement, which recommends that Harvest stockholders vote in favor of the Proposed Transaction, omits and/or misrepresents material information essential and necessary to that decision. Defendants authorized the issuance of the false and misleading Proxy Statement in violation of Sections 14(a) and 20(a) of the Exchange Act.

4. It is imperative that the material information omitted from the Proxy Statement is disclosed to the Company’s stockholders prior to the forthcoming stockholder vote so that they can properly exercise their corporate suffrage rights.

5. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disclosed to the Company’s stockholders or, in the event the Proposed Transaction is consummated.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the claims asserted herein for violations of Sections

¹ Trulieve is a fully licensed medical cannabis company in the State of Florida. Trulieve is also a licensed operator in California, Massachusetts, Connecticut, Pennsylvania, and West Virginia. Trulieve shares trade on the Canadian Securities Exchange under the symbol “TRUL,” and on the OTCQX Best Market under the symbol “TCNNF.”

² The Board approved the Merger Agreement on or around May 10, 2021.

³ The approximate value of the Proposed Transaction is \$2.1 billion.

14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331 (federal question jurisdiction).

7. This Court has jurisdiction over the defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiff's claims arose in this District, where a substantial portion of the actionable conduct took place, where most of the documents are electronically stored, and where the evidence exists. Harvest operates and maintains a corporate office as well as a manufacturing facility in this District. Moreover, each of the Individual Defendants, as Company officers or directors, either resides in this District or has extensive contacts within this District.

PARTIES

9. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of Harvest common stock.

10. Defendant Harvest is a British Columbia corporation with its principal executive offices located at 1155 W. Rio Salado Parkway, Suite 201, Tempe, Arizona 85281, and a corporate office and manufacturing facility located in Denver, Colorado. Harvest is a vertically integrated cannabis company and multi-state operator. The Company's common stock is traded on the OTC Markets under the ticker symbol "HRVSF."

11. Defendant Eula L. Adams ("Adams") has been a director of the Company since December 2019.

12. Defendant Michael Scott Atkison ("Atkison") has been a director of the Company since May 2020.

13. Defendant Mark Neal Barnard (“Barnard”) has been Chairman of the Board since March 2020, and a director of the Company since November 2018.

14. Defendant Ana Dutra (“Dutra”) has been a director of the Company since December 2019.

15. Defendant Elroy P. Sailor (“Sailor”) has been Chief Strategy Officer of the Company since January 2020 and a director since November 15, 2018.

16. Defendant Steven M. White (“White”) co-founded Harvest in 2012, is Chief Executive Officer (“CEO”) of the Company, and has been a director at all relevant times.

17. Defendants identified in paragraphs 10 to 15 are collectively referred to herein as the “Board” or the “Individual Defendants.”

SUBSTANTIVE ALLEGATIONS

The Proposed Transaction

18. On May 10, 2021, Harvest and Trulieve issued a joint press release announcing the Proposed Transaction. The press release stated, in relevant part:

TALLAHASSEE, Fla. and PHOENIX, May 10, 2021 -- Trulieve Cannabis Corp. (“Trulieve” or the “Company”) (CSE: TRUL) (OTC: TCNNF) and Harvest Health & Recreation Inc. (“Harvest”) (CSE: HARV, OTCQX: HRVSF) are pleased to announce they have entered into a definitive arrangement agreement (the “Arrangement Agreement”) pursuant to which Trulieve will acquire all of the issued and outstanding subordinate voting shares, multiple voting shares and super voting shares (the “Harvest Shares”) of Harvest (the “Transaction”). Under the terms of the Arrangement Agreement, shareholders of Harvest (the “Harvest Shareholders”) will receive 0.1170 of a subordinate voting share of Trulieve (each whole share, a “Trulieve Share”) for each Harvest subordinate voting share (or equivalent) held (the “Exchange Ratio”), representing total consideration of approximately \$2.1 billion based on the closing price of the Trulieve Shares on May 7, 2021.

Trulieve, a leading multi-state operator with a focus on the northeast and southeast regions of the United States, and Harvest, a leading multi-state operator with a focus on the west coast and northeast regions of the United States, have built deep, vertically integrated operations in their key markets, becoming leading operators in the United States, the world’s largest regulated cannabis market.

Key Transaction Highlights and Benefits

- Increases Scale Across Our Hub Markets – through the creation of the largest U.S. cannabis operator on a combined retail and cultivation footprint basis;
- Creates the Most Profitable US MSO – with combined 2020 Adjusted EBITDA of \$266 million^{1,2} and combined 2021E consensus Adjusted EBITDA³ of \$461 million, delivering an unparalleled platform for continued growth;
- Delivers a Superior Existing Retail and Distribution Model – from a robust retail network of 126 dispensaries across 11 states, the combined company will have leading market shares in Arizona and Florida;
- Strong and Expanding Multi-State Presence – bolsters Trulieve’s expansion in US northeast and southeast hubs in Florida, Pennsylvania and Maryland, and establishes a southwest hub in core markets including Arizona, where recreational adult use of cannabis was recently legalized;
- Optimizes Nationwide Presence – through well-established retail and wholesale channels across markets, as well as the ability to reach an estimated total addressable market of US\$19.3 billion in 2025E (Arcview market estimate);
- Adds Premium Brands – to Trulieve’s portfolio of in-house brands and national brand partners with a successful line of products across multiple form factors;
- Leverages Expert Operating Teams and Best Practices – from each of Trulieve and Harvest, enhancing operational excellence by combining unparalleled knowledge of, and success in winning, state license application processes and the ability to rapidly bring operations to market; and
- Accretive Transaction Reinforces Trulieve’s Leading Financial Metrics – by reinforcing superior financial performance relative to peers through industry-leading margins and strong projected profitable growth.

Management Commentary

“Today’s announcement is the largest and most exciting acquisition so far in our industry, creating the most profitable public multi-state operator. Importantly, our companies share similar customer values with a focus on going deep in core markets. This combination offers us the opportunity to leverage our respective strong foundations and propel us forward with an unparalleled platform for future growth,” stated Kim Rivers, Chief Executive Officer of Trulieve. “Harvest provides us with an immediate and significant presence in new and established markets and accelerates our entry into the adult use space in Arizona. Trulieve and Harvest are leaders in our markets, recognized for our innovation, brands, and operational expertise with true depth and scale in our businesses. We look forward to providing best-in-class service to patients and customers on a broader national scale as we create an iconic US cannabis brand.”

“We are thrilled to be joining Trulieve, a company that has achieved unrivaled success and scale in its home state of Florida,” said Steve White, Chief Executive Officer of Harvest. “As one of the oldest multi-state operators, we believe our track record of identifying and developing attractive market opportunities combined with our recent successful launch of adult use sales in Arizona will add tremendous value to the combined organization as it continues to expand and grow in the coming years.”



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