

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

Civil Action No.

MATT OPPEN,

Plaintiff,

v.

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

Defendants.

**COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS AND
JURY DEMAND**

Plaintiff Matt Oppen (“Plaintiff”), by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys.

NATURE OF THE ACTION

1. This is an action against Harvest Health & Recreation Inc. (“Harvest” or the “Company”) and its Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a) and 78t(a), and Rule 14a-9 promulgated thereunder by the SEC, 17 C.F.R. § 240.14a-9, in connection with the proposed acquisition (the “Proposed Transaction”) of Harvest by Trulieve Cannabis Corp. (“Trulieve”).

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to Sections 14(a) and 20(a) of the Exchange Act (15 U.S.C. §§ 78n(a) and 78t(a)) and Rule 14a-9 promulgated thereunder by the SEC (17 C.F.R. § 240.14a-9).

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as a substantial portion of the transactions and wrongs complained of herein had an effect in this District, the alleged misstatements entered and the subsequent damages occurred in this District, and the Company conducts business in this District.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

6. Plaintiff is, and has been at all relevant times hereto, an owner of Harvest common stock.

7. Defendant Harvest, together with its subsidiaries, cultivates, processes, sells, and retails inhalable, ingestible, and topical cannabis products in the United States. The Company is incorporated in British Columbia. The Company's common stock trades on the OTCQX tier of the OTC Markets under the ticker symbol, "HRVSF."

8. Defendant Mark N. Barnard ("Barnard") is Chairman of the Board of the Company.

9. Defendant Steven M. White (“White”) is Founder, Chief Executive Officer, and a director of the Company.

10. Defendant Elroy P. Sailor (“Sailor”) is Chief Strategy Officer and a director of the Company.

11. Defendant Ana Dutra (“Dutra”) is a director of the Company.

12. Defendant Eula L. Adams (“Adams”) is a director of the Company.

13. Defendant Michael Scott Atkison (“Atkison”) is a director of the Company.

14. Defendants Barnard, White, Sailor, Dutra, Adams, and Atkison are collectively referred to herein as the “Individual Defendants.”

15. Defendants Harvest and the Individual Defendants are collectively referred to herein as the “Defendants.”

SUBSTANTIVE ALLEGATIONS

A. The Proposed Transaction

16. On May 10, 2021, Harvest and Trulieve announced that they had entered into a definitive arrangement agreement pursuant to which Trulieve would acquire all of the issued and outstanding subordinate voting shares, multiple voting shares and super voting shares of Harvest. Under the terms of the agreement, Harvest shareholders will receive 0.1170 of a subordinate voting share of Trulieve for each Harvest subordinate voting share (or equivalent) held. The press release announcing the Proposed Transaction states, in pertinent part:

Trulieve Announces the Largest US Cannabis Transaction; Acquisition of Harvest Health & Recreation Inc., Creates the Most Profitable Multi-State Operator in the World's Largest Cannabis Market

NEWS PROVIDED BY
Harvest Health & Recreation Inc.
May 10, 2021, 07:05 ET

Combined Company Will Maintain Industry Leading Scale in Retail, Cultivation & Production

Footprint Provides National Scale with a Deep Regional Focus in Attractive Markets

Expanded Runway for Growth with new Southwest Hub and Expanded Northeast and Southeast Hubs

Combined Consensus 2021E Revenue of \$1.2 Billion

Trulieve and Harvest to Host a Joint Conference Call and Webcast today at 8:30 a.m. ET

TALLAHASSEE, Fla. and PHOENIX, May 10, 2021 /PRNewswire/ -- 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.

* * *

Terms of the Transaction

The Transaction will be effected by way of a plan of arrangement pursuant to the *Business Corporations Act* (British Columbia). Under the terms of the Arrangement Agreement, Trulieve will acquire all of the issued and outstanding Harvest Shares, with each Harvest Shareholder receiving 0.1170 of a Trulieve Share for each Harvest Share, implying a price per Harvest Share of US\$4.79, which represents a 34% premium to the May 7, 2021 closing price of the Harvest Shares. After giving effect to the Transaction, Harvest Shareholders will hold approximately 26.7% of the issued and outstanding pro forma Trulieve Shares (on a fully-diluted basis). The Exchange Ratio is subject to adjustment in the event that Harvest completes certain interim period refinancing measures, with the potential adjustment in proportion to the incremental costs from such financing relative to the Transaction value. Additional details of the Transaction will be described in the management information circular and proxy statement (the "**Circular**") that will be mailed to Harvest Shareholders in connection with a special meeting of Harvest

Shareholders (the "**Meeting**") expected to be held in the third quarter to approve the Transaction.

The Transaction has been unanimously approved by the Boards of Directors of each of Trulieve and Harvest. Harvest Shareholders holding more than 50% of the voting power of the issued and outstanding Harvest Shares have entered into voting support agreements with Trulieve to vote in favor of the Transaction.

The Arrangement Agreement provides for certain customary provisions, including covenants in respect of non-solicitation of alternative transactions, a right to match superior proposals, US\$100 million reciprocal termination fees under certain circumstances and reciprocal expense reimbursement provisions in certain circumstances.

The Transaction is subject to, among other things, the approval of the necessary approvals of the Supreme Court of British Columbia, the approval of two-thirds of the votes cast by Harvest Shareholders at the Special Meeting, receipt of the required regulatory approvals, including, but not limited, approval pursuant to the Hart–Scott–Rodino Antitrust Improvements Act, and other customary conditions of closing. Approval of Trulieve Shareholders is not required. Additional details of the Transaction will be provided in the Circular.

The Board of Directors of Harvest (the "**Harvest Board**") has unanimously determined, after receiving financial and legal advice and following the receipt and review of a unanimous recommendation of a special committee of independent directors (the "**Special Committee**"), that the Transaction is in the best interests of Harvest, and that, on the basis of the Fairness Opinion (as defined herein), that the consideration to be received by the Harvest Shareholders is fair, from a financial point of view, to the Harvest Shareholders.

The Harvest Board unanimously recommends that Harvest Shareholders vote in favour of the resolution to approve the Transaction. The Special Committee obtained a fairness opinion from Haywood Securities Inc., (the "**Fairness Opinion**") which provides that, as at the date of such opinion and based upon and subject to the assumptions, procedures, factors, limitations and qualifications set forth therein, the consideration to be received by the Harvest Shareholders pursuant to the Transaction is fair, from a financial point of view, to the Harvest Shareholders.

Financial and Legal Advisors

Canaccord Genuity Corp. acted as exclusive financial advisor and DLA Piper (Canada) LLP and Fox Rothschild LLP acted as Canadian and United States legal counsel, respectively, to Trulieve. Canaccord Genuity Corp. also provided a fairness opinion to the Board of Directors of Trulieve.

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