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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JACOB MAGLEY,
An Individual,

Plaintiff,

v.
HIGH TIDE BIOLOGICAL, LLC
An Oregon Corporation;
HIGHER LEVEL CONCENTRATES, LLC
An Oregon Corporation;
ASTORIA TRADING COMPANY
An Oregon Corporation;
SWEET RELIEF ASTORIA
An Oregon Corporation;
WILLIAM "CHRIS" WEST
An Individual;
JASON ALEXANDER OEI
An Individual;
RICHARD DELPHIA
An Individual;
DICK & JOHN, LLC
An Oregon Corporation;
DICK'S LTD.
An Oregon Corporation;
DIRICK PROPERTIES, LLC
An Oregon Corporation;
D&D GAS, INC.
An Oregon Corporation
DELPHIA ENTERPRISES, INC.
An Oregon Corporation;
UNDER THE BRIDGE CIGARETTES
Assumed Business Name Owned and
Operated by John Harper; and
UTB INVESTMENTS, LLC
An Oregon Corporation

Defendants.

) Case No.
)
)
) COMPLAINT
)
) Premises Liability, Violations of Oregon
) Safe Employment Act, Violations of
) Employer Liability Act, Strict Products
) Liability, Negligence
)
) **JURY TRIAL DEMANDED**
)
) **NOT SUBJECT TO MANDATORY**
) **ARBITRATION**
)
) **FEE AUTHORITY: ORS 21.160 (1)(e)**
)
) AMOUNT PRAYED FOR: \$8,940,000.00

1 For his complaint against Defendants High Tide Biological, LLC, Higher Level
2 Concentrates, LLC, Astoria Trading Company, Sweet Relief Astoria, William “Chris” West,
3 Jason Alexander Oei, Richard Delphia, Dick & John, LLC, Dick’s, Ltd., Dirick Properties, D&D
4 Gas, Inc., Delphia Enterprises, Inc., Under The Bridge Cigarettes, and UTB Investments, LLC
5 (collectively referred to herein as “Defendants”), Plaintiff Jacob Magley alleges as follows:

6 **PARTIES, JURISDICTION AND VENUE**

7 1.

8 Plaintiff is a citizen of the State of Oregon, and resides in Portland, Multnomah County,
9 Oregon.

10 2.

11 Defendant High Tide Biological, LLC (“High Tide”), is a corporation duly formed and
12 existing under the laws of the State of Oregon.

13 3.

14 Defendant Higher Level Concentrates, LLC (“Higher Level”), is a corporation duly
15 formed and existing under the laws of the State of Oregon.

16 4.

17 Defendant Astoria Trading Company (“Astoria Trading”) is a corporation duly formed
18 and existing under the laws of the State of Oregon.

19 5.

20 Defendant Sweet Relief Astoria (“Sweet Relief”) is a corporation duly formed and
21 existing under the laws of the State of Oregon.

22 6.

23 Defendant William “Chris” West (“Chris West” or “West”) is an individual who resides
24 at 990 Bridge View Court, Astoria, Oregon, 97103, where he may be served.

7.

1
2 Defendant Jason Oei (“Oei”) is an individual who resides at 532 West Harrison Avenue,
3 Astoria, Oregon 97103, where he may be served.

8.

4
5 Defendant Richard Delphia is an individual who resides at 324 N. Marion, Gearhart,
6 Oregon 97138, where he may be served.

9.

7
8 Dick & John, LLC (“Dick & John”) is a corporation duly formed and existing under the
9 laws of the State of Oregon.

10.

10
11 Dick’s, Ltd. (“Dick’s”) is a corporation duly formed and existing under the laws of the
12 State of Oregon.

11.

13
14 Dirick Properties, LLC (“Dirick Properties”) is a corporation duly formed and existing
15 under the laws of the State of Oregon.

12.

16
17 D&D Gas, Inc. (“D&D”) is a corporation duly formed and existing under the laws of the
18 State of Oregon.

13.

19
20 Delphia Enterprises, Inc. (“Delphia Enterprises”) is a corporation duly formed and
21 existing under the laws of the State of Oregon.

14.

22
23 Under The Bridge Cigarettes (“Under The Bridge”) is an assumed business name owned
24 and operated by John Harper doing business and existing under the laws of the State of Oregon.

15.

1
2 UTB Investments, LLC (“UTB”) is a corporation duly formed and existing under the
3 laws of the State of Oregon.

16.

4
5 Jurisdiction and venue are proper in Multnomah County pursuant to ORS 14.080 because
6 Defendants High Tide Biological, LLC, Higher Level Concentrates, LLC, and Astoria Trading
7 Company each maintain an agent authorized to receive process in Multnomah County and, thus,
8 these Defendants are deemed to be residents of Multnomah County for the purposes of this
9 action, pursuant to ORS 14.080 (1).

10
11 **FACTS**

12
13 17.

14 Plaintiff realleges and incorporates by reference the facts and allegations set forth in
15 paragraphs 1 through 16 above as if fully set forth herein.

18
19 18.

20 On October 19, 2016, Defendants Higher Level Concentrates, LLC, High Tide
21 Biological, LLC, Astoria Trading Company, Jason Oei and William “Chris” West (hereinafter
22 referred to collectively as the “Astoria Trading Defendants”) were commercial tenants at a
23 facility located at 401 Industry Street, Astoria, Oregon (“the Subject Premises”).

24
25 19.

26 The subject premises was, and is, owned, operated, maintained and possessed by Richard
Delphia, Dick & John LLC, Dick’s LTD, Dirick Properties, LLC, D&D Gas, Inc., and Delphia
Enterprises, Inc. (herein the “Delphia Defendants”) for the purpose of growing marijuana and
manufacturing cannabis extracts. At all times relevant to this Complaint, Richard Delphia,
individually and as an agent for the Delphia Defendants, routinely entered and inspected the

1 subject property. The Delphia Defendants received a portion of the profits of both Astoria
2 Trading and Sweet Relief Astoria as “rent.”

3 20.

4 At all times relevant to this action, including on October 19, 2016, the subject property
5 was also possessed and maintained by Sweet Relief Astoria. Sweet Relief Astoria operates, and
6 on October 19, 2016, operated, a cannabis dispensary on the subject premises. At all times
7 relevant to this action, the Sweet Relief Defendants and the Delphia Defendants were aware of
8 the nature of the use of their property by the Astoria Trading Defendants. Specifically, the
9 Delphia Defendants and Sweet Relief Astoria, at all times relevant to this Complaint, knew the
10 Astoria Trading Defendants used the facility for growing cannabis plants and for producing
11 cannabis extracts in an “open” extraction system.
12

13 21.

14 Agents and employees of both the Delphia Defendants and Sweet Relief Astoria would
15 routinely inspect the subject property and the activities of the Astoria Trading Defendants. Sweet
16 Relief Astoria sold cannabis extracts made by, and cannabis “buds” grown, harvested, and
17 trimmed by, the Astoria Trading Defendants.
18

19 22.

20 In or about March of 2016, Plaintiff was hired by the Astoria Trading Defendants, to
21 construct (or “build out”) the subject premises for their cannabis growing and extraction
22 operation. In violation of ORS 656.017, Astoria Trading Defendants did maintain workers’
23 compensation insurance.

24 / / /

25 / / /

26 / / /

23.

1
2 On October 19, 2016, while Plaintiff was an invitee on the premises, Astoria Trading
3 Defendants were in the process of preparing cannabis extract using an “open-ended” system for
4 extracting THC from cannabis plant product.

24.

5
6 In an “open-ended” system, “hash oil” or “honey oil” is produced by extracting
7 cannabinoids from cannabis plant material using LP gas as a solvent. The plant material is
8 placed in an “extraction tube” which is generally 2 feet long and 1.5 inches in circumference. LP
9 gas is then fed through the extraction tube to extract THC from the cannabis plant.
10

25.

11
12 Unbeknownst to Plaintiff, during an “open-ended” extraction process, invisible LP gas
13 vapors will escape and can quickly fill an enclosed area. Because it is not odorized, the LP gas
14 and vapor used to manufacture cannabis extracts can travel, undetected, great distances. Because
15 it is highly volatile and explosive, the LP gas can be ignited by an open flame.

26.

16
17 On October 19, 2016, the Astoria Trading Defendants were using canisters of “Whip-its”
18 LP gas purchased from or provided by the Under the Bridge Cigarettes and UTB Investments,
19 LLC (herein the “Harper Defendants”) in the extraction process.
20

27.

21
22 At all times relevant to this Complaint, including October 19, 2016, none of the
23 Defendants provided a safe working environment for the Plaintiff i.e. a working environment
24 free from recognized hazards (specifically, a ventilated work environment free from explosion
25 hazards), did not provide fire retardant clothing or any other form of personal protective
26 equipment to the Plaintiff, did not warn Plaintiff about the dangers and hazards of LP gas or the

1 extraction process, did not provide any training to Plaintiff regarding the dangers and hazards of
2 LP gas or cannabis extraction.

3 28.

4 The Subject Premises was defective and presented an unreasonable risk of harm to
5 invitees such as the Plaintiff. Specifically, the subject premises:

- 6 a) Violated the 2014 Oregon Fire Code (OR Admin. Rule 837-040-0001 *et seq.*, the
7 2012 International Fire Code, and the Life Safety Code (NFPA 101);
- 8 b) Was not equipped with automatic sprinklers;
- 9 c) Was not equipped with deflagration venting, as required by NFPA 68 and
10 substantive Oregon law;
- 11 d) Was not equipped with any explosion suppression systems, contrary to NFPA 68;
- 12 e) Did not have adequate ventilation, in violation of Oregon law;
- 13 f) Was not equipped with LP gas detectors;
- 14 g) Did not have any interior “Exit” signs;
- 15 h) Did not have adequate exit routes;
- 16 i) Did not have suitable fire control devices;
- 17 j) Was not equipped with a “safety shower”;
- 18 k) Did not have emergency lighting;
- 19 l) Did not have lit exit routes; and
- 20 m) Did not have two or more working exits, as required by Oregon law.

21 29.

22 On October 19, 2016, while Plaintiff was an invitee at the subject premises, Jason Oei
23 (acting individually and as an agent of High Tide Biological, LLC, Higher Level Concentrates,
24 LLC, and Astoria Trading Company) was “dabbing” while on the subject premises. At the same
25
26

1 time, West was utilizing an open extraction process. This created a source of ignition, causing
2 the LP gas vapors emitted from the Whip-its canisters used by West during the extraction
3 process to ignite and explode.

4 30.

5 On October 19, 2016, while Plaintiff was at the premises, an explosive mix of LP gas
6 vapors and air formed, ignited, and caused an immediate and violent explosion and flash fire that
7 resulted in the Plaintiff's serious and permanent injury.

8 31.

9 As a result of the explosion, a massive flash fire engulfed the Plaintiff. The force of the
10 flash fire caused the Plaintiff to suffer 22% TBSA burns to his hands, arms, upper body, and
11 face.
12

13 32.

14 The explosion caused Plaintiff to endure extensive medical treatment and hospitalization.

15 33.

16 On or about October 19, 2016, the Defendants knew or should have known that LP gas
17 has a wide explosive range, is a highly volatile gas, and its vapors are odorless and highly
18 explosive under a variety of circumstances, including those which are routinely encountered
19 during the preparation of cannabis extracts in interior spaces.
20

21 34.

22 On or about October 19, 2016, the Defendants, in the exercise of ordinary diligence,
23 should have known of prior fires, explosions, injuries and deaths caused by escaped LP gas used
24 in open extraction systems.

25 / / /

26 / / /

35.

1
2 On or about October 19, 2016, Defendants knew of the unreasonably dangerous
3 conditions they were creating and the unreasonable risk of harm to which they were subjecting
4 Plaintiff, employing the “open-system” and utilizing highly volatile LP gas as an extraction
5 solvent.

36.

6
7 By October 19, 2016, Sweet Relief Astoria, the Harper Defendants and Delphia
8 Defendants were aware that the Astoria Trading Defendants were using an unreasonably
9 dangerous process for cannabis extraction.

37.

10
11 Plaintiff had no knowledge of the unreasonably dangerous condition and unreasonable
12 risk of harm to which he was being subjected while he was present at the Premises on October
13 19, 2016.

38.

14
15 Because the Whip-its LP gas was not odorized, Plaintiff was unaware that dangerous
16 levels of LP gas were accumulating at the subject premises on October 19, 2016.

17
18 **FIRST CLAIM FOR RELIEF**
19 **PREMISES LIABILITY**
20 **(Astoria Trading Defendants, Delphia Defendants, and Sweet Relief Astoria)**

39.

21
22 Plaintiff realleges and incorporates by reference the facts and allegations set forth in
23 paragraphs 1 through 38 above as if fully set forth herein.

40.

24
25 On October 19, 2016, Plaintiff was an invitee of Astoria Trading Defendants, Delphia
26 Defendants and Sweet Relief on the Subject Premises.

1 41.

2 On October 19, 2016, and at all other times relevant to this lawsuit, the Astoria Trading
3 Defendants, Delphia Defendants, and Sweet Relief were possessors of the Premises and had the
4 ability to control, and did control, the operations of Astoria Trading and the conditions existing
5 on the Premises.

6 42.

7 On October 19, 2016, the Delphia Defendants owned, maintained and controlled the
8 Subject Premises. Additionally, the Delphia Defendants were also possessors of the Premises,
9 because they maintained control of the conditions existing on the Premises.
10

11 43.

12 On October 19, 2016, Sweet Relief Astoria, by virtue of being located in and operating a
13 business on the Subject Premises, also possessed and controlled the Subject Premises.

14 44.

15 As owners, occupiers, and possessors of the Subject Premises, Astoria Trading, Delphia
16 and Sweet Relief Defendants either knew about the following dangers on their property or in the
17 exercise of reasonable care, should have known of the following dangers on their property:

- 18 a) Violated the 2014 Oregon Fire Code (OR Admin. Rule 837-040-0001 *et seq.*) in
19 that it was not equipped with an automatic sprinkler system;
20
21 b) Was not equipped with fire alarms;
22
23 c) Was not equipped with smoke alarms;
24
25 d) Was not equipped with deflagration venting, as required by NFPA 68, Chapter 7;
26
e) Was not equipped with any explosion suppression systems, contrary to NFPA 68;
f) Did not have adequate ventilation for the intended and known use of the premises;

- 1 g) Was not equipped with LP gas detectors, despite the fact that it was known to
2 these Defendants that LP gas mixtures could, or would, be used at the premises;
3 h) Did not have any interior “Exit” signs;
4 i) Did not have adequate exit routes for the intended and known use of the property;
5 j) Did not have suitable fire control devices, given the intended and known use of
6 the Subject Property;
7 k) Was not equipped with a “safety shower;” and
8 l) Did not have emergency lighting;

9
10 45.

11 As owners, occupiers and possessors of the Subject Premises, Astoria Trading
12 Defendants, Delphia Defendants, and Sweet Relief Astoria knew, or by the exercise of
13 reasonable care should have discovered, the unreasonably dangerous condition created by the
14 deficiencies and code violations outlined in the preceding paragraph, and should have protected
15 the Plaintiff from those dangers. Further, the Astoria Trading Defendants, Delphia Defendants,
16 and Sweet Relief Astoria should have warned Plaintiff of the defects outlined in the preceding
17 paragraph. The Astoria Trading Defendants, Delphia Defendants, and Sweet Relief Defendants
18 did not take any steps to discover or eliminate these hazards, did not warn Plaintiff of the risk
19 presented by these hazards, and thus are liable to Plaintiff.

20
21 46.

22 Further, as owners, occupiers, and possessors of the Subject Premises, Astoria Trading
23 Defendants, Delphia Defendants, and Sweet Relief Astoria knew, or by the exercise of
24 reasonable care could have discovered, the unreasonably dangerous condition created by
25 utilizing an “open-system” for cannabis extraction with LP gas, and should have realized that
26

1 such a process involves an unreasonable risk of harm to Plaintiff, as an invitee. They also had a
2 duty to warn the Plaintiff of the latent danger their premises presented. They failed to do so.

3 47.

4 Plaintiff had no knowledge of the unreasonably dangerous condition of the Subject
5 Premises, and did not know of the unreasonable risk of harm to which he was exposed on
6 October 19, 2016.

7 48.

8 On October 19, 2016, and as a proximate result of the negligence and breaches of duty of
9 the Astoria Defendants, Delphia Defendants, and Sweet Relief Astoria as set forth in this First
10 Claim for Relief, a massive flash fire occurred, which engulfed the Plaintiff, leaving him
11 severely injured as set forth below.
12

13 **SECOND CLAIM FOR RELIEF**
14 **VIOLATIONS OF OREGON SAFE EMPLOYMENT ACT (ORS 654.010, 654.015)**
15 **(Astoria Trading Defendants)**

16 49.

17 Plaintiff realleges and incorporates by reference the facts and allegations set forth in
18 paragraphs 1 through 48 above as if fully set forth herein.

19 50.

20 On October 19, 2016, Plaintiff was employed as a contractor, working for Defendants
21 Astoria Trading Company. Astoria Trading Defendants did not maintain workers' compensation
22 insurance.

23 51.

24 Astoria Trading Defendants were prohibited from constructing or causing to be
25 constructed or maintained any place of employment which is unsafe. Additionally, Astoria
26 Trading Defendants owed Plaintiff a duty to use every device, care and precaution that is

1 practicable to use for the protection and safety of life and limb, without regard to the additional
2 cost.

3 52.

4 At all material times herein there were in full force and effect in the State of Oregon
5 certain safety codes, promulgated as minimum standards for the safety and protection of others,
6 including Plaintiff. Astoria Trading Defendants violated such standards and codes as follows:

- 7 a) Failed to have two or more exit routes depending on the size and layout of the
8 work area. OAR 437-002-0041 (3)(b);
9 b) Failed to have unobstructed access to exit OAR 437-002-0041(5);
10 c) Failed to have emergency action plan 437-002-0042(1) and (2);
11 d) Failed to have appropriate ventilation, in violation OAR 437-002-
12 1910.106(e)(3)(v), which states:

13
14 **(v) Ventilation.**

15 *(A) Areas as defined in paragraph (e)(2)(i) of this section using*
16 *Category 1 or 2 flammable liquids, or Category 3 flammable*
17 *liquids with a flashpoint below 100 degrees F (37.8 degrees C),*
18 *shall be ventilated at a rate of not less than 1 cubic foot per*
19 *minute per square foot of solid floor area. This shall be*
20 *accomplished by natural or mechanical ventilation with*
21 *discharger exhaust to a safe location outside of the building.*
22 *Provision shall be made for introduction of makeup air in such*
23 *a manner as not to short circuit the ventilation. Ventilation*
24 *shall be arranged to include all floor areas or pits where*
25 *flammable vapors may collect.*

26 *(B) Equipment used in a building and the ventilation of the*
building shall be designed so as to limit flammable vapor-air
mixtures under normal operating conditions to the interior of
equipment, and to not more than 5 feet from equipment which
exposes Category 1 or 2 flammable liquids, or Category 3
flammable liquids with a flashpoint below 100 degrees F (37.8
degrees C), to the air. Examples of such equipment are
dispensing stations, open centrifuges, plate and frame filters,
open vacuum filters, and surfaces of open equipment.

///

1 e) Failed to have fire control equipment or plans, in violation of OAR 437-002-
2 1910.106 (e)(5)-(6), which provides:

3 **(5) Fire control.**

4 *(i) Portable and special equipment. Portable fire
5 extinguishment and control equipment shall be provided in
6 such quantities and types as are needed for the special hazards
7 of operation and storage.*

8 *(ii) Water supply. Water shall be available in volume and at
9 adequate pressure to supply water hose streams, foam
10 producing equipment, automatic sprinklers, or water spray
11 systems as the need is indicated by the special hazards of
12 operation, dispensing and storage.*

13 *(iii) Special extinguishers. Special extinguishing equipment
14 such as that utilizing foam, inert gas, or dry chemical shall be
15 provided as the need is indicated by the special hazards of
16 operation dispensing and storage.*

17 *(iv) Special hazards. Where the need is indicated by special
18 hazards of operation, flammable liquid processing equipment,
19 major piping, and supporting steel shall be protected by
20 approved water spray systems, deluge systems, approved fire-
21 resistant coatings, insulation, or any combination of these.*

22 *(v) Maintenance. All plant fire protection facilities shall be
23 adequately maintained and periodically inspected and tested to
24 make sure they are always in satisfactory operating condition,
25 and they will serve their purpose in time of emergency.*

26 **(6) Sources of ignition.**

*(i) General. Adequate precautions shall be taken to prevent
the ignition of flammable vapors. Sources of ignition include
but are not limited to open flames; lightning; smoking; cutting
and welding; hot surfaces; frictional heat; static; electrical,
and mechanical sparks; spontaneous ignition, including heat
producing chemical reactions; and radiant heat.*

f) Failed to provide PPE or provide PPE training, in violation of OAR 437-002-0134
(1) (Personal Protective Equipment), which provides:

437-002-0134 Personal Protective Equipment.

Application. *This rule applies to personal protective equipment
and other protective equipment for the eyes, face, head, extremities
and torso to include protective clothing, respiratory devices, and
protective shields and barriers, wherever employees encounter
hazardous processes or environments, chemical hazards,
radiological hazards, or mechanical irritants that are capable of
causing injury or impairment in the function of any part of the body
through absorption, inhalation or physical contact.*

55.

Plaintiff had no knowledge that the Astoria Trading Defendants, West and Oei were subjecting him to an unreasonable risk of harm when, on October 19, 2016, the facility exploded.

56.

Astoria Trading Defendants’ and Harper Defendants’ breaches of the Oregon Safe Employment Act (herein “OSEA”) caused Plaintiff’s severe injuries, as detailed below.

**THIRD CLAIM FOR RELIEF
VIOLATIONS OF OREGON SAFE EMPLOYMENT ACT (ORS 654.015)
(Delphia Defendants)**

57.

Plaintiff realleges and incorporates by reference the facts and allegations set forth in paragraphs 1 through 56 above as if fully set forth herein.

58.

At all times relevant to this Complaint, the Delphia Defendants were “owners” for the purposes of liability under the OSEA. Plaintiff’s injury occurred at a “place of employment” owned, maintained, possessed and controlled by the Delphia Defendants.

59.

As such, under the OSEA, the Delphia Defendants were prohibited from constructing or causing to be constructed or maintained any place of employment which is unsafe. The Delphia Defendants breached this prohibition in one or more of the following ways:

- a) Failed to provide Plaintiff a safe place to work, in violation of ORS 654.010;
- b) Failing to comply with all safety and health orders, decisions, and rules, in violation of ORS 654.022;

///

///

- 1 c) Failing to comply with OAR 437-003-001 (3)(a) as it incorporates by reference 29
2 C.F.R. 1926.20(a)(1) by requiring Plaintiff to work in surroundings or under
3 working conditions that are hazardous or dangerous to his health and safety;
- 4 d) Failing to have two or more exit routes depending on the size and layout of the
5 work area. OAR 437-002-0041 (3)(b);
- 6 e) Failed to have unobstructed access to exit OAR 437-002-0041(5);
- 7 f) Failed to have emergency action plan 437-002-0042(1) and (2);
- 8 g) Failed to have appropriate ventilation, in violation OAR 437-002-
9 1910.106(e)(3)(v), which states:

10
11 **(v) Ventilation.**

12 *(A) Areas as defined in paragraph (e)(2)(i) of this section using*
13 *Category 1 or 2 flammable liquids, or Category 3 flammable*
14 *liquids with a flashpoint below 100 degrees F (37.8 degrees C),*
15 *shall be ventilated at a rate of not less than 1 cubic foot per*
16 *minute per square foot of solid floor area. This shall be*
17 *accomplished by natural or mechanical ventilation with*
18 *discharger exhaust to a safe location outside of the building.*
19 *Provision shall be made for introduction of makeup air in such*
20 *a manner as not to short circuit the ventilation. Ventilation*
21 *shall be arranged to include all floor areas or pits where*
22 *flammable vapors may collect.*

23 *(B) Equipment used in a building and the ventilation of the*
24 *building shall be designed so as to limit flammable vapor-air*
25 *mixtures under normal operating conditions to the interior of*
26 *equipment, and to not more than 5 feet from equipment which*
exposes Category 1 or 2 flammable liquids, or Category 3
flammable liquids with a flashpoint below 100 degrees F (37.8
degrees C), to the air. Examples of such equipment are
dispensing stations, open centrifuges, plate and frame filters,
open vacuum filters, and surfaces of open equipment.

- h) Failed to have appropriate fire control equipment or plans or prevent the ignition
of flammable vapors, in violation of OAR 437-002-1910.106 (e)(5)-(6), which
provides:

(5) Fire control.

1 **(i) Portable and special equipment.** Portable fire
2 extinguishment and control equipment shall be provided in
3 such quantities and types as are needed for the special hazards
4 of operation and storage.

5 **(ii) Water supply.** Water shall be available in volume and at
6 adequate pressure to supply water hose streams, foam
7 producing equipment, automatic sprinklers, or water spray
8 systems as the need is indicated by the special hazards of
9 operation, dispensing and storage.

10 **(iii) Special extinguishers.** Special extinguishing equipment
11 such as that utilizing foam, inert gas, or dry chemical shall be
12 provided as the need is indicated by the special hazards of
13 operation dispensing and storage.

14 **(iv) Special hazards.** Where the need is indicated by special
15 hazards of operation, flammable liquid processing equipment,
16 major piping, and supporting steel shall be protected by
17 approved water spray systems, deluge systems, approved fire-
18 resistant coatings, insulation, or any combination of these.

19 **(v) Maintenance.** All plant fire protection facilities shall be
20 adequately maintained and periodically inspected and tested to
21 make sure they are always in satisfactory operating condition,
22 and they will serve their purpose in time of emergency.

23 **(6) Sources of ignition.**

24 **(i) General.** Adequate precautions shall be taken to prevent
25 the ignition of flammable vapors. Sources of ignition include
26 but are not limited to open flames; lightning; smoking; cutting
and welding; hot surfaces; frictional heat; static; electrical,
and mechanical sparks; spontaneous ignition, including heat
producing chemical reactions; and radiant heat.

60.

Delphia Defendants, by allowing an “open system” process for cannabis extraction to occur on their property, violated the OSEA.

61.

Richard Delphia, individually and as agent of Delphia Defendants, would routinely inspect the subject premises, including the area where Plaintiff was injured, exercised the right to control the premises, and had knowledge of the unreasonable risk of harm the Subject Premises created for the Plaintiff.

///

62.

The Delphia Defendants’ breaches of the OSEA as set forth herein, caused Plaintiff’s severe injuries.

**FOURTH CLAIM FOR RELIEF
VIOLATIONS OF EMPLOYER LIABILITY LAW
(Harper Defendants)**

63.

Plaintiff realleges and incorporates by reference the facts and allegations set forth in paragraphs 1 through 62 above as if fully set forth herein.

64.

On October 19, 2016, Plaintiff was employed as a contractor, working for Defendants Astoria Trading Company, (the “Astoria Trading Defendants”). The Harper Defendants financed the business and construction operations of the Astoria Trading Defendants, were paying for construction materials and labor used by the Astoria Trading Defendants, and thus were engaged in a common enterprise with the Astoria Trading Defendants. The Harper Defendants retained the right to control the methods and manner of work performed by Astoria Trading Defendants and the Plaintiff, and at various times prior to October 19, 2016, exercised that right.

65.

As such, the Harper Defendants owed Plaintiff a duty to use every device, care and precaution that is practicable to use for the protection and safety of life and limb, without regard to the additional cost.

66.

At all material times herein there were in full force and effect in the State of Oregon, certain safety codes, promulgated as minimum standards for the safety and protection of others, including the Plaintiff. Harper Defendants violated them as follows:

- 1 a) Failed to provide Plaintiff a safe place to work, in violation of ORS 654.010;
- 2 b) Failed to comply with all safety and health orders, decisions, and rules, in
- 3 violation of ORS 654.022;
- 4 c) Failed to comply with OAR 437-003-001 (3)(a) as it incorporates by reference 29
- 5 C.F.R. 1926.20(a)(1) by requiring Plaintiff to work in surroundings or under
- 6 working conditions that are hazardous or dangerous to his health and safety;
- 7 d) Failed to have two or more exit routes depending on the size and layout of the
- 8 work area. OAR 437-002-0041 (3)(b);
- 9 e) Failed to have unobstructed access to exits. OAR 437-002-0041(5);
- 10 f) Failed to have an emergency action plan. 437-002-0042(1) and (2);
- 11 g) Failed to have appropriate, sufficient ventilation for the premises and work area.
- 12
- 13 OAR 437-002-1910.106(e)(3)(v) states:

14 **(v) Ventilation.**

15 *(A) Areas as defined in paragraph (e)(2)(i) of this section using*

16 *Category 1 or 2 flammable liquids, or Category 3 flammable*

17 *liquids with a flashpoint below 100 degrees F (37.8 degrees C),*

18 *shall be ventilated at a rate of not less than 1 cubic foot per*

19 *minute per square foot of solid floor area. This shall be*

20 *accomplished by natural or mechanical ventilation with*

21 *discharger exhaust to a safe location outside of the building.*

22 *Provision shall be made for introduction of makeup air in such*

23 *a manner as not to short circuit the ventilation. Ventilation*

24 *shall be arranged to include all floor areas or pits where*

25 *flammable vapors may collect.*

26 *(B) Equipment used in a building and the ventilation of the*

building shall be designed so as to limit flammable vapor-air

mixtures under normal operating conditions to the interior of

equipment, and to not more than 5 feet from equipment which

exposes Category 1 or 2 flammable liquids, or Category 3

flammable liquids with a flashpoint below 100 degrees F (37.8

degrees C), to the air. Examples of such equipment are

dispensing stations, open centrifuges, plate and frame filters,

open vacuum filters, and surfaces of open equipment.

1 h) Failed to have proper fire control equipment or plans, and failed to take any
2 precautions to prevent the ignition of flammable vapors. OAR 437-002-1910.106

3 (e)(5)-(6) provides:

4 **(5) Fire control.**

5 *(i) Portable and special equipment. Portable fire
6 extinguishment and control equipment shall be provided in
7 such quantities and types as are needed for the special hazards
8 of operation and storage.*

9 *(ii) Water supply. Water shall be available in volume and at
10 adequate pressure to supply water hose streams, foam
11 producing equipment, automatic sprinklers, or water spray
12 systems as the need is indicated by the special hazards of
13 operation, dispensing and storage.*

14 *(iii) Special extinguishers. Special extinguishing equipment
15 such as that utilizing foam, inert gas, or dry chemical shall be
16 provided as the need is indicated by the special hazards of
17 operation dispensing and storage.*

18 *(iv) Special hazards. Where the need is indicated by special
19 hazards of operation, flammable liquid processing equipment,
20 major piping, and supporting steel shall be protected by
21 approved water spray systems, deluge systems, approved fire-
22 resistant coatings, insulation, or any combination of these.*

23 *(v) Maintenance. All plant fire protection facilities shall be
24 adequately maintained and periodically inspected and tested to
25 make sure they are always in satisfactory operating condition,
26 and they will serve their purpose in time of emergency.*

(6) Sources of ignition.

*(i) General. Adequate precautions shall be taken to prevent
the ignition of flammable vapors. Sources of ignition include
but are not limited to open flames; lightning; smoking; cutting
and welding; hot surfaces; frictional heat; static; electrical,
and mechanical sparks; spontaneous ignition, including heat
producing chemical reactions; and radiant heat.*

i) Failed to provide or mandate personal protective equipment. OAR 437-002-0134

(1) (Personal Protective Equipment) mandates:

437-002-0134 Personal Protective Equipment.

*Application. This rule applies to personal protective equipment
and other protective equipment for the eyes, face, head, extremities
and torso to include protective clothing, respiratory devices, and
protective shields and barriers, wherever employees encounter
hazardous processes or environments, chemical hazards,
radiological hazards, or mechanical irritants that are capable of*

1 *causing injury or impairment in the function of any part of the body*
2 *through absorption, inhalation or physical contact.*

3 ***(1) Hazard assessment and equipment selection.***

4 ***(a) The employer must assess the workplace to determine if***
5 ***hazards are present, or are likely to be present, which necessitate***
6 ***the use of personal protective equipment (PPE) or other protective***
7 ***equipment. If such hazards are present, or likely to be present, the***
8 ***employer must:***

9 ***(A) Select, and have each affected employee use, the types of PPE***
10 ***that will protect the affected employee from the hazards identified***
11 ***in the hazard assessment;***

12 ***(i) All protective equipment must be of safe design and***
13 ***construction for the work to be performed.***

14 ***(ii) Protective equipment must be worn and used in a manner***
15 ***which will make full use of its protective properties.***

16 ***(B) Communicate selection decisions to each affected employee;***
17 ***and,***

18 ***(C) Select PPE that properly fits each affected employee.***

19 ***(b) The employer must verify that the required workplace hazard***
20 ***assessment has been performed through a written certification that***
21 ***identifies the workplace evaluated; the person certifying that the***
22 ***evaluation has been performed; the date(s) of the hazard***
23 ***assessment; and which identifies the document as a certification of***
24 ***hazard assessment.***

25 j) Failed to provide or mandate proper work clothing. OAR 437-002-0134 (6)
26 mandates:

(6) Work Clothing.

(a) Clothing must be worn which is appropriate to the work
performed and conditions encountered.

(b) Appropriate high temperature protective clothing must be worn
by workers who are exposed to possible contact with molten metals
or other substances that can cause burns.

67.

22 The premises where Plaintiff worked did not have two or more exit routes, did not have
23 unobstructed access to exists, did not have any ventilation, did not have sufficient fire control,
24 had no emergency action plan and Plaintiff was not provided any personal protective equipment
25 or work clothing. As such, the Harper Defendants failed to use every device, care and precaution
26

1 practicable for the protection and safety of Plaintiff, and violated Oregon’s Employer Liability
2 Act.

3 68.

4 Additionally, an “open system” process for manufacturing cannabis extracts, releasing LP
5 gas in an interior space, was used at Plaintiff’s place of employment. The Harper Defendants had
6 full knowledge of the use of such an open system, and provided the LP gas used in the “open
7 system” process on October 19, 2016 which ultimately caused a massive explosion. This was
8 also a violation of Oregon’s Employer Liability Act.

9 69.

10 The Harper Defendants had knowledge of the unreasonable risk of harm they were
11 creating for Plaintiff, yet did nothing to remediate or cure it.

12 70.

13 The Harper Defendants’ breaches of the Oregon Employer Liability Act proximately
14 caused Plaintiff’s severe injuries and damages.

15
16 **FIFTH CLAIM FOR RELIEF**
17 **STRICT PRODUCTS LIABILITY**
18 **(Design Defect Against Harper Defendants)**

19 Plaintiff realleges and incorporates by reference the facts and allegations set forth in
20 paragraphs 1 through 70 above as if fully set forth herein.

21 71.

22 Harper Defendants market, sell, and distribute LP gas, marketed under the trade name of
23 “Whip-its,” to cannabis extract producers.

24 72.

25 Harper Defendants knew “Whip-its” LP gas was routinely used to manufacture cannabis
26 extracts.

73.

Whip-its canisters were not odorized and were accompanied by virtually no warnings and was not accompanied by any instructions in connection with its use in Hash Oil manufacturing.

74.

Despite numerous such deaths and injuries caused by LP canisters exploding during cannabis extraction, Harper Defendants continued to market and sell unodorized Whip-its LP gas, for profit.

75.

Whip-its canisters used by the Astoria Trading Defendants were unreasonably dangerous and defective at the time they left these Defendants' control because the LP gas contained in the Whip-its canisters was un-odorized, and thus defective.

76.

From the time it left these Defendants' control, Whip-its was unaltered by its users, the Astoria Trading Defendants.

77.

As a result of the Whip-its LP gas being un-odorized, Plaintiff could not have known he was in the presence of a dangerous amount of LP gas. The un-odorized Whip-its was defective, and said defect caused and contributed to Plaintiff's injuries described herein.

78.

Harper Defendants are strictly liable to Plaintiff, entitling him to the relief requested below, under ORS 30.900 *et seq.*

SIXTH CLAIM FOR RELIEF
General Negligence
(Harper Defendants)

///

79.

Plaintiff re-alleges and incorporates by reference the facts and allegations set forth in paragraphs 1 through 79 above as if fully set forth herein.

80.

In their roles of marketing, distributing, supplying and/or selling Whip-its, as more specifically set forth above, Harper Defendants had a duty to Plaintiff to do so in a reasonable manner to ensure that the product was safe for its intended purpose, namely the production of cannabis extracts.

81.

Harper Defendants breached their duty when they placed the defective and dangerous product into the stream of commerce when they knew or should have known of its defective nature and propensity to cause harm to individuals such as Plaintiff.

82.

As a direct, foreseeable and proximate result of this Defendants' negligence, the defective and dangerous product caused the harm and injuries to Plaintiff described herein.

83.

Harper Defendants are liable to Plaintiff, entitling him to the relief requested below, under a general negligence theory.

DAMAGES

84.

Plaintiff re-alleges and incorporates by reference the facts and allegations set forth in paragraphs 1 through 84 above as if fully set forth herein.

///

///

85.

1
2 By reason of the above and foregoing, Plaintiff has suffered the following losses and
3 damages: (1) economic damages consisting of reasonable charges necessarily incurred for past
4 and future medical services and lost income; and (2) non-economic damages consisting of past
5 and future pain, mental suffering, emotional distress, humiliation, permanent physical scarring,
6 inconvenience and interference with normal and usual activities.

7
8 86.

9 As a foreseeable direct and proximate result of Defendants' acts and/or omissions,
10 Plaintiff was made to endure burns on over 22% percent of his body. He was admitted into
11 Legacy Emanuel's burn center and remained there for nearly a month where he underwent
12 painful burn and wound care. As a result of these injuries inflicted on Plaintiff, he is physically
13 impaired such that he has been, and will be, unable to participate in many of the sports, hobbies,
14 and other recreational activities and life pursuits he enjoyed prior to his injuries and is unable to
15 carry out the duties and responsibilities of his trade as a carpenter and construction worker. He
16 has permanent scarring and disfigurement on his face, both hands and wrists, and torso. He is
17 self-conscious and embarrassed by his scars, which keeps him from engaging in family and
18 social activities. For these injuries, Plaintiff is entitled to non-economic damage in the amount
19 of \$7,000,000 and further economic damages as described below.

20
21 87.

22 After spending nearly a month in Legacy Emanuel's burn center, Plaintiff has been
23 enrolled in out-patient rehabilitation and physical therapy. Plaintiff has incurred medical
24 expenses for medical care and treatment including ambulance fees, fees for the services of the
25 physicians and nurses and fees for hospital services and supplies at Legacy Emanuel to date in
26 the amount of approximately \$375,000.00. In connection with his burn injuries, surgeries and

1 other past and future medical treatment, Plaintiff has suffered and will suffer severe physical and
2 mental pain, suffering, and anguish. For these losses, Plaintiff is entitled to relief as described
3 below.

4 88.

5 As a result of the injuries inflicted on Plaintiff, he has burn scars on his face, both arms,
6 hands, wrists, upper torso, back and both legs, which are permanent. In addition, Plaintiff will
7 likely have to undergo scar revision surgeries, which will consequently lead to further
8 disfigurement in the form of scars from such surgeries. For this disfigurement and potential
9 future disfigurement, Plaintiff has suffered and will continue to suffer, and Plaintiff is entitled to
10 future medical expenses in the amount of \$200,000 or the amount proven at trial.
11

12 89.

13 At the time of the incident complained of, Plaintiff was gainfully employed as a
14 handyman, carpenter, and construction worker. As a result of the acts and omissions of
15 Defendants, Plaintiff has been, and will be, unable to work due to the severity of his injuries.
16 Plaintiff has lost past wages of \$15,000 and will incur future lost income in the amount of
17 \$100,000 or the amount proven at trial.
18

19 90.

20 As a result of the injuries Plaintiff suffered due to Defendants' negligence, Plaintiff is
21 permanently impaired and unable to support himself. For this loss, Plaintiff seeks of earning
22 capacity the amount of \$1,250,000 or the amount proven at trial.

23 91.

24 Plaintiff hereby gives notice of intent to move to amend to claim punitive damages.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff prays for relief as follows on all Counts:

1. Past medical expenses in the amount of \$375,000.00 or the amount proven at trial;
2. Future medical expenses in the amount of \$200,000 or the amount proven at trial;
3. Past lost income in an amount not to exceed \$15,000;
4. Future lost income in the amount of \$100,000 or the amount proven at trial;
5. Loss of earning capacity the amount of \$1,250,000 or the amount proven at trial;
6. Human harm (non-economic damages) in an amount not to exceed \$7,000,000;
7. Costs and expenses; and
8. For such other relief as the court deems just and proper.

DATED: January 25, 2017.

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Plaintiff demands a jury trial.

By: /s/ Gregory K. Zeuthen
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