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22 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
23 **IN AND FOR THE COUNTY OF MARICOPA**

24 SWITCH COMMERCE, LLC,

25 Plaintiff,

26 v.

27 TRULIEVE CANNABIS CORP.,
28 HARVEST DISPENSARIES,
29 CULTIVATIONS & PRODUCTION
30 FACILITIES, LLC, HARVEST
31 ENTERPRISES, INC., RANDY TAYLOR
32 CONSULTING, INC., ABEDON SAIZ,
33 LLC, THE GIVING TREE WELLNESS
34 CENTER OF MESA, INC., NATURE
35 MED, INC., SVACCHA, L.L.C., HIGH
36 DESERT HEALING, L.L.C., and KIM
37 RIVERS,

38 Defendants.

Case No. _____

**PLAINTIFF'S VERIFIED
COMPLAINT**

(Commercial Court Requested)

1 For its Verified Complaint against the Defendants Trulieve Cannabis Corp.
2 (“Trulieve”), Harvest Dispensaries, Cultivation & Production Facilities, LLC (“Harvest
3 Dispensaries”), Harvest Enterprises, Inc. (“Harvest Enterprises”), Randy Taylor
4 Consulting, LLC (“Randy Taylor Consulting”), Abedon Saiz, LLC (“Abedon Saiz”), The
5 Giving Tree Wellness Center of Mesa, Inc. (“Giving Tree”), Nature Med, Inc. (“Nature
6 Med”), Svaccha L.L.C. (“Svaccha”), High Desert Healing L.L.C. (“High Desert”), and Kim
7 Rivers (“Rivers”) (collectively, “Defendants”), Plaintiff Switch Commerce, LLC
8 (“Switch”) alleges as follows:

9 **PARTIES, JURISDICTION, AND VENUE**

10 1. Switch is a limited liability company organized and existing under the laws
11 of the State of Texas, with its principal place of business in Irving, Texas.

12 2. Trulieve is a foreign corporation organized and existing under the laws of the
13 Province of British Columbia, Dominion of Canada, with its principal executive offices
14 located in Quincy, Florida. In an August 24, 2023, Verified Complaint filed in Maricopa
15 County Superior Court Case No. CV2023-013015, Trulieve admitted it “directly and
16 through its subsidiary, affiliated and related entities does business in Maricopa County,
17 Arizona.” Trulieve’s subsidiary, affiliated and related entities through which it does
18 business in Maricopa County include Harvest Dispensaries, Randy Taylor Consulting,
19 Abedon Saiz, Giving Tree, Nature Med, Svaccha and High Desert. Moreover, Trulieve
20 allows Harvest Dispensaries, Abedon Saiz, Giving Tree, Nature Med, Svaccha and High
21 Desert to use in, or as part of their registered trade names registered in Arizona, the name
22 “Trulieve.”

23 3. Harvest Dispensaries is an Arizona limited liability company doing business
24 in Maricopa County. Harvest Dispensaries is a manager-managed limited liability company.
25 Harvest Dispensaries has one member, Harvest Enterprises (a Delaware corporation as
26 more fully described in paragraph 4, below). Harvest Dispensaries is identified as a
27 subsidiary of Trulieve in Trulieve’s Annual Report Form 10K for the period ending
28

1 December 31, 2023, and filed on February 29, 2024, with the United States Securities and
2 Exchange Commission (the “Trulieve 2023 10K”). Harvest Dispensaries’ registered trade
3 names in Arizona include “Trulieve,” “Trulieve Cannabis Dispensary,” and “Trulieve
4 Cannabis Dispensary Sierra Vista.” Harvest Dispensaries has two managers, Rivers (as
5 more fully described below), and Raymond Eric Powers (“Powers”), each effective as of
6 February 15, 2022.¹ Harvest Dispensaries is the sole member of Randy Taylor Consulting,
7 Abedon Saiz, Svaccha, and High Desert (each as more fully described in paragraphs 5, 6, 9
8 and 10 below).

9 4. Harvest Enterprises is a corporation organized and existing under the laws of
10 the State of Delaware and doing business in Arizona. Harvest Enterprises is the sole member
11 Harvest Dispensaries and is also identified in the Trulieve 2023 10K as one of Trulieve’s
12 subsidiaries. Harvest Enterprises is a wholly owned subsidiary of Harvest Health &
13 Recreation, Inc. (“Harvest Health”), a Delaware corporation which, in turn, is a wholly
14 owned subsidiary of Trulieve. Harvest Enterprises is also the sole manager of Randy Taylor
15 Consulting.

16 5. According to the current records with the Arizona Corporation Commission,
17 Randy Taylor Consulting is an Arizona limited liability company, with its principal place
18 of business located at 1155 W. Rio Salado Parkway, Suite 201, Tempe, Arizona 85281.²

19 ¹Powers is not a current Defendant in this Complaint, but on information and belief, Switch
20 alleges that Powers is a citizen and resident of the State of Florida. Powers is a Director and
21 the Chief Legal Officer of Trulieve, a Director and Secretary of Giving Tree and Nature
22 Med and a manager of Harvest Dispensaries, Randy Taylor Consulting, Abedon Saiz,
23 Svaccha and High Desert. Switch reserves the right to join Powers as an additional
defendant at a later time.

24 ² The Trulieve 2023 10K reports a subsidiary by the same name, but states that subsidiary
25 was organized under the laws of the State of Oregon. Both Randy Taylor Consulting, LLC,
26 as organized and existing under the laws of the State of Arizona, and Randy Taylor
27 Consulting, LLC, as organized and existing under the laws of the State of Oregon, are listed
28 as subsidiaries of Trulieve in the 2023 Trulieve 10K. Records filed with the Oregon
Secretary of State reflect that an entity by the name of Randy Taylor Consulting, LLC was
formed in that state in 2020 but that articles of dissolution for that entity were filed July 25,

1 Randy Taylor Consulting is a manager-managed limited liability company. Randy Taylor
2 Consulting has one member, Harvest Dispensaries. Randy Taylor Consulting has one
3 manager, Harvest Enterprises.

4 6. Abedon Saiz is an Arizona limited liability company, with its principal place
5 of business located at 16635 N. Tatum Blvd., Phoenix, Arizona 85032. Abedon Saiz is
6 organized to operate on a non-profit basis and is a manager-managed limited liability
7 company. Abedon Saiz has one noneconomic member, Harvest Dispensaries. Abedon Saiz
8 is identified in the Trulieve 2023 10K as one of Trulieve’s subsidiaries. Abedon Saiz’
9 registered trade names in Arizona for its operations at 16635 N. Tatum Blvd. include
10 “Trulieve Cannabis Dispensary Phoenix-Tatum” and “Trulieve of Phoenix Tatum”. Rivers
11 is one of Abedon Saiz’ two managers, effective as of July 27, 2022.

12 7. Giving Tree is an Arizona non-profit corporation, with its principal place of
13 business located at 938 E. Juanita Ave., Mesa, Arizona 85204. Giving Tree is identified in
14 the Trulieve 2023 10K as one of Defendant Trulieve’s subsidiaries. Giving Tree’s registered
15 trade name in Arizona for its operations at the Juanita Avenue address is “Trulieve Cannabis
16 Dispensary Mesa South”. Rivers serves as a Director, Chief Executive Officer, and
17 President of Giving Tree.

18 8. Nature Med is an Arizona non-profit corporation, with its principal place of
19 business located at 8825 N. 23rd Avenue, Suite 100, Phoenix, Arizona 85021. Nature Med
20 is identified in the Trulieve 2023 10K as one of Trulieve’s subsidiaries. Nature Med’s
21 registered trade name in Arizona is “Trulieve Cannabis Dispensary Baseline”. Rivers serves
22 as a Director, Chief Executive Officer, and President of Nature Med.

23 9. Svaccha is an Arizona limited liability company, with its principal place of
24 business located at 710 W. Elliot Rd., Suite 102, Tempe, Arizona 85284. Svaccha is

25 _____
26 2024. Prior to its dissolution, the Oregon entity reported in filings with the Oregon
27 Secretary of State that its managers were Harvest Enterprises and Rivers, and non-
28 defendant, Powers. Switch Commerce reserves the right to amend in the event the Oregon
entity by the name of Randy Taylor Consulting, LLC is determined to be a proper or
necessary party.

1 organized to operate on a non-profit basis and is a manager-managed limited liability
2 company. Svaccha has one noneconomic member, Harvest Dispensaries. Svaccha is
3 identified in the Trulieve 2023 10K as one of Trulieve’s subsidiaries. Rivers is one of
4 Svaccha’s two managers, effective as of July 27, 2022. Svaccha’s registered trade name in
5 Arizona is “Trulieve Cannabis Dispensary Tempe”.

6 10. High Desert is an Arizona limited liability company, with its principal place
7 of business located at 3828 S. Vermaaeersch Rd., Avondale, Arizona 85323. High Desert
8 is organized to operate on a non-profit basis and is a manager-managed limited liability
9 company. High Desert has one noneconomic member, Harvest Dispensaries. High Desert
10 is identified in the Trulieve 2023 10K as one of Trulieve’s subsidiaries. High Desert’s
11 registered trade name in Arizona for its operations at the Vermaaeersch Road address is
12 “Trulieve of Avondale Dispensary”. Rivers is one of High Desert’s two managers, effective
13 as of July 27, 2022.

14 11. Rivers, on information and belief, is a citizen and resident of Florida, and
15 whose address in several publicly filed records with the Arizona Corporation Commission
16 is disclosed as 3494 Martin Hurst Rd., Tallahassee, Florida 32312. Rivers is a Director and
17 the Chief Executive Officer of Trulieve, a Director, President, and Chief Executive Officer
18 of Giving Tree and Nature Med, and a manager of Harvest Dispensaries, Abedon Saiz,
19 Svaccha, and High Desert.

20 12. Through their acts and omissions, Defendants caused events to occur in
21 Maricopa County out of which Switch’s claims arise.

22 13. As a result of Defendants’ acts and omissions, Switch suffered damages that
23 exceed the jurisdictional minimum of this Court.

24 14. This Court has jurisdiction to hear and enter a judgment in this matter
25 pursuant to Ariz. Const. Art. 6, § 14, and A.R.S. § 12-123.

26 15. Venue is proper in this Court pursuant to A.R.S. § 12-401.

1 **DISCOVERY TIER DESIGNATION**

2 16. The damages suffered by Switch are such to qualify this case for Tier 3 under
3 Ariz. R. Civ. P. 26.2(c)(3).

4 **GENERAL FACTUAL ALLEGATIONS**

5 **The ATM Processing System:**

6
7 17. Automatic Teller Machines, or ATMs, are ubiquitous in today’s world.
8 People can find ATMs at banks, grocery stores, gas stations, sports venues, casinos, and
9 specialty stores such as cannabis shops in those jurisdictions where cannabis sales are legal.

10 18. The ATMs are placed at merchant locations through an “independent sales
11 organization” or an “ISO.” An ISO usually sells or leases ATMs to the merchant and may
12 additionally service and replenish cash in the ATMs placed at the merchant’s location. In
13 some instances, the ISO may contract, directly or indirectly, with other individuals or
14 entities, who in turn contract with the merchant. Those other individuals or entities are
15 sometimes known in the industry as “Affiliates” of the ISO. The ISO, or its Affiliates, and
16 the merchant usually have an agreement governing the placement and use of the ATM.
17 Upon placement of an ATM terminal at a merchant location, the ISO, or a party authorized
18 by the ISO, including either an Affiliate or the merchant, inputs via remote computer access
19 to Switch’s Terminal Management System (“TMS”) the information necessary to set up the
20 ATM terminal on Switch’s system. The set up information includes the terminal location,
21 type of terminal, and the bank accounts to which the funds and fees generated by each
22 transaction are to be settled. Switch’s TMS then automatically assigns a unique Terminal
23 ID for each terminal set up on its system.

24 19. The ISO also generally must have a contract with a “Sponsor Bank.” The
25 Sponsor Bank is a member of one of the payment card networks (such as Visa, Mastercard,
26 American Express, Interlink, or their affiliated ATM networks, etc.) and provides the ISO

1 with access to the payment card networks.³ The Sponsor Bank and ISO usually have an
2 agreement governing the Sponsor Bank’s sponsorship of the ISO to the networks and the
3 ISO’s duties to the Sponsor Bank and, among other matters, generally require the ISO to
4 comply with the rules adopted by the networks and the Sponsor Bank. The ISO’s Affiliates
5 and the merchants generally do not have a contract with the Sponsor Bank or the networks.
6 However, the contracts between the ISO and its Affiliates or merchants generally require
7 the Affiliates and the merchants to comply with rules established by the networks and the
8 Sponsor Bank, similar to the requirements set forth in the contract between the ISO and the
9 Sponsor Bank.

10 20. ATM processing companies, such as Switch, serve as a technical link in the
11 operation of ATM networks. Processors such as Switch facilitate the authorization of
12 transactions, the transmittal of requests from the card holder to the network, and the network
13 performs the transmission of information to the bank or financial institution that issued the
14 debit or credit card which facilitates the ultimate transfer of funds to the card holder by the
15 ATM. A processor such as Switch generally has a contract with the Sponsor Bank. The
16 Sponsor Bank provides the processor with access to the payment card networks and sets
17 forth the processor’s duties to the Sponsor Bank that, among other matters, generally require
18 the processor to comply with the rules adopted by the networks and the Sponsor Bank. The
19 processor and ISO usually have an agreement governing the processing of transactions
20 generated by the ATMs placed by the ISO. The contracts between the processor and the
21 ISO generally require the ISO, among other matters, to comply with rules established by
22 the networks and the Sponsor Banks, and to notify its Affiliates and merchants of those
23 rules and require them to comply as well.

24 21. In most ATM transactions, a holder of a credit or debit card uses the card to
25 obtain cash to be automatically dispensed from the ATM and debited to the cardholder’s
26 account held at a bank. If the account is a depository account, the funds are debited to that

27 ³As used in this Complaint, the term “network” refers to card payment networks, not
28 computer networks.

1 account. If the account is a credit card account, the funds dispensed are treated as cash
2 advances under the credit card arrangements between the issuing bank and the card holder.
3 Other transactions processed by Switch include non-monetary transactions such as balance
4 inquiries through which the card holder may learn the balance of funds in or available from
5 the card holder's account.

6 22. The credit or debit cards used by card holders at ATMs contain 10 to 16 digits
7 that, according to industry standards and recognized protocols, identify the type of card
8 (*e.g.*, debit or credit), network (*e.g.*, American Express, Visa or MasterCard and their related
9 ATM networks), the bank or financial institution that issued the card, a pin number that
10 ensures the card's validity, and digits providing links to the card holder's account (but not
11 the card holder's actual bank or credit card account number). The ATM transmits via
12 computer, internet or telephone network connection in interstate commerce, unique
13 messages to Switch containing the card number, the type of transaction requested, such as
14 cash withdrawal or balance inquiry, and, in the case of a request for cash, the amount of
15 cash the card holder seeks to have dispensed. The electronic message transmitted over the
16 internet or interstate telephone lines from the ATM to Switch must contain a code –
17 MCC6011 – that identifies the transaction as an ATM transaction for cash. If that code is
18 not contained within the message, the transaction is rejected by Switch and cannot be
19 processed as an ATM transaction. Other codes in messages transmitted in transactions
20 handled by the networks but not processed by Switch as an ATM transaction might signify
21 a transaction for the purchase of goods or services and are known as Point of Sale (“POS”)
22 transactions. Upon receipt of the message, Switch as a processor, routes the message over
23 the card networks, such as American Express, Visa or Mastercard, via the internet or
24 interstate telephone lines to the issuing bank. Upon receipt of the message, the issuing
25 bank's systems respond to the request to verify that the designated account has sufficient
26 funds on deposit (or to report on the account's balance in the case of a balance inquiry) and,
27 if so, sends an electronic message reply via the internet or interstate telephone lines to
28 Switch authorizing the ATM to dispense the requested cash and debiting the card holder's

1 account at the bank issuing the card. Upon receipt of the message from the issuing bank,
2 Switch sends, via computer network or interstate telephone lines, a message to the ATM
3 instructing the ATM to dispense the cash. Switch periodically – either daily, weekly or
4 monthly as designated by the ISO, its Affiliates, the ATM owner or merchants – settles
5 accounts, as more fully described and identified as the “Settlement” in paragraph 25, below,
6 by crediting the bank or financial institution accounts designated by merchants, ISO’s and
7 Affiliates in Switch’s TMS who have an interest in the funds to be disbursed and the fees
8 to be earned from each transaction.

9 23. The cardholder initiating a cash withdrawal from an ATM customarily pays
10 fees, through a debit to the cardholder’s account with the card’s issuing bank (whether
11 depository or credit), in addition to the amount of cash withdrawn. The fees can include
12 amounts remitted to the network by the cardholder’s issuing bank or retained by the
13 cardholder’s issuing bank for its own fees, as well as a surcharge paid to, and split among,
14 the ISO, the ISO’s Affiliates, the owner of the ATM, and the merchant in whose premises
15 the ATM is placed (the “Surcharge Fees”). Out of its share of the Surcharge Fees, the ISO,
16 in turn, customarily pays the processor, such as Switch, a fee for each transaction processed.

17 24. The owner of the ATM must maintain cash in each ATM from which the
18 withdrawals dispensed can be funded. This cash held within the ATM is known as “Vault
19 Cash”. The owner of the ATM, or the merchant, must from time to time replenish the Vault
20 Cash in the ATM from their own funds to allow for its continued use.

21 25. A processor such as Switch operates computer systems which account for the
22 funds that must be paid by the cardholder’s card issuing bank, after debiting the cardholder’s
23 account, to reimburse the ATM’s owner for the Vault Cash dispensed and to pay the
24 Surcharge Fees. The process of accounting for and establishing the amount of the debits
25 and credits for Surcharge Fees and Vault Cash to be charged to or paid to ISO, its Affiliates,
26 the ATM owner and the merchant, as well as the processor, is known as the “Settlement.”
27 The ISO, or its Affiliates, the ATM owner or the merchant, provide the processor, such as
28 Switch, the account information to which the Surcharge and Vault Cash amounts should be

1 goods and services. ISOs may, however, place ATMs at cannabis dispensaries, where
2 customers may withdraw cash and then use the cash as they please to make the purchases
3 of the marijuana products. At that point, it arguably does not matter if the customer uses the
4 cash to purchase marijuana because the network is not directly connected to the purchase.

5 28. Of course, customers find that withdrawing cash from an ATM, even if on-
6 site, is more burdensome than simply using their payment card to buy marijuana. Moreover,
7 the merchants also desire to facilitate payment card purchases to avoid holding excess cash
8 in their dispensaries. To help facilitate direct card-based, POS transactions, merchants have
9 employed “cashless ATMs” in their stores. By using special software and hardware
10 modifications to ATMs, or POS devices that are programed to utilize the Terminal IDs of
11 ATM terminals and mask their use as a POS device, merchants can set up a cashless ATM
12 at their store that allows customers to use their card to purchase marijuana in a POS
13 transaction although it appears to the processor, networks and issuing banks as an ATM
14 transaction. The customer, or the merchant, will swipe, tap, or insert the card at the ATM
15 terminal or a POS terminal using the ATM Terminal ID, and in either event, which is set
16 up to send a signal that mimics, or masquerades as a transaction from an actual ATM. The
17 processor, such as Switch, then unwittingly relays the signal through the ATM processing
18 system and the transaction is ultimately approved, and the customer’s account is debited for
19 the purchase amount. To the processor, Sponsor Bank, and network, however, the
20 transaction looks just like a cash withdrawal from the physical on-site ATM because the
21 electronic message generated by the ATM utilizes codes and protocols, such a MCC code
22 6011, reserved exclusively by industry standards and protocols for ATM cash withdrawals,
23 not POS transactions used to purchase goods and services. As such, the message generated
24 by the ATM Terminal ID at the merchant’s location mimics, or masquerades, as a legitimate
25 ATM transaction but is false and misrepresents the transaction to be processed by Switch.

26 29. Over the past several years, networks have cracked down on cashless ATMs.
27 For example, Visa has issued compliance memos to Sponsor Banks, processors, and ISOs
28 warning that mis-coding transactions as POS, cashless ATM transactions would result in

1 fines or other enforcement actions. Unfortunately, merchants continue to employ this illegal
2 practice across the United States for their own financial gain.

3 **Defendants’ Operations and Knowledge of Network Prohibitions Regarding Cashless**
4 **POS Terminals:**

5 30. Trulieve is a “vertically integrated cannabis company and multi-state operator
6 which currently holds licenses to operate in nine states.”⁴ “Trulieve operates its business
7 through its directly and indirectly owned subsidiaries that hold licenses and have entered
8 into managed service agreements in the states in which they operate.”⁵ Upon information
9 and belief, the use of these managed service agreements facilitates the distribution of
10 revenue from the license holding subsidiaries to Trulieve, especially with respect to Giving
11 Tree and Nature Med as nonprofit corporations. Abedon Saiz, Giving Tree, Nature Med,
12 Svaccha and High Desert (sometimes hereinafter collectively referred to as the “Merchant
13 Defendants”) are among Trulieve’s subsidiaries holding the licenses through which
14 Trulieve operates in Arizona. As of December 31, 2023 – the effective date of the Trulieve
15 2023 10K – Defendant Trulieve reported that it had 21 dispensaries and 3 cultivation and
16 processing facilities in Arizona.⁶

17 31. Upon information and belief, Randy Taylor Consulting is the party providing
18 the managed services to Merchant Defendants in furtherance of Trulieve’s integrated
19 operations, all as disclosed in the 2023 Trulieve 10K. Moreover, the governing documents
20 for each Merchant Defendant contain express prohibitions on the distribution of their net
21 profits to any member, director, officer, or any other private person, provided, however,
22 that each Merchant Defendant is “authorized and empowered to pay reasonable
23 compensation for services rendered and to make payments and distributions in furtherance
24 of [each entity’s] purposes.” In the Verified Complaint identified in paragraph 2 above,
25 Randy Taylor Consulting specifically alleged that as a subsidiary of Harvest Health, it

26 ⁴ Trulieve 2023 10K, at 3.

27 ⁵ Trulieve 2023 10K, at 3.

28 ⁶ Trulieve 2023 10K, at 36.

1 managed Harvest Health’s Arizona operations. As previously alleged, Harvest Health, in
2 turn, is a subsidiary of Trulieve.

3 32. Trulieve has actual knowledge of the networks’ restrictions on processing
4 credit card transactions for the purchase of Trulieve’s products. As Trulieve acknowledged
5 in the Trulieve 2023 10K in its discussions of investment risks:

6 In addition to the foregoing, *banks may refuse to process debit card*
7 *payments and credit card companies generally refuse to process credit card*
8 *payments for cannabis-related businesses*. As a result, we may have limited
9 or no access to banking or other financial services in the United States and
10 may have to operate our United States business on an all-cash basis. If we
11 are unable or limited in our ability to open or maintain bank accounts, obtain
12 other banking services or accept credit card and debit card payments, it may
13 be difficult for us to operate and conduct our business as planned. Although,
14 we are actively pursuing alternatives that ensure our operations will continue
15 to be compliant with the FinCEN guidance (including requirements related
16 to disclosures about cash management and U.S. federal tax reporting), we
17 may not be able to meet all applicable requirements. (Emphasis supplied).⁷

18 33. Additionally, Trulieve was also aware of the prohibitions against the
19 operation of cashless ATMs before April 4, 2024, the date of the first transactions using the
20 cashless ATMs identified in Chart 1, paragraph 37, that formed the basis of the fines
21 assessed by Visa and passed on to Switch by Pueblo, as more fully described in paragraphs
22 40 and 41. Before that April 4, 2024 first transaction date for those terminals, Switch, the
23 Sponsor Bank or the applicable ISO terminated at least 149 other terminals that upon
24 information and belief were operated by Trulieve, or its subsidiaries. Each of those 149
25 terminals used the Settlement Account, described in paragraph 38, to settle vault cash
26 reimbursements and payment of surcharge fees.

27 34. Rivers has the power and individual pecuniary interest to control the actions
28 of Trulieve and its subsidiaries, including the other Defendants, regarding the operation of
cashless ATMs in violation of network, and in particular, Visa, rules. She is Trulieve’s co-
founder, Chief Executive Officer, and a Director, and she holds 10% of its shares. She is

⁷ Trulieve 2023 10K, at 19.

1 also a Director of Giving Tree and Nature Med, and a Manager of Harvest Dispensaries,
2 Abedon Saiz, Svaccha and High Desert. In these positions with Defendants, and with her
3 personal stake in Trulieve, Rivers has the power to control Defendants and has an
4 independent pecuniary interest beyond her management titles. Moreover, Trulieve
5 acknowledges that it depends on Rivers' management role and involvement for its
6 "continued success."⁸

7 35. Rivers also acknowledges that she does, in fact, exercise her ability and
8 individual pecuniary interest to control. According to her personal website, Rivers
9 "*oversees every activity involved* [at Trulieve] with the cannabis process *from seed to sale*
10 to ensure quality, operational integrity, and financial success."⁹ (Emphasis supplied.)
11 "Every activity from seed to sale" necessarily includes: (i) Trulieve's "integrated"
12 operations through Merchant Defendants' locations; (ii) the applications for the issuance,
13 maintenance, or renewal of the licenses and permits allowing for operation of Merchant
14 Defendants' locations; and (iii) the placement and use of the ATM terminals operated at
15 those locations, including the use and operation of those terminals as cashless ATM
16 terminals, while knowing, as Trulieve acknowledged in its 2023 10K, that the use of ATM
17 terminals as POS terminals would violate the networks' rules prohibiting the use of credit
18 cards to purchase Trulieve's products.

19 **Visa Fines Pueblo Bank for Cashless ATM Operations:**

20 36. As part of its efforts to curb the use of cashless ATMs, Visa receives
21 information from "secret customers" who visit merchants and determine if cashless ATMs
22 are being used. Sometime between January 1 and March 30, 2024, Visa received
23 information from secret customers to the merchant locations operated by Merchant
24 Defendants. In some instances, the locations for the Terminal IDs disclosed to Switch and
25 assigned by Switch's TMS were different than the location at which the terminals were
26 actually operated. The Visa secret customers discovered that Merchant Defendants were

27 ⁸ Trulieve 2023 10K, at 26.

28 ⁹ *Kim Rivers, Trulieve CEO*, <https://kimrivers.co/> (last accessed on February 7, 2025).

1 operating cashless ATMs at their dispensaries. After discovering the use by Merchant
2 Defendants of cashless ATMs, Switch, at the instruction of the Sponsor Bank, Pueblo Bank
3 & Trust (“Pueblo”), terminated processing services for those terminals. Thereafter, in
4 August 2024, Visa levied a hefty \$950,000.00 fine against Pueblo,¹⁰ which Pueblo passed
5 on and demanded that Switch pay, as more fully discussed in paragraph 41, below.

6 **The Arizona Marijuana Merchant Defendants, Allstate ISO, and Pueblo Bank:**
7

8 37. The following Chart 1 identifies the locations of the shops as disclosed to
9 Switch and the Sponsor Banks¹¹ and the ATM Terminal IDs that Visa determined, through
10 the “secret shopper” investigations, had been operated as cashless ATM terminals. Chart 1
11 also identifies the Merchant Defendant, the ISO that placed the ATMs at those locations
12 and arranged for their processing by Switch, the Sponsor Bank for each of the ISOs and
13 Switch, and the dates the terminals with those Terminal IDs operated as reflected in
14 Switch’s TMS. Moreover, even after termination of these cashless ATMs, Trulieve, or its
15 subsidiaries, continued to operate cashless ATMs at those same locations or others
16 nationwide.

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19 //

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21 //

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26 _____
27 ¹⁰ Visa elected to suspend \$700,000.00 of the \$950,000.00 fine, which Visa reserved the
right to collect later upon ten days’ notice to Pueblo Bank.

28 ¹¹ As noted in paragraph 36, in some instances, the addresses disclosed to Switch or the
Sponsor Bank differed from the address identified in the licenses.

CHART 1: LOCATIONS AND TERMINAL IDS OF CASHLESS ATMS

Def.	Location	License Nos.	ISO	Sponsor Bank	Terminal ID	1st Date	Last Date
Abedon Saiz	330 W Bell Road (Trulieve Tatum)	00000013 5DCSM00 130984; 00000052 ESLX159 69554	Allstate	Pueblo	GM053698	4/19/24	5/2/24
Giving Tree	95RG (The Giving Tree Wellness Center)	00000084 DCXM00 601985; 00000008 ESJT2061 5662	Allstate	Pueblo	GM053592	4/4/24	5/3/24
Nature Med	Coppertree Plaza 1731(Nature Med Inc.)	00000018 DCST009 41489; 00000056 ESPE9290 8314	Allstate	Pueblo	GM053774	4/4/24	4/30/24
Svaccha	309 W Elliott Rd. (Svaccha LLC)	00000012 0DCEQ00 578528; 00000009 ESJA4828 6920	Allstate	Pueblo	GM053593	4/4/24	5/3/24
High Desert	16012 S Gilbert Rd. 607 (High Desert Healing LLC)	00000007 DCWH00 607422; 000000M ESNA152 49640	Allstate	Pueblo	GM053572	4/4/24	5/3/24

38. Merchant Defendants derived income from the operation of the cashless ATMs beyond merely collecting the purchase price for their products sold using the cashless ATMs. Merchant Defendants, either directly or through their ISO or its Affiliates, provided information regarding bank accounts into which Vault Cash reimbursements and Merchant Defendants’ share or splits of transaction Surcharge Fees would be paid upon Settlement. Merchant Defendants all designated that both their share or split of the Surcharge Fees and the reimbursement of the Vault Cash should be made to same account at a national bank with offices in Maryland, Delaware and Virginia (the “Settlement Account”).

39. Each cashless ATM transaction through these Terminal IDs initiated by Merchant Defendants resulted in ATM transaction messages generated by the ATM terminals and sent to Switch in interstate commerce for processing. Switch processed the message at its facilities in Texas and then relayed the relevant information interstate commerce onward to the issuing banks and then back to the ATM to complete the transaction. During the period in which each of the identified cashless ATMs operated, the total number of transactions processed by Switch from those terminals (including non-cash transactions such as balance inquiries) and the total amounts of Surcharge Fees and Vault Cash reimbursements for those transactions, with Settlements made to the Settlement Account, are shown in Chart 2:

CHART 2: TRANSACTION AND AMOUNT TOTALS

Terminal Number	Business Month	Transaction Count	Reported Dispensed and Vault Cash Amount	Surcharged Amount
GM053572	Apr-24	4,484	\$314,390.00	\$ 11,625.00
GM053572	May-24	492	\$ 30,460.00	\$ 1,239.00
GM053592	Apr-24	2,077	\$138,135.00	\$ 5,196.00
GM053592	May-24	56	\$ 3,050.00	\$ 132.00
GM053593	Apr-24	3,023	\$200,320.00	\$ 7,941.00
GM053593	May-24	302	\$ 19,240.00	\$ 774.00
GM053698	Apr-24	596	\$ 43,515.00	\$ 1,533.00
GM053698	May-24	17	\$ -	\$ -
GM053774	Apr-24	287	\$ 16,205.00	\$ 717.00
GM053774	May-24	20	\$ 1,120.00	\$ 51.00
Totals			\$766,435.00	\$ 29,208.00

The reported dispensed/vault cash amount was not dispensed due to the operation of these ATMs by Merchant Defendants as cashless ATMs, a misrepresentation by Merchant Defendants.

Pueblo Bank's Demand to Switch and Merchant Defendants' Liability:

40. After receiving notice of the fine from Visa, Pueblo sent a Notice of Breach and Demand for Indemnification to Switch under Switch's Processor Designation Agreement with Pueblo. Pueblo identified the locations and Terminal IDs at each location

1 that Visa had determined were operated as cashless ATM terminals in violation of its
2 governing rules.

3 41. Switch responded to Pueblo's demand and denied liability for the Visa fine,
4 but paid the \$250,000 demanded by Pueblo, with a full reservation of its rights. Switch
5 denied liability because it did not know, nor could it have known, that Defendants were
6 operating cashless ATMs on-site. The messages transmitted by Defendants to Switch were
7 identical in form and substance to compliant messages from real ATM terminals operated
8 at other merchants (including marijuana dispensaries). In its demand to Switch, Pueblo
9 stated that the cashless ATMs "masqueraded" as real ATMs. Indeed, the masquerade was
10 effective.

11 42. Any transactions that violated Visa rules, regulations, or laws, were the direct
12 result of intentional fraudulent conduct by Merchant Defendants that permitted the cashless
13 ATMs to be operated at their stores. Merchant Defendants had a significant financial
14 incentive to bypass Visa rules and set up cashless ATMs. In doing so, Merchant Defendants
15 enabled customers to bypass the hassle of using legitimate ATMs and instead to purchase
16 directly from Merchant Defendants as if they were POS transactions. The transactions
17 completed at the cashless ATMs were done in violation of the Visa rules – rules well known
18 by Defendants.

19 43. Switch has been damaged by the actions and misrepresentations of
20 Defendants in an amount to be proven at trial, but including, at a minimum, damages
21 resulting from: (i) the \$250,000 paid by Switch to Pueblo; (ii) the additional \$700,000
22 contingent liability to Pueblo for the portion of the Visa fine that Visa deferred, (iii) the
23 future revenue lost that would have been earned because the cashless ATMs were not
24 operated in compliance with network rules and regulations and were terminated, and (iv)
25 the future revenue lost that would have been earned from the processing of transactions of
26 compliant terminals for which Switch no longer provides processing because Pueblo or
27 another sponsor bank terminated the ISO that sponsored those terminals due to Defendants'
28 operation of the cashless ATMs, or the ISO otherwise ceased using Switch's processing

1 services for those terminals also due to issues arising from Defendants' operation of
2 cashless ATMs.

3 44. Defendants have additionally been unjustly enriched as a result of their
4 actions and misrepresentations in an amount to be proven at trial, but including, at a
5 minimum, the Surcharge Fees paid to them through the Settlement Account as a result of
6 the transactions processed through the operation of the cashless ATMs.

7
8 **COUNT ONE**
9 **COMMON LAW FRAUD**
10 **(Against Merchant Defendants)**

11 45. Switch restates and incorporates by reference the allegations in the foregoing
12 paragraphs.

13 46. Merchant Defendants made representations to Switch. The representations
14 were in the form of electronic messages sent to Switch from the cashless ATMs operated
15 by Merchant Defendants.

16 47. The representations from Merchant Defendants to Switch were material. The
17 messages were necessary for Switch to perform its transaction processing functions.
18 Without the messages from Merchant Defendants to Switch, the payment transactions could
19 not be completed.

20 48. The representations from Merchant Defendants to Switch were false. The
21 messages were falsified in a way that mimicked or masqueraded as legitimate ATM
22 messages.

23 49. Merchant Defendants knew that the misrepresentations to Switch were false.
24 Merchant Defendants knew that operating cashless ATMs would increase revenue and
25 provide direct financial benefits to Merchant Defendants. To that end, Merchant Defendants
26 used software or hardware that mimicked or masqueraded as legitimate ATM requests to
27 bypass rules and regulations governing ATM transactions and that prohibited POS
28 transactions for cannabis products.

1 and 2, among other matters, Merchant Defendants illegally accessed and manipulated the
2 electronic information transmitted to Switch for processing. Merchant Defendants
3 intentionally sent false information masquerading as legitimate ATM messages so that
4 Switch would process the information and facilitate payment. Each of the other Defendants
5 knew of Merchant Defendants' conduct and encouraged, assisted, or directed such illegal
6 conduct. The illegal acts perpetrated by Defendants were related to each other. Upon
7 information and belief, Defendants' conduct is continuing, as Defendants, and affiliates of
8 Defendants, continue to employ cashless ATMs in Arizona.

9 73. Defendants' violations of A.R.S. §§ 13-2310 and 13-2316 are punishable by
10 imprisonment for more than one year.

11 74. As a result of Defendants' pattern of unlawful activity, Switch was damaged
12 in an amount to be proven at trial, including without limitation the damages more fully
13 alleged in paragraph 43. Additionally, as a result of Defendants' pattern of unlawful
14 activity, Defendants have been unjustly enriched in an amount to be proven at trial,
15 including without limitation the amount of Surcharge Fees paid to them through the
16 Settlement Account, as more fully alleged in paragraph 44.

17 75. Switch's damages and the amounts by which it was unjustly enriched were a
18 reasonably foreseeable result of Defendants' pattern of unlawful activity.

19 76. Pursuant to A.R.S. § 13-2314.04, Switch is entitled to recover up to treble
20 damages for the injury caused by Defendants' pattern of unlawful activity, prejudgment
21 interest on those damages, post-judgment interest, the imposition of a constructive trust on
22 all funds that Defendants wrongfully received, whether they are being held in Defendants'
23 accounts or elsewhere, and on all funds that Defendants are holding that were obtained
24 through Defendants' unlawful conduct, and an award of Switch's attorneys' fees and costs.

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COUNT FIVE
AIDING AND ABETTING TORTIOUS CONDUCT
(Against All Defendants)

77. Switch restates and incorporates by reference the allegations in the foregoing paragraphs.

78. Defendants committed torts that caused injury to Switch, including fraud and a pattern of unlawful activity.

79. At all material times, each Defendant knew that Defendants' conduct constituted a breach of duty and/or a tort.

80. Defendants substantially encouraged, assisted, induced, or directed the other Defendants in the achievement of the tortious conduct directed against Switch.

81. Each Defendant knew or should have known that their actions would combine to cause injury to Switch.

82. As a direct and proximate cause of Defendants' aiding and abetting the commission of these torts, Switch has been damaged in an amount to be proven at trial and as alleged in paragraph 43 and unjustly enriched, also in an amount to proven at trial, but as more fully alleged in paragraph 44.

83. Defendants acted with an evil mind, and their conduct was outrageous, oppressive, or intolerable. Defendants consciously and deliberately disregarded Switch's interests and rights, creating a substantial risk of tremendous harm to Switch. Defendants' conduct was meant only to further Defendants' pecuniary interests to Switch's tremendous detriment. Based on Defendants' conduct, Switch is entitled to an award of punitive damages to punish and to deter Defendants from engaging in similar behavior in the future.

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COUNT SIX
CONSPIRACY
(Against All Defendants)

84. Switch restates and incorporates by reference the allegations in the foregoing paragraphs.

1 funds that Defendants are holding that were obtained through Defendants' unlawful
2 conduct;

3 C. Awarding prejudgment and post-judgment interest under A.R.S. § 44-1201
4 until the judgment is satisfied;

5 D. Awarding Switch's costs, disbursements, and attorneys' fees under A.R.S. §§
6 12-341, 12-341.01, 12-349, and 13-2314.04, and any other applicable contract, statute, or
7 rule; and

8 E. For such other relief as the Court deems just and proper.

9
10 DATED this 19th day of February 2025.

11 **GALLAGHER & KENNEDY, P.A.**

12
13 By: /s/ Michael R. Ross

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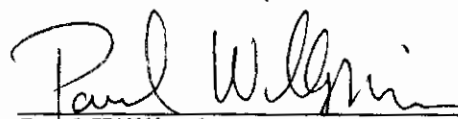
25 **ATTORNEYS FOR PLAINTIFF**

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VERIFICATION

I, Paul Willingham, declare under penalty of perjury that I am the Chief Financial Officer of Plaintiff, Switch Commerce, LLC ("Switch"). I am authorized by Switch to provide this Verification on the company's behalf. I have read Plaintiff's Verified Complaint. The facts and matters stated therein are true and correct to the best of my personal knowledge, confirmed as necessary by Switch's business records and information from other Switch employees, except for those matters based on publicly available sources identified in the Verified Complaint or those matters stated upon information and belief, and as to those matters, I believe them to be true.



Paul Willingham
Chief Financial Officer
Switch Commerce, LLC