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By OLIVIA CARDENAS, Deputy  
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----- CASE# CV2001-019191 -----  
CIVIL NEW COMPLAINT 001 150.00  
TOTAL AMOUNT 150.00  
Receipt# 00004373156

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

CLEMENT L. BURWELL, III,  
Plaintiff,

CV2001-019191

vs.

COMPLAINT (Negligent  
Misrepresentation; Securities Fraud;  
Alter Ego Liability; Failure to Pay  
Wages Due)

JAN WALLACE, an unmarried woman; John  
and/or Jane Does, 1 - 10; Black Entities 1 - 10,  
Defendants.

Plaintiff Clement L. Burwell, III, ("Plaintiff"), for his complaint against Jan Wallace, an  
unmarried woman ("Defendant"), does allege and aver as follows:

GENERAL ALLEGATIONS

1. Plaintiff is a former employee of MW Medical, Inc. ("MWM"), employed from April 1999, to January 31, 2000, in the capacity of National Sales Manager.
2. Defendant is or was, from time to time, the Chairman of the Board, Chief Executive Officer and/or the President of MWM, a Nevada corporation, with its principal place of business in Scottsdale, Arizona. MWM is a supplier of microwave medical equipment.
3. Defendants Doe One through Ten are individuals who are as yet unidentified or unknown to plaintiff and who may be liable to plaintiff for damages in this action.
4. Black Entities One through Ten are domestic or foreign corporations who are as yet unidentified or unknown to plaintiffs and who may be liable to plaintiffs for damages in this action.

- 1        5.     MWM is a publicly-traded company (NASD symbol MWMD).
- 2        6.     On information and belief, Defendant is the alter ego of MWM.
- 3        7.     On information and belief, Defendant was at all times the controlling person and
- 4 principal in connection with MWM's dealings with plaintiff.
- 5        8.     Plaintiff was induced to join MWM based on false, material representations, both
- 6 oral and written, made by or at the direction of Defendant as to the efficacy of the MWM medical
- 7 device, sales projections, projected sales commissions, and the promise of stock options.
- 8 Specifically, Defendant represented, either personally or as the controlling person of MWM:
- 9        9.     That the MWM Business Plan as a reliable document containing accurate
- 10 information, on or about June 24, 1999.
- 11        10.    That the MWM medical device was efficacious for its intended use, on or about
- 12 June 24, 1999.
- 13        11.    That double-blind studies and white papers had been accomplished by notable
- 14 physicians, proving the efficacy of the medical device, on or about June 24, 1999.
- 15        12.    That a medical doctor, Robert Spertell, was in charge of the scientific studies and
- 16 research efforts behind the medical device, on or about June 24, 1999.
- 17        13.    That Plaintiff had been granted 85,000 stock options at a strike price of \$2.62,
- 18 vesting in thirds, on or about Aug. 25, 1999.
- 19        14.    That Plaintiff could expect to earn in excess of \$500,000 in commissions from sales
- 20 of the medical device, on or about Aug. 25, 1999.
- 21        15.    That the MWM medical device had received "FDA approval," although such
- 22 approval had not been granted for use above the neck, on or about Oct. 15, 1999.
- 23        16.    Each of the above representations was false. On information and belief, no devices
- 24 have been sold as of the date of this complaint and devices installed in the field have been recalled
- 25 for lack of efficacy and safety concerns. The MWM medical device had not been double-blind
- 26 studied and was not efficacious. Spertell was not a medical doctor, his license having been

1 revoked for egregious sexual misconduct with patients.

2 17. As of the date of Plaintiff's resignation, Plaintiff was denied the ability to exercise  
3 the stock options promised and granted to him by MWM, at the direction and under the control  
4 of Defendant.

5 18. Upon his resignation, Plaintiff was vested in 56,666 shares of MWM stock as part  
6 of his agreed-upon compensation for services performed for the corporation.

7 19. The value of the stock options dropped from \$92,365.58 (January 31, 2000 value)  
8 to a current value of \$0.05 per share, causing further economic harm to Plaintiff.

9 **COUNT ONE**  
10 **Negligent Misrepresentation**

11 20. Plaintiff hereby incorporates the averments contained in paragraphs 1 through 12  
12 as though fully set forth herein.

13 21. Defendant, in the course of her business and professional transactions with Plaintiff  
14 and others, in which she has a pecuniary interest, supplied false information for the guidance of  
15 Plaintiff and others in their business transactions, as outlined above.

16 22. Defendant is subject to liability for the pecuniary loss caused to Plaintiff by his  
17 justifiable reliance upon the information, because Defendant failed to exercise reasonable care or  
18 competence in obtaining and/or communicating the information.

19 23. Defendant supplied the information to Plaintiff, intending that the information  
20 would influence and induce Plaintiff to support the scheme of selling the MWM medical device.

21 24. Plaintiff did justifiably rely on Defendant's misrepresentations, was induced to join  
22 the corporation, and was consequently and proximately harmed.

23 **COUNT TWO**  
24 **Securities Fraud Pursuant to A.R.S. §§ 44-1991, 44-1998, and 44-1999**

25 25. Plaintiff hereby incorporates the averments contained in paragraphs 1 through 17  
26 as though fully set forth herein.

26 26. The offer of stock options in exchange for services provided is an offer of securities.

1 In connection with the purchase or sale of securities, or the offer of securities for sale, Defendant  
2 made or caused to be made untrue statements of material fact and omitted material facts necessary  
3 to make the statements made not misleading.

4 27. Defendant is a controlling person of MWM pursuant to Arizona law.

5 **COUNT THREE**  
6 **Alter Ego Liability**

7 28. Plaintiff hereby incorporates the averments contained in paragraphs 1 through 21  
8 as though fully set forth herein.

9 29. The corporate fiction will be disregarded when the corporation is the alter ego or  
10 business conduit of a person; in this case, MWM (among other corporations) is the alter ego or  
11 business conduit of Defendant.

12 30. Observation of the corporate form would work an injustice as to Plaintiff.

13 31. Defendant has displayed such a unity of interest and ownership that the separate  
14 personalities of the corporation and Defendant have ceased to exist and/or never existed.

15 32. Upon information and belief, the corporation was formed or is employed for  
16 fraudulent purposes, namely to engage in a "pump and dump" securities scheme; therefore, the  
17 corporate fiction should be disregarded.

18 33. Upon information and belief, Defendant has disregarded the corporate form.

19 34. Upon information and belief, the corporation was thinly capitalized at its inception  
20 and has been financed by defendant with defendant's personal funds.

21 35. Upon information and belief, the corporations checks and bank records carry the  
22 home address of Defendant.

23 36. Defendant has engaged in fraudulent acts, including without limitation the promise  
24 to do a future act with the present intent not to perform (i.e., the promise of stock options to  
25 plaintiff) which justify piercing the corporate veil.

26 37. Defendant is liable for the debts of the corporation and all other acts of the

1 corporation as its alter ego.

2 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

3 A. Payment of wages and stock option compensation due, trebled, with interest thereon  
4 at the statutory rate from Feb. 1, 2000, until paid;

5 B. Damages, in an amount to be determined at trial, for lost opportunity and lost wages;

6 C. Exemplary damages, in an amount to be determined at trial;


7 D. Payment of Plaintiff's attorney's fees and costs, pursuant to A.R.S. § 12-341.01  
8 and/or A.R.S.44-2003;

9 E. Such other and further relief as this Court may deem just and proper.

10 DATED this 2nd day of November, 2001.

11 Respectfully Submitted,

12 ALLEN, PRICE & PADDEN, P.C.

13  
14 By   
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