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8 Attorneys for Plaintiff

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10 ARIZONA SUPERIOR COURT

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MARICOPA COUNTY

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CLEMENT L. BURWELL, III,

13

Plaintiff,

14 vs.

MW MEDICAL, INC., a Nevada Corporation;
15 JAN WALLACE, an unmarried woman; John
16 and/or Jane Does, 1 - 10; Black Entities 1 -10,

17 Defendants.

18 } CV 2000-007658

19 } COMPLAINT (AMENDED)

20 Plaintiff Clement L. Burwell, III, ("Plaintiff"), by and through his undersigned attorneys,
21 Allen & Price, P.L.C., alleges as follows:

22 GENERAL ALLEGATIONS

- 23 1. Plaintiff is a former employee of MW Medical, Inc. ("MWM"), employed from April 1999,
24 to January 31, 2000, in the capacity of National Sales Manager.
25 2. On information and belief, MWM is a Nevada corporation, with its principal place of
26 business in Scottsdale, Arizona. MWM is a supplier of microwave medical equipment.
27 3. On information and belief, MWM is a publicly-traded company (NASD symbol MWMD).

- 1 4. On information and belief, MWM markets a microwave medical device with a purported
 - 2 use of hair removal; FDA approval has not been granted for use of such device on the neck
 - 3 or face.
 - 4 5. Plaintiff was induced to join MWM based on material representations, both oral and
 - 5 written, as to the efficacy of the device, sales projections, and projected sales commissions.
 - 6 6. As of the date of Plaintiff's resignation, MWM had failed to accomplish sales projections
 - 7 or projected sales commissions promised. On information and belief, no devices have been
 - 8 sold as of the date of this complaint and devices installed in the field have been recalled.

COUNT ONE
Failure to Pay Wages Due

- 12 7. Plaintiff hereby incorporates the averments contained in paragraphs 1 through 6 as though
13 said averments were fully set forth herein.

14 8. Upon his resignation, Plaintiff was owed January wages in the amount of \$7,083.33.

15 9. Upon his resignation, Plaintiff was owed business expenses in the amount of \$1,526.06.

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

18 11. As of March 1, 2000, Plaintiff had not been paid any wages or expenses for January, 2000,
19 and the sale of stock was blocked by the corporation. As of March 21, 2000, the value of
20 the stock options had dropped from \$92,365.58 (January 31, 2000, value) to \$7,366.58,
21 causing further economic harm to Plaintiff.

22 12. Despite demand, Defendant has failed and refused to pay wages, compensation, and
23 expenses due.

- 1 13. MWM has failed to pay wages due within the statutory period and, therefore, Plaintiff is
2 entitled to treble damages pursuant to A.R.S. § 23-355.
3 14. Plaintiff is entitled to recover attorney's fees in this matter to relieve the burden of litigating
4 to recover his earned wages pursuant to A.R.S. § 12-341.01.

5

6 **COUNT TWO**
7 **Libel**

- 8 15. Plaintiff hereby incorporates the averments contained in paragraphs 1 through 14 as though
9 said averments were fully set forth herein.
10 16. MWM filed its most recent Annual Report, SEC Form 10KSB, which contained an
11 unmistakable and flagrant allegation of dishonesty and lack of professional integrity on the
12 part of the "vice president of marketing and national sales manager," Mitch DeShon and
13 Luke Burwell respectively. [Exhibit A, attached.]
14 17. MWM's libelous publication was posted on the Internet as of April 17, 2000, and it has
15 been published successively and continuously since that date, resulting in multiple separate
16 offenses of libel.
17 18. Plaintiff has made demand upon MWM to retract and correct the libelous publication
18 pursuant to A.R.S. § 12-653.02. [Exhibit B, attached.]
19 19. Rather than publishing a retraction, MWM in fact re-published the same libelous Annual
20 Report, SEC Form 10KSB, on May 2, 2000. [Exhibit C, attached.]
21 20. MWM's libelous publications are per se defamatory, entitling Plaintiff to recover
22 exemplary damages, general damages, and special damages.
23 21. MWM's failure to cease and desist, as demanded by letter on April 21, 2000 and pursuant
24 to A.R.S. § 12-653.03, entitles Plaintiff to recover general, special, and exemplary damages.

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COUNT THREE

Slander

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22. Plaintiff hereby incorporates the averments contained in paragraphs 1 through 21 as though
said averments were fully set forth herein.
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23. On information and belief, MWM stated to DeYoung and Associates, the investor relations
firm retained by MWM, and/or authorized or permitted DeYoung and Associates as
MWM's agent to state the following:
- 5
24. a) That former employees had broken into the MW Medical office and files were
stolen;
- 6
25. b) That the former salespeople had sold the equipment to non-physicians, requiring
all of these sales to be returned (claiming that there were no problems with burns or
blisters and the machines worked perfectly).
- 7
26. Such slanderous utterances are slander per se.
- 8
27. A.R.S. § 12-651 entitles plaintiff to recover all damages suffered as a result of slanderous
utterances by MWM or through its agent, DeYoung and Associates.
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COUNT FOUR

Harassment

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26. Plaintiff hereby incorporates the averments contained in paragraphs 1 through 26 as though
said averments were fully set forth herein.
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27. On or about April 20, 2000, Jan Wallace of MWM filed a police report with the Scottsdale
Police Department falsely claiming that Mitch DeShon and Luke Burwell had broken and
entered the business offices of MWM on multiple occasions between the dates of February
7, 2000 and April 4, 2000. [Exhibit D, attached.]
- 21
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- 26

- 1 28. In the report, MWM claimed that in addition to the breaking and entering, Plaintiff and his
2 colleague had stolen contract and personnel files, correspondence relating to pending
3 litigation against Plaintiff and DeShon, a notebook containing sales leads and client
4 information, and an address book belonging to Jan Wallace.
- 5 29. MWM also claimed that Jan Wallace was unable to receive her electronic mail.
- 6 30. Plaintiff has suffered embarrassment, annoyance, and emotional distress due to being
7 contacted by the Scottsdale Police Department investigating the false accusations.
- 8 31. Plaintiff's emotional distress and personal and professional defamation have been
9 compounded by the fact of MWM's publishing or broadcasting the allegations and
10 information regarding the police report to third parties, including but not limited to
11 DeYoung and Associates.
- 12 32. The Scottsdale Police Department has stated that it does not intend to pursue this matter as
13 an actual crime against the property of MWM.
- 14 33. Such harassment through filing of a false police report is a violation of A.R.S. § 13-2921
15 (5), a class one misdemeanor.

16

17 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 18 A. Payment of January wages and other compensation, trebled, with interest thereon at the
19 statutory rate from February 1, 2000, until paid;
- 20 B. Payment of business expenses with interest thereon at the statutory rate from February 15,
21 2000, until paid; s
- 22 C. A letter of retraction, personally signed by officers and directors of the corporation,
23 acknowledging the innocence, integrity, and honesty of Plaintiff in his business dealings
24 with MWM;
- 25 D. Damages in an amount to be determined at trial for damage to Plaintiff's professional and
26 personal reputation as a result of MWM's libel;

- 1 E. Damages in an amount to be determined at trial for damage to Plaintiff's professional and
2 personal reputation as a result of MWM's slander;
3 F. Damages in an amount to be determined at trial for embarrassment, annoyance, emotional
4 distress and damage to Plaintiff's professional and personal reputation as a result of
5 MWM's harassment in filing a false police report;
6 G. Payment of reasonable attorney's fees and costs, pursuant to A.R.S. § 12-341.01; and
7 H. Such other and further relief as this Court may deem just and proper.

8 May 25, 2000.

9 Respectfully Submitted,

10 ALLEN, PRICE & PADDEN, P.C.

11
12 By Pamela J.P. Donison
13 Charles S. Price
14 Pamela J.P. Donison
15 3131 E. Camelback Road, #110
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16 Attorneys for Plaintiff

17 Copy hand delivered this 25th day
of May, 2000 to:

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