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11 Attorneys for Plaintiff Canyon State Wireless, Inc.

12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

13 **IN AND FOR THE COUNTY OF COCHISE**

14 CANYON STATE WIRELESS, INC.,

15 Plaintiff,

16 v.

17 DAYSTAR PAYROLL, LLC; and
18 PATRICIA BOWMAN and
19 JOHN/JANE DOE BOWMAN, a married
20 couple,

21 Defendants.

Case No.

COMPLAINT

Commercial Court Assignment
Requested

22 Plaintiff Canyon State Wireless, Inc., for its Complaint against Defendants, alleges
23 as follows:

24 **PARTIES, JURISDICTION, AND VENUE**

25 1. Plaintiff Canyon State Wireless, Inc. ("CSW") is an Arizona corporation, with
26 its principal place of business in Sierra Vista, Arizona. CSW is authorized to conduct
27 business in Arizona.

28 2. Defendant Daystar Payroll, LLC ("Daystar") is an Arizona limited liability
company whose principal place of business is in Cochise County, Arizona.

3. Patricia Bowman ("Bowman") is a married individual who resides in Cochise

1 County, Arizona. At all times relevant, Bowman was married to John/Jane Doe Bowman
2 who is named as a Defendant herein for purposes of reaching community property. At all
3 times relevant, Bowman acted for and on behalf of her marital community. Bowman,
4 John/Jane Doe Bowman, and their marital community, and each of them, are liable for
5 Bowman's conduct, as alleged herein. Daystar and Bowman are collectively referred to
6 herein as "Defendants".

7 4. This Court has subject matter jurisdiction pursuant to the Arizona
8 Constitution and Ariz. Rev. Stat. ("A.R.S.") § 12-123.

9 5. Defendants operate and/or reside in Cochise County, Arizona, and caused the
10 events giving rise to this lawsuit to occur in Cochise County, Arizona. Accordingly, venue
11 is proper in this Court pursuant to A.R.S. § 12-401.

12 **GENERAL ALLEGATIONS**

13 6. CSW is a wireless communication systems company, in business since March
14 2001.

15 7. In or around February 2013, Daystar began handling CSW's payroll
16 operations including, without limit, employee wage calculations, tax calculations and
17 filings, and all related payments.

18 8. Generally, as part of the payroll process, a CSW employee would email
19 employee timecards to Defendants, who would then use said timecards to calculate
20 employee wages and coordinate/cause payment of same.

21 9. Defendants would also calculate the amount of payroll taxes CSW owed to
22 government entities arising from the payment of employee wages.

23 10. After Defendants provided to CSW the total amounts (wages and taxes) owed
24 by CSW for each payroll run, CSW would transfer the total amount due to a specific payroll
25 account.

26 11. Thereafter, Defendants swept the monies deposited by CSW into the payroll
27 account into one controlled exclusively by Defendants. CSW entrusted and expected
28 Defendants to use the swept monies for the exclusive purpose of making all wage and tax

1 payments to the appropriate payees.

2 12. At all times relevant, Defendants controlled and performed CSW's
3 calculation and payment of payroll withholdings/taxes.

4 13. In late 2017, the Internal Revenue Service ("IRS") contacted CSW regarding
5 unpaid payroll taxes for the 3rd and 4th quarters of 2016, as well as all four quarters of
6 2017.

7 14. CSW immediately contacted Defendants who, again, controlled and
8 performed the calculation and payment of CSW's payroll withholdings/taxes. Defendants
9 responded by telling CSW and its representatives that the IRS must be in error regarding
10 the allegedly unpaid taxes.

11 15. Following Defendants' claim that there was an error with regard to the alleged
12 non-payment of payroll taxes, CSW relayed such potential to an investigating IRS Special
13 Agent, who indicated such an occurrence was possible.

14 16. In order to confirm that an error had indeed occurred and that the payroll
15 withholding/tax payments had actually been made, CSW asked Defendants to provide the
16 Electronic Federal Tax Payment System ("EFTPS") confirmation numbers, which are
17 generated every time a payment is made through EFTPS.

18 17. Defendants produced a document titled "EFTPS Batch Report" that they
19 claimed included *some* of the 2017 confirmation numbers. Defendants responded that they
20 did not have access at that time to the 2016 EFTPS confirmation numbers, as their account
21 with EFTPS was frozen (ostensibly, because of investigations into Defendants).

22 18. On or about February 6, 2020, CSW and its representatives met with agents
23 of the IRS Criminal Investigations Division ("CID") and provided said agents with the
24 EFTPS Batch Report supplied by Defendants.

25 19. The CID agents reviewed the document Defendants provided and ultimately
26 confirmed it was fraudulent. When CSW asked the CID agents how they knew this, the
27 agents confirmed, after investigation, that they found some of the confirmation numbers on
28 Defendants' EFTPS Batch Report did not match any confirmation numbers in EFTPS.

1 Additionally, some of the confirmation numbers provided by Defendants related to
2 payments made by other taxpayers.

3 20. Further, many of the payments reflected in Defendants' EFTPS Batch Report
4 Several did not match the records of the U.S. Treasury Department. Moreover, the format
5 of Defendants' EFTPS Batch Report did not match the format typically provided by EFTPS.

6 21. Defendants' duties and obligations to CSW included the timely and accurate
7 filing CSW's IRS Forms 941, also known as the Employer's Quarterly Federal Tax Return.
8 Defendants filed the Forms 941 on behalf of CSW in all four quarters of 2016 and 2017.

9 22. Bowman, on behalf of the Defendants, signed each of the relevant CSW
10 Forms 941 under penalty of perjury.

11 23. The aforementioned Forms 941 in all eight quarters accurately reflected the
12 amount of tax CSW owed, according to the IRS. However, the amounts listed on these
13 Forms 941 did not match the deposits actually received by the IRS.

14 24. The following is a breakdown of the tax CSW owed and the amounts the IRS
15 actually received for the 3rd and 4th quarters of 2016 and all four quarters of 2017:

- 16 (a) 3rd Quarter 2016: CSW owed \$38,562.44 in taxes. Defendants wrongfully
17 deposited only \$18,890.36, resulting in a deficiency of \$19,672.08.
18 Defendants misappropriated the deficient amount.
- 19 (b) 4th Quarter 2016: CSW owed \$48,102.92. Defendants wrongfully deposited
20 only \$26,947.94, resulting in a deficiency of \$21,154.98. Defendants
21 misappropriated the deficient amount.
- 22 (c) 1st Quarter 2017: CSW owed \$34,855.64 in taxes. Defendants wrongfully
23 deposited only \$28,661.20, resulting in a deficiency of \$6,194.44.
24 Defendants misappropriated the deficient amount.
- 25 (d) 2nd Quarter 2017: CSW owed \$39,712.78 in taxes. Defendants wrongfully
26 deposited only \$23,441.42, resulting in a deficiency of \$16,271.36.
27 Defendants misappropriated the deficient amount.
- 28 (e) 3rd Quarter 2017: CSW owed \$31,106.34 in taxes. Defendants wrongfully

1 deposited only \$26,050.22, resulting in a deficiency of \$5,056.12.
2 Defendants misappropriated the deficient amount.

3 (f) 4th Quarter 2017: CSW owed \$33,224.24 in taxes. Defendants wrongfully
4 deposited only \$28,162.34, resulting in a deficiency of \$5,061.90.
5 Defendants misappropriated the deficient amount.

6 25. Defendants stole, converted, and/or embezzled CSW's monies by keeping the
7 deficient funds owed by CSW to the IRS for themselves. In connection with the theft,
8 conversion, and/or embezzlement of monies owed by CSW to the IRS, Defendants
9 misappropriated no less than \$73,410.88 from CSW in 2016 and 2017.

10 26. On or about January 20, 2020, CSW received an audit letter from the Arizona
11 Department of Revenue ("ADOR"), stating that CSW had not paid any Arizona withholding
12 tax, or filed an Arizona withholding tax returns for the years 2014, 2015, 2016, or 2017.

13 27. When asked about this, Defendants provided copies of purported ADOR
14 withholding tax reports and claimed they had filed the Arizona withholding tax reports for
15 the aforementioned years and that Defendants had paid all related withholding taxes.

16 28. CSW's representatives contacted the ADOR, which confirmed it had no
17 record of CSW paying withholding taxes or filing withholding tax returns for 2014-2017.

18 29. Defendants stole, converted, and/or embezzled CSW's monies by keeping the
19 deficient funds owed by CSW to the ADOR for themselves. In connection with the theft
20 and/or embezzlement of monies owed by CSW to the ADOR, Defendants misappropriated
21 no less than \$72,609.87 (including interest and penalties through February 27, 2020) from
22 CSW in 2014-2017.

23 30. The amounts stolen, converted, and/or embezzled by Defendants and that
24 should have been paid to taxing authorities continue to accrue penalties, fines, and interest.
25 Defendants are liable for all monies misappropriated, plus penalties, fines, and interest
26 arising from their improper conduct.

27 31. On or about March 5, 2020, a Detective with the Sierra Vista Police
28 Department interviewed Bowman regarding the theft and/or embezzlement of CSW's

1 monies. During this interview, Defendants confessed to theft, conversion, and/or
2 embezzlement complained of herein.

3 **COUNT I – FRAUD**

4 **(Against all Defendants)**

5 32. CSW incorporates herein by this reference each and every preceding
6 allegation as though fully set forth herein.

7 33. Defendants made representations to CSW that payments for CSW's full tax
8 liability were timely made from CSW's funds to the IRS and the ADOR. Further, when
9 questioned regarding IRS and ADOR notices about deficient or non-existent payments,
10 Defendants falsely stated that both the IRS and ADOR must have made a mistake and that
11 Defendants made the payments at issue. Further, Defendants created false EFTPS
12 documents in a desperate attempt to convince CSW and the IRS that Defendants had made
13 the necessary payments.

14 34. The aforementioned representations, and many, if not all, of Defendants'
15 representations relating to the payment of CSW's withholdings/taxes were false.
16 Defendants filed some tax returns for the correct tax amounts, but deposited deficient
17 amounts, keeping the difference for themselves.

18 35. Defendants' misrepresentations were material. CSW reasonably continued to
19 grant Defendants the authority to handle its tax preparations, filings, and payments for
20 several years following these misrepresentations.

21 36. Defendants were aware of the falsity of their aforementioned
22 misrepresentations, which Defendants undertook to cause harm to CSW and potentially
23 other innocent parties.

24 37. Defendants intended for CSW to rely on their misrepresentations in the
25 manner reasonably contemplated, which Defendants calculated to perpetrate harm upon
26 CSW and misappropriate its funds.

27 38. CSW was ignorant of the falsity of Defendants' misrepresentations.

28 39. CSW reasonably relied on Defendants' misrepresentations and continued to

1 use Defendants for payroll services.

2 40. CSW had a right to rely on Defendants' misrepresentations because, without
3 limit, the amounts reported on the Forms 941 were correct. CSW had no reason to suspect
4 or know that Defendants acted dishonestly until questions were raised by the IRS and the
5 ADOR.

6 41. CSW has suffered significant consequent and proximate injuries as a result of
7 Defendants' malicious actions including, without limitation, the deprivation of not less than
8 \$146,020.75 in good funds.

9 **COUNT II – NEGLIGENT HIRING / RETENTION / SUPERVISION**

10 **(Against Daystar)**

11 42. CSW incorporates herein by this reference each and every preceding
12 allegation as though fully set forth herein.

13 43. At all times relevant, Daystar hired or retained Bowman to work in its
14 accounting/payroll services business, despite knowing Bowman had engaged in, was
15 engaging in, and/or planned to engage in careless or tortious conduct such as, without limit,
16 misappropriating funds from CSW that caused, and/or would continue to cause, injury to
17 CSW.

18 44. Daystar owed CSW a duty of care to prevent its employees and/or agents,
19 including, but not limited to, Bowman, from acting in a negligent and/or tortious manner
20 while in the course and scope of her duties, employment, and/or engagement.

21 45. Daystar breached this duty by, without limit, failing to prevent, permitting,
22 and/or improperly authorizing and directing Bowman, while acting in the course and scope
23 of her duties, employment, and/or engagement with Daystar, to commit the tortious acts
24 complained of herein.

25 46. CSW has incurred substantial damages as a direct and proximate consequence
26 of Daystar's negligent hiring, retention, and/or supervision of Bowman. Daystar is liable
27 to CSW for all direct and consequential damages in an amount to be proven at trial, but not
28 less than \$146,020.75, arising from its negligent hiring, retention, and/or supervision of

1 Bowman.

2 **COUNT III – CONVERSION**

3 **(Against All Defendants)**

4 47. CSW incorporates herein by this reference each and every preceding
5 allegation as though fully set forth herein.

6 48. Defendants are unlawfully exercising intentional dominion or control over
7 CSW's property. Specifically, without limit, Defendants are exercising intentional
8 dominion or control over not less than \$146,020.75 unlawfully misappropriated from CSW.

9 49. The monies that are subject to this conversion claim were specifically
10 identified and segregated, and Defendants had an obligation to use these monies only for
11 payment of CSW's withholdings/taxes.

12 50. Defendants' dominion and/or control seriously interferes with CSW's right to
13 the misappropriated funds. CSW has a rightful claim to these funds and, but for Defendants'
14 actions, CSW would have full control and enjoyment of the funds and/or such funds would
15 have been used to pay CSW's withholding/tax obligations.

16 51. Despite Defendants' knowledge that their possession of CSW property at
17 issue in this action is unlawful, Defendants have failed to return CSW's monies to CSW's
18 exclusive possession and control.

19 52. Defendants' unlawful dominion or control over CSW's monies is unjust and,
20 under Arizona law, Defendants are liable to CSW for the full value of CSW's direct and
21 consequential damages for any loss (in an amount to be determined at trial, but not less than
22 \$146,020.75) arising from Defendants' improper conduct.

23 **COUNT IV – BREACH OF FIDUCIARY DUTY**

24 **(Against All Defendants)**

25 53. CSW incorporates herein by this reference each and every preceding
26 allegation as though fully set forth herein.

27 54. As CSW's payroll services provider, Defendants owed CSW a fiduciary duty
28 to act fairly, honestly, and in good faith in all aspects of their relationship with CSW

1 including, without limit, using all monies obtained from CSW to pay CSW's wage and/or
2 tax obligations.

3 55. Defendants breached their fiduciary duty to CSW by, among other things,
4 failing to file the appropriate tax returns, failing to make the necessary tax payments, and
5 misappropriating funds CSW allowed Defendants to access only in trust and only for the
6 exclusive benefit of CSW.

7 56. Defendants benefited, and continue to benefit from the breaches of their
8 fiduciary duties to CSW, which are the proximate cause of significant direct and
9 consequential damages to CSW in an amount not less than \$146,020.75.

10 57. Defendants are liable to CSW for all direct and consequential damages arising from
11 and/or relating to the violations of their fiduciary duties to CSW.

12 **COUNT V – UNJUST ENRICHMENT**

13 **(Against All Defendants)**

14 58. CSW incorporates herein by this reference each and every preceding
15 allegation as though fully set forth herein.

16 59. To the extent necessary to preserve its unjust enrichment claim, CSW asserts
17 it in the alternative to provide CSW an avenue for recovery if the Court determines CSW
18 has no other adequate or sufficient remedy at law.

19 60. Defendants have been enriched by the improper and unlawful conduct alleged
20 elsewhere herein. For example, and without limitation, Defendants have profited from their
21 misappropriation of CSW's monies.

22 61. CSW has been impoverished by Defendants' improper and unlawful conduct.
23 CSW's impoverishments include, but are not limited to, the monies misappropriated by
24 Defendants.

25 62. CSW's impoverishment is a direct consequence of Defendants' improper and
26 unlawful conduct.

27 63. Defendants' actions were unjustified, unlawful, and tainted because, among
28 other things, the improper acts occurred while Defendant were in a position of trust and

1 confidence with respect to CSW.

2 64. The ill-gotten fruits of Defendants' unlawful conduct should be disgorged to
3 CSW or held in constructive trust for the benefit of CSW.

4 65. CSW has no adequate remedy at law that would either disgorge Defendants'
5 improper, unlawful benefits or that would create a constructive trust for CSW.

6 66. The actions of Defendants have caused considerable damage to CSW in an
7 amount to be proven at trial, but in no event less than \$146,020.75.

8 **COUNT VI – PIERCING THE CORPORATE VEIL**

9 **(Against All Defendants)**

10 67. CSW incorporates herein by this reference each and every preceding
11 allegation as though fully set forth herein.

12 68. Daystar is a single member limited liability company. Bowman is Daystar's
13 sole member and Defendants are alter egos of one another.

14 69. Daystar is the mere alter ego or business conduit of Bowman.

15 70. This Court should disregard Daystar's separate legal status to prevent
16 injustice and fraud perpetrated by Bowman against CSW. Bowman is responsible for all
17 Daystar's liability to CSW alleged herein.

18 **COUNT VII – PUNITIVE DAMAGES**

19 **(Against All Defendants)**

20 71. CSW incorporates herein by this reference each and every preceding
21 allegation as though fully set forth herein.

22 72. All of Defendants' conduct complained of herein, and with regard to each
23 claim under which punitive damages are available, was and is gross, wanton, malicious,
24 oppressive, and performed with spite, ill will, and reckless indifference to the interests of
25 CSW. Defendants' unlawful and unfair conduct evinces an evil hand guided by an evil
26 mind. As a result, Defendants' should be and are liable for punitive damages as well as
27 general damages in an amount to be proven at trial, but in no event should such punitive
28 damages be in an amount less than 3 times CSW's general damages, \$438,062.25.

REQUESTED RELIEF

WHEREFORE, CSW respectfully requests that the Court:

- a) Enter judgment for CSW and against Defendants on all counts;
- b) Award CSW all recoverable direct and/or consequential damages, in an amount to be proven at trial, but in no event less than \$146,020.75. Such damages to include, without limit, any fees, interest, and/or penalties CSW may have to pay governmental authorities due to Defendants' unlawful actions (that have accrued or may accrue in the future), and reimbursement to CSW for all fees paid to Defendants in the past;
- c) Award CSW punitive and/or exemplary damages on all claims under which such damages are available under law in an amount to be determined at trial, but in no event less than \$438,062.25;
- d) Award CSW pre- and post-judgment interest at the highest rate allowed by law on its damages of whatever nature;
- e) Impose a constructive trust on the monies fraudulently obtained from CSW for CSW's benefit, such that CSW may realize a recovery of its damages from same;
- f) Disgorge all ill-gotten fruits realized by Defendants as a result of, or in connection with, their misappropriation of CSW's monies;
- g) Award CSW its attorneys' fees and costs incurred herein under any applicable legal authority; and
- h) Grant CSW any other relief that the Court deems just and proper under circumstances.

DATED this 23rd day of March 2020.

FARHANG & MEDCOFF

By /s/ Robert C. Garcia

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