

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN
AND FOR VOLUSIA COUNTY,
FLORIDA

SCCY INDUSTRIES, LLC., a Florida limited
liability company,

CASE NO.

Plaintiff,

v.

DOUGLAS A. HERBERT, an individual,

Defendant.

COMPLAINT

Plaintiff, SCCY Industries, LLC. (“**SCCY**”), by and through undersigned counsel, hereby
sues Defendant, Douglas Herbert (“**Herbert**”), and in support thereof, states as follows:

PARTIES, JURISDICTION, AND VENUE

1. SCCY is a Florida limited liability company, with its principal place of business at 1800 Concept Court, Daytona Beach, Florida 32114.
2. Herbert is an individual who, upon information and belief, resides at 58 Granite Avenue, St. Augustine, Florida 32086.
3. This is an action for injunctive relief and damages that exceed \$50,000.00, exclusive of interest, fees, and costs, and jurisdiction is proper with this court.
4. Venue is proper in the Court pursuant to Section 47.011, Florida Statutes, because Volusia County is where the action accrued.

GENERAL ALLEGATIONS

5. On September 14, 2020, SCCY hired Herbert as its Controller. At that time, Herbert reported directly to SCCY's owner and president, Joseph Roebuck ("**Roebuck**").

6. As part of his new-hire paperwork, Herbert executed an Employee Non-Disclosure Agreement ("**NDA**"). A copy of Herbert's NDA is attached hereto as Exhibit "**A**."

7. The NDA required Herbert "to use maximum efforts to prevent loss of confidential, valuable, special, and unique information..." and failure to do so could "result in irreparable injury to [SCCY]." Further, Herbert agreed to "hold the Confidential and Proprietary Information in strictest confidence and not to disclose, copy, publish, make available to unauthorized third parties" SCCY's confidential information. As a result, the NDA expressly entitles SCCY to injunctive relief.

8. Section 5 of the NDA expressly states, "Employee will return all Confidential Information within ten (10) days upon written or oral demand by Employer."

9. In addition to the NDA, Herbert also received a copy of SCCY's Employee Handbook ("**Handbook**"). Similar to the NDA, the Handbook required Herbert to use all reasonable care to protect SCCY's confidentiality information and, in the event of termination, immediately return all of SCCY's property upon request. Further, the Handbook states that "[n]o information belonging to [SCCY] can be copied for the employee's use."

10. On or about September 26, 2022, Herbert was promoted to Vice President of Finance. Herbert continued to report directly to Roebuck in his new position.

11. As the Vice President of Finance, Herbert oversaw SCCY's entire finance team and had access to all of SCCY's financial information and records, as well as numerous other confidential materials pertaining to SCCY's business.

12. Additionally, Herbert had access to Roebuck's personal financial information, which Roebuck provided to Herbert for purposes of obtaining loans on behalf of SCCY. At no time did Roebuck authorize Herbert to maintain Roebuck's personal financial information on SCCY's internal servers or elsewhere.

13. At the time Herbert was hired, SCCY possessed a corporate DropBox account that Herbert and other SCCY employees had access to ("**SCCY's Account**"). SCCY's account was an upgraded business account, with increased security features. Additionally, SCCY's IT team had administrative control over SCCY's account and the ability to partition SCCY's Account for specific uses or departments. Herbert was aware of SCCY's Account.

14. Shortly after being hired, Herbert created a folder on his personal DropBox account titled "sccy firearms" ("**Herbert's Account**"). Herbert created Herbert's Account without the knowledge or consent of Roebuck or SCCY. Additionally, upon information and belief, Herbert's Account lacked the same security features as SCCY's Account and SCCY's IT team did not have administrative access to Herbert's Account.

15. During the pendency of Herbert's employment with SCCY, Herbert habitually uploaded SCCY's confidential information to Herbert's Account. The confidential information included, but was not limited to banking information and records, payroll records, credit applications and references, federal licenses, and Roebuck's personal financial information and tax returns (the "**Documents**").

16. Without the knowledge or consent of SCCY or Roebuck, Herbert shared Herbert's Account with SCCY's accounting team and instructed SCCY's accounting team to upload and share the Documents on Herbert's Account.

17. On June 13, 2023, Roebuck was made aware of Herbert's Account by Kent Warner, a Senior Accountant for SCCY and Herbert's report. Prior to this, Roebuck was unaware of the existence of Herbert's Account or that Herbert instructed his team to use Herbert's Account rather than SCCY's Account or SCCY's internal servers.

18. On that same date, Roebuck called Herbert, who was out on medical leave, and confirmed the existence of Herbert's Account.

19. On June 14, 2023, SCCY terminated Herbert, for cause, for his use of Herbert's Account. At that time, SCCY demanded that Herbert immediately return the Documents and all SCCY property, and cease and desist further use of Herbert's Account. A copy of the June 14, 2023, termination letter is attached hereto as Exhibit "**B**."

20. That same day, Herbert contacted SCCY's legal counsel and stated that he would comply with SCCY's termination letter, return all SCCY property, and delete the Documents.

21. The following week, on June 19, 2023, Herbert sent email correspondence to SCCY's legal counsel stating, "I am not in possession of any SCCY documents."

22. On or about August 29, 2023, it came to SCCY's attention that Herbert had posted confidential information regarding SCCY on Herbert's LinkedIn page, including information pertaining to SCCY's sales, revenues, profits, and refinancing.

23. On that same date, SCCY was forced to send Herbert additional cease and desist correspondence demanding that Herbert remove SCCY's confidential information from Herbert's LinkedIn page.

24. Finally, on September 20, 2023, in anticipation of Herbert's unemployment benefits appeal hearing, Herbert produced additional confidential information from the Documents in support of his position that he was authorized to possess the Documents. This is evidence that

dispute his prior representations, Herbert did not delete the Documents and remains in possession of SCCY's confidential information, including the Documents.

25. SCCY has a legal right to its confidential information, including the Documents.

26. As long as Herbert continues to possess SCCY's confidential information, including the Documents, SCCY is left with an inadequate remedy at law and irreparable harm will arise if Herbert is not required to return SCCY's confidential information, including the Documents.

27. All conditions precedent to bringing this action have been complied with by SCCY or waived by Herbert.

COUNT I – CONVERSION

28. SCCY realleges and reincorporates the allegations set forth in paragraphs 1 through 27 above, as if fully set forth herein.

29. During his employment with SCCY, Herbert converted for his own use the Documents, which were the property of SCCY and Roebuck.

30. Herbert was informed that his possession of the Documents was improper and demand was made to Herbert to return the Documents.

31. Despite multiple representations by Herbert that he was either not in possession of the Documents or that he would destroy the Documents, Herbert maintained (and maintains) possession of the Documents.

32. Herbert's continued possession of the Documents is not permitted.

33. SCCY is the rightful and legal owner of the Documents and has made repeated demands to Herbert that Herbert return the documents.

34. To date, Herbert has not complied with SCCY's demands.

35. As a result of Herbert's continued possession of the Documents, SCCY has suffered, and continues to suffer irreparable harm for which there is not adequate legal remedy.

WHEREFORE, Plaintiff, SCCY Industries, LLC, demands judgment against Defendant, Douglas A. Herbert, for damages, interest, costs, and injunctive relief requiring Herbert to return the Documents and all other confidential information belonging to SCCY, and such other and further relief as this Court deems just and equitable.

DATED this 2nd day of October, 2023.



By: /s/ Douglas J. Collins

DOUGLAS J. COLLINS, ESQ.

FLA. BAR NO. 0025838

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Secondary e-mail address:

Lori.Dumont@CobbCole.com

Lisa.Morse@CobbCole.com

149 S. Ridgewood Avenue, #700

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Daytona Beach, FL 32115-2491

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Facsimile: (386) 248-0323

ATTORNEYS FOR PLAINTIFF

Non-Disclosure



NON-DISCLOSURE AGREEMENT

EMPLOYEE NON-DISCLOSURE / NON-COMPETE AGREEMENT

This Agreement is entered into as of the 31st day of August, 2020, by and between SCCY Industries, LLC, whose principal offices are located at 1800 Concept Court, Daytona Beach, Florida 32114 ("Employer") and, ("Employee") concerning Confidential and Proprietary Information, as define herein, which Employer may furnish to Employee or Employee possesses while employed by Employer.

Whereas, the Employee understands and agrees that, through the Employee's association and relationship with the Employer as one of its employees, the Employee has had, and shall continue to have, access to, and acquired, and shall continue to acquire, a considerable amount of confidential and proprietary information, knowledge, and experience with respect to the Employer's business, employees, and customer list, and has established, and will continue to establish, personal relationships with the Company's employees, vendors and its customers; that but for the Employee's association with the Employer as one of its employees, the Employee would not have had, or continued to have, access to, or have acquired, or continued to acquire, any of the confidential and proprietary information, knowledge, and experience with respect to, the Company's business, employees, or customers, and would not have established, or continued to establish, personal relationships with the Employer's employees, or customers that the Employer's employees and customers are an integral part of the Employer's business; that the information and knowledge with respect to the Employer's employees, and customers are extremely confidential and constitute valuable, unique, and special property of the Employer; that it is extremely important for the Employer to use its maximum efforts to prevent the loss of confidential, valuable, special, and unique information, knowledge, or property with respect thereto; and that it would be extremely detrimental and result in irreparable injury to the Employer and its goodwill if disclosed or used by the Employee;

Whereas, Employee therefore understands and agrees that, because of the nature of the Employer's business, it is reasonable and necessary to afford fair protection to the Employer from such disclosures, uses, or loss of any such confidential, valuable, specialized, and unique information, knowledge, or property during and for a period of five (5) years subsequent to the Employment Term and within the same geographic areas in which the Employer conducts business.

Employee hereby covenants and agrees as follows:

1. This agreement shall apply to all Confidential and Proprietary Information disclosed by Employer to Employee or developed or created by Employee for Employer. For purposes of this Agreement, "Confidential and Proprietary Information" shall mean any and all discoveries, ideas,

SCCY Industries 1800 Concept Court, Daytona Beach, FL 32114 P:382.322.6336 F:386.322.6326

**EXHIBIT
A**

Non-Disclosure

facts, or any other information of whatever type and whatever form, from any source, that: (a) is used in Employer's business or its related businesses and is proprietary to Employer; (b) gives Employer a competitive advantage or the opportunity to obtain a competitive advantage; (c) is designated by Employer as confidential, proprietary or secret or that should be reasonably assumed to be confidential, proprietary or secret; (d) is not known by actual or potential competitors of Employer or is generally unavailable to the public; (e) has been created, discovered, developed or otherwise become known to Employer in which property rights have been assigned, or otherwise conveyed to Employer; (f) has material economic value or potential material economic value to Employer's present or future business; and (g) all work product, property, data, documentation or information of any kind prepared, conceived, discovered, developed or created by Employee for Employer, which shall be deemed to be "work for hire" (as determined by the Copyright Act, 17 U.S.C.A. '101, et seq., as amended). Confidential and Proprietary Information shall include, but not be limited to, trade secrets (as defined under FLA. Stat. 812.081) and all other discoveries, developments, designs, improvements, inventions, formulas, processes, techniques, tooling, know-how, data, research and any modifications or enhancements of any of the foregoing, and all computer software, software documentation, computer hardware and software systems, software support plans and descriptions, financial conditions, product plans, market strategies, firearm designs or other business information disclosed to Employee by Employer, either directly or indirectly, in writing or orally, or by drawings or observation. All Confidential and Proprietary Information furnished by Employer to Employee under this Agreement shall be used by Employee solely for Company purposes.

2. Employee agrees to hold the Confidential and Proprietary Information in strictest confidence and not to disclose, copy, publish, make available to unauthorized third parties, sell, transfer or otherwise use or exploit such Confidential Proprietary Information for the Employee's benefit or to the benefit of third parties. Employee shall protect Employer's Confidential and Proprietary Information with the highest degree of care.
3. The obligations regarding Confidential and Proprietary Information shall not apply to information that (a) is or becomes generally available to the public through no fault of Employee; (b) is disclosed to Employee by third party who may transfer or disclose such information without restriction; (c) is required to be disclosed by Employee as a matter of law, provided, that Employee will use all reasonable efforts to provide Employer with prior notice of such disclosures and to obtain a protective order therefore; or (d) is disclosed by Employee with Employer written approval. In all cases above, Employee will use all reasonable efforts to give Employer thirty (3) days prior written notice of any disclosure of Confidential and Proprietary Information.
4. Employee hereby acknowledges that all Confidential and Proprietary Information shall be owned solely by Employer and that the unauthorized disclosure or use of such Confidential and Proprietary Information could cause irreparable harm and significant injury which may be difficult to ascertain and for which Employer may not have an adequate remedy at law. Employee therefore agrees that, in the event of any breach of this Agreement, Employer may, in

Non-Disclosure

its sole discretion and in addition to any other remedies available to it, bring an action or actions for injunctive relief and have entered a temporary restraining order, preliminary or permanent injunction. Employee agrees that if, at any time, it becomes aware of any unauthorized access to or possession or knowledge of any Confidential and Proprietary Information, it shall immediately notify Employer. Further, in the event Employee breaches this Agreement, Employee shall defend and indemnify Employer against any and all claims or liability arising from breach of such obligation including, but not limited to reimbursement for any and all costs and attorney's fees that Employer may incur in protecting its rights herein.

5. Employee will return all Confidential Information within ten (10) days upon written or oral demand by Employer.
6. Employee agrees that, because of the nature of the Employer's business, it is reasonable and necessary to afford fair protection to the Employer from such disclosures, uses, or loss of any such confidential, valuable, specialized, and unique information, knowledge, or property during and for a period of five (5) years subsequent to the Employment Term and within the same geographic areas in which the Employer conducts business. Therefore Employee, for a period of five (5) years subsequent to the Employment Term, shall refrain from (1) soliciting customers of the Employer; and (2) carrying on or engaging in a similar business within the same geographic areas as the Employer so long as the Employer continues to carry on like a business therein. The Employer's geographic business area for the purposes of this Agreement consists of the following ten (10) states: Florida, Georgia, Alabama, Mississippi, Tennessee, South Carolina, North Carolina, Virginia, West Virginia and Kentucky.
7. This Agreement is not lot intended to and shall not be construed as creating a joint venture, partnership or other form of business association between the parties, nor as establishing a license grant of any kind from Employer to Employee.
8. The failure of Employer to enforce any right result in from breach of any provision of the Agreement shall not be deemed a waiver of any right relating to a subsequent breach of such provision or of any other right hereunder.
9. This Agreement shall be governed by the law of the State of Florida and venue shall be in Volusia County, Florida.
10. The provisions of this Agreement shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.
11. This agreement states the entire Agreement and supersedes all prior agreements, written or verbal, between the parties with respect to the subject matter hereof and may not be amended except in writing signed by a duly authorized representative of the respective parties.

Non-Disclosure

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date written above.

Employee: SCCY Industries, LLC:

Print: Douglas A. Herbert

Sign: *Douglas A. Herbert*

Name: By: Joe Roebuck

Position: Title: Chief Executive Officer

Date:

SCCY Industries 1800 Concept Court, Daytona Beach, FL 32114 P:382.322.6336 F:386.322.6326



Non-Disclosure, Non-Compete Agreement.docx

Document ID: fb308b34-ebc3-11ea-b80a-0257711f2b8

Requested:

Aug 31, 2020, 1:47 PM MDT (Aug 31, 2020, 7:47 PM UTC)

Skylar Edwards (skylar@sccy.com)

IP: [REDACTED]

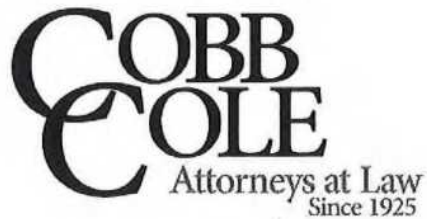
Signed:

Aug 31, 2020, 1:55 PM MDT (Aug 31, 2020, 7:55 PM UTC)

Douglas Herbert (d_herbert@msn.com)

IP: [REDACTED]

Scott W. Cichon
Robert A. Merrell III
John P. Ferguson
Mark A. Watts
Heather Bond Vargas
Michael J. Woods
Raymond L. Schumann
Kathleen L. Crotty
Michael O. Sznajstajler
Matthew S. Welch
Robert E. Doan
William A. Rice
Douglas J. Collins
Sara E. Glover
Holly W. Zitzka
Jessica L. Gow
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(1916-2004)
W. Warren Cole, Jr.
[REDACTED]

June 14, 2023

VIA E-MAIL TRANSMISSION

AND U.S. MAIL

D_Herbert@msn.com

Douglas Herbert

58 Granite Avenue

St. Augustine, FL 32086-0197

Re: SCCY Firearms Termination

Dear Mr. Herbert:

This correspondence serves to inform you that your employment with SCCY Firearms ("SCCY") is terminated effective immediately, for cause. As you know, SCCY recently became aware of your improper use of a personal Dropbox account to which you uploaded SCCY's confidential information, including SCCY's financial records and Mr. Roebuck's personal financial records. You also instructed SCCY employees who reported to you to use this unauthorized Dropbox account. At no time were you authorized to create a Dropbox account on behalf of SCCY or upload SCCY records to an account outside of SCCY's internal servers. This breach of SCCY's policies and egregious lack of judgement regarding safeguards pertaining to SCCY's confidential information is a substantial dereliction of your duties as SCCY's Vice President of Finance.

Your rights to continue your health insurance coverage under SCCY's COBRA will be provided to you by mail from SCCY's plan administrator.

All SCCY property, including, but not limited to, SCCY's documents and any hardware, including computers or other SCCY-issued devices, must be returned to SCCY immediately. Further, SCCY demands that you surrender any administrative account information, including usernames and passwords, related to the Dropbox account used to store SCCY-related electronic documents, as well as any other credentials related to any other account(s) that were used by you to store SCCY property.

You are hereby ordered to cease and desist any use of the above-referenced Dropbox account (or related account), disseminating any documents or information contained in or related

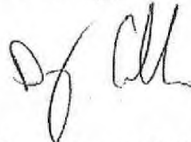
**EXHIBIT
B**

Douglas Herbert
June 14, 2023
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to the account, or accessing any SCCY-related documents. You are further ordered to maintain and preserve all electronically stored information ("ESI"), including metadata, pertaining to all documents related to SCCY or your employment with SCCY. This does not negate your obligation to return all tangible SCCY property and to surrender any administrative account information. This demand for preservation includes all electronically stored information, including metadata, and requires that you affirmatively take steps to ensure that no such data is purged or deleted either intentionally or as part of routine process or maintenance.

If you have questions of clarifications, please contact our office directly.

Sincerely,

A handwritten signature in black ink, appearing to read 'DJ Collins', is positioned above the typed name.

Douglas J. Collins, Esq.

Direct Dial (386) 323-9286

Email: Douglas.Collins@CobbCole.com

Fax (386) 323-9206

DJC/lad