

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

Agrify Corp

CIK: **1800637** | IRS No.: **300943453** | State of Incorporation: **NV** | Fiscal Year End: **1231**
Type: **8-K** | Act: **34** | File No.: **001-39946** | Film No.: **221298458**
SIC: **0700** Agricultural services

Mailing Address
76 TREBLE COVE ROAD
BUILDING 3
BILLERICA MA 01862

Business Address
76 TREBLE COVE ROAD
BUILDING 3
BILLERICA MA 01862
617-896-5243

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 OR 15(d)
of The Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): **October 4, 2022**

AGRIFY CORPORATION

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of incorporation)

001-39946

(Commission File Number)

30-0943453

(IRS Employer Identification No.)

**76 Treble Cove Rd.
Building 3
Billerica, MA 01862**

(Address of principal executive offices)

01862

(Zip Code)

Registrant's telephone number, including area code: **(617) 896-5243**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	AGFY	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

On October 4, 2022, Agrify Corporation (the “Company”) received a deficiency letter (the “Notice”) from the Listing Qualifications Department (the “Staff”) of The Nasdaq Stock Market, LLC (“Nasdaq”) notifying the Company that, for the last 30 consecutive business days, the bid price for the Company’s common stock had closed below \$1.00 per share, which is the minimum closing price required to maintain continued listing on the Nasdaq Stock Market under Nasdaq Listing Rule 5550(a)(2) (the “Minimum Bid Requirement”).

The Notice has no immediate effect on the listing of the Company’s common stock on Nasdaq. In accordance with Nasdaq Listing Rule 5810(c)(3)(A), the Company has 180 calendar days to regain compliance with the Minimum Bid Requirement. To regain compliance with the Minimum Bid Requirement, the closing bid price of the Company’s common stock must be at least \$1.00 per share for a minimum of 10 consecutive trading days during this 180-day compliance period, unless the Staff exercises its discretion to extend the minimum trading day period pursuant to Nasdaq Listing Rule 5810(c)(3)(G). The compliance period for the Company will expire on April 3, 2023.

In the event that the Company does not regain compliance within the 180-day compliance period, the Company may be eligible for an additional 180 calendar day compliance period. To qualify, the Company would need to meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for Nasdaq, with the exception of the Minimum Bid Requirement, and provide written notice to the Staff of its intention to cure the deficiency during the second compliance period. However, if it appears to the Staff that the Company will not be able to cure the deficiency, or if the Company does not meet the other listing standards, the Staff could provide notice that the Company’s common stock will become subject to delisting. In the event the Company receives notice that its common stock is being delisted, the Nasdaq Listing Rules permit the Company to appeal any such delisting determination by the Staff to a Hearings Panel.

As previously disclosed in its [definitive proxy statement on Schedule 14A](#) filed with the Securities and Exchange Commission on September 19, 2022, the Company intends to regain compliance with the Minimum Bid Requirement by effecting a reverse stock split, and will hold a Special Meeting of Stockholders on October 14, 2022 to, among other matters, authorize a reverse stock split at a ratio of not less than 1-for-2 and not greater than 1-for-10, with the exact ratio of, effective time of and decision to implement the reverse stock split to be determined by the Company’s Board of Directors.

There can be no assurance that the Company will be able to regain compliance with the Minimum Bid Requirement or that the Company will otherwise remain in compliance with the other listing standards for the Nasdaq Stock Market.

Item 8.01. Other Events.

On September 15, 2022, the Company provided a notice of default to Bud & Mary’s Cultivation, Inc. (the “Plaintiff”) and certain related parties notifying such parties that the Plaintiff was in default of its obligations under a term loan agreement between the Company and the Plaintiff (the “Agreement”). On October 5, 2022, the Plaintiff filed a complaint in the Superior Court of Massachusetts in Suffolk County naming the Company as defendant (the “Action”). The Action is captioned *Bud & Mary’s Cultivation, Inc. v. Agrify Corporation*, case no. 2284CV02279. The Plaintiff is seeking, among other relief, monetary damages in connection with alleged unfair or deceptive trade practices, breach of contract and conversion arising from the Agreement. The Company believes that the Plaintiff’s claims have no merit and intends to defend itself vigorously. In addition to defending itself vigorously against the allegations in the Lawsuit, the Company is evaluating its rights and remedies against the Plaintiff and related parties.

On October 6, 2022, the Company issued a press release regarding the Action. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
99.1	Press Release of the Company, dated as of October 6, 2022
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

AGRIFY CORPORATION

Date: October 6, 2022

By: /s/ Timothy R. Oakes
Timothy R. Oakes
Chief Financial Officer

Agrify Issues Statement Refuting Lawsuit from Defaulted Customer

BILLERICA, Mass., October 6, 2022 - Agrify Corporation (Nasdaq:AGFY) (“Agrify” or the “Company”), a leading provider of innovative cultivation and extraction solutions for the cannabis industry, today issued the following statement relating to the default of its customer Bud & Mary’s Cultivation, Inc. (“Bud & Mary’s”) under a construction loan facility extended by Agrify to Bud & Mary’s associated with an Agrify Total Turn-Key Solution (“Agrify TTK Solution”) project and the lawsuit brought by Bud & Mary’s in response to the default notice:

Bud & Mary’s was notified by Agrify that it was in default of its credit facility and subsequently responded with a meritless lawsuit in an obvious attempt to avoid repayment of the credit facility.

Bud & Mary’s lawsuit is entirely without merit. Agrify has worked closely and transparently with Bud & Mary’s team throughout the entire design and build process. Agrify fully complied with its contractual obligations under the Agrify TTK Solution agreements.

Agrify is taking all necessary steps to pursue repayment from Bud & Mary’s and will take all actions necessary to protect its shareholders’ interests.

Burns and Levinson LLP is serving as legal counsel to Agrify.

About Agrify (Nasdaq:AGFY)

Agrify is a leading provider of innovative cultivation and extraction solutions for the cannabis industry, bringing data, science, and technology to the forefront of the market. Our proprietary micro-environment-controlled Vertical Farming Units (VFUs) enable cultivators to produce the highest quality products with unmatched consistency, yield, and ROI at scale. Our comprehensive extraction product line, which includes hydrocarbon, ethanol, solventless, post-processing, and lab equipment, empowers producers to maximize the quantity and quality of extract required for premium concentrates. For more information, please visit Agrify at <http://www.agrify.com>.

Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 concerning Agrify and other matters. All statements contained in this press release that do not relate to matters of historical fact should be considered forward-looking statements including, without limitation, statements regarding the Bud & Mary’s lawsuit, the expected outcome thereof, and the ability to recover amounts due to Agrify under the Bud & Mary’s agreements. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expects," "plans," "anticipates," "could," "intends," "targets," "projects," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar expressions. The forward-looking statements in this press release are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. Forward-looking statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. You should carefully consider the risks and uncertainties that affect our business, including those described in our filings with the Securities and Exchange Commission (“SEC”), including under the caption “Risk Factors” in our Annual Report on Form 10-K filed for the year ended December 31, 2021 with the SEC, which can be obtained on the SEC website at www.sec.gov. These forward-looking statements speak only as of the date of this communication. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements, whether as a result of any new information, future events or otherwise. You are advised, however, to consult any further disclosures we make on related subjects in our public announcements and filings with the SEC.

Company Contacts

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Cover

Oct. 04, 2022

Cover [Abstract]

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<u>Entity Registrant Name</u>	AGRIFY CORPORATION
<u>Entity Central Index Key</u>	0001800637
<u>Entity Tax Identification Number</u>	30-0943453
<u>Entity Incorporation, State or Country Code</u>	NV
<u>Entity Address, Address Line One</u>	76 Treble Cove Rd.
<u>Entity Address, Address Line Two</u>	Building 3
<u>Entity Address, City or Town</u>	Billerica
<u>Entity Address, State or Province</u>	MA
<u>Entity Address, Postal Zip Code</u>	01862
<u>City Area Code</u>	(617)
<u>Local Phone Number</u>	896-5243
<u>Written Communications</u>	false
<u>Soliciting Material</u>	false
<u>Pre-commencement Tender Offer</u>	false
<u>Pre-commencement Issuer Tender Offer</u>	false
<u>Title of 12(b) Security</u>	Common Stock, par value \$0.001 per share
<u>Trading Symbol</u>	AGFY
<u>Security Exchange Name</u>	NASDAQ
<u>Entity Emerging Growth Company</u>	true
<u>Elected Not To Use the Extended Transition Period</u>	false

