IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

BIO GEN, LLC, DRIPPERS VAPE SHOP, LLC, THE CIGARETTE STORE LLC d/b/a SMOKER FRIENDLY, and SKY MARKETING CORPORATION d/b/a HOMETOWN HERO, **PLAINTIFFS**

v. **Case No. 4:23-CV-718-BRW**

GOVERNOR SARAH HUCKABEE SANDERS, in her official capacity; ATTORNEY GENERAL JOHN TIMOTHY GRIFFIN in his official capacity; TODD MURRAY, SONIA FONTICIELLA, DEVON HOLDER, MATT DURRETT, JEFF PHILLIPS, WILL JONES, TERESA HOWELL, BEN HALE, CONNIE MITCHELL, DAN TURNER, JANA BRADFORD, FRANK SPAIN, TIM BLAIR, KYLE HUNTER, DANIEL SHUE, JEFF ROGERS, DAVID ETHREDGE, TOM TATUM, II, DREW SMITH, REBECCA REED MCCOY, MICHELLE C. LAWRENCE, DEBRA BUSCHMAN, TONY ROGERS, NATHAN SMITH, CAROL CREWS, KEVIN HOLMES, CHRIS WALTON, and CHUCK GRAHAM, each in his or her official capacity as a prosecuting attorney for the State of Arkansas; JIM HUDSON, in his official capacity as director of the ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION; GREG SLED, in his official capacity as director of the ARKANSAS TOBACCO CONTROL BOARD; WES WARD, in his official capacity as secretary of the ARKANSAS DEPARTMENT OF AGRICULTURE; and MATTHEW MARSH, in his official capacity as chair of the ARKANSAS STATE PLANT BOARD **DEFENDANTS**

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Bio Gen, LLC ("Bio Gen"), Drippers Vape Shop, LLC ("Drippers"), The Cigarette Store LLC d/b/a Smoker Friendly ("Smoker Friendly"), and Sky Marketing Corporation d/b/a Hometown Hero ("Sky Marketing") (collectively, "Plaintiffs"), by counsel, for their Complaint against Defendants; Governor Sarah Huckabee Sanders in

her official capacity ("Governor Sanders"); Attorney General John Timothy Griffin in his official capacity; Todd Murray, Sonia Fonticiella, Devon Holder, Matt Durrett, Jeff Phillips, Will Jones, Teresa Howell, Ben Hale, Connie Mitchell, Dan Turner, Jana Bradford, Frank Spain, Tim Blair, Kyle Hunter, Daniel Shue, Jeff Rogers, David Ethredge, Tom Tatum, II, Drew Smith, Rebecca Reed McCoy, Michelle C. Lawrence, Debra Buschman, Tony Rogers, Nathan Smith, Carol Crews, Kevin Holmes, Chris Walton, and Chuck Graham, each in his or her official capacity as a prosecuting attorney for the State of Arkansas ("Prosecutors"); Jim Hudson, in his official capacity as director of the Arkansas Department of Finance and Administration; Greg Sled, in his official capacity as director of the Arkansas Tobacco Control Board; Wes Ward, in his official capacity as secretary of the Arkansas Department of Agriculture; and Matthew Marsh, in his official capacity as director of the Arkansas State Plant Board (collectively, "Defendants"), state as follows:

INTRODUCTORY STATEMENTS[1]

1. This is a lawsuit challenging Act 629 of the 94th General Assembly of Arkansas, which attempts to recriminalize certain hemp-derived cannabinoid products and obstruct the shipment and transportation of the same, in direct conflict with well-established federal laws encouraging the redevelopment of a domestic supply chain of hemp and hemp products in Arkansas and across the country. Act 629 purports to declare

[1] Plaintiffs filed their original Complaint against Defendants on July 31, 2023 and filed their Amended Complaint on August 15, 2023 to remove the State of Arkansas as a Defendant and to identify Jim Hudson, in his official capacity as director of the Arkansas Department of Finance and Administration; Greg Sled, in his official capacity as director of the Arkansas Tobacco Control Board; Wes Ward, in his official capacity as secretary of the Arkansas Department of Agriculture; and Matthew Marsh, in his official capacity as director of the Arkansas State Plant Board, as party Defendants. This Amended Complaint relates back to July 31, 2023.

an emergency need to prohibit certain products, but instead destroys the ability to cultivate hemp of any kind, creates insurmountable confusion, and goes on to add a sham dysfunctional regulatory framework effective only if and when the initial portion of the law gets enjoined.

2. The Plaintiffs in this case cultivate, wholesale, distribute, and retail hemp plants and hemp-derived products in and out of Arkansas who, until August 1, 2023, had benefitted for several years from operating within a legal market through a supply chain of thousands of farmers, processors, wholesalers, and retail shops throughout Arkansas and most of the nation. These Arkansas businesses will suffer immediate, irreparable financial harm, and many will be forced to close and/or lay off employees.

3. On December 20, 2018, President Donald Trump signed into law the Agriculture Improvement Act of 2018, Pub. L. 115-334 (the "2018 Farm Bill"). The 2018 Farm Bill established a framework for the domestic supply chain of hemp and hemp products in three important ways. First, it permanently decoupled hemp from marijuana under the Controlled Substances Act and exempted hemp-derived tetrahydrocannabinol (THC) from its definition. Second, it deliberately expanded the definition of "hemp" to include "all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." 7 U.S.C. § 16390(1). Third, it expressly prohibited individual states from interfering with the transportation and shipment of hemp and hemp products through interstate commerce.

4. In general, as courts throughout the country have affirmed, the only relevant statutory metric in analyzing whether a product is to be considered hemp or marijuana under the 2018 Farm Bill is the concentration of Delta-9 THC on a dry weight

basis. If the product has 0.3 percent Delta-9 THC or less on a dry weight basis, then it is hemp. If the product contains more than 0.3 percent Delta-9 THC, it is marijuana.

5. Nothing in the 2018 Farm Bill limits the concentration of Delta-8 THC extracted from hemp, which occurs naturally in the Cannabis sativa L. plant.

6. The 2018 Farm Bill's re-establishment of a domestic supply chain of hemp and hemp products has led to a robust hemp-derived cannabinoid market in Arkansas and across the country. (*See* Act 981 of the 91st General Assembly of Arkansas creating a framework for the research, growth, and sale of industrial hemp in Arkansas; Act 504 of the 92nd General Assembly of Arkansas removing a broad definition of hemp from the State's controlled substances; 2021 changes opening hemp market for non-research, commercial purposes).[2]

7. The existing hemp-derived cannabinoid market that farmers, small business owners, and consumers have built and relied on over the last five years would be eliminated under Act 629 because the new law impermissibly narrows the definition of hemp to recriminalize the possession, manufacturing, transportation, and shipment of certain popular hemp-derived cannabinoid products. This would lead to thousands of lost jobs around the state and turn farmers, business owners, and consumers – including Plaintiffs – into criminals overnight, despite no change in federal law.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1343.

[2] https://www.agriculture.arkansas.gov/plant-industries/feed-and-fertilizer-section/hemp-home/industrial-hemp-research-pilot-program-overview/ (last visited July 31, 2023).

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

10. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201, 2202.

11. This action is also brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

THE PARTIES

12. Bio Gen is an Arkansas limited liability company with its principal place of business located in Fayetteville, Arkansas. Bio Gen is a hemp farm producing crops for itself in addition to providing a variety of hemp flowers and consulting services to other Arkansas farmers.

13. Drippers is an Arkansas limited liability company with its principal place of business located in Greenbrier, Arkansas. Drippers is a retail store offering, among other things, hemp extract products to Arkansas consumers and businesses.

14. Smoker Friendly is a Colorado limited liability company registered as an Arkansas foreign limited liability company with its principal place of business located in Boulder, Colorado. Smoker Friendly operates close to 300 retail stores across thirteen states, 58 of which are in Arkansas, offering, among other things, hemp extract products to Arkansas consumers and businesses.

15. Sky Marketing is a Texas corporation with its principal place of business located in Austin, Texas. Sky Marketing is a distributor of, among other things, hemp products, wholesaling to Arkansas businesses in addition to retailing directly to Arkansas consumers.

16. Governor Sanders is charged with the executive authority of state government for the State of Arkansas, including the administration and enforcement of the laws of Arkansas. Governor Sanders is sued in her official capacity due to her signing of Act 629 into law and her role as chief executive overseeing law enforcement.

17. Attorney General John Timothy "Tim" Griffin is charged with enforcing the laws of Arkansas. Attorney General Griffin is sued in his official capacity due to his enforcement responsibilities regarding Act 629.

18. Todd Murray is the Prosecuting Attorney for the First Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

19. Sonia Fonticiella is the Prosecuting Attorney for the Second Judicial District. She is sued in her official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which she acts under color of law to enforce Arkansas's criminal laws, including Act 629.

20. Devon Holder is the Prosecuting Attorney for the Third Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

21. Matt Durrett is the Prosecuting Attorney for the Fourth Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

22. Jeff Phillips is the Prosecuting Attorney for the Fifth Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

23. Will Jones is the Prosecuting Attorney for the Sixth Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

24. Teresa Howell is the Prosecuting Attorney for the Seventh Judicial District. She is sued in her official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which she acts under color of law to enforce Arkansas's criminal laws, including Act 629.

25. Ben Hale is the Prosecuting Attorney for the Eighth Judicial District - North. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

26. Connie Mitchell is the Prosecuting Attorney for the Eighth Judicial District – South. She is sued in her official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which she acts under color of law to enforce Arkansas's criminal laws, including Act 629.

27. Dan Turner is the Prosecuting Attorney for the Ninth Judicial District – East. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

28. Jana Bradford is the Prosecuting Attorney for the Ninth Judicial District – West. She is sued in her official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which she acts under color of law to enforce Arkansas's criminal laws, including Act 629.

29. Frank Spain is the Prosecuting Attorney for the Tenth Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

30. Tim Blair is the Prosecuting Attorney for the Eleventh Judicial District – East. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

31. Kyle Hunter is the Prosecuting Attorney for the Eleventh Judicial District – West. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

32. Daniel Shue is the Prosecuting Attorney for the Twelfth Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

33. Jeff Rogers is the Prosecuting Attorney for the Thirteenth Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

34. David Ethredge is the Prosecuting Attorney for the Fourteenth Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

35. Tom Tatum, II is the Prosecuting Attorney for the Fifteenth Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

36. Drew Smith is the Prosecuting Attorney for the Sixteenth Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

37. Rebecca Reed Mccoy is the Prosecuting Attorney for the Seventeenth Judicial District. She is sued in her official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which she acts under color of law to enforce Arkansas's criminal laws, including Act 629.

38. Michelle C. Lawrence is the Prosecuting Attorney for the Eighteenth Judicial District – East. She is sued in her official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

39. Debra Buschman is the Prosecuting Attorney for the Eighteenth Judicial District – West. She is sued in her official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which she acts under color of law to enforce Arkansas's criminal laws, including Act 629.

40. Tony Rogers is the Prosecuting Attorney for the Nineteenth Judicial District – East. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

41. Nathan Smith is the Prosecuting Attorney for the Nineteenth Judicial District – East. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

42. Carol Crews is the Prosecuting Attorney for the Twentieth Judicial District. She is sued in her official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which she acts under color of law to enforce Arkansas's criminal laws, including Act 629.

43. Kevin Holmes is the Prosecuting Attorney for the Twenty-First Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

44. Chris Walton is the Prosecuting Attorney for the Twenty-Second Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

45. Chuck Graham is the Prosecuting Attorney for the Twenty-Third Judicial District. He is sued in his official capacity only, as a Prosecuting Attorney for the State of Arkansas, a position in which he acts under color of law to enforce Arkansas's criminal laws, including Act 629.

46. Jim Hudson is the director of the Arkansas Department of Finance and Administration ("DFA"), an agency of the State of Arkansas with oversight and administrative responsibilities over the Arkansas Tobacco Control Board.

47. Greg Sled is the director of the Arkansas Tobacco Control Board ("ATCB"), which is a division of DFA. Through his official capacity as director of the ATCB, Mr. Sled is responsible for enforcing various provisions of Act 629.

48. Wes Ward is the secretary of the Arkansas Department of Agriculture, which is an agency of the State of Arkansas with oversight and administrative responsibilities over the Arkansas State Plant Board.

49. Matthew Marsh is the director of the Arkansas State Plant Board, which is a division of the Arkansas Department of Agriculture. Through his official capacity as director of the Arkansas State Plant Board, Mr. Marsh is responsible for enforcing various provisions of Act 629.

50. On information and belief, Defendants will each exercise their discretion and legal authority to implement and enforce Act 629.

51. Plaintiffs seek a temporary restraining order to prevent the enforcement of Act 629 pending the outcome of this litigation.

FACTS COMMON TO ALL COUNTS

52. "Hemp is from the cannabis family of plants as is marijuana. Variations within the cannabis family of plants have different characteristics, much like there are differences between apple varieties. The stalks of cannabis plants contain fiber valuable for production of a wide range of materials, including paper, rope, canvas, building materials and cosmetics. The plant also contains flowers, seeds, and oil, concerning which many extol as providing health benefits and affording natural relief from adverse medical

conditions. Cannabis contains cannabinoids in quantities that vary depending upon the specific variety of cannabis plant. And cannabinoids are comprised of hundreds of natural compounds. Among these are tetrahydrocannabinol ("THC"), the component having psychoactive properties that can produce feelings of euphoria or a "high," and cannabidiol ("CBD"), which is popular for treating pain, anxiety, and other disorders, including neurological diseases." Michelle R.E. Donovan, Jason Canvasser and Danielle M. Hazeltine, The Evolving CBD and Hemp Market, Michigan Bar Journal, 100-JUN Mich. B.J. 38, 39 (June, 2021) (citing Will, The Forgotten History of Hemp Cultivation in America, Farm Collector <https://www.farmcollector.com/farm-life/strategic-fibers/>). There are multiple isomeric forms of THC including, but not limited to, delta-8 THC, delta-9 THC, and delta-10. Delta-9 THC is the primary cannabinoid isomer that causes a psychoactive reaction in humans when it is consumed at certain concentrations and at certain levels. Delta-8 THC and Delta-10 THC are naturally occurring cannabinoid isomers in the Cannabis sativa L. plant. While marijuana and hemp are both varieties of the Cannabis sativa L. plant, they are distinct plants. Hemp differs from marijuana by virtue of the fact it is a variety of the plant produced with a low concentration of delta-9 THC.

53. On February 7, 2014, President Barack Obama signed into law the Agricultural Act of 2014, Pub. L. No. 113-79 (the "2014 Farm Bill"). The 2014 Farm Bill provided that, "[n]otwithstanding the Controlled Substances Act . . . or any other Federal law, an institution of higher education . . . or a State department of agriculture may grow or cultivate industrial hemp," provided it is done "for purposes of research conducted under an agricultural pilot program or other agricultural or academic research" and those activities are allowed under the relevant state's laws. 7 U.S.C. § 5940(a).

54. The 2014 Farm Bill defines "industrial hemp" as the "plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." 7 U.S.C. § 5940(a)(2).

55. The 2014 Farm Bill defines an "agricultural pilot program" as a "pilot program to study the growth, cultivation, or marketing of industrial hemp . . . in States that permit the growth or cultivation of industrial hemp under the laws of the state in a manner that[:] ensures that only institutions of higher education and State departments of agriculture are used to grow or cultivate industrial hemp[;] requires that sites used for growing or cultivating industrial hemp in a State be certified by, and registered with, the State department of agriculture[;] and authorizes State departments of agriculture to promulgate regulations to carry out the pilot program in the States in accordance with the purposes of [Section 7606 of the 2014 Farm Bill]." 7 U.S.C. § 5940(a)(2).

56. The 2014 Farm Bill made the federal government's intentions clear: hemp with low levels of Delta-9 THC is to be treated as an agricultural commodity once again in the United States.

57. In response to the 2014 Farm Bill, Arkansas passed Act 981 in 2017 with the intent to move Arkansas "to the forefront of industrial hemp production, development, and commercialization of hemp products . . . ." Act 981 permitted the state to adopt rules to administer an industrial hemp research program and to license persons to grow industrial hemp for research in Arkansas.[3]

[3] A copy of House Bill 1778 can be found at: https://www.arkleg.state.ar.us/Home/FTPDocument?path=%2FACTS%2F2017R%2FPublic%2FACT981.pdf (last visited July 31, 2023).

58. After what one can fairly characterize as a series of longstanding disputes among the hemp industry, the DEA, States, and Congress regarding the DEA's authority to regulate hemp, *see Monson v. DEA*, 589 F.3d 952, 957 (8th Cir. 2009); *United States v. Mallory*, 372 F. Supp. 3d 377, 382–83, 384–85 (S.D. W. Va. 2019), Congress significantly altered the regulation of hemp as part of the Agricultural Improvement Act of 2018, Pub. L. No. 115–334, 132 Stat. 4490 (2018 Farm Bill).

59. On December 20, 2018, President Donald Trump signed into law the 2018 Farm Bill. A copy of the 2018 Farm Bill is attached in pertinent part as **Exhibit 1**.

60. The 2018 Farm Bill permanently removed hemp and THCs in hemp from the Controlled Substances Act and required the United States Department of Agriculture ("USDA") to be the sole federal regulator of hemp production, leaving no role for the Drug Enforcement Agency ("DEA").

61. The 2018 Farm Bill expanded the definition of hemp by defining it as the "plant Cannabis sativa L. and any part of that plant, including the seeds thereof ***and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not,*** with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." 7 U.S.C. § 16390(1) (emphasis added). Thus, the 2018 Farm Bill's expansion broadly redefined hemp as including all products derived from hemp, so long as the Delta-9 THC concentration is not more than 0.3 percent on a dry weight basis, and it is agnostic on manufacturing processes.

62. The Conference Report for the 2018 Farm Bill made it clear that Congress intended to preclude a state from adopting a more restrictive definition of hemp: "state and Tribal governments are authorized to put more restrictive parameters on the

production of hemp, ***but are not authorized to alter the definition of hemp*** or put in place policies that are less restrictive." Conference Report for Agricultural Improvement Act of 2018, p. 738 (emphasis added). A true and accurate copy of the relevant pages from the Conference Report is attached as **Exhibit 2**.

63. The 2014 Farm Bill made clear that Congress intended the exploration of a possible market for hemp as an agricultural commodity, and the expanded definition of hemp in the 2018 Farm Bill made clear that Congress intended for the hemp industry to be innovative in exploring, creating and sustaining viable submarkets beyond grain and fiber to incorporate consumable products as well, limited only by the delta-9 THC concentration levels.

64. The 2018 Farm Bill required the USDA to issue regulations and guidelines for states to implement the relevant hemp portions of the 2018 Farm Bill as well as regulations and guidelines for states that choose not to regulate the production of hemp in their borders. The fact that a farmer could grow hemp under a federal license if a state chose not to create its own regulatory program demonstrates Congress' resolve to re-establish a domestic supply chain of hemp and hemp products. 7 U.S.C. § 1639r(a)(1)(A).

65. According to the USDA's Final Rule, "produce" is a common agricultural term that means "[t]o grow hemp plants for market, or for cultivation for market, in the United States." 7 C.F.R. § 990.1.

66. The Final Rule further demonstrated that the 2018 Farm Bill preserved the authority of individual states to regulate the act of producing hemp if they chose to do so (e.g. set back requirements, performance based sampling), but individual states could not alter the definition of hemp or regulate in a manner that reaches beyond production. In

other words, the 2018 Farm Bill permits states to regulate the production, i.e., cultivation, of hemp if they chose to do so, but nothing more.

67. Significantly, the 2018 Farm Bill expressly prohibits states from blocking the transportation or shipment of hemp and hemp products produced in accordance with the 2018 Farm Bill:

> SEC. 10114. INTERSTATE COMMERCE.
>
> (a) Rule of Construction. Nothing in this title or an amendment made by this title prohibits the interstate commerce of hemp (as defined in section 297A of the Agricultural Marketing Act of 1946 (as added by section 10113)) or hemp products.
>
> (b) Transportation of Hemp and Hemp Products. No State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable.

68. This explicit protection for hemp and hemp products in interstate commerce would be rendered meaningless if individual states were permitted to criminalize certain hemp and hemp products and frustrate the overarching goal of the 2014 and 2018 Farm Bills, which is to treat hemp and hemp products like a commodity once again.

69. The overarching goal of treating hemp and hemp products like a commodity is further illustrated by the USDA specifically adding hemp to the Agricultural Technical Advisory Committee ("ATAC") for Trade in Tobacco, Cotton, and Peanuts.[4] There are a

[4] *See* https://www.federalregister.gov/documents/2023/06/13/2023-12649/amendment-notice-of-intent-for-agricultural-policy-advisory-committee-apac-and-the-related (last visited July 31, 2023).

total of six (6) ATACs that advise the Secretary of Agriculture and the U.S. Trade Representative about a variety of agricultural trade matters.

70. Furthermore, the General Counsel for the USDA has authored a memorandum discussing the prohibition on states restricting the transportation or shipment of hemp, concluding that any state law purporting to do so has been preempted by Congress. A true and accurate copy of the USDA Memorandum is attached as **Exhibit 3**.

71. In short, the 2018 Farm Bill (1) broadly defined hemp as including all extracts and derivatives whether growing or not, (2) legalized all hemp products with a Delta-9 THC concentration of not more than 0.3 percent on a dry weight basis, (3) is agnostic on the manufacturing processes for finished hemp products, and (4) mandated that no state or Indian tribe could prohibit the transportation or shipment of hemp and hemp products in interstate commerce.

Arkansas's Act 629 is Unconstitutional

72. In 2019, in response to the 2018 Farm Bill, Arkansas passed Act 504 which decoupled hemp from marijuana by removing a broad definition of hemp including all such hemp containing not more than 0.3 percent of tetrahydrocannabinol on a dry weight basis from the State's Uniform Controlled Substances Act.[5]

73. Then, in 2021, Arkansas amended its hemp program to remove the requirement that a research plan be provided in order to obtain a hemp license, thus officially opening up a full commercial market.

[5] A copy of House Bill 1518 can be found at https://www.arkleg.state.ar.us/Home/FTPDocument?path=%2FACTS%2F2019R%2FPublic%2FACT504.pdf (last visited July 31, 2023).

74. The hemp-derived cannabinoid market in Arkansas that had operated smoothly for years is now threatened with extinction after Governor Sanders signed Act 629 into law on April 11, 2023.

75. Although Act 629 properly excluded hemp derived-cannabinoid products from the State's definition of marijuana, it impermissibly narrows the definition of hemp by recriminalizing certain popular hemp-derived cannabinoid products. In fact, Act 629 goes so far as to recriminalize all hemp products "produced as a result of a synthetic chemical process" – including Delta-8 ***and*** Delta-9 THC; despite no such "synthetic" distinction permitted under federal law and despite there being no definition for "synthetic" in Arkansas law or Act 629. Act 629 goes even a step further to recriminalize "[a]ny other psychoactive substance derived [from hemp]," which would encompass cannabidiol ("CBD"), which is understood to be "psychoactive" by industry experts (as are caffeine and sugar).

76. Act 629 further interferes with the interstate transportation and shipment of hemp and hemp products in direct violation of the express language of the 2018 Farm Bill. On its face, if one cannot possess certain hemp and hemp products declared legal under federal law, then one cannot transport or ship it, either. Act 629 attempts, but fails, to cure this defect by inserting the following opaque (and internally conflicting) provisions:

> This section does not prohibit the continuous transportation through Arkansas of the plant Cannabis sativa L., and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths percent (0.3%) on a dry weight basis, produced in accordance with 7 U.S.C. § 20 16390 et seq.

(*Id.*, Section 7 at 5-64-215(d).)

> This subchapter does not prohibit in any form the continuous transportation through Arkansas of the plant Cannabis sativa L., and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 tetrahydrocannabinol concentration of not more than three-tenths percent (0.3%) on a dry weight basis, ***from one licensed hemp producer in another state to a licensed hemp handler in another state***.

(*Id*., Section 10 at 20-56-412(d) (emphasis added).)

The latter provision specifies which types of licensees *outside* of Arkansas are permitted to transport through the state, in further direct violation of the 2018 Farm Bill's interstate commerce protections.

77. Act 629 contains twenty sections. Section 17 of Act 629 explains that "Sections 6-14 of this act shall become effective only upon the certification of the Arkansas Attorney General that the State of Arkansas is currently enjoined from enforcing Sections 2-5 of this Act relating to delta-8 tetrahydrocannabinol and delta-10 tetrahydrocannabinol, but no earlier than August 1, 2023." The Arkansas Code Revision Commission unconstitutionally attempted to amend Act 629 on June 13, 2023 by changing Act 629's references to "Sections 6-13", "Sections 6-14", and "Sections 2-5" to "Sections 8-15", "Sections 8-16", and "Sections 2-7", respectively. Because the Commission lacked legal authority to amend Act 629's substantive provisions, Act 629 should be construed as originally enacted.

78. The interstate commerce provisions quoted above are in Section 7 and Section 10, meaning they are not currently effective. As a result, no such protection on the transportation of hemp exists in Act 629, and the interstate commerce of hemp and hemp products would be unduly burdened as employees would have to route around Arkansas due to the ever-present risk of arrest by transporting the hemp products through the state.

79. Sky Marketing and Smoker Friendly order, transport, and ship hemp-derived cannabinoid products like Delta-8 THC into and through Arkansas, either directly or through third-party distributors. Under Act 629, their employees face criminal liability for transporting and shipping hemp products if they failed to demonstrate the products were "in continuous transportation" and "produced in accordance with 7 U.S.C. § 16390 et seq."

80. As a result of Act 629, Plaintiffs are in jeopardy of criminal prosecution for selling, possessing, transporting, or shipping certain hemp-derived cannabinoid products if law enforcement personnel act on Act 629, and they are being precluded from selling, transporting, and shipping an agricultural commodity despite controlling and preemptive federal law.

COUNT I: DECLARATORY JUDGMENT FOR VIOLATION OF THE 2018 FARM BILL

81. Plaintiffs allege and incorporate by reference all allegations in the paragraphs above.

82. An actual and justiciable controversy exists between Plaintiffs and Defendants regarding the lawfulness of hemp products.

83. Act 629 places Plaintiffs in jeopardy of criminal prosecution and precludes Plaintiffs from shipping, transporting, wholesaling, packaging, processing, and retailing hemp extract products deemed legal by federal law.

84. Pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure, Plaintiffs request a declaration that Act 629 violates the 2018 Farm Bill and is preempted by federal law.

85. The 2018 Farm Bill legalized all hemp products with a Delta-9 THC concentration of not more than 0.3 percent on a dry weight basis and prohibited states

from curtailing the transport and shipment of hemp or hemp products through interstate commerce.

86. Act 629 violates both of these aspects of the 2018 Farm Bill. It attempts to revise federal law to reclassify certain hemp-derived cannabinoids as illegal controlled substances and interferes with the free flow of interstate transportation and shipment of hemp products.

87. Act 629 imposes an impermissible narrower definition of hemp than mandated by the federal government in the 2018 Farm Bill, despite Congress's declaration that states are not permitted to modify the definition of hemp, and despite Arkansas's new definition having the effect of banning hemp production entirely. If states were permitted to selectively criminalize parts of the hemp plant, it renders the protections Congress provided to hemp and hemp products in the stream of commerce meaningless.

88. Moreover, by carving certain hemp-derived cannabinoids out from the definition of hemp, Act 629 attempts to adopt a definition that conflicts with the federal standard, which includes all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a Delta-9 THC concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis (such as Delta-8 THC).

89. Act 629 runs counter to the plain and unambiguous reading of the 2018 Farm Bill as well as its intent as evidenced by a letter from the then-Chairman of the House Agriculture Committee Congressman David Scott and the then-House Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies to the United States Department of Justice and the DEA:

> Congress did not intend the 2018 Farm Bill to criminalize any stage of legal hemp processing, and we are concerned that hemp grown in compliance with a USDA-approved plan could receive undue scrutiny from the DEA as it is being processed into a legal consumer-facing product under this IFR. That is why the 2018 Farm Bill's definition of hemp was broadened from the 2014 Farm Bill's version to include derivatives, extracts and cannabinoids. It was our intent that derivatives, extracts and cannabinoids would be legal if these products were in compliance [with] all other Federal regulations.

A true and accurate copy of Congressmen's Scott and Bishop, Jr.'s letter is attached as **Exhibit 4**.

90. Act 629 is also in direct conflict with the DEA's own determinations that Delta-8 THC and every other hemp-derived cannabinoid product with no more than 0.3 percent Delta-9 THC on a dry weight basis is considered hemp and ***not*** a controlled substance under federal law.

91. On June 24, 2021, during a recorded Florida Department of Agriculture and Consumer Services webinar, DEA representative Sean Mitchell stated:

> I also just want to expand beyond delta-8. There's delta-8, there's delta-10, there's all kind of different uh cannabinoids that uh are associated with cannabis sativa l that are kind of out there and making the rounds. So what I want to say, and I'll be very, very deliberate and clear. At this time, I repeat again, at this time, per the Farm Bill, the only thing uh that is a controlled substance is delta-9 THC greater than 0.3% based on a dry weight basis.[6]

92. On August 19, 2021, the Alabama Board of Pharmacy requested the control status of Delta-8 THC under the Controlled Substances Act. On September 15, 2021, the DEA concluded that ". . . cannabinoids extracted from the cannabis plant that have a Δ 9 -THC concentration of not more than 0.3 percent on a dry weight basis meet the definition of 'hemp' and thus are not controlled under the CSA." Furthermore, according to the

[6] *See Town Hall with USDA and DEA Dated June 29, 2021, available at* https://tinyurl.com/mr2n28hx, at 9:00 minutes (last visited July 31, 2023).

response, the DEA considers unlawful "synthetic" THC products to be those that are "produced from non-cannabis materials." A true and accurate copy of the DEA's response to the Alabama Board of Pharmacy is attached as **Exhibit 5**.

93. Furthermore, DEA's official promulgations in the Federal Register, at 21 C.F.R. § 1308.11(31)(ii), declares that: "(ii) Tetrahydrocannabinols does not include any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. 16390."

94. In addition, by criminalizing hemp derivatives like Delta-8 THC, Act 629 prohibits the transport of hemp products in and through Arkansas in direct contradiction of Section 10114 of the 2018 Farm Bill.

95. Federal law preempts Act 629 that is in conflict with the 2018 Farm Bill pursuant to the Supremacy Clause of the Constitution of the United States and conflicts of laws principles. U.S. Const. art. VI, cl. 2.

96. Moreover, state law cannot be enforced without impairing the federal superintendence of the field of the transportation of hemp, and congresses definition of "hemp" for regulatory reasons.

97. Plaintiffs have been, and will be, harmed by Act 629, as they are unable to transport, manufacture, possess, or sell hemp products that have been declared to be legal under federal law.

98. Plaintiffs have no adequate remedy at law to correct or redress the deprivation of their rights by Defendants.

99. An actual controversy exists between Plaintiffs and Defendants regarding the constitutionality of Act 629.

COUNT II: DECLARATORY JUDGMENT FOR VIOLATION OF THE COMMERCE CLAUSE

100. Plaintiffs allege and incorporate by reference all allegations in the paragraphs above.

101. As explained above, hemp-derived cannabinoids, such as Delta-8 THC, are hemp products declared legal by the 2018 Farm Bill. "Delta-8-tetrahydrocannabinol is a hemp-derived product with less than 0.3% of the psychoactive delta-9-tetrahydrocannabinol compound. It is permitted to be sold in interstate commerce under the 2018 Farm Bill." *AK Futures, LLC v. LCF Labs, Inc.*, No. 821CV02121JVSADSX, 2023 WL 2563155, at *1 n.1 (C.D. Cal. Feb. 2, 2023) (citing *AK Futures Ltd. Liab. Co. v. Boyd St. Distro, Ltd. Liab. Co.*, 35 F.4th 682 (9th Cir. 2022) ("the plain and unambiguous text of the [2018] Farm Act compels the conclusion that the Delta-8 THC products before us are lawful" because the only statutory method for distinguishing "marijuana" from legal hemp is the delta-9 THC concentration level; and as the definition of hemp includes "all" derivatives, extracts and cannabinoids, this method would extend to downstream products).

102. Act 629's prohibition on the possession of hemp-derived cannabinoids, and its express prohibition on the transportation of all such hemp products unless from a licensed producer to a licensed handler, is a substantial burden on interstate commerce in violation of the Commerce Clause of the Constitution of the United States as there is no federal license to transport finished hemp products. U.S. Const. art. I, § 8, cl. 3.

103. Plaintiffs have been, and will be, harmed by Act 629, as they are unable to transport in and through Arkansas hemp-derived cannabinoids products that have been declared legal under federal law.

COUNT III: REGULATORY TAKING

104. Plaintiffs allege and incorporate by reference all allegations in the paragraphs above.

105. Perhaps anticipating that Act 629 is unconstitutional, Section 17 recriminalizes certain hemp-derived products by automatically imposing an onerous regulatory scheme if Sections 2-5 are enjoined:

> Sections 6-14 of this act shall become effective only upon the certification of the Arkansas Attorney General that the State of Arkansas is currently enjoined from enforcing Sections 2-5 of this act relating to delta-8 tetrahydrocannabinol and delta-10 tetrahydrocannabinol, but no earlier than August 1, 2023.

106. Defendants' intent to chill dissent is clear: if members of the hemp industry are successful in defeating the unconstitutional provisions in Sections 2-5 of Act 629, then Defendants will penalize the industry by enforcing an even more restrictive regulatory scheme found in Sections 6-14.

107. The problem with Defendants' regulatory scheme, however, is that its provisions are also unconstitutional. The scheme results in an impermissible regulatory taking because it effectively creates a total ban of hemp containing any amount of tetrahydrocannabinol.

108. Specifically, contingent Section 10 permits the sale of hemp-derived products, but it states that a hemp-derived product "shall ***not*** be combined with or contain any of the following: . . . any amount of tetrahydrocannabinol." (*Id*., at p. 9, lns. 10-18 (emphasis added)). This effectively bans all hemp-derived products containing THC, even if the product contains 0.3 percent or less Delta-9 THC as encompassed by the broad definition of hemp under the 2018 Farm Bill. 7 U.S.C. § 16390(1). For example,

popular full spectrum CBD products—long since accepted as legal and highly popular with adult consumers—would be criminalized under this approach.

109. Act 629's key provisions are preempted by federal law because its emergency nature infringes on Plaintiffs' constitutional rights so as to amount to a regulatory taking under the Constitution of the United States. Plaintiffs have made substantial investments in their businesses based on the established regulatory scheme that existed in Arkansas prior to Act 629. As of August 1, 2023, Plaintiffs' investments, inventory, and entire segments of their businesses were deemed worthless. Farmers with plants in the ground awaiting harvest, including BioGen, have no other course of remedy but to bring this lawsuit.

110. The Supreme Court has long held that "the Fifth Amendment... was designed to bar Government from forcing people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *See Armstrong v. United States*, 364 U.S. 40, 49 (1960).

111. The Supreme Court has recognized that a Taking may be effected not only by government's physical occupation of private property but also by regulations that "go too far." *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 339 (2002). The Takings Clause ". . . is designed not to limit the governmental interference with property rights per se, but rather to secure compensation in the event of otherwise proper interference amounting to a taking." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 536-37 (2005) (quoting *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 315 (1987) (emphasis in original)). The Supreme Court's analysis in *Penn Central* sets forth the framework for assessing whether government action is considered a regulatory taking, identifying "several factors that have

particular significance." *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978).

112. On the other hand, if the regulation "fall[s] short of eliminating all economically beneficial use, a taking nonetheless may have occurred," *Palazzolo [v. Rhode Island]*, 533 U.S. [606] at 617], and the court looks to three factors to guide its inquiry: (1) "[t]he economic impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) "the character of the governmental action," *Penn Central*, 438 U.S. at 124. While these factors provide "important guideposts," "[t]he Takings Clause requires careful examination and weighing of all the relevant circumstances." *Palazzolo*, 533 U.S. at 634 (O'Connor, J., concurring); *see also Tahoe-Sierra*, 535 U.S. at 321 (whether a taking has occurred "depends upon the particular circumstances of the case"); *Yee v. City of Escondido*, 503 U.S. 519, 523 (1992) (regulatory taking claims "entail[] complex factual assessments").

113. Act 629's enforcement and its correlating threat of criminal penalties has caused a regulatory of Plaintiffs' property without just compensation in violation of the Takings Clause of the Fifth Amendment to the U.S. Constitution.

114. The diminution of value of Plaintiffs' businesses and government interference caused by Act 629 qualify as an unconstitutional taking without just compensation.

115. Act 629 infringes upon the investment-backed expectations and industries in which Plaintiffs, and other Arkansas citizens, have built their livelihoods. For this same reason, the regulatory scheme in Act 629 amounts to a deprivation of all, or substantially all, beneficial economic use of Plaintiffs' hemp lines of business in Arkansas.

116. By way of Act 629's infringement upon Plaintiffs' businesses, it has overly burdened Plaintiffs and taken their property without just compensation.

COUNT IV: VOID FOR VAGUENESS

117. Plaintiffs allege and incorporate by reference all allegations in the paragraphs above.

118. The Due Process Clause of the Fifth and Fourteenth Amendments to the U.S. Constitution prohibit criminal enforcement of statutory and regulatory requirements that are unconstitutionally vague and do not give fair warning of their requirements. U.S. Const. Amend. V, XIV.

119. For instance, contingent Section 6 of Act 629 bans hemp containing any "psychoactive substance," a term which is undefined and overly broad so as to potentially ban any hemp-derived cannabinoid product, including CBD isolate with no THC.

120. Act 629 is further void for vagueness because "psychoactive substance" is undefined and does not have a known definition in the industry. It is also internally inconsistent because it attempts to permit hemp-derived products containing "delta-9 tetrahydrocannabinol greater than three tenths percent (.3%)" and in the next section precludes "marijuana" under the exact same definition. (*Id*. Section 10 at p. 5-6, lns. 36-17.)

121. Act 629 fails to give a person of ordinary intelligence fair notice as to what contemplated conduct is forbidden and what is permitted with regard to the possession, transportation, and shipment of the products it seeks to ban. Plaintiffs and the end-users in the stream of commerce will be left to guess at the meaning of the new law. "A law is unconstitutionally vague under due process standards if it does not give a person of

ordinary intelligence fair notice of what is prohibited." *Arkansas Tobacco Control Bd. v. Sitton*, 166 S.W.3d 550, 553 (Ark. 2004).

122. For instance, Sections 6-14 of Act 629 would not become effective unless and until the Attorney General certifies that Sections 2-5 are enjoined. At the same time, Section 18 provides that Section 6, which criminalizes the possession of "a product derived from industrial hemp that was produced as a result of a synthetic chemical process that converted the industrial hemp or a substance contained in the industrial hemp into Delta-8, Delta-9, Delta-6a, 10a, or Delta-10 tetrahydrocannabinol including their respective acetate esters," becomes effective on or after August 1, 2023 for persons who are twenty-one years of age or older. Section 17 and 18 of Act 629 are internally inconsistent, and a person of average intelligence cannot know whether possession, transportation, or shipment of hemp-derived products is subject to criminal sanctions or when Act 629 is even effective.

123. The confusion only abounds when viewing Sections 6, 17, and 18 in context of Section 5. Section 5 of Act 629 amends Ark. Code Ann. § 5-64-215(a)(2)(B)—a section of the criminal code identifying Schedule VI substances—to specifically exclude THC contained in hemp-derived cannabidiol that is not more than three-tenths of one percent (0.3%) of delta-9 THC in the hemp-derived cannabidiol on a dry weight basis as verified by a nationally accredited laboratory for quality, purity, and accuracy standards that is not approved by the FDA for marketing as a medication. In other words, Section 5 excludes hemp-derived products from Schedule VI, while Section 6 specifically includes them in Schedule VI. Section 17 makes Section 6 effective only upon a certification by the Attorney General that Sections 2-5 are enjoined, and Section 18 provides that Section 6 becomes effective on August 1, 2023 for adults.

124. Act 629 exposes Plaintiffs to criminal prosecution, and when and to what extend Act 629 applies to Plaintiffs is difficult for even a well-trained lawyer to understand. As enacted, Act 629 is unconstitutionally vague.

COUNT V: INJUNCTIVE RELIEF

125. Plaintiffs allege and incorporate by reference all allegations in the paragraphs above.

126. Plaintiffs are likely to succeed on the merits of their challenge to Act 629 given that it openly conflicts with the 2018 Farm Bill and the Supremacy and Commerce Clauses of the Constitution of the United States, constitutes an impermissible regulatory taking, and is void for vagueness in violation of the Due Process Clause of the Fifth and Fourteenth Amendments.

127. Unless enjoined in its entirety, Act 629 already has, and will continue to, cause harm to Plaintiffs by placing them in jeopardy of criminal prosecution and depriving them the ability to cultivate, wholesale, distribute, and retail hemp plants and hemp-derived products that are declared legal by federal law.

128. Plaintiffs have no adequate remedy at law and face irreparable harm unless this Court enjoins Act 629 in its entirety as described herein. Plaintiffs' irreparable harm includes rendering their inventory of hemp crops and hemp-derived products utterly worthless, exposing them to criminal liability, and inhibiting them from transporting or shipping commodities declared legal under the 2018 Farm Bill.

129. Plaintiffs are likely to succeed on the merits of this action.

130. The severability clause found in Section 19 of Act 629 does not cure the irreparable harm Plaintiffs will continue to suffer because it is impossible to sever any of

its operative provisions in such a manner to comport with federal law. *See Combs v. Glens Falls Ins. Co.*, 237 Ark. 745, 748, 375 S.W.2d 809, 811 (1964).

131. The balance of harms weighs in favor of Plaintiffs, as the injunction will not harm Defendants; it will simply place Defendants back into compliance with federal law.

132. An injunction is in the public's interests, as Arkansas is not permitted to ignore federal law or criminalize conduct that has been declared legal under federal law, such as interstate transportation of hemp-derived products.

133. Plaintiffs are entitled to a temporary restraining order, later to be made a permanent injunction, with respect to Act 629.

WHEREFORE, Plaintiffs respectfully request that the Court:

(a) Set this matter for a prompt hearing on Plaintiffs' request for a temporary restraining order;

(b) Enter judgment in their favor and against Defendants;

(c) Declare Act 629 void in its entirety and declare all hemp plants and hemp-derived cannabinoid products that comply with the federal definition of hemp, such as Delta-8, as legal under federal law, which preempts Arkansas' effort to recriminalize them through Act 629; and

(d) Issue a temporary restraining order or preliminary injunction, later to be made permanent, enjoining Defendants (including other persons in concert or participation with them, including but not limited to law enforcement personnel and prosecutors' offices) from enforcing Act 629 in its entirety and from taking any steps to enforce, criminalize, or prosecute the sale, possession, manufacture, financing, distribution, or transportation of hemp-derived cannabinoids that do not exceed 0.3 percent Delta-9 THC on a dry weight basis;

(e) Award Plaintiffs their costs and attorneys' fees incurred in bringing this action; and

(f) Award Plaintiffs all other just and proper relief.

Dated: August 15, 2023

Respectfully submitted,

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