IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
19TH JUDICIAL CIRCUIT

MO HEMP TRADE ASSOCIATION,
50 Hi Line Drive
Union, MO 63084-3104

Plaintiff,

v.

MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES,

Serve: Paula F. Nickelson, Director
Missouri Department of Health and Senior Services
912 Wildwood, P.O. Box 570
Jefferson City, MO 65102
(573) 751-6400

Defendant.

Case No.

PETITION FOR DECLARATORY JUDGMENT, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTIVE RELIEF

Plaintiff MO Hemp Trade Association ("Plaintiff" or "MO Hemp") seeks declaratory and injunctive relief to stop the Missouri Department of Health and Senior Services ("DHSS") from designating foods "adulterated" because they contain hemp products and from embargoing such foods. Missouri law specifically prohibits the intended action announced by DHSS. In addition, Plaintiff asks this Court to declare that DHSS has improperly enacted a rule prohibiting the manufacture, sale, or distribution of foods containing hemp products unless done so by facilities licensed by DHSS without undertaking the rulemaking process required by the Missouri Administrative Procedure

Act. As a result, DHSS' announced policy is void and of no effect.

The Parties

1. Plaintiff is a private, non-profit organization residing in Franklin County, Missouri.

2. Defendant Missouri Department of Health and Senior Services ("DHSS") is a state agency. § 192.005.1, RSMo.

3. DHSS is responsible for administering Missouri's laws pertaining to food and drugs. § 192.080, RSMo.

Jurisdiction and Venue

4. Venue is proper in this Court because DHSS is located in Cole County.

5. Plaintiff seeks a declaration of rights, status, and other legal relations. § 527.010, RSMo.

6. Plaintiff seeks a declaration that DHSS has unlawfully promulgated a rule without undertaking the rulemaking process. § 536.050, RSMo.

7. Plaintiff also seeks temporary and permanent injunctive relief.

Factual Allegations

The citizens of Missouri and the General Assembly have chosen to not regulate hemp products.

8. Marijuana and hemp are varieties of the same species, *Cannabis sativa L.*

9. Marijuana plants are generally bred as female plants that produce more than 0.3% of delta-9 tetrahydrocannabinol ("delta-9-THC").

10. Hemp is a mixture of male and female cannabis plants, and its flowers

produce less than 0.3% of delta-9-THC.

11. Cannabidiol, or CBD, is usually derived from the hemp plant and is not psychoactive.

12. Clause 4 of Section 2 of Article XIV of the Missouri Constitution gives DHSS the authority to regulate "marijuana."

13. Clause 2(13) of Section 2 of Article XIV of the Missouri Constitution specifically states that "marijuana does not include industrial hemp, as defined by Missouri statute, or commodities or products manufactured from industrial hemp."

14. Missouri's Controlled Substances Law defines "industrial hemp" as:

> (a) All nonseed parts and varieties of the *Cannabis sativa L.* plant, growing or not, that contain an average delta-9 tetrahydrocannabinol (THC) concentration that does not exceed three-tenths of one percent on a dry weight basis or the maximum concentration allowed under federal law, whichever is greater;
>
> (b) Any *Cannabis sativa L.* seed that is part of a growing crop, retained by a grower for future planting, or used for processing into or use as agricultural hemp seed;
>
> (c) Industrial hemp includes industrial hemp commodities and products and topical or ingestible animal and consumer products derived from industrial hemp with a delta-9 tetrahydrocannabinol concentration of not more than

three-tenths of one percent on a dry weight basis.

§ 195.010(24).

15. The Missouri General Assembly has given DHSS the authority to embargo foods when the agency finds or has probable cause to believe that a food is adulterated or so misbranded as to be dangerous or fraudulent. § 196.030.1, RSMo.

16. The Missouri General Assembly has set forth twelve scenarios where "[a] food shall be deemed to be adulterated." § 196.070.1, RSMo.

17. Under § 196.070.1(1), RSMo., a food shall be deemed to be adulterated if it bears or contains any poisonous or deleterious substance which may render it injurious to health."

18. Under § 196.070.1(2), RSMo., a food shall be deemed to be adulterated if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 196.085.

19. But the Missouri General Assembly has specifically said that "[a] food shall not be considered adulterated solely for containing industrial hemp, or an industrial hemp commodity or product." § 196.070.2, RSMo.

Governor Parson's Executive Order 24-10 attempts to improperly regulate food products containing industrial hemp.

20. On August 1, 2024, Governor Parson issued Executive Order 24-10 ("EO 24-10"). **Exhibit 1**.

21. EO 24-10 states: "[T]here are currently no safety standards, packaging requirements, or other regulations related to the safety of consuming unregulated

psychoactive cannabis products in Missouri."

22. EO 24-10 states: "Unregulated psychoactive cannabis products include delta-8 tetrahydrocannabinol (THC), delta-10 (THC), hexahydrocannabinol (HHC), tetrahydrocannabinol (THC-O), tetrahydrocannabiphoral (THCP), tetrahydrocannabivarin (THCV), and other similar products" (hereinafter referred to as the "Unregulated Psychoactive Cannabis Products").

23. The Unregulated Psychoactive Cannabis Products listed in Executive Order 24-10 are typically made from CBD derived from the hemp plant.

24. The Unregulated Psychoactive Cannabis Products are "industrial hemp" because they do not contain greater than 0.3% delta-9-THC on a dry weight basis.

25. Contrary to Missouri law, EO 24-10 directs DHSS to "find foods that contain unregulated psychoactive cannabis products are deleterious, poisonous, and adulterated under Sections 196.070, RSMo., and 196.085, RSMo., and to take the necessary steps in accordance with statute and regulation to embargo and condemn any food containing unregulated psychoactive cannabis products."

26. EO 24-10 directs DHSS to produce and distribute information regarding how DHSS will regulate products consistent with the executive order.

27. In response to EO 24-10, DHSS has setup an online form for the public to report establishments selling a product that may be considered an Unregulated Psychoactive Cannabis Product: https://health.mo.gov/safety/foodsafety/enviro-health-services/unreg-psychoactive-cannabis-products.php.

28. Upon information and belief, DHSS has received reports identifying

establishments selling a product that may be considered an Unregulated Psychoactive Cannabis Product.

DHSS will violate Missouri law and harm Plaintiff's members by deeming all foods containing industrial hemp "adulterated" and embargoing them.

29. On August 29, 2024, DHSS issued a memorandum entitled "Memo for Missouri Food Retailers and Wholesalers, *Executive Order 24-10 Implementation*" (the "August 2024 Memo"). **Exhibit 2.**

30. The August 2024 Memo states that "[a]ny facility under the regulatory authority of [DHSS] that sells, manufactures, or distributes products containing unregulated psychoactive cannabis are subject to Executive Order 24-10."

31. The August 2024 Memo states that, starting September 1, 2024, DHSS will inspect facilities for compliance with EO 24-10.

32. The August 2024 Memo states: "If unregulated psychoactive cannabis products are found during an investigation, DHSS will: (1) Document the findings. (2) Educate and request voluntary compliance, including destruction of the products. If voluntary compliance is not achieved, products will be embargoed and held on the premises until a court order for destruction is obtained."

33. On August 29, 2024, DHSS representative Lisa Cox sent an email attaching the August 2024 Memo that stated: "Governor Parson's Executive Order 24-10 goes into effect this weekend, which prohibits foods containing psychoactive cannabis products from being manufactured, sold or delivered in the State of Missouri, unless originating from an 'approved source.' The Department of Health and Senior Services will take steps

to embargo and condemn these products beginning Sept. 1, 2024." **Exhibit 3**.

The MO Hemp Trade Association meets the three prong test of associational standing.

34. The members of MO Hemp include those who distribute and sell hemp products.

35. Members of MO Hemp are suffering an immediate and threatened injury as a result of DHSS plan to embargo and condemn foods containing hemp products starting September 1, 2024. They are being threatened with the prospect of an embargo, and related litigation, for selling products that contain industrial hemp.

36. Plaintiff seeks a declaration interpreting the statutes regarding adulterated food, specifically as they relate to the treatment of foods containing hemp products as "adulterated." Therefore, this lawsuit does not require the participation of any individual member of the MO Hemp Trade Association.

37. The interests the MO Hemp Trade Association seeks to protect here are germane to the organization's purpose, namely to promote the research, development, and commercialization of hemp products, and to offer legal, regulatory, and business support services to members.

38. The relief MO Hemp Trade Association requests—a declaration that foods containing industrial hemp products are not adulterated, a declaration that DHSS cannot embargo foods containing industrial hemp products, and a declaration that DHSS cannot unilaterally stop the manufacture, sale, or delivery of foods containing industrial hemp products without promulgating a rule—is not relief that requires information from any

particular member.

COUNT I:
DHSS UNLAWFULLY CONCLUDES THAT FOODS CONTAINING INDUSTRIAL HEMP ARE ADULTERATED

39. Plaintiff incorporates by reference all preceding paragraphs.

40. The Missouri General Assembly has declared that a food cannot be considered adulterated solely for containing industrial hemp, or an industrial hemp commodity or product. § 196.070.2, RSMo.

41. DHSS maintains that foods containing the Unregulated Psychoactive Cannabis Products listed in EO 24-10 are "adulterated."

42. The Unregulated Psychoactive Cannabis Products listed in EO 24-10 are industrial hemp commodities or products.

43. Thus, Plaintiff maintains that foods containing the Unregulated Psychoactive Cannabis Products listed in EO-24 are, by statutory definition, not adulterated.

44. Further, Plaintiff maintains that, even if § 196.070.2 did not exist, foods containing hemp products are unadulterated because they are not poisonous or deleterious.

45. Plaintiff and Defendant have a real, substantial, and presently existing controversy as to whether DHSS can designate foods containing industrial hemp products or commodities as "adulterated."

46. Plaintiff seeks to protect the rights of its members.

47. Plaintiff's claim is ripe for judicial determination.

48. Plaintiff's members will suffer imminent, irreparable harm if foods containing industrial hemp products or commodities are deemed adulterated because adulterated foods cannot be sold under Missouri law.

49. Defendant faces no harm if its interpretation is invalidated and Plaintiff's members are allowed to continue selling and distributing foods containing industrial hemp products or commodities.

50. The public interest favors an injunction prohibiting Defendant from moving forward with its improper interpretation of Missouri law.

51. An injunction ensures the law is properly enforced.

52. Plaintiff has no adequate remedy at law.

COUNT II:
ANY EMBARGO ON THE SALE OF FOODS CONTAINING HEMP PRODUCTS VIOLATES MISSOURI LAW

53. Plaintiff incorporates by reference all preceding paragraphs.

54. DHSS is only authorized to embargo a food when it finds or has probable cause to believe a food is adulterated or so misbranded as to be dangerous or fraudulent. § 196.030.1, RSMo.

55. DHSS cannot embargo unadulterated foods.

56. DHSS has publicly announced that, starting September 1, it will embargo foods containing hemp products because those foods are adulterated.

57. Plaintiff's position is that foods containing hemp products are, by statutory definition, unadulterated, and any embargo preventing the sale of those products is unlawful and a taking of its members' property.

58. Plaintiff and Defendant have a real, substantial, and presently existing controversy regarding DHSS' interpretation of Missouri's Constitution and Food, Drug, and Cosmetics Act.

59. Plaintiff seeks to protect the rights of its members.

60. Plaintiff's claim is ripe for judicial determination.

61. Plaintiff's members will suffer imminent, irreparable harm if foods containing hemp products are embargoed and condemned, meaning destroyed, if DHSS prevails.

62. Defendant faces no harm if its interpretation of Missouri law is invalidated and Plaintiff's members are allowed to continue selling and distributing foods containing hemp products.

63. The public interest favors an injunction prohibiting Defendant from moving forward with an embargo of foods containing hemp products, which not only prevents such products from being sold but could result in their condemnation and destruction if Defendant prevails.

64. An injunction ensures the Missouri Constitution and statutes are properly enforced.

65. Plaintiff has no adequate remedy at law.

COUNT III:
DHSS CANNOT UNILATERALLY STOP THE MANUFACTURE, SALE, OR DELIVERY OF FOODS CONTAINING HEMP PRODUCTS IN MISSOURI WITHOUT PROMULGATING A RULE

66. Plaintiff incorporates by reference all preceding paragraphs.

67. In an email attaching the August 2024 Memo, DHSS has publicly announced Executive Order 24-10 prohibits the manufacture, sale, or delivery of foods containing hemp products, unless originating from a facility licensed by DHSS.

68. DHSS' announcement is an agency statement of general applicability that implements, interprets, or prescribes law or policy.

69. DHSS has made a statement of general applicability that all foods containing hemp products are *per se* illegal unless manufactured, sold, or delivered by a facility licensed by DHSS.

70. Not only is such a statement contrary to § 196.070.2, but it is made without following the rulemaking procedures set forth in § 536.016, RSMo., that must be followed to properly promulgate a rule.

71. DHSS violated the Missouri Administrative Procedure Act by promulgating a rule without following the procedures set forth in § 536.016, RSMo.

72. DHSS statements that the manufacture, sale, or delivery of foods containing hemp products in Missouri are prohibited have no legal effect.

73. Plaintiff and Defendant have a real, substantial, and presently existing controversy regarding whether DHSS has unlawfully promulgated a rule designating all foods containing hemp products *per se* illegal unless manufactured, sold, or delivered by a facility licensed by DHSS.

74. Plaintiff seeks to protect the rights of its members.

75. Plaintiff's claim is ripe for judicial determination.

76. Plaintiff's members will suffer imminent, irreparable harm if DHSS is

allowed to unilaterally declare that foods containing hemp are *per se* illegal unless manufactured, sold, or delivered by a facility licensed by DHSS.

77. Defendant faces no harm if it required to follow the rulemaking procedures statutorily applicable to it.

78. Plaintiff has no adequate remedy at law.

Prayer for Relief

WHEREFORE, for the foregoing reasons, Plaintiff prays for a judgment:

a. Declaring DHSS cannot deem a food to be adulterated because it contains industrial hemp products;

b. Declaring DHSS cannot embargo a food because it contains industrial hemp products;

c. Declaring DHSS cannot unilaterally stop the manufacture, sale, or delivery of foods containing industrial hemp products in Missouri by persons other than those licensed by DHSS;

d. Issuing a preliminary injunction and then permanently enjoining DHSS from deeming a food to be adulterated because it contains industrial hemp products;

e. Issuing a preliminary injunction and then permanently enjoining DHSS from embargoing foods containing industrial hemp products;

f. Award Plaintiff its costs and attorney's fees for this action; and

g. Granting such other and further relief as the Court deems just and appropriate under the circumstances.

Respectfully submitted,

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