

DEC 27 2023

COUNTY & CIRCUIT CLERK  
JOE COOPER

BY \_\_\_\_\_ D.C.

**IN THE CIRCUIT COURT OF IZARD COUNTY, ARKANSAS**

**NICOLE LONG, on behalf of Herself  
AND ALL OTHERS  
SIMILARLY SITUATED.**

**Plaintiffs,**

**v.**

**DERIK JULIAN  
RYAN HAYDEN  
ALLIANCE HEMP COMPANY LLC  
JORDAN'S KWIK STOP, INC.  
JOHN DOES 1-10.**

**Defendants**

**Case No. 33CV-23-190**

**Complaint**

**VERIFIED COMPLAINT**

Plaintiff, **NICOLE LONG**, alleges upon information and belief, except for allegations pertaining to Plaintiff, which are based on personal knowledge:

**JURISDICTION AND VENUE**

1. This is an action brought under the Arkansas Drug Dealer Liability Act, fraud, breach of warranty, rescission, and unjust enrichment. This Court has subject matter jurisdiction. No federal claims are brought, and the damages sought do not exceed 5 million dollars.

2. Venue is proper because Plaintiff purchased the vape pen from **JORDAN'S KWIK STOP, INC.** (Jordan's) in Jackson County and Izard County, Arkansas which they purchased from **JORDANS KWIK STOP, INC.**, an Arkansas corporation with its principal place of business in Arkansas. Each Product was manufactured by **ALLIANCE HEMP COMPANY LLC**, an inactive Oklahoma limited liability company, whose members are

**DERIK JULIAN** and **RYAN HAYDEN**. Julian and Hayden knew the Product was illegal, yet shipped the product into Arkansas anyway.

3. **JOHN DOE 1**, is a laboratory organized under the laws of the State of California who falsely certified the Product contained a legal amount of D9 THC, whose members are sued as **John Does 1-5**. The fraudulent COA issued by John Doe 1 (**The Lab**). These persons are referred to as the Lab Defendants.

4. Each Defendant has established "minimum contacts" with Arkansas such that the assertion of jurisdiction is fair and reasonable under constitutional standards. Here are some key factors: Each Defendant has purposefully availed themselves of the privileges of conducting activities within Arkansas by doing business, entering into contracts, or deliberately interacting with residents of Arkansas. Indeed, **ALLIANCE HEMP COMPANY, LLC**, has registered to do business in Arkansas. If the defendant voluntarily took actions within the state that would subject them to its laws, it strengthens the case for jurisdiction. Each Defendant's publication and distribution of D8 vape pens within the State of Arkansas, caused Plaintiff and the Class harm, in the State of Arkansas, so that this Court has specific personal jurisdiction. Thus, there is direct connection between each Defendant's actions in the state and the legal dispute enhances the likelihood of jurisdiction. Relevant evidence and witnesses exist in Arkansas. Each Defendant's actions were foreseeable to impact the forum state, it may support jurisdiction. Unilateral actions by the Plaintiff alone, such as purchasing a product or service from the Defendant, may not be sufficient. Venue is proper in this County because each retail Defendant sells the product in this County and some of the actions giving rise to the claims occurred within this county.

## GENERAL ALLEGATIONS OF FACT

5. Plaintiff purchased a vape manufactured by Alliance labeled Blue Dream , and tested by the Lab from **JORDAN'S KWIK STOP, INC.**.

6. Plaintiff purchased a vape manufactured by Alliance labeled Blue Dream and tested by the Lab from **JORDAN'S KWIK STOP, INC.** (The Product).

7. Each Defendant manufactures, tests, distributes, markets, or sells D8 Vape pens in Izard and Jackson County, Arkansas warranted as compliant with the Hemp Farming Act of 2018, meaning that these products contain no more than hemp-derived .3% D9 THC by dry weight. This representation is false.

8. Upon information and belief, one or more of the Manufacturers and Distributors of **ALLIANCE HEMP COMPANY, LLC**, sued as John Does 2-9, all had received lab tests that indicated that their respective products contained THC or more than .3% D9 THC dry weight and was therefore a Schedule I controlled substance, marijuana. Instead of demanding that the product be compliant with federal law, these Defendants lab shopped, until each found a lab willing to issue a false COA, like the Lab Defendant in this case.

9. The representations are misleading because they give consumers like the Plaintiff the impression the Product contains a legal amount and type of D9 ingredients but the Product contains an illegal amount of D9, as well as D9. Alliance Enterprises manufactures vape products like the products Plaintiff purchased and others and colludes with various laboratories such as the Lab to produce fraudulent certificates of analysis (COA's) that show a D9 THC percentage below .3% D9 THC and typically show

none detected (ND). However, these product COA's are false and the actual D9 THC is far above the allowable D9 THC limits. Further, Alliance Enterprise products have been tested with various laboratories with similar results, in that they are substantially over the .3% D9 THC maximum.

10. In 2023, Long purchased a D8 vape from Jordan's manufactured by Alliance and falsely certified by the Lab as having a legal percentage of THC to address anxiety.

11. After using the product extensively, Plaintiff had the Product tested, and the test was positive for D9 THC.

12. Based in Oklahoma, Alliance was founded by co-owners Julian and Hayden with the vision of bringing innovation to the counter-culture space. Alliance alleges it has been committed to improving the community it serves by providing superior, consumer-centered and cost-effective products that are thoroughly lab tested with quality assurance, consistency, and traceability. Using its website, About Alliance Hemp Co - Hemp CBD Products Grown in Southern Oregon, Alliance Enterprises sells delta-10-THC cartridges, disposables and tinctures, delta-8-THC-infused shots, vape cartridges, concentrates, disposables, edibles, Delta-8-THC-infused hemp flower, pods, tinctures, THC-O, HHC, THC-V and THC-P products over the internet for delivery in Arkansas and across the nation. Each Defendant has done business in the state of Arkansas and hundreds of thousands of dollars of its product has been sold.

13. Defendant Alliance Enterprises manufactured the product Plaintiff purchased from Jordan's in IZARD and Jackson County, Arkansas, after buying the product from a Distributor, who is named as John Doe 2.

14. Alliance falsely stated on its website that Delta-8 THC is an isomer of CBD, is derived from hemp and CBD, and is a psychoactive cannabinoid that packs several benefits. The unique cannabinoid is different, chemically, from its close relative, Delta-9 THC. It only differs from a few atomic bonds. However, it occurs in small concentrations and is Hemp derived making it Hemp compliant because it contains less than 0.3% of Delta 9 THC as required under the 2018 Farm Bill.

15. Acting at Alliance's direction, the Lab Defendant produced a certificate that falsely reflected that the product Plaintiff purchased contained legal amounts of D9 THC.

16. Delta-8 is a cannabis compound that has become popular because of its similarity to Delta-9 THC, the main compound in cannabis that gets one high, causing euphoria, happiness, and sedation.

17. Delta-8 is short for its scientific name, delta-8-tetrahydrocannabinol, or simply just delta-8 THC. Some people just call it "D-8." Delta-8 THC can cause effects similar to regular delta-9 THC, but they will be much less potent in the same amount.

18. Delta 8 THC is a natural cannabis compound that occurs in both marijuana and hemp. However, its presence is usually so little that one needs a massive amount of plant material to procure any significant quantity of this compound.

19. Delta-8, like Delta-9 (regular THC), binds to the body's endocannabinoid system, which causes one to feel high. Chemically speaking, Delta-8 and Delta-9 are similar in that they both have a double bond in their structures. D8 and D9 THCs are chemically different in the placement of the double bond. Both cannabinoids have a chain of carbon atoms, but delta-8 has the double bond on the eighth carbon, whereas Delta-9 has it on the ninth.

20. Delta-8 binds to the endocannabinoid system in a slightly different manner because of the location of its double bond. This reason makes Delta-8 much less potent than regular THC. So, in order to obtain D8 THC in sufficient concentrations to vape and achieve a “high,” D9 THC is created in illegal amounts.

21. The Hemp Farming Act of 2018 removed hemp (defined as cannabis with less than 0.3% THC) from Schedule I controlled substances and making it an ordinary agricultural commodity. Its provisions were incorporated in the 2018 United States Farm Bill that became law on December 20, 2018.

22. Then, the interim final rule entitled “Implementation of the Agriculture Improvement Act of 2018” effective on August 21, 2020 (85 Fed. Reg. 51,639) made a product containing contains more than .3% D9 THC by dry weight illegal.

23. As used in this Complaint, an illegal D8 vape means a vape that contains more than .3 D9 hemp derived THC by dry weight or THC.

24. The Alliance Defendants advertise its D8 vape pens do not contain more than 0.3% THC by dry weight. All Defendants know that if a product contains more it is considered marijuana and is not legal.

25. On the issue of D9 THC, state and federal law is clear: it is a felony under the Controlled Substances Act of 1970 (“CSA”) to sell a cannabis product that contains more than .3% D9 by dry weight.

26. Of course, in recent years the United States Department of Justice has largely declined to bring prosecutions under the federal cannabis laws, prompting hundreds of millions of investment dollars and thousands of new customers to flow into the D8 commercial hemp industry.

27. But the Justice Department's current policy of non-enforcement does not strike a single word from the U.S. Code or deprive private individuals of their judicially-enforceable rights under federal law. The Department of Justice can no more amend a federal statute than can the States, and cannabis remains just as illegal under federal law today as it was when Congress passed the Controlled Substances Act in 1970 (CSA herein).

28. Dealing in cannabis that contains more than .3% D9 THC by dry weight or that contains D9 THC is illegal activity under state and federal law, and those who engage in a pattern of illegal activity should disgorge the profit and all monies received from the illegal transaction.

29. The sale of the Product with more than .3% D9 THC by dry weight is illegal because it is a Schedule I drug, and defined as marijuana. Plaintiff purchased an Alliance Industries D8 vape pen product, that contained more than .3% D9 THC by dry weight. Defendants falsely, expressly or impliedly warranted these products contained less than .3% D9 THC by dry weight and therefore was not marijuana. But it was marijuana.

30. Reasonable consumers like Plaintiff must and do rely on a company to honestly identify and describe the components, attributes, and features of the Product, relative to itself and other comparable products or alternatives on packaging and through COA's.

31. The value of the Product that Plaintiff purchased was materially less than its value as represented by defendant because it was illegal.

32. Plaintiff bought the Product because the Product was represented as legal. The Product was sold over the counter, resulting in additional and illegal profits.

33. Had Plaintiff known the truth, she would not have purchased the Product because it is illegal to buy and use these products.

34. The hemp is cultivated, then its leaves are processed to create distillate. The distillate then contains D8 and D9 THC. However, the D9 in the distillate is not scrubbed by the distiller because it costs too much. Accordingly, all of Alliance's D8 vape pens contain an illegal amount of D9 THC. Thus, the vape pens contain marijuana, a Schedule I controlled substance.

35. The Alliance Defendants are one of the largest vape pen sellers in Oklahoma. They sell D8 vape pens both wholesale and retail for use in Arkansas.

36. The Alliance Products are sold at several retail locations across the nation and over the internet.

37. The Product is sold individually. But the Alliance Defendants use a uniform process to create the distillate used in D8 vape pens, but the D9 in the distillate is never scrubbed to make the product legal.

### **CLASS ALLEGATIONS**

38. Defendant(s) maintains a database that identifies persons who purchase D8 products and the type of D8 products purchased from the corporate Defendants through credit card receipts and customer loyalty clubs. There are thousands of class members. Plaintiff seeks certification under Ark. R. Civ. P. 23(b)(2) and (b)(3) of the following class:

- a. All persons who bought one or more D8 vape pen Products manufactured by Alliance who have a receipt or are identified in Jordan's purchaser database within the appropriate statute of limitations until the

date of certification. Excluded from Class are any directors, officers, or employees of Defendants, Plaintiff's counsel, members of their immediate families, and any director, officer, or employee of any entity in which Defendants have a controlling interest and legal representatives, heirs, successors, or assigns of any such persons.

- b. All persons who bought one or more D8 vape pen Products manufactured by Alliance and sold or delivered the State of Arkansas who have a receipt or are identified in Alliance's or other Arkansas retailer purchaser database within the appropriate statute of limitations until the date of certification. Excluded from Class are any directors, officers, or employees of Defendants, Plaintiff's counsel, members of their immediate families, and any director, officer, or employee of any entity in which Defendants have a controlling interest and legal representatives, heirs, successors, or assigns of any such persons.

39. Common questions of law or fact predominate and include whether Defendants' representations were and are misleading in violation of Arkansas law and if the Plaintiff and the class members are entitled to damages or rescission. In this case, the key issues include:

- a. Did the Products purchased by the Plaintiff and Class contain D9 THC?
- b. Did the Products purchased by the Plaintiff and Class contain more than .3% hemp-derived D9 THC by dry weight?
- c. Was the Product a Controlled Substance?

40. Plaintiff's claims and basis for relief are typical to other members because

all engaged in an illegal transaction unknowingly and are entitled to rescind the transaction.

41. Plaintiff is an adequate representative because Plaintiff's interests do not conflict with other members. Plaintiff's counsel is competent to represent the Class since they have previously served as Lead Counsel in certified class actions on multiple occasions. No individual inquiry is necessary since the focus is only on Defendant's practices, and the class is definable and ascertainable by Defendant's business records and receipts.

42. Individual actions would risk inconsistent results and be both repetitive and impractical to justify, as the claims are modest relative to the scope of the harm. Class action is superior because of the relatively small amount of money for each purchase. Indeed, public policy does not encourage the sale of illegal drugs.

43. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to protect class members' interests adequately and fairly.

44. Class members number in the thousands, and joinder would be impossible. But the amount in controversy is less than 5 million dollars.

45. As allowed by Rule 23(b)(2), Plaintiff seeks class-wide injunctive and equitable relief because Defendant's practices continue, despite notice, and certain equitable remedies are sought. Plaintiff seeks certification under Rule 23(b)(1), (2), and (3).

**COUNT I § 16-124-103**

46. Plaintiff and the Class re-allege the foregoing as if fully set out herein.

47. Plaintiff and the Class bought the Product within the five years preceding the filing of this lawsuit from **JORDANS KWIK STOP, INC.**

48. Seeking to treat her anxiety, Plaintiff bought the Defendants warranted the product was legal.

49. Plaintiff wanted to buy a legal D8 product, but, unbeknownst to her, she did not.

50. Plaintiff did not want D9, but she now believes that was what was received.

51. Plaintiff did not expect that the "D8" would contain more than .3% D9 by dry weight, rendering the Product illegal under federal law.

52. Plaintiff bought the Product at, or exceeding, the retail price. But the contract was illegal.

53. Plaintiff and the Class relied on the representations identified here.

54. Plaintiff and the Class would not have purchased the Product if each knew the representations were false and misleading.

55. Plaintiff and the Class chose between Defendant's Product and other similar products which were represented similarly but which did not misrepresent their D9 content.

56. The Product was worth less than what Plaintiff and the Class paid, and she would not have paid as much, absent Defendant's false and misleading statements and omissions.

57. Plaintiff intends to, seeks to, and will, purchase the Product again when each can do so with the assurance that Product's representations are legal.

58. The Alliance Defendants and the Retail Defendants, aided and abetted by the Lab Defendant, have violated ACA § 16-124-103 by engaging in unlawful, fraudulent, and unfair conduct.

59. Plaintiff reported this conduct to the prosecutor, prior to the filing of this action, and has not knowingly used illegal drugs in the six months prior to the filing of this action.

60. Plaintiff has personally disclosed to narcotics enforcement authorities, all the information known to the individual drug user regarding his or her source of illegal drugs. Plaintiff and the Class has not knowingly used an illegal drug within the six (6) months before filing the action; and Plaintiff and the Class continues to remain free of the knowing use of an illegal drug throughout the pendency of the action.

61. Defendants engaged in unlawful conduct by violating the Arkansas Drug Dealer Liability Act, as alleged throughout and incorporated here.

62. As alleged in detail above, Defendants' labeling is false and misleading. Their labeling deceived Plaintiff and other reasonable consumers.

63. Defendants' conduct caused substantial injury to Plaintiff and the Class because they have been defrauded of the purchase price. The harm to Plaintiff and the Class outweighs the public utility of Defendants' conduct (which is none). Inaccurately labeled and illegal D9 THC content has no public utility. This injury was not outweighed by any countervailing benefits to consumers or competition. Misleading labels only injure healthy competition and harm consumers.

64. Plaintiff and the Class could not have reasonably avoided this injury. As alleged above, Defendants' misrepresentations and omissions were deceiving to

reasonable consumers. Defendants' conduct, as alleged above, was immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

65. For all prongs, Plaintiff and the Class saw, read and reasonably relied on the Alliance Defendants' misrepresentations and omissions when purchasing Defendants' Products.

66. Defendants' misrepresentations were a determining factor in Plaintiff's purchase decisions.

67. Plaintiff and the Class was injured as a direct and proximate result of Defendants' conduct because: (a) She would not have purchased Defendants' Products if she had known that the D9 THC content in the product contained an illegal amount. As a result, Plaintiff was damaged in the amount of his purchase and has suffered severe mental and emotional distress.

**COUNT II BREACHES OF EXPRESS WARRANTY, IMPLIED WARRANTY OF  
MERCHANTABILITY**

68. The Product was manufactured, labeled, and sold by Defendant and expressly and impliedly warranted to Plaintiff that the Product was a legal product that contained D8, understood as being comprised of a less than .3% hemp derived D9 THC by dry weight, instead of an illegal amount. Defendants warranted that the product was in compliance with federal law, but it was not. The product contained more than .3% hemp derived D9 THC by dry weight and D9 THC.

69. But the Product contained more than .3% D9 by dry weight.

70. Each Defendant had a duty to disclose and/or provide non-deceptive descriptions and marketing of the Product.

71. This duty is based on Defendant's role in the market for this type of Product.

72. Plaintiff provided, or will provide, notice to Defendant, its agents, representatives, retailers, and their employees.

73. The Alliance Defendants received notice and should have been aware of these issues due to complaints by regulators, lawyers, and consumers, to its main offices.

74. The Product did not conform to its affirmations of fact and promises due to Defendant's actions and were not merchantable because they were not fit to pass in the trade as advertised.

75. Plaintiff and the Class would not have purchased the Product, or used the product, if the true facts had been known. As a result, Plaintiff was demoted and damaged.

**COUNT III FRAUD**  
**VIOLATION OF ARKANSAS DECEPTIVE TRADE PRACTICES ACT**

76. Defendant misrepresented and/or omitted the attributes and qualities of the Product, that it was a legal product that contained D8, understood as being comprised of a non-de minimis legal amount of D9, instead of an illegal amount. This was fraud and a violation of the Arkansas Deceptive Trade Practices Act.

77. Plaintiff and the Class reasonably and justifiably relied on these intentional misrepresentations and omissions, which served to induce and did induce, her purchase of the Product.

78. Plaintiff and the Class would not have purchased the Product if the true facts had been known, suffering damages.

79. Plaintiff and the Class reasonably and justifiably relied on these negligent misrepresentations and omissions, which served to induce and did induce, their purchase of the Product.

80. Plaintiff and the Class would not have purchased the Product or used the Product if the true facts had been known, suffering a demotion and damages.

81. Defendant's fraudulent intent is evinced by its knowledge that the Product was not consistent with its representations.

#### **COUNT IV UNJUST ENRICHMENT/DISGORGEMENT**

82. Defendant obtained benefits and monies because the Product was not as represented and expected, to the detriment and impoverishment of Plaintiff and the Class, who seeks restitution and disgorgement of illegally obtained profits. If the new contract be fair and lawful, and the new consideration be valid and adequate, it will be enforced. If, however, it be unfair or fraudulent, or the new consideration so inadequate as to import fraud, imposition, or undue influence, it will be rescinded, and justice done to the parties. *Dent v. Ferguson*, 132 U.S. 50, 67, 10 S. Ct. 13, 19, 33 L. Ed. 242 (1889). Therefore, Plaintiff pleads for disgorgement and rescission.

83. Plaintiff(s) demand a trial by jury.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, pray for judgment:

- a. Awarding compensatory damages, statutory and/or punitive damages pursuant to any statutory claims and interest pursuant to the common law and other statutory claims not exceeding 5 million dollars;
- b. For an Order certifying the Class above;
- c. Awarding costs and expenses, including reasonable attorneys' fees for Plaintiffs' attorneys and experts; and,
- d. For an Order, summarily shutting down all the manufacture and distributions

of all D8 vape pens in the manner prescribed the Arkansas Drug Dealer Liability Act;

e. An ex parte prejudgment attachment order, from the Court, against all assets of Defendants, sufficient to satisfy a potential award;

f. Other and further relief as the Court deems just and proper.

Respectfully submitted,

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