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ORIGINAL

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

AUG 21 2025 RR

at 12 o'clock and 55 min. P.M.
Lucy H. Carrillo, Clerk

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LANCE ALYAS, individually and d/b/a
OAHU DISPENSARY AND PROVISIONS,
KYLER FALCES, individually and d/b/a
ELEVATED ENTERPRISES LLC, PAOLO
MATTEO, LEHUA MAHUNA, JAYMIE TOMITA,
LIANA KALIMA, KAUI KALIMA, LATIANA
LUULOA, LEINEA LUULOA, CHELLA KAWANO,
JEFF FLEEGE, KODY WHITEHEAD, and similarly
situated Hawai'i residents,

CV25 00358 JAO WRP

Civil Action No.:

Plaintiffs,

COMPLAINT

-against-

JOSH GREEN, M.D., in his official capacity as
Governor of the State of Hawai'i; ANNE E. LOPEZ,
in her official capacity as Attorney General of the
State of Hawai'i; KENNETH S. FINK, M.D., MGA,
MPH, in his official capacity as Director of Health,
State of Hawai'i Department of Health; OFFICE
OF MEDICAL CANNABIS CONTROL AND
REGULATION, a division of the State of Hawai'i
Department of Health; SHARON HURD, in her
official capacity as Chairperson of the State of
Hawai'i Department of Agriculture,

Defendants.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
(TEMPORARY RESTRAINING ORDER SOUGHT)**

INTRODUCTION

1. This action challenges the validity and enforceability of Hawai'i's sweeping new
hemp and CBD regulatory amendments, most recently embodied in House Bill 1482 and updated

Department of Health requirements, collectively known as the “Hawai’i Hemp Amendments.” The actual categorical bans on smokable CBD flower, gummies, and pre-rolls were first established under Hawai’i Administrative Rules (HAR) § 11-37, which prohibited these popular forms from being retailed throughout the state. These restrictions were further updated and emphasized by HB 263, a legislative measure that reaffirmed the ongoing ban on retail sales of CBD gummies, flower, and similar prohibited products, while carving out a specific allowance permitting gummies dispensed only within the state’s licensed medical marijuana dispensaries.

2. Plaintiffs contend that the Hawai’i Hemp Amendments—as restructured and further clarified by House Bill 1482—impose sweeping and impermissible restrictions on the production, processing, distribution, sale, and possession of hemp and hemp-derived products. These statutes not only perpetuate and expand the prior bans of HAR 11-37 and HB 263, but also establish additional, complex layers of regulatory oversight and criminal liability. Plaintiffs assert that these state actions violate federal constitutional and statutory law, including the Supremacy Clause, the Dormant Commerce Clause, and the Due Process Clause of the United States Constitution.

3. In 2018, Congress enacted the Agriculture Improvement Act (“2018 Farm Bill”), which decriminalized hemp at the federal level, supplied a single national definition of hemp as *cannabis sativa L.* and its derivatives containing no more than 0.3% delta-9 THC by dry weight, and provided that states may regulate hemp production under federally approved state plans. Critically, the 2018 Farm Bill expressly prohibits states from interfering with the interstate transportation or shipment of hemp and hemp products produced in accordance with federal law, reflecting Congress’s intent to foster a robust, integrated national hemp market free from state-imposed barriers.

4. Despite these federal protections and the expansion of a legal hemp supply chain nationwide—including in Hawai'i—state authorities have layered additional restrictions. The Hawai'i Hemp Amendments, enacted as of July 2, 2025, and set to take effect January 1, 2026, continue and intensify the ban on retail sales of hemp-derived gummies, flower, pre-rolls, and related products, while allowing dispensary-only sales in restricted circumstances. The new law further narrows the definition of legal hemp and imposes strict total THC content limits (encompassing all isomers, not just delta-9 THC), along with a significantly expanded regulatory, inspection, and registration regime for distributors and retailers.

5. Plaintiffs in this action comprise both businesses and individuals who participate in Hawai'i's hemp market and wider interstate commerce, with activities that include shipping hemp and hemp-derived products into, out of, and within Hawai'i; cultivating, processing, and manufacturing hemp products in multiple jurisdictions for Hawai'i consumers; and retailing products sourced from both local and out-of-state suppliers. Their enterprises—and their livelihoods—depend on the predictability of a legal market and supply chain that protects thousands of jobs in the state. The Hawai'i Hemp Amendments threaten this market by recriminalizing the possession, manufacture, transport, and sale of numerous hemp and CBD products that remain fully legal under federal law.

6. As a direct result of these amendments, Plaintiffs face immediate and irreparable harm. Many businesses are at risk of closure or workforce reduction, while farmers, shop owners, and ordinary consumers face possible criminalization for engaging in conduct explicitly protected at the federal level. The state's amendments rewrite the definition of hemp in a manner inconsistent with federal law and criminalize shipment, transportation, and possession of federally compliant hemp. The regulatory scheme discriminates against out-of-state interests by

barring the importation and sale of certain out-of-state hemp products while permitting the production and sale of similar items within Hawai'i's licensed dispensaries only. Moreover, the complex and often ambiguous framework of the amendments deprives businesses and individuals of fair notice and practical guidance, rising to the level of a due process violation under the U.S. Constitution.

7. Because of these unconstitutional conflicts and the burdens placed on interstate commerce, Plaintiffs seek declaratory and injunctive relief to prevent the enforcement of Hawai'i's hemp law amendments in all respects that are inconsistent with federal law, that discriminate against lawful out-of-state commerce, and that deprive Plaintiffs of due process. Plaintiffs respectfully request that the Court vindicate the supremacy of federal law and the constitutional rights of all those engaged in Hawai'i's hemp and CBD sector, and prevent the ongoing economic and social harms caused by Hawai'i's unlawful regulatory regime.

8. In addition, the new law signed by Governor Green grants the Department of Health unrestricted authority to obtain review of patients' medical records without any suspicion of wrongdoing and without securing a warrant or judicial oversight. This provision represents a stark departure from standard medical privacy protections and constitutes a clear violation of HIPAA. The unprecedented breadth of this power—and the absence of procedural safeguards—raises serious constitutional concerns. At the time of the bill signing, Governor Green himself acknowledged the risk of HIPAA violations inherent in permitting such warrantless and suspicionless review of confidential patient information.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiffs' claims arise under the Constitution, laws, and treaties of the United

States, including but not limited to the Supremacy Clause, the Due Process Clause, the Dormant Commerce Clause, the Americans with Disabilities Act, and federal statutory schemes such as the Agriculture Improvement Act of 2018 (the “2018 Farm Bill”). In addition, jurisdiction is conferred by 28 U.S.C. § 1343(a)(3) and (a)(4), as Plaintiffs seek to redress the deprivation, under color of state law, of rights, privileges, and immunities secured by the Constitution and laws of the United States, and to secure equitable and other relief for the violation of civil rights, including rights protected by the Fourteenth Amendment.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), because a substantial part of the acts, omissions, events, and injuries giving rise to Plaintiffs’ claims occurred and continue to occur within this judicial district. In particular, the enforcement, administration, and threatened implementation of the challenged Hawai’i Hemp Amendments, Department of Health requirements, Hawai’i Administrative Rules § 11-37, and related legislation—including the inspection, regulation, and prohibition of federally legal CBD and hemp products—are undertaken in this district by the named Defendant officials. In addition, one or more Plaintiffs reside, do business, or have been directly and adversely impacted by these actions in this district.

11. Declaratory relief is sought by Plaintiffs pursuant to 28 U.S.C. § 2201, which authorizes this Court to declare the rights and other legal relations of the parties in cases of actual controversy within its jurisdiction. Such relief is necessary and appropriate here to resolve the federal constitutional and statutory conflicts raised by the challenged state regulatory scheme with respect to hemp and CBD products.

PARTIES

12. **Plaintiff Lance Alyas**, individually and as operator of **Oahu Dispensary and Provisions**, 1670 Makaloa Street, Room 204, Honolulu, Hawai'i 96814..

13. **Plaintiff Kyler Falces**, individually and as operator of **Elevated Enterprises LLC**, 197 West Hawai'i Street, Kahului, HI 96732.

14. **Plaintiff Paolo Matteo**, individually and as mainland supplier, 10700 City Center Blvd, Pembroke Pines, FL 33025.

15. **Plaintiff Jaymie Tomita**, 2970 Manoa Rd, Honolulu, Hawai'i 96822.

16. **Plaintiff Lehua Mahuna**, 59 Hoea Lane, Maunaloa, Hawai'i 96757.

17. **Plaintiff Liana Kalima**, P.O. Box 164, Kaunakakai, HI 96748.

18. **Plaintiff Kauai Kalima**, P.O. Box 164, Kaunakakai, HI 96748.

19. **Plaintiff Latiana Luuloo**, 56 Iliahi Pl., Kaunakakai, HI 96748.

20. **Plaintiff Leinea Luuloo**, 56 Iliahi Pl., Kaunakakai, HI 96748.

21. **Plaintiff Chella Kawano**, 50 Iliahi Pl., Kaunakakai, HI 96748..

22. **Plaintiff Jeff Fleege**, 4270 Palama St., Kalaheo, HI 96741.

23. **Plaintiff Kody Whitehead**, P.O. Box 1564, Kaunakakai, HI 96748.

24. **Defendant Honorable Josh Green, M.D**, Governor of the State of Hawai'i, Office of the Governor Executive Chambers, State Capitol, 415 South Beretania Street, Honolulu, Hawai'i 96813. Defendant Green is the chief executive officer of the State of Hawai'i and is responsible for the implementation and enforcement of all state laws, including legislation and rules relating to hemp and CBD regulation. He is sued in his official capacity.

25. **Defendant Honorable Anne E. Lopez**, Attorney General of the State of Hawai'i, Department of the Attorney General, 425 Queen Street, Honolulu, Hawai'i 96813 *Defendant* Lopez serves as the State of Hawai'i's chief legal officer. She supervises the enforcement of state

laws, including criminal and civil processes involving controlled substances and regulated hemp products. She is sued in her official capacity.

26. **Defendant Dr. Kenneth S. Fink, M.D., M.G.A., M.P.H.**, Director of the Hawai'i Department of Health Hawai'i Department of Health, 1250 Punchbowl Street, Honolulu, Hawai'i 96813. Defendant Fink oversees the Department of Health and is responsible for administering and enforcing public health laws and the state's regulatory scheme for manufactured hemp products, including its CBD-related rules. He is sued in his official capacity.

27. **Defendant Director, Office of Medical Cannabis Control and Regulation (OMCCR)** c/o Hawai'i Department of Health, 4348 Waiialae Avenue, #648, Honolulu, Hawai'i 96816. The Director of OMCCR is responsible for regulating medical cannabis and manufactured hemp products in the State of Hawai'i. OMCCR operates under the administrative control of the Department of Health. This defendant is sued in their official capacity.

28. **Defendant Sharon Hurd**, Chairperson, Hawai'i Department of Agriculture, Hawai'i Department of Agriculture, 1428 South King Street, Honolulu, Hawai'i 96814. Defendant Hurd supervises the Department of Agriculture and is responsible for regulatory oversight of hemp cultivation activities within the state. She is sued in her official capacity.

STATEMENT OF FACTS

A. The Cannabis Plant

29. *Cannabis sativa* L. is a species of plant that is widely recognized by its common names, "hemp" and "marijuana." These terms refer to different varieties, or cultivars, of the same plant species, each cultivated for distinct purposes and possessing different chemical profiles.

30. Hemp and marijuana, though both derived from *Cannabis sativa* L., are considered distinct cultivars. Hemp is typically grown for industrial uses such as fiber, seed, and oil, while marijuana is cultivated primarily for its psychoactive properties.

31. The cannabis plant is notable for producing a diverse array of chemical compounds known as cannabinoids. To date, scientists have identified at least 113 unique cannabinoids within the plant, each with its own potential effects and applications. Among these, tetrahydrocannabinol is one of the most prominent and widely studied.

32. Tetrahydrocannabinol, often abbreviated as THC, exists in several different isomeric forms—meaning that the same molecular formula can be arranged in different ways, resulting in distinct compounds. The most well-known of these isomers is delta-9 tetrahydrocannabinol (“delta-9 THC”), which is the principal psychoactive ingredient found in cannabis and is responsible for most of its mind-altering effects. Other isomers, such as delta-8 tetrahydrocannabinol (“delta-8 THC”) and delta-10 tetrahydrocannabinol (“delta-10 THC”), also occur naturally in the plant, though generally in much smaller quantities.

33. The primary distinction between hemp and marijuana lies in their respective concentrations of delta-9 THC. Hemp is specifically cultivated to contain a much lower level of delta-9 THC than marijuana, which is why hemp does not produce the same psychoactive effects as marijuana.

34. On December 20, 2018, President Donald Trump signed into law the Agriculture Improvement Act of 2018, commonly referred to as the “2018 Farm Bill” (Pub. L. 115-334). This legislation introduced significant changes to the regulation and legal status of hemp and hemp-derived products in the United States.

35. The 2018 Farm Bill established a comprehensive framework for the domestic production, processing, and distribution of hemp and hemp products. This framework was designed to promote the growth of the hemp industry while ensuring regulatory oversight.

36. The first major change implemented by the 2018 Farm Bill was to formally separate hemp from marijuana under the federal Controlled Substances Act. As a result, tetrahydrocannabinols that are derived from hemp are no longer classified as controlled substances, provided they meet specific criteria outlined in the law.

37. The second significant change was an expanded statutory definition of “hemp.” The law now defines hemp 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. § 1639o(1)

38. The third major provision of the 2018 Farm Bill was to expressly prohibit individual states from interfering with the interstate transportation and shipment of hemp and hemp products. The relevant statutory language provides:

(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 [7 U.S.C. § 1639o])) 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 [7 U.S.C. § 1639o]) through the State or the territory of the Indian Tribe, as applicable.

2018 Farm Bill § 10114

39. The Conference Report accompanying the 2018 Farm Bill further clarifies that states and Indian tribes are not permitted to “limit the transportation or shipment of hemp or hemp products through the state or Indian territory.”

H.R. Rep. No. 115-1072, at 739 (2018) (Conf. Rep.)

40. Additionally, the Conference Report explains that while state and Tribal governments retain the authority to impose stricter regulations on the production of hemp within their jurisdictions, they are not permitted to alter the federal definition of hemp established by the Farm Bill. *Id.* at 737

41. Finally, it is important to note that the 2018 Farm Bill does not impose any restrictions on the concentration of other tetrahydrocannabinol isomers, such as delta-8 THC, in hemp. Delta-8 THC is a naturally occurring compound in the cannabis plant and is not specifically regulated by the Farm Bill.

B. The Evolution of Hawai’i’s Hemp and CBD Regulations

42. The evolution of Hawai’i’s hemp and CBD regulatory environment must be understood as a succession of increasingly restrictive legislative and administrative measures, each of which is being challenged in this action. Following the passage of the 2018 Farm Bill, which established a national baseline for the cultivation and interstate commerce of hemp and its derivatives by defining hemp as *cannabis sativa L.* and any part of that plant containing no more than 0.3% delta-9 tetrahydrocannabinol by dry weight, Hawai’i legislators and agencies began to develop a markedly more restrictive framework for the state’s hemp and CBD product market. In 2020, with the enactment of House Bill 1819 (Act 014), Hawai’i legalized hemp cultivation and implemented a state licensing program overseen by the Department of Agriculture. This law was meant to bring state hemp cultivation into alignment with federal standards but also gave

broad discretion to state regulators to impose product and processing restrictions beyond federal requirements.

43. Administrative rules soon followed. Hawai'i Administrative Rules (HAR) § 11-37 implemented by the Department of Health explicitly prohibited the retail sale of a wide range of hemp-derived consumer products, including all smokable hemp flower, pre-rolls, and most forms of edibles such as gummies, regardless of delta-9 THC content, unless in tablet, capsule, powder, soft gel, gelcap, or liquid form (such as hemp oil) intended as dietary supplements. These rules also ban hemp-containing foods, beverages, and all aerosolized or inhalable cannabinoid products such as vapes. The regulations allow for only a limited class of products (e.g., properly labeled dietary supplements and topicals) and require rigorous product testing and labeling standards.

44. Legislative action further solidified and extended these bans. House Bill 263 (Act 263) codified the prohibition on gummies, hemp flower, pre-rolls, and related forms from retail sale, but created a narrow exemption for the sale of gummies at licensed medical marijuana dispensaries, specifically for registered patients. This codification reinforced the long-standing, state-level ban on most consumer-friendly non-intoxicating hemp and CBD products that continued even as federal law allowed their circulation in other jurisdictions. More recently, House Bill 302 heightened these controls by introducing additional regulatory oversight and compliance requirements for hemp and CBD businesses, including increased penalties for violations and expanded the scope for random inspections.

45. The latest legislative development, House Bill 1482, signed into law in July 2025 and set to take effect January 1, 2026, expands upon the state's intricate regulatory regime. It requires all retailers and distributors of hemp-derived products to register with the Department of

Health, restricts the sale of hemp-derived tinctures to consumers aged 21 and over, empowers state authorities to conduct warrantless inspections and seizure of noncompliant goods, and mandates that oversight of hemp processing now falls under the Office of Medical Cannabis Control and Regulation. Violations can result in both civil and criminal penalties under existing competition and nuisance statutes.

46. Despite the federal government, through the 2018 Farm Bill and Hawai'i's own Act 014, permitting the cultivation, production, and sale of hemp-derived products with no more than 0.3% delta-9 THC, Hawai'i's regulations consistently go further. These extra restrictions ban or sharply limit access to many of the most popular forms of CBD products—such as gummies, beverages, smokable hemp flowers, and pre-rolls—that remain legal in much of the rest of the United States.

47. While the state claims these measures are intended to enhance consumer safety and product integrity, they have prompted significant criticism from industry participants and consumers in Hawai'i, who see these rules as both overly broad and unduly restrictive. All of these legislative and regulatory instruments—HAR § 11-37, Act 263, HB 302, and especially HB 1482—are contested in this action as exceeding the authority granted under federal law, violating the supremacy of federal standards, the Commerce Clause, and due process protections guaranteed by the Constitution.

C. Hemp, Hemp Products, and Intoxicating Hemp Products in Hawai'i

48. Recent legislative enactments and regulatory actions in the State of Hawai'i have profoundly altered the legal and commercial landscape for hemp, hemp-derived products, and those products classified by the state as "intoxicating." These measures have established an increasingly restrictive and far-reaching regulatory framework that imposes substantial limitations on the types of hemp products that may be lawfully produced, sold, transported, or possessed within the state. The current regime also places significant burdens on interstate hemp commerce by subjecting both in-state and out-of-state products to heightened compliance requirements and categorical bans, exceeding the scope permitted under federal law.

D. Regulatory Framework for Hemp and Hemp Products

49. Hawai'i's current laws and regulations define and oversee the production, sale, and possession of hemp and hemp-derived products, with a particular focus on those products that may have intoxicating effects. Unlike some states, Hawai'i has chosen to implement some of the most restrictive policies in the nation regarding hemp product sales, especially for products containing cannabinoids such as delta-8 THC and delta-10 THC, which are classified as "intoxicating hemp products" under state law.

50. Hawai'i's Department of Health and the Office of Medical Cannabis Control and Regulation now have enhanced authority to inspect, confiscate noncompliant products, and enforce penalties against businesses that violate state hemp laws. This regulatory structure is designed to protect public health by reducing access to products that may pose risks, especially to minors, and to clarify what is legal and what is not for both consumers and law enforcement.

E. Specific Regulatory Measures in Hawai'i

51. Hawai'i's approach to hemp and hemp-derived products can be broken down into three main regulatory measures:

52. First, Hawai'i's laws align with the federal definition of hemp as cannabis containing no more than 0.3% delta-9 THC on a dry weight basis. However, the state has gone further by restricting the sale of products containing certain other cannabinoids, such as delta-8 THC and delta-10 THC, even if they are derived from hemp and are technically legal under federal law. In effect, Hawai'i has narrowed the definition of what constitutes a legal hemp product within the state, excluding many products that would be legal elsewhere.

53. Hawai'i Revised Statutes and Department of Health rules prohibit the sale of hemp flower, inhalable products, and most edible hemp products (including gummies and beverages) unless they meet extremely restrictive THC limits and are in specific approved forms (tablets, capsules, powders, soft gels, gels, or liquid tinctures).

54. Second, Hawai'i's regulations apply to all hemp products sold within the state, regardless of their origin. This means that out-of-state products must comply with Hawai'i's strict labeling, testing, and THC content requirements to be sold legally. Products that do not meet these standards—such as those containing delta-8 THC above certain thresholds or in prohibited forms—are banned from sale, and their distribution is subject to enforcement action.

55. Beginning January 1, 2026, all distributors and retailers of hemp products must register with the Hawai'i Department of Health. The law also prohibits the sale of hemp-derived tinctures to individuals under 21 years of age and grants state officials' authority to inspect businesses and confiscate noncompliant products.

56. Third, Hawai'i's laws criminalize the sale, distribution, and possession of hemp products that do not comply with state regulations. This includes products that exceed THC limits or are in prohibited forms, as well as products that are not properly labeled or tested. The

state has also moved to explicitly ban synthetic cannabinoids such as delta-8 THC in some legislative proposals, further narrowing the scope of legal hemp commerce.

57. Unlawful hemp activity is subject to prosecution under Hawai'i's unfair competition and nuisance abatement statutes, and violations can result in significant penalties for businesses and individuals.

58. Hawai'i's regulatory framework for hemp and hemp-derived products is among the most restrictive in the United States. The state has narrowed the definition of legal hemp, imposed strict limits on product forms and THC content, and established robust enforcement mechanisms to ensure compliance. These measures apply to both in-state and out-of-state products, and violations are subject to significant penalties.

59. Before the most recent legislative changes, Hawai'i's definition of "hemp" closely mirrored the federal standard set by the 2018 Farm Bill. Under both federal law and Hawai'i's initial hemp statutes, "hemp" was defined 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 (THC) concentration of not more than 0.3 percent on a dry weight basis."

60. This definition meant that as long as the delta-9 THC content did not exceed 0.3% by dry weight, hemp and its derivatives—including cannabidiol (CBD)—were treated as agricultural commodities, not controlled substances, under both federal and Hawai'i state law.

61. Consistent with federal law, Hawai'i recognized hemp as an agricultural commodity, distinct from marijuana, and not subject to the state's-controlled substances regulations. This allowed for the legal cultivation, processing, and sale of hemp and hemp-derived CBD products, provided they complied with the delta-9 THC threshold.

62. With the passage of House Bill 1482 and related regulatory amendments, Hawai'i has moved away from relying solely on delta-9 THC content to define legal hemp. The new legal framework now hinges on the concentration of "Total THC"—a cumulative measure that includes not only delta-9 THC but also other tetrahydrocannabinol isomers and related compounds.

63. The revised definition of "hemp" in Hawai'i references terms such as "Cannabis sativa L." and "total tetrahydrocannabinol." While "Total THC" is specifically defined in the new law, the broader term "total tetrahydrocannabinol" remains somewhat ambiguous, adding complexity for producers and regulators, especially given the diversity of cannabis cultivars and the various forms of THC present in hemp extracts.

64. Under Hawai'i's amended law, "Total THC" is defined as:

"the total concentration of all tetrahydrocannabinols in hemp or a hemp product, including delta-8 THC, delta-9 THC, delta-10 THC, tetrahydrocannabinolic acid (THCA), and any other chemically similar compound, substance, derivative, or isomer of tetrahydrocannabinol, regardless of how derived or manufactured."

65. This definition is intentionally broad, capturing a wide range of naturally occurring and synthetic THC isomers. The law also grants the Hawai'i Department of Health authority to identify additional cannabinoids that may cause intoxication and subject them to regulation.

66. Whereas the federal definition of hemp is based solely on the concentration of delta-9 THC, Hawai'i's amended definition is much more restrictive. It considers the cumulative concentration of all forms of tetrahydrocannabinol—including delta-8, delta-10, and THCA—when determining whether a product qualifies as legal hemp. This means that products legal

under federal law may be illegal under Hawai'i law if their "Total THC" content exceeds 0.3% on a dry weight basis, even if their delta-9 THC content is compliant.

67. Hawai'i's legislative and regulatory changes were driven by concerns that certain hemp-derived products, while technically compliant with the federal delta-9 THC limit, could still produce intoxicating effects due to the presence of other forms of THC, such as delta-8 and delta-10. Lawmakers and regulators have argued that these products pose risks to public health and safety, particularly when marketed in forms attractive to minors or when sold without adequate oversight.

68. As a result of Hawai'i's adoption of the "Total THC" standard, a category of hemp products that are legal under federal law is now excluded from the state's definition of legal hemp. These "excluded hemp" products have a delta-9 THC content at or below 0.3% but exceed the 0.3% threshold when all forms of THC are counted together. Under Hawai'i law, such products are no longer considered "hemp" and are prohibited from sale, manufacture, or possession within the state.

69. Hawai'i's evolving regulatory framework for CBD and hemp-derived products now imposes some of the strictest standards in the country. By shifting from a delta-9 THC-only standard to a comprehensive "Total THC" approach, the state has excluded many products that remain legal under federal law, significantly narrowing the scope of permissible hemp commerce and increasing compliance challenges for producers, retailers, and consumers.

70. Before the latest legislative changes, Hawai'i's definition of a "hemp product" was closely aligned with the federal approach and similar to that of many other states. A hemp product was any finished product derived from the hemp plant—*Cannabis sativa L.*—with a

delta-9 tetrahydrocannabinol (THC) concentration not exceeding 0.3% on a dry weight basis.

This broad definition encompassed a wide range of products, including:

71. “A finished product with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent that is derived from or made by processing a hemp plant or plant part and prepared in a form available for commercial sale. The term includes cosmetics, personal care products, food intended for human or animal consumption, cloth, cordage, fiber, fuel, paint, paper, particleboard, plastics, and any product containing one or more hemp-derived cannabinoids such as cannabidiol (CBD). Hemp products shall not be considered controlled substances due to the presence of hemp or hemp-derived cannabinoids.”

72. This definition allowed for a diverse market of hemp-derived products, including CBD oils, topicals, and even foods and beverages, so long as they complied with the delta-9 THC threshold.

73. While federal law does not provide a specific definition for “hemp product,” it does extend protections for the interstate commerce of hemp and hemp products, ensuring that products compliant with the 2018 Farm Bill can move freely across state lines. However, states retain the authority to impose their own restrictions on the sale and distribution of hemp products within their borders.

74. Recent amendments to Hawai’i’s hemp laws have dramatically narrowed the definition of legal hemp products. The state now regulates hemp products based on “Total THC,” which includes all tetrahydrocannabinol isomers (such as delta-8, delta-9, delta-10, and THCA), not just delta-9 THC. To qualify as a legal hemp product in Hawai’i, a product must:

- a. Contain a total tetrahydrocannabinol concentration of no more than 0.3% on a dry weight basis.

- b. In some cases, comply with even stricter per-serving and per-package THC limits as established by the Hawai'i Department of Health.
- c. Be in an approved form (e.g., tablets, capsules, powders, soft gels, gelcaps, liquid tinctures, or topical applications).

75. "Hemp product" means a finished product with a total tetrahydrocannabinol concentration of not more than 0.3 percent, and, where applicable, not more than the per-serving and per-package THC limits set by the Department of Health, that is derived from or made by processing a hemp plant or plant part and prepared in a form available for commercial sale. The term includes cosmetics, personal care products, and certain dietary supplements. However, it excludes products in prohibited forms (such as gummies, beverages, and smokable flower) and any product deemed an 'intoxicating hemp product' under state law.

76. Hawai'i's definition also explicitly excludes cannabinoid products that are not derived from naturally occurring biologically active chemical constituents of the hemp plant, as well as products that are considered "intoxicating" due to their cannabinoid content or form.

77. Hawai'i's regulatory framework, like New Jersey's, relies on several terms that are either undefined or ambiguously defined, including:

- a. "Finished product"
- b. "Total tetrahydrocannabinol" (sometimes used interchangeably with "Total THC")
- c. "Hemp-derived cannabinoids"
- d. "Cannabinoid product"
- e. "Not derived from naturally occurring biologically active chemical constituents"

78. This ambiguity can create compliance challenges for manufacturers, distributors, and retailers, particularly when determining whether a product qualifies as a legal hemp product under Hawai'i law.

79. By narrowing the definition of legal hemp products and creating new regulatory categories, Hawai'i effectively divides hemp products into three groups:

- a. **Non-intoxicating hemp products:** These are products that meet all state requirements for THC content and form and are allowed for sale and distribution in Hawai'i.
- b. **Intoxicating hemp products:** Products that exceed the state's THC limits or are in prohibited forms (such as gummies, beverages, or smokable flower) are classified as intoxicating and are banned from sale, manufacture, and possession within the state
- c. **Excluded hemp products:** This category includes products that are legal under federal law (due to compliance with the delta-9 THC standard) but are excluded from Hawai'i's definition of legal hemp products because they exceed the state's "Total THC" threshold or are in a prohibited form. These products cannot be sold or distributed in Hawai'i, regardless of their origin.

80. Recent legislative and regulatory changes in Hawai'i have established a distinct category of "intoxicating hemp products"—a class of items that was not previously recognized under state law. This category includes any hemp-derived product, whether produced in Hawai'i or imported, that exceeds strict state-imposed limits for total tetrahydrocannabinol (THC) content.

81. Under Hawai'i's current rules, "intoxicating hemp products" are defined as:

Any product derived from hemp, including those containing cannabinoids such as delta-8 THC, delta-10 THC, or other THC isomers, that exceeds the maximum allowable total THC content per serving or per package as set by the Hawai'i Department of Health. Specifically, for most edible manufactured hemp products (MHPs) such as gummies and tablets, the limit is 1 mg total THC per serving and 5 mg total THC per package. For oil-based tinctures, the limit

is 2.5 mg total THC per serving and 75 mg total THC per package. For beverages, the limit is 0.5 mg total THC per container, and the product must not exceed 0.3% total THC by dry weight in any form.

82. Products that exceed these thresholds are classified as “intoxicating hemp products” and are prohibited from sale, manufacture, or distribution within the state. Hawai’i law also bans products that are not derived from naturally occurring biologically active constituents of the hemp plant, as well as synthetic cannabinoids and certain forms such as vapes, smokable flower, and most edibles.

83. By statutory and regulatory definition, “intoxicating hemp products” and “hemp products” are mutually exclusive categories in Hawai’i.

- a. **Hemp products** are those that meet all state requirements for total THC content, form, and labeling, and are permitted for sale and distribution.
- b. **Intoxicating hemp products** are those that exceed THC limits, are in prohibited forms, or contain synthetic cannabinoids, and are therefore banned from the market.

84. This distinction is intended to protect public health by preventing the sale of products that may cause intoxication or pose safety risks, while still allowing access to non-intoxicating hemp-derived products such as certain CBD supplements, topicals, and low-THC tinctures.

85. Recent amendments and evolving regulations in Hawai’i have effectively created a third, implicit category of hemp products—commonly referred to here as “Excluded Hemp Products.” These are products that would otherwise meet the definition of “intoxicating hemp products” under Hawai’i law but are cultivated, manufactured, or sold outside of the state. As a result, these products occupy a regulatory gray area: they are neither recognized as legal “hemp products” nor as “intoxicating hemp products” under Hawai’i’s revised legal framework.

86. Excluded Hemp Products are characterized by the following:
- a. They are manufactured, derived, or sold outside of Hawai'i.
 - b. They contain total tetrahydrocannabinol (THC)—including delta-8, delta-9, delta-10, and other isomers—in concentrations that exceed Hawai'i's strict limits for legal hemp products (for example, more than 1 mg total THC per serving or 5 mg per package for gummies and tablets; more than 0.5 mg per beverage container; or more than 2.5 mg per serving/75 mg per package for tinctures).
 - c. They do not qualify as “hemp products” under Hawai'i law because they exceed these THC limits or are in prohibited forms (such as gummies, beverages, vapes, or smokable flower).
 - d. They are not considered “intoxicating hemp products” under Hawai'i law if they are not cultivated, processed, or sold within the state.

87. Hawai'i's definition of legal hemp products is highly restrictive. Any product—regardless of its origin—that exceeds the state's total THC thresholds is automatically excluded from the category of legal “hemp products.” This means that many products legally sold in other states or online, including those with higher THC content or in forms such as gummies and beverages, are not permitted for sale or distribution in Hawai'i.

88. Under Hawai'i's regulatory scheme, a product is only classified as an “intoxicating hemp product” if it is both manufactured or derived from hemp within Hawai'i and sold within the state. Products that are produced or sold entirely outside of Hawai'i's jurisdiction do not fall under this definition, even if they would otherwise be considered “intoxicating” by state standards. As a result, these excluded products are not directly regulated as “intoxicating hemp products” but are still prohibited from being sold or distributed in Hawai'i if they do not comply with state law.

89. The creation of this third category has led to confusion among industry stakeholders, retailers, and consumers. Many products that are federally legal and widely available in other states are not permitted in Hawai'i due to the state's stricter standards and product form restrictions. This has prompted calls from industry groups and legal experts for clearer guidance and potential legislative clarification to address ambiguities and enforcement challenges in the current regulatory framework.

F. Hawai'i's Hemp Law Amendments and the Controlled Substances Act Amendments to Hawai'i's Cannabis and Controlled Substances Statutes

90. Hawai'i's recent legislative changes governing hemp and CBD products have also impacted two key statutory frameworks: the Hawai'i medical cannabis regulatory program (administered by the Office of Medical Cannabis Control and Regulation, OMCCR) and the Hawai'i Uniform Controlled Substances Act (HRS Chapter 329).

91. The 2025 amendments to Hawai'i's hemp laws explicitly address "intoxicating hemp products"—a new legal category for products exceeding strict total THC limits or containing certain cannabinoids (such as delta-8 or delta-10 THC). Under these amendments, intoxicating hemp products are regulated in a manner similar to medical cannabis items. The OMCCR is empowered to oversee both the medical cannabis program and the hemp processors program, consolidating regulatory authority for all intoxicating cannabinoid products.

G. Regulatory Parity for Intoxicating Hemp Products & Medical Cannabis

92. Intoxicating hemp products are now subject to many of the same restrictions, registration requirements, and enforcement mechanisms as medical cannabis items. This includes mandatory business registration, age restrictions (e.g., tinctures only sold to those 21+), and inspection authority for the Department of Health and OMCCR.

93. Because intoxicating hemp products, when properly registered and compliant with Hawai'i law, are regulated similarly to medical cannabis, their sale and transportation—when in accordance with state rules—do not constitute criminal offenses under Hawai'i's Controlled Substances Act. However, unregistered or noncompliant products remain subject to penalties, including civil fines and nuisance abatement.

94. The amendments do not specifically regulate or address “excluded hemp” or “excluded hemp products”—that is, products legal under federal law but not compliant with Hawai'i's stricter THC and product form standards. These products fall outside the scope of both the medical cannabis program and the new hemp product regulations, leading to potential ambiguity for out-of-state products.

95. Hawai'i's Uniform Controlled Substances Act criminalizes the possession, manufacture, or distribution of any material, compound, mixture, or preparation containing THC, except for four specific categories: hemp, hemp products, medical cannabis, and medical cannabis items.

H. Redefinition of Hemp, Hemp Products, and Cannabis Items

96. With the 2025 amendments, Hawai'i has redefined “hemp,” “hemp products,” and “cannabis items” within its controlled substances laws to align with the new regulatory standards. This includes the adoption of a “total THC” standard and the exclusion of certain product forms and cannabinoid concentrations from the definition of legal hemp products.

I. No Exception for Excluded Hemp

97. Under the revised law, there is no exception in Schedule I for “excluded hemp”—products with a delta-9 THC concentration at or below 0.3% (federally compliant) but a total

THC concentration (including all isomers) above Hawai'i's 0.3% threshold. Such products are not considered legal hemp under Hawai'i law.

98. Excluded hemp is expressly omitted from the state's definitions of "hemp" and "hemp product." It is also not encompassed by the definitions of "medical cannabis" or "medical cannabis item." As a result, these products do not benefit from any of the statutory exceptions for THC-containing substances.

99. Consequently, under Hawai'i's current law, excluded hemp—despite being legal under federal law—is classified as a Schedule I controlled substance. Its possession, production, sale, transportation, or shipment into or within Hawai'i is a criminal offense, subject to prosecution under state law.

100. Similarly, excluded hemp products—those that are federally legal but do not meet Hawai'i's stricter standards—are also classified as Schedule I controlled substances. Their possession, production, sale, or transportation in or through Hawai'i constitutes a criminal act, as they do not fall under any of the state's exceptions for legal THC-containing products.

101. Hawai'i's 2025 hemp law amendments create a regulatory framework that treats intoxicating hemp products much like medical cannabis, while imposing some of the strictest THC content and product form restrictions in the nation. Products that do not meet these standards, even if federally legal, are classified as Schedule I controlled substances under Hawai'i law, and their sale or possession is a criminal offense. This approach underscores the state's commitment to consumer safety and regulatory oversight, but also creates significant compliance challenges for businesses and consumers.

J. Agency Responsibilities in Hawai'i Hemp & CBD Regulatory Oversight

102. Recent legislative changes in Hawai'i have significantly restructured the oversight and regulation of hemp, manufactured hemp products (including CBD), and cannabis. Prior to these changes, regulatory authority was divided among several agencies:

- a. **Department of Agriculture (DOA):** Oversaw hemp cultivation as an agricultural commodity.
- b. **Department of Health (DOH):** Regulated the processing, testing, labeling, and sale of hemp products.
- c. **Attorney General (AG) and Department of Law Enforcement:** Enforced criminal penalties related to unlicensed hemp and cannabis activities.
- d. **Office of Medical Cannabis Control and Regulation (OMCCR):** Managed the state's medical cannabis program and, more recently, oversight of hemp processing and manufactured hemp products.

103. Under the new laws effective January 1, 2026:

- a. **DOH** is the primary regulator for the registration, inspection, and enforcement of manufactured hemp product distributors and retailers. It maintains a registry, inspects facilities, and is authorized to seize noncompliant products.
- b. **OMCCR** (a division within DOH) oversees the hemp processors program, consolidating regulation of both medical cannabis and hemp-derived products.
- c. **AG and Department of Law Enforcement** maintain jurisdiction over criminal enforcement, including unlicensed sales and distribution of hemp or cannabis products.
- d. **DOA** continues to regulate hemp as an agricultural commodity, particularly cultivation and raw material production.

104. The DOH and OMCCR are responsible for promulgating detailed regulations concerning:

- a. Packaging, labeling, and product testing requirements for all manufactured hemp products.

- b. Safety standards and permissible total THC concentrations for various product categories (e.g., gummies, tinctures, beverages).
- c. Limitations on the number of certain hemp products (such as beverages) that may be sold to a customer at one time.
- d. Registration fees and penalties for noncompliance.

K. Licensing, Compliance, and Enforcement

105. Beginning January 1, 2026, all distributors and retailers of manufactured hemp products in Hawai'i must register with the DOH and obtain a certificate of registration to legally operate. Unregistered sales or distribution are subject to enforcement action, including product seizure and civil penalties.

106. Retailers and wholesalers of certain hemp-derived products (such as tinctures and topicals) must also obtain appropriate permits. Businesses wishing to sell intoxicating hemp products must comply with additional registration and inspection requirements.

107. All manufactured hemp products must undergo rigorous testing for cannabinoid content and contaminants. Products must be labeled with ingredient lists, cannabinoid concentrations, and warning statements. Test results must be accessible to consumers via QR code or website on the packaging.

108. Retailers are prohibited from selling hemp products that are not derived from “naturally occurring biologically active chemical constituents” of the hemp plant. This excludes synthetic cannabinoids and certain chemically modified products, though the term remains undefined in law.

109. No person or business may sell or distribute intoxicating hemp products in Hawai'i unless they are properly registered with the DOH or OMCCR and the products comply

with all relevant regulations. Liquor stores may apply for approval to sell certain hemp beverages, subject to DOH oversight.

110. Retailers and wholesalers currently selling intoxicating hemp products must immediately cease such sales upon the law's effective date and reapply for approval before resuming operations.

111. The new regulatory framework imposes sales, transfer, and user taxes on licensed wholesalers and distributors of manufactured hemp products, with revenues supporting regulatory enforcement and public health initiatives.

112. The sale or distribution of any product containing detectable tetrahydrocannabinols (THC) to individuals under the age of 21 is strictly prohibited. This applies to all hemp-derived and cannabis products sold in the state.

113. Civil penalties and fines are established for violations, including:

- a. Selling or distributing manufactured hemp products without a license.
- b. Selling, offering for sale, or distributing products not derived from naturally occurring biologically active chemical constituents.
- c. Selling or distributing any product containing THC to persons under 21 years of age.

114. Violations may also be prosecuted under Hawai'i's unfair competition and nuisance abatement statutes, and noncompliant products are subject to seizure and destruction by authorities.

L. The Effect on Plaintiffs

115. The plaintiffs in this action include a diverse group of businesses and individuals directly affected by Hawai'i's recent amendments to its hemp and CBD regulatory framework:

- a. Retailer of CBD products operating on Oahu, serving both local residents and visitors.

- b. Wholesaler that supplies hemp-derived products, including CBD, to retailers in Hawai'i.
- c. Residents of Hawai'i who regularly consumes hemp-derived gummies and smokable flower products.
- d. Residents with no state-licensed marijuana dispensary, who relies on hemp-derived products for access to cannabinoids.
- e. Resident who uses CBD products, such as gummies and flower, for medical reasons.

116. These plaintiffs are engaged in or depend on the cultivation, wholesale, distribution, transportation, and retail sale of hemp and hemp-derived products—including CBD—within Hawai'i and, for some, across state lines.

117. Many of the hemp products bought and sold by the plaintiffs originate from cannabis sativa plants grown both in Hawai'i and in other states, for example, sources hemp from farms across the mainland United States and supplies it to Hawai'i-based retailers like Oahu Dispensary and Provisions.

118. Plaintiffs are involved in the transportation and shipment of hemp and hemp products into, out of, and within Hawai'i. Wholesalers from across various regions within the United States regularly ships products to Hawai'i, where they are distributed by local retailers. Residents such as the consumer Plaintiff's purchase these products for personal use, while Plaintiffs, such as Lance Aylas specifically depends on shipped products due to the absence of dispensaries on Molokai.

119. The recent overhaul of Hawai'i's hemp and CBD laws imposes strict regulations, criminalizes the possession and sale of certain forms of hemp and hemp products, and restricts the types and THC content of products allowed. As a result, plaintiffs face immediate and irreparable financial harm:

- a. **Retailers and wholesalers**, such as Oahu Dispensary and Provisions and Elevated Enterprises LLC, risk substantial business losses, potential layoffs, and possible closure due to the prohibition of popular products (e.g., gummies, flower) and new licensing requirements.
- b. **Consumers**, including , Paolo Matteo, Lehua Mahuna, Jaymie Tomita, Liana Kalima, Kauai Kalima, Latiana Luuloa, Leinea Luuloa, Chella Kawano, Jeff Fleege, and Kody Whitehead are deprived of access to the hemp-derived products they rely on for wellness or medical needs, especially in areas with limited or no dispensary access.

120. Many hemp products cultivated, manufactured, or sold by the plaintiffs—or transported into Hawai'i—are now classified as Schedule I controlled substances under Hawai'i law if they exceed the state's total THC thresholds or are in prohibited forms. This includes products that remain federally legal but are now excluded by Hawai'i's stricter standards.

121. Due to the new regulations, plaintiffs are precluded from manufacturing, transporting, shipping, or selling excluded hemp and excluded hemp products in Hawai'i. This prohibition results in significant business losses and may force some plaintiffs to lay off employees or cease operations entirely.

122. Plaintiffs have no adequate remedy at law to redress the deprivation of their rights under the new regulatory scheme. The restrictions imposed by Hawai'i's hemp law amendments create immediate and ongoing harm that cannot be fully remedied through monetary damages alone.

123. A real and substantial controversy exists between the plaintiffs and the state of Hawai'i regarding the constitutionality and legality of the recent hemp law amendments. The plaintiffs contend that these laws unduly restrict their rights and ability to participate in the legal hemp and CBD market, both as businesses and as consumers.

COUNT ONE

PREEMPTION BY FEDERAL LAW *(Federal Preemption of Hawai'i's Hemp Act Amendments)*

124. Plaintiffs allege and incorporate by reference all allegations in the preceding paragraphs.

125. The Agriculture Improvement Act of 2018 (“2018 Farm Bill”) fundamentally redefined hemp as an agricultural commodity, establishing a uniform federal standard: hemp is defined as *cannabis sativa* L. and its derivatives containing no more than 0.3% delta-9 tetrahydrocannabinol (THC) on a dry weight basis. Critically, the 2018 Farm Bill expressly prohibits states from interfering with the transportation or shipment of hemp and hemp products produced in accordance with federal law through their jurisdictions. Section 10114 of the 2018 Farm Bill states:

“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 through the State or the territory of the Indian Tribe, as applicable.”

126. Hawai'i's recent legislative amendments and administrative rules, including House Bill 1482 and subsequent Department of Health regulations, impose a definition of hemp and hemp products that is significantly more restrictive than federal law. Hawai'i regulates hemp based on “Total THC,” encompassing all tetrahydrocannabinol isomers (including delta-8, delta-10, and THCA), not just delta-9 THC. The state also bans or restricts a wide array of product forms (such as gummies, beverages, and smokable flower) and sets strict per-serving and per-package THC limits that are not found in the federal framework.

127. Under Hawai'i's amended laws, “excluded hemp products”—those that comply with the federal definition of hemp but exceed Hawai'i's “Total THC” limits or are in prohibited

forms—are reclassified as Schedule I controlled substances under state law. Hawai’i prohibits the transportation, shipment, possession, and sale of these products within, into, or through the state, even though such products remain legal under federal law and are protected by the 2018 Farm Bill’s interstate commerce provisions.

128. As a direct result of Hawai’i’s restrictive regime, businesses and individuals—including out-of-state wholesalers, local retailers, and consumers—are unable to transport or ship hemp products that are federally legal but prohibited under Hawai’i law. Plaintiffs and others face the risk of criminal prosecution, product seizure, and civil penalties for engaging in commerce that is expressly protected by federal law.

129. Hawai’i’s laws and regulations are expressly preempted by the 2018 Farm Bill, which grants federal protection to the interstate transportation and shipment of hemp and hemp products that meet the federal definition. By criminalizing conduct that Congress intended to legalize and protect, Hawai’i’s regulatory scheme creates a direct conflict with federal law and is therefore invalid under the Supremacy Clause of the U.S. Constitution.

130. The 2018 Farm Bill occupies the field of hemp regulation with respect to the definition of hemp and the protection of its interstate commerce. Hawai’i’s amendments impermissibly intrude upon this field by redefining hemp, imposing additional restrictions, and criminalizing federally lawful conduct, thereby undermining the uniformity and predictability intended by Congress.

131. Hawai’i’s regulatory framework stands as a substantial obstacle to the accomplishment and execution of Congress’s objectives in enacting the 2018 Farm Bill. Congress sought to legalize hemp and hemp products meeting federal standards and to ensure their free movement across state lines. Hawai’i’s laws, by prohibiting the transportation,

shipment, and sale of federally compliant hemp products, directly frustrate these federal objectives.

132. For all these reasons, Hawai'i's hemp law amendments—by redefining hemp, criminalizing federally legal products, and restricting interstate commerce—are preempted by federal law and cannot constitutionally prohibit the possession, sale, or transportation of hemp products that comply with the 2018 Farm Bill. These state restrictions are invalid to the extent that they conflict with federal protections for hemp and hemp products.

COUNT TWO

VIOLATION OF THE DORMANT COMMERCE CLAUSE (*Excluded Hemp Products*)

134. Plaintiffs allege and incorporate by reference all allegations in the preceding paragraphs.

135. Under Hawai'i's current statutory and regulatory framework, for a hemp-derived product to be legally sold or possessed in the state, it must not only comply with the federal definition of hemp (i.e., $\leq 0.3\%$ delta-9 THC by dry weight), but also adhere to Hawai'i's more stringent "Total THC" limits and product form restrictions. These requirements apply regardless of whether the product was cultivated, derived, or manufactured in Hawai'i or out of state.

136. Hawai'i law prohibits the possession, sale, or distribution of hemp products that exceed state-imposed limits on total THC content (for example, more than 1 mg total THC per serving or 5 mg per package for gummies and tablets, or more than 0.5 mg per beverage

container), regardless of whether these products are federally compliant or legally produced in another state. Products that are cultivated, derived, or manufactured outside Hawai'i and do not meet these standards cannot be lawfully sold or possessed in the state—even if they are legal in their state of origin and under federal law.

137. Further, Hawai'i's rules prohibit the possession of hemp products in the state if they were sold in another jurisdiction and do not meet Hawai'i's strict "Total THC" and product form requirements, even if those products were originally cultivated or manufactured in Hawai'i. This effectively bans the re-importation or possession of such products by Hawai'i residents or businesses.

138. Under Hawai'i's amended hemp laws and the Uniform Controlled Substances Act, it is illegal to possess, sell, or distribute "excluded hemp products"—those that exceed the state's total THC thresholds or are in prohibited forms—regardless of their legal status under federal law or in other states. This criminalizes the interstate transport and commerce of a wide range of hemp products that are otherwise federally legal.

139. The purported public health and safety benefits of Hawai'i's restrictive hemp regulations are undermined by the discriminatory manner in which these laws operate. The prohibitions on certain hemp products apply unequally: products deemed "intoxicating" are banned if they are produced out of state, while certain in-state products may be permitted if they comply with Hawai'i's unique standards. The only meaningful distinction is the place of cultivation, derivation, or manufacture, which constitutes economic protectionism favoring in-state interests over out-of-state competitors.

140. Hawai'i's hemp laws violate the Dormant Commerce Clause of the U.S. Constitution, which prohibits states from enacting legislation that discriminates against or unduly

burdens interstate commerce. By favoring in-state economic interests and imposing substantial barriers on the importation, sale, and possession of out-of-state hemp products—even those that are federally legal—Hawai’i’s laws create a protectionist regime that substantially burdens interstate commerce in hemp and hemp-derived products.

141. As a result, Plaintiffs and individual consumers—face irreparable harm if these amendments remain in effect, as they are prevented from participating in the national hemp market and are deprived of access to legal hemp products solely because of their state of origin.

COUNT THREE

VOID FOR VAGUENESS—CRIMINAL

142. Plaintiffs allege and incorporate by reference all allegations stated in the preceding paragraphs.

143. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution prohibits the criminal enforcement of statutes and regulations that are unconstitutionally vague. Laws must provide clear standards and fair warning so that ordinary people can understand what conduct is prohibited and so that enforcement does not become arbitrary or discriminatory.

144. Hawai’i’s recent amendments to its hemp laws set strict limits on the amount of “Total THC” permitted in hemp and hemp-derived products. “Total THC” is defined broadly to include all tetrahydrocannabinol isomers (such as delta-8, delta-9, delta-10, and THCA), but the statutory and regulatory language fails to provide precise guidance on how these limits are calculated or applied to various product forms.

145. Read together with Hawai’i’s Uniform Controlled Substances Act, the state’s hemp law amendments provide that any hemp or hemp product containing tetrahydrocannabinol in excess of the state’s “Total THC” limits—and not produced in accordance with Hawai’i’s

specific regulatory requirements—is classified as a Schedule I controlled substance. This includes products that are legal under federal law but exceed Hawai’i’s stricter standards or are in prohibited forms. The law purports to exempt certain categories (such as “hemp,” “hemp products,” “medical cannabis,” and “medical cannabis items”), but the definitions of these categories are complex, overlapping, and often require a process of elimination to determine legality.

146. Hawai’i’s amendments appear to make it a criminal offense to possess, sell, or distribute hemp products produced or sold outside of Hawai’i that exceed the state’s “Total THC” limits. However, the precise contours of these prohibitions are unclear. The definitions of “hemp,” “hemp products,” and “intoxicating hemp products” are extraordinarily complex and ambiguous, making it difficult even for legal professionals to determine whether a particular product is legal or illegal. The law creates further confusion by simultaneously regulating and criminalizing “intoxicating” hemp products, leading to potentially absurd results—for example, a product may be illegal until it is “sold” in Hawai’i, but only if it was also manufactured in Hawai’i, leaving the status of out-of-state products entirely uncertain.

147. The vague and confusing statutory scheme exposes Plaintiffs to the risk of criminal prosecution for possessing or selling excluded hemp or excluded hemp products in Hawai’i. The extent to which these criminal penalties apply is so unclear that even well-trained lawyers and industry professionals cannot reliably determine the legal status of many products or the scope of potential liability.

148. The amendments fail to provide a person of ordinary intelligence with fair notice as to what conduct is forbidden and what is permitted regarding the possession, transportation, and shipment of hemp and hemp products within Hawai’i. The lack of clear definitions and the

convoluted structure of the law make it impossible for businesses and individuals to confidently comply with the law or avoid criminal penalties.

149. As enacted and enforced, Hawai'i's hemp law amendments are unconstitutionally vague. They do not give fair warning of their requirements, invite arbitrary enforcement, and violate the Due Process Clause of the Fourteenth Amendment by failing to provide clear and ascertainable standards for lawful conduct with respect to hemp and hemp-derived products.

COUNT FOUR

VOID FOR VAGUENESS—CIVIL

150. Plaintiffs allege and incorporate by reference all allegations in the preceding paragraphs.

151. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution protects individuals and businesses from the enforcement of civil penalty schemes that are unconstitutionally vague. Laws must provide clear standards so that ordinary people can understand what conduct is prohibited or required, and so that enforcement does not become arbitrary or discriminatory.

152. Hawai'i's recent amendments to its hemp and CBD regulatory framework impose civil penalties for a range of activities, including:

- a. Selling or distributing intoxicating hemp products without proper registration or licensure.
- b. Selling, offering for sale, or distributing any intoxicating hemp product, hemp product, or cannabis item that is not derived from "naturally occurring biologically active chemical constituents."
- c. Selling or distributing any product intended for human consumption containing any detectable amount of THC to a person under 21 years of age (a provision not challenged by plaintiffs).

153. The amendments do not define the critical term “naturally occurring biologically active chemical constituents.” This omission creates significant uncertainty for businesses and individuals. For example, delta-8 THC occurs naturally in the cannabis plant but is often produced by chemically converting CBD or other cannabinoids. It is unclear whether such a product would be considered “naturally occurring” under the law, leaving producers, retailers, and consumers without clear guidance.

154. Because some forms of THC—like delta-8—can be both naturally occurring and synthetically derived from other cannabinoids, the law fails to provide an ordinary person with fair notice as to whether certain products are lawful. This ambiguity makes it impossible for businesses to confidently determine whether their products comply with Hawai’i’s civil regulations and exposes them to the risk of significant penalties for conduct that may not be clearly prohibited.

155. The definition of “intoxicating hemp product” in Hawai’i’s amendments is also problematic. The law requires that a product be both cultivated, derived, or manufactured in Hawai’i and sold in Hawai’i to be classified as an intoxicating hemp product. If a product is manufactured in Hawai’i but not yet sold, it is not an intoxicating hemp product but rather falls into the category of an “excluded hemp product”—which is subject to criminal penalties. This circular logic can make it impossible to legally manufacture and sell certain products, as the act of selling may itself trigger a change in the product’s legal status. Such statutory confusion suggests that the legislature did not intend to impose civil or criminal penalties for all intoxicating hemp products, yet the law as written creates precisely that risk.

156. Beyond the issues with “intoxicating hemp product,” the definitions of “hemp product” and “cannabis item” are also vague and confusing. The overlapping and sometimes

contradictory definitions make it impractical for ordinary citizens and businesses to know whether they may be subject to civil penalties. This lack of clarity creates a chilling effect on lawful commerce, as businesses may avoid selling products that are arguably legal for fear of inadvertent violations.

157. As enacted, Hawai'i's hemp law amendments are unconstitutionally vague in their civil penalty provisions. They fail to give fair notice of what conduct is prohibited or required, invite arbitrary and inconsistent enforcement, and violate due process protections under the Fourteenth Amendment. The statutory scheme's lack of clarity and precision exposes plaintiffs and similarly situated parties to irreparable harm and undermines the rule of law.

COUNT FIVE

VIOLATIONS OF THE AMERICANS WITH DISABILITY ACT

158. Plaintiffs allege and incorporate by reference all allegations in the preceding paragraphs.

159. There are Plaintiff's, and similarly situated residents of Hawai'i, with a qualified disability under the ADA, whose chronic pain and muscle spasticity condition substantially limits the major life activities of sleeping, walking, and concentrating. Her treating physician specifically recommended daily use of hemp-derived CBD gummies and smokable flower products because these particular forms provide rapid onset and precise self-titration capabilities that have proven uniquely effective in alleviating her symptoms compared to prescription opioids or topical preparations.

160. Hawai'i's Hemp Amendments categorically ban both of these product forms and impose exceptionally restrictive "total THC" limits that render nearly all commercially available full-spectrum CBD products illegal within the state. As a direct result of these blanket

prohibitions, there will be Plaintiffs who will no longer obtain the only therapeutic modality that reliably controls their disability-related symptoms, forcing them to either endure avoidable pain or relocate outside Hawai'i to access federally lawful medicine.

161. Under Title II of the ADA, no qualified individual with a disability shall be excluded from participation in or denied the benefits of state government services, programs, or activities by reason of their disability. The implementing regulations mandate that states must make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless the modification would fundamentally alter the nature of the service, program, or activity.

162. Similarly, Title III requires private retailers to offer reasonable modifications to avoid disability-based discrimination unless doing so would fundamentally alter the nature of the goods or services provided.

163. Hawai'i's restrictive hemp regulations constitute unlawful disability discrimination under federal law in multiple respects. First, by categorically prohibiting specific formulations of CBD products that similarly situated Plaintiffs have been advised by licensed physicians to use as alternatives to medical cannabis—due to the high cost and limited accessibility of obtaining a state-issued medical marijuana card, which is often not covered by Medicaid or other common insurance programs—the State has imposed eligibility criteria that “tend to screen out” individuals with disabilities who rely on such products to manage their conditions, in direct violation of the Americans with Disabilities Act (ADA) and its implementing regulations. Second, the limited forms of hemp-derived products permitted under the State's framework—such as low-dose tinctures, capsules, and topical preparations—offer significantly reduced therapeutic efficacy due to delayed onset, lower bioavailability, and higher

cost. These alternatives are neither medically equivalent nor accessible, and as such, fail to provide individuals with disabilities a meaningful or reasonable accommodation. Third, these restrictions create a disparate impact whereby non-disabled consumers can easily switch to other over-the-counter remedies without functional loss, there are Plaintiffs who suffer with pain, and other disorders and diseases, and without access to the banned products, it will greatly have a negative impact on their quality of life. Fourth, this discrimination flows directly from Hawai'i's statutory and regulatory scheme rather than from any private retailer's independent decision, placing the duty to accommodate squarely on the state.

164. The feasibility of reasonable modifications strengthens the ADA violation claim. Federal legality removes any legitimate safety concerns, as Congress already determined through the 2018 Farm Bill that hemp products containing no more than 0.3% delta-9 THC pose no unacceptable public health risk. Allowing their sale to disabled consumers based on physician recommendation would impose no "fundamental alteration" on Hawai'i's regulatory program, particularly since the state already authorizes much higher-THC medical cannabis products through its existing dispensary system. A narrowly tailored medical necessity exemption—limited to federally compliant CBD products, verified by licensed practitioners, and subject to existing labeling and testing requirements—would satisfy ADA mandates without undermining Hawai'i's broader policy objectives.

165. The conflict between Hawai'i's restrictions and federal law underscores the severity of the ADA violation. The 2018 Farm Bill expressly preempts state efforts to block interstate transport of compliant hemp products, reflecting Congress's judgment that such products are safe and lawful. Hawai'i's blanket prohibition simultaneously contravenes federal commerce protections and denies disabled residents access to federally approved therapeutic

interventions. This intersection of constitutional and disability rights violations demonstrates the unlawful nature of Hawai'i's regulatory overreach and the urgent need for judicial intervention to protect the rights of disabled individuals who depend on these federally legal treatments.

COUNT SIX

VIOLATION OF HIPAA & FEDERAL PRIVACY PROTECTIONS

166. Plaintiffs allege and incorporate by reference all allegations in the preceding paragraphs.

167. Hawai'i's recent legislative amendments establish a regulatory framework so draconian and unconstitutional that it authorizes state officials to access patient medical records without any suspicion of wrongdoing, any warrant, or any judicial oversight—a direct and flagrant violation of the Health Insurance Portability and Accountability Act (HIPAA) and fundamental constitutional privacy protections. This warrantless access to confidential medical information represents one of the most egregious breaches of patient privacy rights enacted by any state in modern history.

168. Under House Bill 302, signed into law by Governor Green on June 27, 2025, the Hawai'i Department of Health is granted sweeping authority to "inspect a qualifying patient's medical records held by the physician, advanced practice registered nurse, or hospice provider who issued a written certification for the qualifying patient." This provision operates without any requirement for probable cause, reasonable suspicion, or judicial warrant, effectively eviscerating the foundational privacy protections that patients have long enjoyed under both federal and state law. Governor Green himself acknowledged the severity of this violation, describing the medical records access provision as "a grave violation of privacy" and recognizing that it "may deter patients from participating in the medical cannabis program" due to

"reasonable fears of repercussions based upon information gained from inspection of their personal medical records."

169. The constitutional implications of this warrantless access scheme are profound and far-reaching. The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures, and the Supreme Court has repeatedly held that individuals maintain a reasonable expectation of privacy in their medical records and health information. Hawai'i's authorization of warrantless inspection of medical records violates these fundamental protections by allowing state officials to conduct fishing expeditions through confidential patient information without any judicial oversight or constitutional safeguards. This represents precisely the type of arbitrary government intrusion that the Fourth Amendment was designed to prevent.

170. Under HIPAA, covered entities—including healthcare providers, health plans, and healthcare clearinghouses—are strictly prohibited from disclosing protected health information (PHI) without patient authorization except in very limited circumstances. The Privacy Rule establishes comprehensive protections for individually identifiable health information and requires covered entities to implement administrative, physical, and technical safeguards to protect PHI. Hawai'i's mandate that healthcare providers surrender patient records upon demand from state officials violates these federal protections by compelling disclosure of PHI without patient consent and without meeting any of the narrow exceptions permitted under HIPAA. This state-mandated breach of patient confidentiality directly conflicts with federal law and places healthcare providers in the impossible position of choosing between compliance with federal privacy protections and state regulatory demands.

171. The Hawai'i Constitution itself recognizes exceptionally strong privacy protections that should prevent this type of governmental intrusion. Article I, Section 6 of the

Hawai'i Constitution states that "the right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest," and requires the legislature to "take affirmative steps to implement this right." The Hawai'i Supreme Court has consistently held that patient medical records are entitled to constitutional privacy protection, and that such records cannot be accessed or disclosed without either patient consent or a compelling state interest. The broad, warrantless access authorized by HB 302 fails to meet this constitutional standard because it permits inspection of medical records without any individualized showing of necessity or compelling governmental interest.

172. Federal courts have repeatedly recognized that medical records deserve the highest level of privacy protection. The Ninth Circuit Court of Appeals, which has jurisdiction over Hawai'i, recently rejected Hawai'i's attempt to mandate the categorical sealing of all medical records in court proceedings, finding that such blanket approaches violate First Amendment principles. This ruling underscores the federal courts' commitment to protecting medical privacy while preventing overbroad governmental actions that lack proper constitutional justification. Hawai'i's warrantless access scheme represents an even more severe intrusion on privacy rights than the court filing rules struck down by the Ninth Circuit, as it permits direct governmental access to confidential medical information without any judicial oversight whatsoever.

173. The practical consequences of Hawai'i's medical records access provisions are both immediate and devastating. Patients who rely on medical cannabis for legitimate therapeutic purposes—including those with disabilities, chronic conditions, and terminal illnesses—now face the impossible choice between accessing necessary medical treatment and preserving their fundamental privacy rights. Healthcare providers are placed in the untenable position of being

required to violate their patients' confidentiality and their professional ethical obligations in order to comply with state regulations. This chilling effect on the doctor-patient relationship undermines the very foundation of medical care and threatens to drive patients away from the legal medical cannabis program entirely.

174. The intersection of Hawai'i's privacy violations with federal cannabis prohibition creates particularly severe constitutional problems. As Governor Green himself acknowledged, the fact that "the federal government classifies cannabis as a Schedule I substance" means that "patients' reasonable fears of repercussions based upon information gained from inspection of their personal medical records may deter patients from participating in the medical cannabis program." This recognition by the Governor demonstrates that state officials are fully aware that their warrantless access scheme will harm patients and undermine the medical cannabis program's effectiveness, yet they chose to proceed with these privacy violations, nonetheless.

175. The federal preemption implications of Hawai'i's medical records access provisions are clear and compelling. HIPAA contains express preemption language that prevents states from enacting laws that are less protective of health information privacy than federal standards. Hawai'i's authorization of warrantless access to medical records falls far below the privacy protections mandated by HIPAA and therefore violates federal preemption principles. Additionally, the state's interference with the federally protected doctor-patient relationship and its chilling effect on participation in a state-regulated medical program create additional constitutional conflicts that demand federal judicial intervention.

176. These draconian privacy violations provide compelling additional support for the constitutional challenges raised in this action. The state's willingness to authorize warrantless

searches of confidential medical records demonstrate a pattern of regulatory overreach that extends far beyond the hemp and CBD restrictions at issue in this case. This broader context of constitutional violations strengthens the plaintiffs' claims under the Due Process Clause, as it shows that Hawai'i's regulatory scheme fails to provide the basic procedural protections and constitutional safeguards that citizens have a right to expect from their government.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter an order granting the following relief, in light of the conflict between Hawai'i's hemp and CBD regulatory regime and federal law, as well as the state's flagrant violation of HIPAA privacy protections:

A. Prompt Hearing on Preliminary Injunction

Setting this matter for an expedited hearing on Plaintiffs' Order to Show Cause for a Preliminary Injunction, to prevent ongoing and irreparable harm to Plaintiffs resulting from the enforcement of Hawai'i's restrictive hemp and CBD laws, which are preempted by federal law, violate constitutional protections, and include provisions that constitute grave violations of medical privacy under HIPAA and the Fourth Amendment.

B. Judgment Against Defendants

Entering judgment in favor of Plaintiffs and against Defendants, finding that Hawai'i's hemp law amendments, as applied to federally compliant hemp and hemp-derived products, are unlawful and unenforceable under federal law, and that the state's authorization of warrantless inspection of medical records violates HIPAA and fundamental privacy rights.

C. Declaration of Invalidity of Hawai'i's Hemp Law Amendments

Declaring that Hawai'i's recent amendments to its hemp and CBD regulatory framework—including Hawai'i Administrative Rules § 11-37, House Bill 263 (Act 263), House

Bill 302, and House Bill 1482, along with related Department of Health rules—are void and unenforceable in their entirety, except for those provisions that prohibit the sale or distribution of hemp or THC-containing products to individuals under 21 years of age. This declaration specifically encompasses the provisions of House Bill 302 that authorize the Department of Health to inspect qualifying patients' medical records without warrant or suspicion of wrongdoing, which Governor Green himself acknowledged as "a grave violation of privacy."

D. Declaration of Federal Preemption

Declaring that all hemp and hemp-derived products that comply with the federal definition of hemp under 7 U.S.C. § 1639o(1)—defined 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"—are legal under federal law and are protected by the 2018 Farm Bill's preemption of contrary state law. Declaring that Hawai'i's efforts to recriminalize, prohibit, or otherwise restrict the transportation, shipment, sale, possession, or distribution of federally compliant hemp and hemp products are preempted and invalid under the Supremacy Clause of the U.S. Constitution.

E. Permanent Injunction Against Enforcement

Enjoining Defendants, their agents, and all persons acting in concert with them from enforcing or taking any action to implement Hawai'i's hemp law amendments, including the medical records inspection provisions of House Bill 302, except for the age restriction on sales to persons under 21. This injunction shall specifically prohibit criminalizing, prosecuting, or penalizing the sale, possession, manufacture, financing, distribution, transportation, or shipment of hemp or hemp-derived products that meet the federal standard for legality, including but not

limited to hemp flower, pre-rolls, gummies, and vaporized products. The injunction shall further prohibit seizing, destroying, or otherwise interfering with the lawful interstate commerce of federally compliant hemp and hemp products, and shall prevent the warrantless inspection of medical records in connection with medical cannabis or hemp product use.

F. Declaration of Rights for Plaintiffs and Similarly Situated Persons

Declaring that Plaintiffs and all similarly situated persons are entitled to engage in the sale, distribution, transportation, and possession of federally compliant hemp-derived products, including but not limited to hemp flower, pre-rolls, gummies, and vaporized products, without interference from the Defendants and the State of Hawai'i, provided such products contain no more than 0.3% delta-9 tetrahydrocannabinol on a dry weight basis in accordance with federal law. This declaration shall specifically recognize the right of disabled individuals to access CBD products necessary for their medical treatment under the Americans with Disabilities Act, and the right of all persons to medical privacy under HIPAA and the Fourth Amendment.

G. Award of Costs and Fees

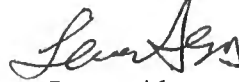
Awarding Plaintiffs all reasonable costs, attorneys' fees, and expenses incurred in bringing and prosecuting this action, as permitted by law, including under 42 U.S.C. § 12205 (Americans with Disabilities Act) and other applicable fee-shifting statutes.

H. Further Relief as Deemed Just and Proper

Granting Plaintiffs such other and further relief as the Court deems just, proper, and equitable in order to vindicate the supremacy of federal law, protect Plaintiffs' constitutional rights including privacy and due process, prevent ongoing harm from the enforcement of Hawai'i's unlawful hemp and CBD regulations, and ensure that the state's regulatory scheme complies with federal law, constitutional protections, and established medical privacy standards.

Dated: August 19, 2025
Honolulu, Hawai'i

Respectfully submitted,



8/21/2025

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