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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

LOKI BRANDS LLC; NORTH FORK
DISTRIBUTION, INC. d/b/a
CYCLING FROG; CANTRIP, INC.;
ALPHA OMEGA COLLECTIS LLC
d/b/a APOLLO SCIENCES;
ALTERNATIVE HEALTH
DISTRIBUTION LLC d/b/a
CANNAAID; and M&A LL
HOLDINGS LLC d/b/a LEGAL LEAF
NEW JERSEY,

Plaintiffs,

v.

MATTHEW J. PLATKIN, in his
official capacity as Attorney General of
New Jersey; DIANNA HOUENOU, in
her official capacity as Chair of the
New Jersey Cannabis Regulatory
Commission; and EDWARD D.
WENGRYN, in his official capacity as
New Jersey Secretary of Agriculture,

Defendants.

Civil Action No.: _____

COMPLAINT

Loki Brands LLC, an organization with a principal place of business at 548 Williamstown Road, Sicklerville, New Jersey 08081; North Fork Distribution, Inc. d/b/a Cycling Frog, an organization with a principal place of business at 1115 NW 51st Street, Seattle Washington 98107; Cantrip, Inc., an organization with a principal place of business at 341 Edmands Road, Framingham, Massachusetts 01701; Alpha Omega Collectis LLC d/b/a Apollo Sciences, an organization with a principal place of business at 11380 Smith Road, Aurora, Colorado 80010; Alternative Health Distribution LLC d/b/a CannaAid, an organization with a principal place of business at 106 North Commercial Drive, Suite A, Mooresville, North Carolina 28115; and M&A LL Holdings LLC d/b/a Legal Leaf New Jersey, an organization with a principal place of business at 248 Morris Avenue, Springfield, New Jersey 07081; bring this complaint against Matthew J. Platkin, in his official capacity as Attorney General of New Jersey, whose official address is P.O. Box 80, Trenton, New Jersey 08625; Dianna Houenou, in her official capacity as Chair of the New Jersey Cannabis Regulatory Commission, whose official address is P.O. Box 360, Trenton, New Jersey 08625; Edward D. Wengryn, in his official capacity as New Jersey Secretary of Agriculture, whose official address is P.O. Box 330, Trenton, New Jersey 08625; and state as follows:

INTRODUCTION

1. This is a lawsuit challenging the validity and enforceability of L. 2024, c. 73, also known as New Jersey Senate Bill No. 3235 (Third Reprint), a legislative act that proposes to restrict and regulate the production and sale of hemp and hemp products in ways that violate federal constitutional and statutory law. The New Jersey legislation is referred to herein as the “Hemp Act Amendments” or the “Amendments.”

2. In 2018, Congress decriminalized hemp and for the first time allowed states to regulate hemp production pursuant to federally approved state plans (the “2018 Farm Bill”).

3. With the 2018 Farm Bill, Congress clearly defined “hemp” and expressly forbade states from interfering with the interstate commerce of hemp. The reestablishment of a domestic supply chain of hemp led to a robust market for hemp products in New Jersey and around the country.

4. Enacted into law less than two weeks ago, the Hemp Act Amendments drastically overhaul the regulatory environment related to the production and sale of hemp and hemp products in New Jersey.

5. Plaintiffs in this case are businesses that participate in the hemp and hemp products markets across the country. Specifically, Plaintiffs (1) ship hemp to and through New Jersey; (2) cultivate, derive, or manufacture hemp products outside

of New Jersey for transportation to New Jersey and sale to consumers in New Jersey and/or to customers who reside in New Jersey; (3) sell hemp products in New Jersey that are cultivated, derived, or manufactured both inside and outside of New Jersey; and (4) cultivate, derive, or manufacture hemp products in New Jersey for shipment or transportation from New Jersey to destinations in New Jersey and other states.

6. Plaintiffs benefit from operating within a legal market that depends on a supply chain of thousands of farmers, processors, wholesalers, and retail shops throughout New Jersey.

7. The Hemp Act Amendments threaten the existing market for hemp and hemp products because the new law impermissibly narrows the definitions of hemp and hemp products by recriminalizing the possession, manufacture, transportation, and shipment of certain hemp and hemp products.

8. As a result of the Amendments, Plaintiffs will suffer immediate, irreparable financial harm, and many businesses will be forced to close or lay off employees. This will lead to thousands of lost jobs around the state and turn farmers, business owners, and consumers into criminals, despite no change in federal law and despite the protections Congress has afforded them.

9. The Amendments violate the Supremacy Clause by expressly changing the definitions of hemp and hemp products and by criminalizing the transportation and shipment of these items through New Jersey, which directly contradicts the 2018

Farm Bill. They also violate the dormant Commerce Clause by favoring in-state economic interests over out-of-state economic interests, criminalizing certain out-of-state products while allowing the production and sale of those same products in-state.

10. Additionally, the Amendments impose a dizzying maze of rules that are far too complicated for ordinary citizens to navigate. As a result, it is extraordinarily difficult, if not impossible, for ordinary citizens to know whether it is legal to possess or sell certain items. For these reasons, the Amendments violate the constitutional protections of due process.

PARTIES

11. Plaintiff Loki Brands LLC (“Loki”) is an organization with a principal place of business in Sicklerville, New Jersey. Loki is an in-state manufacturer of hemp-derived beverages that constitute Intoxicating Hemp Products (defined below). Loki sells its Intoxicating Hemp Products to consumers in approximately 34 states, including New Jersey. Loki also is a New Jersey retailer that sells its own Intoxicating Hemp Products, as well as Intoxicating Hemp Products and Excluded Hemp Products (defined below) that were manufactured by other entities inside and outside of New Jersey.

12. Plaintiff North Fork Distribution, Inc. d/b/a Cycling Frog (“Cycling Frog”) is an organization with a principal place of business in Seattle, Washington.

Cycling Frog is a brand that produces and sells hemp products that contain cannabidiol and delta-9 tetrahydrocannabinol (“THC”), or both. Cycling Frog manufactures Excluded Hemp Products in Texas and Oregon and sells and ships them to customers in New Jersey and other states. Upon information and belief, Cycling Frog’s Excluded Hemp Products also are shipped or transported through New Jersey to other states.

13. Plaintiff Cantrip, Inc. (“Cantrip”) is an organization with a principal place of business in Framingham, Massachusetts. Cantrip is a brand that formulates and designs hemp beverages that contain cannabidiol and delta-9 THC. Cantrip’s products, which include Excluded Hemp Products, are manufactured in Minnesota and New York and sold and shipped to consumers in New Jersey and other states. Upon information and belief, Cantrip’s Excluded Hemp Products are also shipped or transported through New Jersey to other states.

14. Plaintiff Alpha Omega Collectis LLC d/b/a Apollo Sciences (“Apollo”) is an organization with a principal place of business in Aurora, Colorado. Apollo is a bulk manufacturer of products derived from hemp, including Excluded Hemp Products. Apollo manufactures its Excluded Hemp Products in Colorado and Florida and sells and ships them to brand owners located in New Jersey and other states.

15. Plaintiff Alternative Health Distribution LLC d/b/a CannaAid (“CannaAid”) is an organization with a principal place of business in Mooresville,

North Carolina. CannaAid is a manufacturer and retailer of hemp and hemp products that contain delta-8 THC, delta-9 THC, and/or tetrahydrocannabinolic acid (“THCA”). These products include Excluded Hemp (defined below) and Excluded Hemp Products. CannaAid sells and ships these products from its facility in North Carolina to customers in New Jersey and other states. Upon information and belief, CannaAid’s Excluded Hemp and Excluded Hemp Products also are shipped or transported through New Jersey.

16. Plaintiff M&A LL Holdings LLC d/b/a Legal Leaf New Jersey (“Legal Leaf”) is an organization with a principal place of business in Springfield, New Jersey. Legal Leaf is a hemp product retailer with five locations in New Jersey. Legal Leaf sells Excluded Hemp, Intoxicating Hemp Products, and Excluded Hemp Products to customers in New Jersey. Many of these products are manufactured outside of New Jersey and transported to Legal Leaf, though some are manufactured in New Jersey.

17. Defendant Matthew J. Platkin is the Attorney General of New Jersey (“AG”), the state’s chief law enforcement officer, and the head of the Department of Law and Public Safety. The AG and the Department of Law and Public Safety are responsible for enforcement of New Jersey’s civil laws and for investigation and prosecution of violations of New Jersey’s criminal laws. The AG and the Department of Law and Public Safety also enforce criminal penalties involving

illegal marijuana, cannabis, and tetrahydrocannabinols. Under the Hemp Act Amendments, the AG and the Department of Law and Public Safety maintain jurisdiction over illegally produced marijuana and tetrahydrocannabinols, as well as responsibility for prosecuting individuals and businesses selling other cannabis items, including hemp products that exceed the permissible concentration of THC and intoxicating hemp sold by means other than licensed retail.

18. Defendant Dianna Houenou is the Chair of the New Jersey Cannabis Regulatory Commission (“CRC”). The CRC is responsible for regulating adult-use and medical cannabis. Under the Hemp Act Amendments, Houenou and the CRC are also responsible for regulating the sale of all intoxicating hemp.

19. Defendant Edward D. Wengryn is the secretary of the New Jersey Department of Agriculture (“DOA”). The DOA regulates hemp production in New Jersey. Under the Hemp Act Amendments, Wengryn and the DOA are responsible for regulating the cultivation and processing of hemp as an agricultural commodity.

JURISDICTION AND VENUE

20. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1343 in that this action arises under federal law and seeks redress for the deprivation of rights secured by the Fourteenth Amendment to the Constitution of the United States.

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

22. Declaratory relief is authorized by 28 U.S.C. § 2201.

STATEMENT OF FACTS

A. The Cannabis Plant

23. *Cannabis sativa* L. is a plant commonly known as “hemp” or “marijuana.”

24. Hemp and marijuana are distinct cultivars of the cannabis plant.

25. The cannabis plant produces at least 113 different compounds referred to as “cannabinoids.” One cannabinoid found in the cannabis plant is tetrahydrocannabinol.

26. Tetrahydrocannabinol has several isomers (distinct arrangements of the same molecular compounds), including delta-9 (“delta-9 THC”), the principal psychoactive chemical in cannabis. Other tetrahydrocannabinol isomers include delta-8 (“delta-8 THC”) and delta-10 (“delta-10 THC”).

27. The hemp cultivar of the cannabis plant differs from marijuana in that it has a lower concentration of delta-9 THC.

B. 2018 Farm Bill

28. On December 20, 2018, President Trump signed into law the Agriculture Improvement Act of 2018, Pub. L. 115-334 (the “2018 Farm Bill”).

29. The 2018 Farm Bill established a framework for the domestic supply chain of hemp and hemp products in three important ways.

30. First, it decoupled hemp from marijuana under the federal Controlled Substances Act and exempted tetrahydrocannabinols derived from hemp from its definition.

31. Second, it expanded the definition of “hemp” to include “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).

32. Third, it expressly prohibited individual states from interfering with the transportation and shipment of hemp and hemp products through interstate commerce:

(a) **RULE OF CONSTRUCTION.** – Nothing in this title or an amendment made by this title prohibits the interstate commerce of hemp (as defined in section 297A of the Agricultural Marketing Act of 1946 (as added by [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.

33. The Conference Report to the 2018 Farm Bill explains that states and Indian tribes may not “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.). It also explains that “state and Tribal governments are authorized to put more restrictive parameters on the production of hemp, but are not authorized to alter the definition of hemp.” *Id.* at 737.

34. Nothing in the 2018 Farm Bill limits the concentration in hemp of other tetrahydrocannabinol isomers such as delta-8 THC, a substance that occurs naturally in the cannabis plant.

C. The 2019 New Jersey Hemp Farming Act

35. The 2018 Farm Bill’s establishment of a domestic supply chain of hemp and hemp products paved the way for a robust cannabinoid market in New Jersey and across the country.

36. In 2019, the New Jersey Legislature passed the New Jersey Hemp Farming Act, N.J.S.A. 4:28-6 (the “N.J. Hemp Farming Act”), for the purpose of overseeing the “cultivation, handling, processing, transport, and sale of hemp and hemp products in the State in accordance with federal law.” 2019 N.J.G.A. 5322, L.2019, c.238, S. Budget & Appropriations Comm. Statement with Comm. Amendments (First Reprint).

37. The N.J. Hemp Farming Act brought New Jersey’s definition of “Hemp”¹ in line with the federal definition and defined “Hemp Product” as a product derived from Hemp with a concentration of delta-9 THC that is equal to or less than 0.3% on a dry-weight basis:

“Hemp product” means 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. Hemp products shall not be considered controlled substances due to the presence of hemp or hemp-derived cannabinoids.

N.J.S.A. 4:28-8.

38. Pursuant to the N.J. Hemp Farming Act, the Legislature developed a federally approved hemp program that adhered to the definition of “Hemp” in the 2018 Farm Bill and which took effect in 2022. *See* 54 N.J.R. 903(a); *see also* N.J.A.C. 2:25-1.1 to -6.4.

¹ Uncapitalized terms refer to the ordinary meaning of words. Capitalized terms are defined herein or by federal or state law or rule.

D. The Hemp Act Amendments

39. On June 28, 2024, the New Jersey Legislature approved the Hemp Act Amendments to regulate the production and sale of hemp products that are deemed “intoxicating.”

40. On September 12, 2024, Governor Murphy signed the Amendments into law.

41. The Amendments amend the N.J. Hemp Farming Act by regulating the production and sale of hemp and hemp products in New Jersey.

42. The Hemp Act Amendments redefine “Hemp” and “Hemp Products,” introduce the concept of and impose regulations on “Intoxicating Hemp Products,” and reassign the oversight and enforcement responsibilities of various state agencies.

43. At their core, the Amendments limit the amount of tetrahydrocannabinols, including those other than delta-9 THC, that hemp and hemp products contain.

44. In a statement accompanying the bill signing, Governor Murphy recognized that the Amendments have “technical issues and other challenges” and warned that the Amendments implicate Commerce Clause concerns and are already causing significant confusion.²

² Governor’s Statement Upon Signing S. Bill 3235 (Sept. 12, 2024).

E. Hemp, Hemp Products, and Intoxicating Hemp Products

45. The Hemp Act Amendments define and regulate the production and sale of hemp products that are manufactured and sold in New Jersey and are deemed “intoxicating.” They also criminalize certain forms of hemp as well as out-of-state hemp products deemed “intoxicating.”

46. Specifically, the Amendments (1) narrow the definition of “Hemp” to exclude certain hemp that is legal under federal law (“Excluded Hemp”³); (2) narrow the definition of “Hemp Products” to exclude in-state hemp products deemed intoxicating (“Intoxicating Hemp Products”) and out-of-state hemp products deemed intoxicating (“Excluded Hemp Products”⁴); and (3) impose restrictions on Intoxicating Hemp Products while criminalizing Excluded Hemp and Excluded Hemp Products. These three measures are discussed in turn below.

³ “Excluded Hemp” refers to hemp that satisfies the definition of Hemp under the 2018 Farm Bill because its concentration of delta-9 THC does not exceed 0.3% on a dry weight basis, but fails to satisfy the definition of Hemp under the Amendments because its concentration of Total THC (defined below) exceeds 0.3% on a dry weight basis.

⁴ “Excluded Hemp Products” refers to hemp products that satisfy the definition of Intoxicating Hemp Products in the Amendments in all respects except that they were cultivated, derived, manufactured, or sold outside of New Jersey.

i. Hemp

47. Prior to the Amendments, the N.J. Hemp Farming Act defined “hemp” as “the plant *Cannabis sativa* L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a [delta-9 THC] concentration of not more than 0.3 percent on a dry weight basis.” N.J.S.A. 4:28-8. The definition of hemp under the 2018 Farm Bill is substantially identical.

48. Under federal law and the N.J. Hemp Farming Act, Hemp was an agricultural commodity and not a controlled substance.

49. The Amendments change the definition of “Hemp” to hinge on the concentration of all tetrahydrocannabinols (i.e., “Total THC,” defined below), rather than on the concentration of delta-9 THC, as federal law does and as New Jersey law used to.

50. The definition of “Hemp” references two undefined terms: *Cannabis sativa* L. (which is inherently confusing, because there are multiple cultivars and variants of this plant species) and “total tetrahydrocannabinol” (although “Total THC” is defined, “total tetrahydrocannabinol” is not).

51. As the Amendments define it, “Total THC” includes the total concentration of all tetrahydrocannabinols in hemp or a hemp product, including

delta-9 THC, and any other chemically similar substance, regardless of how it is derived:

“Total THC” means the total concentration of all tetrahydrocannabinols in hemp or a hemp product, including delta-8, delta-9, delta-10, tetrahydrocannabinolic acid and any other chemically similar compound, substance, derivative, or isomer of tetrahydrocannabinol, regardless of how derived or manufactured, and any other cannabinoid, other than cannabidiol, identified by the Cannabis Regulatory Commission, in consultation with the Department of Agriculture and the Attorney General, as causing intoxication.

L. 2024, c. 73, § 1.

52. Whereas the federal definition of Hemp depends on the concentration only of delta-9 THC, the Amendments’ definition of Hemp depends on the cumulative concentration of all tetrahydrocannabinols, including not only delta-9 THC, but also delta-8 THC, delta 10-THC, and other chemically similar compounds, such as THCA.

53. In a statement issued alongside the bill-signing, Governor Murphy acknowledged that the products that the Amendments target “meet the legal definition of ‘hemp’ due to their low concentration of delta-9 [THC] but that are intoxicating because of the presence of other forms of THC – such as delta-8 and delta-10.”

54. As a result of this change, the Amendments therefore exclude a category of federally legal hemp from New Jersey’s definition of “Hemp.” This kind of hemp, which we have termed “Excluded Hemp,” has a concentration of delta-9 THC that is less than or equal to 0.3% on a dry weight basis, but also has a concentration of Total TCH that exceeds 0.3% on a dry weight basis. Under the Amendments, this form of hemp is no longer “Hemp” under New Jersey law.

ii. Hemp Products

55. Under the N.J. Hemp Farming Act, a “Hemp Product” was any Hemp plant-derived product that had a concentration of delta-9 THC that was equal to or less than 0.3% on a dry weight basis:

“Hemp product” means 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. Hemp products shall not be considered controlled substances due to the presence of hemp or hemp-derived cannabinoids.

N.J.S.A. 4:28-8.

56. Federal law does not define “hemp product,” but nevertheless expressly extends the protection of interstate commerce to “hemp products.”

57. Separating products deemed “intoxicating” from other hemp products, the Amendments narrow New Jersey’s definition of “Hemp Product” to include only *cannabis sativa* L. derivatives and products with (1) a concentration of Total THC that is equal to or less than 0.3% on a dry weight basis; and (2) equal to or less than 0.5 mg of Total THC per serving and equal to or less than 2.5 mg of Total THC per package:

“Hemp product” means a finished product with a total tetrahydrocannabinol concentration of not more than 0.3 percent, and not more than 0.5 milligrams of total THC per serving and 2.5 milligrams of total THC per package, 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. Hemp products shall not be considered controlled substances due to the presence of hemp or hemp-derived cannabinoids. “Hemp product” shall not mean a cannabinoid product that is not derived from naturally occurring biologically active chemical constituents and shall not mean an intoxicating hemp product as defined in [relation to the regulation of cannabis for personal use].

L. 2024, c. 73, § 1.

58. The definition of “Hemp Products” relies on several undefined terms: “finished product,” “total tetrahydrocannabinol” (the definition uses both this term and “Total THC,” but “total tetrahydrocannabinol” is not defined), “hemp-derived cannabinoids,” “cannabinoid product,” and “not derived from naturally occurring

biologically active chemical constituents” (which is confusing because some relevant substances both exist naturally and are also manufactured by humans from other naturally found substances).

59. By excluding some products made from hemp from the definition of Hemp Products and by creating a new category of in-state hemp products deemed intoxicating, the Amendments ultimately divide all hemp products into three categories: (1) non-intoxicating hemp products (which the Amendments call “Hemp Products”); (2) intoxicating hemp products that are manufactured and sold in New Jersey (which the Amendments call “Intoxicating Hemp Products”); and (3) intoxicating hemp products that are manufactured or sold outside of New Jersey (which we refer to as “Excluded Hemp Products”).

iii. Intoxicating Hemp Products

60. The Hemp Act Amendments define “Intoxicating Hemp Products,” a previously nonexistent class of items that includes all products made from Hemp in New Jersey *and* sold in New Jersey that have a Total THC greater than 0.5 mg per serving or 2.5 mg per package:

“Intoxicating hemp product” means any product cultivated, derived, or manufactured in this State from hemp regulated pursuant to the “Agricultural Improvement Act of 2018,” Pub.L.115-334 or the “New Jersey Hemp Farming Act,” P.L.2019, c.238 (C.4:28-6 et al.) that is sold in this State that has a concentration of total THC greater than 0.5 milligrams per serving or 2.5 milligrams per package. “Intoxicating hemp product”

shall not include a cannabinoid product that is not derived from naturally occurring biologically active chemical constituents and shall not include hemp products as defined in [the N.J. Hemp Farming Act].

L. 2024, c. 73, § 2.

61. By definition, “Intoxicating Hemp Product” and “Hemp Product” are mutually exclusive.

iv. Excluded Hemp Products

62. Additionally, the Amendments create a third category of hemp products, by implication.

63. These hemp products – which we have termed “Excluded Hemp Products” – satisfy the definition of Intoxicating Hemp Products except that they are cultivated, derived, manufactured, or sold outside of New Jersey. Any such product is neither a Hemp Product nor an Intoxicating Hemp Product under the Amendments’ revised definitions.

64. Excluded Hemp Products are not “Hemp Products” because they have a concentration of Total THC that exceeds 0.5 mg per serving or 2.5 mg per package.

65. Excluded Hemp Products are not “Intoxicating Hemp Products” because they are not both (1) cultivated, derived, or manufactured in New Jersey; and (2) sold in New Jersey.

66. Governor Murphy, in the signing statement accompanying the bill, noted that the Amendments’ definition of Intoxicating Hemp Product has “caused

significant confusion,” and he invited the Legislature to pass “clarifying legislation” to address these infirmities and other “challenges.”

F. CREAMMA and Schedule I of the Controlled Dangerous Substances Act

67. The Hemp Act Amendments also amend two other statutory schemes: the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. 24:6I-31 to -56 (“CREAMMA”), and the New Jersey Controlled Dangerous Substances Act, N.J.S.A. 24:21-1 to -56 (the “Controlled Dangerous Substances Act”).

i. CREAMMA

68. The Amendments amend CREAMMA by including “Intoxicating Hemp Products” in the definition of “Cannabis Item.” L. 2024, c. 73, §§ 2–3.

69. Under CREAMMA and the Hemp Act Amendments, Intoxicating Hemp Products are regulated similarly to Cannabis Items.

70. Because Cannabis Items that contain THC are expressly excluded from the list of Controlled Dangerous Substances, the sale or transportation of an Intoxicating Hemp Product is therefore not a criminal offense.

71. The amendments to CREAMMA do not expressly regulate or even address Excluded Hemp or Excluded Hemp Products.

ii. Schedule I of the Controlled Dangerous Substances Act

72. The Controlled Dangerous Substances Act criminalizes materials, compounds, mixtures, or preparations that contain any THC, subject to four specific exceptions: Hemp, Hemp Products, Cannabis, and Cannabis Items.

73. The Amendments redefine Hemp, Hemp Products, and Cannabis Items in the Controlled Dangerous Substances Act. L. 2024, c. 73, §§ 1–3.

74. Under the Amendments, there is no exception in Schedule I for Excluded Hemp, which is hemp with a Total THC concentration that exceeds 0.3% and a delta-9 THC concentration that does not exceed 0.3%.

75. Excluded Hemp is expressly excepted from Hemp Act Amendments' definitions of "Hemp" and "Hemp Product." Neither "Cannabis" nor "Cannabis Item" encompasses all Excluded Hemp.

76. Accordingly, under the Hemp Act Amendments, Excluded Hemp, the interstate commerce of which is protected by federal law, is a Schedule I controlled dangerous substance in New Jersey, and its possession, production, sale, transportation, or shipment from, to, or through the state is a criminal act.

77. Additionally, under the Hemp Act Amendments, Excluded Hemp Products, the interstate commerce of which is protected by federal law, are Schedule I controlled dangerous substances in New Jersey, and their possession, production, sale, transportation, or shipment in or through the state is a criminal act, because

Excluded Hemp Products fit in none of the exceptions to the criminalization of products containing THC.

G. Agency Responsibilities

78. The Hemp Act Amendments also rearrange regulatory oversight of hemp and cannabis. Prior to the Hemp Act Amendments, jurisdiction was divided among three agencies: (1) the AG to enforce criminal penalties; (2) the CRC to regulate adult-use and medical cannabis; and (3) the DOA to regulate hemp.

79. Pursuant to the Hemp Act Amendments, the AG maintains jurisdiction over criminal penalties, including businesses and individuals who sell unlicensed hemp or cannabis, the CRC has the responsibility for regulating the sale of cannabis products, including “Intoxicating Hemp Products”; and the DOA will regulate Hemp as an agricultural commodity.

80. The CRC is required to promulgate regulations related to packaging, labeling, product testing and safety standards, Total THC amounts permitted in intoxicating hemp beverages, the number of intoxicating hemp beverages that may be sold to a customer at any given time, and fees to be charged.

H. Licensing, Compliance, and Enforcement of the Amendments

81. The Hemp Act Amendments prohibit retailers of hemp products from selling or distributing Intoxicating Hemp Products unless they are licensed as Class 5 Cannabis Retailers.

82. Licensed liquor retailers and wholesalers also may apply to the CRC for a license to sell intoxicating hemp beverages.

83. Intoxicating Hemp Products are also subject to the same product-testing and labeling requirements as cannabis.

84. Retail sellers are also prohibited from selling hemp products that are not derived from “naturally occurring biologically active chemical constituents,” a term that is not defined.

85. The Amendments prohibit anyone from selling or distributing Intoxicating Hemp Products unless they are licensed by the CRC or are a liquor store approved by the CRC to sell intoxicating hemp beverages, and the product complies with CREAMMA.

86. Licensed retailers or wholesalers who currently sell Intoxicating Hemp Products are required, upon the effective date of the Amendments, to immediately stop the sale of such products and must reapply to the CRC for approval to sell Intoxicating Hemp Products.

87. The Amendments also impose sales, transfer, and user taxes on licensed wholesalers and distributors.

88. The Amendments prohibit the sale or distribution of products that contain tetrahydrocannabinols in any detectable amount to anyone under the age of

21. Plaintiffs do not challenge the validity or enforceability of that prohibition, which is found in L. 2024, c. 73, § 4(b)(2).

89. The Amendments establish civil penalties and fines for individuals and business who commit any prohibited or unlawful acts. Specifically, the Amendments impose civil penalties for: (1) selling or distributing Intoxicating Hemp Products without a license; (2) selling, offering for sale, or distributing an Intoxicating Hemp Product, a Hemp Product, or a Cannabis Item that is not derived from “naturally occurring biologically active chemical constituents”; and (3) selling or distributing a “product intended for human consumption that contains [THC] in any detectable amount to a person under 21 years of age.”

I. The Effect on Plaintiffs

90. Plaintiffs are businesses that grow, produce, process, cultivate, wholesale, distribute, transport, ship, and retail hemp and/or hemp products across the country, including within and through New Jersey.

91. The hemp that some Plaintiffs buy and sell originates from *cannabis sativa* plants grown on farms in New Jersey and other states.

92. Some Plaintiffs also transport and ship hemp and/or hemp products from, to, and through New Jersey.

93. For example, Apollo is located in Colorado and Florida and regularly transports hemp products to New Jersey and other states. These shipments travel to

and through New Jersey. Similarly, Cantrip and Cycling Frog manufacture Excluded Hemp Products out of state and ship them to, and, upon information and belief, through, New Jersey.

94. Also by way of example, CannaAid transports Excluded Hemp and Excluded Hemp Products manufactured in North Carolina to and, upon information and belief, through New Jersey.

95. Some hemp products currently sold in New Jersey are manufactured in New Jersey.

96. For example, Loki manufactures Excluded Hemp Products in New Jersey and ships them from New Jersey to destinations in New Jersey and other states. Loki manufactures these products with hemp purchased from other states. Loki also sells Intoxicating Hemp Products that it manufactures as well as Intoxicating Hemp Products and Excluded Hemp Products manufactured by others at its own retail outlets. Similarly, Legal Leaf operates five retail locations in New Jersey that sell Excluded Hemp, Intoxicating Hemp Products, and Excluded Hemp Products.

97. Cantrip also uses hemp cultivated in other states to manufacture Excluded Hemp Products that are distributed by a wholesaler network located in New Jersey. Cantrip's hemp products are regularly transported to New Jersey, and, upon information and belief, through New Jersey to other states.

98. Because the Hemp Act Amendments overhaul the market for hemp and hemp products in New Jersey by imposing strict regulations and penalties and criminalizing the possession of certain forms of hemp and hemp products, Plaintiffs will suffer immediate, irreparable financial harm, and many businesses will suffer substantial business losses and be forced to close or to lay off employees.

99. That outcome is nearly inevitable, because many of the hemp products that are cultivated, manufactured, or sold in New Jersey or transported or shipped from, to, or through New Jersey are now either (1) listed on Schedule I of the Controlled Dangerous Substances Act (Excluded Hemp Products); or (2) are derived or extracted from or are made by processing hemp that is listed on Schedule I (Excluded Hemp).

100. Additionally, because Plaintiffs are precluded by the Hemp Act Amendments from manufacturing, transporting, shipping, or selling Excluded Hemp and Excluded Hemp Products, they will also suffer substantial business losses and will be required to lay off employees or close entirely.

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

102. An actual controversy exists between Plaintiffs and Defendants regarding the constitutionality of the Hemp Act Amendments.

COUNT ONE:
PREEMPTION BY FEDERAL LAW
(EXCLUDED HEMP)

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

104. The 2018 Farm Bill standardized the definition of hemp, separated its legal status from that of marijuana, and prohibited states from recriminalizing it or interfering with its transportation and shipment through states.

105. The Hemp Act Amendments regulate hemp under a new definition of hemp.

106. The Hemp Act Amendments reclassify certain hemp as an illegal controlled substance and effectively criminalize the transportation and shipment of this kind of hemp (i.e., Excluded Hemp) from, to, and through New Jersey, even though it is legal under federal law.

107. The illegal status of Excluded Hemp under the Hemp Act Amendments exposes CannaAid and others to the risk of criminal prosecution.

108. The new meaning given to Hemp by the Hemp Act Amendments substantially differs from and conflicts with the standardized definition and legal status of hemp in the 2018 Farm Bill.

109. The Hemp Act Amendments not only impermissibly redefine “hemp,” they also impose a regulatory scheme that is inconsistent with the terms and purposes of the 2018 Farm Bill.

110. The Hemp Act Amendments are expressly preempted by federal law.

111. The Hemp Act Amendments impermissibly interfere with the field occupied by the 2018 Farm Bill.

112. The Hemp Act Amendments stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress – legalizing Hemp and Hemp Products and protecting the shipment and transportation of Hemp and Hemp Products through the states – in enacting the 2018 Farm Bill.

113. For all these reasons, the Hemp Act Amendments are preempted by federal law.

COUNT TWO:
VIOLATION OF THE DORMANT COMMERCE CLAUSE
(EXCLUDED HEMP PRODUCTS)

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

115. To be legal in New Jersey, an Intoxicating Hemp Product must have been cultivated, derived, or manufactured in New Jersey from hemp that is produced pursuant to the 2018 Farm Bill or the N.J. Hemp Farming Act (as amended) and sold in New Jersey.

116. That is, hemp products with more than 0.5 mg of Total THC per serving or more than 2.5 mg of Total THC per package may not be possessed or sold in New Jersey if they are cultivated, derived, manufactured out of state.

117. Further, hemp products with more than 0.5 mg of Total THC per serving more than 2.5 mg of Total THC per package may not be possessed in New Jersey if they were sold in another state, even if they were cultivated, derived, or manufactured in New Jersey.

118. Under the Amendments and the Controlled Substances Act, it is illegal to possess or sell Excluded Hemp Products in New Jersey.

119. The asserted benefits of the Hemp Act Amendments are an illusory attempt to impermissibly favor in-state interests over out-of-state industry because the prohibitions on certain hemp products that are deemed intoxicating do not apply equally to all hemp products that are deemed intoxicating. The only distinction between these categories is the state in which the products were cultivated, derived, manufactured, or sold.

120. The Hemp Act Amendments violate the dormant Commerce Clause because they favor in-state economic interests over those of anyone who cultivates, derives, manufactures, or sells Excluded Hemp Products outside of New Jersey and substantially burdens interstate commerce. As a result, Plaintiffs Loki, Cycling Frog,

Cantrip, Apollo, CannaAid, and Legal Leaf will suffer irreparable harm if the Amendments take effect.

COUNT THREE:
PREEMPTION BY FEDERAL LAW
(EXCLUDED HEMP PRODUCTS)

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

122. The 2018 Farm Bill standardized the legal status of hemp and prohibited states from curtailing the transport and shipment of hemp or hemp products through states.

123. The Hemp Act Amendments regulate hemp products according to definitions that differ from federal law.

124. The Hemp Act Amendments reclassify Excluded Hemp Products as illegal controlled substances and prohibit the transportation and shipment of Excluded Hemp Products from, to, and through New Jersey in direct contradiction of the 2018 Farm Bill.

125. Plaintiffs Loki, Cycling Frog, Cantrip, Apollo, and CannaAid are unable to transport or ship through New Jersey any hemp products that are illegal under the Amendments in New Jersey but otherwise legal under federal law, and the Hemp Act Amendments therefore expose Plaintiffs to criminal prosecution.

126. The Hemp Act Amendments are expressly preempted by federal law.

127. The Hemp Act Amendments impermissibly interfere with the field occupied by the 2018 Farm Bill.

128. The Hemp Act Amendments stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress – legalizing Hemp and Hemp Products and protecting the shipment and transportation of Hemp and Hemp Products through the states – in enacting the 2018 Farm Bill.

129. For all these reasons, the Hemp Act Amendments are preempted by federal law.

COUNT FOUR:
VOID FOR VAGUENESS—CRIMINAL

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

131. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution prohibits criminal enforcement of statutory and regulatory requirements that are unconstitutionally vague and do not give fair warning of their requirements.

132. The Hemp Act Amendments limit the amount of Total THC that can be contained in hemp or hemp products.

133. Read in conjunction with the Controlled Dangerous Substances Act, the Hemp Act Amendments provide that tetrahydrocannabinol-containing hemp or hemp products that are not produced in accordance with the N.J. Hemp Farming Act

(as amended) or CREAMMA (as amended) are included on the Schedule I of the controlled dangerous substance statute unless they are Hemp, Hemp Products, Cannabis, or Cannabis Items.

134. The Hemp Act Amendments appear to make it a criminal offense to possess hemp products produced or sold outside of New Jersey that exceed the Total THC level allowed by state law, but the exact contours of those prohibitions are unclear. That is true, in part, because the definitions of Hemp, Hemp Products, Cannabis, and Cannabis Items are extraordinarily complex and understanding whether a product is legal depends on the process of elimination. In addition, among other reasons why the Amendments are impermissibly confusing, the Amendments appear to lead to an absurd result, criminalizing all hemp products that are “intoxicating” while they simultaneously purport to regulate these products. That is because the Amendments make hemp products that are “intoxicating” illegal until they have been “sold” in New Jersey; and only if they were also manufactured in New Jersey.

135. The Amendments expose Plaintiffs Loki, Cycling Frog, Cantrip, Apollo, CannaAid, and Legal Leaf to criminal prosecution for possessing or selling Excluded Hemp or Excluded Hemp Products in New Jersey, but the extent to which the consequences apply to Plaintiffs is difficult even for well-trained lawyers to understand.

136. The Amendments fail to give a person of ordinary intelligence fair notice as to what contemplated conduct is forbidden and what is permitted with regard to the possession, transportation, and shipment of hemp and hemp products within New Jersey.

137. As enacted, the Hemp Act Amendments are unconstitutionally vague.

COUNT FIVE:
VOID FOR VAGUENESS—CIVIL

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

139. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution also protects against the enforcement of vague civil penalty schemes.

140. The Amendments impose civil penalties for (1) selling or distributing Intoxicating Hemp Products without a license; (2) selling, offering for sale, or distributing an Intoxicating Hemp Product, a Hemp Product, or a Cannabis Item that is not derived from “naturally occurring biologically active chemical constituents”; and (3) selling or distributing a “product intended for human consumption that contains [THC] in any detectable amount to a person under 21 years of age.” Plaintiffs do not challenge the provisions prohibiting the sale of THC products to anyone under 21.

141. The Amendments do not define “naturally occurring biologically active chemical constituents.”

142. Some forms of THC, such as delta-8 THC, occur naturally in the cannabis plant, but can also be derived from other cannabinoids from the cannabis plant. For that reason, it would be unclear to the ordinary person whether delta-8 THC is a “naturally occurring biologically active chemical constituent.”

143. Further, the definition of Intoxicating Hemp Product requires that a product be *both* cultivated, derived or manufactured in New Jersey *and* sold in New Jersey. A product that has been manufactured in New Jersey but not yet sold (to anyone) is, therefore, not an Intoxicating Hemp Product. Instead, it is an “Excluded Hemp Product” that the Amendments criminalize. For that reason, it is arguably impossible to legally manufacture an Intoxicating Hemp Product under the Amendments, unless it is already sold in New Jersey, but selling the product would require it to have been manufactured in New Jersey – a circular and absurd result that was potentially unintended. Given that the Amendments impose a complicated regulatory scheme on Intoxicating Hemp Products, one may assume that the Legislature did not intend to impose civil or criminal penalties for the possession or sale of all hemp products that are deemed intoxicating. As a result, the statutory scheme as it relates to Intoxicating Hemp Products is impermissibly vague and violates due process.

144. In addition to the definition of “Intoxicating Hemp Product,” the definitions of “Hemp Product” and “Cannabis Item” are also impermissibly

confusing, making it impractical for ordinary citizens to know if they may be subject to civil penalties. As a result, Plaintiffs Loki and Legal Leaf will suffer irreparable harm if the Amendments become effective.

145. As enacted, the Hemp Act Amendments are unconstitutionally vague.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request an order granting the following relief:

- a) Setting this matter for a prompt hearing on Plaintiffs' Order to Show Cause for Preliminary Injunction;
- b) Entering judgment against Defendants;
- c) Declaring the Hemp Act Amendments void in their entirety, except for Paragraph (2) of subsection b. of section 4, which prohibits the sale or distribution of certain products to a person under 21 years of age;
- d) Declaring all hemp and hemp products that comply with the federal definition of hemp (or derived from hemp that complies with the federal definition of hemp) as legal under federal law, which preempts New Jersey's effort to recriminalize them;
- e) Enjoining Defendants from enforcing the Hemp Act Amendments except for Paragraph (2) of subsection b. of section 4, or from taking any steps to enforce, criminalize, or prosecute the sale, possession,

manufacture, financing, distribution, or transportation of hemp that has a concentration of delta-9 THC that does not exceed 0.3 percent on a dry weight basis or products derived from such hemp;

- f) Awarding Plaintiffs the costs and fees incurred in bringing this action; and
- g) Granting Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,

SILLS CUMMIS & GROSS P.C.

By: /s/ Michael S. Carucci
Michael S. Carucci, Esq.

Dated: September 24, 2024

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

Pursuant to Local Civil Rule 11.2, the undersigned counsel for Plaintiffs Loki Beverages; North Fork Distribution, Inc. d/b/a Cycling Frog; Cantrip, Inc.; Alpha Omega Collectis LLC d/b/a Apollo Sciences; Alternative Health Distribution LLC d/b/a CannaAid; and M&A LL Holdings LLC d/b/a Legal Leaf New Jersey certify that this matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 24, 2024.

/s/ Michael S. Carucci

Michael S. Carucci, Esq.