### **ELECTRONICALLY FILED**

2025 Dec 09 PM 1:20 CLERK OF THE MCPHERSON COUNTY DISTRICT COURT CASE NUMBER: MP-2025-CV-000126 PII COMPLIANT

### IN THE DISTRICT COURT OF MCPHERSON COUNTY, KANSAS

MIKE BALLINGER, on behalf of	)	
himself and others similarly situated	)	
	)	
Plaintiff,	)	
	)	
<b>V.</b>	)	
	) Case No.	
TONY MATTIVI, in his official	)	
capacity as director of the Kansas	)	
Bureau of Investigation	)	
	)	
KRIS KOBACH, in his official	)	
capacity as Attorney General for	)	
the state of Kansas	)	
Defendants.	)	
Delenuants.	,	

### **VERIFIED PETITION FOR DAMAGES AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff Mike Ballinger ("Plaintiff") and for his Verified Petition for Damages and Injunctive Relief against Tony Mattivi, in his official capacity as Director of the Kansas Bureau of Investigation, and Kris Kobach, in his official capacity as Attorney General for the State of Kansas (collectively "Defendants"), states and alleges as follows:

### **PARTIES**

- 1. Plaintiff is a resident of Kansas and the owner and operator of The Hanging Leaf, located at 106 S Main Street, McPherson, KS 67460.
- 2. Defendant Tony Mattivi is currently the Director of the Kansas Bureau of Investigation. He is being sued in his official capacity and can be served pursuant to K.S.A. 60-304(d)(5) at 120 SW 10th Ave #2, Topeka, KS 66612.

3. Defendant Kris Kobach is currently the Attorney General for the State of Kansas. He can be served at 120 SW 10th Ave #2, Topeka, KS 66612.

### **JURISDICTION AND VENUE**

- 4. This is an action for declaratory and injunctive relief authorized by K.S.A. 60-1701, 60-1703 (declaratory relief) and K.S.A. 60-901, 60-902, and 60-903 (injunctive relief). This court has jurisdiction pursuant to K.S.A. 20-301.
- 5. Defendants Mattivi and Kobach have sufficient personal and business contacts with McPherson County, one of Kansas' most populous counties, for this Court to have personal jurisdiction over them in their official capacities.
- 6. Venue is proper before this Court under K.S.A. 60-602(2) because this action seeks an injunction regarding "act[s] done or threatened to be done" by Defendants in this district.

### **STATEMENT OF FACTS**

- 7. On October 1, 2025, Defendants Mattivi and Kobach jointly announced a statewide "marijuana enforcement operation" ("Operation") executed via search warrants conducted at vape shops and CBD dispensaries to seize products purportedly being sold illegally in the state.<sup>1</sup>
- 8. To the best of Plaintiff's knowledge and belief, the Operation resulted in the execution of at least fifteen search warrants and subsequent product seizures at stores across the state.
- 9. The Hanging Leaf, Plaintiff's store, was one of the raided properties. The search warrant authorizing such a raid is attached hereto as Exhibit A.

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<sup>&</sup>lt;sup>1</sup> <u>http://www.ag.ks.gov/Home/Components/News/News/215/1292</u> "KBI conducts statewide marijuana enforcement operation"; Published October 1, 2025 (last accessed December 4, 2025).

- 10. Authorities seized approximately \$7,000 in inventory, as well as cash, from The Hanging Leaf. The inventory seized, upon Plaintiff's knowledge and belief, contained only legally permissible amounts of THC as allowed by K.S.A. § 2-3908.
- 11. A portion of the cash seized was property of an unrelated business venture operated by Plaintiff, which authorities were made aware of, yet seized the cash anyway.
- 12. The stated goal of the Operation was to seize illegal products such as marijuana being sold under the guise of hemp or CBD products that are otherwise legal in the state of Kansas.
- 13. Because of the overly broad and wide-ranging nature of the search warrants issued as part of the Operation, and of Kansas law itself, store owners have had varying amounts of legal products seized with no recourse to recover the products or the potential profits from those products.
- 14. Several raided stores have already either temporarily or permanently closed their doors after having legal products seized.

#### **Future Raids Imminent**

- 15. In a news interview published October 27, 2025 with Melissa Brunner of Topeka news station WIBW 13, Defendant Mattivi was first asked about the alleged seizure of legal products in the Operation raids.<sup>2</sup>
- 16. Defendant Mattivi responded: "The things that they (shop owners) want to talk about that they say are controversial (products) are not what was part of the enforcement operation."
- 17. As demonstrated, and based on knowledge and belief, this statement is false, as legal products under Kansas law were seized.

<sup>&</sup>lt;sup>2</sup> https://www.wibw.com/2025/10/27/kansas-bureau-investigation-director-defends-thc-enforcement-updates-headquarters-relocation/ WIBW 13; published October 27, 2025 (last accessed December 4, 2025).

18. The interview concluded with Brunner asking Mattivi if the Operation is "ongoing".

Mattivi replied "it is", seeming to imply more raids are imminent.

### **Product Testing Concerns and Incongruity with Kansas Law**

- 19. Upon information and belief, law enforcement officials with the KBI use gas chromatography instruments to test the concentration of tetrahydrocannabinol ("THC") in seized products.
- 20. Generally, gas chromatography requires a sample to be heated to upwards of 500 degrees Fahrenheit to separate the compounds and test for the presence of THC in other words, destroying the sample for future testing.
- 21. Upon information and belief, the gas chromatography testing mechanisms employed by law enforcement do not test the level of THC, just the *presence* of the compound in the sample.
- 22. When THC is detected via gas chromatography, it merely tests positive or negative.
- 23. Kansas law defines "Delta-9 tetrahydrocannabinol concentration" as: "the combined percentage of delta-9 tetrahydrocannabinol and its optical isomers, their salts and acids, and salts of their acids, reported as free THC." K.S.A. § 2-3901(b)(2).
- 24. The same statute, at § 2-3901(b)(4), allows "hemp products" to contain a tetrahydrocannabinol concentration of "not more than 0.3%.".
- 25. In summary, THC (or delta-9 tetrahydrocannabinol) remains illegal in the state of Kansas. Yet minor concentrations of the compound are still allowed in certain products, even though Kansas law enforcement offices do not test for the concentration of the compound, just its presence.

- 26. Further, even when a product may contain a legally allowed concentration of delta-9 tetrahydrocannabinol, it will still return a technically illegal test under Kansas' testing methods.
- 27. This incongruity in the law and in testing mechanisms has created a situation in which wide-ranging search warrants have resulted in legal products and cash being seized from Kansas businesses to their severe detriment.

# COUNT I Declaratory Judgment (K.S.A. § 60-1703)

- 28. Plaintiff incorporates by reference its allegations set forth in paragraphs 1 through 27 of this Verified Petition as if fully set forth herein.
- 29. Plaintiff, as well as those similarly situated and which could be impacted by future raids within the KBI's ongoing operation, have had their rights violated through arbitrary enforcement.
- 30. This enforcement can and has chilled the exercise of otherwise protected activities by similar business owners across the state.
- 31. Kansas courts are empowered to issue declaratory judgments to resolve legal uncertainties and protect individuals from ongoing and/or imminent harm of unconstitutional laws.

WHEREFORE, Plaintiff prays that this Court issue a declaratory judgment that K.S.A. § 2-3901(b)(2) and (b)(4) are unconstitutionally vague. Further, Plaintiff prays for additional relief pursuant to K.S.A. § 60-1703 that this Court order all law enforcement agencies who seized products, cash or other proceeds, or other property from raided businesses immediately return those items.

# <u>COUNT II</u> Injunctive Relief (K.S.A. § 60-901)

- 32. Plaintiff incorporates by reference its allegations set forth in paragraphs 1 through 31 of this Verified Petition as if fully set forth herein.
- 33. Plaintiff and others similarly situated across the state of Kansas have had legal products seized as part of an ongoing KBI operation purporting to crack down on the sale of illicit THC products.
- 34. These seizures are directly attributable to an incongruity in Kansas law and a lack of adequate testing mechanisms maintained by Kansas law enforcement offices.
- 35. In the absence of injunctive relief prohibiting Defendants from continuing to execute search warrants and raid stores across the state of Kansas, Plaintiffs and others in the CBD/hemp industry will suffer irreparable harm, including but not limited to: loss of customers and clients, loss of revenue, and potential closure of the business(es) itself.
- 36. Plaintiffs have no other adequate remedy at law.
- 37. The potential harm to Plaintiffs if Defendants are not enjoined from carrying out future raids is far greater than any harm Defendants may suffer if injunctive relief is not granted.
- 38. Plaintiffs are likely to prevail on the merits of their cause of action against Defendants.
- 39. Public interest weighs in favor of granting injunctive relief.

WHEREFORE, Plaintiff, on behalf of himself and others similarly situated, prays for judgment in its favor against Defendants Tony Mattivi and Kris Kobach, and that the Court grant it the following relief:

- a) Temporary, preliminary, and permanent injunctive relief providing:
  - Defendants shall be enjoined from executing out future search warrants/raids statewide unless and until the law is clarified to account for legal products containing below 0.3% THC.

- ii. Defendants, through the local law enforcement agencies which carried out the raids, shall be compelled to immediately return seized product, moneys, and other materials to the appropriate business owners.
- b) A permanent injunction enjoining and restraining Defendants from the conduct set forth in Paragraph (a) above;
- c) Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

## **GRISSOM MILLER LAW FIRM, LLC**

/s/ Jake Miller

Barry R. Grissom, KS #10866 Jacob "Jake" Miller, KS #28337 1600 Genessee Street, Ste. 460 Kansas City, MO 64102 T – 816-336-1213 F – 816-384-1623 barry@grissommiller.com jake@grissommiller.com

Attorneys for Plaintiff

# **VERIFICATION**

I verify under penalty of perjury under the laws of the state of Kansas that the foregoing Verified Complaint is true and correct.

Executed on: December 8, 2025

Mike Ballinger

MS

# Exhibit A

# IN THE DISTRICT COURT OF MCPHERSON COUNTY, KANSAS

IN THE MATTER OF THE APPLICATION FOR A SEARCH WARRANT FOR:

The Hanging Leaf located at 106 S Main Street, McPherson, McPherson County, Kansas. The Shop is a single-story shop with the front door facing east. The Shop is a Marble in color with Maroon trim. The number 106 is on the front of the shop. The door is glass with Maroon trim. This Shop is being rented by Michael Ballinger; this was also verified by McPherson BPU.

# SEARCH WARRANT

State of Kansas, County of McPherson, ss:

THE STATE OF KANSAS TO ANY SHERIFF, LAW ENFORCEMENT OFFICER, or any Peace Officer of the State of Kansas:

WHEREAS, an Affidavit and Search Warrant has been submitted to me in writing by Detective van der Hoeven and said Affidavit being hereby incorporated by reference, and having evidence under oath before me from which I find there is probable cause to believe the following:

- 1. The crime Unlawful Hemp Products, K.S.A. 2-3908
- 2. Unlawful Cultivation or distribution of a controlled substance, K.S.A. 21-5705
- 3. Violations of the Controlled Substances Act
- 4. The evidence, fruits and/or instrumentalities of a crime to be seized are described with particularity as:

Any controlled substance; paraphernalia commonly associated with storage, use, or packaging of controlled substances, which may consist of but is not limited to baggies, seals, weighing devices, any device to facilitate the injection or use of controlled substances; any means of bookkeeping related to the storage, use, or distribution of controlled substances; firearms; any electronic device which may be used to facilitate the sale or purchase of controlled substances, to include any data and/or metadata; records; latent fingerprints; identification documents and any other indicator of occupancy/ownership of the business located at 106 S Main St., McPherson, McPherson County, Kansas; any other evidence of the crimes of possession of a controlled substance and possession of paraphernalia;

5. That said items will be found at, in, or upon the following described person, place, thing, electronic device, or means of conveyance, to-wit:

The Hanging Leaf located at 106 S Main Street, McPherson, McPherson County, Kansas. The Shop is a single-story shop with the front door facing east. The Shop is a Marble in color with Maroon trim. The number 106 is on the front of the shop. The door is glass with Maroon trim. This Shop is being rented by Michael Ballinger; this was also verified by McPherson BPU.

YOU ARE THEREFORE COMMANDED forthwith to search the place, thing or means of conveyance herein within Two-Hundred and Forty (240) hours of the date signed for such items holding them to be dealt with according to law and make do return of this warrant within ten (10) days.

Issued this 30<sup>TH</sup> day of September 2025 at 12:37 o'clock P m.

Judge of the District Court

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Officer Serving Warrant	ITEM SEIZED REPORT Department		Page 3 of 5
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Officer Serving Warrant	SEIZED REPORT  Department	Page of 9
Officer Recording	20.25	7-1413
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Capting Warrant	TEM SEIZED REPORT Department	Page 2 of 8
Officer Scrains	T/7 Department	
Officer Recording	Department	
Defendant/Suspect Hanging leaf	Address 106 SMc.'n	st
Date of Search 10-1-25 SS#	DOB	
Time of Search 1009 Time Exited	d	
Officers Present	Department(s) MP 7 K 13 I	

ITEM SEIZED	LOCATION OF ITEM SEIZED	TIME	OFFICER
7) Kayo Krispy bites 250			
16 1)-9 ctital treats 1) 30ct. 10 14 6 17.9 THC	2 Glass case 3rd shelf	-	
wis The Housing heaf	2x Glass case 3rd shelf		,
	2 Cast 31d Shelf		
2-97 HI GUHIMICS 500 011	24 Glass case 3, 2 Shelf		
61 My Ser Lass 17 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	22 6/000		
4) 3011/ 120110 1110 1-0	2 Giass Case 311 Shelf		
16 (B) brown Lors	2 as Glass case 312 shelf		3
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01 1 - 1	(1.5.		
Photos only	Glass case 3 paraphernalis		
	24		14
Vaysa of a bottle 25 me	Ma Glass case 1st shelf		
inist top cont. ul possible			(E)
on treate	46 Glass rase 1st skelf		
1) The Hanging Leaf 30rt	4. 11		
Holly werd 129 THC/(131)	111 Case Case 154 Shelt		
quinin'15 251t	4d Glass case lot shelf Rside		
	4. Class case 1st shelf B side		
Our gummy 30 d bittle 7) Naysa 20 d bettles (BD/	1-0411		
136 Soft gels	4 Glass case 1st shelf R. side		
136 30ft gels 3) The Hanging Leaf 113 D gamming n class iars wise ct.	D.	1	
n glass jars mise ct.	12. 211.	1	
offles toungur decies	4h Glass case 2nd Shalf Asid	liquid tota	
s) Naysa 600 MG bottle (Bl	D .	60	
S) Budler Hamplo (1317	1, 51035 (635 Ind#Shall 19. Side	1	
oil drows	4; Glass case Ind shelf A side	lieu d + de	
oil drops  The Hanging Leaf 30et bothe	_	74.6 146	
1 gummies 11/11010	Son Jarvice deck 150 Shelf		
Newadays THC infused	56 Survice desk Ind Shelf		
Drinkin' Buds 129 THG	I .		
CBD beverage rans	De Service deste and shell	I quid tote	
Blue glass ( What ainer Gon.	5d Some lock and shelf	10	
Hy 3.5 6 THC-P VAR	THE STANGE OF TH	r	
, 5 = 1	52 Service desk And shelf	batteryteto	