IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HANNAH LEDBETTER, Individually and On Behalf of All Others Similarly Situated,
PLAINTIFF(S)

v. **NO. 1:24-cv-00538-SDG**

CLOUD 9 ONLINE SMOKE & VAPE, LLC, GREEN RUSH, LLC., DBA XHALE CITY, THESY, LLC., DBA ELEMENT VAPE, XHALE CITY FRANCHISE COMPANY LLC, STIIIZY IP, LLC, L&K DISTRIBUTION, COOKIES CREATIVE CONSULTING & PROMOTIONS, INC., SAVAGE ENTERPRISES, SAVAGE ELIQUID CORPORATION, DELTA EXTRAX, MATT WINTERS, MATTHEW MONTESANO, JON DOUGHERTY, COLUMBIA LABORATORIES, ENCORE LABS, LLC, PHARMLABS SD, PUR ISO LABS LLC AND JOHN DOES 1-1000.,
DEFENDANTS.

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(6), 9(b), AND 12(b)(2)

COMES NOW, Plaintiff, and files this Response to Defendants' Joint Motion to Dismiss Plaintiff's First Amended Complaint, contending that Defendants' Motion is without merit and should be denied in full, stating as follows:

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INTRODUCTION

Defendants' Motion to Dismiss mischaracterizes Plaintiff's First Amended Complaint (FAC) and relies on flawed interpretations of law and facts. Contrary to Defendants' assertions, the FAC presents a well-structured, detailed account of an unlawful scheme involving multiple Defendants. The FAC outlines a complex enterprise designed to manufacture, distribute, test, and sell Delta-8 THC products falsely labeled with illegal levels of Delta-9 THC. The FAC outlines a complex enterprise designed to sell marijuana[1]. This scheme goes beyond false advertising and represents a deliberate attempt by the Manufacturing Defendants, Lab Defendants, and Retailer Defendants to defraud consumers and evade federal regulations. Defendants' motion is a procedural maneuver to avoid accountability for this misconduct.

The FAC provides detailed allegations against each defendant. Manufacturer Defendants, such as Stiiizy LLC, Savage Enterprises, L&K Distribution, and Cookies Creative Consulting, knowingly produced Delta-8 products containing illegal levels of Delta-9 THC, opting not to remove excess Delta-9 THC to save costs (FAC, ¶¶ 64-65, 143-151). Lab Defendants, including Columbia Laboratories, Encore Labs, and Pharmlabs SD, knowingly issued false Certificates of Analysis

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[1] In this context, marijuana is defined as any product that contains more than .3% D9 THC on a dry weight basis. Marijuana is currently a controlled substance that is illegal under both federal law and Georgia law, when sold over the counter.

(COAs) that misrepresented THC content (FAC, ¶¶ 70-74, 154, 156-158). Retailer Defendants, such as Cloud 9, Element Vape, and Xhale City, sold these illegal products knowing or having reason to know they were mislabeled. (FAC, ¶¶ 51-52, 149-150). Individual defendants like Christopher Wheeler, Matt Winters, and Jon Dougherty directed the production and sale of these non-compliant products, forming an "enterprise" aimed at profiting from the sale of illegal THC products (FAC, ¶¶ 22-24, 165-167).

The FAC also alleges a conspiracy to continue selling marijuana using fraudulent COAs and labeling, as seen in *Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865 (10th Cir. 2017). Defendants' argument that the FAC constitutes a "shotgun pleading" is unsupported. In *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313 (11th Cir. 2015), the court identified four types of shotgun pleadings, none of which apply to Plaintiff's FAC. The FAC is well-organized, clearly delineating the roles of each Defendant group in the unlawful scheme (FAC, ¶¶ 2-4). This organization refutes the claim that Defendants cannot adequately respond.

Defendants' effort to dismiss the RICO claims overlooks the factual allegations supporting the existence of an enterprise and a pattern of racketeering. The Eleventh Circuit's decision in *Jackson v. BellSouth Telecommunications*, 372 F.3d 1250 (11th Cir. 2004), established that a RICO claim requires: (1) an enterprise, (2) a pattern of racketeering, and (3) a nexus between illegal conduct and the alleged

harm. Plaintiff's FAC satisfies these elements by detailing how Defendants coordinated their activities to issue false COAs and sell marijuana fraudulently (FAC, ¶¶ 127-195). The FAC also meets the heightened pleading standard of Rule 9(b) by providing specific details of the "who, what, when, where, and how" of Defendants' fraudulent conduct.

Moreover, the FAC is based on a robust legal foundation, supported by both federal and Georgia law. Defendants fail to grasp the seriousness of Plaintiff's claims, grounded in specific factual allegations linking Defendants' unlawful activities to the harm suffered by Plaintiff and consumers. The enterprise's actions demonstrate both closed-ended continuity (repeated illegal conduct) and open-ended continuity (ongoing threat of criminal activity) (FAC, ¶¶ 155, 165-167).

Defendants' Motion to Dismiss lacks merit and should be denied.

FACTUAL BACKGROUND

I. Hemp Testing Regulation and Testing

In their Joint Motion to Dismiss, Defendants claim that testing of hemp products is heavily regulated under federal and state laws, particularly focusing on Delta-9 THC testing on a "dry weight basis" (Motion, pp. 13-15). They assert that some variability in the testing process allows their products to comply with these regulations. However, this argument fails to address the compliance of specific

products. Simply put, as the regulations leave no room for non-compliance, any product that contains more than 0.3% Delta-9 THC is marijuana.

Federal and state regulations require that Delta-9 THC content in hemp not exceed 0.3%, regardless of its form. This standard is codified in the 2018 Farm Bill, 7 *C.F.R. §* 990.1, and incorporated into state laws such as *Ga. Comp. R. & Regs. r*. 40-32-1-.02(1). Products exceeding this threshold are classified as marijuana under the Controlled Substances Act, 21 *U.S.C.* §§ 801 et seq. Defendants emphasize rigorous testing, but federal law defines any product exceeding 0.3% THC as marijuana, subject to criminal and regulatory penalties.

Testing involves two methods: (1) dry weight for solids or plant-based products, and (2) volume-based testing for liquids, such as vape oils. Defendants heavily rely on dry weight testing (7 *C.F.R.* § 990.1) but fail to acknowledge the precision required by High-Performance Liquid Chromatography (HPLC) or Gas Chromatography (GC). These methods ensure that THC levels are accurately assessed. Federal law permits some variability due to environmental factors, but non-compliance with the 0.3% threshold is not excused.

Federal guidelines, including USDA's Sampling Guidelines for Hemp and Laboratory Testing Guidelines, outline sampling, drying, and testing procedures. In dry weight testing, drying removes moisture, ensuring THC concentration is based solely on cannabinoids. Liquid-based products are tested by volume, with the same

0.3% limit applied. Defendants also cite ISO/IEC 17025 accreditation for labs in California, but this does not absolve them from compliance if products exceed the legal THC limit. (Motion, p. 14). Even ISO-certified labs must comply with federal law.

Defendants reference regulations, including 3 *C.C.R.* § 4943(a) and Ga. Comp. R. & Regs. r. 40-32-2-.06, which mandate the destruction of any hemp product exceeding 0.3% Delta-9 THC. This requirement leaves no margin for products exceeding the legal threshold. Defendants' claim of "sampling variability" is irrelevant. USDA Sampling Guidelines ensure that plant variability is accounted for, requiring samples from specific parts of the plant, ensuring compliance despite natural variations.

The Agricultural Improvement Act of 2018, *Pub. L. No.* 115-334, § 12619, and the Controlled Substances Act, 21 *U.S.C.* § 802(16)(B), clarify that products exceeding 0.3% THC are classified as marijuana. *AK Futures LLC v. Boyd St. Distro, LLC*, 35 F.4th 682, 690 (9th Cir. 2022) and *Hemp Indus. Ass'n v. Drug Enf't Admin.*, 36 F.4th 278, 282 & n.3 (D.C. Cir. 2022) further confirm this distinction. Defendants' argument that variability in testing permits deviations beyond the legal limit fails to account for the precise testing protocols that ensure compliance. Substantial deviations beyond the 0.3% threshold result in classification as marijuana.

II. Plaintiff Adequately Alleges the General Claims in the Amended Complaint.

Defendants argue that Plaintiff's general allegations fail to meet the required standard, but this argument is flawed. The First Amended Complaint (FAC) is detailed and specific regarding Defendants' conduct, participation in a fraudulent scheme, and the resulting harm. (FAC, ¶¶ 127-195). The FAC explains how Defendants misrepresented the legality of Delta-8 THC products by issuing fraudulent Certificates of Analysis (COAs) that falsely certified compliance with federal and state THC limits. Independent testing revealed that Delta-9 THC levels exceeded legal limits, demonstrating the fraud. (*Id.*, ¶ 43; Declaration of Josh Swider, Exs. 1-4; Declaration of Sarah Nicholls, Exs. 1-6)[2]. Defendants acted as drug dealers hiding behind false COAs.

The FAC outlines a coordinated scheme between the Manufacturing, Lab, and Retail Defendants to sell marijuana. (FAC, ¶¶ 127-195). Manufacturing Defendants, with Lab Defendants, knowingly issued false COAs, which Retail Defendants used to sell marijuana. These allegations meet the pleading standards under Rule 8 of the Federal Rules of Civil Procedure. (Id.)

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[2] Plaintiff objects to consideration of matters outside the pleadings. Should the Court convert this matter into a Rule 56 motion, Plaintiff attached these Declarations and requests leave to amend the Complaint to add this factual detail, should the Court find it appropriate.

In *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), the Supreme Court held that well-pleaded factual allegations must be accepted as true at the motion to dismiss stage. Plaintiff's FAC does this by detailing facts, including independent testing results. Defendants' claim that these allegations are conclusory is inaccurate. The Eleventh Circuit reinforced this principle in *Speaker v. U.S. Dep't of Health & Human Servs. CDC*, 623 F.3d 1371, 1382 (11th Cir. 2010), holding that a complaint must be read as a whole and assessed for plausibility. Plaintiff's allegations present more than a possibility of misconduct, as they are based on real events, including fraudulent COAs and subsequent independent testing. (FAC, ¶¶ 56, 89-103, 134-35, 156-160).

LEGAL STANDARD

When considering a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the court must determine whether the complaint "states a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when the plaintiff pleads factual content that allows the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Iqbal*, 556 U.S. at 678. While the court is not required to accept legal conclusions, it must accept as true all factual allegations in the complaint and draw reasonable inferences in favor of the plaintiff. *Twombly*, 550 U.S. at 555-56. To survive a motion to dismiss,

a complaint need not include "detailed factual allegations," but it must offer more than "labels and conclusions." *Twombly*, 550 U.S. at 555. A "formulaic recitation of the elements of a cause of action" is insufficient. *Id.* Instead, the plaintiff must allege enough facts to nudge the claim from "conceivable to plausible." *Twombly*, 550 U.S. at 570. For fraud claims, Rule 9(b) of the Federal Rules of Civil Procedure imposes a heightened pleading standard, requiring the party to "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b). Rule 9(b) allows flexibility when facts are within the defendant's control. *Durham v. Business Mgmt. Assocs.*, 847 F.2d 1505, 1511 (11th Cir. 1988).

Rule 9(b) also allows "[m]alice, intent, knowledge, and other conditions of a person's mind" to be alleged generally. Thus, it "does not require a plaintiff to allege specific facts related to the defendant's state of mind when the allegedly fraudulent statements [or omissions] were made." *Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1237 (11th Cir. 2008). Instead, the plaintiff must plead "the who, what, when, where, and how" of the alleged fraud and generally allege intent. *Id.* Fraud claims, however, must still be plausible. *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010).

The plaintiff must allege "who, what, when, where, and how" the fraud occurred, ensuring that the defendant is sufficiently informed of the misconduct. *Ziemba v. Cascade Int'l, Inc.*, 256 F.3d 1194, 1202 (11th Cir. 2001). For claims

involving negligent misrepresentation, Rule 9(b)'s heightened pleading standards do not apply. *In re Equifax, Inc. Customer Data Sec. Breach Litig.*, 371 F. Supp. 3d 1150, 1177 (N.D. Ga. 2019) ("the heightened pleading standards of Rule 9(b) do not apply to claims of negligent misrepresentation"); *Parker v. Perdue Farms, Inc.*, 2022 U.S. Dist. LEXIS 222730 (M.D. Ga. Dec. 8, 2022).

RICO claims require the plaintiff to allege a pattern of racketeering activity, defined by at least two predicate acts. 18 U.S.C. § 1961(5). The Eleventh Circuit requires that these predicate acts be pleaded with specificity, particularly when fraud is alleged as the predicate offense. *Jackson v. BellSouth Telecommunications*, 372 F.3d 1250, 1264 (11th Cir. 2004). Plaintiff also alleges violations of the Controlled Substances Act (CSA) related to the sale of marijuana. The complaint must further allege the existence of an enterprise, either as a legal entity or an association-in-fact, and show that the defendant participated in its operation or management. *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993). To show a "pattern of racketeering activity," the plaintiff must allege both closed-ended and open-ended continuity. *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989).

Defendants argue that Plaintiff has not alleged closed-ended or open-ended continuity, both of which are required to establish a pattern of racketeering under federal RICO. A successful RICO claim must establish both a RICO enterprise and a pattern of racketeering activity. *Jackson*, 372 F.3d at 1264. To allege a pattern of

racketeering activity, plaintiffs must show that (1) the defendants committed two or more predicate acts within a ten-year span; (2) the predicate acts are related; and (3) the predicate acts demonstrate criminal conduct of a continuing nature. *Id.* (*citing H.J. Inc.*, 492 U.S. at 239).

The Eleventh Circuit has emphasized that a RICO enterprise must be more than a loosely connected group of individuals conducting routine business activities. The enterprise must have a common purpose and structured coordination, which Plaintiff has alleged through detailed descriptions of Defendants' efforts to distribute marijuana using fraudulent COAs. *Cisneros v. Petland, Inc.*, 972 F.3d 1204, 1211 (11th Cir. 2020). Georgia's RICO statute similarly requires showing a pattern of racketeering activity and an enterprise. *Wylie v. Denton*, 323 Ga. App. 161, 746 S.E.2d 689 (2013).

In open-ended cases, plaintiffs may establish their burden by showing that the racketeering acts pose a specific threat of repetition or that the acts are part of the entity's regular business. *Jackson*, 372 F.3d at 1265. When evaluating RICO claims, courts recognize RICO's broad remedial purpose. The statute is meant to target organized, long-term criminal activity. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498 (1985). Dismissal is appropriate only when it is clear that no facts would support the plaintiff's claim. *Williams v. Mohawk Indus.*, 465 F.3d 1277, 1282 (11th Cir. 2006).

ARGUMENT

I. Plaintiff's Amended Complaint is Not an Improper Shotgun Pleading

Defendants argue that the FAC should be dismissed as an improper "shotgun pleading." This argument is unfounded. Plaintiff's FAC meets the necessary legal requirements and clearly lays out claims, allegations, and facts in a way that provides Defendants with more than sufficient notice of the claims being asserted against them. Defendants incorrectly categorize the FAC as a shotgun pleading, ignoring the established standards for such a claim in the Eleventh Circuit.

A shotgun pleading is generally characterized by vague, conclusory allegations or improper incorporation of irrelevant allegations across multiple counts. However, courts in the Eleventh Circuit have identified specific criteria for what constitutes a shotgun pleading. In *Weiland v. Palm Beach County Sheriff's Office*, 792 F.3d 1313, 1321–23 (11th Cir. 2015), the court outlined four types of shotgun pleadings: (1) a complaint that contains multiple counts, where each count adopts the allegations of all preceding counts, (2) a complaint that is replete with conclusory, vague, and immaterial facts not connected to any particular cause of action, (3) a complaint that fails to separate into a different count each cause of action or claim for relief, and (4) a complaint that asserts multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions.

The FAC in this case does not fall under any of these categories. It does not adopt all preceding counts into each subsequent count indiscriminately; rather, it incorporates only those allegations that are relevant to the particular claim. Courts have recognized that some degree of incorporation by reference is appropriate and does not automatically create a shotgun pleading. For instance, in *Magluta v. Samples*, 256 F.3d 1282 (11th Cir. 2001), the court found that a complaint incorporating every preceding paragraph into each successive count—without differentiation—could confuse the parties and the court. However, Plaintiff's FAC does not present such confusion. Instead, it carefully delineates the facts relevant to each claim and properly identifies which Defendants are implicated in each count.

The Eleventh Circuit has also held that a shotgun pleading claim is improper when the complaint gives sufficient notice of the claims being asserted and the factual basis for those claims. In *Paylor v. Hartford Fire Ins. Co.*, 748 F.3d 1117, 1126 (11th Cir. 2014), the court stressed that the primary concern with shotgun pleadings is whether they confuse the issues, making it difficult for defendants to respond. In this case, the FAC lays out detailed allegations and connects each group of Defendants—Manufacturers, Labs, and Retailers—to the specific acts of misconduct in question. The complaint is structured to provide clarity, not confusion.

Moreover, Plaintiff's FAC does not impermissibly lump together all Defendants. Rather, it provides specific allegations as to how the Manufacturing

Defendants, Lab Defendants, and Retail Defendants each contributed to the fraudulent scheme. In *Barmapov v. Amuial*, 986 F.3d 1321, 1326 (11th Cir. 2021), the court dismissed a shotgun pleading where the plaintiffs failed to distinguish among various defendants or specify which defendants were responsible for which actions. Plaintiff's FAC avoids this pitfall by clearly distinguishing the roles and actions of each group of Defendants. The roles of the different Defendants are outlined in detail, including the fraudulent COAs issued by the Lab Defendants and the misrepresentations made by the Retail Defendants, ensuring that each group is adequately informed of the allegations against them.

In addition to Eleventh Circuit precedent, Georgia state courts have similarly held that a complaint is not a shotgun pleading if it provides the necessary detail and specificity to inform defendants of the claims against them. In *Fowler v. DeKalb County*, 277 Ga. App. 679, 683 (2006), the court emphasized that the function of notice pleading is to ensure that the complaint provides sufficient detail so that the defendant can adequately respond. Plaintiff's FAC clearly meets this standard, outlining with specificity the fraudulent acts carried out by each Defendant and the resulting harm caused to Plaintiff.

Moreover, the Eleventh Circuit in *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291 (11th Cir. 2018), emphasized that a district court should generally give a plaintiff at least one opportunity to amend a shotgun pleading before dismissing the

case with prejudice. Here, the FAC is neither vague nor confusing, but even if the court finds any issues with the structure, the appropriate remedy would be amendment, not dismissal.

A. Shotgun Pleading as a Procedural Tactic

Defendants' attempt to frame the FAC as a shotgun pleading is nothing more than a procedural tactic to avoid addressing the serious allegations against them. The Eleventh Circuit has consistently held that shotgun pleading claims should not be used as a method to dismiss well-organized complaints. As established in *Barnes v. CitiMortgage, Inc.*, 681 F. App'x 758, 761 (11th Cir. 2017), dismissal is only appropriate when a complaint is so deficient that it prevents defendants from understanding the nature of the claims against them. Plaintiff's FAC is far from such a deficient pleading. It is a well-structured and thorough complaint that offers specific factual allegations regarding Defendants' conduct.

Furthermore, *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1359 n.9 (11th Cir. 1997), underscores that courts should work to clarify any perceived issues in the pleading rather than hastily resorting to dismissal. Even if Defendants were confused by certain aspects of the FAC, their proper recourse would have been to seek clarification through a motion for a more definite statement under Rule 12(e) of the Federal Rules of Civil Procedure, rather than moving for dismissal on the grounds of shotgun pleading.

II. Plaintiff's RICO Claims Exceed the Pleading Requirements (RICO Counts I-III)

Plaintiff's First Amended Complaint (FAC) sets forth a detailed and compelling scheme in which Defendants—including the Manufacturing, Lab, and Retailer Defendants—conspired to issue fraudulent Certificates of Analysis (COAs) to market and sell marijuana, defined under federal law as any product with Delta-9 THC concentrations exceeding 0.3% (FAC, ¶¶ 127-195). Under the Controlled Substances Act (CSA), 21 U.S.C. § 841 et seq., it is unlawful to manufacture, distribute, or dispense controlled substances, including marijuana, which is classified as any cannabis product containing more than 0.3% Delta-9 THC on a dry weight basis, per 21 U.S.C. § 802(16)(B). The CSA classifies such products as Schedule I controlled substances, making their production, distribution, and sale subject to strict federal prohibitions.

Although the Agriculture Improvement Act of 2018 (the "2018 Farm Bill"), Pub. L. No. 115-334, 132 Stat. 4490, removed hemp from the definition of marijuana under the CSA, this exemption applies only to products containing no more than 0.3% Delta-9 THC on a dry weight basis. Any product exceeding this threshold is classified as marijuana under federal law and remains subject to the CSA's prohibitions, regardless of state-level legislation.

Plaintiff alleges that Defendants engaged in a coordinated scheme to manufacture, distribute, and sell products classified as marijuana under the CSA

while falsely certifying these products as compliant with hemp regulations (FAC, ¶¶ 127-195). The scheme involved issuing and disseminating fraudulent COAs to mislead consumers and evade federal law, establishing a pattern of predicate acts that satisfy both federal and Georgia RICO requirements. Under RICO, 18 U.S.C. § 1962, it is unlawful to conduct the affairs of an enterprise through a pattern of racketeering activity, which includes violations of federal drug laws like the CSA, and acts of mail and wire fraud under 18 U.S.C. §§ 1341 and 1343. Similarly, Georgia's RICO statute, O.C.G.A. § 16-14-4, prohibits any person from participating in a pattern of racketeering activity through an enterprise.

To meet the elements of a RICO claim, Plaintiff must allege that Defendants engaged in a pattern of racketeering activity involving at least two predicate acts, continuity in illegal conduct, and participation in a RICO enterprise as defined by 18 U.S.C. § 1961(4) and O.C.G.A. § 16-14-3(3). Plaintiff's FAC presents these allegations in detail, outlining how Defendants engaged in a fraudulent scheme to sell marijuana by falsely certifying their products as compliant with hemp regulations through fraudulent COAs (FAC, ¶¶ 127-195). The FAC demonstrates that Defendants engaged in a pattern of illegal conduct by misrepresenting the THC content of their products and disseminating false information through mail and internet communications.

Moreover, the FAC establishes both closed-ended continuity (through repeated illegal conduct over time) and open-ended continuity (posing an ongoing threat to regulatory compliance and consumer safety) (FAC, ¶¶ 127-195). Defendants' repeated issuance of false COAs and their continuing efforts to mislead consumers underscore their intent to evade federal law. Plaintiff's allegations not only satisfy the elements of a RICO claim, but they also illustrate the existence of a RICO enterprise, multiple predicate acts, and a pattern of continuity in Defendants' illegal activities, all supported by the relevant statutory framework (FAC, ¶¶ 127-195).

The FAC specifically alleges that Defendants engaged in racketeering activity by manufacturing, testing, and selling Delta-8 products that contained illegal levels of Delta-9 THC, rendering them controlled substances under the CSA. Defendants misrepresented the THC content on product labels and in COAs, falsely claiming compliance with federal law (FAC, ¶¶ 127-132, 143-146). Furthermore, Defendants are accused of conspiring to deceive consumers by engaging in "lab-shopping," where manufacturers sought out labs willing to issue fraudulent COAs that understated the Delta-9 THC content (FAC, ¶¶ 65, 152-156). This pattern of deception was allegedly intentional and formed the basis of their racketeering activities.

Defendants further violated RICO by utilizing mail, email, and the internet to facilitate the sale of products containing illegal Delta-9 THC concentrations. This activity involved interstate commerce, wire fraud, and the fraudulent certifications of labs, all of which serve as predicate violations under RICO (FAC, ¶¶ 143-147, 162-164). The FAC describes an enterprise consisting of distillate makers, manufacturers, labs, and retailers that collaborated to produce and sell these illegal vape products. Defendants are alleged to have engaged in a continuous series of violations of the CSA and other federal laws, financially benefiting from the sale of non-compliant products (FAC, ¶¶ 149-167).

Plaintiff also claims economic injury from purchasing products believed to be legal but which in fact contained illegal levels of Delta-9 THC. As a direct result of Defendants' RICO violations, Plaintiff and the class suffered financial loss and legal risk for possessing controlled substances (FAC, ¶¶ 136-137, 168-172). The damages caused by Defendants' racketeering activity underscore the harm suffered by Plaintiff and the class, supporting their claims for relief under federal and Georgia RICO statutes.

Plaintiff's FAC adequately pleads a RICO enterprise involving multiple predicate acts of fraud, violations of the CSA, and continuous racketeering activities. Defendants' coordinated efforts to deceive consumers through false labeling and fraudulent COAs form the basis of the RICO claims. Plaintiff's economic injuries,

caused by reliance on Defendants' misrepresentations, further satisfy the statutory requirements for damages under RICO. Therefore, Plaintiff's claims exceed the pleading requirements and should not be dismissed.

A. Predicate Acts

To satisfy RICO's requirement of a "pattern of racketeering activity," a plaintiff must demonstrate that defendants engaged in at least two predicate acts as enumerated in 18 U.S.C. § 1961(1) and O.C.G.A. § 16-14-3(9)(A). Violations of federal drug laws, including the Controlled Substances Act (CSA), are recognized as predicate acts under both federal and Georgia RICO statutes. Defendants' repeated violations of § 841 of the CSA—which prohibits the manufacture, distribution, or sale of controlled substances like marijuana—form the foundation of Plaintiff's RICO claims (FAC, ¶¶ 127-195).

Courts have consistently held that CSA violations can serve as valid predicate acts under RICO. In *United States v. Turkette*, 452 U.S. 576, 583 (1981), the Supreme Court established that criminal enterprises engaged in drug trafficking qualify as enterprises under RICO. Similarly, in *United States v. Williams*, 631 F.3d 1299 (11th Cir. 2011), the Eleventh Circuit confirmed that CSA violations related to the unlawful manufacture and sale of marijuana qualify as predicate acts. The Tenth Circuit, in *Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865, 884-86 (10th Cir. 2017), further reinforced this view, holding that a RICO enterprise can be established

even if the defendants operated under state laws allowing marijuana sales, as long as the conduct violated federal law.

This reasoning directly applies here, as Defendants' conduct violates the CSA despite any purported state law compliance with hemp regulations. Plaintiff's FAC alleges that Defendants knowingly manufactured and sold products with Delta-9 THC levels exceeding the 0.3% threshold, effectively classifying them as illegal marijuana under the CSA (FAC, ¶¶ 127-195). Independent testing, as described in the FAC, demonstrates that Defendants' products are classified as marijuana under federal law, making their actions comparable to those in *Williams* and *Safe Streets Alliance* (FAC, ¶¶ 127-195). These CSA violations, based on clear federal definitions and standards, provide the primary predicate acts necessary to establish a pattern of racketeering activity under RICO (FAC, ¶¶ 127-195).

In addition to CSA violations, the FAC alleges that Defendants used interstate communications—including telephone, email, and the internet—to facilitate the sale of illegal products with false labeling. Defendants are accused of transmitting fraudulent COAs and making misrepresentations about the THC content of the products over the internet, which constitutes wire fraud under 18 U.S.C. § 1343 (FAC, ¶¶ 158, 162-164). Furthermore, Defendants are alleged to have used the postal system or other interstate carriers to ship the illegal products across state lines. The

shipment of products that were mislabeled and falsely certified as containing legal levels of THC constitutes mail fraud under 18 U.S.C. § 1341 (FAC, ¶¶ 143, 164).

Defendants also engaged in the unlawful manufacturing, distribution, and sale of products containing more than 0.3% Delta-9 THC, which classifies these products as illegal marijuana under the CSA. This conduct constitutes racketeering activity under 18 U.S.C. § 1961(1)(D), which incorporates violations of the CSA as predicate acts (FAC, ¶¶ 144-146, 148). Plaintiff's FAC further alleges that Defendants conspired to manufacture and distribute illegal Delta-9 THC products in violation of the CSA, including agreements among the Defendants to continue selling non-compliant products despite knowing of their illegal THC levels, which constitutes conspiracy under 21 U.S.C. § 846 (FAC, ¶¶ 162, 167).

Additionally, the FAC asserts that Defendants leased or maintained property for the purpose of selling products containing unlawful amounts of Delta-9 THC, in violation of 21 U.S.C. § 856. This activity is also classified as racketeering under 18 U.S.C. § 1961(1)(D) (FAC, ¶ 160). These predicate acts—CSA violations, wire fraud, mail fraud, conspiracy to violate the CSA, and maintaining properties for illegal drug activities—form a pattern of racketeering activity under both the federal RICO statute (18 U.S.C. § 1962) and Georgia's RICO statute.

Thus, Plaintiff's allegations regarding Defendants' repeated violations of the CSA, combined with their use of interstate communications and mail systems to

further their fraudulent scheme, clearly satisfy the requirements for RICO predicate acts under both 18 U.S.C. § 1961(1) and O.C.G.A. § 16-14-3(9)(A).

B. Application of "Dry Weight" and Testing Standards for Marijuana-Derived Products

The CSA, as amended by the 2018 Farm Bill, specifies that the 0.3% Delta-9 THC threshold applies to all cannabis-derived products. 21 U.S.C. § 802(16)(B); Pub. L. No. 115-334, 132 Stat. 4490. Products derived from hemp, such as oils, tinctures, and vape products, must remain within the legal limit to be classified as hemp; those exceeding this limit are classified as marijuana under federal law. The USDA regulations codified at 7 C.F.R. § 990.1 et seq. outline that products with more than 0.3% Delta-9 THC are classified as marijuana and must comply with federal law's controlled substance regulations.

In *AK Futures LLC v. Boyd Street Distro, LLC*, 35 F.4th 682 (9th Cir. 2022), the Ninth Circuit clarified that cannabis-derived products exceeding the 0.3% Delta-9 THC threshold are classified as marijuana under the CSA, even if derived from hemp. Plaintiff alleges that Defendants' products exceeded the legal THC limit and were knowingly marketed as compliant with the 2018 Farm Bill. The fraudulent COAs, issued by Lab Defendants and relied upon by the Manufacturing and Retail Defendants, falsely certified the products as compliant, misleading consumers and evading federal law. These actions align Defendants' conduct with the CSA violations found sufficient to sustain RICO claims in *Williams*, *AK Futures*, and *Safe*

Streets Alliance. The federal standards under the CSA and USDA regulations take precedence here, as Defendants' violations of federal law supersede any claims of state law compliance for hemp products.

This use of the CSA's dry weight and THC testing standards clearly establishes that Defendants' conduct violated federal law, further supporting Plaintiff's claims.

C. RICO Enterprise Involving CSA Violations

Under 18 U.S.C. § 1961(4) and O.C.G.A. § 16-14-3(3), a RICO enterprise is an association of individuals or entities united for a common illegal purpose. In *Boyle v. United States*, 556 U.S. 938, 944 (2009), the Supreme Court held that a RICO enterprise may be an informal association-in-fact, provided the participants have a shared purpose. Plaintiff's FAC describes an enterprise comprised of the Manufacturing, Lab, and Retail Defendants, all of whom collaborated to profit from the illegal sale of marijuana marketed as legal hemp. (FAC, ¶¶ 127-195).

The Lab Defendants issued COAs that falsely certified products as hemp when, in fact, they qualified as marijuana. (FAC, ¶¶ 127-195). Manufacturing Defendants posted these COAs on their websites and distributed them by email to support sales of marijuana. (FAC, ¶¶ 127-195). Retail Defendants, in turn, marketed and sold these products, misleading consumers into purchasing marijuana labeled as hemp. (FAC, ¶¶ 127-195). The Second Circuit in *Horn v. Medical Marijuana, Inc.*,

No. 22-349 (2d Cir. 2023), upheld RICO claims against a cannabis company accused of misrepresenting THC content in its products, underscoring that fraudulent misrepresentation regarding THC content constitutes an actionable scheme under RICO. This mirrors the allegations here, where Defendants' COAs falsely claimed compliance with THC thresholds, further supporting the presence of a RICO enterprise beyond mere business activity. Just as the Second Circuit found sufficient grounds for a RICO enterprise in *Horn*, Defendants' coordinated efforts to evade federal law through deceptive COAs demonstrates a clear RICO enterprise in this case. This coordinated scheme mirrors the enterprise requirements laid out in *Williams v. Mohawk Indus., Inc.*, 465 F.3d 1277, 1283 (11th Cir. 2006), where the Eleventh Circuit confirmed that RICO enterprises could exist within a business structure if the illegal conduct is central to the business operations. Here, Defendants' fraudulent representation of marijuana as compliant hemp through COAs and online marketing demonstrates a RICO enterprise with an illegal purpose under both *Boyle* and *Mohawk*.

Thus, Plaintiff has sufficiently pled the existence of a RICO enterprise under both 18 U.S.C. § 1961(4) and O.C.G.A. § 16-14-3(3).

D. Pattern of Racketeering Activity: CSA Violations and Predicate Acts

To demonstrate a "pattern of racketeering activity" under 18 U.S.C. § 1961(5) and O.C.G.A. § 16-14-3(8), a plaintiff must show that the predicate acts are both

related and either closed-ended (repeated conduct over a substantial period) or open-ended (conduct that poses a threat of future criminal activity). In *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989), the Supreme Court held that continuity may be established either through long-term repeated conduct or by showing a threat of future illegal conduct.

Plaintiff's FAC alleges both types of continuity. (FAC, ¶¶ 127-195). Defendants engaged in CSA violations over an extended period, repeatedly distributing marijuana under the guise of legal hemp, which constitutes closed-ended continuity. (FAC, ¶¶ 127-195). Additionally, Defendants' ongoing issuance of fraudulent COAs and continuous sale of marijuana demonstrate open-ended continuity, as these actions are central to Defendants' business model. This ongoing threat poses significant harm to both regulatory integrity and consumer safety, warranting the application of RICO's deterrent measures to prevent further criminal conduct. (FAC, ¶¶ 127-195). Under Eleventh Circuit precedent, the pattern of racketeering activity is sufficiently established where allegations demonstrate that (1) Defendants committed numerous predicate acts within a ten-year time span; (2) the predicate acts are related; and (3) the predicate acts demonstrate ongoing criminal conduct. *Jackson v. BellSouth Telecomm.*, 372 F.3d 1250, 1264 (11th Cir. 2004); see also *Chesapeake Employers' Ins. Co. v. Eades*, 77 F. Supp. 3d 1241, 1254 (N.D. Ga. 2015).

Courts have held that a RICO pattern is established when the illegal conduct forms an ongoing component of business operations. *Williams v. Mohawk Indus.*, 465 F.3d 1277, 1283 (11th Cir. 2006). Defendants' reliance on fraudulent COAs and sale of marijuana represents a similar threat of ongoing illegal conduct, establishing a pattern of racketeering under RICO. This pattern poses a persistent threat to consumers and regulatory authorities, as the COA fraud and misrepresentation of marijuana as hemp indicate an ongoing scheme essential to Defendants' business model.

E. Mail and Wire Fraud as Additional Predicate Acts

While violations of the CSA are the primary predicate acts, the FAC also includes mail and wire fraud as supplementary predicate acts under RICO. (FAC, ¶¶ 127-195). Under 18 U.S.C. §§ 1341 and 1343, mail fraud and wire fraud occur when the postal system or electronic communications are used as part of a scheme to defraud. Here, Defendants distributed fraudulent COAs via email and websites, misrepresenting marijuana as compliant hemp. (FAC, ¶¶ 127-195).

In *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008), the Supreme Court held that fraudulent communications transmitted electronically qualify as predicate acts of wire fraud under RICO. Georgia law similarly recognizes electronically transmitted misrepresentations as predicate acts of wire fraud under O.C.G.A. § 16-14-3(9)(A). Plaintiff's FAC describes how Lab Defendants issued

fraudulent COAs, which were disseminated by Manufacturing Defendants via email, and then relied upon by Retail Defendants in sales to consumers. (FAC, ¶¶ 127-195). These false certifications, used to further Defendants' scheme to evade federal law, fulfill the requirements for mail and wire fraud predicate acts under RICO. (FAC, ¶¶ 127-195).

Furthermore, the Eleventh Circuit permits flexibility in pleading requirements under Rule 9(b) when evidence is predominantly in the Defendants' control. In *Durham v. Bus. Mgmt. Assocs.*, 847 F.2d 1505, 1512 (11th Cir. 1988), the court recognized that Rule 9(b)'s heightened pleading standard may be applied less stringently in such situations. Similarly, in *Hill v. Morehouse Med. Assocs.*, No. 02-14429, 2003 U.S. App. LEXIS 27956, at *10 (11th Cir. Aug. 15, 2003), the Eleventh Circuit held that "Rule 9(b)'s heightened pleading standard may be applied less stringently, however, when specific 'factual information [about the fraud] is peculiarly within the defendant's knowledge or control.'" Plaintiff's FAC provides adequate detail to satisfy Rule 9(b) at this stage, describing the roles of each Defendant in producing and disseminating the fraudulent COAs. (FAC, ¶¶ 127-195). Additional specificity is expected to emerge during discovery, which will substantiate further details regarding Defendants' coordinated actions. (FAC, ¶¶ 127-195).

Plaintiff's FAC thus meets the heightened pleading standard of Rule 9(b) and provides a comprehensive basis for the RICO claims asserted. (FAC, ¶¶ 127-195). Together, the allegations establish a clear pattern of predicate acts involving CSA violations, mail and wire fraud, a well-defined RICO enterprise, and continuity, fully satisfying the elements of a RICO claim under both federal and Georgia law. (FAC, ¶¶ 127-195).

III. Plaintiff has sufficiently pled a claim for Intentional Misrepresentation/Fraud

Defendants argue that Plaintiff has not pled the Fraud claim with appropriate specificity. (*See* Motion, pp. 32-37). Plaintiff has sufficiently pled a claim for Fraud here, especially when taking into account the "relaxed" pleading standard applicable here, as the factual information about the fraud is within the defendants' knowledge or control. (FAC, ¶¶ 97-103). *Hill v. Morehouse Med. Assocs.*, 2003 U.S. App. LEXIS 27956, at *10.

In order to make out a *prima facie* case of Fraud in Georgia, Plaintiff is required to allege the following: (1) false representation by defendant; (2) with scienter, or knowledge of falsity; (3) with intent to deceive plaintiff or to induce plaintiff into acting or refraining from acting; (4) on which plaintiff justifiably relied; (5) with proximate cause of damages to plaintiff." *Burgess v. Religious Tech. Ctr., Inc.*, 600 F. App'x 657, 662 (11th Cir. 2015) (internal quotation marks omitted). "Justifiable reliance generally is a question for the jury." *Catrett v. Landmark*

Dodge, 253 Ga. App. 639, 641 (2002). Additionally, Rule 9, “does not require a plaintiff to allege specific facts related to the defendant's state of mind when the allegedly fraudulent statements [or omissions] were made.” *Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1237 (11th Cir. 2008). Instead, it is sufficient to plead “the who, what, when, where, and how” of the allegedly fraudulent statements or omissions and then allege generally that those statements or omissions were made with the requisite intent. *Id.*

Here, the Plaintiff alleges in the FAC that (1) Defendants’ knowingly and intentionally made the false representation that the contents of the D8 products at issue were compliant with applicable law (*i.e.* that they contained less than 0.3% D9 THC) (FAC, ¶ 98); (2) Defendants statements were made with the intent to induce the Plaintiff into purchasing the D8 products at issue (FAC, ¶¶ 99-101); (3) Plaintiff justifiably relied on the false representations to her detriment (FAC, ¶ 102); and (4) that these false representations were the proximate cause of the harm to Plaintiff. (FAC, ¶ 103).

Here, the law is clear that the Defendants’ state-of-mind (knowledge and intent to deceive and/or induce) may be pled generally. *See eg. Mizzaro v. Home Depot, Inc.*, 544 F.3d at 1237. Justifiable reliance is a question for the jury and it would be inappropriate to resolve that issue at the pleading stage. *Catrett v. Landmark Dodge*, 253 Ga. App. at 641.

Ultimately, Plaintiff expected, based upon Defendants' representations, that she was purchasing legal D8 products. (FAC, ¶¶ 57-59. 64, 99-103). As it turned out, she was not purchasing legal products – they ***all*** contained illegal amounts of D9 THC and she was harmed because of Defendants' Fraud. (FAC, ¶¶ 99-101; *see also* Declarations of Josh Swider and Sarah Nicholls, including the Exhibits thereto). Plaintiff has done all she is required to do at the pleading stage.

IV. Plaintiff has sufficiently pled her claim for Negligent Misrepresentation

The essential elements of a claim of negligent misrepresentation are: (1) the defendant's negligent supply of false information to foreseeable persons, known or unknown; (2) such persons' reasonable reliance upon that false information; and (3) economic injury proximately resulting from such reliance. *Trico Envtl. Servs. v. Knight Petroleum Co.*, 357 Ga. App. 826, 831, 849 S.E.2d 538, 543-44 (2020) (*citing Home Depot U. S. A. v. Wabash Nat. Corp.*, 314 Ga. App. 360, 367 (3) (724 SE2d 53) (2012). "The economic loss rule is inapplicable in the presence of passive concealment or fraud." *Holloman v. D.R. Horton*, 241 Ga. App. 141, 148 (1999).

Plaintiff has easily set forth a claim for Negligent Misrepresentation, particularly given that the heightened pleading standard simply do not apply to these claims in Georgia. *In re Equifax, Inc., Customer Data Sec. Breach Litig.*, 371 F. Supp. 3d at 177; *see also Parker v. Perdue Farms, Inc.*, 2022 U.S. Dist. LEXIS 222730. Plaintiff has alleged that Defendants negligently supplied false information

to her and other Georgia consumers by stating on product packaging and on a COA accessible to Plaintiff and consumers by scanning a simple QR code on the back of each applicable product that each of the products contained legal amounts of D9 THC. It is also worth noting that the D8 products at issue in this litigation were not sold in a dark alleyway through CashApp; they were purchased from a licensed Georgia brick-and-mortar business during regular business hours. ***If Plaintiff and Georgia consumers cannot reasonably trust that products sold by licensed Georgia businesses are legal for consumption*** (whether they actually take the time to scan QR codes and thoroughly read packaging), ***it is difficult to imagine what they can trust, believe and/or rely upon.***

While not required in the presence of fraud, as alleged here, Plaintiff has sufficiently pled proximate economic injury (FAC, ¶ 95). Having satisfied the requirements set forth in Rule 9, Plaintiff is entitled to conduct discovery into the nature, scope and extent of the Defendants' misconduct. (FAC, ¶¶ 89-96).

V. Plaintiff has sufficiently pled a Product Liability Claim Based on a Manufacturing Defect or Failure to Warn Theory.

In order to bring a products liability claim based upon a manufacturing defect in Georgia, a plaintiff must show: "(1) the defendant was [a] manufacturer of the product; (2) the product, when sold, was not merchantable and reasonably suited to the use intended, and (3) the product's defective condition proximately caused

plaintiff's injury." *Henderson v. Sun Pharms. Indus., Ltd.*, No. 4:11-CV-0060-HLM, 2011 WL 4024656, at *5 (N.D. Ga. June 9, 2011).

Here, the Manufacturing Defendants manufactured the D8 products at issue in this case, which are all non-merchantable, as they all contain illegal amounts of D9 THC. (FAC, ¶¶ 111-122). Plaintiff was thereby harmed. (*Id.*) Defendants respond with the same, tired, hide-the-ball arguments, focusing on the fact that Plaintiff is not yet aware of Defendants' knowledge and intent. (Motion, pp. 42-45). She cannot get in the Defendants' respective heads. Thankfully, the law does not require her to do so at the pleading stage.

Similarly, Plaintiff has properly alleged a failure to warn claim. Under Georgia law, a manufacturer has a duty to warn of "nonobvious foreseeable dangers from the normal use of its products." *Suzuki Motor of Am., Inc. v. Johns*, 351 Ga. App. 186, 193, 830 S.E.2d 549, 557 (2019) (*citing CertainTeed Corp. v. Fletcher*, 300 Ga. 327, 330 (2) (794 SE2d 641) (2016). "[T]he duty to warn arises whenever the manufacturer knows or reasonably should know of the danger arising from the use of its product[s]." *Id.*; *see also Chrysler Corp. v. Batten*, 264 Ga. 723, 724 (1) (450 SE2d 208) (1994). Thus, the duty to adequately warn the public of defects in a product is continuous, even after that product has left the control of the manufacturer to be sold or distributed to the consumer. *Id.* (*citing Hunter v. Werner Co.*, 258 Ga. App. 379, 383 (2) (574 SE2d 426) (2002)).

Here, the Manufacturing Defendants most certainly have a duty to warn of the nonobvious foreseeable danger applicable to this case: that Plaintiff and other Georgia consumers are unknowingly purchasing illegal products and subjecting themselves to threat of arrest and involuntary intoxication. This duty continues even after the product has left the control of the manufacturer to be sold or distributed to the consumer. *See Suzuki Motor*, 351 Ga. App. at 193, 830 S.E.2d at 557 (*citing Hunter*, 258 Ga. App. at 383 (2) (574 SE2d 426)). Plaintiff has pled the Manufacturing Defendants manufactured the product, had ***knowledge*** of the defect, which can be pled generally in Georgia, and that Manufacturing Defendants had a duty to warn of the nonobvious foreseeable danger. (See FAC, ¶ 113). That is all she is required to do at the pleading stage.

VI. Plaintiff has Sufficiently pled a claim for Unjust Enrichment.

Finally, Plaintiff has sufficiently pled a claim for Unjust Enrichment under Georgia law. A plaintiff in Georgia may plead both breach of contract and unjust enrichment, even though it may not recover under both theories. *See Amin v. Mercedes-Benz USA, LLC*, 301 F. Supp. 3d 1277, 1296-7 (N.D. Ga. 2018). A court should not dismiss an unjust enrichment claim if the parties dispute whether the same services were covered by the contract. *Id.* (allowing unjust enrichment claim to proceed); *see also Aron Sec. Inc. v. ADT LLC*, 2020 U.S. Dist. LEXIS 141921 (S.D.

Fla. July 6, 2020) ("Until the resolution of [the plaintiff's] breach of contract claim, the Court declines to dismiss [its] alternative claim ... for unjust enrichment").

Here, Plaintiff has pled the existence of a contract in connection with Plaintiff's unknowing purchase of illegal products, which, if proven, would amount to her unknowingly entering into an illegal contract, which is void in the State of Georgia. *Jones v. Lowman*, 85 Ga. App. 743, 745, 70 S.E.2d 122, 124 (1952) ("A contract to do an . . illegal thing is void."). While Plaintiff is entitled to rely upon the representations and warranties made by Defendants, in the event that this Court holds that any alleged contract formed by the purchases made by Plaintiff is void because it involves the sale of illegal product, then Plaintiff is entitled to recover under an unjust enrichment theory and Defendants would be required to disgorge their ill-gotten gains in the transactions at issue in this case. At this early stage, Plaintiff is permitted to plead in the alternative. Plaintiff has sufficiently pled a claim for Negligence

Finally, Defendants incredibly challenge Plaintiff's negligence claim by alleging that the tests run on the D8 products were somehow unreliable. (Motion, pp. 40-42). This is provably false. (*See* Nicholls and Swider Declarations, including Exhibits thereto).

The elements of a Negligence claim are: "(1) a legal duty to conform to a standard of conduct raised by the law for the protection of others against

unreasonable risk of harm; (2) breach of this standard; (3) a legally attributable causal connection between the conduct and resulting injury; and, (4) some loss or damage flowing to the Plaintiff's legally protected interest as a result of the alleged breach of the legal duty." *Brazil*, 249 F. Supp. 3d at 1339. Plaintiff has sufficiently pled all of these elements. (FAC, ¶¶ 84-88).

Defendants all had a legal duty to Plaintiff and breached that duty. It turns out that ***all of the D8 products she purchased contained illegal amounts of D9 THC***. (*See* Nicholls Decl., Exs. 1-4 to Nicholls Decl.; *see also* Swider Decl., Exs. 2-6 to Swider). Defendants admonish the Plaintiff for her "conclusory, misguided allegations" regarding tests by an "unidentified laboratory." (Motion, p.42). In response to Defendants opening the door regarding the tests conducted, Plaintiff provides tests conducted relative to the Products at issue in this litigation.

CONCLUSION

Plaintiff respectfully requests that Defendants' Joint Motion be denied.

Respectfully submitted this 7th day of October 7, 2024,

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CERTIFICATE OF SERVICE AND TYPE-SIZE COMPLIANCE

Pursuant to Local Rule 5.1(c), N.D.Ga., I hereby certify that the foregoing response is prepared in Times New Roman 14-point font and was filed using the CM/ECF system, which will automatically provide notice to all attorneys of record by electronic means.

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