SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL COURTHOUSE

TENTATIVE RULINGS - October 04, 2024

HEARING DATE: 10/4/24 HEARING TIME: 9:00 am DEPT.: 60

JUDICIAL OFFICER:

CASE NO.:37-2023-00041548-CU-BT-CTL

CASE TITLE: Valley Greens Retail Outlet Inc vs Savage Enterprises [IMAGED]

CASE TYPE: (U)Business Tort/Unfair Business Practice

HEARING TYPE:

The demurrers of Defendants Savage Enterprises ("Savage"), Tre Wellness ("TW"), and Binoid LLC ("Binoid") to the first amended complaint are **SUSTAINED** with leave to amend.

The motions to strike of Defendants Savage, TW, and Binoid are **GRANTED**.

Defendant Cookies Creative Consulting & Prom. Inc. ("Cookies")'s motion for judgment on the pleadings is **GRANTED** with leave to amend.

Preliminary Matters

Defendants Savage, TW, and Binoid's requests for judicial notice of printouts from the websites www.caliextrax.com, www.deltaextrax.com, www.hazyextrax.com, https://trehouse.com, and www.binoidcbd.com, are denied. Although the court agrees it may take judicial notice of the existence of these publicly available websites, they cannot be used for the truth of the matters asserted therein. Defendants effectively seek to use the exhibits to prove, without question, they each do not sell hemp products to California customers and do not produce hemp products in California.

Moreover, even if the court were to accept truth of the extrinsic evidence Defendants proffer, it would at best create a disputed fact as to whether they each sell or produce hemp products in California. The court will not allow Defendants to convert this demurrer hearing into a contested evidentiary hearing. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 605.)

Demurrers & Judgment on the Pleadings

A demurrer shall be sustained if the complaint "does not state facts sufficient to constitute a cause of action." (Code Civ. Proc., § 430.10(e).) To test the sufficiency of a cause of action, the court treats as true "all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010.) The court may also consider matters that have been judicially noticed. (*Id.*) The court shall give the complaint a "reasonable interpretation, reading it as a whole and its parts in their context." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

"A motion for judgment on the pleadings performs the same function as a general demurrer, and hence attacks only defects disclosed on the face of the pleadings or by matters that can be judicially noticed." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.)

In the FAC, Plaintiffs allege all Defendants: (1) "Manufacture, transport, storage, distribution and/or sale of industrial hemp products with THC levels that far exceed 0.3% THC in and/or into the State;" (2) "Manufacture, transport, storage, distribution and/or sale of chemically synthesized industrial hemp products in and/or into the State;" (3) "Manufacture, transport, storage, distribution and/or sale of Inhalable Hemp Products in and/or into the State;" and (4) "in most cases marketed these products as 'legal cannabis products.'" (FAC, ¶ 10.) Plaintiffs similarly group all defendants together in describing their allegedly unlawful or unfair conduct. (FAC, ¶¶ 11-13, 15-16, 53-54, and 63-64.) The specific allegations as to Defendants Savage, TW, Binoid, and Cookies are minimal:

> Defendant Savage is a Wyoming company doing business in California, (FAC, ¶ 30.A), and "has and/or does: manufacture, distribute, market and/or sell Illegal Designer Drugs in and/or into the State of California including but not limited to the County of San
> Diego and the County of Imperial, including Illegal Designer Drugs branded under Defendant's Cali, Delta and Hazy's brand names." (FAC, ¶ 36.)
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> Defendant TW is a California company doing business in California under the fictitious business name "Trehouse," (FAC, ¶ 30.F), and "has and/or does: manufacture, distribute, market and/or sell Illegal Designer Drugs in and/or into the State of California including but not limited to the County of San Diego and the County of Imperial including but not limited to direct sales to consumers through its website (https://trehouse.com/) and sales to third party retailers." (FAC, ¶ 41.)
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> Defendant Binoid is a California company doing business in California (FAC, ¶ 30.H), and "has and/or does: manufacture, distribute, market and/or sell Illegal Designer Drugs in and/or into the State of California including but not limited to the County of San Diego and the County of Imperial including but not limited to direct sales to consumers through its website (https://www.binoidcbd.com/) and sales to third party retailers." (FAC, ¶ 43.)
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> Defendant Cookies is a California company doing business in California (FAC, ¶ 30.G), and "has and/or does: manufacture, distribute, market and/or sell Illegal Designer Drugs in and/or into the State of California including but not limited to the County of San Diego and the County of Imperial including but not limited to direct sales to consumers through its website (https://shop.cookies.co/) and sales to third party retailers." (FAC, ¶ 42.)
> Defendant Cookies or its affiliates also "hold State licenses and local permits to engage in commercial cannabis activities within the State's comprehensive system for cannabis products," but "nonetheless manufactures and/or causes the manufacture, distributes, markets and sells Illegal Designer Drugs in California, including utilizing its web platform for the sale of regulated cannabis products to do so," and "[o]rders made on Defendant's website for Illegal Designer Drugs were fulfilled including sales of products in the State containing highly psychoactive compounds such as THCa, Delta 9 THC and Delta 8 THC." (FAC, ¶ 14.)

Defendants all contend the FAC is uncertain because it fails to include sufficient well-pled allegations of unlawful or unfair acts, or false statements made, by each Defendant to put each of them on notice of the claims against them. The court agrees. The above conclusory allegations in the FAC are not sufficient to state claims under the UCL or FAL that can survive demurrer. (See, e.g., *Berryman v.*

Merit Property Management, Inc. (2007) 152 Cal.App.4th 1544, 1554-57; see also *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 619 ["A plaintiff alleging unfair business practices under [Cal. B&P §§ 17000 and 17200 et seq.] must state with reasonable particularity the facts supporting the statutory elements of the violation."].) Notably, the conclusory and overgeneralized allegations as to Defendants Savage, TW, Binoid, and Cookies contrast with the far more specific factual allegations that support Plaintiffs' claims against Defendants Cutleaf and Canably. (FAC, ¶¶ 44-45.)

Consequently, the demurrers are sustained with leave to amend, and the motion for judgment on the pleadings is granted with leave to amend. The court expects the forthcoming second amended complaint to include specific factual allegations to support Plaintiffs' currently overgeneralized and conclusory claim against Defendants Savage, TW, Binoid, and Cookies.

Notwithstanding the above, the court is not persuaded by Defendant Binoid's preemption arguments. AB 45 is not in conflict with the Federal Farm Bill (, which does not expressly preempt State law over the regulation of industrial hemp products, nor provide a comprehensive regulatory framework for industrial hemp products. In fact, the 2018 Farm Bill expressly does the opposite: "Nothing in this subsection preempts or limits any law of a State of Indian tribe that—(i) regulates the production of hemp; and (ii) is more stringent than this subtitle." (7 U.S.C. § 1639p(a)(3)(A).")

AB 45 also is not in conflict with the clarification in the Farm Bill that it does not prohibit "the interstate commerce of hemp," and that "[n]o 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 section 10113) through the State or the territory of the Indian Tribe, as applicable." (7 U.S.C. § 1639o Note [PL 115-334, Dec. 20, 2018, 132 Stat 4490, § 10114].) Nothing in AB 45 prohibits, or even expressly inhibits, the transportation through California of goods that qualify as "industrial hemp products" under the Farm Bill, but which do not so qualify under AB 45. Transportation through a State of a certain product is quite obviously not the same as prohibiting or limiting the production or sale of that product in or to the State.

Motions to Strike

Plaintiffs concede they cannot obtain damages against Defendants under the UCL or FAL, and therefore are not opposed to striking paragraphs A through D, and H, in their prayer for relief. As such, the court expects these improper categories of damages to be removed from the forthcoming SAC.

As to the claim for attorneys' fees, the court understands Plaintiffs may have a small possibility of obtaining fees under Civil Code section 1021.5. However, this was not specified in the prayer for relief, and Plaintiffs did not include factual allegations connected to this claim. The SAC should so specify.

Accordingly, the motions to strike are granted, and Plaintiffs have leave to amend as to the prayer for attorney fees.

Plaintiffs have 30 days from entry of this order to file and serve a second amended complaint.

If the tentative is confirmed, the minute order is the order of the court.