

No. 23-365

In the Supreme Court of the United States

MEDICAL MARIJUANA, INC.; DIXIE HOLDINGS, LLC,
AKA DIXIE ELIXIRS; RED DICE HOLDINGS, LLC,
PETITIONERS,

v.

DOUGLAS J. HORN,
RESPONDENT.

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT*

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: OCTOBER 3, 2023
CERTIORARI GRANTED: APRIL 29, 2024

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----X

DOUGLAS J. HORN and CINDY HARP-
HORN,

Civ. Action No.:

Plaintiffs,

-against-

MEDICAL MARIJUANA, INC., DIXIE
ELIXIRS AND EDIBLES, RED DICE
HOLDINGS, LLC, and DIXIE
BOTANICALS,

**COMPLAINT and
JURY DEMAND**

Defendants.

-----X

Plaintiffs, DOUGLAS J. HORN and CINDY HORN (collectively “Plaintiff”) by their attorneys, JEFFREY BENJAMIN, P.C. as and for their complaint against the Defendants MEDICAL MARIJUANA, INC., DIXIE ELIXIRS AND EDIBLES, RED DICE HOLDINGS, LLC, and DIXIE BOTANICALS, (collectively the “Defendants”), alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for damages for *inter alia*, deceptive business practices and violations of the New York General Business Law Art 22-A, §349 (“Deceptive Practices Act” or GBL §349”), GBL §350 for false advertising, the federal Racketeer Influenced and Corrupt Organizations Act (“RICO”) 18 U.S.C. §1962(a)-(d), violations of New York State Uniform Commercial Code (UCC) § 2-313 for negligence in products manufacture and sales, UCC § 2-318, strict products liability, as well as numerous common law

causes of action. The Complaint also seeks statutory attorneys' fees and costs pursuant to the statutory violations and the New York General Obligations Law ("GOL") §5-327, and punitive damages.

JURISDICTION AND PARTIES

2. This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. §1332, because the matter in controversy exceeds the sum of \$75,000 and the parties are citizens of different states. This Court also has subject matter jurisdiction over certain claims herein pursuant to RICO, 18 U.S.C. §1964, and 28 U.S.C. §1331, because they arise under the laws of the United States, and over other claims herein pursuant to supplemental jurisdiction, 28 U.S.C. §1367.
3. The venue of this action is proper in this judicial district pursuant to 18 U.S.C. §1965, because the plaintiffs live within this District, and a substantial part of the events or omissions giving rise to the claim occurred within the Western District of New York, 28 U.S.C. §1391.
4. Plaintiffs are natural persons over eighteen years of age and maintain their residence in Lockwood, New York.
5. Upon information and belief, the defendant MEDICAL MARIJUANA, INC. is a California business corporation which maintains its principal place of business at 4901 Morena Blvd., Suite 701, San Diego, California 92117.
6. Upon information and belief, the defendant, MEDICAL MARIJUANA, INC. is engaged in the business of, *inter alia*, the promotion, manufacture

and distribution of hemp-based and cannabis products throughout the United States.

7. Upon information and belief, the defendant DIXIE ELIXIRS AND EDIBLES is a Colorado corporation who maintains its principal place of business at 4990 Oakland Street Denver, Colorado 80239.
8. On information and belief, the Defendants, DIXIE ELIXIRS AND EDIBLES is engaged in the business of, *inter alia*, the promotion, manufacture and distribution of hemp-based and cannabis products throughout the United States.
9. Upon information and belief, the defendant RED DICE HOLDINGS LLC d/b/a DIXIE BOTANICALS is a Colorado limited liability company who maintains its principal place of business at 1610 Wynkoop Street, Suite 400, Denver, Colorado 80202.
10. On information and belief, the defendant, RED DICE HOLDINGS LLC d/b/a DIXIE BOTANICALS is engaged in the business of, *inter alia*, the promotion, manufacture and distribution of hemp-based and cannabis products throughout the United States
11. All of the above named Defendants aggressively market and sell their products and services nationwide generally, and within the State of New York specifically, and the causes of action alleged have a direct and harmful impact on the people of the State of New York.

SPECIFIC FACTS as to PLAINTIFFS

12. On or around February 24, 2012, plaintiff, Douglas J. Horn, suffered bodily injuries from a vehicle accident.

He sustained said injuries to his hip and right shoulder as a result of the accident. Subsequent to the accident, under treatment by his doctor, he took anti-inflammatory and other medication. Some months after the accident, he investigated natural medicines as an alternative to his other prescriptions.

13. In or around September, 2012, plaintiff answered a magazine advertisement from defendant DIXIE BOTANICALS for an industrial hemp product called “Dixie X” which stated it had “0.00 THC” (delta-9 tetrahydrocannabinol) in it. Annexed hereto as Exhibit “A” is a copy of such advertisement. The product had a compound known as Cannabidiol (“CBD”). The advertisement claimed that the product treated inflammation and pain.
14. The advertising by defendant also stated that they imported the hemp product with .3% THC, but that they process it down to 0% THC. On or around October 1, 2012, plaintiff purchased the “elixir” product, the *Dixie X CBD Dew Drops 500 mg Tincture*, with 500 mg of CBD.
15. In October, 2012, plaintiff was a professional over-the-road hazmat commercial truck driver who, prior to 2012, worked for the same company for ten (10) years and drove professionally for twenty-nine (29) years. Plaintiff’s employment as a professional commercial driver required that he be and remain free of all illegal and impairing substances.
16. On October 9, 2012, plaintiff submitted to a random urinalysis screening required by his employer Enterprise Transportation Company, and as required by the U.S. Department of Transportation (“DOT”).

17. On October 11, 2012, Plaintiff was informed by his employer that he had tested positive for a high level of THC. Thereafter, Plaintiff was required to submit to additional toxicology screenings which also were positive to an unacceptable high level of THC. Plaintiff was then terminated from his employment with Enterprise of approximately 10 years.
18. Subsequent to his termination, plaintiff ordered additional quantities of the *Dixie X CBD tincture* to have a laboratory independently test the product to determine if it did indeed contain THC. He sent an unopened bottle of the *Dixie X CBD tincture* to EMSL Analytical, Inc. (“EMSL”) for independent testing. That laboratory informed plaintiff that it could not return the sample of the Dixie X product that was taking to plaintiff as the substance was illegal and contained levels well over the federal limit as per the U.S. DEA regulations. Plaintiff understood that the mere return of the very sample he sent to EMSL was itself a violation of law, as defendants’ product was an illegal substance, and would have subjected that company to criminal and/or civil liability.
19. In reliance on the numerous claims, assertions, allegations, false advertising and misleading press releases of the defendants, claiming the product contains “0% THC” and which does “not conflict with any federal law”, plaintiff purchased and consumed from said defendants the product DIXIE X, an elixir marketed to be a natural, safe way to relieve pain, nausea, anxiety and convulsions. Plaintiff purchased and consumed said product DIXIE X, relying upon the Defendants’ numerous claims that the products were legal, safe and did not contain any narcotic or

controlled substances, or derivatives.

20. As a direct and proximate result of consuming this product, plaintiff was summarily dismissed from his employment. In addition, he was caused to lose his accumulated benefits and suffer substantial current and future economic losses and non-economic losses inclusive of emotional pain and anguish, humiliation, and degradation. He was fired from his long-term employment and, consequently, lost his livelihood, benefits, insurance, pension and job security.
21. Plaintiff's damages are ongoing. He is unable to secure employment at his former level of expertise and cannot continue in commercial trucking for at least seven years. Reputable trucking companies will not hire him based upon his positive toxicology test.

GENERAL FACTS and ALLEGATIONS as to ALL CAUSES of ACTION

22. Defendants promote through advertising, distribute and sell "hemp"-based products to be used for medicinal purposes. According to hemp.com, Hemp is a variety of the "Cannabis" plant that is grown for the fiber and seeds it produces. According to drugs.com, Cannabis contains the chemical compound "THC" (delta-9 tetrahydrocannabinol), which is believed to be responsible for most of the characteristic psychoactive effects of cannabis. The dried leaves and flowers of the Cannabis plant are known as marijuana.
23. Under §812 of the federal Controlled Substances Act ("CSA", 21 U.S.C. 812), marijuana is considered a "Schedule 1 drug" because of its THC content. It is defined as such because THC has high potential for abuse, it has no currently accepted medical treatment

use in the U.S.; and there is a lack of accepted safety for use of the drug under medical supervision. The cultivation and distribution of marijuana are felonies; and possession for personal use is a misdemeanor. In fact, there are examples of consumers of THC oil in the U.S. being subjected to serious criminal felonies for the mere possession of such oil: <http://www.washingtonpost.com/news/local/wp/2015/06/08/mom-who-uses-medical-marijuana-faces-up-to-30-years-in-prison/>.

24. Throughout their advertising media, defendants unequivocally and continually represent on their websites, press releases and advertising media that their products contain no illegal tetrahydrocannabinol (“THC”), and that they conduct testing multiple times and that the products will not produce a positive toxicology test for illegal substances. The defendants claim that their products can treat a plethora of medical conditions. Defendants further represent that they do not grow, sell or distribute and products which violate United States Laws and/or the federal “Controlled Substance Act.”
25. The hemp-based industry is a burgeoning market, wherein, companies such as defendants are manufacturing, selling and distributing products that are hemp-based and claim that, although marijuana and hemp are similar substances, the content and ratio of the chemical components commonly known as cannabidiol (“CBD”) and THC, found in varying degrees, determine whether a substance is illegal to consume or distribute in the United States. Defendants assert among other things that THC, the clearly illegal chemical compound found in marijuana,

is absent in the industrial hemp products that they sell to their respective consumers and end-users.

26. The defendants, in concert and/or on their own account, undertook affirmative efforts to capitalize on the manufacture, production, processing, importation and distribution of illegal substances without regard to the consequences, mental or physical harm levied on the public such as plaintiff.
27. The defendants' CBD health and wellness industry is estimated to be an over five billion dollar (\$5,000,000,000) market currently.
28. Defendants market their products as "THC free" and "non-THC," thereby misleading the public at large through their misrepresentation of the true chemical compound make-up of products like DIXIE X.
29. As is widely known, the cultivation and distribution of marijuana is illegal in the United States. Defendants circumvent the federal prohibition by extracting CBD from industrial hemp grown outside the United States in "secret" locations which MEDICAL MARIJUANA, INC. refuses to disclose.
30. Defendants collective advertising and marketing materials represent that their respective products can be used to treat a variety of conditions such as pain, anxiety, nausea and seizures. In support of its false advertising and marketing, defendants specifically represent and assert unequivocally that THC is undetectable in its products.
31. As further inducement for consumers to buy its products, support for its large scale sales expansion agenda, and in an effort to attract investors,

defendants have collectively and on their own account, published numerous press releases and other materials all claiming that the collective and/or respective products complained of are non-THC, legal, safe and can treat a variety of ailments and diseases. Certain public statements have gone so far as to claim CBD can fight metastatic cancers.

32. Defendants claim that their products are tested multiple times during the manufacturing process, that they are legal to consume in the United States, and that they do not grow, sell or distribute any substances that violate the law.

COUNT I

Deceptive Business Practices/False Advertising

33. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.
34. This Cause of Action is asserted against the Defendants that Plaintiffs suffered damages as a result of the defendant's deceptive business practices and false advertising in violation of GBL §349 and §350.
35. In the course of the within transaction, Defendants committed and/or engaged in one or more of the following acts or conduct and/or made the following misrepresentations:
 - a. misrepresenting in advertising that the Dixie Products were safe and legal for consumers;
 - b. misrepresenting in advertising that Defendants had adequately tested their products;
 - c. misrepresenting that the products complied New York State and the federal laws and regulations;

- d. misrepresenting that their products contained no THC;
 - e. misrepresenting that the ingestion of its products would not cause a positive toxicology result;
 - f. misrepresenting that their products had beneficial health, wellness and medical uses.
36. All of the above misrepresentations, acts and/or conduct by express statement on Defendants involved material elements of the transaction between the parties and were unfair, illegal, false, deceptive and/or misleading.
37. Additionally, such representations were likely to, and in fact did, harm, deceive or mislead the Plaintiffs who were acting reasonably and in reliance thereon.
38. The conduct and actions described herein are directed at the general public and have a broad impact on consumers at large and are not isolated or unique to this transaction between the parties.
39. The aforementioned conduct constitutes deceptive business practices and false advertising, in violation of General Business Law Art. 22-A, §349 and §350.
40. As a result of the defendants' conduct, Plaintiffs have sustained damages for which they are entitled to recover from Defendants.
41. The Plaintiffs are entitled to recover costs and attorney's fees from the defendant pursuant to GBL §349(h) and §350-e(3).

COUNT II – RICO VIOLATION

42. Plaintiffs repeat and re-allege each and every allegation made in the paragraphs above and

incorporate same herein as if fully set forth.

43. At all times relevant to this complaint, all of the defendant entities were and are enterprises as defined by 18 U.S.C. §1961(4) that are engaged in, and whose activities affect, interstate and foreign commerce. Their primary purpose and function was and is to profit from the marketing, distribution, promotion, advertising and/or sale of the Dixie X Elixir product sold to Plaintiff. Upon information and belief, in addition to defendants' legitimate activities, however, they were used in a pattern of racketeering activity in violation of 18 U.S.C. §1962(a), (b), (c), (d).
44. The defendants herein are "persons" pursuant to 18 U.S.C. §1961(3).
45. The patterns of racketeering activity engaged in by the defendants involved separate but related schemes, carried out from the original sale to plaintiff of the product to the present, and directed at the plaintiffs and other individuals in violation of 18 U.S.C. §1961(1) and §1962:
 - a) Selling and/or distributing a product through the U.S. mail that was known or should have been known to be a controlled substance or otherwise illegal or otherwise in violation of federal or state law;
 - b) Inducing the sale of an illegal product through promises of curing medical conditions of consumer purchasers of said product;
 - c) Misrepresenting in advertising that the Dixie Products were safe and legal for consumers;
 - d) Misrepresenting that the products complied New

York State and the federal laws and regulations;

- e) Purposefully failing to disclose material facts regarding the product to induce the purchase of an illegal product;
 - f) Concealing the true chemical content from consumers in its advertising and labelling in order to avoid inquiry into the legality of same.
46. The pattern of racketeering activity engaged in by the defendants named herein involved fraudulent acts in support of the above schemes constituted mail and wire fraud (18 U.S.C. §1341 and §1343), engaged in monetary transactions in property derived from specific unlawful activity (18 U.S.C. §1957), all of which is “racketeering activity,” as defined in 18 U.S.C. §1961(1) and §102 of the Controlled Substances Act.
47. The above described are numerous predicate acts of wire fraud, interstate transportation of controlled substance(s) and unlawful activity involving monetary transactions relating to the plaintiffs and other consumers. The predicate acts include advertisements in multiple media, telephone calls containing misrepresentations or omissions made in furtherance of the schemes, containing misrepresentations or omissions in furtherance of the schemes, derived from specified unlawful activity. The plaintiffs herein relied upon the misrepresentations and omissions directed at the plaintiffs herein by the defendants as part of their pattern of racketeering activity, and as a result suffered monetary and property damages.

COUNT III
Fraudulent Inducement

48. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.
49. This Cause of Action is asserted against Defendants for actual, compensatory and punitive damages based upon common law fraud and/or fraud in the inducement.
50. The conduct referred to above constitute numerous intentional misrepresentations, concealments and/or omissions of fact by Defendants through media, advertising and websites.
51. The material misstatements, concealments and/or omissions as to the ingredients, toxicology, and effects of Defendants' products, are all material inducements to Plaintiff's acquisition and use of same, were made with full knowledge of their falsity and/or with reckless disregard of the truth.
52. On information and belief, Defendants intended that the Plaintiffs rely upon the aforementioned misrepresentations, concealments and/or omissions to induce them to acquire and consume said products.
53. Plaintiffs reasonably relied on Defendants' intentional misrepresentations, concealments or omissions inducing them purchase and consume their products.
54. As a result of the aforementioned conduct of Defendants, Plaintiffs were injured for which they are entitled to recover actual, compensatory and punitive damages.
55. On information and belief, the above-mentioned acts

were committed by Defendants willfully, wantonly and with reckless disregard of the rights of the Plaintiffs.

COUNT IV

Violations of UCC § 2-318 Products Liability

56. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.
57. Defendants knowingly did sell, market and distribute the product known to be defective, illegal and/or unreasonably dangerous.
58. There was no substantial change in the condition of the *Dixie X Botanical* product and it remained in original manufactured condition prior to Plaintiffs' acquisition and consumption.
59. Said product(s) contained illegal and harmful substances which caused harm to Plaintiff to which he is entitled to recover.

COUNT V

Breach of Contract

60. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.
61. The parties entered into a written agreement for the Plaintiffs to purchase the product and the Defendants agreed to provide the product (the "Contract").
62. Consideration was paid by Plaintiffs to Defendants as set forth in the Contract.
63. By reason of all of the foregoing, Defendants breached the Contract between the parties by refusing or failing to perform thereon.

64. Plaintiffs have suffered actual and compensatory damages as a result of Defendants' breach.

COUNT VI
Breach of Express Warranty
Violations of UCC § 2-313

65. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.
66. Defendants made certain specific representations and express warranties in connection with the sale of the Dixie X product, as described above, regarding the nature of the product including the condition or chemical composition of its product.
67. Such representations were expressed as statements of fact.
68. Such representations were false by Defendants.
69. Defendants breached such express warranties in that they failed to perform the terms of such warranty to the detriment of Plaintiff.
70. As a result of the defendant's breach, Plaintiffs have sustained damages for which they are entitled to recover from Defendants.

COUNT VII
Unjust Enrichment

71. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.
72. This Cause of Action is asserted for restitution of Plaintiff based upon common law unjust enrichment.
73. Plaintiffs conferred their full payment price on Defendants.

74. By unjustly retaining all of Plaintiff's funds, defendants were unjustly enriched.
75. Defendant continues to retain the benefit conferred by Plaintiff.

COUNT VIII
Negligence

76. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.
77. Defendants did not exercise due care in the processing of its product at issue and/or distribution of the same in order to ensure its safety for human consumption, and to ensure its legality in and throughout the United States.
78. Defendants did not exercise due care in the product testing, reporting of the results of the toxicity levels of the products, and the sale, marketing and/or distribution complained of herein.
79. Defendants did not exercise due care to ensure that its products complied with all relevant state and federal laws and regulations.
80. Plaintiffs' harm was the natural and foreseeable consequence of the Defendants' breach of its duty to act in a reasonable manner.
81. By reason of the foregoing breach, Plaintiffs consequently suffered significant monetary damages and are entitled to recovery.

COUNT IX
Negligent Infliction of Emotional Harm

82. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.

83. Defendants' respective acts of will and wonton disregard for the safety of consumers is extreme, outrageous and shocking.
84. Defendants' respective reckless and/or negligent behavior has caused Plaintiffs physical harm in the ingestion of caustic, toxic, and/or an illegal substance.
85. Defendants' respective reckless and/or negligent behavior has caused Plaintiff mental anguish, harm and injury, loss of sleep, loss of appetite, anxiety, anger and depression.
86. By reason of the foregoing, Plaintiffs have suffered humiliation, economic harm, loss of employment, loss of social and professional stature, actual present and future financial insecurity and loss of reputation.
87. Plaintiffs are entitled to damages in an amount to be determined at trial which is greater than the jurisdictional amount required.

WHEREFORE, Plaintiffs demand judgment against the defendants, for actual, consequential, incidental, statutory and punitive damages as follows:

- i. On all causes of action, actual and compensatory damages in a sum of money having a present value which exceeds the jurisdictional limits of this Court;
- ii. Punitive damages based on defendants' knowing and willful misrepresentations pursuant to Plaintiffs RICO and Fraud claims;
- iii. Statutory damages pursuant to those causes of action;
- iv. Interest, costs, disbursements and attorneys' fees

- pursuant to statutory causes of action;
- v. Such other relief as the court may deem just proper.

Dated: Forest Hills, New York
August 5, 2015

JEFFREY BENJAMIN, P.C.

Jeffrey Benjamin

By: Jeffrey Benjamin, Esq.
Attorney for Plaintiffs
DOUGLAS J. HORN and CINDY
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Forest Hills, New York 11375
(718) 263-1111

DEMAND FOR A TRIAL BY JURY

Pursuant to the Federal Rules of Civil Procedure,
plaintiffs demand a trial by jury in this action.

Dated: Forest Hills, New York
August 5, 2015

Jeffrey Benjamin
Jeffrey Benjamin, Esq.

CBD for Everyone!

Using a proprietary extraction process and a strain of high-CBD hemp grown in a secret, foreign location, Colorado's Dixie Elixirs and Edibles now offers a new product line called Dixie X, which contains 0% THC and up to 500 mg of CBD. This new CBD-rich medicine will be available in several forms, including a tincture, a topical and in capsules.



Promoted as "a revolution in medicinal hemp-powered wellness," the non-psychoactive products will first roll out in Colorado MMCs (medical marijuana centers), with plans to quickly expand outside the medical-marijuana market.

"It has taken a tremendous amount of time, money and effort, but finally patients here in Colorado—and ultimately all individuals who are interested in utilizing CBD for medicinal

benefit—will be able to have access to it," says Tripp Keber, Dixie's managing director. "We are importing industrial hemp from outside the US using an FDA import license—it's below federal guidelines for THC, which is 0.3%—and we are taking that hemp and extracting the CBD. We have meticulously reviewed state and federal statutes, and we do not believe that we're operating in conflict with any federal law as it's related to the Dixie X (hemp-derived) products." ❄️



[Text from Image]

CBD for Everyone!

Using a proprietary extraction process and a strain of high-CBD hemp grown in a secret, foreign location, Colorado's Dixie Elixirs and Edibles now offers a new product line called Dixie X, which contains 0%THC and up to 500 mg of CBD. This new CBD-rich medicine will be available in several forms, including a tincture, a topical and in capsules. Promoted as "a revolution in medicinal hemp-powered wellness," the non-psychoactive products will first roll out in Colorado MMCs (medical marijuana centers), with plans to quickly expand outside the medical-marijuana market.

"It has taken a tremendous amount of time, money and effort, but finally patients here in Colorado—and ultimately all individuals who are interested in utilizing CBD for medicinal benefit—will be able to have access to it," says Tripp Keber, Dixie's managing director. "We are importing industrial hemp from outside the US using an FDA import license—it's below federal guidelines for THC, which is 0.3%—and we are taking that hemp and extracting the CBD. We have meticulously reviewed state and federal statutes, and we do not believe that we're operating in conflict with any federal law as it's related to the Dixie X [hemp-derived] products."

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----X

DOUGLAS J. HORN and CINDY HARP-
HORN,

Civ. Action No.:

Plaintiffs,

-against-

MEDICAL MARIJUANA, INC., DIXIE
ELIXIRS AND EDIBLES, RED DICE
HOLDINGS, LLC, and DIXIE
BOTANICALS,

PLAINTIFF
CIVIL RICO
STATEMENT

Defendants.

-----X

PLAINTIFFS' CIVIL RICO CASE STATEMENT

Plaintiffs file this Civil RICO Case Statement pursuant to Local Rule 9 and allege on information and belief as follows.

- 1. STATE WHETHER THE ALLEGED UNLAWFUL CONDUCT IS IN VIOLATION OF 18 U.S.C. SECTIONS 1962(a), (b), (c), AND/OR (d). IF YOU ALLEGE VIOLATIONS OF MORE THAN ONE SECTION 1962 SUBSECTION, TREAT EACH AS SEPARATE RICO CLAIM.**

Plaintiffs assert violations of 18 U.S.C. § 1962(a), (b), (c) and (d).

- 2. LIST EACH DEFENDANT, AND SEPARATELY STATE THE MISCONDUCT AND BASIS OF LIABILITY OF EACH DEFENDANT.**

On information and belief, each of the corporate entity

defendants are related through acquisition or merger though they carry out separate functions toward the common goal of profit from the racketeering activity alleged:

MEDICAL MARIJUANA, INC.

- a) Defendant MEDICAL MARIJUANA, INC. is engaged in the business of, *inter alia*, the promotion, manufacture and distribution of hemp-based and cannabis products throughout the United States. Their primary purpose and function was and is to profit from the marketing, distribution, promotion, advertising and/or sale of *inter alia* the Dixie X Elixir product sold to Plaintiff. Defendant was further responsible for the misrepresentations in advertising that the Dixie Products were safe and legal for all consumers to consume.

DIXIE ELIXIRS AND EDIBLES,

- b) DIXIE ELIXIRS AND EDIBLES is a Colorado Corporation who is engaged in the business of, *inter alia*, the promotion, manufacture and distribution of hemp-based and cannabis products throughout the United States. On information and belief, Medical Marijuana, Inc. is the parent company of Dixie Elixers and does business under that corporate name.

RED DICE HOLDINGS, LLC

- c) Red Dice Holdings LLC is a Colorado Corporation who is engaged in the business of, *inter alia*, the promotion, manufacture and distribution of hemp-based and cannabis products

throughout the United States. On information and belief, it was formed as a joint venture between Dixie Holdings and Medical Marijuana, Inc. to hold the intellectual property of the Dixie Brand of products, Dixie Elixirs and Dixie Botanicals.

DIXIE BOTANICALS

d) Dixie Botanicals is a California Corporation who is engaged in the business of, *inter alia*, the promotion, manufacture and distribution of hemp-based and cannabis products throughout the United States. On information and belief, in 2014, Dixie Botanicals was acquired by Medical Marijuana Inc.

3) LIST THE ALLEGED WRONGDOERS, OTHER THAN THE DEFENDANTS LISTED ABOVE, AND STATE THE ALLEGED MISCONDUCT OF EACH WRONGDOER.

Additional wrongdoers not named as Defendants include: (1) unknown employees of defendants who were responsible for *inter alia* marketing, manufacturing and distributing the product which brought about plaintiffs' damages; and (2) other wrongdoers, co-conspirators and aiders and abettors may be identified during the course of discovery.

4) LIST THE VICTIMS, AND STATE WHEN AND HOW EACH VICTIM WAS ALLEGEDLY INJURED.

Plaintiffs, a husband and wife, worked as a team in the commercial trucking business for the same employer for the last ten (10) years. Cindy Harp-Horn assisted and

drove alongside her husband on almost all of their work trips. On or around October 9, 2015, Plaintiffs were immediately terminated upon their employer Enterprise Transportation's discovery of a legally unacceptable level of THC in Douglas Horn's toxicology tests. Plaintiffs subsequently lost his accumulated benefits, his current and hope for future lucrative employment. Plaintiff's believe that they may never replace the successful employment track they were on before taking defendants' Dixie product. As such, plaintiffs each suffer also from non-economic losses inclusive of emotional pain and anguish, humiliation, and degradation.

5) DESCRIBE IN DETAIL THE PATTERN OF RACKETEERING ACTIVITY OR COLLECTION OF AN UNLAWFUL DEBT FOR EACH RICO CLAIM. A DESCRIPTION OF THE PATTERN OF RACKETEERING ACTIVITY SHALL INCLUDE THE FOLLOWING INFORMATION:

a) List the predicate acts/incidents and the specific statutes allegedly violated;

There exist numerous predicate acts of mail and wire fraud by the sending through interstate commerce the product manufactured, promoted, advertised, distributed and sold by defendants. Most prominently, defendants each individually and to advance their common goal acted in violation of 18 U.S.C. §1961(1)(A) dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), and (D) the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law

of the United States. Defendants violated 18 U.S.C. § 1341 and 18 U.S.C. § 1343 by sending their illegal product through U.S. mail and correspondence and billing through wire or electronic transfers. And in violation of 18 U.S.C. §1957(a) in knowingly engages or attempts to engage in a monetary transaction in criminally derived property.

b) Provide the dates of the predicate acts/incidents, the participants in the predicate acts and a description of the facts surrounding each predicate act/incident.

The date of defendants' predicate acts of racketeering activity with respect to plaintiffs was October 1, 2012 when he received and started to consume the product. On information and belief, defendants manufactured and advertised the product and only started to offer the product months earlier in or around February, 2012.

c) If the RICO claim is based upon the predicate offenses of wire fraud, mail fraud, fraud in the sale of securities, or fraud in connection with a case under U.S.C. Title 11, the "circumstances constituting fraud or mistake shall be stated with particularity," Fed. R. Civ. P. 9(b) (*Identifying the time, place and contents of the misrepresentations or omissions, and the identity of the persons to whom and by whom the misrepresentations were made*);

Defendants used both U.S. mail and electronic mail and money transfers to promote, distribute and sell the illegal product to plaintiffs in violation of 18 U.S.C. § 1341 and 1343.

- d) **State whether there has been a criminal conviction for any of the predicate acts/incidents of criminal activity;**

Plaintiffs are unaware of any criminal conviction(s) related to the allegations in the instant action.

- 6) **DESCRIBE IN DETAIL THE ENTERPRISE FOR EACH RICO CLAIM. A DESCRIPTION OF THE ENTERPRISE SHALL INCLUDE THE FOLLOWING INFORMATION:**

- a) **State the names of the individuals, partnerships, corporations, associations, or other entities constituting the enterprise.**

At present, plaintiffs are aware only of the listed Defendants as those persons constituting the Enterprise.

- b) **Describe the structure, purpose, roles, function and course of conduct of the enterprise.**

Plaintiffs are currently unaware before discovery of the structure, purpose, roles, function and course of conduct of the enterprise.

- c) **State whether any defendants are employees, officers, or directors of the enterprise.**

Plaintiffs have initially alleged liability only as against corporate entities and have not as yet identified individuals.

- d) **State whether any defendants are associated with the enterprise, and if so, how.**

Reference is respectfully made to response c) above.

- e) **State whether you allege (i) that the**

defendants are individuals or entities separate from the enterprise, or (ii) that the defendants are the enterprise itself; or (iii) that the defendants are members of the enterprise.

Plaintiffs allege that defendants are the enterprise itself.

- f) **If you allege any defendants to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the racketeering activity.**

Plaintiffs allege that the defendants are perpetrators and active participants in the alleged racketeering activity.

- 7) STATE WHETHER YOU ALLEGE, AND DESCRIBE IN DETAIL, HOW THE PATTERN OF RACKETEERING / CRIMINAL ACTIVITY AND THE ENTERPRISE ARE SEPARATE OR HAVE THEY MERGED INTO ONE ENTITY.**

On information and belief, the enterprise is an association of the defendants which has an ascertainable structure stemming from the leadership of a common principal, merged into one common entity but with separate functions in the promotion, manufacture, distribution and sale of the product which brought about plaintiff's damages.

- 8) DESCRIBE THE RELATIONSHIP BETWEEN THE ACTIVITIES AND THE PATTERN OF RACKETEERING/CRIMINAL ACTIVITY. DISCUSS HOW THE RACKETEERING/CRIMINAL ACTIVITY DIFFERS FROM THE**

USUAL AND DAILY ACTIVITIES OF THE ENTERPRISE, IF AT ALL.

Plaintiffs believe the pattern or racketeering activity does not differ from any legitimate activities of the Enterprise..

9) DESCRIBE WHAT BENEFITS, IF ANY, THE ENTERPRISE AND EACH DEFENDANT RECEIVED FROM THE PATTERN OF RACKETEERING/ CRIMINAL ACTIVITY.

Benefits received by the defendants appear to be the profit from ostensibly to an extent of an over \$5,000,000,000 market.

10) DESCRIBE THE EFFECT OF THE ENTERPRISE'S ACTIVITIES ON INTERSTATE OR FOREIGN COMMERCE.

Defendants distribute and sell a product which is a Controlled Substance through interstate commerce to the extent of a multi-billion dollar market

11) IF THE COMPLAINT ALLEGES A VIOLATION OF 18 U.S.C. § 1962(a) PROVIDE THE FOLLOWING INFORMATION:

- a) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and

At present, plaintiff believes that all defendants received income from the national sale of the product alleged herein.

b) Describe the use or investment of such income.

Plaintiffs' are unaware as to how defendants used

such income other than to further the racketeering activity.

12) IF THE COMPLAINT ALLEGES A VIOLATION OF 18 U.S.C. § 1962(b), PROVIDE THE FOLLOWING INFORMATION:

- a) Describe in detail the acquisition of maintenance of any interest in or control of the alleged enterprise; and

On information and belief, the defendants named herein started the illicit business alleged in the Complaint. Plaintiffs believe that defendant Medical Marijuana, Inc. is the parent company who acquired or otherwise have a stake in the other entities named herein.

- b) State whether the same entity is both the liable “person” and the “enterprise” under § 1962(b)

Yes.

13) IF THE COMPLAINT ALLEGES A VIOLATION OF 18 U.S.C. § 1962 (c), PROVIDE THE FOLLIWING INFORMATION:

- a) State who is employed by or associated with the enterprise;

Plaintiff does not have access to and is unaware of specific individuals employed by the corporate defendants before discovery.

- b) State whether the same entity is both the liable “person” and the “enterprise” under § 1962 (c)

Yes.

14) IF THE COMPLAINT ALLEGES A VIOLATION OF 18 U.S.C. § 1962(d), DESCRIBE IN DETAIL

THE CONSPIRACY, INCLUDING THE IDENTITY OF THE CO-CONSPIRATORS, THE OBJECT OF THE CONSPIRACY, AND THE DATE AND SUBSTANCE OF THE CONSPIRATORIAL AGREEMENT.

In order to successfully perpetrate the enterprise, defendants worked together to manufacture an innovative product which would bring about untold profit from its marketing, distribution and sale. Each of the entities named herein played its own part in bringing the subject product to market and benefitting therefrom. Plaintiffs believe the defendants created this market in or around February, 2012 when advertising for it began.

15) DESCRIBE THE ALLEGED INJURY TO BUSINESS OR PROPERTY.

As more fully stated in plaintiffs' Complaint, plaintiffs lost their substantial livelihood from the use of the product. They were immediately terminated from anticipated lifelong and substantial employment and lost other benefits flowing therefrom. The injury from the use of the product began on approximately October 9, 2012 and continues unabated to date.

16) DESCRIBE THE RELATIONSHIP BETWEEN THE ALLEGED INJURY AND VIOLATION OF THE RICO STATUTE.

If plaintiff Douglas Horn did not consume the Dixie X product, he would not have had a positive toxicology test and lost his and his wife's employment then and into the future.

17) LIST THE DAMAGES SUSTAINED BY REASON OF THE VIOLATION OF § 1962, INDICATING

THE AMOUNT FOR WHICH EACH DEFENDANT ALLEGEDLY IS LIABLE.

Plaintiffs lost employment at the company at a minimum salary of \$100,000 each. The total lost salary for both plaintiffs yearly was a minimum of \$200,000. In addition to their salaries, plaintiffs lost 401 k contributions, life insurance and other benefits for amounts that are ongoing.

18) LIST ALL OTHER FEDERAL CAUSES OF ACTION, IF ANY, AND PROVIDE THE RELEVANT STATUTE NUMBERS.

None.

19) LIST ALL PENDING STATES CLAIM, IF ANY.

None.

20) PROVIDE ANY ADDITIONAL INFORMATION YOU FEEL WOULD BE HELPFUL TO THE COURT IN PROCESSING YOUR RICO CLAIM.

None.

JEFFREY BENJAMIN, P.C.

Jeffrey Benjamin

By: Jeffrey Benjamin, Esq.

Attorney for Plaintiffs

DOUGLAS J. HORN and CINDY HORN

118-21 Queens Boulevard, Suite 501

Forest Hills, New York 11375

(718) 263-1111

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----X

DOUGLAS J. HORN and CINDY HARP-
HORN,

Civ. Action No.:
15-cv-701 FPG/MJR

Plaintiff,

-against-

MEDICAL MARIJUANA, INC., DIXIE
ELIXIRS AND EDIBLES, RED DICE
HOLDINGS, LLC, and DIXIE
BOTANICALS,

**AFFIDAVIT OF
PLAINTIFFS**

Defendants.

-----X

STATE OF IOWA)

: ss.:

COUNTY OF ADAIR)

DOUGLAS J. HORN, being duly sworn, deposes and
says:

1. I and my wife Cindy are the Plaintiffs in this action.
2. I submit this Affidavit in Support of our motion for summary judgment on certain statutory causes of action. As such, I primarily defer to my counsel's Declaration in Support and his Memorandum of Law, along with the Affidavit and Report of our expert Dr. Kenneth Graham as to the basis for the Court to respectfully grant this Motion.
3. I offer this Affidavit to give the Court a background

of facts surrounding my taking of the Dixie Elixirs product in question, which led to my termination of employment in October, 2012, and giving rise to this action.

4. I am and have always been, in a team with my wife and co-plaintiff, an over-the-road trucker since 1998. Since that time, my wife and I drive across the United States hauling various loads such as expedited food, pharmaceuticals and liquid chemicals. In October, 2012, we worked for Enterprise Transportation in this regard.

5. On February 24, 2012, I was involved in a serious work-related semi-truck accident in which I suffered, among other things, severe shoulder and back injuries. Over the months following the accident, I submitted to physical therapy and took various pain medications in an attempt to mitigate the trauma of the accident. However, at that time, those methods did not work.

6. In September, 2012, when we were on an assignment by our then employer Enterprise Transportation, Cindy and I viewed a magazine at a book store in Texas where we had stopped while off-duty. We reviewed the magazine originally to investigate the feasibility of a medical marijuana product for Cindy's mother who was inflicted with cancer, and who was going through a difficult time with those treatments.

7. Annexed hereto as Exhibit "1" is a copy of the first page of the magazine and the advertisement page for the Dixie Elixir product in question. At the point we read the Defendants' magazine advertisement, I also considered this product for myself to treat the pain I still had stemming from the truck accident some seven months earlier.

8. In this magazine advertisement on Page 42, Defendants' represent:

- a) “. . . new product line called Dixie X, which contains 0% THC . . .”;
- b) “ the non-psychoactive products . . .”

9. My and my wife's investigation of this product did not stop there. For instance, we researched the product both by watching YouTube videos of the CEO of the Company, “Tripp Keber”, and by reading the Frequently Asked Questions (“FAQs”).

10. The YouTube videos dated August 8 and August 23, 2012 we viewed can be found at:

- a. https://youtu.be/Urlwtw_xQ48
- b. <https://youtu.be/yDjIGXS58ds>
- c. https://youtu.be/k42_Kpp13mk

11. In these videos, Defendants' CEO states continuously that the products are “THCfree”, there was “no THC” and it had “0% THC.” He also said these were “wellness products.”

12. Annexed hereto as Exhibit “2” on page 2, were the FAQs the Company published back in September, 2012. In those, Defendants' specifically state:

“What is the difference between CBD from hemp and CBD from medical cannabis?” (bold in the original).

“While the two plants are botanically related, *our hemp contains no THC* and numerous medical studies have shown CBD to have significant potential health benefits from a variety of ailments ranging from epilepsy to pain

management. Medical cannabis contains THC and may provide relief from various ailments, however, with a psychotropic effect.” Emphasis added.

13. All of their advertising that I relied upon, magazine, FAQs and YouTube videos were consistent. According to Defendants, their products had no THC, and I indeed was looking for something for pain management. It was a perfect match.

14. Most telling were the Company’s FAQs that followed over the years and which drastically changed. The Company has been warning consumers specifically *not* to take the product if they were subject to random drug-test screening for employment or other reasons. Annexed hereto as Exhibit “3” is the April 8, 2015 FAQ by Defendants admitting to their false advertising to which I responded in September, 2012.

15. I was subject to regular such testing (urine) over the 14 years prior to 2012 that I was a trucker. I had no incident until taking this product.

16. The reason why we specifically researched this product was to investigate the contents so that I would not jeopardize my employment. I state to the Court that I was specifically aware that I could not ingest “THC” or Tetrahydrocannabinol, which is the chemical in Marijuana that would produce a “dirty” result in any random drug screening that I would give for my employment. I knew I had to stay away from THC.

17. As can be seen in the multiple media in which they advertised this product, the Defendants consistently represented that their products had “0% THC”, and were

“THC free.” After these “across the board” statements by Defendants in the magazine advertising, YouTube videos and Frequently Asked Questions, I thought I could take this product without jeopardizing my job.

18. The Court should respectfully note that, I did not and have not smoked marijuana or been around it for the 14 years I was a trucker and for the years prior thereto; and neither do I have an employment history or criminal record showing any use of marijuana.

19. As an over-the-road trucker, subject to regular and random drug-test screenings, I was acutely aware that in addition to the prohibition from smoking marijuana, I could not take any product with THC in it. However, I was also aware that I was able to take products with Cannabinoids (“CBD”) in them. That is what Defendants advertised this product to be, and that’s what I thought I was taking.

20. On September 17, 2012, I ordered the Defendants’ “Dixie X CBD Dew Drops 500mg Tincture. Annexed hereto as Exhibit “4” is a copy of the paid invoice for this product. Within one week of receiving this product, I then ingested it as directed by placing a dropper full of the liquid in my mouth and swallowing it.

21. On October 9, 2012, as I had regularly done over 14 years prior thereto, I submitted to a required, random, urine drug test screening. Annexed hereto as Exhibit “5” is the confirmatory Report dated October 11, 2012. I was confirmed for a positive test result for “marijuana metabolite” with a result of 29 ng/ml, almost double the cutoff concentration limit.

22. Almost immediately thereafter, I was terminated

from my 14-year long career as a trucker, and referred to required drug education courses through a Substance Abuse Professional Evaluation program (“SAP”).

23. Upon learning that the Defendants’ product caused me to have THC in my system, I immediately (October 18, 2012) ordered another batch of the tincture for the purpose of having it tested at a lab. While I ordered the 500mg tincture, Defendant mistakenly sent me the 100mg tincture.

24. Once I received the unopened product, on or around October 29, 2012 I found the lab known as “EMSL Analytical, INC” for the purpose of confirming that the defendants’ product I took contained THC. Annexed collectively hereto as Exhibit “6” are copies of the 1) the EMSL invoice to me for this testing; 2) the Analysis confirming the Defendants’ product had 170 ug/g of THC in it; and 3) EMSL’s Chain of Custody document.

25. Sure enough, the EMSL lab confirmed for me the Defendants’ product contained THC contrary to all of their advertising materials I relied upon before taking the product.

26. Even more remarkably, annexed hereto as Exhibit “7” is the email I received from the National Director at EMSL lab, Scott Van Etten. This email of November 8, 2012 states:

“Douglas,

Your report is attached. Since the ample contained THC, I may not be able to return it to you as per our DEA registration. I am checking on that. I’ll send you an email either way”

and later that day at 3:27 p.m.

“Douglas

We can’t return your sample.”

27. If the Court ever needed any evidence of the illegality of Defendants’ sending me this product in the mail to me in New York, it’s the above email and refusal by a DEA registered lab stating it was illegal to send it back!

28. Moreover, I understand through this litigation that the Defendants have produced Certificates of Analysis admitting the product indeed contained an amount of THC.

29. I brought this case, and indeed the instant motion, because I lost my career and income for 5 years, because I took this product. While the issue of my damages is clearly an issue of fact, there is no such issue as to the Defendants’ liability for sending me an illegal product through the mail, and falsely advertising it as having “0% THC” in multiple media.

30. I would never have taken this product if Defendants’ advertising was truthful and said even “trace amounts of THC” or “0.00001% THC” or anything hinting of any THC. In relying on such false advertising, my career and income was taken away and put myself and my family into financial ruin for an extended period.

31. There is simply no question that the Defendants, Colorado and California companies respectively, sent a federally illegal product to me in New York through the mail. The Court should respectfully grant me summary judgment as to liability under the RICO and GBL 350 claims in this lawsuit.

WHEREFORE, by reason of all of the foregoing, it is

respectfully requested that Plaintiff's motion for summary judgment as to liability of all Defendants be granted in its entirety and that Plaintiffs be allowed to proceed to a trial on the issue of damages, together with such other and further relief as the Court deems just and proper.

Dated: August 28, 2018

Douglas J. Horn
DOUGLAS J. HORN

Subscribed and Sworn to before me this
28 day of August, 2018

Maggie Masker [SEAL]
Notary Public

Cindy Harp-Horn
CINDY HARP-HORN

Subscribed and Sworn to before me this
28 day of August, 2018

Maggie Masker [SEAL]
Notary Public

[Archived Screenshot Dated October 19, 2012]

- [Home](#)
- [About Dixie X](#)
- [Online Store](#)
- [FAQ](#)
- [View Cart](#)

FAQ

Is CBD from hemp legal?

Our revolutionary Hemp oil cannabidiol (CBD) wellness products are legal to consume both here in the U.S. and in many countries abroad. The United States currently considers industrial hemp products to be legal as long as they are derived from industrial hemp and not from any part of the plants categorized under the United States Controlled Substance Act as marijuana. Dixie x's parent company Medical Marijuana, Inc., is a publicly traded company (see [link http://www.otcmarkets.com/stock/MJNA/quote](http://www.otcmarkets.com/stock/MJNA/quote)) that does not grow, sell or distribute any substances that violate United States Law or the controlled substance act.

Is the CBD in Dixie X synthetic?

Dixie X Hemp CBD Wellness Products are derived from a Hemp whole plant extract. We are proud to offer this naturally occurring form of high quality CBD that is not chemically synthesized in a lab.

Dixie X Science Director, Tamar Wise, elaborates:

“The CBD we use is biologically created in hemp plants and our methodology isolates and extracts it. We then infuse this naturally occurring CBD into our line of hemp products.”

Are Dixie X products made in the USA?

Yes, all Dixie X products are manufactured in our state of the art 27,000 square production facility located in Denver, Colorado. We are proud to be a company that not only produces a revolutionary line of CBD products, but also does so in the U.S.

Why are your products so expensive?

Dixie X is the first whole Hemp plant based wellness line of products containing CBD. It represents a significant capital investment of millions of dollars to bring these products to the Continental U.S. and in early 2013, European markets. Red Dice Holdings has a staff of over 25 individuals, including a team of scientists, engineers and clinical herbalists based in the U.S. working to formulate, develop and produce Dixie X. The technology is new and by most standards, revolutionary. All of these components, including strict chemical analysis testing regiments provided by a certified ISO 17-025 testing facility, directly impact the cost to produce Dixie X. We are committed to providing the highest quality products to our customers, balanced with integrity and sustainability.

What is the Compassionate Care Club and how does it work?

The Dixie X Compassion Care Club offers you the opportunity to receive a 25% discount on your ongoing purchases using our auto order system.

When will you begin shipments outside of the U.S.?

Dixie X will begin international distribution (including Great Britain) in early 2013. As a courtesy to our international customers, our customer service staff will

gladly coordinate the pickup of orders with most international shipping companies including UPS and FedEx. Advance coordination is required and the associated shipping fees must be prepaid in advance of shipment by the customer.

Do you lab test your products?

All of our products are tested multiple times during the manufacturing process using both traditional ISO 17 025 chemical testing facilities, as well as cannabinoid testing facilities, all of which are based in the U.S.

Will Dixie X work for me?

Each individual is unique and has different ailments and concerns they are interested in addressing though the consumption and application of the Dixie X product lines. While we are not medical professionals and cannot make medical claims, the feedback we have received from a variety of patients and consumers alike has been overwhelmingly positive. We encourage you to visit our “testimonials” page on our www.dixieX.com website to read more. As with any medical condition, we also encourage you to confer with your physician about Dixie X and develop the most appropriate health and wellness regimen for your specific needs

Can you disclose revenue projections or sales numbers?

Our company policy is that we don't discuss sales revenue or statistics outside of what is reported by our parent company, Medical Marijuana, Inc. (MJNA). Our new Dixie X product line is being received very well across the country by patients and consumers alike. We encourage you to visit our website and social media pages on [Face](#)

Book and Twitter to see what customers are saying about Dixie X.

Will Dixie X make me feel “high”?

We are not aware of any psychotropic effects associated with using these products. The complete product line of Dixie X is consistently tested throughout the formulation and manufacturing process to ensure it meets all local, state and Federal guidelines and laws.

How long will it take me to get my order?

You can expect your order to arrive in 3-5 business days assuming shipment through the United States Postal Service. Orders received by 1:00 MST on Fridays are shipped the next business day.

What is the difference between CBD from hemp and CBD from medical cannabis?

While the two plants are botanically related, our hemp contains no THC and numerous medical studies have shown CBD to have significant potential health benefits for a variety of ailments ranging from epilepsy to pain management. Medical cannabis contains THC and may provide relief from various ailments, however, with a psychotropic effect.

Will Dixie X ever be available in grocery and health food stores?

We are currently in discussion with several major retail chains and hope to offer Dixie X through those retail partners soon.

FOOD AND DRUG ADMINISTRATION (FDA)
DISCLOSURE

These statements have not been evaluated by the Food and Drug Administration (FDA). These products and statements are not intended to diagnose, treat, cure, or prevent any disease.

[Archived Screenshot Dated April 8, 2016]

DIXIE
BOTANICALS

- [Home](#)
- [CBD Products](#)
 - [CBD Stix](#)
 - [CBD Tincture](#)
 - [CBD Salve / CBD Balm](#)
 - [CBD Capsules](#)
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Frequently Asked Questions

NOTE: This website is intended as informational, and is not meant as, and should not be construed as medical advice. Consumers should consult with their own healthcare practitioners concerning specific questions. The hemp stalk oil products described in this website are not drugs, and are not intended to diagnose, treat, cure, or prevent any disease or abnormal condition.

Will Dixie Botanicals work for me?

Each individual is unique and has different wellness goals they are interested in addressing though the consumption and application of the Dixie

Is the cannabidiol – cbd oil in Dixie Botanicals

synthetic?

No. Dixie Botanicals Hemp Stalk Oil Products are derived from a mature stalk and seed extract. We are proud to offer this form of high quality hemp stalk oil, Real Scientific Hemp Oil, that is naturally grown and is not chemically synthesized in a lab.

Do these products contain cannabidiol – cbd oil?

Yes, Dixie Botanicals Hemp Stalk Oil Products contain naturally occurring cannabidiol – cbd oil from industrial hemp. We are not medical professionals; our products are not drugs; and thus we are unable to offer “dose” or “dosing” recommendations regarding cannabidiol – cbd oil. We ask that you consult with your medical professional to determine the appropriate use of our products to meet your health and wellness goals.

Do you lab test your hemp stalk oil products?

All of our products are tested multiple times during the manufacturing process, using both traditional ISO 17 025 chemical testing facilities. [View test results](#)

Are hemp stalk oil products legal?

Our hemp stalk oil products are legal to consume both here in the U.S. and in many countries abroad without a prescription. Dixie Botanicals’ parent company, Medical Marijuana, Inc., MJNA, is a publicly traded company (see link <http://www.otcmarkets.com/stock/MJNA>) that does not grow, sell or distribute any substances in ways that violate United States Law or the Controlled Substance Act.

Will Dixie Botanicals hemp stalk oil make me feel “high”?

No, Dixie Botanicals Products are not marijuana.

Does Cannabidiol (CBD) and other natural hemp based constituents show up on a drug test?

Most workplace drug screens and tests target delta9-tetrahydrocannabinol (THC) and do not detect the presence of Cannabidiol (CBD) or other legal natural hemp based constituents. However, studies have shown that eating hemp foods and oils can cause confirmed positive results when screening urine and blood specimens. Accordingly, if you are subject to any form of drug testing, we recommend (as does the United States Military) that you DO-NOT ingest our products, and consult with your healthcare, drug screening\testing company or employer.

For more information please click on the following links:

[LINKS OBSCURED]

https://www.votehemp.com/PDF/Evaluating_the_Impact_of_Hemp_Food_Consumption_on_Workplace_Drug_Tests.pdf

How long will it take me to receive my order?

Dixie Botanicals strives to offer the best customer service possible and ships all products via US Mail. You should typically receive your products within 7 – 10 business days. You will receive a tracking number via email once your package has shipped.

Are Dixie Botanicals products made in the USA?

Yes, all Dixie Botanicals products are manufactured in our state of the art production facility located in San Diego, California. We are proud to be a company that not only produces an innovative line of hemp stalk oil products, but

also does so in the U.S. [Click Here](#) to learn more about our hemp and manufacturing processes.

What is the Compassionate Care Club and how does it work?

The Dixie Botanicals Compassion Care Club offers you the opportunity to receive a 15% discount on your ongoing purchases using our auto order system. The club is a 12 month auto re-order program. Once enrolled, you will receive the same order every month and your credit card will be charged automatically. You will receive the benefit of knowing your Dixie Botanicals Hemp Stalk Oil Products are on their way to your door. There is a 3 month minimum obligation. If the Compassionate Care Club member chooses to terminate enrollment in the program in the first 3 months a \$50 administration fee will be charged. For more information, visit the [Compassionate Care Club page](#).

**FOOD AND DRUG ADMINISTRATION (FDA)
DISCLAIMER—For Supplements**

These statements have not been evaluated by the Food and Drug Administration (FDA). These products are not intended to diagnose, treat, cure, or prevent any disease.

**FOOD AND DRUG ADMINISTRATION (FDA)
DISCLOSURE**

THESE STATEMENTS HAVE NOT BEEN EVALUATED BY THE FDA AND ARE NOT INTENDED TO DIAGNOSE, TREAT, OR CURE ANY DISEASE. ALWAYS CHECK WITH YOUR PHYSICIAN BEFORE STARTING A NEW DIETARY SUPPLEMENT PROGRAM.

LEAVING OUR WEBSITE DISCLAIMER: IF WE

HAVE A RESEARCH LINK TO A WEBSITE WHERE WE SELL PRODUCTS OR HAVE PRODUCT INFORMATION, THE EXIT DISCLAIMER INDICATES THAT WHEN YOU CLICK OK YOU WILL LEAVE THE DIXIEBOTANICALS.COM WEBSITE AND VISIT AN EXTERNAL LINK. LINKS TO ANY INFORMATIONAL WEBSITES ARE PROVIDED SOLELY AS A SERVICE TO OUR USERS. EXTERNAL LINKS PROVIDE ADDITIONAL INFORMATION THAT MAY BE USEFUL OR INTERESTING AND HAS NO AFFILIATION TO THE PROMOTION, SALE AND DISTRIBUTION OF DIXIE BOTANICALS PRODUCTS. THE LINK DOES NOT CONSTITUTE AN ENDORSEMENT OF THESE ORGANIZATIONS BY DIXIE BOTANICALS AND NONE SHOULD BE INFERRED.

PLEASE VIEW OUR FULL TERMS OF USE AGREEMENT FOR MORE INFORMATION AND THE TERMS AND CONDITIONS GOVERNING YOUR USE OF THIS SITE.

[Text from Dixie X Product Label]

Ingredients

Pure glycerin, hemp whole plant extract, CBD* extract derived from medicinal hemp, cinnamon extract.

Medicinal Information

Contains approximately 500mg CBD* and other cannabinoids. (*cannabidiol)

KEEP OUT OF REACH OF CHILDREN AND PETS.

Dixie Elixirs & Edibles

1-800-928-1623

Dosage

Place below the tongue for fast, effective relief.

This product was tested via HPLC and is manufactured without any regulatory oversight for health, safety or efficacy. There may be health risks associated with the consumption of this product. This product is infused with medicinal hemp and is intended for use solely by the patient to whom it was sold; any resale or distribution to a third party is prohibited.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DOUGLAS J. HORN and CINDY HARP-HORN,

Plaintiffs,

-vs-

Civil Action No.: 15-cv-701-FPG

**MEDICAL MARIJUANA, INC., DIXIE ELIXIRS
AND EDIBLES, RED DICE HOLDINGS, LLC, and
DIXIE BOTANICALS,**

Defendants.

Examination Before Trial of **DOUGLAS J. HORN**, held before Marissa A. Ashcroft, Notary Public, at MURA & STORM, PLLC, 930 Rand Building, 14 Lafayette Square, Buffalo, New York, on May 8th, 2017 at 10:17 a.m., pursuant to notice.

* * * * *

[99]

BY MR. BORON:

Q. Okay. Mr. Horn -- there came a point in time in February of 2012 where you were driving for Enterprise and had an accident?

A. Yes.

Q. Okay. And that was a one-vehicle accident?

A. Initially, yes.

Q. Okay. Tell me what you mean by "initially."

A. Well, after we had fell over another truck had hit us, a pickup truck went over the embankment and did the same thing I did.

Q. You were already off the road at that point?

A. Yes.

Q. On the side?

A. I was down in the ditch.

Q. Down in the ditch. Your car was already on its side?

A. Correct.

Q. Okay. Where were you coming from and going to on that trip?

A. I was going to Liberty, Montana, that was about four miles up the road and I was coming from Lake Charles, Louisiana.

[100]

Q. Okay. Cindy was with you in the truck at the time of the incident?

A. Yes.

Q. Okay. Was the accident an accident that had to be reported to the DOT by Enterprise?

A. Yes.

Q. Yes. Are there certain kinds of accidents that occur with trucks that don't have to be reported to the DOT?

A. Yes.

Q. What's the difference?

A. I think if it has to be towed, if there's an injury, those all have to be DOT reported, fatality definitely.

Q. All right.

The following was marked for identification:

Exhibit 13 Enterprise DOT Reportable
dated March 22, 2012

BY MR. BORON:

Q. Mr. Horn, I'm showing you what's marked as Exhibit 13 for today's deposition. Exhibit 13, I got an extra copy if somebody wants to [101] see an extra copy of Exhibit 13.

For the record, Exhibit 13 consists of five pages stapled together. First page is a -- starts at ENT 109 and then the pages are consecutively numbered through --

MR. MAZZOLA: They're not.

Q. Well, first four pages, ENT 112 and then the last page is ENT 124. Do you see that, Mr. Horn?

A. Yes, I do.

Q. First page is signed by somebody named Nolan Everett with the label of director of safety. Is he somebody who worked at Enterprise?

A. Yes.

Q. Okay. Did you talk to Nolan Everett about the accident?

A. No, I talked to John McConiville. He was our regional manager.

Q. Okay. Was Nolan Everett higher in the organization

than John?

A. Yes.

Q. Right. Okay. Was there an investigation done by Enterprise into the accident?

[102]

A. Yes.

Q. Was there a committee that examined what had happened during the accident?

A. So I was told, yes.

Q. Okay. And the committee made a decision about whether the accident was preventible or not preventible?

A. Correct.

Q. And were you told by the committee that they were preventible?

A. Well, they both -- I heard two different things on that.

Q. Had you ever seen the copy of the report that went to the DOT about the accident?

A. No, I haven't.

Q. Have you seen your own records, like your CSA records regarding the accident?

A. No.

Q. Do you have any reason to doubt that Enterprise reported to the DOT that the accident was preventible?

A. My argument with them that if it was preventative you have to tell me how.

[103]

Q. But here's the question: Do you have any reason to doubt that Enterprise reported to the DOT after investigating the accident that it was preventable?

A. No.

Q. You have no reason to doubt that?

A. Yeah.

Q. We try to get the record as clear as possible.

A. Right.

Q. That's why I'm following up with these kinds of questions. You provided on the second page some information about your recollection of what happened at the accident, correct?

A. Correct.

Q. Okay. Do you know whether that -- what you wrote, your explanation of the accident, was considered by the committee at Enterprise?

A. I'm sure it was.

Q. And then there was the supervisor report, the third page of this exhibit. Have you ever seen a copy of this supervisor's report?

A. No.

Q. Did you talk with John Frezzo about the [104] accident after it had occurred?

A. Yes, I did.

Q. Did you tell him what had happened?

A. Yes.

Q. Do you see where there's a reference on the third page of the exhibit where it says James has a million mile award in safety?

A. Yes.

Q. What is that?

A. That's you've done a million miles with no incident.

Q. A million miles in your career or a million miles for Enterprise?

A. A million miles for Enterprise.

Q. Do you have some document or record, plaque, something like that?

A. Yes.

Q. You do?

A. Yes.

Q. All right. Is it at home?

A. Yes.

Q. Okay. Does Cindy also have a million mile award in safety?

[105]

A. She does.

Q. Were there any equipment defects that caused the accident?

A. No.

Q. Was your truck run off the road?

A. It was not run off the road, no.

Q. Okay. It slid off the road?

- A. Yeah, it was uncontrollable.
- Q. Okay. Did you have to go through periodic training through Enterprise for driving?
- A. No.
- Q. No. Did you ever receive training under the Smith System?
- A. Yeah.
- Q. With Enterprise?
- A. Yeah. That type, yes.
- Q. Okay. And was that something that had to be renewed from time to time?
- A. They did the Smith System and I think they did a goal system, so.
- Q. And, again, you watch videos in a room?
- A. Yeah, you watch videos, then there's some questions.
- [106]
- Q. Then there's some commentary, fill out a form, answer some questions?
- A. Correct.
- Q. Have you had similar training at ICX?
- A. No.
- Q. You have not had Smith training at ICX?
- A. No.
- Q. Did you have to have hazardous material at ICX?
- A. You had to have recertification every two to four years -- company recertification, yes.

- Q. And who would do the recertification, the person that ran the training program and signed the certifications?
- A. Usually the general manager.
- Q. Okay. Is it always the same person that did the hazardous material training?
- A. Usually, yeah.
- Q. Who was that?
- A. John Frezzo.
- Q. How many other people would get the training the same time you were getting it?
- A. We basically did it when we came in, so we [107] pretty much did it, just me and Cindy.
- Q. Just you and Cindy would watch the video?
- A. Yeah, there wasn't a scheduled class or anything, just when you came into the terminal, take a half hour, hour, whatever it took.
- Q. And then John would sign a form saying you were recertified?
- A. Correct.
- Q. The fact of your accident in North Dakota makes you somewhat less interesting to a perspective new employer as oppose to somebody who has never had a wreck, correct?
- A. Some.
- Q. Okay. You got injured in that accident in North Dakota, correct?

A. Yes.

Q. And Cindy got injured as well?

A. Yes.

Q. Okay. So what was injured, what part of your body?
Let's start with that.

A. My lower back and my shoulder.

Q. Okay. Had you had problems with your lower [108]
back before this accident occurred?

A. Yes.

Q. And by "this accident" I'm talking about the North
Dakota, February 24, 2012.

A. Correct.

Q. You had some problems with your back before?

A. Yes.

Q. You were diagnosed with degenerative disc disease?

A. I don't know if that's what it was. I had some
problems, issues going on there. I had several issues.

Q. Had you been treated for back pain before the
accident?

A. Yes.

* * * * *

[111]

Q. Were you prescribed any pain medication by any
doctor?

A. Yes.

Q. After the accident?

A. Yes.

Q. Yes. Who was prescribing pain medication for you?

A. Dr. Choi.

Q. Is that the back doctor from Binghamton?

A. No.

Q. No, okay. Dr. Choi is your --

A. Primary.

[112]

Q. -- primary care physician? How soon after your accident did you see Dr. Choi?

A. As soon as we got home after the -- after I saw the Workman's Comp doctor.

Q. Do you recall the pain medication you were prescribed initially by Dr. Choi?

A. Yes.

Q. What was that?

A. Hydrocodone.

Q. Hydrocodone?

A. Mm-hmm.

Q. Anything else?

A. He gave me prednisone.

Q. Was Dr. Choi aware that you were a trucker?

A. Yes.

Q. Had you had any conversations with Dr. Choi in the past about the drug test that you had to take

periodically, random testing that was done?

A. Yep.

Q. Was there ever any discussion about hydrocodone and whether that could be a problem for you with drug testing?

[113]

A. No.

Q. No. Did you ever ask Dr. Choi about any particular either prescription or nonprescription drugs that you took that you were concerned about for drug test results?

A. Yeah, I asked him as far as taking it at work and with the company and all that, the work I do.

Q. When did you have that kind of a conversation with him?

A. When he first prescribed it for me and I don't know when that was. It's been a while.

Q. Before the accident you're talking about?

A. Before the accident, yes.

Q. Okay. After the accident did you have a further conversation with Dr. Choi about drug testing you would have to take eventually?

A. Yeah, he said it would be fine.

Q. He said what you prescribed him -- what he prescribed for you wouldn't be a problem for your drug testing going forward?

A. Right.

Q. By the time you had the positive test in [114] October 2012, were you off the hydrocodone or were you still taking it?

A. I was taking it off and on at night.

Q. Were you having trouble sleeping without taking it?

A. I was having shoulder pain so that's why I bought the product and that's why I went to the product because the hydrocodone wasn't allowing me to sleep with the pain.

Q. Were you still taking prednisone at the time you tested positive in October 2012?

A. I don't think at that time, no. I was taking it off and on.

Q. Was Dr. Choi just prescribing pain medication for you without seeing you or did you have to go into his office to see him to get the prescriptions?

A. I usually went in and saw him.

Q. In other words, he wouldn't write you a prescription just by talking to you on the phone or if you were requesting it in some way that wasn't face-to-face?

A. No, I had to go in to talk to him.

[115]

Q. Okay. Was his office allowed to prescribe medication for you without him being there? In other words, just a nurse sees you and gives you the prescription?

A. Not that I know of.

Q. Okay. How many times did you see Dr. Choi after the accident before the positive drug test?

- A. At least two to three times.
- Q. And when you saw Dr. Choi in those two or three visits after the accident, but before the positive drug test you were telling him what parts of your body were in pain?
- A. My shoulder.
- Q. Right or left shoulder?
- A. Right shoulder.
- Q. Were you affording any other pain in your body to Dr. Choi?
- A. Just my low back.
- Q. Low back, lumbar region?
- A. Low back, yeah.
- Q. And would Dr. Choi or a nurse ask you to rate your pain on a 0 to 10 scale when you would go [116] visit?
- A. Yes.
- Q. And so you would say my pain's at a 7 today or a 9?
- A. Correct.
- Q. Okay. And did Dr. Choi tell you that if you had a further problem, new problem that you should get in touch with him and let you know -- let him know?
- A. Yeah.
- Q. Yes, he did. Did you consult with Dr. Choi about the product that you bought from Dixie?
- A. No.

The following was marked for identification:

Exhibit 14

Worker's Comp Doctor Form

BY MR. BORON:

Q. Mr. Horn, showing you what's marked as Exhibit 14 for today's deposition. For the record, it's a two page exhibit, correct?

A. Correct.

Q. The pages are numbered in the bottom [117] right-hand corner, ENT 551 and ENT 552, correct?

A. Correct.

Q. Okay. In this two-page document on the first page there's a heading that says History of Present Illness; do you see that?

A. Where at?

Q. The heading right there that says -- sorry about the small print -- History of Present Illness.

A. Yep.

Q. Okay. So there's a description of the accident at first -- the first part of the History of Present Illness describes the accident, correct?

A. Yes.

Q. Okay. Do you see farther down about five lines from the bottom of that history of present illness?

A. Yes.

Q. It says, he states he has degenerative disc disease, two herniated discs and spinal stenosis. Were you aware

that you had two [118] herniated discs –

A. Yes.

Q. -- at the time you were reporting this to a doctor?

A. Yes.

Q. How long had you had herniated discs?

A. Since 2007 I think.

Q. Did they ever resolve or do you still have them today?

A. I've been through decompression, that's usually how I spend my vacations at Christmastime, this five-week decompression program, and then that would alleviate a lot.

Q. Okay. Is it -- do you have any reason to deny --

A. No.

Q. -- that you have degenerative disc disease and you've been dealing with two herniated discs?

A. No.

Q. No, okay. You see the next heading labelled, it says Past Medical History?

A. Correct.

Q. Okay. And then it says -- there's one, two, [119] three, four different types of things described there?

A. Correct.

Q. Number one says Hepatitis C, correct?

A. Correct.

Q. Number two says degenerative disc disease, number three says disc herniation in the lumbar spine and four

says spinal stenosis?

A. Correct.

* * * * *

[139]

Q. Okay. And after you left the facility the next thing you heard about the urine test was when you got contacted by somebody about the result of it?

A. I got contacted by the MRO in Kansas or Kentucky that said I did a dirty random.

Q. MRO stands for medical review officer?

A. Correct.

Q. Is that somebody that works for the DOT?

A. They were working for the lab.

Q. For the lab?

A. Right.

Q. Okay. Were the test results going to be reported to the DOT?

A. I would imagine, yeah.

[140]

Q. Okay. So this wasn't just an Enterprise test, this was a DOT test as well?

A. Yes.

Q. Okay. And what were you told when you were contacted about the urine test by the MRO?

A. That I did a dirty and that I was going to basically not be able to drive unless I went through a substance

abuse program.

* * * * *

[191]

Q. Okay. So your complaint alleges that after your February 24, 2012 vehicle accident you took anti-inflammatory and other medication. Do you see that allegation?

A. Correct.

Q. Okay. So is the anti-inflammatory medication that you took the hydrocodone?

A. Prednisone.

Q. Prednisone?

A. Yeah, that's basically a steroid and I'm not sure if he had me on Relafen or not.

Q. Did you take Relafen after the accident?

A. I don't know if I took it after the accident. I know I had it at one time, but I don't know if I took it after.

Q. And when you say "he," you're talking about [192] Dr. Choi?

A. Yeah.

Q. Do you know how to spell Relafen?

A. It was actually called something else, but that was the actual name for it was Relafen. He just gave me the generic so it was called something else.

Q. Okay. In any event, that allegation that we were just looking at together in your complaint of paragraph 12 says that you not only took anti-inflammatory

medication, but you took other medication?

A. Right.

Q. So what was the other medication you were taking?

A. The hydrocodone.

Q. Okay. Is there any other medication besides the prednisone or the hydrocodone that you were taking?

A. No.

Q. At any point in time after the wreck right up until the positive drug test?

A. Just Motrin.

[193]

Q. You took Motrin as well?

A. Yeah, I took Motrin.

Q. Okay. What about Tylenol?

A. Not so much.

Q. Did you take some Tylenol after the wreck?

A. I did.

Q. You took some Motrin as well?

A. Yeah, because that's what the Workers' Comp doctor told me to do was take Motrin.

Q. Okay. Did you take any other over-the-counter pain relievers of that type?

A. No.

Q. Were you ever prescribed Percocet after the wreck?

A. I don't believe so, no.

Q. You testified earlier that there came a point in time when you stopped taking the hydrocodone on a regular basis. You would just take it as needed --

A. Correct.

Q. -- is that correct?

A. Correct.

Q. Okay. So did you check with Dr. Choi whether [194] it was okay to just take it on an as-needed basis going forward?

A. I did.

Q. All right. And what did he tell you?

A. He told me I should probably take it on a regular basis.

Q. Did he forbid you from using it only on an as-needed basis?

A. No.

Q. Okay. Did you talk with him about whether there would be possible ramifications for random drug testing if you started to take a medication in intervals that he hadn't prescribed?

A. We had discussed about taking the hydrocodone at work, yeah, and he said that I would be fine.

Q. Were you taking the hydrocodone and using the hydrocodone while you were driving your truck?

A. No.

* * * * *

[200]

Q. Okay. So on October 11th you get the phone call and that same day did you supply another urine sample?

A. When I got the call that we had done a dirty random, talked to the company the very next morning because it was 6 o'clock at night, very next morning me and Cindy went down to the nearest drug test facility and did drug tests.

Q. How much did you pay to get those drug tests done?

A. I don't remember.

[201]

Q. Was it more than \$100 each?

A. Yeah, I believe so.

Q. Was it more than \$500 each?

A. No.

Q. How do you know that test came back negative?

A. Because I got the results.

Q. So that's why you say Dr. Choi's test was the third one that you had endured in about a week's time?

A. Yeah.

Q. Two of them came back negative, Dr. Choi's test came back negative and the one where you supplied the urine in Texas came back negative?

A. Yeah, I did two tests there so it was actually three.

Q. You did two tests in Texas?

A. I did an instant test and then I did a DOT test.

Q. Okay. The instant test --

A. Yes.

Q. -- in Texas was just like going to the drugstore and buying something and –

[202]

A. I think it's a little more sophisticated than that, but yeah, basically.

Q. You read your own test results?

A. No, they administered the test.

Q. Oh, okay. So two separate urine samples?

A. Correct.

Q. Did Cindy go through two sets of urine tests in Texas?

A. No, she just did a DOT.

Q. She just did a DOT. What was the result of Cindy's DOT test?

A. Negative.

Q. Were the results of your tests for urine you supplied in Texas sent to Enterprise?

A. Yes, we did. I sent them.

Q. You sent them?

A. Yeah.

Q. Okay. As soon as you got them you passed them on to Enterprise?

A. Yes.

Q. What was the reaction of Enterprise?

A. Well, my terminal manager, I faxed it to him and he said he would pass it along to Nolan, [203] but they

basically said a dirty random is a dirty random.

Q. Do you know if it got passed on to random -- to Nolan, your second test?

A. I was told.

Q. Okay. And John Frezzo's the one that told you that?

A. Yeah.

The following was marked for identification:

Exhibit 23	Photocopy of High Times Medical Marijuana Article
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BY MR. BORON:

Q. I'm showing you, Mr. Horn, what's been marked as Exhibit 23 for today's deposition. For the record, it's two pages stapled together. The front page is a photocopy of a cover to a magazine, second page is an article from a magazine. Would you agree with that?

A. Yes.

Q. And the magazine we're talking about is High Times?

A. Yes.

[204]

Q. Okay. Were you a subscriber at any point in time to High Times magazine?

A. Nope.

Q. Did you ever have this particular issue, which is the Fall 2012 issue of High Times?

- A. I purchased that, yes.
- Q. You purchased it?
- A. Mm-hmm.
- Q. Where did you purchase it?
- A. At a bookstore, Barnes & Noble in Texas.
- Q. In Texas. When did you purchase it?
- A. I'm not sure.
- Q. Purchased it before your dirty random?
- A. No, before.
- Q. Does a log test show that you were in Texas before your dirty random?
- A. Oh, I'm sure. I don't personally have one, no.
- Q. Where was the Barnes & Noble in Texas?
- A. In Freeport, Texas there's a bookstore, it might not have been Barnes & Noble.
- Q. And it wasn't Cindy that bought it, it was you that bought the magazine?
- [205]
- A. Well, we were together, so.
- Q. Oh, you were together, okay. So it was a joint decision to purchase the magazine?
- A. Yeah.
- Q. Do you have a receipt for purchasing the magazine?
- A. Nope.
- Q. Did you purchase it with cash or a credit card?

A. I don't remember.

MR. BORON: Frank, they're going to produce their credit card statements, right? We asked for the credit card statements.

MR. HOUSH: I understand. Yeah, there's no reason to believe that that's not going to happen.

MR. BORON: Okay. I'm sorry to do this, but I need to reserve the right to redeposit them on their credit card statements when I get them.

MR. HOUSH: I understand.

BY MR. BORON:

Q. Yep. Okay. Was this the first time you had [206] ever purchased a High Times magazine?

A. Yep.

Q. The very first time in your life?

A. Yep.

Q. Did you even know such a magazine existed before you purchased it?

A. I heard about it.

Q. Heard about it by who?

A. Not any particular person, I just heard about it.

Q. Somebody recommend that you buy this magazine?

A. No.

Q. What led you to buy it?

A. The ad inside there for Dixie X.

Q. You're referring to this ad that's on page 42?

A. Correct.

Q. That's what made you decide to buy the magazine?

A. Yeah.

Q. Had you read through the first 41 pages and then you got to page 42 and that made you buy the magazine?

A. We flipped through it, yeah.

[207]

Q. Okay. Why is it that you were flipping through the magazine?

A. It was on a table actually and Cindy's mom has cancer so we thought that, you know, we'd see if there was anything in there because of the marijuana/cancer thing.

Q. Did this headline on the cover that says Medical Marijuana, is that what caught your attention?

A. Correct.

Q. In terms of wanting to look at what's in the magazine?

A. Correct.

Q. Cindy's mom had had cancer for how long?

A. She had just been diagnosed.

Q. She had just been diagnosed?

A. Yep.

Q. What state was Cindy's mom living in at that time?

A. California.

Q. Had Cindy's mom suggested that -- that maybe medical marijuana might help her condition?

A. No.

[208]

Q. At that point in time was Cindy's mom going through treatment for her cancer?

A. Not at that particular time, no.

Q. No. And what kind of cancer was it?

A. Breast cancer.

Q. When did Cindy's mom get diagnosed with breast cancer?

A. I don't remember.

Q. Was it in 2012?

A. Yes.

Q. When did Cindy's mom tell you that she had been diagnosed with cancer?

A. It wasn't long before this, before we bought that so I couldn't tell you a specific date.

Q. By "it wasn't long," do you mean less than a month?

A. Yeah, about a month.

Q. And you bought this in October of 2012?

A. Bought this?

Q. Yeah.

A. I'm not sure when I bought it exactly.

Q. You have no record of when you bought it?

A. No.

[209]

- Q. And no memory of when you bought it?
- A. Not really, no.
- Q. So you could have bought it after the dirty random?
- A. No, because I wasn't in Texas after the dirty random.
- Q. I thought you were there giving urine?
- A. Well, I gave urine and then went straight home. That's a higher place in Texas. Texas is a pretty big state.
- Q. What city were you in when you gave the urine?
- A. I can't remember the name of it. It's almost like Dumont.
- MR. MAZZOLA:** Dumas, it's on the thing.
- Q. How far is that from Freeport?
- A. Quite a ways.
- Q. Is it on the way back to New York State?
- A. Nope.
- Q. To Freeport?
- A. No.
- Q. Okay. So at the time that you purchased the magazine your concern was to find out whether the magazine had information about medical [210] marijuana that might treat her -- Cindy's mom's pain that she was dealing with for cancer?
- A. Correct.
- Q. Did you take the magazine home with you or leave it at the bookstore?

A. We purchased it.

Q. Did you retain the magazine?

A. That's -- yeah.

Q. Do you still have the magazine today?

A. Yeah.

Q. You have the original magazine?

A. Yes.

Q. Did you bring it with you?

A. I think it's in -- yeah.

Q. Can we see it?

A. Sure.

MR. HOUSH: So the record's clear, my client is handing Mr. Boron the original of the exhibit.

MR. MAZZOLA: He said there were two.

MR. BORON: Are there two copies of it in there?

[211]

MS. HORN: No, I have a different one in here. I don't think so.

MR. BORON: Okay. That's a different addition?

MR. MAZZOLA: Yeah.

MR. HOUSH: They're going to take everything that you -- just put that back in your thing. Just so the record is clear, my client had a separate and unrelated copy of High Times that opposing

counsel is now taking.

MR. BORON: I think this would be a super time for a break.

MR. HOUSH: Great.

(Recess taken)

The following was marked for identification:

Exhibit 24 High Times Medical Marijuana
Magazine

BY MR. BORON:

Q. We're back on the record after a break.

Mr. Horn, you continue to be under oath. I'm [212] showing you what's been marked as Exhibit 24 for this deposition. Would you agree with me for the record this is a -- this is the actual High Times magazine from which photocopies that we were looking at on Exhibit 23 were taken?

A. Correct.

Q. Okay. And for the record, this is the same High Times magazine that you were testifying earlier just before the break about having purchased at a bookstore in Texas?

A. Correct.

Q. All right. You and your wife Cindy were together at the time the magazine was purchased, correct?

A. Correct.

Q. All right. Did you do some reading of the magazine inside the bookstore or did you just purchase it and bring it out of the bookstore and read it?

A. We were inside the bookstore.

Q. How long were you in the bookstore?

A. For a little while.

[213]

Q. Were you reading other magazines or just focussed on this one?

A. We were reading other books and stuff.

Q. Okay. If you did purchase it with a credit card -- I know you said you don't remember whether you did or didn't. What kind of credit cards did you have in 2012? Visa? MasterCard? Do you remember what credit cards?

A. It probably would have been a Visa.

Q. Visa?

A. Yeah.

Q. Discover? Visa?

A. It wouldn't have been Discover. I don't like using Discover.

Q. Okay. Did you have more than one credit card in your name in 2012?

A. Yeah, I had several.

Q. You had several?

A. Yeah, I had several.

Q. Were they all Visas?

A. No.

Q. Some MasterCard?

[214]

A. Correct.

Q. You had a Discover card as well?

A. Correct.

Q. Okay. That's all in 2012, right? Do you have your wallet with you? Do you have the same cards today?

A. No, I've kind of changed cards. I use a MasterCard right now strictly because it gives me pronounced -- for tax reasons.

Q. Okay. Did you pay -- back in 2012 were you in the habit of paying with a debit card from a bank?

A. I believe so.

Q. Yeah. Which bank is that?

A. The bank I bank with.

Q. Which bank were you banking with in 2012?

A. Visions.

Q. Visions Bank?

A. Correct.

Q. Same today?

A. Yes.

Q. There's been no change?

A. No.

[215]

Q. Do you have bank accounts at any other banks besides Visions in 2012?

A. No.

Q. Just for the record, there's just a couple things I want to make sure we do get on the record. In the bottom right-hand corner the cover of Exhibit 24 it says Fall 2012, correct?

A. Correct.

Q. With a number 11 --

A. Correct.

Q. -- after that. And then there's a price USA 5.99?

A. Correct.

Q. Is that what you paid for the magazine, 5.99, to the best of your knowledge?

A. I don't know.

Q. You don't know, okay. What -- what articles did you review in that magazine?

A. I just kind of skimmed through it.

Q. Were you just looking at the pictures or were you reading articles?

A. I was just looking at articles and what the [216] magazine was about.

Q. Had anybody recommended to you that you buy this magazine?

A. No.

Q. Did you do all the skimming that you were doing inside the bookstore?

A. Yes.

Q. Okay. And then once you purchased it and left the bookstore was that -- was that the last time you had looked at the magazine?

A. Pretty much.

Q. Did you show that magazine to anyone besides lawyers?

A. No.

Q. Share anything in the magazine with Cindy's mom?

A. No.

Q. Talk to Cindy's mom about anything you saw in the magazine?

A. No.

Q. How about your daughters, did you share anything about the information in the magazine with your daughters?

[217]

A. No.

Q. Did you give it to them to read. Did they have any interest in reading it?

A. Nope.

Q. To your knowledge, has anybody besides you and Cindy read any of the articles inside this magazine?

A. Just me and her.

Q. Okay. Take a look with me if you would at page 39 of Exhibit 24. It's Exhibit 24, right? And then the page before is 38, right; would you agree?

A. Yeah.

Q. And page 38 is the start of an article entitled High & Healthy by Elise McDonough?

A. Okay, correct.

Q. You would agree with that?

A. Yes.

Q. And then there's an article she wrote?

A. Correct.

Q. Okay. Did you read that article?

A. No.

Q. You didn't read her article?

[218]

A. No.

Q. Which articles in the magazine did you read?

A. Like I said, I skimmed through it.

Q. Do you have a recollection of reading any article?

A. Just the -- this one.

Q. Does this say High & Healthy at the top of page 42?

A. It does.

Q. Does it say High & Healthy at the top of the page for the Elise McDonough article?

A. Correct.

Q. Does it say High & Healthy at the top of page 40 which is a portion of Elise McDonough's article?

A. Correct.

Q. Were you interested in any of the recipes that are listed in her article?

A. No.

Q. Did you review any of the recipes that are listed in her article?

A. No.

Q. Have you or Cindy ever prepared the food [219] according to those recipes that are listed in that article?

A. No.

Q. Did you buy this magazine to review ads for masking products for dirty tests?

A. Nope.

* * * * *

[296]

Q. All right. We will continue tomorrow. I just want to get these questions on the record. You talked about you and your wife have taken other hemp products over the years; is that correct?

A. Correct.

[297]

Q. What other hemp products have you and your wife taken?

A. Hemp milk.

Q. Hemp milk. Why?

A. Why not?

Q. Okay. What else?

A. Hemp shampoo.

Q. Okay. What else?

A. That's about all -- I don't know if we took seeds or not.
I know we though about it. Hemp hearts.

Q. Hemp hearts?

A. Mm-hmm.

Q. Okay. What else?

A. That's all I can remember.

Q. And for how long a period have you taken these hemp
-- used these hemp products, over what time period?

A. These are a while back.

Q. How far back?

A. I don't remember.

Q. In 2012 were you taking those products?

A. No.

[298]

Q. Okay. 2011?

A. Possibly, yeah.

Q. 2010?

A. Possibly.

Q. Okay. Anything else? Any other hemp products?

- A. Not that I can remember, no.
- Q. Okay. So hemp hearts, hemp seeds possibly, right? Right?
- A. Possibly.
- Q. Okay. Hemp shampoo?
- A. Right.
- Q. And hemp milk?
- A. Yep.
- Q. Okay. What turned you on to taking hemp products?
- A. It's suppose to be help -- healthy.

* * * * *

[307]

- Q. Okay. We were talking also before we went on the break about hemp products that you've used?
- A. Correct?
- Q. Do you recall that?
- A. Yes.
- Q. You said that you've taken hemp seed or hemp heart?
- A. Yeah, it's basically in a shake is what it was.
- Q. Okay. Is there a difference between hemp seed and hemp heart?
- A. I don't know.
- Q. Okay. You said you've used hemp milk; is that correct?
- A. Correct.

Q. And hemp shampoo; is that correct?

A. Correct.

Q. Any other hemp-based products?

A. Not that I can think of, no.

Q. Did you use those products in, say, the – the month preceding your drug test?

[308]

A. No.

Q. When was the last time you used those products before the drug test?

A. Probably about a year before I got fired.

Q. So a year before the drug test?

A. Yeah, at least.

Q. What prompted you to use those hemp products?

A. We used the hemp shake for weight loss.

Q. Okay. And what about the hemp milk?

A. That was used in the shake.

Q. Okay. And what about the hemp shampoo?

A. That was just something we tried one time.

Q. Okay. How did you learn about these hemp products?

A. They were in the grocery store.

Q. What prompted you to buy them?

A. Try something different.

Q. Did you do any research before you used them?

- A. I didn't.
- Q. Did your wife do any research before you used them?
- A. I believe she did, yes.
- Q. After you dropped dirty I understand your wife [309] provided a sample to, I believe it was MEDTOX; is that correct?
- A. I'm not sure.
- Q. Okay. But when you went to that laboratory in Texas?
- A. Correct.
- Q. I think it might have been Dumas, Texas?
- A. Yeah, I think so.
- Q. Your wife gave a sample there; is that correct?
- A. Yes.
- Q. Why did your wife give a sample?
- A. To see if she had THC in her system.
- Q. But what would prompt her to do that?
- A. Because I had THC and I had no idea where it came from.
- Q. Did you have any idea where it came from?
- A. No, I did not.
- Q. Your wife did use the Dixie Elixir product; is that correct?
- A. She tried it once.
- Q. When you used the Dixie Elixir product for the first time did you have any sort of reaction [310] to it?

A. No.

Q. Did you feel high?

A. No.

Q. Did you feel any sort of euphoria or anything like that?

A. No.

Q. What did you feel?

A. I didn't feel anything.

Q. Okay. You testified earlier that you used marijuana when you were a kid; is that correct?

A. No.

Q. I think you testified earlier that when you were 15 you used marijuana?

A. No.

Q. We didn't ask you that question?

A. No.

Q. Okay. Have you ever used marijuana?

A. When I was younger.

Q. Okay. In the -- say, a year preceding your drug test did you ever use any marijuana?

A. No.

[311]

Q. Okay. In the year preceding your drug test did you ever ingest any marijuana products?

A. No.

Q. Nothing for a year?

A. Nope.

Q. Okay. And have you ever been convicted of driving while impaired?

A. No.

Q. And when I say that that includes intoxicated, you know what I mean, right?

A. Right.

Q. What about in your home, I saw someplace that you have five daughters; is that correct?

A. Correct.

Q. They're all grown now; is that correct?

A. Correct.

Q. So none of them live in the home with you?

A. No.

* * * * *

[350]

Q. In the last paragraph of this same exhibit, first page, you make a statement that says, I'm not willing to do that or go through drug rehab. Do you see that?

[351]

A. Correct.

Q. What do you mean by not willing to go through drug rehab?

A. Well, they wanted me to go through a SAT program and at that time I felt it was kind of an admission to

doing drugs and I didn't do drugs.

Q. How long did you wait to go through the drug rehab program?

A. August of the next year.

Q. And did that delay your ability to get your next job?

A. Did it delay my ability?

Q. Yes.

A. I could have done the rehab at any time.

Q. Does going through the rehab help your ability to get a job after the dirty?

A. Correct.

* * * * *

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DOUGLAS J. HORN and CINDY HARP-HORN,

Plaintiffs,

-vs-

Civil Action No.: 15-cv-701-FPG

**MEDICAL MARIJUANA, INC., DIXIE ELIXIRS
AND EDIBLES, RED DICE HOLDINGS, LLC, and
DIXIE BOTANICALS,**

Defendants.

Examination Before Trial of **CINDY HARP-HORN**,
held before Marissa A. Ashcroft, Notary Public, at MURA &
STORM, PLLC, 930 Rand Building, 14 Lafayette Square,
Buffalo, New York, on May 9th, 2017 at 10:56 a.m., pursuant
to notice.

* * * * *

[60]

Q. When's the first time that you went on to a Dixie X
website?

A. After I saw the article in the magazine.

Q. When did you first see the article in the magazine?

A. When we were in Freeport, Texas before we
purchased the product.

Q. Are you certain it was in Freeport, Texas that you
obtained the magazine?

A. Yes.

Q. What makes you so certain that you were in Freeport, Texas when you obtained the magazine?

A. Because we got laid over in Freeport waiting for a load and a friend of ours who also drove for Enterprise who was no longer driving said she was going to meet us at Chili's Downtown Freeport to have lunch so I wanted to go to a Starbucks. They don't have a Starbucks in Freeport. They have another bookstore like Barnes & Noble. I do not remember their name [61] and they have their own coffee shop there so we went there to hang out until we could meet her and while we were there is when we saw the magazine.

Q. What's the name of this book shore -- bookstore and coffee shop?

A. I don't remember the name of the bookstore, but I know it was -- it was like a Barnes & Noble and it had a coffee shop in there. It's like an off brand.

Q. So it's a place that sold books and magazines and --

MR. HOUSH: Coffee.

Q. -- recordings, like CDs that you would listen to?

A. I don't think they sold CDs.

Q. No. So it wasn't like Barnes & Noble in that respect?

A. Oh, I'm thinking music CDs. If you're talking about audio CDs, correct.

Q. Okay. Music CDs, you didn't see those being sold in that store?

MR. MAZZOLA: When was the last time you [62] bought one of those?

MR. HOUSH: I buy them all the time.

BY MR. BORON:

- Q. In the store what was sold besides coffee, you know, for consumption?
- A. For consumption, it was set up like a Starbucks so they had pastries, tea, coffee.
- Q. Were there any hemp-based products being sold in the store?
- A. Not to my knowledge.
- Q. Were there any natural products being sold in the store?

MR. HOUSH: Object to form.

- A. Not to my knowledge.
- Q. Were you at the magazine rack at some point when you were inside that store?
- A. Yeah, we were at the book racks. I was looking at books.
- Q. You never went to the magazine section of the store?
- A. The magazine section was near the coffee, but we sat down at a table and there were a bunch of magazines that were off. And the table [63] that we sat at just happened to have that book on it.
- Q. By that book you mean the High Times Fall 2012 addition?
- A. Correct.
- Q. So you didn't browse any other magazines at that store?

- A. We browsed books.
- Q. And what kind of books were you browsing?
- A. Diet books, cooking books, children's books.
- Q. Did you purchase any books that day?
- A. Just the magazine.
- Q. Did both of you purchase drinks at that store?
- A. Correct.
- Q. So there was a magazine purchased plus two drinks. Was there anything else purchased?
- A. No.
- Q. What did the bill total come to?
- A. I don't know.
- Q. Was it more than \$20?
- A. The magazine purchase was separate. It was like a Starbucks so you bought your coffee and then you -- it was like a Barnes & Noble and [64] you buy your coffee and you go and buy your magazine at a different spot.
- Q. So you actually had two purchase transactions?
- A. I believe so.
- Q. One was the beverages and the other transaction was purchasing the magazine?
- A. I believe.
- Q. Did your friend meet you at the store?
- A. No.
- Q. What other magazines were on the table where you

found the High Times magazine that you ended up buying?

- A. That was the only one on the table.
- Q. I thought I heard you say there was other magazines?
- A. On other tables. When we sat down somebody had been looking at it before we sat down.
- Q. What made you sit down with a magazine on it rather than a table that had a clear counter top?
- A. Because there was no other place to sit.
- Q. What time of day was it before you were there getting this drink? In the morning before [65] lunch?
- A. Before lunch.
- Q. Are you absolutely certain it was before 12 noon?
- A. I'm not positive. I know we went to meet her for lunch.
- Q. What's the absolute latest point in time it could have been that you purchased that magazine that time of day?
- A. I couldn't tell you.
- Q. Is it possible that you purchased it at 7 p.m. at night?
- A. No.
- Q. Is that too late?
- A. Correct.
- Q. Are you certain that you purchased it before 1 p.m.?
- A. I'm not.
- Q. Are you certain you purchased it before 2 p.m.?

A. Pretty certain.

Q. Did you purchase the magazine before you met your friend for lunch?

[66]

A. Correct.

Q. Did you take the magazine with you when you went for lunch?

A. No.

Q. What did you do with the magazine before you met your friend for lunch?

A. It was in the truck.

Q. You left it in the truck?

A. Correct.

Q. Did you discuss the magazine with your friend?

A. No.

Q. Did you make your friend aware that you purchased the magazine?

A. It wasn't subject to talk about, we talked about work.

Q. How long were you sitting at the table when you were inside the store?

A. I'm not sure.

Q. Was it under an hour?

A. I'm not sure.

Q. Was it under two hours?

A. I'm not sure.

Q. Was it under six hours?

[67]

A. Yes.

Q. Was it under four hours?

A. Yes.

Q. Was it under three hours?

A. I believe so.

Q. So the magazine was left in the truck when you went to meet with your friend, correct?

A. Correct.

* * * * *



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----X

DOUGLAS J. HORN and CINDY HARP-
HORN,

Civ. Action: 15-cv-
701-FPG

Plaintiffs,

-against-

MEDICAL MARIJUANA, INC., DIXIE
HOLDINGS, LLC a/k/a DIXIE
ELIXIRS, RED DICE HOLDINGS,
LLC, and DIXIE BOTANICALS,

[PROPOSED]
**FIRST
AMENDED
COMPLAINT and
JURY DEMAND**

Defendants.

-----X

Plaintiffs, DOUGLAS J. HORN and CINDY HORN (collectively “Plaintiff”) by their attorneys, JEFFREY BENJAMIN, P.C. as and for their complaint against the Defendants MEDICAL MARIJUANA, INC., DIXIE HOLDINGS, LLC A/K/A DIXIE ELIXIRS, RED DICE HOLDINGS, LLC, and DIXIE BOTANICALS, (collectively the “Defendants”), alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for damages for *inter alia*, deceptive business practices and violations of the New York General Business Law Art 22-A, §349 (“Deceptive Practices Act” or GBL §349”), GBL §350 for false advertising, the federal Racketeer Influenced and Corrupt Organizations Act (“RICO”) 18 U.S.C. §1962(a)-(d), violations of New York State Uniform Commercial Code (UCC) § 2-313 for negligence in products manufacture and sales, UCC § 2-318, strict products liability, as well as numerous common law causes of action. The Complaint also seeks statutory

attorneys' fees and costs pursuant to the statutory violations and the New York General Obligations Law ("GOL") §5-327, and punitive damages.

JURISDICTION AND PARTIES

2. This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. §1332, because the matter in controversy exceeds the sum of \$75,000 and the parties are citizens of different states. This Court also has subject matter jurisdiction over certain claims herein pursuant to RICO, 18 U.S.C. §1964, and 28 U.S.C. §1331, because they arise under the laws of the United States, and over other claims herein pursuant to supplemental jurisdiction, 28 U.S.C. §1367.
3. The venue of this action is proper in this judicial district pursuant to 18 U.S.C. §1965, because the plaintiffs live within this District, and a substantial part of the events or omissions giving rise to the claim occurred within the Western District of New York, 28 U.S.C. §1391.
4. Plaintiffs are natural persons over eighteen years of age and maintain their residence in Lockwood, New York.
5. Upon information and belief, the defendant MEDICAL MARIJUANA, INC. is a California business corporation which maintains its principal place of business at 4901 Morena Blvd., Suite 701, San Diego, California 92117.
6. Upon information and belief, the defendant, MEDICAL MARIJUANA, INC. is engaged in the business of, *inter alia*, the promotion, manufacture

and distribution of hemp-based and cannabis products throughout the United States.

7. Upon information and belief, the defendant DIXIE HOLDINGS, LLC A/K/A DIXIE ELIXIRS is a Colorado limited liability company that maintains its principal place of business at 16 Wynkoop Street, Suite 400, Denver, Colorado 80202.
8. On information and belief, the Defendants, DIXIE HOLDINGS, LLC A/K/A DIXIE ELIXIRS is engaged in the business of, *inter alia*, the licensure, formulation, promotion, manufacture and distribution of hemp-based and cannabis products throughout the United States.
9. Upon information and belief, the defendant RED DICE HOLDINGS LLC d/b/a DIXIE BOTANICALS is a Colorado limited liability company who also maintains its principal place of business at 1610 Wynkoop Street, Suite 400, Denver, Colorado 80202.
10. On information and belief, the defendant, RED DICE HOLDINGS LLC d/b/a DIXIE BOTANICALS is engaged in the business of, *inter alia*, the promotion, manufacture and distribution of hemp-based and cannabis products throughout the United States.
11. The parties herein named are, except for Dixie Botanicals, all interrelated and are commonly owned and managed. Upon information and belief, and as confirmed by public documents prepared by the respective defendants, defendants MEDICAL MARIJUANA, INC. and DIXIE HOLDINGS, LLC a/k/a DIXIE ELIXIRS are joint venturers and

business partners that, together, owned one-hundred percent of the defendant RED DICE HOLDINGS, LLC at the time of the actions herein complained of.

12. All of the above named Defendants aggressively market and sell their products and services nationwide generally, and within the State of New York specifically, and the causes of action alleged have a direct and harmful impact on the people of the State of New York.

SPECIFIC FACTS AS TO PLAINTIFFS

13. On or around February 24, 2012, plaintiff, Douglas J. Horn, suffered bodily injuries from a vehicle accident. He sustained said injuries to his hip and right shoulder as a result of the accident. Subsequent to the accident, under treatment by his doctor, he took anti-inflammatory and other medication. Some months after the accident, he investigated natural medicines as an alternative to his other prescriptions.
14. In or around September, 2012, plaintiff answered a magazine advertisement from defendant DIXIE BOTANICALS for an industrial hemp product called "Dixie X" which stated it had "0.00 THC" (delta-9 tetrahydrocannabinol) in it. Annexed hereto as Exhibit "A" is a copy of such advertisement. The product had a compound known as Cannabidiol ("CBD"). The advertisement claimed that the product treated inflammation and pain.
15. The advertising by defendant also stated that they imported the hemp product with .3% THC, but that they process it down to 0% THC. On or around October 1, 2012, plaintiff purchased the "elixir"

product, the *Dixie X CBD Dew Drops 500 mg Tincture*, with 500 mg of CBD.

16. In October, 2012, plaintiff was a professional over-the-road hazmat commercial truck driver who, prior to 2012, worked for the same company for ten (10) years and drove professionally for twenty-nine (29) years. Plaintiff's employment as a professional commercial driver required that he be and remain free of all illegal and impairing substances.
17. On October 9, 2012, plaintiff submitted to a random urinalysis screening required by his employer Enterprise Transportation Company, and as required by the U.S. Department of Transportation ("DOT").
18. On October 11, 2012, Plaintiff was informed by his employer that he had tested positive for a high level of THC. Thereafter, Plaintiff was required to submit to additional toxicology screenings which also were positive to an unacceptable high level of THC. Plaintiff was then terminated from his employment with Enterprise of approximately 10 years.
19. Subsequent to his termination, plaintiff ordered additional quantities of the *Dixie X CBD tincture* to have a laboratory independently test the product to determine if it did indeed contain THC. He sent an unopened bottle of the *Dixie X CBD tincture* to EMSL Analytical, Inc. ("EMSL") for independent testing. That laboratory informed plaintiff that it could not return the sample of the Dixie X product that was taken to plaintiff as the substance was illegal and contained levels well over the federal limit as per the U.S. DEA regulations. Plaintiff understood that the mere return of the very sample he sent to EMSL

was itself a violation of law, as defendants' product was an illegal substance, and would have subjected that company to criminal and/or civil liability.

20. In reliance on the numerous claims, assertions, allegations, false advertising and misleading press releases of the defendants, claiming the product contains "0% THC" and which does "not conflict with any federal law", plaintiff purchased and consumed from said defendants the product DIXIE X, an elixir marketed to be a natural, safe way to relieve pain, nausea, anxiety and convulsions. Plaintiff purchased and consumed said product DIXIE X, relying upon the Defendants' numerous claims that the products were legal, safe and did not contain any narcotic or controlled substances, or derivatives.
21. As a direct and proximate result of consuming this product, plaintiff was summarily dismissed from his employment. In addition, he was caused to lose his accumulated benefits and suffer substantial current and future economic losses and non-economic losses inclusive of emotional pain and anguish, humiliation, and degradation. He was fired from his long-term employment and, consequently, lost his livelihood, benefits, insurance, pension and job security.
22. Plaintiff's damages are ongoing. He is unable to secure employment at his former level of expertise and cannot continue in commercial trucking for at least seven years. Reputable trucking companies will not hire him based upon his positive toxicology test.

**GENERAL FACTS and ALLEGATIONS as to ALL
CAUSES of ACTION**

23. Defendants promote through advertising, distribute and sell “hemp”-based products to be used for medicinal purposes. According to hemp.com, Hemp is a variety of the “Cannabis” plant that is grown for the fiber and seeds it produces. According to drugs.com, Cannabis contains the chemical compound “THC” (delta-9 tetrahydrocannabinol), which is believed to be responsible for most of the characteristic psychoactive effects of cannabis. The dried leaves and flowers of the Cannabis plant are known as marijuana.
24. Under §812 of the federal Controlled Substances Act (“CSA”, 21 U.S.C. 812), marijuana is considered a “Schedule 1 drug” because of its THC content. It is defined as such because THC has high potential for abuse, it has no currently accepted medical treatment use in the U.S.; and there is a lack of accepted safety for use of the drug under medical supervision. The cultivation and distribution of marijuana are felonies; and possession for personal use is a misdemeanor. In fact, there are examples of consumers of THC oil in the U.S. being subjected to serious criminal felonies for the mere possession of such oil: <http://www.washingtonpost.com/news/local/wp/2015/06/08/mom-who-uses-medical-marijuana-faces-up-to-30-years-in-prison/>.
25. Throughout their advertising media, defendants unequivocally and continually represent on their websites, press releases and advertising media that their products contain no illegal tetrahydrocannabinol (“THC”), and that they conduct testing multiple times

and that the products will not produce a positive toxicology test for illegal substances. The defendants claim that their products can treat a plethora of medical conditions. Defendants further represent that they do not grow, sell or distribute and products which violate United States Laws and/or the federal “Controlled Substance Act.”

26. The hemp-based industry is a burgeoning market, wherein, companies such as defendants are manufacturing, selling and distributing products that are hemp-based and claim that, although marijuana and hemp are similar substances, the content and ratio of the chemical components commonly known as cannabidiol (“CBD”) and THC, found in varying degrees, determine whether a substance is illegal to consume or distribute in the United States. Defendants assert among other things that THC, the clearly illegal chemical compound found in marijuana, is absent in the industrial hemp products that they sell to their respective consumers and end-users.
27. The defendants, in concert and/or on their own account, undertook affirmative efforts to capitalize on the manufacture, production, processing, importation and distribution of illegal substances without regard to the consequences, mental or physical harm levied on the public such as plaintiff.
28. The defendants’ CBD health and wellness industry is estimated to be an over five billion dollar (\$5,000,000,000) market currently.
29. Defendants market their products as “THC free” and “non-THC,” thereby misleading the public at large through their misrepresentation of the true chemical

compound make-up of products like DIXIE X.

30. As is widely known, the cultivation and distribution of marijuana is illegal in the United States. Defendants circumvent the federal prohibition by extracting CBD from industrial hemp grown outside the United States in “secret” locations which MEDICAL MARIJUANA, INC. refuses to disclose.
31. Defendants collective advertising and marketing materials represent that their respective products can be used to treat a variety of conditions such as pain, anxiety, nausea and seizures. In support of its false advertising and marketing, defendants specifically represent and assert unequivocally that THC is undetectable in its products.
32. As further inducement for consumers to buy its products, support for its large scale sales expansion agenda, and in an effort to attract investors, defendants have collectively and on their own account, published numerous press releases and other materials all claiming that the collective and/or respective products complained of are non-THC, legal, safe and can treat a variety of ailments and diseases. Certain public statements have gone so far as to claim CBD can fight metastatic cancers.
33. Defendants claim that their products are tested multiple times during the manufacturing process, that they are legal to consume in the United States, and that they do not grow, sell or distribute any substances that violate the law.

COUNT I

Deceptive Business Practices/False Advertising

34. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.
35. This Cause of Action is asserted against the Defendants that Plaintiffs suffered damages as a result of the defendant's deceptive business practices and false advertising in violation of GBL §349 and §350.
36. In the course of the within transaction, Defendants committed and/or engaged in one or more of the following acts or conduct and/or made the following misrepresentations:
 - a. misrepresenting in advertising that the Dixie Products were safe and legal for consumers;
 - b. misrepresenting in advertising that Defendants had adequately tested their products;
 - c. misrepresenting that the products complied New York State and the federal laws and regulations;
 - d. misrepresenting that their products contained no THC;
 - e. misrepresenting that the ingestion of its products would not cause a positive toxicology result;
 - f. misrepresenting that their products had beneficial health, wellness and medical uses.
37. All of the above misrepresentations, acts and/or conduct by express statement on Defendants involved material elements of the transaction between the parties and were unfair, illegal, false, deceptive and/or

misleading.

38. Additionally, such representations were likely to, and in fact did, harm, deceive or mislead the Plaintiffs who were acting reasonably and in reliance thereon.
39. The conduct and actions described herein are directed at the general public and have a broad impact on consumers at large and are not isolated or unique to this transaction between the parties.
40. The aforementioned conduct constitutes deceptive business practices and false advertising, in violation of General Business Law Art. 22-A, §349 and §350.
41. As a result of the defendants' conduct, Plaintiffs have sustained damages for which they are entitled to recover from Defendants.
42. The Plaintiffs are entitled to recover costs and attorney's fees from the defendant pursuant to GBL §349(h) and §350-e(3).

COUNT II – RICO VIOLATION

43. Plaintiffs repeat and re-allege each and every allegation made in the paragraphs above and incorporate same herein as if fully set forth.
44. At all times relevant to this complaint, all of the defendant entities were and are enterprises as defined by 18 U.S.C. §1961(4) that are engaged in, and whose activities affect, interstate and foreign commerce. Their primary purpose and function was and is to profit from the marketing, distribution, promotion, advertising and/or sale of the Dixie X Elixir product sold to Plaintiff. Upon information and belief, in addition to defendants' legitimate activities,

however, they were used in a pattern of racketeering activity in violation of 18 U.S.C. §1962(a), (b), (c), (d).

45. The defendants herein are “persons” pursuant to 18 U.S.C. §1961(3).
46. The patterns of racketeering activity engaged in by the defendants involved separate but related schemes, carried out from the original sale to plaintiff of the product to the present, and directed at the plaintiffs and other individuals in violation of 18 U.S.C. §1961(1) and §1962:
 - a) Selling and/or distributing a product through the U.S. mail that was known or should have been known to be a controlled substance or otherwise illegal or otherwise in violation of federal or state law;
 - b) Inducing the sale of an illegal product through promises of curing medical conditions of consumer purchasers of said product;
 - c) Misrepresenting in advertising that the Dixie Products were safe and legal for consumers;
 - d) Misrepresenting that the products complied New York State and the federal laws and regulations;
 - e) Purposefully failing to disclose material facts regarding the product to induce the purchase of an illegal product;
 - f) Concealing the true chemical content from consumers in its advertising and labelling in order to avoid inquiry into the legality of same.
47. The pattern of racketeering activity engaged in by the defendants named herein involved fraudulent acts in support of the above schemes constituted mail and

wire fraud (18 U.S.C. §1341 and §1343), engaged in monetary transactions in property derived from specific unlawful activity (18 U.S.C. §1957), all of which is “racketeering activity,” as defined in 18 U.S.C. §1961(1) and §102 of the Controlled Substances Act.

48. The above described are numerous predicate acts of wire fraud, interstate transportation of controlled substance(s) and unlawful activity involving monetary transactions relating to the plaintiffs and other consumers. The predicate acts include advertisements in multiple media, telephone calls containing misrepresentations or omissions made in furtherance of the schemes, containing misrepresentations or omissions in furtherance of the schemes, derived from specified unlawful activity. The plaintiffs herein relied upon the misrepresentations and omissions directed at the plaintiffs herein by the defendants as part of their pattern of racketeering activity, and as a result suffered monetary and property damages.

COUNT III

Fraudulent Inducement

49. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.
50. This Cause of Action is asserted against Defendants for actual, compensatory and punitive damages based upon common law fraud and/or fraud in the inducement.
51. The conduct referred to above constitute numerous intentional misrepresentations, concealments and/or

omissions of fact by Defendants through media, advertising and websites.

52. The material misstatements, concealments and/or omissions as to the ingredients, toxicology, and effects of Defendants' products, are all material inducements to Plaintiff's acquisition and use of same, were made with full knowledge of their falsity and/or with reckless disregard of the truth.
53. On information and belief, Defendants intended that the Plaintiffs rely upon the aforementioned misrepresentations, concealments and/or omissions to induce them to acquire and consume said products.
54. Plaintiffs reasonably relied on Defendants' intentional misrepresentations, concealments or omissions inducing them purchase and consume their products.
55. As a result of the aforementioned conduct of Defendants, Plaintiffs were injured for which they are entitled to recover actual, compensatory and punitive damages.
56. On information and belief, the above-mentioned acts were committed by Defendants willfully, wantonly and with reckless disregard of the rights of the Plaintiffs.

COUNT IV

Violations of UCC § 2-318 Products Liability

57. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.
58. Defendants knowingly did sell, market and distribute the product known to be defective, illegal and/or

unreasonably dangerous.

59. There was no substantial change in the condition of the *Dixie X Botanical* product and it remained in original manufactured condition prior to Plaintiffs' acquisition and consumption.
60. Said product(s) contained illegal and harmful substances which caused harm to Plaintiff to which he is entitled to recover.

COUNT V

Violation of 15 U.S.C. § 1125(a)

61. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.
62. By reason of the defendants' enumerated and concerted actions, among other things, defendants knowingly, recklessly and/or negligently made material misrepresentation as to the nature, characteristics, qualities, or geographic origin of their Elixir products as fully alleged supra.
63. The Defendants made false statements of fact about their Elixir product.
64. The advertisements alleged to be false actually deceived or had the tendency to deceive a substantial segment of their audience.
65. The Defendants' deception was material in that it would likely influence the purchasing decision.
66. Defendants caused the false advertisements and misinformation to enter interstate commerce.
67. By reason of the foregoing, Plaintiffs were injured as a proximate result thereof.

COUNT VI
Negligence

68. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.
69. Defendants did not exercise due care in the processing of its product at issue and/or distribution of the same in order to ensure its safety for human consumption, and to ensure its legality in and throughout the United States.
70. Defendants did not exercise due care in the product testing, reporting of the results of the toxicity levels of the products, and the sale, marketing and/or distribution complained of herein.
71. Defendants did not exercise due care to ensure that its products complied with all relevant state and federal laws and regulations.
72. Plaintiffs' harm was the natural and foreseeable consequence of the Defendants' breach of its duty to act in a reasonable manner.
73. By reason of the foregoing breach, Plaintiffs consequently suffered significant monetary damages and are entitled to recovery.

COUNT VII
Negligent Infliction of Emotional Harm

74. Plaintiffs repeat and reallege each and every allegation above and incorporate same herein.
75. Defendants' respective acts of will and wonton disregard for the safety of consumers is extreme, outrageous and shocking.

76. Defendants' respective reckless and/or negligent behavior has caused Plaintiffs physical harm in the ingestion of caustic, toxic, and/or an illegal substance.
77. Defendants' respective reckless and/or negligent behavior has caused Plaintiff mental anguish, harm and injury, loss of sleep, loss of appetite, anxiety, anger and depression.
78. By reason of the foregoing, Plaintiffs have suffered humiliation, economic harm, loss of employment, loss of social and professional stature, actual present and future financial insecurity and loss of reputation.
79. Plaintiffs are entitled to damages in an amount to be determined at trial which is greater than the jurisdictional amount required.

WHEREFORE, Plaintiffs demand judgment against the defendants, for actual, consequential, incidental, statutory and punitive damages as follows:

- i. On all causes of action, actual and compensatory damages in a sum of money having a present value which exceeds the jurisdictional limits of this Court;
- ii. Punitive damages based on defendants' knowing and willful misrepresentations pursuant to Plaintiffs RICO and Fraud claims;
- iii. Statutory damages pursuant to those causes of action;
- iv. Interest, costs, disbursements and attorneys' fees pursuant to statutory causes of action;
- v. Such other relief as the court may deem just proper.

Dated: Great Neck, New York
November 15, 2018

KUPILLAS, UNGER & BENJAMIN,
LLP

Jeffrey Benjamin

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DEMAND FOR A TRIAL BY JURY

Pursuant to the Federal Rules of Civil Procedure,
plaintiffs demand a trial by jury in this action.

Dated: Great Neck, New York
August 5, 2015

KUPILLAS, UNGER & BENJAMIN,
LLP

Jeffrey Benjamin

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