

1 ISABELLE L. ORD (Bar No. 198224)
2 isabelle.ord@dlapiper.com
3 ELIZABETH C. CALLAHAN (Bar No. 323510)
4 elizabeth.callahan@dlapiper.com
5 **DLA PIPER LLP (US)**
6 555 Mission Street, Suite 2400
7 San Francisco, CA 94105-2933
8 Tel: 415.836.2500
9 Fax: 415.836.2501

10 ALEXANDER E. WOLF (Bar No. 299775)
11 alexander.wolf@dlapiper.com
12 **DLA PIPER LLP (US)**
13 2000 Avenue of the Stars, Suite 400 North Tower
14 Los Angeles, CA 90067
15 Tel: 310.595.3000
16 Fax: 310.595.3300

17 Attorneys for Defendants
18 JUST BRANDS USA, INC., JUST BRANDS, INC.,
19 and SSGI FINANCIAL SERVICES, INC.
20 *[Additional Counsel Listed on Signature Page]*

21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 MIGUEL RODRIGUEZ, on behalf of
24 himself and all others similarly situated,
25 Plaintiff,

26 v.

27 JUST BRANDS USA, INC., JUST
28 BRANDS, INC., and SSGI FINANCIAL
SERVICES, INC.,
Defendants.

CASE NO. 2:20-CV-04829-ODW-PLA

**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO STAY
THE ACTION**

Date: January 25, 2021
Time: 1:30 p.m.
Courtroom: 5D
Judge: Hon. Otis D. Wright II

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION AND MOTION

TO PLAINTIFF AND ALL ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 25, 2021 at 1:30 p.m., or as soon thereafter as this matter may be heard before the Honorable Otis D. Wright, II, in Courtroom 5D of this Court, located at 350 West 1st Street, Los Angeles, CA 90012, defendants Just Brands USA, Inc. (“Just Brands USA”), Just Brands, Inc. (“Just Brands”), and SSGI Financial Services, Inc. (“SSGI”) (collectively, “Defendants”) will and hereby do move this Court for an order to stay the action.

First, this action must be stayed under the primary jurisdiction doctrine in light of the Food and Drug Administration (“FDA”) issuing draft guidance that will likely establish a new regulatory framework for cannabidiol (known as “CBD”), an ingredient in products like those at issue here, and also given regulatory developments in the States of California and Florida. Second, the Federal Food, Drug, and Cosmetic Act (“FDCA”) gives the FDA jurisdiction to subject CBD products to a comprehensive regulatory scheme, and Section 297D(c) of the 2018 Farm Bill expressly reserved the regulatory oversight of hemp consumables under the FDCA to the FDA. 7 U.S.C. § 1639r(c); see *Snyder v. Green Roads of Fla. LLC*, 430 F. Supp. 3d 1297, 1308 (S.D. Fla. 2020) (the 2018 Farm Bill “explicitly recognized the FDA’s authority to regulate products . . . under the FDCA”) (quoting *Colette v. CV Scis., Inc.*, 2020 WL 2739861, at *5 (C.D. Cal. May 22, 2020)). Third, the regulation of CBD products requires both the FDA’s expertise and uniformity in administration to prevent inconsistent rulings and allow for judicial economy and efficiency. *Colette*, 2020 WL 2739861 at *4 (“[T]he number of CBD class actions currently pending in the federal district courts makes clear the danger of inconsistent adjudications.”).

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, Defendants’ Request for Judicial Notice in

1 ///

2 support of the Motion filed concurrently herewith, the record in this action, and any
3 evidence and argument that may be presented at or before the hearing.

4 Concurrently with this Motion, Defendants move to dismiss the First
5 Amended Complaint (“FAC”) pursuant to Federal Rule of Civil Procedure 12(b)(1),
6 12(b)(2), and 12(b)(6) because, *inter alia*, Plaintiff lacks Article III standing to
7 assert claims based on products that he did not purchase; Plaintiff cannot represent a
8 putative nationwide class as Defendants are not subject to personal jurisdiction in
9 California for non-California putative class members’ claims; Plaintiff’s express
10 warranty, unjust enrichment, and fraud claims are defective because the FAC fails to
11 state which state’s law governs these claims; and Plaintiff’s unjust enrichment,
12 Unfair Competition Law, and False Advertising Law claims for equitable restitution
13 fail because Plaintiff has not (and cannot) allege inadequate remedies at law.

14 This Motion is made following the conference of counsel pursuant to Local
15 Rule 7-3, which took place by telephone on November 12, 2020, and involved
16 Plaintiff’s attorney Alex Straus and Defendants’ attorneys Isabelle L. Ord and
17 Alexander E. Wolf. The parties were unable to reach an informal resolution and
18 Plaintiff’s counsel stated Plaintiff would oppose the Motion.

19

20 Dated: November 23, 2020

DLA PIPER LLP (US)

21

By: */s/ Isabelle L. Ord*

22

ISABELLE L. ORD

23

ALEXANDER E. WOLF

24

ELIZABETH C. CALLAHAN

25

Attorneys for Defendants

26

JUST BRANDS USA, INC., JUST
BRANDS, INC., and SSGI FINANCIAL
SERVICES, INC.

27

STEFANIE J. FOGEL (*Pro Hac Vice*)

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

stefanie.fogel@dlapiper.com
DLA PIPER LLP (US)
33 Arch Street, 26th Floor
Boston, MA 02110
Tel: 617.406.6000
Fax: 617.406.6100

COLLEEN GULLIVER (*Pro Hac Vice*)
colleen.gulliver@dlapiper.com
DLA PIPER LLP (US)
1251 Avenue of the Americas
New York, NY 10020
Tel: 212.335.4500
Fax: 212.335.4501

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page

I. INTRODUCTION..... 1

II. FACTUAL BACKGROUND.....2

 A. Overview of the Case and Procedural History.....2

 B. Hemp Legalization, and Active and Impending Hemp-CBD
 Regulation and Guidance.....2

III. ARGUMENT7

 A. The Primary Jurisdiction Doctrine Requires a Stay.....7

 1. The FDA and State Regulators Will Decide Material
 Issues Affecting This Case.8

 2. The FDA Has Jurisdiction Over and Will Subject CBD
 Products to a Comprehensive Regulatory Scheme Under
 the FDCA..... 10

 3. The Regulation of CBD Products Requires Both the
 FDA’s Expertise and Uniformity in Administration..... 11

IV. CONCLUSION 13

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.