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American States University, Cannabis Science, Inc.,
7 HRM Farms, William Bills, and Glen Burgin

8
9 **UNITED STATES DISTRICT COURT FOR THE**
10 **EASTERN DISTRICT OF CALIFORNIA**

11
12 FREE SPIRIT ORGANICS, NAC;
13 AMERICAN STATES UNIVERSITY;
CANNABIS SCIENCE, INC.; and HRM
FARMS;

14 Plaintiffs,

15 v.

16 SAN JOAQUIN COUNTY BOARD OF
17 SUPERVISORS, et al.

18 Defendant.
19

CASE NO. 2:17-cv-02271-KJM-EFB

January 7, 2019
Time: 1:00 pm
Room: 3

POST HEARING MEMORANDUM RE: STANDING
OF SG FARMS, ONLY

20
21 Plaintiffs FREE SPIRIT ORGANICS, NAC (Free Spirit), AMERICAN STATES
22 UNIVERSITY, and CANNABIS SCIENCE, INC. file this, their Post-Hearing Memorandum on
23 Standing, and state:

24 1. On January 9, 2019 the Court entered its Minute Order (DK #91) holding, after
25 Stipulation was entered and ratified by the Court: “that the issue of standing now only applies to
26 plaintiff S.G. Farms.” The Court did not order further briefing on the other issues surrounding
27

28 POST HEARING MEMORANDUM RE: STANDING OF SG FARMS, ONLY

1 Defendants' Rule 12(b) motion. However, at the initial hearing in this matter, these responding
2 Plaintiffs moved for leave to amend the Complaint to correctly reflect the represented parties.¹

3 2. The evidence establishes that there was no written agreement between SG Farms or its
4 principal George Bianchini outlining any agreement for Mr. Bianchini or his company to share in
5 any crop or partnership of any kind. Indeed the evidence (Exhibit 208, admitted into evidence),
6 establishes that the only thing Mr. Bianchini and SG Farms were paid for, were consulting fees and
7 seeds.
8

9 **MEMORANDUM OF LAW**

10 Pursuant to California law, a contract for the sale of goods is governed by the California
11 version of the Uniform Commercial Code. Cal. Com. Code §2201. The only possible evidence of a
12 sale was an invoice Exhibit #204. However this exhibit is merely an invoice for the sale of clones
13 and seeds, which admittedly were delivered. At best Exhibit #208 states that \$10,000 of those fees
14 included consulting fees. Exhibit #207 is a non-starter, as it fails to explain how in Marin County,
15 Mr. Bianchini and his company SG Farms may sell or do anything in San Joaquin County. Marin
16 County has no jurisdiction to "license" out product in another county. And the letter produced does
17 not explain how there is "statewide" jurisdiction.
18

19 Exhibits #205, #206 and #207 is a conglomeration of various emails across numerous
20 dates; it does not explain how SG Farms has any interest in the hemp grow in San Joaquin County
21 as it either predates the grow by two years, or post-dates the Warrant to seize and destroy the crop
22 involved in this case, and makes no specific mention of it. Exhibit #205 appears to be merely
23 precatory, self-serving, and at best only discusses "possible" future action. It contemplates nothing
24
25

26 ¹ These Plaintiffs discontinued representation by Mr. Joseph Salama when they learned he had
27 added SG Farms as a party to this case without their consent; and that there was a conflict-of-
28 interest. Counsel for these Plaintiffs seek leave to properly amend with relation back to the date of
the original complaint.

1 in San Joaquin County. It describes visits to the farm, but makes no specific statement as to how
2 SG Farms is an actual stakeholder in that grow. All three exhibits, however, are consistent with a
3 consulting fee and Mr. Bianchini trying to put together a deal in Imperial County, California which
4 again has nothing to do with the San Joaquin grow.

5 **ANALYSIS:**

6 In *Lockwood v Smigel* (1971) 18 Cal.App.3d 800 the Court concluded that Cal. Civ. Code
7 §1624a was superseded by Cal. Com. Code §2201. The Court defined the prerequisites of an
8 enforceable contract for the sale of goods and established what may be recovered under the
9 doctrine of part-performance: (1) there must be a writing signed by a party to be charged, said
10 writing may be authenticated and if other than through a signature by other evidence, and be
11 sufficiently adequate to identify the goods and quantity sold²; (2) the sale must be for goods over
12 \$500.00 for the statute to apply; and (3) part performance is severable to the extent that there was
13 part performance, and any non-performed portion of the contract is not enforceable. *Smigel* at 803-
14 804. Here there was a contract stating quantity, several types of goods, and a price is identified.
15 Therefore the contract is complete as to what is expressly stated in the invoice, the only evidence
16 of a writing between the parties.
17

18
19 In fact, during his testimony, Mr. Bianchini stated that it was so unusual for him to prepare
20 an invoice altogether, that his wife had to hunt for a form on the internet, thereby indicating that
21 the invoice itself was merely an afterthought. Mr. Bianchini's testimony was that he did not keep
22 detailed records of sales or consulting agreements or even accept checks as part of his transactions
23 due to the questionable legalities of his business.
24

25
26 _____
27 ² "Only three definite and invariable requirements as to the memorandum are made by this
28 subsection. First, it must evidence a contract for the sale of goods; second, it must be 'signed,' a
word which includes any authentication which identifies the party to be charged; and third, it must
specify a quantity." *Smigel* at 803.

1 All of the writings produced by SG Farms does not evidence the formation of any specific
2 oral contract other than for the sale of goods. It is indefinite as to when the oral contract was
3 formed, as to what the object of that contract was directed, and in fact points to a lot of wishful
4 thinking and precatory actions to the formation of some contract involving other grows, which
5 spans over three years in time.

6 Therefore, the only governing record of any contract is the invoice produced by Mr.
7 Bianchini at the hearings held on January 7, 2019 and January 8, 2019, Exhibits #204 and #208.
8 The emails contained in #205 – 207 are not sufficient to identify any of the elements of a contract
9 to share in some kind of profits or crops.
10

11 Assuming that Civ. Code §1624 applied there is no evidence of this oral contract other than
12 Mr. Bianchini testifying that he only did business by oral agreements. He also complained that
13 many times these contracts were unsuccessful and therefore unenforceable due to the very nature
14 of the hemp and marijuana industries.
15

16 What evidence there is, points to payment for seeds, cuttings, and consulting fees totaling
17 \$15,500.00. Even Mr. Bianchini testified that he would have been satisfied with \$25,000.00, that is
18 the amount he received plus another \$10,000.00. Even if this were the case, he has failed to show
19 how SG Farms can invoke the jurisdiction of this Court where the minimum amount in controversy
20 would be \$75,000.00.
21

22 **III. CONCLUSION:**

23 SG Farms has not advanced any good and sufficient evidence to meet its requirements to
24 demonstrate it has standing to sue in these proceedings, but even if so, it cannot independently
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27 //

1 meet the minimum threshold amount of \$75,000.00 when it was paid \$15,500.00 and would have
2 been satisfied with \$25,000.00.

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4 Dated 2/22/2019

Ronda Baldwin Kennedy, Esq.

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6 /S/ Ronda Baldwin Kennedy
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