

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 3:18-CV-01289

**MATTHEW MALLORY,
COMMONWEALTH ALTERNATIVE
MEDICINAL OPTIONS, LLC,
GARY KALE, GRASSY RUN
FARMS, LLC, their agents,
servants, assigns, attorneys, and all
others acting in concert with the
named defendants,**

Defendants.

**MEMORANDUM IN OPPOSITION TO MOTION TO TEST CANNABIS (“HEMP”)
CROP OF THE MALLORY DEFENDANTS INVOLVED IN THIS CASE**

COMES NOW, Defendants Matthew Mallory (“Mallory”) and Commonwealth Alternative Medicinal Options, LLC (collectively “CAMO Defendants”), by counsel, and submit this response in opposition to the Motion to Test Cannabis (“Hemp”) Crop of the Mallory Defendants Involved in This Case (“Motion”) (ECF No 68).

Initially, the Government’s Motion starts off with an overview of the applicable law and the record that is – for the most part – accurate. What follows, however, is a series of allegations and other factual contentions that have no evidentiary support and have been offered without any reasonable basis in fact (or based on any reasonable factual inquiry by the Government):

- It is **false** that THC testing “was not done here.”
- It is **false** that “[t]here is no dispute that the crop was not tested as required.”

- It is **false** that the CAMO Defendants failed to make the requisite arrangements with the WVDA.
- It is **false** that Mallory did not arrange with the WVDA to have the requisite THC level testing performed before the crop was transported across state lines.
- It is **false** that the “WVDA cannot now perform the requisite THC level testing required by federal law since the crop is now located in Pennsylvania and no longer under the jurisdiction of the State of West Virginia.”

Indeed, CAMO Defendants provided timely notice on or about August 13, 2018 to the West Virginia Department of Agriculture (“WVDA”) regarding their intent to harvest the crop – well before the initiation of this lawsuit. (Emails between M. Arnold and M. Mallory (Aug. 13, 2018), attached as Exhibit 1.). In response, a representative of the WVDA took samples of the same on August 29, 2018. (Email from M. Arnold to M. Mallory (Aug. 27, 2018), attached as Exhibit 2; Final Report of WV Department of Agriculture, attached as Exhibit 3.) Although the Government appears correct that there was a delay in confirming the test results due to equipment issues, the WVDA provided its Final Report to the CAMO Defendants yesterday evening, concluding that **the subject crop contains only 0.065% THC**, well below the statutory threshold. (Ex. 3.) The Final Report conclusively demonstrates that the subject crop is industrial hemp under all applicable laws. This alone moots the Government’s Motion.

Yet, putting aside the blatant factual misrepresentations, it is not the United States Attorney’s responsibility to test this crop of industrial hemp to ensure compliance with federal law. To the contrary, as fully briefed in previous pleadings, the Omnibus Law prohibits federally-appropriated units, including the U.S. Attorney for the Southern District of West Virginia, from expending federal appropriations to interfere with or otherwise frustrate the intrastate or interstate

transportation of industrial hemp grow or cultivated as part of a Farm Bill-authorized agricultural pilot program. Consolidated Appropriations Act, 2018, Public Law No. 115-141 § 729 (<https://www.congress.gov/bill/115th-congress/house-bill/1625/text>).

Instead, Congress and the people of West Virginia have given this responsibility to the WVDA. Because allegations about THC levels are not part of this case (and now appear moot) and because Congress has delegated the responsibility for such testing to the State of West Virginia, the Government's flailing attempts to commandeer the jurisdiction of the WVDA and further delay a decision on the merits must fail.

For the foregoing reasons, the CAMO Defendants request that this Court deny the Government's Motion to Test Cannabis ("Hemp") Crop of the Mallory Defendants Involved in this Case and provide any other relief this Court deems necessary.

Respectfully submitted,

/s/ Carte P. Goodwin

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Elise McQuain (WVSB #12253)

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CERTIFICATE OF SERVICE

I, Carte P. Goodwin, hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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*Counsel for Gary Kale and Grassy
Run Farms, LLC*

Dated this 24th day of January 2019.

/s/ Carte P. Goodwin

Carte P. Goodwin (WV Bar No. 8039)

From: Matthew Mallory <Matthew@camomedical.com>
Sent: Wednesday, January 23, 2019 10:49 AM
To: Philip@wvreal.com; Goodwin, Carte P.
Subject: Fwd: CAMO 2018 Hemp project Expansion request

Matthew Mallory
CAMO
Founder
412-559-9640
Matthew@camomedical.com

Begin forwarded message:

From: "Arnold, Mike" <MArnold@wvda.us>
Date: August 13, 2018 at 10:29:32 AM EDT
To: Matthew Mallory <Matthew@camomedical.com>
Subject: RE: CAMO 2018 Hemp project Expansion request

Yes we need to set up an inspection date so I can collect samples. Will not be this week and next week is filling up. But I can probably do something later next week. Possibly the 23rd or 24th.

Mike.

From: Matthew Mallory <Matthew@camomedical.com>
Sent: Monday, August 13, 2018 9:53 AM
To: Arnold, Mike <MArnold@wvda.us>
Subject: Re: CAMO 2018 Hemp project Expansion request

Hey Mike,

I hope you are well. We are getting close to this harvest. I saw an email from Morgan Leach to the co-op saying that we needed to contact you 30 days before harvest. I'd say were right at 30 days. Do we need to set up some site visit dates and collect some samples for testing? I know you're busy so get back to me when you can. Thanks. Looking forward to talking.

Matthew Mallory
CAMO
Founder
412-559-9640
Matthew@camomedical.com

On Mar 15, 2018, at 2:22 PM, Arnold, Mike <MArnold@wvda.us> wrote:

Me too. I am tired of computer screens and wet snow. Looking forward to green.

M

From: Matthew Mallory <Matthew@camomedical.com>
Sent: Wednesday, January 23, 2019 10:47 AM
To: Philip@wvreal.com; Goodwin, Carte P.
Subject: Fwd: inspection

Matthew Mallory
CAMO
Founder
412-559-9640
Matthew@camomedical.com

Begin forwarded message:

From: "Arnold, Mike" <MArnold@wvda.us>
Date: August 27, 2018 at 7:10:38 PM EDT
To: Matthew Mallory <Matthew@camomedical.com>
Subject: inspection

Matthew,
Hemp inspections on 8/29. Need to meet you somewhere. How about the location just north of the Race Track on old rt 35 near Southside. We will travel north to Bethany as the day goes on. Long day but all in one.

I can be there relatively early, 8am?? Let me know asap to plan.

Regards,

Michael C. Arnold
Plant Regulatory Programs Coordinator
Plant Industries Division/WVDA
1900 Kanawha Blvd., East
Charleston, WV 25305
(304) 558-2212
marnold@wvda.us



PRL
 WV Department of Agriculture READ Pesticide Residue
 313 Gus R. Douglass Lane
 Charleston WV 25312
 Phone: (304) 558-2208

Report Date: 1/23/2019

Final Report

Date Received: 9/4/2018 8:25 AM
Collection Date: 8/29/2018 9:00 AM

Case Coordinator: Brenda KeaveyPRL**Accession No:** R1804749

MATTHEW MALLORY
 470 LONGRIDGE DRIVE
 PITTSBURG WV 15234

Phone: (412) 559-9640

Associated Parties

Field Investigator	Mike Arnold
	Matthew Mallory

Reference Data

Sample Type: Hemp

Sample Number: WV-18-40-02

Lab Findings**Pesticide Analysis**

Specimen	Test Name	Result
Pt. Pleasant - WV-18-40-02	Delta-9- tetrahydrocannabinol (THC) & Delta-9- tetrahydrocannabinolic acid (THC-A) (LC/MS/MS)	.065 %

Client Report History

Report Type	Delivery Method	Sent To	Date Sent
Final	US Mail	470 Longridge Drive, Pittsburg, WV 15234	1/23/2019 4:26 PM