

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

MOOSE AGRICULTURAL, LLC and
COLORADO HEMP SOLUTIONS, LLC,

Plaintiffs,

v.

LAYN USA, INC. and HEMPRISE, LLC,

Defendants.

DEFENDANT HEMPRISE LLC'S ANSWER AND COUNTERCLAIMS

Defendant Hemprise, LLC ("Hemprise"), by and through its attorneys, Greenberg Traurig LLP, respectfully answers Plaintiffs' Amended Complaint and Demand for Jury trial as follows:

JURISDICTION & PARTIES

1. Hemprise lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1, and therefore denies them.
2. Hemprise lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2, and therefore denies them.
3. Admitted.
4. Admitted.

5. Denied. Venue is appropriate in this Court, the District of Colorado, following removal.

6. Admitted.

GENERAL ALLEGATIONS

7. Hemprise admits that Layn USA, Inc. (“Layn”) entered into a contract with Plaintiffs and states that the contract speaks for itself.

8. Hemprise admits that Layn entered into a contract with Plaintiffs and states that the contract speaks for itself.

9. Hemprise admits that Layn entered into a contract with Plaintiffs and states that the contract speaks for itself.

10. Hemprise admits that Layn entered into a contract with Plaintiffs and states that the contract speaks for itself.

11. Hemprise admits that Layn entered into a contract with Plaintiffs and states that the contract speaks for itself.

12. Hemprise admits that Layn entered into a contract with Plaintiffs and states that the contract speaks for itself.

13. Paragraph 13 states a legal conclusion to which no response is required.

14. Hemprise denies the allegations in paragraph 14 insofar as they suggest the tests Plaintiffs performed were the only tests, that Plaintiffs followed the terms of the Agreement, and that Plaintiffs properly planted, grew, harvested, or tested the Product. Otherwise, Hemprise lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 14, and therefore denies them.

15. Admitted in part and denied in part. Admitted to the extent that Plaintiffs informed Hemprise that there was Product available. Denied to the extent that paragraph 14 suggests the Product was suitable for delivery under the terms and conditions in the Agreement, and denied to the extent that paragraph 14 suggests “Layn took no action” and/or “let the product sit for months.”

16. Admit.

17. Admit.

18. Paragraph 18 states legal conclusions to which no response is required.

19. Admit that further testing occurred at the request of Layn. Denied as to the remaining allegations in this paragraph.

20. Denied.

21. Denied.

22. Denied.

23. Admitted in part and denied in part. Admitted to the extent that samples were run through a sieve. Denied as to the remaining allegations in this paragraph.

24. Denied.

25. Hemprise lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25, and therefore denies them.

26. Hemprise lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 26, and therefore denies them.

27. Denied.

28. Admitted in part and denied in part. Admitted to the extent that paragraph 28 suggests that the parties had discussions concerning their respective rights and obligations under the Agreement. Denied as to the remaining allegations in this paragraph.

29. Denied.

30. Admitted in part and denied in part. Admitted to the extent that paragraph 30 states that Hemprise requested further and contractually compliant testing to occur. Denied as to the remaining allegations in this paragraph.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

**CLAIMS FOR RELIEF
BREACH OF CONTRACT**

39. Hemprise hereby incorporates paragraphs 1 through 39 of this Answer as though fully set forth herein.

40. Hemprise admits that Layn entered into a contract with Plaintiffs and states that the contract speaks for itself.

41. Denied.

43. Denied.¹

43. Denied.

43. Denied.

44. Denied.

PRAYER FOR RELIEF

The remainder of the Complaint constitutes Plaintiffs' prayer for relief for which an answer is not required. To the extent an answer is deemed required, Hemprise denies that Plaintiffs are entitled to the relief requested in this section or any other form of relief whatsoever.

DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted, and fails to state facts sufficient to entitle Plaintiffs to the relief sought, or to any other relief, from Hemprise.

2. Plaintiffs lack standing to bring any of their claims as against Hemprise.

3. Plaintiffs' claims are subject to all statutes regarding comparative and contributory fault, limitations on economic and non-economic damages, and limitations on recovery including, but not limited to, C.R.S. §§ 13-21-102, 13-21-102.5, and 13-21-111.

4. The damages as alleged were caused by intervening proximate causes not attributable to Hemprise.

¹ Plaintiffs' Amended Complaint contains three paragraphs numbered as "43," and contains no paragraph numbered "42." This Answer thus does likewise.

5. Plaintiffs' claims as against Hemprise are barred because they were not caused by any alleged act or omission of Hemprise.

6. Plaintiffs cannot recover as against Hemprise because Hemprise fully complied with the contract and with state and federal law.

7. Plaintiffs cannot recover as against Hemprise because Hemprise acted reasonably and in good faith based upon all relevant facts and circumstances known by Hemprise at the time.

8. Plaintiffs' Amended Complaint is barred to the extent that Plaintiffs seek relief for any purported claim(s) which did not accrue within the applicable limitations period.

9. Plaintiffs cannot recover against Hemprise because they failed to mitigate their damages, if any.

10. Plaintiffs cannot recover against Hemprise because their claims are barred by the doctrines of waiver and/or estoppel.

11. Plaintiffs cannot recover against Hemprise because their claims are barred by the doctrine of unclean hands.

12. Plaintiffs' claims fail where the alleged damages are too remote or speculative.

13. Plaintiffs' claims may be barred, in whole or in part, by the doctrine of set-off, which bars or diminishes any potential recovery.

14. Plaintiffs' claims are barred, in part or in whole, by consent or approval.

15. Plaintiffs' damages, if any, are barred or limited by applicable statutory damages caps.

16. Plaintiffs' claims are barred because Plaintiffs would be unjustly enriched if they were allowed to recover any part of the damages alleged.

17. Hemprise incorporates the defenses of all others who are or may become parties to this action as though more fully set forth herein.

18. Hemprise reserves its right to amend its defenses to the extent new information is discovered during the course of this proceeding.

WHEREFORE, Hemprise prays for judgment as to Plaintiffs' claims as follows:

1. For dismissal of Plaintiffs' Amended Complaint with prejudice;
2. For judgment in favor of Hemprise and against Plaintiffs;
3. That all relief sought in the Amended Complaint against Hemprise be denied;
4. For costs of suit, attorney's fees, and expert witness fees incurred under applicable laws to the extent the Court deems appropriate; and
5. For such other and further relief as the Court deems proper.

COUNTERCLAIMS

For its counterclaims against Moose Agricultural, LLC and Colorado Hemp Solutions, LLC, Counter-Plaintiff Hemprise, LLC (“Hemprise”) hereby states as follows:

NATURE OF THE ACTION

1. On or about May 22, 2019, Layn USA, Inc. (“Layn”) entered into a signed, written agreement (the “Agreement”) to purchase industrial hemp biomass from Moose Agricultural, LLC and Colorado Hemp Solutions, LLC (“Counter-Defendants”).

2. On or about November 15, 2019, Layn assigned its rights and liabilities under the Agreement to its corporate affiliate, Hemprise, LLC (“Hemprise”).

3. To date, Layn and/or Hemprise have paid Counter-Defendants over \$1.2 million, in multiple installments, pursuant to the Agreement and as a sign of their good faith.

4. Notwithstanding these payments, and the clear terms and specifications set forth in the Agreement, Counter-Defendants have failed to provide Layn with product meeting the specifications in the Agreement.

GENERAL ALLEGATIONS

5. In June 2019, Layn paid Counter-Defendants \$240,000 per the payment schedule set forth in the Agreement.

6. In July 2019, Layn paid Counter-Defendants \$480,000, also as prescribed by the Agreement.

7. In October 2019, Counter-Defendants informed Layn that some Product was available for shipment. At or around that same time, Counter-Defendants stated that they had some “testing in hand” and requested further payment.

8. In response, Layn requested specific information about the quantity and quality of what had been harvested, as well as a full report of all testing results.

9. The specific testing information then sent by Counter-Defendants showed that many of the samples tested did not meet the Agreement specifications. In particular, Counter-Defendants provided results for 10 of the lots, and 9 of those lots did not meet the specifications set forth in the Agreement. Nevertheless, in the hopes that Counter-Defendants could eventually provide product meeting those specifications, Layn and/or Hemprise provided the additional and requested payment of \$500,000.

10. Shortly after they received that \$500,000 payment, Counter-Defendants informed Layn that they would provide more information soon and requested additional payment.

11. In November 2019, Layn and/or Hemprise again requested the final report on the quality and quantity of the Product that Counter-Defendants had produced.

12. Counter-Defendants responded with an invoice and informed Layn that they would send the final report when it arrived.

13. Layn and/or Hemprise then requested specific information as contemplated in the Agreement, including all the supporting testing reports.

14. Counter-Defendants again responded that they were “working on your below requested information” and again requested payment.

15. In December 2019, Layn and/or Hemprise again requested the final testing reports that were required to verify that the Product met the Agreement's specifications.

16. In response, Counter-Defendants apologized for their delay, and stated that the first round of testing was complete and that they were still waiting on the other tests due to what they called a backup at the lab.

17. Eventually, Counter-Defendants provided Layn and/or Hemprise with the report. That report stated that the vast majority of samples tested failed to conform with the terms or specifications in the Agreement—either due to low CBD%, high THC%, or some combination of the two. Layn and/or Hemprise thereafter informed Counter-Defendants of their failure and requested additional information.

18. In January 2020, Counter-Defendants responded that “[t]he legal limit for total thc is .39 and under in the state of CO,” and stated that they were still waiting on full test results.

19. Layn and/or Hemprise informed Counter-Defendants that none of the Product tested met the specifications contemplated in the Agreement and sought to cure the situation.

20. Counter-Defendants responded that, in their opinion, “[i]n Colorado it is very clear that the variance allowed for THC content is .9 and thus acceptable THC content in the Colorado Hemp Industrial Program is .39 total for THC biomass compliance.”

21. Counter-Defendants never cited to, or otherwise identified, what Colorado law or regulation or other authority supported their view that the “[t]he legal limit for

total [THC] is .39 and under in the state of CO,” or their view that “[i]n Colorado it is very clear that the variance allowed for THC content is .9 and thus acceptable THC content in the Colorado Industrial Hemp Program is .39 total THC for biomass compliance.”

22. The Specifications contained in Attachment C to the Agreement state that the Product must have THC less than 0.3%, as required by federal law in order to qualify as legal industrial hemp.

23. 7 U.S.C. § 1639o(1) defines “hemp” as “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”

24. Under federal law, any product containing THC levels in excess of 0.3% is no longer industrial hemp, and is instead classified as marijuana, which is a controlled substance under federal (and state) law. *See* 21 U.S.C. § 802(16)(A)-(B); *see also* 21 U.S.C. § 812.

25. The Agreement does not adopt or incorporate any Colorado standards or laws.

26. Counter-Defendants have at no point provided Layn with conforming goods under the terms of the Agreement and thus have failed to fulfill any of their obligations under that Agreement.

27. Over the course of several months beginning in or around April 2020, the parties attempted to negotiate a resolution to their dispute.

28. Eventually, and in accordance with section 6 of Attachment A and Attachment C of the Agreement, the parties agreed that an independent laboratory (Phytatech, formerly known as Kaycha Labs, in Denver, Colorado) would test six lots of the products using the following protocol:

- (a) The samples would be taken from different locations of the bags;
- (b) The parties would combine the samples from different bags together for a batch sample;
- (b) The parties would take a one-pound sample from each batch for third-party lab testing;
- (d) The parties would seal and weigh each bag.

29. The parties—including the Counter-Defendants—also expressly agreed that this laboratory testing would constitute the final determination as to whether the product did, or did not, meet the specifications set forth in the Agreement.

30. At no time before, during, or after the final laboratory testing by Phytatech did Counter-Defendants ever suggest that the average CBD levels should be reduced from the contractually mandated 8%—whether due to concerns regarding the passage of time or for any other reason.

31. In furtherance of their agreement, the parties met and conducted the sampling on June 2, 2020. The samples were then transported to Phytatech, and the testing commenced.

32. On June 23, 2020, a Phytatech representative sent the parties the potency reports for the six batches of product. Those Reports are attached as Exhibits 1-6.

33. As before, the testing showed that the product failed to meet the specifications in the Agreement.

34. More specifically, the testing revealed both that the average CBD level of the six batches tested was only 7.3%, and not the bargained-for 8%, and that three of the batches (H2, H5, and H6) exceeded the contracted for maximum THC level of 0.3%.

**FIRST COUNTERCLAIM FOR RELIEF:
BREACH OF CONTRACT**

35. Hemprise realleges paragraphs 1-34 above as though fully set forth herein.

36. Failure to abide by all material terms of a contract results in a material breach for which the non-breaching party is entitled to relief.

37. The Agreement at issue required that Counter-Defendants provide Hemprise and/or Layn with Product that, among other things, had a minimum of 8% CBD and THC levels of no more than 0.3%.

38. None of the Product manufactured or farmed by Counter-Defendants tested met the specifications under the Agreement, resulting in material breach. Counter-Defendants have resisted all attempts by Hemprise and/or Layn to cure Counter-Defendants' material breach.

39. Counter-Defendants' breach has caused Hemprise direct damage in the form of payments already rendered and lost profits due to non-conforming goods, as well as costs and attorney fees.

**SECOND COUNTERCLAIM FOR RELIEF:
PROMISSORY ESTOPPEL**

40. Hemprise realleges paragraphs 1-39 above as though fully set forth herein.

41. In the alternative, a claim for promissory estoppel requires that: (1) a promise was made; (2) it was the reasonable expectation of the promisor to induce action or forbearance on the part of the promisee; (3) the promisee reasonably relied on the promise and took action to his detriment; and (4) such promise is binding because injustice can only be avoided by enforcement of the promise.

42. Counter-Defendants promised to provide Hemprise and/or Layn with conforming product in exchange for money.

43. Hemprise and/or Layn reasonably relied on that promise and continued with the payment schedule.

44. Counter-Defendants repeatedly asked for payments based on the promise and expected Hemprise and/or Layn to pay.

45. As a result of reasonably relying on the promise made by Counter-Defendants, Hemprise and/or Layn have paid Counter-Defendants in excess of \$1.2 million, and have yet to receive any conforming product whatsoever, to the direct detriment of Hemprise.

46. Injustice would result if Counter-Defendants' promise was not enforced and they were allowed to keep over \$1.2 million after providing no conforming product.

**THIRD COUNTERCLAIM FOR RELIEF:
UNJUST ENRICHMENT**

47. Hemprise realleges paragraphs 1-46 above as though fully set forth herein.

48. In the alternative, a claim of unjust enrichment requires: (1) an enrichment; (2) an impoverishment; (3) a relation between the enrichment and impoverishment; (4) the absence of justification; and (5) the absence of remedy provided by law.

49. To date, Counter-Defendants have been unjustly enriched by more than \$1.22 million.

50. This unjust enrichment is the direct cause of the impoverishment suffered by Hemprise in the form of \$1.22 million dollars or, alternatively, conforming product under the terms of the Agreement.

51. There is no justification, and there cannot be any justification, for this unjust enrichment because Counter-Defendants have failed to provide Hemprise and/or Layn with anything in exchange for the \$1.22 million.

52. If there is no adequate remedy at law, then Counter-Defendants have been unjustly enriched.

**FOURTH COUNTERCLAIM FOR RELIEF:
CONVERSION**

53. Hemprise realleges paragraphs 1-52 above as though fully set forth herein.

54. A claim of conversion requires showing that: (1) a plaintiff had a property interest in the converted goods; (2) the plaintiff had a right to possession of the goods; and (3) the plaintiff sustained damages.

55. Hemprise and/or Layn have paid Counter-Defendants \$1.22 million in the expectation of receiving conforming product.

56. Counter-Defendants have yet to supply any conforming product by the terms of the Agreement.

57. Under section 2(g) of the Agreement and by operation of law, Hemprise has a property and security interest in either the exact sum of money paid out to Counter-Defendants, \$1.22 million with interest, or the corresponding amount of conforming product.

58. Under the terms of the Agreement, Hemprise has the right to either possess the corresponding amount of conforming product commensurate with the \$1.22 million paid, or to recoup the \$1.22 million (with interest) if no conforming product is delivered.

59. Therefore, Hemprise has suffered damages from Counter-Defendants' wrongful possession of its property.

**FIFTH COUNTERCLAIM FOR RELIEF:
FRAUD**

60. Hemprise realleges paragraphs 1-59 above as though fully set forth herein.

61. A claim for fraud requires showing that: (1) the defendant made a false representation, usually of fact; (2) that representation was made with either knowledge or belief or with reckless indifference to its falsity; (3) that representation was made with an intent to induce the plaintiff to act or refrain from acting; (4) the plaintiff's action or inaction resulted from a reasonable reliance on the representation; and (5) that reliance damaged the plaintiff.

62. In October 2019, Counter-Defendants misrepresented that they had product available for delivery that met the specifications in the Agreement.

63. Counter-Defendants were in sole possession of all testing information at the time of the misrepresentation, and were in possession of a copy of the Agreement that listed all necessary specifications. Therefore, Counter-Defendants knew at the time of the representation that it was false and that the product did not meet the contractual specifications.

64. After Counter-Defendants made those misrepresentations, they repeatedly elicited additional payments from Hemprise and/or Layn, evidencing Counter-Defendants' intent that Hemprise and/or Layn continue to act on Counter-Defendants' misrepresentations and continue the payment schedule.

65. Hemprise and/or Layn reasonably relied on Counter-Defendants' assurances that conforming product would be provided, and continued to make payments according to the payment schedule in the Agreement.

66. As a result of the misrepresentations made by Counter-Defendants, and Hemprise and/or Layn's reasonable reliance on the misrepresentation, Hemprise and/or Layn has paid Counter-Defendants over \$1.2 million and received nothing in return—directly damaging Hemprise.

**SIXTH CLAIM FOR RELIEF:
VIOLATION OF DELAWARE DECEPTIVE TRADE PRACTICES ACT**

67. Hemprise realleges paragraphs 1-66 above as though fully set forth herein.

68. The Delaware Deceptive Trade Practices Act (DTPA), Del. Code tit. 6, § 2532, states that “[a] person engages in a deceptive trade practice when, in the course of a business, vocation, or occupation, that person: ... (5) [r]epresents that goods or services

have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have ... [or] (7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.”

69. The DTPA also allows for an award of fees for willful violations and the trebling of damages for any claims based on the same conduct. *See* Del. Code tit. 6, § 2533(b), (c).

70. Counter-Defendants, in the course of their business as suppliers of industrial hemp biomass, represented to Hemprise and/or Layn that the product that was purportedly “ready for delivery” had certain characteristics and was of a particular standard. Specifically, Counter-Defendants represented that the product had CBD levels of at least 8% and THC content of 0.3% or less.

71. The majority of purportedly available product did not have the characteristics represented by Counter-Defendants and failed to meet the requisite standards.

72. Much of the product purported to be “ready for delivery” was definitionally not industrial hemp based on the THC content, and was therefore deceptively represented as industrial hemp based on an inapplicable standard.

73. Counter-Defendants’ violation was also willful as Counter-Defendants had all of the necessary information at the time of the misrepresentation, and yet continued to assert that the product was properly characterized after numerous challenges by Hemprise and/or Layn. Counter-Defendants’ continued assertion of an inapplicable standard further demonstrates the willfulness of the violation.

74. Therefore, Counter-Defendants have engaged in a deceptive trade practice and Hemprise is entitled to all fees and trebling of all damages in connection with this action.

PRAYER FOR RELIEF

WHEREFORE, Hemprise respectfully requests that the Court:

- A. Enter judgment in Hemprise’s favor and against Counter-Defendants on each of the Counterclaims set forth herein;
- B. Award Hemprise compensatory damages in an amount no less than \$1,220,000;
- C. Award Hemprise treble, punitive, and/or other statutory damages, costs, expenses, and pre- and post-judgment interest as provided by Delaware law;
- D. Award Hemprise its attorney’s fees and costs;
- E. Award Hemprise any and all further relief the Court deems just and proper.

Respectfully submitted this 20th of August, 2020.

By: /s/ John K. Crisham

John K. Crisham
Josiah Beamish
GREENBERG TRAURIG LLP
1144 Fifteenth Street Suite 3300
Denver, Colorado 80202
crishamj@gtlaw.com
beamishj@gtlaw.com
Tel: (303) 572-6500
Fax: (303) 572-6540

*Attorneys for Defendant / Counter-Plaintiff
Hemprise, LLC*

CERTIFICATE OF SERVICE

The undersigned certifies that on this 20th day of August, 2020, a true and correct copy of the foregoing DEFENDANT HEMPRISE LLC'S ANSWER AND COUNTERCLAIMS was filed via this Court's CM/ECF filing system, and that a copy was served via electronic mail to the following counsel of record:

Benjamin M. Wegener
Wegener, Scarborough, Younge & Hockensmith, LLP
743 Horizon Court, Suite 200
Grand Junction, CO 81506
Tel: (907) 242-2645, ext. 203
ben@wegscar.com

/s/ Karen Loveland