SIXTEENTH JUDICIAL CIRCUIT COURT
JACKSON COUNTY, MISSOURI

Sam Stromme, individually and for all similarly situated Missouri citizens,

Plaintiff,

v.

Kansas City Cannabis Company, LLC
Serve at:
Kevin Stallings
1100 NE Delta School Road
Lee's Summit, MO 64065

Defendant.

Case No.
Division

Class Action Petition

Plaintiff, individually and for all similarly situated Missouri citizens (the "Class" defined below), upon information and belief and based on the investigation made by the undersigned attorneys, alleges:

Introduction

1. Plaintiff brings this class action on behalf of Missouri citizens who purchased cannabis products from Defendant Kansas City Cannabis Company, LLC, ("Defendant" or "Kansas City Cannabis") using "cashless ATMs."[1]

2. A "cashless ATM" is a modified point-of-sale (POS) terminal programmed to misrepresent retail cannabis sales as automated teller machine ("ATM") cash withdrawals.

3. To banks, processors, and card networks, these transactions look like legitimate ATM withdrawals because they are miscoded. No cash is dispensed. Instead, Defendant provides

[1] As used in this Petition, "marijuana" and "cannabis" are synonymous, referring to all parts of the plant genus *Cannabis* in any species or form thereof.

marijuana and often hands back "change" in cash.

4. Unlike ordinary debit card purchases—which typically involve no consumer transaction fee—cashless ATM transactions impose multiple hidden charges:

a. Rounding up to the nearest $5 or $10 increment;

b. An ATM surcharge (commonly $2–$4);

c. Possible out-of-network bank fees.

5. Card networks such as Visa and Mastercard prohibit the use of their payment rails for cannabis sales.

6. Defendant circumvented these prohibitions, deceived consumers about the nature and cost of their transactions and imposed unlawful fees and surcharges.

7. Defendant's use of cashless ATMs forces consumers to pay substantially more than the listed purchase price and Defendant unjustly retains the windfall, enriching itself at the expense of Missouri citizens.

8. Plaintiff and the Class seek relief under the Missouri Merchandising Practices Act ("MMPA"), common-law negligent misrepresentation, and unjust enrichment.

Parties

9. Plaintiff is a citizen of Missouri who purchased products from Defendant using a cashless ATM at its store in Excelsior Springs, Missouri.

10. Defendant is a Missouri limited liability company and with its principal place of business in St. Louis, Missouri. It operates at least five dispensaries in Missouri under brand names like "Kansas City Cannabis Co.", "Kansas City Cannabis", "KC Cannabis" and "KCC."

Jurisdiction & Venue

11. This is a civil case, so this Court has jurisdiction.

12. Venue is proper in Jackson County, Missouri under § 407.025 because the

transaction complained of took place in Jackson County, Missouri. Venue is also proper in Jackson County, Missouri under § 508.010.4 because Plaintiff was first injured in Jackson County, Missouri by the acts or conduct alleged in this action.

Factual Allegations

Normal Debit Card Transactions vs. Cashless ATMs

13. In a normal debit card purchase at a retail POS terminal, a consumer pays only the purchase price. Consumers typically do not pay any transaction fee for debit purchases.

14. The merchant pays interchange and processing fees, but these costs are not passed on to the consumer.

15. In a legitimate ATM transaction, a consumer inserts a debit or credit card into an ATM terminal. The transaction message is coded to identify it as a cash withdrawal and usually carries consumer fees:

a. A surcharge imposed by the ATM operator; and

b. Additional out-of-network fees imposed by the consumer's bank.

16. The processor relays the code (e.g., MCC 6011) through a sponsor bank and card network (Visa, Mastercard, etc.), and the issuing bank debits the consumer's account.

17. Funds are reimbursed to the ATM owner for the "vault cash" dispensed, and fees are distributed among the network, processor, and ATM operator.

18. Every part of that system depends on accurate coding.

19. There is a specific code for "cash withdrawal." Any other type of transaction must be coded differently, e.g., POS codes for retail sales.

20. Cashless ATMs exploit the distinction between normal debit card transactions and legitimate ATM transactions.

21. By miscoding retail marijuana sales as ATM withdrawals, Defendant forces

consumers to bear unnecessary and undisclosed costs that would never apply to a normal debit transaction.

Card Network Prohibitions

22. Because marijuana remains a federally prohibited Schedule I substance, card networks prohibit cannabis purchases on POS terminals.

23. Visa has explicitly warned its members that so-called "cashless ATMs" are prohibited. In its December 2, 2021 compliance communication, Visa wrote:

> "Visa is aware of a scheme where POS devices marketed as 'Cashless ATMs' are being deployed at merchant outlets and are operating in violation of the Visa Core Rules and Visa Product and Service Rules … Cashless ATMs are POS devices … used for purchase transactions, which are miscoded as ATM cash disbursements. … Acquirers miscoding POS purchase transactions as ATM cash disbursements are in violation of these requirements."

24. Visa further stated that such misuse "affects the integrity of VisaNet and the Plus network, as well as the Visa payment system," and that acquirers and merchants engaging in this scheme "will be subject to non-compliance assessments and/or penalties."

25. Mastercard has likewise prohibited cannabis sales through its debit network. In July 2023, Mastercard announced that it had directed financial institutions to stop facilitating marijuana transactions, stating: "The federal government considers cannabis sales illegal, so these purchases are not allowed on our systems."

26. Upon information and belief, all the major networks—Visa, Mastercard, and American Express—deem cannabis sales in the U.S. to be "illegal transactions," and refuse to knowingly permit them to be processed on their rails, regardless of whether state law authorizes retail sales.

Defendant's Scheme and Harm to Consumers

27. Defendant used cashless ATMs in its Missouri dispensaries, disguising marijuana

sales as ATM withdrawals. The device:

a. Swiped or inserted a consumer's debit card;

b. Miscoded the transaction as ATM cash disbursement (e.g., MCC 6011);

c. Debited the consumer's account in preset increments (e.g., $55 for a $52 purchase);

d. Dispensed marijuana instead of cash, often handing back "change."

28. This practice deceives consumers, banks, processors, and networks by misrepresenting retail sales as ATM withdrawals, in direct violation of card network rules and compliance memos.

29. This practice misrepresents the nature of the transaction, exposes consumers to hidden surcharges, and enables Defendant to process federally restricted transactions by deception.

30. Consumers suffer multiple harms from Defendant's use of cashless ATMs, including:

a. **Hidden Fees:** Consumers were charged ATM surcharges and sometimes bank out-of-network fees—charges that would never apply to a normal debit card purchase.

b. **Inflated Payments:** Transactions were rounded up to preset increments, forcing consumers to pay more than the purchase price.

c. **Deception:** Consumers reasonably believed they were making standard debit card purchases, when in fact they were unwittingly participating in misrepresented ATM transactions.

31. Plaintiff purchased one or more products from Defendant using a cashless ATM

and was overcharged through this deceptive practice.

32. Defendant retained the inflated proceeds, unjustly enriching itself at the expense of Plaintiff and the Class.

Tolling of All Applicable Statutes of Limitations

Discovery Rule Tolling

33. Plaintiff and the other Class members had no way of knowing about Defendant's deception regarding cashless ATM transactions. As consumers, they reasonably believed they were making ordinary debit card purchases of marijuana products, which—like other retail debit transactions—carry no consumer fees beyond the purchase price.

34. Although Plaintiff and the other Class members might see the dollar amounts listed on their receipts, they reasonably believed those amounts were lawful retail charges associated with their cannabis purchases.

35. Plaintiff and the Class could not have discovered through reasonable diligence that certain charges were because of Defendant's deliberate miscoding of POS purchases as ATM withdrawals, in direct violation of network rules, including Visa and Mastercard.

36. A reasonable consumer could not be expected to know the difference between a properly coded debit transaction and a miscoded ATM transaction.

37. For these reasons, all applicable statutes of limitations have been tolled by operation of the discovery rule for the claims asserted herein.

Fraudulent Concealment Tolling

38. All applicable statutes of limitation have also been tolled by Defendant's knowing and active fraudulent concealment and denial of the facts alleged throughout the period relevant to this action.

39. Defendant provided receipts that made it appear consumers were simply paying

for marijuana products with their debit cards, omitting any disclosure that the transactions were being miscoded through the ATM network.

40. Defendant also concealed from consumers that all networks, including Visa and Mastercard, prohibit such transactions, that surcharges were unlawful in this context, and that consumers were paying inflated prices because of Defendant's deception.

41. Defendant's concealment and denial of these facts prevented Plaintiff and the Class from discovering the nature of their injuries.

Estoppel

42. Defendant was under a continuous duty to disclose to Plaintiff and the other Class members the true character, quality, and nature of its payment practices.

43. Defendant knowingly, affirmatively, and actively concealed the true nature, quality, and character of the payments for its products.

44. Based on the foregoing, Defendant is estopped from relying on any statutes of limitations in defense of this action.

Class Allegations

45. Plaintiff sues under Rule 52.08.

46. Plaintiff seeks to represent this Class: "all Missouri citizens who purchased (primarily for personal, family, or household use) marijuana products from Defendant."

47. Excluded from the Class are Defendant, and any of Defendant's members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; the judicial officers, and their immediate family members; and Court staff assigned to this case.

48. Plaintiff reserves the right to change or amend the Class definition during this litigation based on information learned from this litigation, discovery, or otherwise. Plaintiff reserves the right individually and for the Court to determine whether certification of other classes

or subclasses are appropriate.

49. This action has been brought and may properly be maintained for the proposed Class under the criteria of Rule 52.08.

50. Certification of Plaintiff's claims for classwide treatment is appropriate because Plaintiff can prove the elements of the claims using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

51. ***Numerosity***: Rule 52.08(a)(1): The members of the Class are so numerous their individual joinder of all Class Members is impracticable. Plaintiff is informed and believes there are hundreds, and likely thousands, of members of the Class based on the size of the market for cannabis products and the number of dispensaries Defendant operates, but the precise number of Class members is unknown to Plaintiff.

52. ***Commonality and Predominance***: Rule 52.08(a)(2) and (b)(3): This action involves common questions of law and fact which predominate over questions affecting individual Class members, including, without limitation:

a. Whether Defendant uses cashless ATMs?

b. Whether consumers paid hidden surcharges and inflated amounts?

c. Whether Defendant's conduct violated card network rules?

d. Whether Defendant's conduct violated the MMPA?

e. How would a reasonable consumer act considering all the circumstances surrounding the transaction?

f. Whether Defendant's unlawful method, act, or practice under § 407.020 would cause a reasonable person to purchase the cannabis products?

g. What measures Defendant took to conceal the true nature of the sales transaction?

h. Defendant's duty to disclose the true nature of the sales transaction?

i. Whether Defendant was unjustly enriched?

j. Whether Plaintiff and the other Class members have the right to equitable and injunctive relief?

53. ***Typicality***: Rule 52.08(a)(3): Plaintiff's claims are typical of the other Class Members' claims because, among other things, all Class members were similarly injured through Defendant's wrongful conduct as described above. Plaintiff and the other Class Members suffered damages as a direct proximate result of the same wrongful practices in which Defendant engaged.

54. ***Adequacy***: Rule 52.08(a)(4): Plaintiff is an adequate Class Representative because Plaintiff's interests do not conflict with the interests of the other members of the Class Plaintiff seeks to represent; Plaintiff has hired counsel competent and experienced in complex class action litigation; and Plaintiff intends to prosecute this action vigorously. Plaintiff and counsel will fairly and adequately protect the Class's interests.

55. ***Declaratory Relief***: Rule 52.08(b)(2): Defendant has acted or refused to act on grounds generally applicable to Plaintiff and the other members of the Class, thus making declaratory relief appropriate, regarding the Class.

56. ***Superiority***: Rule 52.08(b)(3): A class action is superior to any other available means for the fair and efficient adjudication of this controversy and no unusual difficulties are likely to be encountered in managing this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for the members of the Class to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, it creates a potential for

inconsistent or contradictory judgments. It increases the delay and expense to all parties and the court system. By contrast, a class action is suited and intended to manage such difficulties and provide the benefits of uniform and common adjudication, economy of scale, and comprehensive supervision.

Count I – Violation of the MMPA

57. Plaintiff incorporates all preceding allegations.

58. The MMPA protects both consumers and competitors by promoting fair competition in commercial markets for goods and services.

59. The MMPA makes unlawful the "act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce." § 407.020.

60. Plaintiff and the Class are entitled to bring this action pursuant to § 407.025, which provides: "Any person who purchases … merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 407.020, may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover actual damages."

61. Under § 407.025, the court may, in its discretion, award punitive damages, attorney's fees, and equitable relief.

62. Defendant is a "person" within the meaning of § 407.010(5) of the MMPA.

63. Plaintiff and other Class members are "persons under" the MMPA.

64. The MMPA applies to Defendant's conduct alleged in this action because it protects

consumers in transactions that are intended to result, or which have resulted in the sale of goods.

65. The MMPA defines "merchandise" as any objects, wares, goods, commodities, intangibles, real estate, or services.

66. At all relevant times, the marijuana products constituted "merchandise," as defined by § 407.010(4).

67. At all relevant times, Defendant's sales of marijuana products met the definition of "sale" as defined by § 407.010(6).

68. At all relevant times, Defendant's advertising and marketing of the marijuana products met the definition of "advertisement" as defined by § 407.010(1).

69. Defendant's advertising, offering for sale, and sale of marijuana products is considered "trade" or "commerce" in the State of Missouri within the meaning of § 407.010(7).

70. The Missouri Attorney General has promulgated regulations defining the meaning of unfair practice as used in the MMPA. Specifically, Mo. Code Regs. tit. 15, § 60-8.020, provides an unfair practice is any practice which (a) offends any public policy as it has been established by the Constitution, statutes, or common law of this state, or by the Federal Trade Commission, or its interpretive decisions; or (b) is unethical, oppressive, or unscrupulous; and presents a risk of, or causes, substantial injury to consumers. Proof of deception, fraud, or misrepresentation is not required to prove unfair practices as used in § 407.020.1.

71. Missouri case law provides that the MMPA's "literal words cover ***every practice imaginable and every unfairness to whatever degree***." *Conway v. CitiMortgage, Inc.*, 438 S.W.3d 410, 416 (Mo. banc 2014). Furthermore, the statute's "plain and ordinary meaning of the words themselves . . . are unrestricted, all-encompassing and exceedingly broad." *Id*. at 240.

72. Defendant engaged in deception, false pretenses, misrepresentations, and unfair

practices in connection with the sale of marijuana products by disguising retail sales as ATM withdrawals, concealing the true nature of the transaction, and forcing consumers to pay hidden fees and/or unnecessary fees.

73. Unlike legitimate debit transactions, which involve no consumer fee, Defendant's scheme caused ATM surcharges, bank out-of-network fees, and/or inflated rounded payments. These hidden charges are material to a reasonable consumer.

74. Visa and Mastercard expressly prohibit cashless ATM practices. Visa's December 2, 2021 memo declared them violations of the Visa Core Rules and Product and Service Rules and warned of penalties for merchants misrepresenting POS sales as ATM withdrawals. Mastercard likewise declared marijuana sales prohibited on its systems in July 2023.

75. Upon information and belief, all other card networks prohibit cashless ATM practices.

76. Defendant's conduct thus not only misled consumers but also contravened established card network rules and federal regulatory expectations, offending Missouri public policy and constituting an "unfair practice" under the MMPA.

77. Plaintiff and the Class suffered ascertainable losses, including overcharges and hidden fees, as a direct result of Defendant's conduct.

78. Plaintiff and the Class are entitled to actual damages, punitive damages, restitution, equitable relief, attorneys' fees, and costs under § 407.025, RSMo.

79. Defendant violated the MMPA.

80. Plaintiff acted as reasonable consumers would when purchasing the marijuana products considering all the circumstances.

81. Defendant's methods, acts, and/or practices that are unlawful under the MMPA

would cause a reasonable person to purchase the marijuana products.

82. As a direct and proximate result of Defendant's improper conduct, Plaintiff and the other members of the Class have suffered damages and ascertainable losses of moneys, by paying more for marijuana products.

83. Plaintiff's damages are sufficiently definitive and may be established with objective evidence to allow the loss to be calculated with a reasonable degree of certainty.

Count II – Fraud by Omission or Concealment

84. Plaintiff incorporates all preceding allegations.

85. Defendant intentionally and knowingly concealed, suppressed, and/or omitted material facts about the true nature of its cashless ATM scheme. Due to Defendant's fraudulent conduct, Plaintiff and the other Class members suffered actual damages.

86. Defendant knew or should have known that retail cannabis sales were being miscoded as ATM withdrawals in violation of network rules, including Visa and Mastercard rules, and that such transactions would subject consumers to hidden surcharges, inflated rounded charges, and possible out-of-network bank fees.

87. Defendant had a duty to inform Plaintiff and the other members of the Class of the true nature of these transactions because Defendant possessed exclusive and superior knowledge about how its payment system was coded and processed—information not available to ordinary consumers.

88. Plaintiff and other Class members also reposed trust and confidence in Defendant because of their status as retail customers making what appeared to be ordinary debit card purchases, and because Defendant alone controlled the design and disclosure of its point-of-sale system.

89. Plaintiff and the other Class members would not have used their debit cards to

purchase marijuana products through Defendant's cashless ATM terminals, or would have insisted on paying cash instead, had Defendant disclosed the unlawful miscoding, the violation of card network rules, and the hidden fees tied to the scheme.

90. Defendant knew or should have known its concealment and suppression of these material facts was false and misleading, and it knew or should have known the effect of concealing those facts—that consumers would continue to use debit cards under the false impression they were conducting ordinary debit transactions without additional fees.

91. Defendant acted with malice, oppression, and fraud by intentionally concealing these material facts to maximize its own revenue while shifting unlawful costs onto consumers.

92. Plaintiff and the other Class members reasonably relied on Defendant's knowing, affirmative, and active concealment and omissions when they chose to pay with debit cards at Defendant's dispensaries.

93. As a direct and proximate result of Defendant's omissions and active concealment of the true nature of its cashless ATM scheme, Plaintiff and the other Class members suffered actual damages, including inflated charges, ATM surcharges, bank out-of-network fees, and overpayments beyond the purchase price of marijuana.

Count IIII – Negligent Misrepresentation

94. Plaintiff incorporates all preceding allegations.

95. Defendant supplied false information in the course of business by representing that debit card payments at its dispensary were legitimate transactions.

96. Defendant miscoded retail sales as ATM withdrawals, contrary to network rules, including Visa and Mastercard rules.

97. Because of Defendant's failure to exercise reasonable care, the information was false.

98. Defendant intentionally provided the information for the guidance of Plaintiff and the other Class members.

99. Plaintiff and the other Class members reasonably relied on information from Defendant in making purchases.

100. As a direct and proximate result of Defendant's negligent misrepresentations, Plaintiff and the other Class members have suffered actual damages in an amount to be determined.

Count IV – Unjust Enrichment

101. Plaintiff incorporates all preceding allegations.

102. The focus of an unjust enrichment claim is whether the defendant was unjustly enriched. At the core of Missouri's law are two fundamental elements: (1) the defendant received a benefit from the plaintiff; and (2) it would be inequitable for the defendant to keep that benefit without compensating the plaintiff.

103. Plaintiff and all other Class members conferred a benefit on Defendant by paying inflated amounts through cashless ATM transactions.

104. Defendant retained the benefit under circumstances making its retention unjust, as it was obtained through deception and misrepresentation, and by forcing consumers to pay fees that would not exist in ordinary debit transactions.

105. Because Defendant's retention of the non-gratuitous benefit conferred on it by Plaintiff and all Class members is unjust and inequitable, Defendant must pay restitution to Plaintiff and the Class members for Defendant's unjust enrichment, as ordered by the Court.

Prayer for Relief

WHEREFORE, Plaintiff, individually and for all other Class members, respectfully request that the Court enter judgement in their favor and against Defendant:

A. Certifying this case as a class action;

B. Appointing Plaintiff as Class Representative and counsel as Class Counsel;

C. Awarding damages;

D. Ordering restitution and disgorgement;

E. Issuing declaratory and injunctive relief prohibiting Defendant's use of cashless ATMs, including but not limited to:

a. Enjoining Defendant from using cashless ATMs;

b. Requiring Defendant to engage in a corrective advertising campaign and engage in any further necessary affirmative injunctive relief;

c. Awarding declaratory relief, and any further retrospective or prospective injunctive relief permitted by law or equity, including enjoining Defendant from continuing the unlawful practices alleged, and injunctive relief to remedy Defendant's past conduct; and

d. Requiring Defendant to pay restitution/damages to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising in violation of the above-cited authority;

F. Awarding attorneys' fees and costs;

G. Awarding pre- and post-judgment interest; and

H. Such other further relief as may be appropriate.

ONDERLAW, LLC

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