

4. Venue is proper under 28 U.S.C. §1391(b)(1) & (2).

Facts Common To All Counts

5. Elmore is a part owner of a California-licensed medical marijuana business located in Long Beach, California. Elmore's business partner is Warren Blesofsky ("Blesofsky").

6. In summer 2017, Plaintiff and Blesofsky began researching the potential purchase of a piece of equipment for their business designed to process raw plant material for the medical marijuana market in California, and in particular, equipment designed to extract the cannabinoids (primarily THC) from the raw botanical cannabis material. Plaintiff's and Blesofsky's investigation led them to Defendant Apeks, which is a manufacturer of botanical oil extraction machines and related equipment, including those used in the cannabis processing market.

7. Apeks extensively used and continues to use social media, especially Youtube, to market to customers across the United States. For example, Apeks' Youtube channel contains many videos explaining the use of the equipment and the benefits of their machines.

8. On September 14, 2017, Blesofsky met with Apeks sales representative Scott Sondles ("Sondles"), in Los Angeles, California, to discuss the potential purchase of two oil processing/extraction machines manufactured by Apeks. Each of the machines cost approximately \$115,000, and based upon Apeks' representations, they would collectively process 21 pounds of raw plant material in a 19.5 hour day.

9. On November 9, 2017, Sondles informed Blesofsky in an email that Apeks would be introducing a new "duplex system" machine that would "process 60-80 lbs [per day] conservatively."

10. On November 10, 2017, Sondles sent another email to Blesofsky the text of which stated solely "Top secret shit." Attached to the email was a two-page sales brochure describing

Apeks' new "High Production Series" duplex machine. Per the brochure's "return on investment and pricing" guide, the new machine would process nearly 60 pounds of raw material per day operating for 23 hours per day (three runs a day) and that it would extract the cannabinoids at a 90 percent extraction rate, meaning that each run would extract 90 percent of the cannabinoids contained in the raw plant material. The price of the new duplex machine was \$315,000.00.

11. Thus, according to the representations of Sondles and the Defendant's brochure, the single Apeks duplex machine would produce approximately three to four times the output of the two machines being contemplated for purchase by Plaintiff and Mr. Blesofsky for less than 50 percent additional cost.

12. From the end of 2017 through summer of 2018, Defendant (through Sondles) continued to extoll the virtues and performance of the new Apeks duplex machine. Including informing Plaintiff and Blesofsky via email on May 17, 2018, that the 60 pounds per day processing rate was a conservative estimate based upon the latest "R&D" from Apeks.

13. Based upon the representations of Mr. Sondles and those from Defendant's sales brochure as to the performance of the new Apeks duplex machine, Plaintiff and Blesofsky ultimately agreed to purchase the Apeks duplex system machine from Defendant.

14. On or about August 2, 2018, Plaintiff executed an "Order Form/Quote" with Defendant for the purchase of its duplex system machine, specifically the 2000-20LX20LDU DUPLEX machine (the "Equipment") for a total purchase price (including shipping to California and tax) of \$357,761.25. A copy of the Order Form/Quote is not attached hereto because it contains a provision requiring that its terms remain confidential, but upon information and belief, Defendant is in possession of a copy.

15. Among other things, the Order Form/Quote contained a warranty that the Equipment would be free from defects in materials and workmanship for three years to be remedied by Defendant through repair or replacement of the defective part or equipment, and failing that, the return of the Equipment and refund of the purchase price.

16. Per the terms of the Order Form/Quote, Plaintiff paid one-half of the full purchase price upon execution of the Order Form/Quote and the remaining balance when the Equipment was ready for shipment/delivery.

17. The Equipment was delivered to Plaintiff in California on or about October 18, 2018, and with the assistance of Defendant's agents and/or employees, was installed in Plaintiff's business facility in January 2019.

18. The Equipment experienced technical problems from the first day of operation.

19. While Defendant advertised and promised that the Equipment would process between 50-60 pounds of marijuana a day "conservatively," the Equipment never came close to such productivity. Throughout its operation by Plaintiff and his business, the Equipment processed no more than 23 pounds per day, in part because the extraction rates never approached the 90 percent levels promised by Apeks. In fact, the extraction rates were one-fifth (1/5) the promised amounts. Likewise, the resulting oil product was consistently discolored and burnt.

20. Plaintiff and Blesofsky later learned that in Defendant's rush to get the new duplex machine to market, Defendant had run its prototype of the machine using hemp to extract CBD, not raw marijuana to extract THC. Defendant knew, however, that Plaintiff and Blesofsky were primarily interested in using the machine to extract THC.

21. Plaintiff, Blesofsky, and/or their agents repeatedly and timely informed Defendant of the failure of the Equipment to perform as promised by Defendant and repeatedly sought Defendant's technical assistance in getting the Equipment to operate and perform as promised.

22. Plaintiff complied with Defendant's suggested "fixes" to the Equipment, but none of them worked. The Equipment never performed adequately, let alone as promised.

23. In late August 2019, Plaintiff had a telephone conversation with Defendant's President Andy Joseph. During that conversation, Mr. Joseph agreed that Plaintiff could return the Equipment to Defendant for a full refund, Defendant would sell Plaintiff a different, more-proven machine at a lower cost, and that Defendant would reimburse Plaintiff for the difference of approximately \$125,000.

24. However, in follow-up communications, Defendant reneged on its agreement with Plaintiff, insisting that Plaintiff could return the Equipment at a reduced "trade-in" or "depreciated" value of \$236,250, and that Plaintiff would be given only "store credit" for the difference between the trade-in value and the cost of a replacement machine.

25. Despite Defendant's refusal to abide by its agreement to accept the return of the Equipment for full credit, Plaintiff and Blesofsky continued to attempt to work with Apeks to fix the Equipment, but to no avail.

26. In December 2019, Plaintiff ordered and replaced two valves for the Equipment at the suggestion of Defendant. Not only did the suggested valve replacement not fix the ongoing problems with the Equipment, but Defendant refused to refund the cost of the valves as Defendant had promised.

27. In June 2020, after nearly a year and a half of repeatedly assuring Plaintiff that there were no software upgrades or fixes required to be installed on the Equipment, Defendant remotely

installed approximately 10 cumulative software updates to the Equipment that Defendant's representative indicated had been long overdue. Even after the installation of the software updates, the Equipment still did not perform as promised, and in fact, the "updates" made the Equipment even less functional than it had previously been.

28. When Plaintiff complained that the software updates made the Equipment worse and requested that they be removed, Defendant demanded that Plaintiff waive all warranty claims to the Equipment in exchange for doing so. Plaintiff refused.

29. Plaintiff stopped using the Equipment in July 2020.

COUNT 1: Breach of Warranty/Contract

30. Plaintiff incorporates the prior paragraphs as if fully restated herein.

31. On or about August 2, 2018, Plaintiff and Defendant entered into a written contract, the Order Form/Quote, concerning the purchase and sale of the Equipment.

32. Per the terms of the Order Form/Quote, Defendant expressly warranted that the Equipment would be free from defects in materials and workmanship for three years to be remedied by Defendant through repair or replacement of the defective part or equipment, and failing that, the return of the Equipment and refund of the purchase price.

33. The Equipment was and remains defective, and Plaintiff timely informed Defendant of the defective nature of the Equipment.

34. Despite numerous opportunities to remedy and/or cure the defective nature of the Equipment, Defendant has failed to cure and/or repair the Equipment, and the Equipment has never performed as advertised and promised by Defendant.

35. Plaintiff has demanded that Defendant accept the return of the Equipment for a full refund, and Defendant has refused.

36. Plaintiff has fully complied with all of his obligations under the Order Form/Quote, or his obligations have been waived and/or excused.

37. Defendant has breached the Order Form/Quote, including the warranty contained therein.

38. As a direct and proximate result of the Defendant's breach of the Order Form/Quote, and warranty contained therein, Plaintiff has suffered damages to be calculated at trial, including but not limited to the full cost of the Equipment, lost profits, consequential, and incidental damages.

COUNT 2: Breach of Oral Agreement

39. Plaintiff incorporates the prior paragraphs as if fully restated herein.

40. On or about late August 2019, Plaintiff and Defendant orally agreed that Plaintiff would return the Equipment for a refund of the full purchase price and Plaintiff would purchase a lower-cost replacement machine from Apeks.

41. On or about September 6, 2019, Defendant reneged and/or repudiated the oral agreement with Plaintiff, refusing to accept the return of the Equipment for a refund of the full purchase price.

42. Plaintiff was willing to fully perform his obligations under the oral contract with Defendant. However, because of Defendant's anticipatory repudiation of the oral contract, Plaintiff's performance under the oral contract was excused.

43. Defendant has breached the oral contract.

44. As a direct and proximate result of Defendant's breach of the oral agreement, Plaintiff has suffered damages to be calculated at trial, including but not limited to the full cost of the Equipment, lost profits, consequential, and incidental damages.

COUNT 3: Ohio Deceptive Trade Practices Act (Ohio Revised Code § 4165.01 *et seq.*)

45. Plaintiff incorporates the prior paragraphs as if fully restated herein.

46. The Ohio Deceptive Trade Practices Act (“ODTPA”) precludes any persons in the course of business, vocation, or occupation from, among other things, representing that goods have particular characteristics, standards, or qualities that they do not have. R.C. 4165.02(7) & (9).

47. Defendant violated the ODTPA by representing and advertising that the Equipment would (1) process raw marijuana at a particular rate and quality, and (2) would be free of material defects. Such statements were material, false, and deceptive to the prospective purchasers of the Equipment, including Plaintiff. Plaintiff relied upon these false statements in deciding to purchase the Equipment.

48. Defendant knew, or should have known, that its statements were deceptive, and Defendant’s violation of the ODTPA was willful.

49. Plaintiff was injured by Defendant’s willful violation of the ODTPA and is entitled to damages and attorney fees pursuant to Ohio Revised Code 4165.02(A)(2).

COUNT 4: Lanham Act (15 U.S.C. § 1125)

50. Plaintiff incorporates the prior paragraphs as if fully restated herein.

51. The United States Lanham Act prohibits, among other things, any person in connection with any goods from making any false or misleading description or representation of fact that misrepresents the nature, characteristics, qualities, of his goods, and provides that such person shall be liable to any person who is damaged by such act. 15 U.S.C. § 1125(a).

52. Defendant violated the Lanham Act by representing and advertising (including in interstate commerce) that the Equipment would (1) process raw marijuana at a particular rate and quality, and (2) would be free of material defects. Such statements were material, false, and

deceptive to the prospective purchasers of the Equipment, including Plaintiff. Plaintiff relied upon Defendant's false statements in deciding to purchase the Equipment.

53. Plaintiff was injured by Defendant's violation of the Lanham Act and is entitled to damages and attorney fees.

COUNT 5: Fraudulent Inducement

54. Plaintiff incorporates the prior paragraphs as if fully restated herein.

55. Defendant made repeated statements and representations to Plaintiff directly and through Defendant's authorized representatives and advertising that the Equipment would process raw marijuana at a particular amount, rate, and quality.

56. These representations of Defendant were material to Plaintiff's decision to enter into the Order Form/Quote and to purchase the Equipment from Defendant.

57. The statements and representations of Defendant were false, and Defendant made the statements and representations knowing them to be false and/or with utter disregard as to the truth or falsity thereof.

58. Defendant made the representation/statements with the intent to mislead Plaintiff into relying on the statements and representations and to induce Plaintiff into executing the Order Form/Quote and to purchase the Equipment.

59. Plaintiff reasonably and justifiably relied upon the statements and misrepresentations of Defendant.

60. Plaintiff was proximately harmed and injured by his reliance on the misrepresentations by, among other things, executing the Order Form/Quote and purchasing the Equipment.

61. As a direct and proximate result of Defendant's fraudulent inducement, Plaintiff is entitled to judgment against Defendant for rescission of the Order Form/Quote and purchase of the Equipment, and/or for compensatory damages in an amount to be proved at trial, punitive damages, attorney fees, costs, and pre- and post-judgment interest.

Wherefore, Plaintiff demands judgment against Defendant for damages, pre- and post-judgment interest; costs and attorney fees, and for any other relief, whether legal or equitable, that the Court deems just and proper.

Respectfully submitted,

/s/ Gerhardt A. Gosnell II

Gerhardt A. Gosnell II, Trial Attorney (0064919)
James E. Arnold (0037712)
Michael Dillard (0083907)

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Counsel for Plaintiff Ryan Elmore

JURY DEMAND

Plaintiff hereby demands a trial by jury on all counts, claims, and issues so triable.

/s/ Gerhardt A. Gosnell II
Gerhardt A. Gosnell II

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Ryan Elmore
(b) County of Residence of First Listed Plaintiff Los Angeles Cty, CA
(c) Attorneys (Firm Name, Address, and Telephone Number)
Gerhardt A. Gosnell, Arnold & Clifford LLP, 115 W. Main St., 4th Fl., Columbus, OH 43215 (614) 460-1600

DEFENDANTS
Apeks LLC
County of Residence of First Listed Defendant Licking, OH
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, 440 Other Civil Rights, 625 Drug Related Seizure, 710 Fair Labor Standards Act, 820 Copyrights, 870 Taxes (U.S. Plaintiff or Defendant), 375 False Claims Act, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. Section 1125
Brief description of cause:
False advertising and representations in violation of Lanham Act.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE DOCKET NUMBER

DATE 3/17/2022 SIGNATURE OF ATTORNEY OF RECORD /s/ Gerhardt A. Gosnell II

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.