

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Court Address: 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>Plaintiffs: Jordan Coombs</p> <p>vs</p> <p>Defendants: Beyond Broadway LLC d/b/a Full Melt Chocolate and LivWell</p> <hr/> <p>Attorneys for Plaintiff: Corey T. Zurbuch, Atty Reg. 38750 Frascona, Joiner, Goodman and Greenstein P.C. 4750 Table Mesa Drive Boulder, CO 80305 Telephone: 303-494-3000 Facsimile: 303-494-6309</p>	<p style="text-align: center;">COURT USE ONLY</p> <hr/> <p>Case Number: Div.:</p>
<p>COMPLAINT</p>	

Pursuant to C.R.P.C. Rule 23, Plaintiff, individually and on behalf of a Class of other people similarly situated, by and through undersigned counsel, for his Class Action Complaint and Jury Demand, avers and alleges as follows:

I. THE PARTIES

1. At all times mentioned herein, Plaintiff, Jordan Coombs is a citizen of the State of Colorado, residing at 812 Half Measures Drive, Longmont, Colorado 80504.

2. Defendant Beyond Broadway LLC (“Broadway”) is a manufacturer and purveyor of marijuana infused chocolate.

3. Broadway’s corporate headquarters is located at 5131 Franklin Street, Suite B Denver 80216. At all times relevant to this action, Broadway has been located and conducting business in the State of Colorado.

4. At all times relevant to this action, Broadway has done business as Full Melt Chocolate.

5. At all times relevant to this action, Broadway has done business as LivWell.

II. JURISDICTION AND VENUE

6. Venue in this Court is proper pursuant to Colo. R. Civ. P. 98 because Defendant resides in this County.

III. NATURE OF ACTION

7. This civil action is for personal injuries arising from the Defendants' negligent distribution of marijuana infused chocolate bars under the guise that they contained no **Tetrahydrocannabinol (THC)**, the principal psychoactive constituent (or cannabinoid) of the cannabis plant.

8. Plaintiff complains, *inter alia*, the Broadway gave him several pieces of chocolate at the Pot Pavilion at the Denver County Fair and was expressly told by Broadway representatives that the chocolate contained no THC. Upon ingesting the chocolate the Plaintiff experienced and overdose on THC causing him to become seriously and physically ill requiring treatment and evaluation at the emergency room.

IV. FACTS

9. The "Denver County Fair" was held on August 1st, 2nd, and 3rd, 2014 at the National Western Complex located at 4655 Humboldt Street, Denver, Colorado.

10. Among the attractions at the Denver County Fair was the "Pot Pavilion" which had a stage with hourly events, a "Speed Rolling" and "Dorito Eating Competition", live bands, a laser light show, Grateful Dead Karaoke, exhibitors sharing information and discount coupons, vendors selling pot-related merchandise, including paraphernalia and counter-culture items.

11. The Denver County Fair's web page advertising of the Pot-Pavilion expressly provided that "**No marijuana will be onsite**. Some entries will be represented with photos."

12. Upon information and belief, Broadway registered as an exhibitor with the Denver County Fair through its business name LivWell and was one of the exhibitors at the Pot Pavilion.

13. Upon information and belief, the Defendant was prohibited by the Denver County Fair from displaying, selling, giving out or distributing marijuana containing products.

14. On Sunday, August 3, 2014, Defendant maintained a display booth within the Pot Pavilion.

15. On Sunday August 3, 2014, Defendant was giving out free samples of “chocolate.”

16. On Sunday August 3, 2014, the Plaintiff attended the Denver County Fair with his family and entered the Pot Pavilion.

17. On Sunday August 3, 2014, Defendant offered the Plaintiff free chocolate samples.

18. When Defendant offered the Plaintiff the free chocolate samples, its representatives expressly assured the Plaintiff that the chocolate did not contain any THC.

19. In reliance upon the Defendant’s representations that the chocolate did not contain THC, the Plaintiff accepted several pieces of chocolate and ate them.

20. Soon after eating the Defendant’s chocolate, the Plaintiff began to feel strange.

21. Soon after eating the Defendant’s chocolate, the Plaintiff began to feel physically ill.

22. The Plaintiff was forced to leave the Denver County Fair due to his deteriorating health.

23. The Plaintiff’s spouse drove the Plaintiff and his family away from the Denver County Fair.

24. During the drive away from the Denver County Fair, the Plaintiff became so sick that he projectile vomited uncontrollably in his car.

25. The Plaintiff’s spouse then drove the Plaintiff to the Swedish Medical Center Emergency Room.

26. The physicians at the emergency room diagnosed the Plaintiff as overdosing on THC.

27. The Hospital ordered blood tests which confirmed the presence of THC in the Plaintiff’s blood.

28. The Plaintiff’s vehicle was damaged by Plaintiff’s vomit requiring professional cleaning.

29. The Plaintiff incurred medical expenses from his reasonable and necessary visit to the emergency room.

V. CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action as a class action under Colo. R. Civ. P. 23, on behalf of himself and on behalf of a Class for which Plaintiffs seek certification. Pending any modifications necessitated by Class Discovery, Plaintiff preliminarily has defined this Class as follows:

ALL PERSONS WHO WERE SERVED WITH THC CONTAINING
CHOCOLATE BY THE DEFENDANT AT THE DENVER COUNTY FAIR

31. The principal issues for the Class in this matter involves the Defendant's conduct in giving out marijuana/THC laced chocolate under the false pretense that the chocolate did not contain THC, which harmed and continues to harm the health and safety of the representative Plaintiff and absent Class Members.

32. This action is properly brought as a class action for the following reasons:

- a. The Class is so numerous that joinder of all Class Members is impractical. Upon information and belief, the class as initially defined includes in excess of 100 individuals, exceeding the number required to establish numerosity. Thus, at this time, attempting to join and name each Class Member as a co-plaintiff would be unreasonable and impractical.
- b. As set forth below, questions of law or fact are common to the Class and predominate over any individual issues that may exist. The types of issues, which are common to the Class and which predominate over individualistic issues include:
 - Whether, and to what extent, the Defendant's actions have injured the Plaintiff and others similarly situated.
- c. The claims of the representative parties are typical of the claims of the class. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent class certification, Class Members will continue to suffer damages and Defendants' conduct will proceed without effective remedy.
- d. The representative Plaintiff will fairly and adequately protect the interests of the class. The interests of Class Members are coincident with, and not

antagonistic to, those of Plaintiff's. Furthermore, counsel for Plaintiff is experienced in litigating class action, mass tort and toxic tort cases.

- e. This class action is an appropriate method for the fair and efficient adjudication of this controversy because:
- There is no special interest among Class Members in individually controlling the prosecution of separate actions.
 - The damages sustained by individual Class Members make it impossible for most Class Members to individually prosecute the wrongs done to them and immediate threat of harm to them.
 - When Defendant's liability has been adjudicated, claims of all Class Members can be administered efficiently under the direction of or as determined by this Court.
 - This action will: (a) promote an orderly and expeditious administration and adjudication of the class claims; (b) foster economies of time, effort and resources; and (c) ensure uniformity of decisions.
 - Without a class action, Plaintiff and Class Members will continue to suffer injury and suffer immediate threat of harm, and Defendant's violations of law will proceed without remedy.
 - There will be no insurmountable difficulty in management of this lawsuit as a class action.
- f. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members, which would establish incompatible standards of conduct for Defendant.
- g. The prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to individual Class Members, which would, as a practical matter, be dispositive of the interests of the other Class Members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

- h. There are common questions of law and fact that predominate over individual questions of law and fact, which affect the rights of each member of the Class.
- i. The types of relief sought are common to the entire class.
- j. The same conduct by the Defendant has injured and will injure each member of the class. The Class Members are impacted by the contamination caused by the Defendant.
- k. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.
- l. In the factual allegations and counts in this complaint, Plaintiff assert claims under the common law, *infra*, for property damages and medical monitoring that proximately result from Defendant's marijuana infused chocolate bars
- m. If the commencement date for any of Plaintiff's state law claims is earlier than the federally required commencement date provided in 42 U.S.C. §9658(1), the federally required commencement date governs Plaintiffs' claims.

First Cause of Action

Strict Liability

33. Plaintiff incorporates the allegations of the above paragraphs as if fully restated herein.

34. The Defendant manufactured and distributed the chocolate product that caused the Plaintiff and others similarly situated to unknowingly ingest THC and suffer injuries as a result.

35. The chocolate product distributed by the Defendant was contaminated with THC at the time it left the Defendant's possession and control.

36. Edible food items, including the chocolate product that caused Plaintiff and others similarly situated, illness and injuries was unreasonably dangerous for its ordinary and expected use—i.e., consumption. Such a product is thus in an unreasonably dangerous condition not contemplated by an ordinary consumer, making it defective *per se*.

37. The chocolate product was used by the Plaintiff and others similarly situated in the manner expected and intended when the Plaintiff and others similarly situated consumed it.

38. The Plaintiff and others similarly situated suffered injury and damages as direct and proximate result of the defective and unreasonably dangerous condition of the product distributed by the Defendant.

39. The Defendant is strictly liable to Plaintiff for all damages proximately caused by its defective product.

Wherefore, Plaintiff and others similarly situated, prays for judgment on his First Cause of Action against the Defendant in an amount that is fair and reasonable, for costs, and for any other relief the Court deems proper.

SECOND CAUSE OF ACTION
Breach of Warranty

40. Plaintiff incorporates the allegations of the above paragraphs as if fully restated herein.

41. The Defendant is liable to the Plaintiff for breaching express and implied warranties that it made regarding the adulterated product that the Plaintiff consumed. These express and implied warranties included the implied warranties of merchantability and/or fitness for a particular use.

42. Plaintiff alleges that the THC-contaminated chocolate that the Defendant manufactured and distributed would not pass without exception in the trade and was therefore in breach of implied warranty of merchantability.

43. Plaintiff alleges that the THC-contaminated chocolate that the Defendant manufactured and distributed was not fit for the uses and purposes intended, i.e. human consumption, and that this product was therefor in breach of implied warranty of fitness for its intended use.

44. As a direct and proximate cause of the Defendant's breach of warranties, as set forth above, the Plaintiff and others similarly situated sustain injuries and damages in an amount to be determined at trial.

Wherefore, the Plaintiff and others similarly situated, prays for judgment on his Second Cause of Action against the Defendant in an amount that is fair and reasonable, for costs, and for any other relief the Court deems proper.

THIRD CAUSE OF ACTION

Negligence per se

45. Plaintiff incorporates the allegations of the above paragraphs as if fully restated herein.

46. The Defendant owes a duty to Plaintiff, and others similarly situated, to use reasonable care in the production, manufacture, and distribution of its food products to ensure that the products did not become contaminated with THC. The Defendant breached this duty.

47. The Defendant had a duty to comply with all statutes, laws, regulations, or safety codes pertaining to the distribution of its food products, but failed to do so, and was therefore negligent. The Plaintiff and others similarly situated, are among the class of persons designed to be protected by these statutes, laws, regulations, safety codes, or provisions pertaining to the manufacture and distribution of similar food products.

48. The Defendant had a duty to comply with all applicable state and federal regulations intended to insure the safety of its product including, but not limited, to the rules and regulations promulgated by the Colorado Department of Revenue, Marijuana Enforcement Division, 1 CCR 212-1, Series M-100 through Series M 1400, Medical Marijuana Rules; and CCR 212-2.

49. The Defendant failed to comply with the provisions of the health and safety acts identified above, and, as a result, was negligent *per se* in its distribution of food adulterated with THC.

Wherefore, the Plaintiff, and others similarly situated, prays for Judgment on the Third Cause of Action against the Defendant in an amount that is fair and reasonable, for costs, and for any other relief the Court deems proper.

FOURTH CAUSE OF ACTION

(Failure to Label)

50. Plaintiff incorporates the allegations of the above paragraphs as if fully restated herein.

51. The Defendant has a duty to label its product so that it is clear that they contain marijuana.

52. 1 CCR 212-1, M 11013(D) provides that a product must be labelled with:

The license number of the Medical Marijuana Business(es) where the Medical Marijuana used to manufacture the Medical Marijuana-Infused Product within the Container was grown;

The license number of the Medical Marijuana Center that sold the Medical Marijuana-Infused Product to the patient;

The following statement: “This product is contains medical marijuana and was produced without regulatory oversight for health, safety or efficacy and there may be health risks associated with the consumption of the product.”

For Medical Marijuana-Infused Product, the product identity and net weight statements must appear on the portion of the label displayed to the patient.

When a Medical Marijuana-Infused Product is made specifically for a designated patient, the label of that product shall state the patient’s Medical Marijuana Registry number. The list of ingredients and company name statements must be conspicuously listed on the Medical Marijuana-Infused Product package.

A nutrition facts panel may be required if nutritional claims are made on the label of any Medical Marijuana-Infused Product.

53. 1 CCR 212-2, R 1005(B) provides as follows:

Labeling of Retail Marijuana by a Retail Marijuana Store. A Retail Marijuana Store must affix all of the information required by this rule to every Container in which Retail Marijuana is placed prior to sale to a consumer:

...

h. The following warning statements:

i. “There may be health risks associated with the consumption of this product.”

ii. “This product is intended for use by adults 21 years and older. Keep out of the reach of children.”

iii. “This product is unlawful outside the State of Colorado.”

iv. “This product is infused with marijuana.”

v. “This product was produced without regulatory oversight for health, safety, or efficacy.”

vi. “The intoxicating effects of this product may be delayed by two or more hours.”

vii. “There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant.”

viii. “Do not drive a motor vehicle or operate heavy machinery while using marijuana.”

54. The chocolate distributed by the Defendant to the Plaintiff and others similarly situated contained no labelling at all.

55. The Plaintiff and others similarly situated suffered personal injuries and other harm as a direct and proximate result of the Defendant’s failure to properly label the product.

Wherefore, the Plaintiff, and others similarly situated, prays for Judgment on the Third Cause of Action against the Defendant in an amount that is fair and reasonable, for costs, and for any other relief the Court deems proper.

FIFTH CLAIM FOR RELIEF
Negligent Misrepresentation

56. Plaintiff incorporates the allegations of the above paragraphs as if fully restated herein.

57. As set forth above, the Defendant represented to the Plaintiff that the chocolate did not contain any THC.

58. The Plaintiff reasonably relied upon Defendant’s representation in consuming the chocolate distributed by the Defendant.

59. As a direct and proximate result of Defendant’s negligent misrepresentations, the Plaintiff and others similarly situated, suffered personal injuries and other harm.

Wherefore, the Plaintiff, and others similarly situated, prays for Judgment on the Third Cause of Action against the Defendant in an amount that is fair and reasonable, for costs, and for any other relief the Court deems proper.

FIFTH CLAIM FOR RELIEF
Negligence

60. Plaintiff incorporates the allegations of the above paragraphs as if fully restated herein.

61. As set forth above, Defendant negligently served the Plaintiff and others similarly situated with chocolate containing THC with advising the Plaintiff that it contained TCH.

62. As a direct and proximate result of Defendant's negligence, the Plaintiff and others similarly situated, suffered personal injuries and other harm.

Wherefore, the Plaintiff, and others similarly situated, prays for Judgment on the Third Cause of Action against the Defendant in an amount that is fair and reasonable, for costs, and for any other relief the Court deems proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated: August 7, 2014

Respectfully submitted,
Frascona, Joiner, Goodman and Greenstein, P.C.



Corey T. Zurbuch, No. 38750
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This document was filed electronically pursuant to C.R.C.P. 121 § 1-26. The original signed pleading is on file and available for inspection at the Boulder offices of Frascona, Joiner, Goodman and Greenstein, P.C.

Plaintiff's Address:

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