SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

CAPITOL HEMP, LLC, **Plaintiff,** **v.** **DISTRICT OF COLUMBIA,** **Defendant.**	**Civil Action No. 2025-CAB-003730** **Judge Julie H. Becker** **Next Event: Remote Initial Scheduling Conference** **September 12, 2025 at 9:30 AM**

MEMORANDUM IN SUPPORT OF DEFENDANT'S OMNIBUS OPPOSITION TO PLAINTIFF'S PENDING MOTIONS AND CROSS-MOTION TO DISMISS

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INTRODUCTION

Plaintiff Capitol Hemp, LLC bills itself as D.C.-based retailer of "hemp and hemp-derived products." It filed this action on June 11, 2025, asking the Court to resolve whether it may lawfully peddle its products in the District notwithstanding the District's laws governing the sale of cannabis. Along with the Complaint (or within a month of its filing), Plaintiff filed a motion for emergency and preliminary injunctive relief, motion for declaratory judgment, and three procedural motions, two of which asked the Court to expedite consideration of the motions for equitable relief. The Court denied the first of the two motions to expedite on service-related grounds, but the remainder of Plaintiffs' motions are still pending. Defendant District of Columbia (the District) now opposes Plaintiff's outstanding motions and cross-moves to dismiss the Complaint under Rule 12(b) for lack of subject matter jurisdiction and failure to state a claim.

Practically speaking, Plaintiff's Complaint—and its multiple motions for expedited equitable relief—seeks an advisory opinion on a single legal question: Does "cannabis," as defined by District law, encompass "hemp," as defined by federal law? Although the answer is obvious—*yes*, legally and scientifically, hemp *is* cannabis—the Court lacks jurisdiction to pen a declaratory judgment to that effect because the question, as presented by Plaintiff, is purely hypothetical. Plaintiff alleges nothing about its business or the products it apparently sells apart from calling them "hemp and hemp-derived" and thus fails to show that the Court's answer to the question posed would bear on any actual controversy between Plaintiff and the District. In justiciability terms, the controversy, if there is one at all, is not ripe for review.

But that's not all. Plaintiff also fails to establish standing to seek declaratory and injunctive relief because it does not plausibly plead (nor could it prove) that it faces an immediate threat of enforcement or any other cognizable injury in fact. Further, even if Plaintiff's requests for equitable relief were justiciable, Plaintiff does not state a claim on which

the Court can grant any relief. That is not argument or rhetorical gloss—Plaintiff explicitly states that it is not asserting *any* claim under District or federal law. And even if Plaintiff could point to a recognized cause of action, its untethered argument—that the District cannot regulate the sale of hemp—fails under the plain text of the relevant statute. For each of these reasons, the Court should dismiss Plaintiff's Complaint and deny Plaintiff's motions for injunctive and declaratory relief. Plaintiff's other pending motions should be denied as moot.

BACKGROUND

I. Statutory History

A. The District of Columbia Controlled Substances Act

Since 1981, the District of Columbia Uniform Controlled Substances Act (District CSA) has defined "cannabis" as "all parts of the plant genus Cannabis . . . ." D.C. Code § 48-901.02(3); D.C. Law 4-29 (effective Aug. 8, 1981). The definition does not refer to delta-9 tetrahydrocannabinol, D.C. Code § 48-901.02(3), the key psychoactive compound found in cannabis, *Hemp Indus. v. Drug Enf't Admin.*, 36 F.4th 278, 282 (D.C. Cir. 2022). Since 2001, the District CSA has classified cannabis as a schedule III substance. D.C. Code § 48-902.08(a)(6); D.C. Law 13-300 (effective June 8, 2001).[1] Accordingly, it is generally unlawful to possess, sell, manufacture, or distribute cannabis under District law. D.C. Code § 48-904.01(a)(1) and (d)(1). There are, however, two exceptions. First, the District CSA does not prohibit the personal possession, and personal sharing, of limited amounts of cannabis. *Id.* § 48-904.01(a)(1). Second, the District CSA does not prohibit the possession, manufacture, and distribution of cannabis within the contours of the District's medical cannabis program. *Id.* § 48-904.01(a)(1) and (d)(1); *see id.* § 7-1671.01 *et seq.* (medical cannabis program). Plaintiff does

[1] One subset of cannabis, hashish, falls under schedule II. D.C. Code § 48-902.06(1)(F).

not contend that its activities fall under either of these exceptions. The term "hemp" does not appear in the District CSA. *Id.* § 48-901.02 *et seq*.; *see also* Compl. ¶ 13.

B. The Federal Controlled Substances Act

The federal Controlled Substances Act (federal CSA) defines "marijuana" (often rendered "marihuana") as "all parts of the plant Cannabis sativa L., whether growing or not," as well as its seeds, its resin, and any "compound, manufacture, salt, derivative, mixture, or preparation" of any of these. 21 U.S.C. § 802(16)(A). The federal CSA classifies marijuana as a schedule I substance, *id.* § 812(c), so it is unlawful to possess, manufacture, distribute, or dispense it, *id.* § 844(a). These prohibitions apply regardless of whether the marijuana is being possessed, used, or distributed for recreational or medical purposes. *United States v. Oakland Cannabis Buyers Coop.*, 532 U.S. 483, 490-491 (2001).

Before 2018, the federal CSA's definition of marijuana excluded the non-psychoactive parts of the Cannabis sativa L. plant. 21 U.S.C. § 802(16) (2012) (excluding "the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination"). In 2018, Congress added another carve-out to the federal definition of marijuana as part of the Agricultural Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (2018 Farm Bill). The 2018 Farm Bill provided that marijuana "does not include . . . hemp," 21 U.S.C. § 802(16)(B)(i), which is those parts of "the plant Cannabis sativa L. . . . with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis," 7 U.S.C. § 1639*o*(1).[2] The 2018 Farm Bill also made conforming changes to the

[2] Congress first differentiated hemp from marijuana based on delta-9 THC concentration in the Agricultural Act of 2014, Pub. L. No. 113-79, 128 Stat. 649, which authorized the cultivation

definition of tetrahydrocannabinols (THC), which is separately listed as a Schedule I controlled substance. *See* 21 U.S.C. § 812(c). Accordingly, hemp—cannabis with a delta-9 THC concentration of less than 0.3%—is not subject to the federal CSA's prohibitions.

II. Procedural History

According to the Complaint, Plaintiff is "a District of Columbia limited liability company engaged in the commercial sale of hemp and hemp-derived products." Compl. ¶ 9. The Complaint asserts that the District's enforcement of the District CSA against hemp retailers like Plaintiff is unlawful because the D.C. Council has not changed the D.C. Code to "define hemp, or distinguish it from marijuana," in the same way that Congress changed the federal definition of cannabis. *Id.* ¶ 1; *see id.* ¶¶ 12–16, 18–19.

The Complaint includes three Counts, all based on that same proposition. Count I seeks a declaratory judgment that the District "lacks lawful authority to take enforcement actions premised on the treatment of federally legal hemp as cannabis" and other, similar declarations. *Id.* ¶ 26. Counts II and III, which are substantively indistinguishable and seek the same injunctive relief, *see id.* ¶¶ 27–37, are based on the District's purported "refusal to clarify its enforcement position and assertion of ongoing discretionary authority" with respect to hemp, *id.* ¶ 30; *accord id.* ¶ 35. Counts II and III seek an injunction "prohibiting [the District] from asserting or exercising enforcement authority over hemp or hemp-derived products absent statutory authority." *Id.* ¶ 36; *accord id.* ¶ 31. The Complaint does not claim that the federal statute preempts the District's statute, nor does it specify any other cause of action under either federal or local law. *See id.* ¶¶ 7–8.

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of "industrial hemp," defined according to the same 0.3 percent delta-9 THC concentration threshold as the 2018 Farm Bill's definition of "hemp," for agricultural and academic purposes pursuant to a state pilot program. *Hemp Indus.*, 36 F.4th at 282 (citing 7 U.S.C. § 5940).

With the Complaint, Plaintiff also filed its Motion for Declaratory Judgment, along with a motion for expedited consideration of that motion.[3] The Motion for Declaratory Judgment more fully sets out Plaintiff's legal argument—that the District CSA's definition of cannabis does not encompass hemp—and includes a prayer for relief proposing a declaratory judgment that is similar to, but not that same as, the one sought in Count I of the Complaint. *Compare* Decl. J. Mot. ¶ 18 *with* Compl. ¶ 26.[4] Specifically, the motion requests a declaration that "current District law does not establish legal authority to treat federally legal hemp as a controlled substance or to subject it to licensure under the District's medical cannabis program." Decl. J. Mot. ¶ 18d; *see also* Prop. Ord.

On July 28, 2025, Plaintiff filed its Emergency Ex Parte Motion for Temporary Restraining Order Without Notice and Preliminary Injunction (TRO Motion), Motion to Shorten Time for Hearing on Preliminary Injunction, and Motion to Consolidate Preliminary Injunction Hearing with Proceedings on the Merits. Plaintiff's TRO Motion seeks an order temporarily restraining the District "from initiating or threatening any enforcement action against Plaintiff related to hemp and hemp-derived products, including, but not limited to, warnings, seizures, embargoes, fines, arrests, criminal charges, padlocking, or other coercive action." TRO Mot. at 2 (quotation modified). Plaintiff contends that emergency and preliminary relief is warranted due to purported "credible threats of imminent enforcement, including padlocking and arrest."

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[3] These motions were not served on the District. Citing service defects, the Court denied the motion for expedited consideration on July 9, 2025. Ord. Denying Mot. for Expedited Consideration, July 9, 2025.

[4] The motion's prayer for relief also differs slightly from the proposed order submitted with the motion. *Compare* Decl. J. Mot. ¶ 18 *with* Proposed Order (omitting language found in paragraphs 18g and 18h of motion's prayer for relief). The proposed order begins on page 22 of the PDF file containing Plaintiff's Motion for Declaratory Judgment and memorandum in support.

TRO Mot. at 1. The TRO Motion is supported only by a declaration from Plaintiff's litigation counsel, which does not state whether counsel has personal knowledge of the facts in the declaration. Decl. of Counsel in Supp. of Emergency Ex Parte Mot. for Temp. Restraining Ord. Without Notice (Wexler Decl.)[5]; *see also generally* TRO Mot.

On July 30, 2025, the Court ordered Plaintiff to file "an updated affidavit of service on its Complaint" as well as a supplement to its TRO Motion "clarifying the efforts it has made to provide the Defendant with actual notice of these proceedings, and explaining how those efforts satisfy the requirements of Super. Ct. Civ. R. 65(b)(1)(B)." Order Regarding Pending Motions, July 30, 2025, at 2. Plaintiff's supplement, filed July 30, 2025, concedes that Plaintiff did not attempt to serve or otherwise notify the District of the TRO Motion (or the two related motions) until that very day—July 30, 2025—two days after Plaintiff filed the motions. Pl.'s Supp. to Pending Mots. Clarifying Efforts to Provide Notice Under Rule 65(b)(1)(B) at 1.

LEGAL STANDARD

I. Rule 65 – Preliminary Injunction

Emergency injunctive relief may be awarded only when a plaintiff "clearly demonstrate[s]" *each* prong of a four-part test: (1) that there is a substantial likelihood of success on the merits; (2) that there is an imminent threat of irreparable harm should the relief be denied; (3) that more harm would result to the plaintiff from the denial of the injunction than would result to the defendants from granting the relief; and (4) that the public interest will not be disserved by the issuance of the requested order. *Akassy v. William Penn Apartments, L.P.*, 891 A.2d 291, 309 (D.C. 2006) (citing *In re Antioch Univ.*, 418 A.2d 105, 109 (D.C. 1980)); *Zirkle v. District of Columbia*, 830 A.2d 1250, 1255–56 (D.C. 2003); *District of Columbia v. E. Trans-*

[5] Plaintiff's counsel's declaration begins on page 9 of the PDF file containing Plaintiff's TRO Motion and memorandum in support.

Waste of Md., Inc., 758 A.2d 1, 14 (D.C. 2000). The third and fourth factors merge when the government is opposing injunctive relief. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

A plaintiff seeking preliminary injunctive relief must show a right to relief with "[e]vidence that goes beyond the unverified allegations of the pleadings and motion papers . . . ." *E.g.*, *Bird v. Barr*, No. 19-cv-01581, 2020 WL 4219784, at *5 (D.D.C. July 23, 2020) (citation omitted). Indeed, the Supreme Court has described a movant's burden at this stage as requiring "*a clear showing*" with "substantial proof," and as a burden "much higher" than a non-movant's burden at summary judgment. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (quoting in part 11A Wright & Miller, Fed. Practice & Pro. § 2948 (2d ed. 1995)).

II. Rule 12(b)(1) – Lack of Subject Matter Jurisdiction

A complaint must contain "a short and plain statement of the grounds upon which the Court's jurisdiction depends." Super. Ct. Civ. R. 8(a)(1). "[T]he Superior Court must dismiss the complaint at any point if it becomes apparent that it lacks subject matter jurisdiction." *King v. Kidd*, 640 A.2d 656, 662 (D.C. 1993). In determining whether it has jurisdiction, a court may consider material outside of the pleadings. *See, e.g.*, *Halcomb v. Office of the Senate Sergeant-At-Arms*, 563 F. Supp. 2d 228, 235 (D.D.C. 2008). This Court "generally adhere[s] to the case and controversy requirement of Article III as well as prudential principles of standing" and "look[s] to federal standing jurisprudence, both constitutional and prudential, when considering issues of standing." *Riverside Hosp. v. D.C. Dep't of Health*, 944 A.2d 1098, 1104 (D.C. 2008); *see also Padou v. D.C. Alcoholic Bev. Control Bd.*, 70 A.3d 208, 211 (D.C. 2013). "The plaintiff bears the burden to establish standing." *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 43 (D.C. 2015).

III. Rule 12(b)(6) – Failure to State a Claim

Every complaint must set forth a "short and plain statement of the claim showing that the pleader is entitled to relief." Super. Ct. Civ. R. 8(a)(2). The D.C. Court of Appeals has expressly adopted the Supreme Court's interpretation of this rule. *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543–45 (D.C. 2011). Accordingly, while a viable complaint "does not require detailed factual allegations, . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted). A pleading will not "suffice if it tenders 'naked assertions' devoid of 'further factual enhancement.'" *Id.* (alteration marks and quotation omitted). "A complaint should be dismissed under Rule 12(b)(6) if it does not satisfy the pleading standard in Rule 8(a)." *Potomac Dev. Corp*, 28 A.3d at 543.

ARGUMENT

The District opposes Plaintiff's TRO Motion and Motion for Declaratory Judgment and seeks dismissal of the Complaint, on the following grounds.[6]

I. Plaintiff Is Unlikely To Succeed on the Merits Because It Has Not Pled a Justiciable Controversy or a Claim for Relief.

Plaintiffs' entitlement to preliminary relief turns on the Court's assessment of the merits. *See Sherley v. Sebelius*, 664 F.3d 388, 393 (D.C. Cir. 2011) (suggesting that *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 22 (2008), makes the showing of a likelihood of success on the merits a free-standing requirement for a preliminary injunction). To prevail, Plaintiffs

[6] The argument that follows is structured as an opposition to Plaintiff's TRO Motion, with headings corresponding to each of the four preliminary injunction factors set out above. *See* Legal Standard § I. For the same reasons Plaintiff cannot prevail on the merits, as set forth in Argument section I, the Complaint is subject to dismissal for want of jurisdiction, failure to state a claim, or both. *See* Legal Standard §§ II, III. Accordingly, the District simultaneously moves for dismissal under Rules 12(b)(1) and (6).

must prove a "substantial likelihood of success." *Ark. Dairy Co-op Ass'n v. USDA*, 573 F.3d 815, 821 (D.C. Cir. 2009). Failure to do so is alone sufficient to deny a motion for preliminary injunction. *See id.* at 832. Plaintiff has not only failed to meet the standard for preliminary injunctive relief, it has failed to meet the pleading standard to show that its claims for declaratory and injunctive relief are justiciable. *See Iqbal*, 556 U.S. at 678. Even if Plaintiff's preenforcement challenge were justiciable, Plaintiff explicitly disclaims any cause of action that could entitle it to injunctive relief. In any event, Plaintiff's argument that the District CSA's definition of cannabis does not encompass hemp fails as a matter of law.

A. Plaintiff's Preenforcement Challenge Is Not Justiciable.

Plaintiff's Complaint and pending motions collectively seek declaratory and injunctive relief against the District before the District has taken any action affecting Plaintiff's interests. Background § II. To prevail, Plaintiff must show—first—that its preenforcement challenge presents a justiciable case or controversy. *Seegars v. Gonzales*, 396 F.3d 1248, 1251–52 (D.C. Cir. 2005); *see also Vining v. Exec. Bd. of D.C. Health Benefit Exch. Auth.*, 174 A.3d 272, 278 (D.C. 2017) (D.C. courts "conform [their] exercise of 'judicial power' to the law of Article III standing"). Justiciability principles apply regardless of the form of relief requested. *Loc. 36 Int'l Ass'n of Firefighters v. Rubin*, 999 A.2d 891, 896 (D.C. 2010) ("declaratory judgment authority does not supersede the rules of justiciability"); *see also California v. Texas*, 593 U.S. 659, 672 (2021) ("[J]ust like suits for every other type of remedy, declaratory-judgment actions must satisfy Article III's case-or-controversy requirement."). Therefore, Plaintiff must show that its requests for prospective relief are ripe and that it has standing to pursue them. *Vining*, 174 A.3d at 278 (standing); *id.* at 282 n.52 (ripeness). Because Plaintiff has not met the pleading standard for ripeness or standing, the Court should deny Plaintiff's pending motions and dismiss the Complaint for lack of subject matter jurisdiction.

1. Plaintiff's Request for Declaratory Relief Is Unripe.

Plaintiff's Complaint and Motion for Declaratory Judgment seek an order declaring that "current District law does not establish legal authority to treat federally legal hemp as a controlled substance . . . ." Decl. J. Mot. ¶ 18d; *accord* Compl. ¶ 26.[7] Plaintiff's preenforcement challenge is unripe because Plaintiff has not alleged a real and substantial controversy that can be conclusively resolved by the declaration they propose.

"The declaratory judgment procedure may not be used as a 'medium for securing an advisory opinion in a controversy which has not arisen.'" *Quality Air Servs. v. Milwaukee Valve Co.*, 567 F. Supp. 2d 96, 102 (D.D.C. 2008) (citation modified) (quoting *Coffman v. Breeze Corps.,* 323 U.S. 316, 324 (1945)); *see also Rubin*, 999 A.2d at 895–96. To be ripe for determination, the controversy underlying a declaratory judgment action must be "real and substantial and admit of specific relief through a decree of conclusive character, as distinguished from an opinion advising what the law would be on a hypothetical set of facts.'" *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (citation modified); *see also McIntosh v. Washington*, 395 A.2d 744, 754 n.24 (D.C. 1978). To be "of conclusive character," a declaratory judgment must "seek[ ] a final or conclusive determination of the underlying controversy." *Calderon v. Ashmus*, 523 U.S. 740, 740 (1998); *accord Harford Mut. Ins. Co. v. New Ledroit Park Bldg. Co.*, 313 F. Supp. 3d 40, 46 (D.D.C. 2018) (declaratory relief sought "must *completely* resolve a concrete controversy susceptible to conclusive judicial determination") (citation modified) (emphasis in original); *see also Rubin*, 999 A.2d at 896.

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[7] Plaintiff's TRO Motion does not seek declaratory relief, TRO Mot. at 2, but its Complaint and Motion for Declaratory Judgment do. Although the standards applied to the District's Cross-Motion to Dismiss and Plaintiff's Motion for Declaratory Judgment differ, there is little practical difference here because Plaintiff's motion frames the dispute as purely legal and is not supported by evidence. Even if that were not the case, Plaintiff's motion cannot succeed without proving the existence of a justiciable controversy. *See Rubin*, 999 A.2d at 896.

Plaintiff's suit raises a single question: Whether the District CSA's definition of cannabis encompasses hemp as defined by the federal CSA. *See, e.g.*, Compl. ¶¶ 1, 12, 19; Pl.'s Mot. for Decl. J. at 1. But Plaintiff has not alleged facts showing that the Court's answer to that question would finally and conclusively resolve an actual controversy between Plaintiff and the District. Plaintiff's pleadings say almost *nothing* about its business. The Complaint says only that Plaintiff is a District of Columbia limited liability company engaged in the commercial sale of hemp and hemp-derived products. Compl. ¶ 9. Notably, Plaintiff does not offer *any* details about whether the "hemp and hemp-derived products" it sells are cannabis products, cannabis products meeting the federal definition of hemp, or something else entirely. *See id.* Far from establishing a "real and substantial" dispute, Plaintiff does not even present a "hypothetical set of facts." *See MedImmune*, 549 U.S. at 127. The Complaint and other pleadings make clear that Plaintiff fears enforcement of the District CSA, but they leave totally undefined the contours of the hypothetical dispute that would arise from any such future enforcement. Plaintiff appears concerned about both criminal and administrative enforcement, TRO Mot. at 1, but any dispute arising from future enforcement will obviously look quite different depending on which form it takes. "In the absence of specific facts to consider, the Court could only postulate" what Plaintiff's exposure might be and what effect the Court's judgment would have on any future dispute between the Parties. *Quality Air*, 567 F. Supp. 2d at 102; *see also Pauling v. Eastland*, 288 F.2d 126, 128 (D.C. Cir. 1960) (In a declaratory judgment action, a court's "initial question is whether the events which have thus far occurred and *the factual situation which presently exists* are such that the authority of the judiciary can be invoked at this point.") (emphasis added); *Salt Lake Cnty. v. State*, 466 P.3d 158, 164 (Utah 2020) (In a declaratory judgment action, "a challenge to a statute is unripe unless the court's legal determination regarding the

statute can be applied to specific facts in the case."). Plaintiff's vague fears of future enforcement are simply not enough to invoke this Court's jurisdiction.

Notwithstanding the complete factual void, it is exceedingly unlikely that a declaratory judgment concerning whether the District CSA's definition of cannabis encompasses hemp would resolve (or, more precisely, preempt) a hypothetical District enforcement action against Plaintiff. Given the legal and factual questions that are likely to arise from any enforcement, such a declaration "would merely determine a collateral legal issue governing certain aspects of [Plaintiff's] . . . future suits" or administrative proceedings. *Calderon*, 523 U.S. at 747; *see also Pub. Serv. Comm'n of Utah v. Wycoff Co.*, 344 U.S. 237, 246 (1952) ("[W]hen the request is not for ultimate determination of rights but for preliminary findings and conclusions intended to fortify the litigant against future regulation, it would be a rare case in which the relief should be granted."). Here, the legal and factual questions likely to be raised in an enforcement action may well render a declaratory judgment academic. A few examples illustrate the point.

The 2018 Farm Bill's definition of hemp—which Plaintiff would like the Court to write into the District CSA—did not resolve all questions concerning the legal status of hemp products under federal law. For example, does the federal definition of hemp "automatically exempt any product derived from a hemp plant [with a delta-9 THC concentration of less than 0.3% by dry weight], regardless of the delta-9 THC content of the derivative"? *Hemp Indus.*, 36 F.4th at 290 (quoting Implementation of the Agriculture Improvement Act of 2018, 85 Fed. Reg. 51,639, 51,639 (Aug. 21, 2020) (DEA Interim Final Rule)). The federal Drug Enforcement Agency (DEA) says no, and it published a rule stating that "[i]n order to meet the definition of 'hemp,' and thus qualify for the exemption from schedule I, the derivative must not exceed the 0.3%

[delta-9]-THC limit."[8] 85 Fed. Reg. at 51,641. Does Plaintiff sell "hemp-derived" products that exceed 0.3% delta-9 THC? Plaintiff does not say, nor does it address whether federal regulations interpreting the federal CSA's hemp-related provisions should also be imported into District law.

Another area of uncertainty under federal law concerns hemp-derived products that "must be extracted from the cannabis plant and refined through a manufacturing process." *See Anderson v. Diamondback Inv. Grp.*, 117 F.4th 165, 187 (4th Cir. 2024). A DEA rule says that "[a]ll synthetically derived [THC] remain schedule I controlled substances." *Anderson*, 117 F.4th at 186 (4th Cir. 2024) (quoting DEA Interim Final Rule at 51,649). The DEA considers certain hemp-derived products with intensive manufacturing processes to be synthetically derived, and therefore schedule I substances, *even if* the product's delta-9 THC concentration is less than 0.3%. *Id.* (citing Drug Enf't Admin., Diversion Control Div., Opinion Letter (Feb. 13, 2023)).[9] Does Plaintiff sell any hemp-derived products containing such "synthetically derived" THC, such as THC-O? Again, Plaintiff does not say.[10]

In any event, Plaintiff's sale of hemp products may be unlawful regardless of whether the products qualify as cannabis under the District CSA. *See Wycoff*, 344 U.S. at 245 (Noting that even if plaintiff got the declaratory judgment it requested, "we cannot say that there is nothing whatever that the State may require"). District law prohibits the sale of adulterated food. D.C.

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[8] In *Hemp Industries*, the D.C. Circuit dismissed a challenge to this DEA rule for lack of subject matter jurisdiction, 36 F.4th at 293, and thus did not evaluate its consistency with the 2018 Farm Bill's definition of hemp and related provisions of the federal CSA.

[9] The Fourth Circuit rejected the DEA's exclusion of such products from the federal CSA's definition of hemp, *Anderson*, 117 F.4th at 188, but the D.C. Circuit has not addressed the issue, and, to the District's knowledge, the DEA has not changed its position or amended its rule.

[10] The District takes no position as to whether the DEA rules discussed here are consistent with the 2018 Farm Bill's exclusion of "hemp" from the federal CSA, because none of those federal authorities are relevant to the District CSA's definition of cannabis.

Code § 48-101; 25 DCMR § 711.1. Food is adulterated if it "bears or contains any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug and Cosmetic Act" (FD&C Act). D.C. Code § 48-103; *see also* 25-A DCMR § 9901.1 (defining adulterated food as having the meaning stated in § 402 of the FD&C Act.). According to the federal Food and Drug Administration (FDA), cannabidiol (CBD), a cannabis-derived compound found in hemp, is "an unapproved food additive, and its use in human or animal food violates the FD&C Act for reasons that are independent of its status as a drug ingredient."[11] FDA Regulation of Dietary Supplement & Conventional Food Products Containing Cannabis and Cannabis-Derived Compounds, available at https://tinyurl.com/5n75kwm2 (last visited Aug. 12, 2025). Therefore, Plaintiff's sale of any hemp-derived food or beverages containing CBD would violate District law regardless of the products' THC content or status under the District CSA.[12]

Even in the context of a hypothetical enforcement action, then, Plaintiff's liability would ultimately turn on the unknown composition of Plaintiff's products and the particular statutes and regulations being enforced. And of course, Plaintiff would be free to defend against an enforcement action by arguing that the District CSA's definition of cannabis does not encompass the hemp or hemp-derived products to which it is ultimately applied. *See Wycoff*, 344 U.S. at 246 ("the declaratory judgment procedure will not be used to preempt and prejudice issues that are committed for initial decision to an administrative body"). But "a litigant may not use a declaratory-judgment action to obtain piecemeal adjudication of defenses that would not finally and conclusively resolve the underlying controversy." *MedImmune*, 549 U.S. at 127 n.7 (citation

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[11] The 2018 Farm Bill specifically provides that nothing in the subtitle concerning hemp "shall affect or modify . . . the Federal Food, Drug, and Cosmetic Act." 7 U.S.C. § 1639r(c)(1).

[12] Plaintiff states that it was issued an embargo order by DOH in June 2024. Pl.'s Mem. in Supp. of Mot. for Decl. J. (Decl. J. Mem.) ¶ 13.

modified) (discussing *Calderon*, 523 U.S. at 749). Because the Court does not know anything about Plaintiff's "hemp-derived" products or the hypothetical future enforcement action that might result from their sale, Plaintiff's request for preenforcement declaratory relief is unripe. Accordingly, its Motion for Declaratory Judgment should be denied, and its Complaint dismissed, for lack of jurisdiction.

2. Plaintiff Lacks Standing to Seek Declaratory and Injunctive Relief.

In addition to the declaratory relief discussed above, Plaintiff also seeks injunctive relief forbidding the District from asserting regulatory authority over Plaintiff or threatening or initiating enforcement actions against Plaintiff. TRO Mot. at 2; Compl. ¶¶ 27–37. The Court lacks jurisdiction to consider Plaintiff's requests for declaratory and injunctive relief because Plaintiff has not plausibly pled that it has standing to pursue such relief.

Plaintiff has the burden to establish its standing to seek relief for "each claim" that it presses and "for each form of relief that [it] seeks," *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) (citation modified), "with the manner and degree of evidence required at the successive stages of the litigation," *id.* at 58 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)). Thus, "to survive a motion to dismiss for lack of standing, 'a complaint must contain sufficient factual matter, accepted as true,' to make the claim of injury, traceability, and redressability 'plausible on its face.'" *Fraternal Ord. of Police v. District of Columbia*, 290 A.3d 29, 37 (D.C. 2023) (quoting *Iqbal*, 556 U.S. at 678). "At the preliminary injunction stage," however, "the plaintiff must make a 'clear showing' that she is 'likely' to establish each element of standing."[13] *Murthy*, 603 U.S. at 58 (quoting *Winter*, 555 U.S. at 22). Plaintiff has not met either standard.

[13] Plaintiff's TRO Motion is supported only by a declaration of Plaintiff's litigation counsel, which does not state that counsel has personal knowledge of the facts in the declaration. *See* Wexler Decl. Thus, the TRO Motion is not supported by evidence.

An injury in fact is one of the "irreducible constitutional minimum [elements] of standing." *Vining*, 174 A.3d at 278 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016)). To obtain injunctive or declaratory relief, litigants must establish that they are threatened with an "imminent" and "certainly impending" future injury. *Murthy*, 603 U.S. at 49–50, 57–59; *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013); *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983); *Dearth v. Holder*, 641 F.3d 499, 501 (D.C. Cir. 2011) (applying to declaratory relief). "It is blackletter law that plaintiffs cannot rely on speculative future injuries to establish Article III standing." *Hailu v. Morris-Hughes*, Civil Action No. 22-00020, 2022 WL 1124796, at *3 (D.D.C. Apr. 14, 2022).

Plaintiff lacks standing because it fails to plausibly allege (let alone clearly show, for purposes of its TRO Motion), an imminent or certainly impending injury. Throughout its pleadings, Plaintiff points to a "lack of legal clarity," Compl. ¶ 22, and "uncertainty," Decl. J. Mot. at 1, but those sorts of assertions cannot establish injury in fact under any standard. Indeed, "broad-based market effects stemming from regulatory uncertainty are quintessentially conjectural, and it is difficult to imagine an agency action that would not confer standing under this theory." *Hemp Indus.*, 36 F.4th at 290 (citation modified) (quoting *New England Power Generators Ass'n v. FERC*, 707 F.3d 364, 369 (D.C. Cir. 2013)). Plaintiff's vague and unsupported allegation of "reputational harm," Compl. ¶ 22, likewise fails to plead a cognizable injury. *Geary v. Nat'l Newspaper Publishers Ass'n*, 279 A.3d 371, 373 (D.C. 2022) ("vague and unsubstantiated" allegations of reputational harm are not justiciable).

Plaintiff also alleges that it faces a "continued threat of renewed enforcement," Compl. ¶ 22; in other words, Plaintiff brings this suit *pre*-enforcement. "A plaintiff requesting preenforcement review" must "demonstrate that either the threatened enforcement injury is

'certainly impending' or there is a 'substantial risk' such injury will occur." *Hemp Indus.*, 36 F.4th at 290 (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). Plaintiff's stated "intent to commit violative acts and a conventional background expectation that the government will enforce the law" is not enough. *Seegars*, 396 F.3d at 1253. The threat of prosecution must be "credible and immediate, and not merely abstract or speculative." *Navegar, Inc. v. United States*, 103 F.3d 994, 998 (D.C. Cir. 1997). And, as with jurisdiction, generally, Plaintiff bears the burden.

Plaintiff's pleadings point to three reasons Plaintiff apparently fears a future enforcement action, but none plausibly alleges, let alone clearly shows, a certainly impending injury. First, Plaintiff claims that it "received informal but credible threats that District officials intended to take enforcement actions against vendors selling hemp-derived products at the National Cannabis Festival, scheduled for July 18–19, 2025, in Washington, D.C." Wexler Decl. ¶ 2; *accord* TRO Mot. ¶ 18. But nowhere in its pleadings does Plaintiff identify the source of these "threats," describe how it learned of them, or explain why they were "credible." Mere "labels" will not convert "naked assertions devoid of further factual enhancement" into well-pled allegations. *Iqbal*, 556 U.S. at 678 (citation modified). Even if the threats were credible, however, they would not support Plaintiff's standing because, according to Plaintiff's own description, they were directed only at a particular festival that occurred weeks ago. Wexler Decl. ¶ 2. Plaintiff did not participate in that festival, *id.* ¶ 3, and does not assert that it has received any other threats of enforcement.

Second, Plaintiff states that "another hemp retailer was padlocked by District officials without warning, and its personnel were arrested." Wexler Decl. ¶ 4. Plaintiff does not identify this other hemp retailer or provide any information concerning the asserted enforcement action

and arrests. Nor does Plaintiff attempt to show (much less with evidence) that it is similarly situated to the other hemp retailer beyond the fact of being a hemp retailer. That "the government has demonstrated its interest in enforcing the [statute] generally" is not enough to show a certainly impending enforcement injury. *Navegar, Inc.*, 103 F.3d at 1001.

Third, Plaintiff cites a past administrative enforcement action that the District brought against Plaintiff in June 2024 and subsequently dropped. Decl. J. Mem. ¶ 13; *see also* Compl. ¶ 11. But the District's abandonment of a past administrative enforcement action against Plaintiff does not support an inference that Plaintiff currently faces an imminent enforcement action.

Because Plaintiff has failed to plausibly plead its standing to seek prospective relief, its pending motions should be denied and the District's Cross-Motion to Dismiss should be granted.

B. Plaintiff Has Not Stated Any Claim.

Even if Plaintiff's requests for prospective relief were justiciable, Plaintiff has failed to state a claim on which such relief could be granted. Super. Ct. Civ. R. 12(b)(6). In fact, Plaintiff has expressly forsworn "*any* private right of action in tort or under federal law," Compl. ¶ 8 (emphasis added), or reliance "on any claim of federal preemption or constitutional violation, *id.* ¶ 7. Plaintiff's TRO Motion does not mention any cause of action either. TRO Mot. But even if the Court agrees with Plaintiff's argument—that the 2018 Farm Bill rewrote the definition of cannabis in the District CSA—it cannot issue *any* relief unless Plaintiff shows that it has a meritorious claim. This is as true for declaratory relief, *Ali v. Rumsfeld*, 649 F.3d 762, 778 (D.C. Cir. 2011) ("the plaintiffs have not alleged a cognizable cause of action and therefore have no basis upon which to seek declaratory relief"); *Jones v. U.S. Secret Serv.*, 701 F. Supp. 3d 4, 14 n.1 (D.D.C. 2023), as it is for injunctive relief, *Akassy*, 891 A.2d at 309 (preliminary injunction requires likelihood of success on the merits); *Caesar v. Westchester Corp.*, 280 A.3d 176, 192 (D.C. 2022) (noting that permanent injunction will not issue unless plaintiff has succeeded on the

merits). Because Plaintiff has chosen not to assert any cause of action under local or federal law, Plaintiff's Complaint should be dismissed and its pending motions denied.

C. Plaintiff's Freestanding Challenge to the District's Regulation of Hemp-Based Products Is Meritless.

Even if the Court entertains it, Plaintiff's argument that hemp is not encompassed by the District CSA's definition of cannabis is plainly wrong. The District CSA defines cannabis as "all parts of the plant genus Cannabis, including both marijuana and hashish." D.C. Code § 48-901.02(3). Plaintiff concedes that "all hemp" is cannabis. Decl. J. Mem. ¶ 29; *see id.* ("it is one plant"). Therefore, the definitional phrase "all parts of the plant genus Cannabis" encompasses hemp. That is the beginning, the middle, and the end of the relevant statutory analysis. *See Booz Allen Hamilton Inc. v. Off. of Tax & Revenue*, 308 A.3d 1205, 1209 (D.C. 2024) ("When interpreting statutes, [courts] first look to see whether the statutory language at issue is plain and admits of no more than one meaning.") (internal quotation marks omitted).

Against that straightforward, commonsense conclusion, Plaintiff contends that the District has "no valid legal basis under D.C. law for asserting authority over" hemp. Decl. J. Mot. ¶ 12. Plaintiff argues that, because the federal CSA defines "hemp" and excludes it from its prohibitions, *see* Background § I.B, the District CSA's definition of "cannabis" must be read to exclude hemp, as defined by the federal CSA, as well. *See, e.g.*, Compl. ¶ 7, 12–15; Decl. J. Mem. ¶¶ 8–13. But as Plaintiffs repeatedly point out, the term "hemp" does not appear in the District CSA or its implementing regulations. Compl. ¶ 13; Decl. J. Mem. ¶¶ 10–11, 43; Mem. in Supp. of TRO Mot. (TRO Mem.) ¶ 6. Nor does the District CSA's definition of cannabis include any exemption or exclusion based on THC concentration level. D.C. Code § 48-901.02(3). Given the complete absence of statutory support for a hemp exclusion under District law, one might expect Plaintiff to rely on Supremacy Clause principles, but Plaintiff explicitly

disavows any such argument.[14] Compl. ¶ 7 ("[T]he relief sought . . . does not depend on any claim of federal preemption or constitutional violation."); *see also id.* ¶ 15 ("The D.C. Council has not enacted, proposed, or considered legislation to define hemp, adopt a regulatory scheme, or implement the federal Farm Bill locally."). In any event, a preemption claim would not advance Plaintiff's cause, as three federal circuit courts have already rejected hemp preemption challenges to other states' cannabis enforcement laws. *Bio Gen LLC v. Sanders*, 142 F.4th 591, 603 (8th Cir. 2025) (rejecting express and conflict preemption claims against Arkansas statute and noting that the text of the 2018 Farm Bill "does not support [plaintiff's] claim that Congress intended to "federally protect[ ] hemp" and coercively mandate nationwide legality"); *N. Va. Hemp & Agric., LLC v. Virginia*, 125 F.4th 472, 492–96 (4th Cir. 2025) (rejecting express, field, and conflict preemption claims brought against Virginia statute limiting the concentration of *total* THC, including delta-9, delta-8, and other forms of THC, in hemp offered for retail sale to no more than 0.3%); *C.Y. Wholesale, Inc. v. Holcomb*, 965 F.3d 541, 548 (7th Cir. 2020) (rejecting express and conflict preemption claims asserted against Indiana statute criminalizing the possession, manufacture, and delivery of smokable hemp).

Plaintiff's argument is difficult to follow. Plaintiff concedes that the 2018 Farm Bill "imposes no mandatory obligations" on the District; does not require the District "to pass conforming legislation or amend existing definitions"; "does not require the District to permit hemp production"; "does not require the District to legalize hemp"; and "includes an *anti-preemption* provision." Decl. J. Mem. ¶ 39a–c. Plaintiff even concludes that "[n]othing in the Constitution or the [2018] Farm Bill requires the District to act." *Id.* ¶ 47. Ultimately, Plaintiff's

[14] Plaintiff mentions "Supremacy Clause preemption," Decl. J. Mem. ¶¶ 48, but seems to argue that it would only apply once "the District chooses to *enforce*," *id.* ¶ 47 (emphasis in original).

argument seems to rest on the contention that, because the federal CSA created "a distinct legal category" called "hemp," the District cannot regulate substances falling within that category without also creating a distinct legal category called "hemp"—even if such substances already fall within the District CSA's definition of cannabis. *See id.* ¶ 33. Plaintiff offers no support for that contention, which appears to misapprehend the purpose and effect of the 2018 Farm Bill. That legislation does not say "hemp as defined herein is legal everywhere until a State makes it illegal." Rather, "[t]he text of the 2018 Farm Bill shows only that Congress wanted to facilitate state legalization of hemp, *if a state wants to*." *Bio Gen*, 142 F.4th at 603 (emphasis added). "Nor does Congress facilitating state legalization of hemp mean . . . that the states must use the federal definition of hemp." *Id.* In short, the 2018 Farm Bill does not require that state law be changed in order to maintain the state-law status quo. Because hemp was regulated by the District CSA before the 2018 Farm Bill, it remains regulated by the District CSA after. Accordingly, the Court can—and should—reject Plaintiff's attempt to read a hemp exclusion into the District CSA on the merits, deny Plaintiff's TRO Motion, and dismiss Plaintiff's Complaint for failure to state a viable claim.

II. Plaintiff Has Not Clearly Shown an Imminent, Irreparable Harm.

A preliminary injunction "should not be issued unless the threat of injury is imminent and well-founded, and unless the injury itself would be incapable of being redressed after a final hearing on the merits." *Zirkle*, 830 A.2d at 1256 (quotation omitted). Plaintiff must make "*a clear showing*" of irreparable harm supported by "substantial proof." *Mazurek*, 520 U.S. at 972 (emphasis in original). Plaintiff has failed to make the necessary showing, and its TRO Motion should be denied for this reason too.

Plaintiff contends that it is threatened with imminent, irreparable harm from potential future enforcement actions. TRO Mem. ¶ 17. Specifically, Plaintiff fears "imminent padlocking

and arrest." *Id.* However, Plaintiff has not even plausibly alleged a credible and imminent threat of enforcement (criminal or administrative) for purposes of standing. *See* Argument § I.A.2. Even if it had, Plaintiff would be entitled to an injunction only if it identifies an imminent and irreparable injury that would result from a future enforcement action. *Zirkle*, 830 A.2d at 1256. The injuries on which Plaintiff bases its TRO Motion are "regulatory uncertainty[ ] and reputational harm." TRO Mem. ¶ 21. But if alleging "broad-based market effects related to regulatory uncertainty" is not enough to plead an injury in fact, *Hemp Indus.*, 36 F.4th at 290, it certainly is not enough to prove an imminent, irreparable injury. Similarly, Plaintiff has not plausibly alleged that it will suffer reputational harm, *see* Argument § I.A.2, and thus has not shown that any such harm is imminent. In any case, "it is well established that economic and reputational injuries are generally not irreparable." *Zirkle*, 830 A.2d at 1256–57. "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim o[f] irreparable harm." *Id.* at 1257.

To the extent Plaintiff relies on the potential padlocking of its business by the Alcoholic Beverage and Cannabis Board (ABC Board), it has not plausibly alleged, let alone offered evidence, that it is similarly situated to the unidentified hemp retailer that was recently padlocked. *See* Wexler Decl. ¶ 4. Nor does Plaintiff allege or show that it is at risk of being branded an imminent danger to public health or safety, as is required for the ABC Board to padlock a business. D.C. Code § 7-1671.08(g)(1). Regardless, District law already provides for notice and expedited review of a padlocking order. D.C. Code § 7-1671.08(g)(3). The owner has five business days to request a hearing; upon receipt of the request, the Board is required to hold a hearing within five business days and issue a written decision within five business days

after the hearing. D.C. Code § 7-1671.08(g)(4)–(5). Plaintiff's TRO Motion should be denied because Plaintiff has failed to show it will suffer imminent, irreparable harm without an injunction.

III. The Balance of the Equities and Public Interest Weigh Against an Injunction.

Even if a movant demonstrates a likelihood of success *and* irreparable injury, the Court still "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Prod. Co. v. Gambell*, 480 U.S. 531, 542 (1987). Those two factors "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. Plaintiff's proposed injunction would insulate it from District health and safety regulations without any showing that Plaintiff's "hemp-derived" products are safe. That is not equitable or in the public interest.

To the extent Plaintiff proposes an order that would prohibit enforcement actions without a proper legal basis or without legal justification, any such injunction would violate the requirement that such relief "describe in reasonable detail . . . the act or acts restrained or required." Sup. Ct. R. Civ. Pr. 65(d)(1). An order prohibiting certain enforcement actions without a legal basis while this case is pending would cause confusion and create the risk of contempt proceedings against District employees while the determination of the underlying legal issues is pending. Limiting an injunction to enforcement actions "related to hemp and hemp-derived products," TRO Mot. at 2, would not mitigate that problem because Plaintiff's sale of such products may be unlawful even if District law includes the same hemp exclusion as federal law. *See* Argument I.A.1. Plaintiff's proposed order would seemingly restrict District agencies from investigating complaints, reviewing Plaintiff's on-site certificates of occupancy, or inspecting food products currently on sale to the public. Plaintiff has identified no basis for such an order. Finally, Plaintiff's unsupported allegation that similar products are available elsewhere

does not outweigh the public interest in allowing the inspection of food products currently being sold to the public. *See* 25-A DCMR § 101.1 ("The purpose of this Code is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented."). "Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 657 U.S. 1301, 1303 (2012) (citation modified). Accordingly, Plaintiff's TRO Motion should be denied.

CONCLUSION

For the foregoing reasons, the Court should grant the District's Cross-Motion to Dismiss and deny all of Plaintiff's pending motions.

Date: August 19, 2025.

Respectfully Submitted,

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