

IN THE CIRCUIT COURT OF MONTGOMERY, COUNTY, ALABAMA

TSTL HOLDINGS, LLC,)

PLAINTIFF,)

v.)

THE ALABAMA DEPARTMENT OF)

PUBLIC HEALTH, SCOTT HARRIS, M.D.,)

in his official capacity as STATE HEALTH)

OFFICER)

DEFENDANTS.)

Case No.: CV-2023-900643.00

State's Do Not Sell – Food Condemnation Order

STATE OF ALABAMA

COUNTY Etowah

ORDER OF THE HEALTH OFFICER

DO NOT SELL – FOOD CONDEMNATION ORDER

To: TSTL Holdings LLC/Boro Hemp _____ Gordon T. Tinsley _____
Name of Corporation, Food Establishment, Partnership, or Person who has Possession Manager
112 North Stead Street, Suite B _____ Boaz _____ 35957
Address City County Zip Code

The undersigned representative of the Health Officer has inspected the food items listed below and has determined that they constitute a public health nuisance and are unfit for sale by reason of: Food or food products containing cannabidiol or cannabidiol derivatives shall not be manufactured or sold within the state of Alabama.

You are hereby ordered **NOT TO SELL, OFFER TO SELL, GIVE AWAY, OR REMOVE FROM THE LOCATION DESCRIBED BELOW** any of said food items pending further orders of the Health Officer; you are further advised that the above violation gives cause to issue this Notice. Failure to comply with this Notice will necessitate prosecution as provided by law. This Order is issued in accordance with § 22-10-1 et al, Ala. Code 1975, and, if applicable, with the Alabama State Board of Health Rules as marked X below:

- Rules for Food Establishment Sanitation Chapter 420-3-22
- Rules for Food Processing Establishment Sanitation Chapter 420-3-20
- Rules for Production, Processing, Handling or Distribution of Milk, Milk Products or Frozen Deserts Chapter 420-3-16
- Rules for Production, Shucking, and Handling of Oysters Chapter 420-3-18
- Other _____
- Rules for Preparation, Picking, Packing, and Handling of Crab Meat Chapter 420-3-15

Name of Product and Quantity Any raw, cooked, or processed edible substances intended for use or sale in whole or in part for human consumption.

For food transport vehicles with numerous items, "product and quantity" may be the Bill of Lading for the vehicle

How Packaged or Stored _____

Label Identification _____

Location Where Food Items will be Held _____

Condition of Release Voluntary destruction.

Example: "Return to manufacturer" or "Voluntary Destruction" or "Upon instruction from Department of Agriculture"

You may appeal this Order by filing a notice of appeal within 15 days of the receipt of this Notice with the Office of General Counsel, Alabama Department of Public Health, 201 Monroe Street, Suite 1540, Montgomery, AL 36104. If no hearing is requested, the food items shall be destroyed. Contested case proceedings are held in accordance with Chapter 420-1-3 of the Alabama Administrative Code and the Alabama Administrative Procedures Act, §41-22-1 et seq, Ala. Code 1975.

Done and ordered this the 12th day of January, 2023

Signed _____ Title Public Health Senior Environmentalist

Revised on: 09/27/2022

“Food or food products containing cannabidiol or cannabidiol derivatives shall not be manufactured OR sold within the State of Alabama.”

FDA Food Code

3-202.12 Additives.

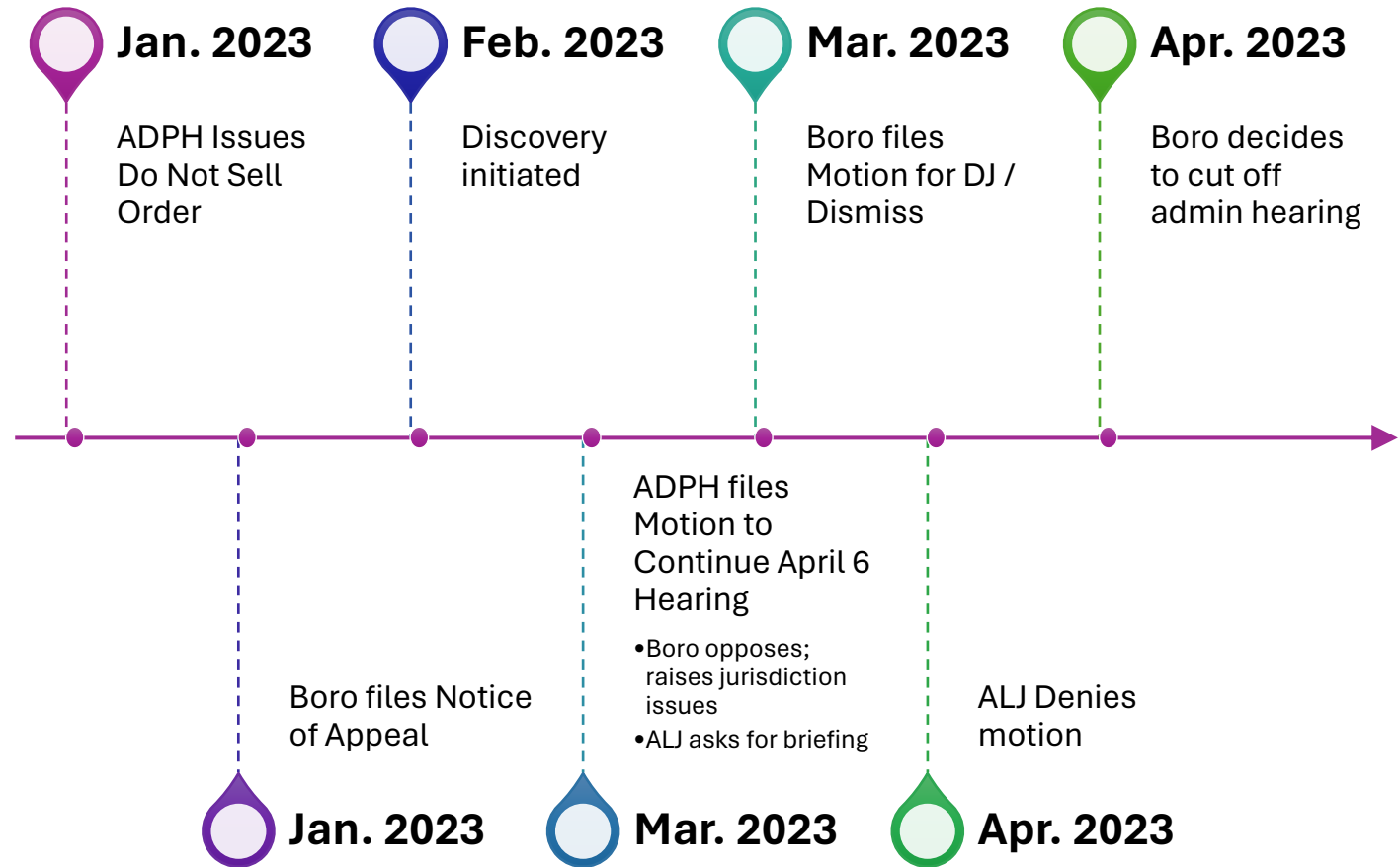
FOOD may not contain unAPPROVED FOOD ADDITIVES or ADDITIVES that exceed amounts specified in 21 CFR 170-180 relating to FOOD ADDITIVES, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR 181-186, substances that exceed amounts specified in 9 CFR Subpart C Section 424.21(b) Food ingredients and sources of radiation, or pesticide residues that exceed provisions specified in 40 CFR 180 Tolerances for pesticides chemicals in food, and exceptions.

Does ADPH claim that TSTL's products exceed the legal limit of cannabinoids under AL law? No.

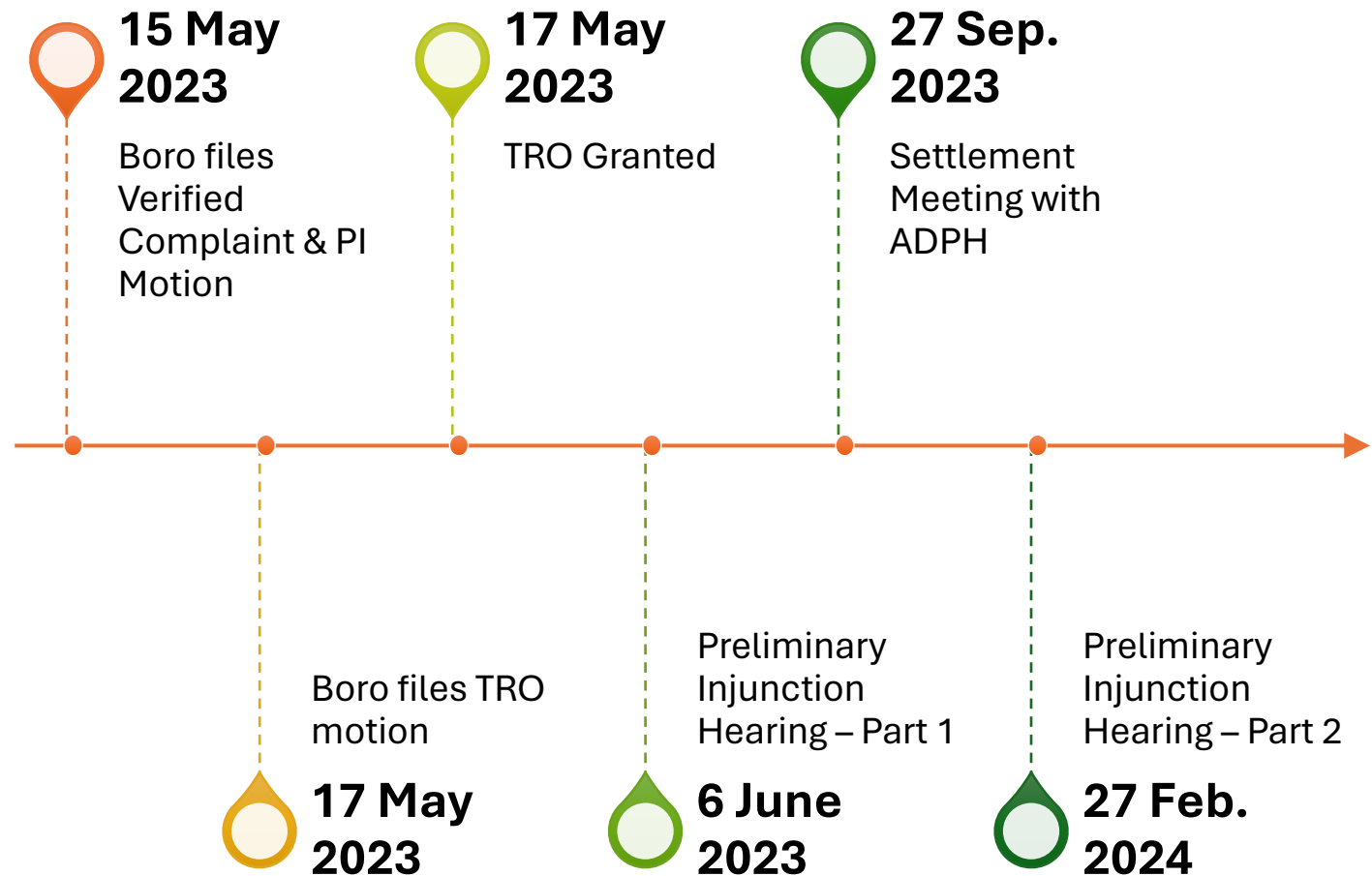
“The Department is not asserting jurisdiction over the growing of hemp as an agricultural commodity; nor does [the Department] assert that Petitioner’s products are illegal because they exceed a THC concentration of 0.3%.”

- ADPH Response to Jurisdictional Issues Raised by Petitioner

Administrative Process



Circuit Court – Boro Takes the Upper Hand



Alabama DPH Goal: Remove ALL edible hemp

ADPH MOTION TO CONTINUE

COMES NOW the Alabama Department of Public Health (“Department”) and moves the Hearing Officer for a continuance of the hearing scheduled for April 6, 2023. As grounds therefore, the Department states as follows:

1. This case concerns a matter of public importance; namely, whether the Department is authorized to condemn and/or prohibit the sale of foods that contain cannabinoid derivatives such as cannabidiol.

2. The Food and Drug Administration (“FDA”) is the federal agency that regulates food, drugs and cosmetics and ensures the food supply is safe, sanitary, wholesome and honestly labeled. The FDA evaluates the safety of food additives and determines whether food additives are generally recognized as safe (“GRAS”). See 21 CFR 170.30.

ADPH Opposition to PI Motion

Plaintiff fails to acknowledge Public Health's regulatory authority over food manufacturers and retail food establishments, and FDA's jurisdiction over food additives. FDA's food additive rule is incorporated into Public Health's regulations by reference.¹ The cannabinoid derivatives that Plaintiff is adding to its edible food products are not approved food additives, and therefore the food products are adulterated and illegal.

¹ Dept. of Health and Human Services 2013 Food Code §§ 1-201.10(B) and 3-202.12 (Additives)

The Alabama Industrial Hemp Research Program was enacted in 2016 and amended in 2019 following the passage of the 2018 federal Farm Bill. Agriculture's Industrial Hemp regulations establish a framework to license persons who participate in the growing, cultivating, handling, or processing of hemp. Ala. Admin. Code r. 80-10-21.01. This law does not supplant or in any way limit Public Health's authority to regulate the manufacture and sale of food.

TSTL's Positioning

Plain language of statute expressly permits CBD in "food"

- Legislature defined new category of "hemp products"
- That definition expressly includes "food" and other "consumable" products
- Intent of legislature was to grow and promote "commercial" hemp industry

ADPH has no regulatory authority

- AL hemp law does not delegate any authority to ADPH
- ADPH can't use pre-existing "food" rules to undermine AL legislature's action
- ADPH food rules do not apply to "hemp products"
- FDA food rules equally inapplicable

ADPH has inconsistently enforced its position

- Only pursued enforcement based on "complaints"
- Failed to enforce against out of state manufacturers
- Demonstrates no public health threat
- Demonstrates no "food safety" threat

New Focus on Out-of-State Manufacturers

- Key TSTL Argument: ADPH not enforcing against OOS Companies
 - Undermined ADPH public health argument
 - Undermined ADPH “unsafe product” argument
 - Undermined legislature’s goal of promoting AL “commercial” hemp industry
 - Highlighted to court that ADPH was simply picking winners/losers
- Evidence
 - ADPH Public Statement said no enforcement on OOS Companies
 - State’s chief witness forced to admit that ADPH was not following its regulations regarding enforcement against OOS Companies
- Result of this argument, if TSTL loses or abandons case
 - ADPH will have no choice but to broadly enforce against all manufacturers and sellers (in state and out of state)
 - ADPH stated they are waiting on outcome of this hearing to launch

Funding Issues

