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<tr><td>DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO
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Denver, CO 80202
Telephone: 303.606.2300</td><td rowspan="2">DATE FILED
May 21, 2026 5:25 PM
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CASE NUMBER: 2026CV31873</td></tr>
<tr><td>Plaintiff:

MAMMOTH FARMS, LLC, a Colorado limited liability company, individually and on behalf of all others similarly situated,

v.

Defendants:
COLORADO DEPARTMENT OF REVENUE;
COLORADO DEPARTMENT OF REVENUE MARIJUANA ENFORCEMENT DIVISION; and
HEIDI HUMPHREYS in her official capacity as Executive Director of the Colorado Department of Revenue</td></tr>
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Div.:</td></tr>
<tr><td colspan="2">CLASS ACTION COMPLAINT</td></tr>
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Plaintiff Mammoth Farms, LLC ("Mammoth" or "Plaintiff"), individually and on behalf of all other members similarly situated, by and through undersigned counsel, hereby submits its Complaint against the Colorado Department of Revenue, Colorado Department of Revenue Marijuana Enforcement Division, and Heidi Humphreys (collectively, "Defendants"), and in support thereof, states as follows:

NATURE OF THE ACTION

1. This action challenges an unlawful method by which Defendants calculate and publish the Average Market Rate (AMR) for purposes of Colorado's retail-marijuana excise tax.

The challenged methodology combines distinct categories of unprocessed retail marijuana that Colorado law requires to be treated separately, inflates the tax base for lower-value product, and thereby increases excise-tax liability and net tax collections beyond the voter-approved structure enacted through Proposition AA and codified in article 28.8 of title 39.

2. This Complaint also challenges Defendants' inflated AMR as a market-wide proxy for suspected diversion, inversion, or sham pricing. On information and belief, Defendants have known that the transaction data feeding the AMR were distorted by high-value product routed through manufacturing-license transfers, diversion, inversion, and other suspect pricing. Rather than investigate and remove those distortions at the input stage—which would entail enforcing the law against bad actors irrespective of how it reflects on Defendants—they have maintained and/or republished elevated category rates and then used those rates as the operative tax base for compliant operators in order to avoid confronting more serious problems in Colorado's regulated marijuana economy.

3. Under the Taxpayer's Bill of Rights ("TABOR"), the State may not impose a new tax, a tax-rate increase, or a tax-policy change directly causing a net tax revenue gain without advance voter approval. Defendants' AMR methodology, republishing practices, category-combining decisions, and knowledge of flaws affecting AMR inputs constitute an unlawful tax-policy change and effective tax-rate increase implemented without voter approval. This practice also constitutes a procedural due process violation given that Defendants are using an inflated AMR to impose tax burdens and trigger audits or other enforcement referrals without meaningful procedures to confront the underlying issue, while also ignoring obviously false or criminal transactions.

4. Plaintiff seeks a declaration that Defendants' conduct is ultra vires and contrary to governing constitutional, statutory, and regulatory law. Plaintiff also seeks an order directing Defendants to apply correct, defensible, and transparent methodologies when calculating the AMR, as well as corresponding tax refunds to all affected members of the proposed class.

PARTIES

5. Plaintiff Mammoth is a Colorado limited liability company with a principal place of business in Saguache, Colorado. Mammoth is a licensed participant in Colorado's regulated marijuana industry and has paid, and continues to pay, retail-marijuana excise tax affected by Defendants' challenged AMR methodology.

6. Defendant Colorado Department of Revenue ("Department") is a government agency of the State of Colorado, established pursuant to C.R.S. § 24-1-117. The Department is responsible for administering Colorado tax laws, including the retail-marijuana excise tax and the calculation and publication of AMR.

7. Defendant Colorado Department of Revenue Marijuana Enforcement Division ("MED") is an administrative agency of the State of Colorado. MED is charged with licensing and regulating Colorado's marijuana industry.

8. Defendant Heidi Humphreys is the Executive Director of the Department and is the designated licensing authority and chief administrative officer of the MED pursuant to C.R.S. § 44-10-201. She is named in her official capacity because she is responsible for the Department's administration of the challenged tax regime and is an appropriate defendant for declaratory and injunctive relief

JURISDICTION AND VENUE

9. This class action is brought pursuant to C.R.C.P. 23. All claims in this matter arise exclusively under Colorado law.

10. TABOR is self-executing. Jurisdiction is proper in this Court pursuant to article VI, section 9, of the Colorado Constitution. Jurisdiction is also proper pursuant to article X, section 20, of the Colorado Constitution. Colorado courts recognize taxpayer standing to challenge unlawful tax measures under TABOR.

11. Jurisdiction is also proper in this Court pursuant to the Uniform Declaratory Judgments Act, C.R.S. §§ 13-51-101, *et seq.*

12. Venue is proper in this Court pursuant to C.R.C.P. 98(b)(2) because this action is brought against a public officer or person specially appointed to execute their duties for an act or failure to perform such duties required by law.

13. Venue is also proper in this Court pursuant to C.R.C.P. 98(c) because the Department and MED "reside" in this county. *See* C.R.S. § 24-4-106(4) (establishing that the residence of a state agency is the city and county of Denver).

14. An actual controversy exists. Defendants continue to calculate, publish, and enforce AMR using the challenged methodology; Plaintiff and the putative class have paid and continue to pay excise taxes under that methodology; and Defendants have referred or threatened to refer operators for audit or enforcement based on departures from the challenged published rates.

CLASS ACTION ALLEGATIONS

15. Mammoth brings this action on behalf of itself and all others similarly situated, and thus seeks class certification under C.R.C.P. 23.

16. The class Mammoth seeks to represent is defined as follows: "All entities subject to the Colorado marijuana excise tax pursuant to C.R.S. § 39-28.8-101, *et seq.* which have paid

the excise tax while the Department of Revenue has calculated the Average Market Rate using a method that combines rates for different categories of marijuana."

17. As used herein, the term "Class" shall mean and refer to the members of the Class as described above.

18. Mammoth reserves the right to amend the Class and to add additional subclasses, if discovery and further investigation reveals such action is warranted.

19. Upon information and belief, the proposed Class is comprised of hundreds of members. The members of the Class are so numerous that joinder of all members would be unfeasible and impractical.

20. All claims alleged herein arise from the identical, unfair, and illegal practices of Defendants.

21. There are common questions of law and fact as to the Class that predominate over questions affecting only individual members, including but not limited to:

a. Whether Defendants engaged in unlawful violations of TABOR;

b. Whether Mammoth and the Class have been subject to a new tax, a tax rate increase, or a tax policy change directly causing a net tax revenue gain to which Colorado voters did not approve;

c. Whether Mammoth and the Class are entitled to a refund and interest under TABOR;

22. Mammoth is a member of the Class, is qualified to fairly and adequately protect the interests of each Class member, and will do so.

23. The prosecution of separate actions by individual Class members may create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants.

24. The claims of Mammoth are typical of all Class members. All claims of Mammoth and the Class are based on the same legal theories.

25. Common questions will predominate, and there will be no issues as to manageability of Class members.

GENERAL ALLEGATIONS

I. The Taxpayer's Bill of Rights

26. TABOR, codified in article X, section 20 of the Colorado Constitution, was passed by Colorado voters in 1992 to provide a constitutional limitation on the amount of revenue the State government may collect and spend.

27. TABOR was passed as a comprehensive restraint on State government's revenue and spending by requiring voter approval before any new tax, capping annual revenue, and requiring refunds in excess of the cap. Colo. Const. art. X, § 20.

28. TABOR requires voter approval in advance of any new tax, tax rate increase, or tax policy change directly causing a net tax revenue gain to any district in Colorado. Colo. Const. art. X, § 20(4)(a).

29. Fees that are not taxes are not subject to voter approval under TABOR.

30. Courts distinguish a fee from a tax based upon the dominant purpose of its imposition at the time the enactment is passed. *Barber v. Ritter,* 196 P.3d 238, 248 (Colo. 2008).

31. Unlike a fee, a tax is "intended to raise revenue to defray the general expenses of the taxing entity." *Id.* (quoting *Zelinger v. City and County of Denver,* 724 P.2d 1356, 1358 (Colo.1986).

32. The expansion of a tax to a new class of goods or activity may constitute a new tax thereby requiring voter approval under TABOR. *MetroPCS California, LLC v. City of Lakewood,* 576 P.3d 139, 144 (Colo. 2025).

II. The Excise Tax Provision

33. In November 2012, Colorado voters approved Amendment 64 which allowed for adults twenty-one years or older to consume or possess up to one ounce of marijuana and required that a regulatory licensing structure be established.

34. Following the passage of Amendment 64, the legislature adopted House Bill 13-1318 ("HB 13-1318") which proposed an excise tax of up to 15% of the average market rate of unprocessed retail marijuana on its first sale or transfer from a cultivation facility or retail store, product manufacturing facility, or other cultivation facility.

35. HB 13-1318 officially referred Proposition AA ("Prop. AA") to the November, 2013 ballot. The text of Prop. AA read as follows:

> Shall state taxes be increased by $70,000,000 annually in the first full fiscal year and by such amounts as are raised annually thereafter ***by imposing an excise tax of 15% when unprocessed retail marijuana is first sold or transferred by a retail marijuana cultivation facility*** with the first $40,000,000 of tax revenues being used for public school capital construction as required by the state constitution, and by imposing an additional sales tax of 10% on the sale of retail marijuana and retail marijuana products with the tax revenues being used to fund the enforcement of regulations on the retail marijuana industry and other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters, with the rate of either or both taxes being allowed to be decreased or increased without further voter approval so long as the rate of either tax does not exceed 15%, and with the resulting tax revenue being allowed to be collected and spent notwithstanding any limitations provided by law?[1]

36. Colorado voters approved Prop. AA in November, 2013.

37. HB 13-1318 and Prop. AA were then codified under Article 28.8 of Title 39 of the Colorado Revised Statutes.

38. As relevant here, C.R.S. § 39-28.8-302 established an excise tax ("Excise Tax") on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility.

39. The statute distinguishes between affiliated and unaffiliated transactions, providing that the Excise Tax of ***fifteen percent of the average market rate*** of the unprocessed retail marijuana shall be applied on transactions between ***affiliated retail marijuana business licensees***. C.R.S. § 39-28.8-302(1)(a)(I) (emphasis added). On the other hand, Excise Tax of ***fifteen percent of the contract price*** of the unprocessed retail marijuana shall be applied on transactions between ***unaffiliated marijuana business licensees***. *Id.* (emphasis added).

40. This distinction reflects the General Assembly's intent to tax at a rate that reflects real market rates for cannabis products. When two affiliated entities engage in a transaction, an average market rate is used as a proxy for market value. When unaffiliated companies engage in a transaction, the arms-length contract price should reflect market value.

41. The statute further provides that the fifteen percent tax shall be imposed at the time "the retail marijuana cultivation facility first sells or transfers unprocessed retail marijuana from the retail marijuana cultivation facility to a retail marijuana product manufacturing facility or a retail marijuana store." *Id.*

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[1] (emphasis added) Available at https://ballotpedia.org/Colorado_Proposition_AA,_Taxes_on_the_Sale_of_Marijuana_(2013)

42. C.R.S. § 39-28.8-101 provides the following relevant definitions:

a. "Affiliated marijuana business licensees" is defined as "marijuana business licensees that are owned or controlled by the same or related interests, where "related interests" includes individuals who are related by blood or marriage or entities that are directly or indirectly controlled by an entity or individual or related individuals." C.R.S. § 39-28.8-101(1).

b. "Average market rate" is defined as: "the average price, as determined by the department on a quarterly basis, of all unprocessed retail marijuana that is sold or transferred ***from retail marijuana cultivation facilities in the state to retail marijuana product manufacturing facilities or retail marijuana stores***, less taxes paid on the sales or transfers. ***An "average market rate" may be based on the purchaser or transferee of unprocessed retail marijuana or on the nature of the unprocessed retail marijuana that is sold or transferred. The "average market rate" must include one or more rates that cover unprocessed marijuana that is allocated to extractions, and the initial rates for these product types must be lower than the rate for unprocessed marijuana that is allocated for direct sale to consumers.***" C.R.S. § 39-28.8-101(1.5) (emphasis added).

c. "Contract price" is defined as: "the invoice price charged by a retail marijuana cultivation facility to each licensed purchaser for each sale or transfer of unprocessed retail marijuana, exclusive of any tax that is included in the written invoice price, and exclusive of any discount or other reduction. In the case of multiple invoices reflecting multiple prices for the same transaction, "contract price" is the highest such price." C.R.S. § 39-28.8-101(2.5).

d. "Retail marijuana" is defined as: "all parts of the plant of the genus cannabis whether growing or not, the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate." C.R.S. § 39-28.8-101(7)(a)(I).

e. "Retail marijuana" includes: "nonintoxicating cannabinoid, as defined in section 44-10-103(42.5), produced from retail marijuana; a potentially intoxicating cannabinoid, as defined in section 44-10-103(48.5), produced from retail marijuana; and an intoxicating cannabinoid, as defined in section 44-10-103(22.5), produced from retail marijuana." C.R.S. § 39-28.8-101(7)(a)(II).

f. "Retail marijuana cultivation facility" is defined as "an entity licensed to cultivate, prepare, and package retail marijuana and sell retail marijuana to retail marijuana stores, to retail marijuana product manufacturing facilities, and to other

retail marijuana cultivation facilities, but not to consumers." C.R.S. § 39-28.8-101(8).

g. "Retail marijuana products" are defined as: "concentrated retail marijuana products and retail marijuana products that are comprised of retail marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures." C.R.S. § 39-28.8-101(9).

h. However, retail marijuana does *not* include: hemp, fiber produced from the stalks, oil, cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product. C.R.S. § 39-28.8-101(7)(b).

i. "Retail marijuana product manufacturing facility" is defined as: "an entity licensed to purchase retail marijuana; manufacture, prepare, and package retail marijuana products; and sell retail marijuana and retail marijuana products to other retail marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers." C.R.S. § 39-28.8-101(10).

j. "Unprocessed retail marijuana" is defined as: "marijuana at the time of the first transfer or sale from a retail marijuana cultivation facility to a retail marijuana product manufacturing facility or a retail marijuana store." C.R.S. § 39-28.8-101(15).

43. Pursuant to C.R.S. § 39-28.8-101(1.5), the AMR "may" be based on "the purchaser or transferee of unprocessed retail marijuana or on the nature of the unprocessed retail marijuana that is sold or transferred." However, the AMR "must" include "one or more rates that cover unprocessed marijuana that is allocated to extractions, and the initial rates for these product types must be lower than the rate for unprocessed marijuana that is allocated for direct sale to consumers."

44. The General Assembly has expressly contemplated that different types of unprocessed marijuana will command different AMRs based upon the physical characteristics and intended use. *See e.g.*, 1 Colo. Code Regs. § 201-18:39-28.8-302(4)(d).

45. The implementing regulations confirm that separate categories are to be treated separately. As relevant here, Colorado Administrative Code provides that "[i]n the case of Retail Marijuana Excise Tax calculated using Average Market Rate, the Excise Tax ***shall be calculated based on the category of Retail*** **Marijuana** ***(i.e., Bud, Trim, Immature Plant, Wet Whole Plant, Seed, Bud Allocated for Extraction, or Trim Allocated for Extraction) being Transferred***." *Id.* (emphasis added).

46. The regulation further provides that for "the categories of Bud, Trim, Bud Allocated for Extraction, and Trim Allocated for Extraction, the Excise Tax is computed on the total weight

of the Retail Marijuana Transferred. ***If multiple categories of Retail Marijuana are included in the Transfer, the Excise Tax shall be calculated separately for each category of Retail Marijuana*** included in the Transfer by separately calculating the total weight of the Retail Marijuana included in each category and multiplying the weight by the Average Market Rate of each category and the applicable Excise Tax rate." *Id.* (emphasis added).

47. Thus, the governing rule states that, for Excise Tax calculated using AMR, the tax shall be calculated based on the category of retail marijuana being transferred - namely, Bud, Trim, Immature Plant, Wet Whole Plant, Seed, Bud Allocated for Extraction, or Trim Allocated for Extraction. *Id*.

48. The rule then requires a separate calculation when multiple categories are included in a transfer: the Department must separately calculate the total weight included in each category and multiply that weight by the AMR of each category and the applicable tax rate. 1 CCR 201-18:39-28.8-302(4)(d)(i).

49. The rule expressly recognizes the distinct status of extraction-allocated categories. Bud Allocated for Extraction and Trim Allocated for Extraction may not later be transferred for direct sale to consumers unless first subjected to extraction; if that happens, the tax return must be amended and the tax recalculated using the AMR for Bud or Trim, respectively. 1 CCR 201-18:39-28.8-302(4)(d)(i)(A)-(B).

50. The current definitions likewise define Bud as flowering-stage flower and Bud Allocated for Extraction as Bud designated for the extraction of retail-marijuana concentrate and not for direct sale to consumers. 1 CCR 201-18:39-28.8-101(4)-(5).

51. Under the governing regulatory language, each product category has its own AMR. The Excise Tax is calculated given each category's weight separately multiplied by its respective AMR. *See Id.*

52. The governing regulations do not authorize the Department to combine categories into a single blended rate when calculating the AMR.

III. <u>The Department Improperly Combines Product Categories in Calculating AMR</u>

53. The Department is responsible for calculating the AMR. 1 Colo. Code Regs. § 201-18:39-28.8-302(4)(c).

54. The MED is responsible for licensing and regulating the medical and retail marijuana industries in Colorado.

55. Contrary to C.R.S. § 39-28.8-101 *et seq.* and its implementing regulations, the Department is combining two functionally distinct categories of unprocessed retail marijuana for purposes of calculating the AMR.

56. The statutory and regulatory scheme requires category-specific AMR and separate computation by category. It does not authorize Defendants to create a blended AMR by combining Bud with Bud Allocated for Extraction merely because both moved to or through a manufacturing licensee.

57. Defendants nonetheless are using a methodology that treats certain transfers as Bud Allocated for Extraction if either: (a) the transfer was labeled in the MED's Marijuana Inventory Tracking System ("METRC") as an extraction-allocated category; or (b) the transfer was labeled as Bud but sent to a marijuana products manufacturing facility.

58. This is confirmed by written communication in which a manager of data analytics with the MED confirmed in an email dated March 8, 2025 that the MED is "mixing two different categories of records by including both Transfers labeled Allocated for Extraction and Transfers that are not labeled Allocated for Extraction . . . ." A true and correct copy of this email communication is attached hereto as **Exhibit 1**, at 1.

59. The categories referenced in that email are listed as separate categories pursuant to 1 Colo. Code Regs. § 201-18:39-28.8-302. Transfers allocated for extraction ("Bud Allocated for Extraction") is bud that is specifically designated for extraction of retail marijuana concentrate, which is not intended for direct consumer sale. Importantly, Colo. Rev. Stat. § 39-28.8-101 requires a lower AMR for such product.

60. Bud Allocated for Extraction is physically and economically distinct from Bud. For example, Bud Allocated for Extraction is commonly frozen, wet, or otherwise not dried and cured before weighing; it is designated for extraction rather than direct sale; and it is not tested or handled in the same ways as consumer-ready Bud.

61. By combining these two separate categories, the Department is effectively inflating the AMR for Bud Allocated for Extraction, which results in a significantly higher tax burden than contemplated under the statutory framework.

62. On information and belief, Defendants became aware that the AMR dataset was contaminated by such transactions, including transactions connected to licensees and operators whose conduct suggested diversion, inversion, sham pricing, or a combination. Yet Defendants did not remove or investigate those distortions at the input stage. Instead, Defendants continued to publish elevated rates and used those rates as the operative tax base for compliant operators.

IV. The Department's AMR Calculation Methodology Violates TABOR

63. The Excise Tax is a tax and not a fee. The language of Prop AA expressly provides that that the taxes imposed are to help "fund the enforcement of regulations on the retail marijuana industry and other costs related to the implementation . . . ."[2]

64. Under Colorado law, this constitutes a tax. *See Bloom v. City of Fort Collins*, 784 P.2d 304, 308 (Colo. 1989) (noting that, unlike a tax, a fee is not "designed to raise revenues to defray the general expenses of government, but rather is a charge imposed upon persons or property for the purpose of defraying the cost of a particular governmental service.").

65. The Department's methodology in calculating the AMR constitutes a new tax, a tax rate increase, or a tax policy change causing a net tax revenue gain.

66. TABOR requires that any "new tax," "tax rate increase," or "tax policy change causing a net revenue gain" be approved by Colorado voters. Colo. Const., Art. X, § 20.

67. The expansion of a tax to a broader class of goods or activity may constitute a new tax. *HCA-Healthone, LLC v. City of Lone Tree*, 197 P.3d 236, 242 (Colo. App. 2008).

68. The Department's methodology in calculating the AMR expands the Excise Tax by blending categories which should remain separate, and thereby broadens the class of goods subject to the Excise Tax. This methodology also results in a tax policy change resulting in net tax revenue gains given the inflated figures that result from the Department's knowingly flawed and unlawful methodology.

69. The Department did not obtain the required voter approval prior to modifying its methodology in calculating the AMR.

70. The revenue increase generated from the Department's methodology is not incidental or de minimis. In fact, the problem with the Department's approach to AMR is much more significant.

V. The Scale of the Problem

71. Bud Allocated for Extraction is a specific product which is designated for the extraction of retail marijuana concentrate and not for direct sale to consumers. It has a lower market value than Bud and is legally required to have a lower initial rate than unprocessed marijuana that is allocated for direct sale to consumers. *See* C.R.S. § 39-28.8-101(1.5).

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[2] Available at https://ballotpedia.org/Colorado_Proposition_AA,_Taxes_on_the_Sale_of_Marijuana_(2013)

72. The General Assembly built in a claw back for over-taxation of Bud Allocated for Extraction, signaling that it should not be taxed at the same rate as Bud. See 1 Colo. Code Regs. § 201-18:39-28.8-302(4)(d)(i)(C). Under this provision, the Retail Marijuana Product Manufacturing Facility must notify the Retail Marijuana Cultivation Facility of any subsequent transfer of Bud Allocated for Extraction which has not first been subjected to extraction within seven days of the transfer, thereby triggering tax recalculation.

73. However, the Department has admitted that it is blending two separate product categories based on the transfer destination of the product. *See* **Ex. 1**, at 1. In relevant part the Department stated as follows on March 10, 2025:

> . . . generally his reply makes us wonder if the way we currently categorize transfers as bud allocated for extraction is not right. For years we have been classifying a transfer as 'bud allocated for extraction' if it meets one of two criteria: 1) category in METRC is Bud Extract OR 2) category in METRC is Bud and it is transferred to a MIP.

74. Testing requirements for Bud versus Bud Allocated for Extraction further highlight the separate nature of these two products. For example, Bud must be tested for potency and water activity whereas Bud Allocated for Extraction does not. Additionally, Bud Allocated for Extraction is almost universally frozen, wet, and not dried or cured, further distinguishing it from Bud as a fundamentally different product.

75. Because Bud Allocated for Extraction is weighed wet and/or frozen, at least fifty percent of the product by weight is water. This substantially reduces its per-pound market value compared to Bud, which is dried and cured before weighing. By combining these categories, the Department is effectively taxing Mammoth and the Class on water weight at Bud rates.

76. Further, the Department's blending of categories is selective. Other AMR categories of consumable or manufacturable plant matter — such as Wet Whole Plant, Trim Allocated for Extraction, and Shake/Trim — are also transferred to manufacturing licenses, yet the Department excludes these categories from the Bud Allocated for Extraction AMR calculation.

77. Including these lower-value categories would reduce the blended rate. By limiting its blending to Bud — the highest-value category — and Bud Allocated for Extraction, the Department produces the highest possible tax base out of the lowest-value product category. This selective methodology is not inadvertent.

78. Additionally, the tax implications of the Department's blending of categories creates highly disproportionate tax burdens on operators depending upon whether operators are vertically integrated or not.

79. Take as an example one pound of Bud Allocated for Extraction worth $100. For non-integrated companies, the company making that transfer will pay an excise tax of $15 per pound (i.e., 15% excise tax on the contract price) for an effective tax rate of 15%. A vertically-integrated company transferring an identical pound of Bud Allocated for Extraction would pay the current AMR rate of $275 per pound, resulting in an excise tax obligation of $41.25 per pound (i.e., 15% multiplied by $275). This results in an effective tax rate nearly triple what non-integrated companies pay for the same product and transfer.

Same Product, Different Tax

Assume Bud for Extraction has an actual value of $100/lb.

Non-Integrated Company	Vertically Integrated Company
Tax base: actual price	Tax base: AMR
$100/lb	**$275/lb**
Excise tax: 15% × $100	Excise tax: 15% × $275
= $15/lb	**= $41.25/lb**
Effective tax rate on actual value:	Effective tax rate on actual value:
15%	**41.25%**

Result: same $100 product, but the vertically integrated company pays 2.75× more tax.

80. The Department's inflated Bud Allocated for Extraction AMR has placed Plaintiff and putative Class members in an impossible position. Operators who recognize that the published AMR bears no relationship to the actual market value of their product have, in good faith, reported excise taxes under categories that more accurately reflect the value of the product transferred, such as Wet Whole Plant. In response, the MED has referred these operators to the Department for audit, subjecting them to investigations, fines, penalties, and in some cases, the loss of their licenses without an adequate opportunity to challenge the knowingly blended and inflated AMR at issue here.

81. The MED has pursued these referrals with full knowledge that the Bud Allocated for Extraction AMR is artificially inflated by the inclusion of Bud transfers and further distorted by illicit activity, including trafficking, diversion, and inversion.

82. For example, licensees have transferred high-value Bud to manufacturers at prices that reflect premium smokable flower, not Bud Allocated for Extraction. These transfers were not undertaken to extract THC from the Bud and create concentrates for sale to Colorado consumers; they were undertaken to divert Bud out of state. But these transfers of Bud were nevertheless classified as Bud Allocated for Extraction solely on the basis of their transfer to licensed manufacturers, which artificially inflates the AMR. Defendants are aware that this happens and have failed to take steps to end the practice.

83. Put another way, when a bad actor transfers one pound of premium Bud to a manufacturer, the correct tax rate should be $648 per pound. Instead, by transferring that Bud to a manufacturer, the Department treats the underlying product as Bud Allocated for Extraction and applies a tax rate less than half the applicable rate: the current AMR for Bud Allocated for Extraction is $275 per pound.

84. A recent case illustrates the point. Upon information and belief, a group of licensees referred to as the Hau Group engaged in the above-described transfers until late 2024 or early 2025. Inflated transaction prices were therefore incorporated into the Department's AMR during that time. A settlement was reached in that case on December 12, 2024, which the Hau Group approved on or about January 21, 2025, resulting in the revocation of applicable licenses and their removal from the market. The impact of that removal was plainly apparent from the Department's AMR rate at the time, as shown in the following chart.

85. The Department calculates the AMR using a three-month "test period" that is offset from the calendar quarter by one month. The test period for the rate effective April 1, 2025 ran from November 1, 2024 through January 31, 2025. Because the Hau Group ceased operations on or about December 12, 2024, the Hau Group was effectively out of the market for approximately 51 of the 92 days in that test period — more than half. The result was an 89% drop in the Bud Allocated for Extraction AMR, from $349 per pound to $40 per pound. This reflects the impact that the Hau Group's illicit transfers had on artificially inflating the AMR of Bud Allocated for Extraction.

86. The Department is aware of these improperly inflated rates for Bud Allocated for Extraction but has refused to act. In an email, the Department stated, "It's more believable that $20 could go down to $10 than $400 could go down to $40." *See* **Ex. 1**, at 1.

87. When the above-described AMR-drop occurred, the Department initiated an external investigation.

88. And despite the Department acknowledging its blending of product categories as described above, the Department simultaneously requested investigations into variable rates without taking any action.

89. In another email thread, a true and correct copy of which is attached hereto as **Exhibit 2**, in March 2025, the Department and MED communicated about the improper blending of different categories while then referring the data to compliance investigators without actually undertaking to enforce rules and regulations against improper or illicit METRC transfers or to otherwise correct the published tax rates.

90. A more recent example further illustrates the capriciousness of the Department's approach to the AMR. On or about March 21, 2026, the Department published AMR rates for the second quarter of 2026 on their website. That page showed an AMR rate for Bud Allocated for Extraction of $403 per pound, a 46.5% jump from the quarter prior.

91. A few days later, without announcing or acknowledging the change, the Department retroactively altered that same website to instead show an AMR rate for Bud for Extraction of $275 per pound.[3]

92. AMR has ceased to function solely as an estimate of lawful category-specific market value and instead functions, at least in part, as a rough proxy for the amount of unpoliced distortion Defendants believe exists in the market. The greater the suspected distortion in destination-based or sham-priced transfers, the greater the pressure to keep the published AMR elevated so that tax collections do not collapse and the oversight problems identified herein remain unknown to the public.

93. In other words, Defendants use AMR as a market-wide corrective multiplier. Rather than prove diversion transaction by transaction, Defendants embed a diversion assumption into the tax base itself and then require compliant operators to pay tax on that higher number.

94. This manipulation of AMR matters because the Excise Tax is imposed as a percentage of AMR. Increasing AMR increases the amount of tax due even though the nominal fifteen-percent rate remains unchanged. For a lower-value category such as Bud Allocated for Extraction, a blended or republished AMR can materially increase the effective tax burden as a percentage of actual market value.

95. The statute authorizes a quarterly average-market-rate determination; it does not authorize the Department to choose a prior published rate untethered to actual test-period transactions simply because the current quarter's true number is inconvenient, suspicious, or politically difficult.

96. Plaintiff and Class members have paid the Excise Tax under the challenged AMR methodology and have suffered a concrete injury. Plaintiff and Class members have paid the Excse Tax above what would have been due under lawful category-specific AMR, have faced uncertainty

[3] This $275 per pound figure serves as the basis for earlier mathematical examples of the problems stemming from the Department's approach to AMR. However, Plaintiff does not concede the accuracy of this figure and maintains it is an improper figure violative of the law. It simply illustrates the disparity in practice under the Department's own AMR figures.

and competitive distortion from the unlawful methodology, and, on information and belief, have also faced or risked audit and enforcement action tied to departures from the challenged published rates.

FIRST CLAIM FOR RELIEF
(Violation of Colo. Const., Art. X, § 20 (TABOR))

97. Mammoth incorporates by reference each of the preceding paragraphs as if fully set forth herein.

98. TABOR prohibits any "new tax," "tax rate increase," or "tax policy change directly causing a net tax revenue gain," without "voter approval in advance." Colo. Const., art. X, § 20(4)(a).

99. In November 2013, Colorado taxpayers approved Prop AA.

100. Prop AA was codified under Article 28.8 of Title 39 of the Colorado Revised Statutes thereby establishing the Excise Tax.

101. Pursuant to the statutory framework and implementing regulations, the AMR "may be based on the purchaser or transferee of unprocessed retail marijuana or on the nature of the unprocessed retail marijuana that is sold or transferred and must include one or more rates that cover unprocessed marijuana that is allocated to extractions, and the initial rates for these product types must be lower than the rate for unprocessed marijuana that is allocated for direct sale to consumers." C.R.S. § 39-28.8-101(1.5).

102. The implementing regulations do not permit the Department to combine separate categories of marijuana into a single blended rate.

103. However, the Department's methodology in calculating the AMR does combine separate categories of marijuana into a single blended rate which artificially inflates the AMR for extraction-allocated bud, and thereby raises the Excise Tax.

104. The Excise Tax is a tax and not a fee.

105. The Department's methodology in calculating the AMR produces an increase in the rate of the Excise Tax on Mammoth and Class members.

106. The Department's methodology in calculating the AMR produces an increase in the revenue the Defendants collect through the Excise Tax.

107. The Department's methodology in calculating the AMR produces a "new tax" under TABOR.

108. The Department's methodology in calculating the AMR produces a "tax rate increase" under TABOR.

109. The Department's methodology in calculating the AMR produces a "tax policy change directly causing a net tax revenue gain" under TABOR.

110. The Department did not obtain voter approval for the methodology modifications related to the Excise Tax.

111. The Department's methodology violates TABOR, and is therefore unlawful, unenforceable, and void to the extent of such TABOR violation(s).

SECOND CLAIM FOR RELIEF
(Declaratory Judgment, C.R.C.P. 57 and C.R.S. § 13-51-101, *et seq.*)

112. Mammoth incorporates by reference each of the preceding paragraphs as if fully set forth herein.

113. Mammoth and Defendants have a dispute over the construction, interpretation, application, validity, and constitutionality of certain provisions related to the Excise Tax.

114. Mammoth's and the Class members' rights, status, or other legal relations are directly and adversely affected by Defendants' position as it relates to the Excise Tax and calculation of AMR.

115. Mammoth seeks declaratory relief from this Court in order to terminate the controversy between the parties and to settle and afford relief from Mammoth's uncertainty with respect to its rights, status, or other legal relations.

THIRD CLAIM FOR RELIEF
(Due Process Violation & Ultra Vires Action)

116. Mammoth incorporates by reference each of the preceding paragraphs as if fully set forth herein.

117. State agencies possess only the authority conferred by statute and properly promulgated rules. They may not rewrite tax statutes through administrative convenience, destination proxies, or ad hoc modifications.

118. Colorado law requires category-specific treatment and separate calculation for multiple marijuana transfer tax calculations. Colorado law does not permit collapsing categories into a single rate or treating one product category as another merely due to the transfer-recipient's identity or for administrative convenience.

119. Colorado law likewise does not permit Defendants to replace true, computed quarterly rates with rates untethered to correct test-period transactions. This is especially true insofar as the Bud Allocated for Extraction AMR has been artificially inflated to conceal and compensate for illicit transfers and transactions.

120. Defendants' conduct therefore exceeds their statutory and regulatory authority, is contrary to law, should be enjoined, and declared unlawful.

121. Defendants' arbitrary and capricious approach to AMR calculation has caused a deprivation of rights by persons acting under color of law.

122. Mammoth and the Class members have a protected property interest in tax monies already paid or demanded through tax assessments, payments, penalties, interest, and the like.

123. Defendants' conduct has caused an actual deprivation of that interest through assessments, payments, penalties, and AMR-based tax collection.

124. Defendants' process for calculating AMR and enforcing tax rules against Class members deprives the effected parties of an adequate opportunity or process to challenge the methodologies and arbitrary approaches outlined herein.

WHEREFORE, based upon the foregoing, Mammoth and the Class are entitled to a judgment, order, and/or declaration that:

A. Mammoth and the Class are entitled to judgment on all claims in this Complaint;

B. The Department's calculation of AMR violates TABOR and therefore, is unlawful, unenforceable, and void;

C. The Department and MED must separate AMR calculations for each of the seven categories of product as described above and required by law;

D. The Department and MED must publicly disclose all transaction-level data on a quarterly basis with published outlier exclusion methodology;

E. The Department and MED must cease all audit referrals and penalties for operators who used alternative categories to avoid the improper Bud Allocated for Extraction rate;

F. The Department and MED may not lawfully require Mammoth or the Class to pay the Excise Tax based upon the current methodology the Department uses to calculate the AMR;

G. Mammoth and the Class are entitled to a refund of all revenue collected, kept, or spent illegally in the four fiscal years preceding the date upon which this Complaint

is filed, with 10% annual interest calculated from the date of the initial illegal conduct, as required by Colo. Const. art. X, § 20(1);

H. Mammoth and the Class are entitled to their costs and reasonable attorneys' fees as allowed by law, including as provided by Colo. Const. art. X, § 20(1); and

I. Any further relief this Court deems just and proper.

Respectfully submitted this 21st day of May, 2026.

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