

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Dauphin

County

For Prothonotary Use Only:

Docket No:

2023 CV 399

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:
Courier Plus, Inc. d/b/a Dutchie

Lead Defendant's Name:
Akerna Corporation

Are money damages requested? ☒ Yes ☐ No

Dollar Amount Requested: ☐ within arbitration limits
☒ outside arbitration limits
(check one)

Is this a Class Action Suit? ☐ Yes ☒ No

Is this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Timothy J. Ford

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

☐ Employment Dispute:
Discrimination
☐ Employment Dispute: Other

☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

☐ Zoning Board
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations
☐ Restraining Order
☐ Quo Warranto
☐ Replevin
☒ Other:
Unfair Competition

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

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*Attorneys for Plaintiff Courier Plus, Inc.
d/b/a Dutchie*

* Application for admission *pro hac vice*
forthcoming

**IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA
CIVIL DIVISION**

COURIER PLUS, INC. d/b/a DUTCHIE,

Plaintiff,

v.

**AKERNA CORPORATION, LEAF DATA
SYSTEMS, and MJ FREEWAY,**

Defendants.

No. 2023 CV 399

JURY TRIAL DEMANDED

NOTICE TO PLEAD

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property of other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**MidPenn Legal Services
213-A North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-0581**

and

**Dauphin County Lawyer Referral Service
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*Attorneys for Plaintiff Courier Plus, Inc.
d/b/a Dutchie*

**IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA
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COURIER PLUS, INC. d/b/a DUTCHIE,

Plaintiff,

v.

**AKERNA CORPORATION, LEAF DATA
SYSTEMS, and MJ FREEWAY,**

Defendants.

No.

2023 CV 399

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Courier Plus, Inc. d/b/a Dutchie (“Dutchie”) hereby files this Complaint against Defendants Akerna Corporation, Leaf Data Systems, and MJ Freeway (collectively “Akerna”), and in support thereof, avers as follows:

INTRODUCTION AND FACTUAL ALLEGATIONS

1. Dutchie serves licensed cannabis businesses in Pennsylvania. Dutchie's software products are intended to simplify the operations of cannabis businesses by providing an all-in-one technology platform. In particular, Dutchie's point-of-sale ("POS") system helps cannabis businesses oversee inventory management, payment for goods and services, and sales taxes.

2. Over 100 medical marijuana dispensary locations located across the Commonwealth of Pennsylvania currently use Dutchie's software tools, including Dutchie's POS system. Dutchie provides dispensary locations in more than 30 states, territories, and provinces with its technology platform, including POS software.

3. Under state law, medical marijuana is legal in the Commonwealth of Pennsylvania. Specifically, the state's Medical Marijuana Act ("MMA") provides that "[n]otwithstanding any provision of law to the contrary, use or possession of medical marijuana as set forth in [the MMA] is lawful within this Commonwealth." 35 P.S. § 10231.303.

4. Pursuant to the MMA, the Commonwealth sets out numerous requirements for the operations of "medical marijuana organizations," which include both growers/processors and dispensaries. *See* 35 P.S. § 10231.601. Among other things, medical marijuana organizations require a permit to operate within the state. *Id.*

5. The Pennsylvania Office of Medical Marijuana administers the state's Medical Marijuana Program. The Office of Medical Marijuana is a component office of the Commonwealth's Department of Health and is located in Harrisburg, Pennsylvania.

6. Failure to follow any provision of the MMA or any regulation of the Office of Medical Marijuana can prompt state officials to suspend or revoke a medical marijuana organization's permit to operate. *See* 35 P.S. § 10231.613.

7. Medical marijuana organizations that fail to maintain effective controls against the diversion of medical marijuana may also be subject to the suspension or revocation of their permits to operate. *Id.*

8. Pursuant to the MMA, medical marijuana organizations are required to implement an electronic inventory tracking system that tracks all medical marijuana on a daily basis and that must be directly accessible to the Office of Medical Marijuana. *See* 35 P.S. § 10231.701(a). This electronic cannabis tracking system requirement is a critical component of the state's controls on medical marijuana within the state. *See* MMA, Ch. 7 "Medical Marijuana Controls," 35 P.S. §§ 10231.701 – .705.

9. As the MMA requires, medical marijuana organizations must implement electronic cannabis tracking systems that, among other things, track the acquisition, possession, growing, and processing of medical marijuana; its delivery and transportation, including amounts and method of delivery; and dispensing information, including amounts, pricing, and payments from patients and caregivers. *See* 35 P.S. § 10231.701(b).

10. Akerna, including its subsidiaries Leaf Data Systems and MJ Freeway, operates the Commonwealth of Pennsylvania's seed-to-sale inventory tracking system.¹ Akerna operates its own POS system, which is used by some licensed cannabis businesses.

¹ *See* Akerna Corp., *Pennsylvania Selects MJ Freeway to Implement Seed-to-Sale Cannabis Tracking System for New Medical Marijuana Program, the Second State to Adopt MJ Freeway's Platform* (Apr. 20, 2017) <https://ir.akerna.com/news-events/press-releases/detail/57/pennsylvania-selects-mj-freeway-to-implement-seed-to-sale> [archived at <https://perma.cc/7EGK-WNDS>]

11. The MMA was amended in 2021 to add 35 P.S. § 10231.701(c.1), as set forth below:

Application programming interface.--The department or the department's contracted seed-to-sale vendor shall allow two-way communication, automation and application-programming interface of a medical marijuana organization's enterprise resource planning, inventory, accounting and point-of-sale software with the software of the department or the department's contracted seed-to-sale vendor. The department or the department's contracted seed-to-sale vendor shall provide for the development and use of a seed-to-sale cannabis tracking system, which shall include a secure application program interface capable of accessing all data required to be transmitted to the advisory board to ensure compliance with the operational reporting requirements established under this act and the regulations of the department.

12. The MMA, as amended, expressly requires MJ Freeway, as the state's seed-to-sale vendor to allow "two-way communication, automation and application-programming interface ["API"] of a medical marijuana organization's enterprise resource planning, inventory, accounting and **point-of-sale software.**" 35 P.S. § 10231.701(c.1) (emphasis added).

13. The MMA, therefore, explicitly recognizes the ability for medical marijuana organizations, such as dispensaries, to choose for themselves which "enterprise resource planning, inventory, accounting and point-of-sale software" they would like to utilize. *Id.*

14. Dutchie provides "enterprise resource planning, inventory, accounting and point-of-sale software" services and tools to medical marijuana organizations in Pennsylvania. *See id.*

15. The MMA further requires the state's seed-to-sale vendor, MJ Freeway, to allow the software chosen by Pennsylvania medical marijuana organizations to integrate and engage with "two-way communication, automation and [API]" between the state's system and the software chosen by the business. 35 P.S. § 10231.701(c.1).

16. APIs are mechanisms that enable two software components to communicate with each other using a set of definitions and protocols. For example, a state cannabis track-and-trace system may contain information regarding specific cannabis products. A cannabis business POS system may “talk” to the system using APIs so that sales and revenue information can be shared in two-way fashion between the system and the POS.

17. Two-way API integration would allow medical marijuana organizations to both (i) provide information to the Commonwealth’s Office of Medical Marijuana via its seed-to-sale electronic cannabis tracking system and (ii) access information that the Office of Medical Marijuana maintains via its seed-to-sale electronic cannabis tracking system about the medical marijuana organization, such as inventory, reports, and patient information. Two-way API integration is vital so that medical marijuana organizations can upload information to the Office of Medical Marijuana via its seed-to-sale electronic cannabis tracking system and verify that the information has been accurately recorded and maintained over time. Read-only access is insufficient; instead, 35 P.S. § 10231.701(c.1) requires two-way communication, meaning that that sales and revenue information can be provided and viewed between the state’s track-and-trace system and the POS system of a medical marijuana organization.

18. Akerna does not allow for “two-way communication, automation and [API]” between the state’s system and the POS software chosen by the medical marijuana organizations in Pennsylvania.

19. Instead, medical marijuana organizations in Pennsylvania that wish to utilize a POS software other than Akerna’s must pay for access to Akerna’s own POS software, and also pay an additional fee to integrate that software into their preferred POS system. Any medical marijuana organization utilizing a different POS system than that provided by Akerna, and its affiliated

companies, must pay for and enter data in both systems. This results in duplicate entries and increased cost, leading to wasted time and resources for medical marijuana organizations in Pennsylvania, and also creating the potential for erroneous entries.

20. The lack of integration with the state's contracted seed-to-sale vendor, MJ Freeway, has caused Dutchie considerable commercial harm. Businesses using Dutchie's POS software in Pennsylvania must pay for duplicate systems and often must enter the same data in two systems. These extra costs and efforts disincentivize Dutchie's clients and potential clients in Pennsylvania from using Dutchie's POS software. In some cases, medical marijuana organizations in Pennsylvania have decided to forego Dutchie systems altogether in favor of those offered by Akerna due to lack of integration.

21. Akerna has used its position as the state's contracted vendor for MJ Freeway to block two-way integration with POS software solutions like those offered by Dutchie, in favor of software solutions that Akerna and its affiliated companies provide. By virtue of its position, Akerna is able to advantage its own POS software to block other providers, such as Dutchie, because Akerna's affiliated POS software is the only system able to directly interface with the state's seed-to-sale tracking system; businesses using Dutchie's POS system, for example, are required to enter information into Dutchie's POS platform *and then pay Akerna for the privilege of re-entering that same information* separately so that it can be uploaded to the state seed-to-sale tracking system. This dual-entry is unnecessary and prohibitive in terms of duplicative cost and labor.

22. Akerna's conduct is contrary to law. Pennsylvania state law expressly requires the state's cannabis tracking system to provide direct two-way API integration between the state and the POS software of state cannabis businesses. *See* 35 P.S. § 10231.701(c.1). That is, the state law

requires marijuana organizations in Pennsylvania to be able to provide information to the state's Office of Medical Marijuana and receive the information that the Office of Medical Marijuana has recorded, regardless of whether Akerna or another company is providing the POS software. Akerna's administration of MJ Freeway therefore violates state law.

23. Because of Akerna's decisions and anti-competitive practices, licensed cannabis businesses cannot provide the state of Pennsylvania with the requisite information unless they pay for Akerna's POS system. Currently, marijuana organizations in Pennsylvania cannot provide information to the state's seed-to-sale vendor, MJ Freeway, using Dutchie's POS software. If a marijuana organization wants to access the information that the Office of Medical Marijuana has recorded for the purpose of, among other things, verifying that the information was accurately transferred or recorded correctly over time, it cannot do so. Akerna, operating as the state's cannabis electronic tracking system, only provides the requisite access if cannabis businesses pay for and enter data directly into Akerna's POS software.

24. To be clear, MJ Freeway does not in all instances provide two-way, or even one-way, integration with the Commonwealth's seed-to-sale electronic cannabis tracking system. Instead, Akerna offers only integration with its own proprietary POS system. As such, Pennsylvania medical marijuana organizations cannot integrate their chosen "enterprise resource planning, inventory, accounting and point-of-sale software" solutions with the state's seed-to-sale electronic cannabis tracking system. Rather, Pennsylvania medical marijuana organizations must pay Akerna, and its affiliates to access the Akerna proprietary POS system, which is the only method for inputting data into, and receiving data from, the Commonwealth's seed-to-sale electronic cannabis tracking system. Pennsylvania medical marijuana organizations choosing to implement their desired "enterprise resource planning, inventory, accounting and point-of-sale

software” solutions provided by any non-Akerna company must pay for both that software and Akerna’s software. This anti-competitive behavior is not lawful.

25. Dutchie has attempted to resolve this issue for several months, starting in December 2021. Akerna has failed to act in accordance with state law, despite being on notice of its violation.

26. As a culmination of many months of requests, Dutchie, by and through its counsel, sent a letter to Akerna on November 1, 2022 formally requesting that Akerna cease-and-desist its unlawful practices. This letter is attached here as **Exhibit A**, and it is incorporated herein.

27. On November 10, 2022, counsel for Akerna stated clearly its belief that Akerna and its affiliated companies do “not have to provide two-way API integration to Dutchie.” This letter is attached here as **Exhibit B**, and it is incorporated herein.

28. In its November 10 letter, Akerna, via counsel, also claimed that the statute 35 P.S. § 10231.701(c.1) requires two-way integration only with *medical marijuana organizations*, not *the software* used by those organizations. This reading is directly contradicted by the language of the statute itself, which allows medical marijuana organizations to utilize the “enterprise resource planning, inventory, accounting and point-of-sale software” of their choice, and further requires the state’s vendor to allow two-way integration with that chosen software.

29. Akerna is operating in violation of state law. The failure of Akerna and its affiliated companies to allow two-way API integration has directly harmed Dutchie and Dutchie’s clients.

PARTIES

30. Plaintiff Dutchie provides software solutions for cannabis businesses. Dutchie is headquartered in Bend, Oregon.

31. Defendant Akerna Corporation is a publicly-traded Delaware corporation with its principal place of business in Denver, Colorado.

32. Defendant Leaf Data Systems, upon information and belief, is a subsidiary of Akerna Corporation and is a Colorado business entity.² According to its website, Leaf Data Systems operates in Pennsylvania.³

33. Defendant MJ Freeway, upon information and belief, is a subsidiary of Akerna Corporation and is a Colorado business entity. MJ Freeway, together with Leaf Data Systems, operate Pennsylvania's seed-to-sale electronic cannabis tracking system for the state's Office of Medical Marijuana.⁴

JURISDICTION AND VENUE

34. Jurisdiction in this Court is appropriate. Under the state's long-arm statute, the Uniform State and International Procedure Act, 42 Pa. C.S. § 5322, this Court has jurisdiction over the parties to this action because, among other things, Akerna contracted with the Commonwealth to supply services in Pennsylvania; the acts or omissions at issue took place within Pennsylvania as did much of Dutchie's damages; and Akerna is in violation of Pennsylvania law.

35. Venue in this Court is appropriate. The Court of Common Pleas of Dauphin County embraces the state capital of Harrisburg. Pursuant to Pa.R.Civ.P. 2179, venue is appropriate in this Court as, among other things, Akerna is regularly conducting business in its dealings with the Commonwealth's Office of Medical Marijuana in Harrisburg; Harrisburg is where the cause of

² Leaf Data Systems, *Contact Us* (last visited Nov. 14, 2022), <https://leafdatasystems.com/contact/> [archived at <https://perma.cc/5KJX-B4P5>]

³ Leaf Data Systems, *About Leaf Data Systems* (last visited Nov. 14, 2022), <https://leafdatasystems.com/about/> [archived at <https://perma.cc/VU57-KDMR>]

⁴ See MJ Freeway, *Pennsylvania Selects MJ Platform To Implement Seed-To-Sale Cannabis Tracking System For New Medical Marijuana Program, The Second State To Adopt MJ Platform* (Apr. 19, 2017) ("MJ Platform, the cannabis industry's leading provider of seed-to-sale traceability solutions, has been awarded the contract from the Pennsylvania Department of Health to implement Leaf Data Systems™ – a secure, web-based regulatory platform developed by MJ Platform to enable governments to effectively and efficiently monitor compliance by licensed cannabis businesses.") <https://mjplatform.com/press-release/pennsylvania-selects-mj-freeway-to-implement-seed-to-sale-cannabis-tracking-system-for-new-medical-marijuana-program-the-second-state-to-adopt-mj-freeways-platform/> [archived at <https://perma.cc/8U8X-834P>].

action arose given Akerna's operations there; and the relevant transactions or occurrences took place in Harrisburg.

COUNT I
UNFAIR COMPETITION

36. Dutchie hereby incorporates Paragraphs 1 through 35 above.

37. Dutchie provides software solutions for medical marijuana organizations in Pennsylvania.

38. Akerna and its affiliated companies also offer software solutions for medical marijuana organizations in Pennsylvania.

39. Some clients and prospective clients of Dutchie that are medical marijuana organizations in Pennsylvania have decided to forego using Dutchie's POS software in favor of the POS software offered by Akerna and its affiliated entities. These medical marijuana organizations in Pennsylvania have done so because of Akerna's anti-competitive acts and omissions in failing to provide two-way integration with the state's seed-to-sale electronic cannabis tracking system.

40. Akerna is operating in violation of state law.

41. Dutchie has suffered harm as a result of Akerna's violations of law.

42. Akerna's actions and failures to act constitutes an unreasonable restraint on trade and therefore unfair competition.

COUNT II
TORTIOUS INTERFERENCE WITH CONTRACT

43. Dutchie hereby incorporates Paragraphs 1 through 42 above.

44. Dutchie has current clients that are medical marijuana organizations in Pennsylvania.

45. Dutchie maintains contracts with its clients, who contract for Dutchie's software tools and services.

46. Akerna's actions and failures to act in allowing for two-way integration between the state's seed-to-sale electronic cannabis tracking system and Dutchie's POS software has interfered with the contracts between Dutchie and its clients. Among other things, the lack of two-way integration has led to duplication of effort, and added costs and frustration to implementing Dutchie's contracts.

47. Akerna's actions and failures to act were intentional.

48. Akerna was on notice that its actions and failures to act were contrary to state law, but chose not to correct its behavior.

49. Akerna's actions and failures to act have caused the performance of Dutchie's contracts to be more burdensome and expensive. Dutchie has suffered damages, including but not limited to the loss of prospective and current client contracts due to these added expenses and burden.

50. Akerna is obligated by state law to allow for this two-way integration and has failed to provide it.

COUNT III
TORTIOUS INTERFERENCE WITH
PROSPECTIVE ECONOMIC RELATIONS

51. Dutchie hereby incorporates Paragraphs 1 through 50 above.

52. Dutchie has prospective clients that are medical marijuana organizations in Pennsylvania.

53. Dutchie markets its services within Pennsylvania for medical marijuana organizations looking for Dutchie's software tools and services.

54. Akerna's actions and failures to act in allowing for two-way integration between the state's seed-to-sale electronic cannabis tracking system and Dutchie's POS software has interfered with Dutchie's ability to obtain and maintain clients in Pennsylvania. Among other things, Akerna and its affiliated entities have utilized their privileged position as the state's seed-to-sale electronic cannabis tracking system to position its software solutions more favorably to prospective clients compared to software tools and solutions offered by other companies, such as Dutchie.

55. As a result of Akerna's actions and failures to act, Dutchie has suffered damages, including but not limited to the loss of prospective and current client contracts due to these added expenses and burdens.

56. Akerna's actions and failures to act were intentional.

57. Akerna was on notice that its actions and failures to act were contrary to state law chose to not correct its behavior.

58. Akerna's actions and failures to act have tortiously interfered with Dutchie's relationships with prospective clients in Pennsylvania.

COUNT IV **UNJUST ENRICHMENT**

59. Dutchie hereby incorporates Paragraphs 1 through 58 above.

60. Akerna obtained benefits to the detriment of Dutchie and its clients.

61. Akerna obtained these benefits unjustly. Among other things, Akerna operated contrary to state law by failing to provide two-way integration with the state's seed-to-sale electronic cannabis tracking system.

62. Akerna's retention of unjustly-obtained benefits is inappropriate.

COUNT V
DECLARATORY JUDGMENT ACT, 42 Pa. C.S. §§ 7531 *et seq.*

63. Dutchie hereby incorporates Paragraphs 1 through 62 above.

64. Pursuant to 35 P.S. § 10231.701(c.1), Dutchie provides Dutchie provides “enterprise resource planning, inventory, accounting and point-of-sale software” services and tools to medical marijuana organizations in Pennsylvania.

65. Akerna operates the state’s seed-to-sale electronic cannabis tracking system.

66. As detailed in **Exhibit B**, Akerna has interpreted Pennsylvania law at 35 P.S. § 10231.701(c.1) to mean that it is not required to provide two-way integration between the state’s seed-to-sale electronic cannabis tracking system and Dutchie’s software solutions used by medical marijuana organizations in Pennsylvania.

67. Given this interpretation of 35 P.S. § 10231.701(c.1), Akerna, via counsel, has represented that it will not comply with Dutchie’s requests for two-way integration. *See Exhibit B* at 1.

68. Dutchie has an interest in the appropriate interpretation of 35 P.S. § 10231.701(c.1), and Dutchie’s rights, status, and legal relations with its clients and prospective clients will be affected by the appropriate interpretation of 35 P.S. § 10231.701(c.1).

69. A declaratory judgment is needed to obtain a declaration of rights, status, or legal relations under 35 P.S. § 10231.701(c.1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Courier Plus, Inc. d/b/a Dutchie respectfully requests that this Court enter judgment in its favor and award the following relief:

A. Declaring that Akerna and its affiliated entities are operating in violation of state law;

B. Entering preliminary and permanent injunctive relief by directing Akerna to correct the challenged practices as to comply with state law;

C. Awarding monetary damages, including (but not limited to) statutory and/or punitive damages and interest pursuant to the claims set forth above;

D. Awarding costs and expenses, including reasonable fees for Plaintiff's attorneys; and

E. Other and further relief as the Court deems just and proper.

A trial by jury of the issues raised by the pleadings in the above-entitled action is hereby demanded pursuant to Pa.R.Civ.P. 1007.1(a).

Respectfully submitted,


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* Applications for admission *pro hac vice*
forthcoming

Dated: January 19, 2023

Attorneys for Plaintiff Courier Plus, Inc.
d/b/a Dutchie

VERIFICATION

I, Jason Fowler, hereby state that I have authority to make this verification on behalf of Courier Plus, Inc. d/b/a Dutchie. The averments in the Complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 12/21/22

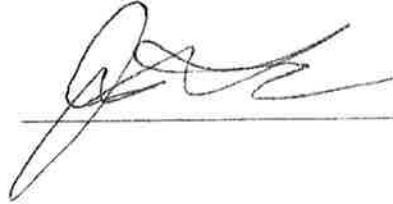


Exhibit A

November 1, 2022

VIA EMAIL AND FEDEX

Jessica Billingsley
Founder, Chief Executive Officer, & Board Chair
Akerna Corporation
1550 Larimer Street #246
Denver, CO 80202
jessica@mjfreeway.com

Re: Dutchie API Integration into Pennsylvania's MJ Freeway

Dear Ms. Billingsley:

I write on behalf of Courier Plus, Inc. d/b/a Dutchie ("Dutchie") to address the failure of Akerna's companies Leaf Data Systems and MJ Freeway (collectively, "You" or "Your") to provide two-way application programming interface ("API") integration with the state of Pennsylvania's cannabis electronic tracking software, as required by state law. Your inaction in response to Dutchie's repeated efforts to remedy this situation has caused months of unnecessary delay to Dutchie's business operations, resulting in substantial lost revenue. We demand that you immediately correct this deficiency, and we reserve the right to seek legal recourse if you fail to do so.

As you surely are aware, the state of Pennsylvania requires cannabis growers and dispensaries to use an electronic seed-to-sale tracking system.¹ More importantly, Pennsylvania state law expressly requires that system to provide direct two-way API integration between the state and cannabis businesses operating in the state with respect to point-of-sale software:²

¹ 35 Pa. Stat. § 10231.701; 28 Pa. Code § 1161.39.

² 35 Pa. Stat. § 10231.701(c.1).

The department or the department's contracted seed-to-sale vendor *shall allow two-way communication, automation and application-programming interface of a medical marijuana organization's enterprise resource planning, inventory, accounting and point-of-sale software with the software of the department or the department's contracted seed-to-sale vendor.* The department or the department's contracted seed-to-sale vendor shall provide for the development and use of a seed-to-sale cannabis tracking system, which shall include a secure application program interface capable of accessing all data required to be transmitted to the advisory board to ensure compliance with the operational reporting requirements established under this act and the regulations of the department.

(Emphasis added.) The Pennsylvania Medical Marijuana Program echoes this requirement in its implementing regulations, which were recently amended to detail with specificity the type of API integration expected of the state's electronic cannabis traceability system.³

The electronic tracking system prescribed by the Department shall allow for two-way communication, automation and secure application-programming interface with a medical marijuana organization's enterprise resource planning, inventory, accounting and point-of-sale software. The electronic tracking system prescribed by the Department shall include a secure application program interface capable of accessing all data required to be transmitted to the Department to ensure compliance with the operational reporting requirements of the act and these regulations.

(Emphasis added.)

As the company that administers this system through MJ Freeway, you are violating these requirements. To be sure, MJ Freeway provides *one-way* access to your company's point of sale system, which in turn reports information to cannabis regulators. MJ Freeway does not, however, automatically provide the requisite *two-way* API integration with cannabis businesses point-of-sale software required by Pennsylvania law and regulations. Instead, your system, operating as the state's cannabis electronic tracking system, only provides access if cannabis businesses pay additional fees and opt into this function through your software.

Notably, Dutchie has repeatedly attempted to communicate with you amicably regarding these concerns, starting in December 2021. Despite multiple attempts to resolve this situation over the ensuing year, you have steadfastly refused to act, providing various contradictory—and legally incorrect—explanations over an extended period of time. For example, you have misleadingly

³ 28 Pa. Code § 1161.39 (as approved by Pennsylvania's Independent Regulatory Review Commission on October 20, 2022), available at <http://www.irrc.state.pa.us/docs/3290/AGENCY/3290FF.pdf#page=213>

claimed that state approval is required before two-way API integration may be provided.⁴ This falsehood was squarely contradicted by Pennsylvania authorities (specifically, the Director of the Office of Medical Marijuana), who have unequivocally stated that no such approval is required, and that “MJ Freeway is responsible for approving integrators.”⁵

It is clear that you have been stonewalling. Dutchie is one of many companies that have been waiting for many months for the appropriate API tools to integrate with MJ Freeway. This is unacceptable. Without proper integration, Dutchie’s customers have had to enter the same tracking data twice and pay for multiple systems to both report and to track their business operations, or in some cases to forego Dutchie systems altogether in favor of Akerna’s due to lack of integration.

As explained above, Pennsylvania law and regulations explicitly require two-way API integration with respect to the state cannabis track-and-trace system without requiring the use of your point-of-sale software. You are operating illegally. By failing to enable two-way API integration with Dutchie’s software, you have enriched yourself at Dutchie’s expense by requiring its customers doing business in Pennsylvania to use your point-of-sale software. This has obviously damaged Dutchie through lost revenues. This is to say nothing regarding the same impact that your illegal practices have had and continue to have on other cannabis companies, which will also certainly take a negative view regarding your practices.

We demand that you cease and desist these practices, and immediately permit two-way integration with the MJ Freeway API, such that Dutchie’s customers may comply with state reporting requirements while using Dutchie products as their point-of-sale technology for business operations. You may avoid immediate litigation by responding to this letter no later than November 14, 2022.

⁴ Attachment 1 (email between Ray Thompson, President & COO, Akerna Corp., to Bryan Barash, Head of Public Policy, (May 16, 2022) (stating that Akerna looks forward to “next steps when the [Department of Health] approves [Dutchie’s] application.”).

⁵ Attachment 2 (email between Laura Mentch, Director of the Pennsylvania Office of Medical Marijuana, to Bryan Barash, Head of Public Policy, (October 25, 2022).

Jessica Billingsley
November 1, 2022
Page 4

We look forward to your prompt response and an efficient resolution of this matter.

Best,



Barak Cohen
Counsel to Courier Plus, Inc. d/b/a Dutchie

Enclosures

CC:

Client

Laura Mentch, Director, Pennsylvania Office of Medical Marijuana
Members of the Akerna Board of Directors

Barry Fishman, info@akerna.com

Matt Kane, mkane@ischool.berkeley.edu

Tahira Rehmatullah, trehmatullah@osunyc-alumni.org

Scott Sozio, scott@vandykeholdings.com

Attachment 1

Attachment 1

On Mon, May 16, 2022 at 4:36 PM Ray Thompson <ray@akerna.com> wrote:
Hi Bryan,

Of course. We will continue to support Dutchie's access and look forward to next steps when the DoH approves your application.

Thanks,
Ray

From: Bryan Barash <bryan.barash@dutchie.com>
Sent: Monday, May 16, 2022 2:27 PM
To: Ray Thompson <ray@akerna.com>
Subject: Re: Dutchie Legal - Letter regarding Leaf integration in Pennsylvania

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Ray,

Thank you so much for emailing me back swiftly and sharing your perspective on this issue. Our team has followed up with the PA DOH and confirmed that they have had an extended delay in approving our integration. We greatly appreciate Akerna's support for Dutchie's access to the ERP Gateway as you mentioned in your email. We look forward to working with you as a partner in providing traceability to Pennsylvania's cannabis dispensaries.

- Bryan

On Tue, May 10, 2022 at 8:19 AM Ray Thompson <ray@akerna.com> wrote:
Bryan,

We are in receipt of your letter. Since the DoH is the administrator of access to the ERP Gateway, I believe your legal letter to Akerna is misdirected. We continue to support your company's access to the ERP Gateway and will confer with the DoH and our attorneys regarding your letter.

Thanks,
Ray



RAY THOMPSON

President & COO

m: 303.648.1449

e: ray@akerna.com

www.akerna.com



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From: Bryan Barash <bryan.barash@dutchie.com>

Sent: Monday, May 9, 2022 3:00 PM

To: Ray Thompson <ray@akerna.com>; Jessica Billingsley <jlb@akerna.com>

Subject: Dutchie Legal - Letter regarding Leaf integration in Pennsylvania

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Ray -

Good afternoon. I have attached a letter regarding Leaf Data Systems's inability to integrate Dutchie products with Pennsylvania's traceability system, despite numerous attempts to reach Akerna to resolve the situation. I would appreciate it if you would review this letter and respond by May 15. Thank you.

--

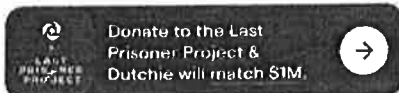
Bryan Barash (he/his)

Counsel to Dutchie

631.379.3525

bryan.barash@dutchie.com

www.dutchie.com/dispensary



Attachment 2

Attachment 2

----- Forwarded message -----

From: **Bryan Barash** <bryan.barash@dutchie.com>

Date: Wed, Oct 26, 2022 at 9:22 PM

Subject: Re: [External] Fwd: Confirmation that Dutchie is approved to Integrate

To: Mentch, Laura <lmentch@pa.gov>

Cc: Pierre, Danielle <dapierre@pa.gov>, Senior, Holli <hsenior@pa.gov>, Traub, Tod <c-
ttraub@pa.gov>, erica.woods@dutchie.com <erica.woods@dutchie.com>

Yes we have. We have made multiple requests to Akerna for additional information, including several requests over the past few weeks regarding the integration approval. We have not received a response email, which is why I reached out to you for clarification.

Any additional information you can provide would be greatly appreciated. We would like to support our licensees in the state, but it's difficult without more information.

- Bryan

On Tue, Oct 25, 2022 at 9:04 PM Mentch, Laura <lmentch@pa.gov> wrote:

Bryan,

Did you reach out to MJ Freeway with your additional questions?

From: Bryan Barash <bryan.barash@dutchie.com>

Sent: Tuesday, October 25, 2022 1:08 PM

To: Mentch, Laura <lmentch@pa.gov>

Cc: Pierre, Danielle <dapierre@pa.gov>; Senior, Holli <hsenior@pa.gov>; Traub, Tod <c-ttraub@pa.gov>; erica.woods@dutchie.com

Subject: Re: [External] Fwd: Confirmation that Dutchie is approved to Integrate

Thank you for letting me know. It was our understanding from MJFreeway that we required state approval to integrate.

Can you confirm that the required integration should allow for two way integration between our point-of-sale product and Pennsylvania's traceability system? We want to make sure we can read the state system and also report transactions to the state system, as required in most states.

- Bryan

Bryan Barash (he/his)

Head of Public Policy, Strategy & Compliance

631.379.3525

bryan.barash@dutchie.com

www.dutchie.com/dispensary

On Tue, Oct 25, 2022 at 1:02 PM Mentch, Laura <lmentch@pa.gov> wrote:

Good afternoon Bryan,

The approved integrator list can be found at the following link:

<https://leafdatasystems.com/padoh-erp-gateway/>.

It should be noted that MJ Freeway is responsible for approving integrators, not DOH. If you have additional questions, you may want to contact them directly.

Thank you,

Laura

Laura Mentch | Director, Office of Medical Marijuana

PA Department of Health

6th floor, Health & Welfare Building

625 Forster Street | Harrisburg, PA 17120-0701

Email: lmentch@pa.gov

www.health.pa.gov

From: Pierre, Danielle <dapierre@pa.gov>

Sent: Monday, October 24, 2022 10:46 AM

To: Mentch, Laura <lmentch@pa.gov>

Subject: FW: [External] Fwd: Confirmation that Dutchie is approved to Integrate

Hi Laura,

Can your team look into this and respond please?

Thank you!

Danielle Pierre, Director of Operations

Department of Health
625 Forster Street | Harrisburg, PA 17120
Phone: 717.547.3055

www.health.pa.gov

From: Bryan Barash <bryan.barash@dutchie.com>
Sent: Monday, October 24, 2022 10:39 AM
To: Pierre, Danielle <dapierre@pa.gov>; Erica Woods <erica.woods@dutchie.com>
Subject: [External] Fwd: Confirmation that Dutchie is approved to Integrate

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Hi Danielle,

Pleased to make your acquaintance, please see our email to Peter below. Any additional information you can provide would be greatly appreciated.

Bryan Barash (he/his)
Head of Public Policy, Strategy & Compliance
631.379.3525
bryan.barash@dutchie.com
www.dutchie.com/dispensary

----- Forwarded message -----

From: **Bryan Barash** <bryan.barash@dutchie.com>

Date: Mon, Oct 24, 2022 at 10:35 AM

Subject: Confirmation that Dutchie is approved to Integrate

To: Blank, Peter <pblank@pa.gov>, Erica Woods <erica.woods@dutchie.com>

Peter,

I am writing to ask if you can provide confirmation and/or documentation that Dutchie/LeafLogix is approved to integrate with the state's seed to sale system / Akerna. Any supporting documentation you have that would help our integration process would also be appreciated. Thank you so much.

Bryan Barash (he/his)

Head of Public Policy, Strategy & Compliance

631.379.3525

bryan.barash@dutchie.com

www.dutchie.com/dispensary

Exhibit B



Jon J. Olafson
1700 Lincoln Street, Suite 4000
Denver, Colorado 80203
Jon.Olafson@lewisbrisbois.com
Direct: 303.562.9767

November 10, 2022

VIA email: BCohen@Perkinscoie.com

Barak Cohen
700 13th Street N.W., Suite 800
Washington, DC, 20005-3960

Re: **Dutchie API Integration into Pennsylvania's MJ Freeway**

Dear Mr. Cohen:

Please be advised that this Firm represents Akerna, Inc. ("Akerna"). Please accept this correspondence as a response to your November 1, 2022, letter ("Correspondence"). As discussed below, and as a threshold matter, your demands lack legal founding. In addition, because of the unfounded allegations in the Correspondence and because you published your Correspondence to a third party, your letter may constitute defamation *per se* and commercial disparagement.

Under Pennsylvania's Medical Marijuana Act, the applicable Akerna subsidiaries who have contracted with the Commonwealth of Pennsylvania must provide two-way API integration with "medical marijuana organization[s]." 35 Pa. Cons. Stat. § 10231.701(c.1). The statute defines a "medical marijuana organization", in relevant part, as "[a] dispensary or a grower/processor." *Id.* § 10231.103. Further, a "dispensary" is defined, in relevant part, as "A . . . corporation, partnership, association, . . . which holds a permit issued by the department to dispense medical marijuana." *Id.* A "grower/processor" is defined, in relevant part, as "A . . . corporation, partnership, association, . . . which holds a permit from the department under this act to grow and process medical marijuana." *Id.* One notable and relevant commonality between these two definitions is that a medical marijuana organization must be a permit holder from the department.

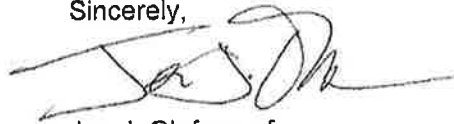
Based on our research, your client, Courier Plus, Inc. d/b/a Dutchie ("Dutchie") does not have a permit to either dispense or grow and process medical marijuana in Pennsylvania. Therefore, Dutchie does not qualify as a medical marijuana organization under the applicable statute. Because Dutchie is neither a permit holder or a medical marijuana organization, the demands made in the Correspondence are without basis and your client lacks standing to make the requests in the Correspondence. Indeed, and to be specific, MJ Freeway does *not* have to provide two-way API integration to Dutchie.

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4853-6042-1949.1

Perhaps more troubling is that it is clear from the Correspondence that Dutchie's purpose with the Correspondence is to gain an unfair competitive advantage over MJ Freeway in the market. To illustrate, the Correspondence is *per se* defamatory because it specifically alleged that MJ Freeway acted illegally. Furthermore, the Correspondence was transmitted and published to MJ Freeway's commercial partner, the Commonwealth of Pennsylvania. See, e.g., *Warzyniak v. Boggs*, No. 2017CV30521, 2018 Colo. Dist. LEXIS 4857, at *4 (Dist. Ct. Colo. July 9, 2018) (citing *Sky Fun 1 v. Schuttloffel*, 27 P.3d 361, 368 (Colo. 2001)) (defamation *per se* occurs when a statement harming business reputation is published to a third party). Similarly, the Correspondence may constitute commercial disparagement under Pennsylvania law. See, e.g., *Pro Golf Mfg. v. Tribune Review Newspaper Co.*, 809 A.2d 243, 246 (Pa. 2002) (permitting recovery for the tort of "publication of a disparaging statement concerning the business of another" when the statement was false, the publisher intended or should have known pecuniary loss would result, the business experienced pecuniary loss, and the publisher knew the statement was false or acted recklessly regarding its falsity).

We ask that you immediately cease and desist from further damage and tortious interference. Akerna and its subsidiaries reserve their rights under the law. Thank you for your immediate attention to this correspondence. If you have any questions, please do not hesitate to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jon J. Olafson', written over a horizontal line.

Jon J. Olafson of
LEWIS BRISBOIS BISGAARD & SMITH LLP

JJO

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