IN THE COURT OF APPEALS OF MARYLAND

JANE DOE, *et al.*, Appellants, v. ALTERNATIVE MEDICINE MARYLAND, LLC, *et al.*, Appellees.	Sept. Term 2017 Case No. 47

APPELLANTS' EMERGENCY MOTION FOR STAY OF PROCEEDINGS IN THE CIRCUIT COURT FOR BALTIMORE CITY AND/OR INJUNCTION

Jane Doe, John Doe, Curio Wellness, LLC, Doctor's Orders Maryland, LLC, Green Leaf Medical, LLC, Kind Therapeutics, USA, LLC, SunMed Growers, LLC, Maryland Wholesale Medical Cannabis Trade Association, and the Coalition for Patient Medicinal Access, LLC ("Movants"), by the undersigned counsel, pursuant to Maryland Rules 8-425(a) and 8-431(f), move this Court for an Order staying proceedings, orders and actions in the Circuit Court for Baltimore City in Case No. 24-C-16-005801 ("the Underlying Lawsuit").

Movants are cannabis grower license pre-awardees and two minors who are in urgent need of cannabis therapy to treat epileptic seizures and other debilitating and progressive diseases. This motion is before the Court for one primary reason. As set forth in Movants' bypass petition, since December 30, 2016, Movants have attempted to intervene as of right

in the Underlying Lawsuit. Their requests have been denied, based in part on Plaintiff's inaccurate representations that Plaintiff did not seek to deprive Movants of any rights. In fact, however, on May 15, 2017, after years of inaction, Plaintiff – a disappointed applicant who had been denied pre-approval for a license – sought equitable relief to deny grower Movants of licensure (and needed patient Movants cannabis therapy) on the eve of licensure. The grower Movants, in reliance upon their pre-approval had invested nearly $200 million. Contrary to their prior representations, Plaintiff seeks to deprive Movants of vested rights, without due process – indeed, without any process – in an expedited preliminary injunction hearing that is proceeding today. Movants have acted promptly to challenge that effort in the circuit court. That challenge was requested yesterday, without the required hearing, triggering today's motion in this Court.

The circuit court has issued a temporary restraining order and has scheduled a June 2 2017, hearing on a motion for a preliminary injunction, which threatens to (a) bring to a halt a nascent industry that the General Assembly has deemed vital to ill citizens of Maryland, (b) cause substantial and permanent harm to the businesses that have been diligently working and expending significant resources to provide vital medicine to ill citizens of Maryland, and (c) violate the Movants' fundamental due process right to be heard before their substantial rights are irreparably injured.

Plaintiff will suffer no cognizable injury if this relief is granted. Plaintiff waited from mid-2015 to May 2017 to file its motion for TRO and preliminary injunction. On the other hand, Jane and John Doe will be deprived of needed medication, an irreparable injury, with

no opportunity to be heard. The grower awardees will be deprived of the value of their multi-million dollar investments and forced to lay off employees, with no process, much less due process. This is particularly egregious because the Movants are wholly blameless and totally innocent. They had no part in the alleged wrongs of which Plaintiff complains, a point that that have never been able to present to the circuit court.

Instead of affording the Movant's their fundamental rights, the circuit court has shut them completely out of proceedings that threatened to shutter businesses, and it has placed the interests of one New York business over the needs of Maryland citizens in desperate need of medical cannabis for their health and welfare.

In further support of this Motion, the Appellants state the following:

1. In 2014, the General Assembly passed and the Governor signed into law the Maryland Medicinal Cannabis Act, Health Gen. Art. §§ 13-3301, et seq. ("the Act"), creating the Natalie M. Laprade Maryland Medical Cannabis Commission for the purpose of legalizing and providing the regulatory framework the cultivating, processing and dispensing of cannabis for medical purposes.

2. On August 15, 2016, the Maryland Medical Cannabis Commission ("MMCC") issued fifteen Stage 1 Awards, creating vested rights for fifteen businesses to grow cannabis and requiring considerable and expensive undertakings by each Awardee to accomplish within a year's time for the license to issue.

3. The Commission promulgated regulations, through the appropriate public process, setting forth the selection process; and, the Commission followed that selection

process in granting the Stage 1 Awards.

4. In reliance upon the Stage 1 Award and the connected promise by the State to issue licenses upon satisfaction of extensive and expensive requirements, the Stage 1 Awardees began expending hundreds of millions of dollars to meet their obligations. The Stage 1 Awardees were given one year from the date of the Stage 1 Awards to meet their obligations or else risk losing their right to receive the license.

5. On October 31, 2016, one of the unsuccessful applicants filed the Underlying Lawsuit in the Circuit Court for Baltimore City against the MMCC seeking relief based on the fact that the MMCC's regulations and selection process were contrary to the Act.

6. On December 30, 2016, some of the Appellants moved to intervene in the Underlying Lawsuit, and on February 23, 2016, the Circuit Court denied the Appellants' motion to intervene. A timely appeal was noted.

7. While the Underlying Lawsuit moved forward without the participation of the Movants, the Stage 1 Awardees continued working to meet their obligations before the impending deadline by, among other things: 1) obtaining land by lease or purchase to construct specialized buildings to grow and cultivate medicinal cannabis; 2) purchasing costly, industry-specific cultivating equipment and materials; 3) employing qualified personnel and other service providers, many of whom left other employment and relocated to Maryland in reliance; 4) obtaining capital and operational financing; and 5) undertaking other mandatory and costly expenditures and commitments as preconditions to licensure – all of which is entirely at risk in the Underlying Lawsuit. Approximately 50 affidavits were

filed, many of which demonstrate these facts and a few representative ones are attached hereto.

8. On May 15, 2017, the Appellees filed "Plaintiff's Motion For Emergency Temporary Restraining Order And Request For Order To Show Cause Why A Preliminary Injunction Should Not Be Granted And Request For Immediate Emergency Hearing," seeking to halt MMCC's authority to inspect facilities and issue licenses. In its response opposing that request, MMCC noted, among other things, that it has issued a license. AMM then requested that the issued license be rescinded.

9. On May 25, 2017, the circuit court issued a Temporary Restraining Order ("TRO"), preventing MMCC from issuing any licenses and setting a hearing on a preliminary injunction for 10:00 a.m. on June 2, 2017.

10. On May 31, 2017, the Appellants and other persons affected by MMCC's failure to issue licenses (collectively "Movants") moved pursuant to Maryland Rule 15-504(f) to dissolve the TRO. They also renewed their motion to intervene, moved to stay proceedings and consolidate, and opposed the issuance of a preliminary injunction. *See* Exhibit 1 hereto, and incorporated herein.

11. On June 1, 2017, the Court summarily denied Appellants' motions without the required hearing under the rules and refused to allow the Movants to participate in the June 2, 2017 adversary proceeding. Although Movants had a right to a hearing under Rules 15-504(f) ("the court shall proceed to *hear* and determine the application [for modification or dissolution] at the earliest possible time") and requested a hearing, none was provided.

12. As set forth in Exhibit 1 at pages 12-14, 17-20, and incorporated herein, the Circuit Court's actions have and continue to deprive the Movants of their due process statutory and procedural rights. Moreover, as set forth in Exhibit 1 at pages 14-16, 28-30 and Ex. A thereto, incorporated herein, the TRO and any preliminary injunction has caused, and will cause tremendous and irreparable harms both to the individuals who are desperately seeking medication that the General Assembly and their doctors have determined should be available for them, and to the businesses that have expended hundreds of millions of dollars in reliance upon the license that is to be awarded once the businesses have complied (within a year) with the requirements placed upon them by the Act and the MMCC.

WHEREFORE, the Movants respectfully request that, pursuant to Maryland Rule 8-425, this Court enter an order staying the hearing on preliminary injunction, or, in the alternative, any preliminary injunction order in the Underlying Lawsuit, and staying any further actions in the Underlying Lawsuit pending the outcome of this appeal.

Dated: June 2, 2017

RESPECTFULLY SUBMITTED,

Alan M. Rifkin
Arnold M. Weiner
Michael D. Berman
Barry L. Gogel
RIFKIN WEINER LIVINGSTON LLC
2002 Clipper Park Road, Suite 108
Baltimore, Maryland 21211
AWeiner@rwllaw.com
ARifkin@rwllaw.com
MBerman@rwllaw.com
Bgogel@rwllaw.com
(410) 769-8080 Telephone
(410) 769-8811 Facsimile

Counsel for Movants

CERTIFICATE OF SERVICE

I HEREBY certify that on this 2nd day of June 2017, a copy of the foregoing was served, by federal express, postage prepaid, and via email, on:

Heather B. Nelson
Robert D. McCray
Office of the Attorney General
Maryland Department of Health & Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201
Heather.nelson1@maryland.gov
Robert.mccray@maryland.gov

Attorneys for Defendants

Byron L .Warnken
Byron B. Warnken
Warnken, LLC
2 Reservoir Circle, Suite 104
Baltimore, Maryland 21208

John A. Pica, Jr.
John Pica and Associates, LLC
14 State Circle
Annapolis, Maryland 21401

Brian S. Brown
Christopher T. Casciano
Brown & Barron, LLC
7 St. Paul Street, Suite 800
Baltimore, Maryland 21202

Attorneys for Respondent Alternative Medicine Maryland, LLC

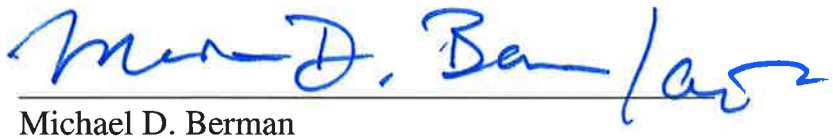
Paul D. Bekman
300 W Pratt Street, #450
Baltimore, Maryland 21201
bekman@bmalawfirm.com

Robert B. Schulman
Schulman, Hershfield & Gilden, P.A.
One East Pratt Street, Suite 904
Baltimore, Maryland 21202
rbs@shg-legal.com

Attorneys for Proposed Intervenor, Temescal Wellness of Maryland, LLC

Ira Kasdan
Allan Weiner
Bezalel Stern
Joseph D. Wilson
Kelley Drye & Warren LLP
3050 K Street, NW, #400
Washington, DC 20007
IKasdan@KelleyDrye.com
AWeiner@KelleyDrye.com
BStern@KelleyDrye.com
JWilson@KelleyDrye.com

Attorneys for Proposed Intervenor, ForwardGro, LLC



Michael D. Berman

Exhibit 1

ALTERNATIVE MEDICINE MARYLAND, LLC, Plaintiff, v. NATALIE M. LAPRADE MARYLAND MEDICAL CANNABIS COMM'N., *et al.*, Defendants.	IN THE CIRCUIT COURT FOR BALTIMORE CITY Case No. 24-C-16-005801 **HEARING REQUESTED**

MEMORANDUM IN SUPPORT OF EMERGENCY MOTION TO DISSOLVE OR MODIFY TRO; FOR RENEWAL OF THE MOTION TO INTERVENE; TO INTERVENE IN THIS ACTION; TO CONSOLIDATE; FOR STAY PENDING APPEAL; AND IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Jane Doe, John Doe, Curio Wellness, LLC, Doctor's Orders Maryland, LLC, Green Leaf Medical, LLC, Kind Therapeutics, USA, LLC, SunMed Growers, LLC, Maryland Wholesale Medical Cannabis Trade Association, and the Coalition for Patient Medicinal Access, LLC ("Movants"), by the undersigned counsel, file this Memorandum in Support of Emergency Motion to Dissolve or Modify the TRO of May 25, 2017;[1] for Renewal of the Motion to Intervene; to Intervene and Consolidate; For a Stay Pending Appeal; and In Opposition to Motion for Preliminary Injunction, state as follows:

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Movants are awardees of Stage 1 cannabis growers licenses selected after a lengthy, rigorous, and costly application process (hereinafter "Grower Awardees") and Jane and John Doe, patients desperately in need of medicinal cannabis for health-related reasons ("Patients")

[1] The Motion to Shorten Time filed contemporaneously herewith is incorporated herein.

(both collectively hereinafter "Movants"). Grower Awardees, who played by the rules set forth under the statutes and regulations established under the Maryland Medicinal Cannabis Act (hereinafter "Act"),[2] have protectable interests that are, and continue to be, adversely affected by this action, and are not adequately represented by parties to this action. Many of the Movants here filed an initial unified motion to intervene, which was denied by this Court (hereinafter "Initial Movants").[3] Movants were, and continue to be, denied procedural protections, due process, and their fundamental right to protect those interests. Present circumstances demonstrate a compelling need for the Movants to be granted permission to intervene in this action.

Movants' rights and interests have been, and continue to be, adversely affected at every stage of these proceedings. Never was that more evident than in the granting of the May 25, 2017 Temporary Restraining Order ("TRO") and in the Court's determination of the amount of the related bond. Because of the denial of Movants' initial motion to intervene, no party was present who advanced, or could advance, the interests of the Grower Awardees or Jane and John Doe.

Movants' interests are not – and cannot be – adequately represented by the State. Unlike the State's non-economic policy interests, Grower Awardees have collectively expended hundreds of millions of dollars to fulfill mandatory requirements within stringent time deadlines imposed by COMAR. Indeed, because of COMAR's unequivocal mandate that Stage 1 awardees *must* be fully operational within one year or risk forfeiture of their rights to licenses,

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[2] Maryland Code Ann, Health Gen., §§ 13-3301, *et seq.* (2016 Supp.).

[3] Initial Movants Jane and John Doe, Curio Cultivation, LLC, Doctors Orders Maryland, LLC, SunMed Growers, LLC, and the Coalition for Patient Medicinal Access, LLC, filed a unified motion to intervene on December 30, 2016, which (as subsequently amended) was denied by Order dated February 23, 2017. An appeal from that Order was taken on March 15, 2017.

Grower Awardees had to fulfill the requisite conditions precedent to be fully operational. Those prerequisites include: 1) obtaining land by lease or purchase to construct specialized buildings to grow and cultivate medicinal cannabis; 2) purchase of costly, industry-specific cultivating equipment and materials; 3) employment of qualified personnel and other service providers, many of whom left other employment and relocated to Maryland in reliance; 4) arrangement of capital and operational financing; and 5) other mandatory and costly undertakings, expenditures and commitments as preconditions to licensure – all of which is entirely at risk in these proceedings. *See* affidavits attached as Exhibit A. Yet, no party was present at the TRO hearing to present that evidence to the Court – and, thus, the TRO was granted on an incomplete record, and a thoroughly inadequate bond of $100.00 was imposed. For these and other reasons,[4] the TRO should be dissolved.

Moreover, Grower Awardees, upon receipt of their Stage 1 awards, obtained a vested property right. The State, in making the Stage 1 awards to Grower Awardees entered into a statutory contract of performance. The Act imposed specific terms and conditions upon Grower Awardees, required performance to be completed within a year of the date of the award, and once those conditions were are timely and subsequently verified by Commission inspection, the Grower Awardees have every expectation that the Commission would issue the licenses. That is, consideration was exchanged and, upon performance of the conditions precedent, Grower Awardees were promised a license. COMAR 10.62.08.07.[5] In fact, the right was so clearly

[4] Among other reasons the TRO should be dissolved, Movants were not provided adequate notice by AMM as to the TRO hearing. Indeed, AMM did not provide Movants with *any* notice, even though AMM had actual knowledge of Movants' interest in these proceedings by virtue of, *inter alia*, Initial Movants' previous motion to intervene, which is now on appeal. AMM is aware of the names, addresses and contact information for all of the Grower Awardees and could easily have provided notice to them. Instead, AMM deliberately disregarded its responsibility under the Rules to do so.

[5] Evidencing that a Grower Awardee had a reasonable expectation of licensure if the performance preconditions

vested that it was not even subject to termination for the convenience of the government. That property right and interest cannot be suspended or revoked without Grower Awardees' participation in these proceedings and due process.

Indeed, unlike the traditional means of State contracting wherein a successful applicant has no obligations until after final award (*e.g.*, an asphalt company has no obligation to buy and lay asphalt until a paving contract is unconditionally awarded), here the statutory and regulatory framework established costly and mandatory performance requirements *before* final award.[6] In consideration, it also provided that if the awardee timely performed, the awardee would receive final licensure, thereby vesting a property interest in the Stage 1 awardees and creating a statutory contract under the Act.[7]

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were met, Commission Chair Robshaw confirmed that point in answer to AMM counsel's deposition questioning. Counsel asked: "[M]y understanding [is] that the process is as follows. There was [sic] provisional approvals, right, and then after provisional approval a license will be issued after certain requirements are met, is that correct?" Commissioner Robshaw answered "Correct." Robshaw Depo. at 44. Although the Commission's Application does provide for certain expressly limited rights to withhold licensure under certain extraordinary circumstances, such as insolvency, misrepresentation to the Commission, and other typical exclusions, a Stage 1 awardee could reasonably expect licensure if the conditions precedent were met within the statutory one-year timeframe. Where the State expresses limitations or exclusions, the enumerated limits exclude all others. "Expressio unius [est exclusion alterius] instructs that, where a statute designates . . . the . . . things to which it refers, courts should infer that all omissions were intentional exclusions." 2A Sutherland Statutory Construction § 47:23 (7th Ed.).

[6] The State's gaming act set forth a similar statutory and regulatory framework, creating a similar promise. Md. State Gov't. Art. §9-1A-01, *et seq.* After competition, five gaming operators were selected by the lottery and gaming commission and received awards to conduct gaming operations in the State, provided the gaming awardees constructed multi-million dollar gaming facilities, hired a certain number of employees, acquired the necessary equipment and materials for gaming, demonstrated adequate financial wherewithal, and prepared to open their gaming facilities in a timely fashion. After meeting these and other prerequisites, the gaming operators were subject to an inspection to confirm that the performance requirements had been met and, if so, were granted a license to conduct gaming by the State. It is improbable to imagine that a gaming operator would have incurred those financial and other commitments absent the property interest vested in its award.

[7] *See A Helping Hand, LLC v. Baltimore Cty.*, MD, 515 F.3d 356, 371-72 (4th Cir. 2008) (methadone clinic had property interest in operation of business, which was threatened by collateral efforts to change zoning laws); *cf. Reese v. Dep't of Health & Mental Hygiene*, 177 Md. App. 102, 154 (2007) (quoting *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 578 (1972)) (mentally ill adult had property interest in living in State facility even though no admission had been granted to her because she had "more than a unilateral expectation" of the services and "a legitimate claim of entitlement to" them.); *Mallette v. Arlington Cty. Employees' Supplemental Ret. Sys. II*, 91 F.3d 630, 636 (4th Cir. 1996) (property interest in ERISA benefits because individuals provided past services and contributions and reasonably expected the resulting benefits).

Now, within days or, at most, weeks of final inspection and licensure, Alternative Medicine Maryland, LLC ("AMM") seeks to enjoin the award of grower licenses. Due process, principles of fundamental fairness, the Declaratory Judgment Act, and the Maryland Rules, compel this Court to permit Movants to intervene to advance their property and other interests as only they can. Anything less would only compound the harms already caused to Movants' rights and interests.

In stark contrast to Movants, AMM has not played by the rules; has not made a showing that it is qualified to receive a grower license (in fact, based on information and belief, AMM was not even ranked within the top 60 applicants in a double blind evaluation); and comes before this Court with unclean hands. After receiving a dispensary license under the very Act it now claims is defective, AMM seeks only to enjoin grower licenses, leaving its dispensary license in place and abandoning any minority dispensary enterprises that were subject to the same alleged disadvantages that it complains of in this matter. That is, AMM hypocritically accepts the benefits of its dispensary licensure while seeking to disrupt and enjoin others for AMM's further benefit of a grower license.

AMM also laid in the weeds for over seven months after filing its complaint before seeking to enjoin licensure under the Act. Although AMM was aware of the Attorney General's March 13, 2015, advice letter; the Commission's regulations promulgated on September 14, 2015; and the August 15, 2016 decision that AMM now challenges, AMM continued to sit silently while Movants were compelled to expend millions of dollars preparing for and fulfilling the terms of licensure under the Act. AMM waited until the 11th hour and 59th minute to seek injunctive relief, leaving Grower Awardees with no opportunity to have mitigated their financial and other injuries or to take other protective actions. AMM knew *all* of this, while it sat quietly

in ambush. Equally egregiously, AMM opposed and continues to oppose Movants' intervention to defend their rights and interests.

AMM's motion impacts the growers and *everyone* downstream, and its timing was deliberately aimed at disruption. As the affidavit of Ms. Mather shows, 6,559 patients, 266 physicians, and 222 caregivers have registered for medical cannabis, and 164 pre-approvals have been issued to growers, processors and dispensaries. Moreover, as the Bronfein affidavit demonstrates, Curio Wellness, LLC's *final* inspection is scheduled for May 31, 2017 – 16 days after AMM's motion and *608 days (approximately a year and eight months) after promulgation of the regulations that did not include racial and ethnic diversity as a factor.* Only after the wholly-innocent growers, processors, distributors, investors, employees, patient advocates, caregivers, and physicians completed all of their mandated, expensive, and time-consuming preparatory work, did AMM seek "emergency" relief and say, "too bad" but we want a do-over.

The human toll that this inflicts is unconscionable. Jane Doe's affidavit describes her minor children's painful and frightening epileptic seizures that can be alleviated by cannabis. John Doe 2, 3, Jane Doe 3's affidavits, and a number of others submitted herewith, describe their chronic pain and need for therapy.

Meanwhile, AMM continues to hide its application so that no one can determine whether it was anywhere close to receiving a growers' award. In doing so, it seeks to obscure both its apparently abysmally-low ranking under RESI and its lack of standing. Even if the Court were to attempt to grant relief to AMM, this Court cannot, on the facts before it, grant any licensure relief to AMM. *See, e.g.*, Movants' Dec. 30, 2016, Memo at 17, n. 19. Stated simply, even if *arguendo* the Commission erred (and it did not), AMM is not even remotely qualified for a growers' award and has failed to prove that it is. It lacks both standing and injury.

A. The TRO Should Be Dissolved

The TRO should be dissolved for at least four reasons. Movants, as persons affected by the TRO, make this request as of right. Rule 15-504 (f).

First, Movants' rights to due process, and under the governing statute and Rules, were violated, and the Court was not fully informed of key facts, because parties whose vested rights were directly impacted had been denied the right to intervene. This became clear at the TRO hearing, both on the merits and on the bond issue. For example, there was no party present to provide the detailed factual support for the many detrimental financial and other impacts of a TRO on growers, processors, distributors, and their employees.

Second, AMM failed to provide Movants with adequate notice and, thus, a meaningful opportunity to have been heard. Indeed, with actual knowledge of Movants' interest in the TRO proceeding, which could – and did – deprive Movants of protectable rights and interests – AMM chose to ignore its responsibility under the Rules requiring AMM to provide notice to those who could be adversely affected by its motion. Md. Rule 15-504(b). The Rules, due process, and principles of fundamental fairness required AMM to notify Movants. For these and other reasons, the TRO should be dissolved.

Third, the $100.00 bond by AMM, a company that declares itself to be worth $10 million, is woefully inadequate to protect the Movants' multi-million dollar investments. In ¶3 of the affidavit of its CEO, Dr. Daniel, AMM states that it has raised or secured commitment in excess of $10 million in capitalization. AMM stated in ¶6 of its Complaint that AMM "had verified capitalization of more than 9 million dollars...." On these alleged facts alone, the $100.00 bond is the equivalent of no bond at all, fails to fulfill its mandated duty to protect the Movants from the injuries that are being caused to them, their employees who will be laid off, investors, processors, dispensaries, doctors, caregivers, and patients who collectively stand to

lose tens of, if not hundreds of, millions of dollars, or more, and who will be denied needed treatment. AMM should be compelled to provide its current and last audited financial statements at the hearing so that the Court may adequately assess a proper bond.

Fourth, AMM attempts to use the TRO and Declaratory Judgment Act to circumvent the only available remedy, administrative mandamus, which is time-barred. This argument was more fully briefed in Movants' December 30, 2016, memorandum at p. 14, *et seq.*, citing *Dugan v. Prince George's Cty.*, 216 Md. App. 650, 654, 659, 661 (2014). This action is limited to administrative review under the substantial evidence on the record standard. To the extent to which AMM seeks to rely on the Declaratory Judgment Act or inherent power, it is barred and the TRO should be dissolved.

B. Movants Must Be Allowed to Intervene

Intervention cannot continue to be denied. Rule 2-214(a)(2). Movants – who have played by the rules – have collectively expended hundreds of millions of dollars and undertaken actions, obligations and commitments in furtherance of licensure under the timeframe set forth by law, while AMM has skirted the rules, let the process unfold, and then, when prejudice was fully matured, now seeks to enjoin this critically-important medicinal program.

Movants' right to intervene should be evident. Movants not only have a protected property interest accruing from their award, but are plainly harmed by a suspension or revocation of licensure. Due process and principles of fundamental fairness require that Movants be accorded a meaningful opportunity to be heard. To date, Movants have been denied that opportunity. In denying Initial Movants' intervention, this Court erroneously evaluated the Grower Awardees' interests. Grower Awardees' (and by extrapolation all Stage 1 awardees) expenditures and commitments made after award and anticipation of licensure were neither discretionary nor voluntarily undertaken at their own risk. Respectfully, Grower Awardees are

required to meet the preconditions for licensure within the one-year mandatory timeframe set forth under COMAR or risk forfeiture of their awards. That one-year timeframe expires on August 15, 2017. In short, the obligation to perform (construct, equip, and staff a fully-operational cultivation facility) commenced on pre-award and culminates with a license upon performance of those mandatory requirements. Grower Awardees reasonably relied upon that statutory and regulatory framework and expended substantial consideration in reliance. Grower Awardees invested time, resources, and funds on behalf of the State's medicinal cannabis program and fully expect that the State will hold up its end of the agreement. That is the essence of a property right – and one which Movants should have a right to protect in these proceedings.[8]

The Court previously denied intervention to protect that vested interest, holding that the grower Movants were adequately protected by the Commission. *Id.* While that holding is on appeal, it can no longer be considered to have any applicability in light of the broad scope of the TRO and the undisputed facts set forth in two recent pleadings filed by AMM and the Commission, both of which clearly demonstrate that the Movants' interests are *unique* and different from those of the State. As evidenced therein and herein, the State's policy interests are substantially different from Grower Awardees' business and financial interests and Patients' interests, which concern the timely provision of critically important medicine for the benefit of their health. *See Guardians v. Hoover Montana Trappers Ass'n*, No. CV 16-65-M-DWM, 2016 WL 7388316, at *2 (D. Mont. Dec. 20, 2016) ("[T]he government's representation of the public interest may not be 'identical to the individual parochial interest' of a particular group just because 'both entities occupy the same posture in the litigation.'") (quoting *Citizens for*

[8] *See* footnote 7 above.

Balanced Use v. Montana Wilderness Ass'n, 647 F.3d 893, 899 (9th Cir. 2011) (quoting *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009))).

No other party adequately represents the Movants' vested interests. Indeed, no other party represents the Movants' interests at all, and they must be permitted to intervene as of right, as well as due process, fundamental fairness and settled law. *Id.* (holding trade association and coal mine owner had right to intervene under federal equivalent to Md. Rule 2-214(a) because, while regulatory agency had interest in defending regulatory process, trade association had interest in how regulation would affect its members and mine owner had a significantly protectable interest in litigation challenging regulatory decision that would impair operation of his mine).

C. The Motion for Preliminary Injunction Should Be Denied

The motion for preliminary injunction should be denied after a full adversary hearing.[9] This memorandum is submitted as a pre-hearing memorandum, and the facts set forth herein are in the nature of a proffer of oral testimony and documentary exhibits that will be offered into evidence at the full adversary hearing required by Rule 15-505(a).[10] An outline of some of the reasons for denial follows:

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[9] Pursuant to Rule 15-505(a): "A court may not issue a preliminary injunction without notice to all parties and an opportunity for a full adversary hearing on the propriety of its issuance." There are no exceptions in the Rule.

[10] Movants object to proceeding on June 2, 2017. Because intervention was previously denied, Movants are not presently afforded adequate time for them to prepare for a full adversary hearing. For example, as reflected in previous filings in this case and the related GTI/MCP case, other parties have conducted discovery from which the Movants have been excluded. Those filings demonstrate that Movants' counsel sought to attend the Miran deposition, but were excluded. The Robshaw deposition, and perhaps others, were conducted with no notice to Movants. Movants have not been served with all pleadings filed in this matter, or with discovery responses that have been exchanged by the parties. Due process requires a reasonable opportunity to prepare for a hearing at which so much (*i.e.*, the life of 15 business that have expended tens, if not hundreds, of millions of dollars in preparation of operation, and the health of Jane and John Doe) is at stake. A motion to postpone the June 2, 2017 hearing is being contemporaneously filed.

First, there is no likelihood of success on the merits. AMM lacks standing and injury, and additionally AMM is barred by the administrative mandamus rule and the doctrine of laches. Further, AMM's request seeks to deprive the Movants of vested property rights without due process.

Second, the balance of convenience tips markedly against injunctive relief. What is at stake for Jane and John Doe is neither abstract nor mere monetary relief such as AMM seeks. Jane and John seek relief from real pain and suffering. A preliminary injunction would derail this nascent industry, result in layoffs of dozens of wholly-innocent Maryland workers, terminate time-sensitive studies of new medical therapy, damage innocent investors, adversely impact wholly-innocent processors and distributors, and, in the end, deprive seriously-ill Maryland patients of needed medical care. *See* affidavits attached as Exhibit A.

Third, AMM has not shown, and cannot show, irreparable injury. Based on information and belief, it ranked approximately 60th in the RESI study. AMM should be compelled to produce its Application, ranking, financial information, leases (if any), contracts with third parties, and employment agreements, under protective order if appropriate, so that it may be cross-examined on whether it meets the requirements for approval and has standing to maintain this action. This Court should not be asked to, and cannot, resolve the issues presented without knowing the facts surrounding AMM's application, and Movants are prejudiced by being compelled to litigate in the dark.

Fourth, granting relief would be contrary to the public interest, as shown by Movants Jane and John Doe, the additional patients' affidavits submitted herewith, Exhibit A, and the Commission's May 24, 2017 Supplement to its Opposition to the Motion for TRO, as well as Mr. Weidenfeld's affidavit in the GTI case, attached hereto as Exhibit B. Each of those papers

demonstrates that patients are being deprived of treatment they need. That is unconscionable. The General Assembly has determined that it is the public policy of Maryland to provide medicinal cannabis forthwith. It was fully aware of AMM's claims in the prior legislative session and it chose not to disrupt the ongoing process. AMM's position is wholly at odds with that policy and legislative intent.

ARGUMENT

II. ISSUES PRESENTED

1. Is AMM, a dilatory business that knowingly waited too long to seek relief, and that has not shown that it is ready and able to perform time-sensitive tasks, entitled to disrupt and halt medical therapy, harm wholly-innocent downstream growers, patients, doctors, caregivers, and other businesses, cause substantial damages as quantified elsewhere, and deprive Movants of vested property rights?

2. Is AMM entitled to a preliminary injunction when it has no likelihood of success, the balance of convenience tips markedly against AMM, AMM has suffered no cognizable injury other than self-inflicted ones, and the public will be indisputably, irrevocably, and irreparably harmed?

3. If so, what is an appropriate bond for a plaintiff with $10 million or more of capitalization when the preliminary injunction will cause at least tens of, if not hundreds of, millions of dollars in harms and untold pain and suffering to innocent persons?

III. THE TRO SHOULD BE DISSOLVED OR, AT A MINIMUM, MODIFIED

Movants have an absolute right, without intervention, to move to modify or dissolve the TRO. Rule 15-504(f) and the TRO itself provide that a "person affected by the order" may make such an application to the Court. Neither the Rule nor the TRO require intervention as a prerequisite.[11] Movants are each affected by the TRO. *See* affidavits attached as Exhibit A.

A. The TRO Should Be Dissolved Because Grower Movants' Interests Were Not Protected During the TRO Hearing

As demonstrated throughout this memorandum by the Movants, they have a unique

[11] Alternatively, Rule 15-504(f) confers an unconditional right to intervene under Rule 2-214(a)(1), and this constitutes a motion to intervene as of right on that basis.

interest. The Court previously denied intervention, holding that the interest was adequately protected by the State. That issue is currently on appeal. It is not sustainable on the recently-presented facts.

AMM has argued that injunctive relief is justified because the State "Defendants are *not* market participants, so they do *not* stand to lose economically in the event that the licensing process is halted and/or re-initiated in accordance with Maryland law." *See* AMM's Memo in Support of TRO at 22 (emphasis added). The State has squarely *confirmed* that assertion, noting that the "State['s] interest lies in implementing a well-regulated medical cannabis program to provide patients safe access to treatment." *See* Commission's May 24, 2017 Supplement to Opposition at 1.

Movants support that interest, but also have a unique and *different* interest. Grower Movants *are* market participants and *do* stand to lose economically if the process is halted. *See* affidavits attached as Exhibit A. They have a right to be heard. *Guardians*, 2016 WL 7388316, at *2. AMM has opened the door.[12] Based on AMM and the Commission's pleadings, Movants' unique economic interest is not represented at all, much less adequately. In fact, the Movants requested that the Commission present some of these facts at the TRO hearing. *See* May 25, 2017, email from Movants' Counsel to Assistant Attorney General, Exhibit C. The Commission did not do so.

In addition to being denied their right of due process (and under the Declaratory Judgment Act) to protect that interest, Movants were denied their procedural rights under the Maryland Rules and the TRO should therefore be dissolved. Under Rule 15-504(b), a temporary restraining order may be granted without written or oral notice only "if the applicant or the

[12] On appeal, it will be urged that the door was never closed.

applicant's attorney certifies to the court in writing, and the court finds, that specified efforts commensurate with the circumstances have been made to give notice." In its Motion for TRO, AMM specifically alleged that relief was appropriate because the Commission was proceeding to grant grower licenses *to some of the Movants*. It sought to restrain issuance of *those* licenses to Movants. AMM therefore had actual knowledge that a TRO would *directly* affect Movants' vested property interests and other rights.

AMM failed to notify those Movants and the TRO was granted without notice to Movants. To Movants' knowledge,[13] no certification was made by AMM. AMM's certificate of service reflects service on the Office of the Attorney General, but not Movants. Contrary to the requirements of Rule 15-504(b), there is no finding that "specified efforts commensurate with the circumstances have been made to give notice." Movants have therefore also been denied procedural rights under Rule 15-504, and the TRO should be dissolved.

B. The TRO Should Be Modified Because the $100.00 Bond Is Insufficient

On this Motion, Rule 15-504(f) places the burden of showing that the bond is adequate on AMM. It has not met, and cannot meet, that burden. Hundreds of millions of dollars are being put at risk and substantial amounts of money burned up on a daily basis, due to AMM's actions. *See* affidavits attached as Exhibit A. AMM is capitalized at $10 million and is more than able to bond the risk, as it should be required to do,

In seeking a grower license, AMM must show that it has financial resources adequate to build and staff a cannabis growing facility. It has alleged that it has those resources and therefore should be able to post a substantial and reasonable bond. In ¶3 of the affidavit of its

[13] Movants were not present at the TRO hearing and have ordered an expedited transcript, but do not know precisely the contours of that hearing.

CEO, Dr. Daniel, AMM states that it has raised or secured commitments in excess of $10 million in capitalization. In ¶6 of AMM's Complaint, AMM alleged that it "had verified capitalization of more than 9 million dollars...."

Initially, in setting the bond, the Court should consider the actual, quantifiable "burn rate" (*i.e.*, ongoing monthly expenses) that injunctive relief will cause involved businesses.[14] Of course, the economic value of pain and suffering caused to patients will also be substantial, and there are many other injuries. Representative of only a few of the business entities, "burn rates" follow:

- Curio Cultivation, LLC – approximately $200,000.00 per month – Affidavit of Michael Bronfein;
- Maryland Compassionate Care and Wellness, LLC – approximately $175,000.00 per month – Affidavit of Mitchell P. Kahn;
- Freestate Wellness, LLC – approximately $150,000.00 per month – Affidavit of Cary D. Millstein;
- Green Leaf Medical, LLC – approximately $95,000.00 per month – Affidavit of Frank D. Boston III, Esq.;
- SunMed Growers, LLC – approximately $80,000.00 per month – Affidavit of Jacob Van Wingerden.

The Court should also consider the very substantial investments of growers, processors, dispensaries, patients who have registered for care, registered caregivers, physicians who have registered to provide care, and employees that are being put at risk by AMM. *See* affidavits attached as Exhibit A. Mr. Bronfein's company has invested $20 million; Mr. Kahn's company has invested approximately $10 million; Mr. Boston's and Mr. Van Windergen's companies

[14] Rule 15-503(a) states: "Except as otherwise provided in this Rule, a court may not issue a temporary restraining order or preliminary injunction unless a bond has been filed. **The bond *shall*** be in an amount approved by the court for the payment of *any* damages to which a party enjoined ***may*** be entitled as a result of the injunction." (Emphasis added.)

have each invested approximately $6.5 million; Mr. Jensen's company has invested $1.5 million; and Dr. Roy's has spent over $750,000.00.

Further, as set forth in the accompanying affidavits, employees have been hired. Some have quit other jobs and purchased homes here. They will be laid off. *Id.* On these and other facts, the $100.00 bond is wholly inadequate to protect.

AMM should be compelled to provide its current and last audited financial statements and ranking at the next hearing and be subject to cross-examination, so that the Court may adequately assess a TRO bond and, separately, a preliminary injunction bond if such an injunction issues (which it should not). A proposed order is attached. It is requested that it issue prior to the hearing.

C. The $100.00 Bond Is Effectively an Improper Waiver of a Bond

Rule 15-503(c) provides for waiver of a bond only on specified conditions. The $100.00 nominal bond is effectively an improper waiver of the bond requirement.

Rule 15-503(c) states: "On request, the court may dispense with the requirement of surety or other security for a bond if it is satisfied that (1) the person is unable to provide surety or other security for the bond, (2) substantial injustice would result if an injunction did not issue, and (3) the case is one of extraordinary hardship. The request shall be supported by an affidavit or testimony under oath stating the grounds for entitlement to the waiver." (Emphasis added.)

A $100.00 bond for a $10 million company seeking to enjoin 15 cannabis growers who have hundreds of millions dollars at stake and other undertakings and commitments at risk is effectively a waiver of the bond requirement. AMM has not complied with Rule 15-503(c). The TRO should be dissolved or modified as set forth herein and in the proposed order attached hereto.

IV. MOVANTS SHOULD BE ALLOWED TO INTERVENE BECAUSE THEY HAVE BEEN WRONGFULLY DEPRIVED OF A VESTED PROPERTY RIGHT WITHOUT DUE PROCESS AND ARE NOT ADEQUATELY REPRESENTED BY THE COMMISSION

This request for intervention is based on changed facts and additional equities. In its original oppositions to intervention, AMM misdirected the Court. It argued that "the only party bound by the judgment in this case is the Commission," and asserted that "[t]he pre-approved growers will neither assume legal obligations *nor lose legal rights*." *See* AMM's January 5, 2017, Opposition to Intervention at ¶10 (emphasis added). AMM argued that, if it prevailed, "the process will be delayed, but *nothing* in the process will foreseeably change to the detriment of the pre-approved growers." *See* AMM's February 9, 2017, Opposition to Intervention at ¶14 (emphasis added).

That was not tenable then, and it is flatly wrong now. The consequences of it have been profound. Now, in direct contradiction of its earlier representations, and after excluding Movants from pleadings, depositions, and discovery, AMM seeks to enjoin the pre-approved growers, deprive them of vested legal rights, and takes multiple other actions to their detriment. Intervention is necessary based on both the original facts and AMM's changed position. AMM should be judicially estopped from taking a position contrary to its representations.[15]

Movants have thoroughly briefed the requirements of Rule 2-214. This is a renewal of the prior intervention motion, and an additional and supplemental motion to intervene, as of right and permissively. We respectfully direct the Court's attention to Movants' January 11, 2017 Reply in Support of Motion to Intervene, Consolidate, and Specially Assign, incorporated herein,

[15] Movants have been irrevocably prejudiced by AMM's misdirection.

wherein Movants noted that Rule 2-214 is a rule of practicality.[16]

As noted in that memorandum at 8, the applicable test for a protectable interest is whether a proposed intervenor ***may*** or ***could*** be bound by a judgment in the action. *Maryland-Nat. Capital Park & Planning Comm'n. v. Town of Washington Grove,* 408 Md. 37, 75 (2009). Here, there can be no dispute that Movants ***are*** bound by the TRO, and would be bound by a preliminary injunction. In their January 25, 2017 Reply memorandum, Movants cited to the Declaratory Judgment Act, Cts. & Jud. Proc. §3-405(a)(1) and Rule 2-211(b) which conferred indispensable party status on them. They cited *Kennedy Temporary v. Comptroller,* 57 Md. App. 22, 40-41 (1984), for the proposition that an awardee is a necessary party in a bid protest challenging a procurement. All of those principles, set forth in more detail therein and incorporated by reference, support this Motion which is based on a direct, immediate, and detrimental impact on Movants. Movants further argued previously, and reiterate herein:

> If AMM prevails, and it should not, three things will inexorably follow. *First*, the availability of medical treatment for Jane and John Doe will be delayed indefinitely as an entirely new application process is conducted. *Second*, the State will have wasted $2 million dollars processing the first round of applications, solely because AMM failed to timely object. *Finally*, the wholly innocent Grower Awardees will be stripped of their awards and lose their investment. That is prejudicial and meets the standard of intervention under both prongs of Rule 2-214.

Id. at 4.

A. Movants Obtained a Vested Property Right On August 15, 2016, and Have Been, and Are Being, Deprived of It Without Due Process

It is beyond disingenuous for AMM to assert that grower pre-awardees, who have *qualified* for licenses and expended enormous sums of money, have no interest to be protected while AMM, which was *rejected* and constructed nothing, seeks injunctive relief because its

[16] Movants also incorporate their December 30, 2016 motion to intervene and proposed intervenors' motion to dismiss, as subsequently amended, herein.

"lost" interest in a grower's license is worth millions of dollars and the first two years of operation are additionally valuable because of the first-to-market rights. *See* AMM Memo at 14, 23. AMM cannot have it both ways. Its position is unsustainable and it is beyond doubt that the Movants have protectable interests in this lawsuit.

As noted at the outset, Movants' rights vested on August 15, 2016. A review of the applicable Regulations demonstrates why. Simply stated, the two-stage process is that Stage 1 awardees must do what they promised to do and, upon completion and inspection, they are awarded a license. This is in the nature of a contractual agreement with the State. A fully-qualified Grower Awardee who meets the statutory and regulatory prerequisites and is fully operational within a year *will* be issued a license. In fact, the Commission so testified. *See* Robshaw Depo. at 44.[17] Grower Awardees have, in fact performed and are fully operational. *See* affidavits attached as Exhibit A. It is indisputable, therefore, that Grower Awardees have a protectable property interest to defend in these proceedings.

Indeed, as a reflected in the regulations, once a Grower Awardee is fully operational and has built its facility in accordance with approved plans, submitted a security plan, passes a criminal background check, submits audited financial statements, and passes its inspection on or before August 15, 2017, a license is issued. *See* Robshaw Depo. at 44. COMAR 10.62.08.07 provides:

> A. After an applicant has been issued a pre-approval for a license under this chapter the applicant shall submit to the Commission, as part of its application:
>
> (1) An audited financial statement for the applicant and any proposed grower agents; and

[17] AMM's counsel asked Commissioner Robshaw: "[M]y understanding [is] that the process is as follows. There was [sic] provisional approvals, right, and then after provisional approval a license will be issued after certain requirements are met, is that correct?" Commissioner Robshaw answered "Correct." Robshaw Depo. at 44. AMM, having elicited and offered that evidence, is bound by it.

(2) Payment of the stage 2 application fee specified in COMAR 10.62.35

B. The Commission may issue a license either to grow medical cannabis or to grow medical cannabis and distribute it to qualifying patients and caregivers on a determination that:

(1) All inspections are passed and all of the applicant's operations conform to the specifications of the application as pre-approved pursuant to Regulation .06 of this chapter;

(2) The proposed premises:

(a) Are under the legal control of the applicant;

(b) Comply with all zoning and planning requirements; and

(c) Conform to the specifications of the application as pre-approved pursuant to Regulation .06 of this chapter; and

(3) The first year's license fee specified in COMAR 10.62.35 has been paid.

Movants, however, have been denied substantive and procedural due process for reasons set forth throughout this memorandum. They are being deprived of vested property rights without notice or an opportunity to be heard.[18]

B. Movants Are Not Adequately Represented In This Action

Movants incorporate by reference §III.B of their January 11, 2017 Reply in Support of Motion to Intervene, Consolidate, and Specially Assign, wherein they explained why the State does not adequately represent them under *Maryland-Nat. Capital Park & Planning Comm'n. v. Town of Washington Grove,* 408 Md. 37, 75 (2009), and related decisions cited in that memorandum. As before, Movants are not critical of the Office of the Attorney General. Instead, it is the fact that Movants' *interests* are *different* from those of the State that creates the inadequate representation issue.

[18] "When governmental institutions regulate careers or occupations in the public interest through the licensing process, their definitions of rights in a license *or other statutory entitlement* may give rise to competition rights and constraints that define property interests." *Iheama v. Mahoning Cty. Mental Health Bd.,* 115 F. Supp. 2d 866, 871 (N.D. Ohio 2000) (emphasis added).

As noted in the prior pleading: "The State's interest is in awarding fifteen grower licenses. The Grower Awardees' interest is in the four Stage I licenses awarded to them. The interests may, or may not, be similar. But they are not identical. Jane and John Doe's interest is in receiving therapy quickly. The State's interest is in defending its process. Again, the interests are not identical."

Based on AMM's Motion, the differences are now in greater focus. *See* discussion, above in §III.B. AMM has opened the door by asserting that the State has no economic interest to protect, while Movants indisputably have such interests to protect.[19]

C. Proposed Intervening Pleading, Motion, or Response

Rule 2-214(c) provides that an intervention motion "shall be accompanied by a copy of the proposed pleading, motion, or response setting forth the claim or defense for which intervention is sought." Exhibit 1 to the December 30, 2016 Motion to Intervene is incorporated herein, and supplemented by the legal arguments contained herein and the affidavits submitted in support. Each new party added herein joins in Exhibit 1.

V. AMM DOES NOT, AND CANNOT, MEET THE HIGH STANDARD FOR PRELIMINARILY ENJOINING NECESSARY MEDICAL TREATMENT

Every party to this action agrees on one point. Medical cannabis is advantageous to many patients, and it can alleviate pain and suffering at a low cost, and with little or no medical risk or adverse side effects. That is the beneficent outcome that AMM seeks to enjoin. Quite simply, AMM's Motion, if granted, will impose untold pain and suffering on innocent people, and that undisputed fact should never be forgotten.

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[19] AMM has argued that injunctive relief is justified because the State "Defendants are *not* market participants, so they do *not* stand to lose economically in the event that the licensing process is halted and/or re-initiated in accordance with Maryland law." *See* AMM's Memo in Support of TRO at 22 (emphasis added). Movants *are* market participants. It is therefore undisputed that the Commission cannot represent Movants' interests.

The legal impact of that fact is clear. The *denial* of medical benefits, and resultant loss of essential medical services, constitutes an *irreparable* harm to these individuals. *Edmonds v. Levine,* 417 F. Supp. 2d 1323, 1342 (S.D. Fla. 2006). The Movants, MCP,[20] and the State have filed undisputed affidavits to that effect.

It is clear that in this, as in other contexts, justice delayed is justice denied. *Stanford v. Dist. Title Ins. Co.,* 260 Md. 550, 554 (1971). Here, treatment delayed is treatment denied. Patients have waited four years while AMM has dithered since the middle of 2015. It is far too late in the day to tell them, "be patient, we're working on it." AMM's actions are callous and unconscionable. It more than willingly accepts a dispensary license, with no complaint about disparity or impact on its colleagues in that process, but seeks to deprive innocent and ill Marylanders of relief in order to seek additional profit.

AMM's entire Motion is grounded on a faulty factual predicate and unproven assumption. It posits: "Because the Commission presently can award no more than 15 medical cannabis growing licenses (*see* Health Gen. § 13-3306(a)(2)), those applicants not selected for Stage 1 pre-approval are precluded from participating in the program." AMM Memo at 10. That assertion is flatly incorrect. Any number of Stage 1 pre-awardees may fail to timely qualify for a license, in which event other applicants – perhaps even AMM – will be selected.

AMM errs when it suggests that it seeks to preserve the status quo.[21] The status quo is that, since August 15, 2016, the grower Movants have had a contractual right to licensure, upon performance, and they have performed. The status quo is that the grower Movants and

[20] The affidavit of Mr. Weidenfeld, counsel to MCP who is suffering from Parkinson's disease, is incorporated herein.

[21] "Ordinarily, the status quo is the last, actual, peaceable, non-contested status which preceded the pending controversy. *Eastside Vend Distributors, Inc. v. Pepsi Bottling Grp., Inc.*, 396 Md. 219, 246 (2006).

thousands of others have relied to their detriment on decisions made on August 15, 2016, while AMM sat silent. They have registered as patients and providers, and worked to be growers, processors, and distributors. AMM belatedly seeks to change the status quo.

As recognized in the TRO order and Rule 15-505(a), a preliminary injunction is an adversary hearing. Movants request the opportunity to present testimony. Out of an abundance of caution, and with all rights reserved, affidavits are submitted herewith as a partial factual proffer.

A. AMM Misdirects the Court as to the Relevant Facts

AMM would have this Court believe that the Commission did nothing to achieve racial and ethnic diversity. That is not correct. Initially, it is noteworthy that efforts to achieve racial and ethnic diversity are not a one-time process: "On June 1 of each year, each licensee shall submit a report in a manner determined by the Commission regarding the licensee's minority owners and employees." COMAR 10.62.08.11. Efforts to achieve diversity are continuous and ongoing.

Nor is AMM's portrayal accurate. The Commission's preliminary industry ownership demographics show 35% racial and ethnic diversity participation, and 57% minority participation including females.[22] The employee demographics are 58% racial and ethnic diversity participation and 75% minority participation including females.[23] The Commission states: "I am encouraged by this preliminary data and I must emphasize preliminary, which shows that the Commission is on the right path to achieving a diverse group of industry participants. . . . The Commission is aware and believes that diversity is an essential element in making the medical

[22] This is posted on the MMCC web site and is judicially noticeable. Rule 5-201. http://mmcc.maryland.gov/Pages/current-diversity-statistics.aspx

[23] *Id.*

cannabis program a success, and will continue to track this important demographic data. As we measure the industry's progress, the Commission recognizes that corporate structures may change for each entity, while always striving for inclusiveness and equal opportunity. We still have work to do and look forward to utilizing a diversity consultant."[24] Among growers, 15.3% are owned by racial and ethnic minorities, and 35.8% are owned by minorities including females.[25]

1. On the Facts Presented, It Would Have Been Unconstitutional to do What AMM Requests

The starting point is, of course, the Attorney General's advice and conclusion that absent a disparity study, the requirement to actively seek racial and ethnic diversity was unconstitutional. It would have been unconstitutional for the Commission to do what AMM asks. In fact, the Commission received legal advice not to consider racial and ethnic diversity. Robshaw Depo. at 104.

It is far from clear that the Commission had the administrative[26] or legal power to then conduct a diversity study. A number of decisions hold that post-enactment disparity studies are irrelevant. *E.g., Associated General Contractors v. Drabik,* 214 F.3d 730 (6th Cir.2000), *cert. denied,* 531 U.S. 1148 (2001).[27] This holding is particularly apposite to newer statutes, such as

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[24] *Id.*

[25] http://mmcc.maryland.gov/Documents/Preliminary%20Industry%20Demographic%20Data.docx%20(1).pdf

[26] The Commission, as an administrative agency, "is a creature of statute, [which] has *no inherent powers* and its authority thus does not reach beyond the warrant provided it by statute." ***Blakehurst Life Care Cmty./The Chestnut Real Estate P'ship v. Baltimore Cty.,*** 146 Md. App. 509, 519 (2002) (emphasis added) (internal quotations omitted). There is certainly no statutory provision authorizing it to conduct a disparity study, and no provision requiring that it do so. As such, it lacked authority to conduct a disparity study.

[27] There is a split of authority, with some decisions permitting post-enactment studies. Antoine Marshall, Pathways for Procurement: Operating Minority Business Programs After *Rothe*, 6 S. Region Black L. Students Ass'n L.J. 1 (2012).

the Act involved here. Thus, there are many solid administrative and substantive reasons why the Commission could not have undertaken such a study.

2. *The Commission Took Other Actions to Achieve Racial and Ethnic Diversity*

But the Commission did take action. As noted in SB 1197, Exhibit D, which is judicially noticeable, Rule 5-201, the Commission is engaged in "ongoing" efforts to obtain diversity. Movants have been deprived of discovery and excluded from depositions, but AMM has filed Commissioner Robshaw's deposition. Like SB 1197, the Commissioner also described "outreach" to the African-American community. *Id.* at 49-50. The Commission had discussions about what it could do to actively seek racial and ethnic diversity, *id.* at 50-51, and hired a diversity consultant to help, *id.* at 50. Commissioner Robshaw testified:

> There was discussion, ***a great deal of discussion,*** between Commission members and the Maryland Department of Transportation about diversity studies and outreach. And they offered a number of suggestions that were essentially the same as we had offered in that original conversation. . . . ***We were interested in the possibility of doing a diversity study*** and became aware that MDOT is the state agency that does that type of work. So we had a meeting with them. . . . We discussed at that meeting the possibility – or the – the actions that would be needed to start that type of process.

Id. at 71-73 (emphasis added).[28] He explained that no study was conducted because of the problems of doing so in an "upstart" industry. *Id.* at 96. That is "why it could not be done at that time." *Id.* In fact, the Commission discussed whether a study could be done in those circumstances, *id.* at 98; however, MDOT felt that certain other industries were not comparable. *Id.* at 99. Robshaw stated that MDOT personnel are the "specialists in this field. It's certainly not my specialty." *Id.* at 99. In short, while one may agree or disagree with the administrative

[28] AMM's counsel did not follow-up. *Id.* at 73. Movants could not participate. Later, Robshaw testified that MDOT suggested that the Commission hire a diversity consultant, *id.* at 74, which it did.

agency's ultimate decision, it is supported by substantial evidence in the record and not arbitrary or capricious.

B. Legislative History

That conclusion is supported by the legislative history. This Court should not impose a duty that the General Assembly considered and rejected. It is for the General Assembly, and not the Court to correct infirmities, if any, in Commission's proper action under a statute enacted without a disparity study. Even if there were an infirmity in the Commission's actions as they relate to the Commissions interpretation and execution of the statute, the remedy for such an error would be for the General Assembly, not the Court. The Attorney General's letter – which is in the administrative record – deemed the provision severable, rendering it a nullity that only the General Assembly could correct.

The 2017 Fiscal and Policy Note to HB 1443, Exhibit E, states that the bill would have mandated a disparity study by July 1, 2017. The study would have been conducted by MDOT as the certification agency, not by the Commission. It would have included other measures. The Fiscal Note states that the disparity study process would last approximately eight months and cost $50,000.00. The Fiscal Note states: "Also, any delays in completing the disparity study and establishing a process to review and evaluate applicants for certification as small medical cannabis business enterprises do not affect Stage One pre-approvals for licenses already awarded; those business entities may proceed to final licensure." See page 15. This is a clear indication that the General Assembly did not wish to disrupt the pre-awards in order to achieve racial and ethnic diversity.

Attached is a copy of DHMH's March 29, 2017 letter to the Chair of the Senate Finance Committee re SB 1197. Exhibit F. It states that the bill "clearly defines several race-neutral measures to be used by the MMCC when actively seeking, to the extent permitted by State and

federal law, racial, ethnic, and geographic diversity when licensing medical cannabis growers, processors, and dispensaries."

A copy of SB 1197 is attached. Exhibit D. It would have mandated "ongoing[29] outreach to small, minority, and women business owners. . . ." It would have developed partnerships with traditional minority-serving institutions. It would have mandated at least 5% minority participation.

The Commission supported SB 1197, which did not pass. Nor did other bills. There is only one conclusion to draw. The General Assembly has expressed its intent. Fully aware of the issue raised by AMM, the legislature determined that the program should proceed without interruption.

C. There Is No Likelihood That AMM Will Succeed on the Merits

AMM cannot succeed on the merits. Movants incorporate by reference Exhibit 1 to their December 30, 2016, filing ("Dec. 2016 Exhibit 1"). Additionally, AMM lacks both standing and injury, as noted above. Quite simply, it is ranked too low and is not in line for an award regardless.

As set forth in Dec. 2016 Exhibit 1 at 7, *et seq.*, this is an action for administrative review of a quasi-judicial agency action and it was not timely filed under the applicable administrative mandamus rule. That time bar cannot be circumvented using the Declaratory Judgment Act. *Id.* at 14. Even if not barred under that provision, it is barred by laches. *Id.* at 15, *et seq.* Even if not barred by laches, this is an on-the-record action for judicial review and there is substantial evidence on the record as a whole (which needs to be filed with the Court) to support the presumptively correct, *id.* at 22, agency decision. *Id.* at 19.

[29] The word "ongoing" is noteworthy. AMM incorrectly asserts that the Commission did nothing.

Notably, while AMM is fully aware of the time-bar defenses, it asks this Court to decide in the dark. It purposely avoids disclosing *when* it discovered its claims. *See* AMM Memo at 13 ("Subsequent to learning that it had not been awarded a Stage 1 preapproval to grow medical cannabis in Maryland, AMM came to believe that the law was not followed by the Commission in Stage 1. . . ."). That fact must be disclosed or an inference adverse to AMM should be made.

D. The Balance of Convenience Tips Strongly Against AMM

Movants will suffer irreparable financial harm, pain, and suffering, tipping the balance in their favor. AMM seeks profit. Jane and John Doe seek medicine. The multiple patient affidavits submitted herewith are heartbreaking. AMM could have acted in 2015. It waited until 2017. That is unconscionable when it will delay medical treatment for people in pain. Some of those people will be called to testify on June 2, 2017. The balance is clear. The *denial* of medical benefits, and resultant loss of essential medical services, constitutes an *irreparable* harm to these individuals. *Edmonds,* 417 F. Supp. 2d at 1342.

Additionally, AMM admits that the grower Movants will be irreparably damaged by a preliminary injunction. In it memorandum, it extols the value of the first-to-market privilege. AMM Memo at 23. Inexplicably, it seeks to deprive 15 innocent growers, who have invested millions to obtain that valuable benefit, of that benefit. Each grower affidavit submitted herewith emphasizes the importance of that provision and the impact of its loss.

Even a cursory review of the many affidavits submitted herewith reinforces the conclusion that the balance tips against injunctive relief. Reciting them in detail would lengthen an already long memorandum, and summarizing them would not do them justice. We therefore simply direct the Court's attention to them.

E. AMM Cannot Meet the Burden of Showing that It Will Suffer Irreparable Injury Without an Injunction

AMM has the burden of proving irreparable injury. AMM posits that it will be irreparably injured absent immediate equitable disruption of the licensing process. But, AMM asks this Court to enjoin a therapeutic medical program while at the same time hiding the ball.

AMM should disclose to this Court, under a confidentiality order if needed, precisely what AMM's ranking was and its entire grower license application. Without seeing AMM's application, all other litigants are hamstrung. No one can determine whether AMM is qualified as a licensee, or even if it filed a responsive application. Absent proof that AMM is in fact qualified to be a licensee, it has no standing. Absent proof that its ranking was not in the cellar of the 145 applicants, AMM also lack standing. Further, no one can determine its ownership structure and, given the stakes, Movants should not be compelled to take AMM's assertions at face value.

Movants request that AMM be ordered to produce its application and ranking, as well as ownership interests, and proffer that they would cross-examine AMM at the June 2, 2017 hearing based on that application, ranking, and interests.

Further, AMM lacks injury because it has not shown how many licenses will be granted in the near future. This is not a class action. There is one, single plaintiff. Fifteen licenses are authorized. AMM can assert fear of injury only if all 15 licenses will be issued immediately. Based on information and belief, there is no such danger.[30]

[30] AMM contends that it is too late for the Commission to achieve racial and ethnic diversity; however, AMM admits that the Governor has directed that GOMA conduct a disparity study to ensure diversity. AMM Memo at 21. AMM directly admits that there are still ways to obtain diversity by, for example, MBE contracting, hiring, or retention requirements. Therefore, it will suffer no injury because there is no statutory violation.

AMM has nothing other than a hope that it will receive a pre-award. It offers no supporting facts. That is not a property interest. "To have a property interest in a benefit, a person must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Reese v. Dep't of Health & Mental Hygiene,* 177 Md. App. 102, 154 (2007) (quoting *Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 578 (1972)). If it is being deprived of anything at all, it is losing a mere expectancy, not a right.

F. The Public Interest Militates Strongly Against Injunctive Relief

AMM argues that the public interest is in following statutes. That puts the cat in the hat. Movants believe that the statute was followed and is being implemented. Perfection is not the standard. Here, substantial evidence on the record as a whole supports the presumptively-correct agency decision. Further, other equally-important principles prohibit ambush tactics, and other important Rules and statutes compel joinder and review under narrowly prescribed circumstances. AMM is more than willing to abandon those provisions. Further, AMM's acceptance of a dispensary license, under the exact same conditions that it challenges the grower licenses deprive it of any moral high ground.

There are many who oppose medical cannabis for many reasons – personal, moral, health, or political – and they have every right to do so. But, the elected representatives of the people of Maryland have legalized it under stringent conditions. One may agree or disagree, but it is the law of Maryland. It became the law because people are ill and suffering and there is proof that medical cannabis can relieve that suffering at low cost, low risk, and without serious side effects.

This Court sits in equity in this matter. "[C]ourts of equity will not lend their aid to anyone seeking their active interposition, who has been guilty of . . . inequitable conduct in the

matter with relation to which he [or she] seeks assistance." *Vito v. Grueff,* No. 75, Sept. Term, 2016, 2017 WL 2226685, at *17 (Md. May 22, 2017). Courts of equity enforce agreements even where they contain technical defects. *Bank of Am., N.A. v. Burgess,* No. 02574, Sept Term, 2015, 2017 WL 1461879, at *6 (Md. Ct. Spec. App. Apr. 25, 2017). One who seeks equity must do equity. *Quillens v. Parker,* 171 Md. App. 52, 67 (2006), *aff'd sub nom. Quillens v. Moore,* 399 Md. 97 (2007).

The Maryland Medical Cannabis Act is a *promise* and *commitment* to the seriously-ill people in this State. Article 1 of the Maryland Declaration of Rights states: "That all Government of right originates from the People, is founded in *compact* only, and instituted solely for the good of the whole. . . ." (Emphasis added.) That compact is a promise that medicine that will relieve suffering will not be delayed. Under Article 19 of the Declaration of Rights:

> That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

The public interest is to get needed medicine to innocent patients quickly. History remembers Admiral David Glasgow Farragut for his order in the Battle of Mobile Bay: "Damn the torpedoes, full speed ahead."

VI. PROFESSOR HIGGINBOTHAM'S AFFIDAVIT SHOULD NOT BE CONSIDERED

Professor F. Michael Higginbotham appears to be a highly-respected attorney and nothing contained herein is to the contrary; however, his affidavit is inadmissible, and Movants object to consideration of it in its entirety. The professor is offered as an expert in legal issues, such as constitutional law, equal protection, human rights, and race relations. Higginbotham Affidavit, ¶6. He offers opinions based on "constitutional certainty," *e.g., id.,* ¶8, that are in large part based on news reports, *id.*, Exhs. 4, 6, 7, and 8. That is no more admissible than an

affidavit from an attorney retained by Movants stating that AMM is not entitled to an injunction would be admissible.

It is well-settled that:

> Under Maryland Rule 5–702, "[e]xpert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." "In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) *the appropriateness of the expert testimony on the particular subject*, and (3) whether a sufficient factual basis exists to support the expert testimony." *Id.*

Henson v. State, 212 Md. App. 314, 325 (2013) (emphasis added), *cert. denied*, 434 Md. 314 (2013) (political robocalls).

Relying on the emphasized portion of the Rule, the Court of Special Appeals held:

> *Although an expert opinion as to an ultimate issue of fact is admissible pursuant to Maryland Rule 5–704, an expert's opinion on a matter of law is inadmissible. Waltermeyer v. State*, 60 Md. App. 69, 81, 480 A.2d 831 (1984). Even if appellant was entitled to the benefit of expert testimony, his experts could not have testified, as desired, to the ultimate legal issue of responsibility for the robocall.

Id. at 327 (emphasis added).[31]

Finally, it is wholly irrelevant that the Governor and Attorney General allegedly criticized the program. AMM Memo at 18-19. Movants object to those arguments. While both are elected and respected officials, their political views are irrelevant to whether the statute was properly implemented.

[31] There is also no basis to conclude that news articles meet the foundational requirement of Rule 5-703(a) ("If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence."). Movants therefore object on that basis also. Further, AMM's motion for preliminary injunction relies extensively on that inadmissible and unauthenticated hearsay. *See, e.g.*, AMM Memo at 17 ("The article goes on to state.... Raquel Coombs, a spokeswoman for Attorney General Frosh, indicated. . . ."). Trial by newspaper is not permitted, and Movants object.

VII. THE GTI AND MCP CASE SHOULD BE CONSOLIDATED WITH THIS ONE

While AMM previously opposed consolidation by arguing the GTI/MCP and AMM cases were different, it took a 180 degree turn in the deposition of Commissioner Robshaw. In that deposition, AMM's counsel stated: "*Geographic diversity is part of our complaint. Not* just racial and ethnic diversity. It's alleged in the complaint that our client's geographic diversity was not considered. . . ." Robshaw Depo. at 118, 122 (emphasis added). As the Assistant Attorney General properly stated in response: "I'm a little bit concerned that your client took the position in open court that consolidation of your case with GTI was inappropriate because the scopes of the litigation were very different. And now we are looking at using as exhibits discovery from the other case relating to geographic diversity." *Id.* at 123-24.[32] Movants share that concern, and renew and ask for reconsideration of their Motion to Consolidate the two cases based on AMM's admission. AMM is estopped from denying the factual overlap between the cases.

Notably, as Movants previously argued, if relief is granted to AMM, the GTI/MCP case is moot. If AMM enjoins the entire process, GTI and MCP have nothing to be swapped back into. Should they continue to knowingly choose to sit on the sidelines, *see* May 26, 2017 email from Alfred Belcoure, Esq., Exhibit G, rather than oppose AMM's request for sweeping relief that impacts their claims, they are bound by any decision rendered in this matter and may forfeit any and all claimed rights.

VIII. THIS ACTION SHOULD BE STAYED PENDING APPEALS

Several issues are pending on appeal. The Movants have appealed the original order

[32] Other overlaps between the two cases were noted. Robshaw Depo. at 188-89. In fact, AMM asked questions about the swap out and Holistic Industries. *Id.* at 226. It has now admitted the substantial overlap of its case with the GTI/MCP case.

denying their motion to intervene. Oral argument has been scheduled in February 2018. *See* COSA Order, Exhibit H.1 and H.2. In light of the foregoing, this action should be stayed pending appeals that determine who properly has a seat at the table.

IX. INCORPORATION BY REFERENCE

The following documents are incorporated by reference in addition to all affidavits submitted herewith, the Mather affidavit submitted by the State, the patient affidavits submitted in the State's Supplemental Opposition, and Mr. Weidenfeld's affidavit. Movants incorporate by reference all pleadings previously filed by any of them in the GTI/MCP case and in this action. Additional exhibits will be submitted at the hearing.

X. CONCLUSION

On August 15, 2016, the Grower Awardees received pre-awards that mandated timely and costly performance and vested rights in them. On the same day, Jane and John Doe, and others like them, received hope. The Grower Awardees spent millions in reliance. Innocent people left their jobs to work for them, and purchased homes in reliance on the anticipated business. Patients registered and doctors prepared to provide treatment.

AMM knew everything that was happening. It knew the actions, regulations, costs, and medical needs. It knew from the date of the Attorney General's letter, from the date the regulations were changed to omit race and ethnicity as a factor, and from the date the application did not ask for race or ethnicity, that the Commission was not going to consider race or ethnicity. But, it did nothing. Well, not quite. In fact, it obtained a dispensary license under the same conditions. If its motives were beneficent, as it now claims, it would be challenging that process also. After all, minority businesses suffered the same alleged disadvantage there. But AMM does not challenge that process because it is profit-motivated there and here.

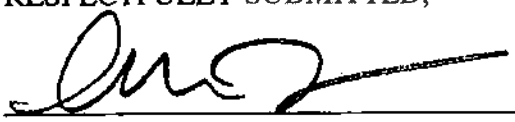
Quite simply, AMM is willing to inflict pain and suffering on innocent people, and inflict damages on innocent people, in order to make its profit. Nothing is wrong with asserting an alleged legal right, but it must be done timely and under proper procedures. If AMM had acted timely, the prejudice could have been mitigated. But, it did not do so. It waited until all of the prejudice matured, and then sprung its ambush. In doing so, it failed to comply with both substantive law and procedural requirements. The TRO should be dissolved and the motion for a preliminary injunction denied.

Wherefore, the Movants request that this Court order AMM to bring the requested current financial statements, audited financial statements, application, and ranking to the hearing, dissolve and modify the TRO, deny the request for preliminary injunction, and for such other and further relief as may be necessary or appropriate.

REQUEST FOR HEARING

Movants request a hearing on their motion. Pursuant to Rule 15-504(f): "The court shall proceed to hear and determine the application at the earliest possible time."

RESPECTFULLY SUBMITTED,



Arnold M. Weiner
Michael D. Berman
Barry L. Gogel
RIFKIN WEINER LIVINGSTON LLC
2002 Clipper Park Road, Suite 108
Baltimore, Maryland 21211
AWeiner@rwllaw.com
MBerman@rwllaw.com
Bgogel@rwllaw.com
(410) 769-8080 Telephone
(410) 769-8811 Facsimile

Alan M. Rifkin
RIFKIN WEINER LIVINGSTON LLC
225 Duke of Gloucester Street
Annapolis, Maryland 21401
ARifkin@rwllaw.com
(410) 269-5066 Telephone
(410) 269-1235 Facsimile

Counsel for Movants

CERTIFICATE OF SERVICE

I HEREBY certify that on this 30th day of May 2017, a copy of the foregoing was served, by first-class mail, postage prepaid, and via email, on:

Heather B. Nelson
Robert D. McCray
Office of the Attorney General
Maryland Department of Health & Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201
Heather.nelson1@maryland.gov
Robert.mccray@maryland.gov

Attorneys for Defendants

Byron L .Warnken
Byron B. Warnken
Warnken, LLC
2 Reservoir Circle, Suite 104
Baltimore, Maryland 21208

John A. Pica, Jr.
JOHN PICA AND ASSOCIATES, LLC
14 State Circle
Annapolis, Maryland 21401

Brian S. Brown
Christopher T. Casciano
Brown & Barron, LLC
7 St. Paul Street, Suite 800
Baltimore, Maryland 21202

Attorneys for Plaintiff Alternative Medicine Maryland, LLC

Phillip M. Andrews
Christopher C. Jeffries
Sheila R. Gibbs
Louis P. Malick
Kramon & Graham, P.A.
One South Street, Suite 2600
Baltimore, Maryland 21202
pandrews@kg-law.com
cjeffries@kg-law.com
sgibbs@kg-law.com
lmalick@kg-law.com

Attorneys for Plaintiff GTI Maryland, LLC

Alfred F. Belcuore
Law Offices of Alfred F. Belcuore
888 17th Street, NW, Suite 904
Washington, DC 20006
Alfred.belcuore@belcuorelaw.com

Edward Weidenfeld
The Weidenfeld Law Firm, P.C.
888 17th Street, NW, #1250
Washington, DC 20006
edward@weidenfeldlaw.com

Attorney for Plaintiff Maryland Cultivation & Processing, LLC

Bruce L. Marcus
Sydney M. Patterson
6411 Ivy Lane, Suite 116
Greenbelt, Maryland 20770
bmarcus@marcusbonsib.com
spatterson@marcusbonsib.com

Attorneys for Proposed Intervening Defendant, Holistic Industries, LLC

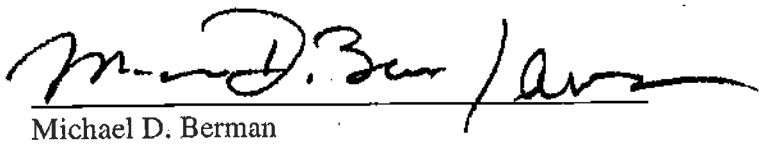
Paul D. Bekman
300 W Pratt Street, #450
Baltimore, Maryland 21201
bekman@bmalawfirm.com

Robert B. Schulman
Schulman, Hershfield & Gilden, P.A.
One East Pratt Street, Suite 904
Baltimore, Maryland 21202
rbs@shg-legal.com

Attorneys for Proposed Intervenor, Temescal Wellness of Maryland, LLC

Ira Kasdan
Allan Weiner
Bezalel Stern
Joseph D. Wilson
Kelley Drye & Warren LLP
3050 K Street, NW, #400
Washington, DC 20007
IKasdan@KelleyDrye.com
AWeiner@KelleyDrye.com
BStern@KelleyDrye.com
JWilson@KelleyDrye.com

Attorneys for Proposed Intervenor, ForwardGro, LLC



Michael D. Berman

SUBSET OF AFFIDAVITS ATTACHED AS EXHIBIT A[1] TO MOTION

[1] Movants attached 50 affidavits from patients, growers, dispensers and medical professionals

Exhibit A.4

ALTERNATIVE MEDICINE MARYLAND, LLC, *et al.*, Plaintiff, v. NATALIE M. LAPRADE MARYLAND MEDICAL CANNABIS, COMM'N., *et al.*, Defendants.	IN THE CIRCUIT COURT FOR BALTIMORE CITY Case No. 24-C-16-005801

AFFIDAVIT OF CHARM CITY MEDICUS, LLC –

DISPENSARY SENATORIAL DISTRICT 6

I, the undersigned, declare or affirm as follows:

1. I have personal knowledge of the facts contained herein. I am over 18 years of age and a citizen of Maryland. I am competent to testify to the facts contained herein.

2. Charm City Medicus, LLC is a Maryland limited liability company formed for, among other things, the purpose of seeking a license from the Maryland Medical Cannabis Commission, and then for dispensing medical cannabis for eligible patients through channels established and approved by the laws of Maryland.

3. On December 09, 2016, Charm City Medicus, LLC was approved by the Maryland Medical Cannabis Commission ("MMCC") for a dispensary license, after a rigorous and costly application process.

4. Charm City Medicus, LLC is now concluding the Stage 2 process. Charm City Medicus, LLC proffers that it believes in good faith that it will timely meet, all requirements for Stage 2 approval and licensure.

5. On January 9th, 2017, Charm City Medicus, LLC began taking steps to become operational.

6. As of May 27, 2017, Charm City Medicus, LLC has raised approximately $1,000,000 of capital investment. On May 25, 2017, Charm City Medicus, LLC executed a lease agreement for its dispensary location in Senatorial District 6. Over the last several months, Charm City Medicus, LLC has met with our District 6 Senator (Mr. Johnny Ray Salling), our 7th Council District Councilman (Mr. Todd Crandell) and his staff, the Baltimore County Police Precinct 12 leadership, and has also participated in numerous neighborhood association meetings to introduce our company and discuss the medical cannabis program in Maryland. Through some of these meetings and social media, we have received numerous inquiries from patients and families of patients on when our dispensary would be open and what types of products we would have available. We believed from the beginning we not only had a responsibility to our patients but also to the local residents and businesses therefore we have developed and maintained the relationships necessary to successfully implement the medical cannabis industry into the Maryland market. Additionally, we received a written letter (which was also sent to the Maryland Medical Cannabis Commission) from the President of the neighborhood association in closest proximity to our dispensary location approving the use of the property we recently executed a lease for. This property is already properly zoned per the Baltimore County zoning regulations outlined in Bill No. 61-15 and does not require a special exception. Every day more and more Maryland citizens either struggle or succumb to opiod addiction and through the medical cannabis program we have an opportunity to offer alternative natural medication and save lives – the more program delays, the more citizens we lose to opiod addiction.

We have already executed contracts for architectural and engineering design and drawings with a well-respected Baltimore City architectural firm. We are scheduled for demo and buildout to commence within the next 10 calendar days. We have also contracted out our security

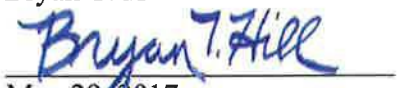
requirements to a local security company for camera, fire/burglary, and biometric entry/exit capabilities to ensure we comply with MMCC regulations. We have scheduled training for our dispensary staff and will be traveling to Colorado and Washington DC to train on site at our consultants successful and compliant dispensary locations. Over the next 90 days we will have invested over $650,000 total since January 2017 to get our dispensary operation up and running to ensure patients have a safe and secure location to obtain their medical cannabis products. Our monthly operational expenses, to include building and employee expenses, is over $100,000. By continuing to delay the program and availability of medical cannabis products, we will have burned through all our capital and funding by mid fall 2017. It is imperative the Maryland medical cannabis program continue as scheduled to ensure patients (who have waited over four years already) have access to medicine but also to support the livelihood and success of the dispensaries who are mostly small businesses owned by Maryland residents.

7. Any challenge to the licensing process creates substantial uncertainty for Charm City Medicus, LLC.

8. I am owner and managing member of Charm City Medicus, LLC.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Bryan T. Hill



May 29, 2017
Executed in Maryland

Exhibit A.6

ALTERNATIVE MEDICINE MARYLAND, LLC, *et al.*, Plaintiff, v. NATALIE M. LAPRADE MARYLAND MEDICAL CANNABIS, COMM'N., *et al.*, Defendants.	IN THE CIRCUIT COURT FOR BALTIMORE CITY Case No. 24-C-16-005801

AFFIDAVIT OF MICHAEL G. BRONFEIN, CEO CURIO CULTIVATION, LLC

I, the undersigned, declare or affirm as follows:

1. I have personal knowledge of the facts contained herein. I am over 18 years of age and a citizen of Maryland. I am competent to testify to the facts contained herein.

2. Curio Cultivation, LLC, is a Maryland limited liability company formed for, among other things, the purpose of seeking a license from the Maryland Medical Cannabis Commission ("MMCC"), and then for cultivating medical cannabis and distributing it to eligible patients through channels established and approved by the laws of Maryland.

3. On August 15, 2016, Curio Cultivation, LLC, was approved by the MMCC for a Stage 1 grower license, after a rigorous and costly application process. Curio Cultivation, LLC, is now concluding the Stage 2 approval and licensure process. Curio Cultivation, LLC, proffers that it believes in good faith that it will timely meet all requirements for Stage 2 approval and licensure and is, in fact, scheduled to receive its final inspection on or about May 31, 2017.

4. I am told that under COMAR 10.62.08.06.E, MMCC may rescind pre-approval "if the grower is not operational within 1 year of pre-approval." Therefore, immediately after pre-approval on August 15, 2016, Curio Cultivation, LLC, began taking steps to become operational on or before August 15, 2017.

5. Growing medical grade cannabis is a highly-technical process that requires a substantial investment and a substantial amount of time and expertise is needed to develop a secure and effective cultivation facility. It is necessary to build or lease an appropriate facility, hire and train employees, purchase expensive and unique equipment, create formulations and test those for commercialization, and take other steps required by law.

6. Curio Cultivation, LLC, has completed the majority of the construction of its State-of-the-Art 56,000 square foot Hygienic Cultivation and Good Manufacturing Practice ("cGMP") manufacturing plant located in Timonium, Maryland, and is scheduled to move into the facility on May 26, 2017. Curio Cultivation, LLC, received its Use & Occupancy permit for the building from Baltimore County on May 16, 2017. Any and all delay is costly. This facility represents a total investment of $20,000,000.00 and is intended to enable Curio Cultivation, LLC, to become a national leader in medicinal cannabis products in traditional pharmaceutical dosage forms. If operations are restrained or enjoined, Curio Cultivation, LLC, will sustain operating losses of approximately $200,000.00 per month.

7. Any restraint or injunction of the licensing process creates substantial uncertainty for Curio Cultivation, LLC, and will cause it to immediately upon the granting, layoff all employees until such time as the matter is resolved and Curio Cultivation, LLC is able to commence operations.

8. The granting of a TRO or injunctive relief will result in immediate layoff of all employees until the issue is resolved. This will cause hardship to Curio's Cultivation, LLC's employees. For example, three of Curio Cultivation, LLC's initial senior managers resigned from well-paying positions in other states, moved their families to Maryland, and in two cases purchased

homes, taking on mortgage debt based on their anticipated income from Curio Cultivation, LLC. The payroll that will be suspended is approximately $209,000 per month.

9. Adding an additional dimension of hardship should a TRO or injunction be issued, Curio Holdings, LLC, the parent of Curio Cultivation, LLC, also has a processing subsidiary whose primary purpose is the manufacture of proprietary medicinal products based on the research and development of Curio's scientific advisory board. The Science Board has developed nine promising compounds and it is anticipated that four of these compounds would be placed in clinical surveys with patients in November 2017, if Curio is able to continue its business operations unconstrained. Therefore, the issuance of a TRO will irreparably damage the health of patients who have waited for four years for Maryland to launch this life changing program.

10. In addition to the foregoing, there is a statutory moratorium on additional grower licenses through June 1, 2018. This is a "first to market" provision and it is an important benefit. Any delay in licensure shortens that benefit and is prejudicial.

11. In addition to the foregoing, I am concerned that if the facility is not operational on or before August 15, 2017, MMCC may rescind pre-approval under COMAR 10.62.08.06.E.

12. I am the Chief Executive Officer, and an owner and managing member of Curio Cultivation, LLC.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the

contents of the foregoing paper are true.

CURIO CULTIVATION, LLC

BY: _____
Michael Bronfein
Managing Member
May 23, 2017
Executed in Maryland

Exhibit A.9

ALTERNATIVE MEDICINE MARYLAND. LLC, *et al.*,	IN THE
	CIRCUIT COURT
Plaintiff.	FOR BALTIMORE CITY
v.	Case No. 24-C-16-005801
NATALIE M. LAPRADE MARYLAND MEDICAL CANNABIS, COMMN., *et al.*,	
Defendants.	

AFFIDAVIT OF CARY D. MILLSTEIN, PRESIDENT OF FREESTATE WELLNESS, LLC

I, the undersigned, declare or affirm as follows:

1. I have personal knowledge of the facts contained herein. I am over 18 years of age and a citizen of Maryland. I am competent to testify to the facts contained herein.

2. Freestate Wellness, LLC, is a Maryland limited liability company formed for, among other things, the purpose of seeking a license from the Maryland Medical Cannabis Commission (the "MMCC"), and then for cultivating medical cannabis and distributing it to eligible patients through channels established and approved by the laws of Maryland.

3. On August 15, 2016, Freestate Wellness, LLC. was approved by the MMCC for a Stage 1 grower license, after an almost 20 month rigorous and costly application process. Freestate Wellness, LLC, is now concluding the Stage 2 approval and licensure process. Freestate Wellness, LLC, proffers that it believes in good faith that it will timely meet all requirements for Stage 2 approval and licensure and

anticipates; it will submit its Stage 2 application and request its final inspection be on or before June 2, 2017.

4. I am told that under COMAR 10.62.08.06.E, MMCC may rescind pre-approval "if the grower is not operational within 1 year of pre-approval." Therefore, immediately after pre-approval on August 15, 2016, Freestate Wellness, LLC, began taking steps to become operational on or before August 15, 2017. Growing medical grade cannabis is a highly-technical process that requires a substantial investment and a substantial amount of time and expertise is needed to develop a secure and effective cultivation facility. It is necessary to build or lease an appropriate facility, hire and train employees, purchase expensive and unique equipment, identify strains and test those for commercialization, and take other steps required by law.

5. Freestate Wellness, LLC, has nearly completed the initial phase of the interior construction of its state-of-the-art 48,000 square foot state of the art agricultural plant located in Howard County, Maryland, and is planning to move into the facility on June 9th, 2017. Freestate Wellness, LLC, is scheduled to request its Use & Occupancy permit for the building from Howard County on May 31, 2017. Any and all delay is costly. This facility represents an initial total investment of $8,000,000.00 and is intended to enable Freestate Wellness, LLC, to become Maryland's premier producer of medicinal cannabis products with traditional and customized pharmaceutical dosage forms. If operations are restrained or enjoined, Freestate Wellness, LLC, will sustain losses of approximately $150,000.00 per month.

6. Any restraint or injunction of the licensing process creates substantial

damage for Freestate Wellness, LLC, and will cause it to immediately upon the granting, layoff all employees until such time as the matter is resolved and Freestate Wellness, LLC is able to commence operations.

7. The granting of injunctive relief will result in immediate layoff of all employees until the issue is resolved. This will cause hardship to Freestate Wellness, LLC's employees. For example, two of Freestate Wellness, LLC's initial senior managers resigned or have given notice from well-paying positions; the payroll that will be suspended is approximately $90,000 per month.

8. Adding an additional dimension of hardship should an injunction be issued, Freestate Wellness, LLC, also has applied for a patented and proprietary method of delivering variable dosed medicaments. Therefore, the issuance of an injunction will irreparably damage the health of patients who have waited over four years for Maryland to launch this life-changing program.

9. In addition to the foregoing, there is a statutory moratorium on additional grower licenses through June 1, 2018. This is a "first to market" provision and it is an important benefit which provides economic protections to licensees who have taken substantial risk in becoming the first operators in a new marketplace. Any delay in licensure shortens that benefit and is prejudicial.

10. In addition to the foregoing, the time and expense thus far committed pale in comparison to the total damages Freestate Wellness, LLC, would endure should through no fault of its own, this valuable right was taken from them after following all of the state requirements and being scored 4th highest cultivator applicant in Maryland. We

estimate our total economic loss could exceed $200,000,000.00 in the first 5 years of business operations alone; should this TRO not be lifted, an injunction granted, and further delays allowed to stop this program from launching, our losses will increase as we had relied on the state and its program commitments to undertake this business initiative. We feel the state of Maryland should understand and bear the consequences of its actions.

11. In addition to the foregoing, I am concerned that if our facility is not operational on or before August 15, 2017, MMCC may rescind our pre-approval under COMAR 10.62.08.06.E.

12. I am the President and an owner of Freestate Wellness, LLC.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

FREESTATE WELLNESS, LLC

By: _____
Cary Millstein
President
May 27, 2017

Exhibit A.11

ALTERNATIVE MEDICINE MARYLAND, LLC, *et al.*, Plaintiff, v. NATALIE M. LAPRADE MARYLAND MEDICAL CANNABIS, COMM'N., *et al.*, Defendants.	IN THE CIRCUIT COURT FOR BALTIMORE CITY Case No. 24-C-16-005801

AFFIDAVIT OF FRANK D. BOSTON, III, GREEN LEAF MEDICAL, LLC

I, the undersigned, declare or affirm as follows:

1. I have personal knowledge of the facts contained herein. I am over 18 years of age and a citizen of Maryland. I am competent to testify to the facts contained herein.

2. Green Leaf Medical, LLC, is a Maryland limited liability company formed for, among other things, the purpose of seeking a license from the Maryland Medical Cannabis Commission ("MMCC"), and then for cultivating medical cannabis as approved by the laws of Maryland.

3. On August 15, 2016, Green Leaf Medical, LLC, was approved by the MMCC for a Stage 1 grower license, after a rigorous and costly application process. Green Leaf Medical, LLC, is now concluding the Stage 2 approval and licensure process. Green Leaf Medical, LLC, proffers that it believes in good faith that it will timely meet all requirements for Stage 2 approval and licensure and is, in fact, scheduled to receive its final inspection on or about July 27th, 2017

4. I am told that under COMAR 10.62.08.06.E, MMCC may rescind pre-approval "if the grower is not operational within 1 year of pre-approval." Therefore, immediately after pre-approval on August 15, 2016, Green Leaf Medical, LLC began taking steps to become operational on or before August 15, 2017.

5. Growing medical grade cannabis is a highly-technical process that requires a substantial investment and a substantial amount of time and expertise is needed to develop a secure and effective cultivation facility. It is necessary to build or lease an appropriate facility, hire and train employees, purchase expensive and unique equipment, create formulations and test those for commercialization, and take other steps required by law.

6. Green Leaf Medical has completed the majority of the construction of its State-of-the-Art 45,000 square foot medical cannabis cultivation facility located in Frederick, Maryland, and is scheduled to move into the facility on July 28th, 2017. Green Leaf Medical, LLC, received zoning verification approval in 2015 and has held a lease on the property since that time. Any and all delays are costly. Our facility represents a total investment of $6,500,000.00 with an on going burn rate of $95,000 per month. If operations are restrained or enjoined, Green Leaf Medical, LLC, will sustain losses of approximately $95,000.00 per month.

7. Any restraint or injunction of the licensing process creates substantial uncertainty for Green Leaf Medical, LLC, and will cause it too immediately upon the granting, layoff all employees until such time as the matter is resolved and Green Leaf Medical, LLC is able to commence operations.

8. The granting of a TRO or injunctive relief will result in immediate layoff of all employees until the issue is resolved. This will cause hardship to Green Leaf Medical, LLC's employees. For example, two of Green Leaf Medical, LLC's initial senior managers resigned from a well-paying positions in other companies based on their anticipated income from Green Leaf Medical, LLC.

9. In addition to the foregoing, there is a statutory moratorium on additional grower licenses through June 1, 2018. This is a "first to market" provision and it is an important benefit. Any delay in licensure shortens that benefit and is prejudicial.

10. In addition to the foregoing, I am concerned that if the facility is not operational on or before August 15, 2017, MMCC may rescind pre-approval under COMAR 10.62.08.06.E.

11. I am a Founding Member, an owner and managing member of Green Leaf Medical, LLC.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Green Leaf Medical, LLC

BY: _____
Frank D. Boston, III
A Founding Member
May 26, 2017
Executed in Maryland

Exhibit A.27

ALTERNATIVE MEDICINE MARYLAND, LLC, *et al.*, Plaintiff, v. NATALIE M. LAPRADE MARYLAND MEDICAL CANNABIS, COMM'N., *et al.*, Defendants.	IN THE CIRCUIT COURT FOR BALTIMORE CITY Case No. 24-C-16-005801

AFFIDAVIT OF **Redacted**

I, the undersigned, declare or affirm as follows:

1. I have personal knowledge of the facts contained herein. I am over 18 years of age and a citizen of Maryland. I am competent to testify to the facts contained herein.

2. I **Redacted** suffer from chronic back pain. I am 42 years of age and already had 3 back surgeries. I have also been diagnosed with degenerative disc disease. I also have a severe disk bulge in my neck. My back pain is an everyday occurrence. The use on medical marijuana not only relieves my pain in a substantial way, but it allows me to stop the use of opioid medicines which in themselves leads to other medical conditions such as liver damage.

3. Each day I go without the use of medical marijuana makes life very difficult to function when it comes to normal everyday activities with such simple things as putting socks and shoes on. Every single day is filled with pain and discomfort with some days being so bad that I feel I can't even leave the house.

4. It is imperative that there are no more delays on the access to medical marijuana. I have already waited too long. The pain is so bad sometimes it almost feels like I will never get relief as long as I live in Maryland. I have actually contemplated moving out of state to a state that has access to medical marijuana, however, my job and family live here so I can't do that.

I **Redacted** do not want any of my medical information, either my conditions or treatment used for public use or disclosed in any way to the public. All of my medical information must be kept in complete confidence.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Redacted

May 29, 2017
Executed in Maryland

Exhibit A.28

ALTERNATIVE MEDICINE MARYLAND, LLC, *et al.*, Plaintiff, v. NATALIE M. LAPRADE MARYLAND MEDICAL CANNABIS, COMM'N., *et al.*, Defendants.	IN THE CIRCUIT COURT FOR BALTIMORE CITY Case No. 24-C-16-005801

DECLARATION OF **Redacted**

I, the undersigned, declare or affirm as follows:

1. I have personal knowledge of the facts contained herein. I am over 18 years of age and a citizen of Maryland. I am competent to testify to the facts contained herein.

2. I, **Redacted**, suffer from Chronic Pain.

3. DESCRIBE YOUR SYMPTOMS/COMPLICATIONS. (I suffer myriad types of pain, mostly in the neck, back, and pelvis regions, all relating to a traffic accident I had twelve years ago. Since then I've been through numerous treatments and therapies, with middling success. Even the most successful treatment has not completely relieved my pain. A treating physician has stated that use of medical cannabis will likely alleviate these symptoms.)

4. STATE WHAT A DAY IS LIKE TO GO WITHOUT ACCESS TO MEDICINE. When enduring a particularly painful spell—sometimes so acute that I can't get out of bed—my natural inclination is to take powerful opioids prescribed by my doctor, but those cause such other horrible side effects that I'm loathe to use them. So instead I just suffer.

5. I need this medicine immediately. I'm really hoping there's not another delay in when this medicine will be available. I'm trying everything I can to avoid opioids, but if there's

another delay I may not have any choice but to endure the side effects like constipation and addiction.

6. I do not want to disclose my or my childrens' medical condition or treatment to the public. I strongly assert the right of privacy in this regard.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Redacted

May 30, 2017
Executed in Maryland

Exhibit A.30

ALTERNATIVE MEDICINE MARYLAND, LLC, *et al.*, Plaintiff, v. NATALIE M. LAPRADE MARYLAND MEDICAL CANNABIS, COMM'N., *et al.*, Defendants.	IN THE CIRCUIT COURT FOR BALTIMORE CITY Case No. 24-C-16-005801

DECLARATION OF Redacted

I, the undersigned, declare or affirm as follows:

1. I have personal knowledge of the facts contained herein. I am over 18 years of age and a citizen of Maryland. I am competent to testify to the facts contained herein.

2. I, Redacted , am one of the parents of Redacted , who suffers from refractory epilepsy.

3. Redacted suffers from refractory epilepsy, meaning the existing drugs do not stop the seizures. He has frequent tonic clonic seizures that take days to recover from, meaning he cannot hold a job or return to college. According to cannabis-literate doctors, Red needs access to THC and high-linalool THCA to help control his seizures.

4. Each day that his access to whole-plant cannabis is delayed is a delay in his ability to resume his life, his college career, and eventually a job.

5. The delay means more seizures, and each seizure affects his brain negatively. The delay means he is trapped at home recovering from constant seizures with no chance at a productive life.

6. Redacted does not want to disclose his medical condition or treatment to the public. As one of his parents, I strongly assert their right of privacy in this regard.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

NAME Redacted

Redacted

May 29, 2017
Executed in Maryland

Exhibit A.50

ALTERNATIVE MEDICINE MARYLAND, LLC, *et al.*, Plaintiff, v. NATALIE M LAPRADE MARYLAND MEDICAL CANNABIS, COMM'N, *et al.*, Defendants	IN THE CIRCUIT COURT FOR BALTIMORE CITY Case No. 24-C-16-005801

DECLARATION OF Green Health Docs, LLC

I, the undersigned, declare or affirm as follows:

1 I have personal knowledge of the facts contained herein. I am over 18 years of age. I am competent to testify to the facts contained herein.

2. Green Health Docs, LLC is a Maryland limited liability company formed for the purpose of certifying patients for the Maryland Medical Cannabis through channels established and approved by the laws of Maryland.

3. On [Feb 20], 2016, Green Health Docs opened to better serve patients in the Maryland area.

4. Delaying the opening of dispensaries where our patients can get access to this medicine is unfair and immoral to these suffering patients. We urge you to reconsider this action as it negatively impacts THOUSANDS of suffering patients.

5. Any challenge to the licensing process creates substantial uncertainty for all of our patients.

6. I am owner and managing member of Green Health Docs, LLC.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

NAME
Anand Dugar, MD

May 29, 2017
Executed in Maryland