

IN THE SUPREME COURT OF THE STATE OF NEVADA

**MM DEVELOPMENT COMPANY, INC.,
D/B/A PLANET 13, A NEVADA
CORPORATION,**

Appellant,

vs.

**TRYKE COMPANIES SO NV, LLC, A
NEVADA LIMITED LIABILITY COMPANY,**

Respondent.

Supreme Court Case No. 81938

Electronically Filed
Nov 12 2020 11:21 a.m.
Elizabeth A. Brown

**DOCKETING CLERK of Supreme Court
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 24

County Clark Judge Jim Crockett

District Ct. Case No. A-19-804883-C

2. Attorney filing this docketing statement:

Attorney Nathanael Rulis Telephone 702-385-6000

Firm Kemp Jones, LLP

Address 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

Client(s) MM Development Company, Inc.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Eric D. Hone, Esq. Telephone 702-608-3720

Firm H1 LAW GROUP

Address 701 N. Green Valley Parkway, Suite 200
Henderson, NV 89074

Client(s) TRYKE COMPANIES SO NV, LLC

Attorney Paul A. Conant, Esq. Telephone 602-508-9010

Firm Conant Law Firm

Address 2398 East Camelback Road
Phoenix, AZ 85016

Client(s) TRYKE COMPANIES SO NV, LLC

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

At issue in this action is Planet 13's marketing program, which compensates taxicab and rideshare drivers who bring passengers to Planet 13, as is customary in the retail cannabis and several other industries in Las Vegas. On November 5, 2019, Reef initiated this action against Planet 13 alleging claims for 1) civil conspiracy, 2) aiding and abetting, and 3) intentional interference with economic advantage. All of Reef's claims arise out of its allegations that compensation provided by Planet 13 to taxicab and rideshare drivers dropping off passengers at Planet 13 is done with intent to promote illegal diversion.

On August 24, 2020, nearly ten months after filing its Complaint, Reef moved for a preliminary injunction on an order shortening time. The hearing on Reef's Motion for Preliminary Injunction was held on September 3, 2020. The District Court granted Reef's Motion for Preliminary Injunction and an order was entered on September 10, 2020 with a notice of entry served on September 11, 2020. Planet 13 appeals the District Court's order granting Reef's motion for Preliminary Injunction and any other rulings and decisions made appealable thereby.

On September 25, 2020, Planet 13 filed a Motion for Reconsideration of the Court's Order Granting Plaintiff's Motion for Preliminary Injunction or, in the Alternative, Motion to Amend Pursuant to NRCP 52(b) or, in the Alternative, Motion for Clarification on Order Shortening time ("Motion for Reconsideration"). Planet 13's Motion for Reconsideration was denied and an order was entered on November 7, 2020 with a notice of entry served on November 9, 2020.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court erred by enjoining MM Development Company, Inc. from paying any fee or commission to rideshare service drivers in exchange for the drivers bringing passengers to Planet 13; and enjoining MM Development Company, Inc. from advertising to rideshare service drivers that it will provide compensation to drivers in exchange for the drivers bringing passengers to Planet 13.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter is presumptively retained by the Supreme Court under NRAP 17(a)(12) because it raises a question of statewide public importance regarding businesses ability to pay drivers (taxicab and rideshare) for dropping off passengers at their businesses.

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from September 10, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served September 11, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☒ NRCP 52(b) Date of filing September 25, 2020

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See AA Primo Builders v. Washington*, 126 Nev._____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion November 7, 2020

(c) Date written notice of entry of order resolving tolling motion was served November 9, 2020 Was service by:

☐ Delivery

☒ Mail

19. **Date notice of appeal filed** October 9, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | NRS 703.376 |
| <input type="checkbox"/> Other (specify) | <input type="checkbox"/> |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The principal issue on appeal is whether the district court erred in granting a preliminary injunction against MM Development Company, Inc. As this is an appeal of an order granting an injunction, the order is appealable under NRAP 3A(b)(3), which states that an appeal may be taken from "[a]n order granting or refusing to grant an injunction ..."

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

MM Development Company, Inc. and Tryke Companies SO NV, LLC

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

(1) Tryke Companies SO NV, LLC has claims against MM Development Company, Inc. for Civil Conspiracy, Aiding and Abetting, and Intentional Interference with Economic Advantage

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

All claims remain pending before the district court. This appeal only challenges a preliminary injunction order.

(b) Specify the parties remaining below:
All parties remain in the proceedings pending below.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)): The order is independently appealable under NRAP 3A(b)(3).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

MM Development Company, Inc.

Name of appellant

Nathanael R. Rulis

Name of counsel of record

Nov 12, 2020

Date

/s/ Nathanael R. Rulis

Signature of counsel of record

Nevada, Clark County

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 12th day of November, 2020, I served a copy of this completed docketing statement upon all counsel of record:

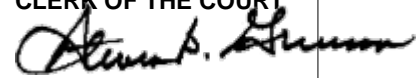
- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Eric D. Hone, Esq.
H1 LAW GROUP
701 N. Green Valley Parkway, Suite 200
Henderson, NV 89074

Paul A. Conant, Esq.
CONANT LAW FIRM
2398 East Camelback Road
Phoenix, AZ 85016

Dated this 12th day of November, 2020

/s/ Ali Augustine
Signature



CASE NO: A-19-804883-C
Department 14

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Attorneys for Plaintiff Tryke Companies SO NV, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

TRYKE COMPANIES SO NV, LLC, a Nevada
limited liability company,

Plaintiff,

vs.

MM DEVELOPMENT COMPANY, INC., dba
PLANET 13, a Nevada corporation; DOES I
through C, inclusive; and ROE BUSINESS
ENTITIES, I through C, inclusive,

Defendants.

Case No.:
Dept. No.:

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

(Exempt from Arbitration –
Amount Exceeds \$50,000;
Action Seeking Equitable or
Extraordinary Relief)

Plaintiff Tryke Companies SO NV, LLC (“Tryke” or “Reef”), by and through its
counsel of record, H1 Law Group, as and for its Complaint against Defendant MM
Development Company, Inc., dba Planet 13 (“Planet 13”), states and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is and was at all relevant times a Nevada limited liability company,
duly organized and existing under the laws of the State of Nevada, and which has its principal

H1 LAW GROUP
701 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074
Tel: 702-608-3720 Fax: 702-608-3759





1 offices in this judicial district, at 3400 Western Avenue, Las Vegas, Nevada 89109. Tryke
2 operates a Reef dispensary at the aforementioned address, selling legal cannabis products.

3 2. Defendant Planet 13 is and was at all relevant times a Nevada corporation, duly
4 organized and existing under the laws of the State of Nevada. Defendant operates a cannabis
5 dispensary at 2548 West Desert Inn Road, Las Vegas, Nevada 89109.

6 3. Upon information and belief, Doe defendants I through C and Roe business
7 entity defendants I through C were legal residents or entities of Clark County, Nevada and/or
8 authorized to do business in the State of Nevada, and were conducting business in Clark
9 County, Nevada.

10 4. Plaintiff is otherwise without knowledge of the true names and capacities of
11 the defendants sued herein as Doe and Roe defendants, whether individual, corporate,
12 associated or otherwise, and therefore sues these defendants by such fictitious names. Plaintiff
13 will amend this Complaint to allege the true names of any and all Doe and Roe defendants as
14 alleged herein and/or after their true names and capacities are ascertained.

15 5. This Court has jurisdiction over this matter.

16 6. Venue is proper in this district because one or more of the Defendants reside
17 within this district and because the actions of Defendants at issue took place within the district.

18 **GENERAL ALLEGATIONS**

19 ***Subject Matter of the Suit***

20 7. This lawsuit seeks to prevent Planet 13 from violating Nevada's anti-diversion
21 laws through paying kickbacks to Uber and Lyft drivers, as well as taxi drivers, in exchange
22 for the drivers diverting passengers that intend to visit Reef to Planet 13.

23 ***Nevada's Anti-Diversion Laws***

24 8. Nevada statutory law provides, at NRS 706A.280(2), that, "with respect to a
25 passenger's destination," a driver "shall not: (a) Deceive or attempt to deceive any passenger
26 who rides or desires to ride in the driver's motor vehicle" or "(b) Convey or attempt to convey
27 any passenger to a destination other than the one directed by the passenger."
28

1 9. Nevada’s Administrative Code provides, at NAC 706.552(1)(c) and (f), that a
2 taxicab driver or an independent contractor shall “[n]ot accept, directly or indirectly, a gratuity or
3 any form of compensation from any person for diverting or attempting to divert a prospective
4 customer from any commercial establishment” and shall “[n]ot divert or attempt to divert a
5 prospective customer from any commercial establishment.”

6 ***Illegal Diversion Revealed***

7 10. In early 2019, Tryke personnel were alerted by a customer that he had asked
8 his Uber driver to take him to Reef but, instead, the Uber driver took him to Planet 13.

9 11. Later, on a separate occasion, an Uber driver informed Reef personnel that
10 another dispensary pays kickbacks to drivers to bring it customers, and that if Reef will not
11 agree to pay kickbacks to drivers, then drivers will take their passengers to a different
12 dispensary.

13 12. On a separate occasion, a local business owner and Uber and Lyft driver called
14 and stated to Reef that Uber and Lyft drivers “are redirecting passengers to Planet 13 because
15 Planet 13 pays drivers” for “dropping off,” and that her group of drivers was “redirecting your
16 people to Planet 13” as much as “two or three times a day,” and that you could “multiply that
17 by the hundreds of drivers here” in Las Vegas.

18 13. Upon information and belief, if Uber and Lyft drivers are diverting customers
19 to Planet 13 in order to obtain kickbacks, taxi drivers are similarly diverting customers to
20 Planet 13 in order to obtain kickbacks.

21 14. Reef does not pay, and has a policy of not paying, kickbacks or “referral fees”
22 to facilitate customers to buy marijuana from it.

23 ***The Role of Ride Sharing Service Drivers***

24 15. Uber and Lyft are commonly referred to as ride sharing service companies.

25 16. Persons with an Uber or Lyft application on their smart phone can arrange a
26 ride with a privately-owned vehicle operated by a driver who also has an Uber or Lyft
27 application on their smart phone as well.



1 17. Once they have a ride sharing company application and wish to use a ride
2 sharing company's ride sharing service, a consumer can do so by using the application to
3 confirm their current location and to enter the location to which they desire to be taken.

4 18. The application matches a driver with the consumer, and each can track the
5 other's location: the consumer can track the driver's arrival path on a map, and the driver can
6 track the consumer's location.

7 19. Once the passenger's ride begins, it is possible for the passenger to change the
8 requested location from within the ridesharing application or for the driver to request that the
9 passenger change the desired location in the application to a new location other than Point B.

10 20. Any time that an Uber or Lyft driver drops a passenger off at the wrong
11 location (*i.e.*, not the location the passenger selected), a violation of Nevada's anti-diversion
12 statutes and regulations has occurred.

13 21. Any time that an Uber or Lyft driver asks the passenger to change the
14 requested location in the relevant ride sharing company's application while the ride is in
15 progress, so that the driver may obtain a kickback, a violation of Nevada's anti-diversion
16 statutes and regulations has occurred.

17 22. Any time that a taxi driver encourages a passenger to modify the passenger's
18 requested location so that the taxi driver may obtain a kickback, a violation of Nevada's anti-
19 diversion statutes and regulations has occurred.

20 ***Specific Instances of Unlawful Diversion to Planet 13***

21 23. Unlawful diversion by Uber and Lyft drivers from Reef to Planet 13 include
22 the following, without limitation, all caused by Planet 13's kickback program, on information
23 and belief:

- 24 a. On August 9, 2019, passenger requested pickup at the Encore at Wynn
25 Hotel in Las Vegas, and specified the destination as Reef in the relevant
26 app. The driver dropped off the passenger instead at Planet 13, without
27 asking the passenger to change the destination in the app.
28



- b. On August 9, 2019, a different passenger than referenced in the prior allegation requested pickup at the Encore at Wynn Hotel, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, without asking the passenger to change the destination in the app.
- c. On August 9, 2019, a passenger requested pickup at the Palazzo Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, without asking the passenger to change the destination in the app.
- d. On August 16, 2019, a passenger requested pickup at the Liquor City in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, after first asking the passenger to change the destination in the app.
- e. On August 16, 2019, a passenger requested pickup at the Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, without asking the passenger to change the destination in the app.
- f. On August 22, 2019, a passenger requested pickup at the Mirage Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, without asking the passenger to change the destination in the app.
- g. On September 5, 2019, a passenger requested pickup at Treasure Island Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, without asking the passenger to change the destination in the app.
- h. On September 5, 2019, a passenger requested pickup at the Encore at Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant



app. The driver dropped off the passenger instead at Planet 13, after first asking the passenger to change the destination in the app.

- i. On September 5, 2019, a passenger requested pickup at the Sahara Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, after first asking the passenger to change the destination in the app.
- j. On September 6, 2019, a passenger requested pickup at Treasure Island Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, without asking the passenger to change the destination in the app.
- k. On September 6, 2019, a passenger requested pickup at Encore at Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, without asking the passenger to change the destination in the app.
- l. On September 6, 2019, a different passenger than in the previous allegation requested pickup at Encore at Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, without asking the passenger to change the destination in the app.
- m. On September 6, 2019, a passenger requested pickup at the Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, after asking the passenger to change the destination in the app.
- n. On September 13, 2019, a passenger requested pickup at Treasure Island Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, after asking the passenger to change the destination in the app.



- o. On September 13, 2019, a passenger requested pickup at the Mirage Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, after asking the passenger to change the destination in the app.
- p. On September 13, 2019, a different passenger than in the previous allegation requested pickup at the Mirage Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, without asking the passenger to change the destination in the app.
- q. On September 13, 2019, a passenger requested pickup at Encore at Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, without asking the passenger to change the destination in the app.
- r. On September 13, 2019, a passenger requested pickup at the Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, after asking the passenger to change the destination in the app.
- s. On September 13, 2019, a different passenger than in the previous allegation requested pickup at the Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, after asking the passenger to change the destination in the app.
- t. On September 17, 2019, a passenger requested pickup at Treasure Island Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The driver dropped off the passenger instead at Planet 13, without asking the passenger to change the destination in the app.

///

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1 ***The Connection Between Planet 13's***
2 ***Kickbacks and Illegal Diversion***

3 24. Reef had been operating for many years at its location before Planet 13 more
4 recently opened a dispensary within approximately 900 feet of Reef.

5 25. Planet 13 widely publicizes that it offers kickback payments to all Uber and
6 Lyft drivers who drop off a customer at its dispensary.

7 26. Upon information and belief, Planet 13 has no mechanism in place to
8 determine which passengers have been diverted to it as a result of its kickback program, and
9 those which have not.

10 27. Upon information and belief, Planet 13's kickback program is specifically
11 designed to encourage the diversion of passengers to Planet 13.

12 28. After Planet 13's kickback program, Reef has become aware of numerous
13 instances of illegal diversion.

14 29. Uber and Lyft drivers, as well as taxi driver, have a significant financial
15 incentive to divert their passengers as a result of Planet 13's kickback program.

16 30. Planet 13's kickback program results in compensation to ride sharing company
17 drivers well in excess, sometimes many times in excess, of the actual fee or fare the drivers
18 receive for providing the ride.

19 31. Planet 13 was warned that its kickback program results in payments for illegal
20 diversion and has not discontinued or modified its kickback program to eliminate payments
21 for illegal diversion.

22 ***Allowing Marijuana Customers to Be***
23 ***Diverted Is Contrary to Public Policy***

24 32. Personal freedom to make safe choices to legally purchase marijuana is a
25 concept which underpins all applicable marijuana legalization laws, including those applicable
26 in Nevada.

27 33. Allowing Planet 13 to engage in the practice of openly offering cash kickbacks
28 to persons whom it knows are thus incentivized to illegally divert customers, in circumstances



1 where Planet 13 has no system in place to avoid paying kickbacks to drivers who have
2 illegally diverted their passengers, is contrary to public policy and should be enjoined.

3 34. Plaintiff has been damaged by Planet 13's illegal conduct in an amount to be
4 determined at the jury trial in this matter, and in a sufficient amount to invoke this Court's
5 jurisdiction, and make it exempt from court-annexed arbitration, and as a result of conduct
6 sufficient to justify a punitive damages award, all as alleged herein above and as more fully
7 set forth below.

8 **CAUSES OF ACTION**

9 **COUNT I – Civil Conspiracy**

10 **(Planet 13, Does, and Roe entities)**

11 35. Plaintiff incorporates all allegations of the Complaint herein by reference.

12 36. Defendant Planet 13's conduct, in conjunction with the Doe defendants' and Roe
13 entity defendants' conduct, as alleged herein constitutes civil conspiracy to violate Nevada's
14 anti-diversion statutes and regulations, including NRS 706A.280(2) and NAC 706.552(1).

15 37. Defendants' conduct alleged herein has caused damage to Plaintiff in an
16 amount to be proven at trial, but which amount exceeds \$50,000.00.

17 38. Plaintiff seeks injunctive relief as against Defendants requiring them to
18 permanently cease and desist from the wrongful conduct as alleged herein.

19 39. Plaintiff has a reasonable probability of success on the merits of its underlying
20 claims.

21 40. Without injunctive relief, Plaintiff will suffer irreparable harm for which
22 compensatory damages are inadequate.

23 41. The public interest in seeing the harm stopped and the relative hardships of the
24 parties should the Court take or refuse to take action weigh in favor of injunctive relief.

25 42. Plaintiff is entitled to punitive damages against Defendants, on account of their
26 willful, conscious and deliberate disregard for the legal rights of others, oppression and
27 malice, as alleged herein, and as will be proven at trial in this matter.

28



1 43. Plaintiff seeks further the remedy of disgorgement with respect to all of
2 Defendants' ill-gotten gains.

3 **COUNT II – Aiding and Abetting**

4 **(Planet 13, Does, and Roe entities)**

5 44. Plaintiff incorporates all allegations of the Complaint herein by reference.

6 45. Defendant Planet 13's conduct, in conjunction with the Doe defendants' and
7 Roe entity defendants' conduct, as alleged herein constitutes aiding and abetting to violate
8 Nevada's anti-diversion statutes and regulations, including NRS 706A.280(2) and NAC
9 706.552(1).

10 46. Defendants' conduct alleged herein has caused damage to Plaintiff in an
11 amount to be proven at trial, but which amount exceeds \$50,000.00.

12 47. Plaintiff seeks injunctive relief as against Defendants requiring them to
13 permanently cease and desist from the wrongful conduct as alleged herein.

14 48. Plaintiff has a reasonable probability of success on the merits of its underlying
15 claims.

16 49. Without injunctive relief, Plaintiff will suffer irreparable harm for which
17 compensatory damages are inadequate.

18 50. The public interest in seeing the harm stopped and the relative hardships of the
19 parties should the Court take or refuse to take action weigh in favor of injunctive relief.

20 51. Plaintiff is entitled to punitive damages against Defendants, on account of their
21 willful, conscious and deliberate disregard for the legal rights of others, oppression and
22 malice, as alleged herein, and as will be proven at trial in this matter.

23 52. Plaintiff seeks further the remedy of disgorgement with respect to all of
24 Defendants' ill-gotten gains.

25 **COUNT III – Intentional Interference with Economic Advantage**

26 **(Planet 13)**

27 53. Plaintiff incorporates all allegations of the Complaint herein by reference.

28



1 54. Passengers requesting to be driven to Plaintiff's dispensary intend to purchase
2 goods from Plaintiff and a prospective contractual relationship exists between such passengers
3 and Plaintiff.

4 55. Defendant Planet 13 is aware of the prospective contractual relationship
5 between such passengers and Plaintiff.

6 56. Defendant Planet 13 intends to disrupt and terminate the prospective
7 contractual relationship between Plaintiff and passengers requesting to be driven to Plaintiff's
8 dispensary, by encouraging drivers to divert such passengers Defendant's Planet 13
9 dispensary.

10 57. No privilege or justification excuses Defendant Planet 13's wrongful conduct
11 of encouraging diversion of passengers to Defendant Planet 13's dispensary.

12 58. Defendant Planet 13's conduct alleged herein has caused damage to Plaintiff in
13 an amount to be proven at trial, but which amount exceeds \$50,000.00.

14 59. Plaintiff seeks injunctive relief as against Defendant Planet 13 requiring it to
15 permanently cease and desist from the wrongful conduct as alleged herein.

16 60. Plaintiff has a reasonable probability of success on the merits of its underlying
17 claims.

18 61. Without injunctive relief, Plaintiff will suffer irreparable harm for which
19 compensatory damages are inadequate.

20 62. The public interest in seeing the harm stopped and the relative hardships of the
21 parties should the Court take or refuse to take action weigh in favor of injunctive relief.

22 63. Plaintiff is entitled to punitive damages against Defendant Planet 13, on
23 account of its willful, conscious and deliberate disregard for the legal rights of others,
24 oppression and malice, as alleged herein, and as will be proven at trial in this matter.

25 64. Plaintiff seeks further the remedy of disgorgement with respect to all of
26 Defendant Planet 13's ill-gotten gains.

27 ///

28 ///



PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief against Defendants:

- a. For damages according to proof and in an amount in excess of \$50,000.00;
- b. For disgorgement as requested herein;
- c. For pre-judgment and post-judgment interest;
- d. For injunctive relief as requested herein;
- e. For punitive damages as requested herein;
- f. For attorneys' fees and costs as may be recoverable in connection with this suit; and
- g. For such other and/or further relief as the Court finds is just and or proper in the circumstances.

Dated this 5th day of November 2019.

H1 LAW GROUP

A blue ink signature of Eric D. Hone, written over a horizontal line.

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Jamie L. Zimmerman, Nevada Bar No. 11749

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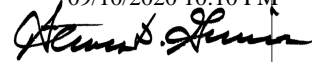
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*Attorneys for Plaintiff Tryke
Companies SO NV, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

TRYKE COMPANIES SO NV, LLC, a Nevada
limited liability company,

Plaintiff,

vs.

MM DEVELOPMENT COMPANY, INC., dba
PLANET 13, a Nevada corporation; DOES I
through C, inclusive; and ROE BUSINESS
ENTITIES, I through C, inclusive,

Defendants.

CASE NO.: A-19-804883-C
DEPT. NO.: 24

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

This matter having come before the Court for hearing on Plaintiff's (1) Motion for Preliminary Injunction; and (2) Application for Order Shortening Time on September 3, 2020; Paul A. Conant of the Conant Law Firm and Eric Hone and Joel Z. Schwarz of the H1 Law Group appeared on behalf of Plaintiff Tryke Companies SO NV, LLC ("Tryke" or "Reef



Dispensary,” the brand name of its marijuana dispensary); Nathanael Rulis of the Kemp Jones law firm appeared on behalf of MM Development Company, Inc. (“MM Development” or “Planet 13,” the brand name of its marijuana dispensary). The Court, having read and considered the motion, opposition, and reply on file herein, including the declarations and exhibits thereto; having considered the oral arguments of counsel at the hearing; for the reasons set forth on the record at the hearing; and for good cause appearing, the Court makes the following preliminary findings of fact and conclusions of law:

FINDINGS OF FACT

1. Since 2016, Plaintiff Tryke has operated the Nevada-licensed “Reef Dispensary” marijuana dispensary located at 3400 Western Avenue, Las Vegas, Nevada 89109. Defendant MM Development Company, Inc. is a competing company that in late 2018 opened its “Planet 13” marijuana dispensary fewer than 900 feet from Reef dispensary.

2. Within a short time after Planet 13 opened, in early 2019, a customer alerted Tryke that he had summoned an Uber with Tryke’s Reef dispensary as the destination specified in the Uber software application but, instead of taking him to Reef, the Uber driver took him to a nearby competitor dispensary called “Planet 13”.

3. Later, on a separate occasion, an Uber driver informed Reef that another dispensary pays “kickbacks” to drivers to bring passengers to shop there, and that if Reef will not also pay kickbacks, then drivers will take passengers to a dispensary that does.

4. Tryke has received similar statements from other Lyft and Uber drivers as well, including by voicemail, since that initial Uber driver interaction.

5. Aware that patrons of Uber, Lyft, and other rideshare services are required to enter their chosen destination as part of the ride scheduling process, and thus drivers are provided the passenger’s chosen destination prior to ever picking them up, Tryke engaged in further investigation as to suspected unlawful diversion.

6. Tryke conducted a random “secret shopper” sampling of Uber and Lyft rides in Las Vegas between August 9 and September 17, 2019 to confirm that unlawful diversion was, in fact, occurring.



1 7. The results of Tryke’s “secret shopper” sampling of 30 rides revealed no less than
2 20 separate occasions where a passenger had pre-selected Tryke’s Reef dispensary as the final
3 destination, but the passenger was diverted to Planet 13 instead.

4 8. Tryke has obtained two Driver Diversion Incident Report Forms from two non-
5 Tryke passengers of Uber and Lyft, who had similar experiences of diversion to Planet 13 as
6 those reported in Tryke’s “secret shopper” investigation.

7 9. Postings on the Las Vegas discussion board of www.uberpeople.net are consistent
8 with Tryke’s “secret shopper” sampling and demonstrate that rideshare service drivers divert
9 passengers who have specified Reef Dispensary as their destination to Planet 13 instead.

10 10. Planet 13 operates a program of paying transportation services company drivers
11 “kickbacks” or “commissions” in exchange for dropping passengers off at Planet 13. Planet 13
12 advertises this program to drivers on the web-based application called “KickBack”.

13 11. Planet 13’s program appeared to be suspended or discontinued earlier this year as
14 of the time of the Covid-19 pandemic, during which time the Nevada dispensaries were closed
15 other than for delivery services. Upon the reopening of marijuana dispensaries, however, Planet
16 13’s program also resumed. As of August 19, 2020, Planet 13 continues to advertise that it pays
17 rideshare service drivers “kickbacks” for diverting customers to Planet 13 on the KickBack
18 application.

19 12. Unlike taxicab drivers who may pick up passengers who do not have a
20 preconceived destination, rideshare service drivers get their passengers through their respective
21 software applications. The passenger is required to enter both their pickup location and their
22 chosen destination when ordering the ride. It is only after this required information is entered
23 that the driver is notified of the ride requested. Thus, rideshare service drivers are always
24 already given both the passenger’s location and destination before the driver even meets the
25 passenger.

26 13. Planet 13’s program financially incentivizes and pays rideshare service drivers for
27 unlawfully diverting Reef Dispensary-bound customers to Planet 13 instead. The drivers divert
28 and alter a passenger’s previously selected destination by means of disparaging and/or

1 providing false information regarding Reef Dispensary, cajoling and/or pressuring the passenger
2 to go to Planet 13 instead, and/or simply dropping the passenger off at Planet 13 instead of the
3 specified destination of Reef Dispensary.

4 14. On June 24, 2019, prior to commencing this action, Tryke notified Planet 13 that
5 its kickback program resulted in payments to drivers for improper diversion, disparagement, and
6 interference with Reef Dispensary’s business. Despite Tryke’s request, Planet 13 has refused to
7 discontinue or modify its program to eliminate payments for diversion.

8 15. If any of the Findings of Fact are properly conclusions of law, they shall be
9 treated as though appropriately identified and designated.

10 **CONCLUSIONS OF LAW**

11 **Preliminary Injunction Standard**

12 16. In Nevada, the standards for a preliminary injunction are set forth in NRS 33.010.
13 A preliminary injunction may be granted where: (1) the party seeking such relief enjoys a
14 reasonable likelihood of success on the merits of at least one claim, and (2) the party’s conduct
15 to be enjoined, if permitted to continue, will result in irreparable harm for which compensatory
16 damages are an inadequate remedy. *See Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029,
17 1029 (1987); *Sobel v. Capital Management Consultants, Inc.*, 102 Nev. 444, 446, 726 P.2d 335,
18 337 (1986).

19 17. Nevada courts may also consider two additional factors: (3) the relative interest of
20 the parties – how much damage the plaintiff will suffer if injunctive relief is denied versus the
21 hardship to the defendant if injunctive relief is granted, and (4) the interest the public may have
22 in the litigation, if any. *See Home Finance Co. v. Balcom*, 61 Nev. 301, 127 P.2d 389 (1942);
23 *Ellis v. McDaniel*, 95 Nev. 455, 596 P.2d 222 (1979).

24 **Plaintiff Is Likely to Succeed on the Merits**

25 18. Nevada law requires only that a moving party demonstrate a “reasonable
26 probability” of success on the merits, not an overwhelming likelihood, to obtain injunctive
27 relief. *See Dixon v. Thatcher*, 103 Nev. 414, 742 P.2d 1029 (1987).

28 ///



1 19. Under Nevada law, unlawful “diversion” occurs if a transportation services
2 company driver deceives or attempts to deceive “any passenger who rides or desires to ride” in
3 the driver’s vehicle, or conveys or attempts to convey “any passenger to a destination other than
4 the one directed by the passenger.” NRS 706A.280(2)(a) and (b) and NAC 706.552(1).

5 20. In Nevada, the elements for a claim of wrongful interference with prospective
6 economic advantage are: “(1) a prospective contractual relationship between the plaintiff and a
7 third party; (2) the defendant’s knowledge of this prospective relationship; (3) the intent to harm
8 the plaintiff by preventing the relationship; (4) the absence of privilege or justification by the
9 defendant; and (5) actual harm to the plaintiff as a result of the defendant’s conduct.” *Las*
10 *Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, 106 Nev. 283,
11 287, 792 P.2d 386, 388 (Nev. 1990).

12 21. “[T]he intent element for an intentional interference with prospective economic
13 advantage claim does not require a specific intent to hurt the plaintiff, but instead, requires only
14 an intent to interfere with the prospective contractual relationship.” *Hitt v. Ruthe*, Case No.
15 65239, 2015 WL 4068435 (Nev. Ct. App. June 24, 2015) (citing *Las Vegas-Tonopah-Reno*
16 *Stage Line, Inc. v. Gray Line Tours of S. Nev.*, 106 Nev. 283, 287-88, 792 P.2d 386, 388
17 (1990)).

18 22. Tryke has prospective economic and contractual relationships with customers that
19 request a rideshare service to take them to the Reef Dispensary. Planet 13 is aware of this
20 relationship and, through its kickback program, Planet 13 purposefully incentivizes rideshare
21 drivers as its agents and/or co-conspirators whom it pays to unlawfully divert these customers
22 away from Reef Dispensary and to Planet 13 instead. Planet 13 has failed to claim any
23 legitimate privilege or justification for its conduct, which is harming Tryke.

24 23. In Nevada, a claim for civil conspiracy may be established under the following
25 rules:

26 (1) An act lawful when done by one individual may become an actionable wrong if
27 done by a number of persons acting in concert, if the result injures the party against
28 whom the action is directed;

28 ///



1 (2) An act lawful when done by one individual may be the subject of an actionable
2 civil conspiracy when it is done with the intention of injuring another or when,
3 although done to benefit the conspirators, its natural consequence is the oppression
4 of an individual; and

5 (3) An act lawful when done by one individual, because justified by his rights,
6 becomes actionable when done by a combination of persons actuated by malice if
7 harm results to another.

8 *Hubbard Business Plaza v. Lincoln Liberty Life*, 596 F. Supp. 344, 346 (D. Nev 1984).

9 24. Tryke satisfies the first rule for civil conspiracy because, while Planet 13 claims it
10 does not “direct” action against Reef Dispensary, Planet 13’s co-conspirators (the rideshare
11 service drivers) do, as demonstrated by their own statements and conduct in the record.

12 25. Tryke satisfies the second rule for civil conspiracy because the injury to Reef
13 Dispensary is the “natural consequence” of the oppression of passengers’ stated intentions and
14 the prospective relationship with Reef Dispensary.

15 26. Tryke satisfies the third rule for civil conspiracy because it provided Planet 13
16 with actual notice that its kickback program resulted in payments to drivers for improper
17 diversion, disparagement, and interference with Reef Dispensary’s business, and Planet 13
18 nonetheless continued to operate its program without alteration, thereby establishing malice.

19 27. Tryke is likely to succeed on the merits of its claims for tortious interference with
20 prospective economic relations and civil conspiracy.

21 28. Because Tryke is likely to succeed on the merits of its claims, this factor weighs
22 in favor of granting injunctive relief.

23 **Plaintiff Will Suffer Irreparable Harm**
24 **If the Preliminary Injunction Is Not Granted**

25 29. Irreparable harm is an injury “for which compensatory damage is an inadequate
26 remedy.” *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987). Generally, harm
27 is ‘irreparable’ if it cannot adequately be remedied by compensatory damages.” *Hamm v.*
28 *Arrowcreek Homeowners’ Ass’n*, 124 Nev. 28, 183 P.2d 895, 901 (2008). “[A]n injury is not
fully compensable by money damages if the nature of the plaintiff’s loss would make damages
difficult to calculate.” *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992).



1 30. Injunctive relief is proper where “it is essential to preserve a business or property
2 interest.” *Guion v. Terra Marketing of Nevada, Inc.*, 90 Nev. 237, 240, 523 P.2d 847, 848
3 (1974). Additionally, courts have recognized “the difficulty in calculating money damages to
4 redress the loss of a client relationship that ‘would produce an indeterminate amount of business
5 in years to come.’” *Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. 347, 351 P.3d 720 (2015)
6 (quoting *Ticor Title Ins. Co. v. Cohen*, 173 F.3d 63, 69 (2d Cir. 1999)).

7 31. The Nevada Supreme Court has “determined that ‘acts committed without just
8 cause which unreasonably interfere with a business or destroy its credit or profits, may do an
9 irreparable injury.’” *State, Dep’t of Bus. & Indus., Fin. Institutions Div. v. Nevada Ass’n Servs.,*
10 *Inc.*, 128 Nev. 362, 370, 294 P.3d 1223, 1228 (2012) (quoting *Sobol v. Capital*
11 *Management*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986)); *see also Guion v. Terra Marketing*
12 *of Nevada, Inc.*, 90 Nev. 237, 523 P.2d 847 (1974) (actions that interfere with a business “or
13 destroy its custom, its credit or its profits, do an irreparable injury and thus authorize the
14 issuance of an injunction.”).

15 32. Planet 13’s actions are causing substantial damage and irreparable harm to
16 Tryke’s sales and customer acquisitions that cannot be fully ascertained or redressed solely
17 through money damages. This harm extends beyond mere financial damage caused by the
18 inevitable decrease in sales. Planet 13’s actions will also lead to the irremediable loss of Tryke’s
19 brand value, consumer loyalty, and inherent goodwill of the dispensary itself.

20 33. The damage caused by Planet 13 is exceptionally difficult to quantify in dollars
21 because it involves harm to reputation and to customer relations.

22 34. Because Tryke will suffer irreparable harm if a preliminary injunction is not
23 granted, this factor weighs in favor of granting injunctive relief.

24 **The Balance of the Equities Is in Plaintiff’s Favor and a**
25 **Preliminary Injunction Is in the Public Interest**

26 35. In granting a preliminary injunction, courts may “weigh the potential hardships to
27 the relative parties, and others, and the public interest.” *Univ. & Cmty. Coll. Sys. of Nevada v.*
28 *Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

39. Because the balance of hardships and public interest weigh in favor of Tryke, all factors weigh in favor of issuing a preliminary injunction.

///



1 43. If any of the Conclusions of Law are properly findings of fact, they shall be
2 treated as though appropriately identified and designated.

3 **ORDER**

4 **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** that Plaintiff's Motion
5 for Preliminary Injunction is GRANTED.

6 IT IS FURTHER ORDERED:

7 1. Defendant Planet 13 is enjoined from paying any fee or commission to rideshare
8 service drivers in exchange for the drivers bringing passengers to Planet 13 rather than another
9 cannabis dispensary; and

10 2. Defendant Planet 13 is enjoined from advertising to rideshare service drivers that
11 Planet 13 will provide compensation to drivers in exchange for the drivers bringing passengers to
12 Planet 13 rather than another cannabis dispensary.
13


DISTRICT COURT JUDGE
DATED this ____ day of September 2020.

14 Submitted by:

15 H1 LAW GROUP
16 
17

18 Eric D. Hone, NV Bar No. 8499
19 Joel Z. Schwarz, NV Bar No. 9181
20 Jamie L. Zimmerman, NV Bar No. 11749
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26 *Attorneys for Plaintiff*
27 Tryke Companies SO NV, LLC
28

BBB 62A 02D4 A3A2
Jim Crockett
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Tryke Companies SO NV, LLC,
7 Plaintiff(s)

CASE NO: A-19-804883-C

8 vs.

DEPT. NO. Department 24

9 MM Development Company,
10 Inc., Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
16 case as listed below:

17 Service Date: 9/10/2020

18 Patricia Stoppard	p.stoppard@kempjones.com
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20 Ali Augustine	a.augustine@kempjones.com
21 Nathanael Rulis	n.rulis@kempjones.com
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23 Eric Hone	eric@h1lawgroup.com
24 Jamie Zimmerman	jamie@h1lawgroup.com
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*Attorneys for Plaintiff Tryke
Companies SO NV, LLC*

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through C, inclusive; and ROE BUSINESS
ENTITIES, I through C, inclusive,

Defendants.

CASE NO.: A-19-804883-C
DEPT. NO.: 24

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

NOTICE IS HEREBY GIVEN that on the 10th day of September 2020 Findings of Fact,
Conclusions of Law, and Order Granting Plaintiff's Motion for Preliminary Injunction was
entered.

///

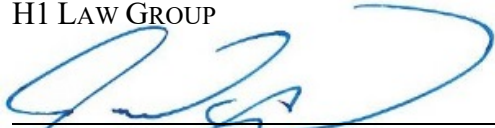
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///

1 A copy of the Findings of Fact, Conclusions of Law, and Order is attached hereto.

2 DATED this 11th day of September 2020.

3 H1 LAW GROUP

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13 Phoenix, AZ 85016

14 *Attorneys for Plaintiff*
Tryke Companies SO NV, LLC

15 **CERTIFICATE OF SERVICE**

16 The undersigned, an employee of H1 Law Group, hereby certifies that on the 11th day of
17 September 2020, she caused a copy of the foregoing to be transmitted by electronic service in
18 accordance with Administrative Order 14.2, to all interested parties, through the Court's

19 **Odyssey E-File & Serve:**

20 
21 Karen M. Morrow, an Employee of H1 LAW GROUP



Heather S. Hume
CLERK OF THE COURT

H1 LAW GROUP
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*Attorneys for Plaintiff Tryke
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FINDINGS OF FACT

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11 “kickbacks” or “commissions” in exchange for dropping passengers off at Planet 13. Planet 13
12 advertises this program to drivers on the web-based application called “KickBack”.

13 11. Planet 13’s program appeared to be suspended or discontinued earlier this year as
14 of the time of the Covid-19 pandemic, during which time the Nevada dispensaries were closed
15 other than for delivery services. Upon the reopening of marijuana dispensaries, however, Planet
16 13’s program also resumed. As of August 19, 2020, Planet 13 continues to advertise that it pays
17 rideshare service drivers “kickbacks” for diverting customers to Planet 13 on the KickBack
18 application.

19 12. Unlike taxicab drivers who may pick up passengers who do not have a
20 preconceived destination, rideshare service drivers get their passengers through their respective
21 software applications. The passenger is required to enter both their pickup location and their
22 chosen destination when ordering the ride. It is only after this required information is entered
23 that the driver is notified of the ride requested. Thus, rideshare service drivers are always
24 already given both the passenger’s location and destination before the driver even meets the
25 passenger.

26 13. Planet 13’s program financially incentivizes and pays rideshare service drivers for
27 unlawfully diverting Reef Dispensary-bound customers to Planet 13 instead. The drivers divert
28 and alter a passenger’s previously selected destination by means of disparaging and/or



1 providing false information regarding Reef Dispensary, cajoling and/or pressuring the passenger
2 to go to Planet 13 instead, and/or simply dropping the passenger off at Planet 13 instead of the
3 specified destination of Reef Dispensary.

4 14. On June 24, 2019, prior to commencing this action, Tryke notified Planet 13 that
5 its kickback program resulted in payments to drivers for improper diversion, disparagement, and
6 interference with Reef Dispensary's business. Despite Tryke's request, Planet 13 has refused to
7 discontinue or modify its program to eliminate payments for diversion.

8 15. If any of the Findings of Fact are properly conclusions of law, they shall be
9 treated as though appropriately identified and designated.

10 **CONCLUSIONS OF LAW**

11 **Preliminary Injunction Standard**

12 16. In Nevada, the standards for a preliminary injunction are set forth in NRS 33.010.
13 A preliminary injunction may be granted where: (1) the party seeking such relief enjoys a
14 reasonable likelihood of success on the merits of at least one claim, and (2) the party's conduct
15 to be enjoined, if permitted to continue, will result in irreparable harm for which compensatory
16 damages are an inadequate remedy. *See Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029,
17 1029 (1987); *Sobel v. Capital Management Consultants, Inc.*, 102 Nev. 444, 446, 726 P.2d 335,
18 337 (1986).

19 17. Nevada courts may also consider two additional factors: (3) the relative interest of
20 the parties – how much damage the plaintiff will suffer if injunctive relief is denied versus the
21 hardship to the defendant if injunctive relief is granted, and (4) the interest the public may have
22 in the litigation, if any. *See Home Finance Co. v. Balcom*, 61 Nev. 301, 127 P.2d 389 (1942);
23 *Ellis v. McDaniel*, 95 Nev. 455, 596 P.2d 222 (1979).

24 **Plaintiff Is Likely to Succeed on the Merits**

25 18. Nevada law requires only that a moving party demonstrate a "reasonable
26 probability" of success on the merits, not an overwhelming likelihood, to obtain injunctive
27 relief. *See Dixon v. Thatcher*, 103 Nev. 414, 742 P.2d 1029 (1987).

28 ///



1 19. Under Nevada law, unlawful “diversion” occurs if a transportation services
2 company driver deceives or attempts to deceive “any passenger who rides or desires to ride” in
3 the driver’s vehicle, or conveys or attempts to convey “any passenger to a destination other than
4 the one directed by the passenger.” NRS 706A.280(2)(a) and (b) and NAC 706.552(1).

5 20. In Nevada, the elements for a claim of wrongful interference with prospective
6 economic advantage are: “(1) a prospective contractual relationship between the plaintiff and a
7 third party; (2) the defendant’s knowledge of this prospective relationship; (3) the intent to harm
8 the plaintiff by preventing the relationship; (4) the absence of privilege or justification by the
9 defendant; and (5) actual harm to the plaintiff as a result of the defendant’s conduct.” *Las*
10 *Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, 106 Nev. 283,
11 287, 792 P.2d 386, 388 (Nev. 1990).

12 21. “[T]he intent element for an intentional interference with prospective economic
13 advantage claim does not require a specific intent to hurt the plaintiff, but instead, requires only
14 an intent to interfere with the prospective contractual relationship.” *Hitt v. Ruthe*, Case No.
15 65239, 2015 WL 4068435 (Nev. Ct. App. June 24, 2015) (citing *Las Vegas-Tonopah-Reno*
16 *Stage Line, Inc. v. Gray Line Tours of S. Nev.*, 106 Nev. 283, 287-88, 792 P.2d 386, 388
17 (1990)).

18 22. Tryke has prospective economic and contractual relationships with customers that
19 request a rideshare service to take them to the Reef Dispensary. Planet 13 is aware of this
20 relationship and, through its kickback program, Planet 13 purposefully incentivizes rideshare
21 drivers as its agents and/or co-conspirators whom it pays to unlawfully divert these customers
22 away from Reef Dispensary and to Planet 13 instead. Planet 13 has failed to claim any
23 legitimate privilege or justification for its conduct, which is harming Tryke.

24 23. In Nevada, a claim for civil conspiracy may be established under the following
25 rules:

26 (1) An act lawful when done by one individual may become an actionable wrong if
27 done by a number of persons acting in concert, if the result injures the party against
28 whom the action is directed;

28 ///



1 (2) An act lawful when done by one individual may be the subject of an actionable
2 civil conspiracy when it is done with the intention of injuring another or when,
3 although done to benefit the conspirators, its natural consequence is the oppression
4 of an individual; and

5 (3) An act lawful when done by one individual, because justified by his rights,
6 becomes actionable when done by a combination of persons actuated by malice if
7 harm results to another.

8 *Hubbard Business Plaza v. Lincoln Liberty Life*, 596 F. Supp. 344, 346 (D. Nev 1984).

9 24. Tryke satisfies the first rule for civil conspiracy because, while Planet 13 claims it
10 does not “direct” action against Reef Dispensary, Planet 13’s co-conspirators (the rideshare
11 service drivers) do, as demonstrated by their own statements and conduct in the record.

12 25. Tryke satisfies the second rule for civil conspiracy because the injury to Reef
13 Dispensary is the “natural consequence” of the oppression of passengers’ stated intentions and
14 the prospective relationship with Reef Dispensary.

15 26. Tryke satisfies the third rule for civil conspiracy because it provided Planet 13
16 with actual notice that its kickback program resulted in payments to drivers for improper
17 diversion, disparagement, and interference with Reef Dispensary’s business, and Planet 13
18 nonetheless continued to operate its program without alteration, thereby establishing malice.

19 27. Tryke is likely to succeed on the merits of its claims for tortious interference with
20 prospective economic relations and civil conspiracy.

21 28. Because Tryke is likely to succeed on the merits of its claims, this factor weighs
22 in favor of granting injunctive relief.

23 **Plaintiff Will Suffer Irreparable Harm**
24 **If the Preliminary Injunction Is Not Granted**

25 29. Irreparable harm is an injury “for which compensatory damage is an inadequate
26 remedy.” *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987). Generally, harm
27 is ‘irreparable’ if it cannot adequately be remedied by compensatory damages.” *Hamm v.*
28 *Arrowcreek Homeowners’ Ass’n*, 124 Nev. 28, 183 P.2d 895, 901 (2008). “[A]n injury is not
fully compensable by money damages if the nature of the plaintiff’s loss would make damages
difficult to calculate.” *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992).



1 30. Injunctive relief is proper where “it is essential to preserve a business or property
2 interest.” *Guion v. Terra Marketing of Nevada, Inc.*, 90 Nev. 237, 240, 523 P.2d 847, 848
3 (1974). Additionally, courts have recognized “the difficulty in calculating money damages to
4 redress the loss of a client relationship that ‘would produce an indeterminate amount of business
5 in years to come.’” *Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. 347, 351 P.3d 720 (2015)
6 (quoting *Ticor Title Ins. Co. v. Cohen*, 173 F.3d 63, 69 (2d Cir. 1999)).

7 31. The Nevada Supreme Court has “determined that ‘acts committed without just
8 cause which unreasonably interfere with a business or destroy its credit or profits, may do an
9 irreparable injury.’” *State, Dep’t of Bus. & Indus., Fin. Institutions Div. v. Nevada Ass’n Servs.,*
10 *Inc.*, 128 Nev. 362, 370, 294 P.3d 1223, 1228 (2012) (quoting *Sobol v. Capital*
11 *Management*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986)); *see also Guion v. Terra Marketing*
12 *of Nevada, Inc.*, 90 Nev. 237, 523 P.2d 847 (1974) (actions that interfere with a business “or
13 destroy its custom, its credit or its profits, do an irreparable injury and thus authorize the
14 issuance of an injunction.”).

15 32. Planet 13’s actions are causing substantial damage and irreparable harm to
16 Tryke’s sales and customer acquisitions that cannot be fully ascertained or redressed solely
17 through money damages. This harm extends beyond mere financial damage caused by the
18 inevitable decrease in sales. Planet 13’s actions will also lead to the irremediable loss of Tryke’s
19 brand value, consumer loyalty, and inherent goodwill of the dispensary itself.

20 33. The damage caused by Planet 13 is exceptionally difficult to quantify in dollars
21 because it involves harm to reputation and to customer relations.

22 34. Because Tryke will suffer irreparable harm if a preliminary injunction is not
23 granted, this factor weighs in favor of granting injunctive relief.

24 **The Balance of the Equities Is in Plaintiff’s Favor and a**
25 **Preliminary Injunction Is in the Public Interest**

26 35. In granting a preliminary injunction, courts may “weigh the potential hardships to
27 the relative parties, and others, and the public interest.” *Univ. & Cmty. Coll. Sys. of Nevada v.*
28 *Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

39. Because the balance of hardships and public interest weigh in favor of Tryke, all factors weigh in favor of issuing a preliminary injunction.

///



1 43. If any of the Conclusions of Law are properly findings of fact, they shall be
2 treated as though appropriately identified and designated.

3 **ORDER**

4 **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** that Plaintiff's Motion
5 for Preliminary Injunction is GRANTED.

6 IT IS FURTHER ORDERED:

7 1. Defendant Planet 13 is enjoined from paying any fee or commission to rideshare
8 service drivers in exchange for the drivers bringing passengers to Planet 13 rather than another
9 cannabis dispensary; and

10 2. Defendant Planet 13 is enjoined from advertising to rideshare service drivers that
11 Planet 13 will provide compensation to drivers in exchange for the drivers bringing passengers to
12 Planet 13 rather than another cannabis dispensary.
13


DISTRICT COURT JUDGE
DATED this ____ day of September 2020.

14 Submitted by:

15 H1 LAW GROUP
16 
17

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28

BBB 62A 02D4 A3A2
Jim Crockett
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Tryke Companies SO NV, LLC,
Plaintiff(s)

CASE NO: A-19-804883-C

7 vs.

DEPT. NO. Department 24

8
9 MM Development Company,
Inc., Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

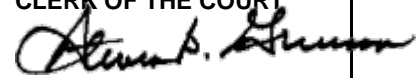
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13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

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DISTRICT COURT

CLARK COUNTY, NEVADA

TRYKE COMPANIES SO NV, LLC, a
Nevada limited liability company,

Plaintiff,

vs.

MM DEVELOPMENT COMPANY, INC.,
dba PLANET 13, a Nevada corporation;
DOES I through C, inclusive; and ROE
BUSINESS ENTITIES I through C,
inclusive,

Defendants.

Case No.: A-19-804883-C

Dept. No.: 24

HEARING REQUESTED

**MM DEVELOPMENT COMPANY,
INC.'S MOTION FOR
RECONSIDERATION OF THE
COURT'S ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION OR, IN
THE ALTERNATIVE, MOTION TO
AMEND PURSUANT TO NRCP 52(b)
OR, IN THE ALTERNATIVE, MOTION
FOR CLARIFICATION**

Defendant MM Development Company, Inc. ("Planet 13"), by and through counsel of record, hereby submits this Motion for Reconsideration of this Court's Order Granting Plaintiff Tryke Companies SO NV LLC ("Reef") Motion for Preliminary Injunction pursuant to EDCR 2.24 because the Court's order is clearly erroneous, the Order Shortening Time did not permit Planet 13 sufficient time to gather evidence to refute Reef's conclusory allegations and inadmissible evidence. In the alternative, Planet 13 moves the Court to alter or amend the Preliminary Injunction pursuant to NRCP 52(b). Alternatively, Planet 13 seeks clarification of the scope of the Preliminary Injunction.

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This Motion is made and based on the papers and pleadings on file, the following Memorandum of Points and Authorities, and accompanying Declarations of Ian P. McGinn and Russell Alexander Giannaris, and any oral argument as may be heard by the Court.

DECLARATION OF IAN P. MCGINN IN SUPPORT MOTION FOR RECONSIDERATION/TO AMEND/FOR CLARIFICATION

I, Ian P. McGinn, Esq., declare as follows:

1. I am one of the attorneys representing MM Development Company, Inc. (“Planet 13”) in this action pending before this court, Case No. A-19-804883-C. I make this Declaration in support of Planet 13’s Motion for Reconsideration of the Court’s Order Granting Plaintiff’s Motion for Preliminary Injunction or, in the Alternative, Motion To Amend Pursuant To NRCP 52(b) or, in the Alternative, Motion for Clarification on Order Shortening Time. I am competent to testify to the facts stated herein.

2. This Court entered the Preliminary Injunction (as defined herein) against Planet 13 enjoining Planet 13 from undertaking certain actions on September 11, 2020.

3. Attached as **Exhibit B and Exhibit C** hereto are true and correct copies of comments pulled from the Kickback Application.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

DATED this 25th day of September, 2020.

/s/ Ian P. McGinn
IAN P. MCGINN, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

Planet 13 respectfully asks the Court to reconsider its entry of the Preliminary Injunction against Planet 13 pursuant to EDCR 2.24, and/or amend the Preliminary Injunction’s Findings of Fact and Conclusions of Law pursuant to NRCP 52(b).

1 First, Reef's Motion for Preliminary Injunction was heard on shortened time, so Planet 13
2 was only given three days to file an opposition. Based on this extremely short time frame,
3 especially in light of Reef's delays in bringing a motion for preliminary injunction, Planet 13 did
4 not have a meaningful opportunity to fully gather and submit significant evidence to refute Reef's
5 conclusory allegations supported by layers of inadmissible hearsay. Planet 13's additional
6 evidence further demonstrates Reef cannot succeed on the merits of its claims. While Planet 13
7 has no authority to police diversion, Planet 13 actively takes steps to discourage rideshare drivers
8 from attempting to divert passengers. Therefore, Reef cannot demonstrate Planet 13's actions are
9 unlawful or that Planet 13 has acted with the requisite intent to harm Reef. As the Preliminary
10 Injunction is based entirely on these erroneous findings, the Court must vacate it.

11 In addition, the Preliminary Injunction is clearly erroneous to the extent it finds that Reef
12 enjoys a likelihood of success on the merits of its intentional interference claim. As a matter of
13 law, Reef does not have a *contractual* relationship with potential retail consumers who
14 contemplate entering its store. Even assuming Reef could impose contractual obligations on
15 potential customers, Reef failed to provide substantial evidence that Planet 13 had knowledge of
16 any specific prospective contractual relationships or a specific intent to harm Reef. In fact, as
17 Planet 13's additional evidence demonstrates, this cannot be farther from the truth.

18 For the same reasons, the Court erroneously found that Reef is likely to succeed on its
19 conspiracy claim. Reef's inability to sustain its intentional interference claim necessarily prohibits
20 its conspiracy claim. Further, Reef failed to provide substantial evidence of any concerted action
21 taken by Planet 13 for the purpose of harming Reef or otherwise acted with malice. Here, again,
22 Planet 13's additional evidence regarding the steps it takes to prevent and discourage rideshare
23 drivers from taking the actions Reef complains of is fatal to Reef's conspiracy claim. Reef's
24 failure to offer anything other than argument, assumptions, and conclusions on Planet 13's
25 motives cannot sustain an injunction against Planet 13. Accordingly, this Court's decision to enter
26 a preliminary injunction against Planet 13 is clearly erroneous, and Planet 13 respectfully asks
27 this Court to reconsider its ruling and/or amend its Findings of Fact and Conclusions of Law.
28

1 In the event the Court does not vacate or amend the Preliminary Injunction, Planet 13
2 seeks clarification and/or amendment of the scope of the Preliminary Injunction. As it stands, the
3 Preliminary Injunction is overly broad because it prevents Planet 13 from providing compensation
4 to rideshare drivers “in exchange for the drivers bringing passengers to Planet 13 rather than
5 another cannabis dispensary.” This is clearly outside the scope of redressing Reef’s alleged harm.
6 Thus, Planet 13 requests that the Court clarify and/or modify the Preliminary Injunction to limit
7 its scope to the issues in this litigation.

8 **I.**

9 **STATEMENT OF RELEVANT FACTS**

10 **A. Planet 13 Actively Discourages Diversion.**

11 All of Reef’s claims are predicated on the flawed assumption that Planet 13’s
12 compensation program is unlawful or improper and was designed to harm Reef. Reef’s self-
13 serving characterization of Planet 13’s compensation program does not render this customary and
14 longstanding business practice in Nevada into an unlawful practice simply because Reef says so.¹

15 In fact, Planet 13’s policy is to refuse to compensate rideshare drivers when Planet 13 is
16 made aware Planet 13 was not the passenger’s chosen destination. *See Exhibit A*, Declaration of
17 Russell Giannaris. Planet 13 does not encourage or condone drivers improperly diverting
18 passengers to Planet 13 in violation of Nevada law. *Id.* at ¶ 6. Further, if Planet 13 security is
19 made aware that a passenger has been dropped at Planet 13 that did not want to be dropped at
20 Planet 13, the transportation department is informed to not provide the driver of that passenger
21 with any compensation. *Id.* at ¶ 8. Planet 13’s policy is also evident by several comments on the
22 Kickback App:

23
24
25 ¹ Reef’s use of the term “kickback” to support its self-serving contentions not only puts the cart
26 before the horse, but is simply incorrect. Merriam-Webster defines a “kickback” as “a return of
27 some part of a sum received because of confidential agreement or coercion.” Dictionary.com
28 defines a “kickback” as “a percentage of income given to a person in a position of power or
influence as payment for having made the income possible: usually considered improper or
unethical.” Reef failed to demonstrate Planet 13’s business decision to provide compensation to
drivers – pursuant to this longstanding and customary practice employed by numerous industries
and businesses in Las Vegas(including other dispensaries) –falls into either of these definitions.

- Kickback App comment dated March 10, 2019: “**their [Planet 13] address has to be the ending destination in the app, or no pay. Do not convert or make a stop on the way to another location because you’ll not be paid.**”
- Kickback App comment dated November 25, 2019: “Talked riders into coming here instead of Essence. Ended the ride as we passed by essence, brought them to Planet 13. The whole process was ten minutes **but bc my trip didn’t end at planet 13, or wasn’t still running, he couldn’t give me a kickback**, Arabian dude with glasses. Pretty unreasonable and bad business.”
- Kickback App comment dated March 1, 2020: “here’s some words of advice to you drivers out there refer your passengers to planet 13 there you will not get screwed. If you want to score some extra money refer you passengers to planet 13 I’ve been going there multiple times and I always get paid. Here’s a heads up though **make sure you show proof that your destination is at planet 13 when you head to the window at the side of the building weather it’s not Uber or Lyft if you don’t have the proof they will not pay you.**
- Kickback App comment dated July 6, 2020: “head to planet 13 they treat drivers very well. No BS **just show them your app Uber or Lyft to confirm your destination is at planet 13 and you’ll be paid.**”

See **Exhibit B**, Screenshots of Kickback App Comments (emphasis added). Planet 13 cannot simultaneously act with the intent to harm Reef while actively attempting to preclude the conduct Reef contends is unlawful.

B. Procedural History

On November 5, 2019, Reef filed its Complaint alleging three causes of action: (1) Civil Conspiracy; (2) Aiding and Abetting; and (3) Intentional Interference with Economic Advantage. All of Reef’s claims hinge on the specious and unsupported allegation that Planet 13’s compensation to taxicab, Uber, and Lyft drivers for dropping off passengers at Planet 13 is illegal and somehow designed to encourage diversion (as defined by NRS 706A.280(2) and NAC 706.552(1)). Neither of these predicates is true.

On August 24, 2020, nearly **ten months** after filing its Complaint, Reef moved for a preliminary injunction on an Order Shortening Time. The Court required Planet 13 to respond to the Motion only three (3) days later on August 27, 2020 (the Parties were able to reach an agreement giving Planet 23 until 5:00pm on August 28, 2020 to file its opposition), and set the hearing on September 3, 2020. This shortened response time did not provide Planet 13 the opportunity to gather additional evidence to refute Reef’s conclusory contentions on the purported merits of its claims. The Court granted Reef’s Motion, despite Planet 13’s contention Reef’s claims lack legal or factual merit. After submitting competing orders, the Court, on September 11, 2020, entered Reef’s proposed order granting the Preliminary Injunction.

Planet 13 respectfully seeks reconsideration of the Preliminary Injunction. The significantly abbreviated time Planet 13 was given to file an opposition did not afford Planet 13 a meaningful opportunity to gather evidence to refute Reef’s allegations. Planet 13’s additional evidence demonstrates the frailty of Reef’s claims and substantially undermines the finding that Reef provided clearly favorable evidence to support its request for a mandatory injunction.² The additional evidence Planet 13 has acquired also clarifies the factual and legal deficiencies of Reef’s claims. As such, the Court must reconsider its clearly erroneous finding that Reef is likely to succeed on the merits of its claims.

II.

ARGUMENT

A. Standard of Review.

The Court has the inherent authority to reconsider its prior orders. *See* EDCR 2.24; *Trail v. Faretto*, 91 Nev. 401, 403 (1975). In particular, “[a] district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous.” *Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741

² *See Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994) (Noting that mandatory injunctions go “well beyond simply maintaining the status quo” during the litigation, are “particularly disfavored,” and should only be granted where the facts and law “clearly favor the moving party.”) (citations omitted).

(1997). The Court may rehear a motion that was previously denied even if the facts and law remain unchanged. *Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 217 (Nev. 1980). Reconsideration of a court order may be granted where there is a reasonable probability that the Court arrived at an erroneous conclusion. *Geller v. McCowan*, 64 Nev. 106, 108 (1947); *In re Ross*, 99 Nev. 657, 659 (1983). The Court may amend, correct, modify, or vacate an order previously made and entered on a motion. *Trail*, 91 Nev. at 403.

Pursuant to NRCP 52(b), upon a timely motion, the Court may also amend its findings and/or make additional findings.³

B. Reef Cannot Succeed on Its Claims.

Reef failed to establish that it was entitled to the extraordinary remedy of injunctive relief in the form of a mandatory preliminary injunction against Planet 13. *See Stanley v. Univ. of S. California*, 13 F.3d at 1320; *see also Wal-Mart Stores, Inc. v. County of Clark*, 125 F. Supp. 2d 420, 424 (D. Nev. 1999). As Planet 13's additional evidence demonstrates, Reef has not and cannot demonstrate Planet 13's actions were designed to or intended to cause any harm to Reef. Thus, contrary to the findings in the Preliminary Injunction, Reef does not enjoy a reasonable likelihood of success on the merits of its claim, both as a matter of law and because Reef failed to provide substantial evidence to support its claims or its purported irreparable harm. *Pickett v. Camanche Constr., Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992); *Number One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 780-81, 587 P.2d 1329, 1330 (1978); *see also* NRS 33.010. As such, the Preliminary Injunction must be vacated or amended.

1. Planet 13's Compensation Program is Not Unlawful or Designed to Harm Reef.

All of Reef's claims hinge on its conclusory allegation that Planet 13 has engaged in some form of wrongful, illegal conduct. As set forth in Planet 13's Opposition to the Motion for Preliminary injunction, this is simply untrue. Planet 13's compensation program does not provide illegal "kickbacks," but is a longstanding, customary practice across numerous industries in Las Vegas. *See* Opp. to Motion for Preliminary Injunction at 2:17-3:23; 10:9-21.

³ A motion pursuant to NRCP 52(b) tolls the time for an appellant to file a notice of appeal pursuant to NRAP 4(a)(4)(B).

1 Reef's claims are unfounded due to multiple critical facts. First, Planet 13's compensation
2 program was designed and implemented long before it moved locations to be near to Reef. Planet
3 13's compensation program had nothing to do with Reef, but rather was simply meant to compete
4 on the same grounds as the multitude of other dispensaries around the Las Vegas valley. Second,
5 Planet 13's compensation program does not designate between rideshare drivers whose
6 passengers originally selected Planet 13 as their destination and those that do not. If Planet 13's
7 conduct was intentionally designed to induce rideshare drivers to unlawfully "divert" passengers
8 or done with an intent to harm Reef, then it would only provide compensation to rideshare drivers
9 who could demonstrate their passengers chose Reef as their original destination. Third, Planet 13
10 refuses to provide compensation to rideshare drivers whose passenger(s) indicates they did not
11 wish to be brought to Planet 13 and thus actively discourages this conduct. *See Ex. 1* at ¶ 8. Planet
12 13 cannot simultaneously act with the intent to harm Reef and to prevent and/or discourage the
13 same harm.

14 Further, this Court's ruling appears to be based, at least in part, on the mistaken
15 assumption that rideshare passengers cannot and do not have a choice to amend their destinations
16 once they chose a destination or that any change is the result of illegal diversion. This is simply
17 untrue. In fact, the ability to choose the final destination is fundamental to these services and is a
18 regular occurrence. There is nothing out of the ordinary, let alone illegal, for a passenger to change
19 his or her mind, even if based in part on suggestions (whether solicited or not) from the driver.
20 While many rideshare passengers have only a certain destination in mind, many others simply put
21 in a destination to initiate the ride, but then can and do seek recommendations from a rideshare
22 driver on similar venues, as is customary with taxi passengers. This is especially true in Las
23 Vegas, where tourists routinely request rides through a rideshare app and are likely to seek
24 recommendations or opinions from the drivers regarding theirs and other similar destinations.
25 Thus, this Court's ruling is based on a misunderstanding of the rideshare concept and the false
26 premise that any change to the final destination during a ride must be the result of diversion by
27 the driver.
28

1 Finally, the Court’s ruling is clearly erroneous because it is not based on substantial
2 evidence. The Court’s mandatory injunction was based on statements from unidentified,
3 anonymous purported rideshare drivers on and internet chat board and conversations covertly
4 taped by Reef’s own “secret shopping” riders. The Court should not have considered this
5 inadmissible hearsay. Reef failed to and could not cite to any authority that statements from
6 unidentified, anonymous persons can be imputed to Planet 13 as a party admission. NRS 51.035
7 provides that a “statement by a coconspirator of a party during the course and in furtherance of
8 the conspiracy” is not hearsay. However, Reef provided no evidence that Planet 13 and these
9 alleged drivers had any direct or even indirect communications purportedly in furtherance of any
10 conspiracy to harm Reef. Neither was there any evidence provided that Planet 13 had any
11 knowledge whatsoever of the alleged diversion. Reef’s conclusory allegation that Planet 13
12 “conspired” with unknown, unidentified rideshare drivers by simply implementing its
13 compensation policy cannot impute these statements to Planet 13. *See United States v. Gonzalez-*
14 *Valdez*, 321 F. App’x 683, 684 (9th Cir. 2009) (statements inadmissible under coconspirator
15 hearsay exception where there was “no evidence other than the alleged co-conspirator’s statements
16 themselves that would establish the existence of a conspiracy between the defendant and the
17 unknown, unidentified caller.”). Therefore, this Court’s Preliminary Injunction is grounded in
18 false premises and inadmissible evidence, and is therefore, clearly erroneous.

19 **2. Reef Cannot Succeed on the Merits of Its Interference with Prospective Economic**
20 **Advantage Claim.**

21 Reef did not demonstrate a likelihood of success on the merits of its interference claim
22 because several of the elements lack legal and factual support in the form of substantial evidence.

23 With respect to Reef’s claim for intentional interference with economic advantage, Reef
24 must allege and prove the following elements:

- 25 (1) a prospective **contractual** relationship between the plaintiff and a third party;
26 (2) **knowledge** by the defendant of the prospective relationship; (3) **intent to harm**
27 the plaintiff by preventing the relationship; (4) the **absence of a privilege or**
28 **justification** by the defendant; and (5) actual harm to the plaintiff as a result of the
defendant’s conduct.

1 *Wichinsky v. Mosa*, 109 Nev. 84, 88, 847 P.2d 727, 729-30 (1993); *Consolidated Generator-Nev.,*
2 *Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1255 (1998) (same) (emphasis
3 added).

4 First, as a matter of law, Reef does not have a prospective **contractual** relationship with
5 retail customers who may wish to visit its retail store. Reef failed to cite any authority whatsoever
6 in its Motion for the proposition that a **contractual** relationship exists between a retailer and a
7 **potential** retail consumer to sustain a claim against a competitor for intentional interference. Reef
8 has not and cannot cite any Nevada authority holding that a retail customer enters into a
9 **contractual** relationship with a retailer simply by deciding to enter its store or even through an
10 isolated purchase of its products under a claim for intentional interference with economic
11 advantage. The nonexistent contractual relationship is even more tenuous when in the context of
12 a potential retail consumer that is a passenger requesting a ride from a rideshare driver with Reef
13 as his or her destination. It should go without saying that a rideshare passenger can change his or
14 her mind on the intended destination and that he or she is not locked into any **contractual**
15 **obligations** with a business simply because he or she chose a specific destination or contemplated
16 visiting the store at some point. Therefore, as a matter of law, Reef cannot succeed on its
17 intentional interference claim because no prospective **contractual** relationship existed with which
18 Planet 13 could allegedly interfere.

19 Second, even assuming a contractual relationship arises where a retail consumer decides
20 her or she *may* want a ride to Reef's store (which it does not), Reef did not provide substantial
21 evidence that Planet 13 had knowledge of any specific prospective contractual relationships or
22 that Planet 13 specifically intended to harm Reef's unidentified prospective contractual
23 relationships by compensating rideshare drivers for dropping off passengers. Because this is an
24 intentional tort, Reef must demonstrate that Planet 13's actions were made with the specific desire
25 to interfere with Reef's prospective contractual relationships or that Planet 13 knew such
26 interference was substantially certain to result. *See* Restatement (Second) of Torts § 767 (1979).
27 Reef failed to provide any evidence of Planet 13's intent and instead relied solely on conclusory
28 statements and argument regarding Planet 13's purported motives.

As set forth above, Reef's conclusory allegations are undermined by the actual facts. For instance, Reef has not alleged that Planet 13 only provides compensation to drivers who bring passengers who originally requested Reef as their destination. In fact, as Planet 13's evidence demonstrates, its security employees refuse to provide compensation to drivers in any instances where the passenger indicates Planet 13 was not its chosen destination. *See* Ex. 1 at ¶ 8. Thus, Planet 13 does not intentionally encourage drivers to divert passengers from Reef to Planet 13, but actively seeks to prevent and discourage this occurrence. Even if Planet 13 was conceivably aware that some rideshare drivers *may* independently suggest passengers visit a different dispensary than the one they had in mind, in whole or in part based on their ability to receive compensation, this does not rise to the level of knowledge and intent required to sustain an intentional interference claim against Planet 13. Therefore, Reef failed to provide substantial evidence Planet 13 had knowledge of a specific, prospective contractual relationship, let alone a specific intent to harm Reef.

Finally, even assuming Reef could establish the existence of prospective contractual relationship or provide substantial evidence of Planet 13's knowledge and intent, the glaring fact remains that Planet 13's provision of compensation to drivers is privileged and justified under longstanding Nevada law protecting free competition. *Crockett v. Sahara Realty Corp.*, 95 Nev. 197, 199, 591 P.2d 1135, 1136 (1979). So long as the competitor's actions to induce potential customers are not improper, the actions are privileged and justified. *Id.* Stated another way, "[w]here a party has a financial interest in a business, it ordinarily cannot be found that decisions made with respect to that business and for the purpose of furthering that business are improper." *Id.*

Planet 13's program providing compensation to drivers who drop off passengers is a privileged business decision made to further its business. As set forth in Planet 13's Opposition to the Motion for Preliminary Injunction, Planet 13's compensation program is not only legal, but consistent with a customary, widespread practice utilized by numerous other dispensaries and in several other prominent industries in Las Vegas. *See* Opp. to Motion for Preliminary Injunction at 2:17-3:23; 10:9-21. Planet 13's compensation program does not become illegal or wrongful

1 simply because Reef labels the compensation as “kickbacks” or says so. That in some instances,
2 unidentified, unaffiliated drivers may suggest or even convince some passengers to visit Planet
3 13 rather than other dispensaries as a result of Planet 13’s business decision to compensate drivers
4 does not make Planet 13’s compensation program unlawful or otherwise strip Planet 13 of this
5 business privilege. As such, Reef failed to demonstrate by substantial evidence that Planet 13’s
6 actions are not privileged or justified.

7 Accordingly, both as a matter of law and due to a lack of substantive evidence, Reef cannot
8 succeed on its interference claim, and thus is not entitled to a preliminary injunction.

9 **3. Reef Cannot Succeed on the Merits of Its Civil Conspiracy Claim.**

10 The Court also erroneously determined that Reef enjoyed a substantial likelihood of
11 success on the merits of its civil conspiracy claim. A conspiracy action must be based on an
12 agreement to commit a viable tort. *Philip v. BAC Home Loans Servicing, LP*, 644 F. App’x 710,
13 711 (9th Cir. 2016) (unpublished) (citing *Eikelberger v. Tolotti*, 611 P.2d 1086, 1088 (Nev.
14 1980)). Reef’s inability to succeed on its intentional interference claim as set forth above is fatal
15 to its conspiracy claim.

16 Regardless, Reef failed to provide substantial evidence of the requisite elements of a
17 conspiracy claim. “An actionable civil conspiracy consists of a combination of two or more
18 persons who, by some concerted action, intend to accomplish an unlawful objective for the
19 purpose of harming another, and damage results from the act or acts.” *Consolidated Generator-*
20 *Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). To succeed
21 on this claim, Reef must demonstrate, among other things that the primary purpose of Planet 13
22 and the unidentified rideshare drivers’ alleged agreement was to harm Reef. *See id.*

23 Again, Reef failed to provide substantial evidence that the primary purpose of Planet 13’s
24 compensation program was to wrongfully interfere with Reef’s prospective contractual relations.
25 In fact, as demonstrated above, Planet 13 actively seeks to prevent this conduct. Therefore, no
26 evidence exists to support Reef’s conspiracy claim, let alone substantial evidence to support a
27 mandatory injunction.
28

1 Instead, the Court determined that Reef could succeed on this claim, based on its
2 misplaced reliance on the so-called civil conspiracy “rules” set forth in *Hubbard Bus. Plaza v.*
3 *Lincoln Liberty Life Ins. Co.*, 596 F. Supp. 344, 346 (D. Nev. 1984). No Nevada state court cites
4 to *Hubbard* as precedent for analyzing a civil conspiracy claim. Regardless, the cases on which
5 these rules are purportedly based do not support Reef’s claims. These cases clearly provide that
6 an actionable conspiracy requires concerted action against Reef done with malicious motives, but
7 Reef failed to present any corresponding evidence. *See Short v. Hotel Riviera, Inc.*, 79 Nev. 94,
8 106, 378 P.2d 979, 986 (1963) (“When an act done by an individual is not actionable because
9 justified by his rights, though harmful to another, such act becomes actionable when done in
10 pursuance of combination of persons **actuated by malicious motives and not having same**
11 **justification as the individual.**”); *see also Eikelberger v. Tolotti*, 96 Nev. 525, 528, 611 P.2d
12 1086, 1088 (1980).

13 As set forth above, because Planet 13’s compensation program does not apply only to
14 drivers who bring passengers who originally selected Reef as their destination, Reef has not
15 demonstrated that the alleged concerted action between Planet 13 and the rideshare drivers is
16 actually taken against Reef. Further, the fact that Planet 13 actually refuses to compensate drivers
17 in any instances in which Planet13 is made aware of the fact that the passenger did not agree to
18 come to Planet 13 eviscerates a finding of intent, let alone malice. *See* Ex. 1 at ¶ 8.

19 *Las Vegas Sun, Inc. v. Summa Corp.*, 610 F.2d 614, 620 (9th Cir. 1979) further
20 demonstrates the Court’s reliance on *Hubbard* is misplaced. There, the Ninth Circuit noted that
21 *Short v. Hotel Riviera* “illustrates that a malicious concerted refusal to deal is actionable,” but
22 held that if “the refusal to deal is motivated by a legitimate business justification, it is privileged.”
23 Thus, because the defendant’s actions were supported by legitimate business motives, namely
24 economizing on its area advertising, the Ninth Circuit held the district court properly denied the
25 plaintiff’s common law conspiracy claim. *Id.* Similarly, here, Planet 13’s compensation program
26 is motivated by a legitimate business justification rather than the result of a malicious motive to
27 harm Reef and, therefore, is not actionable.
28

1 Finally, contrary to the Court’s finding, Reef cannot demonstrate Planet 13 acted with
2 malice simply because Reef sent a letter to Planet 13 alleging it believed Planet 13’s compensation
3 policy was unlawful. *See* Preliminary Injunction at ¶ 26. Planet 13’s policy was implemented long
4 before Reef started complaining and making threats. Therefore, Reef failed to provide substantial
5 evidence it was likely to succeed on the merits of its conspiracy claim.

6 **4. Reef Failed to Demonstrate Irreparable Harm.**

7 Regardless, Reef is not entitled to injunction relief because it cannot demonstrate
8 irreparable harm. Reef failed to provide substantial evidence of the purported irreparable harm it
9 would suffer if Planet 13 is permitted to continue compensating rideshare drivers. Instead, Reef
10 simply argued that unidentified rideshare drivers may be making false and misleading statements
11 about Reef. This is not sufficient to warrant injunctive relief because it assumes that any
12 statements comparing Reef to other dispensaries are “false and misleading” without any actual
13 evidence to support this proposition. Furthermore, there is absolutely no evidence that Planet 13
14 has made any statements about Reef or encouraged rivers making statements about Reef in any
15 way. Substantial evidence well beyond allegations is required to obtain injunctive relief,
16 especially where is goes beyond maintaining the status quo. *See Stanley v. Univ. of S. California*,
17 13 F.3d 1313, 1320 (9th Cir. 1994). Therefore, the lack of substantial evidence on this crucial
18 element renders the Court’s ruling clearly erroneous.

19 Moreover, in reality, the Preliminary Injunction has no effect on the purported harm Reef
20 is suffering. As demonstrated by various comments on the Kickback app following the Court’s
21 injunction, rideshare drivers have indicated they will still suggest to their riders to visit another
22 dispensary that provides compensation as opposed to Reef:

- 23 • Kickback App comment dated September 12, 2020: “F the reef, love taking people
24 here, will continue to support planet 13, **but will recommend pios until this is**
25 **sorted out.**”
- 26 • Kickback App comment dated September 14, 2020: “**I’m still taking every**
27 **customer I can away from Reef.**”
28

- Kickback App comment dated September 19, 2020: “Planet 13 not paying out to ride share. **PISOs here I come with all my rides.**”
- Kickback App comment dated September 22, 2020: “**I change rider destinations from planet 13 to pisos 3 times today** and I make \$60 cash let planet 13 deal with less customer.”

See **Exhibit C**, Screenshots of Kickback App Comments (emphasis added). In other words, the fact that Planet 13 is now enjoined from compensating drivers does not cure Reef’s alleged harm – because Planet 13 is not the proximate cause of the harm alleged by Reef. Instead, as shown by the last Kickback App comment above, the Preliminary Injunction inflicts harm on Planet 13 by precluding Planet 13 from lawfully providing compensation to rideshare drivers while every single other dispensary (including Reef) can choose to exercise this customary business practice. Therefore, the lack of evidence supporting Reef’s claim of irreparable harm and the arbitrary and capricious nature of the injunction only being entered against Planet 13 is further proof that this Court’s ruling was clearly erroneous and should be reconsidered.

C. In the Alternative, the Court Must Clarify and/or Modify the Preliminary Injunction.

In the event the Court denies reconsideration, Planet 13 seeks clarification and/or amendment of the Preliminary Injunction. The Preliminary Injunction enjoins Planet 13 from providing compensation to rideshare drivers “in exchange for bringing passengers to Planet 13 rather than another cannabis dispensary.” Preliminary Injunction at 9:7-9. This prohibition is overly broad because it goes well beyond seeking to redress the alleged harm to Reef, and thus is improper. *See United States v. AMC Entm’t, Inc.*, 549 F.3d 760, 768 (9th Cir. 2008) (“A district court has considerable discretion in granting injunctive relief and in tailoring its injunctive relief. However, a trial court abuses its discretion *by fashioning an injunction which is overly broad.*”) (emphasis added). The Court should clarify and/or modify the Preliminary Injunction to tailor and limit its scope to circumstances where a rideshare driver brings passengers to Planet 13 rather than to the passengers’ original destination of the Reef Dispensary.

///

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III.

CONCLUSION

Based on the foregoing, Planet 13 respectfully requests that the Court reconsider and vacate or amend its clearly erroneous Preliminary Injunction Pursuant to EDCR 2.24 and/or NRCP 52(b). At a minimum, the Court must modify or clarify the Preliminary Injunction to narrowly redress the alleged harm to Reef.

DATED this 25th day of September, 2020.

KEMP JONES, LLP

/s/ Ian P. McGinn

Will Kemp, Esq. (#1205)

Nathanael R. Rulis, Esq. (#11259)

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Las Vegas, Nevada 89169

Attorneys for Defendant

MM Development Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September, 2020, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION OR, IN THE ALTERNATIVE, MOTION TO AMEND PURSUANT TO NRCP 52(b) OR, IN THE ALTERNATIVE, MOTION FOR CLARIFICATION** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Ali Augustine

An employee of Kemp Jones, LLP

Exhibit A

Declaration of Russell Alexander Giannaris

I, Russell A. Giannaris hereby declare under penalty of perjury and state as follows:

1. I am over 18 years old and competent to testify as to the matters contained herein, which are stated upon my personal knowledge except for those matters stated upon information and belief, if any, and as for those matters, I believe them to be true.

2. I am Security Lieutenant for Integrity Global Security ("IGS"), an independent contractor that assists Planet 13 with its security.

3. I have been working at Planet 13 since 10/10/2018.

4. As part of my duties, I observe and patrol the parking lot, including the arrival and departure of persons in rideshares, taxicabs, and limousines.

5. As part of my duties, I assist the Planet 13 employees who work in the Planet 13 Transportation Department to advise whether a driver of a rideshare service (such as Uber or Lyft), taxicab or limousine should receive the compensation Planet 13 offers to those that deliver passengers to Planet 13.

6. I have been trained and understand that Planet 13 does not encourage or condone driver's improperly diverting passengers to Planet 13 in violation of Nevada law.

7. As part of my duties, I watch as vehicles enter the property and the passenger(s) exit the vehicles and enter Planet 13. If I notice a passenger does not enter Planet 13, I advise the transportation Department not to pay the driver of the vehicle those passengers exited.


8. On a few occasions, I had overheard a passenger exit a rideshare and state that this was not his/her destination. If I hear this, I will usually approach the passenger(s) to determine what the issue is and why they are upset. If I am advised that Planet 13 was not their intended destination, I will inform the Transportation Department to not provide that rideshare driver any compensation.

9. There have been occasions where I have witnessed a passenger(s) dropped off at Planet 13, and then walk directly across the street and down to the Reef Dispensary. When I see this, I also inform the Transportation Department not to provide the driver of the vehicle that dropped off that passenger(s) with any compensation.

10. Based on the circumstances in each of the scenarios set forth in Paragraphs 6-8 above, I have had to trespass drivers who have tried to defraud passengers in their vehicle and/or Planet 13.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 24th day of September 2020.



Russell Giannaris

Exhibit B

4:25



Comments



tachin li

on 03/12/2019 at 04:01 AM

Be careful you will not get pay... last week I was recommended my rides come this place, but my app was showing the drop off location not here, even I tell them which is my riders, still don't get pay .



Mark

on 03/10/2019 at 03:04 AM

their address has to be the ending destination in the app, or no pay. do not convert or make a stop on the way to another location because you'll not be paid.



Mark

on 03/10/2019 at 01:43 AM

no pay on pool rides. don't divert your rides here cause you won't be paid!



jackie

on 03/04/2019 at 07:38 PM

I love these guys they are great fast! I always want to bring my clients here



al

on 02/25/2019 at 10:51 AM



4:19 ↗



Comments



jcalder3

on 11/25/2019 at 01:18 AM

Talked riders into coming here instead of Essence. Ended the ride as we passed by essence, brought them to Planet 13. The whole process was ten minutes but bc my trip didn't end at planet 13, or wasn't still running, he couldn't give me a kickback, Arabian dude with glasses. Pretty unreasonable and bad business



jcalder3

on 11/25/2019 at 01:18 AM

Talked riders into coming here instead of Essence. Ended the ride as we passed by essence, brought them to Planet 13. The whole process was ten minutes but bc my trip didn't end at planet 13, or wasn't still running, he couldn't give me a kickback, Arabian dude with glasses. Pretty unreasonable and bad business



Mojii

on 11/18/2019 at 03:09 PM

Thank you



Thomas

on 11/08/2019 at 11:01 AM



Dispensaries should take a page outta the strip clubs. Presenting the "ride" on your phone has to be

4:36



Comments



slayer316

on 03/01/2020 at 12:57 PM

here's some words of advice to you drivers out there refer your passengers to planet 13 there you will not get screwed. If you want to score some extra money refer your passengers to planet 13 I've been going there multiple times and I always get paid. here's a heads up though make sure you show proof that your destination is at planet 13 when you head to the window at the side of the building weather it's Uber or Lyft if you don't have the proof they will not pay you.👍



Fuck Head

on 02/27/2020 at 10:23 PM

Fuck this place. They have to many excuses as to why they don't pay out. FUCK YOU MEDMAN!!



Gonch

on 02/18/2020 at 10:32 PM

If anyone needs a ride downtown just call med men and have them order an Uber for you. Just picked up someone from the airport drove them all way downtown and got burned on the kickback.



rome

on 02/11/2020 at 04:41 PM



Does REEF not do kickbacks??

4:34



Comments

happy



phil2502

on 07/06/2020 at 01:28 PM

head to planet 13 they treat drivers very well. No BS just show them your app Uber or Lyft to confirm your destination is at planet 13 and you'll be paid 👍



gerardo lefebre

on 03/14/2020 at 05:06 PM

\$10 for rite



silly goose

on 03/13/2020 at 04:16 AM

Too many assholes work at Medman while the management kept scamming the drivers for kickbacks!!!!!!



Louie

on 03/03/2020 at 09:09 PM

welp.. last time i drop here. in app ride from them on behalf of the passengers. always ask your pax if its prepaid. if so cancel not worth your time. take them to the real dispensaries on the strip.



silly goose

on 03/02/2020 at 11:21 PM

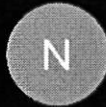


Exhibit C

1:44



Comments



nunataks

on 09/21/2020 at 05:08 AM

Reef sucks!



Rides from A 2 Z

on 09/19/2020 at 07:49 PM

Plant 13 not paying out to ride share. PISOs here I come with all my rides.



mike

on 09/14/2020 at 09:23 PM

No more money pay outs anymore only to cabs something about being sued



Alexion

on 09/14/2020 at 08:24 PM

I'm still taking every customer I can away from Reef



shrimppot

on 09/12/2020 at 07:29 PM

F the reef, love taking people here, will continue to support planet 13, but will recommend pisos until this is sorted out



Peter

on 09/12/2020 at 02:51 PM



1:43



Comments



Peter

on 09/22/2020 at 01:44 AM

I change rider destinations from planet13 to pisos 3 times today and I make \$60 cash let planet13 deal with less customer.



UberVegasDriver

on 09/21/2020 at 06:31 PM

No payouts is bullshit! Fuck P13!



BD

on 09/21/2020 at 03:20 PM

Suddenly Pisos and the Grove have long lines like planet 13 🤔



nunataks

on 09/21/2020 at 05:08 AM

Reef sucks!



Rides from A 2 Z

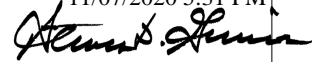
on 09/19/2020 at 07:49 PM

Plant 13 not paying out to ride share. PISOs here I come with all my rides.



mike




CLERK OF THE COURT

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14 EIGHTH JUDICIAL DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 TRYKE COMPANIES SO NV, LLC, a
17 Nevada limited liability company,

18 Plaintiff,

19 vs.

20 MM DEVELOPMENT COMPANY, INC., dba
21 PLANET 13, a Nevada corporation; DOES I
22 through C, inclusive; and ROE BUSINESS
ENTITIES, I through C, inclusive,

Defendants.

CASE NO.: A-19-804883-C
DEPT. NO.: 24

**ORDER DENYING MM DEVELOPMENT
COMPANY, INC.'S MOTION FOR
RECONSIDERATION OF THE COURT'S
ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION OR, IN THE
ALTERNATIVE, MOTION TO AMEND
PURSUANT TO NRCP 52(b) OR, IN THE
ALTERNATIVE, MOTION FOR
CLARIFICATION**

23 The Court, having reviewed and considered the *Motion for Reconsideration of the Court's*
24 *Order Granting Plaintiff's Motion for Preliminary Injunction or, in the Alternative, Motion to*
25 *Amend Pursuant to NRCP 52(b) or, in the Alternative, Motion for Clarification* (the "Motion for
26 Reconsideration") filed by Defendant MM Development Company, Inc. dba Planet 13
27 ("Defendant"), the Opposition to the Motion for Reconsideration filed by Plaintiff Tryke
28



Companies SO NV, LLC (“Plaintiff”), and Defendant’s Reply; good cause appearing and for the reasons set forth in a Minute Order entered October 23, 2020, HEREBY FINDS, CONCLUDES, AND ORDERS:

1. MM Development’s Motion for Reconsideration fails to present newly-discovered evidence or an intervening change in the law to warrant reconsideration or amendment of the Court’s Order Granting Plaintiff’s Motion for Preliminary Injunction.

2. The arguments made by Defendant MM Development are the same arguments made at the time of hearing that resulted in issuance of the Preliminary Injunction.

3. Putting aside the inadmissible nature of the hearsay statements in the declaration of Security Lieutenant Giannaris, Giannaris states he has worked at MM Development’s Planet 13 facility since October of 2018, handling and interacting with rideshare drivers and he attests to the fact that he was an intermediary between Planet 13 and rideshare drivers with regard to making payments to rideshare drivers who brought their passengers to Planet 13. As such, Security Lieutenant Giannaris’s information provided in the Motion for Reconsideration was readily available to Planet 13 at the time of the original Motion for Preliminary Injunction.

4. The arguments about Tryke’s delay in pursuing injunctive relief were already addressed in the context of the COVID-19 restrictions.

5. The Exhibit C excerpts from Kickback are all dated after the injunctive relief was granted and simply reflect drivers are complaining that they are no longer getting paid for diverting passengers like they were before: 9/14/20 9:23 PM Mike – No more money pay outs anymore only to cabs something about being sued. [sic].

6. The Court has already considered the matter of Plaintiff’s likelihood of success so this too is nothing new to warrant reconsideration or amendment of the injunctive relief granted..

7. Defendant’s Motion for Reconsideration is DENIED.

IT IS SO ORDERED this ____ day of November, 2020.

DISTRICT COURT JUDGE



1 Submitted by:
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From: [Ian McGinn](#)
To: [Karen Stecker](#); [Nathanael Rulis](#)
Cc: [Paul Conant](#)
Subject: RE: [External] Tryek/ MM Development Order Denying Motion for Reconsideration
Date: Friday, November 6, 2020 3:37:16 PM
Attachments: [KempJonesLogo2_e97f52fd-beed-4207-bfd3-035d78d1bf0d111.png](#)
[DRAFT Order Denying MM Motion for Reconsideration \(KJ Redline\).docx](#)
[2020.10.22 Court Minutes Re Motion for Reconsideration.pdf](#)

Good afternoon:

Attached is our redline of the proposed order you sent over. The redlines revise and add language from the Court's Minute Order (also attached for ease of reference) and represent a full and more accurate reflection of the Court's ruling.

With these changes accepted, you may add my electronic signature and submit the proposed order to the Court.

Best regards,

Ian

[Ian McGinn, Esq.](#)



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From: Karen Stecker <KStecker@conantlawfirm.com>
Sent: Friday, November 6, 2020 1:03 PM
To: n.rulis@kempjones.com; Ian McGinn <i.mcgin@kempjones.com>
Cc: Paul Conant <PaulConant@conantlawfirm.com>
Subject: [External] Tryek/ MM Development Order Denying Motion for Reconsideration
Importance: High

Good Afternoon:

The attached order needs to be sent to the Court today. Please confirm that we can add your signature as to form and we will send it.

Thank you,

Karen Stecker
Conant Law Firm
Business Manager
(602) 508-9010
(602) 508-9015 FAX

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Tryke Companies SO NV, LLC,
Plaintiff(s)

CASE NO: A-19-804883-C

7 vs.

DEPT. NO. Department 24

8
9 MM Development Company,
Inc., Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 11/7/2020

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p.stoppard@kempjones.com

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(Pro Hac Vice)
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Phoenix, AZ 85016
Phone 602-508-9010
Fax 602-508-9015

*Attorneys for Plaintiff Tryke
Companies SO NV, LLC*

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

TRYKE COMPANIES SO NV, LLC, a Nevada
limited liability company,

Plaintiff,

vs.

MM DEVELOPMENT COMPANY, INC., dba
PLANET 13, a Nevada corporation; DOES I
through C, inclusive; and ROE BUSINESS
ENTITIES, I through C, inclusive,

Defendants.

CASE NO.: A-19-804883-C
DEPT. NO.: 24

**NOTICE OF ENTRY OF ORDER
DENYING MM DEVELOPMENT
COMPANY, INC.'S MOTION FOR
RECONSIDERATION OF THE COURT'S
ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION OR, IN THE
ALTERNATIVE, MOTION TO AMEND
PURSUANT TO NRCP 52(b) OR, IN THE
ALTERNATIVE, MOTION FOR
CLARIFICATION**

NOTICE IS HEREBY GIVEN that on the 7th day of November 2020, an Order Denying
MM Development Company, Inc.'s Motion For Reconsideration Of The Court's Order Granting
Plaintiff's Motion For Preliminary Injunction Or, In The Alternative, Motion To Amend
Pursuant To NRCP 52(b) Or, In The Alternative, Motion For Clarification was entered.

1 A copy of the Order is attached hereto.

2 DATED this 9th day of November 2020.

3 H1 LAW GROUP

4 

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eric@h1lawgroup.com

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9 Henderson, NV 89074

10 Paul A. Conant, AZ Bar No. 012667
paulconant@conantlawfirm.com
11 (*Pro Hac Vice*)

12 Conant Law Firm
2398 East Camelback Road, Suite No. 925
Phoenix, AZ 85016

13 *Attorneys for Plaintiff*
14 *Tryke Companies SO NV, LLC*

15 **CERTIFICATE OF SERVICE**

16 The undersigned, an employee of H1 Law Group, hereby certifies that on the 9th day of
17 November 2020, she caused a copy of the foregoing to be transmitted by electronic service in
18 accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey
19 E-File & Serve system.

20 

21 Karen M. Morrow, an Employee of H1 LAW GROUP
22
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Heather S. Smith
CLERK OF THE COURT

H1 LAW GROUP
701 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074
Tel: 702-608-3720



1 **n.ORDD**

2 **H1 LAW GROUP**

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4 Joel Z. Schwarz, NV Bar No. 9181
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5 Moorea L. Katz, NV Bar No. 12007
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10 Phoenix, AZ 85016
Phone 602-508-9010

11 Fax 602-508-9015

12 *Attorneys for Plaintiff*
Tryke Companies SO NV, LLC

13
14 EIGHTH JUDICIAL DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 TRYKE COMPANIES SO NV, LLC, a
17 Nevada limited liability company,

18 Plaintiff,

19 vs.

20 MM DEVELOPMENT COMPANY, INC., dba
21 PLANET 13, a Nevada corporation; DOES I
22 through C, inclusive; and ROE BUSINESS
ENTITIES, I through C, inclusive,

Defendants.

CASE NO.: A-19-804883-C
DEPT. NO.: 24

**ORDER DENYING MM DEVELOPMENT
COMPANY, INC.'S MOTION FOR
RECONSIDERATION OF THE COURT'S
ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION OR, IN THE
ALTERNATIVE, MOTION TO AMEND
PURSUANT TO NRCP 52(b) OR, IN THE
ALTERNATIVE, MOTION FOR
CLARIFICATION**

23 The Court, having reviewed and considered the *Motion for Reconsideration of the Court's*
24 *Order Granting Plaintiff's Motion for Preliminary Injunction or, in the Alternative, Motion to*
25 *Amend Pursuant to NRCP 52(b) or, in the Alternative, Motion for Clarification* (the "Motion for
26 Reconsideration") filed by Defendant MM Development Company, Inc. dba Planet 13
27 ("Defendant"), the Opposition to the Motion for Reconsideration filed by Plaintiff Tryke
28



Companies SO NV, LLC (“Plaintiff”), and Defendant’s Reply; good cause appearing and for the reasons set forth in a Minute Order entered October 23, 2020, HEREBY FINDS, CONCLUDES, AND ORDERS:

1. MM Development’s Motion for Reconsideration fails to present newly-discovered evidence or an intervening change in the law to warrant reconsideration or amendment of the Court’s Order Granting Plaintiff’s Motion for Preliminary Injunction.

2. The arguments made by Defendant MM Development are the same arguments made at the time of hearing that resulted in issuance of the Preliminary Injunction.

3. Putting aside the inadmissible nature of the hearsay statements in the declaration of Security Lieutenant Giannaris, Giannaris states he has worked at MM Development’s Planet 13 facility since October of 2018, handling and interacting with rideshare drivers and he attests to the fact that he was an intermediary between Planet 13 and rideshare drivers with regard to making payments to rideshare drivers who brought their passengers to Planet 13. As such, Security Lieutenant Giannaris’s information provided in the Motion for Reconsideration was readily available to Planet 13 at the time of the original Motion for Preliminary Injunction.

4. The arguments about Tryke’s delay in pursuing injunctive relief were already addressed in the context of the COVID-19 restrictions.

5. The Exhibit C excerpts from Kickback are all dated after the injunctive relief was granted and simply reflect drivers are complaining that they are no longer getting paid for diverting passengers like they were before: 9/14/20 9:23 PM Mike – No more money pay outs anymore only to cabs something about being sued. [sic].

6. The Court has already considered the matter of Plaintiff’s likelihood of success so this too is nothing new to warrant reconsideration or amendment of the injunctive relief granted..

7. Defendant’s Motion for Reconsideration is DENIED.

IT IS SO ORDERED this ____ day of November, 2020.

DISTRICT COURT JUDGE



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Submitted by:

H1 LAW GROUP

/s/ Eric D. Hone

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eric@h1lawgroup.com

Joel Z. Schwarz, NV Bar No. 9181
joel@h1lawgroup.com

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Henderson, Nevada 89074

/s/ Paul A. Conant

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paulconant@conantlawfirm.com

(Admitted *Pro Hac Vice*)

Conant Law Firm
2398 East Camelback Road, Suite 925
Phoenix, AZ 85016

Attorneys for Plaintiff

Tryke Companies SO NV, LLC

Approved as to form:

KEMP JONES

/s/ Ian P. McGinn

William Kemp, NV Bar No. 1205

Nathanael R. Rulis, NV Bar No. 11259

n.rulis@kempjones.com

Ian P. McGinn, NV Bar No. 12818

i.mcgin@kempjones.com

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Las Vegas, Nevada 89169

Attorneys for Defendant

MM Development Company, Inc.

From: [Ian McGinn](#)
To: [Karen Stecker](#); [Nathanael Rulis](#)
Cc: [Paul Conant](#)
Subject: RE: [External] Tryek/ MM Development Order Denying Motion for Reconsideration
Date: Friday, November 6, 2020 3:37:16 PM
Attachments: [KempJonesLogo2_e97f52fd-beed-4207-bfd3-035d78d1bf0d111.png](#)
[DRAFT Order Denying MM Motion for Reconsideration \(KJ Redline\).docx](#)
[2020.10.22 Court Minutes Re Motion for Reconsideration.pdf](#)

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