

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.

Case No. 81938

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APPELLANT'S APPENDIX

VOLUME 1 OF 3

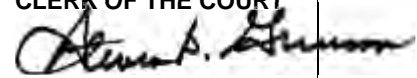
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CASE NO: A-19-804883-C
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EIGHTH JUDICIAL DISTRICT COURT

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





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.
28



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



- 1 b. On August 9, 2019, a different passenger than referenced in the prior
2 allegation requested pickup at the Encore at Wynn Hotel, and specified the
3 destination as Reef in the relevant app. The driver dropped off the
4 passenger instead at Planet 13, without asking the passenger to change the
5 destination in the app.
- 6 c. On August 9, 2019, a passenger requested pickup at the Palazzo Las Vegas,
7 and specified the destination as Reef in the relevant app. The driver dropped
8 off the passenger instead at Planet 13, without asking the passenger to
9 change the destination in the app.
- 10 d. On August 16, 2019, a passenger requested pickup at the Liquor City in Las
11 Vegas, and specified the destination as Reef in the relevant app. The driver
12 dropped off the passenger instead at Planet 13, after first asking the
13 passenger to change the destination in the app.
- 14 e. On August 16, 2019, a passenger requested pickup at the Wynn Hotel in
15 Las Vegas, and specified the destination as Reef in the relevant app. The
16 driver dropped off the passenger instead at Planet 13, without asking the
17 passenger to change the destination in the app.
- 18 f. On August 22, 2019, a passenger requested pickup at the Mirage Hotel in
19 Las Vegas, and specified the destination as Reef in the relevant app. The
20 driver dropped off the passenger instead at Planet 13, without asking the
21 passenger to change the destination in the app.
- 22 g. On September 5, 2019, a passenger requested pickup at Treasure Island
23 Hotel in Las Vegas, and specified the destination as Reef in the relevant
24 app. The driver dropped off the passenger instead at Planet 13, without
25 asking the passenger to change the destination in the app.
- 26 h. On September 5, 2019, a passenger requested pickup at the Encore at Wynn
27 Hotel in Las Vegas, and specified the destination as Reef in the relevant
28



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 handwritten signature in black ink, appearing to read 'Eric D. Hone', written over a horizontal line.

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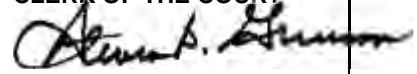
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DISTRICT COURT

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

**MM DEVELOPMENT COMPANY,
INC.'S MOTION TO DISMISS**

HEARING REQUESTED

Defendant MM Development Company, Inc. ("MM"), by and through counsel of record, hereby submits this Motion to Dismiss the Complaint filed by Plaintiff Tryke Companies SO NV, LLC ("Reef"), pursuant to NRCP 12(b)(5), because its claims are based on diversion statutes and regulations that do not apply to MM nor do the statutes or regulations provide Reef with a private right of action. In fact, Reef's claims are based on nothing more than hurt feelings over competition within the same industry, which is absolutely privileged under Nevada law. Hence, Reef's Complaint should be dismissed.

This Motion is made and based on the papers and pleadings on file, the following Memorandum of Points and Authorities and exhibit attached thereto, and any oral argument as may be heard by the Court.

According to Reef, it is now a crime or tort in Nevada to market and promote a business—the sum and substance of the Complaint. This is absolutely nonsense. Aside from conclusory allegations of statutory or regulatory violations by ride-sharing drivers that have no affiliation with MM and for which MM has no legal responsibility, Reef utterly fails to provide sufficient allegations to support its claims in its Complaint. For example, for its claim for Civil Conspiracy, Reef simply alleges: “Planet 13’s conduct, in conjunction with the Doe Defendants’ and Roe entity defendants’ conduct, as alleged herein constitutes civil conspiracy to violate Nevada’s anti-diversion statutes and regulations....” Complaint, ¶36.

This Court further lacks jurisdiction over the pending action. NRS Chapter 706A establishes the exclusive remedies for Reef for suspected diversion of ride-sharing passengers, and that is to take the issue up with the Nevada Transportation Authority (“NTA”). NRS Chapter 706A also includes the necessary administrative procedures for complaints against a transportation network company (i.e., ride-sharing companies) or a driver for suspected diversion. Until the administrative remedies provided by statute have been fully exhausted, the district court lacks subject matter jurisdiction over the action, rendering the controversy non-justiciable. Reef’s apathy toward the available administrative remedies is fatal to its Complaint and mandates dismissal of the present action for lack of jurisdiction.

I

A. Standard for Dismissal

“Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief.” *Stockmeier v. Nev. Dept. of Corrections*, 124 Nev. 313, 316, 183 P.3d 133, 135

(2008) (quoting *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002), *overruled in part on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008)). A complaint shall be dismissed “if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle it to relief.” *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672; *see also Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (providing that dismissal under NRCP 12(b) is appropriate where the allegations “fail to state a cognizable claim for relief”).

For purposes of a Rule 12(b)(5) motion, only the “factual allegations of [Plaintiff’s] complaint must be accepted as true.” *Bratcher v. City of Las Vegas*, 113 Nev. 502, 507, 937 P.2d 485, 489 (1997) (emphasis added) (internal quotation marks omitted). This Court does not assume the truth of conclusions of law. *See Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981); *In re Verifone Sec. Litig.*, 11 F.3d 865, 868 (9th Cir. 1993) (“Conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim.”).¹ Rule 8 “demands more than an unadorned, the-defendant unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Additionally, a deficient complaint “does not unlock the doors to discovery for a plaintiff armed with nothing more than conclusions.” *Id.* at 1950.

B. Reef Fails To State A Claim For Civil Conspiracy

1. Reef Has No Standing To Bring Claims Against MM Based On Diversion.

To support a claim for civil conspiracy, a plaintiff must demonstrate “a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts.” *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993). The agreement

¹ “Federal cases interpreting the Federal Rules of Civil Procedure ‘are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.’” *Executive Management, Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (citation omitted); *Greene v. Eighth Judicial Dist. Ct.*, 115 Nev. 391, 393, 990 P.2d 184, 185 (1999) (same).

to conspire may be either express or tacit. *GES, Inc. v. Corbitt*, 117 Nev. 265, 270-71, 21 P.3d 11,15 (2001). “The cause of action is not created by the conspiracy but by the wrongful acts done by the defendants to the injury of the plaintiff.” *Eikelberger v. Tolotti*, 96 Nev. 525, 528 n.1, 611 P.2d 1086, 1088 n.1 (1980). “Mere knowledge of the fraudulent or illegal actions of another is ... **not enough to show a conspiracy.**” *McClure v. Owens Corning Fiberglas Corp.*, 720 N.E.2d 242, 258 (Ill. 1999) (bold added). Nor is it enough if a defendant innocently performs an act that happens to advance the tortious purpose of another. *Adcock v. Brakegate, Ltd.*, 645 N.E.2d 888, 894 (Ill. 1994).

“Civil conspiracy is not an independent cause of action – it must arise from some underlying wrong.” *Paul Steelman Ltd. v. HKS, Inc.*, No. 2:05-CV-01330-BES-RJJ, 2007 WL 295610, at *3 (D. Nev. Jan. 26, 2007); *see also McPheters v. Maile*, 64 P.3d 317, 321 (Idaho 2002) (“Civil conspiracy is not, by itself, a claim for relief. The essence of a cause of action for civil conspiracy is the civil wrong committed as the objective of the conspiracy, not the conspiracy itself.”) (internal citations omitted); *Raimi v. Furlong*, 702 So. 2d 1273, 1284 (Fla. Ct. App. 1997) (“[A]n actionable conspiracy requires an actionable underlying tort or wrong.”); *cf. Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212, 984 P.2d 164 (1999) (affirming summary judgment on a conspiracy claim, which was “derivative of the defamation claim,” where the claim for defamation was dismissed).

More importantly, **the alleged underlying wrong supporting a civil conspiracy claim must give rise to a private right of action.** *See, e.g., Kramer v. Perez*, 595 F.3d 825, 830 (8th Cir. 2010) (“We refuse to create a private cause of action for civil conspiracy” where the underlying statute did not provide for such a right); *In re: Orthopedic Bone Screw Prods. Liability Litig.*, 193 F.3d 781, 790 (3d Cir. 1999) (“A claim of civil conspiracy cannot rest solely upon the violation of a federal statute for which there is no corresponding private right of action.”); *Wells v. Shelter Gen. Ins. Co.*, 217 F. Supp. 2d 744, 755 (S.D. Miss. 2002) (dismissing a civil conspiracy claim where the plaintiff failed to show a private right of action for alleged statutory violations); *Narragansett Pellet Corp. v. City of East Providence ex rel. Fitzgerald*, No. 06-464 ML, 2007 WL 2821538, at *7 (D. R.I. Sep. 25, 2007) (“Because Plaintiff does not have a private right of

1 action under the [Rhode Island] Code [of Ethics], Plaintiff cannot establish a valid underlying tort
2 to support the conspiracy allegation. As a result, Plaintiffs conspiracy claim... fails as a matter of
3 law.”); *cf. Mainor v. Nault*, 120 Nev. 750, 769, 101 P.3d 308, 321 (2004) (“The district court
4 appropriately struck the causes of action based on violations of ethical rules because the rules
5 were not meant to create a cause of action for civil damages.”).

6 In its Complaint, Reef implies that MM conspired with unknown ride-sharing drivers to
7 divert customers in violation of NRS 706A and NAC 706.552.² MM did no such thing, but more
8 importantly, *nowhere* in NRS Chapter 706A does it allow a business to privately sue for violations
9 of the statute (neither is there a private right of action created under NAC 706 nor NAC 706A).
10 Violations of NRS 706A may result in discipline by the Nevada Transportation Authority
11 (“NTA”). *See* NRS 706A.300 (only the transportation network company (i.e., ride-sharing
12 companies) and the drivers are subject to NTA discipline under NRS 706A). The Nevada
13 Legislature did **not** authorize private parties to seek redress from competitors for violations of
14 NRS Chapter 706A. Hence, Reef lacks any standing to assert claims against MM for diversion.

15 Because Reef lacks standing to assert direct claims against MM for violating NRS
16 706A.280 and NAC 706.552, it likewise lacks standing to assert indirect claims against MM for
17 statutory violations under the guise of a civil conspiracy claim. *See generally Allstate Ins. Co. v.*
18 *Thorpe*, 123 Nev. 565, 170 P.3d 989 (2007) (dismissing claims brought under NRS 690B.012
19 because the statute “does not expressly create a private right of action”); *Palmer v. State*, 106
20 Nev. 151, 787 P.2d 803 (1990) (dismissing a cause of action brought under NRS 281.370 because
21 the statute “does not provide for any private right of action”). Without a predicate wrong upon
22 which Reef could seek relief from MM, Reef cannot maintain a claim for civil conspiracy against
23 MM.

24 ///

25 ///

26 _____
27 ² To be clear, Reef cites to NAC 706.552 in the Complaint, but NAC 706 does not apply to
28 transportation network companies like Uber or Lyft. Those are governed by NAC 706A – though
neither NAC 706 nor NAC 706A apply to or govern MM in any way.

2. ***Reef Cannot Assert A Claim For Civil Conspiracy For An Unknown Class.***

For a party to bring a cause of action for civil conspiracy it must identify at least “two or more persons.” *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 981 P.2d 1251, 1256 (1998). In addition, “the conduct of each tortfeasor [must] be in itself tortious.” *GES, Inc. v. Corbitt*, 117 Nev. 265, 271 (2001). Concert of action requires that a defendant acted with another, or **defendants acted together**, to commit a tort while acting in concert or pursuant to a common design. *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 970 P.2d 98 (1998) (bold added).

Reef identifies MM as the only “party” conspirator. Nevada law is clear that MM could not have conspired with itself. Hence, Reef’s claim for civil conspiracy either: 1) fails to state a conspiracy claim upon which relief can be granted under NRCP 12(b)(5) because as a matter of law MM cannot conspire with itself; or 2) fails to join indispensable parties to the action under NRCP 12(b)(6) because, assuming there was a conspiracy, the other coconspirators cannot be “nonparties” but must be named as parties under NRCP 19.³

C. **Reef Fails To State A Claim For Aiding & Abetting**

In *Dow Chemical Company v. Mahlum*, the Court held that liability may attach for civil aiding and abetting “if the defendant substantially assists or encourages another’s conduct in breaching a duty to a third person.” 114 Nev. 1468, 1490-91, 970 P.2d 98, 112-13 (1998). Three elements must be alleged and proven: (1) that the acting **defendant** (none are named by Reef) committed a tort that injured plaintiff; (2) that the alleged aiding defendant was aware of its role

³ It is anticipated that the Defendant may mistakenly argue that it can conduct discovery to identify any coconspirators. Often known as the “Doe” rule, this type of pleading is based upon NRCP Rule 10(a) which provides in pertinent part “[a] party whose name is not known may be designated by any name, and when the true name is discovered, the pleading may be amended accordingly.” Such “Doe” pleadings must meet certain criteria which are not adhered to in the Complaint. See *Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 822 P.2d 1100 (1991); *Servantius v. United Resort Hotels, Inc.*, 85 Nev. 371, 455 P.2d 621 (1969); *State ex rel. Department of Highways v. Eighth Judicial District Court*, 95 Nev. 715, 601 P.2d 710 (1979); *Hill v. Summa Corp.*, 90 Nev. 79, 518 P.2d 1094 (1974). Without identifying or naming any coconspirators, Reef’s claim for civil conspiracy must be dismissed.

in promoting the tort at the time it provided assistance; and (3) that the alleged aiding defendant **knowingly and substantially assisted the acting defendant** in committing the tort. *Id.* (discussing an aiding and abetting claim in the context of an underlying fraudulent concealment claim) (citing *Temporomandibular Joint (TMJ) Implants Prods. Liab. Litig.*, 113 F.3d 1484, 1495 (8th Cir. 1997); *Halberstam v. Welch*, 227 U.S. App. D.C. 167, 705 F.2d 472, 477 (D.C. Cir. 1983)). To amount to a “substantial assistance” for purposes of aiding and abetting liability, the **alleged encouragement of a tortious act must take the form of a direct communication** or conduct in close proximity to the tortfeasor. *Mahlum*, 114 Nev. at 1491 (citing *Halberstam*, 705 F.2d at 481-82.) (bold added). **There must be some allegation of the existence of direct communication from the alleged aiding and abetting defendant to the tortfeasor**, or close conduct between the two that could have promoted the fraud. *See Id.*

Reef has not stated a claim against MM for aiding and abetting because it has not pleaded facts showing how MM provided substantial assistance to a tortfeasor. The claim of “aiding and abetting” should, therefore, be dismissed. *Id.*

D. Reef Fails To State A Claim For Intentional Interference With Prospective Economic Advantage

Tortious interference with prospective economic advantage requires: “(1) a prospective contractual relationship between the plaintiff and a third party; (2) knowledge by the defendant of the prospective relationship; (3) intent to harm the plaintiff by preventing the relationship; (4) the absence of a privilege or justification by the defendant; and (5) actual harm to the plaintiff as a result of the defendant’s conduct.” *Wichinsky v. Mosa*, 109 Nev. 84, 88, 847 P.2d 727, 729-30 (1993). “Perhaps the most significant privilege or justification for interference with a prospective business advantage is free competition. Ours is a competitive economy in which business entities vie for economic advantage.” *Crockett v. Sahara Realty Corp.*, 95 Nev. 197, 199, 591 P.2d 1135, 1136 (1979). As the Nevada Supreme Court said, “all vendees are potential buyers of the products and services of all sellers in a given line, and success goes to him who is able to induce potential customers not to deal with a competitor.” *Id.*

1 Reef claims it “had a reasonable probability of future business opportunities and economic
2 benefit in connection with those taxicab passengers who requested to be taken to Plaintiffs’
3 establishments.” Complaint, ¶ 53. Despite the language of Reef’s specific allegation, the notion
4 that Reef enjoys a “prospective contractual relationship” with an unknown third party at the time
5 that third party steps into an Uber or Lyft ride, without ever knowing whether the passenger
6 requested to be taken to Reef’s establishment or not, is absurd. The absurdity of the allegation is
7 magnified when one considers the numerous reasons that a passenger, after requesting
8 transportation to Reef’s establishment, might never arrive. In the event the Uber or Lyft were in
9 a traffic accident, or the passenger received an emergency telephone call and had to go elsewhere,
10 or the passenger suffered some sort of medical emergency while in the cab, the passenger, who
11 Reef would never be able to specifically identify as a potential customer, would never arrive on
12 that occasion to Reef’s establishment. The absurdity continues when one considers that the
13 elements of this tort require MM to have knowledge of the prospective contractual relationship.
14 It is impossible for MM to have knowledge of the prospective contractual relationship that even
15 Reef does not know about, i.e., to know of any request made by any Uber or Lyft passenger for
16 any destination.

17 While a person is in a taxi, Uber, or Lyft they have not established an economic
18 relationship with any of their potential destinations, let alone an economic relationship with the
19 probability of future economic impact. *See Crockett*, 95 Nev. at 199, 591 P.2d at 1136 (refusing
20 to hold defendants liable to plaintiffs for tortious interference with plaintiffs’ prospective
21 economic advantage consisting in an anticipated commission from a sales transaction). Reef
22 cannot prevail on its intentional interference with prospective economic advantage claim because
23 it has failed to sufficiently allege that any prospective relationship existed, that MM was aware
24 of any such relationship, or that the MM intended to interfere with any prospective contract. In
25 addition, accepting the allegations in Reef’s Complaint as true, Plaintiff fails to state a claim
26 against MM for tortious interference with a prospective economic advantage because MM’s
27 conduct, as a matter of law, was privileged based on competition in the marketplace. Hence, the
28 court should dismiss the intentional interference with prospective economic advantage claim.

E. This Court Lacks Jurisdiction Over Reef’s Claims Based On Diversion

The Supreme Court of Nevada requires a party to “exhaust all available administrative remedies before initiating a lawsuit.” *Mesagate Homeowners Ass’n v. City of Fernley*, 194 P.3d 1248, 1252 (Nev. 2008). “[F]ailure to do so renders the controversy nonjusticiable.” *Id.* If administrative remedies are not exhausted, the district court lacks subject matter jurisdiction over that action. *Nevada v. Scotsman Manufacturing Co.*, 109 Nev. 252, 255, 849 P.2d 317, 319 (Nev. 1993). Nevada’s Administrative Procedure Act, NRS 233B, reflects this requirement that administrative remedies be exhausted before seeking judicial review. According to NRS 233B.130(1), “[w]here appeal is provided within an agency, only the decision at the highest level is reviewable unless a decision made at a lower level in the agency is made final by statute.”

NAC 706A.420 provides the process by which complaints for the alleged wrongful acts or omissions of transportation network companies and their drivers must be submitted. These complaints are to be in writing and submitted to the NTA. If the NTA determines that probable cause exists for a formal written complaint received by the staff of the NTA, it will set a date for a public hearing on the complaint. NAC 706A.420.

NAC 706A also requires that the NTA conduct administrative hearings and issue a final decision concerning any complaint against a transportation network company or driver. *See, e.g.*, NAC 706A.750 (“The Authority will review the decision of a hearing officer and enter a final order affirming, modifying or setting aside the decision.”). The NTA’s decisions are subject to appeal by any “party of record to the administrative proceed.” NAC 706A.740. All administrative proceedings before the NTA, under NAC 706A, are conducted “pursuant to the provisions of chapter 233B of NRS and those provisions of chapter 706A of NRS which do not conflict with the provisions set forth in chapter 233B of NRS regarding notice to parties and the opportunity of parties to be heard.” NAC 706A.700.

If Reef has a complaint regarding diversion of passengers in ride-sharing vehicles, it needs to take that complaint up with the NTA. As Reef has failed to obtain any decision from the NTA, it has failed to exhaust its administrative remedies. As such, Nevada law mandates dismissal of the present action since this Court lacks subject matter jurisdiction over Reef’s grievances. *See*

1 NRS 233B.130(1); *see also Mesagate*, 194 P.3d at 1248; *Scotsman*, 109 Nev. at 255, 849 P.2d at
2 319.

3 **II**

4 **CONCLUSION**

5 MM has nothing to do with the claims brought by Reef. The only complaint Reef has is
6 against particular ride-sharing drivers and those complaints must be taken up with the NTA. The
7 claims in Reef's Complaint are without basis in law or in fact—marketing and promoting a
8 company is not improper. It neither constitutes an interference with prospective economic
9 advantage nor does it give rise to a claim for civil conspiracy or aiding and abetting.

10 Based on the foregoing, MM respectfully requests that the Court dismiss Reef's
11 Complaint for failure to state a claim upon which relief can be granted and lack of jurisdiction.

12 DATED this 6th day of December, 2019.

13 **KEMP, JONES & COULTHARD LLP**

14 /s/ Nathanael Rulis

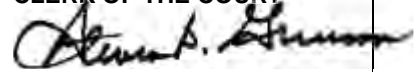
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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2019, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S MOTION TO DISMISS** 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/ Alisa Hayslett
An employee of Kemp, Jones & Coulthard, LLP



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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

**TRYKE COMPANIES SO NV, LLC'S
RESPONSE IN OPPOSITION TO
MOTION TO DISMISS**

**Hearing Date: February 6, 2020
Hearing Time: 9:00 a.m.**

TRYKE COMPANIES SO NV, LLC ("Tryke"), by and through counsel undersigned,
hereby files this response in opposition to MM Development Company, Inc.'s Motion to Dismiss
(the "Motion") filed December 8, 2019.

This Opposition is based upon the record, the following memorandum of points and
authorities, and any arguments made at the hearing on this matter.

///



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Even in the face of detailed factual allegations showing that Planet 13's kickback
4 program induces widespread, unlawful diversion, Planet 13's Motion boldly leaps far outside the
5 pleadings in response to Tryke's conspiracy and aiding and abetting allegations, gratuitously
6 assuring the Court that it "did no such thing." Motion 5:7. And yet elsewhere in its Motion,
7 Planet 13 at least tacitly concedes the misconduct, shifting to instead invoke "free competition"
8 as its shield, asserting that businesses may "vie for economic advantage" and that "success goes
9 to him who is able to induce potential customers not to deal with a competitor." Motion 7:22-27.

10 Of course, the law does not allow all forms of misbehavior under the aegis of "free
11 competition." Nonetheless, in Planet 13's ongoing attempt to simultaneously both deny and
12 excuse its misconduct, the Motion devolves into: (i) falsely accusing Reef of having "apathy"
13 toward purported administrative "remedies" with the NTA (Motion 2:16-21) which, in truth, do
14 not exist for Reef as a matter of law because NTA complaints may only be filed by "consumers"
15 of transportation services companies (*see* NRS 706A.260); (ii) falsely contending that Reef has
16 identified Planet 13 as "the only 'party' conspirator," when clearly the Complaint asserts claims
17 against up to 200 fictitious defendants (Complaint ¶ 3 and pp.9:10 and 10:4), as even the Motion
18 itself elsewhere changes tune to fully concede (Motion 2:7-9); (iii) manufacturing a citation to a
19 purported paragraph 53 of the Complaint that does not exist (Motion 8:1-3); (iv) fundamentally
20 misstating not only the Complaint's allegations, but also the very nature of application-based
21 ride-hailing, arguing that Reef has presented its Complaint "without ever knowing whether the
22 passenger requested to be taken to Reef's establishment or not" (Motion 8:3-6) (Reef knows of
23 twenty actual diversions (Complaint ¶ 23(a)-(t)) and has been informed of many "hundreds" of
24 others (Complaint ¶ 12); and, (v) making a nakedly emotional fact-weighting argument directly
25 contrary to the Complaint's assumed-to-be-true allegations (*i.e.*, arguing that the allegation that a
26 passenger would specify their destination in advance is "absurd," and that "the absurdity of the





1 allegation is magnified” by Tryke’s other allegations, and that the “absurdity continues,” *et*
2 *cetera*). Motion 8:6, 12.¹

3 **II. THE RECORD**

4 In early 2019, a customer alerted Tryke that he had summoned an Uber with Tryke’s
5 Reef dispensary as the destination specified in the Uber software application but, instead of
6 taking him to Reef, the Uber driver took him to a nearby competitor dispensary called “Planet
7 13.” Complaint ¶ 10.² Later, on a separate occasion, an Uber driver informed Reef that another
8 dispensary pays “kickbacks” to drivers to bring passengers to shop there, and that if Reef will not
9 also pay kickbacks, then drivers will take passengers to a dispensary that does. Complaint ¶ 11.
10 The implication was that the dispensary paying kickbacks to get Reef’s customers was Planet 13.
11 On yet another later occasion, a local business owner and Uber and Lyft driver called Reef to
12 state that Uber and Lyft drivers “are redirecting passengers to Planet 13 because Planet 13 pays
13 drivers” for “dropping off.” Complaint ¶ 12. She further explained that she and her group of
14 drivers were “redirecting your people to Planet 13” as much as “two or three times a day,” and
15 that you could “multiply that by the hundreds of drivers here” in Las Vegas to determine how
16 much business Reef is losing. *Id.*³

17 ***Ride Sharing Transportation and*** 18 ***Technology***

19 Uber and Lyft drivers get passengers in a fundamentally different manner than taxicab
20 drivers traditionally have. In fact, Nevada law requires it. Nevada law specifically prohibits
21 Uber and Lyft drivers from soliciting or accepting a passenger or providing any transportation

22 ¹ Planet 13 argues that the up to 200 fictitiously named defendants are not properly identified as “Doe”
23 defendants under NRCP 10(a). It is outside the pleadings, but we can amend to add allegations to this effect: each
24 driver which Planet 13 pays to divert is issued a Form 1099 by Planet 13, as an independent contractor. Planet 13
thus knows, and discovery can be used to determine, the names of the drivers it paid to unlawfully divert passengers.

25 ² Plaintiff Tryke Companies SO NV, LLC operates the Reef-brand legal marijuana dispensary at issue here,
26 located at 3400 Western Avenue, Las Vegas, Nevada 89109. Complaint ¶ 1. Tryke may be referred to herein as
27 “Reef” from time to time. Defendant MM Development Company, Inc. is a competing company which chose to
locate a dispensary fewer than 900 feet from the Reef dispensary, after Reef had been operating there for years.
Complaint ¶ 24.

28 ³ Uber and Lyft are “transportation service companies” regulated by Nevada law, and are commonly also referred
to as ride sharing service companies. Complaint ¶ 15.



1 services to any persons “unless the person has arranged for the transportation services through
2 the digital network or software application service of the transportation network company.”
3 NRS.706A.280(1). In other words, rather than “calling a cab” or “hailing a taxi” or going to a
4 “cab stand” like what taxicab users historically might have done, persons with an Uber or Lyft
5 software application on their smart phone or other device instead arrange for a ride with a
6 privately-owned vehicle operated by a driver who also has Uber or Lyft software application.
7 Complaint ¶ 16. There is no other legal way for an Uber or Lyft driver to get a passenger. *See*
8 NRS.706A.280(1).

9 A potential passenger with a ride sharing service company’s application on their smart
10 phone uses the application to both confirm their current location and specify the location to
11 which they desire to be driven at the time the request the ride. Complaint ¶ 17. The driver thus
12 knows both the consumer’s location and the consumer’s specified destination before deciding to
13 accept the ride request. If a driver accepts the ride request, the application matches a driver with
14 the passenger, and each can track the other’s location through the application: the passenger can
15 track the driver’s arrival path, and the driver can track the passenger’s location, on a digital map.
16 Complaint ¶ 18.

17 ***Prohibited “Diversion” Under***
18 ***Nevada Law***

19 This fundamental difference between how taxicab drivers and transportation services
20 company drivers can operate is relevant to the issue of illegal “diversion” by transportation
21 services company drivers. Under Nevada law, unlawful “diversion” occurs if a transportation
22 services company driver deceives or attempts to deceive “any passenger who rides or desires to
23 ride” in the driver’s vehicle, or conveys or attempts to convey “any passenger to a destination
24 other than the one directed by the passenger.” NRS 706A.280(2)(a) and (b). While surely a
25 taxicab passenger could call the cab company and state both their pickup location and specified
26 destination, it has also long been the case that a taxicab user might simply just hail an available
27 taxicab, or catch one at a cab stand, hop in and say to the driver something like: “I’m hungry for
28 good Italian food. Can you take me someplace nearby?” In those circumstances, the passenger



1 would not necessarily have designated a specific destination when entering the cab, so the
2 taxicab driver might simply recommend a destination and drive the passenger to a nearby Italian
3 restaurant. Now though, by contrast, given how the Uber and Lyft software applications work,
4 and the legal strictures of NRS.706A.280(1), Uber and Lyft drivers who get their passengers
5 through the Uber or Lyft software application are always already given both the passenger's
6 location and destination before the driver even meets the passenger. And, as to those
7 destinations, they are further also legally prohibited from diverting them to a different destination
8 during the ride. *See, e.g.*, NRS 706A.280(2)(a) and (b).

9 Illegal diversion can easily occur. Once an Uber or Lyft passenger's ride begins, a human
10 driver can (illegally) alter the passenger's specified destination by, for example, just taking them
11 to a different location, or convincing them to change their destination in the application.

12 Complaint ¶ 19. In each of those examples, the driver has unlawfully diverted the passenger in
13 violation of NRS 706A.280(2).⁴

14 ***Planet 13's Kickback Program***

15 Planet 13 widely publicizes its kickback program for Uber and Lyft drivers. Complaint
16 ¶ 25. Its program is specifically designed to encourage Uber and Lyft drivers to divert passengers
17 to Planet 13. Complaint ¶ 27. Because of the inherent nature of how Uber and Lyft drivers must
18 get their passengers as a matter of law, and the way the software applications function, drivers
19 have no influence over the passenger's destination choice when initially specified. At that point,
20 the driver and passenger have not even met or communicated yet.

21 Planet 13's kickback program is specifically designed with the intent to encourage illegal
22 diversion on the part of Uber and Lyft drivers. There would be no purpose in paying a kickback
23 to a driver who delivered a passenger to Planet 13 when the passenger had already specified
24 Planet 13 as the destination in the application. The purpose of the Planet 13 kickback program is
25 to get drivers to divert passengers who have not already selected Planet 13 as their destination.

26
27 ⁴ There is an express exception in the statute allowing a driver to decline a destination where "the driver has good
28 reason to fear for the driver's personal safety." NRS 706A.280(3)(a). The Complaint alleges Uber and Lyft drivers
divert Reef passengers to get kickback money from Planet 13, not because they fear for their personal safety.



1 Drivers have a significant financial incentive to unlawfully divert their passengers to
2 Planet 13 because the kickback program results in compensation being paid to them by Planet 13
3 well in excess (often many times in excess) of the actual fee or fare the drivers receive for
4 providing the ride itself. Complaint ¶ 30. Planet 13 was warned that its kickback program
5 resulted in payments to drivers for illegal diversion but refused to discontinue or modify its
6 program to eliminate payments for illegal diversion. Complaint ¶ 31. Subsequently, a random
7 “secret shopper” sampling of Uber and Lyft rides in Las Vegas between August 9 and September
8 17, 2019 confirmed that unlawful diversion to Planet 13 was occurring. Complaint ¶ 23(a)-(t).
9 During that sampling, many passengers specifying that their destination was Reef were often
10 simply just dropped off at Planet 13 instead, without even being alerted to the change in
11 destination. Complaint ¶ 23(a), (b), (c), (e), (f), (g), (j), (k), (l), (p), (q), (t). That conduct violates
12 NRS 706A.280(2)(a). Other times their Uber or Lyft driver asked them to change their
13 destination in the application from Reef to Planet 13. Complaint ¶ 23(d), (h), (i), (m), (n), (o), (r),
14 (s). That conduct violated NRS 706A.280(2)(b).

15 Even before the Complaint became public record, postings on the Las Vegas discussion
16 board of www.uberpeople.net confirmed exactly what the Complaint alleges: that Planet 13’s
17 well-publicized kickback program financially rewards Uber and Lyft drivers for violating
18 Nevada law by inducing them to take passengers who have specified Reef as their destination to
19 Planet 13 instead. Indeed, the following comments posted by Uber and Lyft drivers
20 demonstrates the success of Planet 13’s kickback program to encourage illegal diversion:⁵

21 JethroBodine: Planet 13. ...I schmooze with the riders...Many times they are going
22 to another dispensary and steer them to one that pays... I divert from other
23 dispensaries most of the time...

24
25
26
27 ⁵ These examples and exhibits are not offered as evidence as Tryke is not required to provide evidence to oppose a
28 motion to dismiss; instead, these are merely illustrative examples of the evidence Tryke has already obtained in support
of its claims.



1 Gs328: If person puts in Reef and u get them to divert to Planet, isn't that the
2 whole point of paying drivers.

3 KenLV: All you have to do is have the pax [abbreviation for "passenger"] change
4 the destination in the app. it's easy and if they don't know how, show them/do it
5 for them – but have them hit "confirm"...

6 See Exhibit 1, March 8, 2019 Discussion Thread on www.uberpeople.net.

7 April 20, 2019 discussion thread:

8 "Today is 4/20 get those dispensary runs! And make sure to divert from Reef or
9 Essence. Planet 13 is nearby both of them!"⁶

10 See **Exhibit 2**, April 20, 2019 Discussion Thread on www.uberpeople.net.

11 "My best advice to divert a pax that worked for me 99% of the time. You see where
12 they are going. Crack a joke like oh you picked reef. Good luck. It makes them
13 curious why you said that. Then proceed with their product is second grade and
14 higher priced and planet 13 is right next door with better pricing and product. Can
15 make planet 13 any dispensaries name you like. Then if they don't automatically
16 say re route me to there. Be semi passive aggressive and say you still wanna go to
17 the worst dispensary around? Honestly i have gotten many tips and kickback from
18 this and usually a good rating. Only 1 time a bad one as they worked at reef?"⁷

19 See **Exhibit 3**, August 22, 2019 Discussion Thread on www.uberpeople.net.

20 The www.uberpeople.net posters' comments quote above align with comments made by
21 Uber and Lyft drivers to the "secret shopper" riders whose experiences are referenced in
22 Complaint ¶¶23(a)-(t), none of whom ever disclosed to the passengers that, by diverting the ride
23 from Reef to Planet 13, the driver would be paid a financial kickback from Planet 13 in an
24 amount well in excess of the fare itself. If the Court would like to see a clarifying amendment,
25 Tryke could amend to amplify the pleading with those allegations as well.

26 **III. LEGAL ARGUMENT**

27 Nevada is a notice-pleading jurisdiction and liberally construes pleadings to place into
28 issue matter which is fairly noticed to the adverse party. NRC 8(a); *Chavez v. Robberson Steel*
29 *Co.*, 94 Nev. 597, 599, 584 P.2d 159, 160 (1978). NRC 8(a) requires a pleading "contain only a

30 ⁶ April 20, or "4/20" is considered an unofficial, annual day of celebration for marijuana aficionados, and most
31 dispensaries run promotions that day to attract customers.

32 ⁷ The poster's comment "Can make planet 13 any dispensaries name you like" underscores the obvious, that a
33 driver's efforts to persuade a passenger to change their destination *en route* need not be based on true facts or true
34 opinions, but instead can be made with the sole purpose of leveraging the driver's purportedly superior knowledge
35 to deceive the passenger and, therefore, cause an unlawful diversion in direct violation of NRS 706A.280(2)(b).



1 short and plain statement showing that the pleader is entitled to relief.” *Brown v. Kellar*, 97 Nev.
2 582, 583, 636 P.2d 874 (1981). Also, “the pleading of conclusions, either of law or fact, is
3 sufficient so long as the pleading gives fair notice of the nature and basis of the claim.” *Crucil v.*
4 *Carson City*, 95 Nev. 583, 585, 600 P.2d 216, 217 (1979). Here, the Complaint satisfies
5 Nevada’s notice-pleading requirements.

6 NRCP 12(b)(5) provides the Court authority to dismiss a pleading for failure to state a
7 claim upon which relief can be granted. However, the standard of review for the same is
8 rigorous as the court must “construe the pleadings liberally and draw every fair intendment in
9 favor of the [non-moving party].” *Conway v. Circus Casinos, Inc.*, 116 Nev. 870, 873, 8 P.3d
10 837, 839 (2000); *see also Buzz Stew LLC v. City of North Las Vegas*, 181 P.3d 670, 672 (Nev.
11 2008); *Vacation Village, Inc. v. Hitachi America, Ltd.*, 874 P.2d 744, 746 (Nev. 1994). A
12 complaint can be dismissed under NRCP 12(b)(5) only if it appears beyond a doubt that the
13 plaintiff can prove no set of facts in support of a claim which would entitle them to relief. *See*
14 *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985). The Court must accept all
15 allegations in Plaintiff’s Complaint as true and draw all inferences in favor of Plaintiff, the non-
16 moving parties. *See Kourafas v. Basic Food Flavors, Inc.*, 120 Nev. 195, 88 P.3d 822 (2004).
17 When weighed against such rigorous standards, the Court should deny Planet 13’s motion.

18 **1. Tryke Has Stated a Claim for Tortious Interference**

19 Tryke has stated a claim for tortious interference because the Complaint alleges all
20 necessary elements of the claim. Planet 13’s citation to *Wichinsky v. Mosa* (Motion 7:21)
21 correctly identifies the five elements of the claim, all of which are satisfied by the well-pled
22 allegations of the Complaint.

23 The first element, that a prospective contractual relationship exists between the plaintiff
24 and a third party, is satisfied because Complaint ¶ 54’s allegation that “[p]assengers requesting to
25 be driven to Plaintiff’s dispensary intend to purchase goods from Plaintiff and a prospective
26 contractual relationship exists between such passengers and Plaintiff” is further supported by
27 Complaint ¶¶ 10-12, 23(a)-(t).



1 The second element, that the defendant must have knowledge of the prospective
2 relationship is satisfied because Complaint ¶55's allegation that "Planet 13 is aware of the
3 prospective contractual relationship" is further supported by Complaint ¶¶ 10-12, 24-27, and 31
4 ("Planet 13 was warned that its kickback program results in payments for illegal diversion and
5 has not discontinued or modified its kickback program to eliminate payments for illegal
6 diversion."). The type of relations at issue in this claim "include any prospective contractual
7 relations, except those leading to contracts to marry, if the potential contract would be of
8 pecuniary value to the plaintiff." RESTATEMENT (SECOND) OF TORTS §766, cmt. c (1979); *Las*
9 *Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, 762 P. 2d 386,
10 388 n.1 (1990) (applying RESTATEMENT (SECOND) OF TORTS to intentional interference with
11 prospective economic advantage claim).

12 The third element, that there must be an intent to harm the plaintiff by preventing the
13 relationship, is satisfied because Complaint ¶ 56's allegations that "Planet 13 intends to disrupt
14 and terminate the prospective contractual relationship between Plaintiff and passengers
15 requesting to be driven to Plaintiff's dispensary, by encouraging drivers to divert such passengers
16 [to] Defendant's Planet 13 dispensary" is further supported by Planet 13's own battle cry that
17 "success goes to him who is able to induce potential customers not to deal with a competitor."
18 Motion 7:26-27. It is further supported by Complaint ¶¶ 10-12, 23(a)-(t), 24-27, and 29-31. As
19 Nevada's Supreme Court explained in *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line*
20 *Tours of Southern Nevada, supra*, 766 P. 2d at 388, this element requires "only an intention to
21 interfere with the plaintiff's prospective contractual relation, and not malevolent spite by the
22 defendant." No allegation or proof of "specific intent to harm" is required. *Id.*

23 The fourth element, the "absence of privilege or justification by defendant," is satisfied
24 because Complaint ¶ 57's allegation that "no privilege or justification excuses Defendant Planet
25 13s wrongful conduct of encouraging diversion of passengers" is further supported by Complaint
26 ¶¶ 9 (citing the NAC's ban on gratuities to taxi drivers and independent contractors for
27 diversion), 10-12, 23(a)-(t), and 24-31. To satisfy this element at summary judgment, a plaintiff
28 need only show "that the means used to divert the prospective advantage was unlawful, improper



1 or was not fair and reasonable.” *Custom Teleconnect v. International Tele-Services*, 254 F. Supp.
2 2d 1173, 1181 (D. Nev. 2003) (finding plaintiff established genuine issues of material fact
3 precluding summary judgment on intentional interference with prospective economic advantage
4 claim).

5 The fifth element, the “actual harm to the plaintiff as a result of the defendant’s conduct,”
6 is satisfied because Complaint ¶ 58’s allegation that “Planet 13’s conduct alleged herein has
7 caused damage to Plaintiff in an amount to be proven at trial” in excess of \$50,000.00 is further
8 supported by Complaint ¶¶ 10-12, 23(a)-(t), and 24-31. Planet 13’s notion that it impossible to
9 know whether a customer using Uber or Lyft to come to Reef dispensary, who is then diverted to
10 Planet 13’s dispensary, would have become a customer of Reef, and therefore damages cannot be
11 proven, is contrary to Nevada law. The Nevada Supreme Court has made this clear: “Obviously,
12 once the fact of damage has been established, some uncertainty in amount is allowed.” *Mort*
13 *Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co., Inc.*, 784 P. 2d 954, 955 (Nev. 1989).
14 Perhaps one issue in the case will revolve around the parties’ differing views about the amount of
15 damages, but that does not mean that no claim has been stated.

16 As support for its argument that it is privileged to engage in misconduct, Planet 13
17 (i) makes a purely emotional fact-weighting argument which is inappropriate at the motion to
18 dismiss stage, and which also ignores (and misstates) the Complaint’s allegations, and (ii) cites
19 only one case, *Crockett*.

20 *Crockett* is an older case which, although it retains some utility, addressed principles
21 brought into sharper focus by later decisional authority. It issued in 1979, the same year that the
22 RESTATEMENT (SECOND) OF TORTS was first published. Unlike *Las Vegas-Tonopah-Reno Stage*
23 *Line, Inc. v. Gray Line Tours of Southern Nevada*, issued in 1990, which cited and relied on that
24 RESTATEMENT, *Crockett* was unable to benefit from a decade of legal growth where the
25 RESTATEMENT helped develop modern legal principles. For example, the conduct induced by
26 Planet 13’s kickback program is what illuminates that Planet 13 is without “privilege” or
27 “justification,” and that its conduct is, in the words of the Court in 2003 in *Custom Teleconnect*,
28 *supra*, “unlawful, improper **or** was not fair and reasonable.” 254 F. Supp. at 1181 (bold emphasis



1 added). To the extent that Planet 13 hews to *Crockett* as its excuse for improper or unfair or
2 unreasonable conduct, it falls further out of step with modernity in this area of the law.

3 And, indeed, Planet 13's conduct is improper, unfair and unreasonable. Diversion by
4 Uber and Lyft drivers is illegal. NRS 706A.280(2)(a) and (b). It is also illegal for taxi drivers to
5 accept money for diversion. NAC 706.552(1)(c) and (f). While Planet 13 may rush to argue that
6 it is not a driver, so it may not be expressly "unlawful" for Planet 13 to pay drivers acting
7 illegally to accept its money to unlawfully divert, the legal standard governing Planet 13's
8 conduct does not require that. Rather, the legal standard governing Planet 13's conduct is
9 satisfied, and Tryke has stated a claim, if Planet 13's conduct is merely "improper" or is merely
10 not "fair and reasonable." Perhaps Planet 13 will wish to argue to a jury in summation that its
11 conduct was not "improper" and that it was "fair and reasonable," but this is a genuine issue of
12 material fact, not one of law, and thus cannot be resolved on a motion to dismiss.

13 Further, NRS 453A.332(1) requires any person who may "contract to provide labor" to a
14 dispensary to register with the Nevada Department of Taxation and obtain a marijuana agent
15 card. We can amend to allege that Planet 13 provides Form 1099's to drivers it pays to divert.
16 See footnote 4, *supra*. We can also amend to allege that Planet 13 provides a "driver's lounge"
17 for Uber and Lyft drivers diverting passengers to its location. Because unlawful diversion
18 frequently involves making (untrue) claims about the products of a dispensary perceived to
19 compete with Planet 13, see footnote 6, *supra*, drivers diverting in that fashion, contracting with
20 Planet 13 to receive Form 1099 payments for doing so, and enjoying the Planet 13 driver's
21 lounge, should be required to register with the Nevada Department of Taxation (the
22 "Department") but, on information and belief, are not doing so.

23 Planet 13 also implies that its ability to postulate a series of fact-weighting, "what if"
24 scenarios somehow means a tortious interference claim is not stated (*e.g.*, what if there was
25 "some sort of medical emergency?" Motion 8:10). But this is not correct; rather: "A complaint
26 need only set forth sufficient facts to demonstrate the necessary elements of a claim for relief so
27 that the defending party has adequate notice of the nature of the claim and relief sought." *W.*
28 *States. Constr., Inc. v. Michoff*, 840 P. 2d 1220, 1223 (1992). Tryke's Complaint does that here.



1 It need not chase down every rabbit trail postulated by a Planet 13 “what if” scenario to state a
2 claim.

3 **2. There Is No Administrative Exhaustion Requirement Under NRS**
4 **706A.260**

5 Tryke’s remedies are found solely in this Court. It has no administrative remedy, nor any
6 requirement to exhaust the same before filing suit. The transportation services company statute
7 gives only consumers the right to file a complaint with the NTA. See NRS 706A.260. Moreover,
8 nothing in NRS 706A purports to deprive commercial establishments, such as Tryke, of their
9 right to bring claims against wrongdoers like Planet 13. Indeed, NRS 706A.260 does not even
10 purport to be the sole avenue through which a consumer may seek redress, but instead, merely
11 provides that each transportation network company shall “[c]reate a system to receive and
12 address complaints from consumers which is available during normal business hours in this
13 State.” NRS 706A.260(2). Nothing within the section requires any “exhaustion of
14 administrative remedies” or creates any pre-requisite to asserting common law conspiracy and
15 tort claims. Thus, the Motion provides no legal basis to dismiss Tryke’s Complaint in this forum.

16 **3. Tryke Has Stated a Claim for Civil Conspiracy and Aiding and**
17 **Abetting Diversion**

18 **a. The Leading Case Planet 13 Cites Cuts Against It**

19 Planet 13’s leading case cited against the civil conspiracy claim, *Kramer v. Perez*
20 (Motion 4:20-22) does not say what Planet 13 claims. There, after a bench trial on the merits,
21 with a fully-developed record, the Court dismissed statutorily based conspiracy and aiding and
22 abetting claims, because the statute at issue provided no private right of action. 595 F. 3d at 830.
23 But in dismissing the state common law conspiracy and aiding and abetting claims, the Court did
24 not find that those claims do not exist. Rather, instead, on the fully-developed record there, the
25 Court merely found the plaintiff there “did not prove the actual damages elements necessary to
26 prevail under such claims.” *Id.* The Motion makes no mention of the fact that the only reason the
27 state common law conspiracy and aiding and abetting claims were dismissed was a failure of
28



1 proof of damages, a fact unique to that case, and which does not militate in favor of dismissal
2 here.

3 **b. The Other Cases Planet 13 Cites Are Inapposite**

4 All of Planet 13's other case law presented as the basis for its private right of action
5 argument are federal cases involving federal statutes, or attorney discipline cases, none of which
6 accurately describe this case, and are not controlling Nevada law.

7 Nevada law Implies a Private Right of Action for Commercial Establishments Under
8 NRS 706A

9 The purpose and policy of Nevada's legislature in adopting NRS 706A concerning
10 "Transportation Network Companies" is to ensure the "safety, reliability and cost-effectiveness
11 of the transportation services" provided by drivers affiliated with transportation network
12 companies. NRS 706A.010. That purpose and policy indicates not just a benefit for passengers
13 only, but for commerce generally, and thus for commercial establishments pre-selected as
14 passenger destinations. Tryke's Reef dispensary is a destination sought out by many customers
15 using transportation network companies and, as such, is one of the many beneficiaries of NRS
16 706A's goals of safety, reliability and cost-effectiveness. Those interests are protected by the
17 strictures of NRS 706A.280(2)(a) and (b) which, with respect to a passenger's "destination," bar
18 drivers from deceiving or attempting to deceive passengers, and conveying or attempting to
19 convey any passenger to "a destination" other than the one directed by the passenger. Although
20 only "consumers" can lodge administrative complaints for 706A violations, nothing in 706A
21 indicates that "destination" owners are intended to be excluded from the safety, reliability and
22 cost-effectiveness that 706A is intended to provide, or that they are somehow precluded from
23 bringing legal claims thereon.

24 In Nevada, whether a private right of action exists under a statute like NRS 706A is
25 judged by a three-factor test, two factors of which militate in favor of finding a private right of
26 action here, and one factor is neutral. Under the *Baldonado* test, in determining whether a private
27 right of action exists, the Court is guided by "the entire statutory scheme, reason and public
28 policy." *Baldonado v. Wynn Las Vegas, LLC*, 194 P.3d 96,101 (Nev. 2008). This translates into



1 three factors: “(1) whether the plaintiffs are of a class for whose special benefit the statute was
2 enacted; (2) whether the legislative history indicates any intention to create or deny a private
3 remedy; and (3) whether implying such a remedy is consistent with the underlying purposes of
4 the legislative scheme.” *Id.*

5 Here, the first factor militates in favor of an implied right of action because Tryke is “of a
6 class” for whose benefit the statute was enacted because (i) NRS 706A’s purpose is to benefit
7 commerce generally (“safety, reliability and cost-effectiveness”), (ii) it references destinations,
8 and (iii) destinations rely on safe, reliable and cost-effective transportation for customers to
9 arrive their businesses. The second *Baldonado* factor is neutral, because there appears to be no
10 legislative history indicating that the Nevada Legislature had either an intent to deny, or to
11 create, a private remedy when adopting NRS 706A. NRS 706A was adopted in 2015, seven years
12 after the *Baldonado* decision. The “legislature is presumed to know what it is doing and
13 purposefully used the specific language” of the statute it approves. *Williams v. Clark County*
14 *Dist. Atty.*, 50 P. 3d 536, 545 (Nev. 2002). Consequently, by standing mute in the text of NRS
15 706A, and absent any legislative history indicating a preference one way or another as to whether
16 it would give rise to a private right of action, the Nevada Legislature is presumed to have known
17 that factor 2 of the *Baldonado* test would be evaluated in a neutral fashion in any private right of
18 action analysis. And finally, the third *Baldonado* factor militates in favor of an implied right of
19 action. Individual’s voices are often difficult to hear in a legal setting and, absent compliance
20 with the labyrinth of requirements necessary for a class action suit to proceed, can be ignored. By
21 contrast, motivated commercial actors, such as owners of destinations like Tryke, have an
22 incentive to take action to ensure that their customers are not pirated by unlawful diversion
23 prohibited by law, and will be willing to take action (such as this case) which promote the safety,
24 reliability and cost-effectiveness of transportation network company transportation services.
25 Because two *Baldonado* factors militate in favor of an implied right of action under NRS 706A,
26 and one is neutral, Tryke has the right to proceed with both its conspiracy and aiding and
27 abetting claims against Planet 13.

28 ///



1 **4. The “Doe” Rule Does Not Bar Tryke’s Claims**

2 The Motion contends that “Doe” pleadings must adhere to certain criteria supposedly not
3 present in the Complaint. Motion 6, fn.1. But the law does not support that contention. Instead,
4 Rule 10(a) merely requires (1) pleading doe defendants in the caption; (2) pleading the basis for
5 naming defendants by other than their true identity, and specifying the connection between the
6 defendants and the conduct on which the action is based; and, (3) exercising reasonable diligence
7 to ascertain their identify and then move to amend to add the true names. *Nurenberger Hercules-*
8 *Werke GMBH v. Virostek*, 882 P. 2d 1100, 1106 (Nev. 1991). Clearly doe defendants are pled in
9 the caption. Clearly, Complaint ¶¶ 3-4 allege the basis for naming the doe defendants by other
10 than their true identity, and name them in both the conspiracy and aiding and abetting claims.
11 And finally, it is clearly too early to criticize Tryke for not moving to add the doe defendants’
12 true names: Planet 13 is in possession of all that data and has not shared it with Tryke.

13 **5. Tryke Can Amend to Plead Conspiracy to Commit, and Aiding and**
14 **Abetting, Tortious Interference, in the Alternative**

15 To the extent that any claims or portions of any claims are ultimately dismissed by the
16 Court, Tryke respectfully requests leave to amend with respect to any such claims, and to add a
17 claim for conspiracy and aiding and abetting Planet 13’s tortious interference as against the
18 fictitious defendants.

19 ///

21 ///

23 ///

25 ///

27 ///

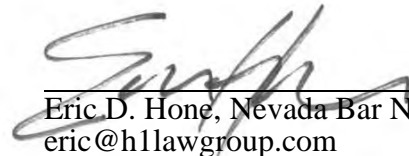


1 **IV. CONCLUSION**

2 Tryke's Complaint states claims for tortious interference with prospective economic
3 relations and violation of NRS Chapter 706A, for which a private cause of action is implied in
4 the statutory scheme. Should the Court find that any of Tryke's allegations are lacking, Tryke
5 respectfully requests leave of court to amend the Complaint. Dismissal is simply not appropriate
6 here.

7 Dated this 6th day of January 2020.

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1 **CERTIFICATE OF SERVICE**

2 The undersigned, an employee of H1 Law Group, hereby certifies that on the 6th day of
3 January 2020, she caused a copy of the foregoing, to be transmitted by electronic service in
4 accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey**
5 **E-File & Serve** system addressed to:

6 Nathanael Rulis
7 n.rulis@kempjones.com
8 Kemp, Jones & Coulthard, LLP
9 *Attorneys for Defendant*
10 *MM Development Company, Inc.*


11 
12 Bobbye Donaldson, an employee of
13 H1 LAW GROUP
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EXHIBIT 1

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Planet 13

 [JethroBodine](#) ·  Mar 8, 2019

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JethroBodine
Well-Known Member

Mar 8, 2019

 #1

I was told today that the stop must show up on app. Transportation Authority is clamping down. Many drivers are doing rides off the app to Planet 13.

justfacts

Big O Tires® Oil Change

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Great Tire Brands, Free Online Quotes. Call Today.

 **Phoenix**

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J

justfacts
Well-Known Member

Mar 8, 2019

 #2

I'm still waiting for that elusive kickback, Do I really need to bring my Social Security card with me in order to claim it. If so I guess I'll have to have it laminated



JethroBodine
Well-Known Member

Mar 8, 2019

Thread Starter  #3

justfacts said: 


I'm still waiting for that elusive kickback, Do I really need to bring my Social Security card with me in order to claim it. If so I guess I'll have to have it laminated

Yes. And you fill out tax form the first time. I schmooze with riders. So they come up more often now. This time the riders asked about it. Many times they are going to another dispensary and steer them to one that pays. Other times they might be on a liquor run.

justfacts

Mar 8, 2019

 #4




DEEJER77
Well-Known Member

justfacts said: ☺

Home — **Forums** — US — AU — World — What's new — Tools —

I'm still waiting for that elusive kickback, Do I really need to bring my Social Security card with me in order to claim it. If so I guess I'll have to have it laminated

The only place that has ever asked for my social security card is spearmint rhino... But all places will require you to fill out a tax form... Probably so they get



NO DEAL
Well-Known Member

Mar 8, 2019 #5

No ss card necessary. I do a drop there at least every other day, super easy in and out.You must show ride tho, nothing crazy about that.


LVcool and justfacts

Target - We've Remodeled
Target

Your Target Store is Remodeled. Come Check Out What's New.

Phoenix

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JethroBodine
Well-Known Member

Mar 8, 2019 Thread Starter #6

NO DEAL said: ☺

No ss card necessary. I do a drop there at least every other day, super easy in and out.You must show ride tho, nothing crazy about that.


I divert from other dispensaries most of the time.



gsx328
Well-Known Member

Mar 8, 2019 #7

I just got a kb from there a few days ago on a ride that showed airport as only destination




JethroBodine
Well-Known Member

Mar 8, 2019 Thread Starter #8

gsx328 said: ☺

I just got a kb from there a few days ago on a ride that showed airport as only destination

They gave me KB. But they told me for now on.



gsx328
Well-Known Member


Mar 8, 2019 #9

JethroBodine said: ☺

They gave me KB. But they told me for now on.

Hopefully it was just some wannabe bossman BSing. Itd also defeat the whole point of kickbacks. If person puts in Reef and u get them to divert to Planet, isnt that the whole point of paying drivers

JethroBodine



LVC
Well-Known Member

Mar 8, 2019 #10

justfacts said: ☺

I'm still waiting for that elusive kickback, Do I really need to bring my Social Security card with me in order to claim it. If so I guess I'll have to have it laminated

Kenly and justfacts

Take a picture of it with your phone, keep the picture stored in a document app on your phone.

Big O Tires® Oil Change

Big O Tires

Big O Tires® Offers Great Tire Brands. Call Now For Details.

Phoenix

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J

justfacts
Well-Known Member

Mar 8, 2019

#11

LVC said: ☺

Take a picture of it with your phone, keep the picture stored in a document app on your phone.

Sold! Thanks

LVC

**Daniel Harbin**
Well-Known Member

Mar 8, 2019

#12

justfacts said: ☺

I'm still waiting for that elusive kickback, Do I really need to bring my Social Security card with me in order to claim it. If so I guess I'll have to have it laminated

Tattoo it on your forehead or the back of your right hand.

**KenLV**
Well-Known Member

Mar 8, 2019

#13

All you have to do is have the pax change the destination in the app, it's easy and if they don't know how, show them/do it for them - but have them hit "confirm".

Same thing for strip clubs.

This also protects you against going afoul of "diversion" laws.

This isn't rocket surgery.

JethroBodine

**beezlewaxin**
Well-Known Member

Mar 8, 2019

#14

LVC said: ☺

Take a picture of it with your phone, keep the picture stored in a document app on your phone.

A screenshot is not sufficient. It is best to wait until you get paid to end the ride. Or else be prepared to let them pull up your ride history.

Last time I ended the ride after the first guy verified it but before entering the waiting room where they asked again to verify it on my app. This is when I overheard one guy ask the other if he had moved the map around on my app when he verified the ride at the front desk.

Last edited: Mar 8, 2019

**Spider-Man**
Well-Known Member

Mar 8, 2019

#15


Daniel Harbin said: ☺

Tattoo it on your forehead or the back of your right hand.

Why are you expediting and encouraging

Revelation 13:16-17

?



KenLV
Well-Known Member

what's in SoyLent Green?

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LVcool


Food coloring, a whole lot of food coloring.



Oh yeah, and people.

Big O Tires® Oil Change

Big O Tires

Big O Tires® Offers Great Tire Brands. Call Now For Details.

 Phoenix









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EXHIBIT 2



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Today is 4/20 get those dispensary runs!

[Uberisfuninlv](#) · [Apr 20, 2019](#)

 <p>Uberisfuninlv Well-Known Member</p>	<p>Apr 20, 2019</p> <p>And make sure to divert from Reef and Essence. Planet 13 is nearby both of them!</p>	<p>#1</p>
	<p>hrswartz</p>	



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EXHIBIT 3



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The Grove kickback

father of unicorns · Aug 20, 2019

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VegasNick
Member

Aug 21, 2019

#21

Take them all to Planet 13, they have a rider lounge with a restroom and pay \$15 very quickly.

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NowWeAllBroke
Active Member

Aug 21, 2019

#22

Ugh. Reading through this entire thread has me confused. Could someone please state the FACTS of the matter concerning The Grove? (The Grove has always been my go-to place and I have never found the "black security guard" anything more than friendly and helpful) If The Grove has truly changed its attitude/policy towards taxi/RS drivers I'll be disappointed. Please keep us updated with the FACTS.



KenLV
Well-Known Member

Aug 22, 2019

#23

Udrivevegas said:

These places could all stop paying kickbacks, and the small amount of drivers that divert pax to other places wouldn't make any difference at all.

Tell that to Reef.

UberDriverLV and Uberisfuninlv

Aug 22, 2019

#24

My best advice to divert a pax that worked for me 99% of the time. You see where they are going. Crack a joke like oh you picked reef. Good luck. It makes them curious why you said that. Then proceed with their product is second grade and higher priced and planet13

APPENDIX 058



Drewsnutz
Active Member

is right next door with much better pricing and product. Can make planet 13 any dispensaries name you like. Then if they don't automatically say re route me to there. Be semi passive aggressive and say you still wanna go to the worst dispensary around? Honestly i have gotten many tips amd kickbacks from this and usually a good rating. Only 1 time a bad one as they worked at reef ??



Taxi2Uber
Well-Known Member

Aug 22, 2019

#25

Drewsnutz said: ☺

My best advice to divert a pax that worked for me 99% of the time. You see where they are going. Crack a joke like oh you picked reef. Good luck. It makes them curious why you said that. Then proceed with their product is second grade and higher priced and planet13 is right next door with much better pricing and product. Can make planet 13 any dispensaries name you like. Then if they don't automatically say re route me to there. Be semi passive aggressive and say you still wanna go to the worst dispensary around? Honestly i have gotten many tips amd kickbacks from this and usually a good rating. Only 1 time a bad one as they worked at reef ??

If you say P13 is right next door to Reef, they'll say take me to Reef and I'll just walk to P13 after.
Better, I think, is to say P13 is closer.

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Big O Tires

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Phoenix

WEBSITE

DIRECTIONS



NowWeAllBroke
Active Member

Aug 23, 2019

#26

VegasNick said: ☺

Take them all to Planet 13, they have a rider lounge with a restroom and pay \$15 very quickly.

A RIDER lounge or a DRIVER lounge?



808master
Member

Aug 23, 2019

#27

Went to the grove on sunday, the big black security did go in and come out and hand us the 15\$. Never had an issue with P13 drop either easy 15\$ in and out and they have waters, coffee. etc..

father of unicorns



jjub40
Well-Known Member

Aug 23, 2019

#28

First he was the "

808master said: ☺

Went to the grove on sunday, the big black security did go in and come out and hand us the 15\$. Never had an issue with P13 drop either easy 15\$ in and out and they have waters, coffee. etc..

First he was the "black" security guard now he is the "big black" security guard. Cmon guys just call him by his name. His name is Willie.

5☆OG

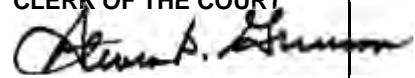
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Attorneys for Defendant
MM Development Company, Inc.

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

**MM DEVELOPMENT COMPANY,
INC.'S REPLY IN SUPPORT OF
MOTION TO DISMISS**

HEARING REQUESTED

Defendant MM Development Company, Inc. ("MM"), by and through counsel of record, hereby submits this Reply in Support of its Motion to Dismiss the Complaint filed by Plaintiff Tryke Companies SO NV, LLC ("Reef"), pursuant to NRCP 12(b)(5).

I.

INTRODUCTION

Plaintiff's claims based on diversion have no valid legal basis. The Court lacks jurisdiction to hear these claims and Reef cannot allege the basic elements for any of these claims. Plaintiff's Complaint must be dismissed.

In Plaintiff's Response in Opposition to Defendant's Motion to Dismiss ("Response"), Plaintiff asserts various arguments in an attempt to obfuscate the main issue, that Reef simply has

no standing:¹ (1) Reef argues that it alleged the elements for a claim of tortious interference; (2) there are no exhaustion of administrative remedies requirements under NRS 706A.260; and (3) Reef stated valid claims for civil conspiracy and aiding abetting diversion.

Plaintiff's arguments are flawed and fail for the following reasons: (1) Plaintiff cannot establish the necessary elements for intentional interference with prospective economic advantage because there is no contractual relationship between unknown, random Uber or Lyft passengers with MM or Reef; (2) all of Reef's claims require an actionable underlying tort for which diversion does not qualify, as there is neither a private right of action under NAC 706 nor NAC 706A; (3) this Court lacks jurisdiction because Reef failed to pursue – much less exhaust – its exclusive administrative remedies; (4) because there is no underlying claim, Plaintiff has no standing to bring conspiracy and aiding and abetting claims; and (5) because Plaintiff provides no basis for its claims, and inaccurately applies the law.

For all of these reasons, Reef's Complaint against MM must be dismissed.

II.

ARGUMENT

“Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief.” *Stockmeier v. Nev. Dept. of Corrections*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008) (quoting *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002), *overruled in part on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008)). For purposes of a Rule 12(b)(5) motion, only the “factual allegations of [Plaintiff's] complaint must be accepted as true.” *Bratcher v. City of Las Vegas*, 113 Nev. 502, 507, 937 P.2d 485, 489 (1997) (emphasis added) (internal quotation marks omitted). This Court does not assume the truth of conclusions of law. *See Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981); *In re Verifone Sec. Litig.*, 11 F.3d 865, 868 (9th Cir. 1993) (“Conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a

¹ Reef's Complaint should be dismissed for that reason alone.

claim.”).² Rule 8 “demands more than an unadorned, the-defendant unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). A deficient complaint “does not unlock the doors to discovery for a plaintiff armed with nothing more than conclusions.” *Id.* at 1950.

A. Reef’s Claim for Intentional Interference with Prospective Economic Advantage Must Be Dismissed as a Matter of Law

Throughout Plaintiff’s Response, it unsuccessfully attempts to argue that allegations in the Complaint demonstrate elements of tortious interference with prospective economic advantage. The truth is, these allegations are nothing more than conclusory allegations of law and unwarranted inferences and Reef’s claim is not sufficiently pled. The elements for intentional interference with prospective economic advantage are as follows: “(1) a prospective contractual relationship between the plaintiff and a third party; (2) knowledge by the defendant of the prospective relationship; (3) intent to harm the plaintiff by preventing the relationship; (4) the absence of a privilege or justification by the defendant; and (5) actual harm to the plaintiff as a result of the defendant’s conduct.” *Wichinsky v. Mosa*, 109 Nev. 84, 88, 847 P.2d 727, 729-30 (1993).

In the Response, Plaintiff fails to point to specific allegations of the Complaint to demonstrate that the claim has been sufficiently pled. *See* Response pp. 8-12. Reef cannot point to any facts that demonstrate any sort of prospective relationship between Plaintiff and a third party. Further, Reef cannot demonstrate MM had **knowledge** of the prospective contractual relationship because this alleged relationship is with random, unknown passengers requesting transportation. Unless MM had clairvoyance, how could it know of these parties or any potential relationship? It is impossible and does not make sense.

² “Federal cases interpreting the Federal Rules of Civil Procedure ‘are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.’” *Executive Management, Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (citation omitted); *Greene v. Eighth Judicial Dist. Ct.*, 115 Nev. 391, 393, 990 P.2d 184, 185 (1999) (same).

1 In the Response, Plaintiff asserts that *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray*
2 *Line Tours of S. Nevada* is out of date but then incorrectly applies it to this matter. A review of
3 this case only strengthens the notion that Reef’s allegations fail as a matter of law. In *Las Vegas-*
4 *Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of S. Nevada*, the district court found that a
5 prospective business relationship existed between Gray Line and USA Hosts, **that LTR had**
6 **knowledge of this relationship**, and that LTR used **unlawful** means to interfere with this
7 relationship. *Id.* 106 Nev. 283, 285, 792 P.2d 386, 387 (1990). Further, the court found, “that
8 the intent required for this tort is that the defendant be **substantially certain** that interference
9 with a commercial relationship will occur. *Id.* (bold added).

10 Here, it is impossible for MM to have knowledge of the prospective contractual
11 relationship with an unknown random passenger requesting any one of the innumerable
12 destinations that even Reef does not know about.³ It is even more absurd that Plaintiff alleges
13 this elevates to any sort of interference with a contractual relationship. *Las Vegas-Tonopah-Reno*
14 *Stage Line, Inc.* highlights that Plaintiff cannot demonstrate a single element of their own claim
15 because the law clearly requires a relationship between prospective businesses and **knowledge of**
16 this relationship, which is not shown between MM and random Uber or Lyft passengers.

17 Further, MM’s actions, that Reef complains about, are absolutely justified as part of the
18 free competition of business. As MM cited in *Crockett*, “perhaps the most significant privilege
19 or justification for interference with a prospective business advantage is free competition. Ours
20 is competitive economy in which business entities vie for economic advantage.” *Crockett v.*
21 *Sahara Realty Corp.*, 95 Nev. at 197, 199, 591 P.2d at 1135. As was provided in the Motion,
22 while a person is in a taxi, Uber, or Lyft they have not established an economic relationship with
23 any of their potential destinations, let alone an economic relationship with the probability of future
24 economic impact and, therefore, no claim for tortious interference can exist. *Crockett*, 95 Nev.

25
26
27 ³ In fact, as of the filing of this Reply, there is an app for smart phones called Kickback, that lists
28 a dozen different dispensaries lawfully competing for business by offering tips to taxis and ride-
sharing drivers, including NuLeaf, MedMen, The Grove, Pisos, Sahara Wellness, Releaf, Acres
Cannabis, Oasis Cannabis, The Apothecary Shoppe, and Jardin Premium Cannabis Dispensary.

1 at 199, 591 P.2d at 1136 (refusing to hold defendants liable to plaintiffs for tortious interference
2 with plaintiffs’ prospective economic advantage consisting in an anticipated commission from a
3 sales transaction).

4 Plaintiff attempts to present another case in a way that benefits their argument, but the
5 case is not applicable to the facts of this case. In *Custom Teleconnect* (“CTI”), CTI executed an
6 agreement entitled “Confidentiality non-Disclosure Agreement” (“NDA”) with International
7 Tele-services, Inc. d/b/a D.A. for Less (“DAFL”). CTI proffered evidence by affidavit and
8 deposition testimony that DAFL breached the NDA. That breach led directly to the diversion of
9 the economic advantage. See *Custom Teleconnect, Inc. v. Int’l Tele-Servs., Inc.*, 254 F. Supp. 2d
10 1173, 1181 (D. Nev. 2003). Reef cannot show there was any means to divert business that was
11 “unlawful, improper or was not fair and reasonable.” *Id.* Reef also cannot point to facts in the
12 Complaint that the necessary elements such that a prospective relationship existed, that MM was
13 aware of any such relationship, or that the MM intended to interfere with any prospective contract.
14 MM did nothing but compete for business as every cannabis dispensary in the Las Vegas Valley
15 does. Hence, the court should dismiss the intentional interference with prospective economic
16 advantage claim.

17 **B. Reef Has No Standing to Bring Claims Against MM for Diversion**

18 **1. There is no private right of action for diversion or for claims based on diversion.**

19 As the Nevada Supreme Court held, “when a statute does not expressly provide for a
20 private cause of action, the absence of such a provision suggests that the Legislature did not intend
21 for the statute to be enforced through a private cause of action.” *Richardson Const., Inc. v. Clark*
22 *Cty. Sch. Dist.*, 123 Nev. 61, 65, 156 P.3d 21, 23 (2007). The Court continued, “when a statute
23 provides an express remedy, courts should be cautious about reading additional remedies into the
24 statute.” *Id.* In *Torres v. Nev. Direct Ins. Co.*, 131 Nev. 531, 353 P.3d 1203 (2015), the Nevada
25 Supreme Court found that the plaintiff did not have standing to pursue a bad faith claim because
26 the corresponding statute, NRS 485.3091, “provides no express language that permits a third-
27 party claimant to pursue an independent bad faith claim against an insurer.” *Torres*, 131 Nev. at
28 542, 353 P.3d at 1211. Absent such a provision, the Nevada Supreme Court found that it would

“not read language into a statute granting a private cause of action for an independent tort.” *Id.*; *see also Richardson Constr., Inc. v. Clark Cnty. Sch. Dist.*, 123 Nev. 61, 65, 156 P.3d 21, 23 (2007); *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 170 P.3d 989 (2007) (dismissing claims brought under NRS 690B.012 because the statute “does not expressly create a private right of action”); *Palmer v. State*, 106 Nev. 151, 787 P.2d 803 (1990) (dismissing a cause of action brought under NRS 281.370 because the statute “does not provide for any private right of action”).

Nowhere in NRS Chapter 706A does it allow a business to privately sue for violations of the statute (neither is there a private right of action created under NAC 706 nor NAC 706A).⁴ Instead, NAC 706A.420 provides the process by which complaints for the alleged wrongful acts or omissions of transportation network companies and their drivers must be submitted. These complaints are to be in writing and **submitted to the Nevada Transportation Authority (“NTA”)**. If the NTA determines that probable cause exists for a formal written complaint received by the staff of the NTA, it will set a date for a public hearing on the complaint. NAC 706A.420. That is the express remedy provided by statute and regulation and this Court must not read additional remedies into the statutes or regulations.

2. ***For any claims based on diversion, Reef is required by Nevada law to exhaust its administrative remedies before it has standing to bring claims in district court.***

Reef argues that “nothing within [NRS 706A.260] requires any exhaustion of “administrative remedies” or creates any pre-requisite to asserting common law conspiracy and tort claims.” *See* Response pg. 12. Reef’s argument is a red herring. It is NRS 233B – in conjunction with NRS 706A and NAC 706A – and Nevada case law that **requires** the exhaustion of administrative remedies by Reef.

NRS 233B (Nevada’s Administrative Procedure Act), provides the requirement that administrative remedies be exhausted before seeking judicial intervention or review. According

⁴ Violations of NRS 706A may result in discipline **by the NTA**. *See* NRS 706A.300 (only the transportation network company (i.e., ride-sharing companies) and the drivers are subject to NTA discipline under NRS 706A).

1 to NRS 233B.130(1), “[w]here appeal is provided within an agency, only the decision at the
2 highest level is reviewable [by a district court] unless a decision made at a lower level in the
3 agency is made final by statute.”

4 NAC 706A.420 provides the process by which complaints for the alleged wrongful acts
5 or omissions of transportation network companies and their drivers must be submitted. These
6 complaints are to be in writing and submitted to the NTA. If the NTA determines that probable
7 cause exists for a formal written complaint received by the staff of the NTA, it will set a date for
8 a public hearing on the complaint. NAC 706A.420. NAC 706A also requires that the NTA
9 conduct administrative hearings and issue a final decision concerning any complaint against a
10 transportation network company or driver. *See, e.g.*, NAC 706A.750 (“The Authority will review
11 the decision of a hearing officer and enter a final order affirming, modifying or setting aside the
12 decision.”). **The NTA’s decisions are subject to appeal** by any “party of record to the
13 administrative proceed.” NAC 706A.740. **All administrative proceedings before the NTA,**
14 **under NAC 706A, are conducted “pursuant to the provisions of chapter 233B of NRS** and
15 **those provisions of chapter 706A of NRS which do not conflict with the provisions set forth in**
16 **chapter 233B of NRS regarding notice to parties and the opportunity of parties to be heard.”** NAC
17 706A.700 (emphasis added).

18 As the procedures for complaints regarding diversion are regulated by NAC 706A, which
19 clearly provides the right of an appeal within an agency (the NTA), only the decision at the highest
20 level of the NTA is reviewable by a district court. NRS 233B.130(1). Reef utilized incorrect
21 procedures and violated the applicable law in trying to assert its unfounded claims. Reef should
22 have taken the complaint up with the NTA. Instead, Reef thoughtlessly filed this Complaint
23 without first seeking the appropriate course of action, thus, failing to exhaust their administrative
24 remedies as required by the law. Hence, Nevada law mandates dismissal of the present action
25 since this Court lacks subject matter jurisdiction over Reef’s grievances. *See* NRS 233B.130(1);
26 *see also Mesagate Homeowners Ass’n v. City of Fernley*, 194 P.3d 1248, 1252 (Nev. 2008)
27 (failure to exhaust administrative remedies before initiating a lawsuit renders the controversy
28 nonjusticiable); *Nevada v. Scotsman Manufacturing Co.*, 109 Nev. 252, 255, 849 P.2d 317, 319

(1993) (district court lacks subject matter jurisdiction if administrative remedies are not exhausted).

3. *Reef has no standing to bring claims for civil conspiracy.*

Reef not only lacks standing for a civil conspiracy claim but also fails to demonstrate any facts to sufficiently plead such a claim. “Civil conspiracy is not an independent cause of action – it must arise from some underlying wrong.” *Paul Steelman Ltd. v. HKS, Inc.*, No. 2:05-CV-01330-BES-RJJ, 2007 WL 295610, at *3 (D. Nev. Jan. 26, 2007); *see also McPheters v. Maile*, 64 P.3d 317, 321 (Idaho 2002) (“Civil conspiracy is not, by itself, a claim for relief. The essence of a cause of action for civil conspiracy is the civil wrong committed as the objective of the conspiracy, not the conspiracy itself.”) (internal citations omitted); *Raimi v. Furlong*, 702 So. 2d 1273, 1284 (Fla. Ct. App. 1997) (“[A]n actionable conspiracy requires an actionable underlying tort or wrong.”); *Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212, 984 P.2d 164 (1999) (affirming summary judgment on a conspiracy claim, which was “derivative of the defamation claim,” where the claim for defamation was dismissed).

First and foremost, Reef lacks standing to assert direct claims against MM for violating NRS 706A.280 and NAC 706.552. *See supra*, Sec. II(B)(1)-(2). Reef also, therefore, lacks standing to assert indirect claims against MM for statutory violations of NRS 706A or NAC 706A via a civil conspiracy claim. *See, e.g., Kramer v. Perez*, 595 F.3d 825, 830 (8th Cir. 2010) (“We refuse to create a private cause of action for civil conspiracy” where the underlying statute did not provide for such a right). As the court found in *Kramer*, **the alleged underlying wrong supporting a civil conspiracy claim must give rise to a private right of action.** *Id.* In response to *Kramer*, Reef again fails to point to a sole relevant fact to demonstrate any element of this claim. Rather, Plaintiff attacks the case law, by stating *Kramer* “does not say what Planet 13 claims.” *See* Response p. 12. Plaintiff is grasping for arguments because in *Kramer*, the court clearly held that *Kramer* failed to prove the necessary elements of those claims. *Kramer v. Perez*, 595 F.3d 825, 831 (8th Cir. 2010).

Even if somehow the standing issue is ignored, Plaintiff still cannot demonstrate that a combination of two or more people agreed to conspire because MM could do no such thing with

completely unknown, random Uber and Lyft passengers. *See Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993); *see also GES, Inc. v. Corbitt*, 117 Nev. 265, 270-71, 21 P.3d 11, 15 (2001). Reef has no standing and, even setting that aside, Reef still cannot demonstrate a valid claim as demonstrated by *Kramer*.

4. Reef cannot assert a claim for civil conspiracy for an unknown class.

Ignoring the standing issue and looking at the allegations, Plaintiff still fails to sufficiently plead a civil conspiracy claim. Instead of clarifying the allegation in the Response, Plaintiff attacks the case law in an attempt to again grasp for any type of distraction. Reef's claim for civil conspiracy fails for two reasons: 1) Plaintiff simply cannot show any of the elements for civil conspiracy and 2) Plaintiff fails to join any indispensable parties to the action under NRCP 12(b)(6) because, assuming there was a conspiracy, the other coconspirators cannot be "nonparties" but must be named as parties under NRCP 19. Reef admits that MM is the only party conspirator. By law, a party cannot conspire with itself. *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 981 P.2d 1251, 1256 (1998). As such, Plaintiff has also failed to sufficiently plead a valid claim for civil conspiracy.

5. Reef fails to sufficiently plead a claim for aiding & abetting.

Plaintiff's Response does not specifically address the aiding and abetting claim. Again, Plaintiff attacks the case law instead of demonstrating the actual allegations and how there is a sufficient claim. In *Dow Chemical Company v. Mahlum*, the Court held that liability may attach for civil aiding and abetting "if the defendant substantially assists or encourages another's conduct in breaching a duty to a third person." 114 Nev. 1468, 1490-91, 970 P.2d 98, 112-13 (1998). But one of the required elements for civil aiding and abetting under *Dow Chemical Company v. Mahlum* is that the acting **defendant** committed a tort that injured plaintiff (none are named by Reef). *Id.*

Neither Reef's Complaint nor its Response provide a legitimate basis for any claim against MM for aiding and abetting. Specifically, Reef did not name any defendant that committed a tort that injured plaintiff, and it cannot point to any facts to show how MM provided substantial assistance to a tortfeasor. Therefore, the claim of "aiding and abetting" should also be dismissed.

C. Plaintiff Does Not Have a Right to Proceed with Either Conspiracy or Aiding and Abetting Claims Against Planet 13

In the Response, Plaintiff presents another distraction in another attempt to obscure its insufficient allegations. Plaintiff spends nearly two pages arguing that “all of Planet 13’s other cases law presented as the basis for its private right of action argument are federal cases involving federal statutes and attorney discipline cases, none of which accurately describe this case, and are not controlling Nevada law.” Response at pg. 13. Again, this is simply inaccurate and shows Plaintiff grasping at straws. Under the Nevada Administrative Procedure Act (NRS 233B), relevant Nevada statutes (NRS 706A), Nevada regulations (NAC 706A), and Nevada case law (*Las Vegas-Tonopah-Reno Stage Line, Inc., Crockett, Richardson, Torres, Allstate, Sahara Gaming, etc.*), Reef has no valid claims.

III.

CONCLUSION

The claims in Reef’s Complaint are improper and insufficiently pled. Under Nevada law, this Court lacks jurisdiction over Reef’s claims. For example, NRS Chapter 706A requires that suspected diversion claims of ride sharing passengers should be brought to the Nevada Transportation Authority, which Reef did not do. Throughout the Complaint and Response, Reef fails to point to any action or fact that gives rise to claims for interference with prospective economic advantage, civil conspiracy, or aiding and abetting. For all of these reasons, Reef’s Complaint should be dismissed.

Based on the foregoing, MM respectfully requests that the Court dismiss Reef’s Complaint for failure to state a claim upon which relief can be granted and lack of jurisdiction.

DATED this 20th day of February, 2020.

KEMP, JONES & COULTHARD LLP

/s/ Nathanael Rulis

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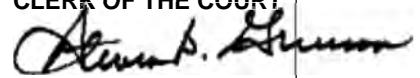
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of February, 2020, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S REPLY IN SUPPORT OF MOTION TO DISMISS** 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 & Coulthard, LLP



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22 *Tryke Companies SO NV, LLC*

23 **EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

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

27 Plaintiff,

28 vs.

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

33 Defendants.

Case No. A-19-804883-C

Dept. No. 24

Date of Hearing: February 27, 2020

Time of Hearing: 9:00 A.M.

34 **ORDER DENYING DEFENDANT'S MOTION TO DISMISS**

35 This matter having come on for hearing on February 27, 2020 at 9:00 A.M., Paul A.
36 Conant of the Conant Law Firm, and Eric D. Hone of H1 Law Group appearing on behalf of
37 plaintiff, and William Kemp of the law firm Kemp, Jones & Coulthard, appearing on behalf of
38 defendant, the Court having reviewed the pleadings and papers on file herein and considered the

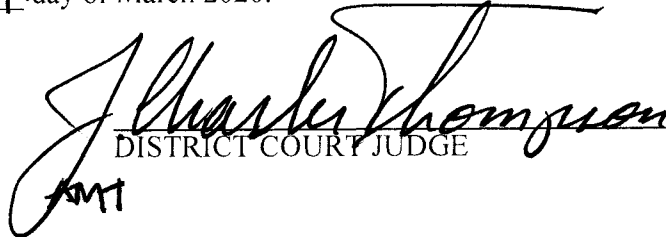
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1 argument of counsel; good cause appearing therefore, and for the reasons set forth by the Court
2 on the record,

3 IT IS HEREBY ORDERED that defendant's motion to dismiss is denied.

4 IT IS FURTHER ORDERED that defendant shall file its answer to the complaint within
5 14 days after notice of entry of this order.

6 IT IS SO ORDERED this 24th day of March 2020.

7
8 
DISTRICT COURT JUDGE
9

10 Approved as to form and content:

11 KEMP, JONES & COULTHARD, LLP

Senior Judge J. Charles Thompson
for Judge Jim Crockett

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18 SUBMITTED BY

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1 argument of counsel; good cause appearing therefore, and for the reasons set forth by the Court
2 on the record,

3 IT IS HEREBY ORDERED that defendant's motion to dismiss is denied.

4 IT IS FURTHER ORDERED that defendant shall file its answer to the complaint within
5 14 days after notice of entry of this order.

6 IT IS SO ORDERED this ____ day of March 2020.

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DISTRICT COURT JUDGE

Approved as to form and content:

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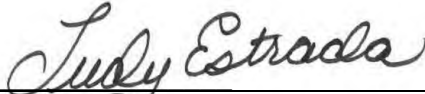
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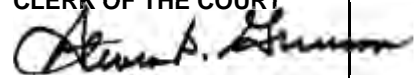


CERTIFICATE OF SERVICE

The undersigned, an employee of H1 Law Group, hereby certifies that on the 25th day of March, 2020, she caused a copy of the foregoing, to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve**.



Judy Estrada, an employee of
H1 LAW GROUP



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Attorneys for Defendant
MM Development Company, Inc.

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

**MM DEVELOPMENT COMPANY,
INC.'S MOTION FOR
RECONSIDERATION OF COURT
ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

HEARING REQUESTED

Defendant MM Development Company, Inc. ("MM"), by and through counsel of record, hereby submits this Motion for Reconsideration of this Court's Order Denying Defendant's Motion to Dismiss pursuant to EDCR 2.24 because the Court's order denying the dismissal of Plaintiff Tryke Companies So NV, LLC ("Reef") is clearly erroneous.

This Motion is made and based on the papers and pleadings on file, the following Memorandum of Points and Authorities, and any oral argument as may be heard by the Court.

MEMORANDUM OF POINTS & AUTHORITIES

Nevada law is clear that Reef's claims for civil conspiracy and aiding and abetting require an actionable underlying tort. Nevada law is also clear that there is no private right of action under NRS 706A.280(2), NAC 706.552(1), or any other Nevada statutes or regulations for

diversion. During oral argument on MM’s Motion to Dismiss, this Court correctly agreed with both of the above statements of law. *See* February 27, 2020 Hearing Transcript (“Hearing Transcript”) at 6:9-11, 15:9-10, and 16:1-2, on file. Yet, the Court denied dismissal of Reef’s civil conspiracy and aiding and abetting claims because it understood Reef’s Complaint to be alleging the underlying tort to be “interference with prospective or economic advantage.” *Id.* at 15:12-14. The Court’s decision is clearly erroneous in light of the well-settled law that is not in dispute and the actual allegations made in Reef’s Complaint. Hence, MM respectfully asks this Court to reconsider its order denying MM’s Motion to Dismiss as it pertains to Reef’s civil conspiracy and aiding and abetting claims.

I.
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 . . . the decision is **clearly erroneous**.” *Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741 (1997) (emphasis added). 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. 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). ““Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief.”” *Stockmeier v. Nev. Dept. of Corrections*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008) (quoting *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002), *overruled in part on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008)). Dismissal of claims is appropriate where plaintiff’s allegations fail to state a cognizable claim for relief. *See Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994).

B. Reef Fails To State A Claim For Civil Conspiracy

“Civil conspiracy is not an independent cause of action – it must arise from some underlying wrong.” *Paul Steelman Ltd. v. HKS, Inc.*, No. 2:05-CV-01330-BES-RJJ, 2007 WL 295610, at *3 (D. Nev. Jan. 26, 2007); *cf. Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212, 984 P.2d 164 (1999) (affirming summary judgment on a conspiracy claim, which was “derivative of the defamation claim,” where the claim for defamation was dismissed). More importantly, **the alleged underlying wrong supporting a civil conspiracy claim must give rise to a private right of action.** *See, e.g., Kramer v. Perez*, 595 F.3d 825, 830 (8th Cir. 2010) (“We refuse to create a private cause of action for civil conspiracy” where the underlying statute did not provide for such a right); *In re: Orthopedic Bone Screw Prods. Liability Litig.*, 193 F.3d 781, 790 (3d Cir. 1999) (“A claim of civil conspiracy cannot rest solely upon the violation of a federal statute for which there is no corresponding private right of action.”); *Wells v. Shelter Gen. Ins. Co.*, 217 F. Supp. 2d 744, 755 (S.D. Miss. 2002) (dismissing a civil conspiracy claim where the plaintiff failed to show a private right of action for alleged statutory violations); *cf. Mainor v. Nault*, 120 Nev. 750, 769, 101 P.3d 308, 321 (2004) (“The district court appropriately struck the causes of action based on violations of ethical rules because the rules were not meant to create a cause of action for civil damages.”).

At the hearing on MM’ Motion to Dismiss, this Court reiterated these legal standards and clearly found that there is no diversion tort recognized in Nevada, and no private action for such provided under NRS 706A.280(2), NAC 706.552(1), or any other Nevada statutes or regulations. *See* Hearing Transcript at 6:9-11, 15:9-10, and 16:1-2, on file. However, based on either a misreading or misunderstanding of Reef’s Complaint, the Court did not dismiss Reef’s civil conspiracy claim because it found “interference with prospective or economic advantage” to be the tort underlying Reef’s claim. *Id.* at 15:12-14. The Court’s understanding of Reef’s civil conspiracy claim is erroneous and belied by Reef’s Complaint.

Reef’s Complaint does **not** allege a conspiracy to intentionally interfere with economic advantage, but rather clearly alleges a “**civil conspiracy to violate Nevada’s anti-diversion**

1 **statutes and regulations**, including NRS 706A.280(2) and NAC 706.552(1).” Complaint at ¶
2 36 (emphasis added). Based on the well-settled law above, Reef’s civil conspiracy claim is not
3 cognizable because the alleged underlying wrong/tort (violation of Nevada’s anti-diversion
4 statutes and regulations) is not a recognized tort in Nevada and the statutes and regulations do not
5 provide for a private action. Because Reef cannot assert direct claims against MM for violating
6 NRS 706A.280 and NAC 706.552, it likewise cannot assert indirect claims against MM for
7 statutory violations under the guise of a civil conspiracy claim. *See generally Allstate Ins. Co. v.*
8 *Thorpe*, 123 Nev. 565, 170 P.3d 989 (2007) (dismissing claims brought under NRS 690B.012
9 because the statute “does not expressly create a private right of action”); *Palmer v. State*, 106
10 Nev. 151, 787 P.2d 803 (1990) (dismissing a cause of action brought under NRS 281.370 because
11 the statute “does not provide for any private right of action”). Without a predicate wrong upon
12 which Reef could seek relief from MM, Reef cannot maintain a claim for civil conspiracy as pled
13 against MM.

14 **C. Reef Fails To State A Claim For Aiding & Abetting**

15 Like civil conspiracy, a claim for aiding and abetting requires an underlying wrong/tort
16 be committed injuring the plaintiff. *See Dow Chemical Company v. Mahlum*, 114 Nev. 1468,
17 1490-91, 970 P.2d 98, 112-13 (1998) (discussing an aiding and abetting claim in the context of
18 an underlying fraudulent concealment claim).

19 Contrary to the Court’s reasoning, Reef’s Complaint does **not** allege MM aided and
20 abetted the Doe Defendants (unnamed ride-share drivers) to interfere with Reef’s prospective
21 economic advantage. Instead, Reef clearly and specifically alleges that MM’s conduct
22 “constitutes aiding and abetting **to violate Nevada’s anti-diversion statutes and regulations**,
23 including NRS 706A.280(2) and NAC 706.52(1).” Complaint at ¶ 45. Reef’s claim for aiding
24 and abetting must be dismissed because there is no diversion tort in Nevada nor a private right of
25 action to bring a suit in this Court for an alleged violation of these so-called anti-diversion statutes
26 and regulations.

27 ///

28 ///

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II

CONCLUSION

Reef's claims for civil conspiracy and aiding and abetting are predicated on violations of Nevada's anti-diversion statutes and regulations, not, as this Court erroneously found, upon the tort of interference with prospective economic advantage. Because Nevada does not recognize a tort for diversion nor do the statutes and regulations cited by Reef provide for a private cause of action for such a violation, Reef's derivative claims for civil conspiracy and aiding and abetting must be dismissed as pled.

Based on the foregoing, MM respectfully requests that the Court reconsider its clearly erroneous Order Denying Defendant's Motion to Dismiss, and dismiss Reef's claims for civil conspiracy and aiding and abetting based on the failure to plead a cognizable claim upon which relief can be granted.

DATED this 7th day of April, 2020.

KEMP JONES, LLP

/s/ Ian P. McGinn

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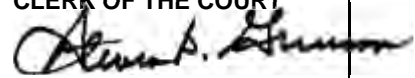
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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April, 2020, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S MOTION FOR RECONSIDERATION OF COURT ORDER DENYING DEFENDANT'S MOTION TO DISMISS** 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



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MM Development Company, Inc.

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

**MM DEVELOPMENT COMPANY,
INC.'S ANSWER TO COMPLAINT**

Defendant MM Development Company, Inc. ("MM"), by and through counsel of record, hereby answers¹ the Complaint filed by Plaintiff Tryke Companies SO NV, LLC ("Reef") as follows:

PARTIES, JURISDICTION, AND VENUE

1. MM is without sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in paragraph 1 of the Complaint and, therefore, deny them.

¹ This Answer is filed subject to the arguments made in the Motion for Reconsideration filed by MM on April 8, 2020 and MM reserves all rights subject to the Court's decision on the Motion for Reconsideration.

2. MM admits the allegations in paragraph 2 of the Complaint.

3. MM is without sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in paragraphs 3 and 4 of the Complaint and, therefore, deny them.

4. As for the allegation in paragraph 5 of the Complaint, MM admits that this Court has personal jurisdiction over MM, but denies that this Court has subject-matter jurisdiction for any claims purportedly arising under NRS 706A or NAC 706.

5. As to the allegations in paragraph 6 of the Complaint, MM admits venue is proper in this district, but denies any other allegations therein.

6. As to the allegations in paragraph 7 of the Complaint, to the extent this paragraph contains legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, MM denies any and all allegations in this paragraph.

7. As to the allegations in paragraph 8 of the Complaint, NRS 706A.280(2) speaks for itself. To the extent the allegations accurately state the law referenced, MM admits the allegations, but to the extent the allegations do not comport with the law referenced, MM denies the allegations.

8. As to the allegations in paragraph 9 of the Complaint, NAC 706.552(1)(c) and (f) speaks for itself. To the extent the allegations accurately state the regulations referenced, MM admits the allegations, but to the extent the allegations do not comport with the regulations referenced, MM denies the allegations.

9. MM is without sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in paragraphs 10, 11, 12, 13 and 14 of the Complaint and, therefor, deny them.

10. MM admits the allegations in paragraph 15 of the Complaint.

11. MM is without sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in paragraphs 16, 17, 18, and 19 of the Complaint and, therefor, deny them.

12. As to the allegations in paragraphs 20, 21, and 22 of the Complaint, these paragraphs contain legal conclusions so no response is necessary. To the extent a response is necessary, MM denies the allegations in these paragraphs.

13. As to the allegations in paragraph 23 and its sub-parts of the Complaint, to the extent they contain legal conclusions, no response is necessary. Moreover, for any and all purported factual statements set forth in paragraph 23 and its sub-parts, MM is without sufficient knowledge or information upon which to base a belief as to the truth of the allegations. Thus, to the extent a response is necessary to any allegation in paragraph 23 and its sub-parts, MM denies them.

14. As to the allegations in paragraph 24 of the Complaint, MM admits that Reef was operating at its location prior to Planet 13 starting its operations at its Desert Inn location.

15. As to the allegations in paragraph 25 of the Complaint, to the extent this paragraph contains legal conclusions, no response is necessary. To the extent a response is necessary, MM denies the allegations in this paragraph.

16. As to the allegations in paragraph 26 of the Complaint, to the extent this paragraph contains legal conclusions, no response is necessary. To the extent a response is necessary, MM denies the allegations in this paragraph.

17. As to the allegations in paragraph 27 of the Complaint, to the extent this paragraph contains legal conclusions, no response is necessary. To the extent a response is necessary, MM denies the allegations in this paragraph.

18. As to the allegations in paragraph 28 of the Complaint, to the extent they contain legal conclusions, no response is necessary. Moreover, for any and all purported factual statements set forth in paragraph 28, MM is without sufficient knowledge or information upon which to base a belief as to the truth of the allegations. Thus, to the extent a response is necessary to any allegation in paragraph 28, MM denies them.

19. As to the allegations in paragraph 29 of the Complaint, to the extent this paragraph contains legal conclusions, no response is necessary. To the extent a response is necessary, MM denies the allegations in this paragraph.

20. As for the allegations in paragraph 30 of the Complaint, MM is without sufficient knowledge or information upon which to base a belief as to the truth of the allegations. Thus, to the extent a response is necessary to any allegation in paragraph 30, MM denies them.

21. As for the allegations in paragraph 31 of the Complaint, to the extent this paragraph contains legal conclusions, no response is necessary. To the extent a response is necessary, MM is without sufficient knowledge or information upon which to base a belief as to the truth of the allegations. Thus, to the extent a response is necessary to any allegation in paragraph 31, MM denies them.

22. As for the allegations in paragraphs 32 and 33, to the extent these paragraphs contain legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, MM denies any and all allegations in these paragraphs.

23. As to the allegations in paragraph 34 of the Complaint, to the extent this paragraph contains legal conclusions, no response is necessary. To the extent a response is necessary, MM denies the allegations in this paragraph.

CAUSES OF ACTION

COUNT I – Civil Conspiracy

(Planet 13, Does, and Roe entities)

24. In response to paragraph 35, MM repeats and reincorporates all previous responses to the Complaint.

25. As for the allegations in paragraphs 36, 37, 38, 39, 40, 41, 42 and 43, to the extent these paragraphs contain legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, MM denies any and all allegations in these paragraphs.

COUNT II – Aiding and Abetting

(Planet 13, Does, and Roe entities)

26. In response to paragraph 44, MM repeats and reincorporates all previous responses to the Complaint.

27. As for the allegations in paragraphs 45, 46, 47, 48, 49, 50, 51 and 52, to the extent these paragraphs contain legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, MM denies any and all allegations in these paragraphs.

COUNT III – Intentional Interference with Economic Advantage
(Planet 13)

28. In response to paragraph 53, MM repeats and reincorporates all previous responses to the Complaint.

29. As for the allegations in paragraphs 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64, to the extent these paragraphs contain legal conclusions and/or non-factual argumentative statements, no response is necessary. To the extent a response is necessary, MM denies any and all allegations in these paragraphs.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim against MM upon which relief may be granted.
2. Plaintiff failed to mitigate, minimize, or otherwise avoid its losses, damages, or expenses.
3. Plaintiff failed to exhaust administrative remedies; therefore, this Court lacks subject-matter jurisdiction.
4. If Plaintiff was injured, NRS Chapter 706A and NRS Chapter 706 establishes the exclusive remedies for Plaintiff.
5. There is no private right of action for Plaintiff under NRS Chapter 706A or NRS Chapter 706.
6. If Plaintiff was injured and damaged as alleged, which is specifically denied, then the injuries and damages were caused, in whole or in part, by the acts or omissions of others, whether individual, corporate or otherwise, whether named or unnamed in the Complaint, for whose conduct MM is not responsible.
7. Plaintiff's claims are barred by waiver.
8. Plaintiff's claims are barred by the doctrine of unclean hands.

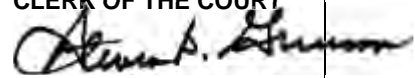
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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of April, 2020, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S ANSWER TO COMPLAINT** 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



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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 Nevada**
limited liability company,

17 **Plaintiff,**

18 **vs.**

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

21 **Defendants.**

Case No. A-19-804883-C

Dept. No. 24

**TRYKE COMPANIES SO NV, LLC'S
OPPOSITION TO MM DEVELOPMENT
COMPANY, INC.'S MOTION FOR
RECONSIDERATION OF COURT
ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

Hearing Date: May 12, 2020

Hearing Time: IN CHAMBERS

24 Plaintiff Tryke Companies SO NV, LLC ("Tryke" or "Plaintiff"), by and through the
25 undersigned counsel, hereby files this Opposition to MM Development Company, Inc.'s ("Planet
26 13") Motion for Reconsideration of Court Order Denying Defendant's Motion to Dismiss
27 ("Motion") filed April 8, 2020.

28 ///





1 This Opposition is based upon the following Memorandum of Points and Authorities; the
2 papers and pleadings already on file herein, including but not limited to Tryke's Complaint filed
3 November 5, 2019 (the "Complaint"), Planet 13's Motion to Dismiss, Tryke's Opposition to the
4 Motion to Dismiss, the transcript of the hearing on Planet 13's Motion to Dismiss, and the Order
5 Denying Planet 13's Motion to Dismiss, notice of which was entered March 26, 2020; and any
6 argument of counsel the Court may allow should this matter be set for hearing.¹

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. INTRODUCTION**

9 The Court should summarily deny Defendants' reconsideration motion as frivolous and
10 procedurally improper. There was no clear error in the Court's denial of Planet 13's motion to
11 dismiss and reconsideration is not warranted. Moreover, Planet 13's motion is a blatant
12 rehashing of the same arguments presented in Planet 13's motion to dismiss. Planet 13 failed to
13 obtain leave of Court prior to filing the Motion, as is required under Nevada's District Court
14 Rules and the Eighth Judicial District Court Rules.

15 Planet 13 argues that the Court committed clear error by not dismissing the civil
16 conspiracy and aiding and abetting causes of action because those causes of actions refer to
17 Nevada's anti-diversion statutes and regulations and there are no private causes of action for the
18 same. However, Planet 13 made these exact arguments in its motion to dismiss, and at the
19 hearing on its motion. The Court correctly found that the claim for intentional interference with
20 economic advantage, plead as Count III of the Complaint, served as an underlying tort to support
21 the civil conspiracy and aiding and abetting causes of actions. Planet 13 contends, however, that
22 the intentional interference claim is not specifically mentioned in the civil conspiracy and aiding
23 and abetting claims and therefore, those claims should be dismissed. Planet 13's arguments are
24 demonstrably false and contradict black letter law, and thus appear to have been raised solely for
25 the purpose of unnecessarily multiplying the proceedings in this manner.

26
27

¹ The Motion is presently set for hearing In Chambers, and Tryke respectfully submits that for the reasons set forth
28 herein, the time and expense of a hearing is not justified. Tryke therefore respectfully requests that the Motion remain
on the Court's In Chambers calendar.



1 First, Planet 13 wholly ignores entire paragraphs of Tryke’s Complaint, which entirely
2 undermine Planet 13’s frivolous arguments. *See, e.g.*, Compl. at ¶¶ 35-36, 44. Second, Planet
3 13’s reconsideration motion ignores the bedrock principal of notice pleading set forth in Nevada
4 Rule of Civil Procedure (“NRCP”) 8, requiring a short and plain statement showing entitlement
5 to relief. Nevada courts have continually rejected imposing a higher pleading burden or
6 requiring any of the uber technicalities and illogical over-formalities suggested by Planet 13
7 here. Indeed, Planet 13’s reconsideration motion suggests that Plaintiffs were required to re-list
8 all other allegations from the complaint and causes of action under each individual cause of
9 action plead. This would result in lengthy and duplicative pleadings, not the “short, plain
10 statements” required under the plain language of Rule 8(a).

11 The bottom line is that Tryke’s Complaint alleges conduct by Planet 13 that violates both
12 of Nevada’s anti-diversion laws and that also constitutes the tort of intentional interference with
13 prospective economic relations. Tryke’s Complaint further alleges a conspiracy among
14 defendants to commit such acts. That is all that is required at the pleading stage and the Court
15 correctly denied Planet 13’s motion to dismiss on this basis.

16 Planet 13’s reconsideration request, based upon a supposed failure to incorporate the
17 intentional interference claim into the civil conspiracy claim, despite it in fact being
18 incorporated, is frivolous and should be summarily denied. Finally, the Court should invoke its
19 inherent authority to sanction conduct which fails to advance the case and which needlessly
20 multiplies the proceedings and costs to all parties, as Planet 13’s reconsideration motion has
21 done here.

22 **II. LEGAL ARGUMENT**

23 **A. Planet 13’s Motion Is Procedurally Improper as Planet 13 Failed to First** 24 **Request Leave of Court to Request Reconsideration**

25 Rule 13(7) of the District Court Rules of the State of Nevada provides: “No motion once
26 heard and disposed of shall be renewed in the same cause, nor shall the same matters therein
27 embraced be reheard, *unless by leave of the court granted upon motion therefor*, after notice of
28 such motion to the adverse parties.” Nev. D. Ct. R. 13(7) (emphasis added); *see also Maples v.*



1 *Quinn*, 126 Nev. 735, 367 P.3d 796 (2010) (Table). Likewise, the Rules of Practice for the
2 Eighth Judicial District Court have an identical provision. EDCR 2.24(a).

3 Here, Planet 13 violated District Court Rule 13(7) and EDCR 2.24 by failing to request
4 leave of court prior to filing a motion for reconsideration. Accordingly, Planet 13's Motion must
5 be denied on this preliminary basis alone.

6 **B. Planet 13's Motion Is Frivolous and Without Merit**

7 Worse than its procedural shortcomings is the fact that Planet 13's reconsideration
8 motion is wholly without merit and presents arguments already rejected by the Court in ruling on
9 Planet 13's motion to dismiss. A reconsideration motion is properly denied where it reasserts the
10 same arguments the court has already ruled upon. *See Maples*, 126 Nev. 735, 367 P.3d 796;
11 *Wallace v. Smith*, No. 70574, 2018 WL 1426396, at *2 (Nev. App. Mar. 5, 2018); *Gaines v.*
12 *State*, 130 Nev. 1178 (2014).

13 As explained above, Planet 13's contention that the civil conspiracy and aiding and
14 abetting causes of action in the Complaint refer to Nevada's anti-diversion laws and do not
15 specifically refer to Plaintiff's claim for intentional interference with economic advantage is: (1)
16 without merit; (2) ignores Nevada's pleading rules and standards; and (3) already was addressed
17 in prior filings and argument.

18 NRCP 8(a) requires a plaintiff to plead a "short and plain statement of the claim." NRCP
19 8(a)(2). Likewise, NRCP 8(d) specifies that pleadings are to "be concise" and that "[e]ach
20 allegations must be simple, concise, and direct. No technical form is required." NRCP 8(d),
21 (d)(2). Indeed, "'Notice pleading' requires plaintiffs to set forth the facts which support a legal
22 theory, but does not require the legal theory relied upon to be correctly identified." *Liston v. Las*
23 *Vegas Metropolitan Police Dep't*, 111 Nev. 1575, 1578, 908 P.2d 720, 723 (1995). "A plaintiff
24 who fails to use the precise legalese in describing his grievance but who sets forth the facts
25 which support his complaint thus satisfies the requisites of notice pleading." *Id.* In determining
26 whether a complaint states a cause of action, a court may review all allegations incorporated by
27 reference into a specific cause of action. *See Nelson v. Sierra Const. Corp.*, 77 Nev. 334, 337,
28 364 P.2d 402, 403 (1961).



Here, the civil conspiracy and aiding and abetting counts in the Complaint specifically refer to the defendants’ conduct “as alleged herein.” Furthermore, paragraphs 35 and 44 of the Complaint provide, for the claims of civil conspiracy and aiding and abetting, respectively, that “Plaintiff incorporates all allegations of the Complaint herein by reference.” Compl. ¶¶ 35, 44. Count III of the Complaint pleads a claim for the tort of intentional interference with economic relations, and the same was incorporated by reference into the claims for civil conspiracy and aiding and abetting. Indeed, there is little doubt that the civil conspiracy and aiding and abetting claims are based on meeting of the minds among the defendants to pay ride share and taxi drivers to divert customers to Planet 13, conduct that both violates Nevada’s anti-diversion laws *and* constitutes the tort of intentional interference with economic advantage. Thus, Plaintiff has plead an underlying tort sufficient to state claims for civil conspiracy and aiding and abetting, and Planet 13’s motion should be denied—*again*.

C. The Court Should Sanction Planet 13 for Its Frivolous Motion

The Court has the inherent authority to sanction abusive litigation practices. *See Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990); *Jordan v. State ex rel. Dep’t of Motor Vehicles and Public Safety*, 121 Nev. 44, 59, 110 P.3d 30, 42 (2005), abrogated on other grounds by *Buzz Stew, LLC v. City of North Las Vegas*, 181 P.3d 670 (Nev. 2008).

Here, the Court already ruled upon the exact arguments that Planet 13 raises in its motion for reconsideration and Planet 13 failed to request leave of Court to move for reconsideration. Planet 13’s arguments fail for the exact reasons they failed a month ago and Planet 13’s motion has served only to unnecessary multiply the proceedings and increase the litigation costs for all parties. Planet 13 has thus engaged in abusive litigation practices and should be subject to sanctions. An appropriate sanction here would be to award Plaintiffs their reasonable attorney fees for having to respond to this frivolous and procedurally improper motion.

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1 **III. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests that this Court deny Planet 13's
3 Motion for Reconsideration and grant Plaintiff its reasonable attorney fees for having to respond
4 to Planet 13's frivolous motion.

5 Dated this 22nd day of April 2020.

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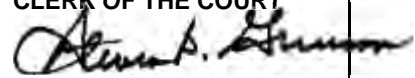
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CERTIFICATE OF SERVICE

The undersigned, an employee of H1 Law Group, hereby certifies that on the 22nd day of April 2020, she caused a copy of the foregoing, to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system addressed to:

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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

**MM DEVELOPMENT COMPANY,
INC.'S REPLY IN SUPPORT OF
MOTION FOR RECONSIDERATION
OF COURT ORDER DENYING
DEFENDANT'S MOTION TO DISMISS**

Hearing Date: May 12, 2020

Hearing Time: IN CHAMBERS

Defendant MM Development Company, Inc. ("MM"), by and through counsel of record, hereby submits this Reply in Support of its Motion for Reconsideration of this Court's Order Denying Defendant's Motion to Dismiss.

I.

INRODUCTION

In denying MM's Motion to Dismiss, this Court mistakenly understood that Reef's civil conspiracy and aiding and abetting claims were based on the purported underlying tort—intentional interference with economic advantage. Contrary to the Court's understanding, Reef's Complaint unambiguously alleges that MM and some unnamed Doe and Roe Entity defendants conspired with and aided and abetted each other **"to violate Nevada's anti-diversion statutes**

1 **and regulations, including NRS 706A.280(2) and NAC 706.552(1)."** *See* Complaint at ¶¶ 36
2 and 45 (emphasis added). Because Nevada neither recognizes a tort claim for diversion under
3 common law nor under the referenced statutes or regulations, Reef's derivative claims for civil
4 conspiracy and aiding and abetting cannot be maintained and must be dismissed. Hence, MM
5 respectfully submits that the Court's prior ruling is clearly erroneous, which, under Nevada law,
6 is grounds for reconsideration.

7 In opposition, Reef argues that (1) MM was required to receive leave from the court before
8 filing its motion for reconsideration so it should be ignored, and (2) Reef's complaint complies
9 with Nevada's notice pleading standards. Both of these arguments lack merit, and Reef fails to
10 address the direct issue raised by MM—that Reef's civil conspiracy and aiding and abetting
11 claims are based on alleged violations of the Nevada anti-diversion statutes and regulations, **not**
12 intentional interference with economic advantage. First, leave is not required to file a motion for
13 reconsideration under EDCR 2.24. Second, based on Nevada's notice pleading standard, Reef's
14 complaint fails to allege intentional interference with economic advantage as the tort underlying
15 the alleged conspiracy and aiding and abetting claims. For these reasons, MM respectfully
16 requests this Court reconsider its prior erroneous order denying dismissal, and amend its order to
17 properly dismiss Reef's civil conspiracy and aiding and abetting claims, which fail to state a claim
18 upon which relief can be granted.

19 **II.**

20 **ARGUMENT**

21 **A. Leave is not required to file a Motion for Reconsideration under EDCR 2.24.**

22 A motion for reconsideration is, in effect, requesting leave from the Court to reconsider a
23 prior ruling. The district court has the inherent authority and is free to revisit and reverse its own
24 rulings upon request of a party. *See* EDCR 2.24; *Kirsch v. Traber*, 134 Nev. 163, 166, 414 P.3d
25 818, 820 (2018); *Trail v. Faretto*, 91 Nev. 401, 403 (1975). In particular, "[a] district court may
26 reconsider a previously decided issue if substantially different evidence is subsequently
27 introduced or **the decision is clearly erroneous.**" *Masonry & Tile Contractors v. Jolley, Urga*
28 *& Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (emphasis added). Here, MM's Motion

carefully points out the legal and factual basis supporting its position, i.e., that the Court’s prior ruling was clearly erroneous and requests that the Court reconsider its ruling.

Reef attempts to twist the court’s rules to require an additional step of requesting leave to file a motion for reconsideration. Such a procedural hurdle is not required by the District Court Rules nor the Rules of Practice for the Eighth Judicial District Court. Further, such practice has never been recognized by this Court. Hence, MM’s Motion is properly before this Court and ripe for determination.

B. Nevada’s notice pleading standard does not permit the Court to simply assume the basis of claims that are belied by the actual plain language in the Complaint.

The plain language of Reef’s civil conspiracy and aiding and abetting claims specifically allege violations of the so-called anti-diversion statutes and regulations. Knowing this, Reef argues its broad reference to MM’s conduct “as alleged herein” and the standard paragraphs preceding each claim somehow alter the actual language in each claim and support the Court’s mistaken and erroneous ruling that these claims are derivative of the intentional interference tort. Reef’s position is contradicted by the plain language in its Complaint and would lead to allowing claims to proceed for which no relief can be granted.

NRCP 8(a)(2) requires that a pleading must contain a short and plain statement of the claim **showing that the pleader is entitled to relief**. NRCP 8(d)(1) requires “[e]ach allegation to be simple, concise, and **direct**.” Based on Reef’s explanation of its pleading its allegations supporting its civil conspiracy and aiding and abetting claims are certainly not direct (at least not in the way Reef contends) nor do they show the pleader is entitled to relief. A direct reading of the allegations shows that the conspiracy and aiding and abetting claims are derivative of purported violations of the Nevada anti-diversion statutes and regulations—not intentional interference:

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

...

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

Complaint at ¶¶ 36 and 45 (emphasis added). MM has clearly established and this Court agreed that there is no recognized tort for diversion in Nevada. Neither is there a private right of action nor standing to sue MM for violations of the Nevada anti-diversion statutes and regulations. Hence, these claims must be dismissed.

Even if the Court adopts Reef's position that these claims incorporate the intentional interference tort as the underlying tort forming the basis for these derivative claims, the Court must, at a minimum, still dismiss these claims against MM in relation to any violation of the so-called anti-diversion statutes and regulations because such a claim fails as a matter of law.

C. There is no basis for sanctions.

In a last-ditch effort to distract from the failures of its Complaint and the Court's mistaken understanding related to the same, Reef cries for sanctions. With only conclusory statements and no valid basis, Reef claims that sanctions are warranted because the Court has already ruled on the exact arguments that MM raises in its motion and MM failed to request leave of Court to move for reconsideration. *See* Opposition at 5:18-19. Reef also claims that by filing its motion for reconsideration, MM has engaged in abusive litigation practices. *Id.* At 5:22-23.

In reality, and as set forth above, MM need not request leave to file a motion for reconsideration. MM's motion is well-argued, legally supported and raises valid and essential issues that this Court should reconsider. There is no standing to sue MM nor can MM be held liable for violation of the Nevada anti-diversion statutes and regulations. As such, Reef's claims for civil conspiracy and aiding and abetting based on alleged violations of those statutes and regulations must be dismissed for failure to state a claim upon which relief can be granted. MM's litigation practices are far from abusive, but rather competent and zealous advocacy. Sanctions are not warranted.

III.

CONCLUSION

Reef's claims for civil conspiracy and aiding and abetting are predicated on violations of Nevada's anti-diversion statutes and regulations, not, as this Court erroneously found, upon the tort of interference with prospective economic advantage. Because Nevada does not recognize a tort for diversion nor do the statutes and regulations cited by Reef provide for a private cause of action for such a violation, Reef's derivative claims for civil conspiracy and aiding and abetting must be dismissed as pled.

Contrary to Reef's arguments in its opposition, MM was not required to request leave of this Court prior to filing its motion for reconsideration and Nevada's notice pleading standard was not designed to let a directly and clearly pled claim upon which no relief could be granted survive dismissal. Even if another tort could be found to be indirectly, through vague incorporation of all allegations in the Complaint, underlying these derivative claims, Reef's civil conspiracy and aiding and abetting claims must be dismissed to the extent they are based on alleged violations of the Nevada anti-diversion statutes and regulations.

Based on the foregoing, MM respectfully requests that the Court reconsider its clearly erroneous Order Denying Defendant's Motion to Dismiss, and dismiss Reef's claims for civil conspiracy and aiding and abetting based on the failure to plead a cognizable claim upon which relief can be granted.

DATED this 5th day of May, 2020.

KEMP JONES, LLP

/s/ Ian P. McGinn

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of May, 2020, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF COURT ORDER DENYING DEFENDANT'S MOTION TO DISMISS** 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/ Alisa Hayslett

An employee of Kemp Jones, LLP

A-19-804883-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

May 07, 2020

A-19-804883-C Tryke Companies SO NV, LLC, Plaintiff(s)
vs.
MM Development Company, Inc., Defendant(s)

**May 07, 2020 3:00 AM Motion For
Reconsideration**

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building 11th Floor
116

COURT CLERK: Tia Everett

RECORDER:

REPORTER:

PARTIES No parties present
PRESENT:

JOURNAL ENTRIES

- MM Development Company, Inc.'s Motion for Reconsideration of Court Order Denying Defendant's Motion to Dismiss

COURT NOTES per Odyssey, MM Development has a filing fee balance of \$223.

This COURT, having reviewed the Motion, Opposition and Reply and concludes there is no basis for reconsideration of the court's decision. Furthermore, MM Development is simply re-arguing the same arguments previously considered and rejected by the court. COURT ORDERED, Motion for Reconsideration DENIED. Counsel for Plaintiff to prepare and submit order to court for signature w/in 14 days per EDCR 7.21. COURT FURTHER ORDERED, matter SET for Status Check.

6/11/20 (CHAMBERS) STATUS CHECK: FILLING OF ORDER DENYING MOTION FOR

PRINT DATE: 05/07/2020

Page 1 of 2

Minutes Date: May 07, 2020

APPENDIX 103

RECONSIDERATION

CLERK'S NOTE: The above minute order has been distributed to:

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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

**ORDER DENYING MOTION FOR
RECONSIDERATION OF COURT
ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

Date of Hearing: May 7, 2020
Time of Hearing: In Chambers

The Court, having reviewed and considered the *Motion for Reconsideration of Court Order Denying Defendant's Motion to Dismiss* (the "Motion for Reconsideration") filed by Defendant MM DEVELOPMENT COMPANY, INC. dba PLANET 13 ("Defendant"), the Opposition to the Motion for Reconsideration filed by Plaintiff TRYKE COMPANIES SO, NV



1 LLC ("Plaintiff"), and Defendant's Reply; good cause appearing and for the reasons set forth in a
2 Minute Order entered May 7, 2020, HEREBY FINDS, CONCLUDES, AND ORDERS:

3 1. There is no basis for reconsideration of the Court's Order denying Defendant's
4 Motion to Dismiss.

5 2. Defendant is simply re-arguing the same arguments previously considered and
6 rejected by the Court.

7 3. Defendant's Motion for Reconsideration is DENIED.

8 IT IS SO ORDERED this 20th day of May 2020.

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DISTRICT COURT JUDGE

Submitted by:

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/s/ Joel Z. Schwarz

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2 **Sent:** Monday, May 18, 2020 3:12 PM
3 **To:** Joel Schwarz <joel@h1lawgroup.com>
4 **Cc:** Ian McGinn <i.mcgin@kempjones.com>; Judy Estrada <judy@h1lawgroup.com>
5 **Subject:** RE: [External] Tryke/Planet 13 order

6 Yes, sorry. You may use my e-signature and submit.

7 Thanks,

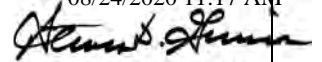
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CLERK OF THE COURT

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15 EIGHTH JUDICIAL DISTRICT COURT

16 CLARK COUNTY, NEVADA

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

19 Plaintiff,

20 vs.

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

25 Defendants.

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

**TRYKE COMPANIES SO NV, LLC'S:
(1) MOTION FOR PRELIMINARY
INJUNCTION; AND (2) APPLICATION
FOR ORDER SHORTENING TIME**

HEARING REQUESTED

26 Pursuant to Nevada Revised Statutes ("NRS") 33.010, Plaintiff Tryke Companies SO
27 NV, LLC ("Tryke" or "Reef Dispensary," the brand name of its marijuana dispensary), by and
28 through the undersigned counsel, hereby moves for a preliminary injunction against Defendant
29 MM Development Company, Inc. ("MM Development" or "Planet 13," the brand name of its
30 marijuana dispensary) enjoining Planet 13's ongoing intentional interference with Tryke's



1 customer relationships, prospective economic advantage, and related tortious conduct consisting
2 of paying Uber, Lyft and taxicab drivers to unlawfully divert customers that specifically
3 requested to go to Reef Dispensary to Planet 13's nearby dispensary instead. Planet 13's
4 unlawful actions are causing—and will continue to cause—Tryke substantial and irreparable
5 harm that will continue unless preliminary injunctive relief is granted.

6 Following the recent reopening of marijuana dispensaries, Planet 13 has resumed its
7 tortious conduct in earnest. Therefore, pursuant to Eighth Judicial District Court Rule ("EDCR")
8 2.26, Tryke requests that this motion be set for hearing on shortened time.

9 This Motion is made and is based upon the following Memorandum of Points and
10 Authorities and supporting exhibits, including the Declaration of Adam Laikin attached hereto as
11 **Exhibit 1** and the exhibits thereto; the Declaration of Jamie L. Zimmerman submitted in
12 compliance with EDCR 2.26; and any oral argument that this Court may allow at the hearing of
13 this matter.

14 **DECLARATION OF JAMIE L. ZIMMERMAN IN SUPPORT OF**
15 **APPLICATION FOR ORDER SHORTENING TIME**

16 I, Jamie L. Zimmerman, declare:

17 1. I am an attorney licensed to practice law in the state of Nevada and am an
18 attorney with the firm H1 Law Group, counsel for Plaintiff in this matter.

19 2. This declaration is made in good faith and not for purposes of delay.

20 3. Plaintiff operates a marijuana dispensary located in Las Vegas, Nevada.
21 Plaintiff's dispensary has been in the same location since 2016.

22 4. In 2019, Plaintiff became aware that a competing dispensary, which moved into a
23 building approximately 900 feet from Plaintiff's dispensary in 2018, was paying Uber and Lyft
24 drivers to divert customers that had specifically requested to go to Plaintiff's dispensary (brand
25 name "Reef Dispensary") to instead be transported to Defendant's dispensary (brand name
26 "Planet 13"). Defendant accomplished this task by paying the drivers "kickbacks" or
27 "commissions" to divert customers to Defendant's dispensary.

28 ///



1 5. Plaintiff informed Defendant that it had learned of Defendant's program that
2 incentivizes ride share and taxi drivers to engage in unlawful diversion and demanded that
3 Defendant immediately cease its program accordingly.

4 6. After Defendant made it known that it had no intention of ceasing its program to
5 pay drivers for illegal diversion of customers, Plaintiff filed this lawsuit.

6 7. After this Court denied Defendant's Motion to Dismiss and Defendant's
7 subsequent Motion for Reconsideration regarding its unsuccessful motion to dismiss,
8 Defendant's improper diversion program was paused—not by its own doing—but instead due to
9 the Covid-19 crisis and the stay at home order issued by Governor Sisolak. Because Nevada
10 dispensaries were all closed, other than for delivery services, Defendant's illegal program was,
11 consequently, briefly interrupted.

12 8. It was Plaintiff's hope and belief that, based upon this pending litigation, and the
13 Court's denial of Defendant's Motion to Dismiss, that Defendant would not restart its improper
14 driver incentivization program when the dispensaries reopened to customer traffic this past
15 month.

16 9. Unfortunately, upon the reopening of dispensaries, Defendant's improper program
17 also resumed.

18 10. As explained further below, Defendant's improper program is causing irreparable
19 harm to Plaintiff, as it is not only harming Plaintiff's sales, but it is also diminishing Plaintiff's
20 brand and customer relationships.

21 11. Plaintiff's dispensary is already suffering due to the Covid-19 crisis and
22 corresponding economic impacts. Being forced to compete with Defendant's dispensary, when
23 Defendant is improperly paying drivers, who are tasked with transporting customers to their
24 requested destination of Plaintiff's dispensary, with kickbacks for diverting customers to
25 Defendant's dispensary instead, is making matters even worse and irreparably harming
26 Plaintiff's business.

27 ///

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12. Given the inadequacies of monetary damages to redress Defendant's wrongful actions, Plaintiff will be further harmed if this motion is heard in the ordinary course. For this reason, Plaintiff requests this motion for preliminary injunction be heard on shortened time.

13. Plaintiff therefore respectfully requests that the present motion be set for hearing as soon as feasible for the Court.

14. Pursuant to EDCR 2.26, a copy of this motion will be provided to the Defendant at the same time it is submitted to the Court for consideration of the application for order shortening time. Upon entry of an order shortening time, the motion will be served promptly.

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

Executed this 21st day of August 2020.


JAMIE L. ZIMMERMAN

ORDER SHORTENING TIME

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

Upon motion of counsel and good cause appearing therefor, IT IS HEREBY ORDERED:

That the time for hearing on **TRYKE COMPANIES SO NV, LLC'S (1) MOTION FOR PRELIMINARY INJUNCTION; AND (2) APPLICATION FOR ORDER SHORTENING TIME** is shortened and that the same shall be heard by the Honorable Jim Crockett in Dept. 24, Phoenix Building, 11th Floor, Courtroom 116, at the time specified herein:
Dated this 24th day of August, 2020
the 3rd day of September 2020 at the hour of 9:00 a.m./p.m.


DISTRICT COURT JUDGE

DATED this ___ day of August 2020.

OPPOSITION DUE: 8/27/20
REPLY DUE: 9/1/20

AF9 EA2 6ED3 540D
Jim Crockett
District Court Judge

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

7 Planet 13 has orchestrated a program of paying transportation services company drivers
8 “kickbacks” or “commissions” well in excess (often many times in excess) of the actual fee for
9 the customers’ fares in exchange for unlawfully diverting Reef Dispensary-bound customers to
10 Planet 13. To be clear, Planet 13’s program is not in place to simply pay drivers for taking
11 customers that had requested to go to Planet 13 to their intended location. Rather, Planet 13’s
12 program was specifically designed to—and evidence confirms that it does—incentivize and pay
13 drivers for unlawfully diverting customers that had requested to go to the Reef Dispensary to
14 Planet 13 instead.

15 Planet 13 has never denied its actions. On the contrary, Planet 13 widely advertises its
16 unlawful diversion incentivization program through web-based applications but contends there is
17 nothing wrong with paying kickbacks for diverting customers. Pursuant to NRS 706A.280(2)(a)
18 and (b) and NAC 706.552(1), Uber and Lyft drivers, as well as taxicab drivers, are prohibited
19 from diverting customers from destinations other than those selected by the customers. Try as it
20 might, Planet 13 cannot exculpate itself by trying to pass the buck on to the drivers for availing
21 themselves to the financial incentives dangled and paid by Planet 13.

22 While this pending litigation, and especially given the Court’s denial of Planet 13’s
23 Motion to Dismiss and its Motion for Reconsideration, should have deterred Planet 13 from
24 restarting its program after the reopening of dispensaries to the public, Planet 13’s program has
25 resumed in earnest. Thus, a preliminary injunction enjoining Planet 13 from operating its
26 diversion incentivization program is necessary and warranted. Specifically:

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- Planet 13's recently-resumed program is intentionally interfering with Tryke's prospective economic relations with those customers that choose to patronize its dispensary and are unlawfully diverted to Planet 13's dispensary instead. Indeed, Planet 13's diversion incentivization program is directly comparable to conduct which the Nevada Supreme Court has held constitutes the tort of intentional interference with prospective economic relations and, thus, Tryke is likely to succeed on the merits.
- By deceptively diverting customers away from Reef Dispensary and to Planet 13 with its illegal program, Planet 13 is causing substantial and irreparable harm to Tryke's sales and customer acquisitions that can never be fully ascertained or redressed solely through money damages. This harm goes well beyond mere financial damage caused by the inevitable decrease in sales; indeed, the nature of Planet 13's actions will also lead to the irremediable loss of brand value, consumer loyalty, and inherent goodwill of the dispensary itself.
- Furthermore, the public interest would be served by entering an injunction to prohibit Planet 13 from operating its program because, among other things, it is promoting illegal diversion prohibited by Nevada statute and regulation, it deceives customers and tramples their right of personal choice underlying Nevada's marijuana statutes and regulations, and it entices drivers to risk their licensure for financial gain.

Accordingly, the Court should enter a preliminary injunction to enjoin Planet 13 from operating its diversion incentivization program to protect Reef Dispensary and other licensed dispensaries, and the public interest, until this matter can be fully and finally adjudicated on the merits.

II. STATEMENT OF RELEVANT FACTS

Tryke had been operating its Reef dispensary since early 2016 at the same location before Planet 13 opened a dispensary in late 2018 within approximately 900 feet of Reef. Laikin Decl. ¶ 5.

Prior Evidence Regarding Planet 13's Kickback Program

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." *Id.* ¶ 6.

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



1 pay kickbacks, then they and other drivers will take passengers to a dispensary that does. *Id.* ¶
2 7. Reef has received similar statements from other Lyft and Uber drivers as well, including
3 by voicemail, since that initial Uber driver interaction. *Id.* ¶ 8.

4 Aware that patrons of Uber, Lyft, and other rideshare programs are required to enter
5 their chosen destination as part of the ride scheduling process, and thus drivers are provided
6 the passenger's chosen destination prior to ever picking them up, this comment suggested
7 something more than a referral. It suggested an illegal diversion. Tryke engaged in further
8 investigation. *Id.* ¶ 9.

9 A random "secret shopper" sampling of Uber and Lyft rides in Las Vegas between
10 August 9 and September 17, 2019 confirmed that unlawful diversion to Planet 13 was, in fact,
11 occurring. Laikin Decl. ¶ 11. In fact, 20 out of 30 rides sampled were diverted to Planet 13.

12 *Id.* The following reflects a sample of specific occasions where such diversion occurred:

13 a. On August 9, 2019, a passenger requested pickup at the Encore at
14 Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant app.
15 The passenger stated, "We're going to Reef Dispensaries, please." The driver
16 responded, "Planet 13?" The passenger corrected the driver, again stating her
17 destination as Reef Dispensaries. The driver informed the passenger that Planet 13 is
18 bigger, considered the best, and many people go there, though he indicated he has no
19 personal experience. Thereafter, the driver continued pushing Planet 13. The passenger
20 eventually stated she would try it but did not direct the driver to Planet 13. Pointing
21 out Reef's location, the driver then dropped the passenger off at Planet 13 instead of
22 Reef, without asking the passenger to change the destination in the app. *See* Laikin
23 Decl. ¶ 12 and Exhibit C-1 thereto.

24 b. On August 9, 2019, a different passenger also requested pickup at the
25 Encore at Wynn Hotel, and specified the destination as Reef in the relevant app. The
26 driver stated to the passenger that Reef is pricey. The driver proceeded to inform the
27 passenger that Planet 13 is better and that it calls itself the biggest dispensary in the
28 world. This driver dropped the passenger off at Planet 13, without asking the



1 passenger to change the destination in the app. *See* Laikin Decl. ¶ 12 and Exhibit C-2
2 thereto.

3 c. On August 9, 2019, a passenger requested pickup at the Palazzo Las
4 Vegas, and specified the destination as Reef in the relevant app. Without saying
5 anything, the driver dropped the passenger off at Planet 13 instead of Reef, without
6 asking the passenger to change the destination in the app, and in fact, without
7 notifying the passenger of the change in their chosen destination. *See* Laikin Decl. ¶ 12
8 and Exhibit C-3 thereto.

9 d. On August 16, 2019, a passenger requested pickup at Liquor City in
10 Las Vegas, and specified the destination as Reef in the relevant app. Upon entering the
11 vehicle, the passenger stated they are going to Reef Dispensary. The driver
12 immediately asked if the passenger has been to Planet 13 and stated that Planet 13 was
13 the best. The driver asked the passenger to change the destination in the app to Planet
14 13. The driver then proceeded to push Planet 13 on the passenger by talking about its
15 deals and discounts, stating it is the world's largest dispensary, and explaining that he
16 tells all of his customers that they are going to thank him for taking them to Planet 13.
17 The driver dropped the passenger off at Planet 13 instead of Reef. *See* Laikin Decl. ¶
18 12 and Exhibit C-4 thereto.

19 e. On August 16, 2019, a passenger requested pickup at the Wynn Hotel
20 in Las Vegas, and specified the destination as Reef in the relevant app. The passenger
21 stated her destination as Reef Dispensary. The driver immediately asked, "Why Reef"?
22 The driver then stated that Reef "is not that good," and that "right in front of it is
23 Planet 13." The driver referred to Planet 13 dispensary as "the best one" and "the
24 biggest." The driver proceeded to inform the passenger that Reef is expensive, that it is
25 for tourists, and that locals go to Planet 13 instead. Continuing, the driver states to the
26 passenger "Don't go to Reef. It's not a good place." Continuing further as to Reef, the
27 driver stated, "it's not good product" and reiterated that it is for tourists. At this point,
28 the driver claimed that he had been to all of the dispensaries and Planet 13 is the best,



1 with better prices, better product, better flavors, more stuff, and it is huge. Continuing
2 further, the driver stated that “Planet 13 is always full. No one goes to Reef” and “I
3 don’t buy nothing Reef.” Finally, the driver told the passenger she should go into
4 Planet 13 and try it and if she does not like it, then she can go to Reef. The driver
5 dropped the passenger off at Planet 13 instead of Reef, without asking the passenger to
6 change the destination in the app. *See* Laikin Decl. ¶ 12 and Exhibit C-5 thereto.

7 f. On August 22, 2019, a passenger requested pickup at the Mirage Hotel
8 in Las Vegas, and specified the destination as Reef in the relevant app. Approximately
9 half-way to her destination, the driver asked “Would you rather go to Planet 13?” and
10 states “it’s a good dispensary.” The passenger asked why the driver prefers Planet 13
11 over Reef. The driver responded that he did not speak much English. The driver
12 dropped the passenger off at Planet 13 instead of Reef, without asking the passenger to
13 change the destination in the app. *See* Laikin Decl. ¶ 12 and Exhibit C-6 thereto.

14 g. On September 5, 2019, a passenger requested pickup at Treasure Island
15 Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The
16 passenger informed the driver she is going to Reef. The driver immediately asked, “Or
17 Planet 13?” At this point, the driver informed the passenger that Planet 13 is newer,
18 bigger, and better. The driver further stated “Before the people go to Reef. Now the
19 people go to Planet 13. More people go to Planet 13.” The driver then proceeded to
20 state that Reef is all tourists. The driver dropped the passenger off at Planet 13 instead
21 of Reef, without asking the passenger to change the destination in the app. *See* Laikin
22 Decl. ¶ 12 and Exhibit C-7 thereto.

23 h. On September 5, 2019, a passenger requested pickup at the Encore at
24 Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant app.
25 The passenger stated upon entry into the vehicle “To Reef,” to which the driver
26 responds, “You don’t like Planet 13?” At this point, the driver stated that “Planet 13 is
27 just the better one,” that it has better prices, larger inventory, and is “just across the
28 street.” As they approached, the driver stated, “Look at Planet 13. Look at Reef. That



1 tells you right there.” The driver dropped the passenger off at Planet 13 instead of
2 Reef, after first asking the passenger to change the destination in the app. *See* Laikin
3 Decl. ¶ 12 and Exhibit C-8 thereto.

4 i. On September 5, 2019, a passenger requested pickup at the Sahara
5 Hotel in Las Vegas, and specified the destination as Reef in the relevant app.
6 Immediately upon entering the vehicle, the driver told the passenger, “You should go
7 to the Planet 13. It’s the best one.” The driver stated that Planet 13 is new, that it is
8 “gonna be amazing,” that it is “the best one,” and that it has better prices. The driver
9 then stated that Reef is expensive. The driver dropped the passenger off at Planet 13
10 instead of Reef, after first asking the passenger to change the destination in the app.
11 *See* Laikin Decl. ¶ 12 and Exhibit C-9 thereto.

12 j. On September 6, 2019, a passenger requested pickup at Treasure Island
13 Hotel in Las Vegas, and specified the destination as Reef in the relevant app. After
14 orally verifying Reef as the destination, the driver asked, “Have you been to Reef
15 before?” The driver proceeded to inform the passenger that Planet 13 is next door to
16 Reef, that people say it is the “largest dispensary” and that he thinks the passenger will
17 like Planet 13 better. The driver dropped the passenger off at Planet 13 instead of Reef,
18 without asking them to change the destination in the app. *See* Laikin Decl. ¶ 12 and
19 Exhibit C-10 thereto.

20 k. On September 6, 2019, a passenger requested pickup at Encore at
21 Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant app.
22 The driver verified the passenger’s destination as Reef. Toward the end of the ride, the
23 driver informed the passenger that he should check out Planet 13, stating “it’s the
24 world’s largest one, so the inventory is very massive,” that Planet has exclusive
25 product that the passenger cannot get anywhere else, and that it is massive and has
26 everything like Wal-Mart. The driver then informed the passenger that Planet 13
27 would be adding a nightclub as well. The driver dropped the passenger off at Planet 13

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1 instead of Reef, without asking him to change the destination in the app. *See* Laikin
2 Decl. ¶ 12.

3 l. On September 6, 2019, another passenger requested pickup at Wynn
4 Hotel in Las Vegas, and specified the destination as Reef in the relevant app.
5 Immediately upon verifying the destination as Reef, the driver asked the passenger
6 why she was not going to Planet 13, and began selling Planet 13 to the passenger. The
7 driver stated Planet 13 is new and is just across the street, and that they give every
8 customer 20% off. The driver dropped the passenger off at Planet 13 instead of Reef,
9 after asking the passenger to change the destination in the app. *See* Laikin Decl. ¶ 12
10 and Exhibit C-12 thereto.

11 m. On September 6, 2019, a passenger requested pickup at the Wynn Hotel
12 in Las Vegas, and specified the destination as Reef in the relevant app. The driver
13 orally verified the destination as Reef. Part way through the ride, the driver stated that
14 Planet 13 is better. The driver explained that her passengers say they like Planet 13
15 better and, specifically, that the weed and prices are better. The driver then stated that
16 if the passenger does not like Planet 13, Reef is right across the street. The driver
17 dropped the passenger off at Planet 13 instead of Reef, without asking the passenger to
18 change the destination in the app. *See* Laikin Decl. ¶ 12 and Exhibit C-13 thereto.

19 n. On September 13, 2019, a passenger requested pickup at Treasure
20 Island Hotel in Las Vegas, and specified the destination as Reef in the relevant app.
21 The driver immediately asked if the passenger likes Reef. The driver proceeded to
22 explain that his customers go to Planet 13, that it is number one in Vegas, and that
23 everyone who lives in Vegas goes there. The driver then stated that if the passenger
24 does not like it, Reef is nearby. Stating that Planet 13 was better, the driver dropped
25 the passenger off at Planet 13 instead of Reef, after asking the passenger to change the
26 destination in the app. *See* Laikin Decl. ¶ 12 and Exhibit C-14 thereto.

27 o. On September 13, 2019, a passenger requested pickup at the Mirage
28 Hotel in Las Vegas and specified the destination as Reef in the relevant app.



1 Immediately after the passenger orally confirms the destination as Reef, the driver
2 stated “This is bad. Change the address. Put Planet 13. It’s the best.” The driver
3 proceeded to explain that Planet 13 is cheaper, it is fresh, and is the best dispensary in
4 Vegas. Continuing, the driver stated that he tells approximately 25 passengers to
5 change their destinations to Planet 13 every day. The driver then proceeded to
6 disparage Reef, stating that Reef is bad, that the product is bad, and that Planet 13 is
7 the best and everyone goes there. The driver dropped the passenger off at Planet 13
8 instead of Reef, after asking the passenger to change the destination in the app. *See*
9 Laikin Decl. ¶ 12 and Exhibit C-15 thereto.

10 p. On September 13, 2019, a different passenger requested pickup at the
11 Mirage Hotel in Las Vegas, and specified the destination as Reef in the relevant app. A
12 few minutes into the ride, the driver stated that people say Planet 13 is better, and that
13 Planet 13 is the best in Vegas. The driver dropped the passenger off at Planet 13
14 instead of Reef, without asking the passenger to change the destination in the app. *See*
15 Laikin Decl. ¶ 12 and Exhibit C-16 thereto.

16 q. On September 13, 2019, a passenger requested pickup at Encore at
17 Wynn Hotel in Las Vegas and specified the destination as Reef in the relevant app and
18 upon pickup. A few minutes into the ride, the driver asked the passenger, “Would you
19 rather go to Planet 13?” The driver stated that Planet 13 has much better deals, is
20 bigger than Reef, and claimed that a lot of people say it has much better selection. The
21 driver dropped the passenger off at Planet 13 instead of Reef, without asking the
22 passenger to change the destination in the app. *See* Laikin Decl. ¶ 12 and Exhibit C-17
23 thereto.

24 r. On September 13, 2019, a passenger requested pickup at the Wynn
25 Hotel in Las Vegas, and specified the destination as Reef in the relevant app. During
26 the ride, the driver informed the passenger that Planet 13 is bigger, is open 24 hours, is
27 full of people, and that all of his passengers say it is the best. The driver then stated
28 that Planet 13 is the biggest and the number one dispensary. The driver dropped the



1 passenger off at Planet 13 instead of Reef, after asking the passenger to change the
2 destination in the app. *See* Laikin Decl. ¶ 12 and Exhibit C-18 thereto.

3 s. On September 13, 2019, a different passenger also requested pickup at
4 the Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant
5 app. Approximately half-way to Reef, the driver asked the passenger if she has ever
6 been to Planet 13. The driver informed the passenger it is “a real popular joint” and
7 that he gets a lot of calls for Planet 13. At this point, the driver encouraged the
8 passenger to change her destination in the app, stating it is not as far as Reef. The
9 driver dropped the passenger off at Planet 13 instead of Reef, and again asked the
10 passenger to change the destination in the app. *See* Laikin Decl. ¶ 12 and Exhibit C-19
11 thereto.

12 t. On September 17, 2019, a passenger requested pickup at Treasure
13 Island Hotel in Las Vegas, and specified the destination as Reef in the relevant app.
14 Immediately upon entering the vehicle, the driver proceeded to disparage Reef asking,
15 “You want to go there? Their shit sucks.” The driver recommended Planet 13, stating
16 that it is like a toy store, it is the best, with fresh product every day (implying Reef’s
17 product is not), and that it is closer. The driver then proceeded to disparage Reef,
18 stating that it is “trash” and “garbage,” and indicated to the passenger that they will be
19 disappointed with Reef. The driver told the passenger to trust him that Planet 13 is
20 better. The driver dropped the passenger off at Planet 13 instead of Reef, without
21 asking the passenger to change the destination in the app. The driver changed the
22 destination in the app to Planet 13 himself. *See* Laikin Decl. ¶ 12 and Exhibit C-20
23 thereto.

24 To date, Tryke has also obtained at least two Driver Diversion Incident Report Forms
25 from Mark Conley and Shetisha Combs, two other non-Tryke passengers of Uber and Lyft, who
26 had similar experiences as those reported in Tryke’s “secret shopper” investigation. *See* Laikin
27 Decl. ¶ 13 and Exhibits D-1 and D-2 thereto.

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1 Just as the “secret shopper” program and Driver Diversion Incident Report Forms
2 showed, postings on the Las Vegas discussion board of www.uberpeople.net are also consistent
3 with Planet 13’s well-publicized kickback program that regularly induces Uber and Lyft drivers
4 to violate Nevada law by diverting passengers who have specified Reef as their destination to
5 Planet 13 instead. Indeed, the following comments posted by Uber and Lyft drivers
6 demonstrates the success of Planet 13’s kickback program to encourage illegal diversion:

7 JethroBodine: Planet 13. ... (Responding to question about showing ss card) Yes.
8 And you fill out tax form the first time. I schmooze with the riders...Many times
9 they are going to another dispensary and steer them to one that pays... I divert from
10 other dispensaries most of the time...

Gsx328: If person puts in Reef and u get them to divert to Planet, isn’t that the whole
point of paying drivers.

11 See Laikin Decl. ¶ 15 and Exhibit E-1 thereto, March 8, 2019 Discussion Thread on
12 www.uberpeople.net (TRYKE000001- 000002).

13 KenLV: All you have to do is have the pax [abbreviation for “passenger”] change
14 the destination in the app. it’s easy and if they don’t know how, show them/do it
for them – but have them hit “confirm”...

15 See Laikin Decl. ¶ 15 and Exhibit E-2 thereto, March 8, 2019 Discussion Thread on
16 www.uberpeople.net (TRYKE000006).

17 Taxi2Uber: *"Drivers cannot attempt to convey any passenger to a destination
18 other than the one directed by the passenger via the Uber app."*

19 You are not allowed to divert passengers. Period. But with careful wording, it could
20 bring you into a grey area. I'm sure with Planet 13's location and kickbacks, Reef's
business has suffered. Businesses that choose not to "pay to play" have likely voiced
their grievance.

21 See Laikin Decl. ¶ 15 and Exhibit E-3 thereto, March 19, 2019 Discussion Thread on
22 www.uberpeople.net (TRYKE000007).

23 April 20, 2019 discussion thread:

24 Today is 4/20 get those dispensary runs! And make sure to divert from Reef or
25 Essence. Planet 13 is nearby both of them!

26 See Laikin Decl. ¶ 15 and Exhibit E-4 thereto, April 20, 2019 Discussion Thread on
27 www.uberpeople.net (TRYKE0000011).

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1 Wasted_Days: Planet 13 every single time for me, PAX always seem pretty stoked
2 when they see how clean and easy it is. I actually go out of my way to bad mouth
those dweebs at REEF.

3 See Laikin Decl. ¶ 15 and Exhibit E-5 thereto, July 30, 2019 Discussion Thread on
4 www.uberpeople.net (TRYKE000085).

5 Udrivevegas: With Uber the choice has been made before they get picked up. Now
6 we have to convince them to go to a different place.

7 See Laikin Decl. ¶ 15 and Exhibit E-6 thereto, August 20, 2019 Discussion Thread on
8 www.uberpeople.net (TRYKE000046).

9 Drewsnutz: My best advice to divert a pax that worked for me 99% of the time.
10 You see where they are going. Crack a joke like oh you picked reef. Good luck. It
11 makes them curious why you said that. Then proceed with their product is second
12 grade and higher priced and planet 13 is right next door with better pricing and
13 product. Can make planet 13 any dispensaries name you like. Then if they don't
automatically say re route me to there. Be semi passive aggressive and say you still
wanna go to the worst dispensary around? Honestly i have gotten many tips and
kickback from this and usually a good rating. Only 1 time a bad one as they worked
at reef??¹

14 See Laikin Decl. ¶ 15 and Exhibit E-7 thereto, August 22, 2019 Discussion Thread on
15 www.uberpeople.net (TRYKE000020).

16 wastaxinowuber: And you couldn't convince them to go across the street to planet
17 13? Make up something like their prices and selection aren't good (talking about
reef of course).

18 KenLV: Literally never drop at Reef anymore. Talk about Planet 13 (world's largest
19 dispensary, "Walmart super store" vs a 7-11; etc...) and then slow roll past it. I've
yet to have someone not change their mind.

20 AtomicBlonde: You gotta nudge them in the right direction. The other night I
21 picked up 2 guys at the airport. Reef. Flat taxi rates don't apply, so no tunnel, I have
22 to go out Paradise to Tropicana—giving them a few extra minutes to change their
23 mind all on their own. Have you been to Reef before? In a tone of voice showing
24 mild, vague surprise that they wanted to go there. Yes, they've been there before.
25 Never a good sign, but they took the bait. Any other store you would recommend?
What's the best one? Why, Planet 13, of course. I tell them how nice it is, how "it's
where I go," blah blah. You expect it to be a tourist trap but it's actually a great
store! And it's right across the street, it would be easy to walk over and check it out
after Reef. Which one is more popular? Planet 13, not even close. I make no
suggestion that I should drop them there instead. At this point they are talking about

26 ¹ The poster's comment "Can make planet 13 any dispensaries name you like" underscores the
27 obvious, that a driver's efforts to persuade a passenger to change their destination *en route* need
28 not be based on true facts or true opinions, but instead can be made with the sole purpose of
leveraging the driver's purportedly superior knowledge to deceive the passenger and, therefore,
cause an unlawful diversion in direct violation of NRS 706A.280(2)(b).



1 it between themselves. As we're getting off the Spring Mountain exit, where you
2 can see the stores, I'm like, so, you can see that Planet 13 is right there, you should
3 check it out after. They take the bait! "Wanna just go to Planet 13?" "Yeah, let's
4 check it out." "Yeah, just drop us at Planet 13, we can walk over to Reef if we don't
5 like it." Sure, no problem! The things we do for \$15.

KenLV: The things we do to double, triple, quadruple, or even quintuple our pay...

6 Always Laughing: I just tell them reef made the news (which it did in September)
7 it was one of the dispensaries that mold was founding their products and needed to
8 be recalled

9 DriveLV: I always ask: Have you been to Reef before? Usually they answer no.
10 Then I casually ask what they are looking to buy. Whatever their answer (flower,
11 edibles, vape, wax etc) I casually let them know P13 has the biggest selection of
12 *that* and it's where most of my pax go. Reef is like a warehouse but PI 3 is like
13 an adult Disneyland for weed (and the worlds largest dispensary). Unless they have
14 some very specific reason for Reef (rare) they then will decide on P13 on their
15 own....The most solid sale is when the customer decides on their own. Let google
16 help you with that. Pax doesn't even realize they are being sold.

17 gsx328: Yes, the whole "Have you been there before?" question in a somewhat-
18 astonishing tone works best for me....Also, like someone else said, ask what they're
19 looking to buy. Whatever the answer is, pause for a second like you're really
20 thinking about it and tell them how much bigger a selection Planet has. Visually,
21 once they see Planet vs the warehouse look of Reef, if they haven't decided on
22 Planet already, that will usually seal the deal....

23 See Laikin Decl. ¶ 15 and Exhibit E-8 thereto, January 31, 2020 Discussion Thread titled "Today
24 had 2 Drop offs at REEF" on www.uberpeople.net (TRYKE000029-000030).

25 The www.uberpeople.net posters' comments align with comments made by Uber and
26 Lyft drivers to the "secret shopper" passengers reporting diversion as detailed above. *Id.* ¶ 16.

27 In sum, this evidence demonstrates Planet 13's operation of a financial incentivization
28 program designed to divert customers from Reef to Planet 13. The program frequently involves
29 disparagement of Reef, for the purpose of harming and interfering with Tryke's (Reef's) business
30 relationships and prospective economic advantage with customers. The program also operates by
31 drivers simply just dropping the customer off at Planet 13—even though they requested Reef—
32 and saying, "you're here." Make no mistake, both forms of diversion are unlawful and bought
33 and paid for by Planet 13 with its kickbacks paid to drivers in exchange for diversion.

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1 ***Planet 13 Recently Resumed Its***
2 ***Kickback Program***

3 After this Court denied Planet 13's Motion to Dismiss and its Motion for Reconsideration
4 regarding its unsuccessful motion to dismiss, Planet 13's improper diversion incentivization
5 program was paused—not by its own doing—but instead due to the Covid-19 crisis and the stay
6 at home order issued by Governor Sisolak. Because Nevada dispensaries were all closed, other
7 than for delivery services, Planet 13's kickback program was, consequently, briefly interrupted.
8 Laikin Decl. ¶ 17.

9 It was Plaintiff's hope that Planet 13 would not restart its unlawful diversion
10 incentivization program when the dispensaries reopened to customer traffic. Unfortunately, upon
11 the reopening of dispensaries, Planet 13's unlawful kickback program also resumed. *Id.* ¶ 18.

12 The following comments posted by Uber and Lyft drivers demonstrate that, at least as of
13 June 19, 2020, Planet 13 resumed its kickback program to encourage illegal diversion:

14 AtomicBlonde: Is anyone paying kickbacks? Planet 13 / MedMen at least?

15 Ellemay: P13 pisos acres that I know of

16 LasVegasMellowYellow: Planet 13 is...the Grove is not...as of Wednesday. Those
17 are the only two that I'm certain of.

18 Las Vegas Mellow Yellow: Confirmed again on Saturday...Grove isn't paying yet.
Planet 13 is.

19 See Laikin Decl. ¶ 18 and Exhibit E-9 thereto, June 19, 2020 Discussion Thread on
20 www.uberpeople.net (TRYKE000050-000051).

21 Planet 13's kickback program is still ongoing to date, as evidenced by the fact that it
22 openly advertises its kickback program on the web-based application KickBack, which shows
23 that as of August 19, 2020, it currently continues to pay kickbacks for diverting customers to
24 Planet 13. *Id.* ¶ 19 and Exhibit F thereto.

25 In sum, the evidence to date demonstrates Planet 13's ongoing operation of a financial
26 incentivization program designed to divert customers from Reef to Planet 13.

27 ///

28 ///



1 ***Prohibited “Diversions” Under***
2 ***Nevada Law***

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

8 Taxicab drivers pick up both passengers who already know exactly where they want to
9 go, and passengers who do not necessarily have a particular destination in mind. Where the
10 passenger directs the taxicab driver to a specific destination, the driver is prohibited from
11 diverting the passenger elsewhere. NAC 706.552(1). Where the passenger has not designated a
12 particular destination, the taxicab driver may offer suggestions and take the passengers to the
13 location they ultimately decide upon.

14 The same is not true of Uber and Lyft drivers. Unlike taxicab drivers who may pick up
15 passengers who do not have a preconceived destination, Uber and Lyft drivers get their
16 passengers through their respective Uber or Lyft software applications. The passenger is required
17 to enter both their pickup location and their chosen destination when ordering the ride. It is only
18 after this required information is entered that the driver is notified of the ride requested. Thus,
19 Uber and Lyft drivers are *always* already given both the passenger’s location and *destination*
20 before the driver even meets the passenger. Uber and Lyft drivers are also legally prohibited
21 from diverting passengers to a different destination during the ride. *See, e.g.*, NRS
22 706A.280(2)(a) and (b).

23 Yet, as is evidenced by the numerous examples above, illegal diversion can easily occur.
24 Once an Uber or Lyft passenger’s ride begins, a driver can (illegally) alter the passenger’s
25 specified destination by, for example, just taking them to a different location, or convincing them
26 to change their destination in the application by way of making disparaging statements regarding
27 their chosen destination. In each of those examples, the driver has unlawfully diverted the
28 passenger in violation of NRS 706A.280(2).



1 ***Planet 13's Program Incentivizes Drivers***
2 ***to Engage in Illegal Diversion***

3 Drivers have a significant financial incentive to unlawfully divert their passengers to
4 Planet 13—in interference with Reef's business--because the kickback program results in
5 compensation being paid to them by Planet 13 well in excess (often many times in excess) of the
6 actual fee or fare the drivers receive for providing the ride itself. Laikin Decl. ¶ 15 and Exhibit
7 E-8 (TRYKE000029-000030).

8 Both prior to and over the course of this action, Reef Dispensary put Planet 13 on notice
9 that its kickback program resulted in payments to drivers for illegal diversion, disparagement,
10 and interference with Reef's business. Laikin Decl. ¶ 20 and Exhibit G (TRYKE000012-
11 000015). Planet 13 has refused to discontinue or modify its program to eliminate payments for
12 illegal diversion, and now even widely advertises the program. *Id.* ¶ 18-19.

13 **III. LEGAL ARGUMENT**

14 NRS 33.010 provides that injunctive relief may be granted:

15 1. When it shall appear by the complaint that the plaintiff is entitled
16 to the relief demanded, and such relief or any part thereof consists
17 in restraining the commission or continuance of the act complained
18 of, either for a limited period or perpetually.

19 2. When it shall appear by the complaint or affidavit that the
20 commission or continuance of some act, during the litigation, would
21 produce great or irreparable injury to the plaintiff.

22 3. When it shall appear, during the litigation, that the defendant is
23 doing or threatens, or is about to do, or is procuring or suffering to
24 be done, some act in violation of the plaintiff's rights respecting the
25 subject of the action, and tending to render the judgment ineffectual.

26 NRS 33.010 (1)-(3).

27 Courts will grant preliminary injunctive relief where: (1) the party seeking such relief
28 enjoys a reasonable likelihood of success on the merits of at least one claim, and (2) the party's
conduct to be enjoined, if permitted to continue, will result in irreparable harm for which
compensatory damages are an inadequate remedy. *See Dixon v. Thatcher*, 103 Nev. 414, 415,

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742 P.2d 1029, 1029 (1987); *Sobel v. Capital Management Consultants, Inc.*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986). The Court may also consider two additional factors: (3) the relative interest of the parties – how much damage the plaintiff will suffer if injunctive relief is denied versus the hardship to the defendant if injunctive relief is granted, and (4) the interest the public may have in the litigation, if any. *See Home Finance Co. v. Balcom*, 61 Nev. 301, 127 P.2d 389 (1942); *Ellis v. McDaniel*, 95 Nev. 455, 596 P.2d 222 (1979).

All elements required for injunctive relief are present in this matter because Tryke is likely to succeed on the merits of its claims for intentional interference of prospective economic advantage, and related claims, based on a Nevada Supreme Court case with similar facts. Further, Tryke is suffering irreparable harm for which money damages would provide an inadequate remedy and Planet 13's conduct complained of herein is damaging not only Tryke's sales, but also its reputation, brand, and customer goodwill. Moreover, the balance of hardships clearly favors granting injunctive relief, and the public interest is best served by enjoining Planet 13 from continuing its deceptive and illegal kickbacks scheme that diverts customers from Tryke to Planet 13. Thus, a preliminary injunction should be entered pending a final adjudication on the merits of Tryke's claims.

A. Tryke Is Likely to Succeed on the Merits of Its Claim for Intentional Interference with Prospective Economic Relations and Related Claims

Nevada law requires only that a moving party demonstrate a "reasonable probability" of success on the merits, not an overwhelming likelihood, to obtain injunctive relief. *See Dixon v. Thatcher*, 103 Nev. 414, 742 P.2d 1029 (1987). Here, Tryke is likely to succeed on the merits of its claim for tortious interference with prospective economic relations, as well as the conspiracy and aiding and abetting claims that relate to this claim.²

In Nevada, the elements for a claim of wrongful interference with prospective economic advantage are: "(1) a prospective contractual relationship between the plaintiff and a third party; (2) the defendant's knowledge of this prospective relationship; (3) the intent to harm the plaintiff

///

² See Compl. at Counts I-III.



1 by preventing the relationship; (4) the absence of privilege or justification by the defendant; and
2 (5) actual harm to the plaintiff as a result of the defendant's conduct." *Las Vegas-Tonopah-Reno*
3 *Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, 106 Nev. 283, 287, 792 P.2d 386, 388
4 (Nev. 1990). "[T]he intent element for an intentional interference with prospective economic
5 advantage claim does not require a specific intent to hurt the plaintiff, but instead, requires only
6 an intent to interfere with the prospective contractual relationship." *Hitt v. Ruthe*, Case No.
7 65239, 2015 WL 4068435 (Nev. Ct. App. June 24, 2015) (citing *Las Vegas-Tonopah-Reno Stage*
8 *Line, Inc. v. Gray Line Tours of S. Nev.*, 106 Nev. 283, 287-88, 792 P.2d 386, 388 (1990)).

9 In *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of Southern Nevada*, the
10 Nevada Supreme Court directly addressed wrongful interference with prospective economic
11 advantage involving two competing companies where one of the companies was paying
12 improper kickbacks to divert business to it and away from its competitor. The parties were
13 competing bus tour companies. 106 Nev. at 285, 792 P. at 387. Non-party USA Hosts was in
14 the business of placing tourists with bus companies for various activities. *Id.* At some point, the
15 defendant came to an agreement with USA Hosts to "shift" (divert) USA Hosts' business from
16 the plaintiff's company to the defendant's tour company, for which the defendant agreed to pay
17 USA Hosts "commissions" in exchange. *Id.* However, such "commissions" violated Nevada
18 Public Service Commission orders, and in turn, was prohibited by statute. *See id.*

19 In affirming the district court's judgment for the plaintiff where its competitor was
20 diverting sales through the use of an illegal "commission" program, the Court concluded that
21 "[t]here is no doubt that promising and paying illegal commissions was improper" and "was
22 the reason for the switch of" business to the company paying kickbacks in the relevant time
23 period. *Id.* at 288, 792 P.2d at 389 (emphasis added). For this reason, the Nevada Supreme
24 Court affirmed the plaintiff's district court judgment for intentional interference with prospective
25 business relations for the period in which the defendant was promising, and paying, illegal
26 kickbacks. *See id.* at 288, 290, 792 P.2d at 389-390. Notably, the case has no negative treatment
27 or adverse citing references in the thirty (30) years since it has been decided.

28 ///



1 Here, Tryke has prospective economic and contractual relationships with customers that
2 request an Uber, Lyft, or taxicab to take them to the Reef dispensary. Planet 13 is aware of this
3 relationship and specifically and purposefully entices agents, whom it pays, to unlawfully divert
4 these customers away from Tryke and to Planet 13 instead. Planet 13 can claim no privilege or
5 justification for its conduct, which is actually, and irreparably, harming Tryke.

6 As already discussed, diversion by Uber and Lyft drivers is illegal. NRS 706A.280(2)(a)
7 and (b). It is also illegal for taxi drivers to accept money for diversion. NAC 706.552(1)(c) and
8 (f). Just as was the case in *Las Vegas-Tonopah-Reno Stage Line, Inc.*, where the payment of
9 illegal kickbacks or “commissions” constituted unlawful interference, the payment of illegal
10 kickbacks by Planet 13 to divert customers to it and away from Tryke constitutes the tort of
11 intentional interference with prospective economic advantage.

12 Planet 13’s contention that it has nothing to do with illegal diversions by drivers ignores
13 the fact that Planet 13 created its kickback program and it is the one making payments to the
14 drivers. Obviously, there would be no purpose in paying a kickback to a driver who delivered a
15 passenger to Planet 13 if the passenger had already specified Planet 13 as the destination when
16 ordering the ride in the application. The clear purpose of the Planet 13 kickback program is to
17 financially incentivize drivers to divert passengers who have not already selected Planet 13 as
18 their destination.

19 It is worthy to note that, despite Tryke notifying Planet 13 of illegal diversion resulting
20 from Planet 13’s kickbacks, and despite multiple rounds of briefing in this case, Planet 13 has
21 never once denied that it pays kickbacks to encourage drivers to divert passengers from Tryke’s
22 Reef dispensary to Planet 13. Far from denying its own misconduct, Planet 13 openly and
23 proudly advertises to rideshare and taxi drivers its kickback program through web-based
24 applications. Until the Court puts a stop to it, Planet 13 will continue engaging in this unlawful
25 misconduct.

26 Because Tryke is likely to succeed on the merits of its claim for intentional interference
27 with prospective economic advantage based on Planet 13’s payment of illegal kickbacks to divert
28 Tryke’s customers, this factor tips sharply in favor of granting injunctive relief.



B. Tryke Will Continue to Be Irreparably Harmed if Planet 13 Is Not Immediately Enjoined from Paying Kickbacks for Illegal Diversion

Irreparable harm is an injury “for which compensatory damage is an inadequate remedy.” *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987). Generally, harm is ‘irreparable’ if it cannot adequately be remedied by compensatory damages.” *Hamm v. 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).

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

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

By deceptively diverting customers away from Tryke and to Planet 13 with its illegal kickbacks program, Planet 13 is causing substantial damage to Tryke’s sales and customer acquisitions that can never be fully ascertained or redressed solely through money damages. This harm goes well beyond mere financial damage caused by the inevitable decrease in sales; indeed, the nature of Planet 13’s actions will also lead to the irremediable loss of brand value, consumer loyalty, and inherent goodwill of the dispensary itself.

///



1 The damage caused by Planet 13 is exceptionally difficult to quantify in dollars because it
2 involves harm to reputation and to customer relations. A customer that requests an Uber or Lyft
3 to take the customer to Tryke's dispensary, but is instead taken to Planet 13, not only will divert
4 that particular sale from Tryke to Planet 13, but worse, the customer may falsely conclude that
5 Planet 13 is a superior dispensary based on the disparaging statements used to divert the
6 customer to Planet 13, or even the mere fact that the ride share driver or taxi took the customer to
7 Planet 13 rather than Tryke's Reef dispensary as the customer had requested.³ Indeed, a
8 customer is likely to infer from this conduct, if the customer is even indeed aware it occurred,
9 that the likely cause was the respective qualities of the two competing dispensaries, rather than
10 the fact that the driver was receiving a kickback for diverting the customer. This will harm
11 Tryke's brand, customer goodwill, and other intangible assets, in addition to the resulting lost
12 sales.

13 For customers that are not aware they are being taken to a dispensary other than the one
14 they requested, they may be confused into thinking that they were taken to the dispensary that
15 they had requested, or they might fail to realize the Tryke's Reef dispensary is a separate
16 location, or even exists at all. The damage to Tryke's brand from deceiving customers in such a
17 manner can never be redressed through money damages alone.

18 Because Planet 13's kickback program is causing irreparable harm that cannot be
19 measured or adequately redressed through money damages, the Court should issue a preliminary
20 injunction to enjoin Planet 13's wrongful conduct for the pendency of this action.

21 **C. The Balance of Hardships and Public Interest Factors Weigh Heavily in**
22 **Tryke's Favor**

23 In granting a preliminary injunction, courts often "weigh the potential hardships to the
24 relative parties, and others, and the public interest." *Univ. & Cmty. Coll. Sys. of Nevada v.*
25 *Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). It is axiomatic that

26 ///

27 ³ At no time does Planet 13 disclose to the customer that it paid the driver to drop off at its
28 dispensary. The customer is left with no information that might put one on guard that the driver's
actions were not genuine.



1 “[t]he public interest is not disserved by an injunction that precludes illegal or tortious conduct.”
2 *See Shell Offshore Inc. v. Greenpeace, Inc.*, 864 F. Supp. 2d 839, 852 (D. Alaska 2012).
3 “Ensuring that [d]efendants do not further profit from illegal activity is in the public interest.”
4 *Huang Yiqiao v. California Investment Fund, LLC*, Case No. CV 18-6413-MWF, 2019 WL
5 7997237, *4 (C.D. Cal. Nov. 27, 2019). Analogously, in the trademark context, courts routinely
6 address the public interest factor in favoring of issuing injunctions to protect the public from
7 confusion or deception with respect to consumer transactions. *See, e.g., Phillip Morris USA Inc.*
8 *v. Shalabi*, 352 F. Supp. 2d 1067, (C.D. Cal. 2004) (noting strong public interest in protecting
9 consumers from confusion). Logically, the same principles are equally applicable to the conduct
10 demonstrated by Planet 13 here.

11 Here, the balance of the hardships and public interest weighs strongly in Tryke’s favor.⁴
12 The conduct for which Planet 13 is responsible is irreparably harming Tryke and intentionally
13 interfering with Tryke’s business and prospective economic advantage.⁵ It is also clearly
14 inducing conduct prohibited by Nevada statute and regulation, and enticing drivers to risk their
15 licensure by incentivizing them to engage in illegal diversion.

16 Further, Planet 13’s wrongful conduct is deceiving customers and violating their right to
17 choose which dispensary to patronize. Personal freedom to make safe choices to legally
18 purchase marijuana is a concept which underpins all applicable marijuana legalization laws,
19 including those applicable in Nevada.

20 Allowing Planet 13 to continue engaging in the practice of offering cash kickbacks to
21 drivers it has financially incentivized to illegally divert customers, in circumstances where Planet

22 ///

23 ⁴ Planet 13 has no credible “balance of hardships” argument at all, for it is making money hand
24 over fist. Its August 2020 financial reporting includes an assertion that its 2019 revenues were
25 approximately \$63,000,000.00, and that its sales account for approximately 9% of all sales in the
entire State of Nevada. *See Planet 13 Holdings Inc. Corporate Presentation August 2020*, at
<https://www.planet13holdings.com/wp-content/uploads/2020/08/Planet13-August2020.ppt.pdf>,
attached to Laikin Decl. as Exhibit H.

26 ⁵ Courts have noted that “[a]s a practical matter, if a plaintiff demonstrates both a likelihood of
27 success on the merits and irreparable injury, it almost always will be the case that public interest
28 will favor the plaintiff.” *American Tel. and Tel. Co. v. Winback and Conserve Program, Inc.*, 42
F.3d 1421, n.8 (3rd Cir. 1994).



1 13 has been made aware that illegal diversion is occurring and Planet 13 has no system in place
2 to avoid paying kickbacks to drivers who have illegally diverted their passengers, is contrary to
3 public policy and should be enjoined.

4 Accordingly, the immediate remedy is for the Court to enter an injunction for the
5 pendency of suit.

6 **D. Only a Nominal Bond Should Be Required**

7 Pursuant to NRCP 65(c), courts are required to condition an injunction upon the payment
8 of a bond. *Strickland v. Griz. Corp.*, 92 Nev. 322, 549 P.2d 1406 (1976). Here, a nominal bond
9 of \$100 will suffice to protect against any improperly imposed injunction. The injunction
10 requested would do nothing more than require Planet 13 to comply with the law and not engage
11 in acts of directing, or aiding and abetting, illegal diversion in violation of Nevada statutes and
12 regulations. The injunction will protect the public from deception. No real harm might come to
13 Planet 13 from being commanded not to deceive customers or unlawfully divert business away
14 from Tryke and other dispensaries.

15 **IV. CONCLUSION**

16 Based on the foregoing, and the record in this matter, Tryke respectfully requests that this
17 Court enter a preliminary injunction as follows:

- 18 1. Prohibiting Planet 13 from paying any fee or commission to taxi or rideshare drivers
19 in exchange for the drivers bringing passengers to Planet 13 rather than another
20 cannabis dispensary;
21 2. Advertising to taxi and rideshare drivers that Planet 13 will provide compensation to
22 drivers in exchange for the drivers bringing passengers to Planet 13's dispensary; and

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1 3. Such other relief as this Court deems appropriate.

2 Dated this 21st day of August 2020.

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CERTIFICATE OF SERVICE

The undersigned, an employee of H1 Law Group, hereby certifies that on the 21st day of August, 2020, she caused a copy of the foregoing, to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system:


Karen M. Morrow, an employee of H1 LAW GROUP



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Tryke Companies SO NV, LLC

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 vs.

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

22 Defendants.

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

**APPENDIX TO TRYKE COMPANIES
SO NV, LLC'S: (1) MOTION FOR
PRELIMINARY INJUNCTION; AND
(2) APPLICATION FOR ORDER
SHORTENING TIME**

HEARING REQUESTED

24 **INDEX OF EXHIBITS**

Ex. No.	Description
1	Declaration of Adam Laikin
A	Email from Tryke employee documenting customer report. (TRYKE000041-000042)
B	Email from Tryke employee documenting customer report. (TRYKE000040)



Ex. No.	Description
C-1	August 9, 2019 pickup at Encore at Wynn Hotel in Las Vegas ride information detail provided by rider.
C-2	August 9, 2019 different passenger pickup at Encore at Wynn Hotel in Las Vegas ride information detail provided by rider.
C-3	August 9, 2019 pickup at Palazzo in Las Vegas ride information detail provided by rider.
C-4	August 16, 2019 pickup at Liquor City in Las Vegas ride information detail provided by rider and transcript of contemporaneous audio recording of ride.
C-5	August 16, 2019 pickup at Wynn Hotel in Las Vegas ride information detail provided by rider and transcript of contemporaneous audio recording of ride.
C-6	August 22, 2019 pickup at Mirage Hotel in Las Vegas ride information detail provided by rider.
C-7	September 5, 2019 pickup at Treasure Island Hotel in Las Vegas ride information detail provided by rider and transcript of contemporaneous audio recording of ride.
C-8	September 5, 2019 pickup at Encore at Wynn Hotel in Las Vegas ride information detail provided by rider and transcript of contemporaneous audio recording of ride.
C-9	September 5, 2019 pickup at Sahara Hotel in Las Vegas ride information detail provided by rider and transcript of contemporaneous audio recording of ride.
C-10	September 6, 2019 pickup at Treasure Island Hotel in Las Vegas ride information detail provided by rider and transcript of contemporaneous audio recording of ride.
C-11	September 6, 2019 pickup at Encore at Wynn Hotel in Las Vegas ride information detail provided by rider and transcript of contemporaneous audio recording of ride.
C-12	September 6, 2019 different passenger pickup at Wynn Hotel in Las Vegas ride information detail provided by rider.
C-13	September 6, 2019 pickup at Wynn Hotel in Las Vegas ride information detail provided by rider.
C-14	September 13, 2019 pickup at Treasure Island Hotel in Las Vegas ride information detail provided by rider.
C-15	September 13, 2019 pickup at Mirage Hotel in Las Vegas ride information detail provided by rider and transcript of contemporaneous audio recording of ride.
C-16	September 6, 2019 different passenger pickup at Treasure Island Hotel in Las Vegas ride information detail provided by rider.
C-17	September 13, 2019 pickup at Encore at Wynn Hotel in Las Vegas ride information detail provided by rider and transcript of contemporaneous audio recording of ride.



Ex. No.	Description
C-18	September 13, 2019 pickup at Wynn Hotel in Las Vegas ride information detail provided by rider.
C-19	September 13, 2019 different passenger pickup at Wynn Hotel in Las Vegas ride information detail provided by rider.
C-20	September 17, 2019 pickup at Treasure Island Hotel in Las Vegas ride information detail provided by rider and transcript of contemporaneous audio recording of ride.
D-1	Driver Diversion Incident Report Forms completed by passenger Mark Conley. (TRYKE000089-TRYKE000090)
D-2	Driver Diversion Incident Report Forms completed by passenger Shetisha Combs. (TRYKE000028)
E-1	March 8, 2019 Discussion Thread on www.uberpeople.net. (TRYKE000001-TRYKE000005)
E-2	March 8, 2019 Discussion Thread on www.uberpeople.net. (TRYKE000006)
E-3	March 19, 2019 Discussion Thread on www.uberpeople.net. (TRYKE000007-TRYKE000010)
E-4	April 20, 2019 Discussion Thread on www.uberpeople.net. (TRYKE0000011)
E-5	July 30, 2019 Discussion Thread on www.uberpeople.net. (TRYKE000082-TRYKE000088)
E-6	August 20, 2019 Discussion Thread on www.uberpeople.net. (TRYKE000043-TRYKE000049)
E-7	August 22, 2019 Discussion Thread on www.uberpeople.net. (TRYKE000020-TRYKE000023)
E-8	January 31, 2020 Discussion Thread titled "Today had 2 Drop offs at REEF" on www.uberpeople.net. (TRYKE000029-TRYKE000030)
E-9	June 19, 2020 Discussion Thread on www.uberpeople.net. (TRYKE000050-TRYKE000051)
F	Planet 13's advertisement on KickBack.
G	Letter dated June 24, 2019 from Tryke counsel to Planet 13 (TRYKE000012-TRYKE000015)

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Ex. No.	Description
H	Planet 13 Holdings Inc.'s Corporate Presentation August 2020. (https://www.planet13holdings.com/wp-content/uploads/2020/08/Planet13-August2020.ppt.pdf)

Dated this 21st day of August 2020.

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CERTIFICATE OF SERVICE

The undersigned, an employee of H1 Law Group, hereby certifies that on the 21st day of August 2020, she caused a copy of the foregoing, to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system:

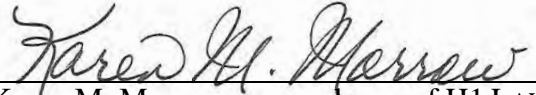

Karen M. Morrow, an employee of H1 LAW GROUP

EXHIBIT 1



**DECLARATION OF ADAM LAIKIN IN SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION AND APPLICATION FOR ORDER SHORTENING TIME**

I, Adam Laikin, declare that:

1. I am the Chief Marketing Officer of Tryke Companies SO NV, LLC (“Tryke”), Plaintiff in the above captioned matter.

2. I make this declaration based on my personal knowledge of the facts contained herein, except for those matters stated upon information and belief, and as to those matters, I believe them to be true, and if called upon to testify, could and would do so.

3. I make this Declaration in support of Tryke’s (1) Motion for Preliminary Injunction; and (2) Application for Order Shortening Time (“Motion”).

4. Plaintiff Tryke operates the Nevada-licensed “Reef Dispensary” (hereafter, “Reef”) marijuana dispensary located at 3400 Western Avenue, Las Vegas, Nevada 89109.

5. Tryke had been operating its Reef dispensary since early 2016 at the same location before Planet 13 opened a dispensary in late 2018 within approximately 900 feet of Reef.

6. Within a short time after Planet 13 opened, in early 2019, I was informed that a customer had 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.” A true and correct copy of an email from a Tryke employee documenting the report is attached hereto as **Exhibit A** (TRYKE000041-000042).

7. Later, on a separate occasion, I was notified that 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 (“Planet 13”). A true and correct copy of an email from a Tryke employee documenting the report is attached hereto as **Exhibit B** (TRYKE000040).

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



1 9. Aware that patrons of Uber, Lyft, and other rideshare programs are required to
2 enter their chosen destination as part of the ride scheduling process, and thus drivers are provided
3 the passenger's chosen destination prior to ever picking them up, this comment suggested
4 something more than a referral, but rather, a diversion.

5 10. In response to these reports, I, along with others at Tryke, decided to further
6 investigate the matter. As part of our investigation, Tryke developed a "secret shopper" sampling
7 and tracking operation, whereby a number of individuals working for or with Tryke would order
8 a ride through Uber or Lyft, designating Reef as their chosen destination. Each Tryke rider
9 reported back the details of their experience, including date, point of origin, designated
10 destination, driver's name, whether the ride was diverted to Planet 13, whether the rider was
11 asked to change the destination to Planet 13 in the Lyft or Uber app, where they were dropped
12 off, and what, if anything was stated to the rider regarding their destination. Each rider also
13 provided screenshots of their ride details along with a recording of their experience (mostly
14 audio, with one video recording). I oversaw this "secret shopper" investigation. I reviewed all
15 recordings and screenshots and spoke with each rider regarding their experience. Screenshots of
16 the ride details collected in connection with the investigation are attached hereto as **Exhibit C**.

17 11. The random "secret shopper" sampling of Uber and Lyft rides in Las Vegas
18 between August 9 and September 17, 2019 confirmed that improper diversion to Planet 13 was
19 occurring. In fact, 20 out of 30 rides sampled were diverted to Planet 13.

20 12. The following is a sample of specific occasions where diversion occurred in the
21 "secret shopper" investigation:

22 a. On August 9, 2019, a passenger requested pickup at the Encore at
23 Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant app.
24 The passenger stated "We're going to Reef Dispensaries, please." The driver
25 responded "Planet 13?" The passenger corrected the driver, again stating her
26 destination as Reef Dispensaries. The driver informed the passenger that Planet 13 is
27 bigger, considered the best, and many people go there, though he indicated he has no
personal experience. Thereafter, the driver continued pushing Planet 13. The passenger



1 eventually stated she would try it, but did not direct the driver to Planet 13. Pointing
2 out Reef's location, the driver then dropped the passenger off at Planet 13 instead of
3 Reef, without asking the passenger to change the destination in the app. A true and
4 correct copy of the ride information detail provided by the rider is attached hereto as
5 **Exhibit C-1**. Tryke has a contemporaneous audio recording of the ride. The
6 participant passenger is also available to provide witness testimony, if needed.

7 b. On August 9, 2019, a different passenger also requested pickup at the
8 Encore at Wynn Hotel, and specified the destination as Reef in the relevant app. The
9 driver stated to the passenger that Reef is pricey. The driver proceeded to inform the
10 passenger that Planet 13 is better and that it calls itself the biggest dispensary in the
11 world. This driver dropped the passenger off at Planet 13, without asking the
12 passenger to change the destination in the app. A true and correct copy of the ride
13 information detail provided by the rider is attached hereto as **Exhibit C-2**. Tryke has a
14 contemporaneous audio recording of the ride. The participant passenger is also
15 available to provide witness testimony, if needed.

16 c. On August 9, 2019, a passenger requested pickup at the Palazzo Las
17 Vegas, and specified the destination as Reef in the relevant app. Without saying
18 anything, the driver dropped the passenger off at Planet 13 instead of Reef, without
19 asking the passenger to change the destination in the app, and in fact, without
20 notifying the passenger of the change in their chosen destination. A true and correct
21 copy of the ride information detail provided by the rider is attached hereto as **Exhibit**
22 **C-3**. Tryke has contemporaneous audio and video recordings of the ride. The
23 participant passenger is also available to provide witness testimony, if needed.

24 d. On August 16, 2019, I requested pickup at the Liquor City in Las
25 Vegas, and specified the destination as Reef in the relevant app. Upon entering the
26 vehicle, I stated that I was going to Reef Dispensary. The driver immediately asked if I
27 had been to Planet 13. The driver then stated that Planet 13 was the best. Once I
^ agreed to go to Planet 13, the driver asked me to change the destination in the app to



1 Planet 13. The driver then proceeded to push Planet 13 by talking about its deals and
2 discounts, stating it is the world’s largest dispensary, and explaining that he tells all of
3 his customers that they are going to thank him for taking them to Planet 13. The driver
4 dropped me off at Planet 13 instead of Reef. A true and correct copy of my screenshots
5 of the ride information detail and a transcript of the contemporaneous audio recording
6 of my ride are attached hereto as **Exhibit C-4**. I am also available to provide
7 additional witness testimony, if needed.

8 e. On August 16, 2019, a passenger requested pickup at the Wynn Hotel
9 in Las Vegas, and specified the destination as Reef in the relevant app. The passenger
10 stated her destination as Reef Dispensary. The driver immediately asked “Why Reef”?
11 The driver then stated that Reef “is not that good,” and that “right in front of it is
12 Planet 13.” The driver referred to Planet 13 dispensary as “the best one” and “the
13 biggest.” The driver proceeded to inform the passenger that Reef is expensive, that it is
14 for tourists, and that locals go to Planet 13 instead. Continuing, the driver states to the
15 passenger “Don’t go to Reef. It’s not a good place.” Continuing further as to Reef, the
16 driver stated “it’s not good product” and reiterated that it is for tourists. At this point,
17 the driver claimed that he had been to all of the dispensaries and Planet 13 is the best,
18 with better prices, better product, better flavors, more stuff, and it is huge. Continuing
19 further, the driver stated that “Planet 13 is always full. No one goes to Reef” and “I
20 don’t buy nothing Reef.” Finally, the driver told the passenger she should go into
21 Planet 13 and try it and if she does not like it, then she can go to Reef. The driver
22 dropped the passenger off at Planet 13 instead of Reef, without asking the passenger to
23 change the destination in the app. A true and correct copy of the ride information
24 detail provided by the rider and a transcript of the contemporaneous audio recording of
25 the ride are attached hereto as **Exhibit C-5**. The participant passenger is also available
26 to provide witness testimony, if needed.

27 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. Approximately



1 half-way to her destination, the driver asked “Would you rather go to Planet 13?” and
2 states “it’s a good dispensary.” The passenger asked why the driver prefers Planet 13
3 over Reef. The driver responded that he did not speak much English. The driver
4 dropped the passenger off at Planet 13 instead of Reef, without asking the passenger to
5 change the destination in the app. A true and correct copy of the ride information
6 detail provided by the rider is attached hereto as **Exhibit C-6**. Tryke has a
7 contemporaneous audio recording of the ride. The participant passenger is also
8 available to provide witness testimony, if needed.

9 g. On September 5, 2019, a passenger requested pickup at Treasure Island
10 Hotel in Las Vegas, and specified the destination as Reef in the relevant app. The
11 passenger informed the driver she is going to Reef. The driver immediately asked “Or
12 Planet 13?” At this point, the driver informed the passenger that Planet 13 is newer,
13 bigger, and better. The driver further stated “Before the people go to Reef. Now the
14 people go to Planet 13. More people go to Planet 13.” The driver then proceeded to
15 state that Reef is all tourists. The driver dropped the passenger off at Planet 13 instead
16 of Reef, without asking the passenger to change the destination in the app. A true and
17 correct copy of the ride information detail provided by the rider and a transcript of the
18 contemporaneous audio recording of the ride are attached hereto as **Exhibit C-7**. The
19 participant passenger is also available to provide witness testimony, if needed.

20 h. On September 5, 2019, a passenger requested pickup at the Encore at
21 Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant app.
22 The passenger stated upon entry into the vehicle “To Reef,” to which the driver
23 responds “You don’t like Planet 13?” At this point, the driver stated that “Planet 13 is
24 just the better one,” that it has better prices, larger inventory, and is “just across the
25 street.” As they approached, the driver stated, “Look at Planet 13. Look at Reef. That
26 tells you right there.” The driver dropped the passenger off at Planet 13 instead of
27 Reef, after first asking the passenger to change the destination in the app. A true and
correct copy of the ride information detail provided by the rider and a transcript of the



1 contemporaneous audio recording of the ride are attached hereto as **Exhibit C-8**. The
2 participant passenger is also available to provide witness testimony, if needed.

3 i. On September 5, 2019, I requested pickup at the Sahara Hotel in Las
4 Vegas, and specified the destination as Reef in the relevant app. Immediately upon
5 entering the vehicle, the driver told me, “You should go to the Planet 13. It’s the best
6 one.” The driver stated that Planet 13 is new, that it is “gonna be amazing,” that it is
7 “the best one,” and that it has better prices. The driver then stated that Reef is
8 expensive. The driver dropped me off at Planet 13 instead of Reef, after first asking
9 me to change the destination in the app. A true and correct copy of my screenshots of
10 the ride information and a transcript of the contemporaneous audio recording of my
11 ride are attached hereto as **Exhibit C-9**. I am available to provide additional witness
12 testimony, if needed.

13 j. On September 6, 2019, I requested pickup at Treasure Island Hotel in
14 Las Vegas, and specified the destination as Reef in the relevant app. After verifying
15 Reef as the destination, the driver asked “Have you been to Reef before?” The driver
16 proceeded to inform me that Planet 13 is next door to Reef, that people say it’s the
17 “largest dispensary” and that he thinks I will like Planet 13 better. The driver dropped
18 me off at Planet 13 instead of Reef, without asking me to change the destination in the
19 app. A true and correct copy of my ride information detail is attached hereto as
20 **Exhibit C-10**. There is also a contemporaneous audio recording of the ride, and I am
21 available to provide witness testimony, if needed.

22 k. On September 6, 2019, I requested pickup at Encore at Wynn Hotel in
23 Las Vegas, and specified the destination as Reef in the relevant app. The driver
24 verified my destination as Reef. As we were getting closer, the driver told me that I
25 should check out Planet 13. He told me “it’s the world’s largest one, so the inventory
26 is very massive,” that Planet 13 has exclusive product that I cannot get anywhere else,
27 and that it is massive and has everything like Wal-Mart. The driver then informed me
that Planet 13 would be adding a nightclub as well. The driver dropped me off at



1 Planet 13 instead of Reef, without asking me to change the destination in the app. A
2 true and correct copy of my ride information detail is attached hereto as **Exhibit C-11**.
3 Tryke has a contemporaneous audio recording of the ride. I am also available to
4 provide witness testimony, if needed.

5 l. On September 6, 2019, another passenger requested pickup at Wynn
6 Hotel in Las Vegas, and specified the destination as Reef in the relevant app.
7 Immediately upon verifying the destination as Reef, the driver asked the passenger
8 why she was not going to Planet 13, and began selling Planet 13 to the passenger. The
9 driver stated Planet 13 is new and is just across the street, and that they give every
10 customer 20% off. The driver stated that Planet 13 is owned by Mike Tyson. The
11 driver dropped the passenger off at Planet 13 instead of Reef, after asking the
12 passenger to change the destination in the app. A true and correct copy of the ride
13 information detail provided by the rider is attached hereto as **Exhibit C-12**. Tryke has
14 a contemporaneous audio recording of the ride. The participant passenger is also
15 available to provide witness testimony, if needed.

16 m. On September 6, 2019, a passenger requested pickup at the Wynn Hotel
17 in Las Vegas, and specified the destination as Reef in the relevant app. The driver
18 orally verified the destination as Reef. Part way through the ride, the driver stated that
19 Planet 13 is better. The driver explained that her passengers say they like Planet 13
20 better and, specifically, that the weed and prices are better. The driver then stated that
21 if the passenger does not like Planet 13, Reef is right across the street. The driver
22 dropped the passenger off at Planet 13 instead of Reef, without asking the passenger to
23 change the destination in the app. A true and correct copy of the ride information
24 detail provided by the rider is attached hereto as **Exhibit C-13**. Tryke has a
25 contemporaneous audio recording of the ride. The participant passenger is also
26 available to provide witness testimony, if needed.

27 n. On September 13, 2019, a passenger requested pickup at Treasure
28 Island Hotel in Las Vegas, and specified the destination as Reef in the relevant app.



1 The driver immediately asked if the passenger likes Reef. The driver proceeded to
2 explain that his customers go to Planet 13, that it is number one in Vegas, and that
3 everyone who lives in Vegas goes there. The driver then stated that if the passenger
4 does not like it, Reef is nearby. Stating that Planet 13 was better, the driver dropped
5 the passenger off at Planet 13 instead of Reef, after asking the passenger to change the
6 destination in the app. A true and correct copy of the ride information detail provided
7 by the rider is attached hereto as **Exhibit C-14**. Tryke has a contemporaneous audio
8 recording of the ride. The participant passenger is also available to provide witness
9 testimony, if needed.

10 o. On September 13, 2019, a passenger requested pickup at the Mirage
11 Hotel in Las Vegas, and specified the destination as Reef in the relevant app.
12 Immediately after the passenger orally confirms the destination as Reef, the driver
13 stated “This is bad. Change the address. Put Planet 13. It’s the best.” The driver
14 proceeded to explain that Planet 13 is cheaper, it is fresh, and is the best dispensary in
15 Vegas. Continuing, the driver stated that he tells approximately 25 passengers to
16 change their destinations to Planet 13 every day. The driver then proceeded to
17 disparage Reef, stating that Reef is bad, that the product is bad, and that Planet 13 is
18 the best and everyone goes there. The driver dropped the passenger off at Planet 13
19 instead of Reef, after asking the passenger to change the destination in the app. A true
20 and correct copy of the ride information detail provided by the rider and a transcript of
21 the contemporaneous audio recording of the ride are attached hereto as **Exhibit C-15**.
22 The participant passenger is also available to provide witness testimony, if needed.

23 p. On September 13, 2019, a different passenger requested pickup at the
24 Mirage Hotel in Las Vegas, and specified the destination as Reef in the relevant app. A
25 few minutes into the ride, the driver stated that people say Planet 13 is better and that
26 Planet 13 is the best in Vegas. The driver dropped the passenger off at Planet 13
27 instead of Reef, without asking the passenger to change the destination in the app. A
true and correct copy of the ride information detail provided by the rider is attached



1 hereto as **Exhibit C-16**. Tryke has a contemporaneous audio recording of the ride. The
2 participant passenger is also available to provide witness testimony, if needed.

3 q. On September 13, 2019, a passenger requested pickup at Encore at
4 Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant app
5 and upon pickup. A few minutes into the ride, the driver asked the passenger, “Would
6 you rather go to Planet 13?” The driver stated that Planet 13 has much better deals, is
7 bigger than Reef, and claimed that a lot of people say it has much better selection. The
8 driver dropped the passenger off at Planet 13 instead of Reef, without asking the
9 passenger to change the destination in the app. A true and correct copy of the ride
10 information detail provided by the rider and a transcript of the contemporaneous audio
11 recording of the ride are attached hereto as **Exhibit C-17**. The participant passenger is
12 also available to provide witness testimony, if needed.

13 r. On September 13, 2019, a passenger requested pickup at the Wynn
14 Hotel in Las Vegas, and specified the destination as Reef in the relevant app. During
15 the ride, the driver informed the passenger that Planet 13 is bigger, is open 24 hours, is
16 full of people, and that all of his passengers say it is the best. The driver then stated
17 that Planet 13 is the biggest and the number one dispensary. The driver dropped the
18 passenger off at Planet 13 instead of Reef, after asking the passenger to change the
19 destination in the app. A true and correct copy of the ride information detail provided
20 by the rider is attached hereto as **Exhibit C-18**. Tryke has a contemporaneous audio
21 recording of the ride. The participant passenger is also available to provide witness
22 testimony, if needed.

23 s. On September 13, 2019, a different passenger also requested pickup at
24 the Wynn Hotel in Las Vegas, and specified the destination as Reef in the relevant
25 app. Approximately half-way to Reef, the driver asked the passenger if she has ever
26 been to Planet 13. The driver informed the passenger it is “a real popular joint” and
27 that he gets a lot of calls for Planet 13. At this point, the driver encouraged the
passenger to change her destination in the app, stating it is not as far as Reef. The



1 driver dropped the passenger off at Planet 13 instead of Reef, and again asked the
2 passenger to change the destination in the app. A true and correct copy of the ride
3 information detail provided by the rider is attached hereto as **Exhibit C-19**. Tryke has
4 a contemporaneous audio recording of the ride. The participant passenger is also
5 available to provide witness testimony, if needed.

6 t. On September 17, 2019, a passenger requested pickup at Treasure
7 Island Hotel in Las Vegas, and specified the destination as Reef in the relevant app.
8 Immediately upon entering the vehicle, the driver proceeded to disparage Reef asking,
9 “You want to go there? Their shit sucks.” The driver recommended Planet 13, stating
10 that it is like a toy store, it is the best, with fresh product every day (implying Reef’s
11 product is not), and that it is closer. The driver then proceeded to disparage Reef,
12 stating that it is “trash” and “garbage,” and indicated to the passenger that they will be
13 disappointed with Reef. The driver told the passenger to trust him that Planet 13 is
14 better. The driver dropped the passenger off at Planet 13 instead of Reef, without
15 asking the passenger to change the destination in the app. The driver changed the
16 destination in the app to Planet 13 himself. A true and correct copy of the ride
17 information detail provided by the rider and a transcript of the contemporaneous audio
18 recording of the ride are attached hereto as **Exhibit C-20**. The participant passenger is
19 also available to provide witness testimony, if needed.

20 13. To date, Tryke has also obtained at least two Driver Diversion Incident Report
21 Forms from Mark Conley and Shetisha Combs, two other non-Tryke passengers of Uber and
22 Lyft, who had similar experiences as those reported in Tryke’s “secret shopper” investigation.
23 True and correct copies of the Driver Diversion Incident Report Forms completed by those
24 passengers are attached hereto as **Exhibits D-1 and D-2**.

25 14. In addition to the foregoing, I directed that additional online research be
26 conducted, to see what Uber and Lyft drivers were saying with regard to Planet 13 kickbacks. I
27 have reviewed the results of that research, including postings on the Las Vegas discussion board



1 of www.uberpeople.net, true and correct copies of which are attached hereto as **Exhibit E** as
2 follows:

3 a. A true and correct copy of the March 8, 2019 Discussion Thread
4 on www.uberpeople.net (TRYKE000001 - 000005) is attached hereto as **Exhibit E-1**.

5 b. A true and correct copy of the March 8, 2019 Discussion Thread
6 on www.uberpeople.net (TRYKE000006) is attached hereto as **Exhibit E-2**.

7 c. A true and correct copy of the March 19, 2019 Discussion Thread
8 on www.uberpeople.net (TRYKE000007 - 000010) is attached hereto as **Exhibit E-3**.

9 d. A true and correct copy of the April 20, 2019 Discussion Thread
10 on www.uberpeople.net (TRYKE0000011) is attached hereto as **Exhibit E-4**.

11 e. A true and correct copy of the July 30, 2019 Discussion Thread
12 on www.uberpeople.net (TRYKE0000082 - 0000088) is attached hereto as **Exhibit E-5**.

13 f. A true and correct copy of the August 20, 2019 Discussion Thread
14 on www.uberpeople.net (TRYKE0000043 - 0000049) is attached hereto as **Exhibit E-6**.

15 g. A true and correct copy of the August 22, 2019 Discussion Thread
16 on www.uberpeople.net (TRYKE0000020 - 0000023) is attached hereto as **Exhibit E-7**.

17 h. A true and correct copy of the January 31, 2020 Discussion Thread
18 titled "Today had 2 Drop offs at REEF" on www.uberpeople.net (TRYKE0000029-
19 0000030) is attached hereto as **Exhibit E-8**.

20 15. The www.uberpeople.net posters' comments align with comments made by Uber
21 and Lyft drivers to the "secret shopper" riders whose experiences are referenced above.

22 16. Planet 13's kickback program appeared to be suspended or discontinued earlier
23 this year; however, it appears now that the incentivization program was merely briefly
24 interrupted by the Covid-19 pandemic, during which time the Nevada dispensaries were all
25 closed, other than for delivery services.

26 17. Upon the reopening of dispensaries, Planet 13's kickback program also resumed
27 as early as June 19, 2020, as evidenced by comments posted by Uber and Lyft drivers

1 on www.uberpeople.net. A true and correct copy of the June 19, 2020 Discussion Thread
2 on www.uberpeople.net (TRYKE000050 - 000051) is attached hereto as **Exhibit E-9**.

3 18. Planet 13's kickback program is still ongoing to date, as evidenced by the fact that
4 it openly advertises its kickback program on the web-based application KickBack, which shows
5 that as of August 19, 2020, it currently continues to pay kickbacks for diverting customers to
6 Planet 13. A true and correct copy of Planet 13's advertisement on KickBack is attached hereto
7 as **Exhibit F**.

8 19. Both prior to and over the course of this action, Tryke warned Planet 13 that its
9 kickback program resulted in payments to drivers for improper diversion, disparagement, and
10 interference with Reef's business. A true and correct copy of a letter Tryke's counsel sent to
11 Planet 13 dated June 24, 2019 is attached hereto as **Exhibit G**. Planet 13 has refused to
12 discontinue or modify its program to eliminate payments for the improper diversion, and now
13 even advertises the program widely.

14 20. Planet 13 Holdings Inc.'s Corporate Presentation August 2020, containing Planet
15 13's current financial reports, is publicly available at [https://www.planet13holdings.com/wp-](https://www.planet13holdings.com/wp-content/uploads/2020/08/Planet13-August2020.ppt.pdf)
16 [content/uploads/2020/08/Planet13-August2020.ppt.pdf](https://www.planet13holdings.com/wp-content/uploads/2020/08/Planet13-August2020.ppt.pdf). A true and correct copy of same is
17 attached hereto as **Exhibit H**.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on August 21, 2020.

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ADAM LAIKIN

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 Shortening Time 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: 8/24/2020

16 Patricia Stoppard

p.stoppard@kempjones.com

17 Ian McGinn

i.mcginns@kempjones.com

18 Ali Augustine

a.augustine@kempjones.com

19 Nathanael Rulis

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20 Alisa Hayslett

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21 Eric Hone

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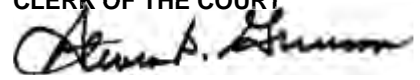


EXHIBIT A

From: Brett Scolari <bscolari@trykecompanies.com>
Sent: Thursday, January 31, 2019 3:24 PM
To: Matthew Griffin; john@g3nv.com; josh@g3nv.com
Cc: Michael Hillerby
Subject: Uber Issues

Hello Griffins:

Hope all is well fellas. See the incident below. This is just one of numerous and it happens daily/weekly. I have informed Mike Hillerby of the same issues with Lyft.

#1, Not sure we want, Cabs, Uber and Lyft driver's acting as salespeople in the controlled substance business; #2, while many in the industry may be giving kickbacks, most in the cannabis industry agree this is a bad practice and a bad path to go down, i.e., strip club fights. I think we will make progress on a marijuana regulatory solution but that will take time. In the meantime, It appears many dispensaries who think they can't compete or have bad locations have caved in to the kickback practice; #3, I can understand that we (Reef) may be hurt by other dispensaries giving kickbacks when we do not, but the incident below is a clear violation of the following statute:

NRS 706A.280 Prohibited acts by drivers.

1. A driver shall not solicit or accept a passenger or provide transportation services to any person unless the person has arranged for the transportation services through the digital network or software application service of the transportation network company.
 2. With respect to a passenger's destination, a driver shall not:
 - (a) Deceive or attempt to deceive any passenger who rides or desires to ride in the driver's motor vehicle.
 - (b) Convey or attempt to convey any passenger to a destination other than the one directed by the passenger.
 - (c) Take a longer route to the passenger's destination than is necessary, unless specifically requested to do so by the passenger.
 - (d) Fail to comply with the reasonable and lawful requests of the passenger as to speed of travel and route to be taken.
 3. A driver shall not, at the time the driver picks up a passenger, refuse or neglect to provide transportation services to any orderly passenger unless the driver can demonstrate to the satisfaction of the Authority that:
 - (a) The driver has good reason to fear for the driver's personal safety; or
 - (b) The driver is prohibited by law or regulation from carrying the person requesting transportation services.
- (Added to NRS by 2015, 1407)

Incidents:

1. **At approximately 1348 hours, a customer walked onto our property and told Security he had an issue with his Uber driver. The customer said he asked his Uber driver to take them to our property (Reef Dispensaries). The customer's Uber driver told the customer he will take them to Planet 13 instead, the customer told the Uber driver no and to take him to Reef Dispensaries. The Uber driver drove the customer and his friends to Planet 13 instead, saying everyone comes here and told them they were at Reef Dispensaries. The customer and his friends immediately left Planet 13's property and walked to Reef Dispensaries. Information about the Uber driver and the route taken, have been acquired. No further incident.**

In any event, like I did with Mike and Lyft, just wanted to give you guys a heads up that this is happening and hope you guys can assist with getting Uber to educate its drivers about these prohibited practices.

Happy to discuss at your convenience.

Thanks,

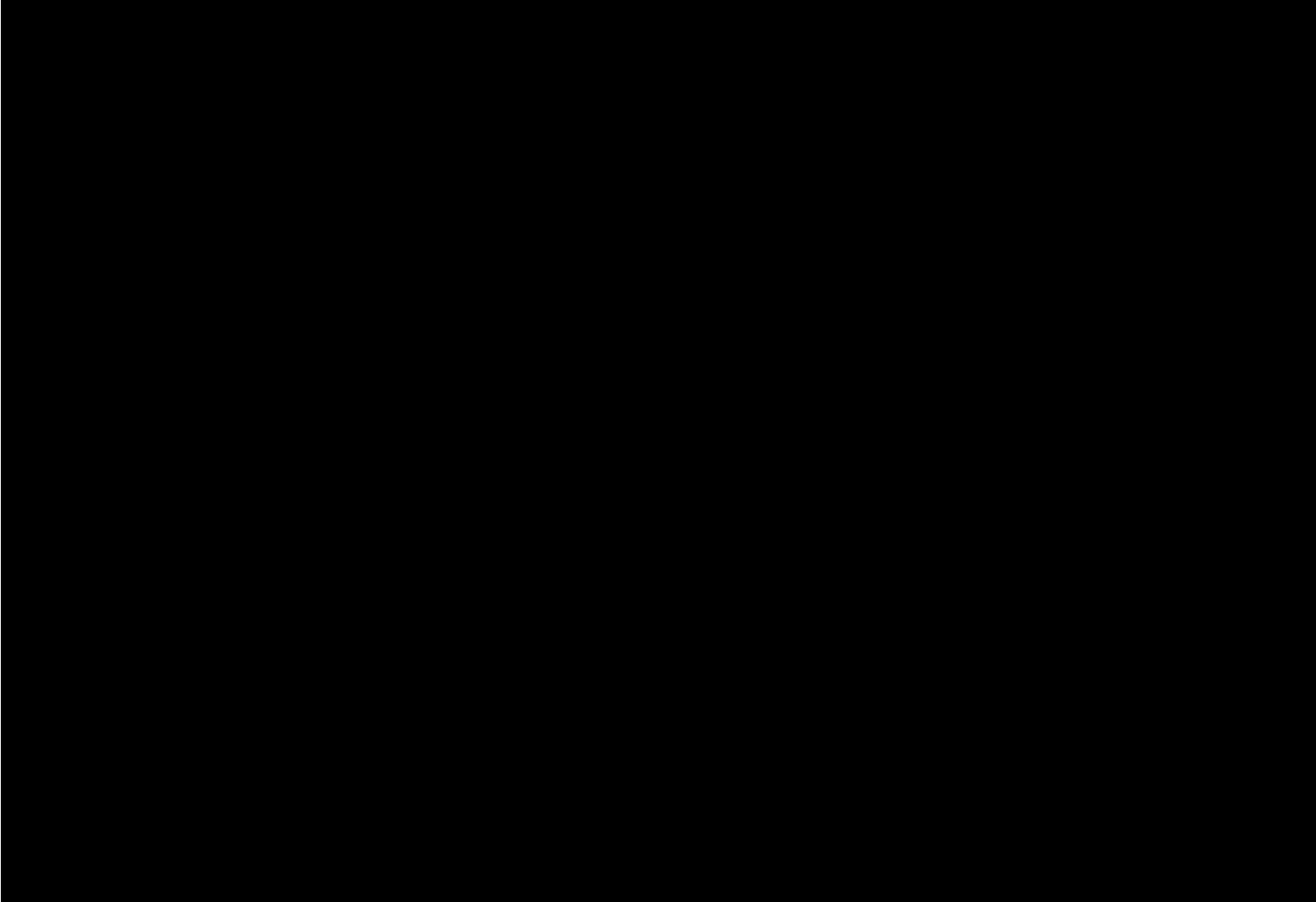
Brett



Brett J. Scolari

General Counsel/Director of Government and Regulatory Affairs
Tryke Companies | 3400 Western Avenue | Las Vegas, NV 89109
Direct (800) 908-6510 Ext 210 | bscolari@trykecompanies.com

EXHIBIT B



From: Jared Davis
Sent: Saturday, March 30, 2019 6:50 PM
To: Mike Pizzo
Cc: Chad Love; Guy Joslin
Subject: Uber Driver

Good Afternoon,

At 1442 hours, a white female adult (WFA), Uber Driver entered our Showroom floor. The WFA Uber Driver proceeded to ask our Security Officer if we give kickbacks (tips), for drivers bringing customers to our store. Our Security Officer told her "No ma'am, we do not give kickbacks", and before he could offer any of our cards, she immediately told him how "she will remember that next time". The WFA Uber Driver said she will take her customers somewhere else, even if her customers request to come to our property. The WFA Uber Driver explained she can suggest another location all she wants, to her customers. The WFA Uber Driver also told our Officer, other Uber Drivers do not come to our property, simply because we don't give kickbacks and proceeded to explain how other marijuana dispensary locations are paying twenty dollars (\$20.00), to bring people to their locations. The WFA Uber Driver left our property, continuing to rant about our property not giving kickbacks. The WFA Uber Driver was driving a blue in color Hyundai Sonata, Nevada plates, plate number (177 LVF). No further issue.

EXHIBIT C-1

Adam Laikin

From: Julieanne Evangelista <jaydevangelista@yahoo.com>
Sent: Friday, August 9, 2019 3:19 PM
To: Adam Laikin
Subject: Fwd: Your Friday afternoon trip with Uber

Begin forwarded message:

From: "Uber Receipts" <uber.us@uber.com>
Date: August 9, 2019 at 2:37:43 PM PDT
To: <jaydevangelista@yahoo.com>
Subject: Your Friday afternoon trip with Uber

Uber

Total: \$7.91
Fri, Aug 09, 2019

Thanks for riding,
Julieanne

We hope you enjoyed your ride
this afternoon.



Total	\$7.91
-------	--------

Trip fare	\$7.68
-----------	--------

Subtotal	\$7.68
----------	--------

3% Transportation Recovery Charge 

\$0.23

Amount Charged



...  | Switch

\$7.91

You rode with Sergio



4.94 ★ Rating

Sergio is known for:
Excellent Service

How was your ride?

RATE OR TIP

When you ride with Uber, your trips are insured in case of a covered accident. [Learn more.](#)

■ 02:32pm
3131 S Las Vegas Blvd, Las Vegas, NV

■ 02:37pm
2548 W Desert Inn Rd, Las Vegas, NV



Invite your friends and family.

Get \$5 off your next ride when you refer a friend to try Uber. Share code: julieannee16ue

[REPORT LOST ITEM >](#)

[CONTACT SUPPORT >](#)

[MY TRIPS >](#)

Uber

[FAQ](#)

[Forgot password](#)

Uber Technologies
1455 Market St
San Francisco, CA 94103

[Privacy](#)

[Terms](#)

EXHIBIT C-2

Adam Laikin

From: Ashbash <aspriggs51.as@gmail.com>
Sent: Friday, August 9, 2019 3:20 PM
To: Adam Laikin
Subject: Fwd: Your ride with Shiva Charan Reddy on August 9

Here ya go!

Ashley Spriggs

Begin forwarded message:

From: Lyft Ride Receipt <no-reply@lyftmail.com>
Date: August 9, 2019 at 2:37:15 PM PDT
To: aspriggs51.as@gmail.com
Subject: Your ride with Shiva Charan Reddy on August 9



AUGUST 9, 2019 AT 2:29 PM

**Thanks for riding with
Shiva Charan Reddy!**



Lyft fare (0.97mi, 6m 58s)
NV Cost Recovery Fee

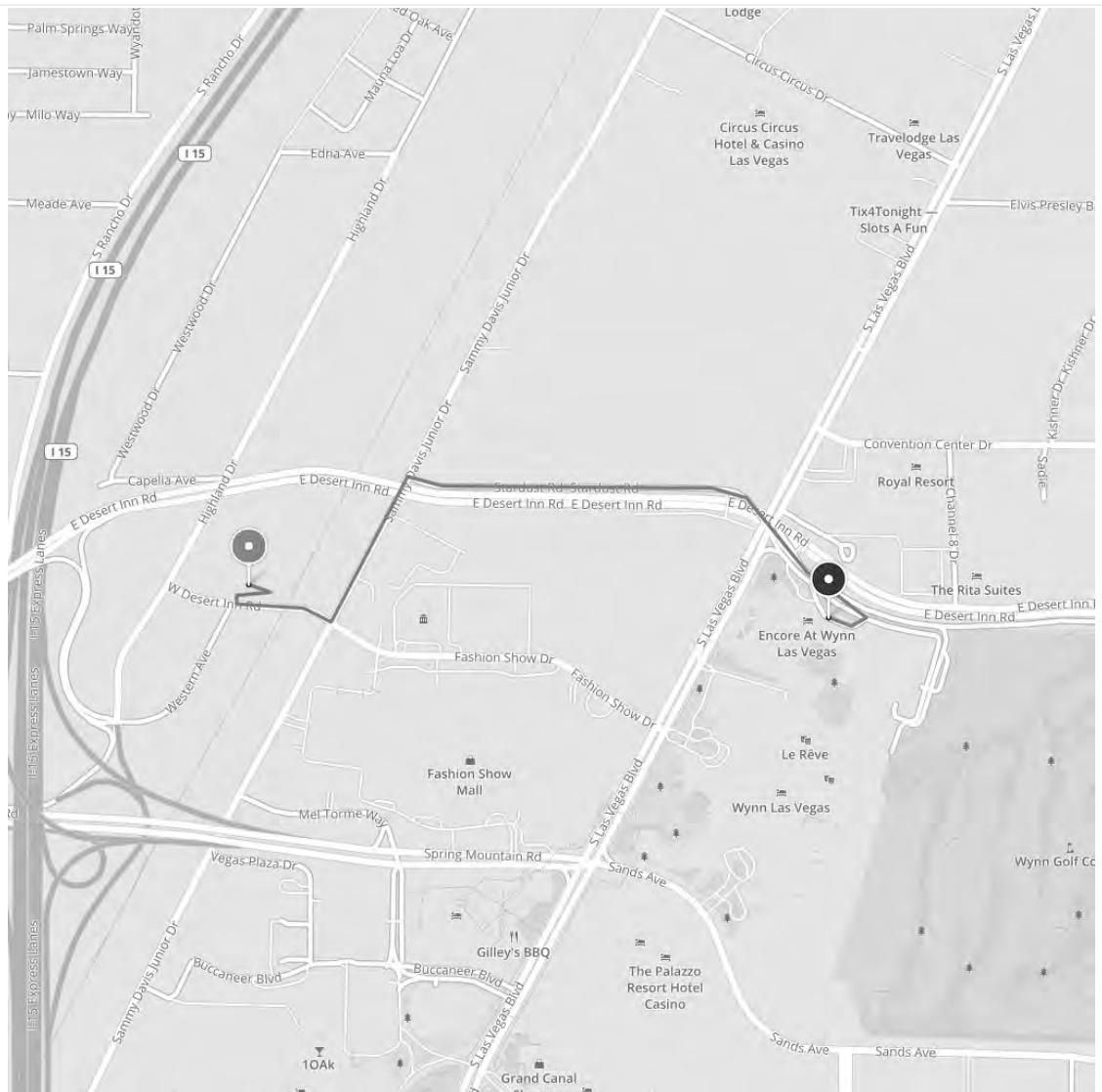
\$9.64
\$0.29



MasterCard



\$9.93



- **Pickup 2:29 PM**
37 E Desert Inn Rd, Paradise, NV
- **Drop-off 2:36 PM**
2564 W Desert Inn Rd, Paradise, NV



**This and every ride is
carbon neutral**

[LEARN MORE](#)

Confirm your email

Confirming your email address helps protect your personal info.

Please verify aspriggs51.as@gmail.com is the correct email address for your Lyft account linked to the phone number +[REDACTED]

CONFIRM EMAIL

[This isn't my account](#)



Ride for work? Get Rewarded

Create a business profile to earn \$5 in personal credit for every 5 work rides you take.

[GET REWARDS](#)

TIP DRIVER

FIND LOST ITEM

REQUEST REVIEW

To protect against unauthorized behavior, you may see [an authorization hold](#) on your bank statement. This is to verify your payment method and will not be charged.

Help Center

Receipt #1301727522597626188

We never share your address with your driver after a ride.
[Learn more](#) about our commitment to safety.

Map data [OpenStreetMap](#) contributors

© 2019 Lyft, Inc.
548 Market St., P.O. Box 68514
San Francisco, CA 94104
CPUC ID No. TCP0032513 - P

Work at Lyft
Become a Driver

EXHIBIT C-3

Adam Laikin

From: Alexandria Manuli <alexmanuli11@gmail.com>
Sent: Friday, August 9, 2019 3:22 PM
To: Adam Laikin
Subject: Fwd: Your Friday afternoon trip with Uber

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

From: **Uber Receipts** <uber.us@uber.com>
Date: Fri, Aug 9, 2019 at 3:01 PM
Subject: Your Friday afternoon trip with Uber
To: <alexmanuli11@gmail.com>

Uber

Total: \$7.95
Fri, Aug 09, 2019

Thanks for riding,
Alexandria

We hope you enjoyed your ride
this afternoon.



Total	\$7.95
-------	--------

Trip fare	\$7.66
-----------	--------

Subtotal	\$7.66
Wait Time [?]	\$0.06
3% Transportation Recovery Charge [?]	\$0.23



Switch

\$7.95

A temporary hold of \$7.89 was placed on your payment method **** 2895 at the start of the trip. This is not a charge and has or will be removed. It should disappear from your bank statement shortly.

[Learn More](#)

You rode with Marc



4.94 ★ Rating

Marc is known for:

Great Conversation

How was your ride?

RATE OR TIP →

When you ride with Uber, your trips are insured in case of a covered accident. [Learn more.](#)

UberX 1.23 mi | 9 min



Invite your friends and family.

Get \$5 off your next ride when you refer a friend to try Uber. Share code: mx51bfqnue

[REPORT LOST ITEM >](#)

[CONTACT SUPPORT >](#)

[MY TRIPS >](#)

Uber

[FAQ](#)

[Forgot password](#)

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EXHIBIT C-4

1:25

LTE

Search



4 min away

Arrive by 1:31 PM



Silver Toyota Camry

791E69

Mohammed • 4.89★ • 1,645 trips



Any pickup notes?



Reef Dispensaries

Add or Change



\$11.50

American Express

Change



Riding with someone?

Split Fare



Share trip status

Share

Cancel



Safety



Gold

\$5 Uber Cash



Save this destination

Reef Dispensaries

3400 Western Ave Las Vegas, NV

Adam Laikin

From: Adam Laikin <ad@mlaik.in>
Sent: Friday, August 16, 2019 2:19 PM
To: Adam Laikin
Subject: Fwd: Your Friday afternoon trip with Uber

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

From: **Uber Receipts** <uber.us@uber.com>
Date: Fri, Aug 16, 2019 at 1:34 PM
Subject: Your Friday afternoon trip with Uber
To: <adamlaikin@gmail.com>

Uber

Total: \$11.85
Fri, Aug 16, 2019

Thanks for riding, Adam

We're glad to have you as an Uber
Rewards Gold Member.



Total

\$11.85

◆ You earned 23 points on this trip

Trip fare	\$11.50
-----------	---------

Subtotal	\$11.50
----------	---------

3% Transportation Recovery Charge 	\$0.35
---	--------

Amount Charged



Switch

\$11.85

You rode with Mohammed



4.89 ★ Rating

Mohammed is known for:

Excellent Service

How was your ride?

RATE OR TIP →

When you ride with Uber, your trips are insured in case of a covered accident. [Learn more.](#)

Comfort 0.79 mi | 5 min

- 01:29pm
787 S Industrial Rd, Las Vegas, NV
- 01:34pm
2548 W Desert Inn Rd, Las Vegas, NV





Invite your friends and family.

Get \$5 off your next ride when you refer a friend to try Uber. Share code: we2b4



Save up to 5% on your next ride with Uber Cash

Spend less on your rides when you use Uber Cash. You can purchase directly in the Uber app. [Learn more](#)

REPORT LOST ITEM >

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.)
_____)

REPORTER'S TRANSCRIPTION OF AUDIOTAPE

3725 SAMMY DAVIS JR DRIVE
August 16, 2019

REPORTED BY: mg reporting Court Reporters

MARY E. MANNING, RPR 2415 East Camelback Road, Suite 700
Certified Reporter Phoenix, Arizona 85016
Certificate No. 50444 (602) 512-1300

PREPARED FOR:

3725 SAMMY DAVIS JR DRIVE

08/16/19

1 3725 SAMMY DAVIS JR DRIVE - 08/16/19

2

3 PASSENGER: Mohammed?

4 DRIVER: (Inaudible.)

5 PASSENGER: Yep.

6 DRIVER: How are you doing tonight?

7 PASSENGER: How are you doing?

8 DRIVER: Good. How are you doing?

9 PASSENGER: Good. Thank you.

10 Going over to Reef Dispensary right around the
11 corner.

12 DRIVER: Reef?

13 PASSENGER: Yep.

14 DRIVER: You been, ah, to Planet 13?

15 PASSENGER: Ah, no. What's that one?

16 DRIVER: The newest one. It's right there next
17 door.

18 PASSENGER: It's right in the same area?

19 DRIVER: Yeah. That's the best.

20 PASSENGER: It's the best?

21 DRIVER: Yeah. Trust me.

22 PASSENGER: All right. You can take me over
23 there.

24 DRIVER: Kinda put -- like, Planet 13. It's next
25 door.

3725 SAMMY DAVIS JR DRIVE

08/16/19

1 PASSENGER: Okay. So just change the destination
2 in the app?

3 DRIVER: Yeah.

4 PASSENGER: Let me see here. Change.
5 Planet 13 Marijuana Dispensary?

6 DRIVER: Yeah.

7 PASSENGER: All right. Did it change on your end
8 yet?

9 DRIVER: Yeah. It's coming in.

10 PASSENGER: All right. Cool.

11 What do you like better about that one?

12 DRIVER: It's like the -- the world largest
13 dispensary.

14 PASSENGER: All right.

15 DRIVER: And then they have, like, deal. Every
16 time they have a deal, like discount.

17 PASSENGER: All right. Deals and discounts?

18 DRIVER: Yeah. That's why I like it. I tried --
19 I tell folks, it's a money thing, my customers. After they
20 left there, like, they gonna, "Whoa, man. Thank you for
21 that."

22 PASSENGER: All right.

23 DRIVER: Yeah. Where are you from?

24 PASSENGER: Indiana.

25 DRIVER: Indiana. Pacers?

1 PASSENGER: Oh, yeah. Reggie Miller.

2 DRIVER: You like them?

3 PASSENGER: I used to be more of a Pacers fan
4 back in the Reggie Miller days, but I haven't -- I haven't
5 been as into them as -- in recent years.

6 DRIVER: Okay.

7 PASSENGER: I haven't been watching as much
8 basketball.

9 DRIVER: What sports you like?

10 PASSENGER: Ah, I don't know. I just don't watch
11 as much sports these days.

12 DRIVER: No?

13 PASSENGER: Not too much.

14 How about you?

15 DRIVER: Not too much. I like basketball.

16 PASSENGER: Basketball? Who's your team?

17 DRIVER: The Warriors.

18 PASSENGER: Yeah?

19 DRIVER: Yeah. I love Stephen Curry, man.

20 PASSENGER: He's pretty good.

21 DRIVER: Yeah.

22 PASSENGER: He is pretty good.

23 DRIVER: Yes, he is.

24 PASSENGER: Those Raptors, though.

25 DRIVER: Oh, yeah. The Raptors, they deserve,

3725 SAMMY DAVIS JR DRIVE

08/16/19

1 brah. Like, they used to struggle a lot.

2 The Warriors, they don't like you because Grant,
3 he has an injury. He doesn't play, so -- and then Kawhi,
4 yo, is pretty good.

5 PASSENGER: I was going to say. Do we know where
6 he's playing next year yet?

7 DRIVER: Yeah. The Clippers.

8 PASSENGER: Oh, yeah. The Clippers?

9 DRIVER: Yeah.

10 PASSENGER: I lived in L.A. for a little while.

11 DRIVER: Oh, yeah.

12 PASSENGER: I couldn't deal -- I couldn't --

13 DRIVER: It seems to get on fire, like --

14 PASSENGER: I know. Well, I couldn't -- I
15 couldn't be a Lakers fan because I told you I grew up as a
16 Pacers fan, and the Lakers beat the Pacers the only time we
17 ever made it to the championship, so I couldn't -- I
18 couldn't go root for the Lakers, so ...

19 When I was living in L.A., I was -- I was going
20 for the Clippers. So that would be a good one. I'll be a
21 Clippers fan again when Kyrie goes over there. I'll get --
22 I'll get into it.

23 So this is the spot, huh, Planet 13?

24 DRIVER: Yeah.

25 PASSENGER: Looks busy.

3725 SAMMY DAVIS JR DRIVE

08/16/19

1 DRIVER: It is. I'm going to let you out right
2 here in the street.

3 PASSENGER: All right. It's all good.

4 It's a tough parking lot they got over here.

5 DRIVER: Take care.

6 PASSENGER: All right. Thank you. Appreciate
7 it.

8 DRIVER: You're welcome. Be good.

9 PASSENGER: Thank you. Have a good day.

10
11 * * * * *

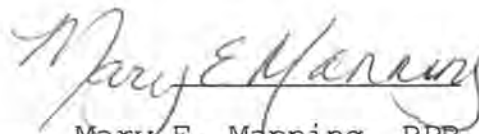
3725 SAMMY DAVIS JR DRIVE

08/16/19

1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.
3
4

5 I, Mary E. Manning, hereby certify that
6 I listened to the audio file(s) of the recorded proceedings;
7 that I made a shorthand record of the oral matters had and
8 adduced at said proceedings; that thereafter, the transcript
9 of said proceedings was reduced to typewriting under my
10 direction, and that the material contained herein is a true
11 and accurate accounting of said matters on the recording all
12 to the best of my skill and ability.

13 DATED at Phoenix, Arizona, this 21st
14 day of August, 2020.
15

16 

17 Mary E. Manning, RPR
18 Certified Court Reporter
19 Certificate No. 50444
20 mg reporting Court Reporters
21 Firm No. R1006
22 (602) 512-1300
23
24
25

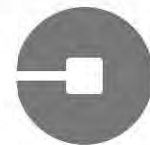
EXHIBIT C-5

↑ 4 min away

Your phone number stays private



Gray Dodge Journey
US462D



Erick • 4.9★ • 5,639 trips



Any pickup notes?



Reef Dispensaries

Add or Change



\$10.74

PayPal

Change



Riding with someone?

Split Fare



Share trip status

Share

Cancel



Safety



You're invited to Uber Rewards

Join for free to start earning Uber Cash and other benefits.



UBER

Adam Laikin

From: Samantha Upham
Sent: Friday, August 16, 2019 5:07 PM
To: Adam Laikin
Subject: Fwd: Your Friday afternoon trip with Uber

Get [Outlook for iOS](#)

From: Samantha Upham <samantha.upham@yahoo.com>
Sent: Friday, August 16, 2019 5:06:38 PM
To: Samantha Upham <supham@trykecompanies.com>
Subject: Fwd: Your Friday afternoon trip with Uber

Sent from my iPhone

Begin forwarded message:

From: "Uber Receipts" <uber.us@uber.com>
Date: August 16, 2019 at 4:53:06 PM PDT
To: <samantha.upham@yahoo.com>
Subject: Your Friday afternoon trip with Uber

Uber

Total: \$11.06
Fri, Aug 16, 2019

Thanks for riding,
SAMANTHA

We hope you enjoyed your ride
this afternoon.




Total

\$11.06

Trip fare	\$10.74
-----------	---------

Subtotal	\$10.74
----------	---------

3% Transportation Recovery Charge 	\$0.32
---	--------

Amount Charged



 | Switch

\$11.06

A temporary hold of \$11.06 was placed on your payment method **** None at the start of the trip. This is not a charge and has or will be removed. It should disappear from your bank statement shortly. [Learn More](#)

You rode with Erick



4.9 ★ Rating

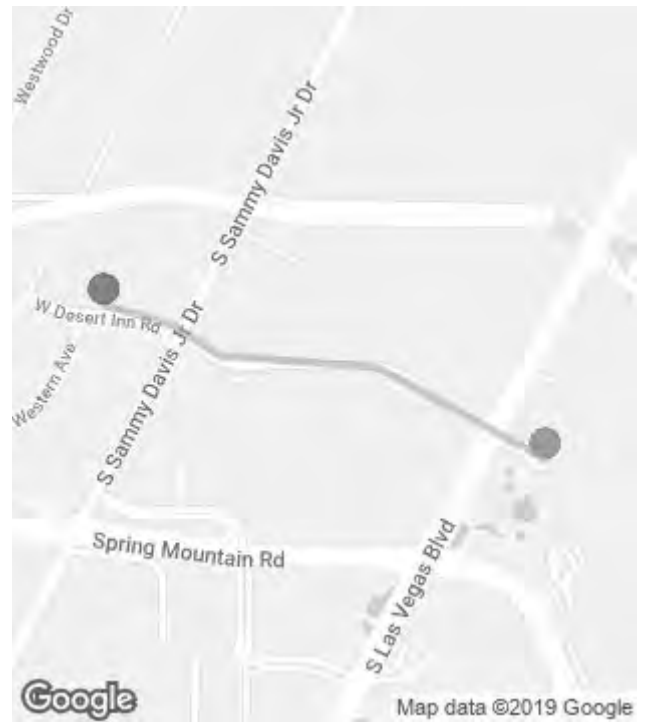
Erick is known for:
Excellent Service

How was your ride?

[RATE OR TIP](#)

When you ride with Uber, your trips are insured in case of a covered accident. [Learn more.](#)

- 04:49pm
3131 S Las Vegas Blvd, Las Vegas, NV
- 04:52pm
2548 W Desert Inn Rd, Las Vegas, NV



Invite your friends and family.

Get \$5 off your next ride when you refer a friend to try Uber. Share code: samanthau25

[REPORT LOST ITEM >](#)

[CONTACT SUPPORT >](#)

[MY TRIPS >](#)

Uber

[FAQ](#)

[Forgot password](#)

Uber Technologies
1455 Market St
San Francisco, CA 94103

[Privacy](#)

[Terms](#)

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.)
)

REPORTER'S TRANSCRIPTION OF AUDIOTAPE

FASHION SHOW MALL
August 16, 2019

REPORTED BY: mg reporting Court Reporters

MARY E. MANNING, RPR 2415 East Camelback Road, Suite 700
Certified Reporter Phoenix, Arizona 85016
Certificate No. 50444 (602) 512-1300

PREPARED FOR:

FASHION SHOW MALL

08/16/19

1 FASHION SHOW MALL - 08/16/19

2

3 PASSENGER: I'm going to head over to Reef
4 Dispensary.

5 DRIVER: Why Reef?

6 PASSENGER: Why Reef?

7 DRIVER: Yeah.

8 PASSENGER: Why?

9 DRIVER: Because Reef is not that good. Right in
10 front is Planet 13. That is the best one. The biggest
11 one. We're going to pass right in front.

12 PASSENGER: Okay.

13 DRIVER: You're going to see the difference.
14 Reef --

15 PASSENGER: Why do you --

16 DRIVER: -- is more expensive than Planet 13
17 because it's for tourism.

18 PASSENGER: Okay.

19 DRIVER: Locals might buy from Planet 13. They
20 have a lot of style. They have more stuff, you know,
21 like -- it's a better place. That's it.

22 PASSENGER: Okay.

23 DRIVER: It's right across from it.

24 PASSENGER: Okay. Then I'll head over to
25 Planet 13.

1 DRIVER: I really buy my stuff in the morning.
2 It's the best place in Vegas. It's huge. They have good
3 prices. They have good product. They have a lot of
4 different product than a lot of dispensaries. I prefer
5 that place. I smoke a lot and I always buy there.

6 PASSENGER: All right. Well, excellent.

7 DRIVER: If you don't like the place, just cross
8 the street and there's the Reef. I tell you, don't go to
9 Reef. It's not a good place.

10 PASSENGER: It's not a good place. Why do you
11 say that?

12 DRIVER: Because the Reef, everyone was going
13 over to Reef, but it's not -- it's not a good product. I
14 don't know what happened. I don't know if it's for
15 tourists or something, but it's not a good product.

16 I live here, like, for five years. I tried every
17 dispensary, and this one is the best. They have better
18 prices and better product. Their weed, I say it's
19 100 percent good. You know like, when you taste, it's
20 good, the flavors and everything. That's my personal
21 opinion.

22 PASSENGER: Okay. Well, I will definitely check
23 it out.

24 DRIVER: It's right in front, closer now.

25 PASSENGER: Okay. Excellent. Should I update

1 my --

2 DRIVER: No. You'll be all right. I am already
3 here.

4 PASSENGER: Okay.

5 DRIVER: You're going to see that's why. The
6 pharmacy is always full, full. At Reef, nobody go there.
7 This is Planet 13.

8 PASSENGER: Okay.

9 DRIVER: That one is Reef. You're going to see
10 the -- there's good deals. It's just better.

11 PASSENGER: All right. Well --

12 DRIVER: Just try it. If you don't like it, just
13 cross the street.

14 PASSENGER: Okay.

15 DRIVER: I tell you, I don't buy nothing from
16 Reef. Come back, don't catch any more. Just walk. It's
17 like a two-minute walk.

18 PASSENGER: Okay.

19 DRIVER: This whole way down that way. You're
20 going to see the Wind Rider.

21 PASSENGER: Yeah.

22 DRIVER: You're going to save some money. I know
23 it's a little bit hot, but it's okay.

24 PASSENGER: Okay. I will definitely do that.

25 DRIVER: Stop right here?

1 PASSENGER: Yeah. This is fine.

2 DRIVER: (Inaudible).

3 There you go, sweetheart.

4 PASSENGER: Thank you so much.

5 DRIVER: Enjoy. Enjoy the place. Just walk
6 around a little first and later buy.

7 PASSENGER: All right. Thank you. Appreciate
8 it.

9

10 * * * * *

11

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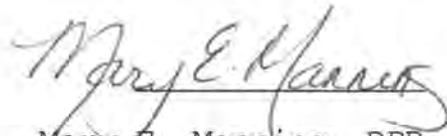
24

25

1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.
3)
4)

5 I, Mary E. Manning, hereby certify that
6 I listened to the audio file(s) of the recorded proceedings;
7 that I made a shorthand record of the oral matters had and
8 adduced at said proceedings; that thereafter, the transcript
9 of said proceedings was reduced to typewriting under my
10 direction, and that the material contained herein is a true
11 and accurate accounting of said matters on the recording all
12 to the best of my skill and ability.

13 DATED at Phoenix, Arizona, this 21st
14 day of August, 2020.

15
16 

17 Mary E. Manning, RPR
18 Certified Court Reporter
19 Certificate No. 50444
20 mg reporting Court Reporters
21 Firm No. R1006
22 (602) 512-1300
23
24
25

EXHIBIT C-6

En Route

Your Uber is on the way. Iva (4.88 stars) will arrive in 4 minutes.



Tan Jeep Cherokee

412K11

Iva • 4.88★ • Top Driver



Any pickup notes?



Reef Dispensaries

Add or Change



\$11.50

PayPal

Change



Riding with someone?

Split Fare



Share trip status

Share

Cancel



Safety



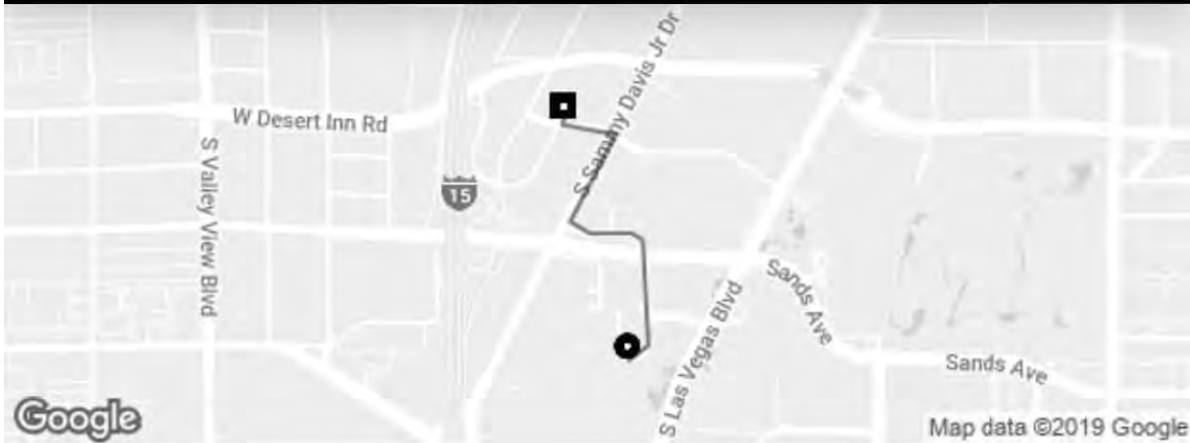
You're invited to Uber Rewards

Join for free to start earning Uber Cash and other benefits.





Trip Details



Today, 3:06 PM

\$11.85

Jeep Cherokee 412K11

Add a tip

- Unnamed Road, Las Vegas, NV 89109, USA
- 2548 W Desert Inn Rd, Las Vegas, NV 89109, USA



Your trip with Iva



Need help with this trip?

Switch payment method

I want to switch my payment method for this trip.

Edit payment

Change

I want to change driver's rate

Edit rate

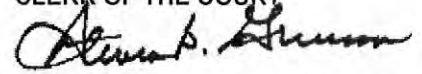


EXHIBIT C-7

Adam Laikin

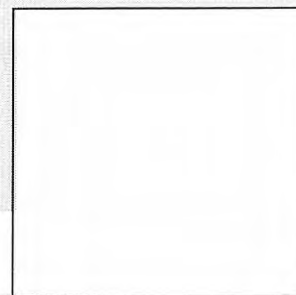
From: Julieanne Evangelista
Sent: Thursday, September 5, 2019 4:28 PM
To: Adam Laikin
Subject: RE: Project Kermit



Total: \$8.35
Thu, Sep 05, 2019

Thanks for riding,
Julieanne

We hope you enjoyed your ride
this afternoon.



Total **\$8.35**

Trip fare \$8.11

Subtotal \$8.11

3% Transportation Recovery Charge ☐ \$0.24

Amount Charged



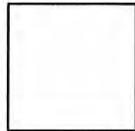
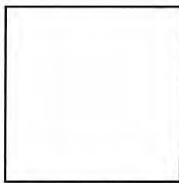
...



Switch

\$8.35

You rode with Rafael



4.89 ☐ Rating

Rafael is known for:

Excellent Service

How was your ride?

RATE OR TIP

RATE OR TIP

When you ride with Uber, your trips are insured in case of a covered accident. [Learn more.](#)





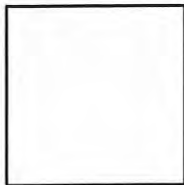
03:09pm

3300 S Las Vegas Blvd, Las Vegas, NV



03:14pm

2548 W Desert Inn Rd, Las Vegas, NV



Invite your friends and family.

Get \$5 off your next ride when you refer a friend to try Uber. Share code: julieannee16ue

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[CONTACT SUPPORT >](#)

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Uber Technologies

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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.)

REPORTER'S TRANSCRIPTION OF AUDIOTAPE

FASHION SHOW MALL 3
September 5, 2019

REPORTED BY: mg reporting Court Reporters

MARY E. MANNING, RPR 2415 East Camelback Road, Suite 700
Certified Reporter Phoenix, Arizona 85016
Certificate No. 50444 (602) 512-1300

PREPARED FOR:

FASHION SHOW MALL 3 - 09/05/19

PASSENGER: Hello. Good. How are you?

DRIVER: (Inaudible.)

PASSENGER: Yes. I am going to Reef Dispensary,
please.

DRIVER: Reef?

PASSENGER: Reef, yes.

DRIVER: Or Planet 13?

PASSENGER: What's Planet 13?

DRIVER: It's in the front. It's new.

PASSENGER: It's new?

DRIVER: Yeah. They only have six months open.

PASSENGER: Oh, really?

DRIVER: Yeah.

PASSENGER: What's different about it? Is it
still --

DRIVER: For me, it's better, Planet 13.

PASSENGER: It's better?

DRIVER: Yeah.

PASSENGER: Have you gone there before?

DRIVER: (Inaudible.)

PASSENGER: How are the prices?

DRIVER: I don't know the price.

Before the people go to Reef. Now the people

1 going to Planet 13.

2 PASSENGER: Oh.

3 DRIVER: More people go to Planet 13.

4 PASSENGER: Did something change with Reef or is
5 it -- is Planet 13 cheaper?

6 DRIVER: I don't know.

7 PASSENGER: You don't know? You don't shop
8 there?

9 DRIVER: (Inaudible.) It's better to buy at
10 Planet 13.

11 PASSENGER: Okay.

12 DRIVER: It's all Taurus.

13 PASSENGER: All Taurus? Okay.

14 DRIVER: Yeah. I don't know (inaudible) Planet
15 13.

16 PASSENGER: Okay.

17 DRIVER: You see now. Planet 13, you want?

18 PASSENGER: Okay. I guess I'll try Planet 13
19 since it's new.

20 DRIVER: It's that building --

21 PASSENGER: It's the building?

22 DRIVER: That building ...

23 PASSENGER: Which one? Planet 13?

24 DRIVER: Planet 13.

25 PASSENGER: Oh, okay.

1 DRIVER: The last time other people take a ride,
2 always going to Planet 13. It's open maybe five or six
3 months.

4 PASSENGER: Only five, six months?

5 DRIVER: Yeah.

6 PASSENGER: That's not long at all.

7 Do I have to change my address to where the
8 drop-off?

9 DRIVER: No. No. No. (Inaudible.)

10 PASSENGER: Okay. So do you do a lot of drops
11 there at Planet 13 and Reef?

12 DRIVER: What?

13 PASSENGER: Do you get a lot of drop locations
14 there, like people want to go there?

15 DRIVER: Yeah.

16 PASSENGER: I bet.

17 DRIVER: It would be (inaudible.)

18 PASSENGER: Everybody, huh?

19 DRIVER: Yeah.

20 PASSENGER: Okay. There's Reef. Oh, I see what
21 you're saying.

22 DRIVER: Reef is right there. You see?

23 PASSENGER: Yeah, on the left.

24 DRIVER: Now, this is Planet 13.

25 PASSENGER: Oh, wow.

1 DRIVER: Do you see?

2 PASSENGER: Yes. It's very close by.

3 DRIVER: I can show you (inaudible).

4 PASSENGER: Yeah.

5 DRIVER: Beautiful building, huh?

6 PASSENGER: Wow. Taxies waiting here and
7 everything, huh?

8 DRIVER: Yeah. You see. A lot of people come
9 here.

10 PASSENGER: I wonder why. I can't wait to check
11 it out. Thank you so much.

12 DRIVER: You're welcome. Have a good day.

13 PASSENGER: You, too.

14

15 * * * * *

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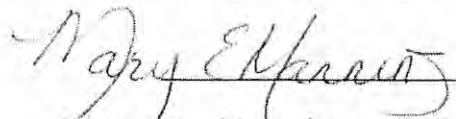
24

25

1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.
3)
4)

5 I, Mary E. Manning, hereby certify that
6 I listened to the audio file(s) of the recorded proceedings;
7 that I made a shorthand record of the oral matters had and
8 adduced at said proceedings; that thereafter, the transcript
9 of said proceedings was reduced to typewriting under my
10 direction, and that the material contained herein is a true
11 and accurate accounting of said matters on the recording all
12 to the best of my skill and ability.

13 DATED at Phoenix, Arizona, this 21st
14 day of August, 2020.
15

16 

17 Mary E. Manning, RPR
18 Certified Court Reporter
19 Certificate No. 50444
20 mg reporting Court Reporters
21 Firm No. R1006
22 (602) 512-1300
23
24
25

EXHIBIT C-8



3 min away

Arrive by 3:30 PM



White BMW 3-series

84G566

Kim • 4.92★ • Top Driver



Any pickup notes?



Reef Dispensaries

Add or Change



\$8.63

PayPal

Change



Riding with someone?

Split Fare



Share trip status

Share

Cancel



Safety



You're invited to Uber Rewards

Join for free to start earning Uber Cash
and other benefits.



Adam Laikin

From: Samantha Upham <samantha.upham@yahoo.com>
Sent: Thursday, September 5, 2019 3:39 PM
To: Adam Laikin
Subject: Fwd: Your Thursday afternoon trip with Uber

Sent from my iPhone

Begin forwarded message:

From: "Uber Receipts" <uber.us@uber.com>
Date: September 5, 2019 at 3:31:28 PM PDT
To: <samantha.upham@yahoo.com>
Subject: Your Thursday afternoon trip with Uber

Uber

Total: **\$8.89**
Thu, Sep 05, 2019

Thanks for riding,
SAMANTHA

We hope you enjoyed your ride
this afternoon.



Total	\$8.89
-------	---------------

Trip fare	\$8.63
-----------	--------

Subtotal	\$8.63
3% Transportation Recovery Charge 	\$0.26

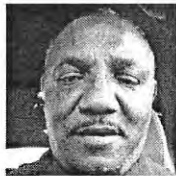
Amount Charged



samantha.upham@yahoo.com Switch

\$8.89

You rode with Kim



4.92 ★ Rating

Kim is known for:
Excellent Service

How was your ride?

RATE OR TIP

When you ride with Uber, your trips are insured in case of a covered accident. [Learn more.](#)

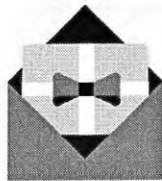


03:27pm

3131 S Las Vegas Blvd, Las Vegas, NV

03:31pm

2548 W Desert Inn Rd, Las Vegas, NV



Invite your friends and family.

Get \$5 off your next ride when you refer a friend to try Uber. Share code: samanthau25

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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.)

REPORTER'S TRANSCRIPTION OF AUDIOTAPE

FASHION SHOW MALL 3
September 5, 2019

REPORTED BY: mg reporting Court Reporters

MARY E. MANNING, RPR 2415 East Camelback Road, Suite 700
Certified Reporter Phoenix, Arizona 85016
Certificate No. 50444 (602) 512-1300

PREPARED FOR:

1 FASHION SHOW MALL 3 - 09/05/19

2

3 PASSENGER: To Reef.

4 DRIVER: You don't like Planet 13?

5 PASSENGER: Ah, what's wrong with Reef?

6 DRIVER: Huh?

7 PASSENGER: I -- I haven't been --

8 DRIVER: No. Just Planet 13 is just a better
9 one. That's all.

10 PASSENGER: It's a better one? Why do you say
11 that?

12 DRIVER: Because the prices are better.

13 PASSENGER: All right. Then we'll go there.

14 DRIVER: It's right across the street.

15 PASSENGER: Okay.

16 DRIVER: So you're not going out of your way.

17 PASSENGER: Sounds good.

18 DRIVER: And they have a larger inventory.

19 PASSENGER: Okay.

20 DRIVER: Have you been to Reef before?

21 PASSENGER: Yes.

22 DRIVER: So you'll get -- you haven't been to 13?

23 PASSENGER: No.

24 DRIVER: So you'll get to see the difference.

25 How are you enjoying your stay?

1 PASSENGER: So far so good.
2 DRIVER: It's going to get better now.
3 PASSENGER: Yeah. For sure.
4 DRIVER: Where are you from? New York?
5 PASSENGER: Wisconsin.
6 DRIVER: Close enough. No. No. I'm thinking
7 of --
8 PASSENGER: Closer to Chicago.
9 DRIVER: Yeah. Close to Chicago. I'm thinking
10 of --
11 PASSENGER: It's my accent or something?
12 DRIVER: M'hum. Yeah. I'm thinking of
13 Connecticut.
14 Look at Planet 13.
15 PASSENGER: Okay.
16 DRIVER: Look at the Reef. That tells you right
17 there.
18 PASSENGER: Lots of traffic.
19 DRIVER: Yes. The business.
20 All right, dear.
21 PASSENGER: Thank you so much.
22 Do I need to update my status?
23 DRIVER: (Inaudible) pull up so ...
24 PASSENGER: Okay.
25 * * * * *

1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.
3)
4)

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10 direction, and that the material contained herein is a true
11 and accurate accounting of said matters on the recording all
12 to the best of my skill and ability.

13 DATED at Phoenix, Arizona, this 21st
14 day of August, 2020.

15
16 

17 Mary E. Manning, RPR
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19 Certificate No. 50444
20 mg reporting Court Reporters
21 Firm No. R1006
22 (602) 512-1300
23
24
25

EXHIBIT C-9

Adam Laikin

From: Adam Laikin <ad@miaik.in>
Sent: Thursday, September 5, 2019 4:45 PM
To: Adam Laikin
Subject: Fwd: Your Thursday afternoon trip with Uber

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

From: **Uber Receipts** <uber.us@uber.com>
Date: Thu, Sep 5, 2019 at 4:37 PM
Subject: Your Thursday afternoon trip with Uber
To: <adamliaikin@gmail.com>

Uber

Total: \$11.85
Thu, Sep 05, 2019

Thanks for riding, Adam

We're glad to have you as an Uber
Rewards Gold Member.



Total

\$11.85

You earned 23 points on this trip

Trip fare \$11.50

Subtotal \$11.50

3% Transportation Recovery Charge  \$0.35

Amount Charged



Switch

\$11.85

You rode with Luis



4.94 ★ Rating

Luis is known for:

Excellent Service

How was your ride?

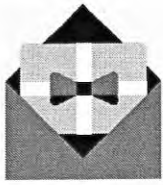
RATE OR TIP →

When you ride with Uber, your trips are insured in case of a covered accident. Learn more.

Comfort 2.12 mi | 9 min

- 04:28pm
2601 Paradise Rd, Las Vegas, NV
- 04:37pm
2550 W Desert Inn Rd, Las Vegas, NV





Invite your friends and family.

Get \$5 off your next ride when you refer a friend to try Uber. Share code: we2b4



Save up to 5% when you purchase Uber Cash

Choose the smart way to pay for Uber. You can purchase directly in the Uber app. [Learn more](#)

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.)

REPORTER'S TRANSCRIPTION OF AUDIOTAPE

2535 SOUTH LAS VEGAS BOULEVARD
September 5, 2019

REPORTED BY: mg reporting Court Reporters

MARY E. MANNING, RPR 2415 East Camelback Road, Suite 700
Certified Reporter Phoenix, Arizona 85016
Certificate No. 50444 (602) 512-1300

PREPARED FOR:

2535 SOUTH LAS VEGAS BOULEVARD

09/05/19

1 2535 SOUTH LAS VEGAS BOULEVARD - 09/05/19

2

3 PASSENGER: For Adam?

4 DRIVER: Adam?

5 PASSENGER: How's it going?

6 DRIVER: You're going to Reef Dispensary?

7 PASSENGER: Yes, sir.

8 DRIVER: You should go to the Planet 13. It's

9 the best one.

10 PASSENGER: It's the best one?

11 DRIVER: Yeah. It's at the corner over there.

12 PASSENGER: Is it nearby?

13 DRIVER: Yeah. They drive better price.

14 PASSENGER: Better price?

15 DRIVER: Yeah.

16 PASSENGER: All right. You can take me to that

17 one.

18 DRIVER: Huh?

19 PASSENGER: You can take me over there.

20 DRIVER: Yeah. (Inaudible.) It's in the corner

21 of the Reef. It's going to be amazing over there. You're

22 going to see.

23 PASSENGER: You said you wanted me to change the

24 destination?

25 DRIVER: Yeah. Planet 13.

2535 SOUTH LAS VEGAS BOULEVARD

09/05/19

1 PASSENGER: Planet 13.

2 DRIVER: It's the best one.

3 PASSENGER: All right. Thank you. You said they
4 have better prices?

5 DRIVER: Yeah. Because it's new, you know. Reef
6 (inaudible) before that because they -- they made the
7 dispensary new and they have the competition, you know --

8 PASSENGER: M'hum.

9 DRIVER: -- so better price. You're going to
10 see.

11 You got it. You did it.

12 PASSENGER: All right. Cool. Thank you.

13 DRIVER: I buy my weed there.

14 PASSENGER: You get your weed there?

15 DRIVER: Yeah.

16 PASSENGER: All right. What do you think? Do
17 you like any of those other ones over there by Sahara?
18 Like I checked out Essence and Releaf.

19 DRIVER: Essence is good, but I don't know. They
20 are expensive.

21 PASSENGER: Expensive?

22 DRIVER: Yeah, it is. They are only good for
23 locals because if I buy one today, I get point over there,
24 so I could use point after. It's not expensive.

25 PASSENGER: How about that Releaf? You ever go

2535 SOUTH LAS VEGAS BOULEVARD

09/05/19

1 over there? I was looking at that.

2 DRIVER: Um, it's expensive, also. It's good but
3 expensive.

4 PASSENGER: What's more expensive, MedMen or
5 Reef?

6 DRIVER: Reef.

7 PASSENGER: Really? So Reef's just the most
8 expensive around, huh?

9 DRIVER: Um.

10 Everybody going there.

11 PASSENGER: Yeah. There it is.

12 DRIVER: Here you are, buddy. There it is.

13 PASSENGER: Cool. Thank you so much.

14 DRIVER: You're welcome, bro.

15 PASSENGER: Have a good one.

16 DRIVER: Have a good one.

17 PASSENGER: Thanks.

18

19 * * * * *

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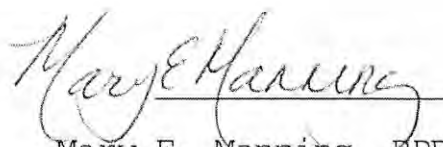
2535 SOUTH LAS VEGAS BOULEVARD

09/05/19

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2 COUNTY OF MARICOPA) ss.
3
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14 day of August, 2020.

15
16 

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18 Certified Court Reporter
19 Certificate No. 50444
20 mg reporting Court Reporters
21 Firm No. R1006
22 (602) 512-1300
23
24
25

EXHIBIT C-10

Adam Laikin

From: Adam Laikin <ad@mlaik.in>
Sent: Friday, September 6, 2019 11:02 AM
To: Adam Laikin
Subject: Fwd: Your ride with Ronald on September 6

----- Forwarded message -----
From: **Lyft Ride Receipt** <no-reply@lyftmail.com>
Date: Fri, Sep 6, 2019 at 10:56 AM
Subject: Your ride with Ronald on September 6
To: <adamlaikin@gmail.com>

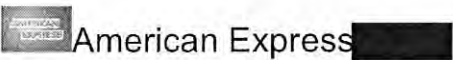


SEPTEMBER 6, 2019 AT 10:47 AM

**Thanks for riding with
Ronald!**



Lyft fare (0.84mi, 4m 35s)	\$8.77
NV Cost Recovery Fee	\$0.26



\$9.03

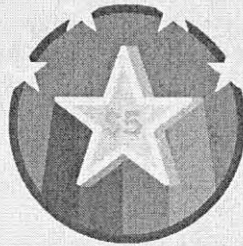


- **Pickup 10:47 AM**
Sirens Cove Blvd, Paradise, NV
- **Drop-off 10:52 AM**
2578 W Desert Inn Rd, Paradise, NV



This and every ride is carbon neutral

[LEARN MORE](#)



Ride for work? Get Rewarded

Create a business profile to earn \$5 in
personal credit for every 5 work rides
you take.

[GET REWARDS](#)

TIP DRIVER

FIND LOST ITEM

REQUEST REVIEW

Help Center

Receipt #1312060855484354044

We never share your address with your driver after a ride.
[Learn more](#) about our commitment to safety.

Map data [OpenStreetMap](#) contributors

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548 Market St., P.O. Box 68514
San Francisco, CA 94104
CPUC ID No. TCP0032513 - P

Work at Lyft
Become a Driver

EXHIBIT C-11

Adam Laikin

From: Adam Laikin <ad@mlaik.in>
Sent: Tuesday, September 10, 2019 2:23 PM
To: Adam Laikin
Subject: Fwd: Your ride with Kaleb on September 6

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

From: Lyft Ride Receipt <no-reply@lyftmail.com>
Date: Fri, Sep 6, 2019 at 4:33 PM
Subject: Your ride with Kaleb on September 6
To: <adamlaikin@gmail.com>



SEPTEMBER 6, 2019 AT 4:06 PM

Thanks for riding with Kaleb!



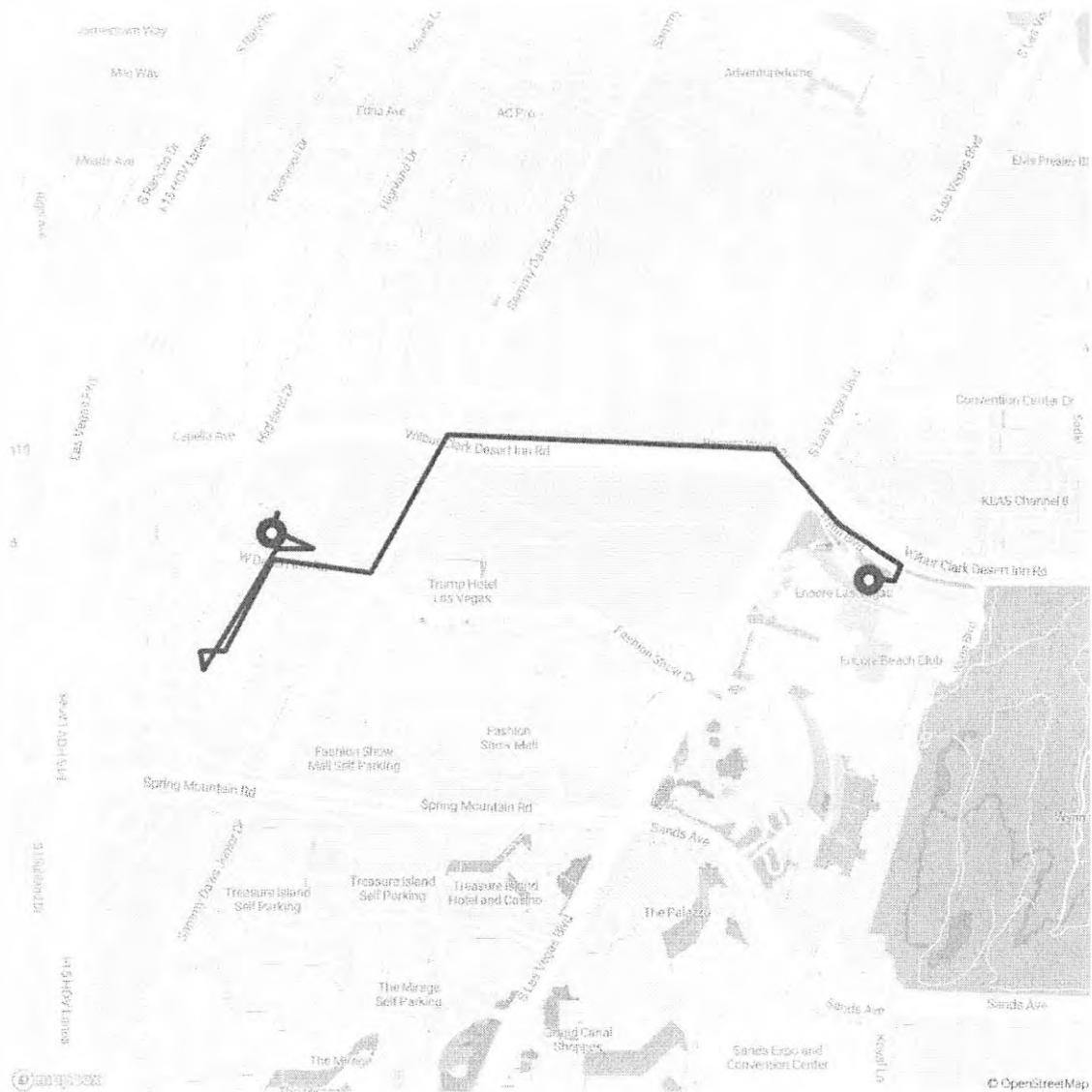
Since you updated your stop or destination, your fare reflects actual time and distance
[Learn more](#)

Base fare	\$1.56
12m 14s	\$2.69
1.33 mi	\$1.11
Service fee	\$3.25
NV Cost Recovery Fee	\$0.26

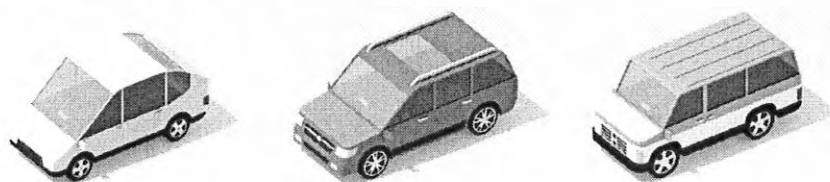


American Express

\$8.87

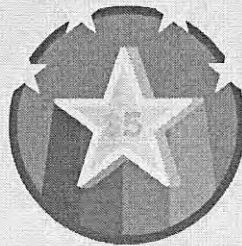


- **Pickup 4:06 PM**
39 E Desert Inn Rd, Paradise, NV
- **Drop-off 4:18 PM**
2552 W Desert Inn Rd, Paradise, NV



**This and every ride is
carbon neutral**

LEARN MORE



Ride for work? Get Rewarded

Create a business profile to earn \$5 in
personal credit for every 5 work rides
you take.

GET REWARDS

TIP DRIVER

FIND LOST ITEM

REQUEST REVIEW

Help Center

Receipt #1312142195396521630

We never share your address with your driver after a ride.
Learn more about our commitment to safety.

Map data [OpenStreetMap](#) contributors

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San Francisco, CA 94104
CPUC ID No. TCP0032513 - P

Work at Lyft
Become a Driver

EXHIBIT C-12

Adam Laikin

From: Julieanne Evangelista <jaydevangelista@yahoo.com>
Sent: Friday, September 6, 2019 5:25 PM
To: Adam Laikin
Subject: Fwd: Your Friday afternoon trip with Uber

Begin forwarded message:

From: "Uber Receipts" <uber.us@uber.com>
Date: September 6, 2019 at 3:56:55 PM PDT
To: <jaydevangelista@yahoo.com>
Subject: Your Friday afternoon trip with Uber

Uber

Total: **\$8.87**
Fri, Sep 06, 2019

Thanks for riding,
Julieanne

We hope you enjoyed your ride
this afternoon.



Total

\$8.87

Trip fare	\$8.61
-----------	--------

Subtotal	\$8.61
----------	--------

3% Transportation Recovery Charge ?

\$0.26

Amount Charged



....



Switch

\$8.87

You rode with Wenxin



4.92 ★ Rating

Wenxin is known for:
Excellent Service

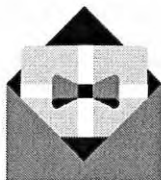
How was your ride?

RATE OR TIP

When you ride with Uber, your trips are insured in case of a covered accident. [Learn more.](#)

■ 03:51pm
3131 S Las Vegas Blvd, Las Vegas, NV

■ 03:56pm
2548 W Desert Inn Rd, Las Vegas, NV



Invite your friends and family.

Get \$5 off your next ride when you refer a friend to try Uber. Share code: julieannee16ue

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