

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

Electronically Filed
Mar 25 2021 03:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX

VOLUME 3 OF 3

KEMP JONES, LLP
Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
Ian P. McGinn, Esq. (#12818)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
w.kemp@kempjones.com
n.rulis@kempjones.com
i.mcgin@kempjones.com

Attorneys for Appellant MM Development Company, Inc.

ALPHABETICAL INDEX OF APPELLANT’S APPENDIX

<u>Document</u>	<u>Date</u>	<u>Vol.</u>	<u>Page Nos.</u>
Answer to Complaint	Apr. 15, 2020	1	083 – 089
Case Appeal Statement	Oct. 9, 2020	3	569 – 578
Complaint	Nov. 5, 2019	1	001 – 012
Findings of Fact, Conclusions of Law, and Order Granting Preliminary Injunction	Sept. 10, 2020	3	518 – 528
Hearing re Motion for Preliminary Injunction (Transcript)	Sept. 8, 2020	3	497 – 517
Minutes of Court re Hearing on Motion for Reconsideration of Order Denying Motion to Dismiss	May 7, 2020	1	103 – 104
Minutes of Court re Hearing on Motion for Reconsideration of Order Granting Preliminary Injunction	Oct. 22, 2020	3	614 – 615
Motion for Preliminary Injunction	Aug. 24, 2020	1	108 – 155
Exhibits A through C12		1	156 – 249
Exhibits C13 through H		2	250 – 383
Motion for Reconsideration of Order Denying Motion to Dismiss	Apr. 8, 2020	1	077 – 082
Motion for Reconsideration of Order Granting Preliminary Injunction	Sept. 25, 2020	3	542 – 568
Motion to Dismiss	Dec. 6, 2019	1	013 – 023
Notice of Appeal of Order Granting Preliminary Injunction	Oct. 9, 2020	3	579 – 595
Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Preliminary Injunction	Sept. 11, 2020	3	538 – 541
Opposition to Motion for Preliminary Injunction	Aug. 28, 2020	2	384 – 478
Opposition to Motion for Reconsideration of Order Denying Motion to Dismiss	Apr. 22, 2020	1	090 – 096

<u>Document</u>	<u>Date</u>	<u>Vol.</u>	<u>Page Nos.</u>
Opposition to Motion for Reconsideration of Order Granting Preliminary Injunction	Oct. 9, 2020	3	596 – 603
Opposition to Motion to Dismiss	Jan. 6, 2020	1	024 – 061
Order Denying Motion for Reconsideration of Order Granting Preliminary Injunction	Nov. 7, 2020	3	616 – 621
Order Denying Motion for Reconsideration of Order Denying Motion to Dismiss	May 20, 2020	1	105 – 107
Order Denying Motion to Dismiss	Mar. 25, 2020	1	073 – 076
Reply in Support of Motion for Preliminary Injunction	Sept. 1, 2020	2	479 – 496
Reply in Support of Motion for Reconsideration of Motion to Dismiss	May 5, 2020	1	097 – 102
Reply in Support of Motion for Reconsideration of Order Granting Preliminary Injunction	Oct. 20, 2020	3	604 – 613
Reply in Support of Motion to Dismiss	Feb. 2, 2020	1	062 – 072



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

TRYKE COMPANIES SO NV,
LLC,

Plaintiff,

vs.

MM DEVELOPMENT
COMPANY, INC.,

Defendant.

CASE#: A-19-804883-C

DEPT. XXIV

BEFORE THE HONORABLE JIM CROCKETT, DISTRICT COURT JUDGE
THURSDAY, SEPTEMBER 3, 2020

**RECORDER'S TRANSCRIPT OF VIDEO CONFERENCE VIA
BLUEJEANS HEARING**

**TRYKE COMPANIES SO NV, LLC'S MOTION FOR PRELIMINARY
INJUNCTION AND APPLICATION FOR ORDER SHORTENING TIME**

APPEARANCES:

For the Plaintiff:

PAUL A. CONANT, ESQ.
JOEL Z. SCHWARZ, ESQ.
ERIC HONE, ESQ.

For the Defendant:

NATHANAEL R. RULIS, ESQ.

RECORDED BY: NANCY MALDONADO, COURT RECORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Las Vegas, Nevada, Thursday, September 3, 2020

[Case called at 10:31 a.m.]

THE COURT RECORDER: Page 6, A --

UNIDENTIFIED SPEAKER: Thank you.

THE COURT RECORDER: -- 804883, Tryke Companies
Southern Nevada, LLC versus MM Development Company, Inc.

THE COURT: All right, who do we have for Plaintiff Tryke
Companies?

MR. CONANT: Good morning, Your Honor. This is Paul --

UNIDENTIFIED SPEAKER: Good morning, Your Honor.

MR. CONANT: Good morning, Your Honor, I was just unmuting
myself. This is Paul Conant, Conant Law Firm.

THE COURT: All right.

MR. CONANT: I'm co-counsel for Plaintiff Tryke Companies of
Southern Nevada, LLC, the Movant.

THE COURT: And you say you're co-counsel. Is there another
Plaintiff's attorney on the phone?

MR. CONANT: Yes, Your Honor, co-counsel in this matter are
lawyers at the H1 Law Group, Eric Hone, Joel Schwarz, Jamie
Zimmerman, and Moorea Katz. I believe that both Mr. Hone and Mr.
Schwarz are on the telephone with us this morning as well.

THE COURT: All right. And who do we have for MM
Development Company?

MR. RULIS: Good morning, Your Honor, this is Nathanael Rulis

1 on behalf of MM Development Company and I have Layton Kohler
2 [phonetic] with me here this morning on behalf of MM.

3 THE COURT: All right. So this is Tryke Company's Motion for
4 a Preliminary Injunction and an Application for an Order Shortening Time.
5 Your order shortening time was obviously granted. That's why we're here.

6 This is the case in which the Plaintiff contends that Defendant is
7 paying money to rideshare companies to divert customers who have
8 specifically asked to go to Plaintiff's marijuana store to divert them away
9 from Plaintiff's store and take them to Defendant's store instead.

10 Plaintiff now seeks injunctive relief contending that now that the
11 stores have re-opened, the Defendant is resuming what it was doing
12 before the Covid-19 shutdown.

13 The Motion for Preliminary Injunction is well supported legally
14 and factually. And the factors that are considered regarding injunctive
15 relief, likelihood of success, irreparable nature of the harm, etcetera,
16 appear to militate in favor of Plaintiff's position.

17 Defendant's Opposition filed August 28th says we're really just
18 talking here about tipping, not interference with prospective advantage or
19 interference with economic advantage.

20 But trying to equate tipping with kickback payments that are
21 intended and designed to divert customers from their preferred requested
22 chosen destination to another for economic advantage is an entirely
23 different creature.

24 And it appears that it also incentivizes rideshare drivers to
25 aggressively pressure their clients into going to someone other than the

1 merchant the client chose, so that the rideshare driver can make
2 additional money above and beyond what the rideshare customer pays as
3 evidenced by the efforts of some drivers to sell their passengers on not
4 going to the merchant destination they selected through the rideshare
5 application.

6 And some of these drivers appear to be going so far as to make
7 allegedly false and misleading statements about the originally intended
8 merchant destination, which in addition to costing the Plaintiff that sale,
9 also has ripple effects as any defamation or false information would.

10 The Court finds this practice that is alleged to be going on to be
11 anathema to the free market system, not emblematic of it. And it also
12 serves to undermine the integrity of the rideshare programs whose drivers
13 participate in the practice.

14 So I'm inclined to grant the Motion for Preliminary Injunction
15 with a minimum bond, but because I'm inclined to rule against MM
16 Development, I'd like to hear from them. Please keep in mind that I did
17 read and understand the briefs that have been filed in this case.

18 So Mr. Rulis?

19 MR. RULIS: Thank you, Your Honor. Appreciate your time this
20 morning. And I think -- I appreciate that you have read the briefs and I'll
21 try not to regurgitate that information, but I think there are some things
22 that need to be clear for the purposes of this record.

23 And that's that what has been alleged in this case, what has
24 been included in Plaintiff's motion is -- they're based on completely false
25 premises.

1 And that's, one, that tips or payments or kickbacks or whatever
2 you want to call it to ridesharing drivers, taxicab drivers, limousine drivers
3 are somehow illegal.

4 That is absolutely false. And I think that that's borne out by the
5 fact that every branch of government has weighed in on this and
6 determined that they are not illegal. In fact, they're part of the system
7 that's in place.

8 You have the governor that has specifically vetoed attempts to
9 make it illegal. You have the Clark County Commission that specifically
10 repealed laws that were in place that made it illegal for liquor licensees to
11 tip.

12 In fact, I think the County Commission even said at that point
13 that it is free market and it's for the businesses to borne out in
14 competition.

15 You have Nevada Taxicab Authority that specifically has said
16 this is -- it's part of the system. It's absolutely okay.

17 And by the way, it's the Nevada Transportation Authority or the
18 Taxicabs [sic] Authority's jurisdiction and their job to regulate any
19 diversions that occur.

20 That's -- so and then additionally, you know, it comes up in the
21 reply that you have this issue of how payments are made and that there
22 are 1099s and W-2s.

23 You have the IRS that reviewed these same practices back in
24 2010 that said -- that provided guidance on how and why at that point strip
25 clubs were supposed to provide 1099s and W-9s, that these practices are

1 absolutely allowed. In fact, I think some of the counsel that's on the video
2 back there may have been involved in the cases.

3 But any way, that's one. So these payments that are being
4 made are lawful and absolutely allowed under the law. But two --

5 THE COURT: Let me comment on your remark about the IRS.
6 You know, the IRS just wants to make sure that they get income reported.
7 So all they're saying is it's not a gift. And so, it's subject to tax, so it has to
8 be 1099. I don't think that supports your argument.

9 MR. RULIS: And that may be. I'm not trying to rely on an IRS
10 interpretation to say these are legal. I think the fact of the matter is that
11 these exact payments are made in a multitude of industries across this
12 valley.

13 As I mentioned in the opposition, if you go to the Kickback app,
14 which I did after looking at Plaintiff's motion, you have strip clubs,
15 restaurants, gun ranges, massage parlors, hookah lounges, tattoo parlors
16 that all do this exact same program of offering tips to rideshare and
17 taxicabs and limousines for dropping off customers at their location.

18 This is -- so that's that. But I think the other --

19 THE COURT: Let me ask you a question. Let me ask you a
20 question?

21 MR. RULIS: Yes.

22 THE COURT: Do you see any difference between somebody
23 getting into a vehicle and saying I want to go to one of those shooting
24 stores or I want to go to a marijuana dispensary, where can you take me?
25 That scenario versus a person using a Lyft or I can't think of the name of

1 the other one now, using a rideshare app --

2 MR. CONANT: Uber.

3 THE COURT: Uber, thank you. And indicating both their
4 pickup and destination. So the person actually knows where they want to
5 go. They're required to enter a destination and they do.

6 And there are efforts to divert them from going to the destination
7 they wanted to go to, to a different one. Do you see a difference?

8 MR. RULIS: No, and here's why, Your Honor. Because a
9 passenger has the absolute right to change their mind on their destination
10 at any point in the ride.

11 You are not required as a passenger to put in a destination and
12 absolutely get dropped off at that destination. From personal experience,
13 I have been in Uber and Lyft rides where I may have put in a destination
14 and halfway there, or three-quarters of the way there, I was asked to be
15 dropped off at a different location. The fact that I changed my mind about
16 where I wanted to be dropped off does not create a diversion.

17 And if we want to talk about the evidence -- and again, I think
18 based -- you know, I'll rely on my pleadings, but I don't think that the
19 evidence that was presented in favor of the motion is in fact admissible or
20 should properly be relied on the -- by the Court.

21 But if you want to go through some of the transcripts that were
22 presented in support of this motion, if you read through them, it's the ride
23 -- that the passengers almost all agree to go to a different destination.

24 It's in Exhibit C-4, you have the passenger that specifically
25 asserts, all right, you can take me over there. You have a passenger that

1 is telling the driver to take them somewhere else.

2 You have in C-5, again, the passenger saying, okay, then I'll
3 head over to Planet 13. That's the passenger telling the driver where they
4 want to go. You have --

5 THE COURT: Well, Mr. Rulis, you have to understand that if
6 there's a diversion claim to be made, then there has to actually be a
7 diversion.

8 If it's just an attempt, that's something less than a diversion.
9 So, of course, the passenger has to agree to be dropped off at a different
10 location, otherwise no diversion took place.

11 MR. RULIS: Except for if the location that the -- see, and I think
12 the issue is that if it's a location that the passenger has decided to go to,
13 that's not a diversion because at that point, the driver is taking the
14 passenger to the location that they have specifically said take me there.

15 THE COURT: Okay, but the point is that they "decided to go to
16 the different location" after having been pitched and sold and cajoled and
17 pressured by the driver. Those are the allegations, okay?

18 MR. RULIS: So and our --

19 THE COURT: Now here's the interesting about this. If the
20 drivers are not in fact doing as I just described, pressuring, cajoling, and
21 so forth, and even in some cases defaming and giving false information to
22 induce people to go to a different location, if they're not actually doing that,
23 then the injunction won't impede their daily activities one bit, because they
24 will continue to not do what the Court is ordering that they are not to do.

25 On the other hand, if they are in fact doing these prohibited

1 acts, then it will curtail their activities.

2 But there is a -- there is no license to interfere with respective
3 advantage. There is no license or consent to interfering with economic
4 advantage. And there just isn't.

5 So the fact that you have tried to re-cast this as just tipping, it's
6 just a gratuity thanking them for transporting the people to their
7 destination, that's very, very different.

8 Now time is limited, so let me hear from Plaintiff's counsel.

9 MR. CONANT: Thank you, Your Honor. This is Paul Conant
10 again. What we primarily came to accomplish today was two things.

11 First, to get the preliminary injunction that we had requested in
12 our moving papers if you're inclined to do that.

13 Secondly, to raise with the Court the prospect of setting a trial
14 on the merits on an expedited basis.

15 Clearly, Planet 13 or Defendant MM Development, Planet 13 is
16 their trade name, but their proper legal name is MM Development.
17 Clearly, they have a different view of what is legally permissible and is not.

18 And as you saw in their papers, they asserted that if this
19 practice was enjoined with respect to what they're doing just vis-à-vis
20 Tryke, that they would be entitled to a bond of \$1 million.

21 Of course, we don't agree with that, but we think it's in
22 everyone's best interests, not just the parties, but also the drivers and the
23 passengers to have this issue resolved as expeditiously as possible.

24 So, in addition to having the injunction granted, we would like to
25 have an expedited trial on the merits preceded by some reasonably short

1 period of expedited discovery and expedited trial preparation and have the
2 parties come into your courtroom, and make their presentation, and have
3 you make the decision.

4 Obviously, we're looking for a permanent injunction as part of
5 the final relief. You would see that in our initial complaint.

6 THE COURT: Well --

7 MR. CONANT: So those are the things we're looking for.

8 THE COURT: -- as you know, Covid-19 has had a profound
9 effect upon trials. Is there a jury demand in this case?

10 MR. CONANT: There is a jury demand with respect to the
11 damages claim, Your Honor. With respect to the equitable relief that's
12 requested, our pleadings I believe are clear that that's relief that could be
13 granted in a bench trial.

14 THE COURT: All right. So in terms of the witnesses, well, first
15 of all, let me tell you that as it presently sits, I think we've done maybe two
16 bench trials since this -- maybe one was an evidentiary hearing since the
17 Covid-19 restrictions went into place.

18 In a case like this, it is possible that there be maybe many,
19 many witnesses that would be called. I don't know because we'd be
20 looking for customers perhaps on both sides that'd be testifying.

21 And so, an expedited trial is something that may or may not be
22 realistically accomplishable just due to space limitations.

23 I suppose that witnesses could be appearing virtually via Zoom
24 or Bluejeans or some other application, but there are logistics that would
25 have to be addressed in order to figure out how this would actually be

1 accomplished.

2 I'm happy to do it if it can be done. It's just that I don't know. I
3 do know that recently, there was a bench trial going on over at a room in
4 the convention center.

5 And I think there were maybe more than 50 or 60 lawyers
6 involved. And just because of that, there were tremendous space
7 requirements for social distancing just amongst the lawyers. I don't even
8 know if they had witnesses in the courtroom or not. But --

9 MR. RULIS: And Your Honor, this is Nate Rulis. Oh.

10 THE COURT: -- it's not a simple matter to accommodate an
11 expedited trial as much as I would like to assist the parties getting to a
12 final solution in this case.

13 MR. CONANT: This is Paul Conant, Your Honor. I do have
14 some familiarity with that trial. I -- my clients actually were dismissed from
15 the case before the actual trial started, but only just a few days
16 beforehand.

17 And so, while I never went to the convention center, I did see
18 how it was set up and I know that Mr. Rulis and his firm were there. And
19 Mr. Hone and his law firm were there for that trial as well, too.

20 I understand that the main concerns in terms of complying with
21 physical distancing orders and mask orders can be addressed in a regular
22 courtroom setting had been -- in your courtroom back on February 27th
23 when I argued the motion to dismiss, I feel that it -- based on what I
24 observed at the time, I believe that just normal scheduling of witnesses
25 where counsel cooperate and schedule times for witnesses and perhaps

1 agree to either stipulate to facts. We can certainly try that. We're open to
2 that, presenting some testimony through deposition summaries or video
3 deposition summaries.

4 To expedite things, we're willing to do all of those what I think
5 are effective trial management techniques to get before you the meat of
6 the matter, so that neither party feels that they have not been able to
7 present important facts and so that you can have a full presentation and
8 make a decision.

9 I think that it is possible. And we call it the DOT litigation in that
10 other case that was being tried over at the convention center. There were
11 many, many more lawyers than we would have in this case.

12 So I do feel that if we were -- if we left this conference being
13 ordered to at least consult with one another and see if we can come up
14 with a plan to present to you for your consideration, we could do that.

15 You might end up with some areas of agreement, some areas
16 of disagreement, but at least we would be able to address, I think, all of
17 the normal trappings of what would otherwise feel like a bench trial, other
18 than portions of it may be, you know, timed differently in terms of how the
19 witnesses can arrive and when they would leave.

20 And some of the evidentiary presentation might be by video.

21 Certainly we could bring in --

22 THE COURT: All right, let me --

23 MR. CONANT: -- video contractors.

24 THE COURT: -- let me interrupt you one second. First things
25 first.

1 As to the Motion for Preliminary Injunction, I am going to grant
2 it. And I appreciate the comments and arguments made by Mr. Rulis, I
3 do, as well as the briefing that was done, but I am very much persuaded
4 that the Motion for Preliminary Injunction is appropriate relief to be granted
5 here until such time as there can be an evidentiary hearing or bench trial
6 to decide whether or not it should be converted, whether or not it should
7 be converted into a permanent injunction. So the Motion for Preliminary
8 Injunction is granted.

9 With regard to bond, I -- I am inclined to think that the bond
10 should be small. And, again, it's because the nature of the conduct is
11 such that if it is true what is alleged to take place, I don't see the
12 Defendants really suffering a financial loss because if it is true, their gains
13 are ill-gotten gains that they would no longer be getting.

14 And so, I'm going to suggest a bond of \$10,000, which is larger
15 than what the Plaintiff was looking for, but I think it reflects the fact that
16 this is not to be taken lightly and one cannot simply throw a motion for
17 preliminary injunction with no cost or consequence to it.

18 So, Mr. Conant, I need you to prepare the order granting the
19 Motion for Preliminary Injunction --

20 MR. RULIS: Your Honor, if I could --

21 THE COURT: Hold on, hold on.

22 MR. RULIS: Can I get a -- sorry.

23 THE COURT: I need you to prepare the order granting the
24 Motion for a Preliminary Injunction, including a \$10,000 bond.

25 Yes, Mr. Rulis, were you trying to say something?

1 MR. RULIS: Yes, I'd like to try and get a clarification, Your
2 Honor then. So if you're talking about the injunction and based on what I
3 heard from Your Honor, that injunction should then be limited only to Uber
4 and Lyft because as you said, those are treated differently than taxicabs
5 or limousines or that sort of thing?

6 THE COURT: Well, we are talking about the rideshare. And
7 the only ones I'm familiar with by name are Uber and Lyft.

8 Mr. Conant, are you aware --

9 MR. CONANT: Your Honor, it is principally a rideshare
10 problem. Our what we call our secret shopper survey focused on both
11 Uber and Lyft rideshare programs.

12 We do have reason to believe that certainly taxicabs can
13 function in the same way. In other words, if you don't get a cab at a cab
14 stand or if you hail it on the street, if you call up and say please pick me
15 up at point A at 11 a.m. and take me to point B, and then during the ride,
16 you're diverted from point A to another location, point C --

17 THE COURT: No, I get that --

18 MR. CONANT: -- that can be unlawful diversion.

19 THE COURT: -- but I think that the thrust of this has been to
20 address the issue with rideshare companies. So I'm not including taxicab
21 companies right now. I'm just including rideshare and Lyft for now.

22 MR. CONANT: I would agree with that. Yeah, our evidence
23 that we've presented so far is focused on Uber and Lyft. You're 100
24 percent correct, Your Honor.

25 THE COURT: Okay, now here's the other thing. With regard to

1 courtrooms where trials are conducted, right now, the courtrooms that
2 have been converted for potential use as trial courtrooms in Clark County
3 are in the third floor of the RJC.

4 As you know, there are many administrative orders regarding
5 Covid-19. There are many. And I'm not sure if my courtroom in the
6 Phoenix building is considered compliant.

7 Maybe it is. I have no way of knowing, but that's something
8 else we need to figure out. Is my courtroom compliant? And if not, is
9 there a courtroom on the third floor that could be used?

10 I'm happy to accommodate the request for expedited trial, but
11 for myself, I believe that the coronavirus concerns, the medical concerns,
12 are legitimate.

13 I don't think that they're a hoax. And I think that we need to be
14 as responsible as we can, while still trying to keep the court system
15 functioning to the best that it can.

16 So what we will do is if we gave you 30 days, could counsel get
17 together and come up with a plan for the logistic solutions to conducting a
18 bench trial on whether or not a permanent injunction should be issued?

19 Mr. Rulis, what are your thoughts?

20 MR. RULIS: Your Honor, I think -- so a couple of thoughts,
21 which is right now, we don't even have our 16.1 conference scheduled
22 until September 24th. There has been no depositions or anything taken in
23 this case yet. And so, there are significant issues.

24 I think Mr. Conant's request about an expedited trial is a bit of a
25 cart before the horse, because we have to get together.

1 And I expect there will be, based on Your Honor's ruling, two
2 major issues. One, I think there will be extensive discovery, because
3 we're going to have to go into all of the other dispensaries and industries
4 that do the exact same program that Planet 13 is involved in, but in
5 addition to that --

6 THE COURT: Mr. Rulis, I don't disagree with what you're
7 saying.

8 MR. RULIS: Right, so --

9 THE COURT: I know that a JCCR has not been -- yet been
10 conducted. So what we will do is there's always a mandatory Rule 16
11 conference after the JCCR gets filed. And when we bring you in for that
12 mandatory Rule 16 conference, then we will discuss these plans.

13 MR. RULIS: Okay.

14 THE COURT: But I do think you'll want to keep an expedited
15 trial in the back of your mind as a target you're working toward. And it
16 may shape your timeline for discovery, because if it ultimately is
17 determined that there should not be a permanent injunction, I would think
18 that your clients are going to be interested in getting to that point just as
19 soon as the Plaintiffs, if not sooner. So --

20 MR. RULIS: Well, and I think, Your Honor, the other issue that I
21 was going to say, the second part of that, is I would expect that we most
22 likely will be appealing this ruling. And the impact that that appeal may
23 have on the ability to go forward on an expedited trial is something that
24 we'll have to talk about.

25 THE COURT: Fair enough, fair enough.

1 So with regard to the question about an expedited trial, that'll
2 have to be deferred until the time of the mandatory Rule 16 conference,
3 which will take place within 60 days approximately of when the JCCR is
4 filed.

5 Any other questions or comments?

6 MR. RULIS: Yes, Your Honor, this is Nate Rulis. I'd ask at this
7 point at least make an oral motion for a stay of Your Honor's ruling on the
8 injunction to allow us to file our injunction, or excuse me, our appeal.

9 THE COURT: Well, they'll have to be a motion for stay to do
10 that. And the TRO doesn't go into effect until the bond is posted. So we'll
11 have to see what happens.

12 And if you choose to file a motion to stay after an effective TRO
13 with bond posted is implemented, then we will entertain that at that time,
14 all right?

15 MR. RULIS: Appreciate that, Your Honor.

16 THE COURT: Thank you.

17 MR. CONANT: Your Honor, this is Paul Conant. One other
18 matter regarding scheduling, if I may?

19 THE COURT: Okay.

20 MR. CONANT: We have filed our JCCR. And so, that's already
21 been done. We, if possible, we'd like to get back in front of you within 30
22 days. Is there a way to select such a date on your calendar --

23 THE COURT: No --

24 MR. CONANT: -- to do the Rule 16 conference?

25 THE COURT: No, there isn't because I think that one of the

1 side effects of the Covid-19 restrictions is that it has created idle hands on
2 the part of many attorneys, resulting in them becoming introspective and
3 inclined to file many motions.

4 I think we had 51 matters on the calendar this morning.

5 MR. CONANT: Sorry.

6 THE COURT: And I think we whittled it from 51 to about 24 by
7 deciding matters without oral argument, but our calendars are amazingly
8 chock full. And so, all we can do is schedule it when it can be scheduled.

9 MR. CONANT: Okay.

10 THE CLERK: Your Honor, this is Rem.

11 MR. CONANT: I'm sorry for reacting with a little bit of laughter.

12 THE COURT: Yes, Rem?

13 MR. CONANT: Yeah.

14 THE CLERK: This case does have a mandatory Rule 16
15 conference scheduled for September 24th.

16 THE COURT: There you go. So you filed your JCCR. And
17 Rem. Lord, my clerk, has just advised that we already have your
18 mandatory Rule 16 conference scheduled for September 24th, which is
19 three weeks from today.

20 MR. CONANT: Well, I'm glad we were introspective and filed a
21 JCCR because --

22 THE COURT: Okay, see you on the 24th.

23 MR. CONANT: We'll see you, or hear you, or both then. Thank
24 you.

25 THE COURT: Okay, thank you. I need the order -- well, it'll be

1 time limited by when you can obtain the bond. Typically, I say to be filed
2 within 14 days in accordance with EDCR 7.21, but that's subject to getting
3 the bond. All right, thank you.

4 MR. CONANT: We'll be working on it immediately.
5 Understood.

6 THE COURT: Okay.

7 [Proceedings concluded at 11:02 a.m.]

8 [The Judge confers with the Clerk and Court Recorder at 12:56 p.m.]

9 THE COURT: Question for clarification?

10 THE COURT RECORDER: Page 6.

11 THE CLERK: Yes, I believe on the preliminary injunction case

12 --

13 THE COURT: Yes?

14 THE CLERK: The one where you had three matters on
15 calendar?

16 THE COURT: Yes.

17 THE CLERK: Yeah, I totally got what you ordered on it. I just
18 think at one point, we called it a -- you called it a TRO. So I just want to
19 make sure that we're -- there's preliminary injunction you granted, not a
20 TRO.

21 THE COURT: Correct. The TRO was first issued, I think, on
22 August 5th. Let's see. What was the name of that case?

23 THE COURT RECORDER: That was Tryke Companies
24 Southern Nevada, LLC versus MM Development Company.

25 THE COURT: Okay.

1 THE COURT RECORDER: It was on page 6.

2 THE COURT: Page 6. Yeah, I'm looking for my notes, which
3 are on page 8. There we go.

4 THE CLERK: Oh, yeah, that's the one we set the bond 10,000.

5 THE COURT: Right, okay, so yeah, I originally granted a TRO
6 on August -- oh, no, that was a different one. So, no, this is in fact a
7 motion for preliminary injunction. There was not a TRO issued originally.
8 So if I ever referenced TRO, I meant to reference --

9 THE CLERK: It might be page -- sorry, it might be page 13 that
10 we're getting confused about.

11 THE COURT: Yeah.

12 THE CLERK: I think that's the one where -- yeah.

13 THE COURT: Yeah, no, we know it was the one I granted the
14 TRO on August 5th, that's right. So, yeah, if I said TRO on the Tryke
15 case, I misspoke.

16 THE CLERK: I think that was the only thing. We're just making
17 sure it was preliminary injunction, not TRO --

18 THE COURT: No, that is correct.

19 THE CLERK: Because I think you're just -- when you reviewed
20 the procedural history, perfect.

21 THE COURT: And thanks for --

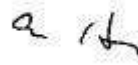
22 THE CLERK: I think that's all I needed.

23 THE COURT: Okay, all right. Well, thank you, everybody.

24 [Conference concluded at 12:58 p.m.]

25 * * * * *

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the
2 audio/video proceedings in the above-entitled case to the best of my ability.

3 

4
5 _____
6 Chris Hwang
7 Transcriber
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Heather S. Hume
CLERK OF THE COURT

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



FFCO

H1 LAW GROUP

Eric D. Hone, NV Bar No. 8499

eric@h1lawgroup.com

Joel Z. Schwarz, NV Bar No. 9181

joel@h1lawgroup.com

Jamie L. Zimmerman, NV Bar No. 11749

jamie@h1lawgroup.com

Moorea L. Katz, NV Bar No. 12007

moorea@h1lawgroup.com

701 N. Green Valley Parkway, Suite 200

Henderson NV 89074

Phone 702-608-3720

Fax 702-703-1063

Paul A. Conant, AZ Bar No. 012667

paulconant@conantlawfirm.com

(Pro Hac Vice)

Conant Law Firm

2398 East Camelback Road, Suite No. 925

Phoenix, AZ 85016

Phone 602-508-9010

Fax 602-508-9015

*Attorneys for Plaintiff Tryke
Companies SO NV, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

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

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



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

FINDINGS OF FACT

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

10 **CONCLUSIONS OF LAW**

11 **Preliminary Injunction Standard**

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

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

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

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

28 ///



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

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

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

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

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

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

28 ///



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

///



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


3 **ORDER**

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

6 IT IS FURTHER ORDERED:

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

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


DISTRICT COURT JUDGE
DATED this ____ day of September 2020.

14 Submitted by:

15 H1 LAW GROUP
16 

17 Eric D. Hone, NV Bar No. 8499
18 Joel Z. Schwarz, NV Bar No. 9181
19 Jamie L. Zimmerman, NV Bar No. 11749
20 Moorea L. Katz, NV Bar No. 12007
21 701 N. Green Valley Parkway, Suite 200
22 Henderson NV 89074

23 Paul A. Conant, AZ Bar No. 012667
24 (Pro Hac Vice)
25 Conant Law Firm
26 2398 East Camelback Road, Suite No. 925
27 Phoenix, AZ 85016

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

BBB 62A 02D4 A3A2
Jim Crockett
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-804883-C

8 vs.

DEPT. NO. Department 24

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

17 Service Date: 9/10/2020

18 Patricia Stoppard	p.stoppard@kempjones.com
19 Ian McGinn	i.mcgin@kempjones.com
20 Ali Augustine	a.augustine@kempjones.com
21 Nathanael Rulis	n.rulis@kempjones.com
22 Alisa Hayslett	a.hayslett@kempjones.com
23 Eric Hone	eric@h1lawgroup.com
24 Jamie Zimmerman	jamie@h1lawgroup.com
25 Pamela Montgomery	p.montgomery@kempjones.com
26 Moorea Katz	moorea@h1lawgroup.com
27 Karen Morrow	karen@h1lawgroup.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Joel Schwarz	joel@h1lawgroup.com
Candice Mata	lawclerk@h1lawgroup.com
Lisa Stewart	lisa@h1lawgroup.com
Judy Estrada	judy@h1lawgroup.com
Elias George	Elias@H1lawgroup.com
Paul Conant	docket@conantlawfirm.com



NEFF
H1 LAW GROUP
Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com
Joel Z. Schwarz, NV Bar No. 9181
joel@h1lawgroup.com
Jamie L. Zimmerman, NV Bar No. 11749
jamie@h1lawgroup.com
701 N. Green Valley Parkway, Suite 200
Henderson NV 89074
Phone 702-608-3720
Fax 702-703-1063

Paul A. Conant, AZ Bar No. 012667
paulconant@conantlawfirm.com
(Pro Hac Vice)
Conant Law Firm
2398 East Camelback Road, Suite No. 925
Phoenix, AZ 85016
Phone 602-508-9010
Fax 602-508-9015

*Attorneys for Plaintiff Tryke
Companies SO NV, LLC*

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

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

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

///

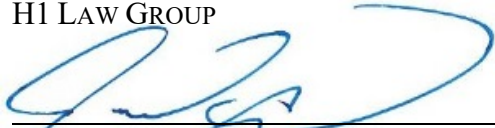
///

///

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

2 DATED this 11th day of September 2020.

3 H1 LAW GROUP

4 
5 Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com

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

7 Jamie L. Zimmerman, NV Bar No. 11749
jamie@h1lawgroup.com
8 701 N. Green Valley Parkway, Suite 200
9 Henderson NV 89074

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

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

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

15 **CERTIFICATE OF SERVICE**

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

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

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



Heather S. Hume
CLERK OF THE COURT

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



FFCO

H1 LAW GROUP

Eric D. Hone, NV Bar No. 8499

eric@h1lawgroup.com

Joel Z. Schwarz, NV Bar No. 9181

joel@h1lawgroup.com

Jamie L. Zimmerman, NV Bar No. 11749

jamie@h1lawgroup.com

Moorea L. Katz, NV Bar No. 12007

moorea@h1lawgroup.com

701 N. Green Valley Parkway, Suite 200

Henderson NV 89074

Phone 702-608-3720

Fax 702-703-1063

Paul A. Conant, AZ Bar No. 012667

paulconant@conantlawfirm.com

(Pro Hac Vice)

Conant Law Firm

2398 East Camelback Road, Suite No. 925

Phoenix, AZ 85016

Phone 602-508-9010

Fax 602-508-9015

*Attorneys for Plaintiff Tryke
Companies SO NV, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

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

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



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

8 **FINDINGS OF FACT**

9 1. Since 2016, Plaintiff Tryke has operated the Nevada-licensed “Reef Dispensary”
10 marijuana dispensary located at 3400 Western Avenue, Las Vegas, Nevada 89109. Defendant
11 MM Development Company, Inc. is a competing company that in late 2018 opened its “Planet
12 13” marijuana dispensary fewer than 900 feet from Reef dispensary.

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

10 **CONCLUSIONS OF LAW**

11 **Preliminary Injunction Standard**

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

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

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

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

28 ///



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

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

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

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

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

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

28 ///



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

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

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

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

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

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

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

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

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

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



30. 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)).

31. 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.”).

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

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

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

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

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

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

///



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

3 **ORDER**

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

6 IT IS FURTHER ORDERED:

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

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


DISTRICT COURT JUDGE
DATED this ____ day of September 2020.

14 Submitted by:

15 H1 LAW GROUP
16
17 

18 Eric D. Hone, NV Bar No. 8499
19 Joel Z. Schwarz, NV Bar No. 9181
20 Jamie L. Zimmerman, NV Bar No. 11749
21 Moorea L. Katz, NV Bar No. 12007
22 701 N. Green Valley Parkway, Suite 200
Henderson NV 89074

23 Paul A. Conant, AZ Bar No. 012667
24 (Pro Hac Vice)
25 Conant Law Firm
2398 East Camelback Road, Suite No. 925
Phoenix, AZ 85016

26 *Attorneys for Plaintiff*
27 Tryke Companies SO NV, LLC
28

BBB 62A 02D4 A3A2
Jim Crockett
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-804883-C

8 vs.

DEPT. NO. Department 24

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

11 **AUTOMATED CERTIFICATE OF SERVICE**

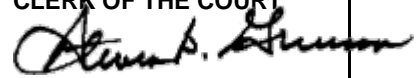
12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
16 case as listed below:

17 Service Date: 9/10/2020

18 Patricia Stoppard	p.stoppard@kempjones.com
19 Ian McGinn	i.mcgin@kempjones.com
20 Ali Augustine	a.augustine@kempjones.com
21 Nathanael Rulis	n.rulis@kempjones.com
22 Alisa Hayslett	a.hayslett@kempjones.com
23 Eric Hone	eric@h1lawgroup.com
24 Jamie Zimmerman	jamie@h1lawgroup.com
25 Pamela Montgomery	p.montgomery@kempjones.com
26 Moorea Katz	moorea@h1lawgroup.com
27 Karen Morrow	karen@h1lawgroup.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Joel Schwarz	joel@h1lawgroup.com
Candice Mata	lawclerk@h1lawgroup.com
Lisa Stewart	lisa@h1lawgroup.com
Judy Estrada	judy@h1lawgroup.com
Elias George	Elias@H1lawgroup.com
Paul Conant	docket@conantlawfirm.com



Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
n.rulis@kempjones.com
Ian P. McGinn, Esq. (#12818)
i.mcgin@kempjones.com
KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
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

HEARING REQUESTED

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

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

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

4
5 **DECLARATION OF IAN P. MCGINN IN SUPPORT MOTION FOR**
6 **RECONSIDERATION/TO AMEND/FOR CLARIFICATION**

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

8 1. I am one of the attorneys representing MM Development Company, Inc. (“Planet
9 13”) in this action pending before this court, Case No. A-19-804883-C. I make this Declaration
10 in support of Planet 13’s Motion for Reconsideration of the Court’s Order Granting Plaintiff’s
11 Motion for Preliminary Injunction or, in the Alternative, Motion To Amend Pursuant To NRCP
12 52(b) or, in the Alternative, Motion for Clarification on Order Shortening Time. I am competent
13 to testify to the facts stated herein.

14 2. This Court entered the Preliminary Injunction (as defined herein) against Planet
15 13 enjoining Planet 13 from undertaking certain actions on September 11, 2020.

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

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

20 DATED this 25th day of September, 2020.

21
22 /s/ Ian P. McGinn
23 IAN P. MCGINN, ESQ.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 Planet 13 respectfully asks the Court to reconsider its entry of the Preliminary Injunction
26 against Planet 13 pursuant to EDCR 2.24, and/or amend the Preliminary Injunction’s Findings of
27 Fact and Conclusions of Law pursuant to NRCP 52(b).
28

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

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

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

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

8 **I.**

9 **STATEMENT OF RELEVANT FACTS**

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

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

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

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

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

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

B. Procedural History

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

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

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

II.

ARGUMENT

A. Standard of Review.

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

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

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

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

B. Reef Cannot Succeed on Its Claims.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

///

KEMP JONES, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

III.

CONCLUSION

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

DATED this 25th day of September, 2020.

KEMP JONES, LLP

/s/ Ian P. McGinn

Will Kemp, Esq. (#1205)

Nathanael R. Rulis, Esq. (#11259)

Ian P. McGinn, Esq. (#12818)

3800 Howard Hughes Parkway, 17th Floor

Las Vegas, Nevada 89169

Attorneys for Defendant

MM Development Company, Inc.

CERTIFICATE OF SERVICE

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

/s/ Ali Augustine

An employee of Kemp Jones, LLP

Exhibit A

Declaration of Russell Alexander Giannaris

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

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

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

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

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

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

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

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


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

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

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

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

Executed this 24th day of September 2020.



Russell Giannaris

Exhibit B

4:25



Comments



tachin li

on 03/12/2019 at 04:01 AM

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



Mark

on 03/10/2019 at 03:04 AM

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



Mark

on 03/10/2019 at 01:43 AM

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



jackie

on 03/04/2019 at 07:38 PM

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



al

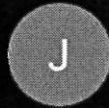
on 02/25/2019 at 10:51 AM



4:19 ↗



Comments



jcalder3

on 11/25/2019 at 01:18 AM

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



jcalder3

on 11/25/2019 at 01:18 AM

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



Mojii

on 11/18/2019 at 03:09 PM

Thank you



Thomas

on 11/08/2019 at 11:01 AM

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



4:36



Comments



slayer316

on 03/01/2020 at 12:57 PM

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



Fuck Head

on 02/27/2020 at 10:23 PM

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



Gonch

on 02/18/2020 at 10:32 PM

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



rome

on 02/11/2020 at 04:41 PM



Does REEF not do kickbacks??

4:34



Comments

Happy



phil2502

on 07/06/2020 at 01:28 PM

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



gerardo lefebre

on 03/14/2020 at 05:06 PM

\$10 for rite



silly goose

on 03/13/2020 at 04:16 AM

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



Louie

on 03/03/2020 at 09:09 PM

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



silly goose

on 03/02/2020 at 11:21 PM



Exhibit C

1:44



Comments



nunataks

on 09/21/2020 at 05:08 AM

Reef sucks!



Rides from A 2 Z

on 09/19/2020 at 07:49 PM

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



mike

on 09/14/2020 at 09:23 PM

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



Alexion

on 09/14/2020 at 08:24 PM

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



shrimppot

on 09/12/2020 at 07:29 PM

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



Peter

on 09/12/2020 at 02:51 PM



1:43



Comments



Peter

on 09/22/2020 at 01:44 AM

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



UberVegasDriver

on 09/21/2020 at 06:31 PM

No payouts is bullshit! Fuck P13!



BD

on 09/21/2020 at 03:20 PM

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



nunataks

on 09/21/2020 at 05:08 AM

Reef sucks!



Rides from A 2 Z

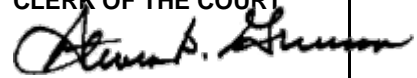
on 09/19/2020 at 07:49 PM

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



mike





Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
n.rulis@kempjones.com
Ian P. McGinn, Esq. (#12818)
i.mcgin@kempjones.com
KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
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 CASE APPEAL STATEMENT**

1. Name of appellants filing this Case Appeal Statement:

MM Development Company, Inc. ("Planet 13").

2. Identify the judge issuing the decision, judgment or order appealed from:

Honorable Jim Crockett.

3. Identify each appellant and the name and address of counsel for each appellant:

MM Development Company, Inc. ("Planet 13"):

KEMP JONES, LLP
Will Kemp, Esq.
Nathanael R. Rulis, Esq.
Ian P. McGinn, Esq.
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

1 **4. Identify each respondent and the name and address of appellate counsel if known,**
2 **for each respondent (if the name of a respondent's appellate counsel is unknown, indicate**
3 **as much and provide the name and address of that respondent's trial counsel):**

4 Tryke Companies SO NV LLC ("Reef"):

5 H1 LAW GROUP
6 Eric D. Hone, Esq.
7 Joel Z. Schwarz, Esq.
8 Jamie L. Zimmerman, Esq.
9 Moorea L. Katz, Esq.
10 701 N. Green Valley Parkway, Suite 200
11 Henderson, Nevada 89074

12 CONANT LAW FIRM
13 Paul A. Conant, Esq. (*pro hac vice*)
14 2398 East Camelback Road
15 Phoenix, Arizona 85016

16 **5. Indicate whether any attorney identified above in response to question 3 or 4 is not**
17 **licensed to practice law in Nevada, and if so, whether the district court granted that attorney**
18 **permission to appear under SCR 42 (attach a copy of any district court order granting such**
19 **permission):**

20 Paul A. Conant, counsel for Reef, is not licensed in Nevada. The District Court
21 Order Admitting to Practice regarding Mr. Conant's request to appear pursuant to
22 SCR 42 was entered on March 4, 2020, and is attached hereto as **Exhibit 1**.

23 **6. Indicate whether appellant was represented by appointed or retained counsel in the**
24 **district court:**

25 Appellant was represented by retained counsel in the district court.

26 **7. Indicate whether appellant is represented by appointed or retained counsel on this**
27 **appeal:**

28 Appellant is represented by retained counsel on appeal.

29 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and**
30 **the date of entry of the district court order granting such leave:**

31 Appellant did not request leave to proceed in forma pauperis.

32 **9. Indicate the date of proceedings commenced in the district court:**

33 November 5, 2019.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

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

On August 24, 2020, nearly ten months after filing its Complaint, Reef moved for a preliminary injunction on an Order Shortening Time. The hearing on the motion for preliminary injunction was held on September 3, 2020. The District Court granted Reef's motion for preliminary injunction and the Court's corresponding Order was entered on September 11, 2020. Planet 13 appeals from this Order and any other rulings and decisions made appealable thereby.

On September 25, 2020, Planet 13 filed a Motion for Reconsideration of the Court's Order Granting Plaintiff's Motion for Preliminary Injunction or, in the Alternative, Motion to Amend Pursuant to NRCP 52(b) or, in the Alternative, Motion for Clarification on Order Shortening Time, which is currently pending before the District Court.¹

11. Indicate whether the case has been the subject of an appeal or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

N/A.

12. Indicate whether this appeal involves child custody or visitation:

N/A.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

¹ Planet 13 files the instant Case Appeal Statement and corresponding Protective Notice of Appeal out of an abundance of cause and to protect all of Planet 13's appellate rights and remedies.

KEMP JONES, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1 The parties have agreed to submit this matter to a settlement conference.

2 DATED this 9th day of October, 2020.

3 **KEMP JONES, LLP**

4 /s/ Nathanael Rulis

5 Will Kemp, Esq. (#1205)

6 Nathanael R. Rulis, Esq. (#11259)

7 Ian P. McGinn, Esq. (#12818)

8 3800 Howard Hughes Parkway, 17th Floor

9 Las Vegas, Nevada 89169

10 *Attorneys for Defendant*

11 *MM Development Company, Inc.*

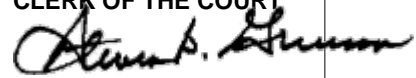
KEMP JONES, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of October, 2020, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S CASE APPEAL STATEMENT** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Ali Augustine
An employee of Kemp Jones, LLP

Exhibit 1



1 **NOEJ**

2 **H1 LAW GROUP**

3 Eric D. Hone, NV Bar No. 8499

4 eric@h1lawgroup.com

5 701 N. Green Valley Parkway, Suite 200

6 Henderson NV 89074

7 Phone 702-608-3720

8 Fax 702-608-3759

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

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

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

14 Plaintiff,

15 vs.

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

20 Defendants.

Case No. A-19-804883-C

Dept. No. 24

21 **NOTICE OF ENTRY OF ORDER**
22 **ADMITTING PAUL A. CONANT TO**
23 **PRACTICE**

24 PLEASE TAKE NOTICE that on the 28th day of February 2020, an Order Admitting to
25 Practice was entered in the above-reference matter. A copy of said Order is attached hereto.

26 Dated this 4th day of March 2020.

27 **H1 LAW GROUP**



28 Eric D. Hone, NV Bar No. 8499

eric@h1lawgroup.com

701 N. Green Valley Parkway, Suite 200

Henderson NV 89074

Attorneys for Plaintiff

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



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

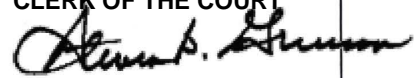


CERTIFICATE OF SERVICE

The undersigned, an employee of H1 Law Group, hereby certifies that on the 4th 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



**ORAP
H1 LAW GROUP**

Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com
701 N. Green Valley Parkway, Suite 200
Henderson NV 89074
Phone 702-608-3720
Fax 702-608-3759

Attorneys for Plaintiff Tryke Companies SO NV, LLC

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants.

Case No. A-19-804883-C

Dept. No. 24

ORDER ADMITTING TO PRACTICE

PAUL A. CONANT having filed his Motion to Associate Counsel under Nevada
Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a
Certificate of Good Standing for the State of Arizona, and the State Bar of Nevada Statement;
said application having been noticed, no objections having been made, and the Court being fully
apprised in the premises. and good cause appearing, it is hereby

ORDERED, that said application is hereby granted, and PAUL A. CONANT is hereby
admitted to practice in the above entitled Court for the purposes of the above entitled matter
only.

Dated this 24 day of FEB 2020.



JUDGE JIM CROCKETT

///





1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUBMITTED BY

H1 Law Group

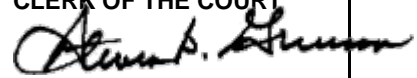

Eric D. Hone, NV Bar No. 8499

eric@h1lawgroup.com

701 N. Green Valley Parkway, Suite 200

Henderson NV 89074

Attorneys for Plaintiff



Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
n.rulis@kempjones.com
Ian P. McGinn, Esq. (#12818)
i.mcgin@kempjones.com
KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
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 PROTECTIVE NOTICE OF
APPEAL**

PROTECTIVE NOTICE OF APPEAL

Please take note that Defendant MM Development Company, Inc. ("Planet 13"), by and through counsel of record, KEMP JONES, LLP hereby appeals to the Nevada Supreme Court from the Order Granting Plaintiff Tryke Companies SO NV LLC'S ("Reef") Motion for Preliminary Injunction, entered in this action on September 11, 2020, attached hereto as **Exhibit 1**, as well as all orders, rulings, or decisions relating thereto, and any other order, ruling, or decision made appealable by the same.

Planet 13 acknowledges that this Protective Notice of Appeal is likely premature in light of its pending Motion for Reconsideration of the Court's Order Granting Plaintiff's Motion for Preliminary Injunction or, in the Alternative, Motion to Amend Pursuant to NRCP 52(b) or, in

KEMP JONES, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1 the Alternative, Motion for Clarification on Order Shortening Time before the District Court.
2 However, Planet 13 files this Notice out of an abundance of caution to preserve all rights.

3 DATED this 9th day of October, 2020.

4 **KEMP JONES, LLP**

5 /s/ Nathanael Rulis

6 Will Kemp, Esq. (#1205)

7 Nathanael R. Rulis, Esq. (#11259)

8 Ian P. McGinn, Esq. (#12818)

9 3800 Howard Hughes Parkway, 17th Floor

10 Las Vegas, Nevada 89169

11 *Attorneys for Defendant*

12 *MM Development Company, Inc.*

KEMP JONES, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of October, 2020, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S PROTECTIVE NOTICE OF APPEAL** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Ali Augustine
An employee of Kemp Jones, LLP

Exhibit 1



NEFF
H1 LAW GROUP
Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com
Joel Z. Schwarz, NV Bar No. 9181
joel@h1lawgroup.com
Jamie L. Zimmerman, NV Bar No. 11749
jamie@h1lawgroup.com
701 N. Green Valley Parkway, Suite 200
Henderson NV 89074
Phone 702-608-3720
Fax 702-703-1063

Paul A. Conant, AZ Bar No. 012667
paulconant@conantlawfirm.com
(Pro Hac Vice)
Conant Law Firm
2398 East Camelback Road, Suite No. 925
Phoenix, AZ 85016
Phone 602-508-9010
Fax 602-508-9015

*Attorneys for Plaintiff Tryke
Companies SO NV, LLC*

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

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

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

///

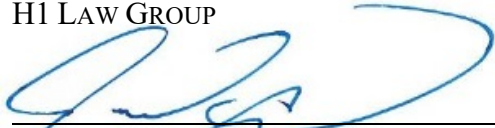
///

///

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

2 DATED this 11th day of September 2020.

3 H1 LAW GROUP

4 
5 Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com

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

7 Jamie L. Zimmerman, NV Bar No. 11749
jamie@h1lawgroup.com
8 701 N. Green Valley Parkway, Suite 200
9 Henderson NV 89074

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

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

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

15 **CERTIFICATE OF SERVICE**

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

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

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



Heather S. Hume
CLERK OF THE COURT

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



FFCO

H1 LAW GROUP

Eric D. Hone, NV Bar No. 8499

eric@h1lawgroup.com

Joel Z. Schwarz, NV Bar No. 9181

joel@h1lawgroup.com

Jamie L. Zimmerman, NV Bar No. 11749

jamie@h1lawgroup.com

Moorea L. Katz, NV Bar No. 12007

moorea@h1lawgroup.com

701 N. Green Valley Parkway, Suite 200

Henderson NV 89074

Phone 702-608-3720

Fax 702-703-1063

Paul A. Conant, AZ Bar No. 012667

paulconant@conantlawfirm.com

(Pro Hac Vice)

Conant Law Firm

2398 East Camelback Road, Suite No. 925

Phoenix, AZ 85016

Phone 602-508-9010

Fax 602-508-9015

*Attorneys for Plaintiff Tryke
Companies SO NV, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

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

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



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

FINDINGS OF FACT

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

10 **CONCLUSIONS OF LAW**

11 **Preliminary Injunction Standard**

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

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

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

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

28 ///



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

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

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

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

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

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

28 ///



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



36. It is axiomatic that “[t]he public interest is not disserved by an injunction that precludes illegal or tortious conduct.” *See Shell Offshore Inc. v. Greenpeace, Inc.*, 864 F. Supp. 2d 839, 852 (D. Alaska 2012). “Ensuring that [d]efendants do not further profit from illegal activity is in the public interest.” *Huang Yiqiao v. California Investment Fund, LLC*, Case No. CV 18-6413-MWF, 2019 WL 7997237, *4 (C.D. Cal. Nov. 27, 2019).

37. Analogously, in the trademark context, courts routinely address the public interest factor in favoring of issuing injunctions to protect the public from confusion or deception with respect to consumer transactions. *See, e.g., Phillip Morris USA Inc. v. Shalabi*, 352 F. Supp. 2d 1067, (C.D. Cal. 2004) (noting strong public interest in protecting consumers from confusion).

38. The balance of the hardships and public interest weigh in favor of issuing Tryke’s requested preliminary injunction. Planet 13’s actions are inducing conduct prohibited by Nevada statute and regulation and enticing drivers to risk their licensure by incentivizing them to engage in unlawful diversion. In addition, Planet 13’s actions are deceiving customers and violating their right to choose which dispensary to patronize. Personal freedom to make safe choices to legally purchase marijuana is a concept which underpins Nevada’s marijuana legalization laws.

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

Security Bond

40. “[N]o restraining order or preliminary injunction shall issue except upon the giving of adequate security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to be wrongfully enjoined or restrained.” NRCP 65(d).

41. Planet 13 stands to suffer no appreciable losses and will suffer only minimal harm as a result of an injunction.

42. Therefore, a security bond in the amount of \$10,000 is sufficient for issuance of this injunctive relief.

///



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

3 **ORDER**

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

6 IT IS FURTHER ORDERED:

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

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


DISTRICT COURT JUDGE
DATED this ____ day of September 2020.

14 Submitted by:

15 H1 LAW GROUP
16 
17

18 Eric D. Hone, NV Bar No. 8499
19 Joel Z. Schwarz, NV Bar No. 9181
20 Jamie L. Zimmerman, NV Bar No. 11749
21 Moorea L. Katz, NV Bar No. 12007
22 701 N. Green Valley Parkway, Suite 200
Henderson NV 89074

23 Paul A. Conant, AZ Bar No. 012667
24 (Pro Hac Vice)
25 Conant Law Firm
2398 East Camelback Road, Suite No. 925
Phoenix, AZ 85016

26 *Attorneys for Plaintiff*
27 Tryke Companies SO NV, LLC
28

BBB 62A 02D4 A3A2
Jim Crockett
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
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 Findings of Fact, Conclusions of Law and Order was served via the
court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

15 Service Date: 9/10/2020

16 Patricia Stoppard	p.stoppard@kempjones.com
17 Ian McGinn	i.mcgin@kempjones.com
18 Ali Augustine	a.augustine@kempjones.com
19 Nathanael Rulis	n.rulis@kempjones.com
20 Alisa Hayslett	a.hayslett@kempjones.com
21 Eric Hone	eric@h1lawgroup.com
22 Jamie Zimmerman	jamie@h1lawgroup.com
23 Pamela Montgomery	p.montgomery@kempjones.com
24 Moorea Katz	moorea@h1lawgroup.com
25 Karen Morrow	karen@h1lawgroup.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Joel Schwarz	joel@h1lawgroup.com
Candice Mata	lawclerk@h1lawgroup.com
Lisa Stewart	lisa@h1lawgroup.com
Judy Estrada	judy@h1lawgroup.com
Elias George	Elias@H1lawgroup.com
Paul Conant	docket@conantlawfirm.com



1 **OPPM**

2 **H1 LAW GROUP**

3 Eric D. Hone, NV Bar No. 8499

eric@h1lawgroup.com

4 Joel Z. Schwarz, NV Bar No. 9181

joel@h1lawgroup.com

5 Moorea L. Katz, NV Bar No. 12007

moorea@h1lawgroup.com

6 701 N. Green Valley Parkway, Suite 200

Henderson NV 89074

7 Phone 702-608-3720

8 Fax 702-703-1063

9 Paul A. Conant, AZ Bar No. 012667

paulconant@conantlawfirm.com

(Pro Hac Vice)

10 Conant Law Firm

2398 East Camelback Road, Suite 925

Phoenix, AZ 85016

11 Phone 602-508-9010

Fax 602-508-9015

12 *Attorneys for Plaintiff*

Tryke Companies SO NV, LLC

13
14 EIGHTH JUDICIAL DISTRICT COURT

15 CLARK COUNTY, NEVADA

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

18 Plaintiff,

19 vs.

20 MM DEVELOPMENT COMPANY, INC., dba
PLANET 13, a Nevada corporation; DOES I
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 THE COURT'S
ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION OR, IN THE
ALTERNATIVE, MOTION TO AMEND
PURSUANT TO NRCP 52(b) OR, IN THE
ALTERNATIVE, MOTION FOR
CLARIFICATION**

Hearing Date: October 27, 2020

Hearing Time: In Chambers

22
23
24
25
26 Plaintiff Tryke Companies SO NV, LLC ("Tryke" or "Plaintiff"), by and through
27 counsel, hereby files this opposition to the motion for reconsideration of the Court's order
28 granting plaintiff's motion for preliminary injunction or, in the alternative, motion to amend



1 pursuant to NRC 52(b) or, in the alternative, motion for clarification (the “Motion”) filed by
2 defendant MM Development Company, Inc. dba Planet 13 (“Planet 13” or “Defendant”).

3 This opposition is based upon the following memorandum of points and authorities; the
4 papers and pleadings already on file herein, including but not limited to Tryke’s motion for
5 preliminary injunction, incorporated by reference as if fully set forth herein; and any argument of
6 counsel the Court may allow should this matter be set for hearing.¹

7 MEMORANDUM OF POINTS AND AUTHORITIES

8 I. INTRODUCTION

9 If the arguments in Planet 13’s present Motion sound familiar, it is because it has made
10 them time and time again, each time to no avail. In its current re-iteration, Planet 13 argues the
11 preliminary injunction ordered by the Court (the “Preliminary Injunction”) halting Planet 13’s
12 kickbacks-for-diversion program for rideshare drivers should be reconsidered, amended, or
13 “clarified” (i.e., amended) based upon supposed new evidence. Upon closer inspection, however,
14 it is clear that the alleged “new” evidence is all information that was available to Planet 13 when
15 it filed its opposition to Tryke’s motion for preliminary injunction and when it argued against the
16 motion for preliminary injunction on September 3, 2020. It is also the same information available
17 at the time this action was filed and served, at the time of Planet 13’s Motion to Dismiss, and
18 during the same 10 months prior to Tryke’s preliminary injunction filings that it claims was a
19 “delay”.² In addition, the so-called “new” evidence does not change the Court’s prior analysis; to
20 the contrary, it only confirms the Court was correct in entering the Preliminary Injunction. Thus,
21 for the reasons discussed below, the Motion should be denied, and the Court also should consider
22 whether additional relief in Tryke’s favor is warranted.

23 ///

24 ///

25 ¹ The Motion is presently set for hearing In Chambers, and Tryke respectfully submits that for the reasons set forth
26 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.

27 ² There was no delay. There was a global pandemic (still ongoing) that halted in-person dispensary sales in Las Vegas,
28 and thus halted the illegal kickbacks, thereby mooting the issue for a period of time. Upon resumption of Planet 13’s
kickbacks program, Tryke properly sought injunction. Again, this has already been raised before this Court.



1 **II. LEGAL ARGUMENT**

2 **A. There Is No Basis for Reconsideration or Amendment**
3 **of the Preliminary Injunction**

4 **1. Legal standard for reconsideration**

5 A district court may reconsider a previously decided issue only in the rare circumstance
6 where substantially different evidence is subsequently introduced, or the decision is clearly
7 erroneous. *See Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*,
8 113 Nev. 737, 741, 941 P.2d 486, 489 (1997); *Moore v. City of Las Vegas*, 92 Nev. 402, 405,
9 551 P.2d 244, 246 (1976); *see also Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890
10 (9th Cir. 2000) (Reconsideration is an “extraordinary remedy, to be used sparingly in the
11 interests of finality and conservation of judicial resources.”) (internal citations omitted).

12 A reconsideration motion is properly denied where it reasserts the same arguments the
13 court has already ruled upon. *See Maples v. Quinn*, 126 Nev. 735, 367 P.3d 796 (2010) (Table);
14 *Wallace v. Smith*, No. 70574, 2018 WL 1426396, at *2 (Nev. App. Mar. 5, 2018); *Gaines v.*
15 *State*, 130 Nev. 1178 (2014); *see also Deerpoint Grp., Inc. v. Agrigenix, LLC*, 400 F. Supp. 3d
16 988, 993 (E.D. Cal. 2019) (“The mere disagreement with the court’s prior decision or the mere
17 recapitulation of arguments that were made previously but rejected are not sufficient bases to
18 grant reconsideration.”). In addition, a motion for reconsideration may not be used to present
19 evidence for the first time which could reasonably have been raised earlier in the litigation. *Riger*
20 *v. Hometown Mortg., LLC*, 104 F. Supp. 3d 1092, 1095 (D. Nev. 2015) (citing *Carroll v.*
21 *Nakatani*, 342 F.3d 934, 945 (9th Cir.2003)).

22 **2. Legal standard for amending an order pursuant to NRCP 52(b)**

23 The primary purpose of Rule 52(b) is to enable an appellate court to obtain a correct
24 understanding of the factual issues determined by the trial court as a basis for the conclusions of
25 law and judgment entered thereon. A party who failed to prove his strongest case is not entitled
26 to a second opportunity by moving to amend a finding of fact and a conclusion of law. *Matter of*
27 *Estate of Herrmann*, 100 Nev. 1, 21 n.16, 677 P.2d 594, 607, n.16 (1984). Rule 52(b) does not

28 ///



1 provide for a reversal of the judgment or for a denial of the facts as found. *Id.* Rule 52(b) also is
2 not intended as a vehicle for securing a re-hearing on the merits. *Id.*

3 **3. Planet 13 is simply re-arguing already decided, and correctly decided, issues**

4 In this action, Planet 13 has filed a motion to dismiss, a motion for reconsideration of the
5 Court's order denying its motion to dismiss, an opposition to Tryke's motion for preliminary
6 injunction, and now a motion for reconsideration of the order granting Tryke's motion for
7 preliminary injunction. In every one of those filings, it has made the same two internally
8 inconsistent arguments: (1) it does not have a kickback program which incentivizes rideshare
9 passenger diversion; and (2) there is nothing wrong with its supposedly non-existent kickback
10 program. These arguments have been squarely rejected by the Court in every instance, and the
11 Court did not err in any of its determinations; to the contrary, the Court's rulings have been both
12 legally and factually supported.

13 **4. Planet 13 has not presented any previously unavailable evidence**

14 In an attempt to avoid the clear prohibition on using a motion for reconsideration simply
15 to re-argue the same points, Planet 13 purports to present "new" evidence in the form of: (1) a
16 declaration from Planet 13 security personnel Russell Giannaris; and (2) selected kickback app
17 comments by rideshare drivers. *See* Motion at Exhibits A, B.³ The substance of this "new"
18 evidence is discussed in the following section. However, as a threshold matter, the declaration
19 presented as Exhibit A and the kickback app comments presented as Exhibit B were available to
20 Planet 13 at the time it filed its opposition to Tryke's motion for preliminary injunction.

21 Specifically, in his Declaration, Russell Giannaris states that he has been employed by
22 Planet 13 since October 2018. Mr. Giannaris therefore was an employee of Planet 13 in
23 November 2019, when this lawsuit was filed and served, stating the very claims at issue along

24 _____
25 ³ Planet 13 also has presented select comments from drivers after entry of the Preliminary Injunction. *See* Motion at
26 Exhibit C. While certain drivers clearly are upset that Planet 13 will not be paying them kickbacks for diverting
27 customers, thus confirming that there was a diversion-kickback program in place, the reactions of drivers have no
28 bearing on whether the Court's ruling on Tryke's motion for preliminary injunction should be reconsidered or
amended. If anything, these comments disprove Planet 13's prior contention that it fairly competes with, *inter alia* by
operating a superior business and instead demonstrate that rideshare drivers will divert passengers to whatever
dispensary is paying a kickback. Planet 13's inclusion of these comments also is noteworthy in that it further evidences
Planet 13's knowledge of the diversion that it has incentivized.



1 with Tryke's intention to obtain the injunctive relief that it in fact has obtained; in December
2 2019, when Planet 13 filed its Motion to Dismiss; on August 21, 2020, when Planet 13 received
3 a courtesy copy of Tryke's motion for preliminary injunction and application for order
4 shortening time⁴; on August 28, 2020, when Planet 13 filed its opposition to Tryke's motion for
5 preliminary injunction; and on September 3, 2020, when the Court heard argument on Tryke's
6 motion for preliminary injunction. Apart from Planet 13's ongoing efforts to withhold documents
7 and conceal the identity of its own witnesses⁵, there is simply no reason why Planet 13 could not
8 have obtained and presented Mr. Giannaris' declaration in conjunction with the briefing and/or
9 hearing on Tryke's motion for preliminary injunction, if not long before.

10 Similarly, the select kickback app comments presented as Exhibit B to Planet 13's
11 Motion range in date from March 2019 through July 2020: all significantly predating Planet 13's
12 opposition to Tryke's motion for preliminary injunction. There can be no question the entirety of
13 the content in Exhibit B was available to Planet 13 when it filed its opposition to the motion.

14 In sum, because the "new" evidence upon which Planet 13 bases the fourth re-iteration of
15 its arguments were previously available, Planet 13's request for reconsideration and/or
16 amendment of the Preliminary Injunction is wholly improper.

17 ///

18 ///

19 ///

20 ⁴ In its present Motion, Planet 13 contends it only had 3 days to oppose Tryke's motion for preliminary injunction.
21 This assertion, however, ignores the fact that a courtesy copy of the motion and application for order shortening time
22 were provided to Planet 13 on August 21, 2020, the same day the motion was submitted to the Court. In addition, on
23 August 24, 2020, after the Court had granted Tryke's request for an order shortening time and set the hearing on
24 Tryke's motion for preliminary injunction for September 3, 2020 and the deadline for Planet 13 to file an opposition
25 for August 27, 2020, Planet 13's counsel emailed Tryke's counsel and requested until August 28, 2020 to file its
26 opposition. Thus, Planet 13 filed its opposition on the date it had requested, and it is only now in seeking
27 reconsideration that it has falsely contended it only had three days to file said opposition.

28 ⁵ Tryke has previously noted Planet 13's gamesmanship in withholding pertinent and discoverable information in this
case. *See, e.g.*, Tryke's reply in support of its motion for preliminary injunction, already on file herein, where Tryke
discusses Planet 13's disclosure of a single document with its Initial Disclosures. The Giannaris Declaration is another
glaring example of Planet 13's lack of good faith in discovery. In its Initial Disclosures served August 20, 2020, Planet
13 did not disclose Mr. Giannaris as a witness. Planet 13 then supplemented its Initial Disclosures on September 23,
2020 – two days before filing its present Motion. Planet 13's supplemental disclosure did not include any additional
documents (i.e., as of the filing of this opposition, Planet 13 still has produced only one document in this case) but did
add in numerous witnesses. Mr. Giannaris, however, was not among them.



5. Planet 13’s “new” evidence does not warrant reconsideration or amendment of the Preliminary Injunction

Even if the Court could consider another rehashing of the same arguments and evidence which was available to Planet 13 when it previously asserted the same arguments, Planet 13 has not presented anything which should alter the Court’s prior analysis and rulings. To the contrary, the Giannaris Declaration confirms not only that Planet 13 does in fact have a kickback program, but also that kickbacks will be paid for diversion unless the diversion is so blatant that Planet 13 cannot look the other way. Similarly, the selected driver comments demonstrate that drivers must coerce passengers to change their intended destination within rideshare apps so that the drivers can avail themselves to the incentives offered by Planet 13. Planet 13 thus only looks at the final destination – it does not look at travel history or make any inquiry into the ride beyond the final destination. This is precisely why the injunctive relief requested by Tryke and awarded by the Court was warranted.

B. There Is No Basis for Clarifying the Preliminary Injunction

In a single paragraph on the last page of its Motion, Planet 13 argues the Court should “clarify” the Preliminary Injunction’s prohibition of paying kickbacks for diversion. There are two problems with this argument. First, this is a request to amend couched within a request to clarify, and as already set forth above, Planet 13 has not established any factual or legal basis for amendment. Second, this request for “clarification” is a transparent attempt to create a loophole in the Preliminary Injunction so that Planet 13 can continue to incentivize kickbacks while foisting all responsibility for obfuscating the diversion on rideshare drivers.

C. Planet 13 Admits It Has the Ability to Detect and Determine Diversion by Drivers

Planet 13 seeks by its request for “clarification” to chip away at the Preliminary Injunction, to carve out for itself the ability to pay drivers to divert from other dispensaries, *just not* Reef. That is an admission of Planet 13’s knowledge, motivation, participation, and intentions to engage in illegal diversion, which goes precisely to those elements as part of

///



1 Tryke's claims. Also, it demonstrates Planet 13's knowledge of its ability to determine diversion
2 at the time a kickback is paid.

3 **D. Planet 13 Now Admits that Kickbacks Are "Made to Further its Business"**

4 As Tryke has previously pointed out, no one throws money away for no reason.
5 "Tipping" a driver for doing his job – a job already paid for by customers – makes no economic
6 sense. There is more to the kickbacks than simple promotion. Planet 13 would not have
7 requested a \$1,000,000 bond, nor would it be fighting this hard, knowing that the same drivers
8 that once diverted to Planet 13 are now diverting to another dispensary paying kickbacks. Planet
9 13 knows full well it is not simple promotion that its kickbacks are paying for – it is, in fact,
10 illegal diversion, in violation of Nevada Law. While a competitor is free to promote their
11 business through legitimate means, such as product discounts, advertising, and the like, a
12 competitor is not privileged or justified in breaking the law, knowingly participating in and
13 inducing illegal diversion.

14 **E. The Court Should Sanction Planet 13 for its Frivolous Motion**

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

19 Here, the Court already ruled upon the arguments that Planet 13 re-raises (now for the
20 fourth time) in its Motion. Planet 13's arguments fail for the exact reasons they failed three times
21 before. Moreover, the supposed "new" evidence upon which Planet 13's Motion is based is not
22 new at all, nor does it have any impact on the Court's prior decisions. Planet 13's Motion has
23 served only to unnecessarily multiply the proceedings and increase the litigation costs for all
24 parties. Planet 13 has thus engaged in abusive litigation practices and should be subject to
25 sanctions. At minimum, Tryke should be awarded the reasonable attorney fees and costs incurred
26 in opposing Planet 13's frivolous Motion.

27 ///

28 ///



1 **III. CONCLUSION**

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

5 Dated this 9th day of October 2020.

6 H1 LAW GROUP

7 

8 Eric D. Hone, NV Bar No. 8499
9 eric@h1lawgroup.com
10 Joel Z. Schwarz, NV Bar No. 9181
11 joel@h1lawgroup.com
12 Moorea L. Katz, NV Bar No. 12007
13 moorea@h1lawgroup.com
14 701 N. Green Valley Parkway, Suite 200
15 Henderson NV 89074

16 Paul A. Conant, AZ Bar No. 012667
17 paulconant@conantlawfirm.com
18 (*Pro Hac Vice*)
19 Conant Law Firm
20 2398 East Camelback Road, Suite 925
21 Phoenix, AZ 85016

22 *Attorneys for Plaintiff*
23 *Tryke Companies SO NV, LLC*

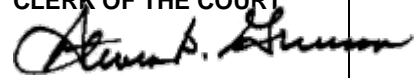
24 **CERTIFICATE OF SERVICE**

25 The undersigned, an employee of H1 Law Group, hereby certifies that on the 9th day of
26 October 2020, she caused a copy of the foregoing, to be transmitted by electronic service in
27 accordance with Administrative Order 14.2, to all interested parties, through the Court's

28 **Odyssey E-File & Serve** system:



Karen M. Morrow, an employee of H1 LAW GROUP



Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
n.rulis@kempjones.com
Ian P. McGinn, Esq. (#12818)
i.mcgin@kempjones.com
KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
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 FOR RECONSIDERATION
OF THE COURT'S ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION OR, IN
THE ALTERNATIVE, MOTION TO
AMEND PURSUANT TO NRCP 52(b)
OR, IN THE ALTERNATIVE, MOTION
FOR CLARIFICATION**

Hearing Date: October 27, 2020

Hearing Time: In Chambers

I.

INTRODUCTION

Rather than address the substance of Planet 13's Motion, Reef's Opposition consists almost entirely of conclusory allegations regarding the propriety of Planet 13's alleged actions and Reef's unsupported, irrelevant, and/or speculative arguments regarding Reef's own view of the litigation. Contrary to Reef's assertion, Planet 13's request for reconsideration and/or amendment is unquestionably proper. There can be no legitimate dispute Planet 13 did not have a meaningful opportunity to fully gather and submit pertinent evidence to refute Reef's

conclusory allegations supported by layers of inadmissible hearsay. Despite waiting nearly 10 months after filing its Complaint, Reef’s Motion for Preliminary Injunction was filed on an order shortening time, which diminished Planet 13’s ability to gather additional evidence like that provided in its Motion. Once Planet 13 had the practical ability to gather additional evidence it did so (some of which was not even available until *after* the injunction was entered, e.g., the Kickback app comments contained in Exhibit C), and provided this evidence in support of its Motion.

Planet 13’s additional evidence further demonstrates Reef cannot succeed on the merits of its claims. The crux of the Motion revolves around whether Planet 13’s compensation program is unlawful or improper because this finding is required for Reef to succeed on all of its claims. Planet 13’s additional evidence demonstrates that Planet 13 already actively takes steps to discourage rideshare drivers from attempting to divert passengers and enjoining Planet 13’s compensation program does nothing to stop or prevent additional diversion – because Planet 13 does not pay for or encourage diversionary practices. Reef cannot demonstrate Planet 13’s compensation program actually encourages diversion or that Planet 13 has acted with the requisite intent to harm Reef. As the Preliminary Injunction is based entirely on these erroneous findings, the Court must vacate it. Therefore, Planet 13 respectfully asks the Court to reconsider its entry of the Preliminary Injunction against Planet 13, and/or amend pursuant to NRCP 52(b).

Reef likewise misconstrues Planet 13’s request for clarification and does not actually address the substance of Planet 13’s request. Preliminary injunctions must be narrowly tailored to redress the *specific harm* alleged. There is no dispute the Preliminary Injunction is overly broad because it seeks to enjoin Planet 13 from actions that have absolutely nothing to do with the issues in this litigation. While it is clear Reef fancies itself the diversion police, Reef cannot seek to redress purported harm to persons other than Reef. Hence, Planet 13 requests that the Court clarify and/or modify the Preliminary Injunction to properly limit its scope to the specific harm alleged by Reef in this litigation.

Finally, the Court must reject Reef’s baseless request for sanctions. Planet 13 filed the Motion based on additional evidence and its contention the Court’s ruling was clearly erroneous,

which Planet 13 supported with ample legal authority. Reef's unsurprising disagreement with Planet 13's position does not render the Motion frivolous. Reef essentially seeks to punish Planet 13 for exercising its right to defend against Reef's claims. However, Planet 13's defense against Reef's claims does not amount to an abusive litigation tactic or warrant sanctions. Nor does Planet 13's prior motion to dismiss have any bearing on the issues herein. The fact is, Reef sought injunctive relief on an order shortening time and now seeks sanctions against Planet 13 for providing additional evidence it did not have the opportunity to obtain as a result. Reef cannot have it both ways and certainly cannot seek to sanction Planet 13 for simply exercising its right to defend itself. Therefore, the Court must reject Reef's unwarranted attempt to sanction Planet 13.

II.

ARGUMENT

A. The Court Must Reconsider or Amend the Preliminary Injunction.

EDCR 2.24 and Nevada law provide Planet 13 the ability to seek reconsideration of the Court's orders. Likewise, under NRCP 52(b), Planet 13 also has the ability to request the Court amend its findings and/or make additional findings. Planet 13's request for reconsideration and/or amendment is based on the additional evidence Planet 13 provided in support of its Motion. In addition, Planet 13 respectfully contends that the Court's ruling is clearly erroneous because it is based upon the incorrect assumption that Planet 13's compensation program is illegal or improper. Not surprisingly, Reef disagrees. Reef's agreement with the Court's ruling does not, however render, Planet 13's motion improper or somehow frivolous. Planet 13 has the right to defend itself against Reef's claims. Therefore, the Court must disregard Reef's baseless contention that Planet 13's Motion is somehow improper simply because Reef disagrees.

1. Planet 13's Additional Evidence Warrants Reconsideration.

Reef cannot legitimately dispute that the significantly abbreviated time Planet 13 had to oppose its Motion stripped Planet 13 of a meaningful opportunity to gather all pertinent evidence. Even if the date Reef provided a courtesy copy to Planet 13 was relevant, Reef served a copy of its Motion on Planet 13 *after hours on Friday, August 21, 2020*. The Motion for Preliminary

1 Injunction – on an order shortening time –was not *filed* until Monday, August 24, 2020. The fact
2 remains that even with the half-day extension to oppose the Motion Reef graciously agreed to
3 (August 28 before 5:00pm), Planet 13 had less than four business days to oppose the Motion for
4 Preliminary Injunction. This extremely shortened window did not provide counsel for Planet 13
5 the opportunity to gather all pertinent evidence or to interview numerous Planet 13 employees.

6 The new evidence in Planet 13’s Motion was only practically attainable after counsel for
7 Planet 13 had the opportunity to interview Planet 13 employees. Similarly, it was only after
8 counsel for Planet 13 conducted interviews with Planet 13 employees that it knew to look for the
9 evidence in Exhibit B. Finally, despite the fact that Reef conveniently attempts to gloss over this
10 evidence, there can be no dispute that the evidence in Exhibit C to the Motion is new evidence
11 (as these comments are all dated between September 12, 2020 and September 22, 2020 – after the
12 injunction was entered). Thus, no support exists for Reef’s contention that the Motion does not
13 properly seek relief pursuant to EDCR 2.24. Reef chose to file its Motion for Preliminary
14 Injunction on an order shortening time, as is its right, but it cannot now use that as a sword to
15 preclude Planet 13 from defending against its claims.

16 Reef does not even attempt to address the substance of Planet 13’s Motion. Instead, Reef
17 continues to rely entirely on its self-serving contention that Planet 13’s compensation program is
18 wrongful simply because Reef says it is. In doing so, Reef either misunderstands or purposefully
19 misconstrues Planet 13’s arguments. There is nothing inconsistent about Planet 13’s position.
20 Contrary to Reef’s assertion, Planet 13 has never claimed it does not provide compensation to
21 drivers. Planet 13 does, however, dispute that its compensation program is illegal. This is the crux
22 of Planet 13’s Motion. The fact that Reef labels Planet 13’s compensation as a “kickback”
23 program is not dispositive of this issue.

24 Planet 13’s uncontested additional evidence demonstrates that Planet 13 actively seeks to
25 dissuade drivers from attempting to divert their passengers to Planet 13 from other dispensaries.
26 Planet 13 cannot simultaneously allegedly encourage drivers to divert passengers to Planet 13
27 while also taking steps to actively discourage the same conduct. Moreover, even if Planet 13 could
28 conceivably be liable for the actions of unaffiliated drivers (it cannot), the steps Planet 13 takes

1 to dissuade such conduct outright refutes Reef’s unsupported and conclusory allegations. Reef’s
2 apparent belief that the actions Planet 13 takes are not “enough” does not close the door on this
3 issue or preclude the Court from considering this evidence on reconsideration. In light of this
4 additional evidence, Planet 13 respectfully requests that the Court reconsider its ruling and reverse
5 the Preliminary Injunction.

6 **2. The Preliminary Injunction is Clearly Erroneous Due to the Numerous Legal**
7 **and Evidentiary Shortcomings.**

8 Even without Planet 13’s additional evidence, the Preliminary Injunction cannot withstand
9 scrutiny due to the numerous evidentiary and legal shortcomings.

10 **a. The Preliminary Injunction is Not Supported by Substantial Evidence.**

11 The fact remains that Reef failed to provide substantial evidence to support the
12 Preliminary Injunction. First, there is no evidence Planet 13’s compensation program was
13 implemented with any intent to harm Reef. Instead, it was simply meant to compete on the same
14 grounds as the multitude of other dispensaries around the Las Vegas valley. This is evidenced by
15 the fact that Planet 13’s compensation program does not designate between rideshare drivers
16 whose passengers originally selected Planet 13 as their destination and those that do not. In reality,
17 Planet 13’s policy is to refuse to provide compensation to rideshare drivers whose passengers
18 indicate they did not ask or wish to be brought to Planet 13. Thus, the evidence shows that Planet
19 13 actively discourages this conduct. *See* Ex. A at ¶ 8. Planet 13 cannot simultaneously act with
20 the intent to harm Reef and to prevent and/or discourage the same harm.

21 Further, the Court’s ruling appears to be based, at least in part, on the mistaken assumption
22 that rideshare passengers do not have the ability to change their destinations once they chose a
23 destination or that any change must be the result of illegal diversion. Reef does not even attempt
24 to address this argument. There is nothing out of the ordinary, let alone illegal, for a passenger to
25 change his or her mind, even if based in part on suggestions (whether solicited or not) from the
26 driver, especially in a town like Las Vegas where tourists routinely request rides through a
27 rideshare app and are likely to seek recommendations or opinions from the drivers regarding theirs
28 and other similar destinations. In fact, the evidence presented by Reef of their own employees

1 recording conversations with drivers during their rides shows that they all ultimately agreed to
2 being dropped off at Planet 13. *See* Exhibits C-4, C-5, C-7, C-8, C-9, C-15, C-17, and C-20 to
3 Reef’s Motion for Preliminary Injunction.

4 Finally, the Preliminary Injunction is clearly erroneous because Reef has never provided
5 any actual evidence of its purported irreparable harm to justify the Preliminary Injunction. *See*
6 *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994). Reef has not demonstrated
7 any legitimate connection between Reef’s alleged harm and any actual conduct by Planet 13. In
8 reality, the Preliminary Injunction has no effect on any the purported harm Reef is suffering
9 because drivers – not Planet 13 – are the proximate cause of any alleged passenger diversion. *See*
10 Ex. C to Motion (showing drivers now dropping passengers off at other dispensaries instead of
11 Reef since the preliminary injunction was entered). This Court’s Preliminary Injunction is thus
12 grounded in false premises and inadmissible evidence and is, therefore, clearly erroneous.

13 ***b. Reef’s Claims Suffer from Numerous Fatal Deficiencies.***

14 Reef does not address the legal and evidentiary deficiencies of its claims as set forth in
15 the Motion. Reef failed to cite to any authority whatsoever for the proposition that a ***contractual***
16 relationship exists between a retailer and a ***potential*** retail consumer to sustain a claim against a
17 competitor for intentional interference. Reef also failed to address the lack of evidence regarding
18 Planet 13’s knowledge of any actual prospective contractual relationships. Instead, Reef
19 inexplicably continues to rely on its conclusory allegation that online messages posted by
20 anonymous, unaffiliated drivers somehow imputes knowledge to Planet 13. Finally, even setting
21 aside the fact that Planet 13 actively discourages drivers from engaging in so-called diversion,
22 *see* Ex. A at ¶ 8, Planet 13’s decision to employ its compensation program is justified and/or
23 privileged. Planet 13’s compensation program is not only legal, but consistent with a customary,
24 widespread practice utilized by numerous other dispensaries and in several other prominent
25 industries in Las Vegas. Planet 13’s compensation program does not become illegal or wrongful
26 simply because Reef labels the compensation as “kickbacks.”

27 For many of the same reasons, the Preliminary Injunction is clearly erroneous because
28 Reef cannot succeed on its civil conspiracy claim. Reef failed to provide evidence that the purpose

of Planet 13's compensation program was to wrongfully interfere with Reef's prospective contractual relations – or had anything to do with Reef whatsoever. In fact, as demonstrated above, Planet 13 actively seeks to prevent this conduct. Therefore, no evidence exists to support Reef's conspiracy claim, let alone substantial evidence to support a mandatory injunction.

As set forth in the Motion, the cases on which the Preliminary Injunction is based are inapplicable. Reef does not even address this issue. No evidence exists regarding any alleged concerted action between Planet 13 and unaffiliated drivers, let alone that any action was actually taken against Reef. Planet 13's refusal to compensate drivers in any instances in which Planet 13 is made aware of the fact that the passenger did not agree to come to Planet 13 eviscerates a finding of intent, let alone malice. *See* Ex. A at ¶ 8. Contrary to Reef's contention, any after-the-fact evidence in form of statements from unaffiliated *drivers* does not impute anything to Planet 13. *Opp.* at 4:17, fn 3.

The numerous legal and evidentiary deficiencies in Reef's claims demonstrate that the Preliminary Injunction was clearly erroneous and should be reconsidered and/or amended.

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

Planet 13 seeks to clarify and/or modify the scope of the Preliminary Injunction to conform to the actual issues in this case. Reef again do not address the substance of Planet 13's position. Planet 13 does not seek to create any loophole, but to narrowly tailor the scope of the Preliminary Injunction to redress *Reef's* alleged harm, as required by law. *See Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) ("Injunctive relief ... must be tailored to remedy the specific harm alleged.")(citing *Lamb–Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir.1991)). There can be no dispute that the Preliminary Injunction is overly broad because it purports to enjoin Planet 13 from conduct that has no bearing on the issues in this action. *See id.* (holding injunction overbroad where district court did not limit injunction to named plaintiffs); *see also United States v. AMC Entm't, Inc.*, 549 F.3d 760, 768 (9th Cir. 2008). Reef failed to cite any authority that permits the Court to enjoin Planet 13 from conduct that has absolutely no bearing on the alleged harm *to Reef*. In other words, Reef does not have the right or the ability to

1 seek to enjoin Planet 13 from conduct that has no connection whatsoever to Reef's purported
2 harm. This is the very definition of overly broad.

3 Therefore, Planet 13 seeks clarification and/or amendment of the Preliminary Injunction
4 to the extent it purports to enjoin Planet 13 from conduct that has absolutely no relation to specific
5 harm Reef has alleged. The Court must clarify and/or modify the Preliminary Injunction to tailor
6 and limit its scope to circumstances where a rideshare driver brings passengers to Planet 13 rather
7 than to the passengers' original destination of the Reef Dispensary.

8 **C. Reef's Request for Sanctions is Baseless.**

9 No legitimate basis exists to impose sanctions on Planet 13 for simply defending against
10 Reef's claims. Reef's reliance on the prior briefing on Planet 13's Motion to Dismiss is wholly
11 misplaced. Certainly, Planet 13's Motion to Dismiss attacked the validity of Reef's claims.
12 However, while Planet 13's position in both instances is similar (that Reef cannot succeed on its
13 claims), there can be no dispute that the Motion to Dismiss and the Opposition to the Motion for
14 Preliminary Injunction implicate different standards and considerations. Thus, the proceedings on
15 Planet 13's Motion to Dismiss are irrelevant to the issues herein. Moreover, the applicable rules
16 provide Planet 13 the ability to seek reconsideration of the Court's rulings. Even if Reef's
17 contention that the number of times a party has attacked the validity of the claims against them
18 throughout the litigation was somehow relevant to whether sanctions were appropriate, this
19 argument has no merit under the circumstances.

20 Reef failed to provide any support for its apparent contention that filing a motion to
21 dismiss and then substantively opposing the plaintiff's claims or seeking reconsideration amounts
22 to an abusive litigation practice. None of the cases cited by Reef are applicable to this case. In
23 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 91, 787 P.2d 777, 779 (1990) the abusive
24 litigation practice at issue was the willful fabrication of evidence. *Jordan v. State ex rel. Dep't of*
25 *Motor Vehicles & Pub. Safety*, 121 Nev. 44, 52, 110 P.3d 30, 37 (2005), *abrogated by Buzz Stew,*
26 *LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008) discussed the approach courts
27 should take regarding restricting the access of vexatious litigants to the courts.
28

KEMP JONES, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

Planet 13 respectfully contends the Court’s ruling was clearly erroneous and provided ample legal and evidentiary support in seeking reconsideration and/or amendment. Reef’s obvious and unsurprising agreement with the Court’s ruling does not render Planet 13’s motion improper or somehow frivolous. Moreover, as Reef begrudgingly admits, Planet 13 provided new evidence in support of its Motion. Opp. at 4:17, fn. 3. Planet 13 cannot be sanctioned for simply exercising its right to defend against Reef’s claims. Therefore, no basis exists to sanction Planet 13.

III.

CONCLUSION

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

DATED this 20th day of October, 2020.

KEMP JONES, LLP

/s/ Ian P. McGinn

Will Kemp, Esq. (#1205)
Nathanael R. Rulis, Esq. (#11259)
Ian P. McGinn, Esq. (#12818)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Defendant
MM Development Company, Inc.

KEMP JONES, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2020, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION OR, IN THE ALTERNATIVE, MOTION TO AMEND PURSUANT TO NRCP 52(b) OR, IN THE ALTERNATIVE, MOTION FOR CLARIFICATION** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Ali Augustine
An employee of Kemp Jones, LLP

A-19-804883-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

October 23, 2020

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

**October 23, 2020 3:00 AM Motion For
Reconsideration**

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

COURT CLERK: Rem Lord

JOURNAL ENTRIES

- MM Development Company, Inc.'s Motion for Reconsideration of the Court's Order Granting Plaintiff's Motion for Preliminary Injunction or, in the Alternative, Motion to Amend Pursuant to NRCP 52(b) or, in the Alternative, Motion for Clarification

This Chambers matter is being decided based upon the status of the record.

Defendant MM Development fails to present newly-discovered evidence or an intervening change in the law to warrant reconsideration or amendment of the Court's Order Granting Plaintiff's Motion for Preliminary Injunction. The arguments made by Defendant MM are the same arguments made at the time of the hearing that resulted in issuance of the Preliminary Injunction. Putting aside the inadmissible nature of the hearsay statements in the declaration of Security Lieutenant Giannaris, Giannaris states he has worked at MM Development's Planet 13 facility since October of 2018, handling and interacting with rideshare drivers and he attests to the fact that he was an intermediary between Planet 13 and rideshare drivers with regard to making payments to rideshare drivers who brought their passengers to Planet 13. As such, Mr. Ginnaris's information was readily available to Planet 13 at the time of the original Motion for Preliminary Injunction. The arguments about Tryke's delay in pursuing injunctive relief were already addressed in the context of the Covid 19 restrictions. The Exhibit C excerpts from Kickback are all dated after the injunctive relief was granted and simply reflect that drivers are complaining that they are no longer getting paid for diverting passengers like they were before: 9/14/20 9:23 PM Mike No more money pay outs anymore only to cabs something about being sued. [sic] Finally, the court has already thoroughly considered the matter of Plaintiff's likelihood of success so this, too is nothing new to warrant reconsideration or amendment of the injunctive relief granted. The Motion is DENIED. Plaintiff to submit the appropriate order

PRINT DATE: 10/23/2020

Page 1 of 2

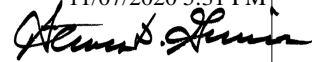
Minutes Date: October 23, 2020

APPENDIX 614

within fourteen days per EDCR 7.21. COURT ORDERED. status check SET for the filing of the Order.

12/3/20 STATUS CHECK: FILING OF ORDER (CHAMBERS)

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey
File & Serve. /rl 10/23/2020


CLERK OF THE COURT

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



1 **n.ORDD**

2 **H1 LAW GROUP**

3 Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com

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

5 Moorea L. Katz, NV Bar No. 12007
Moorea@h1lawgroup.com

6 701 N. Green Valley Parkway, Suite 200
Henderson, NV 89074

7 Phone 702-608-3720
Fax 702-703-1063

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

9 Conant Law Firm
2398 East Camelback Road, Suite 925

10 Phoenix, AZ 85016
Phone 602-508-9010

11 Fax 602-508-9015

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

13
14 EIGHTH JUDICIAL DISTRICT COURT
15 CLARK COUNTY, NEVADA

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

18 Plaintiff,

19 vs.

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

Defendants.

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

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

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



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

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

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

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

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

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

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

7. Defendant’s Motion for Reconsideration is DENIED.

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

DISTRICT COURT JUDGE



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Submitted by:
H1 LAW GROUP

/s/ Eric D. Hone
Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com
Joel Z. Schwarz, NV Bar No. 9181
joel@h1lawgroup.com
701 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074

/s/ Paul A. Conant
Paul A. Conant, AZ Bar No. 012667
paulconant@conantlawfirm.com
(Admitted *Pro Hac Vice*)
Conant Law Firm
2398 East Camelback Road, Suite 925
Phoenix, AZ 85016
Attorneys for Plaintiff
Tryke Companies SO NV, LLC

Approved as to form:
KEMP JONES

/s/ Ian P. McGinn
William Kemp, NV Bar No. 1205
Nathanael R. Rulis, NV Bar No. 11259
n.rulis@kempjones.com
Ian P. McGinn, NV Bar No. 12818
i.mcgin@kempjones.com
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Defendant
MM Development Company, Inc.

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

Good afternoon:

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

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

Best regards,

Ian

[Ian McGinn, Esq.](#)



3800 Howard Hughes Pkwy., 17th Floor | Las Vegas, NV 89169
(P) 702-385-6000 | (F) 702 385-6001 | i.mcgin@kempjones.com
[\(profile\)](#) [\(vCard\)](#)

This e-mail transmission, and any documents, files, or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to sender, or by telephone at (702) 385-6000, and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you.

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

Good Afternoon:

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

Thank you,

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

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO: A-19-804883-C

7 vs.

DEPT. NO. Department 24

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

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/7/2020

16 Patricia Stoppard	p.stoppard@kempjones.com
17 Ian McGinn	i.mcgin@kempjones.com
18 Ali Augustine	a.augustine@kempjones.com
19 Nathanael Rulis	n.rulis@kempjones.com
20 Alisa Hayslett	a.hayslett@kempjones.com
21 Eric Hone	eric@h1lawgroup.com
22 Jamie Zimmerman	jamie@h1lawgroup.com
23 Pamela Montgomery	p.montgomery@kempjones.com
24 Karen Morrow	karen@h1lawgroup.com
25 Joel Schwarz	joel@h1lawgroup.com

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Candice Mata	lawclerk@h1lawgroup.com
Lisa Stewart	lisa@h1lawgroup.com
Elias George	Elias@H1lawgroup.com
Lexi Kim	l.kim@kempjones.com
Paul Conant	docket@conantlawfirm.com