IN THE SUPREME COURT OF THE STATE OF NEVADA

MM DEVELOPMENT COMPANY, INC., D/B/A PLANET 13, a Nevada Corporation,

Appellant,

vs.

TRYKE COMPANIES SO NV, LLC, a Nevada Limited Liability Company,

Respondent.

Supreme Court Case No: 81938

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RESPONDENT TRYKE COMPANIES SO NV, LLC'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal. Pursuant to NRAP 26.1, Respondent Tryke Companies SO NV, LLC ("Tryke") states that it is a Nevada limited liability company. No publicly held company nor any corporation owns 10% or more of Tryke's membership interests. In the District Court proceeding and the proceedings before this Court, H1 Law Group and Conant Law Firm, PLC appear for Tryke.

Dated this 24th day of May 2021.

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TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE 1

STATEMENT OF JURISDICTION 1

ROUTING STATEMENT 1

STATEMENT OF THE ISSUES 2

I. THE DISTRICT COURT PROPERLY ENTERED A PRELIMINARY INJUNCTION PRECLUDING MM DEVELOPMENT FROM PAYING AND ADVERTISING TO PAY KICKBACKS TO RIDESHARE DRIVERS DIVERTING PASSENGERS FROM TRYKE'S REEF CANNABIS DISPENSARY TO MM DEVELOPMENT'S PLANET 13 DISPENSARY 2

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 4

I. EVIDENCE PRESENTED BY TRYKE AND THE DISTRICT COURT'S FACTUAL FINDINGS BASED THEREON 4

II. EVIDENCE PRESENTED BY MM DEVELOPMENT AND THE DISTRICT COURT'S RELATED FACTUAL FINDINGS 11

III. THE DISTRICT COURT CONSIDERED THE PARTIES' FILINGS, HEARD ARGUMENT OF COUNSEL, THEN GRANTED TRYKE'S REQUEST FOR A PRELIMINARY INJUNCTION 13

A. Hearing on Preliminary Injunction 13

B. Preliminary Injunction Findings of Fact, Conclusions of Law, and Order 16

SUMMARY OF THE ARGUMENT 17

ARGUMENT 17

I. THE PRELIMINARY INJUNCTION ORDER IS REVIEWED FOR AN ABUSE OF DISCRETION 17

A. The Preliminary Injunction Order is a Prohibitory Injunction .. 18

B. The Preliminary Injunction Order is Reviewed for Abuse of Discretion 19

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN ENTERING THE PRELIMINARY INJUNCTION ORDER 20

A. The District Correctly Determined Tryke is Likely to Prevail on the Merits of Its Claims 20

1. "Diversion" Is Not One of Tryke's Causes of Action 20

2. Kickbacks Are Not Tips 21

3. MM Development Has Intentionally Interfered with Tryke's Prospective Business Advantage 23

4. Tryke is Likely to Succeed on the Merits of its Civil Conspiracy and Aiding and Abetting Claims *28*

B. The District Court Properly Concluded Tryke Was Suffering Irreparable Harm 30

III. THE SCOPE OF THE ORDER IS PROPER 32

IV. MM DEVELOPMENT'S PROCEDURAL COMPLAINTS ARE WITHOUT MERIT 34

A. An Evidentiary Hearing Was Not Required 34

B. The Evidence Submitted by Tryke Is Not Hearsay, and Hearsay Evidence Is Permitted in Preliminary Injunction Proceedings in any Event 37

C. The District Court Did Not Abuse its Discretion in Hearing Tryke's Motion for Preliminary Injunction on Shortened Time 38

V. CONCLUSION 39

VI. CERTIFICATE OF COMPLIANCE 40

TABLE OF AUTHORITIES

Cases

Carroll v. State,
132 Nev. 269, 371 P.3d 1023 (2016) 37
City of Reno v. Matley,
79 Nev. 49, 378 P.2d 256 (1963)..... 18, 19
Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.,
114 Nev. 1304, 971 P.2d 1251 (1998) 21
Cook v. Sunrise Hospital & Medical Center,
124 Nev. 997, 194 P.3d 1214 (2008) 39
Crockett v. Sahara Realty Corp.,
95 Nev. 197, 591 P.2d 1135 (1979) 24, 25
Dep't of Conservation v. Foley,
121 Nev. 77, 109 P.3d 760 (2005).....19
Dow Chem. Co. v. Mahlum,
114 Nev. 1468, 970 P.2d 98 (1998) 21
Excellence Cmty. Mgmt. v. Gilmore,
131 Nev. 347, 351 P.3d 720 (2015) 30
Flynt Distrib. Co., Inc. v. Harvey,
734 F.2d 1389 (9th Cir. 1984).....35
Garcia v. Google, Inc.,
786 F.3d 733 (9th Cir. 2015).....18
Guion v. Terra Marketing of Nevada, Inc.,
90 Nev. 237, 523 P.2d 847 (1974).....31
Hilton Hotels v. Butch Lewis Productions,
109 Nev. 1043, 862 P.2d 1207 (1993) 28
Hitt v. Ruthe,
131 Nev. 1291 (Nev. App. 2015) 26
Hubbard Business Plaza v. Lincoln Liberty Life,
596 F. Supp. 344 (D. Nev 1984) 28
In re Amerco Derivative Litig.,
127 Nev. 196, 252 P.3d 681 (2011) 27
J.J. Indus., LLC v. Bennett,
119 Nev. 269, 71 P.3d 1264 (2003) 26
Johnson v. Couturier,
572 F.3d 1067 (9th Cir. 2009).....37

Lab. Com'r of State of Nevada v. Littlefield,
123 Nev. 35, 153 P.3d 26 (2007).....19
Las Vegas Novelty, Inc. v. Fernandez,
106 Nev. 113, 787 P.2d 772 (1990) 37
Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of S. Nevada,
106 Nev. 283, 792 P.2d 386 (1990) 25, 26, 27
Leonard v. Stoebling,
102 Nev. 543, 728 P.2d 1358 (1986) 18
Marina Dist. Dev. Co., LLC v. AC Ocean Walk, LLC,
No. 220CV01592GMNBNW, 2020 WL 5502160 (D. Nev. Sept. 10, 2020) 34, 35
Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.,
571 F.3d 873 (9th Cir. 2009).....18
McDowell v. State,
103 Nev. 527, 746 P.2d 149 (1987) 37
Memory Gardens of Las Vegas v. Pet Ponderosa Mem'l Gardens, Inc.,
88 Nev. 1, 492 P.2d 123 (1972).....18
Nelson v. Peckham Plaza Partnerships,
110 Nev. 23, 866 P.2d 1138 (1994) 32
Paul v. Imperial Palace, Inc.,
111 Nev. 1544, 908 P.2d 226 (1995) 37
Progress Development Corp. v. Mitchell,
286 F.2d 222 (7th Cir. 1961).....34
Republic of the Philippines v. Marcos,
862 F.2d 1355 (9th Cir.1988).....37
Ross-Whitney Corp. v. Smith Kline & French Lab'ys,
207 F.2d 190 (9th Cir. 1953) 35, 36
S.O.C., Inc. v. The Mirage Casino–Hotel,
117 Nev. 403, 23 P.3d 243 (2001).....19
State, Dep't of Bus. & Indus., Fin. Institutions Div. v. Nevada Ass'n Servs., Inc.,
128 Nev. 362, 294 P.3d 1223 (2012) 31
Sutherland v. Gross,
105 Nev. 192, 772 P.2d 1287 (1989) 28
Ticor Title Ins. Co. v. Cohen,
173 F.3d 63 (2d Cir. 1999).....30
Univ. of Texas v. Camenisch,
451 U.S. 390, 101 S. Ct. 1830, 68 L. Ed. 2d 175 (1981) 32, 34
Wichinsky v. Mosa,
109 Nev. 84, 847 P.2d 727 (1993)..... 21, 22
Wyeth v. Rowatt,
126 Nev. 446, 244 P.3d 765 (2010) 39

Statutes

NRS 51.035 22
NRS 51.035(3)(e) 37
NRS 706A.280(2)(a) and (b) 21, 29
NRS 706A.280(2)(b) 9

Rules

FRCP 65 37
NRAP 3A(b)(3) 1
NRAP 17(a)(1) 1
NRAP 26.1 2
NRAP 26.1(a) 2
NRAP 28(b) 1
NRAP 28(e)(1) 40
NRAP 32(a)(4) 40
NRAP 32(a)(5) 40
NRAP 32(a)(6) 40
NRAP 32(a)(7) 40
NRAP 32(a)(7)(C) 40
NRCP 65 37

Regulations

NAC 706.552(1) 21, 29

Other Authorities

Restatement (Second) of Torts, § 766B(d) (1979) 26

Pursuant to Nevada Rule of Appellate Procedure ("NRAP") 28(b), Respondent Tryke Companies SO NV, LLC ("Tryke"), by and through its counsel, submits its answering brief in response to the opening brief on appeal (the "Opening Brief") filed by Appellant MM Development, Inc. d/b/a Planet 13 ("MM Development").

STATEMENT OF JURISDICTION

This Court has jurisdiction over MM Development's appeal from the district court's September 10, 2020, Order Granting Preliminary Injunction pursuant to NRAP 3A(b)(3).

ROUTING STATEMENT

This matter does not fall within any of the categories listed in NRAP 17(a)(1) as requiring retention by the Nevada Supreme Court, and accordingly, may be assigned to the Nevada Court of Appeals.

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STATEMENT OF THE ISSUES

I. THE DISTRICT COURT PROPERLY ENTERED A PRELIMINARY INJUNCTION PRECLUDING MM DEVELOPMENT FROM PAYING AND ADVERSTISING TO PAY KICKBACKS TO RIDESHARE DRIVERS DIVERTING PASSENGERS FROM TRYKE'S REEF CANNABIS DISPENASRY TO MM DEVELOPMENT'S PLANET 13 CANNIBIS DISPENSARY.

STATEMENT OF THE CASE

In late 2018, Appellant MM Development Inc. ("MM Development") opened its Planet 13 cannabis dispensary less than 900 feet from Tryke's Reef cannabis dispensary. Though MM Development touts Planet 13 as the gold standard in dispensaries, it still felt the need to employ underhanded business tactics including a formal program of paying kickbacks to drivers who work for rideshare transportation services like Lyft and Uber for diverting customers bound for Reef to Planet 13 instead.

MM Development has tested out several different labels for its kickbacks-for-diversion scheme, most recently calling its payments "tips." But, until the District Court entered a preliminary injunction, MM Development was paying what are clearly kickbacks – advertised to rideshare divers on an application called "KickBack" no less - in exchange for illegal diversion. Indeed, pursuant to its own "parking lot rules," MM Development was intentionally [redacted]

Tryke requested MM Development stop this activity, but it refused, thus necessitating the underlying district court action. After Tryke filed suit, Nevada cannabis dispensaries were closed for several months in 2020 as a result of the COVID-19 pandemic. Upon reopening, MM Development resumed its kickback program. Tryke therefore moved for a preliminary injunction.

The District Court was presented with and made factual findings based upon substantial and largely unrebutted evidence that MM Development's kickback program incentivized rideshare drivers to "harass and cajole," deceive customers, and defame Reef. These were intentional, concerted actions that were damaging Tryke and the Reef dispensary's reputation in the community and destroying customer good-will. From its findings, the District Court properly concluded that Tryke was reasonably likely to succeed on the merits of its claims for intentional interference with prospective economic advantage, civil conspiracy, and aiding and abetting, and that Tryke faced immediate irreparable harm for which there was no adequate remedy at law.

Based upon its findings and conclusions, the District Court entered a carefully worded preliminary injunction (the "Preliminary Injunction Order") prohibiting MM Development from advertising offers to pay or paying any fee or commission to rideshare drivers in exchange for the drivers bringing passengers to Planet 13 rather than another dispensary (diverting passengers to Planet 13). In

short, the preliminary injunction entered by the District Court requires MM Development to lawfully compete, but MM Development simply does not want to do that after so heavily investing in an unlawful kickback scheme. This is why MM Development has brought the instant appeal.

As this Court will see upon review of the record, the Preliminary Injunction Order is well grounded in both law and fact, is properly tailored to fit the circumstances, and the District Court did not abuse its discretion or make any clear error. Thus, the Preliminary Injunction Order should be affirmed.

STATEMENT OF FACTS

Because this is an appeal of the Preliminary Injunction Order, the procedural history of the litigation, the evidence presented to the District Court (almost entirely by Tryke), and the District Court's factual findings and legal conclusions forming the basis for the injunctive order all are important to this Court's analysis. MM Development, however, has bypassed most of this critical information in its Opening Brief. As such, it is necessary for Tryke to apprise the Court of the following:

I. EVIDENCE PRESENTED BY TRYKE AND THE DISTRICT COURT'S FACTUAL FINDINGS BASED THEREON

Since 2016, Tryke has operated the Nevada-licensed "Reef" cannabis dispensary at 3400 Western Avenue in Las Vegas. (*See* Appellant's Appendix ("Appx.") 141-155 at ¶4-5; *see also* District Court in Findings of Fact, Conclusions

of Law and Order Granting Motion for Preliminary Injunction ("FFCL"), Findings of Fact #1, Appx. 532.) In late 2018, MM Development opened its "Planet 13" cannabis dispensary fewer than 900 feet from Reef. (*Id*.)

A short time after Planet 13 opened, a customer alerted Tryke that he had summoned an Uber with Reef as the destination specified in the Uber software application but, instead of taking him to Reef, the Uber driver took him to Planet 13. (*See* Appx. 142 ¶6 and Ex. A, Appx. 156-158; *see also* Finding of Fact #2, Appx. 532.) Not long after that, an Uber driver informed Reef that another dispensary pays "kickbacks" to drivers to bring passengers to shop there, and that if Reef will not also pay kickbacks, then drivers will take passengers to a dispensary that does. (*See* Appx. 142 ¶7 and Ex. B Appx. 159-160; *see also* Findings of Fact #3, Appx. 532.) Tryke thereafter received similar statements from other Lyft and Uber drivers. (Appx. 142 at ¶8, Finding of Fact #4, Appx. 532.)

Aware that patrons of rideshare services are required to enter their chosen destination up front 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 to determine the scope of the diversion of prospective Reef customers to Planet 13 resulting from MM Development's kickback program. (Appx. 143 at ¶9; *see also* Finding of Fact #5, Appx. 532.) Tryke conducted a random "secret shopper" sampling of Uber and Lyft rides in

Las Vegas between August 9 and September 17, 2019, which confirmed that unlawful diversion was, in fact, occurring. (Appx. 143 at ¶10; *see also* Finding of Fact #6, Appx. 532.) Out of 30 "secret shopper" rides where a passenger had pre-selected Reef as the final destination, 20 resulted in the passenger being diverted to Planet 13 instead. In other words, 2/3 of the sampled rides were diverted, and 100% of the diversion was to Planet 13. (Appx. 143-151 at ¶11-12 and related Exs. C1-20, Appx. 161-303; *see also* Finding of Fact #7, Appx. 533.)[1]

In many cases, the drivers used deceitful, defamatory, and aggressive, pressure-filled tactics to convince passengers to alter their destination. In a handful of other instances, the rideshare driver had no interaction with the passenger and simply drove the rideshare customer to Planet 13 instead of Reef. (*Id*.) Representative examples of secret shopper experiences and interactions[2] include:

- On August 9, 2019, a passenger requested pickup at the Palazzo Las Vegas and specified the destination as Reef in the relevant app. Without saying anything, the driver dropped the passenger off at Planet 13 instead of Reef, without asking the passenger to change the destination in the app, and in fact, without notifying the passenger of the change in their chosen destination. *See*, Appx. 143-151 and Exhibit C-3, Appx. 171-175.

/ / /

[1] The exhibits in the record before the District Court included all of the "secret shopper" rideshare requests for transportation to Reef and, when possible, a Reporter's Transcription of Audiotape detailing the specific interaction between the rideshare driver and the secret shopper during the transport. (*See id.*)

[2] Detailed further in Appx. 161-303.

● On August 16, 2019, a passenger requested pickup at the Wynn Hotel in Las Vegas and specified the destination as Reef in the relevant app. The passenger stated her destination as Reef. The driver immediately asked, "Why Reef?" The driver then stated that Reef "is not that good," and that "right in front of it is Planet 13." The driver referred to Planet 13 dispensary as "the best one" and "the biggest." The driver proceeded to inform the passenger that Reef is expensive, that it is for tourists, and that locals go to Planet 13 instead. Continuing, the driver stated to the passenger "Don't go to Reef. It's not a good place." Continuing further as to Reef, the driver stated, "it's not good product" and reiterated that it is for tourists. At this point, the driver claimed that he had been to all of the dispensaries and Planet 13 is the best, with better prices, better product, better flavors, more stuff, and it is huge. Continuing further, the driver stated that "Planet 13 is always full. No one goes to Reef" and "I don't buy nothing Reef." Finally, the driver told the passenger she should go into Planet 13 and try it and if she does not like it, then she can go to Reef. The driver dropped the passenger off at Planet 13 instead of Reef, without asking the passenger to change the destination in the app. (*See* Appx. 143-151 and Exhibit C-5, Appx. 189-200.)

● On August 22, 2019, a passenger requested pickup at the Mirage Hotel in Las Vegas and specified the destination as Reef in the relevant app. Approximately half-way to her destination, the driver asked "Would you rather go to Planet 13?" and states "it's a good dispensary." The passenger asked why the driver prefers Planet 13 over Reef. The driver responded that he did not speak much English. The driver dropped the passenger off at Planet 13 instead of Reef, without asking the passenger to change the destination in the app. (*See* Appx. 143-151 and Exhibit C-6, Appx. 201-203.)

● On September 13, 2019, a passenger requested pickup at the Mirage Hotel in Las Vegas and specified the destination as Reef in the relevant app. Immediately after the passenger orally confirmed the destination as Reef, the driver stated "This is bad. Change the address. Put Planet 13. It's the best." The driver proceeded to explain that Planet 13 is cheaper, it is fresh, and is the best dispensary in Vegas. Continuing, the driver stated that he tells approximately 25 passengers to change their destinations to Planet 13 every day. The driver then proceeded to disparage Reef, stating that Reef is bad, that the product

is bad, and that Planet 13 is the best and everyone goes there. The driver dropped the passenger off at Planet 13 instead of Reef, after asking the passenger to change the destination in the app. *See*, Appx. 143-151 and Exhibit C-15, Appx. 256-267.

- On September 17, 2019, a passenger requested pickup at Treasure Island Hotel in Las Vegas and specified the destination as Reef in the relevant app. Immediately upon entering the vehicle, the driver proceeded to disparage Reef asking, "You want to go there? Their shit sucks." The driver recommended Planet 13, stating that it is like a toy store, it is the best, with fresh product every day (implying Reef's product is not), and that it is closer. The driver then proceeded to disparage Reef, stating that it is "trash" and "garbage," and indicated to the passenger that they will be disappointed with Reef. The driver told the passenger to trust him that Planet 13 is better. The driver dropped the passenger off at Planet 13 instead of Reef, without asking the passenger to change the destination in the app. The driver changed the destination in the app to Planet 13 himself. *See*, Appx. 143-151 and Exhibit C-20, Appx. 291-303.

As part of its investigation, Tryke also obtained two Driver Diversion Incident Report Forms from two rideshare passengers, who had similar experiences of diversion to Planet 13 as those reported in Tryke's secret shopper investigation. (Appx. 151 and Exs. D-1 and D-2 thereto, Appx. 304-308; *see also* Finding of Fact #8 at Appx. 533.)

Tryke also found a public web forum, www.uberpeople.net, where rideshare drivers openly discussed strategies used to divert passengers *specifically* from Reef to Planet 13 to capture MM Development's kickbacks. (Appx. 151-152 at ¶14-15, and Exs. E1-E8 thereto, Appx. 309-347; *see also* Finding of Fact #9 at Appx. 533.) These discussions demonstrated a clear nexus between MM Development's offer

of payment and rideshare drivers' concerted efforts to divert passengers. (*Id*.) A few illustrative examples[3] are:

> ● JethroBodine: Planet 13. … (Responding to question about showing ss card) Yes. And you fill out tax form the first time. I schmooze with the riders…Many times they are going to another dispensary and steer them to one that pays… I divert from other dispensaries most of the time…
>
> Gsx328: .... If person puts in Reef and u get them to divert to Planet, isn't that the whole point of paying drivers. (*See* Exhibit E-1 March 8, 2019 Discussion Thread on www.uberpeople.net Appx. 309-314.)
>
> ● Wasted_Days: Planet 13 every single time for me, PAX always seem pretty stoked when they see how clean and easy it is. I actually go out of my way to bad mouth those dweebs at REEF. (*See* Exhibit E-5, July 30, 2019 Discussion Thread on www.uberpeople.net Appx. 324-331.)
>
> ● Drewsnutz: My best advice to divert a pax that worked for me 99% of the time. You see where they are going. Crack a joke like oh you picked reef. Good luck. It makes them curious why you said that. Then proceed with their product is second grade and higher priced and planet 13 is right next door with better pricing and product. Can make planet 13 any dispensaries name you like. Then if they don't automatically say re route me to there. Be semi passive aggressive and say you still wanna go to the worst dispensary around? Honestly i have gotten many tips and kickback from this and usually a good rating. Only 1 time a bad one as they worked at reef??[4] (*See* Exhibit E-7, August 22, 2019 Discussion Thread on www.uberpeople.net Appx. 340-344.)

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[3] Detailed further in Exhibits E1-E8 (Appx. 309-347).

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

Based on this evidence, it was clear MM Development was operating an extensive program to pay kickbacks in exchange for diversion of rideshare passengers from Reef to Planet 13. (Appx. 156-383; Finding of Fact #10 cite Appx.) MM Development advertised this program to rideshare drivers on a web-based application with the on-the-nose name: "KickBack." (*Id.*)

Hoping to put an end to the kickback program without the need for court intervention, Tryke notified MM Development and advised MM Development that its actions were resulting in extensive rideshare driver diversion of Reef customers, disparagement of Reef, and interference with Reef's business. (Appx. 153 at ¶19 and Ex. G thereto, Pre-Litigation Cease and Desist Correspondence Appx. 353-357; *see also* Finding of Fact #14, Appx. 521.) Despite Tryke's request for MM Development to stop paying kickbacks for diversion of Reef customers, MM Development refused to discontinue or modify its program to eliminate payments for diversion. (*Id*.) Tryke therefore initiated the underlying district court action by filing a complaint asserting three causes of action: Civil Conspiracy, Aiding and Abetting, and Intentional Interference with Prospective Business Advantage (Complaint at Appx. 001-012.)

MM initially filed a motion to dismiss (Appx. 13-23) followed by a motion for reconsideration (Appx. 77- 82), both of which were denied. (See Appx. 073-076 and Appx. 105-107, respectively.) At that point, with the pleadings set, Tryke

was prepared to file a motion for preliminary injunction to stop the ongoing kickback program. But soon thereafter, all dispensaries were subject to COVID-19 closures. (*See* Appx. 152-153 at ¶ 16-17 and Ex. E-9, Appx. 348-350, *see also*, Appx. 109-111, Finding of Fact #11.)

Tryke hoped that MM Development would use the closures as an opportunity to end its kickback program, particularly given the District Court's rejection of MM Development's legal arguments to that point, but MM Development was undeterred. (*Id*.) Upon the reopening of cannabis dispensaries, MM Development resumed its kickback program in earnest. (*Id*.) Tryke therefore submitted a Motion for Preliminary Injunction on August 24, 2020, requesting the matter be heard on shortened time to minimize further damage caused by MM Development's kickback scheme. (*See* Appx. 108-383.) Tryke's request for an order shortening time was granted later that day, with the District Court setting an opposition deadline for August 27, 2020, a reply deadline for September 1, 2020, and the hearing on the motion for September 3, 2020. (Appx. 111.)

II. EVIDENCE PRESENTED BY MM DEVELOPMENT AND THE DISTRICT COURT'S RELATED FACTUAL FINDINGS

In its motion for preliminary injunction, Tryke presented the evidence set forth above: the results of the secret shopper program and other evidence of extensive diversion, rideshare driver blog postings discussing strategies to capture the kickbacks advertised and paid by MM Development for diverting Reef

customers, MM Development's refusal to stop the kickback program despite knowing its impact on Tryke, and MM Development's resumption of the kickback program after dispensaries reopened in 2020.

On the other hand, and much like it has done in its opening brief in this appeal, MM Development presented virtually no facts or evidence germane to the issues at hand in its opposition to the motion for preliminary injunction. (*See* Appx. 384-478, "Factual and Procedural Background," Appx. 385-389.) Instead, MM Development: (1) presented a historical recitation of disputes regarding taxicab drivers (Appx. 385-388); (2) offered opinion-based articles relating to industry awards received by Planet 13, which had/has nothing to do with the payment of kickbacks to rideshare drivers; (Appx. 399-400.); (3) argued – for the third time before the District Court - that Tryke was not entitled to bring a claim for "diversion," blatantly ignoring the fact that Tryke has not alleged a claim of "diversion" but rather has alleged diversion as the method and means employed by Planet 13 that has interfered with Reef's business and customer relations in concert with the various drivers (Appx. 388-389; Appx. 479-496); and (4) argued that rideshare drivers should be able to say whatever they like regarding Tryke/Reef, ignoring the fact that their kickback payments incentivize unfounded disparagement and other improper actions by the drivers. (Appx. 399-400.)

/ / /

Strikingly absent from MM Development's opposition to the motion for preliminary injunction was any evidence that the actions set forth in Tryke's motion were not occurring. To the contrary, MM Development conceded not only that it was occurring, but also that it had an organized program for [redacted] (*See* Appx. 496, with Unredacted Version of Exhibit 1-A, mailed to the Supreme Court with accompanying Motion to File Under Seal.)

III. THE DISTRICT COURT CONSIDERED THE PARTIES' FILINGS, HEARD ARGUMENT OF COUNSEL, THEN GRANTED TRYKE'S REQUEST FOR A PRELIMINARY INJUNCTION

A. Hearing on Preliminary Injunction

On September 3, 2020, the District Court held a hearing on Tryke's motion for preliminary injunction. (*See*, Hearing Transcript, Appx. 497-517.) The District Court noted the motion was legally and factually well supported while MM Development's opposition said, "we're really just talking about tipping here." (Appx. 499.) The District Court stated there is a significant difference between actual tipping and MM Development's kickback program, and those differences are problematic. (*Id*.) The Court also noted MM Development's program was designed and intended to encourage illegal diversion, and it also incentivizes rideshare drivers to "aggressively pursue" passengers into going to a merchant

other than the one originally chosen. (Appx. 499-500.) The District Court further stated the practice is "anathema to a free market system, not emblematic of it" and "it serves to undermine the integrity of the rideshare programs whose drivers participate in the practice." (*Id,* Appx. 500.)

The District Court then gave MM Development the opportunity to argue its position. MM Development did not argue, as it now does, that the matter should be set out for an evidentiary hearing (discussed further below). MM Development also did not argue, as it now does, that it had not been provided enough time to oppose Tryke's motion (also discussed further below). Lastly, MM Development did not attempt to introduce any facts or evidence not found in its opposition. (*Id*., at 500-505.) Instead, MM Development again merely raised the history of taxicab disputes in Nevada and argued that it was merely tipping drivers (drivers who had already been paid and tipped by their client passengers for services received). (*Id*.)

In response, the District Court asked MM Development whether it sees a difference between a passenger entering a taxi and stating, "I want to go to one of these shooting ranges or a marijuana dispensary, where can you take me?" compared to a rideshare customer designating a specific destination into a rideshare app. (Appx. at 502-503.) MM Development argued there is no difference. (*Id*.) But the District Court was unpersuaded, "the point is that [the customer] decided to go to a different location after having been pitched and sold and cajoled

and pressured by the drivers." (Appx. 504.) The District Court further stated the proposed restrictions in the specific preliminary injunction requested by Tryke would not impinge on lawful activity, but would prevent "pressuring, cajoling…giving false information to induce people to go to a different location." (Appx. 504-505.)[5]

Based upon the evidence presented, and after considering the parties' oral arguments, the District Court ruled "Preliminary Injunction is appropriate relief to be granted here until such time as there can be an evidentiary hearing or bench trial to decide whether it should be converted…to a permanent injunction." (*Id,* Appx. 509.) The District Court next turned to the question of an appropriate bond. Making a tacit admission of the extent of its kickback program, MM Development argued for a bond of *one million dollars* to protect it from losses it expects to incur while an injunction prevents it from offering and making kickback payments to rideshare drivers for illegal diversions. (*See,* Appx. 402.) The District Court also was unpersuaded by this argument:

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[5] Even at this point, when it was clear the District Court was inclined to enter a preliminary injunction, MM Development did not request additional time to present further evidence or suggest an evidentiary hearing was needed. (Appx. 511-512.) Rather, MM Development's counsel participated in a discussion with the District Court and Tryke's counsel regarding a plan and schedule for proceeding with discovery.

> [B]ecause the nature of the conduct is such that if it is true what is alleged to take place, I don't see Defendants really suffering a financial loss, because if it is true, their gains are ill-gotten gains that they would no longer be getting. (*Id.*)

B. Preliminary Injunction Findings of Fact, Conclusions of Law, and Order

On September 11, 2020, the District Court entered the Preliminary Injunction Order providing, *inter alia*:

- Tryke is reasonably likely to succeed on the merits of its claims for Intentional Interference with Prospective Business Advantage, Civil Conspiracy, and Aiding and Abetting. (*See* Conclusion of Law #27, Appx. 523; *see also* Conclusions of Law #s 18-26, Appx. 521-523.)

- MM Development'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. (Conclusion of Law #32, Appx. 524; *see also* Conclusions of Law #s 29-32, Appx. 523-524.)

- The harm to Tryke extends beyond mere financial damage caused by the inevitable decrease in sales. MM Development's actions will also lead to the irremediable loss of Tryke's brand value, consumer loyalty, and inherent goodwill of the dispensary itself. (*Id*.) The damage caused by MM Development is exceptionally difficult to quantify in dollars because it involves harm to reputation and to customer relations. (Conclusion of Law #33, Appx. 524.)

Based upon all of these rulings, the District Court entered an order providing:

> 1. Defendant Planet 13 is enjoined from paying any fee or commission to rideshare service drivers in exchange for the drivers bringing passengers to Planet 13 rather than another cannabis dispensary; and
>
> 2. Defendant Planet 13 is enjoined from advertising to rideshare service drivers that Planet 13 will provide compensation to drivers in exchange for the drivers bringing passengers to Planet 13 rather than another cannabis dispensary.

(*See*, FFCL, "Order" at Appx. 526.)

SUMMARY OF THE ARGUMENT

The District Court's findings and conclusions were well-founded based upon the substantial and largely unrebutted evidence in the record. Moreover, the injunctive order entered by the District Court was properly tailored.

The District Court made its ruling based on a solid evidentiary record applied to an accurate interpretation of the law. The District court did not abuse its discretion or make any clear error; thus, the Order should be affirmed.

ARGUMENT

I. THE PRELIMINARY INJUNCTION ORDER IS REVIEWED FOR AN ABUSE OF DISCRETION

As an initial matter, MM Development argues the Preliminary Injunction Order is a mandatory injunction and thus should be subject to heightened scrutiny. (*See* Opening Brief at 6-7.) MM Development is incorrect regarding the

preliminary injunction being mandatory and thus is also incorrect regarding the applicable standard of review for its appeal.

A. The Preliminary Injunction Order Is a Prohibitory Injunction

A prohibitory injunction, as its name suggests, prohibits a party from taking action pending a determination of the action on the merits. *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). By contrast, a mandatory injunction "orders a responsible party to take action." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015); *see also Leonard v. Stoebling*, 102 Nev. 543, 550-51, 728 P.2d 1358, 1363 (1986). Examples of mandatory injunctions include restoration of water rights and reconstruction of roadways. *See, e.g., Memory Gardens of Las Vegas v. Pet Ponderosa Mem'l Gardens, Inc.*, 88 Nev. 1, 492 P.2d 123 (1972), *City of Reno v. Matley*, 79 Nev. 49, 378 P.2d 256 (1963).

In this case, the Preliminary Injunction Order does not require a mandatory, affirmative act by MM Development. Rather, MM Development is prohibited from taking specific actions during the pendency of the case. In particular, MM Development is prohibited from advertising and making kickback payments to

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rideshare drivers for diversions. The injunction, therefore, is prohibitory and subject to the standard of review discussed below.[6]

B. The Preliminary Injunction Order Is Reviewed for Abuse of Discretion

Determining whether to grant or deny a preliminary injunction is within the district court's sound discretion. *Lab. Com'r of State of Nevada v. Littlefield*, 123 Nev. 35, 38-39, 153 P.3d 26, 28 (2007) citing *S.O.C., Inc. v. The Mirage Casino–Hotel*, 117 Nev. 403, 407, 23 P.3d 243, 246 (2001). That discretion will not be disturbed absent abuse. *Id*. (When the appellant takes issue with the district court's application of law to fact, this Court's review is limited to the record to determine whether the lower court exceeded the permissible bounds of discretion.) In exercising its discretion, the district court must determine whether the moving party has shown a likelihood of success on the merits and that the nonmoving party's conduct, should it continue, would cause irreparable harm, for which there is no adequate legal remedy. *Id*, citing *State, Dep't of Conservation v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005).

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[6] Even if the Preliminary Injunction Order is somehow a mandatory injunction, "It is settled beyond question that equity has jurisdiction in a proper case to compel affirmative performance of an act as well as to restrain it, and that it is its duty to do so, especially where it is the only remedy which will meet the requirements of the case." *City of Reno v. Matley*, 79 Nev. 49, 60-61, 378 P.2d 256, 262 (1963) (internal citations omitted).

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN ENTERING THE PRELIMINARY INJUNCTION ORDER

A. The District Court Correctly Determined Tryke is Likely to Prevail on the Merits of Its Claims

MM Development erroneously contends the District Court should have determined Tryke is not reasonably likely to prevail on the merits of its claims. MM Development's arguments rely upon two fundamentally flawed premises: (1) that Tryke has a claim for "diversion"; and (2) that MM Development was "tipping" rideshare drivers. In addition to basing its arguments on these erroneous premises, MM Development incorrectly contends that Tryke's claim for intentional interference with prospective economic advantage fails because it is legally impossible to interfere with retail transactions, and Tryke's claims for civil conspiracy and aiding and abetting fail because MM Development is not responsible for anything rideshare drivers do to obtain kickback payments from MM Development. As discussed below, the District Court applied the law to the facts before it and correctly concluded Tryke had demonstrated a reasonable likelihood of success on the merits of its claims.

1. "Diversion" Is Not One of Tryke's Causes of Action

As it did in multiple filings in the District Court, in its Opening Brief MM Development falsely contends "Tryke sets forth claims for **diversion**, tortious

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interference with prospective economic relations, civil conspiracy, and aiding and abetting." (Opening Brief at 7.)

The District Court considered this argument and correctly concluded there are only three causes of action plead in Tryke's complaint: (1) Civil Conspiracy; (2) Aiding and Abetting; and (3) Intentional Interference with Prospective Business Advantage ("IIPBA"). (Complaint, Appx. 001-012.) Each of these claims requires Tryke to show MM Development intended to accomplish an unlawful objective or a wrongful action that caused Tryke harm. *See Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc*., 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (elements of civil conspiracy); *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1490, 970 P.2d 98, 112 (1998) partially overruled on other grounds (elements of aiding and abetting); *Wichinsky v. Mosa*, 109 Nev. 84, 88, 847 P.2d 727 (1993) (elements of IPBA).The wrongful actions/unlawful objectives Tryke alleges include "diversion" as defined by NRS 706A.280(2)(a) and (b) and NAC 706.552(1) but there is no claim for diversion asserted no matter how many times MM Development argues otherwise.

2. *Kickbacks Are Not Tips*

Throughout its arguments regarding the merits of Tryke's claims, MM Development contends that there have been no payments of kickbacks for illegal

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diversion, only the payment of "tips" under a "driver compensation program" which MM Development claims is both longstanding and ubiquitous in Nevada.[7]

There are three major distinctions between MM Development's kickback scheme and traditional notions of "tipping." First, MM Development is often paying rideshare drivers [redacted] (*See* Appx. 496, with Unredacted Version of Exhibit 1-A, mailed to the Supreme Court with accompanying Motion to File Under Seal.) Second, MM Development requires drivers to complete [redacted], and implemented [redacted]" (*Id.*) Third, these payments are occurring [redacted]. (*Id.*)

In sum, MM Development's payments do not function as a small, discretionary bonus to drivers who provide helpful guidance to otherwise undecided passengers. Rather, MM Development has established [redacted],

[7] It should be noted that while MM Development fervently argues Tryke's evidence is hearsay and should be disregarded, the only evidence in support of MM Development's "tipping" argument is unequivocally hearsay, with no valid exception. (*See* NRS 51.035, *see also* MM Opening Brief at 8-9.)

[redacted]

The District Court clearly understood the difference between actual tipping and MM Development's kickbacks:

> Trying to equate tipping with kickback payments intended and designed to divert customers from their preferred requested chosen destination to another for economic advantage is an entirely different creature.
>
> It appears [MM's Payment Scheme] incentivizes Rideshare drivers to aggressively pressure their clients into going to someone other than the merchant the client chose, so that the rideshare driver can make additional money above and beyond what the rideshare customer pays as evidence by the efforts of some drivers to sell their passengers on not going to the merchant destination they selected through the rideshare application.
>
> Some of these drivers appear to be going so far as to make allegedly false and misleading statements about the [passenger's] originally intended merchant destination, which in addition to costing the Plaintiff that sale, also has ripple effects as any defamation or false information would.

(Appx. 499:20 – 500:9.)

3. MM Development Has Intentionally Interfered with Tryke's Prospective Business Advantage

MM Development makes three arguments in support of its position that Tryke is not likely to prevail on its claim for IIPBA: (1) retail transactions are

insufficient to form the basis of a claim for interference with prospective business advantage; (2) MM Development's payment scheme is a privileged, competitive strategy immune from claims of this type in our open and free market economy; and (3) MM Development had neither the knowledge nor the intent necessary to meet the required proof for this claim. In addition to being incorrect, none of these arguments establish an abuse of discretion by the District Court.

First, MM Development argues that *Crockett v. Sahara Realty Corp.*, 95 Nev. 197, 199, 591 P.2d 1135, 1136 (1979) stands for the proposition that a retail transaction cannot form the basis of a IIPBA claim. (MM Opening Brief, at 11.) But *Crockett* makes no mention whatsoever of a distinction between retail transactions and any other. The matter before the *Crockett* Court did not involve retail transactions; the court was asked to examine whether one real estate broker interfered with a prospective listing agreement of a second real estate broker. *Id*. Nothing in Nevada law supports MM Development's notion that prospective retail transactions can never form the basis for an IIPBA claim.

In its second argument, MM Development relies on an incomplete quote from *Crockett* to contend its own conduct is privileged, free-market competition. MM Development left out the concluding portion of the quote, which in full provides, "so long as the plaintiff's contractual relations are merely contemplated or potential, it is considered to be in the interest of the public that any competitor

should be free to divert them to himself *by all fair and reasonable means." Id., emphasis added*. In this case, the passenger's prospective contractual relationship with Reef rises beyond "merely contemplated or potential." The passengers being diverted specifically requested to be transported to Reef through their rideshare applications, thus declaring an intention to purchase cannabis products from Reef. (Appx. 143, ¶ 9.) Realistically, customers paying for transportation to a specific cannabis dispensary are not incurring such an expense merely to "window shop."

In addition, actions that are illegal and/or against public policy are not "fair and reasonable," and thus are not privileged. Here, the District Court considered MM Development's argument regarding privilege, weighed it against the evidence, and rightly concluded that paying rideshare drivers to engage in illegal acts, defamation, and deception was not privileged.

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

(Hearing Transcript, Appx. 500:10-13.) This was a proper exercise of discretion by the District Court.

Third, MM Development argues that to establish the requisite element of intent, Tryke must show MM Development "desires to bring [the interference] about or [that] he knows that the interference is certain or substantially certain to occur as a result of his action." *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray*

Line Tours of S. Nevada, 106 Nev. 283, 287-88, 792 P.2d 386, 388 (1990) (quoting Restatement (Second) of Torts, § 766B(d) (1979)) (emphasis added). However, "[T]he intent element for an [IIPBA] claim does not require a specific intent to hurt the plaintiff, but instead, requires only an intent to interfere with the prospective contractual relationship." *Hitt v. Ruthe*, 131 Nev. 1291 (Nev. App. 2015)(citing *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of S. Nev.*, 106 Nev. 283, 287-88, 792 P.2d 386, 388 (1990)). Moreover, Tryke only needed to "establish facts from which the existence of the contract can reasonably be inferred." *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003).

There is ample evidence in the record that MM Development knows of the prospective business relationships between Reef and its customers, in particular customers using rideshare services and choosing Reef as their intended destination for their intended cannabis purchases and intended to interfere with as many of those relationships as possible. With kickback payments being made [redacted], MM Development knew or reasonably had to have known that rideshare drivers would prioritize the payments from Planet 13 over the desires of the rideshare passengers.

Furthermore, even if it is true MM Development did not know rideshare drivers were engaged in illegal diversion on behalf of and to the benefit of MM

Development when the kickback scheme was initially implemented, it certainly knew as of June 24, 2019 when Tryke put MM Development on notice with pre-litigation correspondence. (Appx. 153, at ¶19, Appx. 353-357.) Despite being warned of the problem and asked to stop, MM Development continued the kickback program with no modifications. Thus, MM Development clearly knew of the results of its activities and intended to interfere with Tryke's prospective economic relationships. The District Court's ruling in this regard is amply supported by the record.

Finally, MM Development argues Tryke must show MM Development had knowledge about its own interference with *specific* customers. MM Development does not cite to any precedent from this Court to support this position,[8] and for good reason as this Court has on multiple occasions reviewed interference strategies targeting a swath of potential customers and has never articulated a rule requiring a tortfeasor to have specific knowledge of each and every prospective relationship. *See, e.g. In re Amerco Derivative Litig.*, 127 Nev. 196, 226-27, 252 P.3d 681, 702-03 (2011), *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of S. Nevada*, 106 Nev. 283, 287-88, 792 P.2d 386, 388 (1990). MM Development's argument also defies logic: Tryke cannot avoid liability for intentional interference by contending that it did not know in advance of specific

[8] MM Development instead cites federal court dicta.

customers that would be impacted when the purpose of its scheme was to divert as many of those prospective customers as possible. If anything, MM Development's position shows precisely why an injunction was necessary and why the District Court correctly determined that Tryke is likely to succeed on the merits of its IIPBA claim.

4. Tryke is Likely to Succeed on the Merits of its Civil Conspiracy and Aiding and Abetting Claims

An actionable civil conspiracy "consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts." *Hilton Hotels v. Butch Lewis Productions*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993) citing *Sutherland v. Gross*, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989). The key phrase to consider is: "by some concerted action." Nevada's law on civil conspiracy does not require the underlying action to be wrongful, only that the intended result be wrongful. *Id*. Indeed, even what might be a lawful act (like "tipping" rideshare drivers) may become an actionable wrong when it is done with the intention of injuring another or when, although done to the benefit of the co-conspirators, its natural consequence is the oppression or harm of another. *Hubbard Business Plaza v. Lincoln Liberty Life*, 596 F. Supp. 344, 346 (D. Nev 1984).

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MM Development contends Nevada law only allows the Nevada Transportation Authority to bring claims against rideshare drivers. (Opening Brief at 14.) MM Development does *not* argue diverting passenger traffic is legal, only that MM Development itself is immune from related claims simply because it is not a rideshare driver and Tryke is not the Nevada Transportation Authority.

This argument, of course, requires the Court to ignore the fact that MM Development is paying rideshare drivers to engage in illegal behavior, and the fact that it is MM Development who receives economic benefit from the illegal actions it has commissioned. Moreover, it does not matter if NRS 706A.280(2)(a) and (b) and NAC 706.552(1) do not apply to MM Development. It also does not matter if only the Nevada Transportation Authority can pursue rideshare drivers for violations of NRS 706A.280(2)(a) and (b) and NAC 706.552(1). To the extent MM Development and rideshare drivers act in concert to take Reef customers to Planet 13 instead, that action can form the basis of a civil conspiracy claim against MM Development.

MM Development also argues (again) that Tryke cannot connect MM Development's intention and awareness to the rideshare drivers' illegal behavior. There is ample evidence in the record, however, to establish MM Development intended its payment scheme to incentivize rideshare drivers to redirect customers from Reef to Planet 13. From the choice of Planet 13's location, to the [redacted]

[redacted], to the open rideshare driver community forum placing detailed discussion about strategies to accomplish illegal diversion, to MM Development's continued disregard for Tryke's express warnings, the evidence supports the District Court's decision.

B. The District Court Properly Concluded Tryke Was Suffering Irreparable Harm

Next, MM Development argues the Preliminary Injunction Order was improper because Tryke's evidence of irreparable harm was somehow insufficient. Specifically, while MM Development acknowledges loss of goodwill and client relationships is a harm difficult to calculate and redress with money damages alone, it argues Tryke failed to establish with admissible evidence that damage to its reputation is occurring. (Opening Brief at 17.) This argument fails for multiple reasons.[9]

Nevada Courts have recognized the difficulty in calculating money damages to redress the loss of client relationships that would produce an indeterminate amount of business. *See, e.g., Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. 347, 352, 351 P.3d 720, 724 (2015) (quoting *Ticor Title Ins. Co. v. Cohen*, 173 F.3d 63, 69 (2d Cir. 1999)). Acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits may do an irreparable

[9] As set forth in Section III (B), *infra*, MM Development's arguments regarding admissibility of evidence are entirely misplaced.

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) (internal quotations omitted); *see also Guion v. Terra Marketing of Nevada, Inc.*, 90 Nev. 237, 523 P.2d 847 (1974).

To demonstrate the damage occurring to its reputation and customer good will, Tryke submitted evidence that both real customers and secret shoppers had been harassed, lied to, and eventually diverted from their original destination – Reef Dispensary – by rideshare drivers who took them to Planet 13. To connect MM Development to these illegal diversions, Tryke submitted MM Development's own documents and admissions that it pays [redacted]. Additionally, Tryke submitted chat strings on open public forums between rideshare drivers discussing strategies by which they have successfully caused, or might successfully cause, a passenger to change his/her destination and divert course specifically to Planet 13 so the drivers might collect the bounty offered by MM Development. This was more than sufficient evidence to support the District Court's ruling.

MM Development also argues Tryke did not produce admissible evidence to show how many Reef customers have been subject to these illegal diversions from which MM Development benefitted. With this, MM Development is far ahead of

itself. "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 1834, 68 L. Ed. 2d 175 (1981). Tryke's preliminary injunction request only needed to be supported by evidence "reasonably substantial" such that the District Court, in its discretion, could determine Tryke was likely to succeed on the merits of its claims after discovery is complete. *Nelson v. Peckham Plaza Partnerships*, 110 Nev. 23, 25, 866 P.2d 1138 1139. Tryke met this burden.

III. THE SCOPE OF THE ORDER IS PROPER

MM Development argues the Preliminary Injunction Order is at the same time both overly broad and too narrow. But the language of the order was carefully crafted to only prohibit illegal behavior by MM Development:

> 1. Defendant Planet 13 is enjoined from paying any fee or commission to rideshare service drivers in exchange for the drivers bringing passengers to Planet 13 *rather than another cannabis dispensary*; and
>
> 2. Defendant Planet 13 is enjoined from advertising to rideshare service drivers that Planet 13 will provide compensation to drivers in exchange for the drivers bringing passengers to Planet 13 *rather than another cannabis dispensary*.

(Appx. 526, emphasis added.)

To this, MM Development says, "customers are entitled to change their mind enroute." While this may be true in the abstract, the key questions at play in this matter are: *why* are they changing their minds, and are they actually changing

their minds or simply giving in to the pressure exerted by drivers eager to cash in on a diversion? MM Development produced no evidence that rideshare passengers were spontaneously deciding to change their destination to Planet13 from the one they inserted into the rideshare app. Yet, there is plenty of evidence that rideshare drivers were badmouthing their selected destination (Reef) and cajoling passengers into "changing their minds" or just dropping them off at Planet 13 with no discussion whatsoever. MM Development could continue to pay Rideshare drivers for bringing customers to its facility – if those customers requested to go to Planet 13 in the first instance or if the customers did not choose any destination at all. MM Development simply cannot pay or offer to pay rideshare drivers for delivering customers who requested to go elsewhere (i.e., it can no longer solicit diversion).

MM Development also complains the Preliminary Injunction Order is overly narrow because it does not enjoin any other cannabis dispensary from making payments to rideshare drivers for illegal diversions. MM Development did not present evidence to the District Court of any other dispensary paying rideshare drivers to divert Reef customers, and Tryke's secret shopper program only turned up evidence of diversion to Planet 13 (at an astoundingly high rate). Since there was no evidence of kickbacks for the targeted diversion of Reef customers to anywhere other than Planet 13 (across the street, and thus an easy sell), there is no

reason for any other dispensary to be named as a party in the underlying district court action, let alone included in the Preliminary Injunction Order.

IV. MM DEVELOPMENT'S PROCEDURAL COMPLAINTS ARE WITHOUT MERIT

In addition to its unfounded arguments regarding the factual and legal bases for and the scope of the Preliminary Injunction Order, MM Development now raises baseless procedural quibbles. MM's untimely arguments contravene well established Nevada law and fail to establish an abuse of discretion by the District Court.

A. An Evidentiary Hearing Was Not Required

"A party…is not required to prove his case in full at a preliminary-injunction hearing." *Univ. of Texas v. Camenisch*, 451 U.S. at 390, 395, 101 S. Ct. 1830, 1834, citing *Progress Development Corp. v. Mitchell*, 286 F.2d 222 (7th Cir. 1961). "Given [the] limited purpose [of preliminary injunction to preserve the relative positions of the parties], and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits. *Id*. "The urgency of obtaining a preliminary injunction necessitates a prompt determination and makes it difficult to obtain affidavits from persons who would be competent to testify at trial." *Marina Dist. Dev. Co., LLC v. AC Ocean Walk, LLC*, No. 220CV01592GMNBNW, 2020 WL 5502160, at *2 (D.

Nev. Sept. 10, 2020) citing *Flynt Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir.1984) "The trial court may give even inadmissible evidence some weight, when to do so serves the purpose of preventing irreparable harm before trial." *Id*.

Further, a preliminary injunction may be granted upon affidavit. *Ross-Whitney Corp. v. Smith Kline & French Lab'ys*, 207 F.2d 190, 198 (9th Cir. 1953) "A requirement of oral testimony would in effect require a full hearing on the merits and would thus defeat one of the purposes of a preliminary injunction which is to give speedy relief from irreparable injury." *Id.* This process adequately protects litigants despite submissions of less than fully admissible evidence. *See id*.

In this case, the District Court held a hearing, but did not require live witness testimony. This was entirely within the District Court's discretion and a wise decision given the circumstances. First, MM Development had recently recommenced its payment scheme to rideshare drivers after COVID restrictions had eased. This "necessitated speedy adjudication of the issues." Requiring live testimony would only delay that outcome. Second, COVID cases continued to spike in Nevada in September 2020, which was the time of the hearing on Tryke's Motion for Preliminary Injunction. Coordinating the necessary courtroom space to accommodate an evidentiary hearing would have been a challenge, and entirely unnecessary. (*See* Appx. 505-508.)

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To this, MM Development argues even if it was within the District Court's discretion to skip a full evidentiary hearing, it should not have done so in this case with facts "strongly disputed." This argument falls flat as well. While MM Development disputes the *source* of the facts (complaining they are within hearsay), it does not and cannot dispute the facts themselves; namely, that rideshare drivers diverted passengers, that rideshare drivers shared strategies on how to accomplish the diversions without alerting passengers to what was happening, and that MM Development made kickback payments to rideshare drivers knowing full well that a significant portion of the passengers were diverted to Planet 13. MM Development provided no contradictory evidence; rather it made legal arguments based upon the same evidence. (*Id*.) An argument regarding the legal implications of unrebutted evidence does not require an evidentiary hearing, and the District Court did not abuse its discretion in not engaging in what would have been a pointless exercise.

Moreover, despite there being no requirement therefore, if MM Development believed there to be cause for an evidentiary hearing, it had the obligation to raise that issue at the district court level. MM Development did not raise the issue or request an evidentiary hearing at all, thus it waived any right thereto, if any, or later argument therefor.

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B. The Evidence Submitted by Tryke Is Not Hearsay, and Hearsay Evidence Is Permitted in Preliminary Injunction Proceedings in any Event

As touched on above, MM Development's procedural gripes include its contention the District Court improperly considered hearsay evidence.

First, the statements by rideshare drivers were submitted only to demonstrate the fact that MM Development's payment plan was incentivizing these rideshare drivers to divert customers. Second, based on MM Development's payment documentation, [redacted] there is an agent/co-conspirator relationship between MM Development and the rideshare drivers. *See* NRS 51.035(3)(e); *McDowell v. State*, 103 Nev. 527, 529-30, 746 P.2d 149, 150 (1987); *Paul v. Imperial Palace, Inc.*, 111 Nev. 1544, 1549-50, 908 P.2d 226, 230 (1995); *Carroll v. State*, 132 Nev. 269, 277, 371 P.3d 1023, 1029 (2016). Thus, the evidence provided by Tryke is not hearsay of any kind.

But even if this evidence were hearsay, it is still properly a part of the record and properly could form a substantial basis for the District Court's decision-making. "A district court may consider hearsay in deciding whether to issue a preliminary injunction." *Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009); *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1363 (9th Cir.1988) (en banc); *See also Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 787 P.2d 772 (1990) (noting that NRCP 65 was drawn from an earlier version of FRCP 65,

making it appropriate to look to federal cases and treatises in construing the NRCP rule.)

C. The District Court Did Not Abuse its Discretion in Hearing Tryke's Motion for Preliminary Injunction on Shortened Time

Finally, MM Development contends that it only had three days to prepare its opposition to the motion for preliminary injunction. Notably, as demonstrated by the Court docket, there is no indication that MM Development ever required any additional time either to prepare its written response brief or to prepare for the hearing on Tryke's motion for preliminary injunction. Specifically, MM Development did not request that the Court extend either the filing deadline or that the hearing be continued to a later date.[10]

In addition to the above, it is worth noting that Tryke had a similarly abbreviated period to prepare and file its reply brief, which is not surprising since speedy adjudication is the nature of these proceedings.

Moreover, since MM Development believed its behavior was justified and relied almost exclusively on legal arguments to support its theories, there is no reason for this Court to conclude that a longer briefing schedule would have made

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[10] MM Development did request a one-day extension of the filing deadline from Tryke's counsel, who agreed to stipulate to the extension. Despite the agreement to the extension, however, MM Development filed its opposition brief by the original deadline.

any difference in the outcome before the District Court.[11] Thus, even if the District Court's decision to set the hearing on Tryke's motion for preliminary injunction on shortened time and abbreviating the briefing timeline was an abuse of discretion – Tryke maintains it was not - it was at most a harmless error given MM Development's open admission to the facts at bar. *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (When an error is harmless, reversal is not warranted); *Cook v. Sunrise Hospital & Medical Center,* 124 Nev. 997, 1006-07, 194 P.3d 1214, 1219-20 (2008) (To establish that an error is prejudicial, the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached.)

V. CONCLUSION

The District Court granted Tryke's request for preliminary injunction based upon substantial evidence in the record, after undertaking all procedures required by Nevada law for entry of preliminary injunction, and without either abuse of discretion or clear error. In addition, the Preliminary Injunction Order is proper in scope, precluding only continued unlawful activity by MM Development during the pendency of the underlying action. As such, the Preliminary Injunction Order should be affirmed.

[11] Indeed, after the injunction order was entered, MM Development submitted a Motion to Reconsider and in that filing simply re-briefed its prior legal arguments. The District Court accordingly denied that motion to reconsider.

VI. CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016, font size 14-point, Times New Roman. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 10,952 words. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions if the accompanying

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brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 24th day of May 2021.

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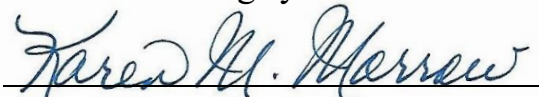
CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May 2021, I submitted the foregoing RESPONDENT TRYKE COMPANIES SO NV, LLC'S ANSWERING BRIEF for filing and service via the Court's eFlex electronic filing system.



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