

IN THE SUPREME COURT OF THE STATE OF NEVADA

MM DEVELOPMENT COMPANY,
INC., a Nevada corporation,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JESSICA PETERSON, DISTRICT
COURT JUDGE,
Respondents,

and

TRYKE COMPANIES SO NV, LLC, A
Nevada Limited Liability Company,
Real Parties in Interest.

Supreme Court Case No.:

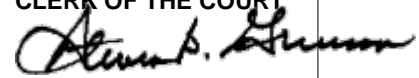
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**PETITIONER'S APPENDIX
VOLUME 1**

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

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No.:
Dept. No.:

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

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

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

PARTIES, JURISDICTION, AND VENUE

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





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

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

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

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

15 5. This Court has jurisdiction over this matter.

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

18 **GENERAL ALLEGATIONS**

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

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

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

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



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

6 ***Illegal Diversion Revealed***

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

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

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

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

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

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

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

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

28



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

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

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

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

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

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

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

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

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



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



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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

8 **CAUSES OF ACTION**

9 **COUNT I – Civil Conspiracy**

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

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

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

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

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

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

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

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

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

28



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

3 **COUNT II – Aiding and Abetting**

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

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

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

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

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

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

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

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

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

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

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

26 **(Planet 13)**

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

28



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

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

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

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

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

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

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

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

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

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

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

27 ///

28 ///



PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief against Defendants:

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

Dated this 5th day of November 2019.

H1 LAW GROUP

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

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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 OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION ON
ORDER SHORTENING TIME**

Hearing Date: September 3, 2020
Hearing Time: 9:00 a.m.

Defendant MM Development Company, Inc. ("Planet 13"), by and through counsel of record, hereby submits this opposition to Tryke Companies SO NV, LLC ("Reef") Motion for Preliminary Injunction on Order Shortening Time (the "Motion").

I.

INTRODUCTION

Reef's efforts to control the marijuana dispensary industry and its competition are manifested through this litigation. The causes of action advanced by Reef and their various arguments of damage at the hands of Planet 13, however, do little to shroud the fact that this litigation is simply the tool-du-jour by which Reef has chosen to deal with an increasingly

1 competitive marketplace. By way of this action and, particularly this Motion, Reef asks this Court
2 to do what numerous judges previously refused to do, what Nevada Governor Kenny Guinn
3 refused to do, what the Clark County Liquor and Gaming Licensing Board refused to do, and
4 what the Nevada Taxicab Authority refused to do; *i.e.*, expressly ban the tipping of taxicab, Uber,
5 and Lyft drivers.

6 Rather than accept the fact that Reef might have to innovate to stay competitive and retain
7 the market share in the industry that it may have had at one point, Reef has chosen to burden the
8 courts with the assertion of meritless claims and hollow cries of damage against its competition.
9 Indeed, Planet 13 represents a different and successful manner in which to operate an adult-use
10 dispensary in Las Vegas; one with which Reef has simply failed to keep up. As readily as those
11 lines are identified, the Court should recognize that the Preliminary Injunction sought by the Reef
12 is not only unwarranted, but to enter such extraordinary relief upon such a weak showing would
13 be plain error.

14 II.

15 FACTUAL & PROCEDURAL BACKGROUND

16 **A. Historical Overview**

17 It is axiomatic that the working class in a service industry depends, if not survives, on the
18 generation of tip and gratuity income. Indeed, not only do dispensaries tip taxicab, Uber, and
19 Lyft drivers, but many other businesses such as strip clubs, nightclubs, casinos, attorneys, and
20 restaurants do as well. *See, e.g.*, Michael Squires, *Taxicab Authority Repeals Tip Law*, Las Vegas
21 Review-Journal, June 25, 2002, **Exhibit A**; Adrienne Packer, *County Backs Away From Cabby*
22 *Tipping Law*, Las Vegas Review-Journal, Dec. 21, 2005, **Exhibit B**. Some businesses offer cash,
23 others offer other rewards such as free food and drink tickets, free coffee and even free traffic
24 ticket representation. *Id.*

25 In recognition of this reality, over 15 years ago Governor Kenny Guinn vetoed Assembly
26 Bill 505, amid mass protests by taxicab drivers across the state, because Section 133 of that bill
27 banned taxicab driver gratuities. *See* Press Release, Office of Governor Guinn, June 14, 2005,
28

1 **Exhibit C.** Governor Guinn vetoed Assembly Bill 505 because, among other things, “it singles
2 out and hurts the financial well-being of taxicab drivers.” *Id.*

3 Following the Governor’s absolute refusal to ban such behavior, on March 28, 2006, the
4 Clark County Liquor and Gaming Licensing Board followed suit and voted to repeal County
5 Ordinance 8.20.297, in its entirety. This ordinance, for the brief time of its existence, made it
6 unlawful for any liquor licensee “to pay any tip, gift, or gratuity of any kind to any taxicab driver
7 for the delivery of any passenger to the business location of the licensee.” *See Relevant Portion*
8 *of Agenda for March 28, 2006, Meeting, Exhibit D.* The Clark County Commission, in repealing
9 County Ordinance 8.20.297, clearly indicated its intention to permit the practice of tipping
10 cabdrivers. “Commissioners agreed that the issue is one that can be sorted out by the free market.
11 **If businesses want to pay the drivers, the government shouldn’t interfere.” Ex. B., p. 2.**

12 Notably, in 2002, the Nevada Taxicab Authority specifically repealed a regulation that
13 banned taxicab drivers from accepting gratuities from anyone other than their employer or a
14 passenger. **Ex. A.** The Nevada Taxicab Authority did so even with the clear understanding that
15 diversion may happen. When the Nevada Taxicab Authority repealed that regulation in 2002,
16 then-administrator John Plunket said, “[w]e will monitor diversions and if we see it increase, we’ll
17 be out there to enforce the law. **But you just can’t stop people from taking tips.” Ex. A (bold**
18 **added).** In fact, the Nevada Taxicab Authority’s repeal of the regulation was actually “prompted”
19 by a legal action between adult nightclubs over the practice of tipping. Talking about allowing
20 businesses to tip taxicab drivers, then-administrator John Plunket went further: “For 30 years
21 they’ve been accepting gratuities. It’s almost like part of their salary.” **Ex. A.**

22 Presently, no state or county law prohibits the tipping of taxicab, Uber, or Lyft drivers nor
23 is there any law prohibiting taxicab, Uber, or Lyft drivers from accepting tips.

24 **B. Tipping Practices Previously Unsuccessfully Challenged**

25 Despite the clear directives of Nevada’s executive and legislative branches, an association
26 of adult nightclubs sought to challenge the practice of tipping taxicabs in various lawsuits between
27 2002 and 2006, by filing complaints alleging that other adult nightclubs were, among other things,
28 violating anti-diversion laws under NRS 706.8846. The truth became evident very quickly – that

1 plaintiffs in those cases never had any moral or legal issue with tipping taxicab drivers (or with
2 the anti-diversion statutes) until they decided that tipping was simply an expense they did not
3 want to incur. Over nearly 40 years, tipping of taxicabs increased to as much as \$70.00 per
4 passenger dropped off at some businesses. *See, e.g., Ex. B*, p. 2.

5 As a result of the increase in tipping prices, thirteen adult nightclubs (including Palomino
6 Club, Spearmint Rhino, Déjà vu, Sapphire, Treasures, and Cheetah's, among others) united on
7 December 5, 2005, to form an association, the sole and stated purpose of which was to take legal
8 action to ensure compliance with all of the laws and regulations concerning the adult night club
9 business. Then, in January 2006, the adult nightclub association sent letters to other nightclubs
10 in an attempt to coerce these other nightclubs to stop the practice of tipping taxicabs. If the other
11 nightclubs dared to decline to join the organization, then the association threatened to file suit and
12 request damages and injunctive relief if the facts support such a course of action. Some of these
13 other nightclubs decided against joining the association and, as a direct result, were sued for
14 claims including: Violation of NRS §§ 598A *et. seq.*, Civil Conspiracy, Violation of NRS 207.360
15 Nevada Civil RICO, Intentional Interference with Business Relations, Intentional Interference
16 with Prospective Business Advantage, and Injunctive Relief. *See* Amended Complaint filed in
17 Nevada Assoc. of Nightclubs, Inc. v. D.I. Food & Beverage of Las Vegas, LLC, *et al.*, Eighth
18 Judicial District Court Case No. 05A514591, March 3, 2006, attached hereto as **Exhibit E**.

19 In April 2006, the plaintiff in that case filed a motion for temporary restraining order and
20 preliminary injunction (which is virtually identical to that presented in the instant action) against
21 non-association nightclubs to enjoin those clubs from:

- 22 (1) diverting passengers to nightclubs and away for Plaintiff's nightclubs; and
- 23 (2) knowingly and/or participating in any manner which provides taxicab
24 drivers compensation specifically for taking customers to defendant's
25 nightclub.

26 Compare to Reef's Motion, 26:18-27:1. The request of an injunction was based on affidavits it
27 alleged contained "evidence" of other nightclubs' wrongdoing and that nightclub association
28

members were being “irreparably” harmed by taxicab tipping.¹ Nevertheless, the association waited over two months after the litigation was commenced before filing the preliminary injunction motion.

That motion by plaintiff was denied by Judge Adair in a decision, filed in that action on March 23, 2007. Presently, the very same entities that sought to enjoin the practice of tipping taxi cabs (e.g., Palomino Club, Spearmint Rhino, Déjà vu, Sapphire, Treasures, and Cheetah’s), and those that defended it (e.g. Scores), all offer tips to taxicab, Uber, and Lyft drivers via the Kickback app. Reef now asks this Court to do what Judge Adair refused to do, what Governor Guinn refused to do, what the Clark County Commission refused to do, and what the Nevada Taxicab Authority refused to do; *i.e.*, ban the tipping of taxicab, Uber, and Lyft drivers.

C. 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 tipping of taxicab, Uber, and Lyft drivers is illegal and somehow designed to encourage the diversion (as defined by NRS 706A.280(2) and NAC 706.552(1)) of passengers to Planet 13. Neither of these predicates is true.

Nevada law is also clear that there is no private right of action under NRS 706A.280(2), NAC 706.552(1), or any other Nevada statutes or regulations for diversion. Planet 13 moved to dismiss Reef’s complaint on this basis and, during oral argument on Planet 13’s Motion to Dismiss, this Court agreed. *See* February 27, 2020 Hearing Transcript (“Hearing Transcript”) at 6:9-11, 15:9-10, and 16:1-2, on file. Yet, the Court denied dismissal of claims because it

¹ After sending the threatening letter (just like Reef did in this matter), the association claimed to have compiled “evidence” to support its request for an injunction. That “evidence” consisted of affidavits from private investigators and an “investigation” for the nightclub association as to “whether or not any Las Vegas Cab Drivers were diverting customers away from their requested destination” (just like Reef submits as part of its instant motion). *See* Affidavits of Hal De Becker, III, and Michael L. Yepko, attached hereto as **Exhibit F**.

understood Reef's Complaint had managed to sufficiently allege the underlying tort of interference with prospective or economic advantage. *Id.* at 15:12-14.

Reef waited nearly ten months *after* filing the Complaint to move for a preliminary injunction. Despite waiting almost a year to file the instant Motion, Reef somehow claims that this Motion had to be heard on shortened time. Aside from the fact that Reef's claims asserted in this litigation have no legal or factual merit, Reef's request for an injunction and its claims of irreparable harm are absolutely refuted by its dilatory conduct alone.²

III.

ARGUMENT

A. Standard for Injunctive Relief

Issuance of the extraordinary remedy of injunctive relief is appropriate only when: (i) the moving party shows a reasonable likelihood of success on the merits; and (ii) irreparable harm will be sustained by the moving party if the requested injunction is not issued. *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. "Where, as here, a party seeks a mandatory preliminary injunction, forcing another party to take action that goes beyond maintaining the status quo, such relief is subject to heightened scrutiny and the injunction requested should not be issued unless the facts and law clearly favor the moving party." *Wal-Mart Stores, Inc. v. County of Clark*, 125 F. Supp. 2d 420, 424 (D. Nev. 1999) (citation omitted); *see also Mustafa v. Clark County Sch. Dist.*, 876 F. Supp. 1177, 1183 (D. Nev. 1995) ("Mandatory injunctions are not granted unless extreme or very serious damage will result

² When a plaintiff's delays are neither justifiable nor reasonable, and they have materially disadvantaged the defendant, the plaintiff is guilty of laches and precluded from relief. *Bldg. & Const. Trades Council of N. Nevada v. State ex rel. Pub. Works Bd.*, 108 Nev. 605, 611-12, 836 P.2d. 633, 637 (1992); *Carson City v. Price*, 113 Nev. 409, 412, 934 P.2d 1042, 1044 (1997) (six-month delay before threatening legal action, and subsequent two-month delay before filing complaint was inexcusable). Here, Reef first sent a letter threatening litigation in June 2019, but delayed nearly five months before filing its complaint in November 2019. Now, after waiting more than **nine months** after filing its complaint, Reef seeks a preliminary injunction. Reef's conduct is the definition of laches and sufficient grounds alone for denial of Reef's Motion.

and are not issued in doubtful cases.”) (citation omitted). Before Reef can obtain any equitable relief from this Court, it must clearly establish that it enjoys a reasonable likelihood of success on the merits and that it will suffer irreparable harm if Planet 13’s actions are not enjoined. As set forth below, Reef has fallen far short of this heightened standard. Reef’s Motion should be denied.

B. Reef Failed to Establish That the Law and Facts Clearly Favor Enjoining Planet 13

a. Reef has submitted no admissible evidence.

Reef asks this Court to issue an entirely unnecessary preliminary injunction on Reef’s bare allegation that Planet 13 has allegedly violated the law. *See* Reef’s Motion, p. 2:2-5. Reef’s attempted indictment of Planet 13 is not supported by law or evidence, but is merely offered by Reef’s counsel in the form of “argument.” Reef apparently hopes that its sweeping and repeated attacks upon Planet 13 will somehow become evidence or “fact” if they are repeated enough times. Such self-serving statements of counsel are unsupported assertions that have no impact upon this dispute and should be disregarded by this Court. *See, e.g., K-2 Ski Co. v. Head Ski Co.*, 467 F.2d 1087, 1088-89 (9th Cir. 1972) (stating that if the facts in support of a preliminary injunction motion consist “largely of general assertions,” the court should not grant injunctive relief unless the moving party makes a further showing sufficient to demonstrate that he will probably succeed on the merits); *Dermody v. City of Reno*, 113 Nev. 207, 211, 931 P.2d 1354, 1357 (1997) (“A party cannot manufacture a genuine issue of material fact by making assertions in its legal memorandum.”). Other than the rhetoric and hyperbole of its counsel, Reef has no evidence whatsoever to prove that it is “clearly” entitled to a preliminary injunction.

In fact, the only additional “evidence” submitted by Reef consists of an affidavit passing along alleged statements from internet chat boards and allegedly secretly-taped conversations by “secret shopping” riders. *See* Affidavit of Adam Laikin, attached to Reef’s Motion. This “evidence” is textbook inadmissible hearsay. Reef is offering these statements for the truth of the matter asserted. Such statements are inadmissible and should not be considered for purposes of deciding Reef’s Motion. *See ACLU of Nev. v. City of Las Vegas*, 13 F. Supp. 2d 1064, 1070 (D. Nev. 1998) (refusing to consider inadmissible hearsay statements when adjudicating plaintiffs’ preliminary injunction motion). Indeed, a court should be “wary of granting a preliminary

1 injunction based ‘solely on allegations and conclusory affidavits submitted by plaintiff.’” *Id.* at
2 1071 (citation omitted).

3 Furthermore, Reef’s own employee’s “secret shopper” investigation and his statements
4 that Planet 13 “continues to pay kickbacks for diverting customers to Planet 13” go to the ultimate
5 factual and legal issues in this case. *See* Laikin Affidavit to Reef’s Motion. These statements
6 must be excluded for purposes of adjudicating Reef’s Motion. *See ACLU*, 13 F. Supp. 2d at 1071
7 (“Affidavits must be based on personal knowledge and must not contain conclusions of law or
8 ultimate facts.”).

9 Finally, due to the fact that the only “evidence” Reef provides in support of its Motion, is
10 hearsay from a self-serving “secret shopper” investigation and anonymous internet chat boards,
11 Reef has failed to show that **customers**, not hired employees or investigators, are being diverted.
12 Once those Reef employees and/or investigators heard the magic name Planet 13, it appears they
13 stopped all discussions with the driver and acquiesced to the driver’s recommendation. This is
14 not evidence that the same scenario occurs with a customer. In addition, it appears none of the
15 people listed in Reef’s affidavit actually had any contractual relationship with Reef that Planet 13
16 could have allegedly interfered with in any way.

17 In sum, when stripped of its hyperbole and inadmissible evidence, Reef has submitted
18 absolutely no evidence in support of its Motion. Reef’s Motion should, therefore, be denied.

19 ***b. Reef has not borne its burden of clearly demonstrating that it has a reasonable***
20 ***probability of ultimate success on the merits.***

21 In support of its Motion, Reef alleges that it is “likely to succeed on the merits of its claim
22 for tortious interference with prospective economic relations, as well as conspiracy and aiding
23 and abetting claims that relate to this claim.” *See* Reef’s Motion, 20:21-23. As set forth below,
24 Reef has not stated one proper claim for relief against Planet 13, much less met its burden of
25 clearly demonstrating that it has a reasonable probability of success on the merits of its claims
26 against Planet 13.

27 ///

28 ///

i. Reef has failed to state a proper claim for interference with economic advantage.

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

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

Wichinsky v. Mosa, 109 Nev. 84, 88, 847 P.2d 727, 729-30 (1993); *Consolidated Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1255 (1998) (same). Reef completely glosses over any argument or evidence that it had "a prospective contractual relationship" with any taxicab, Uber, or Lyft passengers. *See* Reef's Motion, 20:19-22:28. That is because there is no "contractual relationship", prospective or otherwise, between Reef and a potential patron of Reef's dispensary.³ As such, Reef has failed to state a proper claim against Planet 13.

Furthermore, even if Reef could state a proper claim for interference with prospective economic advantage against Planet 13 in the absence of a "prospective contractual relationship" Reef fails to offer any evidence to show that any alleged interference by Planet 13 was not privileged or justified. "Privilege or justification can exist when defendant acts to protect his own interests." *Custom Teleconnect, Inc. v. Int'l Tele-Servs., Inc.*, 254 F. Supp. 2d 1173, 1181 (D. Nev. 2003) (citation omitted). Indeed, the Nevada Supreme Court has long recognized that

Perhaps the most significant privilege or justification for interference with a prospective business advantage is free competition. Ours is a competitive economy in which business entities vie for economic advantage. In a sense, all vendees are potential buyers of the products and services of all sellers in a given

³ Reef strains to get around the "prospective contractual relationship" element by discussing paying "illegal commissions" in *Las Vegas-Tonopah-Reno Stage Lines v. Gray Line Tours*, 106 Nev. 283, 792 P.2d 386 (1990). But that case involved a dispute over actions taken while companies were competing over a **contract** with a firm which places tourists with bus companies. *Id.* No contracts are at issue in this action. Moreover, *Las Vegas-Tonopah-Reno Stage Lines* involved illegal payments and, as has been discussed above, none of the tips paid by Planet 13 to any drivers – taxicab, Uber, or Lyft – are illegal.

1 line, and the success goes to him who is able to induce potential customers not to
2 deal with a competitor. Thus, as Prosser states: “So long as the plaintiff’s
3 contractual relations are merely contemplated or potential, it is considered to be in
4 the interest of the public that any competitor should be free to divert them to
5 himself by all fair and reasonable means.” (Prosser, Torts (4th ed. 1971) p. 954.)

6 *Crockett v. Sahara Realty Corp.*, 95 Nev. 197, 199, 591 P.2d 1135, 1136 (1979) (affirming trial
7 court’s grant of summary judgment on tortious interference with prospective economic advantage
8 claim). Stated another way, “[w]here a party has a financial interest in a business, it ordinarily
9 cannot be found that decisions made with respect to that business and for the purpose of furthering
10 that business are improper.” *Id.*

11 While Reef claims that Planet 13 created its tipping program, the reality is – as recognized
12 by the administrator for the Nevada Taxicab Authority in 2002 – that tipping of drivers (taxi,
13 Uber, and Lyft) has been around in Las Vegas since at least the 1970s. **Ex. A.** Planet 13 did not
14 create the concept or program for tipping drivers. As stated by Ruthie Jones, then vice president
15 of the cabdrivers’ union, “This town is based on incentives.” *Id.* And allowing drivers to accept
16 tips is considered part of their wages. *Id.* Moreover, it is a practice that is so widespread that
17 restaurants, museums, pawn shops, casinos, and even shopping malls have engaged in it. *Id.*
18 Even several other dispensaries provide tips to taxicab, Uber, and Lyft drivers. At various times,
19 the following dispensaries all provided tips to drivers: NuLeaf, MedMen (two locations), The
20 Grove, Pisos, Sahara Wellness, Releaf, Acres, Oasis, and Jardin.⁴ Any tipping of taxicab, Uber,
21 or Lyft drivers by Planet 13 is absolutely privileged as free competition, not just with Reef, but
22 with all the other dispensaries in town.

23
24 ⁴ At the time of filing this Opposition, the Kickback app (which Reef mentions in its Motion)
25 lists 16 different strip clubs including Palomino Club, Spearmint Rhino, Déjà Vu, Sapphire,
26 Treasures, Cheetah’s (all part of the plaintiff association in the prior tipping litigation mentioned
27 in Sec. II(B), above – and Scores – one of the defendants in that same litigation, **Ex. E**) all of
28 which offer tips to drivers delivering customers. In addition to the strip clubs, Kickback also lists
7 dispensaries, 3 liquor stores, 2 gun ranges, 2 auto body and repair shops, 2 clubs/pools, 2 car
washes, 12 restaurants, 3 hookah lounges, one tattoo parlor, one spray tanning facility, and a pawn
shop, among others.

1 The Ninth Circuit Court of Appeals has, interpreting California law, enumerated four
2 specific tests, which, if met, exonerate a competitor for the tort of interference with prospective
3 business advantage:

- 4 1. The relation concerns a matter involved in the competition between the actor
5 and the other;
- 6 2. The actor does not employ wrongful means;
- 7 3. His action does not create or continue an unlawful restraint of trade; and
- 8 4. His purpose is at least in part to advance his interest in competing with the
9 other.

10 *See Pac. Express, Inc. v. United Airlines, Inc.*, 959 F.2d 814, 819 (9th Cir. 1992) (affirming
11 summary judgment on claim for tortious interference with prospective economic advantage where
12 the defense of competitor's privilege was undisputed).

13 Even though the Nevada Supreme Court has not specifically adopted this four-part test,
14 Planet 13 still passes the test. There is no question that Planet 13 competes with Reef. Likewise,
15 Reef has not offered any legal authority or factual evidence which would demonstrate or even
16 infer that Planet 13 has employed unlawful means or has created an unlawful restraint of trade.
17 The reality is that the Governor of Nevada, the Clark County Liquor and Gaming Licensing
18 Board, and the Nevada Taxicab Authority have all made the express determination that the tipping
19 of taxicab, Uber, and Lyft drivers is absolutely permitted. Finally, it is undisputed that any actions
20 taken by Planet 13 were designed to increase business at Planet 13. Conversely, all that Reef
21 could possibly show (but has not even a shred of evidence of that) is the loss of customer
22 patronage, a circumstance which is one of the normal hazards of business. Under these
23 circumstances, Reef has failed to state a claim for tortious interference with prospective economic
24 advantage. As such, this claim should be dismissed and Reef's Motion should be denied.

25 ii. *Reef has failed to state proper claims for civil conspiracy or aiding and*
26 *abetting, much less shown a likelihood of success on the merits of these*
27 *claims.*

28 Reef does not even address the merits of its claims for civil conspiracy or aiding and
abetting. "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." *Consolidated Generator-Nev., Inc. v. Cummins*

1 *Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). In this regard, Reef (vaguely)
2 alleges that Planet 13 has conspired with one or more taxicab, Uber, or Lyft drivers to violate
3 NRS 706A.280(2) and NAC 706.552(1) by “diverting” the passengers away from his/her
4 requested destination. *See* Reef’s Motion, 5:17-19. In order to demonstrate a likelihood of
5 success on the merits of Reef’s claim that Planet 13 conspired with these drivers to accomplish
6 an “unlawful objective,” Reef would have to properly allege and prove the following: (1) NRS
7 706A.280(2) and NAC 706.552(1) apply to Planet 13; (2) the statute and/or regulation creates a
8 private right of action; and (3) the statute and/or regulation were violated. Reef has failed to
9 allege and prove any of these elements.⁵

10 First, the Court must look to the statutes at issue in Reef’s Motion. “The construction of
11 a statute is a question of law.” *Del Papa v. Bd. of Regents*, 114 Nev. 388, 392, 956 P.2d 770, 773
12 (1998) (citation omitted). “Where the language of a statute is plain and unambiguous, and its
13 meaning is clear and unmistakable, there is no room for construction, and the courts are not
14 permitted to search for its meaning beyond the statute itself.” *Id.* at 392; 956 P.2d at 774. Finally,
15 “[a] statute should always be construed to avoid absurd results.” *Id.* (citation omitted).

16 The declared legislative purpose of NRS 706.011 *et seq.* was “to confer upon the [Nevada
17 Transportation] Authority the power and to make it the duty of the Authority to regulate fully
18 regulated carriers, operators of tow-cars and brokers of regulated services to the extent provided
19 in this chapter” NRS 706.151(l)(a). Likewise, the relevant statutes and regulations apply to
20 and regulate **drivers**, not dispensaries such as Planet 13. NRS 706A.280 provides, in pertinent
21 part:

22 With respect to a passenger’s destination, a **driver** shall not:

- 23 1. Deceive or attempt to deceive any passenger who rides or desires
24 to ride in the driver’s motor vehicle.

25
26 ⁵ Planet 13 does not concede that Reef has properly alleged that Planet 13 “conspired” with
27 anyone else to do anything. In fact, Reef has failed to offer any proof whatsoever of any
28 agreement or conspiratorial plot or scheme involving Planet 13. Reef’s conclusory allegations
obviously fall short of the evidentiary burden imposed upon Reef for relief of this sort.

2. Convey or attempt to convey any passenger to a destination other than the one directed by the passenger.
3. Take a longer route to the passenger's destination than is necessary, unless specifically requested to do so by the passenger.
4. Fail to comply with the reasonable and lawful requests of the passenger as to speed of travel and route to be taken.

(Emphasis added). Similarly, NAC 706.8847(1)(f) provides that, among other things, a **driver** shall not “divert or attempt to divert a prospective customer from any commercial establishment.” (emphasis added). Nothing about these statutes applies to Planet 13.

In Reef's Motion, Reef attempts to mislead the Court by claiming that Planet 13 is diverting customers away from Reef's dispensary. *See, e.g.*, Reef's Motion, 6:5-6. That is simply not true. Planet 13 cannot violate any of the provisions of NRS 706A or NAC 706.552 because the express terms of the statutes and regulations do not apply to Planet 13. That Reef resorts to misleading the Court on who is liable under the statutes demonstrates, in and of itself, the frivolousness of Reef's claims.

Nowhere in NRS Chapter 706A does it allow a business to privately sue for violations of the statute (neither is there a private right of action created under NAC 706 nor NAC 706A). Violations of NRS 706A may result in discipline by the **Nevada Transportation Authority**.⁶ *See* NRS 706A.300 (only the transportation network company (i.e., ride-sharing companies) and the **drivers** are subject to NTA discipline under NRS 706A). The Nevada Legislature did **not** authorize private parties to seek redress from competitors for violations of NRS Chapter 706A.⁷ Hence, Reef lacks any standing to assert claims against Planet 13 for diversion.

⁶ According to the Nevada Transportation Authority, it alone is the regulatory body which “administers and enforces state law” regulating: (1) passenger transportation pursuant to NRS 706 and NAC 706; and (2) transportation network companies pursuant to NRS 706A and NAC 706A, among other things. *See* Overview of Nevada Transportation Authority: Before the S. Comm. on Transportation, 2017 Leg., 79th Sess. 2-3 (Feb. 16, 2017) (statements by Chair Alaina Burtenshaw, including presentation marked as Exhibit C), the relevant portions of which are attached hereto as **Exhibit G**.

⁷ If Reef has a complaint regarding diversion of passengers by **drivers** of ride-sharing vehicles or taxicabs, it needs to take that complaint up with the Nevada Transportation Authority. As the

1 Because Reef lacks standing to assert direct claims against MM for violating NRS
2 706A.280 and NAC 706.552, it likewise lacks standing to assert indirect claims against Planet 13
3 for statutory violations under the guise of a civil conspiracy claim or aiding and abetting. *See*
4 *generally Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 170 P.3d 989 (2007) (dismissing claims
5 brought under NRS 690B.012 because the statute “does not expressly create a private right of
6 action”); *Palmer v. State*, 106 Nev. 151, 787 P.2d 803 (1990) (dismissing a cause of action
7 brought under NRS 281.370 because the statute “does not provide for any private right of action”).
8 Without a predicate wrong upon which Reef could seek relief from Planet 13, Reef cannot
9 maintain claims for civil conspiracy or aiding and abetting against Planet 13. As such, Reef has
10 failed to state a claim for relief against Planet 13 and has failed to demonstrate a likelihood of
11 success on the merits.

12 Reef also fails to allege any facts or present a shred of evidence to show that Planet 13
13 employees knew the reason why the patrons came to Planet 13. All Planet 13 knows is that a
14 patron arrives by taxicab, Uber, or Lyft. Nothing more, nothing less. It goes without saying that
15 Planet 13 cannot be found liable or responsible for spontaneous actions taken by the drivers.

16 In short, with nothing other than hyperbole and conjecture, Reef does not have any factual
17 or legal basis to state or allege that Planet 13 has done anything wrong, much less that Planet 13
18 conspired with someone else to do something wrong. Reef has failed to demonstrate a likelihood
19 of success on the merits of its civil conspiracy claim or aiding and abetting claim. These claims
20 should be dismissed. *See Woods v. Reno Commodities, Inc.*, 600 F. Supp. 574, 578 (D. Nev.
21 1984) (stating that “it is not enough to indicate merely that the plaintiff has a grievance, but
22

23
24 Nevada Taxicab Authority administrator John Plunket stated in 2002, “[w]e will monitor
25 diversions and if we see it increase, **we’ll be out there to enforce the law**. But you just can’t
26 stop people from taking tips.” **Ex. A** (bold added). As Reef has utterly failed to present any
27 diversion to the Nevada Taxicab Authority, the Nevada Transportation Authority or obtain any
28 decision from any regulatory body, it has failed to exhaust its administrative remedies. As such,
Nevada law mandates dismissal of the present action since this Court lacks subject matter
jurisdiction over Reef’s grievances. *See* NRS 233B.130(1); *see also Mesagate Homeowners*
Ass’n v. City of Fernley, 194 P.3d 1248, 1252 (Nev. 2008); *Nevada v. Scotsman Manufacturing*
Co., 109 Nev. 252, 255, 849 P.2d 317, 319 (1993).

sufficient detail must be given so that the defendant, and the court, can obtain a fair idea of what the plaintiff is complaining, and can see that there is some legal basis for recovery.”) (citation omitted).

C. Reef Will Not Suffer Any Irreparable Injury For Which Compensatory Damages Is An Inadequate Remedy

In order to obtain a preliminary injunction, Reef must demonstrate that it will suffer irreparable injury for which compensatory damages are an inadequate remedy. *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029–30 (1987) (noting that, with respect to injunctive relief, irreparable harm is harm for which compensatory damages would be inadequate, such as the sale of a home at trustee's sale, because real property is unique); *Hansen v. Eighth Judicial Dist. Ct.*, 116 Nev. 650, 658, 6 P.3d 982, 987 (2000) (noting that “ ‘[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended’ are not enough to show irreparable harm) (quoting *Virginia Petroleum Job. Ass'n v. Federal Power Com'n*, 104 U.S.App.D.C. 106, 259 F.2d 921, 925 (D.C.Cir.1958)).

Reef must also establish that the alleged harm it will suffer is “neither remote nor speculative, but actual and imminent.” *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328,332 (2d Cir. 1995) (citation omitted). **“The injury must be both certain and great; it must be actual and not theoretical.”** *Wisconsin Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985).⁸ Injunctive relief “will not be granted against something merely feared as liable to occur at some indefinite time.” *Connecticut v. Massachusetts*, 282 U.S. 660, 674, 51 S.Ct. 286, 291, 75 L.Ed. 602 (1931).

In support of its claim that it will be irreparably harmed, Reef offers this Court nothing but unsubstantiated conjecture about what potential customers **might** think about theoretical situations.⁹ Reef then uses that speculation to jump to the baseless conclusion that these theories

⁸ *Wisconsin Gas* was one of the cases regarding irreparable harm on which the Nevada Supreme Court relied in *Hansen*. See 116 Nev. at 658, 6 P.3d at 987.

⁹ Of course, “[b]are allegations of what is likely to occur are of no value since the court must decide whether the harm will in fact occur.” *Wisconsin Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985).

it presents **might** irreparably harm Reef’s consumer loyalty, goodwill and reputation. *See* Reef’s Motion, p. 23:25-24:12 (“customer **may** falsely conclude”; “customer is **likely** to conclude”; “they **may** be confused”) (bold added). Setting aside “[t]he fact that alleged harm is primarily in the form of lost customers and business goodwill, which at least in theory may be compensated by damages, weighs against a claim of irreparable harm,”¹⁰ Reef has not offered one shred of evidence that Planet 13 has done anything wrong. *See Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th Cir.1984) (findings of loss of goodwill and customers that are speculative and not based on factual allegations **do not constitute irreparable injury**); *see, e.g., Aurora World, Inc. v. Ty Inc.*, 719 F.Supp.2d 1115, 1169 (C.D.Cal.2009) (no irreparable injury demonstrated because of failure to provide evidence of reputational harm from infringement).

Though not specifically argued, Reef also implies that part of its irreparable harm are those statements made by drivers about Planet 13 and the comparison of Planet 13 to Reef’s dispensary. The statements that Reef claims are “disparaging” and “deceiving”, with respect to Reef and Planet 13 include the following: “Planet 13 is bigger, considered the best”, “Planet 13 is better and that it calls itself the biggest dispensary in the world”, “Planet 13 was the best”, “Planet 13 is the world’s largest dispensary”, “Planet 13 is newer, bigger, and better”. *See* Affidavit attached to Reef’s Motion. Apparently, Reef’s employees fancy themselves as being a much better dispensary than Planet 13 and, as such, feign outrage that the drivers would dare offer contrary opinions. However, what Reef’s employees believe is irrelevant. And, what Reef’s employees fail to recognize and refute is that these statements are true or, at worst, statements of opinion of the drivers.¹¹

¹⁰ *OG Intern., Ltd. v. Ublsoft Entm't*, 2011 WL 5079552, at *10 (N.D.Cal. Oct. 26, 2011) (bold added).

¹¹ The Nevada Supreme Court has long held that, “statements of opinion as opposed to statements of fact are not actionable.” *Nev. Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 410, 664 P.2d 337, 341 (1983). Indeed, “under the first amendment, there is no such thing as a false idea, and the societal value of robust debate militates against a restriction of the expression of ideas and opinions.” *Id.* (citation omitted).

In reality, Planet 13 has repeatedly been recognized and received awards recognizing its award-winning cannabis cultivation, production and dispensary operations. In 2018, Planet 13 was designated the Best Overall Dispensary in Nevada by Leafly.¹² Stacey Mulvey, *Best in State: The Top Cannabis Locations, Products, and Activities in Nevada in 2018*, Leafly (Dec. 20, 2018), <https://www.leafly.com/news/strains-products/best-in-state-2018-nevada-cannabis>, print-out of webpage attached hereto as **Exhibit H**. In 2019, Planet 13 added to its growing collection of awards including the 2019 US Market Leader Retail Award from MJBizDaily¹³, 2019 Best Budtender Choice Award, and 2019 Clio Best Brand Design. Marijuana Business Magazine, MJBizDaily Awards, 80-81 (Feb. 2020), a copy of the relevant pages is attached hereto as **Exhibit I**. Most recently, on August 13, 2020, Planet 13 was named All-Time Best Dispensary of Vegas by Las Vegas Weekly. According to Las Vegas Weekly:

While most cannabis dispensaries are content to blend in with their surroundings, Planet 13 presents an eye-popping alien landscape, replete with selfie spots and interactive art elements. Inside, the fun continues with a vast selection of recreational products, a staff of attentive budtenders and a vibe unlike any other dispensary you've known.

See All-Time Best of Vegas (2020), Best Dispensary: Planet 13, Las Vegas Weekly (Aug. 13, 2020, 2 a.m.) <https://lasvegasweekly.com/news/2020/aug/13/best-dispensary-planet-13/>,

¹² Leafly is the largest cannabis website in the world, with more than 15 million monthly visitors and 40 million page views across its website and mobile applications. Leafly allows users to rate and review different strains of cannabis and cannabis dispensaries.

¹³ According to MJBizDaily's website:

As the leading business news information resource for the medical marijuana and retail cannabis industry, Marijuana Business Daily's editors and reporters bring retailers, professional cultivators, infused product makers, ancillary service providers and finance professionals the information and networking they need to flourish within the cannabis industry. In addition to the MJBizDaily newsletter, MJBizDaily International, hemp industry reports, and the monthly Marijuana Business Magazine, Marijuana Business Daily also serves as producer and host of the world's largest family of B2B tradeshow for the cannabis industry, MJBizCon. Recent recognition and awards include Trade Show Executive's Fastest 50, The Inc. 500 and Folio Magazine's Women in Media. Marijuana Business Daily is also a proud member of the Associated Press.

See <https://mjbizdaily.com/about-us/>

1 print-out of web-based version of the article attached hereto as **Exhibit J**.

2 Although Reef repeatedly asserts that the drivers made disparaging statements, Reef has
3 not submitted any discernable and admissible evidence demonstrating the falseness of the
4 statements. Further, the statements are mere opinions of the drivers. As such, the statements
5 themselves cannot form the basis of an alleged wrongful action.

6 Reef's paucity of facts and law, and unsubstantiated and impertinent claims do not
7 demonstrate any injury, much less irreparable injury. The Court and Planet 13 are simply left to
8 rely on Reef's pure conjecture and unadulterated speculation about what harm, if any, Reef may
9 suffer as a result of the Court's refusal to enjoin Planet 13's lawful behavior. Failure to make
10 even a minimal evidentiary showing of irreparable harm proves fatal to Reef's Motion. Reef's
11 Motion should be denied.

12 **D. The Balance Of The Hardships Weighs Against The Entry Of An Injunction**

13 Finally, Courts often consider the public interest in free competition in determining
14 whether to grant injunctive relief. *See, e.g. Cincinnati Bengals, Inc. v. Bergey*, 453 F. Supp. 129,
15 147 (S.D. Ohio 1974) (the public interest should "encourage to the fullest extent practicable free
16 and open competition in the market place."). In Nevada, the public interest in free and open
17 competition is expressed by statute. NRS 598A.030(2)(b) ("It is the policy of this state ... to
18 preserve and protect the free, open and competitive nature of our market system."). Contrary to
19 Reef's anticipated argument that tipping drivers is not free and open competition, the Nevada
20 Supreme Court recognized over 25 years ago that in a competitive economy "the success goes to
21 him who is able to induce potential customers not to deal with a competitor." *Crockett v. Sahara*
22 *Realty Corp.*, 95 Nev. 197, 199-200, 591 P.2d 11 35, 1136-37 (1979). Quoting Prosser on Torts,
23 the Court condoned the idea that "it is considered to be in the interest of the public that any
24 competitor should be free to divert them [customers] to himself by all fair and reasonable means."
25 *Id.*, quoting Prosser, Torts (4th ed. 1971) p. 954.

26 The fairness and reasonableness of Planet 13's efforts to market its business through the
27 payment of tips (or kickbacks as Reef likes to call them) to drivers is reflected by the fact that the
28 act is not illegal. Moreover, the practice of tipping taxicab – and by extension, Uber and Lyft

1 drivers who perform the same function – has been promoted and upheld by the Governor of
2 Nevada, the Clark County Commission, and the Nevada Taxicab Authority.

3 As discussed above, Nevada Governor Kenny Guinn specifically vetoed an attempt to
4 outlaw tipping, stating: “Taxicab drivers contribute greatly to the economy of this state. I cannot
5 support [the proposed outlawing of tipping] because it singles out and hurts the financial well-
6 being of taxicab drivers.” **Ex. C**, p. 2. The Clark County Commission, in repealing the County
7 Ordinance that banned tipping by liquor licensees, clearly indicated its intention to permit the
8 practice of tipping cabdrivers, as “[c]ommissioners agreed that the issue is one that can be sorted
9 out by the free market.” **Ex. B.**, p. 2. Finally, the Nevada Taxicab Authority specifically repealed
10 a regulation that banned taxicab drivers from accepting gratuities from anyone other than their
11 employer or a passenger. **Ex. A.** In repealing that regulation in 2002, then-administrator John
12 Plunket said, “I think it’s the right thing to do,” and continued, acknowledging that diversion may
13 happen, but “if we see it increase, we’ll be out there to enforce the law.” **Ex. A.**

14 Not only would the entry of an injunction enjoin Planet 13 from a perfectly legal activity
15 and frustrate Nevada’s clearly professed public policy of open competition among businesses,
16 but it would also confer an unfair advantage on all businesses that are not parties to this
17 litigation and which benefit from taxi, Uber, and Lyft traffic. Nonparty competitors of Planet
18 13 who would sustain an unfair advantage by not being so enjoined include those previously
19 listed that provide tips to drivers – and, most likely, many more.

20 Ultimately, the Clark County Commissioners summed up the issue before this Court best
21 when they found that “if businesses want to pay the drivers, the government shouldn’t interfere.”
22 **Ex. B.**, p. 2.

23 **E. If An Injunction Is Issued, A Substantial Bond Must Be Required**

24 In the unlikely event the injunction requested by Reef is granted, Reef must post a
25 substantial bond to pay costs and damages that would be sustained by Planet 13 if the injunction
26 is later determined to have been improper. *See* NRCP 65(c). Planet 13 hereby reserves the
27 opportunity to argue as to the specific amount of the bond required if an injunction is actually
28 granted, but will be requesting no less than one million dollars (\$1,000,000).

IV.

CONCLUSION

It is clear that Reef has failed to carry its burden in order to obtain injunctive relief. Reef has failed to demonstrate a likelihood of success on the merits of their causes of action and has failed to demonstrate an existing or threatened irreparable injury. Finally, the balance of hardships weighs decidedly against the entry of the requested injunction. For the foregoing reasons, Planet 13 respectfully requests that the Court deny Reef's Motion.

DATED this 28th day of August, 2020.

KEMP JONES, LLP

/s/ Nathanael Rulis

Will Kemp, Esq. (#1205)

Nathanael R. Rulis, Esq. (#11259)

Ian P. McGinn, Esq. (#12818)

3800 Howard Hughes Parkway, 17th Floor

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Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of August, 2020, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME** 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

**DECLARATION OF NATHANAEL RULIS IN SUPPORT OF OPPOSITION TO
REEF'S MOTION FOR PRELIMINARY INJUNCTION**

I, Nathanael R. Rulis, Esq., declare as follows:

1. I am one of the attorneys representing MM Development Company, Inc. ("Planet 13") in this action pending before this court, Case No. A-19-804883-C. I make this Declaration in support of Planet 13's Opposition to Motion for Preliminary Injunction on Order Shortening Time. I am competent to testify to the facts stated herein.

2. On August 28, 2020, I downloaded the Vegas Kickback App to my phone. After downloading the application, I found that at least 16 different strip clubs (including Palomino Club, Spearmint Rhino, Déjà Vu, Sapphire, Treasures, Cheetah's, and Scores), 7 dispensaries, 3 liquor stores, 2 gun ranges, 2 auto body and repair shops, 2 clubs/pools, 2 car washes, 12 restaurants, 3 hookah lounges, one tattoo parlor, one spray tanning facility, and a pawn shop, among others, advertise tips for taxicab, Uber, Lyft, and limousine drivers through the application.

3. Attached as **Exhibit A** to Planet 13's Opposition is a true and correct copy of the June 25, 2002 Las Vegas Review-Journal written by Michael Squires, titled *Taxicab Authority Repeals Tip Law*.

4. Attached as **Exhibit B** to Planet 13's Opposition is a true and correct copy of the Dec. 21, 2005 Las Vegas Review-Journal written by Adrienne Packer, titled *County Backs Away From Cabby Tipping Law*.

5. Attached as **Exhibit C** to Planet 13's Opposition is a true and correct copy of the June 14, 2005 Press Release from the Office of Governor Kenny Guinn regarding his veto of AB 505.

6. Attached as **Exhibit D** to Planet 13's Opposition is a true and correct copy of the March 28, 2006 Clark County Liquor and Gaming Licensing Board Agenda regarding the deletion and/or repeal of Clark County Ordinance Section 8.20.297 and 8.20.570.

7. Attached as **Exhibit E** to Planet 13's Opposition is a true and correct copy of the March 3, 2006 Amended Complaint filed in *Nevada Assoc. of Nightclubs, Inc. v. D.I. Food & Beverage of Las Vegas, LLC, et al.*, Eighth Judicial District Court Case No. 05A514591.

8. Attached as **Exhibit F** to Planet 13's Opposition are true and correct copies of the Affidavits of Hal De Becker, III, and Michael L. Yepko filed in *Nevada Assoc. of Nightclubs, Inc. v. D.I. Food & Beverage of Las Vegas, LLC, et al.*, Eighth Judicial District Court Case No. 05A514591.

9. Attached as **Exhibit G** to Planet 13's Opposition is a true and correct copy of the Overview of Nevada Transportation Authority: Before the S. Comm. on Transportation, 2017 Leg., 79th Sess. 2-3 (Feb. 16, 2017) (statements by Chair Alaina Burtenshaw, including presentation marked as Exhibit C).

10. Attached as **Exhibit H** to Planet 13's Opposition is a true and correct copy of the December 20, 2018 Leafly article, written by Stacey Mulvey, titled *Best in State: The Top Cannabis Locations, Products, and Activities in Nevada in 2018*, which can also be found on the internet at: <https://www.leafly.com/news/strains-products/best-in-state-2018-nevada-cannabis>.

11. Attached as **Exhibit I** to Planet 13's Opposition is a true and correct copy of the relevant pages (pp. 80-81) from the February 2020 edition of Marijuana Business Magazine, regarding the 2019 MJBizDaily Awards.

12. Attached as **Exhibit J** to Planet 13's Opposition is a true and correct copy of the August 13, 2020 Las Vegas Weekly article on the All-Time Best of Vegas (2020), Best Dispensary: Planet 13, which can also be found on the internet at the following link: <https://lasvegasweekly.com/news/2020/aug/13/best-dispensary-planet-13/>.

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

DATED this 28th day of August, 2020.


NATHANAEL RULIS, ESQ.

Exhibit A

Westlaw.

NewsRoom

6/25/02 LVRJ 3B

Page 1

6/25/02 Las Vegas Rev.-J. 3B
2002 WLNR 440531

Las Vegas Review-Journal (NV)
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June 25, 2002

Section: Local

Taxicab Authority repeals **tip** law

Michael Squires

Cabdrivers soon will be able to legally take their **tips** wherever they find them.

The Nevada Taxicab Authority Monday repealed a longtime and long-ignored regulation prohibiting **cabdrivers** from accepting gratuities from anyone except their employer or a passenger. Under the revamped regulation accepting a **tip** would be illegal only if a **cabdriver** lured or pressured a passenger away from their original destination, an illegal practice known as diversion, in order to receive a gratuity.

"I think it's the right thing to do," said Taxicab Authority administrator John Plunkett. "We will monitor diversions and if we see it increase we'll be out there to enforce the law. But you just can't stop people from taking **tips**."

The measure will take effect in 30 days. But a county ordinance barring liquor license holders from **tipping cabdrivers** and a city ordinance prohibiting privileged license holders from paying drivers gratuities will remain in effect.

Cabdrivers, union officials and company owners welcomed the decision.

Ruthie Jones, vice president of the Industrial Technical Professional Employees union, which represents about 2,000 **cabdrivers**, said the revamped regulation will give drivers access to the same source of extra income enjoyed by other workers in the tourism industry.

"**Cabdrivers** should be privy to whatever anybody wants to give them as long as they're not taking advantage of their customers," she said. "Everyone is privy to every gratuity. This town is based on incentives."

Bill Shranko, director of operations at Yellow-Checker-Star **Cab**, said he believes the decision was good for drivers and the riding public.

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Page 2

"I don't have a problem with **tips** as long as drivers don't divert passengers from their destination," he said.

Cabby Nick Vicarro said the regulation was irrelevant because drivers regularly took **tips** from restaurants, massage parlors, museums and pawn shops among other businesses.

In addition, for years casinos and shopping malls held parties to reward **cabdrivers** for dropping customers at their doors. Magician Lance Burton distributed free tickets to drivers as a reward for referrals.

"That's the way it was even though there was a law in place," Vicarro said. "If someone offers you money you're not going to turn it down."

Authorities complained the regulation was difficult to enforce and the practice so widespread that the kickbacks were considered a part of drivers' wages.

"It's like trying to enforce the unenforceable," Plunkett said. "For 30 years they've been accepting gratuities. It's almost like a part of their salary."

The review of the regulation was prompted by a legal fight involving several local **strip clubs**.

Three adult businesses, Olympic Garden, Club Paradise and the Crazy Horse Too Gentlemen's Club, sued other **strip clubs** to force them to stop paying **tips** to **cabdrivers** who brought them customers. The businesses that filed the lawsuit alleged passengers were being diverted to the clubs that paid the largest **tips**.

Attorney Dominic Gentile, who represents the Olympic Garden in the lawsuit, said the new regulation may force him to use racketeering law to prove wrongdoing on the part of the **strip clubs**.

He also said allowing businesses to **tip cabdrivers** will probably make diversion a bigger problem.

----- INDEX REFERENCES -----

NEWS SUBJECT: (Economics & Trade (1EC26))

INDUSTRY: (Transportation (1TR48); Taxis (1TA13); Land Transportation (1LA43); Passenger Transportation (1PA35); Transportation Regulatory (1TR42))

Language: EN

OTHER INDEXING: (CRAZY HORSE TOO GENTLEMENS CLUB; INDUSTRIAL TECHNICAL PROFESSIONAL EMPLOYEES; NEVADA TAXICAB AUTHORITY MONDAY; TAXICAB AUTHORITY; YELLOW) (Attorney Dominic Gentile; Bill Shranko; Cabby Nick Vicarro; John Plunkett; Magician Lance Burton; Plunkett; Ruthie Jones; Vicarro)

EDITION: Final

Word Count: 655

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Exhibit B

Westlaw.

NewsRoom

12/21/05 LVRJ 7B

Page 1

12/21/05 Las Vegas Rev.-J. 7B
2005 WLNR 20744052

Las Vegas Review-Journal (NV)
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December 21, 2005

Section: News

County backs away from **cabby tipping** law

Adrienne Packer

By ADRIENNE PACKER

REVIEW-JOURNAL

If Clark County cracked down on businesses offering payouts to limousine and taxi drivers, funding enforcement would cost \$650,000 a year.

That would pay for six additional agents, who could monitor about 10 percent of the county's 40,000 licensed businesses.

When County Business License Director Jacqueline Holloway tossed around those figures Tuesday, Clark County commissioners made their position clear on the existing ordinance prohibiting businesses from **tipping cabbies**.

"I'm not sure if it ever made sense," Commissioner Rory Reid said. "It certainly doesn't make sense now to spend our limited resources to chase this all around town."

The debate arose from an ongoing feud between **strip club** owners and **cabdrivers**. But Holloway pointed out that it's not just topless club operators shelling out cash for **cabbies** to deliver passengers.

In a recent edition of the transportation industry publication Trip Sheet Magazine, attorneys offered free traffic ticket representation to **cabdrivers**, restaurants offered free coffee, clubs offered free admission and massage parlors promised cash for customers.

"There is an absolute proliferation of all types of businesses," Holloway said. "It's very clear it is a very broad situation."

The board was presented with three options on Tuesday: move to repeal the

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Page 2

ordinance; amend it to include all types of commercial drivers; or keep the existing law on the books.

Commissioners agreed that the issue is one that can be sorted out by the free market. If businesses want to pay the drivers, the government shouldn't interfere.

Commissioner Lynette Boggs McDonald told colleagues it would be a waste of taxpayer dollars to "create an enforcement arm of business licensing. I'd rather see millions of dollars go into recreation facilities."

The \$650,000 a year would allow the county to hire six additional business license investigators. Its three agents currently try to regulate the 40,000 businesses in the county, officials said.

There is no way nine agents could effectively enforce the existing ordinance or a proposed amendment to extend it to limousine and shuttle drivers, Reid said. Board members agreed the 20-year-old law is antiquated and essentially useless.

"Why would we use our limited resources to give you six additional agents to not do something well?" Reid asked Holloway.

Holloway is expected to present a proposal to repeal the ordinance to the Clark County Liquor and Gaming Board on Jan. 24. The board, made up of commissioners, regulates businesses with privilege licenses. Commissioners will then hold a public hearing.

The county can only regulate businesses. It is within the Nevada Taxi Cab Authority's powers to penalize drivers who accept the **tips**.

Board members were troubled by the complexity and cost of enforcement since so many businesses are offering **tips**.

"I don't think we, as the county, can regulate this," Boggs McDonald said. "If we do go down this path, where do we draw the line?"

The ordinance was originally passed in 1985, after restaurant owners complained that payouts to **cabdrivers** delivering customers were skyrocketing.

After it passed, the dispute quieted. But in recent years, it has been **strip club** owners complaining about paying as much as \$70 per passenger dropped off at their businesses.

Earlier this month, **strip club** owners entered a pact to pay drivers anymore. Some **cabbies** said this week that some clubs have already broken the pact and started offering payouts again.

---- INDEX REFERENCES ----

NEWS SUBJECT: (Economics & Trade (1EC26))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Nevada (1NE81))

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Page 3

Language: EN

OTHER INDEXING: (BOARD; CLARK COUNTY LIQUOR AND GAMING BOARD; NEVADA TAXI CAB
AUTHORITY) (ADRIENNE PACKER; Boggs McDonald; County; Holloway; Jacqueline
Holloway; Lynette Boggs McDonald; Reid; Rory Reid)

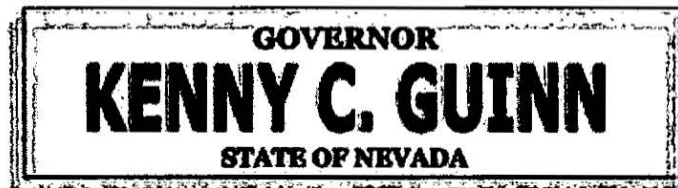
KEYWORDS: Adrienne Packer; clark county commission; ordinance; payouts; repeal;
strip clubs; costs backing away; enforcement expensive; holloway reid; **cabbies**
kickbacks

Word Count: 700
12/21/05 LVRJ 7B

END OF DOCUMENT

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Exhibit C



FOR IMMEDIATE RELEASE: June 14, 2005

Contact Greg Bortolin or John Trent
775-684-5670

GOV. GUINN VETOES AB 505

CARSON CITY – Gov. Kenny Guinn announced today that late this afternoon he sent a letter to Senate Majority Leader William Raggio and Assembly Speaker Richard Perkins, announcing that the Governor has vetoed Assembly Bill 505.

Below is text of the letter:

June 14, 2005

The Honorable Richard D. Perkins
Speaker of the Assembly
Nevada State Assembly
Legislative Building
401 S. Carson Street
Carson City, NV 89701

To the Honorable Members of the Nevada State Assembly:

I am herewith forwarding to you, for filing within the constitutional time limit and without my approval, Assembly Bill 505, which is entitled:

AN ACT relating to transportation; revising provisions governing the registration of motor vehicles with a declared gross weight in excess of 26,000 pounds; abolishing the Transportation Services Authority; transferring the duties and responsibilities related to motor carriers and the storage of household goods and effects to the Public Utilities Commission of Nevada; revising provisions governing regulation of certain taxicab drivers; providing penalties; and providing other matters properly relating thereto.

I would be in support of Assembly Bill 505 and would sign this legislation into law if it were not for Section 133 of this legislation. Section 133 provides that:

[A] taxicab driver shall not accept a tip, gift, gratuity, money, fee or any other valuable consideration of any kind from a person who has been issued a license by a board of county commissioners, a county liquor board, a county licensing board or the city council or other governing body of an incorporated city for the conveyance of a passenger to the location of the person who holds the license.

Page: - 2 -

Section 133 was quietly amended into Assembly Bill 505 at the very end of the Legislative Session. The proponents of Section 133 should have provided taxicab drivers with an opportunity to testify at a public hearing regarding this provision so they could describe the impact it would have on their livelihoods. A public hearing would have also allowed the proponents of Section 133 to identify the resources either needed or available to enforce Section 133, and it would have allowed them to provide an explanation as to why limo drivers, doormen, bellhops, and other professions were left out of this section of the bill. Further, if a public hearing had been provided, local governments could have identified their responsibilities with respect to curtailing the behavior of persons who have been "issued a license by a board of county commissioners, a county liquor board, a county licensing board or the city council or other governing body of an incorporated city."

Taxicab drivers contribute greatly to the economy of this state. I cannot support Section 133 of AB 505 because it singles out and hurts the financial well-being of taxicab drivers. Additionally, I know all of the legislators serving in the Legislature, and I do not believe a majority of them would have supported Section 133 had it been fully and fairly debated in an open public forum. Therefore, I am exercising my right to veto this legislation.

Sincerely,

KENNY C. GUINN
Governor

Office of the Governor
101 North Carson Street
Carson City, NV 89701
Fax: 775-684-7198

Grant Sawyer State Office Building
555 East Washington, Suite 5100
Las Vegas, NV 89101
Fax: 702-486-2505

You are receiving this e-mail because you are a member of *Governor Kenny C. Guinn's Press Release List*. To Subscribe, go to our [Subscribe page](#). To Unsubscribe, go to our [Unsubscribe page](#). [Governor Guinn's Archived Press Releases](#).

Exhibit D

**CLARK COUNTY
LIQUOR AND GAMING LICENSING BOARD
AGENDA FOR MARCH 28, 2006**

ORDINANCE SECTION

BUSINESS IMPACT STATEMENT – TITLE 8 – CHAPTER 8.20 – SECTION 8.20.297 and 8.20.570 **409**

That the Liquor and Gaming Licensing Board accept and approve the business impact statement, pursuant to NRS 237, for the proposed amendment to amend Title 8, Chapter 8.20, Sections 8.20.297 and 8.20.570 of the Clark County Code.

PUBLIC HEARING – TITLE 8 – CHAPTER 8.20 – SECTION 8.20.297 and 8.20.570 **410**

That the Liquor and Gaming Licensing Board conduct a public hearing; approve; adopt; and authorize the Chair to sign an Ordinance to amend Title 8, Chapter 8.20, Section 8.20.297 to delete section 8.20.297, "Paying taxicab drivers", in its entirety; to amend section 8.20.570, by deleting subsection (s) referencing the paying or tipping of taxicab drivers; and providing for other matters properly relating thereto.

ORDINANCE INTRODUCTION – TITLE 8 – CHAPTER 8.20 – SECTION 8.20.020 and 8.20.470 **411**

That the Clark County Liquor and Gaming Licensing Board introduce and set a public hearing date for a liquor ordinance to amend Title 8, Chapter 8.20, Section 8.20.020 to add a definition for "bar"; to amend the definition of "commercial center" to remove the word "anchor" from references to "store; and to add the ability for a shopping center to qualify as a "commercial center" if they have two retail stores each of thirty thousand square feet; to amend the definition of "full bar" to clarify where alcohol can be served; to amend the definition of "main bar" to include resort condominiums, time-share facilities, nightclubs, and to clarify where alcohol can be served; to add a definition and regulations for "nightclub"; to add a definition and regulations for "pub"; to amend the definition of "resort club" by changing its title to "resort condominiums", providing for a standard definition of resort condominiums, and providing for a graduated increase in liquor licenses based on the number of residential units; to amend the definition of "specialty merchandise store" by changing the required square footage of display area for gourmet foods from six thousand six hundred to one thousand five hundred; to amend the definition of "tavern" to clarify where alcohol can be served; to amend the definition of "time-share facility" by restructuring the existing requirements into a new format, providing for a standard definition of time-share units, and providing for a graduated increase in liquor licenses based on the number of time-share units; and to amend section 8.20.470 to set the liquor license fees for a "pub" and "instructional wine-making facility"; and providing for other matters properly relating thereto.

END OF ORDINANCE SECTION

PUBLIC COMMENTS

Exhibit E

ORIGINAL

FILED

14

ACOMP

ANTHONY P. SGRO, ESQ.

Nevada Bar No. 3811

PATTI & SGRO

720 South Seventh Street, Third Floor

Las Vegas, Nevada 89101

(702) 385-9595

Attorney for Plaintiff

MAR 3 3 15 PM '06

Shirley B. Ruggione
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA ASSOCIATION OF
NIGHTCLUBS, INC., a Nevada Non-Profit
Corporation;

Plaintiffs,

vs.

D.I. FOOD & BEVERAGE OF
LAS VEGAS LLC., a Nevada Limited Liability
Corporation, dba SCORES;
DAVID M. FRANK, dba SHERI'S CABARET;
TWO M, INC., a Nevada Corporation dba
DIAMOND CABARET; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive.

Defendants.

CASE NO. A514591
DEPT. NO. VII

ARBITRATION EXEMPT:
Extraordinary Relief Sought;
Damages Exceed \$50,000.00

AMENDED COMPLAINT

COME NOW, Plaintiff, NEVADA ASSOCIATION OF NIGHT CLUBS, INC., a Nevada
Non-Profit Corporation (hereinafter "Plaintiff") and hereby alleges and states as follows.

1. That at all times relevant to this Complaint, Plaintiff is a Non-Profit Corporation of
nightclub owners operating nightclubs in the County of Clark, State of Nevada, with all license and
other fees duly paid.

2. Defendant, D.I. FOOD & BEVERAGE OF LAS VEGAS LLC., d/b/a SCORES, at
all times mentioned herein, is a Nevada Limited Liability Corporation operating SCORES nightclub

Filed

COUNTY CLERK

MAR 03 2006

RECEIVED

1 in the County of Clark, State of Nevada.

2 3. Defendant, DAVID M. FRANK, an individual, is and was the licensed owner of
3 SHERI'S CABARET totally nude club at all times mentioned herein.

4 4. TWO M INC., a Nevada corporation, is and was the licensed owner of DIAMOND
5 CABARET totally nude club at all times mentioned herein.

6 5. The true names or capacities, whether individual, corporate, association or otherwise,
7 of Defendant DOE I through DOE X, are unknown to Plaintiffs, who therefore sues said Defendants
8 by such fictitious names: Plaintiff is informed and believes and therefore alleges that each of the
9 Defendants designated herein as DOE is responsible in some manner for the events and happenings
10 referred herein, and as a result proximately caused damages to Plaintiffs as herein alleged. The
11 Plaintiff will ask leave of this Court to amend this Complaint to insert the true names and capacities
12 of DOE I through DOE X, when the same have been ascertained, and to join such Defendants in this
13 action.

14 6. ROE CORPORATIONS I through ROE CORPORATION X are nightclubs
15 operating within the County of Clark, State of Nevada and making payments to taxicab drivers or
16 limousine drivers for the purpose of diverting or delivering patrons to nightclubs. That the true
17 names or capacities, whether individual, corporate, association or otherwise, of Defendant ROE
18 CORPORATION I through ROE CORPORATION X, are unknown to Plaintiffs, who therefore sues
19 said Defendant by such fictitious names: Plaintiff is informed and believes and therefore alleges that
20 each of the Defendants designated herein as ROE CORPORATION is responsible in some manner
21 for the events and happenings referred herein, and as a result proximately caused damages to
22 Plaintiffs as herein alleged. The Plaintiff will ask leave of this Court to amend this Complaint to
23 insert the true names and capacities of ROE CORPORATION I through ROE CORPORATION X,
24 when the same have been ascertained, and to join such Defendants in this action.

25 7. It is a violation of Nevada Revised Statutes § 706.8846 and § 706.8847 for a taxicab
26 operator to divert or take a passenger to any destination other than the one designated by said
27 passenger.
28

1 8. The NEVADA ASSOCIATION OF NIGHTCLUBS, INC., is a Non-Profit
2 Corporation consisting of Nightclub owners who have contracted to follow all statutes, ordinances,
3 or laws regarding the above, and Defendant SCORES is a member of Plaintiff's association. The
4 remaining Defendants are not members of Plaintiff Association but are bound by the above cited
5 statutes and ordinances.

6 9. That despite having entered into a written agreement promising to follow all statutes,
7 ordinances, or laws, it remains the policy of SCORES, in Clark County and the City of Las Vegas,
8 to divert passengers to it's own business by directly or indirectly compensating taxi cab drivers and
9 other transportation providers in violation of laws and contract.

10 **FIRST CAUSE OF ACTION**
11 **Violation of NRS §§ 598A et seq.**

12 10. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1
13 through 9 and incorporates the same by reference herein.

14 11. Plaintiff members have executed a contract amongst themselves to abide the laws,
15 statutes, and ordinances in the State of Nevada, Clark County, and City of Las Vegas.

16 12. Two state statutes applicable to all adult night clubs, whether topless or totally nude,
17 are Nevada Revised Statutes § 706.8846 and § 706.8847, which prohibit a taxicab operator to divert
18 or take a passenger to any destination other than the one designated by said passenger.

19 13. The State of Nevada has made it clear that its concern for passengers of public
20 transportation is such that these statutes apply to "any person who knowingly makes or causes to be
21 made, either directly or indirectly,...or who violates any of the provisions of NRS 706.881 to 706.885
22 is guilty of a misdemeanor." (N.R.S. § 706.885).

23 14. All of the Plaintiff members are complying with the above statutes as contracted in
24 their by-laws.

25 15. SHERI'S CABARET and DIAMOND CABARET openly and freely pay public
26 transportation providers to divert their paying passengers to their respective adult night clubs,
27 thereby violating the above Nevada Revised Statutes.

1 16. SHERI'S CABARET and DIAMOND CABARET knowingly encourage public
2 transportation drivers to defame and disparage other adult nightclubs in order to facilitate the
3 diversion of innocent customers.

4 17. By far most of the customers using transportation providers are from out of town,
5 and have little information about what adult nightclub is better than others.

6 18. SHERI'S CABARET and DIAMOND CABARET, knowingly encourage public
7 transportation drivers to defame and disparage other adult nightclubs, thereby depriving the
8 customers of objective opinions in order to make informed choices.

9 19. Defendants SHERI'S CABARET and DIAMOND CABARET have jointly
10 conspired, combined or contracted to restrain trade by violating NRS § 598A.060, specifically:

- 11 a. Agreeing to establish uniform discounts or to eliminate discounts;
- 12 b. Agreements to establish prices for services;
- 13 c. Agreements not to advertise prices;
- 14 d. Attempting and/or conspiring to monopolize trade or commerce within this
15 state.

16 20. Plaintiff has standing to bring this private cause of action pursuant to NRS §
17 598A.210 because Plaintiff's members have suffered damage to their respective businesses and
18 properties.

19 21. Defendants SHERI'S CABARET and DIAMOND CABARET are in violation of
20 NRS §§ 598A. et seq.

21 22. Plaintiff is entitled to treble damages, injunctive relief, attorney's fees and costs
22 pursuant to NRS § 598A.210.

23 **SECOND CAUSE OF ACTION**
24 **Civil Conspiracy**

25 23. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1
26 though 22. and incorporates the same by reference herein.

27 24. Defendants have conspired with the taxicab drivers and owners, in Clark County and
28 the City of Las Vegas, to illegally and improperly divert passengers from Plaintiff's members

1 nightclubs to DEFENDANTS'.

2 25. That taxicab drivers have conspired with each other and DEFENDANTS and taxicab
3 owners to illegally and improperly divert passengers from and to refuse to provide service to
4 nightclubs, such as Plaintiff's members clubs, that refuse to pay the taxicab drivers illegal referral
5 fees.

6 26. DEFENDANTS' agreements with the taxicab drivers and taxicab owners to
7 compensate the taxicab drivers to induce them to deliver passengers violates numerous laws,
8 including but not limited to Sections 706.8846 and 706.8847 of the Nevada Revised Statutes
9 [hereinafter NRS].

10 27. By paying the taxicab drivers illegal fees to deliver passengers to them,
11 DEFENDANTS intend to cause illegal diversions to their businesses.

12 28. The actions of DEFENDANTS and the taxi cab drivers and owners in conspiring to
13 pay taxicab drivers illegal fees to deliver passengers to DEFENDANTS, actually causes the illegal
14 diversion of customers to DEFENDANTS.

15 29. The actions of DEFENDANTS, the taxicab owners, and taxi cab drivers, in
16 conspiring to pay illegal fees to deliver passengers to their clubs is intended to reduce the business
17 at Plaintiff's members other nightclubs.

18 30. The actions of DEFENDANTS in conspiring with taxicab drivers and taxicab owners
19 to pay illegal fees to deliver passengers to DEFENDANTS' clubs has caused, and continues to cause
20 both in the present and future, Plaintiff's other members to suffer severe economic harm and loss
21 of business, revenue, and profits, all to Plaintiff's general damages, in an amount in excess of TEN
22 THOUSAND DOLLARS (\$10,000.00).

23 31. The actions of DEFENDANTS, the taxicab drivers and taxicab owners, are and were
24 willful, malicious, and made with the intent to injure Plaintiff's members, and that, therefore,
25 DEFENDANTS should be assessed punitive damages, by way of example, in an amount in excess
26 of TEN THOUSAND DOLLARS (\$10,000.00).

27 32. That it has been necessary for the Plaintiff to obtain the services of an attorney to
28 prosecute this action, and Plaintiff is entitled to reimbursement for those attorneys fees and costs

1 which have been reasonably incurred.

2 **THIRD CAUSE OF ACTION**
3 **Violation of NRS 207.360 Nevada Civil RICO**

4 33. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1
5 though 32. and incorporates the same by reference herein.

6 34. DEFENDANTS have, on numerous occasions, paid taxicab drivers, in Clark County
7 and the City of Las Vegas, to illegally and improperly divert passengers from Plaintiff's members
8 nightclubs to DEFENDANTS' clubs.

9 35. In order to carry out the diversion, the taxicab drivers, with DEFENDANTS active
10 support, participation, encouragement, and payment of illegal fees, routinely misrepresent Plaintiff's
11 members' nightclubs to passengers. For example, prospective customers are told that Plaintiff's
12 members' clubs are closed, Plaintiff's nightclubs have been converted to gay bars, and Plaintiff's
13 nightclubs steal from their customers.

14 36. Any of the diverted customers would have spent more than two hundred fifty dollars
15 (\$250.00) at Plaintiff's members' nightclubs had they not been fraudulently induced to go to
16 DEFENDANTS' clubs.

17 37. The actions of DEFENDANTS and the taxicab drivers constitutes the taking of
18 property from another under circumstances not amounting to robbery within the meaning of NRS
19 207.360(9).

20 38. The actions of DEFENDANTS and the taxicab drivers constitutes the obtaining of
21 money valued at \$250.00 or more by means of false pretenses as set forth in NRS 207.360(26).

22 39. DEFENDANTS and the taxicab drivers' repeated acts of taking property from
23 another within the meaning of NRS 207.360(9), or obtaining money valued at \$250.00 or more by
24 means of false pretenses, constitute racketeering under Nevada law.

25 40. DEFENDANTS and the taxicab drivers' fraudulent diversion of passengers away
26 from their intended destinations at Plaintiff's members nightclubs is intended to permanently deprive
27 Plaintiff's members of revenue and profits.

1 41. That the actions of DEFENDANTS and the taxicab drivers in diverting
2 passengers/customers have caused, and continues to cause both in the present and the future,
3 Plaintiff's members to suffer severe economic harm and loss of business, revenue, and profits, all
4 to Plaintiff's members general damages, in an amount in excess of TEN THOUSAND DOLLARS
5 (\$10,000.00).

6 42. That the actions of DEFENDANTS and the taxicab drivers were willful, malicious,
7 and made with the intent to injure Plaintiff's members, and that, therefore, DEFENDANTS should
8 be assessed punitive damages, by way of example, in an amount in excess of TEN THOUSAND
9 DOLLARS (\$10,000.00).

10 43. Under the Nevada RICO statutes, Plaintiff's members are entitled to treble damages
11 and reasonable attorneys fees and costs.

12 44. It has been necessary for the Plaintiff's to obtain the services of an attorney to
13 prosecute this action, and Plaintiff is entitled to reimbursement for those attorneys fees and costs
14 which have been reasonably incurred.

15 **FOURTH CAUSE OF ACTION**
16 **Breach of Contract Against SCORES**

17 45. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1
18 though 44. and incorporates the same by reference herein.

19 46. On or about December 5, 2005, SCORES, and others signed By-Laws of the Nevada
20 Association of Nightclubs, Inc., a copy of which is attached herein as Exhibit 1. In fact, SCORES
21 executed these By Laws three times to include two addendums which were adopted concomitantly
22 with the By Laws. (Ex. 1).

23 47. As part of the By Laws, all members agreed to abide by all of the Nevada Revised
24 Statutes, Clark County Ordinances, and Las Vegas City Codes listed on page 1 of said By-Laws.

25 48. Further, the signing members all agreed that:

26 The parties agree that the Association may retain counsel to
27 enforce this agreement. In conjunction with paragraph 11, said
28 counsel has authority to file a complaint in the District Court of
 Nevada and seek an immediate injunction, on Shortened Time,
 to enforce these by-laws and enjoin the violating party from any
 further violations.

49. Although signing this contractual agreement, Defendants SCORES and SEAMLESS have continued to compensate taxicab operators in violation of its legal commitment to act otherwise.

50. As a direct and proximate result of Defendants' breach of contract, the other members of Plaintiff corporation have suffered economic damages and will continue to suffer economic damages until Defendant is enjoined. Plaintiff members are suffering immediate and irreparable injury to both reputation and business by SCORE'S ongoing violations of the By Laws.

51. The damages sustained by Plaintiff exceed TEN THOUSAND DOLLARS (\$10,000.00).

52. The By-Laws signed by Defendant SCORES provide for reasonable attorney's fees, costs and litigation expenses in addition to any other available remedy.

53. It has been necessary for the Plaintiff's to obtain the services of an attorney to prosecute this action, and Plaintiff is entitled to reimbursement for those attorneys fees and costs which have been reasonably incurred.

FIFTH CAUSE OF ACTION
Intentional Interference with Business Relations

54. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 53. and incorporates the same by reference herein.

55. DEFENDANTS, the taxicab drivers, and the taxicab owners knew or had reason to know that passengers riding in taxicabs, limousines, or shuttle services who request transportation to Plaintiff's members' nightclubs provide a probability of future economic benefit to these nightclubs.

56. DEFENDANTS, the taxicab drivers, and the taxicab owners, knew or had reason to know that all passengers riding in taxicabs, limousines, or shuttles provide some probability of future economic benefit to Plaintiff's members nightclubs.

57. DEFENDANTS have conspired with the taxicab drivers and the taxicab owners to illegally and improperly divert passengers from Plaintiff's members to DEFENDANTS' nightclubs.

1 58. The taxicab drivers have demanded and continue to receive illegal and improper
2 payment, tips, or referral fees from DEFENDANTS, within the County of Clark and City of Las
3 Vegas.

4 59. The taxicab drivers have refused and continue to refuse to provide service or deliver
5 passengers to Plaintiff's members' clubs, because Plaintiff's clubs refuse to pay such improper
6 compensation.

7 60. That, on numerous occasions, the taxicab drivers have refused to transport passengers
8 to Plaintiff's members' nightclubs because of their refusal to pay illegal fees. Passengers asking to
9 be taken to a competing nightclub of DEFENDANTS are told that the drivers do not service that
10 club.

11 61. DEFENDANTS intend to cause illegal diversions to their business by paying taxicab
12 drivers illegal fees to deliver passengers to it.

13 62. DEFENDANTS and the taxicab owners actively, knowingly, and intentionally
14 encourage and endorse, through both their actions and established practices, slanderous and
15 defamatory statements made by the taxicab drivers directed at Plaintiff's nightclubs, patrons, and
16 personnel.

17 63. DEFENDANTS and the taxicab owners, actively, knowingly, and intentionally
18 engage in fraud on passengers and against Plaintiff by encouraging, conspiring, participating with,
19 and compensating the taxicab drivers in making misrepresentations against Plaintiff's members'
20 nightclubs.

21 64. That the actions of DEFENDANTS referred to in paragraphs 55. through 63. were
22 intended, with express purpose, to unjustifiably reduce the economic benefit to Plaintiff's members
23 and disrupt the relationship between the Plaintiff's nightclubs and passengers of the taxicab drivers.

24 65. DEFENDANTS were aware that their actions referred to in paragraphs 55. through
25 63. would, in fact, reduce the economic benefit to Plaintiff, disrupt the relationship between
26 Plaintiff's nightclubs and passengers of the taxicab drivers, and adversely effect the Plaintiff's
27 businesses and economic relationships.
28

66. The actions of DEFENDANTS referred to in paragraphs 55. through 63. actually disrupted, and continues to disrupt, the relationship between Plaintiff's nightclubs and passengers of the taxicab drivers.

67. The actions of DEFENDANTS referred to in paragraphs 55. through 63. have caused, and continue to cause both in the present and future, Plaintiff's members to suffer severe economic harm and loss of business relationships, revenue, and profits, all to Plaintiff's general damages, in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).

68. The actions of DEFENDANTS are and were willful, malicious, and made with the intent to injure Plaintiff's members, and that, therefore, DEFENDANTS should be assessed punitive damages, by way of example, in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).

69. It has been necessary for the Plaintiff to obtain the services of an attorney to prosecute this action, and Plaintiff is entitled to reimbursement for those attorneys fees and costs which have been reasonably incurred.

SIXTH CAUSE OF ACTION

Intentional Interference with Prospective Business Advantage

70. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 69, and incorporates the same by reference herein.

71. DEFENDANTS knew and/or had reason to know that passengers riding in taxicabs, limousines, or shuttles who request transportation to Plaintiff's nightclubs have a prospective contractual relationship with that Plaintiff's nightclub.

72. DEFENDANTS have conspired with the taxicab drivers and taxicab owners to illegally and improperly divert passengers from Plaintiff's nightclubs to DEFENDANTS' nightclubs.

73. DEFENDANTS intend to cause illegal diversions to their business by paying the taxicab drivers illegal fees to deliver passengers to them.

74. The taxicab drivers continue to demand illegal payment, tips, or referral fees from the members of the Plaintiff since these taxicab drivers continue to receive largesse from DEFENDANTS.

1 75. The taxicab drivers have threatened and continue to threaten, both in the present and
2 future, to refuse to provide service or deliver passengers to Plaintiff's clubs, because Plaintiff's clubs
3 refuse to pay the compensation currently received from DEFENDANTS.

4 76. DEFENDANTS and the taxicab owners actively, knowingly, and intentionally
5 encourage and endorse, through both their actions and established practices, slanderous and
6 defamatory statements made by the taxicab drivers directed at Plaintiff's nightclubs, patrons, and
7 personnel.

8 77. DEFENDANTS and the taxicab owners actively, knowingly, and intentionally
9 engage in fraud on passengers and against Plaintiff's members by encouraging, conspiring,
10 participating with, and/or compensating taxicab drivers for making misrepresentations against
11 Plaintiff's nightclubs.

12 78. That the actions of DEFENDANTS referred to in paragraphs 71. through 77. were
13 intended, with express purpose, to harm the Plaintiff's members by preventing the relationship
14 between the Plaintiff's nightclubs and passengers of the taxicab drivers.

15 79. DEFENDANTS have no privilege or justification, legal or equitable, for their illegal
16 and improper actions referred to in paragraphs 71. through 77.

17 80. That the actions of DEFENDANTS referred to in paragraphs 71. through 77. have
18 actually caused, and continue to cause both in the present and future, Plaintiff's members to suffer
19 severe economic harm and loss of business relationships, revenue, and profits, all to Plaintiff's
20 general damages, in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).

21 81. That the actions of DEFENDANTS are and were willful, malicious, and made with
22 the intent to injure Plaintiff's members, and that, therefore, DEFENDANTS should be assessed
23 punitive damages, by way of example, in an amount in excess of TEN THOUSAND DOLLARS
24 (\$10,000.00).

25 82. It has been necessary for the Plaintiff to obtain the services of an attorney to
26 prosecute this action, and Plaintiff is entitled to reimbursement for those attorneys fees and costs
27 which have been reasonably incurred.
28

SEVENTH CAUSE OF ACTION
Injunctive Relief

83. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 82. and incorporates the same by reference herein.

84. DEFENDANTS continued violation of state and local laws require equitable relief to prevent future harm to the public and Plaintiff.

85. DEFENDANT SCORES continued violation of the By-Laws set forth in Exhibit 1 require equitable relief to prevent future harm to the public and Plaintiff.

86. SCORES, in executing the By-Laws in three different places, agreed to injunctive relief should it be in violation of said agreement.

87. Plaintiff requests that DEFENDANTS be enjoined from providing tips and other compensation to taxicab drivers and from diverting passengers/patrons from Plaintiff's clubs in violation of state and local laws and the By-Laws duly executed.

88. Plaintiff's members continue to suffer immediate and irreparable injury on a daily basis because of DEFENDANTS illegal activities as described above.

89. It has been necessary for the Plaintiff to obtain the services of an attorney to prosecute this action, and Plaintiff is entitled to reimbursement for those attorneys fees and costs which have been reasonably incurred.

WHEREFORE, Plaintiff prays for damages as follows:

1. For general damages in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00);

2. For special damages as proved;

3. For punitive damages in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00);

4. For treble damages and attorneys fees, costs, and litigation expenses pursuant to Nevada RICO statutes and NRS §598.210.

5. For reasonable attorneys fees, costs, and litigation expenses in accordance with the By-Laws executed by Defendant and Plaintiff's other members;

4. For pre-judgment and post-judgment interest;
5. For reasonable attorney fees;
6. For cost of suit;
7. For such other and further relief as the Court may deem just and proper.

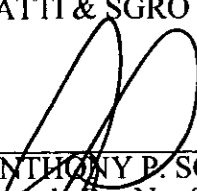
WHEREFORE, on the Seventh Cause of Action, Plaintiff requests the following relief:

1. An injunction prohibiting all Defendants from diverting passengers/patrons from Plaintiff's clubs in violation of state, local laws and contract;

DATED this 3 day of March, 2006.

Submitted by:

PATTI & SGRO LTD.



ANTHONY P. SGRO, ESQ.
Nevada Bar No. 003811
720 South Seventh Street, Third Floor
Las Vegas, Nevada 89101

BY LAWS OF NEVADA ASSOCIATION OF NIGHTCLUBS, INC.

WHEREAS, the undersigned incorporators all are currently the owners/operators of adult night clubs in Las Vegas, and/or Clark County, Nevada;

WHEREAS, the undersigned incorporators desire to work towards enhancing the public view of adult nightclubs as exhibiting the highest degree of professionalism;

WHEREAS, the undersigned incorporators intend to take any and all legal action to ensure compliance with all of the laws and regulations concerning the adult night club business;

WHEREAS, the undersigned incorporators believe that a non-profit organization formed to achieve the purposes set forth above, will raise the standards in the adult nightclub industry to the highest level;

THEREFORE, we the undersigned, being each of the original incorporators herein named, for the purpose of forming a non-profit corporation pursuant to Chapter 82 of the Nevada Revised Statutes, as amended, do hereby adopt the following by-laws:

1. Statutes, Ordinances, and Codes. All members agree to adhere to the following:

Nevada Revised Statutes

NRS §202.055-	Sale or Furnishing of Alcoholic Beverages to Minor;
NRS §706.8846-	Prohibited Acts Concerning Destination of Passenger of Taxicab;
NRS §706.8847-	Compliance with Passenger's Directions;

Clark County Ordinances

6.160.050-	Certain Activities Prohibited concerning exposure and alcohol service;
6.160.080-	Work Identification Card;
6.160.110-	Erotic Dance Establishment Regulations;
6.170.090-	Adult Nightclub Regulations;
6.170.070-	Attendant and Server Work Identification Cards Required;
8.20.297-	Paying Taxicab Drivers;
8.20.340-	Unlawful to Serve Minors;
8.24.020-	Work Identification Card Required;
12.08.025-	Maintaining a Place of Prostitution Unlawful;

Las Vegas City Code

6.06.195-	Paying Tips to Taxicab Drivers for Delivering Passengers to Licensee's Business Location Unlawful;
6.06.010-	Privilege License Required;

The parties acknowledge and agree that this commitment to abide by the laws of Nevada, Clark County, and Las Vegas, will remain in full force and effect notwithstanding a member's withdrawal from the Nevada Association of Nightclubs, Inc.

2. Formation and Membership in the Nevada Association of Nightclubs, Inc. All parties hereto agree to join the Nevada Association of Nightclubs, Inc., and to each pay monthly dues to the Association in the amount of \$1000. The Association shall undertake to represent the parties hereto in all facets of state, local and national lobbying for the sake of the Association, its clients, members and interests. The Association shall also act to police the compliance with paragraph 1. above, take appropriate actions to investigate violations of Paragraph 1., and take all actions necessary to enforce this paragraph. Withdrawal from the Association, however, will not otherwise invalidate or cancel any provision of these by-laws.

3. Liquidated Damages for Violating Any One of the Provisions in Paragraph 1. The Parties hereto, on behalf of themselves, their heirs, successors or assigns, their agents, employees, successors and assigns do hereby covenant not to violate the above referenced laws, codes, and ordinances as set forth in Paragraph 1. above. In addition, in order to ensure that the adult nightclub business adheres to the highest degree of professionalism, the members herein extend these by-laws to include "tips," as defined, to commercial limousines, tour buses or any other entity or individual that may transport a person or persons to a member nightclub. Any action deemed by the Association to be in violation of the by-laws shall be subject to liquidated damages in the amount set forth in Attachment "A" herein.

The parties agree that the Association may retain counsel to enforce this agreement. In conjunction with paragraph 1, said counsel has the authority to file a complaint in the District Court of Nevada and seek an immediate injunction, on Shortened Time, to enforce these by-laws and enjoin the violating party from any further violations.

4. Enforcement Against Non-Members. As set forth in the Articles of Incorporation and by-laws, since the purpose of this Organization is to ensure that all adult nightclubs exhibit the highest degree of professionalism, should one of the members determine that a non-member has violated any prohibited provisions in these by-laws concerning the laws, ordinances, and codes, then the members authorize the retention of private legal counsel to file an action in the District Court, Clark County, seeking to enforce the mandates established herein.

5. Tip. A tip shall be defined as the tender of anything of value to or on behalf of any operator of public transportation. A tip can be any of the following, but is not limited to: money, passes for free entry into anywhere, passes for free food anywhere, passes for free drinks anywhere, tickets to any event, credit for any food, beverage or service inside a club, and/or any scripts or "funny money" to be used inside any club.

6. Exceptions for Convention and Other Non-value passes. Nothing in these by-laws shall preclude a party's ability to allow a conventioner free access to their club or to market non-value passes. The conventioner must present his/her convention badge to the doorman for the respective club to be allowed free access. Examples of other non-value passes include Monday Night Football promotions which permit free entrance to patrons with betting tickets or boxing night promotions that permit free entrance to those with tickets to a boxing match.

7. Assignment of Authority to the Nevada Association of Nightclubs, Inc. All parties hereto do hereby assign, to the Nevada Association of Nightclubs, Inc., the authority to investigate and enforce these by-laws against any party to this Agreement that acts in violation hereto.

8. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, notwithstanding the State of Nevada's conflicts of laws rules. In the event of litigation under this Agreement, such litigation may be commenced and maintained only in a court of competent jurisdiction located within Clark County, Nevada.

9. Waiver and Severability. By entering into these by-laws, the parties agree to waive defenses to the enforceability of this Agreement. Each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law, but if any such provision shall in any respect be ineffective or invalid under such law, such ineffectiveness or invalidity shall not affect the remainder of such provision or the remaining provisions of this Agreement.

10. Further Assurances. The Parties hereto agree to perform, execute, and deliver or cause to be performed, executed, and delivered, any and all such further documents, acts, and assurances as the Parties may reasonably require in order to perform fully their obligations set forth in this Agreement.

11. Notices and Enforcement. Any Party believed to have violated these by-laws shall receive a Violation letter in writing which letter may be sent by personal delivery or mail either (i) by United States registered or certified mail, return receipt requested, postage pre-paid, or (ii) by Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery, addressed as follows (subject to the right of a party to designate a different address for itself by notice similarly given) as Exhibit 1 to these by-laws. Any notice so given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be.

The Notice shall specify the violations date, approximate time, and the specific nature of the violation. The Notice shall also set forth that the breaching party shall immediately cease and desist from any further violations of these by-laws. In addition, that the breaching party shall have 72 hours to tender the amount set forth in Attachment "A" to the Association or request a hearing. The hearing shall take place within 14 days of the request for hearing. Failure to request a hearing within 72 hours shall be deemed an admission of the violation. Nothing contained herein shall constitute a waiver by the Association to seek an immediate injunction against an alleged violator of these by-laws as set forth in paragraph three (3) above.

Any alleged violation shall be heard by a panel of five (5) members, to be elected each year at a regularly scheduled meeting. A decision by a majority of the five (5) panel members shall be binding and final. The members waive any litigation in regards to the decision.

12. No Admission. This Agreement is entered into by the Parties to avoid the expense of litigation and to buy their peace. None of the statements or promises contained in this Agreement shall be construed as any admission of prior actions for any purpose.

13. Amendment. These by-laws shall not be amended except by a writing signed by ~~each~~
~~of the parties~~. *two-thirds of the members.*

14. Counterparts. These by-laws may be executed in any number of counterparts each of which shall constitute an original and all of which shall be deemed to constitute a single agreement.

15. Successors and Assigns. These by-laws shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.

16. Attorneys' Fees. In any action or proceeding brought by the Nevada Association of Nightclubs, Inc., which arises out of or relates to any provision of these by-laws, or is brought to enforce any provision of this Agreement, or to seek damages for a breach of any provision hereof, the prevailing Party shall be entitled to recover reasonable attorneys' fees, costs and litigation expenses in addition to any other available remedy.

17. Legal Advice. All parties further acknowledge that these by-laws are the result of negotiations directly among the members of the Association and that each member had the opportunity to have their own respective attorney review the by-laws and to obtain independent legal advice.

18. Consideration. Consideration is hereby acknowledged by joining the Association.

19. Confidentiality. All parties hereby acknowledge and agree to keep these by-laws confidential and to disseminate it only to members of the Association and their respective attorneys. All parties further agree to neither disseminate these by-laws nor inform non-parties of these by-laws and the parties to and the provisions in this Agreement. The parties understand that public disclosure of this Agreement to non-parties, would cause substantial injuries to the members of this non-profit organization, which injuries would be difficult to quantify. As such, each violation of this confidentiality provision will be subject to a \$1,000.00 penalty and is enforceable according to paragraph 10 of these by-laws.

Signature Page

THE POWER COMPANY, INC.
dba CRAZY HORSE TOO

By: 

Frederick Rizzolo, it's duly authorized agent

Dated: 12/5/05
Service Address: 2476 Industrial Road

Las Vegas, Nevada 89102

PALOMINO CLUB

By: 

Adam Genie, it's authorized agent

Luis Hidalgo

Dated: 12/5/05
Service Address: 1848 N. Las Vegas Blvd.

Las Vegas, Nevada 89030

K-KEL, INC.

dba SPEARMINT RHINO

By: 

Kevin M. Kelly, it's authorized agent

Dated: 12/5/05

Service Address: 3340 S. Highland Dr.
Las Vegas, NV 89109

ANTHONY'S OF HOLLYWOOD, INC.

dba STRIPEASE

By: 

Anthony Mudarris, it's authorized agent

Dated: 12/5/05

Service Address: 2129 Lookout Point
Las Vegas, Nevada 89117

OLYMPUS GARDENS

dba OLYMPIC GARDENS

By: 

Peter Eliades, it's authorized agent

Dated: 5-DEC-05

Service Address: 1531 S. Las Vegas Blvd.
Las Vegas, Nevada 89104

D.I. GOOD & BEVERAGE OF LAS
VEGAS, LLC

dba SCORES

By: 

Dennis DeGori, it's authorized agent

Dated: 12-5-05

Service Address: 3355 Procyon St
Las Vegas, Nevada 89102

SHAC, LLC

dba SAPPHIRE

By: 
SHAC ELIADES LLC - 5 DEC 2005

Dolores Eliades, it's authorized agent

Dated: 12/5/05

Service Address: 1531 S. Las Vegas Blvd.
Las Vegas, Nevada 89104

D.WESTWOOD, INC

dba TREASURES

By: 

Hassan Davari, it's authorized agent

Dated: 12.5.05

Service Address: 2801 Westwood Dr.
Las Vegas, Nevada 89109

CP FOOD AND BEVERAGE, INC.

dba CLUB PARADISE

By: 

Joseph DeMeo, it's authorized agent

Dated: 12/5/05

Service Address: 4416 Paradise Rd
Las Vegas, Nevada 89109

XCO, INC.

dba SIN

By: 

Barry Arfa, it's authorized agent

Dated: 12/5/05

Service Address: 3915 West Hacienda Ave.,
Suite A111
Las Vegas, Nevada 89118

DEJA VU SHOWGIRLS OF LAS VEGAS, LLC
dba DEJA VU

By: [Signature]
Harry Moon, it's authorized agent

Dated: 12/5/05
Service Address: 3247 Industrial Rd.
Las Vegas, NV 89109

SGC INVESTMENT HOLDINGS, LLC
dba SEAMLESS

By: _____
David Franks, duly authorized agent
of its manager, Resort Entertainment
Companies, LLC

Dated: _____
Service Address: 6085 W Twain, Suite 200
Las Vegas, Nevada 89103

LA FUENTE, INC.
dba CHEETAH'S GENTLEMAN CLUB

By: [Signature]
Jack Galardi, it's authorized agent

Dated: 12/5/05
Service Address: 713 E. Ogden Ave., Ste B
Las Vegas, NV 89101

ATTACHMENT "A"

The schedule of liquidated damages to be paid shall be:

For violation of:

Nevada Revised Statutes:

NRS §202.055- Sale or Furnishing of Alcoholic Beverages to Minor;

Clark County Ordinances

6.160.050- Certain Activities Prohibited concerning exposure and alcohol service;
6.160.080- Work Identification Card;
6.160.110- Erotic Dance Establishment Regulations;
6.170.090- Adult Nightclub Regulations;
6.170.070- Attendant and Server Work Identification Cards Required;
8.20.340- Unlawful to Serve Minors;
8.24.020- Work Identification Card Required;
12.08.025- Maintaining a Place of Prostitution Unlawful;

Las Vegas City Code

6.06.010- Privilege License Required;

If no amounts are levied as a fine, penalty, or cost by any governmental or judicial agency;
One Hundred Dollars (\$100.00).

For violation of:

Nevada Revised Statutes:

NRS §706.8846- Prohibited Acts Concerning Destination of Passenger of Taxicab;
NRS §706.8847- Compliance with Passenger's Directions;

Clark County Ordinance:

8.20.297- Paying Taxicab Drivers;

Las Vegas City Code

6.06.195- Paying Tips to Taxicab Drivers for Delivering Passengers to Licensee's Business Location Unlawful;

Twenty Five Thousand Dollars (\$25,000.00).

ADDENDUM #1

The parties to the attached by-laws intend to and do hereby modify the by-laws pursuant to paragraph 2 by adding the following provision:

90% interest in a ← The parties understand and agree that the by-laws shall not bind bona fide purchasers of any club that is a party to the foregoing Agreement. The bona fide sale of a club shall release the signatory club from further duties, responsibilities, and liability under this Agreement effective as of the date of the purchase.

~~OR 50% OF PROPERTY WILL RELEASE~~
A bona fide sale, however, shall not release the signatory club from liquidated damages that have already accrued or for violations of the by-laws occurring prior to the date of the bona fide purchase. Liability for said liquidated damages or violations remains the responsibility of the owner(s) of the club that entered into this Agreement. Thus, if a violation occurs on day one and the club is sold the following day, the seller shall remain responsible for the violation and the liquidated damages; the purchaser, however, has no liability for said violations or liquidated damages.

Nothing in this Addendum is intended to modify the responsibilities, duties, and liability of any successors and assigns of a signatory club other than for bona fide purchasers.

Signature Page to Addendum #1

THE POWER COMPANY, INC.
dba CRAZY HORSE TOO

By: *Frederick Rizzolo*
Frederick Rizzolo, it's duly authorized agent

Dated: 12-5-05

PALOMINO CLUB

By: *Adany Gentile*
Adany Gentile, it's authorized agent

LUIS HIDALGO JR.
Dated: 12-5-05

K-KEL, INC.
dba SPEARMINT RHINO

By: *Kevin Kelly*
Kevin Kelly, it's authorized agent

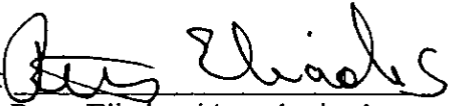
Dated: 12/5/05

ANTHONY'S OF HOLLYWOOD, INC.
dba STRIPTease

By: *Anthony Mudarris*
Anthony Mudarris, it's authorized agent

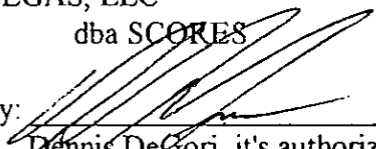
Dated: 12-5-05

OLYMPUS GARDENS
dba OLYMPIC GARDENS

By: 
Peter Eliades, it's authorized agent

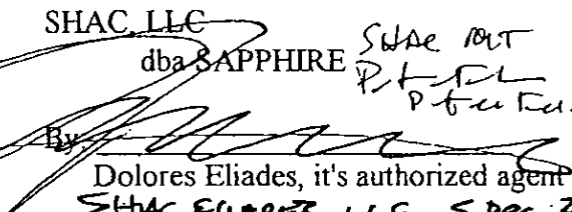
Dated: 12-5-05

D.I. GOOD & BEVERAGE OF LAS
VEGAS, LLC
dba SCORES

By: 
Dennis DeGori, it's authorized agent


Dated: 12-5-05

SHAC, LLC
dba SAPPHIRE

By: 
Dolores Eliades, it's authorized agent
SHAC ELIADES LLC 5 Dec 2005

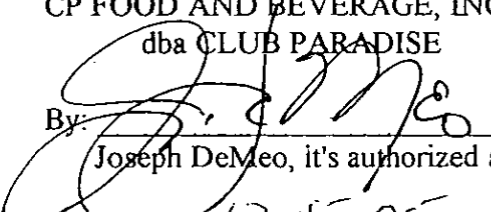
Dated: 12-5-05

D. WESTWOOD, INC
dba TREASURES

By: 
Hassan Davari, it's authorized agent

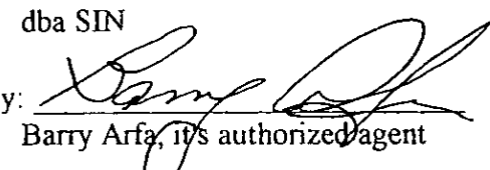
Dated: 12-05-05

CP FOOD AND BEVERAGE, INC.
dba CLUB PARADISE

By: 
Joseph DeMeo, it's authorized agent

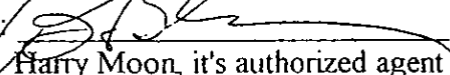
Dated: 12-5-05

XCO, INC.
dba SIN

By: 
Barry Arfa, it's authorized agent

Dated: 12-5-05

DEJA VU SHOWGIRLS OF LAS VEGAS, LLC
dba DEJA VU

By: 
Harry Moon, it's authorized agent

Dated: 12-5-05

SGC INVESTMENT HOLDINGS, LLC
dba SEAMLESS

By: _____
David Franks, duly authorized agent of
its manager, Resort Entertainment
Companies, LLC

Dated: _____

LA FUENTE, INC.

dba CHEETAH'S GENTLEMAN CLUB

By: Charles T. WTB
Jack Galardi, it's authorized agent

Dated: 12-5-05

ADDENDUM #2

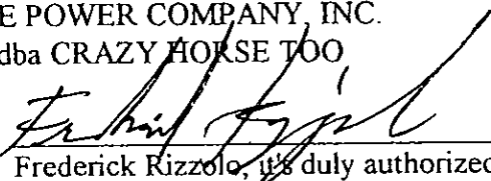
The parties to the attached by-laws intend to and do hereby modify the Agreement pursuant to paragraph 12 by adding the following provision:

The term "tip" as used in the by-laws and defined in paragraph 5, shall include any complimentary, "comps," or discounts for admission prices, food, beverages, and/or any services or goods provided or sold in the club.

Nothing in this Addendum is intended to modify the exceptions to "tips" defined in paragraph 6 of the by-laws.

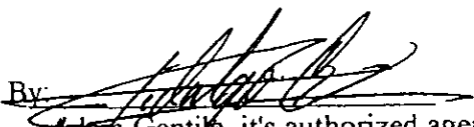
Signature Page to Addendum #2

THE POWER COMPANY, INC.
dba CRAZY HORSE TOO

By: 
Frederick Rizzolo, it's duly authorized agent

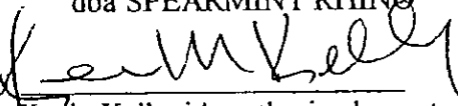
Dated: 12-5-05

PALOMINO CLUB

By: 
Adam Gentile, it's authorized agent
Luis Hidalgo

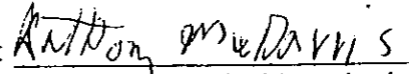
Dated: 12-5-05

K-KEL, INC.
dba SPEARMINT RHINO

By: 
Kevin Kelly, it's authorized agent

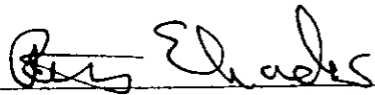
Dated: 12-5-05

ANTHONY'S OF HOLLYWOOD, INC.
dba STRIPTEASE

By: 
Anthony Madarris, it's authorized agent

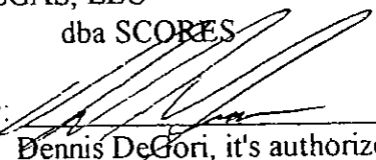
Dated: 12-5-05

OLYMPUS GARDENS
dba OLYMPIC GARDENS

By: 
Peter Eliades, it's authorized agent

Dated: 12-5-05

D.I. GOOD & BEVERAGE OF LAS
VEGAS, LLC
dba SCORES

By: 
Dennis DeGori, it's authorized agent

Dated: 12-5-05

SHAC, LLC

dba SAPPHIRE

SALE MAT.
By: [Signature]
Petter Faurholt.

By: [Signature]

Dolores Eliades, it's authorized agent
SHAC ELIADES, LLC 5 Dec 2005

Dated: 12-5-05

D.WESTWOOD, INC

dba TREASURES

By: [Signature]

Hassan Davari, it's authorized agent

Dated: 12-5-05

CP FOOD AND BEVERAGE, INC.

dba CLUB PARADISE

By: [Signature]

Joseph DeMeo, it's authorized agent

Dated: 12-5-05

XCO, INC.

dba SIN

By: [Signature]

Barry Arfa, it's authorized agent

Dated: 12-5-05

DEJA VU SHOWGIRLS OF LAS VEGAS, LLC

dba DEJA VU

By: [Signature]

Harry Moon, it's authorized agent

Dated: 12-5-05

SGC INVESTMENT HOLDINGS, LLC

dba SEAMLESS

By: _____

David Franks, duly authorized agent of
its manager, Resort Entertainment
Companies, LLC

Dated: 1

LA FUENTE, INC.

dba CHEETAH'S GENTLEMAN CLUB

By: [Signature]

Jack Galardi, it's authorized agent

Dated: 12-5-05

Exhibit F

AFFIDAVIT OF MICHAEL L. YEPKO

State of Nevada

County of Clark

Michael L. Yepko, after first being duly sworn, deposes as follows:

1. I make this Affidavit based upon facts within my own knowledge, save and except as to matters alleged upon information and belief and, as to those matters, I believe them to be true.
2. I am a Nevada licensed Private Investigator and have been in business since December 7, 1999. I conducted a surveillance investigation during the evening hours on January 25 through January 29, 2006, inclusive. The investigation involved obtaining the services of taxi cabs in Las Vegas, Nevada. I requested that the drivers transport me to various topless and/or nude female adult clubs in an effort to determine if they would "divert" me to other adult clubs. I recorded relevant information on each trip and obtained receipts where practical to do so.
3. On January 25, 2006, at approximately 6:44 p.m., I requested a taxi cab at the Sahara Hotel & Casino east taxi stand. I obtained a Whittlesea Blue van, number 1196, and asked the driver, Kenneth A. Fletter, Jr., to take me Deja Vu. Fletter immediately suggested that "Sheri's Cabaret was better" he drove me there. Fletter parked his cab, NV license plates: 119 RYF, and registered his name on a clipboard near the front door. I witnessed a Black male adult hand Fletter a slip of paper before he returned to his cab. Fletter is a white male, 6'0" - 6'3", 280 -320 pounds.
4. From Sheri's Cabaret I requested a cab ride to Club Paradise. I obtained the services of Union cab, number 1862, which was driven by Shalom Haleg. I left Sheri's at approximately 8:48 p.m. Haleg's NV plates were 367 SUT. Haleg advised "Club Paradise was not that hot" and diverted me to Diamonds. Haleg parked his cab on the South side of Diamonds and approached "Chris." Chris (LNU) was the doorman at Diamonds. Chris handed Haleg a piece of paper while I paid the cover charge. Chris is a white male, 20-25 years old, with brown hair and eyeglasses.
5. From Diamonds I requested a cab ride to Sin. I obtained the services of Union Cab, number 1888, which was driven by H. Mamikonyan. I departed Diamonds at approximately 9:26 p.m. Mamikonyan's license

Plates were 713 NSU (Nevada). Mamikonyan advised "Sin was a joke" And suggested The Can Can Room. Upon our arrival at The Can Can Room, "Janice," the house mom, asked why a local boy was taking a cab Ride. I advised I had friends in town from California who were still Partying at the Hotel. Janice told me she had to take my \$60.00 cover Charge and she "had to kick-back money to the cab driver." Janice is a White female, 5'4" - 5'6", 125 - 145 pounds, 50 -60 years old, with Eyeglasses. Mamikonyan waited outside near the doorman, but did not Approach the doorman until I was completely inside the Club.


6. From The Can Can Room I requested a cab ride to Cheetah's. I obtained the services of Checker Yellow cab, number 1317, which was driven by Mazal Koren. Koren said "Sheri's is a lot better than Cheetah's" drove me To Sheri's Cabaret. Koren's Nevada plates were 971 SEL. Koren also Parked his cab in the main lot to the east of the club and signed a register Near the front door area. I did not see any exchange of money nor slips. Koren gave me her cellular number after she returned and gave me another Ride back to the Sahara Hotel. Her cellular number is 373-7440.
7. On January 26, 2006, at approximately 7:07 p.m., I requested a cab at the Sahara Hotel & Casino taxi stand. I obtained the services of Henderson Taxi, number 5700, driven by a black male named "Ty." Ty's license Plates were 700 RAK. I asked to go to Pleasures but was taken to Sheri's Cabaret instead. Ty added Sheri's was "closer to the action."
8. From Sheri's I requested a ride to Olympic Gardens. Ty was still parked in Sheri's lot and told me "Diamonds" was closer and had "much better looking tail." Ty took me to Diamonds at approximately 9:20 p.m.
9. From Diamonds I requested a cab ride to Cheetah's. I obtained the services of Desert Cab, number 4424, driven by "Lou." Lou said Cheetah's was not as good as Sheri's and told me to "trust him." Lou Did not have any receipts nor insight into why Sheri's was so much better Than Cheetah's. I was unable to get the license plate from Lou's cab.
10. On January 27, 2006, at approximately 6:03 p.m, I requested a cab ride from the taxi stand at the Sahara Hotel & Casino. I secured the services of Star Cab, number 2290, driver by Abram Kagossian. I requested a ride to Sin, but was diverted to Diamonds. The plates on the cab were Nevada 305 SEL. Kagossian waited on foot outside his cab while I paid the cover charge. Kagossian waited until I entered the club to approach the front desk area, which was staffed by a white male, 20-25 years old, with black or dark brown hair.

11. From Diamonds I requested a ride to the Palomino Club. I obtained the services of Union Cab, number 1813, driven by "Aris" (LNU). Aris had no picture identification near his Medallion posting, but provided a business card for "future night time fun." Aris immediately suggested I go to Sheri's Cabaret as "it was so much better than the black girls at the Palomino." Aris' cell number is 306-6113. Aris added there was an "underground whorehouse where Asian girls would satisfy me for \$250 - \$500.00. My friends would only pay \$300.00 each for the chance to choose their girl.
12. From Sheri's Cabaret I requested a ride to Sin. I obtained the services of Whittlesea Blue van, number 1154, driven by "Big John." At approximately 10:35 p.m., "Big John" drove me to Cheetah's instead. His plates were Nevada 154 RFD. "Big John" advised the clubs "take care of certain Drivers" and added he also knew of an underground Asian house where I could get "full service." "Big John's cell number is 354-2916.
13. On January 28, 2006, at approximately 7:02 p.m., I requested a cab ride from the taxi stand at the Sahara Hotel & Casino. I obtained a Yellow Cab, number 1419, driven by Amanuel Haile. I requested a ride to The Palomino Club but was diverted to Diamonds. Haile advised he has been a driver since 1991 and has driven the same cab since 2001. His current cab has over 331,000 miles on it. Haile also parked his cab in the street at Diamonds and received a small slip of paper from a white male acting as the Doorman.
14. From Diamonds I requested a cab ride to the Palomino Club. I obtained the services of Ace Cab Company (van), number 2509, driven by Ara Hakobyan. Hakobyan told me Sheri's "was much better" and also referred me to Seamless later with two (2) free drink tickets. Hakobyan's license plates were Nevada, 259 MDC. Additionally, Hakobyan waited near the front door of Sheri's for the black male doorman to return outside. This black male then handed a small piece of white paper to Hakobyan. This occurred at approximately 10:05 p.m.
15. From Sheri's Cabaret I requested a cab ride to Sin. I departed Sheri's at approximately 11:06 p.m. I obtained the services of Yellow Cab, number 1424, driven by "Sue," a white female with blonde hair. "Sue" (LNU) advised Diamonds "was the place to party" and drove me there. "Sue" like all other cab drivers, parked her vehicle and stood near the front door of the club. She only engaged the doorman in conversation after I had paid the cover charge and actually entered the club.

16. On January 29, 2006, at approximately 6:56 p.m., I requested a cab ride from the taxi stand at the Sahara Hotel & Casino. I obtained the services of North Las Vegas (ANLV) Cab (van), number 680, driven by Cheon Hong. I requested a ride to Club Platinum but was diverted to Sheri's Cabaret. I did not get Hong's license plates but he did take a very Lengthy route to Sheri's, i.e West On Sahara, South on Industrial, West On Desert Inn Road, then North on Highland Avenue.
17. From Sheri's Cabaret I requested a ride to the Library. I obtained the services of Desert Cab, number 466, driven by "Juan." Juan did not have his photo identification displayed. Juan told me Diamonds was "way better" and diverted me there. His plates on the cab were 962 PKK.
18. I left Diamonds at approximately 10:16 p.m. I obtained the services of Desert Cab, number 2422, driven by John Dionas, aka Johnny D. Johnny D diverted me to Sheri's Cabaret after I requested a ride to the Palomino Club. The plates on his cab were 879 NSC. Johnny D also Provided a business card entitled "Cin City Tour Guide." His cell Number was listed as (702) 677-1367.
19. From Sheri's Cabaret I requested a ride to Club Platinum. I obtained the services of Lucky Cab, number 717, driven by "Asmir." Asmir told me Club Platinum was a "locals dump" and Diamonds had "better pussy." Asmir did not have a photo identification posted and was an East Indian male. His license plates were Nevada - 717 NSC. Asmir dropped Me at approximately 11:45 p.m. at Diamonds, but I did not see his exit His cab before I entered the front door.

Further, Affiant sayeth naught.

Dated this 31st day of January, 2006.

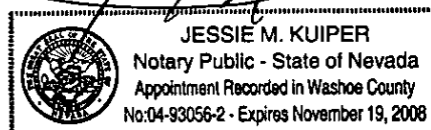

Michael L. Yepko

Subscribed and Sworn to before me

This 31st day of January, 2006


Notary Signature

Seal



1 STATE OF NEVADA)
2) SS.
3 COUNTY OF CLARK)

4 **AFFIDAVIT of Hal De Becker, III**

5
6 **Hal de Becker, III** being duly sworn,

7 That I am a licensed Private Investigator in Las Vegas,
8 Nevada. That I was assigned by the Nevada Association of Night
9 Club Owners, to conduct an investigation in order to determine
10 whether or not any Las Vegas Cab Drivers were diverting customers
11 away from their requested destination, and to persuade them to go
12 to a different location where the cab driver would presumably be
13 paid a fee for having brought the customer to that particular
14 establishment.

15 That on Monday, January 23rd, 2006, at approximately 8:05
16 p.m., I entered a Checker Cab at the Mirage Hotel and Casino and
17 requested that I be taken to Olympic Gardens Topless Club. At
18 this time, the cab driver indicated that Olympic Gardens was
19 topless only, and that I should have him take me to an all nude
20 club called Diamonds. The cab driver then offered me a coupon for
21 \$50.00 off a private dance at Diamonds.

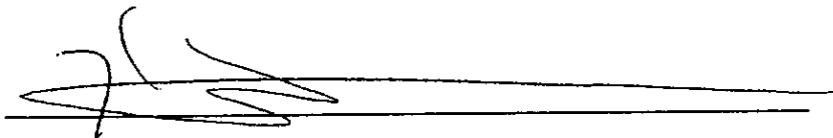
22 That on Monday, January 23rd, 2006, at approximately 9:12
23 p.m., I entered a Yellow Cab at the Treasure Island Hotel and
24 Casino, and requested that I be taken to the Spearmint Rhino. At
25 this time, the cab driver told me that the Spearmint Rhino was
26

DE BECKER VESTIGATIONS
7500 W. LAKE MEAD BLVD., SUITE 9-312
Las Vegas, NV 89128
(702) 380-3801

1 too expensive and recommended that he take me to an all nude club
2 called Sheri's Cabaret or Diamonds.

3
4 That on Monday, January 23rd, 2006, at approximately 9:35
5 p.m., I entered a Yellow Cab at the Treasure Island Hotel and
6 Casino, and requested that I be taken to Scores Adult Night Club.
7 At this time, the cab driver told me that Scores was very
8 expensive and recommended that I should have him take me to
9 Sheri's Cabaret, where I would get more for my money.

10
11
12 DATED THIS 24th DAY OF JANUARY, 2006.

13
14
15 

16 Hal de Becker III, AFFIANT

17
18
19 SUBSCRIBED AND SWORN to me before me

20 this 24th day of January, 2006.

21
22 
23 NOTARY PUBLIC

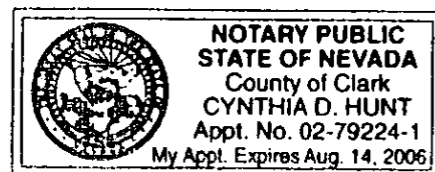


Exhibit G

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TRANSPORTATION**

**Seventy-Ninth Session
February 16, 2017**

The Committee on Transportation was called to order by Chairman Richard Carrillo at 3:16 p.m. on Thursday, February 16, 2017, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Richard Carrillo, Chairman
Assemblywoman Ellen B. Spiegel, Vice Chair
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Ozzie Fumo
Assemblyman Richard McArthur
Assemblywoman Daniele Monroe-Moreno
Assemblyman Michael C. Sprinkle
Assemblyman Justin Watkins
Assemblyman Jim Wheeler
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblyman John Ellison (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jann Stinnesbeck, Committee Policy Analyst
Marsheilah Lyons, Committee Policy Analyst
Darcy Johnson, Committee Counsel
Joan Waldock, Committee Secretary
Trinity Thom, Committee Assistant



OTHERS PRESENT:

Bruce Breslow, Director, Department of Business and Industry
Alaina Burtenshaw, Chair, Nevada Transportation Authority, Department of Business and Industry
Ronald Grogan, Administrator, Taxicab Authority, Department of Business and Industry
Binyam Semereab, Private Citizen, Las Vegas, Nevada
Alexander Assefa, Private Citizen, Las Vegas, Nevada

Chairman Carrillo:

[Roll was called. Committee protocols and rules were explained.] Today we will have two presentations. We will first hear from the Nevada Transportation Authority.

Bruce Breslow, Director, Department of Business and Industry:

My role is to introduce to you our new chair of the Nevada Transportation Authority (NTA). You might remember Alaina Burtenshaw from when she served on the Public Utilities Commission (PUC) of Nevada. Ron Grogan, from the Taxicab Authority, will also be testifying. The NTA and the Taxicab Authority are 2 of the 14 agencies that we oversee at the Department of Business and Industry. I will assist with any questions Ms. Burtenshaw may be unable to answer.

Alaina Burtenshaw, Chair, Nevada Transportation Authority, Department of Business and Industry:

This is the overview of the Nevada Transportation Authority ([Exhibit C](#)). Our mission is to provide for fair and impartial regulation and to encourage the establishment and maintenance of reasonable charges without unjust discrimination [page 2, ([Exhibit C](#))]. We regulate and enforce *Nevada Revised Statutes* (NRS) Chapter 706, NRS Chapter 706A, and NRS Chapter 712 [page 3, ([Exhibit C](#))]. *Nevada Revised Statutes* Chapter 706 regulates passenger motor carriers, tow cars, and household goods movers—fully regulated carriers. We regulate their entry into the market as well their rates, charges, and safety. Transportation network companies (TNCs) are regulated under NRS Chapter 706A. Warehouse permits are authorized under NRS Chapter 712.

The *Nevada Administrative Code* (NAC) has adopted many of the regulations contained in Title 49 of the *Code of Federal Regulations*, in order to fulfill our responsibility in maintaining safety. Our compliance enforcement officers complete training in that regard. The Nevada Highway Patrol, Department of Public Safety (DPS), helps us with training for commercial vehicle safety inspections. We inspect vehicles when they are first placed into service, either temporarily or permanently. Thereafter, carriers are required to inspect their vehicles every 12 months. They provide us a copy of their inspection report.

Driver's permits for those who drive limousines require fingerprint-based background checks. The results come back to us. The permits are deemed approved, unless we identify something in a driver's background that causes us concern. In that case, we call the driver in

for further questions. Carriers that we regulate must have insurance. They have to file a Form K with NTA which adds us as an additional insured. That ensures that if their insurer is canceling them, we will be notified 30 days in advance. That way we can take action.

Under "NTA's Initiatives and Challenges," you can see that we are moving after being in our location for 16 years [page 4, ([Exhibit C](#))]. You can imagine that we have a lot of records to purge. I have been in transportation since 1995, when I was with the PUC. We have my files from back then. We have been working hard to eliminate some documentation, put some on scan drive, make sure we are in compliance with the archive policy of the state, and condense everything into electronic file format.

We continue to work on our driver permit database. There are about 7,000 drivers in Nevada, many of whom are seeking renewals. We have about 4,000 in our driver database at this stage. Our compliance audit investigators are constantly working on that.

We instituted a swing shift for the first time. It runs from 3 p.m. to 1 a.m., Tuesday through Friday. With the advent of the TNCs, we thought it would be appropriate to have a swing shift to gain a better idea of what is going on during the nights and on the weekends.

Another of our challenges is vehicle inspections during peak times. During large events, such as CES [a consumer electronics show] and the Electric Daisy Carnival, we have to put a number of often temporary and rental vehicles into service very quickly to accommodate the demand expected during the event. From January 5 through 8, we inspected 302 vehicles that were temporarily added to 13 of the motor carrier fleets just before the CES. Twelve of those vehicles were permanent additions to fleets.

As you can see, there is not a lot of change in our operating budget for fiscal year (FY) 2017 and FY 2018 [page 5, ([Exhibit C](#))]. We have two enhancement requests. One is for an additional TNC enforcement investigator to be added in FY 2018 and another to be added in FY 2019.

Our administrative fines operating budget is \$180,000. That is in a separate account that is to be used by NTA for expenses related to enforcing statutory provisions.

Nevada Revised Statutes Chapter 706A is the NRS chapter that requires us to regulate TNCs [page 6, ([Exhibit C](#))]. We got off and running after Assembly Bill 176 of the 78th Session was passed. They had a very quick rulemaking that was completed early in September 2015. By September 14, 2015, Lyft and Uber were licensed. Get Me was licensed in January 2016. During that period of time, existing enforcement personnel took over responsibility for TNC investigations until we were able to hire some of our first TNC investigators. We got that up and running in March 2016.



Overview of the Nevada Transportation Authority

Alaina Burtenshaw, Chair

<u>EXHIBIT E</u> Senate Committee on Transportation	
Date: 2-9-2017	Total pages: 10
Exhibit begins with: E1	thru: E10

APP000085

The Nevada Transportation Authority's

Regulatory Responsibilities

The Nevada Transportation Authority (“NTA”) administers and enforces state law regulating:

- Passenger transportation, household goods movers and tow cars pursuant to NRS 706 and NAC 706;
- The storage of household goods pursuant to NRS 712;
- Transportation network companies pursuant to NRS 706A and NAC 706A; and
- Motor carrier safety requirements pursuant to the Federal Motor Carrier Safety Administration (49 CFR as adopted by NAC 706.247).

The Nevada Transportation Authority's Mission

(NRS 706)

Pursuant to NRS 706.151, the NTA has been charged with the responsibility to:

- Provide for fair and impartial regulation, to promote safe, adequate, economical and efficient service and to foster sound economic conditions in motor transportation.
- To encourage the establishment and maintenance of reasonable charges for Intrastate transportation by fully regulated carriers; and non-consent towing services.
- Without unjust discriminations against or undue preferences or advantages being given to any motor carrier or applicant for a certificate of public convenience and necessity.

Regulation Under NRS 706

NRS 706 creates and identifies several different duties to regulate passenger motor carriers; tow cars; household goods movers and brokers of transportation. NRS 706 distinguishes between the regulation of fully regulated carriers and those that are not fully regulated.

- Fully regulated carriers are: common carriers of passengers or household goods who must obtain a Certificate of Public Convenience and Necessity or a Contract Carrier's permit and whose rates, routes and services are subject to regulation by the NTA
 - Examples of fully regulated carriers:
 - Intrastate charter service performed in a limousine
 - Intrastate scenic tour service performed in various vehicle types
 - Intrastate regular route service performed in a bus
 - Intrastate taxi service anywhere in Nevada (except Clark County)
 - Intrastate transportation of household goods.
- Carriers that are not fully regulated are: carriers of passengers or property whose rates, routes and services are not subject to regulation by the NTA.
 - Examples of carriers that are not fully regulated:
 - Intrastate transportation of passengers by charter bus
 - Regulation limited to issues of safety and insurance coverage
 - Tow Carriers
 - Consent-Only tow carriers are partially regulated in the areas of safety and insurance coverage.
 - Non Consent tow carriers are regulated in terms of safety, insurance, rates and services, but not regulated in terms of market or financials

The NTA's Work Force

- Three Commissioners: One of the Commissioners is designated as the Chair and Executive Officer of the Authority. The Commissioners hold hearings on contested applications, citations, impounds and driver permits. Final decisions on all matters are made at an Agenda subject to the Open Meeting Law.
- One Deputy Commissioner: Serves as the Chief Financial Officer for the Authority and directs the day to day operation of the Authority.
- One Administrative Attorney: Assists the Commissioners with the hearings, monthly agendas, drafts orders, notices, and provides legal guidance and research to Commissioners and Authority staff. Administrative Attorney is assisted by one Legal Research Assistant and one Legal Secretary.
- One Applications Manager and two financial analysts: Review and verify the financial information contained in applications, petitions, annual reports and tariff modifications filed with the Authority in order to make recommendations to the Commissioner(s) during hearings or at Agenda Meetings.
- Enforcement Unit: One Chief of Enforcement; three Supervisory investigators; seven investigators; and five compliance audit investigators. The Chief of Enforcement supervises all within the Enforcement Unit. The Enforcement Investigators enforce NRS 706, 706A and 712 by issuing citations and impounding vehicles, where authorized, and inspecting vehicles for safety compliance from time to time. The Compliance audit investigators audit the books and records of the carriers, assist with driver's permit background checks, assist the financial analysts in the background investigation of applications filed with the Authority, and conduct vehicle inspections for safety.
- Administrative Services: two Management Analysts and three Administrative Assistants ensure the functional day to day operations of the Authority.

Additional NTA Safety Responsibilities

49 CFR

The Authority has adopted (with some modifications) by reference via NAC 706.247 the regulations contained in 49 C.F.R. Parts 40, 382, 383, 385, 387, 390 to 393, inclusive, 395, 396 and 397, and Appendices B and G of 49 C.F.R. Chapter III, Subchapter B, as those regulations existed on May 30, 2012, with some limited exceptions.

Based thereon the Authority's officers may, during regular business hours, enter the property of a carrier to inspect its records, facilities and vehicles, including space for cargo and warehouses.

Each compliance enforcement officer employed by the Nevada Transportation Authority pursuant to [NRS 706.176](#) is required to complete training regarding the federal regulations adopted by reference in subsection 1 which relate to common, contract and private motor carriers of passengers and property, including, without limitation, training in commercial vehicle safety inspections provided by the Nevada Highway Patrol.

Vehicle Inspections

NTA enforcement personnel inspect all vehicles when first placed into service whether permanently or temporarily. Thereafter the carrier is required to perform vehicle inspections for each vehicle every 12 months and provide a copy of the inspections to the Authority.

Driver's permit requirements

Pursuant to NRS 706.462, all drivers of common motor carriers are required to submit to a fingerprint-based background check. The results of those checks are reviewed by NTA staff, and any drivers with items of concern are scheduled for a meeting with a Commissioner. The Commissioners identify any items of concern and request additional information from the drivers where appropriate. If the items of concern rise to the levels outlined in NRS 706.462 (3) or NRS 706.4622, the matter is scheduled for review by the full Authority at an Agenda meeting.

Insurance filing form K

The NTA is either a certificate holder or an additional insured on all motor carriers insurance, including TNCs. As such, the NTA would receive a Form K indicating cancellation of insurance and that Form would normally be received 30 days prior to said cancellation. Prior to a TNC's permit being issued and beginning operations, the proposed insurance policy is reviewed by Division of Insurance to ensure compliance with the statutory requirements.

Warehouse Permits

NRS 712

NRS 712 applies to storing for compensation the personal household goods and effects of another where the operator of a warehouse is held out to the public to provide such storage.

A Warehouse Permit is required from the NTA before engaging in the warehouse business.

The Applicant must provide:

- Proof of financial ability to protect persons storing property from loss or damage,
- A showing of sufficient assets, including working capital, to carry out the proposed service.

The NTA must

- Determine that the applicant has sufficient experience in and knowledge of the storage in a warehouse of household goods and effects, and the regulations of the Authority governing the storage of household goods and effects
- Require proof that the applicant carries a legal policy of liability insurance evidencing coverage against fire, theft, loss and damage for stored property
- Require information showing that the property to be used for storage of household goods and effects is reasonably suitable for that purpose.

Failure to maintain insurance or suitable warehousing conditions is grounds for the NTA revoking a warehouse permit

TNC's NRS 706A

AB 176 in the 2015 Legislature provided the NTA with regulatory authority over the TNC's.

- TNC's are required to obtain permits from the NTA by providing information showing:
 - The qualifications and experience of the management and operational personnel;
 - The technology to be used to provide the services – which includes the ability to track and limit the hours of drivers;
 - Copies of articles of incorporation, articles of organization, or partnership agreement;
 - State business registration;
 - Copy of insurance policy that meets the requirements of NRS 690B.400 to 690B.495 and which identifies the NTA as a named insured; and
 - An example of the required trade dress.

The NTA has issued permits to three TNC's: Uber; Lyft and Get Me.

- TNC's are required to provide the NTA with an annual report on or before May 15 of each year and are required to pay an annual assessment to the NTA. In late 2016, the NTA conducted a rulemaking to modify the regulations on annual assessments and annual reports in late 2016. The new regulation, which is currently effective creates:
 - a tiered payment structure (which removes the reporting of actual gross operating revenue, and replaces it with a tiered range)
 - proposes a format for TNC annual reports to be filed by May 15th of each year.

Pursuant to NRS 706A.270, each year TNC's are required to provide the NTA with a report showing:

- The number of motor vehicle crashes which occurred in this State;
- The highest, lowest and average amount paid for bodily injury or death to one or more persons that occurred as a result of such a crash; and
- The highest, lowest and average amount paid for damage to property that occurred as a result of such a crash.

The NTA collects the reports submitted by the TNC's and reports the aggregated information to the Legislative Commission or Director of the Legislative Counsel Bureau by December 1. In that submission the NTA also makes a determination as to whether the limits of coverage required pursuant to [NRS 690B.470](#) are sufficient. The NTA submitted this annual report to the Director of the Legislative Counsel Bureau on or about November 30, 2016.

Exhibit H

[Summertime weed deals nearby! Order for pickup >](#)

Best in State: The Top Cannabis Locations, Products, and Activities in Nevada in 2018

Stacey Mulvey

December 20, 2018

Our Best in State series spotlights the top cannabis dispensaries, companies, products, and activities in the largest cannabis markets in 2018.

There are too many amazing cannabis companies in Nevada, which is a good problem to have if you're compiling a list like this. The trouble is in attempting to narrow it down. It's a well-known secret that Nevada is *the* market to watch for cannabis trends. Nevada has a fiercely independent and discerning spirit.

Find legal cannabis near you—check dispensary menus.

Looking through our history, many, from the mafia to the dirtiest of corporations have tried to conquer Nevada; and only the brands considered the best of the best have managed to remain standing in the Silver State.

While the new adult-use legal cannabis market continues to unfold here, it is exciting to see new leaders emerge.

Overall Dispensary: Planet 13

(Courtesy of Planet 13)

Las Vegas, NV

Newly opened Planet 13 is a dispensary, yes. But in true Las Vegas style, it is a larger-than-life *experience* and beyond comparison to anything else on Earth. Don't let your opinion of Las Vegas influence you before you go. Planet 13 is a unique concept unto itself, boldly presenting its own vision of what purchasing

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and interacting with cannabis can be.

The building itself sets out to be a landmark, visible from a panorama of 55,000 hotel rooms, it lit up at night with an electronic graffiti wall and interactive art exhibit that patrons can control. The visual delights continue on the inside, with an animated LED floor, stocked with koi fish that swim away as you walk on them, and a trip-inducing ceiling that takes more than a cursory glance to figure out. As you're gazing up at the mystery that unfolds, a light show featuring dancing orbs controlled through drone technology move in sync with the music pumped through the enue-quality sound system.

Sound enthralling? Its intentional. Planet 13 wants you there, even if you don't want to purchase cannabis. Hang out, relax, and someday consume your cannabis on-site when future development is realized after legislation allows.

Best Budget Dispensary: Acres Cannabis

Las Vegas, NV

Perusing the stalls at your local farmers market is a fantastic way to find great deals directly from the folks that grew the goods. That's why the Underground at Acres offers you the best deals for your cannabis budget.

Accessed through a faux smugglers tunnel located in Acres Cannabis, Nevadan cannabis vendors at Underground are allowed to set up their finest selection on either tables or in the permanent car trunks installed along the walls. The colorful graffiti and street art create a one-of-a-kind interior. Open only on Friday and Saturday, act fast if you want the best bargains. Look for deep cuts on eighths or ounces of elite flower, pre-rolls, and concentrates.

Best Boutique Dispensary: Sierra Well

(Courtesy of Sierra Well)

Reno, NV

Sierra Well could be called the "Biggest Little Dispensary in the World," with unique features on par with the mega dispensaries found in southern Nevada, blended with the trusted orthodoxy inherent in the patient-based culture

that has always embraced

APP000097

they've always embraced.

The focus here is on portraying cannabis in its best light, whether through thoughtfully placed topical products on shelves that reach the ceiling, engaging layouts of extracts to browse, stocked-to-the-brim edibles refrigerators, elegant arrangements of flowers ... There is no doubt as to who Sierra Well considers the star of the show at their dispensary. Cannabis is the leading lady and clients are invited to become her adoring fans.

Overall Company: Aether Gardens

Las Vegas, NV

The epitome of cannabis is right here in Nevada, and you'll find it at Aether Gardens. Founders Bronwen and Robert, who fell in love and moved to Nevada after pioneering and advocating as caregivers in Detroit, built a virtual temple dedicated to the cultivation and manufacturing of cannabis.

It starts with their cultivation standards, which are carefully applied and directed by their master grower. Proper training and a focus on compliance are of utmost importance at Aether, which currently grows indoor hydro, but will expand to include an outdoor, fully automated greenhouse early next year.

Aether's on-site tissue culture lab embodies their commitment to research and analysis of superior cannabis genetics. The collection includes a bank of 120 strains and over 300 seeds preserved for future testing and consistent release of quality products. Their new analytic equipment, acquired for the purposes of vetting and evaluating their entire process throughout every stage of production, positions Aether as a deeply trusted source of information and education for the entire industry.

Best Flower Products: Cannavative

(Courtesy of Cannavative)

Black Rock City, NV

Tucked near Tahoe and Black Rock City, you'll find a cannabis producer adamant about every strain they grow being raised in an environment tailored to its specific needs. Optimal conditions have been tested for and achieved at

to its specific needs. Optimal conditions have been tested for and evaluated at Cannavative to make sure the resulting plant is exhibiting its best characteristics. The cultivation staff applies an expert small-batch, artisanal mind-set to produce the highest yields of exemplary tasting buds.

Besides elite strains like Limoncello, Velvet Cake and Shortbread Cookies that they've already dialed to perfection, Grow Master Andrew Baldwin plans to release a few cross breeds from Limoncello—hopefully for production in 2019.

Find Cannavative's clear and clean smelling flower throughout the state of Nevada and Oregon, and check out their infused pre-roll: The Motivator, which uses the brand's premium flower treated with their prized honeycomb concentrate.

Best Concentrates: Binske

Las Vegas, NV

The French would call the assumption Binske operates under as *l'art pour l'art*. Translated as art for the sake of art, each gourmet product his cannabis company conceives of is presented as pure form. The purity of their philosophy translates to their concentrates, making them superior to the point of nearly transcending the category into a class unto themselves.

Rich collages created by UK artist Martin O'Neill accompany each product, and are meant as agnostic representations created to evoke wonder and inner-directed contemplation. The impression the image, and more specifically the medicine, created within is entirely dependent on you.

Best Edibles: Evergreen Organix

(Courtesy of Evergreen Organix)

Las Vegas, NV

Starting with cookies, the focus of Evergreen Organix has been on specifics, from precise dosing, hand-crafted production methods, and ideal ingredients. Since 2015, every made-from-scratch product they've developed overwhelms consumers with optimum deliciousness.

Their goodies prompt memories of the ones Grandma used to make for their simple quality and unadulterated nature. Evergreen Organix knows that true luxury doesn't need to be complicated or overdone, and that the best things in life—especially in food—appear effortless.

Best Topical: Canna Hemp CBD Relief Cream

Whispered about among cannabis client specialists at nearly every Nevada dispensary I have visited, Canna Hemp Relief felt like a magic potion that was perpetually out of my reach. I'd ask about the cannabis-based topical products that were available, inquire about which ones they would recommend, and in the midst of their list, a pause. "Oh, but Canna Hemp Relief"... And I'd lose whomever it was in a private reverie. Turns out they had just sold the last one in stock, and I'd be left wishing I could find some. What was the big?

When I finally laid hands on it, I understood the hype. Canna Hemp CBD Relief Cream relieves pain through a cool, rejuvenating sensation, and the light formula means your skin just soaks it up. Inflammation above and below the dermis is calmed and soothed with cannabis derived terpenes and organic botanical oils like rosemary and eucalyptus.

Best High-CBD Product: BASK+ Extended CBD Wellness Cream

(Courtesy of Bask)

Las Vegas, NV

Utilizing a drug delivery method that bypasses the intestines and lungs, BASK+ Extended CBD Wellness Cream, packs a potent 400mg punch, distributing cannabidiol throughout your body via the circulatory system. This translates to an overall feeling of well-being, as opposed to a more localized effect. Great for patients treating systemic inflammatory diseases like arthritis and autoimmune disorders like lupus, transdermal administration of cannabidiol is an emerging method of consumption.

9 part series

Part one**Best in State: The Top Cannabis Locations, Products, and Activities in Arizona in 2018**

Part two**Best in State: The Top Cannabis Locations, Products, and Activities in Colorado in 2018**

Part three**Best in State: The Top State-Specific Cannabis Products and Experiences in 2018**

Part four**Best in State: The Top Cannabis Locations, Products, and Activities in Maryland in 2018**

Part five**Best in State: The Top Cannabis Locations, Products, and Activities in Nevada in 2018**

Part six**Best in State: The Top Cannabis Locations, Products, and Activities in Northern California in 2018**

Part seven**Best in State: The Top Cannabis Locations, Products, and Activities in Oregon in 2018**

Part eight**Best in State: The Top Cannabis Locations, Products, and Activities in Southern California in 2018**

Part nine**Best in State: The Top Cannabis Locations, Products, and Activities in Washington in 2018**

Exhibit I



The awards ceremony was followed by a party at The Cosmopolitan Hotel in Las Vegas.

All Photos by Solimon Productions

Winners' Circle

MJBizDaily Awards honor cannabis industry leaders and induct inaugural Hall of Fame members

Some of the cannabis industry's most recognizable faces turned out Dec. 12 for the MJBizDaily Awards at The Cosmopolitan Hotel in Las Vegas.

The awards gala honored everyone from businesses considered international

“game changers” to U.S. leaders in retail, cultivation and infused products—plus companies notable for their contributions to hemp, sustainability and giving back to the community.

Finalists in each category were culled from hundreds of nominations submitted

by cannabis industry professionals. The staff of *Marijuana Business Daily* helped narrow the field of contestants for the judges, listed on page 90.

In these pages, we highlight the winners and share what prompted judges to cast their deciding votes.

INDUSTRY IMPACT AWARD

NANCY WHITEMAN

CEO, Wana Brands
Boulder, Colorado

Since co-founding Wana Brands in 2010, Nancy Whiteman has grown the company to the No. 1-selling edibles brand in the country. She was responsible for expanding Wana from its Colorado base to Arizona, California, Illinois, Michigan, Nevada, Ohio and Oregon, with plans to move into Florida, Maryland, Pennsylvania and Canada as well.



Nancy Whiteman, center, is presented with the Industry Impact Award from MJBizDaily CEO Chris Walsh, left, and co-founder Cassandra Farrington.

MJBizDaily AWARDS

PLANET 13

Las Vegas

Planet 13 accounts for nearly 10% of all Nevada dispensary sales, and in a short time, its superstore has become a must-see destination for cannabis enthusiasts visiting Las Vegas. In addition to interactive light displays and Instagrammable settings, the retailer carries more than 450 products ranging from flower and pre-rolls to vaping materials, edibles, extracts, topicals, tinctures and gear.

Planet 13 Vice President of Sales and Marketing David Farris, from left, celebrates with Vice President of Operations Chris Wren and General Manager Danielle Stoker.



The MJBizDaily Awards were part of MJBizDaily Week, held Dec. 9-13, 2019.

Exhibit J

ONE FEATURE

[ALL-TIME BEST OF VEGAS (2020)]

BEST DISPENSARY: PLANET 13



Planet 13

Photo: Steve Marcus

Las Vegas Weekly Staff

Thu, Aug 13, 2020 (2 a.m.)


While most cannabis dispensaries are content to blend in with their surroundings, Planet 13 presents an eye-popping alien landscape, replete with selfie spots and interactive art elements. Inside, the fun continues with a vast selection of recreational products, a staff of attentive budtenders and a vibe unlike any other dispensary you’ve known. 2548 W. Desert Inn Road #100, 702-815-1313.

Runner-up: The Source

Tags: [Dispensary](#), [Best of Vegas 2020](#), [Best of Vegas 2020 This & That](#), [All-Time Best of Vegas \(2020\)](#)

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2



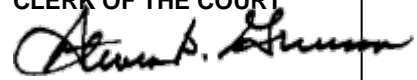
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-804883-C

Dept. No.: 8

**MM DEVELOPMENT COMPANY,
INC.'S MOTION FOR JUDGMENT ON
THE PLEADINGS**

Hearing Requested

Defendant MM Development Company, Inc. ("MM"), by and through counsel of record, hereby submits this Motion for Judgment on the Pleadings ("Motion").

This Motion is made and based upon the following Memorandum of Points and Authorities, any exhibits attached thereto, the pleadings and papers on file herein, the oral argument of counsel and such other or further information as this Honorable Court may request.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff Tryke Companies SO NV, LLC's ("Tryke" or "Reef") claims against MM fail as a matter of law. Reef's claims against MM, including claims for (i) civil conspiracy, (ii) aiding and abetting, and (iii) intentional interference with economic advantage are based entirely upon MM's alleged violation of state diversion laws, Nev. Rev. Stat. ("NRS") 706A.280(2) and Nev. Admin. Code ("NAC") 706.552(1)(c) (the "Diversion Laws") – **laws which provide no private right of action.**¹ Reef is a private company, *not* a government actor. Therefore, Reef has no legal basis to bring a civil suit to enforce the Diversion Laws which underlie each of the three above-mentioned causes of action in the Complaint.

On July 16, 2021, MM moved for leave to amend to assert similar counterclaims against Reef for (i) civil conspiracy, (ii) tortious interference with economic advantage, and (iii) unjust enrichment based on Reef's violation of cannabis advertising laws and regulations, NRS 678B.520(11)(d) and NCCR 6.120(d) ("Motion for Leave"). As to those claims, the Court issued its Order and Judgment denying MM's Motion for Leave, stating that there was **no private right of action** as its basis for denying MM's Motion for Leave. *See* 09/02/21 Ord. The rationale and statutory analysis laid out by this Court with regards to the statutory scheme and intent behind NRS 678B.520(11)(d) and NCCR 6.120(d) (the "Cannabis Laws") is strikingly similar to the scheme promulgated by the Diversion Laws regarding Reef's causes of action at issue here.

If MM's proposed claims for relief under the Cannabis Laws fail to provide a private right of action as this Court has stated, then this Courts rationale applies similarly to Reef's claims against MM regarding the Diversion Laws, NRS 706A.280(2) and NAC 706.552(1)(c). Under that rationale, the Diversion Laws fail to provide a private right of action and all of Reef's claims fail as a matter of law. Therefore, MM respectfully requests judgment on the pleadings and dismissal of Reef's Complaint.

¹ *See* Reef's Complaint and Demand for Jury Trial, filed in this action on November 5, 2019.

II.

STATEMENT OF UNDISPUTED FACTS

On November 5, 2019, Reef brought suit against MM alleging three causes of action. *See* 11/05/19 Compl. In the Complaint, Reef touts the “***Subject Matter of the Suit***” as a lawsuit that “seeks to prevent Planet 13 from **violating Nevada’s anti-diversion laws** through paying kickbacks to Uber and Lyft drivers, as well as taxi drivers, in exchange for the drivers diverting passengers that intend to visit Reef to Planet 13.” *Id.* at ¶ 7 (bold added). The “General Allegations” contained within the Complaint go on to discuss the following categories of factual allegations, all of which address diversion: (i) “Nevada’s Anti-Diversion laws” (ii) the “Illegal Diversion Reveled”, (iii) “The Role of Ride Sharing Service Drivers” in the alleged diversion, (iv) “Specific Instances of Unlawful Diversion to Planet 13”, (v) “The Connection Between Planet 13’s Kickbacks and Illegal Diversion” and (vi) how “Allowing Marijuana Customers to be Diverted Is Contrary to Public Policy”. *See* Compl. at 2:23; 3:6, 23; 4:20; 8:1-2, 22-23 (emphasis not included).

Reef then asserts its civil conspiracy claim based on allegations that MM conspired “to violate Nevada anti-diversion statutes and regulations, including NRS 706A.280(2) and NAC 706.552(1)”; its aiding and abetting claim alleging MM’s conduct constitutes “aiding and abetting to violate NRS 706A.280(2) and NAC 706.552(1); and its intentional interference with prospective economic advantage based on MM’s alleged encouragement of “drivers to divert” passengers. *Id.* at ¶¶ 36, 45, 56, 57.

Both Reef and MM are **private entities** organized and existing under the law of the State of Nevada. *See* Compl. at ¶¶ 1-2. A cursory review of the Complaint reveals that Reef (a private entity) has no right of action to enforce the Diversion Laws that form the foundation of the allegations in its Complaint – and in particular, the three claims at issue here.²

² As discussed above, this Court previously found that no private right of action existed under the Cannabis Laws, which have a similar statutory layout as the Diversion Laws forming the basis of Reef’s three causes of action – causes of action nearly identical to those proposed by MM. The Court denied MM the opportunity to pursue those claims, determining that claims brought on the basis of a violation of statute for which there is no private right of action are “futile.” *See* 07/16/21 Motion for Leave; *see also* 09/02/21 Ord. denying same.

III.
ARGUMENT

A. Legal Standard

Under Nev. R. Civ. P. (“NRC P”) 12(c), a party can move for judgment on the pleadings “[a]fter the pleadings are closed — but early enough not to delay trial[.]”³ In *Bergen v. Mortgage Lender Services, Inc.*, 129 Nev. 1098 (2013) the court made clear that “[j]udgment on the pleadings under NRC P 12(c) applies “when material facts are not in dispute and the movant is entitled to judgment as a matter of law.” *See Honey v. Distelrath*, 195 F.3d 531 (9th Cir. 1999) (same). “A Rule 12(c) motion is designed to provide a means of disposing of cases when material facts are not in dispute and a judgment on the merits can be achieved by focusing on the content of the pleadings.” *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1241 (1987) (citing 5C Wright & A. Miller, Federal Practice and Procedure § 1367 (1969)). A motion for judgment on the pleadings under Rule 12(c) is subject to the same standard as a Rule 12(b) motion. *See e.g. McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *Moonin v. Nevada ex rel. Department of Public Safety Highway Patrol*, 2014 WL 204915, at * 2 (D. Nev. 2014) (Hicks, J.) (“the standard by which a court evaluates a motion for judgment on the pleadings for failure to state a claim is the same as that by which a court evaluates a motion to dismiss for failure to state a claim.”); *see also Foothills Corp. v. Bank of Am., N.A.*, 131 Nev. 1280 (2015) (unpublished).

Even assuming all the allegations in Reef’s Complaint to be true (which they are not), Reef has no standing to assert claims arising out of MM’s alleged violations of Diversion Laws, NRS 706A.280(2) and NAC 706.552(1)(c). As such, by way of its pleading, Reef has failed to state a claim upon which relief can be granted and MM is entitled to judgment as a matter of law.

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³ The deadline to amend any pleadings was September 2, 2021 and is now passed. *See* Stipulation and Order to Extend Discovery Deadlines and Trial Date (First Request), filed in this action on June 9, 2021.

B. Reef is a Private Party with No Standing to Assert Claims or Recover Damages Under the Diversion Laws.

The Diversion Laws underlying Reef’s claims do not expressly provide Reef with any right of action or enforcement power. As the Nevada Supreme Court held, “when a statute does not expressly provide for a private cause of action, the absence of such a provision suggests that **the Legislature did not intend for the statute to be enforced through a private cause of action.**” *Richardson Const., Inc. v. Clark Cty. Sch. Dist.*, 123 Nev. 61, 65, 156 P.3d 21, 23 (2007) (bold added). The Court continued, “when a statute provides an express remedy, courts should be cautious about reading additional remedies into the statute.” *Id.*

When the plain terms of a statute fail to provide a private right thereunder, no private right of action should be read into a statute by the court. *See, e.g., Bigpond v. State*, 128 Nev. 108, 114, 270 P.3d 1244, 1248 (2012) (“When interpreting a statutory provision, the court will look first to the plain language of the statute.”). The Nevada Supreme Court effectuated that duty in *Torres v. Nev. Direct Ins. Co.*, 131 Nev. 531, 353 P.3d 1203 (2015), when it found that the plaintiff did not have standing to pursue a bad faith claim because the statute at issue, NRS 485.3091, “provides no express language that permits a third-party claimant to pursue an independent bad faith claim against an insurer.” *Torres*, 131 Nev. at 542, 353 P.3d at 1211. Absent such a provision, the Nevada Supreme Court held that Courts should “**not** read language into a statute granting a private cause of action for an independent tort.” *Id.* (emphasis added). The court has remained steadfast in upholding its duty to refrain from reading private rights of action into statutes where the legislature intentionally excluded such remedies. *See Richardson Constr., Inc. v. Clark Cnty. Sch. Dist.*, 123 Nev. 61, 65, 156 P.3d 21, 23 (2007); *see also Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 170 P.3d 989 (2007) (dismissing claims under NRS 690B.012 when the statute “d[id] not expressly create a private right of action”); *Palmer v. State*, 106 Nev. 151, 787 P.2d 803 (1990) (dismissing a claim under NRS 281.370 for the identical reason).⁴

⁴ Reef previously argued that a private cause of action should be “implied” under the Diversion Laws. Based on this Court’s own analysis of whether a private right of action should be found to exist when not specifically provided for under a particular statutory scheme, that argument must fail.

1 In this case, this Court has already evaluated whether private claims should be found implied in
2 statutory schemes that do not include any private rights of action. *See* 09/02/21 Ord. When MM
3 requested to amend its pleading to assert similar causes of action to Reef's, this Court issued an
4 extensive order detailing how the statutory scheme of the Cannabis Laws prevented MM from asserting
5 its proposed claims on private right of action grounds. *See* 07/16/21 (Motion for Leave); *see also*
6 09/02/21 (Ord. denying same). In coming to its conclusion that no private right of action existed under
7 those laws, the Court expressly pointed out that to enforce those laws (i) individuals must file written
8 claims with "the Executive Director of the NCCB", (ii) the Executive Director "performs
9 investigations" and transmits details to the Attorney General, and (iii) the statute declared that once
10 received, the Attorney General (and not individuals) was charged with prosecuting all claims
11 thereunder. *See* 09/02/21 Ord. at 4:24-5:1. Based on this statutory enforcement scheme, the Court found
12 that **"nothing in the statute explicitly grants private persons a cause of action** through which to
13 pursue damages for any violations of the Cannabis [Laws]" and determined that no private right of
14 action exists thereunder. *See* NRS 687A.500; *see also* 09/02/21 Ord. at 4:12-14; 4-28:5-1 (emphasis
15 added).

16 Similarly, under the Diversions Laws at issue here, (i) individuals must file written claims with
17 the Nevada Transportation Authority ("NTA") (NRS 706.286, NAC 706.3976, NAC 706A.420), (ii)
18 the Authority performs investigations and shall recommend any action on the complaint (NAC
19 706.3976, NAC 706A.440) and determines whether and may transmit details to the Attorney General
20 (NRS 706.1715), and (iii) the statute declares that once received, the Authority and the Attorney
21 General (and not individuals) is charged with prosecuting **all civil actions or claims** thereunder (NRS
22 706.1715). The Diversion Laws fall squarely within the Courts Cannabis Law analysis and, likewise,
23 provide no private right of action.

24 Because the plain and unambiguous terms on the face of the statute control, there is no private
25 right of action under the Diversion Laws nor can any be "implied" under the Diversion Laws. *See, e.g.,*
26 *Bigpond*, 128 Nev. at 114, 270 P.3d at 1248. NRS Chapter 706 and 706A provide the rules and
27 regulations for the management and enforcement of passenger transportation and transportation
28 network companies in the State of Nevada. *See* NRS 706.151(1)(a) (legislative declaration of purpose);

1 NAC 706 (associated regulations regarding passenger transportation); NRS 706A.010 (legislative
2 declaration of purpose); NAC 706A (associated regulations regarding transportation network
3 companies). The legislature has designated the Nevada Transportation “Authority”⁵ with the duty and
4 power of regulating both NRS 706 and 706A. *See* NRS 706.151(1)(a) (“the purpose and policy of the
5 Legislature in enacting this chapter” is “to confer upon the Authority the power and to make it the duty
6 of the Authority to regulate fully regulated carriers, operators of tow cars and brokers of regulated
7 services”); NRS 706A.010 (“... the purpose and policy of the Legislature in enacting this chapter
8 to ensure the safety, reliability and cost-effectiveness of the transportation services provided by drivers
9 affiliated with transportation network companies in this State.”); *see also* NRS 706A.100 (vesting the
10 Authority with the duty to “adopt such regulations as are necessary to carry out the provisions of this
11 chapter.”).

12 According to the Nevada Transportation Authority itself, *it alone* is the regulatory body which
13 “administers and enforces state law” regulating: (1) passenger transportation pursuant to NRS 706 and
14 NAC 706; and (2) transportation network companies pursuant to NRS 706A and NAC 706A, among
15 other things.” See Overview of Nevada Transportation Authority: Before the S. Comm. on
16 Transportation, 2017 Leg., 79th Sess. 2-3 (Feb. 16, 2017) (statements by Chair Alaina Burtenshaw,
17 including presentation marked as Exhibit C), the relevant portions of which are attached hereto as
18 Exhibit A. In fulfilling that duty, the Nevada Transportation Authority issues citations and enforces the
19 same statutes on which Reef tries to assert private rights of action.⁶

20
21 ⁵ “Authority” is a defined term under both NRS chapters, meaning “the Nevada Transportation
Authority.” *See* NRS 706.018 and NRS 706A.030.

22 ⁶ *See* the Nevada Transportation Authority’s public meeting minutes, examples of which are publicly
23 available through the NTA’s website and also attached hereto as Exhibit B. *See* Minutes of the
24 November 10, 2016 General Session (e.g., Administrative Citation Item 17, Citations 18503 and
25 18504 “for violations of NRS 706.386, NRS 706.758 and NRS 706A.280”) (available at
26 [https://nta.nv.gov/uploadedFiles/ntanvgov/content/About/Meetings/2016/2016-11-
27 10_Minutes_NTA.pdf](https://nta.nv.gov/uploadedFiles/ntanvgov/content/About/Meetings/2016/2016-11-10_Minutes_NTA.pdf)); Minutes of the December 17, 2020 General Session (e.g., Administrative
Citation Item 12, Citations 21799 and 21800 “for violations of NRS 706.386 and NRS 706A.280”) (available at [https://nta.nv.gov/uploadedFiles/ntanvgov/content/About/Meetings/2020/12-
December/17_December_2020_GSM_minutes_ADA.pdf](https://nta.nv.gov/uploadedFiles/ntanvgov/content/About/Meetings/2020/12-December/17_December_2020_GSM_minutes_ADA.pdf)).

28 This Court may take judicial notice of the public records included in Exhibits A and B, and the fact
that the NTA issues citations for and holds hearings on violations of NRS Chapters 706 and 706A.

Further, under NRS 706.1715, the Attorney General or other district attorney are the only persons vested with prosecutorial power under these laws. NRS 706.1715 provides:

1. **The Attorney General shall:**

(a) Act as counsel and attorney for the Authority in all actions, proceedings and hearings.

(b) **Prosecute in the name of the Nevada Transportation Authority all civil actions for the enforcement of this chapter and for the recovery of any penalty or forfeiture provided for therein.**

(c) Generally aid the Authority in the performance of its duties and the enforcement of this chapter.

2. The Attorney General or any district attorney may prosecute any violation of this chapter or chapter 712 of NRS for which a criminal penalty is provided.

(Bold and underline added).

Nowhere within the Diversion Laws has the legislature authorized a business to privately sue for alleged violations of the statute. NAC 706A provides that the *only* express remedy related to violations of NRS 706A is for complaints to be made in writing directly to the Nevada Transportation Authority – and not this court. NAC 706A.420. In the event that the NTA finds probable cause, it will set a date for a public hearing on the complaint. *Id.* Upon the determination that a violation has occurred, the legislature has made clear that any **violations may result in discipline only by the NTA and enforcement only by the Attorney General or other district attorney.** *See* NRS 706.1715; *see also* NRS 706A.300⁷ (expressly allowing the NTA to penalize by (i) suspension or revocation of a permit issued by NTA, (ii) an administrative fine in an amount not to exceed \$100,000, (iii) prohibit a person from operating as a driver, or (iv) any combination thereof). The legislature and its administrative body

See NRS 47.130 (“A judicially noticed fact must be (a) generally known within the territorial jurisdiction of the trial court; or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute.”); *see also* *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (“[A district] court may take into account **matters of public record**, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted.”) (bold added).

⁷ Not only is NTA the only entity with any right of action under NRS 706A, but the NTA would only plausibly have right of action, if any, against drivers or transportation companies. Here, that would be Uber Lyft, and the Taxi companies – and *not* MM.

1 have drafted these laws and regulations – like it did the Cannabis Laws – with purpose and intention.
2 Nowhere does the statute allow private individuals or entities to bring civil lawsuits seeking to punish
3 violators of these Diversion Laws. To somehow read into this statutory scheme a private right of action
4 goes against the clear and unambiguous language, as well as the intent of this chapter. According to
5 this Courts prior rationale, these statutes do not provide any private right of action and claims brought
6 for violations of these statutes should be considered futile.

7 *i. Reef’s claim for civil conspiracy fails as a matter of law.*

8 Reef has no right of action under the Diversion Laws and thus, it has no claim for civil
9 conspiracy. “Civil conspiracy is not an independent cause of action – it must arise from some
10 underlying wrong.” *Paul Steelman Ltd. v. HKS, Inc.*, No. 2:05-CV-01330-BES-RJJ, 2007 WL 295610,
11 at *3 (D. Nev. Jan. 26, 2007); *see, e.g., Kramer v. Perez*, 595 F.3d 825, 830 (8th Cir. 2010) (“We refuse
12 to create a private cause of action for civil conspiracy” where the underlying statute did not provide for
13 such a right); *see also McPheters v. Maile*, 64 P.3d 317, 321 (Idaho 2002) (“Civil conspiracy is not, by
14 itself, a claim for relief. The essence of a cause of action for civil conspiracy is the civil wrong
15 committed as the objective of the conspiracy, not the conspiracy itself.”) (internal citations omitted);
16 *Raimi v. Furlong*, 702 So. 2d 1273, 1284 (Fla. Ct. App. 1997) (“[A]n actionable conspiracy requires
17 an actionable underlying tort or wrong.”); *Sahara Gaming Corp. v. Culinary Workers Union Local 226*,
18 115 Nev. 212, 984 P.2d 164 (1999) (affirming summary judgment on a conspiracy claim, which was
19 “derivative of the defamation claim,” where the claim for defamation was dismissed).

20 Reef’s civil conspiracy claim is an indirect claim based on its allegation that MM conspired “**to**
21 **violate Nevada anti-diversion statutes and regulations, including NRS 706A.280(2) and NAC**
22 **706.552(1)**”. Compl. at ¶ 36 (emphasis added). This claim is improperly before this Court. As discussed
23 at length in Section III(B), *supra*, Reef has no standing to allege a violation of the Diversion Laws. To
24 survive a motion to dismiss or similar, the pleader must allege that the conduct at issue is “unlawful.”
25 *See Saticoy Bay, LLC Series 1330 Crystal Hill v. Tripoly at Stephanie Homeowners Ass’n*, 482 P.3d
26 699 (Nev. 2021). Reef cannot bring an indirect claim based on an alleged violation of a law under
27 which it has no standing. In short. Reef has no basis for showing that the alleged conduct was unlawful
28 because the NTA is the arbiter of unlawful conduct under the Diversion Laws, and *not* private parties

1 like Reef. Thus, Reef has failed to state a claim for relief as to its cause of action for civil conspiracy
2 and MM is entitled to judgment as a matter of law.

3 Based on the Diversion Law’s statutory scheme, because enforcement authority over these laws
4 rests in the NTA, the only conceivable way for this court to properly make a determination under these
5 laws is first through the petition for judicial review mechanism, if (i) brought by a *transportation*
6 *company*, and if (ii) based on some administrative determination made by *the Nevada Transportation*
7 *Authority*. Neither are the case here.

8 ***ii. Reef’s claim for aiding and abetting fails as a matter of law.***

9 Similar to Reef’s civil conspiracy claim, Reef’s aiding and abetting claim is improperly
10 brought. Reef’s aiding and abetting claims is founded upon its allegations that MM’s alleged conduct
11 constitutes “aiding and abetting **to violate NRS 706A.280(2) and NAC 706.552(1).**” *Id.* at ¶ 45
12 (emphasis added). Again, Reef has no standing to make allegations to this Court regarding violations
13 of the Diversion Laws and has no authority to bring secondary claims derived solely therefrom.

14 Reef’s aiding and abetting cause of action is also fraught with insufficiencies. To be liable for
15 civil aiding and abetting, a liability only attaches if “defendant substantially assists or encourages
16 another's conduct in breaching a duty to a third person. *See Dow Chem. Co. v. Mahlum*, 114 Nev.
17 1468, 970 P.2d 98 (1998), *abrogated on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d
18 11 (2001) (citing Restatement (Second) of Torts § 876(b)). Reef’s Complaint fails to identify any tort.
19 The sole basis for its aiding and abetting claim is that MM allegedly violated civil laws and regulations,
20 NRS 706A.280(2) and NAC 706.552(1). Even if Reef has standing to make that allegation, a violation
21 of the Diversion Laws would still not constitute a *tort*, nor could it be committed by *MM*. Any violation
22 of the Diversion Laws must be determined by the NTA, and would only be determined against a driver
23 or transportation company (Uber, Lyft, or Taxi) and not MM. Reef has failed to state a claim for aiding
24 and abetting and MM is entitled to judgment as a matter of law.

25 ***iii. Reef’s claim for intentional interference with prospective economic advantage based on***
26 ***diversion also fails as a matter of law***

27 Reef’s claim for intentional interference with prospective economic advantage (“IIPEA”) fails
28 for all of the same reasons as Reef’s other two Diversion-based claims. A cursory review of the

1 Complaint illustrates that this claim hinges on the Diversion Laws under which Reef has no standing.
2 Under the heading for its IIPEA cause of action, Reef complains that MM “intends to disrupt and
3 terminate the prospective contractual relationship between Plaintiff and passengers requesting to be
4 driven to Plaintiff’s dispensary, **by encouraging drivers to divert such passengers** [to sic]
5 Defendant’s Planet 13 dispensary.” Compl. at ¶ 56. The Complaint continues, “[n]o privilege or
6 justification excuses Defendant Planet 13’s **wrongful conduct of encouraging diversion of**
7 **passengers** to Planet 13’s dispensary.” Thus, Reef’s IIPEA claim, like its others, arises entirely out of
8 the Diversion Laws.

9 If the allegations in Reef’s Complaint were not clear enough to demonstrate that its IIPEA claim
10 is wholly premised on violations of the Diversion Laws, in its prior Opposition to MM’s Motion to
11 Dismiss this claim, Reef relied solely on the Diversion Laws as support for at least two of the five
12 elements of this cause of action.⁸ As to element four, which requires “absence of privilege or
13 justification”, Reef directly cites to ¶ 57 of the Complaint regarding MM’s “wrongful conduct of
14 encouraging diversion of passengers” and defends its position by stating “to satisfy this element at
15 summary judgment, a plaintiff need only show [‘]that the means used to divert the prospective
16 advantage was unlawful, improper or was not fair and reasonable. *Custom Teleconnect v. International*
17 *Tele-Services*, 254 F. Supp. 2d 1173, 1181 (D. Nev. 2003)”. See Opp. at 9:23-27, on file, *see also*
18 *Cummings Engine Co.*, 114 Nev. at 1304, 971 P.2d at 1255. As to element five – actual harm as a
19 result of Defendant’s conduct – the alleged “conduct” that underlies Reef’s damages claim is obviously
20 diversion. See Opp. at 10:8-11 (Reef argues that MM’s claim that it is “impossible to know whether a
21 customer...who is then **diverted** to Planet 13’s dispensary, would have become a customer of Reef
22”) (bold added). The Opposition goes on to argue as to IIPEA that MM’s conduct of allegedly
23

24 ⁸ The five elements that a Plaintiff must prove to succeed on an IIPEA claim are: (1) a prospective
25 contractual relationship between the plaintiff and a third party; (2) defendant’s knowledge of this
26 prospective relationship; (3) intent to harm the plaintiff by preventing the relationship; (4) absence of
27 privilege or justification by the defendant; and, (5) actual harm to plaintiff as a result of defendant’s
28 conduct. See *Consol. Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311,
971 P.2d 1251, 1255 (1998).

diverting passengers through UBER, Lyft, and taxi drivers is an improper, unfair, unreasonable, and unlawful violation of NRS 706A.280(2)(a) and (b), as well as NAC 706.552(1)(c) and (f). *See* Opp. at 11:3-28.

Once again, the sole basis for Reefs IIPEA claim is that MM allegedly violated the Diversion Laws. Reef has no private right of action under the Diversion laws. Thus, like Reef’s other claims, Reef cannot circumvent clear legislative intent by bringing this cause of action and its claim for IIPEA fails as a matter of law.

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

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

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

NAC 706A also requires that the NTA conduct administrative hearings and issue a final decision concerning any complaint against a transportation network company or driver. *See, e.g.*, NAC 706A.750 (“The Authority will review the decision of a hearing officer and enter a final order affirming, modifying or setting aside the decision.”). The NTA’s decisions are subject to appeal by any “party of record to the administrative proceed.” NAC 706A.740. All administrative proceedings before the NTA, under NAC 706A, are conducted “pursuant to the provisions of chapter 233B of NRS

1 and those provisions of chapter 706A of NRS which do not conflict with the provisions set forth in
2 chapter 233B of NRS regarding notice to parties and the opportunity of parties to be heard.” NAC
3 706A.700.

4 If Reef has a complaint regarding diversion of passengers in ride-sharing vehicles, it needs to
5 take that complaint up with the NTA. As Reef has failed to obtain any decision from the NTA, it has
6 failed to exhaust its administrative remedies. As such, Nevada law mandates dismissal of the present
7 action since this Court lacks subject matter jurisdiction over Reef’s grievances. *See* NRS 233B.130(1);
8 *see also Mesagate*, 194 P.3d at 1248; *Scotsman*, 109 Nev. at 255, 849 P.2d at 319.

9 **D. Should the Court Feel a Pending Appeal on the Previously-Ordered Injunction Hinders**
10 **Any Ruling, MM Requests an Order Under NRCP 62.1 Certifying the Court’s Intent to**
11 **Grant the Instant Motion.**

12 The pending appeal on the granting of Reef’s requested preliminary injunction does not prevent
13 this Court from making a dispositive decision on Reef’s claims. If the Court determines that issues
14 currently on appeal may impact the Court’s ability to rule on this Motion, however, then, in the
15 alternative, MM requests that this Court certify its intent to grant the instant Motion under NRCP 62.1.
16 *See* NRCP 62.1(a)(3) (stating that “[i]f a timely motion is made for relief that the court lacks authority
17 to grant because of an appeal that has been docketed and is pending, the court may ”...“state either
18 that it would grant the motion if the appellate court remands for that purpose or that the motion raises
19 a substantial issue”); *see also Foster v. Dingwall*, 126 Nev. 49, 53, 228 P.3d 453, 455 (2010) (citing
20 *Huneycutt v. Huneycutt*, 94 Nev. 79, 81, 575 P.2d 585, 586 (1978) and *Mack-Manley v. Manly*, 122
21 Nev. 849, 855, 138 P.3d 525, 530 (2006) for the proposition that, despite the general rule that an
22 appeal divests the district court of jurisdiction to act on matters non-collateral to the appeal, the court
23 nonetheless retains jurisdiction to review and certify its intent to grant non-collateral motions.) Thus,
24 NRCP 62.1(a)(3) and accompanying case law allow the Court to make a determination on the instant
25 Motion – and certify the Court’s intent to grant this motion – regardless of any related appeal.

26 ///

27 ///

28 ///

IV.

CONCLUSION

Reef has no standing to bring claims arising under Nevada Diversion Laws. Its claims for civil conspiracy, aiding and abetting and intentional interference with prospective economic advantage are all improperly founded upon alleged violations of the Diversion Laws – laws which (like Cannabis Laws) provide no private right of action. As such, MM respectfully moves the Court for an order granting judgment on the pleadings as to Reef’s claims. In the alternative, MM requests that this Court certify its intent to grant the instant Motion as expressly authorized under NRCP 62.1(a)(3).

DATED this 9th day of September, 2021. Respectfully submitted,

KEMP JONES, LLP

/s/ Nathanael R. Rulis

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Inc*

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 2021, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S MOTION FOR JUDGMENT ON THE PLEADINGS** 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

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TRANSPORTATION**

**Seventy-Ninth Session
February 16, 2017**

The Committee on Transportation was called to order by Chairman Richard Carrillo at 3:16 p.m. on Thursday, February 16, 2017, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Richard Carrillo, Chairman
Assemblywoman Ellen B. Spiegel, Vice Chair
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Ozzie Fumo
Assemblyman Richard McArthur
Assemblywoman Daniele Monroe-Moreno
Assemblyman Michael C. Sprinkle
Assemblyman Justin Watkins
Assemblyman Jim Wheeler
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblyman John Ellison (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jann Stinnesbeck, Committee Policy Analyst
Marsheilah Lyons, Committee Policy Analyst
Darcy Johnson, Committee Counsel
Joan Waldock, Committee Secretary
Trinity Thom, Committee Assistant



OTHERS PRESENT:

Bruce Breslow, Director, Department of Business and Industry
Alaina Burtenshaw, Chair, Nevada Transportation Authority, Department of Business and Industry
Ronald Grogan, Administrator, Taxicab Authority, Department of Business and Industry
Binyam Semereab, Private Citizen, Las Vegas, Nevada
Alexander Assefa, Private Citizen, Las Vegas, Nevada

Chairman Carrillo:

[Roll was called. Committee protocols and rules were explained.] Today we will have two presentations. We will first hear from the Nevada Transportation Authority.

Bruce Breslow, Director, Department of Business and Industry:

My role is to introduce to you our new chair of the Nevada Transportation Authority (NTA). You might remember Alaina Burtenshaw from when she served on the Public Utilities Commission (PUC) of Nevada. Ron Grogan, from the Taxicab Authority, will also be testifying. The NTA and the Taxicab Authority are 2 of the 14 agencies that we oversee at the Department of Business and Industry. I will assist with any questions Ms. Burtenshaw may be unable to answer.

Alaina Burtenshaw, Chair, Nevada Transportation Authority, Department of Business and Industry:

This is the overview of the Nevada Transportation Authority ([Exhibit C](#)). Our mission is to provide for fair and impartial regulation and to encourage the establishment and maintenance of reasonable charges without unjust discrimination [page 2, ([Exhibit C](#))]. We regulate and enforce *Nevada Revised Statutes* (NRS) Chapter 706, NRS Chapter 706A, and NRS Chapter 712 [page 3, ([Exhibit C](#))]. *Nevada Revised Statutes* Chapter 706 regulates passenger motor carriers, tow cars, and household goods movers—fully regulated carriers. We regulate their entry into the market as well their rates, charges, and safety. Transportation network companies (TNCs) are regulated under NRS Chapter 706A. Warehouse permits are authorized under NRS Chapter 712.

The *Nevada Administrative Code* (NAC) has adopted many of the regulations contained in Title 49 of the *Code of Federal Regulations*, in order to fulfill our responsibility in maintaining safety. Our compliance enforcement officers complete training in that regard. The Nevada Highway Patrol, Department of Public Safety (DPS), helps us with training for commercial vehicle safety inspections. We inspect vehicles when they are first placed into service, either temporarily or permanently. Thereafter, carriers are required to inspect their vehicles every 12 months. They provide us a copy of their inspection report.

Driver's permits for those who drive limousines require fingerprint-based background checks. The results come back to us. The permits are deemed approved, unless we identify something in a driver's background that causes us concern. In that case, we call the driver in

for further questions. Carriers that we regulate must have insurance. They have to file a Form K with NTA which adds us as an additional insured. That ensures that if their insurer is canceling them, we will be notified 30 days in advance. That way we can take action.

Under "NTA's Initiatives and Challenges," you can see that we are moving after being in our location for 16 years [page 4, ([Exhibit C](#))]. You can imagine that we have a lot of records to purge. I have been in transportation since 1995, when I was with the PUC. We have my files from back then. We have been working hard to eliminate some documentation, put some on scan drive, make sure we are in compliance with the archive policy of the state, and condense everything into electronic file format.

We continue to work on our driver permit database. There are about 7,000 drivers in Nevada, many of whom are seeking renewals. We have about 4,000 in our driver database at this stage. Our compliance audit investigators are constantly working on that.

We instituted a swing shift for the first time. It runs from 3 p.m. to 1 a.m., Tuesday through Friday. With the advent of the TNCs, we thought it would be appropriate to have a swing shift to gain a better idea of what is going on during the nights and on the weekends.

Another of our challenges is vehicle inspections during peak times. During large events, such as CES [a consumer electronics show] and the Electric Daisy Carnival, we have to put a number of often temporary and rental vehicles into service very quickly to accommodate the demand expected during the event. From January 5 through 8, we inspected 302 vehicles that were temporarily added to 13 of the motor carrier fleets just before the CES. Twelve of those vehicles were permanent additions to fleets.

As you can see, there is not a lot of change in our operating budget for fiscal year (FY) 2017 and FY 2018 [page 5, ([Exhibit C](#))]. We have two enhancement requests. One is for an additional TNC enforcement investigator to be added in FY 2018 and another to be added in FY 2019.

Our administrative fines operating budget is \$180,000. That is in a separate account that is to be used by NTA for expenses related to enforcing statutory provisions.

Nevada Revised Statutes Chapter 706A is the NRS chapter that requires us to regulate TNCs [page 6, ([Exhibit C](#))]. We got off and running after Assembly Bill 176 of the 78th Session was passed. They had a very quick rulemaking that was completed early in September 2015. By September 14, 2015, Lyft and Uber were licensed. Get Me was licensed in January 2016. During that period of time, existing enforcement personnel took over responsibility for TNC investigations until we were able to hire some of our first TNC investigators. We got that up and running in March 2016.



Overview of the Nevada Transportation Authority

Alaina Burtenshaw, Chair

<u>EXHIBIT E</u> Senate Committee on Transportation	
Date: 2-9-2017	Total pages: 10
Exhibit begins with: E1	thru: E10

APP000127

The Nevada Transportation Authority's

Regulatory Responsibilities

The Nevada Transportation Authority (“NTA”) administers and enforces state law regulating:

- Passenger transportation, household goods movers and tow cars pursuant to NRS 706 and NAC 706;
- The storage of household goods pursuant to NRS 712;
- Transportation network companies pursuant to NRS 706A and NAC 706A; and
- Motor carrier safety requirements pursuant to the Federal Motor Carrier Safety Administration (49 CFR as adopted by NAC 706.247).

The Nevada Transportation Authority's Mission

(NRS 706)

Pursuant to NRS 706.151, the NTA has been charged with the responsibility to:

- Provide for fair and impartial regulation, to promote safe, adequate, economical and efficient service and to foster sound economic conditions in motor transportation.
- To encourage the establishment and maintenance of reasonable charges for Intrastate transportation by fully regulated carriers; and non-consent towing services.
- Without unjust discriminations against or undue preferences or advantages being given to any motor carrier or applicant for a certificate of public convenience and necessity.

Regulation Under NRS 706

NRS 706 creates and identifies several different duties to regulate passenger motor carriers; tow cars; household goods movers and brokers of transportation. NRS 706 distinguishes between the regulation of fully regulated carriers and those that are not fully regulated.

- Fully regulated carriers are: common carriers of passengers or household goods who must obtain a Certificate of Public Convenience and Necessity or a Contract Carrier's permit and whose rates, routes and services are subject to regulation by the NTA
 - Examples of fully regulated carriers:
 - Intrastate charter service performed in a limousine
 - Intrastate scenic tour service performed in various vehicle types
 - Intrastate regular route service performed in a bus
 - Intrastate taxi service anywhere in Nevada (except Clark County)
 - Intrastate transportation of household goods.
- Carriers that are not fully regulated are: carriers of passengers or property whose rates, routes and services are not subject to regulation by the NTA.
 - Examples of carriers that are not fully regulated:
 - Intrastate transportation of passengers by charter bus
 - Regulation limited to issues of safety and insurance coverage
 - Tow Carriers
 - Consent-Only tow carriers are partially regulated in the areas of safety and insurance coverage.
 - Non Consent tow carriers are regulated in terms of safety, insurance, rates and services, but not regulated in terms of market or financials

The NTA's Work Force

- Three Commissioners: One of the Commissioners is designated as the Chair and Executive Officer of the Authority. The Commissioners hold hearings on contested applications, citations, impounds and driver permits. Final decisions on all matters are made at an Agenda subject to the Open Meeting Law.
- One Deputy Commissioner: Serves as the Chief Financial Officer for the Authority and directs the day to day operation of the Authority.
- One Administrative Attorney: Assists the Commissioners with the hearings, monthly agendas, drafts orders, notices, and provides legal guidance and research to Commissioners and Authority staff. Administrative Attorney is assisted by one Legal Research Assistant and one Legal Secretary.
- One Applications Manager and two financial analysts: Review and verify the financial information contained in applications, petitions, annual reports and tariff modifications filed with the Authority in order to make recommendations to the Commissioner(s) during hearings or at Agenda Meetings.
- Enforcement Unit: One Chief of Enforcement; three Supervisory investigators; seven investigators; and five compliance audit investigators. The Chief of Enforcement supervises all within the Enforcement Unit. The Enforcement Investigators enforce NRS 706, 706A and 712 by issuing citations and impounding vehicles, where authorized, and inspecting vehicles for safety compliance from time to time. The Compliance audit investigators audit the books and records of the carriers, assist with driver's permit background checks, assist the financial analysts in the background investigation of applications filed with the Authority, and conduct vehicle inspections for safety.
- Administrative Services: two Management Analysts and three Administrative Assistants ensure the functional day to day operations of the Authority.

Additional NTA Safety Responsibilities

49 CFR

The Authority has adopted (with some modifications) by reference via NAC 706.247 the regulations contained in 49 C.F.R. Parts 40, 382, 383, 385, 387, 390 to 393, inclusive, 395, 396 and 397, and Appendices B and G of 49 C.F.R. Chapter III, Subchapter B, as those regulations existed on May 30, 2012, with some limited exceptions.

Based thereon the Authority's officers may, during regular business hours, enter the property of a carrier to inspect its records, facilities and vehicles, including space for cargo and warehouses.

Each compliance enforcement officer employed by the Nevada Transportation Authority pursuant to [NRS 706.176](#) is required to complete training regarding the federal regulations adopted by reference in subsection 1 which relate to common, contract and private motor carriers of passengers and property, including, without limitation, training in commercial vehicle safety inspections provided by the Nevada Highway Patrol.

Vehicle Inspections

NTA enforcement personnel inspect all vehicles when first placed into service whether permanently or temporarily. Thereafter the carrier is required to perform vehicle inspections for each vehicle every 12 months and provide a copy of the inspections to the Authority.

Driver's permit requirements

Pursuant to NRS 706.462, all drivers of common motor carriers are required to submit to a fingerprint-based background check. The results of those checks are reviewed by NTA staff, and any drivers with items of concern are scheduled for a meeting with a Commissioner. The Commissioners identify any items of concern and request additional information from the drivers where appropriate. If the items of concern rise to the levels outlined in NRS 706.462 (3) or NRS 706.4622, the matter is scheduled for review by the full Authority at an Agenda meeting.

Insurance filing form K

The NTA is either a certificate holder or an additional insured on all motor carriers insurance, including TNCs. As such, the NTA would receive a Form K indicating cancellation of insurance and that Form would normally be received 30 days prior to said cancellation. Prior to a TNC's permit being issued and beginning operations, the proposed insurance policy is reviewed by Division of Insurance to ensure compliance with the statutory requirements.

Warehouse Permits

NRS 712

NRS 712 applies to storing for compensation the personal household goods and effects of another where the operator of a warehouse is held out to the public to provide such storage.

A Warehouse Permit is required from the NTA before engaging in the warehouse business.

The Applicant must provide:

- Proof of financial ability to protect persons storing property from loss or damage,
- A showing of sufficient assets, including working capital, to carry out the proposed service.

The NTA must

- Determine that the applicant has sufficient experience in and knowledge of the storage in a warehouse of household goods and effects, and the regulations of the Authority governing the storage of household goods and effects
- Require proof that the applicant carries a legal policy of liability insurance evidencing coverage against fire, theft, loss and damage for stored property
- Require information showing that the property to be used for storage of household goods and effects is reasonably suitable for that purpose.

Failure to maintain insurance or suitable warehousing conditions is grounds for the NTA revoking a warehouse permit

TNC's NRS 706A

AB 176 in the 2015 Legislature provided the NTA with regulatory authority over the TNC's.

- TNC's are required to obtain permits from the NTA by providing information showing:
 - The qualifications and experience of the management and operational personnel;
 - The technology to be used to provide the services – which includes the ability to track and limit the hours of drivers;
 - Copies of articles of incorporation, articles of organization, or partnership agreement;
 - State business registration;
 - Copy of insurance policy that meets the requirements of NRS 690B.400 to 690B.495 and which identifies the NTA as a named insured; and
 - An example of the required trade dress.

The NTA has issued permits to three TNC's: Uber; Lyft and Get Me.

- TNC's are required to provide the NTA with an annual report on or before May 15 of each year and are required to pay an annual assessment to the NTA. In late 2016, the NTA conducted a rulemaking to modify the regulations on annual assessments and annual reports in late 2016. The new regulation, which is currently effective creates:
 - a tiered payment structure (which removes the reporting of actual gross operating revenue, and replaces it with a tiered range)
 - proposes a format for TNC annual reports to be filed by May 15th of each year.

Pursuant to NRS 706A.270, each year TNC's are required to provide the NTA with a report showing:

- The number of motor vehicle crashes which occurred in this State;
- The highest, lowest and average amount paid for bodily injury or death to one or more persons that occurred as a result of such a crash; and
- The highest, lowest and average amount paid for damage to property that occurred as a result of such a crash.

The NTA collects the reports submitted by the TNC's and reports the aggregated information to the Legislative Commission or Director of the Legislative Counsel Bureau by December 1. In that submission the NTA also makes a determination as to whether the limits of coverage required pursuant to [NRS 690B.470](#) are sufficient. The NTA submitted this annual report to the Director of the Legislative Counsel Bureau on or about November 30, 2016.

Exhibit B



DEPARTMENT OF BUSINESS AND INDUSTRY
NEVADA TRANSPORTATION AUTHORITY

MINUTES OF THE November 10, 2016 GENERAL SESSION

AGENDA

1. Call to Order

Chairman Alaina Burtenshaw called the meeting to order at 9:30 a.m.

2. Roll Call

Present in Las Vegas: Chairman Alaina Burtenshaw, Commissioner George Assad, Commissioner Keith A. Sakelhide, Administrative Attorney David Newton, Applications Manager Liz Babcock, Financial Analyst Yvonne Shelton, Financial Analyst Lidia Aronova, Chief of Enforcement Michael Bradford, Deputy Attorney General Louis Csoka. Present in Reno: Deputy Commissioner Christopher A. Schneider

3. Pledge of Allegiance

Chief of Enforcement Michael Bradford led a recital of the pledge.

4. Public Comment

None

Chairman Burtenshaw presented certificates to Investigator Teti and Investigator Hardin for ten years of service.

5. Approval of Agenda

Administrative Attorney Newton requested Items 27 and 30 be removed, Applications Manager Liz Babcock requested Item #84 be removed per Applicant request. Approved 3-0

6. Approval of the Minutes of the October 5, 2016 Agenda Meeting

Approved 3-0

7. Briefings from the Commissioners

Commissioner Sakelhide thanked staff for the preparation work on the Agenda. Commissioner Assad echoed Commissioner Sakelhide's comments.

8. Briefing from the Deputy Commissioner

Deputy Commissioner Schneider thanked Commissioner Sakelhide for his expertise.

9. Report of Legal Counsel

Deputy Attorney General Louis Csoka had no report.

ADMINISTRATIVE CITATIONS AND IMPOUNDMENTS

Items 10 through 65, with the exception of Items 27 and 30, were considered collectively.

Approved 3-0

- 10. Citations 17962, 17963, and 17964**, issued to Sierra West Limousines for violations of NAC 706.311 (5 counts), NAC 706.194; NAC 706.3612; NAC 706.247 ref. 49 CFR 396.11 & .13 (6counts) and NAC 706.380 (9 counts) (GA).
- 11. Citation 18020** issued to Blake Price for a violation of NAC 706.234. (GA)
- 12. Citation 18079** issued to Medhanie Petros for violations of NAC 706.228 and NAC 706.324. (GA)
- 13. Citation 18086** issued to Tewdros Desalegne for violations of NAC 706.228 and NAC 706.247/49 CFR 391.41. (GA)
- 14. Citation 18417** issued to Anthony Chavarria for violations of NRS 706.386 and NRS 706.758. (GA)
- 15. Citation 18451** issued to Victor Nares for violations of NRS 706.386 and NRS 706.758. (GA)
- 16. Impound I-2904 and Citation 18498** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 18498 issued to Kevin J. Matter for violations of NRS 706.386 and NRS 706.758. (GA)
- 17. Citations 18503 and 18504** issued to Halston T. Williams for violations of NRS 706.386, NRS 706.758 and NRS 706A.280. (GA)
- 18. Citation 18505** issued to Paul Nyaruba for violations of NAC 706.228 and NAC 706.234. (GA)
- 19. Impound I-2909 and Citation 18508** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 18508 issued to Rami Kabota for violations of NRS 706.386 and NRS 706.758. (GA)
- 20. Citation 18558** issued to Faye Zarka for violations of NAC 706.228 and NA 706.247 ref. 49 CFR 391.41. (GA)
- 21. Citation 18562** issued to Clonda Brittman for violation of NAC 706.228 and NAC 706.247/49 CFR 391.41. (GA)
- 22. Impound I-2894 and Citation 18809** The impoundment pursuant to NRS 706.476 of vehicles registered to and Citation 18809 issued to Joshua Ricci for violations of NRS 706.386 and NRS 706.758. (GA)

- 23. Impound I-2900** The impoundment pursuant to NRS 706.476 of a vehicle registered to VIP Lifestyle Luxury One. (GA)
- 24. Impound I-2913** The impoundment pursuant to NRS 706.476 of a vehicle registered to Hertz Vehicles, LLC. (GA)
- 25. Impound I-2917 and Citations 18511 and 18512** The impoundment pursuant to NRS 706.476 vehicles registered to and Citation 18809 issued to Earl Halbert for violations of NRS 706.386 and NRS 706.758. (GA)
- 26. Citation 18021** issued to Daniel Goldman for a violation of NAC 706.234. (KAS)
- 27. Citation 18313** issued to Brian Jackson for violations of NRS 706.386 and NRS 706.758. (KAS)
Item removed from Agenda.
- 28. Citation 18399** issued to Lealon Johnson for violations of NRS 706.386 and NRS 706.758. (KAS)
- 29. Impound I-2906 and Citation 18418** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 18418 issued to Tacy Joy Woodhams for violations of NRS 706.386 and NRS 706.758. (KAS)
- 30. Citation 18431** issued to Paul-Michael Burgess for violations of NRS 706.386 and NRS 706.758. (KAS)
Item removed from Agenda.
- 31. Citation 18464** issued to Danny Armstrong for a violation of NAC 706.228. (KAS)
- 32. Citation 18466** issued to Thomas Franco for violations of NRS 706.386. (KAS)
- 33. Impound 2683 and Citation 18467** The Impoundment of a vehicle registered to and Citation 18467 issued to Brian Jackson for violations of NRS 706.476, NRS 706.386 and NRS 706.758. (KAS)
- 34. Citations 18501 and 18502** issued to Juan Perez for violations of NRS 706.386, NRS 706.758 and NRS 706A.280. (KAS)
- 35. Impound I2912 and Citation 18566** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 18566 issued to Juan Flores-Ortez for violations of NRS 706.386 and NRS 706.758. (KAS)
- 36. Citation 18630** issued to Graham Cook for violations of NRS 706.386 and NRS 706.758. (KAS)
- 37. Citation 18632** issued to Kevin Dalling for violations of NRS 706.386 and NRS 706.758. (KAS)
- 38. Citation 18637** issued to Anthony Longo for violations of NRS 706.386 and NRS 706.758. (KAS)
- 39. Impound I-2760 and Citation 18638** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 18638 issued to Jesus Jimenes Olvera for violations of NRS 706.386 and NRS 706.758. (KAS)

- 40. Impound I-2893 and Citation 18806** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 18806 issued to Elbert Taylor for violations of NRS 706.386 and NRS 706.758. (KAS)
- 41. Citation 18808** issued to Brett Gall for a violation of NAC 706.354. (KAS)
- 42. Impound I-2910** The impoundment pursuant to NRS 706.476 of a vehicle registered to Juan Perez Sr. (KAS)
- 43. Citation 16955 and 16966** issued to Sierra West Limo for violation of NAC 706.206 (2 counts).
- 44. Citation 18019** issued to Raymond Gulley for a violation of NAC 706.311.
- 45. Citation 18022** issued to James Deach for a violation of NAC 706A.240.
- 46. Citation 18416** issued to Anas Sbay for a violation of NAC 706A.240.
- 47. Citation 18421** issued to Abdalla Kabeto for a violation of NAC 706A.240.
- 48. Citation 18423** issued to Pascal Antoine for a violation of NAC 706A.240.
- 49. Citation 18424** issued to Vargha Amini for a violation of NAC 706A.240.
- 50. Citation 18433** issued to Douglas A. Hume for violation of NRS 706.386 and NRS 706.758.
- 51. Citation 18461** issued to Dagnew Mulubrhan for violation of NAC 706.228 and NAC 706.329.
- 52. Citation 18499** issued to Las Vegas Transportation/24/7 Limousines for a violation of NRS 706.167.
- 53. Citation 18533** issued to Victor Jones for a violation of NAC 706A.240.
- 54. Citation 18534** issued to Yonathan Tibede for a violation of NAC 706A.280.
- 55. Citation 18559** issued to Antonio Sarmiento-Castro for a violation of NAC 706.228.
- 56. Citation 18561** issued to Around The Clock for a violation of NAC 706.247/49 CFR 391.51.
- 57. Citation 18563** issued to Adventure Photo Tours for a violation of NAC 706.247/49 CFR 391.11.
- 58. Citation 18564** issued to Rodney G. Ford for a violation of NAC 706.228.
- 59. Citation 18565** issued to Paolo Ricardo Sarte for a violation of NAC 706A.240.
- 60. Citation 18626** issued to John Blair for a violation of NAC 706.234.
- 61. Citation 18627** issued to Jeffrey Cable for a violation of NAC 706.234.
- 62. Citation 18634 and 18635** issued to Mohammed Damia for violation of NRS 706.386, NRS 706.758 and NAC 706A.280.

- 63. Citation 18701** issued to Alpine Towing for violation of NAC 706.206.
- 64. Citation 18804** issued to Tefera Damtew for a violation of NAC 706.228.
- 65. Citation 18814** issued to Silverstate Limo for violations of NRS 706.398 and NAC 706.354.

**APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND
NECESSITY TO PROVIDE TOW CAR SERVICE**

- 66. Docket 16-05025** The Application of Thomas Staugaard d/b/a Executive Towing & Recovery for expansion of authority to provide non-consent tow car service by tow car vehicle within the State of Nevada, granted under CPCN 7346. Staff investigation concluded. (KAS)
Items 66 and 67 were considered collectively. Approved 3-0
- 67. Docket 16-05026** The joint Application of Thomas Staugaard d/b/a Executive Towing & Recovery for authority to sell and transfer and Executive Towing & Recovery, LLC d/b/a Executive Towing & Recovery to purchase and acquire the authority to provide tow car service by tow car vehicle within the State of Nevada, granted under CPCN 7346. Staff investigation concluded. (KAS)
Items 66 and 67 were considered collectively. Approved 3-0
- 68. Docket 16-08018** The joint Application of Cinthia Andrade d/b/a Andrade's Towing for authority to sell and transfer and Andrade's Towing, LLC to purchase and acquire the authority to provide tow car service by tow car vehicle within the State of Nevada, granted under CPCN 7340. Staff investigation concluded. (KAS)
Cinthia Andrade appeared on behalf of the Applicant. Approved 3-0

**APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND
NECESSITY TO PROVIDE CHARTER BUS SERVICE**

- 69. Docket 16-03019** The Application of D.J. Service, LLC d/b/a Vegas First Class for a certificate of public convenience and necessity to provide charter bus service within the State of Nevada. Staff investigation concluded. (GA)
James Kent, Esquire appeared on behalf of the Applicant. Approved 3-0
- 70. Docket 16-05013** Vision Airlines, Inc. seeks to extend the previously granted temporary discontinuance of services provided under CPCN 2059, Sub 1, from October 31, 2016 through April 30, 2017. Staff investigation concluded.
Applications Manager Liz Babcock detailed the request. Approved 3-0
- 71. Docket 16-06013** The Application of MNM, LLC d/b/a Fabulous Transportation for a certificate of public convenience and necessity to provide charter bus service within the State of Nevada. Staff investigation concluded. (KAS)
James Kent, Esquire appeared on behalf of the Applicant. Approved 3-0
- 72. Docket 16-06034** The Application of Double D Transportation, LLC d/b/a Double D Transportation for a certificate of public convenience and necessity to provide charter bus service within the State of Nevada. Staff investigation concluded. (KAS)
James Kent, Esquire appeared on behalf of the Applicant. Approved 3-0

73. Docket 16-06039 The Application of Touba Transportation, LLC d/b/a Touba Transportation for a certificate of public convenience and necessity to provide charter bus service within the State of Nevada. Staff investigation concluded. (GA)

Brian Holthus, Esquire appeared on behalf of the Applicant. Approved 3-0

74. Docket 16-07015 The Application of VBNZ Limo, LLC for a certificate of public convenience and necessity to provide charter bus service within the State of Nevada. Staff investigation concluded. (GA)

Commissioner Assad summarized the application. Approved 3-0

75. Docket 16-07032 The Application of Experience Transportation Agency, LLC d/b/a ETA DMC for a certificate of public convenience and necessity to provide charter bus service within the State of Nevada. Staff investigation concluded. (KAS)

Jeff Silver, Esquire appeared on behalf of the Applicant. A brief discussion ensued with regard to the addition of a dba. Approved 3-0

76. Docket 16-07039 The Application of Adam's Transportation, LLC d/b/a Lucky 7's for a certificate of public convenience and necessity to provide charter bus service within the State of Nevada. Staff investigation concluded. (GA)

James Kent, Esquire appeared on behalf of the Applicant. Approved 3-0

NAME CHANGES

77. Docket 16-08028 The Petition of Starlight Limousine, Inc. d/b/a Entourage Transportation, for approval to add a second fictitious name, Entourage, for services provided under CPCN 2158, Sub 3. Staff investigation concluded.

Applications Manager Liz Babcock summarized the request and indicated staff support. James Kent, Esquire appeared on behalf of the Applicant. Approved 3-0

78. Docket 16-10001 The Petition of Discount Towing, Inc. for approval to change their corporate name to PCCU, Inc. for services provided under CPCN 7292. Staff investigation concluded.

Applications Manager Liz Babcock summarized the request and indicated staff support. Review of stock books added as a compliance item. Approved as modified 3-0

PETITIONS FOR REMOVAL FROM INELIGIBLE DRIVER LIST

79. Docket 16-10027 Petitioner William Morgan seeks to be removed from the list of ineligible drivers pursuant to NAC 706.229.

Commissioner Sakelhide briefly summarized. Approved 3-0

PETITIONS FOR RECONSIDERATION

80. Docket 16-06033 Petitioner TourCoach, Inc. d/b/a TourCoach seeks reconsideration of the cancellation of CPCN 2098 as set forth in the final Order for Docket 16-03005 (March 2016 General Session). Staff investigation concluded. **Tabled from August meeting for operational inspection.**

Commissioner Sakelhide briefly detailed the history of the docket. Shoeleh Sapir appeared on behalf of the Applicant. Compliance Audit Investigator Revens detailed the communications history. A brief discussion ensued with regard to the requirements that have not been met. Petition denied 3-0

81. Docket 16-09018 – Kyle Schaefer’s Petition for Reconsideration of findings regarding Citation 18427

Item tabled to the next subsequent Agenda. Approved 3-0

FINANCIAL RATES AND TARIFFS

82. Docket 16-09002 The Application of Pink Jeep Tours of Las Vegas, Inc. d/b/a Pink Jeep Tours for approval of a tariff rate modification for services conducted under CPCN 1078, Sub 1. Staff investigation concluded.

Financial Analyst Yvonne Shelton summarized the request and indicated staff support. Kimberly Maxson-Rushton, Esquire appeared on behalf of the Applicant. Approved 3-0

83. Docket 16-10006 The Application of Nevada Coaches, LLC d/b/a Showtime Tours for approval of a tariff rate modification for services conducted under CPCN 2044, Sub 1. Staff investigation concluded.

Financial Analyst Yvonne Shelton summarized the request and indicated staff support. Approved 3-0

84. Docket 16-10011 The Application of Carrel Lavern West & Rose Marie West d/b/a Sierra West Limousine Service for approval of a tariff rate modification for services conducted under CPCN 1015. Staff investigation concluded.

Item removed from Agenda prior to consideration.

85. Docket 16-10024 The Application of Astillita Productions, Inc. d/b/a Acme Moving Co. for approval of a tariff rate modification for services conducted under CPCN 3362. Staff investigation concluded.

Financial Analyst Yvonne Shelton summarized the request and indicated staff support.

Approved 3-0

86. Public Comment

None

1:15 PM AFTERNOON SESSION

87. Public Comment

None

APPLICATIONS FOR FULLY REGULATED CARRIERS

88. Docket 16-02021 The Post Facto Joint Application of Wendy Bizzaro, deceased, for authority to sell and transfer and of Richard Bizzaro to purchase and acquire 3,300 shares of common stock of Lewis Carriages, Inc. d/b/a All Resort Limousine, a carrier authorized to provide charter limousine, airport transfer, and special services within Clark County, Nevada, granted under CPCN 1125. Staff investigation concluded. (KAS)

Applications Manager Liz Babcock summarized the procedural history of the docket. Approved 3-0

89. Docket 16-09019 The temporary discontinuance from September 20, 2016 through March 20, 2017 of household goods moving services provided by Starving Students of Nevada, LLC d/b/a Starving Students, Inc. under CPCN 3241, Sub 1. This includes retroactive approval. Staff investigation concluded.

Applications Manager Liz Babcock summarized the request and indicated staff support. Approved 3-0

ORDERS TO SHOW CAUSE

90. Docket 16-02004 The Order to Show Cause issued to Diamond Transportation Inc., as to why Certificate of Public Convenience and Necessity 3084 should not be revoked.

Robert Winner, Esquire appeared on behalf of the Applicant. Commissioner Assad briefly summarized the procedural history. Approved 3-0

DISCUSSION ITEMS

91. The Authority will discuss regulations enacted by the Nevada Tax Commission on May 16, 2016, LCB file number R068-15, regarding the 3% Excise Tax on transportation of passengers, and review and its impact, if any, on the inclusion of that tax in carrier's tariffs as a separate line item.

Kimberly Maxson-Rushton, Esquire appeared on behalf of Livery Operators Association, and offered a procedural history of the excise tax. A brief discussion ensued. Item to be tabled to the next subsequent Agenda. Approved 3-0

92. 16-11001 The Authority will discuss the interpretation of "nonconsensual tow" pursuant to NAC 706.4022 and "tow at the request of law enforcement agency" pursuant to NAC 706.4026 as applied in correspondence from the Nevada Transportation Authority dated July 22, 2015.

Scott Stuenkel, Nevada Highway Patrol, and Gary Foster, Nevada Highway Patrol appeared and offered a statement and requested additional clarification. A discussion ensued. Clark Whitney, Ewing Bros. Towing, offered a statement.

APPLICATIONS FOR DRIVER PERMITS

(Closed sessions may be held for items 93 through 107 to consider character, alleged misconduct, professional competence, and physical or mental health pursuant to NRS 241.030.)

93. Docket 16-10026 The Petition for Reconsideration of Francis Eugene Auffert regarding application of NAC 706.229.

No action taken.

94. Permit 2770 The Authority will determine whether to grant the application of Kevin Woods for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.

Denied 3-0

95. Permit 2784 The Authority will determine whether to grant the application of Harold Pagni for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.

Denied 3-0

- 96. Permit 2783** The Authority will determine whether to grant the application of Daniel Ellis for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.
Denied 3-0
- 97. Permit 2799** The Authority will determine whether to grant the application of Wacyne Jackson for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.
Denied 3-0
- 98. Permit 2420** The Authority will determine whether to grant the application of Wayne Burroughs for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.
Denied 3-0
- 99. Permit 2686** The Authority will determine whether to grant the application of Larry Olson for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.
Denied 3-0
- 100. Permit 2687** The Authority will determine whether to grant the application of Matthew Dewitt for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.
Denied 3-0
- 101. Permit 2689** The Authority will determine whether to grant the application of Brent Taylor for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.
Denied 3-0
- 102. Permit 2788** The Authority will determine whether to grant the application of Steven Gutierrez for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.
Denied 3-0
- 103. Permit 2749** The Authority will determine whether to grant the application of Aaron Araiza for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.
Aaron Araiza appeared. Item removed from consideration and remanded back to staff for further documentation and proceeding. Approved 3-0
- 104. Permit 2751** The Authority will determine whether to grant the application of Roemon Turner for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.
Denied 3-0
- 105. Permit 2797** The Authority will determine whether to grant the application of Kelley Mays for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.
Denied 3-0
- 106. Permit 2798** The Authority will determine whether to grant the application of Tangatae Tuamoheloa for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.
Denied 3-0
- 107. Permit 2804** The Authority will determine whether to grant the application of Edward Ramirez for issuance of a driver's permit pursuant to NRS 706.462. Staff investigation concluded.

Denied 3-0

108. Public Comment

None

109. Adjournment

Meeting adjourned at 2:20 p.m.

STATE OF NEVADA



DAWN GIBBONS
Chairman

GEORGE ASSAD
Commissioner

DAVID NEWTON
Commissioner

DEPARTMENT OF BUSINESS AND INDUSTRY
NEVADA TRANSPORTATION AUTHORITY

MINUTES OF THE December 17, 2020 GENERAL SESSION

WEBEX LINK: <https://businessnv2.webex.com>

DIAL IN NUMBER: 1-844-621-3956

THURSDAY, DECEMBER 17, 2020 MEETING ACCESS CODE: 146 521 5772

THURSDAY, DECEMBER 17, 2020 MEETING PASSWORD: UcxdxemP988

PUBLIC NOTICE: Pursuant to Section 1 of the Declaration of Emergency Directive 006 ("Directive 006"), the requirement contained in NRS 241.023(1)(b) that there be a physical location designated for meetings of public bodies where members of the public are permitted to attend and participate has been suspended. Moreover, pursuant to Section 3 of Directive 006, the requirements contained in NRS 241.020(4)(a) that public notice agendas be posted at physical locations within the State of Nevada has likewise been suspended. See, <http://gov.nv.gov/uploadedFiles/govnewnv.gov/Content/News/EmergencyOrders/2020/DeclarationofEmergencyDirective006reOML3-21-20.pdf>

The above Declaration of Emergency Directive 006 was extended to July 31, 2020 per Declaration of Emergency Directive 026 Section 3. See, http://gov.nv.gov/News/EmergencyOrders/2020/2020-06-29_-_COVID-19_Declaration_of_Emergency_Directive_026/

The above Declaration of Emergency Directive 026 shall remain in effect for the duration of the current state of emergency, unless terminated prior to that date by a subsequent directive or by operation of law per Declaration of Emergency Directive 029 Section 4. See, http://gov.nv.gov/News/EmergencyOrders/2020/2020-07-31_-_COVID-19_Declaration_of_Emergency_Directive_029/

AGENDA

1. Call to Order

Chairman Dawn Gibbons called the meeting to order at 9:30 a.m.

2. Roll Call

Present: Chairman Dawn Gibbons, Commissioner George Assad, Commissioner David Newton, Administrative Attorney Gary Matthews, Applications Manager Liz Babcock, Financial Analyst Yvonne Shelton, Financial Analyst Paul Servello, Chief of Enforcement Jeremy Jones, Deputy Attorney General Louis Csoka

3. Pledge of Allegiance

Commissioner Assad led a recital of the pledge.

4. WebEx Instructions

IT Professional Jeffrey Berry read directions for participation in the Webex meeting.

5. Public Comment

none

6. Approval of Agenda

Applications Manager Liz Babcock requested Items 38 and 39 be taken together, Items 43 and 44 be taken together, that Item 37 should have "Roadside" included in the d/b/a and that Item 59 had additional information included too late to post in the public binder. Commissioner Newton requested Item 33 be pulled for discussion and Chairman Gibbons requested Item 12 be corrected to read NRS 706A.280.

Approved as modified 3-0

7. Approval of the Minutes of the November 19, 2020 Agenda Meeting

Approved 3-0

8. Briefings from the Commissioners

Chairman Gibbons thanked staff for their support during her recent illness. Commissioner Assad thanked staff for the Agenda preparation and mentioned several individuals by name, Commissioner Newton echoed Commissioner Assad's comments and welcomed Enforcement Officer Jason Brown back to the office.

9. Briefing from the Deputy Commissioner

Deputy Commissioner De Rose echoed the comments made by both commissioners.

10. Report of Legal Counsel

Deputy Attorney General Csoka stated there was nothing to report.

ADMINISTRATIVE CITATIONS AND IMPOUNDMENTS

Items 11 through 35, with the exception of Item 33, were considered collectively. Approved 3-0

- 11. Citation 21397** issued to Lakeshore Pacific/Roger Wilson for violations of NRS 706.386 and NRS 706.758 (DG)

- 12. Citation 21799 and 21800** issued to Andre Moody for violations of NRS 706.386 and NRS ~~706A.380~~ 706A.280 (DG)

- 13. Citation 21846** issued to Fast Towing, Inc. for violations of NAC 706.4275 and NRS 706.4479 (DG)

- 14. Citation 21992** issued to Starlight Limousine d/b/a Entourage Transportation for a violation of NAC 706.3612 (DG)

- 15. Citation 22114** issued to Abraham Limo Services, Inc. operated by Crown Limo, LLC for violation of NRS 706.398(1)(a) and NAC 706.203 (DG)

- 16. Citations 22228, 22265 and 20684** issued to Umbrella Enterprises, LLC for violations of NRS 706.398(1)(a), NAC 706.2473 ref. 49 CFR 396.17, NAC 706.356, and NAC 706.149 (DG)

- 17. Citation 22259** issued to All City Towing & Recovery, LLC for a violation of NAC 706.2473/49 CFR 396.17 (DG)

- 18. Citation 22266** issued to Summerlin Movers/Jeff Stelter for a violation of NRS 706.758 (DG)

19. **Citation 22280** issued to DeBoer Bros. Inc. d/b/a Big John's Towing for a violation of NAC 706.2473/49 CFR 391.23(a)(1)(b) (DG)
20. **Citations 22301 and 22302 and Impound I-3858** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citations 22301 and 22302 issued to Shoji Furuya for violations of NRS 706.386 and NRS 706A.280 (DG)
21. **Impound I-3861** The impoundment pursuant to NRS 706.476 of a vehicle registered to Enterprise Leasing (DG)
22. **Citation 21012** issued to Peggy Loefflemacher for a violation of NRS 706.462 (GA)
23. **Citation 21014** issued to Harold J. Peacock II for a violation of NAC 706.3751 (GA)
24. **Citation 21015** issued to Susan Peacock for a violation of NAC 706.3751 (GA)
25. **Citation 21016** issued to Mark Trowbridge for a violation of NAC 706.3751 (GA)
26. **Citation 21017** issued to Bruce Bilger for a violation of NAC 706.3751 (GA)
27. **Citation 21018** issued to Minden Taxi, Ltd. for a violation of NAC 706.13775 (GA)
28. **Citation 21019** issued to Whittlesea Checker Taxi, a Series of Platinum LV Transportation, LLC for violation of NAC 706.13775 (2 counts) (GA)
29. **Citation 21273** issued to Christian Sastoque for a violation of NRS 706.462 (GA)
30. **Citation 21775** issued to USA Towing, Inc. for violation of NAC 706.191 (GA)
31. **Citation 21994** issued to Taylor Towing, LLC for a violation of NAC 706.247 ref. 49 CFR 391.23(a)(2)(c) (GA)
32. **Citation 22116** issued to Ryan Brendon/Movers and More for violations of NRS 706.386 and NRS 706.758 (GA)
33. **Citation 22118** issued to Silver Dollar Transportation, LLC for violation of ~~NRS 706.463~~ NAC 706.360 (GA)
Commissioner Newton requested the violation be amended NAC 706.360, operating outside the scope of authority. Approved as modified 3-0
34. **Citation 22263** issued to Universal Limousine Service, LLC for a violation of NRS 706.398 1(a) (GA)
35. **Citation 22267 and Impound I-3632** The impoundment pursuant to NRS 706.476 of a vehicle registered to and Citation 22267 issued to Mark Roughton for violations of NRS 706.386 and NRS 706.758 (GA)

**APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND
NECESSITY TO PROVIDE TOW CAR SERVICE**

36. **Docket 18-11017** The Application of Mese Towing, LLC d/b/a Mese Towing for a certificate of public convenience and necessity to provide consent-only tow car service by tow car vehicle within the State of Nevada. Staff investigation concluded. (DN)

Applications Manager Liz Babcock summarized the Application and indicated staff support. Approved 3-0

- 37. Docket 20-02014** The Application of Code 3 Recovery Emergency Roadside Assistance & Towing, LLC d/b/a Code 3 Recovery Emergency Roadside Assistance & Towing, #TowGuyInRed for final approval of an amendment to the application for a certificate of public convenience and necessity to provide consent-only tow car service by tow car vehicle within the State of Nevada. Staff investigation concluded. (DG)

Applications Manager Liz Babcock summarized the Application and indicated staff support. Approved 3-0

- 38. Docket 20-03018** The Application of Reggies Towing, LLC for a certificate of public convenience and necessity to provide consent and non-consent tow car service by tow car vehicle within the State of Nevada. Staff investigation concluded. (DN)

Items 38 and 39 were considered collectively. Lucy Elias appeared on behalf the Applicants.

Applications Manager Liz Babcock summarized the Application and indicated staff support.

Approved 3-0

- 39. Docket 20-03019** The Application of Artins Towing, LLC for a certificate of public convenience and necessity to provide consent and non-consent tow car service by tow car vehicle within the State of Nevada. Staff investigation concluded. (DG)

Items 38 and 39 were considered collectively. Lucy Elias appeared on behalf the Applicants.

Applications Manager Liz Babcock summarized the Application and indicated staff support.

Approved 3-0

- 40. Docket 20-08004** The Application of EZEE Towing, LLC for a certificate of public convenience and necessity to provide consent-only tow car service by tow car vehicle within the State of Nevada. Staff investigation concluded. (DG)

Applications Manager Liz Babcock summarized the Application and indicated staff support. Luis Bettencourt appeared on behalf of the Applicants. Approved 3-0

- 41. Docket 20-09004** The Application of Triple JJJ Corporation d/b/a American Towing and Recovery for a certificate of public convenience and necessity to provide consent and non-consent tow car service by tow car vehicle within the State of Nevada. Staff investigation concluded. (DN)

Item trailed to the end of the morning session. David Walker appeared on behalf of the Applicant.

Applications Manager Liz Babcock summarized the Application and indicated staff support.

Approved 3-0

APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE CHARTER BUS SERVICE

- 42. Docket 19-11004** The Application of Axel Transportation, LLC for a certificate of public convenience and necessity to provide charter bus service within the State of Nevada. Staff investigation concluded. (DN)

Commissioner Newton detailed the procedural history of the Application and the previous certificate held by the Applicant. Abderrahim Mansouri appeared on behalf of the Applicant. Applications Manager Liz Babcock summarized the Application and indicated staff was not in support. Kimberly Maxson-Rushton Esq. submitted a written Protest late in the day December 16, 2020 and read portions of same into the record. Commissioner Assad stated he did not support the application and offered several reasons. Compliance Audit Investigator Marta Acevedo indicated she did not support the Application. Mr. Mansouri offered his apologies to those present for his past behavior.

Denied 3-0

- 43. Docket 19-10013** The motion for interim authority for the Joint Application of Presidential Limousine, Inc. for authority to sell and transfer and Kaptyn Nevada, LLC d/b/a Kaptyn, to purchase and acquire

the authority to provide charter bus service within the State of Nevada granted under CPCN 2119, Sub 2. Staff investigation concluded. (DN)
Items 43 and 44 were considered collectively. Kimberly Maxson-Rushton, Esq., Andrew Meyers and J.J. Bell appeared on behalf of the Applicants. Applications Manager Liz Babcock summarized the Applications and indicated staff support. Approved 3-0

APPLICATIONS FOR FULLY REGULATED CARRIERS

- 44. Docket 19-10012** The motion for interim authority for the Joint Application of Presidential Limousine, Inc. for authority to sell and transfer and Kaptyn Nevada, LLC d/b/a Kaptyn, to purchase and acquire the authority to provide charter limousine and special service within Clark County, Nevada granted under CPCN 1007, Sub 6. Staff investigation concluded. (DN)
Items 43 and 44 were considered collectively. Kimberly Maxson-Rushton, Esq., Andrew Meyers and J.J. Bell appeared on behalf of the Applicants. Applications Manager Liz Babcock summarized the Applications and indicated staff support. Approved 3-0

VOLUNTARY CANCELLATIONS

- 45. Docket 20-10006** The voluntary cancellation of Findlay Credit Acceptance, LLC d/b/a 9-1-1 Towing and Impound, CPCN 7330. Staff investigation concluded. Tabled from prior general session.
James Kent, Esq appeared on behalf of the carrier. Applications Manager Liz Babcock summarized the request and the procedural history. Management Analyst Hope DiBartolomeo indicated no payments have been received since the last Agenda. Deputy Attorney General Csoka and Chief of Enforcement Jones indicated there are several open investigations they would like to clear prior to the cancellation of the certificate.
Item tabled to the next subsequent Agenda 3-0
- 46. Docket 20-11019** The voluntary cancellation of GMS Towing, LLC, CPCN 7409. Staff investigation concluded.
Applications Manager Liz Babcock summarized the request and indicated staff support.
Approved 3-0

NAME CHANGES

- 47. Docket 20-10043** The Petition of Luxury Limousine of Las Vegas, LLC for approval to change their name to do business as Luxury Limousine for services provided under CPCN 2248. Staff investigation concluded.
Applications Manager Liz Babcock summarized the request and indicated staff support.
Approved 3-0

REQUEST FOR TEMPORARY DISCONTINUANCE

Items 48, 49 and 50 were considered collectively. Approved 3-0

- 48. Docket 20-10044** The temporary discontinuance from October 23, 2020, through January 30, 2021 of tow car service provided by C & J Development Enterprises, d/b/a Custom Towing under CPCN 7061. This requires retroactive approval. Staff investigation concluded.
- 49. Docket 20-10046** The temporary discontinuance from October 28, 2020, through April 28, 2021 of charter bus service provided by American Transportation Systems, Inc. d/b/a American Transportation under CPCN 2265, Sub 1. Staff investigation concluded.
- 50. Docket 20-11013** The temporary discontinuance from November 30, 2020, through January 30, 2021 of charter bus service provided by Upscale Limousine, LLC d/b/a Upscale Party Bus under CPCN 2259. Staff investigation concluded.

REQUEST TO EXTEND TEMPORARY DISCONTINUANCE

Items 51 through 57 were considered collectively. Approved 3-0

- 51. Docket 18-05014** The request to extend temporary discontinuance from December 5, 2020 through June 5, 2021, of charter bus services provided by Jambo Transportation, LLC, d/b/a Jambo Transportation, CPCN 2163. Staff investigation concluded.
- 52. Docket 20-04016** The request to extend temporary discontinuance from October 13, 2020 through April 13, 2021, of charter limousine services provided by National Transportation Services, Inc., d/b/a NTS, CPCN 1081, Sub 1. This requires retroactive approval. Staff investigation concluded.
- 53. Docket 20-04017** The request to extend temporary discontinuance from October 13, 2020 through April 13, 2021, of charter bus services provided by National Transportation Services, Inc., d/b/a NTS, CPCN 2092. This requires retroactive approval. Staff investigation concluded.
- 54. Docket 20-04021** The request to extend temporary discontinuance from September 19, 2020 through March 19, 2021, of scenic tour services provided by Motodudes, Inc. d/b/a Red Rock Magical Mystery Tour, Magical Mystery Tours, The Desert Duck, Red Rock Scooter Tours, Red Rock Discovery Tours, CPCN 1137. This requires retroactive approval. Staff investigation concluded.
- 55. Docket 20-05017** The request to extend temporary discontinuance from November 15, 2020 through May 15, 2021, of household goods moving services provided by Nevada Relocation Services, LLC, CPCN 3367. Staff investigation concluded.
- 56. Docket 20-05024** The request to extend temporary discontinuance from November 20, 2020 through April 20, 2021, of charter bus services provided by VBNZ Limo, LLC, CPCN 2225. Staff investigation concluded.
- 57. Docket 20-05029** The request to extend temporary discontinuance from November 21, 2020 through April 15, 2021, of charter bus services provided by Las Vegas International Tours Services, Inc., Permit MV6150, Sub 1. Staff investigation concluded.

MOTION TO EXTEND COMPLIANCE PERIOD

- 58. Docket 18-12002** The motion to extend the compliance period to February 19, 2021 for the application of Red Rock Movers, LLC. Staff investigation concluded.
Brent Carson Esq. appeared on behalf of the Applicant. Applications Manager Liz Babcock summarized the request and indicated staff support. Approved 3-0

PETITION TO DEVIATE FROM REGULATION

- 59. Docket 20-09020** The Petition to Deviate of Luxury Limousine of Las Vegas, LLC, CPCN 2248, to deviate from regulation NAC 706.379 and NAC 706.381. Staff investigation concluded. Tabled from prior general session.
Zev Kaplan, Esq appeared on behalf of the Applicant. Applications Manager Liz Babcock summarized the request and indicated Compliance staff did not support the request. Chief Compliance Audit Investigator Rene Revens summarized the requirements established in January 2016, stated what was needed to comply and that staff did not support the addition of the vehicle as it was manufactured as a truck, not as an incomplete vehicle. Jenna Randall offered an explanation for the lapse in

certification of the upfitter. A lengthy discussion ensued. Item tabled to the next subsequent Agenda 3-0

- 60. Docket 20-11017** The Petition for Relief seeking to Amend Prior Deviation from regulation NAC 706.228 granted to Abraham Limousine Service, Inc. CPCN's 1104, 1090, and 2159, to include Western Limousine Service, LLC CPCN 1054, Sub 3. Staff investigation concluded. (GA)
Brent Carson, Esq. appeared on behalf of the Applicants. Applications Manager Liz Babcock summarized the request and indicated staff's request that the carrier provide a request from the Caesar's property for the deviation. Chief of Enforcement Jones stated confusion with which carriers were allowed to stage at which properties. Commissioner Assad suggested the elimination of the 50 foot requirement and a regulatory workshop be scheduled. Kimberly Maxson-Rushton, Esq. offered an explanation for these types of deviation requests. A discussion ensued. Item tabled to the next subsequent Agenda 3-0

PETITIONS TO DEVIATE FROM NTA POLICY

- 61. Docket 20-11014** The Petition of Umbrella Enterprises, LLC d/b/a Umbrella Movers, CPCN 3364, for final approval to deviate from NTA policy requiring a certificated carrier's fleet vehicle to be registered in the name of the certificated carrier.
Brent Carson, Esq. appeared on behalf of the Applicant. Applications Manager Liz Babcock detailed the request and indicated interim authority was previously granted. Approved for this vehicle only 3-0
- 62. Docket 20-11022** The Petitions of CT & T Transportation, LLC d/b/a CT & T Transportation, CPCN 1058, Sub 2, to deviate from NTA policy requiring a carrier to resume operations prior to the temporary transfer of operating rights under NAC 706.359 and pursuant to NAC 706.389, OR prior to the completion of the sale and transfer of operating rights under NRS 706.6411, whichever comes first
Applications Manager Liz Babcock detailed the request and indicated staff policy is that the carrier must resume operations prior to a temporary transfer or the completion of a sale and transfer. Casey Stiteler, Esq. appeared on behalf of the carrier and indicated the prospective buyer is a certificated carrier and that they would assume all assets. A brief discussion ensued. Approved 3-0

APPLICATION FOR TRANSPORTATION NETWORK COMPANY PERMIT

- 63. Docket 20-10017** The Application of River North Transit, LLC d/b/a Via for a permit to operate as a transportation network company within the State of Nevada. Staff investigation concluded. Tabled from prior general session. (GA)
Applications Manager Liz Babcock summarized the Application and indicated staff requests a hearing be scheduled. Jenny Du and Ayana Free appeared on behalf of Via and provided an explanation of the documents submitted Dec. 16, 2020. Item tabled to next subsequent Agenda 3-0

PETITIONS FOR RECONSIDERATION

- 64. Docket 20-11002** Petition for Reconsideration from Christopher Baker for reconsideration of fines on Citation 22144.
Christopher Baker appeared and detailed his request. Management Analyst Hope DiBartolomeo gave a detailed accounting of the status of the fines. Citation fine to be reduced to \$100.00 – Approved 3-0

FINANCIAL RATES AND TARIFFS

- 65. Docket 20-09012** The Application of Reno Medical Transport, LLC d/b/a GMT CARE for final approval of a tariff modification for services conducted under CPCN 1143. Staff investigation concluded. *Brent Carson, Esq appeared on behalf of the Applicant. Financial Analyst Paul Servello summarized the request and indicated staff support. Approved 3-0*
- 66. Public Comment**
David Walker thanked the Authority for their discretion in consideration of his Application. Kimberly Maxson-Rushton, Esq. thanked staff for their assistance with the Kaptyn applications.

1:15 PM AFTERNOON SESSION

- 67. WebEx Instructions**
IT Professional Jeffrey Berry read directions for participation in the Webex meeting.
- 68. Public Comment**
none

ORDERS TO SHOW CAUSE

- 69. Docket 20-10029** Order to Show Cause issued to Professional Hookers Towing & Transport, LLC as to why Certificate of Public Convenience and Necessity 7386 should not be revoked. Staff investigation concluded.
Applications Manager Liz Babcock detailed the procedural history of the docket. Revocation approved 3-0
- 70. Docket 20-10030** Order to Show Cause issued to David Castillo d/b/a David's Towing as to why Certificate of Public Convenience and Necessity 7162, Sub 1, should not be revoked. Staff investigation concluded
Applications Manager Liz Babcock detailed the procedural history of the docket. Revocation approved 3-0
- 71. Docket 20-10031** Order to Show Cause issued to U.S. Party Bus, LLC d/b/a U.S. Party Bus as to why Certificate of Public Convenience and Necessity 2218 should not be revoked. Staff investigation concluded.
Applications Manager Liz Babcock detailed the procedural history of the docket. Revocation approved 3-0

STAFF REQUEST TO SET POLICY

- 72. Staff Request for Policy Decision** – Staff is asking to set policy to have non-consent tow car operators indicate all locations on their tariff, and that if policy is set, to allow Staff to update the tariffs administratively with no cost to the existing multi-location tow car operators.
Applications Manager Liz Babcock detailed staff's request and the reasoning behind it. Policy approval 3-0

REGULATION WORKSHOP

- 73. Docket 20-11012** Notice of Workshop to establish regulatory assessment for Transportation Network Companies pursuant to NAC 706A.190 for the fiscal year 2020-2021.
See attached minutes
- 74. Public Comment**
none
- 75. Adjournment**

Meeting adjourned at 3:10 p.m.



OPPM

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-804883-C

Dept. No.: 8

**TRYKE COMPANIES SO NV, LLC'S
CONSOLIDATED OPPOSITION TO MM
DEVELOPMENT COMPANY, INC.'S:**

**(1) MOTION FOR JUDGMENT ON THE
PLEADINGS; AND**

**(2) MOTION FOR RECONSIDERATION
OF COURT ORDER DENYING
DEFENDANT'S MOTION FOR LEAVE TO
AMEND ANSWER TO ASSERT
COUNTERCLAIMS**

Date of Hearing: October 12, 2021

Time of Hearing: 10:00 a.m.

Plaintiff Tryke Companies SO NV, LLC ("Tryke" or "Plaintiff"), by and through
counsel, hereby files its consolidated opposition to the Motion for Judgment on the Pleadings
("Motion for Judgment on the Pleadings") and Motion for Reconsideration of Court Order

Denying Defendant’s Motion for Leave to Amend Answer to Assert Counterclaims (“Motion for Reconsideration”), both filed by Defendant MM Development Company, Inc. dba Planet 13 (“Planet 13” or “Defendant”) on September 9, 2021.

This opposition is made and based upon the following memorandum of points and authorities and supporting exhibits; the papers and pleadings already on file herein; and any argument of counsel the Court may permit at the hearing of this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The two instant motions espouse the same flawed dead-horse “no private right of action” argument contesting the viability of Tryke’s claims that Planet 13 previously, and unsuccessfully, raised in its motion to dismiss at the inception of this case nearly *two years ago* and in numerous rounds of motion practice since. Importantly, this Court has squarely rejected Planet 13’s faulty argument in every instance. The Court did not err in any of its determinations. On the contrary, the Court’s rulings have been both legally and factually supported. No cause exists for the Court to rule otherwise at this juncture in what represents the *fourth and fifth rounds of motion practice* on this resolved issue. Enough is enough. The Court can and should summarily deny Planet 13’s instant motions as frivolous and improper.

As a threshold matter, it is important to note that Planet 13’s “no private right of action argument” is an issue that affects the merits of an interlocutory appeal pending before the Nevada Supreme Court. Thus, the Court lacks jurisdiction to consider this issue and should properly deny both motions outright. Additionally, just cause exists to swiftly deny the Motion for Judgment on the Pleadings because it is a procedurally improper motion under EDCR 2.24 and D.C.R. 13(7), as it is effectively Planet 13’s *second* motion for reconsideration of its motion to dismiss and Planet 13 did not obtain leave of Court before attempting to relitigate the well-settled “no private right of action” issue.

Turning to the merits (to the extent the Court is even inclined to consider same), by way of its instant motions, Planet 13 erroneously asserts that a private right of action analysis requires the Court to grant one of its instant motions and either dismiss Tryke’s claims or permit Planet



1 13's proposed counterclaims to proceed. Planet 13's arguments are faulty and must be rejected.
2 Indeed, a proper review of the issue conclusively demonstrates that there is no legal equivalency
3 between Planet 13's recycled "no private right of action" argument attempting to invalidate
4 Tryke's claims and the valid "no private right of action" analysis the Court adopted in its recent
5 Order Denying Leave to Amend¹ in concluding that Planet 13's proposed counterclaims were
6 futile.

7 Ample cause exists for the Court to deny the Motion for Judgment on the Pleadings on
8 the merits. First and foremost, Tryke is not merely a private party attempting to enforce a statute,
9 as Planet 13 incorrectly contends; rather, Tryke's Complaint alleges conduct by Planet 13 that
10 both violates Nevada's anti-diversion laws and constitutes the tort of intentional interference
11 with economic advantage. Secondly, under *Baldonado v. Wynn Las Vegas, LLC*, 194 P.3d 96
12 (2008), it is readily established that an implied private right of action does, in fact, exist for
13 diversion under NRS 706A, mooted Planet 13's arguments. Further, Tryke has sufficiently pled
14 viable claims for all three causes of action in its Complaint. And lastly, there is no exhaustion of
15 administrative remedies requirement under NRS 706A to bar Tryke's claims. As such, Planet 13
16 is clearly not entitled to judgment on the pleadings.

17 Planet 13's Motion for Reconsideration is equally unavailing and should also be denied.
18 Contrary to Planet 13's contentions, there was no clear error in the Court's Motion for Leave to
19 Amend Order in determining that Planet 13's proposed counterclaims were futile, nor did the
20 Court weigh evidence and make findings of fact. Thus, reconsideration is not warranted.

21 In conclusion, the Court should summarily deny Planet 13's instant motions as frivolous
22 and improper for all of the reasons set forth herein.

23 **II. RELEVANT PROCEDURAL HISTORY**

24 As the procedural history detailed below explains, Planet 13 is brazenly attempting to
25 relitigate the "no private right of action" issue against Tryke that this Court has already, correctly
26 decided against Planet 13 on multiple occasions. Worse still, Planet 13 brings the instant two

27 _____
28 ¹ "Order Denying Leave to Amend" refers to the Notice of Entry of Order and Judgment on Motion for Leave to
Amend Answer to Assert Counterclaims and Countermotion for Sanctions entered on September 8, 2021.



1 motions—the *fourth and fifth instances* in which Planet 13 has sought to relitigate this same
2 issue before this Court—without properly acknowledging the Court’s prior decisions on this
3 matter. To correct Planet 13’s error of omission, Tryke submits the following relevant procedural
4 history.

5
6 **A. Planet 13 Files an Unsuccessful Motion to Dismiss Asserting Private
Right of Action and Exhaustion of Remedies Arguments**

7 In December of 2019, when this case was assigned to a different judge, Planet 13 filed a
8 motion to dismiss pursuant to NRCP 12(b)(5) arguing that Tryke’s claims for intentional
9 interference with economic advantage, civil conspiracy, and aiding and abetting were not viable.
10 (*See* Motion to Dismiss, filed December 6, 2019) (on file herein).

11 In its motion to dismiss, Planet 13 argued at length that “[t]here is no private right of
12 action under any Nevada statutes or regulations for diversion.” (*Id.*, pp. 2, 3-5.) Specifically,
13 Planet 13 contended that “[b]ecause [Tryke] lacks standing to assert direct claims against [Planet
14 13] for violating NRS 706A.280 and NAC 706.552, it likewise lacks standing to assert indirect
15 claims against [Planet 13] for statutory violations under the guise of a civil conspiracy claim.”
16 (*Id.*, p. 5.) Additionally, Planet 13 contended that the Court lacked subject matter jurisdiction
17 because Tryke purportedly “failed to exhaust its administrative remedies.” (*Id.*, pp. 9-10.)

18 This Court, correctly, denied the motion to dismiss. (*See* Notice of Entry of Order
19 Denying Motion to Dismiss, entered on March 26, 2020 (“Order Denying Motion to Dismiss”)
20 (on file herein). With respect to Planet 13’s private right of action argument, the Court rejected
21 same, concluding that Tryke’s claim for intentional interference with economic advantage, pled
22 as Count III of the complaint, served as an underlying tort to support the civil conspiracy and
23 aiding and abetting causes of actions. (*See* February 27, 2020 Hearing Transcript (“Hearing
24 Transcript”) at 4:12-14, 5:14-6:4, 6:16-25, 11:22-12:8.) As to Planet 13’s administrative
25 remedies argument, the Court, correctly, determined that the statutes at issue only protect
26 consumers and do not provide any administrative remedies to Tryke. (*Id.* at 4:4-11.)

27 ///

28 ///



B. Planet 13 Files an Unsuccessful Motion for Reconsideration of the Order Denying Motion to Dismiss and Reasserts Its Previously Rejected “No Private Right of Action” Argument

Unwilling to accept the Court’s sound disposition of its motion to dismiss, Planet 13 filed a motion for reconsideration of the Court’s order denying same that made the same arguments presented in its motion to dismiss. (*See* Motion for Reconsideration of Court Order Denying Defendant’s Motion to Dismiss, filed April 8, 2020 (the “First Motion for Reconsideration”), at pp. 3-4 (on file herein) (“[Tryke’s] civil conspiracy claim is not cognizable because the alleged underlying wrong/tort (violation of Nevada’s anti-diversion statutes and regulations) is not a recognized tort in Nevada and the statutes and regulations do not provide for a private action.”); *see also id.*, at p. 5 (“[Tryke’s] claim for aiding and abetting must be dismissed because there is no diversion tort in Nevada nor a private right of action to bring a suit in this Court for an alleged violation of these so-called anti-diversion statutes and regulations.”))

The Court decided Planet 13’s First Motion for Reconsideration without a hearing and issued a minute order memorializing its decision to deny the motion, providing in relevant part:

This COURT, having reviewed the Motion, Opposition and Reply and concludes *there is no basis for reconsideration of the court’s decision. Furthermore, MM Development is simply re-arguing the same arguments previously considered and rejected by the court.* COURT ORDERED, Motion for Reconsideration DENIED.

(Minute Order, entered on May 7, 2020) (on file herein) (emphasis added). A formal order denying the First Motion for Reconsideration followed. (*See* Notice of Entry of Order Denying Motion for Reconsideration, entered on May 20, 2020 (on file herein)).

C. Tryke Files a Motion for Preliminary Injunction and Planet 13 Reasserts Its Rejected “No Private Right of Action” Argument Against Tryke for the Third Time

In August 2020, Planet 13 filed a motion for a preliminary injunction seeking to enjoin Planet 13 from continuing to operate its diversion incentivization program that intentionally interferes with Tryke’s customer relationships and prospective economic advantage by paying “kickbacks” to rideshare service drivers in exchange for the drivers bringing passengers to Planet 13 rather than another cannabis dispensary. (*See* Motion for Preliminary Injunction and Application for Order Shortening Time, filed on August 24, 2020) (on file herein).



1 In its opposition papers, Planet 13 errantly contended that “[Tryke] has failed to state
2 proper claims for civil conspiracy or aiding and abetting, much less shown a likelihood of
3 success on the merits of these claims” and reasserted, *for the third time*, its rejected “no private
4 right of action argument” at length. (*See* Opposition to Motion for Preliminary Injunction on
5 Order Shortening Time, filed August 28, 2020, at pp. 11-15) (on file herein).

6 The Court again rejected Planet 13’s faulty, twice-rejected “no private right of action
7 argument.” Following a hearing on the merits, the Court granted Tryke’s motion for a
8 preliminary injunction. (*See* Notice of Entry of Findings of Fact, Conclusions of Law, and Order
9 Granting Plaintiff’s Motion for Preliminary Injunction, entered on September 10, 2020 (the
10 “Order Granting Preliminary Injunction”) (on file herein).

11 **D. Tryke Appeals the Order Granting Preliminary Injunction and**
12 **Asserts Its “No Private Right of Action” Argument in the Appeal**
13 **Currently Pending Before the Nevada Supreme Court**

14 In September 2020, while its motion for reconsideration of the Order Granting
15 Preliminary Injunction was pending,² Planet 13 commenced an appeal of same. (*See* Protective
16 Notice of Appeal, filed October 9, 2020) (on file herein). At this juncture, the parties have filed
17 their briefs and the appeal remains pending before the Nevada Supreme Court.

18 In its opening brief, Planet 13 rehashed its unavailing “no private right of action
19 argument,” yet again. (*See* Appellant’s Opening Brief, filed March 25, 2021, Case No. 81938)
20 (relevant pages attached hereto as **Exhibit 1**). In furtherance of its argument that Tryke was not
21 likely to prevail on its claims for civil conspiracy and/or aiding and abetting, Planet 13 argued
22 that “Tryke has no private right of action against [Planet 13] for the alleged diversion of
rideshare passengers by rideshare drivers.” (*See id.*, p. 14.)

23 ///

24 ///

25 _____
26 ² True to its pattern of seeking reconsideration of any motion it loses, Planet 13 filed a motion for reconsideration of
27 the Order Granting Preliminary Injunction. (*See* Motion for Reconsideration of the Court’s Order Granting
28 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, filed on September 25, 2020) (on file herein). Tryke omitted discussion of
same herein because Planet 13 did not advance its private right of action or exhaustion of remedies arguments in this
motion.



E. By Way of Its Two Instant Motions, Planet 13 Shamelessly Attempts to Manipulate This Court into Relitigating the Settled “No Private Right of Action” Argument Yet Again

The primary argument in Planet 13’s simultaneously submitted Motion for Judgment on the Pleadings and Motion for Reconsideration concerns whether a private right of action exists to support Tryke’s claims, making the two instant motions the *fourth and fifth times* Planet 13 has argued this same exact issue before this Court. (Motion for Judgment on the Pleadings, pp. 2, 5-12; Motion for Reconsideration, pp. 2-4.)

Moreover, the combination of Planet 13’s instant motions reveals that it only filed its Motion for Leave to Amend Answer to Assert Counterclaims (“Motion for Leave to Amend”) for a calculated, improper purpose. So beloved is the “no private right of action” argument to Planet 13 that it flirted with sanctions by filing its “counterclaim” as a legal chess move to put itself in a position to generate another opportunity to re-make its same old, losing argument again to a new District Court Judge, this time under the guise of a false equivalency argument. It is readily apparent that Planet 13 intended to relitigate the “no private right of action” argument before the current judge in this Department in effort to obtain a different outcome on a well-settled issue. Even worse, Planet 13 improperly attempts to paint the Court into a corner by erroneously asserting that the Court must either dismiss Tryke’s claims or permit Planet 13’s proposed counterclaims to proceed. That is not the case at all. On the contrary, the Court should properly deny both motions for the reasons set forth herein.

III. LEGAL ARGUMENT

A. The Court Is Divested of Jurisdiction to Consider the “No Private Right of Action” Issue Advanced in Planet 13’s Instant Motions

As a threshold matter, Planet 13’s “no private right of action” argument is an issue that affects the merits of a pending interlocutory appeal such that the Court lacks jurisdiction to consider this issue. Moreover, as no basis exists for the Court to grant Planet 13’s Motion for Judgment on the Pleadings, the Court must not certify same under NRCP 62.1.

When an appeal is filed, the district court is divested of jurisdiction to enter further orders granting relief on the same subject matter. Importantly, the Court “can only enter orders on



1 matters that are purely collateral to the appeal, ‘i.e., matters that in no way affect the appeal’s
2 merits.’” *Patraw v. Growth*, 127 Nev. 1165, 373 P.3d 949 (2011) (quoting *Mack-Manley v.*
3 *Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006)). If a district court wishes to grant a
4 motion on an issue that is on appeal, “it must certify its inclination to grant the motion to [the
5 Nevada Supreme Court], and then the moving party must request [the Nevada Supreme Court]
6 remand the issue so that the district court can address it,” a process referred to as the “*Huneycutt*
7 procedure.” *Id.*

8 On this point, NRCP 62.1 provides:

9 (a) Relief Pending Appeal. If a timely motion is made for relief that the
10 court lacks authority to grant because of an appeal that has been docketed
and is pending, the court may:

11 (1) defer considering the motion;

12 (2) deny the motion; or

13 (3) state either that it would grant the motion if the appellate court
14 remands for that purpose or that the motion raises a substantial issue.

15 (b) Notice to the Appellate Court. The movant must promptly notify the
16 clerk of the supreme court under NRAP 12A if the district court states that it
would grant the motion or that the motion raises a substantial issue.

17 (c) Remand. The district court may decide the motion if the appellate court
remands for that purpose.

18 NRCP 62.1.

19 In this case, Planet 13 appealed the Order Granting Preliminary Injunction and the appeal
20 remains pending before the Nevada Supreme Court. In its opening appellate brief, Planet 13
21 argued that Tryke’s claims for civil conspiracy and aiding and abetting were not likely to
22 succeed on the merits because “Tryke has no private right of action against [Planet 13] for the
23 alleged diversion of rideshare passengers by rideshare drivers.” (Exhibit 1, pp. 13-14.) As a
24 result, this Court is divested of jurisdiction to consider this same argument asserted in the instant
25 motions because its decision would affect the merits of the pending appeal.

26 In the event the Court is nevertheless inclined to consider Planet 13’s “no private right of
27 action argument” in the instant motions, the Court should summarily reject same for the reasons
28 set forth herein. In short, there is no basis for the Court to certify intent to grant the Motion for



Judgment on the Pleadings or state that it raises a substantial issue. The Court should properly deny the motion in accordance with NRCP 62.1(a)(2).

B. Planet 13’s Motion for Judgment on the Pleadings Is a Procedurally Improper Motion for Reconsideration and Should Be Summarily Denied

Planet 13’s Motion for Judgment on the Pleadings should be swiftly denied because it is effectively a second motion for reconsideration of Planet 13’s failed motion to dismiss, dressed as a motion for judgment on the pleadings.

Eighth Judicial District Court Rule 2.24 provides that “[n]o motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, *unless by leave of the court granted upon motion therefor*, after notice of such motion to the adverse parties.” EDCR. 2.24 (emphasis added); *see also* D.C.R. 13(7) (“No motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, *unless by leave of the court grated upon motion therefor*, after notice of such motion to the adverse parties.”) (emphasis added); *Maples v. Quinn*, 126 Nev. 735, 367 P.3d 796 (2010).

Here, Planet 13 clearly violated EDCR 2.24 and D.C.R. 13(7) by failing to request leave of court prior to filing its Motion for Judgment on the Pleadings that brazenly attempts to relitigate issues that this Court has already disposed of in prior motion practice. As detailed herein, Planet 13’s arguments regarding “no private right of action” and exhaustion of administrative remedies have already been considered and rejected by this Court.

Accordingly, Planet 13’s Motion for Judgment on the Pleadings must be denied on this preliminary basis alone.

C. Planet 13’s Motion for Judgment on the Pleadings Is Frivolous and Without Merit

As explained herein, Tryke’s claims have repeatedly been determined by this Court to be viable. Nothing has changed and they remain as such. The Court should, therefore, deny Planet 13’s motion.

///

1 **1. Legal Standard**

2 Nevada is a notice-pleading jurisdiction and liberally construes pleadings to place into
3 issue matter which is fairly noticed to the adverse party. NRCP 8(a); *Chavez v. Robberson Steel*
4 *Co.*, 94 Nev. 597, 599, 584 P.2d 159, 160 (1978). NRCP 8(a) requires a pleading “contain only a
5 short and plain statement showing that the pleader is entitled to relief.” *Brown v. Kellar*, 97 Nev.
6 582, 583, 636 P.2d 874 (1981). Also, “the pleading of conclusions, either of law or fact, is
7 sufficient so long as the pleading gives fair notice of the nature and basis of the claim.” *Crucil v.*
8 *Carson City*, 95 Nev. 583, 585, 600 P.2d 216, 217 (1979). Here, Tryke’s Complaint clearly
9 satisfies Nevada’s notice-pleading requirements to state viable claims.

10 As with a NRCP 12(b)(5) motion to dismiss for failure to state a claim upon which relief
11 can be granted, in deciding a NRCP 12(c) motion for judgment on the pleadings, the court must
12 “accept the factual allegations in the complaint as true and draw all inferences in favor of the
13 nonmoving party.” *Sadler v. PacifiCare of Nev.*, 130 Nev. 990, 993–94, 340 P.3d 1264, 1266
14 (2014). A complaint can be dismissed only if it appears beyond a doubt that the plaintiff can
15 prove no set of facts in support of a claim which would entitle them to relief. *See Edgar v.*
16 *Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985). When weighed against such rigorous
17 standards, the Court should deny Planet 13’s motion.

18 **2. Planet 13’s “No Private Right of Action” Argument Fails Because**
19 **Tryke Is Not Merely a Private Party Attempting to Enforce a Statute**

20 While Planet 13’s proposed counterclaims fit the bill of a private party attempting to
21 merely enforce a statute (upon which the Court correctly determined the same were futile), that is
22 not the case with Tryke’s claims. Indeed, fundamental and drastic differences exist between the
23 demonstrated actions of Planet 13 which led to the entry of the Preliminary Injunction Order and
24 the alleged actions of Tryke in Planet 13’s Motion for Leave to Amend.

25 Specifically, while Tryke is merely alleged to have run advertisements for free cannabis
26 products without a purchase where said advertisements were directed to the general public in
27 violation of a statute, Planet 13, on the other hand, has been proven to have directed
28 advertisements for kickbacks to rideshare drivers for the purpose of incentivizing diversion of



rideshare passengers without their knowledge. (*See* Preliminary Injunction Order, ¶¶ 6-10, 13; *see also* Complaint, ¶¶ 25-28.) As a result of Planet 13’s advertisements to drivers (again, not the general public), rideshare passengers who had entered the Reef dispensary into their rideshare applications as their intended destination (i.e., specific, known potential customers) were diverted to Planet 13 instead. (*See* Preliminary Injunction Order, ¶ 7; *see also* Complaint, ¶ 23(a)-(t).) Moreover, *Planet 13 paid the rideshare drivers for this activity* (*see* Preliminary Injunction Order, ¶ 10; *see also* Complaint, ¶ 25), and in so doing, intentionally interfered with Tryke’s prospective economic advantage with these potential customers.

In sum, Tryke is not merely attempting to enforce a statute. Rather, Tryke’s Complaint alleges conduct by Planet 13 that violates Nevada’s anti-diversion laws and that also constitutes the tort of intentional interference with economic advantage. Therefore, Planet 13’s “no private right of action” argument, as applied to Tryke, is entirely misplaced.

3. In Any Event, Nevada Law Implies a Private Right of Action for Diversion Under NRS 706A

The purpose and policy of Nevada’s legislature in adopting NRS 706A concerning “Transportation Network Companies” is to ensure the “safety, reliability and cost-effectiveness of the transportation services” provided by drivers affiliated with transportation network companies. NRS 706A.010. That purpose and policy indicates not just a benefit for passengers only, but for commerce generally, and thus for commercial establishments pre-selected as passenger destinations.

Tryke’s Reef dispensary is a destination sought out by many customers using transportation network companies and, as such, is one of the many beneficiaries of NRS 706A’s goals of safety, reliability, and cost-effectiveness. Those interests are protected by the strictures of NRS 706A.280(2)(a) and (b) which, with respect to a passenger’s “destination,” bar drivers from deceiving or attempting to deceive passengers, and conveying or attempting to convey any passenger to “a destination” other than the one directed by the passenger. Although only “consumers” can lodge administrative complaints for 706A violations, nothing in 706A indicates that “destination” owners are intended to be excluded from the safety, reliability, and cost-



effectiveness that 706A is intended to provide, or that they are somehow precluded from bringing legal claims thereon.

In Nevada, whether an implied private right of action exists under a statute like NRS 706A is judged by the three-factor *Baldonado* test. Under this test, the court is guided by “the entire statutory scheme, reason and public policy.” *Baldonado v. Wynn Las Vegas, LLC*, 194 P.3d 96,101 (Nev. 2008). This translates into the consideration of three factors: “(1) whether the plaintiffs are of a class for whose special benefit the statute was enacted; (2) whether the legislative history indicates any intention to create or deny a private remedy; and (3) whether implying such a remedy is consistent with the underlying purposes of the legislative scheme.” *Id.* Here, two factors militate in favor of finding an implied private right of action and one factor is neutral such that an implied private right of action exists for diversion under NRS 706A.

Here, the first factor militates in favor of an implied private right of action because Tryke is “of a class” for whose benefit the statute was enacted because (i) NRS 706A’s purpose is to benefit commerce generally (“safety, reliability and cost-effectiveness”), (ii) it references destinations, and (iii) destinations rely on safe, reliable, and cost-effective transportation for customers to arrive at their businesses.

The second *Baldonado* factor is neutral because there appears to be no legislative history indicating that the Nevada Legislature had either an intent to deny, or to create, a private remedy when adopting NRS 706A. NRS 706A was adopted in 2015, seven years after the *Baldonado* decision. The “legislature is presumed to know what it is doing and purposefully used the specific language” of the statute it approves. *Williams v. Clark County Dist. Atty.*, 50 P. 3d 536, 545 (Nev. 2002). Consequently, by standing mute in the text of NRS 706A, and absent any legislative history indicating a preference one way or another as to whether it would give rise to a private right of action, the Nevada Legislature is presumed to have known that factor 2 of the *Baldonado* test would be evaluated in a neutral fashion in any private right of action analysis.

And finally, the third *Baldonado* factor militates in favor of an implied private right of action. Individual’s voices are often difficult to hear in a legal setting and, absent compliance with the labyrinth of requirements necessary for a class action suit to proceed, can be ignored. By

1 contrast, motivated commercial actors, such as owners of destinations like Tryke, have an
2 incentive to take action to ensure that their customers are not pirated by unlawful diversion, and
3 will be willing to take action (such as this case) consistent with the purpose of policy of NRS
4 706A to promote the safety, reliability, and cost-effectiveness of transportation network
5 company transportation services.

6 Because two *Baldonado* factors militate in favor of an implied private right of action
7 under NRS 706A, and one is neutral, Tryke is entitled to proceed with claims based on diversion
8 under NRS 706A.

9
10 **4. Tryke Has Stated Viable Claims for Civil Conspiracy and Aiding and Abetting**

11 Planet 13's contention that Tryke's Complaint fails to plead an underlying tort sufficient
12 to state claims for civil conspiracy³ and aiding and abetting is demonstrably false. Notably,
13 Tryke's civil conspiracy and aiding and abetting counts in the Complaint specifically refer to the
14 defendants' conduct "as alleged herein." (Complaint, ¶¶ 36-37, 45-46.) Additionally, paragraphs
15 35 and 44 of the Complaint provide, for the claims of civil conspiracy and aiding and abetting,
16 respectively, that "Plaintiff incorporates all allegations of the Complaint herein by reference."
17 (Complaint, ¶¶ 35, 44.)

18 Furthermore, Count III of the Complaint pleads a claim for the tort of intentional
19 interference with economic advantage, and the same was incorporated by reference into the
20 claims for civil conspiracy and aiding and abetting. Indeed, there is little doubt that the civil
21 conspiracy and aiding and abetting claims are based on meeting of the minds among the
22

23 ³ Planet 13's leading case cited against the civil conspiracy claim, *Kramer v. Perez*, 595 F.3d 825, 830 (8th Cir.
24 2010), does not stand for the proposition Planet 13 claims. (Motion for Judgment on the Pleadings, p. 9: "We refuse
25 to create a private right of action for civil conspiracy' where the underlying statute did not provide for such a right.")
26 In that case, after a bench trial on the merits, with a fully-developed record, the court dismissed statutorily based
27 conspiracy and aiding and abetting claims, because the statute at issue provided no private right of action. *Id.*
28 However, in dismissing the state common law conspiracy and aiding and abetting claims, the court did *not* find that
those claims were not viable. Rather, based on the fully-developed record, the court merely found the plaintiff "did
not prove the actual damages elements necessary to prevail under such claims." *Id.* It is troubling that Planet 13's
instant motion makes no mention of the fact that the only reason the state common law conspiracy and aiding and
abetting claims were dismissed in *Kramer* was a failure of proof of damages, a fact unique to that case, and which in
no way invalidates Tryke's well-plead claims in this case.



1 defendants to pay ride share and taxi drivers to divert customers to Planet 13, conduct that both
2 violates Nevada’s anti-diversion laws *and* constitutes the tort of intentional interference with
3 economic advantage.

4 Most importantly, at the hearing on Planet 13’s motion to dismiss, the Court correctly
5 found that the claim for intentional interference with economic advantage served as an
6 underlying tort to support Tryke’s civil conspiracy and aiding and abetting causes of actions.
7 (*See* Hearing Transcript at 4:12-14, 5:14-6:4, 6:16-25, 11:22-12:8.) Thus, this is a settled matter
8 that need not be revisited.

9 In conclusion, Tryke has plead viable claims for civil conspiracy and aiding and abetting,
10 and Planet 13’s instant motion relitigating this same argument should be denied—*again*.

11 **5. Tryke Has Stated a Viable Claim for Intentional Interference with**
12 **Economic Advantage**

13 Planet 13 asserts that Tryke’s claim for intentional interference with economic advantage
14 fails as a matter of law because the claim is “wholly premised on violations of the Diversion
15 Laws.” (Motion for Judgment on the Pleadings, p. 11.) Not so.

16 First and foremost, the Court has already found Tryke’s intentional interference claims to
17 be sufficiently plead and that “the plaintiff contends that it was accomplished by diverting
18 customers from their requested destination to an alternate destination by tortiously maligning or
19 critiquing the intended destination so that the customer would be persuaded to go to the alternate
20 destination.” (Hearing Transcript at 6:16-25; *see also id.* at 4:12-14, 5:14-6:4, 11:22-12:8.)

21 Second, Planet 13’s argument ignores the bedrock principal of notice pleading set forth in
22 NRCP 8.⁴ Critically, the instant motion runs afoul of the notice pleading standard set forth in

23 ///

24 ⁴ It is well-established that NRCP 8(a) requires a plaintiff to plead a “short and plain statement of the claim.” NRCP
25 8(a)(2). Likewise, NRCP 8(d) specifies that pleadings are to “be concise” and that “[e]ach allegation must be simple,
26 concise, and direct. No technical form is required.” NRCP 8(d), (d)(2). “‘Notice pleading’ requires plaintiffs to set
27 forth the facts which support a legal theory, but does not require the legal theory relied upon to be correctly
28 identified.” *Liston v. Las Vegas Metropolitan Police Dep’t*, 111 Nev. 1575, 1578, 908 P.2d 720, 723 (1995). “A
plaintiff who fails to use the precise legalese in describing his grievance but who sets forth the facts which support
his complaint thus satisfies the requisites of notice pleading.” *Id.* Further, in determining whether a complaint states
a cause of action, a court may review all allegations incorporated by reference into a specific cause of action. *See*
Nelson v. Sierra Const. Corp., 77 Nev. 334, 337, 364 P.2d 402, 403 (1961).



NRCP 8 by inappropriately cherry-picking language in Tryke’s pleading of its intentional interference claim to assert that said claim is purportedly solely based on violation of Nevada’s anti-diversion laws. Nevada courts have continually rejected imposing a higher pleading burden or requiring any of the illogical over-formalities that Planet 13 apparently demands. Indeed, the instant motion seems to suggest that Tryke was required to re-list all other allegations from the complaint under each individual cause of action plead. This would result in lengthy and duplicative pleadings, not the “short, plain statements” required under the plain language of NRCP 8(a).

Here, Tryke’s intentional interference claim as plead in the Complaint specifically refers to Planet 13’s conduct “alleged herein.” (Complaint, ¶ 58.) Additionally, paragraph 53 of the Complaint provides that “Plaintiff incorporates all allegations of the Complaint herein by reference.” (Complaint, ¶ 53.) To be sure, the general allegations in Tryke’s Complaint contain allegations of Planet 13’s conduct that not only violates Nevada’s anti-diversion laws, but also independently constitutes the tort of intentional interference with economic advantage. (*See* Complaint, ¶¶ 10-13, 23(a)–(t), 25-31.) Such is entirely sufficient.

Lastly, Planet 13’s argument against Tryke’s intentional interference claim must also be rejected because an implied private right of action exists for diversion under NRS 706A. (*See* Section III(C)(3), *supra*.)

In sum, Tryke has stated a viable claim for intentional interference with economic advantage and Planet 13’s motion should be denied.

6. There Is No Administrative Exhaustion Requirement Under NRS 706A.260

It is easily established that Tryke’s remedies are found solely in this Court. Contrary to Planet 13’s contentions (which the Court has previously considered and rejected⁵), Tryke has no administrative remedy, nor any requirement to exhaust before filing suit.

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⁵ Planet 13 originally asserted its administrative remedies argument in its motion to dismiss. (Motion to Dismiss, pp. 9-10.) The Court rejected this argument at the hearing, determining that the statutes at issue only protect consumers and do not provide any administrative remedies to Tryke. (Hearing Transcript at 4:4-11.)



1 Notably, NRS Chapter 706A gives only consumers the right to file a complaint with the
2 Nevada Transportation Authority (“NTA”). *See* NRS 706A.260. Moreover, nothing in NRS
3 706A purports to deprive commercial establishments, such as Tryke, of their right to bring
4 claims against wrongdoers like Planet 13. Indeed, NRS 706A.260 does not even purport to be the
5 sole avenue through which a consumer may seek redress, but instead, merely provides that each
6 transportation network company shall “[c]reate a system to receive and address complaints from
7 consumers which is available during normal business hours in this State.” NRS 706A.260(2).
8 Nothing within the section requires any “exhaustion of administrative remedies” or creates any
9 prerequisite to asserting common law conspiracy and tort claims. Thus, Planet 13’s feigned
10 exhaustion of administrative remedies argument is a nonstarter.

11 In conclusion, Planet 13’s Motion for Judgment on the Pleadings is seriously flawed and
12 should be denied.

13
14 **D. Planet 13’s Motion for Reconsideration of the Order Denying Leave to
Amend Is Meritless and Should Be Denied**

15 Reconsideration is not warranted. Contrary to Planet 13’s contentions, there was no clear
16 error in the Court’s Order Denying Leave to Amend, nor did the Court weigh evidence and make
17 findings of fact.

18 A district court may reconsider a previously decided issue only in the rare circumstance
19 where substantially different evidence is subsequently introduced, or the decision is clearly
20 erroneous. *See Masonry & Tile Contractors Ass’n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*,
21 113 Nev. 737, 741, 941 P.2d 486, 489 (1997); *Moore v. City of Las Vegas*, 92 Nev. 402, 405,
22 551 P.2d 244, 246 (1976); *see also Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890
23 (9th Cir. 2000) (noting that reconsideration is an “extraordinary remedy, to be used sparingly in
24 the interests of finality and conservation of judicial resources.”) (internal citations omitted).
25 Neither circumstance is applicable here.

26 Here, the Court correctly determined that amendment would be futile and denied Planet
27 13’s Motion for Leave to Amend on two grounds:

28 ///



(1) “[S]ince the entirety of Defendant’s allegations are premised on an alleged violation of the statute and the Court finds that there is no private right of action, the counterclaim would not withstand dismissal pursuant to Rule 12(b)(5) and as such the amendment would be futile.”

(2) “However, even if the Court were to find that there existed a private right of action, an amendment would still be futile. Based on the documentary evidence provided, Plaintiff has not violated the statute.”

(Order Denying Leave to Amend, p. 5)

First, Planet 13 errantly asserts that the Court committed clear error by inconsistently applying the law with respect to Tryke’s claims and Planet 13’s proposed claims. That is not the case at all. Planet 13’ demonstrably false, untimely, and inviable proposed counterclaims and Tryke’s tried-and-tested claims are not equivalents. Significant differences exist between the demonstrated actions of Planet 13 which led to the entry of the Order Granting Preliminary Injunction and the alleged actions of Tryke in Planet 13’s Motion for Leave to Amend. (*See* Section III(C)(2), *supra.*) The Court properly concluded that amendment would be futile because Planet 13’s proposed counterclaims are “entirely premised on an alleged violation of the statute” and that no private right of action exists. (Order Denying Leave to Amend, p. 5.)

Second, the Court did not weigh evidence and make factual findings, as Planet 13 incorrectly contends. As an initial matter, it is telling that Planet 13’s moving papers vaguely refer to the Court weighing “evidence in dispute,” without ever identifying what the “evidence” is. (Motion for Reconsideration, p. 5.) Of course, that is because the “evidence” is not “in dispute.” Whereas Planet 13 supported its Motion for Leave to Amend and proposed counterclaims with an obscured photograph of an advertisement that failed to show the disclaimer on said advertisement, Tryke provided the Court with a legible photograph that clearly depicted the disclaimer present on the exact same advertisement. The Court’s consideration of the legible photograph of the exact same advertisement, including its disclaimer language, did not amount to weighing evidence and making factual findings. Such was entirely proper.

In conclusion, the Court should deny Planet 13’s baseless Motion for Reconsideration.

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E. Planet 13's Abusive Litigation Practices Warrant Sanctions in the Future

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

Notably, this Court has already, repeatedly and correctly, ruled upon the exact arguments that Planet 13 raises in its instant motions. As demonstrated herein, Planet 13's arguments fail for the same reasons they failed at the inception of this case and in each instance Planet 13 has improperly rehashed the same arguments in filings since. To be sure, Planet 13's instant motions have served only to unnecessarily multiply the proceedings and increase the litigation costs for all parties.

While Tryke is not presently requesting an award of sanctions, it urges the Court to remain cognizant of Planet 13's bad faith tactics that continually waste time, judicial resources, and result in increased litigation costs as this case progresses going forward.

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1 **IV. CONCLUSION**

2 Based on the foregoing, Tryke respectfully requests that this Court deny Planet 13's
3 Motion for Judgment on the Pleadings and Motion for Reconsideration.

4 Dated this 23rd day of September 2021.

5 H1 LAW GROUP

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

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16
17
18 **CERTIFICATE OF SERVICE**

19 The undersigned, an employee of H1 Law Group, hereby certifies that on the 23rd day of
20 September 2021, she caused a copy of the foregoing to be transmitted by electronic service in
21 accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey
22 E-File & Serve system.

23 A blue ink signature of Karen M. Morrow, written over a horizontal line.

24 Karen M. Morrow, an Employee of H1 LAW GROUP

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

**TRYKE COMPANIES SO NV, LLC,
A Nevada Limited Liability Company,**

Respondent.

Case No. 81938

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between Tryke and MM Development is a privilege that destroys the cause of action and further makes Tryke highly unlikely to prevail on its intentional interference claim.

3. *Because Tryke Is Not Likely to Prevail on Its Underlying Claim for Diversion, It Is Not Likely to Prevail on Its Claims for Civil Conspiracy and/or Aiding and Abetting*

Tryke has no private right of action against MM Development for the alleged diversion of rideshare passengers by rideshare drivers. NRS Chapter 706A governs claims of diversion, and such claims can only be brought in the first instance by the Nevada Transportation Authority (“NTA”) for a *rideshare driver’s* alleged diversion. *See, e.g.*, NRS 706A.280(2) (defining diversion is an act done by a driver); NRS 706A.300(1) (penalty for violation of provisions of NRS Ch. 706A are suspension of rideshare company permit or prohibition of allowing driver to operate).

In recognition of the lack of a meritorious cause of action against MM Development for diversion, Tryke instead claims that MM Development has conspired and aided and abetted with those rideshare drivers to commit diversion. Appx. 09–10. But civil conspiracy can only attach if there is an underlying violation of law. *See e.g. Paul Steelman Ltd. V. HKS, Inc.*, 2007 WL 295610, *3 (D. Nev. Jan. 26, 2007) (“Civil conspiracy is not an independent cause of action—it must arise from some underlying wrong.”); *Kramer v. Perez*, 595 F.3d 825, 830 (8th Cir. 2010) (“We refuse to create a private cause of action for civil conspiracy” where the underlying statute did not provide for such a right). Further, a claim for civil conspiracy must identify at least “two or more persons.” *Consol. Generator-Nevada Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311 (1998). *See also GES, Inc. v. Corbitt*, 117 Nev. 265, 271, 21 P. 3d 11, 15 (2001) (“the conduct of each tortfeasor [must] be in itself tortious”). But here, MM Development cannot

commit diversion because it is not a rideshare driver, and furthermore, Tryke has failed to name as a party even a single driver that MM Development allegedly conspired with. Therefore, Tryke cannot allege a conspiracy because MM Development has committed no wrong.

Similarly, Tryke is not likely to prevail on its claim of aiding and abetting because it cannot satisfy the three necessary elements: 1) the *acting defendant* (i.e., the unidentified and unnamed rideshare drivers) committed a tort that injured Tryke; 2) the aiding defendant was aware of its role in promoting the tort at the time it provided assistance; and 3) the aiding defendant *knowingly and substantially assisted the acting defendant*. *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 1490–91, 970 P.2d 98, 112 (1998). “Substantial assistance” in aiding and abetting the tort of another requires a showing of direct communication or conduct in close proximity to the tortfeasor. *Id.* at 1491. Tryke has provided no evidence of the requisite direct communication or close proximity among MM Development and the unidentified and unnamed rideshare drivers, and therefore it is not likely to prevail on its aiding and abetting claim.

The district court abused its discretion by finding Tryke is likely to prevail on the merits of its civil conspiracy claim because MM Development is not guilty of any underlying crime or tort for which Tryke has a private right of action against MM Development, so there cannot be a civil conspiracy as a matter of law. And the district court abused its discretion by finding that Tryke is likely to prevail on its aiding and abetting claim because Tryke failed to produce any evidence of the requisite direct communication between MM Development and any rideshare driver who allegedly committed unlawful diversion.

NRAP 28.2 CERTIFICATE OF COMPLIANCE

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, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(3), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the Record on Appeal or Appendix where the matter relied on is to be found. I hereby certify that this brief also complies with NRAP 32(a)(4)–(6), that the typeface is Times New Roman in 14-point font and that it complies with the type-volume limitation of NRAP 32(a)(7) because it contains approximately 6,327 words. I understand I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted March 25, 2021.

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/s/ Nathanael Rulis

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CERTIFICATE OF SERVICE

I certify that on the 25th day of March, 2021, I served a copy of this Appellant's Opening Brief upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

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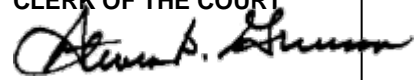
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Dated this 25th day of March, 2021.

/s/ Ali Augustine

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-804883-C

Dept. No.: 8

**MM DEVELOPMENT COMPANY,
INC.'S REPLY IN SUPPORT OF:**

**(1) MOTION FOR JUDGMENT ON THE
PLEADINGS; AND**

**(2) MOTION FOR RECONSIDERATION
OF COURT ORDER DENYING
DEFENDANT'S MOTION FOR
LEAVE TO AMEND ANSWER TO
ASSERT COUNTERCLAIMS**

Hearing Date: October 12, 2021

Hearing Time: 8:00 a.m.

Defendant MM Development Company, Inc. ("MM"), by and through counsel of record, hereby submits this Reply in Support of its Motion for Judgment on the Pleadings ("Motion") and Motion for Reconsideration of Court Order Denying Defendant's Motion for Leave to Amend Answer to Assert Counterclaims ("Reconsideration Motion") (collectively "Motions").

I.

INTRODUCTION

Most of Reef's Opposition ignores the merits of the Motion and Reconsideration Motion because Reef has no valid response. To avoid addressing its failing arguments, Reef spends page upon page rehashing the procedural posture¹ of this case and threatening sanctions (without actually requesting any) and when it finally gets to the merits, Reef chooses to (1) misapply general legal principals of statutory interpretation, (2) misconstrue binding case law; and (3) ignore that the Nevada Transportation Authority (the "Authority") and Nevada Attorney General have been vested with the authority to enact and enforce the necessary regulations under the Diversion Laws. Reef can misconstrue the law and overdramatize procedural posture all it wishes, but the simple fact is: under Nevada law there is no private right of action for a violation of the Diversion Laws; just like this Court found when evaluating the Cannabis Laws with a similar statutory scheme. A review of the text of the Diversion Laws, as well as the factors and analysis articulated by the court in *Baldonado v. Wynn Las Vegas, LLC*, shows that (like the Cannabis Laws) the Nevada Legislature neither created nor intended to create a private right of action under the Diversion Laws. 124 Nev. 951, 958-59, 194 P.3d 96, 101 (2008). Hence, Reef has no standing to bring the claims asserted in its Complaint, which is entirely based upon alleged violations of the Diversion Laws.

And, in the event that this Court for some reason disagrees, then respectfully, the ruling on MM's Motion for Leave to Amend Answer to Assert Counterclaims is entirely inconsistent and should be reconsidered.

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///

///

¹ As to the procedural posture of this case, MM has rightfully defended itself against claims that are legally meritless and brought for anti-competitive purposes. All prior motion practice was procedurally proper, brought in good faith, and well within the normal course of litigation. Reef apparently wishes that MM would stop defending itself. MM will not.

II.

ARGUMENT

A. Under General Principals of Statutory Interpretation and Nevada Case Law, the Diversion Laws Provide No Private Right of Action

The Diversion Laws, like the Cannabis Laws, fail to provide a private enforcement mechanism. The express terms of a statute govern. *See State v. Jepsen*, 46 Nev. 193, 196, 209 P. 501, 502 (1922). “However, where a statute has no plain meaning, a court should consult other sources such as legislative history, legislative intent and analogous statutory provisions” to determine the intent of the legislature. *See State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293–94, 995 P.2d 482, 485 (2000) (quoting *Moody v. Manny's Auto Repair*, 110 Nev. 320, 325, 871 P.2d 935, 938–39 (1994)). “When interpreting a statute, legislative intent is the controlling factor.” *State v. Lucero*, 127 Nev. 92, 249 P.3d 1226 (2011).

As discussed in both MM’s Motion and its Reconsideration Motion, the Court recently issued its decision denying MM’s Motion for Leave to Amend and laying out a thorough basis for its decision. 09/08/21 Ord. All of its reasoning as to the Cannabis Laws’ statutory structure applies in a near-identical fashion to the statutory structure laid out by the Diversion Laws with regard to each of Reef’s claims. Applied equally, it is manifest error for the Court to deny MM a private right to sue under the Cannabis Laws while simultaneously allowing Reef a private right to sue under the structurally similar Diversion Laws. Logically, either no private right exists under either statutory scheme or a private right exists under both.

i. Reef is a private party seeking to enforce the Diversion Laws.

In an attempt to distinguish the respective private party rights of Reef and MM with regard to the relevant laws underlying Reef’s Complaint (the Diversion Laws) and MM’s proposed counterclaim (the Cannabis Laws), Reef pivots the focus **away** from the actual statutory schemes and **onto** the “actions” and “alleged actions” of the parties. *See* Mot. at 10:18-11:12 (“fundamental and drastic differences exist between the demonstrated actions of Planet 13...and the alleged actions of Tryke”). This obvious pivot is a clear red herring. The actions of the parties are **completely irrelevant** in determining whether or not a private right of action exists under any statute. The statute controls.

Whether or not a statute provides a private right to sue and enforce its terms is a straightforward question of statutory interpretation. *See State v. Lucero*, 127 Nev. 92, 93, 249 P.3d 1226, 1227 (2011) (discussing rules of statutory interpretation generally and emphasizing the terms of the statute, legislative history, reason, and public policy).

The relevant determination is whether Reef has sued MM because of an alleged violation of the Diversion Laws. There is no need to go beyond Reef's pleadings to make that determination. Reef's Complaint is explicit that all of its claims are based on alleged violation of the Diversion Laws. The Diversion Laws, however, make it clear that no such private right of action exists and any argument to the contrary is meritless.

ii. The Diversion Laws do not provide either an express or implied private right of action.

Because there is no private right of action expressed on the face of the Diversion Laws, Reef attempts to make several weak and attenuated arguments in order to satisfy the three factor "private right of action" test laid out in *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 958-59, 194 P.3d 96, 101 (2008) (finding that no private right of action exists under NRS 608.160). The *Baldonado* court states:

To ascertain the Legislature's intent in the absence of plain, clear language, we examine the entire statutory scheme, reason, and public policy. In so doing, we are guided by three factors originally set forth by the U.S. Supreme Court: (1) whether the plaintiffs are " 'of the class for whose [e] special benefit the statute was enacted' "; (2) whether the legislative history indicates any intention to create or to deny a private remedy; and (3) whether implying such a remedy is " 'consistent with the underlying purposes of the legislative [sch]eme.' "

Id. Although there are three factors to consider, "[t]he three factors are not necessarily entitled to equal weight; **the determinative factor is always whether the Legislature intended to create a private judicial remedy.**" *Id.* at 959, 101 (bold added). The most importance is placed on the second factor – a point that Reef fails to mention – because "the absence of an express provision providing for a private cause of action to enforce a statutory right **strongly suggests** that the Legislature **did not intend** to create a privately enforceable judicial remedy." *Id.* (bold added); *see also Richardson Const., Inc.*

1 v. *Clark Cty. Sch. Dist.*, 123 Nev. 61, 65, 156 P.3d 21, 23 (2007) (“when a statute does not expressly
2 provide for a private cause of action, the absence of such a provision suggests that **the Legislature did**
3 **not intend for the statute to be enforced through a private cause of action.**”) (bold added).

4 Reef’s analysis and application of the *Baldonado* test is flawed and incorrect for many reasons.
5 First, Reef treats all three factors as equal when the court has made crystal clear that they are not. Reef
6 summarily alleges that because “two *Baldonado* factors militate in favor of an implied private right of
7 action under NRS 706A, and one is neutral, [Reef] is entitle to proceed with claims based on diversion”.
8 *See* Opp. at 13:6-8. Not so. As discussed above, *factor two* holds the most weight. *Baldonado*, 124
9 Nev. at 959, 194 P.3d at 101. Reef cannot meet any of the factors, much less the most important second
10 factor.

11 Reef improperly assumes that factor one weighs in its favor because Reef’s dispensary receives
12 *some* benefit from the Diversion Law, when in reality, factor two contemplates a private right for those
13 in a class who receive a “*special benefit*” from the statute. *Id.* at 958, 101. In order to validate this
14 erroneous conclusion, Reef states that it is “[’]of a class[’] for whose benefit the statute was enacted
15 because (i) NRS 706A’s purpose is to benefit commerce generally ([’]safety, reliability and cost-
16 effectiveness[’]), (ii) it references destinations, and (iii) destinations rely on safe, reliable, and cost-
17 effective transportation”. Opp. at 12:12-16 (alteration added). Reef is neither among the class meant
18 to be protected by these statutes, nor does Reef receive a special benefit from them. To validate its
19 flawed argument Reef ignores the “special benefit” language required under this factor. **Passengers**
20 **receive the direct and “special benefit”** of the “safety, reliability, and cost-effectiveness” purpose
21 furthered by the Diversion Laws. *See* NRS 706A.010 (declaring the purpose of the statute as to protect
22 the “safety, reliability and cost-effectiveness of the transportation services provided by drivers” to
23 passengers in Nevada). **General members of the chain of commerce** may arguably receive some
24 miniscule incidental benefit from the Diversion Laws, but that benefit, if one does exist, is **by no means**
25 **a “special benefit”** as required to satisfy factor one. Neither is Reef among those “**for whose benefit**
26 **the statute was enacted.**” *Baldonado*, 124 Nev. at 959 (bold added). Reef is not a member of the
27 class of persons intended to be protected by the Diversion laws and thus, Reef cannot satisfy factor one.
28

Reef deceptively characterizes the results of factor two (the most important factor) as “neutral” to insinuate that factor two does not weigh *against* providing a private right of action (but it does). Opp. at 12:17-25. *Baldonado* makes clear that the legislature’s failure to indicate an intent to create a private right of action “strongly suggests that the Legislature did not intend” to create one. *Baldonado*, 124 Nev. at 959, 194 P.3d at 101. Reef itself acknowledges the legislature’s failure to express any intent to create a private right under the Diversion Laws. Opp. at 12:22 (declaring that the Legislature “stand[s] mute in the text of NRS 706A.”). But Reef completely ignores the stated purpose of the other portion of the Diversion Laws that it is trying to assert claims under – NRS 706. According to NRS 706.151, the Legislative Declaration of Purpose for this statutory scheme is not to provide any private right of action, but rather to:

... confer upon the Authority the power and to make it the duty of the Authority to regulate fully regulated carriers, operators of tow cars and brokers of regulated services to the extent provided in this chapter and to confer upon the Department of Motor Vehicles the power to license all motor carriers and to make it the duty of the Department of Motor Vehicles and the Department of Public Safety to enforce the provisions of this chapter and the regulations adopted by the Authority pursuant to it

NRS 706.151(1)(a) (bold added). The Diversion Laws are very unambiguous – it is the Nevada Transportation Authority (the “Authority”) that has the right to enforce these statutes and there is no private right of action included or implied within the Diversion Laws. Thus, despite Reef’s improper characterization of this factor, instead of standing “neutral”, factor two absolutely weighs **against** providing a private right of action. Importantly, this “no private right” result should be given the greatest weight. *Baldonado*, 124 Nev. at 959, 194 P.3d at 101.

As to factor three, Reef fails to apply a similar analysis as the *Baldonado* court – an analysis which, if applied correctly, results in this factor weighing **against** a private right of action. In evaluating this factor, the *Baldonado* court looked to the statutory scheme and reasoned “in light of the statutory scheme requiring the Labor Commissioner to enforce the labor statutes and the availability of an adequate administrative remedy for those statutes' violations, the Legislature did not intend to create a parallel private remedy for NRS 608.160 violations.” *Baldonado*, 124 Nev. at 960, 194 P.3d at 102.

1 Similarly, here the Authority enforces the Diversion Laws and through NRS 706.1715, NAC 706.3933-
2 4017 and NAC 706A.700-750, has established adequate administrative remedies for statutory
3 violations. Thus, according to the *Baldonado* rationale, factor three also weighs against providing a
4 private right of action. In short, Reef has inaccurately applied each of the three *Baldonado* factors.
5 Each of the factors weigh in MM’s favor and against providing an implied private right of action. No
6 private right of action exists under the Diversion Laws and each of the claims in Reef’s Complaint fails.

7 *iii. Because there is no private right of action, Reef’s claim for Intentional*
8 *Interference with Economic Advantage fails as a matter of law.*

9 No reference to NRCP 8 or amount of equivocating by Reef about its intentional interference
10 with economic advantage (“IIEA”) claim can unwind the reality that Reef already argued to the Court
11 that its IIEA claim is premised on violations of the Diversion Laws.² When discussing its IIEA claim
12 and the underlying basis for it, Reef argued to the Court that it relied solely on the Diversion Laws as
13 support for at least two of the five elements of this cause of action. Reef could not have been more
14 clear that the “conduct” causing Reef’s damages is diversion – or, more specifically, “an improper,
15 unfair, unreasonable, and unlawful violation of NRS 706A.280(2)(a) and (b), as well as NAC
16 706.552(1)(c) and (f).” *See* 01/06/20 Opp. to Mot. Dis, 11:3-28.

17 As the basis of Reef’s IIEA claim (like all of its other claims), it argues that MM is paying
18 drivers to induce diversion. MM is not paying drivers for diversion and never has. But, even taking
19 Reef’s allegations at face value, the underlying wrong alleged **is still a violation of NRS 706 and NRS**
20 **706A** – statutes that do **not** allow enforcement by a private party like Reef. The statute vests the
21 Authority, in concert with the Nevada Attorney General, with the power to regulate and enforce the
22 Diversion Laws. *See* NRS 706.1715; *see also* NRS 706A.300; *see also* **Ex. B** to MM’s Motion. Reef
23 is not the Authority and has no power to enforce either NRS 706 or NRS 706A.

24 Reef is simply a private business wrongfully attempting to use the Diversion Laws against
25 another private business as a means of negatively impacting Reef’s competition. The statutory scheme,

26
27 ² Of course, try as Reef might to argue that it should not be held to what is specifically alleged in its
28 Complaint, under Nevada law “[a] plaintiff is bound by the material allegations in his complaint.”
Kingsbury v. Copren, 43 Nev. 448, 189 P. 676, 676 (1920).

1 legislative history, and case law all illustrate that Reef is not a member of the class meant to be protected
2 by these statutes and regulations. The real purpose behind the instant litigation is to perpetuate Reef's
3 anti-competitive scheme to decrease the number of customers delivered to its closest competitor's
4 storefront. If Reef had legitimate concerns about the practice of tip-outs or kickbacks (which it does
5 not), then it would have filed claims against every one of the dozen or so dispensaries that has similar
6 kickback practices. In short, Reef can plead its IIEA claim in as much detail as it likes. Regardless of
7 the details plead, Reef will still have no authority to bring such a suit. Its IIEA claim, like all of its
8 others, fails as a matter of law.

9 **B. MM's Motion is Procedurally Properly and Necessarily Brought**

10 *i. This Motion is not simply a request for reconsideration, but a different motion at a*
11 *different stage of this litigation.*

12 Reef's argument that the Motion is "effectively" a motion for reconsideration is outright wrong.
13 See Opp. at 9:5-7. This is a Motion made after the passing of the deadline to amend the pleadings,
14 which was July 2, 2021. 09/24/20 Ord. Reef previously argued ad nauseam that it could and would
15 move to amend its pleadings to assert additional details as it relates to multiple allegations and causes
16 of action within the operative Complaint. 01/06/20 Opp. to Mot. Dis. The deadline to do so has come
17 and gone and Reef made no attempts to amend its pleadings. The timing for MM's Motion and the
18 substantive matter are appropriate. Moreover, the current law of the case appears to be inconsistent.
19 The Court's recent analysis of the Cannabis Laws demonstrates conclusively that the Motion should be
20 granted for all of the reasons articulated in the Motion and *supra*.

21 *ii. Even if the Court were to treat this motion as a request for reconsideration, it should*
22 *be granted to correct a prior decision that was clearly erroneous.*

23 Even *assuming arguendo* that MM's Motion should be treated as one for reconsideration, this
24 Court has the inherent authority to reconsider its prior orders. See EDCR 2.24 (the court may grant
25 leave to rehear any motion even those already "heard and disposed of"); *Trail v. Faretto*, 91 Nev. 401,
26 403, 536 P.2d 1026, 1027 (1975) (A "first order denying the motion to dismiss does not foreclose a
27 succeeding motion of like nature when there has been a change of circumstances"); *Melnick v. State*
28 *Farm Mut. Auto. Ins. Co.*, 106 N.M. 726, 728, 749 P.2d 1105, 1107 (1988) ("A [district] court has the

1 inherent authority to reconsider its interlocutory orders, and it is not the duty of the [district] court to
2 perpetuate error when it realizes it has mistakenly ruled.”). In particular, “[a] district court may
3 reconsider a previously decided issue if . . . the decision is **clearly erroneous**.” *Masonry & Tile*
4 *Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741 (1997) (bold added). Reconsideration of a
5 court order may be granted where there is a reasonable probability that the Court arrived at an erroneous
6 conclusion. *Geller v. McCowan*, 64 Nev. 106, 108 (1947); *In re Ross*, 99 Nev. 657, 659 (1983). The
7 Court may “amend, correct, resettle, modify, or vacate [...] an order previously made and entered on a
8 motion in the progress of the cause or proceeding.” *Trail*, 91 Nev. at 403; *Melnick*, 106 N.M. at 728
9 (“the trial court may revise or rescind an interlocutory order at any time before entry of a judgment that
10 concludes the litigation.”). The Court may rehear a motion that was previously denied even if the facts
11 and law remain unchanged. *Harvey’s Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 217 (1980).

12 Reef’s claims are predicated on violations of Nevada’s Diversion Laws, not, as Reef tries to
13 argue, upon the tort of interference with prospective economic advantage. Because Nevada does not
14 recognize a tort for diversion, nor do the Diversion Laws relied on by Reef in its Complaint provide
15 for a private cause of action for such a violation, any prior decision denying to dismiss Reef’s
16 Complaint was clearly erroneous and must be corrected. Hence, MM’s Motion should be granted and
17 Reef’s claims must be dismissed.

18 **C. The Court Can and Should, at a Minimum, Certify Its Intent to Grant the Motion**

19 Regardless of whether the Court determines that issues on appeal may be affected by a ruling
20 on the Motion, it is well settled that the Court may certify its intent to grant the Motion. *See* NRCPC
21 62.1(a)(3) (allowing a court to “state either that it would grant the motion if the appellate court remands
22 for that purpose or that the motion raises a substantial issue”); *see also Foster v. Dingwall*, 126 Nev.
23 49, 228 P.3d 453 (2010); *Honeycutt v. Honeycutt*, 94 Nev. 79, 575 P2d. 585 (1978); and *Mack-Manley*
24 *v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 530 (2006). In light of this Court’s recent ruling, MM
25 respectfully requests that – should this Court decline to grant MM’s Motion outright – the Court certify
26 its inclination to grant the Motion irrespective of the appeal.

III.

CONCLUSION

Reef has no standing to bring claims arising under the Diversion Laws. MM requests this Court grant judgment on the pleadings as to Reef's claims. In the alternative, MM requests that this Court certify its intent to grant the instant Motion as expressly authorized under NRCP 62.1(a)(3). Additionally, in the event the Court is inclined to deny judgment on the pleadings, MM respectfully asserts that clear error exists and thus requests that this Court reconsider its Order denying MM Leave to Amend Answer to Assert Counterclaims and enter an order granting MM's Motion to correct any manifest injustice as a result of the inconsistent statutory application in this matter.

DATED this 5th day of October, 2021.

Respectfully submitted,

KEMP JONES, LLP

/s/ Nathanael R. Rulis

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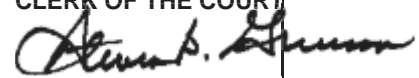
*Attorneys for MM Development Company,
Inc*

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of October, 2021, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.’S REPLY IN SUPPORT OF: (1) MOTION FOR JUDGMENT ON THE PLEADINGS; AND (2) MOTION FOR RECONSIDERATION OF COURT ORDER DENYING DEFENDANT’S MOTION FOR LEAVE TO AMEND ANSWER TO ASSERT COUNTERCLAIMS** 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



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

TRYKE COMPANIES SO NV, LLC,)
)
Plaintiff(s),)
)
vs.)
)
MM DEVELOPMENT COMPANY,)
INC.,)
)
Defendant(s).)

Case No. A-19-804883-C

Department VIII

BEFORE THE HONORABLE JESSICA K. PETERSON,
DISTRICT COURT JUDGE

TUESDAY, OCTOBER 12, 2021

TRANSCRIPT OF PROCEEDINGS RE:
ALL PENDING MOTIONS
(Via Audio Via BlueJeans)

APPEARANCES:

For the Plaintiff(s):

JOEL Z. SCHWARZ, ESQ.

PAUL A. CONANT, ESQ.

For the Defendant(s):

NATHANAEL R. RULIS, ESQ.

RECORDED BY: NANCY MALDONADO, COURT RECORDER

1 **LAS VEGAS, NEVADA, TUESDAY, OCTOBER 12, 2021**

2 [Proceeding commenced at 9:07 a.m.]

3
4 THE COURT CLERK: On page 9 and 10, Case
5 A-19-804883-C, Tryke Companies SO NV versus MM Development
6 Companies, Inc.

7 THE COURT: Good morning, Mr. Conant.

8 Good morning, Mr. Schwarz.

9 Good morning, Mr. Rulis.

10 MR. CONANT: Good morning, Your Honor.

11 MR. RULIS: Good morning, Your Honor.

12 MR. SCHWARZ: Good morning.

13 THE COURT: All right. This is MM Development
14 Companies' Motion for Reconsideration of the Court Order Denying
15 Defendants' Motion for Leave to Amend to Assert the Counterclaim,
16 which the Court previously denied on the basis that there was no
17 private right of action, and/or their Motion for Judgment on the
18 Pleadings.

19 The Court has thoroughly reviewed the motions, the
20 oppositions, the replies. The Court also went back and read the
21 transcript of the hearing that was before Judge Crockett on
22 February 27th of 2020. And I'm going to short shrift this a little bit,
23 simply because the Court does not believe that it can grant the
24 judgment on the pleadings. The Motion for Reconsideration is a
25 different issue, but the Court is pretty much barred by NRCP 62.1.

1 So keeping that in mind, Mr. Rulis, you may make your
2 argument.

3 MR. RULIS: Well, and, Your Honor, if I might maybe start
4 with a first question on NRCP 62.1, in that I understand that you're
5 saying you can't grant it, but I believe that the Court does have the
6 ability to indicate whether, if it had jurisdiction, that it would grant
7 or at least that the motion brings up a -- I believe it's an issue or,
8 excuse me, a -- that the motion raises a substantial issue.

9 THE COURT: And --

10 MR. RULIS: And so on the -- I'd be asking that your
11 court -- that the -- that Your Honor issue a ruling that, if you had
12 jurisdiction, that you would grant it, or that, at a minimum, the
13 Motion for Judgment on the Pleadings raises a substantial issue.

14 THE COURT: Okay. And the Court is -- I'll answer that
15 question right now. The Motion for Judgment on the Pleadings is,
16 essentially, a repackaged Motion to Dismiss. You have filed an
17 appeal on that issue. To the extent that this is a statutory
18 interpretation that was made by Judge Crockett and the Court has
19 reviewed the complaint in this matter, has reviewed the statutes,
20 and while I don't always agree with Judge Crockett, on this one, I'm
21 lockstep with him. I agree with him. So I would not be inclined to
22 grant this motion.

23 If the Supreme Court comes back and tells both myself
24 and Judge Crockett that we're wrong, then we'll deal with it at that
25 point. But -- so that would be my decision on that, Mr. Rulis.

1 MR. RULIS: Okay. So if Your Honor -- if I might, at least
2 make my record on that, then?

3 THE COURT: You may.

4 MR. RULIS: Thank you.

5 So I would say, while I understand Your Honor is saying
6 that it's a Motion for Reconsideration, under Rule 12(c), it
7 specifically says that after the pleadings are closed, but not -- like,
8 early enough not to delay trial, a party may move for judgment on
9 the pleadings. Which is exactly what we've done, considering that
10 the deadline to -- for leave to amend or to file amended pleadings
11 was September 2nd, and this was filed thereafter.

12 So to the extent, you know, we believe that this is a
13 different motion based on a different timeframe in the Court or set
14 by the Court's scheduling order. And to be clear, Tryke had the
15 opportunity to amend their pleadings. One of the arguments they
16 made to Judge Crockett early in the case is that, well, they could
17 amend to clarify what their claims were. But they never have.

18 And that's -- when you get to what is being alleged in the
19 complaint, one of the arguments that was made to you by defense
20 counsel, Mr. Hone, at our hearing on the Motion for Leave to Assert
21 the Counterclaims was that it was very important for Your Honor to
22 understand that the argument that was being made about what the
23 claims were or could be was not the theory, actually, identified in
24 the complaint.

25 And, you know, if we look at Tryke's complaint, what is

1 the theory that is actually identified, if you look at paragraph 7 of
2 the complaint, it says subject matter of the suit. And it's very clear,
3 and I'm going to quote it, it says:

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

9 And the violation of the diversion laws is very clear that
10 there is no private right of action. I mean, NRS 706, which Tryke
11 relies and cites to in their complaint, specifically says that attorney
12 general, that the Nevada Transportation Authority and then through
13 the attorney general, has the exclusive right to bring all civil claims
14 under these statutes. And that is exactly what Your Honor talked
15 about as far as the cannabis laws go and that's why we're asking
16 for judgment on the pleadings.

17 I think we've gone through the analysis on Baldonado
18 [phonetic]. But, you know, one thing I do want to clarify that I don't
19 think was probably sufficiently identified in the briefing as far as
20 Baldonado goes, but when they talk about for whose benefit were
21 these statutes, and we're talking about the diversion laws, for
22 whose statutes were the diversion laws enacted? You know, I think
23 one of the easiest ways to tell who the special benefit was enacted
24 for is who has the right to file claims or request administrative
25 remedies under those statutes.

1 And, you know, if you look at what Tryke is arguing, they
2 don't have a right to move for any administrative remedies or file
3 any claims under the diversionary loss.

4 THE COURT: Okay.

5 MR. RULIS: The only people that do are the passengers.
6 And so, by their own arguments, they're saying that they are not
7 one of the parties that -- for whom these statutes were enacted and
8 for whom the special benefit was provided.

9 Not only that, but I think Nevada law says that the fact that
10 the absence of any private right of action strongly suggests that the
11 legislature didn't intend to create a private right of action. But
12 beyond that, if you look at the legislative history, which we've
13 provided some of the testimony as Exhibit A to our motion from the
14 NTA, it makes clear that the NTA, the authority under these
15 statutes, is the one that has the right to regulate and enforce under
16 these statutes. So, clearly, there's no right of action -- private right
17 of action under those statutes.

18 And as far as what's consistent with the underlying
19 purpose, the purpose is stated in the statutes, which is to confer
20 upon the authority that the NTA, the power to make it -- infer upon
21 the authority the power and to make it the duty of the authority to
22 regulate these statutes, not private entities.

23 So for those purposes, we clearly believe and, you know,
24 are going to defend ourselves as much as possible that there is no
25 private right of action. And just because earlier in the case our

1 Motion to Dismiss was denied, it should not prevent a Motion for
2 Judgment on the Pleadings when the predicate underlying every
3 claim that Reef has asserted is a violation of the diversion laws.

4 And we believe, certainly, and that's why we've brought
5 this up, that the Motion for Judgment on the Pleadings should be
6 granted or at least that there should be a Rule 62.1 ruling that if
7 given the opportunity, it would be granted, or that a substantial
8 issue is raised by this motion if the Court had jurisdiction to hear it.

9 Now, as far as whether or not this is a rehash, and as far
10 as the reconsideration of the Court's other -- excuse me, that the
11 Motion to Assert the Counterclaims, you know, essentially, the
12 cannabis -- the framework of the cannabis laws is nearly -- I mean,
13 it's incredibly similar to NRS 706. At least as far as the Court's
14 analysis of that, which is that the statutes themselves grant the infer
15 on an authority in the cannabis laws, is the CCB under the diversion
16 laws, it's the NTA to regulate and enforce those statutes.

17 And the corrects that are at issue have alleged violations
18 and alleged claims based on violations of the corresponding
19 statutory schemes. You know, where our claims were -- the Court
20 determined that the -- our proposed counterclaims were futile, the
21 opposing party's claims, based on violations of diversionary laws,
22 have been allowed to go forward. And I believe that that's -- and
23 we assert that that is an inconsistent application and believe that if,
24 based on Your Honor's tentative ruling, that the Motion for
25 Judgment on the Pleadings would be denied, that the Motion for

1 Reconsideration should be granted.

2 THE COURT: All right. Mr. Conant, I think, based on --
3 unless you want to make a record, would you like to hear what the
4 Court has to say about this before you argue?

5 MR. CONANT: Yes, Your Honor. The record's already
6 pretty well developed. I'm not looking to burden it further and
7 that's a good -- I agree with that suggestion.

8 THE COURT: All right. This is -- as the Court said, it read
9 the motion, it read the opposition, it read the reply, it went back and
10 looked at the transcript. And I think what the -- Mr. Rulis, what
11 you're missing in all of this is that the -- while they cite to NRS 706
12 in their complaint, their complaint is not predicated on there wholly
13 being a violation of NRS 706. And I'm going to explain this in
14 detail.

15 The defendant argues that Judge Crockett previously
16 agreed with Plaintiff's claims for civil conspiracy, aiding and
17 abetting, and intentional interference with prospective economic
18 advantage require an actionable underlying tort and argues that
19 there was no private right of action under NRS 706A.280, and
20 NAC 706 or any other Nevada statutes or regulations for diversion,
21 and cites to the hearing transcript dated February 27th, 2020, in
22 support of their position.

23 First of all, intentional interference with prospective
24 economic advantage is an underlying tort in and of itself. It does
25 not require a separate tort and can provide the underlying tort

1 necessary for claims of conspiracy or aiding and abetting.

2 Intentional inference with prospective economic
3 advantage requires the plaintiff to prove a prospective contractual
4 relationship between the plaintiff and a third party, the defendant's
5 knowledge of this prospective relationship, the intent to harm the
6 plaintiff by preventing the relationship, the absence of privilege or
7 justification by the defendant, and actual harm to the plaintiff as a
8 result of the defendant's conduct. That is *Leavitt versus Leisure*
9 *Sports Incorporation*, 103 Nev. 81, 1987.

10 The plaintiff's claim as to the intentional interference with
11 prospective economic advantage is not -- it doesn't need to have a
12 violation of the statutes in order to survive. And that's what the
13 defendant is missing on this.

14 What the Court agreed with the defendants on was that
15 there was no tort of diversion. However, the method by which
16 they're engaging in the tort of the interference of prospective
17 economic advantage is the diversion.

18 So it is the method, not the claim, that was the distinction
19 that was made by Judge Crockett. In other words, you could simply
20 strip the 706 out of the complaint completely and if the plaintiff was
21 able to show that the Uber drivers and the Lyft drivers were getting
22 kickbacks, so they entered into some form of illegal contract with
23 the defendant in order to interfere with the contract or with the
24 prospective economic advantage of these people coming to Reef
25 instead of coming to Planet 13, you could still have a basis in

1 common law for that intentional interference. And that's what is
2 the distinction in this case and the distinction upon which this
3 Court, not Judge Crockett, but this Court, made its decision on the
4 Motion to Amend to Assert the Counterclaims.

5 Because the Motion to Amend to Assert the
6 Counterclaims, the entirety of your proposed counterclaims was
7 predicated on a violation of the statute. So that's the distinction
8 that is being made here, is that in the complaint, it's just a method
9 by which the underlying tort was accomplished, whereas in your
10 counterclaims, it was the actual action in and of itself that you were
11 attempting to predicate your claims upon.

12 In other words, with your counterclaims, if you -- there's
13 no way to strip out the violation and still have those counterclaims,
14 whereas with Plaintiff, you could strip out the violation of NRS 706
15 and 708 completely and you would still potentially have the claims
16 there. That's the distinction. That is the reason why the Court is
17 not going to be inclined to grant the judgment on the pleadings,
18 because it does, in fact, find that that is a repackaged Motion to
19 Dismissed, it's based on the same issues that are currently up in
20 front of the Court of Appeals, and therefore, pursuant both to
21 NRCP 62 and the reasons stated today, the Court is not inclined to
22 grant the motion and will allow the Supreme Court to decide
23 whether or not the plaintiff got it right in the first instance.

24 As to the Motion for Reconsideration, again, based on the
25 Court's findings today, there is nothing new that has been brought

1 to the table on the Motion for Reconsideration, especially based on
2 the Court's analysis that it provided and the distinction between the
3 two statutes and how this was packaged by both the plaintiff and
4 the defendant. That motion will be denied, as well.

5 Mr. Conant, will you please -- or Mr. Schwarz --

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

7 THE COURT: -- will you please prepare the order and
8 submit it to Mr. Rulis for his approval as to form and content.

9 MR. CONANT: Yes, Your Honor. I'll collaborate with
10 Mr. Schwarz and we'll do that promptly.

11 THE COURT: All right.

12 MR. RULIS: Two things --

13 MR. CONANT: There was one other thing I wanted to just
14 briefly mention, if I may.

15 THE COURT: Hold on one second.

16 Mr. Rulis, you said there were two things. Yes?

17 MR. RULIS: One is a little bit of clarification and the
18 second is a pending motion that's on Your Honor's calendar for
19 next week that I was going to ask if we could move up.

20 THE COURT: Okay. Go ahead.

21 MR. RULIS: So -- let me do that. Let me do that first,
22 because I think that's quick, is next week, I think it's scheduled for
23 the 21st is our Motion to File under Seal the opposition to the
24 Motion to Extend the Deadlines. There was no opposition filed to
25 that. I'd just ask if we could advance that and it be granted.

1 THE COURT: You can advance that and since there was
2 no opposition filed, unless Mr. Conant or Mr. Schwarz has an
3 opposition, that can be sealed.

4 MR. SCHWARZ: Your Honor, we do not have an
5 opposition and that can be sealed.

6 THE COURT: Okay. That'll be granted then, so you can
7 submit an order on that, Mr. Rulis.

8 MR. RULIS: Thank you, Your Honor.

9 And then just one of clarification is -- and I understand
10 your Court's -- Your Honor's ruling, I'm just trying to make sure -- I
11 think I understand it, I'm trying to make sure I completely do. And
12 that's on the issue of intentional interference, when you talk about
13 the absence of privilege and damages, and that you could strip
14 away the violations of the statutes, the complaint talks about, and
15 paragraph 56 and 57 all reference it, which is diversion. And the
16 problem with that is you can't have diversion without a violation of
17 the statute.

18 Diversion is a statutory creation. And so to say that
19 there's a absence of privilege or damage that is separate from
20 diversion, the complaint specifically states that it's all based on
21 diversion. And you can't have diversion without a violation of the
22 statute.

23 And so I guess I'm trying to get a clarification of how you
24 can fully strip out the violations of the statute when it's based
25 entirely on diversion, which is entirely a statutory creation. And

1 without violations of the statute, there's no such thing as diversion.

2 THE COURT: Theirs is the method, it is not the claim in
3 and of itself. That's the distinction.

4 MR. RULIS: And, sorry, when you say method or -- I'm
5 not sure I understand what you mean is method.

6 THE COURT: What I'm saying is, is that your amended --
7 your proposed amended counterclaims was going to an actual
8 violation of the statute in and of itself to establish your claims. It
9 wasn't just the method. This is the method by which they are
10 supporting the intentional interference with economic advantage --
11 with prospective economic advantage.

12 MR. RULIS: And, I guess, you know, the only other thing
13 is you do -- I guess, is that under Nevada law, whether they
14 intended or want to interpret their complaint some other way, they
15 are bound by the allegations in their complaint. And their
16 complaint specifically says that it's based on violations of the
17 statute.

18 THE COURT: The Court's made its ruling, Mr. Rulis.

19 MR. RULIS: Understood. And I appreciate the
20 clarification, Your Honor.

21 THE COURT: Okay. All right. Mr. Conant, you had
22 something else?

23 MR. CONANT: Yes. There's one thing that I -- I was
24 listening to the Court clarify and I didn't -- there was one thing that I
25 didn't hear that I wanted to point out. I'll make this quick. You

1 saved us a lot of time by announcing your ruling as you did. I'm
2 afflicted with long-windedness, so if I'd gone over that, it would
3 have taken longer than it took you to go over those things.

4 But one thing that I didn't hear had to do with this futility
5 argument. And I wanted to point out that in your September 2nd
6 ruling --

7 THE COURT: Uh-huh.

8 MR. CONANT: -- you did two things. When you denied
9 that motion for permission to amend and had a counterclaim, you
10 went through the private right of action analysis, but then you
11 said -- and this is at page 5, lines 5 through 12 of your
12 September 2nd order, you said:

13 However, even if the Court were to find that there existed
14 a private right of action, an amendment would still be futile
15 based on the documentary evidence, provided Plaintiff has not
16 violated the statute. Plaintiffs' advertisement clearly shows that
17 there is a disclaimer in their advertisement. Therefore, they are
18 not in violation of NRS 678.520(d)(11), because they are not
19 advertising receipt of a free product without purchase.

20 In the Planet 13 papers, they didn't address this separate
21 equally dispositive independent grounds for denial of their Motion
22 for Permission to Amend the answer and add the counterclaim.

23 The only thing that they did in their Motion for
24 Reconsideration was on pages 3 and 4, and there's just a reference,
25 one word reference to futility in the heading on page 3. And then if

1 you read in that section that follows, the heading that begins on
2 page 3, what Planet 13 argues is incorrect. It argues on page 4 at
3 lines 3 to 6, and I quote:

4 "The Court concluded MM's proposed counterclaims were
5 futile because no private right of action exists for those claims
6 under NRS 678B.520(11), and then CCR 6.120(d)."

7 That's not correct. That, Your Honor, is not what you held
8 at all. What you actually held is what I quoted above in the
9 remarks, where you said that even if they were to -- even if the
10 Court were to find that there existed a private right of action, an
11 amendment would still be futile.

12 And so one -- I just wanted to point out that one of the
13 things that Planet 13 did not do, or it calls itself MM in its papers,
14 one of the things that MM did not do is address your second
15 separate independent grounds for overturning -- or, I'm sorry,
16 denying that Motion to Amend the answer and counterclaim. And
17 the only time that they touched on it, I don't really want to say they
18 addressed it, they touched on it, they misquoted your order. That is
19 not what your order said. You did not find futility "because of the
20 private right of action analysis." Your futility finding was separate
21 and independent.

22 And so -- anyway, as I said, I'm afflicted with
23 long-windedness. I'll stop right there. I would just ask that when I
24 submit the order, that I have permission to also include that second
25 separate ground, as well as a basis for denying the Motion for

1 Reconsideration. That's it.

2 THE COURT: Mr. Rulis, any response?

3 MR. RULIS: I guess I'd say that I think your order speaks
4 for itself. But on page 5, lines 1 through 4, you talk about that the --
5 there's no private right of action. And then there's a little bit -- as
6 such, the amendment would be futile. So as far as talking to futility
7 is -- as it pertains to private right of action, that's what your order
8 says.

9 But, you know, I'd say to that, the other issue with that is
10 that, you know, one of the things brought up by Your Honor's ruling
11 is the issue of -- you know, the fact that there -- I think there's every
12 bit a civil -- amount of civil conspiracy between Tryke and the cab
13 companies with whom they've agreed and who drive around the
14 what we believe to be a illegal advertisement. And so to that
15 extent, it's beyond just the violation of the statute. But that's a
16 method by which they've put in a violative advertisement out there.

17 But I understand your ruling.

18 THE COURT: All right. Mr. Conant, you can -- I don't think
19 it's necessary, but because I think the other order stands on itself,
20 so I don't think that you need to put the full analysis. But you can
21 put one line within this order on the Motion for Reconsideration
22 that simply, you know, outlines that the Motion for Reconsideration
23 was brought on the idea that the Court's decision in -- on the
24 Motion to Amend was erroneous on the basis of Judge Crockett's
25 prior decision regarding the private right of action. And the

1 defendants' argument that both statutes were similar, put in my
2 findings from today, and then you can put in a one-liner that says,
3 you know, what I stated in my prior order that it was also -- the
4 Motion to Amend was also denied on the basis of there not being,
5 you know, the separate grounds that you just stated, which was not
6 addressed in the Motion for Reconsideration.

7 MR. CONANT: Understood. I took a note. We'll do that.

8 THE COURT: All right.

9 MR. RULIS: And, then sorry, I apologize, Your Honor.
10 One last thing.

11 THE COURT: Sure.

12 MR. RULIS: I'd like to ask if Your Honor would be willing
13 to entertain an oral Motion for a Stay at this time.

14 THE COURT: And I was thinking about this as I was doing
15 all of it, because I think that to the extent that the Supreme Court
16 may come back and say no, we agree with the defendant, you
17 know, there's -- these are new statutes, essentially, in the way that
18 they're being interpreted. So that's not lost on me and I really don't
19 want everybody to be doing a whole bunch of work and then
20 having the Supreme Court coming back and saying, No, Judge
21 Crockett and Judge Peterson got it wrong. And here's what we're
22 going to do instead.

23 So I was actually already going to ask you all if you
24 thought that a stay was going to be appropriate in this matter. My
25 inclination would be to grant one.

1 MR. RULIS: I do, and I'm asking for a stay at this point.

2 THE COURT: Mr. Conant?

3 MR. CONANT: Not prepared, really, to respond to that.

4 That's something that we had considered. And so today wouldn't
5 be the right time to address that. I'd want to confer with other
6 counsel in the case and I'd want to confer with the client. And, you
7 know, form a better understanding before responding to that.

8 THE COURT: All right.

9 MR. CONANT: And there may be some other issues that
10 would have to be folded into that as well, but perhaps I'm not
11 thinking about, because this was just sort of raised sua sponte this
12 morning without any prior notice. So I'm just not prepared, we're
13 not prepared to really address that yet today, Your Honor.

14 THE COURT: All right. I will tell you, for the reasons I
15 stated, my inclination would be to grant a stay. So here's what I'm
16 going to do. I'm out of town starting this Friday for the next three
17 weeks. I would like the parties to get together, see if you can enter
18 into a stipulation to stay.

19 If not, then go ahead and file your Motion for Stay,
20 Mr. Rulis.

21 MR. RULIS: And, Your Honor, would you be willing to
22 give us a date to have that heard?

23 THE COURT: I'm going to give you that date. Give me a
24 second. I'm thinking --

25 MR. RULIS: Thank you.

1 THE COURT: -- kind of on my feet, as well.
2 Mr. Conant, go ahead and you can do any opposition to
3 that.
4 Mr. Rulis, you can do a reply, if needed.
5 And let's go ahead and Mr. Rulis, let's give you until
6 the 28th to do your motion.
7 Mr. Conant, you will have until -- what's the -- let me give
8 them seven days after that.
9 THE COURT CLERK: That would be November 4th.
10 THE COURT: November 4th. Any reply will be due by
11 November --
12 MR. RULIS: We'd be willing to get a -- sorry, Your
13 Honor -- we'd be willing to get it filed by that Monday, the 8th.
14 THE COURT: That's what I was thinking.
15 MR. RULIS: So that if --
16 THE COURT: And then we can do the hearing on the 12th.
17 Or the 11th.
18 THE COURT CLERK: Which is Veterans Day.
19 THE COURT: Oh, that's Veterans Day. So that's not going
20 to work.
21 THE COURT CLERK: Next day we're in court is the 16th.
22 THE COURT: How about -- is anybody going anywhere on
23 the 12th for the -- are you taking a long weekend? You want to do a
24 special setting on the 12th?
25 MR. RULIS: That works for us, Your Honor.

1 THE COURT: I have trial? Crap. That doesn't work.
2 THE COURT CLERK: We can do 8:00 in the morning.
3 MR. CONANT: The 12th is fine.
4 THE COURT: We can do 8:00 in the morning. We could
5 do 8:00 in the morning on the 12th.
6 MR. RULIS: We can make that work.
7 THE COURT: All right. Let's do that.
8 MR. CONANT: That would be fine. And if you said it and I
9 missed it, is there a date by which you'd like us to submit a
10 stipulation if one is reached? Or was it just prior to --
11 THE COURT: Yeah, by the 28th. So either --
12 MR. CONANT: 28th.
13 THE COURT: -- I'll be expecting either a motion and/or a
14 stipulation by the 28th of October.
15 MR. CONANT: Very well.
16 THE COURT: Okay?
17 MR. RULIS: Thank you, Your Honor.
18 THE COURT: All right. Does that deal with everything?
19 MR. CONANT: Nothing further from the plaintiff, Your
20 Honor.
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THE COURT: All right.


MR. RULIS: I believe that's everything from me. Thank you, Your Honor.

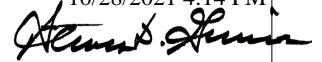
THE COURT: All right. Wonderful. Thank you, everybody. Have a good day.

[Proceeding concluded at 9:39 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability. Please note: Technical glitches in the BlueJeans audio/video which resulted in audio distortion and/or audio cutting out completely were experienced and are reflected in the transcript.


Shawna Ortega, CET*562


CLERK OF THE COURT

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*Attorneys for Plaintiff
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-804883-C
Dept No.: 8

**ORDER DENYING DEFENDANT MM
DEVELOPMENT COMPANY, INC. dba
PLANET 13'S:**

**(1) MOTION FOR JUDGMENT ON THE
PLEADINGS; AND
(2) MOTION FOR RECONSIDERATION
OF THE COURT'S ORDER DENYING
DEFENDANT'S MOTION FOR LEAVE TO
AMEND ANSWER TO ASSERT
COUNTERCLAIMS**

Date of Hearing: October 12, 2021
Time of Hearing: 8:00 a.m.

The Court, having reviewed and considered Defendant MM Development Company, Inc.
dba Planet 13 ("Planet 13")'s Motion for Judgment on the Pleadings (the "Motion for Judgment



on the Pleadings”), Planet 13’s Motion for Reconsideration of the Court’s Order Denying Defendant’s Motion for Leave to Amend Answer to Assert Counterclaims (the “Motion for Reconsideration,” and together with the Motion for Judgment on the Pleadings, the “Motion”), the consolidated opposition to the Motions filed by Plaintiff Tryke Companies SO NV, LLC (“Tryke”), and Planet 13’s reply in support of the Motions; having hearing argument of counsel for Planet 13 and Tryke at the October 12, 2021 hearing on the Motions; good cause appearing and for the reasons set forth on the record, **HEREBY FINDS, CONCLUDES, AND ORDERS:**

1. In its Motion for Reconsideration, Planet 13 has argued the Court erred in concluding there is no private right of action for Planet 13’s proposed counterclaim. The Court did not err in its analysis or conclusion that there is no private right of action for the counterclaims proposed by Planet 13.

2. Additionally, even if the Court were to conclude that there exists a private right of action, as noted in the Court’s September 2, 2021 Order and Judgment on Defendant MM Development Company, Inc’s Motion for Leave to Amend Answer to Assert Counterclaims and Plaintiff’s Countermotion for Sanctions, an amendment would be futile given the documentary evidence showing Plaintiff’s compliance with the statute. This matter was not addressed in Defendant’s Motion for Reconsideration.

3. Based on the foregoing, the Motion for Reconsideration is DENIED.

4. The Motion for Judgment on the Pleadings is, essentially, a repackaged motion to dismiss. The Court has reviewed the complaint in this matter, has reviewed the pertinent statutes and applicable case law, and agrees with the prior denial of Planet 13’s Motion to Dismiss. On this basis, the Court DENIES the Motion for Judgment on the Pleadings.

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5. Further, pursuant to Nevada Rule of Civil Procedure 62.1(a)(2), to the extent there are issues raised in the Motion for Judgment on the Pleadings that are also the subject of Planet 13's currently pending appeal of the September 10, 2020 Findings of Fact, Conclusion of Law, and Order Granting Plaintiff's Motion for Preliminary Injunction, the Court DENIES the Motion for Judgment on the Pleadings.

Dated this 28th day of October, 2021

948 C52 A305 7CC4
Jessica K. Peterson
District Court Judge

Dated the 27th day of October, 2021.

Dated the 27th day of October, 2021.

Submitted by:

Approved as to form:

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Tryke Companies SO NV, LLC*

From: [Joel Schwarz](#)
To: [Karen Morrow](#)
Subject: FW: [External] Tryke v. MM Development: Draft Order [URGENT]
Date: Wednesday, October 27, 2021 2:08:28 PM
Attachments: [KempJonesLogo2_e97f52fd-beed-4207-bfd3-035d78d1bf0d111.png](#)
[2021.10.13 DRAFT Order Denying MM's Mtns for Judgment on the Pldgs and for Reconsideration and Granting Mtn to FUS Ex. B to MM Opp to Tryke Mtn - .docx](#)
Importance: High

Please accept the changes, finalize, and submit today. Thank you.

Joel Schwarz

Attorney

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Joel@H1LawGroup.com

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From: Nathanael Rulis <n.rulis@kempjones.com>
Sent: Wednesday, October 27, 2021 2:00 PM
To: Joel Schwarz <joel@h1lawgroup.com>
Cc: Brook Jacobs <b.jacobs@kempjones.com>; Paul Conant <paulconant@conantlawfirm.com>; Melissa Emmel <MelissaEmmel@conantlawfirm.com>; Eric Hone <eric@h1lawgroup.com>; Jamie Zimmerman <jamie@h1lawgroup.com>; Karen Morrow <karen@h1lawgroup.com>
Subject: RE: [External] Tryke v. MM Development: Draft Order

Joel – Minor revisions in the attached. With those changes, you may add my e-signature.

Nathanael Rulis, Esq.



3800 Howard Hughes Pkwy., 17th Floor | Las Vegas, NV 89169
(P) 702-385-6000 | (F) 702 385-6001 | n.rulis@kempjones.com
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From: Joel Schwarz <joel@h1lawgroup.com>
Sent: Monday, October 25, 2021 3:22 PM
To: Nathanael Rulis <n.rulis@kempjones.com>
Cc: Brook Jacobs <b.jacobs@kempjones.com>; Paul Conant <paulconant@conantlawfirm.com>; Melissa Emmel <MelissaEmmel@conantlawfirm.com>; Eric Hone <eric@h1lawgroup.com>; Jamie Zimmerman <jamie@h1lawgroup.com>; Karen Morrow <karen@h1lawgroup.com>
Subject: [External] Tryke v. MM Development: Draft Order

Nate,

A draft order denying the motions for reconsideration and for judgment on the pleadings is attached for your review and comment.

Joel Schwarz

Attorney

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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 8

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: 10/28/2021

16 Patricia Stoppard p.stoppard@kempjones.com

17 Ali Augustine a.augustine@kempjones.com

18 Nathanael Rulis n.rulis@kempjones.com

19 Eric Hone eric@h1lawgroup.com

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21 Patricia Pierson p.pierson@kempjones.com

22 Joel Schwarz joel@h1lawgroup.com

23 Jessica Lopez j.lopez@kempjones.com

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