

KG WELLNESS #1, LLC, <i>et al.</i>	)	IN THE
	)	
Plaintiffs / Petitioners	)	CIRCUIT COURT
	)	
v.	)	FOR
	)	
MARYLAND CANNABIS ADMINISTRATION, <i>et al.</i>	)	ANNE ARUNDEL COUNTY,
	)	
Defendants / Respondents	)	MARYLAND
	)	
	)	
	)	Civil Case No. _____

**MEMORANDUM AND POINTS OF AUTHORITY  
IN SUPPORT OF PLAINTIFFS’ / PETITIONERS’  
MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs / Petitioners KG Wellness #1 LLC (“KGW #1”), KG Wellness #2 LLC (“KGW #2”), KG Wellness #3 LLC (“KGW #3”), KG Wellness #5 LLC (“KGW #5”), KG Wellness #6 LLC (“KGW #6”) and KG Wellness #8 LLC (“KGW #8”) (collectively, KGW #1, KGW #2, KGW #3, KGW #5, KGW #6 and KGW #8 are the “Applicants”), by and through their undersigned counsel and pursuant to Maryland Rules 15-501 *et seq.*, file this Memorandum and Points of Authority in Support of Plaintiffs’ / Petitioners’ Motion for Preliminary Injunction. Applicants seek an injunction requiring Defendants / Respondents, through the use of a declaratory injunction, a writ of mandamus and/or common law judicial review, to include Applicants in the Cannabis dispensary lotteries that they have applied to participate in (in Calvert and Talbot Counties). In support thereof, Applicants state as follows:

**PRELIMINARY STATEMENT AND STATEMENT OF FACTS**

The gravamen of this matter is very simple. The Applicants have all submitted applications for Cannabis adult-use dispensary licenses to the MCA. *See* Compl. at ¶¶ 40-41. Each of the Applicants is 65% owned by a “social equity” applicant, which is the class of individuals who are required to own 65% of an applicant for this round of cannabis applications. *Id.* at ¶¶ 22-34, 41-42.

A major purpose of the Cannabis Reform Act (the “Act”) passed last year by the General Assembly was to give such social equity applicants a first shot by a lottery to enter the new cannabis market. *Id.*

On March 7, 2024, after going through a quasi-judicial records review, each of the Applicants received notice that they were denied participation in the lottery, as a “final agency decision.” *Id.* at ¶¶ 46-54. The only ground for the denial for the Applicants by the MCA was a simple math error, obvious on the face of the application. *Id.* at ¶¶ 4-6, 43-54. Each Applicant submitted applications that included a “Financial Workbook,” wherein the Applicants each made an arithmetic error miscalculating projected pre-tax profits by an immaterial 2.48%. Instead of correctly adding and subtracting the numbers to a projected \$7,303,000 pre-tax profit, Applicants’ Financial Workbooks incorrectly stated that the pre-tax profits were \$7,484,000. *Id.* at ¶¶ 43-54. The incorrect Financial Workbook appeared as follows:

1.1	Anticipated startup <i>costs</i> for the build out of the physical location of your facility	\$800,000 Buildout, Permits \$175,000 Lease
1.2	Anticipated startup <i>costs</i> for any required permits for authorized activities	\$30,000 (\$5,000 App. \$25,000 License)
1.3	Anticipated startup <i>costs</i> for the first year of utilities that must include, but is not limited to, water, gas, and electricity	\$15,000
1.4	Anticipated startup <i>costs</i> for the first year of salaries or wages for initial staffing to begin operations	\$975,000
1.5	Anticipated startup <i>costs</i> for the first year of necessary equipment for the cultivation, production, or sale of cannabis and cannabis products	\$600,000
1.6	Anticipated startup <i>costs</i> for the first year of track-and-trace, point of sale, testing costs (if applicable) or other technology fees.	\$102,000
1.7	Anticipated <i>revenue</i> for the first year of initial operations	\$10,000,000
1.8	Anticipated <b>pre-tax</b> profit* for the first year of initial operations	\$7,484,000
	*To calculate anticipated pre-tax profit, subtract the total from rows A-F from the total in row G.	

*Id.* at ¶ 43. The actual math should not have reached the \$7,484,000 number, because \$10,000,000 (in projected profits) - \$800,000 - \$175,000 - \$30,000 - \$15,000 - \$975,000 - \$600,000 - \$102,000 = \$7,303,000.

The only grounds available under law for denial of a cannabis license are set forth in COMAR 14.14.05.03, which provides in relevant part as follows:

#### Application Review

- (1) The burden of proving an applicant's qualifications rests on the applicant.
- (2) The Administration may:
  - (a) Deny an application that:
    - (i) Is not complete in every **material** detail;
    - (ii) Contains a **material** misstatement, omission, misrepresentation, or untruth;
    - (iii) Does not meet the minimum qualifications for the lottery;  
or
    - (iv) Is not submitted by the established deadline; and
  - (b) Request any additional information from any applicant, if it deems the information necessary to review or process the application; and
  - (c) If the applicant does not provide the additional requested information within 10 calendar days, deny the application.
- (3) The Administration shall determine whether a submitted application meets the minimum qualifications for the lottery on a pass-fail basis by reviewing:
  - (a) A detailed operational plan for the safe, secure, and effective operation of the business;
  - (b) A business plan demonstrating a likelihood of success and sufficient ability and experience on the part of the applicant, and providing for appropriate employee working conditions;

- (c) A detailed diversity plan; and
- (d) For the first round of licensing and otherwise as required under Alcoholic Beverages and Cannabis Article, § 36-404, Annotated Code of Maryland, for any subsequent round of licensing, documentation that the applicant meets the requirements of a social equity applicant.

COMAR 14.14.05.03 (emphasis added)

Thus, the MCA can only deny an application for a “material” misstatement. But here, the error in the application is the definition of immaterial. It is only a 2.48% discrepancy, and it comes down to the question of whether the Applicants each had \$7,484,000 or \$7,303,000 in projected pre-tax profits. Either number is obviously more than sufficient to put the Applicants’ applications into the lottery. The regulations do not provide for a minimum amount of profits, and any small business that has over \$7,000,000 million in profits in its first year is a success.

The only reason why the MCA denied Applicants’ applications is because the MCA decided to apply a strict accuracy standard when evaluating the information in the Financial Workbook. This is reflected by the MCA Application Evaluation, which provides instructions to applicants and is attached as Exhibit 1. This public document provides in the section about the Financial Workbook that a basis for failure is “the individual line items did not accurately equate to the total assumed pre-tax profits projected.” This set of instructions was not submitted for Administrative Procedures Act public review and comment and as a result does not have the effect of law in the way that the regulations described above, which require *materiality* as opposed to *strict accuracy*, did.

Because the Applicants have been denied access to the lotteries for Calvert and Talbot County dispensary lotteries based on an immaterial mistake, this lawsuit was filed. By the causes of action pled, *i.e.*, declaratory judgment, common law mandamus, administrative mandamus and common law judicial review, Applicants seek for the Court, based on the information available to MCA at the time

of the denials, to rule on whether or not the MCA acted properly in denying Applicants access to the lotteries. For this, no further discovery is needed.

As explained below, Applicants have a real probability of succeeding in this case. Applicants can, to a reasonable (if not high) probability, establish that MCA plainly violated the Cannabis Reform Act and the regulations promulgated pursuant to the Act by enacting a standard for strict accuracy that goes far beyond the “material” standard in COMAR. If an injunction is not issued and a lottery for the dispensary licenses is held for Calvert and Talbot Counties, the Applicants will then have lost out on the very inclusion the law was established to promote.

There is no burden to MCA by including the Applicants in the lotteries. A preliminary injunction to preserve the status quo in this case is in everyone’s interest and should be issued.

**PROCEDURAL POSTURE AND THE AGREEMENT  
BETWEEN APPLICANTS AND THE MCA  
TO DELAY THE LOTTERIES FOR TALBOT AND CALVERT COUNTIES  
PENDING THE PRELIMINARY INJUNCTION HEARING**

On February 16, 2024, the same counsel representing Applicants in this case filed a lawsuit against the same MCA defendants in a matter captioned *KG Wellness #4 LLC v. Maryland Cannabis Administration, et al.*, Circuit Court for Anne Arundel County Case No. C-02-CV-24-000396 (the “KGW #4 Litigation”). The KGW # 4 Litigation is similar to this case in that it involves an entity named “KG Wellness #x” suing the same MCA parties in a matter concerning the social equity licenses that were supposed to be subject to a lottery in January, but which was delayed until March. The cases are different, however, in key respects. In the KGW #4 Litigation, the plaintiff is alleging that the online portal for submitting an application failed while its application was being submitted. Because the MCA treated the application as though it was never received, that plaintiff was never evaluated for inclusion in the lottery, and that plaintiff asserts that this failure to treat its application as timely did not comport with Maryland law.

In order to proceed with the KGW #4 Litigation through a preliminary injunction rather than through a temporary restraining order, that plaintiff and the MCA in that case agreed to delay the lottery for the dispensaries in Talbot County, pending the results of that litigation.

Applicants' case against Defendants / Respondents being raised in this lawsuit did not become ripe until the MCA formally denied them entry into the Talbot and Calvert County lotteries on March 7, 2024. Applicants retained counsel to bring suit concerning the denial of their applications on March 12, 2024. At that time, counsel for Applicants reached out to the MCA on their behalf. Again, to avoid the need for a TRO, another agreement was entered into. The agreement, which was codified via emails attached hereto as Exhibit 2, has the following terms:

- (1) The lotteries in Calvert and Talbot Counties are held in abeyance until the Circuit Court for Anne Arundel County has an opportunity to rule on the Applicants' Motion for preliminary injunction;
- (2) This lawsuit is to be filed by last Friday or "early" this week, which counsel had discussed over the phone to mean by Tuesday of this week;
- (3) MCA shall have an extension to answer the Complaint in the KGW #4 Litigation until 14 days after the Court rules on the motion for preliminary injunction in that case;<sup>1</sup> and
- (4) If the Circuit Court for Anne Arundel County denies the Applicants' motion for preliminary injunction in this case, then the Applicants will dismiss this complaint.

In reliance on this agreement, Applicants opted to file for a preliminary injunction rather than seek a TRO. Also, as a result of this agreement, the lotteries for Calvert County and Talbot County dispensaries licenses have been held in abeyance at least until the hearing on the preliminary injunction here. Upon information and belief, all of the other lotteries took place on March 14, 2024.

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<sup>1</sup> A consent motion has already been filed to extend this deadline, pursuant to the agreement.

## LEGAL STANDARDS FOR PRELIMINARY INJUNCTION

Preliminary injunctions “are designed to maintain the status quo between parties during the course of litigation.” *Eastside Vend Distribs. v. Pepsi Bottling Grp., Inc.*, 396 Md. 219, 240 (2006) (cases cited therein). “The status quo to be preserved by a preliminary injunction has been described as the last actual, peaceable, noncontested status which preceded the pending controversy.” *Dep’t of Health & Mental Hygiene v. Balt. Cnty.*, 281 Md. 548, 556 n.9 (1977) (internal quotation omitted). “Injunctive relief is ‘a preventative and protective remedy, aimed at future acts, and is not intended to redress past wrongs.’” *Eastside Vend Distribs. v. Pepsi Bottling Grp., Inc.*, 396 Md. 219, 240 (2006) (quoting *El Bey v. Moorish Science Temple of Am., Inc.*, 362 Md. 339, 353 (2001)). See also *Litton Sys., Inc. v. Sundstrand Corp.*, 750 F.2d 952, 961 (Fed. Cir. 1984) (“The function of preliminary injunctive relief is to preserve the status quo pending a determination of the action on the merits.”).

In this case, the *status quo* is in jeopardy because, if not enjoined, the MCA will conduct the lotteries for Calvert and Talbot Counties without Applicants’ participation. Once the lottery is held, the *status quo* would be altered beyond repair.

The Maryland Supreme Court instructs trial courts, when considering the appropriateness of granting a preliminary injunction, to examine four factors:

- (1) the likelihood that the plaintiff will succeed on the merits;
- (2) the “balance of convenience” determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal;
- (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest.

*Ehrlich v. Perez*, 394 Md. 691, 708 (2006) (upholding preliminary injunction requiring state to pay Medical Assistance) (quoting *Dep't of Transp., Motor Vehicle Admin. v. Armacost*, 299 Md. 392, 404–05 (1984)). As discussed below, all of these factors weigh heavily in favor of a preliminary injunctions in this case.

## ANALYSIS

**1. The Applicants can demonstrate facts necessary to establish a “real probability of prevailing on the merits” of its claims for relief.**

**A. The Applicants are entitled to injunctive relief, mandamus and/or common law judicial review due to MCA’s violation of the Cannabis Reform Act and related COMAR provisions.**

To satisfy the first element, movants must establish that they have a “real probability of prevailing on the merits, not merely a remote possibility of doing so.” *Ehrlich*, 394 Md. at 708 (quoting *Fogle v. H & G Restaurant, Inc.*, 337 Md. 441, 456 (1995)). Applicants can easily establish facts to show their real probability of success on their claim for a declaratory judgment that Defendants / Respondents acted improperly in denying their applications for adult-use cannabis dispensary licenses. Indeed, Applicants can establish (and there will be no dispute) that they qualified for participation in the Calvert and Talbot County lotteries but for MCA’s negative determination based on the clear and obvious mistake made in the calculation of their projected profits before taxes.

**(i) Denial was Improper Because the Error was Immaterial. Under the Regulations, Only a Material Misstatement is a Basis for Denial. The MCA’s Decision to Apply a Different Standard of Strict Accuracy is Inconstant with the Regulations.**

In enacting the Cannabis Reform Act, the Maryland General Assembly and Governor articulated the goals that Maryland’s nascent adult-use cannabis industry has “*full* participation” and includes “people from communities that have previously been disproportionately impacted by the



war on drugs in order to positively impact those communities.” To accomplish these goals, the Act sets forth procedures to allow social equity applicants to participate in the first round of licensing through a fair and random lottery.

Denial of an application for entry into the lottery under COMAR 14.14.05.03 (quoted in full above) is only permitted under narrow circumstances. None of them are present here. Because Applicants made complete and timely applications, they could only be denied if they made a “material misstatement, omission, misrepresentation, or untruth.” The 2.48% calculation error for assessing pre-tax profits cannot possibly be considered material. First, the MCA cannot (and will not) claim that an applicant with either \$7,484,000 or \$7,303,000 in projected profits fails to qualify for the lottery for insufficient projected profits. For any new small business, that is an excellent first year of profits. A miscalculation cannot be said to be material where either number would be acceptable.

This is fully supported by Generally Accepted Accounting Principles (“GAAP”). Under GAAP, a variance of less than 5% is considered immaterial. Indeed, GAAP requires a plus or minus of 5% before a reasonable investor will be influenced in their investment decisions. Further, even recommendations for internal financial control for compliance with the Sarbanes Oxley Act of 2002 regarding corporate transparency provide that financial data are accurate within a 5% variance.

In denying Applicants’ applications, the MCA failed to give meaning to COMAR 14.17.05.04A, which provides that “(2) Any applicant that meets the minimum qualifications for licensing **shall** be placed in the lottery.” (emphasis added). Because of the use of the word “shall,”

it is mandatory to place qualified applicants like the Applicants here into the lottery upon demonstration that they meet the minimum qualifications.

Mistakes in applications to the State are not new. But in other, analogous situations, the State does not demand strict accuracy, as the MCA claims to impose here. In other similar and analogous contexts, the State corrects or waives those mistakes. For example, for mistakes made in competitively procured State contracts, COMAR 21.05.02.12 provides that “minor irregularities” such as computation errors that are ascertainable on the face of the bid or proposal may be waived. COMAR states as follows in relevant part

Mistakes in Bids.

- A. General. Technicalities or minor irregularities in bids, as defined in COMAR 21.06.02.04, **may be waived if the procurement officer determines that it shall be in the State's best interest.** The procurement officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid, or waive the deficiency if it is to the State's advantage to do so.
- B. Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Regulation .09.
- C. Confirmation of Bid. If the procurement officer knows or has reason to conclude that a mistake has been made, the bidder may be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn upon the written approval of the Office of the Attorney General if any of the following conditions are met:
  - (1) **If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid**

**document are** typographical errors, errors in extending unit prices, transposition errors, and **arithmetical errors.**

*Id.* (emphasis added). Thus, not only can the state waive a mistake, but where an arithmetic error is clear on the face of the bid document, then the State “shall” correct the bid to the intended bid and it “may not be withdrawn.”

In addition, immaterial mistakes that result in minor irregularities in bids or proposals are not grounds for rejection so long as there is no prejudice to other bidders. *See* COMAR 21.06.02.04, which provides as follows:

#### Minor Irregularities in Bids or Proposals

- A. A minor irregularity is one which is **merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation in a bid or proposal from the exact requirement of the solicitation**, the correction or waiver of which would not be prejudicial to other bidders or offerors.
- B. The defect or variation in the bid or proposal is **immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost or scope of the procurement.**
- C. The procurement officer shall either give the bidder or offeror an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or proposal or waive the deficiency, whichever is to the advantage of the State.

(emphasis added).

What these analogous provisions in similar circumstances make clear is that the State will not reject a good bid for a contract with the State just because someone makes a math mistake. These rules are applied to their logical conclusion. For example, in the *Appeal of Flipo Construction Co., Inc.*, MSBA No. 2320 (Feb. 5, 2003), J.D. Echman, Inc. made a bid for the cleaning and painting of a bridge. That bid made an “obvious mistake,” in that it was apparent that where Echman intended

to bid \$167,500 for a line item in the proposal, it accidentally overbid by 10x that amount, listing the item as being bid for \$1,675,000. The procurement officer understood when examining the numbers that this was just a math error. The State thus corrected the error. As a consequence, Eckman submitted the lowest bid. When a bid protest was made by the bidder who would have been the lowest bidder but for the correction, the Maryland State Board of Contract Appeals affirmed the procurement officer on the ground that the mistake and intended correction were clearly intended on the face of the bid document. *See also In the Appeal of PREA America, LLC*, MSBA Nos. 30336 & 3040 (Nov. 7, 2017) (Procurement officer who did not waive or correct math error in proposal reversed – correcting math error, which amounted to failing to list a line item for \$0, was immaterial).

Under the circumstances, if the Court requires the MCA to abide by its own regulations, then there is more than a real probability that Applicants will prevail on the merits.

Importantly, the purpose of Maryland’s procurement laws and regulations are consistent with the stated desire of the Governor and General Assembly in creating the lottery for social equity applicants. *See Md. Code Ann., St. Fin. & Proc., § 11-201(a)* and COMAR 21.01.01.03 (stating, among other things, purposes of fairness, equality, and maximizing participation).

**(ii) Denial was Improper Because the Instructions That the MCA Claims Applicants Violated Do Not Have the Effect of Law. On the Other Hand, the Regulations That Demand a “Material” Misstatement are the Law.**

Here, according to the denial notices, attached hereto as Exhibits 3 through 8, the denial was based **not** on the COMAR provisions that govern denial of an application (discussed above and requiring that any misstatement be “material”), but instead, several of the denial emails assert that the decision was based on the “Evaluation Criteria and Application Instructions.” That criterion, rather than resting on “material” misstatements, requires **strict accuracy**. Specifically, for the

Financial Workbook, the Instructions provide that it is a criteria for failure when “the individual line items did not accurately equate to the total assumed pre-tax profits projected.” *See* Exhibit 1.

Yet the instructions cannot bypass or override the regulations. The regulations went through the APA review process, which requires giving the public notice and an opportunity to comment. As part of that process, COMAR 14.14.05.03 was promulgated as written. Consistent with other State regulatory schemes – such as those for procurement bidding – the regulations allowed for disqualification for an application only upon an error or misstatement that was “material.”

The instructions, on the other hand, which Applicants are accused of violating in the denial notice, never went through an APA review. Because they are not law or regulations, the instructions cannot be a basis for the MCA to bypass the clear meaning of the COMAR provision that went through the APA review process.

This is not the first time that the MCA has sought to enforce a requirement that did not go through the APA review process during the review of cannabis license applications. In *Green Healthcare Solutions, LLC v. Natalie M. Laprade Md. Medical Cannabis Commission*, 254 Md.App. 547 (2022), the predecessor to the MCA, known as the Cannabis Commission, was found to have engaged in similar conduct.<sup>2</sup> *Green Healthcare* involved a disappointed applicant for a cannabis processor license. After being denied the license during the round of applications that occurred in 2019, the Cannabis Commission advised Green Health and other disappointed applicants that, in order to appeal the denial, they were required to seek an appeal that would go to the Office of Administrative Hearings through regulations that were promulgated by the Health Department, rather than directly by the Cannabis Commission. Green Health believed this was

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<sup>2</sup> Many of the same personnel now work for the MCA, including Mr. Tilburg, who was the Executive Director of the Cannabis Commission.

improper, as the Cannabis Commission never actually enacted a regulation through the APA process allowing it to compel such appeals before filing suit. Green Health sought a declaratory judgment and mandamus at the Circuit Court, without exhausting the purported administrative review process. *Id.* at 556-558.

The Cannabis Commission opposed the petition for mandamus and the declaratory judgment action, claiming that it had the power to issue such regulations, and that this was enough. The then Court of Special Appeals disagreed, and found that Green Healthcare was entitled to seek immediate review in the Circuit Court through administrative mandamus, which is available when there is no appeal process at law. *Id.* at 543-44 (“If the Commission had adopted such an administrative remedy by regulation, it could have created an exhaustion requirement for that administrative remedy ... Because there was no administrative review remedy authorized by statute or an administrative scheme providing for such relief, there was no exhaustion requirement, and the circuit court erred in finding that GHS’s petition should be dismissed for failure to exhaust administrative remedies”). The result should be similar here where the MCA has failed to take the necessary steps required by the APA process.

Here, the MCA seeks to impose the requirements from its instructions, even though they are more stringent than those adopted by the MCA via regulation. Naturally, the MCA could override its own regulations by promulgating new ones, so long as they are consistent with the governing statutory scheme. But it has not done so, and it has not put the instructions here through the APA process necessary to promulgate regulations that have the force of law and can override previously adopted regulations. As a result, the Court should disregard the entire set of instructions to the extent they contradict COMAR, as they do here.

**(iii) Applicants Should Succeed on the Merits Under Any of the Causes of Action in the Complaint / Petition.**

In the Complaint / Petition, the Applicants sought four different causes of action, and they should prevail on any of them.

The Court could enter a declaratory judgment under Count I that the denial of Applicants' applications was arbitrary and capricious. The Court could also, under common law mandamus in Count II, find that the act of denying the applications based on the Instructions and without a true material misstatement amounted to a ministerial failure, and issue a writ of common law mandamus, pursuant to Maryland Rule 15-701.

In the alternative, pursuant to Maryland Rules 7-401, et seq., administrative mandamus, in a case where there is no statutory or regulatory right to further review, allows a Circuit Court to overrule an agency (defined to be a unit of the State),<sup>3</sup> and allows the Court to find that the decision below is reversible on a number of grounds, including that it "is affected by any error of law ... is unsupported by competent, material, and substantial evidence in light of the entire record as submitted ... is arbitrary or capricious, or ... is an abuse of its discretion." All of these criteria apply. First, it was an error of law for the MCA to treat its Instructions as though they overrode the material requirement in the regulations. Second, an error that resulted in projected pre tax profits of over \$7 million cannot be seen as "material" in this context, because the MCA would have been satisfied by either the correct number (\$7,303,000) or the misstated number (\$7,484,000). Also, such a deviation of just 2.48% is not material under any standard of evaluation.

In addition, the Court should also conclude that the decision here was arbitrary and capricious. According to the State Supreme Court, such a finding is appropriate when the Court

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<sup>3</sup> Pursuant to Md. Code Ann., Alc. Bev. & Cannabis, Section 36-201, the MCA is an agency and a unit of State government.

cannot sustain the agency's findings for the reasons stated by the agency. *See Baltimore Police Dep't v Open Justice Baltimore*, 485 Md. 605, 660 (2023). Here, where the agency's decision is based on a set of instructions that do not have the force of law, in contrast to a regulation requiring materiality, the decision is arbitrary and capricious. It is also arbitrary and capricious because, even if applying the materiality standard, the math error is not material for the reasons previously stated. In addition, administrative mandamus is also appropriate where the agency abused its discretion, because the decision does not logically flow from the findings from which it supposedly rests, and the decision has no reasonable relationship to its announced objective. *See Anderson v. Burson*, 424 Ms. 232, 243-44 (2011).

Finally, the State Supreme Court has said, on a number of occasions, that the courts can provide judicial review where no review is established by law if an agency's decision is arbitrary and capricious. *See, e.g., Baltimore Police Dep't*, 485 Md. at 657-59; *Heaps v. Cobb*, 185 Md. 372, 378-79 (1945).

The Court should find a reasonable probability of success on the merits on all of the causes of action.

**2. The “balance of convenience” weighs in favor of a preliminary injunction -- greater injury would not be done to the Defendants by granting the injunction than would result from its refusal.**

The Defendants / Respondents will suffer little or no injury if a preliminary injunction is granted. A trial on this matter can be expedited as the facts in dispute would be relatively simple – whether the admitted math mistake warranted the denial of Applicants' applications.

Such a delay would result in little harm compared to the great irreparable harm to Applicants discussed below. Indeed, the MCA has already delayed issuance of the licenses by announcing multiple delays of the lottery. In addition, the MCA did not insist on Applicants here or KG Wellness



#4 to seek a TRO to delay the lotteries in Calvert and Talbot Counties. Rather, the MCA understood that such a reasonable delay is appropriate to adjudicate the rights of parties seeking relief from denial of their applications.

Also, if the Court orders that Applicants be placed into the lottery, the MCA will simply be ordered to administer the lottery that it plans to administer on a date when, if successful, the Applicants can participate. The MCA has already conducted the other lotteries, and so it cannot say that operating these lotteries on the Court's timeframe is a burden.

**3. Applicants will suffer significant irreparable harm without an injunction, and the MCA will suffer virtually no harm if an injunction is entered.**

Applicants will suffer immediate and irreparable harm unless the Court directs the MCA to include them in the lottery. Without being a part of that lottery, Applicants will lose the opportunity to obtain a dispensary license despite obtaining social equity verification and submitting applications that meet all the minimum requirements for entering the lottery. Conversely, the MCA will suffer no harm if it is instructed to include Applicants' application in the lottery.

As ordinarily understood, an injury is irreparable, within the law of injunctions, where it is of such a character that a fair and reasonable redress may not be had in a court of law, so that to refuse the injunction would be a denial of justice—in other words, where, from the nature of the act, or from the circumstances surrounding the person injured, or from the financial condition of the person committing it, it cannot be readily, adequately, and completely compensated for with money.

*Coster v. Dept. of Personnel*, 36 Md. App. 523, 526 (1977) (quoting 42 Am. Jur. 2d, Injunctions, § 49).

In this instance, without the issuance of a preliminary injunction to prevent a lottery until conclusion of this case (which, if the Court believes it has all information and that Defendants have violated the law, it may order at the conclusion of the hearing on the preliminary injunction pursuant to Rule 15-505(b)), Applicants could forever lose any chance to be awarded a license in the lottery

in this first round designated for social equity applicants, and being deprived of an opportunity to obtain a license that is required to pursue a chosen profession constitutes irreparable injury. *See Enyart v. Nat'l Conference of Bar Examiners, Inc.*, 630 F.3d 1153, 1165 (9th Cir. 2011) (“[W]e agree with the district court's conclusion that Enyart demonstrated irreparable harm in the form of the loss of opportunity to pursue her chosen profession.”); *City of Fremont v. F.E.R.C.*, 336 F.3d 910, 914 (9th Cir. 2003) (finding irreparable harm where plaintiff would face more-difficult competition for a limited license).

Requiring Applicants to wait until after a lottery to exercise its rights is both impractical and potentially harmful to the entire process. Even if Applicants could overcome a certain sovereign immunity defense, monetary damages would be virtually impossible to calculate, as the loss of the chance to obtain a license is an intangible harm. When it is impractical to ascertain precise economic consequences, a damages remedy is inadequate. *Maryland-Nat'l Capital Parking and Planning Comm'n v. Washington Nat'l Arena*, 282 Md. 588, 615 (1978) (“irreparable injury is suffered whenever monetary damages are difficult to ascertain or are otherwise inadequate.”).

Once the lottery is conducted, the MCA cannot “un-ring the bell” as the winners will be announced, and the adult-use licenses accounted for. Further, for the reasons discussed above, money damages will be virtually impossible to calculate or obtain. Moreover, money damages alone will not suffice to ameliorate the harm that will be caused if the MCA proceeds with the lottery without Applicants. Applicants are not seeking an award of money damages from the MCA; they simply want their applications included in the lottery with all other social equity verified applicants so that they will have an opportunity to pursue their chosen profession.

Moreover, the MCA has accommodated a delay of the lottery for this litigation so far, and appears amenable to allowing the lottery to be delayed by what it considers a reasonable amount of

time in order to allow the Applicants to have their rights determined. The Court can grant a preliminary injunction and either make that decision final on the merits or schedule the final hearing on the merits in short order, such that the delay caused by this litigation is still reasonable and acceptable.

**4. Entering a Preliminary Injunction is not against, but favors, the public interest.**

There is no public interest in keeping Applicants' applications out of the lottery. Applicants are properly structured social equity applicants whose majority stakeholders obtained their social equity verification and who have submitted applications that fulfill the minimum requirements for being entered into the lotteries for Calvert and Talbot County.

Furthermore, there is no claim that significantly delaying the lottery harms the public's ability to obtain adult-use cannabis. The Cannabis Reform Act allowed medical cannabis license holders to convert their licenses into adult-use licenses. Md. Code Ann., ALCO. BEV., §§ 36-401(b)(1)(ii), 36-404. Even without a lottery, the public can readily obtain cannabis for adult-use.

Further, there *is* public interest in allowing Applicants to participate in the lottery or delaying the lottery until the merits of Applicants' lawsuit are adjudicated. When Governor Moore made clear the State's policy of promoting social equity applicants for this round of licensing, and when the legislature adopted this policy in the Cannabis Reform Act, they stated a public policy that **required** participation by properly verified social equity applicants who submit applications that fulfill the minimum requirements for participation in the lottery, as they have here.

**CONCLUSION**

As established by the evidence submitted and the arguments and analysis above, Defendants violated the Cannabis Reform Act and related COMAR. Applicants needs this Court to act quickly to prevent them from being unnecessarily and irreparably harmed.

WHEREFORE, Applicants pray that the Court grant the motion and enter a preliminary injunction:

(a) requiring the MCA to include Applicants in the upcoming lottery for adult-use cannabis licenses for Calvert and Talbot Counties (pursuant to the lotteries that each Applicant applied for);  
or

(b) alternatively, enjoining the MCA from conducting the lotteries in Calvert and Talbot County until (1) it has made arrangements to include Applicants in the lotteries, or (2) this lawsuit is decided on the merits.

Respectfully submitted,

/s/ Stuart A. Cherry

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## **Introduction**

Pursuant to Alcoholic Beverages and Cannabis Article, §36-404, Annotated Code of Maryland, the Maryland Cannabis Administration (MCA or Administration) will accept standard and micro cannabis business license applications for grower, processor and dispensary applicants. All applications that meet the minimum qualifications, on a pass/fail basis, will be included in a lottery to determine the recipients of a conditional license. Minimum qualifications will be based on the following:

1. A detailed operational plan for the safe, secure, and effective cultivation, manufacture, or dispensing of cannabis;
2. A business plan demonstrating a likelihood of success and sufficient ability and experience on the part of the applicant, and providing for appropriate employee working conditions; and
3. A detailed diversity plan.

Alcoholic Beverages and Cannabis Article, §36-404(d), Annotated Code of Maryland, limits the first round of licensing to social equity applicants who meet the application minimum qualifications. Only candidates who obtained a social equity applicant verification from the Administration prior to the application round are eligible to apply, enter into the lottery, and obtain a conditional licensing award.

To assist social equity applicants in meeting the application minimum qualifications, the Administration has created the following evaluation worksheet to help inform application development. The tables that follow will be used in the review process to determine whether an application meets the minimum qualifications for the lottery.

### **Application Lottery**

The application lottery will be administered as follows for the various license types:

- County lotteries for standard dispensaries. Each of Maryland's 24 counties (including Baltimore City) will have a unique pool of dispensary applications. **An individual or entity may apply for a standard dispensary license in only one (1) county. If an individual or entity applies for a standard dispensary license in multiple counties, all applications associated with the individual or entity will be denied.**

- Regional-level lotteries for **each** of the following license types:
  - Micro Growers
  - Micro Processors
  - Micro Dispensaries
  - Standard Growers
  - Standard Processors

The five regions for licensing lotteries are determined as follows:

- **Western Region:** Carroll, Frederick, Montgomery, Allegany, Garrett, and Washington Counties.
- **Southern Region:** Anne Arundel, Prince George's, Calvert, Charles, and St. Mary's Counties.
- **Central Region:** Baltimore, Harford, Howard, and Cecil Counties, and Baltimore City.
- **Eastern Region:** Caroline, Kent, Queen Anne's, Talbot, Dorchester, Somerset, Wicomico, and Worcester Counties.

An individual or entity may not be associated with applications submitted for the **same license type in multiple regions**. Additionally, an individual or entity may be associated with no more than two applications across all licensing categories within the **entire first licensing round**.

The MCA will maintain the lottery pools of applicants who have received a passing evaluation and return to these pools if any initially selected applicants are unable to meet the requirements of a conditional license. In addition, the MCA will conduct a second licensing round for all cannabis business licensing categories on or after May 1, 2024. Applicants are not required to possess or own property or a facility as part of the application, and the MCA strongly discourages any applicant from securing property or a facility prior to obtaining a conditional award.<sup>1</sup>

In an effort to promote applicant success while ensuring minimum qualifications for licensure are met, the Administration will use the following tables to evaluate an application. These tables should be used to guide application development.

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<sup>1</sup> Physical location need not be secured for applications. Including a secured location will **not** increase the odds of applicant success in entering the lottery. The MCA is **prohibited** from requiring physical location as a condition of application in accordance with §36-404(b)(3) of the Alcoholic Beverages and Cannabis Article.

## Instructions<sup>2</sup>

The following worksheet is intended to help potential applicants understand the criteria that will be used to determine whether an application meets the minimum qualifications and is eligible for the lottery. Consider the following in the development of your application:

1. You must use the MCA Provided Templates for all required attachments.
2. Provide only the requested information to meet the minimum criteria. Additional information will not contribute to the pass-fail evaluation.
3. Use each worksheet as a “checklist” to ensure that you meet the minimum qualifications for each plan.
4. Prior to submitting your application in the OneStop portal, you will need to have the following documents ready for attachment:
  - a. A verification report from Creative Services, Inc., indicating you meet the statutory criteria to be deemed a social equity applicant (*for social equity applicants only*). (PDF)
  - b. An operations plan that uses the MCA provided template and includes the specifications in the outlined tables. (PDF)
  - c. A business plan that uses the MCA provided template and includes the specifications in the outlined tables. (PDF)
  - d. A diversity plan that uses the MCA provided template and includes the specifications in the outlined tables. (PDF)
5. *Business Plan*: The business plan includes a separate worksheet to be uploaded for evaluation. The worksheet requires the applicant to provide the projections of certain monetary metrics; however, those **monetary metrics will not be used as independent evaluation measures**. As such, **projecting metrics (e.g., revenues) at higher figures will not provide applicants an advantage over those projecting lower figures**. The MCA strongly discourages any applicant from submitting information or figures that may be uninformed, unfeasible, or untruthful and factually incorrect. Similarly, applicants are not to provide other information that is verifiably false. **The Administration may deny any application that contains a material misstatement, omission, misrepresentation, or untruth** (COMAR 14.17.05.02). **The worksheet will be evaluated to ensure that the applicant has accurately calculated the total costs of their proposed business by adding each line item of the worksheet.**

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<sup>2</sup> These instructions are for the benefit of the applicant and shall not be misconstrued as professional business or legal advice.

6. **Any aspect or part of the submitted information or materials that indicate the applicant will violate any provision of Alcoholic Beverages and Cannabis Article, Title 36, Annotated Code of Maryland, COMAR 14.17, or COMAR 10.62, will result in a “fail” for the application.** All relevant statutes and laws should be carefully read and considered prior to the development of an application.
7. *Redacted Copies:* In addition to the specifications of the attachments outlined in the tables below (i.e., file type, page length, font size), applicants are required to provide redacted copies of *each* attachment in **one complete file to be uploaded**. Redacted copies may have certain text concealed from view for privacy protection, such as sensitive business information. It is the responsibility of the applicant to determine what information, if any, should be redacted with the understanding that the information provided and not redacted may be made public under the Maryland Public Information Act.
8. *Demonstration v. Confirmation:* At various points in the application, applicants are asked to either demonstrate or confirm components of their prospective business. When asked to *demonstrate*, the applicant should describe their experience, understanding, or expertise in the criteria listed. When asked to *confirm*, the applicant must simply state that they understand and will implement or abide by the criteria referenced.
9. *Social Equity Applicant Status:* Pursuant to Alcoholic Beverages and Cannabis Article, §36-404(d), applications will be considered *only* if at least 65 percent of the ownership and control of the applicant is held by one or more individuals who meet the statutory definition of a social equity applicant. In order to be eligible to apply, an applicant **MUST** verify their status as a social equity applicant in advance of the licensing round by *submitting supporting documentation to Creative Services, Inc. (CSI) for social equity status verification*. The social equity verification period is available to prospective applicants until **November 7<sup>th</sup>, 2023**. **Applicants should verify their social equity applicant status as soon as possible. Only individuals who have verified their status as a social equity applicant in advance may apply for any ownership share greater than 35% in the first round of licensing.** Candidates may access CSI’s portal, track their documentation status, and provide additional verification information as needed. Once verified, prospective applicants will be provided with a report that must be submitted along with the application to affirm their eligibility for the first licensing round.



10. *Pass/Fail Evaluation of Application:* The template below represents the *minimum* criteria for a successful application. **An application that fails to meet the minimum criteria shall not be considered.** Failure to meet the minimum criteria means:

- a. Failure to submit any one of the attachments in the manner prescribed by the MCA;
- b. Failure to accompany the application attachments with self-redacted copies of the prescribed attachments; or
- c. Missing, incomplete, or insufficient criteria in any subsections throughout the three attachments.

**Application Attachment A – (On Administration-Provided Template – “Operational Plan Template”):  
A detailed operational plan for the safe, secure,  
and effective cultivation, manufacture, or dispensing of cannabis**

Evaluation Measure	Evaluation Metric(s)	Criteria for Passing in Addition to Following Above Instructions	Criteria for Failure
<p>Operational Plan - Attachment. The operational plan submitted at minimum:</p>	<p>Meets the attachment standards required by the application portal.</p> <ul style="list-style-type: none"> <li>● 12-point font</li> <li>● Does not exceed 3 pages on the Administration prescribed template.</li> <li>● PDF format</li> </ul>	<p>Met <b>the three</b> attachment standards required by the application portal.</p>	<p>Does not meet <b>the three</b> attachment standards required by the application portal.</p>
<p>Operational Plan – Safety</p> <p>1. Safety Procedures. The operational plan discusses a safety plan for the operation of the business that <i>confirms</i>, at minimum:</p>	<p>Upon conditional licensing and prior to being granted a full license, the applicant will prepare and make available to the Administration safety procedures that must include responding to, <b>at minimum, the three (3) following</b> safety-related events:</p> <ol style="list-style-type: none"> <li>1.1 Fire safety</li> <li>1.2 Medical emergencies</li> <li>1.3 A threatening event such as an armed robbery, an invasion, a burglary, or other criminal incidents.</li> </ol>	<p>Included at minimum <b>the three</b> listed events in their confirmation of preparing and making such documentation available.</p>	<p>Did not include at minimum <b>the three</b> listed events in their confirmation of preparing and making such documentation available.</p>

<p>Operational Plan – Safety</p> <p>2. Safe Handling of Cannabis. The operational plan discusses a safety plan for the operation of the business that <i>confirms</i>, at minimum:</p>	<p>Upon conditional licensing and prior to being granted a full license, the applicant will create and make available to the Administration guidance documentation for the safe handling of cannabis that must include, <b>at minimum, the two (2) following</b> safety-related elements:</p> <ul style="list-style-type: none"> <li>2.1 Sanitary practices for those handling cannabis plants or products (unpackaged or packaged)</li> <li>2.2 Storage procedures for cannabis or cannabis products</li> </ul>	<p>Included at minimum <b>the two</b> listed elements in their confirmation of preparing and making such documentation available.</p>	<p>Did not include at minimum <b>the two</b> listed elements in their confirmation of preparing and making such documentation available.</p>
<p>Operational Plan – Safety</p> <p>3. Workplace Safety Regulations. The operational plan discusses a safety plan for the operation of the business that <i>confirms</i>, at minimum:</p>	<p>Upon conditional licensing and prior to being granted a full license, the applicant will create and make available to the Administration plans for remaining in compliance with regulations for workplace safety, that must cite at least three (3) relevant standards from <a href="#">OSHA 29-CFR 1910</a> Subpart E – Exit Routes and Emergency Planning.</p>	<p>Cited at minimum any <b>three relevant standards</b> from the provided federal code subsection in the confirmation of preparing and making such documentation available.</p>	<p>Cited less than <b>three relevant standards</b> from the provided federal code subsection in the confirmation of preparing and making such documentation available.</p>

Operational Plan – Security

4. Security Plan.

The operational plan discusses a security plan for the operation of the business that *confirms*, at minimum:

Upon conditional licensing and prior to being granted a full license, the applicant will create and make available to the Administration a security plan that must include, at minimum, **the two (2) following** elements:

4.1 The purchasing and implementing of continuous or motion-activated video surveillance recording system that meets the standards of MCA regulations, under:

COMAR 10.62.10.07 for growers;

COMAR 10.62.21.06 for processors; and

COMAR 10.62.27.07 for dispensaries.

4.2 The purchasing and implementation of an alarm system that meets the standards of MCA regulations under:

COMAR 10.62.10.06 for growers;

A COMAR 10.62.21.05 for processors; and

COMAR 10.62.27.06 for dispensaries.

Included at minimum **the two** listed elements and met regulatory compliance in the confirmation of preparing and making such documentation available

Did not include at minimum **the two** listed elements and/or did not meet regulatory compliance in the confirmation of preparing and making such documentation available

Operational Plan – Effectiveness

Plan for Regulatory Adherence.  
The operational plan discusses an effective plan for the cultivation, manufacture, or dispensing of cannabis that *confirms*, at minimum:

Upon conditional licensing and prior to being granted a full license, the applicant will create and make available to the Administration a plan to remain in compliance with all state and local cannabis laws and regulation, and other laws and regulations pertinent to the application license type, that must cite at least **the two (2) following** sources:

- Alcoholic Beverages and Cannabis Article, Title 36, Annotated Code of Maryland
- Code of Maryland Regulations Title 14, Subtitle 17, and Title 10, Subtitle 62.

Included at minimum **the two** listed sources in the confirmation of preparing and making such documentation available.

Did not include at minimum **the two** listed sources in the confirmation of preparing and making such documentation available.

**Application Attachment B (On Administration-Provided Template – “Business Plan Template”):  
A business plan demonstrating a likelihood of success and sufficient business ability and experience on the part of the applicant,  
and providing for appropriate employee working conditions**

Evaluation Measure	Evaluation Metric(s)	Criteria for Passing in Addition to Following Above Instructions	Criteria for Failure
<p>Business Plan - Attachment. The business plan submitted at minimum:</p>	<p>Meets the attachment standards required by the application portal.</p> <ul style="list-style-type: none"> <li>● 12-point font</li> <li>● Does not exceed 10 pages on the Administration prescribed template, with the exception of the financial worksheet which is not to exceed 1 page.</li> <li>● PDF format</li> </ul>	<p>Met <b>the three</b> attachment standards required by the application portal.</p>	<p>Does not meet <b>the three</b> attachment standards required by the application portal.</p>
<p>Business Plan - Likelihood of Success.</p> <p><b>1. Financial Workbook</b></p> <p>The business plan <i>demonstrates</i> the applicant's likelihood of success by providing, at minimum:</p>	<p>In the table provided in Section 1 of the “Business Plan Template,” the business plan must provide <b>the following eight (8) financial metric categories</b> without adjusting or compromising the template.</p> <ol style="list-style-type: none"> <li>1.1 Anticipated startup <i>costs</i> for the build out of the physical location of your facility</li> <li>1.2 Anticipated startup <i>costs</i> for any required permits for authorized activities</li> <li>1.3 Anticipated startup <i>costs</i> for the first year of utilities that must include, but is not limited to, water, gas, and electricity.</li> </ol>	<p>Included <b>only the eight</b> financial metric categories <b>AND</b> the individual line items accurately equate to the total assumed pre-tax profits projected.</p>	<p>Did not include or consider <b>the eight</b> financial metrics <b>OR</b> the individual line items did not accurately equate to the total assumed pre-tax profits projected.</p>

	<p>1.4 Anticipated startup costs for the first year of salaries or wages for initial staffing to begin operations.</p> <p>1.5 Anticipated startup <i>costs</i> for the first year of necessary equipment for the cultivation, production, or sale of cannabis and cannabis products.</p> <p>1.6 Anticipated startup <i>costs</i> for the first year of track-and-trace, point of sale, testing costs (if applicable) or other technology fees.</p> <p>1.7 Anticipated <i>revenue</i> for the first year of initial operations</p> <p>1.8 Anticipated <i>pre-tax profit</i> for the first year of initial operations.</p> <p><i>Note: You may enter \$0 if you believe your entity will not be incurring any associated cost related to a line item.</i></p>		
<p>Business Plan - Likelihood of Success.</p> <p><b>2. 18-Month Financial Overview</b></p> <p>The business plan <i>demonstrates</i> the applicant's likelihood of success by providing, at minimum:</p>	<p>Based on the figures you have provided in your financial workbook (see evaluation metrics above), an overview of the applicant's plan to become operational in 18-months that must include at a minimum, a description of the <b>following two (2) elements:</b></p> <p>2.1 The steps for raising adequate capital to enable the business to become operational may include but are not limited to securing a premises, completing a</p>	<p>Mentions, at minimum, <b>the two</b> elements listed, <b>AND</b> timelines <b>do not exceed 18 months</b></p>	<p>Mentions, at minimum, <b>the two</b> elements listed, <b>AND</b> timelines <b>do not exceed 18 months</b></p>

	<p>buildout, hiring and training staff, and initiating operations.</p> <p>2.2 The anticipated timeline to complete each individual step identified in 2.1.</p>		
<p>Business Plan - Likelihood of Success.</p> <p><b>3. 18-Month Operational Overview</b></p> <p>The business plan <i>demonstrates</i> the applicant's likelihood of success by providing, at minimum:</p>	<p>An overview of the applicant's plan to become operational in 18 months that must include at a minimum, a description of <b>the following two (2) elements</b>:</p> <p>3.1 The steps for the applicant to secure a premises that complies with state and local zoning and planning requirements.</p> <p>3.2 Associated projected timelines with <b>each</b> step identified in 3.1.</p>	<p>Mentions, at minimum, <b>the two</b> elements listed, <b>AND</b> timelines <b>do not exceed 18 months</b></p>	<p>Does not mention, at minimum, <b>the two</b> elements listed, <b>OR</b> timelines <b>exceed 18 months</b></p>
<p>Business Plan - Likelihood of Success.</p> <p><b>4. Permits and Registration</b></p> <p>The business plan <i>demonstrates</i> the applicant's likelihood of success by providing, at minimum:</p>	<p>An overview of the applicant's plan to become operational in 18-months that must include at a minimum, <b>two (2)</b> specific permits or registrations relevant to the proposed license type that you may need to complete a buildout and conduct authorized activities of the specific license. Examples of this may include, but are not limited to, zoning approval, building permits, fire, trader's license, sales, and use tax registration (applicable to dispensaries only).</p>	<p>Mentions, at minimum, <b>two</b> permits or registrations relevant to the proposed license type</p>	<p>Does not mention, at minimum, <b>two</b> permits or registrations relevant to the proposed license type</p>



<p>Business Plan - Likelihood of Success.</p> <p><b>5. Principal Officers</b></p> <p>The business plan <i>demonstrates</i> the applicant's likelihood of success by providing, at minimum:</p>	<p>Identify one (1) or more principal officers for the prospective business. Each principal officer listed should include:</p> <ul style="list-style-type: none"> <li>(i) Name;</li> <li>(ii) Title;</li> <li>(iii) Roles and responsibilities;</li> <li>(iv) Direct reports (if applicable).</li> </ul>	<p>Identified one or more of the organization's principal officers and provided all of the required information.</p>	<p>Was unable or unwilling to identify any of the organizations principal officers <b>OR</b> did not provide complete information.</p>
<p>Business Plan - Likelihood of Success.</p> <p><b>6. Factors for Success</b></p> <p>The business plan <i>demonstrates</i> the applicant's likelihood of success by providing, at minimum:</p>	<p>An overview <b>not to exceed one (1) page</b> that discusses the applicant's ability to be successful in the regulated cannabis industry by discussing and making logical connections to, at minimum, <b>the three (3) following</b> considerations:</p> <ul style="list-style-type: none"> <li>6.1 The applicant's <i>preparedness</i> for working within a complex regulated environment.</li> <li>6.2 The applicant's <i>aptitude</i> for entrepreneurship or business.</li> <li>6.3 The applicant's <i>skill sets</i> that may promote the success of their proposed business.</li> </ul>	<p>Overview includes, at minimum, <b>the three</b> listed considerations by making logical connections to the italicized key words <b>AND</b> did not exceed one page.</p>	<p>Overview did not include, at minimum, <b>the three</b> listed considerations by making logical connections to the italicized key words <b>OR</b> exceeded one page</p>

<p>Business Plan – Sufficient Business Ability</p> <p><b>7. Sufficient Ability and Experience.</b></p> <p>The business plan <i>demonstrates</i> the applicant’s sufficient business ability and experience by providing, at minimum:</p>	<p>An overview <b>not to exceed one (1) page</b> that must discuss the applicant’s experience in, at minimum, <b>one (1) of the following five (5) areas:</b></p> <ul style="list-style-type: none"> <li>(i) Owning, managing, or founding a business;</li> <li>(ii) Working in the cannabis industry;</li> <li>(iii) Operating a business that is subjected to the compliance of laws and regulations;</li> <li>(iv) Working with consumer goods, other products, or controlled substances;</li> <li>(v) Or other work, education, or volunteer experience that may help your proposed business be successful</li> </ul>	<p>Includes experience of, at minimum, <b>one listed area</b> in the overview <i>AND</i> did not exceed one page.</p>	<p>Did not include experience of, at minimum, <b>one listed area</b> in the overview <i>OR</i> exceeded one page.</p>
<p><b>Business Plan – Providing for Appropriate Employee Working Conditions.</b></p> <p><b>8. Appropriate Employee Working Conditions.</b></p> <p>The business plan <i>confirms</i> applicant’s plans to provide appropriate employee working conditions by, at minimum:</p>	<p>Upon conditional licensing and prior to being granted a full license, the applicant will create and make available to the Administration plans for providing appropriate employee working conditions that must include, at minimum, the <b>following two (2) elements:</b></p> <ul style="list-style-type: none"> <li>(i) Compliance with Maryland wage, payment and employment <b>standards.</b></li> <li>(ii) Physical and physiological demands of the workplace pertinent to the license type.</li> </ul>	<p>Included, at minimum, <b>the two listed elements</b> in the confirmation of preparing and making such documentation available</p>	<p>Did not include, at minimum, <b>the two listed elements</b> in the confirmation of preparing and making such documentation available</p>

**Application Attachment C (On Administration-Provided Template – “Detailed Diversity Plan Template”):  
A detailed diversity plan**

<b>Evaluation Measure</b>	<b>Evaluation Metric(s)</b>	<b>Criteria for Passing</b>	<b>Criteria for Failure</b>
Diversity Plan - Attachment. The diversity plan submitted, at minimum:	Meets the attachment standards required by the application portal. <ul style="list-style-type: none"> <li>● 12-point font</li> <li>● Does not exceed 4 pages.</li> <li>● PDF format</li> </ul>	Met <b>the three</b> attachment standards required by the application portal.	Does not meet <b>the three</b> attachment standards required by the application portal.
Diversity Plan – The diversity plan details an applicant’s approach to ensuring and promoting diversity in their workplace by <i>demonstrating</i> , at minimum:	An overview not to exceed 4 pages that must discuss <b>the four (4) following</b> elements: <ol style="list-style-type: none"> <li>1. Establish a <b>goal</b> to ensure that people from diverse backgrounds have equal opportunities in ownership, leadership, jobs, and business contracts and demonstrate the methods that would be used to meet this goal.</li> <li>2. Provide an <b>action plan</b> that must address how to recruit, utilize, and promote diversity of an owner, investor, employee, or a contractor.</li> </ol>	Included, at minimum, <b>the four (4)</b> listed elements <b>AND</b> did not exceed 4 pages.	Did not include, at minimum, <b>the four (4)</b> listed elements in the <b>OR</b> exceeded 4 pages.

3. Explain who qualifies as **'Diverse Participants'** in the proposed diversity plan and demonstrate how these individuals or groups have faced disadvantages, or are underrepresented in the cannabis industry, making it beneficial to include them in the plan.

4. Confirm that the proposed business will engage in diversity-oriented **outreach** including but not limited to promoting or sponsoring events, providing mentoring, training, or professional development programs, partaking in civic or professional groups that promote diversity, or any other initiatives to promote diversity.

*Note: In determining whether an application's Diversity Plan meets the minimum qualifications to be entered into the lottery, the MCA will consider any type of diverse group where an applicant can demonstrate that the group has been disadvantaged, or underrepresented in the cannabis industry and, therefore, inclusion of the individuals from such group as participants in the Diversity Plan would be beneficial.*



**From:** [Heather Nelson -MDH-](#)  
**To:** [Stu Cherry](#)  
**Cc:** [Jamie Tansey -MDH-](#); [Morgan Clipp -MCA-](#); [Barry Gogel](#)  
**Subject:** Re: KG Wellness  
**Date:** Wednesday, March 13, 2024 10:36:46 AM

---

Stu,

Yes. MCA will agree to hold the Talbot County standard dispensary lottery in abeyance until the circuit court rules on each of your clients' motions for preliminary injunction seeking entry to that lottery.

with thanks,

Heather

On Wed, Mar 13, 2024 at 8:41 AM Stu Cherry <[scherry@rwillaw.com](mailto:scherry@rwillaw.com)> wrote:

Heather,

Thank you for your email and MCA's efforts to make this process work for everyone. We agree to your proposal, but I also assume that, to the extent the KG Wellness #4 litigation resolves before the soon-to-be-filed suit, that your agreement as to Calvert County also will extend as to Talbot County for the new plaintiffs who are seeking entry to that lottery. I am sure you only left that out of your email because at the moment, the Talbot County lottery is already on hold pending the KG Wellness #4 litigation. If I misunderstand, please let me know right away.

Thanks,

Stu

**Stuart A. Cherry**

**Rifkin Weiner Livingston, LLC**

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Maryland Super Lawyer, 2021-2024

Rated by “Best Lawyers” 2024

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---

**From:** Heather Nelson -MDH- <[heather.nelson1@maryland.gov](mailto:heather.nelson1@maryland.gov)>  
**Sent:** Tuesday, March 12, 2024 9:23 PM  
**To:** Stu Cherry <[scherry@rwillaw.com](mailto:scherry@rwillaw.com)>  
**Cc:** Jamie Tansey -MDH- <[jamie.tansey@maryland.gov](mailto:jamie.tansey@maryland.gov)>; Morgan Clipp -MCA- <[morgan.clipp1@maryland.gov](mailto:morgan.clipp1@maryland.gov)>; Barry Gogel <[bgogel@rwillaw.com](mailto:bgogel@rwillaw.com)>  
**Subject:** KG Wellness

Stu,

Thank you for reaching out earlier today. As discussed on the phone, MCA is amenable to holding the lottery for standard dispensary licenses in Calvert County in abeyance until the Circuit Court for Anne Arundel County has an opportunity to rule on your clients' forthcoming motion for preliminary injunction. Given this

agreement, and given mutual preexisting obligations this week, we agree that your client will file its complaint on Friday or early next week. MCA also requested an extension of time within which to answer the complaint in KG Wellness #4 until 14 days after the circuit court rules on the motion for preliminary injunction. Finally, MCA proposes that if the court denies your clients' motions for preliminary injunctions, that they dismiss the underlying complaints.

Please let me know your client's position. I look forward to hearing from you.

with thanks,

Heather

--

Heather B. Nelson  
Principal Counsel

Maryland Cannabis Administration

[heather.nelson1@maryland.gov](mailto:heather.nelson1@maryland.gov)

(443) 862-4692  
300 W. Preston Street, Suite 302  
Baltimore, MD 21201

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--

Heather B. Nelson  
Principal Counsel  
Maryland Cannabis Administration  
[heather.nelson1@maryland.gov](mailto:heather.nelson1@maryland.gov)  
(443) 862-4692  
300 W. Preston Street, Suite 302  
Baltimore, MD 21201

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## Cannabis License Application Notification

From: MCA Applications <mca.applications@maryland.gov>

Sent: Thu, Mar 7, 2024 at 3:02 pm

To: [mountaga@kanagrove.com](mailto:mountaga@kanagrove.com)

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[Blank Refund Form.pdf](#) (88 KB)

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 Images not displayed. [SHOW IMAGES](#) | [ALWAYS SHOW IMAGES FROM THIS SENDER](#)

Dear Ryan Atkinson -

The Maryland Cannabis Administration (MCA) is writing to inform you that your application for a Standard Dispensary - Calvert did not meet the minimum qualifications for entry into the application lottery for a Standard Dispensary - Calvert. This notice relates exclusively to your application for entry into the lottery for a Standard Dispensary - Calvert, which is one of up to 44 lottery draws that the MCA will conduct based on license class, license type, and location. The Standard Dispensary - Calvert application lottery will occur on March 14, 2024.


During your Records Review on 2/15/2024, MCA staff discussed with you the reasons your application did not meet the minimum qualifications. This is a final agency decision on your application for Standard Dispensary - Calvert.

Thank you for your interest in a cannabis license in Maryland. As previously discussed, if you elect to apply for a license in the subsequent application round, you may be granted a waiver of your application fee when applying for the same license type. However, the MCA is alternatively offering the opportunity for applicants who failed to qualify into the lottery to request and receive a refund of the paid application fee. **You may only select either the refund of payment, or the waiving of a subsequent fee.** Refunds will only be issued using the method of payment used at the time of application submission. Please complete the attached form and return to the MCA with your selection.

When completing the attached form please reference the below information:

- Payment Order Number: 67136524;
- Application ID: 3556493;
- Payment Amount: \$5,000;
- Applicant Primary Contact: Ryan Atkinson

Sincerely,

 A picture containing line  
chart Description

Will Tilburg, JD, MPH

Director, Maryland Cannabis Administration

## Cannabis License Application Notification

From: MCA Applications <mca.applications@maryland.gov>

Sent: Thu, Mar 7, 2024 at 3:02 pm

To: haimanot@kanagrove.com

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[Blank Refund Form.pdf](#) (88 KB)

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Dear Sean Persaud -

The Maryland Cannabis Administration (MCA) is writing to inform you that your application for a Standard Dispensary - Calvert did not meet the minimum qualifications for entry into the application lottery for a Standard Dispensary - Calvert. This notice relates exclusively to your application for entry into the lottery for a Standard Dispensary - Calvert, which is one of up to 44 lottery draws that the MCA will conduct based on license class, license type, and location. The Standard Dispensary - Calvert application lottery will occur on March 14, 2024.


During your Records Review on 2/20/2024, MCA staff discussed with you the reasons your application did not meet the minimum qualifications. This is a final agency decision on your application for Standard Dispensary - Calvert.

Thank you for your interest in a cannabis license in Maryland. As previously discussed, if you elect to apply for a license in the subsequent application round, you may be granted a waiver of your application fee when applying for the same license type. However, the MCA is alternatively offering the opportunity for applicants who failed to qualify into the lottery to request and receive a refund of the paid application fee. **You may only select either the refund of payment, or the waiving of a subsequent fee.** Refunds will only be issued using the method of payment used at the time of application submission. Please complete the attached form and return to the MCA with your selection.

When completing the attached form please reference the below information:

- Payment Order Number: 67136066;
- Application ID: 3554891;
- Payment Amount: \$5,000;
- Applicant Primary Contact: Sean Persaud

Sincerely,

 A picture containing line  
chart Description

Will Tilburg, JD, MPH

Director, Maryland Cannabis Administration

### Cannabis License Application Notification

From: MCA Applications <mca.applications@maryland.gov>

Sent: Thu, Mar 7, 2024 at 2:36 pm

To: enrique@kanagrove.com

[Blank Refund Form.pdf](#) (88 KB)

 Images not displayed. **SHOW IMAGES** | **ALWAYS SHOW IMAGES FROM THIS SENDER**

Dear Enrique Villagomez -

The Maryland Cannabis Administration (MCA) is writing to inform you that your application for a Standard Dispensary - Calvert did not meet the minimum qualifications for entry into the application lottery for a Standard Dispensary - Calvert. This notice relates exclusively to your application for entry into the lottery for a Standard Dispensary - Calvert, which is one of up to 44 lottery draws that the MCA will conduct based on license class, license type, and location. The Standard Dispensary - Calvert application lottery will occur on March 14, 2024.


During your Records Review on 2/20/2024, MCA staff discussed with you the reasons your application did not meet the minimum qualifications. You had requested that the MCA reconsider these components, and the MCA has determined that findings of the reviewers that the application did not meet the qualifications was consistent with the *Evaluation Criteria* and *Application Instructions*. This is a final agency decision on your application for Standard Dispensary - Calvert.

Thank you for your interest in a cannabis license in Maryland. As previously discussed, if you elect to apply for a license in the subsequent application round, you may be granted a waiver of your application fee when applying for the same license type. However, the MCA is alternatively offering the opportunity for applicants who failed to qualify into the lottery to request and receive a refund of the paid application fee. **You may only select either the refund of payment, or the waiving of a subsequent fee.** Refunds will only be issued using the method of payment used at the time of application submission. Please complete the attached form and return to the MCA with your selection.

When completing the attached form please reference the below information:

- Payment Order Number: 67136622;
- Application ID: 3554879;
- Payment Amount: \$5,000;
- Applicant Primary Contact: Enrique Villagomez

Sincerely,

 A picture containing line chart Description

Will Tilburg, JD, MPH  
Director, Maryland Cannabis Administration



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

From: MCA Applications <[mca.applications@maryland.gov](mailto:mca.applications@maryland.gov)>  
Date: Thursday, March 7 2024 at 4:25 PM EST  
Subject: Cannabis License Application Notification  
To: <[sage.m.winn@gmail.com](mailto:sage.m.winn@gmail.com)>

Dear Ashley Persaud -

The Maryland Cannabis Administration (MCA) is writing to inform you that your application for a Standard Dispensary - Talbot did not meet the minimum qualifications for entry into the application lottery for a Standard Dispensary - Talbot. This notice relates exclusively to your application for entry into the lottery for a Standard Dispensary - Talbot. However, due to pending litigation, the MCA is not conducting this lottery drawing on March 14th, 2024, with the remaining lottery events.

During your Records Review on 2/29/2024, MCA staff discussed with you the reasons your application did not meet the minimum qualifications. You had requested that the MCA reconsider these components, and the MCA has determined that findings of the reviewers that the application did not meet the qualifications was consistent with the *Evaluation Criteria* and *Application Instructions*. This is a final agency decision on your application for Standard Dispensary - Talbot.

Thank you for your interest in a cannabis license in Maryland. As previously discussed, if you elect to apply for a license in the subsequent application round, you may be granted a waiver of your application fee when applying for the same license type. However, the MCA is alternatively offering the opportunity for applicants who failed to qualify into the lottery to request and receive a refund of the paid application fee. **You may only select either the refund of payment, or the waiving of a subsequent fee.** Refunds will only be issued using the method of payment used at the time of application submission. Please complete the attached form and return to the MCA with your selection.

When completing the attached form please reference the below information:


- Payment Order Number: 67137088;
- Application ID: 3554969;
- Payment Amount: \$5,000;
- Applicant Primary Contact: Ashley Persaud

Sincerely,



Will Tilburg, JD, MPH  
Director, Maryland Cannabis Administration

---

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65K

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**Rebecca Sperling** <becca@aavaconsultingllc.com>  
To: Sage Winn <sage.m.winn@gmail.com>  
Cc: Ariana Van Alstine <ariana@aavaconsultingllc.com>, Ryan Boyle <r.boyle@milestonesci.com>

Thu, Mar 7, 2024 at 3:09 PM

Thank you, Sage.  
[Quoted text hidden]

--  
Rebecca Sperling



201-693-2220

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

From: MCA Applications <[mca.applications@maryland.gov](mailto:mca.applications@maryland.gov)>  
Date: Thursday, March 7 2024 at 4:25 PM EST  
Subject: Cannabis License Application Notification  
To: <[sage.m.winn@gmail.com](mailto:sage.m.winn@gmail.com)>

Dear Ashley Persaud -

The Maryland Cannabis Administration (MCA) is writing to inform you that your application for a Standard Dispensary - Talbot did not meet the minimum qualifications for entry into the application lottery for a Standard Dispensary - Talbot. This notice relates exclusively to your application for entry into the lottery for a Standard Dispensary - Talbot. However, due to pending litigation, the MCA is not conducting this lottery drawing on March 14th, 2024, with the remaining lottery events.

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When completing the attached form please reference the below information:

- Payment Order Number: 67137088;
- Application ID: 3554969;
- Payment Amount: \$5,000;
- Applicant Primary Contact: Ashley Persaud


Sincerely,





Will Tilburg, JD, MPH  
Director, Maryland Cannabis Administration

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65K

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**Rebecca Sperling** <becca@aavaconsultingllc.com>  
To: Sage Winn <sage.m.winn@gmail.com>  
Cc: Ariana Van Alstine <ariana@aavaconsultingllc.com>, Ryan Boyle <r.boyle@milestonesci.com>

Thu, Mar 7, 2024 at 3:09 PM

Thank you, Sage.  
[Quoted text hidden]

--  
Rebecca Sperling



201-693-2220

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## Cannabis License Application Notification

**EXHIBIT "8"**

From: MCA Applications &lt;mca.applications@maryland.gov&gt;

Sent: Thu, Mar 7, 2024 at 4:25 pm

To: michelle@kanagrove.com

[Blank Refund Form.pdf](#) (88 KB) Images not displayed. **SHOW IMAGES** | **ALWAYS SHOW IMAGES FROM THIS SENDER**

Dear Michelle Vigliarola -

The Maryland Cannabis Administration (MCA) is writing to inform you that your application for a Standard Dispensary - Talbot did not meet the minimum qualifications for entry into the application lottery for a Standard Dispensary - Talbot. This notice relates exclusively to your application for entry into the lottery for a Standard Dispensary - Talbot. However, due to pending litigation, the MCA is not conducting this lottery drawing on March 14th, 2024, with the remaining lottery events.


During your Records Review on 2/20/2024, MCA staff discussed with you the reasons your application did not meet the minimum qualifications. You had requested that the MCA reconsider these components, and the MCA has determined that findings of the reviewers that the application did not meet the qualifications was consistent with the *Evaluation Criteria* and *Application Instructions*. This is a final agency decision on your application for Standard Dispensary - Talbot.

Thank you for your interest in a cannabis license in Maryland. As previously discussed, if you elect to apply for a license in the subsequent application round, you may be granted a waiver of your application fee when applying for the same license type. However, the MCA is alternatively offering the opportunity for applicants who failed to qualify into the lottery to request and receive a refund of the paid application fee. **You may only select either the refund of payment, or the waiving of a subsequent fee.** Refunds will only be issued using the method of payment used at the time of application submission. Please complete the attached form and return to the MCA with your selection.

When completing the attached form please reference the below information:

- Payment Order Number: 67137316;
- Application ID: 3555003;
- Payment Amount: \$5,000;
- Applicant Primary Contact: Michelle Vigliarola

Sincerely,

 A picture containing line  
chart Description

Will Tilburg, JD, MPH

Director, Maryland Cannabis Administration

