

KG WELLNESS #1, LLC  
5000 Thayer Center Suite C  
Oakland, Maryland 21550

and

KG WELLNESS #2, LLC  
5000 Thayer Center Suite C  
Oakland, Maryland 21550

and

KG WELLNESS #3, LLC  
5000 Thayer Center Suite C  
Oakland, Maryland 21550

and

KG WELLNESS #5, LLC  
5000 Thayer Center Suite C  
Oakland, Maryland 21550

and

KG WELLNESS #6, LLC  
5000 Thayer Center Suite C  
Oakland, Maryland 21550

and

KG WELLNESS #8, LLC  
5000 Thayer Center Suite C  
Oakland, Maryland 21550

Plaintiffs / Petitioners

v.

MARYLAND CANNABIS ADMINISTRATION,  
849 International Drive, Fourth Floor  
Linthicum, Maryland 21090

Serve: Heather Nelson, Esq.  
Principal Counsel  
Maryland Cannabis Administration  
849 International Drive, Fourth Floor  
Linthicum, Maryland 21090

) IN THE  
)  
) CIRCUIT COURT  
)  
) FOR  
)  
) ANNE ARUNDEL COUNTY,  
)  
) MARYLAND  
)  
) Civil Case No. \_\_\_\_\_

WILLIAM TILBURG, in his official capacity as )  
Acting Director of Maryland Cannabis )  
Administration )  
849 International Drive, Fourth Floor )  
Linthicum, Maryland 21090 )  
) )  
and )  
) )  
DAWN BERKOWITZ, in her official capacity as )  
Deputy Director of Maryland Cannabis )  
Administration )  
849 International Drive, Fourth Floor )  
Linthicum, Maryland 21090 )  
) )  
and )  
) )  
AUDRY JOHNSON, in her official capacity as )  
Executive Director of Maryland’s Office of Social )  
Equity )  
849 International Drive, First Floor )  
Linthicum, Maryland 21090 )  
) )  
) )  
Defendants / Respondents )  
) )  
For Administrative Mandamus and/or Common Law )  
Judicial Review of the Decisions of the Maryland )  
Cannabis Administration Regarding Cannabis )  
Application Nos. 3556493, 3554891, 3554879, )  
3554969, 3554931 and 355003 )

**COMPLAINT AND PETITION FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, COMMON LAW MANDAMUS, ADMINISTRATIVE MANDAMUS, COMMON LAW JUDICIAL REVIEW, AND OTHER RELIEF**

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, hereby submit this Complaint and Petition seeking a declaratory judgment, preliminary and permanent injunction, common law mandamus, administrative mandamus, and common law judicial review, declaring that the Defendant Maryland Cannabis Administration (the “MCA”) unlawfully failed to accept Applicant’s Social Equity Applicant applications for

entry into a lottery for standard dispensary cannabis business licenses in Talbot and Calvert Counties pursuant to Md. Code Ann., ALCO. BEV., § 36-404(d)(1) (2023) and enjoining the Maryland Cannabis Administration from holding lotteries for such licenses in Talbot and Calvert Counties without the participation of Applicants.

## **INTRODUCTION**

1. This case concerns the manner with which MCA has conducted itself in “evaluating” applicants to participate in the first lottery for licensing for adult use Cannabis and is made necessary by MCA’s improper conduct.

2. The lottery was specifically created by statute to benefit “social equity” applicants, who the General Assembly has determined have suffered historically and have had to overcome unfair obstacles to success.

3. MCA failed in its duty to Social Equity Cannabis applicants by failing to approve them for participation in the license lottery even though the Applicants met the minimum qualifications for participation.

4. Where the applicable regulations required MCA to engage in a process and determine whether incorrect information in an application was “material,” MCA chose, arbitrarily and capriciously, to require strict accuracy in every application. But if MCA had actually based its decisions on whether an error was “material,” then the applications here would have been approved to participate in the lottery.

5. The Applicants here made an immaterial mistake in the submission of their financial workbook. The workbooks required to be filed with the lottery applications required applicants to project anticipated costs, revenues, and net profits before taxes. The Applicants in this case all submitted paperwork showing costs that, when subtracted from revenue, anticipated pre-tax profits of \$7,303,000. On the forms submitted by Applicants, the Applicants miscalculated the profits as \$7,484,000. This simple arithmetic error, obvious on its face, equaled

an error that was, at most, 2.48%. Irrespective of this immaterial error, the Applicants have each demonstrated that they meet the standards required for the lottery

6. By any accounting standard, such an over projection is the definition of immaterial. Yet on this ground alone, the MCA denied Applicants' the right to participate in the lotteries, even though the Applicants met the lottery's minimum requirements in every other respect.

7. By rejecting the Applicants, the MCA seeks to create an absurd forfeiture based on basic mathematics from social equity applicants, the very kind of people whom the General Assembly and the Governor have determined that the State should be working to include, and not exclude from the industry.

8. The lotteries for standard dispensaries took place as scheduled on March 14, except for the lotteries for Talbot and Calvert County. The MCA did not conduct those lotteries based on an agreement between the Applicants and the MCA. The Talbot and Calvert County lotteries were delayed in order to allow this Court to determine whether or not the Applicants are entitled to participate in the lotteries. The Applicants and the MCA have agreed that the decision in this matter shall be made at the preliminary injunction hearing.<sup>1</sup>

#### **THE PARTIES**

9. Plaintiff / Petitioner KGW #1 is a Maryland limited liability company with its registered business address located at 5000 Thayer Center, Suite C, Oakland, Maryland 21550.

10. Plaintiff / Petitioner KGW #2 is a Maryland limited liability company with its registered business address located at 5000 Thayer Center, Suite C, Oakland, Maryland 21550.

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<sup>1</sup> The Talbot County lottery is also delayed due to an agreement between the MCA and another entity, KG Wellness #4 LLC ("KGW #4"). KGW #4 and the MCA are litigating a different dispute in a matter captioned *KG Wellness #4 LLC v. Maryland Cannabis Administration*, Circuit Court for Anne Arundel County Case No. C-02-CV-24-000396.

11. Plaintiff / Petitioner KGW #3 is a Maryland limited liability company with its registered business address located at 5000 Thayer Center, Suite C, Oakland, Maryland 21550.

12. Plaintiff / Petitioner KGW #5 is a Maryland limited liability company with its registered business address located at 5000 Thayer Center, Suite C, Oakland, Maryland 21550.

13. Plaintiff / Petitioner KGW #6 is a Maryland limited liability company with its registered business address located at 5000 Thayer Center, Suite C, Oakland, Maryland 21550.

14. Plaintiff / Petitioner KGW #8 is a Maryland limited liability company with its registered business address located at 5000 Thayer Center, Suite C, Oakland, Maryland 21550.

15. Defendant / Respondent MCA is a Maryland governmental entity entrusted with, among other things, carrying out a true and fair application process for the issuance of cannabis business licenses via a lottery process, which will entitle the winners to operate cannabis businesses within Maryland.

16. Defendant / Respondent William Tilburg (“Tilburg”) is the Acting Director of the MCA.

17. Defendant / Respondent Dawn Berkowitz (“Berkowitz”) is the Deputy Director of the MCA.

18. Defendant / Respondent Audrey Johnson (“Johnson”) is the Executive Director of Maryland’s Office of Social Equity.

### **JURISDICTION AND VENUE**

19. This Court has subject matter jurisdiction pursuant to §§ 1-501, 3-8B-01, 3-403 of the Courts and Judicial Proceedings Article, Annotated Code of Maryland. There is no primary or exclusive administrative remedy set forth in statute or regulation, therefore it is not necessary to exhaust administrative remedies. Mandamus is thus sought pursuant to Md. Rule 15-701 on the ground that the MCA denied Applicants entry into the cannabis lottery in violation of its ministerial duties. Mandamus is alternatively sought pursuant to Md. Rule 7-

401, et seq. on the ground that the decision of the MCA qualifies as a decision by an administrative agency of a quasi-judicial nature where review is not expressly authorized by law.

20. The MCA is located in Linthicum, Maryland within Anne Arundel County, and therefore jurisdiction and venue are proper in this Court.

21. This Court has personal jurisdiction over the Defendants / Respondents pursuant to Md. Code Ann., CTS & JUD. PROC., § 6-102 as they are domiciled, and will be served with process, in the State of Maryland.

22. Venue is proper in this Court pursuant to Md. Code Ann., CTS & JUD. PROC., § 6-201(b) as the Defendants / Respondents can be found, carry on a regular business, and maintain their principal offices in Anne Arundel County, Maryland, and as the cause of action arose out of the Defendants' application process conducted in this County.

#### **STATEMENT OF FACTS COMMON TO ALL COUNTS**

23. In 2022, Maryland voters approved a referendum legalizing recreational cannabis use (a/k/a "adult-use") in Maryland. It took effect on July 1, 2023.

24. To prepare for legalization, the legislature enacted the Cannabis Reform Act (Ch. 254/255 of the Acts of 2023) ("the Act"). The Act created the MCA and gave it certain implementation and oversight powers.

25. The Act also established an Office of Social Equity ("OSE"). The purpose of the OSE, as set forth in the Act, is to "promote and encourage full participation in the regulated cannabis industry by people from communities that have previously been disproportionately impacted by the war on drugs in order to positively impact those communities." Md. Code Ann., ALCO. BEV., § 1-309.1.

26. That same legislation also established a social equity application process. Specifically, the Act added Md. Code Ann., ALCO. BEV., § 36-404(D)(1), which provides:

For the first round, subject to paragraphs (2) and (3) of this subsection, the Administration shall enter each social equity applicant that meets the minimum qualifications established by the Administration into a lottery and issue to social equity applicants not more than:

(i) for standard licenses:

... 3. 80 dispensary licenses.

27. The lottery process, created in response to past failures in the medical cannabis industry, was designed to ensure that individuals who meet the social equity criteria are given an opportunity to prosper in the adult-use cannabis market.

28. Speaking of the social equity priority, Governor Moore said, “As the only state in the country to exclusively reserve the first round of new cannabis licenses to social equity applicants, Maryland continues to lead the nation in promoting access and equity in the adult-use cannabis market. Leaving no one behind means ensuring that communities that have borne the brunt of misguided policies have an equal shot at benefitting from this lucrative industry.”

29. The MCA promulgated emergency regulations that, consistent with the statute and directives of Governor Moore, provided that verified social equity applicants will, by lottery, have first opportunity to obtain adult-use cannabis dispensary licenses.

30. The regulations defined “Social equity applicant” as

an applicant for a cannabis license or cannabis registration that:

(a) Has at least 65 percent ownership and control held by one or more individuals who:

(i) Have lived in a disproportionately impacted area for at least 5 of the 10 years immediately preceding the submission of the application;

(ii) Attended a public school in a disproportionately impacted area for at least 5 years; or

(iii) For at least 2 years, attended a 4-year institution of higher education in the State where at least 40 percent of the individuals who attend the institution of higher education are eligible for a Pell Grant; or

(b) Meets any other criteria established by the Administration.

COMAR 14.17.01.01B(45).

31. As summarized by the MCA: “A social equity applicant is an applicant that has at least 65% ownership and control held by one or more individuals who lived or went to public school in an area disproportionately impacted by the criminalization of cannabis, or attended a four-year institution of higher education in Maryland where at least 40% of enrollees were eligible for a Pell Grant.”

32. A major purpose of the Act was to give applicants that could demonstrate a need of “social equity” a first shot, by “a lottery,” to enter into this new cannabis market.

33. The plain provisions of the Act were in line with the stated policy of the administration of Maryland Governor Wes Moore to “leave no one in Maryland behind.” As Governor Moore lauded about the new law: “Leaving no one behind means ensuring that communities that have borne the brunt of misguided policies have an equal shot at benefitting from this lucrative industry.”

34. COMAR further provides upon MCA acceptance of a social equity application,

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 14.17.05.03E(3).



35. Denial of an application is governed by the following COMAR provision:

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)

36. According to MCA, the Applicants achieved all of the regulatory requirements, except their financial numbers included a 2.48% error when setting forth expected profits (which regardless are estimated to be more than \$7 million).

37. As stated in the regulations, denial of entry to the lottery can only occur if an error in an applicant's application is "**material.**" (Emphasis added).

38. Further, pursuant to COMAR 14.17.05.04.A(2), "Any applicant that meets the minimum qualifications for licensing **shall** be placed in the lottery." (emphasis added). In

other words, if an applicant meets the minimum qualifications for licensure, the MCA has no discretion, and as a ministerial matter **must** place the applicant in the lottery.

39. Unfortunately, the MCA, which was a creation of the Act, has not abided by the dictates set forth in the Act by the General Assembly nor the aspirations stated by Governor Moore. As the facts of this case demonstrate, many Marylanders who want to benefit from this lucrative industry are being left behind by the failures of those serving the State, whose improper application of a strict accuracy standard in application material is causing social equity applicants, who historically have been shut out from opportunities such as those being presented here, to be improperly rejected. The MCA’s adherence to a standard of strict accuracy, as opposed to materiality, is preventing entry into the lottery for Applicants, who are all no doubt minimally qualified. Failure to allow them in the lottery is also arbitrary, capricious, and an abuse of discretion.

40. In this instance, each of the Applicants have verified 65% social equity owners who have been approved as social equity applicants.

41. The ownership and other relevant information about the Applicants are as follows:

| <b>Entity</b> | <b>Social Equity Owner</b> | <b>Application ID</b> | <b>License Sought</b>              |
|---------------|----------------------------|-----------------------|------------------------------------|
| KGW #1        | Mountaga Traore            | 3556493               | Calvert County Standard Dispensary |
| KGW #2        | Haimanot Teka              | 3554891               | Calvert County Standard Dispensary |
| KGW #3        | Enrique Villagomez         | 3554879               | Calvert County Standard Dispensary |
| KGW #5        | Sage Winn                  | 3554969               | Talbot County Standard Dispensary  |
| KGW # 6       | Shannon Winn               | 3554931               | Calvert County Standard Dispensary |
| KGW #8        | Michelle Vigliarolo        | 3555003               | Talbot County Standard Dispensary  |

42. Each of the social equity owners for the Applicants listed above were verified by the MCA to be social equity applicants.

43. All of the Applicants submitted an “Attachment B – Business Plan Template” to their applications, which consisted of projections and a “Financial Workbook.” These identical forms provided as follows:

|     |   |  |
|-----|---|--|
| 1.1 | Anticipated startup <i>costs</i> for the build out of the physical location of your facility  | \$800,000 Buildout, Permits<br>\$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 profit*</b> for the first year of initial operations<br><br><i>*To calculate anticipated pre-tax profit, subtract the total from rows A-F from the total in row G.</i> | \$7,484,000                                    |

44. The number in box 1.8 is incorrect. As noted by MSA’s form language the number entered in box 1.8 is calculated from other numbers on the applications. By simple arithmetic, the actual number in row 1.8 should add up to \$7,303,000.<sup>2</sup> This is an error of 2.48%. The mistake is obvious on its face, and the correction is equally obvious on its face. Had this been a competitive procurement, where the contract was to be given the singular most

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<sup>2</sup> \$10,000,000 - \$800,000 - \$175,000 - \$30,000 - \$15,000 - \$975,000 - \$600,000 - \$102,000 = \$7,303,000

advantageous proposal, this mistake would be waived or corrected as a minor irregularity. COMAR 21.06.02.04. Instead, this is a process designed to promote inclusion, which is even more liberal in its allowance.

45. The MCA reviewed Attachment B for all of the Applicants, checked the math, saw that the numbers added up to \$7,303,000 rather than the \$7,484,000 in box 1.8, and determined that this disqualified Applicants from the lottery.

46. On February 9, 2024, the MCA advised all of the Applicants that they did not meet the minimum requirements for the lottery would not be entered into the lottery, but that, pursuant to COMAR 14.17.05.07 (Hearing Rights of Applicants), they could request a “Records Review.”<sup>3</sup> The Records Review regulations provide, in relevant part, as follows:

A. Records Review

- (1) An applicant not entered into the lottery by the Administration may request a records review of the submitted application within 10 days of notification that their application does not meet the minimum qualifications for the lottery on a pass-fail basis.
- (2) A records review shall consist of an opportunity for the applicant to examine the applicant’s records received by the Administration and verify the basis on which the application was deemed ineligible for the lottery.

COMAR 14.17.05.07

47. This is the only review permitted by the regulations or statutes for decisions made by the MCA for admission into the lottery.

48. Each of the Applicants had their records review with the MCA, where they learned that the **only** basis for the assertion that their applications had this math error. In every other respect, the MCA agreed that the applications met the minimum requirements.<sup>4</sup>

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<sup>3</sup> The February 9 emails also made clear that “[t]his is not a final agency decision.” (boldface in original).

<sup>4</sup> The records reviews occurred on the following dates: KGW #1 occurred on February 15, 2024, KGW #2 occurred on February 20, 2024, KGW #3 occurred on February 20, 2024, KGW

49. During the records review meetings the MCA said it would consider the conversations during the meetings before making a final decision. At the meeting, the Applicants protested being removed from the lottery based on this obvious math error that amounted to 2.48%.

50. It is clear that the purported problem is not with either the numbers \$7,484,000 or \$7,303,000. If the financial workbook had added up to either number and if that number was listed in box 1.8, the MCA would have been satisfied that the applications met the minimum qualifications.

51. But this error is immaterial. Under Generally Accepted Accounting Principles (GAAP), a plus or minus of 5% is needed for a reasonable investor to be influenced in their investment decisions. A swing of just 2.48% is immaterial. 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.

52. The information submitted in Applicants' applications warranted inclusion in the lotteries because the only misstatement was immaterial. Because they were immaterial, the regulations required the MCA to place Applicants in to the lottery.

53. Rather than doing so, the MCA transmitted emails to each Applicant on March 7, 2023 denying them entry into the lottery and advising that "[t]his is a final agency decision on your application for Standard Dispensary – [Calvert or Talbot]."

54. The final decision emails do not cite the COMAR provisions that govern denial. Rather, several of the rejection emails cite the Evaluation Criteria and Application Instructions, which received no APA public comment and review period. This was improper. The MCA was required to abide by the regulations, requiring materiality, and in the absence of a material

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#5 occurred on February 29, 2024, KGW #6 occurred on February 29, 2024, and KGW #8 occurred on February 20, 2024.

error, the MCA was required to allow the Applicants into the lottery. The MCA failed to do so.<sup>5</sup>

**COUNT I  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

55. Plaintiffs / Petitioners reallege the allegations in the preceding paragraphs as if fully set forth herein.

56. Pursuant to COMAR 14.17.05.04A(1), the MCA “shall conduct a lottery that is impartial, random, and in a format selected by the Administration.”

57. COMAR 14.17.05.04A(2) further provides that: “Any applicant that meets the minimum qualifications for licensing **shall** be placed in the lottery.” (emphasis added).

58. An application can only be denied when it is not complete in every “**material**” detail; it contains a “**material**” misstatement, omission, misrepresentation or untruth; it does not meet the minimum qualifications for the lottery; or if it is not submitted by the established deadline. Applicants’ applications do not qualify for denial under any of these standards.

59. There exists an actual or imminent controversy between Applicants and the Defendants concerning whether (i) MCA conducted or is set to conduct a Lottery that is impartial and random; and whether (ii) MCA has denied Applicants’ applications based on immaterial misstatements in their applications, and in doing so, is acting outside the applicable statutes and regulations.

60. MCA is required by its statutes and regulations to include the Applicants in the lotteries for which they applied.

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<sup>5</sup> Ironically, the MCA’s rejection emails for KGW #5 and KGW #6 incorrectly stated that both entities’ applications had the same Application ID No. They do not. The Application ID No. for KGW #5 was listed on KGW #6’s denial. KGW #6 still knew it was denied. This was an immaterial mistake by the MCA, which apparently it is allowed to commit, even if the MCA claims the Applicants are not.

61. Applicants are entitled to a declaration that their applications meet the minimum requirements for inclusion in the lotteries for which they applied in Calbert or Talbot Counties.

62. Applicants are further entitled to a preliminary and permanent injunction to enjoin MCA from holding the lotteries for Talbot and Calbert Counties without placing the Applicants in the lotteries to which they applied and requiring that the Applicants be placed in the lotteries.

a. Without an injunction, Applicants will be irreparably harmed by, among, other things, loss of an opportunity to be part of the Lottery and an opportunity to be awarded a business cannabis license on an equal basis with all other verified Social Equity Applicants, and for which damages at law cannot provide adequate compensation.

b. The benefits to the Applicants and public outweigh the potential harm, if any. An injunction will preserve the status quo, support the purposes of the Act and protect Applicants' right and ability to participate in the lottery, whereas a lack of injunction could result in Applicants, verified social equity Applicants, losing their rights they should lawfully have as specifically provided by Maryland's General Assembly.

c. The public interest would be served by granting the injunction. An injunction will promote the goals set forth by the Legislature in the Act, as articulated by the Governor of Maryland, to provide social equity applicants first opportunity for new cannabis licenses and to access and equity in the adult-use cannabis market, while "leaving no one behind" and "ensuring that communities that have borne the brunt of misguided policies have an equal shot at benefitting from this lucrative industry."

63. All persons who have or claim any interest which would be affected by the declaration sought herein have been made parties.

**COUNT II  
COMMON LAW MANDAMUS**

64. Applicants reallege the allegations in the preceding paragraphs as if fully set forth herein.

65. Because this action seeks review of MCA's nondiscretionary acts – *i.e.*, whether MCA is required to place Appellants into the lotteries for which they applied in Talbot and Calvert Counties, Appellants seek a Writ of Mandamus pursuant to Md. Rule 15-701.

66. Under applicable regulations, MCA had no grounds to deny Appellants participation in the lotteries, because their applications were complete in every material detail, any misstatements in their applications were immaterial, they met the minimum requirements qualifications for the lottery; and they submitted their applications by the deadline. As a result, the MCA is required to place them in the lottery.

67. There is a clear duty on the part of Defendants to place the Applicants into the lotteries for Calvert and Talbot Counties.

68. Should this Honorable Court find that Appellants are not entitled to Declaratory and Injunctive Relief as requested in Count I, above, Appellants have no adequate remedy by which they can obtain its right to review of its application for entry into the Lottery.

69. For the preceding reasons, this Honorable Court should issue a Writ of Common Law Mandamus ordering Defendants to place the Applicants into the lotteries.

**COUNT III  
ADMINISTRATIVE MANDAMUS**

70. Applicants reallege the allegations in the preceding paragraphs as if fully set forth herein.

71. In the alternative to the causes of action listed above, Applicants assert the right of this Court to review and reverse the decision of MCA to deny Applicants' applications through administrative mandamus as codified by Maryland Rules 7-401, *et seq.*, which



“provide for judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law.” Md. Rule 7-401(a).

72. Decisions of the MCA qualify for review through administrative mandamus because the MCA is an agency and a unit of State government. The decisions of the other Defendants qualify for administrative mandamus review because they are “officials.” There is not a right to judicial review for decisions denying entry to the cannabis lotteries that is expressly authorized by law.

73. This petition for administrative mandamus is timely because it is filed within 30 days of the denial of Applicants’ applications, which occurred on March 7, 2024.

74. A stay of the denial of Applicants’ applications is not necessary because the MCA has agreed to hold the lotteries for Calvert and Talbot Counties in abeyance pending the results of the preliminary injunction hearing in this case.

75. The decision of the MCA is quasi-judicial. Pursuant to COMAR 14.17.05.07, MCA gave Applicants notice that their applications purportedly did not meet the minimum requirements to qualify for the lottery on February 9, 2024 (in an email that made clear the decision, up to that point, was not a final agency decision). As part of that notice and in compliance with the regulation, MCA allowed Applicants to request a records review. Each Applicant then had the records review with the MCA, where the MCA considered their objections to being denied entry into the lotteries.

76. Finally, the MCA issued its denials in emails where it advised that “During your Records Review on [date], MCA staff discussed with you the reasons your application did not meet the minimum qualifications. This is a final agency decision on your respective application for Standard Dispensary – [Calvert or Talbot].”

77. The MCA’s decision should be reversed pursuant to Md. Rule 7-403, because the decision

- a. Is affected by any error of law; or
- b. Is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
- c. Is arbitrary and capricious; or
- d. Is an abuse of discretion; or
- e. Any other appropriate basis under Maryland Rule 7-403.

78. Applicants have a substantial right for their applications for valuable cannabis licenses to be evaluated in a fair manner consistent with the statutes and regulations empowering MCA to review their applications.

79. The MCA was only authorized under its regulations to deny Applicants entry into the lotteries for those criteria set forth in COMAR 14.14.05.03. Denial was inappropriate here because their applications were complete in every material detail; the applications contained no material misstatements, omissions, misrepresentations, or untruths; the applicants do meet the minimum qualifications of the lottery and the Applicants' applications were submitted on a timely basis.

80. The only error in Applicants' applications was a 2.48% error in calculating the projected pre-tax profits for their hypothetical dispensaries. If the numbers had added up to either \$7,303,000 or \$7,484,000 and the accurate number had been reflected in row 1.8 of the financial worksheets filed with their applications, they would have been approved for their respective lotteries.

81. The simple arithmetic error here was immaterial and therefore not a basis for denial to the lotteries. Any deviation of a calculation of less than 5% on an application such as this is immaterial. The error here was 2.48%.

82. The MCA applied no standard to its review. Rather, it demanded strict accuracy for all calculations.

83. Not only is such a standard inconsistent with the regulations, it is also clearly inconsistent with the State's policy goal of providing social equity applicants, who faced historic challenges for entry into this market, access to such opportunities.

84. The decision by MCA to deny the applications should be reversed pursuant to the standards set forth in the applicable regulations and as set forth in Maryland Rule 7-403.

#### **COUNT IV COMMON LAW JUDICIAL REVIEW**

85. Applicants reallege the allegations in the preceding paragraphs as if fully set forth herein.

86. There exists in Maryland a common law right to judicial review for administrative agency decisions that are arbitrary and capricious.

87. The decision denying Applicants' entry into their respective lotteries is arbitrary and capricious.

88. The MCA was only authorized under its regulations to deny Applicants entry into the lotteries for those criteria set forth in COMAR 14.14.05.03. Denial was inappropriate here because Applicants' applications were complete in every material detail; the applications contained no material misstatements, omissions, misrepresentations, or untruths; the applicants do meet the minimum qualifications of the lottery and the Applicants' applications were submitted on a timely basis.

89. The only error in Applicants' applications was a 2.48% error in calculating the projected pre-tax profits for their hypothetical dispensaries. If the numbers had added up to either \$7,303,000 or \$7,484,000 and the accurate number had been reflected in row 1.8 of the financial worksheets filed with their applications, they would have been approved for their respective lotteries.

90. The simple arithmetic error here was immaterial and therefore not a basis for denial to the lotteries. Any deviation of a calculation of less than 5% on an application such as this is immaterial. The error here was 2.48%.

91. The MCA applied no standard to its review. Rather, it demanded strict accuracy for all calculations.

92. Not only is such a standard inconsistent with the regulations, it is also clearly inconsistent with the State's policy goal of providing social equity applicants, who faced historic challenges for entry into this market, access to such opportunities.

93. The decision by MCA to deny the applications should be reversed pursuant to the standards set forth in the applicable regulations and because the MCA's decision, which applied a requirement of strict accuracy rather than the application of a standard for evaluation, was arbitrary and capricious.

WHEREFORE, Applicants demand:

(a) a judgment

i. declaring that Defendants' refusal to accept the adult use business dispensary applications of Applicants on March 7, 2024, was unlawful, arbitrary and capricious;

ii. ordering Defendants to process proceed with the lotteries for Calvert and Talbot Counties with the participation of Applicants for the respective lotteries for which they applied; or

iii. alternatively, enjoining Defendants from conducting the lotteries for Talbot and Calvert Counties for adult-use cannabis licenses without Applicants' participation in the lotteries, and waiving any bond requirement pursuant to Md. Rule 15-503(b);

- (b) alternatively, that a Writ of Mandamus be issued by this Court ordering Defendants to admit Applicants into the lotteries for which they applied under the principals of common law mandamus;
- (c) alternatively, that a Writ of Mandamus be issued by this Court ordering Defendants to admit Applicants into the lotteries for which they applied as a reversal of the MCA's decision to deny such entry based on application of the rules for administrative mandamus;
- (d) alternatively, that the Court reverse the decision of the Defendants to admit Applicants into the lotteries for which they applied pursuant to common law judicial review and based on Defendants' arbitrary and capricious decision denying Applicants' entry to such lotteries;
- (e) any other relief that the Court deems just and proper.

Respectfully submitted,

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