

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT**

CANNABIS CONTROL DIVISON of the)
NEW MEXICO REGULATION AND)
LICENSING DEPARTMENT,)
Petitioner,)
)
v.)
)
SAWMILL SWEET LEAF LLC,)
Respondent.)
_____)

Case No. D-202-CV-2023-06050

PETITION FOR PRELIMINARY INJUNCTION

COMES NOW the Cannabis Control Division (CCD) of the New Mexico Regulation and Licensing Department (RLD), by and through Kevin A. Graham, Acting General Counsel for the RLD, and hereby petitions the Court, pursuant to §61-1-25.1 NMSA 1978 (2023) of the New Mexico Uniform Licensing Act (ULA), §61-1-1 NMSA 1978 *et seq*, and the authority and responsibilities assigned to the CCD by the New Mexico Cannabis Regulation Act, §26-2C-1 NMSA 1978 (2021) *et seq*, to issue a Preliminary Injunction against the Respondent Sawmill Sweet Leaf LLC (Respondent) in this matter, and as grounds therefore states the following:

**OVERVIEW OF THE NECESSITY FOR A PRELIMINARY INJUNCTION
IN THIS MATTER**

1. The CCD comes before the Court to obtain a preliminary injunction necessary to immediately stop ongoing unlawful activity which poses an instant threat to the lives, health and safety of the New Mexico public at-large and specifically threatens lives, health and safety of those customers and employees of the Respondent at the

Respondent's place of business located at 1501 Mountain Drive NW, City of Albuquerque, Bernalillo County, State of New Mexico.

2. As will be fully detailed in the paragraphs that follow, the CCD has clear, documented evidence that Respondent has and continues to knowingly engage in multiple actions at Respondent's business location (1501 Mountain Drive NW) in direct violation of the New Mexico Cannabis Regulation Act (CRA) as well as other state laws, including:
 - a. Having repeatedly engaged in the unlawful possession and sale of cannabis products obtained from outside the state of New Mexico, in direct violation of the CRA, with clear knowledge that such products have not been properly tested to ensure that the products do not contain highly dangerous contaminants or adulterants such as, but not limited to, molds, prohibited pesticides or toxic metals that may be consumed/ingested by individuals purchasing or receiving those cannabis products; and
 - b. The operation of unlicensed closed-loop extraction equipment utilizing liquid petroleum (LP) gas at the same business location, which if improperly installed or operated pose an immediate risk of fire or explosion that could result in great harm or death to any customer, employee or others in the building or surrounding proximity.
3. The dangerousness and recklessness of Respondent's actions related to the sale/distribution of untested, unlawful cannabis products obtained from outside the state of New Mexico is substantially heightened by the fact that individuals who may obtain those products from Respondent seek cannabis products for treatment of medical conditions including immuno-compromising illnesses such as cancer.

4. The risks and dangers involved in Respondent's actions of installing and operating an unlicensed LP gas closed loop extraction system were made abundantly clear by the facts of the incident which took place on October 15, 2020, when a cannabis dispensary and manufacturing facility then located in Santa Fe, New Mexico, where employees were operating extraction equipment utilizing compressed gas. That incident involved a catastrophic fire and explosion that resulted not only in property damage but critical injuries to two employees working at the facility. [See Albuquerque Journal article at https://www.abqjournal.com/news/local/explosion-injures-two-at-santa-fe-cannabis-plant/article_f66e57b6-227e-5132-b5b9-44627fb9f164.html; Santa Fe New Mexican article at https://www.santafenewmexican.com/news/local_news/medical-pot-dispensary-new-mexicann-closes-after-workers-hurt-in-fire/article_e1d7cdd6-9a5b-11eb-bb39-9f5878e10cb4.html]
5. The legal authority of the CCD under the CRA (more fully set out below) includes the responsibility and authority to license and regulate businesses and individuals conducting business in the cannabis industry (including both medical and adult-use cannabis products) in New Mexico. By statute, when the CCD determines that disciplinary regulatory action must be taken regarding a licensee under the CRA, the CCD is bound by the terms of the New Mexico Uniform Licensing Act to ensure licensees (as well as individuals engaged in suspected unlicensed activity) are afforded due process.
6. This petition is sought under the specific authority of §61-1-25.1 NMSA 1978 (2023) of the ULA which is designed to address situations precisely like the one addressed in this Petition for Preliminary Injunction where the CCD has evidence in its possession

indicates that a licensee poses a clear and immediate danger to the public health and safety if the licensee continues to practice.

7. The CCD hereby seeks to protect the public health and safety by obtaining this court's Order or Preliminary Injunction immediately suspend any and all operations of Respondent as a cannabis business and imposing strict limitations on any actions of Respondent until such time as the CCD is able to complete the filing of a Notice of Contemplated Action, and all due process requirements of the CRA and the ULA associated therewith, for the revocation of all licenses held by the Respondent under the CRA.

RELEVANT LEGAL AUTHORITY OF THE CCD

1. The CRA assigns authority for regulation and licensing under the Act to the CCD.

§26-2C-3 NMSA 1978 (2021) Division; powers and duties; rulemaking; advisory committee created; membership; duties.

A. The "cannabis control division" is created in the department to administer the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978] and rules promulgated in accordance with those acts. Rules shall be adopted and promulgated as provided in the State Rules Act [Chapter 14, Article 4 NMSA 1978].

B. No later than January 1, 2022, the division shall promulgate rules that are consistent with industry standards necessary for the division to carry out its duties pursuant to the Cannabis Regulation Act as follows:

- (1) qualifications and procedures for licensure; provided that qualifications shall be directly and demonstrably related to the operation of the applicable cannabis establishment;
- (2) security requirements for a cannabis establishment;
- (3) requirements related to:
 - (a) inspection and monitoring of a cannabis establishment;
 - (b) a cannabis establishment's recordkeeping and tracking of cannabis from seed until sale;
 - (c) prevention of the sale or diversion of cannabis products in commercial cannabis activity to a person under the age of twenty-one;
 - (d) labeling of cannabis products packaged, sold or distributed by a cannabis establishment; and
 - (e) language for labels of cannabis products regarding potential adverse effects;

...

- (5) rules on advertising and marketing of cannabis products;
- (6) rules on how a licensee may display cannabis products for sale;

...

- (11) in consultation with the department of environment, rules to establish:
 - (a) health and safety standards applicable to the research, production and manufacture of cannabis products;
 - (b) standards for food and product safety applicable to cannabis products; and
 - (c) which additives are approved for and prohibited from inclusion in cannabis products; provided that nicotine shall be prohibited;
 - (12) in consultation with the New Mexico department of agriculture and the department of environment, rules to establish standards for quality control, inspection and testing of cannabis products for potency and contaminants, except for cannabis produced or harvested for research purposes and not for ingestion; provided that all such rules and standards shall be consistent with the rules and standards for testing of medical cannabis products; and
 - (13) in consultation with the state fire marshal's office of the homeland security and emergency management department, rules with regard to health and safety.
- D. No later than January 1, 2022, the division shall promulgate rules in consultation with the New Mexico department of agriculture, the department of environment and the office of the state engineer to establish:
- (1) environmental protections; and
 - (2) protocols to ensure licensees' compliance with state and local laws and ordinances governing food and product safety, occupational health and safety, environmental impacts, natural resource protection, water use and quality, water supply, hazardous materials, pesticide use and wastewater discharge.

...

- 2. The CCD's specific authority to regulate, administer and collect fees for specific types of commercial cannabis activity is found at §26-2C-6 NMSA 1978 (2021), and includes the following areas of authority directly relevant to this Petition:

- A. The division shall regulate and administer and may collect fees in connection with the administration of:
 - (1) commercial cannabis activity and licensing related to commercial cannabis activity;
 - (2) the medical cannabis program, except for the medical cannabis registry; and
 - (3) all aspects of cannabis relating to cannabis training and education programs.
- B. The division shall follow the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] when licensing or permitting the following:

...

- ... (3) cannabis manufacturers;
- ... (5) cannabis producers;
- ... (7) cannabis retailers;
- ... (11) integrated cannabis microbusinesses; and
- ...

E. A license is valid for twelve months from the date the license is issued and may be renewed annually, except that a license issued for a cannabis training and education program is valid until terminated by the licensee or suspended or revoked by the division.

3. Definitions of words and terms utilized in the CRA relevant to matters under

consideration in this Petition are found at §26-2C-2 NMSA 1978 (2021) of the Act, which include:

B. "cannabis"

(1) means all parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and

(2) does not include:

- (a) the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination; or
- (b) the weight of any other ingredient combined with cannabis products to prepare topical or oral administrations, food, drink or another product;

...

D. "cannabis courier" means a person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

E. "cannabis establishment" means:

- (1) a cannabis testing laboratory;
- (2) a cannabis manufacturer;
- (3) a cannabis producer;
- (4) a cannabis retailer;
- (5) a cannabis research laboratory;
- (6) a vertically integrated cannabis establishment;
- (7) a cannabis producer microbusiness; or
- (8) an integrated cannabis microbusiness;

F. "cannabis extract":

- (1) means a product obtained by separating resins, tetrahydrocannabinols or other substances from cannabis by extraction methods approved by the division; and
- (2) does not include the weight of any other ingredient combined with cannabis extract to prepare topical or oral administrations, food, drink or another product;

...

H. "cannabis manufacturer" means a person that:

- (1) manufactures cannabis products;
- (2) packages cannabis products;
- (3) has cannabis products tested by a cannabis testing laboratory; or
- (4) purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments;

I. "cannabis producer" means a person that:

- (1) cultivates cannabis plants;
 - (2) has unprocessed cannabis products tested by a cannabis testing laboratory;
 - (3) transports unprocessed cannabis products only to other cannabis establishments;
- or
- (4) sells cannabis products wholesale;

...

K. "cannabis product" means a product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients;

...

M. "cannabis retailer" means a person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

...

R. "commercial cannabis activity":

- (1) means the cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriership, purchase for resale, sale or consignment of cannabis products; and
- (2) does not include activities related only to the medical cannabis program, to cannabis training and education programs or to the personal cultivation or use of cannabis;

...

T. "contaminant" means pesticides and other foreign material, such as hair, insects or other similar adulterants, in harvested cannabis;

AA. "facility" means a building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products;

...

GG. "integrated cannabis microbusiness" means a person that is authorized to conduct one or more of the following:

- (1) production of cannabis at a single licensed premises; provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;
- (2) manufacture of cannabis products at a single licensed premises;
- (3) sales and transportation of only cannabis products produced or manufactured by that person;
- (4) operation of only one retail establishment; and

(5) couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

HH. "licensed premises" means a location that includes:

(1) all enclosed public and private areas at the location that are used in the business and includes offices, kitchens, restrooms and storerooms;

(2) all areas outside of a building that are specifically included in the license for the production, manufacturing, wholesale sale or retail sale of cannabis products; and

(3) with respect to a location that is specifically licensed for the production of cannabis outside of a building, the entire unit of land that is created by subsection or partition of land that the licensee owns, leases or has a right to occupy;

...

JJ. "manufacture" means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product;

...

RR. "retail establishment" means a location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers;

4. Authority for the CCD to take disciplinary action against a licensee under the CRA is set out in §26-2C-8 NMSA 1978 (2021), as follows:

A. A violation of the provisions of the Cannabis Regulation Act by a licensee is grounds for disciplinary action.

B. The division may:

(1) impose an intermediate sanction established by rule;

(2) impose a directed plan of correction;

(3) assess a civil monetary penalty established by rule; provided that a civil monetary penalty shall not exceed ten thousand dollars (\$10,000) per violation; and provided further that penalties and interest recovered pursuant to the Cannabis Regulation Act on behalf of the state shall be remitted to the state treasurer for deposit in the current school fund; or

(4) suspend or revoke the license.

C. The division shall promulgate rules specifying the criteria for imposition of sanctions and civil monetary penalties.

D. The provisions of this section do not apply to occupational health and safety rules promulgated pursuant to Section 3 [26-2C-3 NMSA 1978] of the Cannabis Regulation Act.

E. A person aggrieved by an action taken by the division pursuant to this section may request and receive a hearing with the superintendent for the purpose of reviewing the action in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

5. All licensees under the CRA are required to comply with all state and local laws pursuant to NMAC 16.8.2.8 (A) (2022):

General Operational Requirements for Cannabis Establishments:

- A. State and local laws: Pursuant to the Cannabis Regulation Act, applicants and licensees shall comply with all applicable state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, including laws governing food and product safety, occupational health and safety, environmental impacts, natural resource protection, construction and building codes, operation of a cannabis establishment, employment, zoning, building and fire codes, water use and quality, water supply, hazardous materials, pesticide use, wastewater discharge, and business or professional licensing.
6. In addition to the general requirements that apply to all licensees under the CRA, those persons who wish to obtain/maintain particular types of licenses to be permitted to conduct specific types of cannabis business must apply separately for each such type of licensure. [Examples: Individuals wishing to grow and harvest cannabis must apply for and maintain a Cannabis Producer license; individuals seeking to manufacture cannabis products from raw cannabis must apply for and maintain a Cannabis Manufacturer license.]
 7. Licensees under the CRA must comply with specific requirements designated under the CRA for each different type of license, including complying with limitations on specific levels of any licenses held. [Example: Cannabis Manufacturer licenses are further separated into Classes I, II, III and IV, with each level permitting different types of manufacturing activity, with the Class IV Cannabis Manufacturer license involving the highest level of complexity/skill necessary for the safe operation of equipment or processes involved. Operation of a manufacturing process that involves extracts using volatile solvents (such as a closed loop LP gas extraction system) requires a Class IV Cannabis Manufacturer license. NMAC 16.8.2.29 (03/22/2022)]

8. Similarly, there are specific requirements under the CRA for the Integrated Cannabis Establishment Microbusiness (ICEM) license held by Respondent.

9. Among the specific requirements for an ICEM are those found at NMAC 16.8.2.8 (AA) (2022) which provides as follows:

AA. Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness:

(1) Applicants for a vertically integrated cannabis establishment or integrated cannabis establishment microbusiness must meet all qualifications for each type of cannabis establishment that is authorized pursuant to the Cannabis Regulation Act.

(2) An initial applicant for an integrated cannabis microbusiness or a vertically integrated cannabis establishment license, must submit an application for authorization to conduct one or more of the following:

- (a) production of cannabis;
- (b) manufacturing of cannabis products;
- (c) retail establishment; or
- (d) courier of cannabis products.

(3) Applicants or licensees shall request authority to add or remove a cannabis establishment activity by submitting an amended application, and any required additional fees.

(4) If a vertically integrated cannabis establishment applicant or licensee will not conduct all cannabis establishment activity on a single premises, each additional premises shall require an additional premises fee.

(5) An applicant or licensee shall not conduct any activity for which additional authority is required until it has received written approval from the division.

10. The CRA likewise mandates specific requirements for licensure as a Cannabis Producer, including multiple provisions designed to protect the health and safety of the public by mandating licensees have appropriate policies and procedures in place to ensure the safety of any cannabis products produced and that testing of those cannabis products complies with the requirements of the CRA, the Lynn and Erin Compassionate Use Act (LECUA), §26-2B-1 NMSA 1978 *et seq.*, and other state statutes and regulations.

A. Among these requirements for licensed cannabis micro producer are those found at NMAC 16.8.2.22 (A) (2022) which include:

...

- (9) certification the applicant will adhere to production requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis or cannabis products;
- (10) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the transport of unprocessed cannabis or cannabis products to other cannabis establishments;
- (11) certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use requirements to ensure a safe product and environment;

...

- (13) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to routine testing by a licensed testing laboratory, division inspection of licensed premises during normal business hours, and testing of cannabis;
- (14) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

B. NMAC 16.8.2.26 (2022) requires cannabis microproducer licensees to have in place minimum policy and procedure requirements that include:

A. Minimum policy and procedure requirements: A producer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

- (1) cannabis testing criteria and procedures, which shall be consistent with the testing requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:
 - (a) employee health and safety training materials;
 - (b) training requirements for the proper use of health and safety measures and controls;

(c) representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment consistent with self-sampling guidance issued annually by the division on September 1 and made available on the division website, the sunshine portal, and at the division's district, field and regional offices;

(d) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory, consistent with 16.8.2.12 NMAC and 16.8.2.13 NMAC;

(e) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;

(f) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion, consistent with Subsection L of 16.8.7.8 NMAC;

(g) protocols for testing sample collection that ensures accurate test results, establishment consistent with self-sampling guidance issued annually by the division on September 1 and made available on the division website, the sunshine portal, and at the division's district, field and regional offices; and

(h) procedures for remedial measures to bring cannabis or cannabis products into compliance with division standards or destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

F. Safety and health requirements: Licensees shall ensure the following:

(1) all equipment, implements, and fixtures that are used for the production of cannabis shall be used exclusively for the production of cannabis and meet sanitation and safety standards required by the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and any other state or federal laws;

(2) production is conducted in a manner that does not allow cross-contamination from chemical or biological hazards;

(3) any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including a boil, sore, or infected wound, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with preparation surfaces for cannabis, shall be excluded from any operations which may be anticipated to result in such contamination until the condition is corrected;

(4) handwashing facilities are provided that are adequate, accessible, furnished with running water at a suitable temperature, conveniently located in indoor production facilities, in restrooms, and wherever good sanitary practices require employees to wash or sanitize their hands, and stocked with effective hand-cleaning and sanitizing preparations, and sanitary towel service or suitable drying devices;

- (5) all persons involved in preparing or handling cannabis conform to hygienic practices while on duty, including:
- (a) maintaining adequate personal cleanliness;
 - (b) wearing gloves while handling processed cannabis or unpackaged but processed cannabis products;
 - (c) possessing a valid food handler card issued by an ANSI/ASTM e2659-09 accredited Food Handler Training Certificate Program approved by the New Mexico environment department if handling processed cannabis or unpackaged but processed cannabis products; and
 - (d) washing hands thoroughly in an adequate hand-washing facility before starting work, at any other time when the hands may have become soiled or contaminated, and both before putting gloves on and after removal of gloves, if the person is handling processed cannabis or unpackaged but processed cannabis products;
- (6) operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where cannabis is exposed;
- (7) water damage is properly and timely treated to protect health and safety of employees and the public, and that fiberglass and other insulation material is not exposed;
- (8) adequate safety-type lighting in all areas where cannabis is produced or stored, if applicable, and where equipment is cleaned;
- (9) rubbish is disposed of so as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage, or breeding place for pests;
- (10) premises, fixtures, and physical facilities where cannabis or cannabis products are produced are maintained to ensure the health and safety of employee and the public;
- (11) contact surfaces, including utensils and equipment used for preparation of cannabis or cannabis products, are cleaned and sanitized as frequently as necessary to protect against contamination;
- (12) only environmental protection agency (EPA) registered sanitizing are used in production operations and that they are used in accordance with labeled instructions;
- (13) toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of cannabis or cannabis products and that otherwise satisfies the requirements of this rule;
- (14) storage and transportation of cannabis and cannabis products is accomplished under conditions that will maintain security and will protect the cannabis or cannabis products against physical, chemical and microbial contamination, as well as against deterioration of the cannabis or cannabis products and the container; and

(15) that there is sufficient space for placement of equipment and storage of material as is necessary for the maintenance of sanitary operations for production of cannabis.

11. As mentioned previously, the CRA contains numerous requirements for licensure as a Cannabis Manufacturer.

A. General requirements for licensure as a Cannabis Manufacturer under the CRA are found at NMAC 16.8.2.29 (2022), which provides as follows:

A. License Types: The division may license four classes of manufacture:

(1) Class I: A licensee that only packages or repackages cannabis products, or labels or relabels the cannabis product container;

(2) Class II: A licensee that conducts Class I activities, and manufactures edible products or topical products using infusion processes, or other types of cannabis products other than extracts or concentrates, and does not conduct extractions;

(3) Class III: A licensee that conducts Class I and Class II activities, and extracts using mechanical methods or nonvolatile solvents; and

(4) Class IV: A licensee that conducts Class I, Class II, and Class III activities, and extracts using volatile solvents or supercritical CO₂.

B. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division found on the division website.

C. License required: Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not manufacture cannabis extract, unless for personal use pursuant to Section 26-2C-31, NMSA.

D. Other activities prohibited: Except as provided in Subsection BB of 16.8.2.8 NMAC, no cannabis manufacturer establishment licensee may produce cannabis, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.

E. Prohibited additives: A manufacturer shall not manufacture or distribute a product that is intended to be consumed by inhalation that includes polyethylene glycol, polypropylene glycol, vitamin E acetate, or medium chain triglycerides. A manufacturer shall not combine nicotine, caffeine, or any other addictive substance with a cannabis product. This prohibition shall not apply to the combination of cannabis with sugar, or a product in which caffeine is naturally occurring, such as coffee, tea, or chocolate.

B. NMAC 16.8.2.34 (2022) imposes minimum standards on licensees under CRA for the manufacture of cannabis products, including general requirements to meet

those minimum standards and specific provisions for the use of “Closed-Loop Extraction Systems”, as follows:

- A. General requirements: Licensees shall ensure the following:
 - (1) manufacturing shall be done in premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act;
 - (2) the licensee’s right to use the quantity of water sufficient to meet the manufacturing facility’s needs remains in good standing;
 - (3) weighting or measuring devices that are used in the wholesale of cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture; and
 - (4) licensee shall notify the division of any changes to the days or hours of business operation;
- ...
- D. Closed-Loop Extraction System Requirements:
 - (1) Closed loop systems, other equipment used, the extraction operation, and facilities must be approved for use by the local fire code official and meet any required fire, safety, and building code requirements specified in:
 - (a) National Fire Protection Association (NFPA) standards;
 - (b) International Building Code (IBC);
 - (c) International Fire Code (IFC); or
 - (d) Other applicable standards including all applicable fire, safety, and building codes related to the processing, handling and storage of the applicable solvent or gas.
 - (2) All pressure vessels must comply with the Construction Industries Licensing Act, Section 60-13-1 *et seq.*, NMSA 1978, including associated rules, applicable codes, and standards.
 - (3) A list of the name(s) of all trained employees must be prominently displayed inside or immediately outside of the extraction area.
 - (4) A licensee that is currently approved to use CO2 or a volatile solvent for extraction has 6 months from the effective date of this rule to comply with the applicable requirements. Nothing in this subsection is intended to relieve a licensee of its obligation to comply with any applicable federal, state, or local laws and regulations.

12. The CRA includes a specific prohibition on the unlicensed manufacturing of cannabis extract, making a violation of this provision, found at §26-2C-31 NMSA 1978 (2021), with that statute reading as follows:

It is unlawful for a person to manufacture cannabis extract without a license issued pursuant to the Cannabis Regulation Act unless the person produces

and manufactures cannabis extract from homegrown cannabis using nonvolatile solvents, alcohol or carbon dioxide or no solvents. The use of any other solvent or process is expressly prohibited unless it is approved by the division. A person who violates this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

13. The CRA imposes both general and specific requirements for Cannabis Retailers as well, as follows:

A. NMAC 16.8.2.35 (2022) sets out general provisions for all Cannabis Retailers to include:

B. License required: Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not sell cannabis products to qualified patients, primary caregivers or reciprocal participants, or directly to consumers.

B. NMAC 16.8.2.39 (2021) sets minimum policy and procedure requirements for all Cannabis Retailers licensed under the CRA, with certain of the provisions of the rule requiring as follows:

A. Minimum policy and procedure requirements: A licensed retailer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis handling criteria and procedures, which shall be consistent with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

- (a) employee health and safety training materials;
- (b) training requirements for the proper use of health and safety measures and controls;
- (c) if applicable, recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;
- (d) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;
- (e) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;

(g) if applicable, protocols for testing sample collection that ensures accurate test results; and

C. NMAC 16.8.2.40 (2021) sets out “Minimum Standards for Retail of Cannabis

G. Cannabis and cannabis products for sale:

(1) A licensed retailer shall not make any cannabis or cannabis products available for sale or delivery to a customer unless:

(a) the cannabis or cannabis products were received by the retail licensee from a licensed producer, licensed producer microbusiness, licensed manufacturer, licensed vertically integrated cannabis establishment, or licensed integrated cannabis microbusiness;

...

(c) in the case of manufactured cannabis products, the cannabis product complies with all requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules;

(d) the cannabis or cannabis products have undergone laboratory testing as required by the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules;

(e) the packaging and labeling of the cannabis or cannabis product complies with Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules; and

(f) the cannabis or cannabis product complies with all applicable requirements found in the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules.

14. The CRA specifically requires that all cannabis products offered for sale under the terms of the Act must be derived from a source originating within the state of New Mexico.

§26-2C-37 NMSA 1978 (2021), Intrastate source.

Except as provided in Section 38 [26-2C-38 NMSA 1978] of the Cannabis Regulation Act, all cannabis products shall be derived from a source originating within New Mexico.

[Note: §26-2C-38 NMSA 1978 pertains to a potential future scenario wherein the United States federal government has changed or reinterpreted federal law to allow for the interstate or international transfer of cannabis products between authorized cannabis-related businesses. To date, no such change in law or interpretation of law has occurred.]

15. Pursuant to §26-2C-6 NMSA 1978 (2023) the CCD shall follow the provisions of the ULA when licensing or permitting licensees issued under the CRA. At subsection (B) the statute specifically provides:

B. The division shall follow the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] when licensing or permitting the following:

- ...
- (3) cannabis manufacturers;
- (4) cannabis producer microbusinesses;
- (5) cannabis producers;
- ...
- (7) cannabis retailers;
- ...
- (11) integrated cannabis microbusinesses;

16. Turning now to provisions of the ULA directly relevant to the Court’s consideration of this Petition, the CCD of the RLD is included within the definition of a “board” under §61-1-2 (A)(5) NMSA 1978 of the ULA:

A. “board” means:

- ...
- (5) any other state agency to which the Uniform Licensing Act is applied by law

17. CCD is a division of the RLD to which the ULA has been applied by law, specifically by §26-2C-6 (B) NMSA 1978 (2021) which states that the “the [CCD] shall follow the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] when licensing or permitting” licensees under the CRA.

18. §61-1-25.1 NMSA 1978 (2023) of the ULA is titled as “Preliminary injunction and hearing; summary suspension or probation” and at subsection (A) provides as follows:

A. When a board finds that evidence in its possession indicates that a licensee poses a clear and immediate danger to the public health and safety if the licensee continues to practice, the board may seek a preliminary injunction from the district court in the county in which the principal office of the licensee is located or, if the principal office is not in New Mexico, in the district court for Santa Fe county. If the injunction is granted, the board shall hold an expedited hearing for the suspension of the license or probation of the licensee. The board shall follow the hearing procedures of the

Uniform Licensing Act, but times shall be shortened in accordance with the injunction or at the request of the licensee.

FACTUAL BASIS/BACKGROUND

19. Respondent, Sawmill Sweet Leaf LLC, currently holds a total of four (4) licenses issued by the CCD under the CRA:

A. License #CCD-MICB-2022-0034 licenses Respondent as an Integrated Cannabis Microbusiness, with a licensed business premise physically located at 1501 Mountain Drive NW, Albuquerque, New Mexico 87104

[Note: Each of the licenses held by the Respondent are licensed at the same physical business premise at 1501 Mountain Drive NW.]

B. License #CCD-MICB-2022-0034-PROD licenses Respondent a Cannabis Producer Microbusiness [See CCD Attachment A].

C. License #CCD-MICB-2022-0034-MANU licenses Respondent as a Cannabis Class II Manufacturer [See CCD Attachment B]; and

D. License #CCD-MICB-2022-RTLRL licenses Respondent as a Cannabis Retailer [See CCD Attachment C].

20. Cloud G. Duran is listed as the “Contact” for each of the four (4) licenses issued to Respondent, Sawmill Sweet Leaf LLC, on the applications for licensure submitted to the CCD.

21. Cloud G. Duran is also listed as the Resident Agent for Sawmill Sweet Leaf LLC per the New Mexico Secretary of State’s “Corporations and Business Services” website “Business Search” online tool.

[See <https://portal.sos.state.nm.us/BFS/online/CorporationBusinessSearch>]

22. On June 26, 2023, staff members of the CCD conducted a randomized inspection of Respondent's facility at 1501 Mountain Drive NW, Albuquerque, NM 87104.
23. On site, the CCD staff found product with a label denoting its origin in the state of California and denoting that the product was tetrahydrocannabinol-8 (delta-8), a cannabinol outside of the regulatory authority of the CCD. [See CCD Attachment D]
24. At that time, Respondent claimed that the product did not contain tetrahydrocannabinol-9 (delta-9), the psychoactive ingredient in cannabis products that is under the specific regulatory authority of the CCD pursuant to the CRA.
25. CCD staff then specifically requested Respondent to not transport or sell any of the product in question (the California-sourced product Respondent claimed to only contain delta-8) and to keep the product under video surveillance so the CCD could confirm that the product would not be moved or consumed/ingested by anyone.
26. On June 27, 2023, CCD staff collected samples of the California-sourced product Respondent claimed contain only delta-8 in order to submit those samples for laboratory testing to confirm whether or not delta-9 was present in the samples.
27. On July 18, 2023, the CCD received the results of the tests conducted on the samples taken on July 27, 2023, and the test results demonstrated that the product contained delta-9 in amounts sufficient to classify the products as "cannabis products" under the CRA. [See CCD Attachment E]
28. On July 19, 2023, CCD staff members conducted a follow up inspection and investigation of Respondent's business location at 1501 Mountain Drive NW, Albuquerque, after receiving the test results of the California-sourced cannabis products, at which time it was learned that the product which the CCD had requested be

quarantined and kept under video surveillance had been removed from the area where it had previously been observed and that associated video footage of that area which should have been available from Respondent's video surveillance was unavailable due to a reported system malfunction.

29. The CCD staff having conducted multiple site visits to Respondent's sole licensed cannabis business location at 1501 Mountain Drive NW, CCD staff members present during those site visits observed and documented multiple violations of the CRA, and rules promulgated thereto, on or about July 19, 2023.
30. Respondent, at present, holds a Class II cannabis manufacturing license under license #CCD-MICB-2022-0034-MANU, which allows Respondent to manufacture edibles or topical cannabis products, but does not allow for any type of extraction activities.
31. Upon observing large amounts of extracted cannabis products present on site, CCD staff asked one of Respondent's employees where the cannabis extract product had originated, to which Respondent's employee stated that the cannabis extract product was being manufactured in the back of the facility utilizing a closed-loop extraction system.
32. Respondent's employee then showed CCD staff where the cannabis extract product was stated to have been manufactured and CCD staff observed closed-loop extraction equipment. [See CCD Attachments F and G]
33. At that time CCD staff also observed a heat gun and various accessories that are commonly used in the manufacturing of cannabis concentrates via extraction. [See CCD Attachment H]
34. All solvent based extraction activities require a Class IV manufacturing license and also require a liquified petroleum (LP) permit issued by the Construction Industries Division

of the RLD to ensure proper safety of such equipment as the equipment poses a risk of explosion when handled incorrectly.

35. Manufacturing cannabis products outside the scope of one's license is a violation of the CRA and rules promulgated thereto.
36. CCD staff also observed finished cannabis products that had stickers placed on the original packaging.
37. One of the stickers observed by CCD staff at the Respondent's 1501 Mountain Drive NW location was a symbol to denote that the cannabis product originated in New Mexico and the other sticker contained the license number for Respondent meant to show a consumer or qualified patient the license number of the manufacturer of that product.
38. When CCD staff pulled back the stickers on the cannabis finished product, it was evident that the stickers were placed to cover up a symbol to denote that the cannabis product originated in California.
39. CCD staff observed hydrocarbon wax product on-site, which had a sticker with a license number for a facility that had an expired license.
40. Any cannabis or cannabis product originating from a source other than New Mexico is a violation of the Cannabis Regulation Act and rules promulgated thereto.
41. At or about that same time, CCD staff identified cannabis products at the Respondent's 1501 Mountain Drive NW site with the name of a company called "Sunny Slabs." [See CCD Attachments I and J]
42. No company with the name "Sunny Slabs" or company licensed to do business as "Sunny Slabs" is licensed under the CRA under the CCD's licensing records.

43. Upon further investigation, CCD staff identified a cannabis company called “Sunny Slabs” that operates in Colorado and California, and it is the observation and belief of CCD staff that the same logo observed on the products at the Respondent’s business site is utilized by the “Sunny Slabs” company located outside of New Mexico.
44. CCD staff contacted the Sunny Slabs company and received confirmation from the company that it has no operations within the state of New Mexico.
45. The CRA requires that all lawful cannabis product in New Mexico must originate in New Mexico and cannot be exported to other states, whether or not those states have legalized adult-use or medical cannabis.
46. CCD staff, upon review of the BioTrack cannabis “seed-to-sale” track and trace system for cannabis and cannabis products produced, manufactured and retailed in New Mexico, identified inconsistencies in the state track and trace system as compared to the business records for Respondent.
47. Based upon the CCD’s review of the BioTrack system, Respondent was receiving wholesale cannabis flower from a CRA licensee identified as “Pothole” (#CCD-2022-0172) and was sending back to that same licensee cannabis concentrate in quantities suggesting that Respondent was improperly extracting cannabis concentrate for licensee, Pothole.
48. The CRA, and rules promulgated pursuant thereto, require that all cannabis and cannabis products be recorded and tracked in BioTrack to ensure the origin of the product(s).
49. Licensees under the CRA are required to have digital surveillance cameras in all parts of the facility where cannabis products are being grown, manufactured, sold, stored, or transported.

50. The CCD staff who inspected Respondent's sole licensed business site located at 1501 Mountain Drive NW observed and determined that Respondent did not have proper surveillance systems installed at that site.
51. Licensees under the CRA are required to document all cannabis and cannabis product that is transported to or from any other licensed cannabis facility using a transport manifest generated by the BioTrack system.
52. Respondent did not have transport manifests for most of the cannabis product found on-site at the 1501 Mountain Drive site.
53. While at the Respondent's 1501 Mountain Drive NW business site, CCD staff observed and identified multiple cannabis products that were lacking the information required under the CRA to be listed on all cannabis products to denote to a consumer or medical patient the origin of the product.

VIOLATIONS OF LAW:

54. Violations listed above that were observed and documented by inspectors for the CCD include violations of the following statutory and administrative rule provisions of the CRA:
 - A. Unlicensed Manufacturing of Cannabis Extract, §26-2C-31, NMSA 1978;
 - B. Illegal Sourcing of Cannabis or Cannabis Product, §26-2C-37, NMSA 1978;
 - C. Illegal Sale or Distribution (of Cannabis Products), NMAC 16.8.2.8(E);
 - D. Digital Video Surveillance Record, NMAC 16.8.2.10(F);
 - E. Chain of Custody, NMAC 16.8.2.12;
 - F. Transportation of Cannabis, NMAC 16.8.2.13(A)(2);

- G. Other Manufacturing Activities Prohibited, NMAC 16.8.2.(D);
 - H. Minimum Standards for Manufacturing, NMAC 16.8.2.29;
 - I. Closed Loop Extraction System Requirements, NMAC 16.8.2.34(D); and
 - J. Cannabis Finished Product Labeling, NMAC 16.8.2.9. [See CCD Attachment E]
55. Petitioner will file a Notice of Contemplated Action (NCA) addressing the facts, violations of law and proposed administrative remedies relevant to the matters underlying this Petition as soon as practicable, and in keeping with the requirements of the ULA, and said NCA will be properly served upon Respondent.

NECESSITY FOR IMMEDIATE ISSUANCE OF PRELIMINARY INJUNCTION:

56. Respondent's unlicensed use of an extraction system that uses volatile solvents presents a clear and imminent danger to the public by increasing the risk of an explosion or fire that may result in severe bodily harm or death.
57. Respondent's import of out-of-state products and sale to the public presents a clear and imminent danger to the public by making available cannabis products that have not been tested for microbials, pesticides, or residual solvents and due to its unknown source, may also be contaminated with other narcotics.
58. Untested cannabis products pose a particular risk of severe bodily injury or death to qualified patients who purchase cannabis products for treatment of an illness and in many cases are immuno-compromised.

REQUESTED INJUNCTIVE RELIEF:

59. The Court set a hearing on Petitioner's petition for preliminary injunction in this matter at the Court's earliest convenience, recognizing the eminent and ongoing danger to the public at issue; and
60. The Court grant such additional remedies and other equitable authority or relief as the Court deems necessary and appropriate.

WHEREFORE, the Petitioner requests this Court enter an Order of Preliminary Injunction imposing the following requirements:

61. Respondent shall immediately cease and desist all cannabis-related activities at the 1501 Mountain Drive NW, Albuquerque, New Mexico, licensed premises for Sawmill Sweet Leaf LLC until a resolution is reached regarding the foregoing identified alleged violations of law and all such matters as may be specified in the Notice of Contemplated Action to be served upon Respondent by the CCD in accordance with the requirements of the Uniform Licensing Act.
62. Respondent shall comply with all requests for information and/or inspection of the facility located at 1501 Mountain Drive NW, Albuquerque, New Mexico, as made by the CCD in accordance with the requirements of the CRA.
63. Respondent shall immediately and without delay produce any and all records of financial or other business transactions related to the operation of Sawmill Sweet Leaf LLC as requested by Petitioner.
64. Respondent shall not dispose of, deface, remove, transfer or alter in any way any and all products, materials, equipment, records (whether on paper or stored via any electronic

medium) or other property or physical items located at the Sawmill Sweet Leaf LLC facility at 1501 Mountain Drive NW, Albuquerque, New Mexico, or stored or maintained at any other location on behalf of Sawmill Sweet Leaf LLC or any controlling person of Sawmill Sweet Leaf LLC, without first consulting with Petitioner regarding any proposed activities and also obtaining an order from this authorizing such proposed action(s).

65. Respondent shall immediately comply with any instructions given to Respondent by the Construction Industries Division of the New Mexico Regulation and Licensing Department regarding the deactivation, proper storage or handling of any devices located at 1501 Mountain Drive NW, Albuquerque, New Mexico, that are connected to or utilize in any way liquified petroleum (LP) gas or any other volatile or flammable gas.

NOTE: Attachments are being filed electronically under separate cover sheets.

Respectfully submitted,



Kevin A. Graham

Acting General Counsel

New Mexico Regulation & Licensing Department

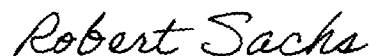
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VERIFICATION

I, Laura Romero Halama, being duly sworn upon my oath, state that I am the Deputy Director of the Cannabis Control Division (the Division) of the New Mexico Regulation and Licensing Department. The Division is charged with the statutory authority to license, investigate and regulate companies licensed under the New Mexico Cannabis Regulation Act (CRA), §26-2C-1 NMSA 1978 (2021) *et seq.* I, along with staff members of the Division whom I supervise, discovered and reported the factual information contained in the above and foregoing “Petition for Preliminary Injunction” and I have reviewed same and hereby verify that the facts contained therein are true and accurate to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.



Laura Romero Halama Date 07/28/2023

STATE OF NEW MEXICO)
) ss
COUNTY OF SANTA FE.)

STATE OF NEW MEXICO NOTARY PUBLIC CODY J GARCIA COMMISSION # 1139546 COMMISSION EXPIRES 01/23/2027
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SUBSCRIBE AND SWORN to me this 28 day of July, 2023, by




Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Petition for Preliminary Injunction, and accompanying Verification, were delivered via electronic mail on July 28, 2023, and/or placed in the United States Mail postage pre-paid, addressed to the following:

Cloud Duran
Registered Agent
Sawmill Sweet Leaf LLC
219 Bryn Mawr Drive SE
Albuquerque, NM 87106
ibcloud@hotmail.com
(206) 496-9059
[Sent via email and U.S. Mail]

Sawmill Sweet Leaf LLC
(Physical Business Address)
1501 Mountain Drive NW
Albuquerque, NM 87104
[Sent via U.S. Mail]

By: 

Kevin A. Graham
New Mexico Regulation & Licensing Department