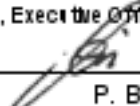


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9 *Department of Cannabis Control and*
Nicole Elliott, In Her Official Capacity

FILED
Superior Court of California
County of Alameda
03/22/2023
Clad Flake, Executive Officer / Clerk of the Court
By:  Deputy
P. Bir

*Exempt from filing fees
pursuant to Gov. Code §6103*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

15 **MOJO MOUNTAIN, LLC, 707 REALTY,**
LLC, SAMANTHA PHILLIPS, and
16 **JACOB PHILLIPS,**
17
Petitioners,
18
v.
19
CALIFORNIA DEPARTMENT OF
20 **CANNABIS CONTROL, NICOLE**
ELLIOTT, in her official capacity as
21 **Director of DCC, and DOES 1-10,**
22
Respondents.

Case No. RG21111567

~~[PROPOSED]~~ **ORDER TO DISMISS
CASE WITHOUT PREJUDICE AND TO
RETAIN JURISDICTION TO ENFORCE
SETTLEMENT**

[Code Civ. Proc., §§ 581(b)(2) and 664.6]

Dept: 17
Judge: Hon. Frank Roesch
Action Filed: August 30, 2021

23
24 **ORDER**

25 Petitioners, Mojo Mountain, LLC, 707 Realty LLC, Samantha Phillips, and Jacob Phillips
26 (Petitioners), and Respondents California Department of Cannabis Control (DCC) and Nicole
27 Elliott, in her official capacity as Director of the DCC (Respondents) request, pursuant to Code of
28 Civil Procedure section 664.6, that the Court retain jurisdiction to interpret and enforce the terms

1 and conditions of the settlement of the case. Petitioners' and Respondents' (Parties) Settlement
2 Agreement and Release is attached as Exhibit A to this Order.

3 The case will be dismissed without prejudice and the Court shall retain jurisdiction
4 pursuant to Code of Civil Procedure section 664.6 until after Petitioners' provisional cannabis
5 licenses, identified in paragraph 1 of the attached settlement agreement, become active or annual
6 licenses for the premises are issued.

7 The Court GRANTS the Parties' request to dismiss the case and to retain jurisdiction to enforce
8 the Parties' Settlement Agreement and Release, attached as Exhibit A.

9

10 IT IS SO ORDERED.

11 Dated: 03/22/2023
12 _____, 2023



13 HON. FRANK ROESCH
14 Judge of the Superior Court
15 **Frank Roesch / Judge**

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Exhibit A

SETTLEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is made and entered into by Petitioners MOJO MOUNTAIN LLC, a California limited liability company, 707 REALTY LLC, a California limited liability company, SAMANTHA PHILLIPS, an individual, and JACOB PHILLIPS, an individual (collectively "Petitioners") and the Department of Cannabis Control ("Department") and Nicole Elliott, in her official capacity as Director of the Department, (collectively "Respondents"). Petitioners and Respondents shall be collectively referred to as "Parties" and individually as "Party." The effective date of this Agreement is the date it is signed by the last signatory. Pursuant to this Agreement, the Parties agree as follows:

RECITALS

1. Petitioner Mojo Mountain LLC is a California limited liability company and operated a commercial cannabis business in Willow Creek, Humboldt County, California Assessor's Parcel No. 522-024-001 ("Premises"). Petitioner held three provisional cannabis cultivation licenses: #CCL21-0000381, #CCL21 0000383 and #CCL21-0000384 ("Provisional Licenses").
2. Petitioner 707 Realty LLC is a California limited liability company.
3. Petitioners Samantha Phillips and Jacob Phillips are natural persons and members of Mojo Mountain LLC.
4. Respondent Department is a state agency created in the state government of California. (Bus. & Prof. Code, § 26010.)
5. Respondent Nicole Elliott is a natural person and the Director of the Department.
6. On August 23, 2021, the Department issued a Notice of Revocation revoking the Provisional Licenses.
7. On August 30, 2021, Petitioners filed an Unverified Petition for Writ of Mandate ("Petition") in the Superior Court of California, County of Alameda, entitled *Mojo Mountain LLC et al v. California Department of Cannabis Control et al.*, Case No. RG21111567 ("Action"). A verified Petition was subsequently filed on February 22, 2022.
8. The California Department of Fish and Wildlife ("CDFW") approved a Streambed Alteration Agreement ("SAA") for the Premises (Agreement No. EPIMS-HUM-21613) for "Unnamed Tributaries to Supply Creek, Tributary to the Trinity River, Tributary to the Klamath River and the Pacific Ocean." The SAA was entered into between CDFW and Petitioner Samantha Phillips, effective November 1, 2021.
9. On December 22, 2021, the Humboldt County Planning and Building Department issued a Notice of Interim Permit Expiration stating that the Zoning Clearance Certificate for the Interim Permit ("Local Authorization") for the Premises would expire on January 1, 2022.
10. Respondents' consent to the Agreement is not an admission regarding any issue of law or fact alleged by Petitioners and may not be construed as an admission by any Party or third party.

11. Petitioners do not admit any of the alleged regulatory violations or any other wrongdoing arising out of the events and violations that formed the basis for the Department's August 23, 2021 revocation and subsequent suspension of the Provisional Licenses.
12. Given the uncertainty and cost of protracted litigation, the Parties have agreed to settle the Action. This Agreement is made to compromise the disputed claims, and there was no adjudication of the merits of any claim.

TERMS

13. The Recitals in Paragraphs 1-12 are fully incorporated herein.
14. Within 10 business days of the effective date of this Agreement:
 - (A) The Department will change the status of the Petitioners' Provisional Licenses, from revoked to suspended, with an effective date of August 23, 2021. The Provisional Licenses shall remain suspended until the conditions set forth in paragraph 15, 16, and 17 below, are satisfied and the Department's website will accurately reflect the status of Petitioners' licenses;
 - (B) The Department will not consider the events and alleged violations leading to the revocation and suspension as the basis for future disciplinary action or in further review of these or any other future applications by petitioners;
 - (C) The Department shall confirm in writing to Humboldt County Planning Director John Ford that it is rescinding the revocation of the Provisional Licenses; and
 - (D) The Department will not consider the events and alleged violations leading to the revocation in its review of Petitioners' application for Distribution-Transport Only license.
15. Neither Petitioners, nor any other person or entity, may engage or participate in commercial cannabis activity at the Premises until:
 - (A) Petitioners provide confirmation from CDFW of a determination that Petitioners have achieved full compliance with the SAA as approved or as amended.
 - (B) Petitioners provide evidence that they have received Local Authorization from Humboldt County Planning and Building Department, and are in compliance with all applicable ordinances and requirements of the local jurisdiction, to engage in commercial cannabis activity.
16. Petitioners agree to comply with the following deadlines, requirements, and restrictions, and understand and agree that failure to satisfy these terms shall constitute a material breach of this Agreement, authorizing summary revocation of the Provisional Licenses:
 - (A) Petitioners shall submit a Water Management Plan to CDFW for review within 60 days of the effective date of this Agreement in accordance with Measure 2.10 of the SAA, or on an extended timeline, as authorized by an approved Minor Amendment through CDFW.

- (B) Erosion control measures, culvert installations, and all other work and infrastructure installation necessary to comply with the approved SAA, and any water management plan approved by CDFW, shall be completed by October 1, 2023, in accordance with Measure 1.10 of the SAA, or on an extended timeline, as authorized by an approved Minor Amendment through CDFW. All required work, improvements, construction, or installation of infrastructure shall be completed in accordance with applicable law and regulations, and with the requisite local building and grading permits.
 - (C) No surface water diversion shall occur on the property for any reason until such diversion is authorized, if so required, by the State Water Resources Control Board's Division of Water Rights. In no event shall any surface water diversion occur except in compliance with applicable laws and regulations.
 - (D) Petitioners shall provide evidence to the Department that full compliance with all terms of the SAA was achieved within 90 days of CDFW's final authorized deadline.
17. Upon confirmation by the Department that the terms set forth in paragraphs 15 and 16, above, and the prerequisites for the issuance of either a provisional license as set forth in Business and Professions Code section 26050.2 or for an annual license have been satisfied, Petitioners shall be eligible to have the suspension of their provisional license lifted, at which time all applicable license fees due going forward only (excluding any retroactive fees) will be due. Upon payment of the applicable license fee, Petitioners' license will be active and will expire after 12 months unless renewed.
 18. Petitioners agree and understand that the Provisional Licenses held by the entity currently known as Mojo Mountain LLC, or its successors or assigns, may be summarily revoked for breach of any term contained in this Agreement, or as otherwise provided by law and not inconsistent with this Agreement, and may be subject to other action as provided by law and not inconsistent with this Agreement. Nothing in this Agreement excuses Mojo Mountain LLC or its successors or assigns from any requirement otherwise imposed by law, including but not limited to any requirement imposed in connection with renewals of provisional licenses under Business and Professions Code section 26050.2.
 19. Petitioners agree and understand that unnoticed regulatory inspection(s) may occur during the pendency of this Agreement and after the suspension of the Provisional Licenses is lifted only as otherwise provided by applicable law and regulation.
 20. Any dispute arising from the summary revocation of a license due to a breach of any term of this Agreement shall be resolved in accordance with paragraph 21, below, and the Court's review of a summary revocation shall be limited solely to the determination of whether there was a breach of any term of this Agreement.
 21. The Parties agree that the Agreement constitutes a full, final, and complete resolution of the events and alleged violations that resulted in Respondents' August 23, 2021 Notice of Revocation, including but not limited to those set forth in the Notice of Revocation, Petitioners' petitions for writ of mandate, filed on August 30, 2021 and February 22, 2022, and Petitioners' Government Tort Claim for Money or Damages against Respondents, dated

February 22, 2022 (“Released Matters”). No further proceedings or actions will be brought by either party in connection with the Released Matters except to address a dispute arising from the terms of this Agreement.


- (A) Petitioners release, discharge, and covenant not to sue the Department, or any of its employees, including each and every state constituent agency, state board, state department, state office, state commission, state fund, or other state entity thereof, and successors and assigns of each and every constituent of the State of California, for any and all claims or causes of action, of every kind and nature whatsoever, in law and in equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to the Department’s August 23, 2021 Notice of Revocation of Petitioners’ Provisional Licenses, or the administrative or investigative actions that preceded it.
 - (B) The Department agrees that no further license discipline, including the imposition of fines for violations of applicable regulations, future revocations or cancellations of the Provisional License, or annual application denials, will be taken against Petitioners based on the events and alleged violations that resulted in and are contained in the August 23, 2021 Notice of Revocation.
22. The Parties will submit a proposed order requesting that Department 17 of the Superior Court of Alameda retain jurisdiction over this matter for the interpretation and enforcement of this Agreement, and that such jurisdiction shall continue until the Department renders a decision on Mojo Mountain LLC’s Annual License Application or Mojo Mountain LLC fails to meet the requirements set forth in paragraphs 15 and 16, above. However, in no event shall the Court’s jurisdiction extend beyond the time to provide evidence that full compliance with all terms of the SAA was achieved per paragraph 16(D), above. If the Department denies Mojo Mountain LLC’s annual license application, this determination shall not be considered part of this same Petition for Writ of Mandate and shall not be subject to review under the continuing jurisdiction of the Court.
 23. Petitioners agree to file a request for dismissal of the Petition upon termination of the Court’s jurisdiction, as provided in paragraph 21, above.
 24. If the Court objects to the form or content of this Agreement, the Parties retain the right to renegotiate an agreement acceptable to the Court, to proceed to a trial on the merits of the Petition, or to proceed as otherwise directed by the Court.
 25. The Parties agree that the Alameda County Superior Court is the appropriate venue and has jurisdiction over them and the subject matter of the Action and this Agreement. Should a Party fail to comply with this Agreement, the Parties may seek any relief provided under the law, including a court order enforcing the terms of this Agreement or entry of judgment under Code of Civil Procedure section 664.6. The Alameda County Superior Court shall retain jurisdiction over Petitioners and Respondents to enforce the Agreement in accordance with paragraph 19 of this Agreement. Before any Party may seek the Court’s assistance with the enforcement of the terms of this Agreement, the Parties shall 1) provide written notice to each other in accordance with Paragraph 25 of this Agreement, and 2) take reasonable steps to resolve the issue.

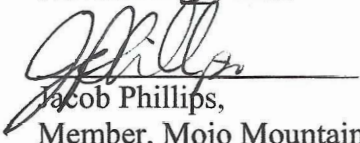
26. Each Party shall bear its own attorney's fees and costs associated with the Action and with the drafting of this Agreement through and including the effective date, except as otherwise provided herein.
27. Notices. All notices and submissions required by this Agreement shall be sent by certified mail as follows:
 - (A) Notices to Petitioners: Mojo Mountain et al.
PO Box 1465 Willow Creek, CA 95573
 - (B) Notices to Respondents: Department of Cannabis Control, Attn: Legal Affairs, 2920 Kilgore Road, Rancho Cordova, CA 95670.
28. The Parties may modify the person and address to whom the notice is to be sent by informing each other in writing by certified mail. Nothing in the Agreement shall be interpreted or applied to relieve Respondents of their existing obligations to provide documentation to a federal or state agency, county, city, or other governmental agency as required by statute, regulation, ordinance, permit, or other requirement.
29. Scope of Agreement. The Agreement shall apply to and be binding upon Petitioners and each of their respective officers, directors, agents, employees, contractors, consultants, representatives, successors, assigns, receivers, trustees, and all persons, partnerships, corporations, and other entities acting under, on behalf of, or in concert with Petitioners, and upon the Department of Cannabis Control, and any successor agency.
30. Agreement Does Not Bind Other Agencies. Except as previously expressed in the Agreement, nothing in the Agreement is intended or shall be construed to preclude the Attorney General, or any other federal, state, or local agency, board, department, office, commission, or entity from exercising its authority under any laws, statutes, regulations, or ordinances.
31. Interpretation. This Agreement shall be deemed to have been drafted equally by the Parties, and shall not be interpreted for or against either Party on the ground that any such Party drafted it. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
32. Integration. This Agreement contains all of the terms and conditions agreed upon by the Parties, relating to the matters covered by this Agreement, and supersedes any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and communications of the Parties, whether oral or written, respecting the matters covered by this Agreement.
33. Modification. The Agreement may be amended or modified only by a writing signed by the Parties or their authorized representatives, and then by order of the Court.
34. Severability. If a provision of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, such provision shall be deemed severed and deleted, and the remainder will continue to be valid and enforceable.
35. Knowing, Voluntary Agreement. Each Party to this Agreement acknowledges that it has been represented by legal counsel, and that each Party has reviewed and has had the benefit of legal counsel's advice, concerning all of the terms and conditions of this Agreement.

36. Warranty of Capacity to Execute Agreement. Each Party to this Agreement represents and warrants that the person who has signed this Agreement on its behalf is duly authorized to enter into this Agreement, and to bind that Party to the terms and conditions of this Agreement.
37. Confidentiality. This Agreement and the facts and circumstances surrounding this Action will not be confidential and will be available for disclosure by the Respondents to any member of the public pursuant to a California Public Records Act request.
38. Signatures. This Agreement may be executed in duplicate originals and/or in counterparts, but it is agreed there is only one Agreement. The Parties agree to accept fax and scanned signatures, in lieu of original documents and signatures.

IT IS SO STIPULATED

Petitioners


 Samantha Phillips,
 Managing Member, Mojo Mountain LLC
 November 8th, 2022



 Jacob Phillips,
 Member, Mojo Mountain LCC
 November 8th, 2022


 Samantha Phillips, Managing Member, 707 Realty LLC
 November 8th, 2022

Respondents


Nicole Elliott Digitally signed by Nicole Elliott
Date: 2022.12.12 12:38:58 -08'00'
 Nicole Elliott,
 Director of Cannabis Control
 November __, 2022

**APPROVED AS TO FORM:
 ANTHONY LAW GROUP**


 James Anthony
 Attorney for Mojo Mountain LLC
 707 Realty LLC,
 Samantha Phillips, and
 Jacob Phillips

November 7, 2022

ROB BONTA
 Attorney General, State of California


 Ethan Turner
 Deputy Attorney General
 Attorneys for the Department of Cannabis Control and Nicole Elliott in her official capacity as Director

November 2, 2022

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Mojo Mountain, LLC v. Department of Cannabis Control**

Case No.: **RG21111567**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On March 10, 2023, I served the attached **[PROPOSED] ORDER TO DISMISS CASE WITHOUT PREJUDICE AND TO RETAIN JURISDICTION TO ENFORCE SETTLEMENT** by transmitting a true copy via electronic mail to the following electronic addresses:

James M. Anthony

Drew Sanchez

Jamila Colbert

Hannah Young

Anthony Law Group, PC

Emails: james@anthonylaw.group

drew.sanchez@anthonylaw.group;

jamila@anthonylaw.group;

hannah@anthonylaw.group

Attorney for Petitioner

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 10, 2023, at Sacramento, California.

Natalie Y. Quinonez

Declarant



Signature