

COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

STATE OF OHIO *EX REL.*

CANNASCEND OHIO, LLC,  
*Individually and on behalf of the State of Ohio*  
*For violations of the Ohio Public Records Act*  
c/o Statuent, Inc.  
450 W. Wilson Bridge Road, Suite 340  
Worthington, OH 43085,

Case No. \_\_\_\_\_

And

APPALACHIAN PHARM PRODUCTS, LLC,  
*Individually and on behalf of the State of Ohio*  
*For violations of the Ohio Public Records Act*  
16064 Beaver Pike,  
Jackson Ohio 45640

And

CANNAMED THERAPEUTICS, LLC,  
*Individually and on behalf of the State of Ohio*  
*For violations of the Ohio Public Records Act*  
c/o Statuent, Inc.  
450 W. Wilson Bridge Road, Suite 340  
Worthington, Ohio 43085,

And

PALLIATECH OHIO, LLC,  
*Individually and on behalf of the State of Ohio*  
*For violations of the Ohio Public Records Act*  
2692 Madison Road, Suite 235  
Cincinnati, OH 45208

TRILLIUM HOLDINGS, INC.  
*Individually and on behalf of the State of Ohio*  
*For violations of the Ohio Public Records Act*  
c/o Ted Wensink  
4411 Wood Rd.  
Monroeville, OH 44847

SCHOTTENSTEIN APHRIA, LLC  
*Individually and on behalf of the State of Ohio*

*For violations of the Ohio Public Records Act* :  
c/o Tod H. Friedman :  
4300 East Fifth Avenue :  
Columbus, OH 43219 :

Plaintiffs, :

vs. :

JACQUELINE T. WILLIAMS :  
DIRECTOR :  
OHIO DEPARTMENT OF COMMERCE :  
77 S. High Street, 23<sup>rd</sup> Floor :  
Columbus, OH 43215, :  
*In her official capacity* :

And :

TERRADIOL OHIO, LLC :  
c/o CT Corporation System, Statutory Agent :  
4400 Easton Commons Way, STE 125 :  
Columbus, OH 43219, :

And :

CRESCO LABS OHIO, LLC :  
c/o ACFB Incorporated, Statutory Agent :  
200 Public Square, Suite 2300 :  
Cleveland, OH 44114, :

And :

HARVEST GROWS, LLC :  
c/o Registered Agent Solutions, Inc. :  
4578 Mayfield Road, Suite 204 :  
Cleveland, OH 44121 :

And :

PARMA WELLNESS CENTER, LLC :  
c/o National Registered Agents, Inc. :  
4400 Easton Commons Way, Suite 125 :  
Columbus, OH 43219, :

And :

GROW OHIO PHARMACEUTICALS LLC :  
c/o Emilie Kurtz :  
7616 Riverview Road :  
Independence, OH 44131 :

And :

BUCKEYE RELIEF, LLC :  
c/o Andrew K. Rayburn, Statutory Agent :  
40 E. Washington Street :  
Chagrin Falls, OH 44022 :

And :

OPC CULTIVATION, LLC :  
c/o ACFB Incorporated, Statutory Agent :  
200 Public Square, Suite 2300 :  
Cleveland, OH 44114 :

And :

RIVIERA CREEK HOLDINGS, LLC :  
c/o Christopher D. Stock, Statutory Agent :  
3825 Edwards Road, Suite 650 :  
Cincinnati, OH 45209 :

And :

PURE OHIO WELLNESS, LLC :  
c/o James L. Pegram, Jr., Statutory Agent :  
6983 Gale Road SW :  
Hebron, OH 43025 :

And :

COLUMBIA CARE OH, LLC :  
c/o UCS of Ohio, Inc., Statutory Agent :  
3040 Riverside Drive, Suite 122 :  
Columbus, OH 43221 :

And :

MEADE & WING, LLC :  
c/o Mindy Meade :  
9991 East Country Shadows Drive :  
Tucson, AZ 85748, :

And

B & B GROW SOLUTIONS

7646 W 63rd St.

Summit, IL 60501

And

ICANN CONSULTING, LLC

c/o United States Corporation Agents, Inc.,

Statutory Agent

3250 West Market, Suite 205

Fairlawn, OH 44333

Defendants

**COMPLAINT FOR  
MONETARY, DECLARATORY, MANDAMUS, AND INJUNCTIVE RELIEF**

For their complaint against Jacqueline Williams in her official capacity as Director of the Ohio Department of Commerce; Terradiol Ohio, LLC; Cresco Labs Ohio, LLC; Harvest Grows, LLC; Parma Wellness Center, LLC; Meade & Wing, LLC, B & B Grow Solutions, LLC; iCANN Consulting, LLC; and Trevor Bozeman, the sole member of the now dissolved iCANN, Consulting, LLC (collectively, “Defendants”), Plaintiffs (proceeding both individually and upon behalf of the State of Ohio for claims advanced under R.C. 149.43) CannAscend Ohio, LLC; Appalachian Pharm Products, Inc.; CannaMed Therapeutics, LLC; PalliaTech Ohio, LLC; Trillium Holdings, Inc.; and Schottenstein Aphria, LLC (collectively, “Plaintiffs”) allege as follows:

**THE PARTIES AND VENUE**

1. Plaintiffs applied for, but did not receive, a Level I Cultivator Provisional License. This Complaint challenges the Department’s design, administration, and execution of the process used to select provisional license awardees. As detailed in this Complaint, Plaintiffs’ investigation

reveals that the Department has employed a fundamentally unreasonable, arbitrary, and unconscionable scoring process that has resulted in, at minimum, the following defects:

- At least five of the twelve provisional license awards went to entities that made material fraudulent and/or misleading representations on their applications that should have led to disqualification under Chapter 3796 of the Ohio Revised Code.
- At least five of the twelve provisional license awards went to entities that should have been disqualified for failure to meet mandatory criteria provided in Chapter 3796 of the Ohio Revised Code, which was apparent on the face of applications submitted to the Department, but which the Department failed to verify or discover.
- Upon information and belief that fourteen out of the first seventeen applicants' (MMCP-C-201706-0077 through MMCP-C-201706-0093) applications were incorrectly scored. *See Spreadsheet of Faulty Scoring*, attached as Exhibit A.
- Unexplainable “scoring defects” that led to inflated scores for at some of the Defendant-applicants, while leading to incorrect deflated scores for others—all of which impacted the provisional license awards.
- The Department failed to adhere to the mandates of Chapter 3796 of the Ohio Revised Code, and failed to follow its own Administrative Rules and application instructions, leading to a fundamentally arbitrary, capricious, unfair, and flawed scoring process at the expense of the Plaintiffs, who in the aggregate

expended millions of dollars complying with rules the Department did not properly enforce or follow.

- The Department allowed multiple employees to have unlimited access to online accounts for all the individual cultivator application scorers, which provided the opportunity for multiple employees to change scores or manipulate other documents for any cultivator applicant.
- The Department failed to uncover blatant conflicts of interest between the Defendants-Consultants, hired to help score applications, and the applicants that received a Level I Cultivator Provisional License.

2. Plaintiff CannAscend Ohio, LLC (“CannAscend Ohio”) is an Ohio limited liability company with its principal place of business in Cincinnati, Ohio. CannAscend Ohio was an applicant for a Level I Cultivator Provisional License, and submitted an application to the Department of Commerce under the Department’s Medical Marijuana Control Program (“MMCP”) on or before June 30, 2017. CannAscend Ohio is majority owned by Ohioans with extensive backgrounds in building successful businesses in the State and who have been instrumental in the reform of medical marijuana policy in Ohio. CannAscend includes equity owners with extensive experience in founding and operating successful businesses engaged in the cultivation, production, and distribution of medical marijuana in other highly regulated, state-sanctioned markets. CannAscend Ohio also includes multiple physicians who, as equity owners, are committed to the successful integration of medical marijuana as a viable therapeutic option for patients in Ohio.

3. Plaintiff Appalachian Pharm Products, Inc. (“Appalachian”) is an Ohio limited liability company with its principal place of business in Ohio. Appalachian was an applicant for a

Level I Cultivator Provisional License, and submitted an application to the Department of Commerce under the MMCP on or before June 30, 2017. Appalachian's founders and team have a wealth of experience in agriculture and cultivation in both food and marijuana production. Appalachian's existing facility, built for indoor agriculture production, was designed and developed by the expert members of Appalachian's Team. This facility has produced over 270,000 pounds of produce per week. The facility was the first of its kind in the United States when it was built over four decades ago. Appalachian also has direct experience with marijuana cultivation as one of its founding members owns and operates a successful marijuana cultivation business in another state with a robust and mature, state-sanctioned market. Furthermore, Appalachian's founders have continued to expand their knowledge of medical marijuana and obtain hands-on experience through attendance and completion of numerous training courses on best practices in cultivation.

4. Plaintiff CannaMed Therapeutics, LLC ("CannaMed") is an Ohio limited liability company with its principal place of business in Columbus, Ohio. CannaMed was an applicant for a Level I Cultivator Provisional License, and submitted an application to the Department of Commerce under the MMCP on or before June 30, 2017. CannaMed is majority owned by Ohioans who qualify as an economically disadvantaged group under Revised Code section 3796.09, and qualify under Administrative Code section 3796:2-1-03 in that they have both a 51% or greater control over the management and day-to-day operations of the business, and a 51% or greater interest in the capital, assets, and profits and losses of the business. CannaMed includes equity owners with extensive experience in founding and operating successful businesses engaged in the cultivation, production, and distribution of medical marijuana in other highly regulated, state-sanctioned markets. CannaMed also includes multiple physicians who, as equity owners, are

committed to the successful integration of medical marijuana as a viable therapeutic option for patients in Ohio.

5. Plaintiff PalliaTech Ohio, LLC (“PalliaTech Ohio”) is a Delaware limited liability company, registered with the Ohio Secretary of State as a foreign limited liability company. PalliaTech Ohio was an applicant for a Level I Cultivator Provisional License, and submitted three applications to the Department of Commerce under the MMCP on or before June 30, 2017. PalliaTech Ohio’s team consists of one of the most experienced medical cannabis operators in the United States with cultivation, processing, and dispensary facilities in seven highly-regulated state-sanctioned markets. This experience includes seven individual processing licensees currently or soon-to-be operating across six states. PalliaTech Ohio’s team also boasts extensive operational experience, leading to implementation of a strict and effective set of standard operating procedures, and a reputation as an industry leader in the advancement of medical cannabis science. In sum, PalliaTech Ohio has a team setting new standards in the critical areas of medical cannabis processing and formulation, security protocols, risk-management, quality assurance, new program development, and patient-centered palliative care across many regulated markets throughout the United States.

6. Trillium Holdings, Inc. (“Trillium Ohio”) is an Ohio for-profit corporation, with its principle place of business in Ohio. Trillium Ohio was an applicant for a Level I Cultivator Provisional License, and submitted an application to the Department under the MMCP on or before June 30, 2017. The founders of Trillium Ohio are medical cannabis professionals and entrepreneurs with deep experience in the industry. Its principals have founded and operated several licensed cannabis businesses and have assisted these entities with obtaining, designing, building, and operating commercial medical cannabis production and retail facilities. These



include greenfield and build-out of facilities in Illinois, New York, Pennsylvania, Sydney and Medellin. Trillium Ohio’s founders have also created and operated international medical cannabis businesses in Canada, Colombia, and Australia.

7. Schottenstein Aphria, LLC (“Schottenstein Aphria”) is an Ohio limited liability company with its principle place of business in Ohio. Schottenstein Aphria was an applicant for a Level I Cultivator Provisional License, and submitted an application to the Department of Commerce under the MMCP on or before June 30, 2017. Schottenstein Aphria is a joint venture combining marijuana industry experience, business know-how, and operational excellence. The Aphria side of the joint venture is a well-known player in the medical marijuana industry, boasting a cash flow positive track record. The Schottenstein side of the joint venture is a well-known business operator that has a sustained record of success in a diverse array of business ventures. Together, Schottenstein Aphria further boasts equity owners, and professional management, with extensive experience in founding and operating successful businesses engaged in the cultivation, production, and distribution of medical marijuana in other highly regulated state-sanctioned marijuana markets.

8. Defendant Jacqueline Williams is the Director of the Ohio Department of Commerce (“Defendant Williams” or the “Department”), and is responsible for enforcing the medical cannabis cultivator licensing provisions set forth in Chapter 3796 of the Ohio Revised Code. Defendant Williams is sued in her official capacity only. Additionally, the Department of Commerce is a “public office” as that term is defined under R.C.149.011(A).

9. Defendant Terradiol Ohio, LLC (“Terradiol”) is an Ohio limited liability company with its principal place of business in Syracuse, New York. Terradiol was an applicant for a Level

I Cultivator Provisional License, and submitted an application to the Department of Commerce under the MMCP.

10. Defendant Cresco Labs Ohio, LLC (“Cresco”) is an Ohio limited liability company with its principal place of business in North Canton, Ohio. Cresco was an applicant for a Level I Cultivator Provisional License, and submitted an application to the Department of Commerce under the MMCP.

11. Defendant Harvest Grows, LLC (“Harvest Grows”) is an Ohio limited liability company with its principal place of business in Tempe, Arizona. Harvest Grows was an applicant for a Level I Cultivator Provisional License, and submitted two applications to the Department of Commerce under the MMCP.

12. Defendant Parma Wellness Center, LLC (“Parma Wellness”) is an Ohio limited liability company with its principal place of business in Akron, Ohio. Parma Wellness was an applicant for a Level I Cultivator Provisional License, and submitted two applications to the Department of Commerce under the MMCP.

13. Defendant Grow Ohio Pharmaceuticals LLC (“Grow Ohio”) is an Ohio limited liability company with its principle place of business in Ohio. Grow Ohio was an applicant for a Level I Cultivator Provisional License, and submitted an application to the Department of Commerce under the MMCP.

14. Defendants Buckeye Relief, LLC; OPC Cultivation, LLC; Riviera Creek Holdings, LLC; Pure Ohio Wellness, LLC; Columbia Care OH, LLC; Standard Wellness Company, LLC; AT-CPC of Ohio, LLC, are all Ohio limited liability companies that applied for a Level I Cultivator Provisional License, and submitted an application to the Department of Commerce under the MMCP. The foregoing Defendants are sued pursuant to the mandates of the Ohio Declaratory

Judgment Act, which requires Plaintiffs to join all parties whose interests may be affected by the declarations sought by Plaintiffs in this Complaint.

15. Defendant Meade & Wing, LLC (“Meade & Wing”) is an Arizona limited liability company with its principal place of business in Tucson, Arizona. Notably, Meade & Wing is not registered to do business in Ohio as a foreign limited liability company. On or about June 12, 2017, the Controlling Board of the State of Ohio (the “Controlling Board”) authorized payment of up to one hundred and fifty thousand dollars (\$150,000.00) to Meade & Wing for services to be rendered to the Department of Commerce as an independent contractor assisting in the evaluation of applications for Cultivator Provisional Licenses submitted under the MMCP (the “Scoring Contract”). Upon information and belief that Meade & Wing also aided the Department in constructing the rubric by which Level I and Level II Cultivator applicants were evaluated by when determining provisional license awards (the “Rubric Consultation”). That rubric included specific “elements” to be awarded points and other “required elements” that if not adequately addressed would result in the entire corresponding subsection of the application receiving a zero score, neither of which were otherwise announced in Rule or the application governing cultivator licensing awards (collectively, the “Scoring Elements”).

16. Defendant B&B Grow Solutions (“B&B”) is an Ohio partnership with its principal place of business in Summit, Illinois. Upon information and belief that B&B was a partnership between Bret Bender and Brandon Miller during all relevant times complained of in the Complaint. On or about June 12, 2017, the Controlling Board authorized payment of up to one hundred and fifty thousand dollars (\$150,000.00) to B&B relative to the Scoring Contract. Upon information and belief that B&B also provided the Rubric Consultation and had knowledge of the Scoring Elements.

17. Defendant iCANN Consulting, LLC was an Ohio limited liability company operating in Ohio during the time the events giving rise to the present Complaint took place. The company was dissolved on January 27, 2018. Plaintiffs name iCANN pursuant to R.C. 1705.03(A) and R.C. 1705.45(B)(2), and serve iCANN pursuant to R.C. 1705.54(B)(4). Trevor Bozeman is an individual whose last known address is 2262 Sonnington Drive, Dublin, OH 43016 (Bozeman and iCANN will collectively be referred to interchangeably as “Bozeman” or “iCANN”). On or about June 12, 2017, the Controlling Board authorized payment of up to one hundred and fifty thousand dollars (\$150,000.00) to iCANN relative to the Scoring Contract. Upon information and belief that Bozeman also provided the Department Rubric Consultation and had knowledge of the Scoring Elements.

18. Upon information and belief that, prior to the Scoring Contract, B&B and Defendant Bozeman were engaged by the Department of Commerce to provide consultation services, which included but were not limited to both the drafting of the cultivator and processing rules under Chapter 3796 of the Ohio Administrative Code and the corresponding applications for licensure.

19. This Court has personal jurisdiction over all of the Defendants.

20. Venue is proper before this Court because, among other things, the Department of Commerce is a state agency that maintains its headquarters in Franklin County, Ohio, and it is the county to which the other Defendants conducted the activities giving rise to these claims for relief. *See Ohio R. Civ. P. 3(B).*

### **BACKGROUND**

21. This lawsuit challenges the unreasonable, unlawful, arbitrary, and capricious nature of the process used by the Department to score medical marijuana cultivator applications. Among

other things detailed in this Complaint, the Department: (1) failed to adhere to the mandates of Chapter 3796 of the Ohio Revised Code, and its own Administrative Rules and application instructions; (2) awarded provisional licenses to entities that made material fraudulent and/or misleading representations in their cultivator applications, which were not discovered, but could or should have been uncovered by the Department with reasonable due diligence; (3) awarded provisional licenses to entities that should have been disqualified for failure to meet mandatory provisions of Chapter 3796 of the Ohio Revised Code, but were not disqualified due to the Department's failure to verify or otherwise evaluate information provided in at least some of the Defendants' cultivator applications; and (4) failed to uncover blatant conflicts of interest between the Defendant-consultants, who scored the cultivator applications, and the Defendant-applicants who received a provisional license despite clear conflicts of interest.

22. This lawsuit also seeks redress for the fraudulent, misleading, and/or otherwise unlawful conduct of the Consultants—Meade & Wing, B&B Grow Solutions, and iCANN/Trevor Bozeman—and certain provisional licensees including at least Terradiol, Cresco, Harvest Grows, Parma Wellness, and Grow Ohio, that made material fraudulent and/or misleading statements in their applications to secure a provisional license.

**A. OVERVIEW OF THE OHIO MEDICAL MARIJUANA CONTROL PROGRAM.**

23. On or about September 8, 2016, Ohio passed House Bill 523 legalizing medical marijuana in Ohio and creating the MMCP. The MMCP is intended to allow people with certain medical conditions, upon the recommendation of an Ohio-licensed physician certified by the state medical board, to purchase and use medical marijuana.

24. Under R.C. 3796.02, the MMCP is established in, and is to be administered by, the Department of Commerce and the Board of Pharmacy. The MMCP also provides for a civilian advisory body called the Medical Marijuana Advisory Committee.

25. The General Assembly statutorily charged the Department of Commerce with licensing medical marijuana cultivators and processors and the licensure of laboratories that test medical marijuana. The Board of Pharmacy is tasked with licensing retail dispensaries and patient and caregiver registration.

26. H.B. 523 and Chapter 3796 of the Revised Code establish a basic framework for the MMCP, and prescribe a number of tasks to be completed by dates certain, including:

- (a) R.C. 3796.03(A)(1) required the Department of Commerce to adopt rules establishing the standards and procedures for MMCP.
- (b) R.C. 3796.03(A)(2) required the Department of Commerce to adopt rules establishing standards and procedures for the licensure of cultivators.
- (c) R.C. 3796.09 provides that an entity seeking to cultivate medical marijuana must submit an application for each location for which it seeks to operate and each application shall be submitted in accordance with rules adopted under R.C. 3796.03.

27. Under the Act, the Department of Commerce and State Board of Pharmacy established the MMCP to provide for the following: (1) the licensure of medical marijuana cultivators, processors, and retail dispensaries; (2) registration of patients and caregivers; and (3) the licensure of laboratories that test medical marijuana.

**B. STATUTORY REQUIREMENTS FOR A CULTIVATOR PROVISIONAL LICENSE.**

28. The rules governing the required cultivator license application materials and the scoring process used by the Department are set forth in the MMCP, Ohio's statutory code provisions, rules and regulations adopted by the Department of Commerce, and the cultivator application instructions.

29. Under R.C. 3796.09(B), the Department of Commerce is obligated to issue a license to an applicant if the following conditions are met:

- (1) The report of the criminal records check conducted pursuant to section 3796.12 of the Revised Code with respect to the application demonstrates the following:
  - (a) Subject to division (B)(1)(b) of this section that the person subject to the criminal records check requirement has not been convicted of or pleaded guilty to any of the disqualifying offenses specified in rules adopted under division (B)(2)(b) of section 3796.03 of the Revised Code:
  - (b) That the disqualifying offense the person was convicted of or pleaded guilty to is one of the offenses specified in rules adopted under division (B)(2)(c) of section 3796.03 of the Revised Code and the person was convicted of or pleaded guilty to the offense more than five years before the date the application for licensure is filed.
- (2) The applicant demonstrates that it does not have an ownership or investment interest in or compensation arrangement with any of the following:
  - (a) A laboratory licensed under this chapter:
  - (b) An applicant for a license to conduct laboratory testing.
- (3) The applicant demonstrates that it does not share any corporate officers or employees with any of the following:
  - (a) A laboratory licensed under this chapter:

- (b) An applicant for a license to conduct laboratory testing.
- (4) The applicant demonstrates that it will not be located within five hundred feet of a school, church, public library, public playground, or public park.
- (5) The information provided to the department pursuant to section 3796.11 of the Revised Code demonstrates that the applicant is in compliance with the applicable tax laws of this state.
- (6) The applicant meets all other licensure eligibility conditions established in rules adopted under section 3796.03 of the Revised Code.

(Emphasis added.)

30. Under R.C. 3796.03(A)(3), the rules adopted by the Department of Commerce must (1) establish application procedures and fees for licenses it issues under this chapter; and (2) specify the conditions that must be met to be eligible for licensure. (emphasis added).

31. Administrative Rule 3796:2-1-02 sets forth the rules for submission in consideration of the cultivator provisional license applications. Administrative Rule 3796:2-1-02(B) provides: “The provisional license application shall be submitted in accordance with Chapter 3796 of the Revised Code in this Chapter. The application will include instructions for completion and submission.” (Emphasis added.)

32. Under Rule 3796:2-1-02(B), each applicant is obligated to submit a nonrefundable application fee of \$20,000 and the following: (1) Business Plan, (2) Operations Plan, (3) Quality Assurance Plan, (4) Security Plan, (5) Financial Plan, and (6) any other information requested in the application instructions. Rule 3796:2-1-02(B) sets forth the minimum elements required for each plan, which included, among other language, the following particularly relevant provisions:

- Per Rule 3796:2-1-02(B)(2), an applicant’s business plan was required to include:



- (e) organizational chart of the company, including name, address and date of birth of each principal officer, board member and any other individual associated with the cultivator;
- (f) All persons subject to the criminal records checks shall submit both an Ohio bureau of criminal identification and investigation criminal records check and a federal bureau of criminal investigation criminal records check pursuant to division (B) of section 3796.12 of the Revised Code;
- (i) A location area map of the area surrounding the proposed cultivator that establishes the facility is at least five hundred feet from the boundaries of a parcel of real estate having situated on it a prohibited facility, as measured under rule 3796:5-5-01 of the Administrative Code;
- (j) For any instance in which an applicant or any person associated with the applicant is currently or was previously licensed or authorized in another state or jurisdiction to cultivate, produce, test, dispense, or otherwise deal in the distribution of marijuana in any form, the following:
- Per Rule 3796:2-1-02(B)(6), an applicant's financial plan was required to include:
  - (b) A cost breakdown of the applicant's anticipated costs in building the facility and implementing the policies and procedures submitted as part of the application and the source of funding for the associated costs;
  - (c) Documentation acceptable to the department that the individual or entity filing the application has at least five hundred thousand dollars in liquid assets for a level I cultivator provisional license and fifty thousand dollars in liquid assets for a level II cultivator provisional license, which are unencumbered and can be converted within thirty days after a request to liquidate such assets;

33. Administrative Rule 3796:2-1-03 supplements the criteria in Rule 3796:2-1-02(B) and provides some additional criteria applicants must provide when submitting an application

seeking a Cultivator Provisional License. For example, some particularly relevant provisions include:

- Per Rule 3796:2-1-03(A)(4), the applicant was required to:
  - Certify that the local jurisdiction where the facility is proposed has not passed a moratorium or taken other action that would prohibit the applicant from operating as a medical marijuana cultivator;
- Per Rule 3796:2-1-03(A)(7), the applicant was required to:
  - Submit an application with the applicable fee under rule 3796:5-1-01 of the Administrative Code that does not contain information that misleads the department, misrepresents a material fact, or is received after the established application submission period established under paragraph (A) of rule 3796:2-1-02 of the Administrative Code.
- Rule 3796:2-1-03(B)(1)(e) requires:
  - Documentation that the applicant is in compliance with any local ordinances, rules, or regulations adopted by the locality in which the applicant's property is located, which are in effect at the time of the application. Such documentation may include, but is not limited to, local building department approval demonstrating compliance with rules adopted by the board of building standards pursuant to Chapters 3781. and 3791. of the Revised Code to construct the proposed facility, local approval to operate as a medical marijuana cultivation facility, and evidence that the applicant's proposed location is in compliance with local ordinances, rules, or regulations adopted by the locality in which the applicant's property is located, which are in effect at the time of application.
- Rule 3796:2-1-03(C)(1)(a) provides:
  - The applicant must provide documentation establishing that its principal place of business is headquartered in Ohio. The applicant may also provide names, addresses, and verification of any persons associated with the applicant that have established residency in Ohio.
- Rule 3796:2-1-03(C)(4)(a) provides that the applicant must demonstrate:
  - (i) It is owned and controlled by a United States citizen who is a resident of this state and is a member of one of

the economically disadvantaged groups set forth in division (C) of section 3796.09 of the Revised Code. As used in that section, "owned and controlled" means that at least fifty-one per cent of the business, including corporate stock if a corporation, is owned by persons who belong to one or more of the groups set forth in this rule, and that those owners have control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to their percentage of ownership; or

- (ii) It is owned and controlled as a woman-owned business by a United States citizen who is a resident of this state. For purposes of this paragraph, "owned and controlled" has the same ownership and control requirements as listed in paragraph (C)(4)(a)(i) of this rule.

(Emphasis added).

34. Administrative Rule 3796:2-1-03 also provides for the process by which the Department of Commerce must score and rank applications for Cultivator Provisional Licenses. Specifically, “the department, an independent contractor selected by the department, or a combination of the two shall review” the submitted applications and the application instructions.

35. Under Administrative Rule 3796:2-1-03, the Department of Commerce was required to rank each application using an impartial and numerical process taking into account the criteria identified in Administrative Rule 3796:2-1-02, as developed by the Department, an independent contractor, or a combination of the two.

36. The applications were to be ranked based on the following criteria, at a minimum: (1) Business Plan, (2) Operations Plan, (3) Quality Assurance Plan, (4) Security Plan, (5) Financial Plan, and (6) any other information the department deems necessary to evaluate and determine the applicant’s suitability to operate as a cultivator.

37. Under Administrative Code 3796:2-1-04(A), a provisional license is to be issued to the Level I and Level II qualified applicants receiving at least the minimum required score in each category and the highest total score overall as compared to the other applicants. In sum, the Department of Commerce was to accept and review applications for medical marijuana cultivator provisional licenses through a competitive process.

**C. THE LEVEL I CULTIVATOR PROVISIONAL LICENSES.**

38. There are two levels of Cultivator Provisional Licenses. According to the Department of Commerce, Level I cultivators will be permitted to operate an initial marijuana cultivation area of up to 25,000 square feet, and Level II cultivators will be permitted to operate an initial cultivation area of 3,000 square feet.

39. Under Administrative Code Rule 3796:2-1-01, the Department of Commerce may issue up to 12 Level One Cultivator Provisional Licenses and 12 Level II Cultivator Provisional Licenses before September 8, 2018, based upon the ranking of the applicants in accordance with the criteria listed in R.C. 3796.09 and Chapter 3796 of the Administrative Code. Beginning in September 2018, the Department may issue additional Cultivator Provisional Licenses, if the state population and patient usage data supports additional licenses, at the discretion of the director. However, in the event additional Cultivator Provisional Licenses are deemed necessary, the Department of Commerce is to follow the same application process outlined in Administrative Rule 3796:2-1-02.

40. The Department reviewed Level II Cultivator applications first, accepting applications between June 5 and June 16, 2017.

41. The Department next reviewed Level I Cultivator applications, accepting applications between June 19 and June 30, 2017.

42. Notably, nothing in Revised Code Chapter 3796, Administrative Code Chapter 3796, or the Cultivator application instructions allowed for differentiation in the scoring process applied to Level I and Level II applicants.

**D. SCORING OF THE LEVEL I CULTIVATOR APPLICATIONS.**

43. The medical marijuana Level I Cultivator applications were divided into two sections. Section 1 required the applicants to provide proof that certain mandatory requirements for licensure were met per R.C. 3796.09(B) including but not limited to: disclosure of the name and contact information of the applicant, proof of sufficient liquid capital assets, submission of criminal background checks, and submission of tax information.

44. Since the information in Section 1 of the cultivator application sought mandatory information, it was to be scored on a pass/fail basis. Page eleven of the Cultivator Application Instructions provided that failure to meet these mandatory requirements would result in disqualification from the scoring process.

45. According to the Department of Commerce, the reviewing and scoring of Section 2 in the Level I Cultivator application evaluated five separate plans: Business Plan; Operations Plan; Quality Assurance Plan; Security Plan; and Financial Plan. In submitting this information, the applicant was required to redact or use identity legends to ensure that Section 2 omitted any identifiable information.

46. According to the Department of Commerce, the score range associated for such categories or plans are as follows:

Category	Minimum Score (Step	Maximum Score (Step 1)	Conversion Factor	Final Weighted Score
Business Plan	6	10	1.46	14.6
Operations Plan	18	30	2.36	70.8
Quality Assurance Plan	18	30	1.64	49.2

Security Plan	12	20	2.00	40.0
Financial Plan	6	10	2.54	25.4
<b>Total Possible</b>		<b>100</b>		<b>200</b>

47. According to the Department of Commerce, it calculated the scores using a two-step process. In the first step, a maximum score of 100 points was possible. An applicant must have achieved a minimum score of 60 points and must also have achieved the minimum score for each plan (Business, Operations, Quality Assurance, Security and Financial) to be considered a qualified applicant. Applicants failing to meet the minimum score requirements were disqualified.

48. In this second step, the Department of Commerce applied a conversion factor to the score from step 1 to arrive at the final weighted score. The maximum possible final weighted score was 200 points.

49. The scores assigned to each applicant are attached as Exhibit B.

50. On November 3, 2017, the Department of Commerce announced eleven successful applicants for the Level II Cultivator Provisional Licenses. The Department of Commerce identified Fire Rock Ltd., three times, but an applicant is entitled to only one license, and, thus, only eleven Level II Cultivator Provisional Licenses were authorized at that time.

51. Over three weeks later, the Department of Commerce awarded Farkas Farms LLC a Level II Provisional License. For unknown reasons, additional deliberations were necessary before the Department was ready to award Farkas Farms LLC a Level II Provisional License.

52. On or about November 30, 2017, the Department of Commerce announced thirteen successful applicants for the Level I Cultivator Provisional Licenses. The Department of Commerce identified Harvest Grows, LLC, twice, but an applicant is entitled to only one license, and, thus, only twelve Level I Cultivator Provisional Licenses were issued.

53. As published at <https://www.medicalmarijuana.ohio.gov/Cultivation>, the recipients of Level I Cultivator Provisional Licenses, and their corresponding scores as determined by the Ohio Department of Commerce, are as follows:

- \* Score - 179.28 Buckeye Relief LLC (Eastlake, Lake County)
- \* Score - 173.44 Grow Ohio Pharmaceuticals LLC (Newton Township, Muskingum County)
- \* Score - 173.28 OPC Cultivation LLC (Huron, Erie County)
- \* Score - 172.72 Riviera Creek Holdings LLC (Youngstown, Mahoning County)
- \* Score - 167.64 Pure Ohio Wellness LLC (Springfield, Clark County)
- \* Score - 167.08 Columbia Care OH LLC (Mt. Orab, Brown County)
- \* Score - 165.48 Terradiol Ohio LLC (Canton, Stark County)
- \* Score - 161.28 Standard Wellness Company LLC (Gibsonburg, Sandusky County)
- \* Score - 161.28 AT-CPC of Ohio LLC (Akron, Summit County)
- \* Score - 159.80 Cresco Labs Ohio LLC (Yellow Springs, Greene County)
- \* Score - 153.08 Parma Wellness Center LLC (Parma, Cuyahoga County)
- \* Score - 142.04 Harvest Grows LLC (Hamilton Township, Lawrence County)
- \* Score - 142.04 Harvest Grows LLC (Cleveland, Cuyahoga County)

**E. THE IRREGULARITIES AS DISCERNED FROM THE DEPARTMENT OF COMMERCE'S SCORING AND STATEMENTS.**

54. The medical marijuana cultivation business is a burdensome endeavor. In addition to the non-refundable \$20,000 application fee, there are substantial costs associated with submitting a competitive application that complies with all the rules laid out in the Code and by the Department. To competitively reply to the State's Request for Application applicants spent, in aggregate, millions of dollars in reliance on the process and criteria laid out by the Department. In short, each applicant expected and was entitled to a fair and just grading process. Review of the final scoring made partially available by the Department, however, reveals that the Department deviated from its own rules, applied inconsistent and arbitrary grading methods, in many instances failed to do even minimal due diligence on the veracity of statements contained in the applications, and utterly failed to provide a fair and just process for determining Level I and Level II Cultivator

Provisional License awardees. Some examples of material inconsistencies and issues with the Department of Commerce’s scoring include the following:

- Upon information and belief that fourteen out of the first seventeen applicants’ (MMCP-C-201706-0077 through MMCP-C-201706-0093) applications were incorrectly scored. *See* Spreadsheet of Faulty Scoring, attached as Exhibit A. Meaning that, even taking the Department’s scores at face value, the Department failed to correctly add up the scores it gave applicants.
- The Department of Commerce scored differently applications that were identical in every respect except for the geographic locations of the planned site.
- The Department gave the exact same score to individual applicants that submitted significantly different applications for different locations.
- In some instances, applicant scorecards were misidentified as Level II Cultivator applicants, even though the applications were clearly submitted for consideration of a Level I Cultivator Provisional License.
- The Department of Commerce assigned negative points and, in some cases, disqualified applicants based on criterion not referenced anywhere in the Revised Code, Administrative Rules, or the application instructions, including many of the scoring “elements” and the “required elements” (collectively, the “Unannounced Criterion”). For example:
  - The Department of Commerce marked down applicants if they did not reference having HVAC/humidification/odor control-equipment (including failure detection equipment), which was addressed nowhere in the Administrative Rules or the application.



- The Department of Commerce marked down applicants under the “Operations Plan” section of the application if they did not specify anticipated yield – a criterion not referenced anywhere in the Administrative Rules or the application.
- The Department of Commerce assigned negative scores for the omissions of data by an applicant even though the allegedly omitted data was, in fact, contained in the application.
- The Department of Commerce gave credit to certain applicants for the inclusion of data but could have done so only by ignoring practices allegedly adopted to ensure anonymous grading.
- The Department of Commerce disqualified 73 of the 109 (66.9%) Level I cultivator applications it received on the basis of their purported nonresponsiveness to what the Department’s internal scoring sheets deemed to be “required elements” under various subsections of the application. Yet nowhere in the Administrative Rules or on the application itself did the Department provide notice of all of the “required elements” that it expected to be addressed in the particular subsection. In many instances, the Department compounded the unfair and punitive effect of this practice by giving a zero score for an entire subsection containing multiple “required elements” based on its perceived nonresponsiveness to a “required element” that was kept secret from the public, but was otherwise known by Meade & Wing, B&B, and iCANN. Such practice resulted in significant reductions in the scores of applicants that were otherwise responsive to the “required elements” that the applicants had notice of.

- The Department of Commerce referenced purported requirements in the Administrative Rules that had not even been adopted in the Rules at the time applications had to be submitted. For example, at least some applicants were marked down if they failed to state how marijuana would be “packaged in increments that comply with 3796,” but the provisions of the Administrative Rules pertaining to packaging increments were not even adopted until three months after cultivator license applications had to be submitted.
- The Department of Commerce’s application did not comply with its own Rules as it awarded provisional licenses to entities that misrepresented material facts and omitted statutorily required application components, and by applying secret or unannounced grading criteria in direct contravention of R.C. 3796.03(B)(2)(a).
- Upon information and belief that the Department did nothing to alleviate obvious conflicts of interest between the consultants scoring applications and the applicants, thereby compromising the integrity of the scoring process. For example, applicants from Arizona and Illinois were scored by consultants from Arizona and Illinois. The result being that over 33% of the Level I Cultivator Provisional License awardees have operations in those states. Meade & Wing, in particular, was openly soliciting investors in Arizona and elsewhere “to break into the OH cannabis market” shortly before being retained as a consultant responsible for scoring Ohio Cultivator Applications submitted by Arizona companies. *See Paragraph 189, infra.*
- The Department of Commerce’s application did not comply with its own Rules. For example, the Rules require “a signed statement from an Ohio licensed certified public accountant attesting to proof of the required amount of liquid assets under

the control of an owner or the entity applying” to establish sufficient liquid assets, but the application then allowed applicants to simply “certify” for themselves that they meet the requirement.

- It was required by Rule, as further articulated in the official question and answer sessions, that organizational and governance documents for the application entities were required to be provided in Section 1 of the application, yet the Department did not adhere to this process and awarded provisional licenses to groups that did not provide the required documentation.
- The answer prompts in the application Section 2 subsections did not specify the Rules which may have announced the specified regulatory requirements that were not identified, thereby failing to give the applicant any notice that missing a particular requirement of a non-identified administrative rule would result in a zero being scored for the subsection.
- The answer prompts in the application Section 2 subsections for Operations Plan and the Quality Assurance Plan did not adequately differentiate the content required between the two, such that content logically and appropriately provided in one subsection was not given credit and subsequently marked-down for not being provided in the other.
- Director Williams and Chief Operating Officer Justin Hunt of the MMCP, in their December 14, 2017 power point presentation and press conference (collectively, the “Power Point”), testified “the Department verified numerous requirements under statute and rule for the top scoring applicants. These included: Adherence to the 500-foot rule; financial interest; financial responsibility; and economically

disadvantaged group status.” Yet, as delineated below and evidenced in multiple instances, these statements are either materially false and misleading, or the Department’s efforts were woefully ineffective.

55. In addition to the irregularities above, the Department also openly misapplied Chapter 3796 of the Ohio Revised Code and its own rules, application instructions, and question and answers to public comment. For example, the instructions for Level I Cultivator Provisional License Application states that *“An applicant who fails to provide information or who fails to submit one of the attachments that establishes they meet the mandatory qualification criteria set forth in rule 3796:2-1-03 of the Administrative Code will be disqualified prior to the scoring process.”* (Emphasis added).

56. Consistent with the foregoing instruction, Rule 3796:2-1-03 sets forth several mandatory criteria an applicant must demonstrate to avoid being “disqualified prior to the scoring process.” Among the mandatory provisions applicants were required to demonstrate at the time of application submission were:

*(1) Demonstrate sufficient liquid capital pursuant to rule 3796:2-1-02 of the Administrative Code and an ability to meet the financial responsibility requirements under rule 3796:2-1-05 of the Administrative Code*

*(3) Verify that the proposed facility is not located within five hundred feet of a prohibited facility, which shall be measured in accordance with rule 3796:5-5-01 of the Administrative Code;*

*(4) Verification of economically disadvantaged groups (if applicable)*

(Emphasis added).

57. The Form 1F in Section 1 of the Level I Cultivator Provisional License Application required applicants to provide information certifying compliance with, among other criteria, the provisions laid out in Rule 3796:2-1-03. According to the Department, and as stated in Section D

of this Complaint, Section 1 of the Level I Cultivator Application was scored on a pass/fail basis. According to the Department’s own application instructions, this means applicants who failed to establish the pass/fail criteria were to be disqualified prior to receiving a score on Section 2 of the applications.

58. Several additional provisions further bolster the interpretation that pass/fail criteria were to be satisfied at the time of application. This includes the Administrative Code Rules promulgated by the Department and the Department’s own interpretation of its cultivator application and application instruction.

59. For example, the requirement that compliance with the 500-foot rule must be demonstrated at the time of application submission is found in Rule 3796:5-5-01:

(A) In establishing the distance between a medical marijuana entity and a prohibited facility, the distance shall be measured linearly and shall be shortest distance between the closest point of *the property lines of the medical marijuana entity and the prohibited facility*.

(Emphasis added).

60. Neither the Cultivator Provisional License Application, nor Chapter 3796 of the Ohio Administrative Code, allow for the distance to be measured linearly from the *proposed* property lines, or the *potential future* property lines, of the medical marijuana entity and a prohibited facility.

61. Furthermore, the Cultivator Level I Provisional License Application specified on particular application forms, such as Forms 1C and 1D, where compliance was only required prior to a certificate of operation being issued. No such distinction was made of the Form 1F “500 Foot Compliance Cover Page.”

62. In addition to the foregoing Administrative Code provisions, the Department offered two public question and answer periods during which prospective applicants could ask for

clarification from the Department about how to interpret the application and application instructions. Two such questions and answers, interpreting the liquid asset and 500-foot rule requirements respectively, went as follows:

Q: If multiple applications are submitted with the exact same equity players then can the \$500,000 of liquid assets and \$750,000 of surety bond be used simultaneously for each application or do you need to meet those requirements separately for each application?

A: Since only one license would be issued, an applicant that submits multiple applications with identical ownership and financial interest allocations *need only prove they can meet the different financial responsibility requirements required of one applicant.*

Q: 1F 500 Foot Compliance Cover Page: Is survey map information required to confirm the 500 Foot Compliance?

A: *Different types of maps or satellite images may be included, so long as the documents are legible, and clearly demonstrate compliance with the rule.*

(Emphasis added).

63. Plaintiffs and other applicants relied on this information and the Department's statements when putting together their Level I Cultivator applications. For example, Plaintiffs expended vast resources carefully selecting proposed cultivation sites that were not within 500 feet of a prohibited facility in order to ensure compliance with R.C. 3796.09(B).

64. After the Level I Cultivator Provisional License awardees were announced, the Department of Commerce provided information about the application scoring process to the public via a slide presentation on December 14, 2017. According to the Department, one unique team of three individuals reviewed all applicants' Section 1 information. The slide presentation also stated that "[Section 1] applicant information [was] verified by the team." *See* MMCP December 14, 2017 Slide Presentation, Slide 3, attached as Exhibit C. In addition, the Department stated that the Section 1 review team "flagged for disqualification" applications that may not meet the minimum

requirements, and that the flagged areas were “discussed during the final review” including “potential statute/rule violations.” *See* Slides 14, 16, Exhibit C.

65. According to the slide presentation, the Department also did the following:

*Once the overall scores were compiled and finalized, the Department verified numerous requirements under statute and rule for the top scoring applicants. These included:*

*Disqualifying offense;  
Tax compliance;  
Adherence to 500-foot rule;  
Financial interest;  
Financial responsibility; and  
Economically disadvantaged group status.*

*See* Slide 24, Exhibit C. (Emphasis added).

66. Despite the Department’s numerous representations that the mandatory pass/fail criteria were to be satisfied at the time of application, and that applicants failing to meet such criteria “will be disqualified prior to the scoring process,” at least five applicants who received a Level I Cultivator Provisional License did not satisfy the pass/fail criteria at the time of application.

67. After it was discovered publicly that several Level I Cultivator Provisional License awardees escaped disqualification even after failing to meet the pass/fail criteria, the Department changed its story. Instead, as an article published on Cleveland.com noted, “the Department of Commerce says it didn’t have to verify applicants’ claims because the provisional license winners have nine months to fully comply with all state laws, rules and regulations for the medical marijuana program.” *See* Four Medical Marijuana Grow Sites Didn’t Initially Comply with 500-foot Rule, Cleveland.com Article, attached as Exhibit D. According to the article, a spokeswoman of the Department named Stephanie Gostomski went on the record stating that “To receive a certificate of operation, each provisional licensee will have to comply with all statutory and rule requirements, which the department *will* verify.” According to the article, the Department did not verify whether applicants adhered to the 500-foot buffer rule and other pass/fail criteria, which

directly contradicts the Department’s own slide presentation from December 14, 2017. Gostomski also confirmed that “the department also did not check applicants’ claims to have sufficient liquid assets or economically disadvantaged status as a minority. . .”

68. Upon information and belief, the false, misleading, and conflicting public statements made by Defendant Williams, Justin Hunt, and Gostomski are further compounded by the fact that on or about November 20, 2017, the Department through Justin Hunt contacted Plaintiff CannaMed seeking to confirm CannaMed’s economically disadvantaged group status as a minority. Specifically, on information and belief, Mr. Hunt requested that Plaintiff CannaMed have a birth certificate translated to demonstrate “proof of your status as an economically disadvantaged group applicant, as defined in O.R.C. 3796”. *See Exhibit E.*

69. In essence, after initially representing to the public that all applicant information was verified, the Department later admitted that it did not verify any information provided by Level I Cultivator applicants. More troubling, the pass/fail criteria that was supposed to lead to disqualification if not met, was taken at face value, meaning any applicant could simply certify that it complied with the rules even if it did not meet the requirements of Chapter 3796 of the Ohio Revised Code and all related rules and provisions. Plaintiffs spent significant resources, aggregating to millions of dollars, to ensure compliance with all pass/fail criteria, which was not evaluated by the Department in direct contravention to the clear mandates of Chapter 3796 of the Administrative Code. Worse still, the Department ignored clear failures by provisional licensees to meet the mandatory criteria—established by Chapter 3796 of the Ohio Revised Code and related rules—by allowing at least five Defendant-provisional licensees to correct any deficiency in the nine months prior to requesting a certificate of operation. At the same time, other applicants were disqualified for not including undisclosed grading criteria in their applications. Meaning the



Department failed to disqualify applicants that did not meet the mandatory *announced* criteria, but did disqualify other applicants for *unannounced and undisclosed* criteria.

**F. THE PHARMACANN OHIO, LLC LAWSUIT AND ITS IMPACT ON THE DEPARTMENT**

70. On December 13, 2017, PharmaCann Ohio, LLC filed a lawsuit against the Department in the Franklin County Court of Common Pleas in the case: *PharmaCann Ohio, LLC v. Williams, et al.*, Case No. 17-CV-010962. In this suit, PharmaCann alleged that the “Economically Disadvantaged Applicant” set aside in R.C. 3796.09(C)—which requires 15% of all cultivator, processor, dispensary, and lab testing licenses to go to applicants defined as economically disadvantaged under the statute—is an unconstitutional racial preference. PharmaCann was the eleventh highest scoring applicant according to the scores reported by the Department, but did not receive a license because of the set aside in R.C. 3796.09(C) required that two lower scoring Economically Disadvantaged Applicants receive a license. Citing this perceived constitutional defect, PharmaCann asked the court to (1) revoke the Level I provisional cultivator license to Parma Wellness Ohio, LLC and Harvest Grows, LLC; and (2) to grant a Level I provisional cultivator license to PharmaCann. *See Complaint, PharmaCann Ohio, LLC v. Williams, et al.*, Case No. 17-CV-010962, attached as Exhibit F.

71. The Department has vigorously defended the lawsuit and hired Squire, Patton & Boggs as special counsel to aid in Defense of the Department. There has been extensive briefing on a variety of issues, multiple motions, and an amended complaint has been filed.

72. On February 15, 2018, the Department announced that a state employee’s “inadvertent error” caused one Level I Cultivator applicant to receive a lower score than it earned. *See Ohio Says Error Inadvertently Excluded Marijuana Grower*, AP News, attached as Exhibit G;

*see also* Inadvertent Error Caused Ohio Medical Marijuana Grower to be Denied a License, State Says, Cleveland.com, attached as Exhibit H.

73. Remarkably, the only entity that suffered from the Department’s “inadvertent error” was PharmaCann, which is the same entity currently pursuing litigation against the Department. The Department noted that but for the “inadvertent error,” PharmaCann’s score would have been eighth highest.

74. Rule 3796:2-1-01(A) provides that the Department may only issue “up to twelve Level I and twelve Level II cultivator provisional licenses.”

75. In response to the “inadvertent error,” however, the Department stated—through its spokesperson Ms. Gostomski—that no provisional licensee would lose their license. Instead, Ms. Gostomski noted that “we want to do what’s right and we want the highest scoring applicants to receive these licenses.” The Department further stated that “We’re trying to ensure that every applicant who rightfully deserves access to a provisional license gets one.”

76. In essence, the Department has publicly taken the position that PharmaCann and the twelve current Level I Cultivator Provisional Licensees are each entitled to a provisional license, meaning the Department is refusing to follow its most basic Rule that only twelve Level I Cultivator Provisional Licenses be awarded. *See* Exhibits G and H.

77. Moreover, the “inadvertent error” was supposedly discovered only after the Ohio Auditor of State, David Yost, uncovered some significant flaws that allowed certain MMCP reviewers to access all of the applicant information. This flaw provided Department employees with the ability to change scores or manipulate other documents for any applicant. The Department later admitted in review of this failure that it “discovered” a “scoring error” and that PharmaCann was the sole entity materially affected.

78. The Department has since offered to halt the MMCP entirely due to the errors discovered thus far by the Auditor’s Office. In a letter from the Department to the Auditor’s Office, the Department noted “. . . given the reservations raised by your Office, the Department remains willing to pause any portion of the MMCP’s process that you deem necessary, if appropriate.” *See* Letter to Auditor David Yost, Exhibit I.

**G. THE DEPARTMENT OF COMMERCE’S EFFORTS TO THWART REVIEW AND INVESTIGATION OF ITS ACTIVITIES**

79. In an effort to investigate the Department of Commerce’s faulty scoring, various public records requests have been served upon the Department of Commerce, but the Department of Commerce, in violation of the Public Records Act, has failed to release some or all of the requested public records. As to those records that were produced, they were incomplete and/or released on an untimely basis.

80. On or about December 5, 2017, CannAscend Ohio submitted a public records request to the Ohio Department of Commerce, a true and accurate copy of which is attached hereto as Exhibit J (the “First December Public Records Request”).

81. On or about December 5, 2017, the Department of Commerce acknowledged that it had received said public records request and that it would “respond within a reasonable time.”

82. On or about December 7, 2017, the Department of Commerce provided the following update to the public records request without producing substantive documents as requested. To date, the Department of Commerce has failed to produce any public records in response to the First December Public Records Request.

83. On or about December 7, 2017, a separate public records request was served, a true and accurate copy of which is attached hereto as Exhibit K (the “Second December Public Records Request”).

84. On or about December 11, 2017, the Department of Commerce responded to the Second December Public Records Request as follows:

The Medical Marijuana Control Program has received your Public Records Request, dated December 7, 2017. The Department will respond to your request in a reasonable time.

To date, no documents have been produced in response to the Second December Public Records Request.

85. On or about January 4, 2018, a third public records request was served, a true and accurate copy of which is attached hereto as Exhibit L (the “January Public Records Request”), requesting records pertaining to the application scoring process and the independent consultants who took part in the scoring. To date, no documents have been produced in response to the January Public Records Request.

86. On or about January 6, 2018, Plaintiffs PalliaTech Ohio, Appalachian Pharm Products, and CannaMed served public records requests on the Department of Commerce, true and accurate copies of which are attached hereto as Exhibits M, N, and O, respectively. To date, only PalliaTech Ohio’s public records requests received a response.

87. In response to PalliaTech Ohio’s requests, the Ohio Attorney General (acting on behalf of the Department) requested a phone conference, which was set for January 17, 2018. During the call, and confirmed by email after the call, the Ohio Attorney General’s Office agreed to prioritize: (1) all Level 1 Cultivator Applications; (2) Scoring sheets with reviewer notes; and (3) Reviewer HR personnel files. *See* Email from Stacey Adams, dated January 19, 2018, attached as Exhibit P. The Attorney General’s Office further agreed to discuss requests 15 through 19 of PalliaTech Ohio’s records requests with MMCP staff and contact counsel with an update the week of January 22, 2018.

88. Following the phone conference, the Attorney General’s Office made two productions. The first, was on January 29, 2018, which included (1) scorecards for all Level I Cultivator applicants, but with reviewer/grader names redacted; and (2) heavily redacted copies of some Level I Cultivator Applications. No rationale was provided for redacting the reviewer/grader names, and no explanation was given for why several Level I Cultivator applications were omitted—including applications of six of the provisional license awardees.

89. On February 1, 2018, counsel for PalliaTech Ohio submitted a letter notifying the Attorney General’s Office of the deficiencies in their production including the fact that several applications were omitted and the grader names were erroneously redacted. *See* February 1, 2018 Letter, attached as Exhibit Q. In response, the Attorney General’s Office responded by email providing a link to the State’s MMCP website where heavily redacted versions of the omitted Level I Cultivator applications were provided. The Department subsequently made a second production on February 5, 2018 providing unredacted scorecards for each Level I Cultivator applicant.

90. Neither production made by the Attorney General’s Office identified which of PalliaTech’s Public Records Requests were being answered, nor was any clarity provided on whether any such requests were considered “satisfied in full.” The Attorney General’s Office also failed to follow up regarding requests 15 through 19, and failed to provide any substantive response regarding PalliaTech’s remaining public records requests. Instead, the Attorney General’s Office has provided a vague statement via email stating that “The remainder of the records responsive to your request (if any) will be provided on a rolling basis and within a reasonable period of time.”

91. On or about January 25, 2018, CannAscend submitted a fourth public records request (CannAscend’s Fourth Request”), a true and accurate copy of which is attached hereto as

Exhibit R. CannAscend’s Fourth Request repeated several of the initial records requests in addition to some new requests. To date, the Department has not responded to CannAscend’s Fourth Request.

92. The foregoing records sought are “public records” kept by a public office within the meaning of R.C. 149.43(A)(1).

**H. ISSUANCE OF PROVISIONAL LICENSES IN VIOLATION OF R.C. CHAPTER 3796.**

93. Notwithstanding the Department of Commerce’s failure to adequately respond to properly served and delivered public records requests, Plaintiffs have, through other efforts, uncovered information establishing the impropriety of the licenses and the failure of the Department to follow the Administrative Code, adhere to its process, or demonstrate the veracity of statements the Department has made relative to the verifications it performed.

94. Upon information and belief, a sample of the improprieties, and failure by the Department to properly vet the applications, may be summarized as follows.

**1. Terradiol Ohio, LLC**

95. Defendant Terradiol is one of the applicants that was awarded Level I Cultivator Provisional Licenses by the Department. Terradiol’s application misrepresented its compliance with Rule 3796:2-1-02(B)(2)(i) and Rule 3796:2-1-03(A)(3).

96. Briefly, R.C. 3796.30 provides that no marijuana cultivator shall be located within 500 feet of the boundaries of a parcel or real estate having situated on it a school, church, public library, public playground, or public park.

97. Under R.C. 3796.09(B)(4), the Department of Commerce cannot issue a license to an applicant unless: “The applicant demonstrates that it will not be located within five hundred feet of a school, church, public library, public playground, or public park.”

98. Administrative Rule 3796:2-1-03 provides that an applicant must establish that the proposed facility is not located within 500 feet of a prohibited facility, which shall be measured in accordance with rule 3796:5-5-01 of the Administrative Code.

99. Rule 3796:5-5-01(A) states: “In establishing the distance between a medical marijuana entity and a prohibited facility, the distance shall be measured linearly and shall be shortest distance between the closest point of the property lines of the medical marijuana entity and the prohibited facility.”

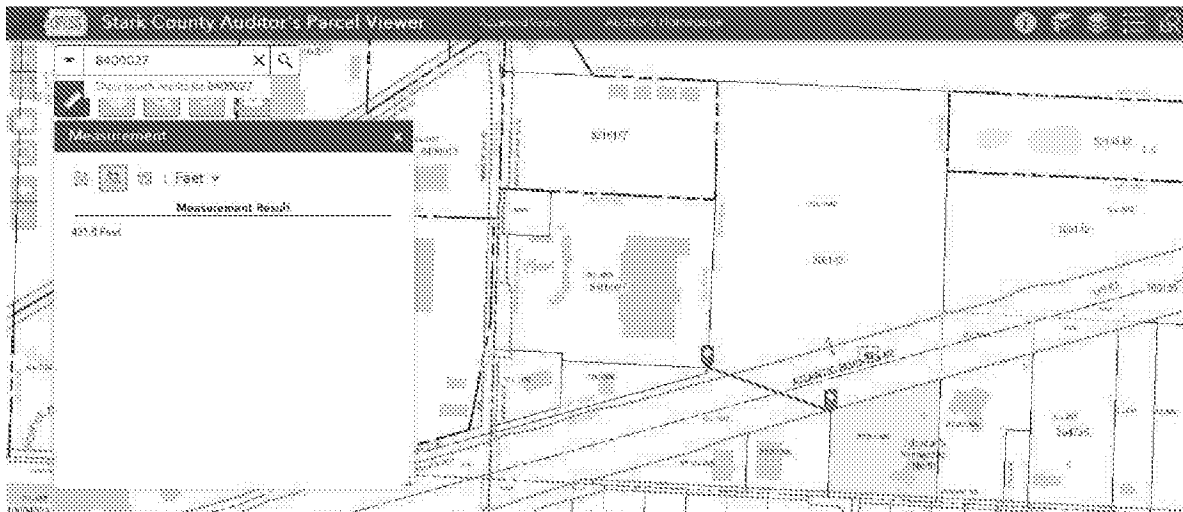
100. Terradiol proposes to locate its cultivation facility at 3800 Harmont Avenue, Canton, Ohio 44705, upon Parcel ID 8400027. A Jehovah Witnesses Kingdom Hall (the “Hall”), which is a church under R.C. 1710.01, is located at 3611 Lesh St. NE, Canton, Ohio 44705. Terradiol’s application identifies both its location and the Hall in the following picture (which has been cropped).



101. Terradiol asserted that the blue circles in Figure 1 represent 500 feet radii from the corners of the property lines of its proposed location. However, Terradiol did not identify the location of the property lines.

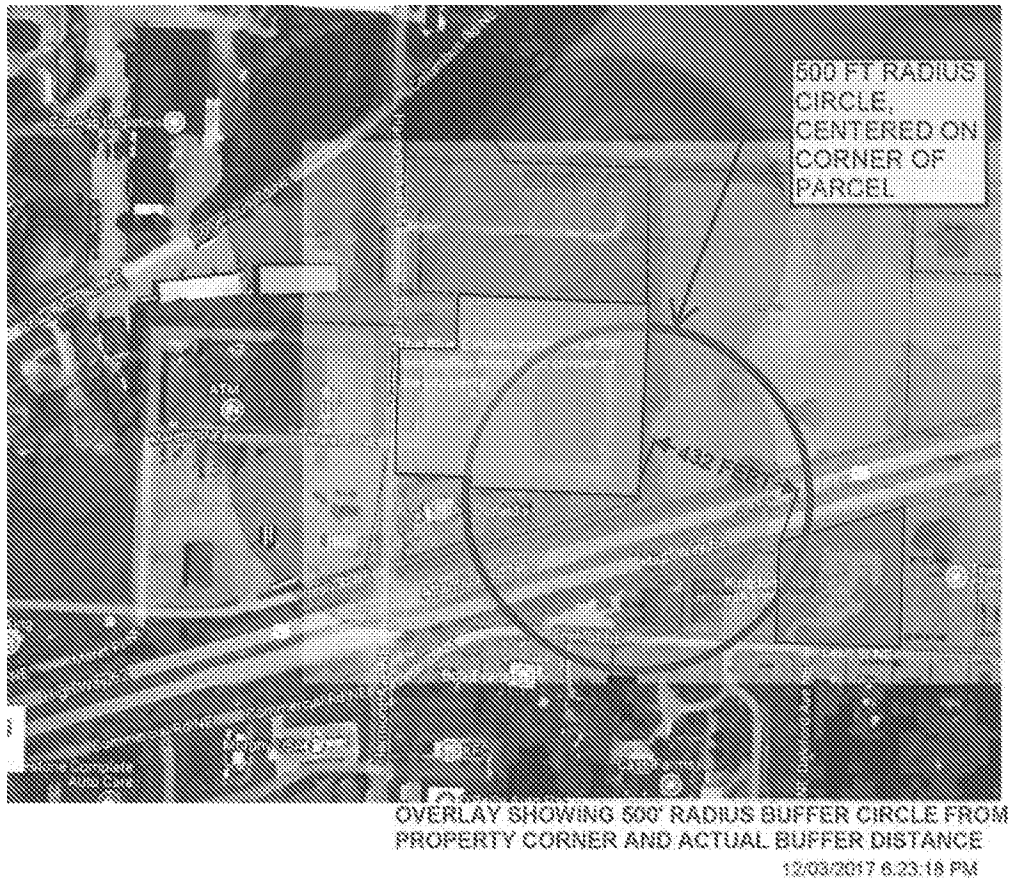
102. Upon investigation, it is clear that Terradiol's application misrepresented the southeast buffer zone inasmuch as it is not centered on the southeast corner of the property line.

103. Figure 2 below, which is available on Stark County's online map, accurately reflects not only the property lines of Terradiol's parcel, but also the property lines of the Hall. Measuring from property line to property line as required by Rule 3796:5-5-01(A), it is clear that Terradiol's parcel is less than 432 feet from the parcel upon which the Hall is situated.



104. Figure 3, below, provides an overlay showing the extent of Terradiol misrepresented of its parcel's proximity to the Hall, in addition to the other buffer zones that do not correspond to the actual parcel boundaries.





105. Terradiol's application is thus in violation of both Rule 3796:2-1-02(B)(2)(i) and Rule 3796:2-1-03(A)(3).

106. Under Rule 3796:2-1-03(A)(7), in order to even be considered by the Department, an application must be submitted "that does not contain information that misleads the department" or "misrepresents a material fact." Accordingly, on the first page of each application, a representative of the applicant must sign the following attestation:

I hereby acknowledge that knowingly making a statement that is untrue or which is intended to mislead the Medical Marijuana Control Program (MMCP), the Department of Commerce, the State Board of Pharmacy, or the State Medical Board, or any person designated by the State of Ohio in the performance of their official function is a violation of Chapter 3796 of the Revised Code. As the duly authorized representative of the applicant, I hereby attest to the accuracy to the best of my knowledge of the submitted information on this application and make the submitted certifications on behalf of the applicant.

107. In addition, under Rule 3796:5-6-02(B)(1), “false or misleading statements in or involving a license or registration application” are considered threats to public health, welfare, or safety and are sufficient cause for a provisional license to be denied, suspended with or without a hearing, and/or revoked, among other things.

108. Terradiol’s application is misleading and misrepresents its proposed facility’s location to the Hall, which is a material fact. The Department did not even have the authority to consider Terradiol’s application because it should have been disqualified for both (a) not being in compliance with the 500-foot buffer, and (b) for misrepresenting its proximity to the Hall.

109. Upon information and belief, Terradiol also made material misleading representations on its application in violation of Rule 3796:2-1-03(A)(4) and (A)(7).

110. Under Rule 3796:2-1-03(A)(4), an applicant must “certify that the local jurisdiction where the facility is proposed has not passed a moratorium.”

111. Terradiol proposes to locate its cultivation facility at 3800 Harmont Avenue, Canton, Ohio 44705, upon Parcel ID 8400027 which is in the Plain Township tax district, school district, and township jurisdiction.

112. At the time of application submission, Plain Township had a moratorium in place, attached here as Exhibit S. Upon affirmative vote of all three Plain Township Trustees to institute the moratorium, Trustee Scott Haws attested “I’m sure as hell not going to let it happen on my watch. No way in hell...” See [www.cantonrep.com/news/20160908/plain-jackson-lake-canton-trustees-vote-to-ban-marijuana-in-their-meetings](http://www.cantonrep.com/news/20160908/plain-jackson-lake-canton-trustees-vote-to-ban-marijuana-in-their-meetings).

113. Upon information and belief, Defendant Terradiol made other material misrepresentations on its application, in violation of the Rule 3796:2-1-03(A)(7). For example, Terradiol failed to submit a Form 1K for one individual who has an ownership interest and at least

six individuals who clearly would be participating in the management of the operation should it be awarded a license.

114. Form 1I of the Department’s Cultivator Provisional License application requires applicants to list “every individual who has an ownership interest or financial interest, either directly, or indirectly through an entity, as defined in O.A.C. 3796:1-1-01, in the Applicant’s business or will directly or indirectly participate in the management of the operation. If the financial interest is in an entity, provide the individuals with an equity or profit interest in the entity.” Rule 3796:1-1-01(A)(18), in turn, defines “Financial interest” in pertinent part as meaning “any actual or future right to ownership, investment, or compensation arrangement with another person, either directly or indirectly, through business, investment, spouse, parent, or child, in a medical marijuana entity.”

115. Form 1I then requires applicants to complete and submit a Form 1K “for each individual listed” in Form 1I. Each individual who submits a Form 1K must make various certifications tied to provisions of the Rules, along with a catch-all certification that “the information I have provided is true and correct.”

116. A major purpose of the required disclosures of individuals involved in ownership and control of an applicant is to identify those individuals required under R.C. 3796.12(B) to submit to criminal records checks. R.C. 3796.12(F) requires that the Department “shall deny a license if ... a person subject to the criminal records check requirement” fails to initiate and complete a criminal records check and instruct that the completed report be submitted to the Department.

117. Terradiol's Form 1I lists James C. Burns as having a 2.5 percent ownership interest, but it did not submit a Form 1K for him. Among other consequences, this means Terradiol failed to meet the requirement to submit a criminal background check regarding this individual.

118. Also, the organizational chart that Terradiol attached to its Form 1I lists the following individuals who, based on their titles, clearly would participate in management of the operation, but as to whom it also failed to submit a Form 1K: Dr. Jeffrey Lombardo, Chief Clinical Director; Phillip Hague, CPO; Jason Matlock, Chief Horticulturalist; Eric Bremiller, Cultivation Operations Manager; Glen Green, Director of Quality Control; and Paula Givens, Director of Compliance. Among the certifications that each person who submits a Form 1K as part of the application to the Department is that: "I understand that the Department may review criminal background records for purposes of evaluating my suitability to participate in the medical marijuana program. I hereby authorize the release of any and all information of a confidential or privileged nature to the Department and its agents." As to these individuals as well, Terradiol failed to meet the requirement to submit criminal background checks.

## 2. Cresco Labs Ohio, LLC

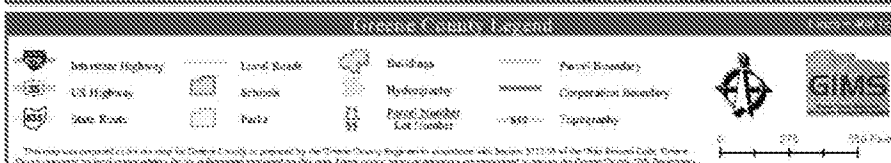
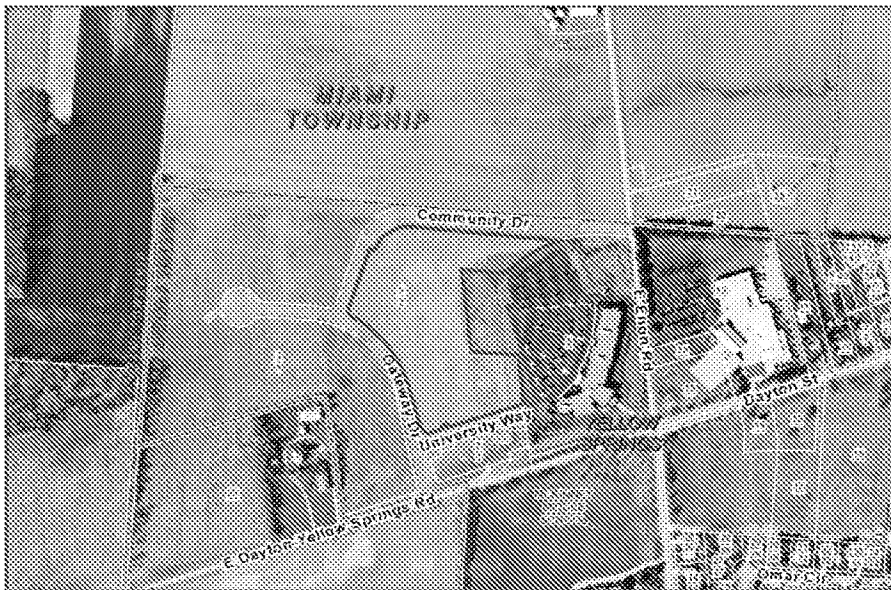
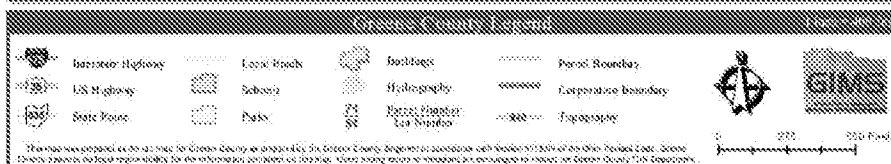
119. Defendant Cresco is one of the applicants that were awarded Level I Cultivator Provisional Licenses by the Department. Cresco's application, like Terradiol's, also misrepresents its compliance with the requirement no marijuana cultivator shall be located within 500 feet of the boundaries of a parcel or real estate having situated on it a school, church, public library, public playground, or public park.

120. Cresco proposes to locate its facility at 904 Dayton Street in Yellow Springs, Ohio. The materials Cresco submitted to the Department show a particular lot that straddles two separate parcels: F19000100200000300 and F19000100200000600. The parcels (and their

corresponding parcel lines) are not reflected on the materials submitted to the Department. Instead, Figure 4 depicts lot lines that do not exist.

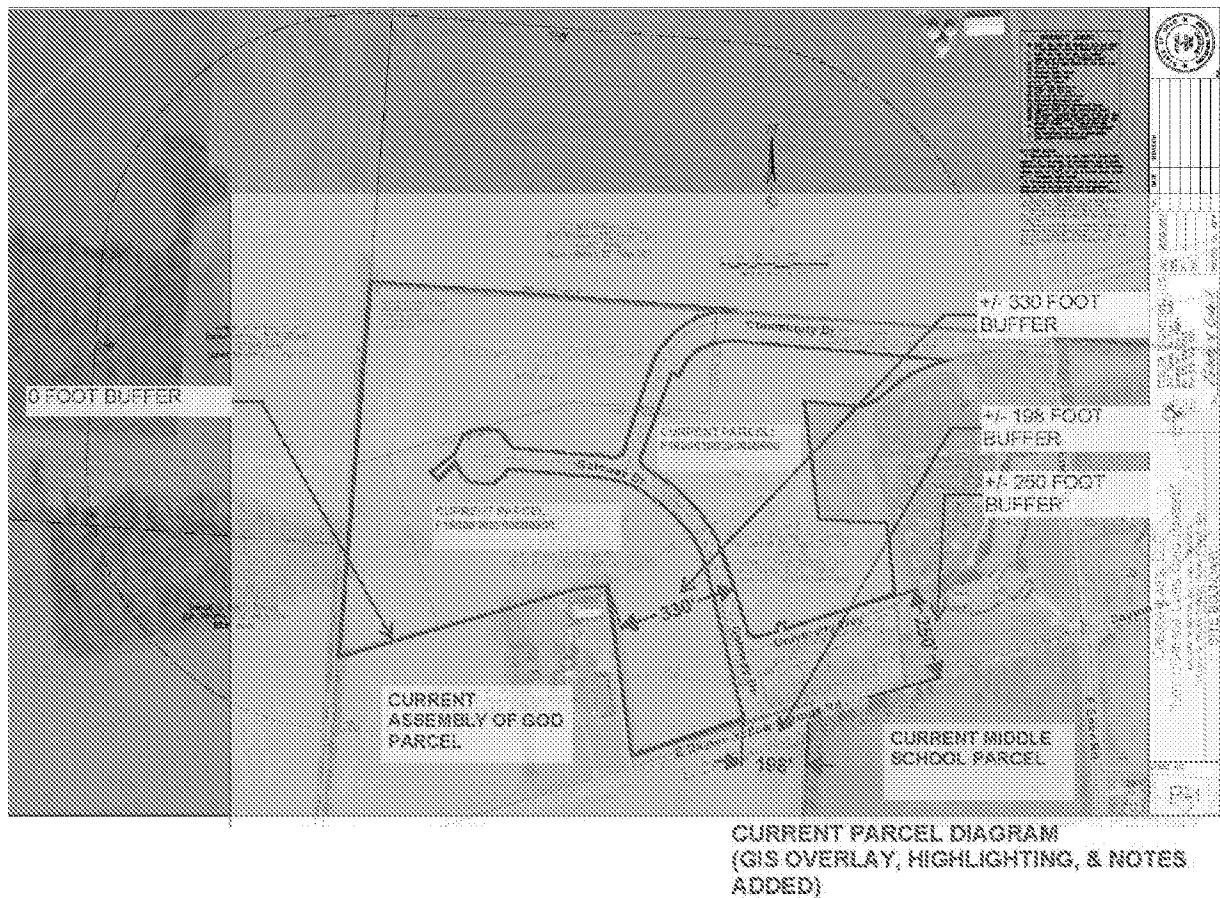


121. Plaintiffs' investigation has failed to identify any recording with Greene County that verifies the existence of the lot described in Cresco's application. Inasmuch as the proposed lot does not exist, the relevant property lines for purposes of Rule 3796:2-1-02(B)(2)(i), Rule 3796:2-1-03(A)(3), and Rule 3796:5-5-01(A) at the time of application would be the lines of the two relevant parcels, and not the lot lines disclosed by Cresco in its application. The property lines of parcel F19000100200000300 are reflected in Figure 5, while the property lines of parcel F19000100200000600 are reflected in Figure 6. Figures 5 and 6 are derived directly from the Greene County online GIS map.



122. On its application materials, Cresco discloses the existence of the Assembly of God church (the “Church”) which constitutes a prohibited facility in that it meets the definition

of a church contained in R.C. 1701.01. The Church directly abuts parcel F19000100200000300. As such, as the relevant property lines for purposes of the 500-foot buffer are the parcel lines, Cresco is in violation of Rule 3796:2-1-02(B)(2)(i) and Rule 3796:2-1-03(A)(3). In addition, as depicted in Figure 7, the parcel upon which McKinney Middle School is located within 500 feet of both of Cresco's parcels, as well.



123. Cresco should have disclosed the 500-foot boundary of the two master parcels to the Department. Because each of these parcels are within 500 feet of prohibited facilities, Cresco's application should have been disqualified further evidencing that the Department materially failed to properly vet the application or adhere to its process.

124. What's more, Cresco stated in the Cleveland.com article referenced above that, "Cresco and Yellow Springs had fully developed our real estate plan, including the option to

purchase and sub-divide Village-owned property, prior to submitting the application for our cultivation license,” and that “Customary local review and approval processes were completed.”

125. Yet, as seen in the figure below, the final parcel as sub-divided is entirely different than the alleged sub-divided parcel Cresco represented on its Form 1F, further compounding Cresco's material misrepresentations both in its application and its subsequent statements to the press, as well as the Department's failure to properly vet the application or adhere to its process.



## 2. Harvest Grows Ohio, LLC

126. Defendant Harvest Grows is one of the applicants that was awarded a Level I Cultivator Provisional License by the Department. Upon information and belief, Harvest Grows violated Administrative Rules and made material misrepresentations on its application, in violation of the Rule 3796:2-1-03(A)(7).



127. Harvest Grows submitted two applications for Level I Cultivator Provisional Licenses – one for a site in Cuyahoga County and the other for a site in Lawrence County. Upon information and belief, Harvest Grows misrepresented itself as being an entity “owned and controlled” by a member of an economically disadvantaged group in order to obtain favorable consideration from the Department to which it was not entitled.

128. R.C. 3796.09(C) also requires the Department to award a certain percentage of licenses to entities owned and controlled by members of groups defined as “economically disadvantaged,” provided that such applicants meet all other requirements. Specifically, R.C. 3796.09(C) directs that the Department “shall issue not less than fifteen per cent of cultivator, processor, or laboratory licenses to entities that are owned and controlled by United States citizens who are residents of this state and are members of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians.” Applicants must meet all the conditions set forth in R.C. 3796.09(B), including R.C. 3796.09(B)(6), which requires applicants to “meet[ ] all other licensure eligibility conditions established” by the Department in the Administrative Rules.

129. For purposes of determining whether an applicant entity is “owned and controlled” by a member, or members, of an economically disadvantaged group, R.C. 3796.09(C) defines “owned and controlled” as meaning “that at least fifty-one per cent of the business, including corporate stock if a corporation, is owned by persons who belong to one or more of the groups set forth in this division, and that those owners have control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to their percentage of ownership.” (Emphasis added).

130. Harvest Grows, in both of its applications, represented that it is a limited liability company and that “Ariane Kirkpatrick (member of a disadvantaged group)” is the owner of a 51 percent interest in the company. On her profile that appears on the networking Web site LinkedIn, Ariane Kirkpatrick (“Kirkpatrick) identifies herself as President and CEO of The AKA Team, a Cleveland-area business, and represents that “[t]he AKA Team is a professional female and minority business enterprise union labor shop specializing in maintenance of site, post construction cleaning, and providing union site labor.”

131. Under R.C. 3796.09(C), a 51 percent interest is the minimum required to apply the definition of “owned and controlled” by a member, or members, of a disadvantaged group. Upon information and belief, the representation on Harvest Grows’ applications that Kirkpatrick is the owner of a 51 percent interest in Harvest Grows is false, and that Kirkpatrick does not own “at least fifty-one per cent of the business” or “have control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to” a 51 percent ownership, within the meaning of R.C. 3796.09(C).

132. Additionally, Harvest Grows certified on both of its applications for Level I Cultivator Provisional Licenses that it has the minimum of \$500,000 in unencumbered liquid assets. Rule 3796:2-1-02(B)(6)(c) requires that an applicant submit a “financial plan” containing “[d]ocumentation acceptable to the department that the individual or entity filing the application has at least five hundred thousand dollars in liquid assets for a level I cultivator provisional license ... which are unencumbered and can be converted within thirty days after a request to liquidate such assets.”

133. Upon information and belief, per R.C. 3796.09(C) Harvest Grows further certified that Kirkpatrick as its economically disadvantaged member would be providing 51 percent of the capital as delineated in the “financial plan” under Rule 3796:2-1-02(B)(6)(c).

134. Upon information and belief, neither Ariane Kirkpatrick nor Erika Waltz – who is listed as the “owner” of the remaining 49 percent interest in the company – have \$500,000 in unencumbered liquid assets that are placed at the company’s disposal. This certification was not signed by either of the “owners” – Kirkpatrick or Waltz – or by a CPA acting for them. Rather, the certification was made by Steve White, who is identified in the applications as the CEO of Harvest Grows, and confusingly as an “owner” with “0%” equity interest on the Form 1I, which indicates that the liquid assets are being provided by another entity, not the putative “owners.”

135. Upon information and belief, the above-described material misrepresentations, among others, contributed to the Department’s decision to award Harvest Grows a Cultivator Provisional License despite the fact that Harvest Grows scored significantly lower in the application review process than did a number of applicants that did not represent themselves as being as being owned and controlled by members of an economically disadvantaged group and whose applications were rejected. In short, Harvest Grows qualified for a license based on its representation that it is owned and controlled by a member of an economically disadvantaged group.

136. Upon information and belief, Harvest Grows is owned and controlled by Harvest Inc., a company based in Tempe, Arizona, that has a number of affiliated entities involved in the medical marijuana business in Arizona and other states. Harvest Inc. confirmed that fact in an announcement post on the company’s Web site on November 20, 2007, which states as follows:

**Ohio names grower locations for medical marijuana program**

Arizona-based Harvest Inc. has medical marijuana licenses in five states and was granted a license for the Cleveland site. CEO Steve White said the company is investing millions of dollars to build the facility, which will create hundreds of jobs.

“Take marijuana out of the equation completely and imagine a facility that provides an ingredient to medical products. That is what you would see,” he said, describing the facility as a factory.

He said research shows the facilities reduce crime and that his company has never had a security issue. White said the facility will be highly secured and closed to the public.

“This is not a facility that houses cash or other items that are easy to transfer on a black market,” he said.

This announcement is available at: <http://harvestinc.com/ohio-names-grower-locations-for-medical-marijuana-program/> (last checked January 11, 2018).

137. Harvest Inc. also posted a news release headlined: “Harvest Wins Approval to Cultivate Medical Marijuana in Ohio,” which identifies Harvest Grows LLC as simply a subsidiary or alter ego of Harvest Inc. The text of the release reads:

TEMPE – Arizona-based Harvest, Inc., operating as Harvest Grows, LLC, was recently awarded a Level 1 provisional cultivation license in Ohio. The license permits Harvest to initially operate up to 25,000 square feet of medical marijuana cultivation space. Harvest is one of 12 companies recently chosen from an applicant pool of 109, and was the only company with two winning applications.

“Harvest was founded with one mission: to improve people’s lives. We accomplish this mission by empowering patients to take control of their health and well-being, and one way we facilitate that process is by growing high-quality, standardized medicine,” said Steve White, Harvest CEO. “Being awarded the provisional license in Ohio further validates our model and approach that we’ve been relentlessly bringing to markets since 2013 and making medical cannabis more accessible to patients who need it.”

Founded in 2013, Harvest currently has medical cannabis interests in six states: Arizona, Nevada, Illinois, Maryland, Pennsylvania, and now Ohio. Cumulatively, these facilities have been operating successfully for nearly 13 years and have produced over 50,000

pounds of medical marijuana, providing pain and symptoms relief for tens of thousands of patients.

“Harvest navigates our business lines purposefully and with excellence,” said Jason Vedadi, Harvest’s President. “Winning in Ohio further invigorates our tem to continue to strategically shape the future of cannabis in the United States.”

This news release is available at: <https://www.harvestofaz.com/harvest-wins-approval-cultivate-medical-marijuana-ohio-press-release/> (last checked January 17, 2018).

138. Harvest Inc.’s Web site, [www.harvestinc.com](http://www.harvestinc.com), represents that “[w]e presently hold 31 medical cannabis licenses in six states and participate in a variety of ways for each facility, from full ownership to design-build expertise and operational consultation. Our aggressive expansion efforts include seeking licenses in other states and exploring opportunities abroad.” Listed among those presently held medical cannabis licenses is the Level I Cultivator Provisional License awarded to Harvest Grows Ohio, LLC.

139. Form 1M of the Cultivator Provisional License application requires applicants to submit copies of licenses from marijuana businesses in other jurisdictions. Per Rule 3796:2-1-02(B)(2)(j), applicants are required to document “any instance in which an applicant or any person associated with the applicant is currently or was previously licensed or authorized in another state or jurisdiction to cultivate, produce, test, dispense, or otherwise deal in the distribution of marijuana in any form.” Harvest Grows submitted copies of licenses from four entities: for Byers Dispensary, located in Springerville, Arizona; Verde Dispensary, Inc., which is listed at the same address in Tempe, Arizona, given for Harvest Grows and Harvest Inc.; NuMed Urbana, located in Urbana, Illinois; and NuMed East Peoria, located in East Peoria, Illinois. Upon information and belief, these four entities are affiliated with Harvest Inc. and/or individuals associated with Harvest Inc. who are also associated with Harvest Grows. Upon information and belief, Harvest Grows

has violated Rule 3796:2-1-02(B)(2)(j) in that it failed to disclose licensing information on other licenses, such as the other “31 medical cannabis licenses in six states” that Harvest Inc. states on its Web site that it holds.

140. The control by Harvest Inc. over Harvest Grows is also indicated by corporate filings. Articles of Incorporation for Harvest Inc. were filed on October 2, 2017, with the Wyoming Secretary of State by Steve White, who is listed on the Wyoming filings as the incorporator and manager of Harvest Inc.

141. As noted above, Harvest Grows represented on the Cultivator Provisional License applications that it filed with the Department that Steve White is its CEO. The application represents that White has a “0 percent” interest in Harvest Grows, however.

142. Corporate filings made by Harvest Grows with the Ohio Secretary of State, on June 16, 2017, identify Steve White, or Steven M. White, as the incorporator and as a “member, manager, or other representative” of the company.

143. Steve White represents himself on his LinkedIn profile as CEO of Harvest Inc., located in Tempe, Arizona, from August 2012 to the present, and as a practicing attorney with White Berberian PLC, a law firm located in Tempe. The Web site of his law firm, [www.wbazlaw.com](http://www.wbazlaw.com), lists White and a partner and represents that the firm’s practice areas include “assist[ing] businesses and individuals who wish to enter and succeed in opportunities created by Arizona’s new medical marijuana laws.”

144. Although Harvest Inc. represents itself on its Web site, [www.harvestinc.com](http://www.harvestinc.com), as having had had a corporate existence before the October 2, 2017, filing in Wyoming, it provides no specific information about the company’s existence or where it was (or is) incorporated. Upon information and belief, Harvest Inc., was never incorporated in Arizona. An electronic search of

corporate filings records kept by the Arizona Corporation Commission yielded no filing for “Harvest Inc.”

145. Harvest Inc.’s filings with the Wyoming Secretary of State list its mailing address and principal place of business as 627 S. 48<sup>th</sup> St., Suite 100, Tempe, Arizona. That is the same business address listed on filings made by Harvest Grows with the Ohio Secretary of State and on the Cultivator Provisional License applications that Harvest Grows filed with the Department. Both the Wyoming filings and the Harvest Grows license application list Steve White’s e-mail address as “steve@harvestinc.com.”

146. Harvest Grows represented on both of its cultivator applications submitted to the Department of Commerce that an “Erika Waltz” is the owner of the remaining 49 percent interest in the company, although the information that would further identify this individual is redacted from copies of the application made the publicly available. Upon information and belief, “Erika Waltz” is a resident of Maricopa County, Arizona (where Tempe is located), and the spouse of Matthew Waltz, a principal, member, and/or manager of Harvest Inc., and/or related entities engaged in various aspects of the medical marijuana business.

147. Upon information and belief, neither Erika Waltz nor Ariane Kirkpatrick “have control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to” their represented percentages of ownership, within the meaning of R.C. 3796.09(C). Erika Waltz is not identified as either an officer or a manager of the Harvest Grows on its Form 11 or the accompanying organizational chart. Kirkpatrick is identified on both as the “President,” but in a telling omission, she and Waltz are shown on the organizational chart as having no reporting lines of authority or

responsibility over the officers and managers shown on the chart. Instead, CEO Steve White is shown at the top of the organizational pyramid.

148. Upon information and belief, the day-to-day management of Harvest Grows is actually controlled by Steve White, in association with nine other individuals who are identified on the provisional cultivator license applications as officers of Harvest Grows and who, upon information and belief, are also associated with Harvest Inc. and/or other affiliates of Harvest Inc.:

- a. John Terry, who is identified on Form 1I and the accompanying organizational chart as CFO. Terry identifies himself on his LinkedIn profile as being employed by Harvest Inc. since November 2016.
- b. Julian Salazar, who is identified on Form 1I and the accompanying organizational chart as COO.
- c. Siobhan Carragher, who is identified on Form 1I and the accompanying organizational chart as Director of HR. Carragher identifies herself on her LinkedIn profile as Director of Human Resources for Harvest Inc.
- d. Paul Nowak, who is identified on Form 1I and the accompanying organizational chart as Director of New Development. Nowak identifies himself on his LinkedIn profile as Founding Partner and Executive Director of Cultivation at Harvest Inc., from September 2012 to the present.
- e. Timothy Buskirk, who is identified on Form 1I and the accompanying organizational chart as Safety and Security Compliance Director.
- f. Matthew Curran, who is identified on Form 1I and the accompanying organizational chart as Cultivation Director.



- g. Daniel Whisenand, who is identified on Form 1I and the accompanying organizational chart as Greenhouse Specialist.
- h. Matthew DiDonato, who is identified on Form 1I and the accompanying organizational chart as Director of Research and Evaluation. DiDonato identifies himself on his LinkedIn profile as Director of Research and Evaluation for Harvest Inc. since September 2015.
- i. Egan O’Keefe, who is identified on Form 1I and the accompanying organizational chart as Cultivation Manager.

149. Administrative Rule 3796:2-1-02(B)(6)(a) requires applicants to disclose “[t]he identity and ownership interest of every person, association, partnership, other entity, or corporation having a financial interest, direct or indirect, in the cultivator with respect to which licensure is sought.” Upon information and belief, the ownership of Harvest Grows was misrepresented for the purpose of concealing the identities of individuals who also have a management role in Harvest Grows and/or an ownership interest in Harvest Grows, through their interests in Harvest Inc., for the purposes of avoiding the requirement of one or more of those individuals to submit a criminal background check in conjunction with the Ohio application.

150. Upon information and belief, the ownership of Harvest Grows was misrepresented specifically for the purpose of avoiding having to submit a criminal background check of Jason Vedadi, who is identified in the news release quoted above as the President of Harvest Inc. A criminal background check likely would have uncovered evidence filed in the U.S. District Court for the District of Montana in 2011 by the U.S. Drug Enforcement Agency (“DEA”) identifying Jason Vedadi (a/k/a Touraj J. Vedadi) as a suspected co-conspirator in an illegal drug-trafficking ring the DEA referred to as the “Jason Washington Drug Trafficking Organization.” Specifically,

DEA Special Agent Vincent Sanchez submitted an affidavit in support of an application for a seizure warrant for property owned by Jason Washington and others involved in the alleged conspiracy.

151. In a section of the affidavit reciting evidence obtained by means of a court-authorized interception of wire and electronic communications, the DEA Special Agent reported the following:

On October 6, 2011, a telephone call was intercepted between VEDADI and WASHINGTON. VEDADI asked WASHINGTON "What's it worth if it's in Kalispell?" WASHINGTON responded "To me it's not worth anything it's worth 23 to me" (\$2300/lb.). VEDADI responded that "It's just too good of shit for that." WASHINGTON responded "Fuck (\$3500 / lb.) shit whatever, I'm just not, in the game like that right now" "Cause I can ya know get that other stuff when our stuff's not ready ... 23 all day and that's what I pay." [The affiant] believes VEDADI was offering to provide marijuana to WASHINGTON but WASHINGTON is able to obtain it from [another individual] at a lower price.

152. According to the DEA affidavit, the illegal drug ring was operated out of a Montana State-licensed medical marijuana-growing operation that was managed by Jason Washington, Jason Vedadi, and a third individual. According to the affidavit, the DEA was informed that Vedadi allegedly invested \$500,000 to establish the medical marijuana business. Upon information and belief, Harvest Grows misrepresented its ownership in order to avoid inquiry by the State of Ohio into Vedadi's criminal history, as well as to falsely represent itself as being fifty-one percent "owned and controlled" by a member of an economically disadvantaged group in order to obtain preferential consideration.

153. The Department failed to adequately review and vet Section 1 of the Harvest Grows application to discover the information contained in this Complaint, which the Plaintiffs discovered with simple internet searches.

**4. Parma Wellness Center, LLC.**

154. Defendant Parma Wellness is one of the applicants that was awarded Level I Cultivator Provisional License by the Department. Upon information and belief, Parma Wellness violated Administrative Rules and made material misrepresentations on its application, in violation of the Rule 3796:2-1-03(A)(7).

155. Parma Wellness represented itself in both of its applications as a limited liability company, and on its Form IO is represented that its business is owned and controlled by a member of an economically disadvantaged group. The application fails to identify the member of an economically disadvantaged group. Form 1L identifies Sheldon Rose, M.D. (“Rose”), as the owner of a 51 percent interest of the company, so Rose is presumably the requisite member of an economically disadvantaged group. Upon information and belief, Parma Wellness was selected as a provisional licensee based solely on its representation as being owned and controlled by a member of an economically disadvantaged group, inasmuch as it scored lower in the application review process than did several applicants that did not represent themselves as being as being at least 51 percent owned and controlled by members of an economically disadvantaged group and whose applications were rejected

156. Upon information and belief, the representation on Parma Wellness’ application that Rose has “control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to” a 51 percent ownership, within the meaning of R.C. 3796.09(C), is false.

157. The organizational chart submitted by Parma Wellness with its Form 1I lists Rose as the Chief Science Officer and as two levels down from two officers who are listed on the top row of the chart – the Chief Executive Officer (Scott Barker, who is identified as a 20 percent

owner) and the Chief Operating Officer (John Fife Symington IV, a 20 percent owner). The Chief Compliance Officer (Richard Parizek, a 9 percent owner), is shown as a direct report under the Chief Operating Officer. Below Parizek and shown as directly reporting to him are the “Security Risk Management Consultants” (not identified by name), the “Legal Consultant” (Ryan Hurley), and Rose, as Chief Science Officer. Rose is also listed on the chart as junior to three other individuals on who answer directly to the Chief Executive Officer and are at the same level as the Chief Compliance Officer – Rose’s supervisor.

158. Rose is required by the Rules governing Economically Disadvantaged Applicants to exert fifty-one percent or greater control of the day-to-day operations. Upon information and belief, as indicated by the organizational chart, that is not intent or plan of Parma Wellness.

159. In conjunction with the clear lack of fifty-one percent or greater control of the day-to-day operations evidenced by the organizational chart, the application narrative in Part 2A of Section 2 further evidences Rose’s role and responsibilities:

*The Chief of Science’s primary responsibility is to become and remain fluent and competent in the core subject areas of cannabis therapeutics, including areas of pharmacology, efficacy, adverse effects, dosing, pharmacodynamics, drug-drug interactions, safety, concerns of use and abuse, and recognition of toxicity, while also understanding the principals of psychoactive drugs, concepts of threshold and sequelae for qualifying conditions, iatrogenic conditions, and conceptualization of disease verses illness. The Chief Science Officer will be tasked with monitoring published peer-reviewed medical journals for information involving research in cannabinoids and work with the other members of the staff to develop Cultivation operations and protocols that reflect the most recent understanding of cannabis therapeutics pursuant to types of MM produced.*

160. Rose is currently an emergency medicine physician for University Hospital Parma Medical Center located in Cleveland, Ohio. Upon information and belief that Rose maintains his position as a full-time emergency medicine doctor evidencing his lack of participation in the management and control of Parma Wellness.

161. Also, the organizational chart lists the following individuals who, based on their titles, clearly would participate in management of the operation, but as to whom it failed to submit a Form 1K: Susan Sweeney, Financial Consultant; Todd Peterson, Human Resources & Labor Consultant; William Bethea, Horticulture/Agriculture Consultant; Jane Fix, Patient & Community Relations Educator; Michael Messieha, Cultivator Consultant; and Ryan Hurley, Legal Consultant. A note on the chart states that the “consultants” listed on the chart are “voluntarily providing their experience and knowledge for application purposes and have not received any compensation.” To the extent such individuals are intended to be “responsible for the daily operation of the entity seeking the license,” R.C. 3796.12(B) requires them to undergo criminal background checks.

162. Additionally, Parma Wellness certified on both of its applications for Level I Cultivator Provisional Licenses that it has the minimum of \$500,000 in unencumbered liquid assets that is required by 3796:2-1-02(B)(6)(c). The certification was not made by Rose, the putative 51 percent owner. Rather, was made by a CPA, Bryan Franklin, who is based on Maricopa County, Arizona, which also happens to be where the other owners of Parma Wellness – Barker, Symington, and Parizek – are located.

163. Upon information and belief, per R.C. 3796.09(C) Parma Wellness certified that Sheldon Rose, as a 51 percent owner and as its economically disadvantaged member, would be providing 51 percent of the capital as delineated in the “financial plan” under Rule 3796:2-1-02(B)(6)(c). Upon information and belief, Rose, does not have \$255,000 (51% of the necessary \$500,000) in unencumbered liquid assets that are placed at the company’s disposal or 51% of the total capitalization of the amount provided in the “financial plan.”

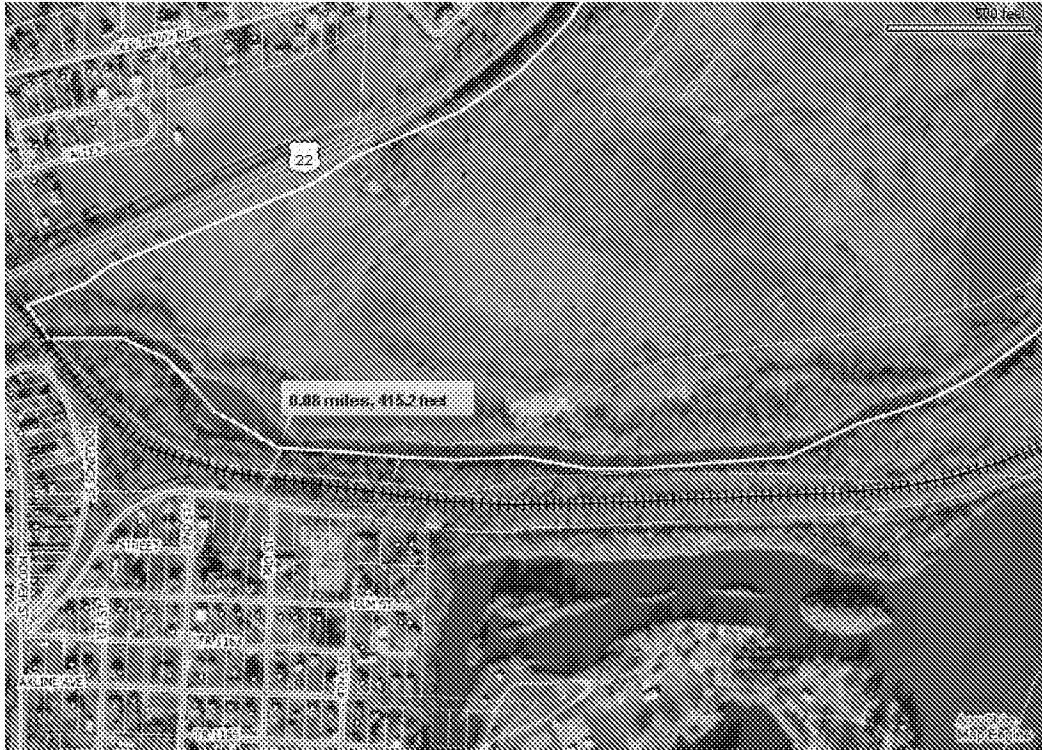
164. The Department failed to adequately review and vet Section 1 or Section 2 of the Parma Wellness application to discover the material misrepresentations and omissions detailed in this Complaint, which the Plaintiffs discovered with simple internet searches.

**5. Grow Ohio Pharmaceuticals, LLC**

165. Defendant Grow Ohio is one of the applicants that was awarded Level I Cultivator Provisional Licenses by the Department. Upon information and belief that Grow Ohio's application, like Terradiol's and Cresco's, also misrepresents its compliance with the requirement no marijuana cultivator shall be located within 500 feet of the boundaries of a parcel or real estate having situated on it a school, church, public library, public playground, or public park.

166. Grow Ohio proposes to locate its cultivation facility at 6400 Maysville Pike in Cleveland, Ohio 44131, upon Parcel ID: 47-60-01-24-000. Located nearby is the East Fultonham United Methodist Church, which is a church under R.C. 1710.01, located at 6945 Elm St., East Fultonham, Ohio 43735.

167. Upon information and belief that, at the time of application, Grow Ohio's proposed site was located within 415.2 feet of a prohibited facility (East Fultonham United Methodist Church) as is shown by the figure below:



168. Grow Ohio should have disclosed the location of the prohibited facility, which was within the 500-foot boundary of parcel submitted to the Department. Because the parcel is within 500 feet of a prohibited facility, Grow Ohio’s application should have been disqualified, which further evidences that the Department materially failed to properly vet the application, adhere to its process, and adhere to the mandates of Chapter 3796 of the Ohio Revised Code.

**I. Misconduct by Defendants Meade & Wing, LLC; B&B; and iCANN.**

169. On or about July 1, 2017, the Department of Commerce engaged Defendant Meade & Wing, along with parties iCANN, and B&B, to provide “subject matter expertise for the scoring of medical marijuana license applications,” according to an Operating Request submitted by the Department to the Controlling Board.

170. The services supplied by Meade & Wing were personally provided by Jason Meade (“Meade”) and Keoki Wing (“Wing”), who are members of the company, according to its Articles of Organization filed with the Arizona Corporation Commission on May 22, 2014.

171. The services supplied by iCANN were personally provided by Trevor Bozeman (“Bozeman”), who, upon information and belief, was the company’s sole member.

172. According to information the Department of Commerce provided to the public via a slide presentation on December 14, 2017, a total of 25 individuals contributed to the cultivator application scoring process and “[o]nly 3 were non-state employees.” See Exhibit B.

173. According to the Department, it took steps to address conflicts of interest that might arise between consultants, who were utilized for their subject matter expertise concerning the marijuana industry, and license applicants, who are in, or seeking to get into, the industry. The Department’s slide presentation states in part:

The Department was aware of the potential for conflicts, so the following controls were implemented:

The RFP process to secure the consultants required self-disclosure of existing relationships with individuals/businesses looking to apply in Ohio.

One consultant was removed entirely from the scoring process due to a potential conflict that was voluntarily disclosed by the consultant, per the agreement.

The Personal Services Agreement with every consultant included language that required the consultant to disclose conflicts to the Department, should they arise.

No other conflicts were disclosed to the Department related to the scoring process.

174. Upon information and belief, B&B was a partnership of two parties, Bret Bender (“Bender”) and Brandon Miller (“Miller”). Bender has since dissociated from the partnership as of October 30, 2017.



175. Upon information and belief, Bender was General Manager of Bedford Grow LLC in Illinois until October of 2017 and became the Political Director for the Marijuana Policy Project thereafter.

176. Upon information and belief, Miller is the current Director of Cultivation of Bedford Grow LLC in Illinois and has been since August 2015.

177. Upon information and belief, Bedford Grow LLC participated in the submission of an application for Level I Provisional Cultivation License on or before June 30, 2017.

178. The Department stated in the Power Point, the “MMCP team also received feedback from its consultants used during the rule writing process to make any changes necessary.”

179. Upon information and belief, the consultants referred to in Power Point slide number ten and Paragraph 173 of this Complaint, are B&B and iCANN/Defendant Bozeman.

180. Upon information and belief, pursuant the Paragraph 16 of this complaint, B&B provided the Department Rubric Consultation prior to June 30, 2017.

181. Upon information and belief, pursuant the Paragraph 16 of this complaint, B&B had knowledge of the Scoring Elements prior to June 30, 2017.

182. Upon information and belief, B&B was the consultant that the Department states “voluntarily disclosed” a potential conflict of interest and was removed from the scoring process after June 30, 2017. Upon information and belief that, despite being “removed from the scoring process,” the Department paid B&B over \$43,000. The Department has not publicly disclosed any information about this “potential conflict,” the nature of the work performed by B&B prior to its removal from the scoring process, and has failed to respond to requests for records concerning this disclosure contained in the January Public Records Request.

183. Meade & Wing LLC, thus, provided two of the three “non-state employees” that the Department of Commerce states were involved in scoring each application for a Cultivator Provisional License, the third being Bozeman.

184. These three individuals were the “subject matter experts” who were used to score two sections of each application – the applicants’ (1) Operations Plan and (2) Quality Assurance plan. According to the Department’s slide presentation, “[t]he consultants utilized during the scoring process were limited to the areas focusing on cultivation within the operations plan and quality assurance plan (cultivation layout, grow orientation, Standard Operating Procedures, etc.).” Despite the Department’s attempt to describe the consultants as playing a limited role, these two sections collectively make up 60 percent of the total points available on the application.

185. Upon information and belief, Meade & Wing should have been disqualified and removed as a consultant because of conflicts of interest and/or (at least) potential conflicts of interest that it was obligated to disclose. For example:

186. On his profile on the networking site LinkedIn, Wing represented that he was Director of Horticulture for a company called NatureMed, Inc. (“NatureMed”), from October 2015 to July 2016 and General Manager of the company from September 2013 to June 2015. NatureMed is an Arizona corporation that lists its address at 627 S. 48<sup>th</sup> St., Suite 100, in Tempe – the same address as Harvest Inc. and Harvest Grows. Steve White, the CEO of Harvest Grows and of Harvest Inc., is the President and Director of NatureMed, according its filings with the Arizona Corporation Commission.

187. On his LinkedIn profile, Wing also represents that, concurrent with his employment by NatureMed, he was an Operations Specialist with AOW Management, LLC, from May 2015 to July 2016. According its filings with the Arizona Corporation Commission, AOW Management,

LLC, is a South Dakota limited liability company whose manager is Touraj J. Vedadi, the President of Harvest Inc.

188. On his LinkedIn profile, Wing also represents that he was Facilities Operations Manager for Cottonwood Agricultural Services from June 2015 to November 2016. According to its filings with the Arizona Corporation Commission, Cottonwood Agricultural Services, LLC, is an Arizona limited liability company whose manager is Touraj J. Vedadi.

189. By its own admission, Meade & Wing was actively seeking to join with investors in the marijuana business in Ohio. On its Facebook page on November 15, 2016, Wing & Meade posted a statement that: “Meade & Wing is on the move again. We are currently looking for investors to break into the OH cannabis market. If you or someone you know would like to get in on the ground floor of this billion dollar industry please pm us.”

190. At the very least, Meade & Wing violated its obligations to disclose conflicts of interest, including the conflicts described above, to the Department, per terms of the terms of “[t]he Personal Services Agreement with every consultant” as stated by the Department. Meade & Wing’s wrongful conduct is not excused by the fact that the Department should have easily learned of Meade & Wing’s conflicts of interest. Even minimal due diligence would have revealed Meade & Wing’s extensive conflicts of interest, suggesting the Department knew of the conflicts and simply ignored them.

191. Upon information and belief, Meade & Wing acted on its undisclosed conflicts of interest and its connections to the principals of Harvest Grows in order to manipulate the scoring process to, among other things, result in the award of a Cultivation Provisional License to Harvest Grows.

192. Upon information and belief, Defendant Bozeman was arrested in South Portland and charged with assault, carrying concealed weapons, and threatening, court records show. Upon information and belief, a TV report on the incident at the time said he held a knife to a woman's throat and police seized two knives from Bozeman, who was 18 at the time. He pleaded guilty to misdemeanor threatening, received a six-month suspended sentence and was put on probation for a year.

193. Upon information and belief, Defendant Bozeman pleaded guilty to manufacturing, delivering and possessing drugs, with intent to manufacture or deliver in 2005, according to Pennsylvania court records.

194. Per the Controlling Board statement of June 12, 2017, upon information and belief Defendant Bozeman made false and misleading statements claiming the address "from which all or most of the contract work will be performed" was 7652 Sawmill Rd, Ste 227, Dublin Ohio, a post office box.

195. Upon information and belief, iCANN and Defendant Bozeman breached the representations and warranties of the Consulting Agreement with the Department signed June 1, 2017. Specifically, upon information and belief, Defendant Bozeman was debarred from consideration pursuant to R.C. 153.02 and R.C. 125.25.

196. Upon information and belief, pursuant the Paragraphs 17, 172, and 173 of this Complaint, iCANN and Defendant Bozeman provided the Department Rubric Consultation prior to June 30, 2017.

197. Upon information and belief, pursuant the Paragraphs 17, 172, and 173 of this complaint, iCANN and Defendant Bozeman had knowledge of the Scoring Elements prior to June 30, 2017.

198. Upon information and belief, iCANN and Defendant Bozeman had knowledge of the rubric and/or the Scoring Elements for the Processor Provisional License application prior to the application's release to the public on or about October 19, 2017.

199. Upon information and belief, B&B had knowledge of the rubric and/or the Scoring Elements for the Cultivator Provisional License application prior to the application's release to the public on or about October 19, 2017.

200. Upon information and belief, Meade & Wing had knowledge of the rubric and/or the Scoring Elements for the Processor Provisional License application prior to the application's release to the public on or about October 19, 2017.

201. Upon information and belief, the Department's failed to adequately vet any of its consultants thereby tainting the already flawed process with four hundred and fifty thousand dollars (\$450,000.00) of State funds ear-marked for "subjected matter experts" which all should have been disqualified from participation.

202. The Department stated in the Power Point that "legal challenges in other states and conversations with regulators in those states identified the need for reviewers knowledgeable in the subject matter."

203. Upon information and belief, 22 of the 25 application graders were State employees with no medical marijuana industry experience, knowledge, or expertise whatsoever.

204. Upon information and belief, the Department failed to score the applications with competent graders with the requisite subject matter expertise capable of producing results that were not arbitrary and capricious.

205. Upon information and belief that had the Department's scoring process been properly administered, Plaintiffs each would have received a Level I Cultivator Provisional License.

206. Pursuant to Rule 3796:2-1-01(A), the Department may issue up to twelve Level I Cultivator Provisional Licenses, and twelve Level II Cultivator Provisional Licenses. The Department has already awarded all twenty-four cultivator provisional licenses that it has legal authority to issue. Since the Department has no authority to issue additional provisional cultivator licenses, Plaintiffs have been irreparably harmed by the Defendants' conduct.

### **COUNT ONE**

#### **(Abuse of Discretion—as to Defendant Williams as Director for the Department)**

207. Plaintiffs restate each of the foregoing allegations as if fully rewritten herein.

208. Under Chapter 3796 of the Revised Code, the Department is responsible for fairly administering aspects of the MMCP including the licensing of medical marijuana cultivators and processors, and licensure of laboratories to test medical marijuana. The Department was also tasked with adopting rules establishing standards and procedures for administering the MMCP and for reviewing and scoring applications for cultivation and processing licensure.

209. In attempting to fulfill the foregoing duties, the Department's actions were unreasonable, arbitrary, and/or unconscionable to such an extent so as to constitute an abuse of discretion.

210. The unreasonable, arbitrary, and/or unconscionable actions and decisions undertaken by the Department included: (1) failing to conduct even basic due diligence in verifying information provided by Defendants Terradiol, Cresco, Harvest Grows, Parma Wellness, and Grow Ohio; (2) failing to administer a fair and just process for evaluating and scoring Level I Cultivator applications by, among other things, utilizing undisclosed criteria in the application scoring process in direct violation of Chapter 3796 of the Ohio Revised Code; (3) failing to police, disclose, or otherwise evaluate blatant conflicts of interests between consultants responsible for

scoring Level I Cultivator applications and the applicants applying for Level I Cultivator applications; (4) failing to enforce mandatory provisions of the Ohio Revised Code including, but not limited to: R.C. 3796.09(B), Administrative Rule 3796:2-1-02, and Administrative Rule 3796:2-1-03; and (5) awarding Level I Cultivator Provisional Licenses to applicants that failed to meet mandatory provisions of the Ohio Revised Code and/or the Ohio Administrative Code at the expense of other applicants, including Plaintiffs, who expended amounts aggregating to millions of dollars in order to ensure compliance with those same provisions of law.

211. As a direct and proximate result of the Department's abuse of discretion, each Plaintiff has been damaged, and Plaintiffs are entitled to a declaration pursuant to R.C. 2721.02, that (a) the Department's administration and scoring of applications for Level I Cultivator Provisional Licenses was unreasonable, arbitrary, and/or unconscionable; (b) That the Department's conduct rose to the level of an abuse of discretion; (c) all Level I Cultivator Provisional Licenses issued to date should be set aside, with injunctive relief enjoining the Department of Commerce from issuing a certificate of operation to any recipient of a Level I Cultivator Provisional License and any other relief this Court deems equitable and just.

## **COUNT TWO**

### **(Breach of Contract and Public Policy, Cultivator Licensing—as to Defendant Williams as Director for the Department)**

212. Plaintiffs restate each of the foregoing allegations as if fully rewritten herein.

213. In establishing the framework for soliciting and accepting applications, the Department of Commerce entered into an implied or informal contract with each applicant that it would, among other things, fairly consider each bid in accordance with all applicable statutes and regulations; that the consideration of the applications would be based upon the identified criteria and no others; and that each applicant would be fairly and honestly considered; that each

application would be considered by competent graders with subject matter expertise and free of conflicts of interest; and that those applications containing false information would be excluded.

214. Each Plaintiff submitted an application for a cultivator license and provided consideration for said contract in the form of a \$20,000 non-refundable application fee.

215. Each Plaintiff that submitted an application for a cultivator license fully performed all of the elements of said agreement.

216. As set forth above the Department of Commerce has materially breached such contract for which there is not an adequate remedy at law. As a result of the Department of Commerce's material breach of such contract, each Plaintiff has been damaged, and Plaintiffs are entitled to a declaration pursuant to R.C. 2721.02, that (a) the Department of Commerce is in breach of the contract; (b) that such breach was material to the contract; and (c) all provisional licenses issued to date should be set aside, with injunctive relief enjoining the Department of Commerce from issuing a certificate of operation to any recipient of a Level I Cultivator Provisional License and any other relief this Court deems equitable and just.

### **COUNT THREE**

#### **(Tortious Interference—as to Defendants Meade & Wing, B&B, iCann-Trevor Bozeman, Terradiol, Cresco, Harvest Grows, Parma Wellness, and Grow Ohio)**

217. Plaintiffs restate each of the foregoing allegations as if fully rewritten herein.

218. Plaintiffs each have valid prospective contractual and business relationships in connection with obtaining licenses under the MMCP.

219. Defendants Terradiol; Cresco; Harvest Grows; Parma Wellness; Grow Ohio; Meade & Wing, LLC, B&B Grow Solutions, and iCANN, with knowledge of Plaintiffs' prospective and contractual business and licensing relationships, have intentionally interfered with such prospective contractual and business relationships by the conduct set forth above. They lack



justification for such intentional interference, which has been accomplished through the use of wrongful means, including knowingly making material fraudulent and/or misleading misrepresentations on MMCP application forms, knowingly failing to disclose disqualifying facts, and knowingly failing to disclose disqualifying conflicts of interest.

220. For example, under Rule 3796:2-1-03(A)(7), in order to even be considered by the Department for a Level I Cultivator Provisional License, an application must be submitted “that does not contain information that misleads the department” or “misrepresents a material fact.”

221. On the first page of the Level I Cultivator Provisional License Application, each applicant including Terradiol, Cresco, Harvest Grows, Parma Wellness, and Grow Ohio was required to sign an attestation representing that the information provided in the application was accurate, and that knowingly making a statement that is untrue or misleading is a violation of Chapter 3796 of the Revised Code.

222. Defendants Terradiol, Cresco, Harvest Grows, Parma Wellness, and Grow Ohio made the foregoing attestation and representation that the content of their Level I Cultivator Provisional License Applications were accurate and not knowingly false or misleading.

223. Despite making the foregoing attestation, Defendants Terradiol, Cresco, Harvest Grows, Parma Wellness, and Grow Ohio made false and/or misleading statements material to their applications including, but not limited to, those laid out in Section H of this Complaint. For example, Defendant Harvest Grows violated, among other provisions, Administrative Rule 3796:2-1-02(B)(6)(a) by failing to disclose the identity and ownership interest of Jason Vedadi. Had Harvest Grows properly disclosed Mr. Vedadi’s interest, a criminal background check likely would have uncovered evidence of criminal activity as discussed in Paragraphs 150 through 152 of this Complaint.

224. Defendants Terradiol, Cresco, Harvest Grows, Parma Wellness, and Grow Ohio had knowledge of the falsity and/or misleading nature of information provided in their applications, or acted with utter disregard and recklessness as to the falsity or misleading nature of the information provided in their applications.

225. By making such false and/or misleading statements Defendants Terradiol, Cresco, Harvest Grows, Parma Wellness, and Grow Ohio interfered with Plaintiffs valid prospective contractual and business relationship in connection with obtaining licenses under the MMCP.

226. As a consequence of the false and/or misleading statements made by Terradiol, Cresco, Harvest Grows, Parma Wellness, and Grow Ohio, Plaintiffs have suffered injury including potential lost profits from failure to obtain a Level I Cultivator Provisional License. Further, but for the false and/or misleading statements provided by Harvest Grows and Parma Wellness, each would have been disqualified from consideration for a Level I Cultivator Provisional License. Had Harvest Grows and/or Parma Wellness been properly disqualified, at least one Plaintiff, CannaMed Therapeutics, would have received a Level I Cultivator Provisional License due to being the third highest scoring Economically Disadvantaged Applicant where the Department was required to issue at least two licenses to such applicants.

227. As a result of the foregoing, Plaintiffs seek injunctive relief and compensatory damages in an amount to be established at trial but not less than \$25,000.

#### **COUNT FOUR**

##### **(Failure to Produce Public Records in Violation of the Public Records Act—as to Defendant Williams as Director for the Department)**

228. Plaintiffs restate each of the foregoing allegations as if fully rewritten herein.

229. Plaintiffs submitted public records requests set forth on Section G of this Complaint seeking production of public records.

230. The Department of Commerce is in the possession of such public records, and The Department of Commerce has failed to identify any exception for withholding some or all of the public records requested.

231. Under R.C. 149.43, the Department of Commerce is obligated to release such public records.

232. By its delay, the Department of Commerce has refused to produce the public records.

233. Department of Commerce has violated Section 149.43 by failing to timely release the requested records for which Plaintiffs lack any remedy at law, and therefore is entitled to a writ of mandamus or injunctive relief requiring the Department of Commerce to release for inspection the documents requested and an award of attorneys' fees.

#### **COUNT FIVE**

#### **(Failure to Timely Produce Public Records in Violation of the Public Records Act—as to Defendant Williams as Director for the Department)**

234. Plaintiffs restate each of the foregoing allegations as if fully rewritten herein.

235. Under Section 149.43(B)(1), “all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours.”

236. Under Section 149.43(B)(2) and “[i]n order to facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in the manner that they can be made available for inspection. . . .”

237. The Department of Commerce has failed to timely produce some or all of the aforementioned public records for inspection in violation of R.C. 149.43, and this Court issue a

writ compelling the Department of Commerce to produce records in a timely fashion and an award of attorneys' fees.

WHEREFORE, Plaintiffs seek the following relief:

A. A declaration that the Department of Commerce failed to timely produce public records;

B. A writ of mandamus and/or injunction compelling the Ohio Department of Commerce to produce the requested public records immediately.

C. Pursuant to R.C. 149.43(C), reasonable attorneys' fees and court costs incurred in prosecuting claims for violations of the Ohio Public Records Act.

D. The following declarations:

1. The Department of Commerce failed to conduct, administer, and execute upon the application process for the Level I Cultivator Provisional Licenses consistent with the requirements set forth in the Revised Code, which led to Level I Cultivator Provisional License awards going to entities that made fraudulent and/or misleading statements on their cultivator applications.

2. The Department of Commerce failed to conduct, administer, and execute upon the application process for the Level I Cultivator Provisional Licenses consistent with the requirements set forth in the Ohio Administrative Code, which led to, among other things, Level I Cultivator Provisional License awards going to entities that should have been disqualified for failing to meet mandatory pass/fail criteria.

3. The Department of Commerce failed to conduct, administer, and execute upon the application process for the Level I Cultivator Provisional Licenses consistent with its contractual obligations and/or public policy.

4. The Department of Commerce unreasonably, unlawfully, and/or arbitrarily conducted, administered and executed upon the application process for the Level I Cultivator Provisional Licenses as evidenced by the vast number of failed verifications, scoring errors, undisclosed conflicts of interest, and undisclosed loopholes in the security of information which provided certain Department employees with access and opportunity to manipulate or otherwise modify any applicant's score or information.

5. The Department of Commerce failed to provide the required notice of the bidding criteria to applicants for the Level I Cultivator Provisional Licenses, leading to a disqualification rate of over 70% for cultivator applicants.

6. The Department of Commerce unlawfully utilized *undisclosed* criteria in evaluating the applications for the Level I Cultivator Provisional Licenses, which constituted an abuse of discretion as it led to arbitrary disqualifications for failure to meet criteria that applicants had not notice of.

7. That the Department of Commerce unlawfully awarded Level I Cultivator Provisional Licenses to applicants who made false and/or misleading statements on their applications.

8. The Department of Commerce unlawfully awarded Level I Cultivator Provisional Licenses to applicants who failed to satisfy the minimum requirements set forth in the Revised Code and/or the Administrative Rules.

9. A preliminary and permanent injunction:

- (a) Enjoining the Department of Commerce from issuing a certificate of operation to any recipient of a Level I Cultivator Provisional

License and ordering the Department of Commerce to revoke all  
provisional Level I Cultivator Provisional Licenses.

E. Grant any other relief as this Court may deem just and proper.

F. No monetary relief is sought against the Department of Commerce, except an award  
of attorneys' fees under R.C. 149.43.

Respectfully submitted,

/s/ Marion H. Little, Jr.

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