

STATE OF MINNESOTA

DISTRICT COURT

COUTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Cristina Aranguiz and Jodi Connolly,

Court File No. 62-CV-24-7403

Plaintiffs,

Case Type: Other Civil

v.

Minnesota Office of Cannabis  
Management; and Charlene Briner, in  
her capacity as Interim Director of the  
Minnesota Office of Cannabis  
Management,

## **OPPOSITION TO MOTION FOR TEMPORARY INJUNCTION<sup>1</sup>**

Defendants.

### **INTRODUCTION**

The Plaintiffs move for a temporary injunction to prevent OCM from proceeding with a lottery to selected certain social equity applicants for preapproval for cannabis licensing. The motion should be denied. The Plaintiffs are unlikely to prevail with their claims because this Court has no subject matter jurisdiction to hear them. Additionally, there is significant work that has gone into setting the lottery for November 26, and there is substantial risk of diminishing or eliminating the benefits of the lottery if it is delayed.

---

<sup>1</sup> The Court has scheduled a consolidated hearing on November 25, 2024 in three matters seeking temporary injunctions to prevent OCM from conducting a scheduled lottery to select social equity applicants for pre-approved licensing. The three cases are *Aranguiz et al. v. Minnesota Office of Cannabis Management*, 62-CV-24-7403, *Northern Illusion LLC v. Minnesota Office of Cannabis Management*, 62-CV-24-7411, and *Green Leaf MN LLC v. Minnesota Office of Cannabis Management*, 62-CV-24-7412. The cases have not been consolidated, and OCM is submitting substantially similar memoranda and declaration in each.

## BACKGROUND

### Statutory Framework

Minnesota is currently in the process of creating the licensing scheme through which legalized cannabis sales will occur. *See* Minn. Stat. § 342.14. The process is overseen by OCM. *Id.* There are two processes by which OCM distributes licenses: the license preapproval process, and second, a standard license approval process. License preapprovals, as the name implies, are given prior to the first full cycle of license applications. Laws of Minnesota 2024, Chapter 121, Article 2, Section 148, subdivision 1 (allowing that the office may, prior to the adoption of adult-use cannabis rules, “establish a license preapproval process for [social equity] applicants” for nine license types.)<sup>2</sup> Every license type in the license preapproval process is capped. *Id.* at subd. 1(b). Unlike the license preapproval process, only four license types are capped whereby certain “social equity applicants” can apply to receive preapproval for one of the limited number of licenses in four categories. Minn. Stat. § 342.14, subd. 1b.<sup>3</sup>

In both processes the legislature anticipated that OCM would receive more applications for social equity status than there would be licenses available. As a result, the statutes allow OCM to conduct a lottery among eligible applicants and gives OCM the authority to determine eligibility as a social equity applicant. *Id.* at subds. 1b-4, Laws of Minnesota 2024, Chapter 121, Article 2, Section 148, subdivision 1-6. While the license

---

<sup>2</sup> As the license preapproval process is a one-time only process, this part of the session laws was not coded into chapter 342 and exists only in the session laws.

<sup>3</sup> The eventually selected social equity applicants will still need to meet all requirements for licensure under the rules, and thus are not guaranteed a license to operate.

preapproval process largely mirrors the standard application process there are three key differences: license caps, deficiency notice process, and ability to seek reconsideration. See Table 1.

Table 1. Preapproval Process versus Standard Process.

	<b>Preapproval Process</b> Laws of Minnesota 2024, Chapter 121, Article 2, Section 148.	<b>Standard Process</b> Minnesota Statutes, Section 342.14.
License Caps	All available license types capped. (Subd. 1).	Only Mezzobusiness, Cultivation, Manufacture, and Retail capped. (Subd. 1b).
Deficiency Notice	“If the office receives an application that fails to provide the office with the required information or pay the applicable application fee, the office shall issue a deficiency notice to the applicant that states the amount of time that the applicant has to submit the required information or pay the application fee to the office.” (Subd. 4(c))	“If the office receives an application that fails to provide the required information or pay the applicable application fee, the office shall issue a deficiency notice to the applicant. The applicant may submit the required information or pay the required application fee within 14 calendar days from the date of the deficiency notice.” (Subd. 2(c))
Reconsideration	“An applicant whose application is denied or not selected in a lottery may not appeal or request a hearing.” (Subd. 11(d)).	“If the office denies an application or denies final authorization and does not issue a license after granting preliminary license approval, the applicant may seek reconsideration from the office. A decision by the office on a request for reconsideration is final.” (Subd. 8).

### Plaintiffs' Straw Applicant Scheme

Plaintiffs applied for and were approved for social equity status. (Dkt. 1 ¶ 1.) Plaintiffs then submitted an application for a license preapprovals. OCM denied their applications based on the fact that both were straw-applicants who concealed the true control of the intended licensees. (*Id.* ¶ 8.) Plaintiffs worked in concert with others to submit more than 200 related applications for the lottery, for the purpose of flooding the lottery and increasing their chances of success. (Taubel Decl. ¶¶ 6-19.)

During the process of reviewing applications, OCM received a tip from a concerned citizen with knowledge of a widespread scheme to game the Minnesota Cannabis Pre-Approval License lottery. (*Id.* ¶ 8.) This communication stated that an out-of-state cannabis operator had recruited hundreds of persons to apply on its behalf. (*Id.*) The communication indicated that the 'owner' had a cannabis business in Iowa. (*Id.*)

OCM reviewed all applications from Iowa and discovered that many contained a uniform email domain name: mncanna.org. (*Id.* ¶ 9.) MNcanna.org is not an active website, however, there is a very similarly named website for the "Iowa Cannabis Company": IAcanna.com. (*Id.* ¶ 10.) That company is owned by Tate Kapple. (*Id.*) Tate Kapple submitted two applications for license preapproval, one for a retail license, and one for a delivery license. (*Id.* ¶ 11.)

Subsequent communications from the informant included screenshots of a spreadsheet tracking the (1) name, (2) retail entity LLC registered for the retail license application, (3) delivery entity LLC registered for the retail license application, (4) an email address ending in a mncanna.org domain, (5) a phone number, (6) the retail application

number, (7) the delivery application number, (8) the name of the employee who filed the applications, and (9) a timestamp of the application submissions. (*Id.* ¶ 12.)

OCM reviewed these spreadsheets against its own application records. (*Id.* ¶ 13.) The timestamps for each application matched. (*Id.*) OCM also matched many of the names of the MNCanna.org applicants to current employees of Tate Kapple's companies, including Plaintiff Christina Aranguiz, Zen Springs, and Tate Kapple, and multiple members of the Kapple family. (*Id.* ¶ 14.) The email address used by Jodi Connolly in her submissions to OCM also came from the MNCanna.org domain. (*Id.*) In reviewing the applications for each of the MNCanna.org applications, each application used the same file naming conventions. (*Id.* ¶ 16.) Each application also contained identical information about the anticipated first year earnings of the companies. (*Id.*)

OCM was informed that each of the applicants was required to enter into an agreement with Tate Kapple to sell him their company for \$100,000.00 should they win the lottery. (*Id.* ¶ 17.) Based on the foregoing facts, OCM identified 120 retail and 120 delivery applications associated with this scheme, each containing an MNCanna.org email address, and denied each of the MNCanna.org applications for failing to disclose the \$100,000.00 transfer agreements. (*Id.* ¶ 18.) On November 19, an attorney representing the plaintiffs provided copies of the transfer agreements, confirming the existence of the straw applicant scheme. (*Id.* ¶ 19.)

### November 26 Lottery

OCM intends to hold the Preapproval Lottery on Tuesday, November 26, 2024. (*Id.* ¶ 20.) OCM began the process of planning for the lottery in June of 2024, shortly after the law creating the Preapproval Lottery process went into effect. (*Id.* ¶ 21.) In order to hold the lottery, OCM entered into four separate contracts with: Smartplay International (“Smartplay”), Baker Tilly Advisory Group, LP (“Baker Tilly”), iDream.tv, Inc. (“iDream”), and the Minnesota Department of Revenue. (*Id.* ¶ 22.)

OCM retained Smartplay to provide a digital lottery draw system and technician to conduct a lottery event which will award cannabis licenses for the State of Minnesota. (*Id.* ¶ 23.) The contract requires that the date and time of the lottery be determined by mutual agreement. (*Id.*) The contract terminates on December 31, 2024. (*Id.*) OCM retained Baker Tilly to operate Smartplay’s computerized random drawing system and ensure appropriate procedures are implemented and followed to ensure a fair and random lottery. (*Id.* ¶ 25.) The contract expressly states the lottery services will be provided on November 26, 2024. (*Id.* ¶ 25.) The contract terminates on December 31, 2024. (*Id.* ¶ 25.) The contract identifies specific persons from Baker Tilly who have specific expertise and experience in administering lotteries for cannabis licensure. (*Id.* ¶ 25.) OCM retained iDream to provide audio-video capability to stream the lottery. (*Id.* ¶ 27.) The contract provides that services will be provided on November 25 and 26, 2024, and cover a tech-rehearsal and the lottery itself. The contract expires on December 30, 2024. (*Id.* ¶ 27.) Collectively, these contracts required months of work to complete. (*Id.* ¶ 30.) The November 26 date for the lottery was set in September after extensive coordination. (*Id.* ¶ 31.)

OCM entered into an agreement with the Minnesota Department of Revenue to reserve physical space to hold the lottery. The specific location has the necessary size and technology to administer the lottery. (*Id.* ¶ 28.) The specific location has been outfitted by Minnesota IT Services (MNIT) with a hard-wired connection to the Internet to ensure that the lottery broadcast would not be interrupted or subject to service outages. (*Id.*) There are a limited number of locations within the Minnesota State Government buildings that meet the required criteria needed to host the lottery. (*Id.* ¶ 29.)

As both Smartplay and Baker Tilly provide difficult to obtain services, and OCM cannot easily find alternative vendors. (*Id.* ¶ 32.) There is a substantial risk that if the lottery were rescheduled it would be difficult or impossible to find a date and location to reassemble the vendors and space required to run the lottery. (*Id.*)

There is also substantial risk that if the lottery is delayed, OCM will not be able to conduct it at all. (*Id.* ¶¶ 33-38.) OCM is currently working under tight deadlines to hold the social equity lottery and a second lottery in 2025 to issue license types that are capped in the standard process. (*Id.* ¶¶ 35-37.) There will also need to be an extensive social equity status verification process and application review process for the applicants in the standard application process. (*Id.* ¶ 35-36.) OCM plans to open that process in January in order to provide enough time to complete those reviews before cannabis sales are allowed. (*Id.*) Moving the social equity lottery into January would diminish or eliminate entirely the benefits of early preapprovals the legislature intended, and will create difficult logistical hurdles for OCM. (*Id.* ¶¶ 33-38.) There is substantial risk that if the lottery does not proceed as scheduled, it will not proceed at all. (*Id.* ¶ 38.) The social equity lottery is a one-time

opportunity afforded by the legislature. (*Id.* ¶ 33.) OCM will not have the authority to re-run the lottery once the final rules for cannabis distribution are finalized. (*Id.*)

OCM estimates that the cost to administer the lottery will be approximately \$100,000 and that if the lottery is rescheduled, it will incur significant additional expense for the inconvenience and additional work required from its vendors. (*Id.* ¶ 39.)

### ARGUMENT

A preliminary injunction is an extraordinary remedy that should only be issued in clear cases, requiring the Court to proceed with great caution and restraint. *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982); *Allstate Sales & Leasing Co. v. Geis*, 412 N.W.2d 30, 33 (Minn. Ct. App. 1987). This Court's decision on the request for a temporary injunction is governed by the *Dahlberg* factors, which include: (1) the nature and relationship of the parties; (2) the balance of relative harm between the parties; (3) the likelihood of success on the merits; (4) public policy considerations; and (5) any administrative burden involving judicial supervision and enforcement. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (1965). Likelihood of success on the merits is the most important of the five factors. *Minneapolis Fed'n of Tchrs., AFL-CIO, Loc. 59 v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1*, 512 N.W.2d 107, 110 (Minn. Ct. App. 1994); *Albrecht v. Rite Tyme Co.*, No. A08-1694, 2009 WL 2366146, at \*2 (Minn. Ct. App. Aug. 4, 2009) As set forth below, the *Dahlberg* factors favor denying a temporary injunction here.

**I. Plaintiffs' Are Unlikely to Prevail Because This Court Lacks Subject Matter Jurisdiction to hear Their Claims.**

As set forth in the defendants' motion to dismiss and supporting memorandum, this Court lacks subject matter jurisdiction to review a quasi-judicial decision of OCM.<sup>4</sup> OCM relies on its briefing on the motion to dismiss, and does not repeat those arguments here.

**II. The Balance of Harms Favor Denying an Injunction.**

OCM is currently engaged in a fast-moving regulatory process with multiple moving pieces. As part of that process, the legislature created the social equity license preapproval lottery process recognizing that small business operators with societal impediments and little history of business development would be at a significant disadvantage in creating new businesses and securing the limited licenses that will be made available by OCM. To alleviate these disadvantages, the legislature created a process that allows certain social equity applicants to get a head start in license pre-approvals. These applicants must still meet all criteria for licensing, but the head start gives them better opportunity to search for and obtain the financing and facilities they will need to operate.

As set forth above, it is not clear OCM would be successful in rescheduling the lottery if a TRO is entered. The November 26 date was selected in consultation with several vendors who may or may not be available on the same date in the near future. OCM would also need to negotiate amendments for some of those contracts, and potentially go back through a public bidding process for the contract to broadcast the lottery.

---

<sup>4</sup> Indeed, Plaintiffs concede that OCM's decision to deny their applications was quasi-judicial. (Dkt. 10 at 6-7.)

Moreover, if there is any significant delay in the lottery there will be two adverse consequences. First, the intended advantage of giving social equity applicants a head start on business planning will be lost. The social equity lottery is a pre-approval process, but not one that guarantees a license. The applicants must still go through a process to confirm they meet the ultimate requirements for a license. OCM intends to open that process in late January. If the lottery is pushed into January, the entire schedule would slip, limiting or negating the advantage the early pre-approval is designed to provide.

Second, there is substantial risk OCM would have to abandon the process entirely if there is a significant delay. OCM intends to open the general application process in late February or early March. (Taubel Decl. ¶ 37.) Social equity applicants who are unsuccessful in the social applicant lottery must reapply in this process – which therefore requires some time between the completion of the social equity lottery and the opening of the general process. The general process is also expected to see the number of applications exceed the available licenses, requiring a second lottery. As a result, if the social equity process is pushed into January there will be little benefit to holding two lotteries, and significant logistical hurdles to running the social equity process in close proximity to the general process.

### **III. Public Policy Considerations Favor Denying an Injunction.**

Public policy favors moving the social equity process forward as designed and intended by the legislature. Minnesota's cannabis law was intended to benefit communities that have been harmed by the war on drugs, and cannabis prohibition. The legislature designed the social equity criteria in Minnesota Statutes, section 342.17, to identify those

groups harmed. The social equity license preapproval process was designed to address the above described barriers that many persons who qualify as social equity applicants face in starting a cannabis business.

There are over 600 social equity applicants whose applications for the lottery have been approved. If the lottery is delayed, they will see diminished or no benefits from the social equity process. They may also be forced to re-apply for the general process on an expedited basis if the lottery is delayed and they are not successful in the social equity lottery. These factors favor denying a TRO.

#### **IV. Balancing of Harms Favors Denying an Injunction.**

In contrast to the substantial harms to the public, the Plaintiffs in this case will see no legally cognizable harm. They are engaged in an illegal and improper attempt to flood the social equity lottery with bogus straw applications. OCM has identified at least 200 applications tied to those efforts. Delaying the lottery process for hundreds of qualified applicants to litigate the merits of Plaintiffs' straw purchase scheme would be a manifest injustice.

#### **V. The Remaining *Dahlberg* Factors are Neutral.**

For purposes of a temporary injunction, the relationship of the parties is typically a material factor in a court's analysis only where there is an existing contractual or other relationship between the parties that will be disrupted in the *absence* of an injunction. *See, e.g., Pac. Equip. & Irrigation v. Toro, Co.*, 519 N.W.2d 911 (Minn. Ct. App. 1994). The classic example is the one seen in *Pacific Equipment* – where a manufacturer was seeking to terminate a distributor agreement that constituted a substantial portion of the

distributor's business. *Id.* at 913. Here, there is no relationship among the parties to preserve through an injunction.

As to administrative burdens, there would be no administrative burden on the Court to enjoin the lottery, but if the lottery is to proceed in any kind of modified form, there could be significant burdens on the Court to determine what modification, if any, would be appropriate. As set forth above, any significant delay in the lottery proceeding as scheduled risks the entire process being abandoned.

#### **VI. The Court Should Require a Bond of \$50,000.**

For a temporary injunction to issue, a bond is generally required. Minn. R. Civ. P. 65. As Rule 65.03(a) provides:

No temporary restraining order or temporary injunction shall be granted except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

As set forth in the Taubel declaration, OCM will spend approximately \$100,000 to conduct the lottery, and will potentially incur additional expense if it has to reschedule the event. (Taubel Decl. ¶ 39.) Plaintiffs should be required to post a \$50,000 bond to insure over this risk. *See Sayer v. Minn. Dept. of Transp.*, No. CV-07-3425, 2007 WL 5283608, at \*27 (Minn. Dist. Ct. Oct. 31, 2007) (denying TRO but concluding that shutdown of contract between the state and private party would have been an appropriate benchmark for bond).

## CONCLUSION

For the reasons set forth above, this Court should deny the motion for a temporary injunction.

Dated: November 24, 2024

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

/s/ Oliver J. Larson

OLIVER J. LARSON  
Assistant Attorney General  
Attorney Reg. No. 0392946

RYAN V. PETTY  
Assistant Attorney General  
Atty. Reg. No. 0401053

445 Minnesota Street, Suite 900  
St. Paul, Minnesota 55101-2131  
(651) 757-1265 (Voice)  
(651) 297-4139 (Fax)  
[oliver.larson@ag.state.mn.us](mailto:oliver.larson@ag.state.mn.us)  
[ryan.petty@ag.state.mn.us](mailto:ryan.petty@ag.state.mn.us)

ATTORNEYS FOR DEFENDANTS

**MINN. STAT. § 549.211 ACKNOWLEDGMENT**

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211.

Dated: November 24, 2024

OFFICE OF THE ATTORNEY GENERAL  
State of Minnesota

/s/ Oliver J. Larson

OLIVER J. LARSON

MINNESOTA  
JUDICIAL  
BRANCH