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FILED
ALAMEDA COUNTY

SEP 13 2021

CLERK OF THE SUPERIOR COURT

By _____ Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

**EMERALD ACRES CORPORATION, a
California corporation, and JOSEPH
NIEVES, an individual,**

Petitioners,

v.

**CALIFORNIA DEPARTMENT OF FOOD
AND AGRICULTURE (CDFA);
TABATHA CHAVEZ, in her official
capacity as Chief, Compliance and
Enforcement Branch of the CDFA, KAREN
ROSS, in her capacity as Secretary of the
CDFA, and Does 1-10,**

Respondents.

Case No. RG21098348

**[PROPOSED] ORDER RETAINING
JURISDICTION TO ENFORCE
SETTLEMENT**

[Code Civ. Proc., § 664.6]

Trial: TBD
Time: 3:30 p.m.
Dept:
Judge: Hon. Frank Roesch
Hearing:
Action Filed: May 10, 2021


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ORDER

Petitioners Emerald Acres Corporation and Joseph Nieves (Petitioners), and Respondents California Department of Cannabis Control (DCC), Tabatha Chavez, in her official capacity as the Complaints and Compliance Branch Chief of the DCC, and Nicole Elliott, in her official capacity as Director of the DCC (Respondents) have requested, pursuant to Code of Civil Procedure section 664.6, that the Court retain jurisdiction to interpret and enforce the terms and conditions of the settlement of the case. The Petitioners' and Respondents' (Parties) Settlement Agreement and Release is attached as Exhibit A to this Order. Petitioners will file a dismissal with prejudice of the entire action after the Court grants the order retaining jurisdiction, and within seven calendar days after the occurrence of the events described under paragraph 12 OR the DCC makes a determination on the annual license application under paragraph 19, whichever comes first, of the Parties' Settlement Agreement. The Court GRANTS the Parties' request to retain jurisdiction to enforce the Parties' Settlement Agreement and Release, attached as Exhibit A.

IT IS SO ORDERED.

Dated: Sept 13, 2021



HON. FRANK ROESCH
Judge of the Superior Court

EXHIBIT A

SETTLEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is made and entered into by Petitioners Emerald Acres Corporation and Joseph Nieves (collectively Petitioners) and the California Department of Food and Agriculture¹ (CDFA), Tabatha Chavez, in her official capacity as Chief, Compliance and Enforcement Branch of CDFCA, and Karen Ross, in her official capacity as Secretary of the CDFCA (collectively Respondents). The Petitioners and the Respondents shall be collectively referred to as “Parties” and individually as “Party.” The Effective Date of this Agreement is the date it is signed by the last signatory. Pursuant to this stipulation of settlement, the Parties agree as follows:

RECITALS

1. Petitioner Emerald Acres Corporation is a California General Law Corporation holding provisional cannabis cultivation license number CCL20-0000142, license type Adult-Use-Small Mixed-Light Tier 1 (“Provisional License”), concerning the premises located at 1478 Hyampom Road, Hayfork (Unincorporated), CA 96041, APN Trinity County - 014-420-61-00 (“Premises”)
2. Petitioner Joseph Nieves is an individual and an owner of Petitioner Emerald Acres Corporation.
3. Respondent CDFCA is a state agency created in the state government of California. (Bus. & Prof. Code, § 26010.) Prior to July 12, 2021, and at the time Petitioners filed suit in this matter, the CDFCA was responsible for administering the provisions of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) associated with and related to cannabis cultivation activities including the cultivation of cannabis. (Former Bus. & Prof. Code, § 26012, subd. (a)(2) repealed by Stats. 2021 ch. 70 § 11; AB 141 reg sess. 2021-2022.)
4. On May 10, 2021, Petitioners filed an Unverified Petition for Writ of Mandate (Petition) in the Superior Court of California, County of Alameda, entitled *Emerald Acres Corporation et al v. California Department of Food and Agriculture et al* Case No. RG21098348 (Action).
5. At the time the Action was filed, Respondent Tabatha Chavez was the Chief of the Compliance and Enforcement Branch of the CDFCA and Karen Ross in her Capacity as Secretary of CDFCA

¹ In accordance with Section 8 of Assembly Bill 141, and, specifically, Business and Professions Code section 26010.7, subdivision (d), “[a]ny action by or against . . . the Department of Food and Agriculture pertaining to matters vested in the Department of Cannabis Control by this section shall not abate but shall continue in the name of the Department of Cannabis Control, and the name of the Department of Cannabis Control shall be substituted for . . . the Department of Food and Agriculture by the Court wherein the action is pending.” The section became operative and the consolidation of the licensing agencies occurred on Monday, July 12, 2021. For this reason, each reference to the Respondents shall be deemed to mean Respondents or their successors once the Court complies with Business and Professions Code section 26010.7, subdivision (d) and substitutes the names of the successor respondents in this matter, which proper respondents will be the Department of Cannabis Control, Nicole Elliott, in her official capacity as Director, and Tabatha Chavez, in her official capacity as Complaints and Compliance Branch Chief.

was charged with overseeing the CalCannabis Cultivation Licensing Division within the CDFA. Subsequently, on July 12, 2021, the functions of the CalCannabis Cultivation Licensing Division of the CDFA were consolidated with the functions of the Bureau of Cannabis Control and the California Department of Public Health's Manufactured Cannabis Safety Branch under the Department of Cannabis Control. Nicole Elliott was appointed Director of the Department of Cannabis Control, Secretary Ross no longer has any role in licensing cannabis cultivators, and Tabatha Chavez joined the Department of Cannabis Control as the Complaints and Compliance Branch Chief.

6. The Parties entered into the Agreement pursuant to a compromise and settlement of disputed claims set forth in the Petition. Respondents do not admit any allegation, finding, or determination alleged in the Action, Petition or Agreement. Respondents' consent to the Agreement is not an admission regarding any issue of law or fact alleged by the Petitioners and may not be construed as an admission by any Party or third party.
7. Given the uncertainty and cost of protracted litigation, the Parties have agreed to settle the Action. The Agreement is made to compromise the disputed claims, and there was no adjudication of the merits of any claim.

TERMS

8. The Recitals in Paragraphs 1-7 are fully incorporated herein.
9. Emerald Acres Corporation's provisional cannabis cultivation license number CCL20-0000142, license type Adult-Use-Small Mixed-Light Tier 1 ("Provisional License"), concerning the premises located at 1478 Hyampom Road, Hayfork (Unincorporated), CA 96041, APN Trinity County - 014-420-61-00 ("Premises"), will be valid and active from the date this Agreement is fully executed through May 29, 2022, and through the term of any renewals of the license, provided there are no further regulatory violations or a revocation of local authorization to conduct commercial cannabis activity at the Premises subsequent to the execution of this Agreement.
10. Petitioners do not admit any of the regulatory violations or any other wrongdoing arising out of the events and violations that formed the basis for CDFA's March 4, 2021 revocation of the Provisional License or CDFA's May 27, 2021 denial or revocation of renewal of the Provisional License.
11. The Department of Cannabis Control, within 10 business days of the execution of this Agreement, will rescind the March 4, 2021 revocation of the Provisional License and the May 27, 2021 denial of renewal of the Provisional License. The Department of Cannabis Control shall communicate to any inquiries that those actions were rescinded. The license search results on the Department of Cannabis Control Website or online status of the Provisional License will not show that any action was taken against the Provisional License.
12. Emerald Acres Corporation, or any other person or entity, will not engage or participate in commercial cannabis activity at the Premises until:

(A) Consummation of the sale of Emerald Acres Corporation and the Premises to a new owner, whose identity shall be promptly disclosed to the Department of Cannabis Control;

(B) Any interest Petitioner Nieves holds or may hold in Emerald Acres Corporation, directly or indirectly, is terminated; and,

(C) Amendment of Emerald Acres Corporation's application for an annual license to add the new owner(s) is approved by the Department of Cannabis Control.

13. Subsequent to the sale described in Paragraph 12(A), Petitioner Nieves will not have any future participation or interest, direct or indirect, in Emerald Acres Corporation or the Premises. In particular, Petitioner Nieves will not have any direct or indirect interest in, control over, or other ongoing relationship relating to commercial cannabis activity with any future owner of Emerald Acres Corporation, subsequent to such sale.
14. Petitioner Nieves agrees that he shall voluntarily not apply for a license to engage in commercial cannabis activity or have any ownership interest, either directly or indirectly, in any entity applying for a license or licensed to engage in commercial cannabis activity in the state of California for five years from the date of execution of this Agreement. If within that time period the Department of Cannabis Control issues a license to engage in commercial cannabis activity to Petitioner Nieves or any entity in which Petitioner Nieves has any interest, the license may be revoked at any time.
15. Petitioners agree and understand that at any time while Emerald Acres Corporation maintains any active commercial cannabis license, unnoticed regulatory inspection(s) may occur per existing statute and regulation.
16. Petitioners agree and understand that the Provisional License held by Emerald Acres Corporation, or under whatever name the entity may be known in the future, may be summarily revoked for breach of any settlement term contained in this Agreement. Any dispute arising as a result of the summary revocation for breach of any settlement term of this Agreement shall be resolved in accordance with Paragraph 21, below, and review by the Court of such summary revocation shall be limited solely to the determination of whether there was a breach of any settlement term of this Agreement.
17. The Parties agree that the Agreement constitutes a full, final and complete resolution of the events and violations leading up to the March 4, 2021 revocation and the May 27, 2021 denial or revocation of license ("Released Matters"), including but not limited to those set forth in the matter giving rise to this settlement and Petitioners' Government Tort Claim for Money or Damages against The State of California, the California Department of Food and Agriculture, CalCannabis, Tabatha Chavez, Karen Ross, and Richard Parrott dated June 9, 2021, as well as the Department of Cannabis Control and Nicole Elliott as successors to the named agencies and officers. No further proceedings or actions will be brought by either Party in connection with the Released Matters except to address a dispute arising from the terms of this Agreement.

(A) Petitioners shall and do release, discharge, and covenant not to sue CDFA, CalCannabis Cultivation Licensing Division and its successor agency, the Department of Cannabis Control, State of California, or any of their employees, including each and every state constituent agency, state board, state department, state office, state commission, state fund, or other state entity thereof, and successors and assigns of each and every constituent of the State of California, for any and all claims or causes of action, of every kind and nature whatsoever, in law and in equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this lawsuit or the administrative or investigative actions that preceded it.

(B) The Department of Cannabis Control agrees that no further licensing discipline, including the imposition of fines for violations of applicable regulations, future revocations or cancellations of the Provisional License, or annual application denials, will be taken against Emerald Acres Corporation based on the events and violations leading up to the March 4, 2021 revocation.

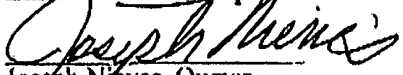
18. This Agreement is contingent on confirmation from Trinity County that Emerald Acres Corporation possesses local authorization and is in compliance with all applicable ordinances and requirements of the local jurisdiction, to engage in commercial cannabis activity.
19. The Parties will submit a proposed order requesting that Department 17 of the Superior Court of Alameda retain jurisdiction over this matter for the interpretation and enforcement of this Agreement, and that such jurisdiction shall continue until: the occurrence of the events described in Paragraph 12, subsections (A), (B), and (C); or until the DCC determination on the annual license application, whichever comes first. If the Department of Cannabis Control denies the annual license application of Emerald Acres Corporation, this determination shall not be considered part of this same petition for writ of mandate and shall not be subject to review under the continuing jurisdiction of this Court.
20. If the Court objects to the form or content of this Agreement, in any way, both Parties retain the right to renegotiate to a mutual agreement acceptable to the Court, to proceed to a trial on the merits of the Petition, or to proceed as otherwise directed by the Court.
21. The Parties agree that the Alameda County Superior Court is the appropriate venue and has jurisdiction over them and the subject matter of the Action and this Agreement. Should a Party fail to comply with this Agreement, the Parties may seek any relief provided for by law, including a court order enforcing the terms of this Agreement or entry of judgment under Code of Civil Procedure section 664.6. The Alameda County Superior Court shall retain jurisdiction over Petitioner and Respondents to enforce the Agreement in accordance with paragraph 19 of this Agreement. Before any Party may seek to enforce the terms of this Agreement, the Parties shall 1) provide written notice to each other as required by paragraph 21 of this Agreement before taking any formal action for relief with the Court, and 2) take reasonable steps to resolve the issue with each other before seeking relief from the Court.

22. Each Party shall bear its own attorney's fees and costs associated with the Action and with the drafting of this Agreement through and including the Effective Date, except as otherwise provided herein.
23. Notices. All notices and submissions required by this Agreement shall be sent by certified mail as follows:
- (A) Notices to Petitioners:
(1) Joseph Nieves
2317 Kingsland Ave, Bronx, NY 10469
- (2) Notices to Emerald Acres
c/o Anthony Law Group
3542 Fruitvale Ave # 224, Oakland, CA 94602-2327
- (C) Notices to Respondents: Department of Cannabis Control, Attn: Legal Affairs, 2920 Kilgore Road, Rancho Cordova, CA 95670.
24. The Parties may modify the person and address to whom the notice is to be sent by informing each other in writing by certified mail. Nothing in the Agreement shall be interpreted or applied to relieve Respondents of their existing obligations to provide documentation to a federal or state agency, county, city, or other governmental agency as required by statute, regulation, ordinance, permit, or other requirement.
25. Scope of Agreement. The Agreement shall apply to and be binding upon Petitioners and each of their respective officers, directors, agents, employees, contractors, consultants, representatives, successors, assigns, receivers, trustees, and all persons, partnerships, corporations, and other entities acting under, on behalf of, or in concert with Petitioners, and upon the Department of Cannabis Control, and any successor agency.
26. Agreement Does Not Bind Other Agencies. Except as previously expressed in the Agreement, nothing in the Agreement is intended or shall be construed to preclude the Attorney General, or any other federal, state, or local agency, board, department, office, commission, or entity from exercising its authority under any laws, statutes, regulations, or ordinances.
27. Interpretation. This Agreement shall be deemed to have been drafted equally by the Parties, and shall not be interpreted for or against either Party on the ground that any such Party drafted it. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
28. Integration. This Agreement contains all of the terms and conditions agreed upon by the Parties, relating to the matters covered by this Agreement, and supersedes any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and communications of the Parties, whether oral or written, respecting the matters covered by this Agreement.

29. Modification. The Agreement may be amended or modified only by a writing signed by the Parties or their authorized representatives, and then by order of the Court.
30. Severability. If a provision of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, such provision shall be deemed severed and deleted and the remainder will continue to be valid and enforceable.
31. Knowing, Voluntary Agreement. Each Party to this Agreement acknowledges that it has been represented by legal counsel, and that each Party has reviewed and has had the benefit of legal counsel's advice, concerning all of the terms and conditions of this Agreement.
32. Warranty of Capacity to Execute Agreement. Each Party to this Agreement represents and warrants that the person who has signed this Agreement on its behalf is duly authorized to enter into this Agreement, and to bind that Party to the terms and conditions of this Agreement.
33. Confidentiality. This Agreement and the fact and circumstances surrounding this Action will not be confidential and will be available for disclosure by the Respondents to any member of the public pursuant to a California Public Records Act request.
34. Signatures. This Agreement may be executed in duplicate originals and/or in counterparts, but it is agreed there is only one Agreement. The Parties agree to accept fax and scanned signatures, in lieu of original documents and signatures.

IT IS SO STIPULATED.

Emerald Acres Corporation


Joseph Nieves, Owner

Dated: 9/1/21

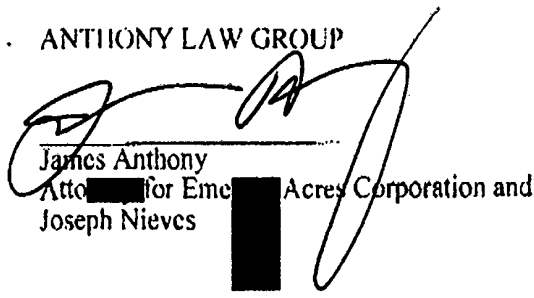
Department of Cannabis Control


Nicole Elliott, Director

Dated: 9/4/2021


APPROVED AS TO FORM:

ANTHONY LAW GROUP


James Anthony
Attorney for Emerald Acres Corporation and
Joseph Nieves

Dated: 9/1/21

ROB BONTA
Attorney General, State of California


Harinder Kapur
Senior Assistant Attorney General
Attorneys for the
Department of Cannabis Control
Nicole Elliott, in her official capacity
Tabatha Chavez, in her official capacity

Dated: 9/7/2021

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Emerald Acres Corporation v. California Department of Food and
Agriculture, et al.**

Case No.: **RG21098348**

I declare:

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

On September 13, 2021, I served the attached **[PROPOSED] ORDER RETAINING JURISDICTION TO ENFORCE SETTLEMENT** by transmitting a true copy via electronic mail, addressed as follows:

James M. Anthony
Drew M. Sanchez
Jamila Colbert
Hannah Young
Anthony Law Group, PC
3542 Fruitvale Avenue, #224
Oakland, CA 94602
Counsel for Petitioners

E-mail Addresses:

james@anthonylaw.group
drew.sanchez@anthonylaw.group
jamila@anthonylaw.group
hannah@anthonylaw.group

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 13, 2021, at Sacramento, California.

N. Clark

Declarant



Signature