

IN THE CIRCUIT OF PULASKI COUNTY, ARKANSAS  
\_\_\_\_\_ DIVISION

NATURALIS HEALTH, LLC

PLAINTIFF

v. CASE NO. \_\_\_\_\_

ARKANSAS DEPARTMENT OF FINANCE AND  
ADMINISTRATION, ARKANSAS ALCOHOLIC  
BEVERAGE CONTROL DIVISION, AND  
ARKANSAS MEDICAL MARIJUANA COMMISSION

DEFENDANTS

**VERIFIED COMPLAINT TO APPEAL AGENCY DECISION,  
FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT  
INJUNCTION AND DECLARATORY JUDGMENT**

Plaintiff, Naturalis Health, LLC, by its attorneys, Bequette & Billingsley, P.A., pursuant to Section IV(19)(a)(i) of the Rules and Regulations Governing Application For, Issuance and Renewal of Licenses for Medical Marijuana Cultivation Facilities and Dispensaries in Arkansas and the Administrative Procedures Act, for its Verified Complaint to Appeal Agency Decision, for Temporary Restraining Order, for Preliminary and Permanent Injunction and Declaratory Judgment against Defendants, Arkansas Department of Finance and Administration, Arkansas Alcoholic Beverage Control Division, and Arkansas Medical Marijuana Commission, alleges and states:

**PARTIES**

1. Plaintiff, Naturalis Health, LLC (“Naturalis”), is an Arkansas limited liability company with its principal of business in Little Rock, Pulaski County, Arkansas.
2. Defendant, Arkansas Department of Finance and Administration (“DFA”), is an agency of the State of Arkansas.
3. Defendant, Arkansas Alcoholic Beverage Control Division (“ABC”), is a division of DFA.

4. Defendant, Arkansas Medical Marijuana Commission (“Commission”), is an Arkansas administrative body created under Article 19 of the Arkansas Medical Marijuana Amendment of 2016 pursuant to Amendment 98 of the Constitution of the State of Arkansas of 1874.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this cause of action pursuant to Section IV(19)(a)(i) of the Rules and Regulations Governing Application For, Issuance and Renewal of Licenses for Medical Marijuana Cultivation Facilities and Dispensaries in Arkansas (the “Rules”) and the Administrative Procedures Act codified at Ark. Code Ann. § 25-15-212(B). Venue is proper in this Court.

### **INTRODUCTION**

6. This is an appeal of the Commission’s arbitrary and capricious denial of Naturalis’s application for a medical marijuana cultivation facility license, a request for temporary restraining order and preliminary and permanent injunctive relief to stay the issuance of medical marijuana cultivation licenses by the Commission until a full review can be completed and proper safeguards put in place, including but not limited to the appointment of an independent application review and selection committee, and a declaratory judgment finding the Commission failed to follow its Rules and violated relevant parts of the Arkansas Administrative Procedures Act. The Commission’s findings, conclusions, decisions, and its overall process for selection of the successful applicants for licenses to operate cultivation facilities was arbitrary and capricious, constituted an abuse of discretion, was without any rational basis, was plagued by unlawful and inconsistent procedures, failed to follow and uniformly apply its own Rules, and was not supported

by substantial evidence, in violation of Naturalis’s rights to Due Process and Equal Protection under the Fourteenth Amendment of the United States Constitution and the Arkansas Constitution.

**FACTUAL AND PROCEDURAL BACKGROUND**

7. The Commission operates according to rules and regulations specifically outlining the requirements for applicants seeking a license for a cultivation or dispensary facility. *See* Rules, attached hereto as Exhibit 1.

8. The Commission began accepting applications for cultivation facilities on June 30, 2017 and imposed a deadline for receipt of applications on September 18, 2017 at 4:30 p.m. *See* Arkansas Medical Marijuana Cultivation License Request for Application and enclosed Application (“Application”), attached hereto as Exhibit 2.

9. Applicants were required to first meet the Minimum Qualifications for Applicant and Documentation and Information for Applicant, Ex. 1 at § IV(4) (“Minimum Qualifications”) which was part of the Verification of Application. *Id.* at § IV(8). The applicants were then placed into an applicant pool for further review and selection based on merit as determined by the Commission. Upon information and belief, DFA and ABC conducted the initial review and screening process and submitted eligible applicants to the Commission for final scoring.

10. Naturalis met the initial qualifications and was advanced to the “merit” stage of the application process for scoring by the Commission.

11. On February 27, 2018, the Commission announced the five successful cultivation facility applications which would be tentatively receiving a cultivation license. The following applicants were awarded a tentative license:

- a. Natural State Medicinals Cultivation (“NSMC”);
- b. Bold Team, LLC (“Bold”);
- c. Natural State Wellness Enterprises (“NSWE”);
- d. Osage Creek Cultivation, LLC (“OCC”); and

e. Delta Medical Cannabis Company (“DMCC”).

12. Pursuant to the Rules, the successful applicants were required to submit to the Commission a cultivation license fee in the sum of \$100,000.00 and a performance bond of \$500,000.00 as conditions to the issuance of the cultivation facility license. *See* Rules, § IV(10)(a)-(b).

13. The Commission is expected to certify and award licenses to the successful applicants at a meeting on March 14, 2018 at 5:00 p.m. At that time, the five successful cultivation facility applicants will be awarded a license and registration number and can begin cultivation operations. *See* Rules, § IV(10)(e)-(f).

14. The applications for the five successful cultivation facility applicants have been released by the Commission; while the released applications contained numerous redactions, the applicants’ owners and officers were identified. *See* <http://www.mmc.arkansas.gov/top-10-scored-mmc-applications1> (last accessed Sunday, March 11, 2018).

**DISCREPANCIES IN APPLICATIONS AND  
SELECTIVE ENFORCEMENT OF THE COMMISSION’S RULES**

15. The redacted applications from the five successful cultivation facility applicants granted a tentative license reveal wide-ranging discrepancies and outright violations of the Rules. Some of the applicants submitted applications that contained flagrant violations of the Rules, and therefore should never have been advanced in the process to the merit scoring stage. The information contained in the successful applications establishes unequivocally that the selection process was objectively flawed, biased, and arbitrary and capricious, and that the Commission failed to uniformly apply its own Rules.

16. The evidence of record demonstrates that the Commission’s selection process was objectively flawed. Further, some members of the Commission were either biased or at minimum

had inherent conflicts of interest which incontrovertibly tainted the selection process and resulted in an unfair selection process.

17. Issues and discrepancies plaguing the selection process by both ABC and the Commission adversely affected not only Naturalis, but uniformly affected each of the applicants for a cultivation facility who were not awarded a tentative license. Of the five successful applicants currently set to receive a license on Wednesday, March 14, 2018, most had discrepancies in the applications which should have disqualified them from selection. These discrepancies include but are not limited to:

- a. an applicant failing to complete the residency requirement as required by the Rules;
- b. multiple applicants with Arkansas tax liabilities, which requires disqualification under the Rules; and
- c. an applicant failing to comply with the requirement in the Rules that a cultivation facility not be located within 3,000 feet from the nearest public, charter or private school, church or daycare.

18. These discrepancies establish that the selection process utilized by the Commission was flawed, the Rules were not uniformly applied to all applicants, and the selection process by the Commission was arbitrary and capricious.

19. Noteworthy, of the five Commission members, only one is a licensed attorney, who had an irreconcilable conflict of interest, discussed *infra*. The remaining members consists of two medical doctors, a pharmacist and a business professional. While these occupations are admirable, these individuals did not have the requisite expertise or training to undertake the arduous task of grading voluminous applications in a very complex industry, as evidenced by blatant issues which plagued the scoring process, all of which were arbitrary, capricious and characterized by an abuse of discretion. An independent selection committee composed of individuals with expertise in the

industry was a viable option the Commission disregarded, but should be utilized as a cure to this Complaint.

### **RESIDENCY REQUIREMENT**

20. The Minimum Qualifications require that an individual applicant for a cultivation facility license be a current resident of the State of Arkansas and that the applicant has been a resident of the state for seven (7) consecutive years prior to the date of application. *See Ex. 1* at § IV(4)(a)(ii).

21. For an individual applicant to establish residency, the Rules require the following:

b. The following supporting documents shall be submitted at the time of application:

i. To establish residency in the State of not less than seven (7) years preceding the application, an applicant must present at least two (2) of the following source documents:

1. Arkansas tax return Form AR1000 for each of the seven years preceding the application without schedules, worksheets, or attachments, and redacted to remove all financial information and all but the last four digits of the individual's social security number;
2. Evidence of voter registration for the seven years preceding the application;
3. Ownership, lease, or rental documents for place of primary domicile for the seven (7) years preceding the application;
4. Billing statements including utility bills for the seven (7) years preceding the application; or
5. Vehicle registration for the seven (7) years preceding the application.

*See Ex. 1* at § IV(5)(b)(i).

22. A legal affidavit declaring residency is not a sufficient form of documentation under the Rules. However, upon information and belief, ABC and the Commission accepted

residency affidavits for the owners of NSMC: Joseph Courtright, Kathyne Peck and Robert deBin. *See* Residency Affidavits for NSMC, attached hereto as Exhibit 3-A, 3-B, and 3-C.

23. The Rules explicitly do not permit a residency affidavit to be submitted in order to comply with the residency requirement; indeed, the Request for Application reiterates this requirement. *See* Ex. 2 at p. 16.

24. NSMC has been tentatively awarded one of the five cultivation facility licenses, despite its failure to comply with the unambiguous rule regarding verification of residency. Naturalis complied with the residency verification requirement. Defendants' decision to award a license to NSMC in spite of its failure to comply with the Rules clearly illustrates the arbitrary and capricious nature of the selection process and the Commission's failure to uniformly enforce its own Rules. Upon information and belief, other applicants were disqualified for not meeting minimum requirements.

### **TAX LIABILITIES**

25. An additional minimum qualification for cultivation facility applicants is that an individual applicant for a license "has no outstanding tax delinquencies owed to the State of Arkansas." Ex. 1 at IV(4)(a)(vii). The Request for Application also asked applicants about tax liabilities. *See* Ex. 2 at p. 11.

26. The law is clear in Arkansas that every corporation registered with the state shall file an annual franchise tax report and pay an annual franchise tax. *See* Ark. Code Ann. § 26-54-104(a). Furthermore, Arkansas law imposes personal liability on corporate officers and shareholders for obligations arising during the operation of a corporation when the corporate charter has been revoked for non-payment of franchise taxes, as the individuals ought not be allowed to avoid personal liability because of their nonfeasance. *See* *Bullington v. Palangio*,

345 Ark. 320, 326, 45 S.W.3d 834, 838 (2001) and *Whitaker v. Mitchell Mfg. Co.*, 219 Ark. 779, 244 S.W.2d 965 (1952).

27. In *H.T. Larzelere v. Reed*, the Arkansas Court of Appeals held that “officers and directors of a corporation who actively participate in its operation during the time when the corporate charter is revoked for failure to pay corporate franchise taxes are individually liable for debts incurred during the period of revocation.” 35 Ark. App. 174, 816 S.W.2d 614 (1991).

28. Despite a tax liability to the State of Arkansas being a disqualifying event for applicants under the Rules, numerous applicants with tax liabilities owed to the state, including some of the successful applicants, submitted applications that were advanced to the Commission. Furthermore, numerous applicants denied owing any tax liability on the Request for Application with no recourse from the ABC or Commission. Upon information and belief, Defendants were selective in the screening process and did not uniformly screen all applications for tax liabilities.

29. Due to the Defendants’ heavy redaction of applicant information released to the public, Plaintiff was limited in its ability to search tax liens. The State has no such limitation, but chose to perform a limited search which appears to have been selectively enforced.

30. Dr. Alonzo Dean Williams, Sr., Stephen Lee LaFrance, and Dr. Donald Keith Mooney are all identified as owners of NSMC, owning 8.45%, 4.23%, and 5.66%, respectively. *See* Excerpts from the NSMC Application, p. 11, attached hereto as Exhibit 4.

31. Despite Williams, Mooney and LaFrance all being an owner of a cultivation facility with a pending license, they are also listed as officers of Arkansas corporations with revoked charters, as a result of past due franchise taxes owed to the State. Williams is listed as the officer of D & D Financial Services, LLC and is also listed as the registered agent of two additional defunct Arkansas corporations: Rivercrest Anesthesia Services LLC and Williams Kanis Building,

LLC. *See* Documentation of Revoked Charters from the Arkansas Secretary of State, attached hereto as Exhibit 5. All three of these defunct corporations have franchise taxes due, which is a tax liability for which Williams is individually liable. Furthermore, Williams listed in the application that he owed “no” tax liabilities to the State, which is a blatantly incorrect statement. *See* Ex. 4 at pp. 13-16.

32. LaFrance is listed as the registered agent for two defunct corporations owing franchise taxes to the state: Stephen LaFrance Enterprises, Inc. and LaFrance Development, LLC. *See* Ex. 5. Presumably, LaFrance has an interest in these companies, which bear his name, and he is personally liable for these past due taxes owed to the State. As for Mooney, he is the agent for the defunct corporation Know Period, LLC, which owes franchise taxes to the State. *Id.*

33. Jay Trulove and Shaun Kahn are identified as owners of OCC, with Truelove owning 40% and serving as chief operating officer and Kahn serving as a board member. *See* Excerpts from the OCC Application, p. 3, attached hereto as Exhibit 6.

34. Trulove is listed as the agent for Trulove Farms, LLC, a defunct Arkansas corporation, which coincidentally lists Commission member Travis Story as its officer. Kahn is listed as the officer of Captain Jack’s Fresh Seafood Shack, LLC, a defunct Arkansas corporation owing franchise taxes to the State of Arkansas. *See* Ex. 5.

35. Ray Foster Osment and Lynn McKnight Parker are stakeholders in DMCC. *See* Excerpts from the DMCC Application, attached hereto as Exhibit 7.

36. Osment is listed as the agent and officer for three (3) defunct Arkansas corporations; Champion Sales and Leasing, Inc., Osment Insurance, Inc. and Raybob, LLC. Parker is listed as the agent for the defunct corporation Legal Strategies Lc. *See* Ex. 5. All of these

defunct corporations have franchise taxes due, which is a tax liability for which Osment and Parker are personally liable.

37. Plaintiff's concern regarding applicants having tax liability and still receiving a tentative license is shared by a member of the Arkansas House of Representatives. The Honorable Scott Baltz, Arkansas State Representative for District 61, requested on March 9, 2018 that the DFA review the top ten (10) applications to determine if the applicants were in compliance with the tax requirements of §§ IV(4)(a)(vii) and IV(4)(b)(iii)(7). *See* Letter from Representative Baltz, dated March 9, 2018, hereto attached as Exhibit 8.

38. Pursuant to Section B of the Application, an absence of any tax delinquency to the State is both a Minimum Qualification and a prerequisite to moving on to the merit based scoring section of the Application. *See* Merit Criteria Scoring Schedule, hereto attached as Exhibit 9.

39. Had Defendants properly reviewed applications or uniformly applied their own Rules, it would have changed the grades for those applicants who submitted false information as to their tax liabilities. Misleading, incorrect, false or fraudulent information provided to the Commission is grounds for the denial of a license. *See* Rules, § IV(4)(a)(vii). Moreover, the mere existence of any outstanding franchise tax liability is grounds for application disqualification. The Commission's scoring process was arbitrary and capricious and should be completely invalidated.

#### **DISTANCE REQUIREMENT**

40. The Rules include a requirement that the cultivation facility be a minimum of 3,000 feet from the nearest public or private school, church or daycare. *See* Application, Ex. 2, Section C. Property Information, Part 2. at p. 18 and § IV(5)(c) of the Rules.

41. Natural State Agronomics ("NSA"), applicant number 00023, was advanced following the ABC's initial review to the "merit" stage of the selection process conducted by the

Commission. *See Applicant Scoring*, indicating those applicants scored by the Commission, hereto attached as Exhibit 10.

42. Upon information and belief, and based on a review of public land records, NSA submitted two parcels for a cultivation facility: parcel numbers 940-02824-000 (“Parcel 1”) and 001-01689-000 (“Parcel 2”) in Jefferson County. *See Parcels*, attached hereto as Exhibit 11.

43. Parcel 1’s furthest southeast corner (furthest parcel location) is only 2,912.2 feet from the Redfield United Methodist Church, 210 River Road, Redfield, Arkansas. Parcel 1’s furthest southeast corner (furthest parcel location) is 1,915.3 feet from the Church of Christ located at 210 River Road, Redfield, Arkansas. Parcel 2 is only 2,937.5 feet from the Church of Christ. Upon information and belief, Parcel 1 is located within 3,000 feet from Hardin Elementary School.

44. While NSA was not awarded a tentative cultivation facility license, the mere fact it even advanced to the “merit” stage of the selection process indicates Defendants failed to follow or otherwise enforce their own Rules. Clearly, Defendants did not conduct the due diligence necessary to decide of which applicants met the unambiguous criteria for a cultivation facility license.

45. Based on the foregoing, Defendants have displayed a pattern of selectively enforcing the Rules and applying the Rules in an arbitrary and capricious manner.

#### **IRREGULARITIES IN SCORING**

46. NSMC listed Susan Williams (“S. Williams”) as a 15.02% equity owner. *See Application by S. Williams*, attached hereto as Exhibit 12. In her application, S. Williams stated that either she or an entity over which she exercised management or control had been fined or penalized in excess of \$10,000 by a regulatory agency.

47. NSMC listed Alonzo Williams (“A. Williams”) as an 8.45% equity owner. *See* Application by A. Williams, hereto attached as Exhibit 13. A. Williams answered that either he or an entity over which he exercised management or control had been fined or penalized in excess of \$10,000 by a regulatory agency.

48. Despite two owners of NSMC admitting to having paid regulatory agency fines and/or penalties in excess of \$10,000, the Schedule 1 – Qualifications of Applicant for NSMC, which was out of ten (10) points, reflects all but one Commissioner scored NSMC a perfect ten (10) under this category.

49. To the contrary, Naturalis had no regulatory fines or penalties, but was scored significantly less in Schedule 1 – Qualifications of Applicant category, with scores ranging from six (6) to ten (10).

50. The most blatant irregularity in scoring was Chairperson Tillman’s use of a different scoresheet, unlike the uniform scoresheet used by the other four Commissioners. Tillman appears to have provided no numerical scores for several categories. *See* Exemplar Scoresheets, attached hereto as Exhibit 14; Tillman’s scoresheet is at page 1.

### **CONFLICTS OF INTEREST**

51. Dr. Scott Michael Schlesinger is identified as an owner for NSMC in the application released by the Commission, owning 5.66%. On information and belief, Schlesinger’s ownership interest was known to the members of the Commission, especially since each applicant’s owner, officer, director or board member was required to submit a disclosure statement. Schlesinger’s disclosure statement is attached hereto as Exhibit 15.

52. Upon information and belief, Schlesinger and Commission member Dr. J. Carlos Roman have an extremely close personal and professional relationship. Schlesinger is the founder

of Legacy Spine and Neurological Specialists, and upon information and belief, Dr. Roman routinely refers patients to Dr. Schlesinger's medical practice. *See* Referral Note from Roman to Schlesinger, attached hereto as Exhibit 16.

53. Not surprisingly, Dr. Roman scored NSMC's application at a 98 out of 100. The average score Dr. Roman gave out to the remaining cultivation applicants was 55.55 out of 100. *See* Ex. 10.

54. Commission member Travis Story's connection to successful applicant OCC has been the subject of much media attention to date. *See* Arkansas Democrat Gazette Articles, attached hereto as Exhibit 17 and 17-A.

55. As the newspaper accounts indicate, Story had an attorney-client relationship with Jay and Mary Truelove, the owners of OCC, and on information and belief knew his clients were requesting a cultivation permit. Furthermore, based on financial disclosures required in the application process, Story had to have known which application was submitted by OCC. *See* financial disclosures by Jay and Mary Trulove, hereto attached as Exhibits 18 and 18-A.

56. Story's blatant conflict is well-documented in a pending citizen complaint before the Arkansas Ethics Commission. *See* Ex. 17, "*Ethics filing claims bias by Arkansas Medical Marijuana Commissioner.*"

57. Incredibly, Story awarded one of his highest scores of any applicant (94.5) to OCC. Story's actions are unmistakably rife with inherent conflict and bias; Story should not have participated in the scoring process when the obvious and irreconcilable conflict became known to him. His actions caused harm to Naturalis and further demonstrates the process was flawed, arbitrary and capricious, and unfair to all applicants.

58. In addition to Story failing to recuse from the selection process, news reports of Story's text messages indicate he was scoring applicants on the evening of February 25, 2018, five days after the scoring deadline had passed and just two days before the Commission met to select the successful applicants. *See* Ex. 17-A.

#### **VIOLATIONS OF ADMINISTRATIVE PROCEDURES ACT**

59. The Arkansas Administrative Procedures Act ("APA") allows the Pulaski County Circuit court to review the validity or applicability of an agency rule, or its threatened application, which injures or threatens to injure Plaintiff. *See* Ark. Code Ann. §25-15-207.

60. Pursuant to APA, in every case of adjudication, all parties shall be afforded an opportunity for a hearing after reasonable notice. § 25-15-208(a). Adjudication is defined as an agency process for the formulation of an Order. § 25-15-202(1)(A). An Order is defined as the final disposition of an agency in any matter other than rule making, *including licensing* and rate making, in which the agency is required by law to make its determination after notice and hearing. *Id.* at 6 (*emphasis added*).

61. The tentative licenses are anticipated to be certified by the Commission on March 14, 2018. However, no agenda has been posted or other formal notice of a hearing. *See* Announcement of March 14<sup>th</sup> meeting and Prior Meeting Minutes, hereto attached as Exhibit 19. Such a certification is an "Order" pursuant to § 25-15-202(1)(A), as licenses for cultivation facilities are expected to be certified. Accordingly, the administrative procedure for notice and a hearing, as outlined in § 25-15-208, are triggered, as to those parties effected by the Order. Plaintiff will be affected and has received no notice. Defendants have failed to comply with these procedures, a violation of APA.

62. Tentative licenses for cultivation facilities were announced on February 27, 2018, at a meeting of the Commission, by public announcement for those in attendance. However, the Commission has not added the meeting minutes (even unapproved minutes) to its website or otherwise distributed the minutes. *See Ex. 19*. Upon information and belief, there has been no official notice of the Commissions' announcement of tentative licenses being certified on March 14, 2018, and an official notice of a hearing has never been given.

63. Since the Commission has posted no notice of any hearing to be conducted on the certification of licenses to presumably take place on March 14, 2018, it has obviously not provided a statement of the nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, or a short and plain statement of the matters of facts and law asserted. *See* § 25-15-208(a)(2).

64. Plaintiff and the public in general are running blind as to what exactly is to take place at the Commission meeting of March 14, 2018. It appears to be only a meeting, not a hearing. A hearing is required under APA if licenses are going to be certified, an act of adjudication under APA.

65. To the extent the Commission plans to certify cultivation facility licenses on March 14, 2018, despite the violations of APA listed, *supra*, the Commission has continuing legal obligations under Ark. Code Ann. § 25-15-210. The certification of cultivation licenses to the five (5) facilities in Paragraph 11 will be adverse to Plaintiff, and a decision by the Commission to certify the licenses – an agency order – shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral arguments to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law

necessary thereto, prepared by the person who conducted the hearing. *See* Ark. Code Ann. § 25-15-210.

66. Plaintiff has received no notice of a hearing or proposal for decision. If the Commission plans to certify cultivation licenses at its March 14, 2018, meeting, the agenda of which is unknown, Plaintiff has a right to file exceptions and be present to present oral argument and briefs. The Commission has not provided Plaintiff this opportunity, but has violated and continues to violate the APA.

67. Since the Commission has violated APA regarding notice and right to a hearing as to the grant of cultivation licenses, administrative adjudication is proper. *See* Ark. Code Ann. §25-15-211.

68. Due to the Commission's complete violation of APA, a review by this Court is timely and appropriate. This Court may affirm the decision of the Commission or remand for further proceedings. This Court may reverse or modify the decision if substantial rights of Plaintiff have been prejudiced by the Commission. The Commission has given Plaintiff no rights-no hearing, no proper notice of any hearing and no opportunity to file exceptions, present briefs or oral arguments. The Commission's complete disregard for the due process requirements under the APA unequivocally rise to the following:

- a. In violation of constitutional or statutory provisions;
- b. In excess of the agency's statutory authority;
- c. Made upon unlawful procedure;
- d. Affected by other error or law;
- e. Not supported by substantial evidence of record; and
- f. Arbitrary, capricious, or characterized by abuse of discretion.

**STANDARD FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

69. Plaintiff adopts and incorporates the allegations contained in the preceding paragraphs.

70. Arkansas Rule of Civil Procedure 65(a)(1) states that a preliminary injunction may be granted where it appears by that irreparable harm may result to the plaintiff if the preliminary injunction is not granted.

71. Concurrent with the filing of this Complaint copies have been provided to the Arkansas Attorney General and representatives for all Defendants, pursuant to Ark. R. Civ. P. 65(b)(1)(B).

72. It is within the Court's decision whether to grant a preliminary injunction. *Custom Microsystems, Inc. v. Blake*, 344 Ark. 536, 540, 42 S.W.3d 453, 456 (2001); *Smith v. American Trucking Association, Inc.*, 300 Ark. 594, 781 S.W.2d 3 (1989). The Eighth Circuit's standard for issuance of a preliminary injunction consists of four elements that must be considered: (1) the probability of the movant's success on the merits; (2) the threat of irreparable harm to the movant in the absence of relief; (3) the balance between that harm and the harm that the relief would cause to the other litigants; and (4) the public interest. *Dataphase Systems, Inc. v. CL Systems, Inc.*, 640 F. 2d 109, 112-114 (8th Cir. 1981). Arkansas courts, though, hold that the two critical factors are whether the plaintiff demonstrates a likelihood of success on the merits and whether the plaintiff demonstrates a likelihood that, absent the granting of preliminary relief, irreparable harm will occur. *Custom Microsystems*, 344 Ark. at 542, 42 S.W.3d at 456-57. The phrase "likelihood of success on the merits" has been interpreted by the Arkansas Supreme Court to mean a reasonable probability of success in the litigation on appeal. *Id.* at 542, 42 S.W.3d at 457.

73. In this case, Naturalis's Complaint supports its position that it will suffer irreparable harm if the temporary restraining order and preliminary injunction it requests is not granted, as reflected in the statement of facts above.

74. Moreover, if the current cultivation licensing process is not immediately halted, those entitles with a pending dispensary application, including Plaintiff, will be irreparably harmed.

75. Furthermore, Defendants have caused a complete distrust in the newly-implemented medical marijuana industry, approved by Arkansas voters, to serve the medicinal needs of qualifying Arkansans. Arkansas is the first state in the south to legalize medicinal marijuana. The State has an obligation not only to Plaintiff, but to its citizens, to get this right. The State has a limited window of time to correct the problems outlined in this Complaint. This Court must act now.

WHEREFORE, Plaintiff, Naturalis Health, LLC, prays that this Court enter the following relief:

- (a) That Defendants be restrained and enjoined from issuing cultivation facility licenses until further order of the Court;
- (b) That Defendants' decision to award cultivation facility licenses be stayed pending further order of the Court;
- (c) That Defendants' putative award of cultivation licenses be invalidated and that they be ordered to re-score the applications in a manner which is consistent with the Rules and eliminates the conflicts of interest, bias, arbitrariness and capriciousness, lack of rational basis, and abuse of discretion which characterized the original scoring of the applications; and

(d) For all other appropriate relief to which Plaintiff may be entitled.

Respectfully submitted,

BEQUETTE & BILLINGSLEY, P.A  
425 West Capitol Avenue, Suite 3200  
Little Rock, AR 72201-3469  
Phone: (501) 374-1107  
Fax: (501) 374-5092  
Email: jbequette@bbpalaw.com  
Email: kbillingsley@bbpalaw.com  
Email: ckees@bbpalaw.com

By:           /s/ Jay Bequette            
Jay Bequette, Ark. Bar No. 87012  
Keith I. Billingsley, Ark. Bar No. 86016  
Cody Kees, Ark. Bar No. 2012118

*Attorneys for Plaintiff, Naturalis Health, LLC*

**VERIFICATION**

I, Jackson T Stephens III, do hereby certify that the above information is true and correct to the best of my knowledge and belief.

Naturalis Health, LLC

By: [Signature]  
Managing Member, Officer

STATE OF ARKANSAS    )  
  ) ss.  
COUNTY OF PULASKI    )

SUBSCRIBED AND SWORN to before me this 12<sup>th</sup> day of March, 2018.

[Signature]  
Notary Public

My Commission expires:  
4/25/23

(SEAL)  
EUGENE PATRICK CLIFFORD  
PULASKI COUNTY  
NOTARY PUBLIC -- ARKANSAS  
My Commission Expires April 25, 2023  
Commission No. 12393885