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Perspectives on the Emerging Cannabis Industry

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LEGAL HISTORY OF CANNABIS IN THE UNITED STATES

WIKIPEDIA

Legal history of cannabis in the United States

The **legal history of cannabis in the United States** relates to the regulation of cannabis (legal term marijuana) use for medical, recreational or industrial purposes in the **United States**. Increased restrictions and labeling of cannabis as a poison began in many states from 1906 onward, and outright prohibitions began in the 1920s. By the mid-1930s marijuana was regulated as a drug in every state, including 35 states that adopted the Uniform State Narcotic Drug Act.^[1] The first national regulation was the Marihuana Tax Act of 1937.^[2]

Multiple efforts to reschedule cannabis under the Act have failed, and the United States Supreme Court has ruled in *United States v. Oakland Cannabis Buyers' Cooperative* and *Gonzales v. Raich* that the federal government has a right to regulate and criminalize cannabis, even for medical purposes.

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Early history

Pre-1850s

In 1619, King James I decreed that the American colonists of Jamestown would need to step up efforts to do their fair share towards supporting England. The Virginia Company enacted the decree, asking Jamestown's land owners to grow and export 100 hemp plants to help support England's cause. Later the colonists would grow it to support its expansion in the Americas.^{[3][4]} George Washington grew hemp at Mount Vernon as one of his three primary crops. The use of hemp for rope and fabric later became ubiquitous throughout the 18th and 19th centuries in the United States. Medicinal preparations of cannabis became available in American pharmacies in the 1850s following an introduction to its use in Western medicine by William O'Shaughnessy a decade earlier in 1839.^[5]

Early pharmaceutical and recreational use

Around the same time, efforts to regulate the sale of pharmaceuticals began, and laws were introduced on a state-to-state basis that created penalties for mislabeling drugs, adulterating them with undisclosed narcotics, and improper sale of those considered "poisons". Poison laws generally either required labels on the packaging indicating the harmful effects of the drugs or prohibited sale outside of licensed pharmacies and without a doctor's prescription. Those that required labeling often required the word "poison" if the drug was not issued by a pharmacy. Other regulations were prohibitions on the sale to minors, as well as restrictions on refills. Some pharmaceutical laws specifically enumerated the drugs that came under the effect of the regulations, while others did not—leaving the matter to medical experts. Those that did generally included references to cannabis, either under the category of "cannabis and its preparations" or "hemp and its preparations."^[6]

A 1905 Bulletin from the United States Department of Agriculture lists twenty-nine states with laws mentioning cannabis. Eight are listed with "sale of poisons" laws that specifically mention cannabis: North Carolina, Ohio, Wisconsin, Louisiana, Vermont, Maine, Montana, and the District of Columbia. Among those that required a prescription for sale were Wisconsin and Louisiana. Several "sale of poison" laws did not specify restricted drugs, including in Indiana, Rhode Island, Hawaii, Nebraska, Kentucky, Mississippi, and New York. Many states did not consider cannabis a "poison" but required it be labeled.^[7]

In New York, the original law did enumerate cannabis, and was passed in 1860 following a string of suicides allegedly involving the substances later categorized as poisons. The first draft of the bill 'An act to regulate the sale of poisons' prohibited the sale of cannabis—as with the other substances—without the written order of a physician.^[8] The final bill as passed allowed the sale without a prescription so long as the purpose to which it was issued and name and address of the buyer was recorded, and in addition, all packaging of such substances—whether sold with a prescription or not—had to have the label "poison" on them in uppercase red letters. In 1862, the section which enumerated the substances was repealed with an amendatory act, though cannabis was still required to be labeled.^[9]

In some states where poison laws excluded cannabis, there were nonetheless attempts to include it. A bill introduced in 1880 in the California state legislature was titled 'An act to regulate the sale of opium and other narcotic poisons' and would have forbidden anyone to keep, sell, furnish, or give away any "preparations or mixtures made or prepared from opium, hemp, or other narcotic drugs" without a doctor's prescription at a licensed store. That bill was withdrawn in favor of one specifically aimed at opium, though further bills including hemp-based drugs were introduced in 1885 and in 1889.^[5]

Background to later restrictions (late 1800s)

As early as 1853, recreational cannabis was listed as a "fashionable narcotic."^[10] By the 1880s, oriental-style hashish parlors were flourishing alongside opium dens, to the point that one could be found in every major city on the east coast. It was estimated there were around 500 such establishments in New York City alone.^[11]

An article in Harper's Magazine (1883), attributed to Harry Hubbell Kane, describes a hashish-house in New York frequented by a large clientele, including males and females of "the better classes," and further talks about parlors in Boston, Philadelphia and Chicago.^[5] Hemp cigarettes were reported to be used by Mexican soldiers early as 1874.^[12]

Criminalization (1900s)

Strengthening of poison laws (1906–1938)



Cannabis fluid extract medicine bottle from 1906

MR. BINNS TRIES HASHISH.
From the Baltimore Sun, March 6.
A well-dressed young man, who gave the name of Binns, came to the City Hospital. He had yielded to a strange desire to enjoy a dose of hashish, a drug that produces curious results. He told the doctor that he had some doubts as to the locality of his feet, which to him seemed situated at least two feet from where it really was. Binns lay on his side, whether he had any legs or was simply walking on his feet. The latter idea seemed to have a firm hold on him, for he stamped his feet on the ground a dozen times. His requests to be relieved were fruitless. He begged that some one would attend on him or for him. After medical treatment Binns felt better.

Excerpt from the *New York Times*,
March 7, 1884

The Pure Food and Drug Act was then passed by the United States Congress in 1906 and required that certain special drugs, including cannabis, be accurately labeled with contents. Previously, many drugs had been sold as patent medicines with secret ingredients or misleading labels.^[13] Even after the passage of regulations, there continued to be criticism about the availability of narcotics and around 1910 there was a wave of legislation aimed to strengthen requirements for their sale and remove what were commonly referred to as "loopholes" in poison laws. The new revisions aimed to restrict all narcotics, including cannabis, as poisons, limit their sale to pharmacies, and require doctor's prescriptions. The first instance was in the District of Columbia in 1906, under "An act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes". This act was updated in 1938 to the Federal Pure Food, Drug, and Cosmetics Act of 1938 which remains in effect even today, creating a legal paradox for federal sentencing. Under this act, the framework for prescription and non-prescription drugs and foods are set, along with standards as well as the enforcing agency, the Food and Drug Administration (FDA). "Goods found in violation of the law were subject to seizure and destruction at the expense of the manufacturer. That, combined with a legal requirement that all convictions be published (Notices of Judgment), proved to be important tools in the enforcement of the statute and had a deterrent effect upon would-be violators." Marijuana remains under this law defined as a "dangerous drug".^[14]

Further regulation of cannabis followed in Massachusetts (1911), New York (1914), and Maine (1914). In New York, reform legislation began under the Towns-Boylan Act, which targeted all "habit-forming drugs", restricted their sale, prohibited refills in order to prevent habituation, prohibited sale to people with a habit, and prohibited doctors who were themselves habituated from selling them.^[15] Shortly after, several amendments were passed by the New York Board of Health, including adding cannabis to the list of habit-forming drugs.^[16]

A New York Times article noted on the cannabis amendment:

The inclusion of *Cannabis indica* among the drugs to be sold only on prescription is common sense. Devotees of hashish are now hardly numerous here enough to count, but they are likely to increase as other narcotics become harder to obtain.^[17]

In the West, the first state to include cannabis as a poison was California. The Poison Act was passed in 1907 and amended in 1909 and 1911, and in 1913 an amendatory act was made to make possession of "extracts, tinctures, or other narcotic preparations of hemp, or loco-weed, their preparations and compounds" a misdemeanor.^[5] There is no evidence that the law was ever used or intended to restrict pharmaceutical cannabis; instead it was a legislative mistake, and in 1915 another revision placed cannabis under the same restriction as other poisons.^[5] In 1914, one of the first cannabis drug raids in the nation occurred in the Mexican-American neighborhood of Sonoratown in Los Angeles, where police raided two "dream gardens" and confiscated a wagonload of cannabis.^[18]

Other states followed with marijuana laws including: Wyoming (1915); Texas (1919); Iowa (1923); Nevada (1923); Oregon (1923); Washington (1923); Arkansas (1923); Nebraska (1927);^[19] Louisiana (1927); and Colorado (1929).^[20]

One source of tensions in the western and southwestern states was the influx of Mexicans to the U.S. following the 1910 Mexican Revolution.^[21] Many Mexicans also smoked marijuana to relax after working in the fields.^[22] It was also seen as a cheaper alternative to alcohol, due to Prohibition (which went into effect nationally in 1920).^[23] Later in the 1920s, negative tensions grew between the small farms and the large farms that used cheaper Mexican labor. Shortly afterwards, the Great Depression came which increased tensions as jobs and resources became more scarce. Because of that, the passage of the initial laws is often described as a product of racism, yet use of hashish by near eastern immigrants was also cited, as well as the misuse of pharmaceutical hemp, and the laws conformed with other legislation that was being passed around the country. Mexico itself had passed prohibition in 1925, following the International Opium Convention (see below).^[24]

International Opium Convention (1925)

In 1925, the United States supported regulation of Indian hemp, also known as hashish, in the International Opium Convention.^[25] The convention banned exportation of "Indian hemp", and the preparations derived therefrom, to countries that had prohibited its use and required importing countries to issue certificates approving the importation and stating that the shipment was required "exclusively for medical or scientific purposes". The convention did not ban trade in fibers and other similar products from European hemp, and traditionally grown in the United States. According to the 1912 edition of the Swedish encyclopedia Nordisk familjebok, the European hemp grown for its fibers lacks the THC content that characterizes Indian hemp.^[26]

Uniform State Narcotic Drug Act (1925–1932)

The Uniform State Narcotic Drug Act, first tentative draft in 1925 and fifth final version in 1932, was a result of work by the National Conference of Commissioners on Uniform State Laws. It was argued that the traffic in narcotic drugs should have the same safeguards and the same regulation in all of the states. The committee took into consideration the fact that the federal government had already passed the Harrison Act in 1914 and the Federal Import and Export Act in 1922. Many people assumed that the Harrison Act was all that was necessary. The Harrison Act, however, was a revenue-producing act and, while it provided penalties for violation, it did not give the states themselves authority to exercise police power in regard to seizure of drugs used in illicit trade, or in regard to punishment of those responsible. The act was recommended to the states for that purpose.^[27] As a result of the Uniform State Narcotic Act, the Federal Bureau of Narcotics encouraged state governments to adopt the act. By the middle of the 1930s all member states had some regulation of cannabis.^{[28][29][30]}

Federal Bureau of Narcotics (1930)

The use of cannabis and other drugs came under increasing scrutiny after the formation of the Federal Bureau of Narcotics (FBN) in 1930,^[31] headed by Harry J. Anslinger as part of the government's broader push to outlaw all recreational drugs.

When the present administration took office ten countries had ratified the Geneva Narcotic Limitation Convention. The United States was one of these ten. ... It was my privilege, as President, to proclaim, on that day, that this treaty had become effective throughout the jurisdiction of the United States. ... On Jan. 1, 1933, only nine nations had registered their ratification of the limitation treaty. On Jan. 1, 1935, only nine States had adopted the uniform State statute. As 1933 witnessed ratification of the treaty by thirty-one additional nations, so may 1935 witness the adoption of the uniform drug act by at least thirty-one more states, thereby placing interstate accord abreast of international accord, to the honor of the legislative bodies of our States and for the promotion of the welfare of our people and the peoples of other lands.

— Franklin D. Roosevelt, March 1935 in a radio message read by United States Attorney General, Homer Stille Cummings,^[32]

Anslinger claimed cannabis caused people to commit violent crimes and act irrationally and overly sexual. The FBN produced propaganda films promoting Anslinger's views and Anslinger often commented to the press regarding his views on marijuana.^[33]

The 1936 Geneva Trafficking Conventions

In 1936 the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs (1936 Trafficking Convention) was concluded in Geneva. The U.S., led by Anslinger, had attempted to include the criminalization of all activities in the treaty – cultivation, production, manufacture and distribution – related to the use of opium, coca (and its derivatives), and cannabis, for non-medical and non-scientific purposes. Many countries opposed this and the focus remained on illicit trafficking. Article 2 of the Convention called upon signatory countries to use their national criminal law systems to "severely" punish, "particularly by imprisonment or other penalties of deprivation of liberty", acts directly related to drug trafficking.^[34] The U.S. refused to sign the final version because it considered the convention too weak, especially in relation to extradition, extraterritoriality and the confiscation of trafficking profits.^[35]

Marihuana Tax Act (1937)

The Marihuana Tax Act of 1937 effectively made possession or transfer of marihuana illegal throughout the United States under federal law, excluding medical and industrial uses, through imposition of an excise tax on all sales of hemp. Annual fees were \$24 (\$637 adjusted for inflation) for importers, manufacturers, and cultivators of cannabis, \$1 (\$24 adjusted for inflation) for medical and research purposes, and \$3 (\$82 adjusted for inflation) for industrial users. Detailed sales logs were required to record marihuana sales. Selling marihuana to any person who had previously paid the annual fee incurred a tax of \$1 per ounce or fraction thereof; however, the tax was \$100 (\$2,206 adjusted for inflation) per ounce or fraction thereof to sell any person who had not registered and paid the annual fee.^[36]

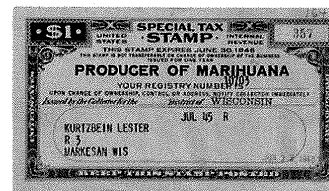
The American Medical Association (AMA) opposed the act because the tax was imposed on physicians prescribing cannabis, retail pharmacists selling cannabis, and medical cannabis cultivation and manufacturing; instead of enacting the Marihuana Tax Act the AMA proposed cannabis be added to the Harrison Narcotics Tax Act.^[37] This approach was unappealing to some legislators who feared that adding a new substance to the Harrison Act would subject that act to new legal scrutiny. Since the federal government had no authority under the 10th Amendment to regulate medicines, that power being reserved by individual states in 1937, a tax was the only viable way to legislate marijuana.

After the Philippines fell to Japanese forces in 1942, the Department of Agriculture and the U.S. Army urged farmers to grow hemp fiber and tax stamps for cultivation were issued to farmers. Without any change in the Marihuana Tax Act, over 400,000 acres of hemp were cultivated between 1942 and 1945. The last commercial hemp fields were planted in Wisconsin in 1957.^[38] New York Mayor Fiorello LaGuardia, who was a strong opponent of the 1937 Marihuana Tax Act, started the LaGuardia Commission that in 1944 contradicted the earlier reports of addiction, madness, and overt sexuality.^[39]

The decision of the United States Congress to pass the Marihuana Tax Act of 1937 was based on poorly attended hearings and reports based on questionable studies.^{[40][41]} In 1936 the Federal Bureau of Narcotics (FBN) noticed an increase of reports of people smoking marijuana, which further increased in 1937. The Bureau drafted a legislative plan for Congress seeking a new law, and the head of the FBN, Harry J. Anslinger, ran a campaign against marijuana.^{[42][43]} Newspaper mogul William Randolph Hearst's empire of newspapers used the "yellow journalism" pioneered by Hearst to demonize the cannabis plant and spread a public perception that there were connections between cannabis and violent crime.^[44] Several scholars argue that the goal was to destroy the hemp industry,^{[45][46][47]} largely as an effort of Hearst, Andrew Mellon and the Du Pont family.^{[45][47]} They argue that with the invention of the decorticator hemp became a very cheap substitute for the wood pulp that was used in the newspaper industry.^{[45][48]} However, Hearst newspapers owed large debts to Canadian



Federal Bureau of Narcotics public service announcement used in the late 1930s and 1940s

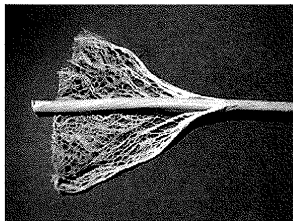


Tax stamp for a producer of hemp

suppliers of paper, who used wood as raw material. If an alternative raw material for paper had emerged, it would have lowered the price of the paper needed to print Hearst's many newspapers—a positive thing for Hearst.^{[49][50]} Moreover, by the year 1916 there were at least five "machine brakes" for hemp^[51] and it is unlikely that in 1930s hemp became a new threat for newspapers owners.

Mellon was Secretary of the Treasury, as well as the wealthiest man in America, and had invested heavily in nylon, DuPont's new synthetic fiber. He considered nylon's success to depend on it replacing the traditional resource, hemp.^{[45][52][53][54][55][56][57][58]}

The company DuPont and many industrial historians dispute a link between nylon and hemp. They argue that the reason for developing nylon was to produce a fiber that could compete with silk and rayon in, for example, thin stockings for women. Silk was much more expensive than hemp and imported largely from Japan. There was more money in a substitute for silk. DuPont focused early on thin stockings for women. As a commercial product, nylon was a revolution in textiles. Strong and water-resistant, it was possible to make very thin fibers from cheap raw materials. The first sales in 1938 in New York of nylon stockings created a line with 4000 middle class women. For years to come, nylon demand was greater than DuPont could produce. And the DuPont Group was very big; it could move on if nylon had not become a success.^{[59][60][61]}



Hemp, bast with fibers. The stem in the middle.

In 1916 United States Department of Agriculture (USDA) chief scientists Jason L. Merrill and Lyster H. Dewey created a paper, USDA Bulletin No. 404 "Hemp Hurds as Paper-Making Material",^[62] in which they stated that paper from the woody inner portion of the hemp stem broken into pieces, so called hemp hurds, was "favorable in comparison with those used with pulp wood". Merrill and Dewey's findings were not repeated in a later book by Dewey^[63] and have not been confirmed by paper production experts. The consistency of long fibers is too low in hemp hurds for commercial papermaking. Numerous machines had been devised for breaking and scutching hemp fibers, but none had been found to be fully satisfactory in actual commercial work.^{[50][63][64]} To produce fiber from hemp was a labor-intensive process if harvest, transport and processing are included. Technological developments decreased the labor but not sufficiently to eliminate this disadvantage.^[65]

There was also a misconception about the intoxicating effects of hemp because it has the same active substance, THC, which is in all cannabis strains. Hemp normally has a minimal amount of THC when compared to recreational cannabis strains but, in the 1930s, THC was not yet fully identified.^[66] The

methods FBN used for predicting the psychoactive effect of different samples of cannabis and hemp therefore gave confusing results.^{[67][68]}

Mandatory sentencing (1952, 1956)

Mandatory sentencing and increased punishment were enacted when the United States Congress passed the Boggs Act of 1952 and the Narcotics Control Act of 1956. The acts made a first-time cannabis possession offense a minimum of two to ten years with a fine up to \$20,000; however in 1970 the United States Congress repealed mandatory penalties for cannabis offenses.^[39]

The Controlled Substances Act (1970)

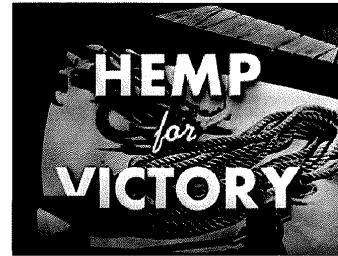
In its 1969 *Leary v. United States* decision the Supreme Court held the Marijuana Tax Act to be unconstitutional, since it violated the Fifth Amendment privilege against self-incrimination.^[69] In response, Congress passed the Controlled Substances Act as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, which repealed the Marijuana Tax Act.^[70]

Reorganization (1968, 1973)

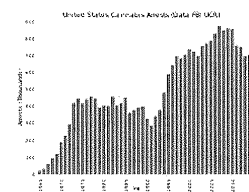
In 1968 the United States Department of the Treasury subsidiary the Bureau of Narcotics, and the United States Department of Health, Education, and Welfare subsidiary the Bureau of Drug Abuse Control, merged to create the Bureau of Narcotics and Dangerous Drugs as a United States Department of Justice subsidiary.^[71]

In 1973 President Richard Nixon's "Reorganization Plan Number Two" proposed the creation of a single federal agency to enforce federal drug laws and Congress accepted the proposal, as there was concern regarding the growing availability of drugs.^[72] As a result, on July 1, 1973, the Bureau of Narcotics and Dangerous Drugs (BNDD) and the Office of Drug Abuse Law Enforcement (ODALE) merged to create the Drug Enforcement Administration (DEA).^[69] On December 1, 1975, the Supreme Court ruled that it was "not cruel or unusual for Ohio to sentence someone to 20 years for having or selling cannabis".^[73]

State-level decriminalization (1973–1978)



Hemp for Victory, a short documentary produced by the United States Department of Agriculture during World War II to inform and encourage farmers to grow hemp.



U.S. cannabis arrests by year

In 1973 the National Commission on Marijuana and Drug Abuse released a report entitled *Marijuana: A Signal of Misunderstanding*, which recommended "partial prohibition" and decriminalization of possession of small amounts of marijuana. Following this report and extensive lobbying by NORML, 11 states decriminalized cannabis to varying degrees between 1973 (Oregon) and 1978 (Nebraska).^[74]

State Office of Narcotics and Drug Abuse (1977)

In January 1976, California's study of the economic impact of its law repealing prohibitions of use went into effect. The law reduced the penalty for personal possession of an ounce or less of marijuana from a felony to a citable misdemeanor with a maximum fine of \$100. Possession of more than an ounce was made a misdemeanor, making the maximum fine \$500 and/or six months in jail. After the law went into effect, the state's annual spending towards marijuana laws went down 74%. Prior to the law, the state had been spending from \$35 million to \$100 million.^[75]

Mandatory sentencing and three-strikes (1984, 1986)

During the Reagan Administration the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984 created the Sentencing Commission, which established mandatory sentencing guidelines.^[76] The Anti-Drug Abuse Act of 1986 reinstated mandatory prison sentences, including large scale cannabis distribution.^[77] Later an amendment created a three-strikes law, which created mandatory 25-years imprisonment for repeated serious crimes – including certain drug offenses – and allowed the death penalty to be used against "drug kingpins".^[39]

Compassionate Use Act of 1996

In 1996, cannabis was legalized in California for the aid of chronically ill residents.^[78] The Compassionate Use Act of 1996 allowed people to have and use cannabis but only when prescribed by a doctor/physician.^[79] Cannabis was prescribed to people who had trouble with cancer, AIDS, and other medical afflictions such as glaucoma.^[80] It was implemented as a way to try and help those who needed cannabis for their medical illnesses to find a source and safe way to use the drug.^[81] However, this did not protect patients with medical cards to redistribute any of the cannabis they had legally obtained for themselves.^[82]

United States v. Oakland Cannabis Buyers' Cooperative (2001)

In 1996 California voters passed Proposition 215, which legalized medical cannabis. The Oakland Cannabis Buyers' Cooperative was created to "provide seriously ill patients with a safe and reliable source of medical cannabis, information and patient support" in accordance with Proposition 215.^[83]

In January 1998 the U.S. Government sued Oakland Cannabis Buyers' Cooperative for violating federal laws created as a result of Controlled Substances Act of 1970. On May 14, 2001, the United States Supreme Court ruled in *United States v. Oakland Cannabis Buyers' Coop* that federal anti-drug laws do not permit an exception for medical cannabis and rejected the common-law medical necessity defense to crimes enacted under the Controlled Substances Act because Congress concluded cannabis has "no currently accepted medical use" when the act was passed in 1970.^[84]

Gonzales v. Raich (2005)

Gonzales v. Raich 545 U.S. 1 (2005) was a decision in which the U.S. Supreme Court ruled (6–3) that even where individuals or businesses in accordance with state-approved medical cannabis programs are lawfully cultivating, possessing, or distributing medical cannabis, such persons or businesses are violating federal marijuana laws. Therefore, under federal law violators are prosecuted because the Commerce Clause of the United States Constitution grants the federal government jurisdiction, pursuant to the U.S. Controlled Substances Act, to prosecute marijuana offenses.

In *Gonzales* the defendants argued that because the cannabis in question had been grown, transported, and consumed entirely within the state of California, in compliance with California medical cannabis laws, their activity did not implicate interstate commerce, and as such could not be regulated by the federal government through the Commerce Clause.

The U.S. Supreme Court disagreed, reasoning that cannabis grown within California for medical purposes is indistinguishable from illicit marijuana and that because the intrastate medical cannabis market contributes to the interstate illicit marijuana market, the Commerce Clause applies. Even where California citizens are using medical cannabis in compliance with state law, those individuals and businesses can still be prosecuted by federal authorities for violating federal law.^[85]

To combat state-approved medical cannabis legislation, the Drug Enforcement Administration (DEA) continued to routinely target and arrest medical cannabis patients and seized medical cannabis and the business assets of growers and medical dispensaries. However, the Obama administration indicated that this practice might potentially be curtailed.^[86]

Efforts to decriminalize (1970s–)

Medical use

In 1978 Robert Randall sued the federal government for arresting him for using cannabis to treat his glaucoma. The judge ruled Randall needed cannabis for medical purposes and required the Food and Drug Administration set up a program to grow cannabis on a farm at the University of Mississippi and to distribute 300 cannabis cigarettes a month to Randall. In 1992 George H. W. Bush discontinued the program after Randall tried to make HIV/AIDS patients eligible for the program. Thirteen people were already enrolled and were allowed to continue receiving cannabis cigarettes; today the government still ships cannabis cigarettes to four people. Irvin Rosenfeld, who became eligible to receive cannabis from the program in 1982 to treat rare bone tumors, urged the George W. Bush administration to reopen the program; however, he was unsuccessful.^[87]

"Citing the dangers of marijuana and the lack of clinical research supporting its medicinal value" the American Society of Addiction Medicine in March 2011 issued a white paper recommending a halt to using marijuana as a medicine in U.S. states where it has been declared legal.^{[88][89]}

Advocacy

Several U.S.-based advocate groups seek to modify the drug policy of the United States to decriminalize cannabis. These groups include Law Enforcement Against Prohibition, Students for Sensible Drug Policy, The Drug Policy Alliance, the Marijuana Policy Project, NORML, Coalition for Rescheduling Cannabis, and Americans for Safe Access. In June 2005, libertarian economist Jeffrey Alan Miron and over 530 other economists, including Nobel Prize winner Milton Friedman, called for the legalization of cannabis in an open letter to President George W. Bush, the United States Congress, Governors of the United States, and State Legislatures of the United States. The open letter contained Miron's "Budgetary Implications of Marijuana Prohibition in the United States" report (view report (<http://www.prohibitioncosts.org/MironReport.pdf>)).^[90]

In 1997, the Connecticut Law Revision Commission recommended that Connecticut reduce cannabis possession of one ounce or less for adults aged 21 years and over to a civil fine although driving privileges maybe suspended for up to 60 days.^[91] In 2001, the New Mexico state-commissioned Drug Policy Advisory Group stated that decriminalizing cannabis "will result in greater availability of resources to respond to more serious crimes without any increased risks to public safety."^[92] On November 3, 2004, Oakland, California passed Proposition Z, which makes "adult recreational marijuana use, cultivation and sales the lowest [city] law enforcement priority."^[93]

Ron Paul, a Texas Congressman and 2008 and 2012 Presidential Candidate, stated at a rally in response to a question by a medical cannabis patient that he would "never use the federal government to force the law against anybody using marijuana."^[94] Based on the collective perspective of its Editorial Board, The New York Times commenced a series examining the legalization of cannabis in July 2014 titled "High Time: An Editorial Series on Marijuana Legalization". The introductory article concludes with the statement: "We recognize that this Congress is as unlikely to take action on marijuana as it has been on other big issues. But it is long past time to repeal this version of Prohibition."^[95]

Non-medical use

In 1970 the United States Congress repealed mandatory penalties for cannabis offenses and The Comprehensive Drug Abuse Prevention and Control Act separated cannabis from other illicit narcotics and removed mandatory sentences for possession of small amounts of cannabis.^[39] In 1972 President Richard Nixon commissioned a comprehensive study from the National Commission on Marijuana and Drug Abuse. The Commission found that the constitutionality of cannabis prohibition was suspect and that the executive and legislative branches had a responsibility to obey the Constitution, even in the absence of a court ruling to do so. The Richard Nixon administration did not implement the study's recommendations.^[96]

In 1973 Oregon decriminalized cannabis.^[97] Laws changed again in 1995 that reduced penalties. Possession of one ounce or less became legally defined as a "violation" (a crime that is considered a lesser offence than a misdemeanor) and now is punishable by a \$500 to \$1,000 fine and up to 6 months of jail time, ^[98] in some jurisdictions, paid off by means of community service. Possession of multiple containers of any weight, or possession of more than one ounce can sometimes add the additional crime "Intent to Sell". In some cases people who have no marijuana, but are caught at the scene of a drug bust, are charged with "Frequenting". Stricter punishments exist for sale, cultivation, and proximity to schools.^[99]

Colorado, Alaska, Ohio, and California followed suit in 1975. By 1978 Mississippi, North Carolina,^[100] New York, and Nebraska had some form of cannabis decriminalization.^{[101][102]} In 2001 Nevada reduced cannabis possession from a felony offense to a misdemeanor, but only for adults age 21 and older, with other restrictions.^[103] Starting in the 1970s multiple states, counties, and cities decriminalized cannabis for non-medical purposes. While many states, counties, and cities have partially decriminalized cannabis, on November 3, 2004, Oakland passed Proposition Z, and became the first place to fully decriminalize cannabis to allow the licensing, taxing, and regulation of cannabis sales if California law is amended to allow so.^[104] In 2008 Massachusetts passed a voter initiative that decriminalized simple possession of up to one ounce of marijuana, instead making it a civil infraction punishable by a \$100 fine. Criminal penalties for cultivation and distribution remain in place.^[105] In June 2011, Connecticut decriminalized possession of small amounts of marijuana.

On November 6, 2012, Colorado Amendment 64 (2012) was passed by initiative, thereby legalizing the recreational use of cannabis. Colorado Governor John Hickenlooper signed two bills on May 28, 2013 that made Colorado the world's first fully regulated recreational cannabis market for adults. Hickenlooper explained to the media: "Certainly, this industry will create jobs. Whether it's good for the brand of our state is still up in the air. But the voters passed Amendment 64 by a clear majority. That's why we're going to implement it as effectively as we possibly can." In its independent analysis, the Colorado Center on Law & Policy found that the state could expect a to see "\$60 million in total combined savings and additional revenue for Colorado's budget with a potential for this number to double after 2017."^[108] On September 9, 2013, the Colorado Department of Revenue adopted final regulations for recreational marijuana establishments, implementing the Colorado Retail Marijuana Code (HB 13-1317).^[107] On September 16, 2013, the Denver City Council adopted an ordinance for retail marijuana establishments.^[108] The first stores officially opened on January 1, 2014.^[109] The state prepared for an influx of tourists with extra police officers posted in Denver. Safety fears led to officials seeking to limit use of the drug in popular ski resorts.^[110]

State-level legalization

The first ballot measure to legalize marijuana on a statewide level was California Proposition 19 in 1972.^[111] Subsequent efforts include California Proposition 19 (2010) and Oregon Measure 80 (2012).

Ravin v. State was a 1975 decision by the Alaska Supreme Court that held the Alaska Constitution's right to privacy protects an adult's ability to use and possess a small amount of marijuana in the home for personal use.^{[112][113]} The Alaska Supreme Court thereby became the first—and only—state or federal court to announce a constitutional privacy right that protects some level of marijuana use and possession.^[112]

2012 legalization

On November 6, 2012, Colorado and Washington became the first states to legalize the sale and possession of cannabis for recreational use since the Marijuana Tax Act of 1937 when they passed Colorado Amendment 64 and Washington Initiative 502.^[114] Each regulated marijuana in a way similar to alcohol, allowing possession of up to an ounce for adults ages 21 and older, with "DUID" provisions similar to those against drunk driving. Unlike Initiative 502, Amendment 64 allows personal cultivation (of up to 6 plants). Both provide for commercial cultivation and sales, subject to regulation and taxes. It remains to be seen how the conflicts of these laws with federal law will be resolved.

2013 legalization

The city of Portland, Maine legalized the possession of up to 2.5 ounces of marijuana on November 5, 2013, making it the first city on the east coast to do so. The citizens voted in the law with 67% in favor of legalization. The law does not allow the sale of marijuana; and city police still intend to enforce state law, under which possession is a civil offense, and only medical marijuana is legal. Supporters of marijuana legalization believe, "this is just the next domino," said Marijuana Policy Project Maine Political Director, David Boyer, "I think there's national implications, keeping the momentum that Washington and Colorado started last November in ending marijuana prohibition." There are hopes that the vote will be a push to legalize it statewide within the next few years.^{[115][116]}

The same day, voters in the cities of Ferndale, Jackson and Lansing, Michigan also voted on and approved similar measures to legalize possession and transfer of less than one ounce of marijuana. The votes were 69%, 61% and 63% in favor respectively. Similar to Portland, state law (where only medical marijuana is legal) will likely be enforced, as indicated by the Governor's statement that "no city charter provision 'shall conflict with or contravene the provisions of any general law of the state.'"^[117]

2014 legalization

On November 4, 2014, the states of Alaska (Alaska Measure 2) and Oregon (Oregon Ballot Measure 91) along with Washington D.C. (Initiative 71) legalized the recreational usage of marijuana, with laws similar to those of Colorado and Washington. However, by a rider of the 2014 "Cromnibus" bill (Consolidated Appropriations Act, 2014), Washington DC was prevented from making additional changes to its marijuana laws for the fiscal year, allowing home use and cultivation, but not commercial sales.^{[118][119]}

As of November 2014, 28 states have enacted medical marijuana laws, removed jail time for possession of small amounts of marijuana, and/or have legalized the possession, distribution, and sale of marijuana outright.^[120] The factors which have led to this change are many, but some of them could include increased support from the medical community for legalization,^[121] viable regulatory systems modeled off of alcohol regulation,^[122] and the potential for state financial gains from decreased criminal justice costs and increased tax revenues.^[123] Although outright legalization for non-medical use of marijuana has only occurred in four states in the Union, in view of the movements in many states, it is possible that those states will not be alone for long.^[120]

2016 legalization

In November 2016, three states voted to pass medical marijuana: Florida, North Dakota, and Arkansas. Montana expanded its medical Marijuana laws. Four states legalized recreational cannabis: California, Nevada, Maine, and Massachusetts.^[124]

2017 legalization

More states began to initiate their own legalization in 2017, despite the ambiguity of the Cannabis policy of the Donald Trump administration.

2018 legalization

Vermont's bill legalizing adult possession of one ounce of cannabis and allows individuals to grow up to two cannabis plants cleared the state legislature in January 2018; was signed by the governor on January 22; the law will go into effect on July 1 of the same year.^{[126][126][127]}

Territorial-level legalization

In November 2014, Guam became the first U.S. territory to legalize cannabis for medical use. In December 2014, the US Virgin Islands passed a bill that decriminalized possession of cannabis up to an ounce.^[128] In Puerto Rico, medical cannabis was legalized on May 3, 2015, by an executive order from its governor.^[129]

Indian Reservation-level legalization

In December 2014, the United States Justice Department allowed recognized Indian Reservations to regulate cannabis laws within their reservation. The laws in the reservations are allowed to be different from state and federal laws. As with State and Territories, the Federal government will not intervene as long as the reservations regulate strict control over marijuana. Some domestic nations such as the Yakama Nation and the Oglala Sioux Tribal Council rejected the approval to allow marijuana on their reservation.^[130]

In 2015, the Flandreau Santee Sioux Tribe (South Dakota) voted to legalize recreational cannabis on its territory.^[131]

Federal reform efforts (2013–)

Ending Federal Marijuana Prohibition Act

On February 5, 2013, Colorado representative Jared Polis introduced Ending Federal Marijuana Prohibition Act of 2013 (H.R. 499; 113th Congress), a bill that would decriminalize marijuana on the federal level, instead treating it as a substance to be regulated in a similar manner to alcohol. The act has not been approved by Congress.^[132]

Respect State Marijuana Laws Act

On April 12, 2013, Rep. Dana Rohrabacher (R-CA) introduced H.R. 1523, the Respect State Marijuana Laws Act.^[133] Eleven cosponsors, representing both major political parties, have joined Rohrabacher in a federalist approach to drug policy reformation.

Rohrabacher–Farr amendment

The Rohrabacher–Farr amendment is legislation first introduced by Rep. Maurice Hinchey in 2001, prohibiting the Justice Department from prosecuting individuals acting in accordance with state medical cannabis laws.^[134] It passed the House for the first time in May 2014, becoming law in December 2014 as part of an omnibus spending bill.^[135] The passage of the amendment was the first time either chamber of Congress had voted to protect medical cannabis patients, and is viewed as a historic victory for cannabis reform advocates at the federal level.^[136] The amendment does not change the legal status of cannabis, however, and must be renewed each fiscal year in order to remain in effect.^[135]

No Welfare for Weed Act of 2014

The No Welfare for Weed Act prevents the use of electronic benefit transfer (EBT) cards to purchase marijuana in states where it has been legalized. The bill was approved by the House in September 2014.^[137]

Regulate Marijuana Like Alcohol Act and Marijuana Tax Revenue Act of 2015

In February 2015, two national-level legalization acts were proposed in Congress, the Regulate Marijuana Like Alcohol Act by Jared Polis (D-Colorado) and the Marijuana Tax Revenue Act by Earl Blumenauer (D-Oregon).^[138]

The Compassionate Access, Research Expansion and Respect States (CARERS) Act of 2015

On March 10, 2015, Senators Rand Paul (R-KY), Cory Booker (D-NJ), and Kirsten Gillibrand (D-NY) proposed a new bipartisan medical marijuana bill for patients and veterans to access medical marijuana.

The act:

|

would reschedule marijuana from a Schedule I to Schedule II drug to recognize it has accepted medical use, and would amend federal law to allow states to set their own medical marijuana policies. The bill would also permit VA doctors to prescribe veterans medical marijuana to treat serious injuries and chronic conditions. The legislation would not legalize medical marijuana in all 50 states, rather it would respect the states that set their own medical marijuana programs and prevents federal law enforcement from prosecuting patients, doctors and caregivers in those states.^[139]

Ending Federal Marijuana Prohibition Act of 2015

On November 4, 2015, Senator [Bernie Sanders](#) introduced the bill into Senate. It was read twice and referred to the Committee on the Judiciary. The intentions of the bill are to limit the application of Federal laws to the distribution and consumption of marijuana, and for other purposes.^[140]

Crime

Possession of marijuana is still punishable by the law because of its Schedule I drug standing.^[141] Depending on the amount a person carries around, or possesses, punishment differs. According to California health and safety codes (section 11357- 11362.9), punishment for possession of marijuana differs by amount unless the person is allowed to have cannabis with them.^[142] For amounts exceeding 28.5g, a person can be fined less or equal to an amount of five hundred dollars or be imprisoned in a country jail for less than or equal to six months or in some cases both.^[143] For amounts less than 28.5g, a person can be fined less than or equal to an amount of one hundred dollars. The smuggling of any drugs/illegal substances can be fined \$250,000 or by a 20-year sentence in prison.^[144] The trafficking of cannabis itself for any amount up to fifty kilograms, or up to 49 cannabis plants, can be fined from \$250,000 to one million dollars or serve 5 years in prison.^[144] According to the FBI, there have been 1,488,707 drug abuse violation arrests in the U.S in the year 2015.^[145] Out of the 1,488,707 people arrested, 4.6% were arrested for the illegal sale and manufacturing of cannabis while 38.6% were arrested for possession of cannabis.^[145]

Drug courts

[Drug courts](#) first started in 1989 and have spread since. 2140 drug courts were in operation May 2008, with another 284 being planned or developed.^[146] They offer offenders charged with less-serious crimes of being under the influence, possession of a controlled substance, or even drug-using offenders charged with a non-drug-related crime the option of entering the drug court system instead of a conventional criminal court with the possibility of serving a jail sentence. To take advantage of this program, offenders have to plead guilty to the charge, agree to take part in treatment, regular drug screenings, and regular reporting to the drug court judge for a minimum of one year, as well as pay heavy fines and monthly drug court fees. Drug court systems in some areas utilize a color code system, whereas each offender is assigned a designated color, one of which is selected daily by the drug court for drug screening. Offenders must call the "color code" office each morning to see if their color has been selected for screening. Should the offender fail to comply with one or more of the requirements they may be removed from the drug court and incarcerated at the judge's discretion. If they complete the drug court program the charges brought against them are dropped or reduced.^[147]

2018 rescinding of the Cole Memorandum

On January 4, 2018, the Obama Administration's [Cole Memo](#), which was issued by former Deputy US Attorney General [James Cole](#) in 2013 and instructed the federal government to avoid blocking state-sanctioned legalization of marijuana, was rescinded by US Attorney General [Jeff Sessions](#), who instructed US Attorneys to enforce federal laws criminalizing marijuana.^[148]

See also

- [Adult lifetime cannabis use by country](#)
- [Annual cannabis use by country](#)
- [Cannabis in the United States](#)
- [Colorado Amendment 64](#)
- [Effects of cannabis](#)
- [Illegal drug trade](#)
- [Legal and medical status of cannabis](#)
- [Legality of cannabis by country](#)
- [Single Convention on Narcotic Drugs](#)
- [Timeline of cannabis legalization in the United States](#)

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LEGALITY OF CANNABIS BY U.S. JURISDICTION

By state

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State		Possession	Sale	Transportation	Cultivation	Notes
 Alabama	e	Medical use of non-psychoactive CBD oil only. Otherwise felony (1st-offense, personal use possession is a misdemeanor)	felony	not clearly stated	illegal	First-time possession for personal use may be punished as a misdemeanor, but further personal possession, or intent to sell, can result in felony charges.
 Alaska	a	legal	medical and recreational use	legal to carry up to 1 oz. (28 grams) ^[9]	legal to grow up to 12 plants in a household with two adults over 21, ^[10] or an unlimited number commercially with a license	Legalized in Measure 2 on November 4, 2014. ^[11]
 Arizona	d	medical use only	medical use only	medical use only	medical use only	In November 2010, Arizona legalized medical marijuana when the voters passed Proposition 203 with 50.13% of the vote. ^{[12][13][14]}
 Arkansas	d	medical use only	medical use only	medical use only		Possession of amounts under three ounces is a criminal misdemeanor; the cities of Fayetteville and Eureka Springs have labeled cannabis the "lowest law enforcement priority". On November 8, 2016, the state legalized medical marijuana when voters passed Issue 6 by 53%. ^[15]
 California	a	legal	medical and recreational use	legal to carry up to 1oz. (28 grams)	legal to grow up to six plants for an individual, or commercially with a license	In July 1975, Governor Jerry Brown enacted Senate Bill 95, which reduced the penalty for possession of one ounce (28.5 grams) of cannabis or less to a citable misdemeanor. ^[16] On November 5, 1996,
State		Possession	Sale	Transportation	Cultivation	Notes

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State		Possession	Sale	Transportation	Cultivation	Notes
						<p>California became the first state in the United States to legalize medical marijuana when the voters passed Proposition 215 by 56%.^[17]</p> <p>On November 8, 2016, Proposition 64, also known as the Adult Use of Marijuana Act, passed by a vote of 57% to 43%, legalizing the sale and distribution of cannabis in both a dry and concentrated form. Adults are allowed to possess up to one ounce of cannabis for recreational use and can grow up to six live plants individually or more commercially with a license. The law and regulations on recreational cannabis went into full effect on January 1, 2018.</p>
 Colorado	a	legal	medical and recreational use	legal to carry up to 1 oz. (28 grams)	legal to grow up to six plants for an individual, or commercially with a license ^[18]	<p>Colorado Amendment 64 legalized the sale and possession of marijuana for non-medical uses on November 6, 2012, including private cultivation of up to six marijuana plants, with no more than three being mature.^{[19][20]}</p>
 Connecticut	b	decriminalized (Legal for medical use only)	felony (Legal for medical use only)	felony (Legal for medical use only)	felony	<p>Possession of less than one half ounce by persons 21 and over results in graduating scale of fines, and seizure of contraband. Under 21 face addition sanctions, to include temporary loss of license to drive.^[21]</p>
 Delaware	b		medical use only	medical use only		
State		Possession	Sale	Transportation	Cultivation	Notes








State		Possession	Sale	Transportation	Cultivation	Notes
		decriminalized (civil infraction)			medical use only	On February 10, 2012, Gov. Markell announced that he was suspending medical marijuana because of a letter from the Obama Justice Department alleging that its implementation would subject those licensed under the law, as well as public servants, to federal criminal prosecution. On August 31, 2016, Gov. Markell signed House Bill 400 into law, to expand medical cannabis programs for people with a terminal illness. ^{[22][23]}
 Florida	d	medical use only	medical use only	medical use only	medical use only	On November 8, 2016, the state legalized medical marijuana when voters passed Amendment 2 by 71%. ^[24] The rules implementing the law started on July 1.
 Georgia	d	medical use only	medical use only	medical use only	illegal	Any conviction of a marijuana possession, sale, or cultivation offense results in suspension of driver's license. First-time offenders may be eligible for a conditional discharge under Section 16-13-2 of the Official Code of Georgia Annotated (O.C.G.A.), which operates as a dismissal if certain conditions are met, such as the payment of a fine and community service. A measure to allow medical cannabis oil passed the House in February 2015. ^[25] On April 16, 2015, the non-
State		Possession	Sale	Transportation	Cultivation	Notes

State		Possession	Sale	Transportation	Cultivation	Notes
						psychoactive form of Marijuana oil (CBD Oil, also known as "Charlotte's Web") was legalized for medical use in the state. ^[26]
 Hawaii	d	medical use only	medical use only	Against program rules.	medical use only	On June 15, 2000, Governor Benjamin Cayetano signed a bill legalizing medical marijuana. ^{[27][28]} On July 14, 2015 the Governor of Hawaii David Ige signed a bill into law allowing medical cannabis dispensaries. ^[29] On July 14, 2016 David Ige also signed into law expanding medical cannabis programs. ^[30]
 Idaho	e	misdemeanor (85 grams/3 oz. or less)	felony	not clearly stated	felony	Personal use possession of 3 ounces or less of marijuana is a misdemeanor punishable by up to 1 year imprisonment or a fine up to \$1,000 or both if for. If the quantity possessed is more than 3 ounces but less than 1 pound, it is a felony punishable by up to 5 years imprisonment or a fine up to \$10,000 or both. ^[31]
 Illinois	b	decriminalized (civil infraction)	Misdemeanor (legal for medical use)	Misdemeanor (legal for medical use)	Misdemeanor (legal for medical use)	Illinois passed the Cannabis Control Act in 1978, which technically allows for medical marijuana. However, in order for it to become an actuality, action is required from two state departments—Human Services and the State Police—neither of which
State		Possession	Sale	Transportation	Cultivation	Notes

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State		Possession	Sale	Transportation	Cultivation	Notes
						has taken action. ^{[32][33]} On August 1, 2013, Gov. Pat Quinn signed a bill legalizing medical marijuana; the legislation took effect on January 1, 2014. ^[34] On March 22, 2017, Illinois lawmakers proposed legalizing recreational marijuana in the state. ^[35] The measure would also allow residents to possess up to 28 grams of marijuana, or about an ounce, and to grow five plants.
 Indiana	e	medical use of non-psychoactive CBD oil for patients with epilepsy; ^[36] misdemeanor (Up to 6 months, \$1000 Fine)	misdemeanor/felony	not clearly stated	illegal	<ul style="list-style-type: none"> 1913: prohibited
 Iowa	d	medical use only	felony	not clearly stated	felony	<ul style="list-style-type: none"> 2014 CBD legalized
 Kansas	e	misdemeanor	illegal	not clearly stated	illegal	<ul style="list-style-type: none"> 1927: prohibited
 Kentucky	e	misdemeanor (less than 8 oz (230 g))	misdemeanor (less than 8 oz (230 g); first offense)	not clearly stated	misdemeanor (less than 5 plants)	<ul style="list-style-type: none"> 2014 CBD legalized
 Louisiana	i	medical use only	medical use only	medical use only	illegal	<ul style="list-style-type: none"> 1924: prohibited 2015: medical cannabis legalized
 Maine	a	legal	medical and recreational use	legal to carry up to 2.5oz. (71 grams)	legal to grow up to six plants for an individual, or commercially with a license	<ul style="list-style-type: none"> 1913: prohibited 1976: decriminalized 1999: medical cannabis^[37] 2009: further decriminalization^{[38][39]} 2016: legalized recreational^[40]
 Maryland	b	decriminalized (10g or less)	medical use only	medical use only	medical use only	On April 14, 2014, Maryland Governor Martin O'Malley signed two
State		Possession	Sale	Transportation	Cultivation	Notes

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State		Possession	Sale	Transportation	Cultivation	Notes
						pieces of cannabis reform legislation. SB 364 decriminalizes possession of 10 grams or less to a civil infraction punishable by a \$100 fine for the first offense, a \$250 fine for a second offense, and a \$500 fine plus possible drug treatment for a third offense. HB 881 legalizes the possession, sale, and production of medical cannabis, and it authorizes the creation of a commission to license dispensaries, doctors, and patients to manage distribution. These two laws do not go into effect until October 1, 2014, prior to the effective date, possession of any amount of marijuana could still be charged and prosecuted. ^{[41][42]}
 Massachusetts	a	legal	medical and recreational use	Legal to carry up to 1 oz. (28 grams)	Allowed to have 1 ounce of marijuana outside the home and up to 10 ounces inside the home, and to cultivate up to six plants.	<ul style="list-style-type: none"> 2008: decriminalized cannabis when 63% of the populace voted yes on Question 2. The legislation defines possession of 1 ounce or less to be a civil infraction punishable by a \$100 fine.^{[43][44]} 2012: legalized medical marijuana when voters passed Question 3 by 60%.^{[45][46]} 2016: legalized recreational marijuana when voters passed Question 4 by 54%.^[47]
 Michigan	d	medical use only	medical use only	medical use only	medical use only	<ul style="list-style-type: none"> 2008: legalized medical cannabis
 Minnesota	b	decriminalized	medical use only	medical use only	illegal	<ul style="list-style-type: none"> 1976: decriminalization^[48]
State		Possession	Sale	Transportation	Cultivation	Notes

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State		Possession	Sale	Transportation	Cultivation	Notes
						<ul style="list-style-type: none"> 2014: medical cannabis legalized^[49]
 Mississippi	c	decriminalized (first offense; 30 grams or less)	illegal	not clearly stated	illegal	<ul style="list-style-type: none"> 1978: decriminalized 2014: CBD legalized
 Missouri	e	misdemeanor	felony	not clearly stated	illegal	<ul style="list-style-type: none"> 2014: decriminalized 2014: CBD legalized
 Montana	d	medical use only	medical use only	medical use only	medical use only	<p>Personal use possession of 60 grams or less of marijuana is a misdemeanor punishable by up to 6 months imprisonment and a fine of \$100 – \$500. A second offense is punishable by up to 3 years imprisonment or a fine up to \$1,000 or both. Possession of more than 60 grams is a felony punishable by up to 5 years imprisonment or a fine up to \$50,000 or both. Possession of any amount of marijuana with intent to distribute is a felony punishable by up to 20 years imprisonment or a fine up to \$50,000 or both.</p> <p>^[50]</p>
 Nebraska	c	decriminalized (first offense only)	illegal	not clearly stated	illegal	<p>Possession of up to one ounce of cannabis is treated as a civil infraction for the first offense, and as a misdemeanor for the second and third offenses. A fine of up to \$300 may be issued for the first offense, along with potential court-mandated drug education courses. A second offense is punishable by a fine of up to \$500 and up to five</p>
State		Possession	Sale	Transportation	Cultivation	Notes

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State		Possession	Sale	Transportation	Cultivation	Notes
						days' jail time, and a third offense carries up to a \$500 fine and a maximum of one week in jail. ^[51]
 Nevada	a	legal	medical and recreational use	medical and recreational use	legal by adults 21+ of up to 6 plants per household	Home cultivator must reside 25 miles away from marijuana store. ^[52] On November 7, 2000, Nevada legalized medical marijuana when 65% of the populace voted yes on Question 9. ^{[53][54]} On November 8, 2016, the state legalized recreational marijuana when voters passed Question 2 by 54%. ^[55]
 New Hampshire	b	Decriminalized (up to three-quarters of an ounce)	medical use only	medical use only	medical use only	On July 18, 2017, New Hampshire Governor Chris Sununu signed a bill into law decriminalizing possession of up to three-quarters of an ounce. On July 23, 2013, New Hampshire legalized medical marijuana when Governor Maggie Hassan signed HB 573. ^{[56][57]} On July 11, 2015 Governor Maggie Hassan signs a law that expands the medical marijuana law. ^[58]
 New Jersey	d	medical use only	medical use only	medical use only	illegal	On January 18, 2010, New Jersey legalized medical marijuana when Governor Jon Corzine signed the New Jersey Compassionate Use Medical Marijuana Act. Maximum sentencing of 1 year in prison as a misdemeanor and a 1,000 dollar fine for possession of up to 50 grams. ^{[59][60]} On
State		Possession	Sale	Transportation	Cultivation	Notes






State		Possession	Sale	Transportation	Cultivation	Notes
						September 19, 2016 New Jersey Governor Chris Christie signed a measure expanding the state's medical marijuana law, further nullifying federal prohibition in practice. A coalition of representatives introduced Assembly Bill 457 (A457) in January. The new law adds post-traumatic stress disorder (PTSD) to the list of debilitating medical conditions that qualify a patient to receive medical marijuana under the New Jersey Compassionate Use Medical Marijuana Act. The Assembly passed A457 on June 16 by a 56-7 vote. After substituting the assembly bill for a Senate version, the Senate passed the measure 28-9 on Aug. 1. Gov. Christie's signature, the provision went into immediate effect. ^[61]
 New Mexico	d	medical use only	medical use only	medical use only	medical use only	In April 2007, New Mexico legalized medical marijuana when Governor Bill Richardson signed Senate Bill 523. ^{[62][63]}
 New York	b	decriminalized (unless open to public view ^[64])	misdemeanor (25 g or less)	not clearly stated	misdemeanor	On July 14, 2014, New York legalized medical marijuana when Governor Andrew Cuomo signed the Compassionate Care Act into law. The legislation only allows patients to ingest cannabis using edibles, oils, pills, or
State		Possession	Sale	Transportation	Cultivation	Notes

State		Possession	Sale	Transportation	Cultivation	Notes
						vaporization, and does not allow smoking of the plant material. ^{[65][66][67]}
 North Carolina	c	decriminalized (.5 oz or less)	illegal	illegal	illegal	<ul style="list-style-type: none"> 1977: decriminalized 2015: CBD legalized
 North Dakota	d	medical use only	medical use only	medical use only		On November 8, 2016, the state legalized medical marijuana when voters passed Measure 5 by 64%. ^[68]
 Ohio	b	decriminalized (civil infraction)	medical use only	not clearly stated	illegal	On June 8, 2016, Governor John Kasich signed legislation legalizing marijuana for medical use. ^[69]
 Oklahoma	e	medical use only	illegal	not clearly stated	illegal	<ul style="list-style-type: none"> 1933: criminalized^[70] 2015: governor Mary Fallin signed a bill legalizing cannabis oils for children with epilepsy.^[71]
 Oregon	a	legal	medical and recreational use	legal transport of up to 1 oz.; by January 1, 2016: legal transport of larger amounts by marijuana cultivators	legal cultivation by adults 21+ of up to 4 plants per household	Oregon voters approved Measure 91 on November 4, 2014, providing for regulated legal possession and sale of set amounts of cannabis. ^{[72][73]} Further cannabis reforms were signed into law on July 1, 2015 by Oregon Democratic Governor Kate Brown. ^{[74][75]} More medical cannabis reforms were signed into law on July 28, 2015 by Governor Brown to become effective from October 1, 2015. ^{[76][77]} On top of all the cannabis law reforms in Oregon, Governor Brown also signed a bill that sets a cannabis sales tax at 25 percent. ^[78]
State	e	Possession	illegal Sale	illegal Transportation	illegal Cultivation	Notes

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State		Possession	Sale	Transportation	Cultivation	Notes
 Pennsylvania		medical use only				For medical use only. Signed by Governor Wolf on April 17, 2016. Possession of 30g or less is a misdemeanor resulting in up to 30 days incarceration and a fine of up to \$500. Possession of more than 30g is a misdemeanor netting up to a year in jail and a \$5000 fine. ^[79]
 Rhode Island	b	decriminalized (civil violation)	medical use only	medical use only	medical use only	Possession of an ounce or less is a civil violation with a \$150 fine, three violations within 18 months is a misdemeanor with larger fines or prison or both. ^[80]
 South Carolina	e	misdemeanor ^[81]	illegal	not clearly stated	illegal	<ul style="list-style-type: none"> 2014: governor Nikki Haley signed into law Senate Bill 1035, "Julian's Law", following a unanimous Senate vote and a 92–5 House vote. The law allows children with severe epilepsy to be treated with CBD oil if recommended by a physician.^[82]
 South Dakota	e	misdemeanor	illegal	not clearly stated	illegal	Personal use possession of 2 oz or less is a Class 1 misdemeanor which is punishable by a maximum sentence of 1 year imprisonment and a maximum fine of \$2,000. ^[83]
 Tennessee	e	Possession of medical non-psychoactive CBD oil is allowed for patients suffering from seizures; otherwise misdemeanor*	felony	not clearly stated	misdemeanor: 9 plants or less; felony: 10+ plants	First-time possession offenders can complete one year of supervised probation instead of criminal penalty of one year incarceration; *Possession of 1/2 ounce
State		Possession	Sale	Transportation	Cultivation	Notes

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State		Possession	Sale	Transportation	Cultivation	Notes
		(less than 1/2 ounce; first or second offense only).				or more is automatic felony charge: possession for resale. Non-psychoactive CBD oil possession, as of Monday, May 4, 2015, is allowed, due to newly signed legislation, if a person is suffering seizures or epilepsy and has the recommendation of their doctor. ^[84]
 Texas	e	medical use of non-psychoactive CBD oil only; "Cite and Release" in Houston, Dallas, and Austin (for Austin, only for residents of Travis County)	felony	not clearly stated	illegal	"Both the current leadership and candidates for prominent political offices are increasingly calling for marijuana policy reform in the Lone Star State--In Texas, a conviction for possession of up to two ounces of marijuana can result in a jail sentence of up to six months and a fine of up to \$2,000." ^[85] On June 1, 2015 governor Greg Abbott signed a bill legalizing non-psychoactive CBD oil for medical use. ^[86]
 Utah	e	misdemeanor	felony	not clearly stated	illegal	House bill 105 was introduced by Representative Gage Froerer (R) and has been passed and signed by the governor. This bill would excuse anyone who was in possession of hemp extract. Hemp extract means an extract from a cannabis plant, or a mixture or preparation containing cannabis plant material, that is composed of less than .3% of THC by
State		Possession	Sale	Transportation	Cultivation	Notes

State		Possession	Sale	Transportation	Cultivation	Notes
						weight ^[87] Possession of less than an ounce can result in a 6-month incarceration and a maximum fine of \$1,000. Any amount over 10 ounces can result in a \$10,000 fine. Selling of any amount is a felony and will result with 5 years in prison and a \$5,000 fine. ^[88]
 Vermont	b	legal (up to one ounce)	illegal	medical use only	two mature plants four immature	On May 19, 2004, Vermont legalized medical marijuana when Governor James Douglas announced he would allow Senate Bill 76 to pass without his signature. ^[89] The law was further expanded in June 2007 when Senate Bill 7 passed without Governor Douglas' signature once again. ^[90] On June 6, 2013, Governor Peter Shumlin signed legislation (HB200) which decriminalized the possession of 1 ounce or less to a civil infraction. ^[91] The state house voted on January 4, 2018 to pass H.511, an amended version of the 2017 bill. ^{[92][93][94]} The bill would legalize adult personal possession of one ounce of cannabis of and allows individuals to cultivate two plants. The senate passed the bill by voice vote on January 10, 2018, becoming "An act relating to eliminating penalties for possession of limited amounts of marijuana by
State		Possession	Sale	Transportation	Cultivation	Notes






State		Possession	Sale	Transportation	Cultivation	Notes
						adults 21 years of age or older", to be sent to the governor who has stated he will sign it into law. Once it becomes law, its provisions will take effect on July 1, 2018. ^{[95][96]}
 Virginia	e	misdemeanor	illegal	not clearly stated	illegal	A first offense is an "Unclassified Misdemeanor", meaning the maximum penalty is 30 days in jail and a \$500 fine (or both), and loss of driving privileges. A subsequent offense is a Class 1 misdemeanor, with a maximum penalty of 12 months in confinement and a \$2,500 fine (or both), plus loss of driving privileges. A first-offense will qualify for a deferred disposition resulting in dismissal. This option requires a drug assessment, classes, community service, and loss of driving privileges for six months. The first-offender program is controversial according to some Virginia criminal defense attorneys and advocates for young men and women in the Commonwealth, primarily because it does not allow the defendant to qualify for expungement, and as a result, remains on the individual's record for life. ^[97]
 Washington	a	legal	medical and recreational use	legal	legal with restrictions and licensing	Marijuana was legalized by Washington Initiative 502 in 2012. The law requires state licenses from all sellers, distributors
State		Possession	Sale	Transportation	Cultivation	Notes

State		Possession	Sale	Transportation	Cultivation	Notes
						and producers of Marijuana, and permits anyone over 21 to carry one ounce. The state allows licensed growers to cultivate marijuana, but does not permit personal growing in one's home except for medical use. ^[98]
 West Virginia	d	medical use only; misdemeanor	medical use only; felony	not clearly stated	illegal	"Creates the "Compassionate Use Act for Medical Cannabis; providing for protections for the medical use of cannabis..." ^[99]
 Wisconsin	e	medical use of non psychoactive cbd oil only; misdemeanor on first offense, felony on subsequent offenses ^[100]	felony	"An Assembly bill allows qualifying patients to possess 12 marijuana plants and three ounces of marijuana leaves or flowers." ^[99]	felony	A first offense for possession of marijuana is a misdemeanor punishable by a fine of up to \$1,000 or imprisonment of up to 6 months, or both. A second offense is a Class I felony and is punishable by a fine of up to \$10,000 or imprisonment for up to 3.5 years, or both.
 Wyoming	e	medical use of non-psychoactive CBD oil only; misdemeanor otherwise	illegal	not clearly stated	illegal	"Being under the influence of marijuana is a misdemeanor punishable by a maximum of 90 days imprisonment and a maximum fine of \$100. Possession of three ounces or less is a misdemeanor that is punishable by a maximum of 1 year imprisonment and a maximum fine of \$1000." ^[101]
State		Possession	Sale	Transportation	Cultivation	Notes

Federal district

District		Possession	Sale	Transportation	Cultivation	Notes
 District of Columbia	b	legal ^[102]	medical use only; no provision for commercial sale	legal to carry up to 2 oz. (57 grams)	legal to grow up to six plants (only three mature at a time) for recreational purposes; no provision for commercial recreational cultivation	<ul style="list-style-type: none"> 1998: Initiative 59 was voted in to allow medical marijuana, but its effecting was blocked by Congress until 2009. 2014: D.C. Mayor Vincent Gray signed a bill that decriminalized possession of up to an ounce (28 grams) of marijuana in the U.S. capital for persons 18 years of age or older. The law made possession a civil violation with a penalty of \$25, lower than most city parking tickets. 2014, D.C. voted by ballot Initiative 71 to legalize marijuana possession and cultivation for personal recreational use (commercial production and sale not permitted); the law went into effect February 26, 2015 following 30 days of Congressional review.^[103]

By inhabited territory

State		Possession	Sale	Transportation	Cultivation	Notes
 American Samoa	e	illegal	illegal	illegal	illegal	In 1999, the Territory established a 5-year mandatory minimum sentence for possession of any amount of any illegal drug, to explicitly include marijuana, even when medically prescribed in another jurisdiction. ^[104]
 Guam	d	medical use only	medical use only	medical use only	medical use only	Residents passed a ballot measure on November 4, 2014 that allows cannabis for medical use only. ^[105]
 Northern Mariana Islands	e	illegal	illegal	illegal	illegal	In 2010, the CNMI House of Representatives approved a legalization bill to regulate and tax marijuana, ^[106] but the measure ultimately failed.
 Puerto Rico	e	medical use only	medical use only	medical use only	medical use only	On May 4, 2015, the governor of Puerto Rico signed an executive order legalizing medicinal marijuana in the U.S territory. ^[107]
 U.S. Virgin Islands	c	decriminalized	illegal	illegal	illegal	

By Native-American reservation

Reservation		Possession	Sale	Transportation	Cultivation	Notes
<u>Flandreau Santee Sioux Tribe</u> (South Dakota)	b	legal ^[108]	Legal sales since January 1, 2016		One single licensed grow site for the nation	In summer 2015, the tribal authorities voted 5–1 to legalize recreational cannabis, making them the first reservation to do so following the 2013 Cole Memorandum. ^[108]
<u>Suquamish Tribe</u> (Washington state)	b	legal	Legal sales since December 2015 ^{[109][110]}			In September 2015, the tribe signed the nation's first tribe-state cannabis pact, under which the tribe would operate a cannabis retail store with regulations paralleling those of Washington state. ^[111]
<u>Squaxin Island Tribe</u> (Washington state)	b	legal	Legal sales since November 2015 ^[112]			

See also

- Legality of cannabis

- [Legality of cannabis by country](#)
- [Legal history of cannabis in the United States](#)
- [Timeline of cannabis legalization in the United States](#)
- [Cannabis laws of Canada by province or territory](#)

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- [State marijuana laws – NORML \(http://norml.org/laws\)](http://norml.org/laws)
- [State medical marijuana laws – NCSL \(http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx\)](http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx)
- [State industrial hemp statutes – NCSL \(http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx\)](http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx)

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RELEVANT CITATIONS AND CASE LAW

CONTROLLED SUBSTANCES ACT (CSA), 21 U.S.C §§ 801 et seq.

- Establishes five classifications (“Schedules”) of regulated drugs based on potential for abuse, accepted medical use and other factors.
- The Drug Enforcement Agency classifies Marijuana as a schedule I drug – the most dangerous category - deemed to have high potential for abuse and no accepted medical value.
- Simple possession, manufacture, distribution, and dispensing of marijuana are illegal under the CSA.
- **21 U.S.C §856** (a) – (d), “Maintaining drug-involved premises” defines unlawful acts, criminal penalties, violations, and civil penalties for acts related to management and control of drug-involved premises.

21 U.S.C § 856 MAINTAINING DRUG-INVOLVED PREMISES

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful to--

- (1) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance;
- (2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

(b) Criminal penalties

Any person who violates subsection (a) of this section shall be sentenced to a term of imprisonment of not more than 20 years or a fine of not more than \$500,000, or both, or a fine of \$2,000,000 for a person other than an individual.

(c) Violation as offense against property

A violation of subsection (a) of this section shall be considered an offense against property for purposes of section 3663A(c)(1)(A)(ii) of Title 18.

(d) Civil penalties

(1) Any person who violates subsection (a) of this section shall be subject to a civil penalty of not more than the greater of

(A) \$250,000; or

(B) 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person.

(2) If a civil penalty is calculated under paragraph (1)(B), and there is more than 1 defendant, the court may apportion the penalty between multiple violators, but each violator shall be jointly and severally liable for the civil penalty under this subsection.

(e) Declaratory and injunctive remedies

Any person who violates subsection (a) of this section shall be subject to declaratory and injunctive remedies as set forth in section 843(f) of this title.

In re McGinnis, 453 B.R. 770 (Bankr. D. Or. 2011)

- Chapter 13 Debtor proposed a plan to be partly funded by income generated from medicinal marijuana sales.
- The bankruptcy court denied confirmation of the plan, because the plan was in violation of Bankruptcy Code 11 U.S.C. § 1325(a)(3), which requires chapter 13 plans be “proposed in good faith and not by any means forbidden by law.” Id. at 772.
- The court noted that profits from Debtor’s marijuana operation were illegal under Oregon’s Medical Marijuana Act and would require a change in state law to allow for sale of medical marijuana at a profit. Id. at 773.
- However, instead of dismissing or converting the case, the court stated that it would confirm the plan if the “[d]ebtor can propose an amended Plan [that] meets the requirements of the Bankruptcy Code”. Id.

In re Rent-Rite Super Kegs W. Ltd., 484 B.R. 799 (Bankr. D. Colo. 2012)

- Chapter 11 debtor knowingly rented space in its warehouse to tenants in the marijuana growing business; income from those leases generated approximately 25% of Debtor’s income. Id. at 803.
- Although growing marijuana was legal under Colorado law, the court found that Debtor’s business constituted an ongoing criminal violation of the federal Controlled Substances Act, placing creditors’ collateral at risk. Id. at 805-06.
- Whether characterized as “unclean hands” or simply as part of the totality-of-circumstances analysis, the court held that Debtor’s continued criminal activity satisfied the requirement of “cause” under §1112(b) and required dismissal or conversion of the chapter 11 case. Id. at 809.
- The court ordered a final hearing “concerning the issue of whether conversion of this case to a case under chapter 7 or dismissal of the case is in the best interests of the creditors and of the bankruptcy estate.” Id. at 811.

In re Arenas, 514 B.R. 887 (Bankr. D. Colo. 2014), aff’d, 535 B.R. 845 (10th Cir. BAP (Colo.) 2015)

- Chapter 7 debtor, in compliance with all Colorado state laws, was engaged in the business of producing and distributing marijuana. Id. at 888.
- Debtor also owned a 2-unit commercial building where Debtor carried out his business in one unit and leased the other unit to a marijuana dispensary. Id. at 889.
- The court found that the inevitable illegality of the trustee's administration of illegal estate assets constituted cause to dismiss under § 707(a) and granted the United States Trustee's motion to dismiss. Id. at 892.
- Additionally, the court held that Debtor was not entitled to convert to a chapter 13 because the court could not confirm a reorganization plan funded from the profits of federal crimes. Id.

In re Johnson, 532 B.R. 53 (Bankr. W.D. Mich. 2015)

- Chapter 13 debtor, a legal marijuana grower and licensed "caregiver" under the Michigan Medical Marihuana Act, filed his bankruptcy petition to prevent foreclosure on his home. Id. at 54.
- The United States Trustee filed a motion to dismiss, arguing that the Debtor appeared to be in violation of the CSA and was thereby ineligible for bankruptcy protections. Id.
- In consideration of the Debtor's legitimate need for relief under chapter 13, the court and Debtor's obligations under federal law, and Michigan's policy towards medical marijuana, the court enjoined Debtor from conducting his medical marijuana business while his case was pending rather than dismissing the case. Id. at 59.

In re Medpoint Mgmt., LLC, 528 B.R. 178 (Bankr. D. Ariz. 2015), vacated in part, No. BAPAZ151130KUJAJU, 2016 WL 3251581 (B.A.P. 9th Cir. June 3, 2016) *

- Four creditors filed an involuntary chapter 7 petition against alleged debtor Medpoint Management, LLC, an Arizona entity that manages medical marijuana dispensaries. Id. at 180.
- Although the cultivation and sale of medical marijuana is legal under Arizona law, The bankruptcy court granted Medpoint's motion to dismiss. Id. at 186.
- The court found that the prospects of a possible forfeiture or seizure of Medpoint's assets posed an unacceptable risk to a chapter 7 estate and to a chapter 7 trustee. Id.

- In addition to the risks of forfeiture of Medpoint's assets and the trustee's inevitable violation of the CSA in administration of this chapter 7 estate, the court also determined that the Unclean Hands Doctrine applied to Petitioning Creditors, barring them from relief in bankruptcy court. Id. at 187.
- Vacated and remanded on the issues of 1) Medpoint recovering attorney's fees, costs, and punitive damages, and 2) the court's denial of Medpoint's request for evidentiary hearing on those issues.

Northbay Wellness Grp., Inc. v. Beyries, 789 F.3d 956, (9th Cir. 2015)

- Debtor Beyries, an attorney, stole \$25,000 from his client Northbay, a medical marijuana dispensary. Id. at 958.
- Northbay brought a California state court action against Beyries, prevailing on conversion and breach of contract claims, and was awarded \$349,430.96. Id. Beyries later filed for chapter 7 bankruptcy. Id.
- Northbay commenced an adversary proceeding against Beyries, alleging that the state court award was nondischargeable under 11 U.S.C. § 523(a). Id.
- After trial, the bankruptcy court concluded that Beyries's misappropriation of the \$25,000 would ordinarily be a nondischargeable debt, however, the court held that the doctrine of unclean hands precluded any judgment for Northbay because the \$25,000 was created from the proceeds of illegal marijuana sales. Id. at 959. The court dismissed the adversary proceeding and Northbay appealed. Id.
- The Ninth Circuit reversed, finding that "the bankruptcy court abused its discretion by applying the doctrine of unclean hands to bar Northbay's request for a judgment of non-dischargeability." Id. at 961.
- The doctrine of unclean hands does not bar marijuana businesses access to bankruptcy courts in all instances.

Arm Ventures, LLC, 564 B.R. 77 (Bankr. S.D. Fla. 2017)

- Single asset real estate business filed chapter 11 on the eve of foreclosure. Id. at 80.
- Debtor's proposed reorganization plan relied on a tenant being approved by the state of Florida as a medical marijuana dispensary. Id. at 81.

- The court found that a plan that proposes to be funded through income generated by the sale of marijuana products cannot be confirmed unless the business generating the income is legal under both state and federal law. Id. at 84.
- The court determined that dismissal was not in the best interest of unsecured creditors, but granted relief from stay to the secured creditor. Debtor was ordered to file an amended plan that did not depend on marijuana as a source of income. Id. at 86-87.

SAMPLE MOTIONS TO APPOINT A RECEIVER

DISTRICT COURT, CITY AND COUNTY OF DENVER 1437 Bannock Street, Room 256 Denver, Colorado 80202		EFILED Document CO Denver County District Court 2nd JD Filing Date: Jan 5 2012 3:37 PM MDT Filing ID: 44647100 Review Clerk: Imran Sufi
Plaintiffs: _____		▲ COURT USE ONLY ▲ Case Number: 2012CV1302 Division: 376
vs. Defendants: _____		
Attorney for Plaintiff: Gregory Goodman (#35992) 6901 S. Pierce St., Suite 370 Littleton, CO 80128 Telephone: (303) 946-8525 Email: greg@goodmanlawco.com		
MOTION FOR TEMPORARY RESTRAINING ORDER OR APPOINTMENT OF RECEIVER		

Plaintiffs, via their undersigned counsel, allege, aver and state as follows:

INTRODUCTION

1. Plaintiffs filed their Complaint in this matter on February 29, 2012.
2. In the Complaint, Plaintiffs included a claim of foreclosure of a security interest consisting of ownership of a company and all of its assets –
3. Plaintiffs incorporate by reference all of their original factual allegations from the Complaint, as well as making additional factual allegations to support their current request for emergency relief (the additional allegations follow immediately below).
4. One of the business assets at issue was the possession and use of a commercial space in Boulder, CO together with an “optional premise cultivation location” allowing the production of medical marijuana (the “OPC Location”). The OPC Location was originally sold to Defendants, pursuant to the purchase agreement attached to the Complaint as Exhibit A.
5. Defendant (and its principal) was recently the subject of an enforcement action by the criminal division of the state Medical Marijuana Enforcement

Division. The state determined that Defendant Leon Cisneros had caused the OPC Location to be affiliated with another business owned by Mr. Cisneros, which he sold but then failed to properly surrender any remaining medical marijuana plants. The state sent armed agents to the OPC Location and destroyed all of the medical marijuana plants in the OPC Location.

6. Defendant [redacted] was subsequently evicted from the OPC Location and no longer has possession of it.

7. Upon information and belief, Defendant Silver Lizard's retail "medical marijuana center" no longer has an attached "optional premise cultivation location" as required by law.

8. Upon information and belief, Defendant Silver Lizard is insolvent. As of last week, it had failed to regularly pay its employees, and Defendant Leon Cisneros has ceased being involved in the day-to-day operation of the business.

9. In addition, according to published media reports last week, the Defendants were recently just visited in-person by agents (presumably from the Internal Revenue Service) regarding a "tax issue" involving one or both of the Defendants.

10. In addition, Plaintiffs have recently become aware of some sizable other loans or other debts that one or both Defendants are currently in default on, and which may further jeopardize the ongoing existence of the Defendants' business.

11. Finally, upon actual knowledge Defendant [redacted] is actively attempting to find a buyer for the [redacted] business (including actual ownership of the corporate entity), and Mr. [redacted] is attempting to conceal the existence of Plaintiffs' lien and security interest in the business, and whether or not he has satisfied the promissory note payable to Plaintiffs.

12. Defendant [redacted] (and his alter ego The [redacted]) appears to be trying to fraudulently transfer assets solely to avoid Plaintiffs' claims.

MOTION FOR TEMPORARY RESTRAINING ORDER

13. Plaintiffs will suffer irreparable harm in the absence of injunctive relief allowing them to enforce their security interest in assets that are in immediate danger of being destroyed, lost or transferred.

14. While Defendants asserted counterclaims in this matter, they are entirely lacking credibility given Mr. [redacted] recent and ongoing criminal conduct. This is a very simple case

involving non-payment of a promissory note – secured by a security interest in the business and assets of Defendant Silver Lizard – where the terms are not ambiguous and are capable of being interpreted and resolved by the Court as a matter of law.

15. In addition, Defendants have represented to the Court that somehow Defendants were not yet obligated to pay under the note at issue here, because the contingency of an approval by the state Medical Marijuana Enforcement Division had not yet been granted – assuming for sake of argument such was the case, Plaintiffs have confirmed with the state that according to their records the OPC Location was transferred / sold / conveyed to The [redacted] and is no longer affiliated with Plaintiffs.

16. As a general principle, injunctive relief should not be “loosely granted.” *Crosby v. Watson*, 355 P.2d 958, 959 (Colo. 1960). This initial threshold is overcome once the trial court is satisfied that injunctive relief is an “urgent necessity” to prevent irreparable harm to the movant. *Rathke v. MacFarlane*, 648 P.2d 648, 653 (Colo. 1982).

17. “[O]nce the trial court has determined that the threshold requirement has been met for the issuance of a preliminary injunction . . . it must then determine whether the moving party has established the prerequisites for preliminary relief” pursuant to Colo. R. Civ. P. 65. *Rathke*, 648 P.2d at 653. In exercising its discretion, the court must find that the moving party has demonstrated: (A) a reasonable probability of success on the merits; (B) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; (C) that there is no plain, speedy, and adequate remedy at law; (D) that the granting of a preliminary injunction will not disserve the public interest; (E) that the balance of equities favors the injunction; and (F) that the injunction will preserve the status quo pending a trial on the merits. *Id.*

18. In determining whether or not a movant has a reasonable probability of success on the merits, “the trial court [is] obliged to assess the proper legal standard and applicable burden of proof which would be required at a subsequent trial on the merits.” *Id.* at 655 (upholding trial courts denial of injunctive relief to Movant who did not establish that statute to be enjoined was unconstitutional beyond a reasonable doubt). Plaintiffs believes the arguments raised above speak for themselves and demonstrate that they have a reasonable probability of success.

19. Preliminary injunctive relief is an extraordinary remedy designed to protect a movant from sustaining irreparable injury. *Rathke*, 648 P.2d at 651. Here, Plaintiffs are owed a substantial sum of money by Defendants, who appear to be in the midst of going insolvent and

conveying assets, in addition to being subject to mounting criminal problems – Plaintiffs’ only hope for any recovery is the foreclosure of their valid security interest in The Silver Lizard LLC. Plaintiffs hope there is still time to salvage and repair the business before it is shortly run into the ground or fraudulently conveyed by Defendant. The true virtue of an injunction or TRO is the anticipation and prevention of injuries that are probable and threatened. *Wyman v. Jones*, 228 P.2d 158, 162 (Colo. 1951).

20. The rule that an injunction will not be granted where the remedy at law is full is generally applied to, for example, suits for an injunction against a levy or sale under an execution. *Compare, Hercules Equipment Co. v. Smith*, 335 P.2d 255, 257 (Colo. 1959) (there is not an adequate remedy at law if the remedy is doubtful or obscure), with, *Hercules Equipment Co. v. Smith*, 335 P.2d 255, 257 (Colo. 1959). But this is inapplicable given that by the time this matter is resolved, Defendants could have completely run The Silver Lizard LLC into the ground, or caused it to be shut down by the state or local authorities, or otherwise dissolved. In addition, it is well settled that irreparable damage to a business is an interest that can be protected by an injunction. *See Swart v. Mid-Continent Refrigerator Co.*, 360 P.2d 440, 442-43 (Colo. 1961) (injunction was appropriate to prevent mere confusion among the minds of customers that might damage Movant’s business); *Carroll v. Stancato*, 354 P.2d 1018, 1019 (Colo. 1960) (holding that injunction was needed to prevent further damage to Movant’s business).

21. In protecting the interests of Plaintiffs from the conduct of Defendants, the general interests of the public are also well served, because Defendants’ actions are wholly contrary to public policy (and have crossed the line into apparent criminal conduct as well). *See American Television & Com. Corp. v. Manning*, 651 P.2d 440, 446 (Colo. Ct. App. 1982).

22. “[B]y also requiring a finding by the trial court that the balance of equities favors injunctive relief, the trial judge is able to consider fully whether the threatened injury to the movant outweighs the threatened harm the preliminary injunction may inflict on the defendant.” *Rathke*, 648 P.2d at 654. Defendant [redacted] appears to have become personally insolvent, and Defendant [redacted] is no longer paying its financial obligations, and [redacted] is attempting to fraudulently transfer assets. He has refused to make payments under a black-and-white promissory note, and has deliberately allowed Plaintiffs’ security to be nearly destroyed. This behavior cannot be tolerated in a law-abiding society, particularly in this sensitive industry.

23. “The underlying purpose of a temporary injunction is to prevent a tort or wrong

and to preserve status quo until a final hearing and determination as to the controverted rights of the parties.” *Spickerman v. Sproul*, 328 P.2d 87 (Colo. 1958). Presently, the status quo will be preserved through a TRO by allowing Plaintiffs to take charge of and preserve the business assets. It is only the failure to grant a TRO that will permanently and irreparably alter the existing status quo – because within months or possibly even weeks Mr. [redacted] will have completely destroyed the business or caused it to be involuntarily shut down or seized. Only by removing Mr. [redacted] from any control of the company will the company even be able to survive (which benefits not only Plaintiffs, but also Defendants as well).

24. Plaintiffs have established that each of the elements required by *Rathke v. MacFarlane*, 648 P.2d 648, 653 (Colo. 1982), have been satisfied, and therefore request the issuance of an appropriate temporary restraining order after a hearing on the same if so desired by Defendants.

MOTION FOR APPOINTMENT OF RECEIVER

25. In the event that the Court will not or does not grant a temporary restraining order pursuant to Plaintiffs’ request above, Plaintiff would request in the alternative that the Court appoint a receiver for The [redacted] LLC pursuant to C.R.C.P. 66(a).

26. Plaintiffs claim to be the 100% owner of the company, pursuant to their valid security interest which by its own terms is self-executing, and they are entitled to the appointment of a receiver to safeguard their interest in the business.

27. The profits, personal property and very existence of the business itself, all of which are incident to Plaintiffs’ claimed ownership, are in immediate danger of being lost, destroyed, removed or materially injured or impaired due to the conduct of Defendants.

28. Plaintiffs thus request the appointment of a receiver to manage the affairs of The [redacted] LLC, including the attendant rights of Plaintiffs, all pursuant to C.R.C.P. 66(a).

WHEREFORE, Plaintiffs pray for this Court to grant the injunctive relief requested herein, or in the alternative to appoint a receiver, and for attorney fees and costs which have been and will be incurred pursuant to C.R.S. § 13-17-101, et seq., and such other and further relief as the Court deems proper.

2018 BANKRUPTCY BATTLEGROUND WEST

Respectfully submitted this 5th day of June, 2012.

GOODMAN LEGAL LLC

Duly signed original on file

/s/ Gregory Goodman

Gregory Goodman

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of June, 2012, a copy of the foregoing was delivered to the following via LexisNexis File & Serve:

Robert Hoban, Esq.
1626 Wazee Street, Suite 2A
Denver, CO 80202

Duly signed original on file

/s/ Gregory Goodman

Gregory Goodman

1 Jeffrey Matura, State Bar No. 019893
2 Melissa J. England, State Bar No. 022783
3 **GRAIF, BARRETT & MATURA, P.C.**
4 1850 North Central Avenue, Suite 500
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10 Send Court Documents To: Court-Info@gbmlawpc.com

11 Attorneys for Defendant

12 **ARIZONA SUPERIOR COURT**

13 **MARICOPA COUNTY**

14 , a single man,

Case No. CV2015-002274

15 Plaintiff,

16 **APPLICATION FOR APPOINTMENT
OF RECEIVER**

17 vs.

(Assigned to Honorable Randall Warner)

18
19
20
21
22 Defendants.

23 Pursuant to Arizona Civil Procedure Rule 66 and A.R.S. § 12-1241, defendants

24 and request that this Court appoint a receiver for ,

25 , a non-profit Arizona corporation awarded a Dispensary Certificate by the
26

1 Arizona Department of Health Services. A receiver is necessary because plaintiff
 2 will not provide written consent – as required by this Court’s previous Order – to
 3 operate DMC’s business, provide needed medicine to its patients, or pay its employees for their
 4 services. Therefore, absent a receiver, DMC’s business will cease operations on April 6, 2015,
 5 and many people will suffer, including the patients who rely upon DMC for medicine,
 6 (who is a 50% owner), DMC’s employees (including), and others
 7 affiliated with DMC. DHS may also pull DMC’s certificate, which is the only medical
 8 marijuana certificate awarded to the Payson CHAA.

9 This application is supported by this Court’s file and the following memorandum of
 10 points and authorities.¹

11 MEMORANDUM OF POINTS AND AUTHORITIES

12 This Court is familiar with this dispute. On March 24, 2015, and following a two-day
 13 hearing, this Court issued an Order that “ and are 50-50 owners of
 14 DMC. This Court also ruled that “Neither , nor shall act on
 15 behalf of DMC or cause DMC to do anything except with both and
 16 written consent. This includes everything DMC does.”² This Court then provided
 17 some examples of acts that neither party can undertake without the written consent of the other,
 18 including no employee can be paid, no product or material can be ordered or manufactured, no
 19 wholesale or retail product can be sold, no bill can be paid, and no contract can be signed.³
 20 Since this Court’s Order, has contacted on several occasions to
 21 request his written consent on issues necessary to DMC’s day-to-day business.

23
 24 ¹ and were not in favor of a receiver following the hearing on
 25 application for a preliminary injunction. Unfortunately, circumstances have
 26 quickly deteriorated because will not communicate or work with ,
 thereby making a receiver now necessary to protect DMC.

² See March 24, 2015 Order (emphasis added).

³ Id.

has refused to provide written consent (or even unwritten consent), thereby requiring a receiver.

Rule 66 and A.R.S. § 12-1241 provide this Court with discretion to appoint a receiver. Traditionally, a receiver was appointed to protect the property rights of litigants while the litigation proceeded. In 2007, the Arizona Court of Appeals, in Gravel Resources of Arizona v. Hills, 217 Ariz. 33, 170 P.3d 282 (Ariz. Ct. App. 2007), expanded a Court's discretion to appoint a receiver. In response to an argument that the trial court improperly appointed a receiver, the Court of Appeals provided the following guidance regarding A.R.S. § 12-1241:

In Arizona, however, a petitioner need not show irreparable harm or lack of an adequate legal remedy to obtain the appointment of a receiver. Section 12-1241 states that "[t]he superior court or a judge thereof may appoint a receiver to protect and preserve the property or the rights of parties therein, even if the action includes no other claim for relief." When a statute is clear and unambiguous, we apply its plain meaning. On its face, A.R.S. § 12-1241 requires no showing of irreparable harm or lack of an adequate legal remedy. Prior to its amendment in 1993, the statute provided that a receiver could be appointed "when no other adequate remedy is given by law." Ariz. Rev. Code § 3881 (1928), *amended by* ch. 43, § 1, 1993 Ariz. Sess. Laws. In revising the statute, however, the Legislature deleted that language.

The "decision to delete language . . . is strong evidence that [the] Legislature did not intend [the] omitted matter should be effective." Stein v. Sonus USA, Inc., 214 Ariz. 200, 203 ¶ 11, 150 P.3d 773, 776 (App. 2007) (internal citations omitted); *see also* 2 Ariz. Practice 2d § 4.6 (2007) ("This statutory elimination of the 'no other adequate remedy at law' requirement would appear to broaden the universe of cases in which a receiver may be appointed."). We so construe the statutory deletion here. In our view, the Legislature made it clear by deleting the omitted language that the lack of an adequate legal remedy is no longer a requirement for obtaining the appointment of a receiver. The statute simply requires the trial court to determine that the property or the rights of the parties need protection.

Id. at 37, 286.

As stated in Gravel Resources, the rights of DMC, [redacted] (as an owner), and [redacted] (as an employee), need protection. Here is a brief summary of what has occurred since this Court issued its March 24, 2015 Order:

1. [redacted] contacted Mr. [redacted] to request a meeting (without any attorneys present) to discuss DMC's business and operations. [redacted] did not respond.
2. [redacted] contacted [redacted] to obtain his written consent to pay DMC's employees. [redacted] did not respond, other than to tell [redacted] to have her lawyer contact his lawyer.
3. [redacted] contacted [redacted] to go through the inventory list together and to help [redacted] gain access to DMC's financial records. [redacted] did not respond.
4. [redacted] contacted [redacted] to obtain his written consent to purchase elixir for DMC's wholesale products. [redacted] did not respond, other than to tell [redacted] to have her lawyer contact his lawyer.
5. [redacted] contacted Mr. [redacted] to obtain his written consent to buy seeds, soil, nutrients, and other items to repot and care for DMC's cultivation plants. [redacted] did not respond. The plants require daily care, and even a single day closed could cause DMC to lose its entire cultivation.
6. [redacted], who is DMC's Senior Operations Manager, contacted [redacted] to obtain his written consent that DMC's employees could come to work on Monday, April 6, 2015, and that they would receive payment for their services. [redacted] did not respond, but instead had his attorney state that [redacted] will decide if any employee still

1 has a job with DMC (this statement is directly contrary to this Court's
2 Order that all decisions require the written consent of both and
3).
4

5 These examples are just a few of the many efforts of ; and others to obtain from .
6 his written consent on fundamental issues necessary to run DMC's business. 1
7 has not responded and has not shown any interest to protect DMC's business, its
8 customers, or its employees.

9 Due to failure to participate in DMC's business or to give written
10 consent to , DMC will officially close on Monday, April 6, 2015, which is the first
11 date under this Court's Order that unanimous written consent of and M
12 is required for "everything DMC does."⁴ Once the doors are closed, DMC is at risk to have
13 DHS pull its certificate pursuant to Arizona Administrative Code R9-17-310(A), which states:

14 A dispensary shall:
15 1. Ensure that the dispensary is operating and available to dispense
16 medical marijuana to qualifying patients and designated caregivers
17 at least 30 hours weekly between the hours of 7:00 a.m. and 10:00
18 p.m.;
19 This regulation requires DMC to operate and dispense medical marijuana for at least 30 hours
20 each week. But due to refusal to provide written consent for anything
21 involving DMC's business, DMC will not meet its requirement. The clock starts ticking at
22 7:00 a.m. on April 6, 2015.

23 A receiver is clearly necessary. Accepting this unfortunate fact, and I
24 request that this Court appoint Kevin Singer as the receiver. Mr. Singer has been
25 appointed as a receiver in over 200 cases and has substantial experience in performing the
26

⁴ See March 24, 2015 Order.

1 function of a Court-appointed receiver. He is also available and willing to serve as a receiver
2 in this case.⁵ Mr. Singer's curriculum vitae is attached as Exhibit 1.

3 Time is running short to save DMC. Within just a few days, its doors will close and its
4 patients will be turned away. [redacted] and [redacted] did not want or cause this situation.
5 But this Court's prior Order was very clear – [redacted] must agree in writing to
6 everything that DMC does. [redacted] has sought that written agreement, bu
7 has refused. A receiver is therefore necessary; otherwise, DMC will be gone.

8 For these reasons, [redacted] and [redacted] request that this Court appoint a receiver
9 (specifically, Mr. Singer) over DMC. A proposed order and a motion for expedited
10 consideration are also filed with this Court.

11 Dated this 3rd day of April 2015.

12
13 GRAIF BARRETT & MATURA, P.C.

14
15 By /s/ Jeffrey C. Matura
16 Jeffrey C. Matura
17 Melissa J. England
18 1850 North Central Ave., Suite 500
19 Phoenix, Arizona 85004

20 By _____
21
22
23
24

25 _____
26 [redacted], her counsel, and [redacted] do not have any prior relationship with Mr. Singer.
Rather, he is recommended solely due to his qualifications, experience, interest, and fee
structure, all of which would benefit DMC.

SAMPLE COURT ORDERS TO APPOINT A RECEIVER

DISTRICT COURT, CITY AND COUNTY OF DENVER 1437 Bannock Street, Room 256 Denver, Colorado 80202		EFILED Document CO Denver County District Court 2nd JD Filing Date: 06/18/2012 2:33 PM MDT Filing ID: 44847856 Review Clerk: Kari S Elizalde
Plaintiffs: _____, a Colorado corporation vs. Defendants: _____, a Colorado limited liability company		▲ COURT USE ONLY ▲ Case Number: 2012CV1302 Division: 376
ORDER REGARDING STIPULATION AND APPOINTMENT OF RECEIVER		

THIS MATTER comes before the Court on Plaintiffs' motion for appointment of a receiver pursuant to C.R.C.P. 66. The parties stipulated to the appointment of a receiver, as well as staying all deadlines in this case until August 17, 2012, and the Court entered an oral ruling approving of the same.

THE COURT HEREBY FINDS, ORDERS, ADJUDGES AND DECREES THAT:

1. The Court has reviewed the resume of the receiver proposed by Plaintiff and hereby finds that _____ is a suitable person to be a Receiver for The _____ LLC and its property, and SCOTT HANSEN hereby is appointed Receiver of The Silver Lizard LLC's medical marijuana business and its property, including, but not limited to, (i) _____ LLC's retail medical marijuana center and its related OPC facility, (ii) other personal property of including medical marijuana, inventory, fixtures, grow equipment, office equipment, supplies, computers, and cash on hand, (iii) the profits, revenue, and other income derived from, or generated by, The _____ LLC, and (iv) any other property owned by The _____ LLC ("the Receivership Property").
2. The Receiver, as an officer of this Court, shall take possession, charge and control of the Receivership Property and hereby is authorized and is directed to (if commercially feasible): a) to protect, operate and manage the Receivership Property, b) to hire a qualified manager and/or other qualified personnel to operate The _____ LLC's retail medical marijuana center, c) to communicate with local authorities and the Colorado Department of Revenue Medical Marijuana Enforcement Division and submit any information or records to such authorities that they may reasonably request, d) to assist in securing a new lease for The _____ LLC's retail operation in Denver, e) to hire and supervise growers, sales personnel and any other employees or independent contractors necessary for the short-term operation of The _____ LLC.

_____, medical marijuana grow business and medical marijuana center, f) to ensure compliance with applicable state and local laws, and g) to solicit and evaluate all reasonable offers for the proposed purchase and sale of the Receivership Property, including offers which involve as the consideration a potential buyer assuming all of the company's pre-existing debts.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

3. Defendant _____, and any agents acting on his behalf, are ordered to deliver immediately to the Receiver or his agents, all Receivership Property described above, including, without limitation, keys to the property, and all other things of value relating to the Receivership Property (including, without limitation, such records and other papers in their possession or under their control as may be pertinent), and continue to deliver immediately to the Receiver all books, and other records relating to the operation, maintenance and management of the Receivership Property, and to permit the Receiver to carry out his duties hereunder without interference and to cooperate when requested.
4. From the date of this Order and until further order of this Court funds due with respect to this Receivership Property shall be due and payable to the Receiver and not to Plaintiffs or Defendants, and the Receiver shall be, and hereby is, empowered and directed to demand, receive and collect all funds due with respect to this or any other sums due but unpaid or hereafter to become due during the pendency of this Receivership.
5. Plaintiffs and Defendants and all other persons hereby are enjoined from transferring or encumbering the Receivership Property without the consent of the Receiver or order of this Court. Defendant _____ is prohibited from further participation in the operation and management of The _____ LLC while this Order remains in effect.
6. The Defendants are ordered to deliver all bank accounts (if any) with funds from the Receivership Property, and the Receiver hereby is authorized to seize all such bank accounts by delivery of this order to the bank or banks. The Plaintiffs and the Defendants are hereby enjoined from transferring funds from such bank accounts.
7. Defendants immediately shall deliver over to the Receiver all books, financial records, including all accounts receivable and payable, leases, applications to governmental agencies, tax documents and all other records concerning the Receivership Property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

8. The Receiver shall apply all income derived from the property in the following Order: (a) First toward the actual operating and management expenses of the Receivership Property incurred by the Receiver including Receiver's payment of wages to employees or contractors, (b) Second toward the expenses of the Receivership including, but not limited to fees of professionals engaged by the Receiver as may be

2018 BANKRUPTCY BATTLEGROUND WEST

authorized by this Order or further Order of Court, (c) Third toward the payment of any taxes currently due and owing, (d), Fourth, towards immediately necessary capital expenditures, and (e) Lastly the remaining income shall be held in the Receiver's account and shall be accounted for in the Receiver's final accounting.

9. The Receiver shall not be compensated for his time, but he is authorized to employ such persons as are necessary to operate the business.
10. The Receiver is authorized to establish a separate bank account in the Receiver's name referencing the Property and the Receiver to deposit all sums received in, and to disburse all funds from, this account.
11. The Receiver shall account for all sums received and expended in a monthly report. Any excess funds in the Receiver's account or any other Th _____ LLC account shall be disbursed only in accordance with this Order or the further Order of this Court. The Receiver is authorized to endorse on behalf of The _____ LLC, all checks he receives which are payable to The _____ LLC and which relate to the income and expenses of the Receivership Property or other income or expenses of The _____ LLC business. All such funds shall be accounted for in the Receiver's monthly reports.
12. The Receiver, without the further approval of Court, may pay bills in the amount of up to \$5,000.00 per bill and borrow funds of up to \$10,000.00 on such commercially reasonable terms as the Receiver is able to procure. Any borrowing by the Receiver in excess of this amount shall not be allowed or approved by this Court unless it is approved by Plaintiffs, whose approval may not be unreasonably withheld if it is in the best interest of the business. The Receiver may also, without prior approval of the Court, enter into commercially reasonable lease agreements for either or both of a new medical marijuana center location and new OPC facility location.
13. The Receiver or any party to this action, at any time, on proper and sufficient notice may apply to this Court for further instructions or clarifications, whenever such instructions or clarifications shall be deemed necessary to enable the Receiver to perform his duties.
14. The Receiver shall not initially be required to post a bond to insure proper and faithful performance of his duties in accordance with this order.
15. The Receiver shall include in his periodic reports any compensation paid for that period, which compensation shall be deemed reasonable, absent an objection by a party to the matter, prior to the Receiver being discharged. When the Receiver files his final report and motion for discharge as set forth below, the Receiver shall file with this Court for final approval of the fees paid to the Receiver.
16. The Receiver has already assumed his duties, but henceforth may only continue to undertake them in accordance with this Order.

17. Sheriff's assistance to enforce the terms of this Order in the form of peacekeeping duties is hereby authorized.
18. The parties or Receiver may from time to time request that the Court enter additional orders to supplement, clarify or amend this Order.
19. The Receiver shall continue in possession of the Receivership Property until discharged by the Court.
20. The Receiver shall not be responsible for the preparation of any tax returns for the parties or any of their respective affiliates.
21. This Receivership shall continue until the Court discharges the Receiver and its sureties and dismisses this case.
22. The Receiver may not sell, convey or transfer, or offer to do the same, any stock, ownership interest or equity in The _____ LLC without the consent of both Plaintiffs and Defendants, which consent may not be unreasonably withheld, conditioned or delayed if the proposed transaction is deemed by the Receiver, in his commercially reasonable discretion, to be in the best interests of The _____ LLC, the Receivership Property and the company's pre-existing creditors.
23. The Receiver may enter into any repayment agreements or repayment schedules with the landlord for outstanding rent on The _____ LLC premises as the Receiver deems appropriate in his commercially reasonable business discretion.
24. All pending deadlines in this matter, including any Civil Access Pilot Project deadlines, are STAYED pending further order of the Court. The parties are ORDERED to appear on August 17, 2012 at 8:30 a.m. for a status conference, at which time the Court will consider extending such stay based upon the status of the Receivership Property, the arguments of the parties, etc.
25. Notwithstanding anything in this Order to the contrary, it is ORDERED that any personal property and equipment which was used by Defendants and which is located in The _____ LLC's former OPC space in Boulder _____), remains the personal property and equipment of Plaintiffs and must be delivered to Plaintiffs, who may repossess such personal property and equipment and are ordered to use good-faith efforts to sell such property and equipment in order to mitigate their damages in this lawsuit, and Plaintiffs must provide adequate proof of such good-faith efforts. Such personal property and equipment will NOT be deemed part of the Receivership Property.
26. Nothing in this Order will be deemed to affect the priority of any lien claims of any creditor of Defendants, or the validity of any debts or other contractual obligations of Defendants, including those held by or claimed by the Receiver or any persons or businesses he may be affiliated with.

Dated this 15th of June, 2012.

COPY FOR
CERTIFICATION

FILED
12-16-15 3:30pm
MICHAEL K. JEANES, Clerk
By J. Beel

STEVEN N. BERGER, SBA #009613
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CERTIFIED COPY

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

an Arizona limited
liability company,

Plaintiff,

vs.

an Arizona non-
profit corporation;
unmarried man; a
an unmarried woman,

Defendants.

Case No. CV 2015-009556

ORDER APPOINTING RECEIVER

This matter came before the Court on the *Verified Complaint and Application for Appointment of Receiver With Notice* (the "Complaint") and the *Application for Order to Show Cause Why Receiver Should Not Be Appointed* (the "Application") filed by Plaintiff ("Plaintiff"). Good cause appearing for appointment of a Receiver for the purpose of preserving, protecting and controlling all personal property (collectively, the "Collateral") securing the indebtedness of ("Borrower") to Plaintiff, as described in the Application, together with the Borrower's medical marijuana dispensary license and its business operations (collectively, the "Property"), and

The Court having further determined that Receivership Specialists, by and through Kevin Singer, its agent (the "Receiver"), is qualified to be appointed receiver for the Property described herein, pursuant to A.R.S §12-1241 and Ariz.R.Civ.P. 66(b)(1), and that upon posting a bond in the sum of \$ 15,000.00 pursuant to Ariz.R.Civ.P. 66(b)(2) (the "Bond"), Receiver is

{0005185.0000;00605334.DOC / }

ENGELMAN BERGER, P.C.
3636 North Central Avenue, Suite 700
Phoenix, Arizona 85012

1 empowered by the Court to act as Receiver for the Property,

2 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

3 1. The Receiver is hereby appointed as receiver of the Property.

4 2. Upon posting the Bond with the Clerk of the Court, this Order shall become effective.

5 3. The Receiver shall take immediate possession of and control over all property owned
6 by, controlled by, or in the name of Borrower, including without limitation all cash, accounts,
7 inventory, rights to payment, goods, equipment, furnishings, and general intangibles, together with
8 Borrower's business operations, Borrower's medical marijuana dispensary registration certificate, and
9 all other permits and licenses pertaining to the operation of Borrower's business, both tangible and
10 intangible, of whatever kind and description and wherever situated (collectively, the "Property") and
11 the proceeds and profits derived from them (collectively, the "Proceeds and Profits").

12 4. Receiver is authorized to enter into and take possession of the real property located at
13 _____ (the "Leased Premises"), subject to the
14 terms and conditions of the lease between Borrower and _____ ("Landlord").

15 5. The Receiver is granted the power and authority to:

16 a. Take immediate possession of and control over the Property;

17 b. To assume full control of Borrower by removing, as the Receiver deems
18 necessary or advisable, any director, officer, independent contractor, employee, or agent of
19 Borrower, from control of, management of, or participation in the affairs of Borrower;

20 c. Perform all services and take all actions necessary to operate, manage, care for,
21 maintain, recover, gain possession and control over, protect and preserve, lease, complete the
22 construction of, market for sale, and sell all or a portion of the Property, including without
23 limitation: (i) to employ, supervise, discharge and pay all servants, employees, contractors,
24 managers, accountants, attorneys and other professionals it deems necessary or advisable to
25 manage the Property, (ii) to bring, prosecute, defend against, compromise, adjust or intervene
26 in such legal actions or proceedings as the receiver deems necessary to manage the Property,
27 (iii) to borrow from Plaintiff funds reasonable and necessary to manage the Property, and

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Plaintiff has no obligation to loan any additional funds, but if Plaintiff agrees to do so, such additional funds ("Receivership Advances") shall be secured by Plaintiff's Loan Documents (as defined in the Complaint), and shall be secured by personal property security interests, and assignments of rents, issues, and profits encumbering the Property with the same priority as Plaintiff's existing liens and security interests under the Loan Documents, and the Receiver shall be authorized to issue Receivership Certificate(s) to Plaintiff, at Plaintiff's request, reflecting the amount and priority of the Receivership Advances; (iv) to borrow from third-parties, other than Plaintiff, reasonable and necessary to manage the Property, and if such third-parties agree to do so, these Receivership Advances shall be secured by the Property subject and subordinate to Plaintiff's first, senior priority interest in the Property, and the Receiver shall be authorized to issue "Receivership Certificates" to such third-parties reflecting the amount and priority of such Receivership Advances; (v) to receive and evaluate any and all offers for the purchase or lease of part or all of the Property; (vi) to make such changes to the management and control of Borrower as the Receiver, in the exercise of the Receiver's business judgment, deems necessary and appropriate to protect, preserve and operate the Property, including but not limited to appointing new officers and directors of Borrower; (vii) to negotiate with vendors in the ordinary course of business; and (viii) to enter into contracts to manage the affairs of Borrower;

d. Collect all accounts, rents, issues, income, profits and monies derived from the Property, and apply them first to payment of the cost of managing the Property, then to payment of the Receiver's fees and expenses, then to the payment of all amounts owed to Aquestus, and then to the payment of any amounts owed to other creditors and other parties;

e. Take possession and control of all the records, correspondence, insurance policies, books and accounts of Borrower which disclose or refer to the assets, Proceeds and Profits and/or liabilities pertaining to the Property, whether in the possession and control of Borrower or the agents, servants or employees of Borrower;

f. To continue in effect any contracts or agreements presently existing and not in

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default relating to the Property;

g. To enter into, modify or terminate any contracts or agreements affecting any part or all of the Property including, without limitation, any and all leases affecting the Property;

h. To expend funds to purchase merchandise, materials, supplies and services as the Receiver deems necessary and advisable to assist in performing the Receiver's duties hereunder and to pay the ordinary and usual rates and prices out of the funds that may come into the possession of the Receiver;

i. To apply for, obtain and pay any reasonable fees for any lawful license, permit, or other governmental approval relating to the Property or the operation thereof; confirm the existence of and, to the extent permitted by law, exercise the privileges of any existing license, certificate or permit, and do all things necessary to protect and maintain such licenses, certificates, permits and approvals and to maintain the status and resources required of Borrower under Arizona law to remain eligible for its Dispensary Registration Certificate for a dispensary in Phoenix, Arizona and to establish or maintain any cultivation and/or infusion locations in accordance with the Arizona Department of Health Services' ("DHS") regulations and Arizona statutes;

j. To hire, manage, and terminate the employment of any employee, contractor, or agent to conduct Borrower's business and/or to maintain the status and resources required of Borrower under Arizona law to remain eligible for its Dispensary Registration Certificate for a dispensary in Phoenix, Arizona and to establish or maintain any cultivation and/or infusion locations in accordance with the DHS regulations and Arizona statutes;

k. To interact as Borrower's authorized management agent with any governmental entity, agency, department, employee, agent, or inspector in connection with obtaining any approvals, certificates, licenses, rights of occupancy or use, zoning approval, variances, special use permits, permits, or rights or approvals required by Arizona law for Borrower to remain eligible for its Dispensary Registration Certificate for a dispensary in

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Phoenix, Arizona and to establish or maintain any cultivation and/or infusion locations in accordance with the DHS regulations and Arizona statutes;

l. To open and utilize bank accounts, including existing bank accounts of Borrower, for Receivership funds;

m. To present for payment any checks, money orders and other forms of payment made payable to Borrower which constitute Proceeds and Profits of the Property, endorse same and collect the proceeds thereof, such proceeds to be used and maintained as elsewhere provided herein;

n. To prepare an inventory setting forth a list of all personal property of which the Receiver has taken possession by virtue of the appointment within thirty (30) days after the effective date of this appointment, and to prepare a supplemental inventory if the Receiver later takes possession of other personal property;

o. To provide Plaintiff with monthly profit/loss statements and balance sheets pertaining to the Property, which Receiver will file with the Court and serve on all parties hereto in his monthly Receiver reports;

p. to continue to conduct the business of Borrower in such a manner and for such a duration as Receiver may in good faith deem to be necessary or appropriate to operate the business profitably and lawfully;

q. To conserve, hold, and manage all assets of Borrower, and to perform all necessary or advisable acts to preserve the value of those assets in order to prevent any irreparable loss, damage, or injury to consumers or creditors of Borrower, including, but not limited to, obtaining an accounting of assets and preventing transfer, withdrawal, or misapplication of assets;

r. To generally do such other things as may be necessary or incidental to the foregoing specific powers, directions and general authorities and to take such actions relating to the Property which are provided in the Loan Documents and provided by law;

s. To pay, in full or in part, any claims of creditors other than Plaintiff relating to

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the Property that arose prior to the Receiver taking possession of the Property;

t. All of the of the foregoing powers, together with all other powers, duties, and actions related to the operation of Borrower's medical marijuana dispensary business and day-to-day operations, are referred to collectively as the "Management Functions").

6. The Receiver is authorized to immediately engage the services of a management agent (the "Manager") to perform any or all of the Management Functions on the Receiver's behalf, as the Receiver determines appropriate in the exercise of his discretion. The Receiver may execute a final Management Agreement that delegates the Management Functions to the Manager in accordance with the terms set forth above, and that includes, at a minimum, the following additional terms:

a. The Manager shall perform all services designated by the Receiver or believed in the business judgment of the Manager to be necessary to operate in compliance with Arizona law, subject to control and oversight by the Receiver.

b. The Management Agreement shall be terminable: (i) at the will and upon the discretion of Receiver; (ii) immediately at the will and upon the discretion of this Court; or (iii) automatically upon conclusion or termination of the receivership in this action.

c. The Manager shall obtain and be authorized to obtain all required dispensary cards for all necessary employees or agents of Borrower and, to the extent required by Arizona law, for the Receiver and its personnel.

d. The Manager shall be obligated to operate the dispensary and to establish and/or maintain any cultivation or infusion facilities.

e. The Manager shall be authorized to interface with DHS and all other relevant governmental agencies on behalf of the Borrower.

f. The Manager shall hire, manage, and terminate the employment of any employee, contractor, or agent to the extent such action is necessary for Borrower to maintain the status and resources required of it under Arizona law to remain a dispensary.

g. The Manager shall provide to the Receiver monthly accounting reports.

7. Receiver shall provide notice to this Court and the parties when it has executed a

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1 Management Agreement with the Manager certifying that the terms of the written Management
2 Agreement comply with the terms of this Order and attach an executed copy of the Management
3 Agreement. Additionally, Receiver shall, in the monthly report to this Court, report on the efforts and
4 expenditures of the Manager, the status of the Management Agreement, and Receiver's
5 recommendations, if any, regarding the continuation, termination, or modification of the Management
6 Agreement.

7 8. In order to fulfill their duties, the Receiver and the Manager, at all reasonable times,
8 shall be given access by Borrower, for purposes of review, inspection and copying, Borrower's
9 records, including but not limited to: accounts receivable, accounts payable, deposit and checking
10 account records, customer records, invoices, income and expense records, compensation, personnel,
11 and all other records relating to the Property.

12 9. The Receiver and Manager empowered to do any other acts which may be reasonably
13 necessary and proper to carry out the present Order. The specific powers enumerated in this Order
14 shall not exclude the general authority granted to the Receiver for any reasonable purpose relating to
15 the proper and efficient operation and maintenance of the Property.

16 10. Receiver may also take possession of and receive from any and all banks, savings and
17 loan associations and/or any financial institutions any monies and funds on deposit in said banks,
18 savings and loan associations and/or any financial institutions in the name of Borrowers, to the extent
19 that said accounts contain Rents and profits. Receiver's receipt of said monies and funds shall
20 discharge said banks, savings and loan associations and/or any financial institutions from further
21 responsibility for accounting to said account holder for monies and funds for which the Receiver shall
22 give his receipt.

23 11. The Court hereby Orders that Borrower, and their officers, agents, partners, servants,
24 employees and attorneys, and all other persons in active concert or participation with Borrower, or
25 their officers, agents, partners, servants, employees and attorneys, to deliver to the Receiver:

26 a. All personal property, equipment, accounts, inventory, keys, bank accounts,
27 cash, records, documents, leases and other material relating to the Property that are in their

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possession, custody or control, including, but not limited to, all accounting records, ledgers, journals, books and records, computer data, and all materials and documents relating to the Property;

b. All documents which constitute or pertain to all licenses, permits or governmental approvals relating to the Property;

c. All appraisals, surveys, tax assessments, photographs, and any and all other documents relating or pertaining to the value and condition of the Property;

d. All documents which constitute or pertain to insurance policies, whether currently in effect or lapsed, which relate to the Property;

e. All leases and subleases, side agreements, renewals, broker leasing agreements, royalty agreements, licenses, franchise agreements, licensing agreements, property management agreements, assignments or other agreements of any kind whatsoever, whether currently in effect or lapsed, which relate to any interests in the Property;

f. All documents pertaining to past, present or future construction of any type with respect to all or any part of the Property;

g. All documents of any kind pertaining to any and all toxic chemicals or hazardous materials, if any, ever brought, used and/or remaining upon the Property, including, without limitation, all reports, inventories, surveys, inspections, checklists, proposals, orders, citations, fines, warnings and notices; and

h. All rents and profits derived from the Property and all accounts, including bank accounts, operating accounts, security deposit accounts (including, without limitation, all security deposits, advances, prepaid rents, late fees, and parking fees) wherever and in whatsoever mode maintained, whether or not such accounts are in the name of the Borrower, to the extent that any such accounts not in Borrower's name have been used by or on behalf of Borrower.

12. Borrower shall cooperate fully with the Receiver and abide by the Receiver's requests for information and documentation so that the Receiver may perform its function with full

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1 information and knowledge. Borrower shall not in any manner interfere with or hinder the operations
2 of the Receiver.

3 13. The Court hereby enjoins and restrains Borrower from collecting any rents, profits,
4 income, receivables or other monies from the Property and from otherwise interfering with the
5 Property in any manner during the course of the Receivership. The Court orders Borrower to turn
6 over to Receiver all income or monies held by or received by them from and after the date of the
7 Court Order in response to this Application and grant a constructive trust over all such income in
8 favor of Plaintiff.

9 14. The Court orders that the Receiver maintain books and records of account for the
10 Property, and account to the Court and all parties periodically with respect to the receipt of income
11 and the expenditure of funds in connection with the Receiver's expenses and the Property. Expenses
12 incurred by the Receiver should be reasonable and directly related to the operation of the Property.
13 The Receiver should maintain receipts and verification of the expenses incurred, showing that they
14 are related to the Property. The Receiver's books and records should be maintained at the Receiver's
15 notice address. The Receiver should ensure such control over accounting and financial transactions
16 as is reasonably required to protect the Property from theft, negligence or fraudulent activity on the
17 part of the Receiver's employees, contractors, subcontractors, service vendors or agents.

18 15. The Court directs and empowers the Receiver to deposit all income collected from the
19 Property in an interest bearing account (the "Operating Account") at a federally-insured bank, in the
20 name of the Receiver in trust for Plaintiff. The parties should be given notice of the account number
21 and location of the Operating Account.

22 16. The Court orders that the Receiver will receive, as compensation for its services
23 ("Receiver's Compensation"): an hourly rate of not more than _____ per hour for work performed
24 by Kevin Singer, and not more than _____ or work performed by other staff of the Receiver. The
25 Court further orders that the Receiver, in its sole discretion, may use other outside professionals to
26 perform its services. Receiver shall also be reimbursed for direct expenses incurred in connection
27 with its duties as Receiver.

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1 17. The Receiver's Compensation shall be paid from the proceeds and revenue generated
2 by the Property. To the extent such proceeds and revenue are insufficient to fund the payment of the
3 Receiver's Compensation, Plaintiff may, but is not obligated to, include the Receiver's Compensation
4 in the Receiver's Advances.

5 18. The Receiver's Compensation, and reimbursement of the Receiver's expenses, shall be
6 paid periodically, but not more frequently than on a monthly basis. The Receiver shall send written
7 notice to all parties of the amount of the Receiver's Compensation, and expense reimbursement
8 requested and file such notice with the Court. Any party objecting to any portion of the Receiver's
9 Compensation shall have five (5) calendar days within which to object, with such objection to be in
10 writing, filed with the Court, and served on the other parties. If there were no timely objections to
11 any periodic request for the Receiver's Compensation, such shall be paid to the Receiver from the
12 proceeds and revenue generated from the Property.

13 19. The Court orders that **ANY PERSON WHO INTERFERES WITH THE**
14 **RECEIVER, WILLFULLY OBSTRUCTS THE CONDUCT OF THE RECEIVER, OR**
15 **DAMAGES OR CONCEALS THE PROPERTY OF THE RECEIVERSHIP ESTATE MAY**
16 **BE SUBJECT TO CIVIL OR CRIMINAL CONTEMPT.**

17 20. The Court orders that in addition to the powers set forth herein, the Receiver will have
18 and enjoy the powers otherwise provided by law.

19 21. The Receiver will not be liable for any act or omission of Defendants or any of their
20 respective officers, directors, owners, members, shareholders, agents, representatives, professionals,
21 and employees, or be held to any personal liability whatsoever in tort, contract, or otherwise in
22 connection with the discharge of its duties under this Order, except for liabilities arising from the
23 Receiver's bad faith, willful malfeasance, or reckless disregard of duty. Without limiting the
24 foregoing, the Receiver shall not be liable to any other party in any way for any damages or liability
25 resulting from the existence or use, discharge, or storage by any person other than the Receiver of any
26 hazardous substance defined in 42 U.S.C. §§9601-57. In addition, Plaintiff will not be liable for any
27 act or omission of the Receiver.

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1 22. No person or entity shall file suit against Receiver, or take other action against
2 Receiver, without an order of this Court permitting the suit or action provided, however, no prior
3 Court order is required to file a motion in this action to enforce the provisions of this Order or any
4 other order of this Court in this action.

5 23. The receivership estate and its employees, agents, attorneys and all professionals and
6 management companies retained by the Receiver shall have no liability for any obligations, or debts
7 incurred, by Borrower. The Receiver and his employees, agents and attorneys shall have no personal
8 liability, and they shall have no claim asserted against them relating to the Receiver's duties under
9 this Order, without prior authority from this Court as stated in ¶22 above.

10 24. Nothing contained in this Order shall be construed as obligating or permitting the
11 Receiver to advance his own funds to pay any costs and expense of the receivership estate.

12 25. The Receiver or Plaintiff may at any time apply to this Court for further or other
13 instructions and powers necessary to enable the Receiver to properly perform the Receiver's duties.

14 26. The Receivership shall terminate at such other time as determined by the Court or
15 upon application by Plaintiff, or by agreement of the parties or upon request by the Receiver if the
16 Receiver determines it is not economically feasible to perform its duties hereunder.

17 DATED this 16th day of December 2015.

18
19 _____
Superior Court Judge
20
21
22
23
24
25
26
27

1 Jeffrey Matura, State Bar No. 019893
2 Melissa J. England, State Bar No. 022783
3 GRAIF, BARRETT & MATURA, P.C.
4 1850 North Central Avenue, Suite 500
5 Phoenix, Arizona 85004
6 Tel: (602) 792-5700
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8 jmatura@gbmlawpc.com
9 mengland@gbmlawpc.com
10 Send Court Documents To: Court-Info@gbmlawpc.com

11 Attorneys for Defenda

12 ARIZONA SUPERIOR COURT

13 MARICOPA COUNTY

14 a single man,

Case No. CV2015-002274

15 Plaintiff,

ORDER APPOINTING RECEIVER

16 vs.

(Assign

22 Defendants.

24 Pursuant to defendants T^h and Verified Application for
25 Appointment of Receiver, and good cause appearing, IT IS HEREBY ORDERED as follows:
26

APPOINTMENT

1. Kevin Singer is appointed as the Receiver for
("DMC") and all of its current assets, with the powers granted by this Order as follows:

A. The Receiver shall be the agent of this Court and shall be accountable
directly to this Court.

B. This Court hereby asserts exclusive jurisdiction and takes exclusive
possession of all of the property owned by, controlled by, or in the name of DMC, including all
contracts, monies, securities, inventory, and properties, real or personal, tangible and
intangible, of whatever kind and description and wherever situated ("Receivership Assets"),
except that the Receiver has no authority to enter private homes without prior consent of the
owners and occupants, obtained after reasonable notice or, failing that consent, order of this
Court.

C. Kevin Singer is located at:

Receivership Specialists
40 North Central Avenue
Suite 1400
Phoenix, Arizona, 85004
Tel: (602) 343-1889
Fax: (602) 343-1801

BOND

1. The Receiver shall, within ten days of the entry of this Order, file with the Clerk
of this Court a bond in the sum of \$5,000, with sureties, and submit a written, signed oath with
this Court stating that he will truly perform his duties of the office and abide by and perform all
acts that this Court directs.

RECEIVERSHIP DUTIES

1. The Receiver is directed and authorized to assume full control of DMC by
removing, as the Receiver deems necessary or advisable, any director, officers, independent

1 contractor, employee, or agent of DMC, from control of, management of, or participation in
2 the affairs of DMC.

3 2. The Receiver is directed and authorized to take exclusive control, custody, and
4 possession of all Receivership Assets and all documents and other records that belong to DMC
5 and that is in the custody of DMC ("Receivership Records"). The Receiver shall have full
6 power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all
7 assets and the Receivership Records.

8 3. The Receiver is directed and authorized to take all steps necessary to secure any
9 premises owned or leased by DMC, wherever located or situated. Regarding commercial (but
10 not residential) locations, such steps may include, but are not limited to, the following as the
11 Receiver deems necessary or advisable: (a) serving and filing this Order; (b) completing a
12 written inventory of all assets of DMC; (c) obtaining pertinent information from all employees
13 and other agents of DMC, including the name, address, job description, compensation, and
14 other items; (d) videotaping all portions of the location; (e) securing the location by changing
15 the locks; or (f) requiring any person present on the premises at the time this Order is served to
16 leave the premises, to provide the Receiver with proof of identification, or to determine to the
17 satisfaction of the Receiver that such persons are not removing from the premises and
18 Receivership Records or assets of DMC.

19 4. The Receiver is directed and authorized to conserve, hold, and manage all assets
20 of DMC, and to perform all necessary or advisable acts to preserve the value of those assets in
21 order to prevent any irreparable loss, damage, or injury to consumers or creditors of DMC,
22 including, but not limited to, obtaining an accounting of the assets and preventing transfer,
23 withdrawal, or misapplication of assets.

24 5. The Receiver is directed and authorized to enter into contracts and to purchase
25 insurance as advisable or necessary.
26

1 6. The Receiver is directed and authorized to prevent the inequitable distribution of
2 assets and determine, adjust, and protect the interests of investors and creditors who have
3 transacted business with DMC.

4 7. The Receiver is directed and authorized to manage and administer the business of
5 DMC until further order of this Court by performing all incidental acts that the Receiver deems
6 to be advisable or necessary, which includes retaining, hiring, or dismissing any employees,
7 independent contractors, or agents.

8 8. The Receiver is directed and authorized to choose, engage, and employ attorneys,
9 accountants, appraisers, and other independent contractors and specialists, as the Receiver
10 deems advisable or necessary to perform its duties and responsibilities under this Order.

11 9. The Receiver is directed and authorized to make payments and disbursements
12 from the Receivership Assets that are necessary or advisable to carry out this Order. The
13 Receiver shall apply to this Court for prior approval of any payment of any debt or obligation
14 incurred by DMC prior to the date of entry of this Order, except payments that the Receiver
15 deems necessary or advisable to secure assets of DMC, such as rental or lease payments.

16 10. The Receiver is directed and authorized to institute, compromise, adjust, appear
17 in, or become a party to any actions in state, federal, or foreign courts that the Receiver deems
18 necessary and advisable to preserve or recover the assets of DMC.

19 11. The Receiver is directed and authorized to defend, compromise, adjust, or
20 otherwise dispose of any or all actions or proceedings instituted in the past or in the future
21 against the Receiver in his role as Receiver, or against DMC that the Receiver deems necessary
22 and advisable to preserve the assets of DMC.

23 12. The Receiver is directed and authorized to continue to conduct the business of
24 DMC in such a manner and for such duration as Receiver may in good faith deem to be
25 necessary or appropriate to operate the business profitably and lawfully, if at all.
26

1 13. The Receiver is directed and authorized to open one or more bank accounts for
2 funds of DMC.

3 14. The Receiver is directed and authorized to maintain accurate records of all
4 receipts and expenditures that are made as Receiver.

5 15. The Receiver is directed and authorized to file with this Court and serve upon the
6 parties, within 30 days after entry of this Order, a preliminary report setting out the identity,
7 location, and value of the Receivership Assets and any liabilities pertaining thereto, and the
8 Receiver's recommendations for further Order from this Court regarding the receivership.

9 16. The Receiver is directed and authorized to cooperate with reasonable requests for
10 information or assistance from any state or federal law enforcement agency.

11 **TURNOVER TO REECIVER**

12 1. Immediately upon receiving notice of this Order, DMC and any other person or
13 entity receiving notice of this Order shall transfer and deliver to the Receiver possession,
14 custody, and control of all assets known to them to be Receivership Assets, all records known
15 to them to be Receivership Records, and all assets of others now held by DMC in a fiduciary
16 capacity for the benefit of the receivership estate.

17 2. DMC shall cooperate with and assist the Receiver, which shall include, but not
18 be limited to, providing information to the Receiver following reasonable notice to DMC;
19 providing any password required to access any computer, electronic file, or telephone data;
20 advising all persons who owe money to DMC that all debts should be paid directly to the
21 Receiver; and provide to the Receiver all keys and codes necessary to gain or to secure access
22 to any Receivership Assets or Records.

23 **PROHIBITIONS**

24 1. DMC and any person acting on its behalf are hereby restrained and enjoined
25 from directly or indirectly:

26 A. Transacting any of the business of DMC, with the Receiver's consent.

1 B. Destroying, secreting, defacing, transferring, or otherwise altering or
2 disposing of any documents of DMC.

3 C. Transferring, receiving, altering, selling, encumbering, pledging,
4 assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the
5 possession or custody of, or in which an interest is held or claimed by, DMC or the Receiver.

6 D. Excusing debts owed to DMC.

7 E. Failing to notify the Receiver of any asset of DMC.

8 F. Doing any act or refraining from any act whatsoever to interfere with the
9 Receiver's compliance with this Order.

10 G. Filing, or causing to be filed, any petition on behalf of DMC for relief
11 under the United States Bankruptcy Code, without prior permission from this Court.

12 **DOCUMENTS AND LEGAL ACTION**

13 1. Except as otherwise provided in this Order, all persons and entities in need of
14 documentation from the Receiver shall first attempt to secure such information by submitting a
15 written request (e-mail or mail) to the Receiver and, if the Receiver does not respond to the
16 request within 30 days, any person may thereafter seek an Order from this Court with regard to
17 the request.

18 2. Nothing in this Order shall be construed to limit or restrict the right of Plaintiff or
19 the Defendants in this action to assert in this action any defense, claim, cross-claim,
20 counterclaim, affirmative defense, right of indemnification, or any other matter regarding any
21 claim or defense.

22 **COMPENSATION OF RECEIVER**

23 1. The Receiver and all personnel hired by the Receiver are entitled to reasonable
24 compensation for the performance of duties pursuant to this Order and for the cost of expenses
25 incurred, to be paid from the Receivership Assets. The Receiver shall file with this Court and
26

1 serve upon all parties monthly requests for payment of compensation to be paid to the Receiver
2 or his attorneys, accountants, or other third parties.

3 **ENGAGEMENT OF MANAGEMENT SERVICES COMPANY**

4 1. The Receiver is authorized to immediately engage the services of ~~M&T~~
5 ~~Management Company, LLC ("M&T") to act as the~~ management agent ("Management
6 Agent") to operate the dispensary business and the day-to-day operations of DMC, which
7 efforts and operations shall including authorization, upon notice to and approval of the
8 Receiver, to conduct the following functions ("Management Functions"):

9 A. Locate, inspect, and manage the books and records of DMC.

10 B. Negotiate, execute, perform, extend, re-negotiate, amend, or modify any
11 contracts or obligations, including leases, loan obligations, repairs, agreements for the purchase
12 of equipment, furnishings or supplies, employment agreements, or consulting agreements to
13 the extent any such contract or agreement is necessary for DMC to maintain the status and
14 resources required of it under Arizona law to remain eligible for its Dispensary Registration
15 Certificate for a dispensary in Payson, Arizona, and to maintain its cultivation and infusion
16 location in accordance with the Arizona Department of Health Services' regulations and
17 Arizona statutes.

18 C. Hire, manage, and terminate the employment of any employee, contractor,
19 or agent to the extent such action is necessary for DMC to maintain the status and resources
20 required of it under Arizona law to remain a dispensary, cultivation, and infusion facility.

21 D. Pay bills associated with or incurred in connection with the operations of
22 DMC.

23 E. Interact as authorized Management Agent for DMC with any
24 governmental entity, agency, department, employee, agent or inspector in connection with
25 obtaining any approvals, certificates, licenses, rights of occupancy or use, zoning approval,
26 variances, special use permits, permits or rights or approvals required by Arizona law for DMC

1 to remain eligible for an Approval to Operate for a dispensary and cultivation location from
2 ADHS in accordance with Arizona statutes and regulations.

3 2. The Receiver may execute a final Management Agreement with the Management
4 Agent that delegates to the Management Agent the Management Functions in accordance with
5 the terms set forth above, and that includes, at a minimum, the following additional terms:

6 ~~A. The Management Agreement shall, except to the extent otherwise~~
7 ~~provided herein, or specified by the Receiver, contain terms consistent with the prior operating~~
8 ~~relationship between DMC and M&T.~~

9 B. The Management Agent shall perform all services designated by the
10 Receiver or believed in the business judgment of the Management Agent to be necessary to
11 operate in compliance with Arizona law, subject to control and oversight by the Receiver.

12 C. The Management Agreement shall be terminable: (i) at the will and upon
13 the discretion of the Receiver ~~upon 60 days' advance notice of termination;~~ (ii) immediately at
14 the will and upon the discretion of this Court; or (iii) automatically upon conclusion or
15 termination of the receivership proceedings in this action.

16 D. The Management Agent shall obtain and be authorized to obtain all
17 required dispensary cards for all necessary employees or agents of DMC and, to the extent
18 required by Arizona law, for the Receiver and its personnel.

19 E. The Management Agent shall be obligated to operate the dispensary,
20 cultivation, and infusion in Payson, Arizona.

21 F. The Management Agent shall be obligated to timely pay all past due
22 invoices to all applicable landlords and contractors of DMC.

23 G. The Management Agent shall be authorized to interface with DHS and all
24 other relevant governmental agencies on behalf of DMC.

25 H. The Management Agent shall provide to the Receiver monthly accounting
26 reports.

3. The Receiver shall provide notice to this Court and the parties when it has executed a Management Agreement with the Management Agent certifying that the terms of the written Management Agreement comply with the terms of this Order and attaching a copy of the executed Management Agreement.

~~5. In the event the Receiver is unable to consummate a final written Management Agreement with M&T, the Receiver is authorized to commence negotiations with another management company for a Management Agreement that contains the same terms as stated in this Order; provided, however, that the Receiver has no authority to execute any such alternative agreement without the prior approval of this Court.~~

Judge, Maricopa County Superior Court

2018 BANKRUPTCY BATTLEGROUND WEST

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 S. Potomac Street Centennial, Colorado 80112		FILED Document CO Arapahoe County District Court 18th JD Filing Date: May 3 2011 10:19 AM MDT Filing ID: 57429802 Review Clerk: Janet Hanes Review Date: May 3 2011 3:09 PM MDT Review ID: 57429802
Plaintiff: v. Defendants: _____ and _____ Counterclaim Plaintiffs: _____		▲ COURT USE ONLY ▲ Case Number: 2010CV2510 Div.: 202 Ctrm.:
ORDER RE: APPOINTMENT OF RECEIVER		

THIS MATTER comes before the Court on the motion of Defendants/Counterclaim Plaintiffs _____ for appointment of a receiver pursuant to C.R.C.P. 66. The Court considered the parties' presentation of evidence and arguments on the receivership issue at hearing on April 11, 2011 and April 25, 2011 and entered oral findings of fact and orders on April 25, 2011, finding that appointment of a receiver is necessary to preserve A) ("ADG") assets pending determination of the parties' claims at trial. The court also held that Nicholas King is qualified to act as the receiver for the ADG medical marijuana business.

THE COURT HEREBY FINDS, ORDERS, ADJUDGES AND DECREES THAT:

1. The Court has reviewed the resume of the receiver proposed by Plaintiff and hereby finds that Nicholas King is a suitable person to be a Receiver for ADG Inc. and its Property, and Nicholas King hereby is appointed Receiver of the ADG medical marijuana business and its Property, including, but not limited to, (i) ADG's leasehold interest in the premises located at _____, including a medical marijuana dispensary and medical marijuana grow operation, (ii) other personal property of ADG including medical marijuana, inventory, fixtures, grow equipment, office equipment, supplies, computers, security cameras and cash on hand, (iii) the profits, revenue, and other income derived from, or generated by, ADG, and (iv) any other property owned by ADG ("the Receivership Property"). Notwithstanding the foregoing, the Receivership Property will not include any personal property of Plaintiff or any of the Defendants, including without limitation Plaintiff's personal computer.
2. The Receiver, as an officer of this Court, shall take possession, charge and control of the Receivership Property and hereby is authorized and is directed: a) to protect, operate and

manage the Receivership Property, b) to collect sales tax and remit it to the appropriate state and local agencies, c) to communicate with local authorities and the Colorado Department of Revenue Medical Marijuana Enforcement Division and submit any information or records to such authorities that they may reasonably request, d) to hire appropriate contractors or personnel to complete the build-out of the ADG medical marijuana grow facility (subject to any specific limitations below), e) to hire and supervise growers, sales personnel and any other employees or independent contractors necessary for operation of ADG's medical marijuana grow business and medical marijuana center (subject to any specific limitations below), f) to purchase supplies, equipment and inventory necessary to operate the business and to manage ADG's accounts payable and accounts receivable g) to ensure compliance with applicable state and local laws, h) to have all powers normally exercised by Receivers as well as all additional powers granted herein.

3. The Receiver is empowered to do whatever is necessary to preserve and protect ADG's Property, profits and goodwill, and to ensure that ADG operates in compliance with state and local law as well as any and all orders of the court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

4. Plaintiff \ and Defendant \ and Gennadiy \, and all persons in active concert and participation with them, including employees, agents, managers, accountants and banks are ordered to deliver immediately to the Receiver or his agents, all Receivership Property described above, including, without limitation, keys to the Property, and all other things of value relating to the Receivership Property (including, without limitation, such records and other papers in their possession or under their control as may be pertinent to the status of the Receivership Property and the Receiver's operation and management thereof), and continue to deliver immediately to the Receiver all books, and other records relating to the operation, maintenance and management of the Receivership Property, and to permit the Receiver to carry out his duties hereunder without interference and to cooperate when requested.
5. From the date of this Order and until further order of this Court funds due with respect to this Receivership Property shall be due and payable to the Receiver and not to Plaintiff, Defendants or their agents, and the Receiver shall be, and hereby is, empowered and directed to demand, receive and collect all funds due with respect to this or any other sums due but unpaid or hereafter to become due during the pendency of this Receivership.
6. Plaintiff and Defendants and all other persons hereby are enjoined from transferring, encumbering or dealing with the Receivership Property without the consent of the Receiver or order of this Court. Plaintiffs, Defendants and their agents are enjoined from interfering in any manner with the Receivership Property or the possession or management of the Receivership Property by the Receiver except as allowed by Court order or the consent of the Receiver.

7. The Plaintiff shall promptly provide to the Receiver the names and contact information for contractors and utility providers who currently provide security, maintenance, utilities, and other similar types of services necessary to the preservation of the Receivership Property.
8. The Plaintiff, the Defendants and their agents hereby are ordered to deliver all bank accounts with operating or other funds from the Receivership Property, and the Receiver hereby is authorized to seize all such bank accounts by delivery of this order to the bank or banks. The Plaintiff and the Defendants are hereby enjoined from transferring funds from such bank accounts. In a timely manner, Plaintiff or Defendants may make application to this Court to show why funds seized are not funds derived from, by or upon, the Receivership Property.
9. The Receiver is authorized to employ a construction company or other qualified contractors or design professionals to finish the build out of the ADG medical marijuana grow facility and to conduct any repairs or maintenance necessary to maintain the Receivership Property and keep it in good working order. The Receiver must use all commercially reasonable efforts to minimize the costs of such construction work, and must seek bids or estimates from at least two third parties with whom neither the Receiver, nor any of the parties to this action, have any prior business relationship with. The Receiver must present all of what he believes are the best bids or estimates for construction and build-out of the grow facility to Plaintiff and Defendants for their review, and to the extent practicable, the Receiver will try and obtain the mutual agreement of Plaintiff and Defendant to the final scope of work and costs associated with the build-out of the grow facility.
10. Plaintiff and Defendants immediately shall deliver over to the Receiver all books, financial records, including all accounts receivable and payable, leases, applications to governmental agencies, tax documents and all other records concerning the Receivership Property and the ADG business.
11. Plaintiff and/or the landlord shall deliver all keys to the Property to the Receiver and if such keys are not delivered or are not available, the Receiver is authorized to coordinate with the landlord to change all locks to secure the Property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

12. The Receiver shall apply all income derived from the Property in the following Order: (a) First toward the actual operating and management expenses of the Receivership Property incurred by the Receiver including Receiver's fees and payment of wages to employees or contractors, (b) Second toward the expenses of the Receivership including, but not limited to fees of professionals engaged by the Receiver as may be authorized by this Order or further Order of Court (and the Receiver shall determine the reasonable working capital reserve over and above operating expenses and shall maintain such amounts in the Receiver's account, not to exceed \$5,000), (c) Third toward the payment of any taxes

currently due and owing, (d), Fourth, towards the repayment of any short-term loans to ADG made by Plaintiff subsequent to December 20, 2010 pursuant to Section 7 of the "ADG Interim Agreement" (not, however, to exceed \$7,500), (e), Fifth, towards the repayment of any short-term loans to ADG incurred by, through or with the consent of the Receiver, and (f) Lastly the remaining income shall be held in the Receiver's account and shall be accounted for in the Receiver's final accounting.

13. The Receiver shall be compensated for his time at the rate of \$30/hr., and is authorized to employ 1-2 employees to work at the ADG facility during hours of operation depending on the needs of the business and to pay Employees \$12/hr. to \$15 each (the equivalent employee head count should be 1.0 to 1.5 full-time employees). He is further authorized to pay one qualified medical marijuana grower \$20-\$30/hr to grow medical marijuana, and to pay one trimmer, if needed, \$15-20/hr to harvest and trim medical marijuana grown at the ADG facility.
14. The Receiver is authorized to establish a separate bank account in the Receiver's name referencing the Property and the Receiver ~~to~~ ^{shall} deposit all sums received in, and ~~to~~ disburse all funds from, this account.
15. The Receiver shall account for all sums received and expended in his monthly reporting. Any excess funds in the Receiver's account or any other ADG account shall be disbursed only in accordance with this Order or the further Order of this Court. The Receiver shall be, and hereby is authorized to endorse on behalf of ADG, all checks he receives which are payable to ADG and which relate to the income and expenses of the Property or other income or expenses of the ADG business. All such funds shall be placed in the appropriate account and shall be accounted for in the Receiver's monthly reports.
16. The Receiver shall enter all sales into an electronic point of sale system and shall render reports in the form of a profit and loss statement to counsel for the parties on a monthly basis on or before the 20th day of the following month.
17. The Receiver, without the further approval of Court, may pay bills in the amount of up to \$5,000.00 per bill and borrow funds of up to \$5,000.00 on such commercially reasonable terms as the Receiver is able to procure. Any borrowing by the Receiver in excess of this amount shall be approved by this Court before such borrowing occurs unless it is approved by joint stipulation of Plaintiff ^{and Defendant} The Receiver may, without prior approval of the Court, borrow funds from either Plaintiff ^{or Defendants} and/or (even in amounts exceeding \$5,000), provided that all three such parties stipulate to the terms and repayment priority of any such loan.
18. The Receiver or any party to this action, at any time, on proper and sufficient notice to all parties who have appeared in this action, may apply to this Court for further instructions or clarifications, whenever such instructions or clarifications shall be deemed necessary to enable the Receiver to perform his duties. Any third party who is not a party to this

action shall intervene in this action in accordance with the Colorado Rules of Civil Procedure.

19. The Receiver shall post a bond in the amount of \$1,000.00 to insure proper and faithful performance of his duties in accordance with this order and further orders of this Court. This bond shall insure the payment of all bills contracted for by the Receiver after the date of this order and before the date of the discharge of the Receiver, including, but not limited to, the payment of rent, the payment of public service bills and other utility bills, and such persons or companies dealing with the Receiver as the officer of this Court shall not require an additional bond to insure the Receiver's performance without the express consent of this Court. The Receiver and its bond shall not be subject to any successor liability for labor, tax or other matters relating to the parties' operations of ADG prior to the date of this order.
20. The Receiver shall include in his periodic reports to any compensation paid for that period, which compensation shall be deemed reasonable, absent an objection by a party to the matter, prior to the Receiver being discharged. When the Receiver files his final report and motion for discharge as set forth below, the Receiver shall file with this Court for final approval of the fees paid to the Receiver during the pendency of the Receivership.
21. The Receiver named herein shall assume his duties upon taking an oath of office and posting of the bond required above; provided however this receivership shall be effective from the date of the execution of this Order. The posting of the bond which is in compliance with this Order and Colorado law shall be deemed approved by this Court upon its posting without further order of this Court.
22. Sheriff's assistance to enforce the terms of this Order in the form of peacekeeping duties is hereby authorized.
23. The parties or Receiver may from time to time request that the Court enter additional orders to supplement, clarify or amend this Order.
24. The Receiver shall continue in possession of the Receivership Property until discharged by the Court. Any notice required hereunder shall be deemed served on the date it is deposited in the United States mail, first class postage prepaid, to counsel of record for any party, or directly to any party not represented by counsel and, unless otherwise ordered by the court, any computation of time for purposes of the Order shall be governed by the provision of C.R.C.P. 6.
25. The Receiver shall not be responsible for the preparation of any tax returns for the parties or any of their respective affiliates.
26. This Receivership shall continue until the Court discharges the Receiver and its sureties and dismisses this case.

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27. The Receiver may not sell, convey or transfer, or offer to do the same, any stock, ownership interest or equity in ADG. Without the prior written consent of Plaintiff _____, and Defendants _____, the Receiver may not pledge or secure any loan with stock or any ownership interest or equity in ADG.
28. The Receiver may enter into any repayment agreements or repayment schedules with the landlord for outstanding rent on the ADG premises as the Receiver deems appropriate in his commercially reasonable business discretion.

BY THE COURT:

Dated May 6, 2011

District Court Judge



FILED

NOT FOR PUBLICATION

FEB 05 2018

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	NV-17-1168-LTiF
)		
PATRICIA G. OLSON,)	Bk. No.	3:17-bk-50081-BTB
)		
Debtor.)		
)		
PATRICIA G. OLSON,)		
)		
Appellant,)		
)		
v.)		
)		
WILLIAM ALBERT VAN METER,)		
Chapter 13 Trustee;)		
CODY BASS; CITY OF SOUTH)		
LAKE TAHOE; UNITED STATES OF)		
AMERICA; U.S. BANK, N.A.,)		
)		
Appellees.)		

MEMORANDUM*

Argued and Submitted on December 1, 2017
at Reno, Nevada

Filed - February 5, 2018

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable Bruce T. Beesley, Bankruptcy Judge, Presiding

Appearances: Anne J. Williams of the Law Offices of J. Craig
Demetras argued for Appellant Patricia G. Olson;
Seth Joseph Adams of Woodburn & Wedge argued for
Appellee Cody Bass.

*This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8024-1.

1 Before: LAFFERTY, TIGHE,** and FARIS, Bankruptcy Judges.

2 Memorandum by Judge Lafferty
3 Concurrence by Judge Tighe

4 The Debtor is 92 years old, legally blind, and resides in an
5 assisted living facility. She sought chapter 13¹ relief to stop
6 foreclosure of her commercial real property. One of the tenants
7 at that property operated a marijuana dispensary on the premises
8 and continued to pay rent to Debtor postpetition. Debtor's plan
9 called for her to sell the commercial real property to pay off
10 all creditors. At the hearing on the motion to sell and reject
11 the lease with the tenant, the bankruptcy court dismissed the
12 case sua sponte on the ground that Debtor's postpetition
13 acceptance of rents from the dispensary business was an ongoing
14 criminal violation that disqualified her from bankruptcy relief.

15 Because the bankruptcy court did not make adequate findings
16 for us to discern the standard under which it concluded that
17 dismissal was mandatory, we VACATE and REMAND.

18 **FACTS²**

19 Prepetition, Debtor Patricia G. Olson was the general
20

21 **Hon. Maureen A. Tighe, U.S. Bankruptcy Judge for the
22 Central District of California, sitting by designation.

23 ¹Unless specified otherwise, all chapter and section
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

25 ²The parties did not include all relevant documents in their
26 excerpts of record. We have thus exercised our discretion to
27 review relevant imaged documents from the bankruptcy court's
28 electronic docket. See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989); Atwood v. Chase Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

1 partner of Olson Bijou Center, L.P., a California limited
2 partnership ("OBC"). OBC owned real property on Lake Tahoe
3 Boulevard in South Lake Tahoe, California, known as the Olson
4 Bijou Shopping Center (the "Shopping Center Property").

5 Beginning in January 2013, Appellee Cody Bass began leasing
6 space in the Shopping Center Property from OBC; although the
7 record includes only an unsigned copy of the lease, the signature
8 block on the lease indicates that it was to be signed by Debtor's
9 son, Patrick Olson, as manager of OBC.³ The lease expressly
10 authorized Mr. Bass to operate a "dispensary."⁴ Pursuant to that
11 authority, Mr. Bass operated at the leased premises Tahoe
12 Wellness Cooperative ("TWC"), a marijuana dispensary authorized
13 under California law. Both the operation of the dispensary
14 business and the leasing of the premises for such a business,
15 however, potentially violated the federal Controlled Substances
16 Act, 21 U.S.C. §§ 801-904 ("CSA"). The CSA classifies marijuana
17 as a controlled substance, 21 U.S.C. § 812, and makes it unlawful
18 to

19 (1) knowingly open, lease, rent, use, or maintain any
20 place, whether permanently or temporarily, for the
21 purpose of manufacturing, distributing, or using any
22 controlled substance;

22 ³In Debtor's declaration in support of the motion to reject
23 lease, she stated that she believed the lease "agreements" were
24 taken from her residence by government law enforcement
25 authorities in May 2015. In Debtor's second declaration in
26 support of the motions to sell and to reject, she stated,
27 "[t]here is no signed lease agreement between Mr. Bass and me."

26 ⁴The lease also required Mr. Bass to "comply with all
27 statutes, codes, ordinances, orders, rules and regulations of any
28 Federal, California, municipal or other governmental or quasi-
governmental entity"

1 (2) manage or control any place, whether permanently or
2 temporarily, either as an owner, lessee, agent,
3 employee, occupant, or mortgagee, and knowingly and
4 intentionally rent, lease, profit from, or make
available for use, with or without compensation, the
place for the purpose of unlawfully manufacturing,
storing, distributing, or using a controlled substance.

5 21 U.S.C. § 856(a).

6 In early 2016, Mr. Bass and OBC entered into a letter of
7 intent for Mr. Bass to purchase the Shopping Center Property for
8 \$4.2 million; Mr. Bass made a \$25,000 payment to Debtor's
9 attorney pursuant to the letter of intent. Shortly thereafter,
10 Mr. Bass, OBC, and Debtor entered into an option agreement, which
11 expired on March 3, 2016. Mr. Bass tendered an additional
12 \$50,000 to be applied to the purchase price if the option were
13 exercised. According to Mr. Bass' declaration in support of his
14 opposition to the motion to sell, he gave notice on April 1,
15 2016, that he was exercising the option agreement. He asserted
16 that this notice was timely based on a First Amendment to Option
17 Agreement attached to his declaration, which extended the
18 deadline for exercising the option to April 4, 2016 and appears
19 to be signed by Debtor. But in Debtor's second declaration in
20 support of pending motions, she stated that Mr. Bass came to her
21 assisted living facility on March 3, 2016, the day the option
22 agreement expired, and asked her to sign papers, but she did not
23 understand what she may have signed, and she believed Mr. Bass
24 misled her into "signing something."⁵

25
26 ⁵We include these "facts" merely to provide some context for
27 the proceedings before the bankruptcy court, and for no other
28 purpose. And we should be particularly circumspect in this
instance, in which we remand after determining that the

(continued...)

1 OBC and Debtor did not perform under the option agreement,
2 and, in May 2016, Mr. Bass sued OBC, Debtor, and Mr. Olson in El
3 Dorado County Superior Court for damages and specific
4 performance.

5 The Shopping Center Property was encumbered by a deed of
6 trust in favor of U.S. Bank, N.A. In August 2016 U.S. Bank
7 recorded a notice of default, and in December 2016 it recorded a
8 notice of sale. The foreclosure sale was set for February 1,
9 2017.

10 On January 30, 2017, Debtor filed a chapter 13 petition,
11 which stayed both the foreclosure and the Bass litigation. That
12 same day, she filed a quitclaim deed transferring OBC's interest
13 in the Shopping Center Property to herself individually.
14 Mr. Bass continued to pay rent postpetition to Debtor or her
15 counsel.

16 About a month after the bankruptcy filing, the bankruptcy
17 court approved a stipulation between Debtor and U.S. Bank for the
18 use of cash collateral for Debtor's ordinary operating expenses
19 and maintenance of the Shopping Center Property as well as
20 assisted living expenses and health insurance, through April
21

22 ⁵(...continued)
23 bankruptcy court neither articulated the legal basis for its
24 decision sua sponte to dismiss this case, nor identified with
25 precision the facts which it must have determined, or upon which
26 it might have relied, under any cognizable theory, in dismissing
27 the case. Accordingly, we neither make any determination
28 concerning what appear to be disputed facts, nor "weigh" any such
facts, nor determine credibility, nor even, indeed, opine
regarding what facts might be relevant under the
as-yet-undetermined legal standard to be applied by the
bankruptcy court on remand.

1 2017. In exchange, Debtor granted U.S. Bank a postpetition
2 replacement lien on all rents generated from the Shopping Center
3 Property and agreed to make adequate protection payments of
4 \$4,000 per month. According to the stipulation, at that time
5 expected rental income was \$16,220 per month, including TWC's
6 monthly rental payment of \$10,200. In early May 2017, the court
7 approved another cash collateral stipulation extending the
8 agreement to use cash collateral through July 31, 2017 and
9 modifying the budget to exclude the rent from TWC. There is no
10 evidence in the record to indicate whether the postpetition rents
11 paid by Mr. Bass were used to make payments pursuant to the
12 initial cash collateral stipulation; other than Debtor's
13 counsel's oral representation that the May 2017 rent payment was
14 being held in a safe in his office, the record does not show what
15 happened to those funds at all.

16 Debtor's proposed chapter 13 plan called for monthly
17 payments of \$150 for 12 months and \$2,100 for 48 months. The
18 plan also provided that Debtor would sell the Shopping Center
19 Property within six months of plan confirmation and use the net
20 proceeds to pay all administrative, priority, and unsecured
21 claims.

22 In April 2017, Debtor filed a motion to sell free and clear
23 under § 363(f) the Shopping Center Property and the adjacent
24 property, which she also owned, for \$3 million. Among the
25 conditions of the sale of the Shopping Center Property were
26 (i) court approval of the rejection or termination of Mr. Bass'
27 lease and the commencement of eviction proceedings by Debtor; and
28 (ii) court-ordered rejection, termination, or voiding of the

1 option agreement with Mr. Bass. Debtor also filed a motion to
2 reject the lease and the option agreement with Mr. Bass.⁶ In her
3 declaration in support of the motion to reject, Debtor stated
4 that she had entered into the lease with Mr. Bass in January 2013
5 and that Mr. Bass "currently operates a medical marijuana
6 dispensary at 3443 Lake Tahoe Blvd[.]" In a subsequent
7 declaration filed May 11, 2017, Debtor further testified:

8 1. I am 92-years [sic] old and legally blind. I
9 live in an assisted living facility in Sparks, Nevada.

10

11 9. At times prior to the filing of this case, my
12 son, Patrick Olson, acted and served as my
13 attorney-in-fact. In doing so, Patrick managed most of
14 my financial affairs, which included the management of
15 949 Bal Bijou Road and 3443 Lake Tahoe Blvd. Patrick's
16 duties included obtaining leases for the properties,
17 collecting rents and paying all expenses, such as the
18 secured mortgage payment to U.S. Bank, real property
19 taxes and insurance premiums.

20 10. In 2012, Patrick Olson, through Olson Bijou
21 Center L.P., leased space at 3443 Lake Tahoe Blvd. to
22 Cody Bass.

23

24 15. I wish to end any involvement with Mr. Bass
25 and his illegal business. I do not want to use money
26 from Mr. Bass to fund my Chapter 13 Plan. I don't want
27 to sell my property to Mr. Bass and do not want to
28 finance his purchase of 3343 Lake Tahoe Blvd. I wish
only to terminate any dealings with Mr. Bass and to
sell my property and pay my creditors in full.

Mr. Bass opposed both motions. In his declaration in
support of his opposition to the motion to sell, Mr. Bass

⁶The City of South Lake Tahoe (the "City") filed a joinder
in the motion to reject on the ground that Mr. Bass' permit to
operate the dispensary had expired and had not been renewed
because the Debtor had not provided her written consent.

1 confirmed that he had been operating a marijuana dispensary on
2 the premises pursuant to the terms of his lease with OBC and that
3 he had paid rent to the Debtor postpetition.

4 Shortly thereafter, the chapter 13 trustee filed a motion to
5 dismiss for failure to make plan payments and for failure to file
6 an amended plan. Mr. Bass also filed a motion to dismiss the
7 case on grounds that Debtor's acceptance of rents from his
8 marijuana dispensary violated the CSA. Neither of those motions
9 were heard because they were mooted by the bankruptcy court's sua
10 sponte dismissal of Debtor's case.

11 At the initial hearing on the motion to sell and motion to
12 reject, the bankruptcy court questioned whether it could
13 authorize the sale, given that the Debtor had been accepting
14 rents from leasing a marijuana dispensary; the parties argued the
15 issue, and the court continued the matter for a few days to study
16 the relevant authorities. At the continued hearing, the court
17 heard additional argument but concluded, based on its
18 interpretation of relevant case law, that because Debtor had
19 continued to receive rent postpetition, the case had to be
20 dismissed:

21 I think it's a crime for Ms. Olson to be accepting
22 rents from an illegal operation, so I am dismissing
23 this case. . . . My finding is this debtor is leasing
24 property for an unlawful purpose under federal law,
25 although lawful under state law . . . and has continued
26 to accept rents during the course of her bankruptcy.

27 Hr'g Tr. (May 22, 2017) at 6:4-5; 22-25. In response to a
28 request for clarification from Debtor's counsel, the court
29 explained:

30 [I]f the debtor has committed a crime during the course

of the bankruptcy and continued for several months to commit a crime during the course of the bankruptcy, I think that is a basis for not providing relief to the debtor. Had the debtor, prior to filing bankruptcy or not during the bankruptcy had not committed the crime of taking money from a marijuana operation, I would feel differently. But that's not what happened here. Because you don't, in my opinion, get to go through five or six months of a bankruptcy knowingly receiving illegal proceeds and then say, oh, I'm not going to take those anymore, I want to sell the property now, so I get to play here. I don't think that's correct.

Id. at 7:17-8:3. The bankruptcy court entered its sua sponte order dismissing the case on May 31, 2017; the court also granted a stay pending appeal. Debtor timely appealed.

JURISDICTION

The bankruptcy court had jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b) (2) (A). We have jurisdiction under 28 U.S.C. § 158.

ISSUE

Whether the bankruptcy court abused its discretion in dismissing Debtor's chapter 13 case.

STANDARD OF REVIEW

We review a bankruptcy court's dismissal of a chapter 13 case for abuse of discretion. Ellsworth v. Lifescape Med. Assoc., P.C. (In re Ellsworth), 455 B.R. 904, 914 (9th Cir. BAP 2011). A bankruptcy court abuses its discretion if it applies the wrong legal standard, misapplies the correct legal standard, or if its factual findings are clearly erroneous. TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th Cir. 2011).

DISCUSSION

Ordinarily, a bankruptcy court grants or denies relief based

1 on a specific provision in the Code. Here, the bankruptcy court
2 did not specify what Code section or other authority it relied
3 upon in dismissing Debtor's case. The court concluded,
4 apparently based on case law from other jurisdictions, that
5 Debtor's postpetition receipt of rental payments from a tenant
6 that operated a marijuana dispensary on property she owned was
7 (i) a violation of the CSA that (ii) constituted grounds for
8 dismissal of the case. The legal basis for dismissal could have
9 been bad faith under § 1307(c), but the bankruptcy court made no
10 bad faith finding and did not engage in the totality of the
11 circumstances analysis required for dismissal under that Code
12 section.

13 Alternatively, the bankruptcy court may have been acting
14 pursuant to its inherent power to "issue any order, process, or
15 judgment that is necessary or appropriate to carry out the
16 provisions of this title." § 105(a). But, if acting pursuant to
17 its inherent powers, the court could act only "within the
18 confines of the Bankruptcy Code." Law v. Seigel, 134 S. Ct.
19 1188, 1194-95 (2014) (citations omitted). And where a statute
20 adequately addresses the conduct at issue, the court's inherent
21 powers should be invoked only when that statute does not fully
22 address the situation at hand. See Chambers v. NASCO, Inc., 501
23 U.S. 32, 50 (1991) ("[I]f in the informed discretion of the
24 court, neither the statute nor the Rules are up to the task, the
25 court may safely rely on its inherent power [in imposing a
26 sanction for bad faith litigation conduct].").

27 But the bankruptcy court did not articulate the legal basis
28 for its ruling or make findings to support its conclusions that

1 the CSA was being violated and that that violation was grounds
2 for dismissal. When a court imposes the harsh penalty of
3 dismissal in circumstances such as those presented here, it is
4 imperative that it state with clarity and precision its factual
5 and legal bases for doing so.

6 The standard for dismissal of a chapter 13 case is set forth
7 in § 1307(c). That section provides that on request of a party
8 in interest and after notice and a hearing, the bankruptcy court
9 may convert a chapter 13 case to chapter 7, or may dismiss a
10 case, whichever is in the best interests of creditors and the
11 estate, for "cause." § 1307(c).⁷ Section 1307(c) sets forth a
12 non-exclusive list of factors that constitute "cause" for
13 conversion or dismissal.⁸ In dealing with questions of
14 conversion and dismissal, the bankruptcy court engages in a two-
15 step process: "First, it must be determined that there is 'cause'
16 to act. Second, once a determination of 'cause' has been made, a
17 choice must be made between conversion and dismissal based on the

18
19 ⁷Although that statute requires a request by a party in
20 interest or the United States trustee, the bankruptcy court may
21 dismiss or convert a case sua sponte under § 105(a). Tennant v.
22 Rojas (In re Tennant), 318 B.R. 860, 868-70 (9th Cir. BAP 2004).
23 Additionally, despite § 1307's requirement of notice and a
24 hearing, due process is satisfied if the impacted party has had
25 an opportunity to be heard. See id. at 870 (noting that the
26 concept of notice and a hearing is flexible and depends on what
27 is appropriate in the circumstances). Debtor does not argue that
28 her due process rights were violated, nor does she dispute that
the court had the authority to sua sponte dismiss the case.

26 ⁸Those enumerated factors include: unreasonable delay by the
27 debtor that is prejudicial to creditors; failure to commence
28 making timely payments; denial of confirmation of a plan; and
material default by the debtor with respect to a term of a
confirmed plan.

1 'best interests of the creditors and the estate.'" Nelson v.
2 Meyer (In re Nelson), 343 B.R. 671, 675 (9th Cir. BAP 2006).

3 Although not listed, bad faith is cause for dismissal.
4 Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir.
5 1999). In determining bad faith, the bankruptcy court is to
6 apply a totality of the circumstances analysis, considering
7 (1) whether the debtor misrepresented facts in her petition or
8 plan, unfairly manipulated the Bankruptcy Code, or otherwise
9 filed her chapter 13 petition or plan in an inequitable manner;
10 (2) the debtor's history of filings and dismissals; (3) whether
11 the debtor only intended to defeat state court litigation; and
12 (4) whether egregious behavior is present. Id.

13 On appeal, Debtor assumes the bankruptcy court dismissed her
14 case on grounds of bad faith by arguing that the bankruptcy court
15 abused its discretion in not considering the totality of the
16 circumstances, especially the fact that Debtor was using the
17 bankruptcy to sever her ties with Mr. Bass' business. But the
18 bankruptcy court did not invoke § 1307(c), nor did it explicitly
19 find bad faith.

20 The bankruptcy court stated that it had "looked at the
21 cases," but did not articulate any rules drawn from those cases
22 that applied to the facts before it. The case law addressing
23 facts such as those presented here is sparse, and there is no
24 controlling authority in the Ninth Circuit.

25 Some courts have held that, to the extent estate assets are
26 used for or generated by the operation of a federally prohibited
27 marijuana business, a trustee or debtor in possession may not
28 administer those assets without violating federal law. Arenas v.

1 U.S. Tr. (In re Arenas), 535 B.R. 845, 852 (10th Cir. BAP 2015);
 2 In re Medpoint Mgmt., LLC, 528 B.R. 178, 184-85 (Bankr. D. Ariz.
 3 2015), vacated in part, Medpoint Mgmt., LLC v. Jensen (In re
 4 Medpoint Mgmt., LLC), BAP No. AZ-15-1130-KuJaJu, 2016 WL 3251581
 5 (9th Cir. BAP Jun. 3, 2016); In re Johnson, 532 B.R. 53, 56-57
 6 (Bankr. W.D. Mich. 2015);⁹ In re Rent-Rite Super Kegs W., Ltd.,
 7 484 B.R. 799, 810 (Bankr. D. Colo. 2012). The bankruptcy court
 8 here made no finding, however, that the trustee would be
 9 administering the proceeds of an illegal business, and there is
 10 no evidence in the record that the rents were to be used to fund
 11 the plan.

12 Some courts have held that a bankruptcy filing or a plan of
 13 reorganization proposed by a debtor who is involved in an illegal
 14 enterprise is not in good faith, even where the debtor does not
 15 have a subjective bad motive, is in legitimate need of bankruptcy
 16 relief, and there is otherwise no indicia of an attempt to abuse
 17 the bankruptcy process. In re Arenas, 535 B.R. at 852-53; In re
 18 Rent-Rite Super Kegs W., Ltd., 484 B.R. at 809. Related to the
 19 good faith analysis, some courts have concluded that a debtor
 20 engaged in an illegal business who seeks bankruptcy relief comes
 21 into court with unclean hands and is not eligible for relief. In
 22 _____

23 ⁹In In re Johnson, the bankruptcy court acknowledged the
 24 problems created when a debtor who operates a marijuana business
 25 that is legal under state law seeks bankruptcy relief, noting
 26 that continued operation of the marijuana business would result
 27 in the court and the trustee tacitly supporting the debtor's
 28 criminal enterprise. 532 B.R. at 56-57. Nevertheless, the court
 ruled that it would permit the debtor to remain in chapter 13 on
 the condition that he stop engaging in the marijuana business.
Id. at 58. The bankruptcy court here explicitly disagreed with
 this approach.

1 re Rent-Rite Super Kegs W., Ltd., 484 B.R. at 807; cf. In re
2 Medpoint Mgmt., LLC, 528 B.R. at 186-87 (petitioning creditors
3 who knew the putative debtor was engaged in a federally
4 prohibited medical marijuana business had unclean hands and could
5 not seek relief from the bankruptcy court).

6 The bankruptcy court here made no finding of bad faith or
7 unclean hands. Further, it concluded that it was a crime for
8 Debtor to be accepting rents from Mr. Bass' business without
9 making any findings showing that all the elements of a CSA
10 violation had been established (such as the requirement that the
11 conduct be "knowing").

12 The foregoing cases suggest possible reasons for the court's
13 decision, but without specific findings and conclusions, we
14 cannot determine whether or how the court found those cases
15 applicable to the facts of this case, nor can we adequately
16 evaluate the propriety of the bankruptcy court's ruling.

17 Accordingly, on remand, the bankruptcy court should
18 articulate the findings that led it to determine that Debtor was
19 violating the CSA and what legal standard it relied upon in
20 dismissing the case.

21 **CONCLUSION**

22 For the reasons set forth above, we VACATE and REMAND.

23
24 Concurrence begins on next page.
25
26
27
28

1 TIGHE, Bankruptcy Judge, CONCURRING.

2 I concur in the memorandum and write separately to emphasize
3 (1) the importance of evaluating whether the Debtor is actually
4 violating the Controlled Substances Act and (2) the need for the
5 bankruptcy court to explain its conclusion that dismissal was
6 mandatory under these circumstances. With over twenty-five
7 states allowing the medical or recreational use of marijuana,
8 courts increasingly need to address the needs of litigants who
9 are in compliance with state law while not excusing activity that
10 violates federal law. A finding explaining how a debtor violates
11 federal law or otherwise provides cause for dismissal is
12 important to avoid incorrectly deeming a debtor a criminal and
13 denying both debtor and creditors the benefit of the bankruptcy
14 laws.

15 As the memorandum details, there are a number of situations
16 where the federal prohibition on marijuana distribution prevented
17 debtors from reorganizing or liquidating under federal bankruptcy
18 laws. Typically, these were cases where the debtor sought to
19 continue to distribute marijuana postpetition or where a trustee
20 would be asked to accept proceeds of a drug-related business,
21 situations where federal law would clearly be violated. See,
22 e.g., In re Arenas, 535 B.R. 845 (debtors themselves grew and
23 sold marijuana); In re Rent-Rite Super Kegs W., Ltd., 484 B.R.
24 799 (debtor's ongoing postpetition leases with marijuana-growing
25 tenant exposed debtor to criminal liability and primary asset to
26 forfeiture).

27 This Debtor's plan did not necessarily require the rental
28 income from the dispensary to fund the proposed payments. It

1 provided for minimal plan payments until a sale motion could be
2 filed and the Debtor's real property sold. The sale of Debtor's
3 real property would have been simply a liquidation of legal
4 estate assets. In fact, but for the marijuana-related proceeds,
5 the sale of real property to fund a plan is a common scenario
6 because of the ability in bankruptcy to sell property subject to
7 a bona fide dispute free and clear of a lien. See § 363(f)(4).

8 If, on remand, the basis for dismissal is the court's
9 concern that Debtor committed a crime by receiving postpetition
10 rent derived from a marijuana business, an explicit finding of
11 the facts required for criminal liability is needed. Section
12 856(a)(2) of Title 21 prohibits a person with a premises from
13 knowingly and intentionally allowing its use for the purpose of
14 distributing drugs. United States v. Tamez, 941 F.2d 770, 774
15 (9th Cir. 1991). A violation of section 856(a) also requires a
16 showing that a primary or principal use of the premises is for
17 drug distribution or manufacture. See United States v. Mancuso,
18 718 F.3d 780, 794-96 (9th Cir. 2013). Any prosecution of this
19 crime would require a showing that Debtor knew that Mr. Bass
20 leased the property to operate a marijuana dispensary, and that
21 she intended to allow that use.

22 The Debtor's personal knowledge is an especially critical
23 inquiry for an elderly, blind woman residing in assisted living
24 with an attorney-in-fact in charge of the lease. Although Debtor
25 stated in her second declaration in support of the motion to
26 reject the lease that Bass was operating a medical marijuana
27 dispensary, the record does not indicate when Debtor became aware
28 of this. She stated in that declaration that she did not want to

1 be involved in leasing to a marijuana business.

2 Any prosecution of 21 U.S.C. § 856(a)(2) would need to prove
3 beyond a reasonable doubt that Debtor herself “knowingly and
4 intentionally” leased the property where the marijuana is
5 distributed. See Elonis v. United States, 135 S. Ct. 2001, 2009
6 (2015) (general rule is that a guilty mind is a necessary element
7 in the proof of every crime); Morrisette v. United States, 342
8 U.S. 246, 252 (1952) (“wrongdoing must be conscious to be
9 criminal”). Debtor’s son’s knowledge in acting for her cannot be
10 imputed to Debtor for purposes of showing criminal knowledge and
11 intent. Nor can Mr. Bass’ intent and knowledge be imputed to the
12 Debtor.

13 Bankruptcy courts have historically played a role in
14 providing for orderly liquidation of assets, equal payment to
15 creditors, and resolution of disputes that otherwise would take
16 many years to resolve. Although debtors connected to marijuana
17 distribution cannot expect to violate federal law in their
18 bankruptcy case, the presence of marijuana near the case should
19 not cause mandatory dismissal.¹ I believe this focus on specific
20 federal violations along with the further analysis required by
21 the lead memorandum properly address the challenge of a marijuana
22 related case.

23

24

25 ¹Cf. Northbay Wellness Grp., Inc. v. Beyries, 789 F.3d 956,
26 960-61 (9th Cir. 2015) (bankruptcy court abused its discretion by
27 failing to conduct the balancing test required by doctrine of
28 unclean hands, and instead determining that unclean hands applied
solely because the creditor had engaged in marijuana
distribution).