

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

IN RE:)
)
REVOLUTION GEORGIA LLC,)
ASPIRE MEDICAL PARTNERS LLC,)
GA BIOSCIENCE RESEARCH INC.,)
CURALEAF GA HOLDINGS LLC,)
PEACH STATE MEDICINALS LLC,)
PURE BEAUTY GA LLC,)
CUMBERLAND CURATIVE LLC,)
SYMPHONY MEDICAL LLC,)
PURE PEACH ORGANIC INC.,)
ACC LLC,)
PEACH HEALTH ALTERNATIVES LLC,)
HARVEST CONNECT LLC,)
SILVERLEAF HEALTH ALTERNATIVES)
INC., and REMEDIUM LIFE SCIENCE)
OF GEORGIA LLC,)
)
Petitioners,)
)
v.)
)
FFD GA HOLDINGS, LLC;)
THERATRUE GEORGIA, LLC;)
NATURES GA, LLC; and)
TREEVANA REMEDY, INC.)
)
Respondents.)

Case No. 2022CV370799

**CURALEAF GA HOLDINGS, LLC’S BRIEF IN SUPPORT OF ITS
RESPONSE IN OPPOSITION TO NONPARTY GEORGIA FIRST
AMENDMENT FOUNDATION’S MOTION TO UNSEAL**

Curaleaf GA Holdings, LLC (“Curaleaf”) files this Brief in Support of its Response in Opposition to Nonparty Georgia First Amendment Foundation’s (“Georgia First”) Motion to Unseal and states as follows:

INTRODUCTION AND BACKGROUND

Georgia's Hope Act created the Georgia Access to Medical Cannabis Commission ("GMCC") and granted it expansive powers to establish and regulate a licensing regime for the production and distribution of low-THC products, including the authority to establish an application process for Class 1 and Class 2 production licenses. *See* O.C.G.A. §§ 16-12-203, 16-12-211, 16-12-212. The Hope Act requires GMCC to award these licenses through competitive sealed bids. *Id.* § 16-12-221(a).

In accordance with the Hope Act, applicants submitted competitive sealed bids to the GMCC. After GMCC issued its Notice of Intent to Award licenses, many unsuccessful applicants appealed the GMCC's decisions under GMCC's Administrative Protest Procedures (the "Protest Procedures"). These procedures gave parties the "right to appeal before the hearing officer for oral argument." Protest Procedures at 7 attached hereto as **Exhibit A**. The Protest Procedures granted parties the right to "submit briefs, documents, and witness testimony in the form of affidavits." Protest Procedures, Sec 3.3. During the protest process, GMCC transferred the matter to the Office of State Administrative Hearings ("OSAH"), where an Administrative Law Judge ("ALJ") presided over the hearing. On June 23, 2022, the ALJ, sealed the administrative record and designated it confidential in accordance with O.C.G.A. § 16-12-220.¹ After the ALJ issued final decisions on the protests, many unsuccessful applicants sought judicial review of those decisions in

¹ The ALJ's Order is attached as Exhibit C to Georgia First's Motion.

Superior Courts throughout Georgia, including Curaleaf. Many of those cases are still pending.

Georgia First challenges the ALJ's decision to seal the hearing records, alleging that decision did not comply with the statutory framework for sealing records in Georgia Uniform Superior Court Rule 21. However, Rule 21 only applies to trial court decisions—not administrative decisions by OSAH ALJs. Further, the ALJ acted within her power in sealing the administrative record based on the Hope Act and OSAH's Administrative Rules, which allow proceeding records to be sealed when confidential information is involved. The Hope Act establishes that all documents provided to the GMCC are confidential and not subject to the Open Records Act. O.C.G.A. § 16-12-220. Because it was within the ALJ's authority to seal the administrative record, Georgia First's Motion to Unseal should be denied.

ARGUMENT AND CITATION TO AUTHORITY

I. Georgia First's Motion is Procedurally Improper.

Georgia First couches its Motion to Unseal as a challenge to the ALJ's decision under Rule 21 of the Uniform Superior Court Rules. *See* Mot. at 2. However, the text of Rule 21 reveals that it is not the appropriate mechanism for Georgia First's Motion. Rule 21 establishes the procedures for a *trial court* to seal records and a subsequent appeal of that decision to the Supreme Court. *See* Ga. Unif. Super. Ct. R. 21.1, 21.4 & 21.5. It does not create a process for any person to challenge an agency's decision through an appeal to the Superior Court. The cases cited by Georgia First only establish that a *trial court* must hold a hearing and conduct a balancing test before

records can be sealed. *See Wall v. Thurman*, 283 Ga. 533 (2008); *BankWest, Inc. v. Oxendine*, 266 Ga. App. 771 (2004). Any argument by Georgia First that the ALJ did not comply with the hearing procedures laid out in Rule 21 is therefore misplaced. *See Mot.* at 8.

Because the ALJ’s decision to seal the administrative records was not subject to Rule 21’s requirements, there is no need for a “reconciliation of the Hope Act and Rule 21.” *See Mot.* at 16-17. Rather, Georgia’s Administrative Procedure Act (“APA”) is the appropriate vehicle to challenge the ALJ’s decision to seal the hearing records. However, only an aggrieved party is entitled file a petition for judicial review under the APA. O.C.G.A. § 50-13-19(a).² Georgia First admits that it has “no legal interest in the substance of the licensing protests.” *Mot.* at 4.

Georgia First’s Motion can therefore only be viewed as an attempt to circumvent the appropriate mechanism for challenging an agency’s decision because it lacks standing to petition for judicial review under the APA. For this reason, the Motion should be denied.

II. The ALJ’s Decision to Seal the Record as to Parties Outside of the Licensing Procedures Was Appropriate.

The ALJ relied on O.C.G.A. § 16-12-220 in determining that the administrative protest records were exempt from Georgia’s Open Records Act. June 6, 2022 Order

² For purposes of the APA, a person is aggrieved if they can show “an interest in the agency decision that has been specially and adversely impacted thereby.” *Zitrin v. Georgia Composite State Bd. Of Medical Examiners*, 288 Ga. App. 295, 299, 653 S.E.2d 758, 763 (2007) (citations omitted) (holding that physician was not aggrieved when he could not show that a board’s refusal impacted his practice of medicine or threatened him with an economic injury).

at 2. O.C.G.A. § 16-12-220 provides that “[a]ll working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the [GMCC] . . . shall be confidential data and shall not be subject to [the Open Records Act].” The ALJ thus did not rule on an Open Records Act dispute—the Hope Act already stated the Open Records Act was inapplicable to documents produced or obtained by the GMCC. *See* Mot. at 6 (arguing ALJ ruled on Open Records Act dispute). Further, OSAH’s rules provide that administrative hearings “shall be available to the public, *except as provided by law according confidentiality.*” Ga. Comp. R. & Regs. 616-1-2-.23 (emphasis added). Because the Hope Act designated the records as confidential, OSAH’s rules gave the ALJ authority to seal the administrative protest records as well. *See id.*

Georgia First claims the General Assembly never intended to create a process for sealing court records in the Hope Act, but as explained above, these are not court records. *See* Mot. at 9-11. The Hope Act and OSAH’s rules provided authority for the ALJ to seal the administrative record. *See* O.C.G.A. § 16-12-220; Ga. Comp. R. & Regs. 616-1-2-.23. Because the General Assembly exempted GMCC’s records from the Open Records Act, the ALJ was authorized to prevent their broad dissemination to those outside of the licensing proceedings.³ In fact, the GMCC and thus the ALJ were required to take appropriate actions to protect those records. *See Georgia Dep’t*

³ Because documents submitted to GMCC were designated as confidential, the ALJ took the necessary steps to prevent dissemination of those records to the public. However, both Curaleaf and the ALJ required access to the entire record in order to have a meaningful protest process.

of Nat. Res. V. Theragenics Corp., 273 Ga. 724, 725, 545 S.E.2d 904, 906 (2001) (holding that government agency was ultimately responsible for protecting confidential documents provided to it where statute specifically exempted records provided to that agency from the Open Records Act).

Georgia First also claims the ALJ's decision was too broad because information could have been produced during discovery that would not be confidential under O.C.G.A. § 16-12-220. Mot. at 12. However, as laid out in the Protest Procedures, there was no discovery in the proceedings before the ALJ. Protest Procedures, Sec. 3.3. Therefore, none of the records in the ALJ's proceedings fell outside the types of documents the General Assembly had already designated as confidential in the Hope Act.

Georgia First cites numerous cases that outline the public policy rationale behind having open court proceedings without explaining how the same rationale applies to the administrative proceedings at issue here. *See* Mot. at 7-9 (collecting cases). The hearing before the ALJ was based on a record containing documents that had already been designated as confidential by the Georgia Legislature. In stark contrast to the cases cited by Georgia First,⁴ the documents here consisted of business records containing confidential trade secrets that were submitted to a licensing

⁴ *See, e.g., Merch L. Firm, P.C. v. Emerson*, 301 Ga. 609, 800 S.E.2d 557 (2017) (attorneys sought recordings of criminal proceedings that were open to the public); *Atlanta Journal v. Long*, 258 Ga. 410, 369 S.E.2d 755 (1988) (pre-judgment court records were not appropriately sealed when there would be open court proceedings that would reveal the same information as the previous filings); *F.T.C. v. AbbVie Prod. LLC*, 713 F.3d 54 (11th Cir. 2013) (holding that, since a complaint is a judicial record, exhibits to the complaint must also be treated as judicial records).

agency with the understanding that they would be kept as confidential and exempt from the Open Records Act. The ALJ, in reviewing the documents and ruling on the protests, was acting as a Hearing Officer for the GMCC and not as a trial court judge in a public judicial proceeding.

Additionally, the business interests in maintaining the seal on the ALJ hearing records as to parties not a part of the protest and licensing proceedings outweighs any potential interest of the general public in unsealing the documents. The records submitted to the ALJ in the protest proceedings were proposed business plans which contained confidential information and trade secrets regarding how each applicant planned to operate their business if awarded a license. *See United HealthCare of Georgia, Inc. v. Georgia Dep’y of Cmty. Health*, 293 Ga. App. 84, 92, 666 S.E.2d 472, 479-80 (2008) (“A private entity’s voluntary participation in a government contract does not, standing alone, strip the entity’s documents of their trade secret status.”); *see also Douglas Asphalt Co. v. Snell Contractor, Inc.*, 282 Ga. App. 546, 551-52, 639 S.E.2d 372, 376-77 (2006) (holding that trade secrets submitted during a bidding process for state contracts were exempt from Georgia’s Open Records Act).

In contrast, under O.C.G.A. § 16-12-220(a), any contracts ultimately awarded by GMCC for the growth and production of THC products would be subject to the Open Records Act. While Curaleaf agrees there may be a legitimate public interest in the performance of the actual contracts, Georgia First’s efforts to gain access to trade secret information at this stage is without merit. Georgia First’s reliance on *Macon Tel. Pub. Co. v. Tatum* is misplaced, because none of the protestors who

appeared before the ALJ has done anything that could be construed as deeming them a legitimate public interest. 263 Ga. 678, 679, 436 S.E.2d 655, 657 (1993) (discussing how a private citizen became “the object of a legitimate public interest” when she shot and killed her attacker).

Contrary to Georgia First’s assertion, redaction would not have been a better alternative than the ALJ sealing the entire record. *See* Mot. at 12-13. Although that statutory exemptions from the Open Records Act must be narrowly construed, the ALJ’s decision to seal the hearing record was a narrow reading of the Hope Act’s exemption from the Open Records Act. *Blau v. Georgia Dep’t of Corr.*, 364 Ga. App. 1, 7-8 (2022). Unlike the statute at issue in *Blau*, which only classified specific “identifying information” that could easily be redacted as confidential, the Hope Act classified entire documents as confidential and exempt from the Open Records Act. *Compare Blau*, 364 Ga. App. at 6 (statute limited confidential “identifying information” to only names, residential or business addresses, residential or business telephone numbers, day and month of birth, social security numbers, and professional qualifications), *with* O.C.G.A. § 16-12-220(a) (designating “[a]ll working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the [GMCC]” as confidential). The ALJ thus acted within her authority in sealing the entire protest record from third parties who were not part of the licensing proceedings. Because sealing the agency record was appropriate, Georgia First’s Motion should be denied.

CONCLUSION

For the foregoing reasons, Curaleaf respectfully requests that the Court deny Georgia First's Motion to Unseal.

Respectfully submitted this 28th day of October, 2022.

KILPATRICK TOWNSEND
& STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530
Telephone: (404) 815-6500
Facsimile: (404) 815-6555
jjett@kilpatricktownsend.com
aconger@kilpatricktownsend.com

/s/ John P. Jett
John P. Jett
Georgia Bar No. 827033
Ava J. Conger
Georgia Bar No. 676247

Counsel for Curaleaf GA Holdings, LLC

Exhibit A

ATTACHMENT D

Georgia Access to Medical Cannabis Commission Administrative Protest Procedures

The Georgia Access to Medical Cannabis Commission (the “Cannabis Commission”) has adopted both a Pre-Award and a Post-Award Protest Procedure pursuant to the authority granted to it in O.C.G.A. § 16-12-210(a)(3) of the Georgia Hope Act (the “Hope Act”). The Cannabis Commission has adopted the Pre-Award and Post-Award Protest Procedures to provide applicants an opportunity to challenge both the process of the competitive application request for proposal and grant of the Notice of Intent to Award a contract while maintaining and preserving the confidentiality requirements set forth in O.C.G.A. § 16-12-220(a). The Pre-Award Protest Procedure (“Pre-Award Protest Procedure”) shall apply exclusively to a challenge to the process of the competitive application request for proposals for the grant of a Class 1 or Class 2 production license with respect to any events or facts arising regarding the process prior to the closing date. Any protest or issue that could have been raised during the Pre-Award Protest stage but was not raised shall be waived. The Post-Award Protest Procedure shall apply exclusively to a challenge of a Notice of Intent to Award a Class 1 or Class 2 production license by contract through a competitive sealed bid or competitive sealed proposal, pursuant to O.C.G.A. § 16-12-221(a) of the Hope Act, after the closing date.

Cannabis Commission Pre-Award Protest Procedure

The Pre-Award Protest Procedure set forth herein does not apply to a license revocation, suspension, cancelation, or termination or to a decision of the Cannabis Commission to deny a license transfer under O.C.G.A. §§ 16-12-222 and 16-12-223, or to any protest challenging the Notice of Intent to Award issued after the closing date. Any protest or challenge to the Notice of Intent to Award issued pursuant to the competitive application request for proposals and arising after the closing date must comply with the Georgia Access to Medical Cannabis Commission Administrative Post-Award Protest Procedure.

Section 1.0. Pre-Award Protest Process. Any prospective applicant that is (a) capable of responding to the competitive application request for proposals; and (b) that maintains a direct economic interest in the competitive application request for proposals may submit a written protest to the Deputy Commissioner of State Purchasing for the Georgia Department of Administrative Services with respect to any events or facts arising regarding the conduct of the competitive application request for proposals process prior to the closing date: including, but not limited to, a challenge to instructions, application, procedures, pre-award or post-award protest procedures, requirements, or specifications provided for in the competitive application request for proposals

instructions, subject to the prospective applicant's compliance with the provisions of these protest procedures.

A protest involving such a challenge is considered to be properly filed when it is in writing and signed by a company officer authorized to sign contracts on behalf of the applicant or potential applicant, is submitted via e-mail to protests@doas.ga.gov, and is received by the Deputy Commissioner within ten (10) calendar days after the protesting party knows or should have known of the occurrence of the action which is protested or two (2) business days prior to the closing date and time of the competitive application request for proposals as published on the Georgia Procurement Registry at the time that the protest was received, whichever date is earlier. If an applicant or potential applicant fails to file a protest by the applicable deadline, the Department of Administrative Services ("DOAS") may, at its discretion, deem such failure as the applicant or potential applicant's voluntary relinquishment of any grounds the applicant or potential applicant may have for protesting through this protest process or through subsequent litigation.

If a protest involving a challenge to the conduct of the competitive application request for proposals with respect to any events or facts regarding the process prior to closing date has been timely filed, the competitive application request for proposals will not close until a final decision resolving the protest has been issued, unless the State Purchasing Division Deputy Commissioner makes a written determination that the closing of the competitive application request for proposals without delay is necessary to protect the interests of the state.

Section 2.0. Request for Formal Review/Appeal Process. The Deputy Commissioner's pre-award protest decision is subject to formal review by the DOAS Commissioner upon request by the potential applicant filing the protest, or any potential applicant adversely impacted by the protest decision, provided that the potential applicant is (a) capable of responding to the competitive application request for proposals; and (b) that maintains a direct economic interest in the competitive application request for proposals, or the Cannabis Commission. Any request for formal review must be submitted to the DOAS Commissioner via e-mail at protests@doas.ga.gov. Such request for formal review must be received by the DOAS Commissioner within three (3) business days of issuance of the protest decision. The request for formal review must be in writing and identify any errors in the protest decision as well as the factual and legal grounds upon which reversal or modification of the protest decision is deemed and warranted. The parties involved in the protest have a right to a hearing before the DOAS Commissioner. If a hearing is requested, the DOAS Commissioner, or designee, shall issue a Procedural Order, scheduling and providing details for a hearing.

The parties may submit documentary evidence and witness testimony in the form of affidavits prior to the hearing. The DOAS Commissioner may solicit additional information from the parties prior to the hearing or at any time prior to the issuing of the final decision. Issues not raised in the initial protest or issues not raised in the initial request for formal review may, at the discretion of the DOAS Commissioner, be deemed

voluntarily relinquished. The protesting party may request that the hearing be conducted before a court reporter. Such request must be in writing and include an agreement by the protesting party that it shall secure and pay for the court reporting services for such hearing. To be made part of the record, the original transcript of any such proceedings shall be submitted to the DOAS Commissioner as soon as the transcript is available, without cost. The DOAS Commissioner will make a decision on the protest as expeditiously as possible after receiving all relevant requested information. The decision of the DOAS Commissioner will be the final DOAS action regarding the protest. No motion for reconsideration shall be considered.

Section 3.0. Relief, Burden of Proof, and Standard of review. There is no such thing as a perfect procurement. Thus, a protestor must show prejudice, not mere error, for not every error compels the requested relief. Rather, it is the significance of errors in the procurement process that determines whether the relief is appropriate, and it is the protestor who bears the burden of proving error in the procurement process sufficient to justify relief. The presence of multiple nonmaterial issues in a competitive application request for proposal process, including, but not limited to, the instructions, application, procedures, pre-award or post-award protest procedures, requirements, or specifications provided for in the competitive application request for proposals instructions, does not constitute a material issue unless the protestor can establish those nonmaterial issues together would prejudice the outcome of the procurement.

The following general principles shall apply in the review of protests:

- The standard for reviewing the competitive application request for proposals process, including, but not limited to, the instructions, application, procedures, pre-award or post-award protest procedures, requirements, or specifications provided for in the competitive application request for proposals instructions, is one of deference to any reasonable judgment of the Cannabis Commission or DOAS.
- In order to demonstrate that the application request for proposal process, including, but not limited to, the instructions, applications, procedures, pre-award or post-award protest procedures, requirements, or specifications provided for in the competitive application request for proposals instructions, is improper, a protestor cannot merely suggest an alternative competitive application request for proposal process; it is required to establish that the decision concerning the competitive application request for proposals process lacked a reasonable basis.
- Governmental officials and state entities are presumed to act in good faith, and a protestor's contention that procurement officials, including but not limited to Commissioners, personnel of the Cannabis Commission, DOAS and its personnel, are motivated by bias or bad faith will not be considered unless supported by convincing proof.
- Patent ambiguities must be challenged prior to close of the competitive application request for proposal. An applicant who chooses to compete under a

patently ambiguous competitive application request for proposal does so at its own peril and cannot later complain when the Cannabis Commission, including, but not limited to, Commissioners, personnel of the Cannabis Commission, or evaluation team members, proceeds in a manner inconsistent with one of the possible interpretations.

Section 4.0. Costs. In no event will a party to a protest be entitled to recover any costs incurred in connection with the competitive application request for proposals or protest process, including, but not limited to, the costs of filing a written protest or response to a written protest, the cost of preparing and submitting an application, the costs of participating in a protest, or any attorneys' fees.

Section 5.0. Waiver. A party's or applicant's failure to strictly comply with the Pre-Award Protest Procedure or to raise any challenge to the competitive application request for proposals process prior to the closing date waives any and all rights for protesting or participating in any protest and further waives any and all rights to bring such claims in subsequent administrative appeals or litigation.

Cannabis Commission Post-Award Protest Procedure

The Cannabis Commission adopts this Post-Award Protest Procedure for the grant of a Class 1 or Class 2 production license awarded by contract through a competitive sealed bid or competitive sealed proposal, pursuant to O.C.G.A. § 16-12-221(a) of the Georgia Hope Act (the “Hope Act”). The Post-Award Protest Procedure set forth herein shall be administered exclusively by the Cannabis Commission and does not apply to a license revocation, suspension, cancelation, or termination or to a decision of the Cannabis Commission to deny a license transfer under O.C.G.A. §§ 16-12-222 and 16-12-223, or to any protest or challenge to the competitive application request for proposals arising prior to the closing date. Any protest or challenge to the competitive application request for proposals arising prior to the closing date must comply with the Georgia Access to Medical Cannabis Commission Administrative Pre-Award Protest Procedure. Any claim or protest that could have been raised in the Pre-Award Protest Procedure but was not shall be deemed waived and may not be brought in subsequent litigation.

Section 1.0. Interested Applicant and Waiver. This Post-Award Protest Procedure is only available to an “interested applicant,” which is defined to mean an actual or prospective applicant with a direct economic interest in the procurement of a Class 1 or Class 2 production license. In protest challenges related to the evaluation of bids and proposals and the award of contracts, this generally means an applicant that would potentially be in line for award if the protest were sustained. An interested applicant must follow this Post-Award Protest Procedure strictly. An interested applicant’s failure to strictly comply with the Post-Award Protest Procedure waives any and all rights for protesting or participating in any protest of the intent to award a contract by the Cannabis Commission and further waives any and all rights to bring or participate in any subsequent litigation.

Section 2.0. Written Protest. A protest challenging the intended contract award to a prospective licensee must be filed by the interested applicant in writing with the Executive Director of the Cannabis Commission (“Executive Director”) or designee of the Cannabis Commission (“designee”) within seven (7) business days after the issuance of the Notice of Intent to Award a contract. The written protest must identify and provide/produce, at a minimum, the name and address of the interested applicant, the specific Notice of Intent to Award that is being protested, the factual and legal bases for the protest, supporting exhibits, evidence, or documents to substantiate any claims, the relief that the interested applicant seeks, and a redacted copy of the application (which application shall be redacted only to the extent authorized, and in compliance with Article 4 of Chapter 18 of Title 50) that the interested applicant submitted to the Cannabis Commission in response to the competitive application request for proposal. Except as provided for in Section 2.3, claims and/or grounds for protest that are not

expressly raised during the protest filing period are voluntarily waived by the interested applicant and may not be introduced by the interested applicant at any time during the protest process or any subsequent litigation.

Section 2.1. Filing Protests. A protest is considered to be properly filed when it is in writing and signed by a company officer authorized to sign contracts on behalf of the interested applicant, is submitted via e-mail to protest@gmcc.ga.gov, and is received by the Executive Director or designee within the filing period set forth in Section 2.0 above. The Executive Director or designee may dismiss without a hearing a written protest for failure to comply with the filing requirements of this Section or Section 2.0.

Section 2.2. Prospective Licensee's Right to Respond. Within seven (7) business days of receipt of the written protest filed by an interested applicant, a prospective licensee shall be permitted, but not required, to file a written response to the Executive Director or designee.

Section 2.3. Confidentiality and Amendment. Pursuant to O.C.G.A. § 16-12-220(a), “[a]ll working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the commission pursuant to the activities conducted pursuant to [Part 2 of the Hope Act], other than information published in an official commission report regarding the activities conducted pursuant to [the Hope Act], shall be confidential data and shall not be subject to Article 4 of Chapter 18 of Title 50; provided, however, that any contract, memorandum of understanding, or cooperative endeavor agreement entered into by the commission pursuant to [the Hope Act] shall be subject to Article 4 of Chapter 18 of Title 50.” Accordingly, in order to facilitate a meaningful protest process, a copy of the applicant-signed contract document shall be released with the Notice of Intent to Award and shall be redacted in accordance with Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated.

To the extent an interested applicant protesting the Notice of Intent to Award the contract or prospective licensee alleges that it requires any redacted information from a prospective licensee's application that is an exhibit to the applicant-signed contract document, an interested applicant's application, or the evaluation sheets to substantiate any of the claims and/or grounds for its protest set forth in a timely filed written protest or response, the interested applicant and prospective licensee shall confer without delay with opposing counsel in a good faith effort to agree on the terms for the disclosure of any redacted information in the prospective licensee's application or the evaluation sheets to an interested applicant, as well as the disclosure of any information in the interested applicant's redacted application or evaluation sheets to a prospective licensee to assist in its contention that the protest should not be sustained, including, but not limited to, entering into a confidentiality agreement. If the interested applicant and a prospective licensee are unable to agree on the disclosure of information in their respective applications or evaluation sheets, the Executive Director or designee, in his or her capacity as a hearing officer, shall have the authority to determine whether the requested information should be disclosed and the terms for such disclosure, including,

but not limited to, an in camera review of the requested information, the entry of an order setting forth the terms of any disclosure of information, and the entry of a protective order. Upon the disclosure of any confidential or redacted information in an application or evaluation sheet to an interested applicant or prospective licensee pursuant to this Section, the interested applicant or prospective licensee shall have seven (7) business days from the date of the disclosure in which to amend its protest or its response to specifically address any of the disclosed information. Any attempt to amend the protest or response beyond that which can be reasonably connected by the interested applicant or prospective licensee to the disclosure of any confidential or redacted information in an application or evaluation sheet pursuant to this Section shall not be considered by the hearing officer. To further maintain confidentiality as required under the Hope Act, the Georgia Department of Administrative Services shall be excluded from and play no role in the evaluation of the applications, the determination of any award of contract or license, or this Post-Award Protest Procedure and shall have no access to confidential working papers, recorded information, documents, or copies produced by, obtained by, or disclosed to the Cannabis Commission.

Section 3.0. Protest Hearing Procedure. The hearing held under this Post-Award Protest Procedure shall be only as formal as is necessary to preserve order and be compatible with the principles of justice. The Executive Director or designee shall serve as the hearing officer during the protest process. Upon receipt of a timely written protest, the Executive Director or designee shall schedule a hearing. The Executive Director or designee shall also post a copy of the written protest on the Cannabis Commission's website, <https://www.gmcc.ga.gov>, including a redacted copy of the protestor's application, which shall serve as notice of the filing of the protest to the prospective licensee identified in the written protest and any other interested applicant or prospective licensee. The Executive Director or designee may also provide additional notice in his or her sole discretion.

Section 3.1. Representation of Counsel. Both the interested applicant and any prospective licensee shall have the right to be represented by legal counsel at their own expense at all levels of the protest process.

Section 3.2. Pre-Hearing Status Conference/Confidentiality. Prior to the hearing, the hearing officer may schedule a status conference with the interested applicant and prospective licensee to address scheduling issues, evidentiary concerns, or, where appropriate, to resolve any issues related to the disclosure of redacted information in the interested applicant or prospective licensee's application or evaluation sheets as set forth in Section 2.3. The hearing officer may, in his or her sole discretion, also review any confidential Cannabis Commission data in camera and enter a protective order or any other appropriate order necessary to maintain the confidentiality of Cannabis Commission data as required under O.C.G.A. § 16-12-220(a). The interested applicant and any prospective licensee shall be strictly bound by any such order, and the hearing officer may condition the disclosure of any such data upon entry of such order.

Section 3.3. Hearing. Both the interested applicant and prospective licensee shall have a right to appear before the hearing officer for oral argument. The interested applicant and prospective licensee shall also have the right to submit briefs, documents, and witness testimony in the form of affidavits no later than five (5) business days before the scheduled hearing. The hearing officer may also solicit additional information from the interested applicant or prospective licensee after the hearing and prior to the issuing of the final decision. The hearing officer may also order sealed any portion of the record upon request of any of the parties or upon his own accord.

Section 3.4. Relief, Burden of Proof, and Standard of review. There is no such thing as a perfect procurement. Thus, a protestor must show prejudice, not mere error, for not every error compels revision or cancellation of the notice of intent or re-evaluation and re-award (collectively the “relief”). Rather, it is the significance of errors in the procurement process that determines whether the relief is appropriate. The protestor shall bear the burden of proving error in the procurement process sufficient to justify relief. Protests must demonstrate a reasonable possibility of competitive prejudice; in effect, but for the Cannabis Commission’s actions, the protesting party would have had a substantial chance of receiving an award. The presence of multiple nonmaterial issues in a Notice of Intent to Award does not constitute a material issue unless the protestor can establish those nonmaterial issues together would prejudice the outcome of the procurement.

The following general principles shall apply in the review of protests:

- The standard for reviewing the evaluation of applications is one of deference to any reasonable judgment of the Cannabis Commission or of the evaluation team.
- A protesting party’s simple disagreement with the evaluation team provides no basis for reversing the evaluation team’s determination and categorization of whether a prospective licensee met one of the specifications/requirements, allocation of points, or both.
- In order to demonstrate that the Cannabis Commission’s evaluation was improper, a protester cannot merely suggest alternative methodologies or conclusions; it is required to establish that the Cannabis Commission’s actual evaluation lacked a reasonable basis.
- Governmental officials and state entities are presumed to act in good faith, and a protester’s contention that procurement officials, including but not limited to Commissioners, personnel of the Cannabis Commission, and evaluation team members, are motivated by bias or bad faith will not be considered unless supported by convincing proof.
- The composition of an evaluation team is within the sole discretion of the Cannabis Commission. The qualifications or the composition of an evaluation team

may not be questioned unless the protester provides convincing proof of bad faith, conflict of interest, or actual bias.

- Patent ambiguities must be challenged prior to close of the competitive application request for proposal. A supplier who chooses to compete under a patently ambiguous competitive application request for proposal does so at its own peril and cannot later complain when the Cannabis Commission, including, but not limited to, Commissioners, personnel of the Cannabis Commission, or evaluation team members, proceeds in a manner inconsistent with one of the possible interpretations.

Section 3.5. Court Reporter. Either the interested applicant or the prospective licensee shall have the right to have a court reporter transcribe the Hearing, but any such cost shall be paid by the party requesting the court reporter. To be made part of the record, the original transcript of any such hearing shall be submitted to the hearing officer by the party requesting the court reporter as soon as the transcript is available, without cost to the hearing officer or the Cannabis Commission.

Section 3.6. Protest Decision. The hearing officer will issue a written decision on the protest as soon as is reasonably practical after the hearing and receiving all relevant requested information from the Cannabis Commission, the interested Applicant, and, where necessary, the prospective licensee. The decision of the hearing officer shall be the final decision of the Cannabis Commission and there shall be no additional administrative appeals. The failure to comply with these Post-Award Protest Procedures shall be deemed to constitute a waiver of the party's appeal rights.

Section 4.0. Costs. In no event will a party to a protest be entitled to recover any costs incurred in connection with the solicitation or protest process, including, but not limited to, the costs of filing a written protest or response to a written protest, the cost of preparing and submitting an application, the costs of participating in a protest, or any attorneys' fees.

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

IN RE:)	
)	
REVOLUTION GEORGIA LLC,)	
ASPIRE MEDICAL PARTNERS LLC,)	
GA BIOSCIENCE RESEARCH INC.,)	
CURALEAF GA HOLDINGS LLC,)	
PEACH STATE MEDICINALS LLC,)	Case No. 2022CV370799
PURE BEAUTY GA LLC,)	
CUMBERLAND CURATIVE LLC,)	
SYMPHONY MEDICAL LLC,)	
PURE PEACH ORGANIC INC.,)	
ACC LLC,)	
PEACH HEALTH ALTERNATIVES LLC,)	
HARVEST CONNECT LLC,)	
SILVERLEAF HEALTH ALTERNATIVES)	
INC., and REMEDIUM LIFE SCIENCE)	
OF GEORGIA LLC,)	
)	
Petitioners,)	
)	
v.)	
)	
FFD GA HOLDINGS, LLC;)	
THERATRUE GEORGIA, LLC;)	
NATURES GA, LLC; and)	
TREEVANA REMEDY, INC.)	
)	
Respondents.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **CURALEAF GA HOLDINGS, LLC'S BRIEF IN SUPPORT OF ITS RESPONSE IN OPPOSITION TO NONPARTY GEORGIA FIRST AMENDMENT**

FOUNDATION'S MOTION TO UNSEAL by placing the same in the U.S. Mail,
proper postage paid to:

Gerald Weber, Esq.
Post Office Box 5391
Atlanta, Georgia 31107

Joy Ramsingh, Esq.
RAMSINGH LEGAL
4203 Union Deposit Road, #1030
Harrisburg, Pennsylvania 17111
joy@ramsinghlegal.com

Counsel for the Georgia First
Amendment Foundation

Jane Kwak, Esq.
Abdul Mohamed, Esq.
Revolution Global
1200 North Branch Street
Chicago, Illinois 60642
jkwak@revcanna.com
amohamed@revcanna.com

Counsel for Revolution Georgia LLC

James ("Jake") C. Evans, Esq.
Kevin T. Kucharz, Esq.
Hall Booth Smith, PC
191 Peachtree Street NE
Suite 2900
Atlanta, GA 30303
jevans@hallboothsmith.com
kkucharz@hallboothsmith.com

Counsel for GA Bioscience Research Inc.

Kevin Ward, Esq.
Schulten Ward Turner & Weiss LLP
260 Peachtree Street NW, Suite 2700
Atlanta, Georgia 30303
k.ward@swtwlaw.com

Counsel for Aspire Medical Partners,
LLC

Robert ("Robbie") L. Ashe III, Esq.
Kamal Ghali, Esq.
Juliana Mesa, Esq.
Bondurant Mixon & Elmore LLP
One Atlanta Center
1201 West Peachtree St., NW, Suite 3900
Atlanta, Georgia 30309
ashe@bmelaw.com
ghali@bmelaw.com
mesa@bmelaw.com

Counsel for Peach State Medicinals, LLC

Jeffrey ("Jeff") A. Belkin, Esq.
Arabella Okwara, Esq.
Alston & Bird, LLP
One Atlantic Center
1201 West Peachtree Street, Suite 4900
Atlanta, Georgia 30309
jeff.belkin@alston.com
arabella.okwara@alston.com

Counsel for Pure Beauty GA, LLC

William T. Arnold, Esq.
Ayerbe & Arnold, LLC
3608 Vineville Avenue
Macon, Georgia 31204
bill.arnold@acinjurylaw.com

Fisher K. Law
Evans Law Firm
117 N. Erwin Street
P.O. Box 3022
Cartersville, Georgia 30120
fisher@evansfirm.com

Counsel for Cumberland Curative LLC

Charles (“Chuck”) C. Clay, Esq.
Hall Booth Smith, PC
191 Peachtree Street NE, Suite 2900
Atlanta, Georgia 30303
cclay@hallboothsmith.com

Counsel for Pure Peach Organic Inc.

Reginald (“Reggie”) Snyder, Esq.
Taylor English Duma LLP
1600 Parkwood Circle, Suite 200
Atlanta, Georgia 30339
rsnyder@taylorenghish.com

Counsel for Harvest Connect LLC

Jefferson M. Allen, Esq.
Cohen Cooper Estep & Allen
3330 Cumberland Boulevard, Suite 600
Atlanta, Georgia 30339
jallen@ccealaw.com

Robert (“Bob”) Brazier, Esq.
Jonathan Stuart, Esq.
Baker, Donelson, Bearman,
Caldwell & Berkowitz, P.C.
3414 Peachtree Road NE, Suite 1500
Atlanta Georgia 30325
rbrazier@bakerdonelson.com
jstuart@bakerdonelson.com

Mike Williams, Esq.
mike@williamsbusinesslaw.com

Counsel for Peach Health Alternatives
LLC

Jonathan Bledsoe, Esq.
Azurae K. Orie, Esq.
The Minor Firm LLC
745 College Drive, Suite B
P.O. Box 2586
Dalton, Georgia 30722
jbledsoe@minorfirm.com
aorie@minorfirm.com

Counsel for ACC, LLC

Kristen Goodman, Esq.
Hall Gilligan Roberts & Shanlever LLP
3340 Peachtree Road NE, Suite 1900
Atlanta, Georgia 30326
kgoodman@hgrslaw.com

Counsel for Symphony Medical, LLC

J. Matthew Maguire, Jr., Esq.
Melissa D. Andrews, Esq.
Parks, Chesin, and Walbert, PC
75 Fourteenth Street, Suite 2600
Atlanta, Georgia 30309
mmaguire@pcwlawfirm.com
mandrews@pcwlawfirm.com

Counsel for Silverleaf Health
Alternatives Inc.

S. Derek Bauer, Esq.
Jacqueline Menk, Esq.
Baker & Hostetler LLP
1170 Peachtree Street, Suite 2400
Atlanta, Georgia 30309
dbauer@bakerlaw.com
jmenk@bakerlaw.com

Counsel for FFD GA Holdings, LLC

Joanne Caceres, Esq.
Dentons US LLP
Joanne.caceres@dentons.com

Eric P. Berlin, Esq.
Dentons US LLP
233 South Wacker Drive
Suite 5900
Chicago, IL 60606

Counsel for Natures GA, LLC

Counsel for Remedium Life Science Of
Georgia, LLC

Vincent R. Russo, Esq.
Matthew T. Parrish, Esq.
Robbins Ross Alloy Belinfante
Littlefield LLC
400 14th Street, NW
Atlanta, Georgia 30318
vrusso@robbinsfirm.com
matt.parrish@robbinsfirm.com

[Counsel for Theratrue Georgia,
LLC](#)

William (“Chip”) Collins, Jr.,
Esq.
Joe Stuhrenberg, Esq.
Burr & Forman LLP
171 Seventeenth Street, NW
Suite 1100
Atlanta, Georgia 30363
wcollins@burr.com
jestuhrenberg@burr.com

Counsel for Treevana Remedy,
Inc.

This 28th day of October, 2022.

KILPATRICK TOWNSEND
& STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530
Telephone: (404) 815-6500
Facsimile: (404) 815-6555
jjett@kilpatricktownsend.com
aconger@kilpatricktownsend.com

/s/ John P. Jett
John P. Jett
Georgia Bar No. 827033
Ava J. Conger
Georgia Bar No. 676247

Counsel for Curaleaf GA Holdings, LLC