DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202 **Plaintiff:** MAMMOTH FARMS, LLC, a Colorado limited liability company; MAMMOTH MANUFACTURING, LLC, a Colorado limited liability company; and MAMMOTH FORTE JV, LLC, a Colorado limited liability company, **v.** **Defendants:** COLORADO DEPARTMENT OF REVENUE; COLORADO DEPARTMENT OF REVENUE MARIJUANA ENFORCEMENT DIVISION; and HEIDI HUMPHREYS, in Her Official Capacity as Executive Director of the Colorado Department of Revenue.	DATE FILED March 31, 2025 4:05 PM FILING ID: CF23EA36AD382 CASE NUMBER: 2025CV30881 **▲COURT USE ONLY▲**
Philip J. Weiser, Attorney General ROSS A. HOOGERHYDE* CRISTY DIMARIA* HIWOT M. COVELL* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 8th Floor Denver, CO 80203 Telephone: (720) 508-6000 E-Mail: ross.hoogerhyde@coag.gov; cristy.dimaria@coag.gov; hiwot.covell@coag.gov Atty. Reg. #s: 42588 (Hoogerhyde); 38188 (DiMaria); 41142 (Covell) *Counsel of Record	Case No. 2025CV30881 Courtroom: 203
DEFENDANTS' MOTION TO DISMISS	

CERTIFICATE OF CONFERRAL

Defendants' counsel conferred with Plaintiffs' counsel by audio conference on March 31, 2025, regarding this motion. Plaintiffs oppose the motion.

I. INTRODUCTION

Defendants, Colorado Department of Revenue ("Department of Revenue"); Colorado Department of Revenue, Marijuana Enforcement Division ("MED"); and Heidi Humphreys, in her official capacity as Executive Director of the Colorado Department of Revenue ("State Licensing Authority" and together with the Colorado Department of Revenue and the MED, "Defendants") deny the allegations in the Complaint.

As a preliminary matter, conversion of hemp into tetrahydrocannabinol (THC) is a nationwide issue, not unique to Colorado. The Farm Bill definition of hemp includes not only the plant Cannabis sativa L., but also "any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis". 7 U.S.C.A. § 1639o. Some hemp industry members argue this definition makes intoxicating hemp legal under the Farm Bill. *See, e.g.,* CANNRA Overview of Regulatory Challenges for Cannabinoid Hemp available at https://tinyurl.com/43232va9 (last accessed March 28, 2025). In Colorado, hemp products are regulated by the Colorado Department of Health and Environment. *See* § 25-5-427(3)(a), C.R.S.

Defendants neither regulate hemp products nor safe harbor hemp products in Colorado and the Colorado Constitution mandates separate regulation of marijuana from hemp. *See* Colorado Const. at Art. XVIII, §16, ¶(1)(c). With limited exception for Research & Development

Licenses, which is not relevant here, the Marijuana Rules prohibit licensed marijuana businesses from possessing synthetic cannabinoids – THC made by converting hemp with chemicals. *See* Marijuana Rule 3-335(G.5), 1 CCR 212-3. Following MED investigations, the State Licensing Authority took administrative licensing action against at least two licensed marijuana manufacturers for converting hemp into THC in violation of the Marijuana Code and Rules. (*See* Final Agency Actions available at https://med.colorado.gov/final-administrative-actions, under 2025 Final Administrative Actions see link "Ware Hause LLC, South Platte Distributors LLC 1/22/2025," and link "2022 Final Administrative Action," then link "Mile High Distribution, LLC" (date of 5/12/22) adopting "Initial Decision Mile High Distributing, LLC" (date of 11/17/21) (last accessed Mar. 28, 2025)).[1] In short, Plaintiffs' complaints are with parties not named in the Complaint, not the Defendants' enforcement of the Marijuana Code or Marijuana Rules. This requires dismissal of the Complaint.

Defendants request the Court dismiss this action pursuant to C.R.C.P. 12(b)(1) for lack of subject matter jurisdiction, and C.RC.P. 12(b)(5) for failure to state a claim upon which relief can be granted without addressing the merits of Plaintiffs' claims. The Court lacks subject matter jurisdiction over each claim because the Plaintiffs seek judicial review despite the lack of any final agency action – a mandatory requirement, failed to timely initiate judicial review of Marijuana Rules effective December 4, 2024, and request this Court substitute Plaintiffs' decisions for the State Licensing Authority's decisions in violation of the separation of powers

[1] There may be other, ongoing investigations including alleged hemp conversion by marijuana licensees, however, any such ongoing investigation is confidential under subsections 44-10-204(1)(a) and (2)(a), C.R.S., until issuance of a final agency action.

doctrine. The Complaint also fails to state a claim upon which relief can be granted as to the Department of Revenue and the MED because they lack any authority to make rules or discharge powers and duties expressly granted to only the State Licensing Authority. Based on the foregoing, the entire Complaint should be dismissed.

II. FACTUAL BACKGROUND

On March 10, 2025, Plaintiffs filed this case alleging five causes of action against Defendants. Each claim asserts a violation of the Colorado Administrative Procedure Act, § 24-4-106(7)(b), C.R.S., (the "APA"), and requests that the Court enter a declaratory judgment against the Defendants related to testing, seed-to-sale tracking regarding inversion and diversion of marijuana, and identification of rule violations requiring mandatory disciplinary actions. (Compl. at ¶¶ 195, 209, 222, 240 and 262.) Two claims seek to compel the State Licensing Authority to initiate rulemaking regarding testing rules for converted THC and methylene chloride. (*Id.* at ¶¶ 196 and 210.) Three claims request an order that Defendants comply with certain sections of the Marijuana Code and the Colorado Constitution. (*Id.* at ¶¶ 223, 241, 263.) The prayer for relief then reiterates these requests and adds that the Court should "[o]rder Defendants to initiate the emergency rulemaking process by determining whether it is imperatively necessary under C.R.S. § 24-4-103(6)(a) to adopt immediately rules that establish" testing requirements, and categories of infractions. (*Id.* at Prayer for Relief (I).) Despite Plaintiffs' reliance on the APA, Plaintiffs fail to identify any "final agency action" – a prerequisite to judicial review.

Plaintiffs acknowledge that "C.R.S. § 44-10-202(1)(a) mandates that "[t]he *state licensing authority* shall . . . [d]evelop and maintain a seed-to-sale tracking system…" (*Id.* at ¶90

(emphasis added).) They also acknowledge that "C.R.S. § 44-10-202(1)(b) states that "[t]he *state licensing authority* shall . . . suspend, fine, restrict, or revoke such licenses, whether active, expired, or surrendered, upon a violation of this article 10 or any rule promulgated pursuant to this article 10; and impose any penalty authorized by this article 10 or any rule promulgated pursuant to this article 10." (*Id.* at ¶ 227 (emphasis added).) The State Licensing Authority is also required to "promulgate rules for the proper regulation and control of the cultivation, manufacture, distribution, sale, and testing of regulated marijuana and regulated marijuana products…and promulgate amended rules and such special rulings and findings as necessary," which may include rules related to testing and labeling. § 44-10-202(1)(c), C.R.S.; *see also* (*id.* at ¶105); §§ 44-10-203(2)(d), (f), C.R.S.

On December 4, 2024, the State Licensing Authority adopted the most recent amendments to the Marijuana Rules. *See* Colo. Secretary of State, December 4, 2024, No. 2025-00382 ("December 2024 Marijuana Rules"), https://tinyurl.com/56p9syt4 (last accessed Mar. 28, 2025). Defendants do not allege they petitioned for the "issuance, amendment or repeal of a rule." *See* § 24-4-103(7), C.R.S.; *see also* (Compl.) Even if they had, Defendants failed to challenge the State Licensing Authority's adoption of rule amendments by the January 8, 2025, statutory deadline under the APA. *See* §§ 24-4-103(5), 24-4-106(4), C.R.S.

III. LEGAL STANDARD

A plaintiff bears the burden of proving jurisdiction when a court's subject matter is challenged pursuant to C.R.C.P. 12(b)(1). *See DiCocco v. Nat'l Gen. Ins. Co.*, 140 P.3d 314, 316 (Colo. App. 2006). "If the plaintiff fails to establish that the trial court has subject matter jurisdiction, the court must dismiss the matter; any other order or judgment entered by the court

would be void and unenforceable." *City of Boulder v. Pub. Serv. Co. of Colo.*, 996 P.2d 198, 203 (Colo. App. 1999) (citing *Adams City Dept. of Soc. Services v. Huynh*, 883 P.2d 573 (Colo.App.1994).)

"[A] motion under C.R.C.P. 12(b)(5) to dismiss a complaint for failure to state a claim upon which relief can be granted is to test the formal sufficiency of the complaint." *Dorman v. Petrol Aspen*, 914 P.2d 909, 911 (Colo. 1996). A court may dismiss a complaint "if the substantive law does not support the claims asserted, or if the plaintiff's factual allegations do not, as a matter of law, support a claim for relief." *Peña v. Am. Family Mut. Ins. Co.*, 463 P.3d 879, 881 (Colo. App. 2018) (internal citations omitted). A claim for relief must satisfy the plausibility standards under *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *Warne v. Hall*, 373 P.3d 588, 589-90 (Colo. 2016). To meet that standard, "the factual allegations of the complaint must be enough to raise a right to relief 'above the speculative level,' and provide 'plausible grounds to infer a [right to relief].'" *Id.* at 591 (citing *Bell Atl. Corp.*, 550 U.S. at 556.)

IV. MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION.

Section 24-4-106, C.R.S., of the APA, allows for judicial review of a final agency action. *See* § 24-4-106(2), C.R.S. A prerequisite to a judicial review under § 24-4-106(7)(b), C.R.S., is a final agency action. *See* § 24-4-106(2), C.R.S. ("Final agency actions under this or any other law shall be subject to judicial review as provided in this section…."); § 24-4-106(7)(b), C.R.S. "[A]ny person adversely affected or aggrieved by any agency action may commence an action for judicial review in the district court within thirty-five days after such agency action becomes

effective…." § 24-4-106(4), C.R.S.; *see Roosevelt Tunnel, LLC v. Norton*, 89 P.3d 427, 429 (Colo. App. 2003).

The Court lacks subject matter jurisdiction over all claims in the Complaint because a final agency action does not exist. If a final agency action exists based on a rule adopted by the State Licensing Authority in the December 2024 Marijuana Rules, Plaintiffs failed to timely seek judicial review so that Complaint still requires dismissal.

a. Subsection 24-4-106(7), C.R.S., Permits a Party to Seek Judicial Review of Only a Final Agency Action, But There is No Final Agency Action in This Case.

Judicial review under § 24-4-106(4), C.R.S., first requires that the agency issue a final agency action. Section 24-4-106(4), C.R.S., with a few exceptions not applicable in this case, allows a person adversely affected or aggrieved by an agency action to seek judicial review within 35-days after that action becomes effective. Despite going on for 38 pages, including 263 individual allegations, Plaintiffs fail to identify **any** final agency action for which they are requesting judicial review. That is because none exist.

An "action" under the APA includes rules, orders, licenses, sanctions, relief or denials, or a failure to act. *See* § 24-4-102(1), C.R.S. Here, the Complaint is based on Plaintiffs' assertion that the Defendants failed to establish proper testing requirements based on portions of the Marijuana Code related to rulemaking, but Plaintiffs fail to cite a specific final agency action. (*See* Compl., ¶¶195, 209 (claims 1 and 2), referencing §§ 44-10-202(1)(c), 44-10-203(2)(d)(I)[2], C.R.S., the Colorado Constitution, and § 24-4-106(7)(b), C.R.S.). Plaintiffs' other causes of

[2] Plaintiffs reference "§44-10-203(d)(I)" throughout the Complaint. (*See e.g.* ¶¶195, 196, 209, 210). Defendants believe Plaintiffs are referencing §44-10-203(2)(d)(I), but if this assumption is incorrect, then Defendants will request further briefing.

actions are based on the state licensing authority's powers and duties. (*See, e.g.,* Compl., ¶¶ 222, 240, 262 (claims 3-5), referencing § 44-10-202(1)(b), C.R.S.). A power and duty of the State Licensing Authority is not an "action" as required by § 24-4-106(7)(b), C.R.S.

"The APA provides an independent right to a hearing in only two areas: rule making, § 24–4–103(4), C.R.S.2001; and licensure, § 24–4–104(6), (9), C.R.S.2001." *Bazemore v. Colo. State Lottery Div*., 64 P.3d 876, 880 (Colo. App. 2002). But "the APA does not create substantive legal rights on which a claim for relief can be based. That is, such substantive legal rights must exist either by statutory language, by the agency's rules and regulations, or by some constitutional command." *Romer v. Bd. of Cnty. Comm's of Pueblo*, 956 P.2d 566, 576 (Colo. 1998).

Plaintiffs fail to identify any "action" under the APA as the basis of their challenge, much less a final agency action. That is because no action exists, and therefore the dispute is not justiciable. *Id*. Absent a final agency action, this Court lacks subject matter jurisdiction under § 24-4-106(7)(b), C.R.S., and the Complaint must be dismissed.

b. Plaintiffs Failed to Timely Challenge the Marijuana Rules Effective December 4, 2024.

Giving Plaintiffs the benefit of the doubt, the most recent final agency action that they could be challenging are amendments in the December 2024 Marijuana Rules – specifically the Marijuana Rules related to testing or disciplinary actions. (*See* Compl., ¶¶ 195, 209 (claims 1 and 2), ¶¶ 240, 262 (claims 4 and 5).) The State Licensing Authority revised several testing rules and disciplinary rules which became effective on December 4, 2024. *See* December 2024 Marijuana Rules. The December 2024 Marijuana Rules included amendments to the testing rules (4-200 Series) and amendments in response to a 2023 State Audit to clarify penalties and sanctions

(December 2024 Marijuana Rule 8-120(D)). *See* Adopted Rule Redline available at https://www.coloradosos.gov/CCR/eDocketDetails.do?trackingNum=2024-00382, at pp. 236-349 (repealing the 4-100 series testing rules and adopting the 4-200 series); pp. 610-11 (identifying violations not eligible for written warning or assurance of voluntary compliance).

The APA requires that judicial review of a rule be commenced within thirty-five days of that rule becoming effective. § 24-4-106(4), C.R.S. "Once a rule becomes effective, the rule-making process shall be deemed to have become final agency action for judicial review purposes." § 24-4-103(5), C.R.S. Failure to meet this deadline is a jurisdictional defect. *See Clasby v. Klapper,* 636 P.2d 682, 685 (Colo., 1981) ("… one seeking to exercise a statutorily provided right of review must comply with the time limitations imposed by that statute. The failure to bring a proceeding within the applicable time limit is a jurisdictional defect.") (internal citations omitted).

If Plaintiffs seek judicial review of the December 2024 Marijuana Rules, then the statutory deadline of January 8, 2025, which is 35-days after the State Licensing Authority adopted these Marijuana Rules under § 24-4-106(4), C.R.S., passed well before the filing of the Complaint. Any challenge to these Marijuana Rules is untimely. Plaintiffs' failure to seek judicial review within the statutory deadline deprives this Court of subject matter jurisdiction to hear the claims. *See, e.g., Allen Homesite Grp. v. Colo. Water Control Comm'n*, 19 P.3d 32, 34 (Colo. App. 2000) (failure to seek timely review of an administrative action deprives district court of jurisdiction).

Finally, the APA allows a party to petition an agency for the "issuance, amendment or repeal of a rule." *See* § 24-4-103(7), C.R.S. "Action on such [rule] petition shall be within the

discretion of the agency[.]" *Id.* Neither this section, nor the APA generally, provides any right to obtain judicial review of a denial or failure to act on a rule petition. Instead, the only ability to seek judicial review would be after the rulemaking during which the petition was filed became effective. Here, Plaintiffs do not allege they petitioned for a rule change related to testing related to mislabeling (Claim 1), testing related to contaminants (Claim 2), tracking of Regulated Marijuana (Claim 3), or disciplinary actions (Claims 4 and 5). Plaintiffs' failure to petition for the requested rule changes or to timely pursue judicial review of any rulemaking deprives the Court of subject matter jurisdiction and bars Plaintiffs' claims.

c. Plaintiffs Requested Relief Violates the Separation of Powers Doctrine.

The Colorado Constitution provides that one branch of government may not interfere with another branch's exercise of its powers. *See* Colo. Const. Art. III; *see also Pena v. Dist. Court of the Second Judicial Dist. City & County of Denver*, 681 P.2d 953, 955-56 (Colo. 1984). The separation of powers doctrine prohibits courts from encroaching on an agency's exercise of its authority. "This doctrine insures [sic] that the judiciary will not 'under the pretense of deciding a case,' preempt an executive agency from exercising powers properly within its own sphere." *Colo. State Dep't of Health v. Geriatrics, Inc.*, 699 P.2d 952, 959 (Colo. 1985) (internal citations omitted); *see also Rocky Mountain Retail Mgmt. v. City of Northglenn*, 393 P.3d 533, 536 (Colo. 2017) (describing "limited" judicial review under the administrative procedures act for administrative action); *Hilst v. Bennet*, 485 P.2d 880, 882 (Colo. 1971) (courts do not have jurisdiction by injunction or other court order to interfere with the functions of a licensing authority before a license is issued, transferred or revoked, and judicial review is available only after the licensing authority has exercised its authority); *Envirotest Sys., Corp v. Colo. Dept. of*

Revenue, 109 P.3d 142, 144 (Colo. 2005) (separation of powers and the exhaustion of administrative remedies requirement prohibit courts from entertaining challenges, including declaratory or injunctive relief, before final agency action is taken by an executive agency). "The power of the courts to order executive agencies to take any action is extremely limited. Injunctive relief is generally not available against an administrative agency performing the duties delegated to it." *Jones v. Colo. State Bd. of Chiropractic Exam'rs*, 874 P.2d 493, 494 (Colo. App. 1994). A claim for mandamus, even if "framed as a request for mandatory and permanent injunction," is only appropriate "if the administrative act is ministerial in nature and the agency or official has a clear legal duty to perform it." *Id*. at 494. "[R]ule-making authority is a quasi-legislative function delegated" by the General Assembly to an executive agency that is "inherently discretionary" and not available as a court ordered remedy against an agency. *Id.*

In *Yates v. Hartman*, 488 P.3d 348, 349 (Colo. App. 2018), the Colorado Court of Appeals applied the separation of powers doctrine and concluded a District Court could not appoint an unlicensed receiver in violation of marijuana licensing statutes. The *Yates* court recognized "[i]t is a fundamental tenet of a separation-of-powers doctrine that a court's enforcement powers are restricted by the dictates of the legislature." *Id.* (*c*iting *LaShawn A. v. Barry*, 144 F.3d 847, 853 (D.C. Cir. 1998)). The court also recognized "'it is not an appropriate function of the court to act as a licensing agency,' and undertake the agency's role in determining who may operate marijuana businesses." *Id.* at 351 (citing *Kourlis v. District Court, El Paso Cty.*, 930 P.2d 1329, 1337 (Colo. 1997)).

The Marijuana Code creates the State Licensing Authority, identifies powers and duties of the State Licensing Authority and delegates rulemaking authority to the State Licensing

Authority. *See* §§ 44-10-201(1), 202 and 203, C.R.S. The State Licensing Authority is the Executive Director of the Colorado Department of Revenue or the Deputy Director if designated. § 44-10-202(1), C.RS. Both the Executive Director and Deputy Executive Director of the Colorado Department of Revenue are executive branch positions. *See* § 24-35-101, *et seq.*, C.R.S. (creating the department of revenue).

Specifically, the State Licensing Authority has the exclusive power to "develop and maintain a seed-to-sale tracking system" (§ 44-10-202(1)(a), C.R.S.); "grant or refuse state licenses for the cultivation, manufacture distribution, sale, hospitality, and testing of regulated marijuana and regulated marijuana products as provided by law; suspend, fine, restrict, revoke, such license," (§ 44-10-202(1)(b), C.R.S.); and to "promulgate rules for the proper regulation and control of the cultivation, manufacture, distribution, sale and testing of regulated marijuana and regulated marijuana products and enforcement of" the Marijuana Code. § 44-10-202(1)(c), C.R.S. Finally, the general assembly delegated rulemaking authority to the State Licensing Authority to establish marijuana testing rules. § 44-10-203(2)(d), C.R.S.

Plaintiffs' Complaint alleges five causes of action under § 24-4-106(7)(b), C.R.S., and nine separate Prayers for Relief. None can survive a separation of powers challenge as all seek an order from this Court – the judicial branch – compelling the State Licensing Authority – the executive branch – to discharge its statutorily identified powers, duties and rulemaking authority as directed by Plaintiffs. Plaintiffs' Complaint is a violation of the separation of powers doctrine which cannot survive a motion to dismiss.

The most telling example of Plaintiffs' attempt to undermine the separation of powers established by the Colorado Constitution is identified in Prayer for Relief (I). This request seeks

to "[o]rder Defendants to initiate the emergency rulemaking process by determining whether it is imperatively necessary under C.R.S. § 24-4-103(6)(a), to adopt immediately rules that establish (1) proper testing requirements to ensure that regulated marijuana products are not in fact mislabeled Converted THC; (2) proper testing requirements to ensure that regulated marijuana products are accurately sampled for testing and do not contain methylene chloride; and (3) a category of severe infractions that provide ground for mandatory disciplinary action." (Compl. Prayer for Relief, ¶ (I).) Every single request in this Prayer for Relief identifies rulemaking authority expressly reserved to the State Licensing Authority by the Marijuana Code. *See* § 44-10-203(2)(d)(1), C.R.S. Granting this requested relief would violate the separation of powers doctrine by compelling the executive branch to discharge powers and duties as directed by Plaintiffs.

Plaintiffs' claims 1 through 5 and Prayers for Relief (B), (D), (F), and (H), similarly violate the separation of powers doctrine. (Compl. at ¶¶ 196, 210, 223, 241, 263; Prayer for Relief (B), (D), (F) and (H)). Plaintiffs request regarding testing to identify mislabeled Converted THC and the absence of methylene chloride specifically conflict with the State Licensing Authority's delegated rulemaking authority to develop the regulated marijuana testing program (*Compare* Compl. at ¶¶ 196 and 210; Prayer for Relief (B) and (D) *with* §§ 44-10-203(2)(d), C.R.S.).[3] Similarly, Plaintiffs attempt to conscript the State Licensing Authority's exclusive power and duty to establish a seed-to-sale tracking system and to determine the appropriate

[3] Plaintiffs fail to assess the operability of the proposed new testing requirements by regulated marijuana testing laboratories or the Colorado Department of Public Health and Environment which certifies these testing laboratories.

sanction for violations of the Marijuana Code and Marijuana Rules also violate the separation of powers doctrine. (*Compare* Compl. at ¶¶ 223, 241, 263 and Prayer for Relief (F), and (H) with §§ 44-10-202(1)(a)-(c), C.R.S.). Finally, Plaintiffs' attempt to obtain an order requiring the State Licensing Authority to identify "a category of severe infractions that provide ground[s] for mandatory disciplinary action" violates the separation of powers doctrine and is moot as this has already been provided at Marijuana Rule 8-120(D). *See* December 2024 Marijuana Rule 8-120(D) (identifying seven categories of violations that are "Not Eligible for Written Warning or Assurance of Voluntary Compliance.").

Plaintiffs assert substantially similar claims for declaratory relief potentially recognizing their requested orders regarding rulemaking and discharge of the State Licensing Authority's powers and duties violates the separation of powers doctrine. (*See* Compl. at ¶¶ 195, 209, 222, 240, 262; Prayer for Relief (A), (C), (E) and (G).) These claims seek declarations that the State Licensing Authority's labeling and testing rules, regulated marijuana seed-to-sale tracking system and disciplinary rules violate the Colorado Constitution, the State Licensing Authority's delegated powers, duties and rulemaking authority and subsection 24-4-106(7), C.R.S. These claims, however, similarly fail as declaratory judgment regarding the State Licensing Authority's discharge of its delegated powers, duties and rulemaking authority also violate the separation of powers doctrine. *See Envirotest,* 109 P.3d at 145("Envirotest's attempt to posit the declaratory judgment provisions of C.R.C.P. 57 as an alternative to the APA to serve as the basis for district court jurisdiction cannot succeed in light of the APA's specific requirement for finality of agency action and exhaustion of administrative remedies prior to judicial review. Where, as here, the

provisions of the APA provide a claimant with adequate remedies, in particular section 24–4–106(7), the provisions of C.R.C.P. 57 are inapplicable.")

Plaintiffs' claims 1 through 5 and granting any relief requested in the Prayer for Relief violate the separation of powers doctrine. Plaintiffs are attempting to conscript the State Licensing Authority to discharge its powers, duties and rulemaking authority as directed by Plaintiffs. Courts routinely reject such attempts as improper and in violation of the separation of powers doctrine. As such, Plaintiffs' attempt to compel the State Licensing Authority to take Plaintiffs' desired actions through declaratory judgment similarly fail. Accordingly, the Complaint must be dismissed in its entirety.

V. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

The general assembly granted powers and duties as well as the authority to adopt rules solely to the State Licensing Authority. *See* § 44-10-202(1)(a), C.R.S. (related to developing and maintaining a seed to sale tracking system); § 44-10-202(1)(b), C.R.S. (related to discipline); § 44-10-202(1)(c), C.R.S. (related to regulation and control of regulated marijuana and regulated marijuana products); § 44-10-203, C.R.S. (regarding mandatory and permissive rulemaking authority). The Department of Revenue and the MED were not delegated any powers or duties in the Marijuana Code and do not have any authority to adopt, amend or repeal rules. (*See* Compl., ¶¶ 195-96 (Claim 1); ¶¶209-10 (Claim 2); ¶¶90, ¶¶222-23 (Claim 3); ¶¶ 240-41 (Claim 4); ¶¶262-63 (Claim 5).) Simply put, even if the Court were to grant each claim in the Complaint, none could be ordered against the Department of Revenue or the MED because the duties to grant the requested relief is reserved for the State Licensing Authority. Accordingly, the Department of Revenue and MED must be dismissed from the Complaint.

VI. CONCLUSION

Plaintiffs' Complaint and all claims alleged therein must be dismissed for lack of subject matter jurisdiction. As it relates to named defendants Department of Revenue and MED, all claims in the Complaint fail to state a claim upon which relief can be granted because none of the relief requested can be granted against these defendants. The Complaint should be dismissed in its entirety.

Respectfully submitted this 31st day of March, 2025.

PHILIP J. WEISER
Attorney General

/s/ Hiwot Covell

Ross A. Hoogerhyde*
First Assistant Attorney General
Cristy DiMaria*
Second Assistant Attorney General
Hiwot Covell*
Senior Assistant Attorney General
Attorneys for Defendants
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **DEFENDANTS' MOTION TO DISMISS** upon all parties herein by Colorado Courts E-Filing or Email, at Denver, Colorado, this 31st day of March, 2025, addressed as follows:

Jean E. Smith Gonnell, Esq.
Troutman Pepper Locke LLP
301 S. College Street, Suite 3400
Charlotte, NC 28202
Jean.gonnell@troutman.com

Attorney for Plaintiffs

By: */s/ Hiwot Covell*
Hiwot Covell