

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

FILED September 7, 2023 ADMINISTRATIVE HEARING COMMISSION

DELTA EXTRACTION, LLC,)	
)	
Petitioner,)	
)	
v.)	AHC Case No. 23-0608
)	
MISSOURI DEPARTMENT OF)	
HEALTH AND SENIOR SERVICES,)	
)	
Respondent.)	

MOTION TO CONTINUE AND ADOPT SCHEDULING ORDER

Respondent Missouri Department of Health and Senior Services, by and through its undersigned counsel, hereby submits this Motion to Continue and Issue Scheduling Order.

On August 2, 2023, the Missouri Department of Health and Senior Services (“DHSS”), Division of Cannabis Regulation (“DCR”) issued Plaintiff Delta Extraction, LLC (“Delta Extraction” or “Licensee”) an Order of Immediate Suspension (“OIS”). On August 3, 2023, Petitioner filed its complaint, challenging the OIS. DCR issued an Administrative Hold (“Hold”) the same day. On August 9, 2023, Petitioner filed its Emergency Motion for Stay (“stay motion”). On August 11, 2023, DCR issued Delta Extraction a Notice of Pending Revocation (“NOPR”). On August 14, 2023, the Administrative Hearing Commission held an evidentiary hearing on the stay motion. That day, DCR issued a Notice of Recall (“Recall”).

On August 29, 2023, the Commission issued an Order denying Petitioner’s stay motion. A hearing on the OIS is set for September 29, 2023. On August 31, Petitioner issued its First Request for Production of Documents or Things. On September 1, 2023, Petitioner issued its Second Request for Production of Documents or Things and Respondent issued its First Request for

Production. Also on September 1, 2023, DCR issued Delta Extraction an Amended Notice of Pending Revocation (“Amended NOPR”).

A. Parties No Longer have Agreement as to Discovery

Prior to the pre-hearing conference on August 31, 2023, at Petitioner’s request, the parties conferred regarding the scope of discovery and scheduling. The parties reached an agreement on timelines, depositions, and hearing date, which led to Respondent withdrawing its request for a protective order during the pre-hearing conference and consenting to setting this matter for hearing on September 29, 2023. However, after the pre-hearing conference, Respondent was informed that there was no agreement on discovery, including who would be deposed, the number of depositions and when documents would be exchanged. Exhibit A. Without agreement, the current discovery and hearing scheduling is highly prejudicial to Respondent. Petitioner’s expedited discovery schedule, reiterated in its Second Requests for Production of Documents and Things, demands objections and production less than a week after the issuance of discovery demands.

Petitioner has also expanded the number of issues to be resolved since the pre-hearing conference, specifically adding a challenge to the Recall and several constitutional allegations to its Complaint. Exhibit B. These allegations are reflected in Petitioner’s Second Discovery Requests. Exhibit C.

Given the expanded scope of issues, expanded scope of discovery, and its own need to conduct reasonable discovery, the Department requests a reasonable and deliberate scheduling order.

B. Efficiency Favors Consolidation of Issues

Petitioner is now appealing three DCR actions: 1) the OIS; 2) the Hold; and 3) the Recall. These actions have all been, as to Petitioner, penalties on its license. The September 1, 2023,

Amended NOPR includes the compliance concerns outlined in the OIS as well as additional concerns of inversion, non-compliant testing, and several other alleged violations of security and storage regulations. Exhibit D. If Delta Extraction cures the issues outlined in the Amended NOPR, the current matter may be resolved. Conversely, if thirty (30) days pass without cure, Delta Extraction's license may be revoked or suspended, at which time the revocation or suspension is appealable to this Commission. The Amended NOPR includes the same and additional factual issues as those currently at issue here.

Respondent requested consent to this request, but consent was not received. However, establishing a reasonable and deliberate schedule in this matter will promote efficiency by ensuring the Commission and the parties do not have to litigate the same issues multiple times.

Therefore, in light of the foregoing, the Department requests the Commission issue an Order Continuing Hearing and Adopting a Scheduling Order.

Respectfully submitted,

MICKES O'TOOLE, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2023, I electronically filed the foregoing with the Administrative Hearing Commission using the electronic filing system, and the foregoing was sent via electronic mail to:

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