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CONFIDENTIAL

To: Interested Clients

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Re: Franchise Law Issues FAQ – "Accidental Franchisors"

Background

California and federal franchise law is very complicated and can be applied to unsuspecting parties to contracts and/or arrangements that involve branding, marketing and sale of products under trademarks and tradenames. If a substantial part of a licensed cannabis company's business involves the foregoing activities, it is very important to understand the general nature and extent of California and federal franchise laws on such activities.[1]

To summarize: this is a big deal. Every contract or unwritten arrangement that involves the marketing and sale of products under a tradename for a fee is at risk of being deemed to be a franchise under the California Franchise Investment Law ("**CFIL**") and the California Franchise Relations Law ("**CFRA**"). In addition, to the extent that vending machines, vending routes, rack displays and/or kiosks are involved, the California Seller Assisted Marketing Plan Act ("**SAMP**") could also apply. Further, the Federal Trade Commission ("**FTC**") regulates franchises under federal law and federal courts have jurisdiction over franchise cases. As a result, federal courts could end up adjudicating disputes notwithstanding contractual provisions mandating exclusivity of California courts.

If found to be in a franchise relationship with an Accidental Franchisor, a company will have statutory remedies under California and federal franchise laws that may include rights to, among other things, refuse termination without "good cause," to extend the term past the contractual termination date, and to transfer a contract in connection with or without the sale of a business notwithstanding contractual terms to the contrary.

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[1] To the extent a business commences activities in other states, the franchise laws of such other states will apply. However, because few states have franchise laws that are as aggressive as California's, it is unlikely that any new franchise related issues would arise in such other states that are not already implicated under California's laws.

Further, to the extent that a company is working with independent sales agents, it could be found to be an Accidental Franchisor with respect to such sales agents and, in such event, those sales agent arrangements should be examined to see if identified risks can be mitigated.

The foregoing clearly indicates a need to be aware of franchise law issues when entering into agreements and/or arrangements that contain one or more elements of a franchise discussed above.

Please let me know if you would like to discuss the foregoing in greater detail.