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Mendocino County Board of Supervisors
501 Low Gap Road, Ukiah, CA 95482

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Re: Agenda Item 4f- Discussion and Possible Action Including Direction to Staff to Limit Cannabis Equity Program(s) to Legitimate Governmental Purposes, Including Environmental Remediation, Encouragement of Regulatory Compliance, Mitigation of Negative Impacts of Existing Industry and Void Any Program Elements Found to be Impermissible Under Federal Law

1. Restricting The Equity Program Is Contrary to The Intent Of The State Equity Goals

The State's enunciated goal in administering Equity Grants to location jurisdictions is "to advance economic justice for populations and communities impacted by cannabis prohibition and the War on Drugs (WoD) by providing support to local jurisdictions as they promote equity in California and eliminate barriers to enter the newly regulated cannabis industry for equity program applicants and licensees." P.1, Mendocino County Cannabis Local Equity Program Manual V.6, 7/29/22. Further, "[t]he term "equity" recognizes that because different individuals or groups have different histories and circumstances, they have different needs and unequal starting points. Using an equity approach, individuals and groups receive different resources, opportunities, support, or treatment based on their specific needs. By providing what each individual or group needs, they can have equitable or fair outcomes." P.1, Mendocino County Cannabis Local Equity Program Manual V.6, 7/29/22 ("LEEP Manual V.6")

A breadth of participation of both current applicants for commercial cannabis permits and licenses and those who intend on obtaining such permits and licenses for any commercial cannabis activity were specifically contemplated and included in our local program. P.2, LEEP Manual V.6. Likewise, **a breadth of direct grant budget items was specifically identified to include items that are much broader than this agenda item seeks to now limit.** For example, items 5 and 6 in the LEEP Manual (pages 4-5) include Grants "for the purpose of paying start-up and ongoing business expenses including but not limited to rent or lease, utility bills, staff salaries and hourly rates, insurance, fixtures and equipment, furniture, capital improvements, legal assistance, bookkeeping and accounting, regulatory compliance, and the testing of legal cannabis" (item 5); and Grants for the purpose of paying for "expenses associated with marketing and branding" (item 6). It is also important to note that the LEEP Manual, in every version has intentionally and specifically included language that explicitly seeks to not limit the examples of the types of items an Equity applicant can apply for by stating "**including but not limited to**" when listing examples of budget items.

The intentional expansiveness was in service of the explicit State grant program goal to use "an equity approach, individuals and groups receive different resources, opportunities, support, or treatment based on their specific needs." P.1, LEEP Manual, V6.

To adopt a more restrictive approach in the years after the program was started, would not only be in contravention to the State's enunciated goals, but would fail to recognize that the current cohort of applicants have relied upon the intended breadth of possibilities.

2. Any "Concern" About Violating Federal Law Is Unwarranted And Could Result In The Total Elimination Of The Entire Equity Program

Without any attached materials or memos from Staff or the Sponsor of this agenda item, it is difficult to understand what the specific concern was or how there was a danger of liability for the county with respect



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to federal law. None the less, there are two separate and important points to consider when adding language regarding violating federal laws:

- a. Theoretically, any program elements are impermissible under the federal Controlled Substances Act (CSA), so including a prohibition on anything in violation of federal law could backfire and result in any support or facilitation of commercial cannabis activity through an Equity Program being deemed illegal. This is a specious argument and if it were valid, we could not have a local permitting process because to do so would facilitate commercial cannabis activity in violation of the CSA.
- b. Unless the Board has not disclosed information to the public, the federal government is not in any way expressing any concern about our local permitting or Equity Programs. In 2010 or 2011 when the original 9.31 permitting program was adopted and in full swing, the feds made themselves very known and clear about their displeasure and that is why the County shut down that program. However, it is important to note that even then, it was only because the State of California did not have a tightly regulated system and only the loose parameters of Prop 215 were in effect. Since that time, not only has California passed and implemented a rigorous state regulatory system, but each year since 2015, the federal budget was passed with a specific amendment that prohibited the feds from spending money on pursuing cases regarding medical cannabis (later expanded to recreational) if the activity was in conformance with state law where the activity was legal in that state.

From 2007 to 2009, I litigated, all the way up to the California Supreme Court, the first post Prop 215 return of medical cannabis to the patient (People v. Brown). It was a Mendocino County case and after the first ruling by the Municipal Court agreeing with my position that the cannabis needed to be returned, the California Attorney General's office stepped in to litigate each of the next 3 levels of appeals. **The AG argued that the medicine could not be returned because it was illegal for the state (in this sense meaning any level of government in the state) to "facilitate" the return of something that was illegal at the federal level. The Superior Court disagreed and so did the Court of Appeal and the Supreme Court of California.**

Finally, in addition to the annual federal budget provision that prevents use of federal funds to pursue cases in instances where state law is being followed, **the federal government itself spends time and effort attempting to assist the cannabis industry.** In fact, if this sudden concern over federal law was raised because the Equity Grant has been modified to allow a set aside to help awardees pay for the federal income tax impact of receiving the grant, have no fear: The Internal Revenue Service has published and continues to push out information and assistance to cannabis specific businesses to help them pay their federal tax liability. <https://www.irs.gov/about-irs/providing-resources-to-help-cannabis-business-owners-successfully-navigate-unique-tax-responsibilities>.

Quite frankly, I think the feds would throw a party if they knew we had a way to help people pay their federal taxes and it is frustrating to have to spend energy on concerns that appear to be merely theoretical and not in keeping with either the State's goals in establishing the Equity Grant funding or in line with how the federal government is treating lawful commercial cannabis activity in states where there is a robust regulatory system.

Respectfully, submitted,
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