

UNITED STATES DEPARTMENT OF JUSTICE

Drug Enforcement Administration

In the Matter of

**Schedules of Controlled Substances:  
Proposed Rescheduling of Marijuana**

**DEA Docket No. 1362  
Hearing Docket No. 24-44**

**ORDER GRANTING OCO, *ET AL.*'S SECOND  
MOTION TO SUBSTITUTE WITNESS**

On December 23, 2024, the consolidated party of the Office of the Cannabis Ombudsman for the State of Connecticut (OCO), Ellen Brown (Brown), and the Doc App, Inc. (the Doc App) (collectively OCO, *et al.*), filed a motion (Second Motion to Amend or SMTA) seeking the substitution of a witness noticed in a previous filing. This is OCO, *et al.*'s second petition for relief in the form of witness substitution in light of a previous motion for substitution (First Motion to Amend or FMTA) filed on December 13, 2024. The First Motion to Amend sought to replace a witness noticed in OCO, *et al.*'s joint prehearing statement with Dr. Staci Gruber. FMTA at 1, 3. An order issued on December 18, 2024 (the December Order) granted the requested witness substitution. The Second Motion to Amend now petitions for the substitution of Dr. Staci Gruber with Dr. Marion McNabb. SMTA at 1. The SMTA's exclusive basis for the requested relief is attributed to the representation that "Brown has been unable to reach Dr. Gruber" since the filing of the FMTA. *Id.* In a letter affixed to OCO, *et al.*'s most recent motion, the requested witness substitution is characterized as "a proactive solution to an unforeseen circumstance" in light of an impending procedural deadline<sup>1</sup> set forth in a prehearing ruling (the Prehearing Ruling or PHR). SMTA at 8; PHR at 3-5.

The SMTA avers that OCO, *et al.* is unable to comply with the January 3, 2025 document deadline and cannot continue with Dr. Gruber as a witness because Brown has not heard from Dr. Gruber since the filing of the First Motion to Amend. SMTA at 1-2, 8. The First Motion to Amend specifically petitioned for the inclusion of Dr. Gruber and requested additional

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<sup>1</sup> The Prehearing Ruling directs the parties to supply each other and the tribunal with copies of their proposed documentary exhibits no later than January 3, 2025. PHR at 3-5.

time to provide a summary of her proposed testimony in light of its representation that “Dr. Gruber recently expressed a willingness to testify but indicated needing several more days to review a statement of her expected testimony to ensure it will be precise and accurate.” FMTA at 3. It further averred that Dr. Gruber would be available to testify on OCO, *et al.*’s presentation day during the hearing on the merits,<sup>2</sup> and stated in a letter of support attached to the FMTA that Dr. Gruber allegedly relayed to Brown that during a conversation “she would be my witness.” *Id.* at 10.

The order issued on November 19, 2024 (the Standing Order) put all Designated Participants with standing to participate in these proceedings under the Administrative Procedure Act (and those, including Brown, who lacked such standing but were permitted to consolidate) on notice that they would have the opportunity to offer live witness testimony. Stand’g Ord. at 43-44. The parties were provided with an opportunity to amend their prehearing statements, and in turn, their witness lists, through the Prehearing Ruling. PHR at 2, 8. However, the parties were explicitly cautioned that any motions filed at this point in the prehearing proceedings were to be “supported by a demonstration of good cause that it likely to be narrowly construed.” *Id.* at 8. The SMTA represents that the inability to contact one of OCO, *et al.*’s proposed witnesses should justify the requested relief. SMTA at 1. However, no good cause has been provided to support or explain why one of its two witnesses has not responded to OCO, *et al.*’s communication attempts, why this Designated Participant would select a proposed witness with what appears to be limited availability, and/or why OCO, *et al.* is certain that they will not be able to comply with the deadline established in the Prehearing Ruling.<sup>3</sup> PHR at 3-5.

As discussed, *supra*, the Second Motion to Amend has scarce little to recommend it, beyond whatever interest there is in preserving Ms. Brown’s opportunity to be heard, notwithstanding what appears to be disorganized, paltry efforts to secure a witness that is willing to appear. The tactical election made by counsel to substitute Ms. Brown’s efforts in a letter as a seeming replacement for his own are likewise singularly unimpressive. That said, in the interests of extending the maximum level of due process possible to this Designated Participant, OCO, *et*

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<sup>2</sup> FMTA at 1.

<sup>3</sup> It is worth noting that the Designated Participants have been afforded time to sort out logistical issues (including general witness availability) since the issuance of the Standing Order.

*al.*'s Second Motion to Amend is herein **GRANTED**.<sup>4</sup>

Dated: December 31, 2024

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JOHN J. MULROONEY, II  
Chief Administrative Law Judge

### **CERTIFICATE OF SERVICE**

This is to certify that the undersigned, on December 31, 2024, caused a copy of the foregoing to be delivered to the following recipients: (1) Julie L. Hamilton, Esq., Counsel for the Government, via email at julie.l.hamilton@dea.gov; James J. Schwartz, Esq., Counsel for the Government, via email at james.j.schwartz@dea.gov; Jarrett T. Lonich, Esq., Counsel for the Government, via email at jarrett.t.lonich@dea.gov; and S. Taylor Johnston, Esq., Counsel for the Government, via email at stephen.t.johnston@dea.gov; (2) the DEA Government Mailbox, via email at dea.registration.litigation@dea.gov; (3) Shane Pennington, Esq., Counsel for Village Farms International, via email at spennington@porterwright.com; and Tristan Cavanaugh, Esq., Counsel for Village Farms International, via email at tcavanaugh@porterwright.com; (4) Nikolas S. Komyati, Esq., Counsel for National Cannabis Industry Association, via email at nkomyati@foxrothschild.com; William Bogot, Esq., Counsel for National Cannabis Industry Association, via email at wbogot@foxrothschild.com; and Khurshid Khoja, Esq., Counsel for National Cannabis Industry Association, via email at khurshid@greenbridgelaw.com; (5) Dante Picazo for Cannabis Bioscience International Holdings, via email at ir@cbih.net; (6) Andrew J. Kline, Esq., Counsel for Hemp for Victory, via email at AKline@perkinscoie.com; and Abdul Kallon, Esq., Counsel for Hemp for Victory, via email at and AKallon@perkinscoie.com; (7) Timothy Swain, Esq., Counsel for Veterans Initiative 22, via email at t.swain@vicentellp.com; Shawn Hauser, Esq., Counsel for Veterans Initiative 22, via email at s.hauser@vicentellp.com; and Scheril Murray Powell, Esq., Counsel for Veteran's Initiative 22, via email at smpesquire@outlook.com; (8) Kelly Fair, Esq., Counsel for The Commonwealth Project, via email at Kelly.Fair@dentons.com; Joanne Caceres, Esq., Counsel for The Commonwealth Project, via email at joanne.caceres@dentons.com; and Lauren M. Estevez, Esq., Counsel for The Commonwealth Project, via email at lauren.estevez@dentons.com; (9) Rafe Petersen, Esq., Counsel for Ari Kirshenbaum, via email at Rafe.Petersen@hkllaw.com; (10) David G. Evans, Esq., Counsel for Cannabis Industry Victims Educating Litigators, Community Anti-Drug Coalitions of America, Kenneth Finn, International Academy on the Science and Impacts of Cannabis, and National Drug and Alcohol Screening Association, via email at

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<sup>4</sup> No additional attempts at witness substitution will be entertained. Additionally, the December Order directed OCO, *et al.* to file a single consolidated list of proposed exhibits in conformity with the directives set forth in the Prehearing Ruling. Dec. Ord. at 1 n.3. The most recent proposed exhibit list supplied contains entries that fail to identify the total number of pages in its proposed exhibits and lists a proposed "Software Demonstration" that was addressed during the preliminary hearing and in a previous order. SMTA at 4; Stand'g Ord. at 30. Even a high level of ideological commitment to a potential litigation outcome cannot substitute for efforts at conscientious due diligence and adherence to the directions of the tribunal. It would be unwise for OCO, *et al.*, to assume continued forbearance in this regard for the balance of these proceedings.

thinkon908@aol.com; (11) Patrick Philbin, Esq., Counsel for Smart Approaches to Marijuana, via email at pphilbin@torridonlaw.com; and Chase Harrington, Esq., Counsel for Smart Approaches to Marijuana, via email at charrington@torridonlaw.com; (12) Eric Hamilton, Esq., Counsel for the State of Nebraska, via email at eric.hamilton@nebraska.gov; and Zachary Viglianco, Esq., for the State of Nebraska, via email at zachary.viglianco@nebraska.gov; (13) Gene Voegtlin for International Association of Chiefs of Police, via email at voegtlin@theiacp.org; (14) Gregory J. Cherundolo for Drug Enforcement Association of Federal Narcotics Agents, via email at executive.director@afna.org and afna.org@gmail.com; (15) Reed N. Smith, Esq., Counsel for the Tennessee Bureau of Investigation, via email at Reed.Smith@ag.tn.gov; and Jacob Durst, Esq., Counsel for Tennessee Bureau of Investigation, via email at Jacob.Durst@ag.tn.gov; and (16) Matthew Zorn, Esq., Counsel for OCO *et al.*, via email at mzorn@yettercoleman.com.

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Tayonna Eubanks  
Secretary (CTR)  
Office of Administrative Law Judges