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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
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9 MCGEE & MCGEE WINE MERCHANTS
10 LLC, a Nevada limited liability company, dba
11 SAPPHIRE FAMILY OF WINES

Case No. CV16-00761
Dept. No. B9

12 Plaintiff,

13 v.

14 JAM CELLARS, INC., a California Corporation;
15 JOHN ANTHONY VINEYARDS, LLC, a
16 California limited liability company; and
DOES I-X, inclusive,

17 Defendants.
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19 **ORDER (1) DENYING PLAINTIFF'S EMERGENCY EX PARTE APPLICATION FOR**
20 **TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY**
21 **INJUNCTION AND (2) DENYING AS MOOT PLAINTIFF'S EMERGENCY EX PARTE**
22 **MOTION FOR EXPEDITED DISCOVERY**

23 The Court is in receipt of Plaintiff MCGEE & MCGEE WINE MERCHANTS LLC's
24 (hereinafter "Plaintiff") *Emergency Ex-Parte Application for Temporary Restraining Order and*
25 *Motion for Preliminary Injunction* filed on April 4, 2016. On April 4, 2016 this Court entered an
26 *Order* directing Defendants, JAM CELLARS, INC. and JOHN ANTHONY VINEYARDS, LLC to
27 respond. Defendants filed an *Opposition* on April 6, 2016. Plaintiff filed a *Reply in Support* of its
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1 Application on April 8, 2016. Plaintiff also filed an *Emergency Ex Parte Motion for Expedited*
2 *Discovery* on April 4, 2016.

3 **STANDARD OF REVIEW**

4 **A. Temporary Restraining Order**

5 NRCP 65(b) provides in relevant part,

6 A temporary restraining order may be granted without written or oral notice to
7 the adverse party or that party's attorney only if (1) it clearly appears from
8 specific facts shown by affidavit or by the verified complaint that immediate and
9 irreparable injury, loss, or damage will result to the applicant before the adverse
10 party or that party's attorney can be heard in opposition, and (2) the applicant's
11 attorney certifies to the court in writing the efforts, if any, which have been made
12 to give the notice and the reasons supporting the claim that notice should not be
13 required.

14 **B. Preliminary Injunction**

15 A preliminary injunction is available in Nevada "when the moving party can demonstrate
16 that the nonmoving party's conduct, if allowed to continue," will (1) cause irreparable harm for
17 which there is no adequate remedy at law and (2) that the moving party has a reasonable likelihood
18 of success on the merits. NRS 33.010; *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters, LLC*,
19 125 Nev. 397, 403, 215 P.3d 27, 31 (2009). The moving party bears the burden of proving each
20 element of injunctive relief. *Dep't of Conservation & Natural Res. Div. of Water Res. v. Foley*, 121
21 Nev. 77, 80, 109 P.3d 760, 762 (2005). A District Court may also weigh the public interest and
22 relative hardships of the parties. *Clark County School Dist. v. Buchanan*, 112 Nev. 1146, 1150, 942
23 P.2d 716, 719 (1996).

24 **ARGUMENT**

25 Plaintiff seeks a Temporary Restraining Order (TRO) and Preliminary Injunction to "enjoin
26 Defendants from (a) terminating the parties' Franchise Agreement; (b) appointing another
27 wholesaler of Products in the State of Nevada; (c) refusing to fulfill Plaintiff's March 16, 2016,
28 Purchase Order Nos. 15-430, 15-431 and 15-432; (d) unreasonably refusing to accept Plaintiff's
future orders and/or withholding Products from Plaintiff; (e) restricting the retailers to which
Plaintiff may sell Products; and (f) dictating the price at which Plaintiff may sell Products pending a
final decision on the merits of Plaintiff's underlying claims for relief." See (Application, 21-22).

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1 **DISCUSSION**

2 Upon careful consideration of the record, the Court DENIES Plaintiff's *Emergency Ex-Parte*
3 *Application for Temporary Restraining Order and Motion for Preliminary Injunction*.

4 The Court finds Plaintiff has not established it will suffer irreparable harm for which there is
5 no adequate remedy at law. In the case at hand, Plaintiff's requests to preclude Defendants from (1)
6 terminating the Franchise Agreement; (2) appointing another wholesaler of product in the State of
7 Nevada; and (3) refusing to fulfil or accept purchase orders, may be compensated through an action
8 for contract damages. *See Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. Adv. Op. 38, 351 P.3d 720,
9 723-24 (2015). Further, the Court finds an adequate remedy at law exists for Plaintiff's request to
10 enjoin Defendants from price fixing and restricting retailers to whom Plaintiff may sell product.
11 Where a statute provides an applicant for preliminary injunction an adequate remedy, a District
12 Court should not issue a preliminary injunction. *Elliott v. Denton & Denton*, 109 Nev. 979, 981 n.3,
13 860 P.2d 725, 727 n.3 (1993). Here, NRS 597.120 to 597.180, inclusive, which Plaintiff has asserted
14 Defendants have violated, provides an adequate remedy at law: "Any wholesaler may bring an
15 action in a court of competent jurisdiction against a supplier for violation of NRS 597.120 to
16 597.180, inclusive, and may recover damages sustained by the wholesaler." NRS 597.170(1).

17 Moreover, the Court finds Plaintiff's assertion that the non-issuance of a temporary
18 restraining order and preliminary injunction would cause irreparable harm to Plaintiff's business
19 reputation speculative. The Court does not find *Sobol v. Capital Mgmt. Consultants, Inc.* persuasive
20 to the issues at hand. 102 Nev. 444, 726 P.2d 335 (1986). In *Sobol*, a preliminary injunction issued
21 because a business competitor usurped the trade name of a medical center, which "clearly
22 interfere[d] with the operation of a legitimate business by creating public confusion, infring[ed] on
23 good will, and damage[ed] reputation in the eyes of creditors." *Id.* at 446. Here, unlike *Sobol*, the
24 actions Plaintiff requests enjoined are both contractual and statutory with adequate remedies at law.
25 Further, the non-issuance of a temporary restraining order and preliminary injunction will not "create
26 public confusion" as was the case in *Sobol*.

27 Additionally, the Court does not find Plaintiff's reliance on *State, Dept. of Business &*
28 *Industry, Financial Institutions Div. v. Nevada Ass'n Serv. Inc.* persuasive. 128 Nev. Adv. Op. 34,

1 294 P.3d 1223 (2012). In *State*, a preliminary injunction issued because the non-issuance would
2 prevent the plaintiff company from conducting *any* business. *Id.* at 1223. Here, Plaintiff asserts that
3 Defendant's product comprises thirty percent (30%) of Plaintiff's annual sales and business. *See*
4 (*App.*, 19). The Court finds that Plaintiff still has the adequate means and opportunity to conduct its
5 business. Insofar as Defendant's product does not comprise Plaintiff's *entire* business operations,
6 nor would the non-issuance prevent Plaintiff from conducting *any* business, the Court will not issue
7 a temporary restraining order or preliminary injunction.

8 Plaintiff has not established it will suffer irreparable harm for which there is no adequate
9 remedy at law.

10 THEREFORE, and good cause appearing, the Court's ORDER IS AS FOLLOWS:

11 IT IS HEREBY ORDERED Plaintiff's *Emergency Ex-Parte Application for Temporary*
12 *Restraining Order and Motion for Preliminary Injunction* is DENIED.

13 IT IS FURTHER ORDERED Plaintiff's *Emergency Ex Parte Motion for Expedited*
14 *Discovery*, which requests expedited discovery to prepare for a preliminary injunction hearing, is
15 DENIED AS MOOT.

16 DATED this 61 day of April, 2016.



DISTRICT JUDGE