



DEPARTMENT OF VETERANS AFFAIRS
Center for Verification and Evaluation
Washington DC 20420

5/17/2022
In Reply Refer To: **00VE**

Mr. Zachary K. Zindler
Holistic Serendipity LLC
DBA: Native Ceuticals Tampa
SAM UEI: C9B1H2YNBE14
4305 Sunniland Street
Sarasota, FL 34233

Dear Mr. Zindler:

On behalf of the U.S. Department of Veterans Affairs (VA), Center for Verification and Evaluation (CVE), I am writing to inform you that Holistic Serendipity LLC DBA: Native Ceuticals Tampa's (Holistic Serendipity LLC) application for inclusion as a verified Service-Disabled Veteran-Owned Small Business (SDVOSB) in VA's Vendor Information Pages (VIP) has been denied.

The decision is based upon a review of the submitted documentation and publicly available information.

Findings

The Verification Application submitted by Holistic Serendipity LLC lists the business as a SDVOSB, and VA Form 0877 lists you as a Service-Disabled Veteran owner. CVE has confirmed that you meet the definition of *Service-Disabled Veteran* as found in 38 Code of Federal Regulations (CFR) § 74.1 and 13 CFR part 125. However, CVE is unable to conclude that Holistic Serendipity LLC satisfies the requirements set forth in 38 CFR part 74 and 13 CFR part 125. CVE identified the following 2 area(s) of non-compliance with the regulation:

1. *Control-Non-Veteran Control*

According to 13 CFR § 125.13(i), "... Non-Service-Disabled Veteran individuals or entities may not control the firm. There is a rebuttable presumption that non-Service-Disabled Veteran individuals or entities control or have the power to control a firm in any of the following circumstances, which are illustrative only and not inclusive: ... (7) Business relationships exist with non-Service-Disabled Veteran individuals or

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entities which cause such dependence that the applicant or concern cannot exercise independent business judgment without great economic risk.”

CVE is in receipt of the documentation that was submitted on May 9, 2022 in response to the Post-Review Findings (PRF) Notice dated April 29, 2022. However, CVE is unable to reasonably conclude that a non-Service-Disabled Veteran or entity does not control or have the power to control the applicant because a business relationship with non-Service-Disabled Veteran individual or entity which causes such dependence that the applicant or concern cannot exercise independent business judgment without great economic risk does not exist.

The PRF Notice dated April 29, 2022 states in part the following:

“According to the Florida Secretary of State, the applicant, Holistic Serendipity, LLC has registered the fictitious name or DBA of Native Ceuticals Tampa. The applicant’s website, www.nativeceuticalstampagov.com, states, ‘The business Holistic Serendipity LLC dba Native Ceuticals Tampa was created to provide natural treatments to help symptoms of PTSD, Anxiety, Depression, Chronic Pain, Sleep Issues, Stress, and Mental Clarity. We work with the manufacturer Native Ceuticals to supply the hemp derived products to help treat these issues. We focus our services towards veterans, animals, and individuals seeking alternatives to prescription narcotics by educating consumers on the benefits of organic supplements.’ The applicant’s website address, www.nativeceuticalstampagov.com, includes Native Ceuticals (Non-Veteran). According to Native Ceuticals’ (Non-Veteran) website, www.nativeceuticals.com, the Non-Veteran entity provides licensing opportunities. The applicant provided the current Affiliate Agreement between Native Ceuticals, LLC (Non-Veteran) and Zack Zindler (Service-Disabled Veteran) dated May 14, 2021.

According to the Recitals, ‘WHEREAS, the vision and business model of the Company is to educate and help people understand the benefits of Cannabinoid Industrial Hemp Oils and other related products by providing educational and marketing materials, an inviting farmhouse boutique storefront with lounge area, lockers, shelves and other visual accessories and a convenient checkout counter; and WHEREAS, in the course of its business, Company has developed, owns and offers for in the affiliate program various training, marketing materials, business models, coaching programs, events and other processes related to its vision and business model; and WHEREAS, the Company had designed and developed an affiliate program (the “Program”), through which members can participate in promoting the Company and its vision and business model and offer for sale products and materials distributed by the Company in accordance with the program set forth herein...’ As stated in the recitals, the Non-Veteran company, Native Ceuticals, LLC, has a line of products and proprietary business model that the applicant has contracted to utilize in order to sell the Non-Veteran company products. The business model includes more than a license to sell products, it also includes required training, marketing, and other business processes that are created

and controlled by the Non-Veteran company that the applicant must use while in the Program.

The Agreement requires the applicant to operate the business while in compliance with the provisions as set by the Non-Veteran company. According to Section 2(b), 'Affiliate agrees to purchase from Company at prices established by the Company as Affiliate's cost ("Wholesale Prices"), and to sell in the Store Location at prices to be established by the Affiliate in its sole discretion, but, in no event, more than the suggested retail price established by Company ("Suggested Retail Prices"), Company Products. Affiliate may choose the Company Products to be purchased hereunder and to be sold at the Store Location in its sole discretion, subject to availability. Company will timely process all orders of Company Products made by the Affiliate. All revenue generated at the Store Location from the sale of Company Products shall be collected by Affiliate and shall be the sole property of Affiliate. The Company shall provide to Affiliate a link for the Affiliate at the Company's e-commerce location ("Company Internet Sales Site") wherein the Affiliate may refer customers for the purchase of Company Products.' It appears that any online sales are made through the Non-Veteran entity, not the applicant. Further, the applicant is only able to sell the products under the Agreement from the Store Location. Although it appears that the applicant is able to select which products are sold at the Store Location, and is able to set the prices, those prices cannot exceed an established maximum as set by the Non-Veteran company.

The Agreement contains other restrictions or requirements that the applicant must follow to be in compliance with the Agreement. As stated in Section 2(d), 'Affiliate may only carry Company Products at the Store Location. Affiliate agrees that it shall not carry and/or offer to customers at the Store Location any other products or services other than those provided by Company without first obtaining approval by Company in writing, which approval shall be at the sole discretion of Company. Affiliate understands and agrees that this is an exclusive Program and it may not promote, market, offer or sell at the Store Location, at any other physical location within the Geofencing Area (as such term is defined below) or any website or e-commerce location (other than the Company Internet Sales Site) (collectively, the "Restricted Areas"), any products or services other than the Company Products or those other products or services that have been approved by the Company in accordance herewith. Notwithstanding the foregoing, Affiliate and the Company agree that Affiliate is hereby authorized to provide in the Restricted Areas health, wellness and nutritional coaching.' Section 4(a) states, 'Affiliate shall not promote, market, offer or sell any other brand of CBD products in the Store Location or any other location, including without limitation any website or e-commerce, unless approved by the Company in writing, in its sole discretion.' Other than health, wellness and nutritional coaching, the applicant company may not sell any other physical products that are not approved by the Non-Veteran company. The only NAICS code selected on the Vendor Information Pages (VIP) profile for the applicant is 446191 for Food (Health) Supplement Stores. Based on the documentation

provided, it appears the applicant company exclusively sells the products created or approved by the Non-Veteran company.

The Agreement includes requirements for marketing, operating policies and procedures as well as inventory standards. Section 4(e) states, 'Affiliate will endorse the Company and market the Company products using only the Marketing Materials and other approved methods,' and Section 4(f) states, 'Affiliate shall follow the Company procedures and policies.' Section 4(h) states, 'Affiliate shall not change, alter or modify any of the Company Products or Marketing Materials without consent from the Company.' The applicant must use the marketing materials as provided by the Non-Veteran company without alteration and agrees to operate following the Company procedures and policies. According to Section 4(j), 'Affiliate shall maintain a minimum inventory in the Store Location in the amount of \$10,00 (at cost) of Company product.' According to Section 4(k), 'Affiliate shall keep product inventory available for sale in the store location in accordance with Company guidance.' The applicant cannot stock less inventory than required by the Non-Veteran company. Section 4(p) outlines payments due at various times to include, Licensing Fee, Pre-Operating Training; Signage; POS System; Initial Inventory; Technology Fee (Portal); Furniture, Fixtures and Interior Design. Although the Agreement does not specifically outline the signs, furniture and interior design that the applicant must follow, it appears that the applicant must purchase what the Non-Veteran company requires in order to operate the Store Front to comply with the Non-Veteran's prescribed interior design style of, 'inviting farmhouse boutique storefront with lounge area.'

According to Section 4(q), 'Affiliate is required to provide any employees with an employee handbook that clearly describes policies and procedures. Native Ceuticals will provide the Affiliate with a sample of such a handbook if requested.' Although the applicant can hire employees, the employees are subject to the policies and procedures as set by the Non-Veteran company. Finally, Section 12 includes a Competition Clause that prevents the Service-Disabled Veteran and other individuals from being associated with any company that is considered a Competitive Business within fifteen miles of the Restricted Territory for the duration of the Agreement and to continue one year after the termination or expiration of the Agreement. Thus, the applicant can only offer Native Ceuticals products within the agreed to territory.

Mr. Zack Zindler provided the following DLOE, 'Native Ceuticals is a licensing company that allows affiliates to sell their seed-to-shelf products with no franchising restrictions.' Although the agreement is not a Franchise Agreement, the applicant is an Affiliate that is participating in the 'exclusive' Program created and managed by the Non-Veteran. The Program prevents the applicant from offering, 'any products or services other than the Company Products or those other products or services that have been approved by the Company in accordance herewith.' Therefore, it appears that the agreement is restrictive as it does not allow the applicant to sell any products that are not approved by the Non-Veteran outside of the agreed to territory.

The DLOE asserts the Agreement is a licensing agreement that authorizes the applicant to sell the products created by the Non-Veteran company. Although the agreement includes a license, it also includes restrictions on operational decision making and requires a specific business model the applicant must follow in selling the Non-Veteran products. It appears that the applicant cannot exercise independent business judgment as all revenue is derived from selling the Native Ceuticals products which requires compliance with the terms of the Affiliation agreement.

Based upon a totality of the information reviewed, it does not appear that the applicant would be able to operate as a viable independent business entity without the support provided by Native Ceuticals (Non-Veteran). The burden is on the applicant to demonstrate to CVE that it is not unduly dependent on or influenced by a non-Service-Disabled Veteran or outside entity. Therefore, absent any additional information, CVE cannot reasonably conclude that the requirements of 13 CFR § 125.13(i)(7) have been satisfied."

In response to the PRF Notice dated April 29, 2022, the applicant submitted a letter of explanation dated May 9, 2022 which is signed by Mr. Zack Zindler (Service-Disabled Veteran). This May 9, 2022 letter states, "The affiliate agreement provided is strictly for the ability to sell their products and offer licensing (i.e. DBA). I do not have a storefront, as I am operating out of my residential address. They provide the marketing material, coaching, and training program, among other things, for their product alone." Based on the letter of explanation, the terms of the Affiliate Agreement between Native Ceuticals, LLC (Non-Veteran) and Zack Zindler (Service-Disabled Veteran) dated May 14, 2021 are still in effect and apply to the Native Ceuticals products sold by the applicant.

The letter of explanation further provides, "The affiliate agreement states 'the affiliate can participate in promoting the company and its vision and business model, etc.' but does not state they have the control over my business, just what they provide to me as an affiliate for their products. This is very similar to a manufacturing agreement where a distributor has an agreement with a manufacturer to sell their products – I am essentially a distributor. At which, manufacturers typically set prices that distributors can sell their products at as well, this is no different. The marketing materials they provide is strictly for their product, not my company. The link I have is strictly for their product so I can sell other products from other companies as long as it is not included on the site for their products they provide to me through the affiliate agreement."

The applicant analogizes its relationship with Native Ceuticals, LLC (Non-Veteran) to that of a distributorship. The applicant asserts that Native Ceuticals LLC (Non-Veteran) does not have control over the applicant business but does have control over the materials it provides to the applicant and over the Native Ceuticals products sold by the applicant. The referenced provision of the Affiliate Agreement states, in its entirety, "Whereas, the Company had designed and developed an affiliate program ('Program'), through which members can participate in promoting the

Company and its visions and business model and offer for sale products and materials distributed by the Company in accordance with the program set forth herein ..." Thus, as a participant in the Program, the applicant must sell the Native Ceuticals products in accordance with the terms set by the Non-Veteran entity. By its own admission, the applicant states that the Non-Veteran entity sets the prices and provides required marketing materials. Because the Non-Veteran entity, rather than the applicant, sets the prices and provides required marketing materials, the applicant depends on the Non-Veteran entity to conduct its sales and marketing strategies, part of business operations. According to 13 CFR § 125.11, daily business operations "include, but are not limited to, the marketing, production, sales, and administrative functions of the firm ..."

The letter of explanation further provides, "As mentioned previously, I do not have a storefront, I ship products out of my residential address, so I can provide any other products at my choosing – that is only referencing a storefront and utilizing that storefront through the affiliate program, which I do not do. I do not have employees and do not plan on having any employees, but the handbook that is mentioned is for their products and procedures when dealing with their products only."

The applicant asserts that it does not have a store front but operates out of the Service-Disabled Veteran's residence. The applicant further asserts that because it does not have a store location it is not limited to selling only Native Ceuticals products. However, Section 2(d) still provides, "... Affiliate understands and agrees that this is an exclusive Program and it may not promote, market, offer or sell at the Store Location, at any other physical location within the Geofencing Area (as such term is defined below) or any website or e-commerce location (other than the Company Internet Sales Site) (collectively, the 'Restricted Areas'), any products or services other than the Company Products or those other products or services that have been approved by the Company in accordance herewith. Notwithstanding the foregoing, Affiliate and the Company agree that Affiliate is hereby authorized to provide in the Restricted Areas health, wellness and nutritional coaching." Moreover, Section 4(a) of the Affiliate Agreement provides, "Affiliate shall not promote, market, offer or sell any other brand of CBD products in the Store Location or any other location, including without limitation any website or e-commerce, unless approved by Company in writing, in its sole discretion." Even though the applicant does not have a physical store front, the applicant may not sell other products, including other brands of CBD products, without the approval of the Native Ceuticals, LLC (Non-Veteran). While the applicant may also provide health, wellness and nutritional coaching services, the applicant is currently limited to selling only Native Ceuticals products. Because the approval of Native Ceuticals, LLC (Non-Veteran) is required regarding the products to be sold by the applicant and because applicant is currently limited to selling Native Ceuticals products, the applicant depends on Native Ceuticals, LLC (non-Veteran) to conduct business operations. CVE acknowledges that because the applicant does not have employees, as the applicant is currently situated, it may not be required to provide

and operate pursuant to the employee handbook developed by Native Ceuticals, LLC (Non-Veteran).

The letter of explanation provides, "Again, this agreement is only for their product. I have the ability to sell any additional products that I'd like to wherever I'd like to and the Company is understanding of that due to my intent to sell to the Federal government, but they in no way, shape, or form, have any control over my entity, only the product they provide to me which is typical for any distributor."

The applicant admits that the terms of the Affiliate Agreement apply to the Native Ceuticals products it sells and give Native Ceuticals, LLC (Non-Veteran) control over its products. The applicant asserts the Affiliate Agreement does not give the non-Veteran entity control of the applicant business. However, the sections of the Affiliate Agreement referenced in the April 29, 2022 PRF Notice are still in effect, and these sections are Sections 2(b), 2(d), 4(a), 4(e), 4(f), 4(h), 4(j), 4(k), 4(p), and 12. As a participant in the Program, the applicant must market and sell, part of its business operations, the Native Ceuticals products in accordance with these terms set by Native Ceuticals, LLC (Non-Veteran). As discussed above in detail, these terms allow the Non-Veteran entity not only to control the applicant's marketing and sales strategies, which are part of its business operations, as relate to the products sold, but also to control the applicant's product portfolio, which is part of sales or business operations. Because the Non-Veteran entity controls these aspects of the business operations, the Non-Veteran entity controls the applicant business.

Based upon a totality of the information reviewed, it does not appear that the applicant would be able to operate as a viable independent business entity without the support provided by Native Ceuticals, LLC (Non-Veteran). Pursuant to the terms of the Affiliate Agreement, the applicant depends on Native Ceuticals, LLC (Non-Veteran) to market and sell the Native Ceuticals products, the only products currently sold by the applicant, and to determine the applicant's product portfolio. Because the applicant depends on Native Ceuticals, LLC (Non-Veteran) to market and sell its products, the Non-Veteran entity controls the applicant's marketing and sales strategies, part of the daily business operations. Moreover, because the applicant depends on the non-Veteran entity to determine its product portfolio, the non-Veteran controls the applicant's sales strategy, again part of the business operations. Because Native Ceuticals, LLC (Non-Veteran) controls or has the power to control the applicant's business operations, the applicant has not rebutted this presumption. The burden is on the applicant to demonstrate to CVE that it is not unduly dependent on and influenced by a non-Service-Disabled Veteran or outside entity. Therefore, based on the foregoing, CVE cannot reasonably conclude that the requirements of 13 CFR § 125.13(i)(7) have been satisfied.

2. Federal Law

CVE is in receipt of the documentation that was submitted on May 9, 2022 in response to the PRF Notice dated April 29, 2022.

The PRF Notice dated April 29, 2022 states in part the following:

"The Controlled Substance Act (CSA), 21 United States Code (USC) §§ 811 and 812, provides that Marijuana is a Schedule I Controlled Substance and is illegal. If a business concern elects to implicitly or explicitly include in its marketing material or pursues contracting opportunities relating to the production and/or endorsement of Marijuana and simultaneously applies for and becomes verified by CVE as a Veteran-Owned Small Business, the VA could be seen as endorsing illegal conduct under Federal law.

Article II, Section A of the Operating Agreement of the applicant, Holistic Serendipity, LLC DBA Native Ceuticals Tampa dated July 28, 2021 states, 'Purpose. The Company is created for the following business purpose: Provide alternative options to help address mental and physical health symptoms with organic hemp products.' Moreover, the applicant's website, www.nativeceuticalstampa.gov.com, states, 'The business Holistic Serendipity LLC dba Native Ceuticals Tampa was created to provide natural treatments to help symptoms of PTSD, Anxiety, Depression, Chronic Pain, Sleep Issues, Stress, and Mental Clarity. We work with the manufacturer Native Ceuticals to supply the hemp derived products to help treat these issues. We focus our services towards veterans, animals, and individuals seeking alternatives to prescription narcotics by educating consumers on the benefits of organic supplements.' The capabilities tab of the applicant's website further provides, 'Holistic Serendipity LLC dba Native Ceuticals Tampa's "seed to shelf" business model allows us to assure the quality of our products through each phase of production. Our professionally processed oils are sent for third-party testing to ensure the highest concentrations of cannabinoids and the absence of any residual solvents, molds, or pesticides. These extra steps are taken not only to ensure we are providing the highest quality products, but more importantly to make sure they are safe for our customers. ... At Native Ceuticals Tampa, we provide the ability to customize our Hemp products (which can be customized to contain 0 traces of THC) to specifically target what is being diagnosed for veterans and military personnel. We can guarantee 100% the quality of all our products with QR codes to reference the results of the products' laboratory (3rd Party) batch test. We also provide 'White Labeling' which allows businesses to brand our products and label them with any information needed.' The applicant is an Affiliate of Native Ceuticals, LLC, as evidenced by the May 14, 2021 Affiliate Agreement. Finally, the Food Permit from the Florida Department of Agriculture and Consumer Services, Safety Division, Annual Food Permit is for a 'Hemp Food Establishment.' Based on the documentation submitted and online research, the applicant sells hemp derived products.

The Veterans First Contracting Program is a Federal Program administered by the United States Department of Veterans Affairs (VA), pursuant to 38 USC § 8127(f). Holistic Serendipity LLC DBA Native Ceuticals Tampa is applying for the VA's Veterans First Contracting Program as a Service-Disabled Veteran-Owned Small Business (SDVOSB). If Holistic Serendipity LLC DBA Native Ceuticals Tampa were verified as a SDVOSB, it would be listed on the VA's Vendor Information Pages (VIP) database as a verified SDVOSB and would receive access to the VA's SDVOSB trademark for use on its marketing materials and website. Marijuana is still a controlled substance under federal law. Holistic Serendipity LLC DBA Native Ceuticals Tampa is engaging in the sale, growth, or distribution of products derived from the same genus of plant (cannabis) as marijuana. For this reason, the VA cannot verify Holistic Serendipity LLC DBA Native Ceuticals Tampa as a SDVOSB, which would grant the firm the ability to utilize the VA SDVOSB trademark and therefore may give the appearance that the VA is endorsing a company that promotes the use of a Schedule I Controlled Substance. As many states have decriminalized marijuana and allow the growing, harvesting, curing manufacturing, sale and distribution of marijuana, Holistic Serendipity LLC DBA Native Ceuticals Tampa is not prohibited from contracting for production of marijuana or cannabis-related products under applicable state law, notwithstanding its restrictions under Federal law. However, as previously explained, the Veterans First Contracting Program (and underlying SDVOSB Verification Program) is governed exclusively by federal law.

This means the aforementioned trademark and appearance issues of a Federal Agency endorsing a Schedule I Controlled Substance or any related products takes precedence over state law. For the reasons set forth, CVE cannot approve Holistic Serendipity LLC DBA Native Ceuticals Tampa for inclusion in the Veterans First Contracting Program."

In response to the PRF Notice dated April 29, 2022, the applicant submitted a letter of explanation dated May 9, 2022 which is signed by Mr. Zack Zindler (Service-Disabled Veteran). This letter states in part, "The affiliate agreement provided is strictly for the ability to sell their products and offer licensing (i.e .DBA). I do not have a storefront, as I am operating out of my residential address. They provide the marketing material, coaching, and training program, among other things, for their product alone. ..." While this finding is not specifically addressed, there is no change in the applicant's line of business, the sale of hemp derived products, which come from the same genus of plant (cannabis) as marijuana. Because there is no change in the line of business, the applicant concern has not overcome this finding. For the reasons stated above, the VA cannot verify Holistic Serendipity LLC DBA Native Ceuticals Tampa as a SDVOSB, which would grant the firm the ability to utilize the VA SDVOSB trademark and therefore may give the appearance that the VA is endorsing a company that promotes the use of a Schedule I Controlled Substance.

Conclusion

The applicant bears the burden of establishing with adequate evidence compliance with the Verification Program regulatory requirements. CVE cannot reasonably conclude that Holistic Serendipity LLC meets the requirements of a SDVOSB as defined in 38 CFR part 74 and 13 CFR part 125.

For the reasons set forth, the application for Holistic Serendipity LLC is denied. The specific reasons set forth are contained in the record and support denial of the application. Pursuant to 38 CFR § 74.11(d), “[a]n applicant’s eligibility will be based on the totality of circumstances existing on the date of application...” To the extent additional reasons for denial may be present in the record, CVE is not precluded from raising such reasons at a future point in support of its decision. Holistic Serendipity LLC will be ineligible to participate in Veterans First Contracting Program opportunities with VA, and its profile will be hidden from public view in the VIP database until such time as this denial is overturned, either on a successful appeal or CVE’s processing and approval of a new application. Both options are explained in more detail below. Please be advised that this letter and other information pertaining to Holistic Serendipity LLC’s verification application may be subject to Freedom of Information Act (FOIA) requests. However, FOIA disclosures include exceptions regarding the personal privacy of individuals, and VA policy similarly provides limitations on the release of individual records.

New Application

According to 38 CFR § 74.14, “[o]nce an application, an appeal of a denial of an application, or an appeal of a verified status cancellation has been denied, or a verified status cancellation which was not appealed has been issued, the applicant or participant shall be required to wait for a period of 6 months before a new application will be processed by CVE.” Therefore, Holistic Serendipity LLC is welcome to submit a new Verification Program application any time after six (6) months from the date of this letter. This application must be completed and submitted electronically through the applicant’s VIP profile. CVE will process the new application as it would an initial application, in accordance with 38 CFR § 74.11.

Appeal

According to 38 CFR § 74.13(a), “[a]n applicant may appeal CVE’s decision to deny an application by filing an appeal with the United States Small Business Administration (SBA) Office of Hearings and Appeals (OHA) after the applicant receives the denial in accordance with 13 CFR part 134. The filing party bears the risk that the delivery method chosen will not result in timely receipt by OHA.”

According to 13 CFR § 134.1104, “[a] concern whose application for CVE verification has been denied or whose CVE status has been cancelled must file its appeal within 10 business days of receipt of the denial or cancellation.” Instructions for submitting a complete and timely appeal can be found here: [13 CFR § 134.204](#). Additional guidelines specific to the appeals process can be found here: [13 CFR Part 134 Subpart K](#).

Sincerely,

A handwritten signature in black ink that reads "John Perkins". The signature is written in a cursive style with a large, prominent "J" and "P".

John Perkins
Director
Center for Verification and Evaluation