

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, NEVADA  
DIVISION OF PUBLIC AND  
BEHAVIORAL HEALTH, MEDICAL  
MARIJUANA ESTABLISHMENT  
PROGRAM,

Appellant,

vs.

SAMANTHA INC., d/b/a SAMANTHA'S  
REMEDIES, a Domestic Corporation,

Respondent.

No.: 71123

District Court No. 2170874

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**AMENDED APPELLANT'S APPENDIX**

**VOLUME 2 of 2**

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 3<sup>rd</sup> day of October, 2016, I electronically filed and served by electronic mail a true and correct copy of the *AMENDED APPELLANT'S APPENDIX, VOLUME 2 OF 2*, addressed as follows:

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DISTRICT COURT  
CLARK COUNTY, NEVADA


8  
9 Samantha Inc., d/b/a Samantha's Remedies,  
10 a Domestic Corporation,  
11 Petitioner.  
12 vs.  
13 Department of Health and Human Services  
Nevada Division of Public and Behavioral Health  
14 Medical Marijuana Establishment Program,  
Respondent(s).  
15

CASE NO. A-14-710874-J  
DEPT. NO. VIII

**PETITIONER'S REPLY TO**  
**RESPONDENT'S RESPONSE**  
**MEMORANDUM**

16 COMES NOW, Petitioner, SAMANTHA, INC. d/b/a SAMANTHA'S REMEDIES  
17 ("Samantha's") by and through its attorney, KIMBERLY MAXSON-RUSHTON, ESQ., of the law  
18 firm COOPER LEVENSON P.A., and hereby submits the following Reply to Respondent Nevada  
19 Department of Health and Human Services, Division of Public and Behavioral Health. Medical  
20 Marijuana Establishment Program's ("Division") Response Memorandum of Points and Authorities.

21 Dated this 7th day of July, 2016.

22  
23   
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1 ARGUMENT

2 A. INTRODUCTION

3 As this Court is aware, when Samantha's filed its Petition for Judicial Review Memorandum  
4 of Points and Authorities on May 6, 2016, it was operating without a complete record. At first blush  
5 the error could easily be construed as a procedural oversight; however, when the Court considers what  
6 this Petition is about – the glaring errors in the Division's interpretation and application of the law -  
7 the issues with the record appears to be endemic.

8 On May 26, 2016, the Division supplemented the Record on Review by filing over 250  
9 additional pages. Upon reviewing the newly filed documents – which purported to be the complete  
10 Application – Petitioner discovered that the Record was still incomplete. Specifically, the Record on  
11 Review lacked certain drawings and blueprints which were included in the subject Application filed  
12 by Samantha's in August 2014. Subsequently, Samantha's hand delivered this Court a copy of the  
13 complete Application on June 15, 2016.

14 At present the parties – and most importantly this Court -- have received copies of the  
15 following documents:

- 16 - The Division's Medical Marijuana Establishment ("MME") Registration Certificate Request  
17 for Applications ("Request for Applications"). This is a 45-page document provided to the  
18 Court by the Division and also available online at:

19 [http://dpbh.nv.gov/uploadedFiles/dpbh.nv.gov/content/Reg-MedMarijuana NV \\_MMP \\_Application.pdf](http://dpbh.nv.gov/uploadedFiles/dpbh.nv.gov/content/Reg-MedMarijuana%20NV_MMP_Application.pdf)

20 This document provides the specific format and guidelines for prospective MMEs to apply for  
21 a license to operate in Nevada.

- 22 - The Division's "Request for Evaluators." This is a single-page email where the Division  
23 requested applicants for temporary positions in the Division to review and evaluate MME  
24 applications.

- 25 - Samantha's MME State of Nevada Application ("Samantha's Application" or more  
26 generally "the Application"). The Application is over 800 pages and was partially provided  
27 in both installments of the Record on Review. It was then provided in its complete form via  
28 hand delivery to the Court by Samantha's attorneys in two large 3-ring binders along with a

1 manila folder containing large blueprints, diagrams, and drawings.

- 2 - The Division's Scoring/Evaluation Tool ("TOOL"). The TOOL is over 125 pages and  
3 contains scores and comments by the Division's evaluators who reviewed Samantha's  
4 Application. The TOOL evidences the methodology used by the Division to review, evaluate,  
5 score and rank MME applicants and specifically Samantha's Application. The TOOL is  
6 roughly broken out into seven (7) categories which loosely match the statutory criteria for  
7 licensure as set forth in NRS 453A.322 and 453A.328, as follows:

- 8       o FINANCIAL PLAN  
9       o ORGANIZATIONAL STRUCTURE  
10       o CONVENIENT TO SERVE THE NEEDS  
11       o LIKELY IMPACT ON THE COMMUNITY  
12       o TAXES PAID AND BENEFICIAL CONTRIBUTIONS  
13       o ADEQUACY OF BUILDING SIZE AND CONSTRUCTION PLANS  
14       o CARE, QUALITY, SAFEKEEPING

- 15 - Scoring Details for Samantha's Application ("Scoring Details"). This single page was  
16 included in the Record on Review and provides a concise summary of the points assigned to  
17 Samantha's Application for each of the categories, above, and also for the Application as a  
18 whole. (ROR 573)

19 Petitioner submits that with these documents in hand the Court is able to better understand  
20 each party's position in this action. In addition, based on the copious amounts of pages contained  
21 within the Record on Review an overview of the MME application process (and specifically the  
22 evaluation of Samantha's Application) has been provided below.

23 By way of background, the Division's Request for Applications required MME applicants to  
24 submit their applications in two distinct and divided portions: the Identified Criteria Response ("ICR")  
25 and the Non-Identified Criteria Response ("NICR"). The ICR required an applicant to include all  
26 "identifying" information in the response, including names of people and places, dates of birth,  
27 addresses, etc.; whereas, the NICR required that the information submitted in an application be more  
28 generic and anonymous. Whereas the ICR might include specific information about "John Smith" and  
his proposed MME on "Maryland Parkway and Sahara," the NICR would contain information about  
"Applicant 1" and the proposed MME on "Street-1 and Street-2." Anonymity is preserved in the  
NICR by the MME applicant omitting all "identifying" information from its application. The Division



1 has acknowledged in its Response that the evaluators did not have access to the entire application  
2 when evaluating and scoring using the TOOL. Instead, if the evaluator was scoring a category which  
3 corresponded to topics covered in the ICR, he/she would not have access to the NICR, and *vice versa*.

4 Finally, in addition to the Request for Applications requiring that MME applications be broken  
5 out into the ICR and NICR sections, it further required that each section be broken into separate tabs.  
6 The ICR was fragmented into tabs I – XIII and the NICR into tabs I – VII. This classification of  
7 ICR/NICR and tabs will be useful to understand the specific explanations for Samantha's low scores  
8 and provide clear guidance for this Court to award additional points, or remand the Application with  
9 instructions to award additional points.

10 Accordingly, based on the documents listed above, the further explanation of the ICR and  
11 NICR portions of the application, and taking into consideration the representations of the Division in  
12 its Response brief, as well as in the several hearings on this matter, Petitioner submits that the  
13 Division's process for evaluating Samantha's MME-Dispensary Application was arbitrary and  
14 capricious, infirm, and contrary to the laws governing this new frontier of medical marijuana. The  
15 resulting effect has been the prejudice suffered by both Samantha's, as an applicant expecting a fair  
16 process, as well as the thousands of medical patients unable to receive medicine from a safe, reliable  
17 dispensary owned and operated by individuals who have lived and worked in this community for over  
18 three decades. Even more disconcerting is the substantiated fact that a state agency made a final  
19 decision without substantial evidence upon which to base its decision. *See*, NRS 233B.135(3).

20 **B. SAMANTHA'S SHOULD HAVE RECEIVED ADDITIONAL POINTS FOR THE**  
21 **"ADEQUACY OF SIZE - BUILDING AND CONSTRUCTION PLANS" CATEGORY**

22 The Division has stated that Samantha's Application scored above average in many of the  
23 categories, but the Scoring Details (ROR 573) show that there were three categories where the  
24 Application fell below the average marks. In the Adequacy of Size – Building and Construction Plans  
25 ("Adequacy of Size") category, Samantha's received only 7.3 out of 20 points, where the average  
26 score was 10.32 points. After reviewing all of the documents discussed above, it is clear that the  
27 Division's evaluators did not have access to Samantha's entire Application, and that additional points  
28 are merited.

1 The Adequacy of Size portion of the TOOL asked evaluators to review tab III of the NICR.  
2 The Request for Applications had only one requirement, that "Non-identified Building and  
3 Construction plans with supporting details must be included in this tab." Samantha's Application  
4 covered this category starting on page 7 of the NICR portion of its Application. (ROR 585) This page  
5 clearly states "*Original plans attached*" and the Court has been provided these large plans and  
6 drawings by Samantha's counsel. In addition to the large drawings, Samantha's included 1.5 pages of  
7 text explaining and describing the building and several changes which would be made to the already-  
8 constructed building which was originally used as a bank. These pages of written explanation are  
9 included as pages 9-10 in Samantha's Application and ROR 587-588.

10 However, the NICR portion of the Record on Review provided by the Division only has one  
11 page (ROR 589) of a scaled-down and poor quality image of the large drawings and plans provided by  
12 Samantha's. There is no evidence in the Record on Review that the Division's evaluators had access  
13 to the original plans and drawings included in Samantha's Application. Additionally, the TOOL is  
14 completely devoid of any comments by the evaluators which suggest that they had access to the large  
15 drawings and plans.

16 With the evaluators only having the 1.5 pages of written explanation and one small, poor  
17 quality image of the building layout, the evaluators' comments from the TOOL in the Adequacy of  
18 Size section are more comprehensible:

- 19 - "Very little in the way of plans to make the plans happen." (TOOL0007)
- 20 - "If the building already exists... ." (TOOL0007)
- 21 - "No mention of interior or exterior appearance." (TOOL0008)
- 22 - "No mention of signage." (TOOL0008, TOOL0013)

23 These are only some of the comments which show that the evaluators only had access to a small  
24 portion of Samantha's Application. If the evaluators had access to the large drawings and plans  
25 included in Samantha's Application, one can reasonably assume that these comments would not have  
26 been made and that additional points would have been assigned to the Application. The plans and  
27 drawings provided to the Court clearly show that Samantha's already owned and had plans to make  
28 slight modifications to a large building suitable for an MME-Dispensary, and that Samantha's fully

1 complied with the Request for Applications with its thorough plans, photographs of the building  
2 exterior, and proposed signage for the MME-Dispensary.

3 Samantha's would have received a substantial increase in points in this 20-point section if  
4 evaluators were given access to the drawings Samantha's provided in its Application. Samantha's  
5 clearly followed the guidelines of the Request for Applications but was penalized by the Division's  
6 failure to provide the evaluators with all of Samantha's Application materials – namely, the large  
7 drawings and blueprints which clearly showed that Samantha's building was fit to serve as an MME-  
8 Dispensary with several modifications.

9 Since evaluators did not receive critical materials provided by Samantha's, Petitioner hereby  
10 respectfully requests that this Court assign additional points to Samantha's based on the plans  
11 submitted as part of the Application, or, that Samantha's Application be remanded to the Division  
12 with specific instructions to provide additional points in this category.

13 **C. SAMANTHA'S SHOULD HAVE RECEIVED ADDITIONAL POINTS FOR THE**  
14 **"ORGANIZATIONAL STRUCTURE" CATEGORY**

15 The Scoring Details page (ROR 573) shows that Samantha's also received a below average  
16 score in the Organizational Structure category of the Application, receiving 30.4 points out of 50,  
17 when 34.30 was the average score. Whereas, the Request for Applications had very few requirements  
18 for the Adequacy of Size category, the Organizational Structure section of the application – part of the  
19 ICR – required much more detail, as follows:

20 5.2.11 Tab XI – The description of the proposed organizational structure of  
21 the proposed medical marijuana establishment and information concerning  
22 each Owner, Officer and Board Member of the proposed medical marijuana  
establishment.

23 5.2.11.1. An organizational chart showing all owners, officers, and board  
24 members of the medical marijuana establishment, including percentage of  
ownership for each individual.

25 5.2.11.2. The owner, officer and board member information form must be  
completed for each individual named in this application.

26 5.2.11.3. An owner, officer and board member Attestation Form must be  
27 completed for each individual named in this application.

28 5.2.11.4. A Child Support Verification Form for each owner, officer and board  
member must be completed for each individual named in this application.

1 5.2.11.5. A narrative description, not to exceed 750 words, demonstrating the  
2 following:

3 5.2.11.5.1. Past experience working with governmental agencies and  
4 highlighting past community involvement.

5 5.2.11.5.2. Any previous experience at operating other businesses or  
6 nonprofit organizations.

7 5.2.11.5.3. Any demonstrated knowledge or expertise with respect to  
8 the compassionate use of marijuana to treat medical conditions.

9 5.2.11.5.4. A resume, including educational achievements, for each  
10 owner, officer and board member must be completed for each  
11 individual named in this application.

12 5.2.11.6. A Request and Consent to Release Application Form for Medical  
13 Marijuana Establishment Registration Certificate(s) for each owner, officer and  
14 board member may be completed for each individual named in this application.

15 5.2.11.7. Documentation that fingerprint cards have been submitted to the  
16 Central Repository for Nevada Records of Criminal History.

17 See, Request for Applications pages 13-14.

18 In reviewing the TOOL, Samantha's has discovered a critical discrepancy between the Request  
19 for Applications and the TOOL. As seen in the quoted portions of the Request for Applications,  
20 above, the entire Tab XI (5.2.11 – 5.2.11.7) only pertains to "owners, officers, or board members."  
21 However, the TOOL shows that evaluators were instructed to give points for aspects of the proposed  
22 MME organizational structure far outside of the owners and head leadership.

23 Specifically, 5.2.11.1 of the Request for Applications asks for "An organizational chart  
24 showing all owners, officers, and board members of the medical marijuana establishment, including  
25 percentage of ownership for each individual." See, Request for Applications page 14. Under the  
26 corresponding section of the TOOL, evaluators were instructed that applications should provide:

27 The organizational chart clearly demonstrates the following:

28 Defines the roles and responsibilities that will make up the company's  
functioning and shows how everything fits together as a whole.

Demonstrates groupings of functions to ensure they are overseen and  
performed by a member of the organization.

Position job descriptions demonstrate the scope, function and limits of their  
roles, and for what tasks and outcomes they will be held responsible for.

1 Organizational structure shows efficiency between roles.

2 An excellent response would include all the following elements: the  
3 organizational chart and position descriptions demonstrate all or most of the  
4 above expectations, are reasonable, and the rationale for the structure appears  
reasonable and logical. (TOOL0047)

5 This subcategory of the TOOL allowed for up to 10 points to be given to each applicant. Samantha's  
6 received only 2.3 points in this area. (TOOL 0046) It is no wonder that such a low score was given  
7 since Samantha's organizational chart was a simple two-pronged flowchart with each of its owners,  
8 Bill and Erminia Drobkin as equal 50-50 partners and sharing responsibilities of ownership. (ROR  
9 page 401) Samantha's did not discuss "job descriptions" or any of the deeper organizational workings  
10 of its proposed MME-Dispensary since *the Request for Applications did not request this information*  
11 *to be presented in this portion of the application.* There was no reason Samantha's Application  
12 should have included such information in this section of the application as it was not requested  
13 in the Request for Applications.

14 Critically, Samantha's did provide such information. In fact, Petitioner submitted a detailed  
15 description of each respective job, its functions, and roles within the corporate structure. See,  
16 Application - Request for Applications tab VI - NICR, pages 110-115. (ROR 688-693) However,  
17 since this information was submitted as part of the NICR, and the Organizational Structure section  
18 was part of the ICR, the evaluators did not have access to this material even though it was properly  
19 presented by the Applicant. Accordingly, Petitioner asks this Court to exercise its "broad supervisory  
20 powers to insure that all relevant evidence" - the entirety of Samantha's Application - "is examined  
21 and considered," and that Samantha's be awarded a score which accurately reflects the contents and  
22 quality of the Application. *Clark County Liquor & Gambling Licensing Bd. v. Clark*, 102 Nev. 654,  
23 658 (1986).

24 One of two things should have occurred during the application review process - to ensure that  
25 Samantha's Application was properly evaluated and scored by the Division : either (i) evaluators of  
26 the Organizational Structure section should have been provided the relevant sections of the NICR  
27 where Samantha's justifiably included information regarding the day-to-day operations and  
28 organization of the MME-Dispensary. or (ii) the TOOL should only have allotted points for

1 information relating to owners, officers, or board members, so as to directly correspond with the  
2 Request for Applications.

3 Because of the discrepancy between the TOOL and the Request for Applications, coupled with  
4 the poor handling of the application materials, Samantha's has been prejudiced by receiving only 2.3  
5 out of 10 points. Without question, Samantha's should be awarded the accurate number of points  
6 based on the relevant portions of the NICR, either by this Court or, pursuant to a remand to the  
7 Division with specific instructions to award additional points based on Samantha's entire Application.

8 **D. THIS COURT HAS BROAD AUTHORITY TO PROVIDE THE RELIEF SOUGHT IN**  
9 **THIS PETITION**

10 With the Court finally having a complete picture of the MME application process, the question  
11 becomes what legal effect must be given to the Division's actions in scoring Samantha's Application?  
12 In Nevada it has been a long standing, generally accepted rule, for reviewing courts to give great  
13 deference to an administrative agency's interpretation and application of the statutes it's charged with  
14 enforcing. However, when an administrative agency's actions are deemed to be either arbitrary,  
15 capricious, clearly erroneous or otherwise unauthorized by law the courts have broad latitude in  
16 deciding whether to set aside the matter, in whole or in part, or remand it back to the agency. NRS  
17 233B.135(3).

18 Should this Court find that the Division's actions were arbitrary, capricious, clearly erroneous  
19 or otherwise unauthorized by law there remains the issue of finality – specifically, whether the  
20 Division can issue Samantha's a Certificate of Registration. "The ultimate interpretation of a statute is  
21 an exercise of the judicial power ... conferred upon the courts by the Constitution and, in the absence  
22 of a constitutional provision, cannot be exercised by any other body." *Yamaha Corp. v. State Bd. of*  
23 *Equalization*, 19 Cal. 4th 1, 7, 960 P. 2d 1031 (Cal. 1998), quoting, *Boxlinson Mfg. Co. v. California*  
24 *E. Com.*, 17 Cal. 2d 321, 325-326, 109 P.2d 935 (1941). "The standard for judicial review of agency  
25 interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of  
26 the agency *appropriate* to the circumstances of the agency action." *Judicial Review of Agency Action*  
27 27 Cal. Law Revision Com. Rep. 81 (Feb. 1997). (emphasis added)

28 As promulgated by the 2013 Nevada Legislature, NRS 453A.322 and NRS 453A.328 set forth

1 the statutorily mandated standards required of MME's. Yet, as demonstrated by the facts in this case,  
2 the Division's interpretation and application of these statutory provisions, as it specifically applies to  
3 the 2014 licensure process, were grossly infirm. Beginning with the obscure application developed by  
4 the Division, whereby two sections (IRC and NIRC) were created to capture information that would  
5 demonstrate the qualifications and standards contained in NRS 453A and NAC 453A. As the Court  
6 can see from the Record, both sections of the application requested similar, and in many instances,  
7 identical information from applicants. Yet oddly, the Request for Applications and the TOOL do not  
8 squarely match. Inconsistencies such as those enumerated herein resulted in a flawed, unlawful  
9 application process created, employed and overseen by the Division.

10 Another point of concern is the fact that glaringly absent from the Record on Review is  
11 evidence that the information submitted by Petitioner was in fact provided to or used by the temporary  
12 evaluators to score Samantha's Application. Absent said evidence this Court must find that the  
13 Division's scoring of Samantha's Application was "clearly erroneous in view of the reliable, probative  
14 and substance evidence on *the whole record*." NRS 233B.135(3)(c) and 233B.135(4). Accordingly,  
15 consistent with NRS 233B.135(3), and the resulting prejudice suffered by Petitioner, this Court must  
16 afford Samantha's the requested relief – award the points owed or set aside the Division's final action  
17 – the existing score and corresponding ranking of Samantha's Application – and remand the  
18 Application for an expedited review, scoring and ranking. "The Administrative Procedure Act  
19 expressly authorizes remand to state agencies for the taking of further evidence. NRS 233B.135(3).  
20 The district court has very broad supervisory powers to ensure that all relevant evidence is examined  
21 and considered." *Clark County Liquor & Gaming Licensing Board v. Clark*, 102 Nev. 654, 658, 730  
22 P.2d 443 (1986), citing, *Nevada Industrial Comm'n v. Reese*, 93 Nev. 115, 126, 560 P.2d 1352, 1358  
23 (1977).

24 In determining whether to set aside the Division's score of Samantha's Application, the Court  
25 must also consider the effect of said action, balanced with any potential risk to the public. NRS  
26 233B.140. In response, Petitioner asserts that the balance in this case weighs in favor of Petitioner  
27 and warrants setting aside the prior score; otherwise, the legislative intent to protect the public health  
28 and safety are at risk. NRS 453A.320. "The purpose for registering medical marijuana

1 establishments.....is to *protect the public health and safety and the general welfare of the people of*  
2 *this State.*" (emphasis added) In other words, if only the most qualified applicants are to be issued  
3 licenses to dispense medical marijuana to patients in Nevada, then the law demands that Samantha's  
4 Application be reconsidered and scored, and thereafter. Petitioner be issued a Certificate of  
5 Registration.

6 The Division disputes this Court's ability to afford finality in this matter. Specifically,  
7 Respondent argues that if Samantha's Application is re-scored and, as a result, qualifies as one of the  
8 top twelve (12) applications in the City of Las Vegas the Division cannot award a Certificate of  
9 Registration authorizing Petitioner to operate. In support of this assertion Respondent recites the  
10 Legislative declaration contained in NRS 453A.320 (*[A] MME certificate of registration issued*  
11 *pursuant to NRS 453A.322 is a revocable privilege and the holder does not acquire any vested rights*),  
12 and asserts that while the agency retains authority to revoke or rescind a Certificate of Registration it  
13 cannot issue one outside of the application process - despite the fact that other District Courts have  
14 ordered the Division to issue Certificates of Registration to aggrieved applicants - further details of the  
15 District Court decisions are contained below.

16 At the present time, there are a total of eleven (11) Provisional or Permanent Certificates of  
17 Registration issued to MME-Dispensaries operating in the City of Las Vegas. This is primarily due to  
18 the unlawful acts of the Division (acts which occurred during the application process and they are  
19 specific to the licensure of MME-Dispensaries in the City of Las Vegas) which, as noted, other courts  
20 have found to be in violation of NRS 453A.322, 453A.326 and 453A.328. Specifically, MME-  
21 Dispensary applicant, Desert Aire, was granted a provisional certificate to operate an MME-  
22 Dispensary in the City of Las Vegas (1 of the 12 licenses issued) during the initial application process.  
23 Unfortunately, Desert Aire failed to obtain the requisite special use and compliance permits from the  
24 City of Las Vegas prior to the application process, and as such, it was determined to not be eligible to  
25 receive a Certificate of Registration. On April 28, 2016, Judge Kenneth Cory signed an Order  
26 revoking Desert Aire's registration because of this shortcoming in Desert Aire's application. *See, A-*  
27 *15-728448-C GB Sciences Nevada, LLC v. State of Nevada, et. al.*

28



1 Similarly, in A-14-710193, *Henderson Organic Remedies, LLC v. State of Nevada et. al.* Judge  
2 Ronald Israel signed an Order on July 20, 2015 whereby MME-Dispensary Henderson Organic  
3 Remedies, LLC was granted the Provisional Certificate of Registration (1 of the 5 licenses issued in  
4 the City of Henderson) previously issued to Wellness Connections of Nevada, LLC for reasons similar  
5 to those of Desert Aire, above. Similarly, this Court has authority to order the Division to issue  
6 Samantha's its Provisional Certificate based on the Division's improper scoring of its Application.

7 Lastly, Respondent reasserts the argument that the applicable statutes and regulations were not  
8 designed to provide relief to aggrieved parties therefore, the present action, a Petition for Judicial  
9 Review, does not afford the same remedies as those granted by the District Court in the above-  
10 referenced cases. The state offers no legal support for this declaration however, as this Court is aware,  
11 in a good faith effort to prevent such disparate treatment between similarly situated aggrieved parties  
12 Samantha's has attempted to intervene in said matters – requesting consolidation of all pending cases  
13 in order to preserve judicial resources and ensure consistent treatment. Yet, the reviewing court in  
14 each instance, including the Nevada Supreme Court, denied Petitioner's request thereby, signaling this  
15 Court's authority to decide the matter before it and, if warranted, grant the necessary relief based on  
16 the egregious actions of the Division.

#### 17 CONCLUSION

18 In conclusion, Petitioner submits that the judicial review process is designed to provide  
19 expeditious finality in administrative proceedings. NRS 233B provides for short timeframes for the  
20 court to receive and review a Record of the underlying agency action, read and hear arguments from  
21 the parties, and issue a swift ruling on the legality of the agency's actions. Unfortunately, the present  
22 Petition has been on-going for twenty (20) months due to the Divisions failed attempts to quash and  
23 delay this review from the get-go, including an immediate Motion to Dismiss, a request for Mandamus  
24 from the Nevada Supreme Court, refusing to immediately provide the TOOL, and failing to provide  
25 the entire Record on Review. All of these spurious actions have caused unreasonable and undue delay  
26 in reaching a final result in this matter where there is clear evidence that the Division's actions need to  
27 be reviewed and corrected.

28

1           Unfortunately, lost in all of this procedure and the delays are Bill and Erminia Drobkin, the  
2 proposed co-owners of Samantha's Remedies. Mr. and Mrs. Drobkin entered this MME application  
3 process to honor their daughter, Samantha, who died after a long and painful battle with cancer.  
4 Samantha endured her cancer and treatment before medical marijuana was available, and the Drobkins  
5 know that her life could have been made much less painful if she had access to these medications.  
6 The Drobkins wholeheartedly want to be involved in providing this relief to the countless others who  
7 continue to struggle with cancer and other painful diseases.

8           The Drobkins did not rely on an emotional story to get them a license to operate their  
9 dispensary but instead, painstakingly completed their 800+ page Application, carefully complying  
10 with each requirement from the Request for Applications. While the Drobkins knew that this was a  
11 competitive process and a certificate was not a guarantee, having held multiple privileged licenses in  
12 the past, they had a reasonable expectation that the process would be fair and consistent with the law.  
13 Their requests for clarification of their low scores initiated this long process and after the dust has  
14 settled, it has become readily apparent that the errors and shortcomings were not on the part of  
15 Samantha's and its Application, but on the Division's unlawful evaluation process.

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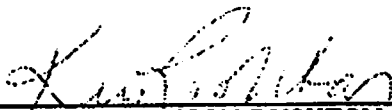
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1        This Court is now in the position to correct the Division's clear errors by awarding Samantha's  
2 additional points in the Adequacy of Size and Organizational Structure categories. Furthermore, this  
3 Court has authority to remand Samantha's Application to the Division with instructions to review the  
4 subject sections and award additional points – the points the Application would have been given had  
5 the Division's evaluators had access to the entirety of Samantha's Application. This Court's  
6 supervision in the process will ensure that the intent of NRS 453A is satisfied and that the best and  
7 most qualified applicants, such as Samantha's, are authorized to operate in the MME community in  
8 Clark County.

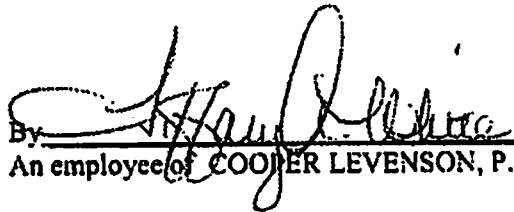
9        Dated this 7th day of July, 2016.

10  
11          
12        KIMBERLY MAXSON-RUSHTON, ESQ.  
13        Bar No. 005065  
14        6060 Elton Avenue, Suite A  
15        Las Vegas, Nevada 89107  
16        Attorneys for Petitioner  
17  
18  
19  
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28

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am employee of COOPER LEVENSON, P.A. and that  
3 on this 7<sup>th</sup> day of July, 2016, I did cause a true and correct copy of the foregoing PETITIONER  
4 SAMANTHA, INC.'S REPLY TO RESPONDENT'S RESPONSE MEMORANDUM to be  
5 served upon each of the parties listed below via electronic service through the Eighth Judicial District  
6 Court's Odyssey E-File and Serve System:

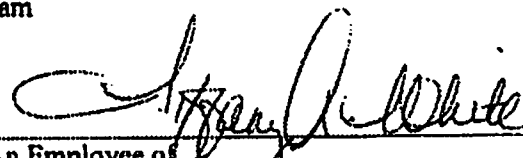
7 Linda C. Anderson  
8 Chief Deputy Attorney General  
9 State of Nevada Attorney General  
555 E. Washington Blvd., Suite 3900  
Las Vegas, Nevada 89101

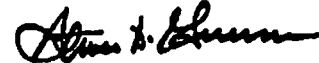
10  
11   
12 By \_\_\_\_\_  
13 An employee of COOPER LEVENSON, P.A.

14 CERTIFICATE OF SERVICE

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16 and that on this 7<sup>th</sup> day of July, 2016, I did cause a true copy of the foregoing PETITIONER  
17 SAMANTHA, INC.'S REPLY TO RESPONDENT'S RESPONSE MEMORANDUM to be  
18 placed in the United States Mail, with first class postage prepaid thereon, and addressed as  
19 follows:

20 Division Health and Human Services  
21 Nevada Division of Public and Behavioral Health  
22 Medical Marijuana Establishment Program  
4150 Technology Way  
Carson City, NV 89706

23   
24 By \_\_\_\_\_  
25 An Employee of  
26 COOPER LEVENSON, P.A.  
27  
28



CLERK OF THE COURT

1  
2 **ORDR**

3  
4 **DISTRICT COURT**

5 **CLARK COUNTY, NEVADA**

6 **Samantha Inc., d/b/a Samantha's Remedies,**  
7 **a Domestic Corporation,**

8 **Petitioner.**

9 **vs.**

10 **Department of Health and Human Services**  
11 **Nevada Division of Public and Behavioral Health**  
12 **Medical Marijuana Establishment Program,**

13 **Respondent(s).**

**CASE NO. A-14-710874-J**  
**DEPT. NO. VIII**

**ORDER**

14 This matter having come before the above-entitled Court for hearing on July 12, 2016.  
15 and the Court having read and considered Petitioner Samantha Inc., d/b/a Samantha's Remedies  
16 ("Samantha's") Petition for Judicial Review Memorandum of Points and Authorities,  
17 Respondent Department of Health and Human Services Nevada Division of Public and  
18 Behavioral Health Medical Marijuana Program's ("Division") Reply Memorandum,  
19 Samantha's Reply Memorandum, the Record on Review, all other documents before the court  
20 including a verified copy of Samantha's Application, the Division's Request for Applications,  
21 and the Division's Scoring/Evaluation Tool - and the oral argument presented by the parties,  
22 the Court makes the following findings of fact and conclusions of law.

23 **I.**

24 **FINDINGS OF FACT**

25 1. On May 30, 2014, the Division released the "Medical Marijuana Establishment  
26 Registration Certificate Request for Applications" (hereinafter "Request for Applications").

27 2. The Request for Applications set forth detailed guidelines and requirements for  
28 a prospective Medical Marijuana Establishment ("MME") applicant to follow in preparing an  
application to operate a MME.

**DOUGLAS E. SMITH**  
**DISTRICT JUDGE**

**DEPARTMENT COURT**  
**LAS VEGAS NV 89155**

000137

1           3. Pursuant to NRS 453A there are four (4) types of MME's: independent testing  
2 laboratories, cultivation facilities, production facilities, and dispensaries.

3           4. Applicants seeking a Certificate of Registration to operate a MME were required  
4 to file an application with the Division during a ten-day filing period.

5           5. The Request for Applications required MME applicants to submit information  
6 evidencing the statutory criteria set forth in NRS 453A.322, 453A.328 and NAC 453A.300 -  
7 453A.456.

8           6. The Request for Applications instructed applicants to provide specific  
9 information in one or both sections of the application referenced as Identified Criteria Response  
10 ("ICR") and Non-Identified Criteria Response ("NICR").

11           7. The ICR was to contain all identifying information regarding the MME  
12 applicant (e.g. names, addresses, dates of birth, etc.) and, in the NICR section applicants were  
13 instructed to omit such identifying information.

14           8. The Request for Applications provided instructions that the application "must be  
15 presented in a format that corresponds to and references the sections outlined within this  
16 [Request for Applications]" and "are to be prepared in such a way as to provide  
17 straightforward, concise delineation of information."

18           9. Pursuant to NRS 453A.324(4), the Division stated in its Request for  
19 Applications that MME applications would only be accepted during a "10 Day Window"  
20 beginning August 5, 2014 and closing August 18, 2014.

21           10. The Request for Applications stated that the applications would be evaluated  
22 between August 5, 2014 and November 2, 2014, with provisional Certificates of Registration to  
23 operate being issued the following day, November 3, 2014.

24           11. On March 31, 2014, the Division published a "Request for Evaluators," which  
25 invited individuals interested in filling temporary positions as evaluators of MME applications  
26 to apply. The Request for Evaluators sought evaluators with backgrounds in the following  
27 areas:  
28

Administrative assistant background, accounting, personnel officers/human resources, business ownership, environmental protection, pharmacist technician experience, fire and life safety, IT professionals, supply technician background, inspection, purchasing, public works background, and building construction/inspection experience.

12. The Division selected evaluators to review, evaluate, and score all MME applications received during the 10-day window.

13. Samantha's Remedies submitted its "Medical Marijuana Establishment State of Nevada Application" (hereinafter "Samantha's Application") to the Division within the established ten-day window.

14. Samantha's Application sought authority to operate a MME-Dispensary in the City of Las Vegas.

15. Samantha's Application included the ICR and NICR portions.

16. Samantha's Application also included six (6) sheets of large, blueprint-sized drawings and plans regarding the building it intended to use as an MME-Dispensary.

17. The Division's Scoring/Evaluation Tool ("TOOL") was created by the Division as a methodology for the evaluators to use in the review, evaluation, and scoring of the MME applications.

18. The TOOL contains seven (7) different scoring categories with the following points allotted for each category:

- |   |                    |
|---|--------------------|
| 1- Financial Plan                                     | (40 Points) (ICR)  |
| 2- Organizational Structure                           | (50 Points) (ICR)  |
| 3- Convenient to Serve the Needs                      | (20 Points) (ICR)  |
| 4- Likely Impact on the Community                     | (20 Points) (NICR) |
| 5- Taxes Paid and Financial Contributions             | (25 Points) (ICR)  |
| 6- Adequacy of Size - Building and Construction Plans | (20 Points) (NICR) |
| 7- Care, Quality and Safekeeping                      | (75 Points) (NICR) |

19. The seven (7) categories of the TOOL are meant to correspond to different portions of the MME application, with four (4) of the scoring categories used to evaluate and score aspects of an applicant's ICR, and three (3) of the scoring categories evaluating aspects of an applicant's NICR.

1           20.    The Division used different evaluators to evaluate the seven (7) different scoring  
2 categories with respect to each application.

3           21.    Having carefully and cautiously considered the Record on Review, this Court  
4 finds that the Division's evaluators did not have access to Samantha's entire Application during  
5 the review and evaluation of the subject Application.

6           22.    Samantha's Application was scored and received points as set forth in the  
7 Division's Scoring Details summary. See, Record on Review pg. 573.

8           23.    Samantha's Application scored 163.26 points, thereby resulting in a ranking of  
9 fourteenth (14<sup>th</sup>) for MME-Dispensaries in the City of Las Vegas. Only the top twelve (12)  
10 applications for MME-Dispensaries in the City of Las Vegas were issued provisions Certificate  
11 of Registration to operate.

12          24.    On November 18, 2014, the Division notified Samantha's that there would be no  
13 further consideration of the Application, thereby resulting in a final decision of the Division  
14 pursuant to NRS 233B.130(b).

15          25.    On December 8, 2014, Samantha's filed its Petition for Judicial Review.

16          26.    On December 24, 2014, the Division filed a Motion to Dismiss, arguing that  
17 there was no statutory authority for judicial review of the Division's final decision relative to  
18 the MME application process. Samantha's filed an Opposition to the Division's Motion and  
19 the Division filed a Reply. The Division's Motion was denied.

20          27.    The Division petitioned the Nevada Supreme Court for a Writ of Mandamus  
21 based on this Court's denial of the Motion to Dismiss. As set forth in Nevada Supreme Court  
22 Case No. 87423, the Nevada Supreme Court denied the Division's Request for a Writ of  
23 Mandamus and remanded the case back to this Court to proceed in the judicial review process.

24          28.    The Division provided what it purported to be the Record on Review on March  
25 10, 2013, and later produced the TOOL.

26          29.    Samantha's filed its Memorandum of Points and Authorities on May 6, 2016.  
27  
28



1           30. On May 26, 2016, the Division filed additional documents specifically identified  
2 as the NICR section of Samantha's Application and deemed to be a supplement to the Record  
3 on Review.

4           31. The Division filed its Reply Memorandum of Points and Authorities on June 2,  
5 2016.

6           32. Samantha's filed its Reply Memorandum on July 7, 2016.

7           33. Oral arguments were heard on this matter on July 12, 2016.

8           34. The briefs and oral arguments presented in this Petition have established that the  
9 Division's actions in evaluating and scoring of Samantha's Application were clearly erroneous  
10 in light of the evidence in the record as a whole. Correspondingly, there is no substantial  
11 evidence to support the Application's score.

12          35. Furthermore this Court finds that:

- 13           a. The Division's evaluators did not review and/or consider the blueprint-size  
14 drawings and plans included in Samantha's Application pertaining to the  
15 Adequacy of Building Size and Construction Plans category of the TOOL;  
16           b. The Organizational Structure category of the TOOL did not reasonably  
17 correspond to the requirements of the Request for Applications; thereby,  
18 necessitating a review of the full application; and  
19           c. The Likely Impact on the Community category of the TOOL did not  
20 reasonably correspond to the requirements of the Request for Applications,  
21 also meriting a review of the full application by the evaluators.

22                               II.

23                               CONCLUSIONS OF LAW

24           1. The Division's scoring and ultimate denial of a provision Certificate of  
25 Registration constitute a final decision in an administrative action. NRS 233B.130(1)(b).

26           2. In matters pertaining to judicial review "[t]he district court has very broad  
27 supervisory powers to insure that all relevant evidence is examined and considered." *Clark*  
28

1 *County Liquor & Gaming Licensing Board v. Clark*, 102 Nev. 654, 658 (1986), citing *Nevada*  
2 *Industrial Commission v. Reese*, 93 Nev. 115, 126, 560 P.2d 1352, 1358 (1977).

3 3. Furthermore, courts "review the factual determinations of administrative  
4 agencies for clear error 'in view of the reliable, probative and substantial evidence on the whole  
5 record.'" NRS 233B.135(3)(e), (f).

6 4. Pursuant to NRS 233B.135(3)

7 The court may remand ... or set [a final decision] aside ... if substantial  
8 rights of the petitioner have been prejudiced because the final decision of  
9 the agency is:

- 10 a) In violation of constitutional or statutory provisions;  
11 b) In excess of the statutory authority of the agency;  
12 c) Made upon unlawful procedure;  
13 d) Affected by other error of law;  
14 e) Clearly erroneous in view of the reliable, probative and  
15 substantial evidence on the whole record; or  
16 f) Arbitrary or capricious or characterized by abuse of discretion.

17 5. The purpose for registering medical marijuana establishments "is to protect the  
18 public health and safety and the general welfare of the people of this State" to ensure that the  
19 most qualified and applicants operate in the field of medical marijuana. NRS 453A.320.

20 6. Considering the Division's process of reviewing Samantha's Application, the  
21 Request for Application, the TOOL, the evaluators comments on the TOOL, and the entirety of  
22 Samantha's Application, the Court finds that the Division's final decision was not based on  
23 substantial evidence and thus the Division acted arbitrarily and capriciously in evaluating and  
24 scoring Samantha's Application.

### 25 III.

### 26 ORDER

27 Based on the foregoing, and following a thorough review of the entire Record as  
28 presented above IT IS HEREBY ORDERED:

1 The score given to Samantha's Application for a MME-Dispensary Certificate  
of Registration is hereby set aside in full;

2 Samantha's Application is remanded to the Division for a reevaluation with the

1 following specific instructions:

- 2 a. The Application is to be reviewed in its entirety;
- 3 b. Before withholding points in any section of the TOOL, the Division must
- 4 review Samantha's complete Application and assign points for information
- 5 contained in all sections of the complete Application;
- 6 c. Maintaining the obligation to evaluate Samantha's Application in full, the
- 7 Division is specifically instructed to reevaluate the Adequacy of Building
- 8 Size and Construction Plans category and assign points considering
- 9 Samantha's large drawings and plans;
- 10 d. The Division is specifically instructed to reevaluate the Organizational
- 11 Structure category and assign points for the job descriptions and operational
- 12 information contained in Samantha's NICK; and
- 13 e. The Division is specifically instructed to reevaluate the Likely Impact on the
- 14 Community category and assign points for the related information contained
- 15 in Samantha's Application.
- 16 3. The Division must complete this review within 30 days of the entry of this
- 17 Order;
- 18 4. Following the Division's review and scoring of Samantha's Application the
- 19 Division shall rank Samantha's Applications among the MME-Dispensaries for
- 20 the City of Las Vegas.
- 21 5. If Samantha's Application's revised score results in Samantha's being ranked in
- 22 the top 12 MME-Dispensaries in Las Vegas, Samantha's shall be awarded a
- 23 provisional Certificate of Registration.
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IT IS SO ORDERED this 27 day of July, 2016.

  
DISTRICT COURT JUDGE 

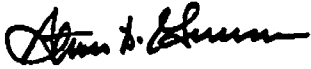
I hereby certify that on or about the date signed, a copy of this order was electronically served and/or placed in the attorney folder maintained by the Clerk of the Court and/or mailed by U.S. mail to the following:

Kimberly Maxson-Rushton, Esq., COOPER LEVENSON  
Linda Christine Anderson, Esq., ATTORNEY GENERAL'S OFFICE

  
CATHERINE DAVILA, Judicial Assistant

1 NEOJ  
2 KIMBERLY MAXSON-RUSHTON  
3 Nevada Bar No. 005065  
4 COOPER LEVENSON, P.A.  
5 1835 Village Center Circle  
6 Las Vegas, Nevada 89134  
7 (702) 366-1125  
8 FAX: (702) 366-1857  
9 krushton@cooperlevenson.com  
10 Attorneys for Petitioner  
11 Samantha Inc. d/b/a  
12 Samantha's Remedies

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CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 Samantha Inc., d/b/a Samantha's Remedies,  
11 a Domestic Corporation,

Petitioner.

12 vs.

13 Department of Health and Human Services  
14 Nevada Division of Public and Behavioral Health  
15 Medical Marijuana Establishment Program,

Respondent(s).

CASE NO. A-14-710874-J  
DEPT. NO. VIII

NOTICE OF ENTRY OF ORDER

17 TO: DEPARTMENT OF HEALTH AND HUMAN SERVICES NEVADA DIVISION OF  
18 PUBLIC AND BEHAVIORAL HEALTH MEDICAL MARIJUANA ESTABLISHMENT  
19 PROGRAM, Respondent; and

20 TO: LINDA C. ANDERSON, ESQ., of the STATE OF NEVADA ATTORNEY GENERAL,  
21 Attorneys for Plaintiff;

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YOU WILL PLEASE TAKE NOTICE that on the 27th day of July, 2016, an Order  
was entered in the above-entitled action, a copy of which is attached hereto.

Dated this 3rd day of August, 2016.

COOPER LEVENSON, P.A.

By /s/ Kimberly Maxson-Rushton  
KIMBERLY MAXSON-RUSHTON, ESQ.  
Nevada Bar No. 005065  
1835 Village Center Circle  
Las Vegas, Nevada 89134  
Attorneys for Petitioner  
SAMANTHA INC.  
d/b/a SAMANTHA'S REMEDIES

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and  
3 that on this 3rd day of August, 2016, I did cause a true copy of the foregoing **NOTICE OF ENTRY**  
4 **OF ORDER** to be served upon each of the parties listed below via electronic service through the  
5 Eighth Judicial District Court's Odyssey E-File and Serve System:

6 Linda C. Anderson  
7 Chief Deputy Attorney General  
8 State of Nevada Attorney General  
555 E. Washington Blvd., Suite 3900  
Las Vegas, Nevada 89101

9  
10 By 

An Employee of  
COOPER LEVENSON, P.A.

12  
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19 Nevada Division of Public and Behavioral Health  
20 Medical Marijuana Establishment Program  
4150 Technology Way  
Carson City, NV 89706

21  
22 By 

An Employee of  
COOPER LEVENSON, P.A.

1  
2 **ORDR**

3  
4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

6 Samantha Inc., d/b/a Samantha's Remedies,  
a Domestic Corporation,

CASE NO. A-14-710874-J  
DEPT. NO. VIII

7 Petitioner.

8 vs.

**ORDER**

9 Department of Health and Human Services  
Nevada Division of Public and Behavioral Health  
Medical Marijuana Establishment Program,

10 Respondent(s).  
11

12 This matter having come before the above-entitled Court for hearing on July 12, 2016,  
13 and the Court having read and considered Petitioner Samantha Inc., d/b/a Samantha's Remedies  
14 ("Samantha's") Petition for Judicial Review Memorandum of Points and Authorities,  
15 Respondent Department of Health and Human Services Nevada Division of Public and  
16 Behavioral Health Medical Marijuana Program's ("Division") Reply Memorandum,  
17 Samantha's Reply Memorandum, the Record on Review, all other documents before the court –  
18 including a verified copy of Samantha's Application, the Division's Request for Applications,  
19 and the Division's Scoring/Evaluation Tool – and the oral argument presented by the parties,  
20 the Court makes the following findings of fact and conclusions of law.

21 **L**

22 **FINDINGS OF FACT**

23 1. On May 30, 2014, the Division released the "Medical Marijuana Establishment  
24 Registration Certificate Request for Applications" (hereinafter "Request for Applications").

25 2. The Request for Applications set forth detailed guidelines and requirements for  
26 a prospective Medical Marijuana Establishment ("MMB") applicant to follow in preparing an  
27 application to operate a MME.  
28

DOUGLAS E. SMITH  
DISTRICT JUDGE  
DEPARTMENT COURT  
LAS VEGAS NV 89103

000148



1           3. Pursuant to NRS 453A there are four (4) types of MME's: independent testing  
2 laboratories, cultivation facilities, production facilities, and dispensaries.

3           4. Applicants seeking a Certificate of Registration to operate a MME were required  
4 to file an application with the Division during a ten-day filing period.

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6 evidencing the statutory criteria set forth in NRS 453A.322, 453A.328 and NAC 453A.300 –  
7 453A.456.

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16 [Request for Applications]" and "are to be prepared in such a way as to provide  
17 straightforward, concise delineation of information."

18           9. Pursuant to NRS 453A.324(4), the Division stated in its Request for  
19 Applications that MME applications would only be accepted during a "10 Day Window"  
20 beginning August 5, 2014 and closing August 18, 2014.

21           10. The Request for Applications stated that the applications would be evaluated  
22 between August 5, 2014 and November 2, 2014, with provisional Certificates of Registration to  
23 operate being issued the following day, November 3, 2014.

24           11. On March 31, 2014, the Division published a "Request for Evaluators," which  
25 invited individuals interested in filling temporary positions as evaluators of MME applications  
26 to apply. The Request for Evaluators sought evaluators with backgrounds in the following  
27 areas:  
28

Administrative assistant background, accounting, personnel officers/human resources, business ownership, environmental protection, pharmacist technician experience, fire and life safety, IT professionals, supply technician background, inspection, purchasing, public works background, and building construction/inspection experience.

12. The Division selected evaluators to review, evaluate, and score all MME applications received during the 10-day window.

13. Samantha's Remedies submitted its "Medical Marijuana Establishment State of Nevada Application" (hereinafter "Samantha's Application") to the Division within the established ten-day window.

14. Samantha's Application sought authority to operate a MME-Dispensary in the City of Las Vegas.

15. Samantha's Application included the ICR and NICR portions.

16. Samantha's Application also included six (6) sheets of large, blueprint-sized drawings and plans regarding the building it intended to use as an MME-Dispensary.

17. The Division's Scoring/Evaluation Tool ("TOOL") was created by the Division as a methodology for the evaluators to use in the review, evaluation, and scoring of the MME applications.

18. The TOOL contains seven (7) different scoring categories with the following points allotted for each category:

- |   |                    |
|---|--------------------|
| 1- Financial Plan                                     | (40 Points) (ICR)  |
| 2- Organizational Structure                           | (50 Points) (ICR)  |
| 3- Convenient to Serve the Needs                      | (20 Points) (ICR)  |
| 4- Likely Impact on the Community                     | (20 Points) (NICR) |
| 5- Taxes Paid and Financial Contributions             | (25 Points) (ICR)  |
| 6- Adequacy of Size - Building and Construction Plans | (20 Points) (NICR) |
| 7- Care, Quality and Safekeeping                      | (75 Points) (NICR) |

19. The seven (7) categories of the TOOL are meant to correspond to different portions of the MME application, with four (4) of the scoring categories used to evaluate and score aspects of an applicant's ICR, and three (3) of the scoring categories evaluating aspects of an applicant's NICR.

1           20.    The Division used different evaluators to evaluate the seven (7) different scoring  
2 categories with respect to each application.

3           21.    Having carefully and cautiously considered the Record on Review, this Court  
4 finds that the Division's evaluators did not have access to Samantha's entire Application during  
5 the review and evaluation of the subject Application.

6           22.    Samantha's Application was scored and received points as set forth in the  
7 Division's Scoring Details summary. See, Record on Review pg. 573.

8           23.    Samantha's Application scored 163.26 points, thereby resulting in a ranking of  
9 fourteenth (14<sup>th</sup>) for MME-Dispensaries in the City of Las Vegas. Only the top twelve (12)  
10 applications for MME-Dispensaries in the City of Las Vegas were issued provisions Certificate  
11 of Registration to operate.

12           24.    On November 18, 2014, the Division notified Samantha's that there would be no  
13 further consideration of the Application, thereby resulting in a final decision of the Division  
14 pursuant to NRS 233B.130(b).

15           25.    On December 8, 2014, Samantha's filed its Petition for Judicial Review.

16           26.    On December 24, 2014, the Division filed a Motion to Dismiss, arguing that  
17 there was no statutory authority for judicial review of the Division's final decision relative to  
18 the MME application process. Samantha's filed an Opposition to the Division's Motion and  
19 the Division filed a Reply. The Division's Motion was denied.

20           27.    The Division petitioned the Nevada Supreme Court for a Writ of Mandamus  
21 based on this Court's denial of the Motion to Dismiss. As set forth in Nevada Supreme Court  
22 Case No. 87423, the Nevada Supreme Court denied the Division's Request for a Writ of  
23 Mandamus and remanded the case back to this Court to proceed in the judicial review process.

24           28.    The Division provided what it purported to be the Record on Review on March  
25 10, 2013, and later produced the TOOL.

26           29.    Samantha's filed its Memorandum of Points and Authorities on May 6, 2016.  
27  
28

30. On May 26, 2016, the Division filed additional documents specifically identified as the NICR section of Samantha's Application and deemed to be a supplement to the Record on Review.

31. The Division filed its Reply Memorandum of Points and Authorities on June 2, 2016.

**32. Samantha's filed its Reply Memorandum on July 7, 2016.**

33. Oral arguments were heard on this matter on July 12, 2016.

34. The briefs and oral arguments presented in this Petition have established that the Division's actions in evaluating and scoring of Samantha's Application were clearly erroneous in light of the evidence in the record as a whole. Correspondingly, there is no substantial evidence to support the Application's score.

**35. Furthermore this Court finds that:**

- a. The Division's evaluators did not review and/or consider the blueprint-size drawings and plans included in Samantha's Application pertaining to the Adequacy of Building Size and Construction Plans category of the TOOL;
- b. The Organizational Structure category of the TOOL did not reasonably correspond to the requirements of the Request for Applications; thereby, necessitating a review of the full application; and
- c. The Likely Impact on the Community category of the TOOL did not reasonably correspond to the requirements of the Request for Applications, also meriting a review of the full application by the evaluators.

## II.

### CONCLUSIONS OF LAW

1. The Division's scoring and ultimate denial of a provision Certificate of Registration constitute a final decision in an administrative action. NRS 233B.130(1)(b).

2. In matters pertaining to judicial review "[t]he district court has very broad supervisory powers to insure that all relevant evidence is examined and considered." *Clark*

1 *County Liquor & Gaming Licensing Board v. Clark*, 102 Nev. 654, 658 (1986), citing *Nevada*  
2 *Industrial Commission v. Reese*, 93 Nev. 115, 126, 560 P.2d 1352, 1358 (1977).

3 3. Furthermore, courts "review the factual determinations of administrative  
4 agencies for clear error 'in view of the reliable, probative and substantial evidence on the whole  
5 record.'" NRS 233B.135(3)(e), (f).

6 4. Pursuant to NRS 233B.135(3)

7 The court may remand ... or set [a final decision] aside ... if substantial  
8 rights of the petitioner have been prejudiced because the final decision of  
the agency is:

- 9 a) In violation of constitutional or statutory provisions;  
10 b) In excess of the statutory authority of the agency;  
11 c) Made upon unlawful procedure;  
12 d) Affected by other error of law;  
e) Clearly erroneous in view of the reliable, probative and  
substantial evidence on the whole record; or  
f) Arbitrary or capricious or characterized by abuse of discretion.

13 5. The purpose for registering medical marijuana establishments "is to protect the  
14 public health and safety and the general welfare of the people of this State" to ensure that the  
15 most qualified and applicants operate in the field of medical marijuana. NRS 453A.320.

16 6. Considering the Division's process of reviewing Samantha's Application, the  
17 Request for Application, the TOOL, the evaluators comments on the TOOL, and the entirety of  
18 Samantha's Application, the Court finds that the Division's final decision was not based on  
19 substantial evidence and thus the Division acted arbitrarily and capriciously in evaluating and  
20 scoring Samantha's Application.

21 **III.**

22 **ORDER**

23 Based on the foregoing, and following a thorough review of the entire Record as  
24 presented above IT IS HEREBY ORDERED:

25 1. The score given to Samantha's Application for a MME-Dispensary Certificate  
26 of Registration is hereby set aside in full;

27 2. Samantha's Application is remanded to the Division for a reevaluation with the  
28

1 following specific instructions:

- 2 a. The Application is to be reviewed in its entirety;
- 3 b. Before withholding points in any section of the TOOL, the Division must
- 4 review Samantha's complete Application and assign points for information
- 5 contained in all sections of the complete Application;
- 6 c. Maintaining the obligation to evaluate Samantha's Application in full, the
- 7 Division is specifically instructed to reevaluate the Adequacy of Building
- 8 Size and Construction Plans category and assign points considering
- 9 Samantha's large drawings and plans;
- 10 d. The Division is specifically instructed to reevaluate the Organizational
- 11 Structure category and assign points for the job descriptions and operational
- 12 information contained in Samantha's NICR; and
- 13 e. The Division is specifically instructed to reevaluate the Likely Impact on the
- 14 Community category and assign points for the related information contained
- 15 in Samantha's Application.
- 16 3. The Division must complete this review within 30 days of the entry of this
- 17 Order;
- 18 4. Following the Division's review and scoring of Samantha's Application the
- 19 Division shall rank Samantha's Applications among the MME-Dispensaries for
- 20 the City of Las Vegas.
- 21 5. If Samantha's Application's revised score results in Samantha's being ranked in
- 22 the top 12 MME-Dispensaries in Las Vegas, Samantha's shall be awarded a
- 23 provisional Certificate of Registration.
- 24
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- 27
- 28

1 IT IS SO ORDERED this 27 day of July, 2016.

2  
3  
4 De S. Smith  
5 DISTRICT COURT JUDGE MS

6 I hereby certify that on or about the date signed, a copy of this order was  
7 electronically served and/or placed in the attorney folder maintained by  
8 the Clerk of the Court and/or mailed by U.S. mail to the following:

9 Kimberly Maxson-Rushton, Esq., COOPER LEVENSON  
10 Linda Christine Anderson, Esq., ATTORNEY GENERAL'S OFFICE

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CATHERINE DAVILA, Judicial Assistant

  
CLERK OF THE COURT

ADAM PAUL LAXALT  
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Linda C. Anderson  
Chief Deputy Attorney General  
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E-mail: landerson@ag.nv.gov

DISTRICT COURT  
CLARK COUNTY, NEVADA

SAMANTHA INC. d/b/a SAMANTHA'S  
REMEDIES, a domestic corporation

Petitioner,

vs.

DEPARTMENT OF HEALTH AND HUMAN  
SERVICES, DIVISION OF PUBLIC AND  
BEHAVIORAL HEALTH; et. al,

Respondent.

Case No.: A-14-710874-J

Dept. No. VIII

NOTICE OF ENTRY OF ORDER:

PLEASE TAKE NOTICE that on the 13<sup>th</sup> day of February, 2015, an ORDER was entered and attached is a true and correct copy thereof.

**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: August 25, 2016.

ADAM PAUL LAXALT  
Attorney General

By: /s/ Linda C. Anderson  
Linda C. Anderson  
Chief Deputy Attorney General

Attorney General's Office  
555 E. Washington, Suite 3900  
Las Vegas, Nevada 89101



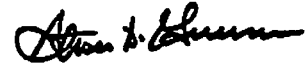
Attorney General's Office  
555 E. Washington, Suite 1900  
Las Vegas, Nevada 89101

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing *NOTICE OF ENTRY OF ORDER* by using the electronic filing system on the 25<sup>th</sup> day of August, 2016. The Following participants in this case are registered electronic filing system users and will be served electronically:

Kimberly Maxson-Rushton  
COOPER LEVENSON, P.A.  
1835 Village Center Circle  
Las Vegas, NV 89134

/s/ Linda Aouste  
An Employee of the Office of the Attorney General



CLERK OF THE COURT

1 ODM  
2 KIMBERLY MAXSON-RUSHTON  
3 Nevada Bar No. 005065  
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7 (702) 366-1125  
8 FAX: (702) 366-1857  
9 Attorney for Petitioner  
10 krushton@cooperlevenson.com

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DISTRICT COURT

CLARK COUNTY, NEVADA

Samantha Inc., d/b/a Samantha's Remedies, a  
Domestic Corporation.

CASE NO. A-14-710874-J  
DEPT NO. VIII

Petitioner.

vs.

ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS

Department of Health and Human Services,  
Nevada Division of Public and Behavioral  
Health, Medical Marijuana Establishment  
Program,

Respondent(s).

Respondent, STATE OF NEVADA and the DEPARTMENT OF HEALTH AND HUMAN  
SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH'S (hereinafter "Division")  
having filed a Motion To Dismiss Petitioner's Petition for Judicial Review pursuant to Nevada Rules  
of Civil Procedure ("NRC") 12(B), and the matter having come before the Court for oral argument  
on January 27, 2015, Kimberly Maxson-Rushton of the law firm Cooper Levenson P.A. appearing  
on behalf of Petitioner SAMANTHA INC., d/b/a SAMANTHA'S REMEDIES, ("Samantha  
Remedies") and Chief Deputy Attorney General, Linda Anderson appearing on behalf of  
Respondent, the Court finds as follows:

THAT Petitioner filed a Petition for Judicial Review of an administrative decision denying  
its application for a medical marijuana establishment registration certificate.

THAT Petitioner seeks review of the application review and ranking process, claiming the

1 administrative denial, which allows no opportunity for a hearing, was arbitrary and capricious rather  
2 than fair and impartial.

3 THAT Respondent's motion seeking dismissal of the petition is based on the claim that  
4 administrative decisions like this one are not subject to judicial review because judicial review is  
5 reserved for contested cases, cases in which legal rights, duties, or privileges are determined after an  
6 opportunity for a hearing. Furthermore, Respondent asserts that registration certificates for medical  
7 marijuana establishments involve revocable privileges, not legal rights, for which no opportunity for  
8 hearing has been established, and therefore judicial review is not available.

10 THEREFORE having heard arguments from both parties, and after reviewing the record, the  
11 Court finds that judicial review must be available for this administrative decision.

12 THEREFORE, the COURT ORDERS, Respondent's Motion to Dismiss is hereby DENIED.  
13 The parties may proceed with the Petition for Judicial Review.

15 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is DENIED.

16 DATED this 11 day of February 2015.

18  
19  
20   
DISTRICT COURT JUDGE *He*

21 Submitted By:

22 COOPER LEVENSON, P.A.

23   
KIMBERLY MAXSON-RUSHTON

24 Nevada Bar No. 005065

25 COOPER LEVENSON, P.A.

26 6060 Elton Avenue, Suite A

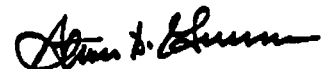
27 Las Vegas, Nevada 89107

28 (702) 366-1125

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Attorney for Petitioner

krushton@cooperlevenson.com



CLERK OF THE COURT

Electronically Filed  
Aug 25 2016 03:17 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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DISTRICT COURT  
CLARK COUNTY, NEVADA

SAMANTHA INC., d/b/a SAMANTHA'S  
REMEDIES, a domestic corporation,

Petitioner,

vs.

DEPARTMENT OF HEALTH AND HUMAN  
SERVICES, DIVISION OF PUBLIC AND  
BEHAVIORAL HEALTH, et. al.

Respondent.

Case No.: A-14-710874-J

Dept. No.: VIII

NOTICE OF APPEAL

TO: SAMATHA, INC. d/b/a SAMANTHA'S REMEDIES, Petitioner,

TO: KIMBERLY MAXSON-RUSHTON, ESQ. Attorney for Petitioner.

NOTICE IS HEREBY GIVEN that Respondent DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH, by and through ADAM PAUL LAXALT, Attorney General by Chief Deputy Attorney General, LINDA C. ANDERSON, hereby appeals to the Supreme Court of the State of Nevada from the Order Denying the Motion to Dismiss filed February 13, 2015 and the Order filed on July 27, 2016. A copy of both orders along with Notice of Entry filed August 3, 2016 attached as Exhibit "A".

Dated: August 18, 2016

ADAM PAUL LAXALT  
Attorney General

By: /s/ Linda C. Anderson  
Linda C. Anderson  
Chief Deputy Attorney General

Attorney General's Office  
555 E. Washington, Suite 3900  
Las Vegas, Nevada 89101

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing *NOTICE OF APPEAL* by using the electronic filing system on the 18<sup>th</sup> day of August, 2016.

The Following participants in this case are registered electronic filing system users and will be served electronically:

Kimberly Maxson-Rushton, Esq.  
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Las Vegas, NV 89134

/s/ Linda Aousie  
An Employee of the Office of the Attorney General