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Nevada Organic Remedies, LLC

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IN THE SUPREME COURT OF THE STATE OF NEVADA

GREENMART OF NEVADA NLV LLC, A  
NEVADA LIMITED LIABILITY COMPANY;  
AND NEVADA ORGANIC REMEDIES, LLC,

APPELLANTS,

vs.

SERENITY WELLNESS CENTER LLC, A  
NEVADA LIMITED LIABILITY COMPANY;  
TGIG, LLC, A NEVADA LIMITED LIABILITY  
COMPANY; NULEAF INCLINE  
DISPENSARY, LLC, A NEVADA LIMITED  
LIABILITY COMPANY; NEVADA HOLISTIC  
MEDICINE, LLC, A NEVADA LIMITED  
LIABILITY COMPANY; TRYKE  
COMPANIES SO NV, LLC, A NEVADA  
LIMITED LIABILITY COMPANY; TRYKE  
COMPANIES RENO, LLC, A NEVADA  
LIMITED LIABILITY COMPANY; PARADISE  
WELLENESSE CENTER, A NEVADA  
LIMITED LIABILITY COMPANY; GBS  
NEVADA PARTNERS, LLC, A NEVADA  
LIMITED LIABILITY COMPANY; FEDELIS  
HOLDINGS, LLC, A NEVADA LIMITED  
LIABILITY COMPANY; GRAVITAS  
NEVADA, LLC, A NEVADA LIMITED  
LIABILITY COMPANY; NEVADA PURE,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY; MEDIFARM, LLC, A NEVADA  
LIMITED LIABILITY COMPANY;  
MEDIFARM IV LLC, A NEVADA LIMITED  
LIABILITY COMPANY; and STATE OF  
NEVADA, DEPARTMENT OF TAXATION,

RESPONDENTS.

Supreme Court No. 79668

District Court Case No. A-19-786962-B

NEVADA ORGANIC REMEDIES,  
LLC'S MOTION TO SUSPEND  
THE PRELIMINARY INJUNCTION  
ISSUED AGAINST THE STATE OF  
NEVADA, DEPARTMENT OF  
TAXATION PENDING APPEAL,  
PURSUANT TO NRAP 8

Appellant Nevada Organic Remedies, LLC (“NOR”) moves this Court to suspend the Preliminary Injunction (the “Injunction”) issued against the State of Nevada, Department of Taxation (the “Department”) pending appeal of the Injunction.

## **I. INTRODUCTION**

On August 23, 2019, Judge Elizabeth Gonzalez issued the Injunction (attached as Exhibit 1) that precludes some, but not all, recreational marijuana establishment licensees from opening their stores. The Injunction will irreparably harm NOR, who is now prevented from opening seven establishments and could lose its licenses altogether. On the other hand, unsuccessful applicants who sought the Injunction (the “Respondents”) will not suffer any identifiable harm if NOR were to open. These harms combined with the substantive legal flaws in the Injunction itself justify suspending the Injunction for the duration of the appeal under NRAP 8.

## **II. FACTUAL BACKGROUND**

In May 2019 Judge Gonzalez coordinated four cases that unsuccessful applicants for recreational marijuana establishment licenses filed against the Department—the agency that allocated the licenses—solely to hear motions for preliminary injunctions. NOR, who received seven licenses, and other successful applicants intervened in all four cases as Defendants. In a four-month evidentiary hearing, Respondents made myriad arguments and accusations against the Department, and at some point the Department’s mandate under NRS 453D.200(6) to “conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant” became an issue.

With respect to that subsection, the Department had adopted a regulation in NAC 453D.255(1) providing that NRS Chapter 453D would “**only apply** to a person with an **aggregate ownership interest of 5 percent or more** in a marijuana establishment” (the “5% rule”), which serves to ensure that potentially thousands nominal shareholders of publicly traded companies are not required to be background checked. The rule was part of the medical marijuana regulations in NAC 453A.302(1) and was recommended by the Governor’s Task Force.

Judge Gonzalez granted the preliminary injunction on the basis that the 5% rule is “an impermissible deviation from the mandatory language of...NRS 453D.200(6),” (Ex. 1, ¶ 82), and enjoined the Department from conducting final inspections on applicants that did not list 100% of their owners in their applications. She determined who those applicants were by requesting the Attorney General’s office, which represented the Department, to provide a list of “[w]hich successful applicants completed the application in compliance with NRS 453D.200(6).” (Ex. 2.) The Attorney General sent the court an email with three “Tiers” of successful applicants and stated that it “*could not eliminate a question* as to the completeness” of the applications of four successful applicants, including NOR, with respect to listed owners, and placed those applicants into a “Tier 3.” (Ex. 3). Without further explanation, Judge Gonzalez applied the Injunction only to the entities in Tier 3, while permitting other entities—including other publicly traded companies—to move forward to opening.

Today it remains unclear why NOR was subject to the Injunction. NOR listed 100% of its owners—its members—in its application including those with 5% interest or



less.<sup>1</sup> *NOR had the same ownership structure approved by the Department before NOR submitted its applications*, (Ex. 5), and the Department continued to approve NOR's full list of owners in the Department's own register of owners. (Ex. 6). The Attorney General's office apparently had questions regarding NOR's ownership solely because it was unsure whether NOR listed all shareholders of Xanthic Biopharma, Inc., a publicly traded company that was the parent company of one of NOR's owners, GGB Nevada, LLC. But the Department has never deemed Xanthic or its shareholders as "owners" of NOR. Its own regulations state that the persons who "must comply with the provisions [in NRS 453D] governing owners" are "the members of the limited-liability company," NAC 453D.250(2), and Xanthic or its shareholders are not members of NOR.<sup>2</sup>

### **III. ARGUMENT**

#### **A. Standard of Review for a Motion to Suspend a Preliminary Injunction**

Under NRAP 8, this Court may suspend injunctions for the duration of the appeal when: (1) the object of the appeal will be defeated if the stay is denied; (2) the appellant will suffer irreparable or serious injury if the stay is denied; (3) the respondent will suffer irreparable or serious injury if the stay is granted; or (4) the appellant is likely to prevail on the merits in the appeal. *See, also, Hansen v. Eighth Jud. Dist. Ct. ex rel. County of Clark*, 6 P.3d 982, 986 (Nev. 2000). This Court has held that none of these factors "carries more weight than the others," but if "one or two factors are especially

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<sup>1</sup> Organizational chart from NOR's applications listed every owner of NOR. (Ex. 4)

<sup>2</sup> NOR attempted to clarify this issue by filing an objection with the district court (Exhibit 7), and it recently applied for a writ of mandamus to compel the Department to move NOR into Tier 2, which is set to be heard on November 12, 2019. (Exhibit 8).



strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp. v. McCrea*, 89 P.3d 36, 38 (Nev. 2004). Here, each of the factors favor suspending the Injunction.

**B. NOR Will Be Irreparably Harmed and the Object of the Appeal Will Be Lost If the Injunction Is Not Suspended**

Unlike Respondents, NOR has a legally protected interest in seven licenses to open marijuana establishments. This Court has held that “the possibility of a license suspension ... may constitute irreparable harm.” *State, Dept. of Bus. & Indus. v. Check City*, 337 P.3d 755, 758 n. 5 (Nev. 2014). NOR licenses are suspended while the Department is enjoined from conducting final inspections. This, in and of itself, subjects NOR to cognizable harm that it suffers each day it is enjoined.

Since receiving its conditional licenses, NOR worked to secure locations, receive local permits, hire employees, obtain inventory, and prepare for final inspections in all jurisdictions. (Wiegand Decl., ¶¶ 2-3). As of this writing, NOR has received all necessary jurisdictional approvals required to open dispensaries in the City of Las Vegas, the City of Reno, and the Town of Pahrump. It has secured locations in those jurisdictions, performed necessary tenant improvements, purchased security systems, signed agreements for operations systems, hired and trained employees, and is ready to open these locations after final inspections by the Department. (*Id.* at ¶ 4). It is also moving forward in North Las Vegas, where it has secured a location and paid rent since early 2019, and in Clark County, where it had obtained a desirable location that has now been lost because of the Injunction. (*Id.* at ¶5.) Each day that passes, NOR will lose more locations and lay off more employees, and based on current operations, NOR projects it

would see \$27.5MM in annual gross profits from the five locations closest to opening. (*Id.* at ¶ 7).

There is also significant risk that NOR and other successful applicants may lose their licenses permanently before this Court decides the appeal. The deadline for the Department to conduct final inspections of marijuana establishments was originally December 4, 2019, and this deadline was just recently extended to June 5, 2020. (Ex. 9.) That date may come and go before an appeal can be decided, and even if the appeal were heard before June, it would leave little time for all of the work that needs to take place to obtain a final inspection. Moreover, there is a risk that NOR could lose the ability to exercise its licenses entirely before the final inspection deadline if local jurisdictions stop allowing new dispensaries to open for business, as is happening in several jurisdictions now. The bottom line is that NOR's licenses may not survive long enough for a standard appeal to be heard, as the licenses will effectively be required to lie dormant for months. This will not only irreparably harm NOR **but will destroy the entire object of appeal**. The injunction must be suspended to prevent such results.<sup>3</sup>

### C. Respondents Do Not Suffer Any Articulable Irreparable Harm

On the other hand, Respondents will not suffer any irreparable harm if the injunction is suspended, which favors suspension for several reasons. The lack of harm is conclusive proof that NOR is likely to succeed on appeal, because the district court abused its discretion in granting the Injunction without finding that Respondents would suffer identifiable irreparable harm. This Court has held that "irreparable harm **must be**

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<sup>3</sup> As this issue is extremely time-sensitive and of significant public importance, NOR also requests that this appeal be expedited to allow these matters to be decided 5 promptly to provide certainty for all involved.

**articulated in specific terms** by the issuing order or be sufficiently apparent elsewhere in the record.” *Dept. of Conservation and Nat. Resources, Div. of Water Resources v. Foley*, 109 P.3d 760, 762 (Nev. 2005) (emphasis added). However, nowhere in Judge Gonzalez’s FFCL does she ever articulate any specific irreparable harm.<sup>4</sup>

The only activity the FFCL enjoins is the Department’s inspection of some, but not all, stores, and NOR’s ability to open its stores during the litigation does not harm Respondents in any way. The only harm Respondents have ever raised is a vague potential loss of “market share.” Such harm is not “(a) concrete and particularized; and (b) actual or imminent” as required to support a preliminary injunction. *Hajro v. U.S. Citizenship and Immig. Services*, 811 F.3d 1086, 1102 (9th Cir. 2016). The licensing laws in NRS 453D—and specifically the background check requirement—are not designed to protect licensees from competition. The laws cannot be used as a basis to establish competition-based claims. There is, therefore, no causal connection between the harm suffered and the activity to be enjoined. No evidence of the loss of market share has been presented at all, leaving any such argument as conjectural and hypothetical, especially compared to the concrete harm NOR is now suffering.

#### **D. NOR Is Likely to Prevail on the Legal Merits of the Appeal**

The district court abused its discretion in making its factual determinations and also came to improper legal conclusions in granting the Injunction. These errors should

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<sup>4</sup> The district court has stated in other circumstances that it believes the mere fact that there are a limited number of overall licenses constitutes irreparable harm to those who do not have one. But allowing successful applicants to open now does not make those licenses irrevocable. If a court ultimately finds that licenses should be canceled, it can do so, but in the meantime, Respondents would not be entitled to use those licenses anyway.



result in a reversal on appeal and justify a suspension of the Injunction until the appeal is decided.<sup>5</sup>

### **1. NOR Submitted Information for 100% of Its Owners**

NOR listed 100% of its owners, and it is only subject to the Injunction due to the district court's unorthodox process of asking the Attorney General to effectively determine which parties would be enjoined. By relying entirely on the Attorney General's email, Judge Gonzalez allowed NOR to be subject to the Injunction without explanation as to why, which is an abuse of discretion.

NOR was only subject to the injunction based on an improper assumption that "prospective owner" in NRS 453D.200(6) includes not only the actual owners of the applicant—*i.e.* the members of an LLC—but also eventual indirect owners of a parent company of one of the owners of the applicant. The statute does not provide such a framework, and the Injunction is devoid of any discussion of the issue. The Department's original definition of owner has never been challenged, and NOR cannot remain subject to the Injunction while that definition stands.

### **2. The Department's Adoption of NAC 453D.255(1) Was a Reasonable Interpretation of NRS 453D.200(6)'s Requirements**

On appeal, this Court is likely to find that the Department's adoption of the 5% rule was a reasonable interpretation of NRS 453D.200(6) and a valid exercise of the Department's discretion. The Department is afforded "great deference" in interpreting

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<sup>5</sup> In determining whether NOR is likely to succeed on the merits of the appeal, this Court should review the district court's factual findings for an abuse of discretion and review *de novo* the district court's legal determinations, which include any questions of statutory construction. *See, Sarfo v. Bd. of Med. Examiners*, 429 P.3d 650, 652 (Nev. 2018); *S. Highlands Comm. Ass'n v. San Florentine Ave. Tr.*, 365 P.3d 503, 504–05 (Nev. 2016).

NRS 453D.200(6), (*see, Nuleaf CV Dispensary, LLC V. State Dep't of Health & Human Servs., Div. of Publ. & Behavioral Health*, 134 Nev. Adv. Op. 17, 414 P.3d 305, 311 (2018)), and the district court failed to grant that deference.

Nevada's "leading rule of statutory construction" is to ascertain the intent of the voters, which the Department did in adopting the 5% rule as applied to NRS 453D.200(6). *Dezzani v. Kern & Associates, Ltd.*, 412 P.3d 56, 59 (Nev. 2018)). This Court has continually held that statutes should be interpreted to 1) avoid absurd results, 2) harmonize with the broader statutory scheme, and 3) conform to public policy and the general spirit of the law **even if the interpretation necessarily departs from the literal interpretation of the statute** in order to ascertain the actual intent of the enactors.<sup>6</sup> The Department's interpretation of NRS 453D.200(6) does exactly that.

With respect to publicly traded companies, interpreting NRS 453D.200(6) to require background checks on every "prospective" shareholder—as the district court did—leads to absurd results. It is neither possible nor reasonable to track every stock trade and concurrently conduct a background check as the trade happens. Even obtaining a background check on all shareholders at a single point in time would be extraordinarily difficult, if not impossible.<sup>7</sup> Nevada voters could not have intended to require such background checks, and the 5% rule was designed to address such absurd results by

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<sup>6</sup> *See, In re CityCenter Constr. & Lien Master Litig.*, 310 P.3d 574, 580 (Nev. 2013) (citations omitted) ("We interpret statutes to conform[ ] to reason and public policy. In so doing, we avoid interpretations that lead to absurd results. Whenever possible, [we] will interpret a rule or statute in harmony with other rules or statutes.").

<sup>7</sup> At the evidentiary hearing, Mark Bradley Feldgreber, a principal of Green Leaf Farms, one of the Respondents, testified that they had 9,000 shareholders and an estimated 55% of the shares held in "street names" such as Merrill Lynch or Charles Schwab. He further testified that simply identifying the actual names of those 5,000 shareholders would be effectively impossible. -8-

limiting background checks to owners with actual influence on the operation of the applicant establishments.

Additionally, requiring background checks on all nominal shareholders contradicts other statutes and the spirit of the law. NRS 453D.200(1) expressly prohibits the Department from adopting regulations that make operating a recreational marijuana establishment *unreasonably impracticable*. The spirit of the law created by NRS 453D attempts to balance goals of: (1) making recreational marijuana available to the public and regulating it similar to other industries, and (2) protecting the public's health and safety. *See*, NRS 453D.020. If background checks were required on all nominal shareholders, it would effectively bar publicly traded companies from operating marijuana establishments and would not regulate ownership similar to medical marijuana. Such a requirement would hinder public safety, not promote it, as the most capable and profitable operators would be pushed out of the market. The 5% rule addresses these concerns, and it is likely to be validated on appeal.

### **3. Respondents Lack Standing to Challenge Implementation of NRS 453D.200(6)**

Finally, Respondents have no standing to claim breach of NRS 453D.200(6) because no Respondent was injured by a failure to conduct background checks on other entities. To have standing, "there [must] be a causal connection between the injury and the conduct complained of," and "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Miller v. Ignacio*, 921 P.2d 882, 885 n. 4 (Nev. 1996) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561



(1992) (emphasis added).<sup>8</sup> Here, Respondents' claimed injury is their failure to receive a license, but the background check requirement in NRS 453D.200(6) is completely unconnected to the grading process and has no causal connection Respondents' injury. In fact, NAC 453D.312(5) makes clear that if a background check reveals that an applicant has an excluded owner that applicant is allowed to remove the owner to "correct the situation."

The background check requirement is intended to promote public safety, and the only theoretical injury with any causal connection to a violation of that statute would be limited to public safety concerns. Respondents could not have suffered any personal injury for any violation of NRS 453D.200(6) that is not common to the public as a whole, and injury common to the public is not sufficient to create standing here. Respondents' individual litigation incentives and the nature of their claims make them the worst possible representatives of the public interest. *See, Schwartz v. Lopez*, 382 P.3d 886, 894 (Nev. 2016). Therefore, Respondents have no standing to sue for breach of NRS 453D.200(6), rendering the Injunction improper.

#### IV. CONCLUSION

The Court should suspend the Injunction to the extent it precludes the Department from conducting final inspections on NOR's marijuana establishments until the appeal is heard and decided.

**KOCH & SCOW, LLC**

/s/ David R. Koch

David R. Koch

*Attorneys for Nevada Organic Remedies LLC*

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<sup>8</sup> Whether a party has standing is a question of law and is subject to de novo review. *Saticoy Bay LLC Series 9641 Christine View v. Fed. Natl. Mortg. Assn.*, 417 P.3d 363, 366 (Nev. 2018).

## **DECLARATION OF BRODY WIGHT**

I, Brody R. Wight, make this declaration in support of Appellant Nevada Organic Remedies, LLC's ("NOR") Motion to suspend the Preliminary Injunction (the "Injunction") issued against the State of Nevada, Department of Taxation (the "Department") pending the appeal of the Injunction:

1. I am an attorney licensed to practice law in the State of Nevada and an associate at the law firm of Koch & Scow, LLC, and we are the attorneys of record for NOR in the matter entitled *GreenMart of Nevada NLC, LLC, et al. v. Serenity Wellness Center, LLC, et al.*, Supreme Court Case No. 79668, (the "Appeal") before the Nevada Supreme Court.
2. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.
3. Attached as Exhibit 1 to the Motion is a true and correct copy of the Findings of Fact and Conclusions of law filed by Judge Gonzalez, granting, in part, the preliminary injunction, and enjoining the Department from conducting final inspections on NOR's marijuana establishment.
4. Attached as Exhibit 2 to the Motion is a true and correct copy of a portion of the transcripts from day 20 of the Evidentiary Hearing on the Motions for Preliminary Injunction in the relevant district court cases before Judge Gonzalez, which was held on August 20, 2019.
5. Attached as Exhibit 3 to the Motion is a true and correct copy of the email

that the State of Nevada, Department of Taxation (the “Department”) sent to Judge Gonzalez’s chamber and to counsel for the parties to the Lawsuit. The tiers referred to in the attached email are those that Judge Gonzalez referred to in issuing the Findings of Fact and Conclusions of Law regarding the motion for preliminary injunction issued against the Department that is the subject of the Appeal.

6. Attached as Exhibit 4 to the Motion is a true and correct copy of the organizational chart found in NOR’s applications for licenses to open marijuana establishments that it submitted to the Department in September 2018.

7. Attached as Exhibit 5 to the Motion is a true and correct copy of the letter NOR received from the Department approving the transfer of ownership of NOR on August 20, 2018.

8. Attached as Exhibit 6 to the Motion is a true and correct copy of the list of owners and affiliated entities of NOR as of May 1, 2019, as found on the Department’s website, which can be found at the URL <https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/FAQs/CURRENTLICENSEEESMAY12019.pdf>.

9. Attached as Exhibit 7 to the Motion is a true and correct copy of NOR’s Response to the Department’s Statement Regarding Completeness of Applications with Reference to NRS 453D.200(6).

10. Attached as Exhibit 8 to the Motion is a true and correct copy of NOR’s Application for Writ of Mandamus to Compel the State of Nevada, Department of Taxation to Move Nevada Organic Remedies, LLC Into “Tier 2” of Successful Conditional



License Applicants filed in the matter entitled *MM Development Company, Inc. et. al. v. State of Nevada, Department of Taxation et. al.*, Case No. A-18-785818-W, filed in the Eighth Judicial District Court, Clark County, Nevada.

11. Attached as Exhibit 9 to the Motion is a true and correct copy of the letter NOR received from the Department extending the deadline NOR had to receive final inspections on its marijuana establishments to June 5, 2020, which it sent on October 18, 2019.

I declare under penalty of perjury under the laws of the United States and the State of Nevada that the foregoing is true and correct.

Executed this 28th day of October, 2019.



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BRODY R. WIGHT, ESQ.

## **DECLARATION OF BRANDON WIEGAND**

I, Brandon Wiegand, declare and state as follows:

1. I am the Regional General Manager of Nevada Organic Remedies and am responsible for the operation and opening of licensed marijuana establishments for the company in the State of Nevada. I have personal knowledge of the facts stated in this Declaration and could testify competently thereto.

2. On December 5, 2018, NOR was notified that it had been awarded seven conditional licenses by the Department of Taxation. Since December 5, 2018, NOR has been diligently acting to ensure that its stores can be inspected by the Department of Taxation and open for business no later than December 4, 2019.

3. NOR has leased locations, hired employees, worked with city and county governmental bodies to obtain approvals and permits, and has expended hundreds of hours and hundreds of thousands of dollars to ensure that it will be able to open its stores within the defined timeframe.

4. NOR has received special permits, business licenses, and other necessary jurisdictional approvals required to open dispensaries in the City of Las Vegas, the City of Reno, and the Town of Pahrump. It has secured locations in those jurisdictions, performed necessary tenant improvements, purchased security systems, signed agreements for operations systems, and has hired and trained employees, NOR is, in all respects, ready to open the doors to these locations after obtaining a final inspection from the Department. This said, the City of Las Vegas City Council recently removed NOR from the City

Council agenda with respect to its permits, as it has stated that it must wait until the injunction has been resolved before it can take further action on the permits.

5. NOR is also moving forward in the other locations. In North Las Vegas, NOR has secured a location and has been paying rent since early 2019. In Clark County, NOR obtained a highly desirable location that has already been lost because of the delay caused by the court's injunction.

6. NOR has been informed and believes that it will not be able to move forward at a local level in either Clark County or the City of North Las Vegas until the injunction is lifted, and once the injunction is lifted, it will take NOR months to obtain all necessary permits and prepare for final inspections in those jurisdictions.

7. Based on its currently operating locations and the demographics of the locations where NOR would open its new dispensaries, NOR projects that it will see \$27.5MM in annual gross profits from the five locations closest to opening for business.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: October 28, 2019

  
\_\_\_\_\_  
Brandon Wiegand



**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **NEVADA ORGANIC REMEDIES, LLC'S MOTION TO SUSPEND THE PRELIMINARY INJUNCTION ISSUED AGAINST THE STATE OF NEVADA, DEPARTMENT OF TAXATION PENDING APPEAL, PURSUANT TO NRAP 8** with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on October 28, 2019.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF users.

**KOCH & SCOW, LLC**

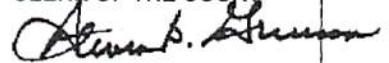
/s/ David R. Koch

David R. Koch

*Attorneys for Nevada Organic Remedies LLC*

# EXHIBIT 1

# EXHIBIT 1



1 FFCL

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3  
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 SERENITY WELLNESS CENTER, LLC, a  
7 Nevada limited liability company, TGIG, LLC,  
8 a Nevada limited liability company, NULEAF  
9 INCLINE DISPENSARY, LLC, a Nevada  
10 limited liability company, NEVADA  
11 HOLISTIC MEDICINE, LLC, a Nevada limited  
12 liability company, TRYKE COMPANIES SO  
13 NV, LLC, a Nevada limited liability company,  
14 TRYKE COMPANIES RENO, LLC, a Nevada  
15 limited liability company, PARADISE  
16 WELLNESS CENTER, LLC, a Nevada limited  
17 liability company, GBS NEVADA PARTNERS,  
18 LLC, a Nevada limited liability company,  
19 FIDELIS HOLDINGS, LLC, a Nevada limited  
20 liability company, GRAVITAS NEVADA,  
21 LLC, a Nevada limited liability company,  
22 NEVADA PURE, LLC, a Nevada limited  
23 liability company, MEDIFARM, LLC, a Nevada  
24 limited liability company, DOE PLAINTIFFS I  
25 through X; and ROE ENTITY PLAINTIFFS I  
26 through X,

27 Plaintiff(s),

28 vs.

THE STATE OF NEVADA, DEPARTMENT  
OF TAXATION,

Defendant(s).

and

NEVADA ORGANIC REMEDIES, LLC;  
INTEGRAL ASSOCIATES LLC d/b/a  
ESSENCE CANNABIS DISPENSARIES, a  
Nevada limited liability company; ESSENCE  
TROPICANA, LLC, a Nevada limited liability  
company; ESSENCE HENDERSON, LLC, a  
Nevada limited liability company; CPCM  
HOLDINGS, LLC d/b/a THRIVE CANNABIS  
MARKETPLACE, COMMERCE PARK  
MEDICAL, LLC, a Nevada limited liability  
company; and CHEYENNE MEDICAL, LLC, a  
Nevada limited liability company; LONE  
MOUNTAIN PARTNERS, LLC, a Nevada

Case No. A-19-786962-B  
Dept. No. 11

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW GRANTING  
PRELIMINARY INJUNCTION

CLERK OF THE COURT

REC'D  
AUG 29 2019



1 limited liability partnership; HELPING HANDS  
2 WELLNESS CENTER, INC., a Nevada  
3 corporation; GREENMART ~~OF NEVADA~~  
4 NLV LLC, a Nevada limited liability company;  
5 and CLEAR RIVER, LLC,

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Intervenors.

5 This matter having come before the Court for an evidentiary hearing on Plaintiffs' Motion for  
6 Preliminary Injunction beginning on May 24, 2019, and occurring day to day thereafter until its  
7 completion on August 16, 2019;<sup>1</sup> Dominic P. Gentile, Esq., Vincent Savarese III, Esq., Michael V.  
8 Cristalli, Esq., and Ross J. Miller, Esq., of the law firm Gentile Cristalli Miller Armeni Savarese,  
9 appeared on behalf of Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf Incline Dispensary, LLC,  
10 Nevada Holistic Medicine, LLC, Tryke Companies SO NV, LLC, Tryke Companies Reno, LLC,  
11 Paradise Wellness Center, LLC, GBS Nevada Partners, LLC, Fidelis Holdings, LLC, Gravitas Nevada,  
12 LLC, Nevada Pure, LLC, Medifarm, LLC (Case No. A786962-B) (the "Serenity Plaintiffs"); Adam K.  
13 Bult, Esq. and Maximilien D. Fetaz, Esq., of the law firm Brownstein Hyatt Farber Schreck, LLP,  
14 appeared on behalf of Plaintiffs ETW Management Group LLC, Global Harmony LLC, Green Leaf  
15 Farms Holdings LLC, Green Therapeutics LLC, Herbal Choice INC., Just Quality, LLC, Libra  
16 Wellness Center, LLC, Rombough Real Estate Inc. dba Mother Herb, NevCann LLC, Red Earth LLC,  
17 THC Nevada LLC, Zion Gardens LLC, and MMOF Vegas Retail, Inc. (Case No. A787004-B) ( the  
18 "ETW Plaintiffs"); William S. Kemp, Esq. and Nathaniel R. Rulis, Esq., of the law firm Kemp, Jones  
19 & Coulthard LLP, appeared on behalf of MM Development Company, Inc. and LivFree Wellness LLC  
20 (Case No. A785818-W) (the "MM Plaintiffs"); Theodore Parker III, Esq., of the law firm Parker  
21 Nelson & Associates, appeared on behalf of Nevada Wellness Center (Case No. A787540-W)  
22 (collectively the "Plaintiffs"); Steven G. Shevorski, Esq., Ketan D. Bhirud, Esq., and Theresa M. Haar,  
23 Esq., of the Office of the Nevada Attorney General, appeared on behalf of the State of Nevada,  
24 Department of Taxation; David R. Koch, Esq., of the law firm Koch & Scow LLC, appeared on behalf

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<sup>1</sup> Although a preservation order was entered on December 13, 2018, in A785818, no discovery in any case was done  
prior to the commencement of the evidentiary hearing, in part due to procedural issues and to statutory restrictions on  
disclosure of certain information modified by SB 32 just a few days before the commencement of the hearing. As a result,  
the hearing was much longer than anticipated by any of the participating counsel. In compliance with SB 32, the State  
produced previously confidential information on May 21, 2019. These documents were reviewed for confidentiality by the  
Defendants in Intervention and certain redactions were made prior to production consistent with the protective order entered  
on May 24, 2019.

1 of Nevada Organic Remedies, LLC; Brigid M. Higgins, Esq. and Rusty Graf, Esq., of the law firm  
2 Black & Lobello, appeared on behalf of Clear River, LLC; Eric D. Hone, Esq., of the law firm H1 Law  
3 Group, appeared on behalf of Lone Mountain Partners, LLC; Alina M. Shell, Esq., of the law firm  
4 McLetchie Law, appeared on behalf of GreenMart of Nevada NLV LLC; Jared Kahn, Esq., of the law  
5 firm JK Legal & Consulting, LLC, appeared on behalf of Helping Hands Wellness Center, Inc.; and  
6 Joseph A. Gutierrez, Esq., of the law firm Maier Gutierrez & Associates, and Philip M. Hymanson,  
7 Esq., of the law firm Hymanson & Hymanson; Todd Bice, Esq. and Jordan T. Smith, Esq. of the law  
8 firm Pisanelli Bice; and Dennis Prince, Esq. of the Prince Law Group appeared on behalf of Integral  
9 Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson,  
10 LLC, CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and  
11 Cheyenne Medical, LLC (the "Essence/Thrive Entities"). The Court, having read and considered the  
12 pleadings filed by the parties; having reviewed the evidence admitted during the evidentiary hearing;  
13 and having heard and carefully considered the testimony of the witnesses called to testify; having  
14 considered the oral and written arguments of counsel, and with the intent of deciding the Motion for a  
15 Preliminary Injunction,<sup>2</sup> makes the following preliminary findings of fact and conclusions of law:

#### 16 *PROCEDURAL POSTURE*

17 Plaintiffs are a group of unrelated commercial entities who applied for, but did not receive,  
18 licenses to operate retail recreational marijuana establishments in various local jurisdictions throughout  
19 the state. Defendant is Nevada's Department of Taxation ("DoT"), which is the administrative agency  
20 responsible for issuing the licenses. Some successful applicants for licensure intervened as Defendants.

21 The Serenity Plaintiffs filed a Motion for Preliminary Injunction on March 19, 2019, asking for  
22 a preliminary injunction to:

- 23 a. Enjoin the denial of Plaintiffs applications;
- 24 b. Enjoin the enforcement of the licenses granted;
- 25 c. Enjoin the enforcement and implementation of NAC 453D;

26  
27 <sup>2</sup> The findings made in this Order are preliminary in nature based upon the limited evidence presented after very  
28 limited discovery permitted on an expedited basis and may be modified based upon additional evidence presented to the  
Court at the ultimate trial of the business court matters.



- 1 d. An order restoring the *status quo ante* prior to the DoT's adoption of NAC 453D;  
2 and  
3 e. Several orders compelling discovery.

4 This Court reviewed the Serenity Plaintiffs' Motion for Preliminary Injunction and at a hearing on  
5 April 22, 2019, invited Plaintiffs in related cases, not assigned to Business Court, to participate in the  
6 evidentiary hearing on the Motion for Preliminary Injunction being heard in Department 11 for the  
7 purposes of hearing and deciding the Motions for Preliminary Injunction.<sup>3</sup>

### 8 ***PRELIMINARY STATEMENT***

9 The Attorney General's Office was forced to deal with a significant impediment at the early  
10 stages of the litigation. This inability to disclose certain information was outside of its control because  
11 of confidentiality requirements that have now been slightly modified by SB 32. Although the parties  
12 stipulated to a protective order on May 24, 2019, many documents produced in preparation for the  
13 hearing and for discovery purposes were heavily redacted because of the highly competitive nature of  
14 the industry and sensitive financial and commercial information being produced.

15 All parties agree that the language of an initiative takes precedence over any regulation that is in  
16 conflict and that an administrative agency has some discretion in determining how to implement the  
17 initiative. The Court gives deference to the agency in establishing those regulations and creating the  
18 framework required to implement those provisions in conformity with the initiative.

19  
20  
21 <sup>3</sup> The complaints filed by the parties participating in the hearing seek declaratory relief, injunctive relief and writs of  
22 mandate, among other claims. The motions and joinders seeking injunctive relief which have been reviewed by the Court in  
conjunction with this hearing include:

23 A786962-B Serenity: Serenity Plaintiffs' Motion for Preliminary Injunction filed 3/19/19 (Joinder to Motion by  
24 Compassionate Team: 5/17; Joinder to Motion by ETW: 5/6 (filed in A787004); and Joinder to Motion by Nevada  
25 Wellness: 5/10 (filed in A787540)); Opposition by the State filed 5/9/19 (Joinder by Essence/Thrive Entities: 5/23);  
26 Opposition by Nevada Organic Remedies: 5/9 (Joinder by Lone Mountain: 5/13; Joinder by Helping Hands: 5/21; and  
Joinder by Essence/Thrive Entities: 5/23). Application for TRO on OST filed 5/9/19 (Joinder by Compassionate Team:  
5/17; and Joinder by ETW: 5/10 (filed in A787004)); Opposition by Nevada Organic Remedies: 5/9 (Joinder by Clear River:  
5/9); Opposition by Essence/Thrive Entities: 5/10 (Joinder by GreenMart: 5/10; Joinder by Lone Mountain: 5/11; and  
Joinder by helping Hands: 5/12).

27 A785818-W MM Development: MM Plaintiffs' Motion for Preliminary Injunction or Writ of Mandamus filed 5/9/19  
28 (Joinder by Serenity: 5/20 (filed in A786962); Joinder by ETW: 5/6 (filed in A787004 and A785818); and Joinder by  
Nevada Wellness: 5/10 (filed in A787540)).



1 The initiative to legalize recreational marijuana, Ballot Question 2 ("BQ2"), went to the voters  
2 in 2016. The language of BQ2 is independent of any regulations that were adopted by the DoT. The  
3 Court must balance the mandatory provisions of BQ2 (which the DoT did not have discretion to  
4 modify);<sup>4</sup> those provisions with which the DoT was granted some discretion in implementation;<sup>5</sup> and  
5 the inherent discretion of an administrative agency to implement regulations to carry out its statutory  
6 duties. The Court must give great deference to those activities that fall within the discretionary  
7 functions of the agency. Deference is not given where the actions of the DoT were in violation of BQ2  
8 or were arbitrary and capricious.

### 9 FINDINGS OF FACT

10 1. Nevada allows voters to amend its Constitution or enact legislation through the initiative  
11 process. Nevada Constitution, Article 19, Section 2.

12 <sup>4</sup> Article 19, Section 2(3) provides the touchstone for the mandatory provisions:

13 . . . . An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or  
14 suspended by the Legislature within 3 years from the date it takes effect.

15 <sup>5</sup> NRS 453D.200(1) required the adoption of regulations for the licensure and oversight of recreational marijuana  
16 cultivation, manufacturing/production, sales and distribution, but provides the DoT discretion in exactly what those  
17 regulations would include.

18 . . . the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter.  
19 The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations  
20 that make their operation unreasonably impracticable. The regulations shall include:

21 (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana  
22 establishment;

23 (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana  
24 establishment;

25 (c) Requirements for the security of marijuana establishments;

26 (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21  
27 years of age;

28 (e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-  
resistant packaging;

(f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana  
establishments including a numerical indication of potency based on the ratio of THC to the weight of a product  
intended for oral consumption;

(g) Requirements for record keeping by marijuana establishments;

(h) Reasonable restrictions on signage, marketing, display, and advertising;

(i) Procedures for the collection of taxes, fees, and penalties imposed by this chapter;

(j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another  
qualified person and to enable a licensee to move the location of its establishment to another suitable location;

(k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and  
marijuana establishments at the same location;

(l) Procedures to establish the fair market value at wholesale of marijuana; and

(m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any  
violation of the provisions of NRS 453D.300.

1           2.       In 2000, the voters amended Nevada's Constitution to allow for the possession and use  
2 of marijuana to treat various medical conditions. Nevada Constitution, Article 4, Section 38(1)(a). The  
3 initiative left it to the Legislature to create laws "[a]uthoriz[ing] appropriate methods for supply of the  
4 plant to patients authorized to use it." Nevada Constitution, Article 4, Section 38(1)(e).

5           3.       For several years prior to the enactment of BQ2, the regulation of medical marijuana  
6 dispensaries had not been taken up by the Legislature. Some have argued in these proceedings that the  
7 delay led to the framework of BQ2.

8           4.       In 2013, Nevada's legislature enacted NRS 453A, which allows for the cultivation and  
9 sale of medical marijuana. The Legislature described the requirements for the application to open a  
10 medical marijuana establishment. NRS 453A.322. The Nevada Legislature then charged the Division of  
11 Public and Behavioral Health with evaluating the applications. NRS 453A.328.

12           5.       The materials circulated to voters in 2016 for BQ2 described its purpose as the  
13 amendment of the Nevada Revised Statutes as follows:  
14

15               Shall the *Nevada Revised Statutes* be amended to allow a person, 21 years old or older, to  
16 purchase, cultivate, possess, or consume a certain amount of marijuana or concentrated  
17 marijuana, as well as manufacture, possess, use, transport, purchase, distribute, or sell marijuana  
18 paraphernalia; impose a 15 percent excise tax on wholesale sales of marijuana; require the  
19 regulation and licensing of marijuana cultivators, testing facilities, distributors, suppliers, and  
20 retailers; and provide for certain criminal penalties?

21           6.       BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.<sup>6</sup>

22           7.       BQ2 specifically identified regulatory and public safety concerns:

23               The People of the State of Nevada proclaim that marijuana should be regulated in a manner  
24 similar to alcohol so that:

25               (a) Marijuana may only be purchased from a business that is licensed by the State of  
26 Nevada;

27               (b) Business owners are subject to a review by the State of Nevada to confirm that the  
28 business owners and the business location are suitable to produce or sell marijuana;

             (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly  
controlled through State licensing and regulation;

<sup>6</sup> As the provisions of BQ2 and the sections NRS 453D currently in effect (with the exception of NRS 453D.205) are identical, for ease of reference the Court cites to BQ2 as enacted by the Nevada Legislature in NRS 453D.



- (d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;
- (e) Individuals will have to be 21 years of age or older to purchase marijuana;
- (f) Driving under the influence of marijuana will remain illegal; and
- (g) Marijuana sold in the State will be tested and labeled.

NRS 453D.020(3).

8. BQ2 mandated the DoT to “conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.” NRS 453D.200(6).

9. On November 8, 2016, by Executive Order 2017-02, Governor Brian Sandoval established a Task Force composed of 19 members to offer suggestions and proposals for legislative, regulatory, and executive actions to be taken in implementing BQ2.

10. The Task Force’s findings, issued on May 30, 2017, referenced the 2014 licensing process for issuing Medical Marijuana Establishment Registration Certificates under NRS 453A. The Task Force recommended that “the qualifications for licensure of a marijuana establishment and the impartial numerically scored bidding process for retail marijuana stores be maintained as in the medical marijuana program except for a change in how local jurisdictions participate in selection of locations.”

11. Some of the Task Force’s recommendations appear to conflict with BQ2.<sup>7</sup>

---

<sup>7</sup> The Final Task Force report (Exhibit 2009) contained the following statements:

The Task Force recommends that retail marijuana ownership interest requirements remain consistent with the medical marijuana program. . . .  
at 2510.

The requirement identified by the Task Force at the time was contained in NAC 453A.302(1) which states:

Except as otherwise required in subsection 2, the requirements of this chapter concerning owners of medical marijuana establishments only apply to a person with an aggregate ownership interest of 5 percent or more in a medical marijuana establishment.

The second recommendation of concern is:

The Task Force recommends that NRS 453A be changed to address companies that own marijuana establishment licenses in which there are owners with less than 5% ownership interest in the company. The statute should be amended to:

\*Limit fingerprinting, background checks and renewal of agent cards to owners officers and board members with 5% or less cumulatively of the company to once every five years;

\*Only require owners officers and board members with 5% or more cumulatively and employees of the company to obtain agent registration cards; and



1           12.     During the 2017 legislative session Assembly Bill 422 transferred responsibility for the  
2 registration, licensing, and regulation of marijuana establishments from the State of Nevada Division of  
3 Public and Behavioral Health to the DoT.<sup>8</sup>

4           13.     On February 27, 2018, the DoT adopted regulations governing the issuance, suspension,  
5 or revocation of retail recreational marijuana licenses in LCB File No. R092-17, which were codified in  
6 NAC 453D (the "Regulations").

7           14.     The Regulations for licensing were to be "directly and demonstrably related to the  
8 operation of a marijuana establishment." NRS 453D.200(1)(b). The phrase "directly and demonstrably  
9 related to the operation of a marijuana establishment" is subject to more than one interpretation.  
10

11  
12  
13  
14  
15  
16  
17  
18           \*Use the marijuana establishments governing documents to determine who has approval rights and signatory  
19 authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory  
20 documents.  
21           There was Task Force dissent on the recommendation. The concern with this recommendation was that by  
22 changing the requirements on fingerprinting and background checks, the state would have less knowledge of when  
23 an owner, officer, and board member commits an offense not allowed under current marijuana law, potentially  
24 creating a less safe environment in the state.  
25 at 2515-2516.

26           <sup>8</sup>       Those provisions (a portion of which became NRS 453D.205) are consistent with BQ2:

27           1.     When conducting a background check pursuant to subsection 6 of NRS 453D.200, the Department may  
28 require each prospective owner, officer and board member of a marijuana establishment license applicant to submit  
a complete set of fingerprints and written permission authorizing the Department to forward the fingerprints to the  
Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation  
for its report.

          2.     When determining the criminal history of a person pursuant to paragraph (c) of subsection 1 of NRS  
453D.300, a marijuana establishment may require the person to submit to the Department a complete set of  
fingerprints and written permission authorizing the Department to forward the fingerprints to the Central  
Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its  
report.

1           15. A person holding a medical marijuana establishment registration certificate could apply  
2 for one or more recreational marijuana establishment licenses within the time set forth by the DoT in  
3 the manner described in the application. NAC 453D.268.<sup>9</sup>

4  
5 <sup>9</sup> Relevant portions of that provision require that application be made

6 . . . by submitting an application in response to a request for applications issued pursuant to NAC 453D.260 which  
7 must include:

8 \*\*\*

9 2. An application on a form prescribed by the Department. The application must include, without limitation:

- 10 (a) Whether the applicant is applying for a license for a marijuana establishment for a marijuana cultivation  
11 facility, a marijuana distributor, a marijuana product manufacturing facility, a marijuana testing facility or a retail  
12 marijuana store;  
13 (b) The name of the proposed marijuana establishment, as reflected in both the medical marijuana establishment  
14 registration certificate held by the applicant, if applicable, and the articles of incorporation or other documents filed  
15 with the Secretary of State;  
16 (c) The type of business organization of the applicant, such as individual, corporation, partnership, limited-liability  
17 company, association or cooperative, joint venture or any other business organization;  
18 (d) Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business,  
19 and the articles of incorporation, articles of organization or partnership or joint venture documents of the applicant;  
20 (e) The physical address where the proposed marijuana establishment will be located and the physical address of  
21 any co-owned or otherwise affiliated marijuana establishments;  
22 (f) The mailing address of the applicant;  
23 (g) The telephone number of the applicant;  
24 (h) The electronic mail address of the applicant;  
25 (i) A signed copy of the Request and Consent to Release Application Form for Marijuana Establishment License  
26 prescribed by the Department;  
27 (j) If the applicant is applying for a license for a retail marijuana store, the proposed hours of operation during  
28 which the retail marijuana store plans to be available to sell marijuana to consumers;  
(k) An attestation that the information provided to the Department to apply for the license for a marijuana  
establishment is true and correct according to the information known by the affiant at the time of signing; and  
(l) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of NAC  
453D.250 and the date on which the person signed the application.

3. Evidence of the amount of taxes paid, or other beneficial financial contributions made, to this State or its  
political subdivisions within the last 5 years by the applicant or the persons who are proposed to be owners, officers  
or board members of the proposed marijuana establishment.

4. A description of the proposed organizational structure of the proposed marijuana establishment, including,  
without limitation:

(a) An organizational chart showing all owners, officers and board members of the proposed marijuana  
establishment;

(b) A list of all owners, officers and board members of the proposed marijuana establishment that contains the  
following information for each person:

(1) The title of the person;

(2) The race, ethnicity and gender of the person;

(3) A short description of the role in which the person will serve for the organization and his or her  
responsibilities;

(4) Whether the person will be designated by the proposed marijuana establishment to provide written notice to  
the Department when a marijuana establishment agent is employed by, volunteers at or provides labor as a  
marijuana establishment agent at the proposed marijuana establishment;

(5) Whether the person has served or is currently serving as an owner, officer or board member for another  
medical marijuana establishment or marijuana establishment;

(6) Whether the person has served as an owner, officer or board member for a medical marijuana establishment  
or marijuana establishment that has had its medical marijuana establishment registration certificate or license, as  
applicable, revoked;



1 NRS 453D.210(6) mandated the DoT to use "an impartial and numerically scored competitive bidding  
2 process" to determine successful applicants where competing applications were submitted.

3 16. NAC 453D.272(1) provides the procedure for when the DoT receives more than one  
4 "complete" application. Under this provision the DoT will determine if the "application is complete and

5 (7) Whether the person has previously had a medical marijuana establishment agent registration card or  
6 marijuana establishment agent registration card revoked;

7 (8) Whether the person is an attending provider of health care currently providing written documentation for the  
8 issuance of registry identification cards or letters of approval;

9 (9) Whether the person is a law enforcement officer;

10 (10) Whether the person is currently an employee or contractor of the Department; and

11 (11) Whether the person has an ownership or financial investment interest in any other medical marijuana  
12 establishment or marijuana establishment.

13 5. For each owner, officer and board member of the proposed marijuana establishment:

14 (a) An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of  
15 an excluded felony offense, and that the information provided to support the application for a license for a  
16 marijuana establishment is true and correct;

17 (b) A narrative description, not to exceed 750 words, demonstrating:

18 (1) Past experience working with governmental agencies and highlighting past experience in giving back to the  
19 community through civic or philanthropic involvement;

20 (2) Any previous experience at operating other businesses or nonprofit organizations; and

21 (3) Any demonstrated knowledge, business experience or expertise with respect to marijuana; and

22 (c) A resume.

23 6. Documentation concerning the size of the proposed marijuana establishment, including, without limitation,  
24 building and general floor plans with supporting details.

25 7. The integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana  
26 from seed to sale, including, without limitation, a plan for testing and verifying marijuana, a transportation or  
27 delivery plan and procedures to ensure adequate security measures, including, without limitation, building security  
28 and product security.

8. A plan for the business which includes, without limitation, a description of the inventory control system of the  
proposed marijuana establishment to satisfy the requirements of NRS 453D.300 and NAC 453D.426.

9. A financial plan which includes, without limitation:

(a) Financial statements showing the resources of the applicant;

(b) If the applicant is relying on money from an owner, officer or board member, evidence that the person has  
unconditionally committed such money to the use of the applicant in the event the Department awards a license to  
the applicant and the applicant obtains the necessary approvals from the locality to operate the proposed marijuana  
establishment; and

(c) Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.

10. Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana establishment on a  
daily basis, which must include, without limitation:

(a) A detailed budget for the proposed marijuana establishment, including pre-opening, construction and first-year  
operating expenses;

(b) An operations manual that demonstrates compliance with this chapter;

(c) An education plan which must include, without limitation, providing educational materials to the staff of the  
proposed marijuana establishment; and

(d) A plan to minimize the environmental impact of the proposed marijuana establishment.

11. If the application is submitted on or before November 15, 2018, for a license for a marijuana distributor,  
proof that the applicant holds a wholesale dealer license issued pursuant to chapter 369 of NRS, unless the  
Department determines that an insufficient number of marijuana distributors will result from this limitation.

12. A response to and information which supports any other criteria the Department determines to be relevant,  
which will be specified and requested by the Department at the time the Department issues a request for  
applications which includes the point values that will be allocated to the applicable portions of the application  
pursuant to subsection 2 of NAC 453D.260.



1 in compliance with this chapter and Chapter 453D of NRS, the Department will rank the applications . .  
2 . in order from first to last based on the compliance with the provisions of this chapter and chapter  
3 453D of NRS and on the content of the applications relating to . . .” several enumerated factors. NAC  
4 453D.272(1).

5 17. The factors set forth in NAC 453D.272(1) that are used to rank competing applications  
6 (collectively, the “Factors”) are:

- 7
- 8 (a) Whether the owners, officers or board members have experience operating another kind  
9 of business that has given them experience which is applicable to the operation of a marijuana  
10 establishment;
  - 11 (b) The diversity of the owners, officers or board members of the proposed marijuana  
12 establishment;
  - 13 (c) The educational achievements of the owners, officers or board members of the proposed  
14 marijuana establishment;
  - 15 (d) The financial plan and resources of the applicant, both liquid and illiquid;
  - 16 (e) Whether the applicant has an adequate integrated plan for the care, quality and  
17 safekeeping of marijuana from seed to sale;
  - 18 (f) The amount of taxes paid and other beneficial financial contributions, including, without  
19 limitation, civic or philanthropic involvement with this State or its political subdivisions, by the  
20 applicant or the owners, officers or board members of the proposed marijuana establishment;
  - 21 (g) Whether the owners, officers or board members of the proposed marijuana establishment  
22 have direct experience with the operation of a medical marijuana establishment or marijuana  
23 establishment in this State and have demonstrated a record of operating such an establishment in  
24 compliance with the laws and regulations of this State for an adequate period of time to  
25 demonstrate success;
  - 26 (h) The (unspecified) experience of key personnel that the applicant intends to employ in  
27 operating the type of marijuana establishment for which the applicant seeks a license; and
  - 28 (i) Any other criteria that the Department determines to be relevant.

21 18. Each of the Factors is within the DoT’s discretion in implementing the application  
22 process provided for in BQ2. The DoT had a good-faith basis for determining that each of the Factors  
23 is “directly and demonstrably related to the operation of a marijuana establishment.”

24 19. The DoT posted the application on its website and released the application for  
25 recreational marijuana establishment licenses on July 6, 2018.<sup>10</sup>

27 <sup>10</sup> The DoT made a change to the application after circulating the first version of the application to delete the  
28 requirement of a physical location. The modification resulted in a different version of the application bearing the same  
“footer” with the original version remaining available on the DoT’s website.

1           20.     The DoT utilized a question and answer process through a generic email account at  
2 marijuana@tax.state.nv.us to allow applicants to ask questions and receive answers directly from the  
3 Department, which were not consistent with NRS 453D, and that information was not further  
4 disseminated by the DoT to other applicants.

5           21.     In addition to the email question and answer process, the DoT permitted applicants and  
6 their representatives to personally contact the DoT staff about the application process.

7           22.     The application period ran from September 7, 2018 through September 20, 2018.

8           23.     The DoT accepted applications in September 2018 for retail recreational marijuana  
9 licenses and announced the award of conditional licenses in December 2018.

10          24.     The DoT used a listserv to communicate with prospective applicants.

11          25.     The DoT published a revised application on July 30, 2018. This revised application was  
12 sent to all participants in the DoT's listserv directory. The revised application modified a sentence on  
13 attachment A of the application. Prior to this revision, the sentence had read, "Marijuana  
14 Establishment's proposed physical address (this must be a Nevada address and cannot be a P.O. Box)."  
15 The revised application on July 30, 2018, read: "Marijuana Establishment's proposed physical address  
16 if the applicant owns property or has secured a lease or other property agreement (this must be a  
17 Nevada address and not a P.O. Box). Otherwise, the applications are virtually identical.

18          26.     The DoT sent a copy of the revised application through the listserv service used by the  
19 DoT. Not all Plaintiffs' correct emails were included on this listserv service.

20          27.     The July 30, 2018 application, like its predecessor, described how applications were to  
21 be scored. The scoring criteria was divided into identified criteria and non-identified criteria. The  
22 maximum points that could be awarded to any applicant based on these criteria was 250 points.

23          28.     The identified criteria consisted of organizational structure of the applicant (60 points);  
24 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant  
25  
26  
27  
28



1 in the last 5 years (25 points); a financial plan (30 points); and documents from a financial institution  
2 showing unencumbered liquid assets of \$250,000 per location for which an application is submitted.

3 29. The non-identified criteria consisted of documentation concerning the integrated plan of  
4 the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to  
5 sale (40 points); evidence that the applicant has a plan to staff, educate and manage the proposed  
6 recreational marijuana establishment on a daily basis (30 points); a plan describing operating  
7 procedures for the electronic verification system of the proposed marijuana establishment and  
8 describing the proposed establishment's inventory control system (20 points); building plans showing  
9 the proposed establishment's adequacy to serve the needs of its customers (20 points); and, a proposal  
10 explaining likely impact of the proposed marijuana establishment in the community and how it will  
11 meet customer needs (15 points).  
12

13 30. An applicant was permitted to submit a single application for all jurisdictions in which it  
14 was applying, and the application would be scored at the same time.  
15

16 31. By September 20, 2018, the DoT received a total of 462 applications.

17 32. In order to grade and rank the applications the DoT posted notices that it was seeking to  
18 hire individuals with specified qualifications necessary to evaluate applications. The DoT interviewed  
19 applicants and made decisions on individuals to hire for each position.

20 33. When decisions were made on who to hire, the individuals were notified that they would  
21 need to register with "Manpower" under a pre-existing contract between the DoT and that company.  
22 Individuals would be paid through Manpower, as their application-grading work would be of a  
23 temporary nature.  
24

25 34. The DoT identified, hired, and trained eight individuals to grade the applications,  
26 including three to grade the identified portions of the applications, three to grade the non-identified  
27  
28



1 portions of the applications, and one administrative assistant for each group of graders (collectively the  
2 “Temporary Employees”).

3 35. It is unclear how the DoT trained the Temporary Employees. While portions of the  
4 training materials were introduced into evidence, testimony regarding the oral training based upon  
5 example applications was insufficient for the Court to determine the nature and extent of the training of  
6 the Temporary Employees.<sup>11</sup>

7 36. NAC 453D.272(1) required the DoT to determine that an Application is “complete and  
8 in compliance” with the provisions of NAC 453D in order to properly apply the licensing criteria set  
9 forth therein and the provisions of the Ballot Initiative and the enabling statute.

10 37. When the DoT received applications, it undertook no effort to determine if the  
11 applications were in fact “complete and in compliance.”

12 38. In evaluating whether an application was “complete and in compliance” the DoT made  
13 no effort to verify owners, officers or board members (except for checking whether a transfer request  
14 was made and remained pending before the DoT).

15 39. For purposes of grading the applicant’s organizational structure and diversity, if an  
16 applicant’s disclosure in its application of its owners, officers, and board members did not match the  
17 DoT’s own records, the DoT did not penalize the applicant. Rather the DoT permitted the grading, and  
18 in some cases, awarded a conditional license to an applicant under such circumstances, and dealt with  
19 the issue by simply informing the winning applicant that its application would have to be brought into  
20 conformity with DoT records.

21 40. The DoT created a Regulation that modified the mandatory BQ2 provision “[t]he  
22 Department shall conduct a background check of each prospective owner, officer, and board member of  
23 a marijuana establishment license applicant” and determined it would only require information on the  
24

25  
26  
27  
28 <sup>11</sup> Given the factual issues related to the grading raised by MM and LivFree, these issues may be subject to additional  
evidentiary proceedings in the assigned department.

1 application from persons “with an aggregate ownership interest of 5 percent or more in a marijuana  
2 establishment.” NAC 453D.255(1).

3 41. NRS 453D.200(6) provides that “[t]he DoT shall conduct a background check of each  
4 prospective owner, officer, and board member of a marijuana establishment license applicant.” The  
5 DoT departed from this mandatory language in NAC 453D.255(1) and made no attempt in the  
6 application process to verify that the applicant’s complied with the mandatory language of the BQ2 or  
7 even the impermissibly modified language.  
8

9 42. The DoT made the determination that it was not reasonable to require industry to  
10 provide every owner of a prospective licensee. The DOT’s determination that only owners of a 5% or  
11 greater interest in the business were required to submit information on the application was not a  
12 permissible regulatory modification of BQ2. This determination violated Article 19, Section 3 of the  
13 Nevada Constitution. The determination was not based on a rational basis.

14 43. The limitation of “unreasonably impracticable” in BQ2<sup>12</sup> does not apply to the  
15 mandatory language of BQ2, but to the Regulations which the DoT adopted.  
16

17 44. The adoption of NAC 453D.255(1), as it applies to the application process is an  
18 unconstitutional modification of BQ2.<sup>13</sup> The failure of the DoT to carry out the mandatory provisions  
19 of NRS 453D.200(6) is fatal to the application process.<sup>14</sup> The DoT’s decision to adopt regulations in  
20 direct violation of BQ2’s mandatory application requirements is violative of Article 19, Section 2(3) of  
21 the Nevada Constitution.  
22

23 <sup>12</sup> NRS 453D.200(1) provides in part:

24 The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations  
25 that make their operation unreasonably impracticable.

26 <sup>13</sup> For administrative and regulatory proceedings other than the application, the limitation of 5% or greater ownership  
27 appears within the DoT’s discretion.

28 <sup>14</sup> That provision states:

6. The Department shall conduct a background check of each prospective owner, officer, and board member of a  
marijuana establishment license applicant.



1           45.     Given the lack of a robust investigative process for applicants, the requirement of the  
2 background check for each prospective owner, officer, and board member as part of the application  
3 process impedes an important public safety goal in BQ2.

4           46.     Without any consideration as to the voters mandate in BQ2, the DoT determined that  
5 requiring each prospective owner be subject to a background check was too difficult for  
6 implementation by industry. This decision was a violation of the Nevada Constitution, an abuse of  
7 discretion, and arbitrary and capricious.

8  
9           47.     The DoT did not comply with BQ2 by requiring applicants to provide information for  
10 each prospective owner, officer and board member or verify the ownership of applicants applying for  
11 retail recreational marijuana licenses. Instead the DoT issued conditional licenses to applicants who  
12 did not identify each prospective owner, officer and board member.<sup>15</sup>

13           48.     The DoT's late decision to delete the physical address requirement on some application  
14 forms while not modifying those portions of the application that were dependent on a physical location  
15 (i.e. floor plan, community impact, security plan, and the sink locations) after the repeated  
16 communications by an applicant's agent; not effectively communicating the revision; and, leaving the  
17 original version of the application on the website, is evidence of conduct that is a serious issue.

18  
19           49.     Pursuant to NAC 453D.295, the winning applicants received a conditional license that  
20 will not be finalized unless within twelve months of December 5, 2018, the licensees receive a final  
21 inspection of their marijuana establishment.

22  
23  
24  
25 <sup>15</sup>     Some applicants apparently provided the required information for each prospective owner, officer and board  
26 member. Accepting as truthful these applicants' attestations regarding who their owners, officers, and board members were  
27 at the time of the application, these applications were complete at the time they were filed with reference to NRS  
28 453D.200(6). These entities are Green Therapeutics LLC, Eureka NewGen Farms LLC, Circle S Farms LLC, Deep Roots  
Medical LLC, Pure Tonic Concentrates LLC, Wellness Connection of Nevada LLC, Polaris Wellness Center LLC, and  
TRNVP098 LLC, Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and  
Commerce Park Medical LLC. See Court Exhibit 3 (post-hearing submission by the DoT).



50. The few instances of clear mistakes made by the Temporary Employees admitted in evidence do not, in and of themselves, result in an unfair process as human error occurs in every process.

51. Nothing in NRS 453D or NAC 453D provides for any right to an appeal or review of a decision denying an application for a retail recreational marijuana license.

52. There are an extremely limited number of licenses available for the sale of recreational marijuana.

53. The number of licenses available was set by BQ2 and is contained in NRS 453D.210(5)(d).

54. Since the Court does not have authority to order additional licenses in particular jurisdictions, and because there are a limited number of licenses that are available in certain jurisdictions, injunctive relief is necessary to permit the Plaintiffs, if successful in the NRS 453D.210(6) process, to actually obtaining a license, if ultimately successful in this litigation.

55. The secondary market for the transfer of licenses is limited.<sup>16</sup>

56. If any findings of fact are properly conclusions of law, they shall be treated as if appropriately identified and designated.

## CONCLUSIONS OF LAW

57. “Any person...whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” NRS 30.040.

58. A justiciable controversy is required to exist prior to an award of declaratory relief. *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986).

<sup>16</sup> The testimony elicited during the evidentiary hearing established that multiple changes in ownership have occurred since the applications were filed. Given this testimony, simply updating the applications previously filed would not comply with BO2.

1           59.     NRS 33.010 governs cases in which an injunction may be granted. The applicant must  
2 show (1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving  
3 party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is  
4 an inadequate remedy.

5           60.     Plaintiffs have the burden to demonstrate that the DoT's conduct, if allowed to continue,  
6 will result in irreparable harm for which compensatory damages is an inadequate remedy.

7           61.     The purpose of a preliminary injunction is to preserve the *status quo* until the matter can  
8 be litigated on the merits.

9           62.     In *City of Sparks v. Sparks Mun. Court*, the Supreme Court explained, "[a]s a  
10 constitutional violation may be difficult or impossible to remedy through money damages, such a  
11 violation may, by itself, be sufficient to constitute irreparable harm." 129 Nev. 348, 357, 302 P.3d  
12 1118, 1124 (2013).

13           63.     Article 19, Section 2 of the Constitution of the State of Nevada provides, in pertinent  
14 part:

15           "1. Notwithstanding the provisions of section 1 of article 4 of this constitution, but subject to the  
16 limitations of section 6 of this article, the people reserve to themselves the power to propose,  
17 by initiative petition, statutes and amendments to statutes and amendments to this  
18 constitution, and to enact or reject them at the polls.

19           ...

20           3. If the initiative petition proposes a statute or an amendment to a statute, the person who  
21 intends to circulate it shall file a copy with the secretary of state before beginning circulation  
22 and not earlier than January 1 of the year preceding the year in which a regular session of the  
23 legislature is held. After its circulation, it shall be filed with the secretary of state not less than  
24 30 days prior to any regular session of the legislature. The circulation of the petition shall cease  
25 on the day the petition is filed with the secretary of state or such other date as may be prescribed  
26 for the verification of the number of signatures affixed to the petition, whichever is earliest. The  
27 secretary of state shall transmit such petition to the legislature as soon as the legislature  
28 convenes and organizes. The petition shall take precedence over all other measures except  
appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted  
or rejected by the legislature without change or amendment within 40 days. If the proposed  
statute or amendment to a statute is enacted by the legislature and approved by the governor in  
the same manner as other statutes are enacted, such statute or amendment to a statute shall  
become law, but shall be subject to referendum petition as provided in section 1 of this article.



1 If the statute or amendment to a statute is rejected by the legislature, or if no action is taken  
2 thereon within 40 days, the secretary of state shall submit the question of approval or  
3 disapproval of such statute or amendment to a statute to a vote of the voters at the next  
4 succeeding general election. If a majority of the voters voting on such question at such election  
5 votes approval of such statute or amendment to a statute, it shall become law and take effect  
6 upon completion of the canvass of votes by the supreme court. An initiative measure so  
7 approved by the voters shall not be amended, annulled, repealed, set aside or suspended  
8 by the legislature within 3 years from the date it takes effect.

9 (Emphasis added.)

10 64. The Nevada Supreme Court has recognized that “[i]nitiative petitions must be kept  
11 substantively intact; otherwise, the people’s voice would be obstructed. . . [I]nitiative legislation is not  
12 subject to judicial tampering—the substance of an initiative petition should reflect the unadulterated will  
13 of the people and should proceed, if at all, as originally proposed and signed. For this reason, our  
14 constitution prevents the Legislature from changing or amending a proposed initiative petition that is  
15 under consideration.” Rogers v. Heller, 117 Nev. 169, 178, 18 P.3d 1034,1039–40 (2001).

16 65. BQ2 provides, “the Department shall adopt all regulations necessary or convenient to  
17 carry out the provisions of this chapter.” NRS 453D.200(1). This language does not confer upon the  
18 DoT unfettered or unbridled authority to do whatever it wishes without constraint. The DoT was not  
19 delegated the power to legislate amendments because this is initiative legislation. The Legislature itself  
20 has no such authority with regard to NRS 453D until three years after its enactment under the  
21 prohibition of Article 19, Section 2 of the Constitution of the State of Nevada.

22 66. Where, as here, amendment of a voter-initiated law is temporally precluded from  
23 amendment for three years, the administrative agency may not modify the law.

24 67. NRS 453D.200(1) provides that “the Department shall adopt all regulations necessary or  
25 convenient to carry out the provisions of this chapter.” The Court finds that the words “necessary or  
26 convenient” are susceptible to at least two reasonable interpretations. This limitation applies only to  
27 Regulations adopted by the DoT.  
28



1           68.     While the category of diversity is not specifically included in the language of BQ2, the  
2 evidence presented in the hearing demonstrates that a rational basis existed for the inclusion of this  
3 category in the Factors and the application.

4           69.     The DoT's inclusion of the diversity category was implemented in a way that created a  
5 process which was partial and subject to manipulation by applicants.

6           70.     The DoT staff provided various applicants with different information as to what would  
7 be utilized from this category and whether it would be used merely as a tiebreaker or as a substantive  
8 category.  
9

10          71.     Based upon the evidence adduced, the Court finds that the DoT selectively discussed  
11 with applicants or their agents the modification of the application related to physical address  
12 information.

13          72.     The process was impacted by personal relationships in decisions related to the  
14 requirements of the application and the ownership structures of competing applicants. This in and of  
15 itself is insufficient to void the process as urged by some of the Plaintiffs.  
16

17          73.     The DoT disseminated various versions of the 2018 Retail Marijuana Application, one  
18 of which was published on the DoT's website and required the applicant to provide an actual physical  
19 Nevada address for the proposed marijuana establishment, and not a P.O. Box, (*see* Exhibit 5), whereas  
20 an alternative version of the DoT's application form, which was not made publicly available and was  
21 distributed to some, but not all, of the applicants via a DoT listserv service, deleted the requirement that  
22 applicants disclose an actual physical address for their proposed marijuana establishment. *See* Exhibit  
23 5A.  
24

25          74.     The applicants were applying for conditional licensure, which would last for 1 year.  
26 NAC 453D.282. The license was conditional based on the applicant's gaining approval from local  
27  
28

1 authorities on zoning and land use, the issuance of a business license, and the Department of Taxation  
2 inspections of the marijuana establishment.

3 75. The DoT has only awarded conditional licenses which are subject to local government  
4 approval related to zoning and planning and may approve a location change of an existing license, the  
5 public safety aspects of the failure to require an actual physical address can be cured prior to the award  
6 of a final license.

7  
8 76. By selectively eliminating the requirement to disclose an actual physical address for  
9 each and every proposed retail recreational marijuana establishment, the DoT limited the ability of the  
10 Temporary Employees to adequately assess graded criteria such as (i) prohibited proximity to schools  
11 and certain other public facilities, (ii) impact on the community, (iii) security, (iv) building plans, and  
12 (v) other material considerations prescribed by the Regulations.

13 77. The hiring of Temporary Employees was well within the DoT's discretionary power.

14 78. The evidence establishes that the DoT failed to properly train the Temporary  
15 Employees. This is not an appropriate basis for the requested injunctive relief unless it makes the  
16 grading process unfair.

17  
18 79. The DoT failed to establish any quality assurance or quality control of the grading done  
19 by Temporary Employees.<sup>17</sup> This is not an appropriate basis for the requested injunctive relief unless it  
20 makes the grading process unfair.

21 80. The DoT made licensure conditional for one year based on the grant of power to create  
22 regulations that develop "[p]rocedures for the issuance, renewal, suspension, and revocation of a  
23 license to operate a marijuana establishment." NRS 453D.200(1)(a). This was within the DoT's  
24 discretion.  
25  
26  
27

28 <sup>17</sup> The Court makes no determination as to the extent which the grading errors alleged by MM and Live Free may be  
subject to other appropriate writ practice related to those individualized issues by the assigned department.

1           81.     Certain of DoT's actions related to the licensing process were nondiscretionary  
2 modifications of BQ2's mandatory requirements. The evidence establishes DoT's deviations  
3 constituted arbitrary and capricious conduct without any rational basis for the deviation.

4           82.     The DoT's decision to not require disclosure on the application and to not conduct  
5 background checks of persons owning less than 5% prior to award of a conditional license is an  
6 impermissible deviation from the mandatory language of BQ2, which mandated "a background check  
7 of each prospective owner, officer, and board member of a marijuana establishment license applicant."  
8 NRS 453D.200(6).  
9

10          83.     The argument that the requirement for each owner to comply with the application  
11 process and background investigation is "unreasonably impracticable" is misplaced. The limitation of  
12 unreasonably impracticable applied only to the Regulations not to the language and compliance with  
13 BQ2 itself.

14          84.     Under the circumstances presented here, the Court concludes that certain of the  
15 Regulations created by the DoT are unreasonable, inconsistent with BQ2 and outside of any discretion  
16 permitted to the DoT.  
17

18          85.     The DoT acted beyond its scope of authority when it arbitrarily and capriciously  
19 replaced the mandatory requirement of BQ2, for the background check of each prospective owner,  
20 officer and board member with the 5% or greater standard in NAC 453.255(1). This decision by the  
21 DoT was not one they were permitted to make as it resulted in a modification of BQ2 in violation of  
22 Article 19, Section 2(3) of the Nevada Constitution.  
23

24          86.     As Plaintiffs have shown that the DoT clearly violated NRS Chapter 453D, the claims  
25 for declaratory relief, petition for writ of prohibition, and any other related claims is likely to succeed  
26 on the merits.

27          87.     The balance of equities weighs in favor of Plaintiffs.  
28



1        88.     “[N]o restraining order or preliminary injunction shall issue except upon the giving of  
2 adequate security by the applicant, in such sum as the court deems proper, for the payment of such  
3 costs and damages as may be incurred or suffered by any party who is found to be wrongfully enjoined  
4 or restrained.” NRCP 65(d).

5        89.     The DoT stands to suffer no appreciable losses and will suffer only minimal harm as a  
6 result of an injunction.

7        90.     Therefore, a security bond already ordered in the amount of \$400,000 is sufficient for  
8 the issuance of this injunctive relief.<sup>18</sup>  
9

10       91.     If any conclusions of law are properly findings of fact, they shall be treated as if  
11 appropriately identified and designated.

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27       <sup>18</sup>     As discussed during the preliminary injunction hearing, the Court sets a separate evidentiary hearing on whether to  
28 increase the amount of this bond. That hearing is set for August 29, 2019, at 9:00 a.m.

**ORDER**

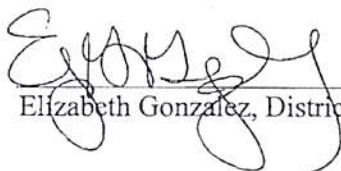
**IT IS HEREBY ADJUDGED ORDERED AND DECREED** that Plaintiffs' Motions for Preliminary Injunction are granted in part.

The State is enjoined from conducting a final inspection of any of the conditional licenses issued in or about December 2018 who did not provide the identification of each prospective owner, officer and board member as required by NRS 453D.200(6) pending a trial on the merits.<sup>19</sup>

The issue of whether to increase the existing bond is set for hearing on August 29, 2019, at 9:00 am.

The parties in A786962 and A787004 are to appear for a Rule 16 conference September 9, 2019, at 9:00 am and submit their respective plans for discovery on an expedited schedule by noon on September 6, 2019.

DATED this 23<sup>rd</sup> day of August 2019.

  
Elizabeth Gonzalez, District Court Judge

**Certificate of Service**

I hereby certify that on the date filed, this Order was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

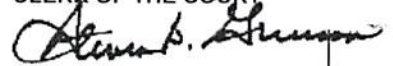
  
Dan Kutinac

<sup>19</sup> As Court Exhibit 3 is a post-hearing submission by the DoT, the parties may file objections and/or briefs related to this issue. Any issues related to the inclusion or exclusion from this group will be heard August 29, 2019, at 9:00 am.

# EXHIBIT 2

# EXHIBIT 2





TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

SERENITY WELLNESS CENTER LLC, .  
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .  
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of  
Proceedings**

. . . . .

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 20**

FRIDAY, AUGUST 16, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS  
District Court

FLORENCE HOYT  
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFFS:

DOMINIC P. GENTILE, ESQ.  
MICHAEL CRISTALLI, ESQ.  
ROSS MILLER, ESQ.  
WILLIAM KEMP, ESQ.  
NATHANIEL RULIS, ESQ.  
ADAM BULT, ESQ.  
MAXIMILIEN FETAZ, ESQ.  
THEODORE PARKER, ESQ.

FOR THE DEFENDANTS:

KETAN BHIRUD, ESQ.  
STEVE SHEVORSKI, ESQ.  
RUSTY GRAF, ESQ.  
BRIGID HIGGINS, ESQ.  
ERIC HONE, ESQ.  
BRODY WIGHT, ESQ.  
ALINA SHELL, ESQ.  
JARED KAHN, ESQ.  
JOSEPH GUTIERREZ, ESQ.  
TODD BICE, ESQ.  
DENNIS PRINCE, ESQ.



1 LAS VEGAS, NEVADA, FRIDAY, AUGUST 16, 2019, 9:17 A.M.

2 (Court was called to order)

3 THE COURT: Good morning. Are there any  
4 housekeeping matters before Mr. Shevorski begins his closing  
5 argument?

6 Mr. Shevorski, you're up.

7 MR. SHEVORSKI: Thank you, Your Honor.

8 It's typical in these scenarios to address the Court  
9 first, but I'd like this opportunity to thank your staff for  
10 putting up with for what a long, strange trip it's been. And  
11 I don't think could have happened without you. We're  
12 certainly from this side of the table and from that side of  
13 the table very grateful here, all of your help, and especially  
14 me, helping me find the binders over and over again.

15 THE COURT: Thank you, Mr. Shevorski. They are a  
16 great staff. Okay.

17 DEFENDANT STATE'S CLOSING ARGUMENT

18 MR. SHEVORSKI: Very good. Your Honor, when we  
19 first started chatting in May we talked about the adversarial  
20 process in the Attorney General's Office and how it was our  
21 goal to be fair to this side of the table and to this side of  
22 the table. I hope we've been true to our word. We have  
23 brought every witness that has been asked, without a subpoena.  
24 We've responded and provided 50,000, over 50,000 documents  
25 without a single request for production. It was our goal in

1 rebuttal, or have I finished the rebuttal arguments?

2 Mr. Shevorski, I have a homework assignment for you,  
3 because, as the representative of the State, you are the only  
4 one in a position to be able to provide this information.

5 MR. SHEVORSKI: Yes, Your Honor.

6 THE COURT: And then I need you to give me an  
7 estimate on how long it's going to take you to do it.

8 MR. SHEVORSKI: Okay.

9 THE COURT: And I want a realistic estimate, not one  
10 that keeps you and your staff from sleeping, okay.

11 MR. PRINCE: What was the last comment? I didn't  
12 hear the last comment.

13 MR. SHEVORSKI: She wants me to be able to sleep.

14 MR. PRINCE: Oh.

15 MS. SHELL: Objection, Your Honor.

16 THE COURT: We've had a couple of times during this  
17 where I told them I didn't care if they slept. But this one  
18 isn't one of those.

19 Which successful applicants completed the  
20 application in compliance with NRS 453D.200(6), which is the  
21 provision that says, "All owners -- " I'm sorry, it says "Each  
22 owner," at the time the application was filed in September  
23 2018?

24 MR. SHEVORSKI: Completed applications, and then --

25 THE COURT: So I want to know which of the



1 successful applicants, and I heard an argument today that was  
2 a total of 17 different entities --

3 MR. SHEVORSKI: Yes, Your Honor.

4 THE COURT: -- complied with the statute, as opposed  
5 to the Department's administrative change to the statute which  
6 limited it to a 5 percent or greater ownership interest.

7 MR. SHEVORSKI: Yes, Your Honor.

8 THE COURT: Because I know there are many, because I  
9 have heard testimony during this hearing of various  
10 individuals, whether they were successful or unsuccessful,  
11 that they included all of their shareholders' or owners'  
12 interests.

13 MR. SHEVORSKI: Yes, Your Honor.

14 THE COURT: Okay. How long?

15 MR. SHEVORSKI: I need to talk to Director Young to  
16 figure that out. I don't want to give you an estimate and be  
17 wrong because I don't know the answer.

18 THE COURT: Best estimate.

19 MR. SHEVORSKI: Because of the way you're looking at  
20 me, let's say by Tuesday 5:00 o'clock?

21 THE COURT: Sure. The matter will stand submitted.  
22 I'm going to put it on my chambers calendar for next Friday.

23 When you get the information, Mr. Shevorski, if you  
24 will circulate it to all counsel and my law clerk.

25 MR. SHEVORSKI: Yes. Of course, Your Honor.

1 THE COURT: Thank you. Have a nice day. And --  
2 THE CLERK: Your Honor --  
3 THE COURT: Yes?  
4 THE CLERK: May I return --  
5 THE COURT: If there were any exhibits that were  
6 tendered but not offered, we are going to return them to you.  
7 Dulce will prepare receipts for you -- she has the receipts  
8 already so you can come pick them up. So don't leave.  
9 THE PROCEEDINGS CONCLUDED AT 2:32 P.M.  
10 \* \* \* \* \*  
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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT  
Las Vegas, Nevada 89146

  
\_\_\_\_\_  
FLORENCE M. HOYT, TRANSCRIBER

8/19/19

\_\_\_\_\_  
DATE



# EXHIBIT 3

# EXHIBIT 3

**From:** Steven G. Shevorski SShevorski@ag.nv.gov  
**Subject:** RE: A786962 Serenity - Response to Judge's Question on NRS 453D.200(6)  
**Date:** August 21, 2019 at 3:23 PM



**To:** Meriwether, Danielle LC Dept11LC@clarkcountycourts.us, Michael Cristalli mcristalli@gcmaslaw.com, Vincent Savarese vsavarese@gcmaslaw.com, Ross Miller rmiller@gcmaslaw.com, Ketan D. Bhirud KBhirud@ag.nv.gov, Robert E. Werbicky RWerbicky@ag.nv.gov, David J. Pope DPope@ag.nv.gov, Theresa M. Haar THaar@ag.nv.gov, jag@mgalaw.com, rgraf@blacklobello.law, bhiggins@blacklobello.law, alina@nvlitigation.com, Work maggie@nvlitigation.com, Eric Hone, Esq. (eric@h1lawgroup.com) eric@h1lawgroup.com, jamie@h1lawgroup.com, moorea@h1lawgroup.com, jkahn@jk-legalconsulting.com, dkoch@kochscow.com, sscow@kochscow.com, Bult, Adam K. ABult@bhfs.com, tchance@bhfs.com, a.hayslett@kempjones.com, Nathanael Rulis, Esq. (n.rulis@kempjones.com) n.rulis@kempjones.com, tparker@pnalaw.net, Fetaz, Maximilien MFetaz@bhfs.com, phil@hymansonlawnv.com, shane@lasvegaslegalvideo.com, joe@lasvegaslegalvideo.com, Pat Stoppard (p.stoppard@kempjones.com) p.stoppard@kempjones.com, jdelcarmen@pnalaw.net, Kutinac, Daniel KutinacD@clarkcountycourts.us, ShaLinda Creer screer@gcmaslaw.com, Tanya Bain tbain@gcmaslaw.com, Karen Wiehl (Karen@HymansonLawNV.com) Karen@hymansonlawnv.com, Kay, Paula PKay@bhfs.com, Dennis Prince (dprince@thedplg.com) dprince@thedplg.com, tlb@pisanellibice.com, JTS@pisanellibice.com  
**Cc:** Kutinac, Daniel KutinacD@clarkcountycourts.us

Case : A-19-786962-B  
Dept. 11

Danielle,

The Department of Taxation answers the Court's question as follows:

**Court's Question:** Which successful applicants completed the application in compliance with NRS 453D.200(6) at the time the application was filed in September 2018?

**Answer:** The Department of Taxation answers the Court's question in three parts.

**First,** there were seven successful applicants who are not parties to the coordinated preliminary injunction proceeding. These entities are Green Therapeutics LLC, Eureka NewGen Farms LLC, Circle S Farms LLC, Deep Roots Medical LLC, Pure Tonic Concentrates LLC, Wellness Connection of Nevada LLC, Polaris Wellness Center LLC, and TRNVP098 LLC. Accepting as truthful these applicants' attestations regarding who their owners, officers, and board members were at the time of the application, these applications were complete at the time they were filed with reference to NRS 453D.200(6).

**Second,** there were five successful applicants who are parties to this coordinated preliminary injunction proceeding whose applications were complete with reference to NRS 453D.200(6) if the Department of Taxation accepts as truthful their attestations regarding who their owners, officers, and board members were. These applicants were Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and Commerce Park Medical LLC.

**Third,** there were four successful applicants who are parties to this proceeding regarding whom the Department of Taxation could not eliminate a question as to the completeness of their applications with reference to NRS 453D.200(6). These applicants were Helping Hands Wellness Center Inc., Lone Mountain Partners LLC, Nevada Organic Remedies LLC, and Greenmart of Nevada NLV LLC.

With respect to the third group, the Department of Taxation could not eliminate a question as the completeness of the applications due to the following:

1. **Helping Hands Wellness Center, Inc.** – The Department of Taxation could not eliminate a question a question regarding the completeness of the applicant's identification of all of its officers on Attachment A in light of Mr. Terteryan's testimony that he is the Chief Operating Officer and was not listed on Attachment A. The Department of Taxation does note, however, that Mr. Terteryan has been the subject of a completed background check.
2. **Lone Mountain Partners, LLC** – The Department of Taxation could not eliminate a question regarding the completeness of the applicant's identification of all of its owners because the Department could not determine whether Lone Mountain Partners, LLC was a subsidiary of an entity styled "Verona" or was owned by the individual members listed on Attachment A.
3. **Nevada Organic Remedies, LLC** - The Department of Taxation could not eliminate a question regarding the completeness of the applicant's identification of all of its owners because the Department could not determine whether there were shareholders who owned a membership interest in the applicant at the time the application was submitted, but who were not listed on Attachment A, as the applicant was acquired by a publicly traded company on or around September 4, 2018.
4. **Greenmart of Nevada NLV, LLC** - The Department of Taxation could not eliminate a question regarding the completeness of the applicant's identification of all of its owners. The Department could not determine whether the applicant listed all its owners on Attachment A because a subsidiary of a publicly traded company owned a membership interest in the applicant at the time the applicant submitted its application.

In creating this answer, the Department of Taxation sought to answer the Court's question in a neutral fashion based on the information available to it from the applications themselves, testimony given at the hearing (without reference to issues of admissibility, which an affected party may raise), and information publicly available from a government website (the Canadian Securities Exchange website), which was submitted by the applicant or information submitted about the applicant by an entity claiming an affiliation to the applicant. The Department of Taxation expects that Helping Hands Wellness Center Inc., Lone Mountain Partners LLC, Nevada Organic Remedies LLC, and Greenmart of Nevada NLV LLC may explain why they believe they submitted complete applications in compliance with the provisions of NRS 453D.200(6).

Best regards,



Steve Shevorski

Steve Shevorski  
Head of Complex Litigation  
Office of the Attorney General  
555 E. Washington Ave., Suite 3900  
Las Vegas, NV 89101  
702-486-3783

**From:** Meriwether, Danielle LC <Dept11LC@clarkcountycourts.us>  
**Sent:** Wednesday, August 21, 2019 10:11 AM  
**To:** Steven G. Shevorski <SShevorski@ag.nv.gov>; 'Michael Cristalli' <mcristalli@gcmaslaw.com>; 'Vincent Savarese' <vsavarese@gcmaslaw.com>; 'Ross Miller' <rmiller@gcmaslaw.com>; Ketan D. Bhirud <KBhirud@ag.nv.gov>; Robert E. Werbicky <RWerbicky@ag.nv.gov>; David J. Pope <DPope@ag.nv.gov>; Theresa M. Haar <THaar@ag.nv.gov>; 'jag@mgalaw.com' <jag@mgalaw.com>; 'rgraf@blacklobello.law' <rgraf@blacklobello.law>; 'bhiggins@blacklobello.law' <bhiggins@blacklobello.law>; 'alina@nvlitigation.com' <alina@nvlitigation.com>; 'Work' <maggie@nvlitigation.com>; 'Eric Hone, Esq.' <eric@h1lawgroup.com>; 'jamie@h1lawgroup.com' <jamie@h1lawgroup.com>; 'moorea@h1lawgroup.com' <moorea@h1lawgroup.com>; 'jkahn@jk-legalconsulting.com' <jkahn@jk-legalconsulting.com>; 'dkoch@kochscow.com' <dkoch@kochscow.com>; 'sscow@kochscow.com' <sscow@kochscow.com>; 'Bult, Adam K.' <ABult@bhfs.com>; 'tchance@bhfs.com' <tchance@bhfs.com>; 'a.hayslett@kempjones.com' <a.hayslett@kempjones.com>; 'Nathanael Rulis, Esq.' <n.rulis@kempjones.com>; 'tparker@pnalaw.net' <tparker@pnalaw.net>; 'Fetaz, Maximilien' <MFetaz@bhfs.com>; 'phil@hymansonlawnv.com' <phil@hymansonlawnv.com>; 'shane@lasvegaslegalvideo.com' <shane@lasvegaslegalvideo.com>; 'joe@lasvegaslegalvideo.com' <joe@lasvegaslegalvideo.com>; 'Pat Stoppard' <p.stoppard@kempjones.com>; 'jdelcarmen@pnalaw.net' <jdelcarmen@pnalaw.net>; Kutinac, Daniel <KutinacD@clarkcountycourts.us>; 'ShaLinda Creer' <screer@gcmaslaw.com>; 'Tanya Bain' <tbain@gcmaslaw.com>; 'Karen Wiehl' <Karen@HymansonLawNV.com>; 'Kay, Paula' <PKay@bhfs.com>; 'Dennis Prince' <dprince@thedplg.com>; 'tlb@pisanellibice.com' <tlb@pisanellibice.com>; 'JTS@pisanellibice.com' <JTS@pisanellibice.com>  
**Cc:** Kutinac, Daniel <KutinacD@clarkcountycourts.us>  
**Subject:** RE: A786962 Serenity - Request for 1 day extension to respond to Judge's Question on NRS 453D.200

Mr. Shevorski,

Judge said she understands and asks that you please get us an answer as soon as you can.

Thank you,

**Danielle M. Meriwether, Esq.**  
Law Clerk to the Honorable Elizabeth G. Gonzalez  
District Court, Department XI  
702-486-3783

T: (702) 671-4375  
F: (702) 671-4377

**From:** Meriwether, Danielle LC

**Sent:** Tuesday, August 20, 2019 4:06 PM

**To:** 'Steven G. Shevorski'; Michael Cristalli; Vincent Savarese; Ross Miller; Ketan D. Bhirud; Robert E. Werbicky; David J. Pope; Theresa M. Haar; [jag@mgalaw.com](mailto:jag@mgalaw.com); [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law); [bhiggins@blacklobello.law](mailto:bhiggins@blacklobello.law); [alina@nvlitigation.com](mailto:alina@nvlitigation.com); Work; Eric Hone, Esq. ([eric@h1lawgroup.com](mailto:eric@h1lawgroup.com)); [jamie@h1lawgroup.com](mailto:jamie@h1lawgroup.com); [moorea@h1lawgroup.com](mailto:moorea@h1lawgroup.com); [jkahn@jk-legalconsulting.com](mailto:jkahn@jk-legalconsulting.com); [dkoch@kochscow.com](mailto:dkoch@kochscow.com); [sscow@kochscow.com](mailto:sscow@kochscow.com); Bult, Adam K.; [tchance@bhfs.com](mailto:tchance@bhfs.com); [a.hayslett@kempjones.com](mailto:a.hayslett@kempjones.com); Nathanael Rulis, Esq. ([n.rulis@kempjones.com](mailto:n.rulis@kempjones.com)); [tparker@pnalaw.net](mailto:tparker@pnalaw.net); Fetaz, Maximilien; [phil@hymansonlawnv.com](mailto:phil@hymansonlawnv.com); [shane@lasvegaslegalvideo.com](mailto:shane@lasvegaslegalvideo.com); [joe@lasvegaslegalvideo.com](mailto:joe@lasvegaslegalvideo.com); Pat Stoppard ([p.stoppard@kempjones.com](mailto:p.stoppard@kempjones.com)); [jdelcarmen@pnalaw.net](mailto:jdelcarmen@pnalaw.net); Kutinac, Daniel; ShaLinda Creer; Tanya Bain; Karen Wiehl ([Karen@HymansonLawNV.com](mailto:Karen@HymansonLawNV.com)); Kay, Paula; Dennis Prince ([dprince@thedplg.com](mailto:dprince@thedplg.com)); [tlb@pisanellibice.com](mailto:tlb@pisanellibice.com); [JTS@pisanellibice.com](mailto:JTS@pisanellibice.com)

**Cc:** Kutinac, Daniel

**Subject:** RE: A786962 Serenity - Request for 1 day extension to respond to Judge's Question on NRS 453D.200

Mr. Shevorski,

Thank you for your email. I will inform Judge.

**Danielle M. Meriwether, Esq.**

Law Clerk to the Honorable Elizabeth G. Gonzalez  
District Court, Department XI  
P: (702) 671-4375  
F: (702) 671-4377

**From:** Steven G. Shevorski [<mailto:SShevorski@ag.nv.gov>]

**Sent:** Tuesday, August 20, 2019 4:03 PM

**To:** Meriwether, Danielle LC; Michael Cristalli; Vincent Savarese; Ross Miller; Ketan D. Bhirud; Robert E. Werbicky; David J. Pope; Theresa M. Haar; [jag@mgalaw.com](mailto:jag@mgalaw.com); [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law); [bhiggins@blacklobello.law](mailto:bhiggins@blacklobello.law); [alina@nvlitigation.com](mailto:alina@nvlitigation.com); Work; Eric Hone, Esq. ([eric@h1lawgroup.com](mailto:eric@h1lawgroup.com)); [jamie@h1lawgroup.com](mailto:jamie@h1lawgroup.com); [moorea@h1lawgroup.com](mailto:moorea@h1lawgroup.com); [jkahn@jk-legalconsulting.com](mailto:jkahn@jk-legalconsulting.com); [dkoch@kochscow.com](mailto:dkoch@kochscow.com); [sscow@kochscow.com](mailto:sscow@kochscow.com); Bult, Adam K.; [tchance@bhfs.com](mailto:tchance@bhfs.com); [a.hayslett@kempjones.com](mailto:a.hayslett@kempjones.com); Nathanael Rulis, Esq. ([n.rulis@kempjones.com](mailto:n.rulis@kempjones.com)); [tparker@pnalaw.net](mailto:tparker@pnalaw.net); Fetaz, Maximilien; [phil@hymansonlawnv.com](mailto:phil@hymansonlawnv.com); [shane@lasvegaslegalvideo.com](mailto:shane@lasvegaslegalvideo.com); [joe@lasvegaslegalvideo.com](mailto:joe@lasvegaslegalvideo.com); Pat Stoppard ([p.stoppard@kempjones.com](mailto:p.stoppard@kempjones.com)); [jdelcarmen@pnalaw.net](mailto:jdelcarmen@pnalaw.net); Kutinac, Daniel; ShaLinda Creer; Tanya Bain; Karen Wiehl ([Karen@HymansonLawNV.com](mailto:Karen@HymansonLawNV.com)); Kay, Paula; Dennis Prince ([dprince@thedplg.com](mailto:dprince@thedplg.com)); [tlb@pisanellibice.com](mailto:tlb@pisanellibice.com); [JTS@pisanellibice.com](mailto:JTS@pisanellibice.com)

**Cc:** Kutinac, Daniel

**Subject:** A786962 Serenity - Request for 1 day extension to respond to Judge's Question on NRS 453D.200

To the Honorable Judge Gonzales,

The Department of Taxation needs until tomorrow to submit the email responding to your query. My office needs a little more time to confer with the DOT on the answer to your question. I also have to leave work early due to a medical circumstance involving my wife's family, which requires my wife to attend to her mother in the hospital and I have the charge of my two children.



I apologize for the delay. The DOT requests an additional day to provide its response, if possible.

Steve Shevorski  
Head of Complex Litigation  
Office of the Attorney General  
555 E. Washington Ave., Suite 3900  
Las Vegas, NV 89101  
702-486-3783

**From:** Meriwether, Danielle LC <[Dept11LC@clarkcountycourts.us](mailto:Dept11LC@clarkcountycourts.us)>

**Sent:** Thursday, August 15, 2019 8:23 AM

**To:** Michael Cristalli <[mcristalli@gcmaslaw.com](mailto:mcristalli@gcmaslaw.com)>; Vincent Savarese <[vsavarese@gcmaslaw.com](mailto:vsavarese@gcmaslaw.com)>; Ross Miller <[rmiller@gcmaslaw.com](mailto:rmiller@gcmaslaw.com)>; Ketan D. Bhirud <[KBhirud@ag.nv.gov](mailto:KBhirud@ag.nv.gov)>; Robert E. Werbicky <[RWerbicky@ag.nv.gov](mailto:RWerbicky@ag.nv.gov)>; David J. Pope <[DPope@ag.nv.gov](mailto:DPope@ag.nv.gov)>; Steven G. Shevorski <[SShevorski@ag.nv.gov](mailto:SShevorski@ag.nv.gov)>; Theresa M. Haar <[THaar@ag.nv.gov](mailto:THaar@ag.nv.gov)>; [jag@mgalaw.com](mailto:jag@mgalaw.com); [rgraf@blacklobello.law](mailto:rgraf@blacklobello.law); [bhiggins@blacklobello.law](mailto:bhiggins@blacklobello.law); [alina@nvlitigation.com](mailto:alina@nvlitigation.com); Work <[maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)>; Eric Hone, Esq. ([eric@h1lawgroup.com](mailto:eric@h1lawgroup.com)) <[eric@h1lawgroup.com](mailto:eric@h1lawgroup.com)>; [jamie@h1lawgroup.com](mailto:jamie@h1lawgroup.com); [moorea@h1lawgroup.com](mailto:moorea@h1lawgroup.com); [jkahn@jk-legalconsulting.com](mailto:jkahn@jk-legalconsulting.com); [dkoch@kochscow.com](mailto:dkoch@kochscow.com); [sscow@kochscow.com](mailto:sscow@kochscow.com); Bult, Adam K. <[ABult@bhfs.com](mailto:ABult@bhfs.com)>; [tchance@bhfs.com](mailto:tchance@bhfs.com); [a.hayslett@kempjones.com](mailto:a.hayslett@kempjones.com); Nathanael Rulis, Esq. ([n.rulis@kempjones.com](mailto:n.rulis@kempjones.com)) <[n.rulis@kempjones.com](mailto:n.rulis@kempjones.com)>; [tparker@pnalaw.net](mailto:tparker@pnalaw.net); Fetaz, Maximilien <[MFetaz@bhfs.com](mailto:MFetaz@bhfs.com)>; [phil@hymansonlawnv.com](mailto:phil@hymansonlawnv.com); [shane@lasvegaslegalvideo.com](mailto:shane@lasvegaslegalvideo.com); [joe@lasvegaslegalvideo.com](mailto:joe@lasvegaslegalvideo.com); Pat Stoppard ([p.stoppard@kempjones.com](mailto:p.stoppard@kempjones.com)) <[p.stoppard@kempjones.com](mailto:p.stoppard@kempjones.com)>; [jdelcarmen@pnalaw.net](mailto:jdelcarmen@pnalaw.net); Kutinac, Daniel <[KutinacD@clarkcountycourts.us](mailto:KutinacD@clarkcountycourts.us)>; ShaLinda Creer <[screer@gcmaslaw.com](mailto:screer@gcmaslaw.com)>; Tanya Bain <[tbain@gcmaslaw.com](mailto:tbain@gcmaslaw.com)>; Karen Wiehl ([Karen@HymansonLawNV.com](mailto:Karen@HymansonLawNV.com)) <[Karen@hymansonlawnv.com](mailto:Karen@hymansonlawnv.com)>; Kay, Paula <[PKay@bhfs.com](mailto:PKay@bhfs.com)>; Dennis Prince ([dprince@thedplg.com](mailto:dprince@thedplg.com)) <[dprince@thedplg.com](mailto:dprince@thedplg.com)>; [tlb@pisanellibice.com](mailto:tlb@pisanellibice.com); [JTS@pisanellibice.com](mailto:JTS@pisanellibice.com)

**Cc:** Kutinac, Daniel <[KutinacD@clarkcountycourts.us](mailto:KutinacD@clarkcountycourts.us)>

**Subject:** A786962 Serenity - Bench Briefs Received

Counsel:

I am emailing to confirm the receipt of the following briefs:

1. MM & LivFree (Kemp)
2. CPCM/Thrive (Gutierrez)
3. NOR (Koch)
4. Essence (Bice)
5. Greenmart (Shell)
6. Clear River (Graf)

Thank you,

**Danielle M. Meriwether, Esq.**  
Law Clerk to the Honorable Elizabeth G. Gonzalez  
District Court, Department XI  
P: (709) 671-1375



F: (702) 671-4377

# EXHIBIT 4

# EXHIBIT 4

the+source

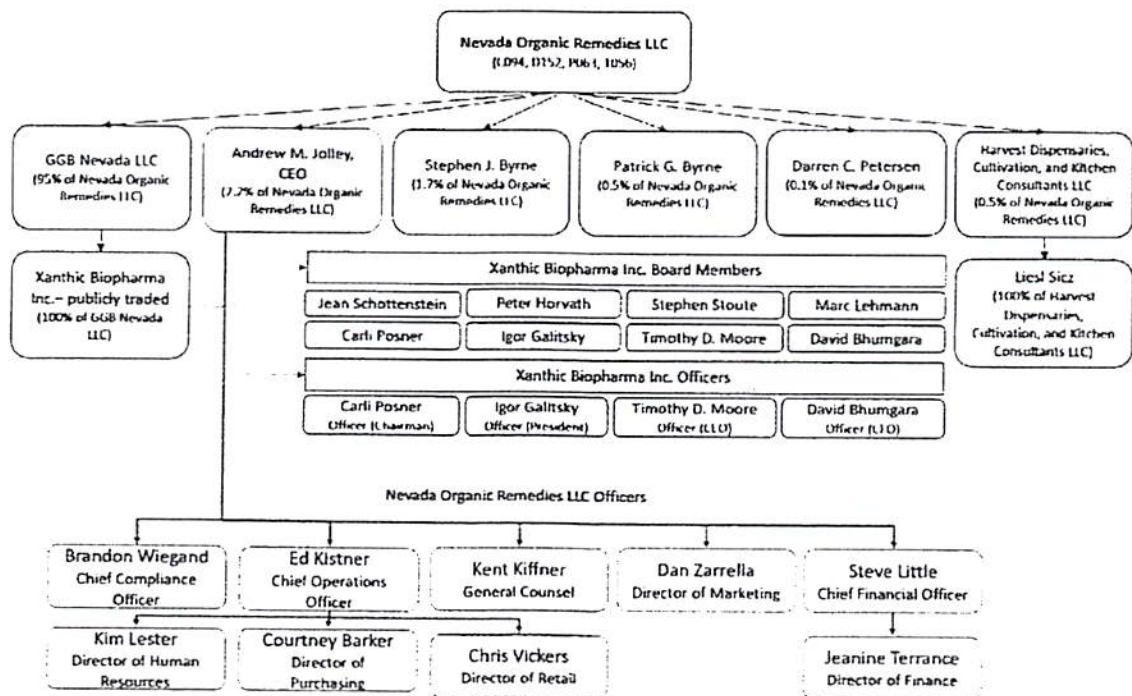
**5.2.10.1**

**ORGANIZATIONAL  
CHARTS**



**5.2.10.1. An organizational chart showing all owners, officers, and board members of the recreational marijuana establishment, including percentage of ownership for each individual.**

The following Organizational Chart shows all owners, officers and board members of Nevada Organic Remedies LLC ("NOR").<sup>1</sup> This chart is also provided in larger size in *Exhibit A: Organizational Chart and Ownership Structure*.

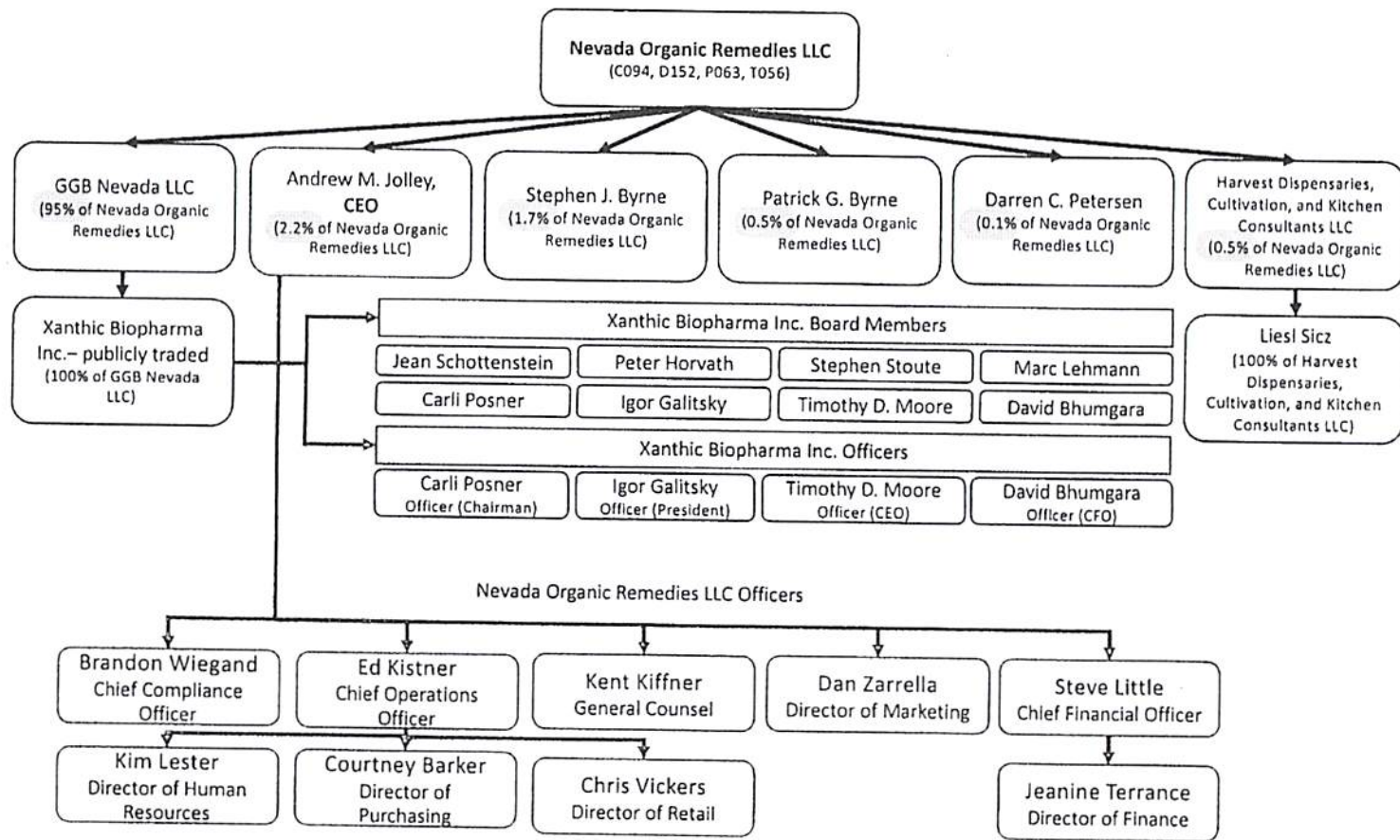


NOR is a robust organization with oversight, governance and support provided by owners, board members and officers. Due to the size of the organization, multiple charts have been provided in this section in an effort to clearly illustrate not only the Company's ownership, but the operational structure of the company leadership team and the retail store organizational structure. Collectively, these sub-sections and exhibits provide a wholistic view of the Company's ownership and operational structure and are referenced here for clarity:

1. Organizational Chart and Ownership Structure. This section and the associated exhibit (*Exhibit A: Organizational Chart and Ownership Structure*) outline NOR's organizational

<sup>1</sup> Please note this ownership structure was approved by the Department of Taxation on August 20, 2018 (see attached letter *Exhibit E*). Please note the Department was provided notice of the officers of the Company on August 31, 2018 and September 7, 2018 (see attached letters *Exhibit E*).

*Exhibit A: Organizational Chart and Ownership Structure*





# EXHIBIT 5

# EXHIBIT 5



BRIAN SANDOVAL  
Governor  
JAMES DEVOLLO  
Chair, Nevada Tax Commission  
BILL ANDERSON  
Executive Director

STATE OF NEVADA  
DEPARTMENT OF TAXATION

Web Site: <https://tax.nv.gov>

1550 College Parkway, Suite 115  
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LAS VEGAS OFFICE  
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Las Vegas, Nevada 89101  
Phone: (702) 486-2300 Fax: (702) 486-2373

RENO OFFICE  
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Building L, Suite 235  
Reno, Nevada 89502  
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Fax: (775) 688-1303

HENDERSON OFFICE  
2550 Paseo Verde Parkway, Suite 180  
Henderson, Nevada 89074  
Phone: (702) 486-2300  
Fax: (702) 486-3377

August 20, 2018

Ms. Amanda Connor  
Nevada Organic Remedies, LLC  
710 Coronado Center Dr. Suite 121  
Henderson, NV 89052

State of Nevada Application ID Number:	MME Certificate	C094 – 88242054656300627601
	ME License	# 1018539646-002-CUL
	MME Certificate	D152 – 02441426022753521200
	ME License	# 1018539646-001-DIP
	MME Certificate	P063 – 72792951478780009507
	ME License	# 1018539646-002-PRO
	ME License	T056 # 1018539646-002-DIT

**Subject: MME Ownership Change**

Dear Ms. Connor,

Your Notice of Transfer of Interest pertaining to the ownership of the above referenced MME(s) has been reviewed and APPROVED. Effective immediately, your MME(s) and ownership Schedule of Interest is recorded as follows:

<u>Name</u>	<u>% Held</u>
GGB Nevada, LLC	95.00%
Xanthic Biopharma, Inc.	
Board Members:	
- Jean Schottenstein	
- Peter Horvath	
- Stephen Stoute	
- Carli Posner, Chairman	
- Timothy Moore, CEO	
- Igor Galitsky, President	
- Marc Lehmann, Board Member	
- David Bhumgara, CFO	

Officers:

- Igor Galitsky
- Timothy Moore, CEO
- David Bhungara, CFO
- Carli Posner, Chairman

Andrew M. Jolley	2.20%
Stephen J. Byrne	1.70%
Patrick G. Byrne	0.50%
Harvest Dispensaries, Cultivation & Kitchen Consultants, LLC	0.50%
Liesl Sicz	
Darren C. Petersen	0.10%
<b>Total</b>	<b>100.00%</b>

Please feel free to contact us at [marijuana@tax.state.nv.us](mailto:marijuana@tax.state.nv.us) if you have any questions.

Sincerely,



Steve Gilbert, Program Manager II  
Department of Taxation, Marijuana Enforcement Division



# EXHIBIT 6

# EXHIBIT 6

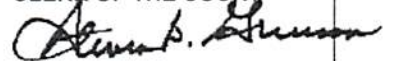
LICENSED ENTITY - OWNERS/OFFICERS/BOARD MEMBERS as of: May 1, 2019. *An affiliated entity may be a parent company, subsidiary, an organization that controls another entity, is controlled by another entity or under common control alongsid*

ID	Licensed Entity	License Type	Establishment Jurisdiction	COUNTY	Last Name	First Name	MI	Owner	Officer	Board Member	Affiliated Entity (1)	Affiliated Entity (2)	Affiliated Entity (3)	Affiliated Entity (4)	Affiliated Entity (5)
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Posner	Carli		no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Terrance	Jeanine	N	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Vickers	Christopher	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Wiegand	Brandon	M	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Horvath	Peter	Z	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Lehmann	Marc	E	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Schottenstein	Jean	R	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Stoute	Stephen	J	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Jolley	Andrew	M	Owner	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Byrne	Patrick	G	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Byrne	Stephen	J	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	GGB Nevada LLC			Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Peterson	Darren	C	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Sicz	Liesl	M	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	Harvest Dispensaries, Cultivation & Kitchen	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Barker	Courtney	D	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Bhumgara	David	W	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Galitsky	Igor	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Kiffner	Kent	C	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Kistner	Edward	J	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Lester	Kimberly	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Little	Steven	J	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Moore	Timothy	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Posner	Carli		no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Terrance	Jeanine	N	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Vickers	Christopher	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Wiegand	Brandon	M	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Horvath	Peter	Z	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Lehmann	Marc	E	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Schottenstein	Jean	R	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Stoute	Stephen	J	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Jolley	Andrew	M	Owner	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Byrne	Patrick	G	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Byrne	Stephen	J	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	GGB Nevada LLC			Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Peterson	Darren	C	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no

# EXHIBIT 7

# EXHIBIT 7





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EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, et al.,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF  
TAXATION;

Defendant

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor

Case No. A-19-786962-B

Dept. No. 11

NEVADA ORGANIC REMEDIES'  
RESPONSE TO THE DEPARTMENT  
OF TAXATION'S STATEMENT  
REGARDING COMPLETENESS OF  
APPLICATIONS WITH REFERENCE  
TO NRS 453D.200(6)

Date: August 29, 2019  
Time: 9:00 a.m.

Defendant-Intervenor Nevada Organic Remedies, LLC ("NOR") hereby responds to the post-hearing submission from the State of Nevada Department of Taxation (the "Department") regarding completion of applications in accordance with NRS 453D.200(6), which has been admitted as the Court's Exhibit 2. As shown in this Response, NOR fully complied with the statute and applicable regulatory guidance, and based on the information NOR has provided, the Department should have no "question" regarding the ownership of NOR, which was accurately presented in its applications in September 2018.

1                   I.       RESPONSE TO THE DEPARTMENT'S SUBMISSION

2           NOR's ownership was fully disclosed in the Notice of Transfer of Interest letter  
3 issued by the Department of Taxation (Hearing Exhibit 5026, attached here as Exhibit A)  
4 and in the Organizational Chart (Hearing Exhibit 5025, attached here as Exhibit B), both  
5 of which were submitted by NOR to the Department with its application in September  
6 2018. As stated in those documents, the "Organizational Chart shows all owners,  
7 officers, and board members of Nevada Organic Remedies, LLC." (Ex. 5025 at DOT-  
8 NVOrganic 001427).

9           As listed in the Organizational Chart submitted to the Department, NOR – the  
10 Applicant – was owned by several listed individuals and by GGB Nevada LLC. Every  
11 owner of NOR was expressly listed. GGB Nevada LLC is then in turn owned by Xanthic  
12 Biopharma, Inc., but GGB Nevada LLC is the only entity that actually owns a portion of  
13 NOR.

14           The Department already approved this ownership structure in the Notice of  
15 Transfer of Interest approval letter that the Department prepared (Ex. A) It cannot now  
16 come back and say that it has an unanswered "question," when it has already given its  
17 approval at the time that applications were submitted, and it has demonstrated its prior  
18 knowledge of the approved ownership structure that was listed in NOR's application.

19           Even MM Development's own rogue pocket brief (now reclassified as an  
20 "objection") admits that NOR is owned by GGB Nevada LLC when it wrongly contends  
21 that, "NOR did not disclose its owner (GGB Nevada)..." (MM Dev. Brief at pg. 9:21-24.)  
22 Thus, even MM Development understands that GGB Nevada is an owner of NOR, and  
23 its faulty claim regarding disclosure is directly contradicted by NOR's Organizational  
24 Chart and Transfer of Interest approval letter contained in the application. (See Exs. A  
25 and B.) Accordingly, NOR provided all necessary information necessary in its  
26 application, and it fully complied with all statutory and regulatory guidance provided in  
27 NRS 453D.200(6) and accompanying regulations.  
28



1     **A.     NOR Fully Disclosed Its Ownership on Its Application**

2             The Department states in its disclosure that it “could not eliminate a question”  
3     regarding the completeness of NOR’s application regarding the identification of its  
4     owners. NOR believes that the Department should be the entity that addresses and  
5     answers this question now, as the information provided and attested to by NOR answers  
6     the Department’s question, but the Department has refused to answer the question as it  
7     has done for each of the other successful applicants, including those who did not even  
8     intervene here and presumably provided no additional information for the Department  
9     to consider in sending its post-hearing submission.

10            The Department is expressly tasked with processing “complete” applications and  
11     to determine whether applications are “complete and in compliance” with the applicable  
12     regulations. *See* NRS 453D.210(4) and NAC 453D.272(1). It is therefore up to the  
13     Department to consider the information submitted and attested to by NOR, and NOR  
14     contends that the information submitted answers the Department’s question and fully  
15     complies with the statute. The fact that the Department has already approved this  
16     information with its Notice of Transfer of Interest letter demonstrates that the  
17     Department has considered the information to be complete. In its application, NOR  
18     expressly stated that “this ownership structure was approved by the Department of  
19     Taxation on August 20, 2018....[and] the Department was provided notice of the officers  
20     of the Company on August 31, 2018 and September 7, 2018.” (Ex. B at DOT-NVOrganic  
21     001427). For the Department to have received and approved the ownership information  
22     and now to state that there is a “question” about the information nearly one year later is  
23     improper.

24            NRS 453D.200(6) provides that the Department “shall conduct a background  
25     check of each prospective owner, officer, and board member of a marijuana  
26     establishment license applicant.” NOR’s Organizational Chart (Ex. B), provides a  
27     complete list of the entire ownership interest in NOR sufficient for the Department to  
28



1 conduct such background checks. NOR is a limited liability company and as such, **it is**  
2 **owned by its "members."** See, NRS 86.081.

3 The chart provided in NOR's applications lists all owners/ members of NOR and  
4 even provides the percentage of ownership of each owner at the time of the application.  
5 GGB Nevada, LLC owned 95% of NOR, Andrew Jolley owned 2.2%, Stephen Byrne  
6 owned 1.7%, Patrick Byrne owned 0.5%, Harvest Dispensaries owned 0.5%, and Darren  
7 Petersen owned 0.1%. As indicated, NOR fully disclosed all ownership of NOR, even  
8 including owners of less than 5% of the company even though the regulations at issue  
9 did not require the listing of these minor owners. Moreover, NOR provided all  
10 information necessary for the Department to fulfill its duties to conduct background  
11 checks of all NOR's owners by providing agent cards for all the individual owners and  
12 by providing the corporate structure of GGB's corporate parent, Xanthic Biopharma,  
13 Inc., in compliance with NAC 453D.250(2).

14 Nothing in the application, the statute, or the Court's order filed on August 23,  
15 2019, suggested that NOR was required to further break down the ownership of NOR's  
16 member owners if those owners were corporate entities. Nothing required NOR to break  
17 down ownership of companies that owned portions of parent companies, or the  
18 companies that own portions of those companies that owned portions of parent  
19 companies. If such were the requirement, the cascade of ownership checks could be  
20 endless.

21 This interpretation of ownership was adopted by all applicants, as multiple  
22 plaintiffs in this proceeding provided exactly the same information with respect to their  
23 structure. For example, MM Development's organizational chart provides the names of  
24 the companies owning MM Development, their officers and board members, as well as  
25 the individuals with major ownership interests in the company. (See Hearing Exhibit 20,  
26 at DOT-MM000787, attached here as Exhibit C.) After identifying MM Development  
27 Company, Inc. as "THIS ENTITY APPLYING FOR LICENSES", it goes on to show that  
28 the applicant is owned by Planet 13 Holdings, Inc., which is in turn owned by

1 unidentified "Investors, Public Stockholders (none > 5% individually) 29.2453%." MM  
2 Development listed its direct owner and did not list minor stockholders of the  
3 subsequent parent company, as it also was not required to do so.

4 Plaintiffs Serenity Wellness Center LLC was in the same boat. As demonstrated  
5 during the hearing, Serenity's organizational structure in its application showed that it  
6 was owned by "Alternative Solutions LLC", which was then owned in turn by "CLS  
7 Holdings USA, Inc." (Hearing Ex. 5033, attached here as Ex. D.) Serenity then  
8 submitted a list of ownership that only "included information from a few significant  
9 stockholders that were part of the previous ownership group." (Hearing Ex. 5035,  
10 attached here as Ex. E.) Serenity has never claimed that it submitted every owner of  
11 each of these parent entities for background checks. That's because it did not. These  
12 parties followed the same process and made the same disclosures, and thus, any claim of  
13 irreparable harm for parties such as these is invalid. Plaintiffs cannot claim prejudice or  
14 harm based upon the Department's usage of a standard that the Plaintiffs' themselves  
15 relied upon in submitting applications.

16 If the Court interprets the language of the statute literally, as it has chosen to do  
17 in the context of requiring background checks of "each owner," then this literal  
18 interpretation must also be applied to the "owner" of the applicant, which can only go  
19 up one level and not result in subsequent subjective determinations of how many levels  
20 of ownership above the immediate owner would be reviewed. If additional ownership  
21 were checked, this would violate the statute, which does not define "owner" and does  
22 not identify majority, partial, or full subsequent ownership as a condition.

23 NOR's application thus fully complied by providing all information necessary for  
24 the Department to conduct background checks in compliance with the law. Were the  
25 Department to require any further information, NOR would have provided that  
26 information. As it stands, NOR provided everything that was necessary and fully  
27 complied with the statute and regulation.  
28



1     **B.     The Department Is Tasked with Compliance with NRS 453D.200(6), Not**  
2     **Applicants**

3         NRS 453D.200(6) mandates that the Department conduct background checks on  
4     the prospective owners, officers, and board members of applicants for a marijuana  
5     establishment. That statute does not mandate that an applicant take any action, and it  
6     does not state what information must be included in an application. Under no  
7     circumstances can an applicant fail to “comply” with NRS 453D.200(6). Once  
8     information is submitted, the Department can conduct background checks, and if it  
9     needs additional information, it can request such information from the applicant. If  
10    there is an issue with a background check of an owner, officer, or board member that is  
11    performed, the Department is required to “provide notice to the applicant and give the  
12    applicant an opportunity to revise its application.” NAC 453D.272(6).

13        NOR objects to any allusion in the Department’s submission, the objections of  
14    any other parties, and of the Court’s August 23, 2019 Order that suggests that NOR  
15    failed to comply with NRS 453D.200(6) or that NOR submitted an incomplete  
16    application for failure to comply with NRS 453D.200(6). NOR followed the instructions  
17    given to it. Any failure of compliance is solely the fault of the Department. NOR should  
18    not be placed in a position where it is treated any differently than any other applicant in  
19    regard to the injunction because it acted no differently than any other applicant.

20    **C.     The Requirement for “Prospective” Owners to Be Background Checked**  
21    **Precludes Freezing an Ownership Date as of the Date of Applications**

22        NOR further objects to the Court’s recent request that the Department provide  
23    only information of ownership frozen on the application date, as the statute expressly  
24    states that the Department is to conduct background checks of each “prospective  
25    owner.” When an applicant is already underway with a transaction to sell the company,  
26    “prospective” (*i.e.*, “future”) owners are certainly being contemplated. In the last few  
27    days of the preliminary injunction hearing, when it appeared as though the Court was  
28    concerned about the background check issue, certain of the defendant-intervenors



1 explained that even though they are now owned by publicly-traded companies, they  
2 were not yet owned by the publicly-traded companies when submitting their  
3 application. The implication in this argument is that there was no need to disclose their  
4 prospective owners in the application in order for the Department to have the  
5 information necessary to comply with NRS 453D.200(6). The Department appears to  
6 have improperly accepted this false construction in its submission by accepting a list of  
7 owners only as of the date of the application, when "prospective owners" were clearly  
8 required to be provided at the time of the application.

9 If "public safety" is the concern that background checks are meant to address,  
10 then it would be absurd to allow a company to freeze its ownership list as of the date of  
11 the application when it has a deal in place to sell itself to criminals who will take over  
12 the business immediately upon the license being awarded. To decide otherwise would  
13 effectively result in the same nightmare scenario that plaintiffs have waxed on about  
14 during the hearing, e.g., if the Sinaloa cartel were to become an "owner" after  
15 applications are due without any ability to check the backgrounds of these new owners.  
16 Such a result would be absurd and contravene the entire purpose of the statute.

17 For the record, NOR does not believe any other successful applicant acted in any  
18 way other than in full compliance with the requirements of the application and the law,  
19 as it believes the Departments adoption of NAC 453D.255 was an appropriate  
20 interpretation of the ownership statute, but NOR should not be treated any differently  
21 than other applicants now owned by publicly-traded companies just because of the  
22 timing of the transfer of ownership.

23 **D. The Defendant-Intervenors Should Not Be Treated Any Differently Than**  
24 **Conditional Licensees That Did Not Intervene**

25 Finally, throughout the months' long hearing on the motion for preliminary  
26 injunction, the applications and ownership structure of all the defendant-intervenors  
27 have been heavily scrutinized, and, as a result, the Department's disclosures erroneously  
28 indicated that there was some question as to the ownership of certain defendant-

1 intervenors such as NOR. There were, however, several successful applicants that did  
2 not intervene, and the Department has apparently made *no attempt* to re-scrutinize  
3 those applications of non-intervening parties. At no point in the hearing has any party  
4 seen any portion of those applicants' applications, and no party has any idea whether or  
5 not they actually listed all their owners, officers, and board members in their  
6 applications.

7 As a result, the winning applicants that did not intervene are now being treated  
8 much differently than those who chose to intervene. In effect, the non-intervenors have  
9 been given a free pass and none will face the prospect of an injunction. The result is  
10 inequitable and punishes parties such as NOR for electing to intervene to protect their  
11 rights. Not only have the non-intervenors received a free ride from those actually willing  
12 to defend the application process, but they ended up facing no risk from their free ride.  
13 NOR objects to the disparate treatment as inequitable and improper.

## 14 II. CONCLUSION

15 For the reasons set forth above, NOR provided all information required by NRS  
16 453D at the time it submitted its applications in September 2018, and the Department  
17 should be permitted to move forward with conducting final inspections for NOR's  
18 establishments.

19  
20 KOCH & SCOW, LLC

21 By: /s/ David R. Koch  
22 David R. Koch  
23 Attorneys for Defendant-Intervenor  
24 Nevada Organic Remedies LLC  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on August 26, 2019, I caused the foregoing document entitled: **NEVADA ORGANIC REMEDIES' RESPONSE TO THE DEPARTMENT OF TAXATION'S STATEMENT REGARDING COMPLETENESS OF APPLICATIONS WITH REFERENCE TO NRS 453D.200(6)** to be served as follows:

- ☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in in the mail; and/or;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and/or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and/or
- ☐ hand-delivered to the attorney(s) listed below at the address indicated below;
- ☐ to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s); and or:
- ☐ by electronic mailing to:

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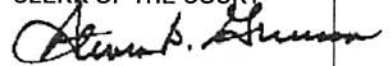
Executed on August 26, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh  
Andrea Eshenbaugh



# EXHIBIT 8

# EXHIBIT 8



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EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

MM DEVELOPMENT COMPANY, INC., a  
Nevada corporation, LIVFREE WELLNESS  
LLC, dba The Dispensary, a Nevada Limited  
liability company,

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF  
TAXATION; AND DOES 1 through 10; and  
ROE CORPORATIONS 1 through 10.

Defendants,

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor.

NEVADA ORGANIC REMEDIES, LLC,

Counterclaimant,

vs.

MM DEVELOPMENT COMPANY, INC., a  
Nevada corporation, LIVFREE WELLNESS  
LLC, dba The Dispensary, a Nevada Limited  
liability company.

Counter-Defendants

Case No. A-18-785818-W  
Dept. No. 8

APPLICATION FOR WRIT OF  
MANDAMUS TO COMPEL STATE  
OF NEVADA, DEPARTMENT OF  
TAXATION TO MOVE NEVADA  
ORGANIC REMEDIES, LLC INTO  
"TIER 2" OF SUCCESSFUL  
CONDITIONAL LICENSE  
APPLICANTS

HEARING REQUESTED

1 Defendant-Intervenor and Counterclaimant Nevada Organic Remedies, LLC  
2 ("NOR") hereby applies to this Court for the issuance of a writ of mandamus pursuant  
3 to NRS 34.160 to compel the State of Nevada, Department of Taxation (the  
4 "Department") to move NOR into the Department-created "Tier 2" of successful  
5 applicants for recreational marijuana licenses. This Application is supported by the  
6 following Memorandum of Points and Authorities and exhibits attached thereto, the  
7 Declarations of Brody R. Wight and Brandon Wiegand, the pleadings and papers on file  
8 herein, and any other materials this Court may wish to consider.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. INTRODUCTION**

11 This lawsuit centers on the application process for obtaining licenses to operate  
12 recreational marijuana establishments in the State of Nevada. NOR applied for several  
13 recreational marijuana licenses in September 2018, and in December 2018, the  
14 Department notified NOR that its applications were successful, and it was awarded  
15 conditional licenses to open seven establishments. The unsuccessful applicants filed this  
16 and other lawsuits claiming that they should have received licenses or that the  
17 application process was unfair. NOR has filed a counterclaim for declaratory relief  
18 seeking a determination that its conditional licenses were properly obtained and that it  
19 should be permitted to open its stores.

20 On August 26, 2019, District Court Judge Elizabeth Gonzalez issued a Preliminary  
21 Injunction and made certain determinations, including a legal finding that the  
22 Department's adoption of NAC 453D.255(1)—which set a 5% threshold for ownership to  
23 be considered by the Department—was "arbitrary and capricious" and constituted an  
24 "impermissible deviation" from Ballot Question 2, the voter initiative permitting  
25 recreational marijuana in Nevada. (Ex. 2.) In connection with that Injunction, Judge  
26 Gonzalez asked the Department to review and confirm which successful applicants had  
27 listed "each prospective owner, officer, and board member" in their applications, so that  
28



1 a background check could be performed pursuant to NRS 453D.200(6) for each owner,  
2 officer, and board member of the applicant.

3 The Department followed Judge Gonzalez's instruction and attempted to  
4 determine which applicants had in fact listed "each prospective owner, officer, and  
5 board member" when applications were submitted in September 2018. In completing  
6 this task, the Department ultimately created three "Tiers" of successful applicants.

7 These Tiers included:

8 "Tier 1" – applicants who did not intervene in this litigation, and which the  
9 Department automatically deemed to have listed their full ownership  
10 without checking further.

11 "Tier 2" – intervenors which the Department decided it could confirm had listed  
12 "each prospective owner, officer, and board member" in their  
13 applications. This Tier included five of the intervenors.

14 "Tier 3" – intervenors for which the Department "could not eliminate a question  
15 as to the completeness of their applications" with respect to the list of  
16 owners, officers, and board members. Four intervenors were included in  
17 this tier, including NOR. (Exhibit 1).

18 After being notified of these Tiers, Judge Gonzalez ordered that the Department  
19 could conduct final inspections for Tier 1 and Tier 2 applicants, thereby allowing those  
20 applicants to move forward to open recreational marijuana establishments using their  
21 conditional licenses. But for Tier 3 applicants, Judge Gonzalez enjoined the Department  
22 from conducting a final inspection for these applicants until such time that the  
23 Department could confirm that each prospective owner, officer, and board member had  
24 been listed on the application.

25 NOR was one of four applicants included in Tier 3 when the Department made its  
26 initial review. After this initial determination was made, NOR provided additional  
27 information to the Department to make it clear that NOR had in fact listed "each  
28 prospective owner, officer, and board member" of NOR on its applications. The

1 Department, however, has failed to reassess its initial assignment of the Tiers, and it has  
2 taken the position that the mere existence of a “question” would preclude any change  
3 even if the law or the facts demonstrated that its initial determination was incorrect. As  
4 a result, although it fully complied with the law and provided the information required  
5 by the statute at issue, NOR is now stuck in legal limbo, as the Department will not take  
6 further action to correct the initial Tier determination for NOR, and NOR cannot move  
7 forward to obtain a final inspection for each of its marijuana establishments as is  
8 necessary to open its doors.

9 The Department’s designation of NOR in Tier 3 is also confounding because the  
10 Department has already approved NOR’s ownership structure in an application for a  
11 transfer of ownership that was submitted and approved prior to applications for  
12 recreational licenses being submitted. By suddenly reversing course and changing its  
13 position on the matter without explanation after NOR has detrimentally relied on the  
14 Department’s own statements and approvals, the Department is acting arbitrarily and  
15 capriciously.

16 Accordingly, NOR now applies to this Court for the issuance of a writ of  
17 mandamus directing the Department to move NOR into Tier 2 of the applicants. Doing  
18 so will allow NOR to move forward to open establishments with its approved licenses  
19 just as numerous other licensees with similar ownership structures have been permitted  
20 to do. This relief is necessary and warranted on an expedited basis, as NOR currently  
21 has a deadline of December 4, 2019, to have final inspections completed for each  
22 establishment or otherwise its conditional licenses may be canceled.

## 23 II. LEGAL AND FACTUAL BACKGROUND

### 24 A. The Application Process

25 The initiative to legalize recreational marijuana, Ballot Question 2 (“BQ2”), was  
26 approved by Nevada citizens in 2016. BQ2 was enacted and codified as NRS 453D. As  
27 the government agency charged with the implementation of the Nevada recreational  
28 marijuana program pursuant to NRS 453D.200, the Department accepted and graded



1 applications for licenses to operate recreational marijuana establishments across the state  
2 of Nevada from applicants between September and December 2018. Because the  
3 Department received more applications than licenses available, the Department scored  
4 the applications and awarded conditional licenses to the highest-ranking applicants in  
5 each jurisdiction pursuant to NRS 453D.210. NOR was a successful applicant that  
6 received seven conditional licenses.

7 After the Department announced the successful applicants for recreational  
8 marijuana establishment licenses in December 2018, a number of unsuccessful  
9 applicants, including Plaintiffs MM Development and LivFree Wellness, brought  
10 lawsuits against the Department claiming that the licensing process was flawed and  
11 requesting that they be awarded licenses even though they had not received enough  
12 points to merit a license. NOR and several other successful applicants intervened into  
13 various of the lawsuits as Defendant-Intervenors.

14 **B. Judge Gonzalez Grants a Preliminary Injunction on Limited Grounds**

15 In May 2019 Judge Gonzalez coordinated four of the licensing cases solely for the  
16 purpose of conducting an evidentiary hearing on motions for preliminary injunctions  
17 filed by the plaintiffs. The motions for preliminary injunction contained a broad array of  
18 scattershot arguments attempting to prevent successful applicants from opening for  
19 business. The motions argued that the Department violated NRS Chapter 453D or  
20 violated the plaintiffs' constitutional rights by doing everything from including diversity  
21 among the grading criteria to using outside contractors to grade the applications. The  
22 motions led to a four-month, pre-discovery evidentiary hearing where plaintiffs of the  
23 various lawsuits combed through every decision the Department made in attempt to  
24 find some problem in the process.

25 At some point during the many weeks of the evidentiary hearing, the  
26 Department's mandate under NRS 453D.200(6) to "conduct a **background check of each**  
27 **prospective owner, officer, and board member** of a marijuana establishment license  
28



1 applicant” began to be part of the discussion. This issue was not part of any complaint  
2 in the various actions, nor has any party amended their complaint to add this issue.

3 With respect to the requirement that the Department background check “each  
4 prospective owner,” in January 2018 the Department adopted a regulation in NAC  
5 453D.255(1) providing that the application of NRS 453D would “only apply to a person  
6 with an aggregate ownership interest of 5 percent or more in a marijuana establishment”  
7 (the “5% rule”). As discussed in the preliminary injunction hearing, the 5% rule was  
8 already part of the medical marijuana regulatory framework (NAC 453A.302(1) already  
9 had the same 5% limitation), and the 5% rule was specifically requested by the industry  
10 and recommended by the Governor’s Task Force. (See Ex. 3.) Even though the 5% rule  
11 was not mentioned in any of the motions for preliminary injunction, Judge Gonzalez  
12 expressed a concern that the regulation may not comply with NRS 453D.200(6), because  
13 it did not require the Department to conduct a background check for “each prospective  
14 owner.”

15 Despite the fact that none of the plaintiffs to the various lawsuits had ever  
16 complained about the 5% rule—not before submitting applications, not in their  
17 complaints, not even in their motions for preliminary injunctions—Judge Gonzalez  
18 found in her Findings of Fact and Conclusions of Law that the Department’s decision “to  
19 not require disclosure on the application and to not conduct background checks on  
20 persons owning less than 5% prior to award of a conditional license is an impermissible  
21 deviation from the mandatory language of...NRS 453D.200(6),” which therefore  
22 supported a preliminary injunction preventing the Department from conducting final  
23 inspections of any applicants where there was any question about complete ownership  
24 being listed in an application. (FFCL, ¶ 82). Judge Gonzalez granted the preliminary  
25 injunction on that single legal issue.

26 In conjunction with her Findings of Fact and Conclusions of Law, Judge Gonzalez  
27 asked the Department to determine which successful applicants it could definitively  
28 confirm had listed “each prospective owner, officer, and board member” at the time they

1 filed their applications. The Department, through the Attorney General's office, then  
2 sent the Court an email in response preliminarily placing all successful applicants into  
3 one of the three Tiers described above. (Ex. 1.)

4 Judge Gonzalez thereafter determined that the preliminary injunction would only  
5 prevent the Department from conducting final inspections only for those applicants that  
6 were designated to be in "Tier 3."

7 **C. The Department Was Directed to Redesignate Applicants by Tier When**  
8 **Warranted, but It Has Failed to Do So**

9 The initial determination of applicant Tiers was not intended to be final. Judge  
10 Gonzalez expressly stated that the Department could move applicants between Tiers, if  
11 warranted, after reviewing the information that the applicants had submitted to the  
12 Department. Judge Gonzalez stated that she was "merely seeking to exclude applicants  
13 who filed applications in compliance with NRS 453d.200(6) at the time the applications  
14 were filed from the injunctive relief that I have granted...Any issues should be directed  
15 to the Department for you to resolve based upon the information that was in your  
16 applications at the time." (Ex. 4 at 56:27-57:16.) NOR filed a "Response to the  
17 Department's Statement Regarding Completeness of Applications with Reference to  
18 NRS 453D.200(6)" which clearly laid out the ownership structure of NOR in its  
19 application and once again explained that each and every owner had been listed, even  
20 those with less than a 5% ownership interest in NOR. (Ex. 5.) As explained in this  
21 Response, NOR did in fact list each and every owner of the applicant in its September  
22 2018 application. The Department did not oppose or take any position with respect to  
23 this Response, but it also did not take any action to correct its earlier designation of NOR  
24 in Tier 3.

25 NOR has subsequently corresponded with and met with the Department to  
26 continue to ensure that the Department had complete and accurate information  
27 regarding the content of NOR's September 2018 applications. NOR has requested on  
28 numerous occasions that the Department correct its erroneous determination of NOR



1 being placed in Tier 3, but as of this writing the Department has not taken any action to  
2 correct its miscategorization of NOR. The Department has not made any statement  
3 either way as to its position on NOR's ownership listing. At present, it appears that the  
4 Department will not take any action to correct its miscategorization unless it is  
5 compelled to do so by this court.

### 6 III. ARGUMENT

#### 7 A. **Standard for Writ of Mandamus Relief**

8 Pursuant to NRS 34.160, a district court may issue a writ of mandamus "to  
9 compel the performance of an act which the law especially enjoins as a duty resulting  
10 from an office, trust or station; or to compel the admission of a party to the use and  
11 enjoyment of a right or office to which the party is entitled and from which the party is  
12 unlawfully precluded by such inferior tribunal, corporate, board or person."

13 A writ of mandamus will issue when the respondent "has a clear, present legal duty to  
14 act." *Round Hill Gen. Imp. Dist. v. Newman*, 637 P.2d 534, 536 (Nev. 1981). When "factual  
15 issues are critical in demonstrating the propriety of a writ of mandamus, the writ should  
16 be sought in the district court." *Id.* at 536.

17 Writs of mandamus are available to compel government agencies such as the  
18 Department to perform "an act that the law requires as a duty or to control an arbitrary  
19 or capricious exercise of discretion." *Gumm ex rel. Gumm v. Nevada Dept. of Educ.*, 113  
20 P.3d 853, 856 (Nev. 2005) (holding that a writ of mandamus is the proper vehicle to  
21 challenge the Nevada Department of Education's compliance with the Individuals with  
22 Disabilities Education Act). In fact, the Nevada Supreme Court has recently held that  
23 parties may utilize mandamus to challenge agency decisions regarding marijuana  
24 licensing. *See, State Dept. of Health and Human Services, Div. of Pub. and Behavioral Health*  
25 *Med. Marijuana Estab. Program v. Samantha Inc.*, 407 P.3d 327, 332 (Nev. 2017) (noting that  
26 the Department of Health and Human Services, the agency then tasked with issuing  
27 medical marijuana registration certificates, had itself acknowledged that mandamus  
28 may be available to challenge licensing decisions).



1 Under the recreational marijuana statutory framework, the Department is  
2 required to approve a license if the requirements of the application process have been  
3 met. NRS 453D.210(5) imposes a mandatory requirement that “the Department **shall**  
4 **approve** a license application” if the listed criteria are satisfied. The Department may  
5 therefore be compelled by the issuance of a writ of mandamus to take action to move  
6 NOR to Tier 2 pursuant to the terms of the statute.

7 **B. This Court Should Compel the Department to Move NOR into Tier 2**

8 NOR fully complied with the requirements of NRS 453D.200(6) to provide  
9 complete information to allow the Department to “conduct a background check of each  
10 prospective owner, officer, and board member of [the] marijuana license applicant.”  
11 This is true even without applying the limitation of the 5% rule set forth in NAC  
12 453D.255(1), which Judge Gonzalez found to be improper. While NOR believes that the  
13 5% limitation is a proper exercise of the Department’s discretion and a reasonable  
14 interpretation of the ownership requirements in the application,<sup>1</sup> that issue can be set  
15 aside for purposes of this Application, as it has no bearing on NOR’s requested relief  
16 here.

17 NOR does not understand the Department’s initial determination to include NOR  
18 within Tier 3. The Department has not provided a definitive answer as to why NOR was  
19 placed in Tier 3. The Department has only stated that it “could not determine whether  
20 there were shareholders who owned a membership interest in the applicant at the time  
21 the application was submitted, but who were not listed [in the application].” (Ex. 1.) In  
22 doing so, the Department has failed to follow its own interpretation of the very statute at  
23 issue in the Preliminary Injunction.

24 In considering NRS 453D.200(6)’s requirement for the Department to conduct a  
25 background check of “each prospective owner, officer, or board member of a marijuana  
26

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27 <sup>1</sup> NOR and multiple additional parties have filed an Appeal of Judge Gonzalez’s Preliminary  
28 Injunction, as they contend Judge Gonzalez was not correct in finding the 5% limitation to be an  
“impermissible deviation” from BQ2. Plaintiffs in this case, MM Development and LivFree,  
have also filed a Cross-Appeal of that injunction.

1 license applicant," the terms of the statute should first be examined. The "marijuana  
2 license applicant" here is NOR itself, so the Department must look to the owners of NOR  
3 to determine whether each owner was listed in NOR's application.

4 The statute does not provide any definition of "owner," nor does it provide any  
5 method to determine the "owner" of an applicant. If the Legislature had "independ-  
6 dently defined [a] word or phrase contained within a statute," then the court "must  
7 apply that definition wherever the Legislature intended it to apply...." *Knickmeyer v.*  
8 *State ex. Rel. Eighth Judicial Dist. Ct.*, 133 Nev. 675, 679 (2017). But where no definition is  
9 provided, the court must give the words "their plainest and most ordinary meaning  
10 unless the Legislature clearly used them differently, or the words are used in an  
11 ambiguous way." *Id.*

12 The term "owner" is not defined in NRS 453D, so the Court must give the word  
13 its plain and ordinary meaning. NOR is a limited liability company, and NRS Chapter  
14 86 provides that "members" of the LLC are the "owner[s] of a member's interest in a  
15 limited-liability company." NRS 86.081. In accordance with this statutory construct,  
16 NOR's application listed every owner of any membership interest of NOR, including  
17 owners with less than a 5% membership interest in the company. The Organizational  
18 Chart provided in NOR's applications lists "each owner" and provides the percentage of  
19 ownership of each owner at the time of the application. GGB Nevada, LLC owned 95%  
20 of NOR, Andrew Jolley owned 2.2%, Stephen Byrne owned 1.7%, Patrick Byrne owned  
21 0.5%, Harvest Dispensaries owned 0.5%, and Darren Petersen owned 0.1%. (Ex. 6).

22 This same ownership structure was provided to the Department well before the  
23 application time period, and **the Department issued a Notice of Transfer of Interest**  
24 **Approval letter clearly stating that NOR's ownership of interest was "reviewed and**  
25 **APPROVED."** (Exhibit 7).

26 Prior correspondence and discussion with the Department further demonstrates  
27 that the list NOR provided in its application was proper. NOR specifically asked how to  
28 list its owners, officers, and board members with respect to transfer of interest forms



1 submitted to the Department, and the Department confirmed that the proposed list was  
2 correct. (Ex. 8.) Additionally, during the preliminary injunction hearing, Steve Gilbert  
3 confirmed that when considering "owners" of limited liability company applicants, the  
4 Department looked to the "members" of the LLC.<sup>2</sup> (Ex. 9 at 84:3-15.)

5 In submitting its ownership list, NOR therefore relied not only on the terms of the  
6 statutes and regulations but also express upon direction and approval from the  
7 Department. The Department's own correspondence indicated not only that it was  
8 defining the owners of NOR as NOR's members, but also confirmed that NOR had  
9 disclosed its full ownership. It is therefore improper and arbitrary and capricious for the  
10 Department to unfairly change its position and claim that it now has an unanswered  
11 "question" that precludes it from allowing NOR to move forward with its conditional  
12 licenses. The Department has given guidance and approval that NOR has relied upon,  
13 and the Department is estopped and must be required to comply with its own prior  
14 guidance and approval in this very matter.

15 **D. Subsequent Ownership of a Parent Company Is Not Relevant under the Statute**

16 The Department's apparent "question" regarding NOR's ownership arises from a  
17 new idea that because one of NOR's owners, GGB Nevada, LLC, is in turn owned by a  
18 parent company, Xanthic Biopharma, Inc., there may be certain shareholders of Xanthic  
19 that were not listed as owners of NOR. Such a construction or interpretation of an  
20 "owner" would directly contradict the statute itself and would also contradict the prior  
21 direction and approval from the Department.

22 Xanthic Biopharma is specifically listed on the Department's own register of  
23 owners, officers, and board members as an "affiliated entity," because it is a parent  
24 company of the GGB Nevada, LLC entity. (Exhibit 10.) This is consistent with how the  
25 Department handled establishments such as NOR and many other companies with  
26

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27 <sup>2</sup> The transcript of Gilbert's testimony states that the Department looked to the statute to  
28 determine owners, and provided that owners are defined for each entity: "Corporations are  
officers, partnerships are partners, and are members." The transcript appears to have left a  
blank space for "LLC", but this was the statement made during the hearing and reflects the  
terms of the applicable regulation.



1 similar ownership structures, including MM Development and LivFree. The  
2 Department does not list eventual parent companies of owners of the applicant as direct  
3 “owners” of the applicant. There was no need to list all the eventual shareholders of a  
4 parent company like Xanthic, because Xanthic and its shareholders are not members of  
5 NOR and do not have any direct ownership of NOR. Nothing in the application, the  
6 statute, or Judge Gonzalez’s Preliminary Injunction requires the Department to trace  
7 down every layer of ownership or require applicants to further break down ownership  
8 of its constituent owners. Once NOR provided the Department with the information  
9 necessary to confirm ownership and to conduct a background check on each owner—  
10 which NOR did provide—the Department had sufficient information to comply with the  
11 requirements of NRS 453D.200(6) whether or not the 5% rule applied.

12 But apparently the Department is independently interpreting the statute beyond  
13 its express terms to raise a “question” as to whether any shareholders of a parent  
14 company would be the indirect “owners” of an applicant or legal entities, such as LLCs.  
15 The Department apparently has decided that if an applicant has any owner that is  
16 owned even in part by a company that is publicly traded, then the Department may be  
17 required to conduct a background check of every owner of every share of the publicly  
18 traded company. This would be an absurd interpretation and is contrary to the  
19 Department’s previously held position.

20 Such an interpretation would be in direct conflict with existing regulations  
21 governing medical marijuana establishments, which already have the same 5%  
22 ownership limitation. *See* NAC 453A.302. Moreover, each applicant for recreational  
23 marijuana licenses in this lawsuit is already operating a medical or a recreational  
24 marijuana establishment (applicants for recreational licenses were required by statute to  
25 already have a medical marijuana license), and any concern about background checks  
26 for “each owner” would and could have already been addressed for existing  
27 establishments, as the ownership is identical for the ongoing operations of the currently  
28 operating and existing establishments.

1 E. NOR Is Suffering Serious Irreparable Harm as a Result of the Department's  
2 Failure to Act

3 Since receiving its seven conditional licenses, NOR has been working to secure  
4 locations, receive local permits, hire employees, obtain inventory, and prepare for the  
5 final inspections on those locations across all of the jurisdictions where it has obtained a  
6 license. (Declaration of Brandon Wiegand, ¶ 3). As of the date of this Application, NOR  
7 has received special permits, business licenses, and other necessary jurisdictional  
8 approvals required to open dispensaries in the City of Las Vegas at 1725 S. Rainbow  
9 Blvd., Suite 21; City of Reno at 5270 Longley Lane, Suite 103; and Town of Pahrump at  
10 2370-2380 Homestead Road. It has secured specific locations in those jurisdictions,  
11 performed necessary Tenant Improvements, purchased security systems, signed  
12 agreements for operations systems, and has hired and trained employees, NOR is, in all  
13 respects, ready to open the doors to these locations after obtaining a final inspection  
14 from the Department. (*Id.* at ¶ 4). It is also moving forward in the other locations. In  
15 North Las Vegas, NOR has secured a location and has been paying rent since early 2019.  
16 In Clark County, NOR has already lost a highly desirable location that it had secured  
17 and was ready to move forward but could not do so because of the Department's  
18 inaction in moving NOR to the proper Tier. (*Id.* at ¶ 5).

19 The Department's failure to move NOR into Tier 2, which precludes the  
20 completion of final inspections on specified applicants, is causing tremendous damage  
21 to NOR, which will only increase in the coming weeks, as locations are lost and  
22 employees are laid off. Based on its currently operating locations and the demographics  
23 of the locations where NOR would open its new dispensaries, NOR projects that it  
24 would see \$27.5MM in annual gross profits from the five locations closest to opening for  
25 business. (*Id.* at ¶ 7). And the damages NOR stands to suffer if the injunction is not  
26 suspended include much more than profits. NOR stands to lose all of the work it has put  
27 into the process to this point. It will likely lose its special permits, its employees, and all  
28 other work it has put into opening a viable business.



1       There is also a significant threat that NOR could be required to surrender its  
2 existing conditional licenses if final inspections are not completed before the appeal can  
3 be heard. Under NAC 453D.295, NOR only has until December 4, 2019 to receive final  
4 inspections, and once the injunction is lifted, it will take NOR months to obtain all  
5 necessary permits and prepare for final inspections in those jurisdictions. (*Id.* at ¶ 6) It  
6 has been stated in open court that the Department will be extending that date six  
7 months, but there has been no formal confirmation of that extension.

8       The Department should be required to solve this problem by taking the correct  
9 steps to confirm that NOR did in fact list each owner of the applicant in its  
10 applications. Five other similarly situated intervenors have been permitted to move  
11 forward by the Department by being placed into Tier 2, and there is no meaningful or  
12 defensible basis to preclude NOR from doing the same.

#### 13                                   IV.    CONCLUSION

14       A writ of mandamus is necessary and appropriate to compel the Department to  
15 comply with the statute and confirm that NOR did list each owner of NOR in its  
16 application. The Department must also be compelled to move NOR into "Tier 2" of  
17 applicants so that it may move forward with opening its stores under its conditional  
18 licenses.

19  
20 DATED: October 10, 2019

KOCH & SCOW, LLC

21 By: /s/ David R. Koch  
22 David R. Koch, Esq.  
23 *Attorneys for Counterclaimant*  
24 *Nevada Organic Remedies, LLC*

#### 25                   DECLARATION OF BRODY WIGHT IN SUPPORT OF OPPOSITION TO 26                   PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

27       I, Brody R. Wight, make this declaration in support of Defendant-Intervenor and  
28 Counterclaimant Nevada Organic Remedies, LLC's ("NOR") Application to this Court  
for the issuance of a writ of mandamus pursuant to NRS 34.160 to compel the State of



1 Nevada, Department of Taxation (the "Department") to move NOR into the  
2 Department-created "Tier 2" of successful applicants for recreational marijuana licenses:

3 1. I am an attorney licensed to practice law in the State of Nevada and an  
4 associate at the law firm of Koch & Scow, LLC, and we are the attorneys of record for  
5 Nevada Organic Remedies, LLC ("NOR") in the matter entitled *MM Development*  
6 *Company, Inc. et. al. v. State of Nevada, Department of Taxation et. al.*, Case No. A-18-785818-  
7 W, filed in the Eighth Judicial District Court, Clark County, Nevada (the "Lawsuit").

8 2. I am competent to testify to the matters asserted herein, of which I have  
9 personal knowledge, except as to those matters stated upon information and belief. As to  
10 those matters stated upon information and belief, I believe them to be true.

11 3. Attached as Exhibit 1 to the Application is a true and correct copy of the  
12 email the State of Nevada, Department of Taxation (the "Department") sent to Judge  
13 Gonzalez's chamber and to counsel for the parties to the Lawsuit. The tiers referred to in  
14 the attached email are those that Judge Gonzalez referred to in issuing the Findings of  
15 Fact and Conclusions of Law regarding the motion for preliminary injunction issued  
16 against the Department in the Lawsuit, and the email has been admitted as Court's Exhibit  
17 3.

18 4. Attached as Exhibit 2 to the Application is a true and correct copy of the  
19 Findings of Fact and Conclusions of law filed by Judge Gonzalez, granting, in part, the  
20 preliminary injunction, and enjoining the Department from conducting final inspections  
21 on NOR's marijuana establishments.

22 5. Attached as Exhibit 3 to the Application is a true and correct copy of select  
23 portions of the Governor's Task Force on the Implementation of Question 2: The  
24 Regulation and Taxation of Marijuana Act recommending the implementation of the  
25 regulation requiring background checks only on owners with a 5% interest or more in the  
26 applicants for marijuana establishment licenses.

27 6. Attached as Exhibit 4 to the Application is a true and correct copy of select  
28 portions of the Hearing on Objections to State's Response, Nevada Wellness Center's

1 Motion Re Compliance Re Physical Address, and Bond Amount Setting from August 29,  
2 2019.

3 7. Attached as Exhibit 5 to the Application is a true and correct copy of NOR's  
4 Response to the Department's Statement Regarding Completeness of Applications with  
5 Reference to NRS 453D.200(6).

6 8. Attached as Exhibit 6 to the Application is a true and correct copy of the  
7 organizational chart found in NOR's applications for licenses to open marijuana  
8 establishments that it submitted to the Department in September 2018.

9 9. Attached as Exhibit 7 to the Application is a true and correct copy of the  
10 letter NOR received from the Department approving the transfer of ownership of NOR  
11 on August 20, 2018.

12 10. Attached as Exhibit 8 to the Application is a true and correct copy of the  
13 emails between Amanda Connor, counsel for NOR, and Steve Gilbert from the  
14 Department wherein Mr. Gilbert confirmed what information NOR was required to place  
15 in its transfer of ownership request.

16 11. Attached as Exhibit 9 to the Application is a true and correct copy of select  
17 portions of the transcripts of Preliminary Injunction Evidentiary Hearing- Day 5 Volume  
18 II, held on May 31, 2019.

19 12. Attached as Exhibit 10 to the Application is a true and correct copy of the  
20 list of owners and affiliated entities of NOR as of May 1, 2019, as found on the  
21 Department's website, which can be found at the URL  
22 [https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/FAQs/CURRENTLICENSEESM](https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/FAQs/CURRENTLICENSEESMAY12019.pdf)  
23 [AY12019.pdf](https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/FAQs/CURRENTLICENSEESMAY12019.pdf).

24 I declare under penalty of perjury under the laws of the United States and the  
25 State of Nevada that the foregoing is true and correct.

26 Executed this 10th day of October, 2019.

27  
28 \_\_\_\_\_  
/s/ Brody R. Wight  
BRODY R. WIGHT, ESQ.

1  
2 DECLARATION OF BRANDON WIEGAND

3 I, Brandon Wiegand, declare and state as follows:

4 1. I am the Regional General Manager of Nevada Organic Remedies and am  
5 responsible for the operation and opening of licensed marijuana establishments for the  
6 company in the State of Nevada. I have personal knowledge of the facts stated in this  
7 Declaration and could testify competently thereto.

8 2. On December 5, 2018, NOR was notified that it had been awarded seven  
9 conditional licenses by the Department of Taxation. Since December 5, 2018, NOR has  
10 been diligently acting to ensure that its stores can be inspected by the Department of  
11 Taxation and open for business no later than December 4, 2019.

12 3. NOR has leased locations, hired employees, worked with city and county  
13 governmental bodies to obtain approvals and permits, and has expended hundreds of  
14 hours and hundreds of thousands of dollars to ensure that it will be able to open its  
15 stores within the defined timeframe.

16 4. NOR has received special permits, business licenses, and other necessary  
17 jurisdictional approvals required to open dispensaries in the City of Las Vegas at 1725 S.  
18 Rainbow Blvd., Suite 21; City of Reno at 5270 Longley Lane, Suite 103; and Town of  
19 Pahrump at 2370-2380 Homestead Road. It has secured specific locations in those  
20 jurisdictions, performed necessary Tenant Improvements, purchased security systems,  
21 signed agreements for operations systems, and has hired and trained employees, NOR  
22 is, in all respects, ready to open the doors to these locations after obtaining a final  
23 inspection from the Department.

24 5. NOR is also moving forward in the other locations. In North Las Vegas,  
25 NOR has secured a location and has been paying rent since early 2019. In Clark County,  
26 NOR had obtained a highly desirable location located at the intersection of Flamingo  
27 and Paradise to open a marijuana establishment, but it has already lost this location due  
28 to the subject litigation causing uncertainty in the minds of Clark County elected



1 officials.

2 6. NOR has been informed and believes that it will not be able to move  
3 forward at a local level in either Clark County or the city of North Las Vegas until the  
4 injunction is lifted, and once the injunction is lifted, it will take NOR months to obtain all  
5 necessary permits and prepare for final inspections in those jurisdictions.

6 7. Based on its currently operating locations and the demographics of the  
7 locations where NOR would open its new dispensaries, NOR projects that it will see  
8 \$27.5MM in annual gross profits from the five locations closest to opening for business.

9 I declare under penalty of perjury that the foregoing is true and correct to the  
10 best of my knowledge.

11  
12 Date: October 10, 2019

\_\_\_\_\_/s/ Brandon Wiegand\_\_\_\_\_  
BRANDON WIEGAND

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## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on October 10, 2019, I caused the foregoing document entitled:  
to be served as follows:

- ☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and/or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and/or
- ☐ hand-delivered to the attorney(s) listed below at the address indicated below;
- ☐ to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s); and or:
- ☐ by electronic mailing to:

State of Nevada, Department of Taxation:

Traci Plotnick (tplotnick@ag.nv.gov)  
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2 Alina Shell (alina@nvlitigation.com)  
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20 Lisa Lee (llee@thedplg.com)  
21 Eservice Filing (eservice@thedplg.com)

22 Executed on October 10, 2019 at Henderson, Nevada.

23 /s/ Andrea Eshenbaugh  
24 Andrea Eshenbaugh  
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# EXHIBIT 9

# EXHIBIT 9



STEVE SISOLAK  
Governor  
JAMES DEVOLLD  
Chair, Nevada Tax Commission  
MELANIE YOUNG  
Executive Director

STATE OF NEVADA  
DEPARTMENT OF TAXATION

Web Site: <https://tax.nv.gov>

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Phone: (702) 486-2300  
Fax: (702) 486-3377

October 18, 2019

Amanda Connor  
2580 Anthem Village Dr.  
Henderson, NV 89052

Re: Nevada Organic Remedies LLC RD215  
76170147149504770817 / 1018539646-004

Dear Amanda Connor,

Pursuant to NAC 453D.295, if a marijuana establishment has not received a final inspection within 12 months after the date on which the Department issued a conditional license to the marijuana establishment, the marijuana establishment must surrender the conditional license to the Department. The Department may extend the 12-month period if the Department, in its discretion, determines that extenuating circumstances prevented the marijuana establishment from receiving a final inspection within this time frame.

As a result of the existing and ongoing litigation, the Department is hereby extending the 12-month period to June 5, 2020. As this deadline (and any possible future extensions thereof) approaches, the Department will consider whether circumstances exist warranting further extensions. Per this extension, fully operational recreational marijuana establishments, as described in the December 5, 2018 letter you received from the Department, must be approved by the Department and the appropriate local governments no later than June 5, 2020.

Please be advised, the Department will not provide any additional reminders or notices of the June 5, 2020 deadline.

For questions, please email Karalin Cronkhite at [kcronkhite@tax.state.nv.us](mailto:kcronkhite@tax.state.nv.us).

Sincerely,

Tyler Klimas, Deputy Executive Director  
Department of Taxation, Marijuana Enforcement Division

cc: David Pope, Senior Deputy Attorney General  
[amanda@connorpllc.com](mailto:amanda@connorpllc.com)