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Elizabeth A. Brown
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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

Supreme Court No. 79668

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

**MOTION TO EXPEDITE
APPEAL**

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.

Appellant Nevada Organic Remedies, LLC (“NOR”) respectfully requests that this Court expedite the briefing, oral argument, and resolution of this appeal pursuant to NRAP 2, 26(d), and 31(a).

INTRODUCTION

On August 23, 2019, Judge Elizabeth Gonzalez issued a Preliminary Injunction (the “Injunction”) that precludes the State of Nevada, Department of Taxation (the “Department”) from performing final inspections of the recreational marijuana establishments of some, but not all, recipients of conditional licenses. The recreational marijuana regulatory framework imposes deadlines for final inspections to be conducted by the Department, and if those deadlines are not met, the conditional licenses may be surrendered. Based on the standard schedule for briefing before this Court, the issue on appeal may be moot before the appeal would be decided. This appeal also concerns a matter of state-wide importance concerning the future of the entire Nevada recreational

marijuana industry, which requires immediate attention. Accordingly, this appeal should be briefed and decided on an expedited basis.

The Department also agrees that this appeal should be reviewed on an expedited basis, as it has recently submitted a filing in the district court stating that an expedited appeal is appropriate.

FACTUAL BACKGROUND

A. The Recreational Marijuana License Application Process

The initiative to legalize recreational marijuana, Ballot Question 2 (“BQ2”), was approved by Nevada citizens in 2016 and codified as NRS 453D. As the government agency charged with the implementation of the Nevada recreational marijuana program pursuant to NRS 453D.200(1), the Department accepted and graded applications for licenses to operate recreational marijuana establishments across the state of Nevada between September and December 2018. Because the Department received more applications than licenses available, the Department scored the applications and awarded conditional licenses to the highest-ranking applicants in each jurisdiction pursuant to NRS 453D.210. NOR was a successful applicant that received seven conditional licenses to operate establishments across Nevada.

After the Department announced the successful applicants, a number of unsuccessful applicants filed several lawsuits against the Department claiming that the licensing process was flawed and requesting that they be awarded licenses even though they had not received enough points to merit a license.

B. Judge Gonzalez Issues a Preliminary Injunction on Limited Grounds

In May 2019, Judge Gonzalez coordinated four of the licensing cases solely to hear motions for preliminary injunctions filed by several plaintiffs in the various lawsuits. The motions led to a four-month, pre-discovery evidentiary hearing where the Respondents combed through every action and decision made by the Department in an attempt to find problems in the process. The hearing started on May 24, 2019, and it did not conclude until Judge Gonzalez issued her decision on August 23, 2019.

As considered during that hearing, with respect to the requirement in NRS 453D.200(6) to conduct a background check for “each prospective owner,” the Department had adopted a regulation in NAC 453D.255(1) providing that with respect to “owners,” NRS Chapter 453D would “only apply to a person with an aggregate ownership interest of 5 percent or more in a marijuana establishment.” This regulation was often referred to as the “5% rule.”

The 5% rule serves to ensure that applicants—especially those that may be publicly traded companies—are not required to have background checks completed on hundreds or even thousands of nominal shareholders who have no real ability to control the company. The 5% rule was already part of the medical marijuana regulatory framework, as NAC 453A.302(1) had already included the same 5% limitation since 2014, and it was specifically requested by the industry and recommended by the Governor’s Task Force, which included principals of Respondents.

Eventually, Judge Gonzalez determined in her Findings of Fact and Conclusions of Law (“FFCL”) that the Department’s decision “to not require disclosure on the application

and to not conduct background checks on persons owning less than 5% prior to award of a conditional license is an impermissible deviation from the mandatory language of...NRS 453D.200(6),” and the regulation was “arbitrary and capricious.” (Ex. 1, ¶¶ 81, 82) She therefore concluded that the Department should be enjoined from conducting final inspections on any applicant that did not have 100% of its owners background checked pursuant to the 5% rule, and she looked to the disclosures of ownership in the license applications to determine whether or not each owner had been background checked. (*Id.* at pg. 24). Judge Gonzalez granted the preliminary injunction on that single legal issue.

C. An Irregular, Confusing Process Using “Tiers” Is Used to Determine the Scope of the Injunction

Before issuing the FFCL, Judge Gonzalez requested the Nevada Attorney General’s office, which represented the Department, to provide the court with a list of “[w]hich successful applicants completed the application in compliance with NRS 453D.200(6).”¹ The request was confusing not only because it appears to unjustifiably shift the burden of compliance with the requirements of NRS 453D.200(6) from the Department to the applicants, but also because at that point Judge Gonzalez had not yet interpreted the scope of NRS 453D.200(6). She had not determined whether the 5% rule violated the statute, nor had she given any guidance on how to define the terms of the statute, most notably, the term “owner,” or the term “prospective owner,” neither of which are defined in the statute itself.

¹ Transcript, Evidentiary Hearing, Day 20, August 20, 2019, at pg. 164 attached as Exhibit 2

In attempting to interpret Judge Gonzalez's request, the Attorney General's office appears to have anticipated her finding that the 5% rule should be invalidated and that Judge Gonzalez would look to the contents of the applications in order to determine whether the Department had complied with the background check requirements found in NRS 453D.200(6). The office replied with information that would interpret NRS 453D.200(6) more broadly than the Department had interpreted it in the past by sending Judge Gonzalez an email creating three "Tiers" and placing each successful applicant into one of three "Tiers." These Tiers included:

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

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

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

After receiving the Attorney General's email, Judge Gonzalez limited the scope of the Injunction to enjoining the Department from conducting final inspections only to those

entities listed in Tier 3. The injunction tied up 25 licenses and placed many of the other licenses on an unstable legal footing.²

In subjecting NOR to the injunction, Judge Gonzalez deferred entirely to the Attorney General's email, admitting it as a court exhibit. She did not elaborate on why NOR or the other Tier 3 applicants should be the only parties affected by the injunction. To this day, NOR remains unclear why it was placed in Tier 3, because it listed 100% of its owners in its applications.

NOR filed this appeal challenging the district court's determination that the 5% rule was "arbitrary and capricious" and was an "impermissible deviation" from the language of BQ2.

ARGUMENT

A. Expedited Review Is Necessary for Relief to Be Obtained Prior to Upcoming Regulatory Deadlines

Pursuant to NRAP 2, this Court may "expedite its decision" or "suspend any provision of these Rules in a particular case and order proceedings as the court directs." Good cause exists to expedite this appeal, as expedited briefing and review would serve the public interest, including the interests of the parties directly involved. *See, Huckabay Properties, Inc. v. NC Auto Parts, LLC*, 130 Nev. Adv. Op. 23, 322 P.3d 429, 430 (2014) (noting "the public's interest in expeditious resolution of appeals"); *City of*

² Many of the licensees that allegedly included all of their owners in their applications and are not subject to the injunction later transferred ownership to publicly traded companies and may have taken advantage of the 5% rule in obtaining transfer approval. Until this Court hears and resolves the appeal, the fates of the licenses held by these licensees also remain unresolved.

Las Vegas v. Int’l Ass’n of Firefighters, Local # 1285, 110 Nev. 449, 451, 874 P.2d 735, 737 (1994) (explaining that it “is a matter of the utmost concern to this court, to litigants in general, and to this State’s citizens” that “appeals proceed to finality in an expeditious fashion”).

Absent expedited review, numerous successful conditional licensees may lose those licenses merely because of the passage of time. Under NAC 453D.295(1), conditional licensees are required to receive a final inspection on their recreational marijuana establishments “within 12 months after the date on which the Department issued a license to the marijuana establishment.” If the inspection is not received, “the marijuana establishment must surrender the license to the Department.” *Id.*

The deadline for final inspections was originally December 4, 2019, but the Department has recently issued a short extension of this deadline to June 5, 2020. (Exhibit 4). With the Court’s standard briefing schedule of opening briefs being due within 120 days of docketing, this matter would not be heard and decided prior to June 5, 2020. And even if this matter could be heard and decided just prior to June 5, 2020, the entire purpose of the appeal would be thwarted, as conditional licensees such as NOR have considerable work to perform in order to receive final approvals, obtain permits, and complete all tasks—such as hiring employees and building out space—that are necessary to complete before opening. This work will take several months. (*See* Wiegand Declaration filed concurrently in support of Motion to Suspend Injunction Pending Appeal.) Accordingly, unless expedited relief is provided, NOR and other

conditional licensees stand to lose these valuable conditional licenses due solely to the passage of time.

B. An Expedited Appeal is Necessary to Ensure a Speedy Resolution to an Issue of State-Wide Public Importance

Under NRS 453D.210(1) and (4), the Department is directed to begin receiving applications for recreational marijuana establishment licenses by January 1, 2018, and is further directed to allocate licenses within 90 days after applications are submitted. These deadlines communicate a significant public interest in the prompt regulation and incorporation of recreational marijuana into the marketplace. Those deadlines passed long ago, and the entire market in Nevada remains in flux due to the issues of this appeal. Not only are 25 licenses now completely removed from the market—including some licenses in more rural jurisdictions that do not now have access to the product—but many others are potentially subject to revocation under Judge Gonzalez’s order regarding the 5% rule. Until this Court decides the appeal, the desire of the voters of this state to have maintainable access to recreational marijuana cannot be fulfilled, and many of those who have been awarded licenses cannot operate. It is therefore imperative that this appeal be heard as soon as reasonable as an issue of state-wide importance.

C. The Department Agrees that Expedited Review Is Necessary

While the appeal of the Injunction is pending, the underlying actions are moving forward. In a recent filing in which NOR asked the district court to issue a writ of mandamus directing the Department to move NOR to Tier 2 based on the facts of its application, the Department confirmed to the district court that expedited relief of this

appeal would be appropriate. Pointing to this appeal as a “legal remedy” that limits the need for mandamus in the district court, the Department agreed that “**NOR can ask the Supreme Court to expedite its appeal** or file an emergency motion with the Nevada Supreme Court.” (Ex. 4 (emphasis added).) The Department certainly understands the need for expedited relief, especially as the Injunction is directed to the Department and limits its ability to act.

D. Requested Briefing and Argument Schedule

NOR therefore requests that this matter be heard with the following schedule:

1. Appellants’ opening briefs will be due 20 calendar days after the date on which the Court grants this motion.
2. Respondents’ answering briefs will be due 20 calendar days after the date on which the opening brief is filed.
3. Appellants’ reply briefs will be due 10 calendar days after the date on which answering briefs are filed.
4. Oral argument to be heard as soon as possible at the Court’s earliest availability.

This proposed briefing schedule substantially shortens the time in which Appellants have to file their opening brief, shortens the time in which Respondents have to file their answering briefs by 16 days, and shortens the time in which the Appellants have to file their reply briefs by 23 days. See NRAP 31(a)(1). If an alternative schedule be preferred—including a shorter time frame—counsel will comply with any schedule the Court may order.

CONCLUSION

For the foregoing reasons, NOR respectfully requests that this Court expedite review of this appeal, and that the Court order that: the opening brief shall be due 14 days after the Court's order granting this motion; the answering brief shall be due 14 days after the opening brief is filed; and the reply brief shall be due 7 calendar days after the answering brief is filed, with oral argument to follow.

KOCH & SCOW, LLC

/s/ David R. Koch

David R. Koch

Attorneys for Nevada Organic Remedies LLC

DECLARATION OF BRODY WIGHT

I, Brody R. Wight, make this declaration in support of Appellant Nevada Organic Remedies, LLC's ("NOR") Motion to expedite the briefing, oral argument, and resolution of this appeal pursuant to NRAP 2, 26(d), and 31(a):

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 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 29th day of October, 2019.

/s/ Brody R. Wight
BRODY R. WIGHT, ES

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **MOTION TO EXPEDITE APPEAL** with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on October 29, 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

Steven D. Grierson

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

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
WELLNESS CENTER, LLC, a Nevada limited
liability company, GBS NEVADA PARTNERS,
LLC, a Nevada limited liability company,
FIDELIS 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, DOE PLAINTIFFS I
through X; and ROE ENTITY PLAINTIFFS I
through X,

Plaintiff(s),

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

ADG 20 2019

RECEIVED

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

4 Intervenor.

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;¹ 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

25 ¹ Although a preservation order was entered on December 13, 2018, in A785818, no discovery in any case was done
26 prior to the commencement of the evidentiary hearing, in part due to procedural issues and to statutory restrictions on
27 disclosure of certain information modified by SB 32 just a few days before the commencement of the hearing. As a result,
28 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,² 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 ² 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 DoI'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.³

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 ³ 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
Compassionate Team: 5/17; Joinder to Motion by ETW: 5/6 (filed in A787004); and Joinder to Motion by Nevada
24 Wellness: 5/10 (filed in A787540)); Opposition by the State filed 5/9/19 (Joinder by Essence/Thrive Entities: 5/23);
Opposition by Nevada Organic Remedies: 5/9 (Joinder by Lone Mountain: 5/13; Joinder by Helping Hands: 5/21; and
25 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:
26 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);⁴ those provisions with which the DoT was granted some discretion in implementation;⁵ 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 ⁴ 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 ⁵ 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.⁶

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;

⁶ 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 BQ2.⁷

⁷ 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.⁸

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

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

20 There was Task Force dissent on the recommendation. The concern with this recommendation was that by
21 changing the requirements on fingerprinting and background checks, the state would have less knowledge of when
an owner, officer, and board member commits an offense not allowed under current marijuana law, potentially
creating a less safe environment in the state.
at 2515-2516.

22 8
23 Those provisions (a portion of which became NRS 453D.205) are consistent with BQ2:

24 1. When conducting a background check pursuant to subsection 6 of NRS 453D.200, the Department may
25 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.

26 2. When determining the criminal history of a person pursuant to paragraph (c) of subsection 1 of NRS
27 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
28 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.268.⁹

4
5 ⁹ 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

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

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

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

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

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

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

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

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

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

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

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

14 (c) A resume.

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

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

17 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.

18 9. A financial plan which includes, without limitation:

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

20 (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

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

22 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;

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

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

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

26 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.

27 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.

18 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, 2018.¹⁰

27 ¹⁰ 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
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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.¹¹

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

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

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

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

23
24 40. The DoT created a Regulation that modified the mandatory BQ2 provision "[t]he
25 Department shall conduct a background check of each prospective owner, officer, and board member of
26 a marijuana establishment license applicant" and determined it would only require information on the
27

28 ¹¹ 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

15 43. The limitation of "unreasonably impracticable" in BQ2¹² does not apply to the
16 mandatory language of BQ2, but to the Regulations which the DoT adopted.

17 44. The adoption of NAC 453D.255(1), as it applies to the application process is an
18 unconstitutional modification of BQ2.¹³ The failure of the DoT to carry out the mandatory provisions
19 of NRS 453D.200(6) is fatal to the application process.¹⁴ 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 ¹² 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 ¹³ For administrative and regulatory proceedings other than the application, the limitation of 5% or greater ownership
27 appears within the DoT's discretion.

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

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

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

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25 ¹⁵ 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
TRNV098 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.¹⁶

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).

¹⁶ 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

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

10 62. In *City of Sparks v. Sparks Mun. Court*, the Supreme Court explained, "[a]s a
11 constitutional violation may be difficult or impossible to remedy through money damages, such a
12 violation may, by itself, be sufficient to constitute irreparable harm." 129 Nev. 348, 357, 302 P.3d
13 1118, 1124 (2013).

14 63. Article 19, Section 2 of the Constitution of the State of Nevada provides, in pertinent
15 part:
16

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

21 3. If the initiative petition proposes a statute or an amendment to a statute, the person who
22 intends to circulate it shall file a copy with the secretary of state before beginning circulation
23 and not earlier than January 1 of the year preceding the year in which a regular session of the
24 legislature is held. After its circulation, it shall be filed with the secretary of state not less than
25 30 days prior to any regular session of the legislature. The circulation of the petition shall cease
26 on the day the petition is filed with the secretary of state or such other date as may be prescribed
27 for the verification of the number of signatures affixed to the petition, whichever is earliest. The
28 secretary of state shall transmit such petition to the legislature as soon as the legislature
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.¹⁷ 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 ¹⁷ 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.¹⁸
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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26
27 ¹⁸ 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

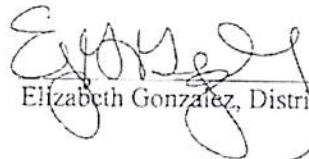
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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.¹⁹

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 23rd 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

¹⁹ 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

Steven D. Grierson

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,
et al.

Plaintiffs

vs.

STATE OF NEVADA DEPARTMENT OF
TAXATION

Defendant
* * * * *

CASE NO. A-19-786962-B

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 20

FRIDAY, AUGUST 16, 2019

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

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 Dept111LC@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, rgral@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, Bull, Adam K. ABull@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, tl@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
Clark County, NV

T: (702) 671-4377
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; rgraf@blacklobello.law; bhiggins@blacklobello.law; alina@nvlitigation.com; Work; Eric Hone, Esq. (eric@h1lawgroup.com); jamie@h1lawgroup.com; moorea@h1lawgroup.com; jkahn@jk-legalconsulting.com; dkoch@kochscow.com; sscow@kochscow.com; Bult, Adam K.; tchance@bhfs.com; a.hayslett@kempjones.com; Nathanael Rulis, Esq. (n.rulis@kempjones.com); tparker@pnalaw.net; Fetaz, Maximilien; phil@hymansonlawnv.com; shane@lasvegaslegalvideo.com; joe@lasvegaslegalvideo.com; Pat Stoppard (p.stoppard@kempjones.com); jdelcarmen@pnalaw.net; Kutinac, Daniel; ShaLinda Creer; Tanya Bain; Karen Wiehl (Karen@HymansonLawNV.com); Kay, Paula; Dennis Prince (dprince@thedplg.com); tlb@pisanellibice.com; 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; rgraf@blacklobello.law; bhiggins@blacklobello.law; alina@nvlitigation.com; Work; Eric Hone, Esq. (eric@h1lawgroup.com); jamie@h1lawgroup.com; moorea@h1lawgroup.com; jkahn@jk-legalconsulting.com; dkoch@kochscow.com; sscow@kochscow.com; Bult, Adam K.; tchance@bhfs.com; a.hayslett@kempjones.com; Nathanael Rulis, Esq. (n.rulis@kempjones.com); tparker@pnalaw.net; Fetaz, Maximilien; phil@hymansonlawnv.com; shane@lasvegaslegalvideo.com; joe@lasvegaslegalvideo.com; Pat Stoppard (p.stoppard@kempjones.com); jdelcarmen@pnalaw.net; Kutinac, Daniel; ShaLinda Creer; Tanya Bain; Karen Wiehl (Karen@HymansonLawNV.com); Kay, Paula; Dennis Prince (dprince@thedplg.com); tlb@pisanellibice.com; 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 Shevorsi
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: Thursday, August 15, 2019 8:23 AM

To: 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>; Steven G. Shevorsi <SShevorsi@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>

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: 702.486.1375

.....
F: (702) 671-4377

EXHIBIT 4

EXHIBIT 4



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

STATE OF NEVADA
DEPARTMENT OF TAXATION

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

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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.

Sincerely,

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

cc: David Pope, Senior Deputy Attorney General
amanda@connorpllc.com