IN THE SUPREME COURT OF THE STATE OF NEVADA

GREENMART OF NEVADA NLV LLC, a Nevada limited liability company; NEVADA ORGANIC REMEDIES, LLC; and LONE MOUNTAIN PARTNERS, LLC, a Nevada limited liability company,

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 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; MEDIFARM IV LLC, a Nevada limited liability company; and THE STATE OF NEVADA DEPARTMENT OF TAXATION,

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

SUPREME COURT CASE NO: 79668

DISTRICT COURT CASE NO.: A785818

MOTION TO SUSPEND PRELIMINARY INJUNCTION PENDING APPEAL

Appellant GreenMart of Nevada NLV, LLC ("GreenMart"), hereby moves this Court pursuant to Nev. R. App. P. 8(a)(2) to suspend the preliminary injunction issued by the district court against the State of Nevada, Department of Taxation (the "Department") pending the appeal of the preliminary injunction.

I. INTRODUCTION

On August 23, 2019, the Honorable Judge Elizabeth Gonzalez issued a preliminary injunction (hereinafter the "Injunction") enjoining the Department from conducting final inspections of some—but not all—recreational marijuana establishments. (*See* Exhibit ("Exh.") 1.) GreenMart will be irreparably harmed by the Injunction because the Injunction prevents GreenMart from perfecting the four conditional licenses it was awarded and may cause GreenMart to lose those conditional licenses altogether. Given the irreparable harm this would cause to GreenMart, the lack of any comparable harm to Respondents, and GreenMart's likelihood of prevailing on appeal, this Court should suspend the Injunction pending resolution of this appeal.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Relevant Facts Regarding September 2018 Application Period

On November 8, 2016, Nevada voters passed the Regulation and Taxation of Marijuana Act (the "Act") (Ballot Question 2), an act which legalized the purchase, possession, and consumption of recreational marijuana for adults 21 and older. The

Department was to adopt regulations necessary to carry out the Act, including regulations that set forth the "[p]rocedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment" and "[q]ualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment." Nev. Rev. Stat. § 453D.200(1)(a)-(b). Pursuant to Nev. Rev. Stat. § 453D.210(2), for the first 18 months after the Department began to receive applications for marijuana establishments, the Department could only accept applications for licenses for marijuana establishments from "from persons holding a medical marijuana establishment registration certificate pursuant to chapter 453A of NRS."

On January 16, 2018, the Nevada Tax Commission unanimously approved permanent regulations ("Approved Regulations"). LCB File No. R092-17. The Approved Regulations went into effect on February 27, 2018. Thereafter, on August 16, 2018, the Department issued a Notice of Intent to Accept Applications ("Notice") for sixty-four (64) recreational marijuana retail store licenses, which are to be located throughout various jurisdictions in Nevada. The Notice required that all applications be submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018. Pursuant to section 80 of the Approved Regulations, if the Department received more than one complete and qualified application for a license the Department would rank all applications within each jurisdiction from first to last

based on compliance with NRS § 453D and the Approved Regulations. R092-17, Sec. 80. The Department is then required to go down the list and issue the highest scoring applicants the available licenses. *Id.*

GreenMart, which was a medical marijuana license holder at the time of the September 2018 Application period, submitted applications to the Department consistent with the requirements of the Approved Regulations.

B. Relevant Facts Regarding the District Court Proceedings

On December 5, 2018, after the Department received and graded applications for licenses to open recreational marijuana establishments, it allocated conditional licenses to winning applicants pursuant to Nev. Rev. Stat. § 453D.210, including GreenMart, which was awarded four conditional licenses. Shortly thereafter, several losing applicants (including the respondents in the instant appeal and Appeal Nos. 79669, 79670, 79671, 79672, and 79673) brought suit against the Department in several different cases. GreenMart and several other winning applicants moved to intervene.

When the plaintiffs in the various cases filed motions for preliminary injunctions, the cases were coordinated in front of the Honorable Elizabeth Gonzalez for the purpose of holding an evidentiary hearing. Although the plaintiffs in the various cases had made a variety of different arguments in support of their requests for preliminary injunctions, in the end the court focused on a single issue that none

of the plaintiffs had raised. Specifically, the court held that the Department's adoption of NAC 453D.255(1) was "arbitrary and capricious" and was an "impermissible deviation" from Nev. Rev. Stat. § 453D.200(6) as it did not require the Department to conduct background checks on nominal owners with an ownership interest of less than 5% in some successful applicants.

At the conclusion of the evidentiary hearing, the district court instructed counsel for the Department to provide the court with information regarding "which of the successful applicants . . . complied with the statute, as opposed to the Department's administrative change to the statute which limited it to a 5 percent or greater ownership interest." (Exh. 2, pp. 164:25-165:6.) The district court did not ask the Department to provide the same information for any of the losing applicants.

The Department provided the district court with the requested information via email on August 21, 2019. (Exh. 3.) Over GreenMart's objections (Exh. 4), the district court relied on the Department's email and enjoined the Department from conducting necessary final inspections on certain marijuana establishments—including GreenMart—based on the potential application of the background check statute and regulations. (Exh. 1, p. 24.)

C. Relevant Facts Regarding the Instant Appeal

GreenMart filed a timely Notice of Appeal from the district court's order on September 19, 2019, as did Nevada Organic Remedies, LLC ("NOR"), another

winning applicant which intervened in the district court proceedings. On September 27, 2019, NOR filed a motion requesting that the district court suspend the Injunction pending appeal; GreenMart timely filed a joinder to that motion on October 2, 2019. (Exh. 5; *see also* Exh. 6 (supplement to joinder).) Subsequently, on October 28, 2019, NOR filed a Motion to Suspend the Preliminary Injunction Issued Against the State of Nevada, Department of Taxation Pending Appeal, Pursuant to NRAP 8. (Doc. No. 19-44338.) To the extent that this Court's rules or practice permit joinder, GreenMart joins in that motion, and presents the following additional arguments demonstrating why suspension of the Injunction pending appeal is required.

III. ARGUMENT

A. Each of the NRAP 8(c) Factors Favors Suspending the Injunction

This Court considers four factors in deciding whether to issue a stay: (1) "whether the object of the appeal will be defeated if the stay is denied;" (2) "whether appellant will suffer irreparable or serious injury if the stay is denied;" (3) "whether respondent will suffer irreparable or serious injury if the stay is granted;" and (4) "whether appellant is likely to prevail on the merits in the appeal." Nev. R. App. P. 8(c). As detailed below, each of these factors weighs in favor of a stay. However, this Court has "not indicated that any one factor carries more weight than the others," and instead "recognizes that if one or two factors are especially strong, they may

counterbalance other weak factors. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citing *Hansen v. District Court*, 116 Nev. 650, 6 P.3d 982 (2000)).

Moreover, suspending the Injunction pending appeal is especially appropriate because the district court's order would thwart the public interest, which courts have considered in evaluating stay requests. For example, in *Hilton v. Braunskill*, 481 U.S. 770 (1987), the United States Supreme Court held that the standard for stays pending appeals requires appellate courts to consider "where the public interest lies" separately from and in addition to "whether the applicant [for stay] will be irreparably injured absent a stay." *Id.* at 776; *accord Nat. Res. Def. Council, Inc. v. Winter*, 502 F.3d 859, 863 (9th Cir. 2007).

1. The Object of GreenMart's Appeal Will be Defeated and GreenMart Would Be Irreparably Harmed if the Injunction is Not Suspended.

The first factor for this Court to consider under NRAP 8(c) is whether the object of the appeal will be defeated if the stay is denied. The second NRAP 8(c) factor is whether the appellant (in this instance, GreenMart) will suffer irreparable injury if the stay is denied. Because these factors are related and strongly weigh in favor of a stay, these two factors are analyzed collectively.

If the Injunction is not stayed, GreenMart could lose all of the licenses it successfully applied for, thereby defeating the object of GreenMart's appeal and

causing GreenMart irreparable harm. Since the Department awarded GreenMart four conditional licenses to operate retail marijuana dispensaries, GreenMart has been working towards perfecting those licenses by working to secure suitable locations, hire employees, and prepare for the final inspections the Department is currently enjoined from performing. (Exh. 6.) If the Injunction remains in place, all of GreenMart's efforts and the substantial resources it has expended to obtain and perfect its conditional licenses will have been in vain, thereby irreparably harming GreenMart.

Moreover, unlike Respondents, GreenMart has a protected property interest in the four licenses it was awarded. *See Burgess v. Storey Cty. Bd. of Comm'rs*, 116 Nev. 121, 124, 992 P.2d 856, 858 (2000) ("A protected property interest exists when an individual has a reasonable expectation of entitlement derived from 'existing rules or understandings that stem from an independent source such as state law.'") (citing *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)). If the Injunction is not suspended pending appeal, GreenMart may be permanently deprived of property in which it has a protected interest. *See State, Dept. of Bus. & Indus. v. Check City*, 130 Nev. 909, 914 n.5 337 P.3d 755, 758 n.5 (2014) (holding that "the possibility of a license suspension . . . may constitute irreparable harm for the purpose of granting a preliminary injunction"). Accordingly, the first two factors of the NRAP 8(c) analysis weigh in favor of a stay.

2. Respondents Will Not Suffer Any Irreparable Harm From a Suspension of the Injunction

Unlike GreenMart, Respondents will not suffer irreparable harm—or any harm at all—if the injunction is suspended. Indeed, not even the district court's findings of fact and conclusions of law identify any specific harm any part will suffer. Indeed, the district court's order is devoid of any assessment of harm except for a conclusion that the Department "will suffer only minimal harm as a result of the injunction." (Exh. 1, p. 23, ¶ 89.)

The only "harm" Respondents have identified is a speculative loss of their "market share." This sort of speculative harm, however, is not sufficient to justify the issuance of an injunction. *See, e.g.*, *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) ("Speculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction.") (citation omitted); *accord Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1022 (9th Cir. 2016). Moreover, even if a possible loss to "market share" was a cognizable basis for issuing the Injunction, Respondents have not proffered any evidence of this alleged loss. Because Respondents have not demonstrated any harm that they will suffer in the absence of the Injunction, this factor tips strongly in favor of GreenMart.

3. GreenMart is Likely to Prevail on Appeal.

GreenMart has several strong arguments as to why the district court's Injunction is improper. It only needs to prevail on one. As noted above, NOR has

filed a similar motion seeking to suspend the injunction pending appeal. In its motion, NOR outlines several reasons why it is likely to prevail on appeal, including that the Department's adoption of NAC 453D.255(1) was reasonable (NOR Motion, pp. 7-9) and that Respondents lack standing to challenge the Department's implementation of Nev. Rev. Stat. § 453D.200(6). (*Id.*, pp. 9-10.) GreenMart joins in those arguments and presents the following additional reasons why it—and by extension the other appellants in this matter—is likely to prevail on appeal.

a. The Injunction Should Be Vacated Because the Court Misinterpreted the Statutory Scheme and Replaced Its Judgment for the Department's.

The voters' intent in passing Ballot Question 2—the ballot question which led to the legalization of recreational marijuana—was to protect the public's interest in "public health and safety" and to "better focus state and local law enforcement resources on crimes involving violence and personal property." Nev. Rev. Stat. § 453D.020(1). To effectuate to these important goals, Nev. Rev. Stat. § 453D.200(1) grants the Department the authority to "adopt all regulations necessary or convenient" to implement the State's recreational marijuana program, so long as the regulations "do not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable." Nev. Rev. Stat. § 453D.200(1). Accordingly, the Department properly exercised its discretion in implementing NAC 453D.255(1), which provides that the background checks

mandated by Nev. Rev. Stat. § 453D.200(6) would "only apply to a person with an aggregate ownership interest of 5 percent or more in a marijuana establishment." NAC 453D.255(1).

Despite the clear guidance from Nevada voters, and despite testimony from witnesses at the evidentiary hearing—including testimony from Deonne Contine, the former Director of the Department—that requiring background checks of every shareholder of a publicly-traded company that had a minority ownership interest in an applicant would be both impracticable and effectively impossible, the district court substituted its judgment for that of the Department and held that the Department's conclusion that requiring background checks of every owner is not "unreasonably impracticable" (*see* Exh. 1, p. 22, ¶ 83) and that the 5% rule was "unreasonable, inconsistent with [Ballot Question 2] and outside of any discretion permitted to the [Department]." In so ruling, the district court effectively substituted its own judgment for that of the Department.

This was clear error. As explained in this Court's decision in *Nuleaf*, a district court must defer to an administrative agency's interpretation of a statute "unless it conflicts with the constitution or other statutes, exceeds the agency's powers, or is otherwise arbitrary and capricious." *Nuleaf CLV Dispensary, LLC v. State Dep't of Health & Human Servs., Div. of Pub. & Behavioral Health*, 134 Nev. 129, 133, 414 P.3d 305, 308 (2018) (quoting *Cable v. State ex rel. Emp'rs Ins. Co. of Nev.*, 122 Nev.

120, 126, 127 P.3d 528, 532 (2006)); *see also Desert Aire Wellness, LLC v. GB Scis.*, LLC, 416 P.3d 1055 (Nev. 2018) (reversing the district court and finding, consistent with *Nuleaf* that "allowing the Department to issue a provisional registration certificate before an applicant receives local government approval does not supersede local oversight of MMEs and does not conflict with the statute's plain language or the legislative intent"). Further, this Court recognized in *Nuleaf* that it "must afford great deference to the Department's interpretation of a statute that it is tasked with enforcing when the interpretation does not conflict with the plain language of the statute or legislative intent." *Nuleaf,* 134 Nev. at 136, 414 P.3d at 311 (citation omitted).

Moreover, given that the statutory scheme at issue here is so new, the Department's discretion in interpreting and implementing the scheme is at its apex. Courts have recognized that deference to an agency is "heightened where . . . the regulations at issue represent the agency's initial attempt at interpreting and implementing a new regulatory concept." *Texaco, Inc. v. Dep't of Energy*, 663 F.2d 158, 165 (D.C. Cir. 1980) (quotation and parentheticals omitted). This is so because administrative agencies are often presented with statutory schemes that contain gaps or contradictions. Thus, administrative agencies such as the Department are vested with the authority to fill the gaps and reconcile statutory contradictions consistent with the power vested in them by the Legislature to best carry out the statutory purpose. *See Atwell v. Merritt Sys. Prot. Bd.*, 670 F.2d 272, 282 (D.C. Cir. 1981) (agency is

empowered to reconcile arguably conflicting statutory provisions, and the court's role is limited to ensuring that the agency effectuated an appropriate harmonization within the bounds of its discretion). Here, the statutory purpose the Department is tasked with carrying out is ensuring that persons aged 21 and over have access to safe, legal marijuana and focus law enforcement resources on crimes involving violence and personal property.

Given this Court's guidance regarding deference to agencies, the extreme relief issued by the district court was improper. The purpose of a preliminary injunction is to "preserve the status quo ante litem pending a determination of the action on the merits." *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1024 (9th Cir. 2016) (quotation omitted). Here, the district court's issuance of a preliminary injunction does not maintain the status quo; rather, it undermines the Department's interpretation and implementation of the statutory scheme. This was error, as a court cannot exercise its equitable powers in conflict with a statute. *See State, Victims of Crime Fund v. Barry*, 106 Nev. 291, 292-93, 792 P.2d 26, 27-28 (1990) (court cannot "grant a remedy which contradicts the statute").

b. GreenMart Complied with the Department's Regulation and Submitted 100% of its Ownership.

In its application, GreenMart listed 100% of its owners, all of whom had previously been vetted and approved by the Department. GreenMart is only affected by the district court's injunction because of its improper decision to direct the

Department to provide it with information only about GreenMart and other successful applicants. By relying only on the email from the Department's counsel, the district court allowed GreenMart to be subject to the Injunction without an explanation as to why. This was an abuse of discretion.

GreenMart is now subject to the injunction—and therefore stands to lose all four of the conditional licenses it was awarded—based solely on the district court's improper assumption that the phrase "prospective owner" in Nev. Rev. Stat. § 453D.200(6) includes not just the *actual* owners of an LLC, but also any indirect owners of a parent company of one of the owners of the applicant. Nev. Rev. Stat. § 453D.200 does not provide such a framework, and the Injunction is completely devoid of any discussion of this issue.

c. The District Court Failed to Articulate What—If Any—Irreparable Harm the Respondents Would Suffer if the Injunction Was Denied.

This Court has repeatedly held that for a preliminary injunction to issue, the moving party must demonstrate (1) likelihood of success on the merits, and (2) that the nonmoving party's conduct would cause irreparable harm for which there is no adequate remedy at law. *Dangberg Holdings v. Douglas Co.*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999). Injunctive relief is extraordinary relief, and the irreparable harm must be articulated in specific terms by the issuing order or be sufficiently apparent elsewhere in the record. *Id.*; *accord Dep't of Conservation & Nat. Res.*,

Div. of Water Res. v. Foley, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). Similarly, in *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 775–76 (1990), this Court held that an injunctive order would be nullified "wherever the reasons for the injunction are not readily apparent elsewhere in the record, or appellate review is otherwise significantly impeded due to lack of a statement of reasons."

The district court's order regarding the Injunction in this case failed to comport with this guidance. Indeed, as discussed below, other than a passing consideration of the harm issuance of the Injunction would cause the Department, the district court's order is strikingly devoid of any findings that Respondents would be harmed if the Injunction did not issue. Given this Court's explicit guidance that such a finding must be specifically articulated in the issuing order and or must otherwise be "readily apparent" in the record, the Injunction is unlikely to survive appellate review.

d. The District Court Failed to Address Whether GreenMart Would Be Harmed By the Entry of a Preliminary Injunction.

Relatedly, GreenMart is also likely to prevail on appeal in this case because, in entering the preliminary injunction, the district court failed to consider whether GreenMart and the other intervening applicants would be harmed by the entry of an injunction. In issuing the Injunction, the district court only briefly touched on the potential harm the Department (*see* Exh. 1, ¶¶ 89), but did not address the hardships

an injunction would impose on GreenMart and the other intervenors and did not address what impact an injunction would have on the public's interest. This was clear, reversible error. This Court has held that "[i]n considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest*." Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004) (citing *Clark Co. School Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996)). The district court's failure to consider the potential hardships the Injunction would cause for GreenMart and its failure to consider the potential harm to the public's interest therefore was an abuse of discretion.

e. The District Court Deprived GreenMart of Due Process By Ordering the Department to Provide Information Only About Winning Applicants' Compliance with Nev. Rev. Stat. § 453D.200(6) But Not Requiring Similar Information About Respondents' Compliance.

As discussed above, at the close of the evidentiary hearing, the district court ordered the Department to provide it with information regarding which successful applicants complied with Nev. Rev. Stat. § 453D.200(6) but did not require the Department to provide the same information regarding losing applicants. Due process and equity demands that if the district court considered winning applicants' compliance with Nev. Rev. Stat. § 453D.200(6), it should have also considered the Respondents' and other losing applicants' compliance with the same provision. This

is particularly salient given that the applications of several Respondents may suffer from the same perceived deficiency. The district court's failure to do so deprived GreenMart of due process. Thus, GreenMart is likely to prevail in the instant appeal.

f. The District Court's Interpretation of Nev. Rev. Stat. § 453D.200(6) Could Lead to Absurd and Unreasonable Results.

Statutes must be interpreted to avoid absurd or unreasonable results, even if it means rejecting a literal interpretation of the plain language a statute. *Newell v. State*, 131 Nev. 974, 977, 364 P.3d 602, 604 (2015) (quoting *State v. Friend*, 118 Nev. 115, 120, 40 P.3d 436, 439 (2002) ("[W]hen the 'literal, plain meaning interpretation' leads to an unreasonable or absurd result, this court may look to other sources for the statute's meaning"); *see also State v. White*, 130 Nev. 533, 536, 330 P.3d 482, 484 (2014) ("statutory construction should always avoid an absurd result") (quotation omitted).

The district court's literal interpretation of Nev. Rev. Stat. § 453D.200(6), however, would lead to absurd results that would affect the entire legal recreational marijuana industry. Taking the district court's interpretation to its logical end, any licenses transfers to publicly traded companies would have to be unwound—including transfers which were approved by the Department after the December 5, 2018 award of licenses to applicants—and effectively no public companies in the Nevada could own or operate any marijuana business.

g. The Doctrines of Laches and Estoppel Warrant Reversal.

Respondents did not challenge the regulations or the application and only raised concerns once they failed to perform in the application process. Thus, they should not have been permitted below to raise arguments that the regulations or application are invalid. As this Court has explained,

> Laches is an equitable doctrine which may be invoked when delay by one party works to the disadvantage of the other, causing a change of circumstances which would make the grant of relief to the delaying party inequitable… Thus, laches is more than a mere delay in seeking to enforce one's rights; it is a delay that works to the disadvantage of another…The condition of the party asserting laches must become so changed that the party cannot be restored to its former state.

Carson City v. Price, 113 Nev. 409, 412, 934 P3d 1042, 1043 (1997) (quotations omitted).

B. The Court Should Also Consider the Public Interest in Suspending the Injunction.

Additionally, suspending the Injunction is especially appropriate in this matter because it would thwart the public interest, a factor courts have considered in evaluating stay requests. *See, e.g. Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (that the standard for stays pending appeals requires a court to consider "where the public interest lies" separately from and in addition to "whether the applicant [for stay] will be irreparably injured absent a stay").

This Court recognizes that a statute should be interpreted in light of the spirit of the law and public policy even if such an interpretation violates the plain language

of the statute. If "a statute's language is clear and unambiguous, it must be given its plain meaning, unless doing so violates the spirit of the act." *Griffith v. Gonzales-Alpizar*, 132 Nev. 392, 394, 373 P.3d 86, 87–88 (2016) (quotation omitted); *see also Desert Valley Water Co. v. State, Engineer*, 104 Nev. 718, 720, 766 P.2d 886, 886–87 (1988) ("The words of the statute should be construed in light of the policy and spirit of the law, and the interpretation made should avoid absurd results.").

In this instance the public has explicitly stated that, "[i]n the interest of public health and public safety, and in order to better focus state and local law enforcement resources on crimes involving violence and personal property, the People of the State of Nevada find and declare that the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated similar to other legal businesses." Nev. Rev. Stat. § 453D.020(1). The public has further stated that "[t]he People of the State of Nevada find and declare that the cultivation and sale of marijuana should be taken from the domain of criminals and be regulated under a controlled system, where businesses will be taxed and the revenue will be dedicated to public education and the enforcement of the regulations of this chapter."

Owners with a less than 5% interest in a company are not making decisions on behalf of the company and do not have the ability to control the day-to-day business of the company. In effect, they have extremely minimal to no impact on public health and safety, and a background check on those owners is of no practical

value. On the other hand, requiring background checks on those individuals would chill publicly traded companies from applying for licenses. As a result, some of the best qualified candidates who would best protect the public interest may not even apply for a license, and if they did, they could not reasonably obtain one. Such a reading goes against the clear spirit of the statute and public policy. Accordingly, the granting of the preliminary injunction based on the 5% rule is likely to be overturned on appeal.

DATED this the 8th day of November, 2019.

/s/ Alina M. Shell

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION TO SUSPEND PRELIMINARY INJUNCTION PENDING APPEAL was filed electronically with the Nevada Supreme Court on the 8th day of November, 2019. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Michael V. Cristalli, Dominic P. Gentile, Ross J. Miller, and Vincent Savarese, III
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/s/ Pharan Burchfield
Employee of McLetchie Law

EXHIBIT 1

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

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

Intervenors.

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

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

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

PROCEDURAL POSTURE

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

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

a. Enjoin the denial of Plaintiffs applications;

b. Enjoin the enforcement of the licenses granted;

c. Enjoin the enforcement and implementation of NAC 453D;

[2] The findings made in this Order are preliminary in nature based upon the limited evidence presented after very 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.

d. An order restoring the *status quo ante* prior to the DoT's adoption of NAC 453D; and

e. Several orders compelling discovery.

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

PRELIMINARY STATEMENT

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

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

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[3] The complaints filed by the parties participating in the hearing seek declaratory relief, injunctive relief and writs of mandate, among other claims. The motions and joinders seeking injunctive relief which have been reviewed by the Court in conjunction with this hearing include:

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 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 Joinder by Essence/Thrive Entities: 5/23). Application for TRO on OST filed 5/9/19 (Joinder by Compassionate Team: 5/17; and Joinder by ETW: 5/10 (filed in A787004)); Opposition by Nevada Organic Remedies: 5/9 (Joinder by Clear River: 5/9); Opposition by Essence/Thrive Entities: 5/10 (Joinder by GreenMart: 5/10; Joinder by Lone Mountain: 5/11; and Joinder by helping Hands: 5/12).

A785818-W MM Development: MM Plaintiffs' Motion for Preliminary Injunction or Writ of Mandamus filed 5/9/19 (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)).

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

FINDINGS OF FACT

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

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[4] Article 19, Section 2(3) provides the touchstone for the mandatory provisions:

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

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

> . . . the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:
>
> (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;
>
> (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;
>
> (c) Requirements for the security of marijuana establishments;
>
> (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;
>
> (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.

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

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

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

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

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

6. BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.[6]

7. BQ2 specifically identified regulatory and public safety concerns:

> The People of the State of Nevada proclaim that marijuana should be regulated in a manner similar to alcohol so that:
> (a) Marijuana may only be purchased from a business that is licensed by the State of Nevada;
> (b) Business owners are subject to a review by the State of Nevada to confirm that the 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]

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[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

12. During the 2017 legislative session Assembly Bill 422 transferred responsibility for the registration, licensing, and regulation of marijuana establishments from the State of Nevada Division of Public and Behavioral Health to the DoT.[8]

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

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

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*Use the marijuana establishments governing documents to determine who has approval rights and signatory authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory documents.
There was Task Force dissent on the recommendation. The concern with this recommendation was that by 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.

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

1. When conducting a background check pursuant to subsection 6 of NRS 453D.200, the Department may require each prospective owner, officer and board member of a marijuana establishment license applicant to submit a complete set of fingerprints and written permission authorizing the Department to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.
2. When determining the criminal history of a person pursuant to paragraph (c) of subsection 1 of NRS 453D.300, a marijuana establishment may require the person to submit to the Department a complete set of fingerprints and written permission authorizing the Department to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

15. A person holding a medical marijuana establishment registration certificate could apply for one or more recreational marijuana establishment licenses within the time set forth by the DoT in the manner described in the application. NAC 453D.268.[9]

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[9] Relevant portions of that provision require that application be made

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

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

(a) Whether the applicant is applying for a license for a marijuana establishment for a marijuana cultivation facility, a marijuana distributor, a marijuana product manufacturing facility, a marijuana testing facility or a retail marijuana store;

(b) The name of the proposed marijuana establishment, as reflected in both the medical marijuana establishment registration certificate held by the applicant, if applicable, and the articles of incorporation or other documents filed with the Secretary of State;

(c) The type of business organization of the applicant, such as individual, corporation, partnership, limited-liability company, association or cooperative, joint venture or any other business organization;

(d) Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business, and the articles of incorporation, articles of organization or partnership or joint venture documents of the applicant;

(e) The physical address where the proposed marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;

(f) The mailing address of the applicant;

(g) The telephone number of the applicant;

(h) The electronic mail address of the applicant;

(i) A signed copy of the Request and Consent to Release Application Form for Marijuana Establishment License prescribed by the Department;

(j) If the applicant is applying for a license for a retail marijuana store, the proposed hours of operation during 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;

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

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

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(7) Whether the person has previously had a medical marijuana establishment agent registration card or marijuana establishment agent registration card revoked;
(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;
(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.
5. For each owner, officer and board member of the proposed marijuana establishment:
(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;
(b) A narrative description, not to exceed 750 words, demonstrating:
(1) Past experience working with governmental agencies and highlighting past experience in giving back to the community through civic or philanthropic involvement;
(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
(c) A resume.
6. Documentation concerning the size of the proposed marijuana establishment, including, without limitation, building and general floor plans with supporting details.
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.
8. A plan for the business which includes, without limitation, a description of the inventory control system of the proposed marijuana establishment to satisfy the requirements of NRS 453D.300 and NAC 453D.426.
9. A financial plan which includes, without limitation:
(a) Financial statements showing the resources of the applicant;
(b) If the applicant is relying on money from an owner, officer or board member, evidence that the person has unconditionally committed such money to the use of the applicant in the event the Department awards a license to the applicant and the applicant obtains the necessary approvals from the locality to operate the proposed marijuana establishment; and
(c) Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.
10. Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana establishment on a daily basis, which must include, without limitation:
(a) A detailed budget for the proposed marijuana establishment, including pre-opening, construction and first-year operating expenses;
(b) An operations manual that demonstrates compliance with this chapter;
(c) An education plan which must include, without limitation, providing educational materials to the staff of the proposed marijuana establishment; and
(d) A plan to minimize the environmental impact of the proposed marijuana establishment.
11. If the application is submitted on or before November 15, 2018, for a license for a marijuana distributor, proof that the applicant holds a wholesale dealer license issued pursuant to chapter 369 of NRS, unless the Department determines that an insufficient number of marijuana distributors will result from this limitation.
12. A response to and information which supports any other criteria the Department determines to be relevant, which will be specified and requested by the Department at the time the Department issues a request for applications which includes the point values that will be allocated to the applicable portions of the application pursuant to subsection 2 of NAC 453D.260.

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

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

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

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

19. The DoT posted the application on its website and released the application for recreational marijuana establishment licenses on July 6, 2018.[10]

[10] The DoT made a change to the application after circulating the first version of the application to delete the 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

portions of the applications, and one administrative assistant for each group of graders (collectively the "Temporary Employees").

35. It is unclear how the DoT trained the Temporary Employees. While portions of the training materials were introduced into evidence, testimony regarding the oral training based upon example applications was insufficient for the Court to determine the nature and extent of the training of the Temporary Employees.[11]

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

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

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

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

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

[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.

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

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

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

43. The limitation of "unreasonably impracticable" in BQ2[12] does not apply to the mandatory language of BQ2, but to the Regulations which the DoT adopted.

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

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[12] NRS 453D.200(1) provides in part:

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

[13] For administrative and regulatory proceedings other than the application, the limitation of 5% or greater ownership appears within the DoT's discretion.

[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.

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

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

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

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

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

[15] Some applicants apparently provided the required information for each prospective owner, officer and board member. 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). These entities are Green Therapeutics LLC, Eureka NewGen Farms LLC, Circle S Farms LLC, Deep Roots Medical LLC, Pure Tonic Concentrates LLC, Wellness Connection of Nevada LLC, Polaris Wellness Center LLC, and TRNVP098 LLC, Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and Commerce Park Medical LLC. See Court Exhibit 3 (post-hearing submission by the DoT).

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

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

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

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

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

55. The secondary market for the transfer of licenses is limited.[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 BQ2.

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

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

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

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

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

> "1. Notwithstanding the provisions of section 1 of article 4 of this constitution, but subject to the limitations of section 6 of this article, **the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls**.
>
> ...
>
> 3. If the initiative petition proposes a statute or an amendment to a statute, the person who intends to circulate it shall file a copy with the secretary of state before beginning circulation and not earlier than January 1 of the year preceding the year in which a regular session of the legislature is held. After its circulation, it shall be filed with the secretary of state not less than 30 days prior to any regular session of the legislature. The circulation of the petition shall cease on the day the petition is filed with the secretary of state or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The 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.

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

(Emphasis added.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

79. The DoT failed to establish any quality assurance or quality control of the grading done by Temporary Employees.[17] This is not an appropriate basis for the requested injunctive relief unless it makes the grading process unfair.

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

[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.

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

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

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

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

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

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

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

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

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

90. Therefore, a security bond already ordered in the amount of $400,000 is sufficient for the issuance of this injunctive relief.[18]

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

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[18] As discussed during the preliminary injunction hearing, the Court sets a separate evidentiary hearing on whether to 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

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:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFFS:	DOMINIC P. GENTILE, ESQ. MICHAEL CRISTALLI, ESQ. ROSS MILLER, ESQ. WILLIAM KEMP, ESQ. NATHANIEL RULIS, ESQ. ADAM BULT, ESQ. MAXIMILIEN FETAZ, ESQ. THEODORE PARKER, ESQ.
FOR THE DEFENDANTS:	KETAN BHIRUD, ESQ. STEVE SHEVORSKI, ESQ. RUSTY GRAF, ESQ. BRIGID HIGGINS, ESQ. ERIC HONE, ESQ. BRODY WIGHT, ESQ. ALINA SHELL, ESQ. JARED KAHN, ESQ. JOSEPH GUTIERREZ, ESQ. TODD BICE, ESQ. DENNIS PRINCE, ESQ.

rebuttal, or have I finished the rebuttal arguments?

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

MR. SHEVORSKI: Yes, Your Honor.

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

MR. SHEVORSKI: Okay.

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

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

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

MR. PRINCE: Oh.

MS. SHELL: Objection, Your Honor.

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

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

MR. SHEVORSKI: Completed applications, and then --

THE COURT: So I want to know which of the

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

MR. SHEVORSKI: Yes, Your Honor.

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

MR. SHEVORSKI: Yes, Your Honor.

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

MR. SHEVORSKI: Yes, Your Honor.

THE COURT: Okay. How long?

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

THE COURT: Best estimate.

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

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

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

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

THE COURT: Thank you. Have a nice day. And --

THE CLERK: Your Honor --

THE COURT: Yes?

THE CLERK: May I return --

THE COURT: If there were any exhibits that were tendered but not offered, we are going to return them to you. Dulce will prepare receipts for you -- she has the receipts already so you can come pick them up. So don't leave.

THE PROCEEDINGS CONCLUDED AT 2:32 P.M.

* * * * *

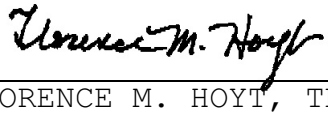
CERTIFICATION

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

From:	Steven G. Shevorski
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; Maggie; "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 - Response to Judge"s Question on NRS 453D.200(6)
Date:	Wednesday, August 21, 2019 3:23:15 PM

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'

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

From: Meriwether, Danielle LC
Sent: Tuesday, August 20, 2019 4:06 PM
To: 'Steven G. Shevorski'; Michael Cristalli; Vincent Savarese; Ross Miller; Ketan D. Bhirud; Robert E. Werbicky; David J. Pope; Theresa M. Haar; jag@mgalaw.com; 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 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: 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. Shevorski <SShevorski@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
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EXHIBIT 4

OBJ

MARGARET A. MCLETCHIE, Nevada Bar No. 10931
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Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, et al., Plaintiffs, vs. STATE OF NEVADA, DEPARTMENT OF TAXATION, Defendant, and NEVADA ORGANIC REMEDIES, LLC, a Nevada limited liability company; GREENMART OF NEVADA NLV LLC, a Nevada limited liability company, Defendants-Intervenors.	Case No.: A-19-786962-B Dept. No.: XI **DEFENDANT-INTERVENOR GREENMART OF NEVADA NLV, LLC'S OBJECTIONS TO COURT'S EXHIBIT 3**

Defendant-Intervenor GreenMart of Nevada NLV LLC ("GreenMart"), by and through its undersigned counsel, hereby submits these objections to Court Exhibit 3, the August 21, 2019 email sent by counsel for the State of Nevada Department of Taxation (the "Department") regarding winning applicants' compliance with Nev. Rev. Stat. § 453D.200(6). This brief is made and based upon the attached memorandum of points and authorities, all papers and pleadings on file in this matter, and any oral argument at the time of hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

1. Plaintiffs Lack Standing to Challenge the Department's Denial of Their Applications.

As a preliminary matter, as GreenMart and other Defendant-Intervenors have argued throughout the pendency of the case, Plaintiffs lack standing to request a preliminary injunction. This is so for two reasons. First, as outlined most recently in GreenMart's August 15, 2019 Trial Memorandum, Plaintiffs are not entitled to judicial review of the Department's denial of their applications because the application process was not a "contested case" under Nevada law. (*See* August 15, 2019 Trial Memorandum, pp. 2:24-3:26.) Second, Plaintiffs lack standing because they cannot demonstrate they suffered an injury in fact or that a preliminary injunction can remedy any alleged injury. Because Plaintiffs do not have standing, judicial review of the Department's denial of their applications is inappropriate.

2. The Department Did Not Provide the Court With Any Information Regarding Plaintiffs' Compliance With Nev. Rev. Stat. § 453D.200(6).

In its August 16, 2019 statements at the close of the evidentiary hearing, this Court directed the Department to provide it with information regarding which successfully applicants completed their applications in compliance with Nev. Rev. Stat. § 453D.200(6). Notably absent from the Court's assignment to the Department, however, was any request that the Department provide the same information regarding Plaintiffs or other unsuccessful applicants. What is true in life is true in the law: "What is sauce for the goose is sauce for the gander." *Whitehead v. Nevada Comm'n on Judicial Discipline*, 111 Nev. 70, 183, 893 P.2d 866, 936 (1995). Equity demands that if the Court considers winning applicants' compliance with Nev. Rev. Stat. § 453D.200(6), it must also consider the Plaintiffs' and other losing applicants' compliance with the same provision. This is particularly salient given that the applications of several Plaintiffs—including MM Development and Serenity Wellness—may suffer from the same perceived deficiency.

3. Exhibit 3 is Irrelevant Because the Department Had Already Vetted GreenMart.

GreenMart also objects to the Court's consideration of Court Exhibit 3 on the grounds that it is irrelevant. As set forth in Statewide Ballot Question 2 (2016), for the initial

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application process, the Department would "only accept applications for licenses for retail marijuana stores, marijuana product manufacturing facilities, and marijuana cultivation facilities . . . from persons holding a medical marijuana establishment registration certificate pursuant to chapter 453A of NRS." Ballot Question 2, § 10(2) (2016). At the time the application process opened, GreenMart already held a medical marijuana establishment certificate. Thus, the Department had already vetted and approved GreenMart's ownership.

4. Exhibit 3 is Inadmissible Hearsay.

Nev. Rev. Stat. § 51.035(1) defines hearsay as "a statement offered in evidence to prove the truth of the matter asserted." In turn, Nev. Rev. Stat. § 51.065(1) provides that hearsay is inadmissible unless it falls within certain statutory exceptions. The Department's email to this Court is textbook hearsay which does not fall within any of the recognized hearsay exceptions. The Department's email is not evidence. Instead, the Court required an attorney for the Department to provide an opinion. In emailing the Court and the parties, the Department did not provide any supporting documentation or evidence. Thus, neither GreenMart nor any other party can assess the accuracy of the Department's factual assertions or legal opinion. Moreover, in forcing the Department to provide this email, the Court forced the Department to make a legal conclusion that is contrary to its own position in litigation. Thus, Exhibit 3 should not be considered by the Court, and should not be admissible as evidence in any further proceedings in this matter.

DATED this the 26th day of August, 2019.

/s/ Alina M. Shell

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing DEFENDANT-INTERVENOR GREENMART OF NEVADA NLV, LLC'S OBJECTIONS TO COURT'S EXHIBIT 3 in *Serenity Wellness Center, LLC, et al. v. State of Nevada, Department of Taxation, et al.*, Clark County District Court Case No A-19-786962-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

/s/ Pharan Burchfield
An Employee of McLetchie Law

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EXHIBIT 5

JOIN

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, et al.,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF TAXATION,

Defendant,

and

NEVADA ORGANIC REMEDIES, LLC, a Nevada limited liability company; GREENMART OF NEVADA NLV LLC, a Nevada limited liability company, 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,

Defendants-Intervenors.

Case No.: A-19-786962-B

Dept. No.: XI

DEFENDANT-INTERVENOR GREENMART OF NEVADA NLV LLC'S JOINDER TO DEFENDANT IN INTERVENTION NEVADA ORGANIC REMEDIES, LLC'S MOTION TO: (1) DISSOLVE THE PRELIMINARY INJUNCTION IN ALL CASES WHERE NO BOND WAS POSTED AND (2) TO SUSPEND/STAY THE PRELIMINARY INJUNCTION IN ALL REMAINING CASES ON AN ORDER SHORTENING TIME

Defendant-Intervenor GreenMart of Nevada NLV LLC ("GreenMart"), by and through its undersigned counsel, McLetchie Law, hereby joins Defendant in Intervention Nevada Organic Remedies, LLC's ("NOR") Motion to: (1) Dissolve the Preliminary Injunction in All Cases Where No Bond Was Posted and (2) to Suspend/Stay the Preliminary Injunction Pending Appeal in All Remaining Cases on an Order Shortening Time, filed on September 27, 2019, and adopts the arguments and grounds as stated in the Points and Authorities filed in support of said Motion.

In addition to the arguments presented by NOR, GreenMart asserts that granting the Motion in its entirety is appropriate for the following reasons:

A. The Court Retains Jurisdiction Over Issues Pertaining to the Bond While the Case Is Pending Appeal.

GreenMart anticipates that Plaintiffs may assert that the Court should decline to rule on NOR's Motion while the challenges to the Court's August 23, 2019 Findings of Fact and Conclusions of Law are winding their way through the appeals process. Declining to rule on NOR's Motion during the pendency of the appeals, however, would be wrong for two reasons.

First, declining to rule on the Motion would be inappropriate because even with the pending appeals, this Court still retains jurisdiction "to enter orders that are collateral to and independent from the appealed order; i.e., matters that in no way affect the appeal's merits." *Mack-Manley v. Mack*, 122 Nev. 849, 855, 138 P.2d 525, 529-30 (2006) (citations omitted); *see also Chemlawn Servs. Corp. v. GNC Pumps, Inc.*, 823 F.2d 515, 518 (Fed. Cir. 1987) ("[O]n interlocutory orders, a notice of appeal divests the District Court of jurisdiction over all matters involved in the appeal. In those circumstances, the District Court may proceed only with matters not involved with the appeal."); *accord Aevoe Corp v. A.E. Tech. Co., Ltd.*, 2013 WL 12129860 at *1 (D. Nev. Aug. 26, 2013). Issues pertaining to the bond do not affect the merits of the appeals. Thus, the failure of Plaintiffs in the instant case and Plaintiffs in *ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation*, Case No. A-19-787004-B to post the five-million-dollar bond as ordered by the Court is a matter over

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which the Court retains jurisdiction.

Second, the Court should decline any invitation to delay or defer ruling on NOR's Motion because, as discussed in NOR's Motion, the posting of a security is an ***absolute prerequisite for the issuance of a preliminary injunction***. *See* Nev. R. Civ. P. 65(c); *see also Dangberg Holdings Nev. L.L.C. v. Douglas Cnty.*, 115 Nev. 129, 144–45, 978 P.2d 311, 320–21 (1999) ("We have previously held that the district court's failure to require the applicant to post security voids an order imposing a preliminary injunction."); *Strickland v. Griz Corp.*, 92 Nev. 322, 323, 549 P.2d 1406, 1407 (1976) ("'Where a bond is required by statute before the issuance of an injunction, it must be exacted or the order will be absolutely void.'") (quoting *Shelton v. Second Judicial Dist. Court*, 64 Nev. 487, 494, 185 P.2d 320, 323–24 (1947)).

Because the Plaintiffs in this matter and the *ETW* matter have not posted a bond, GreenMart and the other Defendant Intervenors are in the untenable position where the Court's injunction is "absolutely void," but Plaintiffs, the Department, and local jurisdictions are proceeding as if the injunction is still in place. This simply cannot stand. Thus, this Court should exercise its clear jurisdiction over this collateral (but significant) issue and grant NOR's Motion.

B. The Factors Enumerated in Nevada Rule of Appellate Procedure 8(c) Weigh In Favor of Entering a Stay Pending Appeal.

Like, GreenMart filed a Notice of Appeal in this matter on September 19, 2019. (*See* GreenMart Notice of Appeal, on file with this Court.) Accordingly, this Court must now consider four factors in deciding whether to issue a stay: (1) "whether the object of the appeal will be defeated if the stay is denied;" (2) "whether appellant will suffer irreparable or serious injury if the stay is denied;" (3) "whether respondent will suffer irreparable or serious injury if the stay is granted;" and (4) "whether appellant is likely to prevail on the merits in the appeal." Nev. R. App. P. 8(c). The Nevada Supreme Court has "not indicated that any one factor carries more weight than the others," and instead "recognizes that if one or two factors are especially strong, they may counterbalance other weak factors. *Mikohn Gaming Corp. v.*

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McCrea, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citing *Hansen v. District Court*, 116 Nev. 650, 6 P.3d 982 (2000)).

Through this Joinder, GreenMart adopts the arguments NOR presented in its Motion regarding (1) the absence of any harm to Plaintiffs if the Court enters a stay, and (2) the fact that Defendant-Intervenors are likely to prevail on the merits of their appeals. (*See* Motion, pp. 7:17-8:17 (regarding lack of harm to Plaintiffs); *id.* at pp. 17-11:3 (regarding the likelihood of success on appeal).) Like NOR, GreenMart has already presented this Court with briefing both prior to and at the conclusion of the evidentiary hearing outlining the myriad reasons why Plaintiffs' claims are procedurally and substantively deficient. Thus, GreenMart writes separately to address arguments not asserted in NOR's Motion regarding the NRAP 8(c) factors and their application to the instant request for a stay.

1. The Object of GreenMart's Appeal Will Be Defeated and GreenMart Will Suffer Irreparable Harm if a Stay Is Denied Because GreenMart Will Lose the Four Licenses it Was Awarded by the Department.

The first factor under NRAP 8(c) is whether the object of the appeal will be defeated if the stay is denied. The second NRAP 8(c) factor is whether the appellant (in this instance, GreenMart) will suffer irreparable injury if the stay is denied. Because these factors are related and strongly weigh in favor of a stay, GreenMart analyzes these two factors together. If the stay is denied, GreenMart could lose all of the licenses it successfully applied for, thereby defeating the object of GreenMart's appeal *and* causing GreenMart irreparable harm. Since the Department awarded GreenMart four conditional licenses to operate retail marijuana dispensaries, GreenMart has been working towards perfecting those licenses by working to secure suitable locations, hire employees, and prepare for the final inspections the Department is currently enjoined from performing. If the stay is not granted, all of GreenMart's efforts—and any resources it has expended—will have been in vain, thereby causing GreenMart irreparable harm.

And, as noted in NOR's Motion (*see* Motion, p. 6:16-24), although the Department has stated in open court that it will extend the December 4, 2019 deadline for final inspections

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by six months, this oral pronouncement has not been confirmed in any official manner. *Cf. Rust v. Clark County School Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) ("The district court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose . . . ") (citation omitted). Thus, although the Department has made a statement about extending the deadline, GreenMart is in the untenable position of relying on that statement, with no formal guarantee. Thus, absent a stay, GreenMart may lose the four licenses it was awarded by the Department, thereby defeating the purpose of the appeal and causing GreenMart irreparable harm.

Moreover, unlike Plaintiffs, GreenMart has a protected property interest in the four licenses it was awarded. *See Burgess v. Storey Cty. Bd. of Comm'rs*, 116 Nev. 121, 124, 992 P.2d 856, 858 (2000) ("A protected property interest exists when an individual has a reasonable expectation of entitlement derived from 'existing rules or understandings that stem from an independent source such as state law.'") (citing *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)). In the absence of a stay, GreenMart may be permanently deprived of property in which it has a protected interest, and therefore the first two factors of the NRAP 8(c) analysis weigh in favor of a stay.

2. GreenMart Is Likely to Prevail on Appeal.

In addition to the reasons set forth in NOR's Motion, there is at least one other reason why GreenMart is likely to prevail on appeal: The Court's failure to address in its Findings of Facts and Conclusions of Law ("FFCL") whether the non-governmental Defendant and Defendant Intervenors will be harmed by the entry of a preliminary injunction. As the Nevada Supreme Court has explained, "[i]n considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest." *Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004) (citing *Clark Co. School Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996)). In its FFCL, the Court appears to have considered the hardships to the Plaintiffs (*See* FFCL, ¶ 87), and the hardships to the Department (*Id.*, ¶ 89), but does not address the hardships to any of the intervening

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Defendants. This is an error which is unlikely to survive appellate review, further militating toward this Court's staying proceedings.

C. The Court Should Also Consider the Public Interest in a Stay of the FFCL.

A stay is especially appropriate in this matter because the FFCL would thwart the public interest, a factor courts have considered in evaluating stay requests. *See, e.g. Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (the standard for stays pending appeals requires a court to consider "where the public interest lies" separately from and in addition to "whether the applicant [for stay] will be irreparably injured absent a stay"). In this instance, the public has explicitly stated that, "[i]n the interest of public health and public safety, and in order to better focus state and local law enforcement resources on crimes involving violence and personal property, the People of the State of Nevada find and declare that the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated similar to other legal businesses." Nev. Rev. Stat. § 453D.020(1). The public has further stated that "[t]he People of the State of Nevada find and declare that the cultivation and sale of marijuana should be taken from the domain of criminals and be regulated under a controlled system, where businesses will be taxed and the revenue will be dedicated to public education and the enforcement of the regulations of this chapter." Continuing to enjoin the perfection of additional licenses to operate marijuana retail stores by reducing the public's access to legal, regulated marijuana and pushing the public back toward the "domain of criminals." Thus, in order to further the public's interest in protecting public health and safety, this Court should stay the injunction pending appeal.

DATED this the 2nd day of October, 2019.

/s/ Alina M. Shell

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing DEFENDANT-INTERVENOR GREENMART OF NEVADA NLV LLC'S JOINDER TO DEFENDANT IN INTERVENTION NEVADA ORGANIC REMEDIES, LLC'S MOTION TO: (1) DISSOLVE THE PRELIMINARY INJUNCTION IN ALL CASES WHERE NO BOND WAS POSTED AND (2) TO SUSPEND/STAY THE PRELIMINARY INJUNCTION IN ALL REMAINING CASES ON AN ORDER SHORTENING TIME in *Serenity Wellness Center, LLC, et al. v. State of Nevada, Department of Taxation, et al.*, Clark County District Court Case No A-19-786962-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

/s/ Pharan Burchfield
An Employee of McLetchie Law

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EXHIBIT 6

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Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, et al.,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF TAXATION,

Defendant,

and

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Defendants-Intervenors.

Case No.: A-19-786962-B

Dept. No.: XI

DEFENDANT-INTERVENOR GREENMART OF NEVADA NLV LLC'S AMENDED JOINDER TO DEFENDANT IN INTERVENTION NEVADA ORGANIC REMEDIES, LLC'S MOTION TO: (1) DISSOLVE THE PRELIMINARY INJUNCTION IN ALL CASES WHERE NO BOND WAS POSTED AND (2) TO SUSPEND/STAY THE PRELIMINARY INJUNCTION IN ALL REMAINING CASES ON AN ORDER SHORTENING TIME

Defendant-Intervenor GreenMart of Nevada NLV LLC ("GreenMart"), by and through its undersigned counsel, McLetchie Law, hereby joins Defendant in Intervention Nevada Organic Remedies, LLC's ("NOR") Motion to: (1) Dissolve the Preliminary Injunction in All Cases Where No Bond Was Posted and (2) to Suspend/Stay the Preliminary Injunction Pending Appeal in All Remaining Cases on an Order Shortening Time, filed on September 27, 2019, and adopts the arguments and grounds as stated in the Points and Authorities filed in support of said Motion.

In addition to the arguments presented by NOR, GreenMart asserts that granting the Motion in its entirety is appropriate for the following reasons:

A. The Court Retains Jurisdiction Over Issues Pertaining to the Bond While the Case Is Pending Appeal.

GreenMart anticipates that Plaintiffs may assert that the Court should decline to rule on NOR's Motion while the challenges to the Court's August 23, 2019 Findings of Fact and Conclusions of Law are winding their way through the appeals process. Declining to rule on NOR's Motion during the pendency of the appeals, however, would be wrong for two reasons.

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which the Court retains jurisdiction.

Second, the Court should decline any invitation to delay or defer ruling on NOR's Motion because, as discussed in NOR's Motion, the posting of a security is an ***absolute prerequisite for the issuance of a preliminary injunction***. *See* Nev. R. Civ. P. 65(c); *see also Dangberg Holdings Nev. L.L.C. v. Douglas Cnty.*, 115 Nev. 129, 144–45, 978 P.2d 311, 320–21 (1999) ("We have previously held that the district court's failure to require the applicant to post security voids an order imposing a preliminary injunction."); *Strickland v. Griz Corp.*, 92 Nev. 322, 323, 549 P.2d 1406, 1407 (1976) ("'Where a bond is required by statute before the issuance of an injunction, it must be exacted or the order will be absolutely void.'") (quoting *Shelton v. Second Judicial Dist. Court*, 64 Nev. 487, 494, 185 P.2d 320, 323–24 (1947)).

Because the Plaintiffs in this matter and the *ETW* matter have not posted a bond, GreenMart and the other Defendant Intervenors are in the untenable position where the Court's injunction is "absolutely void," but Plaintiffs, the Department, and local jurisdictions are proceeding as if the injunction is still in place. This simply cannot stand. Thus, this Court should exercise its clear jurisdiction over this collateral (but significant) issue and grant NOR's Motion.

B. The Factors Enumerated in Nevada Rule of Appellate Procedure 8(c) Weigh In Favor of Entering a Stay Pending Appeal.

Like, GreenMart filed a Notice of Appeal in this matter on September 19, 2019. (*See* GreenMart Notice of Appeal, on file with this Court.) Accordingly, this Court must now consider four factors in deciding whether to issue a stay: (1) "whether the object of the appeal will be defeated if the stay is denied;" (2) "whether appellant will suffer irreparable or serious injury if the stay is denied;" (3) "whether respondent will suffer irreparable or serious injury if the stay is granted;" and (4) "whether appellant is likely to prevail on the merits in the appeal." Nev. R. App. P. 8(c). The Nevada Supreme Court has "not indicated that any one factor carries more weight than the others," and instead "recognizes that if one or two factors are especially strong, they may counterbalance other weak factors. *Mikohn Gaming Corp. v.*

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McCrea, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citing *Hansen v. District Court*, 116 Nev. 650, 6 P.3d 982 (2000)).

Through this Joinder, GreenMart adopts the arguments NOR presented in its Motion regarding (1) the absence of any harm to Plaintiffs if the Court enters a stay, and (2) the fact that Defendant-Intervenors are likely to prevail on the merits of their appeals. (*See* Motion, pp. 7:17-8:17 (regarding lack of harm to Plaintiffs); *id.* at pp. 17-11:3 (regarding the likelihood of success on appeal).) Like NOR, GreenMart has already presented this Court with briefing both prior to and at the conclusion of the evidentiary hearing outlining the myriad reasons why Plaintiffs' claims are procedurally and substantively deficient. Thus, GreenMart writes separately to address arguments not asserted in NOR's Motion regarding the NRAP 8(c) factors and their application to the instant request for a stay.

1. The Object of GreenMart's Appeal Will Be Defeated and GreenMart Will Suffer Irreparable Harm if a Stay Is Denied Because GreenMart Will Lose the Four Licenses it Was Awarded by the Department.

The first factor under NRAP 8(c) is whether the object of the appeal will be defeated if the stay is denied. The second NRAP 8(c) factor is whether the appellant (in this instance, GreenMart) will suffer irreparable injury if the stay is denied. Because these factors are related and strongly weigh in favor of a stay, GreenMart analyzes these two factors together. If the stay is denied, GreenMart could lose all of the licenses it successfully applied for, thereby defeating the object of GreenMart's appeal *and* causing GreenMart irreparable harm. Since the Department awarded GreenMart four conditional licenses to operate retail marijuana dispensaries, GreenMart has been working towards perfecting those licenses by working to secure suitable locations, hire employees, and prepare for the final inspections the Department is currently enjoined from performing. (*See* **Exhibit A** (Declaration of Elizabeth M. Stavola), ¶¶ 4-5.) If the stay is not granted, all of GreenMart's efforts—and any resources it has expended—will have been in vain, thereby causing GreenMart irreparable harm. (*Id.*, ¶ 6.)

And, as noted in NOR's Motion (*see* Motion, p. 6:16-24), although the Department

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has stated in open court that it will extend the December 4, 2019 deadline for final inspections by six months, this oral pronouncement has not been confirmed in any official manner. *Cf. Rust v. Clark County School Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) ("The district court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose . . . ") (citation omitted). Thus, although the Department has made a statement about extending the deadline, GreenMart is in the untenable position of relying on that statement, with no formal guarantee. Thus, absent a stay, GreenMart may lose the four licenses it was awarded by the Department, thereby defeating the purpose of the appeal and causing GreenMart irreparable harm.

Moreover, unlike Plaintiffs, GreenMart has a protected property interest in the four licenses it was awarded. *See Burgess v. Storey Cty. Bd. of Comm'rs*, 116 Nev. 121, 124, 992 P.2d 856, 858 (2000) ("A protected property interest exists when an individual has a reasonable expectation of entitlement derived from 'existing rules or understandings that stem from an independent source such as state law.'") (citing *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)). In the absence of a stay, GreenMart may be permanently deprived of property in which it has a protected interest, and therefore the first two factors of the NRAP 8(c) analysis weigh in favor of a stay.

2. GreenMart Is Likely to Prevail on Appeal.

In addition to the reasons set forth in NOR's Motion, there is at least one other reason why GreenMart is likely to prevail on appeal: The Court's failure to address in its Findings of Facts and Conclusions of Law ("FFCL") whether the non-governmental Defendant and Defendant Intervenors will be harmed by the entry of a preliminary injunction. As the Nevada Supreme Court has explained, "[i]n considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest." *Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov't,* 120 Nev. 712, 721, 100 P.3d 179, 187 (2004) (citing *Clark Co. School Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996)). In its FFCL, the Court appears to have considered the hardships to the Plaintiffs (*See* FFCL, ¶ 87), and the hardships to the

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Department (*Id.*, ¶ 89), but does not address the hardships to any of the intervening Defendants. This is an error which is unlikely to survive appellate review, further militating toward this Court's staying proceedings.

C. The Court Should Also Consider the Public Interest in a Stay of the FFCL.

A stay is especially appropriate in this matter because the FFCL would thwart the public interest, a factor courts have considered in evaluating stay requests. *See, e.g. Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (the standard for stays pending appeals requires a court to consider "where the public interest lies" separately from and in addition to "whether the applicant [for stay] will be irreparably injured absent a stay"). In this instance, the public has explicitly stated that, "[i]n the interest of public health and public safety, and in order to better focus state and local law enforcement resources on crimes involving violence and personal property, the People of the State of Nevada find and declare that the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated similar to other legal businesses." Nev. Rev. Stat. § 453D.020(1). The public has further stated that "[t]he People of the State of Nevada find and declare that the cultivation and sale of marijuana should be taken from the domain of criminals and be regulated under a controlled system, where businesses will be taxed and the revenue will be dedicated to public education and the enforcement of the regulations of this chapter." Continuing to enjoin the perfection of additional licenses to operate marijuana retail stores by reducing the public's access to legal, regulated marijuana and pushing the public back toward the "domain of criminals." Thus, in order to further the public's interest in protecting public health and safety, this Court should stay the injunction pending appeal.

DATED this the 4th day of October, 2019

/s/ Alina M. Shell

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing DEFENDANT-INTERVENOR GREENMART OF NEVADA NLV LLC'S AMENDED JOINDER TO DEFENDANT IN INTERVENTION NEVADA ORGANIC REMEDIES, LLC'S MOTION TO: (1) DISSOLVE THE PRELIMINARY INJUNCTION IN ALL CASES WHERE NO BOND WAS POSTED AND (2) TO SUSPEND/STAY THE PRELIMINARY INJUNCTION IN ALL REMAINING CASES ON AN ORDER SHORTENING TIME in *Serenity Wellness Center, LLC, et al. v. State of Nevada, Department of Taxation, et al.,* Clark County District Court Case No A-19-786962-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

/s/ Lacey Ambro
An Employee of McLetchie Law

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EXHIBIT A

DECLARATION OF ELIZABETH M. STAVOLA

I, Elizabeth M. Stavola, declare and state as follows:

1. I am an owner and Chief Executive Officer of GreenMart of Nevada NLV, LLC. I have personal knowledge of the facts stated in this Declaration, and could testify competently as to these facts.

2. Between July 6, 2018, and September 20, 2018, GreenMart expended significant time and resources in preparing applications for licenses to operate recreational marijuana establishments.

3. On December 5, 2018, GreenMart was notified by the Department of Taxation that it had been awarded four conditional licenses to operate marijuana establishments.

4. Since December 5, 2018, GreenMart has expended significant resources and worked diligently to ensure that it can perfect its conditional licenses before the December 4, 2019 deadline for final inspection by the Department of Taxation.

5. GreenMart has selected locations and is working with city and county governmental bodies to obtain the necessary approvals, licenses, and permits to open its retail marijuana establishments as soon as possible, despite the interference from the establishments that did not obtain licenses. All of these efforts have required GreenMart to expend significant financial resources.

6. If GreenMart is unable to perfect its four conditional licenses, GreenMart is informed and believes that it risks losing those licenses. It will also be injured due to delays in getting to market.

Dated this 4th day of October, 2019: _____

Elizabeth M. Stavola

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