

SUPREME COURT OF NEVADA

Case No. 79668

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Elizabeth A. Brown
Clerk of Supreme Court

GREENMART OF NEVADA NLV LLC,; and
NEVADA ORGANIC REMEDIES, LLC

Appellants,

v.

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

Respondents,

Appeal from the Eighth Judicial District Court,
Clark County, Nevada
District Court Case # A-19-786962-B
The Honorable Elizabeth Gonzalez

APPELLANT'S APPENDIX – VOLUME 4

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29	Notice of Entry of Order and Order Regarding Nevada Wellness Center, LLC's Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction	11/6/19	AA 007058 - AA 007067
20	Order Granting in Part Motion to Coordinate Cases for Preliminary Injunction Hearing	7/11/19	AA 004938 - AA 004940
22	Order Granting Preliminary Injunction (Findings of Fact and Conclusions of Law)	8/23/19	AA 005277 - AA 005300
46, 47	Preliminary Injunction Hearing, Defendant's Exhibit 2009 Governor's Task Force Report	n/a	AA 011408 - AA 011568
47	Preliminary Injunction Hearing, Defendant's Exhibit 2018 List of Applicants for Marijuana Establishment Licenses 2018	n/a	AA 011569 - AA 011575

VOL.	DOCUMENT	DATE	BATES
47	Preliminary Injunction Hearing, Defendant's Exhibit 5025 Nevada Organic Remedies, LLC's Organizational Chart	n/a	AA 011576 - AA 011590
47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter	n/a	AA 011591, AA 011592
47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter as Contained in the Application	n/a	AA 011593 - AA 011600
47	Preliminary Injunction Hearing, Defendant's Exhibit 5038 Evaluator Notes on Nevada Organic Remedies, LLC's Application	n/a	AA 011601 - AA 011603
47	Preliminary Injunction Hearing, Defendant's Exhibit 5045 Minutes of ther Legislative Commission, Nevada Legislative Counsel Bureau	n/a	AA 011604 - AA 011633
47	Preliminary Injunction Hearing, Defendant's Exhibit 5049 Governor's Task Force for the Regulation and Taxation of Marijuana Act Meeting Minutes	n/a	AA 011634 - AA 011641
47	Register of Actions for Serenity Wellness Center, LLC v. State of Nevada, Department of Taxation, Case No. A-18-786962-B	n/a	AA011642 - AA 011664
27	Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/30/19	AA 006506 - AA 006508
2	Serenity Wellness Center, LLC et al.'s Complaint	1/4/19	AA 000343 - AA 000359
0	Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint	7/11/19	AA 004907 - AA 004924
5, 6	Serenity Wellness Center, LLC et al.'s Ex Parte Motion for Leave to file Brief in Support of Motion for Preliminary Injunction in Excess of Thirty Pages in Length	4/10/19	AA 001163 - AA 001288

VOL.	DOCUMENT	DATE	BATES
20	Serenity Wellness Center, LLC et al.'s First Amended Complaint	7/3/19	AA 004889 - AA 004906
40	Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/20/19	AA 003603 - AA 003636
23	Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Objection to Court's Exhibit 3	8/27/19	AA 005540 - AA 005543
27	Serenity Wellness Center, LLC et al.'s Joinder to Nevada Wellness Center, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/7/19	AA 006528 - AA 006538
4	Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	3/19/19	AA 000769 - AA 000878
18	Serenity Wellness Center, LLC et al.'s Reply in support of Motions for Summary Judgment	5/22/19	AA 004395 - AA 004408
29	Serenity Wellness Center, LLC et al.'s Second Amended Complaint	11/26/19	AA 007131 - AA 007153
5	Serenity Wellness Center, LLC et al.'s Summons to State of Nevada, Department of Taxation	3/26/19	AA 001031 - AA 001034
19	Serenity Wellness Center, LLC et al.'s Supplemental Memorandum of Points and Authorities in Support of Preliminary Injunction	6/10/19	AA 004564 - AA 004716
6	State of Nevada, Department of Taxation's Answer to ETW Management Group, LLC et al.'s Amended Complaint	4/17/19	AA 001313 - AA 001326
19	State of Nevada, Department of Taxation's Answer to ETW Management Group, LLC et al.'s Second Amended Complaint	6/4/19	AA 004513 - AA 004526
5	State of Nevada, Department of Taxation's Answer to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's First Amended Complaint	4/10/19	AA 001150 - AA 001162

VOL.	DOCUMENT	DATE	BATES
6	State of Nevada, Department of Taxation's Answer to Nevada Wellness Center, LLC's Complaint	5/2/19	AA 001342 - AA 001354
15	State of Nevada, Department of Taxation's Answer to Serenity Wellness Center, LLC et al.'s Complaint	5/20/19	AA 003637 - AA 003648
20	State of Nevada, Department of Taxation's Answer to Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint	7/15/19	AA 004949 - AA 004960
11	State of Nevada, Department of Taxation's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/20/19	AA 002704 - AA 002724
11-14	State of Nevada, Department of Taxation's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction, Appendix	5/20/19	AA 002725 - AA 003444
24	State of Nevada, Department of Taxation's Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/23/19	AA 005984 - AA 005990
28	State of Nevada, Department of Taxation's Opposition to Motion to Nevada Wellness Center, LLC's Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/24/19	AA 006827 - AA 006832
28	State of Nevada, Department of Taxation's Opposition to Nevada Organic Remedies, LLC's Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	10/24/19	AA 006889 - AA 006954
10	State of Nevada, Department of Taxation's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/9/19	AA 002273 - AA 002534
19-20	State of Nevada, Department of Taxation's Pocket Brief Regarding Regulatory Power Over Statutes Passed by Voter Initiative	6/10/19	AA 004717 - AA 004777

VOL.	DOCUMENT	DATE	BATES
20	State of Nevada, Department of Taxation's Supplement to Pocket Brief Regarding Regulatory Power Over Statutes Passed by Voter Initiative	6/24/19	AA 004879 - AA 004888
5	Stipulation and Order to Continue Hearing and Extend Briefing Schedule for Motion for Preliminary Injunction	4/8/19	AA 001144 - AA 001149
46	Transcripts for Hearing on Objections to State's Response, Nevada Wellness Center, LLC's Motion Re Compliance Re Physical Address, and Bond Amount Set	8/29/19	AA 011333 - AA 011405
29	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 1	5/24/19	AA 007170 - AA 007404
30	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 2 Volume 1	5/28/19	AA 007405 - AA 007495
30, 31	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 2 Volume 2	5/28/19	AA 007496 - AA 007601
31	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 3 Volume 1	5/29/19	AA 007602 - AA 007699
31, 32	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 3 Volume 2	5/29/19	AA 007700 - AA 007843
32, 33	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 4	5/30/19	AA 007844 - AA 008086
33	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 5 Volume 1	5/31/19	AA 008087 - AA 008149
33, 34	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 5 Volume 2	5/31/19	AA 008150 - AA 008369
34, 35	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 6	6/10/19	AA 008370 - AA 008594
35, 36	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 7	6/11/19	AA 008595 - AA 008847

VOL.	DOCUMENT	DATE	BATES
36	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 8 Volume 1	6/18/19	AA 008848 - AA 008959
36, 37	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 8 Volume 2	6/18/19	AA 008960 - AA 009093
37	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 9 Volume 1	6/19/19	AA 009094 - AA 009216
38	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 10 Volume 1	6/20/19	AA 009350 - AA 009465
38, 39	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 10 Volume 2	6/20/19	AA 009466 - AA 009623
39	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 11	7/1/19	AA 009624 - AA 009727
39, 40	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 12	7/10/19	AA 009728 - AA 009902
40, 41	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 13 Volume 1	7/11/19	AA 009903 - AA 010040
41	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 13 Volume 2	7/11/19	AA 010041 - AA 010162
41, 42	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 14	7/12/19	AA 010163 - AA 010339
42	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 15 Volume 1	7/15/19	AA 010340 - AA 010414
42, 43	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 15 Volume 2	7/15/19	AA 010415 - AA 010593
43	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 16	7/18/19	AA 010594 - AA 010698

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43, 44	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 17 Volume 1	8/13/19	AA 010699 - AA 010805
44	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 17 Volume 2	8/13/19	AA 010806 - AA 010897
44, 45	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 18	8/14/19	AA 010898 - AA 011086
45	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 19	8/15/19	AA 011087 - AA 011165
45, 46	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 20	8/16/19	AA 011166 - AA 011332

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPELLANT APPENDIX was filed electronically with the Nevada Supreme Court on the 13th day of January, 2020. 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

Clark Hill PLLC

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*Serenity Wellness Center LLC, TGIG LLC, NuLeaf Incline Dispensary LLC,
Nevada Holistic Medicine LLC, Tryke Companies So NV LLC, Tryke
Companies Reno LLC, Fidelis Holdings, LLC, GBS Nevada Partners LLC,
Gravitas Nevada Ltd., Nevada Pure LLC, MediFarm LLC, and MediFarm IV
LLC*

Ketan D. Bhirud, Aaron D. Ford, Theresa M. Haar, David J. Pope,
and Steven G. Shevorski

Office of the Attorney General

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The State of Nevada Department of Taxation

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H1 Law Group
Counsel for Appellant,
Lone Mountain Partners, LLC

/s/ David R. Koch
Koch & Scow

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CERTIFICATE OF SERVICE

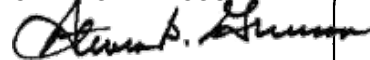
I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on March 8, 2019, I caused the foregoing document entitled: **NOTICE OF ENTRY OF ORDER** to be served as follows:

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

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Executed on March 8, 2019 at Henderson, Nevada.

/s/ David R. Koch
David R. Koch



David R. Koch (NV Bar #8830)
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Attorneys for Intervenor
Nevada Organic Remedies, LLC

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants.

NEVADA ORGANIC REMEDIES, LLC

Applicant for Intervention

Case No. A-18-785818-W
Dept. No. 9

**ORDER GRANTING MOTION TO
INTERVENE**

The Court, having reviewed the Intervenor's Motion to Intervene, and good cause
appearing,

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FEB 22 2019

1 IT IS HEREBY ORDERED:

2 Intervenor's Motion to Intervene is granted, and Nevada Organic Remedies, LLC
3 shall intervene as a Defendant in the above-captioned case as a necessary party to the
4 action pursuant to NRCP 24 and NRS 12.130. The proposed Answer attached to the
5 Motion to Intervene as Exhibit 2 shall be filed in this case.

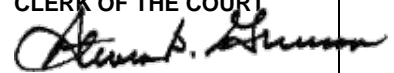
6 DATED this 22nd day of February, 2019.

7
8  DISTRICT COURT JUDGE
9 DAVID BARKER

10 *Respectfully submitted by:*
KOCH & SCOW LLC

11 
12 David R. Koch (NV Bar #8830)
13 Brody R. Wight (NV Bar #13615)
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19 *Attorneys for Intervenor*
20 Nevada Organic Remedies, LLC
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Attorneys for Defendant-Intervenor/Counterclaimant
Nevada Organic Remedies, LLC

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants,

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor.

NEVADA ORGANIC REMEDIES, LLC,

Counterclaimant,

vs.

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

Counter-Defendants

Case No. A-18-785818-W
Dept. No. 9

**ANSWER TO PLAINTIFFS' FIRST
AMENDED COMPLAINT
AND COUNTERCLAIM**

Defendant-Intervenor Nevada Organic Remedies, LLC ("NOR") files its Answer to Plaintiff's Complaint as follows:

I. PARTIES & JURISDICTION

1. NOR does not have sufficient knowledge or information as to the truth or falsity of these allegations and on that basis denies these allegations.

2. NOR does not have sufficient knowledge or information as to the truth or falsity of these allegations and on that basis denies these allegations.

3. NOR admits the allegations of paragraph 3.

4. NOR does not have sufficient knowledge or information as to the truth or falsity of these allegations and on that basis denies these allegations.

II. GENERAL ALLEGATIONS

5. To the extent this paragraph contains legal conclusions or statements regarding the content of the laws or regulations referenced, no response is necessary. To the extent the allegations accurately state the laws or regulations referenced, NOR admits the allegations.

6. To the extent this paragraph contains legal conclusions or statements regarding the content of the laws or regulations referenced, no response is necessary. To the extent the allegations accurately state the laws or regulations referenced, NOR admits the allegations.

7. To the extent this paragraph contains legal conclusions or statements regarding the content of the laws or regulations referenced, no response is necessary. To the extent the allegations accurately state the laws or regulations referenced, NOR admits the allegations.

8. To the extent this paragraph contains legal conclusions or statements regarding the content of the laws or regulations referenced, no response is necessary. To the extent the allegations accurately state the laws or regulations referenced, NOR admits the allegations.

1 9. To the extent this paragraph contains legal conclusions or statements
2 regarding the content of the laws or regulations referenced, no response is necessary. To
3 the extent the allegations accurately state the laws or regulations referenced, NOR admits
4 the allegations.

5 10. To the extent this paragraph contains legal conclusions or statements
6 regarding the content of the laws or regulations referenced, no response is necessary. To
7 the extent the allegations accurately state the laws or regulations referenced, NOR admits
8 the allegations.

9 11. NOR does not have sufficient knowledge or information as to the truth or
10 falsity of these allegations and on that basis denies these allegations.

11 12. NOR does not have sufficient knowledge or information as to the truth or
12 falsity of these allegations and on that basis denies these allegations.

13 13. NOR does not have sufficient knowledge or information as to the truth or
14 falsity of these allegations and on that basis denies these allegations.

15 14. NOR does not have sufficient knowledge or information as to the truth or
16 falsity of these allegations and on that basis denies these allegations.

17 15. NOR does not have sufficient knowledge or information as to the truth or
18 falsity of these allegations and on that basis denies these allegations.

19 16. NOR does not have sufficient knowledge or information as to the truth or
20 falsity of these allegations and on that basis denies these allegations.

21 17. NOR does not have sufficient knowledge or information as to the truth or
22 falsity of these allegations and on that basis denies these allegations.

23 18. NOR denies the allegations contained in this paragraph to the extent such
24 allegations pertain to NOR, and to the extent the allegations pertain to any other applicant,
25 NOR does not have sufficient knowledge or information as to the truth or falsity of these
26 allegations and on that basis denies these allegations.

27 19. NOR denies the allegations contained in this paragraph to the extent such
28 allegations pertain to NOR, and to the extent the allegations pertain to any other applicant,

1 NOR does not have sufficient knowledge or information as to the truth or falsity of these
2 allegations and on that basis denies these allegations.

3 20. NOR denies the allegations contained in this paragraph to the extent such
4 allegations pertain to NOR, and to the extent the allegations pertain to any other applicant,
5 NOR does not have sufficient knowledge or information as to the truth or falsity of these
6 allegations and on that basis denies these allegations.

7 **FIRST CLAIM FOR RELIEF**

8 **(Declaratory Relief)**

9 21. NOR repeats and reasserts all prior responses as though fully set forth
10 herein.

11 22. This paragraph contains legal conclusions, and no response is necessary. To
12 the extent a response is necessary, NOR denies the allegations.

13 23. This paragraph contains legal conclusions, and no response is necessary. To
14 the extent a response is necessary, NOR denies the allegations.

15 24. This paragraph contains legal conclusions, and no response is necessary.
16 To the extent a response is necessary, NOR denies the allegations.

17 25. NOR denies the allegations contained in this paragraph to the extent such
18 allegations pertain to NOR, and to the extent the allegations pertain to any other applicant,
19 this paragraph contains legal conclusions, and no response is necessary. To the extent a
20 response is necessary, NOR denies the allegations.

21 26. This paragraph contains legal conclusions, and no response is necessary. To
22 the extent a response is necessary, NOR denies the allegations.

23 27. This paragraph contains legal conclusions, and no response is necessary. To
24 the extent a response is necessary, NOR denies the allegations.

25 28. This paragraph does not contain factual allegations or legal conclusions, and
26 no response is necessary. To the extent a response is necessary, NOR denies the allegations.

27 29. This paragraph does not contain factual allegations or legal conclusions, and
28 no response is necessary. To the extent a response is necessary, NOR denies the allegations.

1 30. This paragraph contains legal conclusions, and no response is necessary. To
2 the extent a response is necessary, NOR denies the allegations.

3 31. NOR does not have sufficient knowledge or information as to the truth or
4 falsity of these allegations and on that basis denies these allegations.

5
6 **SECOND CLAIM FOR RELIEF**
7 **(Injunctive Relief)**

8 32. NOR repeats and reasserts all prior responses as though fully set forth
9 herein.

10 33. This paragraph contains legal conclusions, and no response is necessary.

11 34. NOR does not have sufficient knowledge or information as to the truth or
12 falsity of these allegations and on that basis denies these allegations.

13 35. NOR admits the allegations contained in this paragraph.

14 36. This paragraph contains legal conclusions, and no response is necessary. To
15 the extent a response is necessary, NOR denies the allegations.

16 37. This paragraph contains legal conclusions, and no response is necessary. To
17 the extent a response is necessary, NOR denies the allegations.

18 38. This paragraph contains legal conclusions, and no response is necessary.
19 To the extent a response is necessary, NOR denies the allegations.

20 **THIRD CLAIM FOR RELIEF**
21 **(Violation of Procedural Due Process)**

22 39. NOR repeats and reasserts all prior responses as though fully set forth
23 herein.

24 40. This paragraph contains legal conclusions, and no response is necessary. To
25 the extent a response is necessary, NOR denies the allegations.

26 41. This paragraph contains legal conclusions, and no response is necessary. To
27 the extent a response is necessary, NOR denies the allegations.

28 42. This paragraph contains legal conclusions, and no response is necessary. To
the extent a response is necessary, NOR denies the allegations.

1 43. This paragraph contains legal conclusions, and no response is necessary. To
2 the extent a response is necessary, NOR denies the allegations.

3 44. NOR does not have sufficient knowledge or information as to the truth or
4 falsity of these allegations and on that basis denies these allegations.

5 45. This paragraph contains legal conclusions, and no response is necessary. To
6 the extent a response is necessary, NOR denies the allegations.

7
8 **FOURTH CLAIM FOR RELIEF**
9 **(Violation of Substantive Due Process)**

10 46. NOR repeats and reasserts all prior responses as though fully set forth
11 herein.

12 47. This paragraph contains legal conclusions, and no response is necessary. To
13 the extent a response is necessary, NOR denies the allegations.

14 48. This paragraph contains legal conclusions, and no response is necessary. To
15 the extent a response is necessary, NOR denies the allegations.

16 49. This paragraph contains legal conclusions, and no response is necessary. To
17 the extent a response is necessary, NOR denies the allegations.

18 50. This paragraph contains legal conclusions, and no response is necessary. To
19 the extent a response is necessary, NOR denies the allegations.

20 **FIFTH CLAIM FOR RELIEF**
21 **(Equal Protection Violation)**

22 51. NOR repeats and reasserts all prior responses as though fully set forth
23 herein.

24 52. This paragraph contains legal conclusions, and no response is necessary. To
25 the extent a response is necessary, NOR denies the allegations.

26 53. This paragraph contains legal conclusions, and no response is necessary. To
27 the extent a response is necessary, NOR denies the allegations.

28 54. This paragraph contains legal conclusions, and no response is necessary. To
the extent a response is necessary, NOR denies the allegations.

1 55. This paragraph contains legal conclusions, and no response is necessary. To
2 the extent a response is necessary, NOR denies the allegations.

3 56. This paragraph contains legal conclusions, and no response is necessary. To
4 the extent a response is necessary, NOR denies the allegations.

5
6 **SIXTH CLAIM FOR RELIEF**
 (Petition for Judicial Review)

7 57. NOR repeats and reasserts all prior responses as though fully set forth
8 herein.

9 58. This paragraph contains legal conclusions, and no response is necessary. To
10 the extent a response is necessary, NOR denies the allegations.

11 59. This paragraph contains legal conclusions, and no response is necessary. To
12 the extent a response is necessary, NOR denies the allegations.

13 60. This paragraph contains legal conclusions, and no response is necessary. To
14 the extent a response is necessary, NOR denies the allegations.

15 61. This paragraph does not contain factual allegations or legal conclusions, and
16 no response is necessary.

17 62. This paragraph contains legal conclusions, and no response is necessary. To
18 the extent a response is necessary, NOR denies the allegations.

19
20 **SEVENTH CLAIM FOR RELIEF**
 (Petition for Writ of Mandamus)

21 63. NOR repeats and reasserts all prior responses as though fully set forth
22 herein.

23 64. This paragraph contains legal conclusions, and no response is necessary. To
24 the extent a response is necessary, NOR denies the allegations.

25 65. This paragraph contains legal conclusions, and no response is necessary. To
26 the extent a response is necessary, NOR denies the allegations.

27 66. This paragraph contains legal conclusions, and no response is necessary. To
28 the extent a response is necessary, NOR denies the allegations.

1 67. This paragraph contains legal conclusions, and no response is necessary. To
2 the extent a response is necessary, NOR denies the allegations.

3 68. This paragraph contains legal conclusions, and no response is necessary. To
4 the extent a response is necessary, NOR denies the allegations.

5 **GENERAL DENIAL**

6 To the extent a further response is required to any allegation set forth in the
7 Complaint, NOR denies such allegation.

8
9 **AFFIRMATIVE DEFENSES**

10 **AFFIRMATIVE DEFENSE NO. 1**

11 The First Amended Complaint and each claim for relief fails to state a claim upon
12 which relief can be granted.

13 **AFFIRMATIVE DEFENSE NO. 2**

14 The actions of Defendants the State of Nevada and Nevada Department of
15 Taxation were all official acts that were done in compliance with applicable laws and
16 regulations.

17 **AFFIRMATIVE DEFENSE NO. 3**

18 Plaintiffs' claims are barred because Plaintiff has failed to exhaust administrative
19 remedies.

20 **AFFIRMATIVE DEFENSE NO. 4**

21 Plaintiffs have failed to join necessary and indispensable parties to this litigation
22 under NRCP 19 as the Court cannot grant any of Plaintiffs' claims without affecting the
23 rights and privileges of those parties who received the licenses at issue as well as other
24 third parties.

25 **AFFIRMATIVE DEFENSE NO. 5**

26 The actions of Defendants the State of Nevada and Nevada Department of
27 Taxation were not arbitrary or capricious, and Defendants had a rational basis for all of
28 the actions taken in the licensing process at issue.

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AFFIRMATIVE DEFENSE NO. 6

The Defendants the State of Nevada and Nevada Department of Taxation are immune from suit when performing the functions at issue in this case.

AFFIRMATIVE DEFENSE NO. 7

Plaintiffs have no constitutional rights to obtain privileged licenses.

AFFIRMATIVE DEFENSE NO. 8

Injunctive relief is unavailable to Plaintiffs, because the Nevada Department of Taxation has already completed the tasks of issuing the conditional licenses.

AFFIRMATIVE DEFENSE NO. 9

Mandamus is not available to compel the members of the executive branch to perform non-ministerial, discretionary tasks.

AFFIRMATIVE DEFENSE NO. 10

Plaintiffs are not entitled to Judicial Review on the denial of a license.

AFFIRMATIVE DEFENSE NO. 11

Declaratory relief will not give the Plaintiffs the relief that they are seeking.

AFFIRMATIVE DEFENSE NO. 12

Because this case is in its infancy, NOR has not yet discovered all relevant facts. Additional facts may support the assertion of additional affirmative defenses, including, but not limited to, those enumerated in NRCP 8(c). NOR reserves the right to assert such affirmative defenses as discovery proceeds.

PRAYER FOR RELIEF

WHEREFORE, Defendant-Intervenor prays for judgment as follows:

1. That Plaintiffs take nothing by way of their First Amended Complaint and that the same be dismissed with prejudice;
2. For costs of suit and reasonable attorneys' fees; and

///
///

1 3. For any other such relief as this Court deems just and proper under the
2 circumstances.

3
4 DATED: March 15, 2019

KOCH & SCOW, LLC

5 By: /s/ David R. Koch
6 David R. Koch, Esq.
7 *Attorneys for Nevada Organic*
8 *Remedies, LLC*

9
10 **COUNTERCLAIM**

11 Nevada Organic Remedies, LLC ("NOR") asserts its Counterclaim against MM
12 Development Company, Inc. ("MM") and Livfree Wellness, LLC, dba The Dispensary
13 ("Livfree") and alleges as follows:

14 **PARTIES**

15 1. NOR is, and at all relevant times was, a Nevada limited liability
16 company doing business in Clark County.

17 2. NOR is informed and believes, and on that basis alleges that MM is, and
18 at all relevant times was, a Nevada corporation doing business in Clark County.

19 3. NOR is informed and believes, and on that basis alleges that Livfree is,
20 and at all relevant times was, a Nevada limited liability company doing business in
21 Clark County.

22 **JURISDICTION**

23 4. Jurisdiction is proper in this Court as this Counterclaim is brought in
24 response to an action presently pending before this Court, and pursuant to NRCP
25 8(a)(1), no new jurisdictional support is needed.

26 ///

27 ///

28 ///

GENERAL ALLEGATIONS

NOR Applies for and Is Awarded Conditional Licenses

5. On August 16, 2018, the Department issued notice for an application period within which the Department sought applications from qualified applicants for recreational marijuana retail store licenses throughout various jurisdictions in Nevada.

6. The application period for those licenses opened on September 7, 2018 and closed on September 20, 2018.

7. The Department allocated 10 licenses for Unincorporated Clark County, Nevada; 10 licenses for Las Vegas, Nevada; 6 licenses for Henderson, Nevada; 5 licenses for North Las Vegas, Nevada; 6 licenses for Reno, Nevada; 1 license for Sparks, Nevada; and 1 license for Nye County, Nevada. The Department stated that it would issue conditional licenses to successful applicants on or before December 5, 2018.

8. NOR timely submitted applications for 8 recreational marijuana retail store licenses during the September 2018 application period in the following Nevada jurisdictions: Unincorporated Clark County, City of Las Vegas, City of North Las Vegas, City of Henderson, City of Reno, Nye County, Carson City, and City of Sparks.

9. On December 5, 2018, the Department sent letters to NOR indicating that the Department intended to conditionally approve NOR's applications for licenses in Unincorporated Clark County, City of Las Vegas, City of North Las Vegas, City of Henderson, City of Reno, Carson City and Nye County.

10. NOR is informed and believes that the Department issued NOR seven conditional licenses because NOR scored second highest among overall applicants in six jurisdictions and had the highest score for any applicant in Nye County.

///

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1 *Current Regulations Require NOR to Receive*

2 *Final Inspections Within 12 Months*

3 11. Pursuant to current regulations, NOR has 12 months to receive a final
4 inspection for a marijuana establishment under its conditional licenses. As provided
5 in R092-17, Sec. 87, "If a marijuana establishment has not received a final inspection
6 within 12 months after the date on which the Department issued a license to the
7 marijuana establishment, the marijuana establishment must surrender the license to
8 the Department. The Department may extend the period specified in this subsection if
9 the Department, in its discretion, determines that extenuating circumstances prevented
10 the marijuana establishment from receiving a final inspection within the period
11 specified in this subsection."
12

13 12. Accordingly, NOR intends to proceed with obtaining a final inspection of
14 a marijuana establishment no later than December 4, 2019, in each jurisdiction in which
15 it was awarded a license.

16 *MM and Livfree File the Present Action to Impede*

17 *Licensees' Rights to Open a Marijuana Establishment*

18 13. The present lawsuit is an attempt by MM and Livfree to delay or hinder
19 the process and timing for licensees, such as NOR, of opening a marijuana establishment
20 under their approved conditional licenses. MM and Livfree contend that they had
21 received high scores for medical marijuana establishments during the 2015 application
22 review process, and that the "Department improperly granted 'conditional' licenses to
23 applicants who were ranked substantially lower than Plaintiffs on the 2015 rankings," as
24 if the 2015 rankings should be simply transferred over to the new 2018 application
25 process.
26

27 14. The wholly unfounded claims made by MM and Livfree in this action are
28 an attempt to manufacture a dispute in the hope of undermining the rights of NOR and

1 other successful applicants. MM and Livfree have asserted factually deficient
2 allegations that they should have received one or more of the licenses that were awarded
3 to NOR (or other licensees) without any substantive facts that demonstrate any
4 impropriety or issue with the granting of the licenses to NOR.

5 15. MM and Livfree have not asserted (nor can they assert) any facts specific to
6 NOR to demonstrate that NOR should not have received the conditional licenses that it
7 was granted, yet MM and Livfree have sought relief that might limit or preclude NOR
8 from being able to move forward with obtaining final inspections for marijuana
9 establishments under current regulations.

10 **FIRST CAUSE OF ACTION**

11 **(Declaratory Relief)**

12
13 16. NOR repeats and reincorporates by reference all previous allegations of
14 this Counterclaim.

15 17. A justiciable controversy exists sufficient to warrant a declaratory
16 judgment pursuant to Nevada's Uniform Declaratory Judgments Act, NRS 30.010, *et seq.*

17 18. NOR has received conditional licenses from the Department of Taxation to
18 open marijuana establishments in seven jurisdictions in the State pursuant to statute and
19 regulation.

20 19. MM and Livfree contend that the Department of Taxation "must" issue a
21 conditional license to each of them in at least six jurisdictions, which would necessarily
22 deprive NOR of a license in one or more of the jurisdictions in which it has received a
23 license.

24
25 20. MM and Livfree have asserted no facts specific to NOR that would provide
26 any valid basis to receive the relief requested as it relates to NOR.

27 21. NOR requests a declaratory judgment to determine its rights, status, or
28 other legal relations under the applicable statutes and regulations with respect to the

1 unfounded dispute brought by MM and Livfree. Such a declaratory judgment will
2 eliminate any false and untenable impediments that might otherwise potentially delay
3 the opening of a marijuana establishment within the specified regulatory time period.

4 22. NOR has been required to retain counsel to bring these claims and is
5 entitled to recover its fees and costs incurred in pursuit of these claims.

6 **PRAYER FOR RELIEF**

7 Wherefore, NOR prays for relief as follows:

8 1. A declaratory judgment from the Court that NOR has a valid conditional
9 license under applicable statutes and regulations and may proceed with opening and
10 obtaining a final inspection for a marijuana establishment,

11 2. Costs and fees incurred in bringing and pursuing its claims herein, and

12 3. Any further and additional relief that the Court may award.
13
14

15 DATED: March 15, 2019

KOCH & SCOW, LLC

16 By: /s/ David R. Koch
17 David R. Koch, Esq.
18 *Attorneys for Counterclaimant*
Nevada Organic Remedies, LLC
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CERTIFICATE OF SERVICE

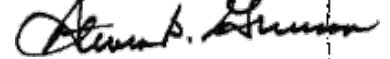
I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on March 15, 2019, I caused the foregoing document entitled: **ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND COUNTERCLAIM** to be served as follows:

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

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Executed on March 15, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh



MOT

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Attorneys for Plaintiffs

**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,

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant.

CASE NO.: A-19-786962-B
DEPT. NO.: 11

HEARING REQUESTED

**MOTION FOR PRELIMINARY
INJUNCTION**

1 COME NOW the Plaintiffs, SERENITY WELLNESS CENTER, LLC, a Nevada limited
2 liability company, TGIG, LLC, a Nevada limited liability company, NULEAF INCLINE
3 DISPENSARY, LLC, a Nevada limited liability company, NEVADA HOLISTIC MEDICINE,
4 LLC, a Nevada limited liability company, TRYKE COMPANIES SO NV, LLC a Nevada
5 limited liability company, TRYKE COMPANIES RENO, LLC, a Nevada limited liability
6 company, PARADISE WELLNESS CENTER, LLC, a Nevada limited liability company, GBS
7 NEVADA PARTNERS, LLC, a Nevada limited liability company, FIDELIS HOLDINGS, LLC,
8 a Nevada limited liability company, GRAVITAS NEVADA, LLC, a Nevada limited liability
9 company, NEVADA PURE, LLC, a Nevada limited liability company, MEDIFARM, LLC, a
10 Nevada limited liability company; DOE PLAINTIFFS I through X; and ROE ENTITIES I
11 through X, by and through their counsel, DOMINIC P. GENTILE, ESQ., VINCENT
12 SAVARESE III, ESQ., MICHAEL V. CRISTALLI, ESQ., and ROSS MILLER, ESQ., of the
13 law firm of Gentile Cristalli Miller Armeni Savarese, and pursuant to the Fourteenth Amendment
14 to the Constitution of the United States; Article 1, Sections 1 and 8 of the Constitution of the
15 State of Nevada; Title 42, United States Code ("U.S.C."), Section 1983; 2016 Initiative Petition,
16 Ballot Question No. 2 entitled the "Regulation and Taxation of Marijuana Act" (the "Ballot
17 Initiative"); Nevada Revised Statutes ("NRS"), Chapter 453D ("the enabling statutes"); Nevada
18 Administrative Code ("NAC"), Chapter 453D ("the Regulation"); Section 80 of the Adopted
19 Regulation of the Department of Taxation, LCB File No. R092-17 ("R092-17"); NRS 33.010,
20 and other laws and regulations of the State of Nevada, hereby respectfully request that this
21 Honorable Court enter a preliminary injunction providing them with the following relief pending
22 a trial on the merits and a final judgment in this matter, as requested in the Complaint on file
23 herein:

- 24 A. An order enjoining the enforcement of the denial by the State of Nevada Department
25 of Taxation ("the Department") of Plaintiffs' applications for conditional licenses to
26 operate adult-use recreational marijuana retail stores;
- 27 B. An order enjoining the enforcement of the conditional licenses to operate such
28 recreational marijuana retail stores granted by the Department to other applicants;

- 1 C. An order enjoining the enforcement and implementation of the current regulation
2 governing the adult-use recreational marijuana retail store conditional licensing
3 application and determination process adopted by the Department codified at Nevada
4 Administrative Code ("NAC") Chapter 453D ("the Regulation") pursuant to which
5 Plaintiffs' applications for conditional licensure were denied and the applications of
6 other applicants for conditional licensure were granted by the Department;
- 7 D. An order restoring the *status quo ante* prior to the Department's adoption of the
8 Regulation;
- 9 E. An order compelling the Department to disclose all applications and scoring
10 information pertaining to each and every applicant for conditional licensure;
- 11 F. An order compelling the Department to disclose the identities, training, and
12 qualifications of each and every scorer of the various applications;
- 13 G. An order compelling the Department to disclose the policies, procedures, guidelines,
14 and/or regulations which governed the manner by which the various scorers assessed
15 numerical points to each criterion applied in the license application determination
16 process, whether published or unpublished, and the manner by which uniformity and
17 consistency of scoring assessment was ensured.

18 THIS MOTION is made and based upon all pleadings and papers on file in this action,
19 the exhibits appended hereto, the following Memorandum of Points and Authorities and such
20 evidence and argument as the Court may require at time of hearing.

21 IN SUPPORT OF THIS MOTION Plaintiffs respectfully assign the following grounds:

- 22 1. The provisions of the Regulation and the licensing determinations of the Department
23 exceed the parameters of the delimited regulatory authority delegated to the
24 Department by the Ballot Initiative and its codification by the Nevada Legislature at
25 NRS Chapter 453D, in that:
- 26 A. NAC 453D.272(3) textually permits the Department to rank applications and
27 allocate conditional licenses according to the proportionate populations of specific
28

- 1 municipal jurisdictions and unincorporated areas within a county, rather than on a
2 county-wide basis as textually required by NRS 453D.210;
- 3 B. NAC 453D.272(1) textually permits the Department to rank applications and
4 allocate conditional licenses based upon arbitrary, irrelevant, vague, ambiguous,
5 undisclosed, and unpublished criteria, rather than criteria “that are directly and
6 demonstrably related to the operation of a marijuana establishment,” as textually
7 required by NRS 453D.200(1)(b) and rather than pursuant to “an impartial and
8 numerically scored competitive bidding process” as textually required by NRS
9 453D.200(2) and NRS 453D.210(6);
- 10 C. The Regulation does not assign specific numerical point values, or numerical
11 point value ranges, applicable to any of the licensing criteria that are listed in
12 NAC 453D.272(1) and certainly cannot do so with respect to the undisclosed and
13 unpublished, additional criteria referred to therein only as “additional criteria,”
14 and does not require that all such criteria be equally weighted, uniformly and
15 consistently assessed, or scored by adequately trained and qualified personnel, all
16 of which is further inconsistent with the “impartial and numerically scored
17 competitive bidding process” textually required by NRS 453D.200(2) and NRS
18 453D.210(6);
- 19 D. The Department has failed to issue the number of conditional licenses required by
20 NRS 453D.210(5);
- 21 E. The Department has engaged in unlawful *ad hoc* rule-making by arbitrarily
22 limiting each applicant to a single conditional license per locality absent
23 legislative authorization by NRS Chapter 453D;
- 24 F. On information and belief, the Department has failed to conduct the background
25 check required by NRS 453D.200(6) in order to determine that “each prospective
26 owner” has not been convicted of certain felony offenses and has not served as an
27 owner of a marijuana establishment that has had its license revoked, particularly
28 with respect public-company applicants, as textually required by NRS

1 453D.210(5)(f) and NAC 453D.312(1), which requires the Department to deny
2 any application that is not in compliance with any provision of NRS Chapter
3 453D;

4 G. The Department has failed to send written notices of rejection to un-approved
5 applicants adequately setting forth the reasons why it did not grant their
6 conditional license applications as textually required by NRS 453D.210(4)(b);

7 H. The Department has arbitrarily and capriciously refused to permit un-approved
8 applicants to review the scoring for their conditional license application until after
9 the time to appeal the licensing determination has expired (pursuant to NRS
10 233B.130); will not provide them with any explanation as to how their score for
11 each published criterion was determined; will not advise them whether
12 undisclosed, unpublished "additional criteria" were considered in rejecting their
13 applications, and if so, provide them with any explanation as to how their score
14 for each such criterion was determined; and will not provide them with copies of
15 the scoring for their own applications or the applications of any other applicants
16 who were either granted or denied licenses; and therefore, the Department has
17 effectively deprived Plaintiffs of information necessary to determine whether the
18 Department accurately scored their applications; meaningfully exercise their right
19 to appeal the Department's licensing determinations; or meaningfully obtain
20 informed and appropriate judicial review of the Department's administrative
21 decisions; and

22 I. The Department has arbitrarily and capriciously allocated and issued conditional
23 licenses in violation of its own (albeit otherwise invalid) Regulation.

24 2. The provisions of the Regulation are facially repugnant to the above-cited federal and
25 state constitutional provisions, in that:

26 A. For the foregoing reasons, they textually permit the arbitrary and capricious
27 deprivation of a qualified and prevailing, properly-ranked applicant's property
28 interest in conditional licensure, in derogation of such an applicant's statutory

1 entitlement thereto under the provisions of NRS 453D.200 and NRS 453D.210,
2 and therefore in violation of the due process protections guaranteed by the
3 Fourteenth Amendment to the Constitution of the United States and Article 1,
4 Sections 1 and 8 of the Constitution of the State of Nevada;

5 B. For the foregoing reasons, they likewise textually permit the arbitrary and
6 capricious deprivation of such an applicant's liberty interest in conditional
7 licensure, in derogation of such an applicant's statutory entitlement thereto under
8 the provisions of NRS 453D.200 and NRS 453D.210, and therefore in violation of
9 the due process protections guaranteed by the Fourteenth Amendment to the
10 Constitution of the United States and Article 1, Sections 1 and 8 of the
11 Constitution of the State of Nevada and the fundamental federal constitutional
12 right to pursue a lawful occupation; and

13 C. For the foregoing reasons, they further likewise textually permit the arbitrary and
14 capricious deprivation of such an applicant's aforesaid property and liberty
15 interests in conditional licensure in violation of the equal protection of the law
16 guaranteed by the Fourteenth Amendment to the Constitution of the United States
17 and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada.

18 3. On information and belief, the denial of Plaintiffs' applications for conditional
19 licensure by the Department was in fact affected by actual arbitrary and capricious
20 decision-making in derogation of the provisions of NRS 453D; and therefore, the
21 licensing process was also thereby rendered unconstitutional in its application as to
22 Plaintiffs for the reasons set forth *supra*.

23 4. The Department's improper denial of conditional licensure to Plaintiffs in violation of
24 the above-cited constitutional and statutory provisions has unreasonably interfered
25 with Plaintiffs' business interests and has thereby caused and continues to cause
26 irreparable harm to Plaintiffs for which Plaintiffs have no adequate remedy at law;
27
28

- 1 5. The Department will suffer no harm by following the requirements of the above-cited
2 constitutional and statutory provisions in properly administering the regulation of the
3 conditional licensing process;
4 6. The public interest is consistent with Plaintiffs' interests in the proper administration
5 of a transparent, impartial and objective licensing process in accordance with the
6 above-cited constitutional and statutory provisions; and
7 7. For the foregoing reasons, Plaintiffs are likely to succeed on the merits in this
8 litigation.

9 Dated this 18 day of March, 2019.

10 GENTILE CRISTALLI
11 MILLER ARMENI SAVARESE
12 

13 DOMINIC P. GENTILE
14 Nevada Bar No. 1923
15 VINCENT SAVARESE III
16 Nevada Bar No. 2467
17 MICHAEL V. CRISTALLI
18 Nevada Bar No. 6266
19 ROSS MILLER
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21 410 S. Rampart Blvd., Suite 420
22 Las Vegas, Nevada 89145
23 Tel: (702) 880-0000
24 *Attorneys for Plaintiffs*
25
26
27
28

1 NOTICE OF MOTION

2 YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the
3 above foregoing motion on for Hearing before this Court on the ____ day of _____,
4 2019, at the hour of ____ a.m./p.m. of said day, or as soon thereafter as counsel can be heard
5 in Department 11.

6 Dated this 18 day of March, 2019.

7
8 GENTILE CRISTALLI
MILLER ARMENI SAVARESE

9 
10 DOMINIC P. GENTILE

11 Nevada Bar No. 1923

VINCENT SAVARESE III

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410 S. Rampart Blvd., Suite 420

15 Las Vegas, Nevada 89145

16 Tel: (702) 880-0000

Attorneys for Plaintiffs

17 MEMORANDUM OF POINTS AND AUTHORITIES

18 1.

19 INTRODUCTION

20
21 In 2017, after the voters of the State of Nevada embraced the sale of marijuana to adults
22 for recreational use, the Nevada Department of Taxation was tasked by the Legislature with
23 implementing a new licensing application process for the sales of recreational marijuana in this
24 state.

25 By 2018, it had become clear that the application scheme and grading process that the
26 Department had established completely lacked transparency for stakeholders across the board.
27 The taxpaying public, license-holding members of the Nevada cannabis industry and their
28 employees who pioneered the sale of medical marijuana, regulators at the county and municipal

1 level, and members of the media were completely unable to audit what was going on and ensure
2 the accountability of those involved in the licensing process. The public concern regarding the
3 possibility of the presence of organized criminal cartels (that previously had absolute control
4 over the cultivation and distribution of marijuana) in this new taxed and regulated industry was
5 unable to be addressed. The Department of Taxation – refusing to reveal the information
6 necessary to audit the process under the guise of “privacy concerns” – has cavalierly taken the
7 position of: “just trust us.”

8 This has resulted in the recreational marijuana retail store licensing application process
9 adopted and administered by the Department being inconsistent with the enabling statutes
10 enacted by the Nevada Legislature and unconstitutional, both on its face in that it permits the
11 arbitrary and capricious deprivation of an applicant’s due process, property and liberty interests,
12 and as applied with regard to the denial of conditional licensing that resulted. The Department’s
13 closed-door approach to licensing determinations in one of Nevada’s most lucrative emerging
14 industries which, until now, has been completely controlled by lawless and violent elements,
15 runs counter to Nevada’s longstanding tradition of transparency in the licensing of liquor and
16 gaming establishments. Nevada’s history of dealing with such licensing in the light of day has
17 long established the Silver State’s approach as the “gold standard” for entitlement processes.

18 Conversely, it is precisely this type of “closed system” which the Department
19 implemented in 2018 that is ripe for the potential of corruption of both the application system
20 and officials involved in the entitlement process. This lack of transparency is of even graver
21 concern given the fact that the market has established that cannabis licenses are worth tens of
22 millions, even hundreds of millions, of dollars. Given the Department’s lack of transparency in
23 the 2018 application scheme, the system is therefore ripe for corruption on all levels.

24 Among the most troubling outcomes of the 2018 licensing scheme was the fact that some
25 Nevada residents who were owners of recreational sales and cultivation licenses with essentially
26 perfect records of operation were completely shut out. They were granted no new licenses. At the
27 same time, non-Nevada residents and foreign nationals were awarded a significant number of
28 licenses. This occurred despite the fact these non-residents and foreign nationals had absolutely

1 no record of operation in Nevada's cannabis industry. Worse still, they acquired their interests in
2 the applying entities by purchasing shares in publicly-traded companies with anonymous
3 stockholders, *after* the applications were filed by their original owners.

4 Among the issues which make Plaintiff's claims likely to prevail at trial is that it is
5 widely understood that even though these licenses are worth millions of dollars, the decision-
6 making process by the Nevada Department of Taxation was conducted by temporary workers
7 contracted on a daily basis by "Manpower," whose training, consistency and supervision are
8 unascertainable, and who were not susceptible to the accountability of regular government
9 employees. Despite this troubling lack of judgment, experience, and accountability, the
10 Department's position is that there is no right of appeal from the denial of a license application,
11 and no right of redress in the administrative process. This arbitrary and capricious approach to a
12 "final verdict" in administrative licensing is in direct contravention of the due process
13 protections of the Fourteenth Amendment to the United States Constitution.

14 Finally, Plaintiffs allege, on information and belief, that as a result of the Department's
15 refusal to allow daylight to enter the machinations of the process so as to permit effective
16 scrutiny by the public and others with direct interest in it, the denial of their applications for
17 licensure by the Department has in fact been affected by actual arbitrary, capricious or corrupt
18 decision-making based upon administrative partiality or favoritism. And as a result, the licensing
19 process was thereby rendered unconstitutional in its application as to Plaintiffs.

20 **2.**

21 **STATEMENT OF FACTS**

22 The Nevada Legislature passed a number of bills during the 2017 legislative session
23 concerning the licensing, regulation, and operation of recreational marijuana establishments in
24 the State of Nevada. One of those bills, Assembly Bill 422, transferred responsibility for the
25 registration, licensing, and regulation of marijuana establishments from the State of Nevada
26 Division of Public and Behavioral Health to the State of Nevada Department of Taxation ("the
27 Department"). This legislation was approved by the voters at the General Election of 2016 as
28 Initiative Petition, Ballot Question No. 2, entitled the "Regulation and Taxation of Marijuana

1 Act,” (“the Ballot Initiative”), appended hereto and incorporated herein by reference as “Exhibit
2 A.” It was enacted by the Nevada Legislature; and is codified at NRS Chapter 453D.

3 NRS 453D.200 provides, in pertinent part:

4 “1. Not later than January 1, 2018, the Department *shall* adopt all regulations
5 necessary or convenient *to carry out the provisions of this chapter*. The
6 regulations must not prohibit the operation of marijuana establishments, either
7 expressly or through regulations that make their operation unreasonably
8 impracticable. The regulations *shall* include:

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

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

13 2. The Department *shall approve or deny* applications for licenses *pursuant
14 to NRS 453D.210*.”

15 (Emphasis added.)

16 NRS 453D.210, *in turn*, provides, in pertinent part:

17 “4. Upon receipt of a complete marijuana establishment license application, the
18 Department *shall*, within 90 days:

19 (a) *Issue the appropriate license if the license application is approved*.

20 5. The Department *shall approve* a license application if:

21 (a) The prospective marijuana establishment has *submitted an application in
22 compliance with regulations adopted by the Department and the application fee
23 required pursuant to NRS 453D.2*;

24 6. When *competing applications* are submitted for a proposed retail marijuana
25 store *within a single county*, the Department *shall* use an *impartial and
26 numerically scored competitive bidding process* to determine which application
27 or applications among those competing will be approved.”

28 (Emphasis added.)

And NRS 453D.210 requires the Department to rank applications and allocate conditional
licenses according to proportionate *county-wide* populations.

The Department thereupon adopted a regulation governing the adult-use recreational
marijuana retail store conditional licensing application and determination process, which is
codified at NAC Chapter 453D (“the Regulation”).

Rather than criteria “that are *directly and demonstrably related to the operation of a
marijuana establishment*,” as textually required by NRS 453D.200(1)(b) as set forth *supra*,

1 NAC 453D.272(1) textually purports to permit the Department to rank applications and allocate
2 conditional licenses based upon all of the following enumerated criteria:

- 3 a. Operating experience of *another kind of business* by the owners, officers or
4 board members that has given them experience which is applicable to the
5 operation of a marijuana establishment;
- 6 b. *Diversity* of the owners, officers or board members;
- 7 c. Evidence of *the amount of taxes paid* and *other beneficial financial*
8 *contributions*;
- 9 d. *Educational achievements* of the owners, officers or board members;
- 10 e. The applicant's plan for care, quality and safekeeping of marijuana from seed to
11 sale;
- 12 f. The financial plan and *resources of the applicant, both liquid and illiquid*;
- 13 g. The experience of key personnel that the applicant intends to employ; and
- 14 h. Direct experience of the owners, officers, or board members of a medical
15 marijuana establishment or marijuana establishment in this state.

16 (Emphasis added.)

17 Moreover, NAC 453D.272(1)(i) further purports to allows the Department to rank
18 applications based on “[a]ny other [undisclosed and unpublished, additional] criteria that the
19 Department determines to be relevant” (emphasis added). And consistent therewith, Section 6.3
20 of the conditional licensing application form created by the Department, (appended hereto and
21 incorporated herein by reference as “Exhibit B”), states that “[a]pplications that have not
22 demonstrated a sufficient response related to the [specifically enumerated] criteria set forth
23 above will not have *additional [undisclosed, unpublished] criteria* considered in determining
24 whether to issue a license *and will not move forward in the application process*” (emphasis
25 added). Thus, conversely, by necessary implication, in order for it to “*move forward in the*
26 *application process*,” that section of the application form textually subjects an application which
27 has in fact demonstrated a *sufficient* response related to the specifically enumerated, published
28 criteria set forth above to “*additional [unspecified, unknown, and unpublished] criteria*”—

1 consideration of which by the Department will determine whether or not a license application
2 will ultimately be approved—notwithstanding the textual requirement of NRS 453 D. 200.1(b)
3 that the Department “*shall*” adopt regulations that prescribe only “[q]ualifications for licensure
4 that are *directly and demonstrably related to the operation of a marijuana establishment*”
5 (emphasis added).

6 Furthermore, rather than pursuant to “an *impartial* and *numerically scored* competitive
7 bidding process” as textually required by NRS 453D.200(2) and NRS 453D.210(6), by
8 purporting to allow the Department to rank applications based on “[a]ny other [undisclosed,
9 unknown and unpublished, additional] criteria that the Department determines to be
10 relevant,” NAC 453D.272(1)(i) textually permits the Department to undertake *unbridled*
11 discretion to rank applications based on criteria that are arbitrary and unknown to the applicants
12 and the public—not only in the absence of legislative delegation of authority, but clearly in
13 derogation of expressed legislative intent to specifically delimit and cabin administrative
14 discretion in licensing determinations. And, due to the absence of transparency thereby
15 enshrined, there is no accounting for the potential of partiality, favoritism, or even outright
16 corruption in the decision-making process (emphasis added).

17 Nor does the Regulation assign specific numerical point values, or numerical point value
18 ranges, applicable to any of the licensing criteria that are listed in NAC 453D.272(1), and
19 certainly cannot do so with respect to the undisclosed and unpublished, additional criteria
20 referred to therein. Neither does it require that all such criteria be equally weighted, uniformly
21 and consistently assessed, or scored by adequately trained and qualified personnel.

22 NAC 453D.272(3) further textually permits the Department to allocate conditional
23 licenses according to the proportionate populations of specific municipal jurisdictions and
24 unincorporated areas *within* a county, rather than on a *county-wide* basis as required by NRS
25 453D.210. Indeed, NRS 453D.210(5)(d) sets presumptive caps on the number of licenses issued
26 in each county, according to *county-wide* population. And NRS 453D.210(5)(d)(5) permits the
27 Department to issue *more* licenses, but only if the *county* requests that it do so.

28 . . .

1 Pursuant to NRS 453D.210(5)(d)(1), the cap in Clark County is 80 licenses. However, the
2 Department issued only 78 licenses in Clark County.

3 And, absent statutory authority to do so, the Department's application form states that
4 "[n]o applicant may be awarded more than 1 (one) retail store license in a jurisdiction/locality,
5 unless there are less applicants than licenses allowed in the jurisdiction." Exhibit A at page 8.

6 On Information and belief, the Department has failed to conduct the background check
7 required by NRS 453D.200(6) in order to determine that "*each* prospective owner," (emphasis
8 added), has not been convicted of certain felony offenses and has not served as an owner of a
9 marijuana establishment that has had its license revoked, particularly with respect to shareowners
10 of public companies, as required by NRS 453D.210(5)(f) and NAC 453D.312(1)—which
11 requires the Department to deny any application that is not in compliance with any provision of
12 NRS Chapter 453D.

13 The Department has further failed to send written notices of rejection to un-approved
14 applicants adequately setting forth the specific reasons why it did not grant their conditional
15 license applications as required by NRS 453D.210(4)(b). Rather, the notices of rejection merely
16 state, in every case, that the applicant did not attain a high enough score.

17 The Department will not permit un-approved applicants to review the scoring for their
18 conditional license application until after the time to appeal the licensing determination has
19 expired (pursuant to NRS 233B.130); will not provide them with any explanation as to how their
20 score for each published criterion was determined; will not advise them whether or not
21 undisclosed, unpublished criteria were considered in rejecting their applications, and if so,
22 provide them with any explanation as to how their score for each such unpublished and
23 undisclosed criterion was determined; and will not provide them with copies of the scoring for
24 their own applications or any information regarding the applications of any other applicants who
25 were either granted or denied licenses; and will not discuss the scoring provided or the
26 application review process; and therefore, the Department has effectively deprived Plaintiffs with
27 information necessary to determine whether the Department accurately scored their applications;
28 appeal the Department's licensing determinations; or obtain informed and appropriate judicial

1 review of the Department's administrative decisions. *See* Marijuana Establishment (ME)
2 Application Score Review Meeting Procedures, appended hereto and incorporated herein by
3 reference as "Exhibit C."

4 Plaintiffs were among those applicants which sought licenses to own and operate
5 recreational marijuana retail stores pursuant to the Regulation, having submitted their
6 applications in compliance with the requirements thereof together with the required application
7 fee in accordance with NRS 453D.210.

8 However, Plaintiffs have all been informed by the Department that each of their
9 Applications were denied. And in each instance, Plaintiffs were simply informed by letter from
10 the Department that a license was not granted to the Plaintiff applicant "because it did not
11 achieve a score high enough to receive an available license."

12 On information and belief, Plaintiffs allege that the Department improperly denied their
13 license applications and, conversely, improperly granted licenses to other competing applicants,
14 absent implementation of the impartial and objective competitive bidding process mandated by
15 NRS 453D.210, and based upon the assumption of arbitrary and capricious exercise of
16 impermissibly unbridled administrative discretion.

17 And on information and belief, Plaintiffs allege that the Department has further violated
18 its own Regulation by granting more than one recreational marijuana store license per local
19 jurisdiction to certain applicants, owners, or ownership groups.

20 **3.**

21 **LEGAL STANDARD**

22 **NRS 33.010 (Cases in which injunction may be granted) provides:**

23 "An injunction may be granted in the following cases:

24 1. When it shall appear by the complaint that the plaintiff is entitled to the
25 relief demanded, and such relief or any part thereof consists in restraining the
commission or continuance of the act complained of, either for a limited period or
perpetually.

26 2. When it shall appear by the complaint or affidavit that the commission or
27 continuance of some act, during the litigation, would produce great or irreparable
injury to the plaintiff.

28 3. When it shall appear, during the litigation, that the defendant is doing or
threatens, or is about to do, or is procuring or suffering to be done, some act in

1 violation of the plaintiff's rights respecting the subject of the action, and tending
2 to render the judgment ineffectual."

3 NRS 30.040.1 (Questions of construction or validity of instruments, contracts and
4 statutes) provides:

5 "Any person interested under a deed, written contract or other writings
6 constituting a contract, or whose rights, status or other legal relations are affected
7 by a statute, municipal ordinance, contract or franchise, may have determined any
8 question of construction or validity arising under the instrument, statute,
9 ordinance, contract or franchise and obtain a declaration of rights, status or other
10 legal relations thereunder."

11 And 42 U.S.C. § 1983 provides:

12 "Every person who, under color of any statute, ordinance, regulation, custom, or
13 usage, of any State or Territory or the District of Columbia, subjects, or causes to
14 be subjected, any citizen of the United States or other person within the
15 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
16 secured by the Constitution and laws, shall be liable to the party injured in an
17 action at law, *suit in equity*, or other proper proceeding for redress, except that in
18 any action brought against a judicial officer for an act or omission taken in such
19 officer's judicial capacity, injunctive relief shall not be granted unless a
20 declaratory decree was violated or declaratory relief was unavailable. For the
21 purposes of this section, any Act of Congress applicable exclusively to the
22 District of Columbia shall be considered to be a statute of the District of
23 Columbia."

24 (Emphasis added.)

25 Thus, as the Nevada Supreme Court has explained, under NRS 33.010: "A preliminary
26 injunction to preserve the status quo is normally available upon a showing that the party seeking
27 it enjoys a reasonable probability of success on the merits and that the defendant's conduct, if
28 allowed to continue, will result in irreparable harm for which compensatory damage is an
inadequate remedy." *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987). *See*
also e.g., City of Sparks v. Sparks Mun. Court, 129 Nev. 348, 357, 302 P.3d 1118, 1124 (2013);
University Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004);
Dangberg Holdings Nevada, L.L.C. v. Douglas Cty. & its Bd. of Cty. Comm'rs, 115 Nev. 129,
142, 978 P.2d 311, 319 (1999).

"The decision whether to grant a preliminary injunction is within the sound discretion of
the district court, whose decision will not be disturbed on appeal absent an abuse of discretion."

1 *Dangberg Holdings*, 115 Nev. at 142–43, 978 P.2d at 319 (1999). *See also e.g., State, Dep't of*
2 *Bus. & Indus., Fin. Institutions Div. v. Nevada Ass'n Servs., Inc.*, 128 Nev. 362, 366, 294 P.3d
3 1223, 1226 (2012). However, our Supreme Court has pointed out that “when [as in this case] the
4 underlying issues in the motion for preliminary injunction involve[] questions of statutory
5 construction, including the meaning and scope of a statute, we review . . . those questions [of
6 law] de novo.” *Id. See also e.g., City of Sparks*, 129 Nev. at 357, 302 P.3d at 1124–25 (2013)
7 (“Whether to grant or deny a preliminary injunction is within the district court's discretion.
8 *Nevadans for Sound Gov't*, 120 Nev. at 721, 100 P.3d at 187. In the context of an appeal from a
9 preliminary injunction, we review questions of law de novo and the district court's factual
10 findings for clear error or a lack of substantial evidentiary support”).

11 4.

12 ARGUMENT

13 I.

14 **THE PROVISIONS OF THE REGULATION TEXTUALLY EXCEED THE**
15 **PARAMETERS OF THE DELIMITED REGULATORY AUTHORITY DELEGATED**
16 **TO THE DEPARTMENT BY THE BALLOT INITIATIVE AND ITS CODIFICATION**
BY THE NEVADA LEGISLATURE PURSUANT TO NRS CHAPTER 453D.

17 Because administrative regulations have the force of law and are legislative in nature, an
18 administrative agency must be given statutory authority to adopt regulations. *Cty. of Clark v. LB*
19 *Props., Inc.*, 129 Nev. 909, 912, 315 P.3d 294, 296 (2013). Thus, an administrative agency
20 cannot enact regulations that exceed the rule-making authority delegated to it by enabling statute.
21 *Village League to Save Incline Assets, Inc. v. State*, 388 P.3d 218, 225 (Nev. 2017). And
22 therefore, courts “will not hesitate to declare a regulation invalid when the regulation violates the
23 constitution, conflicts with existing statutory provisions or exceeds the statutory authority of the
24 agency or is otherwise arbitrary and capricious.” *Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*,
25 116 Nev. 290, 293, 995 P.2d 482, 485 (2000).

26 The process the Department has used to grant or deny the new licenses for retail
27 marijuana stores was illegal and the Department’s licensing determinations must therefore be set
28 aside. Thus, as discussed *infra*, the Department violated the requirements of the Ballot Initiative

1 and NRS Chapter 453D in numerous respects, including: by ranking and allocating licenses
2 according to the populations of specific localities within a county; by ranking and allocating
3 applications using arbitrary, irrelevant, undisclosed and unpublished criteria; by failing to issue
4 the required number of licenses; and by limiting the number of licenses to one per applicant for
5 each local jurisdiction.

6 A.

7 **The Regulation Violates NRS 453D.210 By Ranking Applications And**
8 **Allocating Licenses According To Local Municipalities And Unincorporated**
9 **Areas Within A County Rather Than On A County-Wide Basis.**

10 NAC 453D.272(1) states that the Department will allocate licenses and rank applications
11 according to the proportionate populations of various local jurisdictions *within* a single county.
12 This process directly conflicts with NRS 453D.210, which requires the Department to rank and
13 issue licenses on a *county-wide* basis.

14 NAC 453D.272 is invalid because it exceeds the Department's rule-making authority and
15 directly conflicts with NRS 453D.210. Thus, NAC 453D.272(3) provides in relevant part:

16 "The Department will allocate the licenses for retail marijuana stores described in
17 paragraph (d) of subsection 5 of NRS 453D.210 to jurisdictions *within* each
18 county and to the unincorporated area of the county proportionally *based on the*
19 *population of each [such] jurisdiction and of the unincorporated area of the*
20 *county.*"

21 (Emphasis added.)

22 That subsection further states:

23 "*Within each such jurisdiction or area*, the Department will issue licenses for
24 retail marijuana stores to the highest-ranked applicants until the Department has
25 issued the number of licenses authorized for issuance."

26 (Emphasis added.)

27 Nothing in NRS Chapter 453D authorizes the Department to rank applications or allocate
28 licenses to certain local jurisdictions *within* a county. Rather, the Initiative and NRS Chapter
453D clearly delimit the Department's authority to issue licenses according to *county* only. Thus,
the Department does not have the authority to pick and choose the jurisdictions *within* a county
where licenses will be issued, or to decide how many it will issue on that basis.

1 Indeed, NRS 453D.210(6) provides: “When competing applications are submitted for a
2 proposed retail marijuana store *within a single county*, the Department *shall* use an impartial
3 and numerically scored competitive bidding process to determine which application or
4 applications among those competing will be approved” (emphasis added).

5 Thus, the Ballot Initiative and enabling statutes already make provision for situations in
6 which there are multiple “competing applications” for licenses in a single county. The statute’s
7 reference to “competing applications ... *within a single county*” plainly shows that it is *all* the
8 applications *within a county* (not an intra-county local jurisdiction) that are “competing.” The
9 statute further mandates that the Department “*shall*” use a competitive bidding process to
10 determine which applications “among those competing” will be approved. Thus the phrase
11 “among those competing” must be construed to refer to those “applications for licenses *in a*
12 *single county*.” And therefore, the statute must be construed to require the competitive bidding
13 process to apply on a *county-wide* basis.

14 NRS 453D.210(6) is *mandatory*, and therefore *requires* the Department to rank all
15 competing applications within the county as a whole, and to issue licenses according to
16 applicants’ rankings on that basis, and does not permit the Department to rank applications or
17 allocate licenses according to the population of specific localities *within* a county. NAC
18 453D.272 directly conflicts with this mandate by purporting to authorize the Department to rank
19 and allocate licenses on a completely different basis, *i.e.*, population of certain localities. Ans
20 accordingly, NAC 453D.272 is invalid because it conflicts with NRS 453D.210(6).

21 Furthermore, NAC 453D.272 violates the plain purpose and intent of NRS 453D.210(6)
22 to require that where there are more applicants than there are licenses to be issued within a
23 county, the Department should determine which are the “best” applicants, and issue licenses to
24 those applicants first. Whereas by contrast, the Department’s method, as set forth in NAC
25 453D.272, could result in licenses being issued to lower-ranked applicants on the fortuitous basis
26 of where the applicant’s proposed store happens to be located *within* the county. Thus, because
27 the Department’s method violates NRS 453D.210(6), an applicant who would otherwise rank
28 quite poorly as compared to all other applicants in the county could achieve a higher ranking in a

1 specific local jurisdiction within the county due to less competition, and thus be awarded a
2 license ahead of more qualified applicants within the county who did not apply for a license in
3 all of the local jurisdictions within it in order to meet the Department's self-imposed local
4 population allocation.

5 Other provisions of the Ballot Initiative and NRS Chapter 453D also demonstrate that the
6 Department has no authority to pick and choose the specific localities within a county where it
7 will issue licenses, and how many it will issue.

8 First, NRS 453D.210(5)(d)(5) provides that the Department may issue *more* licenses than
9 set forth in the statute, but only "[u]pon request of a *county* government" (emphasis added),
10 whereas, in contradistinction, local governments are not permitted to make such requests.

11 And second, NRS 453D.210(5) mandates that the Department "*shall*" issue licenses to
12 applicants who meet the requirements of the statute and regulations, unless certain exceptions
13 apply. The only relevant exception in this case is set forth in NRS 453D.210(5)(e), which
14 provides that, assuming other conditions are met, the Department shall issue a license if "[t]he
15 locality in which the proposed marijuana establishment will be located *does not affirm to the*
16 *Department that the proposed marijuana establishment will be in violation of zoning or land*
17 *use rules adopted by the locality*" (emphasis added). The language of this exception is limited
18 and specific. Thus, under the enabling statutes, the *only* consideration given to a specific locality
19 is when that locality *affirmatively notifies the Department that the proposed marijuana*
20 *establishment would violate its zoning or land use rules.*¹ And accordingly, the Department
21 cannot deny a license solely because the applicant's proposed location does not fit the
22 Department's own unauthorized local population allocation rule imposed by NAC 453D.272 in
23 conflict with NRS 453D.210(5).

24 When an agency's regulation is not within the scope of statutory language delimiting its
25 authority, the regulation is invalid. *Village League*, 388 P.3d at 226. In *Village League*, the
26 Nevada Supreme Court struck down a regulation that purported to allow the State Board of

27 ¹ The Department apparently recognizes this restriction to some degree, in that NAC 453D.272(2) states that the
28 Department will not require proof of compliance with local zoning and land use regulations to be submitted with an
application, and will not consider such approval when ranking applications.

1 Equalization to order reappraisals of certain properties, holding that “[b]ecause NAC
2 361.665(1)(c)’s purported grant of power is not within the language of NRS 361.395, or any
3 other statutory provision, we conclude that the State Board’s interpretation is unreasonable and in
4 excess of its statutory authority.” *Id.*

5 Likewise, NAC 453D.272 is “not within the language” of NRS Chapter 453D. Nothing in
6 the statutory scheme authorizes the Department to decide which specific localities within a
7 county will get licenses, and how many. Indeed, NAC 453D.272 directly conflicts with NRS
8 453D.210(5) and (6), which require the Department to conduct a *county-wide* competitive
9 bidding process. Thus, as in *Village League*, the Regulation exceeds the Department’s statutory
10 authority, and is therefore unenforceable. And accordingly, the licenses issued pursuant to the
11 Department’s illegal ranking and allocation method are likewise invalid.

12 **B.**

13 **The Regulation Violates NRS 453D.210 By Employing Unauthorized,**
14 **Arbitrary, Irrelevant, Vague, Ambiguous, Undisclosed And Unpublished**
15 **Criteria To Rank Applications.**

16 The Department has also exceeded its statutory authority by creating a competitive
17 bidding process that textually takes into account not only enumerated, facially arbitrary criteria
18 that are not “directly and demonstrably related to the operation of a marijuana establishment,” as
19 required by the Ballot Initiative and NRS Chapter 453D, but textually purports to permit
20 licensing determinations to be based on any additional, unspecified, undisclosed and unpublished
21 criteria that the Department deems relevant, and which therefore cannot be determined to be of
22 such requisite delimited character.

23 Thus, while NRS 453D.200 permits the Department to adopt regulations to carry out the
24 purposes of that chapter, it does not give the Department carte blanche to enact any and all
25 regulations it might wish to impose. Instead, NRS 453D.200(1)(b) textually mandates that the
26 regulations “*shall*” only impose criteria for licensure that “*directly and demonstrably relate to*
27 *the operation of a marijuana establishment*” (emphasis added). Furthermore, NRS 453D.200(2)
28 mandates that the Department “*shall* approve or deny applications for licenses *pursuant to NRS*

1 453D.210" (emphasis added). And NRS 453D.210(6) requires that the "Department *shall* use an
2 *impartial* and *numerically scored competitive bidding process* to determine which among those
3 competing applications will be approved" (emphasis added).

4 However, in the event that there are more applicants than licenses to be issued, NAC
5 453D.272(1) sets forth application ranking criteria that are *neither* "impartial" nor "directly and
6 demonstrably relate[d]" to the operation of a marijuana establishment. These criteria include:
7 "[o]perating experience *of another kind of business*"; "[d]iversity of the owners, officers or
8 board members"; "*the amount of taxes paid and other beneficial financial contributions*";
9 "*[e]ducational achievements* of the owners, officers or board members"; "The *financial. . .*
10 *resources of the applicant, both liquid and illiquid*" (emphasis added).

11 Thus, with due regard to the desirability of diversity generally, a person's race, gender,
12 religion, and so forth are completely irrelevant to one's qualifications "to. . . operat[e]. . . a
13 marijuana establishment." Nor is consideration of such factors "impartial." The same is also true
14 of the regulation's requirement that the Department consider "*[t]he amount of taxes paid and*
15 *other beneficial financial contributions*," including, without limitation, civic or philanthropic
16 involvement with this State or its political subdivisions and "*[t]he financial. . . resources of the*
17 *applicant*" (emphasis added).

18 Indeed, these criteria clearly, arbitrarily, and gratuitously favor large corporations over
19 smaller businesses, and the very wealthy over those of more moderate means.

20 Moreover, NAC 453D.272(1)(i) further textually permits the Department to rank
21 applications based on "*[a]ny other [undisclosed and unpublished, additional] criteria that the*
22 *Department determines to be relevant*" (emphasis added). Thus, this subsection expressly
23 purports to allow the Department to literally use absolutely *any* criteria it wants to. And
24 therefore, the Regulation textually purports to permit the Department to exercise *unbridled*
25 *discretion* to rank applications based on unauthorized, unaccountable, and undisclosed criteria as
26 well as criteria that are unaccountably arbitrary, vague and ambiguous, unknown to the
27 applicants and the public, and that could differ substantially in their assessment from one
28 Department employee to the next. And the plain language of the Regulation therefore manifestly

1 violates the respective requirements of NRS 453D.200(1)(b), 453D.200(2), and NRS
2 453D.210(6) that the ranking criteria be “*directly and demonstrably related to the operation of a*
3 *marijuana establishment*” and that the competitive bidding process employed be “*impartial*”
4 (emphasis added).

5 And consistent therewith, Section 6.3 of the conditional licensing application form
6 created and issued by the Department (Exhibit “B”) states that “[a]pplications that have not
7 demonstrated a sufficient response related to the [specifically enumerated] criteria set forth
8 above will not have *additional [undisclosed, unpublished] criteria* considered in determining
9 whether to issue a license *and will not move forward in the application process*” (emphasis
10 added). Thus, conversely, by necessary implication, Section 6.3 of the application form textually
11 subjects an application which *has* in fact demonstrated a *sufficient* response related to the
12 specifically enumerated, published criteria set forth above to “*additional [unspecified,*
13 *unpublished] criteria*”— consideration of which by the Department will determine whether or
14 not a license application will “*move forward in the application process,*” and whether or not a
15 license is ultimately issued (emphasis added).

16 In short, NAC 453D.272 creates a competitive bidding process that is anything but
17 impartial and imposes ranking criteria that are not directly and demonstrably related to operating
18 a marijuana establishment in clear excess of the Legislature’s delimited delegation of discretion
19 to the Department. And whereas “[a]dministrative regulations cannot contradict or conflict with
20 the statute they are intended to implement,” (*Roberts v. State*, 104 Nev. 33, 37, 752 P.2d 221,
21 223 (1988)), the Regulation is invalid, and the Department’s licensing determinations pursuant
22 thereto must be set aside.

23 C.

24 **The Department Failed To Issue The Number Of Licenses Required By**
25 **Statute.**

26 NRS 453D.210(5)(d) sets presumptive caps on the number of licenses for marijuana retail
27 stores in each county, according to county-wide population, but allows the Department to issue
28 more licenses, if the county requests it to do so. Under NRS 453D.210(5)(d)(1) the cap in Clark

1 County is 80 licenses. However, the Department issued only 79 licenses in Clark County.

2 The Department does not have authority to limit the number of licenses allowed by the
3 statute. Thus, NRS 453D.210(5) provides:

4 “The Department *shall approve* a license application if:

5 (a) The prospective marijuana establishment has submitted an application in
6 compliance with regulations adopted by the Department and the application fee
7 required pursuant to NRS 453D.230;

8 (b) The physical address where the proposed marijuana establishment will
9 operate is owned by the applicant or the applicant has the written permission of
10 the property owner to operate the proposed marijuana establishment on that
11 property;

12 (c) The property is not located within:

13 (1) One thousand feet of a public or private school that provides formal
14 education traditionally associated with preschool or kindergarten through grade
15 12 and that existed on the date on which the application for the proposed
16 marijuana establishment was submitted to the Department; or

17 (2) Three hundred feet of a community facility that existed on the date on
18 which the application for the proposed marijuana establishment was submitted to
19 the Department;

20 (d) *The proposed marijuana establishment is a proposed retail
21 marijuana store and there are not more than:*

22 (1) *Eighty licenses already issued in a county with a population greater than
23 700,000;*

24 (2) Twenty licenses already issued in a county with a population that is less than
25 700,000 but more than 100,000;

26 (3) Four licenses already issued in a county with a population that is less than
27 100,000 but more than 55,000;

28 (4) Two licenses already issued in a county with a population that is less than
55,000;

(5) Upon request of a county government, the Department may issue retail
marijuana store licenses in that county in addition to the number otherwise
allowed pursuant to this paragraph;

(e) The locality in which the proposed marijuana establishment will be
located does not affirm to the Department that the proposed marijuana
establishment will be in violation of zoning or land use rules adopted by the

1 locality; and

2 (f) The persons who are proposed to be owners, officers, or board
3 members of the proposed marijuana establishment:

4 (1) Have not been convicted of an excluded felony offense; and

5 (2) Have not served as an owner, officer, or board member for a medical
6 marijuana establishment or a marijuana establishment that has had its registration
7 certificate or license revoked."

8 (Emphasis added.)

9 The statute is *mandatory*. The Department *must* issue a license if the applicant meets all
10 of the legal criteria "and there are not more than" the statute's allowed number of licenses
11 already issued.

12 NRS 453D.210(1) requires that the Department must begin accepting applications for
13 marijuana establishments "no later than 12 months after January 1, 2017." NRS 453D.210(4)
14 requires the Department to approve or deny an application within 90 days of receipt. The intent
15 of these provisions is clearly to prevent administrative foot-dragging that would thwart or delay
16 the will of the voters, whether done intentionally or not. Nothing in NRS Chapter 453D permits
17 the Department to limit the number of applications it will consider, the number of licenses it will
18 issue, or issue them beyond the parameters of a time certain.

19 However, the Department has done just that. The Department issued only 79 licenses in
20 Clark County, when NRS 453D.210(5) allows for 80, and there were more than 80 qualified
21 applicants. It is unknown why the Department refused to issue all 80 licenses. One explanation
22 could be that the two remaining licenses would not fit the Department's legislatively-
23 unauthorized requirement that the licenses be distributed to certain localities *within* Clark
24 County.

25 In any event, the reason is irrelevant. The Department's failure to issue all 80 licenses in
26 Clark County, when there were more than 80 qualified applicants, violates NRS 453D.210(5),
27 which mandates that the Department issue licenses to qualified candidates if the statutory cap on
28 the number of licenses has not been met. The Department's failure to do so demonstrates that its
process for awarding licenses was contrary to law, and must be set aside.

1 D.

2 **The Department Engaged In Illegal, *Ad Hoc* Rule-Making By Limiting Each**
3 **Applicant To Only One License Per Locality.**

4 Another possible reason the Department failed to issue all 80 licenses in Clark County
5 could be that the Department simply refused, absent statutory authority, to issue an applicant
6 more than one license in each of the specified localities. Thus, the Department's application for a
7 marijuana establishment (Exhibit "B") states, on page 8: "No applicant may be awarded more
8 than 1 (one) retail store license in a jurisdiction/locality, unless there are less applicants than
9 licenses allowed in the jurisdiction."

10 A "regulation" includes an "agency rule, standard, directive or statement of general
11 applicability which effectuates or interprets law or policy, or describes the organization,
12 procedure or practice requirements of any agency." NRS 233B.038(1)(a). "An agency makes a
13 **rule** when it does nothing more than state its official position on how it interprets a requirement
14 already provided for and how it proposes to administer its statutory function." *Coury v.*
15 *Whittlesea-Bell Luxury Limousine*, 102 Nev. 302, 305, 721 P.2d 375, 377 (1986) (emphasis
16 added).

17 It is plain that the limit of one license per locality affects the substantive legal rights of
18 the applicants and constitutes an "agency rule" that attempts to effectuate law or policy and
19 describes the procedure of an agency. However, there is nothing in either the statutory scheme or
20 in NAC Chapter 453D that provides for that limitation. Accordingly, the Department's policy
21 that no applicant may be awarded more than one license per locality constitutes *ad hoc* rule-
22 making in violation of the Administrative Procedures Act.

23 The Department's process for awarding licenses in at least Clark and Washoe Counties
24 was fatally flawed because of its reliance on this invalid "one license" policy. Without this illegal
25 policy, it is very likely that the Department would have issued licenses to different applicants,
26 and/or a different number of licenses in the various localities, and it would have issued the
27 correct number of licenses, as required by NRS 453D.210(5). Because the Department's illegal
28 "one license" policy infected its process for awarding licenses, that process, at least as applied to

1 those counties was therefore invalid.

2 E.

3 **The Department Allocated And Issued Licenses In Violation Of Its Own**
4 **(Albeit Otherwise Invalid) Regulation By Exceeding The Cap On The**
5 **Number Of Licenses That Can Be Issued To A Single Company And By**
6 **Failing To Fairly And Objectively Score Applications.**

7 The Department's licensing determinations should also be invalidated because the
8 Department failed to follow, not only the enabling statutes, but also its own (albeit otherwise
9 invalid) regulations. First, the Department issued more licenses to a single company than is
10 permitted under the Regulation's anti-monopoly provisions. Second, the Department scored
11 applications in a manner that is statistically impossible under an impartial, objective, and fair
12 scoring process.

13 Dr. Amei Amei is a statistician and associate professor of mathematics at UNLV. She
14 performed an analysis of the number of licenses issued and data from a sample of applicants.
15 Based on that analysis, she concludes that: (1) the Department issued more licenses to a single
16 company than is permitted by the anti-monopoly provisions of NAC 453D.272; and (2) that the
17 Department did not accurately and objectively score the applications. Dr. Amei's Affidavit,
18 Report, and Curriculum Vitae are attached hereto as "Collective Exhibit D."

19 1.

20 **The Department Exceeded The Cap On The Number Of Licenses That Can**
21 **Be Issued To A Single Company.**

22 Although NRS 453D.210 sets forth criteria for licensure at a county level, the Regulation
23 states that "[t]he Department will allocate the licenses for retail marijuana stores described in
24 paragraph (d) of subsection 5 of NRS 453D.210 to jurisdictions within each county and to the
25 unincorporated area of the county proportionally based on the population of each jurisdiction and
26 of the unincorporated area of the county." NAC 453D.272(3).

27 Pursuant to that provision of the Regulation, the Department allocated the number of
28 licenses it would issue according to the population of various local jurisdictions within a county,
allocating licenses for Clark County as follows:

Licensing Authority	Number of New Licenses
Henderson	6
Las Vegas	10
Mesquite	0
North Las Vegas	5
Unincorporated Clark County	10
Total:	31

Prior to the Department issuing these 31 new licenses, there were a total of 48 existing licenses for retail stores in Clark County. Thus the Department allocated a total of 79 licenses to the various jurisdictions in Clark County.

And, in this manner, the Department allocated licenses for Washoe County as follows:

Licensing Authority	Number of New Licenses
Reno	6
Sparks	1
Unincorporated Washoe County	0
Total:	7

Prior to the allocation of new licenses, there were a total of 13 licenses issued in Washoe County. Accordingly, the Department has allocated all 20 licenses allowed under NRS 453D.210(5) in Washoe County.

NAC 453D.272(5) provides:

“To prevent monopolistic practices, the Department will ensure, in a county whose population is 100,000 or more, that the Department does not issue, to any person, group of persons or entity, **the greater of:**

- (a) One license to operate a retail marijuana store; or
- (b) More than 10 percent of the licenses for retail marijuana stores allocable in the county.”

(Emphasis added.)

As set forth in her attached report, Dr. Amei analyzed the number of licenses issued using two methods. Under the first method, Dr. Amei interpreted “10 percent of the licenses. . . allocable in the county” to refer to the *new* licenses the Department allocated. And under the second method, Dr. Amei interpreted “allocable in the county” to refer to the *total* number of licenses the Department had allocated for a given county.

Under the first method, the Department cannot issue more than three of the new licenses to any one company in Clark County, because 10% of the 31 new licenses allocated to Clark County = 3.1, which is greater than 1. For Washoe and Carson City, the Department cannot issue

1 more than one of the new licenses to any one company, because in both Washoe and Carson
2 City, 1 license is greater than 10% of the new licenses allocated, *i.e.*, $10\% * 7 = 0.7$ and $10\% * 2$
3 $= 0.2$, respectively.

4 Dr. Amei concluded that, under the first method, the Department violated NAC
5 453D.272(5) because it issued "Essence" five (5) licenses in Clark County, which is greater than
6 the limit of three. It also violated the regulation by issuing Essence two licenses in Washoe,
7 which is greater than the cap of one license.²

8 Under the second method, Dr. Amei calculated the limit imposed by NAC 453D.272(5)
9 including all the licenses the Department allocated to each county. The limit for Clark County is
10 7 licenses because $10\% * 79 = 7.9$, which is greater than 1.³ The limit for Washoe County is two
11 licenses, because $10\% * 20 = 2$, which is greater than 1.

12 Dr. Amei concluded that, under the second method, the Department issued licenses in
13 Washoe and Carson City consistent with the Regulation. However, the Department violated
14 NAC 453D.272(5) by issuing "Essence" a total of 8 licenses in Clark County.

15 In sum, Dr. Amei found that, under *either* method, the Department violated the anti-
16 monopoly provisions by granting more licenses to "Essence" than is permitted.

17 Because there is no data available showing how licenses were allocated to the other
18 companies operating retail stores, Dr. Amei was unable to analyze the anti-monopoly provisions
19 with respect to other companies, in that the applicable provisions of the Regulation apply per
20 county. However, Dr. Amei found that only 4 companies control nearly half of the retail store
21 licenses in the State. And given that the Department has issued "Essence" more licenses than
22 permitted under the anti-monopoly provisions, it is possible, if not likely, that the Department
23 has also issued licenses in excess of the limits to other companies as well.

24 ...

25 ...

26 _____
27 ² The Department issued "Essence" one license in Carson City, which is consistent with the Regulation.

28 ³ It is impossible to issue a fractional license, and the limit is less than 8 licenses, therefore the fraction must be rounded *down*.

The Department Did Not Fairly And Objectively Score The Applications.

The Department did not score the applications objectively or accurately. Many of the scores were remarkably similar, and in some cases, exactly the same, despite differences in the contents of the applications. It is a statistical impossibility that this would occur if the Department had used an objective, accurate, and fair scoring process.

As discussed *supra*, the Department announced that it would issue licenses to those applicants who score and rank high enough in each jurisdiction to be awarded one of the allocated licenses. And each applicant was required to submit a separate application for each local jurisdiction. While some parts of those applications would be the same, other parts would differ due to the different proposed location, different requirements of the locality, etc. Consequently, the scores on those applications would normally be different as well – assuming they were scored and ranked in an objective fashion.

Dr. Amei determined that the difference in the content of the applications is around 10% to 15%. And she analyzed the scores on a sample of applications that were submitted by the same companies to various local jurisdictions, using the lower 10% bound to be conservative.

In the first case, the applicant received six scores: 207.66, 207.33, 209, 209.66, 209.66, 209.66. These scores are all within 2.33 points or less of each other. Using the lower bound of a 10% difference between the applications, Dr. Amei analyzed the probability that the scores would be so similar under an objective and accurate scoring system. And she concludes that the probability of all six scores being so similar is only 0.0002, which is extremely unlikely.

In the second case, the applicant received exactly the same score of 196.67 on all six of its applications. And Dr. Amei calculates that the probability of this occurring is $4.67e-11$, which is equivalent to 0. In other words, Dr. Amei has concluded that had an accurate and objective scoring system been used, it is statistically impossible that the scores on all six applications would be exactly the same.

Dr. Amei's analysis demonstrates that the Department did not comply with NAC 453D.272(1), which states that the Department will rank applications "within each applicable

1 locality” according to the criteria set forth therein. Her analysis further shows that the
2 Department violated NRS 453D.210(6), which requires that the Department use an “impartial
3 and numerically scored competitive bidding process to determine which application or
4 applications among those competing will be approved.” For certainly, a process that results in
5 statistically impossible scores is not impartial.

6 Thus, the Department did not rank license applicants in an impartial, fair, and objective
7 manner. Instead, it scored applications in a manner that would be statistically impossible under
8 an objective process. Additionally, the Department violated its own regulation prohibiting
9 monopolistic practices by issuing more licenses to a single entity than the regulation permits.
10 This evidence shows that the Department’s process for awarding licenses violated the mandate of
11 NRS 453D.210(6) that it use an impartial competitive bidding process. The Department’s actions
12 must therefore be set aside, and it must be enjoined from taking any further action on the 31 new
13 licenses, including but not limited to issuing permanent licenses.

14 II.

15 THE PROVISIONS OF THE REGULATION ARE FACIALLY REPUGNANT TO 16 FEDERAL AND STATE CONSTITUTIONAL PROVISIONS.

17 A.

18 The Regulation Textually Permits The Arbitrary And Capricious
19 Deprivation Of A Qualified And Prevailing, Properly-Ranked Applicant’s
20 Property Interest In Conditional Licensure In Derogation Of Such An
21 Applicant’s Statutory Entitlement Thereto Under The Provisions Of NRS
22 453D.200 And NRS 453D.210, And Therefore In Violation Of The Due
23 Process Protections Guaranteed By The Fourteenth Amendment To The
24 Constitution Of The United States And Article 1, Sections 1 And 8 Of The
25 Constitution Of The State Of Nevada.

26 Section 1 of the Fourteenth Amendment to the Constitution of the United States
27 provides:

28 “All persons born or naturalized in the United States, and subject to the
jurisdiction thereof, are citizens of the United States and of the state wherein they
reside. No state shall make or enforce any law which shall abridge the privileges
or immunities of citizens of the United States; nor shall any state deprive any
person of life, liberty, or property, without due process of law; nor deny to any
person within its jurisdiction the equal protection of the laws.”

1 Article 1, Section 8.5 of the Constitution of the State of Nevada likewise provides: “No
2 person shall be deprived of life, liberty, or property, without due process of law.”

3 Article 1, Section 1 of the Nevada Constitution further provides:

4 “All men are by Nature free and equal and have certain inalienable rights among
5 which are those of enjoying and defending life and liberty; Acquiring, Possessing
6 and Protecting property and pursuing and obtaining safety and happiness.”

7 The purpose and intent of the imperative of due process in both its procedural and
8 substantive applications is to protect life, liberty and property interests against their arbitrary and
9 capricious deprivation or otherwise than in accordance with mandated procedures. Thus, in
10 analyzing such issues in cases such as this, a court must determine whether a protected liberty or
11 property interest is implicated, entitling a party aggrieved by administrative action to
12 constitutional due process protection against its arbitrary or capricious deprivation. For as the
13 Nevada Supreme Court recently held in *Nuleaf CLV Dispensary, LLC v. State of Nevada*
14 *Department of Health and Human Services, et al.*, ___ Nev. ___, 414 P.3d 305, 308 (2018), in
15 the specific context of Marijuana business licensing regulations: “An agency’s interpretation of a
16 statute that it is authorized to execute is . . . [not] entitled to deference . . . [if] ‘it conflicts with
17 the constitution or other statutes, exceeds the agency’s powers, or is otherwise arbitrary and
18 capricious’” (quoting *Cable v. State ex rel. Emp’rs Ins. Co. of Nev.*, 122 Nev. 120, 126, 127 P.3d
19 528, 532 (2006)). Thus, as our Supreme Court explained in *Nevada Attorney for Injured Workers*
20 *v. Nevada Self-Insurers Ass’n*, 126 Nev. 74, 83, 225 P.3d 1265, 1271 (2010): “When examining
21 whether an administrative regulation is valid, we will generally defer to the ‘agency’s
22 interpretation of a statute that the agency is charged with enforcing.’ *State, Div. of Insurance v.*
23 *State Farm*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000). However, we will not defer to the
24 agency’s interpretation if, for instance, the regulation ‘conflicts with existing statutory provisions
25 or exceeds the statutory authority of the agency.’ *Id.* We have established that ‘administrative
26 regulations cannot contradict the statute they are designed to implement.’ *Jerry’s Nugget v.*
27 *Keith*, 111 Nev. 49, 54, 888 P.2d 921, 924 (1995).”

28 ***

1 As the *Nuleaf* Court determined, in light of its resolution of that case on other grounds:
2 “We . . . need not reach GB and Acres’ arguments on cross-appeal regarding entitlement to
3 Nuleaf’s registration certificate.” Note 2. However, a properly qualified candidate’s
4 “entitlement” to the issuance of conditional recreational marijuana store license pursuant to
5 principles of substantive and procedural due process is a question that is squarely presented in
6 the case at bar.

7 Property and liberty interests are not *created* by the Constitution, but arise under an
8 *independent source* such as state law. However, where they do so obtain, the imperative of due
9 process operates to preclude their deprivation arbitrarily, capriciously, or otherwise than in
10 accordance with prescribed procedures. Such interests can be created by “statutory entitlement,”
11 the operation of institutional common law, historic custom and usage, or principles of contract
12 law. And such interests can attach to the issuance of a necessary government license to engage in
13 a particular activity. In determining whether a plaintiff enjoys a protected property or liberty
14 interest in the issuance of a license, permit, or other benefit by virtue of a state statutory
15 entitlement pursuant to a particular, legislatively-prescribed procedure, a court must determine
16 whether *mandatory* language set forth therein by the legislature, *limiting the exercise of broad*
17 *discretion by a regulatory agency*, creates a legitimate claim of substantive or procedural
18 *entitlement*. And accordingly, this will necessarily depend on a specific assessment in each case.
19 *Mathews v. Eldridge*, 424 U.S. 319 (1976) (social security disability benefits); *Perry v.*
20 *Sindermann*, 408 U.S. 593 (1972) (tenure); *Board of Regents of State Colleges v. Roth*, 408 U.S.
21 564 (1972) (tenure); *Goldberg v. Kelly*, 397 U.S. 254 (1970) (welfare benefits); *Valdez v.*
22 *Employers Ins. Co. of Nevada*, 123 Nev. 170, 180, 162 P.3d 148, 154–55 (2007) (“Valdez has a
23 statutorily created property interest in the continued receipt of workers’ compensation benefits
24 that the State may not abrogate without due process under the Fourteenth Amendment to the
25 United States Constitution. Further, Valdez’s property interest in receiving these benefits
26 attached once he fulfilled the requirements of his entitlement under Nevada law”); *Weaver v.*
27 *State, Dep’t of Motor Vehicles*, 121 Nev. 494, 502, 117 P.3d 193, 199 (2005) (“[t]he revocation
28 of a driver’s license implicates a protectable property interest entitling the license holder to due

1 process”).

2 Accordingly, the Ninth Circuit has held that a state statute creates a legitimate claim of
3 entitlement to a government license, permit or benefit when it imposes significant limitations on
4 the discretion of the administrative decision maker. *Gerhart v. Lake County, Mont.*, 637 F.3d
5 1013, 1019–20 (9th Cir. 2011), cert. denied, 132 S. Ct. 249 (2011). *Accord, e.g., Pritchett v.*
6 *Alford*, 973 F.2d 307, 317 (4th Cir. 1992) (plaintiff had property interest in being on state-
7 prescribed wrecker-service list in light of regulations directing that such list be administered
8 fairly and in a manner designed to ensure that all wrecker services on the list have an equal
9 opportunity to acquire towing business); *Richardson v. Town of Eastover*, 922 F.2d 1152, 1156-
10 1157 (4th Cir. 1991) (a license issued by a state which can be suspended or revoked only upon
11 showing of cause or for certain stated reasons creates a property interest protected by the
12 Fourteenth Amendment and entitlement to renewal of the license may be implied from policies,
13 practices and understandings or from mutual expectations); *Silberstein v. City of Dayton*, 440
14 F.3d 306, 312–15 (6th Cir. 2006) (assistant examiner for city civil service board had a property
15 interest in continued employment because city charter categorized the position as “classified”
16 and classified employees were given the right to specific termination procedures); *Paskvan v.*
17 *City of Cleveland Civil Service Com’n*, 946 F.2d 1233, 1237 (6th Cir. 1991) (district court erred
18 in dismissing plaintiff’s procedural due process claim where plaintiff alleged that defendant’s
19 course of conduct created implied contract or mutually explicit understanding regarding
20 promotion based on test scores); *Cushman v. Shinseki*, 576 F.3d 1290, 1297-1300 (Fed. Cir.
21 2009) (court joins seven sister circuits in holding that applicants for benefits may possess a
22 property interest in the receipt of public welfare entitlements, and here, because veteran’s
23 disability benefits are nondiscretionary and statutorily mandated, entitlement to such benefits is a
24 property interest); *Furlong v. Shalala*, 156 F.3d 384 (2d Cir. 1998) (although statute that simply
25 provides standard for review of agency action cannot furnish substantive basis for claim of
26 entitlement to property interest, property interest may be established through such sources as
27 unwritten common law and informal institutional policies and practices and thus anesthesiologist
28 demonstrated a cognizable property interest in recovering a Medicare-approved charge based on

1 a constant, consistent pattern of decisions); *Med Corp., Inc. v. City of Lima*, 296 F.3d 404, 409-
2 413 (6th Cir. 2002) (ambulance company had a property interest in city-issued license to provide
3 ambulance services);

4 Whereas, in contradistinction, the Ninth Circuit has held that where statutory language
5 confers *unfettered discretion* upon administrative officials, a statutory entitlement does not
6 attach. *Shanks v. Dressel*, 540 F.3d 1082, 1090-92 (9th Cir. 2008) (even assuming a property
7 owner may have a constitutionally protected interest in the proper application of zoning
8 restrictions to neighboring properties, plaintiffs did not have a legitimate claim of entitlement to
9 the denial of developers' permit in accordance with historic preservation provisions because the
10 governing ordinance vested *unfettered discretion* in the reviewing party to deny or approve the
11 application and thus there was no protected property interest); *Thornton v. City of St. Helens*, 425
12 F.3d 1158, 1164-66 (9th Cir. 2005) (state license that can be revoked only for cause creates a
13 property interest, but where statute grants reviewing body *unfettered discretion* to approve or
14 deny application, no property right exists; thus, wrecking yard owners who failed to secure
15 approval to renew their licenses lacked protected property interest in renewal since state statute
16 gave city *unfettered discretion* to deny renewal application and therefore did not create property
17 interest). *Accord, e.g., Harrington v. County of Suffolk*, 607 F.3d 31, 34-35 (2d Cir. 2010) (a
18 benefit is not a protected entitlement if government officials may grant or deny it in their
19 *unfettered discretion*, and thus statute that requires police department to preserve the peace,
20 prevent crime, and detect and arrest offenders, does not confer on the victims of crime a property
21 interest in a police investigation that conforms with certain minimal standards; further, the
22 ordinance confers a benefit on the public generally, rather than creating an individual
23 entitlement, which is required to qualify as a property interest protected by the Due Process
24 Clause); *Sanitation and Recycling Industry, Inc. v. City of New York*, 107 F.3d 985, 995 (2d Cir.
25 1997) (plaintiffs had no due process property interest in waiver of termination of their existing
26 contracts nor in possible future license to collect trade waste where local law gave Commission
27 *broad discretion* to grant or deny license applications); *Villager Pond, Inc. v. Town of Darien*, 56
28 F.3d 375, 378, 379 (2d Cir. 1995) (entitlement to property interest exists only when discretion of

1 issuing agency is *circumscribed*); *Colson on Behalf of Colson v. Sillman*, 35 F.3d 106, 109 (2d
2 Cir. 1994) (whether statutory benefit scheme invests applicant with claim of entitlement or with
3 merely unilateral expectation is determined by amount of discretion that disbursing agency
4 retains); *Walz v. Town of Smithtown*, 46 F.3d 162, 268 (2d Cir. 1995) (legal claim of entitlement
5 exists where discretion of issuing agency is *circumscribed*); *Bayview-Lofberg's, Inc. v. City of*
6 *Milwaukee*, 905 F.2d 142, 145-146 (7th Cir. 1990) (since municipal ordinance did not provide
7 that upon meeting statutory and municipal requirements applicant for liquor license is entitled to
8 license, plaintiff did not have a property interest protectable under the due process clause);
9 *Austell v. Sprenger*, 690 F.3d 929, 935-36 (8th Cir. 2012) (state law provided a property interest
10 by statutory entitlement).

11 In the present context, the Ninth Circuit case of *Wedges/Ledges of California, Inc., City*
12 *of Phoenix, Arizona*, 24 F.3d 56 (9th Cir. 1994) is particularly instructive. Thus, as the Ninth
13 Circuit explained in that case:

14 A threshold requirement to a substantive or procedural due process claim is the
15 plaintiff's showing of a liberty or property interest protected by the Constitution.
16 *Board of Regents v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705, 33 L.Ed.2d
548 (1972); *Kraft v. Jacka*, 872 F.2d 862, 866 (9th Cir.1989).

17 *A protected property interest is present where an individual has a reasonable*
18 *expectation of entitlement deriving from "existing rules or understandings that*
19 *stem from an independent source such as state law."* *Roth*, 408 U.S. at 577, 92
20 S.Ct. at 2709. "A reasonable expectation of entitlement is determined largely by
21 *the language of the statute and the extent to which the entitlement is couched in*
22 *mandatory terms."* *Association of Orange Co. Deputy Sheriffs v. Gates*, 716 F.2d
23 733, 734 (9th Cir.1983), *cert. denied*, 466 U.S. 937, 104 S.Ct. 1909, 80 L.Ed.2d
458 (1984). Although procedural requirements ordinarily do not transform a
unilateral expectation into a protected property interest, *such an interest is*
24 *created "if the procedural requirements are intended to be a 'significant*
25 *substantive restriction' on ... decision making."* *Goodisman v. Lytle*, 724 F.2d
26 818, 820 (9th Cir.1984) (citations omitted).

27 24 F.3d at 62 (emphasis added).

28 In *Wedges/Ledges*, the manufacturer and former distributors and owners of an arcade
"crane" amusement game called "The Challenger" initiated a lawsuit under 42 U.S.C. § 1983
against the City of Phoenix, the Phoenix License Appeal Board, and members of the License
Appeal Board (collectively "the City") based upon the denial of licenses to operate the game,

1 alleging violation of their right to due process. The district court found that the plaintiffs had not
2 shown either that they had a liberty or property interest in the crane game licenses, and
3 accordingly decided that the denial of licensure did not violate their due process rights.

4 The provision of the local code governing licensing of amusement games provided in
5 pertinent part as follows:

6 "A. Coin-Operated Game Machines—Skill Games.

7 Only coin machines which are approved by the City Treasurer as games of skill
8 may be operated as an amusement within the City of Phoenix.

9 B. Approval of Coin-Operated Games as Skill Games.

10 3. The City Treasurer shall make a determination as to whether or not [a
11 proffered machine] qualifies as a game of skill based upon an evaluation of the
12 machine and recommendation by the police department and other relevant
13 information

14 C. Issuance and Display of the Machine, Identification Tags to Approved Machines .

- 15 1. Owners of coin-operated game machines approved by the City Treasurer as
16 games of skill shall be issued identification tags by the City Treasurer for each
17 game approved by the City Treasurer."

18 (Emphasis added.)

19 On appeal, the Ninth Circuit reversed, holding that, with respect to eligible applicants
20 thereunder, the *mandatory standards* imposed by the language of the foregoing provisions—by
21 limiting the licensing authority's exercise of discretion in determining *qualification* for
22 licensure—created an *entitlement* thereto—and a consequent *property interest* therein—within
23 the meaning and subject to the due process protections of the Fourteenth Amendment.

24 The City claims that these provisions do not significantly constrain the discretion
25 of the City Treasurer and thus do not create a legitimate expectation of
26 entitlement on the part of license applicants. In particular, the City argues that the
27 provisions lack the "explicitly mandatory language" necessary to create an
28 entitlement. *We disagree.*

Section 7-28(B)(3) expressly provides that "[t]he City Treasurer *shall* make a
determination as to whether or not [each proffered coin-operated game] qualifies
as a game of skill." Once this determination is made in the affirmative, § 7-
28(C)(1) provides that a game license tag "*shall be issued.*" *The use of the*
imperative in these provisions is sufficient to create an expectation in applicants

1 *that, as long as their machines qualify as games of skill, they have a right to*
2 *obtain license tags. Although the Code directs the City Treasurer to consider all*
3 *“relevant information” when making its determination, it does not allow the*
4 *City Treasurer to rest its decision on anything other than the “game of skill”*
5 *determination; the Code does not provide any open-ended discretionary factors.*
Accordingly, the question of whether the Code creates a property interest in new
licenses turns solely on whether the “game of skill” criterion serves as a
significant substantive restriction on the City Treasurer's discretion.

6 The City argues that the game of skill determination requires the exercise of broad
7 discretion, and the City cites to *Jacobson v. Hannifin*, 627 F.2d 177 (9th
8 Cir.1980), in support of this proposition. The City's reliance on *Jacobson* is
9 misplaced. *Jacobson* involved a Nevada gaming statute that expressly granted
10 the licensing body “full and absolute power and authority” to deny license
11 applications “for any reason deemed reasonable.” *Id.* at 180. The wide
12 discretion conferred by the Nevada statute contrasts sharply with the narrow
13 “game of skill” criterion at the heart of the Phoenix licensing statute. The City
14 Treasurer's determination, moreover, is constrained further by P.C.C. § 7-3,
15 which defines the term “game of skill” as “any game, contest, or amusement of
16 any description in which the designating element of the outcome ... is the
17 judgment, skill, or adroitness of the participant in the contest and not chance.”
18 This definition, derived from the interpretation Arizona courts gave to the
19 predecessor statute to A.R.S. § 13-3302, further constrains the game of skill
20 determination through its implicit directive that even games containing elements
21 of chance can qualify as games of skill as long as skill is the “designating element
22 of the outcome.”

23 *Taken together, the provisions of the Phoenix City Code create an “articulable*
24 *standard” sufficient to give rise to a legitimate claim of entitlement.* *Parks v.*
25 *Watson*, 716 F.2d 646, 657 (9th Cir.1983) (finding that criteria for vacating
26 plotted city streets created a property interest notwithstanding the fact that one of
27 the criteria broadly directed the decision-maker to consider “the public interest,”
28 and noting that “a determination as to whether the public interest will be
prejudiced, while obviously giving a certain amount of play in the decisional
process, defines an articulable standard.”); *cf. Allen v. City of Beverly Hills*, 911
F.2d 367, 371 (9th Cir.1990) (holding that a provision allowing the Beverly Hills
City Council to abolish any position in the classified service when “necessary in
the interests of the economy or because the necessity for the position no longer
exists” does not significantly constrain the City's discretion and thus does not
create a property interest); *Kraft*, 872 F.2d at 867 (holding that a Nevada statute
granting Gaming Control Board “full and absolute power and authority” to deny
license applications “for any reason deemed reasonable by the Board” does not
create a property interest).

Accordingly we hold that the district court erred when it ruled that the Challenger
operators did not have a property right in obtaining new license tags.

24 F.3d at 63-64 (emphasis added).

1 Thus, as the court explained in *Grabhorn, Inc. v. Metropolitan Service District*, 624
2 F.Supp.2d 1280, 1286 (D. Oregon 2009):

3 *Permit and licensing applicants have a property interest protected by the Due*
4 *Process Clause when “the regulations establishing entitlement to the benefit are*
5 *... mandatory in nature.” Foss v. Nat’l Marine Fisheries Serv., 161 F.3d 584, 588*
6 *(9th Cir.1998)*

7 [Thus,]. . . *if the governing statute compels a result “upon compliance with*
8 *certain criteria, none of which involve the exercise of discretion by the*
9 *reviewing body,” . . . it create[s] a constitutionally protected property interest.*
10 *Thornton v. City of St. Helens, 425 F.3d 1158, 1164–65 (9th Cir.2005); see also*
11 *Foss v. Nat’l Marine Fisheries Serv., 161 F.3d 584, 588 (9th Cir.1998) (holding*
12 *that “specific, mandatory” and “carefully circumscribed” requirements*
13 *constrained discretion enough to give rise to property interest).* Conversely, “a
14 statute that grants the reviewing body *unfettered discretion* to approve or deny an
15 application does not create a property right.” *Thornton*, 425 F.3d at 1164. There is
16 no protected property interest *if “the reviewing body has discretion ... to impose*
17 *licensing criteria of its own creation.” Id. at 1165.*

18 (Emphasis added.)

19 As the *Grabhorn* court explained: “Here, the Metro Code does not give the discretion to
20 the Council . . . [to apply] *open-ended criteria*,” and therefore held that “the Metro Code sections
21 at issue are sufficiently mandatory to create a constitutionally protected property interest.” 624 F.
22 Supp. 2d at 1288. *See also e.g., T.T., Plaintiff v. Bellevue School District*, No. C08-365RAJ,
23 2010 WL 5146341 (W.D. Washington 2010).

24 Here, the provisions of NRS 453D.200.2 and NRS 453D.210.4-6—the governing statutes
25 —*affirmatively mandate* that the Department “*shall*” approve and issue the appropriate license
26 within a time certain if, together with the required application fee, the prospective establishment
27 submits an application in compliance with published Department regulations *promulgated in*
28 *accordance with the limitations imposed by NRS 453.D.200.1(b), so as to require that*
29 *“[q]ualifications for licensure [be] directly and demonstrably related to the operation of a*
30 *marijuana establishment.”* And further mandate that, in the case of competing applications, the
31 Department “*shall*” approve and issue the appropriate license within a time certain if an
32 applicant outranks competing applicants in accordance with an objective, “*impartial and*
33 *numerically scored competitive bidding process.*”

34 ...

1 Thus, these provisions impose significant, specific, mandatory, and carefully
2 circumscribed limitations on the discretion of the licensing authority in determining *qualification*
3 for licensure in accordance with such specifically delineated and “demonstrable” criteria. And
4 therefore, they hardly confer *unfettered discretion* upon administrative officials to grant or deny
5 licenses based upon “open-ended criteria” of their own.

6 As elucidated by the foregoing authorities, these provisions therefore serve to create, as a
7 matter of textual legislative mandate, a *statutory entitlement* to receipt of the license by
8 applicants who comply with and competitively prevail in accordance with such specific,
9 “demonstrable” qualification requirements, and—in the case of competing applications—such an
10 “impartial” and “numerically scored” “competitive bidding process.” Such a statutory
11 entitlement constitutes a “property interest” within the meaning and subject to the due process
12 protections of the Fourteenth Amendment to the Constitution of the United States and Article 1,
13 Sections 1 and 8 of the Constitution of the State of Nevada. And accordingly, may not be denied
14 arbitrarily, capriciously, corruptly or based upon administrative partiality, favoritism, or the mere
15 *commandeering* of unfettered discretion which has not been legislatively-conferred upon the
16 licensing authority.

17 However, acting under color of state law, the Department has effectively nullified and
18 rendered this legislatively-mandated statutory entitlement to conditional licensure of qualified
19 applicants illusory, by textually subjecting an application to its legislatively-unauthorized and
20 presumptuous unfettered discretion in the ways and manners described *supra*, and thereby
21 rendering the current Regulation governing the application and licensing process susceptible to
22 opaque, *ad hoc*, arbitrary, capricious or corrupt decision-making based upon administrative
23 partiality or favoritism which cannot be accounted for; and therefore, unconstitutional on its face.

24 ...

25 ...

26 ...

27 ...

28 ...

1 B.

2 **The Regulation Textually Permits The Arbitrary And Capricious**
3 **Deprivation Of A Qualified And Prevailing, Properly-Ranked Applicant's**
4 **Liberty Interest In Conditional Licensure In Derogation Of Such An**
5 **Applicant's Statutory Entitlement Thereto Under The Provisions Of NRS**
6 **453D.200 And NRS 453D.210, And Therefore In Violation Of The Due**
7 **Process Protections Guaranteed By The Fourteenth Amendment To The**
8 **Constitution Of The United States And Article 1, Sections 1 And 8 Of The**
9 **Constitution Of The State Of Nevada And The Fundamental Constitutional**
10 **Right To Pursue A Lawful Occupation.**

11 In *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), the United States Supreme Court
12 explained that the liberty protected against deprivation without due process includes the right
13 "generally to enjoy those privileges long recognized at common law as essential to the orderly
14 pursuit of happiness by free men." And as the courts have since consistently recognized there is
15 such a fundamental liberty interest protected by the due process clause of the Fourteenth
16 Amendment to pursue any lawful occupation.

17 Thus, as the Ninth Circuit explained in *Wedges/Ledges of California, Inc. v. City of*
18 *Phoenix, Ariz.*, 24 F.3d 56, 66 (9th Cir. 1994):

19 *[I]t is well-recognized that the pursuit of an occupation or profession is a*
20 *protected liberty interest that extends across a broad range of lawful*
21 *occupations, see Greene v. McElroy, 360 U.S. 474, 492, 79 S.Ct. 1400, 1411, 3*
22 *L.Ed.2d 1377 (1959) (aeronautical engineer); Schware v. Board of Bar*
23 *Examiners, 353 U.S. 232, 238-39, 77 S.Ct. 752, 755-56, 1 L.Ed.2d 796 (1957)*
24 *(law practice); Benigni v. City of Hemet, 879 F.2d 473, 478 (9th Cir.1988) (bar*
25 *ownership), and we assume without deciding that the operation of skill-based*
26 *amusement games is within this range, cf. Chalmers v. City of Los Angeles, 762*
27 *F.2d 753, 756-57 (9th Cir.1985) (holding that selling t-shirts from a vending cart*
28 *is an occupation protected under the Constitution). Moreover, corporations, as*
legal persons, also can assert a right to pursue an occupation. See Physicians'
Serv. Med. Group v. San Bernardino County, 825 F.2d 1404, 1407 (9th Cir.1987)
("A corporation ... is a 'person' possessing Fourteenth Amendment due process
rights.") (citing First Nat'l Bank v. Bellotti, 435 U.S. 765, 778-80, 98 S.Ct. 1407,
1416-18, 55 L.Ed.2d 707 (1978); Old Dominion Dairy Products Inc. v. Secretary
of Defense, 631 F.2d 953, 962 (D.C.Cir.1980) ("[A] corporation may contract and
may engage in the common occupations of life, and should be afforded no lesser
protections under the Constitution than an individual to engage in such pursuits").

(Emphasis added.)

...

1 And accordingly, as the court pointed out in *Speed's Auto Services Group, Inc. v. City of*
2 *Portland, Oregon*, No. 3:12-CV-738-AC, 2014 WL 2809825 at *4 (D. Oregon June 20, 2014),
3 *aff'd sub nom. Speed's Auto Servs. Grp., Inc. v. City of Portland, Oregon*, 685 F. App'x 629 (9th
4 Cir. 2017):

5 The "liberty component of the Fourteenth Amendments Due Process Clause
6 includes . . . [the] right to choose one's field of private employment" but mere
7 interruption of a right to engage in a calling is insufficient to support a substantive
8 due process claim. *Conn v. Gabbert*, 526 U.S. 286, 291–92 (1999). [However,]
9 [w]here the[re] [is] . . . a **complete bar** to the pursuit of an occupation, a person's
liberty interest in pursuing such occupation is sufficiently impacted to support a
claim under the Substantive Due Process Clause. *Dittman v. State of California*,
191 F.3d 1020, 1029 (9th Cir.1999).

10 (Emphasis added.)

11 Thus here, the wrongful denial of Plaintiffs' license applications—operating as it
12 does as such a complete bar upon their right to engage in a lawful occupation of their
13 choosing also constitutes a deprivation of liberty under color of state law in violation of
14 Plaintiffs' substantive due process rights.

15 C.

16
17 **The Regulation Textually Permits The Arbitrary And Capricious**
18 **Deprivation Of A Qualified And Prevailing, Properly-Ranked Applicant's**
19 **Property And Liberty Interests In Conditional Licensure In Derogation Of**
20 **Such An Applicant's Statutory Entitlement Thereto Under The Provisions**
21 **Of NRS 453D.200 And NRS 453D.210 And The Fundamental Constitutional**
22 **Right To Pursue A Lawful Occupation, And Therefore In Violation Of An**
23 **Applicant's Right To The Equal Protection Of The Law Guaranteed By The**
24 **Fourteenth Amendment To The Constitution Of The United States And**
25 **Article 1, Sections 1 And 8 Of The Constitution Of The State Of Nevada.**

26 By improperly denying their applications for conditional licensure notwithstanding the
27 mandatory provisions of NRS 453D.200.2 and NRS 453D.210.4-6, while improperly granting
28 the applications of other applicants under color of state law despite them, the Department has,
without justification, disparately treated Plaintiffs' applications absent rational basis, and has
thereby violated Plaintiffs' rights to equal protection of the law as guaranteed by the Fourteenth
Amendment to the Constitution of the United States and Article 1, Section 1 of the Constitution
of the State of Nevada.

1 Indeed, as the court explained in *Grabhorn, Inc. v. Metropolitan Service District*, 624
2 F.Supp.2d 1280, 1290 (D. Oregon 2009):

3 The Equal Protection Clause ensures that “all persons similarly situated should be
4 treated alike.” *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439,
5 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). The equal protection guarantee protects
6 not only groups, but *individuals* who would constitute a “*class of one*.” *Village of*
7 *Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S.Ct. 1073, 145 L.Ed.2d 1060
8 (2000). Where, as here, state action does not implicate a fundamental right or a
9 suspect classification, *the plaintiff can establish a “class of one” equal*
10 *protection claim by demonstrating that it has “been intentionally treated*
11 *differently from others similarly situated and that there is no rational basis for*
12 *the difference in treatment.” Village of Willowbrook*, 528 U.S. at 564, 120 S.Ct.
13 1073. Where an equal protection claim is based on selective enforcement of valid
14 laws, *a plaintiff can show that the defendants’ rational basis for selectively*
15 *enforcing the law is a pretext for an impermissible motive.*

....

11 Disparate government treatment will survive rational basis scrutiny as long as it
12 bears a rational relation to a legitimate state interest. Although selective
13 enforcement of valid laws, without more, does not make the defendants’ action
14 irrational, *there is no rational basis for state action that is malicious, irrational*
15 *or plainly arbitrary.*

15 (Emphasis added.) (Quoting *Squaw Valley Development Co. v. Goldberg*, 375 F.3d 936, 944 (9th
16 Cir.2004), *abrogation on other grounds noted by Action Apartment Ass’n, Inc. v. Santa Monica*
17 *Rent Control Bd.*, 509 F.3d 1020, 1025–26 (9th Cir.2007).

18 Here there is no rational basis supporting the disparate treatment to which Plaintiffs’ have
19 been subjected by the selective denial of licensure as a result of the either the Department’s
20 arbitrary and capricious promulgation of the provisions of the Regulation or its arbitrary and
21 capricious application of them in the ways and manners set forth *supra*, in derogation of the
22 limited discretion conferred upon the Department by the governing statutes, or as a result of
23 otherwise-motivated irrational, actual bias, animus or caprice, as discussed *infra*. And therefore,
24 Plaintiffs have been denied the equal protection of the law.

25 II.

26 **ON INFORMATION AND BELIEF, THE DENIAL OF PLAINTIFFS’**
27 **APPLICATIONS FOR LICENSURE BY THE DEPARTMENT WAS IN FACT**
28 **AFFECTED BY ACTUAL ARBITRARY AND CAPRICIOUS DECISION-MAKING;**
AND THE LICENSING PROCESS WAS THEREBY RENDERED
UNCONSTITUTIONAL IN ITS APPLICATION AS TO PLAINTIFFS.

1 As the Ninth Circuit explained in *Stivers v. Pierce*, 71 F.3d 732, 741-747 (9th Cir. 1995)
2 a genuine issue of fact obtained as to whether a board member who owned a private security and
3 investigation firm was biased against the plaintiff and therefore denied his application for a
4 license as a private investigator, private patrolman and process server; and that the adjudicator's
5 pecuniary personal interest in the outcome of the proceedings created the appearance of partiality
6 in violation of due process without any showing of *actual* bias and even absent evidence that the
7 vote of a biased member of a multi-person tribunal was decisive or that his views influenced
8 those of other members.

9 Here, on information and belief, Plaintiffs allege that pursuant to the implementation of
10 the foregoing constitutionally-repugnant licensing process, the denial of their applications for
11 licensure, were in fact affected by actual arbitrary and capricious decision-making; and therefore,
12 that the licensing application process was thereby been rendered unconstitutional in its
13 application as to them as well.

14 III.

15
16 **THE DEPARTMENT'S IMPROPER REFUSAL TO ISSUE CONDITIONAL**
17 **LICENSURE TO PLAINTIFFS IN ACCORDANCE WITH LEGISLATIVE MANDATE**
18 **HAS UNREASONABLY INTERFERED WITH PLAINTIFFS' BUSINESS INTERESTS**
19 **AND HAS THEREBY CAUSED AND CONTINUES TO CAUSE IRREPARABLE HARM**
20 **TO PLAINTIFFS FOR WHICH PLAINTIFFS HAVE NO ADEQUATE REMEDY AT**
21 **LAW.**

22 Plaintiffs are entitled to injunctive relief in this case because the Department's refusal to
23 issue conditional licensure to Plaintiffs on an improper basis has unreasonably interfered with
24 Plaintiffs' business interests and has thereby caused and continues to cause them irreparable
25 harm.

26 Indeed, a required government-issued license to operate a particular type of business
27 enterprise confers a *unique right* upon the recipient entitled thereto. And as our Supreme Court
28 held in *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1030 (1987), deprivation of a
... *unique right* "generally results in irreparable harm."

1 Thus, as the Nevada Supreme held in *State, Dep't of Bus. & Indus., Fin. Institutions Div.*
2 *v. Nevada Ass'n Servs., Inc.*, 128 Nev. 362, 370, 294 P.3d 1223, 1228 (2012):

3 We have determined that “acts committed without just cause which *unreasonably*
4 *interfere with a business* or destroy its credit or profits, may do an *irreparable*
5 *injury*.” *Sobol v. Capital Management*, 102 Nev. 444, 446, 726 P.2d 335, 337
6 (1986); *see also Com. v. Yameen*, 401 Mass. 331, 516 N.E.2d 1149, 1151 (1987)
7 (“A licensee whose license has been revoked or suspended immediately suffers
8 the *irreparable penalty* of loss of [license] *for which there is no practical*
9 *compensation*.” (alteration in original) (internal quotations omitted)).

10 Here, the district court found that . . . if such an instance occurred, NAS *would*
11 *be unable to conduct any business during that time* *The district court*
12 *properly determined that the inability to conduct any business would cause*
13 *irreparable harm*. *Sobol*, 102 Nev. at 446, 726 P.2d at 337. It was within the
14 district court's discretion to find that NAS would suffer irreparable harm because
15 it was threatened with the prospect of losing its license to conduct business.
16 Therefore, NAS sustained its burden, under NRS 33.010, to prove that it had a
17 reasonable likelihood of success on the merits and that it would suffer irreparable
18 harm for which compensatory damages would not suffice. Consequently, we
19 determine that the district court did not abuse its discretion in granting NAS's
20 request for injunctive relief, and we therefore affirm its order.

21 (Emphasis added.)

22 It is axiomatic that this logic and analysis applies with equal force where, as in this case,
23 an applicant is denied issuance of a license to do business without just cause or in violation of
24 constitutional protections. Thus, “[i]rreparable harm is an injury ‘for which compensatory
25 damage is an inadequate remedy.’” *Excellence Community Management, LLC v. Gilmore, et al.*,
26 131 Nev. Ad. Op. 38, 351 P.3d 720 (2015) (quoting *Dixon*, 103 Nev. at 415, 742 P.2d at 1029).
27 And as our Supreme Court explained in *City of Sparks v. Sparks Mun. Court*, 129 Nev. 348, 357,
28 302 P.3d 1118, 1124–25 (2013): “As 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” (citing *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir.1997)
(emphasis added)).

...

...

...

...

1 IV.

2 THE DEPARTMENT WILL SUFFER NO HARM BY FOLLOWING THE
3 REQUIREMENTS OF LEGISLATIVE MANDATE IN PROPERLY ADMINISTERING
4 THE REGULATION OF THE LICENSING APPLICATION PROCESS.

5 It is axiomatic that the Department will suffer no cognizable prejudice by being required
6 to follow legislative mandate in accordance with constitutional imperatives and protections.
7 Indeed, there is no legitimate argument to the contrary whatsoever.

8 V.

9 THE PUBLIC INTEREST IS CONSISTENT WITH PLAINTIFFS' INTERESTS IN THE
10 PROPER ADMINISTRATION OF A TRANSPARENT, IMPARTIAL AND OBJECTIVE
11 LICENSING PROCESS WHICH IS APPLIED WITH INTEGRITY IN ACCORDANCE
12 WITH LEGISLATIVE MANDATE AND CONSTITUTIONAL PROTECTIONS.

13 As the Nevada Supreme Court pointed out in *Richardson Const., Inc. v. Clark Cty. Sch.*
14 *Dist.*, 123 Nev. 61, 66, 156 P.3d 21, 24 (2007): "Public policy . . . supports th[e] conclusion . . .
15 [that] [*inter alia*] [t]he purpose of [an impartial competitive] bidding [requirement] is to . . .
16 guard against 'favoritism, improvidence and corruption'" (quoting *Gulf Oil Corp. v. Clark*
17 *County*, 94 Nev. 116, 118, 575 P.2d 1332, 1333 (1978), all of which are clearly values which are
18 consistent with the public interest in all respects.

19 VI.

20 PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

21 For the reasons set forth *supra*, Plaintiffs are likely to succeed on the merits of their
22 lawsuit. And accordingly, they should be granted the preliminary injunctive relief herein
23 requested.

24 ...

25 ...

26 ...

27 ...

28 ...

5.

CONCLUSION

WHEREFORE, for all the foregoing reasons Plaintiffs respectfully pray that the Court grant the preliminary injunctive relief herein requested, together with such other and further relief as the Court deems fair and just in the premises.

DATED this 18 day of March, 2019.

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EXHIBIT A

EXHIBIT A

INITIATIVE PETITION NO. 1

FEBRUARY 2, 2015

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to marijuana and marijuana establishments.

EXPLANATION — Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to marijuana; requiring the Department of Taxation to adopt regulations relating to the license to operate and operation of a marijuana establishment; providing for disciplinary action against a marijuana establishment which violates laws regulating the establishment; authorizing the possession, use, consumption, purchase, processing and transportation of certain quantities of marijuana by certain persons in this State; authorizing the possession, use, transportation and purchase of marijuana paraphernalia by certain persons in this State; authorizing certain other acts relating to marijuana; making contracts relating to the operation of marijuana establishments enforceable; providing for the licensure of marijuana distributors; providing for licensure of marijuana establishments; providing a fee for the application for a license to operate a marijuana establishment and for an annual licensing fee; establishing certain requirements for marijuana establishments; imposing an excise tax on wholesale sales of marijuana by a marijuana cultivation facility; providing penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1. Short Title.** Sections 1 to 18, inclusive, of this
2 act may be cited as the Regulation and Taxation of Marijuana Act.



1 **Sec. 2. Preamble.**

2 In the interest of the public health and public safety, and in order
3 to better focus state and local law enforcement resources on crimes
4 involving violence and personal property, the People of the State of
5 Nevada find and declare that the use of marijuana should be legal
6 for persons 21 years of age or older, and its cultivation and sale
7 should be regulated similar to other legal businesses.

8 The People of the State of Nevada declare that the cultivation
9 and sale of marijuana should be taken from the domain of criminals
10 and be regulated under a controlled system, where businesses will
11 be taxed and the revenue will be dedicated to public education and
12 to the enforcement of the regulations in this act.

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

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

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

20 (c) Cultivating, manufacturing, testing, transporting, and selling
21 marijuana will be strictly controlled through state licensing and
22 regulation;

23 (d) Selling or giving marijuana to persons under 21 years of age
24 shall remain illegal;

25 (e) Individuals will have to be 21 years of age or older to
26 purchase marijuana;

27 (f) Driving under the influence of marijuana will remain illegal;
28 and

29 (g) Marijuana sold in the state will be tested and labeled.

30 **Sec. 3. Definitions.** As used in sections 1 to 18, inclusive, of
31 this act, unless the context otherwise requires:

32 1. "Community facility" means a facility licensed to provide
33 day care to children, a public park, a public playground, a public
34 swimming pool, a center or facility the primary purpose of which is
35 to provide recreational opportunities or services to children or
36 adolescents, or a church, synagogue, or other building, structure, or
37 place used for religious worship or other religious purpose.

38 2. "Concentrated marijuana" means the separated resin,
39 whether crude or purified, obtained from marijuana.

40 3. "Consumer" means a person who is 21 years of age or older
41 who purchases marijuana or marijuana products for use by persons
42 21 years of age or older, but not for resale to others.

43 4. "Department" means the Department of Taxation.

44 5. "Dual Licensee" means a person or group of persons who
45 possess a current, valid registration certificate to operate a medical



1 marijuana establishment pursuant to Chapter 453A of NRS and a
2 license to operate a marijuana establishment under sections 1 to 18,
3 inclusive, of this act.

4 6. "Excluded felony offense" means a conviction of an offense
5 that would constitute a category A felony if committed in Nevada or
6 convictions for two or more offenses that would constitute felonies
7 if committed in Nevada. "Excluded felony offense" does not
8 include:

9 (a) A criminal offense for which the sentence, including any
10 term of probation, incarceration, or supervised release, was
11 completed more than 10 years ago; or

12 (b) An offense involving conduct that would be immune from
13 arrest, prosecution, or penalty pursuant to Chapter 453A of NRS,
14 except that the conduct occurred before the effective date of Chapter
15 453A of NRS, or was prosecuted by an authority other than the State
16 of Nevada.

17 7. "Locality" means a city or town, or, in reference to a
18 location outside the boundaries of a city or town, a county.

19 8. "Marijuana" means all parts of any plant of the genus
20 Cannabis, whether growing or not, the seeds thereof, the resin
21 extracted from any part of the plant, and every compound,
22 manufacture, salt, derivative, mixture, or preparation of the plant, its
23 seeds, or resin. "Marijuana" does not include:

24 (a) The mature stems of the plant, fiber produced from the
25 stems, oil, or cake made from the seeds of the plant, any other
26 compound, manufacture, salt, derivative, mixture, or preparation of
27 the mature stems (except the resin extracted therefrom), fiber, oil, or
28 cake, the sterilized seed of the plant which is incapable of
29 germination; or

30 (b) The weight of any other ingredient combined with marijuana
31 to prepare topical or oral administrations, food, drink, or other
32 products.

33 9. "Marijuana cultivation facility" means an entity licensed to
34 cultivate, process, and package marijuana, to have marijuana tested
35 by a marijuana testing facility, and to sell marijuana to retail
36 marijuana stores, to marijuana product manufacturing facilities, and
37 to other marijuana cultivation facilities, but not to consumers.

38 10. "Marijuana distributor" means an entity licensed to
39 transport marijuana from a marijuana establishment to another
40 marijuana establishment.

41 11. "Marijuana establishment" means a marijuana cultivation
42 facility, a marijuana testing facility, a marijuana product
43 manufacturing facility, a marijuana distributor, or a retail marijuana
44 store.



1 12. "Marijuana product manufacturing facility" means an
2 entity licensed to purchase marijuana, manufacture, process, and
3 package marijuana and marijuana products, and sell marijuana and
4 marijuana products to other marijuana product manufacturing
5 facilities and to retail marijuana stores, but not to consumers.

6 13. "Marijuana products" means products comprised of
7 marijuana or concentrated marijuana and other ingredients that are
8 intended for use or consumption, such as, but not limited to, edible
9 products, ointments, and tinctures.

10 14. "Marijuana paraphernalia" means any equipment, products,
11 and materials of any kind which are used, intended for use, or
12 designed for use in planting, propagating, cultivating, growing,
13 harvesting, manufacturing, compounding, converting, producing,
14 preparing, testing, analyzing, packaging, repacking, storing, or
15 containing marijuana, or for ingesting, inhaling, or otherwise
16 introducing marijuana into the human body.

17 15. "Marijuana testing facility" means an entity licensed to test
18 marijuana and marijuana products, including for potency and
19 contaminants.

20 16. "Process" means to harvest, dry, cure, trim, and separate
21 parts of the marijuana plant by manual or mechanical means, such
22 as sieving or ice water separation, but not by chemical extraction or
23 chemical synthesis.

24 17. "Public place" means an area to which the public is invited
25 or in which the public is permitted regardless of age. "Public place"
26 does not include a retail marijuana store.

27 18. "Retail marijuana store" means an entity licensed to
28 purchase marijuana from marijuana cultivation facilities, to
29 purchase marijuana and marijuana products from marijuana product
30 manufacturing facilities and retail marijuana stores, and to sell
31 marijuana and marijuana products to consumers.

32 19. "Unreasonably Impracticable" means that the measures
33 necessary to comply with the regulations require such a high
34 investment of risk, money, time, or any other resource or asset that
35 the operation of a marijuana establishment is not worthy of being
36 carried out in practice by a reasonably prudent businessperson.

37 **Sec. 4. Limitations.** 1. Sections 1 to 18 do not permit any
38 person to engage in and do not prevent the imposition of any civil,
39 criminal, or other penalty for:

40 (a) Driving, operating, or being in actual physical control of a
41 vehicle, aircraft, or vessel under power or sail while under the
42 influence of marijuana or while impaired by marijuana;

43 (b) Knowingly delivering, giving, selling, administering, or
44 offering to sell, administer, give, or deliver marijuana to a person
45 under 21 years of age, unless:



1 (1) The recipient is permitted to possess marijuana pursuant
2 to Chapter 453A of NRS; or

3 (2) The person demanded and was shown bona fide
4 documentary evidence of the majority and identity of the recipient
5 issued by a federal, state, county, or municipal government, or
6 subdivision or agency thereof;

7 (c) Possession or use of marijuana or marijuana paraphernalia on
8 the grounds of, or within, any facility or institution under the
9 jurisdiction of the Nevada Department of Corrections;

10 (d) Possession or use of marijuana on the grounds of, or within,
11 a school providing instruction in preschool, kindergarten, or any
12 grades 1 through 12; or

13 (e) Undertaking any task under the influence of marijuana that
14 constitutes negligence or professional malpractice.

15 2. Sections 1 to 18 do not prohibit:

16 (a) A public or private employer from maintaining, enacting,
17 and enforcing a workplace policy prohibiting or restricting actions
18 or conduct otherwise permitted under sections 1 to 18, inclusive, of
19 this act;

20 (b) A state or local government agency that occupies, owns, or
21 controls a building from prohibiting or otherwise restricting the
22 consumption, cultivation, processing, manufacture, sale, delivery, or
23 transfer of marijuana in that building;

24 (c) A person who occupies, owns, or controls a privately owned
25 property from prohibiting or otherwise restricting the smoking,
26 cultivation, processing, manufacture, sale, delivery, or transfer of
27 marijuana on that property; or

28 (d) A locality from adopting and enforcing local marijuana
29 control measures pertaining to zoning and land use for marijuana
30 establishments.

31 3. Nothing in the provisions of sections 1 to 18, inclusive, of
32 this act shall be construed as in any manner affecting the provisions
33 of Chapter 453A of NRS relating to the medical use of marijuana.

34 **Sec. 5. Powers and duties of the Department.** 1. Not
35 later than 12 months after the effective date of this act, the
36 Department shall adopt all regulations necessary or convenient to
37 carry out the provisions of sections 1 to 18, inclusive, of this act.
38 The regulations must not prohibit the operation of marijuana
39 establishments, either expressly or through regulations that make
40 their operation unreasonably impracticable. The regulations shall
41 include:

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

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



- 1 (c) Requirements for the security of marijuana establishments;
- 2 (d) Requirements to prevent the sale or diversion of marijuana
- 3 and marijuana products to persons under 21 years of age;
- 4 (e) Requirements for the packaging of marijuana and marijuana
- 5 products, including requirements for child-resistant packaging;
- 6 (f) Requirements for the testing and labeling of marijuana and
- 7 marijuana products sold by marijuana establishments including a
- 8 numerical indication of potency based on the ratio of THC to the
- 9 weight of a product intended for oral consumption;
- 10 (g) Requirements for record keeping by marijuana
- 11 establishments;
- 12 (h) Reasonable restrictions on signage, marketing, display, and
- 13 advertising;
- 14 (i) Procedures for the collection of taxes, fees, and penalties
- 15 imposed by sections 1 to 18, inclusive, of this act;
- 16 (j) Procedures and requirements to enable the transfer of a
- 17 license for a marijuana establishment to another qualified person
- 18 and to enable a licensee to move the location of its establishment to
- 19 another suitable location;
- 20 (k) Procedures and requirements to enable a dual licensee to
- 21 operate medical marijuana establishments and marijuana
- 22 establishments at the same location;
- 23 (l) Procedures to establish the fair market value at wholesale of
- 24 marijuana; and
- 25 (m) Civil penalties for the failure to comply with any regulation
- 26 adopted pursuant to this section or for any violation of the
- 27 provisions of section 13 of this act.
- 28 2. The Department shall approve or deny applications for
- 29 licenses pursuant to section 9 of this act.
- 30 3. The Department may by motion or on complaint, after
- 31 investigation, notice of the specific violation, and an opportunity for
- 32 a hearing, pursuant to the provisions of Chapter 233B of NRS,
- 33 suspend, revoke, or fine a licensee for the violation of sections 1 to
- 34 18, inclusive, of this act or for a violation of a regulation adopted by
- 35 the Department pursuant to this section.
- 36 4. The Department may immediately suspend the license of
- 37 any marijuana establishment if the marijuana establishment
- 38 knowingly sells, delivers, or otherwise transfers marijuana in
- 39 violation of sections 1 to 18, inclusive, of this act, or knowingly
- 40 purchases marijuana from any person not licensed pursuant to
- 41 sections 1 to 18, inclusive, of this act or to Chapter 453A of NRS.
- 42 The Department must provide an opportunity for a hearing pursuant
- 43 to the provisions of NRS 233B.121 within a reasonable time from a
- 44 suspension pursuant to this subsection.
- 45 5. To ensure that individual privacy is protected:



1 (a) The Department shall not require a consumer to provide a
2 retail marijuana store with identifying information other than
3 government-issued identification to determine the consumer's age;
4 and

5 (b) A retail marijuana store must not be required to acquire and
6 record personal information about consumers other than information
7 typically acquired in a financial transaction conducted at a retail
8 liquor store.

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

12 7. The Department shall inspect marijuana establishments as
13 necessary to enforce sections 1 to 18, inclusive, of this act or the
14 regulations adopted pursuant to this section.

15 **Sec. 6. Personal Use and Cultivation of Marijuana.**

16 Notwithstanding any other provision of Nevada law and the law of
17 any political subdivision of Nevada, except as otherwise provided in
18 sections 1 to 18, inclusive, of this act, it is lawful, in this State, and
19 must not be used as the basis for prosecution or penalty by this State
20 or a political subdivision of this State, and must not, in this State, be
21 a basis for seizure or forfeiture of assets for persons 21 years of age
22 or older to:

23 1. Possess, use, consume, purchase, obtain, process, or
24 transport marijuana paraphernalia, one ounce or less of marijuana
25 other than concentrated marijuana, or one-eighth of an ounce or less
26 of concentrated marijuana;

27 2. Possess, cultivate, process, or transport not more than six
28 marijuana plants for personal use and possess the marijuana
29 produced by the plants on the premises where the plants were
30 grown, provided that:

31 (a) Cultivation takes place within a closet, room, greenhouse, or
32 other enclosed area that is equipped with a lock or other security
33 device that allows access only to persons authorized to access the
34 area; and

35 (b) No more than 12 plants are possessed, cultivated, or
36 processed at a single residence, or upon the grounds of that
37 residence, at one time;

38 3. Give or otherwise deliver one ounce or less of marijuana,
39 other than concentrated marijuana, or one-eighth of an ounce or less
40 of concentrated marijuana without remuneration to a person
41 provided that the transaction is not advertised or promoted to the
42 public; or

43 4. Assist another person who is 21 years of age or older in any
44 of the acts described in this section.



1 **Sec. 7. Marijuana Paraphernalia Authorized.** Notwithstanding
2 any other provision of Nevada law and the law of any political
3 subdivision of Nevada, it is not unlawful and shall not be an offense
4 or be a basis for seizure or forfeiture of assets for persons 21 years
5 of age or older to manufacture, possess, use, transport, or purchase
6 marijuana paraphernalia, or to distribute or sell marijuana
7 paraphernalia to a person who is 21 years of age or older.

8 **Sec. 8. Lawful operation of marijuana establishments.**
9 Notwithstanding any other provision of Nevada law and the law of
10 any political subdivision of Nevada, except as otherwise provided in
11 sections 1 to 18, inclusive, of this act, or the regulations adopted
12 pursuant to section 5 of this act, it is lawful and must not, in this
13 State, be used as the basis for prosecution or penalty by this State or
14 a political subdivision of this State, and must not, in this State, be a
15 basis for seizure or forfeiture of assets for persons 21 years of age or
16 older to:

17 1. Possess marijuana and marijuana products, purchase
18 marijuana from a marijuana cultivation facility, purchase marijuana
19 and marijuana products from a marijuana product manufacturing
20 facility, return marijuana or marijuana products to a facility from
21 which they were purchased, transport marijuana and marijuana
22 products to or from a marijuana testing facility, use the services of a
23 marijuana distributor to transport marijuana or marijuana products
24 to or from marijuana establishments, or sell marijuana and
25 marijuana products to consumers, if the person conducting the
26 activities described in this subsection has a current, valid license to
27 operate a retail marijuana store or is acting in the person's capacity
28 as an agent of a retail marijuana store.

29 2. Cultivate, harvest, process, package, or possess marijuana,
30 sell marijuana to a marijuana cultivation facility, a marijuana
31 product manufacturing facility, or a retail marijuana store, transport
32 marijuana to or from a marijuana cultivation facility, a marijuana
33 product manufacturing facility, or a marijuana testing facility, use
34 the services of a marijuana distributor to transport marijuana to or
35 from marijuana establishments, or purchase marijuana from a
36 marijuana cultivation facility, if the person conducting the activities
37 described in this paragraph has a current, valid license to operate a
38 marijuana cultivation facility or is acting in his or her capacity as an
39 agent of a marijuana cultivation facility.

40 3. Package, process, manufacture, or possess marijuana and
41 marijuana products, transport marijuana and marijuana products to
42 or from a marijuana testing facility, a marijuana cultivation facility,
43 or a marijuana product manufacturing facility, use the services of a
44 marijuana distributor to transport marijuana or marijuana products
45 to or from marijuana establishments, sell marijuana and marijuana



1 products to a retail marijuana store or a marijuana product
2 manufacturing facility, purchase marijuana from a marijuana
3 cultivation facility, or purchase marijuana and marijuana products
4 from a marijuana product manufacturing facility, if the person
5 conducting the activities described in this paragraph has a current,
6 valid license to operate a marijuana product manufacturing facility
7 or is acting in his or her capacity as an agent of a marijuana product
8 manufacturing facility.

9 4. Possess marijuana and marijuana products and transfer and
10 transport marijuana and marijuana products between marijuana
11 establishments, if the person transporting the marijuana and
12 marijuana products has a current, valid license to operate as a
13 marijuana distributor or is acting in his or her capacity as an agent of
14 a marijuana distributor.

15 5. Possess, process, repackage, transport, or test marijuana and
16 marijuana products if the person has a current, valid license to
17 operate a marijuana testing facility or is acting in his or her capacity
18 as an agent of a marijuana testing facility.

19 6. Lease or otherwise allow property owned, occupied, or
20 controlled by any person, corporation, or other entity to be used for
21 any of the activities conducted lawfully in accordance with this
22 section.

23 **Sec. 9. Contracts pertaining to marijuana enforceable.** It
24 is the public policy of the People of the State of Nevada that
25 contracts related to the operation of marijuana establishments under
26 sections 1 to 18, inclusive, of this act should be enforceable, and no
27 contract entered into by a licensee, its employees, or its agents as
28 permitted pursuant to a valid license issued by the Department, or
29 by those who allow property to be used by a licensee, its employees,
30 or its agents as permitted pursuant to a valid license issued by the
31 Department, shall be deemed unenforceable on the basis that the
32 actions or conduct permitted pursuant to the license are prohibited
33 by federal law.

34 **Sec. 10. Certification of marijuana establishments.** 1.
35 No later than 12 months after the effective date of this act, the
36 Department shall begin receiving applications for marijuana
37 establishments.

38 2. For 18 months after the Department begins to receive
39 applications for marijuana establishments, the Department shall only
40 accept applications for licenses for retail marijuana stores, marijuana
41 product manufacturing facilities, and marijuana cultivation facilities
42 pursuant to sections 1 to 18, inclusive, of this act, from persons
43 holding a medical marijuana establishment registration certificate
44 pursuant to Chapter 453A of NRS.



1 3. For 18 months after the Department begins to receive
2 applications for marijuana establishments, the Department shall
3 issue licenses for marijuana distributors pursuant to sections 1 to 18,
4 inclusive, of this act, only to persons holding a wholesale dealer
5 license pursuant to Chapter 369 of NRS, unless the Department
6 determines that an insufficient number of marijuana distributors will
7 result from this limitation.

8 4. Upon receipt of a complete marijuana establishment license
9 application, the Department shall, within 90 days:

10 (a) Issue the appropriate license if the license application is
11 approved; or

12 (b) Send a notice of rejection setting forth the reasons why the
13 Department did not approve the license application.

14 5. The Department shall approve a license application if:

15 (a) The prospective marijuana establishment has submitted an
16 application in compliance with regulations adopted by the
17 Department and the application fee required pursuant to section 12;

18 (b) The physical address where the proposed marijuana
19 establishment will operate is owned by the applicant or the applicant
20 has the written permission of the property owner to operate the
21 proposed marijuana establishment on that property;

22 (c) The property is not located within:

23 (1) 1,000 feet of a public or private school that provides
24 formal education traditionally associated with preschool or
25 kindergarten through grade 12 and that existed on the date on which
26 the application for the proposed marijuana establishment was
27 submitted to the Department; or

28 (2) 300 feet of a community facility that existed on the date
29 on which the application for the proposed marijuana establishment
30 was submitted to the Department;

31 (d) The proposed marijuana establishment is a proposed retail
32 marijuana store and there are not more than:

33 (1) 80 licenses already issued in a county with a population
34 greater than 700,000;

35 (2) 20 licenses already issued in a county with a population
36 that is less than 700,000 but more than 100,000;

37 (3) 4 licenses already issued in a county with a population
38 that is less than 100,000 but more than 55,000;

39 (4) 2 licenses already issued in a county with a population
40 that is less than 55,000;

41 (5) Upon request of a county government, the Department
42 may issue retail marijuana store licenses in that county in addition to
43 the number otherwise allowed pursuant to this paragraph;

44 (e) The locality in which the proposed marijuana establishment
45 will be located does not affirm to the Department that the proposed



1 marijuana establishment will be in violation of zoning or land use
2 rules adopted by the locality; and

3 (f) The persons who are proposed to be owners, officers, or
4 board members of the proposed marijuana establishment:

5 (1) Have not been convicted of an excluded felony offense;
6 and

7 (2) Have not served as an owner, officer, or board member
8 for a medical marijuana establishment or a marijuana establishment
9 that has had its registration certificate or license revoked.

10 6. Competing applications. When competing applications are
11 submitted for a proposed retail marijuana store within a single
12 county, the Department shall use an impartial and numerically
13 scored competitive bidding process to determine which application
14 or applications among those competing will be approved.

15 **Sec. 11. Expiration and renewal.** 1. All licenses expire
16 one year after the date of issue.

17 2. The Department shall issue a renewal license within 10 days
18 of receipt of the prescribed renewal application and renewal fee
19 from a marijuana establishment if its license is not under suspension
20 or has not been revoked.

21 **Sec. 12. Fee schedule.** 1. The Department shall require
22 each applicant for a marijuana establishment license to pay a one-
23 time application fee of \$5,000.

24 2. The Department may require payment of an annual licensing
25 fee not to exceed:

26 For the initial issuance of a license for a retail	
27 marijuana store	\$20,000
28 For a renewal license for a retail marijuana store	\$6,600
29 For the initial issuance of a license for a marijuana	
30 cultivation facility	\$30,000
31 For a renewal license for a marijuana cultivation	
32 facility	\$10,000
33 For the initial issuance of a license for a marijuana	
34 product manufacturing facility	\$10,000
35 For a renewal license for a marijuana product	
36 manufacturing facility	\$3,300
37 For the initial issuance of a license for a marijuana	
38 distributor	\$15,000
39 For a renewal license for a marijuana distributor	\$5,000
40 For the initial issuance of a license for a marijuana	
41 testing facility	\$15,000
42 For a renewal license for a marijuana testing	
43 facility	\$5,000



1 **Sec. 13. Marijuana establishment operating requirements.**
2 In addition to requirements established by rule pursuant to section 5
3 of this act:

4 1. Marijuana establishments shall:

5 (a) Secure every entrance to the establishment so that access to
6 areas containing marijuana is restricted to persons authorized to
7 possess marijuana;

8 (b) Secure the inventory and equipment of the marijuana
9 establishment during and after operating hours to deter and prevent
10 theft of marijuana;

11 (c) Determine the criminal history of any person before the
12 person works or volunteers at the marijuana establishment and
13 prevent any person who has been convicted of an excluded felony
14 offense or who is not 21 years of age or older from working or
15 volunteering for the marijuana establishment.

16 2. All cultivation, processing, and manufacture of marijuana
17 must take place at a physical address approved by the Department
18 and within an area that is enclosed and locked in a manner that
19 restricts access only to persons authorized to access the area. The
20 area may be uncovered only if it is enclosed with security fencing
21 that is designed to prevent unauthorized entry and that is at least 8
22 feet high.

23 3. All cultivation, processing, and manufacture of marijuana
24 must not be visible from a public place by normal unaided vision.

25 4. All cultivation, processing, and manufacture of marijuana
26 must take place on property in the marijuana establishment's lawful
27 possession or with the consent of the person in lawful physical
28 possession of the property.

29 5. A marijuana establishment is subject to reasonable
30 inspection by the Department, and a person who holds a marijuana
31 establishment license must make himself or herself, or an agent
32 thereof, available and present for any inspection required by the
33 Department. The Department shall make reasonable
34 accommodations so that ordinary business is not interrupted and
35 safety and security procedures are not compromised by the
36 inspection.

37 **Sec. 14. Penalties.** 1. Restrictions on personal cultivation.

38 (a) Except as otherwise provided in 453A of NRS, any person
39 who:

40 (1) Cultivates marijuana plants within 25 miles of a retail
41 marijuana store licensed pursuant to sections 1 to 18, inclusive, of
42 this act, unless the person is a marijuana cultivation facility or a
43 person acting in his or her capacity as an agent of a marijuana
44 cultivation facility;



1 (2) Cultivates marijuana plants where they are visible from a
2 public place by normal unaided vision; or

3 (3) Cultivates marijuana on property not in the cultivator's
4 lawful possession or without the consent of the person in lawful
5 physical possession of the property;

6 (b) Is guilty of:

7 (1) For a first violation, a misdemeanor punished by a fine of
8 not more than \$600.

9 (2) For a second violation, a misdemeanor punished by a fine
10 of not more than \$1,000.

11 (3) For a third violation, a gross misdemeanor.

12 (4) For a fourth or subsequent violation, a category E felony.

13 2. A person who smokes or otherwise consumes marijuana in a
14 public place, in a retail marijuana store, or in a moving vehicle is
15 guilty of a misdemeanor punished by a fine of not more than \$600.

16 3. A person under 21 years of age who falsely represents
17 himself or herself to be 21 years of age or older to obtain marijuana
18 is guilty of a misdemeanor.

19 4. A person under 21 years of age who knowingly enters,
20 loiters, or remains on the premises of a marijuana establishment
21 shall be punished by a fine of not more than \$500 unless the person
22 is authorized to possess marijuana pursuant to Chapter 453A NRS
23 and the marijuana establishment is a dual licensee.

24 5. A person who manufactures marijuana by chemical
25 extraction or chemical synthesis, unless done pursuant to a
26 marijuana product manufacturing license issued by the Department
27 or authorized by Chapter 453A of NRS, is guilty of a category E
28 felony.

29 6. A person who knowingly gives marijuana to any person
30 under 21 years of age, or who knowingly leaves or deposits any
31 marijuana in any place with the intent that it will be procured by any
32 person under 21 years of age is guilty of a misdemeanor.

33 7. A person who knowingly gives marijuana to any person
34 under 18 years of age, or who knowingly leaves or deposits any
35 marijuana in any place with the intent that it will be procured by any
36 person under 18 years of age is guilty of a gross misdemeanor.

37 8. Notwithstanding the provisions of sections 1 to 18,
38 inclusive, of this act, after the effective date of this act, the
39 legislature may amend provisions of this act to provide for the
40 conditions in which a locality may permit consumption of marijuana
41 in a retail marijuana store.

42 **Sec. 15. Marijuana excise tax.** 1. An excise tax is hereby
43 imposed and must be collected by the State respecting wholesale
44 sales of marijuana in this State by a marijuana cultivation facility at



1 a rate of 15 percent of the fair market value at wholesale of the
2 marijuana. The tax imposed pursuant to this subsection:

- 3 (a) Is the obligation of the marijuana cultivation facility; and
4 (b) Is separate from and in addition to any general state and
5 local sales and use taxes that apply to retail sales of tangible
6 personal property.

7 **Sec. 16.** Any tax revenues, fees, or penalties collected
8 pursuant to sections 1 to 18, inclusive, of this act, first must be
9 expended to pay the costs of the Department and of each locality in
10 carrying out sections 1 to 8, inclusive, of this act and the regulations
11 adopted pursuant thereto. The Department shall remit any remaining
12 money to the State Treasurer to be deposited to the credit of the
13 State Distributive School Account in the State General Fund.

14 **Sec. 17. Severability.** If any provision of this act, or the
15 application thereof to any person, thing, or circumstance is held
16 invalid or unconstitutional by a court of competent jurisdiction, such
17 invalidity or unconstitutionality shall not affect the validity or
18 constitutionality of this act as a whole or any provision or
19 application of this act which can be given effect without the invalid
20 or unconstitutional provision or application, and to this end the
21 provisions of this act are declared to be severable.

22 **Sec. 18. Effective Date.** This act shall become effective on
23 October 1, 2015 if approved by the legislature, or on January 1,
24 2017 if approved by the voters.

Ⓢ



EXHIBIT B

EXHIBIT B



BRIAN SANDOVAL
Governor
JAMES DEVOLLO
Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
Executive Director

**STATE OF NEVADA
DEPARTMENT OF TAXATION**

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

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Phone: (702) 486-2300
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Recreational Marijuana Establishment License Application Recreational Retail Marijuana Store Only

Release Date: July 6, 2018

Application Period: September 7, 2018 through September 20, 2018

(Business Days M-F, 8:00 A.M. - 5:00 P.M.)

For additional information, please contact:

Marijuana Enforcement Division
State of Nevada Department of Taxation
1550 College Parkway, Suite 115
Carson City, NV 89706

marijuana@tax.state.nv.us



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APPLICANT INFORMATION

Provide all requested information in the space next to each numbered question. The information in Sections V1 through V10 will be used for application questions and updates. Type or print responses. **Include this applicant information sheet in Tab III of the Identified Criteria Response (Page 10).**

V1	Company Name:	
V2	Street Address:	
V3	City, State, ZIP:	
V4	Telephone: () _____ - _____	ext: _____
V5	Email Address:	
V6	Toll Free Number: () _____ - _____	ext: _____
Contact person who will provide information, sign, or ensure actions are taken pursuant to R092-17 & NRS 453D		
V7	Name:	
	Title:	
	Street Address:	
	City, State, ZIP:	
V8	Email Address:	
V9	Telephone number for contact person: () _____ - _____	ext: _____
V10	Signature: _____	Date: _____



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1. TERMS AND DEFINITIONS

For the purposes of this application, the following acronyms/definitions will be used.

TERMS	DEFINITIONS
<i>Applicant</i>	Organization/individual submitting an application in response to this request for application.
<i>Awarded applicant</i>	The organization/individual that is awarded and has an approved conditional license with the State of Nevada for the establishment type identified in this application.
<i>Confidential information</i>	Any information relating to building or product security submitted in support of a recreational marijuana establishment license.
<i>Department</i>	The State of Nevada Department of Taxation.
<i>Edible marijuana products</i>	Products that contain marijuana or an extract thereof and are intended for human consumption by oral ingestion and are presented in the form of foodstuffs, extracts, oils, tinctures and other similar products.
<i>Enclosed, locked facility</i>	A closet, display case, room, greenhouse, or other enclosed area equipped with locks or other security devices which allow access only by a recreational marijuana establishment agent and the holder of a valid registry identification card.
<i>Establishment license approval to operate date</i>	The date the State Department of Taxation officially gives the approval to operate based on approval of the local jurisdiction and successful fulfillment of all approval-to-operate instructions between the Department and the successful applicant.
<i>Conditional establishment license award date</i>	The date when applicants are notified that a recreational marijuana establishment conditional license has been successfully awarded and is awaiting approval of the local jurisdiction and successful fulfillment of all approval-to-operate instructions.
<i>Evaluation committee</i>	An independent committee comprised of state officers or employees and contracted professionals established to evaluate and score applications submitted in response to this request for applications.
<i>Excluded felony offense</i>	A crime of violence or a violation of a state or federal law pertaining to controlled substances if the law was punishable as a felony in the jurisdiction where the person was convicted. The term does not include a criminal offense for which the sentence, including any term of probation, incarceration or supervised release, was completed more than 10 years before or an offense involving conduct that would be immune from arrest, prosecution or penalty, except that the conduct occurred before April 1, 2014 or was prosecuted by an authority other than the State of Nevada.



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<i>Facility for the production of edible marijuana products or marijuana infused products</i>	A business that is registered/licensed with the Department and acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells edible marijuana products or marijuana-infused products to recreational marijuana retail stores.
<i>Identifiers or Identified Criteria Response</i>	A non-identified response, such as assignment of letters, numbers, job title or generic business type, to assure the identity of a person or business remains unidentifiable. Assignment of identifiers will be application-specific and will be communicated in the application in the identifier legend.
<i>Marijuana Testing Facility</i>	Means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.
<i>Inventory control system</i>	A process, device or other contrivance that may be used to monitor the chain of custody of marijuana used for recreational purposes from the point of cultivation to the end consumer.
<i>Marijuana</i>	All parts of any plant of the genus Cannabis, whether growing or not, and the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. "Marijuana" does not include the mature stems of the plant, fiber produced from the stems, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stems (except the resin extracted there from), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. "Marijuana" does not include industrial hemp as defined in NRS 557.040, and grown or cultivated pursuant to Chapter 557 of NRS.
<i>Marijuana-infused products</i>	Products that are infused with marijuana or an extract thereof and are intended for use or consumption by humans through means other than inhalation or oral ingestion. The term includes topical products, ointments, oils and tinctures.
<i>May</i>	Indicates something that is recommended but not mandatory. If the applicant fails to provide recommended information, the Department may, at its sole discretion, ask the applicant to provide the information or evaluate the application without the information.
<i>Medical use of marijuana</i>	The possession, delivery, production or use of marijuana; the possession, delivery or use of paraphernalia used to administer marijuana, as necessary, for the exclusive benefit of a person to mitigate the symptoms or effects of his or her chronic or debilitating medical condition.



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<i>Must</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.
<i>NAC</i>	Nevada Administrative Code. All applicable NAC documentation may be reviewed via the internet at: http://www.leg.state.nv.us/NAC/CHAPTERS.HTML
<i>Non-Identified Criteria Response</i>	A response to the application in which no information is included pertaining to identifiable information for any and all owners, officers, board members or employees and business details (proposed business name(s), D/B/A, current or previous business names or employers). Identifiers that must be removed from the application include all names; specific geographic details including street address, city, county, precinct, ZIP code, and their equivalent geocodes; telephone numbers; fax numbers; email addresses; social security numbers; financial account numbers; certificate/license numbers; vehicle identifiers and serial numbers including license plate numbers; Web Universal Resource Locators (URLs); Internet Protocol (IP) addresses; biometric identifiers including finger and voice prints, full-face photographs and any comparable images; previous or proposed company logos, images or graphics; and, any other unique identifying information, images, logos, details, numbers, characteristics, or codes.
<i>NRS</i>	Nevada Revised Statutes. All applicable NRS documentation may be reviewed via the internet at: http://www.leg.state.nv.us/NRS/ .
<i>Pacific Time (PT)</i>	Unless otherwise stated, all references to time in this request for applications and any subsequent award of license are understood to be Pacific Time.
<i>Recreational marijuana retail store</i>	Means an entity licensed to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities and retail marijuana stores, and to sell marijuana and marijuana products to consumers.
<i>Recreational marijuana establishment</i>	Means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.
<i>Recreational marijuana establishment agent</i>	Means an owner, officer, board member, employee or volunteer of a marijuana establishment, an independent contractor who provides labor relating to the cultivation, processing or distribution of marijuana or the production of marijuana or marijuana products for a marijuana establishment or an employee of such an independent contractor. The term does not include a consultant who performs professional services for a recreational marijuana establishment.



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<i>Recreational marijuana establishment agent registration card</i>	A registration card that is issued by the Department pursuant to R092-17, Sec. 94 to authorize a person to volunteer or work at a recreational marijuana establishment.
<i>Recreational marijuana establishment license</i>	A license that is issued by the Department pursuant to NRS 453D and R092-17 to authorize the operation of a recreational marijuana establishment.
<i>Shall</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.
<i>Should</i>	Indicates something that is recommended but not mandatory. If the applicant fails to provide recommended information the Department may, at its sole discretion, ask the applicant to provide the information or evaluate the application without the information.
<i>State</i>	The State of Nevada and any agency identified herein.
<i>Will</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.



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2. APPLICATION OVERVIEW

The Nevada State Legislature passed a number of bills during the 2017 session which affect the licensing, regulation and operation of recreational marijuana establishments in the state. In addition, the Department of Taxation has approved regulations effective February of 2018. Legislation changes relevant to this application include but are not limited to the following:

Assembly Bill 422 (AB422):

- Transfers responsibility for registration/licensing and regulation of marijuana establishments from the State of Nevada's Division of Public and Behavioral Health (DPBH) to the Department of Taxation.
- Adds diversity of race, ethnicity, or gender of applicants (owners, officers, board members) to the existing merit criteria for the evaluation of marijuana establishment registration certificates.

LCB File No. Regulation R092-17:

- On or before November 15, 2018, a person who holds a medical marijuana establishment registration certificate may apply for one or more licenses, in addition to a license issued pursuant to section 77 of the regulation, for a marijuana establishment of the same type or for one or more licenses for a marijuana establishment of a different type.

No applicant may be awarded more than 1 (one) retail store license in a jurisdiction/locality, unless there are less applicants than licenses allowed in the jurisdiction.

The Department is seeking applications from qualified applicants in conjunction with this application process for recreational marijuana retail store license. If a marijuana establishment has not received a final inspection within 12 months after the date on which the Department issued a license, the establishment must surrender the license to the Department. The Department may extend the period specified in R092-17, Sec. 87 if the Department, in its discretion, determines that extenuating circumstances prevented the marijuana establishment from receiving a final inspection within the period.

3. APPLICATION TIMELINE

The following represents the timeline for this project. All times stated are in Pacific Time (PT).

Task	Date/Time
Request for application date	July 6, 2018
Opening of 10-day window for receipt of applications	September 7, 2018
Deadline for submission of applications	September 20, 2018 – 5:00 p.m.
Application evaluation period	September 7, 2018 – December 5, 2018
Conditional licenses award notification	Not later than December 5, 2018
Anticipated approximate fully operational deadline	12 months after notification date of conditional license



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4. APPLICATION INSTRUCTIONS

The State of Nevada Department of Taxation is seeking applications from qualified applicants to award recreational marijuana retail store licenses.

The Department anticipates awarding a recreational marijuana retail store license in conjunction with this application as determined by the applicant's establishment type, geographic location and the best interest of the State. Therefore, applicants are encouraged to be as specific as possible regarding services provided, geographic location, and information submitted for each application merit criteria category.

Pursuant to section 78 subsection 12 of R092-17, the application must include the signature of a natural person for the proposed marijuana establishment as described in subsection 1 of section 74 of R092-17.

5. APPLICATION REQUIREMENTS, FORMAT AND CONTENT

5.1. General Submission Requirements

- 5.1.1. Applications must be packaged and submitted in counterparts; therefore, applicants must pay close attention to the submission requirements. Applications will have an Identified Criteria Response and a Non-Identified Criteria Response. Applicants must submit their application separated into the two (2) required sections, Identified Criteria Responses and Non-Identified Criteria Responses, recorded to separate electronic media (CD-Rs or USB thumb drives).
- 5.1.2. The required electronic media must contain information as specified in Section 5.4, and must be packaged and submitted in accordance with the requirements listed at Section 5.5.
- 5.1.3. Detailed instructions on application submission and packaging are provided below. Applicants must submit their applications as identified in the following sections.
- 5.1.4. All information is to be completed as requested.
- 5.1.5. Each section within the Identified Criteria Response and the Non-Identified Criteria Response must be saved as separate PDF files, one for each required "Tab". The filename will include the tab number and title (e.g., 5.2.1 Tab I – Title Page.pdf).
- 5.1.6. For ease of evaluation, the application must be presented in a format that corresponds to and references the sections outlined within the submission requirements section and must be presented in the same order. Written responses must be typed and placed immediately following the applicable criteria question, statement and/or section.
- 5.1.7. Applications are to be prepared in such a way as to provide a straightforward, concise delineation of information to satisfy the requirements of this application.
- 5.1.8. In a Non-Identified Criteria Response, when a specific person or company is referenced the identity must remain confidential. A person may be addressed through their position, discipline or job title, or assigned an identifier. Identifiers assigned to people or companies must be detailed in a legend (Attachment H) to be submitted in the Identified Criteria Response section.
- 5.1.9. Materials not requested in the application process will not be reviewed.



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5.2. Part I – General Criteria Response

The IDENTIFIED CRITERIA RESPONSE must include:

- Electronic media (CD-R or thumb drive) containing only the Identified Criteria Response.
- Do not password protect electronic media or individual files.
- The response must contain separate PDF files for each of the tabbed sections as described below.

5.2.1. Tab I – Title Page

The title page must include the following:

Part I – Identified Criteria Response	
Application Title:	A Recreational Marijuana Establishment License
Applicant Name:	
Address:	
Application Opening Date and Time:	September 7, 2018
Application Closing Date and Time:	September 20, 2018

5.2.2. Tab II – Table of Contents

An accurate table of contents must be provided in this tab.

5.2.3. Tab III – Applicant Information Sheet (Page 2)

The completed Applicant Information Sheet signed by the contact person who is responsible for providing information, signing documents, or ensuring actions are taken pursuant to R092-17, Sec. 74 must be included in this tab.

5.2.4. Tab IV – Recreational Marijuana Establishment License Application (Attachment A)

The completed and signed Recreational Marijuana Establishment License Application must be included in this tab.

5.2.5. Tab V – Multi-Establishment Limitations Form (Attachment F)

If applicable, a copy of the Multi-Establishment Limitations Form must be included in this tab. If not applicable, please insert a plain page with the words “Not applicable.”

5.2.6. Tab VI – Identifier Legend (Attachment H)

If applicable, a copy of the Identifier Legend must be included in this tab. If not applicable, please insert a page with the words “Not Applicable”.



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- 5.2.7. **Tab VII – Confirmation that the applicant has registered with the Secretary of State.**
Documentation that the applicant has registered as the appropriate type of business and the Articles of Incorporation, Articles of Organization, Operating Agreements, or partnership or joint venture documents of the applicant must be included in this tab.
- 5.2.8. **Tab VIII – Documentation of liquid assets**
Documentation demonstrating the liquid assets and the source of those liquid assets from a financial institution in this state or in any other state or the District of Columbia must be included in this tab and demonstrate the following criteria:
- 5.2.8.1. That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets; and
- 5.2.8.2. The source of those liquid assets.
- Note: If applying for more than one recreational marijuana establishment license, available funds must be shown for each establishment application.*
- 5.2.9. **Tab IX – Evidence of taxes paid; other beneficial financial contributions**
Evidence of the amount of taxes paid and/or other beneficial financial contributions made to the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the establishment must be included in this tab.
- 5.2.10. **Tab X – Organizational structure and owner, officer or board member information**
The description of the proposed organizational structure of the proposed recreational marijuana establishment and information concerning each owner, officer and board member of the proposed recreational marijuana establishment must be included in this tab and demonstrate the following criteria:
- 5.2.10.1. An organizational chart showing all owners, officers and board members of the recreational marijuana establishment including percentage of ownership for each individual.
- 5.2.10.2. An Owner, Officer and Board Member Attestation Form must be completed for each individual named in this application (Attachment B).
- 5.2.10.3. The supplemental Owner, Officer and Board Member Information Form should be completed for each individual named in this application. This attachment must also include the diversity information required by R092-17, Sec. 80.1(b) (Attachment C).
- 5.2.10.4. A resume, including educational level and achievements for each owner, officer and board member must be completed for each individual named in this application.
- 5.2.10.5. Narrative descriptions not to exceed 750 words demonstrating the following:
- 5.2.10.5.1. Past experience working with government agencies and highlighting past community involvement.



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- 5.2.10.5.2. Any previous experience at operating other businesses or non-profit organizations, including marijuana industry experience.
- 5.2.10.6. A Request and Consent to Release Application Form for Recreational Marijuana Establishment License(s) for each owner, officer and board member should be completed for each individual named in this application (Attachment D).
- 5.2.10.7. A copy of each individual's completed fingerprint submission form demonstrating he or she has submitted fingerprints to the Nevada Department of Public Safety. Agent cards will not be accepted.
- 5.2.11. **Tab XI – Financial plan**
A financial plan must be included in this tab which includes:
 - 5.2.11.1. Financial statements showing the resources of the applicant, both liquid and illiquid.
 - 5.2.11.2. If the applicant is relying on funds from an owner, officer, board member or any other source, evidence that such person has unconditionally committed such funds to the use of the applicant in the event the Department awards a recreational marijuana establishment license to the applicant.
 - 5.2.11.3. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation.
- 5.2.12. **Tab XII – Name, signage and advertising plan**
A proposal of the applicant's name, signage and advertising plan which will be used in the daily operations of the recreational marijuana establishment on the form supplied by the Department (Attachment G) must be included in this tab.
Please note: This section will require approval, but will not be scored.
- 5.2.13. **Application Fee**
 - 5.2.13.1. Include with this packet the \$5,000.00 non-refundable application fee per NRS 453D.230(1). License fee is not required until a conditional license has been awarded.

Please note: Only cash, cashier's checks and money orders made out to the "Nevada Department of Taxation" will be accepted for payment of the nonrefundable application fee.

5.3. Part II – Non-identified Criteria Response

The NON-IDENTIFIED CRITERIA RESPONSE must include:

- Electronic media (CD-R or thumb drive) containing only the Identified Criteria Response.
- Do not password-protect electronic media or individual files.



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- The response must contain separate PDF files for each of the tabbed sections as described below:

5.3.1. **Tab I – Title Page**

Please note: Title page will not be viewed by Non-Identified Criteria evaluators.

The title page must include the following:

Part II –Non-Identified Criteria Response	
Application Title:	A Recreational Marijuana Establishment License
Applicant Name:	
Address:	
Application Opening Date and Time:	September 7, 2018
Application Closing Date and Time:	September 20, 2018

5.3.2. **Tab II – Table of Contents**

An accurate table of contents must be provided in this tab.

5.3.3. **Tab III – Building/Establishment information**

Documentation concerning the adequacy of the size of the proposed recreational marijuana establishment to serve the needs of persons who are authorized to engage in the use of marijuana must be included in this tab. The content of this response must be in a **non-identified** format and include general floor plans with all supporting details

Please note: The size or square footage of the proposed establishment should include the maximum size of the proposed operation. The start-up plans and potential expansion should be clearly stated to prevent needless misunderstandings and surrendering of certification.

5.3.4. **Tab IV – Care, quality and safekeeping of marijuana from seed to sale plan**

Documentation concerning the integrated plan of the proposed recreational marijuana establishment for the care, quality and safekeeping of recreational marijuana from seed to sale must be included in this tab. The content of this response must be in a **non-identified** format and include:

- 5.3.4.1. A plan for verifying and testing recreational marijuana
- 5.3.4.2. A transportation or delivery plan
- 5.3.4.3. Procedures to ensure adequate security measures for building security
- 5.3.4.4. Procedures to ensure adequate security measures for product security

5.3.5. **Tab V – System and Inventory Procedures plan**



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A plan for the operating procedures for verification system and inventory control system must be included in this tab. The content of this response must be in a **non-identified** format and include:

- 5.3.5.1. A description of the operating procedures for the verification system of the proposed marijuana establishment for verifying age.
- 5.3.5.2. A description of the inventory control system of the proposed recreational marijuana establishment.

Please note: Applicants should demonstrate a system to include thorough tracking of product movement and sales. The applicant shall demonstrate capabilities for an external interface via a secure API to allow third party software systems to report all required data into the State database to allow seamless maintenance of records and to enable a quick and accurate update on demand. The system shall account for all inventory held by an establishment in any stage of cultivation, production, display or sale as applicable for the type of establishment, and demonstrate an internal reporting system to provide the Department with comprehensive information about an establishment's inventory.

5.3.6. **Tab VI**– *Operations and resources plan*

Evidence that the applicant has a plan to staff and manage the proposed marijuana establishment on a daily basis must be included in this tab. The content of this response must be in a **non-identified** format and include:

- 5.3.6.1. A detailed budget for the proposed establishment including pre-opening and first year operating expenses.
- 5.3.6.2. An operations manual that demonstrates compliance with the regulations of the Department.
- 5.3.6.3. An education plan which must include providing training and educational materials to the staff of the proposed establishment.
- 5.3.6.4. A plan to minimize the environmental impact of the proposed establishment.

5.3.7. **Tab VII** – *Community impact and serving authorized persons in need*

A proposal demonstrating the likely impact on the community and convenience to serve the needs of persons authorized to use marijuana must be included in this tab. The content of this response must be in a **non-identified** format and include:

- 5.3.7.1. The likely impact of the proposed recreational marijuana establishment in the community in which it is proposed to be located.
- 5.3.7.2. The manner in which the proposed recreational marijuana establishment will meet the needs of the persons who are authorized to use marijuana.



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5.4. Electronic Media Requirements

Electronic media submitted as part of the application must include:

- 5.4.1. A separate CD-R or thumb drive which contains only the Identified Criteria Response.
- 5.4.2. A separate CD-R or thumb drive which contains only the Non-Identified Criteria Response.
 - 5.4.2.1. The electronic files must follow the format and content section for the Identified Criteria Response and Non-Identified Criteria Response.
 - 5.4.2.2. All electronic files must be saved in "PDF" format with separate files for each required "Tab". Individual filenames must comply with the naming requirements specified in 5.1.5 of the General Submission Requirements.
 - 5.4.2.3. CD-Rs or thumb drives will be labeled as either Identified or Non-Identified Criteria Response. Identified Criteria Responses and Non-Identified Criteria Responses must not be saved to the same CD-R or thumb drive.
 - 5.4.2.3.1. Part I – Identified Criteria Response
 - 5.4.2.3.2. Part II – Non-Identified Criteria Response
 - 5.4.2.4. Seal the Identified Criteria Response and Non-Identified Criteria Response electronic media in separate envelopes and affix labels to the envelopes per the example below:

CDs or Thumb Drives	
Application	A Recreational Marijuana Establishment License
Applicant Name:	
Address:	
Contents:	Part I – Identified Criteria Response OR Part II – Non-Identified Criteria Response



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Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
Executive Director

STATE OF NEVADA DEPARTMENT OF TAXATION

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555 E. Washington Avenue
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Phone: (702) 486-2300 Fax: (702) 486-2373

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

5.5. Application Packaging and Instructions

- 5.5.1. Recreational Marijuana Establishment License Applications may be mailed or dropped off in person at:

**Department of Taxation
Marijuana Enforcement Division - OR -
1550 College Parkway
Carson City, NV 89706**

**Department of Taxation
Marijuana Enforcement Division
555 E. Washington Ave. Ste 1300
Las Vegas, NV 89101**

- 5.5.2. Applications dropped off in person at one of the two Taxation office's must be received no later than **5:00 p.m. on September 20, 2018.**
- 5.5.3. Applications mailed in to one of the two Taxation office's must be postmarked by the United States Postal Service not later than **September 20, 2018.**
- 5.5.4. If an application is sent via a different delivery service (i.e. UPS, FedEx, etc.) and does not arrive at one of the two Taxation offices by **5:00 p.m. on September 20, 2018**, the application will not be considered.
- 5.5.5. If mailing the application, combine the separately sealed Identified and Non-Identified Criteria Response envelopes into a single package suitable for mailing.
- 5.5.6. The Department will not be held responsible for application envelopes mishandled as a result of the envelope not being properly prepared.
- 5.5.7. Email, facsimile, or telephone applications will **NOT** be considered.



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6. APPLICATION EVALUATION AND AWARD PROCESS

The information in this section does not need to be returned with the applicant's application.

- 6.1. Applications shall be consistently evaluated and scored in accordance with NRS 453D, NAC 453D and R092-17 based upon the following criteria and point values.

Grey boxes are the Identified Criteria Response. White boxes are Non-Identified Criteria Response.

Nevada Recreational Marijuana Application Criteria		Points
The description of the proposed organizational structure of the proposed marijuana establishment and information concerning each owner, officer and board member including key personnel of the proposed marijuana establishment including the information provided pursuant to R092-17.		60
Evidence of the amount of taxes paid or other beneficial financial contributions made to the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed establishment.		25
A financial plan which includes: <ul style="list-style-type: none"> Financial statements showing the resources of the applicant, both liquid and illiquid. If the applicant is relying on funds from an owner, officer or board member, or any other source, evidence that such source has unconditionally committed such funds to the use of the applicant in the event the Department awards a recreational marijuana establishment license to the applicant and the applicant obtains the necessary local government approvals to operate the establishment. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation. 		30
Documentation from a financial institution in this state or in any other state or the District of Columbia which demonstrates: <ul style="list-style-type: none"> That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets. The source of those liquid assets. 		10
Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including: <ul style="list-style-type: none"> A plan for testing recreational marijuana. A transportation plan. Procedures to ensure adequate security measures for building security. Procedures to ensure adequate security measures for product security. 		40
<i>Please note: The content of this response must be in a non-identified format.</i>		
Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include: <ul style="list-style-type: none"> A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses. An operations manual that demonstrates compliance with the regulations of the Department. An education plan which must include providing educational materials to the staff of the proposed establishment. A plan to minimize the environmental impact of the proposed establishment. 		30



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<i>Please note: The content of this response must be in a non-identified format.</i>	
A plan which includes: <ul style="list-style-type: none"> A description of the operating procedures for the electronic verification system of the proposed marijuana establishment. A description of the inventory control system of the proposed marijuana establishment. <i>Please note: The content of this response must be in a non-identified format.</i>	20
Documentation concerning the adequacy of the size of the proposed marijuana establishment to serve the needs of persons who are authorized to engage in the use of marijuana, including: <ul style="list-style-type: none"> Building plans with supporting details. <i>Please note: The content of this response must be in a non-identified format.</i>	20
A proposal demonstrating: <ul style="list-style-type: none"> The likely impact of the proposed marijuana establishment in the community in which it is proposed to be located. The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to use marijuana. <i>Please note: The content of this response must be in a non-identified format.</i>	15
Application Total	250
Unweighted: <ul style="list-style-type: none"> Review plan for all names and logos for the establishment and any signage or advertisement. Review results of background check(s). Applicant has until the end of the 90-day application period to resolve background check information which may cause the application to be rejected. 	

6.2. If the Department receives more than one application for a license for a retail marijuana store in response to a request for applications made pursuant to R092-17, Sec. 76 and the Department determines that more than one of the applications is complete and in compliance with R092-17, Sec. 78 and Chapter 453D of the NRS, the Department will rank the applications within each applicable locality for any applicants which are in a jurisdiction that limits the number of retail marijuana stores in order from first to last. Ranking will be based on compliance with the provisions of R092-17 Sec. 80, Chapter 453D of NRS and on the content of the applications relating to:

- 6.2.1. Operating experience of another kind of business by the owners, officers or board members that has given them experience which is applicable to the operation of a marijuana establishment.
- 6.2.2. Diversity of the owners, officers or board members.
- 6.2.3. Evidence of the amount of taxes paid and other beneficial financial contributions.
- 6.2.4. Educational achievements of the owners, officers or board members.
- 6.2.5. The applicant's plan for care, quality and safekeeping of marijuana from seed to sale.
- 6.2.6. The financial plan and resources of the applicant, both liquid and illiquid.
- 6.2.7. The experience of key personnel that the applicant intends to employ.
- 6.2.8. Direct experience of the owners, officers or board members of a medical marijuana establishment or marijuana establishment in this State.



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- 6.3. Applications that have not demonstrated a sufficient response related to the criteria set forth above will not have additional criteria considered in determining whether to issue a license and will not move forward in the application process.
- 6.4. Any findings from a report concerning the criminal history of an applicant or person who is proposed to be an owner, officer or board member of a proposed recreational marijuana establishment that disqualify that individual from serving in that capacity will also result in the disqualification of the application. The applicant will have the opportunity to resolve such an issue within the 90-day application period.
- 6.5. The Department and evaluation committee may also contact anyone referenced in any information provided for the owners, officers and board members of the proposed establishment; contact any applicant to clarify any response; solicit information from any available source concerning any aspect of an application; and, seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept any application, but shall make an award in the best interests of the State of Nevada per Regulation R092-17 and Chapter 453D of the NRS.
- 6.6. Clarification discussions may, at the Department's sole discretion, be conducted with applicants who submit applications determined to be acceptable and competitive per R092-17, Sec. 77-80 and NRS 453D.210. Applicants shall be afforded fair and equal treatment with respect to any opportunity for discussion and/or written clarifications of applications. Such clarifications may be permitted after submissions and prior to award for the purpose of obtaining best and final ranking of applications. In conducting discussions, there shall be no disclosure of any information derived from applications submitted by competing applicants. Any clarification given for the original application during the clarification discussions will be included as part of the application.
- 6.7. The Department will issue conditional recreational marijuana establishment licenses subject to final inspection in accordance with R092-17, Sec. 87 and subject to local jurisdiction to the highest ranked applicants up to the designated number of licenses the Department plans to issue.
- 6.8. If two or more applicants have the same total number of points for the last application being awarded a conditional license, the Department shall select the applicant which has scored the highest number of points as it is related to the proposed organizational structure of the proposed marijuana establishment and the information concerning each owner, officer and board member of the proposed marijuana establishment.
- 6.9. If the Department receives only one response within a specific jurisdiction; and, if the jurisdiction limits the number of a type of establishment to one; and, statewide, if there is not a limit on the number of a type of establishments to a request for applications for recreational marijuana establishments issued pursuant to R092-17, Sec. 76 (3) within 10 business days after the Department begins accepting responses to the request for applications; and, the



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Department determines that the response is complete and in compliance with the regulations, the Department will issue a conditional license to that applicant to operate a recreational marijuana establishment in accordance with R092-17.

- 6.10. The issuance by the Department of a recreational marijuana establishment license is conditional and not an approval to begin business operations until such time as:
 - 6.10.1. The marijuana establishment is in compliance with all applicable local government ordinances and rules; and
 - 6.10.2. The local government has issued a business license or otherwise approved the applicant for the operation of the establishment.
- 6.11. If the local government does not issue business licenses and does not approve or disapprove marijuana establishments in its jurisdiction, a recreational marijuana establishment license becomes an approval to begin business operations when the marijuana establishment is in compliance with all applicable local government ordinances and rules and has fulfilled all the requirements of the approval to operate by the Department.
- 6.12. Any license resulting from this application shall not be effective until approved by the Department.



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ATTACHMENT A RECREATIONAL MARIJUANA ESTABLISHMENT APPLICATION

GENERAL INFORMATION

Type of Marijuana Establishment: <input type="checkbox"/> Recreational Retail Marijuana Store			
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 cannot be a P.O. Box).			
City:	County:	State:	Zip Code:
Proposed Hours of Operation :			
Sunday	Monday	Tuesday	Wednesday
Thursday	Friday	Saturday	

APPLYING ENTITY INFORMATION

Applying Entity's Name:			
Business Organization: <input type="checkbox"/> Individual <input type="checkbox"/> Corp. <input type="checkbox"/> Partnership			
<input type="checkbox"/> LLC <input type="checkbox"/> Assoc. /Coop. <input type="checkbox"/> Other specify:			
Telephone #:		E-Mail Address:	
State Business License #:		Expiration Date:	
Mailing Address:			
City:		State:	Zip Code:

DESIGNEE INFORMATION

Name of individual designated to manage agent registration card applications on behalf of the establishment.

Last Name:	First Name:	MI:
------------	-------------	-----

SUPPLEMENTAL REQUESTS

Does the applicant agree to allow the Nevada Department of Taxation (Department) to submit supplemental requests for information? <input type="checkbox"/> Yes <input type="checkbox"/> No
--



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ATTACHMENT A (continued)

Recreational Marijuana Establishment Owner (OR), Officer (OF), Board Member (BM) Names

For each owner, officer and board member listed below, please fill out a corresponding Establishment Principal Officers and Board Members Information Form (Attachment C).

Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
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ATTACHMENT A (continued)

A marijuana agent identification card or recreational marijuana establishment license issued by the Nevada Department of Taxation (Department) pursuant to R092-17, Sec. 95 does not protect the applicant from legal action by federal authorities, including possible criminal prosecution for violations of federal law for the sale, manufacture, distribution, use, dispensing, possession, etc. of marijuana.

The acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing of "recreational" marijuana under state law is lawful only if done in strict compliance with the requirements of the State Medical & Recreational Marijuana Act(s) & Regulations (NAC- 453, NRS-453D, R092-17). Any failure to comply with these requirements may result in revocation of the marijuana agent identification card or Recreational Marijuana Establishment License issued by the Department.

The issuance of a license pursuant to section 80 of R092-17 of this regulation is conditional and not an approval to begin operations as a marijuana establishment until such time as all requirements in section 83 of R092-17 are completed and approved by the Department by means of a final inspection.

The State of Nevada, including but not limited to the employees of the Department, is not facilitating or participating in any way with my acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing of marijuana.

I attest that the information provided to the Department for this Recreational Marijuana Establishment License application is true and correct.

_____ Print Name	_____ Title
_____ Signature	_____ Date Signed
_____ Print Name	_____ Title
_____ Signature	_____ Date Signed



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ATTACHMENT B OWNER, OFFICER AND BOARD MEMBER ATTESTATION FORM

I, _____ (PRINT NAME)

Attest that:

I have not been convicted of an excluded felony offense as defined in NRS 453D; and

I agree that the Department may investigate my background information by any means feasible to the Department; and

I will not divert marijuana to any individual or person who is not allowed to possess marijuana pursuant to R092-17, Sec. 94 and 453D of the NRS; and

All information provided is true and correct.

Signature of Owner, Officer or Board Member Date Signed

State of Nevada	
County of _____	
Signed and sworn to (or affirmed) before me on _____ (date)	
By _____ (name(s) of person(s) making statement)	
Notary Stamp	
	Signature of notarial officer



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ATTACHMENT C
OWNER, OFFICER AND BOARD MEMBER INFORMATION FORM

Provide the following information for each owner, officer and board member listed on the Recreational Marijuana Establishment Application. Use as many sheets as needed.			
Last Name:	First Name:	MI:	<input type="checkbox"/> OR <input type="checkbox"/> OF <input type="checkbox"/> BM
Date of Birth:	Race:	Ethnicity:	
Gender:			
Residence Address:			
City:	County:	State:	Zip:
Describe the individual's title, role in the organization and the responsibilities of the position of the individual:			
Has this individual served as a principal officer or board member for a marijuana establishment that has had their establishment license or certificate revoked? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has this individual previously had a medical marijuana establishment agent registration card or marijuana establishment agent registration card revoked <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is this individual an attending provider of health care currently providing written documentation for the issuance of registry identification cards or letters of approval? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is this individual employed by or a contractor of the Department? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has a copy of this individual's signed and dated Recreational Retail Marijuana Store Principal Officer or Board Member Attestation Form been submitted with this application? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is this individual a law enforcement officer? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has a copy of this individual's fingerprints on a fingerprint card been submitted to the Nevada Department of Public Safety? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has a copy of the Request and Consent to Release Application Form been submitted with this application? <input type="checkbox"/> Yes <input type="checkbox"/> No			



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For each owner (OR), officer (OF) and board member (BM) that is currently serving as an owner, officer or board member for another medical marijuana establishment or marijuana establishment, please fill out the information below.

[illegible]



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ATTACHMENT D
REQUEST AND CONSENT TO RELEASE APPLICATION FORM
RECREATIONAL MARIJUANA ESTABLISHMENT LICENSE

I, _____, am the duly authorized representative of

_____ to represent and interact with the Department of Taxation (Department) on all matters and questions in relation to the Nevada Recreational Marijuana Establishment License(s) Application. I understand that R092-17, Sec. 242 makes all applications submitted to the Department confidential but that local government authorities, including but not limited to the licensing or zoning departments of cities, towns or counties, may need to review this application in order to authorize the operation of an establishment under local requirements. Therefore, I consent to the release of this application to any local governmental authority in the jurisdiction where the address listed on this application is located.

By signing this Request and Consent to Release Application Form, I hereby acknowledge and agree that the State of Nevada, its sub-departments including the Department of Taxation and its employees are not responsible for any consequences related to the release of the information identified in this consent. I further acknowledge and agree that the State and its sub-departments and its employees cannot make any guarantees or be held liable related to the confidentiality and safe keeping of this information once it is released.

Date: _____

Signature of Requestor/Applicant or Designee

State of Nevada	
County of _____	
Signed and sworn to (or affirmed) before me on _____ (date)	
By _____ (name(s) of person(s) making statement)	
Notary Stamp	Signature of notarial officer



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ATTACHMENT E
PROPOSED ESTABLISHMENT PROPERTY ADDRESS

To be completed by the applicant for the physical address of the proposed marijuana establishment if the applicant owns property or has secured a lease or other property agreement.

Name of Individual or Entity Applying for a Marijuana Establishment License:

Physical Address of Proposed Marijuana Establishment (must be a Nevada address, not a P.O. Box):

City:

County:

State:

Zip Code:

Legal Description of the Property:



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ATTACHMENT F MULTI-ESTABLISHMENT LIMITATIONS FORM

NRS 453D.210 places a limitation on the total number of Recreational Retail Marijuana Store licenses that can be issued within each county, and R092-17, Sec. 80 (5) places limitations on the number of recreational marijuana retail stores located in any one governmental jurisdiction and a limitation on the number of licenses issued to any one person, group or entity. Due to these limitations, please list below all applications submitted from this business organization and/or persons as identified in the recreational marijuana establishment owner, officer and board member names section of Attachment A in the 10-day window of **September 7, 2018 – September 20, 2018**.

If this business organization were to not receive approval on all applications submitted, would the applicant still want approval on the applications determined by the ranking below? ☐ Yes ☐ No

Please list in order of preference for approval (use as many sheets as needed).

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:



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**ATTACHMENT G
NAME, SIGNAGE, AND ADVERTISING PLAN FORM**

A recreational marijuana establishment must have all advertising plans approved by the Department as a requirement for approval to operate a recreational marijuana establishment. A recreational marijuana establishment shall not use:

- A name or logo unless the name or logo has been approved by the Department; or
- Any sign of advertisement unless the sign or advertisement has been approved by the Department.

Please demonstrate the Name, Signage and Advertising Plans for the proposed marijuana establishment. Additional pages and documents can be included to demonstrate the full advertising plans of the proposed establishment.



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In a Non-Identified Criteria Response, when a specific person or company is referenced, the identity must remain confidential. A person may be addressed through their position, discipline or job title, or be assigned an identifier. Identifiers assigned to people or companies must be detailed in a legend (Attachment H) to be submitted in the Identified Criteria Response section (use as many sheets as needed).

[illegible]



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ATTACHMENT I FACILITY JURISDICTION FORM

Mark the jurisdiction(s) and number of stores in each jurisdiction for which you are applying. Only one application is necessary for multiple jurisdictions and licenses, however, you must submit attachments "A" & "E" for each jurisdiction, location and the appropriate application fee for each of the jurisdictions/locality and number of licenses requested.

No applicant may be awarded more than 1 (one) retail store license in a jurisdiction/locality, unless there are less applicants than licenses allowed in the jurisdiction.

<i>Jurisdiction</i>	<i>Indicate Number of Licenses Requested</i>
Unincorporated Clark County	
City of Henderson	
City of Las Vegas	
City of Mesquite	
City of North Las Vegas	
Carson City	
Churchill County	
Douglas County	
Elko County	
Esmeralda County	
Eureka County	
Humboldt County	

<i>Jurisdiction</i>	<i>Indicate Number of Licenses Requested</i>
Unincorporated Washoe County	
City of Reno	
City of Sparks	
Lander County	
Lincoln County	
Lyon County	
Mineral County	
Nye County	
Pershing County	
Storey County	
White Pine County	



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ATTACHMENT J

FEDERAL LAWS AND AUTHORITIES

(Apply outside of NAC 453, NAC 453A, NRS 453A, NRS 453D, R092-17)

The information in this section does not need to be returned with the applicant's application. The following is a list of federal laws and authorities with which the awarded Applicant will be required to comply.

ENVIRONMENTAL:

- Archeological and Historic Preservation Act of 1974, PL 93-291
- Clean Air Act, 42 U.S.C. 7506(c)
- Endangered Species Act 16 U.S.C. 1531, ET seq.
- Executive Order 11593, Protection and Enhancement of the Cultural Environment
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands: Farmland Protection Policy Act, 7 U.S.C. 4201 ET seq.
- Fish and Wildlife Coordination Act, PL 85-624, as amended
- National Historic Preservation Act of 1966, PL 89-665, as amended
- Safe Drinking Water Act, Section 1424(e), PL 92-523, as amended

ECONOMIC:

- Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended
- Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans

SOCIAL LEGISLATION:

- Age Discrimination Act, PL 94-135 Civil Rights Act of 1964, PL 88-352
- Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act
- Executive Order 11246, Equal Employment Opportunity
- Executive Orders 11625 and 12138, Women's and Minority Business Enterprise Rehabilitation Act of 1973, PL 93, 112

MISCELLANEOUS AUTHORITY:

- Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646 Executive Order 12549 – Debarment and Suspension

EXHIBIT C

EXHIBIT C



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Marijuana Establishment (ME) Application Score Review Meeting Procedures

The Department of Taxation Marijuana Enforcement Division (MED) requires that all ME applicants who contact the MED may schedule a meeting with Chief Compliance Audit Investigator, Marijuana Program Supervisor or Marijuana Program Manager. Due to the need to verify identity and ensure the confidentiality required by NRS 453A.700 & R092-17 neither phone nor video-conferenced meetings will be supported.

PURPOSE

This document describes the strict adherence that must be followed for ME applicants to view the scoring information.

SCOPE

All ME Applicants

PROCEDURE

- The following staff persons are authorized to coordinate the meeting for the MED: Program Officer 3, Chief Compliance Audit Investigator, Marijuana Program Supervisor, Program Manager 2 or higher. The MED representative will ensure the legitimacy of the company representative to view the scoring information, including but not limited to, making a copy of their identification card.
- During the meeting, the company representative will be provided their average score for each category of their application, and the total overall score. A copy of the ME application will be provided to the company so they can compare the score with the maximum score available for that category.
- The company representative can make notes of the scoring information provided. No photocopies, scan, recordings, or photographs can be made of the information provided.
- MED staff will not discuss nor comment on the scores provided, nor discuss or comment on the MED's review process.
- No information will be provided on any other ME applicant not associated with the company representative.
- The meeting will be scheduled for up to but no longer than 30 minutes.
- A copy of the following documents will be maintained in the establishment hard copy file, and electronically: a copy of the establishment scoring information, copies of ID cards, and a copy of the MS Outlook appointment information.

EXHIBIT D

EXHIBIT D

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AFFIDAVIT OF AMEI AMEI

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, AMEI AMEI., first being duly sworn upon oath, hereby deposes and states as follows:

1. I am over the age of eighteen years old and I am currently an Associate Professor in Statistics, Department of Mathematical Sciences, at the University of Nevada Las Vegas.

2. I earned my PhD in Mathematics at Washington University in St. Louis, Missouri.

3. I make this Affidavit in support of Plaintiffs' Motion for Preliminary Injunction.

4. I swear, to the best of my knowledge, that the facts set forth herein are true and accurate, save and except any facts stated upon information and belief, and, as to such facts, I believe them to be true. I hereby reaffirm said facts as if fully set forth herein to the extent they are not recited herein. If called upon by this Court, I will testify as to my personal knowledge of the truth and accuracy of the statements contained therein.


5. I was retained by the law firm of Gentile Cristalli Miller Armeni Savarese as an expert in the field of statistics to analyze data regarding the 2018 recreational marijuana retail store applications for and awarding of licenses by the State of Nevada Department of Taxation.

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1 6. I analyzed data from (1) a sample of 2018 applicant's scores, (2) NAC
2 453D.272(5)(a)(b), (3) List of store licenses to sell marijuana in Nevada from the Department of
3 Taxation as of March 1, 2019, (4) list of licenses awarded pursuant to the 2018 applications. The
4 results are detailed in my Report attached to this affidavit.

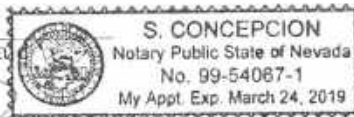
5 Further Affiant Sayeth Naught.

6 Dated this 11 day of March, 2019.

7
8 
AMEI AMEI

9 SUBSCRIBED AND SWORN to before me
10 on the 11 day of March, 2019.

11 
12 NOTARY PUBLIC in and for said
13 County and State



DATA ANALYSIS OF SCORING AND ALLOCATION OF THE 2018 RECREATIONAL MARIJUANA RETAIL STORE APPLICATIONS

First of all, NRS 453D.210 gives criterion at county level, however the Regulation uses criterion at the level of jurisdiction and unincorporated area within each county.

Second, according to the Regulation: "To prevent monopolistic practices, the Department will ensure, in a county whose population is 100,000 or more, that the Department does NOT issue, to any person, group of persons or entity, the greater of (a) One license to operate a retail marijuana store or (b) more than 10% of the licenses for retail marijuana stores allocable in the county."

The criterion (a) and (b) result in the following specific allocation caps over each jurisdiction and unincorporated area within each county:

1) Excluding existing license

Clark County: $\max(1, 10\% \times 31 = 3.1) = 3.1$, cap is 3 licenses

Washoe County: $\max(1, 10\% \times 7 = 0.7) = 1$, cap is 1 license

Carson City County: $\max(1, 10\% \times 2 = 0.2) = 1$, cap is 1 license

Remaining Counties: cap is 1 license

2) Including existing licenses

Clark County: $\max(1, 10\% \times 79 = 7.9) = 7.9$, cap is 7 licenses

Washoe County: $\max(1, 10\% \times 20 = 2) = 2$, cap is 2 licenses

Carson City County: $\max(1, 10\% \times 4 = 0.4) = 1$, cap is 1 license

Remaining Counties: cap is 1 license

Here, $\max(a,b)$ is a mathematical operation taking the maximum between the number a and b.

Essence have 8 newly awarded and 3 existing licenses allocated as follows:

- Washoe County: 2 newly awarded (Sparks 1, Reno 1) and 0 existing licenses. This allocation exceeded the cap of 1 according to the calculation formula given in 1) but did not exceed the cap of 2 according to the calculation formula given in 2).
- Clark County: 5 newly awarded (Clark County 2, City of Las Vegas 1, North Las Vegas 1, City of Henderson 1) and 3 existing licenses (Henderson 1, Las Vegas 1, unincorporated area 1). This allocation exceeded the cap of 3 according to the calculation formula given in 1) and also exceeded the cap of 7 according to the calculation formula given in 2) which includes all existing licenses.
- 1 in Carson City

There are no allocation data for the rest of the awarded companies such as The Source (7), Thrive (7), Taproot (7), Deep Roots (5), Greenmart(MPX) (4), NV Made (3), Sahara Wellness (1), Zen Leaf (1), Green therapeutics (1), Polaris MMJ (1).

Third, we want to calculate the probability of a certain company to obtain similar scores across all its applications based on a sample of 2018 applicants' scores.

It is known that the difference in contents between applications of a certain company to different jurisdiction or unincorporated area within a county is around 10% to 15%. We use the lower bound of 10% in the following analysis to be conservative.

The highest score one application can obtain is 250. Therefore, the difference between two application scores applied by one company should be uniformly distributed from 0 to 25 ($250 \times 10\% = 25$).

We know that one company had applied for 6 different jurisdictions and obtained the following scores: 207.66, 207.33, 209, 209.66, 209.66, 209.66. This can result in three independent differences in terms of scores such as 2, 2.33, and 0.66.

The probability of obtaining a difference in scores that is less than or equal to 2 is $2/25 = 0.08$. Similarly, the probability of obtaining a difference in scores that is less than or equal to 2.33 is $2.33/25 = 0.0932$; the probability of obtaining a difference in scores that is less than or equal to 0.66 is $0.66/25 = 0.0264$. The probability of the above 3 independent events happening together is the product of the three probabilities, that gives 0.0002, which is extremely unlikely.

We know another company applied for 6 licenses and received 196.67 for all of its 6 applications. This can result in three independent differences in scores and all three differences are being less than 0.009. The probability of obtaining a difference in scores that is less than or equal to 0.009 is $0.009/25 = 0.00036$. The probability of resulting three differences that are all less than or equal to 0.009 is $0.00036 \times 0.00036 \times 0.00036$, that gives $4.67e-11$, which is equivalent to 0. This shows that the likelihood of a single company getting an exact same score over 6 applications is an impossibility.

Fourth, based on the information we have, four companies take up 48% ($29/61 = 47.54\%$) of the awarded licenses. We could have conducted further statistical analyses if data related to the evaluating process were released to the public. For example, the list of companies with the number of licenses applied and the list of companies with the number of licenses awarded.

ANALYSIS RELIED UPON THE FOLLOWING DATA:

- (1) A sample of 2018 applicants' scores
- (2) NAC 453D.272 (5)(a)(b)
- (3) List of store licenses to sell marijuana in Nevada from Department of Taxation as of March 1, 2019
- (4) List of licenses awarded pursuant to the 2018 applications



Amei Amei, PhD
Associate Professor

AMEI AMEI
CURRICULUM VITAE

Department of Mathematical sciences
University of Nevada Las Vegas
Las Vegas NV 89154

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Appointment

07/2013- present	Associate Professor in Statistics Department of Mathematical Sciences, University of Nevada Las Vegas
08/2007- 07/2013	Assistant Professor in Statistics Department of Mathematical Sciences, University of Nevada Las Vegas
09/1999 - 07/2002	Lecturer Department of Mathematics, Inner Mongolia University, China

Education

2002 - 2007	PhD , Mathematics (statistics concentration), Washington University in St.Louis Advisor: Stanley Sawyer
1996 - 1999 (with Honor)	MS , Mathematics, University of Science and Technology of China
1992 - 1996	BS , Mathematics, Inner Mongolia University, China

Research Interest

Statistical Genetics, Statistical Association Tests, Statistical Inference of Stochastic Processes, Population Genetics, Mathematical Biology, Probability Theory, Diffusion Theory, Markov chain Monte Carlo (MCMC) Methods

Publication

1. **A. Amei**, J. Xu, Inference of genetic forces using a Poisson random field model with non-constant population size (2019), *Journal of Statistical Planning and Inference*, (IF= 0.814), Acceptance.
2. **A. Amei**, S. Zhou, Inferring the distribution of selective effects from a time inhomogeneous model, (2019) *PLoS ONE*, (IF= 3.352), 14(1): e0194709.
3. X. Wang, **A. Amei**, S. de Belle, S. P. Roberts, Environmental effects on *Drosophila* brain development and learning, (2018), *Journal of Experimental Biology*, (IF= 3.41), 221, jeb169375.

4. J. Xu, G. Shan, **A. Amei**, J. Zhao, D. Young, S. Clark (2017), A modified Friedman test for randomized complete block designs, *Communications in Statistics-Simulation and Computation*, (IF= 0.491), Vol. 46, No. 2, 1508-1519.
5. H. Jin, P. S. Pinheiro, J. Xu, **A. Amei**, Cancer incidence among Asian populations in the United States, 2009-2011 (2016), *International Journal of Cancer*, (IF= 5.624), 138(9), 2136-2145.
6. G. Shan, **A. Amei**, D. Young (2015), Efficient noninferiority testing procedures for simultaneously assessing sensitivity and specificity of two diagnostic test, *Computational Mathematical Methods in Medicine*, (IF= 0.887), Vol. 2015, Article ID 128930, 7 pages.
7. **A. Amei**, B. T. Smith (2014), Robust estimates of divergence times and selection with a Poisson random field model: A case study of comparative phylogeographic data, *Genetics*, (IF= 4.808), Vol. 196, 225-233.
8. **A. Amei**, S. Lee, K. S. Mysore, Y. Jia (2014), Statistical inference of selection and divergence of the rice blast resistance gene *Pi-ta, G3: Genes, Genomes, Genetics*, (IF= 3.198), 4(12), 2425-2432.
9. J. Zhang, H. Liang, **A. Amei** (2014), Asymptotic normality of estimators in heteroscedastic error-in-variables model, *ASIA Advances in Statistical Analysis*, (IF= 1.272), 98, 165-195.
10. **A. Amei**, S. Sawyer (2012), Statistical inference of selection and divergence from a time-dependent Poisson random field model, *PLoS ONE*, (IF= 3.535), 7(4): e34413.
11. B. Smith, **A. Amei**, J. Klicka (2012), Evaluating the role of contracting and expanding rainforest in initiating cycles of speciation across the isthmus of Panama, *Proceedings of the Royal Society B*, (IF= 5.366), 279, 3520-3526.
12. R. Stutman, M. Codner, A. Mahoney, **A. Amei** (2012), Comparison of Breast Augmentation Incisions and Common Complications, *Aesthetic Plastic Surgery*, (IF= 1.269), Vol. 36, No. 5, 1096-1104.
13. T. Moazzeni, **A. Amei**, J. Ma, Y. Jiang (2012), Statistical model based SNR estimation method for speech signals, *Electronics Letters*, (IF= 0.914), Vol. 48, Issue 12, 727-729.
14. **A. Amei**, W. Fu, C. H. Ho (2012), Time series analysis for predicting the occurrences of large scale earthquakes, *International Journal of Applied Science and Technology*, Vol. 2, No. 7, 64-75.
15. T. Moazzeni, **A. Amei**, J. Ma, Y. T. Jiang (2012), On a new approach to SNR estimation of BPSK signals, *International Journal of Electronics and Telecommunications*, Vol. 58, No. 3, 273-278.
16. **A. Amei**, S. Sawyer (2010), A time-dependent Poisson random field model for polymorphism within and between two related biological species, *Annals of Applied Probability*, (IF= 1.833), Vol. 20, No. 5, 1663-1696.
17. M. Cheney, J. Liu, **A. Amei**, X. Zhao, S. Joo, S. Qian (2009), A comparative study on the uptake of polycyclic aromatic hydrocarbons by *Anodonta californiensis*, *Environmental Pollution*, (IF= 5.008), 157, 601-608.
18. Y. Cheng, **A. Amei** (1999), Integrate type of Darboux transformation, *Annals of Mathematics (China)* 20A: 6(1999) 667-672.

Teaching

- STA 762 Regression Analysis II (Spring 2017)
- MATH 124 College Algebra (Spring 2017)
- STA 761 Regression Analysis I (Fall 2016)
- STA 755 Stochastic Modeling I (Spring 2010, 2013, 2015; Fall 2008, 2018)
- STA 756 Stochastic Modeling II (Spring 2009, 2019; Fall 2010, 2013, 2015)
- STAT 391 Applied Statistics for Biological Sciences (Spring 2008, 2011-2013, 2015, 2016, 2019; Fall 2009, 2011-2018;)
- STA 731 Probability Theory and Its Applications (Fall 2007, 2009, 2012, Spring 2016)
- STA 713 Experimental Design (Fall 2011, 2017)
- MATH 461/661 Probability Theory (Spring 2012; Fall 2008, 2010)
- STAT 411 Statistical Methods I (Spring 2011)

Mathematical Contest

- 1st place, China Undergraduate Mathematical Contest in Modeling (CUMCM), 1996
- 3rd place, China Undergraduate Mathematical Contest in Modeling (CUMCM), 1995

Award and Honor

- Faculty Opportunity Award, University of Nevada Las Vegas, 07/2013-12/2014, \$14,000
- Summer Stimulus Fund for Junior Faculty Research and Scholarship, University of Nevada Las Vegas, 06/2009-08/2009, \$10,000
- NSF EPSCoR RING TRUE III: Infrastructure Award, 11/2007-07/2008, \$30,000
- Travel Award, The 3rd Workshop for Women in Probability, Duke University, Durham, North Carolina, October 2012
- Travel Award, The 33rd Conference on Stochastic Processes and Their Applications, Berlin, Germany, July 2009
- Travel Award, The 2009 Seminar on Bayesian Inference in Econometrics and Statistics, Washington University in St. Louis, St. Louis, Missouri, May 2009
- Travel Award, The 11th Meeting of New Researchers in Statistics and Probability, University of Colorado and The National Center for Atmospheric Research (NCAR), Boulder, Colorado, July 2008

- Travel Award, The 2nd Workshop for Women in Probability, Cornell University, Ithaca, New York, October 2008
- Dissertation Fellowship, 2007, Washington University in St.Louis
- Research Assistantship, 2004-2006, Washington University in St.Louis
- University Fellowship, 2002-2004, Washington University in St.Louis
- Outstanding Young Teacher Award, 2001, Inner Mongolia University, China
- Outstanding Graduate Student of Anhui Province, 1999, Anhui Province, China
- “Guang Hua” Fellowship, 1998, University of Science and Technology of China, China
- “Guang Hua” Fellowship, 1993, 1994, 1995, Inner Mongolia University, China

Presentation at professional meeting

- Genome-Wide Association Study of Schizophrenia Using Bayesian Variable Selection Methods, *Yale Biostatistics Department Seminar*, New Haven, Connecticut, October 2018 (invited)
- A Mathematical Population Genetics Model for Cancer Gene Detection, *2016 ICSA Applied Statistics Symposium*, Atlanta, Georgia, June 2016 (invited)
- Robust estimates of divergence times and selection with a Poisson random field model, *2014 ICSA and KISS Joint Applied Statistics Symposium*, Portland, Oregon, June 2014 (invited)
- A Poisson random field model to estimate mutation and selection, *First Joint Biostatistics Meeting*, Beijing, China, July 2010 (invited)
- Moran model based time inhomogeneous Poisson random field model and its application, 2008 Joint Statistical Meetings (JSM), Denver, CO, August 2008.
- Time-dependent Poisson random field model for polymorphism within and between two related biological species, *Eleventh Meeting of New Researchers in Statistics and Probability*, Boulder, CO July 2008
- Diffusion approximation to discrete time discrete state Markov chain and its applications, *Nevada Chapter of The American Statistical Association Spring Symposium*, Las Vegas, NV, April 2008
- Population genetics of polymorphism and divergence, *2008 ENAR (Eastern North American Region) Spring Meeting*, Arlington, VA, March 2008

Conference and Workshop Attended

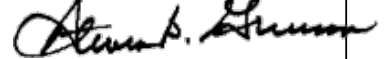
- 2018 Conference of Program in Quantitative Genomics, Harvard T.H.Chan School of Public Health, Boston, Massachusetts, November 2018
- Nevada Institute of Personalized Medicine 2018 Symposium, UNLV, November 2018
- NSF Noyce and S-Stem Grant Workshop, UNLV, November 2018
- The Nevada Chapter of the American Statistical Association Symposium, UNLV, October 2018, 2016, 2014, 2012, 2010, April 2011, and November 2008
- Mathematical aspects of computational biology workshop at MSRI , University of California, Berkeley, California, June 2006
- Computational Biology Retreat, Department of Genetics, School of Medicine, Washington University in St.Louis, St. Louis, Missouri, September 2005, 2004
- Seminar on Bayesian Inference in Econometrics and Statistics (SBIES), Olin School of Business, Washington University in St.Louis, St. Louis, Missouri, July 2005

Professional Affiliation

Membership of American Statistical Association (ASA) Membership of Institute of Mathematical Statistics (IMS)

Computational Skills

SAS, R, and C



MINV

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Essence Tropicana, LLC, Essence

Henderson, LLC, CPCM Holdings, LLC

d/b/a Thrive Cannabis Marketplace,

Commerce Park Medical, LLC, Cheyenne

Medical, LLC

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

Case No. : A-19-786962-B

Dept. No.: XI

**MOTION TO INTERVENE AS
DEFENDANTS**

1 company, NEVADA PURE, LLC, a Nevada
2 limited liability company, MEDIFARM, LLC, a
3 Nevada limited liability company, DOE
PLANTIFFS I through X; and ROE ENTITY
PLAINTIFFS I through X,

4 Plaintiffs,
5 vs.

6 THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

7 Defendants.

8 INTEGRAL ASSOCIATES LLC d/b/a
9 ESSENCE CANNABIS DISPENSARIES, a
Nevada limited liability company; ESSENCE
TROPICANA, LLC, a Nevada limited liability
10 company; ESSENCE HENDERSON, LLC, a
Nevada limited liability company; CPCM
11 HOLDINGS, LLC d/b/a THRIVE CANNABIS
MARKETPLACE, COMMERCE PARK
12 MEDICAL, LLC, a Nevada limited liability
company; and CHEYENNE MEDICAL, LLC, a
13 Nevada limited liability company.

14 Applicants for Intervention.

15
16 Defendants in Intervention INTEGRAL ASSOCIATES LLC d/b/a ESSENCE CANNABIS
17 DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC, CPCM
18 HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, COMMERCE PARK MEDICAL,
19 LLC, and CHEYENNE MEDICAL, LLC (collectively “Defendants” or “Intervenors”), by and
20 through their attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby respectfully
21 moves this Court to intervene in the above-referenced action pursuant to NRCP 24 and NRS §12.130.

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This motion is made and based upon the following memorandum of points and authorities, the pleadings and papers on file herein and any oral argument of counsel at the time of the hearing.

DATED this 19th day of March, 2019.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez.

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Nevada Bar No. 9046

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Attorneys for Intervenors

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NOTICE OF HEARING ON MOTION

TO: ALL PARTIES AND ATTORNEYS OF RECORD:

YOU AND EACH OF YOU will please take notice that the undersigned will bring the foregoing **MOTION TO INTERVENE AS DEFENDANTS** on for hearing before the above-entitled Court in Department XI on the _____ day of _____, 2019, at _____am/pm, or as soon thereafter as counsel may be heard.

DATED this 19th day of March, 2019.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
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Attorneys for Intervenors

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf Incline Dispensary, LLC,
4 Nevada Holistic Medicine, LLC, Tryke Companies So NV, LLC, Tryke Companies Reno, LLC,
5 Paradise Wellness Center, LLC, GBS Nevada Partners, LLC, Fidelis Holdings, LLC, Gravitas Nevada,
6 LLC, Nevada Pure, LLC, and Medifarm, LLC (collectively “Plaintiffs”) initiated this lawsuit against
7 the State of Nevada, Department of Taxation (the “Department”), alleging that the Department’s
8 issuance of conditional licenses to operate recreational marijuana retail stores was done improperly.
9 *See generally* Complaint. Plaintiffs essentially challenge the Department’s entire process of
10 evaluating and ranking applicants during the application period, and seek to have this Court render the
11 entire application process void. This relief, as well as other relief sought by Plaintiffs, could
12 substantially effect applicants that were awarded the licenses.

13 Defendants collectively were granted fourteen (14) of the conditional licenses issued by the
14 Department on December 5, 2018. Defendants timely seek to intervene in this action pursuant to
15 NRCP 24 and NRS § 12.130 to protect their rights and interests as the owners of these conditional
16 licenses.¹

17 Attached as **Exhibit B** is Defendants’ Proposed Answer to Plaintiffs’ Complaint. Defendants
18 expressly reserve their right to amend their Answer to include counterclaims, should this Court allow
19 Defendants to intervene.

20 **II. FACTUAL BACKGROUND**

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

24 The Department was to adopt regulations necessary to carry out the Act, including regulations
25 that set forth the “[p]rocedures for the issuance, renewal, suspension, and revocation of a license to
26

27 ¹ On March 1, 2019, this Court issued a minute order granting Nevada Organic Remedies, LLC’s
28 (“NOR”) Motion to Intervene in this matter. *See* Minute Order Granting NOR’s Motion to Intervene,
attached as **Exhibit A**.

1 operate a marijuana establishment” and “[q]ualifications for licensure that are directly and
2 demonstrably related to the operation of a marijuana establishment.” Nev. Rev. Stat. §
3 453D.200(1)(a)-(b). On January 16, 2018, the Nevada Tax Commission unanimously approved
4 permanent regulations (“Approved Regulations”). LCB File No. R092-17. The Approved
5 Regulations went into effect on February 27, 2018.

6 Thereafter, on August 16, 2018, the Department issued a Notice of Intent to Accept
7 Applications (“Notice”) for sixty-four (64) recreational marijuana retail store licenses, which are to be
8 located throughout various jurisdictions in Nevada. The Notice required that all applications be
9 submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018.

10 Pursuant to section 80 of the Approved Regulations, if the Department received more than one
11 complete and qualified application for a license the Department would rank all applications within
12 each jurisdiction from first to last based on compliance with NRS § 453D and the Approved
13 Regulations. R092-17, Sec. 80. The Department is then required to go down the list and issue the
14 highest scoring applicants the available licenses. *Id.*

15 On December 5, 2018, the Department issued sixty-one (61) recreational marijuana retail store
16 conditional licenses, including 10 licenses for Unincorporated Clark County, Nevada; 10 licenses for
17 Las Vegas, Nevada; 6 licenses for Henderson, Nevada; 5 licenses for North Las Vegas, Nevada; 6
18 licenses for Reno, Nevada; 1 license for Sparks, Nevada; and 1 license for Nye County, Nevada.
19 Defendants collectively were granted fourteen (14) of these conditional licenses.

20 Under their conditional licenses, Defendants have twelve (12) months to receive a final
21 inspection for a marijuana establishment. R092-17, Sec. 87. If a marijuana establishment does not
22 receive a final inspection within twelve (12) months, the marijuana establishment must surrender the
23 license to the Department. *Id.* The Department may extend the period specified in this subsection if
24 the Department, in its discretion, determines that extenuating circumstances prevented the marijuana
25 establishment from receiving a final inspection within the period specified in this subsection. *Id.*

26 On January 4, 2019, Plaintiffs filed their Complaint against the Department. Plaintiffs allege
27 “that the Department’s denial of their license applications was not properly based upon actual
28 implementation of the impartial and objective bidding process mandated by NRS 453D.210, but rather,

1 was [...] based upon the arbitrary and capricious exercise of administrative partiality and favoritism.”
2 (Complaint at ¶ 33).

3 The Complaint contains numerous claims for relief, including:

- 4 • Claims for violation of procedural due process, substantive due process and
5 equal protection, each of which is alleged to have rendered the Department’s
6 denial of Plaintiffs license applications void and unenforceable. (*Id.* at ¶¶ 37-
7 42, 66-68, 70-74);
- 8 • A claim for Declaratory Relief, seeking, among other things, a judicial
9 declaration that the Department’s ranking of applicants and issuance of
10 conditional licenses was improper, that the denial of Plaintiffs’ license
11 applications was improper and void ab initio, and that the Department must
12 issue Plaintiffs the licenses for which they applied. (*Id.* at ¶¶ 43-44, 50-52);
- 13 • A claim for Injunctive Relief seeking an order requiring the Department to issue
14 Plaintiffs the licenses for which they applied. (*Id.* at ¶¶ 53, 59);
- 15 • A Petition for Judicial Review of the Department’s entire process, seeking a
16 determination that the Department’s denial of Plaintiffs’ applications lacked
17 substantial evidence and is void ab initio. (*Id.* at ¶¶ 75-80); and
- 18 • A Petition for Writ of Mandamus, alleging that the Department’s denial
19 of Plaintiffs’ applications was arbitrary and capricious in that it lacked
20 substantial evidence and was done “solely to approve other competing
21 applicants without regard to the merit of Plaintiffs’ application,” and seeking
22 an order compelling the Department to “review the application on its merits
23 and/or approve it.” (*Id.* at ¶¶ 81-86).

24 Given the nature of the relief sought by Plaintiffs, a disposition of this case, could irrefutably
25 impair Defendants’ unique legal interests in their conditional licenses. As such, Defendants wish to
26 intervene in this action.

27 **III. LEGAL ARGUMENT**

28 **A. LEGAL STANDARD**

Pursuant to NRS § 12.130, any person “[b]efore the trial, [...] may intervene in an action or
proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an
interest against both.” Nev. Rev. Stat. § 12.130(1)(a). “Intervention is made as provided by the
Nevada Rules of Civil Procedure.” Nev. Rev. Stat. § 12.130(c).

In furtherance, NRCP § 24(a)(2) governs non-statutory intervention of right and states that
upon timely intervention “the court must permit anyone to intervene who ... claims an interest relating
to the property or transaction that is the subject of the action, and is so situated that disposing of the

1 action may as a practical matter impair or impede the movant’s ability to protect its interest, unless
2 existing parties adequately represent that interest.” Nev. R. Civ. P. § 24(a)(2). NRCP § 24(b)(1)(B)
3 governs permissive intervention and allows for intervention when an applicant “has a claim or defense
4 that shares with the main action a common question of law or fact.” Nev. R. Civ. P. § 24(b)(1)(B).

5 **B. DEFENDANTS SHOULD BE PERMITTED TO INTERVENE PURSUANT TO INTERVENTION OF**
6 **RIGHT**

7 The Supreme Court of Nevada has imposed four requirements on an application seeking to
8 intervene in an action: (1) the application must be timely; (2) the applicant must claim a sufficient
9 interest relating to the property or transaction which is the subject of the action; (3) the applicant must
10 be so situated that the disposition of the action may as a practical matter impair or impede its ability
11 to protect that interest; and (4) the applicant’s interest must be inadequately represented by the parties
12 to the action. *See American Home Assurance Corp. v. Eighth Judicial District Ct. ex rel. County of*
13 *Clark*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006)². Determining whether an applicant has
14 met these four requirements is within the district court’s sound discretion. *Am. Home Assur. Co.*, 122
15 Nev. at 1126.

16 However, when evaluating whether the requirements for intervention of right are met, a court
17 generally follows practical and equitable considerations and construes the governing rule broadly in
18 favor of proposed intervenors. *Wilderness Soc’y v. U.S. Forest Service*, 630 F.3d 1173, 1179 (9th Cir.
19 2011) (*en banc*) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002)).
20 This is because “[a] liberal policy in favor of intervention serves both efficient resolution of issues
21 and broadened access to the Courts.” *Wilderness Soc’y*, 630 F.3d 1173 (quoting *City of Los Angeles*,
22 288 F.3d at 397-98).

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26
27 ² Federal decisions involving the federal civil procedure rules are persuasive authority when this court
28 examines its equivalent rules. *See Executive Mgmt. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d
872, 876 (2002). The 2019 amendment specifically conform NRCP 24 to its Federal counterpart,
FRCP 24. *See Nev. R. Civ. P. 24* (advisory committee note on the 2019 amendment).

1 *1. Defendants Application to Intervene is Timely*

2 First, Defendants filed their motion to intervene in a timely manner. The Supreme Court of
3 Nevada has held that when determining the timeliness of an application to intervene “[t]he most
4 important question to be resolved [...] is not the length of the delay by the intervenor but the extent of
5 prejudice to the rights of existing parties resulting from the delay.” *See Dangberg Holdings Nevada,*
6 *L.L.C. v. Douglas Cty. & its Bd. of Cty. Commr’s*, 115 Nev. 129, 141, 978 P.2d 311, 318 (1999); *see*
7 *also American Home Assurance Corp.*, 122 Nev. at 1244, n.49 and n.50 (citations omitted).

8 Here, intervention by Defendant will not cause prejudice to the Plaintiffs nor the other parties
9 currently involved in this action, including the Department and NOR. Namely because this case is in
10 the early stages of litigation. *See Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d
11 893, 897 (9th Cir. 2011) (where the Court found the parties would not have suffered prejudice from
12 the grant of intervention at the early stage of litigation).

13 NOR just recently intervened in the matter, and the Department has yet to file an answer to
14 Plaintiffs’ complaint. In *Citizens for Balanced Use*, the Ninth Circuit found that a motion filed less
15 than three months after the complaint was filed and less than two weeks after the first filing of an
16 answer to the complaint was timely. *Id.* The Court reasoned that an intervention so early in the
17 litigation would not cause disruption or delay in the proceedings. *Id.* These are traditional features of
18 a timely motion. *See Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir.1996). Similarly,
19 here, there will be no delay resulting from Defendants’ intervention.

20 In contrast, Defendants would be significantly prejudiced if they are precluded from
21 intervening. Defendants hold the interest to fourteen (14) of the conditional licenses. Through this
22 action, Plaintiffs are attempting to undermine the rights of Defendants to their conditional licenses.
23 Because Defendants may be gravely prejudiced if not permitted to intervene and all other parties
24 within this action would not suffer any prejudice, this Court should find that Defendants request to
25 intervene is timely.

26 *2. Defendants Have a Sufficient Interest in the Litigation’s Subject Matter*

27 Second, Defendants have a sufficient interest in the litigation’s subject matter. While there is
28 no “bright-line” test to determine if a sufficient interest exists, the Supreme Court of Nevada has held

1 that an applicant must make a showing of a “significant protectable interest.” *See Am. Home Assur.*
2 *Co.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1127 (2006). Whether a proposed intervenor has a
3 significant protectable interest is a “practical, threshold inquiry,” and the party seeking intervention
4 need not establish any “specific legal or equitable interest.” *Citizens for Balanced Use v. Montana*
5 *Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (internal quotations omitted) (quoting *Nw. Forest*
6 *Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996)). To meet its burden, a proposed intervenor
7 “must establish that the interest is protectable under some law and that there is a relationship between
8 the legally protected interest and the claims at issue.” *Id.* The question of whether there is a significant
9 protectable interest does not turn on “technical distinctions.” *California v. United States*, 450 F.3d
10 436, 441 (9th Cir. 2006). Instead, courts “have taken the view that a party has a sufficient interest for
11 intervention purposes if it will suffer a practical impairment of its interests as a result of the pending
12 litigation.” *See id.*

13 Here, Defendants have a sufficient interest in the subject matter of this action – the conditional
14 licenses to operate a recreational marijuana retail store. Defendants were issued fourteen (14) of the
15 licenses by the Department. Plaintiffs, through this lawsuit, are essentially attempting to void the
16 Department’s application process, which could impair Defendants interest in their conditional licenses.
17 Accordingly, Defendants have a significant protectable interest in this action.

18 *3. The Disposition of this Action May Impair or Impeded Defendants’ Ability to*
19 *Protect Their Interests*

20 Third, the disposition of this action, as a practical matter, may impair or impede Defendants’
21 ability to protect their interest. Once a significant protectable interest is established, courts look to
22 whether the proposed intervenor’s ability to protect that interest would be “impair[ed] or impede[ed]”
23 by “the disposition of the action.” *Citizens for Balanced Use*, 647 F.3d at 897 (citation omitted). “If
24 an absentee would be substantially affected in a practical sense by the determination made in an action,
25 [it] should, as a general rule, be entitled to intervene....” *Id.* at 898 (quoting Fed R. Civ. P. 24 advisory
26 committee’s note).

27 Here, the claims made by Plaintiffs in this action are an attempt to manufacture a dispute in
28 the hope of undermining the rights of Defendants and other successful applicants. Plaintiffs have

1 asserted allegations that they should have received one or more of the licenses that were awarded to
2 Defendants (or other licensees). Simply put, Plaintiffs seek to displace the conditional licenses from
3 the current holders for purposes of obtaining them for themselves. This relief, if granted, would
4 necessarily harm at least one or more of the applicants who ranked higher than Plaintiffs. Accordingly,
5 Defendants' interests may be impaired by the disposition of this case, as they risk losing their
6 conditional licenses.

7 *4. Defendants Interests May Not be Adequately Represented*

8 Fourth, Defendants interests may not be adequately represented should this Court deny them
9 intervention. Generally, "[t]he burden of showing inadequacy of representation is minimal and
10 satisfied if the [party seeking intervention] can demonstrate that representation of its interests may be
11 inadequate." *Citizens for Balanced Use*, 647 F.3d at 898 (internal quotation omitted); *see also*
12 *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10, 92 S.Ct. 630, 636 n. 10, 30 L.Ed.2d 686
13 (1972) (holding that the requirement of inadequate representation is satisfied if the applicant shows
14 that representation "may be" inadequate). In making this determination, courts examine three factors:
15 (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed
16 intervenor's arguments; (2) whether the present party is capable and willing to make such arguments;
17 and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other
18 parties would neglect. *Citizens for Balanced Use*, 647 F.3d at 898 (quoting *Arakaki v. Cayetano*, 324
19 F.3d 1078, 1086 (9th Cir. 2003)).

20 "The most important factor in assessing the adequacy of representation is how
21 the interest compares with the interests of existing parties." *Citizens for Balanced Use*, 647 F.3d at
22 898 (internal quotation and citation omitted). Where a proposed intervenor and an existing party
23 "share the same ultimate objective, a presumption of adequacy of representation arises." *Citizens for*
24 *Balanced Use*, 647 F.3d at 898 (citation omitted). A presumption of adequacy "must be rebutted with
25 a compelling showing." *Id.* (citation omitted).

26 Here, Defendants' interests would not be adequately represented by the Department or NOR.
27 Specifically, the Department will presumably defend its application evaluation process by showing
28 that it complied with NRS Chapter 453D and the Approved Regulations throughout the application

1 process. The Department will not defend each of Defendants, or other licensees, unique and valuable
2 licenses. The Department simply has no interest in specifically defending Defendants' licenses versus
3 other applicants, nor is the Department equipped to do so.

4 Defendants anticipate that Plaintiffs will argue that NOR and Defendants share the same
5 ultimate objective, and thus Defendants' motion to intervene should be denied. Notwithstanding, no
6 such alignment of objectives exist. Each of the sixty-one (61) conditional licenses is unique and
7 valuable. To obtain any one of the licenses an applicant had to rank higher than other applicants in
8 any given jurisdiction. Each Defendant will have a different ranking in which they were able to obtain
9 their license. If the application evaluation process is called into question, the ranked list of applicants
10 would necessarily be also. Defendants will need to defend their applications against all other
11 applicants, including Plaintiffs. Accordingly, Defendants have met their minimal burden of showing
12 that their interests may not adequately represented.

13 **C. DEFENDANTS SHOULD BE PERMITTED TO INTERVENE PURSUANT TO PERMISSIVE**
14 **INTERVENTION**

15 Even if this Court were to find that Defendants cannot establish intervention as right,
16 Defendants may still intervene pursuant to NRCP 24(b), which governs permissive intervention.
17 Permissive intervention is available when the motion is timely and "the applicant's claim or defense,
18 and the main action, have a question of law or a question of fact in common." Nev. R. Civ. P.
19 24(b)(1)(B). "In exercising its discretion" on this issue, "the court must consider whether the
20 intervention will unduly delay or prejudice the adjudication of the original parties' rights." Nev. R.
21 Civ. P. 24(b)(3).

22 Here, as discussed above, Defendants' motion to intervene is timely and will not prejudice any
23 of the parties in the case. Additionally, Defendants' defense, and anticipated counterclaims, present a
24 common question of law and question of fact with the main action.

25 Moreover, allowing Defendants to intervene in this suit will not unduly delay or prejudice the
26 adjudication of the current parties' rights. If anything, allowing intervention will promote judicial
27 economy and spare the parties from needing to litigate a similar case in another district. *See Dangberg*
28 *Holdings Nevada, L.L.C.*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999) (where the court found

1 “bringing all of the parties together in one proceeding before one tribunal will foster the principles of
2 judicial economy and finality”); *see also Venegas v. Skaggs*, 867 F.2d 527, 531 (9th Cir. 1989) (noting
3 that “judicial economy is a relevant consideration in deciding a motion for permissive
4 intervention”), *aff’d sub nom. Venegas v. Mitchell*, 495 U.S. 82, 87, 110 S.Ct. 1679, 109 L.Ed.2d 74
5 (1990). Accordingly, this Court should grant Defendants’ Motion to Intervene.

6 **IV. CONCLUSION**

7 Based upon the foregoing, Defendants respectfully request that this Honorable Court grant the
8 instant motion and allow INTEGRAL ASSOCIATES LLC d/b/a ESSENCE CANNABIS
9 DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC, CPCM
10 HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, COMMERCE PARK MEDICAL,
11 LLC, and CHEYENNE MEDICAL, LLC to intervene as Defendants in this action. A proposed Order
12 Granting the Motion to Intervene is attached as **Exhibit C**.

13 DATED this 19th day of March, 2019.

14 Respectfully submitted,

15 **MAIER GUTIERREZ & ASSOCIATES**

16 /s/ Joseph A. Gutierrez

17 JOSEPH A. GUTIERREZ, ESQ.
18 Nevada Bar No. 9046
19 JASON R. MAIER, ESQ.
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22 Las Vegas, Nevada 89148
23 *Attorneys for Intervenors*
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **MOTION TO INTERVENE AS**
3 **DEFENDANTS** was electronically filed on the 19th day of March, 2019 and served through the
4 Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed
5 on the Court's Master Service List and by depositing a true and correct copy of the same, enclosed
6 in a sealed envelope upon which first class postage was fully prepaid, in the U.S. Mail at Las Vegas,
7 Nevada, addressed as follows (*Note: All Parties Not Registered Pursuant to Administrative Order*
8 *14-2 Have Been Served By Mail.*):

9
10 Dominic P. Gentile, Esq.
11 Michael V. Cristalli, Esq.
12 Ross Miller, Esq.
13 Vincent Savarese III, Esq.
14 GENTILE CRISTALLI MILLER ARMENI SAVARESE
15 410 South Rampart Blvd., Suite 420
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29 /s/ Brandon Lopipero
30 An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT “A”

A-19-786962-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

March 01, 2019

A-19-786962-B Serenity Wellness Center, LLC, Plaintiff(s)
vs.
State of Nevada Department of Taxation, Defendant(s)

March 01, 2019 3:00 AM Motion to Intervene

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Andrea Natali

RECORDER:

REPORTER:

PARTIES None - minute order issued from chambers

PRESENT:

JOURNAL ENTRIES

- Upon review of the papers and pleadings on file in this Matter, as proper service has been provided, this Court notes no opposition has been filed. Accordingly, pursuant to EDCR 2.20(e) the Motion to Intervene is deemed unopposed. Therefore, good cause appearing, COURT ORDERED, motion is GRANTED. Moving Counsel is to prepare and submit an order within ten (10) days and distribute a filed copy to all parties involved in this matter.

CLERK'S NOTE: Counsel are to ensure a copy of the foregoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the registered service recipients via Odyssey eFileNV E-Service (3/1/19 amn).

PRINT DATE: 03/01/2019

Page 1 of 1

Minutes Date: March 01, 2019

EXHIBIT “B”

1 **ANSC**

JASON R. MAIER, ESQ.

2 Nevada Bar No. 8557

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14 *d/b/a Essence Cannabis Dispensaries, Essence*

Tropicana, LLC, Essence Henderson, LLC,

15 *CPCM Holdings, LLC d/b/a Thrive Cannabis*

Marketplace, and Commerce Park Medical, LLC,

16 *Cheyenne Medical, LLC*

17
18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20
21 SERENITY WELLNESS CENTER, LLC, a
Nevada limited liability company, TGIG, LLC,
22 a Nevada limited liability company, NULEAF
INCLINE DISPENSARY, LLC, a Nevada
23 limited liability company, NEVADA
HOLISTIC MEDICINE, LLC, a Nevada limited
24 liability company, TRYKE COMPANIES SO
NV, LLC, a Nevada limited liability company,
25 TRYKE COMPANIES RENO, LLC, a Nevada
limited liability company, PARADISE
26 WELLNESS CENTER, LLC, a Nevada limited
liability company, GBS NEVADA PARTNERS,
27 LLC, a Nevada limited liability company,
FIDELIS HOLDINGS, LLC, a Nevada limited
28 liability company, GRAVITAS NEVADA,
LLC, a Nevada limited liability company.

Case No. : A-19-786962-B

Dept. No.: XI

**DEFENDANTS' [PROPOSED] ANSWER
TO PLAINTIFFS' COMPLAINT**

1 NEVADA PURE, LLC, a Nevada limited
2 liability company, MEDIFARM, LLC, a Nevada
3 limited liability company, DOE PLAINTIFFS I
through X; and ROE ENTITY PLAINTIFFS I
through X,

4 Plaintiffs,
5 vs.

6 THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

7 Defendants.

8 INTEGRAL ASSOCIATES LLC d/b/a
9 ESSENCE CANNABIS DISPENSARIES, a
Nevada limited liability company; ESSENCE
10 TROPICANA, LLC, a Nevada limited liability
company; ESSENCE HENDERSON, LLC, a
Nevada limited liability company; CPCM
11 HOLDINGS, LLC d/b/a THRIVE CANNABIS
MARKETPLACE, COMMERCE PARK
12 MEDICAL, LLC, a Nevada limited liability
company; CHEYENNE MEDICAL, LLC, a
13 Nevada limited liability company; and
GREENMART OF NEVADA NLV, LLC, a
14 Nevada limited liability company.

15 Defendants in Intervention.

16
17 Defendants in Intervention, INTEGRAL ASSOCIATES LLC d/b/a ESSENCE CANNABIS
18 DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC, CPCM
19 HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, and COMMERCE PARK
20 MEDICAL, LLC, CHEYENNE MEDICAL, LLC (collectively “Defendants”), by and through their
21 attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby answers the Complaint
22 filed by plaintiffs, SERENITY WELLNESS CENTER, LLC, TGIG, LLC, NULEAF INCLINE
23 DISPENSARY, NEVADA HOLISTIC MEDICINE, LLC, TRYKE COMPANIES SO NV, LLC,
24 TRYKE COMPANIES RENO, LLC, PARADISE WELLNESS CENTER, LLC, GBS NEVADA
25 PARTNERS, LLC, FIDELIS HOLDINGS, LLC, GRAVITAS NEVADA, LLC, NEVADA PURE,
26 LLC, and MEDIFARM, LLC (collectively “Plaintiffs”), as follows:

27 Defendants deny each and every allegation in the Complaint except those allegations which
28 are hereinafter admitted, qualified, or otherwise answered.

1 I.

2 **PARTIES, JURISDICTION, AND VENUE**

3 1. Answering paragraph 1 of the Complaint, Defendants are without sufficient knowledge
4 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
5 these allegation.

6 2. Answering paragraph 2 of the Complaint, Defendants are without sufficient knowledge
7 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
8 these allegations.

9 3. Answering paragraph 3 of the Complaint, Defendants are without sufficient knowledge
10 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
11 these allegations.

12 4. Answering paragraph 4 of the Complaint, Defendants are without sufficient knowledge
13 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
14 these allegations.

15 5. Answering paragraph 5 of the Complaint, Defendants are without sufficient knowledge
16 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
17 these allegations.

18 6. Answering paragraph 6 of the Complaint, Defendants are without sufficient knowledge
19 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
20 these allegations.

21 7. Answering paragraph 7 of the Complaint, Defendants are without sufficient knowledge
22 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
23 these allegations.

24 8. Answering paragraph 8 of the Complaint, Defendants are without sufficient knowledge
25 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
26 these allegations.

27 9. Answering paragraph 9 of the Complaint, Defendants are without sufficient knowledge
28 or information as to the truth or falsity of the allegations contained therein, and on that basis deny

1 these allegations.

2 10. Answering paragraph 10 of the Complaint, Defendants are without sufficient
3 knowledge or information as to the truth or falsity of the allegations contained therein, and on that
4 basis deny these allegations.

5 11. Answering paragraph 11 of the Complaint, Defendants are without sufficient
6 knowledge or information as to the truth or falsity of the allegations contained therein, and on that
7 basis deny these allegations.

8 12. Answering paragraph 12 of the Complaint, Defendants are without sufficient
9 knowledge or information as to the truth or falsity of the allegations contained therein, and on that
10 basis deny these allegations.

11 13. Answering paragraph 13 of the Complaint, Defendants admit these allegations.

12 14. Answering paragraph 14 of the Complaint, Defendants are without sufficient
13 knowledge or information as to the truth or falsity of the allegations contained therein, and on that
14 basis deny these allegations.

15 15. Answering paragraph 15 of the Complaint, no response is required as the allegations
16 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
17 are without sufficient knowledge or information as to the truth or falsity of the allegations contained
18 therein, and on that basis deny these allegations.

19 II.

20 GENERAL ALLEGATIONS

21 16. Answering paragraph 16 of the Complaint, no response is required as the allegations
22 contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or
23 regulations. To the extent a response is required and the allegations accurately state the laws or
24 regulations referenced to therein, Defendants admit these allegations.

25 17. Answering paragraph 17 of the Complaint, no response is required as the allegations
26 contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or
27 regulations. To the extent a response is required and the allegations accurately state the laws or
28 regulations referenced to therein, Defendants admit these allegations.

1 18. Answering paragraph 18 of the Complaint, no response is required as the allegations
2 contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or
3 regulations. To the extent a response is required and the allegations accurately state the laws or
4 regulations referenced to therein, Defendants admit these allegations.

5 19. Answering paragraph 19 of the Complaint, no response is required as the allegations
6 contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or
7 regulations. To the extent a response is required and the allegations accurately state the laws or
8 regulations referenced to therein, Defendants admit these allegations.

9 20. Answering paragraph 20 of the Complaint, no response is required as the allegations
10 contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or
11 regulations. To the extent a response is required and the allegations accurately state the laws or
12 regulations referenced to therein, Defendants admit these allegations.

13 21. Answering paragraph 21 of the Complaint, no response is required as the allegations
14 contained therein reference a document that speaks for itself. To the extent a response is required and
15 the allegations accurately state the contents of the document referenced to therein, Defendants admit
16 these allegations.

17 22. Answering paragraph 22 of the Complaint, Defendants admit these allegations.

18 23. Answering paragraph 23 of the Complaint, Defendants admit these allegations.

19 24. Answering paragraph 24(a)-(h) of the Complaint, no response is required as the
20 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of
21 laws or regulations. To the extent a response is required and the allegations accurately state the laws
22 or regulations referenced to therein, Defendants admit these allegations.

23 25. Answering paragraph 25 of the Complaint, no response is required as the allegations
24 contained therein reference a document that speaks for itself. To the extent a response is required and
25 the allegations accurately state the contents of the document referenced to therein, Defendants admit
26 these allegations.

27 26. Answering paragraph 26 of the Complaint, no response is required as the allegations
28 contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or

1 regulations. To the extent a response is required and the allegations accurately state the laws or
2 regulations referenced to therein, Defendants admit these allegations.

3 27. Answering paragraph 27 of the Complaint, no response is required as the allegations
4 contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or
5 regulations. To the extent a response is required, Defendants deny these allegations.

6 28. Answering paragraph 28 of the Complaint, Defendants admit that the Department of
7 Taxation announced it would issue recreational retail store conditional licenses no later than
8 December 5, 2018. Defendants deny these allegations to the extent that it imposes a legal obligation
9 on the Department that is inconsistent or outside of the requirements set forth in Section 4 of NRS
10 453D.210.

11 29. Answering paragraph 29 of the Complaint, Defendants are without sufficient
12 knowledge or information as to the truth or falsity of the allegations contained therein, and on that
13 basis deny these allegations.

14 30. Answering paragraph 30 of the Complaint, Defendants are without sufficient
15 knowledge or information as to the truth or falsity of the allegations contained therein, and on that
16 basis deny these allegations.

17 31. Answering paragraph 31 of the Complaint, Defendants are without sufficient
18 knowledge or information as to the truth or falsity of the allegations contained therein, and on that
19 basis deny these allegations.

20 32. Answering paragraph 32 of the Complaint, Defendants are without sufficient
21 knowledge or information as to the truth or falsity of the allegations contained therein, and on that
22 basis deny these allegations.

23 33. Answering paragraph 33 of the Complaint, no response is required as the allegations
24 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
25 deny these allegations.

26 34. Answering paragraph 34 of the Complaint, no response is required as the allegations
27 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
28 deny these allegations.

35. Answering paragraph 35 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

III.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Violation of Civil Rights)

(Due Process: Deprivation of Property)

(U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1, 8; Title 42 U.S.C. § 1983)

36. Answering paragraph 36 of the Complaint, Defendants repeat and reallege their answers to paragraphs 1 through 35 above, and incorporates the same herein by reference as though fully set forth herein.

37. Answering paragraph 37 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

38. Answering paragraph 38 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

39. Answering paragraph 39 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

40. Answering paragraph 40 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

41. Answering paragraph 41 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

1 42. Answering paragraph 42 of the Complaint, no response is required as the allegations
2 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
3 deny these allegations.

4 43. Answering paragraph 43 of the Complaint, no response is required as the allegations
5 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
6 deny these allegations.

7 44. Answering paragraph 44 of the Complaint, no response is required as the allegations
8 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
9 deny these allegations.

10 45. Answering paragraph 45 of the Complaint, no response is required as the allegations
11 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
12 deny these allegations.

13 46. Answering paragraph 46 of the Complaint, no response is required as the allegations
14 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
15 deny these allegations.

16 47. Answering paragraph 47 of the Complaint, no response is required as the allegations
17 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
18 deny these allegations.

19 48. Answering paragraph 48 of the Complaint, no response is required as the allegations
20 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
21 deny these allegations.

22 49. Answering paragraph 49 of the Complaint, no response is required as the allegations
23 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
24 deny these allegations.

25 50. Answering paragraph 50(a)-(g) of the Complaint, no response is required as the
26 allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent
27 a response is required, Defendants deny these allegations.

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1 51. Answering paragraph 51 of the Complaint, no response is required as the allegations
2 contained therein are not factual in nature and/or contain legal conclusions. To the extent a response
3 is required, Defendants deny these allegations.

4 52. Answering paragraph 52 of the Complaint, no response is required as the allegations
5 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
6 deny these allegations.

7 53. Answering paragraph 53 of the Complaint, no response is required as the allegations
8 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
9 deny these allegations.

10 54. Answering paragraph 54 of the Complaint, no response is required as the allegations
11 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
12 deny these allegations.

13 55. Answering paragraph 55 of the Complaint, Defendants are without sufficient
14 knowledge or information as to the truth or falsity of the allegations contained therein, and on that
15 basis deny these allegations.

16 56. Answering paragraph 56 of the Complaint, Defendants admit these allegations.

17 57. Answering paragraph 57 of the Complaint, no response is required as the allegations
18 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
19 deny these allegations.

20 58. Answering paragraph 58 of the Complaint, no response is required as the allegations
21 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
22 deny these allegations.

23 59. Answering paragraph 59 of the Complaint, no response is required as the allegations
24 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
25 deny these allegations.

26 60. Answering paragraph 60 of the Complaint, no response is required as the allegations
27 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
28 deny these allegations.

1 61. Answering paragraph 61 of the Complaint, no response is required as the allegations
2 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
3 deny these allegations.

4 **SECOND CLAIM FOR RELIEF**
5 **(Violation of Civil Rights)**

6 **(Due Process: Deprivation of Liberty)**

7 **(U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1, 8; Title 42 U.S.C. § 1983)**

8 62. Answering paragraph 62 of the Complaint, Defendants repeat and reallege their
9 answers to paragraphs 1 through 61 above, and incorporates the same herein by reference as though
10 fully set forth herein.

11 63. Answering paragraph 63 of the Complaint, no response is required as the allegations
12 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
13 deny these allegations.

14 64. Answering paragraph 64 of the Complaint, no response is required as the allegations
15 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
16 deny these allegations.

17 65. Answering paragraph 65 of the Complaint, no response is required as the allegations
18 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
19 deny these allegations.

20 66. Answering paragraph 66 of the Complaint, no response is required as the allegations
21 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
22 deny these allegations.

23 67. Answering paragraph 67 of the Complaint, no response is required as the allegations
24 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
25 deny these allegations.

26 68. Answering paragraph 68 of the Complaint, no response is required as the allegations
27 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
28 deny these allegations.

1 69. Answering paragraph 69 of the Complaint, no response is required as the allegations
2 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
3 deny these allegations.

4 **THIRD CLAIM FOR RELIEF**

5 **(Violation of Civil Rights)**
6 **(Equal Protection)**

7 **(U.S. Const., Amendment XIV; Nev. Const., Art. 1, Sec. 1; Title 42 U.S.C. § 1983)**

8 70. Answering paragraph 70 of the Complaint, Defendants repeat and reallege their
9 answers to paragraphs 1 through 69 above, and incorporates the same herein by reference as though
10 fully set forth herein.

11 71. Answering paragraph 71 of the Complaint, no response is required as the allegations
12 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
13 deny these allegations.

14 72. Answering paragraph 72 of the Complaint, no response is required as the allegations
15 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
16 deny these allegations.

17 73. Answering paragraph 73 of the Complaint, no response is required as the allegations
18 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
19 deny these allegations.

20 74. Answering paragraph 74 of the Complaint, no response is required as the allegations
21 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
22 deny these allegations.

23 **FOURTH CLAIM FOR RELIEF**

24 **(Petition for Judicial Review)**

25 75. Answering paragraph 75 of the Complaint, Defendants repeat and reallege their
26 answers to paragraphs 1 through 74 above, and incorporates the same herein by reference as though
27 fully set forth herein.

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76. Answering paragraph 76 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

77. Answering paragraph 77 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

78. Answering paragraph 78 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

79. Answering paragraph 79(a)-(c) of the Complaint, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendants deny these allegations.

80. Answering paragraph 80 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

FIFTH CLAIM FOR RELIEF

(Petition for Writ of Mandamus)

81. Answering paragraph 81 of the Complaint, Defendants repeat and reallege their answers to paragraphs 1 through 80 above, and incorporates the same herein by reference as though fully set forth herein.

82. Answering paragraph 82 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

83. Answering paragraph 83(a)-(b) of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

84. Answering paragraph 84(a)-(b) of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,

1 Defendants deny these allegations.

2 85. Answering paragraph 85 of the Complaint, no response is required as the allegations
3 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
4 deny these allegations.

5 86. Answering paragraph 86 of the Complaint, no response is required as the allegations
6 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
7 deny these allegations.

8 **GENERAL DENIAL**

9 To the extent a further response is required to any allegation set forth in the Complaint,
10 Defendants such allegation.

11 **ANSWER TO PRAYER FOR RELIEF**

12 Answering the allegations contained in the entirety of Plaintiffs prayer for relief, Defendants
13 deny that Plaintiffs are entitled to the relief being sought therein or to any relief in this matter.

14 **AFFIRMATIVE DEFENSES**

15 Defendants, without altering the burdens of proof the parties must bear, assert the following
16 affirmative defenses to Plaintiffs' Complaint, and all causes of action alleged therein, and specifically
17 incorporates into these affirmative defenses their answers to the preceding paragraphs of the
18 Complaint as if fully set forth herein.

19 **First Affirmative Defense**

20 Defendants expressly preserve the right to amend this Answer to bring counterclaims against
21 Plaintiffs.

22 **Second Affirmative Defense**

23 The Complaint, and all the claims for relief alleged therein, fails to state a claim against
24 Defendants upon which relief can be granted.

25 **Third Affirmative Defense**

26 Plaintiffs have not been damaged directly, indirectly, proximately or in any manner
27 whatsoever by any conduct of Defendants.

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Fourth Affirmative Defense

The State of Nevada, Department of Taxation is immune from suit when performing the functions at issue in this case.

Fifth Affirmative Defense

The actions of the State of Nevada, Department of Taxation were all official acts that were done in compliance with applicable laws and regulations.

Sixth Affirmative Defense

Plaintiffs' claims are barred because Plaintiffs have failed to exhaust administrative remedies, if any.

Seventh Affirmative Defense

Plaintiffs have failed to join necessary and indispensable parties to this litigation under NRCPL 19 as the Court cannot grant any of Plaintiffs' claims without affecting the rights and privileges of those parties who received the licenses at issue as well as other third parties.

Eighth Affirmative Defense

The occurrences referred to in the Complaint and all alleged damages, if any, resulting therefrom, were caused by a third party of which Defendants had no control.

Ninth Affirmative Defense

The actions of the State of Nevada, Department of Taxation were not arbitrary or capricious, and the State of Nevada, Department of Taxation had a rational basis for all of the actions taken in the licensing process at issue.

Tenth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by their failure to perform or satisfy required conditions precedent and by their own bad acts.

Eleventh Affirmative Defense

Plaintiffs are not in possession and/or control of the documents and/or witnesses necessary to prove its alleged causes of action against Defendants.

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Twelfth Affirmative Defense

The claims, and each of them, are barred by the failure of Plaintiffs to plead those claims with sufficient particularity.

Fourteenth Affirmative Defense

Plaintiffs have failed to allege sufficient facts and cannot carry the burden of proof imposed on it by law to recover attorney’s fees incurred to bring this action.

Fifteenth Affirmative Defense

Injunctive relief is unavailable to Plaintiffs, because the State of Nevada, Department of Taxation has already completed the tasks of issuing the conditional licenses.

Sixteenth Affirmative Defense

Plaintiffs have no constitutional rights to obtain privileged licenses.

Seventeenth Affirmative Defense

Mandamus is not available to compel the members of the executive branch to perform non-ministerial, discretionary tasks.

Eighteenth Affirmative Defense

Plaintiffs are not entitled to Judicial Review on the denial of a license.

Nineteenth Affirmative Defense

Declaratory relief will not give the Plaintiffs the relief that they are seeking.

Twentieth Affirmative Defense

Pursuant to Nevada Rules of Civil Procedure, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this answer and, therefore, Defendants reserve the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

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WHEREFORE, Defendants prays for judgment as follows:

- 1. Plaintiffs take nothing by way of their Complaint;
- 2. The Complaint, and all causes of action against Defendants alleged therein, be dismissed with prejudice;
- 3. For reasonable attorney fees and costs to be awarded to Defendants; and
- 4. For such other and further relief the Court may deem just and proper.

Dated this ____ day of March, 2019.

Respectfully submitted,
MAIER GUTIERREZ & ASSOCIATES

JASON R. MAIER, ESQ.
Nevada Bar No. 8557
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **DEFENDANTS' [PROPOSED]**
3 **ANSWER TO PLAINTIFFS' COMPLAINT** was electronically filed on the ____ day of March,
4 2019 and served through the Notice of Electronic Filing automatically generated by the Court's
5 facilities to those parties listed on the Court's Master Service List and by depositing a true and
6 correct copy of the same, enclosed in a sealed envelope upon which first class postage was fully
7 prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed as follows (*Note: All Parties Not*
8 *Registered Pursuant to Administrative Order 14-2 Have Been Served By Mail.*):

9
10 Dominic P. Gentile, Esq.
11 Michael V. Cristalli, Esq.
12 Ross Miller, Esq.
13 Vincent Savarese III, Esq.
14 GENTILE CRISTALLI MILLER ARMENI SAVARESE
15 410 South Rampart Blvd., Suite 420
16 Las Vegas, NV 89145
17 *Attorneys for Plaintiffs*

18 David R. Koch, Esq.
19 Steven B. Scow, Esq.
20 Brody R. Wright, Esq.
21 Daniel G. Scow, Esq.
22 KOCH & SCOW, LLC
23 11500 S. Eastern Ave., Suite 210
24 Henderson, NV 89052
25 *Attorneys for Nevada Organic Remedies, LLC*

26 Margaret A. McLetchie, Esq.
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Las Vegas, NV 89101

/s/ Brandon Lopipero
An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT “C”

1 **ORDR**

2 JASON R. MAIER, ESQ.

3 Nevada Bar No. 8557

4 JOSEPH A. GUTIERREZ, ESQ.

5 Nevada Bar No. 9046

6 **MAIER GUTIERREZ & ASSOCIATES**

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8 Las Vegas, Nevada 89148

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12 *Attorneys for Defendants in Intervention,*

13 *Integral Associates LLC d/b/a Essence Cannabis Dispensaries,*

14 *Essence Tropicana, LLC, Essence Henderson, LLC,*

15 *CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace,*

16 *Commerce Park Medical, LLC, and Cheyenne Medical, LLC*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 SERENITY WELLNESS CENTER, LLC, a
20 Nevada limited liability company, TGIG, LLC,
21 a Nevada limited liability company, NULEAF
22 INCLINE DISPENSARY, LLC, a Nevada
23 limited liability company, NEVADA
24 HOLISTIC MEDICINE, LLC, a Nevada limited
25 liability company, TRYKE COMPANIES SO
26 NV, LLC, a Nevada limited liability company,
27 TRYKE COMPANIES RENO, LLC, a Nevada
28 limited liability company, PARADISE
WELLNESS CENTER, LLC, a Nevada limited
liability company, GBS NEVADA PARTNERS,
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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,

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION.

Case No. : A-19-786962-B

Dept. No.: XI

**[PROPOSED] ORDER GRANTING
MOTION TO INTERVENE**

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Defendants.

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 in Intervention.

The Court, having reviewed the Intervenor's Motion to Intervene, and good cause appearing,
IT IS HEREBY ORDERED:

Intervenor's Motion to Intervene is granted, and 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
shall intervene as Defendants in the above-captioned case as a necessary party to the action pursuant
to NRCP 24 and NRS § 12.130. The proposed answer attached to the Motion to Intervene as Exhibit
B shall be filed in this case.

DATED this ____ day of March, 2019.

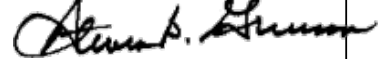
DISTRICT COURT JUDGE

Respectfully submitted by:

MAIER GUTIERREZ & ASSOCIATES

/s/

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d/b/a Thrive Cannabis Marketplace,
Commerce Park Medical, LLC, and
Cheyenne Medical, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

ETW MANAGEMENT GROUP LLC, a
Nevada limited liability company; GLOBAL
HARMONY LLC, a Nevada limited liability
company; GREEN LEAF FARMS HOLDINGS
LLC, a Nevada limited liability company;
HERBAL CHOICE INC., a Nevada
corporation; JUST QUALITY, LLC, a Nevada
limited liability company; LIBRA WELLNESS
CENTER, LLC, a Nevada limited liability
company; MOTHER HERB, INC., a Nevada
corporation; NEVCANN LLC, a Nevada limited
liability company; RED EARTH LLC, a
Nevada limited liability company; THC
NEVADA LLC, a Nevada limited liability
company; and ZION GARDENS LLC, a
Nevada limited liability company.

Case No. : A-19-787004-B

Dept. No.: XI

**MOTION TO INTERVENE AS
DEFENDANTS**

HEARING REQUESTED

1 This motion is made and based upon the following memorandum of points and authorities, the
2 pleadings and papers on file herein and any oral argument of counsel at the time of the hearing.

3 DATED this 20th day of March, 2019.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Joseph A. Gutierrez
7 JOSEPH A. GUTIERREZ, ESQ.
8 Nevada Bar No. 9046
9 JASON R. MAIER, ESQ.
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11 8816 Spanish Ridge Avenue
12 Las Vegas, Nevada 89148
13 *Attorneys for Intervenors*

14 **NOTICE OF HEARING ON MOTION**

15 TO: ALL PARTIES AND ATTORNEYS OF RECORD:

16 YOU AND EACH OF YOU will please take notice that the undersigned will bring the
17 foregoing **MOTION TO INTERVENE** on for hearing before the above-entitled Court in Department
18 XI on the _____ day of _____, 2019, at _____ am/pm, or as soon
19 thereafter as counsel may be heard.

20 DATED this 20th day of March, 2019.

21 Respectfully submitted,

22 **MAIER GUTIERREZ & ASSOCIATES**

23 /s/ Joseph A. Gutierrez
24 JOSEPH A. GUTIERREZ, ESQ.
25 Nevada Bar No. 9046
26 JASON R. MAIER, ESQ.
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Attorneys for Intervenors

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs ETW Management Group LLC, Global Harmony LLC, Green Leaf Farms Holdings
4 LLC, Green Therapeutics LLC, Herbal Choice Inc., Just Quality, LLC, Libra Wellness Center, LLC,
5 Rombough Real Estate Inc Dba Mother Herb, Nevcan LLC, Red Earth LLC, The Nevada LLC And
6 Zion Gardens LLC (collectively “Plaintiffs”) initiated this lawsuit against the State of Nevada,
7 Department of Taxation (the “Department”), alleging that the Department’s issuance of conditional
8 licenses to operate recreational marijuana retail stores was done arbitrarily and partially. *See generally*
9 First Amended Complaint (“FAC”). Plaintiffs essentially challenge the Department’s entire process
10 of evaluating and ranking applicants during the application period, and seek to have this Court issue a
11 ruling to that regard. This relief could substantially affect applicants that were awarded the licenses.

12 Defendants collectively were granted fourteen (14) of the conditional licenses issued by the
13 Department on December 5, 2018. Defendants timely seek to intervene in this action pursuant to
14 NRCP 24 and NRS § 12.130 to protect their rights and interests as the owners of these conditional
15 licenses.

16 Attached as **Exhibit A** is Defendants’ Proposed Answer to Plaintiffs’ First Amended
17 Complaint. Defendants expressly reserve their right to amend their Answer to include counterclaims,
18 should this Court allow Defendants to intervene.

19 **II. FACTUAL BACKGROUND**

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

23 The Department was to adopt regulations necessary to carry out the Act, including regulations
24 that set forth the “[p]rocedures for the issuance, renewal, suspension, and revocation of a license to
25 operate a marijuana establishment” and “[q]ualifications for licensure that are directly and
26 demonstrably related to the operation of a marijuana establishment.” Nev. Rev. Stat. §
27 453D.200(1)(a)-(b). On January 16, 2018, the Nevada Tax Commission unanimously approved
28

1 permanent regulations (“Approved Regulations”). LCB File No. R092-17. The Approved
2 Regulations went into effect on February 27, 2018.

3 Thereafter, on August 16, 2018, the Department issued a Notice of Intent to Accept
4 Applications (“Notice”) for sixty-four (64) recreational marijuana retail store licenses, which are to be
5 located throughout various jurisdictions in Nevada. The Notice required that all applications be
6 submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018.

7 Pursuant to section 80 of the Approved Regulations, if the Department received more than one
8 complete and qualified application for a license the Department would rank all applications within
9 each jurisdiction from first to last based on compliance with NRS § 453D and the Approved
10 Regulations. R092-17, Sec. 80. The Department is then required to go down the list and issue the
11 highest scoring applicants the available licenses. *Id.*

12 On December 5, 2018, the Department issued sixty-one (61) recreational marijuana retail store
13 conditional licenses, including 10 licenses for Unincorporated Clark County, Nevada; 10 licenses for
14 Las Vegas, Nevada; 6 licenses for Henderson, Nevada; 5 licenses for North Las Vegas, Nevada; 6
15 licenses for Reno, Nevada; 1 license for Sparks, Nevada; and 1 license for Nye County, Nevada.
16 Defendants collectively were granted fourteen (14) of these conditional licenses.

17 Under their conditional licenses, Defendants have twelve (12) months to receive a final
18 inspection for a marijuana establishment. R092-17, Sec. 87. If a marijuana establishment does not
19 receive a final inspection within twelve (12) months, the marijuana establishment must surrender the
20 license to the Department. *Id.* The Department may extend the period specified in this subsection if
21 the Department, in its discretion, determines that extenuating circumstances prevented the marijuana
22 establishment from receiving a final inspection within the period specified in this subsection. *Id.*

23 On January 4, 2019, Plaintiffs, with the exception of Green Therapeutics LLC, filed their
24 Complaint against the Department, and on February 8, 2019, the FAC was filed naming Green
25 Therapeutics LLC as an additional plaintiff. Plaintiffs allege that the Department’s review and scoring
26 of applicants’ applications for the recreational marijuana licenses was done “errantly, arbitrarily,
27 irrationally, and partially.” (FAC at ¶ 45).

28 The FAC contains numerous claims for relief, including:

- Claims for violation of substantive due process, procedural due process and equal protection, each of which is alleged to have rendered the Department's denial of Plaintiffs' license applications improper, warranting compensatory damages. (*See generally id.* at ¶¶ 50-84);
- A claim for Declaratory Relief, seeking a judicial declaration that (1) the factors for ranking do not comply with NRS 453D.210(6), (2) the Department applied the factors for ranking of applicants in an arbitrary and irrational matter, (3) the Department violated Section 80(5) of the Regulations by issuing multiple retail marijuana licenses to same entity or group of entities, and (4) the denial notices did not comply with 453D.210(4)(b). (*See generally id.* at ¶¶ 86-96);

Given the nature of the relief sought by Plaintiffs, a disposition of this case, could irrefutably impair Defendants' unique legal interests in their conditional licenses. As such, Defendants wish to intervene in this action.

III. LEGAL ARGUMENT

A. LEGAL STANDARD

Pursuant to NRS § 12.130, any person "[b]efore the trial, [...] may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both." Nev. Rev. Stat. § 12.130(1)(a). "Intervention is made as provided by the Nevada Rules of Civil Procedure." Nev. Rev. Stat. § 12.130(c).

In furtherance, NRCP § 24(a)(2) governs non-statutory intervention of right and states that upon timely intervention "the court must permit anyone to intervene who ... claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Nev. R. Civ. P. § 24(a)(2). NRCP § 24(b)(1)(B) governs permissive intervention and allows for intervention when an applicant "has a claim or defense that shares with the main action a common question of law or fact." Nev. R. Civ. P. § 24(b)(1)(B).

B. DEFENDANTS SHOULD BE PERMITTED TO INTERVENE PURSUANT TO INTERVENTION OF RIGHT

The Supreme Court of Nevada has imposed four requirements on an application seeking to intervene in an action: (1) the application must be timely; (2) the applicant must claim a sufficient interest relating to the property or transaction which is the subject of the action; (3) the applicant must

1 be so situated that the disposition of the action may as a practical matter impair or impede its ability
2 to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties
3 to the action. *See American Home Assurance Corp. v. Eighth Judicial District Ct. ex rel. County of*
4 *Clark*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006) ¹. Determining whether an applicant has
5 met these four requirements is within the district court's sound discretion. *Am. Home Assur. Co.*, 122
6 Nev. at 1126.

7 However, when evaluating whether the requirements for intervention of right are met, a court
8 generally follows practical and equitable considerations and construes the governing rule broadly in
9 favor of proposed intervenors. *Wilderness Soc'y v. U.S. Forest Service*, 630 F.3d 1173, 1179 (9th Cir.
10 2011) (*en banc*) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002)).
11 This is because "[a] liberal policy in favor of intervention serves both efficient resolution of issues
12 and broadened access to the Courts." *Wilderness Soc'y*, 630 F.3d 1173 (quoting *City of Los Angeles*,
13 288 F.3d at 397-98).

14 *I. Defendants Application to Intervene is Timely*

15 First, Defendants filed their motion to intervene in a timely manner. The Supreme Court of
16 Nevada has held that when determining the timeliness of an application to intervene "[t]he most
17 important question to be resolved [...] is not the length of the delay by the intervenor but the extent of
18 prejudice to the rights of existing parties resulting from the delay." *See Dangberg Holdings Nevada,*
19 *L.L.C. v. Douglas Cty. & its Bd. of Cty. Commr's*, 115 Nev. 129, 141, 978 P.2d 311, 318 (1999); *see*
20 *also American Home Assurance Corp.*, 122 Nev. at 1244, n.49 and n.50 (citations omitted).

21 Here, intervention by Defendants will not cause prejudice to the Plaintiffs nor the Department.
22 Namely because this case is in the early stages of litigation. *See Citizens for Balanced Use v. Montana*
23 *Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (where the Court found the parties would not have
24 suffered prejudice from the grant of intervention at the early stage of litigation).

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27 ¹ Federal decisions involving the federal civil procedure rules are persuasive authority when this court
28 examines its equivalent rules. *See Executive Mgmt. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d
872, 876 (2002). The 2019 amendment specifically conform NRCP 24 to its Federal counterpart,
FRCP 24. *See Nev. R. Civ. P. 24* (advisory committee note on the 2019 amendment).

1 Indeed, Plaintiffs filed the Amended Complaint on February 8, 2019 and the Department has
2 yet to file an answer or responsive pleading. In *Citizens for Balanced Use*, the Ninth Circuit found
3 that a motion filed less than three months after the complaint was filed and less than two weeks after
4 the first filing of an answer to the complaint was timely. *Id.* The Court reasoned that an intervention
5 so early in the litigation would not cause disruption or delay in the proceedings. *Id.* These are
6 traditional features of a timely motion. *See Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 836
7 (9th Cir.1996). Similarly, here, there will be no delay resulting from Defendants' intervention.

8 In contrast, Defendants would be significantly prejudiced if they are precluded from
9 intervening. Defendants hold the interest to fourteen (14) of the conditional licenses issued by the
10 Department. Through this action, Plaintiffs are attempting to undermine the rights of Defendants to
11 their conditional licenses by claiming that the Department arbitrarily and partially awarded them.
12 Because Defendants may be gravely prejudiced if not permitted to intervene and Plaintiffs would not
13 suffer any prejudice, this Court should find that Defendants' request to intervene is timely.

14 *2. Defendants Have a Sufficient Interest in the Litigation's Subject Matter*

15 Second, Defendants have a sufficient interest in the litigation's subject matter. While there is
16 no "bright-line" test to determine if a sufficient interest exists, the Supreme Court of Nevada has held
17 that an applicant must make a showing of a "significant protectable interest." *See Am. Home Assur.*
18 *Co.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1127 (2006). Whether a proposed intervenor has a
19 significant protectable interest is a "practical, threshold inquiry," and the party seeking intervention
20 need not establish any "specific legal or equitable interest." *Citizens for Balanced Use v. Montana*
21 *Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (internal quotations omitted) (quoting *Nw. Forest*
22 *Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996)). To meet its burden, a proposed intervenor
23 "must establish that the interest is protectable under some law and that there is a relationship between
24 the legally protected interest and the claims at issue." *Id.* The question of whether there is a significant
25 protectable interest does not turn on "technical distinctions." *California v. United States*, 450 F.3d
26 436, 441 (9th Cir. 2006). Instead, courts "have taken the view that a party has a sufficient interest for
27 intervention purposes if it will suffer a practical impairment of its interests as a result of the pending
28 litigation." *See id.*

1 Here, Defendants have a sufficient interest in the subject matter of this action – the conditional
2 licenses issued by the Department to operate recreational marijuana retail stores. Defendants were
3 issued fourteen (14) of the licenses by the Department. Plaintiffs, through this lawsuit, are essentially
4 attempting to have this Court determine that the Department’s application process was improper,
5 which could impair Defendants interest in their conditional licenses.

6 Plaintiffs may argue that because they only seek monetary damages and declaratory relief,
7 Defendants do not have a substantial interest in the litigation. This argument, however, lacks merit.
8 The crux of Plaintiffs’ allegations are that the Department improperly issued the licenses, which
9 necessarily implicates that the applicants awarded the licenses should not have received them. As
10 such, any ruling by this Court that the process was done improperly could affect a licensees’ interest
11 in their license. Accordingly, Defendants have a significant protectable interest in this action.

12 *3. The Disposition of this Action May Impair or Impeded Defendants’ Ability to*
13 *Protect Their Interests*

14 Third, the disposition of this action, as a practical matter, may impair or impede Defendants’
15 ability to protect their interest. Once a significant protectable interest is established, courts look to
16 whether the proposed intervenor’s ability to protect that interest would be “impair[ed] or impede[ed]”
17 by “the disposition of the action.” *Citizens for Balanced Use*, 647 F.3d at 897 (citation omitted). “If
18 an absentee would be substantially affected in a practical sense by the determination made in an action,
19 [it] should, as a general rule, be entitled to intervene....” *Id.* at 898 (quoting Fed R. Civ. P. 24 advisory
20 committee's note).

21 Here, the claims made by Plaintiffs in this action are an attempt to manufacture a dispute in
22 the hope of undermining the application process. This could substantially effect the rights of
23 Defendants and other successful applicants. Indeed, Plaintiffs have asserted allegations that the
24 Department arbitrarily and partially awarded the licenses, and therefore, must enter a declaratory
25 judgment in that regards. This relief, if granted, could necessarily harm the applicants who were
26 awarded a license. Accordingly, Defendants’ interests may be impaired by the disposition of this case,
27 as they risk losing their conditional licenses.

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1 4. *Defendants Interests May Not be Adequately Represented*

2 Fourth, Defendants interests may not be adequately represented should this Court deny them
3 intervention. Generally, “[t]he burden of showing inadequacy of representation is minimal and
4 satisfied if the [party seeking intervention] can demonstrate that representation of its interests may be
5 inadequate.” *Citizens for Balanced Use*, 647 F.3d at 898 (internal quotation omitted); *see also*
6 *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10, 92 S.Ct. 630, 636 n. 10, 30 L.Ed.2d 686
7 (1972) (holding that the requirement of inadequate representation is satisfied if the applicant shows
8 that representation “may be” inadequate). In making this determination, courts examine three factors:
9 (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed
10 intervenor’s arguments; (2) whether the present party is capable and willing to make such arguments;
11 and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other
12 parties would neglect. *Citizens for Balanced Use*, 647 F.3d at 898 (quoting *Arakaki v. Cayetano*, 324
13 F.3d 1078, 1086 (9th Cir. 2003)).

14 “The most important factor in assessing the adequacy of representation is how
15 the interest compares with the interests of existing parties.” *Citizens for Balanced Use*, 647 F.3d at
16 898 (internal quotation and citation omitted). Where a proposed intervenor and an existing party
17 “share the same ultimate objective, a presumption of adequacy of representation arises.” *Citizens for*
18 *Balanced Use*, 647 F.3d at 898 (citation omitted). A presumption of adequacy “must be rebutted with
19 a compelling showing.” *Id.* (citation omitted).

20 Here, Defendants’ interests would not be adequately represented by the Department.
21 Specifically, the Department will presumably defend its application evaluation process by showing
22 that it complied with NRS Chapter 453D and the Approved Regulations throughout the application
23 process. Plaintiffs will have to prove that the Department did not. In order to do this Plaintiffs will
24 necessarily have to show that applicants were ranked improperly, including Defendants. As such,
25 Defendants will need to defend their applications against all other applicants, including Plaintiffs.

26 Moreover, this case is one of many currently being litigated concerning these conditional
27 licenses. Although Plaintiffs in this case will assert that they do not want the same thing as the
28 plaintiffs in other cases, as they are only requesting monetary damages and not a license, this is

1 unfounded. Plaintiffs ultimately want to upset the entire process to have another bite of the apple to
2 a license. Defendants' should be entitled to assert defenses and arguments to protect their interests in
3 their conditional licenses. Accordingly, Defendants have met their minimal burden of showing that
4 their interests may not adequately represented.

5 **C. DEFENDANTS SHOULD BE PERMITTED TO INTERVENE PURSUANT TO PERMISSIVE**
6 **INTERVENTION**

7 Even if this Court were to find that Defendants cannot establish intervention as right,
8 Defendants may still intervene pursuant to NRCP 24(b), which governs permissive intervention.
9 Permissive intervention is available when the motion is timely and "the applicant's claim or defense,
10 and the main action, have a question of law or a question of fact in common." Nev. R. Civ. P.
11 24(b)(1)(B). "In exercising its discretion" on this issue, "the court must consider whether the
12 intervention will unduly delay or prejudice the adjudication of the original parties' rights." Nev. R.
13 Civ. P. 24(b)(3).

14 Here, as discussed above, Defendants' motion to intervene is timely and will not prejudice any
15 of the parties in the case. Additionally, Defendants' defense, and anticipated counterclaims, present a
16 common question of law and question of fact with the main action.

17 Moreover, allowing Defendants to intervene in this suit will not unduly delay or prejudice the
18 adjudication of the current parties' rights. If anything, allowing intervention will promote judicial
19 economy and spare the parties from needing to litigate a similar case in another district. *See Dangberg*
20 *Holdings Nevada, L.L.C.*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999) (where the court found
21 "bringing all of the parties together in one proceeding before one tribunal will foster the principles of
22 judicial economy and finality"); *see also Venegas v. Skaggs*, 867 F.2d 527, 531 (9th Cir. 1989) (noting
23 that "judicial economy is a relevant consideration in deciding a motion for permissive
24 intervention"), *aff'd sub nom. Venegas v. Mitchell*, 495 U.S. 82, 87, 110 S.Ct. 1679, 109 L.Ed.2d 74
25 (1990). Accordingly, this Court should grant Defendants' Motion to Intervene.

26 **IV. CONCLUSION**

27 Based upon the foregoing, Defendants respectfully request that this Honorable Court grant the
28 instant motion and allow INTEGRAL ASSOCIATES LLC, d/b/a ESSENCE CANNABIS

1 DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC, CPCM
2 HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, COMMERCE PARK MEDICAL,
3 LLC, and CHEYENNE MEDICAL, LLC to intervene as Defendants in this action. A proposed Order
4 Granting the Motion to Intervene is attached as **Exhibit B**.

5 DATED this 20th day of March, 2019.

6 Respectfully submitted,

7 **MAIER GUTIERREZ & ASSOCIATES**

8
9 /s/ Joseph A. Gutierrez

10 JOSEPH A. GUTIERREZ, ESQ.

11 Nevada Bar No. 9046

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14 8816 Spanish Ridge Avenue

15 Las Vegas, Nevada 89148

16 *Attorneys for Interveners*
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **MOTION TO INTERVENE AS**
3 **DEFENDANTS** was electronically filed on the 20th day of March, 2019 and served through the
4 Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed
5 on the Court's Master Service List and by depositing a true and correct copy of the same, enclosed in
6 a sealed envelope upon which first class postage was fully prepaid, in the U.S. Mail at Las Vegas,
7 Nevada, addressed as follows (*Note: All Parties Not Registered Pursuant to Administrative Order*
8 *14-2 Have Been Served By Mail.*):

9
10 Adam K. Bult, Esq.
11 Maximilien D. Fetaz, Esq.
12 Travis F. Chance, Esq.
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16 *Attorneys for Plaintiffs*

17 Adam R. Fulton, Esq.
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22 David R. Koch, Esq.
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24 Brody R. Wright, Esq.
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29 /s/ Brandon Lopipero
30 An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT “A”

1 **ANSC**

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9 *d/b/a Essence Cannabis Dispensaries, Essence*

Tropicana, LLC, Essence Henderson, LLC,

10 *CPCM Holdings, LLC d/b/a Thrive Cannabis*

11 *Marketplace, Commerce Park Medical, LLC,*

and Cheyenne Medical, LLC

12
13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 ETW MANAGEMENT GROUP LLC, a
16 Nevada limited liability company; GLOBAL
HARMONY LLC, a Nevada limited liability
17 company; GREEN LEAF FARMS HOLDINGS
LLC, a Nevada limited liability company;
18 GREEN THERAPEUTICS LLC, a Nevada
limited liability company; HERBAL CHOICE
19 INC., a Nevada corporation; JUST QUALITY,
LLC, a Nevada limited liability company;
20 LIBRA WELLNESS CENTER, LLC, a Nevada
limited liability company; ROMOUGH REAL
21 ESTATE INC. dba MOTHER HERB, a Nevada
Corporation; NEVCANN LLC, a Nevada
22 limited liability company; RED EARTH LLC, a
Nevada limited liability company; THC
23 NEVADA LLC, a Nevada limited liability
company; and ZION GARDENS LLC, a
24 Nevada limited liability company,

25 Plaintiffs,

26 vs.

27 STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative agency;
DOES 1 through 20, inclusive; and ROE
28 CORPORATIONS 1 through 20. Inclusive.

Case No. : A-19-787004-B

Dept. No.: XI

**DEFENDANTS' [PROPOSED] ANSWER
TO PLAINTIFFS' FIRST AMENDED
COMPLAINT**

1
2 Defendants.

3 INTEGRAL ASSOCIATES LLC, d/b/a
4 ESSENCE CANNABIS DISPENSARIES, a
5 Nevada limited liability company; ESSENCE
6 TROPICANA, LLC, a Nevada limited liability
7 company; ESSENCE HENDERSON, LLC, a
8 Nevada limited liability company; CPCM
9 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 in Intervention.

10 Defendants in Intervention INTEGRAL ASSOCIATES LLC, d/b/a ESSENCE CANNABIS
11 DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC, CPCM
12 HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, and COMMERCE PARK
13 MEDICAL, LLC, CHEYENNE MEDICAL, LLC (collectively “Defendants”), by and through their
14 attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby answers the First Amended
15 Complaint filed by plaintiffs ETW MANAGEMENT GROUP LLC, GLOBAL HARMONY LLC,
16 GREEN LEAF FARMS HOLDINGS LLC, GREEN THERAPEUTICS LLC, HERBAL CHOICE
17 INC., JUST QUALITY, LLC, LIBRA WELLNESS CENTER, LLC, ROMBOUGH REAL ESTATE
18 INC dba MOTHER HERB, NEVCANN LLC, RED EARTH LLC, THC NEVADA LLC and ZION
19 GARDENS LLC (collectively “Plaintiffs”), as follows:

20 Defendants deny each and every allegation in the First Amended Complaint except those
21 allegations which are hereinafter admitted, qualified, or otherwise answered.

22 **PARTIES**

23 1. Answering paragraph 1 of the First Amended Complaint, Defendants are without
24 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
25 on that basis deny these allegation.

26 2. Answering paragraph 2 of the First Amended Complaint, Defendants are without
27 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
28 on that basis deny these allegation.

1 3. Answering paragraph 3 of the First Amended Complaint, Defendants are without
2 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
3 on that basis deny these allegation.

4 4. Answering paragraph 4 of the First Amended Complaint, Defendants are without
5 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
6 on that basis deny these allegation.

7 5. Answering paragraph 5 of the First Amended Complaint, Defendants are without
8 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
9 on that basis deny these allegation.

10 6. Answering paragraph 6 of the First Amended Complaint, Defendants are without
11 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
12 on that basis deny these allegation.

13 7. Answering paragraph 7 of the First Amended Complaint, Defendants are without
14 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
15 on that basis deny these allegation.

16 8. Answering paragraph 8 of the First Amended Complaint, Defendants are without
17 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis deny these allegation.

19 9. Answering paragraph 9 of the First Amended Complaint, Defendants are without
20 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
21 on that basis deny these allegation.

22 10. Answering paragraph 10 of the First Amended Complaint, Defendants are without
23 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
24 on that basis deny these allegation.

25 11. Answering paragraph 11 of the First Amended Complaint, Defendants are without
26 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
27 on that basis deny these allegation.

28 12. Answering paragraph 12 of the First Amended Complaint, Defendants are without

1 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
2 on that basis deny these allegation.

3 13. Answering paragraph 13 of the First Amended Complaint, Defendants are without
4 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
5 on that basis deny these allegation.

6 14. Answering paragraph 14 of the First Amended Complaint, Defendants are without
7 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
8 on that basis deny these allegation.

9 **JURISDICTION AND VENUE**

10 15. Answering paragraph 15 of the First Amended Complaint, no response is required as
11 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
12 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
13 contained therein, and on that basis deny these allegations.

14 16. Answering paragraph 16 of the First Amended Complaint, no response is required as
15 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
16 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
17 contained therein, and on that basis deny these allegations.

18 **GENERAL ALLEGATIONS**

19 17. Answering paragraph 17 of the First Amended Complaint, Defendants repeat and
20 reallege their answers to paragraphs 1 through 16 above, and incorporates the same herein by reference
21 as though fully set forth herein.

22 ***The Statutory Scheme Governing Retail Marijuana Licenses***

23 18. Answering paragraph 18 of the First Amended Complaint, Defendants admit these
24 allegations.

25 19. Answering paragraph 19 of the First Amended Complaint, Defendants admit these
26 allegations.

27 20. Answering paragraph 20 of the First Amended Complaint, no response is required as
28 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content

1 of laws or regulations. To the extent a response is required and the allegations accurately state the
2 laws or regulations referenced therein, Defendants admit these allegations.

3 21. Answering paragraph 21 of the First Amended Complaint, no response is required as
4 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
5 of laws or regulations. To the extent a response is required and the allegations accurately state the
6 laws or regulations referenced therein, Defendants admit these allegations.

7 22. Answering paragraph 22 of the First Amended Complaint, no response is required as
8 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
9 of laws or regulations. To the extent a response is required and the allegations accurately state the
10 laws or regulations referenced therein, Defendants admit these allegations.

11 23. Answering paragraph 23 of the First Amended Complaint, no response is required as
12 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
13 of laws or regulations. To the extent a response is required and the allegations accurately state the
14 laws or regulations referenced therein, Defendants admit these allegations.

15 ***The DOT's Adoption of Flawed Regulations that Do Not Comply with Chapter 453D***

16 24. Answering paragraph 24 of the First Amended Complaint, Defendants are without
17 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis deny these allegation.

19 25. Answering paragraph 25 of the First Amended Complaint, Defendants are without
20 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
21 on that basis deny these allegation.

22 26. Answering paragraph 26 of the First Amended Complaint, Defendants are without
23 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
24 on that basis deny these allegation.

25 27. Answering paragraph 27 of the First Amended Complaint, Defendants are without
26 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
27 on that basis deny these allegation.

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1 28. Answering paragraph 28 of the First Amended Complaint, Defendants are without
2 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
3 on that basis deny these allegation.

4 29. Answering paragraph 29 of the First Amended Complaint, Defendants are without
5 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
6 on that basis deny these allegation.

7 30. Answering paragraph 30 of the First Amended Complaint, no response is required as
8 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
9 of laws or regulations. To the extent a response is required and the allegations accurately state the
10 laws or regulations referenced therein, Defendants admit these allegations.

11 31. Answering paragraph 31 of the First Amended Complaint, no response is required as
12 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
13 of laws or regulations. To the extent a response is required and the allegations accurately state the
14 laws or regulations referenced therein, Defendants admit these allegations.

15 32. Answering paragraph 32(a)-(i) of the First Amended Complaint, no response is
16 required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding
17 the content of laws or regulations. To the extent a response is required and the allegations accurately
18 state the laws or regulations referenced therein, Defendants admit these allegations.

19 33. Answering paragraph 33 of the First Amended Complaint, Defendants are without
20 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
21 on that basis deny these allegation.

22 34. Answering paragraph 34 of the First Amended Complaint, no response is required as
23 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
24 of laws or regulations. To the extent a response is required and the allegations accurately state the
25 laws or regulations referenced therein, Defendants admit these allegations.

26 35. Answering paragraph 35 of the First Amended Complaint, no response is required as
27 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
28 of laws or regulations. To the extent a response is required and the allegations accurately state the

1 laws or regulations referenced therein, Defendants admit these allegations.

2 ***Plaintiffs Receive Arbitrary Denials of their Applications for Retail Marijuana Licenses***

3 36. Answering paragraph 36 of the First Amended Complaint, no response is required as
4 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
5 of laws or regulations. To the extent a response is required and the allegations accurately state the
6 laws or regulations referenced therein, Defendants admit these allegations.

7 37. Answering paragraph 37 of the First Amended Complaint, Defendants are without
8 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
9 on that basis deny these allegation.

10 38. Answering paragraph 38 of the First Amended Complaint, Defendants are without
11 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
12 on that basis deny these allegation.

13 39. Answering paragraph 39 of the First Amended Complaint, Defendants are without
14 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
15 on that basis deny these allegation.

16 40. Answering paragraph 40 of the First Amended Complaint, Defendants are without
17 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis deny these allegation.

19 41. Answering paragraph 41 of the First Amended Complaint, Defendants are without
20 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
21 on that basis deny these allegation.

22 42. Answering paragraph 42 of the First Amended Complaint, Defendants are without
23 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
24 on that basis deny these allegation.

25 43. Answering paragraph 43 of the First Amended Complaint, Defendants are without
26 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
27 on that basis deny these allegation.

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1 44. Answering paragraph 44 of the First Amended Complaint, Defendants are without
2 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
3 on that basis deny these allegation.

4 45. Answering paragraph 45(a)-(d) of the First Amended Complaint, no response is
5 required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response
6 is required, Defendants deny these allegations.

7 46. Answering paragraph 46 of the First Amended Complaint, no response is required as
8 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
9 Defendants deny these allegations.

10 47. Answering paragraph 47 of the First Amended Complaint, no response is required as
11 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
12 Defendants deny these allegations.

13 48. Answering paragraph 48 of the First Amended Complaint, no response is required as
14 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
15 Defendants deny these allegations.

16 **FIRST CLAIM FOR RELIEF**

17 **Violation of Substantive Due Process**

18 49. Answering paragraph 49 of the First Amended Complaint, Defendants repeat and
19 reallege their answers to paragraphs 1 through 48 above, and incorporates the same herein by reference
20 as though fully set forth herein.

21 50. Answering paragraph 50 of the First Amended Complaint, no response is required as
22 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
23 of laws or regulations. To the extent a response is required and the allegations accurately state the
24 laws or regulations referenced therein, Defendants admit these allegations.

25 51. Answering paragraph 51 of the First Amended Complaint, no response is required as
26 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
27 of laws or regulations. To the extent a response is required and the allegations accurately state the
28 laws or regulations referenced therein, Defendants admit these allegations.

1 52. Answering paragraph 52 of the First Amended Complaint, no response is required as
2 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
3 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
4 contained therein, and on that basis deny these allegation.

5 53. Answering paragraph 53 of the First Amended Complaint, no response is required as
6 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
7 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
8 contained therein, and on that basis deny these allegation.

9 54. Answering paragraph 54 of the First Amended Complaint, Defendants are without
10 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
11 on that basis deny these allegation.

12 55. Answering paragraph 55 of the First Amended Complaint, no response is required as
13 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
14 Defendants deny these allegations.

15 56. Answering paragraph 56 of the First Amended Complaint, no response is required as
16 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
17 extent a response is required, Defendants deny these allegations.

18 57. Answering paragraph 57(a)-(f) of the First Amended Complaint, no response is
19 required as the allegations contained therein are not factual in nature and/or contain legal conclusions.
20 To the extent a response is required, Defendants deny these allegations.

21 58. Answering paragraph 58 of the First Amended Complaint, no response is required as
22 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
23 extent a response is required, Defendants deny these allegations.

24 59. Answering paragraph 59 of the First Amended Complaint, no response is required as
25 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
26 extent a response is required, Defendants deny these allegations.

27 60. Answering paragraph 60 of the First Amended Complaint, no response is required as
28 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the

1 extent a response is required, Defendants deny these allegations.

2 **SECOND CLAIM FOR RELIEF**

3 **Violation of Procedural Due Process**

4 61. Answering paragraph 61 of the First Amended Complaint, Defendants repeat and
5 reallege their answers to paragraphs 1 through 60 above, and incorporates the same herein by reference
6 as though fully set forth herein.

7 62. Answering paragraph 62 of the First Amended Complaint, no response is required as
8 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
9 of laws or regulations. To the extent a response is required and the allegations accurately state the
10 laws or regulations referenced therein, Defendants admit these allegations.

11 63. Answering paragraph 63 of the First Amended Complaint, no response is required as
12 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
13 of laws or regulations. To the extent a response is required and the allegations accurately state the
14 laws or regulations referenced therein, Defendants admit these allegations.

15 64. Answering paragraph 64 of the First Amended Complaint, no response is required as
16 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
17 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
18 contained therein, and on that basis deny these allegation.

19 65. Answering paragraph 65 of the First Amended Complaint, no response is required as
20 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
21 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
22 contained therein, and on that basis deny these allegation.

23 66. Answering paragraph 66 of the First Amended Complaint, no response is required as
24 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
25 of laws or regulations. To the extent a response is required and the allegations accurately state the
26 laws or regulations referenced therein, Defendants admit these allegations.

27 67. Answering paragraph 67 of the First Amended Complaint, Defendants are without
28 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and

1 on that basis deny these allegation.

2 68. Answering paragraph 68 of the First Amended Complaint, no response is required as
3 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
4 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
5 contained therein, and on that basis deny these allegation.

6 69. Answering paragraph 69 of the First Amended Complaint, no response is required as
7 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
8 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
9 contained therein, and on that basis deny these allegation.

10 70. Answering paragraph 70 of the First Amended Complaint, no response is required as
11 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
12 extent a response is required, Defendants deny these allegations.

13 71. Answering paragraph 71 of the First Amended Complaint, no response is required as
14 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
15 extent a response is required, Defendants deny these allegations.

16 72. Answering paragraph 72 of the First Amended Complaint, no response is required as
17 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
18 extent a response is required, Defendants deny these allegations.

19 **THIRD CLAIM FOR RELIEF**

20 **Violation of Equal Protection**

21 73. Answering paragraph 73 of the First Amended Complaint, Defendants repeat and
22 reallege their answers to paragraphs 1 through 72 above, and incorporates the same herein by reference
23 as though fully set forth herein.

24 74. Answering paragraph 74 of the First Amended Complaint, no response is required as
25 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
26 of laws or regulations. To the extent a response is required and the allegations accurately state the
27 laws or regulations referenced therein, Defendants admit these allegations.

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1 75. Answering paragraph 75 of the First Amended Complaint, no response is required as
2 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
3 of laws or regulations. To the extent a response is required and the allegations accurately state the
4 laws or regulations referenced therein, Defendants admit these allegations.

5 76. Answering paragraph 76 of the First Amended Complaint, no response is required as
6 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
7 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
8 contained therein, and on that basis deny these allegation.

9 77. Answering paragraph 77 of the First Amended Complaint, no response is required as
10 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
11 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
12 contained therein, and on that basis deny these allegation.

13 78. Answering paragraph 78 of the First Amended Complaint, Defendants are without
14 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
15 on that basis deny these allegation.

16 79. Answering paragraph 79 of the First Amended Complaint, no response is required as
17 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
18 extent a response is required, Defendants deny these allegations.

19 80. Answering paragraph 80 of the First Amended Complaint, no response is required as
20 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
21 extent a response is required, Defendants deny these allegations.

22 81. Answering paragraph 81(a)-(f) of the First Amended Complaint, no response is
23 required as the allegations contained therein are not factual in nature and/or contain legal conclusions.
24 To the extent a response is required, Defendants deny these allegations.

25 82. Answering paragraph 82 of the First Amended Complaint, no response is required as
26 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
27 extent a response is required, Defendants deny these allegations.

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83. Answering paragraph 83 of the First Amended Complaint, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendants deny these allegations.

84. Answering paragraph 84 of the First Amended Complaint, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendants deny these allegations.

FOURTH CLAIM FOR RELIEF

Declaratory Judgment

85. Answering paragraph 85 of the First Amended Complaint, Defendants repeat and reallege their answers to paragraphs 1 through 84 above, and incorporates the same herein by reference as though fully set forth herein.

86. Answering paragraph 86 of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or regulations. To the extent a response is required and the allegations accurately state the laws or regulations referenced therein, Defendants admit these allegations.

87. Answering paragraph 87 of the First Amended Complaint, Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis deny these allegation.

88. Answering paragraph 88 of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or regulations. To the extent a response is required and the allegations accurately state the laws or regulations referenced therein, Defendants admit these allegations.

89. Answering paragraph 89 of the First Amended Complaint, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendants deny these allegations.

90. Answering paragraph 90(a)-(f) of the First Amended Complaint, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendants deny these allegations.

1 91. Answering paragraph 91 of the First Amended Complaint, no response is required as
2 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
3 extent a response is required, Defendants deny these allegations.

4 92. Answering paragraph 92 of the First Amended Complaint, no response is required as
5 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
6 extent a response is required, Defendants deny these allegations.

7 93. Answering paragraph 93 of the First Amended Complaint, no response is required as
8 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
9 extent a response is required, Defendants deny these allegations.

10 94. Answering paragraph 94 of the First Amended Complaint, no response is required as
11 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
12 extent a response is required, Defendants are without sufficient knowledge or information as to the
13 truth or falsity of the allegations contained therein, and on that basis deny these allegation.

14 95. Answering paragraph 95 of the First Amended Complaint, no response is required as
15 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
16 extent a response is required, Defendants deny these allegations.

17 96. Answering paragraph 96 of the First Amended Complaint, no response is required as
18 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
19 extent a response is required, Defendants are without sufficient knowledge or information as to the
20 truth or falsity of the allegations contained therein, and on that basis deny these allegation.

21 **GENERAL DENIAL**

22 To the extent a further response is required to any allegation set forth in the First Amended
23 Complaint, Defendants such allegation. Defendants further object to Plaintiffs’

24 **ANSWER TO PRAYER FOR RELIEF**

25 Answering the allegations contained in the entirety of Plaintiffs prayer for relief, Defendants
26 deny that Plaintiffs are entitled to the relief being sought therein or to any relief in this matter.

27 **AFFIRMATIVE DEFENSES**

28 Defendants, without altering the burdens of proof the parties must bear, assert the following

1 affirmative defenses to Plaintiffs' First Amended Complaint, and all causes of action alleged therein,
2 and specifically incorporates into these affirmative defenses their answers to the preceding paragraphs
3 of the First Amended Complaint as if fully set forth herein.

4 **First Affirmative Defense**

5 Defendants expressly preserve the right to amend this Answer to bring counterclaims against
6 Plaintiffs.

7 **Second Affirmative Defense**

8 The First Amended First Amended Complaint, and all the claims for relief alleged therein,
9 fails to state a claim against Defendants upon which relief can be granted.

10 **Third Affirmative Defense**

11 Plaintiffs have not been damaged directly, indirectly, proximately or in any manner
12 whatsoever by any conduct of Defendants.

13 **Fourth Affirmative Defense**

14 The State of Nevada, Department of Taxation is immune from suit when performing the
15 functions at issue in this case.

16 **Fifth Affirmative Defense**

17 The actions of the State of Nevada, Department of Taxation were all official acts that were
18 done in compliance with applicable laws and regulations.

19 **Sixth Affirmative Defense**

20 Plaintiffs' claims are barred because Plaintiffs have failed to exhaust administrative remedies,
21 if any.

22 **Seventh Affirmative Defense**

23 Plaintiffs have failed to join necessary and indispensable parties to this litigation under NRCP
24 19 as the Court cannot grant any of Plaintiffs' claims without affecting the rights and privileges of
25 those parties who received the licenses at issue as well as other third parties.

26 **Eighth Affirmative Defense**

27 The occurrences referred to in the First Amended First Amended Complaint and all alleged
28 damages, if any, resulting therefrom, were caused by a third party of which Defendants had no control.

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Ninth Affirmative Defense

The actions of the State of Nevada, Department of Taxation were not arbitrary or capricious, and the State of Nevada, Department of Taxation had a rational basis for all of the actions taken in the licensing process at issue.

Tenth Affirmative Defense

Plaintiffs’ claims are barred, in whole or in part, by their failure to perform or satisfy required conditions precedent and by their own bad acts.

Eleventh Affirmative Defense

Plaintiffs are not in possession and/or control of the documents and/or witnesses necessary to prove its alleged causes of action against Defendants.

Twelfth Affirmative Defense

The claims, and each of them, are barred by the failure of Plaintiffs to plead those claims with sufficient particularity.

Fourteenth Affirmative Defense

Plaintiffs have failed to allege sufficient facts and cannot carry the burden of proof imposed on it by law to recover attorney’s fees incurred to bring this action.

Fifteenth Affirmative Defense

Injunctive relief is unavailable to Plaintiffs, because the State of Nevada, Department of Taxation has already completed the tasks of issuing the conditional licenses.

Sixteenth Affirmative Defense

Plaintiffs have no constitutional rights to obtain privileged licenses.

Seventeenth Affirmative Defense

Mandamus is not available to compel the members of the executive branch to perform non-ministerial, discretionary tasks.

Eighteenth Affirmative Defense

Plaintiffs are not entitled to Judicial Review on the denial of a license.

Nineteenth Affirmative Defense

Declaratory relief will not give the Plaintiffs the relief that they are seeking.

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Twentieth Affirmative Defense

Pursuant to Nevada Rules of Civil Procedure, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this answer and, therefore, Defendants reserve the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, Defendants prays for judgment as follows:

1. Plaintiffs take nothing by way of their First Amended Complaint;
2. The First Amended Complaint, and all causes of action against Defendants alleged therein, be dismissed with prejudice;
3. For reasonable attorney fees and costs to be awarded to Defendants; and
4. For such other and further relief the Court may deem just and proper.

Dated this ____ day of March, 2019.

Respectfully submitted,
MAIER GUTIERREZ & ASSOCIATES

JASON R. MAIER, ESQ.
Nevada Bar No. 8557
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **DEFENDANTS' [PROPOSED]**
3 **ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT** was electronically filed on the
4 ____ day of March, 2019 and served through the Notice of Electronic Filing automatically generated
5 by the Court's facilities to those parties listed on the Court's Master Service List and by depositing
6 a true and correct copy of the same, enclosed in a sealed envelope upon which first class postage was
7 fully prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed as follows (*Note: All Parties Not*
8 *Registered Pursuant to Administrative Order 14-2 Have Been Served By Mail.*):

9 Adam K. Bult, Esq.
10 Maximilien D. Fetaz, Esq.
11 Travis F. Chance, Esq.
12 BROWNSTEIN HYATT FARBER SCHRECK, LLP
13 100 North City Parkway, Suite 1600
14 Las Vegas, NV 89106
15 Attorneys for Plaintiffs

16 Adam R. Fulton, Esq.
17 JENNINGS & FULTON, LTD.
18 2580 Sorrel Street
19 Las Vegas, NV 89146
20 Attorneys for Plaintiffs

21 David R. Koch, Esq.
22 Steven B. Scow, Esq.
23 Brody R. Wright, Esq.
24 Daniel G. Scow, Esq.
25 KOCH & SCOW LLC
26 11500 S. Eastern Ave, Suite 210
27 Henderson, NV 89052
28 Attorneys for Intervenor Nevada Organic Remedies, LLC

29 /s/
30 An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT “B”

1 **ORDR**

2 JASON R. MAIER, ESQ.

3 Nevada Bar No. 8557

4 JOSEPH A. GUTIERREZ, ESQ.

5 Nevada Bar No. 9046

6 **MAIER GUTIERREZ & ASSOCIATES**

7 8816 Spanish Ridge Avenue

8 Las Vegas, Nevada 89148

9 Telephone: (702) 629-7900

10 Facsimile: (702) 629-7925

11 E-mail: jrm@mgalaw.com

12 jag@mgalaw.com

13 *Attorneys for Defendants in Intervention,*

14 *Integral Associates LLC, d/b/a Essence Cannabis Dispensaries,*

15 *Essence Tropicana, LLC, Essence Henderson, LLC,*

16 *CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace,*

17 *Commerce Park Medical, LLC, and Cheyenne Medical, LLC*

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 ETW MANAGEMENT GROUP LLC, a
21 Nevada limited liability company; GLOBAL
22 HARMONY LLC, a Nevada limited liability
23 company; GREEN LEAF FARMS HOLDINGS
24 LLC, a Nevada limited liability company;
25 HERBAL CHOICE INC., a Nevada
26 corporation; JUST QUALITY, LLC, a Nevada
27 limited liability company; LIBRA WELLNESS
28 CENTER, LLC, a Nevada limited liability
company; MOTHER HERB, INC., a Nevada
corporation; NEVCANN LLC, a Nevada limited
liability company; RED EARTH LLC, a Nevada
limited liability company; THC NEVADA LLC,
a Nevada limited liability company; and ZION
GARDENS LLC, a Nevada limited liability
company,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative agency;
DOES 1 through 20, inclusive; and ROE
CORPORATIONS 1 through 20. Inclusive,

Defendants.

Case No. : A-19-787004-B

Dept. No.: XI

**[PROPOSED] ORDER GRANTING
MOTION TO INTERVENE**

1
2 INTEGRAL ASSOCIATES LLC, d/b/a
3 ESSENCE CANNABIS DISPENSARIES, a
4 Nevada limited liability company; ESSENCE
5 TROPICANA, LLC, a Nevada limited liability
6 company; ESSENCE HENDERSON, LLC, a
7 Nevada limited liability company; CPCM
8 HOLDINGS, LLC d/b/a THRIVE CANNABIS
9 MARKETPLACE, COMMERCE PARK
10 MEDICAL, LLC, a Nevada limited liability
11 company; and CHEYENNE MEDICAL, LLC, a
12 Nevada limited liability company.

13
14 Defendants in Intervention.

15 The Court, having reviewed the Intervenor's Motion to Intervene, and good cause appearing,

16 IT IS HEREBY ORDERED:

17 Intervenor's Motion to Intervene is granted, and Integral Associates, LLC d/b/a Essence
18 Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC, CPCM Holdings, LLC
19 d/b/a Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and Cheyenne Medical, LLC
20 shall intervene as a Defendant in the above-captioned case as a necessary party to the action pursuant
21 to NRCP 24 and NRS 12.130. The proposed answer attached to the Motion to Intervene as Exhibit A
22 shall be filed in this case.

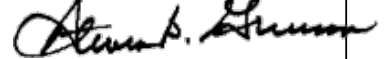
23 DATED this ____ day of March, 2019.

24
25 _____
26 DISTRICT COURT JUDGE

27 Respectfully submitted by:

28 **MAIER GUTIERREZ & ASSOCIATES**

29 _____
30 JASON R. MAIER, ESQ.
31 Nevada Bar No. 8557
32 JOSEPH A. GUTIERREZ, ESQ.
33 Nevada Bar No. 9046
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36 *Attorneys for Defendants in Intervention*



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Commerce Park Medical, LLC, and
Cheyenne Medical, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

ETW MANAGEMENT GROUP LLC, a
Nevada limited liability company; GLOBAL
HARMONY LLC, a Nevada limited liability
company; GREEN LEAF FARMS HOLDINGS
LLC, a Nevada limited liability company;
HERBAL CHOICE INC., a Nevada
corporation; JUST QUALITY, LLC, a Nevada
limited liability company; LIBRA WELLNESS
CENTER, LLC, a Nevada limited liability
company; MOTHER HERB, INC., a Nevada
corporation; NEVCANN LLC, a Nevada limited
liability company; RED EARTH LLC, a
Nevada limited liability company; THC
NEVADA LLC, a Nevada limited liability
company; and ZION GARDENS LLC, a
Nevada limited liability company.

Case No. : A-19-787004-B

Dept. No.: XI

**MOTION TO INTERVENE AS
DEFENDANTS**

HEARING REQUESTED

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Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF TAXATION, a Nevada administrative agency; DOES 1 through 20, inclusive; and ROE CORPORATIONS 1 through 20. Inclusive,

Defendants.

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,

Applicants for Intervention.

Defendants in Intervention INTEGRAL ASSOCIATES LLC d/b/a ESSENCE CANNABIS DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC, CPC HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, COMMERCE PARK MEDICAL, LLC, and CHEYENNE MEDICAL, LLC (collectively “Defendants” or “Intervenors”), by and through their attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby respectfully moves this Court to intervene in the above-referenced action pursuant to NRCP 24 and NRS §12.130.

[illegible]

1 This motion is made and based upon the following memorandum of points and authorities, the
2 pleadings and papers on file herein and any oral argument of counsel at the time of the hearing.

3 DATED this 20th day of March, 2019.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Joseph A. Gutierrez
7 JOSEPH A. GUTIERREZ, ESQ.
8 Nevada Bar No. 9046
9 JASON R. MAIER, ESQ.
10 Nevada Bar No. 8557
11 8816 Spanish Ridge Avenue
12 Las Vegas, Nevada 89148
13 *Attorneys for Intervenors*

14 **NOTICE OF HEARING ON MOTION**

15 TO: ALL PARTIES AND ATTORNEYS OF RECORD:

16 YOU AND EACH OF YOU will please take notice that the undersigned will bring the
17 foregoing **MOTION TO INTERVENE** on for hearing before the above-entitled Court in Department
18 XI on the _____ day of _____, 2019, at _____ am/pm, or as soon
19 thereafter as counsel may be heard.

20 DATED this 20th day of March, 2019.

21 Respectfully submitted,

22 **MAIER GUTIERREZ & ASSOCIATES**

23 /s/ Joseph A. Gutierrez
24 JOSEPH A. GUTIERREZ, ESQ.
25 Nevada Bar No. 9046
26 JASON R. MAIER, ESQ.
27 Nevada Bar No. 8557
28 8816 Spanish Ridge Avenue
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Attorneys for Intervenors

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs ETW Management Group LLC, Global Harmony LLC, Green Leaf Farms Holdings
4 LLC, Green Therapeutics LLC, Herbal Choice Inc., Just Quality, LLC, Libra Wellness Center, LLC,
5 Rombough Real Estate Inc Dba Mother Herb, Nevcan LLC, Red Earth LLC, The Nevada LLC And
6 Zion Gardens LLC (collectively “Plaintiffs”) initiated this lawsuit against the State of Nevada,
7 Department of Taxation (the “Department”), alleging that the Department’s issuance of conditional
8 licenses to operate recreational marijuana retail stores was done arbitrarily and partially. *See generally*
9 First Amended Complaint (“FAC”). Plaintiffs essentially challenge the Department’s entire process
10 of evaluating and ranking applicants during the application period, and seek to have this Court issue a
11 ruling to that regard. This relief could substantially affect applicants that were awarded the licenses.

12 Defendants collectively were granted fourteen (14) of the conditional licenses issued by the
13 Department on December 5, 2018. Defendants timely seek to intervene in this action pursuant to
14 NRCP 24 and NRS § 12.130 to protect their rights and interests as the owners of these conditional
15 licenses.

16 Attached as **Exhibit A** is Defendants’ Proposed Answer to Plaintiffs’ First Amended
17 Complaint. Defendants expressly reserve their right to amend their Answer to include counterclaims,
18 should this Court allow Defendants to intervene.

19 **II. FACTUAL BACKGROUND**

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

23 The Department was to adopt regulations necessary to carry out the Act, including regulations
24 that set forth the “[p]rocedures for the issuance, renewal, suspension, and revocation of a license to
25 operate a marijuana establishment” and “[q]ualifications for licensure that are directly and
26 demonstrably related to the operation of a marijuana establishment.” Nev. Rev. Stat. §
27 453D.200(1)(a)-(b). On January 16, 2018, the Nevada Tax Commission unanimously approved
28

1 permanent regulations (“Approved Regulations”). LCB File No. R092-17. The Approved
2 Regulations went into effect on February 27, 2018.

3 Thereafter, on August 16, 2018, the Department issued a Notice of Intent to Accept
4 Applications (“Notice”) for sixty-four (64) recreational marijuana retail store licenses, which are to be
5 located throughout various jurisdictions in Nevada. The Notice required that all applications be
6 submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September 20, 2018.

7 Pursuant to section 80 of the Approved Regulations, if the Department received more than one
8 complete and qualified application for a license the Department would rank all applications within
9 each jurisdiction from first to last based on compliance with NRS § 453D and the Approved
10 Regulations. R092-17, Sec. 80. The Department is then required to go down the list and issue the
11 highest scoring applicants the available licenses. *Id.*

12 On December 5, 2018, the Department issued sixty-one (61) recreational marijuana retail store
13 conditional licenses, including 10 licenses for Unincorporated Clark County, Nevada; 10 licenses for
14 Las Vegas, Nevada; 6 licenses for Henderson, Nevada; 5 licenses for North Las Vegas, Nevada; 6
15 licenses for Reno, Nevada; 1 license for Sparks, Nevada; and 1 license for Nye County, Nevada.
16 Defendants collectively were granted fourteen (14) of these conditional licenses.

17 Under their conditional licenses, Defendants have twelve (12) months to receive a final
18 inspection for a marijuana establishment. R092-17, Sec. 87. If a marijuana establishment does not
19 receive a final inspection within twelve (12) months, the marijuana establishment must surrender the
20 license to the Department. *Id.* The Department may extend the period specified in this subsection if
21 the Department, in its discretion, determines that extenuating circumstances prevented the marijuana
22 establishment from receiving a final inspection within the period specified in this subsection. *Id.*

23 On January 4, 2019, Plaintiffs, with the exception of Green Therapeutics LLC, filed their
24 Complaint against the Department, and on February 8, 2019, the FAC was filed naming Green
25 Therapeutics LLC as an additional plaintiff. Plaintiffs allege that the Department’s review and scoring
26 of applicants’ applications for the recreational marijuana licenses was done “errantly, arbitrarily,
27 irrationally, and partially.” (FAC at ¶ 45).

28 The FAC contains numerous claims for relief, including:

- Claims for violation of substantive due process, procedural due process and equal protection, each of which is alleged to have rendered the Department's denial of Plaintiffs' license applications improper, warranting compensatory damages. (*See generally id.* at ¶¶ 50-84);
- A claim for Declaratory Relief, seeking a judicial declaration that (1) the factors for ranking do not comply with NRS 453D.210(6), (2) the Department applied the factors for ranking of applicants in an arbitrary and irrational matter, (3) the Department violated Section 80(5) of the Regulations by issuing multiple retail marijuana licenses to same entity or group of entities, and (4) the denial notices did not comply with 453D.210(4)(b). (*See generally id.* at ¶¶ 86-96);

Given the nature of the relief sought by Plaintiffs, a disposition of this case, could irrefutably impair Defendants' unique legal interests in their conditional licenses. As such, Defendants wish to intervene in this action.

III. LEGAL ARGUMENT

A. LEGAL STANDARD

Pursuant to NRS § 12.130, any person "[b]efore the trial, [...] may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both." Nev. Rev. Stat. § 12.130(1)(a). "Intervention is made as provided by the Nevada Rules of Civil Procedure." Nev. Rev. Stat. § 12.130(c).

In furtherance, NRCP § 24(a)(2) governs non-statutory intervention of right and states that upon timely intervention "the court must permit anyone to intervene who ... claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Nev. R. Civ. P. § 24(a)(2). NRCP § 24(b)(1)(B) governs permissive intervention and allows for intervention when an applicant "has a claim or defense that shares with the main action a common question of law or fact." Nev. R. Civ. P. § 24(b)(1)(B).

B. DEFENDANTS SHOULD BE PERMITTED TO INTERVENE PURSUANT TO INTERVENTION OF RIGHT

The Supreme Court of Nevada has imposed four requirements on an application seeking to intervene in an action: (1) the application must be timely; (2) the applicant must claim a sufficient interest relating to the property or transaction which is the subject of the action; (3) the applicant must

1 be so situated that the disposition of the action may as a practical matter impair or impede its ability
2 to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties
3 to the action. *See American Home Assurance Corp. v. Eighth Judicial District Ct. ex rel. County of*
4 *Clark*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006) ¹. Determining whether an applicant has
5 met these four requirements is within the district court's sound discretion. *Am. Home Assur. Co.*, 122
6 Nev. at 1126.

7 However, when evaluating whether the requirements for intervention of right are met, a court
8 generally follows practical and equitable considerations and construes the governing rule broadly in
9 favor of proposed intervenors. *Wilderness Soc'y v. U.S. Forest Service*, 630 F.3d 1173, 1179 (9th Cir.
10 2011) (*en banc*) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002)).
11 This is because "[a] liberal policy in favor of intervention serves both efficient resolution of issues
12 and broadened access to the Courts." *Wilderness Soc'y*, 630 F.3d 1173 (quoting *City of Los Angeles*,
13 288 F.3d at 397-98).

14 *I. Defendants Application to Intervene is Timely*

15 First, Defendants filed their motion to intervene in a timely manner. The Supreme Court of
16 Nevada has held that when determining the timeliness of an application to intervene "[t]he most
17 important question to be resolved [...] is not the length of the delay by the intervenor but the extent of
18 prejudice to the rights of existing parties resulting from the delay." *See Dangberg Holdings Nevada,*
19 *L.L.C. v. Douglas Cty. & its Bd. of Cty. Commr's*, 115 Nev. 129, 141, 978 P.2d 311, 318 (1999); *see*
20 *also American Home Assurance Corp.*, 122 Nev. at 1244, n.49 and n.50 (citations omitted).

21 Here, intervention by Defendants will not cause prejudice to the Plaintiffs nor the Department.
22 Namely because this case is in the early stages of litigation. *See Citizens for Balanced Use v. Montana*
23 *Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (where the Court found the parties would not have
24 suffered prejudice from the grant of intervention at the early stage of litigation).

25
26
27 ¹ Federal decisions involving the federal civil procedure rules are persuasive authority when this court
28 examines its equivalent rules. *See Executive Mgmt. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d
872, 876 (2002). The 2019 amendment specifically conform NRCP 24 to its Federal counterpart,
FRCP 24. *See Nev. R. Civ. P. 24* (advisory committee note on the 2019 amendment).

1 Indeed, Plaintiffs filed the Amended Complaint on February 8, 2019 and the Department has
2 yet to file an answer or responsive pleading. In *Citizens for Balanced Use*, the Ninth Circuit found
3 that a motion filed less than three months after the complaint was filed and less than two weeks after
4 the first filing of an answer to the complaint was timely. *Id.* The Court reasoned that an intervention
5 so early in the litigation would not cause disruption or delay in the proceedings. *Id.* These are
6 traditional features of a timely motion. *See Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 836
7 (9th Cir.1996). Similarly, here, there will be no delay resulting from Defendants' intervention.

8 In contrast, Defendants would be significantly prejudiced if they are precluded from
9 intervening. Defendants hold the interest to fourteen (14) of the conditional licenses issued by the
10 Department. Through this action, Plaintiffs are attempting to undermine the rights of Defendants to
11 their conditional licenses by claiming that the Department arbitrarily and partially awarded them.
12 Because Defendants may be gravely prejudiced if not permitted to intervene and Plaintiffs would not
13 suffer any prejudice, this Court should find that Defendants' request to intervene is timely.

14 *2. Defendants Have a Sufficient Interest in the Litigation's Subject Matter*

15 Second, Defendants have a sufficient interest in the litigation's subject matter. While there is
16 no "bright-line" test to determine if a sufficient interest exists, the Supreme Court of Nevada has held
17 that an applicant must make a showing of a "significant protectable interest." *See Am. Home Assur.*
18 *Co.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1127 (2006). Whether a proposed intervenor has a
19 significant protectable interest is a "practical, threshold inquiry," and the party seeking intervention
20 need not establish any "specific legal or equitable interest." *Citizens for Balanced Use v. Montana*
21 *Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (internal quotations omitted) (quoting *Nw. Forest*
22 *Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996)). To meet its burden, a proposed intervenor
23 "must establish that the interest is protectable under some law and that there is a relationship between
24 the legally protected interest and the claims at issue." *Id.* The question of whether there is a significant
25 protectable interest does not turn on "technical distinctions." *California v. United States*, 450 F.3d
26 436, 441 (9th Cir. 2006). Instead, courts "have taken the view that a party has a sufficient interest for
27 intervention purposes if it will suffer a practical impairment of its interests as a result of the pending
28 litigation." *See id.*

1 Here, Defendants have a sufficient interest in the subject matter of this action – the conditional
2 licenses issued by the Department to operate recreational marijuana retail stores. Defendants were
3 issued fourteen (14) of the licenses by the Department. Plaintiffs, through this lawsuit, are essentially
4 attempting to have this Court determine that the Department’s application process was improper,
5 which could impair Defendants interest in their conditional licenses.

6 Plaintiffs may argue that because they only seek monetary damages and declaratory relief,
7 Defendants do not have a substantial interest in the litigation. This argument, however, lacks merit.
8 The crux of Plaintiffs’ allegations are that the Department improperly issued the licenses, which
9 necessarily implicates that the applicants awarded the licenses should not have received them. As
10 such, any ruling by this Court that the process was done improperly could affect a licensees’ interest
11 in their license. Accordingly, Defendants have a significant protectable interest in this action.

12 *3. The Disposition of this Action May Impair or Impeded Defendants’ Ability to*
13 *Protect Their Interests*

14 Third, the disposition of this action, as a practical matter, may impair or impede Defendants’
15 ability to protect their interest. Once a significant protectable interest is established, courts look to
16 whether the proposed intervenor’s ability to protect that interest would be “impair[ed] or impede[ed]”
17 by “the disposition of the action.” *Citizens for Balanced Use*, 647 F.3d at 897 (citation omitted). “If
18 an absentee would be substantially affected in a practical sense by the determination made in an action,
19 [it] should, as a general rule, be entitled to intervene....” *Id.* at 898 (quoting Fed R. Civ. P. 24 advisory
20 committee's note).

21 Here, the claims made by Plaintiffs in this action are an attempt to manufacture a dispute in
22 the hope of undermining the application process. This could substantially effect the rights of
23 Defendants and other successful applicants. Indeed, Plaintiffs have asserted allegations that the
24 Department arbitrarily and partially awarded the licenses, and therefore, must enter a declaratory
25 judgment in that regards. This relief, if granted, could necessarily harm the applicants who were
26 awarded a license. Accordingly, Defendants’ interests may be impaired by the disposition of this case,
27 as they risk losing their conditional licenses.

28 ///

1 4. *Defendants Interests May Not be Adequately Represented*

2 Fourth, Defendants interests may not be adequately represented should this Court deny them
3 intervention. Generally, “[t]he burden of showing inadequacy of representation is minimal and
4 satisfied if the [party seeking intervention] can demonstrate that representation of its interests may be
5 inadequate.” *Citizens for Balanced Use*, 647 F.3d at 898 (internal quotation omitted); *see also*
6 *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10, 92 S.Ct. 630, 636 n. 10, 30 L.Ed.2d 686
7 (1972) (holding that the requirement of inadequate representation is satisfied if the applicant shows
8 that representation “may be” inadequate). In making this determination, courts examine three factors:
9 (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed
10 intervenor’s arguments; (2) whether the present party is capable and willing to make such arguments;
11 and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other
12 parties would neglect. *Citizens for Balanced Use*, 647 F.3d at 898 (quoting *Arakaki v. Cayetano*, 324
13 F.3d 1078, 1086 (9th Cir. 2003)).

14 “The most important factor in assessing the adequacy of representation is how
15 the interest compares with the interests of existing parties.” *Citizens for Balanced Use*, 647 F.3d at
16 898 (internal quotation and citation omitted). Where a proposed intervenor and an existing party
17 “share the same ultimate objective, a presumption of adequacy of representation arises.” *Citizens for*
18 *Balanced Use*, 647 F.3d at 898 (citation omitted). A presumption of adequacy “must be rebutted with
19 a compelling showing.” *Id.* (citation omitted).

20 Here, Defendants’ interests would not be adequately represented by the Department.
21 Specifically, the Department will presumably defend its application evaluation process by showing
22 that it complied with NRS Chapter 453D and the Approved Regulations throughout the application
23 process. Plaintiffs will have to prove that the Department did not. In order to do this Plaintiffs will
24 necessarily have to show that applicants were ranked improperly, including Defendants. As such,
25 Defendants will need to defend their applications against all other applicants, including Plaintiffs.

26 Moreover, this case is one of many currently being litigated concerning these conditional
27 licenses. Although Plaintiffs in this case will assert that they do not want the same thing as the
28 plaintiffs in other cases, as they are only requesting monetary damages and not a license, this is

1 unfounded. Plaintiffs ultimately want to upset the entire process to have another bite of the apple to
2 a license. Defendants' should be entitled to assert defenses and arguments to protect their interests in
3 their conditional licenses. Accordingly, Defendants have met their minimal burden of showing that
4 their interests may not adequately represented.

5 **C. DEFENDANTS SHOULD BE PERMITTED TO INTERVENE PURSUANT TO PERMISSIVE**
6 **INTERVENTION**

7 Even if this Court were to find that Defendants cannot establish intervention as right,
8 Defendants may still intervene pursuant to NRCP 24(b), which governs permissive intervention.
9 Permissive intervention is available when the motion is timely and "the applicant's claim or defense,
10 and the main action, have a question of law or a question of fact in common." Nev. R. Civ. P.
11 24(b)(1)(B). "In exercising its discretion" on this issue, "the court must consider whether the
12 intervention will unduly delay or prejudice the adjudication of the original parties' rights." Nev. R.
13 Civ. P. 24(b)(3).

14 Here, as discussed above, Defendants' motion to intervene is timely and will not prejudice any
15 of the parties in the case. Additionally, Defendants' defense, and anticipated counterclaims, present a
16 common question of law and question of fact with the main action.

17 Moreover, allowing Defendants to intervene in this suit will not unduly delay or prejudice the
18 adjudication of the current parties' rights. If anything, allowing intervention will promote judicial
19 economy and spare the parties from needing to litigate a similar case in another district. *See Dangberg*
20 *Holdings Nevada, L.L.C.*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999) (where the court found
21 "bringing all of the parties together in one proceeding before one tribunal will foster the principles of
22 judicial economy and finality"); *see also Venegas v. Skaggs*, 867 F.2d 527, 531 (9th Cir. 1989) (noting
23 that "judicial economy is a relevant consideration in deciding a motion for permissive
24 intervention"), *aff'd sub nom. Venegas v. Mitchell*, 495 U.S. 82, 87, 110 S.Ct. 1679, 109 L.Ed.2d 74
25 (1990). Accordingly, this Court should grant Defendants' Motion to Intervene.

26 **IV. CONCLUSION**

27 Based upon the foregoing, Defendants respectfully request that this Honorable Court grant the
28 instant motion and allow INTEGRAL ASSOCIATES LLC, d/b/a ESSENCE CANNABIS

1 DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC, CPCM
2 HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, COMMERCE PARK MEDICAL,
3 LLC, and CHEYENNE MEDICAL, LLC to intervene as Defendants in this action. A proposed Order
4 Granting the Motion to Intervene is attached as **Exhibit B**.

5 DATED this 20th day of March, 2019.

6 Respectfully submitted,

7 **MAIER GUTIERREZ & ASSOCIATES**

8
9 /s/ Joseph A. Gutierrez

10 JOSEPH A. GUTIERREZ, ESQ.

11 Nevada Bar No. 9046

12 JASON R. MAIER, ESQ.

13 Nevada Bar No. 8557

14 8816 Spanish Ridge Avenue

15 Las Vegas, Nevada 89148

16 *Attorneys for Intervenors*
17
18
19
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **MOTION TO INTERVENE AS**
3 **DEFENDANTS** was electronically filed on the 20th day of March, 2019 and served through the
4 Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed
5 on the Court's Master Service List and by depositing a true and correct copy of the same, enclosed in
6 a sealed envelope upon which first class postage was fully prepaid, in the U.S. Mail at Las Vegas,
7 Nevada, addressed as follows (*Note: All Parties Not Registered Pursuant to Administrative Order*
8 *14-2 Have Been Served By Mail.*):

9
10 Adam K. Bult, Esq.
11 Maximilien D. Fetaz, Esq.
12 Travis F. Chance, Esq.
13 BROWNSTEIN HYATT FARBER SCHRECK, LLP
14 100 North City Parkway, Suite 1600
15 Las Vegas, NV 89106
16 *Attorneys for Plaintiffs*

17 Adam R. Fulton, Esq.
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19 2580 Sorrel Street
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21 *Attorneys for Plaintiffs*

22 David R. Koch, Esq.
23 Steven B. Scow, Esq.
24 Brody R. Wright, Esq.
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28 Henderson, NV 89052
Attorneys for Intervenor Nevada Organic Remedies, LLC

29 /s/ Brandon Lopipero
30 An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT “A”

1 **ANSC**

JASON R. MAIER, ESQ.

2 Nevada Bar No. 8557

JOSEPH A. GUTIERREZ, ESQ.

3 Nevada Bar No. 9046

4 **MAIER GUTIERREZ & ASSOCIATES**

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8 *Attorneys for Defendants Integral Associates LLC*

9 *d/b/a Essence Cannabis Dispensaries, Essence*

Tropicana, LLC, Essence Henderson, LLC,

10 *CPCM Holdings, LLC d/b/a Thrive Cannabis*

11 *Marketplace, Commerce Park Medical, LLC,*

and Cheyenne Medical, LLC

12
13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 ETW MANAGEMENT GROUP LLC, a
16 Nevada limited liability company; GLOBAL
HARMONY LLC, a Nevada limited liability
17 company; GREEN LEAF FARMS HOLDINGS
LLC, a Nevada limited liability company;
18 GREEN THERAPEUTICS LLC, a Nevada
limited liability company; HERBAL CHOICE
19 INC., a Nevada corporation; JUST QUALITY,
LLC, a Nevada limited liability company;
20 LIBRA WELLNESS CENTER, LLC, a Nevada
limited liability company; ROMOUGH REAL
21 ESTATE INC. dba MOTHER HERB, a Nevada
Corporation; NEVCANN LLC, a Nevada
22 limited liability company; RED EARTH LLC, a
Nevada limited liability company; THC
23 NEVADA LLC, a Nevada limited liability
company; and ZION GARDENS LLC, a
24 Nevada limited liability company,

25 Plaintiffs,

26 vs.

27 STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative agency;
DOES 1 through 20, inclusive; and ROE
28 CORPORATIONS 1 through 20. Inclusive.

Case No. : A-19-787004-B

Dept. No.: XI

**DEFENDANTS' [PROPOSED] ANSWER
TO PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Defendants.

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 in Intervention.

Defendants in Intervention INTEGRAL ASSOCIATES LLC, d/b/a ESSENCE CANNABIS
DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC, CPCM
HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, and COMMERCE PARK
MEDICAL, LLC, CHEYENNE MEDICAL, LLC (collectively “Defendants”), by and through their
attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby answers the First Amended
Complaint filed by 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 and ZION
GARDENS LLC (collectively “Plaintiffs”), as follows:

Defendants deny each and every allegation in the First Amended Complaint except those
allegations which are hereinafter admitted, qualified, or otherwise answered.

PARTIES

1. Answering paragraph 1 of the First Amended Complaint, Defendants are without
sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
on that basis deny these allegation.

2. Answering paragraph 2 of the First Amended Complaint, Defendants are without
sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
on that basis deny these allegation.

1 3. Answering paragraph 3 of the First Amended Complaint, Defendants are without
2 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
3 on that basis deny these allegation.

4 4. Answering paragraph 4 of the First Amended Complaint, Defendants are without
5 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
6 on that basis deny these allegation.

7 5. Answering paragraph 5 of the First Amended Complaint, Defendants are without
8 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
9 on that basis deny these allegation.

10 6. Answering paragraph 6 of the First Amended Complaint, Defendants are without
11 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
12 on that basis deny these allegation.

13 7. Answering paragraph 7 of the First Amended Complaint, Defendants are without
14 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
15 on that basis deny these allegation.

16 8. Answering paragraph 8 of the First Amended Complaint, Defendants are without
17 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis deny these allegation.

19 9. Answering paragraph 9 of the First Amended Complaint, Defendants are without
20 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
21 on that basis deny these allegation.

22 10. Answering paragraph 10 of the First Amended Complaint, Defendants are without
23 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
24 on that basis deny these allegation.

25 11. Answering paragraph 11 of the First Amended Complaint, Defendants are without
26 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
27 on that basis deny these allegation.

28 12. Answering paragraph 12 of the First Amended Complaint, Defendants are without

1 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
2 on that basis deny these allegation.

3 13. Answering paragraph 13 of the First Amended Complaint, Defendants are without
4 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
5 on that basis deny these allegation.

6 14. Answering paragraph 14 of the First Amended Complaint, Defendants are without
7 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
8 on that basis deny these allegation.

9 **JURISDICTION AND VENUE**

10 15. Answering paragraph 15 of the First Amended Complaint, no response is required as
11 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
12 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
13 contained therein, and on that basis deny these allegations.

14 16. Answering paragraph 16 of the First Amended Complaint, no response is required as
15 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
16 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
17 contained therein, and on that basis deny these allegations.

18 **GENERAL ALLEGATIONS**

19 17. Answering paragraph 17 of the First Amended Complaint, Defendants repeat and
20 reallege their answers to paragraphs 1 through 16 above, and incorporates the same herein by reference
21 as though fully set forth herein.

22 ***The Statutory Scheme Governing Retail Marijuana Licenses***

23 18. Answering paragraph 18 of the First Amended Complaint, Defendants admit these
24 allegations.

25 19. Answering paragraph 19 of the First Amended Complaint, Defendants admit these
26 allegations.

27 20. Answering paragraph 20 of the First Amended Complaint, no response is required as
28 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content

1 of laws or regulations. To the extent a response is required and the allegations accurately state the
2 laws or regulations referenced therein, Defendants admit these allegations.

3 21. Answering paragraph 21 of the First Amended Complaint, no response is required as
4 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
5 of laws or regulations. To the extent a response is required and the allegations accurately state the
6 laws or regulations referenced therein, Defendants admit these allegations.

7 22. Answering paragraph 22 of the First Amended Complaint, no response is required as
8 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
9 of laws or regulations. To the extent a response is required and the allegations accurately state the
10 laws or regulations referenced therein, Defendants admit these allegations.

11 23. Answering paragraph 23 of the First Amended Complaint, no response is required as
12 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
13 of laws or regulations. To the extent a response is required and the allegations accurately state the
14 laws or regulations referenced therein, Defendants admit these allegations.

15 ***The DOT's Adoption of Flawed Regulations that Do Not Comply with Chapter 453D***

16 24. Answering paragraph 24 of the First Amended Complaint, Defendants are without
17 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis deny these allegation.

19 25. Answering paragraph 25 of the First Amended Complaint, Defendants are without
20 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
21 on that basis deny these allegation.

22 26. Answering paragraph 26 of the First Amended Complaint, Defendants are without
23 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
24 on that basis deny these allegation.

25 27. Answering paragraph 27 of the First Amended Complaint, Defendants are without
26 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
27 on that basis deny these allegation.

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1 28. Answering paragraph 28 of the First Amended Complaint, Defendants are without
2 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
3 on that basis deny these allegation.

4 29. Answering paragraph 29 of the First Amended Complaint, Defendants are without
5 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
6 on that basis deny these allegation.

7 30. Answering paragraph 30 of the First Amended Complaint, no response is required as
8 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
9 of laws or regulations. To the extent a response is required and the allegations accurately state the
10 laws or regulations referenced therein, Defendants admit these allegations.

11 31. Answering paragraph 31 of the First Amended Complaint, no response is required as
12 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
13 of laws or regulations. To the extent a response is required and the allegations accurately state the
14 laws or regulations referenced therein, Defendants admit these allegations.

15 32. Answering paragraph 32(a)-(i) of the First Amended Complaint, no response is
16 required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding
17 the content of laws or regulations. To the extent a response is required and the allegations accurately
18 state the laws or regulations referenced therein, Defendants admit these allegations.

19 33. Answering paragraph 33 of the First Amended Complaint, Defendants are without
20 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
21 on that basis deny these allegation.

22 34. Answering paragraph 34 of the First Amended Complaint, no response is required as
23 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
24 of laws or regulations. To the extent a response is required and the allegations accurately state the
25 laws or regulations referenced therein, Defendants admit these allegations.

26 35. Answering paragraph 35 of the First Amended Complaint, no response is required as
27 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
28 of laws or regulations. To the extent a response is required and the allegations accurately state the

1 laws or regulations referenced therein, Defendants admit these allegations.

2 ***Plaintiffs Receive Arbitrary Denials of their Applications for Retail Marijuana Licenses***

3 36. Answering paragraph 36 of the First Amended Complaint, no response is required as
4 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
5 of laws or regulations. To the extent a response is required and the allegations accurately state the
6 laws or regulations referenced therein, Defendants admit these allegations.

7 37. Answering paragraph 37 of the First Amended Complaint, Defendants are without
8 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
9 on that basis deny these allegation.

10 38. Answering paragraph 38 of the First Amended Complaint, Defendants are without
11 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
12 on that basis deny these allegation.

13 39. Answering paragraph 39 of the First Amended Complaint, Defendants are without
14 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
15 on that basis deny these allegation.

16 40. Answering paragraph 40 of the First Amended Complaint, Defendants are without
17 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis deny these allegation.

19 41. Answering paragraph 41 of the First Amended Complaint, Defendants are without
20 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
21 on that basis deny these allegation.

22 42. Answering paragraph 42 of the First Amended Complaint, Defendants are without
23 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
24 on that basis deny these allegation.

25 43. Answering paragraph 43 of the First Amended Complaint, Defendants are without
26 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
27 on that basis deny these allegation.

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1 44. Answering paragraph 44 of the First Amended Complaint, Defendants are without
2 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
3 on that basis deny these allegation.

4 45. Answering paragraph 45(a)-(d) of the First Amended Complaint, no response is
5 required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response
6 is required, Defendants deny these allegations.

7 46. Answering paragraph 46 of the First Amended Complaint, no response is required as
8 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
9 Defendants deny these allegations.

10 47. Answering paragraph 47 of the First Amended Complaint, no response is required as
11 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
12 Defendants deny these allegations.

13 48. Answering paragraph 48 of the First Amended Complaint, no response is required as
14 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
15 Defendants deny these allegations.

16 **FIRST CLAIM FOR RELIEF**

17 **Violation of Substantive Due Process**

18 49. Answering paragraph 49 of the First Amended Complaint, Defendants repeat and
19 reallege their answers to paragraphs 1 through 48 above, and incorporates the same herein by reference
20 as though fully set forth herein.

21 50. Answering paragraph 50 of the First Amended Complaint, no response is required as
22 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
23 of laws or regulations. To the extent a response is required and the allegations accurately state the
24 laws or regulations referenced therein, Defendants admit these allegations.

25 51. Answering paragraph 51 of the First Amended Complaint, no response is required as
26 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
27 of laws or regulations. To the extent a response is required and the allegations accurately state the
28 laws or regulations referenced therein, Defendants admit these allegations.

1 52. Answering paragraph 52 of the First Amended Complaint, no response is required as
2 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
3 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
4 contained therein, and on that basis deny these allegation.

5 53. Answering paragraph 53 of the First Amended Complaint, no response is required as
6 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
7 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
8 contained therein, and on that basis deny these allegation.

9 54. Answering paragraph 54 of the First Amended Complaint, Defendants are without
10 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
11 on that basis deny these allegation.

12 55. Answering paragraph 55 of the First Amended Complaint, no response is required as
13 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
14 Defendants deny these allegations.

15 56. Answering paragraph 56 of the First Amended Complaint, no response is required as
16 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
17 extent a response is required, Defendants deny these allegations.

18 57. Answering paragraph 57(a)-(f) of the First Amended Complaint, no response is
19 required as the allegations contained therein are not factual in nature and/or contain legal conclusions.
20 To the extent a response is required, Defendants deny these allegations.

21 58. Answering paragraph 58 of the First Amended Complaint, no response is required as
22 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
23 extent a response is required, Defendants deny these allegations.

24 59. Answering paragraph 59 of the First Amended Complaint, no response is required as
25 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
26 extent a response is required, Defendants deny these allegations.

27 60. Answering paragraph 60 of the First Amended Complaint, no response is required as
28 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the

1 extent a response is required, Defendants deny these allegations.

2 **SECOND CLAIM FOR RELIEF**

3 **Violation of Procedural Due Process**

4 61. Answering paragraph 61 of the First Amended Complaint, Defendants repeat and
5 reallege their answers to paragraphs 1 through 60 above, and incorporates the same herein by reference
6 as though fully set forth herein.

7 62. Answering paragraph 62 of the First Amended Complaint, no response is required as
8 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
9 of laws or regulations. To the extent a response is required and the allegations accurately state the
10 laws or regulations referenced therein, Defendants admit these allegations.

11 63. Answering paragraph 63 of the First Amended Complaint, no response is required as
12 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
13 of laws or regulations. To the extent a response is required and the allegations accurately state the
14 laws or regulations referenced therein, Defendants admit these allegations.

15 64. Answering paragraph 64 of the First Amended Complaint, no response is required as
16 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
17 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
18 contained therein, and on that basis deny these allegation.

19 65. Answering paragraph 65 of the First Amended Complaint, no response is required as
20 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
21 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
22 contained therein, and on that basis deny these allegation.

23 66. Answering paragraph 66 of the First Amended Complaint, no response is required as
24 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
25 of laws or regulations. To the extent a response is required and the allegations accurately state the
26 laws or regulations referenced therein, Defendants admit these allegations.

27 67. Answering paragraph 67 of the First Amended Complaint, Defendants are without
28 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and

1 on that basis deny these allegation.

2 68. Answering paragraph 68 of the First Amended Complaint, no response is required as
3 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
4 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
5 contained therein, and on that basis deny these allegation.

6 69. Answering paragraph 69 of the First Amended Complaint, no response is required as
7 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
8 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
9 contained therein, and on that basis deny these allegation.

10 70. Answering paragraph 70 of the First Amended Complaint, no response is required as
11 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
12 extent a response is required, Defendants deny these allegations.

13 71. Answering paragraph 71 of the First Amended Complaint, no response is required as
14 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
15 extent a response is required, Defendants deny these allegations.

16 72. Answering paragraph 72 of the First Amended Complaint, no response is required as
17 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
18 extent a response is required, Defendants deny these allegations.

19 **THIRD CLAIM FOR RELIEF**

20 **Violation of Equal Protection**

21 73. Answering paragraph 73 of the First Amended Complaint, Defendants repeat and
22 reallege their answers to paragraphs 1 through 72 above, and incorporates the same herein by reference
23 as though fully set forth herein.

24 74. Answering paragraph 74 of the First Amended Complaint, no response is required as
25 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
26 of laws or regulations. To the extent a response is required and the allegations accurately state the
27 laws or regulations referenced therein, Defendants admit these allegations.

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1 75. Answering paragraph 75 of the First Amended Complaint, no response is required as
2 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content
3 of laws or regulations. To the extent a response is required and the allegations accurately state the
4 laws or regulations referenced therein, Defendants admit these allegations.

5 76. Answering paragraph 76 of the First Amended Complaint, no response is required as
6 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
7 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
8 contained therein, and on that basis deny these allegation.

9 77. Answering paragraph 77 of the First Amended Complaint, no response is required as
10 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
11 Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations
12 contained therein, and on that basis deny these allegation.

13 78. Answering paragraph 78 of the First Amended Complaint, Defendants are without
14 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
15 on that basis deny these allegation.

16 79. Answering paragraph 79 of the First Amended Complaint, no response is required as
17 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
18 extent a response is required, Defendants deny these allegations.

19 80. Answering paragraph 80 of the First Amended Complaint, no response is required as
20 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
21 extent a response is required, Defendants deny these allegations.

22 81. Answering paragraph 81(a)-(f) of the First Amended Complaint, no response is
23 required as the allegations contained therein are not factual in nature and/or contain legal conclusions.
24 To the extent a response is required, Defendants deny these allegations.

25 82. Answering paragraph 82 of the First Amended Complaint, no response is required as
26 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
27 extent a response is required, Defendants deny these allegations.

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83. Answering paragraph 83 of the First Amended Complaint, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendants deny these allegations.

84. Answering paragraph 84 of the First Amended Complaint, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendants deny these allegations.

FOURTH CLAIM FOR RELIEF

Declaratory Judgment

85. Answering paragraph 85 of the First Amended Complaint, Defendants repeat and reallege their answers to paragraphs 1 through 84 above, and incorporates the same herein by reference as though fully set forth herein.

86. Answering paragraph 86 of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or regulations. To the extent a response is required and the allegations accurately state the laws or regulations referenced therein, Defendants admit these allegations.

87. Answering paragraph 87 of the First Amended Complaint, Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis deny these allegation.

88. Answering paragraph 88 of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or regulations. To the extent a response is required and the allegations accurately state the laws or regulations referenced therein, Defendants admit these allegations.

89. Answering paragraph 89 of the First Amended Complaint, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendants deny these allegations.

90. Answering paragraph 90(a)-(f) of the First Amended Complaint, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendants deny these allegations.

1 91. Answering paragraph 91 of the First Amended Complaint, no response is required as
2 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
3 extent a response is required, Defendants deny these allegations.

4 92. Answering paragraph 92 of the First Amended Complaint, no response is required as
5 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
6 extent a response is required, Defendants deny these allegations.

7 93. Answering paragraph 93 of the First Amended Complaint, no response is required as
8 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
9 extent a response is required, Defendants deny these allegations.

10 94. Answering paragraph 94 of the First Amended Complaint, no response is required as
11 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
12 extent a response is required, Defendants are without sufficient knowledge or information as to the
13 truth or falsity of the allegations contained therein, and on that basis deny these allegation.

14 95. Answering paragraph 95 of the First Amended Complaint, no response is required as
15 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
16 extent a response is required, Defendants deny these allegations.

17 96. Answering paragraph 96 of the First Amended Complaint, no response is required as
18 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
19 extent a response is required, Defendants are without sufficient knowledge or information as to the
20 truth or falsity of the allegations contained therein, and on that basis deny these allegation.

21 **GENERAL DENIAL**

22 To the extent a further response is required to any allegation set forth in the First Amended
23 Complaint, Defendants such allegation. Defendants further object to Plaintiffs’

24 **ANSWER TO PRAYER FOR RELIEF**

25 Answering the allegations contained in the entirety of Plaintiffs prayer for relief, Defendants
26 deny that Plaintiffs are entitled to the relief being sought therein or to any relief in this matter.

27 **AFFIRMATIVE DEFENSES**

28 Defendants, without altering the burdens of proof the parties must bear, assert the following

1 affirmative defenses to Plaintiffs' First Amended Complaint, and all causes of action alleged therein,
2 and specifically incorporates into these affirmative defenses their answers to the preceding paragraphs
3 of the First Amended Complaint as if fully set forth herein.

4 **First Affirmative Defense**

5 Defendants expressly preserve the right to amend this Answer to bring counterclaims against
6 Plaintiffs.

7 **Second Affirmative Defense**

8 The First Amended First Amended Complaint, and all the claims for relief alleged therein,
9 fails to state a claim against Defendants upon which relief can be granted.

10 **Third Affirmative Defense**

11 Plaintiffs have not been damaged directly, indirectly, proximately or in any manner
12 whatsoever by any conduct of Defendants.

13 **Fourth Affirmative Defense**

14 The State of Nevada, Department of Taxation is immune from suit when performing the
15 functions at issue in this case.

16 **Fifth Affirmative Defense**

17 The actions of the State of Nevada, Department of Taxation were all official acts that were
18 done in compliance with applicable laws and regulations.

19 **Sixth Affirmative Defense**

20 Plaintiffs' claims are barred because Plaintiffs have failed to exhaust administrative remedies,
21 if any.

22 **Seventh Affirmative Defense**

23 Plaintiffs have failed to join necessary and indispensable parties to this litigation under NRCP
24 19 as the Court cannot grant any of Plaintiffs' claims without affecting the rights and privileges of
25 those parties who received the licenses at issue as well as other third parties.

26 **Eighth Affirmative Defense**

27 The occurrences referred to in the First Amended First Amended Complaint and all alleged
28 damages, if any, resulting therefrom, were caused by a third party of which Defendants had no control.

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Ninth Affirmative Defense

The actions of the State of Nevada, Department of Taxation were not arbitrary or capricious, and the State of Nevada, Department of Taxation had a rational basis for all of the actions taken in the licensing process at issue.

Tenth Affirmative Defense

Plaintiffs’ claims are barred, in whole or in part, by their failure to perform or satisfy required conditions precedent and by their own bad acts.

Eleventh Affirmative Defense

Plaintiffs are not in possession and/or control of the documents and/or witnesses necessary to prove its alleged causes of action against Defendants.

Twelfth Affirmative Defense

The claims, and each of them, are barred by the failure of Plaintiffs to plead those claims with sufficient particularity.

Fourteenth Affirmative Defense

Plaintiffs have failed to allege sufficient facts and cannot carry the burden of proof imposed on it by law to recover attorney’s fees incurred to bring this action.

Fifteenth Affirmative Defense

Injunctive relief is unavailable to Plaintiffs, because the State of Nevada, Department of Taxation has already completed the tasks of issuing the conditional licenses.

Sixteenth Affirmative Defense

Plaintiffs have no constitutional rights to obtain privileged licenses.

Seventeenth Affirmative Defense

Mandamus is not available to compel the members of the executive branch to perform non-ministerial, discretionary tasks.

Eighteenth Affirmative Defense

Plaintiffs are not entitled to Judicial Review on the denial of a license.

Nineteenth Affirmative Defense

Declaratory relief will not give the Plaintiffs the relief that they are seeking.

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Twentieth Affirmative Defense

Pursuant to Nevada Rules of Civil Procedure, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this answer and, therefore, Defendants reserve the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, Defendants prays for judgment as follows:

1. Plaintiffs take nothing by way of their First Amended Complaint;
2. The First Amended Complaint, and all causes of action against Defendants alleged therein, be dismissed with prejudice;
3. For reasonable attorney fees and costs to be awarded to Defendants; and
4. For such other and further relief the Court may deem just and proper.

Dated this ____ day of March, 2019.

Respectfully submitted,
MAIER GUTIERREZ & ASSOCIATES

JASON R. MAIER, ESQ.
Nevada Bar No. 8557
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **DEFENDANTS' [PROPOSED]**
3 **ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT** was electronically filed on the
4 ____ day of March, 2019 and served through the Notice of Electronic Filing automatically generated
5 by the Court's facilities to those parties listed on the Court's Master Service List and by depositing
6 a true and correct copy of the same, enclosed in a sealed envelope upon which first class postage was
7 fully prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed as follows (*Note: All Parties Not*
8 *Registered Pursuant to Administrative Order 14-2 Have Been Served By Mail.*):

9
10 Adam K. Bult, Esq.
11 Maximilien D. Fetaz, Esq.
12 Travis F. Chance, Esq.
13 BROWNSTEIN HYATT FARBER SCHRECK, LLP
14 100 North City Parkway, Suite 1600
15 Las Vegas, NV 89106
16 Attorneys for Plaintiffs

17 Adam R. Fulton, Esq.
18 JENNINGS & FULTON, LTD.
19 2580 Sorrel Street
20 Las Vegas, NV 89146
21 Attorneys for Plaintiffs

22 David R. Koch, Esq.
23 Steven B. Scow, Esq.
24 Brody R. Wright, Esq.
25 Daniel G. Scow, Esq.
26 KOCH & SCOW LLC
27 11500 S. Eastern Ave, Suite 210
28 Henderson, NV 89052
Attorneys for Intervenor Nevada Organic Remedies, LLC

24 /s/
25 An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT “B”

1 **ORDR**

2 JASON R. MAIER, ESQ.

3 Nevada Bar No. 8557

4 JOSEPH A. GUTIERREZ, ESQ.

5 Nevada Bar No. 9046

6 **MAIER GUTIERREZ & ASSOCIATES**

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13 *Attorneys for Defendants in Intervention,*

14 *Integral Associates LLC, d/b/a Essence Cannabis Dispensaries,*

15 *Essence Tropicana, LLC, Essence Henderson, LLC,*

16 *CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace,*

17 *Commerce Park Medical, LLC, and Cheyenne Medical, LLC*

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 ETW MANAGEMENT GROUP LLC, a
21 Nevada limited liability company; GLOBAL
22 HARMONY LLC, a Nevada limited liability
23 company; GREEN LEAF FARMS HOLDINGS
24 LLC, a Nevada limited liability company;
25 HERBAL CHOICE INC., a Nevada
26 corporation; JUST QUALITY, LLC, a Nevada
27 limited liability company; LIBRA WELLNESS
28 CENTER, LLC, a Nevada limited liability
company; MOTHER HERB, INC., a Nevada
corporation; NEVCANN LLC, a Nevada limited
liability company; RED EARTH LLC, a Nevada
limited liability company; THC NEVADA LLC,
a Nevada limited liability company; and ZION
GARDENS LLC, a Nevada limited liability
company,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative agency;
DOES 1 through 20, inclusive; and ROE
CORPORATIONS 1 through 20. Inclusive,

Defendants.

Case No. : A-19-787004-B

Dept. No.: XI

**[PROPOSED] ORDER GRANTING
MOTION TO INTERVENE**

1
2 INTEGRAL ASSOCIATES LLC, d/b/a
3 ESSENCE CANNABIS DISPENSARIES, a
4 Nevada limited liability company; ESSENCE
5 TROPICANA, LLC, a Nevada limited liability
6 company; ESSENCE HENDERSON, LLC, a
7 Nevada limited liability company; CPCM
8 HOLDINGS, LLC d/b/a THRIVE CANNABIS
9 MARKETPLACE, COMMERCE PARK
10 MEDICAL, LLC, a Nevada limited liability
11 company; and CHEYENNE MEDICAL, LLC, a
12 Nevada limited liability company.

13
14 Defendants in Intervention.

15 The Court, having reviewed the Intervenor's Motion to Intervene, and good cause appearing,

16 IT IS HEREBY ORDERED:

17 Intervenor's Motion to Intervene is granted, and Integral Associates, LLC d/b/a Essence
18 Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC, CPCM Holdings, LLC
19 d/b/a Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and Cheyenne Medical, LLC
20 shall intervene as a Defendant in the above-captioned case as a necessary party to the action pursuant
21 to NRCP 24 and NRS 12.130. The proposed answer attached to the Motion to Intervene as Exhibit A
22 shall be filed in this case.

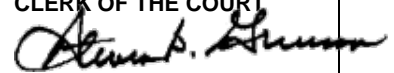
23 DATED this ____ day of March, 2019.

24
25 _____
26 DISTRICT COURT JUDGE

27 Respectfully submitted by:

28 **MAIER GUTIERREZ & ASSOCIATES**

29 _____
30 JASON R. MAIER, ESQ.
31 Nevada Bar No. 8557
32 JOSEPH A. GUTIERREZ, ESQ.
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36 *Attorneys for Defendants in Intervention*



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Attorneys for Intervenor
Nevada Organic Remedies, LLC

EIGHTH JUDICIAL 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,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant;

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

NOTICE OF ENTRY OF ORDER

1 NEVADA ORGANIC REMEDIES, LLC

2 Applicant for Intervention

3 PLEASE TAKE NOTICE that an *Order Granting Motion to Intervene* was entered in
4 the above-referenced matter on March 22, 2019, a copy of which is attached hereto.
5

6 KOCH & SCOW, LLC

7 By: /s/ David R. Koch

8 David R. Koch, Esq.

9 Steven B. Scow, Esq.

10 Brody R. Wight, Esq.

11 Daniel G. Scow, Esq.

12 11500 S. Eastern Ave., Suite 210

13 Henderson, Nevada 89052

14 *Attorneys for Intervenor*

15 *Nevada Organic Remedies*
16
17
18
19
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23
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CERTIFICATE OF SERVICE

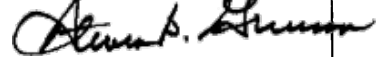
I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on March 22, 2019, I caused the foregoing document entitled: **NOTICE OF ENTRY OF ORDER** to be served as follows:

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

ShaLinda Creer (screer@gcmaslaw.com)
David Koch (dkoch@kochscow.com)
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Daniel Scow (dscow@kochscow.com)
Margaret McLetchie (maggie@nvlitigation.com)
MGA Docketing (docket@mgalaw.com)
Cami Perkins, Esq. (cperkins@nevadafirm.com)

Executed on March 22, 2019 at Henderson, Nevada.

/s/ David R. Koch
David R. Koch



David R. Koch (NV Bar #8830)
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**EIGHTH JUDICIAL 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,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant;

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

**ORDER GRANTING MOTION TO
INTERVENE**

2019-03-22 11:43 AM

1 NEVADA ORGANIC REMEDIES, LLC
2 Applicant for Intervention

no the chambers
calendar on 3/1/19
10

4 The Court, having reviewed the Intervenor's Motion to Intervene, and good cause
5 appearing,

6 IT IS HEREBY ORDERED:

7 Intervenor's Motion to Intervene is granted, and Nevada Organic Remedies shall
8 intervene as a Defendant in the above-captioned case as a necessary party to the action
9 pursuant to NRCP 24 and NRS 12.130. An Answer or other responsive pleading or
10 motion pursuant to the Nevada Rules of Civil Procedure shall be filed with this Court
11 within twenty days of the filing of the notice of this order.

12 DATED this 20 day of March, 2019.

13 
14 DISTRICT COURT JUDGE

15 Respectfully submitted by:
16 KOCH & SCOW LLC

17 
18 David R. Koch (NV Bar #8830)
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8 Attorneys for Intervenor
Lone Mountain Partners, LLC

9 EIGHTH JUDICIAL DISTRICT COURT
10 CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant.

LONE MOUNTAIN PARTNERS, LLC, a Nevada
limited liability partnership,

Applicant in Intervention.

FILE WITH
MASTER CALENDAR

Case No. A-19-786962-B

Dept. No. 11

LONE MOUNTAIN PARTNERS, LLC'S
MOTION TO INTERVENE ON ORDER
SHORTENING TIME

Date: 4/1/19

Time: 9:00 a.m.

007-22-19704:20 RCVD



1 Plaintiffs' Motion for Preliminary Injunction (filed March 19, 2019), which is currently set to be
2 heard by this Court on April 22, 2019 at 9:00 a.m.

3 4. If Lone Mountain filed the instant motion in the ordinary course, Lone Mountain
4 would not have the opportunity to oppose Plaintiffs' Motion for Preliminary Injunction, a motion
5 that requests, amongst other things, for the Court to enjoin Nevada's Department of Taxation
6 ("Department") from enforcing the denial of Plaintiffs' licenses. If permitted to intervene, Lone
7 Mountain will vigorously oppose Plaintiffs' Motion for Preliminary Injunction because eleven of
8 the licenses requested by Plaintiffs belong to Lone Mountain.

9 5. For the foregoing reasons, Lone Mountain respectfully requests that its Motion to
10 Intervene be considered on shortened time.

11 6. I declare under penalty of perjury under the laws of the State of Nevada that the
12 foregoing is true and correct.

13 Executed this 22nd day of March 2019.

14 
ERIC D. HONE

15 **ORDER SHORTENING TIME**

16
17 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

18 Upon motion of counsel and good cause appearing therefor, IT IS HEREBY ORDERED:

19 That the time for hearing Motion to Intervene (the "Motion") is shortened and that the same
20 shall be heard by the Honorable Elizabeth Gonzalez in Dept. 11, RJC Courtroom 03E, at the time
21 specified herein, to wit: the 1 day of April 2019 at the hour of 9 a.m./p.m.

22 IT IS FURTHER ORDERED that Applicant shall immediately serve a copy of said Motion
23 herein on Plaintiffs.

24 
DISTRICT COURT JUDGE
25 Dated: 3/22/19
26
27
28



Moreover, although Plaintiffs did not name Lone Mountain as a defendant, or real party in interest,¹ Plaintiffs have already explicitly challenged the propriety of the Department's award of licenses to Lone Mountain specifically. Indeed, at the hearing held before the Court on February 5, 2019 in this matter, Plaintiffs' counsel asserted that the licenses awarded to Lone Mountain (identified by Plaintiffs' counsel as "Verano," a related entity) demonstrate the flawed licensing process that Plaintiffs seek to challenge and unwind in this suit.

This Court recently permitted the intervention of another conditional license-holder, Nevada Organic Remedies, LLC, on vastly similar grounds as to those present here.² Just like Nevada Organic Remedies, Lone Mountain holds numerous licenses, has a vested interest in this action, and meets the standards of NRS § 12.130(c) and NRCP 24 such that Lone Mountain should be permitted to intervene and protect its valuable interests.

II. STATEMENT OF RELEVANT FACTS

On November 8, 2016, Nevada voters passed the Regulation and Taxation of Marijuana Act (the "Act") (Ballot Question 2). The Act 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). 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

¹ Plaintiffs' failure to name current license holders as real parties in interest is arguably fatal to Plaintiffs' lawsuit. *See* NRS 233B.130(2)(a); *see also Washoe Cnty. v. Otto*, 128 Nev. 424, 432, 282 P.3d 719, 725 (2012); NRCP 19(a).

² Likewise, a motion to intervene filed by five other conditional license was filed on March 19, 2019 and is currently pending on the Court's docket.



1 applications be submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on
2 September 20, 2018.

3 Pursuant to section 80 of the Approved Regulations, if the Department received more
4 than one complete and qualified application for a license the Department would rank all
5 applications within each jurisdiction from first to last based on compliance with NRS § 453D
6 and the Approved Regulations. R092-17, Sec. 80. The Department is then required to go down
7 the list and issue the highest scoring applicants the available licenses. *Id.*

8 On December 5, 2018, the Department issued sixty-one (61) recreational marijuana retail
9 store conditional licenses, including 10 licenses for Unincorporated Clark County, Nevada; 10
10 licenses for Las Vegas, Nevada; 6 licenses for Henderson, Nevada; 5 licenses for North Las
11 Vegas, Nevada; 6 licenses for Reno, Nevada; 1 license for Sparks, Nevada; and 1 license for Nye
12 County, Nevada. Lone Mountain was granted eleven (11) of these conditional licenses.

13 Under their conditional licenses, Lone Mountain has twelve (12) months to receive a final
14 inspection for a marijuana establishment. R092-17, Sec. 87. If a marijuana establishment does
15 not receive a final inspection within twelve (12) months, the marijuana establishment must
16 surrender the license to the Department. *Id.* The Department may extend the period specified in
17 this subsection if the Department, in its discretion, determines that extenuating circumstances
18 prevented the marijuana establishment from receiving a final inspection within the period
19 specified in this subsection. *Id.*

20 On December 10, 2018, Plaintiff MM Development Company, Inc. filed its Complaint
21 for Petition of Judicial Review or Writ of Mandamus against the Department, and on
22 December 18, 2018, the FAC was filed naming Livfree Wellness, LLC as an additional plaintiff.
23 Plaintiffs allege that because they received high scores and were highly ranked in the 2015
24 licensing application process for medical marijuana establishments, the Department must have
25 improperly ranked the applications during the 2018 application process. (FAC at ¶¶ 13, 18-19).

26 The FAC contains numerous claims for relief, including:
27
28



- A claim for Declaratory Relief, seeking, among other things, a judicial declaration that the Department’s ranking of applicants and issuance of conditional licenses was improper, that the denial of Plaintiffs’ license applications was improper and void ab initio, and that the Department must issue Plaintiffs the licenses for which they applied. (*Id.* at ¶¶ 21-31);
- A claim for Injunctive Relief seeking an order requiring the Department to issue Plaintiffs the licenses for which they applied. (*Id.* at ¶¶ 32-38);
- Claims for violation of procedural due process, substantive due process and equal protection, each of which is alleged to have rendered the Department’s denial of Plaintiffs license applications void and unenforceable. (*Id.* at ¶¶ 39-56);
- A Petition for Judicial Review of the Department’s entire process, seeking a determination that the Department’s denial of Plaintiffs’ applications lacked substantial evidence and is void ab initio. (*Id.* at ¶¶ 57-62); and
- A Petition for Writ of Mandamus, alleging that the Department’s denial of Plaintiffs’ applications was arbitrary and capricious in that it lacked substantial evidence and was done “solely to approve other competing applicants without regard to the merit of Plaintiffs’ application,” and seeking an order compelling the Department to “review the application on its merits and/or approve it.” (*Id.* at ¶¶ 63-68).

Given the nature of the relief sought by Plaintiffs, a disposition of this case, will irrefutably impact Lone Mountain’s unique legal interests in its conditional licenses. As such, Lone Mountain respectfully requests to be permitted to intervene in this action.

III. LEGAL ARGUMENT

A. Legal Standard

Pursuant to NRS § 12.130, any person “[b]efore the trial, [...] may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the



1 parties, or an interest against both.” Nev. Rev. Stat. § 12.130(1)(a). “Intervention is made as
2 provided by the Nevada Rules of Civil Procedure.” Nev. Rev. Stat. § 12.130(c).

3 In furtherance, NRCP § 24(a)(2) governs non-statutory intervention of right and states
4 that upon timely intervention “the court must permit anyone to intervene who ... claims an
5 interest relating to the property or transaction that is the subject of the action, and is so situated
6 that disposing of the action may as a practical matter impair or impede the movant’s ability to
7 protect its interest, unless existing parties adequately represent that interest.” Nev. R. Civ. P.
8 § 24(a)(2). NRCP § 24(b)(1)(B) governs permissive intervention and allows for intervention
9 when an applicant “has a claim or defense that shares with the main action a common question of
10 law or fact.” Nev. R. Civ. P. § 24(b)(1)(B).

11 **B. Lone Mountain Is Entitled to Intervene as of Right**

12 A party applying to intervene as of right must show: (1) the application is timely; (2) the
13 applicant has sufficient interest in the property or transaction which is the subject of the action;
14 (3) the applicant is so situated that the disposition of the action may as a practical matter impair
15 or impede its ability to protect that interest; and (4) the applicant’s interest is inadequately
16 represented by the parties to the action. *See American Home Assurance Corp. v. Eighth Judicial*
17 *District Ct. ex rel. County of Clark*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006).
18 Determining whether an applicant has met these four requirements is within the district court’s
19 sound discretion. *Am. Home Assur. Co.*, 122 Nev. at 1126.

20 When evaluating whether the requirements for intervention of right are met, a court
21 generally follows practical and equitable considerations and construes the governing rule broadly
22 in favor of proposed intervenors. *Wilderness Soc’y v. U.S. Forest Service*, 630 F.3d 1173, 1179
23 (9th Cir. 2011) (en banc) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th
24 Cir. 2002)). This is because “[a] liberal policy in favor of intervention serves both efficient
25 resolution of issues and broadened access to the Courts.” *Wilderness Soc’y*, 630 F.3d 1173
26 (quoting *City of Los Angeles*, 288 F.3d at 397-98).

27 ///

28



1 **1. Lone Mountain’s Application to Intervene Is Timely**

2 When determining the timeliness of an application to intervene “[t]he most important
3 question to be resolved [...] is not the length of the delay by the intervenor but the extent of
4 prejudice to the rights of existing parties resulting from the delay.” *See Dangberg Holdings*
5 *Nevada, L.L.C. v. Douglas Cty. & its Bd. of Cty. Commr’s*, 115 Nev. 129, 141, 978 P.2d 311,
6 318 (1999); *see also American Home Assurance Corp.*, 122 Nev. at 1244, n.49 and n.50
7 (citations omitted).

8 Here, Lone Mountain’s intervention will not prejudice the existing parties. This case is in
9 the early stages of litigation. *See Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647
10 F.3d 893, 897 (9th Cir. 2011) (where the Court found the parties would not have suffered
11 prejudice from the grant of intervention at the early stage of litigation). Moreover, the Court
12 recently permitted Nevada Organic Remedies, LLC to intervene, and the Department has yet to
13 file an answer to Plaintiffs’ Amended Complaint. In *Citizens for Balanced Use*, the Ninth
14 Circuit found that a motion filed less than three months after the complaint was filed and less
15 than two weeks after the first filing of an answer to the complaint was timely. *Id.* The court
16 reasoned that an intervention so early in the litigation would not cause disruption or delay in the
17 proceedings. *Id.* Similarly, here, there will be no delay resulting from Lone Mountain’s
18 intervention.

19 Plaintiffs have directly challenged Lone Mountain’s eleven licenses in this lawsuit, most
20 explicitly, by presenting Lone Mountain’s licenses to the Court as an example of why the
21 licensing process was flawed and as a basis for the Court’s injunction of the same. *See* excerpts
22 from Transcript of Proceedings Re: All Pending Motions (Feb. 5, 2019), attached as **Exhibit A**,
23 at 11:10-12:22 (Plaintiffs’ counsel discussing the licenses held by “Verano”—an entity related to
24 Lone Mountain—and claiming that Lone Mountain’s licenses demonstrate the flawed license
25 evaluation process that Plaintiffs are seeking to overturn).

26 Through this action, Plaintiffs are attempting to undermine the rights of Lone Mountain
27 to its conditional licenses. Because Lone Mountain may be gravely prejudiced if not permitted to
28



1 intervene and all other parties within this action would not suffer any prejudice, this Court should
2 find that Lone Mountain request to intervene is timely.

3 **2. Lone Mountain Has a Significant Interest in the Litigation’s Subject**
4 **Matter**

5 While there is no “bright-line” test to determine if a sufficient interest exists, an applicant
6 must make a showing of a “significant protectable interest.” *See Am. Home Assur. Co.*, 122 Nev.
7 1229, 1238, 147 P.3d 1120, 1127 (2006). Whether a proposed intervenor has a significant
8 protectable interest is a “practical, threshold inquiry,” and the party seeking intervention need not
9 establish any “specific legal or equitable interest.” *Citizens for Balanced Use v. Montana*
10 *Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (internal quotations omitted) (quoting *Nw.*
11 *Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996)). To meet its burden, a
12 proposed intervenor “must establish that the interest is protectable under some law and that there
13 is a relationship between the legally protected interest and the claims at issue.” *Id.* The question
14 of whether there is a significant protectable interest does not turn on “technical distinctions.”
15 *California v. United States*, 450 F.3d 436, 441 (9th Cir. 2006). Instead, courts “have taken the
16 view that a party has a sufficient interest for intervention purposes if it will suffer a practical
17 impairment of its interests as a result of the pending litigation.” *See id.*

18 Here, Lone Mountain has a sufficient interest in the subject matter of this action—the
19 conditional licenses to operate a recreational marijuana retail store. Lone Mountain was issued
20 eleven (aa) of the licenses by the Department. Plaintiffs, through this lawsuit, are essentially
21 attempting to void the Department’s application process, which could impair Lone Mountain’s
22 interest in their conditional licenses. Accordingly, Lone Mountain has a significant protectable
23 interest in this action.

24 **3. The Disposition of This Action May Impair or Impede Lone Mountain’s**
25 **Ability to Protect Its Interests**

26 Once a significant protectable interest is established, courts look to whether the proposed
27 intervenor’s ability to protect that interest would be “impair[ed] or impede[ed]” by “the
28



1 disposition of the action.” *Citizens for Balanced Use*, 647 F.3d at 897 (citation omitted). “If an
2 absentee would be substantially affected in a practical sense by the determination made in an
3 action, [it] should, as a general rule, be entitled to intervene....” *Id.* at 898 (quoting Fed R. Civ. P.
4 24 advisory committee’s note).

5 Here, Plaintiffs have challenged the entire licensing process and directly challenged the
6 Department’s award of licenses to Lone Mountain, specifically. Plaintiffs assert that the licenses
7 awarded to current license holders, such as Lone Mountain, rightfully belong to Plaintiffs.
8 Plaintiffs thus seek to displace the conditional licenses from the current holders for purposes of
9 obtaining them for themselves. This relief, if granted, would necessarily harm at least one or
10 more of the applicants who ranked higher than Plaintiffs. Accordingly, Lone Mountain’s
11 interests may be impaired by the disposition of this case, as they risk losing their conditional
12 licenses.

13 4. Lone Mountain’s Interests Are Not Adequately Represented

14 Generally, “[t]he burden of showing inadequacy of representation is minimal and
15 satisfied if the [party seeking intervention] can demonstrate that representation of its interests
16 may be inadequate.” *Citizens for Balanced Use*, 647 F.3d at 898 (internal quotation omitted); *see*
17 *also Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10, 92 S. Ct. 630, 636 n.10, 30
18 L.Ed.2d 686 (1972) (holding that the requirement of inadequate representation is satisfied if the
19 applicant shows that representation “may be” inadequate). In making this determination, courts
20 examine three factors: (1) whether the interest of a present party is such that it will undoubtedly
21 make all of a proposed intervenor’s arguments; (2) whether the present party is capable and
22 willing to make such arguments; and (3) whether a proposed intervenor would offer any
23 necessary elements to the proceeding that other parties would neglect. *Citizens for Balanced Use*,
24 647 F.3d at 898 (*quoting Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). “The most
25 important factor in assessing the adequacy of representation is how the interest compares with
26 the interests of existing parties.” *Citizens for Balanced Use*, 647 F.3d at 898 (internal quotation
27 and citation omitted). Where a proposed intervenor and an existing party “share the same
28



1 ultimate objective, a presumption of adequacy of representation arises.” *Citizens for Balanced*
2 *Use*, 647 F.3d at 898 (citation omitted). A presumption of adequacy “must be rebutted with a
3 compelling showing.” *Id.* (citation omitted).

4 Here, Lone Mountain’s interests are not adequately represented by the Department or
5 Nevada Organic Remedies. A proposed intervenor “should be treated as the best judge of
6 whether the existing parties adequately represent . . . [its] interests, and . . . any doubt regarding
7 adequacy of representation should be resolved in [its] favor.” 6 Edward J. Brunet, Moore’s
8 Federal Practice § 24.03[4][a] (3d ed. 1997).

9 Specifically, the Department will presumably defend its application evaluation process
10 by showing that it complied with NRS Chapter 453D and the Approved Regulations throughout
11 the application process. The Department will not defend Lone Mountain’s, or other licensees,
12 unique and valuable licenses. The Department simply has no interest in specifically defending
13 Lone Mountain’s licenses versus other applicants, nor is the Department equipped to do so.

14 Even the other intervenor, Nevada Organic Remedies, is not an adequate representative
15 of Lone Mountain’s interests. To obtain any one of the licenses an applicant had to rank higher
16 than other applicants in any given jurisdiction. Thus, all applicants are competing with one
17 another for a limited supply of licenses, and their interests are therefore by their very nature
18 divergent. Plaintiffs have challenged the entire ranking process, and to the extent that Plaintiffs’
19 challenge is considered, Lone Mountain will need to defend its licenses against all other
20 applicants, including other current license holders. Accordingly, Lone Mountain has met its
21 “minimal” burden of showing that their interests may not adequately represented such that its
22 intervention is proper.

23
24 **C. Lone Mountain Should Be Permitted to Intervene Pursuant to Permissive Intervention**

25 Even if this Court were to find that Lone Mountain cannot establish intervention as
26 right, Lone Mountain may still intervene pursuant to NRCP 24(b), which governs permissive
27 intervention. Permissive intervention is available when the motion is timely and “the applicant’s
28