

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 24

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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

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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

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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

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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

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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

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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:

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VERANO HOLDINGS, LLC AND SUBSIDIARIES
Notes to Consolidated Financial Statements
For the Years Ended December 31, 2018 and 2017

16. SUBSEQUENT EVENTS *(Continued)*

(b) Term Sheets and Acquisitions *(Continued)*

Healthway Services of Illinois, LLC

In January 2019, Verano affiliate Chicago Natural Treatment Solutions, LLC, entered into an agreement to acquire, upon regulatory approval, 100% of the membership interests of Healthway Services of Illinois, LLC, ("Healthway") which entity holds a 40% interest in each of Healthway Services of West Illinois, LLC ("HSWI"); West Capital, LLC ("WCL"); Union Group of Illinois, LLC ("UGI"); and United Development of Illinois, LLC ("UDI"). HSWI holds a medical cannabis dispensary license in St. Charles, Illinois, and WCL owns the real property out of which HSWI operates. UGI holds a medical cannabis dispensary license in Chicago, Illinois, and UDI owns the real property out of which UGI operates. Pursuant to the terms of the transaction, the purchase price for Healthway is \$3,500,000 in cash and \$6,500,000 in stock of PubCo or the acquirer of Verano if Verano is sold prior to going public. Final closing on the transaction will require approval by the Illinois Department of Financial and Professional Regulation.

Saint Chicago, LLC

In February 2019, the owner of Saint Chicago, LLC ("Saint Chicago") entered into an Agreement (the "Agreement") with certain other individuals (the "PTS Members"). Saint Chicago owns 60% of the issued and outstanding membership interests in HSWI, WCL, UGI, and UDI. Pursuant to the terms of the Agreement, Saint Chicago would sell to 2 entities owned and/or controlled by the PTS Members all of its membership interests in UGI and UDI, resulting in a net cash payment to the PTS Members in the amount of \$775,000. Closing would occur upon, *inter alia*, regulatory approval of the transaction by the Illinois Department of Financial and Professional Regulation.

Green Rx, LLC

In February 2019, Verano entered into a term sheet with Green Rx, LLC, ("Green Rx") the holder of a provisional medical cannabis dispensary license in the State of Ohio. Pursuant to the terms of the transaction, an affiliate of Verano would purchase 51% of the issued and outstanding membership interests in Green Rx for \$1,100,000 upon State approval. Given the temporal limitation on transfers in interest under Ohio law, Verano's subsidiary will first enter into another commercial arrangement with Green Rx, pay a \$100,000 deposit upon execution of definitive deal documents, and the remaining \$1,000,000 at closing. Contemporaneous with the execution of definitive deal documents, Verano would also provide secured debt to Green Rx in the amount of \$1,800,000 bearing an interest rate of 9% per annum.

VERANO HOLDINGS, LLC AND SUBSIDIARIES
Notes to Consolidated Financial Statements
For the Years Ended December 31, 2018 and 2017

16. SUBSEQUENT EVENTS *(Continued)*

(b) Term Sheets and Acquisitions *(Continued)*

Conor Green Consulting, LLC and Shinnecock Nation

In February 2019, Verano entered into a term sheet with Conor Green Consulting, LLC, ("CGC"). Under the terms of the transaction, CGC and Verano would create a joint venture (the "JV") that would enter into a contractual relationship through a Master Service Agreement ("MSA") with the Shinnecock Indian Nation, a federally recognized Native American tribe, who will cultivate, manufacture, and sell cannabis. Certain milestone payments tied to the performance of the project would provide CGC with \$500,000 in cash and up to \$3,000,000 in stock of PubCo or the acquirer of Verano if Verano is sold prior to going public. Verano will have a 51% interest in the JV. Verano would be responsible for lending (through funding of the JV) the Shinnecock Indian Nation funds for capital and operational expenditures. The fees payable under the MSA will initially be 15% of gross revenue of the project, plus 25% of the net profits of the project. All revenues collected under the MSA by the JV will be split 66.67% in favor of Verano and 33.33% in favor of CGC.

3 Boys Farm, LLC and Harvest Health & Recreation, Inc.

In October 2018, the Company entered into a Purchase Agreement with Cannabis Cures Investments, LLC, as Seller, and Scythian Biosciences Corp., ("Scythian") as Owner, pursuant to which, upon the completion of Scythian's acquisition of Cannabis Cures Investments, LLC, and its parent company, CannCure Investments, Inc. ("CannCure"), the Company will purchase 3 Boys Farm, LLC ("3 Boys"), the holder of a vertically-integrated medical cannabis licensee in the State of Florida, for \$100,000,000 in Class B Units of the Company at the price of \$21.73 per unit.

In March 2019, Verano entered into a binding letter agreement (the "Letter Agreement") with Harvest Health & Recreation, Inc. ("Harvest"), a corporation publicly-traded and based in Canada, for Harvest to acquire, directly, or indirectly through a wholly-owned subsidiary or controlled affiliate, all of the issued and outstanding membership units of Verano by way of a merger, securities exchange or similar transaction. The purchase price is \$850,000,000 based upon a price of CAD\$8.79 per share of Harvest. Definitive documents were executed on or about April 22, 2019.

Notwithstanding the foregoing, as Harvest has an existing medical cannabis dispensing organization license in Florida, and Florida does not permit ownership of multiple medical cannabis dispensing organization licenses, Verano, Scythian, 3 Boys, and CannCure mutually agreed and determined not to proceed with the acquisition of 3 Boys. In March 2019, the parties entered into a termination agreement, release, and covenant not to sue regarding the termination of the Purchase Agreement.

VERANO HOLDINGS, LLC AND SUBSIDIARIES
Notes to Consolidated Financial Statements
For the Years Ended December 31, 2018 and 2017

16. SUBSEQUENT EVENTS *(Continued)*

(b) Term Sheets and Acquisitions *(Continued)*

420 Capital Management, LLC d/b/a GreenGate Chicago

On March 1, 2019, Verano entered into a term sheet with 420 Capital Management, LLC d/b/a GreenGate Chicago ("GreenGate") and 42 Capital Management, LLC ("GreenGate Property"). GreenGate holds a medical cannabis dispensary license in Chicago, and GreenGate Property owns or leases the property out of which GreenGate operates. Definitive documents for the transaction are being negotiated by the parties. It is contemplated that a wholly-owned subsidiary of Verano created for the purpose of this transaction and known as VHGG Holdings, LLC, would acquire 100% of the membership interests of (i) GreenGate for \$10,000,000 in stock of Verano's publicly-traded parent company if the Company became public or, in the case of a sale of Verano prior to becoming a public company, the sellers would receive \$10,000,000 in value of securities in the acquirer and (ii) GreenGate Property for \$5,000,000 in cash, with the approval of the State of Illinois. The \$5,000,000 in cash will be payable in installments beginning on the signing date of the definitive documents, is non-refundable and will be fully paid out five months after the signing (or sooner if the final closing occurs sooner). The transaction also contemplates a contractual arrangement effective whereby VHGG Holdings would act as manager for GreenGate and charge a management fee equal to 10% of GreenGate's net profits. Final closing on the transaction will require approval by the Illinois Department of Financial and Professional Regulation.

Verano NJ, LLC Buy-Out and Roll-Up

On March 1, 2019, Verano entered into a series of agreements with various parties proposing to buy out or roll-up their units in Verano NJ, LLC, partly in cash and partly in stock. As for the members electing to roll-up their Verano NJ units, such members would receive units of a subsidiary of Verano created for the purpose of this transaction called Verano NJ Holdings, LLC, which units would be exchangeable in the aggregate for \$1,575,000 in stock of Verano's publicly-traded parent company if the Company became public or, in the case of a sale of Verano prior to becoming a public company, such members would receive \$1,575,000 in value of securities in the acquirer. All agreements entered into in connection with this transaction are being held in escrow pending submission to and approval from the State of New Jersey, such that none of the transfers are deemed to have occurred until such approval has been received. Upon receipt of approval from the State of New Jersey, all transaction documents are deemed automatically released and effective.

(c) Commitments and Contingencies

JJR Private Capital II Ltd. Partnership ("JJR") entered into a convertible loan agreement with the Company on or about August 22, 2018, pursuant to which the Company could draw funds which could be converted into equity. The Company did not draw funds under this agreement, and, on or about February 1, 2019, entered into Settlement and Termination Agreement pursuant to which the loan agreement, and any rights which may have arisen thereunder, were terminated, in consideration for the Company's agreement to pay JJR \$5,000,000, which was paid in April of 2019.

In connection with a subscription receipt offering in October of 2018, the Company entered into an agency agreement with Clarus Securities, Inc., ("Clarus") pursuant to which Clarus would broker, *inter alia*, the subscription of up to \$12,000,000 of Class B Units of the Company. On or about February 7, 2019, the Company and Clarus mutually agreed to terminate the agency agreement and any rights which may have arisen thereunder, in consideration for which the Company granted to Clarus's blocker entity 100,000 Class B warrants in the Company at a price of USD\$21.73 per Class B Unit. Clarus's blocker, Clarus Securities SIV, Inc., exercised the warrants on February 11, 2019.

On or about February 11, 2019, the Company took in non-brokered subscription receipts totaling approximately \$5.6MM from Cannon Verano, LLC, Andrew Left, A&T SPV II LLC, and Caravel DE Corporation at a price of USD\$21.73 per Class B Unit.

Verano Holdings, LLC

MANAGEMENT'S DISCUSSION & ANALYSIS

For the years ended December 31, 2018 and 2017

(Amounts Expressed in United States Dollars Unless Otherwise Stated)

MD&A of Verano Holdings, LLC

This management discussion and analysis (“**MD&A**”) of the financial condition and results of operations of Verano Holdings, LLC, and its subsidiaries and affiliates (the “**Company**”, “**we**”, “**our**”, “**us**” or “**Verano**”) is for the years ended December 31, 2018 and 2017. It is supplemental to, and should be read in conjunction with, the Company’s audited consolidated financial statements and the accompanying notes for the years ended December 31, 2018 and 2017 (the “**Audited Consolidated Financial Statements**”). The Company’s financial statements are prepared in accordance with International Financial Reporting Standards (“**IFRS**”).

This MD&A has been prepared by reference to the MD&A disclosure requirements established under National Instrument 51-102 Continuous Disclosure Obligations of the Canadian Securities Administrators.

This MD&A contains certain “forward-looking statements” and certain “forward-looking information” as defined under applicable United States securities laws and Canadian securities laws. Please refer to the discussion of forward-looking statements and information set out under the heading “Cautionary Statement Regarding Forward-Looking Statements”, located at the beginning of this listing statement. As a result of many factors, the Company’s actual results may differ materially from those anticipated in these forward-looking statements and information.

All references to “\$” are to United States dollars unless otherwise specified.

OVERVIEW OF THE COMPANY

Headquartered in Chicago, Illinois, Verano is a vertically integrated cannabis operator that focuses on limited-licensed markets in the United States. As a vertically integrated provider, Verano owns, operates, and/or manages licenses for cultivation, manufacturing/processing, and dispensary/retail facilities across ten U.S. States (Arkansas, California, Illinois, Maryland, Massachusetts, Michigan, Nevada, New Jersey, Ohio, and Oklahoma) and the Commonwealth of Puerto Rico. Verano employs approximately 390 people and serves thousands of customers from coast to coast.

In addition to the states listed above, the Company also conducts pre-licensing activities in several other markets. In these markets, the Company has either applied for licenses, or plans on applying for licenses, but does not currently own any cultivation, processing, or retail licenses.

On April 22, 2019, Verano signed a definitive business combination agreement with Harvest Health & Recreation Inc. (“**Harvest**”), whereby the securityholders of Harvest and Verano will become securityholders in the combined company (the “**Resulting Issuer**”). Harvest and Verano are arm’s length parties. In connection with the transaction, an application will be made to list the Resulting Issuer’s subordinate voting shares for trading on the Canadian Securities Exchange (the “**CSE**”). The transaction is subject to CSE and court approval, approval of the Verano members and approval of at least 66 2/3% of the votes cast by Harvest shareholders at a special meeting expected to take place on June 26, 2019.

Operating Segments

For the purpose of analysis, Verano considers two operating divisions: Wholesale – in which it cultivates, manufactures, sells and distributes cannabis products to third-party retail customers, and Retail – in which it sells directly to end consumers in its retail stores, with perspectives by each operating market: Arkansas, California, Illinois, Maryland, Massachusetts, Michigan, Nevada, New Jersey, Ohio, Oklahoma, and Puerto Rico. Looking forward, management believes that Verano is well positioned to construct and open more cannabis facilities and to gain control of additional cannabis licenses through the application process, acquisition, or strategic partnerships.

NON-IFRS FINANCIAL AND PERFORMANCE MEASURES

In addition to providing financial measurements based on IFRS, the Company provides additional financial metrics that are not prepared in accordance with IFRS. Management uses non-IFRS financial measures, in addition to IFRS financial measures, to understand and compare operating results across accounting periods, for financial and operational decision making, for planning and forecasting purposes and to evaluate the Company’s financial

performance. These non-IFRS financial measures are Adjusted EBITDA and Working Capital.

Management believes that these non-IFRS financial measures reflect the Company's ongoing business in a manner that allows for meaningful comparisons and analysis of trends in the business, as they facilitate comparing financial results across accounting periods and to those of peer companies. Management also believes that these non-IFRS financial measures enable investors to evaluate the Company's operating results and future prospects in the same manner as management. These non-IFRS financial measures may also exclude expenses and gains that may be unusual in nature, infrequent or non-reflective of the Company's ongoing operating results.

As there are no standardized methods of calculating these non-IFRS measures, the Company's methods may differ from those used by others, and accordingly, the use of these measures may not be directly comparable to similarly titled measures used by others. Accordingly, these non-IFRS measures are intended to provide additional information and should not be considered in isolation or as a substitute for measures of performance prepared in accordance with IFRS. We use these metrics to measure our core financial and operating performance for business planning purposes. In addition, we believe investors use both IFRS and non-IFRS measures to assess management's past and future decisions associated with our priorities and our allocation of capital, as well as to analyze how our business operates in, or responds to, swings in economic cycles or to other events that impact the cannabis industry. However, these measures do not have any standardized meaning prescribed by IFRS and may not be comparable to similar measures presented by other companies in our industry.

Adjusted EBITDA

Adjusted EBITDA is a financial measure that is not defined under IFRS. We use this non-IFRS financial measure, and believe it enhances our investors' understanding of our financial and operating performance from period to period, because it excludes certain material non-cash items and certain other adjustments we believe are not reflective of our ongoing operations and our performance. In particular, we have and continue to make significant acquisitions and investments in cannabis properties and management resources to better position our organization to achieve our strategic growth objectives which have resulted in outflows of economic resources. Adjusted EBITDA is not intended to represent and should not be considered as alternatives to net income, operating income or any other performance measures derived in accordance with IFRS as measures of operating performance or operating cash flows or as measures of liquidity.

Adjusted EBITDA has important limitations as an analytical tool and should not be considered in isolation or as a substitute for any standardized measure under IFRS. The calculation of Adjusted EBITDA:

- excludes certain tax payments that may reduce cash available to us;
- does not reflect any cash capital expenditure requirements for the assets being depreciated and amortized that may have to be replaced in the future;
- does not reflect changes in, or cash requirements for, our working capital needs; and
- does not reflect the interest expense, or the cash requirements necessary to service interest or principal payments on our debt.

Other companies in our industry may calculate this measure differently than we do, limiting its usefulness as a comparative measure.

Working Capital

The calculation of working capital provides additional information and is not defined under IFRS. We define working capital as current assets less current liabilities. This measure should not be considered in isolation or as a substitute for any standardized measure under IFRS. This information is intended to provide investors with information about the Company's liquidity.

Other companies in our industry may calculate this measure differently than we do, limiting its usefulness as a comparative measure.

Reconciliations of Non-IFRS Financial and Performance Measures

The table below reconciles Net Income to Adjusted EBITDA for the periods indicated.

(in thousands \$)	As at and for the year ended December 31,		Change	
	2018	2017	\$	%
Net income (IFRS) before non-controlling interest	\$ 3,709	\$ 1,896	\$ 1,813	95%
Adjustments to derive Adjusted EBITDA				
Interest	431	73	358	490%
Taxes	1,772	297	1,475	496%
Depreciation and amortization	2,569	856	1,713	200%
Amortization of debt issuance cost	2,662	-	2,662	192%
Adjusted EBITDA	\$ 11,143	\$ 3,122	\$ 8,021	257%

SELECTED FINANCIAL INFORMATION

The following table presents selected financial data derived from the audited annual consolidated financial statements of the Company at and for the years ended December 31, 2018 and 2017. The selected consolidated financial information below may not be indicative of the Company's future performance.

(in thousands \$)	As at and for the year ended December 31,			Change	
	2018	2017	\$	%	
Revenue, net	\$ 31,095	\$ 11,305	\$ 19,790	175%	
Cost of goods sold	(18,380)	(7,533)	(10,847)	144%	
Gross profit before biological asset adjustments	12,715	3,772	8,943	237%	
Realized fair value amounts included in inventory sold	(28,000)	(6,877)	(21,123)	307%	
Unrealized fair value gain on growth of biological assets	(34,311)	(9,580)	(24,731)	258%	
Gross profit	18,926	6,475	12,451	192%	
Expenses					
General and administrative	9,297	3,531	5,766	n/m	
Sales and Marketing	305	251	54	22%	
Depreciation and Amortization	1,028	478	562	115%	
Total expenses	10,630	4,260	6,370	150%	
Income from investment in Associates	279	51	228	n/m	
Operating income	8,575	2,266	6,309	278%	
Other expense	(3,093)	(73)	(3,020)	n/m	
Net income before provision for income taxes and non-controlling interest	\$ 5,481	\$ 2,193	\$ 3,288	150%	
Provision for income taxes	(1,772)	(297)	(1,475)	n/m	
Net income before non-controlling interest	3,709	1,896	1,813	96%	
Adjusted EBITDA (non-IFRS)	\$ 11,143	\$ 3,122	\$ 8,021	257%	
Total assets	\$ 148,547	\$ 41,424	\$ 3,528	259%	
Long-term liabilities	\$ 3,421	\$ 2,921	\$ 500	17%	
n/m – Not meaningful					

Year Ended December 31, 2018 Compared to Year Ended December 31, 2017

Revenue

Revenue for the year ended December 31, 2018 was \$31.1 million, up 175% from \$11.3 million for the year ended December 31, 2017 due to revenue contributions across both Wholesale and Retail business units from Illinois, Nevada, and Maryland. Wholesale revenue for the year ended December 31, 2018 was \$16.4 million, up 165% from \$6.2 million for the year ended December 31, 2017 due to the expansion of branded product offerings and increased retail distribution from the Illinois and Maryland Wholesale businesses of Verano's portfolio of branded consumer cannabis products. Retail revenue for the year ended December 31, 2018 was \$14.7 million, up 188% from \$5.1 million for the year ended December 31, 2017 due to the increased expansion into additional markets and continued increases in retail foot traffic across all markets.

Cost of Goods Sold

Cost of goods sold are derived from cost related to the internal cultivation and production of cannabis and from purchases made from other licensed producers operating within our state markets.

For the year ended December 31, 2018, cost of goods sold, excluding any adjustments to the fair value of biological assets, of \$18.4 million was up \$10.8 million or 144% compared to the year ended December 31, 2017, driven by increased sales described above.

Inventory of plants under production is considered a biological asset. Under IFRS, biological assets are to be recorded at fair value at the time of harvest, less costs to sell. The biological assets are transferred to inventory and the transfer becomes the deemed cost on a go-forward basis. When the product is sold, the fair value is removed from inventory and the transfer is recorded to cost of sales. In addition, the cost of sales also includes products and costs related to other products acquired from other licensed producers and sold by the Company.

Gross Profit

Gross profit before biological asset adjustments for the year ended December 31, 2018 was \$12.7 million, representing a gross margin on the sale of branded cannabis flower and processed and packaged products including concentrates, edibles, topicals and other cannabis, of 41%. This is compared to gross profit before biological asset adjustments for the year ended December 31, 2017, of \$3.8 million or a 33% gross margin.

Gross profit after net gains on biological asset transformation for the year ended December 31, 2018 was \$18.9 million, representing a gross margin of 61%, compared with gross profit after net gains on biological asset transformation of \$6.5 million or 57% gross margin, for the year ended December 31, 2017, driven by increased harvested cannabis and wholesale shipments.

General and Administrative Expenses

Total general and administrative expenses primarily consist of corporate personnel costs including salaries, benefits, professional service costs including legal and consulting, travel, and rent. Verano expects to continue to invest considerably in this area to support Verano's aggressive expansion plans and to support the increasing complexity of the cannabis business. Furthermore, Verano expects to incur acquisition and transaction costs related to its expansion plans. Verano anticipates an increase in personnel costs, marketing costs, and legal and professional fees associated with bringing new facilities and markets online.

Total expenses for the year ended December 31, 2018 were \$10.6 million, an increase of \$6.4 million, or 150%, compared to \$4.3 million for the year ended December 31, 2017. This was primarily attributable to an increase in general and administrative expenses, particularly costs attributable to professional fees of \$3.4 million related to transactions of the Company as well as salaries and benefits of \$2.5 million for increased head count to support the Company's expansion plans.

Other Expense

Total other expense for the year ended December 31, 2018 was \$3.1 million, an increase of \$3 million compared to the year ended December 31, 2017. The increase relates to amortization of debt issuance costs as well as an increase in interest expense.

Provision for Income Taxes

Income tax expense is recognized based on the expected tax payable on the taxable income for the year, using tax rates enacted or substantively enacted at year-end. For the year ended December 31, 2018, Federal and State income tax expense totaled \$1.8 million compared to \$3.3 million for the year ended December 31, 2017. The increase is due to higher revenue offset by a lower tax rate in 2018.

Net Income before Non-controlling Interest

Net income for the year ended December 31, 2018 was \$3.7 million, an increase of \$1.8 million or 96%, as compared to net income of \$1.9 million for the year ended December 31, 2017. The increase in net income was driven largely by the Company's 175% increase in revenues due to our business growth and expansion described above.

Adjusted EBITDA

Adjusted EBITDA increased to \$11.1 million for the year ended December 31, 2018 compared to \$3.1 million for the same period in 2017. The increase of \$8 million is primarily attributable to increases in revenue driven by our business growth and expansion described above.

LIQUIDITY AND CAPITAL RESOURCES

Verano's primary need for liquidity is to fund the working capital requirements of our business, including capital expenditures, acquisitions, and for general corporate purposes. Verano's primary source of liquidity is funds generated by financing activities and from existing operations. When the Company made its decision to enter into the transaction with Harvest, the Company elected to postpone and/or cancel its fundraising initiatives.

For the years ended December 31, 2018 and 2017, the Company had total current liabilities of \$19 million and \$8.7 million respectively, and cash and cash equivalents of \$73.1 million and \$3.3 million respectively to meet its current obligations. As of December 31, 2018 and 2017, the Company had working capital of \$74.9 million and \$3.4 million respectively, an improvement of \$71.5 million driven mainly by increases in cash and cash equivalents resulting from equity financing.

The possibility of an extended pre-closing period for, or the termination of, the Harvest transaction creates a material uncertainty and casts significant doubt as to the ability of the Company to meet its obligations as they come due unless it is able to raise sufficient funds to enable it to reach profitability, and, accordingly, the appropriateness of the use of accounting principles applicable to a going concern. The consolidated financial statements do not reflect the adjustments to the carrying values of assets and liabilities and the reported expenses and balance sheet classifications that would be necessary if the going concern assumption was inappropriate, and these adjustments could be material.

Management believes that if the Harvest transaction is terminated, it will have time to execute existing fundraising initiatives and to repay any debt that comes due in the next year. Management has demonstrated its ability to raise capital and to secure loans in the past. Nevertheless, there is no assurance that these initiatives will be successful or sufficient.

Change in Cash (in thousands of \$)	For the Years Ended December 31		Change	
	2018	2017	\$	%
Net cash provided by operating activities	\$ 4,820	\$ 597	\$4,223	707%
Net cash used in investing activities	(29,349)	(13,279)	(16,070)	121%
Net cash provided by financing activities	94,290	13,822	80,468	582%
Change in cash	\$ 69,760	\$ 1,140	\$ 68,620	

Net Cash provided by Operating Activities

Net cash provided by operating activities was \$4.8 million for the year ended December 31, 2018, an increase of \$4.2 million, or 707%, as compared to \$.6 million for the year ended December 31, 2017. The increase was primarily due to the Company's \$6.3 million increase in operating income.

Net Cash used in Investing Activities

Net cash used in investing activities was \$29.3 million for the year ended December 31, 2018, an increase of \$16 million, or 121%, compared to \$13.3 million for the year ended December 31, 2017. The increase was due to an increase in capital expenditures for the buildout of the Illinois dispensary and the Illinois cultivation facility as well as increased expenditures for leasehold improvements, manufacturing equipment, and other construction costs related to other acquisitions during the year ended December 31, 2018.

Net Cash provided by Financing Activities

Net cash provided by financing activities was \$94.3 million for the year ended December 31, 2018, an increase of \$80.5 million, or 582%, compared to \$13.8 million for the year ended December 31, 2017. The increase was due to equity financing of \$100.8 million in 2018, which was partially offset by the repayment of approximately \$4.5 million in debt and the payment of \$2.5 million purchase price in connection with an acquisition.

Contractual Obligations

The Company and its subsidiaries have entered into operating lease agreements for the corporate offices, a cultivation facility and dispensaries. The following represents the Company's commitments in relation to its operating leases:

(in thousands \$)	Amount
Not more than one year	\$ 499
More than one year and not more than five years	1,780
More than five years	1,246
Total	\$ 3,525

OFF-BALANCE SHEET ARRANGEMENTS

The Company does not have any material off-balance sheet arrangements that have, or are reasonably likely to have, a current or future effect on the results of the operations or financial condition of the Company, including without limitation, such considerations as liquidity and capital resources.

TRANSACTIONS WITH RELATED PARTIES

Transactions with related parties are entered into in the normal course of business and are measured at the amount established and agreed to by the parties.

Related party notes receivable

As of December 31, 2018 and 2017, amounts due from related parties were comprised of balances due from investors of \$947,384 and \$221,918 respectively. These amounts are due on demand and do not have formal contract agreements governing payment terms or interest.

SUBSEQUENT TRANSACTIONS

Gentle Ventures, LLC

In October 2018, Verano entered into a term sheet with Gentle Ventures, LLC d/b/a Dispensary 33 (“**D33**”) and 5001 Partners, LLC (“**5001**”). D33 holds a medical cannabis dispensary license in Chicago, and 5001 holds a leasehold interest in the property out of which D33 operates. Definitive documents for the transaction were executed in February 2019. Pursuant to the definitive documents, upon the approval of the Illinois Department of Financial and Professional Regulation, a wholly-owned subsidiary of Verano created for the purpose of this transaction and known as VHGV Holdings, LLC, would acquire 100% of the membership interests of each of D33 and 5001 for \$20 million in stock of Verano’s publicly-traded parent company (“**PubCo**”) if the Company became public or, in the case of a sale of Verano prior to becoming a public company, the sellers would receive securities in the acquirer. The transaction also includes a consulting agreement for the sellers and a potential increase in the acquisition price in the event that upon the Company going public or sale of Verano the transaction is not tax-deferred. Closing on the transaction will require approval by the Illinois Department of Financial and Professional Regulation.

Ohio Grown Therapies, LLC

In November 2018, Verano entered into a term sheet with Ohio Grown Therapies, LLC, (“**OGT**”) the holder of, inter alia, a provisional medical cannabis dispensary license in the State of Ohio, and definitive deal documents were executed in January 2019. Pursuant to the transaction, Verano (through wholly-owned subsidiary Ohio Natural Treatment Solutions, LLC) would purchase the provisional medical cannabis dispensary license asset from OGT for a purchase price of \$1.25 million in cash with approval from the appropriate regulatory authorities. Prior to Verano’s ability to submit for State approval, Verano would provide services to operate the asset pursuant to a contract. The foregoing transaction will be subject to State approval.

AGG Wellness, LLC

In November 2018, Verano entered into a term sheet with AGG Wellness, LLC d/b/a Herban Legends of Towson (“**Herban**”). Herban holds a medical cannabis dispensary license in Towson, Maryland. Pursuant to the terms of the transaction, Verano, through wholly-owned subsidiary Zen Leaf Technologies, LLC, (“**ZLT**”) would enter into a management and administrative services agreement (“**MSA**”) with Herban, upon approval by the Maryland Medical Cannabis Commission (“**MMCC**”), in exchange for a placement fee equal to \$2.5 million in cash and \$1.8 million in stock of PubCo or the acquirer of Verano if Verano is sold prior to going public. The cash portion of the consideration would be paid as follows: (a) \$750,000 upon approval of the MSA by MMCC; (b) \$750,000 30 days after the approval of the MSA; and (c) \$1 million on the earlier of (i) December 2020, so long as the MSA is effective at that time; (ii) the 60th day following Herban’s first legal sale of adult-use cannabis products in the State of Maryland after the effective date of the MSA; and (iii) Verano’s ability to purchase the equity interests of Herban with regulatory approval. The MSA was sent to MMCC for review and approval in February of 2019, and MMCC provided such approval on April 8, 2019.

Cali Sweets, LLC

In December 2018, Verano entered into a term sheet with Cali Sweets, LLC, d/b/a Koko Nuggz (“**Cali Sweets**”). Cali Sweets is a California-based confectionary company, which manufactures chocolates. Cali Sweets does not infuse its products with cannabis. Definitive deal documents were executed in January 2019. Pursuant to the terms of the transaction, Verano purchased 30% of the issued and outstanding membership interests in Cali Sweets for \$50,000, also providing to Cali Sweets a secured line of credit in the amount of \$10 million (draws from which are at the sole discretion of Verano), and providing to the inventor of the technology Cali Sweets uses to manufacture its products a five year consulting agreement with payments equal to \$1,950,000 in the aggregate. Cali Sweets also executed a management agreement with Verano giving Verano management rights over the entity. Notwithstanding the foregoing, this transaction was terminated by agreement dated May 15, 2019.

DGV Holdings, LLC

In December 2018, Verano entered into a term sheet with D9 Manufacturing, Inc. (“**D9**”), the holder of cannabis manufacturing and distribution licenses in the State of California, and Greenfield Global, Inc. (“**GFG**”), a Canadian corporation, for the purposes of creating a three way joint venture to extract cannabis oil and manufacture and distribute cannabis products in the State of California. Pursuant to the terms of the transaction, D9 would contribute its licenses and intellectual property related to the extraction of cannabinoids; GFG (later changed to G2 Bio Inc.) would contribute cash; and Verano would contribute cash and certain intellectual property. Between execution of the term sheet and execution of definitive deal documents, and in an effort to permit D9 to meet upcoming equipment and other deadlines, both Verano and GFG entered into equipment leases and secured promissory notes to provide equipment and debt financing to D9. Definitive deal documents, which included the creation of DGV Holdings, LLC (the joint venture) were executed in February 2019. In accordance with the terms of the transaction, Verano contributed cash in the amount of \$4,875,000 (less amounts previously contributed for equipment and debt) to DGV and will pay to the founders of D9 \$3.5 million in cash or in securities of PubCo or the acquirer of Verano if Verano is sold prior to going public. Verano must make additional cash contributions totaling \$1.625 million by May 2019. Initially, Verano will have a 73.53% equity stake in DGV Holdings, LLC, decreasing to 62.5% upon the joint venture achieving certain targets.

Magpie Management, LLC

In December 2018, Verano affiliate Verano Oklahoma, LLC, entered into a transaction with Magpie Management, LLC (“**Magpie**”), a holding company which, through various subsidiaries, owns two medical cannabis commercial grower licenses, one medical cannabis commercial processing license, and three medical cannabis commercial dispensary licenses in the State of Oklahoma. The transaction provides for Verano Oklahoma, LLC’s purchase of 25% of the issued and outstanding membership interests of Magpie, which becomes effective upon State approval of the transfer of the membership interests described above. The parties also entered into a management and administrative services agreement. The purchase price for the foregoing is \$1.5 million in stock of PubCo or the acquirer of Verano if Verano is sold prior to going public. Definitive deal documents were executed in February 2019. State approval for the transfer was received on March 28, 2019 and final closing occurred on April 4, 2019.

Buchanan Development, LLC

In January 2019, Verano affiliate Verano Michigan, LLC executed definitive documents to acquire 100% of the membership interests of Buchanan Development, LLC, holder of a provisional medical cannabis dispensary license in the State of Michigan, pending regulatory approval. The purchase price for the membership interests is \$1,070,392, to be paid in multiple tranches, 60% of the purchase price to be paid upon execution of the definitive deal documents; 20% to be paid upon receipt of a final state operating license; and the final 20% to be paid upon approval from the State of Michigan for the transfer of interests to Verano Michigan, LLC. Together with the definitive documents, Verano Michigan, LLC, entered into a management and administrative services agreement with Buchanan Development, LLC, for Verano Michigan, LLC, to manage and operate the entity until State and municipal approvals are received. The parties will seek State and municipal approvals for the transfer once Buchanan Development, LLC, receives its final license. The final license was received on or about May 6, 2019.

Healthway Services of Illinois, LLC

In January 2019, Verano affiliate Chicago Natural Treatment Solutions, LLC entered into an agreement to acquire 100% of the membership interests of Healthway Services of Illinois, LLC (“**Healthway**”), which entity holds a 40% interest in each of Healthway Services of West Illinois, LLC (“**HSWI**”); West Capital, LLC (“**WCL**”); Union Group of Illinois, LLC (“**UGI**”); and United Development of Illinois, LLC (“**UDI**”). HSWI holds a medical cannabis dispensary license in St. Charles, Illinois, and WCL owns the real property out of which HSWI operates. UGI holds a medical cannabis dispensary license in Chicago, Illinois, and UDI owns the real property out of which UGI operates. Pursuant to the terms of the transaction, the purchase price for Healthway is \$3.5 million in cash and \$6.5 million in stock of PubCo or the acquirer of Verano if Verano is sold prior to going public. Closing of the transaction will require approval by the Illinois Department of Financial and Professional Regulation.

Saint Chicago, LLC

In February 2019, the owners of Saint Chicago, LLC (“**Saint Chicago**”) entered into an Agreement (the “**Agreement**”) with certain other individuals (the “**PTS Members**”). Saint Chicago owns 60% of the issued and outstanding membership interests in HSWI, WCL, UGI, and UDI. Pursuant to the terms of the Agreement, Saint Chicago would sell to 2 entities owned and/or controlled by the PTS Members all of its membership interests in UGI and UDI, resulting in a net cash payment to the PTS Members in the amount of \$775,000. Closing will occur upon, *inter alia*, regulatory approval of the transaction by the Illinois Department of Financial and Professional Regulation.

Green Rx, LLC

In February 2019, Verano entered into a term sheet with Green Rx, LLC (“**Green Rx**”), the holder of a provisional medical cannabis dispensary license in the State of Ohio. Pursuant to the terms of the transaction, an affiliate of Verano would have the option to purchase 51% of the issued and outstanding membership interests in Green Rx for \$1.1 million upon State approval. Given the temporal limitation on transfers in interest under Ohio law, Verano’s subsidiary will first enter into another commercial arrangement with Green Rx, pay a \$100,000 option deposit upon execution of definitive deal documents, and the remaining \$1 million option payment at closing. Closing of the transaction is subject to State approval. Contemporaneous with the execution of definitive deal documents, Verano would also provide secured debt to Green Rx in the amount of \$1.8 million bearing an interest rate of 9% per annum. Definitive deal documents were executed on or about April 18, 2019.

Conor Green Consulting, LLC and Shinnecock Nation

In February 2019, Verano entered into a term sheet with Conor Green Consulting, LLC (“**CGC**”). Under the terms of the transaction, CGC and Verano would create a joint venture (the “**JV**”) that would enter into a contractual relationship with the Shinnecock Indian Nation, a federally recognized Native American tribe, to develop and open a cannabis dispensary. Certain milestone payments tied to the performance of the project would provide CGC with \$500,000 in cash and up to \$3 million in stock of PubCo or the acquirer of Verano if Verano is sold prior to going public. Verano will have a 51% interest in the JV. Verano would be responsible for lending (through funding of the JV) the Shinnecock Indian Nation funds for capital and operational expenditures. The fees payable to the JV will initially be 15% of gross revenue of the project, plus 25% of the net profits of the project. All revenues collected by the JV will be split 66.67% in favor of Verano and 33.33% in favor of CGC. Definitive documents for the transaction are being negotiated by the parties.

Harvest Health & Recreation, Inc.

In March 2019, Verano entered into a binding letter agreement (the “**Letter Agreement**”) with Harvest Health & Recreation Inc. (“**Harvest**”), a corporation publicly-traded in Canada, for Harvest to acquire, directly, or indirectly through a wholly-owned subsidiary or controlled affiliate, all of the issued and outstanding membership units of Verano by way of a merger, securities exchange or similar transaction. The purchase price is approximately \$850 million based upon a price of CAD\$8.79 per share of Harvest. The parties executed a definitive agreement on or about April 22, 2019.

420 Capital Management, LLC d/b/a GreenGate Chicago

On March 1, 2019, Verano entered into a term sheet with 420 Capital Management, LLC d/b/a GreenGate Chicago (“**GreenGate**”) and 42 Capital Management, LLC (“**GreenGate Property**”). GreenGate holds a medical cannabis dispensary license in Chicago, and GreenGate Property owns or leases the property out of which GreenGate operates. Definitive documents for the transaction are being negotiated by the parties. It is contemplated that a wholly-owned subsidiary of Verano created for the purpose of this transaction and VHGG Holdings, LLC, would acquire 100% of the membership interests of (i) GreenGate for \$10 million in stock of Verano’s publicly-traded parent company if the Company became public or, in the case of a sale of Verano prior to becoming a public company, the sellers would receive \$10 million in value of securities in the acquirer and (ii) GreenGate Property for \$5 million in cash, with the approval of the Illinois Department of Financial and Professional Regulation. The \$5 million in cash will be payable in installments beginning on the signing date of the definitive documents, is non-refundable and will be fully paid out five months after the signing (or sooner if the final closing occurs sooner). Closing of the transaction will require approval by the Illinois Department of Financial and Professional Regulation.

Commitments and Contingencies

JJR Private Capital II Ltd. Partnership (“**JJR**”) entered into a convertible loan agreement with the Company on or about August 22, 2018, pursuant to which the Company could draw funds which could be converted into equity. The Company did not draw funds under this agreement, and, on or about February 1, 2019, entered into Settlement and Termination Agreement pursuant to which the loan agreement, and any rights which may have arisen thereunder, were terminated, in consideration for the Company’s agreement to pay JJR \$5 million, which was paid in April of 2019.

In connection with a subscription receipt offering in October of 2018, the Company entered into an agency agreement with Clarus Securities, Inc. (“**Clarus**”), pursuant to which Clarus would broker, *inter alia*, the subscription of up to \$12 million of Class B Units of the Company. On or about February 7, 2019, the Company and Clarus mutually agreed to terminate the agency agreement and any rights which may have arisen thereunder, in consideration for which the Company granted to Clarus’s blocker entity 100,000 Class B warrants in the Company at a price of \$21.73 per Class B Unit. Clarus’s blocker, Clarus Securities SIV, Inc., exercised the warrants on February 11, 2019.

On or about February 11, 2019, the Company took in non-brokered subscription receipts totaling approximately \$5.6 million from Cannon Verano, LLC, Andrew Left, A&T SPV II LLC, and Caravel DE Corporation at a price of \$21.73 per Class B Unit.

SIGNIFICANT ACCOUNTING JUDGMENTS, ESTIMATES AND ASSUMPTIONS

The preparation of consolidated financial statements in conformity with IFRS accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimate is revised if the revision affects only that period or in the period of the revision and future periods if the review affects both current and future periods.

Significant judgements, estimates and assumptions that have the most significant effect on the amounts recognized in the consolidated financial statements are described below.

(i) Estimated Useful Lives and Depreciation of Property and Equipment (Also see Note 6)

Depreciation of property and equipment is dependent upon estimates of useful lives which are determined through the exercise of judgment. The assessment of any impairment of these assets is dependent upon estimates of recoverable amounts that take into account factors such as economic and market conditions and the useful lives of assets.

(ii) Estimated Useful Lives and Amortization of Intangible Assets (Also see Note 8)

Amortization of intangible assets is recorded on a straight-line basis over the estimated useful life of the intangible asset. Intangible assets that have indefinite useful lives are not subject to amortization and are tested annually for impairment, or more frequently if events or changes in circumstances indicate that they might be impaired.

(iii) *Biological Assets*

Management is required to make estimates in calculating the fair value of biological assets and harvested cannabis inventory. These estimates include a number of assumptions, such as estimating the stages of growth of the cannabis, harvested costs, sales price and expected yields.

(iv) *Intangible Asset and Goodwill Impairment*

Indefinite-lived intangible assets and goodwill are tested for impairment annually and whenever events or changes in circumstances indicate that the carrying amount of such assets has been impaired. In order to determine if the value of the goodwill had been impaired, the cash-generating unit to which goodwill has been allocated must be valued using present value techniques. When applying this valuation technique, the Company relies on a number of factors, including historical results, business plans, forecasts, and market data. Changes in the condition for these judgements and estimates can significantly affect the assessed value of goodwill.

(v) *Business Combination*

In a business combination, all identifiable assets, liabilities and contingent liabilities acquired are recorded at their fair values. One of the most significant estimates relates to the determination of the fair value of these assets and liabilities. Contingent consideration is measured at its acquisition-date fair value and is included as part of the consideration transferred in a business combination. Contingent consideration that is classified as equity is not remeasured at subsequent reporting dates and its subsequent settlement is accounted for within equity. Contingent consideration that is classified as an asset or a liability is remeasured at subsequent reporting dates in accordance with IAS 39, or IAS 37 Provisions, Contingent Liabilities and Contingent Assets, as appropriate, with the corresponding gain or loss being recognized in profit or loss. For any intangible asset identified, depending on the type of intangible asset and the complexity of determining its fair value, an independent valuation expert or management may develop the fair value, using appropriate valuation techniques, which are generally based on a forecast of the total expected future net cash flows. The valuations are linked closely to the assumptions made by management regarding the future performance of the assets concerned and any changes in the discount rate applied. Amortization of intangible assets is recorded on a straight-line basis over estimated useful lives.

Income taxes

Income tax expense is recognized in the Consolidated Statements of Operations based on the expected tax payable on the taxable income for the year, using tax rates enacted or substantively enacted at year-end. For the years ended December 31, 2018 and 2017, Federal and State income tax expense totaled \$1,791,912 and \$296,897, respectively. Federal and State income tax expense is computed on taxable income of NatureX, LLC, Healthway Services of West Illinois, LLC and Union Group of Illinois, LLC all of which elected to be taxed as C corporations. Furthermore, as a result of Redfish Holdings, Inc.'s stockholders exchanging their stock for membership units in Verano Holdings, LLC in 2018, Redfish Holdings, Inc. became a C corporation for tax purposes during 2018. For the years ended December 31, 2018 and 2017, all other entities were treated as limited liability companies; accordingly, taxable income and losses flowed through to the respective members.

Deferred tax assets and liabilities and the related deferred income tax expense or recovery, if any, are recognized for deferred tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using the enacted or substantively enacted tax rates expected to apply when the asset is realized or the liability settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that substantive

enactment occurs.

Certain Verano subsidiaries are subject to U.S. Internal Revenue Code Section 280E. This section disallows deductions and credits attributable to a trade or business trafficking in controlled substances. Under U.S. federal law, marijuana is a Schedule I controlled substance. The Company has taken the position that any costs included in the cost of goods sold should not be treated as amounts subject to the Section 280E expense disallowance.

The Company would recognize any potential accrued interest and penalties related to unrecognized tax benefits as part of its tax provision as interest or penalty expense, as applicable. The Company had no penalties or interest related to income taxes for the years ended December 31, 2018 and 2017.

CHANGES IN OR ADOPTION OF ACCOUNTING POLICIES

New standards and interpretations issued but not yet adopted

The following IFRS standards have been recently issued by the IASB. The Company is assessing the impact of these new standards on future consolidated financial statements. Pronouncements that are not applicable or where it has been determined to not have a significant impact to the Company have been excluded herein.

(i) *IFRS 16, Leases*

In January 2016, the IASB issued IFRS 16, *Leases*, which will replace IAS 17, *Leases*. This standard introduces a single lessee accounting model and requires a lessee to recognize assets and liabilities for all leases with a term of more than twelve months unless the underlying asset is of low value. A lessee is required to recognize a right-of-use asset representing its right to use the underlying asset and a lease liability representing its obligation to make lease payments. The standard will be effective for annual periods beginning on or after January 1, 2019, with earlier application permitted for entities that apply IFRS 15, *Revenue from Contracts with Customers*, at or before the date of initial adoption of IFRS 16. The extent of the impact of adoption of the standard has not yet been determined.

FINANCIAL INSTRUMENTS AND FINANCIAL RISK MANAGEMENT

Financial Instruments

The Company's financial instruments consist of cash, accounts receivable, accounts payable, accrued liabilities, short-term notes payable, and long-term notes payable. The carrying values of these financial instruments approximate their fair values at December 31, 2018 and 2017.

Financial instruments recorded at fair value are classified using a fair value hierarchy that reflects the significance of the inputs to fair value measurements. The three levels of hierarchy are:

Level 1 – Unadjusted quoted prices in active markets for identical assets or liabilities;

Level 2 – Inputs other than quoted prices that are observable for the asset or liability, either directly or indirectly

Level 3 – Inputs for the asset or liability that are not based on observable market data.

There have been no transfers between fair value levels during the years ended December 31, 2018 and 2017.

The following table summarizes the Company's financial instruments at December 31, 2018:

	Financial Assets	Financial Liabilities	Total
Financial Assets:			
Cash	\$ 73,087,292	\$ -	\$ 73,087,292
Accounts Receivable	\$ 2,765,033	\$ -	\$ 2,765,033
Financial Liabilities			
Accounts Payable	\$ -	\$ 7,809,439	\$ 7,809,439
Accrued Liabilities	\$ -	\$ 1,775,523	\$ 1,775,523
Current Portion of Notes Payable	\$ -	\$ 4,261,642	\$ 4,261,642
Notes Payable, Net of Current Portion	\$ -	\$ 2,853,836	\$ 2,853,836

The following table summarizes the Company's financial instruments at December 31, 2017:

	Financial Assets	Financial Liabilities	Total
Financial Assets:			
Cash	\$ 3,326,794	\$ -	\$ 3,326,794
Accounts Receivable	\$ 1,043,877	\$ -	\$ 1,043,877
Financial Liabilities			
Accounts Payable	\$ -	\$ 2,147,810	\$ 2,147,810
Accrued Liabilities	\$ -	\$ 612,199	\$ 612,199
Current Portion of Notes Payable	\$ -	\$ 2,049,598	\$ 2,049,598
Notes Payable, Net of Current Portion	\$ -	\$ 2,920,569	\$ 2,920,569

Financial Risk Management

The Company is exposed in varying degrees to a variety of financial instrument related risks. The Board mitigates these risks by assessing, monitoring and approving the Company's risk management processes:

Credit Risk

Credit risk is the risk of a potential loss to the Company if a customer or third party to a financial instrument fails to meet its contractual obligations. The maximum credit exposure at December 31, 2018 and 2017 is the carrying amount of cash. The Company does not have significant credit risk with respect to its customers.

The Company provides credit to its customers in the normal course of business and has established credit evaluation and monitoring processes to mitigate credit risk but has limited risk as the majority of its sales are transacted with cash.

Liquidity Risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations associated with financial liabilities. The Company manages liquidity risk through the management of its capital structure. The Company's approach to managing liquidity is to ensure that it will have sufficient liquidity to settle obligations and liabilities when due.

In addition to the commitments outlined in Note 13 to the Audited Consolidated Financial Statements, the Company has the following contractual obligations:

	<1 Year	1 to 3 Years	3 to 5 Years	Greater than 5	Total
Accounts Payable	\$ 7,809,439	\$ -	\$ -	\$ -	\$ 7,809,439
Accrued Liabilities	\$ 1,775,523	\$ -	\$ -	\$ -	\$ 1,775,523
Notes Payable	\$ 4,261,642	\$ 255,910	\$ 276,825	\$ 2,411,101	\$ 7,205,478

Market Risk

(i) Interest Rate Risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. The Company's financial debts have fixed rates of interest and therefore expose the Company to a limited interest rate fair value risk.

(ii) Price Risk

Price risk is the risk of variability in fair value due to movements in equity or market prices. See Note 5 to the Audited Consolidated Financial Statements for the Company's assessment of certain changes in the fair value assumption used in the calculation of biological asset values.

Banking Risk

Notwithstanding that a majority of states have legalized medical marijuana, there has been no change in U.S. federal banking laws related to the deposit and holding of funds derived from activities related to the marijuana industry. Given that U.S. federal law provides that the production and possession of cannabis is illegal, there is a strong argument that banks cannot accept for deposit funds from businesses involved with the marijuana industry. Consequently, businesses involved in the marijuana industry often have difficulty accessing the U.S. banking system and traditional financing sources. The inability to open bank accounts with certain institutions may make it difficult to operate the businesses of the Company and leaves their cash holdings vulnerable.

Asset Forfeiture Risk

Because the cannabis industry remains illegal under U.S. federal law, any property owned by participants in the cannabis industry, which either are used in the course of conducting such business, or are the proceeds of such business, could be subject to seizure by law enforcement and subsequent civil asset forfeiture. Even if the owner of the property was never charged with a crime, the property in question could still be seized and subject to an administrative proceeding by which, with minimal due process, it could be subject to forfeiture.

Exhibit 12

APP 0351

AA 005771

SECURITIES AND EXCHANGE COMMISSION

FORM D

Official notice of an offering of securities that is made without registration under the Securities Act in reliance on an exemption provided by Regulation D and Section 4(6) under the Act.

Filing Date: **2018-11-13**
SEC Accession No. 0001062993-18-004557

(HTML Version on secdatabase.com)

FILER

Verano Holdings, LLC

CIK:1757626 | IRS No.: 000000000 | State of Incorp.:DE | Fiscal Year End: 1231
Type: D | Act: 33 | File No.: 021-325642 | Film No.: 181177368

Mailing Address
214 W. OHIO STREET
CHICAGO IL 60654

Business Address
214 W. OHIO STREET
CHICAGO IL 60654
4106350613

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM D**Notice of Exempt Offering of Securities****OMB APPROVAL**

OMB Number: 3235-0076
Expires: June 30,
2012
Estimated average
burden
hours per
response: 4.00

1. Issuer's Identity

CIK (Filer ID Number)	Previous Name(s) <input checked="" type="checkbox"/> None	Entity Type
<u>0001757626</u>		<input type="checkbox"/> Corporation
Name of Issuer		<input type="checkbox"/> Limited Partnership
Verano Holdings, LLC		<input checked="" type="checkbox"/> Limited Liability Company
Jurisdiction of Incorporation/ Organization		<input type="checkbox"/> General Partnership
DELAWARE		<input type="checkbox"/> Business Trust
Year of Incorporation/Organization		<input type="checkbox"/> Other
<input type="checkbox"/> Over Five Years Ago		
<input checked="" type="checkbox"/> Within Last Five Years (Specify Year) 2017		
<input type="checkbox"/> Yet to Be Formed		

2. Principal Place of Business and Contact Information

Name of Issuer			
Verano Holdings, LLC			
Street Address 1		Street Address 2	
214 W. OHIO STREET			
City	State/Province/Country	ZIP/Postal Code	Phone No. of Issuer
CHICAGO	ILLINOIS	60654	8334837266

3. Related Persons

Last Name	First Name	Middle Name
ARCHOS	GEORGE	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☒ Executive Officer ☒ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
DORF	SAM	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code

CHICAGO

ILLINOIS

60654

Relationship: ☒ Executive Officer ☒ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
MATT	DEAN	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☒ Executive Officer ☒ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
TENNANT	TIM	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☒ Executive Officer ☐ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
WEISS	DARREN	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☒ Executive Officer ☒ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
MARSICO	ANTHONY	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☒ Executive Officer ☐ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
FOTOPOULOS	CHRIS	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☒ Executive Officer ☐ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
MAHLER	LEONARD	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☐ Executive Officer ☒ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
MILLSTEIN	CARY	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☐ Executive Officer ☒ Director ☐ Promoter

Clarification of Response (if Necessary)

4. Industry Group

- | | | |
|---|---|--|
| <input type="checkbox"/> Agriculture | Health Care | <input type="checkbox"/> Retailing |
| Banking & Financial Services | <input type="checkbox"/> Biotechnology | <input type="checkbox"/> Restaurants |
| <input type="checkbox"/> Commercial Banking | <input type="checkbox"/> Health Insurance | Technology |
| <input type="checkbox"/> Insurance | <input type="checkbox"/> Hospitals & Physicians | <input type="checkbox"/> Computers |
| <input type="checkbox"/> Investing | <input type="checkbox"/> Pharmaceuticals | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> Investment Banking | <input type="checkbox"/> Other Health Care | <input type="checkbox"/> Other Technology |
| <input type="checkbox"/> Pooled Investment Fund | <input type="checkbox"/> Manufacturing | Travel |
| | Real Estate | <input type="checkbox"/> Airlines & Airports |
| <input type="checkbox"/> Other Banking & Financial Services | <input type="checkbox"/> Commercial | <input type="checkbox"/> Lodging & Conventions |
| <input type="checkbox"/> Business Services | <input type="checkbox"/> Construction | <input type="checkbox"/> Tourism & Travel Services |
| Energy | <input type="checkbox"/> REITS & Finance | <input type="checkbox"/> Other Travel |
| <input type="checkbox"/> Coal Mining | <input type="checkbox"/> Residential | |
| <input type="checkbox"/> Electric Utilities | <input type="checkbox"/> Other Real Estate | <input checked="" type="checkbox"/> Other |
| <input type="checkbox"/> Energy Conservation | | |
| <input type="checkbox"/> Environmental Services | | |
| <input type="checkbox"/> Oil & Gas | | |
| <input type="checkbox"/> Other Energy | | |

5. Issuer Size

- | | |
|---|---|
| Revenue Range | Aggregate Net Asset Value Range |
| <input type="checkbox"/> No Revenues | <input type="checkbox"/> No Aggregate Net Asset Value |
| <input type="checkbox"/> \$1 - \$1,000,000 | <input type="checkbox"/> \$1 - \$5,000,000 |
| <input type="checkbox"/> \$1,000,001 - \$5,000,000 | <input type="checkbox"/> \$5,000,001 - \$25,000,000 |
| <input type="checkbox"/> \$5,000,001 - \$25,000,000 | <input type="checkbox"/> \$25,000,001 - \$50,000,000 |
| <input type="checkbox"/> \$25,000,001 - \$100,000,000 | <input type="checkbox"/> \$50,000,001 - \$100,000,000 |
| <input type="checkbox"/> Over \$100,000,000 | <input type="checkbox"/> Over \$100,000,000 |
| <input checked="" type="checkbox"/> Decline to Disclose | <input type="checkbox"/> Decline to Disclose |
| <input type="checkbox"/> Not Applicable | <input type="checkbox"/> Not Applicable |

6. Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)

- | | |
|--|--|
| <input type="checkbox"/> Rule 504(b)(1) (not (i), (ii) or (iii)) | <input type="checkbox"/> Rule 505 |
| <input type="checkbox"/> Rule 504 (b)(1)(i) | <input type="checkbox"/> Rule 506 |
| <input type="checkbox"/> Rule 504 (b)(1)(ii) | <input type="checkbox"/> Securities Act Section 4(6) |
| <input type="checkbox"/> Rule 504 (b)(1)(iii) | <input type="checkbox"/> Investment Company Act Section 3(c) |
| | <input type="checkbox"/> Section 3(c)(1) <input type="checkbox"/> Section 3(c)(9) |
| | <input type="checkbox"/> Section 3(c)(2) <input type="checkbox"/> Section 3(c)(10) |
| | <input type="checkbox"/> Section 3(c)(3) <input type="checkbox"/> Section 3(c)(11) |
| | <input type="checkbox"/> Section 3(c)(4) <input type="checkbox"/> Section 3(c)(12) |
| | <input type="checkbox"/> Section 3(c)(5) <input type="checkbox"/> Section 3(c)(13) |
| | <input type="checkbox"/> Section 3(c)(6) <input type="checkbox"/> Section 3(c)(14) |
| | <input type="checkbox"/> Section 3(c)(7) |

7. Type of Filing

- ☒ New Notice Date of First Sale 2018-11-08 ☐ First Sale Yet to Occur

☐ Amendment

8. Duration of Offering

Does the Issuer intend this offering to last more than one year? ☐ Yes ☒ No

9. Type(s) of Securities Offered (select all that apply)

- | | |
|--|---|
| <input type="checkbox"/> Pooled Investment Fund Interests | <input checked="" type="checkbox"/> Equity |
| <input type="checkbox"/> Tenant-in-Common Securities | <input type="checkbox"/> Debt |
| <input type="checkbox"/> Mineral Property Securities | <input type="checkbox"/> Option, Warrant or Other Right to Acquire Another Security |
| <input type="checkbox"/> Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security | <input checked="" type="checkbox"/> Other (describe) |

Subscription receipts at \$21.73USD each

10. Business Combination Transaction

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer? ☐ Yes ☒ No

Clarification of Response (if Necessary)

11. Minimum Investment

Minimum investment accepted from any outside investor \$ 0 USD

12. Sales Compensation

Recipient	Recipient CRD Number <input type="checkbox"/> None	
(Associated) Broker or Dealer <input type="checkbox"/> None	(Associated) Broker or Dealer CRD Number	<input type="checkbox"/> None
Street Address 1	Street Address 2	
City	State/Province/Country	ZIP/Postal Code
State(s) of Solicitation (select all that apply)		
Check "All States" or check individual States	<input type="checkbox"/> All States	<input type="checkbox"/> Foreign/non-US

13. Offering and Sales Amounts

Total Offering Amount \$ 12,000,001 USD or ☐ Indefinite

Total Amount Sold \$ 12,000,001 USD

Total Remaining to be Sold \$ 0 USD or ☐ Indefinite

Clarification of Response (if Necessary)

Subscription receipts at \$21.73USD each

14. Investors

- ☐ Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors,
Number of such non-accredited investors who already have invested in the offering

Regardless of whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering:

15. Sales Commissions & Finders' Fees Expenses

Provide separately the amounts of sales commissions and finders' fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount.

Sales Commissions \$ 0 USD ☐ Estimate

Finders' Fees \$ 0 USD ☐ Estimate

Clarification of Response (if Necessary)

16. Use of Proceeds

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

\$ 0 USD ☐ Estimate

Clarification of Response (if Necessary)

Signature and Submission

Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.

Terms of Submission

In submitting this notice, each Issuer named above is:

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, the information furnished to offerees.
- Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the Issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against it in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.
- Certifying that the Issuer is not disqualified from relying on any Regulation D exemption it has identified in Item 6 above for one of the reasons stated in Rule 505(b)(2)(iii).

Each Issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

For signature, type in the signer's name or other letters or characters adopted or authorized as the signer's signature.

Issuer	Signature	Name of Signer	Title	Date
Verano Holdings, LLC	/s/ George Archos	GEORGE ARCHOS	CHIEF EXECUTIVE OFFICER	2018-11-13

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.

* This undertaking does not affect any limits Section 102(a) of the National Securities Markets Improvement Act of 1996 ("NSMIA") [Pub. L. No. 104-290, 110 Stat. 3416 (Oct. 11, 1996)] imposes on the ability of States to require information. As a result, if the securities that are the subject of this Form D are "covered securities" for purposes of NSMIA, whether in all instances or due to the nature of the offering that is the subject of this Form D, States cannot routinely require offering materials under this undertaking or otherwise and can require offering materials only to the extent NSMIA permits them to do so under NSMIA's preservation of their anti-fraud authority.

Exhibit 13

APP 0360

AA 005780

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,.
et al.

Plaintiffs

vs.

STATE OF NEVADA DEPARTMENT OF
TAXATION

Defendant
.

CASE NO. A-19-786962-B

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 6

MONDAY, JUNE 10, 2019

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APP 0361

AA 005781

1 Director of Marketing of NOR, two women; right?

2 A We have an executive team at NOR and we listed all
3 the people who are part of that executive team.

4 Q Including these --

5 A These are the people who actually run the company.

6 Q Including these two women who are not officially on
7 the board of directors of NOR, you listed them; right?

8 A We listed all the key executives that compose the
9 executive team who come into the office every day and run the
10 company.

11 Q Including the two women; right?

12 A Including everyone who's a key executive in the
13 company.

14 Q Okay. Would I be correct that the application
15 required you to list the percentage of ownership of all the
16 owners?

17 A I think --

18 Q Do you want to look at it?

19 A Well, I think where that statement gets murky is
20 when you talk about publicly traded companies.

21 Q Okay. That's where we're going to go in a minute,
22 but would you agree with me that the application requires,
23 quote, "all owners and their percentage of ownership" to be
24 listed?

25 MR. KOCH: Objection. He's pointing to a section of

1 the document. I'd ask him to show it.

2 THE COURT: Overruled.

3 BY MR. KEMP:

4 Q Do you know as you sit here -- I'll show it to you
5 if you want.

6 A Yeah, please.

7 MR. KEMP: Shane, will you pop it up, please?

8 I.T. TECHNICIAN: Sorry, which exhibit?

9 MR. KEMP: It's Exhibit 5, page 11.

10 BY MR. KEMP:

11 Q "And the organizational chart showing all owners,
12 officers and board members of the recreational marijuana
13 establishment, including percentage of ownership of each
14 individual -- for each individual." Right, that's what it
15 says?

16 A Yes.

17 Q Now, counsel asked you some questions about -- I
18 can't remember who it was, someone you listed on the
19 percentage of ownership. It's true that you did not list all
20 of the owners of Xanthic; right?

21 A Xanthic is a publicly traded corporation and our
22 understanding was that for a publicly registered or publicly
23 traded companies that you're required to disclose the officers
24 and board members, which we did.

25 Q Where did you get that understanding?

1 A Well, I've been involved in the industry from the
2 beginning and our legal counsel has been and we had just
3 recently received an approval letter from the Department of
4 Taxation itself approving the 95 percent transfer of
5 ownership.

6 Q Okay.

7 A I'm still going. So I --

8 Q So it was your --

9 A So we did a similar disclosure in our application,
10 listing those same board members and officers. At no point in
11 time was there a requirement to list every shareholder of
12 Xanthic.

13 Q But it was your understanding that you had to list
14 all of the officers and directors of the public company but
15 not the shareholders, is that correct?

16 A That's correct. My understanding was that we had to
17 list the board members and officers in the application, just
18 as we had recently done in the ownership transfer request that
19 we submitted to the State which was recently approved.

20 Q Okay. And you did not include the major
21 shareholders of Xanthic; correct?

22 A I don't agree with that statement.

23 Q Okay. All Js Greenspace LLC, have you ever heard
24 that name?

25 A All Jay Green Piece?

1 Q All Js Greenspace LLC.

2 A Not off the top of my head.

3 Q And if I told you they owned 37 million shares of
4 Xanthic, they are 22.5 percent, that's news to you now?

5 A Can you tell me who the members and managers are of
6 that LLC?

7 Q Earlier you referenced an individual named Schott
8 something?

9 A Schottenstein.

10 Q Yes. So the Schottenstein company is one of the
11 major owners?

12 A As far as I know, yes.

13 Q And do you know how much they own?

14 A My recollection was around 30 percent.

15 Q Okay. And how about GA Opportunities Corp? They
16 own 27 million shares of Xanthic or 16.5 percent of the
17 company. You didn't list them under the organizational chart,
18 did you?

19 A I believe we listed everyone that the application
20 required us to list.

21 Q Okay. I'm not asking if you think you did
22 everything right, I'm asking specifically did you list GA
23 Opportunities Corp. or not?

24 A GA Opportunities Corp. is not on our application, as
25 far as I can recall.

1 Q And neither was All Js, which by the way is a
2 wonderful name for a marijuana company, All Js Greenspace LLC;
3 right?

4 A I do not believe we listed All Js.

5 Q But you did list Liesl -- how do you pronounce her
6 last name?

7 A Liesl Sicz.

8 Q And she only owned .5 percent of NOR through
9 Harvest; right?

10 A Yeah, post 95 percent transaction. I'd have to pull
11 that up again and see, but yeah, it was a smaller percentage.

12 Q Okay. Let's use your 95 percent. So if you use
13 your 95 percent, these two shareholders that own 37 percent of
14 NOR you didn't list, but the woman who only owned, what was
15 it, .5 percent, you did list as an owner; right? Right?

16 A Well, you know --

17 Q I'm just asking what you did.

18 A Yeah. So I don't believe we listed those two
19 entities, you know. You're asking me to make certain
20 assumptions that I frankly don't know as I sit here right now,
21 but I know we did list Liesl Sicz, yes.

22 Q Okay. So why did you list the woman that only owned
23 .5 percent and you didn't list the shareholders that owned 74
24 times as much stock? Why was that?

25 A Well, first of all, Liesl was one of the founding

Exhibit 14

APP 0367

AA 005787

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,.
et al.

Plaintiffs

vs.

STATE OF NEVADA DEPARTMENT OF
TAXATION

Defendant
.

CASE NO. A-19-786962-B

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 5
VOLUME II**

FRIDAY, MAY 30, 2019

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APP 0368

AA 005788

1 to Mr. Kemp. Before we get started --

2 MR. KEMP: Your Honor, I don't want her to make any
3 statements of fact in front of the witness, because this is a
4 key point of the examination.

5 MS. SHELL: Okay.

6 MR. KEMP: And I talked to her about it. And if she
7 wants to excuse the witness so we can talk about this --

8 MS. SHELL: Could we --

9 THE COURT: Okay. So, ma'am, I'm going to ask you
10 to go back outside for a minute.

11 THE WITNESS: Can I leave my --

12 THE COURT: Yes. You can leave your stuff if you
13 want.

14 (Witness exited courtroom)

15 THE COURT: All right. Ms. Shell, you had an issue
16 you wanted to raise.

17 MS. SHELL: Yes. And I believe that the -- Mr.
18 Kemp's table has already pulled up the testimony that I wanted
19 to correct -- statements that I wanted to correct.

20 So when we were in court on Wednesday morning on a
21 hearing on the motion for protective order I stated that MPX
22 did not own GreenMart at the time that they applied for the
23 license. Your Honor, that was incorrect. When I went back
24 and -- I'm relatively new to this case, and when I went back
25 -- I thought I knew all the facts. I went back and was

1 preparing last night, and looking through the materials that I
2 had been given by Mr. Kemp in preparation for today's
3 examination of Ms. Dougan, and I realized I had made an error.
4 And I did not want to let that sit on the record.

5 THE COURT: Okay.

6 MR. KEMP: Your Honor, this was a key point in the
7 examination of Mr. Plaskon. And if you recall, I put up the
8 charts of the GreenMart people.

9 THE COURT: I got it. I'm not worried about it.
10 It's an issue I will weigh as part of my deliberative process
11 at some point when I get closer to having more of the
12 evidence.

13 If we could get the witness back in, because we're
14 trying to get the rest of our witnesses done today. Because
15 Mr. Gilbert would like to finish, I think. Although it's
16 unlikely.

17 MR. SHEVORSKI: You might have a point, Your Honor.

18 THE COURT: You want to the over-under on how many
19 more hours?

20 Ms. Dougan, if you'd come on back up. And since
21 we've already sworn you, I'd like to remind you you're still
22 under oath.

23 Mr. Kemp, you're up.

24 BY MR. KEMP:

25 Q Ms. Dougan, can you see the screen there -- or you

Exhibit 15

APP 0371

AA 005791



NOTICE OF MEETING

AND

MANAGEMENT INFORMATION CIRCULAR

RELATING TO

THE SPECIAL MEETING OF SECURITYHOLDERS

TO BE HELD ON JANUARY 15, 2019

**The Board of Directors unanimously recommends that you vote
IN FAVOUR
of the Arrangement Resolution**

These materials are important and require your immediate attention. The securityholders of MPX Bioceutical Corporation are required to make important decisions. If you have questions as to how to deal with these documents or the matters to which they refer, please contact your financial, legal or other professional advisor. If you have any questions or require more information with respect to voting your MPX Securities at the Meeting, please contact our proxy solicitation agent:

**Laurel Hill Advisory Group
North American Toll Free: 1-877-452-7184
Collect Calls Outside of North America: 416-304-0211
Email: assistance@laurelhill.com**

THE ARRANGEMENT, THE MPX CONTINUANCE, THE MPX INTERNATIONAL STOCK OPTION PLAN AND THE RELATED SECURITIES DESCRIBED HEREIN HAVE NOT BEEN APPROVED OR DISAPPROVED BY ANY SECURITIES REGULATORY AUTHORITY, INCLUDING WITHOUT LIMITATION ANY SECURITIES REGULATORY AUTHORITY OF ANY CANADIAN PROVINCE OR TERRITORY, THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, OR THE SECURITIES REGULATORY AUTHORITY OF ANY U.S. STATE, NOR HAS ANY OF THEM PASSED UPON THE ACCURACY OR ADEQUACY OF THIS CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENCE.

December 11, 2018

APP 0372
MMLF00947

AA 005792

in connection with the Arrangement, provided that the number of such securities sold during any three-month period does not exceed 1% of the then outstanding class of such securities, subject to specified restrictions on the manner of sale, notice requirements, aggregation rules and the availability of current public information about iAnthus or MPX International, as applicable.

Exercise of the iAnthus Replacement Options, the MPX International Options and the MPX Warrants

The iAnthus Replacement Options, the MPX International Options and the MPX Warrants may not be exercised in the United States or by or on behalf of a “U.S. person” (as defined in Rule 902(k) of Regulation S under the U.S. Securities Act), except by a person that qualifies as an “accredited investor” as defined in Rule 501 under the U.S. Securities Act, unless another exemption from registration under the U.S. Securities Act) is available. Prior to the issuance of any shares pursuant to any such exercise, iAnthus or MPX International may require the delivery of an opinion of counsel or other evidence or certifications reasonably satisfactory to iAnthus or MPX (as the case may be) to the effect that the issuance of such shares does not require registration under the U.S. Securities Act. Any such exercise must also comply with applicable state securities laws.

The foregoing discussion is only a general overview of certain requirements of United States Securities Laws applicable to the securities received upon completion of the Arrangement. All holders of such securities are urged to consult with counsel to ensure that the resale of their securities complies with applicable United States Securities Laws.

Fees and Expenses

The aggregate expenses of MPX incurred or to be incurred relating to the Arrangement, including, without limitation, contractual severance obligations, legal, accounting, audit, financial advisory, printing, “tail” policies of directors’ and officers’ liability insurance and other administrative and professional fees, the preparation and printing of this Circular, fees owed to Laurel Hill Advisory Group in connection with the solicitation of proxies for the Meeting and other out-of-pocket costs associated with the Meeting are estimated to be approximately \$11,826,983 in the aggregate.

All expenses incurred in connection with the Arrangement and the transactions contemplated thereby shall be paid by the party incurring such expense.

Interests of Certain Persons in the Arrangement

In considering the recommendation of the MPX Board with respect to the Arrangement, MPX Securityholders should be aware that certain members of MPX’s senior management and the MPX Board have certain interests in connection with the Arrangement that may present them with actual or potential conflicts of interest in connection with the Arrangement.

The table below sets forth the number and percentage of MPX Shares, MPX Options and MPX Warrants that the directors and officers of MPX and any of their respective affiliates and associates beneficially own or exercise control or direction over, directly or indirectly, as of the date hereof. Neither the MPX Convertible Debentures nor the MPX Convertible Loan are owned by any directors or executive officers of MPX or any of their respective affiliates or associates.

Other than the interests and benefits described below, none of the directors or the executive officers of MPX, or to the knowledge of the directors and executive officers of MPX, any of their respective associates or affiliates, has any material interest, direct or indirect by way of beneficial ownership of securities or otherwise in any matter to be acted upon in connection with the Arrangement or that would materially affect the Arrangement.

<u>Name and Position</u>	<u>Number of MPX Shares Beneficially Owned⁽¹⁾</u>	<u>Percentage of MPX Shares⁽²⁾</u>	<u>Number of MPX Options Beneficially Owned</u>	<u>Percentage of MPX Options⁽³⁾</u>	<u>Number of MPX Warrants Beneficially Owned</u>	<u>Percentage of MPX Warrants⁽⁴⁾</u>
W. Scott Boyes, <i>Chairman, Chief Executive Officer and President</i>	3,911,000	0.97%	4,000,000	15.76%	Nil	N/A
David McLaren, <i>Chief Financial Officer</i>	Nil	N/A	1,000,000	3.94%	Nil	N/A
Elizabeth Stavola, <i>Chief Operating Officer and Director</i>	13,380,798	3.3%	3,500,000	13.79%	1,740,000	3.8%
Michael Arnkværn, <i>Executive Vice President Sales & Marketing</i>	3,047,281	0.75%	500,000	1.97%	Nil	N/A
Jeremy S. Budd, <i>Vice President, General Counsel & Corporate Secretary</i>	508,500	0.13%	900,000	3.45%	Nil	N/A
Jonathan Chu, <i>Vice President Accounting</i>	Nil	N/A	1,000,000	3.94%	Nil	N/A
Randy Stafford, <i>Director</i>	270,000	0.07%	1,050,000	4.14%	Nil	N/A
Andrew R. Ryan, <i>Director</i>	1,520,000	0.38%	750,000	2.95%	600,000	1.32%
Richard S. Segerblom, <i>Director</i>	Nil	N/A	750,000	2.95%	Nil	N/A
Robert R. Galvin, <i>Director</i>	1,520,000	0.38%	750,000	2.95%	600,000	1.32%
Dr. Miles D. Thompson, <i>Director</i>	Nil	N/A	750,000	2.95%	Nil	N/A
Robert Petch, <i>Director</i>	Nil	N/A	750,000	2.95%	Nil	N/A

Notes:

- (1) The number of MPX Shares beneficially owned by each MPX Shareholder excludes the MPX Options and MPX Warrants held by each MPX Shareholder, which have been separately listed in the column titled "Number of MPX Options Beneficially Owned" and "Number of MPX Warrants Beneficially Owned".
- (2) The percentage of MPX Shares figures are based on 404,954,040 MPX Shares outstanding on the Record Date.
- (3) The percentage of MPX Options figures are based on 25,387,887 MPX Options outstanding on the Record Date.
- (4) The percentage of MPX Warrants figures are based on 45,768,500 MPX Warrants outstanding on the Record Date.

Directors

The MPX directors (other than directors who are also executive officers) hold, in the aggregate, 3,310,000 MPX Shares, representing approximately 0.82% of the MPX Shares outstanding on the Record Date. The MPX directors (other than directors who are also executive officers) hold, in the aggregate, 4,800,000 MPX Options, representing approximately 18.91% of the MPX Options outstanding on the Record Date. The MPX directors (other than directors who are also executive officers) hold, in the aggregate, 1,200,000 MPX Warrants, representing approximately 2.62% of the MPX Options outstanding on the Record Date. David J. Layman, who ceased to be a Director of MPX on October 30, 2017, holds 399,500 MPX Shares, representing approximately 0.1% of the MPX Shares outstanding on the Record Date. Donald P. Stott, who ceased to be a Director of MPX on October 30, 2017, holds 342,000 MPX Shares, representing approximately 0.08% of the MPX Shares outstanding on the Record Date. All of the MPX Shares, MPX Options and MPX Warrants held by the MPX directors will be treated in the same fashion under the Arrangement as MPX Shares, MPX Options and MPX Warrants held by every other MPX Shareholder, MPX Optionholder and MPX Warrantholder, respectively.

Consistent with standard practice in similar transactions, in order to ensure that the MPX directors do not lose or forfeit their protection under liability insurance policies maintained by MPX, the Arrangement Agreement provides for the maintenance of such protection for six years. See "The Arrangement — Interests of Certain Persons in the Arrangement — Indemnification and Insurance" below.

DIRECTORS AND OFFICERS OF MPX INTERNATIONAL

As of the date of the Circular, the directors of MPX International are W. Scott Boyes and Jeremy S. Budd. At the Effective Time, the directors of MPX International are intended to be W. Scott Boyes, Jeremy S. Budd, Alastair Crawford, Robert Petch and Randall G. Stafford. Each of the directors of MPX International will hold office until the next annual general meeting of MPX International Shareholders unless the director's office is earlier vacated in accordance with the articles of incorporation of MPX International or the director becomes disqualified to serve as a director.

The following table sets forth the name, province or state and country of residence, position with MPX International, principal occupation during the previous five (5) years and the pro forma number of voting securities beneficially owned, directly or indirectly, or over which control or direction is exercised, for the proposed directors and executive officers of MPX International after giving effect to the Arrangement.

Name and Municipality of Residence	Principal Occupation during the last five years ⁽¹⁾	Director Since	Position with the Corporation	Number of MPX International Shares Beneficially Owned, Directly or Indirectly, or Over which Control or Direction is Exercised ⁽²⁾
W. Scott Boyes <i>Toronto, Ontario</i>	President & Chief Executive Officer, MPX Bioceutical Corporation Since November 24, 2014 Chairman, MPX Bioceutical Corporation Since October 30, 2017 President, CGX Life Sciences, Inc. June 28, 2013 to January 19, 2017	October 17, 2018	Chairman, President & CEO	391,100
Jeremy S. Budd <i>Toronto, Ontario</i> ⁽⁴⁾	Vice President, General Counsel and Corporate Secretary Since March 1, 2018 Principal The Law Office of Jeremy S. Budd Since November 1, 2013	October 17, 2018	Vice President, General Counsel and Corporate Secretary	50,850
Alastair Crawford <i>London, United Kingdom</i> ⁽³⁾⁽⁴⁾⁽⁵⁾	Chairman of Hooyu Limited (formerly 192.com Limited) Since March, 2012	Proposed Director	-	1,200,000
Robert Petch <i>Cranbrook, Kent, UK</i> ⁽³⁾⁽⁴⁾⁽⁵⁾	Independent Investment Consultant Since June, 2014 Investment Advisor to Private Family Office January, 2010 to June, 2014	Proposed Director	-	Nil
Randall G. Stafford <i>Toronto, Ontario</i> ⁽³⁾⁽⁴⁾⁽⁵⁾	Consultant Since January 15, 2018 Interim Chief Financial Officer, MPX Bioceutical Corporation December 1, 2016 to January 15, 2018 Vice President, Finance Cushman & Wakefield, Inc., June 2014 to July 2016 Realtor, Royal LePage Real Estate Service Ltd., Johnston & Daniel Division, Brokerage November 2013 to June 2014	Proposed Director	-	20,750

Notes:

- (1) All companies noted are still carrying on business as of the date of the Circular unless otherwise noted.
- (2) Assumes 43,437,607 MPX International Shares issued and outstanding after the completion of the Arrangement and the exercise or conversion pursuant to the Plan of Arrangement of: (a) such number of MPX Options and MPX Warrants that the individuals in the table above have indicated they currently intend to exercise; and (b) such number of MPX Convertible Debentures and the MPX Convertible Loan that the individuals in the table above have indicated they currently intend to convert or exercise. The information as to MPX International Shares to be beneficially owned, directly or indirectly, or over which control or direction is exercised, is based upon information furnished to MPX International by its proposed directors and officers as of the date hereof.
- (3) Proposed member of the Audit Committee of the Corporation.
- (4) Proposed member of the Nominating and Corporate Governance Committee of the Corporation.
- (5) Proposed member of the Compensation Committee of the Corporation.

Management of the Corporation

The following is a brief description of the background and experience of each proposed member of the MPX International management team and MPX International Board. Unless otherwise specified, the organizations named in the descriptions below are still carrying on business.

W. Scott Boyes – Director, Chairman, President and Chief Executive Officer / age: 68

W. Scott Boyes is the Chairman, President, Chief Executive Officer and a director of MPX International. Mr. Boyes is a seasoned senior executive with diversified and cross-functional experience, combining MBA credentials with a strong career background in revenue development and general management. Prior to the acquisition of CGX Life Sciences Inc. by MPX, Mr. Boyes was President of CGX Life Sciences Inc. where he focused on general management. Since August 2008, Mr. Boyes has been President of NCD Associates, where he focused his consulting services on financial restructuring, and revenue enhancement and streamlining business processes for distressed or high growth companies. In 2005, Mr. Boyes founded and developed Railcrew Xpress Corporation, a specialized passenger transportation company servicing U.S. railroads, and served as its President until 2008. There, he developed and led the sales and customer service teams, managed the acquisition and integration of three competitor companies and developed and deployed sophisticated dispatch, tracking and reporting technology. From 2000 to 2005, Mr. Boyes served as President and Chief Executive Officer of Hallcon Corporation where he was responsible for the senior executive management of the company and its operating subsidiaries. Previously, he served as a Vice President of a large Canadian Bank and Vice President and General Manager of a business unit within a multinational commercial finance company with a focus on marketing and revenue development.

Jeremy S. Budd – Director, Vice President, General Counsel and Corporate Secretary / age: 40

Jeremy S. Budd is the Vice President, General Counsel and Corporate Secretary of MPX International. Mr. Budd has been practicing corporate and securities law, in Toronto, Ontario, since 2007 representing issuers and underwriters in a wide variety of capital market transactions. Mr. Budd obtained his J.D./M.B.A. from Osgoode Hall Law School and the Schulich School of Business at York University in 2005 and holds a Bachelor of Arts in philosophy from Huron University College at the University of Western Ontario.

Alastair Crawford – Proposed Director / age: 49

Alastair Crawford is a proposed director of the Corporation. Mr. Crawford has over 20 years of experience in management, operations and strategic planning. In 1996, Mr. Crawford founded 192.com, the first alternative to British Telecom's phone book as well as i-CD Publishing (UK) Ltd in 1997, which published the UK-info Disk phone book range. In addition, Mr. Crawford founded the German and Spanish social networking site Passado and Mipasado in 2001 and was the original owner of Russian social networking site Odnoklassniki.ru. Most recently, Mr. Crawford is currently the Chairman of Hooyu Limited which is a next generation identity confirmation platform used by individuals and businesses including know-your-client financial account obligations.

Mr. Crawford is an investor and advisor to over 15 companies in various sectors including hi-tech and cannabis.

Mr. Crawford was educated at the Harrow School in northwest London.

David McLaren – Chief Financial Officer / age: 48

David McLaren is the Chief Financial Officer of MPX International. Mr. McLaren brings over 25 years of financial experience, having spent the past 10 years at the chief financial officer level. Prior to joining MPX and MPX International, Mr. McLaren was CFO for Ontario Drive & Gear Limited for the past two years and previously Chief Financial Officer for Belmont Meats Limited, Redpath Sugar Limited and Nealanders International Inc. Mr. McLaren also held senior finance positions with Mother Parkers Tea & Coffee, Weston Bakeries and Loblaw's.

Mr. McLaren is a Chartered Professional Accountant and holds an Honours Bachelor of Commerce degree from McMaster University. In 2012, Mr. McLaren was honored with a Fellowship from the Chartered Professional Accountants Association in recognition of his career achievements and contributions.

Robert Petch – Proposed Director / age: 50

Robert Petch is a proposed director of the Corporation. Mr. Petch brings over 30 years of experience in management, strategic planning and financial analysis. With experience on both the buy-side and sell-side of the investment market, Mr. Petch will be able to greatly assist the Corporation in the execution of its on-going strategy of growth in the international cannabis industry.

Mr. Petch worked for 15 years at Dresdner Kleinwort Benson advising companies on strategy, fund-raising including IPOs where he led a number of successful issues, acquisitions (public and private), disposals and other market-related issues. More recently he spent 4 years assessing investment opportunities for a specialist AIM-listed private equity investment company (including in its structuring and launch) and a further 4 years advising a substantial family office (\$5 billion of asset under management) on its private equity and real estate portfolio before going independent in 2014.

Mr. Petch is a Chartered Accountant, was educated at the Harrow School and earned an honours degree in Engineering Science from Oxford University.

Randall G. Stafford – Proposed Director / age: 57

Randall G. Stafford is a proposed director of the Corporation and a director and former Interim Chief Financial Officer of MPX. Mr. Stafford was the Vice President of Finance, Cushman & Wakefield, Inc., the world's largest privately owned international commercial real estate firm, between June 2014 and July 2016. Previously, Mr. Stafford was a realtor at Royal LePage Real Estate Service Ltd., Johnston & Daniel Division, Brokerage between November 2013 and June 2014 and continues to hold his real estate licence in the Province of Ontario. Mr. Stafford was the Director of Operations and Fulfillment, First Canadian Title, one of Canada's largest providers of title insurance and backend processing operations for residential and commercial real estate transactions, a division of one of the world's largest title insurance providers, First American Title Company, between November 2010 and February 2013.

Mr. Stafford received an MBA from the Rotman School of Business at the University of Toronto, and holds his Certified Management Accountant and Chartered Professional Accountant designations.

Corporate Cease Trade Orders, Bankruptcies, Penalties or Sanctions

Corporate Cease Trade Orders

As at the date of the Circular, other than as set out below, no current or proposed director or executive officer of MPX International is, or within the 10 years prior to the date of the Circular has been, a director, chief executive officer or chief financial officer of any company (including MPX International), that:

Name of Member**Education****Experience**

and Fulfillment, First Canadian Title, one of Canada's largest providers of title insurance and backend processing operations for residential and commercial real estate transactions

Pre-Approval Policies and Procedures

The Audit Committee shall pre-approve all audit and non-audit services not prohibited by law to be provided by the independent auditors of the Corporation.

CORPORATE GOVERNANCE

National Policy 58-201 — *Corporate Governance Guidelines* ("**NP 58-201**") of the Canadian Securities Administrators sets out a series of guidelines for effective corporate governance (the "**Guidelines**"). The Guidelines address matters such as the constitution and independence of corporate boards, the functions to be performed by boards and their committees and the effectiveness and education of board members. National Instrument 58-101 — *Disclosure of Corporate Governance Practices* ("**NI 58-101**") requires the disclosure by each listed corporation of its approach to corporate governance with reference to the Guidelines as it is recognized that the unique characteristics of individual corporations will result in varying degrees of compliance.

Set out below is a description of the Corporation's intended approach to corporate governance in relation to the Guidelines.

The Board of Directors

NI 58-101 defines an "independent director" as a director who has no direct or indirect material relationship with the Corporation. A "material relationship" is in turn defined as a relationship which could, in the view of the MPX International Board, be reasonably expected to interfere with such member's independent judgment. At the Effective Time, the MPX International Board is expected to be comprised of five (5) members, three (3) of whom the MPX International Board has determined will be "independent directors" within the meaning of NI 58-101.

At the Effective Time, of the Corporation's proposed five (5) directors, Alastair Crawford, Robert Petch and Randall G. Stafford will be considered independent directors within the meaning of NI 58-101 since they are each independent of management and free from any material relationship with the Corporation. The basis for this determination is that, since the date of incorporation of the Corporation, none of the independent directors have worked for the Corporation, received remuneration from the Corporation or had material contracts with or material interests in the Corporation which could interfere with their ability to act with a view to the best interests of the Corporation. W. Scott Boyes and Jeremy S. Budd are not independent directors since they are also officers of MPX International.

The MPX International Board believes that it will function independently of management. To enhance its ability to act independent of management, the MPX International Board may in the future meet in the absence of members of management or may excuse such persons from all or a portion of any meeting where an actual or potential conflict of interest arises or where the MPX International Board otherwise determines is appropriate.

Directorships

Three (3) of the directors and/or proposed directors of MPX International (W. Scott Boyes, Randy Stafford and Robert Petch) are currently directors of MPX. However, upon completion of the Arrangement one (1) of the directors or proposed directors of MPX International (Robert Petch) will also become a director of iAnthus. Other than as set forth above, none of the directors and/or proposed directors of the Corporation are also current directors of other reporting issuers (or equivalent) in a jurisdiction or a foreign jurisdiction.

Exhibit 16

APP 0379

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,.
et al.

Plaintiffs

vs.

STATE OF NEVADA DEPARTMENT OF
TAXATION

Defendant
.

CASE NO. A-19-786962-B

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 18

WEDNESDAY, AUGUST 14, 2019

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APP 0380

AA 005800

1 Q Okay. Good enough. So is that a, no, Mr. Parker, I
2 am not identified with the Secretary of State?

3 A I'm not identified to the Secretary of State.

4 Q Good enough. Now, I believe you've testified today
5 to this Court that there are three female owners; is that
6 correct?

7 A That's right.

8 Q Why don't we have a single female owner speaking on
9 behalf of Helping Hands, as opposed to you today?

10 MS. SHELL: Objection. Relevance.

11 THE COURT: Overruled. You can answer.

12 THE WITNESS: Because I'm mostly involved with the
13 operation of Helping Hands from the beginning with my wife.

14 BY MR. PARKER:

15 Q Now, let me make sure I'm clear. Because when I
16 looked again through the application of Helping Hands I did
17 not see your name referenced as an owner, a board member, or
18 an officer. Is that also true, sir?

19 A That's right. But isn't it community property,
20 husband and wife?

21 Q Well, I don't practice domestic court, so -- but I
22 do remember that.

23 A Well, anything she owns I own, anything I own she
24 owns.

25 Q Yes. But --

1 THE WITNESS: I didn't say I was CEO.

2 BY MR. PARKER:

3 Q All right. So tell me what your role and
4 responsibilities are, then, for Helping Hands?

5 A Chief operating officer. I'm the one who operates
6 the business.

7 Q Okay. So when I look at the organizational chart
8 for Helping Hands it says that the -- it's either Dr. Florence
9 Jameson or a counterpart that is not identified as anyone,
10 it's just chief operations officer, no name whatsoever. Were
11 you aware of that?

12 A I don't -- no, Q I don't remember. Do you have
13 it somewhere?

14 MR. PARKER: Your Honor, can I take a few-minute
15 break?

16 THE COURT: I have to do a conference call at 11:30.
17 Can we go for nine more minutes?

18 At 11:30; right, Jill?

19 THE COURT: Can you go for nine more minutes on
20 something else?

21 MR. PARKER: I could, Your Honor.

22 THE COURT: Great.

23 BY MR. PARKER:

24 Q Did you do any evaluation of community impact as a
25 part of your application?

Exhibit 17

APP 0383

AA 005803

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,.
et al.

Plaintiffs

vs.

STATE OF NEVADA DEPARTMENT OF
TAXATION

Defendant
.

CASE NO. A-19-786962-B

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 8
VOLUME II**

TUESDAY, JUNE 18, 2019

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APP 0384

AA 005804

1 O'Neal as part of its team or its board. Does the Department
2 have any problem with that?

3 A No.

4 Q The Department didn't go out and start looking at
5 Websites and performing investigations into what was
6 represented other than completing a background check; is that
7 right?

8 A Right. And what was provided in the application.

9 Q Right. And so you trusted what the applicants
10 submitted; correct?

11 A Yes.

12 Q And trusted them to tell the truth; is that right?

13 A Yes.

14 Q And you relied upon them?

15 A Yes.

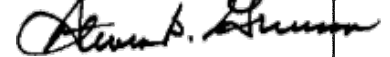
16 Q And did you think that was a reasonable thing to do
17 for the Department?

18 A I do.

19 Q Did you go out and conduct any interviews of these
20 individuals to see if they were qualified to be a board
21 member?

22 A No, we did not.

23 Q What if a company listed let's say 10 vice
24 presidents of operations as officers and described their
25 duties there? Would the Department go back and tell that



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10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 NEVADA WELLNESS CENTER, LLC, a
14 Nevada Limited Liability Company,

15 Plaintiff,

16 v.

17 STATE OF NEVADA, DEPARTMENT OF
18 TAXATION; and DOES I through X,
19 inclusive; and ROE CORPORATIONS I
20 through X, inclusive,

21 Defendants.

22 MM DEVELOPMENT COMPANY, INC., a
23 Nevada corporation; LIVFREE WELLNESS
24 LLC, dba The Dispensary, a Nevada limited
25 liability company,

26 Plaintiffs,

27 v.

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

Defendants.

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

CASE NO.: A-19-787540-W
DEPT. NO.: XVIII

NEVADA WELLNESS CENTER, LLC,
MOTION TO AMEND FINDINGS OF
FACTS AND CONCLUSIONS OF LAW
ISSUED ON AUGUST 23, 2019,
PURSUANT TO NRCP 52

[Hearing Requested]

CASE NO.: A-18-785818-W
DEPT. NO.: VIII

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

1 COMPANIES SO NV, LLC a Nevada limited
2 liability company, TRYKE COMPANIES
3 RENO, LLC, a Nevada limited liability
4 company, PARADISE WELLNESS
5 CENTER, LLC, a Nevada limited liability
6 company, GBS NEVADA PARTNERS, LLC,
7 a Nevada limited liability company, FIDELIS
8 HOLDINGS, LLC, a Nevada limited liability
9 company, GRAVITAS NEVADA, LLC, a
10 Nevada limited liability company, NEVADA
11 PURE, LLC, a Nevada limited liability
12 company, MEDIFARM, LLC, a Nevada
13 limited liability company; DOE PLAINTIFFS
14 I through X; and ROE ENTITIES I through
15 X,

16 Plaintiffs,

17 v.

18 THE STATE OF NEVADA, DEPARTMENT
19 OF TAXATION,

20 Defendants.

21 ETW MANAGEMENT GROUP LLC, a
22 Nevada limited liability company; GLOBAL
23 HARMONY LLC, a Nevada limited liability
24 company; GREEN LEAF FARMS
25 HOLDINGS LLC, a Nevada limited liability
26 company; GREEN THERAPEUTICS LLC, a
27 Nevada limited liability company; HERBAL
28 CHOICE INC., a Nevada corporation; JUST
QUALITY, LLC, a Nevada limited liability
company; LIBRA WELLNESS CENTER,
LLC, a Nevada limited liability company;
ROMBOUGH REAL ESTATE INC. dba
MOTHER HERB, 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;
ZION GARDENS LLC, a Nevada limited
liability company; and MMOF VEGAS
RETAIL, INC., a Nevada corporation,

Plaintiffs,

v.

STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative
agency; DOES 1 through 20, inclusive; and
ROE CORPORATIONS 1 through 20,

CASE NO.: A-19-787004-B
DEPT NO.: XI

1 inclusive,

2 Defendants.

3
4 COMES NOW, Plaintiff, NEVADA WELLNESS CENTER, LLC (hereinafter "NWC"), by
5 and through its attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER,
6 NELSON & ASSOCIATES, CHTD., and moved the Court seeking to Motion to Amend the
7 Findings of Facts and Conclusions of Law issued August 23, 2019, pursuant to NRCP 52.

8 This motion is made and based upon the pleadings and paper on file herein, the points and
9 authorities included herewith, the exhibits attached hereto and such oral argument as the Court may
10 entertain at the time this matter is heard.

11 DATED this 13th day of September, 2019.

12 PARKER, NELSON & ASSOCIATES, CHTD.

13 

14 THEODORE PARKER, III, ESQ.
15 Nevada Bar No. 4716
16 2460 Professional Court, Suite 200
17 Las Vegas, Nevada 89128

18 *Attorneys for Plaintiff*
19
20
21
22
23
24
25
26
27
28

1 **NOTICE OF MOTION**


2 **TO: ALL INTERESTED PARTIES and**

3 **TO: ITS COUNSEL OF RECORD:**

4 YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the
5 above and foregoing Motion to Amend Findings of Facts and Conclusions of Law date August 23,
6 2019, pursuant to NRC 52. on for hearing, before the above-entitled Court in Department No. XI
7 on the ____ day of _____, 2019 at ____ a.m./p.m.

8 DATED this 13th day of September, 2019.

10 **PARKER, NELSON & ASSOCIATES, CHTD.**

11 
12 THEODORE PARKER, III, ESQ.
13 Nevada Bar No. 4716
14 2460 Professional Court, Suite 200
15 Las Vegas, Nevada 89128

16 *Attorneys for Plaintiff*

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I.**

19 **INTRODUCTION**

20 Following lengthy hearings, on August 23, 2019, this Court issued Findings of Fact and
21 Conclusions of Law Granting Preliminary Injunction. (See Findings of Fact and Conclusions of Law
22 Granting Preliminary Injunction, filed August 23, 2019, a true and correct copy attached hereto as
23 Exhibit "A".) NWC now moves to amend those findings pursuant to NRC 52. As shown below,
24 the entire selection process was so flawed, and conducted in such degradation of NWC's
25 constitutional rights, that the previous results must be discarded and the process redone in order to
26 arrive at impartial and fair results, as contemplated under the applicable laws and regulations.
27 Specifically, that the State must be enjoined from conducting a final inspection on any of the
28 conditional licenses issued in or about December of 2018 because the process was so rife with errors,
subject to corruption, including inappropriate sharing of information, lunches, dinners and drinks

1 between DoT staff and certain privileged applicants, and improper changes to the process which
2 amounted to DoT's refusal to follow the will of Nevada voters and therefore the entire process must
3 be deemed invalid.

4 II.

5 DISCUSSION

6 A. LEGAL AUTHORITIES

7 1. Motions to Amend Findings of Fact and Conclusions of Law

8 NRCP 52 provides in pertinent part:

9 (a) Findings and Conclusions.

10 (1) In General. In an action tried on the facts without a jury or with an
11 advisory jury, the court must find the facts specially and state its conclusions
12 of law separately. The findings and conclusions may be stated on the record
after the close of the evidence or may appear in an opinion or a memorandum
of decision filed by the court. Judgment must be entered under Rule 58.

13

14 (b) Amended or Additional Findings. On a party's motion filed no later than
15 28 days after service of written notice of entry of judgment, the court may
16 amend its findings — or make additional findings — and may amend the
judgment accordingly. The time for filing the motion cannot be extended
under Rule 6(b). The motion may accompany a motion for a new trial under
Rule 59.

17 NRCP 65 states in relevant part:

18 (a) Preliminary Injunction.

19 (1) Notice. The court may issue a preliminary injunction only on notice to the adverse
party.

20 (2) Consolidating the Hearing With the Trial on the Merits. Before or after beginning the
21 hearing on a motion for a preliminary injunction, the court may advance the trial on the
22 merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence
that is received on the motion and that would be admissible at trial becomes part of the trial
record and need not be repeated at trial. But the court must preserve any party's right to a jury
trial.

23 (b) Temporary Restraining Order.

24 (1) Issuing Without Notice. The court may issue a temporary restraining order without
25 written or oral notice to the adverse party or its attorney only if:

26 (A) specific facts in an affidavit or a verified complaint clearly show that immediate
and irreparable injury, loss, or damage will result to the movant before the adverse
party can be heard in opposition; and

27 (B) the movant's attorney certifies in writing any efforts made to give notice and the
28 reasons why it should not be required.

1 (2) Contents; Expiration. Every temporary restraining order issued without notice must
2 state the date and hour it was issued; describe the injury and state why it is irreparable; state
3 why the order was issued without notice; and be promptly filed in the clerk's office and
4 entered in the record. The order expires at the time after entry — not to exceed 14 days —
that the court sets, unless before that time the court, for good cause, extends it for a like
period or the adverse party consents to a longer extension. The reasons for an extension must
be entered in the record.

5
6 **2. Violations of the Public Trust Warrant Voiding Results from a Flawed
Process**

7 Invitations to bid are akin to requests for applications for licenses. As the Nevada Supreme
8 Court has stated, “[a]n awarding board has a duty to reject any bid materially varying from bid
9 specifications.” Faust v. Donrey Media Grp., 95 Nev. 235, 237 (1979). This is done to “preserve the
10 competitive nature of bidding by preventing unfair advantage to any bidder, or other conditions
11 undermining the necessary common standard of competition” and to “save public funds and guard
12 against favoritism, improvidence and corruption. Id. at 238, fn 1 and Richardson Constr. V. Clark
13 Cty. Scho. Dist., 123 Nev. 61, 66 (2007). It was with these principles in mind, that the Nevada
14 Supreme Court declared that a “contract is void if it materially differs from the contents of the
15 invitation to bid.” Orion Portfolio Servs. 2, LLC v. County of Clark ex rel. Univ. Med. Ctr., 126
16 Nev. 397 (2010). Likewise, applications for licenses that fail to conform to the standards and
17 requirements issued by DoT in DoT’s request for applications, should be deemed void on their face.

18 Ms. Contine provided sworn testimony that the physical locations were required under the
19 regulations she created and should have been a part of the application.

20 Further, when insider information is provided to some, but not all applicants, it precludes all
21 applicants from competing on equal terms. Spiniello Constr. Co. V. Manchester, 189 Conn 539, 544
22 (Conn. 1983). In Spiniello, while the Court recognized the City’s actions were done in good faith
23 to obtain the best result for residents, the Court still found that “judicial relief is warranted where the
24 municipal action amounts to an erosion on the integrity of the bidding statute.” Id. at 545. “One of
25 the essentials to competitive bidding is that bidders **shall have the opportunity to bid on the same**
26 **thing.**” Gamewell Co. V. Phoenix, 216 F.2d 928, 934 (9th Cir. 1954) (emphasis added). “The
27 requirement is that specifications be such that **all parties can familiarize themselves with the**
28 **details.** Id. (emphasis added). Not only did the DoT give certain information to a privileged few

1 applicants but additionally made two different applications available during the application process.

2 It is appropriate for a Court to intervene when the process established by a governmental
3 agency “destroys the very principles of public policy that form the underlying basis of competitive
4 bidding.” Weinder v. City of Reno, 88 Nev. 127, 494 P.2d 277, 281 (1972). “[C]ourts should
5 scrutinize the conduct of the bidding process by any governmental agency when it appears that a
6 violation of the public trust may be involved.” Id. “Public confidence should be maintained at all
7 costs, even at the expense of those who errors are inadvertent.” Comm’n on Ethics v. JMA/Lucchese,
8 110 Nev. 1, 10 (1994). “Innocence cannot deflect the appearance of impropriety.” Id. (reversing the
9 district court and reinstating the opinion of the Nevada Commission on Ethics because architects
10 obtained an unfair advantage over competitors by virtue of insider information).

11 Here, all applicants were not given equal access to information, or even access to the same
12 application, as evidenced by multiple communications between DoT and certain applicants over
13 others. The failure of DoT to follow the voters’ mandate, and failure to consistently provide
14 information to all applicants, undeniably amounts to an erosion of the integrity of the process.
15 Favoritism and bias governed this process, and grading of the applications was partial to those the
16 DoT staff favored. Notwithstanding, government has a strong desire to prevent opportunities for –
17 and suspicion of – fraud or favoritism; “neither favoritism nor fraud is necessary to invalidate non-
18 compliance with a request for bidding...”. Gamewell, 216 F.2d at 937; Hannan v. Board of
19 Education, 107 P. 646 (OK 1909). Here, the failure to provide all information to all applicants,
20 failing to abide by the terms of the bid (by changing the physical location requirement), and the
21 insider communications that were ongoing and abundant) warrant preventing the issuance of any
22 permanent licenses as the competitive process, by virtue of DoT’s improper actions, was unsound,
23 flawed, biased and favored the connected few.

24 **B. FINDINGS OF FACT**

25 **1. Removal of Physical Location**

26 It is an indisputable the DoT failed to comply with the physical location requirement. The
27 DoT's arbitrary and improper elimination of the physical address requirement, as required by
28 NRS453D.210(5)(b), NAC 453D.265(1)(b), and NAC 453D.268(2)(e), made the grading process

1 unfair. Because winning applicants should not have received a license but for their manipulation of
2 the DoT's unfair process, the Court's preliminary injunction should also apply to those winning
3 applicants that did not provide actual physical addresses for the proposed marijuana establishments
4 (e.g., those that listed UPS stores or P.O. boxes). Former DoT Director Deonne Contine explicitly
5 testified that applications without a real physical address should have been summarily rejected.

6 The Court's related findings:

7 The Task Force's findings, issued on May 30, 2017, referenced the 2014 licensing process
8 for issuing Medical Marijuana Establishment Registration Certificates under NRS 453A. The
9 Task Force recommended that "the qualifications for licensure of a marijuana establishment
10 and the impartial numerically scored bidding process for retail marijuana stores be
11 maintained as in the medical marijuana program except for a change in how local
12 jurisdictions participate in selection of locations. (See Exhibit "A" at p. 10.)

13 The DoT made a change to the application after circulating the first version of the application
14 to delete the requirement of a physical location. The modification resulted in a different
15 version of the application bearing the same "footer" with the original version remaining
16 available on the DoT's website. The DoT's late decision to delete the physical address
17 requirement on some application forms while not modifying those portions of the
18 application that were dependent on a physical location (i.e. floor plan, community impact,
19 security plan, and the sink locations) after the repeated communications by an applicant's
20 agent; not effectively communicating the revision; and, leaving the original version of the
21 application on the website, is evidence of conduct that is a serious issue. P75

22 By selectively eliminating the requirement to disclose an actual physical address for each and
23 every proposed retail recreational marijuana establishment, the DoT limited the ability of the
24 Temporary Employees to adequately assess graded criteria such as (i) prohibited proximity
25 to schools and certain other public facilities, (ii) impact on the community, (iii) security, (iv)
26 building plans, and (v) other material considerations prescribed by the Regulations. P76"

27 NWC provided a physical address for each desired jurisdiction and was graded incorrectly.
28 The graders seemed to only understand floor plans and deducted points for actual building plans and
inspection of NWC's location which was approved by the DoT on September 18, 2018.

2. This Case is Distinguishable from the Nuleaf Case

23 This motion to amend is based upon the failure of applicants to provide a physical location
24 in order for the DoT to even approve an application for a retail marijuana stores. Applications
25 submitted without a physical address were incomplete and should have been rejected. The Nuleaf
26 case is easily distinguishable from this case.

27 In Nuleaf, an injunction was sought due to applicants failure to comply with applicable local
28 and governmental zoning requirements before the applicant received a registration certificate for

1 a medical marijuana establishment. Nuleaf CLV Dispensary, LLC v. State Dep't of Health & Human
2 Servs., 414 P.3d 305, 306, (2018). The Court in Nuleaf was tasked with determining whether NRS
3 453A.322(3)(a)(5) required applicants compliance with applicable local and governmental zoning
4 requirements before a applicant can receive a registration certificate. Specifically NRS
5 453A.322(3)(a)(5) states:

6 “ (5) If the city, town or county in which the proposed medical marijuana establishment will
7 be located has enacted zoning restrictions, proof of licensure with the applicable local
8 governmental authority or a letter from the applicable local governmental authority certifying
that the proposed medical marijuana establishment is in compliance with those restrictions
and satisfies all applicable building requirements; and”

9 NRS 453A.322(3)(a)(5) requires proof of licensure with the applicable local governmental
10 authority or a letter from the applicable local governmental authority certifying that the proposed
11 medical marijuana establishment is in compliance with zoning restrictions and satisfies all applicable
12 building requirements.

13 Nuleaf **did not** address NRS 453A.322 requirement that a physical location be provided in
14 the application. Rather, the issue was an applicants failure to obtain licensure from applicable local
15 governmental authority certifying that the proposed medical marijuana establishment is in
16 compliance with zoning restrictions and satisfied all applicable building requirements.

17 In the case at bar, NWC is seeking injunctive relief because other applicants failed to comply
18 with the requirement to list a physical address on the initial application as required by NRS
19 453D.210(5)(b).

20 Specifically NRS 453D.210(5)(b) provides:

21 “5. The Department shall approve a license application if:

22 (b) The physical address where the proposed marijuana establishment will operate is owned
by the applicant or the applicant has the written permission of the property owner to operate
the proposed marijuana establishment on that property. . . .”

23 According to plain unambiguous language of NRS 453D.210(5)(b) the DoT shall only
24 approve a completed license application that includes a physical address. Consequently, all
25 applications without physical locations should have been deemed incomplete and rejected, not
26 approved or scored by the DoT. Unlike the Nuleaf case, here the court is asked to determined
27 whether the clear language of 453D.210(5)(b) applications to include a physical address where the
28 proposed marijuana establishment will operate in order for the DoT to approve a completed license

1 application. Stated a different way, pursuant to NRS 453D.210(5)(b) applications without physical
2 addresses were incomplete and should have been rejected.

3 Unlike this case, the issue in Nuleaf was applicants obtaining approval or proof of licensure
4 with the applicable local governmental authority. Furthermore, the Court in Nuleaf found the statute
5 at issue ambiguous. Here, the plain language of NRS 453D.210 clearly specifies **conditions for**
6 **approval of application** and clearly states the DoT is only to consider **completed applications**.
7 There is no similar language in NRS 453A.322(3)(a)(5), and thus the Nuleaf Court found NRS
8 453A.322(3)(a)(5) was open to interpretation. Here, NRS 453D.210 has additional language making
9 the plain language of the statute clear and unambiguous. When the language of a statute is plain and
10 unambiguous, a court should give that language its ordinary meaning and not go beyond it." City
11 Council of Reno v. Reno Newspapers, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989).

12 NRS 453D.210(4) provides:

13 "Acceptance of applications for licensing; priority in licensing; **conditions for approval of**
14 **application**; limitations on issuance of licenses to retail marijuana stores; competing
15 applications. [This section was proposed by an initiative petition and approved by the voters
16 at the 2016 General Election and therefore is not subject to legislative amendment or repeal
17 until after November 22, 2019.]

18 4. **Upon receipt of a complete** marijuana establishment license application. . . . (a) Issue
19 the appropriate license if the license application is approved...." (*Emphasis added*)

20 The court should give that language of NRS 453D.210 its ordinary meaning and not go
21 beyond it. Id. The plain language of NRS 453D.210 requires conditions for approval of all
22 applications. The plain language requires all applicants to provide a **complete** application which
23 requires a **physical location** for approval of the application. Former DoT Executive Deonne Contine
24 confirmed the DoT required a real physical location be provided on all applications. In fact, she
25 stated that "applications that did not have a real physical address should not have even been
26 considered."¹ In addition, DoT Deputy Executive Jorge Pupo testified that the DoT expected a
27 physical location to be included on all applications. He confirmed that applications without a
28 physical location are incomplete.² Thus according to the plain and unambiguous language of NRS

¹ See Exhibit B, Trial Transcript Excerpts from July 12, 2019 P48:L15-49:16.

² See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P:19:L21-P:20:L11.

1 453D.210(4) and 453D.210(5)(b), as affirmed by DoT Executive and DoT Deputy Executive, all
2 applications without a physical location are incomplete and should have been rejected, not approved
3 and/or scored by the DoT. Accordingly the preliminary injunction should apply to all applications
4 that failed to provide a real physical location.

5 **2. Violation of Nevada Open Meeting Laws/Communication Methods**

6 The Nevada Open Meeting Law (OML) was enacted in 1960 to ensure that the actions and
7 deliberations of public bodies be conducted openly. The OML is set forth in chapter 241 of the
8 Nevada Revised Statutes (NRS). The DoT is a public body subject to NRS Chapter 241.

9 NRS 241.020 provides:

10 “Meetings to be open and public; limitations on closure of meetings; notice of meetings;
copy of materials; exceptions.

11 “1. Except as otherwise provided by specific statute, all meetings of public bodies must be
open and public, and all persons must be permitted to attend any meeting of these public
12 bodies. A meeting that is closed pursuant to a specific statute may only be closed to the
extent specified in the statute allowing the meeting to be closed. All other portions of the
13 meeting must be open and public, and the public body must comply with all other provisions
of this chapter to the extent not specifically precluded by the specific statute. Public officers
and employees responsible for these meetings shall make reasonable efforts to assist and
14 accommodate persons with physical disabilities desiring to attend.

15 2. Except in an emergency, written notice of all meetings must be given at least 3 working
days before the meeting. . . .”

16 The DoT failed to comply with the open meeting laws with regard to dissemination of
17 information related to the recreational marijuana licensing application and associated requirements.
18 The application process for a license to sell recreational marijuana, unlike the application process
19 for a license to sell medical marijuana, did not contain any information on how or where to submit
20 questions regarding the application.³ Steve Gilbert testified that he did not know why this was the
21 case. (Id.) Mr. Gilbert further confirmed that while there was an email address to send questions to,
22 the questions and responses were not provided to all applicants.⁴ Compounding this with the fact
23 that the scoring criteria was deliberately kept secret from applicants, DoT's conduct raises red flags.⁵
24 The DoT permitted applicants and their representatives to personally contact the DoT staff about

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26 ³See Exhibit D, Trial Transcript Excerpts from May 30, 2019, P:218:22-25.

27 ⁴ See Exhibit E, Trial Transcript Excerpts from May 30, 2019 Volume II, P207:L8-P209:9.

28 ⁵See Exhibit F, Trial Transcript Excerpts from June 19, 2019 Volume I, P120:L5-8.

1 the application process.

2 Unfortunately, DoT went a step further than merely carelessly failing to share all pertinent
3 information with all applicants; Mr. Pupo actively discussed the regulations with some applicants'
4 counsel on his personal cell phone. Mr. Pupo was aware before the applications were released that
5 there was confusion regarding some of the criteria.⁶ Yet, Mr. Pupo took "no corrective action" to
6 clarify the rule for the rest of the industry. (*Id.*) Mr. Pupo was offered a job by the same applicants
7 he spoke with on his personal cell phone and dined.⁷ In Mr. Pupo's own words "everyone had the
8 same opportunity to request clarification..."⁸)

9 Mr. Pupo's purported belief – that all applicants had the same opportunity to contact DoT
10 and obtain the same clarification, – is belied by Mr. Pupo's own testimony. Mr. Pupo admits to
11 speaking with the owners of some of the applicants personally *during the application process*.⁹ Mr.
12 Pupo met these applicants after DoT was charged with implementing the scoring procedure for
13 recreational marijuana.¹⁰ Mr. Pupo further had multiple dinners and lunches with certain owners.
14 ¹¹ Moreover, DoT itself refused to answer questions for applicants with which they were personally
15 unfamiliar. ¹² Mr. Pupo could not explain why some applicants were simply denied information by
16 DoT. (*Id.*) However, Mr. Pupo could confirm he did not go out to dinners or lunches, or speak with,
17 NWC or its owners during the application process. ¹³

20 ⁶ See Exhibit G, Trial Transcript Excerpts from June 19, 2019 Volume II, P46:L21-P48:L25.

21 ⁷ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P83:L8-P:84:L21.

22 ⁸ See Exhibit G, Trial Transcript Excerpts from June 19, 2019 Volume II, P58:L1-12.

23 ⁹ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P9:L15-25

24 ¹⁰ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P12:L1-15.

25 ¹¹ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P12:L1-15.

26 ¹² See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P72:L22-P74:L20.

27 ¹³ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P47:L14-P:48:L2.

1 As Mr. Pupo was the final decision maker on the scoring criteria – the buck stops here –.¹⁴
2 It appears Mr. Pupo manipulated the application process to award licenses to select applicants. This
3 violated the trust of the voters of Nevada and NRS 241. Pursuant to NRS 241.020 private meetings
4 by the DoT are prohibited. Since there is no statutory exception specifically providing public bodies
5 with the privilege to meet in private just because they have their attorneys present, such meetings are
6 prohibited. *McKay v. Board of County Comm'rs*, 103 Nev. 490, 746 P.2d 124, 1987 Nev. (Nev.
7 1987).

8 The DoT's arbitrary and improper communication with applicants and their
9 representatives/attorney violated NRS chapter 241. DoT 's actions violated the statute and made the
10 grading process unfair by allowing some applicants the benefit of inside information when other
11 applicants were not afforded the same opportunity.

12 The Court's related findings:

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

18 In addition to the email question and answer process, the DoT permitted applicants and
19 their representatives to personally contact the DoT staff about the application process.
20 **See Exhibit A ¶21**

21 The DoT conducted the following in violation of Nevada OML/NRS chapter 241:

- 22 1. Failed to provide a single point of contact for all applicants;
- 23 2. Allowed applicants to ask questions and receive answers directly from the
24 Department, without disseminating the same information to all applicants;
- 25 3. Modified the application without informing all applicants the application was
26 modified;
- 27 4. Failed to disseminate the modified application to all applicants;
- 28 5. Removed the requirement of a physical location from the application without
informing all applicants the physical location requirement was removed;

¹⁴ See Exhibit F, Trial Transcript Excerpts from June 19, 2019 Volume I, P118:L25-P119:3.

1 6. Removed compliance from the grading process and failed to inform all applicants
2 of the removal of compliance; and

3 7. DoT Executives held private meetings with applicants/representatives/attorneys.

4 The DoT by its actions precluded all applicants from competing on equal terms. All actions
5 taken by the DoT following DoT's violation of NRS chapter 241, should be declared void pursuant
6 NRS 241.037.¹⁵ The DoT's action in issuing marijuana establishment licenses after it violated NRS
7 Chapter 241 should be voided. Accordingly the preliminary injunction should apply to all marijuana
8 establishment licenses issued.

9 **3. DoT Deputy Executive Jorge Pupo Actions**

10 Most alarming, are the actions of DoT Deputy Executive Jorge Pupo. Mr. Pupo exhibited
11 favoritism with certain applicants, made significant changes to the application and scoring process
12 substantial affecting the outcome thereof, and directed DoT investigators not to consider the sale
13 of marijuana to minors by a certain applicant thereby impacting the compliance section of
14 application scoring. Mr. Pupo's actions so infected the integrity of the application and scoring
15 process that it impacted NWC's right to just and fair application scoring process.

16 Specifically, Mr. Pupo explicitly testified that he had lunch, dinner and drinks with certain
17 applicants and/or their representatives. ¹⁶ Karalin Cronkhite DoT Chief Investigator testified that
18 Mr. Pupo directed her not to include non compliance involving the sale of marijuana to minors by
19 certain facilities.¹⁷ Mr. Gilbert, testified that Mr. Pupo was responsible for applying the percentage
20
21

22
23 ¹⁵ See NRS 241.037(2) Any person denied a right conferred by this chapter may sue in the district court of
24 the district in which the public body ordinarily holds its meetings or in which the plaintiff resides. A suit may seek to
25 have an action taken by the public body declared void, to require compliance with or prevent violations of this
26 chapter or to determine the applicability of this chapter to discussions or decisions of the public body. The court may
27 order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this
28 subsection.

29 ¹⁶ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P:13:L7-15.

30 ¹⁷ See Exhibit H, Trial Transcript Excerpts from July 11 Volume I, 2019, P:78:L23-25.

1 and break down of points to certain categories.¹⁸ Mr. Gilbert testified that it was Mr. Pupo's decision
2 not to employ QuantumMark for the 2018 application process.¹⁹ Mr. Pupo confirmed that he decided
3 to remove the physical location as a scoring item from the application.²⁰ Mr. Pupo through multiple
4 actions was able to manipulate the application and scoring process. Consequently, the Court's
5 preliminary injunction should also apply to the entire process. Accordingly, the Court's Findings of
6 Fact and Conclusion of Law should be amended and the preliminary injunction should also apply
7 to the entire process.

8 **4. Former DoT Director Deonne Contine Actions**

9 Former DoT Director Deonne Contine's actions also exhibited favoritism with certain
10 applicants. Mrs. Contine's actions affected the integrity of the application and scoring process
11 impacting NWC's right to a just and fair application scoring process.

12 Specifically, Mrs. Contine explicitly testified that she had lunch, dinner and drinks with
13 certain applicants and/or their representatives, and that certain applicants called her on her cellular
14 telephone.²¹ She also testified that after leaving the DoT she received campaign contributions when
15 she ran for Nevada State Assembly from applicants and/or their representatives.²² Mrs. Contine
16 through multiple actions taken along side Mr. Pupo was able to manipulate the application and
17 scoring process infecting the integrity of the application and scoring process. Consequently, the
18 Court's preliminary injunction should also apply to the entire process.

19 **C. ARGUMENT**

20 **1. Competitive Bidding Process**

21 The purpose of a competitive application or bidding process "is to secure competition, save
22 public funds, and to guard against favoritism, improvidence and corruption." *Gulf Oil Corp. v. Clark*

23 ¹⁸ See Exhibit I, Trial Transcript Excerpts from June 11, 2019, P:98:L12-16.

24 ¹⁹ See Exhibit I, Trial Transcript Excerpts from June 11, 2019, P:96:L5-10.

25 ²⁰ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P:14:L19-P15:L11.

26 ²¹ See Exhibit B, Trial Transcript Excerpts from July 12, 2019, P:99:L21-P:100:L17.

27 ²² See Exhibit B, Trial Transcript Excerpts from July 12, 2019, P:101:L4-P:102:L8.

1 *Cty.*, 94 Nev. 116, 118-19, 575 P.2d 1332, 1333 (1978); see also *City of Boulder City v. Boulder*
2 *Excavating, Inc.*, 124 Nev. 749, 758, 191 P.3d 1175, 1181 (2008) (same). The statutes and
3 regulations that govern these competitive processes "are deemed to be for the benefit of the
4 taxpayers" and "are to be construed for the public good." *Gulf Oil*, 94 Nev. at 118-19.

5 **a. DoT's Violation of Nevada Open Meeting**
6 **Laws/Communication Methods**

7 By permitting applicants to submit applications with inside information when other
8 applicants were not afforded the same opportunity, the DoT precluded the other applicants from
9 competing on equal terms. See *Spiniello Const. Co. v. Town of Manchester*, 189 Conn. 539, 544,
10 456 A.2d 1199, 1202 (1983). By giving some applicants information that was not available to others,
11 the DoT defeated the objectivity and integrity of the competitive application process by exhibiting
12 favoritism. *Spiniello*, 189 Conn. 544-545. In that situation, an injunction was appropriate. *Id.*

13 **b. Violation of Initiative Ballot, NRS 453D.210(4) and (5), and**
14 **NAC 453D Requirements for Physical Address**

15 Under the marijuana ballot initiative, as codified in NRS 453D.210(4) and (5), the DoT shall,
16 within 90 days of receipt of applications, approve a license application if the prospective marijuana
17 establishment has submitted an application in compliance with regulations adopted by the
18 Department' and: (b) The physical address where the proposed marijuana establishment will operate
19 is owned by the applicant or the applicant has the written permission of the property owner to operate
20 the proposed marijuana establishment on that property; NRS 453D.210(5)(b). As the statute requires
21 the DoT to determine whether an application was submitted "in compliance with the regulations,"
the regulations likewise require that any application submitted must have the physical address in it:

- 22 1. On or before November 15, 2018, a person who holds a medical marijuana
23 establishment registration certificate may apply for not more than one
24 license for a marijuana establishment of the same type by submitting:
25 (b) An application on a form prescribed by the Department which includes, without
limitation:
(3) The physical address where the proposed marijuana establishment will be
located and the physical address of any co-owned or otherwise affiliated marijuana,

26 The application submission period began on September 7, 2018 and closed on September
27 20, 2018. The DoT, pursuant to statute, had until December 5, 2018 to complete its compliance
28 review. NAC 453D.265() (b) (3) (bold added). As if stating it once in the regulations was not

1 enough to be clear, NAC 453D.268(2)(e) also requires that "[The] application must include, without
2 limitation."

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

6 Both the Ballot Initiative (which was enacted as NRS 453D) and the DoT's adopted
7 regulations (NAC 453D) absolutely required all applications to be complete and approved
8 applications to include physical address where the proposed marijuana establishment will be located.
9 But the DoT only informed certain applicants (those that had direct access to DoT employees), that
10 real physical addresses were not required and would not be graded at all. The selective disclosure
11 of information by DoT employees about the grading and the need for a real physical address
12 impacted the entire process:

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

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

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

The DoT's failure to require an actual physical address, its failure to confirm whether actual
addresses were provided, and its failure to consider those addresses as part of the evaluation and
grading resulted in an unfair process. The DoT's unfair process allowed winning applicants to take
advantage of inside information to which they were privy and it permitted winning applicants to
manipulate their scoring for graded categories like (i) impact on the community, (ii) security, and
(iii) building plans, among others. An example of the resulting unfairness is shown by the fact that
the highest graded building scores were given to those applicants (e.g., Thrive) that did not have an
actual physical address and were able to submit fairy-tale building plans because they were not

1 bound by reality and an actual location. Currently, NWC provided physical addresses, building
2 plans, and parking plans of an existing building. The NWC building was inspected by DoT on
3 September 18, 2018 and approved.²³

4 Former DoT Director Deonne Contine testified that applications that did not have a real
5 physical address should not have even been considered:

6 Q You couldn't use a UPS Store, because that's not a real physical address; right?

7 A I don't think -- I don't think that it would be allowed.

8 Q Okay. And if you'd been the director at the time, you would have disqualified
those applications?

9 A I wouldn't have even reviewed the applications.²⁴

10 Q Your staff would have been instructed that if they didn't have a physical address
apart from a Post Office box or a UPS Store that that application should not be
accepted; right?

11 A I think that would be the direction.

12 Q Okay. So the answer to my question is yes?

13 A Yes.

14 I mean, the reason for your position is because the statute says that?

15 A Right.²⁵

16 Because applicants would not have received a license but for their manipulation of the DoT's
17 unfair process, NWC believes that the Court's preliminary injunction should also apply to those
18 winning applicants that did not provide actual physical addresses for the proposed marijuana
19 establishments (e.g., those that listed UPS stores or P.O. boxes). In order to determine which of the
20 winning applicants failed to provide actual physical addresses for the proposed marijuana
21 establishments, the Court should order the DoT to identify which of winning applicants did not
22 comply with NRS 453D.210(5)(b), NAC 453D.265(1)(b), and NAC 453D.268(2)(e).

23 By comparison, NRS 333 (State Purchasing Chapter) provides:

24 "A contract may not be awarded to a bidder who does not comply with the
25 requirements set forth in the request for proposal".

26 NRS 333.311

27 ²³ See Exhibit J, A copy of the inspection result.

28 ²⁴ See Exhibit B, Trial Transcript Excerpts from July 12, 2019, P:48:L15-21.

²⁵ See Exhibit B, Trial Transcript Excerpts from July 12, 2019, P49:L2-16.

1 **c. Violation of Integrity of the Application and Scoring Process**
2 **that it Impacting NWC's Interest in a Just and Fair**
3 **Competitive Bidding Process**

4 Mr. Pupo and Mrs. Contine's actions in meeting with certain applicants and providing
5 information permitting applicants to submit applications with inside information when other
6 applicants were not afforded the same opportunity, the DoT precluded the other applicants from
7 competing on equal terms. See Spiniello Const. Co. v. Town of Manchester, 189 Conn. 539, 544,
8 456 A.2d 1199, 1202 (1983). Moreover, Mr. Pupo and Mrs. Contine by and through their actions
9 defeated the objectivity and integrity of the competitive application process. Spiniello, 189 Conn.
10 544-545. Mr. Pupo exhibited favoritism with certain applicants by making significant changes to
11 the application and scoring process, including physical location and scoring breakdown and
12 percentages, substantially affecting the outcome thereof. In addition, Mr. Pupo directed DoT
13 investigators not to investigate the sale of marijuana to minors by certain facilities thereby impacting
14 the compliance grading section of those applicants applications. Mr. Pupo made the decision to not
15 consider any deficiencies or violations committed by the applicant in violation of NAC
16 453D.272(i)(g). Mr. Pupo's totality of actions infected the integrity of the application and scoring
17 process, thereby impacted NWC's interest in a just and fair application scoring process. In that
18 situation, an injunction is appropriate. *Id.*

19 **d. The DoT May Not Waive Material Irregularities**

20 A government entity may waive minor irregularities with the bid documents as mere
21 informalities, *see AAB. Elec., Inc. v. Stevensen Public School Dist. No. 303*, 491 P.2d 684, 685
22 (Wash. 1971).²⁶ Material irregularities may not be waived, Blount, Inc. v. U.S., 22 Cl.Ct. 221, 227
23 (1989). A bid which contains a material nonconformity must be rejected as nonresponsive. Blount
24 citing Honeywell, Inc. v. United States, 16 Cl. Ct. 173, 181 (1989), rev'd on other grounds, 870 F.2d

25 ²⁶The test of whether or not a nonconformity or irregularity is material is whether or not it gives a bidder a
26 substantial advantage or benefit not enjoyed by the other bidders. *Id.* Irregularities are minor or immaterial only if
27 they do not affect price, quantity, or delivery of the overall supplies or services to be contracted. *George & Benjamin*
28 *General Contractors v. Government of the Virgin Islands Dept. of Property and Procurement*, 921 F. Supp. 304, 309
(V.I. 1996). See also 48 C.F.R. § 14.301(a) ("to be considered for award, a bid must comply in all material respects
with the invitation for bids. Such compliance enables all bidders to stand on an equal footing and maintains the
integrity of the sealed bidding system.").

1 644 (Fed. Cir. 1989). Material terms and conditions of a solicitation involve price, quality, quantity,
2 and delivery. *Id.* The rule is designed to prevent bidders from taking exception to material
3 provisions of the contract in order to gain an unfair advantage over competitors and to assure that
4 the government evaluates all bids on an equal basis.

5 The violations allowed by the DoT cannot be considered “minor irregularities.” First and
6 foremost, the DoT has allowed applicants to violate the mandatory provision of NRS 453D.
7 Specifically, NRS 453D.210 provides that a applicant “must include” the names of prospective
8 owners, officers, board members and physical addresses of the proposed entities. *See e.g., Blaine*
9 *Equip. Co. v. State*, 122 Nev. 860, 866, 138 P.3d 820, 823 (2006) (the district court may not rely on
10 its equitable power to disregard the mandatory language of a statute). “When the language of a
11 statute is plain and unambiguous, a court should give that language its ordinary meaning and not go
12 beyond it.” *Id.* citing *City Council of Reno v. Reno Newspapers*, 105 Nev. 886, 891, 784 P.2d 974,
13 977 (1989). Minor irregularities may be waived but violations of Statutes and Regulations can not.
14 Therefore, all applications not complying with Nevada Statutes and/or Regulations must be rejected.

15 III.

16 CONCLUSION

17 Based upon the foregoing, NWC pursuant to NRCP 55 respectfully requests this Court
18 amend its Findings of Facts and Conclusions of Law dated August 23, 2019, and enjoining the State
19 from conducting a final inspection on any of the conditional licenses issued in or about December
20 of 2018 and deeming the entire scoring/application process invalid or at a minimum enjoying all
21 applicants that did not comply with Nevada Statutes 453D and Nevada Administrative Code 453D.

22 DATED this 13th day of September, 2019.

23 **PARKER, NELSON & ASSOCIATES, CHTD.**

24 

25 THEODORE PARKER, III, ESQ.
26 Nevada Bar No. 4716
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128

27 *Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of the law office of PARKER,
3 NELSON & ASSOCIATES, CHTD., and that on this 13th day of September, 2019, I served a
4 true and correct copy of the foregoing **NEVADA WELLNESS CENTER, LLC, MOTION TO**
5 **AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST**
6 **23, 2019, PURSUANT TO NRCP 52** on the party(s) set forth below by:

- 7 ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in
8 the United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business
9 practices.
10 ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule
11 7.26, by faxing a true and correct copy of the same to each party addressed as follows:
12 ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es)
13 set forth below on this date before 5:00 p.m.
14 ☒ By EFC: by electronic filing with the Court delivering the document(s) listed above via E-file &
E-serve (Odyssey) filing system.

15 Aaron D. Ford, Esq.
16 Attorney General
17 Robert E. Werbicky, Esq.
18 Deputy Attorney General
19 Office of the Attorney General
20 555 E. Washington Avenue, Suite 3900
21 Las Vegas, NV 89101
22 (702) 486-3105
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Attorneys for Defendant,
State of Nevada, Department of Taxation

23
24 
25 An employee of PARKER, NELSON & ASSOCIATES, CHTD.
26
27
28

EXHIBIT “A”

AA 005827

Steven D. Grierson

DISTRICT COURT

CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, a
Nevada limited liability company, TGIG, LLC,
a Nevada limited liability company, NULEAF
INCLINE DISPENSARY, LLC, a Nevada
limited liability company, NEVADA
HOLISTIC MEDICINE, LLC, a Nevada limited
liability company, TRYKE COMPANIES SO
NV, LLC, a Nevada limited liability company,
TRYKE COMPANIES RENO, LLC, a Nevada
limited liability company, PARADISE
WELLNESS CENTER, LLC, a Nevada limited
liability company, GBS NEVADA PARTNERS,
LLC, a Nevada limited liability company,
FIDELIS HOLDINGS, LLC, a Nevada limited
liability company, GRAVITAS NEVADA,
LLC, a Nevada limited liability company,
NEVADA PURE, LLC, a Nevada limited
liability company, MEDIFARM, LLC, a Nevada
limited liability company, DOE PLAINTIFFS I
through X; and ROE ENTITY PLAINTIFFS I
through X,

Plaintiff(s),

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant(s).

and

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

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

FINDINGS OF FACT AND
CONCLUSIONS OF LAW GRANTING
PRELIMINARY INJUNCTION

CLERK OF THE COURT

ASG 23 280

RECEIVED

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

Intervenors.

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

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

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

16 ***PROCEDURAL POSTURE***

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

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

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

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

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

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

8 ***PRELIMINARY STATEMENT***

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

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

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

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

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

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

9 FINDINGS OF FACT

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

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

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

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

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

- 18 (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana
19 establishment;
- 19 (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana
20 establishment;
- 20 (c) Requirements for the security of marijuana establishments;
- 21 (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21
22 years of age;
- 21 (e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-
22 resistant packaging;
- 22 (f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana
23 establishments including a numerical indication of potency based on the ratio of THC to the weight of a product
24 intended for oral consumption;
- 24 (g) Requirements for record keeping by marijuana establishments;
- 24 (h) Reasonable restrictions on signage, marketing, display, and advertising;
- 25 (i) Procedures for the collection of taxes, fees, and penalties imposed by this chapter;
- 25 (j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another
26 qualified person and to enable a licensee to move the location of its establishment to another suitable location;
- 26 (k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and
27 marijuana establishments at the same location;
- 27 (l) Procedures to establish the fair market value at wholesale of marijuana; and
- 28 (m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any
violation of the provisions of NRS 453D.300.

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

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

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

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

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

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

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

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

- 25 (a) Marijuana may only be purchased from a business that is licensed by the State of
26 Nevada;
27 (b) Business owners are subject to a review by the State of Nevada to confirm that the
28 business owners and the business location are suitable to produce or sell marijuana;
 (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly
controlled through State licensing and regulation;

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

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

5 NRS 453D.020(3).

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

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

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

16 11. Some of the Task Force’s recommendations appear to conflict with BQ2.⁷

17
18
19 ⁷ The Final Task Force report (Exhibit 2009) contained the following statements:

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

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

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

27 The second recommendation of concern is:

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

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

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

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

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

7 14. The Regulations for licensing were to be "directly and demonstrably related to the
8 operation of a marijuana establishment." NRS 453D.200(1)(b). The phrase "directly and demonstrably
9 related to the operation of a marijuana establishment" is subject to more than one interpretation.
10
11
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17

18 *Use the marijuana establishments governing documents to determine who has approval rights and signatory
19 authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory
documents.

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

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

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

26 2. When determining the criminal history of a person pursuant to paragraph (c) of subsection 1 of NRS
27 453D.300, a marijuana establishment may require the person to submit to the Department a complete set of
fingerprints and written permission authorizing the Department to forward the fingerprints to the Central
28 Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its
report.

1 15. A person holding a medical marijuana establishment registration certificate could apply
2 for one or more recreational marijuana establishment licenses within the time set forth by the DoT in
3 the manner described in the application. NAC 453D.268.⁹
4

5 ⁹ Relevant portions of that provision require that application be made

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

8 ***

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

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

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

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

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

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

- (1) The title of the person;
(2) The race, ethnicity and gender of the person;
(3) A short description of the role in which the person will serve for the organization and his or her
responsibilities;
(4) Whether the person will be designated by the proposed marijuana establishment to provide written notice to
the Department when a marijuana establishment agent is employed by, volunteers at or provides labor as a
marijuana establishment agent at the proposed marijuana establishment;
(5) Whether the person has served or is currently serving as an owner, officer or board member for another
medical marijuana establishment or marijuana establishment;
(6) Whether the person has served as an owner, officer or board member for a medical marijuana establishment
or marijuana establishment that has had its medical marijuana establishment registration certificate or license, as
applicable, revoked;

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 19. The DoT posted the application on its website and released the application for
22 recreational marijuana establishment licenses on July 6, 2018.¹⁰

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

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

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

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

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

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

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

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

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

23 28. The identified criteria consisted of organizational structure of the applicant (60 points);
24 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant
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1 in the last 5 years (25 points); a financial plan (30 points); and documents from a financial institution
2 showing unencumbered liquid assets of \$250,000 per location for which an application is submitted.

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

13 30. An applicant was permitted to submit a single application for all jurisdictions in which it
14 was applying, and the application would be scored at the same time.
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16 31. By September 20, 2018, the DoT received a total of 462 applications.

17 32. In order to grade and rank the applications the DoT posted notices that it was seeking to
18 hire individuals with specified qualifications necessary to evaluate applications. The DoT interviewed
19 applicants and made decisions on individuals to hire for each position.
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21 33. When decisions were made on who to hire, the individuals were notified that they would
22 need to register with "Manpower" under a pre-existing contract between the DoT and that company.
23 Individuals would be paid through Manpower, as their application-grading work would be of a
24 temporary nature.

25 34. The DoT identified, hired, and trained eight individuals to grade the applications,
26 including three to grade the identified portions of the applications, three to grade the non-identified
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1 portions of the applications, and one administrative assistant for each group of graders (collectively the
2 "Temporary Employees").

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

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

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

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

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

21 40. The DoT created a Regulation that modified the mandatory BQ2 provision "[t]he
22 Department shall conduct a background check of each prospective owner, officer, and board member of
23 a marijuana establishment license applicant" and determined it would only require information on the
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28 ¹¹ Given the factual issues related to the grading raised by MM and LivFree, these issues may be subject to additional
evidentiary proceedings in the assigned department.

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

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

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

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

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

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

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

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

27 ¹⁴ That provision states:

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

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

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

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

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

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

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

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

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

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

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

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

55. The secondary market for the transfer of licenses is limited.¹⁶

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

19 ...

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

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

7 (Emphasis added.)

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

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

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

22 67. NRS 453D.200(1) provides that "the Department shall adopt all regulations necessary or
23 convenient to carry out the provisions of this chapter." The Court finds that the words "necessary or
24 convenient" are susceptible to at least two reasonable interpretations. This limitation applies only to
25 Regulations adopted by the DoT.
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1 68. While the category of diversity is not specifically included in the language of BQ2, the
2 evidence presented in the hearing demonstrates that a rational basis existed for the inclusion of this
3 category in the Factors and the application.

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

6 70. The DoT staff provided various applicants with different information as to what would
7 be utilized from this category and whether it would be used merely as a tiebreaker or as a substantive
8 category.
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10 71. Based upon the evidence adduced, the Court finds that the DoT selectively discussed
11 with applicants or their agents the modification of the application related to physical address
12 information.

13 72. The process was impacted by personal relationships in decisions related to the
14 requirements of the application and the ownership structures of competing applicants. This in and of
15 itself is insufficient to void the process as urged by some of the Plaintiffs.
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17 73. The DoT disseminated various versions of the 2018 Retail Marijuana Application, one
18 of which was published on the DoT's website and required the applicant to provide an actual physical
19 Nevada address for the proposed marijuana establishment, and not a P.O. Box, (*see* Exhibit 5), whereas
20 an alternative version of the DoT's application form, which was not made publicly available and was
21 distributed to some, but not all, of the applicants via a DoT listserv service, deleted the requirement that
22 applicants disclose an actual physical address for their proposed marijuana establishment. *See* Exhibit
23 5A.
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25 74. The applicants were applying for conditional licensure, which would last for 1 year.
26 NAC 453D.282. The license was conditional based on the applicant's gaining approval from local
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1 authorities on zoning and land use, the issuance of a business license, and the Department of Taxation
2 inspections of the marijuana establishment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 90. Therefore, a security bond already ordered in the amount of \$400,000 is sufficient for
8 the issuance of this injunctive relief.¹⁸
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10 91. If any conclusions of law are properly findings of fact, they shall be treated as if
11 appropriately identified and designated.

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

ORDER

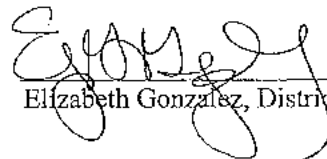
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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

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

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

DATED this 23rd day of August 2019.


Elizabeth Gonzalez, District Court Judge

Certificate of Service

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


Dan Kutinac

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

EXHIBIT “B”

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

.

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 14

FRIDAY, JULY 12, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

AA 005853

1 address.

2 Q A physical address?

3 A Yes.

4 Q Okay. And a physical address in your mind could not
5 be a Post Office box?

6 A Right.

7 Q Or one of these companies that maintains Post Office
8 -- fake Post Office places. Couldn't be that, either; right?

9 A I think the idea was to have an office address
10 essentially.

11 Q Right. So you couldn't use -- I can't remember what
12 it is, UPS.

13 THE COURT: UPS Stores.

14 BY MR. KEMP:

15 Q You couldn't use a UPS Store, because that's not a
16 real physical address; right?

17 A I don't think -- I don't think that it would be
18 allowed.

19 Q Okay. And if you'd been the director at the time,
20 you would have disqualified those applications?

21 A I wouldn't have even reviewed the applications.

22 Q Okay. Because it was disqualified, or because you
23 wouldn't be the person doing the review?

24 A Well, I don't know. I mean, I --

25 Q And let me ask it --

1 A -- I would --

2 Q Let me ask it better. Your staff would have been
3 instructed that if they didn't have a physical address apart
4 from a Post Office box or a UPS Store that that application
5 should not be accepted; right?

6 A I think that would be the direction.

7 Q Okay. So the answer to my question is yes?

8 A Yes.

9 Q Okay. And the reason for that is because the
10 statute required it; right?

11 MR. KOCH: Objection. Misstates the law.

12 THE COURT: Overruled.

13 BY MR. KEMP:

14 Q I mean, the reason for your position is because the
15 statute says that?

16 A Right.

17 Q Okay. All right. Okay. I'm going to go to my last
18 area. Mr. Gutierrez asked you some questions about
19 extenuating circumstances. Do you recall those?

20 A Yes.

21 Q And your answer said, and I wrote it down -- I tried
22 to write it down verbatim. You said, if they were enjoined,
23 that would be beyond their control. Do you recall saying
24 that?

25 A I guess what I -- yes, I recall saying that.

1 A I've never met him. I mean, I know who he is,
2 but --
3 Q Armand?
4 A Armand -- yes, I know Armand.
5 Q What's his last name?
6 A I don't know.
7 Q Okay. All I know is Armand, as well.
8 A Armand -- I don't know. Somebody who understands
9 his last name better could probably say it. I don't know.
10 Q Phil Peckman?
11 A I know him.
12 Q Do you know the names of any of the marijuana
13 establishments that may have applied?
14 A I know -- I mean, I know -- I don't -- when I looked
15 at -- I didn't look too closely at the caption here.
16 Q How about Essence?
17 A Is Essence Armand? I'm not sure.
18 Q Thrive?
19 A Thrive I think is Mr. Peckman and his group.
20 Q Nevada Organics?
21 A I don't know who that is.
22 Q Okay. Have you had lunch, dinner, or even coffee
23 with any of these people that you listed?
24 A Yes.
25 Q On more than one occasion?

1 A Yes.

2 Q Tell me who you recall having lunch with.

3 A I think I've had lunch with Mr. Ritter --

4 Q Anyone else?

5 A -- a couple times. I've known Brett Scolari for

6 years before marijuana. I've had lunch or coffee with him in

7 the past.

8 Q How about dinner?

9 A Brett. I don't -- I don't know.

10 Q All right.

11 A I think I've had dinner with Mr. Ritter, as well.

12 Or lunch or dinner. I can't recall.

13 Q Okay. Would any of these people have your cell

14 phone number?

15 A Yes.

16 Q Would that include Amanda Connor?

17 A Yes.

18 Q Phil Peckman?

19 A I don't know.

20 Q Andrew Jolley?

21 A I don't know. I mean, generally I worked to make

22 the regulations, to create the process. So I will have had

23 some contact and know pretty much anyone that was involved in

24 that process.

25 Q Okay.

1 A Either -- yeah.

2 Q Did you run for political office?

3 A Yes.

4 Q And what position did you run for?

5 A I ran for the Nevada State Assembly.

6 Q And when did you run?

7 A In 2018.

8 Q Okay. Did you have any fundraisers for that

9 campaign?

10 A Yes.

11 Q Were any of the people you listed a participant or a

12 contributor to your campaign?

13 A Yes.

14 Q Can you tell me which people, entities contributed

15 to your campaign?

16 A No, I can't -- I mean, I know some. I can't -- I

17 can't list them all.

18 Q Can you tell me of the applicants that are involved

19 in the marijuana business which ones contributed to your

20 campaign?

21 A I don't know.

22 Q You don't know any of them by name?

23 A Well, I know some of them by name, but I can't give

24 you -- I know TGIG did, I think Essence did, Thrive, Tryke.

25 Q Anyone else?

1 A There were others, but I just can't remember.

2 Q All right. And do you remember because you remember
3 them attending, or do you remember them because you remember
4 checks coming to you with their names on them? Or both?

5 A I mean, I remember -- I remember people attending
6 and then generally contributions, but I don't remember -- but
7 I don't necessarily know who everybody's group was, and so I
8 might have to look that up. So --

9 Q Did you ever receive any inquiries, or has anyone
10 ever hypothecated to you perhaps hiring you, any of the
11 applicants?

12 A I did -- no. Not in this case.

13 Q I'm sorry. You did what?

14 A No. No, not in this case.

15 Q Not in this case. What do you mean by that?

16 A Do you mean anybody?

17 Q Anybody.

18 A Yeah. I did some -- a little of application work --

19 Q And when did you do this application work?

20 A In July to November.

21 Q July what?

22 A To November.

23 Q Of what year?

24 A 2018.

25 Q When did you leave the State originally?

EXHIBIT “C”

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

.

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 10
VOLUME II**

THURSDAY, JUNE 20, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

AA 005861

1 A Normal business.

2 Q Okay. Explain that.

3 A My day-to-day interactions, you know, managing the
4 industry.

5 Q Okay. Day-to-day managing of the industry, or day-
6 to-day familiarity with these owners?

7 A No. Just day-to-day management of, you know, the
8 industry. And I don't know all the entire ownership. I know,
9 you know, maybe one or two people may have common ownership.
10 I'd have to go into the records to see, you know, what the
11 exact ownership is.

12 Q But you knew -- tell me, did you know names in terms
13 of owners?

14 A One of each probably.

15 Q Tell me who you are familiar with that had ownership
16 interest in these companies. And we can start with Essence
17 Trop and Essence Henderson.

18 A Armen Yemenidjian or however you pronounce it.

19 Q Do you know how to spell it?

20 A No.

21 Q Okay. Good enough. And how about Cheyenne and
22 Commerce Park, which is Thrive?

23 A Yeah, I believe that's Mitch Britten and --

24 Q Had you spoken with either of them before the first
25 gentleman you named or the second?

1 A Yes.

2 Q On more than one occasion?

3 A Yes.

4 Q So when I asked you about your familiarity with the
5 owners it goes beyond simply the industry. You actually knew
6 these owners; is that correct?

7 A No, I know them from my interactions with the
8 industry.

9 Q Right. But you actually know -- there are a lot of
10 people in the industry. You may not know the owners; right?

11 A Yes.

12 Q Right. But in this case you knew the owners of all
13 four locations?

14 A Yes.

15 Q All right.

16 A Or at least some of them, right.

17 Q Good enough. And had you spoken to them prior to
18 the submission of the applications?

19 A Yes.

20 Q Did you speak with them between July of 2018 and
21 September 20th of 2018?

22 A I believe so. Possibly, yes.

23 Q Would your phone records reflect telephone
24 conversations with those gentlemen?

25 A Possibly, yes.

1 Q Do they have medical marijuana locations?
2 A Yes.
3 Q Have you known them since 2014?
4 A No.
5 Q When did you meet the owner of Essence Trop and
6 Essence Henderson?
7 A Sometime after the Department of Taxation started
8 administering the marijuana program.
9 Q What year would that be?
10 A I believe it was July 1st, 2017.
11 Q Okay. So after it became clear that recreational
12 marijuana would be available?
13 A Yes.
14 Q Same with the owner of Commerce and Cheyenne?
15 A Yes.
16 Q Okay. And can you tell me the circumstances in
17 terms of how you met them.
18 A I don't recall specifically. It could have -- you
19 know, I've met a lot of people through meetings or
20 regulations, things like that.
21 Q All right. Now, you indicated you've spoken to them
22 and you've met them, and you said your phone records would
23 reflect conversations with them. Did you ever text either of
24 them?
25 A Yes.

1 Q Okay. Have you produced records indicating that you
2 -- your phone records indicating text messages between
3 yourself and those owners?

4 A Yes.

5 Q Okay. Have you received any emails from them?

6 A Don't know. Not sure.

7 Q Have you gone to dinner with either of them?

8 A Dinner, I believe, yes.

9 Q Have you gone to lunch with either of them?

10 A Yes.

11 Q More than one occasion?

12 A Possibly, yes.

13 Q And would it also -- would those lunches or dinners
14 have occurred between 2017 and September 20th of 2018?

15 A Yes.

16 Q All right. Now, let me get back to a couple more
17 questions. We may come back to that, but I want to get back
18 to the statutes, the regulations first.

19 When we left off you told me that while location was
20 important in the ballot, location was important in the
21 statutes, and location was important in the regulations, you
22 thought you had the ability to remove it from the scoring on
23 the application process; is that correct?

24 A Yes.

25 Q All right. Now, do you think you also had the power

1 in your position, the way you remove location, to change the
2 age in terms of what person can purchase recreational
3 marijuana? Because that seemed also important in the ballot
4 question that it'd be someone over 21. Did you have the
5 authority to change it to 20?

6 A No.

7 Q What makes you think you had the ability to change
8 the location, since that was important and actually a question
9 within the ballot, but you couldn't change the age?

10 MR. KOCH: Objection. Lacks foundation.

11 THE COURT: Overruled.

12 THE WITNESS: I think I explained before. I don't
13 think we -- the initiative doesn't say how to score an
14 application.

15 BY MR. PARKER:

16 Q Wait a second, sir. Let's make sure we're on the
17 same page. I didn't ask about scoring this time.

18 A I'm sorry.

19 Q You removed location as a scoring item, I
20 understand.

21 A Yes.

22 Q But you told me right before we left and you gave me
23 time to think about your response, the Court did, that you had
24 the authority to remove location as a scoring item. Do you
25 remember that?

1 A Yes.

2 Q All right. If you can change something that was
3 important to the citizens of Nevada like location, which is
4 represented in the ballot question, do you think you also have
5 the ability to change the age a person can be to buy
6 recreational marijuana?

7 A No.

8 Q Is there anything in the ballot that differentiates
9 your authority in terms of locality versus age?

10 A No.

11 Q That's what I thought. All right.

12 So now let's go to the statute.

13 THE COURT: And, sir, if you'd like the book if it's
14 easier, I'd be happy to get it for you.

15 THE WITNESS: Sure, Your Honor.

16 MR. PARKER: He may need it, Your Honor. I'm going
17 to be flipping back and forth a little bit.

18 THE COURT: I've just got to make sure I grab the
19 right one. 453; correct? There you go.

20 THE WITNESS: Thank you, ma'am.

21 BY MR. PARKER:

22 Q And we're going to start with the statutes, and then
23 we'll work to the regs, okay?

24 A Okay.

25 Q All right. And the first one we're going to look at

1 Q All right. Now, when you told Mr. Miller yesterday
2 that location -- a location was required but not scored does
3 that mean that every applicant who gave a floor plan without a
4 location had presented an incomplete or inadequate
5 application?

6 A I don't believe so.

7 Q Well, that's what you said. You said yesterday more
8 than once, and I was --

9 A Maybe I misunderstood the question.

10 Q Well, maybe you --

11 A Your question. Can you just say it again.

12 Q Certainly. Because I found this interesting. You
13 said that locations were required, but would not be scored.
14 Do you remember saying that more than once yesterday?

15 A Yes.

16 Q Right. So given what you've told me right before we
17 broke for lunch, that location was required, doesn't that mean
18 every applicant who provided a floor plan without a location,
19 even if a location wasn't scored, would have presented an
20 inadequate and incomplete application?

21 A I believe I said that location was required on the
22 application.

23 Q Right. So they provided an application that did not
24 have a location. Each one of those applicants' applications
25 were incomplete and should not be considered by your

1 Department; isn't that correct?

2 A I would say it can be considered incomplete, but it
3 would move forward.

4 Q Thank you. But it would be incomplete?

5 A If it's missing an element, yes. You know, we
6 expect the information --

7 Q You said location --

8 A -- that we ask for.

9 Q Right. You expected a location even if it wasn't
10 scored; isn't that correct?

11 A Yes.

12 Q Thank you. Now let's go to 453D.205 and paragraph
13 (1). Do you have that in front of you?

14 A Yes.

15 Q And it talks about background checks. And again it
16 refers to subsection (6), 453D.200, which is right above it,
17 okay?

18 A Okay.

19 Q And if you want, I can read what subsection (6) says
20 of 453D.200 --

21 A No, I see it.

22 Q You can see it?

23 A Yes.

24 Q Okay. Good. So yesterday when you were speaking
25 with Mr. Ross you talked about --

1 (Pause in the proceedings)

2 THE WITNESS: Is this the entire application?

3 BY MR. PARKER:

4 Q Yeah. But we're going to only look at a couple of
5 pages, okay.

6 Sir, I want you to take a look at DOTNBWELL2. So
7 it's page 2.

8 A Okay.

9 Q Are you familiar with this form -- document?

10 A With this letter, yeah. Yes.

11 Q Is this a form that is utilized by the Department of
12 Taxation Marijuana Enforcement Division?

13 A Yes.

14 Q All right. And can you tell me -- this was sent out
15 September 18th, 2018, to Mr. Frank Hawkins. Do you know who
16 he is?

17 A Yes.

18 Q Have you met him before?

19 A Yes.

20 Q When?

21 A This week.

22 Q Okay. Other than this week have you met him before?

23 A No.

24 Q Have you ever gone to lunch or dinner with him?

25 A No.

1 Q Has he ever called you on the phone?

2 A No.

3 Q All right. It says here, "On September 12th, 2018,
4 The Department of Taxation Marijuana Enforcement Division
5 conducted a routine inspection/audit of your establishment
6 located at 3200 South Valley View Boulevard, Las Vegas,
7 Nevada." And it has certificate numbers and the license
8 number. Do you see that?

9 A Yes.

10 Q All right. The next paragraph says, "The
11 audit/inspection results reveal that your establishment was in
12 compliance with Nevada Revised Statutes...", and it references
13 453A and 453D; is that correct?

14 A Yes.

15 Q All right. And it also says, "...the Administrative
16 Code, and no deficiencies were noted during the inspection."
17 Do you see that?

18 A Yes.

19 Q What does that mean in terms of the operation of
20 Nevada Wellness Center at this location?

21 A It means at this time upon the inspection from my
22 inspectors that they found nothing out of compliance.

23 Q All right. Would that mean that the location as
24 it's being operated would be suitable both in terms of
25 location and suitable in terms of adequacy of size to sell

1 THE COURT: The A-V guys are allowed to have a
2 break. Here he comes.

3 (Pause in the proceedings)

4 THE COURT: Okay. Now we're ready.

5 MR. PARKER: Thank you, Your Honor.

6 THE COURT: Okay.

7 MR. PARKER: May I proceed?

8 THE COURT: You may.

9 MR. PARKER: So can we look at Exhibit 446, page 1,
10 please.

11 BY MR. PARKER:

12 Q It should be coming up, Mr. Pupo.

13 So this is the Marijuana Nevada email to Ramsey, is
14 it Davise? How do you pronounce that?

15 Oh. Is yours not on?

16 A It's not on the screen here.

17 MR. PARKER: May I approach?

18 THE COURT: You may. Are you going to use the turn
19 off and hopefully it comes back on method?

20 (Pause in the proceedings)

21 BY MR. PARKER:

22 Q All right. Do you recognize that email address in
23 terms of the sender? It says "From: Marijuana Nevada."

24 A Okay. Yes.

25 Q Is that from the Department of Taxation?

1 A That's one of our boxes, yes.

2 Q Okay. And it's dated September 9, 2018. So this is
3 during the application process, is that correct, after
4 applications are being -- the window in terms of submission of
5 applications? Wasn't it the 7th through the 20th?

6 A Yeah. Okay. I believe it was the 7th through the
7 20th.

8 Q All right. So it appears here that Mr. Ramsey was
9 being responded to by Mr. Plaskon; is that correct?

10 A Yes.

11 Q All right. And he indicates here that he cannot
12 answer the question being asked; is that correct?

13 MR. KOCH: Objection. Document speaks for itself.

14 THE COURT: Overruled.

15 THE WITNESS: It's that would not provide guidance
16 to individual applicants.

17 BY MR. PARKER:

18 Q Now, tell me. That seems at odds with what has been
19 said earlier in this trial -- or in this hearing. I was told
20 that, you know, you've had conversations and others have had
21 conversations with representatives of applicants, as well as
22 applicants. Why would Mr. Plaskon take this position on
23 September 9th, 2018?

24 MR. KOCH: Objection. Speculation.

25 THE COURT: Overruled.

1 THE WITNESS: He must have gotten instruction.
2 BY MR. PARKER:
3 Q Okay. Did you give any instruction to not provide
4 information to this person?
5 A No.
6 Q Are you familiar with Libra Wellness?
7 A Yes.
8 Q Do they have a medical marijuana license?
9 A I believe so, yes.
10 Q Did they apply for or receive a conditional
11 recreational license?
12 A I don't know.
13 Q All right. Was this the position taken by the
14 agency, your Department, on September 9th, that there would be
15 no more answers given?
16 MR. KOCH: Objection. Mischaracterizes the
17 document.
18 THE COURT: Overruled.
19 THE WITNESS: Yeah. I don't know that was
20 instructions.
21 BY MR. PARKER:
22 Q It says, "With that said, the Division cannot
23 provide guidance to individual applicants.
24 THE COURT: Hold on a second.
25 THE COURT RECORDER: I'm having a hard time hearing

1 THE WITNESS: I could have. I think that would have
2 created more problems.

3 BY MR. PARKER:

4 Q Okay. Thank you.

5 MR. PARKER: Now, let's stay right here in terms of
6 Exhibit 252, Shane. I don't need the other email.

7 BY MR. PARKER:

8 Q You told Mr. Miller that you went to -- you were
9 offered ownership -- you were offered jobs by I believe one of
10 the owners that you allowed to have more than one location in
11 this jurisdiction; is that correct?

12 A Yeah. I don't characterize them as offers. They
13 were saying, hey, if you leave the State, make sure I'm the
14 first one to call, or, give me a call.

15 Q And who was that again? Was this the owner of
16 Essence?

17 A Yes.

18 Q Okay. And did anyone else or any of the other
19 owners from Essence -- did you meet with any of them?

20 A No.

21 Q Did you meet with any of the owners of Cheyenne or
22 Commerce Park?

23 A Regarding?

24 Q Any offers of employment.

25 A No.

1 Q Did you meet with any owners -- do you know the
2 owners of Commerce Park and Cheyenne?

3 A I know -- I know some.

4 Q Okay.

5 A Yeah. I don't know that I know all the owners.

6 Q What owners do you know?

7 A Mitch Britten and Phil Peckman.

8 Q Okay. And who are the owners that you're aware of
9 in terms of Essence Trop and Essence Henderson?

10 A Just Armen.

11 Q No one else have you met with or are familiar with
12 that own that company?

13 A Not that I'm familiar with.

14 Q Okay. And did the owners of both these companies
15 the ones that you know in common -- you've spoken to them,
16 you've gone to lunch with them and/or dinner with them; right?

17 A Yes.

18 Q All right. And you turned them both down on the
19 offers?

20 A I am not interested in staying in the marijuana
21 space here.

22 MR. PARKER: Thank you. I appreciate your time.

23 THE COURT: Sir, I'm going to switch gears, if it's
24 okay. Since the people on that side of the room have finished
25 asking questions, I'm going to ask some, because I need a

EXHIBIT “D”

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 4

THURSDAY, MAY 30, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

AA 005878

1 all at once.

2 BY MR. GENTILE:

3 Q All right. That's the 2018 application. Do you
4 recall it? Probably not.

5 A I'm not sure what I'm --

6 Q All right. Let me -- let me -- I've never lied to
7 you before, so I wouldn't start now, okay. Look at the top
8 one. The top one is the 2014 application form. The reason
9 you can see that is because due dates that end in the year
10 2014. Do you see that?

11 A Yes.

12 Q Okay. The bottom one is the 2018, and you could
13 trust me for the same reason, it says that there are due dates
14 for 2018, okay. I have a question for you.

15 The top one on the second line -- first one says,
16 "Request for application pay." Oddly enough, so does the
17 bottom one, first line says "Request for application pay,"
18 okay. But the second one on the top one says, "Deadline for
19 submitting questions." Look at the bottom one. Is there
20 anything there that indicates that you can submit questions in
21 2018?

22 A There is not.

23 Q Okay. How come?

24 A You know, to be quite honest with you, I wasn't the
25 one that made that decision. I don't -- I don't know.

EXHIBIT “E”

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

.

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 5
VOLUME II**

FRIDAY, MAY 30, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

AA 005881

1 regards to the diversity area?

2 A I don't -- I don't think so. You know, we do get a
3 lot of questions. Ky Plaskon, Mr. Plaskon would probably be
4 the better person to ask on how many questions he may have
5 received in regards to, you know, diversity. But I don't
6 recall we received too many.

7 Q What was -- oh. I've got it.

8 Sir, was there a procedure that the Department
9 implemented whereby an applicant that was confused could
10 potentially ask a question to get a clarification?

11 A Mr. Plaskon monitors generic email. A lot of
12 questions came in through there.

13 Q Okay. I've seen some responses to questions where
14 he says, "See application, see regulations," and other
15 responses where he actually gives some substantive
16 information. Is that your understanding of what was going on
17 here?

18 A I'm not aware of that.

19 Q Okay. Do you think it would have been a good idea
20 that any question and answer he gave was made available to all
21 the applicants so we had some consistency here?

22 A We try to do the best that we can to educate.

23 Q Okay.

24 A I think we did send out some list serves.

25 Q But you've seen bulletin boards that have questions

1 and answers posted on them so everybody's up to speed,
2 everybody's got the same information?

3 A Yeah, I've seen those.

4 Q That's commonly done with government contracting
5 programs; right?

6 A I'm not sure about that, but I've seen the boards.

7 Q Okay. But you didn't do that?

8 A We did not.

9 Q Okay. In retrospect do you think you should have
10 done that?

11 A Now, Ky would probably be a better person to ask
12 that, because I don't know the quantity and type of questions
13 that he did receive. I know he's in a situation where he did
14 receive a lot of questions, but he couldn't give out -- he
15 couldn't give out an answer that's -- that an applicant would
16 have an advantage with.

17 Q Well, there wouldn't be any advantage if you told
18 all the applicants the questions and answers. If you told
19 everybody the question and answer, no one has an advantage
20 there, do you think?

21 A We tried -- the Department did a good job, I think,
22 in my opinion, of providing the information they did.

23 Q A good job even though half the applicants knew the
24 that building address was not required and say half thought it
25 was required? The Department did a good job on that point?

1 MS. SHELL: Objection. Assumes facts not in
2 evidence.

3 THE COURT: Overruled.

4 THE WITNESS: I wasn't aware that half the
5 applicants didn't know that.

6 BY MR. KEMP:

7 Q You knew that some of the applicants didn't know
8 that?

9 A Yes.

10 Q For example, you know, that Livfree went out and got
11 real addresses for all six of those applications; right?

12 A I didn't know that.

13 Q Well, you heard Mr. Thomas testify to the extreme
14 efforts he went to get approved addresses; right?

15 A I did hear that.

16 Q And the Department expected people to be more like
17 Mr. Thomas than just to put down a Post Office box, didn't
18 they?

19 A Can you repeat that.

20 Q Didn't the Department expect that applicants would
21 be like Mr. Thomas, have real addresses and real locations?

22 A We -- the Department did not require a location.

23 Q Okay. And how could you rate things like community
24 impact without knowing where in Clark County the dispensary
25 was going to be?

EXHIBIT “F”

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,)
et al.,)

Plaintiffs,)

vs.)

STATE OF NEVADA DEPARTMENT OF)
TAXATION,)

Defendant.)

CASE NO. A-19-786962-B
DEPT NO. XI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

WEDNESDAY, JUNE, 19, 2019

EVIDENTIARY HEARING - DAY 9

VOLUME I OF II

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 were supposed to consider, they wouldn't have considered it;
2 right?

3 A Well, again, I don't know if it was part of their --
4 the additional training outside of the evaluation sheets.
5 Because they did receive training from staff for --

6 Q You just -- you're speculating that that might have
7 happened, even though the face of the application that we just
8 walked through -- we can walk through it again --

9 A I mean, we're speculating on a lot of things here.

10 THE COURT: Sir, I don't want you to speculate. I
11 want you to tell me why the Department did what it did and made
12 the decisions it made after Ballot Question 2 was passed and
13 your department was charged with implementing.

14 MR. MILLER: Well, let me say it this way.

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Wait. Thank you, sir. Now you may go,
17 Mr. Miller.

18 MR. MILLER: Were you asking a question, Judge. I
19 didn't catch it all.

20 THE COURT: I was making a statement. He said, "Yes,
21 Your Honor," and I just needed him to verify that while we were
22 here.

23 MR. MILLER: Got it.

24 BY MR. MILLER:

25 Q Let's pull up the application. And then we get to

1 the scoring criteria. You were involved in that; right? You
2 determined which points were going to be awarded?

3 A Yes.

4 Q And this is the --

5 MR. MILLER: We should pull up the -- I think it's
6 going to be page 18, 17. There we go, the page before.

7 BY MR. MILLER:

8 Q -- talking about an organizational structure; right?
9 You evaluate that criteria that was described there; right?

10 A I'm sorry?

11 Q You reviewed that criteria that was described there;
12 right?

13 A Under "organization"?

14 Q Yeah. Sixty points on the top, not up -- it's going
15 the wrong way. Yeah, organization.

16 A Right, uh-huh. Yes.

17 Q Description of the proposal -- and then you, in turn,
18 that's all (indiscernible). The description of the proposed
19 organizational structure of proposed marijuana establishment
20 and information concerning each owner, officer, and board
21 member of the proposed marijuana establishment, including the
22 information provided in response to the regulation. Right?

23 A Yeah.

24 Q And you determined that that criteria should be worth
25 60 points in total; right?

1 A Well, there are subcategories that make up that 60.

2 Q Right. You didn't disclose that to the applicants,
3 did you?

4 A No.

5 Q So it was secret to the applicants as though which
6 criteria are going to be included in that regulation and how
7 many points are going to be awarded; right?

8 A Yes.

9 Q Why did you keep that secret?

10 A Well, it's almost like -- my opinion, it's almost
11 like giving the answers to the test.

12 Q Is it?

13 A I mean --

14 Q How would it --

15 A Everyone's score -- sorry.

16 Q -- be like giving answers to the test, letting
17 everyone know that diversity, for example, was going to be
18 given 20 points, but the experience of key employees was going
19 to be worth zero because it wouldn't be considered. Is that
20 giving answers to the test?

21 A Wait. Say that again.

22 Q How would it be giving the answers to the test to
23 tell the applicants that diversity, within that 60 points, was
24 going to be awarded 20 points?

25 A The application can be tailored to, you know, those

EXHIBIT “G”

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 9
VOLUME II**

WEDNESDAY, JUNE 19, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

AA 005891

1 how they believed the applications would be interpreted if
2 they did not provide a physical address on the application?

3 A Yeah. I don't -- I don't recall any.

4 Q Okay. But you gave at least Amanda Connor and John
5 Ritter guidance that physical address, although it was
6 required by law, wouldn't be scored and so they didn't need to
7 include it?

8 A No, I didn't say they didn't need to include it. I
9 said the application requires that they put a physical
10 address, but that it -- you know, that location was not
11 scored, it's not part of the scoring criteria.

12 Q Okay. And when you gave that guidance did you go
13 back to the Department and share that information with anybody
14 else that might have been receiving calls from applicants
15 about information in the application?

16 A Well, I'm sure we discussed it several times.

17 Q Okay. Who'd you discuss it with?

18 A Steve Gilbert, Kara, Damon.

19 Q And this was prior to the application being released
20 on July 5th?

21 A Yes. There was a lot of discussion around that --
22 during the Task Force and the public meetings or the
23 recommendations while we were doing the regulations.

24 Q But the two you just identified, Amanda Connor and
25 John Ritter, were the two co-chairs for the Task Force that

1 came up with the -- two co-chairs of the committee on the Task
2 Force that were designed to help implement the regulations
3 that are on the application; correct?

4 A Say it again.

5 Q The two individuals that you named, Amanda Connor
6 and John Ritter, are you aware that those are the two co-
7 chairs on the Task Force for the subcommittee that was
8 designed and intended to review the applications for the
9 recreational manager license applications?

10 A No, I didn't know Amanda was a co-chair. Well, I
11 don't remember.

12 Q But nevertheless, they're very involved in the
13 industry; correct?

14 A Yes.

15 Q You would have expected them to have attended those
16 Task Force meetings?

17 A Yes.

18 Q All right. And participated in any public hearings
19 where the rules might have been explained?

20 A Yes.

21 Q Okay. And yet they didn't understand whether or not
22 a proposed physical address would be required; correct?

23 MR. SHEVORSKI: Objection. Speculation.

24 THE COURT: Overruled.

25 THE WITNESS: They would tell me -- like Amanda

1 would say she's getting questions from her clients and she
2 just wants to confirm, right. And, you know, John also was
3 more like a confirmation.

4 BY MR. MILLER:

5 Q Yeah. But at least for individuals that were highly
6 involved in the process it's apparent to you that there was
7 some confusion in this area; is that fair?

8 A Yes.

9 Q And so it's a fair assessment that other people
10 might have also had the same confusion; correct?

11 A Yes.

12 Q Did you make any attempts to clarify it?

13 A I believe I did.

14 Q How'd you do that?

15 A Well, I don't -- maybe not necessarily that I think
16 the clarification I was sending out was more regarding whether
17 someone owned or leased a location. They were asking about
18 where to put it. I don't think I put out a clarification
19 regarding physical location must be on -- must be listed on
20 the application.

21 Q Okay. So you knew in advance of the application
22 being released on July 5th that there was confusion within the
23 industry as to whether or not a proposed physical address was
24 required and would be scored; correct?

25 A Yes.

1 Q They believe that is required, and they submit their
2 application that way. Other applicants understand that a
3 proposed physical address will not be scored, so they don't
4 provide a physical address. Is that a fair application
5 process, sir?

6 A Is it a fair application process? I think everyone
7 had the same opportunity to request clarification. I think
8 that everyone had access to the Department. I think everyone
9 had access to submit their questions. I think everyone had an
10 opportunity to attend 70-plus public meetings and workshops
11 regarding this issue. I think the application was a fair
12 process -- the application process was a fair process.

13 Q Moving to 5.3.4.3, "Procedures to ensure adequate
14 security measures for building security." Sir, wouldn't you
15 agree that the consideration of that plan would indicate that
16 there is some tie-in within the scoring criteria to an actual
17 proposed physical address versus a fictional one?

18 A No.

19 Q So if you develop a plan that is designed to ensure
20 adequate security measures of a proposed physical location
21 that is tied to an actual address, has a real neighborhood
22 around it, may have additional security concerns, that one is
23 the same as one that could be submitted that doesn't have any
24 physical address associated with it at all?

25 A Pretty much, yeah.

EXHIBIT “H”

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,)
et al.,)

Plaintiffs,)

vs.)

STATE OF NEVADA DEPARTMENT OF)
TAXATION,)

Defendant.)

CASE NO. A-19-786962-B
DEPT NO. XI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

THURSDAY, JULY, 11, 2019

EVIDENTIARY HEARING - DAY 13

VOLUME I OF II

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 Q Okay. With regard to these episodes, how did they
2 come to your attention?

3 A They were incident reports submitted by the facility
4 themselves.

5 Q Okay. And what did you do in response to the
6 reports?

7 A We accepted them --

8 Q No. I don't want to hear we. We is a -- when I use
9 the word you, I'm using it in the second person singular. Do
10 you understand?

11 A Yes.

12 Q All right. What did you do in response to receiving
13 these incident reports?

14 A I did not personally receive the incident reports.
15 They go to a separate email address. The administrative
16 assistant intakes them. I assigned them to people to
17 investigate. I was then directed to hold off on that. I had a
18 discussion with Jorge Pupo, and then I gave the direction to
19 the assigned people investigating to send acknowledgment
20 letters or look through them and see if there was room for
21 improvement.

22 Q Okay. You said you received a directive not to
23 assign these cases for investigation. From whom did you
24 receive that directive?

25 A Jorge Pupo.

EXHIBIT “I”

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

.

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 7

TUESDAY, JUNE 11, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

AA 005900

1 Q And then did QuantumMark provide its own training
2 tools for 2018 or did your Department amend QuantumMark's
3 training tools for purposes of training the evaluators?

4 A We amended the 2014 training tools.

5 Q Why didn't you ask QuantumMark to provide updated
6 training tools to fit a recreational application?

7 A That wasn't my decision.

8 Q Whose decision was that?

9 A That would have been a contract decision,
10 essentially Mr. Pupo or the director of the Department.

11 Q Do you know who made that decision?

12 A No, I do not.

13 Q And do you know why that decision was made? Why
14 wasn't QuantumMark utilized to come up with the 2018 training
15 tools?

16 A I don't -- I do not know. I don't know if it was
17 ever contemplated.

18 Q And so going back to where we were, you were a part
19 of the process in terms of the merit criteria for diversity,
20 is that correct?

21 A Yes.

22 Q Who made the decision on how the scoring would be
23 done?

24 A Can you be --

25 Q Yes. Who came up with let's give points based on

1 A Yes.

2 Q All right. So if you didn't get the information
3 from the ballot question and you did not get that information
4 from the regulations, you had to get it from somewhere. Did
5 you get it from any other jurisdiction like Colorado? Because
6 I saw in the production of your training tool where there's
7 thanks given to QuantumMark, thanks given to Colorado. Do you
8 remember those?

9 A I do.

10 Q All right. So where did you get this methodology in
11 scoring diversity?

12 A The methodology was put together by Kara, Mr. Pupo
13 and myself. As far as the breakdown on the evaluation tool --

14 Q Yes, sir.

15 A -- that was put in then -- like I said, if I recall
16 correctly, Mr. Pupo gave us the breakdown of the percentages.

17 Q Do you know where he got that breakdown from?

18 A I do not.

19 Q And do you have any understanding whether or not
20 that breakdown can be traced to another jurisdiction like
21 Colorado or Washington or California?

22 A I wouldn't know, no.

23 Q You have no idea?

24 A No.

25 Q Good enough. Do you know whether or not there was

EXHIBIT “J”



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

STATE OF NEVADA
DEPARTMENT OF TAXATION

Web Site: <http://tax.nv.gov>
1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-6999
Fax: (775) 688-1303

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

September 18, 2018

Frank Hawkins
Nevada Wellness Center (D009)
2300 Alta Dr.
Las Vegas, NV 89107

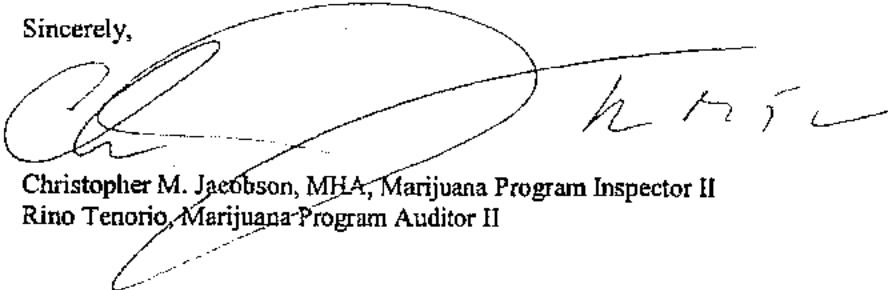
Dear Mr. Frank Hawkins:

On September 12, 2018, the Department of Taxation's Marijuana Enforcement Division conducted a routine inspection/audit of your establishment located at 3200 S. Valley View Blvd., Las Vegas, NV, certificate #30064186279328795105, license #1017582408-001-DIP.

The Audit/Inspection results revealed that your establishment was in compliance with Nevada Revised Statutes (NRS) 453A/453D and/or Nevada Administrative Code (NAC) 453A/R092-17 (NAC 453D). No deficiencies were noted during the inspection. Please retain this letter for your files.

Should you have any questions concerning this matter, please contact our office at (702) 486-5786.

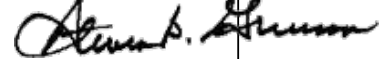
Sincerely,



Christopher M. Jacobson, MHA, Marijuana Program Inspector II
Rino Tenorio, Marijuana Program Auditor II

DOT-NVWell001358

AA 005904



1 ANEO

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLEATCHIE LAW

5 701 East Bridger Avenue, Suite 520

6 Las Vegas, NV 89101

7 Telephone: (702) 728-5300

8 Email: maggie@nvlitigation.com

9 Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

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

12 MM DEVELOPMENT COMPANY, INC., a
13 Nevada Corporation, LIVFREE WELLNESS
14 LLC, dba The Dispensary, a Nevada limited
15 liability company,

16 Plaintiffs,

17 vs.

18 STATE OF NEVADA, DEPARTMENT OF
19 TAXATION; and DOES 1 through 10; and
20 ROE CORPORATIONS 1 through 10,

21 Defendants,

22 GREENMART OF NEVADA NLV LLC, a
23 Nevada limited liability company,

24 Defendant-Intervenor.

25 SERENITY WELLNESS CENTER, LLC, et
26 al.,

27 Plaintiffs,

28 vs.

29 STATE OF NEVADA, DEPARTMENT OF
30 TAXATION,

31 Defendant,

32 and

33 GREENMART OF NEVADA NLV LLC, a
34 Nevada limited liability company, et al.

35 Defendants-Intervenors.

36 ETW MANAGEMENT GROUP LLC, a
37 Nevada limited liability company; GLOBAL
38 HARMONY LLC, a Nevada limited liability

company; GREEN LEAF FARMS
HOLDINGS LLC, a Nevada limited liability

Case No.: A-18-785818-W

Dept. No.: VIII

**AMENDED NOTICE OF ENTRY OF
ORDER**

Case No.: A-19-786962-B

Dept. No.: XI

**AMENDED NOTICE OF ENTRY
OF ORDER**

Case No.: A-19-787004-B

Dept. No.: XI

AMENDED NOTICE OF ENTRY OF

company; GREEN THERAPEUTICS 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; ROMBOUGH REAL ESTATE INC. dba MOTHER HERB, 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; and DOES 1 through 20; and ROE CORPORATIONS 1 through 20, inclusive
Defendants.

GREENMART OF NEVADA NLV LLC, a Nevada limited liability company,
Defendant-Intervenor.

COMPASSIONATE TEAM OF LAS VEGAS LLC, a Nevada Limited Liability Company;

Plaintiff,

vs.

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

GREENMART OF NEVADA NLV LLC, a Nevada limited liability company,
Intervenor Defendant.

HIGH SIERRA HOLISTICS, LLC,
Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF TAXATION; DOES 1-10 and ROE

ORDER

Case No.: A-18-786357-W

Dept. No.: XIV

AMENDED NOTICE OF ENTRY OF ORDER

Case No.: A-19-787726-C

Dept. No.: XIV

AMENDED NOTICE OF ENTRY OF ORDER

CORPORATIONS 1-10,
Defendants.

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,
Intervenor Defendant.

NEVADA WELLNESS CENTER, LLC, a
Nevada limited liability company,
Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION; and NEVADA ORGANIC
REMEDIES, LLC,
Defendants.

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,
Intervenor Defendant.

Case No.: A-19-787540-W

Dept. No.: XVIII

**AMENDED NOTICE OF ENTRY OF
ORDER**

TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:
PLEASE TAKE NOTICE that on the 23rd day of August, 2019, the Findings of
Fact and Conclusions of Law Granting Preliminary Injunction was entered in the above-
captioned action. A copy of the Findings of Fact and Conclusions of Law Granting
Preliminary Injunction is attached hereto as **Exhibit 1**.

DATED this the 19th day of September, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLEITCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEITCHIE LAW

701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

Telephone: (702) 728-5300

Email: maggie@nvlitigation.com

Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing AMENDED NOTICE OF ENTRY OF ORDER in *Serenity Wellness Center, LLC, et al. v. State of Nevada, Department of Taxation, et al.*, Clark County District Court Case No. A-19-786962-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

This document applies to Case Nos. A-19-786962-B; A-19-785818-W; A-19-787004-B; A-19-787540-W; A-18-786357-W; and A-19-787726-C.

/s/ Pharan Burchfield

An Employee of McLetchie Law

INDEX OF EXHIBITS TO AMENDED NOTICE OF ENTRY

Exhibit	Description
1	August 23, 2019 Findings of Fact and Conclusions of Law Granting Preliminary Injunction

EXHIBIT 1

Steven D. Grierson

1 FFCL

2
3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

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

27 Plaintiff(s),

28 vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant(s).

and

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

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

FINDINGS OF FACT AND
CONCLUSIONS OF LAW GRANTING
PRELIMINARY INJUNCTION

CLERK OF THE COURT

ASG 23 2019

RECEIVED

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

6
7 Intervenor.

8 This matter having come before the Court for an evidentiary hearing on Plaintiffs' Motion for
9 Preliminary Injunction beginning on May 24, 2019, and occurring day to day thereafter until its
10 completion on August 16, 2019;¹ Dominic P. Gentile, Esq., Vincent Savarese III, Esq., Michael V.
11 Cristalli, Esq., and Ross J. Miller, Esq., of the law firm Gentile Cristalli Miller Armeni Savarese,
12 appeared on behalf of Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf Incline Dispensary, LLC,
13 Nevada Holistic Medicine, LLC, Tryke Companies SO NV, LLC, Tryke Companies Reno, LLC,
14 Paradise Wellness Center, LLC, GBS Nevada Partners, LLC, Fidelis Holdings, LLC, Gravitas Nevada,
15 LLC, Nevada Pure, LLC, Medifarm, LLC (Case No. A786962-B) (the "Serenity Plaintiffs"); Adam K.
16 Bult, Esq. and Maximilien D. Fetaz, Esq., of the law firm Brownstein Hyatt Farber Schreck, LLP,
17 appeared on behalf of Plaintiffs ETW Management Group LLC, Global Harmony LLC, Green Leaf
18 Farms Holdings LLC, Green Therapeutics LLC, Herbal Choice INC., Just Quality, LLC, Libra
19 Wellness Center, LLC, Rombough Real Estate Inc. dba Mother Herb, NevCann LLC, Red Earth LLC,
20 THC Nevada LLC, Zion Gardens LLC, and MMOF Vegas Retail, Inc. (Case No. A787004-B) (the
21 "ETW Plaintiffs"); William S. Kemp, Esq. and Nathaniel R. Rulis, Esq., of the law firm Kemp, Jones
22 & Coulthard LLP, appeared on behalf of MM Development Company, Inc. and LivFree Wellness LLC
23 (Case No. A785818-W) (the "MM Plaintiffs"); Theodore Parker III, Esq., of the law firm Parker
24 Nelson & Associates, appeared on behalf of Nevada Wellness Center (Case No. A787540-W)
25 (collectively the "Plaintiffs"); Steven G. Shevorski, Esq., Ketan D. Bhirud, Esq., and Theresa M. Haar,
26 Esq., of the Office of the Nevada Attorney General, appeared on behalf of the State of Nevada,
27 Department of Taxation; David R. Koch, Esq., of the law firm Koch & Scow LLC, appeared on behalf
28

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

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

16 ***PROCEDURAL POSTURE***

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

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

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

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

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

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

8 **PRELIMINARY STATEMENT**

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

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

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

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

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

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

9 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

(g) Requirements for record keeping by marijuana establishments;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 NRS 453D.020(3).

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

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

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

16 11. Some of the Task Force's recommendations appear to conflict with BQ2.⁷

17
18
19 ⁷ The Final Task Force report (Exhibit 2009) contained the following statements:

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

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

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

27 The second recommendation of concern is:

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

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

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

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

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

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

*Use the marijuana establishments governing documents to determine who has approval rights and signatory authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory documents.

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

at 2515-2516.

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

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

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

1 15. A person holding a medical marijuana establishment registration certificate could apply
2 for one or more recreational marijuana establishment licenses within the time set forth by the DoT in
3 the manner described in the application. NAC 453D.268.⁹
4

5 ⁹ Relevant portions of that provision require that application be made

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

8 ***

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

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

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

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

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

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

22 (f) The mailing address of the applicant;

23 (g) The telephone number of the applicant;

24 (h) The electronic mail address of the applicant;

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

27 (j) If the applicant is applying for a license for a retail marijuana store, the proposed hours of operation during
28 which the retail marijuana store plans to be available to sell marijuana to consumers;

(k) An attestation that the information provided to the Department to apply for the license for a marijuana
establishment is true and correct according to the information known by the affiant at the time of signing; and

(l) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of NAC
453D.250 and the date on which the person signed the application.

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

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

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

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

(1) The title of the person;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A resume.

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

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

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

9. A financial plan which includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 19. The DoT posted the application on its website and released the application for
20 recreational marijuana establishment licenses on July 6, 2018.¹⁰

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

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

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

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

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

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

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

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

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

23 28. The identified criteria consisted of organizational structure of the applicant (60 points);
24 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant
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1 in the last 5 years (25 points); a financial plan (30 points); and documents from a financial institution
2 showing unencumbered liquid assets of \$250,000 per location for which an application is submitted.

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

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

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

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

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

25 34. The DoT identified, hired, and trained eight individuals to grade the applications,
26 including three to grade the identified portions of the applications, three to grade the non-identified
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1 portions of the applications, and one administrative assistant for each group of graders (collectively the
2 “Temporary Employees”).

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

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

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

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

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

21 40. The DoT created a Regulation that modified the mandatory BQ2 provision “[t]he
22 Department shall conduct a background check of each prospective owner, officer, and board member of
23 a marijuana establishment license applicant” and determined it would only require information on the
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28 ¹¹ Given the factual issues related to the grading raised by MM and LivFree, these issues may be subject to additional
evidentiary proceedings in the assigned department.

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

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

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

13 43. The limitation of “unreasonably impracticable” in BQ2¹² does not apply to the
14 mandatory language of BQ2, but to the Regulations which the DoT adopted.

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

20
21
22 ¹² NRS 453D.200(1) provides in part:

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

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

27 ¹⁴ That provision states:

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

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

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

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

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

17 49. Pursuant to NAC 453D.295, the winning applicants received a conditional license that
18 will not be finalized unless within twelve months of December 5, 2018, the licensees receive a final
19 inspection of their marijuana establishment.
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25 ¹⁵ Some applicants apparently provided the required information for each prospective owner, officer and board
26 member. Accepting as truthful these applicants' attestations regarding who their owners, officers, and board members were
27 at the time of the application, these applications were complete at the time they were filed with reference to NRS
28 453D.200(6). These entities are Green Therapeutics LLC, Eureka NewGen Farms LLC, Circle S Farms LLC, Deep Roots
Medical LLC, Pure Tonic Concentrates LLC, Wellness Connection of Nevada LLC, Polaris Wellness Center LLC, and
TRNVP098 LLC, Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and
Commerce Park Medical LLC. See Court Exhibit 3 (post-hearing submission by the DoT).

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

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

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

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

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

55. The secondary market for the transfer of licenses is limited.¹⁶

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

CONCLUSIONS OF LAW

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

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

¹⁶ The testimony elicited during the evidentiary hearing established that multiple changes in ownership have occurred since the applications were filed. Given this testimony, simply updating the applications previously filed would not comply with BQ2.

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

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

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

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

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

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

21 ...

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

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

6 (Emphasis added.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

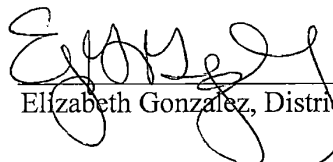
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

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

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

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

DATED this 23rd day of August 2019.

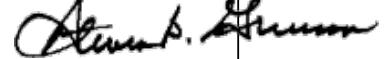

Elizabeth Gonzalez, District Court Judge

Certificate of Service

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


Dan Kutinac

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



1 **NOAS**

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9 Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

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

12 MM DEVELOPMENT COMPANY, INC., a
13 Nevada Corporation, LIVFREE WELLNESS
14 LLC, dba The Dispensary, a Nevada limited
15 liability company,

16 Plaintiffs,

17 vs.

18 STATE OF NEVADA, DEPARTMENT OF
19 TAXATION; and DOES 1 through 10; and
20 ROE CORPORATIONS 1 through 10,

21 Defendants,

22 GREENMART OF NEVADA NLV LLC, a
23 Nevada limited liability company,

24 Defendant-Intervenor.

25 SERENITY WELLNESS CENTER, LLC, et
26 al.,

27 Plaintiffs,

28 vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant,

and

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company, et al.

Defendants-Intervenors.

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

Case No.: A-18-785818-W

Dept. No.: VIII

DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL

Case No.: A-19-786962-B

Dept. No.: XI

DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL

Case No.: A-19-787004-B

Dept. No.: XI

DEFENDANT-INTERVENOR

company; GREEN THERAPEUTICS 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; ROMBOUGH REAL ESTATE INC. dba MOTHER HERB, 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; and DOES 1 through 20; and ROE CORPORATIONS 1 through 20, inclusive

Defendants.

GREENMART OF NEVADA NLV LLC, a Nevada limited liability company,
Defendant-Intervenor.

COMPASSIONATE TEAM OF LAS VEGAS LLC, a Nevada Limited Liability Company;

Plaintiff,

vs.

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

GREENMART OF NEVADA NLV LLC, a Nevada limited liability company,
Intervenor Defendant.

HIGH SIERRA HOLISTICS, LLC,
Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF

**GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL**

Case No.: A-18-786357-W

Dept. No.: XIV

**DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL**

Case No.: A-19-787726-C

Dept. No.: XIV

**DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV**

TAXATION; DOES 1-10 and ROE
CORPORATIONS 1-10,
Defendants.

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,
Intervenor Defendant.

NEVADA WELLNESS CENTER, LLC, a
Nevada limited liability company,
Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION; and NEVADA ORGANIC
REMEDIES, LLC,
Defendants.

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,
Intervenor Defendant.

LLC'S NOTICE OF APPEAL

Case No.: A-19-787540-W

Dept. No.: XVIII

**DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL**

PLEASE TAKE NOTICE that Defendant-Intervenor GreenMart of Nevada NLV LLC, by and through its attorneys of record, Margaret A. McLetchie and Alina M. Shell, of the law firm McLetchie Law, pursuant to Nevada Rule of Appellate Procedure 4(b)(1), hereby timely appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order entered in the following cases on August 28, 2019:¹

(1) *Serenity Wellness Center, LLC et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-786962-B;

(2) *MM Development Company, Inc. et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-785818-W;

(3) *ETW Management Group, LLC et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-787004-B;

///

¹ On September 19, 2019, GreenMart of Nevada NLV, LLC also filed an Amended Notice Of Entry of the Court's August 23, 2019 Findings of Fact, Conclusions of Law and Order which, in compliance with EDCR 2.50(b)(2), lists all six matters coordinated pursuant to the Court's order entered July 11, 2019. Regardless, this does not affect the timeliness of GreenMart of Nevada NLV, LLC's Notice of Appeal.

(4) *Nevada Wellness Center v. State of Nevada, Department of Taxation*, Case No. A-19-787540-W;

(5) *Compassionate Team of Las Vegas LLC v. Nevada Department of Taxation*, Case No. A-18-786357-W; and

(6) *High Sierra Holistics LLC v. State of Nevada Department of Taxation*, Case No. A-19-787726-C.

DATED this the 19th day of September, 2019.

/s/ Margaret A. McLetchie

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ALINA M. SHELL, Nevada Bar No. 11711

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Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

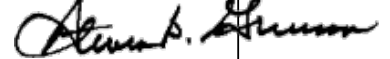
CERTIFICATE OF SERVICE

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

This document applies to Case No. A-19-786962-B; Case No. A-19-785818-W; Case No. A-19-787004-B; Case No. A-19-787540-W; Case No. A-18-786357-W; and Case No. A-19-787726-C.

/s/ Pharan Burchfield

An Employee of McLetchie Law



1 **NOAS**

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9 Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

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

12 MM DEVELOPMENT COMPANY, INC., a
13 Nevada Corporation, LIVFREE WELLNESS
14 LLC, dba The Dispensary, a Nevada limited
15 liability company,

16 Plaintiffs,

17 vs.

18 STATE OF NEVADA, DEPARTMENT OF
19 TAXATION; and DOES 1 through 10; and
20 ROE CORPORATIONS 1 through 10,

21 Defendants,

22 GREENMART OF NEVADA NLV LLC, a
23 Nevada limited liability company,

24 Defendant-Intervenor.

25 SERENITY WELLNESS CENTER, LLC, et
26 al.,

27 Plaintiffs,

28 vs.

STATE OF NEVADA, DEPARTMENT OF
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and

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company, et al.

Defendants-Intervenors.

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

Case No.: A-18-785818-W

Dept. No.: VIII

DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL

Case No.: A-19-786962-B

Dept. No.: XI

DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL

Case No.: A-19-787004-B

Dept. No.: XI

DEFENDANT-INTERVENOR

company; GREEN THERAPEUTICS 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; ROMBOUGH REAL ESTATE INC. dba MOTHER HERB, 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; and DOES 1 through 20; and ROE CORPORATIONS 1 through 20, inclusive

Defendants.

GREENMART OF NEVADA NLV LLC, a Nevada limited liability company,
Defendant-Intervenor.

COMPASSIONATE TEAM OF LAS VEGAS LLC, a Nevada Limited Liability Company;

Plaintiff,

vs.

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

GREENMART OF NEVADA NLV LLC, a Nevada limited liability company,
Intervenor Defendant.

HIGH SIERRA HOLISTICS, LLC,
Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF

**GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL**

Case No.: A-18-786357-W

Dept. No.: XIV

**DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL**

Case No.: A-19-787726-C

Dept. No.: XIV

**DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV**

TAXATION; DOES 1-10 and ROE
CORPORATIONS 1-10,
Defendants.

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,
Intervenor Defendant.

NEVADA WELLNESS CENTER, LLC, a
Nevada limited liability company,
Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION; and NEVADA ORGANIC
REMEDIES, LLC,
Defendants.

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,
Intervenor Defendant.

LLC'S NOTICE OF APPEAL

Case No.: A-19-787540-W

Dept. No.: XVIII

**DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL**

PLEASE TAKE NOTICE that Defendant-Intervenor GreenMart of Nevada NLV LLC, by and through its attorneys of record, Margaret A. McLetchie and Alina M. Shell, of the law firm McLetchie Law, pursuant to Nevada Rule of Appellate Procedure 4(b)(1), hereby timely appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order entered in the following cases on August 28, 2019:¹

(1) *Serenity Wellness Center, LLC et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-786962-B;

(2) *MM Development Company, Inc. et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-785818-W;

(3) *ETW Management Group, LLC et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-787004-B;

///

¹ On September 19, 2019, GreenMart of Nevada NLV, LLC also filed an Amended Notice Of Entry of the Court's August 23, 2019 Findings of Fact, Conclusions of Law and Order which, in compliance with EDCR 2.50(b)(2), lists all six matters coordinated pursuant to the Court's order entered July 11, 2019. Regardless, this does not affect the timeliness of GreenMart of Nevada NLV, LLC's Notice of Appeal.

(4) *Nevada Wellness Center v. State of Nevada, Department of Taxation*, Case No. A-19-787540-W;

(5) *Compassionate Team of Las Vegas LLC v. Nevada Department of Taxation*, Case No. A-18-786357-W; and

(6) *High Sierra Holistics LLC v. State of Nevada Department of Taxation*, Case No. A-19-787726-C.

DATED this the 19th day of September, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLECHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLECHIE LAW

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Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

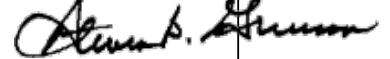
CERTIFICATE OF SERVICE

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

This document applies to Case No. A-19-786962-B; Case No. A-19-785818-W; Case No. A-19-787004-B; Case No. A-19-787540-W; Case No. A-18-786357-W; and Case No. A-19-787726-C.

/s/ Pharan Burchfield

An Employee of McLetchie Law



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9 Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

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

12 MM DEVELOPMENT COMPANY, INC., a
13 Nevada Corporation, LIVFREE WELLNESS
14 LLC, dba The Dispensary, a Nevada limited
15 liability company,

16 Plaintiffs,

17 vs.

18 STATE OF NEVADA, DEPARTMENT OF
19 TAXATION; and DOES 1 through 10; and
20 ROE CORPORATIONS 1 through 10,

21 Defendants,

22 GREENMART OF NEVADA NLV LLC, a
23 Nevada limited liability company,

24 Defendant-Intervenor.

25 SERENITY WELLNESS CENTER, LLC, et
26 al.,

27 Plaintiffs,

28 vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant,

and

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company, et al.

Defendants-Intervenors.

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

Case No.: A-18-785818-W

Dept. No.: VIII

DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL

Case No.: A-19-786962-B

Dept. No.: XI

DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL

Case No.: A-19-787004-B

Dept. No.: XI

DEFENDANT-INTERVENOR

company; GREEN THERAPEUTICS 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; ROMBOUGH REAL ESTATE INC. dba MOTHER HERB, 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; and DOES 1 through 20; and ROE CORPORATIONS 1 through 20, inclusive

Defendants.

GREENMART OF NEVADA NLV LLC, a Nevada limited liability company,

Defendant-Intervenor.

COMPASSIONATE TEAM OF LAS VEGAS LLC, a Nevada Limited Liability Company;

Plaintiff,

vs.

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

Defendants;

GREENMART OF NEVADA NLV LLC, a Nevada limited liability company,

Intervenor Defendant.

HIGH SIERRA HOLISTICS, LLC,

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF

GREENMART OF NEVADA NLV LLC'S NOTICE OF APPEAL

Case No.: A-18-786357-W

Dept. No.: XIV

DEFENDANT-INTERVENOR GREENMART OF NEVADA NLV LLC'S NOTICE OF APPEAL

Case No.: A-19-787726-C

Dept. No.: XIV

DEFENDANT-INTERVENOR GREENMART OF NEVADA NLV

TAXATION; DOES 1-10 and ROE
CORPORATIONS 1-10,
Defendants.

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,
Intervenor Defendant.

NEVADA WELLNESS CENTER, LLC, a
Nevada limited liability company,
Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION; and NEVADA ORGANIC
REMEDIES, LLC,
Defendants.

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,
Intervenor Defendant.

LLC'S NOTICE OF APPEAL

Case No.: A-19-787540-W

Dept. No.: XVIII

**DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL**

PLEASE TAKE NOTICE that Defendant-Intervenor GreenMart of Nevada NLV LLC, by and through its attorneys of record, Margaret A. McLetchie and Alina M. Shell, of the law firm McLetchie Law, pursuant to Nevada Rule of Appellate Procedure 4(b)(1), hereby timely appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order entered in the following cases on August 28, 2019:¹

(1) *Serenity Wellness Center, LLC et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-786962-B;

(2) *MM Development Company, Inc. et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-785818-W;

(3) *ETW Management Group, LLC et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-787004-B;

///

¹ On September 19, 2019, GreenMart of Nevada NLV, LLC also filed an Amended Notice Of Entry of the Court's August 23, 2019 Findings of Fact, Conclusions of Law and Order which, in compliance with EDCR 2.50(b)(2), lists all six matters coordinated pursuant to the Court's order entered July 11, 2019. Regardless, this does not affect the timeliness of GreenMart of Nevada NLV, LLC's Notice of Appeal.

(4) *Nevada Wellness Center v. State of Nevada, Department of Taxation*, Case No. A-19-787540-W;

(5) *Compassionate Team of Las Vegas LLC v. Nevada Department of Taxation*, Case No. A-18-786357-W; and

(6) *High Sierra Holistics LLC v. State of Nevada Department of Taxation*, Case No. A-19-787726-C.

DATED this the 19th day of September, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLECHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLECHIE LAW

701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

Telephone: (702) 728-5300

Email: maggie@nvlitigation.com

Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

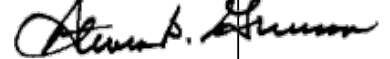
CERTIFICATE OF SERVICE

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

This document applies to Case No. A-19-786962-B; Case No. A-19-785818-W; Case No. A-19-787004-B; Case No. A-19-787540-W; Case No. A-18-786357-W; and Case No. A-19-787726-C.

/s/ Pharan Burchfield

An Employee of McLetchie Law



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8 Email: maggie@nvlitigation.com

9 Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

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

12 MM DEVELOPMENT COMPANY, INC., a
13 Nevada Corporation, LIVFREE WELLNESS
14 LLC, dba The Dispensary, a Nevada limited
15 liability company,

16 Plaintiffs,

17 vs.

18 STATE OF NEVADA, DEPARTMENT OF
19 TAXATION; and DOES 1 through 10; and
20 ROE CORPORATIONS 1 through 10,

21 Defendants,

22 GREENMART OF NEVADA NLV LLC, a
23 Nevada limited liability company,

24 Defendant-Intervenor.

25 SERENITY WELLNESS CENTER, LLC, et
26 al.,

27 Plaintiffs,

28 vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant,

and

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company, et al.

Defendants-Intervenor.

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

Case No.: A-18-785818-W

Dept. No.: VIII

DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL

Case No.: A-19-786962-B

Dept. No.: XI

DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL

Case No.: A-19-787004-B

Dept. No.: XI

DEFENDANT-INTERVENOR

company; GREEN THERAPEUTICS 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; ROMBOUGH REAL ESTATE INC. dba MOTHER HERB, 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; and DOES 1 through 20; and ROE CORPORATIONS 1 through 20, inclusive

Defendants.

GREENMART OF NEVADA NLV LLC, a Nevada limited liability company,

Defendant-Intervenor.

COMPASSIONATE TEAM OF LAS VEGAS LLC, a Nevada Limited Liability Company;

Plaintiff,

vs.

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

Defendants;

GREENMART OF NEVADA NLV LLC, a Nevada limited liability company,

Intervenor Defendant.

HIGH SIERRA HOLISTICS, LLC,

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF

GREENMART OF NEVADA NLV LLC'S NOTICE OF APPEAL

Case No.: A-18-786357-W

Dept. No.: XIV

DEFENDANT-INTERVENOR GREENMART OF NEVADA NLV LLC'S NOTICE OF APPEAL

Case No.: A-19-787726-C

Dept. No.: XIV

DEFENDANT-INTERVENOR GREENMART OF NEVADA NLV

TAXATION; DOES 1-10 and ROE
CORPORATIONS 1-10,
Defendants.

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,
Intervenor Defendant.

NEVADA WELLNESS CENTER, LLC, a
Nevada limited liability company,
Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION; and NEVADA ORGANIC
REMEDIES, LLC,
Defendants.

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,
Intervenor Defendant.

LLC'S NOTICE OF APPEAL

Case No.: A-19-787540-W

Dept. No.: XVIII

**DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL**

PLEASE TAKE NOTICE that Defendant-Intervenor GreenMart of Nevada NLV LLC, by and through its attorneys of record, Margaret A. McLetchie and Alina M. Shell, of the law firm McLetchie Law, pursuant to Nevada Rule of Appellate Procedure 4(b)(1), hereby timely appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order entered in the following cases on August 28, 2019:¹

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(2) *MM Development Company, Inc. et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-785818-W;

(3) *ETW Management Group, LLC et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-787004-B;

///

¹ On September 19, 2019, GreenMart of Nevada NLV, LLC also filed an Amended Notice Of Entry of the Court's August 23, 2019 Findings of Fact, Conclusions of Law and Order which, in compliance with EDCR 2.50(b)(2), lists all six matters coordinated pursuant to the Court's order entered July 11, 2019. Regardless, this does not affect the timeliness of GreenMart of Nevada NLV, LLC's Notice of Appeal.

(4) *Nevada Wellness Center v. State of Nevada, Department of Taxation*, Case No. A-19-787540-W;

(5) *Compassionate Team of Las Vegas LLC v. Nevada Department of Taxation*, Case No. A-18-786357-W; and

(6) *High Sierra Holistics LLC v. State of Nevada Department of Taxation*, Case No. A-19-787726-C.

DATED this the 19th day of September, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLECHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLECHIE LAW

701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

Telephone: (702) 728-5300

Email: maggie@nvlitigation.com

Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

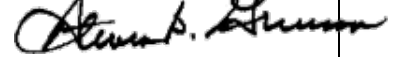
CERTIFICATE OF SERVICE

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

This document applies to Case No. A-19-786962-B; Case No. A-19-785818-W; Case No. A-19-787004-B; Case No. A-19-787540-W; Case No. A-18-786357-W; and Case No. A-19-787726-C.

/s/ Pharan Burchfield

An Employee of McLetchie Law



David R. Koch (NV Bar #8830)
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Brody R. Wight (NV Bar #13615)
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Attorneys for Intervenor
Nevada Organic Remedies, LLC

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

ETW MANAGEMENT GROUP LLC, et al.,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION, et al.

Defendants,

Case No. A-19-787004-B

Dept. No. 11

**NEVADA ORGANIC REMEDIES,
LLC'S NOTICE OF APPEAL**

Notice is hereby given that Nevada Organic Remedies, LLC appeals to the Supreme Court of Nevada from the Findings of Fact and Conclusions of Law Granting Preliminary Injunction issued on August 23, 2019 (as modified on August 29, 2019) by Judge Elizabeth Gonzalez in the following cases:

(1) *Serenity Wellness center, LLC et. al. v. State of Nevada, Department of Taxation,*

Case No. A-19-786962-B;

(2) *ETW Management Group, LLC et. al. v. State of Nevada, Department of*

Taxation, Case No. A-19-787004-B;

(3) *MM Development Company, Inc. et. al. v. State of Nevada, Department of*

Taxation, Case No. A-19-785818-W;

1 (4) *Nevada Wellness Center v. State of Nevada, Department of Taxation*, Case No.
2 A-19-787540-W.
3
4

5 **KOCH & SCOW, LLC**

6 By: /s/ David R. Koch
7 David R. Koch
8 *Attorneys for Defendant-Intervenor*
9 *Nevada Organic Remedies LLC*
10
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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 September 19, 2019, I caused the foregoing document entitled: **NEVADA ORGANIC REMEDIES, LLC'S NOTICE OF APPEAL** to be served as follows:

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

ETW Management Group LLC:
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Vicki Bierstedt (vickib@jfnvlaw.com)
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2 Henry Hymanson (Hank@HymansonLawNV.com)
James Pisanelli (lit@pisanellibice.com)
3 Jordan Smith (jts@pisanellibice.com)
Shannon Dinkel (sd@pisanellibice.com)

4 Lone Mountain Partners, LLC:
5 Eric Hone (eric@h1lawgroup.com)
Jamie Zimmerman (jamie@h1lawgroup.com)
6 Bobbye Donaldson (bobbye@h1lawgroup.com)
7 Moorea Katz (moorea@h1lawgroup.com)

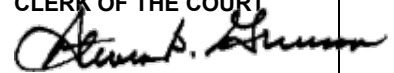
8 GreenMart of Nevada NLV LLC:
9 Alina Shell (alina@nvlitigation.com)
Margaret McLetchie (maggie@nvlitigation.com)

10 Other Service Contacts not associated with a party on the case:

11 David Koch (dkoch@kochscow.com)
12 Steven Scow (sscow@kochscow.com)
13 Brody Wight (bwight@kochscow.com)
Mariella Dumbrique (mdumbrique@blacklobello.law)
14 Brigid Higgins (bhiggins@blacklobello.law)
Patricia Stoppard (p.stoppard@kempjones.com)
15 Ali Augustine (a.augustine@kempjones.com)
Nathanael Rulis (n.rulis@kempjones.com)
16 Andrea Eshenbaugh - Legal Assistant (aeshenbaugh@kochscow.com)
Daniel Scow (dscow@kochscow.com)
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18 Daniel Simon (lawyers@simonlawlv.com)
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Dominic Gentile (dgentile@gcmaslaw.com)
22 Vincent Savarese (vsavarese@gcmaslaw.com)
Michael Cristalli (mcristalli@gcmaslaw.com)
23 Ross Miller (rmiller@gcmaslaw.com)
Jared Kahn (jkahn@jk-legalconsulting.com)
24 Rusty Graf (rgraf@blacklobello.law)
Thomas Gilchrist (tgilchrist@bhfs.com)
25 Lisa Lee (llee@thedplg.com)
26 Eservice Filing (eservice@thedplg.com)
27

28 Executed on September 19, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh



David R. Koch (NV Bar #8830)
Steven B. Scow (NV Bar #9906)
Brody R. Wight (NV Bar #13615)
Daniel G. Scow (NV Bar #14614)
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sscow@kochscow.com
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,

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor.

NEVADA ORGANIC REMEDIES, LLC,

Counterclaimant,
vs.

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

Counter-Defendants

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

NEVADA ORGANIC REMEDIES'
NOTICE OF APPEAL

1
2 Notice is hereby given that Nevada Organic Remedies, LLC appeals to the Supreme
3 Court of Nevada from the Findings of Fact and Conclusions of Law Granting Preliminary
4 Injunction issued by Judge Elizabeth Gonzalez in the following cases:

5 (1) *Serenity Wellness center, LLC et. al. v. State of Nevada, Department of Taxation,*
6 Case No. A-19-786962-B;

7 (2) *ETW Management Group, LLC et. al. v. State of Nevada, Department of*
8 *Taxation,* Case No. A-19-787004-B;

9 (3) *MM Development Company, Inc. et. al. v. State of Nevada, Department of*
10 *Taxation,* Case No. A-18-785818-W;

11 (4) *Nevada Wellness Center v. State of Nevada, Department of Taxation,* Case No.
12 A-19-787540-W.

13
14
15 **KOCH & SCOW, LLC**

16 By: /s/ David R. Koch
17 David R. Koch
18 *Attorneys for Defendant-Intervenor*
19 *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 September 19, 2019, I caused the foregoing document entitled: **NEVADA ORGANIC REMEDIES, LLC'S CASE APPEAL STATEMENT** to be served as follows:

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

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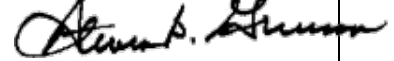
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Executed on September 19, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh



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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

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor

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

**NEVADA ORGANIC REMEDIES,
LLC'S NOTICE OF APPEAL**

1 Notice is hereby given that Nevada Organic Remedies, LLC appeals to the Supreme
2 Court of Nevada from the Findings of Fact and Conclusions of Law Granting Preliminary
3 Injunction issued on August 23, 2019 (as modified on August 29, 2019) by Judge Elizabeth
4 Gonzalez in the following cases:

5 (1) *Serenity Wellness center, LLC et. al. v. State of Nevada, Department of Taxation,*
6 Case No. A-19-786962-B;

7 (2) *ETW Management Group, LLC et. al. v. State of Nevada, Department of*
8 *Taxation,* Case No. A-19-787004-B;

9 (3) *MM Development Company, Inc. et. al. v. State of Nevada, Department of*
10 *Taxation,* Case No. A-19-785818-W;

11 (4) *Nevada Wellness Center v. State of Nevada, Department of Taxation,* Case No.
12 A-19-787540-W.

13
14
15 **KOCH & SCOW, LLC**

16 By: /s/ David R. Koch
17 David R. Koch
18 Attorneys for Defendant-Intervenor
19 Nevada Organic Remedies LLC
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CERTIFICATE OF SERVICE

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- ☒ 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:
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7 *Attorneys for Defendants in Intervention,*
8 *Integral Associates LLC d/b/a Essence Cannabis Dispensaries,*
9 *Essence Tropicana, LLC, Essence Henderson, LLC*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 NEVADA WELLNESS CENTER, LLC, a
13 Nevada Limited Liability Company,

14 Plaintiffs,

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF
17 TAXATION; and DOES I through X; and ROE
18 CORPORATIONS I through X.

19 Defendants.

20 GREENMART OF NEVADA NLV LLC, a
21 Nevada limited liability company,

22 Intervenor Defendant.

Case No.: A-19-787540-W
Dept. No.: XVIII

**THE ESSENCE ENTITIES' MOTION TO
INTERVENE AS DEFENDANTS**

(HEARING REQUESTED)

23 Defendants in Intervention Integral Associates LLC d/b/a Essence Cannabis Dispensaries,
24 Essence Tropicana, LLC, and Essence Henderson, LLC (the "Essence Entities"), by and through
25 their attorneys of record, the law firm of Pisanelli Bice PLLC, respectfully move this Court to
26 intervene in the above-referenced action pursuant to NRCP 24 and NRS §12.130.
27
28

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

4 DATED this 20th day of September, 2019.

5 PISANELLI BICE PLLC

6
7 By: 

James J. Pisanelli, Esq., #4027
Todd L. Bice, Esq., #4534
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12 *Dispensaries, Essence Tropicana, LLC, Essence*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Nevada Wellness Center, LLC ("Nevada Wellness") initiated this lawsuit against the State of Nevada, Department of Taxation (the "Department"), alleging that the Department's issuance of conditional licenses to operate recreational marijuana retail stores was done unlawfully. Nevada Wellness challenges the Department's entire process of evaluating and ranking applicants during the application period, and seek to have this Court issue a ruling that essentially halts the winning applicants from conducting business, and awards licenses to Nevada Wellness. If successful, this relief could substantially affect applicants that were awarded the licenses, including proposed Defendants in Intervention ("Defendants").

The Essence Entities collectively were granted eight (8) of the conditional licenses issued by the Department on December 5, 2018. Defendants timely seek to intervene in this action pursuant to NRCP 24 and NRS § 12.130 to protect their rights and interests as the owners of these conditional licenses.

Attached as Exhibit A is Defendants' proposed Opposition to Nevada Wellness's Motion for Summary Judgment and Countermotion to Dismiss, which shows that Plaintiff's failure to name the Essence Entities – and all other license holders – is fatal to this action.

II. FACTUAL BACKGROUND

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 years of age 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.

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

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

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

16 Under their conditional licenses, Defendants have twelve (12) months to receive a final
17 inspection for a marijuana establishment. R092-17, Sec. 87. If a marijuana establishment does
18 not receive a final inspection within twelve (12) months, the marijuana establishment must
19 surrender the license to the Department. *Id.* The Department may extend the period specified in
20 this subsection if the Department, in its discretion, determines that extenuating circumstances
21 prevented the marijuana establishment from receiving a final inspection within the period
22 specified in this subsection. *Id.*¹

23 On January 15, 2019, Nevada Wellness Center filed its complaint against the State of
24 Nevada Department of Taxation. Nevada Wellness seeks declaratory and injunctive relief for,
25 among other things, the Department's alleged improper denial of four conditional licenses. It
26 alleges that the application process violated its procedural and substantive due process and equal

27
28 ¹ Because of the operational delays caused by the litigation, the State has granting a
six-month extension of time to the successful applicants.

1 protections rights. (Nev. Well Center Compl. ¶¶ 31, 43-60). Nevada Wellness also seeks a
2 declaration that the Department must grant it four conditional licenses in Clark County,
3 Las Vegas, North Las Vegas, and Reno. (*Id.* ¶32.) Additionally, Nevada Wellness seeks judicial
4 review and a petition for writ of mandamus. (*Id.* ¶¶ 61-72).

5 On April 22, 2019, Judge Gonzalez held a hearing to coordinate for a preliminary
6 injunction hearing all cases pending in the Eighth Judicial District Court involving the
7 recreational marijuana application process. (Hr'g Tr. Apr. 22, 2019). Judge Gonzalez "invited
8 participation in the preliminary injunction hearing of all interested parties in order to avoid
9 potentially conflicting ruling in different departments." (*Id.* at 20:19-21). Judge Gonzalez
10 explained that "[t]his [process] has the approval of the chief judge in trying to coordinate this
11 given the current status of some of the departments [parties are] assigned to" (*Id.* at 13:21-3).
12 If parties to other cases intended to seek an injunction on the same basis, Judge Gonzalez stated
13 "you need to do it, if you're going to do it, as part of this case." (*Id.* at 15:12-14). Judge Gonzalez
14 sought to avoid "four or five preliminary injunction hearings set on the same issues before
15 different judges because of the risk of varying rulings based upon the same legal issues but with
16 slightly different facts being presented in front of each department." (*Id.* at 16:8-12).

17 Ultimately, the Preliminary Injunction Hearing started in May 2019, lasted 20 days, and
18 concluded on August 16, 2019. Judge Gonzalez ruled that the Department is partially enjoined
19 from conducting a final inspection of any of the conditional licenses issued in or about
20 December 2018 who did not provide the identification of each prospective owner, officer and
21 board member as required by NRS 453D.200(6) pending a trial on the merits. (Findings of Fact
22 & Conclusions of Law Granting in Part Prelim. Inj., A-19-786962-B, pg. 24, Aug. 23, 2019).

23 Nevada Wellness seeks to use Judge Gonzalez's finding to obtain summary judgment in
24 this case. Given the nature of the relief sought by Nevada Wellness, a disposition of this case
25 could irrefutably impair Defendants' legal interests in their conditional licenses.

1 **III. LEGAL ARGUMENT**

2 **A. Legal Standard.**

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

7 In furtherance, NRCP § 24(a)(2) governs non-statutory intervention of right and states that
8 upon timely intervention "the court must permit anyone to intervene who . . . claims an interest
9 relating to the property or transaction that is the subject of the action, and is so situated that
10 disposing of the action may as a practical matter impair or impede the movant's ability to protect
11 its interest, unless existing parties adequately represent that interest." Nev. R. Civ. P. § 24(a)(2).
12 NRCP § 24(b)(1)(B) governs permissive intervention and allows for intervention when an
13 applicant "has a claim or defense that shares with the main action a common question of law or
14 fact." Nev. R. Civ. P. § 24(b)(1)(B).

15 **B. Defendants Should be Permitted to Intervene Pursuant to Intervention of**
16 **Right.**

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

26 ² Federal decisions involving the federal civil procedure rules are persuasive authority when
27 this court examines its equivalent rules. *See Executive Mgmt. v. Ticor Title Ins. Co.*, 118 Nev. 46,
28 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 However, when evaluating whether the requirements for intervention of right are met, a
2 court generally follows practical and equitable considerations and construes the governing rule
3 broadly in favor of proposed intervenors. *Wilderness Soc'y v. U.S. Forest Service*, 630 F.3d 1173,
4 1179 (9th Cir. 2011) (*en banc*) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397
5 (9th Cir. 2002)). This is because "[a] liberal policy in favor of intervention serves both efficient
6 resolution of issues and broadened access to the Courts." *Wilderness Soc'y*, 630 F.3d 1173
7 (quoting *City of Los Angeles*, 288 F.3d at 397-98).

8 ***1. Defendants' application to intervene is timely.***

9 First, Defendants filed their motion to intervene in a timely manner. The Supreme Court
10 of Nevada has held that when determining the timeliness of an application to intervene "[t]he
11 most important question to be resolved [. . .] is not the length of the delay by the intervenor but
12 the extent of prejudice to the rights of existing parties resulting from the delay." *See Dangberg*
13 *Holdings Nevada, L.L.C. v. Douglas Cty. & its Bd. of Cty. Commr's*, 115 Nev. 129, 141,
14 978 P.2d 311, 318 (1999); *see also American Home Assurance Corp.*, 122 Nev. at 1244, n.49
15 and n.50 (citations omitted).

16 Here, intervention by Defendants will not cause prejudice to Nevada Wellness nor the
17 Department; namely because this case is in its relatively early stages of litigation and the motion
18 for summary judgment was recently filed. *See Citizens for Balanced Use v. Montana Wilderness*
19 *Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (where the Court found the parties would not have
20 suffered prejudice from the grant of intervention at the early stage of litigation).

21 Conversely, Defendants would be significantly prejudiced if they are precluded from
22 intervening and opposing the motion for summary judgment. Defendants hold the interest to
23 eight (8) of the conditional licenses issued by the Department. Through this action,
24 Nevada Wellness is attempting to undermine the rights of Defendants to their conditional licenses
25 by claiming that the Department arbitrarily and partially awarded them. Because Defendants may
26 be gravely prejudiced if not permitted to intervene, and Nevada Wellness will not suffer any
27 prejudice, this Court should find that Defendants' request to intervene is timely.

1 2. *Defendants have a sufficient interest in the litigation's subject matter.*

2 Second, Defendants have a sufficient interest in the litigation's subject matter. While there
3 is no "bright-line" test to determine if a sufficient interest exists, the Supreme Court of Nevada
4 has held that an applicant must make a showing of a "significant protectable interest." *See*
5 *Am. Home Assur. Co.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1127 (2006). Whether a proposed
6 intervenor has a significant protectable interest is a "practical, threshold inquiry," and the party
7 seeking intervention need not establish any "specific legal or equitable interest." *Citizens for*
8 *Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (internal
9 quotations omitted) (quoting *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837
10 (9th Cir. 1996)). To meet its burden, a proposed intervenor "must establish that the interest is
11 protectable under some law and that there is a relationship between the legally protected interest
12 and the claims at issue." *Id.* The question of whether there is a significant protectable interest
13 does not turn on "technical distinctions." *California v. United States*, 450 F.3d 436, 441
14 (9th Cir. 2006). Instead, courts "have taken the view that a party has a sufficient interest for
15 intervention purposes if it will suffer a practical impairment of its interests as a result of the
16 pending litigation." *See id.*

17 Here, Defendants have a sufficient interest in the subject matter of this action – the
18 conditional licenses issued by the Department to operate recreational marijuana retail stores.
19 Defendants were issued eight (8) of the licenses by the Department. Nevada Wellness, through
20 this lawsuit and its Motion for Summary Judgment, is essentially attempting to have this Court
21 determine that the Department's application process was improper, which could impair
22 Defendants' interest in their conditional licenses.

23 3. *The disposition of this action may impair or impeded Defendants' ability*
24 *to protect their interests.*

25 Third, the disposition of this action, as a practical matter, may impair or impede
26 Defendants' ability to protect their interest. Once a significant protectable interest is established,
27 courts look to whether the proposed intervenor's ability to protect that interest would be
28 "impair[ed] or impede[ed]" by "the disposition of the action." *Citizens for Balanced Use*,

1 647 F.3d at 897 (citation omitted). "If an absentee would be substantially affected in a practical
2 sense by the determination made in an action, [it] should, as a general rule, be entitled to
3 intervene" *Id.* at 898 (quoting Fed R. Civ. P. 24 advisory committee's note).

4 Here, Nevada Wellness's claims attempt to manufacture a dispute in the hope of
5 undermining the application process. This could substantially impair the rights of Defendants and
6 other successful applicants. Indeed, Nevada Wellness has asserted allegations that the
7 Department arbitrarily and partially awarded the licenses, and therefore, must enter a declaratory
8 judgment granting it a license. This relief, if granted, could necessarily harm the applicants who
9 were awarded a license. Accordingly, Defendants' interests may be impaired by the disposition of
10 this case, as they risk losing their conditional licenses.

11 **4. Defendants' interests may not be adequately represented.**

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

24 "The most important factor in assessing the adequacy of representation is how
25 the interest compares with the interests of existing parties." *Citizens for Balanced Use*, 647 F.3d
26 at 898 (internal quotation and citation omitted). Where a proposed intervenor and an existing
27 party "share the same ultimate objective, a presumption of adequacy of representation arises."
28

1 *Citizens for Balanced Use*, 647 F.3d at 898 (citation omitted). A presumption of adequacy "must
2 be rebutted with a compelling showing." *Id.* (citation omitted).

3 Here, Defendants' interests would not be adequately represented by the Department or the
4 other intervening Defendant. Nevada Wellness will have to prove that the Department did not
5 correctly rank the applicants. As a result, Defendants will need to defend their applications
6 against all other applicants, including Nevada Wellness. Nevada Wellness ultimately wants to
7 upset the entire process and hold the conditional license winners hostage. Defendants should be
8 entitled to assert defenses and arguments to protect their interests in their conditional licenses.
9 Accordingly, Defendants have met their minimal burden of showing that their interests may not
10 adequately represented.

11 **C. Defendants Should be Permitted to Intervene Pursuant to Permissive**
12 **Intervention.**

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

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

23 Furthermore, allowing Defendants to intervene in this suit will not unduly delay or
24 prejudice the adjudication of the current parties' rights. If anything, allowing intervention will
25 promote judicial economy. *See Dangberg Holdings Nevada, L.L.C.*, 115 Nev. 129, 142,
26 978 P.2d 311, 319 (1999) (where the court found "bringing all of the parties together in one
27 proceeding before one tribunal will foster the principles of judicial economy and finality");
28 *see also Venegas v. Skaggs*, 867 F.2d 527, 531 (9th Cir. 1989) (noting that "judicial economy is a

1 relevant consideration in deciding a motion for permissive intervention"), *aff'd sub nom. Venegas*
2 *v. Mitchell*, 495 U.S. 82, 87, 110 S.Ct. 1679, 109 L.Ed.2d 74 (1990). Accordingly, this Court
3 should grant Defendants' Motion to Intervene.

4 **IV. CONCLUSION**

5 For these reasons, Defendants respectfully request that the Court allow them to intervene
6 and that the Court will consider Defendants' Opposition to Plaintiff's Motion for Summary
7 Judgment and Countermotion to Dismiss, attached hereto as Exhibit A, before ruling on Nevada
8 Wellness' Motion.

9 DATED this 20th day of September, 2019.

10 PISANELLI BICE PLLC

11 By: 

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20 *Henderson, LLC*
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22
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24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 20th day of September, 2019, I caused to be served via the Court's e-filing/e-service system true and correct copies of the above **THE ESSENCE ENTITIES' MOTION TO INTERVENE AS DEFENDANTS** to all parties listed on the Court's Master Service List.


An employee of Pisanelli Bice PLLC

EXHIBIT A

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Essence Tropicana, LLC, Essence Henderson, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA WELLNESS CENTER, LLC, a
Nevada Limited Liability Company,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION; and DOES I through X; and ROE
CORPORATIONS I through X.

Defendants.

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,

Intervenor Defendant.

Case No.: A-19-787540-W
Dept. No.: XVIII

**THE ESSENCE ENTITIES'
OPPOSITION TO NEVADA
WELLNESS CENTER, LLC'S
MOTION FOR SUMMARY
JUDGMENT AND COUNTERMOTION
TO DISMISS**

I. INTRODUCTION

Nevada Wellness Center, LLC ("Nevada Wellness") requests summary judgment based on its selective characterization of evidence presented during Judge Gonzalez's preliminary injunction hearing. The problems with Nevada Wellness' request are many. First, Nevada Wellness' entire complaint is fatally flawed because it has purposefully failed to name all of the parties who were successfully awarded provisional licenses by the State of Nevada. Nevada Wellness concedes that each and every one of these provisional licenses would be impaired if it were to obtain relief from this Court. Under NRCP 19, Nevada Wellness' failure to

1 name all of the parties who successfully received licenses from the State, like the
2 Essence Entities,¹ renders its requested relief invalid. Nevada Wellness' attempt to race to a
3 resolution without providing notice and due process to the successful applicants is transparently
4 improper.

5 Moreover, even ignoring that fatal flaw, Nevada Wellness fails to disclose crucial facts
6 and findings – including that Nevada Wellness largely *lost* at the injunction hearing.
7 Judge Gonzalez determined that the scoring process was not "unfair," and that a physical location
8 was not required to obtain provisional licenses. Nevada Wellness omits the many conclusions
9 from Judge Gonzalez's order that undercut its motion for summary judgment. The preliminary
10 injunction posture of the *Serenity* case and Judge Gonzalez's findings of fact and conclusions of
11 law demonstrate that Nevada Wellness is not entitled to summary judgment. And, while the
12 Essence Entities are not among the entities who are affected by Judge Gonzalez's partial
13 injunction, Nevada Wellness' omissions and misstatements cannot stand uncorrected.

14 **II. ARGUMENT**

15 **A. Nevada Wellness' Complaint Violates NRCP 19.**

16 Nevada Wellness' request that this Court invalidate the more than sixty licenses that the
17 State granted to successful applicants – while purposefully not naming any of them in this lawsuit
18 – is invalid on its face. Nevada Wellness knows to whom the State issued these successful
19 licenses. Yet, it failed to name any of them in this legal proceeding, one which seeks to invalidate
20 each and every one of those licenses. Unremarkably, the law does not countenance such conduct.

21 NRCP 19 specifically mandates that the plaintiff must name and join in the action any
22 party who has received a government approval – such as a license or permit – in any action that
23 seeks to invalidate those approvals. As the Ninth Circuit explained in *Dine Citizens Against*
24 *Ruining Our Environment v. Bureau of Indian Affairs*, 932 F.3d 843, 852 (9th Cir. 2019), Rule 19
25 requires the plaintiff to name and join any party who has an interest that will be impaired or

26
27 ¹ Integral Associates, LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC,
28 Essence Henderson, LLC.

1 impeded by the lawsuit. This means that if a party seeks to challenge government action
2 approving any form of permit or authorization, the parties who successfully received that
3 permit/authorization/license is a necessary party to the action, and that relief cannot be granted
4 without their involvement. *Id.* Indeed, as NRCP 19(a)(2) mandates, if the plaintiff has failed to
5 join the party and provide them notice, "the court *must order* that the person be made a party"
6 (emphasis added).

7 Here, Nevada Wellness' improper procedural maneuvering is transparent. It has given no
8 notice to any of the successful license holders, and yet seeks to have this Court invalidate their
9 licenses without notice or due process. The law forbids the plaintiff from using such tactics.
10 *Gladys Baker Olsen Family Trust v. Eighth Judicial District Ct.*, 110 Nev. 548, 554,
11 874 P.2d 778, 782 (1994) (failure to name and join necessary parties is "fatal" to any judgment by
12 the district court); *University of Nevada v. Tarkanian*, 95 Nev. 389, 395, 594 P.2d 1159, 1163
13 (1979) (reversing and explaining that it was improper for the district court to proceed with a case
14 without the joinder of necessary parties).

15 **B. Judge Gonzalez's Preliminary Injunction Findings Cannot Serve as**
16 **"Undisputed Facts" and Do Not Entitle Nevada Wellness to Summary**
Judgment.

17 Even if Nevada Wellness had properly joined all of the parties whose rights it seeks to
18 impede – and thereby gave them proper notice – its request for summary judgment would still be
19 fatally flawed. Summary judgment is appropriate when the pleadings and other evidence on file
20 demonstrate that no genuine issue as to any material fact remains, and the moving party is entitled
21 to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029
22 (2005); NRCP 56(a) ("The court shall grant summary judgment if the movant shows that there is
23 no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
24 law."). The non-moving party may defeat an affirmative motion for summary judgment by
25 showing the absence of evidence on a necessary element of the plaintiff's case. *See Cuzze v.*
26 *Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007).

27 Preliminary injunctions and motions for summary judgment have different purposes and,
28 as a result, different evidentiary standards. "The purpose of a preliminary injunction is merely to

1 preserve the relative positions of the parties until a trial on the merits can be held. Given this
2 limited purpose, and given the haste that is often necessary if those positions are to be preserved,
3 a preliminary injunction is customarily granted on the basis of procedures that are less formal and
4 evidence that is less complete than in a trial on the merits." *Univ. of Texas v. Camenisch*,
5 451 U.S. 390, 395 (1981); *see also Hosp. Int'l Grp. v. Gratitude Grp., LLC*, 387 P.3d 208,
6 2016 WL 7105065, at *2 (Nev. 2016) (unpublished disposition) (citing Charles Alan Wright,
7 Arthur R. Miller & Mary Kay Kane, *supra*, § 2949, at 239 (noting that the evidentiary standards
8 that govern summary judgment practice do not strictly "apply in the Rule 65 context because a
9 preliminary injunction only has the effect of maintaining the positions of the parties until the trial
10 can be held; the order neither replaces the trial nor represents an adjudication of the merits"))).

11 A party is not required to prove its entire case at a preliminary injunction hearing, and "the
12 findings of fact and conclusions of law made by a court granting a preliminary injunction are not
13 binding at trial on the merits." *Camenisch*, 451 U.S. at 395. That is why it is inappropriate for a
14 court to give a final judgment on the merits at the preliminary injunction stage. *Id.*

15 Nevada Wellness gets this standard exactly backwards.² It argues that, "[w]hile there may
16 not have been enough evidence to throw out the entire process from a preliminary injunction
17 standpoint . . . there is certainly more than enough to meet the standard under a motion for
18 summary judgment"³ What nonsense. The summary judgment standard is higher than the
19 preliminary injunction standard. Since Judge Gonzalez applied the lower preliminary injunction
20 standard, her order cannot serve as the basis for Nevada Wellness' motion for summary judgment,
21 and her factual findings are not "undisputed" for purposes of summary judgment. To prevail on a
22 motion for summary judgment, Nevada Wellness cannot merely rest on the evidentiary record
23 before Judge Gonzalez. Accordingly, Nevada Wellness' Motion for Summary Judgment fails for
24 this reason as well.

25
26 ² Nevada Wellness does not bother to identify which of its seven claims for relief entitle it
27 to summary judgment. It does not address any of the elements of those claims, and does not try to
apply any evidence to those elements. This deficiency alone is fatal.

28 ³ (Mot. at 13 :5-8).

1 **C. The Five Percent (5%) Threshold for Background Checks May Eventually Be**
2 **Upheld.**

3 Additionally, because of the differing legal requirements between preliminary injunctions
4 and summary judgment, Judge Gonzalez did not render a final judgment that the State of Nevada,
5 Department of Taxation's (the "State") five percent background check threshold was unlawful. At
6 most, Judge Gonzalez found that there was a *likelihood* that the threshold was inappropriate. The
7 injunction only enjoined the State "from conducting a final inspection" of those applicants
8 "pending a trial on the merits."⁴ Thus, the State and the four enjoined applicants ultimately could
9 prevail at trial and the standard could be upheld.

10 **D. A Final Address Was Not Needed to Apply for a Provisional License.**

11 Nevada Wellness Center asserts that it is entitled to summary judgment because "[s]he
12 [Judge Gonzalez] found that several applicants did not provide physical addresses" on their
13 applications. (Mot. 7:21, 9:15-20, 12:25). Nevada Wellness conspicuously withholds
14 Judge Gonzalez's actual holding: since the State "has only awarded conditional licenses which
15 are subject to local government approval[s] . . . the public safety aspects of the failure to require
16 an actual physical address *can be cured prior to the award of a final license.*" (Pl's Ex. 7 ¶ 75)
17 (emphasis added).

18 Judge Gonzalez's ruling is based on recent Nevada Supreme Court precedent involving
19 the medical marijuana licensing process. In *Nuleaf CLV Dispensary, LLC v. State Department of*
20 *Health & Human Services, Division of Public & Behavioral Health*, 134 Nev. Adv. Op. 17,
21 414 P.3d 305 (2018), two unsuccessful applicants for a medical marijuana certification brought an
22 action seeking a mandatory injunction ordering the State to revoke a competitor's provisional
23 certificate. The parties disputed whether the statutory scheme required all applicants to obtain
24 prior zoning and building approval from a local government before receiving a registration
25 certificate. *Id.* at 306-09.

26 The relevant provision provided that "not later than 90 days after receiving an application
27 to operate a medical marijuana establishment, the [Department] *shall register* . . . and issue a . . .

28 ⁴ Pl.'s.' Ex. 7 at p. 24.

1 registration certificate *if . . . [the applicant] has submitted to the [department] all of the*
2 *following:* Proof of licensure with the applicable local governmental authority or a letter from
3 the applicable local governmental authority certifying that the proposed medical marijuana
4 establishment is in compliance with [zoning] restrictions and satisfies all applicable building
5 requirements." *Id.* at 309 (emphasis in original) (quoting NRS 453A.322).

6 Like Nevada Wellness here, the challengers argued that the statute required the applicants
7 to provide proof of local approval before the Department could even consider the application. *Id.*
8 The successful applicant, who did not have prior local approval – and in fact had been denied
9 local approval – asserted that such local approval was merely one factor and the "nothing in the
10 statute prohibits the Department from considering an applicant that fails to meet the
11 requirements." *Id.* at 309-310.

12 The Nevada Supreme Court agreed with the successful applicant. Notwithstanding the
13 language of the statute, the Court explained that adopting the challengers' reading would produce
14 unreasonable results by precluding otherwise qualified applicants from receiving certificates.
15 *Id.* at 310. The Court held that "nothing in the statute prohibits the Department from considering
16 an applicant that fails to meet the requirements." *Id.* Just like the conditional licenses at issue in
17 this case, these certificates were provisional, and the businesses could not operate until the
18 establishment complies with all applicable local governmental ordinances and rules. *Id.*

19 Thus, Judge Gonzalez's finding was correct under *Nuleaf*, and Nevada Wellness cannot
20 obtain summary judgment based on a legal issue that it *lost* in front of Judge Gonzalez. The State
21 lawfully issued conditional licenses and location or building issues, if any, can be cured before
22 final licenses are issued.

23 **E. Summary Judgment Cannot Be Granted Based on the State's Scoring**
24 **Method.**

25 Nevada Wellness claims that it was denied four licenses "due to an unfair and partial
26 selection process." (Mot. 4:11-12). It attacks the State's "scoring methods." (*Id.* at 4:22,
27 11:19-21). In actuality, Judge Gonzalez concluded otherwise. Judge Gonzalez determined that
28 "[t]he few instances of clear mistakes" made by the temporary employees who conducted the

1 scoring "*do not, in and of themselves, result in an unfair process as human error occurs in*
2 *every process.*" (Pl.'s Ex. 7 ¶50; *see also id.* at ¶¶78-79).

3 Judge Gonzalez did not find that "material irregularities" occurred, and did not issue the
4 partial injunction based on any such occurrences. If Judge Gonzalez did not find even the
5 *likelihood* of a "nonconformity or irregularity," then Nevada Wellness's identical evidence
6 certainly does not demonstrate that it is entitled to judgment as a matter of law.⁵

7 Nevada Wellness analogizes to competitive bidding cases (Mot. at 1:4-11-7), but those
8 cases support the State's process. For example, in *Reno Water, Land & Light Co. v. Osburn*, the
9 Reno City Council submitted two questions to the voters, asking whether the city should borrow
10 money for water works and electric lighting. 25 Nev. 53, 56 P. 945 (1899). Similar to the ballot
11 initiative involved in this case, the residents voted "yes," and the city solicited bids. A winner
12 was awarded but a losing bidder sued to enjoin the winners from entering into the city contracts.
13 *Id.* at 53, 56 P. at 945-46.

14 The loser made an argument akin to Nevada Wellness. It argued that the law required a
15 "competitive bidding" process and the city failed to follow it. The Nevada Supreme Court
16 disagreed. It explained, "[u]nder provisions requiring proposals to be awarded to the lowest
17 responsible bidder, the board or officer charged with the award has no discretion, except as to the
18 responsibility of the bidder; *but the provision of the charter that the bidder offering to furnish the*
19 *best system* of water supply for the least number of bonds shall be deemed the lowest or *best*
20 *bidder commits to the council a discretionary power to determine which system is the best, and*
21 *introduces an element inconsistent with competitive bidding* upon plans and specifications
22 previously adopted." *Id.* at 53, 56 P. at 946 (emphases added). In other words, when the
23 application process involves assessing the "best" or most qualified applicants – rather than black
24 and white numerical values- the State appropriately exercises its discretion.

25 Here, neither the ballot initiative nor scoring process required the State to award any
26 certain, specified number of points for the various statutory criteria. The graders were given the

27
28 ⁵ The recreational marijuana licensing application process is not subject to
NRS Chapters 332 or 333.

1 discretion to award a range of points for the specified elements. The ability to award a range of
2 points introduced discretion into the process that is not ordinarily present in normal government
3 competitive bidding for the lowest price. The State had discretion to evaluate applications and
4 assign differing point values based on the applicant's qualifications and suitability. Nevada
5 Wellness cannot substitute the State's discretionary scoring system for its own self-serving view
6 of the points it would have awarded itself. *See Douglas Cty. Bd. of Cty. Comm'rs v. Pederson*,
7 78 Nev. 106, 108, 369 P.2d 669, 671 (1962) (rejecting lowest bidder's request for mandamus
8 where the State had the discretion to determine the lowest "responsible" bidder).

9 **III. CONCLUSION**

10 Nevada Wellness' attempt to invalidate provisional licenses without giving notice to those
11 license winners is fatally flawed. The law does not permit such conduct. Besides that,
12 Nevada Wellness is just wrong on the law and conveniently ignores the actual grounds for
13 Judge Gonzalez's preliminary injunction ruling. Its motion for summary judgment must be
14 denied.

15 DATED this 20th day of September, 2019.

16 PISANELLI BICE PLLC

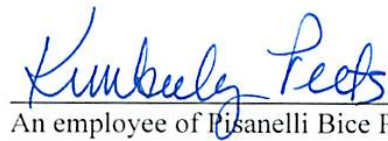
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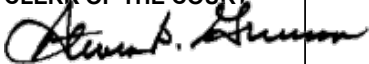
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24 *Henderson, LLC*
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 20th day of September, 2019, I caused to be served via the Court's e-filing/e-service system true and correct copies of the above **THE ESSENCE ENTITIES' OPPOSITION TO NEVADA WELLNESS CENTER, LLC'S MOTION FOR SUMMARY JUDGMENT** to all parties listed on the Court's Master Service List.


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DISTRICT COURT
CLARK COUNTY, NEVADA

NEVADA WELLNESS CENTER, LLC, a
Nevada Limited Liability Company,

Plaintiff(s),

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION; and DOES I through X,
inclusive; and ROE CORPORATIONS I
through X inclusive,

Defendant(s),

and

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

Case No. A-19-787540-W
Dept. No. 18

liability company, DOE PLAINTIFFS I
through X; and ROE ENTITY PLAINTIFFS
I through X,

Plaintiff(s),

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant(s).

and

NEVADA ORGANIC REMEDIES, LLC;
INTEGRAL ASSOCIATES LLC d/b/a
ESSENCE CANNABIS DISPENSARIES, a
Nevada limited liability company;
ESSENCE TROPICANA, LLC, a Nevada
limited liability company; ESSENCE
HENDERSON, LLC, a Nevada limited
liability company; CPCMHOLDINGS, LLC
d/b/a THRIVE CANNABIS
MARKETPLACE, COMMERCE PARK
MEDICAL, LLC, a Nevada limited liability
company; and CHEYENNE MEDICAL,
LLC, a Nevada limited liability company;
LONE MOUNTAIN PARTNERS, LLC, a
Nevada limited liability partnership;
HELPING HANDS WELLNESS CENTER,
INC., a Nevada corporation; GREENMART
OF NEVADA NLV LLC, a Nevada limited
liability company; and CLEAR RIVER,
LLC,

Intervenors.

**DEPARTMENT OF TAXATION'S OPPOSITION TO NEVADA WELLNESS
CENTER, LLC'S MOTION TO AMEND FINDINGS OF FACTS AND
CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019**

The State of Nevada ex. rel. the Department of Taxation, by and through its counsel,
opposes Plaintiff Nevada Wellness Center's motion to amend this Court's findings of fact
and conclusions of law

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

This Court should deny Nevada Wellness Center's motion. A motion to amend
findings is not an excuse to regurgitate arguments already made or which could have been

1 made by the moving party. But, that is what Nevada Wellness Center's motion improperly
2 does. Consistent with the policy of not hearing the same motion twice, this Court should
3 deny Nevada Wellness Center's motion to amend under Nev. R. Civ. P. 52.

4 First, in accord with the Nevada Supreme Court's decision in *Nuleaf CLV*
5 *Dispensary, LLC v. State Dep't of Health & Human Servs., Div. of Pub. & Behavioral*
6 *Health*, 134 Nev. 129, 414 P.3d 305 (2018), nothing prohibited the Department of Taxation
7 from accepting applications without physical addresses. Second, Nevada Wellness Center
8 has not demonstrated that any discussion with staff met the definition of a meeting, action,
9 and the quorum standard under *Dewey v. Redevelopment Agency of Reno*, 119 Nev. 87, 64
10 P.3d 1070 (2003) (en banc) for Nevada's Open Meeting Law to even apply.¹

11 **II. Legal discussion**

12 **A. Nevada Wellness Center makes no attempt to meet the standard to** 13 **amend findings of fact and conclusions of law**

14 Rule 52(b) permits parties to move to correct manifest errors of law and findings of
15 fact. However, a party cannot use Rule 52(b) to raise arguments that were or could have
16 been made prior to the Court's entry of judgment. *Granat v. Schoepski*, 272 F.2d 814, 815
17 (9th Cir. 1995). The Fifth Circuit nicely summarized the rule that bars motions such as
18 Nevada Wellness Center's:

19 Blessed with the acuity of hindsight, [a party] may now realize
20 that it did not make its initial case as compellingly as it might
21 have, but it cannot charge the District Court with responsibility
22 for that failure through [a] Rule 52(b) motion.

23 *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207 1220 (5th Cir. 1986).

24 Here, Nevada Wellness Center does not offer any new evidence, but cites to
25 testimony adduced at the evidentiary hearing, which was already considered by the Court.
26 Nevada Wellness Center restates the same arguments both from the public bidding forum

27 ¹ Far from being unfair to Nevada Wellness Center, Nevada Wellness Center does
28 not dispute that it received through its email address, a copy of the revised application
noting that physical addresses were not required if an applicant had not already secured a
physical location.

1 and based on its interpretation of Nevada law pertaining to the physical address language
2 in both the initiative and the accompany regulations. Nevada Wellness Center does raise
3 a new argument under Nevada’s Open Meeting Law, but never explains why it did not
4 raise that argument prior to this Court’s entry of its findings of fact and conclusions of law.
5 Nevada Wellness Center’s motion is procedurally improper and should be rejected.

6 **B. The *Nuleaf* decision is directly on point**

7 Nevada Wellness Center’s attempts to distinguish *Nuleaf* are not persuasive.
8 Nevada Wellness Center mistakenly attempts to distinguish *Nuleaf* by arguing that
9 “*Nuleaf* did not address NRS 453A.322[’s] requirement that a physical location be provided
10 in the application.” Br. at 9:13-14. Nevada Wellness Center is wrong.

11 *Nuleaf* expressly considered NRS 453A.322. The Court, in relevant part, wrote as
12 follows, “[f]urthermore, while NRS 453A.322(3)(a) states that the Department ‘shall’
13 register a medical marijuana establishment when it has satisfied that subsection’s
14 requirements, nothing in the statute prohibits the Department from considering an
15 applicant that fails to meet the requirements.” *Nuleaf*, 134 Nev. at 134, 414 P.3d at 310.

16 The language of Nevada Revised Statute 453D.210(5)(b) is precisely like that
17 language interpreted by the court in *Nuleaf*. There is nothing in the Initiative that
18 prohibits the Department of Taxation from considering applications that do not list a
19 prospective physical address. Section 453D.210(5)(b) provides:

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

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

24 NRS 453D.210(5)(b).

25 More importantly, Nevada Wellness Center does nothing to challenge this Court’s
26 central holding approving the Department of Taxation’s power to create conditional
27 licensure. Order at 21, ¶80. Because the Department of Taxation had this power, it
28 necessarily follows that the physical address language in NRS 453D.210(5)(b) was not a

1 mandatory requirement at the application stage since the location of the marijuana
2 establishment was subject to change at the conditional licensee's discretion so long as it
3 was suitable. NRS §453D.200(1)(j). It would be an absurd interpretation to elevate the
4 physical location language in section 453D.210(5)(b) into a prerequisite when another part
5 of the initiative states it is subject to change at any time by the applicant so long as other
6 suitability requirements are met. Moreover, Nevada Wellness Center never addresses this
7 Court's holding that the physical address language in section 5(b) is subject to cure.²

8 **C. Nevada's Open Meeting Law does not apply**

9 Nevada Wellness Center argues that various discussions occurred between the
10 Department of Taxation's staff members and prospective applicants violated Nevada's
11 OML, but does nothing to show that the statutory prerequisites for the OML to apply are met
12 with respect to any such discussions.

13 Nevada, like other states, adopts the quorum standard for determining whether
14 OML applies to a given situation. *Dewey*, 119 Nev. at 95, 64 P.3d at 1075-76. A quorum
15 applies to a meeting at which a quorum of members is present to "deliberate toward a
16 decision or to take action on any matter over which the public body has supervision, control
17 jurisdiction or advisory power." NRS §241.015(2). Action means:

18 (a) A decision made by a majority of the members present during
19 a meeting of a public body;

20 (b) A commitment or promise made by a majority of the members
present during a meeting of a public body; or

21 (c) A vote taken by a majority of the members present during a
22 meeting of a public body.

23 NRS 241.015(1).

24 Nevada Wellness Center never explains how the dissemination of information meets
25 the definition of an action. Moreover, Nevada Wellness Center never explains how any
26 discussion that Jorge Pupo or any other staff member of the Department of Taxation may

27
28 ² The Department of Taxation also joins the arguments made by the Essence Entities
as though fully set forth herein.

1 have had with a prospective applicant was a “meeting,” which meets the quorum standard
2 under *Dewey*. Nevada Wellness Center never points to any particular discussion as having
3 been undertaken by any particular staff member with the intent to make a decision, rather
4 such discussions were explanatory in nature and not decisional. Since no quorum and no
5 action were taken, there could be no OML violation.

6 **D. Nevada Wellness Center ignores the irreparable harm element**

7 Even if this Court were to consider the merits of Nevada Wellness Center’s motion
8 (which it should not), Nevada Wellness Center ignores irreparable harm analysis. A
9 preliminary injunction will only issue where the plaintiff has demonstrated that the
10 conduct at issue will cause irreparable harm for which compensatory damage is an
11 inadequate remedy. *See Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120
12 Nev. 712, 721, 100 P.3d 179, 187 (2004). There is no irreparable harm where injuries are
13 too speculative to be credited. *Clark Cty. Sch. Dist. v. Richardson Const., Inc.*, 123 Nev.
14 382, 397, 168 P.3d 87, 97 (2007).

15 In its Motion, Nevada Wellness Center has not demonstrated that allowing
16 conditional licenses to issue, and allow the successful applicants 12 months to comply with
17 local ordinances and zoning requirements to secure a physical location prior to receiving a
18 final license, constitutes irreparable harm.

19 **III. Conclusion**

20 For these reasons, the Court should deny Nevada Wellness Center’s attempt at a
21 third bite at the apple.

22 DATED this 23rd day of September, 2019.

23 AARON D. FORD
24 Attorney General

25 By: /s/ Steve Shevorski
26 Steve Shevorski (Bar No. 8256)
27 Head of Complex Litigation
28 Theresa M. Haar (Bar No. 12158)
Special Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 23rd day of September, 2019.

I certify that the following participants in this case are registered electronic filing systems users and will be served electronically:

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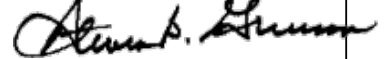
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DISTRICT COURT

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.

Case No. : A-19-786962-B
Dept. No.: XI

**THRIVE'S JOINDER TO ESSENCE
ENTITIES' OPPOSITION TO NEVADA
WELLNESS CENTER, LLC'S MOTION
TO AMEND FINDINGS OF FACTS AND
CONCLUSIONS OF LAW ISSUED ON
AUGUST 23, 2019, PURSUANT TO NRCP
52**

1 LLC, a Nevada limited liability company,
2 FIDELIS HOLDINGS, LLC, a Nevada limited
3 liability company, GRAVITAS NEVADA,
4 LLC, a Nevada limited liability company,
5 NEVADA PURE, LLC, a Nevada limited
6 liability company, MEDIFARM, LLC, a Nevada
7 limited liability company, DOE PLAINTIFFS I
8 through X; and ROE ENTITY PLAINTIFFS I
9 through X,

10 Plaintiffs,

11 vs.

12 THE STATE OF NEVADA, DEPARTMENT
13 OF TAXATION,

14 Defendants.

15 INTEGRAL ASSOCIATES, LLC d/b/a
16 ESSENCE CANNABIS DISPENSARIES, a
17 Nevada limited liability company; ESSENCE
18 TROPICANA, LLC, a Nevada limited liability
19 company; ESSENCE HENDERSON, LLC, a
20 Nevada limited liability company; CPCM
21 HOLDINGS, LLC d/b/a THRIVE CANNABIS
22 MARKETPLACE, COMMERCE PARK
23 MEDICAL L.L.C., a Nevada limited liability
24 company; and CHEYENNE MEDICAL LLC, a
25 Nevada limited liability company; a Nevada
26 limited liability company.

27 Defendants in Intervention.

28 AND ALL RELATED ACTIONS

Hearing Date: October 23, 2019

Hearing Time: 9:00 AM

19 Intervening Defendant CPCM HOLDINGS, LLC d/b/a THRIVE CANNABIS
20 MARKETPLACE (“Thrive”), by and through its attorneys of record, the law firm MAIER GUTIERREZ
21 & ASSOCIATES, HYMANSON & HYMANSON, hereby joins in defendant-intervenor Integral Associates
22 LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC’s
23 Opposition to Nevada Wellness Center, LLC’s Motion to Amend Findings of Facts and Conclusion
24 of Law Issued on August 23, 2019, Pursuant to NRCP 52 filed on September 23, 2019.

25 This joinder is made and based upon the papers and pleadings on file herein, such other
26 documentary evidence as may be presented and any oral argument of counsel at the time of the
27 hearing. Thrive expressly adopts and incorporates by reference herein all of the points and authorities
28 set forth in defendant-intervenor Integral Associates LLC d/b/a Essence Cannabis Dispensaries,

1 Essence Tropicana, LLC, Essence Henderson, LLC's Opposition to Nevada Wellness Center, LLC's
2 Motion to Amend Findings of Facts and Conclusion of Law Issued on August 23, 2019, Pursuant to
3 NRCP 52 filed on September 23, 2019.

4 DATED this 24th day of September 2019.

5 Respectfully submitted,

6 **MAIER GUTIERREZ & ASSOCIATES**

7 /s/ Joseph A. Gutierrez

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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, a copy of the **THRIVE'S JOINDER TO ESSENCE ENTITIES' OPPOSITION TO NEVADA WELLNESS CENTER, LLC'S MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52** was electronically filed on the 24th day of September 2019 and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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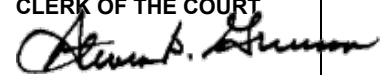
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8 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

9 MM DEVELOPMENT COMPANY, INC., a
10 Nevada corporation; LIVFREE WELLNESS
11 LLC, dba The Dispensary, a Nevada limited
12 liability company

13 Plaintiff,

14 vs.

15 STATE OF NEVADA, DEPARTMENT OF
16 TAXATION; and DOES 1 through 10; and ROE
17 CORPORATIONS 1 through 10.

18 Defendants.

Case No.: A-18-785818-W
Dept. No.: VIII

**MM DEVELOPMENT COMPANY,
INC.'S AND LIVFREE WELLNESS,
LLC'S MOTION TO ALTER OR
AMEND FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

HEARING REQUESTED

Coordinated for purposes of preliminary
injunction hearing with:

Case No.: A-19-786962-B
Dept. No.: XI

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

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1 PLAINTIFFS I through X; and ROE ENTITIES
2 I through X,

3 Plaintiffs,

4 vs.

5 THE STATE OF NEVADA, DEPARTMENT
6 OF TAXATION,

7 Defendant.

8
9 ETW MANAGEMENT GROUP LLC, a
10 Nevada limited liability company; GLOBAL
11 HARMONY LLC, a Nevada limited liability
12 company; GREEN LEAF FARMS HOLDINGS
13 LLC, a Nevada limited liability company;
14 GREEN THERAPEUTICS LLC, a Nevada
15 limited liability company; HERBAL CHOICE
16 INC., a Nevada corporation; JUST QUALITY,
17 LLC, a Nevada limited liability company;
18 LIBRA WELLNESS CENTER, LLC, a Nevada
19 limited liability company; ROMBOUGH REAL
20 ESTATE INC. dba MOTHER HERB, a Nevada
21 corporation; NEVCANN LLC, a Nevada limited
22 liability company; RED EARTH LLC, a Nevada
23 limited liability company; THC NEVADA LLC,
24 a Nevada limited liability company; ZION
25 GARDENS LLC, a Nevada limited liability
26 company; and MMOF VEGAS RETAIL, INC.,
27 a Nevada corporation,

28 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

NEVADA WELLNESS CENTER, LLC, a
Nevada Limited Liability Company,

Plaintiff,

v.

STATE OF NEVADA, DEPARTMENT OF
TAXATION; and DOES I through X; and
ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-19-787540-W

Dept. No.: XVIII

NOW APPEAR Plaintiffs/Counter-Defendants MM Development Company, Inc. d/b/a/
Planet 13 (“MM”) and LivFree Wellness, LLC d/b/a The Dispensary (“LivFree”) (“Plaintiffs”),
by and through their counsel of record, and move to alter or amend the Findings of Fact and
Conclusions of Law Granting Preliminary Injunction filed by the Court against Defendants
State of Nevada, Department of Taxation (“Department”) and all Defendants-in-Intervention on
August 23, 2019. The Court should alter or amend the Findings of Fact and Conclusions of
Law to enjoin final inspections of any conditional license winning applicant that did not provide
the physical address where the proposed marijuana establishment will be located as part of
applications.

This motion is made and based upon NRCP 52, the following memorandum of points
and authorities, the pleadings and papers on file herein, any exhibits attached hereto, and any
oral argument that this Court may entertain at a hearing on this motion.

MEMORANDUM OF POINTS & AUTHORITIES

I.

INTRODUCTION

There was an express anti-monopoly provision included in the applications for
recreational marijuana dispensary licenses that prevented the same applicant from winning more

1 than one license in one jurisdiction (e.g., unincorporated Clark County). According to the
2 Application form released by the Department, highlighted in bold and all red letters, “**No**
3 **applicant may be awarded more than 1 (one) retail store license in a jurisdiction/locality,**
4 **unless there are less applicants than licenses allowed in the jurisdiction.**” Admitted Exhibits
5 **5 and 5a**, p. 7 (Bold in original). According to testimony from Department employees, as long
6 as a company submitted applications under differently-named limited liability companies, entities
7 with the exact same ownership could be awarded multiple licenses in the same jurisdiction. Under
8 the Department’s approach, if one entity had submitted the same application under 61 differently-
9 named limited liability companies, it could have been awarded all 61 licenses. **As former**
10 **Department Director Deonne Contine agreed during her testimony, applicants with**
11 **identical ownership structure who applied for multiple licenses in the same jurisdiction (e.g.,**
12 **unincorporated Clark County) should not have obtained more than one license.**
13 Unfortunately, that’s exactly what the Department allowed to happen. Both Essence and Thrive
14 were awarded two conditional licenses in unincorporated Clark County. **See Admitted Exhibit**
15 **13.** Those entities – Essence and Thrive – that were improperly granted multiple licenses in
16 unincorporated Clark County should be enjoined from moving forward on more than one of their
17 locations/licenses.

18 In addition, the Department improperly changed how the applications should be scored.
19 Under the marijuana ballot initiative, as codified in NRS 453D.210(4) and (5), the Department
20 **shall**, within 90 days of receipt of applications, approve a license application **if** the prospective
21 marijuana establishment has submitted an application in compliance with regulations adopted by
22 the Department¹ **and the physical address where the proposed marijuana establishment will**
23 **operate** is owned by the applicant or the applicant has the written permission of the property
24 owner to operate the proposed marijuana establishment on that property. NRS 453D.210(5)(b).
25 The statute requires the Department to determine whether an application was submitted “in
26 _____

27 ¹ The application submission period began on September 7, 2018 and closed on September 20,
28 2018. The Department, pursuant to statute, had until December 5, 2018 to complete its
compliance review.