SUPREME COURT OF NEVADA

Case No. 79668

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 WELLENESS 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

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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'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
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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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5	Serenity Wellness Center, LLC et al.'s Summons to State of Nevada, Department of Taxation	3/26/19	AA 001031 - AA 001034
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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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20. The DoT utilized a question and answer process through a generic email account at marijuana@tax.state.nv.us to allow applicants to ask questions and receive answers directly from the Department, which were not consistent with NRS 453D, and that information was not further disseminated by the DoT to other applicants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[11] Given the factual issues related to the grading raised by MM and LivFree, these issues may be subject to additional evidentiary proceedings in the assigned department.

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

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

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

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

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

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

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

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

[14] That provision states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

[16] The testimony elicited during the evidentiary hearing established that multiple changes in ownership have occurred since the applications were filed. Given this testimony, simply updating the applications previously filed would not comply with BQ2.

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

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

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

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

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

> "1. Notwithstanding the provisions of section 1 of article 4 of this constitution, but subject to the limitations of section 6 of this article, **the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls**.
>
> ...
>
> 3. If the initiative petition proposes a statute or an amendment to a statute, the person who intends to circulate it shall file a copy with the secretary of state before beginning circulation and not earlier than January 1 of the year preceding the year in which a regular session of the legislature is held. After its circulation, it shall be filed with the secretary of state not less than 30 days prior to any regular session of the legislature. The circulation of the petition shall cease on the day the petition is filed with the secretary of state or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The secretary of state shall transmit such petition to the legislature as soon as the legislature convenes and organizes. The petition shall take precedence over all other measures except appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted or rejected by the legislature without change or amendment within 40 days. If the proposed statute or amendment to a statute is enacted by the legislature and approved by the governor in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law, but shall be subject to referendum petition as provided in section 1 of this article.

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

(Emphasis added.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

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

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

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

DATED this 23rd day of August 2019.

Elizabeth Gonzalez, District Court Judge

Certificate of Service

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

Dan Kutinac

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

EXHIBIT "B"

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 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.

address.

Q A physical address?

A Yes.

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

A Right.

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

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

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

THE COURT: UPS Stores.

BY MR. KEMP:

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

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

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

A I wouldn't have even reviewed the applications.

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

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

Q And let me ask it --

A -- I would --

Q Let me ask it better. 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?

A I think that would be the direction.

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

A Yes.

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

MR. KOCH: Objection. Misstates the law.

THE COURT: Overruled.

BY MR. KEMP:

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

A Right.

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

A Yes.

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

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

A I've never met him. I mean, I know who he is, but. --

Q Armand?

A Armand -- yes, I know Armand.

Q What's his last name?

A I don't know.

Q Okay. All I know is Armand, as well.

A Armand -- I don't know. Somebody who understands his last name better could probably say it. I don't know.

Q Phil Peckman?

A I know him.

Q Do you know the names of any of the marijuana establishments that may have applied?

A I know -- I mean, I know -- I don't -- when I looked at -- I didn't look too closely at the caption here.

Q How about Essence?

A Is Essence Armand? I'm not sure.

Q Thrive?

A Thrive I think is Mr. Peckman and his group.

Q Nevada Organics?

A I don't know who that is.

Q Okay. Have you had lunch, dinner, or even coffee with any of these people that you listed?

A Yes.

Q On more than one occasion?

A Yes.
Q Tell me who you recall having lunch with.
A I think I've had lunch with Mr. Ritter --
Q Anyone else?
A -- a couple times. I've known Brett Scolari for years before marijuana. I've had lunch or coffee with him in the past.
Q How about dinner?
A Brett. I don't -- I don't know.
Q All right.
A I think I've had dinner with Mr. Ritter, as well. Or lunch or dinner. I can't recall.
Q Okay. Would any of these people have your cell phone number?
A Yes.
Q Would that include Amanda Connor?
A Yes.
Q Phil Peckman?
A I don't know.
Q Andrew Jolley?
A I don't know. I mean, generally I worked to make the regulations, to create the process. So I will have had some contact and know pretty much anyone that was involved in that process.
Q Okay.

A Either -- yeah.
Q Did you run for political office?
A Yes.
Q And what position did you run for?
A I ran for the Nevada State Assembly.
Q And when did you run?
A In 2018.
Q Okay. Did you have any fundraisers for that campaign?
A Yes.
Q Were any of the people you listed a participant or a contributor to your campaign?
A Yes.
Q Can you tell me which people, entities contributed to your campaign?
A No, I can't -- I mean, I know some. I can't -- I can't list them all.
Q Can you tell me of the applicants that are involved in the marijuana business which ones contributed to your campaign?
A I don't know.
Q You don't know any of them by name?
A Well, I know some of them by name, but I can't give you -- I know TGIG did, I think Essence did, Thrive, Tryke.
Q Anyone else?

A There were others, but I just can't remember.
Q All right. And do you remember because you remember them attending, or do you remember them because you remember checks coming to you with their names on them? Or both?
A I mean, I remember -- I remember people attending and then generally contributions, but I don't remember -- but I don't necessarily know who everybody's group was, and so I might have to look that up. So --
Q Did you ever receive any inquiries, or has anyone ever hypothecated to you perhaps hiring you, any of the applicants?
A I did -- no. Not in this case.
Q I'm sorry. You did what?
A No. No, not in this case.
Q Not in this case. What do you mean by that?
A Do you mean anybody?
Q Anybody.
A Yeah. I did some -- a little of application work --
Q And when did you do this application work?
A In July to November.
Q July what?
A To November.
Q Of what year?
A 2018.
Q When did you leave the State originally?

EXHIBIT "C"

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 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.

A Normal business.

Q Okay. Explain that.

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

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

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

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

A One of each probably.

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

A Armen Yemenidjian or however you pronounce it.

Q Do you know how to spell it?

A No.

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

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

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

A Yes.
Q On more than one occasion?
A Yes.
Q So when I asked you about your familiarity with the owners it goes beyond simply the industry. You actually knew these owners; is that correct?
A No, I know them from my interactions with the industry.
Q Right. But you actually know -- there are a lot of people in the industry. You may not know the owners; right?
A Yes.
Q Right. But in this case you knew the owners of all four locations?
A Yes.
Q All right.
A Or at least some of them, right.
Q Good enough. And had you spoken to them prior to the submission of the applications?
A Yes.
Q Did you speak with them between July of 2018 and September 20th of 2018?
A I believe so. Possibly, yes.
Q Would your phone records reflect telephone conversations with those gentlemen?
A Possibly, yes.

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

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

A Yes.

Q Okay. Have you received any emails from them?

A Don't know. Not sure.

Q Have you gone to dinner with either of them?

A Dinner, I believe, yes.

Q Have you gone to lunch with either of them?

A Yes.

Q More than one occasion?

A Possibly, yes.

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

A Yes.

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

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

A Yes.

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

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

A No.

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

MR. KOCH: Objection. Lacks foundation.

THE COURT: Overruled.

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

BY MR. PARKER:

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

A I'm sorry.

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

A Yes.

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

A Yes.

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

A No.

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

A No.

Q That's what I thought. All right.

So now let's go to the statute.

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

THE WITNESS: Sure, Your Honor.

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

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

THE WITNESS: Thank you, ma'am.

BY MR. PARKER:

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

A Okay.

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

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

A I don't believe so.

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

A Maybe I misunderstood the question.

Q Well, maybe you --

A Your question. Can you just say it again.

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

A Yes.

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

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

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

Department; isn't that correct?

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

Q Thank you. But it would be incomplete?

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

Q You said location --

A -- that we ask for.

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

A Yes.

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

A Yes.

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

A Okay.

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

A No, I see it.

Q You can see it?

A Yes.

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

(Pause in the proceedings)

THE WITNESS: Is this the entire application?

BY MR. PARKER:

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

Sir, I want you to take a look at DOTNEWELL2. So it's page 2.

A Okay.

Q Are you familiar with this form -- document?

A With this letter, yeah. Yes.

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

A Yes.

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

A Yes.

Q Have you met him before?

A Yes.

Q When?

A This week.

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

A No.

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

A No.

Q Has he ever called you on the phone?
A No.
Q All right. It says here, "On September 12th, 2018, The Department of Taxation Marijuana Enforcement Division conducted a routine inspection/audit of your establishment located at 3200 South Valley View Boulevard, Las Vegas, Nevada." And it has certificate numbers and the license number. Do you see that?
A Yes.
Q All right. The next paragraph says, "The audit/inspection results reveal that your establishment was in compliance with Nevada Revised Statutes...," and it references 453A and 453D; is that correct?
A Yes.
Q All right. And it also says, "...the Administrative Code, and no deficiencies were noted during the inspection." Do you see that?
A Yes.
Q What does that mean in terms of the operation of Nevada Wellness Center at this location?
A It means at this time upon the inspection from my inspectors that they found nothing out of compliance.
Q All right. Would that mean that the location as it's being operated would be suitable both in terms of location and suitable in terms of adequacy of size to sell

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

(Pause in the proceedings)

THE COURT: Okay. Now we're ready.

MR. PARKER: Thank you, Your Honor.

THE COURT: Okay.

MR. PARKER: May I proceed?

THE COURT: You may.

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

BY MR. PARKER:

Q It should be coming up, Mr. Pupo.

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

Oh. Is yours not on?

A It's not on the screen here.

MR. PARKER: May I approach?

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

(Pause in the proceedings)

BY MR. PARKER:

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

A Okay. Yes.

Q Is that from the Department of Taxation?

A That's one of our boxes, yes.

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

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

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

A Yes.

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

MR. KOCH: Objection. Document speaks for itself.

THE COURT: Overruled.

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

BY MR. PARKER:

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

MR. KOCH: Objection. Speculation.

THE COURT: Overruled.

THE WITNESS: He must have gotten instruction.

BY MR. PARKER:

Q Okay. Did you give any instruction to not provide information to this person?

A No.

Q Are you familiar with Libra Wellness?

A Yes.

Q Do they have a medical marijuana license?

A I believe so, yes.

Q Did they apply for or receive a conditional recreational license?

A I don't know.

Q All right. Was this the position taken by the agency, your Department, on September 9th, that there would be no more answers given?

MR. KOCH: Objection. Mischaracterizes the document.

THE COURT: Overruled.

THE WITNESS: Yeah. I don't know that was instructions.

BY MR. PARKER:

Q It says, "With that said, the Division cannot provide guidance to individual applicants.

THE COURT: Hold on a second.

THE COURT RECORDER: I'm having a hard time hearing

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

BY MR. PARKER:

Q Okay. Thank you.

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

BY MR. PARKER:

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

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

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

A Yes.

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

A No.

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

A Regarding?

Q Any offers of employment.

A No.

Q Did you meet with any owners -- do you know the owners of Commerce Park and Cheyenne?
A I know -- I know some.
Q Okay.
A Yeah. I don't know that I know all the owners.
Q What owners do you know?
A Mitch Britten and Phil Peckman.
Q Okay. And who are the owners that you're aware of in terms of Essence Trop and Essence Henderson?
A Just Armen.
Q No one else have you met with or are familiar with that own that company?
A Not that I'm familiar with.
Q Okay. And did the owners of both these companies the ones that you know in common -- you've spoken to them, you've gone to lunch with them and/or dinner with them; right?
A Yes.
Q All right. And you turned them both down on the offers?
A I am not interested in staying in the marijuana space here.
MR. PARKER: Thank you. I appreciate your time.
THE COURT: Sir, I'm going to switch gears, if it's okay. Since the people on that side of the room have finished 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 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 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.

all at once.
BY MR. GENTILE:
Q All right. That's the 2018 application. Do you recall it? Probably not.
A I'm not sure what I'm --
Q All right. Let me -- let me -- I've never lied to you before, so I wouldn't start now, okay. Look at the top one. The top one is the 2014 application form. The reason you can see that is because due dates that end in the year 2014. Do you see that?
A Yes.
Q Okay. The bottom one is the 2018, and you could trust me for the same reason, it says that there are due dates for 2018, okay. I have a question for you.
The top one on the second line -- first one says, "Request for application pay." Oddly enough, so does the bottom one, first line says "Request for application pay," okay. But the second one on the top one says, "Deadline for submitting questions." Look at the bottom one. Is there anything there that indicates that you can submit questions in 2018?
A There is not.
Q Okay. How come?
A You know, to be quite honest with you, I wasn't the 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 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:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

regards to the diversity area?

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

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

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

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

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

A I'm not aware of that.

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

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

Q Okay.

A I think we did send out some list serves.

Q But you've seen bulletin boards that have questions

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

A Yeah, I've seen those.

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

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

Q Okay. But you didn't do that?

A We did not.

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

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

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

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

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

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

THE COURT: Overruled.

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

BY MR. KEMP:

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

A Yes.

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

A I didn't know that.

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

A I did hear that.

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

A Can you repeat that.

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

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

Q Okay. And how could you rate things like community impact without knowing where in Clark County the dispensary 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.

were supposed to consider, they wouldn't have considered it; right?

A Well, again, I don't know if it was part of their -- the additional training outside of the evaluation sheets. Because they did receive training from staff for --

Q You just -- you're speculating that that might have happened, even though the face of the application that we just walked through -- we can walk through it again --

A I mean, we're speculating on a lot of things here.

THE COURT: Sir, I don't want you to speculate. I want you to tell me why the Department did what it did and made the decisions it made after Ballot Question 2 was passed and your department was charged with implementing.

MR. MILLER: Well, let me say it this way.

THE WITNESS: Yes, Your Honor.

THE COURT: Wait. Thank you, sir. Now you may go, Mr. Miller.

MR. MILLER: Were you asking a question, Judge. I didn't catch it all.

THE COURT: I was making a statement. He said, "Yes, Your Honor," and I just needed him to verify that while we were here.

MR. MILLER: Got it.

BY MR. MILLER:

Q Let's pull up the application. And then we get to

the scoring criteria. You were involved in that; right? You determined which points were going to be awarded?

A Yes.

Q And this is the --

MR. MILLER: We should pull up the -- I think it's going to be page 18, 17. There we go, the page before.

BY MR. MILLER:

Q -- talking about an organizational structure; right? You evaluate that criteria that was described there; right?

A I'm sorry?

Q You reviewed that criteria that was described there; right?

A Under "organization"?

Q Yeah. Sixty points on the top, not up -- it's going the wrong way. Yeah, organization.

A Right, uh-huh. Yes.

Q Description of the proposal -- and then you, in turn, that's all (indiscernible). The description of the proposed organizational structure of proposed marijuana establishment and information concerning each owner, officer, and board member of the proposed marijuana establishment, including the information provided in response to the regulation. Right?

A Yeah.

Q And you determined that that criteria should be worth 60 points in total; right?

A Well, there are subcategories that make up that 60.
Q Right. You didn't disclose that to the applicants, did you?
A No.
Q So it was secret to the applicants as though which criteria are going to be included in that regulation and how many points are going to be awarded; right?
A Yes.
Q Why did you keep that secret?
A Well, it's almost like -- my opinion, it's almost like giving the answers to the test.
Q Is it?
A I mean --
Q How would it --
A Everyone's score -- sorry.
Q -- be like giving answers to the test, letting everyone know that diversity, for example, was going to be given 20 points, but the experience of key employees was going to be worth zero because it wouldn't be considered. Is that giving answers to the test?
A Wait. Say that again.
Q How would it be giving the answers to the test to tell the applicants that diversity, within that 60 points, was going to be awarded 20 points?
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 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 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.

how they believed the applications would be interpreted if they did not provide a physical address on the application?

A Yeah. I don't -- I don't recall any.

Q Okay. But you gave at least Amanda Connor and John Ritter guidance that physical address, although it was required by law, wouldn't be scored and so they didn't need to include it?

A No, I didn't say they didn't need to include it. I said the application requires that they put a physical address, but that it -- you know, that location was not scored, it's not part of the scoring criteria.

Q Okay. And when you gave that guidance did you go back to the Department and share that information with anybody else that might have been receiving calls from applicants about information in the application?

A Well, I'm sure we discussed it several times.

Q Okay. Who'd you discuss it with?

A Steve Gilbert, Kara, Damon.

Q And this was prior to the application being released on July 5th?

A Yes. There was a lot of discussion around that -- during the Task Force and the public meetings or the recommendations while we were doing the regulations.

Q But the two you just identified, Amanda Connor and John Ritter, were the two co-chairs for the Task Force that

came up with the -- two co-chairs of the committee on the Task Force that were designed to help implement the regulations that are on the application; correct?

A Say it again.

Q The two individuals that you named, Amanda Connor and John Ritter, are you aware that those are the two co-chairs on the Task Force for the subcommittee that was designed and intended to review the applications for the recreational manager license applications?

A No, I didn't know Amanda was a co-chair. Well, I don't remember.

Q But nevertheless, they're very involved in the industry; correct?

A Yes.

Q You would have expected them to have attended those Task Force meetings?

A Yes.

Q All right. And participated in any public hearings where the rules might have been explained?

A Yes.

Q Okay. And yet they didn't understand whether or not a proposed physical address would be required; correct?

MR. SHEVORSKI: Objection. Speculation.

THE COURT: Overruled.

THE WITNESS: They would tell me -- like Amanda

would say she's getting questions from her clients and she just wants to confirm, right. And, you know, John also was more like a confirmation.

BY MR. MILLER:

Q Yeah. But at least for individuals that were highly involved in the process it's apparent to you that there was some confusion in this area; is that fair?

A Yes.

Q And so it's a fair assessment that other people might have also had the same confusion; correct?

A Yes.

Q Did you make any attempts to clarify it?

A I believe I did.

Q How'd you do that?

A Well, I don't -- maybe not necessarily that I think the clarification I was sending out was more regarding whether someone owned or leased a location. They were asking about where to put it. I don't think I put out a clarification regarding physical location must be on -- must be listed on the application.

Q Okay. So you knew in advance of the application being released on July 5th that there was confusion within the industry as to whether or not a proposed physical address was required and would be scored; correct?

A Yes.

Q They believe that is required, and they submit their application that way. Other applicants understand that a proposed physical address will not be scored, so they don't provide a physical address. Is that a fair application process, sir?

A Is it a fair application process? I think everyone had the same opportunity to request clarification. I think that everyone had access to the Department. I think everyone had access to submit their questions. I think everyone had an opportunity to attend 70-plus public meetings and workshops regarding this issue. I think the application was a fair process -- the application process was a fair process.

Q Moving to 5.3.4.3, "Procedures to ensure adequate security measures for building security." Sir, wouldn't you agree that the consideration of that plan would indicate that there is some tie-in within the scoring criteria to an actual proposed physical address versus a fictional one?

A No.

Q So if you develop a plan that is designed to ensure adequate security measures of a proposed physical location that is tied to an actual address, has a real neighborhood around it, may have additional security concerns, that one is the same as one that could be submitted that doesn't have any physical address associated with it at all?

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

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Q Okay. With regard to these episodes, how did they come to your attention?

A They were incident reports submitted by the facility themselves.

Q Okay. And what did you do in response to the reports?

A We accepted them --

Q No. I don't want to hear we. We is a -- when I use the word you, I'm using it in the second person singular. Do you understand?

A Yes.

Q All right. What did you do in response to receiving these incident reports?

A I did not personally receive the incident reports. They go to a separate email address. The administrative assistant intakes them. I assigned them to people to investigate. I was then directed to hold off on that. I had a discussion with Jorge Pupo, and then I gave the direction to the assigned people investigating to send acknowledgment letters or look through them and see if there was room for improvement.

Q Okay. You said you received a directive not to assign these cases for investigation. From whom did you receive that directive?

A Jorge Pupo.

EXHIBIT "I"

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 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.

Q And then did QuantumMark provide its own training tools for 2018 or did your Department amend QuantumMark's training tools for purposes of training the evaluators?

A We amended the 2014 training tools.

Q Why didn't you ask QuantumMark to provide updated training tools to fit a recreational application?

A That wasn't my decision.

Q Whose decision was that?

A That would have been a contract decision, essentially Mr. Pupo or the director of the Department.

Q Do you know who made that decision?

A No, I do not.

Q And do you know why that decision was made? Why wasn't QuantumMark utilized to come up with the 2018 training tools?

A I don't -- I do not know. I don't know if it was ever contemplated.

Q And so going back to where we were, you were a part of the process in terms of the merit criteria for diversity, is that correct?

A Yes.

Q Who made the decision on how the scoring would be done?

A Can you be --

Q Yes. Who came up with let's give points based on

A Yes.

Q All right. So if you didn't get the information from the ballot question and you did not get that information from the regulations, you had to get it from somewhere. Did you get it from any other jurisdiction like Colorado? Because I saw in the production of your training tool where there's thanks given to QuantumMark, thanks given to Colorado. Do you remember those?

A I do.

Q All right. So where did you get this methodology in scoring diversity?

A The methodology was put together by Kara, Mr. Pupo and myself. As far as the breakdown on the evaluation tool --

Q Yes, sir.

A -- that was put in then -- like I said, if I recall correctly, Mr. Pupo gave us the breakdown of the percentages.

Q Do you know where he got that breakdown from?

A I do not.

Q And do you have any understanding whether or not that breakdown can be traced to another jurisdiction like Colorado or Washington or California?

A I wouldn't know, no.

Q You have no idea?

A No.

Q Good enough. Do you know whether or not there was

EXHIBIT "J"

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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

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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, 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 ENTITIES I through X,

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT OF TAXATION,

Defendant.

Case No.: A-19-786962-B

Dept. No.: XI

MM DEVELOPMENT COMPANY, INC.'S AND LIVFREE WELLNESS, LLC'S REPLY IN SUPPORT OF MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW

Date of Hearing: 10/28/19
Time of Hearing: 9:00 a.m.

Coordinated for purposes of preliminary injunction hearing with:

MM DEVELOPMENT COMPANY, INC., a Nevada corporation; LIVFREE WELLNESS LLC, dba The Dispensary, a Nevada limited liability company Plaintiffs, vs. STATE OF NEVADA, DEPARTMENT OF TAXATION; and DOES 1 through 10; and ROE CORPORATIONS 1 through 10. Defendants.	Case No.: A-18-785818-W Dept. No.: VIII
ETW MANAGEMENT GROUP LLC, a Nevada limited liability company; GLOBAL HARMONY LLC, a Nevada limited liability company; GREEN LEAF FARMS HOLDINGS LLC, a Nevada limited liability company; 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 ESTA TE 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, 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

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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 hereby file this reply in support of their Motion 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.

I.

ARGUMENT

A. This Court Has Jurisdiction To Hear This Motion

Notice of Entry of the Court's Findings of Fact and Conclusions of Law Granting Preliminary Injunction was filed on August 28, 2019. On September 13, 2019, well within the 28-day deadline provided by the Rule, Nevada Wellness Center, LLC ("NWC") filed its Motion to Amend Findings of Facts and Conclusions of Law Issued on August 23, 2019, Pursuant to NRCP 52. Under NRAP 4(a)(4)(B), the time to file a notice appeal is tolled by the filing of an NRCP 52 motion to: "no later than 30 days from the date of service of written notice of entry of that order" disposing of the last such remaining motion. NEV. R. APP. PROC. 4(a)(4). On September 24, 2019, also within 28-day deadline, MM and LivFree filed their NRCP 52 Motion. Both NWC's motion and MM/LivFree's Motion tolled the time for the parties to file an appeal.

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There has not yet been any decision on the pending NRCP 52 motions. Hence, the Notices of Appeal filed by Nevada Organic Remedies (Sept. 19), Greenmart of Nevada NLV, LLC (Sept. 19), and Lone Mountain Partners, LLC (Sept. 27) are all premature. As premature, the Notices of Appeal do not divest the district court of jurisdiction to decide the motions to alter or amend. See NEV. R. APP. PROC. 4(a)(6) ("A premature notice of appeal does not divest the district court of jurisdiction."). Arguments to the contrary are simply incorrect.

B. The Anti-Monopoly Legislative Intent

MM and LivFree discussed in the Motion how the Department violated its own interpretation of the anti-monopoly provisions by awarding 2 licenses in Clark County to Essence and 2 licenses in Clark County to Thrive. As former Department Director Deonne Contine agreed, applicants with identical ownership structure who applied for multiple licenses in the same jurisdiction (e.g., unincorporated Clark County) should not have obtained more than one license.

The Department's interpretation deserves no deference. Courts will not defer to the State of Nevada where the interpretation is unreasonable and conflicts with legislative intent. Nev. State Democratic Party v. Nev. Republication Party. 256 P.3d 1, 10 (Nev. 2011); State, Div. of Ins. v. State Farm, 116 Nev. 290, 293, 995 P .2d 482, 485 (2000) (same); Public Agency Comp. Trust v. Blake, 127 Nev. 863, 868-869 (2011) (Nevada Courts do not "defer to the agency's interpretation if, for instance, a regulation conflicts with existing statutory provisions or exceeds statutory authority of the agency.") (internal citations and quotations omitted).

As former-Director Contine testified, the Department's interpretation of the anti-monopoly regulations directly conflicted with the intent behind the regulations **and** the Department's own stated prohibition that, "**No applicant may be awarded more than 1 (one) retail store license in a jurisdiction/locality, unless there are less applicants than licenses allowed in the jurisdiction**." **Admitted Exhibits 5 and 5a**, p. 7 (Bold in original). According to former-Director Contine, applicants with identical ownership structure who applied for multiple licenses in the same jurisdiction **should not** have obtained more than one license; but that is exactly what the Department allowed to happen.

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In Opposition to this Motion, the Department argues that: "There is also nothing within the regulation's language that requires the Department of Taxation to examine levels of corporate ownership to complete the anti-monopoly analysis." See Department's Opposition, 9:19-20. That's incorrect. NAC 453D.272(5) specifically requires the Department to evaluate corporate ownership to ensure, "that the Department does not issue, **to any person, group of persons or entity**," licenses that would violate the monopoly provisions. The Department failed to do that.

As mentioned in the Motion, the Department treated the two Essence entities, and the two Thrive entities, as exactly the same for finances and taxes paid, but then disingenuously claims that they were "different" entities for purposes of the anti-monopoly provision. Even the Essence entities argue that "each of the Essence Entities is a separate and distinct legal entity." See Essence Entities Opposition, 5:1.[1] The problem is, however, that the Department resorted to varying and inconsistent interpretations of whether the entities were separate or the same. The Department's varying interpretation of the entities' separateness in relation to provisions of NRS 453D and NAC 453D – to the advantage of Essence and Thrive and disadvantage of others like Plaintiffs – is inconsistent with the totality of the statutory scheme, and created an absurd result. It should be given no deference. Under the Department's own rules and regulations, Essence and Thrive should be enjoined from receiving any final inspection on a second conditional license or location in unincorporated Clark County.

C. The Physical Location Requirement

In reviewing a statute, it "should be given [its] plain meaning and must be construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory." Mangarella v. State, 117 Nev. 130, 133, 17 P.3d 989, 991 (2001) (internal quotation omitted). When the language of a statute is unambiguous, courts are not permitted to

[1] As it relates to how these entities have appeared in this case, the Essence entities misinterpret the point Plaintiffs were making. To be clear, if these entities are indeed distinct and separate, then neither Integral Associates LLC (Essence) nor CPCM Holdings, LLC (Thrive) have any standing to be parties to this lawsuit. Yet, they clearly believe that there is such a unity of identity that Integral Associates, LLC and CPCM Holdings, LLC should be parties to these proceedings and, thus, have intervened.

look beyond the statute itself when determining its meaning. Erwin v. State of Nevada, 111 Nev. 1535, 1538-39, 908 P.2d 1367, 1369 (1995).

NRS 453D.210 (and NAC 453D.268) are clear and unambiguous on the requirement that applications must have the "[t]he physical address where the proposed marijuana establishment will be located…." See NRS 453D.210(5)(b); NAC 453D.268(2)(e) ("The application **must include, without limitation**: … (e) The physical address where the proposed marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments") (bold added).

The Department'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 and renders those requirements in NRS 453D.210 superfluous, meaningless, and nugatory.[2] The Department is not permitted to do that. Mangarella, 117 Nev. at 133. Based on exhibits admitted at trial, it is clear that Essence Tropicana, LLC, Essence Henderson, LLC, Cheyenne Medical, LLC, Commerce Park Medical, LLC and Nevada Organic Remedies (at a minimum) did not submit physical addresses where their proposed marijuana establishments would be located, but instead submitted UPS Store addresses.[3] See **Admitted Exhibits** 301, 302, 303. These UPS Store addresses are the same thing as P.O. Boxes – which were not allowed. See, e.g., **Admitted Exhibits 5 and 5a**, p. 21.

[2] To avoid repetition and for the sake of brevity, Plaintiffs join in the NWC Motion and Reply in Support of the Motion to Amend Findings of Facts and Conclusions of Law Issued on August 23, 2019, Pursuant to NRCP 52, filed in the Serenity Wellness Center, LLC, et al. v. State of Nevada Department of Taxation (Case No. A-19-786962-B), and hereby incorporate by reference the citations, authorities and arguments – especially those regarding the NuLeaf decision, stated therein as though fully set forth herein.

[3] To the extent the Department and the Defendants/Intervenors have argued that it was an impossibility to have physical addresses in jurisdictions where moratoriums on retail marijuana dispensaries were in place: that does not apply to the majority of jurisdictions and certainly not to Unincorporated Clark County, City of Las Vegas, or City of North Las Vegas. Hence, any of the December 2018 conditional licenses issued to parties that failed to submit actual physical addresses in jurisdictions where there was no moratorium should be enjoined.

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The Department's improper interpretation of the statutory/Ballot Question 2 and regulatory requirements permitted applicants to take advantage of inside information they were given about the Department's interpretation 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 bound by reality and an actual location.

Some of the winning applicants would not have received a license but for the Department's manipulation of the physical address requirement, the inside information that was then provided by the Department to those applicants, and the Department's unfair process. Hence, the Court's preliminary injunction should apply to those winning applicants that did not provide actual physical addresses for the proposed marijuana establishments (including those that listed UPS stores or P.O. boxes).

II.

CONCLUSION

Based upon the foregoing, and in accordance with NRCP 52, Plaintiffs request the Court amend its Findings of Facts and Conclusions of Law, dated August 23, 2019, and enjoin the State from conducting a final inspection on (1) the second locations of applicants that were awarded multiple licenses in a single jurisdiction, i.e., Essence and Thrive in unincorporated Clark County; and (2) any of the December 2018 conditional licenses – or issuing final licenses – for any of the winning applicants that did not provide the physical address where the proposed marijuana establishment will be located as required by NRS 453D and NAC 453D or provided UPS Stores as proposed physical addresses as part of their applications.

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For all the foregoing reasons, Plaintiffs Motion should be granted.

DATED this 23rd day of October, 2019.

KEMP, JONES & COULTHARD LLP

/s/ Nathanael Rulis

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of October, 2019, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S AND LIVFREE WELLNESS, LLC'S REPLY IN SUPPORT OF MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Ali Augustine
An employee of Kemp, Jones & Coulthard, LLP

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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, 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

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

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 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. [1]

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 made by the moving party. But, that is what Nevada Wellness Center's motion improperly does. Consistent with the policy of not hearing the same motion twice, this Court should deny Nevada Wellness Center's motion to amend under Nev. R. Civ. P. 52.

First, in accord with the Nevada Supreme Court's decision in *Nuleaf CLV Dispensary, LLC v. State Dep't of Health & Human Servs., Div. of Pub. & Behavioral*

[1] The Department of Taxation previously filed this Opposition in Case No. A-19-786962-B on September 23, 2019. As Nevada Wellness Center also re-filed the instant motion in this case, the Department submits the same Opposition here.

Health, 134 Nev. 129, 414 P.3d 305 (2018), nothing prohibited the Department of Taxation from accepting applications without physical addresses. Second, Nevada Wellness Center has not demonstrated that any discussion with staff met the definition of a meeting, action, and the quorum standard under *Dewey v. Redevelopment Agency of Reno*, 119 Nev. 87, 64 P.3d 1070 (2003) (en banc) for Nevada's Open Meeting Law to even apply.[2]

II. Legal discussion

A. Nevada Wellness Center makes no attempt to meet the standard to amend findings of fact and conclusions of law

Rule 52(b) permits parties to move to correct manifest errors of law and findings of fact. However, a party cannot use Rule 52(b) to raise arguments that were or could have been made prior to the Court's entry of judgment. *Granat v. Schoepski*, 272 F.2d 814, 815 (9th Cir. 1995). The Fifth Circuit nicely summarized the rule that bars motions such as Nevada Wellness Center's:

> Blessed with the acuity of hindsight, [a party] may now realize that it did not make its initial case as compellingly as it might have, but it cannot charge the District Court with responsibility for that failure through [a] Rule 52(b) motion.

Fontenot v. Mesa Petroleum Co., 791 F.2d 1207 1220 (5th Cir. 1986).

Here, Nevada Wellness Center does not offer any new evidence, but cites to testimony adduced at the evidentiary hearing, which was already considered by the Court. Nevada Wellness Center restates the same arguments both from the public bidding forum and based on its interpretation of Nevada law pertaining to the physical address language in both the initiative and the accompany regulations. Nevada Wellness Center does raise a new argument under Nevada's Open Meeting Law, but never explains why it did not raise that argument prior to this Court's entry of its findings of fact and conclusions of law. Nevada Wellness Center's motion is procedurally improper and should be rejected.

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[2] Far from being unfair to Nevada Wellness Center, Nevada Wellness Center does 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.

B. The *Nuleaf* decision is directly on point

Nevada Wellness Center's attempts to distinguish *Nuleaf* are not persuasive. Nevada Wellness Center mistakenly attempts to distinguish *Nuleaf* by arguing that "Nuleaf did not address NRS 453A.322['s] requirement that a physical location be provided in the application." Br. at 9:13-14. Nevada Wellness Center is wrong.

Nuleaf expressly considered NRS 453A.322. The Court, in relevant part, wrote as follows, "[f]urthermore, while NRS 453A.322(3)(a) states that the Department 'shall' register a medical marijuana establishment when it has satisfied that subsection's requirements, nothing in the statute prohibits the Department from considering an applicant that fails to meet the requirements." *Nuleaf*, 134 Nev. at 134, 414 P.3d at 310.

The language of Nevada Revised Statute 453D.210(5)(b) is precisely like that language interpreted by the court in *Nuleaf*. There is nothing in the Initiative that prohibits the Department of Taxation from considering applications that do not list a prospective physical address. Section 453D.210(5)(b) provides:

> 5. The Department shall approve a license application if:
> …
> (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;

NRS 453D.210(5)(b).

More importantly, Nevada Wellness Center does nothing to challenge this Court's central holding approving the Department of Taxation's power to create conditional licensure. Order at 21, ¶80. Because the Department of Taxation had this power, it necessarily follows that the physical address language in NRS 453D.210(5)(b) was not a mandatory requirement at the application stage since the location of the marijuana establishment was subject to change at the conditional licensee's discretion so long as it was suitable. NRS §453D.200(1)(j). It would be an absurd interpretation to elevate the physical location language in section 453D.210(5)(b) into a prerequisite when another part of the initiative states it is subject to change at any time by the applicant so long as other

suitability requirements are met. Moreover, Nevada Wellness Center never addresses this Court's holding that the physical address language in section 5(b) is subject to cure.[3]

C. Nevada's Open Meeting Law does not apply

Nevada Wellness Center argues that various discussions occurred between the Department of Taxation's staff members and prospective applicants violated Nevada's OML, but does nothing to show that the statutory perquisites for the OML to apply are met with respect to any such discussions.

Nevada, like other states, adopts the quorum standard for determining whether OML applies to a given situation. *Dewey*, 119 Nev. at 95, 64 P.3d at 1075-76. A quorum applies to a meeting at which a quorum of members is present to "deliberate toward a decision or to take action on any matter over which the public body has supervision, control jurisdiction or advisory power." NRS §241.015(2). Action means:

> (a) A decision made by a majority of the members present during a meeting of a public body;
>
> (b) A commitment or promise made by a majority of the members present during a meeting of a public body; or
>
> (c) A vote taken by a majority of the members present during a meeting of a public body.

NRS 241.015(1).

Nevada Wellness Center never explains how the dissemination of information meets the definition of an action. Moreover, Nevada Wellness Center never explains how any discussion that Jorge Pupo or any other staff member of the Department of Taxation may have had with a prospective applicant was a "meeting," which meets the quorum standard under *Dewey*. Nevada Wellness Center never points to any particular discussion as having been undertaken by any particular staff member with the intent to make a decision, rather such discussions were explanatory in nature and not decisional. Since no quorum and no action were taken, there could be no OML violation.

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[3] The Department of Taxation also joins the arguments made by the Essence Entities as though fully set forth herein.

D. Nevada Wellness Center ignores the irreparable harm element

Even if this Court were to consider the merits of Nevada Wellness Center's motion (which it should not), Nevada Wellness Center ignores irreparable harm analysis. A preliminary injunction will only issue where the plaintiff has demonstrated that the conduct at issue will cause irreparable harm for which compensatory damage is an inadequate remedy. *See Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). There is no irreparable harm where injuries are too speculative to be credited. *Clark Cty. Sch. Dist. v. Richardson Const., Inc.*, 123 Nev. 382, 397, 168 P.3d 87, 97 (2007).

In its Motion, Nevada Wellness Center has not demonstrated that allowing conditional licenses to issue, and allow the successful applicants 12 months to comply with local ordinances and zoning requirements to secure a physical location prior to receiving a final license, constitutes irreparable harm.

III. Conclusion

For these reasons, the Court should deny Nevada Wellness Center's attempt at a third bite at the apple.

DATED this 24th day of October, 2019.

AARON D. FORD
Attorney General

By: /s/ Steve Shevorski
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Theresa M. Haar (Bar No. 12158)
Special Assistant Attorney General
Attorneys for Nevada Department of Taxation

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 24th day of October, 2019 to all parties on the electronic service list.

/s/ *Theresa Haar*
Theresa Haar, Special Assistant Attorney General

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DISTRICT COURT

CLARK COUNTY, NEVADA

MM DEVELOPMENT COMPANY, INC., a Nevada corporation; LIVFREE WELLNESS LLC, dba The Dispensary, a Nevada limited liability company Plaintiffs, vs. STATE OF NEVADA, DEPARTMENT OF TAXATION; and DOES 1 through 10; and ROE CORPORATIONS 1 through 10. Defendants.	Case No.: A-18-785818-W Dept. No.: VIII **MM DEVELOPMENT COMPANY, INC.'S AND LIVFREE WELLNESS, LLC'S OPPOSITION TO NEVADA ORGANIC REMEDIES, LLC'S APPLICATION FOR WRIT OF MANDAMUS** Date of Hearing: 11/12/19 Time of Hearing: 9:00 a.m.
AND ALL RELATED MATTERS	

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 hereby file this opposition to the application for writ of mandamus to compel State of Nevada, Department of Taxation to move Nevada Organic Remedies, LLC ("NOR") into "Tier 2" of successful conditional license applicants (the "Motion").

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/ / /

/ / /

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I.

ARGUMENT

A. NOR And Other Applicants Are Precluded From Moving Forward With Licenses

After a 20-day preliminary injunction hearing, Judge Gonzalez issued her Findings of Fact and Conclusions of Law Granting Preliminary Injunction ("FFCL") enjoining several retail marijuana applicants from moving forward on any conditional licenses. See FFCL, 24:4-6, attached as **Exhibit 1**.[1] Judge Gonzalez ordered that the following entities may not make any use of their conditional licenses because they did not (in their September 2018 applications) provide the identification of each prospective owner, officer and board member as required by NRS 453D.200(6):

Entities Enjoined by the Injunction	
Entity Name	**Number of Conditional Licenses Issued**
Nevada Organic Remedies LLC ("NOR")	7
Greenmart of Nevada NLV LLC ("Greenmart")	4
Helping Hands Wellness Center Inc. ("Helping Hands")	3
Lone Mountain Partners LLC ("Lone Mountain")	11
Licensees Affected	25

B. NOR's Motion Is An Improper Attempt At Reconsideration And Forum Shopping

NOR's Motion is nothing more than an improper request for reconsideration brought before **this** Court, instead of Judge Gonzalez, who heard the preliminary injunction, reviewed the

[1] Judge Gonzalez ruled at the May 13, 2019 hearing on the DOT's Motion to Consolidate that the MM Development Company, Inc, et al. v. State of Nevada, Department of Taxation, Case No. A-18-785818-W, (this case); Compassionate Team of Las Vegas v. NV Department of Taxation, Case No. A-18-786357-W; Serenity Wellness Center, LLC, et al. v. NV Department of Taxation, Case No. A-19-786962-B; ETW Management Group LLC, et al. v. NV Department of Taxation, Case No. A-19-787004-B, Nevada Wellness Center, LLC v. NV Department of Taxation, Case No. A-19-787540-W; and High Sierra Holistics LLC v. NV Department of Taxation, Case No. A-19-787726-C, actions would all be coordinated for purposes of the preliminary injunction hearing scheduled.

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evidence and made the decision. That decision included consideration of the exact same arguments NOR makes in its current motion:

> The applicants who fit into that category based upon the State's email to me are those in the first and second tier as identified by the State. **While I certainly understand the arguments by the parties that certain other information was available** that may not be within the scope of my question, my question was limited for a reason. **Those who are in the third category will be subject to the injunctive relief which is described on page 24 the findings of fact and conclusions of law**. Those who are in the first and second category will be excluded from that relief.
>
> **Any request for modifications by the State based upon the State's review of the applications that were submitted by the applicants during the application period will be submitted by motion by the State, and then all of you will have an opportunity to submit any briefs and any argument you think is appropriate.**
>
> I am not precluding the State from making any other determinations related to this very flawed process the State decides to make related to the application process. **That's within the State's determination as to how they handle any corrections to this process. And I'm not going to determine what that is.** I was merely seeking to exclude applicants who filed applications in compliance with NRS 453D.200(6) at the time the applications were filed from the injunctive relief that I have granted in order that was filed last Friday on page 24.

August 29, 2019 Transcript, Serenity Wellness Center, LLC, et al. v. NV Department of Taxation action (Case No. A-19-786962-B), 56:12-57:12, relevant excerpts are attached as **Exhibit 2** (bold added).

As NOR readily acknowledges in its Motion, Judge Gonzalez made the decision to apply the injunction against NOR. That is, in all reality, the decision NOR challenges by its Motion. Hence, NOR's Motion should have been filed in one of the cases before Judge Gonzalez. NOR is a party to both actions. It intervened in both the Serenity Wellness Center, LLC, et al. v. NV Department of Taxation action (Case No. A-19-786962-B), and the ETW Management Group LLC, et al. v. NV Department of Taxation action (Case No. A-19-787004-B). See Orders Granting NOR's Motions to Intervene, in both cases, attached collectively as **Exhibit 3**.

A district court may only reconsider a prior order where the moving party offers new evidence or demonstrates that the prior order was clearly erroneous based on new clarifying case law. Masonry and Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737,

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741, 941 P.2d 486, 489 (1997). Judge Gonzalez already heard these exact same arguments as part of the preliminary injunction hearing. Reconsideration is not appropriate for simply rehashing previously made arguments. Id. "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." Moore v. City of Las Vegas, 92 Nev. 402, 404, 551 P.2d 244, 246 (1976).

Although NOR does not style its motion as one for reconsideration, that is what it is. A review of the transcript of the August 29th hearing before Judge Gonzalez makes it clear that NOR's arguments in this Motion are simply a restatement of those already argued before Judge Gonzalez. See 8/29/19 Transcript, 29:2-35:24, **Ex. 2** (arguing that NOR listed each of the owners for NOR and that the Department previously approved – through a change of ownership application – the ownership structure for NOR). Despite hearing the very same arguments NOR includes in its Motion, Judge Gonzalez ordered that the State is enjoined from "conducting a final inspection" for conditional licensees, including NOR, that did not identify for the State each prospective owner, officer, and board member. See FFCL, 24:4-6. Now, NOR asks this Court to change Judge Gonzalez's order and alter the scope of **her** preliminary injunctive order. That cannot be permitted.

C. NOR Admitted That It Did Not Comply With The Background Check Requirement

NOR, by its own admissions at the preliminary injunction hearing, confirmed that it did not have "each" of its prospective owners, officers, or board members background checked in compliance with NRS 453D.200(6).[2] Andrew Jolley, the corporate representative for NOR, testified that NOR did not list the majority shareholders **or all the board members** for the company that actually owned NOR at the time the applications were submitted (Xanthic Biopharma Inc. dba Green Growth Brands ("GGB")):

Q ... It's true that you did not list all of the owners of Xanthic; right?

[2] Plaintiffs are at a disadvantage addressing the issue of who from NOR was background checked as part of the application process. NOR redacted and refused to produce any information from its application about which owners, officers, and/or board members agreed that the Department may investigate their background information by any means feasible to the Department.

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

…

At no point in time was there a requirement to list every shareholder of Xanthic.

Jolley Testimony, 6/10/19, 96:19-97:12, relevant excerpts attached as **Exhibit 4**. Mr. Jolley clarified further, that the **controlling shareholders** of Xanthic, which owned 95% of Nevada Organic Remedies, were **not** listed on its applications:

Q Okay. And you did not include the major shareholders of Xanthic; correct?
A I don't agree with that statement.
Q Okay. All Js Greenspace LLC, have you ever heard that name?
A All Jay Green Piece?
Q All Js Greenspace LLC.
A Not off the top of my head.
Q And if I told you they owned 37 million shares of Xanthic, they are 22.5 percent, that's news to you now?
A Can you tell me who the members and managers are of that LLC?
Q Earlier you referenced an individual named Schott something?
A Schottenstein.
Q Yes. So the Schottenstein company is one of the major owners?
A As far as I know, yes.
Q And do you know how much they own?
A My recollection was around 30 percent.
Q Okay. And how about GA Opportunities Corp? They own 27 million shares of Xanthic or 16.5 percent of the company. You didn't list them under the organizational chart, did you?
A I believe we listed everyone that the application required us to list.
Q Okay. I'm not asking if you think you did everything right, I'm asking specifically did you list GA Opportunities Corp. or not?
A GA Opportunities Corp. is not on our application, as far as I can recall.
Q And neither was All Js, which by the way is a wonderful name for a marijuana company, All Js Greenspace LLC; right?
A I do not believe we listed All Js.

Jolley Testimony, 6/10/19, 97:20-99:4, **Ex. 4**. Hence, the majority shareholders that have the ability to control Xanthic (All Js Greenspace LLC and GA Opportunities Corp.) – and thereby control NOR – were not listed on NOR's application.[3] As Mr. Jolley's testimony made clear,

[3] For comparison's sake, MM Development disclosed both of its controlling shareholders (Mr. Groesbeck and Mr. Scheffler) and had full and complete background checks performed for both.

NOR did not comply with the requirement to have each prospective owner/officer/board member background checked.

II.

CONCLUSION

NOR's request for reconsideration of Judge Gonzalez's ruling is not appropriate as its Motion simply rehashes arguments it previously made to Judge Gonzalez, which she denied. NOR did not disclose the two controlling shareholders (All Js Greenspace LLC and GA Opportunities Corp.) of its parent public company (GGB/Xanthic) that certainly have the ability to control NOR. Hence, the DOT could not have possibly background checked these individuals. For all the foregoing reasons, NOR's Motion should be denied.

DATED this 24th day of October, 2019.

KEMP, JONES & COULTHARD LLP

/s/ Nathanael Rulis

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of October, 2019, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S AND LIVFREE WELLNESS, LLC'S OPPOSITION TO NEVADA ORGANIC REMEDIES, LLC'S APPLICATION FOR WRIT OF MANDAMUS** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Ali Augustine
An employee of Kemp, Jones & Coulthard, LLP

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Exhibit 1

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, a Nevada limited liability company, TGIG, LLC, a Nevada limited liability company, NULEAF INCLINE DISPENSARY, LLC, a Nevada limited liability company, NEVADA HOLISTIC MEDICINE, LLC, a Nevada limited liability company, TRYKE COMPANIES SO NV, LLC, a Nevada limited liability company, TRYKE COMPANIES RENO, LLC, a Nevada limited liability company, PARADISE WELLNESS CENTER, LLC, a Nevada limited liability company, GBS NEVADA PARTNERS, LLC, a Nevada limited liability company, FIDELIS HOLDINGS, LLC, a Nevada limited liability company, GRAVITAS NEVADA, LLC, a Nevada limited liability company, NEVADA PURE, LLC, a Nevada limited liability company, MEDIFARM, LLC, a Nevada limited liability company, DOE PLAINTIFFS I through X; and ROE ENTITY PLAINTIFFS I through X, Plaintiff(s), vs. THE STATE OF NEVADA, DEPARTMENT OF TAXATION, Defendant(s). and NEVADA ORGANIC REMEDIES, LLC; INTEGRAL ASSOCIATES LLC d/b/a ESSENCE CANNABIS DISPENSARIES, a Nevada limited liability company; ESSENCE TROPICANA, LLC, a Nevada limited liability company; ESSENCE HENDERSON, LLC, a Nevada limited liability company; CPCM HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, COMMERCE PARK MEDICAL, LLC, a Nevada limited liability company; and CHEYENNE MEDICAL, LLC, a Nevada limited liability company; LONE MOUNTAIN PARTNERS, LLC, a Nevada	Case No. A-19-786962-B Dept. No. 11 **FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING PRELIMINARY INJUNCTION**

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

Intervenors.

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

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

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

PROCEDURAL POSTURE

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

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

a. Enjoin the denial of Plaintiffs applications;

b. Enjoin the enforcement of the licenses granted;

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

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

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

e. Several orders compelling discovery.

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

PRELIMINARY STATEMENT

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

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

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

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

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

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

FINDINGS OF FACT

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

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

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

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

> . . . the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:
>
> (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;
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> (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;
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> (c) Requirements for the security of marijuana establishments;
>
> (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;
>
> (e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;
>
> (f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;
>
> (g) Requirements for record keeping by marijuana establishments;
>
> (h) Reasonable restrictions on signage, marketing, display, and advertising;
>
> (i) Procedures for the collection of taxes, fees, and penalties imposed by this chapter;
>
> (j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location;
>
> (k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and marijuana establishments at the same location;
>
> (l) Procedures to establish the fair market value at wholesale of marijuana; and
>
> (m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any violation of the provisions of NRS 453D.300.

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

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

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

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

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

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

7. BQ2 specifically identified regulatory and public safety concerns:

> The People of the State of Nevada proclaim that marijuana should be regulated in a manner similar to alcohol so that:
> (a) Marijuana may only be purchased from a business that is licensed by the State of Nevada;
> (b) Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;
> (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly controlled through State licensing and regulation;

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

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

NRS 453D.020(3).

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

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

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

11. Some of the Task Force's recommendations appear to conflict with BQ2.[7]

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[7] The Final Task Force report (Exhibit 2009) contained the following statements:

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

at 2510.

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

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

The second recommendation of concern is:

> The Task Force recommends that NRS 453A be changed to address companies that own marijuana establishment licenses in which there are owners with less than 5% ownership interest in the company. The statute should be amended to:
> *Limit fingerprinting, background checks and renewal of agent cards to owners officers and board members with 5% or less cumulatively of the company to once every five years;
> *Only require owners officers and board members with 5% or more cumulatively and employees of the company to obtain agent registration cards; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The mailing address of the applicant;

(g) The telephone number of the applicant;

(h) The electronic mail address of the applicant;

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

(j) If the applicant is applying for a license for a retail marijuana store, the proposed hours of operation during which the retail marijuana store plans to be available to sell marijuana to consumers;

(k) An attestation that the information provided to the Department to apply for the license for a marijuana establishment is true and correct according to the information known by the affiant at the time of signing; and

(l) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of NAC 453D.250 and the date on which the person signed the application.

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

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

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

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

(1) The title of the person;

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

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

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

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

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

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

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

(7) Whether the person has previously had a medical marijuana establishment agent registration card or marijuana establishment agent registration card revoked;
(8) Whether the person is an attending provider of health care currently providing written documentation for the issuance of registry identification cards or letters of approval;
(9) Whether the person is a law enforcement officer;
(10) Whether the person is currently an employee or contractor of the Department; and
(11) Whether the person has an ownership or financial investment interest in any other medical marijuana establishment or marijuana establishment.
5. For each owner, officer and board member of the proposed marijuana establishment:
(a) An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of an excluded felony offense, and that the information provided to support the application for a license for a marijuana establishment is true and correct;
(b) A narrative description, not to exceed 750 words, demonstrating:
(1) Past experience working with governmental agencies and highlighting past experience in giving back to the community through civic or philanthropic involvement;
(2) Any previous experience at operating other businesses or nonprofit organizations; and
(3) Any demonstrated knowledge, business experience or expertise with respect to marijuana; and
(c) A resume.
6. Documentation concerning the size of the proposed marijuana establishment, including, without limitation, building and general floor plans with supporting details.
7. The integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including, without limitation, a plan for testing and verifying marijuana, a transportation or delivery plan and procedures to ensure adequate security measures, including, without limitation, building security and product security.
8. A plan for the business which includes, without limitation, a description of the inventory control system of the proposed marijuana establishment to satisfy the requirements of NRS 453D.300 and NAC 453D.426.
9. A financial plan which includes, without limitation:
(a) Financial statements showing the resources of the applicant;
(b) If the applicant is relying on money from an owner, officer or board member, evidence that the person has unconditionally committed such money to the use of the applicant in the event the Department awards a license to the applicant and the applicant obtains the necessary approvals from the locality to operate the proposed marijuana establishment; and
(c) Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.
10. Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana establishment on a daily basis, which must include, without limitation:
(a) A detailed budget for the proposed marijuana establishment, including pre-opening, construction and first-year operating expenses;
(b) An operations manual that demonstrates compliance with this chapter;
(c) An education plan which must include, without limitation, providing educational materials to the staff of the proposed marijuana establishment; and
(d) A plan to minimize the environmental impact of the proposed marijuana establishment.
11. If the application is submitted on or before November 15, 2018, for a license for a marijuana distributor, proof that the applicant holds a wholesale dealer license issued pursuant to chapter 369 of NRS, unless the Department determines that an insufficient number of marijuana distributors will result from this limitation.
12. A response to and information which supports any other criteria the Department determines to be relevant, which will be specified and requested by the Department at the time the Department issues a request for applications which includes the point values that will be allocated to the applicable portions of the application pursuant to subsection 2 of NAC 453D.260.

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

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

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

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

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

[10] The DoT made a change to the application after circulating the first version of the application to delete the requirement of a physical location. The modification resulted in a different version of the application bearing the same "footer" with the original version remaining available on the DoT's website.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[11] Given the factual issues related to the grading raised by MM and LivFree, these issues may be subject to additional evidentiary proceedings in the assigned department.

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

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

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

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

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

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

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

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

[14] That provision states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

[16] The testimony elicited during the evidentiary hearing established that multiple changes in ownership have occurred since the applications were filed. Given this testimony, simply updating the applications previously filed would not comply with BQ2.

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

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

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

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

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

> "1. Notwithstanding the provisions of section 1 of article 4 of this constitution, but subject to the limitations of section 6 of this article, **the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls**.
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> ...
>
> 3. If the initiative petition proposes a statute or an amendment to a statute, the person who intends to circulate it shall file a copy with the secretary of state before beginning circulation and not earlier than January 1 of the year preceding the year in which a regular session of the legislature is held. After its circulation, it shall be filed with the secretary of state not less than 30 days prior to any regular session of the legislature. The circulation of the petition shall cease on the day the petition is filed with the secretary of state or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The secretary of state shall transmit such petition to the legislature as soon as the legislature convenes and organizes. The petition shall take precedence over all other measures except appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted or rejected by the legislature without change or amendment within 40 days. If the proposed statute or amendment to a statute is enacted by the legislature and approved by the governor in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law, but shall be subject to referendum petition as provided in section 1 of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

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

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

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

DATED this 23rd day of August 2019.

Elizabeth Gonzalez, District Court Judge

Certificate of Service

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

Dan Kutinac

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

Exhibit 2

Electronically Filed
9/3/2019 3:48 PM
Steven D. Grierson
CLERK OF THE COURT

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

HEARING ON OBJECTIONS TO STATE'S RESPONSE, NEVADA WELLNESS CENTER'S MOTION RE COMPLIANCE RE PHYSICAL ADDRESS, AND BOND AMOUNT SETTING

THURSDAY, AUGUST 29, 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.

Okay. Mr. Koch.

MR. KOCH: Thank you, Your Honor.

And the Court had indicated in its order that it was looking for a discussion about inclusion or exclusion from this [unintelligible]. I really think my audience today is frankly Mr. Shevorski and the Department, because the Court asked the Department to make a determination of the applications and the information contained there and to report back to the Court on what it found. And the Court is not making a determination of what was there, so they're asking the Department for that information.

We have obviously considered the Court's order. We've been here. The Court considered a lot of information and put that into the order. We would disagree with the component of that order with respect to the 5 percent provision and the 453D.255 of the regulations. We're not here to argue that, we're not asking the Court to reconsider that. And if this matter goes up on appeal, I assume that will be addressed at that time. It's not what we're here for today.

What we're here for today is to confirm that in fact my client did comply with the requirement to list all prospective owners, officers, and board members so that it can move forward with its perfection of its application. When the Court asked for the State to provide information that it provided, it did so, and it said -- you know, I guess there's

three tiers.

THE COURT: So you're asking me to let the State now make a decision as to whether applications are complete when they totally abdicated their responsibility related to that last fall?

MR. KOCH: Well, that's an interesting question, because if the Court is saying -- asked the State for information as of this last Tuesday or Wednesday and it said, give me the information on that, it's a little bit ironic, I suppose, when the Court has said, well, the State didn't do its job back then, but do it now.

THE COURT: Well, I'm not sure they did it right now, which is why I had the opportunity for everybody to have an objection to determine if I am going to restructure the relief as Mr. Prince had requested.

MR. KOCH: And so with that, the State did provide those three tiers. One is some people who aren't we just trust them, they must all be good, so they got a license, we're going to let them go. There's another tier that said, we don't have anything to dispute what they said so we're going to let them -- say their application was complete, as well. And there's a third tier that said, we have some questions about what was part of that application. And when I get a question I try to provide an answer, and I saw the State had a question, and I in fact called Mr. Shevorski and said,

you got a question, I want to provide information. Mr. Shevorski is a fair guy, friend of many in the courtroom, I suppose.

THE COURT: He is a friend to all.

MR. KOCH: Friend to all.

MR. SHEVORSKI: Ecumenical, Your Honor.

MR. KOCH: But I think Mr. Shevorski probably rightly, although I may disagree, I suppose, said, look, we're neutral, the Court has asked us to do something, we're going to do what the Court asked us to do and make a decision on what the Court asked us to do and submit that, but we're not deciding anything else, we're not saying yea or nay, we have a question that cannot be answered.

And so the answer to that question we provided in our response, the answer the Department had that answer all along because Nevada Organic Remedies submitted in first August 2018 its ownership transfer request, and the Department has, attached to Exhibit A to our response, sent back a transfer of ownership approval letter dated August 20th, 2018, listing each of the owners of Nevada Organic Remedies, the applicant in this case. Listed GGV Nevada LLC and listed also individuals well below 5 percent, in fact, even Mr. Peterson, who owned one tenth of 1 percent. It listed Pat Byrne, who had one half of 1 percent, individuals -- anyone who had a membership in the applicant listed there. And the Department

approved that list. And when Nevada Organic Remedies submitted its application and provided its organizational chart that same organizational chart and list of owners was provided there, and in fact, as indicated in the footnote to our Exhibit B, that organizational chart, it states, "Please note. This ownership structure was approved by the Department of Taxation on August 20th, 2018. All owners, all prospective owners, officers, and board members were listed there and were approved by the Department.

And so when the State said, we have an open question of whether there were shareholders who owned a membership interest in the applicant, information was there all along. Because what that ownership interest is in an applicant, in an LLC, an ownership interest is a membership interest. And that information was provided. The Nevada Organic Remedies itself is not a public company, it's an LLC. None of the owners of membership interests of Nevada Organic Remedies are public companies. Each of the owners of those membership interests in Nevada Organic Remedies was disclosed, was approved by the Department, and for that reason Nevada Organic Remedies must be included -- to the extent that the Court is even going to consider that point, included within the group of those applicants that have properly disclosed all prospective owners, officers, and board members.

And to the extent that there's any question about

completing background checks or something else that had not be done, that's not what the Court's question was. And that background check could be completed at some future time if it were necessary or appropriate. But we believe background checks were in fact completed of those that were listed there. If the Department believed that there needed to be a background check done of the entity that owned membership interests in Nevada Organic Remedies, it fashioned such relief. They've not been asked to do that.

So we believe that Nevada Organic Remedies has clearly complied with the statute, the express terms of the statute as the Court has read that statute literally, and we have complied with what the Department has requested, and the Department has approved what we have submitted. And we do not believe we need to go any further than that, but to the extent that the Department would come back now and say, oh, we approved it before but now we have a question, we believe that the Department would be estopped from taking that position, because we complied with the rules and regulations in place at the time that the Department asked to provide without objection but actually explicit approval of that list that was provided to the Department.

THE COURT: And so you think the change of ownership approval trumps the ballot question?

MR. KOCH: Not at all. We provided -- the ballot

question says each prospective owner, officer, or board member.

THE COURT: Correct.

MR. KOCH: We provided a list of each prospective owner, officer, and board members. Listed right there. The change of ownership letter is there, but it's also directly in the application. We provided that as part of our Exhibit B, here are the owners, these are the owners of the applicant, and it is disclosed right there. There is no secondary question. The Court has read that statute quite literally. It's an owner of the applicant. It's not to say, well, let's see if there's, you know, somewhere else off here, we're going to engage in some investigation to see if there's some sort of secondary tertiary ownership. And, frankly, that's what, you know, plaintiffs, many of them, same type of situation. Frankly, some of them probably a little more explicit. And Mr. Kemp talked about MM, but then said, well, LivFree wasn't [unintelligible], but MM was. MM provided the disclosure of its structure which doesn't even have the same LLC -- ownership of the LLC, provided a different structure and did provide a list of any other shareholders up above.

Serenity, same thing. Said, here's our structure, here's the LLC that owns a membership in our entity. We're not saying anybody did anything wrong in that. That's what was asked for, that's what was provided. And if the Court has

made its determination of the statute precluding the regulation -- which I don't know how a regulation that adopts a 5 percent rule that's already in the medical regs that apply to the same owners that half of the owners of medical be able to apply for recreational becomes arbitrary at that point in time when you've already got the 5 percent rule there. But we submitted it at the time within the application period.

You know, it's -- frankly, the date of application period could be potentially more arbitrary than anything else. If there's a question of shareholders changing over in these public companies over here, they submit the application on the 14th, by the 18th, the end, that could change over.

THE COURT: You set a record date, Mr. Koch. You know how that works from doing proxies and --

MR. KOCH: Absolutely. Could set record date. But for that purpose, for purposes of what we had explained and clearly laid out, there is no public ownership of a membership interest in our applicant. We've complied with the statute, we've complied with the law, and for that purpose, to the extent the Court is going to make any determination, which I think that's up to the State to do or the Department to do, it should include Nevada Organic Remedies in the list of companies that provided full ownership and can move forward with perfecting their conditional licenses in a timely manner.

THE COURT: Okay. Thank you.

judgment if this matter should proceed. And based upon the limited information that was provided to the parties through disclosures as part of the injunctive relief hearing we've had a hearing based upon what I would characterize as extremely limited information.

I am not granting any affirmative relief to Clear River as requested, because that was not the purpose of this hearing. I have previously made a determination that I was going to exclude applicants who properly completed the applications in accordance with NRS 453D.200(6) at the time the application was filed in September 2018.

The applicants who fit into that category based upon the State's email to me are those in the first and second tier as identified by the State. While I certainly understand the arguments by the parties that certain other information was available that may not be within the scope of my question, my question was limited for a reason. Those who are in the third category will be subject to the injunctive relief which is described on page 24 the findings of fact and conclusions of law. Those who are in the first and second category will be excluded from that relief.

Any request for modifications by the State based upon the State's review of the applications that were submitted by the applicants during the application period will be submitted by motion by the State, and then all of you will

have an opportunity to submit any briefs and any argument you think is appropriate.

I am not precluding the State from making any other determinations related to this very flawed process the State decides to make related to the application process. That's within the State's determination as to how they handle any corrections to this process. And I'm not going to determine what that is. I was merely seeking to exclude applicants who filed applications in compliance with NRS 453D.200(6) at the time the applications were filed from the injunctive relief that I have granted in order that was filed last Friday on page 24.

Does anybody have any questions about the tiers? Any issues should be directed to the Department for you to resolve based upon the information that was in your applications at the time.

I am not going to do the goose-gander analysis that was urged upon me by one of the parties under the Whitehead decision.

Okay. That takes me to the bond. Anybody want to talk about a bond?

MR. KEMP: Judge, on the bond just some logistics that you should be aware of. Mr. Gentile's expert is available on the 16th or 17th.

THE COURT: That's why I'm doing the hearing today,

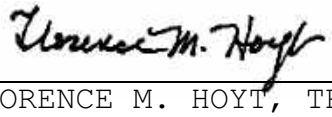
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

8/30/19

DATE

Exhibit 3

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Attorneys for Intervenor
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF TAXATION,

Defendant;

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

ORDER GRANTING MOTION TO INTERVENE

NEVADA ORGANIC REMEDIES, LLC

Applicant for Intervention

on the chambers calendar on 3/1/19

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

IT IS HEREBY ORDERED:

Intervenor's Motion to Intervene is granted, and Nevada Organic Remedies shall intervene as a Defendant in the above-captioned case as a necessary party to the action pursuant to NRCP 24 and NRS 12.130. An Answer or other responsive pleading or motion pursuant to the Nevada Rules of Civil Procedure shall be filed with this Court within twenty days of the filing of the notice of this order.

DATED this 20 day of March, 2019.

DISTRICT COURT JUDGE

Respectfully submitted by:
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

ETW MANAGEMENT GROUP LLC, et al., 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, NEVADA ORGANIC REMEDIES, LLC Defendant Intervenor	Case No. A-19-787004-B Dept. No. 11 **ORDER GRANTING NEVADA ORGANIC REMEDIES, LLC'S MOTION TO INTERVENE**

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

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IT IS HEREBY ORDERED:

Intervenor's Motion to Intervene is granted, and Nevada Organic Remedies shall intervene as a Defendant in the above-captioned case as a necessary party to the action pursuant to NRCP 24 and NRS 12.130.

DATED this 24 day of April, 2019.

DISTRICT COURT JUDGE

Respectfully submitted by:

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Steven B. Scow (NV Bar #9906)
Brody R. Wight (NV Bar #13615)
Daniel G. Scow (NV Bar #14614)
Attorneys for Intervenor
Nevada Organic Remedies, LLC

Approved as to form by:

Adam K. Bult (NV Bar #9332)
Travis F. Chance (NV Bar #13800)
Adam R. Fulton (NV Bar #11572)
Attorneys for Plaintiffs
ETW Management Group LLC, et al

Exhibit 4

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

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

Director of Marketing of NOR, two women; right?

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

Q Including these --

A These are the people who actually run the company.

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

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

Q Including the two women; right?

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

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

A I think --

Q Do you want to look at it?

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

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

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

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

THE COURT: Overruled.

BY MR. KEMP:

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

A Yeah, please.

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

I.T. TECHNICIAN: Sorry, which exhibit?

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

BY MR. KEMP:

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

A Yes.

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

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

Q Where did you get that understanding?

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

Q Okay.

A I'm still going. So I --

Q So it was your --

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

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

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

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

A I don't agree with that statement.

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

A All Jay Green Piece?

Q All Js Greenspace LLC.
A Not off the top of my head.
Q And if I told you they owned 37 million shares of Xanthic, they are 22.5 percent, that's news to you now?
A Can you tell me who the members and managers are of that LLC?
Q Earlier you referenced an individual named Schott something?
A Schottenstein.
Q Yes. So the Schottenstein company is one of the major owners?
A As far as I know, yes.
Q And do you know how much they own?
A My recollection was around 30 percent.
Q Okay. And how about GA Opportunities Corp? They own 27 million shares of Xanthic or 16.5 percent of the company. You didn't list them under the organizational chart, did you?
A I believe we listed everyone that the application required us to list.
Q Okay. I'm not asking if you think you did everything right, I'm asking specifically did you list GA Opportunities Corp. or not?
A GA Opportunities Corp. is not on our application, as far as I can recall.

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

A I do not believe we listed All Js.

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

A Liesl Sicz.

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

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

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

A Well, you know --

Q I'm just asking what you did.

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

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

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

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Department of Taxation

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

STATE OF NEVADA ex rel. its DEPARTMENT OF TAXATION; DOES 1 through 10; and ROE CORPORATIONS 1 through 10,

Defendants.

and

ALL RELATED INTERVENORS.

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

Coordinated for purposes of preliminary injunction with:

Case No.: A-19-786962-B
Dept. No.: XI

DEPARTMENT OF TAXATION'S OPPOSITION TO NEVADA ORGANIC REMEDIES, LLC'S APPLICATION FOR WRIT OF MANDAMUS

The State of Nevada ex. rel. the Department of Taxation, through its counsel, opposes Nevada Organic Remedies, LLC's application for writ of mandamus.

. . .

. . .

. . .

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Department of Taxation agrees that its 5% regulation, Nevada Administrative Code 453D.255(1), was and remains valid. However, NOR's application for mandamus is not the correct vehicle for obtaining relief from Judge Gonzales' order.

This Court should deny NOR's application for writ of mandamus. **First**, NOR has an adequate remedy at law through its pending appeal of Judge Gonzales' order. **Second**, NOR's irreparable harm argument is not persuasive since NOR can seek expedited review of its appeal with the Nevada Supreme Court. **Third**, this Court should not use mandamus to substitute its legal judgment regarding the propriety of filing a legal motion for the Office of the Attorney General's. **Fourth**, NOR's estoppel argument fails under *Foley v. Kennedy*, 110 Nev. 1295, 1302, 885 P.2d 583, 587 (1994) in which the court held that the government cannot be estopped on issues of law.

II. BACKGROUND

The initiative gave the Department of Taxation little guidance concerning background checks. The initiative provides: "The Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant." NRS 453D.200(6). NOR indicates correctly that the terms "background check," "prospective," and "owner" are undefined.

The Department of Taxation created a regulation explaining the level of ownership interest that would have to be reached for the ownership regulations to apply to an individual. Nevada Administrative Code 453D.255(1) provides:

> 1. Except as otherwise required in subsection 2, the requirements of this chapter concerning owners of marijuana establishments only apply to a person with an aggregate ownership interest of 5 percent or more in a marijuana establishment.

NAC 453D.255(1). It is this regulation that Judge Gonzales believed to be constitutionally impermissible in her preliminary injunction order.

. . .

A. Judge Gonzales' preliminary injunction order

Judge Gonzales issued a preliminary injunction order after several days of hearings. Her order had a central legal holding. She ruled that a constitutional violation, in and of itself, was irreparable harm. **Ex. A** at 18, ¶62. She then found that NAC 453D.200(1)'s five percent rule was an impermissible deviation from NRS 453D.200(6). *Id*. at 22, ¶¶82-84. The Court enjoined the Department of Taxation from conducting a final inspection of any conditional licensees who did disclose during the application process "each prospective owner, officer and board member as required by NRS 453D.200(6)…" *Id*. at 24:4-6.

Judge Gonzales allowed any party to file objections and briefs if they felt that her injunction order should not be applied to them. **Ex. A**, supra, at 24 n.19. NOR was one of the entities that was enjoined. NOR filed its objection. **Ex. B**. The Court in a minute order denied NOR's objection and stated it would be up to the State's discretion to make a motion to remove a party from the preliminary injunctive relief order. **Ex C**. NOR then appealed Judge Gonzales' order to the Nevada Supreme Court. **Ex. D**.

III. LEGAL DISCUSSION

NOR never explains why its pending appeal is an insufficient legal remedy. By statute, mandamus relief is not available where an adequate remedy at law is available to the party alleging it was aggrieved. NRS §34.170. An appeal is an adequate remedy at law. *Int'l Game Tech. v. Dist. Ct.,* 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Here, NOR appealed Judge Gonzales' order. **Ex. D**, supra. NOR has an adequate remedy at law. *See* NRAP 3A(3) (an order granting an injunction is an appealable order).

There are exceptions to when an appeal is not an adequate remedy, but none of them apply here. *See D.R. Horton, Inc. v. State of Nev. ex. rel. Eighth Jud. Dist. Ct*., 123 Nev. 468, 474-75, 168 P.3d 731, 736 (2007). These exceptions reference the underlying case's status, the types of issues raised, and whether a future appeal will allow the Nevada Supreme Court to consider adequately the issues presented in the writ. *Id*. An appeal was an inadequate remedy in *D.R. Horton* because the issue in the writ, whether a pre-litigation

. . .

notice was complied with or necessary, was to determine whether litigation could have been commenced lawfully in the first place. *Id.*

In contrast to *D.R. Horton*, Judge Gonzales' preliminary injunction order is immediately appealable. NOR does not have wait until the case's end to seek appellate relief. Accordingly, an appeal is an adequate remedy.

NOR argues that it will suffer irreparable harm should this Court fail to grant a writ of mandamus. Br. 13-14. To be sure, the Department of Taxation is sympathetic to this argument, but NOR has a legal remedy. NOR can ask the Nevada Supreme Court to expedite its appeal or file an emergency motion with the Nevada Supreme Court. *See* NRAP 2 and NRAP 27(e).

NOR fails to point to any legal duty, which is clear and specific, compelling the Department of Taxation to file a motion with Judge Gonzales. A writ of mandamus can issue only against officials under a "clear" and "specific" duty required by law. *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603, 637 P.2d 534, 536 (1981) ("clear"); *Douglas Cty. Bd. of Cty. Comm'rs v. Pederson*, 78 Nev. 106, 108, 369 P.2d 669, 671 (1962) ("specific"). Here, NOR cannot point to any rule or statute under which it can compel the Department of Taxation and the Office of the Attorney General to file a motion with a court.

The abuse of discretion standard does not apply. Mandamus is available to control a manifest abuse or an arbitrary or capricious exercise of discretion. *Round Hill Gen. Imp. Dist.*, 97 Nev. at 603-04, 637 P.2d at 536. But, that standard has never been deployed to interfere with a discretionary legal judgment. NOR certainly does not cite any authority supporting its position. This Court should not accept NOR's request for this Court to substitute its legal judgment, i.e. the legal judgment of whether to file a motion with Judge Gonzales, for that of the Attorney General's Office.

In the licensing context, the licensing authority abuses its discretion by acting without any reason for doing so. *City Council of City of Reno v. Irvine*, 102 Nev. 277, 280, 721 P.2d 371, 373 (1986) (citing *Cty. of Clark v. Atl. Seafoods,* 96 Nev. 608, 615 P.2d 233 (1980)). Here, the Department of Taxation has an obvious reason – the language in Judge

Gonzales' order. Mandamus does not lie to invade an agency's discretionary authority, and its counsel's, on legal strategy.

Principles of estoppel do not apply. NOR appears to argue that the Department of Taxation's communications that occurred operate as an estoppel. *See* NOR's motion, Exs. 7-8. But, estoppel against the government cannot be applied in this context. The holding in *Foley v. Kennedy*, supra, explains why. In that case, the court refused to apply equitable estoppel to an assistant registrar of voters' statement during a telephone call to a recall campaign representative, regarding the number of signatures necessary for a recall petition because the constitution established the number of signatures necessary. *Id.* at 1302–03, 885 P.2d at 587. In *Foley*, the constitution controlled the legally sufficiency of the recall petition, not the registrar's statement.

Here, as in *Foley*, estoppel principles are inapplicable. The Department of Taxation, like NOR, believes that the five percent regulation, NAC 453D.255(1) is valid. Judge Gonzales disagreed. However that legal issue is decided eventually, it will be the language in the initiative or the regulation that controls the validity of NOR's application, not any statement by a Department of Taxation employee to NOR.

IV. CONCLUSION

For these reasons, this Court should deny NOR's application for mandamus.

Respectfully submitted October 24, 2019.

AARON D. FORD
Attorney General

By: /s/ *Steve Shevorski*
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Attorneys for Defendant
State of Nevada ex rel. its
Department of Taxation

CERTIFICATE OF SERVICE

I hereby certify that I caused to be e-filed and e-served to all parties listed on the Court's Master Service List the foregoing document via the Clerk of the Court by using the electronic filing system on the 24th day of October, 2019.

/s/ Traci Plotnick
Traci Plotnick, an employee of the
Office of the Attorney General

EXHIBIT A

EXHIBIT A

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, a Nevada limited liability company, TGIG, LLC, a Nevada limited liability company, NULEAF INCLINE DISPENSARY, LLC, a Nevada limited liability company, NEVADA HOLISTIC MEDICINE, LLC, a Nevada limited liability company, TRYKE COMPANIES SO NV, LLC, a Nevada limited liability company, TRYKE COMPANIES RENO, LLC, a Nevada limited liability company, PARADISE WELLNESS CENTER, LLC, a Nevada limited liability company, GBS NEVADA PARTNERS, LLC, a Nevada limited liability company, FIDELIS HOLDINGS, LLC, a Nevada limited liability company, GRAVITAS NEVADA, LLC, a Nevada limited liability company, NEVADA PURE, LLC, a Nevada limited liability company, MEDIFARM, LLC, a Nevada limited liability company, DOE PLAINTIFFS I through X; and ROE ENTITY PLAINTIFFS I through X, Plaintiff(s), vs. THE STATE OF NEVADA, DEPARTMENT OF TAXATION, Defendant(s). and NEVADA ORGANIC REMEDIES, LLC; INTEGRAL ASSOCIATES LLC d/b/a ESSENCE CANNABIS DISPENSARIES, a Nevada limited liability company; ESSENCE TROPICANA, LLC, a Nevada limited liability company; ESSENCE HENDERSON, LLC, a Nevada limited liability company; CPCM HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, COMMERCE PARK MEDICAL, LLC, a Nevada limited liability company; and CHEYENNE MEDICAL, LLC, a Nevada limited liability company; LONE MOUNTAIN PARTNERS, LLC, a Nevada	Case No. A-19-786962-B Dept. No. 11 **FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING PRELIMINARY INJUNCTION**

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

Intervenors.

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

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

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

PROCEDURAL POSTURE

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

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

a. Enjoin the denial of Plaintiffs applications;

b. Enjoin the enforcement of the licenses granted;

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

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

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

e. Several orders compelling discovery.

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

PRELIMINARY STATEMENT

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

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

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

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

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

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

FINDINGS OF FACT

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

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

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

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

> . . . the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:
>
> (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;
>
> (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;
>
> (c) Requirements for the security of marijuana establishments;
>
> (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;
>
> (e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;
>
> (f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;
>
> (g) Requirements for record keeping by marijuana establishments;
>
> (h) Reasonable restrictions on signage, marketing, display, and advertising;
>
> (i) Procedures for the collection of taxes, fees, and penalties imposed by this chapter;
>
> (j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location;
>
> (k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and marijuana establishments at the same location;
>
> (l) Procedures to establish the fair market value at wholesale of marijuana; and
>
> (m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any violation of the provisions of NRS 453D.300.

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

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

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

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

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

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

7. BQ2 specifically identified regulatory and public safety concerns:

> The People of the State of Nevada proclaim that marijuana should be regulated in a manner similar to alcohol so that:
> (a) Marijuana may only be purchased from a business that is licensed by the State of Nevada;
> (b) Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;
> (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly controlled through State licensing and regulation;

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

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

NRS 453D.020(3).

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

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

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

11. Some of the Task Force's recommendations appear to conflict with BQ2.[7]

---

[7] The Final Task Force report (Exhibit 2009) contained the following statements:

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

at 2510.

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

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

The second recommendation of concern is:

> The Task Force recommends that NRS 453A be changed to address companies that own marijuana establishment licenses in which there are owners with less than 5% ownership interest in the company. The statute should be amended to:
> *Limit fingerprinting, background checks and renewal of agent cards to owners officers and board members with 5% or less cumulatively of the company to once every five years;
> *Only require owners officers and board members with 5% or more cumulatively and employees of the company to obtain agent registration cards; and

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

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

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

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

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

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

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

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

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

***

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

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

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

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

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

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

(f) The mailing address of the applicant;

(g) The telephone number of the applicant;

(h) The electronic mail address of the applicant;

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

(j) If the applicant is applying for a license for a retail marijuana store, the proposed hours of operation during which the retail marijuana store plans to be available to sell marijuana to consumers;

(k) An attestation that the information provided to the Department to apply for the license for a marijuana establishment is true and correct according to the information known by the affiant at the time of signing; and

(l) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of NAC 453D.250 and the date on which the person signed the application.

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

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

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

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

(1) The title of the person;

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

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

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

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

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

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

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

(7) Whether the person has previously had a medical marijuana establishment agent registration card or marijuana establishment agent registration card revoked;
(8) Whether the person is an attending provider of health care currently providing written documentation for the issuance of registry identification cards or letters of approval;
(9) Whether the person is a law enforcement officer;
(10) Whether the person is currently an employee or contractor of the Department; and
(11) Whether the person has an ownership or financial investment interest in any other medical marijuana establishment or marijuana establishment.
5. For each owner, officer and board member of the proposed marijuana establishment:
(a) An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of an excluded felony offense, and that the information provided to support the application for a license for a marijuana establishment is true and correct;
(b) A narrative description, not to exceed 750 words, demonstrating:
(1) Past experience working with governmental agencies and highlighting past experience in giving back to the community through civic or philanthropic involvement;
(2) Any previous experience at operating other businesses or nonprofit organizations; and
(3) Any demonstrated knowledge, business experience or expertise with respect to marijuana; and
(c) A resume.
6. Documentation concerning the size of the proposed marijuana establishment, including, without limitation, building and general floor plans with supporting details.
7. The integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including, without limitation, a plan for testing and verifying marijuana, a transportation or delivery plan and procedures to ensure adequate security measures, including, without limitation, building security and product security.
8. A plan for the business which includes, without limitation, a description of the inventory control system of the proposed marijuana establishment to satisfy the requirements of NRS 453D.300 and NAC 453D.426.
9. A financial plan which includes, without limitation:
(a) Financial statements showing the resources of the applicant;
(b) If the applicant is relying on money from an owner, officer or board member, evidence that the person has unconditionally committed such money to the use of the applicant in the event the Department awards a license to the applicant and the applicant obtains the necessary approvals from the locality to operate the proposed marijuana establishment; and
(c) Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.
10. Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana establishment on a daily basis, which must include, without limitation:
(a) A detailed budget for the proposed marijuana establishment, including pre-opening, construction and first-year operating expenses;
(b) An operations manual that demonstrates compliance with this chapter;
(c) An education plan which must include, without limitation, providing educational materials to the staff of the proposed marijuana establishment; and
(d) A plan to minimize the environmental impact of the proposed marijuana establishment.
11. If the application is submitted on or before November 15, 2018, for a license for a marijuana distributor, proof that the applicant holds a wholesale dealer license issued pursuant to chapter 369 of NRS, unless the Department determines that an insufficient number of marijuana distributors will result from this limitation.
12. A response to and information which supports any other criteria the Department determines to be relevant, which will be specified and requested by the Department at the time the Department issues a request for applications which includes the point values that will be allocated to the applicable portions of the application pursuant to subsection 2 of NAC 453D.260.

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

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

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

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

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

[10] The DoT made a change to the application after circulating the first version of the application to delete the requirement of a physical location. The modification resulted in a different version of the application bearing the same "footer" with the original version remaining available on the DoT's website.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35. It is unclear how the DoT trained the Temporary Employees. While portions of the training materials were introduced into evidence, testimony regarding the oral training based upon example applications was insufficient for the Court to determine the nature and extent of the training of the Temporary Employees.[1]

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

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

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

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

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

[1] Given the factual issues related to the grading raised by MM and LivFree, these issues may be subject to additional evidentiary proceedings in the assigned department.

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

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

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

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

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

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

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

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

[14] That provision states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

[16] The testimony elicited during the evidentiary hearing established that multiple changes in ownership have occurred since the applications were filed. Given this testimony, simply updating the applications previously filed would not comply with BQ2.

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

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

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

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

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

> "1. Notwithstanding the provisions of section 1 of article 4 of this constitution, but subject to the limitations of section 6 of this article, **the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls**.
>
> ...
>
> 3. If the initiative petition proposes a statute or an amendment to a statute, the person who intends to circulate it shall file a copy with the secretary of state before beginning circulation and not earlier than January 1 of the year preceding the year in which a regular session of the legislature is held. After its circulation, it shall be filed with the secretary of state not less than 30 days prior to any regular session of the legislature. The circulation of the petition shall cease on the day the petition is filed with the secretary of state or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The secretary of state shall transmit such petition to the legislature as soon as the legislature convenes and organizes. The petition shall take precedence over all other measures except appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted or rejected by the legislature without change or amendment within 40 days. If the proposed statute or amendment to a statute is enacted by the legislature and approved by the governor in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law, but shall be subject to referendum petition as provided in section 1 of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

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

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

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

DATED this 23rd day of August 2019.

Elizabeth Gonzalez, District Court Judge

Certificate of Service

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

Dan Kutinac

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

EXHIBIT B

EXHIBIT B

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, et al., Plaintiffs, vs. STATE OF NEVADA, DEPARTMENT OF TAXATION; Defendant and NEVADA ORGANIC REMEDIES, LLC Defendant-Intervenor	Case No. A-19-786962-B Dept. No. 11 **NEVADA ORGANIC REMEDIES' RESPONSE TO THE DEPARTMENT OF TAXATION'S STATEMENT REGARDING COMPLETENESS OF APPLICATIONS WITH REFERENCE TO NRS 453D.200(6)** Date: August 29, 2019 Time: 9:00 a.m.

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

I. RESPONSE TO THE DEPARTMENT'S SUBMISSION

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

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

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

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

A. NOR Fully Disclosed Its Ownership on Its Application

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. The Requirement for "Prospective" Owners to Be Background Checked Precludes Freezing an Ownership Date as of the Date of Applications

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

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

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

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

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

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

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

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

II. CONCLUSION

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

KOCH & SCOW, LLC

By: /s/ David R. Koch
David R. Koch
Attorneys for Defendant-Intervenor
Nevada Organic Remedies LLC

CERTIFICATE OF SERVICE

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

[X] 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:

Serenity Wellness Center, LLC:
ShaLinda Creer (screer@gcmaslaw.com)

Nevada Organic Remedies LLC:
David Koch (dkoch@kochscow.com)
Steven Scow (sscow@kochscow.com)
Brody Wight (bwight@kochscow.com)
Andrea Eshenbaugh - Legal Assistant (aeshenbaugh@kochscow.com)
Daniel Scow (dscow@kochscow.com)

Integral Associates, LLC d/b/a Essence Cannabis Dispensaries:
MGA Docketing (docket@mgalaw.com)

Lone Mountain Partners, LLC:
Eric Hone (eric@h1lawgroup.com)
Jamie Zimmerman (jamie@h1lawgroup.com)
Bobbye Donaldson (bobbye@h1lawgroup.com)
Moorea Katz (moorea@h1lawgroup.com)

Margaret McLetchie (maggie@nvlitigation.com)
Cami Perkins, Esq. (cperkins@nevadafirm.com)

Executed on August 26, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh

EXHIBIT A

EXHIBIT A

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

STATE OF NEVADA
DEPARTMENT OF TAXATION
Web Site: https://tax.nv.gov
1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite1300
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) 687-9999
Fax: (775) 688-1303

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

August 20, 2018

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

State of Nevada Application ID Number:

MME Certificate	C094 – 88242054656300627601
ME License	# 1018539646-002-CUL
MME Certificate	D152 – 02441426022753521200
ME License	# 1018539646-001-DIP
MME Certificate	P063 – 72792951478780009507
ME License	# 1018539646-002-PRO
ME License	T056 # 1018539646-002-DIT

Subject: MME Ownership Change

Dear Ms. Connor,

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

Name	% Held
GGB Nevada, LLC	95.00%

Xanthic Biopharma, Inc.

Board Members:

- Jean Schottenstein
- Peter Horvath
- Stephen Stoute
- Carli Posner, Chairman
- Timothy Moore,CEO
- Igor Galitsky, President
- Marc Lehmann, Board Member
- David Bhumgara, CFO

Officers:
- Igor Galitsky
- Timothy Moore,CEO
- David Bhumgara, CFO
- Carli Posner, Chairman

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

Please feel free to contact us at marijuana@tax.state.nv.us if you have any questions.

Sincerely,

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

EXHIBIT B

EXHIBIT B

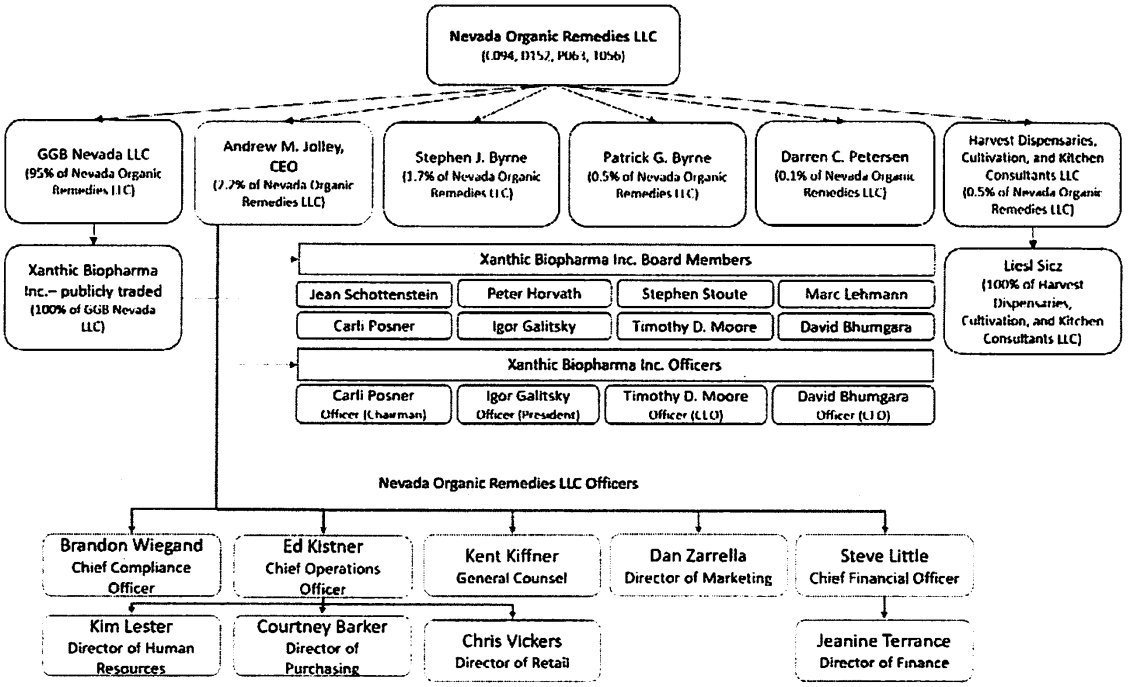
the+source

5.2.10.1

ORGANIZATIONAL CHARTS

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

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



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

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

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

Exhibit A: Organizational Chart and Ownership Structure

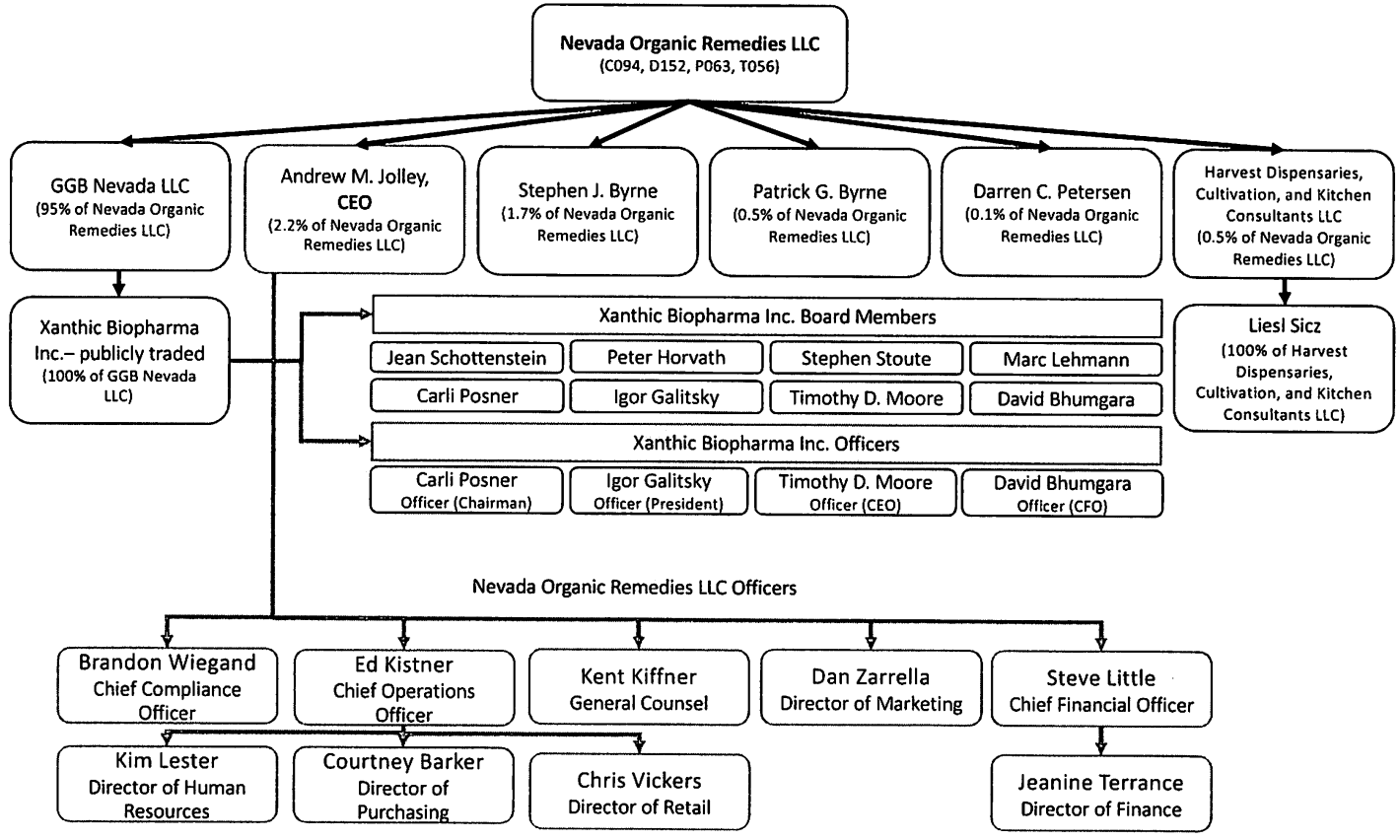
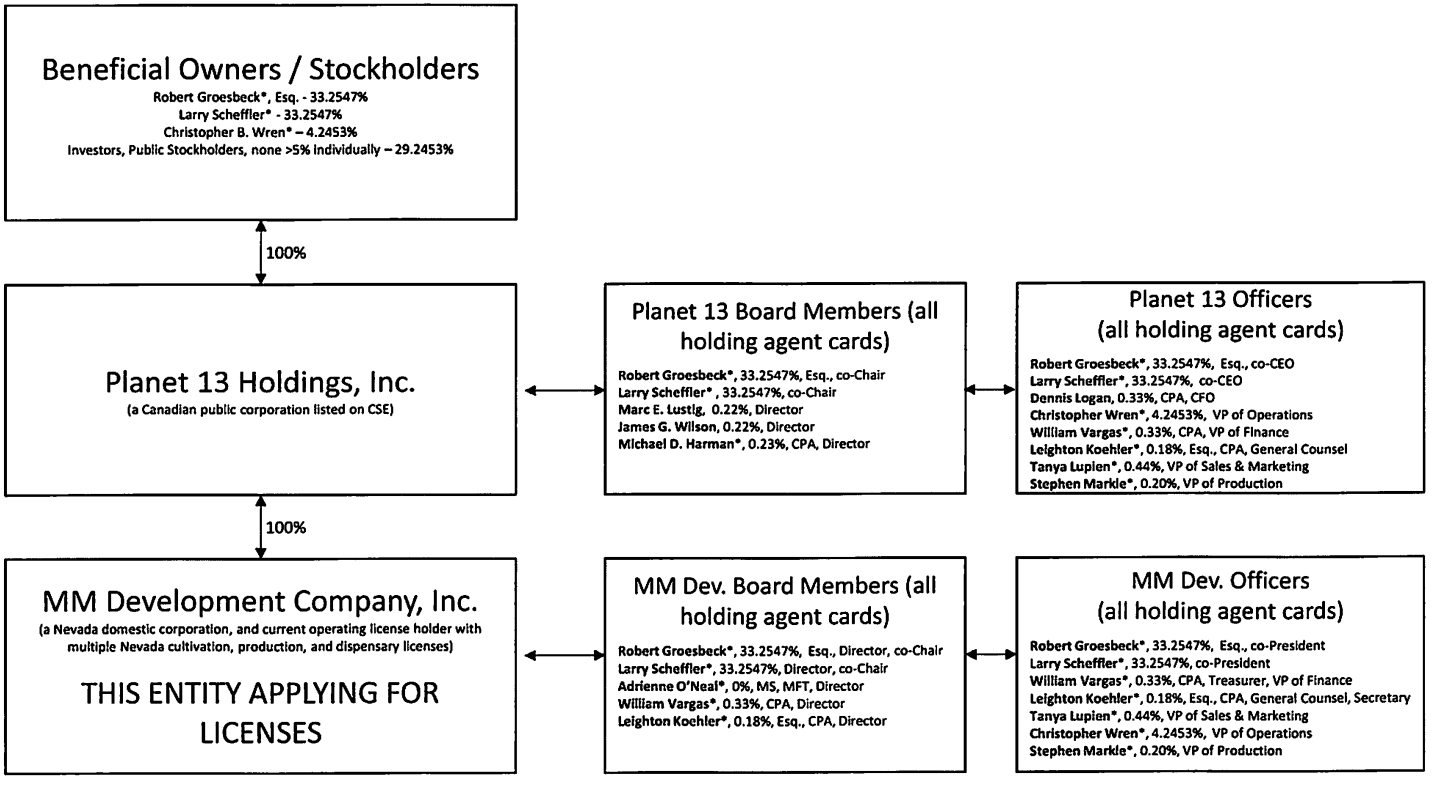


EXHIBIT C

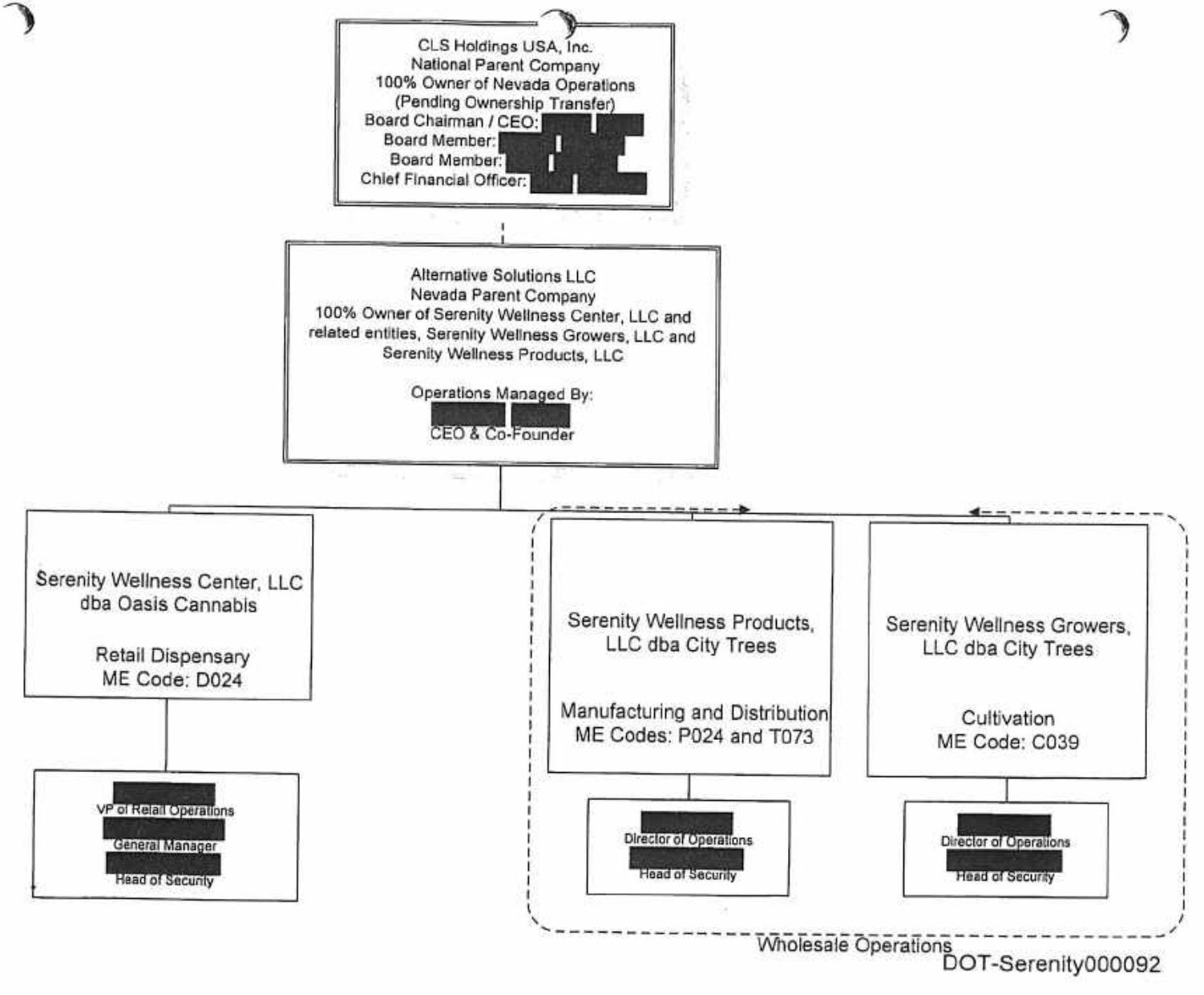
EXHIBIT C



Note: * is inserted to designate Nevada residents

EXHIBIT D

EXHIBIT D



DOT-Serenity000092

EXHIBIT E

EXHIBIT E

5.2.3 Tab III - Applicant Information Sheet

OASIS CANNABIS DISPENSARY

Serenity Wellness Center LLC
DBA Oasis Cannabis
1800 Industrial Road, Suite 180
Las Vegas, NV 89102
702-[redacted]

September 13, 2018

Nevada Department of Taxation
555 E Washington Avenue #1300
Las Vegas, NV 89101

Re: Pending Ownership Transfer During Retail Store Application Period

Dear Madam or Sir:

CLS Holdings USA, Inc., a publicly traded company listed as CLSH on the OTCQB exchange, recently acquired 100% of the membership interests in Serenity Wellness Center, LLC DBA Oasis Cannabis. The ownership transfer request has been submitted to the Department of Taxation in accordance with applicable laws and procedures, but it was still pending review when this application was submitted. Please note that the application was submitted as if the pending transfer had already been approved, in expectation that the transfer will be completed prior to or at the time of the final scoring and ranking of retail store applications.

All the former owners and founders of Oasis Cannabis are now stockholders in CLSH, and together they own about 29% of the outstanding shares of the public company. We have included information from a few significant stockholders that were part of the previous ownership group. The stockholders who were included are [redacted] and [redacted] The remaining owner information contained in this application relates to officers and board members.

CLSH retained me, [redacted] the CEO and Co-Founder of Oasis Cannabis, when they appointed me as the CEO of their newly acquired Nevada operations. I will serve in the same capacity as the primary operator in Nevada, overseeing all aspects of the dispensary, cultivation, and production operations. CLSH also retained the team of 60+ employees and managers that currently work for the organization.

Respectfully,

[redacted]

CEO / Co-Founder
Oasis Cannabis

EXHIBIT C

EXHIBIT C

REGISTER OF ACTIONS

CASE NO. A-19-786962-B

Serenity Wellness Center LLC, Plaintiff(s) vs. State of Nevada Department of Taxation, Defendant(s)

Case Type:	**Other Business Court Matters**
Date Filed:	**01/04/2019**
Location:	**Department 11**
Cross-Reference Case Number:	**A786962**
Supreme Court No.:	**79668**

PARTY INFORMATION

		Lead Attorneys
Counter	**Cheyenne Medical, LLC**	**Dennis M Prince**
Counter	**Commerce Park Medical, LLC**	**Dennis M Prince**
Counter	**CPCM Holdings, LLC**	**Dennis M Prince**
Counter	**Essence Henderson, LLC**	**Dennis M Prince**
Counter	**Essence Tropicana, LLC**	**Dennis M Prince**
Counter	**Integral Associates, LLC**	**Dennis M Prince**
Counter	**Fidelis Holdings, LLC**	**Dominic P. Gentile**
Counter	**GBS Nevada Partners, LLC**	**Dominic P. Gentile**
Counter	**Gravitas Nevada, LLC**	**Dominic P. Gentile**
Counter	**Medifarm, LLC**	**Dominic P. Gentile**
Counter	**Nevada Holistic Medicine, LLC**	**Dominic P. Gentile**
Counter	**Nevada Pure, LLC**	**Dominic P. Gentile**
Counter	**Nuleaf Incline Dispensary, LLC**	**Dominic P. Gentile**
Counter	**Paradise Wellness Center, LLC**	**Dominic P. Gentile**
Counter	**Serenity Wellness Center LLC**	**Dominic P. Gentile**
Counter	**TGIG, LLC**	**Dominic P. Gentile**
Counter	**Tryke Companies Reno, LLC**	**Dominic P. Gentile**
Counter	**Tryke Companies SO NV, LLC**	**Dominic P. Gentile**
Defendant		

	State of Nevada Department of Taxation	Robert E. Werbicky *Retained*
Intervenor	Cheyenne Medical, LLC	Dennis M Prince
Intervenor	Clear River, LLC	J. Rusty Graf
Intervenor	Commerce Park Medical, LLC	Dennis M Prince
Intervenor	CPCM Holdings, LLC	Dennis M Prince
Intervenor	Essence Henderson, LLC	Dennis M Prince
Intervenor	Essence Tropicana, LLC	Dennis M Prince
Intervenor	GreenMart of Nevada NLV LLC	Margaret A. McLetchie
Intervenor	Helping Hands Wellness Center Inc	Jared B Kahn
Intervenor	Integral Associates, LLC	Dennis M Prince
Intervenor	Lone Mountain Partners, LLC	Eric D. Hone
Other	Compassionate Team of Las Vegas LLC	Daniel S. Simon, ESQ *Retained*
Other	Greenmart of Nevada NLV LLC's	Margaret A. McLetchie
Other	LivFree Wellness, LLC	Nathanael R. Rulis, ESQ
Other	MM Development Company, Inc.	Nathanael R. Rulis, ESQ
Other	MM Development Company, Inc.	Nathanael R. Rulis, ESQ
Other	Nevada Organic Remedies LLC	David Koch
Plaintiff	Fidelis Holdings, LLC	Dominic P. Gentile
Plaintiff	GBS Nevada Partners, LLC	Dominic P. Gentile
Plaintiff	Gravitas Nevada, LLC	Dominic P. Gentile
Plaintiff	Medifarm IV LLC	
Plaintiff	Medifarm, LLC	Dominic P. Gentile
Plaintiff	Nevada Holistic Medicine, LLC	Dominic P. Gentile
Plaintiff	Nevada Pure, LLC	

		Dominic P. Gentile *Retained*
Plaintiff	**Nuleaf Incline Dispensary, LLC**	**Dominic P. Gentile**
Plaintiff	**Serenity Wellness Center LLC**	**Dominic P. Gentile**
Plaintiff	**TGIG, LLC**	**Dominic P. Gentile**
Plaintiff	**Tryke Companies Reno, LLC**	**Dominic P. Gentile**
Plaintiff	**Tryke Companies SO NV, LLC**	**Dominic P. Gentile**
Subpoena'd	**Connor, Amanda N**	**Derek Connor**
Subpoena'd	**Cronkite, Kara**	
Subpoena'd	**Gilbert, Steve**	
Subpoena'd	**Hernandez, Damon**	

EVENTS & ORDERS OF THE COURT

08/29/2019 **All Pending Motions** (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)

Minutes

08/29/2019 9:00 AM

- PLAINTIFF NEVADA WELLNESS CENTER'S MOTION REGARDING COMPLIANCE WITH PHYSICAL ADDRESS REQUIREMENTS OF NRS 453D.210(5)(B), NAC 453D265(1)(B), AND NAC 453D.268(2)(E)...OBJECTIONS TO STATE OF NEVADA DEPARTMENT OF TAXATION'S RESPONSE TO COURT'S QUESTION ON NRS 453D.200(6) APPEARANCES CONTINUED: Attorney William Kemp and Attorney Nathanael Rulis for the Plaintiffs in A-18-785818-W - MM Development Company, Inc. vs. State of Nevada, Department of Taxation (Department VIII case); Attorney Adam Bult and Attorney Maximilien Fetaz for the Plaintiffs in A-19-787004-B - ETW Management Group LLC vs. Nevada Dept of Taxation (Department XI case); Attorney Theodore Parker for the Plaintiff in A-19-787540-W - Nevada Wellness Center, LLC vs. State of Nevada, Department of Taxation (Department XVIII case). Ms. Shell participated by telephone. Court advised that after it released its Findings of Fact and Conclusions of Law a copy was sent to each of the judges that are not in business court, notifying the judges that this Court has completed the hearing on the preliminary injunction and that they are to handle the remainder of their cases; the Court has not heard from any of them. Court further inquired as to whether there would be any objection to advancing Lone Mountain's Motion to Strike, which was set for August 30th. Mr. Kemp stated they would like to file an Opposition. Mr. Gentile advised he did not file a written joinder to Mr. Parker's motion that is on today's calendar, so for the record they join. COURT FURTHER NOTED it will address the BOND issue today. Following arguments by counsel, COURT ORDERED as follows: PLAINTIFF NEVADA WELLNESS CENTER'S MOTION REGARDING COMPLIANCE WITH PHYSICAL ADDRESS REQUIREMENTS OF NRS 453D.210(5)(B), NAC 453D265(1)(B), AND NAC 453D.268(2)(E): Everyone who participated in

the hearing process recognizes that the process used by the Nevada Department of Taxation was flawed; it was adversely impacted by changing the physical address location midstream in the application distribution process; given the Nevada Supreme Court's Decision in the NuLeaf case, the Court DENIES the motion. OBJECTIONS TO STATE OF NEVADA DEPARTMENT OF TAXATION'S RESPONSE TO COURT'S QUESTION ON NRS 453D.200(6): The question the Court asked the Department of Taxation at the conclusion of arguments was made based on a suggestion by one of the Defendants in Intervention that a narrower scope for injunctive relief might be appropriate. The question the Court asked was which successful applicants completed the application in compliance with NRS 453D.200(6) at the time the application was filed in September 2018. Because the Court did not have unredacted versions of the applications for all applicants, it was impossible and it remains impossible for the Court to make a determination, which is why the Court has asked the State to make that determination since that is within their records. The standard on injunctive relief is different from the standard that the parties will face at trial or at summary judgment if this matter should proceed, and based on the limited information that was provided to the parties through disclosures as part of the injunctive relief hearing, there was a hearing based on what the Court would characterize as extremely limited information, the Court is NOT GRANTING any affirmative relief to Clear River as requested, because that was not the purpose of this hearing. The Court previously made the determination that it would exclude applicants who properly completed the applications in accordance with NRS 453D.200(6) at the time the application was filed in September 2018. The applicants who fit into that category based upon the State's email to the Court are those in the first and second tier as identified by the State. While the Court understands the argument of some of the parties that certain other information was available that may not be within the scope of the Court's question, the Court's question was limited for a reason. Those in the third category will be subject to injunctive relief which is described in page 24 of the Findings of Fact and Conclusions of Law; those in the first and second category will be excluded from that relief. Any request for modifications by the State based on the State's review of the applications that were submitted by the applicant during the application period will be submitted by motion by the State, and all of the parties will have opportunities to submit briefs and argument that they think are appropriate. The Court is not precluding the State from making any other determinations in this very flawed process. The State will determine how to handle any corrections to this process. Any issues should be directed to the Department based on information that was in the applications at the time. The Court is not going to do the goose gander analysis urged upon the Court by one of the parties under the Whitehead decision. BOND: Mr. Kemp advised the Court of the availability of Mr. Gentile's expert. Court noted it has received no briefing on the bond. Arguments by Mr. Kahn, Mr. Koch, Mr. Hone, Mr. Prince, Mr. Gentile, and Mr. Kemp. COURT ORDERED, while it appreciates comments from all counsel related to the amount of the bond, the risks of businesses actually opening prior to trial in this matter as well as the risks of any business that is a start-up or new location make it difficult for the Court to place a value on the income stream of any of those entities, which is what the bond needs to be based on, as losses suffered as a result of injunctive relief. For that reason, the Court SETS a fair BOND of $5 million TO BE POSTED in ten (10) days. Mr. Koch argued the $5 million should be posted in each of the cases. COURT ORDERED it is only being posted in the business court cases, collectively. This does not include the amount previously posted. 9-9-19 9:00 AM MANDATORY RULE 16 CONFERENCE CLERK'S NOTE: Following this proceeding, Lone Mountain Partners, LLC's Motion to Strike MM Development Company, Inc. and Livfree Wellness, LLC's Objection to State's Response Regarding Compliance with NRS 453D.200(6) on Order Shortening Time, originally set for Friday, August 30th VACATED per counsel's request.

Parties Present
Return to Register of Actions

EXHIBIT D

EXHIBIT D

David R. Koch (NV Bar #8830)
Steven B. Scow (NV Bar #9906)
Brody R. Wight (NV Bar #13615)
Daniel G. Scow (NV Bar #14614)
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, Nevada 89052
Telephone: 702.318.5040
Facsimile: 702.318.5039
dkoch@kochscow.com
sscow@kochscow.com
Attorneys for Intervenor
Nevada Organic Remedies, LLC

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF TAXATION;

Defendant

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor

Case No. A-19-786962-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;

(4) *Nevada Wellness Center v. State of Nevada, Department of Taxation*, Case No. A-19-787540-W.

KOCH & SCOW, LLC

By: /s/ David R. Koch
David R. Koch
Attorneys for Defendant-Intervenor
Nevada Organic Remedies LLC

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:

[X] 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;

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[ ] Pursuant to EDCR 7.26, to be sent via facsimile; and/or

[ ] hand-delivered to the attorney(s) listed below at the address indicated below;

[ ] to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s); and or:

[ ] by electronic mailing to:

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Executed on September 19, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh

SUPP
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Attorneys for Plaintiff

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 ENTITIES I through X,

Plaintiffs,

v.

THE STATE OF NEVADA, DEPARTMENT OF TAXATION,
Defendant.

Defendants.

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

DATE OF HEARING: October 28, 2019
TIME OF HEARING: 9:00 am

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

NEVADA WELLNESS CENTER, LLC, a Nevada Limited Liability Company, Plaintiff, 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
MM DEVELOPMENT COMPANY, INC., a Nevada corporation; LIVFREE WELLNESS LLC, dba The Dispensary, a Nevada limited liability company, Plaintiffs, v. STATE OF NEVADA, DEPARTMENT OF TAXATION; and DOES 1 through 10; and ROE CORPORATIONS 1 through 10. Defendants	CASE NO.: A-18-785818-W DEPT. NO.: VIII
ETW MANAGEMENT GROUP LLC, a Nevada limited liability company; GLOBAL HARMONY LLC, a Nevada limited liability company; GREEN LEAF FARMS HOLDINGS LLC, a Nevada limited liability company; 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; 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 I through 20, inclusive, Defendants.	CASE NO.: A-19-787004-B DEPT. NO.:

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

COMES NOW, Plaintiff, NEVADA WELLNESS CENTER, LLC (hereinafter "NWC"), by and through its attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER, NELSON & ASSOCIATES, CHTD., and files this Supplement in Support of Motion to Amend the Findings of Facts and Conclusions of Law issued August 23, 2019, pursuant to NRCP 52 which was originally timely filed September 13, 2019, and heard on October 28, 2019. The following was used in support of the motion:

Exhibit 1- State of Nevada Department of Taxation -Meeting October 9, 2019;

Exhibit 2- State of Nevada Department of Taxation -Public Meeting Notes;

Exhibit 3- Nevada Supreme Court Case 69909 Appellant's Opening Brief Dated September 15, 2016;

Exhibit 4- Nevada Supreme Court Case 69909 State Respondent's Answering Brief Dated October 13, 2016;

Exhibit 5- Nevada Supreme Court Case 69909 Appellant's Reply Brief Dated January 4, 2017; and

Exhibit 6- Nevada Supreme Court Case 69909 Opinion Dated March 29, 2018.

DATED this 28th day of October, 2019.

PARKER, NELSON & ASSOCIATES, CHTD.

/s/ Theodore Parker, III, Esq.

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

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of the law office of PARKER, NELSON & ASSOCIATES, CHTD., and that on this 30th day of October, 2019, I served a true and correct copy of the foregoing **SUPPLEMENT IN SUPPORT OF NEVADA WELLNESS CENTER, LLC, REPLY IN SUPPORT OF MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52** on the party(s) set forth below by:

☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.

☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, by faxing a true and correct copy of the same to each party addressed as follows:

☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.

■ By EFC: by electronic filing with the Court delivering the document(s) listed above via E-file & E-serve (Odyssey) filing system in all related cases A-19-786962-B, A-18-785818-W; A-19-787004-B; A-19-787540-W, A-18-786357-W; and A-19-787726-C.

An employee of PARKER, NELSON & ASSOCIATES, CHTD.

EXHIBIT 1

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State Board of Equalization

Mining Oversight and Accountability Commission

Appraiser Certification Board

Committee on Local Government Finance

NEVADA TAX COMMISSION

The Nevada Tax Commission

Contact Us

Nevada Tax Commission
775-684-2098

Established by Nevada Revised Statute 360.010, the Nevada Tax Commission is the head of the Department of Taxation. It consists of eight citizens appointed by the Governor. In addition, the Governor is an ex-officio non-voting member. Each commissioner will serve an initial four-year term, and can serve more than one term. The commission is designed to be a group of business people with various professional backgrounds, who will supervise the overall administration and operations of the Department of Taxation.

The Commission adopts regulation (Nevada Administrative Code), enforcement and audit policy, and approves forms and procedures of the Department. The commission hears taxpayer appeals of hearing decisions, and, under statutory authority, makes decisions to ensure that the application of taxes is done consistently among taxpayers and among various taxes.

The Nevada Tax Commission meets multiple times a year to hear appeals, review and hold public hearings on regulations and pursue other such actions as are necessary for the operation of the Department of Taxation.

Meeting Date: October 7, 2019

October 7, 2019

9:00 a.m.

Meeting Locations:

Nevada Legislative Building

401 S. Carson Street, Room 2135

Carson City, NV 89701

Video Conference

Legislative Counsel Bureau

Grant Sawyer State Office Building

555 E. Washington Ave., Room 4412

Las Vegas, NV 89101

Meeting Agenda, Exhibits and Packet

- Meeting Agenda, Exhibits and Packet

Appeal Form

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Members

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FAQ's

EXHIBIT 2

Marijuana in Nevada

STAY INFORMED

PUBLIC MEETING NOTICES

As the Department develops, adopts, and revises regulations for marijuana in Nevada, notices of all public meetings will be posted on this page. Interested parties can attend these meetings and offer public comment, or submit written public comment to the Department.

Email written public comment

Governor's Advisory Panel for the Creation of a Cannabis Compliance Board

- April 4, 2019 at 10:00 a.m. - Meeting of Working Group for Tribal Marijuana
- March 29, 2019 at 3:30 p.m. - Meeting of Working Group for Consumption Alternatives
- March 15, 2019 at 10:00 a.m. - Meeting of the Advisory Panel
- March 1, 2019 at 9:00 a.m. - Meeting of the Advisory Panel
- February 15 at 9:00 a.m. - Meeting of the Advisory Panel

Adult-Use Permanent Marijuana Regulation Adoption Hearing

- Notice of Intent for Adoption of Regulation - January 16, 2018
  - Revised Proposed Adult-Use Marijuana Regulation - LCB File No. R092-17 (01/10/18)
  - Proposed Adult-Use Marijuana Regulation - LCB File No. R092-17 (12/13/17)
  - Public Comment - Nevada Press Association
  - Public Comment - BG Sciences
  - Public Comment - Peel Brimely
  - Public Comment - Nevada League of Cities and Municipalities
  - Public Comment - Eaze
  - Public Comment - Green Leaf Farms
  - Small Business Impact Statement

Public Meeting for Marijuana Distribution

- August 10 at 1:00 p.m. - Proceeding for sufficiency determination

Adult-Use Marijuana Permanent Regulation Workshops

The Department is in the process of having permanent regulations adopted to govern the retail marijuana program. Public workshops were held on each topic area of the regulations, as indicated below.

- July 24 at 10:00 a.m. - Application and licensing requirements & education and training
- July 24 at 1:30 p.m. - Civil Penalties, Security, Disposal, Taxes
- July 25 at 10:00 a.m. - Distribution, delivery, and storage
- July 25 at 1:30 p.m. - Retail stores
- July 26 - Cultivation facilities
- July 26 - Testing facilities
- July 27 - Product manufacturing facilities
- July 27 - Packaging and labeling & Signage, marketing, and advertising

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Do you have a question or a resource you'd like us to share? Send us an email:

marijuana@tax.state.nv.us

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Education Information Officer

Kyril Plaskon
(775) 684-2487
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EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 69909
District Court Case No. A-14-710597-C

NULEAF CLV DISPENSARY, LLC, A NEVADA LIMITED LIABILITY COMPANY

Appellant,

v.

THE STATE OF NEVADA DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH; ACRES MEDICAL, LLC; AND GB SCIENCES, LLC, A NEVADA LIMITED LIABILITY COMPANY,

Respondents.

APPELLANT'S OPENING BRIEF

Appeal from the Eighth Judicial District Court, Clark County
The Honorable Eric Johnson, Department XX
District Court Case No. A-14-710597-C

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Attorneys for Appellant

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that judges of this Court may evaluate possible disqualification or recusal.

Appellant, Nuleaf CLV Dispensary, LLC, is a Nevada limited liability company which is neither owned nor affiliated with any publicly traded corporation. The law firm whose partners or associates have or are expected to appear for Nuleaf CLV Dispensary, LLC are PISANELLI BICE PLLC.

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JURISDICTIONAL STATEMENT

Appellant Nuleaf CLV Dispensary LLC ("Nuleaf") appeals the December 14, 2015 order, partly granting Respondent GB Sciences ("GB") Nevada's Motion for Summary Judgment and denying Appellant's Countermotion for Summary Judgment. (App. Vol. III, APP00487-99.) The Notice of Entry of this Order occurred on December 15, 2015. (*Id.*) This Order constitutes a final judgment as to the claims asserted by GB against Nuleaf, and became appealable as a result of the Order Granting Intervenor Acres Medical, LLC's ("Acres") Motion to Dismiss GB Sciences Nevada, LLC's Counterclaims against Acres signed on February 29, 2016. (App. Vol. III, APP00517-23.) This Court has jurisdiction in accordance with NRAP 3A(b)(1).

ROUTING STATEMENT

This case is presumptively retained by the Supreme Court, NRAP 17. This matter qualifies under NRAP 17(a)(8) because it stems from conflicting interpretations of NRS Chapter 453A. Additionally, this matter raises, as its principal issue, a question of first impression involving Nevada law under NRAP 17(a)(13). The licensing of marijuana dispensaries is a matter of public importance under NRAP 17(a)(14). Finally, the matter is not one that would be presumptively assigned to the Court of Appeals under NRAP 17(b).

ISSUES PRESENTED FOR REVIEW

1. Substituted Judgment: The Nevada Legislature passed comprehensive legislation, NRS Chapter 453A, for the control and distribution of medical marijuana, including strict licensing requirements and limiting the number of available licenses. The Legislature vested the implementation of that new statutory scheme and resolving its sometimes competing policy goals with the Department of Health and Human Services ("Division"). Based on a comprehensive scoring system, the Division awarded one of the highly coveted licenses to Nuleaf, ranking it as one of the most eligible for licensure. The District Court stripped Nuleaf of its provisional license, asserting that it had failed to satisfy all local land-use and building criteria, something which no applicant had nor could have done during the application process. Did the District Court err in substituting its judgment for that of the Division in how to best resolve the Legislature's competing policy objectives in the regulation of a federally controlled substance?

2. Improper Remedy: Not only did the District Court substitute its judgment for that of the Division as well as conflicting with another Court's upholding of the Division's balancing, it then decided to revoke the provisional license of Nuleaf and ordered the Division to award that license outside of the permitted statutory window to an alternative, lower ranked applicant that had

intervened in the action on that same day. Did the District Court err in directing to whom the Division must issue a first-time license?

I. SUMMARY OF THE ARGUMENT

Nevada's voters have decided that the use of medical marijuana is appropriate and important. Despite the fact that the voters had approved an amendment to the Nevada Constitution in 2000 to allow for the use of medical marijuana for those in need, it was not until 2013 that the Nevada Legislature adopted implementing legislation, SB 374, which established a comprehensive regulatory scheme. In amending NRS 453A, the Legislature vested the Division the authority interpret the statute and implement this first-time program.

After adopting comprehensive regulations, the Division established an extensive application process, enlisted outside experts to score those applications, to best achieve the Legislature's goals. One of the highest ranked applicants was Nuleaf, to which the Division awarded a provisional certificate. Like all other certificates, it had issued throughout the State, the Division's certificate to Nuleaf was provisional because it still needed to build its facility and obtain all local licensing approvals. The Division had recognized that despite efforts by local governments to preempt the State's comprehensive licensing process, no applicant could obtain all required local government approvals prior to the State's

determination of who is best qualified to administer a drug that is still technically banned under federal law.

Unlike the Division and a fellow district court, this District Court concluded that it was best suited to determine who should be permitted to even apply. To do so, it selectively interpreted certain words of the statute – to the express exclusion of other language in the very same section – to claim that local government bodies could dictate who could even apply during the State-controlled process.

The District Court usurped the Division's role and authority when it ordered the Division to revoke the registration certificate granted to Nuleaf and instead award that certificate to last-minute intervenor Acres. The District Court's order is contrary to case law, and provided an unprecedented remedy.

II. STATEMENT OF FACTS AND PROCEEDINGS BELOW

A. Nevada Enacts Legislation to Allow for the Production, Cultivation, and Distribution of Medical Marijuana.

In 1998 and 2000, the voters of Nevada approved a constitutional amendment allowing the use of marijuana for medical purposes, and directed the Legislature provide the necessary statutory scheme to allow patients to have medical access to marijuana. NEV. CONST. art. IV, §38. But, the Legislature did not do so until 2013. Then, though SB 374, the legislature amended NRS 453A to provide a structure for the commercial medical marijuana program.

As a first-time program for Nevada, one that seeks to control the usage of a drug still prohibited by federal law, the Legislature's enactment contained a number of broad policy goals, several of which required balancing. Accordingly, the Legislature expressly provided the Division with responsibility to "adopt such regulations as it determines to be necessary or advisable to carry out the provisions of NRS 453A.320 to 453A.370, inclusive," as well as to "[a]ddress such other matters as may assist in the implementing the program of dispensation contemplated by NRS 453A.320 to 453A.370, inclusive." NRS 453A.370.

Pursuant to that authority, the Division adopted voluminous regulations which are codified at Nevada Administrative Code Chapter 453A. Those regulations span everything from registration, application, production, distribution, packaging, labeling, as well as cultivation and testing. But at the same time that the Legislature called for comprehensive regulation oversight, it also put the Division on narrow time tables for the initial ramp-up, including the application process, in what would prove to be one of many competing policy objectives.

To begin, the Legislature provided that there would be only one 10-day business window in which to accept applications in any given calendar year. NRS 453A.324(4). Thereafter, any unallocated licenses would have to await an additional year in which to be available for future applications. At the same time,

the Legislature mandated that the Division must approve or reject any application "not later than 90 days after receiving an application . . . ." NRS 453A.322(3).

Because of the highly regulated nature of marijuana, the Legislature also established strict limitations on the number of available licenses depending upon county population. NRS 453A.324. The Legislature also established restrictions on who could be the owners and operators of a medical marijuana establishment: Owners, officers, and board members of the medical marijuana establishments must be 21 years of age, never have been convicted of a felony, or had a registration certificate revoked. NRS 453A.322(3)(b)-(d). In order to receive a registration certificate, an applicant was required to submit an application to the Division and pay the application fee. NRS 453A.322. Just to apply, an applicant for a certificate is required to pay a "one-time, nonrefundable application fee of $5,000" along with any actual costs incurred by the Division while processing the application. NRS 453A.344(2).

The application for the medical marijuana establishment registration certificate, released by the Division on May 30, 2014, was a daunting 45 pages long and requested extensive, specific information about the applicants' plans for the establishment. (App. Vol. II, APP00256-300.) Applicants had just over two months to complete the application before the ten day acceptance window which occurred from August 5-18, 2014. (*Id.* at APP00256.) The application required

documentation of the applicant's financial capabilities (*Id.* at APP00268), information about the organizational structure (*Id.* at APP00268-69), specifics of the location and the proposed establishment's likely impact on the community (*Id.* at APP272-73), and documentation to show that the proposed establishment has a plan for the care, quality, and safekeeping of the medical marijuana (*Id.* at APP00277). In total, the Division and its experts created a comprehensive, specific application process to comply with the Legislature's directives.

Although not exclusive as to the ability of local jurisdictions to determine the location of any particular medical marijuana facility, the Legislature still set forth certain minimum requirements. For example, the building must be in a separate building or facility, "comply with local ordinances and rules pertaining to zoning, land use and signage", as well as have an appearance consistent with that of traditional pharmacies. NRS 453A.350(1). Medical marijuana establishments are required to have electronic verification systems to monitor and report relevant information to the Division (NRS 453A.354), as well as an inventory control system to monitor the inventory the medical marijuana establishment has in its control. NRS 453A.356. NRS 453A.362 sets forth requirements for the storage and removal of medical marijuana.

B. Certain Local Jurisdictions Attempt to Control the Division's Selection Process.

Again, per statute, the Legislature limited the number of available licenses. For all of Clark County this equated to only 40 available licenses. NRS 453A.324. To ensure as wide a distribution as possible, the available licenses were then allocated along the geographic lines of each local government within a county. For instance, within the boundaries of the City of Las Vegas, the maximum number of dispensaries could be 12. (App. Vol. II, APP00349-50.) Of course, just as it had for other highly regulated business – for example, gaming – the Legislature had set out a minimum criteria but did not preempt local regulation of subjects that are typically considered local, like ordinary land-use, building codes, or business license requirements. That is why, not coincidentally, the Legislature expressly provides that the Division's initial certificates to the winning applicants would be "provisional" and that the provisional certificate holder would then have up to 18 months to be "in compliance with all applicable local government ordinances or rules." NRS 453A.326(3).

However, tension between the Division and certain local governments began to develop over the latter's attempt to direct the Division's application process. These attempts, which took various forms, would later generate several lawsuits. The genesis for the attempt by certain local governments to upend the application process – those that thought they would fare better in a selection process governed

by local politics rather than the State's blind system of independent experts – stem from a selective reading of one provision in NRS 453A.322 to the exclusion of the rest of the statute.

Specifically, NRS 453A.322(3)(a)(5), states that the Division shall register the medical marijuana establishment that successfully applies "no later than 90 days after receiving an application" if:

> (5) If the city, town or county in which the proposed medical marijuana establishment will be located has enacted zoning restrictions, proof of licensure with the applicable local government 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.

(emphasis added).

Of course, as the Division ultimately recognized, no applicant can literally comply with these provisions at the time of application and before issuance of a certificate, and none did. After all, because these were first time applications, the applicants did not have completed structures – since the criteria was still being established – satisfying all local land use and building requirements. Unremarkably, the Division recognized – as other provisions of the statute provided – that those local requirements would follow after the State selection process was completed. (App. Vol. II, APP00402-03.)

1. The County Process.

However, that did not stop certain applicants or local governments from attempting to reverse the process. One of the early and most noted examples was the Clark County Commission. As the State was establishing and implementing its selection process, Clark County adopted Clark County Code § 30.16.070, an ordinance purportedly to implement NRS 453A.322(3)(a)(5). Then, Clark County established an application process for certain preferred applicants to obtain special use permits (*i.e.* land use approvals) for their proposed medical marijuana facilities. Of course, neither the County's new ordinance nor its special use permit process addressed any of the County's "applicable building requirements" let alone "all" of them as stated in NRS 453A.322(3)(a)(5).

But, the County nonetheless sought to influence who the Division might approve as authorized medical marijuana providers. It approved a number of special use permits – in exactly the same number as available permits – apparently thinking that it might pigeon hole the Division. (App. Vol. II, APP00401-02.) However, even the County recognized that it might not be effective. (*Id.*) Accordingly, the County held in abeyance all other applicants for special use permits, recognizing that the Division had the ultimate say over who was authorized to receive a provisional certificate. (*Id.*) Accordingly, the County

announced that it would later readdress any land use applications from those held in abeyance if they were selected for a certificate by the Division.

2. The City Process.

But the City of Las Vegas went further. It adopted an ordinance and then proceeded to not only process special use permit applications – but again not addressing any, let alone all "applicable building requirements" – but then denied certain applications that it did not prefer. Indeed, the City's process was transparent in its attempt to usurp the Division's vetting of the most qualified applicants. The Division's 90-day window to rank the applicants expired on November 3, 2014. Thus, by that day, the Division was required to issue all provisional certificates to the most qualified applicants.

However, Las Vegas City Council only held its public meeting on all open special use permits on October 28 and 29, 2014, just days before the Division announced its rankings. (App. Vol. II, APP00316.) Again, at its public meeting, the City approved certain special use permits and denied others. The next day, October 30, 2014, as the Division's process was to be announced one business day later, the City sent a letter ostensively under NRS 453A.322(3)(a) – identifying the special use permits it had already granted and informing the Division State that others had been denied. (*Id.*) Nuleaf was among those that the City had denied.[1]

[1] But of course, this denial had only just occurred, and the time period for

The Division acknowledges that it received the City's last-minute submittal but did not consider it or adjust its findings. (*Id.* at APP00351.) On the next business day, November 3, the Division announced its rankings and issued the provisional certificates, including to Nuleaf and Desert Aire, LLC, another entity which had not received a special use permit from the City. (*Id.* at APP00332-37.)

As the Division had previously announced, it went about creating a system to rank the applications on the merits of the Legislature's criteria: "The Division objectively scored and ranked the MME applications for each jurisdiction. The Division's process focused on public health and public safety as it relates to the use of marijuana for medical purposes, per Nevada Revised Statutes (NRS) Chapter 453A." (*Id.* at APP00411-12.)

Of all the applicants for a location within the City of Las Vegas' borders, Nuleaf received a score of 189.71, and was ranked third overall. (*Id.* at APP00332.) Thus, the Division awarded Nuleaf a certificate and informed Nuleaf that it is a provisional certificate under NRS 453A.326 "until the establishment is in compliance with all applicable local governmental requirements, and has received a state business license to operate the establishment." (App. Vol. I, APP00069-70.) The Division further notified Nuleaf that it had the authority to

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reconsideration had not run nor had the time period for potential judicial review of the City's process. After all, the City was supposed to be making land use decisions but was engaged in a political vetting process of its preferred applicants. Thus, any such denial was still subject to further proceedings.

revoke the provision registration certification under NAC 453A.324 if Nuleaf did not satisfy those requirements and become fully operational within 18 months. *Id.*

Meanwhile, GB received a score of only 166.86, and was ranked 13th in the City jurisdiction and 82nd out of the applications received. (App. Vol. II, APP00329-30.) Despite the City of Las Vegas' approval of the location of the establishment, the Division, the entity charged with evaluating the safety of the establishments, determined GB's proposal failed in comparison to most others.

A similar outcome occurred with respect to the applicants for locations in unincorporated Clark County. There, Nuleaf's affiliate, Nuleaf Clark Dispensary, LLC, was selected and awarded a provisional license and GB was again lowly ranked and not awarded a provisional certificate by the Division. (*Id.* at APP00333-34.)

C. GB files suit and is Unsuccessful in Obtaining Injunctive Relief.

Because it was unsuccessful in satisfying the State criteria in either Clark County or the City of Las Vegas – despite that it successfully navigated the local land use process in both – GB filed litigation. GB's first action concerned its unsuccessful application for a certificate in unincorporated Clark County. (*Id.* at APP00399-404.) In that case, GB and other unsuccessful applicants claimed that the Division had violated NRS 453A.322(3)(a)(5) by accepting applications from anyone that had not already received a land use approval from a local governing

body, like Clark County. (*Id.*) GB asserted that the County could preempt the State process through this statute and dictate who could even apply for a provisional certificate. (*Id.*) In that action, GB sought, among other things, extraordinary writ relief against the Division seeking to compel it to rescind the provisional certificates granted to anyone that had not received local land use approvals in advance.[2] The District Court in that case, the Honorable Kathleen Delaney, denied GB's motion for preliminary injunction, recognizing that the Division had the authority and the policy and time objectives set forth by the Legislature. (*Id.*)

Specifically, Judge Delaney noted that the Legislature did not intend to have local land use decisions override the State's careful selection process for medical marijuana through GB's proposed interpretation of NRS 453A.322(3)(a)(5). (*Id.* at APP00402.) Indeed, if GB's interpretation of that statute were valid, then its own application failed, because Clark County had only issued GB a special use permit. The County had in no way made any determination that GB or anyone else satisfies "all applicable building requirements" as that same statute discusses. (*Id.*) The Court recognized that certificates are provisional until such time as the successful applicants satisfy all local land use, building and business license requirements.

[2] Notably, as discussed below, when GB sued the Division and Nulcaf in the action, it failed to assert or seek writ relief.

Judge Delaney thus concluded that GB had no likelihood of success on the merits and had failed to show any irreparable harm. She rejected any attempts by a local body, like Clark County, to use the land use process to override the important public safety concerns that the Legislature had outlined for the Division to consider in its ranking process. (*Id.*) Thus, if one of the successful provisional certificate holders could not obtain their required local approvals within the statutory 18 month window, then the Division could cancel that certificate and reissue it in the next permissible licensing window.

Undeterred, GB later filed a similar lawsuit making the same arguments concerning its unsuccessful application within the boundaries of the City of Las Vegas. Here, it sued the Division as well as both Nuleaf and Desert Aire repeating the very same arguments under NRS 453A.322(3)(a)(5). (App. Vol. I, APP00001-29.) Again, GB claimed that because neither Nuleaf nor Desert Aire had been successfully granted a special use permit for land use purposes, the Division should not have awarded either a provisional certificate. (*Id.*) Once again, GB ignored its contradictory interpretation of the statute – the one rejected by Judge Delaney – unable to address how it "satisfies all applicable building requirements" if that statute is a prerequisite to even obtaining a provisional certificate.

Indeed, before the then presiding judge, the Honorable Jerome Tao, GB all but admitted its inconsistency. Even though it had sued Desert Aire, GB conceded

that by the time of the preliminary injunction hearing, Desert Aire had been able to reapply and obtain a special use permit from the City. (App. Vol. I, APP00150-51.) Thus, even though Desert Aire did not have a special use permit at the time the Division awarded it a provisional certificate, GB voluntarily dismissed Desert Aire from the case.[3] (*Id.* at 158-59.)

With respect to its claims against Nuleaf, Judge Tao denied GB's request for a preliminary injunction. After all, GB was not seeking to maintain the status quo. (*Id.* at APP00136-37.) Instead, GB was seeking to compel the Division to act and reorder the applicants, outside the 90-day window mandated by the Legislature. (*Id.*) Additionally, in evaluating the balance of hardships, GB Sciences' requested relief would impose significant harm on many people because it would prevent all dispensaries in the City of Las Vegas from receiving a registration certificate. (*Id.* at APP00146-50.)

D. With Competing Motions for Summary Judgment Pending, Acres Medical Moves to Intervene.

Thereafter, GB took no other action, while Nuleaf proceeded on its alternative path to obtain its local licensing – including a special use permit – just as Desert Aire had successfully done. (App. Vol. III, APP00455.) Then on September 18, 2015, GB moved for summary judgment, repeating its same tried

[3] Of course, if Desert Aire is allowed to obtain local approvals after obtaining the provisional certificate, so too is Nuleaf. This is yet another of the inexplicable contradictions by GB and the District Court.

and rejected arguments surrounding NRS 453A.322(3)(a)(5). (App. Vol. I, APP00160-176.)GB asked the now-presiding judge, the Honorable Eric Johnson, to disregard the Division's balancing of the competing statutory requirements and accept its renewed contention that only those applicants that had already been granted a special use permit by the local jurisdiction could even obtain a provisional certificate. (*Id.*) To do so, of course, GB would have to continue to ignore its own concessions in dismissing Desert Aire as well its inability to reconcile its interpretation with NRS 453A.322(3)(a)(5)'s requirements that it also present proof that it "satisfies all applicable building requirements."

Nuleaf opposed the motion for summary judgment and, on October 5, 2015, filed a counter-motion for summary judgment, noting among other things that the Legislature had vested the Division with the authority to implement the statutory scheme, including through the issuance of provisional certificates, until such time as local land use, building and licensing criteria were satisfied. Nuleaf also noted that the remedy sought by GB is inappropriate and that GB had failed to seek any form of writ relief against the Division. (App. Vol. II at APP00377-91.)

On October 14, 2015, the State of Nevada filed a Notice of Entry of Order, from a distinct litigation, *Acres Medical, LLC v. Department of Health and Human Services, Division of Public and Behavioral Health, et al.*, Case No. A-15-719637-W, wherein that court ruled that Acres application had been improperly scored by

the Division and Acres, not GB, was the 13th ranked applicant for one of the 12 spots within the City's borders. (App. Vol. III at APP00420-412.) It was then that Acres hastily moved to intervene in the present case and argued that it should be awarded the certificate based on GB's arguments. (*Id.* at APP430-45.)

The motions for summary judgment and the last-minute motion to intervene came before the District Court on November 9, 2015. On November 13, 2015, the District Court issued its decision via minute order, with a formal order entered on December 15, 2015. (*Id.* at APP00487-99.) Unlike the contrary ruling by Judge Delaney, Judge Johnson ruled that the Division could not even issue provisional certificates to any applicant that had not already received a special use permit in advance of the Division's decision date. (*Id.*) Yet, the Court could not address and did not explain how that interpretation could be reconciled with the reality that no other applicants, including GB, had any authorization or approvals showing that it "satisfies all applicable building requirements." NRS 453A.322(3)(a)(5). (*Id.*)

The District Court ordered that Nuleaf should not have been issued a provisional registration by the Division, and ordered that the "Division shall rescind or withdraw the registration of Nuleaf as a medical marijuana establishment." (*Id.* at APP00497.) It further ordered the Division to affirmatively reissue the certificate in favor of Acres, based on Acres' last-minute intervention in the action. (*Id.* at APP00498.) Nuleaf now challenges the District Court's

selective interpretation of NRS 453A.322(3)(a)(5) and the unprecedented remedy it ordered.

III. ARGUMENT

A. Standard of Review

This Court reviews the grant of summary judgment *de novo*, without deference to the findings of the District Court. *Foster v. Costco Wholesale Corp.*, 128 Nev. Adv. Op. 71, 291 P.3d 150, 153 (2012). *De novo* review requires that the evidence be considered "'in a light most favorable to the nonmoving party.'" *Id.* (quoting *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026,1029 (2005)). Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.*; NRCP 56(c). Issues of statutory interpretation are also reviewed *de novo*. *Westpark Owners' Ass'n v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 349, 357, 167 P.3d 421, 426–27 (2007).

B. The District Court Improperly Substituted its Judgment for that of the Division.

The District Court's enlistment of NRS 453A.322(3)(a)(5) as somehow upending the State's ranking system is both contradictory and contrary to settled principles of statutory interpretation. To begin with, the Division is vested with considerable discretion in interpreting its statutory mandate and determining what applications are sufficiently compliant for it to consider. Indeed, an agency

charged with enforcing a statute is entitled to interpret and implement it consistent with its discretion. *Int'l Game Tech., Inc. v. Second Jud. Dist. Court of Nevada*, 122 Nev. 132, 157, 127 P.3d 1088, 1106 (2006); *accord Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 247, 871 P.2d, 320, 326 (1989) (city's interpretation of its own laws is cloaked with a presumption of validity). Agencies are empowered to construe the statutes under which they operate and courts "are obliged to attach substantial weight to the agency's interpretation." *Folio v. Briggs*, 99 Nev. 30, 33, 656 P.2d 842, 844 (1983). Such deference must be afforded unless the agency's interpretation conflicts with the constitution, other statutes, exceeds the agency's powers, or is otherwise arbitrary and capricious." *Cable v. State ex rel. its Employers Ins. Co. of Nevada*, 122 Nev. 120, 126, 127 P.3d 528, 532 (2006).

And, the Division's discretion and entitlement to deference as to how to best implement this Legislative directive is at its apex here because the statutory scheme is a new one. Courts recognize that deference to the agency is "'heightened where . . . the regulations at issue represent the agency's initial attempt at interpreting and implementing a new regulatory concept.'" *Texaco, Inc. v. Dep't of Energy*, 663 F.2d 158, 165 (D.C. Cir. 1980) (quoting *Atchison, T. & S. F. Ry. Co. v. ICC*, 580 F.2d 623, 629 (D.C. Cir. 1978)) (parentheticals removed). After all, administrative agencies are often presented with statutory schemes that contain gaps or contradictions. The agency is thus vested with the authority to fill in those

gaps and reconcile any potential statutory contradictions consistent with the power invested in them by the Legislature to best carry out the statutory purpose. *Atwell v. Merritt Sys. Prot. Bd.*, 670 F. 2d. 272, 282 (D.C. Cir. 1981) (Agency is empowered to reconcile arguably conflicting statutory provisions and court's role is limited to ensuring that the agency effectuated an appropriate harmonization within the bounds of its discretion.) Here, that statutory purpose is to make sure that the most qualified applicants are the ones authorized to dispense medical marijuana to those entitled to receive it.

And therein lies one of the major problems with the District Court's assertion that NRS 453A.322(3)(a)(5) precluded the Division from considering any application or issuing a provisional certificate unless they already possess a City-approved special use permit. That interpretation conflicts with other provisions of statutory scheme and renders the process unworkable. For instance, NRS 453A.316(a) specifies that any certificate issued is deemed "provisional" until the "establishment is in compliance with all applicable local governmental ordinances or rules." NRS 453A.326(3). *See* NAC 453A.316(a) (same). The obvious point is that any applicant will need time after the provisional certificate to satisfy all local regulatory requirements. Likewise, a certificate holder can change locations, provided that it is within five miles of the original approved location. NAC 453A.326(2). That change in location may occur upon approval of the Division

and land use approval by the local governmental body. NRS 453A.350. In other words, the statutory framework is designed to approve the most qualified applicants, based upon criteria set forth in statute and regulation. And once provisionally licensed, the qualified applicant is provided the ability to change locations within a 5 mile radius, so that the local concerns may be addressed as determined by the local governing body after State approval. *Id.* Again, the statute recognizes that not all regulatory approvals at the local level must be obtained before someone can even submit an application to the State. After all, it is the State, by and through the Division, which actually issues the certificates.

As this Court knows well, statutory provisions are not read in isolation or to the exclusion of the statutory purpose. Instead, "[s]tatutes within a scheme and provisions within a statute must be interpreted harmoniously with one another in accordance with the general purpose of those statutes and should not be read to produce unreasonable or absurd results." *Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001). Common sense must be used to interpret statutes. *State, Dep't of Motor Vehicles & Pub. Safety v. Brown*, 104 Nev. 524, 526, 762 P.2d 882, 883 (1988); *Ex parte Prosole*, 32 Nev. 378, 108 P. 630, 633 (1910).

By not providing the necessary deference to the Division's interpretation of NRS 453A.322, the District Court went against the Legislature's intent and this Court's precedents. SB 374 was enacted to create a safe distribution system of

medical marijuana. In doing so, the Legislature explicitly gave significant discretion to the Division to enact the necessary regulations to ensure the "safe and healthful operation of medical marijuana establishments. . . ." NRS 453A.370. Like all of the other disputes, this case turns on the Division's authority to reconcile and best implement the various policy considerations that the Legislature set forth in NRS Chapter 453A.

Here, the Division's decision was neither arbitrary nor capricious, nor did it exceed the significant authority given to it by the statute. And, despite GB's protestations otherwise, it does not conflict with the legislative intent. GB attempts to ignore the Division's need to harmonize all of the statutory provisions and policy objectives and instead it proposes to override all of that by its almost exclusive reliance on a snippet in the Minutes of the Advisory Committee on the Administration of Justice's Subcommittee on the Medical Use of Marijuana from the July 9, 2014 meeting. (App. Vol. II, APP00183-206.) This meeting was held after SB 374 was passed into law and NRS 453A was amended.

At the meeting, Chad Westom, Health Bureau Chief of the Division, discussed how the Division might handle a hypothetical situation of an applicant being ranked highly enough by the Division to receive a registration certificate, while not receiving local zoning approval. (*Id.* at APP00189.) "He said they would come up with the highest 18 rankings in Clark County and issue provisional

certificates. He said Clark County then had the option of denying the business at a local level. If they are denied at the local level, then the State will also deny them and the State would let Clark County know who was the next ranked entity." (*Id.*) But of course, GB provided no "legislative history" that would support the District Court's action of revoking Nuleaf's certificate.

Moreover, the letter the Division sent on November 18, 2014 to local jurisdictions acknowledged the statements made on July 9, 2014, but announced that the reality of the application process required an alteration. (*Id.* at APP00411-12.) Under NRS 453A.322, the Division was only given a certain time period of 90 days to review applications and issue registration certificates. (*Id.*) When Mr. Westom made those statements, the Division was not aware that the review process would take the full 90 days. (*Id.*) The references to 'moving up' an applicant "only pertained to the application review period." (*Id.*)

The Division had to balance all requirements set forth in NRS 453A, including the limit to the number of provisional dispensary registration the Division can issue, as set forth in NRS 453A.324, and the requirement that the Division issue registration certificates within 90 days of receiving the application, as set forth in NRS 453A.322. By identifying and issuing registration certificates to the 12 highest ranking dispensary applications by November 3, 2014, the Division

satisfied the explicit mandates of the statutory scheme and best harmonized the statutory objectives.

I. No Applicant Complied with GB's Proffered Interpretation of the Statute.

At the time the applications were due to the Division, the City of Las Vegas had not begun reviewing, let alone approved, any of the land use applications to the City. The Division recognized this reality on November 9, 2015 stating "when the registration application period came down, nobody, when they applied, could show that they had local authority. So if we took a very strict interpretation of the statute, we would have to deny everybody." (App. Vol. III, APP00534.) None of the applicants, including GB, met what GB now claims that NRS 453A.322(3)(a)(5) requires.

Although the City of Las Vegas sent a letter attempting to control the selection process, this letter proved the opposite. The City's letter does not include let alone address "all applicable building requirements" as referenced in NRS 453A.322(3)(a)(5). Nor could it. As set forth in the Division's November 3, 2014 letter, notifying successful applicants that they had received provisional certificates: "Final approval will occur when the applicant has: . . . 2. Provided documentation to the Division regarding successful inspections issued from fire, building, health and air quality." (App. Vol. I, APP00069-70.)

The Division reasonably recognized that a literal interpretation of NRS 453A.322(3)(a)(5) -- to the exclusion of all else – is simply untenable. No applicant could comply if it were interpreted to mean that they must have the approvals before the State selection process. At the same time, the Division also recognized that the statute cannot be selectively applied – as GB proposes – with land use requirements deemed mandatory before the application process but "all applicable building requirements" somehow not being mandatory. Respectfully, the process of statutory interpretation is not one of selectively choosing bits and pieces to apply that serves a particular self-interest. But, that is precisely what the District Court did and precisely why its failure to defer to the Division's balancing of the entire statutory scheme must be rejected.

2. The District Court's Interpretation Creates an Absurd Result.

A cornerstone of interpreting any statute is avoiding absurd results. The Legislature gave the Division the authority and obligation to review and analyze applications to determine, in a non-political arena, the most skilled, experienced, and qualified applicants for an uncharted, former-contraband substance. NRS 453A.370. To do this, the Division worked with experts to create an objective scoring and ranking system "focused on public health and public safety as it relates to the use of marijuana for medical purposes . . . ." (App. Vol. II, APP00411-12.) After reviewing the applications, the Division determined that Nuleaf was one of

the most qualified applicants in the City; in fact, Nulcaf third highest in the jurisdiction. GB was not even in the top 10.

Just as the District Court substituted its judgment for that of the Division in interpreting the statute, this interpretation of the statute would substitute the Las Vegas City Council's judgment for that of the Division. While local jurisdictions should undoubtedly have some say on where dispensaries are located, the local jurisdictions' decisions on the limited issue of zoning should not outweigh that of the Division as to suitability. The Division has the skill and expertise to evaluate the applicants in a way that the City Council does not. It would be an absurd result that an unqualified applicant such as GB would be able to operate a dispensary because the City Council preferred it over others.

Courts must look to the entire statutory scheme for legislative intent. *Salas v. Allstate Rent-A-Car, Inc.*, 116 Nev. 1165, 1168, 14 P.3d 511, 514 (2000), *as amended* (Dec. 29, 2000). In failing to do so, the District Court ignored the clear deference given to the Division in issuing registration certificates as set forth in NRS 453A.370. The District Court ignored the discussion of provisional licenses, and the ability to obtain local approvals at a later date included in NRS 453A.326(3)(b). The District Court ignored the limited 90 day period for the Division to award registration certificates as set forth in NRS 453A.322(3). The District Court ignored the language that the Division was allowed, not required, to

revoke a provisional certificate if the establishment was not operational within 18 months of receiving it as included in NAC 453A.324.

Instead, the District Court resorted to an interpretation of the statute that no applicants, including GB, actually satisfied. It claimed that part of the statute is mandatory while other parts of the very same section must be ignored. Respectfully, the District Court's interpretation of NRS Chapter 453A is inconsistent with the totality of the statutory scheme, and created an absurd result.

Compare the District Court's interpretation of with that of the Division. The Division was able to create an application process that balances its expertise in evaluating the applications, while withholding the final license until the local jurisdiction had approved the location and the applicant had met all the building requirements as required by NRS 453A.322(3)(a)(5). Rather than creating its own absurd result, the District Court should have deferred to the Division's interpretation and how application process complied with the statute.

C. The District Court Should Not Have Ordered the Division to Revoke Nuleaf's Registration Certificate and Issue a Registration Certificate to Acres.

1. The Declaratory Relief Sought by GB Sciences is Limited to a Declaration of Rights.

GB's First Amended Complaint sought declaratory and injunctive relief related to the Division's interpretation of NRS 453A and awarding the registration certificate to Nuleaf. (App. Vol. I, APP00001-29.) In its motion for summary