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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 GREENMART OF NEVADA NLV LLC,
4 a Nevada Limited Liability Company;
5 NEVADA ORGANIC REMEDIES, LLC;
6 and LONE MOUNTANT PARTNERS,
7 LLC,

8 Appellants,

9 vs.

10 SERENITY WELLNESS CENTER,
11 LLC; TGIG, LLC; NULEAF INCLINE
12 DISPENSARY, LLC; NEVADA
13 HOLISTIC MEDICINE, LLC; TRYKE
14 COMPANIES SO NV, LLC; TRYKE
15 COMPANIES RENO, LLC; PARADISE
16 WELLNESS CENTER, LLC; GBS
17 NEVADA PARTNERS, LLC; FIDELIS
18 HOLDINGS, LLC; GRAVITAS
19 NEVADA, LLC; NEVADA PURE,
20 LLC; MEDIFARM, LLC; MEDIFARM,
21 IV LLC; and THE STATE OF
22 NEVADA, DEPARTMENT OF
23 TAXATION,

24 Respondents.

Supreme Court Case No. 79668
District Court Case No.: A19-00112
Electronically Filed
Feb 25 2020 10:35 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

25 **RESPONDENTS' APPENDIX**

26 **Volume One (1) of One (1)**

27 (Pages RA000001 to RA000112)

28
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¹NRAP 30(c)(1) and (c)(2) provide:

(1) **Order and Numbering of Documents.** All documents included in the appendix shall be placed in chronological order by the dates of filing beginning with the first document filed, and shall bear the file-stamp of the district court clerk, clearly showing the date the document was filed in the proceedings below. Transcripts that are included in the appendix shall be placed in chronological order by date of the hearing or trial. Each page of the appendix shall be numbered consecutively in the lower right corner of the document.

(2) **Page Limits; Index of Appendix.** Each volume of the appendix shall contain no more than 250 pages. The appendix shall contain an alphabetical index identifying each document with reasonable definiteness, and indicating the volume and page of the appendix where the document is located. The index shall preface the documents comprising the appendix. If the appendix is comprised of more than one volume, one alphabetical index for all documents shall be prepared and shall be placed in each volume of the appendix.

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Respectfully submitted this 24 day of Feb., 2020.

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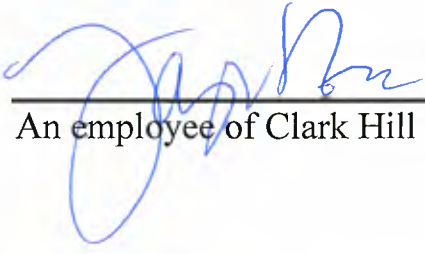
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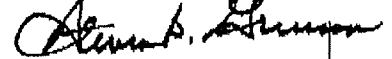
Attorneys for Respondents (less the State of Nevada, Department of Taxation)

1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that pursuant to NRAP 25(1)(d) on the 25 day of
4 February, 2020, I served a true and correct copy of the foregoing
5 **RESPONDENTS' APPENDIX** via the Court's electronic filing and service
6 program (Document Access) to all registered counsel and/or parties.

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8 
9 An employee of Clark Hill PLLC

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS FOR SUMMARY JUDGMENT
AND MOTION TO SEAL EXHIBITS A-F ATTACHED TO
PLAINTIFFS' MOTION TO COMPEL

TUESDAY, JULY 23, 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.

RA000001

APPEARANCES:

FOR THE PLAINTIFFS:

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MICHAEL CRISTALLI, ESQ.
WILLIAM KEMP, ESQ.
NATHANIEL RULIS, ESQ.
ADAM BULT, ESQ.
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FOR THE DEFENDANTS:

STEVE SHEVORSKI, ESQ.
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BRIGID HIGGINS, ESQ.
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DAVID KOCH, ESQ.
ALINA SHELL, ESQ.
JARED KAHN, ESQ.
JOSEPH GUTIERREZ, ESQ.

1 LAS VEGAS, NEVADA, TUESDAY, JULY 23, 2019, 12:57 P.M.

2 (Court was called to order)

3 THE COURT: Good afternoon.

4 MR. GRAF: Good afternoon, Judge.

5 THE COURT: Who wants to -- how about I start with
6 the motion to seal, since I keep forgetting to do it. I
7 noticed that Mr. Graf filed a notice of compliance if he had
8 provided redacted versions.

9 Mr. Koch, do you have your redacted versions?

10 MR. KOCH: I do. I guess I'm a little confused as
11 far as what we're actually being asked to provide. We have
12 the page numbers that we're asking to be sealed, which is
13 financial information that's part of it. The rest of it
14 remains redacted. I have two versions, one that has the
15 financial information on it, one that does not. And so if the
16 Court would like we're ready to provide that.

17 THE COURT: I want the redacted versions.

18 MR. KOCH: Okay.

19 THE COURT: The others have already been provided in
20 a sealed format.

21 MR. KOCH: I have the Exhibit F here.

22 THE COURT: That'd be great. Come on up.

23 MR. KOCH: I'll provide it. The flagged pages are
24 the ones that were redacted.

25 THE COURT: Flagged? Oh. With the blue things on

1 top. I'll look real quickly. So the only pages that are
2 being redacted are the ones with the blue flags on them.

3 MR. KOCH: Right.

4 THE COURT: All of the rest may be released to the
5 public.

6 MR. KOCH: The ones -- I should clarify that there's
7 one, I think, that has a set. We'd like to put that together.

8 THE COURT: Because in a minute I'm going to hand
9 them to April with instructions. So let's make sure the my
10 instructions will be accurate.

11 (Pause in the proceedings)

12 THE COURT: Okay. So, April, with respect to the
13 motion to seal that is on today -- I don't know if you can
14 detect which one it is from the calendar --

15 Your client is which one?

16 MR. KOCH: Nevada Organic Remedies.

17 THE COURT: Nevada Organic Remedies has submitted in
18 open court redacted versions of Exhibit F. The Exhibit F that
19 was filed as an appendix will remain sealed, and this Exhibit
20 F will be substituted for public view, understanding that
21 those pages that have the little clips on them are those with
22 redactions. So this entire document is now publicly available
23 because it includes the appropriate redactions per Mr. Koch.
24 The other will remain sealed.

25 Anybody else have anything before I finish ruling on

1 that motion to seal? All right. So that means now you need
2 to submit the order.

3 Thanks, Max.

4 MR. FETAZ: Understood, Your Honor.

5 THE COURT: All right. We're up to the motions for
6 summary judgment.

7 MR. KAHN: Good afternoon, Your Honor.

8 THE COURT: Good afternoon.

9 MR. KAHN: Thank you for providing Helping Hands
10 Wellness Center East the opportunity to present some oral
11 argument this afternoon on our motion for summary judgment.
12 In the interest of time, since we're limited today, I think
13 the briefing was sufficiently submitted to be able to dispose
14 of the federal due process and federal equal protection
15 claims, because the 1983 claims require conduct to be
16 protected under federal law. As our good friend Mr. Gentile
17 has stated repeatedly throughout this proceeding --

18 THE COURT: Are you copying Mr. Shevorski?

19 MR. KAHN: I am. Mr. Shevorski, thank you for
20 giving me that.

21 -- has repeatedly said throughout the hearings on
22 the preliminary injunction that the sale of marijuana is
23 illegal under federal law. You cannot have a 1983 claim,
24 because you're not impairing -- you have not been impaired of
25 a federal right under the Constitution.

1 The equal protection claim, as well, irregardless of
2 the fact that the plaintiffs or joinders did not file an
3 opposition to the standard of review or the rational basis
4 test regarding equal protection claim, if you look at the
5 rational basis test, the Nordike case out of the Ninth Circuit
6 indicated that licensing and regulation of marijuana does not
7 implicate a suspect class nor fundamental right regardless of
8 whether marijuana was illegal under federal law. Therefore,
9 there is no equal protection claim under the federal
10 Constitution, nor a federal due process claim, because the
11 conduct is illegal under federal law.

12 Moving to the State due process and State equal
13 protection claims, this Court has repeatedly inquired of
14 witnesses during the preliminary injunction hearing how
15 Question 2's ballot initiative, which dictates that the
16 licensing and regulation of marijuana should be treated
17 similar to alcohol, has great guidance, then, from the recent
18 Malfitano case. In the Malfitano case, Your Honor, that was a
19 licensing board regulating alcohol --

20 THE COURT: A county licensing board.

21 MR. KAHN: Excuse me?

22 THE COURT: Storey County.

23 MR. KAHN: Storey County licensing board regulating
24 alcohol or issuing licenses that in that case the licensing
25 board and then the Supreme Court affirmed that there is no

1 property interest in licenses not yet obtained. Similarly
2 here, these plaintiffs have not obtained a license yet to sell
3 marijuana. They don't even reach the same level of facts that
4 Malfitano had where he had a temporary license to sell liquor.
5 These plaintiffs don't even have that temporary license. And
6 there the Nevada Supreme Court found that there was still no
7 entitlement under a property interest right to make a claim
8 for a due process violation.

9 The court in Malfitano said, "We first look at
10 whether there exists a property interest, and it was quickly
11 determined that there isn't one." Here it's the same
12 argument. They have to establish that there's a property
13 interest in a marijuana license. They have not made that
14 argument. Their only hook that they're trying to really make
15 is that NRS 453D.210(5) says that you shall issue a license if
16 you submit your application meeting (1), (2), (3), (4), (5),
17 Your Honor.

18 However, as indicated in our reply brief, they
19 clearly are ignoring NRS 453D.210(6), which then discusses if
20 there's more than one application submitted, there'll be the
21 competitive licensing process. The entire reason we're here
22 before you on the preliminary injunction hearing is over this
23 competitive bidding process. They would like to establish an
24 entitlement for property interest claims under NRS .210(5),
25 yet ignore (6), however, come to this Court seeking relief,

1 saying that subject in (6) was flawed. So there is no
2 entitlement.

3 The Malfitano case even clearly states that, "To
4 have a property interest and the benefit a person clearly must
5 have more than an abstract need or desire for it. He must
6 have more than a unilateral expectation of it. He must
7 instead have a legitimate claim of entitlement to it." And
8 that is what is the test to establish whether or not you have
9 a legitimate property interest or right to be afforded due
10 process protections for and seeking a violation thereof.

11 There is absolutely no property interest that these
12 plaintiffs can establish. Therefore, Malfitano is the
13 guidance here that dismisses their claims as a matter of law
14 for the State due process and equal protection claims.

15 The analysis under the equal protection, excuse me,
16 in Malfitano was similar, that there's not a protected class
17 for the class of one, which they're not even making an
18 argument, Your Honor, here. There was no opposition
19 establishing that fact here, and that's not what's before the
20 Court. And still in Malfitano the court did not find an equal
21 protection violation.

22 Your Honor, due to the interests of time I'm going
23 to heed to plaintiffs to make their opposition. We also have
24 the other motion for summary judgment that Mr. Graf is going
25 to present. But I think that it's clear that you cannot have

1 a federal due process or equal protection claim. When your
2 conduct is illegal under the federal law, how can you be
3 afforded constitutional privileges? And under the State due
4 process and equal protection claims they cannot have -- they
5 do not have an interest to be protected when no license had
6 been yet obtained, as clearly briefed before Your Honor.

7 THE COURT: Thank you.

8 MR. KAHN: Thank you.

9 THE COURT: Anyone else on the defendants and
10 defendants in intervention wish to argue anything related to
11 this motion?

12 Opposition.

13 MR. SAVARESE: Good afternoon, Your Honor.

14 THE COURT: Good afternoon.

15 MR. SAVARESE: Vincent Savarese for the plaintiffs.
16 Your Honor, this argument, most respectfully, we think is most
17 illusory. Every case in which the -- on which the intervenors
18 are relying involve cases in which there's been claims,
19 Fourteenth Amendment claims made to contraband per se.

20 THE COURT: Forfeiture proceedings, essentially.

21 MR. SAVARESE: Yes. Seizures and such and
22 individuals trying to retrieve marijuana that had been seized.
23 And -- which is quite a different matter entirely. We are not
24 here asserting an interest or asking you to grant us rights in
25 contraband per se. We are talking here about a licensing

1 situation. It is a statutory entitlement. The entire
2 predicate of this case is based on that concept. It does not
3 require that a license already be held in order for a
4 statutory entitlement to the license to constitute a property
5 interest to the same extent as the actual property itself. It
6 is property. If it shall be granted and if discretion in
7 denying the granting of a license is curtailed, as it is in
8 this case, in Malfitano, it is a plenary discretionary
9 statute. In fact, allows the Storey County authority --
10 licensing authority to make decisions based on such things as
11 suitability. The word "suitability," classic gaming licensing
12 language.

13 In this ballot initiative the language chosen
14 meaningfully restricts the exercise of administrative
15 discretion, and that is why there's a cause of action.
16 There's an entire body of law that, of course, we've briefed
17 and the Court is I'm sure more than very familiar with. And
18 I'm not going to bother citing cases, but Goldberg versus
19 Kelly and that line of cases from the Supreme Court in which
20 -- Perry versus Cinderman, Board of Regents versus Ross in
21 which entitlement when a tenure or a license shall be granted
22 if the requirements are met, that is an entitlement to the
23 same extent. So --

24 THE COURT: But here you have a numeric limit on the
25 ability of someone to issue those licenses.

1 MR. SAVARESE: So my response to that is that what
2 our clients are entitled to is a fair shot in that process.

3 THE COURT: Sure. Everybody's entitled to a fair
4 shot in the process.

5 MR. SAVARESE: Right. And in this situation there
6 are more than one potential person entitled to receive the
7 license, but they each have a statutory entitlement to that
8 fair shot. And if they are not given that fair shot, they're
9 denied that statutory entitlement.

10 THE COURT: But that's not a property right. That's
11 a different claim, and you've got three varied claims under
12 these theories. But that's not a property right. Fair shot
13 at the process is not a property right.

14 MR. SAVARESE: We would suggest that it is, Your
15 Honor, if the procedures to be followed are mandated that it
16 shall be a numerically graded, competitive process. And if it
17 is not, then a statutory entitlement to that objective
18 consideration has been denied. That process for more than one
19 applicant, where the number of applicants exceeds the number
20 of available licenses --

21 THE COURT: Competing applications.

22 MR. SAVARESE: -- applications exceeds the number of
23 available licenses, all timely applicants have a statutory
24 entitlement to be admitted to consideration in accordance with
25 the mandatory procedures that are put forth in the ballot

1 initiative and in the statute. So the process itself of being
2 considered a candidate -- we recognize that not everybody will
3 end up with a license, but we suggest that everyone who timely
4 applied in September of 2018 was entitled to the process, the
5 fair and mandated procedural consideration to achieve that
6 license that the statute and the ballot initiative mandated,
7 and that that is a property right.

8 The argument -- and I find this -- I find this --
9 I'll use the word, I think, "perverse" would not be an
10 overstatement. It appears they're essentially saying that
11 notwithstanding the fact that the federal Controlled
12 Substances Act continues to designate marijuana as a
13 Schedule I controlled substance entitles them to achieve -- to
14 acquire a license; but because the Controlled Substances Act
15 continues to designate marijuana as a Schedule I controlled
16 substance, it may be done in an arbitrary and capricious
17 manner. It can even be done on the basis of invidious
18 discrimination.

19 There's no Fourteenth Amendment review. They're
20 entitled to get the license and by whatever means, you know,
21 are employed, whether they are fair or whether they're equal,
22 whether they are -- whether they comport with notions of
23 traditional due process. It is simply that they are entitled
24 to the license, and there's no -- there's no Fourteenth
25 Amendment review of how it's done. It can be done in any

1 unfair manner possible. That it's a very, very selective
2 invocation of federal law. And, as we've briefed in our
3 papers, the riders that Congress has placed upon -- precluding
4 interference with local legislation and marijuana programs
5 clearly indicates a federal intention on the part of Congress
6 not to interfere where states like Nevada have chosen to
7 implement under state law and have a robust system of
8 regulation such as we have here that there is no -- and there
9 certainly is no federal interest in seeing those licenses be
10 granted arbitrarily or capriciously. We're not displacing the
11 Fourteenth Amendment because are not enforcing Schedule I.
12 We're not -- by the same token, not enforcing the Fourteenth
13 Amendment.

14 Nothing here involves contraband per se. All cases
15 they rely upon involve contraband per se. There's nothing
16 illegal about having a license. That does not violate federal
17 law. A license is not subject to forfeiture, it is not a
18 criminal offense, and the state of Nevada has decided to
19 permit it. And Congress has said there shall be no
20 interference with that. So we suggest that the argument that
21 licenses have to be granted to the intervenors, but may be
22 done in such a manner as to be completely arbitrary or suspend
23 the Fourteenth Amendment makes no sense. We see no federal
24 interest in defeating what the Fourteenth Amendment stands
25 for.

1 The licenses have to be granted in accordance with
2 due process. That's all we're seeking. And to the extent
3 that timely applicants came forward they were all entitled to
4 be considered for receipt of the licenses in accordance with
5 the mandatory procedures that we contend are lacking here and
6 the entire evidence in this case has focused on.

7 We brought to your attention a case which is not a
8 binding case. We don't think the case is well reasoned. We
9 don't understand it, but we made it available to you out of an
10 abundance of responsibility to make sure that you're aware of
11 it. It simply doesn't draw the necessary distinction between
12 the illegality of contraband per se and the license itself.
13 We are seeking here fair consideration according to the ballot
14 initiative and the statute for receipt of the license in
15 accordance with mandatory procedures which dictate that it
16 shall be granted when those procedures are properly followed.
17 So it is not the sort of plenary discretionary licensing
18 situation that Malfitano talks about. Malfitano is not a
19 shall grant case. Malfitano is a plenary discretion case. I
20 agree there's no statutory entitlement at stake in Malfitano.
21 And that's simply because the statute doesn't curtail
22 discretion. In this case it clearly does. That's what this
23 entire litigation has been all about.

24 And so we would respectfully suggest that summary
25 judgment is certainly not appropriate, that these are claims

1 that have to go forward to the merits, and that the Court
2 should rule on our motion and ultimately on our complaint.
3 The Malfitano case flies in the face of an entire body of law
4 that distinguishes those cases in which, unlike Malfitano,
5 discretion is curtailed and the issuance of a license is
6 mandated or at least in this case. And what is distinctive
7 about this case is that, yes, there's competition between more
8 than one applicant, but it's got to be done according to the
9 statutory mandate. And these people to the extent that they
10 had made a timely application and paid their fees were
11 entitled to be treated in that manner. We have -- the
12 evidence in the case has shown and we have concentrated our
13 efforts on showing you that that's not what was done. So to
14 that extent they were effectively deprived of a fair and
15 reasoned and mandated opportunity to receive the license,
16 which is as good as being denied the license itself.

17 THE COURT: Thank you.

18 MR. SAVARESE: Thank you.

19 THE COURT: Anyone else on the plaintiffs' side wish
20 to comment?

21 MR. BULT: Your Honor, very briefly. ETW filed a
22 joinder. The only thing I would add is -- and, for the
23 record, sorry --

24 THE COURT: Keep your voice up.

25 MR. BULT: Let me just come up there. Sorry. I

1 apologize. I didn't realize you didn't have the same clerk.
2 Adam Bult on behalf of the ETW plaintiffs. Thank you.

3 Your Honor, the only thing I would add to that is,
4 one, there are some procedural differences, and that's the
5 fact that Helping Hands is not a party to the ETW action. We
6 think that's an important clarification, and we point that
7 out.

8 And then the only piece that I would add to what Mr.
9 Savarese was talking about is that NRS 453D.210 is significant
10 in that it does call out "shall" and that the Department of
11 Taxation has no discretion as to whether the approved licenses
12 can be denied when those five factors are met.

13 And then the only other piece that I would call out
14 is that as a result of a lack of any review mechanism in 453D,
15 that violates plaintiffs' rights to procedural due process,
16 and we agree with the Serenity plaintiffs that this motion
17 should be denied.

18 THE COURT: Thank you.

19 MR. KAHN: Thank you, Your Honor. I think you hit
20 the nail right on the head when you indicated that there is no
21 property interest in these licenses for these plaintiffs. But
22 what I'd like to also point out is that the plaintiffs rely on
23 the Citizens case. And, again, Mr. Savarese cites to it here
24 today, as they did in their brief. In that case the court
25 held that -- it said, "The case deals with the murky interface

1 of California state law permitting the cultivation and sale of
2 marijuana in some circumstances and the United States federal
3 law banning all such activities." These licenses that they
4 have applied for and were denied because they didn't qualify
5 in the competitive bidding process to obtain a high enough
6 score --

7 THE COURT: It's not that they didn't qualify.

8 MR. KAHN: To obtain a conditional license.

9 THE COURT: It's not that they didn't qualify. It's
10 a different issue on the scoring.

11 MR. KAHN: Sure. They didn't --

12 THE COURT: There's qualification, and then there's
13 how high did you score.

14 MR. KAHN: Correct, Your Honor. They didn't -- they
15 didn't qualify to obtain a high enough score to obtain a
16 license.

17 THE COURT: Okay. They didn't score high enough.

18 MR. KAHN: Exactly. There we go. We'll stick to
19 that. But that license in particular is to sell marijuana.
20 If these plaintiffs are coming into this court to indicate
21 that they are not going to use that license to sell marijuana,
22 then they are not going to meet that statutory deadline of
23 December 5th to become beneficial --

24 THE COURT: All of them are going to sell marijuana
25 if they get a license.

1 MR. KAHN: Exactly, Your Honor.

2 THE COURT: But the license is different than the
3 product.

4 MR. KAHN: But the license falls within the entire
5 ban of all such activities.

6 THE COURT: I understand your argument on that
7 issue. Okay.

8 MR. KAHN: The next thing, Your Honor, I'd like to
9 point out is they talk about that there's no discretion to the
10 State. Well, the State's discretion was rooted in NRS
11 453D.200, which the duties of the Department are relating to
12 regulation and licensing of marijuana establishment states,
13 "The Department shall adopt all regulations necessary or
14 convenient to carry out the provisions of this chapter,"
15 certainly a provision we have heard ad nauseam throughout
16 these preliminary injunction proceedings.

17 But that right there gives the Department broad
18 discretion in and of itself to adopt the regulations necessary
19 to carry out provisions of the chapter for licensing purposes
20 and the application purposes. You cannot take away the
21 agency's discretion or deference afforded to them when they
22 are trying to protect the public health, safety, and general
23 welfare. Malfitano even points that out, that in the liquor
24 licensing context you have the broad discretion when the
25 matters are within the police regulation. Clearly the sale of

1 marijuana is a matter that is within the police regulatory
2 issue here within the state that needs to be strictly
3 regulated, and the agency issuing licenses has broad
4 discretion as to who they're going to issue licenses to if
5 they meet that competitive bidding process and high enough
6 score. That's what the statute is there for. They cannot
7 take away the State's discretion and deference simply because
8 they want to say that there's some entitlement based on NRS
9 453D.210(5). (6) provides that discretion.

10 Your Honor, and then I just want to -- I just want
11 to address one thing. The defendant intervenors are not here
12 today currently making an argument that we have a violation of
13 our due process yet. We are the ones who have actually
14 obtained a license, conditional albeit, from the State and are
15 moving forward with our licenses. If anybody were to be
16 afforded some form of legally protected interest, it would be
17 our side of the table if we were making those arguments. But
18 we're not here making those arguments that we've had our due
19 process violated. So Mr. Savarese's argument that how can we
20 come into court and argue that there is no constitutional due
21 process afforded to them and yet we obtained -- we have it, we
22 would at least meet the standards under Malfitano, Your Honor,
23 if it goes that far our license were somehow taken away,
24 because we actually have the legally protected interest in
25 having a license awarded to us by the State. Therefore, we

1 would be afforded protections under the State constitutional
2 due process and equal protection clauses.

3 THE COURT: Anything else?

4 MR. KAHN: I don't think I have anything else, Your
5 Honor. But -- that's it, Your Honor. Thank you very much.

6 THE COURT: Thank you.

7 I had a hearing on April 22nd. I invited plaintiffs
8 in a number of related cases not assigned to Business Court to
9 participate in an evidentiary hearing on the motion for
10 preliminary injunction being heard in my department related to
11 two Business Court cases about the licensing process. These
12 cases have not been coordinated, and my decision relates only
13 to the two cases that are assigned in Business Court, the
14 Serenity case and the ETW case.

15 Here the license which was applied for in and of
16 itself is not a property right that confers jurisdiction upon
17 this Court to the extent that the claim is for loss of a
18 property right. For that reason the Court grants the motion
19 in part as to those portions of the first cause of action in
20 the Serenity claim and the second cause of action in the ETW
21 claim that are based on the loss of a property right, as
22 opposed to the other alternative issues pled in that claim.

23 With respect to the remaining arguments the motion
24 is denied. The Department of Taxation had discretion to
25 implement certain regulations related to Ballot Question 2.

1 Others were mandatory for which no discretion existed on
2 behalf of the Department. The Court is in the process of
3 hearing evidence and closing arguments related to those
4 issues, and genuine issues of material fact exist related to
5 violations of the Department.

6 Mr. Graf, you want to talk petitions for judicial
7 review?

8 MR. GRAF: Yes, Your Honor.

9 THE COURT: Remember these cases are not
10 coordinated. Just in case you don't think I read all the
11 briefs.

12 MR. GRAF: No. I got it.

13 THE COURT: Okay.

14 MR. GRAF: EDCR 2.50, Your Honor, is about as clear
15 as mud, number one. Number two --

16 THE COURT: That's what Judge Bell told me when she
17 came to ask me what I meant when I wrote it. And I explained
18 it to her, and she said, that's not what it says. And we
19 looked at together, and I said, you're right, that's not what
20 it says. Good luck.

21 MR. GRAF: So we're in agreement.

22 THE COURT: Well, when I sent it up to the Supreme
23 Court it was clear.

24 MR. GRAF: That committee still has an open email,
25 and I have sent an email saying, I don't know what this means

1 and several people know what this means, please address. But
2 anyway --

3 THE COURT: It's up -- I understand it's up at the
4 Nevada Supreme Court for consideration.

5 Right, Mr. Kemp?

6 MR. KEMP: Actually, we won, Your Honor. They
7 came --

8 THE COURT: Oh. You won.

9 MR. KEMP: Yeah. They came out with --

10 THE COURT: So is it clear as mud now?

11 MR. KEMP: They just said, petition denied. So --

12 THE COURT: It's still unclear.

13 MR. KEMP: They should have written an opinion, but
14 they didn't. So we did win.

15 THE COURT: Congratulations, Mr. Kemp.

16 MR. GRAF: So, Your Honor, we started this motion
17 for summary judgment talking about all the cases. The reason
18 we're talking about all the cases is to draw a particular
19 interest and attention to the Court as to the fact that all of
20 the parties to this competition pursuant to NRS 453D.210(6)
21 are not before this Court. And that is a problem under the
22 Otto case. NRS 233B.130 requires them to name all parties.
23 That Otto case, I've got four pages of notes on the facts that
24 I can go over with Her Honor, but I know Her Honor's read the
25 case. And the case is very simple, actually. It is a case

1 that was decided by the Nevada Supreme Court en banc. Justice
2 Pickering recused, but all the other six justices were in
3 concurrence as to that decision. And they said that on a
4 motion to dismiss where the District Court adjudicated the
5 rights of two individuals, Mr. Otto and Mr. Mark, who had
6 brought motions to dismiss not once, but twice before the
7 District Court and said, hey, not everybody is before the
8 court and thus you cannot apply that. And even on a
9 substantial compliance basis the District Court agreed. The
10 District Court said, yeah, you've got to name all of the
11 people. But the Nevada Supreme Court went a step further, Your
12 Honor. They went two steps further. They said that those
13 statutes have to be strictly complied with. So the 30-day
14 requirement of NRS 233B.130 was to be strictly complied with.
15 You can't extend it, you can't do anything. And, Your Honor,
16 even -- assuming arguendo for purposes of this motion that
17 this Court determined that on May 10th these have nots learned
18 as to all of the other parties, then they should have amended
19 their complaints.

20 THE COURT: So you're saying that once SB 32 became
21 effective everybody should have said, oh, now we know who all
22 the participants are?

23 MR. GRAF: Yes.

24 THE COURT: Okay.

25 MR. GRAF: Because that's what it did. Your Honor,

1 that's what happened. That's what -- everybody was listed.
2 But, Your Honor, I take a step back. I think the Nevada
3 Supreme Court is going to say, if this is ever reviewed, is
4 that the deadline, the 30 days runs on -- from December 5th,
5 when those awards were given out or the denials were given
6 out. You know, we'll talk about what the process is or what
7 the contested case is here in a second. But the issue here
8 before Her Honor is whether or not as in the Otto case that
9 court made a determination that under a standard of motion to
10 dismiss, because they didn't name all the parties, that it
11 wasn't appropriate. And in that case where they said certain
12 taxpayers or unidentified taxpayers, that wasn't enough. And
13 if you go through the facts of that case, Your Honor, you'll
14 see that in several instances they were given the list, just
15 as in this case on May 10th they were given the list. That's
16 why I'm confident that this is the standard to be applied,
17 strictly adhered to by this Court, and that is even if you
18 give them the benefit of the doubt, you say May 10th when all
19 of those names became apparent and everybody amended it and
20 they added those people, then that's where we're at. But the
21 Nevada Supreme Court in the step two, the second step that I
22 say that they went, they said that you cannot cure defective
23 jurisdiction. Because that's the issue that's before Her
24 Honor in this motion for summary judgment, is whether or not
25 this Court has jurisdiction to adjudicate any petition for

1 judicial review.

2 And let's talk about it like it is, Your Honor, and
3 that is the cause of action for injunctive relief, declaratory
4 relief are really remedies.

5 THE COURT: Not necessarily.

6 MR. GRAF: I understand what Her Honor is saying.
7 But they're all veilly -- not so veil based in the petition
8 for judicial review.

9 THE COURT: No, they're not petitions for -- the
10 writ of mandamus isn't a petition for judicial review. The
11 equal protection argument's not judicial review.

12 MR. GRAF: No, no, no. And that's what I was going
13 to say. The other three constitutional arguments, Your Honor.
14 But in this instance and on the petition for judicial review
15 cause of action, Your Honor, this Court, even if they gave
16 them the benefit of the doubt and May 10th was the date, then
17 June 9th is when they would have had to have filed their new
18 petition or amended petition for judicial review. And, Your
19 Honor, just for the record, this motion for summary judgment
20 was filed on June 18th, and no such motions have been or were
21 filed at that time.

22 THE COURT: So you're really only talking about the
23 fourth claim for relief in the Serenity pleading, because
24 there's not one in ETW's pleading.

25 MR. GRAF: Correct, Your Honor.

1 THE COURT: Okay.

2 MR. GRAF: There are various versions of the
3 petition for judicial review.

4 THE COURT: Those cases are assigned to their
5 regular department, and some day when I finish a preliminary
6 injunction hearing, maybe those departments will do something.

7 MR. GRAF: But I think that -- and the reason for
8 bringing this motion the way that we did, Your Honor, was to
9 make sure that the Court was aware that there are various
10 parties, at least 10, that are not parties to any of these
11 cases, whether through intervention or otherwise.

12 THE COURT: Or choice.

13 MR. GRAF: Exactly.

14 THE COURT: Some have decided even though they know
15 about the litigation they just don't want to participate. And
16 that's okay. It's expensive.

17 MR. GRAF: That's true, Your Honor. But the Otto
18 case mandates that they at least name them as respondents and
19 give those individuals and those potential parties the
20 opportunity. In fact, 233B.130 goes a step further to
21 describe that process, whether or not that they have to get
22 served and then after they're served they have the opportunity
23 to decide whether or not they want to be a party to the case.
24 Your Honor, we can't speak for those parties. And that's I
25 guess the issue that's here before Her Honor, too, and that is

1 what these plaintiffs are asking Her Honor to do is to affect
2 the rights of other parties. They're asking this Court to
3 adjust the scores, Your Honor.

4 And I guess that gets me to the contested case
5 argument. And if Her Honor has any questions -- I don't think
6 there's really any question in my mind given NRS 453D.210(6)
7 that the whole process of scoring and then ranking is what
8 we're asking the Court -- or what the plaintiffs are asking
9 the Court to review. And Mr. Savarese in his argument said
10 it's a competition among more than one applicant. Yeah, we
11 agree. That's the process, that's what they've asked this
12 Court to review as the contested matter. And because they
13 have not named all of those parties, this Court doesn't have
14 any jurisdiction, and it has to grant our motion for summary
15 judgment at least as to that cause of action.

16 If Her Honor has any questions --

17 THE COURT: I don't. Thank you, Mr. Graf.

18 MR. GRAF: Thank you.

19 THE COURT: Mr. Cristalli.

20 MR. CRISTALLI: Thank you, Your Honor.

21 Your Honor, Mr. Graf brought it to your attention,
22 and I know the pleadings have, as well; the ability to bring
23 all the parties into the litigation initially was impossible,
24 as the Court is aware, until the transparency bill was passed
25 and until the Department of Taxation put all of the

1 conditional licensees on their Website. That was the first
2 time the plaintiffs had an opportunity to know who the
3 application recipients were.

4 But even before that when the appeal to the
5 Department of Taxation was made it was rejected. There was no
6 substantive hearings before the Department of Taxation. So
7 the argument in terms of judicial review is more form over
8 substance. We're here stating to the Court that the
9 Department was incorrect in that it should have granted those
10 appeals and given the right for additional substantive review
11 as it related to the administrative process.

12 In terms of NRS 233B.130 the plaintiffs have
13 complied with those requirements. The plaintiffs have named
14 all the parties of record to the administrative proceedings,
15 specifically the Department of Taxation. As this Court is
16 very aware, with regard to the legal proceedings and the
17 application of the initiative to the regulations and how the
18 application process was administered that is the challenge.
19 Certainly going through the application processes,
20 understanding some of the deficiencies associated with it, and
21 seeing where some applicants may have taken advantage of some
22 of the knowledge associated with criteria whereas others did
23 not, those are important factual issues for the Court to
24 understand and address when making a determination as it
25 relates to the initiative and the application of the

1 regulations to the process. That is the challenge, not
2 specific to each and every conditional licensee who, by the
3 way, Your Honor, had an opportunity to come in and intervene.
4 Certainly it is expensive and it is a process, but there are
5 others on the defendants' side of the table who took advantage
6 of that opportunity to assert its rights with regard to the
7 process.

8 So we believe that we have pled properly pursuant to
9 the complaint that we filed and in accordance with NRS
10 233B.130. For that reason we think that the challenge to the
11 administrative review should stand.

12 THE COURT: Thank you.

13 Anyone else want to speak in opposition to the
14 motion?

15 Mr. Graf.

16 MR. GRAF: Yeah, Your Honor. Briefly.

17 The Otto case, citing to Oklahoma Employment
18 Security Commission versus Carter, says, "Reasoning that
19 because the failure to name necessary parties is a
20 jurisdictional defect, a District Court lacks jurisdiction to
21 permit a petitioner to amend his or her petition outside the
22 statutory time limit." They're not even asking to amend to
23 name these individuals, Your Honor. They're basically just
24 saying, forget the fact that we had a list on May 10th and we
25 could have amended and/or filed amended petitions on or before

1 June 9th of this year. They're not even addressing that
2 issue, Your Honor. What they're asking this Court to do is
3 just say, hey, we're not going to name all of the parties to
4 this contested case, which is the process of the ranking.

5 And I guess that's the final point, Your Honor, is
6 if the only thing that they're saying is in the petition for
7 review is what score they got, give them all 250, for all I
8 care. If it's not the ranking, I could care less. I've
9 already got my conditional letter saying I've got a license.
10 Go ahead. Give them all 250s, and we're done, we'll all walk
11 out of this courtroom. But that's not what we're talking
12 about here. What we're talking about here is the ranking of
13 all of those scores. And they're saying some people got more
14 and some people got less. That's why intellectual honesty is
15 important when you're arguing that, because that's the
16 ranking. In this court it's a pre condition for this Court's
17 jurisdiction so that all of the parties to that process are
18 named herein. I am throwing them a bone when I say in the
19 reply, you had until June 10th and it didn't happen, it's not
20 a -- it's not a mistake, it's not a coincidence that this
21 matter was filed only days after that June 10th deadline ran.
22 And it also had to do with the DH Flamingo motion, also.

23 But, Your Honor, the Otto case is really specific,
24 really specific when it talks about the jurisdictional defects
25 and the fact that it doesn't even relate back. That's the

1 finding. So I don't know. If the Court has any questions --

2 THE COURT: Nope.

3 MR. GRAF: -- I'm prepared to address them.

4 THE COURT: Thank you.

5 MR. GRAF: Thank you, Your Honor.

6 THE COURT: The motion is denied. At the time of
7 the filing of the two complaints that were assigned to
8 Business Court on January 4th the process was confidential and
9 it was difficult, if not impossible, for the plaintiffs in
10 those matters to know who the other applicants were. For that
11 reason, while I certainly understand the argument related to
12 the transparency bill, SB 32, and the production of
13 information by the Department of Taxation quite some time into
14 the process of this preliminary injunction hearing, I'm going
15 to deny the petition for judicial review.

16 All right. Mr. Kahn, you're going on a trip or
17 vacation, so I need you to provide one of your people on your
18 side what the best idea of your schedule is from August 5 to
19 August 30 so when I have at least an email communication with
20 everybody shortly after July 30th we'll be able to figure out
21 a time to do closings.

22 MR. KAHN: Your Honor, I don't go anywhere without
23 my email. I'll be on those emails, and I'll be able to return
24 them.

25 THE COURT: Darn. You know, it's not really a

1 vacation if you're reading emails.
2 MR. KAHN: Tell my wife that.
3 THE COURT: Yeah, okay.
4 Anybody else? So who's drafting the orders?
5 Mr. Fetaz has the sealing order. Who's doing the
6 others?
7 MR. KAHN: Your Honor, we can prepare our motions
8 order.
9 THE COURT: Okay. Who's going to do the first
10 draft, Mr. Graf?
11 MR. GRAF: I'll do it.
12 THE COURT: Okay.
13 MR. KAHN: Thank you, Your Honor.
14 THE COURT: I will communicate with you on Tuesday.
15 Have a nice afternoon.
16 THE PROCEEDINGS CONCLUDED AT 1:41 P.M.
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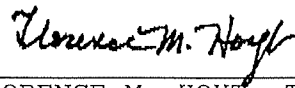
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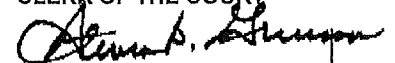
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7/24/19

DATE



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

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.

APPEARANCES:

FOR THE PLAINTIFFS:

DOMINIC P. GENTILE, ESQ.
WILLIAM KEMP, ESQ.
NATHANIEL RULIS, ESQ.
ADAM BULT, ESQ.
MAXIMILIEN FETAZ, ESQ.
THEODORE PARKER, ESQ.

FOR THE DEFENDANTS:

STEVE SHEVORSKI, ESQ.
THERESA HAAR, ESQ.
RUSTY GRAF, ESQ.
BRIGID HIGGINS, ESQ.
ERIC HONE, ESQ.
DAVID KOCH, ESQ.
ALINA SHELL, ESQ.
JARED KAHN, ESQ.
JOSEPH GUTIERREZ, ESQ.
TODD BICE, ESQ.
DENNIS PRINCE, ESQ.

1 LAS VEGAS, NEVADA, THURSDAY, AUGUST 29, 2019, 9:21 A.M.

2 (Court was called to order)

3 THE COURT: Do I have everybody? Do I have
4 everybody? Am I missing anyone? Look around your friends.

5 MR. KEMP: Everybody on our side, Your Honor.

6 THE COURT: Okay. Couple of agenda items. After I
7 released the findings of fact and conclusions of law I sent a
8 copy to each of the judges who are not Business Court judges
9 who had cases, advised them I had completed the hearing on the
10 preliminary injunctions, that I had this hearing scheduled,
11 and that they needed to handle the rest of their case. I've
12 not heard back from a single one.

13 So I have one other agenda item, which is a motion
14 to strike that I signed an OST and set for tomorrow because I
15 couldn't set it for today. Does anyone have an objection to
16 advancing it and having it heard today?

17 MR. KEMP: Judge, we'd like to file an opposition to
18 that, because there's various evidentiary points being in
19 raised in there, and we do think we should address it. Not so
20 much for you, Your Honor, but --

21 THE COURT: For your record.

22 MR. KEMP: Right.

23 THE COURT: It's okay, Mr. Kemp. I understand what
24 record's about. I had Polsenberg here already this morning.

25 Anything else before we go to the discussion about

1 the bond? Mr. Gentile.

2 I'm missing Ms. Shell. Wait. I can't start. I

3 don't have Ms. Shell or Ms. McLetchie.

4 (Pause in the proceedings)

5 THE COURT: If she circulated dial-in information,

6 can you give it to us, Mr. Bice, so Ramsey can dial in. Thank

7 you. If you'd help Ramsey, please.

8 MR. BICE: I will.

9 THE COURT: Thank you.

10 (Pause in the proceedings)

11 THE COURT: Good morning, Ms. Shell. How are you

12 today?

13 MS. SHELL: I'm fine, Judge. Thank you.

14 THE COURT: All right. I have the other

15 participants who are all gathered here. We have not advanced

16 the motion that was filed to strike by Mr. Hone. That is

17 scheduled for hearing tomorrow. I do not know if you are

18 interested and plan to attend. And I also made a disclosure

19 that I communicated my decision on the preliminary injunction

20 and sent the written order to the judges who are not Business

21 Court judges who had cases, and referred the remainder of the

22 handling of those cases to them. But I've not heard back.

23 All right. So now I was to point where I was going

24 to talk about a bond. Mr. Gentile.

25 MR. GENTILE: No. Prior to that I just wanted --

1 for the record, I looked at the pleadings on the other matters
2 that are set for today, objections, and apparently we did not
3 file a written joinder with Mr. Parker's. And so for the
4 record we join in Mr. Parker's.

5 THE COURT: Okay. Anybody want to talk about the
6 bond?

7 MR. KEMP: Judge, I thought we agreed to have a
8 separate bond hearing.

9 THE COURT: That's what I set for today. That's why
10 I put it in the order and the footnote that today was today.
11 Anybody want to talk about the bond?

12 MR. KOCH: Your Honor, our position would be that
13 the question of the bond would be premature as it relates to
14 our clients. I know the Court set the bond with respect to
15 the State, because it enjoined the State. We believe, as the
16 Court indicated, that the issue of being included or excluded
17 from the group as was talked about would be discussed today.
18 And so the issue of the bond could be addressed at a later
19 time with respect to these entities.

20 THE COURT: No, no. We're going to do the bond
21 today. But if you want me to do other things first, I'll do
22 that first.

23 Mr. Parker, you've got a motion about addresses,
24 property locations.

25 MR. PARKER: Yes, Your Honor. I do.

1 THE COURT: And apparently there are joinders by Mr.
2 Gentile and others.

3 MR. PARKER: Yes, there are. Your Honor, I thought
4 I would be very brief, because I know the Court is familiar
5 with the competitive bidding process and --

6 THE COURT: Did you re-read 134 Nev. Adv. Op. 17,
7 the Nuleaf Dispensary case?

8 MR. PARKER: No, I did not this morning, Your Honor.

9 THE COURT: Here. I'm going to give you this --

10 MR. PARKER: Let me see it.

11 THE COURT: -- so you can read it. Wait. I'm going
12 to unfold my page. There are a couple of highlights that are
13 probably important. I think Mr. Bice forwarded them in his
14 brief, though. So we'll wait for a minute for you to read
15 that, because that's important to our discussion this morning.

16 MR. SHEVORSKI: That was Shevorski, actually.

17 THE COURT: That was Shevorski? Okay.

18 MR. SHEVORSKI: But it was his case.

19 THE COURT: It was his case.

20 (Pause in the proceedings)

21 THE COURT: All right. Mr. Parker, it's your
22 motion.

23 MR. PARKER: Thank you, Your Honor.

24 That case, while helpful, is not I think completely
25 applicable to where we are, Your Honor. First, it deals with

1 the medical marijuana, as opposed to recreational, which is
2 obvious from the front of it. But it also deals with whether
3 or not a applicant has received approved approval from a local
4 municipality. That's not the issue here.

5 The question here is whether or not the applicant
6 complied with the statute, as well as the regulation, not
7 whether or not it's received conditional or provisional
8 approval of a location from a municipality, in that case the
9 City. And so that's what Nuleaf was dealing with.

10 What our motion is directed to is whether or not the
11 initiative by virtue of the statute was adhered to by certain
12 applicants, which I believe goes with and is consistent with
13 the Court's overall request originally to the State to
14 determine whether or not the background checks were done also
15 in conformance with NRS 453D.200.

16 So, Your Honor, I think if you take a look at
17 453D.200 --

18 THE COURT: I'm there.

19 MR. PARKER: -- and you can consider what the
20 applications and the applicants were required to do by
21 statute, it points out or requires not only the portion that
22 the Court has already addressed, that being the background
23 checks, but also the physical address. So going to 453D.210,
24 this is specifically where we deal with the 90-day period
25 which is also referenced in the case you just provided me,

1 Your Honor. And in 453D.210(5)(b) it requires a physical
2 address, Your Honor. And in fact it does not mention the word
3 "floor plan" in the statute. It says, "The physical address
4 where the proposed marijuana establishment will operate is
5 owned by applicant or the applicant has the written permission
6 of the property owner to operate the proposed marijuana
7 establishment on that property." That's what it says.

8 Now, if you think back to the application,
9 Exhibit 5, it's consistent with what Exhibit 5 said. This
10 is the information that required the physical address. 5A was
11 different, but 5 was more akin to what the statute and the
12 initiative required.

13 So although Mr. Shevorski -- I can understand his
14 attempt to advance the position that that Nuleaf decision
15 helps his position, it does not. It simply speaks the
16 ambiguous nature of that 453D, whether or not within the
17 90 days you actually have to have a location approved by a
18 municipality versus simply providing an address, which is
19 required by the statute. So I don't think it applies here,
20 Your Honor.

21 What I do believe applies is not only that
22 453D.210(5)(b) mentions physical address, but it's also
23 mentioned, as well, in the regulation, NAC 453D.265(1)(b)(3).
24 And, Your Honor, you have that in front of you.

25 THE COURT: I do.

1 MR. PARKER: It says, "The physical address where
2 the proposed marijuana establishment will be located and the
3 physical address of any co-owned or otherwise affiliated
4 marijuana establishments." So it's required in the statute,
5 it's required in the regulation, Your Honor. I don't believe
6 that there's any ambiguity in terms of that requirement.

7 It is also, Your Honor, mentioned in NAC
8 453D.268(e). So we'll go to that, as well. And it says
9 again, "The physical address where the proposed marijuana
10 establishment will be located and the physical address of any
11 co-owned or otherwise affiliated marijuana establishment."

12 Your Honor, there is no ambiguity in terms of what
13 453D the statute requires or the regulations require. Now,
14 when the Court issued its order and everyone had a chance to
15 pore over it and pore over and pore over it, I had the
16 pleasure of being on the plane, and I had four hours of
17 nothing else to do but go back and forth over it.

18 THE COURT: Sorry.

19 MR. PARKER: No worries. No worries, Your Honor.

20 But I gleaned a lot from it, and it gave me a chance
21 to ponder I would think all aspects of it. And that's why
22 when you look at our brief we start out in part mentioning the
23 statutes and as well as the regulations. But we also point
24 out the verbiage in your order when you speak to the process.

25 Now, the bidding statutes, the 338 cases and those

1 that have followed 338 deal with a competitive bidding
2 process. And typically that deals with the lowest response of
3 a responsible bidder. And the Court's aware of that.

4 THE COURT: I am.

5 MR. PARKER: I know. But the cases that have come
6 from those decisions, the Bud Mohas case, the Gulf Oil case,
7 the cases that we cite all deal with favoritism that can be --
8 that should be prevented from a competitive bid process.

9 Now, your report has actually shown the similarities
10 in this competitive application process to the competitive bid
11 process, which I would suggest to Your Honor, be it a
12 competitive bid process where you're looking for the lowest
13 responsible bidder or a competitive application process borne
14 out by the regulations and the statute, you have to prevent
15 favoritism or corruption or improvidence. That's what the
16 caselaw says in Nevada, as well as the Federal District Court
17 in the Gulf Oil case, Your Honor.

18 So, Your Honor, you actually put within your order
19 -- you said, serious issues presented by the testimony from
20 Ms. Contine, as well as Mr. Pupo. Ms. Contine said, "I
21 created these regulations, they were supposed to be consistent
22 with the initiative. To the extent there is a deviation
23 between the regulation and the initiative the priority is the
24 initiative." She said that the application required physical
25 address. She should have required physical address. She said

1 that physical address was important in the initiative and it
2 was equally important in the regulations. And that's why I
3 started with the initiative and then I pointed out the
4 sections within the regulations that also indicate the
5 requirement of physical address.

6 Beyond that, Your Honor, I've asked the Court --
7 this is the relief we're seeking in this -- by virtue of this
8 motion. I'm asking the Court to instruct or request from the
9 State the same exercise requested earlier, because it goes to
10 the initiative and it goes to the requirement that the people
11 of Nevada though were important. And that included physical
12 address. So I think it's something that can be done fairly
13 easily by Mr. Shevorski and his team or his team as well as
14 the Department of Taxation. But I think it's certainly
15 required under 453D.210, and I believe that the 90-day period
16 of time, which is 453D.210(4), refers not only to the
17 background check that has to be done within that time period,
18 but also every other requirement under this statute, which
19 also includes, of course, the physical address. That's the
20 argument, Your Honor.

21 THE COURT: Thank you, Mr. Parker.

22 MR. PARKER: Thank you.

23 THE COURT: Does anyone else wish to speak in favor
24 of the Nevada Wellness Center motion this morning?

25 Mr. Bult.

1 MR. BULT: Thank you, Your Honor.

2 We join Mr. Parker's motion and reiterate some of
3 the things he noted on fairness of process, Bud Mohas, the
4 serious issues you note in your written ruling. The only
5 thing that we would add to that that we don't think was clear
6 or clear enough in the motion is that if you continue through
7 NRS 453D.210 to get through that statute, you must get to
8 section (6), and that's without a physical address you cannot
9 get to the competitive bidding process set out in NRS
10 453D.210(6). And for that reason, Your Honor, we join in the
11 request that the State perform the same analysis it did on
12 background.

13 THE COURT: Thank you.

14 Anyone else wish to speak in favor of the motion?
15 Mr. Kemp.

16 MR. KEMP: Your Honor, we didn't file a written
17 joinder, but I just wanted to join in the motion.

18 THE COURT: Thank you. I have written joinders by
19 ETW, Mr. Gentile's oral, and yours now.

20 Okay. In opposition? Who wants to start? I know I
21 have several.

22 MR. SHEVORSKI: Mr. Bice is going to handle it,
23 since [inaudible].

24 THE COURT: Mr. Bice wants to argue his Nuleaf
25 decision's applicability to this case because he spent so much

1 time dealing with it in the medical marijuana situation?

2 MR. BICE: Well, yes and no. I mean, this is --
3 there's nothing new -- this is, you know, reconsideration.
4 There's nothing new here. This is the same argument that's
5 been going on for about the last however many months.

6 Your Honor, just to sort of briefly touch on it, you
7 know, I need to reiterate to -- particularly on this point
8 about standing. They are not -- I mean, regardless of what
9 they think the statute should -- how it should be interpreted
10 and how it should be administered by the State, it's not for
11 their protection. It's for the public's protection. So the
12 assertion that they are entitled to some sort of an injunction
13 based on, well, I don't think that these applications were
14 sufficiently complete, is, again, not a claim that belongs to
15 a losing party.

16 But nonetheless, turning to the merits, yes, Nuleaf
17 does apply here, because Nuleaf -- the language is not
18 identical, but substantively it is the same. It's under the
19 90-day provision. The initiative proponents took the medical
20 marijuana provisions and modified them for purposes of the
21 initiative. In the interim period the Nevada Supreme Court
22 decided the Nuleaf case and explained that, notwithstanding
23 the arguments that were made there, the statute says that if
24 someone has complied with all of the following in that 90
25 days, if, then they can obtain a conditional license. And

1 what the Nevada Supreme Court said is, you have to read the
2 statute as a whole, not just little snippets out of it and
3 then -- like is going on here, and say that it's -- you know,
4 that term about "if" and "all" are unambiguous and so
5 therefore because you had to have a physical location there,
6 too, in fact, you had to have even more than a physical
7 location, you had to have the physical location and the local
8 land use approvals. As the testimony --

9 THE COURT: So do you think the delay of the local
10 authorities in granting the land use request was the reason
11 for the decision in the Nuleaf case? You litigated it.

12 MR. BICE: I'm sorry.

13 THE COURT: The delay.

14 MR. BICE: The delay by the City? No. Because this
15 happened in every jurisdiction. It happened -- did that
16 influence ultimately or highlight the ambiguity in the
17 statute? I think so. But every jurisdiction did something
18 like this. The Nuleaf case was actually only one of multiple.
19 It's the one that made it to the Supreme Court. The other
20 cases -- there was a case in front of Judge Delaney where a
21 preliminary injunction TRO was sought, which was denied.
22 There was another one in front of -- I don't recall which
23 judge handled the other one. But ultimately this is the one
24 that was -- that ultimately made its way to the Nevada Supreme
25 Court. But all those cases have the same issue about these

1 local jurisdictions, some accuse them of trying to manipulate
2 the process by the timing and the triggering of their local
3 land use approvals. But at the end of the day the Nevada
4 Supreme Court said, none of that matters because the
5 Department, in this case it was the Department of Health, has
6 to have the discretion and has the discretion to figure out
7 how to best implement this policy, right. Because the statute
8 there on its face said the same argument that's being advanced
9 to you today, well, it says that you have to have a physical
10 address so therefore you have to have a physical address.

11 But that doesn't make a lot of sense, and the
12 Department I think recognized that fact. And the reason it
13 doesn't make sense is for multiple reasons. One, the statute
14 also gives you the ability to move locations. So you could
15 submit an application even if you could obtain a physical
16 address and even if you get that conditional license, guess
17 what, you can submit an application the next day to move the
18 location. And so the Nevada Supreme Court recognized -- and
19 that's -- by the way, that is the same provision in the
20 medical marijuana statute. Doesn't make a lot of sense to
21 say, oh, the physical location is so critical. Because it's
22 not critical.

23 Then, as you heard in the evidence in this case,
24 people couldn't even obtain physical addresses. You had over
25 400 applicants here spread throughout the state, 460-some.

1 You're not going to have 460 individual locations where people
2 could actually put marijuana establishments. That's not going
3 to happen. On top of that you also had jurisdictions that
4 have moratoriums. You couldn't possibly have a physical
5 address, because it's illegal in those locations to have
6 submitted a physical address. You couldn't have gotten a
7 lease, as they're trying to say the statute should be
8 literally interpreted to require. So the Department
9 recognized, just like the Nevada Supreme Court recognized in
10 the medical marijuana context, is the licenses are conditional
11 until such time as you get the final approvals for opening.
12 Any concerns about locations --

13 Because you've also got to remember, Your Honor,
14 some of these jurisdictions don't even have local land use
15 approval -- or processes. Don't even have ordinances in
16 places. And the State was required by the statute to act
17 within a certain time period. So they couldn't --

18 THE COURT: Ms. Shell, are you still there?

19 Okay. Sorry.

20 MR. BICE: In any event, Your Honor, the point here
21 is I believe that your order accurately notes that this is
22 something that, just like in Nuleaf the Nevada Supreme Court
23 said, can be addressed at a subsequent point in time as part
24 of the final licensing criteria. And it's not possible for
25 the State to have required everyone to have submitted a

1 physical address, an actual physical address at the time of
2 application.

3 And that I think ties into this attempt to now claim
4 that Ms. Contine's testimony is somehow the end all be all of
5 all legal analysis. With all due respect to Ms. Contine, I
6 don't believe -- my recollection is, Your Honor, she wasn't
7 there at the time this was actually implemented, and --

8 THE COURT: Well, she was there at the time they
9 were created and took responsibility for being the person in
10 charge of them.

11 MR. BICE: Correct. At the time of creation.

12 THE COURT: Correct.

13 MR. BICE: But then there was implementation issues
14 that arose, which is --

15 THE COURT: Really? That was sarcasm. I've been
16 reminded by Mr. Graf recently sarcasm does not appear well on
17 the record.

18 MR. BICE: It doesn't. It doesn't. And I'm
19 obviously guilty of that, too.

20 But the point is the Department has the discretion
21 and the obligation to make this process work as well as it
22 can, and it has to reconcile these competing policy goals that
23 are in the statute. One of them is land use consideration,
24 one of them is physical locations. How to best achieve that
25 in light of the public safety issues is best left to the

1 Department, and the Department ultimately had to implement
2 this in recognition that you can't literally have physical
3 addresses for an unlimited number of applicants who are
4 particularly in jurisdictions that you couldn't even designate
5 a location. And I know for a fact that if the State had done
6 -- had had a different standard for those jurisdictions where
7 there were existing land use laws so therefore you could have
8 theoretically had a physical location, as opposed to those
9 that not, they would have screamed, well, that's
10 discriminatory, you can't have different standards in
11 different jurisdictions, this is a statewide statute. So the
12 Department has the discretion and the authority to implement
13 this.

14 And my last part on discovery, Your Honor, is this
15 case has gone on for a not insignificant amount of time.

16 THE COURT: We haven't even done a Rule 16
17 conference. Nobody's done any initial disclosures. This has
18 not really gone on very long from a discovery standpoint.

19 MR. BICE: From a discovery standpoint. I agree. I
20 understand that, Your Honor. I understand that. What I'm
21 talking about, though, is the preliminary injunction hearing,
22 which the Court has decided except for the bond. That's why I
23 do object to, well, let's just start now, everyone's loading
24 up -- I mean, this is just the briefing that has occurred on
25 -- and not the appendix. I don't have --

1 THE COURT: I didn't print the appendix, either.
2 Dani did, but --

3 MR. BICE: Just occurring on this simple question
4 that you asked the State. So I object to this effort to
5 interject new evidence and ask the State to now do an
6 investigation into all of these other people. But, of course,
7 don't look into any of these plaintiffs and where they
8 acquired standing to raise these points. I mean, many of
9 these plaintiffs don't comply with the very provisions upon
10 which they're telling the Court it should enjoin everyone else
11 under. How do they have standing to enjoin -- let's just use
12 the 5 percent rule as an example. Many of them didn't have
13 their own background investigations done, yet they're
14 obtaining an injunction on the basis that they are likely to
15 prevail when they didn't comply with the very same statute
16 that they are now attacking? I think that same premise
17 applies here, and there isn't any basis for further discovery.

18 THE COURT: Before you sit down, Mr. Bice --

19 MR. BICE: Yeah.

20 THE COURT: -- for record purposes I had previously
21 marked Mr. Shevorski's email which --

22 MR. BICE: Yes.

23 THE COURT: -- answered my question as a Court
24 exhibit. Do you want it marked again for purposes of today's
25 hearing for your record?

1 MR. BICE: No. It's in the Court's record. Thank
2 you.
3 THE COURT: All right. Thank you.
4 Next?
5 MR. PRINCE: On behalf of the Thrive defendants,
6 Your Honor, good morning. Dennis Prince. We join in Mr.
7 Bice's arguments and have nothing additional.
8 THE COURT: Well, aren't you the same parties as Mr.
9 Bice sort of?
10 MR. PRINCE: I also represent Essence, but I'm on
11 behalf of Thrive.
12 THE COURT: Anybody else? Mr. Shevorski, you filed
13 a written opposition. Do you want to say anything else in
14 addition to Mr. Bice?
15 MR. SHEVORSKI: No.
16 THE COURT: Okay. Mr. Parker, that means you're up.
17 Last word.
18 MR. PARKER: Yes indeed. I prefer actually the
19 rebuttal than the initial argument, Your Honor.
20 MR. KEMP: Judge, I had one comment, too.
21 MR. PARKER: You had something you want to say?
22 THE COURT: Mr. Kemp, do you want to go before Mr.
23 Parker, please.
24 MR. KEMP: Maybe I should go before, Your Honor. I
25 just want to talk about the standing issue.

1 THE COURT: Okay.

2 MR. KEMP: Mr. Bice argued it was impossible to get
3 addresses. Actually, LivFree had addresses for each one of
4 its six applications. And he also talked about standing on
5 the 5 percent. I think he was taking a shot at MM
6 Development, but whatever. LivFree was a private company at
7 that time. It didn't become a public company until I believe
8 March or April. So it had no 5 percent requirement
9 whatsoever. So there's no standing issue with regards to
10 LivFree on either point.

11 And on this address thing we're really talking about
12 two different things here, Your Honor. You're talking about
13 addresses in the context of grading, and then you're talking
14 about addresses in what Mr. Bice calls implementation. I
15 mean, I think your order's pretty clear that it was impossible
16 to adequately grade these without an address. And I think the
17 -- you know, using the example I've used over and over again,
18 we had a location that was actually built out that we gave the
19 address for, and we got a 15-something for it. They used a
20 UPS box, referring to Thrive, and they got a 19.67. How is
21 that -- you know, that's not an implementation issue, because
22 they've gotten a license. That's a grading issue.

23 Now, implementation is did in fact all these people
24 give the Department real addresses within 90 days of December
25 5th. The answer's going to be no, Your Honor. That's why

1 don't want the answer to be given. And it doesn't have
2 anything to do with municipalities. They didn't give
3 addresses for City of Las Vegas, they didn't give addresses
4 for the County, they didn't give addresses for North Las
5 Vegas. You know, there's no moratorium in any of those
6 jurisdictions. The statute says specifically 90 days after
7 the conditional license is awarded they have to provide the
8 address. Didn't happen, Your Honor. They didn't happen in
9 the application, they didn't have it in the implementation
10 period like Mr. Bice addresses. And that's what's wrong about
11 this whole process.

12 And those are the only points I have unless the
13 Court has --

14 THE COURT: Mr. Parker, you're up.

15 MR. PARKER: Thank you, Your Honor.

16 Your Honor, let me start off where Mr. Kemp left
17 off. On behalf of Nevada Wellness Center we provided
18 addresses. We went through the painstaking process of finding
19 what we believed to be appropriate, compliant locations for
20 each of the four applications we submitted. That's number
21 one.

22 Number two, Your Honor, Mr. Bice has been here long
23 enough to hear some of the -- you know, to prepare for the
24 closing arguments, but he was not here to hear all the
25 testimony. And he was not here to go through all of the

1 regulations we've gone through with each of the Department of
2 Taxation employees. He mentioned this issue or problem with
3 perhaps the change of ownership and a change of location and
4 how that could affect the Court's determination.

5 Well, the statutes provide for that. If you look at
6 453D.200, Your Honor, (1)(j), it says, "Procedures and
7 requirements to enable the transfer of a license for a
8 marijuana establishment to another qualified person and to
9 enable a licensee to move the location of its establishment to
10 another suitable location." Suitability, Your Honor, again
11 requires an actual location. Impact on the community requires
12 a physical location.

13 Other portions of the application dealing with the
14 criteria for scoring go again to physical -- a physical
15 address. The statute -- I've mentioned already three
16 locations in the statutes themselves that reference and
17 require physical address. This Court has indicated in its
18 order and throughout the questioning of several witnesses how
19 it placed -- what importance it placed on the initiative and
20 these statutes. All we're asking the Court to do is to follow
21 through with those questions, which would be -- the
22 culmination of which would be a question to the State, which
23 of these applicants actually complied with the statute as it
24 pertains to physical address. You've done it terms of
25 background. This doesn't take much in terms of physical

1 address. And I think Mr. Kemp indicated that would have
2 provided a physical address within the 90-day period.

3 Your Honor, I listed in our brief some of the Nevada
4 cases that deal with the fundamental purpose of competitive
5 bidding and how the competitive bidding process is placed
6 there to make sure that contract-making officials like Mr.
7 Pupo, Ms. Contine, Ms. Cronkhite are not placed in a position
8 where they can alter, change, or prevent there from being a
9 fair playing field. In fact, the caselaw says, "The
10 fundamental purpose of competitive bidding is to deprive or
11 limit the discretion of contract-making officials in the areas
12 which are susceptible to such abuses as fraud, favoritism,
13 improvidence, and extravagance."

14 Now, we heard and this Court heard -- Mr. Pupo
15 talked about dinners he went with some of these applicants,
16 lunches, drinks, conversations, access by cell phone, how
17 certain information was not provided. I mean, you compare
18 what was done in 2014 for the medical marijuana to what was
19 done here, it was open question-and-answer periods, one point
20 of contact, all by email so that everyone got the same
21 information. That was not done here. The testimony we heard
22 from Mr. Pupo and we heard from Ms. Contine, Your Honor, reeks
23 of favoritism. And the only way this Court can flesh this
24 out, complete this analysis is to require that at least in
25 terms of what the statute required the applicants to provide

1 that that question be answered by the State. It took two days
2 for the State to do it in terms of the last question. I don't
3 -- I'm not speaking for Mr. Shevorski. I don't know how long
4 it will take to simply check the applications. But what I
5 say, Your Honor, is we cannot. Because many of the winning
6 side when they presented their applications, they redacted
7 that type of information. But we do know that the initiative
8 never allowed for or afforded an applicant to simply put a
9 floor plan. The changes made by Mr. Pupo through backdoor
10 negotiations and discussions with their consultant, Ms.
11 Connor, that's exactly the type of favoritism that the Nevada
12 competitive bidding statute and caselaw interpreting the same
13 was meant to prevent.

14 The only other thing I would say, Your Honor, and I
15 don't want to beat this horse to death, but no one on this
16 side has argued prior to Mr. Shevorski presenting in court the
17 Nuleaf case that these statutes are ambiguous. They've not
18 made that argument. And they certainly have not provided an
19 alternative interpretation of NRS 453D.200, .210, NAC .265 or
20 .268. So if you're not doing so, then they cannot rely on the
21 Nuleaf case that simply talks about having to have
22 municipality approval as a part of your application. That's
23 not the case we have here, and that's not the analysis the
24 Court is going through.

25 The Court has never asked any of the witnesses,

1 including not only the Department of Taxation witnesses or any
2 of the plaintiffs in this case whether or not you have
3 municipal approval of that location. The question is did you
4 provide a location. And that's a question that needs to be
5 answered, Your Honor.

6 Unless the Court has any other questions --

7 THE COURT: I don't. Thank you, Mr. Parker.

8 MR. PARKER: Thank you, Your Honor.

9 THE COURT: Everyone who participated in the hearing
10 recognizes --

11 MR. BULT: Your Honor, could I clarify one thing?

12 THE COURT: No.

13 Everyone who participated in the hearing process
14 recognizes the process used by the Department of Taxation was
15 flawed. It was adversely impacted by changing the physical
16 address requirement midstream in the application distribution
17 process. But, given the Supreme Court's decision in Nuleaf,
18 the Court denies the motion.

19 All right. That takes me to my issues related to
20 Mr. Shevorski's email where the Department answered my
21 question in three parts. I have several objections on all
22 sides related to this, and I am happy to hear them in turn. I
23 am going to start on the plaintiffs' side and I'm going to
24 work around.

25 So anyone on the plaintiffs' side, including Mr.

1 Kemp, wish to say anything related to the objection to the
2 State's answer to my question that I asked at the end of the
3 hearing after Mr. Prince came up with a less restrictive
4 relief for the injunction?

5 So, Mr. Prince, we're going to keep giving you
6 credit for that.

7 MR. KEMP: Judge, you want to go applicant by
8 applicant, or do you want to go --

9 THE COURT: You can go in whatever order you want,
10 which is why there was no time limit today. Mr. Kemp.

11 MR. KEMP: Well, Your Honor, I think we've raised
12 our points. I would just reserve time for rebuttal.

13 THE COURT: All right. Thanks.

14 MR. KEMP: I would make one point, however, which
15 is, you know, everyone, Mr. Graf especially, yelled and
16 screamed about, oh, we can't attach exhibits that weren't
17 introduced at the hearing. And for the most part we limited
18 ourselves to exhibits at the hearing, with the exception of
19 the two public records and the verified complaint. But then
20 they turn around and file the exact same kind of stuff. They
21 filed Mr. Black's affidavit, who, according to Mr. Hawkins's
22 testimony which was unrebutted at the hearing, was dodging
23 service. I can file the affidavit of process server. You
24 know, Mr. Graf says I should have tried harder. But maybe he
25 should just produce Mr. Black. Then to suggest that now all

1 of a sudden they can strike all my exhibits because they
2 weren't introduced at the hearing but then Clear River can
3 come in with a new exhibit, this sale document which shows
4 that the sale wasn't effectuated until sometime in December
5 after the conditional license. But, in any event, they can
6 come in with a new document and, in addition to that, an
7 affidavit from Mr. Black, who was ducking service? You know,
8 I just want a fair playing field, Your Honor. If their
9 stuff's coming in -- and I talked to Mr. Graf about this
10 before and he said there was a minute order allowing his
11 stuff. I went back and I didn't find any minute order. I did
12 find --

13 THE COURT: No. The minute order related to you.
14 Mr. Graf asked a similar question by email with my law clerk,
15 whether he was going to get in trouble for filing an
16 objection. I was in trial, so I told Dani to tell him to look
17 at the footnote which told him he could file an objection if
18 he wanted to.

19 MR. KEMP: I just want an equal playing field, Your
20 Honor.

21 THE COURT: I know.

22 MR. KEMP: We file stuff, they file stuff. It's
23 fine with me.

24 THE COURT: Okay. Anybody else on the plaintiffs'
25 side wish to say anything?

1 Okay. Mr. Koch.

2 MR. KOCH: Thank you, Your Honor.

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

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

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

1 three tiers.

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

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

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

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

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

4 THE COURT: He is a friend to all.

5 MR. KOCH: Friend to all.

6 MR. SHEVORSKI: Ecumenical, Your Honor.

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

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

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

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

25 And to the extent that there's any question about

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

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

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

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

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

3 THE COURT: Correct.

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

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

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

8 You know, it's -- frankly, the date of application
9 period could be potentially more arbitrary than anything else.
10 If there's a question of shareholders changing over in these
11 public companies over here, they submit the application on the
12 14th, by the 18th, the end, that could change over.

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

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

25 THE COURT: Okay. Thank you.

1 MR. HONE: Your Honor, Eric Hone on behalf of Lone
2 Mountain parties. Real quickly just two points.

3 One, we have a motion to strike, of course, the
4 material that was submitted by Mr. Kemp that you're hearing
5 tomorrow, so I'll reserve the issue on that.

6 Secondly, just a real quick point. Our position is
7 that to the extent that the Court asked a question of the
8 State and the State raised a question as to completeness for
9 the first time, that it's the State's obligation to answer
10 that question, not abdicate its responsibility, to then
11 actually answer that question and then come back into court.
12 So we would say from a logistical position our point would be
13 that if the State has a question or they do have a question
14 with regard to our client that they raised for the first time
15 last week, we should be able to address that with the
16 Department of Taxation. If they can resolve their question,
17 then we can come back to Your Honor and see whether our client
18 can go forward with the rest of the group. But as an initial
19 take we believe the object rests with the State. They should
20 answer the question that they raised for the first time last
21 week and then allow us to come back to your court to see if
22 that satisfies Your Honor. Thank you.

23 THE COURT: Thank you.

24 Next?

25 MR. GRAF: Good morning, Your Honor.

1 THE COURT: Mr. Graf, the person who asks for
2 affirmative relief in his objection.

3 MR. GRAF: I did, Your Honor. And it's not an
4 objection.

5 THE COURT: It's a brief. I'm sorry.

6 MR. GRAF: Correct. And I wanted to make that
7 clear, and I want to make that clear to Mr. Kemp. Our
8 objection early on when they initially filed their objection
9 and then the appendix was the fact that there was no
10 procedural mechanism for doing that. That's what we objected
11 to.

12 THE COURT: Not until I had Footnote Number 19 in
13 the findings of fact and conclusions of law.

14 MR. GRAF: I agree. So, and that's fine, Your
15 Honor. But the issue is here and our problem with what they
16 produced was you didn't get leave. So then we prepared a
17 letter to all counsel and the Court and said, hey, Your Honor,
18 if and when we submit a brief can we submit additional
19 information, Her Honor was --

20 THE COURT: I didn't see your letter at time I did
21 the minute order.

22 MR. GRAF: All counsel saw it.

23 THE COURT: I struck it because I wasn't taking
24 post-trial briefing.

25 MR. GRAF: Understood, Your Honor. We eserved it on

1 all counsel, just so Mr. Kemp's aware that he was aware of our
2 request to the Court regarding that issue.

3 But, Your Honor, you necessarily don't need any
4 documents. So here's the issue. The State has answered your
5 question and said Clear River submitted a completed
6 application pursuant to 453D.200(6). Your Honor, even in the
7 ballot initiative it reads the same way as it does in the
8 statute. The ballot initiative in Part 6 reads, "The
9 Department shall conduct a background check of each
10 prospective owners, officers, and board members of a marijuana
11 establishment license applicant." Your Honor, Clear River
12 couldn't be a bigger and better poster child for this very
13 prospective owner issue. This is a case where Clear River had
14 one other owner, Armco LLC. Armco LLC owned 8 percent. They
15 disputed the ownership and everything else in the initiative
16 litigation in 2015, February 26th, 2015. That litigation was
17 resolved in September with a confidential settlement agreement
18 signed, dated September 21st, 2016.

19 I raise those dates for this reason, Your Honor.
20 It's before the initiative was passed, it's before all of
21 these deadlines for these applications were even set. And
22 then there were deadlines for payments that were going to be
23 made, four in total, the last payment being made December 1st,
24 2018. That's coincidence, the very definition of coincidence.

25 So then we've got an issue where they're submitting

1 an application, and we know on December 1st or December 4th,
2 when the actual last payment was made, that this entity will
3 no longer be a member. That's the definition of prospective.
4 What's going to happen in the future? That's what Clear River
5 did, that's what they submitted. That's why we're not -- we
6 didn't file an objection, Your Honor. We just wanted to file
7 a brief that said, hey, these are all the facts and by the way
8 that's what the State knew, that's why the State put us in
9 Category Number 2. In our conditional letter they said, hey,
10 you've got to file this transfer of ownership. And
11 immediately on December 14th, within the 30 days required in
12 the conditional letter, we filed our change and transfer of
13 ownership to create ownership of 100 percent.

14 So, Your Honor, we're actually what they've been
15 railing against. Well, not necessarily some of them, because
16 some of these plaintiffs are publicly traded companies. And,
17 again, Your Honor, as we argued in our closing argument to the
18 motion for preliminary injunction, it is not lost on us the
19 unclean hands and/or the lack of equity that some of these
20 plaintiffs come to this Court with.

21 But here's the issue. Here's the issue, Your Honor.
22 What kind of whack-a-mole are we going to keep playing in this
23 case? Are we going to keep having -- we've had eight
24 different theories of the case by the plaintiffs throughout
25 this process that they have coming on for various reasons.

1 But on this one issue you've got before you an applicant that
2 owns a hundred percent of the company. Her Honor asked a
3 question, a very specific question, a very specific question,
4 did these applicants comply with NRS 453D.200(6).

5 THE COURT: Actually, I asked which applicants.

6 MR. GRAF: Which applicants. Clear River is one of
7 them, and Mr. Randy Black, the one man who controls Clear
8 River LLC, that's what we're talking about.

9 So unless Her Honor has any questions about that
10 process or any of the documents that were submitted -- but,
11 again, Your Honor, we submit that all of those documents were
12 in the possession and control of the State. The State knew
13 all of this information. And I guess that's the final
14 comment, Your Honor. These plaintiffs can say whatever they
15 want, they can make whatever arguments that they want; but at
16 the end of the day in this one issue, whether or not there was
17 ownership in one entity, it's this case and it's this client,
18 and it's our client, Clear River. Do you have any questions,
19 Your Honor?

20 THE COURT: I do not.

21 MR. GRAF: Thank you, Your Honor.

22 THE COURT: Next?

23 MR. KAHN: Good morning, Your Honor. Jared Kahn for
24 Helping Hands Wellness Center, Inc. My client representative
25 Dr. Jameson also has the pleasure of being here today for this

1 hearing.

2 Your Honor, the State responded to your inquiry as
3 it pertains to Helping Hands Wellness Center that it is unable
4 to eliminate a question whether Mr. Terteryan's testimony that
5 he was the COO and how he was not listed on Exhibit A could
6 respond to your inquiry. What is before the Court and Helping
7 Hands's objection that has been filed is a rundown that
8 explains that. You asked for an objection to the State's
9 inquiry, and we submitted the evidence. And that evidence
10 shows in Exhibit 1 there was a corporate resolution that was
11 executed in July of 2019 that Alyssa Navallo-Herman was no
12 longer the president, she resigned as the president, and
13 Klaris Terteryan was nominated as the president, and that Mr.
14 Alfred Terteryan was nominated as the chief operating officer
15 to assist the company.

16 Now, that transfer of ownership that caused Ms.
17 Navallo-Herman to resign occurred on July 19th, 2019, in the
18 middle of this entire process and not contemplated at the time
19 when they submitted their application. Certainly she's listed
20 in the application as an owner and president in there. So
21 upon her resignation they substitute who's going to be the new
22 president, and they nominated Mr. Terteryan as COO.

23 In the application itself that's designated
24 Exhibit 3, Mr. Terteryan is disclosed in the application as a
25 director of cultivation operations. So he's fully disclosed

1 in the application.

2 The organizational chart, which is included, as
3 well, shows that the COO position is blank. There was no COO
4 position at the time of the application. It was a prospective
5 position that they did not know who would have that title
6 until Mr. Terteryan was actually nominated in July of 2019,
7 after Mr. Navallo-Herman resigned as president.

8 The State inquiry as to whether they have a question
9 as to who should be an officer, they should look at the
10 company's application and the company's documents. And what
11 those company documents say now --

12 THE COURT: Well, but actually they should have
13 looked at that when they got the applications; right?

14 MR. KAHN: Correct.

15 THE COURT: Okay.

16 MR. KAHN: And I don't know if they did look at it
17 or not at the time, but they certainly couldn't look at Mr.
18 Terteryan being a COO at the time, because he wasn't a COO at
19 the time. It is not for them to hypothecate that to say he
20 should be the COO when he's the director of cultivation
21 operations. It's not the State's position to say who should
22 be an officer.

23 Mr. Terteryan was also noted in the State's response
24 to your inquiry, Your Honor, that he was fully background
25 checked because he's been a key employee working at the

1 facility for four years. And he was background checked then,
2 and he's background checked now. He has his agent card, and
3 they're in full compliance as to who has been background
4 checked in compliance with your concern, Your Honor, as to
5 which owners, officers, and board members have been background
6 checked.

7 The point of your order was to ensure that the State
8 background checks all of those folks, essentially, your
9 inquiry and your order that they can't issue the final license
10 until there's that compliance. For the State to then question
11 Mr. Terteryan and say he should be a COO as of the time of the
12 application, that's not the State's role and that's not what
13 your inquiry was. Your inquiry wasn't for the State to
14 determine who should be an officer, should it be the guy who's
15 running the dispensary who's the general manager. Should he
16 have been an officer? At what point does the State's inquiry
17 as to who should be an officer become a fantasy, as opposed to
18 let's look at what is actually disclosed and what actually
19 occurred. So now the State has this information that the
20 corporate resolution occurred in July 2019 after the transfer
21 of ownership occurred, and that inquiry should be complete
22 now.

23 Now, we are not certain as Helping Hands and I think
24 the other defendant intervenors whether or not it's your job,
25 Your Honor, to actually make a determination of completeness

1 here today or whether it's really the State's. The State was
2 tasked to respond to your inquiry, but you don't have the full
3 application before you, Your Honor. You don't have the -- you
4 weren't tasked, Your Honor, with determining whose application
5 is actually complete. That's the State's. And certainly
6 we're objecting to the State's objection that was filed and is
7 now -- I think it's marked Exhibit 3 and providing that proof
8 to respond to their inquiry. And is it up to you, Your Honor,
9 to determine now that Helping Hands is compliant, or is it up
10 to the State to say, well, we provided the information and
11 we're compliant? That -- I don't know if that's happening
12 here today or we go back to the State and have that inquiry
13 with them. When I also reached out to Mr. Shevorski he said
14 that was going to be your determination, essentially. Not
15 putting words in your mouth, Mr. Shevorski, but essentially
16 that's where we are today. He said, we're supposed to file
17 the objection. Which we did.

18 So the last point I want to make, Your Honor, on
19 this issue is the plaintiffs have made a great deal of
20 commotion of saying who was gaming the system by not listing
21 owners, officers, or board members or maybe listing new
22 owners, officers, and board members to obtain diversity
23 points. Here Mr. Terteryan was background checked. If he was
24 actually listed as an officer, we would have received more
25 points, Your Honor, because he's a minority. But in fact he

1 was not an officer at the time, and that's why he wasn't
2 listed.

3 So there's no harm or foul to the State and its
4 public policy to protect the public to ensure everyone's
5 background checked, which was I believe Your Honor's concern
6 as to why we should ensure everyone has been background
7 checked, to make sure the public knows who is the owners and
8 how they pass background checks. So that's been complied with
9 in response to their objection as to Mr. Terteryan.

10 And, again, it shows that we have substantially
11 complied. And I can understand now the confusion from the
12 State when Mr. Terteryan comes in and testifies in August that
13 he acts as the COO, which just occurred several weeks prior.
14 But nobody asked him on the stand, Your Honor. There's no
15 testimony that said, were you the COO at the time of the
16 application. Because at the time he wasn't. He was the
17 director of cultivation operations.

18 Therefore, Your Honor, I believe we have
19 substantially complied with filing a proper objection proving
20 Mr. Terteryan was not a COO at the time of the application,
21 and 'Helping Hands' application should be deemed complete and e
22 should move into the other tier, Your Honor. Thank you. And
23 if you have any questions --

24 THE COURT: Thank you. No.

25 Anyone else? Anything else, Mr. Kemp?

1 MR. KEMP: Yes, Your Honor.

2 THE COURT: Anything, Mr. Shevorski?

3 Mr. Shevorski is standing neutral.

4 MR. SHEVORSKI: Mr. Shevorski is here to answer your
5 questions, Your Honor, should you turn your fire in that
6 direction.

7 MR. KEMP: Your Honor, on Lone Mountain Mr. Hone
8 never answered the central issue, which is did Verano own Lone
9 Mountain at the time the application was filed. The answer to
10 that is clearly yes, and the support we rely in for that is
11 Mr. Kahn's complaint we've attached. He filed a complaint on
12 behalf of the Frye family against Lone Mountain, saying they
13 stole all his trade secrets. But in that complaint he alleges
14 clearly that Verano was the owner of Lone Mountain at the time
15 the application was filed. But more importantly, we have the
16 two -- I call them SEC filings. They're not really filing
17 with the United States Securities and Exchange Commission.

18 THE COURT: They're Canadian.

19 MR. KEMP: They're whatever the Canadian SEC is. So
20 I just want to make that clear. But I'm going to continue to
21 call them SEC filings. But anyway, we have not one, but two
22 SEC filings that specifically show that Verano owned Lone
23 Mountain at the time the application was filed. I mean, that
24 is it, Your Honor. You know, first of all, the State was
25 right; but, second of all, it's undisputed. And you didn't

1 hear Mr. Hone argue this fact. He won't admit it. He just
2 sits there and he says -- tries to be coy about it. But the
3 undisputed fact is that Verano owned Lone Mountain at the time
4 the application was filed and they did not disclose the Verano
5 owners -- the officers and directors on the application. I
6 mean, it's clear that there's support from the State's
7 position.

8 Moving to Mr. Koch's argument, he says, Judge,
9 ignore Schedule B where we listed the officers, directors, and
10 board members, and also he listed janitors and the maintenance
11 people and everybody else. But he says, ignore Schedule B,
12 look at the organizational chart we provided. That was not
13 part of Schedule B, Your Honor. What he's arguing is that he
14 did not list the officers and directors for the parent in
15 Schedule B but State should have figured this out and moved
16 them over there from his organizational chart to Schedule B.
17 Well, I mean, a couple problems with that. First, you know,
18 it's obvious that the State and the graders used Schedule B,
19 because they did the diversity rating -- by the way, NOR got
20 an 8, we got a 4, we being M&M. They used the people that
21 were listed on Schedule B as the owners, officers, and
22 directors. That's where he should have had all these other
23 owners, officers, and directors, not hidden somewhere on
24 Exhibit B. And he says, oh, well, M&M's bad, too. Your
25 Honor, we're not bad. We listed our owners, officers, and

1 directors of the holding company, the Canadian holding
2 company. We listed them on Schedule B, where they're supposed
3 to be listed. And because of that, we got lower diversity
4 points than them. We got a 4, they got an 8. And in our case
5 adding another 4 would have been outcome determinative. We
6 would have won a couple of the licenses. But, you know, to
7 say --

8 THE COURT: And I've deferred that to your
9 department. I sent that --

10 MR. KEMP: I understand that, Your Honor. We're
11 filing a motion with the -- you know, the new judge is
12 probably going to call you. But, any event --

13 THE COURT: I hope not.

14 MR. KEMP: But, in any event, we'll file a motion.
15 We're going to blame you. But, in any event --

16 THE COURT: I sent it to him. Even though he
17 doesn't have a County email yet, I sent it to his email at his
18 office.

19 MR. KEMP: Okay. In any event, Your Honor, I think
20 -- I don't know, you should send him a gift or something -- or
21 vice versa. But, in any event, the record clearly supports
22 that on the Nevada Organic Remedies thing that it wasn't
23 properly complete in Section B.

24 Moving to GreenMart, we didn't hear anything on
25 GreenMart, so I'm going to skip over it.

1 THE COURT: I believe that's because we lost Ms.

2 Shell during the conference call.

3 MR. KEMP: I won't take advantage of the situation,
4 Your Honor, I'll just rely upon the brief.

5 THE COURT: Thank you.

6 MR. KEMP: On Clear River -- this is my favorite,
7 okay.

8 Can I have my chart, please, Shane.

9 Well, one of my favorites. I've got a couple
10 favorites here.

11 THE COURT: I specifically told a group yesterday
12 they could not use Disney princesses in a PowerPoint. So
13 let's not use any Disney princesses.

14 MR. KEMP: All I was going to put is the purchase
15 and sale agreement that Mr. Black tendered.

16 THE COURT: Okay.

17 MR. KEMP: Okay, Your Honor. This is his own
18 purchase and sale agreement, okay. This is what he tendered.

19 Can we have that up, Shane.

20 (Pause in the proceedings)

21 MR. KEMP: Whatever the document that he put up,
22 Your Honor. He tendered this document. The document --

23 THE COURT: That Mr. Graf asked me to determine --
24 make a determination on today.

25 MR. KEMP: Yeah. What happened here is that Mr.

1 Black, like a lot of the applicants, started out with people
2 who were consultants or whatever who came in to -- and
3 supposedly knew something about marijuana, so he gave them a
4 piece of the action. But anyway, they were actual owners at
5 the time the application was filed. And the two men whose
6 names we referred to in the brief are Kozar and Arbelez
7 [phonetic]. They were actual owners at the time the
8 application was filed in September 2016.

9 When the awards were announced on December 5th they
10 were also actual owners, okay, both of these people. And then
11 in the admitted exhibit, the May 1st list of the State's
12 owners, officers, and directors, they're still listed as
13 owners of Clear River. They're still listed. That's an
14 admitted exhibit, Your Honor.

15 Now, he says, well, ignore the actual owners because
16 we were in the process of buying them out. They did not buy
17 -- what they did is they had a membership interest, and
18 instead of just doing the buyout and executing a note, they
19 had -- I guess they didn't trust each other -- they had the
20 membership interest tendered into the escrow maintained by one
21 of the attorneys, and that's where it was held to make sure
22 all four payments were made. The final fourth payment wasn't
23 made until after the awards were announced by the State.

24 So at the time that the application was filed and at
25 the time the award was made these people were actual owners of

1 the LLC, Clear River LLC. So Mr. Graf's argument is, Your
2 Honor, ignore the actual owners because we were buying them
3 out, they were going to be prospective owners. Well, first of
4 all, at the time the application was filed that was
5 speculative, because all the payments hadn't been made. Maybe
6 they were going to be actual owners, maybe they weren't. But
7 that ignores reality. These are the actual owners who should
8 be background checked more than anyone other than the actual
9 owners. And for that reason, Your Honor, we submit that the
10 Clear River application should be added to the list.

11 Moving to the next one --

12 THE COURT: Add to the list of Tier 3?

13 MR. KEMP: Yeah. I call it the Bad Boy List, Your
14 Honor.

15 THE COURT: I called it the Tier 3 list.

16 MR. KEMP: Okay, the Tier 3 list. All right. It
17 should be added to the Tier 3 list.

18 Helping Hands, Your Honor. This reminds me of the
19 cases we used to read about casinos on Fremont Street in the
20 '50s. Who knows who the real owner is, okay. I mean, we have
21 -- you know, I've done this a while, Your Honor, and that was
22 some of the most unbelievable testimony I've ever heard, you
23 know. Mr. -- I don't want to pronounce his name wrong, so
24 I'll just call him Mr. T. So Mr. T., he testifies that the
25 Jamesons come in with all the money, they have the architect,

1 they have -- they put everyone on the board, they find the
2 locations, they pay the -- some of the consultant fees, they
3 pay when the \$20,000 is due on the applications but they're
4 not the owners, okay, that's going to be worked out at a later
5 point. And now today we've got the client representative Dr.
6 Jameson, who two or three weeks ago when we did Mr. T's
7 testimony wasn't an owner at that time. I don't know what's
8 going on.

9 But this is one of the squirrelliest situations I
10 think you can imagine, Your Honor. And that's why they're
11 properly on the list. I don't want to belabor the point.

12 The last one we haven't -- I'll rely on the brief as
13 to Circle S. Circle S is pretty much in the same situation as
14 Helping Hands in that Mr. Hoffman is the husband, he's the one
15 that's really running the show for this particular applicant,
16 so that's why we submit they should be added on the list.

17 THE COURT: Thank you, Mr. Kemp.

18 Anyone else wish to speak?

19 MR. PARKER: Your Honor, I have a question for you.

20 THE COURT: Yes, Mr. Parker.

21 MR. PARKER: Just a quick one.

22 THE COURT: Is this a procedural question?

23 MR. PARKER: It is a procedural question, Your
24 Honor.

25 THE COURT: Lovely.

1 MR. PARKER: Okay. Your Honor, in terms of Rule 60
2 relative to amending an order --
3 THE COURT: Yes.
4 MR. PARKER: -- we didn't put all our arguments
5 forward today. I think the deadline is on Monday.
6 THE COURT: Today is not that day.
7 MR. PARKER: Good. I just wanted to make sure.
8 THE COURT: I am not doing motions to amend today.
9 MR. PARKER: Perfect.
10 THE COURT: I am handling discussions related to two
11 issues that I addressed in the findings of fact and
12 conclusions of law, one being who's in the categories
13 according to the email that Mr. Shevorski and the Department
14 of Taxation were kind enough to send me, and then the issue of
15 the bond.
16 MR. PARKER: And you're not foreclosing the
17 motion --
18 THE COURT: I'm not.
19 MR. PARKER: Thank you, Your Honor. That's it.
20 That's all I have.
21 THE COURT: Anything else?
22 MR. KOCH: Can I just address one thing Mr. Kemp
23 raised?
24 THE COURT: You can.
25 MR. KOCH: Mr. Kemp had indicated that the owners

1 were not listed in the Department's record. Exhibit 5023 is
2 the current license's owner -- license owners of record, if it
3 was not attached to our response here.

4 THE COURT: As of May.

5 MR. KOCH: As of the time --

6 THE COURT: That was in May.

7 MR. KOCH: These were -- these were of the
8 applicants that were of record. Based upon the transfer of
9 ownership letter from August 2018, DGV Nevada LLC is listed as
10 the first owner there. The other owners, officers, and board
11 members are each listed there. And so to say that somehow
12 this was hidden away someplace when the Department's own
13 records have that of record in their list at the time the
14 applications is an inappropriate comment.

15 MR. KEMP: Your Honor, I didn't say the owners
16 weren't listed. I said the officers and directors of the
17 holding company weren't listed.

18 THE COURT: Okay. Anybody else?

19 MR. KAHN: Your Honor, I think you're going to get a
20 couple of us standing up here.

21 Your Honor, just to briefly address Mr. Kemp's
22 comments and what this Court asked the State to do, the Court
23 asked the State to respond to the inquiry, and the State
24 provided its response after it thoroughly went through the
25 applications. It did not ask the plaintiffs to come in and

1 make a determination as to who the plaintiffs think should be
2 on the clients' applications, it did not ask the plaintiffs to
3 say who should be owners or officers or board members based on
4 testimony that actually said there was not an agreement on
5 ownership for Helping Hands until this year, Your Honor, which
6 is still under tax attorney review, has not been finalized,
7 has not been inked, Your Honor. And that's in our brief.
8 It's not for Mr. Kemp to make that determination, it's really
9 for the State, and the State did not bring that issue up
10 before you, Your Honor.

11 THE COURT: Thank you.

12 The question that I asked the Department of Taxation
13 at the conclusion of the arguments was made based upon a
14 suggestion by one of the defendants in intervention that a
15 narrower scope for injunctive relief might be appropriate.
16 The question that I asked was which successful applicants
17 completed the application in compliance with NRS 453D.200(6)
18 at the time the application was filed in September 2018.

19 Because the Court did not have unredacted versions
20 of the applications for all applicants, it was impossible and
21 remains impossible for the Court to make a determination,
22 which is why I have asked the Department of Taxation to make
23 that determination, since that's within their records.

24 The standard on injunctive relief is different from
25 the standard that the parties will face at trial or at summary

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

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

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

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

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

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

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

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

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

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

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

1 because I'm doing the bond hearing today. So anybody want to
2 talk to me about a bond? Anybody think the bond's okay at the
3 amount I've already set? Anybody want me to modify the bond?
4 I got no briefing on that issue from anyone. I was surprised.

5 MR. KAHN: Your Honor, I think collectively from
6 this table we did want to hear how the exclusion occurs before
7 bonds are applied. However, we are prepared to address
8 certain issues on the bond before Your Honor today based on --

9 THE COURT: Great.

10 MR. KAHN: -- based on evidence that was admitted
11 into the record during the hearing.

12 THE COURT: I'm listening.

13 MR. KAHN: Let me approach real quick, Your Honor.

14 Your Honor, currently the bond that was issued in
15 the TRO in the amount of approximately \$400,000 --

16 THE COURT: And some related TROs.

17 MR. KAHN: -- and related TRO, the Nevada Organic
18 Remedies, only applies to those two locations when you talk
19 about Thrive and then Nevada Organic Remedies licenses and the
20 harm that would occur as to those particular licenses. Those
21 amounts certainly cannot cover what the Tier 3 applicants and
22 capture 25 of the licenses. So \$400,000 would certainly not
23 compensate this side of the table if this side of the table
24 happened to be wrong at trial.

25 THE COURT: Well, it's not whether you're wrong at

1 trial. The standard is whether the injunctive relief was
2 improvidently granted. That's what the standard is. It's a
3 very narrow standard. And Polsenberg's here if you want to
4 ask him.

5 MR. KAHN: No, no. That's fine, Your Honor. And I
6 appreciate the correction.

7 THE COURT: Because you and Polsenberg and Bice are
8 going to spend time in Carson City now.

9 MR. KAHN: And I appreciate that, Your Honor. And I
10 appreciate the correction now.

11 If you're taking a look at what the bond -- how much
12 it should be issued, you should be taking a look at what these
13 licenses will basically generate [unintelligible] on the
14 profits potentially lost by failing to be able to be open due
15 to the injunction.

16 The document that was actually prepared by one of
17 the plaintiffs, Mr. Ritter, on behalf of his entity, TGIG LLC,
18 which is a plaintiff in this matter, presented to my client in
19 March of 2019, which was Exhibit 5064 in this matter, Your
20 Honor, indicates that there are net profits to the tune of
21 \$6.7 million for the location. Now, Mr. Gentile argued at the
22 time that that maybe encompassed two of the locations, so that
23 net profit calculation would be 3.35 million annually for each
24 location of the two, Your Honor, that would be lost by my
25 client based on the plaintiffs' projections as to how valuable

1 these licenses are.

2 So we submit, Your Honor, the bond would be
3 calculated at at least the amount the plaintiffs believe the
4 lost profits would be in this case.

5 Now, Your Honor, if you take that number and you
6 apply it times the 61 licenses or just the Tier 3, which are
7 the 25 licenses, certainly the \$400,000 isn't a compensable
8 number, and 3.35 million per license it would be for the net
9 profits expected to be lost.

10 If Your Honor were to take a look at the \$400,000
11 number, and I think it was 385,000, if I recall, as it applied
12 to Thrive, and you times that by 25, you would have
13 \$10 million as an appropriate bond. However, that \$385,000
14 number for Thrive was only based on being closed temporarily
15 during the preliminary injunction hearing.

16 THE COURT: For a couple months, hopefully.

17 MR. KAHN: For a couple months, correct.

18 THE COURT: That was the plan.

19 MR. KAHN: Correct. Pending trial, where we haven't
20 even had a Rule 16.1 conference, Your Honor, we have not had a
21 scheduling order on the trial date --

22 THE COURT: We actually have one set for
23 September 6th.

24 MR. KAHN: Correct. We haven't had one yet.

25 THE COURT: September 9th.

1 MR. KAHN: Yeah. It would be inappropriate to say
2 \$385,000 for one location that's only closed for a couple
3 months would be the correct number that would apply to 25
4 licenses.

5 THE COURT: You don't think I can get the Business
6 Court cases to trial before the end of the year?

7 MR. KAHN: Well, I don't know if you can get all
8 these lawyers in that room within a year, Your Honor. But I
9 hope you can. You had a hard time finishing the preliminary
10 injunction hearing.

11 THE COURT: I'm not worried about the rest of the
12 departments. I'm just worried about mine.

13 MR. KAHN: Right. No. What I mean is we had a hard
14 time getting everybody here already, so --

15 THE COURT: I know.

16 MR. KAHN: No. And I appreciate that, Your Honor.
17 If it's done expeditiously, then that's the appropriate thing
18 to do and it eliminates the --

19 THE COURT: That's why I called it an expedited
20 schedule in my order.

21 MR. KAHN: Correct. And that eliminates the
22 potential harm. But certainly we don't know when that is yet
23 at this point. And a modification to the bond could occur if
24 you set it at a higher number to predict that we're going to
25 lose 3.35 million annually in net profits in the first year of

1 operations for just our licenses each, you know, that could be
2 modified if trial was set sooner. But apparently right now
3 there's no trial set before Your Honor.

4 THE COURT: I haven't had a Rule 16 conference yet.

5 MR. KAHN: Exactly. And last thing I would note,
6 Your Honor, is even Mr. Yemenidjian, and I'm sorry of I
7 butchered the name, from Essence, he testified conservatively
8 \$2.8 million annually was the profits that could be lost. And
9 those numbers weren't disputed.

10 Now, at his calculation applying to the 25 licenses,
11 you're looking at a bond, you know, in excess of \$50 million.
12 So I'm just trying to put before Your Honor that currently the
13 plaintiffs' own party has presented what the potential net
14 profits could be for these licenses. That was undisputed by
15 the plaintiffs, other than whether that was for one or two
16 license at the \$6.7 million number. And that's where the bond
17 should be set, Your Honor. Thank you.

18 THE COURT: Thank you.

19 Anyone else from the defendants in intervention wish
20 to speak related to the bond amount? Mr. Koch.

21 MR. KOCH: I again join what Mr. Kahn had offered.
22 There's been a fair amount of evidence. Frankly, we had
23 thought there would be separate evidentiary hearings, but I
24 think enough evidence has been presented with respect to the
25 amounts --

1 THE COURT: Me, too.

2 MR. KOCH: -- and I've got other things to do. But
3 I want to just talk to the State after this, because we think
4 that there needs to be -- it needs to be modified.

5 For purposes of the bond here, as Mr. Kahn said, the
6 evidence offered by the Essence representative was the
7 2.8 million per license per year profit, and that was a
8 conservative number. That was internal [unintelligible] that
9 it was conservative. We believe our store's generating a
10 higher profit, much higher profit number. At the time Mr.
11 Jolley was here he'd testified about that, testified about a
12 lot of things. But at that point in time we weren't putting
13 on dollars and cents. 2.8 million is an appropriate number.
14 In the context of 25 licenses that would be \$70 million. We
15 have seven of those licenses. We believe that that 2.8 is an
16 appropriate number. Frankly, I'd be shocked if these cases
17 got to trial within a year based upon the process that has
18 gone on so far. And to the extent that the plaintiffs, who --
19 you've got numerous of them, all with varying different
20 interests and claims --

21 THE COURT: I've only got two sets of plaintiffs.

22 MR. KOCH: You will have only two sets of
23 plaintiffs. But this injunction hearing goes out to the other
24 judges who'll have to look at that, as well.

25 They have offered -- you know, Mr. Ritter got up on

1 the stand said each license is worth 10 million and we're
2 shopping ours, we're trying to sell ours. We're not saying,
3 you've got to pay us the full value of the license. 10
4 million for 26 licenses would be \$250 million. On that basis
5 the 70 million is a very conservative number to the extent
6 that we are not going to be permitted to open, we're going to
7 lose that amount of money that's pure profit. If you take the
8 same calculation the Court's already provided with respect to
9 Essence, Thrive -- I get the entities confused there, but the
10 TRO bond of \$400,000, that was for two months, as the Court
11 had stated. That'd be 2.4 million for a year. Am I right?
12 Yes. There we go. 2.4 million for the year times 25
13 licenses, that's \$60 million.

14 So based upon all those calculations that number is
15 appropriate. The plaintiffs have been the ones who have come
16 forward talking about the massive financial largess that's
17 here that they need to be able to grab a hold on, and now
18 they're trying to take that away from entities like us who are
19 going to lose revenue and profit in the meantime. So the
20 amount that should be set for the bond is no less than
21 \$70 million to secure this injunction based upon the evidence
22 that has been presented.

23 THE COURT: Thank you, Mr. Koch.

24 Anyone else on the defendants in intervention side
25 wish to speak related to this issue?

1 MR. HONE: Your Honor, Eric Hone on behalf of Lone
2 Mountain. We would just join in the arguments of Mr. Koch and
3 Mr. Kahn.
4 THE COURT: Thank you.
5 Mr. Prince --
6 MR. PRINCE: Your Honor, thank you.
7 THE COURT: -- aren't you excluded from the
8 injunctive relief?
9 MR. PRINCE: In part, yes.
10 THE COURT: Then why are you talking?
11 MR. PRINCE: Because I want to address -- they've
12 been discussing the bond that's applicable to the Thrive
13 defendants. That was part of a TRO which now obviously has
14 dissolved as a result of you ruling. That \$450,000
15 encompassed six weeks. It was \$150,000 for two weeks, then
16 you increased it to 300,000 for four weeks. That was
17 approximately May 24th through June 30th only. So you have an
18 identifiable number, number one, which particular --
19 THE COURT: So, Mr. Prince --
20 MR. PRINCE: Go ahead.
21 THE COURT: -- let me ask again. Your client is one
22 of those excluded because they're in Tier 1 or 2.
23 MR. PRINCE: Correct.
24 THE COURT: Why are you talking with me about the
25 bond?

1 MR. PRINCE: The only reason why is we're going to
2 be moving separately for the release of that bond amount to
3 our client --
4 THE COURT: Okay.
5 MR. PRINCE: -- so therefore should not be
6 considered --
7 THE COURT: Right.
8 MR. PRINCE: -- for your purposes in --
9 THE COURT: I will exclude that from my
10 calculations. Thank you.
11 MR. PRINCE: Thank you.
12 THE COURT: Anybody else on the defendants' side?
13 All right. The plaintiffs' side. Because the State
14 is standing silent.
15 Right, Mr. Shevorski?
16 MR. SHEVORSKI: Correct.
17 MR. GENTILE: Did you ever hear the phrase, are you
18 buying or are you selling?
19 THE COURT: I know.
20 MR. GENTILE: All right. It's got to be --
21 THE COURT: That's why in a settlement conference we
22 have them write the number down on a paper, and then we try
23 and have it exchanged. And whoever wrote that number down,
24 they're going to take it and buy it or sell it.
25 MR. GENTILE: I do not want to criticize Mr. Ritter,

1 but I think the Court needs to look at the context in which
2 Mr. Ritter was stating to a prospective --

3 THE COURT: He was trying to sell product and get a
4 management --

5 MR. GENTILE: He was sure trying to sell.

6 THE COURT: -- percentage out of that, too.

7 MR. GENTILE: Absolutely. Okay. And so --

8 THE COURT: I read the exhibit when it was admitted.

9 MR. GENTILE: All right. So, you know, then I don't
10 need to go any further. The bottom line here is that with
11 regard to the bond the value of the license should have
12 nothing to do with anything for two reasons. Number one, if
13 they lose, that license isn't worth anything. And, number
14 two, if they win, they have the license. And so nothing's at
15 risk. So what you really have to look at is how certain, what
16 kind of comfort can you have with regard to the profitability
17 of any business that hasn't opened its stores. And none of
18 these businesses have opened their doors. Our expert, Mr.
19 Seigneur, to the best of my knowledge, he is the only person
20 that has written a book specifically with regard to the
21 evaluation of cannabis businesses. And he's been at it for
22 quite some time in Colorado. And were he to have testified,
23 were you to have conducted a hearing, I can tell you that his
24 testimony would be that the value in this context in our
25 community, particularly in light of Mr. Peckman's testimony

1 that nobody's waiting around for a store to open closer to
2 them so that they could start smoking weed --

3 MR. KOCH: Your Honor, I object to Mr. Gentile
4 testifying what his expert would testify to if he shows up at
5 some future date.

6 THE COURT: No. He's talking about what Mr. Peckman
7 testified to.

8 MR. KOCH: No. He's talking about his expert from
9 Colorado.

10 MR. GENTILE: No. I'm talking about Mr. Peckman.
11 Mr. Peckman --

12 THE COURT: He said his expert was the only one who
13 wrote a book and it would be really nice if I continued this
14 hearing and let him get his expert here. And I'm not doing
15 that, because I've heard enough evidence. Now, if somebody
16 wants to increase the bond again later, you'll have to file a
17 motion.

18 MR. GENTILE: So Mr. Peckman's testimony was pretty
19 clear, and Mr. Peckman acknowledged in addition to that that
20 he does expect to lose some of the customers that used to go
21 to the Commerce store at the Sahara location.

22 THE COURT: Because they don't want to drive as far.

23 MR. GENTILE: Exactly. So --

24 THE COURT: And there are other places in between
25 that Commerce location and Sahara already that are open.

1 MR. GENTILE: So what I think is in any market, any
2 market for any kind of a product, and this is a product, there
3 comes a point in time when you're going to start seeing
4 cannibalization. I think that time is now. And under the
5 circumstances it is --

6 THE COURT: Then why are we all here if you're going
7 to all --

8 MR. GENTILE: Market share. Exactly. That is
9 exactly why we're here, to protect market share, okay.

10 THE COURT: Okay.

11 MR. GENTILE: And so under the circumstances, Your
12 Honor, I think the bond that you've previously set at
13 \$400,000, it may be little low, okay, but to suggest that \$70
14 million is a reasonable bond is certainly subject to
15 criticism.

16 THE COURT: Thank you.

17 MR. GENTILE: So under the circumstances I'd ask you
18 -- I'm not going to ask you for a particular number. I'm not,
19 okay. What I'm going to ask you is to recognize that none of
20 these stores have any kind of a track record. And so you
21 really cannot compare apples to apples here. And it's going
22 to take them some time to build up steam, if they ever get
23 open. And so under the circumstances this bond -- I'm not
24 going to ask you a number, but I'm going to tell you it
25 shouldn't be more than seven digits.

1 THE COURT: Thank you.

2 MR. KEMP: Your Honor, I just want to add a couple
3 facts here. Out of 25 licenses 13 of the 25 are here in Clark
4 County. Of those 13 two are in Henderson, where there's
5 already a moratorium. So I would submit that moratorium, you
6 know, precludes them from arguing any damages on those two.

7 But anyway, so that leaves 11 that in Clark County,
8 Las Vegas, and North Las Vegas. I just wanted the Court to be
9 aware of that.

10 THE COURT: Thank you.

11 Anybody else from the plaintiffs' side?

12 Anyone else on the defense side want to speak again?

13 While I appreciate the comments from all counsel
14 related to the amount of the bond, the risks of businesses
15 actually opening prior to the trial in this matter, as well as
16 the risks of any business that is a startup or new location,
17 makes it very difficult for the Court to place a value on the
18 income stream of any of those entities, which is what the bond
19 needs to be based on, is the losses that will be suffered as a
20 result of this injunctive relief.

21 For that reason the Court has set a fair bond in the
22 amount of \$5 million.

23 So can you post it in 10 days?

24 MR. GENTILE: Yes, Your Honor.

25 THE COURT: Okay. Anything else?

1 MR. KEMP: Judge, you made one comment that kind of
2 confused me.

3 THE COURT: I make lots of comments that confuse
4 you, Mr. Kemp. Ask for clarification.

5 MR. KEMP: You said the injunction going back to my
6 department.

7 THE COURT: No, not your injunction.

8 MR. KEMP: It's not my --

9 THE COURT: The injunction's here.

10 MR. KEMP: The injunction stays here, so we pay the
11 5 million --

12 THE COURT: Motions for reconsideration on the thing
13 that Mr. Parker's going to file that he wants me to reconsider
14 certain findings or conclusions of law, that comes here.

15 MR. KEMP: Right.

16 THE COURT: You do your Rule 16 in Department 8 with
17 whichever senior judge is there prior to your judge taking
18 office on or about September 30th.

19 MR. KEMP: Yeah. We're in the discovery phase over
20 there, Your Honor.

21 THE COURT: I don't know what you're going to do.

22 MR. KEMP: I just wanted to ask. So I put my 5
23 million up with Mr. Gentile; right?

24 THE COURT: You all as a group --

25 MR. KEMP: Okay. Thank you, Your Honor.

1 THE COURT: -- are putting up \$5 million.

2 \ Anything else?

3 MR. KOCH: Your Honor, I just want to for the record
4 say they as a group are putting up \$5 million. Some of these
5 plaintiffs may drop out of the case, which whoever's putting
6 this up is ambiguous. We believe that in each case the amount
7 should be put up as \$5 million, because each of the parties
8 that have brought that are the ones that are claiming they've
9 been harmed. For example, MM Development, which has the same
10 issues with respect to the application, has no irreparable
11 harm. So in each case that \$5 million should be posted.

12 THE COURT: So the \$5 million is only being posted
13 in the Business Court cases, because that is the only cases in
14 which the injunctive relief has been issued. So that's the
15 cases the bonds are going to be issued. I agreed to do the
16 injunctive relief so all the other departments didn't have to
17 and we only had to have one circus for the injunctive relief
18 hearing.

19 (Off-record colloquy - Clerk and Court)

20 THE COURT: And that does not include the amount
21 that was previously posted, which is going to be the subject
22 of the motion practice Mr. Prince mentioned.

23 Anything else? 'Bye, guys. See some of you
24 tomorrow unless you work it out.

25 THE PROCEEDING CONCLUDED AT 11:00 A.M.

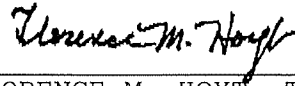
CERTIFICATION

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

AFFIRMATION

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

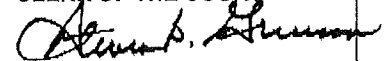
FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

8/30/19

DATE



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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, 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,

STATE OF NEVADA, DEPARTMENT OF TAXATION,

Defendant.

CLEAR RIVER, LLC, a Nevada limited liability company,

Applicant in Intervention

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

**DEFENDANT/INTERVENOR,
CLEAR RIVER, LLC'S, ORDER
DENYING ITS MOTION FOR
PARTIAL SUMMARY
JUDGMENT ON THE
PETITION FOR JUDICIAL
REVIEW CAUSE OF ACTION**

BLACK & LOBELLO
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1 This matter, having come on for hearing before the Court on July 23, 2019, Michael
2 Cristalli for the Plaintiffs in Case No. A-19-786962-B ("Serenity Plaintiffs"), William Kemp,
3 and Nate Rulis for Plaintiffs in Case No. A-18-785818 ("MM Plaintiffs", together "Plaintiffs");
4 Eric Hone for Lone Mountain Partners, LLC ("Lone Mountain"); J. Rusty Graf, Brigid Higgins
5 and Tisha Black for Clear River, LLC ("Clear River"); Jared Kahn for Helping Hands Wellness
6 Center, LLC ("HHWC"); David Koch for Nevada Organics Remedies, LLC ("NOR");), and
7 Leo Wolpert for Greenmart of Nevada NLV, LLC ("Greenmart"); Steve Shevorski, David Pope,
8 Theresa Haar for the State of Nevada ("State"); and, Joseph Gutierrez for Integral Associates,
9 LLC d/b/a Essence, CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Commerce Park
10 Medical, LLC, and Cheyenne Medical, LLC ("Thrive"), all having appeared at the hearing; and
11 the Court having reviewed the Motion for Partial Summary Judgment on the Cause of Action for
12 Petition for Judicial Review ("Motion") on file herein, all other pleadings, exhibits, and
13 affidavits on file herein, having entertained oral argument both in support and in opposition to
14 the Motion, makes the following findings and orders:

15 The Court hereby Finds that Serenity did timely file its complaint and that the cause of
16 action for Petition for Judicial Review properly named only Serenity and the State;

17 Further, the Court hereby Finds that upon the Legislatures passing of SB 32, the bill that
18 required the production of the names of all of the applicants for the retail marijuana
19 establishment licenses submitted on or before September 20, 2018, including the applicants'
20 addresses and any other identifying information, did not require that the Plaintiffs to amend their
21 existing petitions for judicial review or to file new or amended complaints alleging anew their
22 petition for judicial review cause of action and naming all of the four hundred and sixty two
23 (462) applications pursuant to NRS 233B.130 from the September 2018 application submittal;

24 Further, the Court hereby Finds that the Plaintiffs did properly allege and name the
25 proper parties for purposes of complying with NRS 233B.130, when they asserted themselves
26 and the State as the only parties to the contested case;

27 Further, the Court hereby Finds that the contested case for purposes of the petition for
28 judicial review cause of action was the scoring of the Serenity application(s) and only involved

1 the State and the Serenity in that process;

2 Further, the Court hereby Finds that the ranking of the applicants pursuant to NRS
3 453D.210(6) only involved Serenity and the State;

4 Further, the Court hereby Finds that as a result of these findings, Serenity was not
5 required to name all of the four hundred sixty-two (462) applicants who submitted applications
6 on or before September 20, 2018, and whose applications were ranked pursuant to NRS
7 453D.210(6);

8 Further, the Court hereby Finds that on or after May 10, 2019, when the State of Nevada,
9 Department of Taxation, produced the four hundred sixty-two (462) names of all of the
10 applications for the retail marijuana establishment licenses submitted on or before September 20,
11 2018, including the applicants' addresses and any other identifying information, Serenity was not
12 required to amend its existing complaint and name all of the applicants or to file a new complaint
13 naming all of the applicants as respondents pursuant to NRS 233B.130;

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Court hereby
15 Denies Clear River's Motion for Partial Summary Judgment as to the cause of action for Petition
16 for Judicial Review;

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1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Motion is
2 hereby **DENIED** in whole, and the Court further denies the Motion for Summary Judgment in
3 that it argued Serenity could have and should have filed a new complaint alleging the cause of
4 action for petition for judicial review naming all four hundred and sixty-two (462) of the
5 applications, upon the disclosure of all of the applicants names and identities, on or about May
6 10, 2019.


DISTRICT COURT JUDGE

1 By: NO RESPONSE
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8 LLC, CPCM Holdings, LLC d/b/a Thrive
Cannabis Marketplace, Commerce Park
9 Medical, LLC, Cheyenne Medical, LLC

10 By: NO RESPONSE
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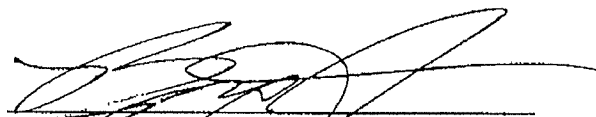
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CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of October, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing **DEFENDANT/INTERVENOR, CLEAR RIVER, LLC'S, ORDER DENYING ITS MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE PETITION FOR JUDICIAL REVIEW CAUSE OF ACTION** in *Serenity Wellness Center, LLC, et al v. State of Nevada, Department of Taxation, et al*, Clark County District Court Case No. A-19-786962-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.



An Employee of Black & LoBello