SUPREME COURT OF NEVADA
Case No. 79668

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

v.

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

Respondents,

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

APPELLANT NEVADA ORGANIC REMEDIES, LLC'S REPLY BRIEF

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NRAP 26.1 DISCLOSURE

This NRAP 26.1 Disclosure is made in connection with APPELLANT NEVADA ORGANIC REMEDIES, LLC'S REPLY BRIEF. The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a).

1. More than 10% of the ownership interest of Appellant Nevada Organic Remedies, LLC is owned by GGB Nevada, LLC. GGB Nevada LLC is 100% owned by GGB Green Holdings LLC. GGB Green Holdings LLC is 100% owned by GGB Holdco. GGB Holdco is 100% owned by GGB Canada Inc., and GGB Canada Inc. is 100% owned by Green Growth Brands, Inc. (formerly known as Xanthic Biopharma Inc.), a publicly traded company listed on the Canadian Securities Exchange.

2. David R. Koch (Nevada Bar Number 8830) and Brody R. Wight (Nevada Bar Number 13615) of Koch & Scow, LLC, are the only attorneys that have or are expected to appear for Nevada Organic Remedies, LLC in this matter.

Dated this 13th day of March 2020.

/s/ David R. Koch
David R. Koch
Attorney for Appellant
Nevada Organic Remedies, LLC

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I. NRS 453D.200(6) Is Ambiguous on Its Face

The Serenity Applicants want this Court to believe the phrase "each prospective owner" in NRS 453D.200(6) is clear and unambiguous on its face. Though "each prospective owner" is never defined in the statute and though the word "prospective" literally means "in the future,"[1] the Serenity Applicants conclude that no one could reasonably interpret this phrase any other way than they do. This argument is made by a group of unsuccessful applicants headed by the now self-dismissed Serenity Wellness Center, LLC[2] and whose own representatives have since testified of multiple interpretations of "prospective owner" for purposes of the applications.

Contrary to the Serenity Applicants' position, the statute does not define the enigmatic phrase "prospective owner," it includes no definition of what constitutes a "background check," and it specifies no time period within which the

[1] Black's Law Dictionary, 1222 (6th Ed. 1990).

[2] Serenity Wellness Center, LLC, the "lead plaintiff" of this group, has now dismissed itself from the lawsuit after its 30(b)(6) representative testified in deposition that the company never saw the Complaint before it was filed, never approved the filing of the lawsuit, and did not agree with Judge Gonzalez's reliance on the 5% rule being invalid as the basis for her injunction. (Deposition of Ben Sillitoe, March 5, 2020). This is not surprising given that Serenity was acquired by a public company prior to Serenity submitting its license application, and it did not list any of its minor shareholders in its application because of the 5% rule.

"background check" of "each prospective owner" must be performed. These are gaps in the statutory language that call for – in fact, require – the very clarification that the Department provided when it promulgated NAC 453D.255. The term "each prospective owner" is ambiguous because the language reasonably supports more than one interpretation on its face. *See*, *Great Basin Water Network v. State Eng'r*, 234 P.3d 912, 918 (Nev. 2010) ("An ambiguous statute is one that is capable of more than one reasonable interpretation."). The Serenity Applicants' failure to even consider the ambiguity of this phrase evidences the futility of their argument.

The term "owner," for example, is not defined in the statute. It must therefore be considered in the context of the applicant that is submitting for the license. Pursuant to Nevada law, an LLC is "owned" by its "members." NRS 86.081. In submitting an application, an LLC that lists each member of the LLC has listed each of its "owners." To argue that anyone else should have been considered as an "owner" of an LLC directly contradicts NRS Chapter 86 and finds no basis in NRS 453D. The Serenity Applicants' position – that applicants with public company parents were required to disclose not just the applicant's members but also all shareholders of an ultimate public parent, no matter how far attenuated – only underscores the ambiguity in the statute. To make this argument is to read into the statute an outcome not derived from its plain language.

Both the Department and NOR have the same position: as to LLC applicants, the definition of "owner" found in NRS Chapter 86 was applied to license applications. The Serenity Applicants do not even respond to, much less challenge, this statute-based interpretation. Instead, they now espouse a much broader definition of "owner" to include every person, entity, trust, or financial institution with *any* ownership interest in any parent company of the applicant, regardless of the nature of the ownership, the level of ownership, or the level of control exerted by that equity holder. The Serenity Applicants do not cite any statute or agency interpretation to support this definition, because no support exists.

The Serenity Applicants' response to NOR's Opening Brief entirely relies upon their conclusory assertion that NRS 453D.200(6) is unambiguous. Without this faulty assumption, the Answering Brief's reasoning and arguments fall apart.

II. There Was No Evidence that Nevada Voters Intended to Adopt the Serenity Applicants' Extreme Interpretation

The ballot initiative at issue ("BQ2") provides no support for the district court's finding that every single shareholder of a public company with any ownership interest of an applicant must be background checked. Such a requirement would be a *de facto* prohibition on public company ownership, as explained more fully in NOR's Opening Brief. There is no evidence that Nevada

voters meant to bar public companies from applying for licenses, as public company status is not mentioned in BQ2. Yet the Serenity Applicants argue that their unwieldly interpretation requiring background checks of every shareholder of a public entity is somehow required by the "plain meaning" of the statute. They do not care if the "plain meaning" they assert leads to unreasonable results and conflicts with other provisions. They still argue that courts are bound by the plain language. (Answering Brief, pgs. 16, 17).

Such an argument conflicts with this Court's holdings on statutory construction. This Court has consistently stated that it will look beyond the plain meaning of the statute when "that meaning was clearly not intended."[3] The Serenity Applicants try to cite this Court's decision in *State v. Friend* for the proposition that courts should never depart from the plain meaning of a statute, but this Court has cited *Friend* for the exact opposite. In *Newell v. State*, 364 P.3d 602, 603–04 (Nev. 2015) this Court explained:

> [W]hen the words of a statute are clear and unambiguous, they will be given their plain, ordinary meaning, and we need not look beyond the language of the statute. *State v. Friend*, 118 Nev. 115, 120, 40 P.3d 436, 439 (2002). However, **when the 'literal, plain meaning interpretation' leads to an unreasonable or absurd result, this**

[3] *Seput v. Lacayo*, 134 P.3d 733, 735 (Nev. 2006); *Szydel v. Markman*, 117 P.3d 200, 202 (Nev. 2005); *State v. Quinn*, 30 P.3d 1117, 1120 (Nev. 2001); *State v. State of Nevada Employees Ass'n, Inc.*, 720 P.2d 697, 699 (Nev. 1986).

> **court may look to other sources for the statute's meaning**. *Id.* at 120–21, 40 P.3d at 439. (emphasis added).

The Serenity Applicants erroneously claim that NOR did not provide Nevada authority to support the standard that this Court can look beyond the plain meaning when necessary, (*see*, Answering Brief, pg. 19), and in doing so fail to apprise this Court of the numerous cases including *Newell*, *Fierle*, and others cited in footnote 10 of the Opening Brief in direct support of the proposition. As explained there, "[w]hen two statutes are clear and unambiguous but conflict with each other when applied to a specific factual situation, an ambiguity is created and [courts] will attempt to reconcile the statutes." *Fierle v. Perez*, 219 P.3d 906, 910–11 (Nev. 2009) (quoting *Szydel v. Markman*, 117 P.3d 200, 202–03 (Nev. 2005)) (overruled on other grounds by *Egan v. Chambers*, 299 P.3d 364 (Nev. 2013)).

NOR explained that the district court's and the Serenity Applicants' interpretation of NRS 453D.200(6) is both absurd and fails to harmonize with other statutes and the spirit of the law. The Serenity Applicants do not even address these arguments, instead choosing to sidestep them with their assumption that no ambiguity exists.

A. Requiring Background Checks on Small Shareholders of Public Companies Would Be an Absurd Interpretation of NRS 453D.200(6)

There is no dispute regarding the public-safety purpose of conducting background checks of "prospective owners" of applicants. See NRS 453D.020(1). The Serenity Applicants abandon the argument at this point and fail to address either the negligible value or the practical impossibility of conducting background checks on minor shareholders who may turn over on a daily basis. The Serenity Applicants provide no evidence that any voter was concerned about a grandmother in Winnipeg owning 10 shares of public parent's stock exerting control over a marijuana establishment in Nevada. Indeed, there is no support for the extraordinary contention that criminal elements would engage in the acquisition of sub-5% interests in a company with the hope of exerting control.

And even if such a situation were to occur, the Department has the express regulatory authority to conduct background checks of smaller owners: "If, **in the judgment of the Department**, the public interest will be served by requiring any owner with an **ownership interest of less than 5 percent** in a marijuana establishment to comply with any provisions of this chapter concerning owners of marijuana establishments, the **Department will notify that owner and he or she must comply with those provisions**." NAC 453D.255(2). In other words, the

Department has discretion to regulate each applicant using its expertise and judgment.

With respect to the impossibility of the task, there was no dispute at the injunction hearing that conducting background checks on all shareholders of a publicly traded company would be "impossible." (*See, e.g.* AA 008676:23-008677:3). The Serenity Applicants do not deny it, and the district court does not dispute it. The district court instead chose to create its own saving interpretation by imposing a "record date" for ownership that is nowhere to be found in the statute. The statute cannot be interpreted to require the impossible, even with a judicially manufactured "record date," and such an incongruous interpretation cannot be what was intended.

Despite these glaring problems, the Serenity Applicants and the district court would deprive the Department of discretion and instead demand strict adherence to an impossible background check procedure that would serve no meaningful public purpose.

B. The Serenity Applicants' Interpretation of NRS 453D.200(6) Does Not Harmonize with the Remainder of NRS Chapter 453D

The Serenity Applicants fail to see how their interpretation of NRS 453D.200(6) conflicts with the remainder of NRS Chapter 453D and the broader statutory scheme, such that Nevada voters could never have intended to adopt the

Serenity Applicants' interpretation. In NRS 453D.200(1), the Nevada voters required that:

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

The statute defines "unreasonably impracticable" in NRS 453D.030(21):

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

The Serenity Applicants cannot answer the question of how their interpretation of NRS 453D.200(6) could be applied without making it "unreasonably impracticable" for any public company to operate a marijuana establishment or for the Department to conduct background checks of individual shareholders. Had the Department adopted regulations requiring background checks on all shareholders of a public company, the public company applicants undoubtedly would have brought suit against the Department for violation of NRS 453D.200(1).

The Serenity Applicants attempt to brush off this conflict by relying on the findings of the preliminary injunction itself as authority that NRS 453D.200(1) is somehow inapplicable. But this reliance is misplaced, because the injunction on appeal is reviewed by this Court *de novo*. (*See*, Answering Brief, pg. 14). This Court does not defer to the district court's conclusions of law, yet the Serenity Applicants offer nothing other than the injunction itself to support their statutory argument.

Nor do the Serenity Applicants provide any explanation of how similar threshold percentage of ownership regulations in related industries, including medical marijuana establishments, are inapplicable here. Simply saying the other industries are "irrelevant" or "inapplicable" doesn't magically make them so. To the contrary, the Serenity Applicants' purposeful ignorance of these related industry regulations further underscores their persuasiveness. If Nevada voters are casting their ballots regarding a detailed statutory scheme, the most reasonable assumption is that the voters bring with them their knowledge or experience from any other similar industries with which they are familiar. These comparisons demonstrate that the Department's interpretation and regulation are appropriate and reasonable in this context.

III. This Court Gives Deference to an Agency's Interpretation of an Ambiguous Statute the Agency Is Tasked with Implementing

Faced with an ambiguous statute, the Department interpreted the statute (and especially the phrase "prospective owner") in a way that avoided the pitfalls outlined above. This interpretation, which was manifest in the regulations the Department adopted, was within the discretion of the Department. The Serenity Applicants' Answering Brief, like the district court below, attempts to eliminate the Department's discretion and deference by characterizing the Department's actions as "modifications" of NRS 453D.200(6) rather than "interpretations" of the statute. The Serenity Applicants go on to present a classic strawman argument that the Nevada Constitution does not give the Department the power to "modify" the statute, without ever pointing to an actual argument by NOR or anyone else that the Department was entitled to "modify" the statute. Neither NOR nor the Department has *ever* argued that the Department had the power to "modify" the statute, nor have they stated that the Department actually modified the statute when it promulgated its regulations.

Both NOR and the Department agree that the Department has the power to interpret NRS 453D.200(6), and NOR contends that the 5% rule in NAC 453D.255 interprets NRS 453D.200(6) in a reasonable manner. It does so by applying the background check requirements to a scope of "prospective owners" who have the

potential to exert any control over the applicant. The Court should evaluate the appeal in this administrative context.

The Serenity Applicants further misapply caselaw from this Court to imply that agencies have no deference in interpreting statutes. Most egregiously, they cite *Manke Truck Lines, Inc. v. Pub. Serv. Commn. of Nev.* to argue that court must not give any deference agencies in questions of statutory construction. (Answering Brief, pg. 11). The *Manke* Court, however, was referring to an entirely different scenario, where the agency made an administrative determination as to a specific party and held that a reviewing court should treat the review like any other appeal, considering legal issues *de novo*. 862 P.2d 1201, 1203 (Nev. 1993). Here, where the Department interpreted NRS 453D.200(6) and adopted NAC 453D.255, it was not making an administrative decision as to a specific party; it was interpreting and implementing the statute itself. The Department did nothing more than what administrative agencies in Nevada and elsewhere have done for decades: provide guidance and clarification where statutory language contains gaps or ambiguities.

This Court laid out the actual deference to be provided to the Department in its implementation of NRS 453D.200(6) with its decision in *Nuleaf CLV Dispensary, LLC v. State Dept. of Health and Human Services,* 414 P.3d 305 (Nev. 2018). In *Nuleaf*, similarly situated parties (some being the very same parties who are now before this Court once more) argued that the Department's predecessor

should not have been given deference in interpreting the medical marijuana statute and granting registration certificates to license applicants who did not comply with the plaintiffs' strict reading of the statute. This Court rejected such a reading and held that it must afford "great deference" to the Department's interpretation of a statute it is tasked with enforcing, especially when multiple parties have differing interpretations. Such is the case here. *Nuleaf*, 414 P.3d at 311. The district court's injunction contradicts *Nuleaf* and holds the Department to a standard this Court has previously rejected.

IV. The Serenity Applicants Fail to Articulate Any Irreparable Harm

The Serenity Applicant's Answering Brief further demonstrates the lack of articulated irreparable harm in the district court's preliminary injunction. In fact, it appears that the Serenity Applicants do not understand what irreparable harm means, as the Serenity Applicants could have answered this point by showing where in the record the district court stated the specific harm the Serenity Applicants would suffer if NOR were able to open its marijuana establishments for business during the pendency of the action. And by pointing out that NOR could not cite to any part of the record where irreparable harm was found, the Serenity Applicants have actually proved the point: NOR cannot provide a citation to something that does not exist.

Instead, like the district court before them, the Serenity Applicants state that "Serenity Applicants have been irreparably harmed because of the repeated statutory and constitutional violations engaged in by the [Department]." (Answering Brief, pg. 32). But claimed violations of statutes are not the same as irreparable harm. Neither the district court nor the Serenity Applicants can explain the irreparable harm, and the injunction is therefore improper.

V. The Serenity Applicants Lack Standing to Sue for Violations of NRS 453D.200(6)

The Serenity Applicants do not have standing to sue for violations of NRS 453D.200(6). The statute is not designed to protect the Serenity Applicants but rather to protect the public in general. Even the Serenity Applicants admit that the background check requirement is designed to "facilitate[] the important public safety goal." (Answering Brief, pgs. 17, 18). The Serenity Applicants have suffered no justiciable injury that is not common to the general public.

Safety laws are not designed to protect competitors. As in *Hauer v. BRDD of Indiana, Inc.* where the court found that a competitor did not have standing to sue based upon a statute that was designed to "assure the safety of…citizens," the competitor did not have standing to bring its claim. 654 N.E.2d 316, 317-18 (Ind. App. 1995). To the extent the Serenity Applicants claim they should be able to sue for breach of NRS 453D.200(6) as representatives of the public interest (as they

appear to imply on page 24 of their Answering Brief), they are a poor choice to represent the public interest because **the Serenity Applicants first proposed the 5% rule and have themselves been relying on the 5% rule to operate dispensaries through publicly traded companies**. Any purported reliance on public safety is specious. Instead, they are challenging the rule in a desperate attempt for a second bite at the license apple. They do not represent the public's interest and have no standing to sue under the representative theory.

VI. The Serenity Applicants' Opposition to Estoppel and Laches Has No Support in the Evidence from the Injunction Hearing

To stave off estoppel and laches as defenses to their claims, the Serenity Applicants misguidedly argue that: (1) John Ritter of TGIG, LLC did not support the adoption of the 5% rule while on the Governor's Task Force, and (2) the Serenity Applicants could not have known about the 5% rule before the Department evaluated applications. The evidentiary hearing contradicts both of these arguments.

A. John Ritter Individually Sponsored the 5% Rule for Background Checks

John Ritter was the Serenity Applicants' primary factual witness. He testified on behalf of respondent TGIG, LLC and sits on its board. He was the first person to ever mention the 5% rule while testifying. The 5% rule was not

mentioned in any Complaint filed in the case or in the motion for preliminary injunction. The challenge to the 5% rule began with John Ritter's testimony.

This challenge is hypocritical, as John Ritter was the sponsor of the Governor's Task Force recommendation to include the 5% rule in the regulations. Beginning on page 114 of the Task Force report and recommendations, (46 AA 011520), Ritter sponsored the recommendation to "[r]equire **only Owners with 5%** or more cumulatively ... be required to undergo a **background check** and resubmit a new application for license renewal." The final report specifically states that the 5% rule recommendation had **two "Individual Sponsor(s)", which included "John Ritter, Advisory Board Member for TGIG, LLC, The Grove"** along with David Goldwater. (46 AA 011521).

The recommendation goes on to state that the guiding principle behind the recommendation was to "[p]ropose efficient and effective regulation that is clear and reasonable and not unduly burdensome." (*Id.*). It then states that the provision of Ballot Question 2 addressed by the recommendation is found in NRS 453D.200(1); specifically, that the "[t]he regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impractical." (*Id.*). Finally, the final report states that the 5% rule, sponsored by Mr. Ritter, resolves the following issue:

> To allow companies that own marijuana establishment licenses in which there are multiple Owners that own less than 5%, in some cases far less, to be able to operate practically and efficiently. To allow companies that own marijuana establishment licenses to function based on their governing documents as companies are allowed to do in other industries. (*Id.*).

Mr. Ritter's recommendations in the Task Force report support NOR's position. In contrast to the selectively clipped and conveniently characterized injunction hearing testimony from Mr. Ritter, he essentially created and certainly sponsored the adoption of the 5% rule. The fact that Mr. Ritter's TGIG establishment did not rank high enough to receive a license does not justify erasing his prior actions in supporting and sponsoring the very rule that his company and current applicant group now contest.

B. The Serenity Applicants Have Already Benefitted from the 5% Rule

The first plaintiffs among the Serenity Applicants – Serenity Wellness Center, LLC – is a publicly traded company with 125 million outstanding shares. (43 AA 010546 – 010547). Serenity's representative at the preliminary injunction hearing, Ben Sillitoe, testified that he had no idea how many shareholders Serenity had. (43 AA 010546 – 010547). He further stated that he has only ever reviewed public filings for Serenity shareholders with interests over 10%. (43 AA 010547).

Mr. Sillitoe admitted that there were even some shareholders that did not want to be on the application and were not listed. (43 AA 010549). He stated that those shareholders were not listed because they owned "[m]uch less than 5 percent" of the stock. (*Id.*). He did not list those owners "[b]ecause we were directed to only include those over 5 percent," and he testified that he was aware of the 5% rule found in NAC 453D.255 at the time Serenity submitted its application. The rule was certainly well known amongst all public companies at the time of application. (43 AA 010550, 010554).[4]

Serenity not only relied on the 5% rule in submitting its application, it is currently relying on the 5% rule to operate its current recreational dispensary. The 5% rule has been in the regulations for years, and operators, including multiple unsuccessful applicants that sued the Department, have relied on the 5% rule since the regulation was passed and are currently relying on the rule to operate their dispensaries. The Serenity Applicants are not challenging the 5% rule because they are legitimately worried about background checks. They are challenging the rule because it is one way to disrupt a system that has denied them another license.

[4] Mr. Sillitoe also testified that it he could not see how it would be logistically possible for the Department to conduct background checks on all shareholders as the shares trade hands, admitting that a "couple hundred thousand" shares trade hands each day. (43 AA 010551 – 010552). He also testified that minority shareholders have no say regarding changes to the company and that any proposed changes should be submitted to the board of directors. (43 AA 010552). Like Mr. Ritter, Mr. Sillitoe's testimony supports NOR's position.

VII. NOR Listed All of Its Owners in Its Application

The Serenity Applicants dedicate a section of their Answering Brief to arguing that NOR did not list all of its owners, (See, Answering Brief, pgs. 39-42), but the argument shows that the Serenity Applicants fail to comprehend the definition of the term "owner." Misconstruing testimony from Steve Gilbert of the Department, the Serenity Applicants argue that NOR did not list all of the shareholders of Xanthic, a public parent company.[5] They again create a false premise, stating that NOR believes regulations exempted compliance with NRS 453D.200(6). (Answering Brief, pg. 42) ("According to NOR, NAC 453D.250(2) suggests that it did not have to comply with NRS 453D.200(6).").

Because NOR is a limited liability company, its owners are its members, and NOR listed all of its members in its application. It provided all information necessary for the Department to conduct background checks on those owners. For all the fuss the Serenity Applicants make about the disclosure of "Xanthic"

[5] In making the argument, the Serenity Applicants deceivingly state that "testimony from NOR's own representative [Andrew Jolley] at the preliminary injunction hearing established that the majority of shareholders that have ability to control Xanthic (All Js Greenspace and GA Opportunities Corp.) ... were not listed on NOR's application. (Answering Brief pg. 42). But Mr. Jolley never made any such admissions. In the transcripts, the attorney questioning Mr. Jolley accused All Js Greenspace and GA Opportunities of owning controlling shares of parent company Xanthic (now Green Growth Brands Inc.), but Mr. Jolley had no knowledge of those claimed facts and does not confirm these accusations. (See, 28 AA 006883-6888). Nor are they accurate, as the only shareholders the attorney "testified" about was a shareholder of the public entity which was disclosed.

shareholders, Xanthic did not apply for licenses, and its shareholders are not members of NOR. Nonetheless, NOR did list all shareholders owning more than 5% of the Xanthic entity. The Serenity Applicants never address NOR's actual argument on this point, and the Court should conclude that NOR listed all of its members and should not be subject to the injunction.

VIII. The Serenity Applicants' Defense of the District Court's Selective Application of the Injunction Undermines Their Other Arguments

In the last section of the Opening Brief, NOR explained how the district court indefensibly subjected NOR to the preliminary injunction while excluding other licensees owned by public companies and other licensees who did not intervene. NOR did not expect the Serenity Applicants to support the district court's distinction among "Tiers" of applicants on this point, but they do, and their defense is further proof they are not actually concerned about public safety or whether an injunction is necessary to prevent irreparable harm.

There is no dispute that the district court subjected NOR to the injunction but did not subject other applicants such as the Essence entities, which are owned by a publicly traded company.[6] The Serenity Applicants try to justify the district

[6] The Serenity Applicants claim NOR does not cite to the record to show that the Essence entities are owned by a publicly traded company. They apparently skipped over NOR's entire statement of the facts which states that the Essence entities are publicly traded companies and cites to transcripts from the preliminary injunction hearing. (*See*, Opening Brief, pg. 12).

court's action by arguing that the Essence entities had not been purchased by a publicly traded company until just after the application process started. Apparently, in their view, NRS 453D.200(6)'s requirement to conduct background checks on each "prospective owner" only applies up to the time someone submits an application. Following submission of the application, the Serenity Applicants apparently have no problem with an applicant transferring their ownership to whomever they want without any background check requirements on the new owners. That is a particularly gaping loophole for the criminal bogeymen the Serenity Applicants describe in their Brief. If criminals want to infiltrate the Nevada market, the Serenity Applicants would just tell them to purchase a company that has already applied for licenses, and they can then operate with impunity.

Of course, the language of NRS 453D.200(6) does not support the Serenity Applicants' position. Nothing in that statute distinguishes applicants that have already applied for licenses from those that have not. The statute explicitly covers "prospective" or future owners and never defines "applicant" so narrowly. To be clear, NOR does not believe the minority shareholders of the Essence entities need to be background checked for all of the reasons argued above. NOR is simply arguing that the insisted distinction between NOR and the Essence entities exposes the ludicrous nature of the preliminary injunction.

Similarly, the Serenity Applicants' insistence that the Essence entities are exempt from the preliminary injunction shows that the Serenity Applicants are not at all worried about public safety. They feign concern when convenient, and there was never any basis to distinguish applicants into Tiers in the preliminary injunction.

CONCLUSION

The Serenity Applicants fail to justify the preliminary injunction in this case. They have not provided valid legal reasons why the Department is not entitled to administrative deference in implementing and interpreting an ambiguous statute. Nor have they provided any evidence of any articulated irreparable harm. Finally, they have not shown how they have standing to challenge the statute in the first place. For these reasons, the Court should reverse the district court's order granting the preliminary injunction.

Dated this 13th day of March, 2020

/s/ David R. Koch
David R. Koch
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Nevada Organic Remedies, LLC

NRAP 28.2 CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP (a)(6) because: This brief has been prepared in a proportionately spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32 (a)(7)(c), it is proportionately spaced, has a type face of 14 points and contains 4,773 words.

3. Finally, I hereby certify that I have read this Reply Brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

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sanctions in the event that the accompanying brief is not in conformity with the Nevada Rules of Appellate Procedure.

Dated: March 13, 2020

DAVID R. KOCH
KOCH & SCOW, LLC

/s/ David R. Koch
Attorneys for Appellant Nevada Organic Remedies, LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT NEVADA ORGANIC REMEDIES, LLC'S REPLY BRIEF** was filed electronically with the Nevada Supreme Court on the 13th day of March 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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