

SUPREME COURT OF NEVADA

Case No. 79669

GREENMART OF NEVADA NLV LLC,; and
NEVADA ORGANIC REMEDIES, LLC
Appellants/Cross-Respondents,

Electronically Filed
Apr 15 2020 09:28 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

ETW MANAGEMENT GROUP LLC; GLOBAL HARMONY LLC; GREEN
LEAF FARMS HOLDINGS LLC; GREEN THERAPEUTICS LLC; HERBAL
CHOICE INC.; JUST QUALITY LLC; LIBRA WELLNESS CENTER LLC;
ROMBOUGH REAL ESTATE INC. D/B/A MOTHER HERB; NEVCANN LLC;
RED GARDENS LLC; THC NEVADA LLC; ZION GARDENS LLC; and
MMOF VEGAS RETAIL INC.,
Respondents/Cross-Appellants,

and

THE STATE OF NEVADA DEPARTMENT OF TAXATION,
Respondent,

Appeal from the Eighth Judicial District Court,
Clark County, Nevada
District Court Case # A-19-797004-B
The Honorable Elizabeth Gonzalez

APPELLANT'S APPENDIX – VOLUME 5

David R. Koch (NV Bar #8830)
Brody R. Wight (NV Bar #13615)
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Telephone: (702) 318-5040
Email: dkoch@kochscow.com, bwight@kochscow.com
Attorneys for Appellant Nevada Organic Remedies, LLC

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

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

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

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

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

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

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT NEVADA ORGANIC REMEDIES, LLC'S OPENING BRIEF** was filed electronically with the Nevada Supreme Court on the 17th day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Adam Fulton and Maximilien D. Fetaz
Brownsein Hyatt Farber Shreck, LLP

Counsel for Respondents,

ETWManagement Group LLC; Global Harmony LLC; Green Leaf Farms Holdings LL; Green Therapeutics LLC; Herbal Choice Inc.; Just Quality LLC; Libra Wellness Center LLC; Rombough Real Estate Inc. d/b/a Mother Herb; NEVCANN LLC; Red Gardens LLC; TH Nevada LLC; Zion Gardens LLC; and MMOF Vegas Retail Inc.

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

Office of the Attorney General

Counsel for Respondent,

The State of Nevada Department of Taxation

David R. Koch, Steven B. Scow, Daniel G. Scow, and Brody R. Wight

Koch & Scow, LLC

Counsel for Appellant,

Nevada Organic Remedies, LLC

Margaret A. McLetchie, Alina M. Shell

McLetchie Law

Counsel for Appellant,

Counsel for GreenMart of Nevada NLV LLC

/s/ David R. Koch

Koch & Scow



1 claim or defense, and the main action, have a question of law or a question of fact in common.”
2 Nev. R. Civ. P. 24(b)(1)(B). “In exercising its discretion” on this issue, “the court must consider
3 whether the intervention will unduly delay or prejudice the adjudication of the original parties’
4 rights.” Nev. R. Civ. P. 24(b)(3).

5 Here, as discussed above, Lone Mountain’s motion to intervene is timely and will not
6 prejudice any of the parties in the case. Additionally, Lone Mountain’s defense, and anticipated
7 counterclaims, present a common question of law and question of fact with the main action.
8 Moreover, allowing Lone Mountain to intervene in this suit will not unduly delay or prejudice
9 the adjudication of the current parties’ rights. If anything, allowing intervention will promote
10 judicial economy and spare the parties from needing to litigate a similar case in another district.
11 *See Dangberg Holdings Nevada, L.L.C.*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999) (where
12 the court found “bringing all of the parties together in one proceeding before one tribunal will
13 foster the principles of judicial economy and finality”); *see also Venegas v. Skaggs*, 867 F.2d
14 527, 531 (9th Cir. 1989) (noting that “judicial economy is a relevant consideration in deciding a
15 motion for permissive intervention”), *aff’d sub nom. Venegas v. Mitchell*, 495 U.S. 82, 87, 110 S.
16 Ct. 1679, 109 L.Ed.2d 74 (1990). Accordingly, this Court should grant Lone Mountain’s Motion
17 to Intervene.

18 **II. CONCLUSION**

19 Based on the foregoing, Lone Mountain respectfully requests that this Court grant its
20 application to intervene. Attached as **Exhibit B** is Lone Mountain’s Answer to Plaintiffs’ First
21 Amended Complaint. Lone Mountain expressly reserves its right to amend this Proposed Answer

22 ///

24 ///

26 ///

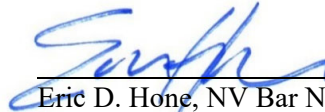
H1 LAW GROUP
701 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074
Tel: 702-608-3720 Fax: 702-608-3759



1 to include counterclaims should this Court permit Lone Mountain's intervention. A proposed
2 Order Granting the Motion to Intervene is attached as **Exhibit C**.

3 Dated this 22nd day of March 2019.

H1 LAW GROUP

4
5 

Eric D. Hong, NV Bar No. 8499

eric@h1lawgroup.com

Jamie L. Zimmerman, NV Bar No. 11749

jamie@h1lawgroup.com

Moorea L. Katz, NV Bar No. 12007

moorea@h1lawgroup.com

701 N. Green Valley Parkway, Suite 200

Henderson NV 89074

Phone 702-608-3720

Fax 702-608-3759

Attorneys for Intervenor

Lone Mountain Partners, LLC

13
14 **CERTIFICATE OF SERVICE**

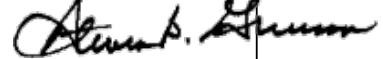
15 The undersigned, an employee of H1 Law Group, hereby certifies that on the 25th day of
16 March 2019, she caused a copy of the foregoing to be transmitted by electronic service in
17 accordance with EDCR 8.05(a) and 8.05(f), the Eighth Judicial District court's electronic filing
18 system, to all interested parties, through the Court's **Odyssey E-File & Serve** system.

19
20 

Bobby Donaldson, an employee of
H1 LAW GROUP

EXHIBIT A

AA 001003



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

MM DEVELOPMENT COMPANY,
INC,

Plaintiff(s),

vs.

STATE OF NEVADA,
DEPARTMENT OF TAXATION,

Defendant(s).

Case No. A-18-785818-W

DEPT. IX

BEFORE THE HONORABLE DAVID BARKER,
SENIOR DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 5, 2019

**TRANSCRIPT OF PROCEEDINGS RE:
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff(s):

WILLIAM SIMON KEMP, ESQ.
NATHANAEL R. RULIS, ESQ.

For the Defendant(s):

ROBERT E. WERBICKY, ESQ.
DAVID J. POPE, ESQ.

RECORDED BY: ROBIN PAGE, COURT RECORDER

1 THE COURT: I'm concerned I have authority. And I'm sure
2 Mr. -- or Judge Bailus was too.

3 MR. KEMP: Well, Your Honor, when -- when this started,
4 when we first requested the preservation order, we had been informed
5 that the grading was done by some out-of-state consultant, like, you
6 know, a big accounting firm or someone like that.

7 THE COURT: Okay.

8 MR. KEMP: It wasn't till we actually got to the hearing that
9 counsel informed us that the State had hired Manpower to do this, which
10 was rather shocking to us, and it's been shocking to pretty much
11 everyone who's looked at it. You know, we quoted Commissioner
12 Kelesis's comments, he was shocked. I mean, the State charged these
13 people two and a half million dollars for application fees and then they
14 went and hired Manpower to -- to rate these applications.

15 And the amount of money involved is staggering, Your Honor.
16 The -- the estimate -- we attached a copy of the complaint in the Verano
17 case. The Verano people were winning bidders. They won 11 licenses.
18 So they estimate that each one of those is worth \$30 million. I think
19 that's probably a little on the high side, to be candid with the Court. But
20 let's just say they're worth 10.

21 So what we're talking about here is over 60 licenses, 10
22 million apiece, that were rated by this -- this process, that the
23 governor's -- the governor's own proclamation calls it opaque. Okay.
24 That's the governor of our state is calling it opaque.

25 But in any event, so what has happened here, Your Honor, is

1 a number of people who were previous licensees, including our clients,
2 MM Development and Livfree, we were ranked fourth and fifth by the
3 State last time.

4 THE COURT: All right. Okay.

5 MR. KEMP: Okay. Now we're not even in the top 30. The
6 only new factor added to the rating criteria was diversity. And if -- if
7 anything, we should have gone -- MM Development should have gone
8 up, because one quarter of the business is owned by American Indians.
9 So if diversity is really a factor, we -- we should have went up.

10 Instead, we saw a situation where three Canadian-controlled
11 companies won substantially all of the licenses, especially in Clark
12 County. I've already mentioned Verano. They're financed -- they're a
13 Chicago company, but they get their money out of Canada. They
14 won 11. Another group won eight. Another group won seven. These
15 are all big Canadian companies.

16 And to say the industry was shocked I think would be
17 understating it. Because everyone thought, you know, if we win one
18 license, it's great. If we win two, it's -- you know, that's wonderful.

19 THE COURT: That's \$10 million. That's \$10 million.

20 MR. KEMP: Yeah. Yeah, they were dreaming about
21 winning -- yeah, these are lottery tickets, Your Honor.

22 THE COURT: Okay.

23 MR. KEMP: And so this one company wins 11 out of 11,
24 Verano. And, you know, that -- the Department comes in and says,
25 Well, you have no proof that anything inappropriate happened. Well, we

1 do, Your Honor. Verano has already -- the partners in Verano have
2 already sued themselves and the -- the partner that runs the dispensary
3 here is run by Robert Frey. I don't know if Your Honor's familiar with that
4 name, he's a long-time businessman here in Nevada.

5 THE COURT: No.

6 MR. KEMP: Has a number of cigar stores.

7 Anyway, according to his lawsuit, he arranged with the Illinois
8 people who were in the process of merging with him, that they would file
9 applications, the 11 applications, on behalf of both of them. And so they
10 used Mr. Frey's dispensary, they used his taxation, they used his
11 trademarks. And lo and behold, they won 11 out of 11.

12 Mr. Frey contact him and said, Boy, we did great.

13 And they said, Well, what's this we stuff? These are all our
14 licenses.

15 So he's filed a lawsuit. This is the winning bidder -- the
16 winning bidder that's won the most licenses has filed a lawsuit saying
17 that there was fraud, that there was misappropriation of his trademarks,
18 that the process was not appropriate. The winning bidder has said this,
19 Your Honor. We also say this for the reasons I've indicated, we were
20 ranked four and five.

21 But anyway, this all shines a bright spotlight on how these
22 applications were graded and evaluated.

23 THE COURT: Okay.

24 MR. KEMP: So when we came here with Judge Bailus, I
25 disagree with counsel that we weren't talking about imaging at that time.

EXHIBIT B

AA 001008



1 **ANS**

2 **H1 LAW GROUP**

3 Eric D. Hone, NV Bar No. 8499

eric@h1lawgroup.com

4 Jamie L. Zimmerman, NV Bar No. 11749

jamie@h1lawgroup.com

5 Moorea L. Katz, NV Bar No. 12007

moorea@h1lawgroup.com

6 701 N. Green Valley Parkway, Suite 200

Henderson NV 89074

7 Phone 702-608-3720

8 Fax 702-608-3759

Attorneys for Intervenor

Lone Mountain Partners, LLC

9
10 EIGHTH JUDICIAL DISTRICT COURT

11 CLARK COUNTY, NEVADA

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

Plaintiffs,

16 vs.

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

Defendants.

20 LONE MOUNTAIN PARTNERS, LLC, a Nevada
21 limited liability partnership,

Applicant in Intervention.

Case No. A-18-785818-W

Dept. No. 18

**LONE MOUNTAIN PARTNERS, LLC'S
[PROPOSED] ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT AND PETITION FOR
JUDICIAL REVIEW OR WRIT OF
MANDAMUS**

22 Lone Mountain Partners, LLC ("Lone Mountain"), by and through counsel undersigned,
23 hereby files this answer to the First Amended Complaint filed by Plaintiff MM Development
24 Company, Inc., and Livfree Wellness, LLC dba The Dispensary (collectively "Plaintiffs"). Lone
25 Mountain states as follows:

26 Lone Mountain denies each and every allegation in the complaint except those allegations
27 that are admitted, qualified, or otherwise answered herein.
28



I. PARTIES & JURISDICTION

1. Answering paragraph 1, Lone Mountain lacks sufficient knowledge or information as to the truth or falsity of the allegations contained in this paragraph.

2. Answering paragraph 2, Lone Mountain lacks sufficient knowledge or information as to the truth or falsity of the allegations contained in this paragraph.

3. Answering paragraph 3, Lone Mountain admits that the Department of Taxation is an agency of the State of Nevada. Lone Mountain states that the duties of the Department are outlined by applicable law and regulation. Lone Mountain admits the allegations in this paragraph only insofar as they accurately reflect these laws and regulations.

4. Answering paragraph 4, Lone Mountain lacks sufficient knowledge or information as to the truth or falsity of the allegations contained in this paragraph.

II. GENERAL ALLEGATIONS

5. Answering paragraph 5, Lone Mountain states that Assembly Bill 422 speaks for itself. No response is required for Plaintiffs' legal conclusions or statements regarding the content of laws or regulations. To the extent a response is required, Lone Mountain admits only insofar as the allegations accurately state the laws or regulations referenced in this paragraph.

6. Answering paragraph 6, Lone Mountain states that the August 16, 2018 letter from the Department speaks for itself and no response is required. To the extent a response is required, Lone Mountain admits only insofar as the allegations accurately quote the contents of that letter.

7. Answering paragraph 7, Lone Mountain admits.

8. Answering paragraph 8, Lone Mountain admits.

9. Answering paragraph 9, and subparagraphs 9(a)-(h), Lone Mountain states that no response is required as the allegations contained in this paragraph and subparagraphs are Plaintiffs' legal conclusions regarding the content of laws or regulations. These laws and regulations speak for themselves. To the extent a response is required, Lone Mountain admits only insofar as the allegations accurately state the laws or regulations referenced in this



1 paragraph and subparagraphs.

2 10. Answering paragraph 10, Lone Mountain admits, in part, that the Department
3 represented that it would issue recreational retail store conditional licenses no later than
4 December 5, 2018. Lone Mountain denies the allegations in this paragraph to the extent that
5 they impose a legal obligation on the Department that is inconsistent or outside the requirements
6 set forth in NRS 453D.210.

7 11. Answering paragraph 11, Lone Mountain lacks sufficient knowledge or
8 information as to the truth or falsity of the allegations contained in this paragraph and therefore
9 denies.

10 12. Answering paragraph 12, Lone Mountain lacks sufficient knowledge or
11 information as to the truth or falsity of the allegations contained in this paragraph and therefore
12 denies.

13 13. Answering paragraph 13, Lone Mountain lacks sufficient knowledge or
14 information as to the truth or falsity of the allegations contained in this paragraph and therefore
15 denies.

16 14. Answering paragraph 14, Lone Mountain lacks sufficient knowledge or
17 information as to the truth or falsity of the allegations contained in this paragraph and therefore
18 denies.

19 15. Answering paragraph 15, Lone Mountain lacks sufficient knowledge or
20 information as to the truth or falsity of the allegations contained in this paragraph and therefore
21 denies.

22 16. Answering paragraph 16, Lone Mountain lacks sufficient knowledge or
23 information as to the truth or falsity of the allegations contained in this paragraph and therefore
24 denies.

25 17. Answering paragraph 17, Lone Mountain lacks sufficient knowledge or
26 information as to the truth or falsity of the allegations contained in this paragraph and therefore
27 denies.

28



1 18. Answering paragraph 18, Lone Mountain lacks sufficient knowledge or
2 information as to the truth or falsity of the allegations contained in this paragraph and therefore
3 denies.

4 19. Answering paragraph 19, Lone Mountain lacks sufficient knowledge or
5 information as to the truth or falsity of the allegations that pertain to entities who are not Lone
6 Mountain, and therefore denies. Insofar as the allegations pertain to the Lone Mountain, Lone
7 Mountain denies.

8 20. Answering paragraph 20, Lone Mountain lacks sufficient knowledge or
9 information as to the truth or falsity of the allegations contained in this paragraph that pertain to
10 entities that are not Lone Mountain, and therefore Lone Mountain denies. Insofar as the
11 allegations pertain to Lone Mountain, Lone Mountain denies that the Department improperly
12 granted Lone Mountain licenses.

13 **III. CLAIMS FOR RELIEF**

14 **First Claim for Relief**

15 **(Declaratory Relief)**

16 21. Lone Mountain repeats and realleges all prior paragraphs as though fully set forth
17 herein.

18 22. Answering paragraph 22, Lone Mountain denies.

19 23. Answering paragraph 23, Lone Mountain denies.

20 24. Answering paragraph 24, Lone Mountain denies.

21 25. Answering paragraph 25, Lone Mountain denies.

22 26. Answering paragraph 26, Lone Mountain denies.

23 27. Answering paragraph 27, Lone Mountain denies.

24 28. Answering paragraph 28 and subparagraphs 28(a)-(h), Lone Mountain denies any
25 allegations contained in this paragraph and subparagraphs and denies that Plaintiffs are entitled
26 to any requested relief.

27 29. Answering paragraph 29, Lone Mountain denies.

28



1 30. Answering paragraph 30, Lone Mountain denies.

2 31. Answering paragraph 31, Lone Mountain denies.

3 **Second Claim for Relief**

4 **(Injunctive Relief)**

5 32. Lone Mountain repeats and realleges all prior paragraphs as though fully set forth
6 herein.

7 33. Answering paragraph 33, Lone Mountain denies.

8 34. Answering paragraph 34, Lone Mountain denies.

9 35. Answering paragraph 35, Lone Mountain denies.

10 36. Answering paragraph 36, Lone Mountain denies.

11 37. Answering paragraph 37, Lone Mountain denies.

12 38. Answering paragraph 38, Lone Mountain denies.

13 **Third Claim for Relief**

14 **(Violation of Procedural Due Process)**

15 39. Lone Mountain repeats and realleges all prior paragraphs as though fully set forth
16 herein.

17 40. Answering paragraph 40, Lone Mountain denies.

18 41. Answering paragraph 41, Lone Mountain denies.

19 42. Answering paragraph 42, Lone Mountain denies.

20 43. Answering paragraph 43, Lone Mountain denies.

21 44. Answering paragraph 44, Lone Mountain denies.

22 45. Answering paragraph 45, Lone Mountain denies.

23 **Fourth Claim for Relief**

24 **(Violation of Substantive Due Process)**

25 46. Lone Mountain repeats and realleges all prior paragraphs as though fully set forth
26 herein.

27 47. Answering paragraph 47, Lone Mountain denies.

28



1 48. Answering paragraph 48, Lone Mountain denies.

2 49. Answering paragraph 49, Lone Mountain denies.

3 50. Answering paragraph 50, Lone Mountain denies.

4 **Fifth Claim for Relief**

5 **(Equal Protection Violation)**

6 51. Lone Mountain repeats and realleges all prior paragraphs as though fully set forth
7 herein.

8 52. Answering paragraph 52, Lone Mountain denies.

9 53. Answering paragraph 53, Lone Mountain denies.

10 54. Answering paragraph 54, Lone Mountain denies.

11 55. Answering paragraph 55, Lone Mountain denies.

12 56. Answering paragraph 56, Lone Mountain denies.

13 **Sixth Claim for Relief**

14 **(Petition for Judicial Review)**

15 57. Lone Mountain repeats and realleges all prior paragraphs as though fully set forth
16 herein.

17 58. Answering paragraph 58, Lone Mountain denies.

18 59. Answering paragraph 59, Lone Mountain denies.

19 60. Answering paragraph 60, Lone Mountain denies.

20 61. Answering paragraph 61 and subparagraphs 61(a)-(c), Lone Mountain denies any
21 allegations contained in this paragraph and subparagraphs and denies that Plaintiffs are entitled
22 to any requested relief.

23 62. Answering paragraph 62, Lone Mountain denies.

24 **Seventh Claim for Relief**

25 **(Petition for Writ of Mandamus)**

26 63. Lone Mountain repeats and realleges all prior paragraphs as though fully set forth
27 herein.

28



- 1 64. Answering paragraph 64, Lone Mountain denies.
2 65. Answering paragraph 65 and subparagraphs 65(a)-(b), Lone Mountain denies.
3 66. Answering paragraph 66 and subparagraphs 66(a)-(b), Lone Mountain denies.
4 67. Answering paragraph 67, Lone Mountain denies.
5 68. Answering paragraph 68, Lone Mountain denies.

6 WHEREFORE, Lone Mountain denies that Plaintiffs are entitled to any relief being
7 sought in their Prayer for Relief or any other relief in this matter.

8 **AFFIRMATIVE DEFENSES**

9 **First Affirmative Defense**

10 Lone Mountain adopts and incorporates herein all affirmative defenses plead by
11 Defendants and other Intervenors in this matter.

12 **Second Affirmative Defense**

13 The First Amended Complaint fails to state a claim upon which relief can be granted.

14 **Third Affirmative Defense**

15 Plaintiffs have not been damaged directly, indirectly, proximately or in any manner
16 whatsoever by any conduct of Defendants.

17 **Fourth Affirmative Defense**

18 The State of Nevada, Department of Taxation is immune from suit when performing the
19 functions at issue in this case.

20 **Fifth Affirmative Defense**

21 The actions of the State of Nevada, Department of Taxation were all official acts that
22 were done in compliance with applicable laws and regulations.

23 **Sixth Affirmative Defense**

24 Plaintiffs' claims are barred because Plaintiffs have failed to exhaust administrative
25 remedies, if any.

26 **Seventh Affirmative Defense**

27 Plaintiffs have failed to join necessary and indispensable parties to this litigation under
28



1 NRCP 19 as the Court cannot grant any of Plaintiffs' claims without affecting the rights and
2 privileges of those parties who received the licenses at issue as well as other third parties.

3 **Eighth Affirmative Defense**

4 The occurrences referred to in the First Amended Complaint and all alleged damages, if
5 any, resulting therefrom, were caused by a third party of which Defendants had no control.

6 **Ninth Affirmative Defense**

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

10 **Tenth Affirmative Defense**

11 Plaintiffs' claims are barred, in whole or in part, by their failure to perform or satisfy
12 required conditions precedent and by their own bad acts.

13 **Eleventh Affirmative Defense**

14 Plaintiffs are not in possession and/or control of the documents and/or witnesses
15 necessary to prove its alleged causes of action against Defendants.

16 **Twelfth Affirmative Defense**

17 The claims, and each of them, are barred by the failure of Plaintiffs to plead those claims
18 with sufficient particularity.

19 **Thirteenth Affirmative Defense**

20 Plaintiffs have failed to allege sufficient facts and cannot carry the burden of proof
21 imposed on it by law to recover attorney's fees incurred to bring this action.

22 **Fourteenth Affirmative Defense**

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

25 **Fifteenth Affirmative Defense**

26 Plaintiffs have no constitutional rights to obtain privileged licenses.

27 ///

28



Sixteenth Affirmative Defense

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

Seventeenth Affirmative Defense

Plaintiffs are not entitled to judicial review on the denial of a license.

Eighteenth Affirmative Defense

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

Nineteenth Affirmative Defense

Plaintiffs lack standing to seek the relief they request.

Twentieth Affirmative Defense

Pursuant to Nevada Rules of Civil Procedure, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this answer and, therefore, Lone Mountain reserves the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, Lone Mountain prays for judgment as follows:

1. Plaintiffs take nothing by way of their First Amended Complaint;
2. The First Amended Complaint, and all causes of action against Defendants and Lone Mountain alleged therein, be dismissed with prejudice;
3. For reasonable attorney fees and costs to be awarded to Lone Mountain; and
4. For such other and further relief the Court may deem just and proper.

Dated this ____ day of _____ 201__.

H1 LAW GROUP

Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com
Jamie L. Zimmerman, NV Bar No. 11749
jamie@h1lawgroup.com
Moorea L. Katz, NV Bar No. 12007
moorea@h1lawgroup.com
701 N. Green Valley Parkway, Suite 200
Henderson NV 89074

H1 LAW GROUP
701 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074
Tel: 702-608-3720 Fax: 702-608-3759



Phone 702-608-3720
Fax 702-608-3759

*Attorneys for Intervenor
Lone Mountain Partners, LLC*

CERTIFICATE OF SERVICE

The undersigned, an employee of H1 Law Group, hereby certifies that on the ____ day of [Click Here and Type](#) 201_, she caused a copy of the foregoing [Click Here and Type](#), to be transmitted by electronic service in accordance with EDCR 8.05(a) and 8.05(f), the Eighth Judicial District Court's electronic filing system, to all interested parties, through the Court's [Odyssey E-File & Serve](#) system.

Bobbie Donaldson, an employee of
H1 LAW GROUP

EXHIBIT C

AA 001019



ORDG

H1 LAW GROUP

Eric D. Hone, NV Bar No. 8499

eric@h1lawgroup.com

Jamie L. Zimmerman, NV Bar No. 11749

jamie@h1lawgroup.com

Moorea L. Katz, NV Bar No. 12007

moorea@h1lawgroup.com

701 N. Green Valley Parkway, Suite 200

Henderson NV 89074

Phone 702-608-3720

Fax 702-608-3759

Attorneys for Intervenor

Lone Mountain Partners, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

LONE MOUNTAIN PARTNERS, LLC, a Nevada
limited liability partnership,

Applicant in Intervention.

Case No. A-18-785818-W

Dept. No. 18

**[PROPOSED] ORDER GRANTING
LONE MOUNTAIN PARTNERS, LLC'S
MOTION TO INTERVENE**

The Court, having reviewed the Applicant Lone Mountain Partners, LLC's Motion to
Intervene, and good cause appearing,

///

///



1 IT IS HEREBY ORDERED:

2 Applicant's Motion to Intervene is granted, and Lone Mountain Partners, LLC shall
3 intervene as a Defendant/Real Party in Interest in the above-captioned case as a necessary party to
4 the action pursuant to NRCP 24 and NRS 12.130.

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DISTRICT COURT JUDGE

DATED: _____

Respectfully submitted by:

H1 LAW GROUP

Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com
Jamie L. Zimmerman, NV Bar No. 11749
jamie@h1lawgroup.com
Moorea L. Katz, NV Bar No. 12007
moorea@h1lawgroup.com
701 N. Green Valley Parkway, Suite 200
Henderson NV 89074
Phone 702-608-3720
Fax 702-608-3759
*Attorneys for Intervenor
Lone Mountain Partners, LLC*

Electronically Filed
3/25/2019 12:30 PM
Steven D. Grierson

CLERK OF THE COURT

Steven D. Grierson

Attorney or Party without Attorney: Parker, Nelson & Associates, Chtd. Theodore Parker, III, Esq. (SBN 4716) 2460 Professional Court Suite 200 Las Vegas, NV 89128 Telephone No: (702) 868-8000 Attorney For: Plaintiff		Ref. No. or File No.: NV WELLNESS CENTER/DEPT	
Insert name of Court, and Judicial District and Branch Court: District Court Clark County Nevada			
Plaintiff: NEVADA WELLNESS CENTER, LLC, a Nevada Limited Liability Company, Defendant: STATE OF NEVADA, DEPARTMENT OF TAXATION, et al.			
AFFIDAVIT OF SERVICE		Hearing Date:	Time:
		Dept/Div:	Case Number: A-19-787540-W

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of the Summons, Complaint and Petition for Judicial Review or Writ of Mandamus
- Party served: State of Nevada, Department of Taxation
 - Person served: Diana Herrera, Administrative Aide II, a person of suitable age and discretion authorized to accept service.
- Address where the party was served: 100 N. Carson Street, Carson City, NV 89701
- I served the party:
 - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Mon, Mar 18 2019 (2) at: 01:10 PM

Fee for Service: \$0.00

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

6. Person Who Served Papers:

- Toni Ruckman (R-052005, Washoe)
- FIRST LEGAL
NEVADA PI/PS LICENSE 1452
2920 N. GREEN VALLEY PARKWAY, SUITE 514
HENDERSON, NV 89014
- (702) 671-4002

22 Mar 19 Toni Ruckman
(Date) (Signature)

7. STATE OF NEVADA, COUNTY OF Washoe
Subscribed and sworn to (or affirmed) before on this 22 day of March, 2019 by Toni Ruckman (R-052005, Washoe)
proved to me on the basis of satisfactory evidence to be the person who appeared before me.



Jessica Marquis
(Notary Signature)

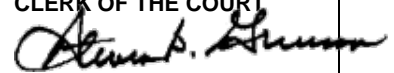


AFFIDAVIT OF SERVICE

3174546
(55110940)

Case Number: A-19-787540-W

AA 001022



David R. Koch (NV Bar #8830)
Steven B. Scow (NV Bar #9906)
Brody R. Wight (NV Bar #13615)
Daniel G. Scow (NV Bar #14614)
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, Nevada 89052
Telephone: 702.318.5040
Facsimile: 702.318.5039
dkoch@kochscow.com
sscow@kochscow.com

Attorneys for Defendant
Nevada Organic Remedies, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, et al.,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION; NEVADA ORGANIC
REMEDIES, LLC, a Nevada limited liability
company

Defendants

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor.

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

**MOTION TO STRIKE
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION,
OR, IN THE ALTERNATIVE,
MOTION TO CONTINUE THE
HEARING ON PLAINTIFFS'
MOTION FOR A PRELIMINARY
INJUNCTION ON ORDER
SHORTENING TIME**

**HEARING REQUESTED
ON SHORTENED TIME**

Nevada Organic Remedies, LLC ("NOR"), by and through its attorneys, Koch & Scow, LLC, hereby moves for an order striking Plaintiffs' Motion for a Preliminary Injunction, or, in the alternative, for an order to continue the hearing on Plaintiffs' Motion for a Preliminary Injunction. This Motion is supported by the following Memorandum of

1 Points and Authorities and exhibits attached thereto, the pleadings and papers on file
2 herein, and any other materials this Court may wish to consider.

3
4 DATED: March 26, 2019

KOCH & SCOW, LLC

5 By: /s/ David R. Koch
6 David R. Koch, Esq.
7 *Attorneys for Defendant-Intervenor*
8 *Nevada Organic Remedies*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiffs' Motion for a Preliminary Injunction is procedurally flawed in several
4 fatal respects. Although the rules expressly impose a 30-page limit on motions, Plaintiffs
5 filed a bloated behemoth totaling 47 pages. NOR is further informed that Plaintiffs have
6 not even served defendant the State of Nevada, Department of Taxation (the
7 "Department") with the Complaint in this action let alone served the Department with
8 their Motion for Preliminary Injunction. Additionally, Plaintiffs have failed to provide
9 notice of the Motion to many of the parties that Plaintiffs are seeking to enjoin.¹ And
10 while the Motion seeks to enjoin the use of licenses held by a number of third parties,
11 Plaintiffs have failed to name those parties in this action. For all of these reasons, the Court
12 should strike Plaintiffs' Motion in its entirety.

13 In the alternative, NOR asks that the Court continue the hearing on Plaintiffs'
14 Motion so that the Department and the other necessary parties may be properly served the
15 Complaint, may respond to the Complaint, and may receive adequate notice of Plaintiffs'
16 Motion along with sufficient time to oppose the motion.

17 **ARGUMENT**

18 **A. The Court Should Strike Plaintiff's Motion for a Preliminary Injunction in Its**
19 **Entirety**

20 **1. The Briefing Attached to Plaintiffs' Motion Exceeds 30 Pages in**
21 **Violation of EDCR 2.20**

22 Under the Eighth District Court Rule 2.20(a), "papers submitted in support of
23 pretrial and post-trial briefs **shall be limited to 30 pages**, excluding exhibits" unless the
24 Court enters an order permitting a longer brief. The Rule promotes judicial economy by
25 forcing parties to bring forward only their key arguments and to make those arguments
26 succinctly.

27 _____
28 ¹ NOR only received notice of the Motion for Preliminary Injunction because it moved to
intervene in the case.

1 Plaintiffs' Motion for Preliminary Injunction flouts the requirements of EDCR
2 2.20(a) entirely. In their 47-page Motion, Plaintiffs make no attempt to argue succinctly
3 or to bring forward their primary arguments. Just as their central case relies upon the
4 belief that the marijuana licensing rules should not apply to them, Plaintiffs have
5 ignored the Court's page limitation and blithely written on-and-on with the end coming
6 only when Plaintiffs have decided to stop writing. Undoubtedly aware that their
7 substantive arguments are untenable when examined on their merits—Plaintiffs have
8 filled their motion with innumerable arguments in a scattershot approach to litigation.
9 Asserting dozens of baseless arguments, many of which are only mentioned in an
10 introduction and then never mentioned again, Plaintiffs are apparently hoping that at
11 least one of their numerous arguments sticks. Such a strategy creates a problem for
12 opposing parties such as NOR (which is now forced to respond to all of Plaintiffs'
13 arguments within a 30-page limit) and to the Court—which must now review and
14 dismiss all of Plaintiffs' arguments.

15 EDCR 2.20(a) is designed to prevent parties from doing exactly what Plaintiffs
16 did here, and the Court should enforce the rules by striking Plaintiffs' Motion for their
17 failure to comply with the page limit stated in the Court's rules.

18 **2. Plaintiffs Have Not Provided Notice of the Lawsuit or the Motion to the**
19 **Department**

20 Perhaps more troubling than the length of the Motion is the fact that it was
21 apparently filed **before the Complaint was served on the Department**. Though the
22 Motion asks the Court to issue an injunction against the Department (the only defendant
23 actually named in the Complaint), Plaintiffs have yet to file any affidavit of service
24 indicating that the Department has been served the Complaint, and the Department has
25 not answered the Complaint or filed any other responsive motion or pleading. Plaintiffs
26 did not even attach a Certificate of Service to the Motion as required by EDCR 8.05(f),
27 nor have they made any indication that they served the Motion on any party
28

1 whatsoever. The only reason NOR heard of the Motion was because it actively moved to
2 intervene in this case and has been monitoring the case.

3 Plaintiffs were required under both NRCP 65(a)(1) and EDCR 2.10(a) to provide
4 proper notice of the Motion to the “adverse part[ies],” otherwise, the Court cannot issue
5 the preliminary injunction. Since Plaintiffs apparently have not even served the
6 Complaint to the Department or waited for the Department to answer, this Motion is
7 procedurally improper, and the Court should strike the Motion.

8 **3. Plaintiffs Have Failed to Join Necessary Parties and Failed to Provide**
9 **Notice of the Motion for Preliminary Injunction**

10 Plaintiffs’ requested preliminary injunction is extremely broad. It asks for an
11 order enjoining “the enforcement of the conditional licenses” to sell recreational
12 marijuana that the Department has already granted to numerous parties and asks for an
13 order restoring the *status quo ante* prior to the Department’s adoption of the regulations
14 found in NAC 453D. Since several parties, including NOR, have already been granted
15 the conditional licenses referenced in Plaintiffs’ Motion, and many other parties
16 (including Plaintiffs themselves) were previously granted licenses under the earlier
17 adoption of the same regulations, the Court cannot grant the motion for preliminary
18 injunction without enjoining all of the parties that currently hold licenses.

19 Under NRCP 65(d)(2), preliminary injunction orders can only bind parties to an
20 action; the parties’ officers, agents, servants, employees, and attorneys; and other
21 persons who are “in active concert or participation” with the parties or their officers, etc.
22 Each of the parties that now holds a license that Plaintiffs seek to enjoin, which includes
23 every party that now holds a recreational marijuana license in Nevada, would need to be
24 included as a party to be enjoined, and Plaintiffs’ Motion cannot be granted without
25 seeking relief against those parties.

26 Further, in a more general sense Plaintiffs are actively attempting to enjoin the
27 enforcement of valuable licenses, and each party holding such a license is a necessary
28

1 party to this action under NRCP 19(a). The Court should not entertain a motion
2 affecting those parties' rights without their participation in the action. Under NRCP
3 19(a), a party must be joined to an action when disposing of the action in the party's
4 absence may "as a practical matter impair or impede the person's ability to protect [its]
5 interest." Just as NOR was granted leave to intervene in this action, other licensees also
6 have the right to intervene and the right to participate as a party to this action.
7 Therefore, the Court should strike Plaintiffs' Motion until all of the parties Plaintiffs seek
8 to enjoin are given notice and the opportunity to participate as parties to this action.

9 **B. In the Alternative, The Court Should Continue the Hearing on the Motion to**
10 **Provide the Parties to Be Enjoined with Notice and a Chance to Respond to the**
11 **Motion**

12 If the Court does not strike Plaintiffs' Motion in its entirety for failure to comply
13 with the rules cited above, NOR asks the Court to continue the hearing on the Motion.
14 At the least, the Motion should not be heard until the Department has been properly
15 served with the Complaint, has had the opportunity granted to it by the Nevada Rules
16 of Civil Procedure to respond to the Complaint, and has received notice and the
17 opportunity to respond to Plaintiffs' Motion.

18 The hearing on the Motion should be continued until all the parties holding a
19 license that Plaintiffs seeks to enjoin are named in the action and have an opportunity to
20 receive notice and respond to Plaintiffs' Motion. As of the date this Motion to Strike was
21 filed, several such parties, including Integral Associates, LLC and Essence Tropicana,
22 LLC have filed motions to intervene that are currently set to be heard after the current
23 hearing date on Plaintiffs' Motion.

24 Finally, even if none of the other relief described above were not granted, at a
25 minimum a continuance should be provided to allow NOR to file an opposition to
26 Plaintiffs' Motion. As Plaintiffs have far exceeded the page limit with their Motion, NOR
27 should not be required to oppose the Motion until the Court has ruled on the Motion to
28

1 Strike. NOR is concurrently applying for an order shortening time on this Motion to
2 Strike, but it will may not be heard until after April 2, 2019, the date NOR's opposition to
3 Plaintiffs' Motion is now due. Therefore, equity demands at least a three-week
4 continuance to allow the responding parties to have adequate time to draft an
5 opposition to Plaintiffs' overly long Motion.

6 **CONCLUSION**

7 For the reasons set forth above, NOR respectfully requests that this Court enter an
8 Order striking Plaintiffs' Motion for Preliminary Injunction, or, in the alternative
9 continuing the hearing on the Motion so that the parties Plaintiffs seek to enjoin have an
10 opportunity to respond.

11
12 **KOCH & SCOW, LLC**

13 By: /s/ David R. Koch
14 David R. Koch
15 *Attorneys for Defendant-Intervenor*
16 *Nevada Organic Remedies*
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on March 26, 2019, I caused the foregoing document entitled: **MOTION TO STRIKE PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION, OR, IN THE ALTERNATIVE, MOTION TO CONTINUE THE HEARING ON PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME** to be served as follows:

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

Serenity Wellness Center, LLC:
ShaLinda Creer (screer@gcmaslaw.com)

Nevada Organic Remedies LLC:
David Koch (dkoch@kochscow.com)
Steven Scow (sscow@kochscow.com)
Brody Wight (bwight@kochscow.com)
Andrea Eshenbaugh - Legal Assistant (aeshenbaugh@kochscow.com)
Daniel Scow (dscow@kochscow.com)

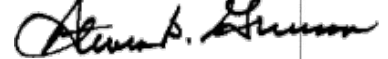
Integral Associates, LLC d/b/a Essence Cannabis Dispensaries:
MGA Docketing (docket@mgalaw.com)

Lone Mountain Partners, LLC:
Eric Hone (eric@h1lawgroup.com)
Jamie Zimmerman (jamie@h1lawgroup.com)
Bobbie Donaldson (bobbie@h1lawgroup.com)
Moorea Katz (moorea@h1lawgroup.com)

Margaret McLetchie (maggie@nvlitigation.com)
Cami Perkins, Esq. (cperkins@nevadafirm.com)

Executed on March 26, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh



1 **SUMM**
2 GENTILE CRISTALLI
3 MILLER ARMENI SAVARESE
4 DOMINIC P. GENTILE
5 Nevada Bar No. 1923
6 Email: dgentile@gcmaslaw.com
7 MICHAEL V. CRISTALLI
8 Nevada Bar No. 6266
9 Email: mcristalli@gcmaslaw.com
10 ROSS MILLER
11 Nevada Bar No. 8190
12 Email: rmiller@gcmaslaw.com
13 VINCENT SAVARESE III
14 Nevada Bar No. 2467
15 Email: vsavarese@gcmaslaw.com
16 410 South Rampart Blvd., Suite 420
17 Las Vegas, Nevada 89145
18 Tel: (702) 880-0000
19 Fax: (702) 778-9709
20 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**
12
13 **CLARK COUNTY, NEVADA**

14 SERENITY WELLNESS CENTER, LLC, a
15 Nevada limited liability company, TGIG, LLC, a
16 Nevada limited liability company, NULEAF
17 INCLINE DISPENSARY, LLC, a Nevada
18 limited liability company, NEVADA HOLISTIC
19 MEDICINE, LLC, a Nevada limited liability
20 company, TRYKE COMPANIES SO NV, LLC,
21 a Nevada limited liability company, TRYKE
22 COMPANIES RENO, LLC, a Nevada limited
23 liability company, PARADISE WELLNESS
24 CENTER, LLC, a Nevada limited liability
25 company, GBS NEVADA PARTNERS, LLC, a
26 Nevada limited liability company, FIDELIS
27 HOLDINGS, LLC, a Nevada limited liability
28 company, GRAVITAS NEVADA, LLC, a
Nevada limited liability company, NEVADA
PURE, LLC, a Nevada limited liability company,
MEDIFARM, LLC, a Nevada limited liability
company; DOE PLAINTIFFS I through X; and
ROE ENTITIES I through X,

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendants.

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

SUMMONS

Gentile Cristalli
Miller Armeni Savarese
Attorneys At Law
410 S. Rampart Blvd. #420
Las Vegas, NV 89145
(702) 880-0000

Summons

1 of 3

Case Number: A-19-786962-B

Case Number: A-19-786962-B

AA 001031

1 **TO: THE STATE OF NEVADA, DEPARTMENT OF TAXATION**

2 **NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST**
3 **YOU WITHOUT YOUR BEING HEARD UNLESS YOU FILE A RESPONSE WITH**
4 **THE COURT WITHIN 20 DAYS. READ THE INFORMATION BELOW CAREFULLY.**

5 To the Defendant named above:

6 A civil Complaint has been filed by the Plaintiffs against you. Plaintiffs are seeking to
7 recover the relief requested in the complaint, which could include a money judgment against you
8 or some other form or relief.

9 If you intend to defend this lawsuit, within 20 days¹ after this Summons is served on you
10 (not counting the day of service), you must:

11 1. File with the Clerk of the Court, whose address is shown below, a formal written
12 response (typically a legal document called an "answer," but potentially some other response) to
13 Plaintiffs' complaint.

14 2. Pay the required filing fee to the court, or file an Application to Proceed *In Forma*
15 *Pauperis* and request a waiver of the filing fee.

16 3. Serve (by mail or hand delivery) a copy of your response upon the Plaintiffs
17 whose name and address is shown below.

18 **Information and forms to assist you are available, free of charge, at the Civil Law Self-Help**
19 **Center at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada and on the**
20 **center's website at www.civilawselfhelpcenter.org.**

21 If you fail to respond, the Plaintiffs can request your default. The court can then enter
22 judgment against you for the relief demanded by the Plaintiffs in the complaint, which could
23 result in money or property being taken from you or some other relief requested in Plaintiffs'
24 complaint.

25
26
27 ¹ The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission
28 members, and legislators each have 45 days after service of this Summons within which to file a response to
 Plaintiff's complaint

1 If you intend to seek an attorney's advice, do it quickly so that your response can be file
2 on time.

3 Issued at direction of:
4 GENTILE CRISTALLI
5 MILLER ARMENI SAVARESE

STEVEN D. GRIERSON
CLERK OF THE COURT

6 /s/ Vincent Savarese, Esq.

By: 

1/8/2019

7 DOMINIC P. GENTILE
8 Nevada Bar No. 1923
9 MICHAEL V. CRISTALLI
10 Nevada Bar No. 6266 _____
11 ROSS MILLER
12 Nevada Bar No. 8190
13 VINCENT SAVARESE III
14 Nevada Bar No. 2467
15 410 S. Rampart Blvd., Suite 420
16 Las Vegas, Nevada 89145
17 Tel: (702) 880-0000
18 *Attorneys for Plaintiffs*

Deputy Clerk Date
Regional Justice Center Courtnie Hoskin
200 Lewis Avenue
Las Vegas, NV 89155

14 **NOTE: When service is by publication, add a brief statement of the object of the action.**
15 **See Rules of Civil Procedure, Rule 4(b).**

1 **AFFT**

2 Gentile Cristalli Miller Armeni Savarese
3 Vincent Savarese III
4 410 S. Rampart Blvd., Suite 420
5 Las Vegas, Nv 89145
6 State Bar No.: 2467
7 Attorney(s) for: Plaintiffs

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 Serenity Wellness Center, LLC, a Nevada limited
11 liability company, et al.

Case No.: A-19-786962-B

Dept. No.: 11

Date: 4/22/2019
Time: 9:00 a.m.

12 Plaintiff(s),

13 vs.

14 The State of Nevada, Department of Taxation

15 Defendant(s).

AFFIDAVIT OF SERVICE

16 I, **Tonya Malone**, being duly sworn deposes and says: That at all time herein Affiant was and is a citizen
17 of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under
18 license #1926, and not a party to or interested in the proceedings in which this Affidavit is made. The
19 Affiant received **1 copy** of the: **Summons; Complaint; Notice of Hearing; Motion for Preliminary**
20 **Injunction; Exhibits** on the **20th** day of **March, 2019** and served the same on the **21st** day of **March,**
21 **2019** at **3:06pm** by serving **The State of Nevada, Department of Taxation**, by personally delivering and
22 leaving a copy at **1550 College Pkwy., Carson City, NV 89706** with **Tina Padovano** as **Executive**
23 **Assistant** an agent lawfully designated by statute to accept service of process.

24 **State of Nevada, County of Washoe**

SIGNED AND SWORN to before me on this

25 25 day of March, 2019

26 By: Tonya Malone

Affiant: Tonya Malone

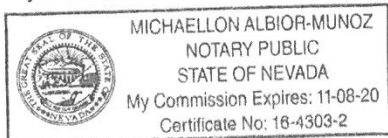
#: R-100246

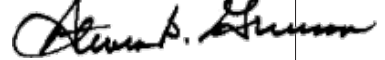
27 Notary Public:

J & L Process Service, License # 1926

Work Order No: 19-7205

28 J & L Process Service
J.N. Nellis Blvd., A3-197,
Las Vegas, NV 89110
(702) 883-5725
processSvc@gmail.com





1 **MINV**
2 **H1 LAW GROUP**
3 Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com
4 Jamie L. Zimmerman, NV Bar No. 11749
jamie@h1lawgroup.com
5 Moorea L. Katz, NV Bar No. 12007
moorea@h1lawgroup.com
6 701 N. Green Valley Parkway, Suite 200
Henderson NV 89074
7 Phone 702-608-3720
Fax 702-608-3759
8 *Attorneys for Intervenor*
Lone Mountain Partners, LLC

9
10 EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

11 ETW MANAGEMENT GROUP LLC, a Nevada
12 limited liability company; GLOBAL
13 HARMONY LLC, a Nevada limited liability
14 company; GREEN LEAF FARMS HOLDINGS
15 LLC, a Nevada limited liability company;
16 HERBAL CHOICE INC., a Nevada corporation;
17 JUST QUALITY, LLC, a Nevada limited
18 liability company; LIBRA WELLNESS
19 CENTER, LLC, a Nevada limited liability
20 company; MOTHER HERB, INC., a Nevada
21 corporation; NEVCANN LLC, a Nevada
22 limited liability company; RED EARTH LLC, a
23 Nevada limited liability company; THC
24 NEVADA LLC, a Nevada limited liability
25 company; and ZION GARDENS LLC, a Nevada
26 limited liability company,

27 Plaintiffs,

28 vs.

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

Defendants.

LONE MOUNTAIN PARTNERS, LLC, a
Nevada limited liability partnership,

Applicant in Intervention.

Case No. A-19-787004-B

Dept. No. 11

**LONE MOUNTAIN PARTNERS, LLC'S
MOTION TO INTERVENE**

HEARING REQUESTED

H1 LAW GROUP
701 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074
Tel: 702-608-3720 Fax: 702-608-3759





1 Lone Mountain Partners, LLC (“Lone Mountain”), by and through counsel undersigned,
2 respectfully moves to intervene in the above captioned case pursuant to NRCP 24 and NRS
3 12.130 (the “Motion”).

4 This Motion is based upon the record and the exhibits attached hereto and by reference
5 incorporated herein. The requested relief is based on the following Memorandum of Points and
6 Authorities.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. INTRODUCTION**

9 Lone Mountain seeks to intervene in this action to protect its vested interests in eleven
10 conditional retail marijuana dispensary licenses it was awarded by the State of Nevada
11 Department of Taxation (“Department”) on December 5, 2018. Lone Mountain’s licenses are
12 jeopardized by the proceedings in this action as Plaintiffs are challenging the Department’s
13 issuance of a type of license for which there is a statutorily-limited supply, and for which
14 applicants compete against one another through a ranking system. Thus, Plaintiffs’ requested
15 relief directly impacts the licenses already awarded to Lone Mountain and Lone Mountain
16 respectfully requests to be permitted to protect its interests by intervening in the action.

17 Plaintiffs have argued that because they only seek monetary damages and declaratory
18 relief in this action, current license holders do not have a substantial interest in the litigation and
19 should not be permitted to intervene. Yet in their claim for declaratory relief, Plaintiffs request
20 the Court to declare that the entire licensing process was in violation of statute. Such a
21 declaration would necessitate the re-distribution of the current license awards such that Lone
22 Mountain’s licenses are under direct threat. Accordingly, Lone Mountain has a significant
23 protectable interest in this action. Moreover, Nevada statute requires that “[w]hen declaratory
24 relief is sought, all persons shall be made parties who have or claim any interest which would be
25 affected by the declaration, and no declaration shall prejudice the rights of persons not parties to
26 the proceeding.” NRS § 30.130.¹

27 ¹ Plaintiffs’ failure to name current license holders as real parties in interest is arguably fatal to Plaintiffs’ lawsuit. *See*
28



1 Lone Mountain holds numerous licenses, has a vested interest in this action, and meets
2 the standards of NRS § 12.130(c) and NRCP 24 such that Lone Mountain should be permitted to
3 intervene and protect its valuable interests.

4 **II. STATEMENT OF RELEVANT FACTS**

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

8 The Department was to adopt regulations necessary to carry out the Act, including
9 regulations that set forth the “[p]rocedures for the issuance, renewal, suspension, and revocation
10 of a license to operate a marijuana establishment” and “[q]ualifications for licensure that are
11 directly and demonstrably related to the operation of a marijuana establishment.” Nev. Rev. Stat.
12 § 453D.200(1)(a)-(b). On January 16, 2018, the Nevada Tax Commission unanimously approved
13 permanent regulations (“Approved Regulations”). LCB File No. R092-17. The Approved
14 Regulations went into effect on February 27, 2018.

15 Thereafter, on August 16, 2018, the Department issued a Notice of Intent to Accept
16 Applications (“Notice”) for sixty-four (64) recreational marijuana retail store licenses, which are
17 to be located throughout various jurisdictions in Nevada. The Notice required that all
18 applications be submitted between 8:00 a.m. on September 7, 2018 and 5:00 p.m. on September
19 20, 2018.

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

25 On December 5, 2018, the Department issued sixty-one (61) recreational marijuana retail
26 store conditional licenses, including 10 licenses for Unincorporated Clark County, Nevada; 10

27
28 *also* NRS 233B.130(2)(a); *see also* *Washoe Cnty. v. Otto*, 128 Nev. 424, 432, 282 P.3d 719, 725 (2012); NRCP 19(a).



1 licenses for Las Vegas, Nevada; 6 licenses for Henderson, Nevada; 5 licenses for North Las
2 Vegas, Nevada; 6 licenses for Reno, Nevada; 1 license for Sparks, Nevada; and 1 license for Nye
3 County, Nevada. Lone Mountain was granted eleven (11) of these conditional licenses.

4 Under their conditional licenses, Lone Mountain has twelve (12) months to receive a final
5 inspection for a marijuana establishment. R092-17, Sec. 87. If a marijuana establishment does
6 not receive a final inspection within twelve (12) months, the marijuana establishment must
7 surrender the license to the Department. *Id.* The Department may extend the period specified in
8 this subsection if the Department, in its discretion, determines that extenuating circumstances
9 prevented the marijuana establishment from receiving a final inspection within the period
10 specified in this subsection. *Id.*

11 On January 4, 2019, Plaintiffs, with the exception of Green Therapeutics LLC, filed their
12 Complaint against the Department, and on February 8, 2019, the FAC was filed naming Green
13 Therapeutics LLC as an additional plaintiff. Plaintiffs allege that the Department's review and
14 scoring of applicants' applications for the recreational marijuana licenses was done "errantly,
15 arbitrarily, irrationally, and partially." (FAC at ¶ 45).

16 The FAC contains numerous claims for relief, including:

- 17 • Claims for violation of substantive due process, procedural due process
18 and equal protection each of which is alleged to have rendered the
19 Department's denial of Plaintiffs' license applications improper,
20 warranting compensatory damages. (*See generally id.* at ¶¶ 50-84);
- 21 • A claim for Declaratory Relief, seeking a judicial declaration that (1) the
22 factors for ranking do not comply with NRS 453D.210(6), (2) the
23 Department applied the factors for ranking of applicants in an arbitrary
24 and irrational matter, (3) the Department violated Section 80(5) of the
25 Regulations by issuing multiple retail marijuana licenses to same entity or
26 group of entities, and (4) the denial notices did not comply with
27 453D.210(4)(b). (*See generally id.* at ¶¶ 86-96).

28 Given the nature of the relief sought by Plaintiffs, a disposition of this case will
irrefutably impact Lone Mountain's unique legal interests in its conditional licenses. As such,
Lone Mountain respectfully requests to be permitted to intervene in this action.

///

///



1 **III. LEGAL ARGUMENT**

2 **A. Legal Standard**

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

7 In furtherance, NRCP § 24(a)(2) governs non-statutory intervention of right and states
8 that upon timely intervention “the court must permit anyone to intervene who ... claims an
9 interest relating to the property or transaction that is the subject of the action, and is so situated
10 that disposing of the action may as a practical matter impair or impede the movant’s ability to
11 protect its interest, unless existing parties adequately represent that interest.” Nev. R. Civ. P.
12 § 24(a)(2). NRCP § 24(b)(1)(B) governs permissive intervention and allows for intervention
13 when an applicant “has a claim or defense that shares with the main action a common question of
14 law or fact.” Nev. R. Civ. P. § 24(b)(1)(B).

15 **B. Lone Mountain Is Entitled to Intervene as of Right**

16 A party applying to intervene as of right must show: (1) the application is timely; (2) the
17 applicant has sufficient interest in the property or transaction which is the subject of the action;
18 (3) the applicant is so situated that the disposition of the action may as a practical matter impair
19 or impede its ability to protect that interest; and (4) the applicant’s interest is inadequately
20 represented by the parties to the action. *See American Home Assurance Corp. v. Eighth Judicial*
21 *District Ct. ex rel. County of Clark*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006).²
22 Determining whether an applicant has met these four requirements is within the district court’s
23 sound discretion. *Am. Home Assur. Co.*, 122 Nev. at 1126.

24 When evaluating whether the requirements for intervention of right are met, a court
25 generally follows practical and equitable considerations and construes the governing rule broadly

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



1 in favor of proposed intervenors. *Wilderness Soc’y v. U.S. Forest Service*, 630 F.3d 1173, 1179
2 (9th Cir. 2011) (en banc) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th
3 Cir. 2002)). This is because “[a] liberal policy in favor of intervention serves both efficient
4 resolution of issues and broadened access to the Courts.” *Wilderness Soc’y*, 630 F.3d 1173
5 (quoting *City of Los Angeles*, 288 F.3d at 397-98).

6 **1. Lone Mountain’s Application to Intervene Is Timely**

7 When determining the timeliness of an application to intervene “[t]he most important
8 question to be resolved [...] is not the length of the delay by the intervenor but the extent of
9 prejudice to the rights of existing parties resulting from the delay.” *See Dangberg Holdings*
10 *Nevada, L.L.C. v. Douglas Cty. & its Bd. of Cty. Commr’s*, 115 Nev. 129, 141, 978 P.2d 311,
11 318 (1999); *see also American Home Assurance Corp.*, 122 Nev. at 1244, nn.49-50 (citations
12 omitted).

13 Here, Lone Mountain’s intervention will not prejudice the existing parties. This case is in
14 the early stages of litigation. *See Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647
15 F.3d 893, 897 (9th Cir. 2011) (where the Court found the parties would not have suffered
16 prejudice from the grant of intervention at the early stage of litigation).

17 Indeed, Plaintiffs filed the Amended Complaint on February 8, 2019 and the Department
18 has yet to file an answer or responsive pleading. In *Citizens for Balanced Use*, the Ninth Circuit
19 found that a motion filed less than three months after the complaint was filed and less than two
20 weeks after the first filing of an answer to the complaint was timely. *Id.* The court reasoned that
21 an intervention so early in the litigation would not cause disruption or delay in the proceedings.
22 *Id.* Similarly, here, there will be no delay resulting from Lone Mountain’s intervention.

23 Through this action, Plaintiffs are attempting to undermine the rights of Lone Mountain
24 to its conditional licenses. Because Lone Mountain may be gravely prejudiced if not permitted to
25 intervene and all other parties within this action would not suffer any prejudice, this Court should
26 find that Lone Mountain request to intervene is timely.

27 ///

28 ///



2. Lone Mountain Has a Significant Interest in the Litigation’s Subject Matter

While there is no “bright-line” test to determine if a sufficient interest exists, an applicant must make a showing of a “significant protectable interest.” *See Am. Home Assur. Co.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1127 (2006). Whether a proposed intervenor has a significant protectable interest is a “practical, threshold inquiry,” and the party seeking intervention need not establish any “specific legal or equitable interest.” *Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (internal quotations omitted) (quoting *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996)). To meet its burden, a proposed intervenor “must establish that the interest is protectable under some law and that there is a relationship between the legally protected interest and the claims at issue.” *Id.* The question of whether there is a significant protectable interest does not turn on “technical distinctions.” *California v. United States*, 450 F.3d 436, 441 (9th Cir. 2006). Instead, courts “have taken the view that a party has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation.” *See id.*

Here, Lone Mountain has a sufficient interest in the subject matter of this action—the conditional licenses to operate a recreational marijuana retail store. Lone Mountain was issued eleven (11) of the licenses by the Department. Plaintiffs, through this lawsuit, are essentially attempting to void the Department’s application process, which could impair Lone Mountain’s interest in its conditional licenses. Accordingly, Lone Mountain has a significant protectable interest in this action.

3. The Disposition of This Action May Impair or Impede Lone Mountain’s Ability to Protect Its Interests

Once a significant protectable interest is established, courts look to whether the proposed intervenor’s ability to protect that interest would be “impair[ed] or impede[ed]” by “the disposition of the action.” *Citizens for Balanced Use*, 647 F.3d at 897 (citation omitted). “If an absentee would be substantially affected in a practical sense by the determination made in an



1 action, [it] should, as a general rule, be entitled to intervene....” *Id.* at 898 (quoting Fed R. Civ. P.
2 24 advisory committee’s note).

3 Here, Plaintiffs have challenged the entire licensing process and indirectly challenged the
4 Department’s award of licenses to Lone Mountain. Plaintiffs assert that the licenses awarded to
5 current license holders, such as Lone Mountain, rightfully belong to Plaintiffs. Plaintiffs seek a
6 declaration that the Department’s entire licensing process violated Nevada law. This relief, if
7 granted, would necessarily harm the successful applicants that were awarded licenses.
8 Accordingly, Lone Mountain’s interests may be impaired by the disposition of this case, as it
9 risks losing its conditional licenses.

10 **4. Lone Mountain’s Interests Are Not Adequately Represented**

11 Generally, “[t]he burden of showing inadequacy of representation is minimal and
12 satisfied if the [party seeking intervention] can demonstrate that representation of its interests
13 may be inadequate.” *Citizens for Balanced Use*, 647 F.3d at 898 (internal quotation omitted); *see*
14 *also Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10, 92 S.Ct. 630, 636 n. 10, 30
15 L.Ed.2d 686 (1972) (holding that the requirement of inadequate representation is satisfied if the
16 applicant shows that representation “may be” inadequate). In making this determination, courts
17 examine three factors: (1) whether the interest of a present party is such that it will undoubtedly
18 make all of a proposed intervenor’s arguments; (2) whether the present party is capable and
19 willing to make such arguments; and (3) whether a proposed intervenor would offer any
20 necessary elements to the proceeding that other parties would neglect. *Citizens for Balanced Use*,
21 647 F.3d at 898 (*quoting Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). “The most
22 important factor in assessing the adequacy of representation is how the interest compares with
23 the interests of existing parties.” *Citizens for Balanced Use*, 647 F.3d at 898 (internal quotation
24 and citation omitted). Where a proposed intervenor and an existing party “share the same
25 ultimate objective, a presumption of adequacy of representation arises.” *Citizens for Balanced*
26 *Use*, 647 F.3d at 898 (citation omitted). A presumption of adequacy “must be rebutted with a
27 compelling showing.” *Id.* (citation omitted).

28

1 Here, Lone Mountain's interests are not adequately represented by the Department. A
2 proposed intervenor "should be treated as the best judge of whether the existing parties
3 adequately represent . . . [its] interests, and . . . any doubt regarding adequacy of representation
4 should be resolved in [its] favor." 6 Edward J. Brunet, Moore's Federal Practice § 24.03[4][a]
5 (3d ed. 1997).

6 The Department will presumably defend its application evaluation process by showing
7 that it complied with NRS Chapter 453D and the Approved Regulations. However, the
8 Department will not defend Lone Mountain's, or other licensees', unique and valuable licenses.
9 The Department simply has no interest in specifically defending Lone Mountain's licenses
10 versus other applicants.

11 Even the other proposed intervenors are not adequate representatives of Lone Mountain's
12 interests. To obtain any one of the licenses an applicant had to rank higher than other applicants
13 in any given jurisdiction. Thus, all applicants are competing with one another for a limited
14 supply of licenses, and their interests are therefore by their very nature divergent. Plaintiffs have
15 challenged the entire ranking process, and to the extent that Plaintiffs' challenge is considered,
16 Lone Mountain will need to defend its licenses against *all* other applicants, including other
17 current license holders. Accordingly, Lone Mountain has met its "minimal" burden of showing
18 that their interests may not adequately represented such that its intervention is proper.

19 **C. Lone Mountain Should Be Permitted to Intervene Pursuant to Permissive**
20 **Intervention**

21 Even if this Court were to find that Lone Mountain cannot establish intervention as of
22 right, Lone Mountain may still intervene pursuant to NRCP 24(b), which governs permissive
23 intervention. Permissive intervention is available when the motion is timely and "the applicant's
24 claim or defense, and the main action, have a question of law or a question of fact in common."
25 Nev. R. Civ. P. 24(b)(1)(B). "In exercising its discretion" on this issue, "the court must consider
26 whether the intervention will unduly delay or prejudice the adjudication of the original parties'
27 rights." Nev. R. Civ. P. 24(b)(3).
28



1 Here, as discussed above, Lone Mountain's motion to intervene is timely and will not
2 prejudice any of the parties in the case. Additionally, Lone Mountain's defense of its licenses,
3 and anticipated counterclaims, present a common question of law and question of fact with the
4 main action.

5 Moreover, allowing Lone Mountain to intervene in this suit will not unduly delay or
6 prejudice the adjudication of the current parties' rights. If anything, allowing intervention will
7 promote judicial economy and spare the parties from needing to litigate a similar case in another
8 district. *See Dangberg Holdings Nevada, L.L.C.*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999)
9 (where the court found "bringing all of the parties together in one proceeding before one tribunal
10 will foster the principles of judicial economy and finality"); *see also Venegas v. Skaggs*, 867
11 F.2d 527, 531 (9th Cir. 1989) (noting that "judicial economy is a relevant consideration in
12 deciding a motion for permissive intervention"), *aff'd sub nom. Venegas v. Mitchell*, 495 U.S.
13 82, 87, 110 S. Ct. 1679, 109 L.Ed.2d 74 (1990). Accordingly, this Court should grant Lone
14 Mountain's Motion to Intervene.

15 **II. CONCLUSION**

16 Based on the foregoing, Lone Mountain respectfully requests that this Court grant its
17 application to intervene. Attached as **Exhibit A** is Lone Mountain's Answer to Plaintiffs'
18 Complaint. Lone Mountain expressly reserves its right to amend this Answer to include

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27 ///

28



1 counterclaims should this Court permit Lone Mountain's intervention. A proposed Order
2 Granting the Motion to Intervene is attached as **Exhibit B**.

3 Dated this 28th day of March 2019.

4 H1 LAW GROUP

5 

6 Eric D. Hone, NV Bar No. 8499

eric@h1lawgroup.com

7 Jamie L. Zimmerman, NV Bar No. 11749

jamie@h1lawgroup.com

8 Moorea L. Katz, NV Bar No. 12007

moorea@h1lawgroup.com

9 701 N. Green Valley Parkway, Suite 200

10 Henderson NV 89074

11 Attorneys for Intervenor

12 Lone Mountain Partners, LLC

13 **CERTIFICATE OF SERVICE**

14 The undersigned, an employee of H1 Law Group, hereby certifies that on the 28th day of
15 March 2019, she caused a copy of the foregoing to be transmitted by electronic service in
16 accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey**
17 **E-File & Serve** system.

18 

19 Bobbye Donaldson, an employee of
20 H1 LAW GROUP

EXHIBIT A

AA 001046

H1 LAW GROUP
701 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074
Tel: 702-608-3720 Fax: 702-608-3759



1 **ANS**

2 **H1 LAW GROUP**

3 Eric D. Hone, NV Bar No. 8499

eric@h1lawgroup.com

4 Jamie L. Zimmerman, NV Bar No. 11749

jamie@h1lawgroup.com

5 Moorea L. Katz, NV Bar No. 12007

moorea@h1lawgroup.com

6 701 N. Green Valley Parkway, Suite 200

Henderson NV 89074

7 Phone 702-608-3720

8 Fax 702-608-3759

Attorneys for Intervenor

Lone Mountain Partners, LLC

9
10 EIGHTH JUDICIAL DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 ETW MANAGEMENT GROUP LLC, a Nevada
13 limited liability company; GLOBAL HARMONY
14 LLC, a Nevada limited liability company; GREEN
15 LEAF FARMS HOLDINGS LLC, a Nevada limited
16 liability company; HERBAL CHOICE INC., a
17 Nevada corporation; JUST QUALITY, LLC, a
18 Nevada limited liability company; LIBRA
19 WELLNESS CENTER, LLC, a Nevada limited
20 liability company; MOTHER HERB, INC., a
21 Nevada corporation; NEVCANN LLC, a Nevada
22 limited liability company; RED EARTH LLC, a
23 Nevada limited liability company; THC NEVADA
24 LLC, a Nevada limited liability company; and
25 ZION GARDENS LLC, a Nevada limited liability
26 company,

27 Plaintiffs,

28 vs.

STATE OF NEVADA, DEPARTMENT OF
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DOES 1 through 20, inclusive; and ROE
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Defendants.

LONE MOUNTAIN PARTNERS, LLC, a Nevada
limited liability partnership,

Applicant in Intervention.

Case No. A-19-787004-B

Dept. No. 11

**LONE MOUNTAIN PARTNERS, LLC'S
[PROPOSED] ANSWER TO
PLAINTIFFS' AMENDED
COMPLAINT**



1 Lone Mountain Partners, LLC (“Lone Mountain”), by and through counsel undersigned,
2 hereby files this answer to the Amended Complaint filed by Plaintiffs ETW Management Group
3 LLC, Global Harmony LLC, Green Leaf Farms Holdings LLC, Herbal Choice Inc., Just Quality,
4 LLC, Libra Wellness Center, LLC, Mother Herb, Inc., Nevcan LLC, Red Earth LLC, THC
5 Nevada LLC, and Zion Gardens LLC (collectively “Plaintiffs”). Lone Mountain states as
6 follows:

7 Lone Mountain denies each and every allegation in the Amended Complaint except those
8 allegations that are admitted, qualified, or otherwise answered herein.

9 **PARTIES**

10 1. Answering paragraph 1, Lone Mountain lacks sufficient knowledge or
11 information as to the truth or falsity of the allegations contained in this paragraph.

12 2. Answering paragraph 2, Lone Mountain lacks sufficient knowledge or
13 information as to the truth or falsity of the allegations contained in this paragraph.

14 3. Answering paragraph 3, Lone Mountain lacks sufficient knowledge or
15 information as to the truth or falsity of the allegations contained in this paragraph.

16 4. Answering paragraph 4, Lone Mountain lacks sufficient knowledge or
17 information as to the truth or falsity of the allegations contained in this paragraph.

18 5. Answering paragraph 5, Lone Mountain lacks sufficient knowledge or
19 information as to the truth or falsity of the allegations contained in this paragraph.

20 6. Answering paragraph 6, Lone Mountain lacks sufficient knowledge or
21 information as to the truth or falsity of the allegations contained in this paragraph.

22 7. Answering paragraph 7, Lone Mountain lacks sufficient knowledge or
23 information as to the truth or falsity of the allegations contained in this paragraph.

24 8. Answering paragraph 8, Lone Mountain lacks sufficient knowledge or
25 information as to the truth or falsity of the allegations contained in this paragraph.

26 9. Answering paragraph 9, Lone Mountain lacks sufficient knowledge or
27 information as to the truth or falsity of the allegations contained in this paragraph.
28



1 10. Answering paragraph 10, Lone Mountain lacks sufficient knowledge or
2 information as to the truth or falsity of the allegations contained in this paragraph.

3 11. Answering paragraph 11, Lone Mountain lacks sufficient knowledge or
4 information as to the truth or falsity of the allegations contained in this paragraph.

5 12. Answering paragraph 12, Lone Mountain lacks sufficient knowledge or
6 information as to the truth or falsity of the allegations contained in this paragraph.

7 13. Answering paragraph 13, admit.

8 14. Answering paragraph 14, Lone Mountain lacks sufficient knowledge or
9 information as to the truth or falsity of the allegations contained in this paragraph.

10 **JURISDICTION AND VENUE**

11 15. Answering paragraph 15, Lone Mountain lacks sufficient knowledge or
12 information as to the truth or falsity of the allegations contained in this paragraph and therefore
13 denies.

14 16. Answering paragraph 16, Lone Mountain lacks sufficient knowledge or
15 information as to the truth or falsity of the allegations contained in this paragraph and therefore
16 denies.

17 **GENERAL ALLEGATIONS**

18 17. Answering paragraph 17, Lone Mountain incorporates and realleges all prior
19 paragraphs as through fully set forth herein.

20 18. Answering paragraph 18, admit.

21 19. Answering paragraph 19, admit.

22 20. Answering paragraph 20, Lone Mountain states that NRS 453D.200(1) speaks for
23 itself. No response is required for Plaintiffs' legal conclusions or statements regarding the
24 content of laws. To the extent a response is required, Lone Mountain admits only insofar as the
25 allegations accurately state the laws referenced in this paragraph.

26 21. Answering paragraph 21, Lone Mountain states that NRS 453D.210(d)(1) speaks
27 for itself. No response is required for Plaintiffs' legal conclusions or statements regarding the
28



1 content of laws. To the extent a response is required, Lone Mountain admits only insofar as the
2 allegations accurately state the laws referenced in this paragraph.

3 22. Answering paragraph 22, Lone Mountain states that NRS 453D.210(d)(5) speaks
4 for itself. No response is required for Plaintiffs' legal conclusions or statements regarding the
5 content of laws. To the extent a response is required, Lone Mountain admits only insofar as the
6 allegations accurately state the laws referenced in this paragraph.

7 23. Answering paragraph 23, Lone Mountain states that NRS 453D.210(6) speaks for
8 itself. No response is required for Plaintiffs' legal conclusions or statements regarding the
9 content of laws. To the extent a response is required, Lone Mountain admits only insofar as the
10 allegations accurately state the laws referenced in this paragraph.

11 24. Answering paragraph 24, Lone Mountain lacks sufficient knowledge or
12 information as to the truth or falsity of the allegations contained in this paragraph and therefore
13 denies.

14 25. Answering paragraph 25, Lone Mountain lacks sufficient knowledge or
15 information as to the truth or falsity of the allegations contained in this paragraph and therefore
16 denies.

17 26. Answering paragraph 26, Lone Mountain lacks sufficient knowledge or
18 information as to the truth or falsity of the allegations contained in this paragraph and therefore
19 denies.

20 27. Answering paragraph 27, Lone Mountain lacks sufficient knowledge or
21 information as to the truth or falsity of the allegations contained in this paragraph and therefore
22 denies.

23 28. Answering paragraph 28, Lone Mountain lacks sufficient knowledge or
24 information as to the truth or falsity of the allegations contained in this paragraph and therefore
25 denies.

26 ///

27 ///

28



1 29. Answering paragraph 29, Lone Mountain lacks sufficient knowledge or
2 information as to the truth or falsity of the allegations contained in this paragraph and therefore
3 denies.

4 30. Answering paragraph 30, Lone Mountain states that the regulations speak for
5 themselves. No response is required for Plaintiffs' legal conclusions or statements regarding the
6 content of laws or regulations. To the extent a response is required, Lone Mountain admits only
7 insofar as the allegations accurately state the regulations referenced in this paragraph.

8 31. Answering paragraph 31, Lone Mountain states that the regulations speak for
9 themselves. No response is required for Plaintiffs' legal conclusions or statements regarding the
10 content of laws or regulations. To the extent a response is required, Lone Mountain admits only
11 insofar as the allegations accurately state the regulations referenced in this paragraph.

12 32. Answering paragraph 32, Lone Mountain states that the regulations speak for
13 themselves. No response is required for Plaintiffs' legal conclusions or statements regarding the
14 content of laws or regulations. To the extent a response is required, Lone Mountain admits only
15 insofar as the allegations accurately state the regulations referenced in this paragraph.

16 33. Answering paragraph 33, Lone Mountain lacks sufficient knowledge or
17 information as to the truth or falsity of the allegations contained in this paragraph and therefore
18 denies.

19 34. Answering paragraph 34, Lone Mountain states that the regulations speak for
20 themselves. No response is required for Plaintiffs' legal conclusions or statements regarding the
21 content of laws or regulations. To the extent a response is required, Lone Mountain states that
22 Section 80(5) of the regulations should be considered in its full context and denies the accuracy
23 the allegations.

24 35. Answering paragraph 35, Lone Mountain states that the laws and regulations
25 speak for themselves. No response is required for Plaintiffs' legal conclusions or statements
26 regarding the content of laws or regulations. To the extent a response is required, Lone
27
28



1 Mountain admits only insofar as the allegations accurately state the laws and regulations
2 referenced in this paragraph.

3 36. Answering paragraph 36, Lone Mountain states that NRS 453D.210 speaks for
4 itself. No response is required for Plaintiffs' legal conclusions or statements regarding the
5 content of laws. To the extent a response is required, Lone Mountain admits only insofar as the
6 allegations accurately state the laws referenced in this paragraph.

7 37. Answering paragraph 37, Lone Mountain lacks sufficient knowledge or
8 information as to the truth or falsity of the allegations contained in this paragraph and therefore
9 denies.

10 38. Answering paragraph 38, Lone Mountain lacks sufficient knowledge or
11 information as to the truth or falsity of the allegations contained in this paragraph and therefore
12 denies.

13 39. Answering paragraph 39, Lone Mountain lacks sufficient knowledge or
14 information as to the truth or falsity of the allegations contained in this paragraph and therefore
15 denies.

16 40. Answering paragraph 40, Lone Mountain lacks sufficient knowledge or
17 information as to the truth or falsity of the allegations contained in this paragraph and therefore
18 denies.

19 41. Answering paragraph 41, Lone Mountain lacks sufficient knowledge or
20 information as to the truth or falsity of the allegations contained in this paragraph and therefore
21 denies.

22 42. Answering paragraph 42, Lone Mountain lacks sufficient knowledge or
23 information as to the truth or falsity of the allegations contained in this paragraph and therefore
24 denies.

25 43. Answering paragraph 43, Lone Mountain lacks sufficient knowledge or
26 information as to the truth or falsity of the allegations contained in this paragraph and therefore
27 denies.

28



1 44. Answering paragraph 44, Lone Mountain lacks sufficient knowledge or
2 information as to the truth or falsity of the allegations contained in this paragraph and therefore
3 denies.

4 45. Answering paragraph 45, deny.

5 46. Answering paragraph 46, deny.

6 47. Answering paragraph 47, deny.

7 48. Answering paragraph 48, deny.

8 **FIRST CLAIM FOR RELIEF**

9 **Violation of Substantive Due Process**

10 49. Answering paragraph 49, Lone Mountain repeats and realleges all prior
11 paragraphs as though fully set forth herein.

12 50. Answering paragraph 50, Lone Mountain states that the Fourteenth Amendment
13 speaks for itself. No response is required for Plaintiffs' legal conclusions or statements
14 regarding the content of laws. To the extent a response is required, Lone Mountain admits only
15 insofar as the allegations accurately state the laws referenced in this paragraph.

16 51. Answering paragraph 51, Lone Mountain states that the Nevada Constitution
17 speaks for itself. No response is required for Plaintiffs' legal conclusions or statements
18 regarding the content of laws. To the extent a response is required, Lone Mountain admits only
19 insofar as the allegations accurately state the laws referenced in this paragraph.

20 52. Answering paragraph 52, Lone Mountain denies.

21 53. Answering paragraph 53, Lone Mountain denies.

22 54. Answering paragraph 54, Lone Mountain lacks sufficient knowledge or
23 information as to the truth or falsity of the allegations contained in this paragraph and therefore
24 denies.

25 55. Answering paragraph 55, Lone Mountain denies.

26 56. Answering paragraph 56, Lone Mountain denies.

27 57. Answering paragraph 57 and subparagraphs 57(a)-(f), Lone Mountain denies.
28



1 58. Answering paragraph 58, Lone Mountain denies.

2 59. Answering paragraph 59, Lone Mountain denies.

3 60. Answering paragraph 60, Lone Mountain denies.

4 **SECOND CLAIM FOR RELIEF**

5 **Violation of Procedural Due Process**

6 61. Answering paragraph 61, Lone Mountain repeats and realleges all prior
7 paragraphs as though fully set forth herein.

8 62. Answering paragraph 62, Lone Mountain states that the Fourteenth Amendment
9 speaks for itself. No response is required for Plaintiffs' legal conclusions or statements
10 regarding the content of laws. To the extent a response is required, Lone Mountain admits only
11 insofar as the allegations accurately state the laws referenced in this paragraph.

12 63. Answering paragraph 63, Lone Mountain states that the Nevada Constitution
13 speaks for itself. No response is required for Plaintiffs' legal conclusions or statements
14 regarding the content of laws. To the extent a response is required, Lone Mountain admits only
15 insofar as the allegations accurately state the laws referenced in this paragraph.

16 64. Answering paragraph 64, Lone Mountain denies.

17 65. Answering paragraph 65, Lone Mountain denies.

18 66. Answering paragraph 66, Lone Mountain states that no response is required as the
19 allegations in this paragraph are Plaintiffs' legal conclusions regarding the contents of laws or
20 regulations. To the extent a response is required, Lone Mountain admits only insofar as the
21 allegations accurately state the laws or regulations referenced.

22 67. Answering paragraph 67, Lone Mountain denies.

23 68. Answering paragraph 68, Lone Mountain denies.

24 69. Answering paragraph 69, Lone Mountain denies.

25 70. Answering paragraph 70, Lone Mountain denies.

26 71. Answering paragraph 71, Lone Mountain denies.

27 72. Answering paragraph 72, Lone Mountain denies.

28



THIRD CLAIM FOR RELIEF

Violation of Equal Protection

73. Answering paragraph 73, Lone Mountain repeats and realleges all prior paragraphs as though fully set forth herein.

74. Answering paragraph 74, Lone Mountain states that the Fourteenth Amendment speaks for itself. No response is required for Plaintiffs' legal conclusions or statements regarding the content of laws. To the extent a response is required, Lone Mountain admits only insofar as the allegations accurately state the laws referenced in this paragraph.

75. Answering paragraph 75, Lone Mountain states that the Nevada Constitution speaks for itself. No response is required for Plaintiffs' legal conclusions or statements regarding the content of laws. To the extent a response is required, Lone Mountain admits only insofar as the allegations accurately state the laws referenced in this paragraph.

76. Answering paragraph 76, Lone Mountain denies.

77. Answering paragraph 77, Lone Mountain denies.

78. Answering paragraph 78, Lone Mountain admits only insofar as the term Factors, as used by Plaintiffs, accurately comports with those laws and regulations referenced in the definition of the term "Factors."

79. Answering paragraph 79, Lone Mountain denies.

80. Answering paragraph 80, Lone Mountain denies.

81. Answering paragraph 81 and subparagraphs 81(a)-(f), Lone Mountain denies.

82. Answering paragraph 82, Lone Mountain denies.

83. Answering paragraph 83, Lone Mountain denies.

84. Answering paragraph 84, Lone Mountain denies.

FOURTH CLAIM FOR RELIEF

Declaratory Judgment

85. Answering paragraph 85, Lone Mountain repeats and realleges all prior paragraphs as though fully set forth herein.



1 86. Answering paragraph 86, Lone Mountain states that the Uniform Declaratory
2 Judgment Act speaks for itself. No response is required for Plaintiffs' legal conclusions or
3 statements regarding the content of laws. To the extent a response is required, Lone Mountain
4 admits only insofar as the allegations accurately state the laws referenced in this paragraph.

5 87. Answering paragraph 87, Lone Mountain lacks sufficient knowledge or
6 information as to the truth or falsity of the allegations contained in this paragraph.

7 88. Answering paragraph 88, Lone Mountain denies.

8 89. Answering paragraph 89, Lone Mountain states that NRS 453D.210(6) speaks for
9 itself. No response is required for Plaintiffs' legal conclusions or statements regarding the
10 content of laws. To the extent a response is required, Lone Mountain admits only insofar as the
11 allegations accurately state the laws referenced in this paragraph.

12 90. Answering paragraph 90 and subparagraphs 90(a)-(f), Lone Mountain denies.

13 91. Answering paragraph 91, Lone Mountain denies.

14 92. Answering paragraph 92, Lone Mountain denies.

15 93. Answering paragraph 93, Lone Mountain denies.

16 94. Answering paragraph 94, Lone Mountain admits.

17 95. Answering paragraph 95, Lone Mountain denies.

18 96. Answering paragraph 96, Lone Mountain denies any allegations. Lone Mountain
19 also denies that Plaintiffs are entitled to the requested relief.

20 WHEREFORE, Lone Mountain denies that Plaintiffs are entitled to any relief being
21 sought in their Prayer for Relief or any other relief in this matter.

22 **AFFIRMATIVE DEFENSES**

23 **First Affirmative Defense**

24 Lone Mountain adopts and incorporates herein all affirmative defenses plead by
25 Defendants and other Intervenor in this matter.

26 **Second Affirmative Defense**

27 The Amended Complaint fails to state a claim upon which relief can be granted.
28



Third Affirmative Defense

Plaintiffs have not been damaged directly, indirectly, proximately or in any manner whatsoever by any conduct of Defendants.

Fourth Affirmative Defense

The State of Nevada, Department of Taxation is immune from suit when performing the functions at issue in this case.

Fifth Affirmative Defense

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

Sixth Affirmative Defense

Plaintiffs' claims are barred because Plaintiffs have failed to exhaust administrative remedies, if any.

Seventh Affirmative Defense

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

Eighth Affirmative Defense

The occurrences referred to in the Amended Complaint and all alleged damages, if any, resulting therefrom, were caused by a third party of which Defendants had no control.

Ninth Affirmative Defense

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

Tenth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by their failure to perform or satisfy required conditions precedent and by their own bad acts.

///



1 **Eleventh Affirmative Defense**

2 Plaintiffs are not in possession and/or control of the documents and/or witnesses
3 necessary to prove its alleged causes of action against Defendants.

4 **Twelfth Affirmative Defense**

5 The claims, and each of them, are barred by the failure of Plaintiffs to plead those claims
6 with sufficient particularity.

7 **Thirteenth Affirmative Defense**

8 Plaintiffs have failed to allege sufficient facts and cannot carry the burden of proof
9 imposed on it by law to recover attorney's fees incurred to bring this action.

10 **Fourteenth Affirmative Defense**

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

13 **Fifteenth Affirmative Defense**

14 Plaintiffs have no constitutional rights to obtain privileged licenses.

15 **Sixteenth Affirmative Defense**

16 Mandamus is not available to compel the members of the executive branch to perform
17 nonministerial, discretionary tasks.

18 **Seventeenth Affirmative Defense**

19 Plaintiffs are not entitled to judicial review on the denial of a license.

20 **Eighteenth Affirmative Defense**

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

22 **Nineteenth Affirmative Defense**

23 Plaintiffs lack standing to seek the relief they request.

24 **Twentieth Affirmative Defense**

25 Pursuant to Nevada Rules of Civil Procedure, all possible affirmative defenses may not
26 have been alleged herein insofar as sufficient facts were not available after reasonable inquiry
27
28



1 upon the filing of this answer and, therefore, Lone Mountain reserves the right to amend this
2 answer to allege additional affirmative defenses if subsequent investigation warrants.

3 WHEREFORE, Lone Mountain prays for judgment as follows:

- 4 1. Plaintiffs take nothing by way of their Amended Complaint;
5 2. The Amended Complaint, and all causes of action against Defendants and Lone
6 Mountain alleged therein, be dismissed with prejudice;
7 3. For reasonable attorney fees and costs to be awarded to Lone Mountain; and
8 4. For such other and further relief the Court may deem just and proper.

9 Dated this ____ day of _____ 201__.

10 H1 LAW GROUP
11

12
13 Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com
14 Jamie L. Zimmerman, NV Bar No. 11749
jamie@h1lawgroup.com
15 Moorea L. Katz, NV Bar No. 12007
moorea@h1lawgroup.com
16 701 N. Green Valley Parkway, Suite 200
17 Henderson NV 89074
18 Phone 702-608-3720
Fax 702-608-3759

19 *Attorneys for Intervenor*
20 *Lone Mountain Partners, LLC*
21
22
23
24
25
26
27
28

H1 LAW GROUP
701 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074
Tel: 702-608-3720 Fax: 702-608-3759



CERTIFICATE OF SERVICE

The undersigned, an employee of H1 Law Group, hereby certifies that on the ____ day of [Click Here and Type](#) 201_, she caused a copy of the foregoing [Click Here and Type](#), to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's [Odyssey E-File & Serve](#) system.

Bobbie Donaldson, an employee of
H1 LAW GROUP

EXHIBIT B



**ORDG
H1 LAW GROUP**

Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com
Jamie L. Zimmerman, NV Bar No. 11749
jamie@h1lawgroup.com
Moorea L. Katz, NV Bar No. 12007
moorea@h1lawgroup.com
701 N. Green Valley Parkway, Suite 200
Henderson NV 89074
Phone 702-608-3720
Fax 702-608-3759

*Attorneys for Intervenor
Lone Mountain Partners, LLC*

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

ETW MANAGEMENT GROUP LLC, a Nevada
limited liability company; GLOBAL HARMONY
LLC, a Nevada limited liability company; GREEN
LEAF FARMS HOLDINGS LLC, a Nevada limited
liability company; HERBAL CHOICE INC., a
Nevada corporation; JUST QUALITY, LLC, a
Nevada limited liability company; LIBRA
WELLNESS CENTER, LLC, a Nevada limited
liability company; MOTHER HERB, INC., a
Nevada corporation; NEVCANN LLC, a Nevada
limited liability company; RED EARTH LLC, a
Nevada limited liability company; THC NEVADA
LLC, a Nevada limited liability company; and
ZION GARDENS LLC, a Nevada limited liability
company,

Plaintiffs,

vs.

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

Defendants.

LONE MOUNTAIN PARTNERS, LLC, a Nevada
limited liability partnership,

Applicant in Intervention.

Case No. A-19-787004-B

Dept. No. 11

**[PROPOSED] ORDER GRANTING
LONE MOUNTAIN PARTNERS, LLC'S
MOTION TO INTERVENE**



1 The Court, having reviewed the Applicant Lone Mountain Partners, LLC's Motion to
2 Intervene, and good cause appearing,

3 IT IS HEREBY ORDERED:

4 Applicant's Motion to Intervene is granted, and Lone Mountain Partners, LLC shall
5 intervene as a Defendant/Real Party in Interest in the above-captioned case as a necessary party to
6 the action pursuant to NRCP 24 and NRS 12.130.

7
8
9 DISTRICT COURT JUDGE

DATED: _____

10 Respectfully submitted by:

11 **H1 LAW GROUP**

12
13 

14 Eric D. Hone, NV Bar No. 8499

eric@h1lawgroup.com

15 Jamie L. Zimmerman, NV Bar No. 11749

jamie@h1lawgroup.com

16 Moorea L. Katz, NV Bar No. 12007

moorea@h1lawgroup.com

17 701 N. Green Valley Parkway, Suite 200

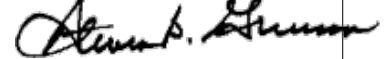
Henderson NV 89074

18 Phone 702-608-3720

Fax 702-608-3759

19 *Attorneys for Intervenor*

20 *Lone Mountain Partners, LLC*



1 MINV
2 Jared Kahn, Esq.
3 Nevada Bar # 12603
4 JK Legal & Consulting, LLC
5 9205 West Russell Rd., Suite 240
6 Las Vegas, NV 89148
7 P: (702) 708-2958
8 F: (866) 870-6758
9 jkahn@jk-legalconsulting.com

10 *Attorneys for Defendant Intervenor*
11 *Helping Hands Wellness Center, Inc.*

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

14 SERENITY WELLNESS CENTER, LLC)
15 a Nevada limited liability company; TGIG,)
16 LLC, a Nevada limited liability company;)
17 NULEAF INCLINE DISPENSARY, LLC,)
18 a Nevada limited liability company;)
19 NEVADA HOLISTIC MEDICINE, LLC, a)
20 Nevada limited liability company; TRYKE)
21 COMPANIES SO NV, LLC, a Nevada)
22 limited liability company; TRYKE)
23 COMPANIES RENO, LLC, a Nevada)
24 limited liability company; PARADISE)
25 WELLNESS CENTER, LLC, a Nevada)
26 limited liability company; GBS NEVADA)
27 PARTNERS, LLC, a Nevada limited)
28 liability company; GRAVITAS NEVADA,)
LLC, a Nevada limited liability company;)
NEVADA PURE, LLC, Nevada limited)
liability company; MEDIFARM, LLC, a)
Nevada limited liability company; DOE)
PLAINTIFFS I through X; and ROE)
ENTITY PLAINTIFFS I through X,)

Plaintiff,)

vs.)

THE STATE OF NEVADA,)
DEPARTMENT OF TAXATION,)

Defendants.)

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

**MOTION TO INTERVENE AS
DEFENDANTS**

HEARING REQUESTED

1 HELPING HANDS WELLNESS)
2 CENTER, INC., a Nevada corporation.)
3)
4 Applicants for Intervention)
5 _____)

5 Defendants in Intervention HELPING HANDS WELLNESS CENTER, INC.,
6 (“HHWC” or “Intervenor”), by and through their counsel Jared Kahn, Esq., of JK Legal &
7 Consulting, LLC, hereby respectfully moves this Court to intervene in the above-referenced
8 matter pursuant to NRCP 24 and NRS §12.130. This Motion is made and based upon the
9 Memorandum of Points and Authorities, the pleadings and papers on file herein, and upon any
10 oral argument of counsel at the time of hearing.
11

12 DATED: April 1, 2019

13 /s/ Jared B. Kahn
14 Jared B. Kahn, Nevada Bar # 12603
15 JK Legal & Consulting, LLC
16 9205 W. Russell Rd., Suite 240
17 Las Vegas, NV 89148
18 jkahn@jk-legalconsulting.com
19 Of Attorneys for Defendant Intervenor

20 **NOTICE OF HEARING ON MOTION**

21 TO: ALL PARTIES AND ATTORNEYS OF RECORD:

22 Please take notice that the undersigned will bring the foregoing MOTION TO
23 INTERVENE AS DEFENDANTS on for hearing before the above-entitled Court in
24 Department XI on the _____ day of _____, 2019, at _____ am/pm, or as soon
25 thereafter as counsel may be heard.

26 DATED: April 1, 2019

27 /s/ Jared B. Kahn
28 Jared B. Kahn, Nevada Bar # 12603
JK Legal & Consulting, LLC
9205 W. Russell Rd., Suite 240
Las Vegas, NV 89148
jkahn@jk-legalconsulting.com

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 HHWC timely files this Motion to Intervene in this matter to protect its interests as
4 owner and recipient of three conditional recreational marijuana dispensary licenses (the
5 “HHWC Licenses”) issued to it on December 5, 2018, by the State of Nevada Department of
6 Taxation (the “Department”). The instant action challenges the entire process by which the
7 Department assessed applications, scored the applications, ranked and issued recreational
8 marijuana dispensary licenses (the “Licenses”) to HHWC and the other applicants. The
9 Plaintiffs seek to void the entire application process alleging the Department’s application
10 process and issuance of the Licenses was flawed and improper. If the Court were to entertain
11 granting Plaintiffs the extreme relief sought then HHWC’s interests would be unjustly impaired
12 despite HHWC properly and appropriately submitting its application and ranking higher in each
13 jurisdiction of Clark County, City of Las Vegas and North Las Vegas, than the Plaintiffs’
14 rankings. Therefore, it is imperative HHWC is permitted to intervene in the instant action to
15 protect its own interests and the HHWC Licenses.

16 HHWC meets the standards for intervention pursuant to NRCP 24 and this Motion to
17 Intervene should be granted to permit HHWC’s intervention and participation in this action.
18 HHWC respectfully requests this Court consider this Motion on an emergency and expedited
19 basis due to the Plaintiffs’ recently filed Motion for Preliminary Injunction seeking to enjoin the
20 HHWC Licenses and all issued Licenses from obtaining final license issuance by the
21 Department.

22 Attached hereto as Exhibit A is HHWC’s Proposed Answer to Plaintiff’s Complaint.
23 HHWC expressly reserves the right to amend the Proposed Answer to include counterclaims,
24 should this Court allow HHWC to intervene.

1 **II. BACKGROUND**

2 **a. Retail Marijuana License Application Process**

3 In November 2016, Nevada legalized the purchase, possession, and consumption of
4 recreational marijuana for adults 21 and older by passing the Regulation and Taxation of
5 Marijuana Act (the “Act”). The Act required the Department to adopt regulations necessary to
6 carry out the Act, including regulations that set forth the “[p]rocedures for the issuance,
7 renewal, suspension, and revocation of a license to operate a marijuana establishment” and the
8 “[q]ualifications for licensure that are directly and demonstrably related to the operation of a
9 marijuana establishment.” NRS §453D.200(1)(a-b). The Nevada Tax Commission
10 unanimously approved the Department’s permanent regulations (“Regulations”), which went
11 into effect on February 27, 2018. *LCB File No. R092-17*.

12 Thereafter, on August 16, 2018, the Department issued the Notice of Intent to Accept
13 Applications to qualified existing Nevada marijuana licensees to apply for the available sixty-
14 four (64) recreational marijuana retail store licenses to be located throughout various
15 jurisdictions in Nevada. The application submittal period would be open from September 7,
16 2018 through September 20, 2018. The Department indicated it would issue its decision to
17 successful and unsuccessful applicants on December 5, 2018.

18 In the event the Department receives more than one complete and qualified application
19 for a license for each available jurisdiction then the Regulations require the Department to issue
20 a ranking of all applications from first to last within each jurisdiction. R092-17, Sec. 80. The
21 Department is then required to issue the available conditional Licenses in each jurisdiction to
22 the highest scoring applicants. *Id.*

23 On December 5, 2018, HHWC received notice it received approval of three conditional
24 Licenses, among the Department’s issuance of sixty-one (61) Licenses. The recipients of the
25
26
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1 conditional Licenses have twelve (12) months to receive a final inspection and license for their
2 retail marijuana establishment. *Id.*, at Sec. 87. If a final inspection is not obtained within the
3 twelve (12) months, the License must be surrendered to the Department. *Id.*

4 **b. The Lawsuit's Claims for Relief**

5 Plaintiffs initiated the instant action against the Department after their applications were
6 deemed by the Department inadequate to obtain Licenses. Among the various unfounded
7 allegations, Plaintiffs allege "the Department's denial of their license applications was not
8 properly based upon actual implementation of the impartial and objective bidding process
9 mandated by NRS 453D.210, but rather ... based upon the arbitrary and capricious exercise of
10 administrative partiality and favoritism." *Complaint* at ¶ 33.

11 The Complaint seeks various claims for relief, including:

- 12 • Claims for violation of procedural due process, substantive due process and
13 equal protection, each of which is alleged to have rendered the Department's
14 denial of Plaintiffs' license applications void and unenforceable. *Id.* at ¶¶ 37-42,
15 66-68, 70-74;
- 16 • Declaratory relief, seeking a judicial declaration the Department's ranking of
17 applicants and issuance of conditional licenses was improper, the denial of
18 Plaintiffs' license applications was improper and void ab initio, and the
19 Department must issue Plaintiffs the licenses for which they applied. *Id.* at ¶¶
20 43-44, 50-52;
- 21 • Injunctive relief seeking an Order requiring the Department to issue Plaintiffs the
22 licenses for which they applied. *Id.* at ¶¶ 53, 59;
- 23 • Petition for Judicial Review of the Department's application process seeking a
24 determination the Department's denial of the Plaintiffs' applications lacked
25 substantial evidence and is void ab initio. *Id.* at 75-80;
- 26 • Petition for Writ of Mandamus, alleging the Department's denial of Plaintiffs'
27 applications was arbitrary and capricious due to lack of substantial evidence and
28 was done "solely to approve other competing applicants without regard to the
merit of Plaintiffs' application" and seeking an Order compelling the Department
to "review the application on its merits and/or approve it." *Id.* at ¶¶ 81-86.

HHWC now seeks to intervene to protect its unique legal interests in the HHWC

1 Licenses issued by the Department because the claims for relief sought, if somehow granted,
2 would directly impact and impair HHWC from obtaining its final inspection causing a jeopardy
3 to not obtaining final issuance and the possible surrender of the Licenses – a potential goal of
4 the Plaintiffs with this litigation to instead interfere and delay the conditional license process in
5 hopes of obtaining a surrendered or forfeited license in the future. As a result of the recent
6 filing of the Motion for Preliminary Injunction, HHWC needs to intervene immediately so
7 HHWC can participate in responding to the Motion for Preliminary Injunction and participating
8 at the hearing set on April 22, 2019.

10 **III. LEGAL ARGUMENT**

11 **a. Standard for Granting a Motion for Intervention as a Matter of Right**

12 Pursuant to NRS § 12.130, anytime before the trial commences, “any person ... may
13 intervene in an action or proceeding, who has an interest in the matter in the litigation, in the
14 success of either of the parties, or an interest against both.” *NRS* § 12.130(1)(a). “Intervention
15 is made as provided by the Nevada Rules of Civil Procedure.” *NRS* § 12.130(c).

17 Upon timely application, intervention is permitted “when the applicant claims an interest
18 relating to the property or transaction which is the subject of the action and the applicant is so
19 situated that the disposition of the action may as a practical matter impair or impede the
20 applicant’s ability to protect that interest, unless the applicant’s interest is adequately
21 represented by existing parties.” *NRCP* 24(a)(2).

23 The Supreme Court of Nevada imposed four requirements for seeking to intervene in an
24 action: (1) the application must be timely; (2) the applicant must claim a sufficient interest
25 relating to the property or transaction which is the subject of the action; (3) the applicant must
26 be so situated that the disposition of the action may as a practical matter impair or impede its
27 ability to protect that interest; and (4) the applicant’s interest must be inadequately represented
28

1 by the parties to the action. *American Home Assurance Corp. v. Eighth Judicial District Ct. ex*
2 *rel. County of Clark*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006). Determining whether
3 an applicant has met these four requirements is within the district court's sound discretion. *Id.*
4 at 1126. A court generally follows practical and equitable considerations and construes the
5 governing rule broadly in favor of proposed intervenors. *Wilderness Soc'y v. U.S. Forest*
6 *Service*, 630 F.3d 1173, 1179 (9th Cir. 2011) (*en banc*) (quoting *United States v. City of Los*
7 *Angeles*, 288 F. 3d 391, 397 (9th Cir. 2002)). This is because "[a] liberal policy in favor of
8 intervention serves both efficient resolution of issues and broadened access to the Courts." *Id.*
9

10 i. *HHWC's Application to Intervene is Timely*

11 HHWC timely filed its Motion to Intervene. In determining the timeliness of an
12 application to intervene, the Nevada Supreme Court held "[t]he most important question to be
13 resolved ... is not the length of the delay by the intervenor but the extent of prejudice to the
14 rights of existing parties resulting from the delay." *Dangberg Holdings Nevada, LLC, v.*
15 *Douglas Cty. & its Bd. Of Cty. Commr's*, 115 Nev. 129, 141, 978 P.2d 311, 318 (1999); *see also*
16 *American Home Assurance Corp.*, 122 Nev. at 1244, n.49 and n.50 (citations omitted).
17

18 Here, HHWC's application for intervention will not cause prejudice to the Plaintiffs nor
19 the Department or other intervenors, given the case is in the early stages of litigation. *See*
20 *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011)
21 (where the Court found the parties would not suffer prejudice from the grant of intervention in
22 the early stage of litigation). The Department has not filed an Answer. No substantive Orders
23 have been issued by the Court. Discovery has not initiated. The Court in *Citizens for Balanced*
24 *Use* found a motion for intervention was timely when it was filed less than three months after
25 the Complaint was filed and less than two weeks after the first filing of an answer to the
26 complaint. *Id.* The Court found the intervention was so early in the litigation it would not
27
28

1 cause disruption or delay the proceedings. *Id.* Similarly, HHWC's Motion to Intervene will not
2 cause delay given the application being filed so early in the litigation.

3 In contrast, HHWC would be materially prejudiced if it were precluded from intervening
4 in this action. HHWC was awarded three (3) conditional licenses. The Plaintiffs in the instant
5 action are seeking to undermine HHWC's rights in the HHWC Licenses and to impair and
6 impede HHWC's ability to obtain the requisite final inspections. Without intervention, HHWC
7 will be severely prejudiced, however, the other parties will not suffer any prejudice if the
8 Motion is granted.

10 ii. *HHWC Maintains a Significant Interest in the Litigation Subject Matter*

11 HHWC maintains a significant interest in the litigation's subject matter. The Nevada
12 Supreme Court held, that while there is "no bright line test", an applicant must make a showing
13 of a "significant protectable interest." *Am. Home Assur. Co.*, 122 Nev. 1229, 1238, 147 P.3d
14 1120, 1127 (2006). Whether a proposed intervenor has a significant protectable interest is a
15 "practical, threshold inquiry" and the party seeking intervention need not establish any "specific
16 legal or equitable interest". *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d
17 at 897 (quoting *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996). To meet
18 its burden, a proposed intervenor "must establish that the interest is protectable under some law
19 and that there is a relationship between the legally protected interest and the claims at issue."
20 *Id.* Courts "have taken the view that a party has a sufficient interest for intervention purposes if
21 it will suffer a practical impairment of its interests as a result of the pending litigation." *Id.*

22 Here, HHWC maintains a sufficient interest in the subject matter of this action - the
23 HHWC Licenses awarded by the Department. Plaintiffs are attempting to void and unwind the
24 Department's application process which may result in the impairment or impeding of HHWC's
25 ability to obtain final licenses within the twelve-month deadline. Therefore, HHWC has
26
27
28

1 demonstrated a significant protectable interest in this action.

2 iii. *The Disposition of this Matter May Impair or Impede HHWC's Ability to*
3 *Protect Its Interests*

4 The instant litigation may impair or impede HHWC's ability to protect its interests – the
5 HHWC Licenses. Once a significant protectable interest is established, courts look to whether
6 the proposed intervenor's ability to protect that interest would be "impair[e]d or impede[d]" by
7 "the disposition of the action." *Citizens for Balanced Use*, 647 F.3d at 897. "If an absentee
8 would be substantially affected in a practical sense by the determination made in an action, [it]
9 should, as a general rule, be entitled to intervene ..." *Id.* at 898.

11 Here, Plaintiffs' manufactured and unfounded claims with the litigation are an attempt to
12 destabilize the legitimacy of the Department's application process with the desired result of
13 undermining the HHWC Licenses and other Licenses issued to successful applicants. Plaintiffs
14 seek to be awarded licenses that were awarded to HHWC and the other successful applicants.
15 The result would be to displace the current license holders so Plaintiffs can be awarded licenses
16 instead despite not qualifying through the Department's scoring and ranking system. The relief
17 sought by Plaintiffs would undoubtedly harm one or more of the successful applicants.
18 Therefore, HHWC's interests may be impaired by the disposition of this case due to the risk of
19 losing the HHWC Licenses.
20

21 iv. *HHWC's Interests May Not Be Adequately Represented*

22 Defendant's interests may not be adequately represented by the present parties in the
23 event this Court should deny the motion to intervene. "The burden of showing inadequacy of
24 representation is minimal and satisfied if the [party seeking intervention] can demonstrate that
25 representation of its interests may be inadequate." *Citizens for Balanced Use*, 647 F.3d at 898;
26 *see also Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10, 92 S.Ct. 630, 636 n.10, 30
27
28

1 L.Ed.2d 686 (1972) (holding that the requirement of inadequate representation is satisfied if the
2 applicant shows that representation “may be” inadequate). Courts examine three factors for
3 determining the adequacy of representation: (1) whether the interest of a present party is such
4 that it will undoubtedly make all of a proposed intervenor’s arguments; (2) whether the present
5 party is capable and willing to make such arguments; and (3) whether a proposed intervenor
6 would offer any necessary elements to the proceeding that other parties would neglect. *Citizens*
7 *for Balanced Use*, 647 F.3d at 898.
8

9 The *Citizens*’ court stated the “most important factor in assessing the adequacy of
10 representation is how the interest compares with the interests of existing parties.” *Id.* The court
11 continued when a proposed intervenor and an existing party “share the same ultimate objective,
12 a presumption of adequacy of representation arises.” *Id.* A presumption of adequacy “must be
13 rebutted with a compelling showing.” *Id.*
14

15 Here, HHWC’s interests would not be adequately represented by the Department or the
16 intervening defendant Nevada Organic Remedies (“NOR”). The Department presumably will
17 defend its application evaluation process by showing it complied with NRS Chapter 453D and
18 the Regulations throughout the application process. However, the Department will not defend
19 HHWC or the other licensees’ unique and valuable licenses. The Department has no interest in
20 specifically defending HHWC’s licenses versus other applicants, nor is the Department
21 equipped to do so.
22

23 HHWC anticipates Plaintiffs will argue NOR shares the same ultimate objective thus the
24 Motion to Intervene should be denied. However, no such alignment of objectives exist
25 particularly since each of the sixty-one (61) conditional licenses is unique and valuable, and,
26 each applicant was uniquely positioned in order to acquire such licenses. Each licensee was
27 individually ranked in order to obtain their licenses and each licensee will have to defend their
28

1 own ranking if the application evaluation process is called into question. HHWC will need to
2 defend their application against all other applicants. In addition, the arguments recently
3 presented by Plaintiffs in the Motion for Preliminary Injunction regarding the number of retail
4 licenses awarded potentially violating anti-monopoly regulations or licensees being awarded
5 multiple licenses within a jurisdiction do not apply to HHWC, which is in a unique position to
6 have been awarded Licenses without prior retail marijuana establishments as opposed to other
7 intervenors. Therefore, only HHWC would be in a position to defend against such arguments,
8 such as those presented by Plaintiffs in the Motion for Preliminary Injunction. Accordingly,
9 HHWC has met its burden of showing its interest may not be adequately represented.
10

11 **IV. CONCLUSION**

12 For the foregoing reasons, HHWC respectfully requests this Court grant the instant Motion
13 to Intervene, on an expedited basis, ordering HHWC to intervene as a Defendant in this action.
14

15 DATED: April 1, 2019

16 /s/ Jared B. Kahn
17 Jared B. Kahn, Nevada Bar # 12603
18 JK Legal & Consulting, LLC
19 9205 W. Russell Rd., Suite 240
20 Las Vegas, NV 89148
21 jkahn@jk-legalconsulting.com
22 Of Attorneys for Defendant Intervenor
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EXHIBIT "A"

Defendant's [Proposed] Answer to Complaint

1 **ANS**
Jared Kahn, Esq.
2 Nevada Bar # 12603
JK Legal & Consulting, LLC
3 9205 West Russell Rd., Suite 240
Las Vegas, NV 89148
4 P: (702) 708-2958
5 F: (866) 870-6758
jkahn@jk-legalconsulting.com

6
7 *Attorneys Helping Hands Wellness Center, Inc.*

8
9 **EIGHTH JUDICIAL DISTRICT COURT**
 CLARK COUNTY, NEVADA

10
11 SERENITY WELLNESS CENTER, LLC)
a Nevada limited liability company; TGIG,)
12 LLC, a Nevada limited liability company;)
NULEAF INCLINE DISPENSARY, LLC,)
13 a Nevada limited liability company;)
NEVADA HOLISTIC MEDICINE, LLC, a)
14 Nevada limited liability company; TRYKE)
COMPANIES SO NV, LLC, a Nevada)
15 limited liability company; TRYKE)
COMPANIES RENO, LLC, a Nevada)
16 limited liability company; PARADISE)
WELLNESS CENTER, LLC, a Nevada)
17 limited liability company; GBS NEVADA)
18 PARTNERS, LLC, a Nevada limited)
liability company; GRAVITAS NEVADA,)
19 LLC, a Nevada limited liability company;)
NEVADA PURE, LLC, Nevada limited)
20 liability company; MEDIFARM, LLC, a)
Nevada limited liability company; DOE)
21 PLAINTIFFS I through X; and ROE)
22 ENTITY PLAINTIFFS I through X,)

23 Plaintiff,)
24))
25 vs.)
26 THE STATE OF NEVADA,)
27 DEPARTMENT OF TAXATION,)
28 Defendants.)
))

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

DEFENDANT HELPING HANDS
WELLNESS CENTER, INC.'S
[PROPOSED] ANSWER TO
COMPLAINT

1 HELPING HANDS WELLNESS)
2 CENTER, INC., a Nevada corporation.)

3 Defendant in Intervention)
4 _____)

5
6
7 Defendant in Intervention Helping Hands Wellness Center, Inc., (“HHWC” or
8 “Defendant”), by and through their counsel Jared Kahn, Esq., hereby answers the Complaint
9 filed by Plaintiffs, as follows:

10 **PARTIES, JURISDICTION AND VENUE**

- 11 1. Defendant is without sufficient information to admit or deny the allegation of paragraphs
12 1 of the Complaint. In the event a response is required, Defendant denies the allegations
13 of the aforementioned paragraphs of the Complaint.
14
15 2. Defendant is without sufficient information to admit or deny the allegation of paragraphs
16 2 of the Complaint. In the event a response is required, Defendant denies the allegations
17 of the aforementioned paragraphs of the Complaint.
18
19 3. Defendant is without sufficient information to admit or deny the allegation of paragraphs
20 3 of the Complaint. In the event a response is required, Defendant denies the allegations
21 of the aforementioned paragraphs of the Complaint.
22
23 4. Defendant is without sufficient information to admit or deny the allegation of paragraphs
24 4 of the Complaint. In the event a response is required, Defendant denies the allegations
25 of the aforementioned paragraphs of the Complaint.
26
27 5. Defendant is without sufficient information to admit or deny the allegation of paragraphs
28 5 of the Complaint. In the event a response is required, Defendant denies the allegations
of the aforementioned paragraphs of the Complaint.

- 1 6. Defendant is without sufficient information to admit or deny the allegation of paragraphs
2 6 of the Complaint. In the event a response is required, Defendant denies the allegations
3 of the aforementioned paragraphs of the Complaint.
- 4 7. Defendant is without sufficient information to admit or deny the allegation of paragraphs
5 7 of the Complaint. In the event a response is required, Defendant denies the allegations
6 of the aforementioned paragraphs of the Complaint.
- 7 8. Defendant is without sufficient information to admit or deny the allegation of paragraphs
8 8 of the Complaint. In the event a response is required, Defendant denies the allegations
9 of the aforementioned paragraphs of the Complaint.
- 10 9. Defendant is without sufficient information to admit or deny the allegation of paragraphs
11 9 of the Complaint. In the event a response is required, Defendant denies the allegations
12 of the aforementioned paragraphs of the Complaint.
- 13 10. Defendant is without sufficient information to admit or deny the allegation of paragraphs
14 10 of the Complaint. In the event a response is required, Defendant denies the
15 allegations of the aforementioned paragraphs of the Complaint.
- 16 11. Defendant is without sufficient information to admit or deny the allegation of paragraphs
17 11 of the Complaint. In the event a response is required, Defendant denies the
18 allegations of the aforementioned paragraphs of the Complaint.
- 19 12. Defendant is without sufficient information to admit or deny the allegation of paragraphs
20 12 of the Complaint. In the event a response is required, Defendant denies the
21 allegations of the aforementioned paragraphs of the Complaint.
- 22 13. Defendant admits the allegations of paragraph 13 of the Complaint.
- 23 14. Defendant is without sufficient information to admit or deny the allegation of paragraphs
24 14 of the Complaint. In the event a response is required, Defendant denies the
25
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allegations of the aforementioned paragraphs of the Complaint.

15. The allegations of paragraph 15 of the Complaint call for a legal conclusion to which a response is not required. In the event a response is required, Defendant denies the allegations of paragraph 15 of the Complaint.

GENERAL ALLEGATIONS

16. The allegations of paragraph 16 of the Complaint call for a legal conclusion or contain statements regarding the content of laws or regulations. To the extent a response is required and the allegations accurately state the laws or regulations referenced therein, Defendant admits to these allegations. To the extent the allegations do not accurately state the laws or regulations referenced therein, then Defendant denies those allegations.

17. The allegations of paragraph 17 of the Complaint call for a legal conclusion or contain statements regarding the content of laws or regulations. To the extent a response is required and the allegations accurately state the laws or regulations referenced therein, Defendant admits to these allegations. To the extent the allegations do not accurately state the laws or regulations referenced therein, then Defendant denies those allegations.

18. The allegations of paragraph 18 of the Complaint call for a legal conclusion or contain statements regarding the content of laws or regulations. To the extent a response is required and the allegations accurately state the laws or regulations referenced therein, Defendant admits to these allegations. To the extent the allegations do not accurately state the laws or regulations referenced therein, then Defendant denies those allegations.

19. The allegations of paragraph 19 of the Complaint call for a legal conclusion or contain statements regarding the content of laws or regulations. To the extent a response is required and the allegations accurately state the laws or regulations referenced therein, Defendant admits to these allegations. To the extent the allegations do not accurately

1 state the laws or regulations referenced therein, then Defendant denies those allegations.

2 20. The allegations of paragraph 20 of the Complaint call for a legal conclusion or contain

3 statements regarding the content of laws or regulations. To the extent a response is

4 required and the allegations accurately state the laws or regulations referenced therein,

5 Defendant admits to these allegations. To the extent the allegations do not accurately

6 state the laws or regulations referenced therein, then Defendant denies those allegations.

7

8 21. The allegations of paragraph 21 of the Complaint call for a legal conclusion or contain

9 statements regarding the content of laws or regulations. To the extent a response is

10 required and the allegations accurately state the laws or regulations referenced therein,

11 Defendant admits to these allegations. To the extent the allegations do not accurately

12 state the laws or regulations referenced therein, then Defendant denies those allegations.

13

14 22. Defendant admits the allegations of paragraph 22 of the Complaint.

15

16 23. Defendant admits the allegations of paragraph 23 of the Complaint.

17

18 24. The allegations of paragraph 24(a-h) of the Complaint call for a legal conclusion or

19 contain statements regarding the content of laws or regulations. To the extent a response

20 is required and the allegations accurately state the laws or regulations referenced therein,

21 Defendant admits to these allegations. To the extent the allegations do not accurately

22 state the laws or regulations referenced therein, then Defendant denies those allegations.

23

24 25. The allegations of paragraph 25 reference documents, which the contents of such alleged

25 documents will speak for themselves. In the event a response is required, Defendant

26 admits the allegations of the aforementioned paragraph of the Complaint.

27

28 26. The allegations of paragraph 26 of the Complaint call for a legal conclusion or contain

statements regarding the content of laws or regulations. To the extent a response is

required and the allegations accurately state the laws or regulations referenced therein,

1 Defendant admits to these allegations. To the extent the allegations do not accurately
2 state the laws or regulations referenced therein, then Defendant denies those allegations.
3 27. The allegations of paragraph 27 of the Complaint call for a legal conclusion or contain
4 statements regarding the content of laws or regulations. To the extent a response is
5 required, then Defendant denies those allegations.
6
7 28. Defendant admits the allegations of paragraph 28 of the Complaint that the Department
8 of Taxation announced it would issue recreational retail store conditional licenses no
9 later than December 5, 2018. Defendant denies the allegations to the extent it imposes a
10 legal obligation on the Department that is inconsistent or outside of the requirements set
11 forth in Section 4 of NRS 453D.210.
12
13 29. Defendant is without sufficient information to admit or deny the allegation of paragraphs
14 29 of the Complaint. In the event a response is required, Defendant denies the
15 allegations of the aforementioned paragraphs of the Complaint.
16
17 30. Defendant is without sufficient information to admit or deny the allegation of paragraphs
18 30 of the Complaint. In the event a response is required, Defendant denies the
19 allegations of the aforementioned paragraphs of the Complaint.
20
21 31. Defendant is without sufficient information to admit or deny the allegation of paragraphs
22 31 of the Complaint. In the event a response is required, Defendant denies the
23 allegations of the aforementioned paragraphs of the Complaint.
24
25 32. Defendant is without sufficient information to admit or deny the allegation of paragraphs
26 32 of the Complaint. In the event a response is required, Defendant denies the
27 allegations of the aforementioned paragraphs of the Complaint.
28
29 33. Defendant is without sufficient information to admit or deny the allegation of paragraphs
30 33 of the Complaint. In the event a response is required, Defendant denies the

allegations of the aforementioned paragraphs of the Complaint.

34. Defendant is without sufficient information to admit or deny the allegation of paragraphs 34 of the Complaint. In the event a response is required, Defendant denies the allegations of the aforementioned paragraphs of the Complaint.

35. Defendant is without sufficient information to admit or deny the allegation of paragraphs 35 of the Complaint. In the event a response is required, Defendant denies the allegations of the aforementioned paragraphs of the Complaint.

III.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of Civil Rights)

(Due Process Deprivation of Property)

36. Defendant repeats and realleges its answers to paragraphs 1 through 35 above, and incorporates the same herein by reference as though fully set forth herein.

37. The allegations of paragraph 37 of the Complaint contain statements of legal conclusion, to which a response is not required. To the extent a response is required, Defendant denies these allegations.

38. The allegations of paragraph 38 of the Complaint contain statements of legal conclusion, to which a response is not required. To the extent a response is required, Defendant denies these allegations.

39. The allegations of paragraph 39 of the Complaint contain statements of legal conclusion, to which a response is not required. To the extent a response is required, Defendant denies these allegations.

40. The allegations of paragraph 40 of the Complaint contain statements of legal conclusion,

1 to which a response is not required. To the extent a response is required, Defendant
2 denies these allegations.

3 41. The allegations of paragraph 41 of the Complaint contain statements of legal conclusion,
4 to which a response is not required. To the extent a response is required, Defendant
5 denies these allegations.

6 42. The allegations of paragraph 42 of the Complaint contain statements of legal conclusion,
7 to which a response is not required. To the extent a response is required, Defendant
8 denies these allegations.

9 43. The allegations of paragraph 43 of the Complaint contain statements of legal conclusion,
10 to which a response is not required. To the extent a response is required, Defendant
11 denies these allegations.

12 44. The allegations of paragraph 44 of the Complaint contain statements of legal conclusion,
13 to which a response is not required. To the extent a response is required, Defendant
14 denies these allegations.

15 45. The allegations of paragraph 45 of the Complaint contain statements of legal conclusion,
16 to which a response is not required. To the extent a response is required, Defendant
17 denies these allegations.

18 46. The allegations of paragraph 46 of the Complaint contain statements of legal conclusion,
19 to which a response is not required. To the extent a response is required, Defendant
20 denies these allegations.

21 47. The allegations of paragraph 47 of the Complaint contain statements of legal conclusion,
22 to which a response is not required. To the extent a response is required, Defendant
23 denies these allegations.

24 48. The allegations of paragraph 48 of the Complaint contain statements of legal conclusion,
25 to which a response is not required. To the extent a response is required, Defendant
26 denies these allegations.

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1 to which a response is not required. To the extent a response is required, Defendant
2 denies these allegations.

3 49. The allegations of paragraph 49 of the Complaint contain statements of legal conclusion,
4 to which a response is not required. To the extent a response is required, Defendant
5 denies these allegations.

6 50. The allegations of paragraph 50(a-g) of the Complaint contain statements of legal
7 conclusion or are not factual in nature, to which a response is not required. To the
8 extent a response is required, Defendant denies these allegations.

9 51. The allegations of paragraph 51 of the Complaint contain statements of legal conclusion
10 or are not factual in nature, to which a response is not required. To the extent a response
11 is required, Defendant denies these allegations.

12 52. The allegations of paragraph 52 of the Complaint contain statements of legal conclusion,
13 to which a response is not required. To the extent a response is required, Defendant
14 denies these allegations.

15 53. The allegations of paragraph 53 of the Complaint contain statements of legal conclusion,
16 to which a response is not required. To the extent a response is required, Defendant
17 denies these allegations.

18 54. The allegations of paragraph 54 of the Complaint contain statements of legal conclusion,
19 to which a response is not required. To the extent a response is required, Defendant
20 denies these allegations.

21 55. Defendant is without sufficient information to admit or deny the allegation of paragraphs
22 55 of the Complaint. In the event a response is required, Defendant denies the
23 allegations of the aforementioned paragraphs of the Complaint.

24 56. Defendant admits the allegations of paragraph 56 of the Complaint.

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- 1 57. The allegations of paragraph 57 of the Complaint contain statements of legal conclusion,
2 to which a response is not required. To the extent a response is required, Defendant
3 denies these allegations.
4
5 58. The allegations of paragraph 58 of the Complaint contain statements of legal conclusion,
6 to which a response is not required. To the extent a response is required, Defendant
7 denies these allegations.
8
9 59. The allegations of paragraph 59 of the Complaint contain statements of legal conclusion,
10 to which a response is not required. To the extent a response is required, Defendant
11 denies these allegations.
12
13 60. The allegations of paragraph 60 of the Complaint contain statements of legal conclusion,
14 to which a response is not required. To the extent a response is required, Defendant
15 denies these allegations.
16
17 61. The allegations of paragraph 61 of the Complaint contain statements of legal conclusion,
18 to which a response is not required. To the extent a response is required, Defendant
19 denies these allegations.

20 **SECOND CLAIM FOR RELIEF**

21 **(Violation of Civil Rights)**

22 **(Due Process: Deprivation of Liberty)**

- 23 62. Defendant repeats and realleges its answers to paragraphs 1 through 61 above, and
24 incorporates the same herein by reference as though fully set forth herein.
25
26 63. The allegations of paragraph 63 of the Complaint contain statements of legal conclusion,
27 to which a response is not required. To the extent a response is required, Defendant
28 denies these allegations.
64. The allegations of paragraph 64 of the Complaint contain statements of legal conclusion,

1 to which a response is not required. To the extent a response is required, Defendant
2 denies these allegations.

3 65. The allegations of paragraph 65 of the Complaint contain statements of legal conclusion,
4 to which a response is not required. To the extent a response is required, Defendant
5 denies these allegations.

6 66. The allegations of paragraph 66 of the Complaint contain statements of legal conclusion,
7 to which a response is not required. To the extent a response is required, Defendant
8 denies these allegations.

9 67. The allegations of paragraph 67 of the Complaint contain statements of legal conclusion,
10 to which a response is not required. To the extent a response is required, Defendant
11 denies these allegations.

12 68. The allegations of paragraph 68 of the Complaint contain statements of legal conclusion,
13 to which a response is not required. To the extent a response is required, Defendant
14 denies these allegations.

15 69. The allegations of paragraph 69 of the Complaint contain statements of legal conclusion,
16 to which a response is not required. To the extent a response is required, Defendant
17 denies these allegations.

18
19
20 **THIRD CLAIM FOR RELIEF**

21 **(Violation of Civil Rights)**

22 **(Equal Protection)**

23
24 70. Defendant repeats and realleges its answers to paragraphs 1 through 69 above, and
25 incorporates the same herein by reference as though fully set forth herein.

26 71. The allegations of paragraph 71 of the Complaint contain statements of legal conclusion,
27 to which a response is not required. To the extent a response is required, Defendant
28

denies these allegations.

72. The allegations of paragraph 72 of the Complaint contain statements of legal conclusion, to which a response is not required. To the extent a response is required, Defendant denies these allegations.

73. The allegations of paragraph 73 of the Complaint contain statements of legal conclusion, to which a response is not required. To the extent a response is required, Defendant denies these allegations.

74. The allegations of paragraph 74 of the Complaint contain statements of legal conclusion, to which a response is not required. To the extent a response is required, Defendant denies these allegations.

FOURTH CLAIM FOR RELIEF

(Petition for Judicial Review)

75. Defendant repeats and realleges its answers to paragraphs 1 through 74 above, and incorporates the same herein by reference as though fully set forth herein.

76. The allegations of paragraph 76 of the Complaint contain statements of legal conclusion, to which a response is not required. To the extent a response is required, Defendant denies these allegations.

77. The allegations of paragraph 77 of the Complaint contain statements of legal conclusion, to which a response is not required. To the extent a response is required, Defendant denies these allegations.

78. The allegations of paragraph 78 of the Complaint contain statements of legal conclusion, to which a response is not required. To the extent a response is required, Defendant denies these allegations.

79. The allegations of paragraph 79(a-c) of the Complaint contain statements of legal

1 conclusion, to which a response is not required. To the extent a response is required,
2 Defendant denies these allegations.

3 80. The allegations of paragraph 80 of the Complaint contain statements of legal conclusion,
4 to which a response is not required. To the extent a response is required, Defendant
5 denies these allegations.
6

7 **FIFTH CLAIM FOR RELIEF**

8 **(Petition for Writ of Mandamus)**

9 81. Defendant repeats and realleges its answers to paragraphs 1 through 80 above, and
10 incorporates the same herein by reference as though fully set forth herein.

11 82. The allegations of paragraph 82 of the Complaint contain statements of legal conclusion,
12 to which a response is not required. To the extent a response is required, Defendant
13 denies these allegations.
14

15 83. The allegations of paragraph 83(a-b) of the Complaint contain statements of legal
16 conclusion, to which a response is not required. To the extent a response is required,
17 Defendant denies these allegations.

18 84. The allegations of paragraph 84(a-b) of the Complaint contain statements of legal
19 conclusion, to which a response is not required. To the extent a response is required,
20 Defendant denies these allegations.
21

22 85. The allegations of paragraph 85 of the Complaint contain statements of legal conclusion,
23 to which a response is not required. To the extent a response is required, Defendant
24 denies these allegations.

25 86. The allegations of paragraph 86 of the Complaint contain statements of legal conclusion,
26 to which a response is not required. To the extent a response is required, Defendant
27 denies these allegations.
28

1 87. To the extent any allegations require a response not otherwise addressed herein,
2 Defendant denies every allegation not expressly admitted to herein.

3 **ANSWER TO PRAYER FOR RELIEF**

4 Defendant denies Plaintiffs are entitled to the relief being sought in the Plaintiffs' prayer
5 for relief or to any relief in this matter.
6

7 **AFFIRMATIVE DEFENSES**

- 8 1. Plaintiffs have failed to state a claim upon which relief may be granted.
- 9 2. The State of Nevada Department of Taxation is immune from suit when performing the
10 functions at issue in this case.
- 11 3. The actions of the State of Nevada Department of Taxation were all official acts that
12 were done in compliance with applicable laws and regulations.
- 13 4. The damages alleged by Plaintiffs in the Complaint are attributable to and were caused
14 by Plaintiffs by their own negligence and Plaintiffs shall take nothing by way of its
15 Complaint as a result of its own comparative fault in causing the damages it is alleged to
16 have incurred.
- 17 5. Plaintiffs have failed to join necessary and indispensable parties to this litigation
18 pursuant to NRCP 19 because the Court cannot grant any of the Plaintiffs' claims
19 without affecting the rights and privileges of those parties who received the licenses at
20 issue as well as other third parties.
- 21 6. The Plaintiffs alleged damages, if any, resulted from or were caused by a third party the
22 Defendant had no control.
- 23 7. Plaintiffs' claims for relief are barred for failing to exhaust administrative remedies, if
24 any.
- 25 8. The actions of the State of Nevada Department of Taxation were not arbitrary or
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1 capricious, and the State of Nevada Department of Taxation had a rational basis for all
2 of the actions taken in the licensing process at issue.

3 9. Plaintiffs' claims are barred, in whole or in part, by their failure to perform or satisfy
4 required conditions precedent and by their own bad acts.

5 10. Plaintiffs are not in possession and/or control of the documents and/or witnesses
6 necessary to prove its alleged causes of action against Defendants.

7 11. Plaintiffs' claims are barred for failure to plead those claims with sufficient particularity.

8 12. Plaintiffs' have failed to allege sufficient facts and cannot meet their burden of proof
9 imposed on it by law to recover attorneys' fees incurred to bring this action.

10 13. Injunctive relief is unavailable to Plaintiffs' because the conditional licenses have
11 already been issued the task completed.

12 14. Plaintiffs have no constitutional right to obtain privileged licenses.

13 15. Plaintiffs' relief seeking mandamus is not available to compel the members of the
14 executive branch to perform non-ministerial, discretionary tasks.

15 16. Plaintiffs are not entitled to judicial review based on the denial of a license.

16 17. Plaintiffs are not entitled to declaratory relief because declaratory relief will not provide
17 the relief sought.

18 18. Defendant may have additional defenses unknown to them at this time, which may be
19 discovered through the course of these proceedings. Defendant does not wish to waive
20 these defenses and specifically assert them hereby, reserving the right to amend this
21 Answer and to plead other affirmative defenses as they become known.

22 WHEREFORE, Defendant prays for judgment as follows:

23 1. Plaintiffs take nothing by way of their Complaint.

24 2. The Complaint, and all causes of action against Defendants alleged therein, be
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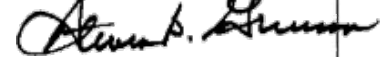
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dismissed with prejudice;

- 3. For reasonable attorney fees and costs to be awarded to Defendants; and,
- 4. For such other relief the Court may deem just and proper.

DATED: April 1, 2019.

/s/ Jared B. Kahn
Jared B. Kahn, Nevada Bar # 12603
JK Legal & Consulting, LLC
9205 W. Russell Rd., Suite 240
Las Vegas, NV 89148
(702) 708-2958 Phone
(866) 870-6758 Fax
jkahn@jk-legalconsulting.com
Of Attorneys for Defendant in Intervention



ORDR

JASON R. MAIER, ESQ.

Nevada Bar No. 8557

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: (702) 629-7900

Facsimile: (702) 629-7925

E-mail: jrm@mgalaw.com

jag@mgalaw.com

Attorneys for Defendants in Intervention,

Integral Associates LLC d/b/a Essence Cannabis Dispensaries,

Essence Tropicana, LLC, Essence Henderson, LLC,

CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace,

Commerce Park Medical, LLC, and Cheyenne Medical, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION.

Case No. : A-19-786962-B

Dept. No.: XI

**ORDER GRANTING MOTION TO
INTERVENE**

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Defendants.

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

Defendants in Intervention.

The Court, having reviewed the Intervenor's Motion to Intervene, and good cause appearing,
IT IS HEREBY ORDERED:

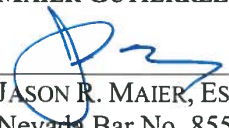
Intervenor's Motion to Intervene is granted, and Integral Associates, LLC d/b/a Essence
Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC, CPCM Holdings, LLC
d/b/a Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and Cheyenne Medical, LLC
shall intervene as Defendants in the above-captioned case as a necessary party to the action pursuant
to NRCP 24 and NRS § 12.130. The proposed answer attached to the Motion to Intervene as Exhibit
B shall be filed in this case.

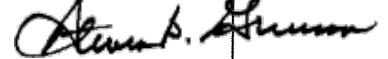
DATED this 1 day of April, 2019.


DISTRICT COURT JUDGE

Respectfully submitted by:

MAIER GUTIERREZ & ASSOCIATES


JASON R. MAIER, ESQ.
Nevada Bar No. 8557
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Defendants in Intervention



1 MINV
2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
3 ALINA M. SHELL, Nevada Bar No. 11711
4 MCLEATCHIE LAW
5 701 East Bridger Avenue, Suite 520
6 Las Vegas, NV 89101
7 Telephone: (702) 728-5300
8 Email: maggie@nvlitigation.com
9 Counsel for Proposed Intervenor, GreenMart of Nevada NLV LLC

FILE WITH
MASTER CALENDAR

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Serenity Wellness Center, LLC, et al.,

Case No.: A-19-786962-B

Plaintiffs,

Dept. No.: XI

vs.

MOTION TO INTERVENE ON
ORDER SHORTENING TIME

STATE OF NEVADA, DEPARTMENT OF
TAXATION; and NEVADA ORGANIC
REMEDIES, LLC,

HEARING REQUESTED

Defendants.

Date: 4/8/19

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,

Time: 9:00 a.m.

Applicant in Intervention

GreenMart of Nevada NLV LLC ("GreenMart"), by and through its undersigned
counsel, respectfully moves to intervene in the above-captioned case pursuant to Nevada
Rule of Civil Procedure 24 and Nev. Rev. Stat. § 12.130. This request is made on an order
shortening time.

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4-2-19 11:11 AM

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

DATED this the 2nd day of April, 2019.



MARGARET A. MCLETCHE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
MCLETCHE LAW
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101
Telephone: (702) 728-5300
Email: maggie@nvlitigation.com
Counsel for Proposed Intervenor, GreenMart of Nevada NLV LLC

**DECLARATION OF ALINA M. SHELL IN SUPPORT OF ORDER SHORTENING
TIME**

Alina M. Shell declares as follows:

1. I am an attorney duly licensed to practice before this Court.
2. I am counsel for GreenMart of Nevada NLV, LLC ("GreenMart"). As such, I am knowledgeable about the facts contained herein and am competent to testify thereto.
3. I am making this declaration in support of hearing GreenMart's Motion to Intervene on an Order Shortening Time pursuant to EDCR 2.26.
4. On March 19, 2019, Plaintiffs file their Motion for Preliminary Injunction.
5. The hearing on Plaintiffs' Motion for Preliminary Injunction is currently scheduled for April 22, 2019 at 9:00 a.m.
6. Plaintiffs' Motion for Preliminary Injunction raises arguments directly adverse to GreenMart's interests, and a ruling on the motion may gravely impact GreenMart.
7. If GreenMart filed the instant motion in the ordinary course, Intervenor would not have the opportunity to oppose Plaintiffs' Motion for Preliminary Injunction; a motion which requests, *inter alia*, for the Court to enjoin the State of Nevada, Department of Taxation from enforcing the denial of Plaintiffs' licenses. If permitted to intervene, GreenMart would vigorously oppose Plaintiffs' Motion for Preliminary Injunction because

1 four (4) of the licenses requested by Plaintiffs belong to GreenMart.

2 8. For the foregoing reasons, GreenMart respectfully requests that this Court
3 consider its Motion to Intervene on shortened time.

4 9. I declare under the penalties of perjury under the laws of the State of Nevada
5 that the foregoing is true and correct.

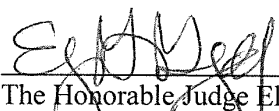
6 Executed this 2nd day of April, 2019.

7 
8
9 ALINA M. SHELL


ORDER SHORTENING TIME

TO: ALL INTERESTED PARTIES.

Upon the Declaration of Alina M. Shell, and good cause appearing therefor, IT IS
HEREBY ORDERED, ADJUDGED, AND DECREED that the time for hearing the above-
entitled matter will be shortened and will be heard before Department XI on the 8
day of April, 2019, at 9:00 a.m./p.m., or as soon thereafter as counsel
may be heard.

 4/2/19
The Honorable Judge Elizabeth Gonzalez

Respectfully submitted by,



MARGARET A. MCLETTCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
MCLETTCHIE LAW
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101
Telephone: (702) 728-5300
Email: maggie@nvlitigation.com
Counsel for Proposed Intervenor, GreenMart of Nevada NLV LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

GreenMart of Nevada NLV, LLC (“GreenMart”) timely seeks to intervene in this matter to protect its vested interests in four conditional retail marijuana licenses it was awarded by the State of Nevada Department of Taxation (the “Department”) on December 5, 2018.

Plaintiffs Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf Incline Dispensary, LLC, Nevada Holistic Medicine, LLC, Tryke Companies So NV, LLC, Tryke Companies Reno, LLC, Paradise Wellness Center, LLC, GBSNevada Partners, LLC, Fidelis Holdings, LLC, Gravitas Nevada, LLC, Nevada Pure, LLC, and Medifarm, LLC (collectively “Plaintiffs”) initiated the instant lawsuit against the Department, alleging that the Department’s issuance of conditional licenses to operate recreational marijuana retail stores was done improperly. (*See generally* Complaint.) Plaintiffs also seek an injunction to undo the Department’s issuance of a type of license for which there is a statutorily limited supply, and for which applicants compete against one another through a ranking system. (*See* March 19, 2019 Motion for Preliminary Injunction.) If granted, this relief (as well as the other relief sought by Plaintiffs) would directly impact the licenses already awarded to GreenMart. Thus, GreenMart should be permitted to intervene in this action to protect its interests.

This Court recently permitted the intervention of another conditional license holder, Nevada Organic Remedies, LLC (“NOR”), on substantially similar grounds to those presented here. (*See* March 22, 2019 Notice of Entry of Order Granting Motion to Intervene.) Additionally, on April 1, 2019, this Court permitted the intervention of several other conditional license holders. (*See* minutes of April 1, 2019 hearing on motions to intervene.) Just like the other intervenors, GreenMart holds numerous licenses, has a vested interest in this action, and meets the standards for intervention under Nev. Rev. Stat. § 12.130(c) and Nev. R. Civ. P. 24 such that GreenMart should be permitted to intervene and protect its valuable interests.

///

1 **II. STATEMENT OF RELEVANT FACTS**

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

5 The Department was to adopt regulations necessary to carry out the Act, including
6 regulations that set forth the “[p]rocedures for the issuance, renewal, suspension, and
7 revocation of a license to operate a marijuana establishment” and “[q]ualifications for
8 licensure that are directly and demonstrably related to the operation of a marijuana
9 establishment.” Nev. Rev. Stat. § 453D.200(1)(a)-(b). On January 16, 2018, the Nevada Tax
10 Commission unanimously approved permanent regulations (“Approved Regulations”). LCB
11 File No. R092-17. The Approved Regulations went into effect on February 27, 2018.

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

17 Pursuant to section 80 of the Approved Regulations, if the Department received
18 more than one complete and qualified application for a license the Department would rank
19 all applications within each jurisdiction from first to last based on compliance with NRS §
20 453D and the Approved Regulations. R092-17, Sec. 80. The Department is then required to
21 go down the list and issue the highest scoring applicants the available licenses. *Id.*

22 On December 5, 2018, the Department issued sixty-one (61) recreational marijuana
23 retail store conditional licenses, including ten (10) licenses for Unincorporated Clark County,
24 Nevada; ten (10) licenses for Las Vegas, Nevada; six (6) licenses for Henderson, Nevada;
25 five (5) licenses for North Las Vegas, Nevada; six (6) licenses for Reno, Nevada; one (1)
26 license for Sparks, Nevada; and one (1) license for Nye County, Nevada. GreenMart was
27 granted four of these conditional licenses.

28 ///

1 Under their conditional licenses, GreenMart has twelve (12) months to receive a
2 final inspection for a marijuana establishment. *See* R092-17, Sec. 87. If a marijuana
3 establishment does not receive a final inspection within twelve (12) months, the marijuana
4 establishment must surrender the license to the Department. *Id.* The Department may extend
5 the period specified in this subsection if the Department, in its discretion, determines that
6 extenuating circumstances prevented the marijuana establishment from receiving a final
7 inspection within the period specified in this subsection. *Id.*

8 On January 4, 2019, Plaintiffs filed their Complaint against the Department.
9 Plaintiffs allege that the Department improperly granted licenses to certain applicants such
10 as NOR while improperly failing to grant licenses to Plaintiffs. Specifically, Plaintiffs allege
11 “that the Department’s denial of their license applications was not properly based upon actual
12 implementation of the impartial and objective bidding process mandated by NRS 453D.210,
13 but rather, was . . . based upon the arbitrary and capricious exercise of administrative
14 partiality and favoritism.” (Complaint, ¶ 33.)

15 The Complaint contains numerous claims for relief, including claims for violation
16 of procedural due process, substantive due process and equal protection rights (*id.*, ¶¶ 37-42,
17 66-68, 70-74), a claim for declaratory relief (*Id.*, ¶¶ 43-44, 50-52), a claim for injunctive
18 relief (*id.*, ¶¶ 53, 59), a petition for judicial review (*id.*, ¶¶ 75-80), and a petition for a writ of
19 mandamus. (*Id.*, ¶¶ 81-86.) The claims asks the Court to reverse the granting of licenses to
20 parties such as GreenMart and to grant Plaintiffs those licenses.

21 GreenMart wishes to intervene in this action to protect its unique legal interests in
22 the licenses issued to it by the Department. Accordingly, GreenMart respectfully requests
23 that this Court enter an Order allowing GreenMart to intervene in this action as a defendant,
24 and to file the [Proposed] Answer attached hereto as **Exhibit A**.

25 **III. LEGAL ARGUMENT**

26 **A. Legal Standard**

27 Pursuant to Nev. Rev. Stat. § 12.130, any person “[b]efore the trial, [...] may
28 intervene in an action or proceeding, who has an interest in the matter in litigation, in the

1 success of either of the parties, or an interest against both.” Nev. Rev. Stat. § 12.130(1)(a).
2 “Intervention is made as provided by the Nevada Rules of Civil Procedure.” Nev. Rev. Stat.
3 § 12.130(c).

4 In furtherance, Nev. R. Civ. P. § 24(a)(2) governs non-statutory intervention of
5 right and states that upon timely intervention “the court must permit anyone to intervene who
6 ... claims an interest relating to the property or transaction that is the subject of the action,
7 and is so situated that disposing of the action may as a practical matter impair or impede the
8 movant’s ability to protect its interest, unless existing parties adequately represent that
9 interest.” Nev. R. Civ. P. § 24(a)(2). Rule § 24(b)(1)(B) governs permissive intervention and
10 allows for intervention when an applicant “has a claim or defense that shares with the main
11 action a common question of law or fact.” Nev. R. Civ. P. § 24(b)(1)(B).

12 **B. GreenMart Should Be Permitted to Intervene as of Right.**

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

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

1 **1. GreenMart's Motion to Intervene is Timely.**

2 When determining the timeliness of an application to intervene "[t]he most
3 important question to be resolved [...] is not the length of the delay by the intervenor but the
4 extent of prejudice to the rights of existing parties resulting from the delay." *See Dangberg*
5 *Holdings Nevada, L.L.C. v. Douglas Cty. & its Bd. of Cty. Commr's*, 115 Nev. 129, 141, 978
6 P.2d 311, 318 (1999); *see also American Home Assurance Corp.*, 122 Nev. at 1244, n.49 and
7 n.50 (citations omitted). Here, intervention by GreenMart will not cause prejudice to the
8 Plaintiffs nor the other parties currently involved in this action—including the Department
9 and NOR—because the case is in the early stages of litigation. *See Citizens for Balanced Use*
10 *v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (finding that the parties
11 would not have suffered prejudice from the grant of intervention at the early stage of
12 litigation).

13 NOR just recently intervened in the matter, and the Department has yet to file an
14 answer to Plaintiffs' complaint. In *Citizens for Balanced Use*, the Ninth Circuit found that a
15 motion filed less than three months after the complaint was filed and less than two weeks
16 after the first filing of an answer to the complaint was timely. *Id.* at 897. The Court reasoned
17 that an intervention so early in the litigation would not cause disruption or delay in the
18 proceedings. *Id.* These are traditional features of a timely motion. *See Nw. Forest Res.*
19 *Council v. Glickman*, 82 F.3d 825, 836 (9th Cir.1996). Similarly, here, there will be no delay
20 resulting from GreenMart's intervention.

21 GreenMart, in contrast, would be significantly prejudiced if they are precluded from
22 intervening. GreenMart holds the interest to four (4) of the conditional licenses. Through this
23 action, Plaintiffs are attempting to undermine the rights of GreenMart to its conditional
24 licenses. Because GreenMart may be gravely prejudiced if not permitted to intervene and all
25 other parties within this action would not suffer any prejudice, this Court should find that
26 GreenMart's request to intervene is timely.

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1 **2. GreenMart Has a Sufficient Interest in the Litigation's Subject**
2 **Matter.**

3 GreenMart has a sufficient interest in the litigation's subject matter. While there is
4 no "bright-line" test to determine if a sufficient interest exists, the Supreme Court of Nevada
5 has held that an applicant must make a showing of a "significant protectable interest." *Am.*
6 *Home Assur. Co.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1127 (2006). Whether a proposed
7 intervenor has a significant protectable interest is a "practical, threshold inquiry," and the
8 party seeking intervention need not establish any "specific legal or equitable interest."
9 *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011)
10 (internal quotations omitted) (quoting *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825,
837 (9th Cir. 1996)).

11 To meet its burden, a proposed intervenor "must establish that the interest is
12 protectable under some law and that there is a relationship between the legally protected
13 interest and the claims at issue." *Citizens for Balanced Use*, 647 F.3d at 897 (citation
14 omitted). The question of whether there is a significant protectable interest does not turn on
15 "technical distinctions." *California v. United States*, 450 F.3d 436, 441 (9th Cir. 2006).
16 Instead, courts "have taken the view that a party has a sufficient interest for intervention
17 purposes if it will suffer a practical impairment of its interests as a result of the pending
18 litigation." *See id.*

19 Here, GreenMart has a sufficient interest in the subject matter of this action—the
20 conditional licenses to operate a recreational marijuana retail store. GreenMart was issued
21 four (4) of the licenses by the Department. Plaintiffs, through this lawsuit, are essentially
22 attempting to void the Department's application process, which could impair GreenMart's
23 interest in their conditional licenses. Accordingly, GreenMart has a significant protectable
24 interest in this action.

25 **3. The Disposition of This Action May Impair or Impede GreenMart's**
26 **Ability to Protect Its Interests.**

27 As a practical matter, the disposition of this action may impair or impede
28 GreenMart's ability to protect its interests. Once a significant protectable interest is

1 established, courts look to whether the proposed intervenor's ability to protect that interest
2 would be "impair[ed] or impede[ed]" by "the disposition of the action." *Citizens for*
3 *Balanced Use*, 647 F.3d at 897 (citation omitted). "If an absentee would be substantially
4 affected in a practical sense by the determination made in an action, [it] should, as a general
5 rule, be entitled to intervene...." *Id.* at 898 (quoting Fed R. Civ. P. 24 advisory committee's
6 note).

7 Here, the claims made by Plaintiffs in this action are an attempt to manufacture a
8 dispute in the hope of undermining the rights of GreenMart and other successful applicants.
9 Plaintiffs have asserted allegations that they should have received one or more of the licenses
10 that were awarded to GreenMart (or other licensees). Simply put, Plaintiffs seek to displace
11 the conditional licenses from the current holders for purposes of obtaining them for
12 themselves. This relief, if granted, would necessarily harm at least one or more of the
13 applicants who ranked higher than Plaintiffs. Accordingly, GreenMart's interests may be
14 impaired by the disposition of this case, as they risk losing its conditional licenses.

15 **4. GreenMart's Interest May Not Be Adequately Protected.**

16 Finally, GreenMart's interests may not be adequately represented should this Court
17 deny it intervention. Generally, "[t]he burden of showing inadequacy of representation is
18 minimal and satisfied if the [party seeking intervention] can demonstrate that representation
19 of its interests may be inadequate." *Citizens for Balanced Use*, 647 F.3d at 898 (internal
20 quotation omitted); *see also Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10
21 (1972) (holding that the requirement of inadequate representation is satisfied if the applicant
22 shows that representation "may be" inadequate). In making this determination, courts
23 examine three factors: (1) whether the interest of a present party is such that it will
24 undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is
25 capable and willing to make such arguments; and (3) whether a proposed intervenor would
26 offer any necessary elements to the proceeding that other parties would neglect. *Citizens for*
27 *Balanced Use*, 647 F.3d at 898 (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir.
28 2003)).

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

7 Here, GreenMart’s interests would not be adequately represented by the
8 Department or the other intervenors. Specifically, the Department will presumably defend
9 its application evaluation process by showing that it complied with NRS Chapter 453D and
10 the Approved Regulations throughout the application process. The Department will not
11 defend GreenMart’s or other licensees’ unique and valuable licenses. The Department simply
12 has no interest in specifically defending Defendants’ licenses versus other applicants, nor is
13 the Department equipped to do so.

14 The other intervenors are not adequate representatives of GreenMart’s interests. To
15 obtain any one of the licenses an applicant had to rank higher than other applicants in any
16 given jurisdiction. Thus, all applicants are competing with one another for a limited supply
17 of licenses, and their interests are therefore necessarily divergent. Plaintiffs have challenged
18 the entire ranking process, and to the extent that Plaintiffs’ challenge is considered,
19 GreenMart will need to defend its licenses against all other applicants, including current
20 license holders. Thus, GreenMart has met its minimal burden of showing that their interests
21 may not be adequately represented.

22 **C. GreenMart Should Be Permitted to Intervene Pursuant to Permissive**
23 **Intervention.**

24 Even if this Court were to find that GreenMart cannot establish intervention as
25 right, GreenMart may still intervene pursuant to Nev. R. Civ. P. 24(b), which governs
26 permissive intervention. Permissive intervention is available when the motion is timely and
27 “the applicant’s claim or defense, and the main action, have a question of law or a question
28 of fact in common.” Nev. R. Civ. P. 24(b)(1)(B). “In exercising its discretion” on this issue,

1 “the court must consider whether the intervention will unduly delay or prejudice the
2 adjudication of the original parties’ rights.” Nev. R. Civ. P. 24(b)(3).

3 As discussed above, GreenMart’s motion to intervene is timely and will not
4 prejudice any of the parties in the case. Additionally, GreenMart’s defense and anticipated
5 counterclaims present a common question of law and question of fact with the main action.

6 Moreover, allowing GreenMart to intervene in this suit will not unduly delay or
7 prejudice the adjudication of the current parties’ rights. If anything, allowing intervention
8 will promote judicial economy and spare the parties from needing to litigate a similar case in
9 another district. *See Dangberg Holdings Nevada, L.L.C.*, 115 Nev. 129, 142, 978 P.2d 311,
10 319 (1999) (where the court found “bringing all of the parties together in one proceeding
11 before one tribunal will foster the principles of judicial economy and finality”); *see also*
12 *Venegas v. Skaggs*, 867 F.2d 527, 531 (9th Cir. 1989) (noting that “judicial economy is a
13 relevant consideration in deciding a motion for permissive intervention”), *aff’d sub nom.*
14 *Venegas v. Mitchell*, 495 U.S. 82, 87 (1990); *cf.* Nev. R. Civ. P. 1 (mandating that the Rules
15 of Civil Procedure “should be construed, administered, and employed by the court and the
16 parties to secure the just, speedy, and inexpensive determination of every action and
17 proceeding”). Accordingly, this Court should grant GreenMart’s Motion to Intervene.

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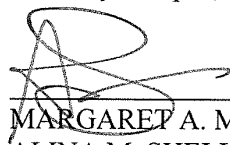
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IV. CONCLUSION

For these reasons, GreenMart respectfully requests that this Court grant its Motion to Intervene. Attached as **Exhibit A** is GreenMart's proposed Answer to Plaintiff's First Amended Complaint. GreenMart expressly reserves its right to include counterclaims should the Court permit GreenMart's intervention. A proposed Order Granting the Motion to Intervene is Attached as **Exhibit B**.

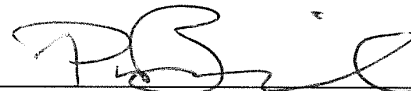
DATED this the 2nd day of April, 2019.



MARGARET A. MCLEITCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
MCLEITCHIE LAW
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101
Telephone: (702) 728-5300
Email: maggie@nvlitigation.com
Counsel for Proposed Intervenor, GreenMart of Nevada NLV LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing MOTION TO INTERVENE ON ORDER SHORTENING TIME in *Serenity Wellness Center, LCL, 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 McLetchie Law

INDEX OF EXHIBITS TO MOTION TO INTERVENE ON ORDER SHORTENING TIME

Exhibit	Description
A	Defendant's [Proposed] Answer to Plaintiffs' Complaint
B	[Proposed] Order Granting Motion to Intervene

EXHIBIT A

1 **ANSC**
2 MARGARET A. MCLETSCHIE, Nevada Bar No. 10931
3 ALINA M. SHELL, Nevada Bar No. 11711
4 MCLETSCHIE LAW
5 701 East Bridger Avenue, Suite 520
6 Las Vegas, NV 89101
7 Telephone: (702) 728-5300
8 Email: maggie@nvlitigation.com
9 *Counsel for Proposed Intervenor, GreenMart of Nevada NLV LLC*

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

12 Serenity Wellness Center, LLC, et al.,

Case No.: A-19-786962-B

13 Plaintiffs,

Dept. No.: XI

14 vs.

15 **DEFENDANT'S [PROPOSED]**
16 **ANSWER TO PLAINTIFFS'**
17 **COMPLAINT**

18 STATE OF NEVADA, DEPARTMENT OF
19 TAXATION; and NEVADA ORGANIC
20 REMEDIES, LLC,

21 Defendants.

22 GREENMART OF NEVADA NLV LLC, a
23 Nevada limited liability company,

24 Defendant in Intervention

25 Defendant in Intervention GreenMart of Nevada NLV LLC, by and through its
26 undersigned counsel, McLetchie Law, hereby answers the Complaint filed by Plaintiffs
27 Serenity Wellness Center, LLC; TGI, LLC; Nuleaf Incline Dispensary, LLC; Nevada
28 Holistic Medicine, LLC; Tryke Companies SO NV, LLC; Tryke Companies Reno, LLC;
Paradise Wellness Center, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC;
Gravitas Nevada, LLC; Nevada Pure, LLC; and Medifarm, LLC (collectively "Plaintiffs"),
as follows:

Defendant denies each and every allegation in the Complaint except those
allegations which are hereinafter admitted, qualified, or otherwise answered.

///

I.**PARTIES, JURISDICTION, AND VENUE**

1. Answering paragraph 1 of the Complaint, Defendant is without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis denies these allegations.

2. Answering paragraph 2 of the Complaint, Defendant is without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis denies these allegations.

3. Answering paragraph 3 of the Complaint, Defendant is without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis denies these allegations.

4. Answering paragraph 4 of the Complaint, Defendant is without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis denies these allegations.

5. Answering paragraph 5 of the Complaint, Defendant is without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis denies these allegations.

6. Answering paragraph 6 of the Complaint, Defendant is without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis denies these allegations.

7. Answering paragraph 7 of the Complaint, Defendant is without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis denies these allegations.

8. Answering paragraph 8 of the Complaint, Defendant is without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis denies these allegations.

9. Answering paragraph 9 of the Complaint, Defendant is without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and

1 on that basis denies these allegations.

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

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

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

11 13. Answering paragraph 13 of the Complaint, Defendant admits these
12 allegations.

13 14. Answering paragraph 14 of the Complaint, Defendant is without sufficient
14 knowledge or information as to the truth or falsity of the allegations contained therein, and
15 on that basis denies these allegations.

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

20 **II.**

21 **GENERAL ALLEGATIONS**

22 16. Answering paragraph 16 of the Complaint, no response is required as the
23 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
24 required, Defendant is without sufficient knowledge or information as to the truth or falsity
25 of the allegations contained therein, and on that basis denies these allegations.

26 17. Answering paragraph 17 of the Complaint, no response is required as the
27 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
28 contents of laws or regulations. To the extent a response is required and the allegations

1 accurately state the laws or regulations referenced therein, Defendant admits these
2 allegations.

3 18. Answering paragraph 18 of the Complaint, no response is required as the
4 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
5 contents of laws or regulations. To the extent a response is required and the allegations
6 accurately state the laws or regulations referenced therein, Defendant admits these
7 allegations.

8 19. Answering paragraph 19 of the Complaint, no response is required as the
9 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
10 contents of laws or regulations. To the extent a response is required and the allegations
11 accurately state the laws or regulations referenced therein, Defendant admits these
12 allegations.

13 20. Answering paragraph 20 of the Complaint, no response is required as the
14 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
15 contents of laws or regulations. To the extent a response is required and the allegations
16 accurately state the laws or regulations referenced therein, Defendant admits these
17 allegations.

18 21. Answering paragraph 21 of the Complaint, no response is required as the
19 allegations therein reference a document that speaks for itself. To the extent a response is
20 required and the allegations accurately state the contents of the document referenced therein,
21 Defendant admits these allegations.

22 22. Answering paragraph 22 of the Complaint, Defendant admits these
23 allegations.

24 23. Answering paragraph 23 of the Complaint, Defendant admits these
25 allegations.

26 24. Answering paragraph 24(a)-(h) of the Complaint, no response is required as
27 the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
28 contents of laws or regulations. To the extent a response is required and the allegations

1 accurately state the laws or regulations referenced therein, Defendant admits these
2 allegations.

3 25. Answering paragraph 25 of the Complaint, no response is required as the
4 allegations therein reference a document that speaks for itself. To the extent a response is
5 required and the allegations accurately state the contents of the document referenced therein,
6 Defendant admits these allegations.

7 26. Answering paragraph 26 of the Complaint, no response is required as the
8 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
9 contents of laws or regulations. To the extent a response is required and the allegations
10 accurately state the laws or regulations referenced therein, Defendant admits these
11 allegations.

12 27. Answering paragraph 27 of the Complaint, no response is required as the
13 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
14 contents of laws or regulations. To the extent a response is required and the allegations
15 accurately state the laws or regulations referenced therein, Defendant denies these
16 allegations.

17 28. Answering paragraph 28 of the Complaint, Defendant admits that the
18 Department of Taxation announced it would issue recreational retail store licenses no later
19 than December 5, 2018. Defendant denies these allegations to the extent that it imposes a
20 legal obligation on the Department that is inconsistent or outside of the requirements set forth
21 in Nev. Rev. Stat. § 453D.210.

22 29. Answering paragraph 29 of the Complaint, Defendant is without sufficient
23 knowledge or information as to the truth or falsity of the allegations contained therein, and
24 on that basis deny these allegations.

25 30. Answering paragraph 30 of the Complaint, Defendant is without sufficient
26 knowledge or information as to the truth or falsity of the allegations contained therein, and
27 on that basis deny these allegations.

28 ///

1 31. Answering paragraph 31 of the Complaint, Defendant is without sufficient
2 knowledge or information as to the truth or falsity of the allegations contained therein, and
3 on that basis deny these allegations.

4 32. Answering paragraph 32 of the Complaint, Defendant is without sufficient
5 knowledge or information as to the truth or falsity of the allegations contained therein, and
6 on that basis deny these allegations.

7 33. Answering paragraph 33 of the Complaint, no response is required as the
8 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
9 required, Defendant denies these allegations.

10 34. Answering paragraph 34 of the Complaint, no response is required as the
11 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
12 required, Defendant denies these allegations.

13 35. Answering paragraph 35 of the Complaint, no response is required as the
14 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
15 required, Defendant denies these allegations.

16 **III.**

17 **CLAIMS FOR RELIEF**

18 **FIRST CLAIM FOR RELIEF**

19 **(Violation of Civil Rights)**

20 **(Due Process; Deprivation of Property)**

21 **(U.S. Const., Amendment XIV; Nev. Const. Art. 1, Sec. 1, 8; Title 42 U.S.C. § 1983)**

22 36. Answering paragraph 36 of the Complaint, Defendant hereby repeats and
23 realleges its answers to paragraphs 1 through 35 above, and incorporates the same herein by
24 reference as though fully set forth herein.

25 37. Answering paragraph 37 of the Complaint, no response is required as the
26 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
27 required, Defendant denies these allegations.

28 38. Answering paragraph 38 of the Complaint, no response is required as the
allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is

1 required, Defendant denies these allegations.

2 39. Answering paragraph 39 of the Complaint, no response is required as the
3 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
4 required, Defendant denies these allegations.

5 40. Answering paragraph 40 of the Complaint, no response is required as the
6 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
7 required, Defendant denies these allegations.

8 41. Answering paragraph 41 of the Complaint, no response is required as the
9 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
10 required, Defendant denies these allegations.

11 42. Answering paragraph 42 of the Complaint, no response is required as the
12 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
13 required, Defendant denies these allegations.

14 43. Answering paragraph 43 of the Complaint, no response is required as the
15 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
16 required, Defendant denies these allegations.

17 44. Answering paragraph 44 of the Complaint, no response is required as the
18 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
19 required, Defendant denies these allegations.

20 45. Answering paragraph 45 of the Complaint, no response is required as the
21 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
22 required, Defendant denies these allegations.

23 46. Answering paragraph 46 of the Complaint, no response is required as the
24 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
25 required, Defendant denies these allegations.

26 47. Answering paragraph 47 of the Complaint, no response is required as the
27 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
28 required, Defendant denies these allegations.

1 48. Answering paragraph 48 of the Complaint, no response is required as the
2 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
3 required, Defendant denies these allegations.

4 49. Answering paragraph 49 of the Complaint, no response is required as the
5 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
6 required, Defendant denies these allegations.

7 50. Answering paragraph 50(a)-(g) of the Complaint, no response is required as
8 the allegations contained therein are not factual in nature and/or contain legal conclusions.
9 To the extent a response is required, Defendant denies these allegations.

10 51. Answering paragraph 51 of the Complaint, no response is required as the
11 allegations contained therein are not factual in nature and/or contain legal conclusions. To
12 the extent a response is required, Defendant denies these allegations.

13 52. Answering paragraph 52 of the Complaint, no response is required as the
14 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
15 required, Defendant denies these allegations.

16 53. Answering paragraph 53 of the Complaint, no response is required as the
17 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
18 required, Defendant denies these allegations.

19 54. Answering paragraph 54 of the Complaint, no response is required as the
20 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
21 required, Defendant denies these allegations.

22 55. Answering paragraph 55 of the Complaint, Defendant is without sufficient
23 knowledge or information as to the truth or falsity of the allegations contained therein, and
24 on that basis denies these allegations.

25 56. Answering paragraph 56 of the Complaint, Defendant admits these
26 allegations.

27 57. Answering paragraph 57 of the Complaint, no response is required as the
28 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is

required, Defendant denies these allegations.

58. Answering paragraph 58 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendant denies these allegations.

59. Answering paragraph 59 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendant denies these allegations.

60. Answering paragraph 60 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendant denies these allegations.

61. Answering paragraph 61 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendant denies these allegations.

SECOND CLAIM FOR RELIEF
(Violation of Civil Rights)

(Due Process: Deprivation of Liberty)

(U.S. Const., Amendment XIV; Nev. Const. Art. 1, Sec. 1, 8; Title 42 U.S.C. § 1983)

62. Answering paragraph 62 of the Complaint, Defendant hereby repeats and realleges its answers to paragraphs 1 through 61 above, and incorporates the same herein by reference as though fully set forth herein.

63. Answering paragraph 63 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendant denies these allegations.

64. Answering paragraph 64 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendant denies these allegations.

65. Answering paragraph 65 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendant denies these allegations.

1 66. Answering paragraph 66 of the Complaint, no response is required as the
2 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
3 required, Defendant denies these allegations.

4 67. Answering paragraph 67 of the Complaint, no response is required as the
5 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
6 required, Defendant denies these allegations.

7 68. Answering paragraph 68 of the Complaint, no response is required as the
8 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
9 required, Defendant denies these allegations.

10 69. Answering paragraph 61 of the Complaint, no response is required as the
11 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
12 required, Defendant denies these allegations.

13 **THIRD CLAIM FOR RELIEF**

14 **(Violation of Civil Rights)**

15 **(Equal Protection)**

16 **(U.S. Const., Amendment XIV; Nev. Const. Art. 1, Sec. 1; Title**

17 70. Answering paragraph 70 of the Complaint, Defendant repeats and realleges
18 its answers to paragraphs 1 through 69 above, and incorporates the same herein by reference
19 as though fully set forth herein.

20 71. Answering paragraph 71 of the Complaint, no response is required as the
21 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
22 required, Defendant denies these allegations.

23 72. Answering paragraph 72 of the Complaint, no response is required as the
24 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
25 required, Defendant denies these allegations.

26 73. Answering paragraph 73 of the Complaint, no response is required as the
27 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
28 required, Defendant denies these allegations.

1 74. Answering paragraph 74 of the Complaint, no response is required as the
2 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
3 required, Defendant denies these allegations.

4 **FOURTH CLAIM FOR RELIEF**

5 **(Petition for Judicial Review)**

6 75. Answering paragraph 75 of the Complaint, Defendant repeats and realleges
7 its answers to paragraphs 1 through 74 above, and incorporates the same by reference herein
8 as though fully set forth herein.

9 76. Answering paragraph 76 of the Complaint, no response is required as the
10 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
11 required, Defendant denies these allegations.

12 77. Answering paragraph 77 of the Complaint, no response is required as the
13 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
14 required, Defendant denies these allegations.

15 78. Answering paragraph 78 of the Complaint, no response is required as the
16 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
17 required, Defendant denies these allegations.

18 79. Answering paragraph 79(a)-(c) of the Complaint, no response is required as
19 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
20 required, Defendant denies these allegations.

21 80. Answering paragraph 80 of the Complaint, no response is required as the
22 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
23 required, Defendant denies these allegations.

24 **FIFTH CLAIM FOR RELIEF**

25 **(Petition for Writ of Mandamus)**

26 81. Answering paragraph 81 of the Complaint, Defendant repeats and realleges
27 its answers to paragraphs 1 through 80 above, and incorporates the same herein by reference
28 as though fully set forth herein.

1 82. Answering paragraph 82 of the Complaint, no response is required as the
2 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
3 required, Defendant denies these allegations.

4 83. Answering paragraph 83(a)-(b) of the Complaint, no response is required as
5 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
6 required, Defendant denies these allegations.

7 84. Answering paragraph 84(a)-(b) of the Complaint, no response is required as
8 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
9 required, Defendant denies these allegations.

10 85. Answering paragraph 85 of the Complaint, no response is required as the
11 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
12 required, Defendant denies these allegations.

13 86. Answering paragraph 86 of the Complaint, no response is required as the
14 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
15 required, Defendant denies these allegations.

16 **GENERAL DENIAL**

17 To the extent a further response is required to any allegation set forth in the
18 Complaint, Defendant denies such allegation.

19 **ANSWER TO PRAYER FOR RELIEF**

20 Answering the allegations contained in the entirety of Plaintiffs' prayer for relief,
21 Defendant denies that Plaintiffs are entitled to the relief sought therein or to any relief in this
22 matter.

23 **AFFIRMATIVE DEFENSES**

24 Defendant, without altering the burdens of proof the parties must bear, asserts the
25 following affirmative defenses to Plaintiffs' Complaint, and all causes of action alleged
26 therein, and specifically incorporates into these affirmative defenses its answers to the
27 preceding paragraphs of the Complaint as if fully set forth herein.

28 ///

1 **FIRST AFFIRMATIVE DEFENSE**

2 The Complaint and all the claims for relief alleged therein, fails to state a claim
3 upon which relief can be granted.

4 **SECOND AFFIRMATIVE DEFENSE**

5 Plaintiffs have not been damaged directly, indirectly, proximately, or in any manner
6 whatsoever by any conduct of Defendant.

7 **THIRD AFFIRMATIVE DEFENSE**

8 The State of Nevada, Department of Taxation is immune from suit when
9 performing the functions at issue in this case.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 The actions of the State of Nevada, Department of Taxation were all official acts
12 that were done in compliance with applicable laws and regulations.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 Plaintiffs' claims are barred because Plaintiffs have failed to exhaust administrative
15 remedies.

16 **SEVENTH AFFIRMATIVE DEFENSE**

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

20 **EIGHTH AFFIRMATIVE DEFENSE**

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

25 **NINTH AFFIRMATIVE DEFENSE**

26 The claims, and each of them, are barred by the failure of Plaintiffs to plead those
27 claims with sufficient particularity.

28 ///

TENTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to allege sufficient facts and cannot carry the burden of proof imposed on them by law to recover attorney's fees incurred to bring this action.

ELEVENTH AFFIRMATIVE DEFENSE

Injunctive relief is not available to Plaintiffs, because the State of Nevada, Department of Taxation has already completed the task of issuing conditional licenses.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs have no constitutional right to obtain privileged licenses.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to judicial review on the denial of a privileged license.

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

Pursuant to the Nevada Rules of Civil Procedure, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this answer and, therefore, Defendant hereby reserves the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant expressly reserves the right to amend this Answer to bring counterclaims against Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment as follows:

1. Plaintiffs take nothing by way of their Complaint.
2. The Complaint, and all causes of action alleged against Defendant therein

be dismissed with prejudice.

3. For reasonable attorney's fees and costs be awarded to Defendant.

4. For any such other and further relief the Court deems just and proper under the circumstances.

DATED this the ____ day of ____, 2019.

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
MCLEATCHIE LAW
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101
Telephone: (702) 728-5300
Email: maggie@nvlitigation.com
Counsel for Proposed Intervenor, GreenMart of Nevada NLV LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing DEFENDANT'S [PROPOSED] ANSWER TO PLAINTIFFS' COMPLAINT in *Serenity Wellness Center, LCL, 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 McLetchie Law

EXHIBIT B

ORDR

MARGARET A. MCLEITCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEITCHIE LAW

701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

Telephone: (702) 728-5300

Email: maggie@nvlitigation.com

Counsel for Defendant, GreenMart of Nevada NLV LLC

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

Serenity Wellness Center, LLC, et al.,

Plaintiffs,

vs.

Case No.: A-19-786962-B

Dept. No.: XI

**ORDER GRANTING MOTION TO
INTERVENE**

STATE OF NEVADA, DEPARTMENT OF
TAXATION; NEVADA ORGANIC
REMEDIES, LLC; GREENMART OF
NEVADA NLV LLC, a Nevada limited
liability company,

Defendants.

The Court, having reviewed GreenMart of Nevada NLV LLC's Motion to Intervene, and good cause appearing,

IT IS HEREBY ORDERED:

GreenMart of Nevada NLV LLC's Motion to Intervene is granted, and GreenMart of Nevada NLV LLC shall intervene as a Defendant in the above-captioned case as a necessary party to the action pursuant to Nev. R. Civ. P. 24 and Nev. Rev. Stat. § 12.130.

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///

Serenity Wellness Center, LCL, et al. v.
State of Nevada, Department of Taxation, et al.,
Case No.: A-19-786962-B

The proposed answer attached to the Motion to Intervene as Exhibit B shall be filed
in this case.

Date

The Honorable Judge Elizabeth Gonzalez

Respectfully submitted by,



MARGARET A. MCLETCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLETCHIE LAW

701 East Bridger Avenue, Suite 520

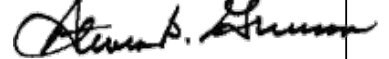
Las Vegas, NV 89101

Telephone: (702) 728-5300

Email: maggie@nvlitigation.com

Counsel for Defendant, GreenMart of Nevada NLV LLC

MCLETCHIE LAW
ATTORNEYS AT LAW
701 EAST BRIDGER AVE., SUITE 520
LAS VEGAS, NV 89101
(702) 728-5300 (T) / (702) 455-8120 (F)
WWW.NVLITIGATION.COM



NEOJ

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046

JASON R. MAIER, ESQ.
Nevada Bar No. 8557

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

Telephone: (702) 629-7900

Facsimile: (702) 629-7925

E-mail: jrm@mgalaw.com
jag@mgalaw.com

PHILIP M. HYMANSON, ESQ.

Nevada Bar No. 2253

HENRY JOSEPH HYMANSON, ESQ.

Nevada Bar No. 14381

HYMANSON & HYMANSON

8816 Spanish Ridge Avenue
Las Vegas, NV 89148

Telephone: (702) 629-3300

Facsimile: (702) 629-3332

Email: Phil@HymansonLawNV.com
Hank@HymansonLawNV.com

*Attorneys for Defendants in Intervention,
Integral Associates LLC d/b/a Essence
Cannabis Dispensaries, Essence Tropicana, LLC,
Essence Henderson, LLC, CPCMC Holdings, LLC
d/b/a Thrive Cannabis Marketplace, Commerce
Park Medical, LLC, Cheyenne Medical, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, a
Nevada limited liability company, TGIG, LLC,
a Nevada limited liability company, NULEAF
INCLINE DISPENSARY, LLC, a Nevada
limited liability company, NEVADA
HOLISTIC MEDICINE, LLC, a Nevada limited
liability company, TRYKE COMPANIES SO
NV, LLC, a Nevada limited liability company,
TRYKE COMPANIES RENO, LLC, a Nevada
limited liability company, PARADISE
WELLNESS CENTER, LLC, a Nevada limited
liability company, GBS NEVADA PARTNERS,
LLC, a Nevada limited liability company,
FIDELIS HOLDINGS, LLC, a Nevada limited
liability company, GRAVITAS NEVADA,
LLC, a Nevada limited liability company,
NEVADA PURE, LLC, a Nevada limited

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

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION TO INTERVENE**

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

5 Plaintiffs,

6 vs.

7 THE STATE OF NEVADA, DEPARTMENT
8 OF TAXATION,

9 Defendants.

10 INTEGRAL ASSOCIATES LLC d/b/a
11 ESSENCE CANNABIS DISPENSARIES, a
12 Nevada limited liability company; ESSENCE
13 TROPICANA, LLC, a Nevada limited liability
14 company; ESSENCE HENDERSON, LLC, a
15 Nevada limited liability company; CPCM
16 HOLDINGS, LLC d/b/a THRIVE CANNABIS
17 MARKETPLACE, COMMERCE PARK
18 MEDICAL, LLC, a Nevada limited liability
19 company; and CHEYENNE MEDICAL, LLC, a
20 Nevada limited liability company.

21 Defendants in Intervention.

22 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

23 YOU AND EACH OF YOU will please take notice that an **ORDER GRANTING MOTION**
24 **TO INTERVENE** was hereby entered on the 1st day of April, 2019. A copy of which is attached
25 hereto.

26 DATED this 2nd day of April, 2019.

27 Respectfully submitted,

28 **MAIER GUTIERREZ & ASSOCIATES**

/s/ Joseph A. Gutierrez

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

JASON R. MAIER, ESQ.

Nevada Bar No. 8557

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Attorneys for Defendants in Intervention

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CERTIFICATE OF SERVICE

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

Dominic P. Gentile, Esq.
Michael V. Cristalli, Esq.
Ross Miller, Esq.
Vincent Savarese III, Esq.
GENTILE CRISTALLI MILLER ARMENI SAVARESE
410 South Rampart Blvd., Suite 420
Las Vegas, NV 89145
Attorneys for Plaintiffs

David R. Koch, Esq.
Steven B. Scow, Esq.
Brody R. Wright, Esq.
Daniel G. Scow, Esq.
KOCH & SCOW, LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Attorneys for Nevada Organic Remedies, LLC

Margaret A. McLetchie, Esq.
MCLETCHIE LAW GROUP, PLLC
701 E. Bridger Ave, Suite 520
Las Vegas, NV 89101

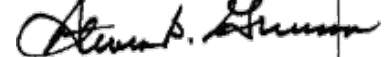
Cami M. Perkins, Esq.
HOLLEY DRIGGS WALCH FINE PUZEY STEIN & THOMPSON
4400 S. 4th Street 3rd Floor
Las Vegas, NV 89101

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Jared Kahn, Esq.
JK LEGAL & CONSULTING, LLC
9205 West Russell Rd., Suite 240
Las Vegas, NV 89148
*Attorneys for Defendant Intervenor
Helping Hands Wellness Center, Inc.*

/s/ Brandon Lopipero
An Employee of MAIER GUTIERREZ & ASSOCIATES



ORDR

JASON R. MAIER, ESQ.

Nevada Bar No. 8557

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: (702) 629-7900

Facsimile: (702) 629-7925

E-mail: jrm@mgalaw.com

jag@mgalaw.com

Attorneys for Defendants in Intervention,

Integral Associates LLC d/b/a Essence Cannabis Dispensaries,

Essence Tropicana, LLC, Essence Henderson, LLC,

CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace,

Commerce Park Medical, LLC, and Cheyenne Medical, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION.

Case No. : A-19-786962-B

Dept. No.: XI

**ORDER GRANTING MOTION TO
INTERVENE**

Defendants.

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

Defendants in Intervention.

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

IT IS HEREBY ORDERED:


Intervenor's Motion to Intervene is granted, and Integral Associates, LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC, CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and Cheyenne Medical, LLC shall intervene as Defendants in the above-captioned case as a necessary party to the action pursuant to NRCP 24 and NRS § 12.130. The proposed answer attached to the Motion to Intervene as Exhibit B shall be filed in this case.

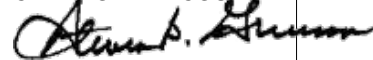
DATED this 1 day of April, 2019.


DISTRICT COURT JUDGE

Respectfully submitted by:

MAIER GUTIERREZ & ASSOCIATES


JASON R. MAIER, ESQ.
Nevada Bar No. 8557
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Defendants in Intervention



1 **NEO**
2 **H1 LAW GROUP**
3 Eric D. Hone, NV Bar No. 8499
eric@h1lawgroup.com
4 Jamie L. Zimmerman, NV Bar No. 11749
jamie@h1lawgroup.com
5 Moorea L. Katz, NV Bar No. 12007
moorea@h1lawgroup.com
6 701 N. Green Valley Parkway, Suite 200
Henderson NV 89074
7 Phone 702-608-3720
Fax 702-608-3759
8 *Attorneys for Intervenor/Defendant*
Lone Mountain Partners, LLC

9 EIGHTH JUDICIAL DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 SERENITY WELLNESS CENTER, LLC, a
12 Nevada limited liability company, TGIG, LLC,
13 a Nevada limited liability company, NULEAF
14 INCLINE DISPENSARY, LLC, a Nevada
15 limited liability company, NEVADA
16 HOLISTIC MEDICINE, LLC, a Nevada limited
17 liability company, TRYKE COMPANIES SO
18 NV, LLC, a Nevada limited liability company,
19 TRYKE COMPANIES RENO, LLC, a Nevada
20 limited liability company, PARADISE
21 WELLNESS CENTER, LLC, a Nevada limited
22 liability company, GBS NEVADA PARTNERS,
23 LLC, a Nevada limited liability company,
24 FIDELIS HOLDINGS, LLC, a Nevada limited
25 liability company, GRAVITAS NEVADA, LLC,
26 a Nevada limited liability company, NEVADA
27 PURE, LLC, a Nevada limited liability
28 company, MEDIFARM, LLC a Nevada limited
liability company, DOE PLAINTIFFS I through X;
and ROE ENTITY PLAINTIFFS I through X,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant.

LONE MOUNTAIN PARTNERS, LLC, a Nevada
limited liability partnership,

Intervenor/Defendant.

Case No. A-19-786962-B

Dept. No. 11

**NOTICE OF ENTRY OF ORDER
GRANTING LONE MOUNTAIN
PARTNERS, LLC'S MOTION TO
INTERVENE**



H1 LAW GROUP
701 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074
Tel: 702-608-3720 Fax: 702-608-3759



1 NOTICE IS HEREBY GIVEN that on this 3rd day of April 2019, an Order was entered
2 granting Lone Mountain Partners, LLC's Motion to Intervene. A copy of said Order is attached
3 hereto and by reference incorporated herein.

4 Dated this 4th day of April 2019.

5 H1 LAW GROUP

6 A blue ink signature of Eric D. Hone, written over a horizontal line.

7 Eric D. Hone, NV Bar No. 8499

8 eric@h1lawgroup.com

9 Jamie L. Zimmerman, NV Bar No. 11749

10 jamie@h1lawgroup.com

11 Moorea L. Katz, NV Bar No. 12007

12 moorea@h1lawgroup.com

13 701 N. Green Valley Parkway, Suite 200

14 Henderson NV 89074

15 Phone 702-608-3720

16 Fax 702-608-3759


17 *Attorneys for Intervenor/Defendant*

18 *Lone Mountain Partners, LLC*



CERTIFICATE OF SERVICE

The undersigned, an employee of H1 Law Group, hereby certifies that on the 4th day of April 2019 she caused a copy of the foregoing to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system.



Bobbye Donaldson, an employee of
H1 LAW GROUP

Steven D. Grierson

1 **ORDG**

2 **H1 LAW GROUP**

3 Eric D. Hone, NV Bar No. 8499

4 eric@h1lawgroup.com

5 Jamie L. Zimmerman, NV Bar No. 11749

6 jamie@h1lawgroup.com

7 Moorea L. Katz, NV Bar No. 12007

8 moorea@h1lawgroup.com

9 701 N. Green Valley Parkway, Suite 200

10 Henderson NV 89074

11 Phone 702-608-3720

12 Fax 702-608-3759

13 Attorneys for Intervenor

14 Lone Mountain Partners, LLC

15 EIGHTH JUDICIAL DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 SERENITY WELLNESS CENTER, LLC, a
18 Nevada limited liability company, TGIG, LLC,
19 a Nevada limited liability company, NULEAF
20 INCLINE DISPENSARY, LLC, a Nevada
21 limited liability company, NEVADA
22 HOLISTIC MEDICINE, LLC, a Nevada limited
23 liability company, TRYKE COMPANIES SO
24 NV, LLC, a Nevada limited liability company,
25 TRYKE COMPANIES RENO, LLC, a Nevada
26 limited liability company, PARADISE
27 WELLNESS CENTER, LLC, a Nevada limited
28 liability company, GBS NEVADA PARTNERS,
LLC, a Nevada limited liability company,
FIDELIS HOLDINGS, LLC, a Nevada limited
liability company, GRAVITAS NEVADA, LLC,
a Nevada limited liability company, NEVADA
PURE, LLC, a Nevada limited liability
company, MEDIFARM, LLC a Nevada limited
liability company, DOE PLAINTIFFS I through
X; and ROE ENTITY PLAINTIFFS I through X,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant.

LONE MOUNTAIN PARTNERS, LLC, a Nevada
limited liability partnership,

Applicant in Intervention.

Case No. A-19-786962-B

Dept. No. 11

**ORDER GRANTING LONE
MOUNTAIN PARTNERS, LLC'S
MOTION TO INTERVENE**



H1 LAW GROUP
701 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074
Tel: 702-608-3720 Fax: 702-608-3759

1 The Court, having reviewed the Applicant Lone Mountain Partners, LLC's Motion to
2 Intervene, and good cause appearing,

3 IT IS HEREBY ORDERED:

4 Applicant's Motion to Intervene is granted, and Lone Mountain Partners, LLC shall
5 intervene as a Defendant/Real Party in Interest in the above-captioned case as a necessary party to
6 the action pursuant to NRCp 24 and NRS 12.130.

7
8 
DISTRICT COURT JUDGE

9 DATED: 4-1-2019

10 Respectfully submitted by:

11 H1 LAW GROUP

12 
13
14 Eric D. Hone, NV Bar No. 8499

eric@h1lawgroup.com

15 Jamie L. Zimmerman, NV Bar No. 11749

jamie@h1lawgroup.com

16 Moorea L. Katz, NV Bar No. 12007

moorea@h1lawgroup.com

17 701 N. Green Valley Parkway, Suite 200

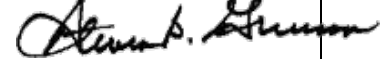
Henderson NV 89074

18 Phone 702-608-3720

Fax 702-608-3759

19 Attorneys for Intervenor

Lone Mountain Partners, LLC



1 Will Kemp, Esq. (#1205)
2 Nathanael R. Rulis, Esq. (#11259)
3 n.rulis@kempjones.com
4 KEMP, JONES & COULTHARD, LLP
5 3800 Howard Hughes Parkway, 17th Floor
6 Las Vegas, Nevada 89169
7 Telephone: (702) 385-6000
8 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

9 MM DEVELOPMENT COMPANY, INC., a
10 Nevada corporation; LIVFREE WELLNESS
11 LLC, dba The Dispensary, a Nevada limited
12 liability company

13 Plaintiff,

14 vs.

15 STATE OF NEVADA, DEPARTMENT OF
16 TAXATION; and DOES 1 through 10; and ROE
17 CORPORATIONS 1 through 10.

18 Defendants.

19 and

20 NEVADA ORGANIC REMEDIES, LLC

21 Defendant-Intervenor.

22 _____
23 NEVADA ORGANIC REMEDIES, LLC.

24 Counterclaimant,

25 vs.

26 MM DEVELOPMENT COMPANY, INC., A
27 Nevada corporation, LIVFREE WELLNESS,
28 LLC, d/b/a The Dispensary, a Nevada Limited
liability company

Counter-Defendants

Case No.: A-18-785818-W
Dept. No.: IX

**PLAINTIFFS'/COUNTER-
DEFENDANTS' ANSWER TO
COUNTERCLAIM**

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1 Plaintiffs/Counter-Defendants MM Development Company, Inc. (“MM”) and Livfree
2 Wellness, LLC d/b/a The Dispensary (“Livfree”) (collectively, “Plaintiffs” or “Counter-
3 Defendants”) answer the Nevada Organic Remedies, LLC’s (“NOR”) Counterclaim (the
4 “Counterclaim”) as follows:

5
6 **PARTIES**

7 1. Counter-Defendants admit the allegations in paragraphs 1, 2, and 3 of the
8 Counterclaim.

9 **JURISDICTION**

10 2. Counter-Defendants admit the allegations in paragraph 4 of the Counterclaim.

11 **GENERAL ALLEGATIONS**

12 3. Counter-Defendants admit the allegations in paragraphs 5, 6, and 7 of the
13 Counterclaim.

14 4. Counter-Defendants are without sufficient knowledge or information upon which
15 to base a belief as to the truth of the allegations contained in paragraphs 8, 9, and 10 of the
16 Counterclaim and, therefore, deny them.

17 5. Counter-Defendants admit that any entity granted a conditional license has 12
18 months to receive a final inspection as alleged in paragraph 11 of the Counterclaim. As to the
19 remaining allegations in paragraph 11 of the Counterclaim, R092-17, Sec. 87 speaks for itself.

20 6. Counter-Defendants are without sufficient knowledge or information upon which
21 to base a belief as to the truth of the allegations contained in paragraph 12 of the Counterclaim
22 and, therefore, deny them.

23 7. Counter-Defendants admit that they contend they received high scores for
24 medical marijuana establishments during the 2015 application review process, and that the
25 “Department improperly granted ‘conditional’ licenses to applicants who were ranked
26
27
28

1 substantially lower than Counter-Defendants on the 2015 rankings,” as alleged in paragraph 13
2 of the Counterclaim. As to all other allegations in paragraph 13 of the Counterclaim, Counter-
3 Defendants deny.

4 8. Counter-Defendants deny the allegations in paragraph 14 of the Counterclaim.

5 9. Counter-Defendants admit that they have sought relief that might limit or
6 preclude NOR from being able to move forward with obtaining final inspections for marijuana
7 establishments under current regulations as alleged in paragraph 15 of the Counterclaim. As to
8 all other allegations in paragraph 15 of the Counterclaim, Counter-Defendants deny.
9

10 **FIRST CAUSE OF ACTION**

11 **(Declaratory Relief)**

12 10. In response to paragraph 16, Counter-Defendants repeat and reincorporate all
13 previous responses to the Counterclaim.
14

15 11. Counter-Defendants admit that the State of Nevada, Department of Taxation’s
16 (the “Department”) actions and/or inactions have created an actual justiciable controversy ripe
17 for judicial determination between Counter-Defendants and the Department with respect to the
18 construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-17 as to
19 Counter-Defendants. As to all other allegations in paragraph 17 of the Counterclaim, Counter-
20 Defendants are without sufficient knowledge or information upon which to base a belief as to
21 the truth of the allegations and, therefore, deny them.
22

23 12. Counter-Defendants are without sufficient knowledge or information upon which
24 to base a belief as to the truth of the allegations contained in paragraph 18 of the Counterclaim
25 and, therefore, deny them.

26 13. Counter-Defendants deny the allegations in paragraph 19 of the Counterclaim.
27
28

9 AFFIRMATIVE DEFENSES

2. Counterclaimants' claim is barred due to the absence of any legitimate controversy between Counterclaimant and Counter-Defendants.

17 4. If Counterclaimant was injured and damaged as alleged, which is specifically
18 denied, then the injuries and damages were caused, in whole or in part, by the acts or omissions
19 of others, whether individual, corporate or otherwise, whether named or unnamed in the
20 Counterclaim, for whose conduct Counter-Defendants are not responsible.

23 | 6. Counterclaimant's claim is barred by the doctrine of unclean hands.

24 7. Counterclaimant is barred from seeking equitable relief because it has adequate
25 legal remedies from any alleged injuries.

8. Counterclaimant has been unjustly enriched to the injury and detriment of the Counter-Defendants, and therefore, is not entitled to any relief by way of Counterclaimant's claim.

9. In performing the actions complained of, the Counter-Defendants acted in the ordinary course of business.

10. Counterclaimant's claims fail because of intervening and superseding causes for the injury alleged in the Counterclaim.

11. Counter-Defendants have insufficient knowledge or information upon which to form a belief as to whether there may be addition, as yet unstated, affirmative defenses and, therefore, reserves the right to allege other affirmative defenses as they become appropriate or known through the course of discovery.

PRAYER FOR RELIEF

WHEREFORE, Counter-Defendants pray for judgment as follows:

1. That Counterclaimant takes nothing by way of its Counterclaim and that the same be dismissed with prejudice;
2. For costs of suit and reasonable attorneys' fees; and
3. For all other and further relief as the Court deems just and proper.

DATED this 5th day of April, 2019.

KEMP, JONES & COULTHARD LLP

/s/ Nathanael Rulis

Will Kemp, Esq. (NV Bar No. 1205)
Nathanael R. Rulis (NV Bar No. 11259)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Plaintiffs/Counter-Defendants

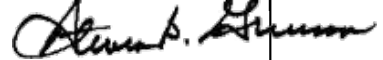
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempljones.com

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of April, 2019, I served a true and correct copy of the foregoing **Plaintiffs'/Counter-Defendants' Answer to Counterclaim** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Ali Augustine

An employee of Kemp, Jones & Coulthard, LLP



1 David R. Koch (NV Bar #8830)
2 Steven B. Scow (NV Bar #9906)
3 Brody R. Wight (NV Bar #13615)
4 Daniel G. Scow (NV Bar #14614)
5 KOCH & SCOW LLC
6 11500 S. Eastern Ave., Suite 210
7 Henderson, Nevada 89052
8 Telephone: 702.318.5040
9 Facsimile: 702.318.5039
10 dkoch@kochscow.com
11 sscow@kochscow.com

12 *Attorneys for Defendant*
13 Nevada Organic Remedies, LLC

14
15 **EIGHTH JUDICIAL DISTRICT COURT**
16
17 **CLARK COUNTY, NEVADA**

18 SERENITY WELLNESS CENTER, LLC, et al.,

19 Plaintiffs,

20 vs.

21 STATE OF NEVADA, DEPARTMENT OF
22 TAXATION;


23 Defendant,

24 and

25 NEVADA ORGANIC REMEDIES, LLC, LONE
26 MOUNTAIN PARTNERS, LLC, INTEGRAL
27 ASSOCIATES LLC d/b/a ESSENCE
28 CANNABIS DISPENSARIES, et al.

Defendant-Intervenors.

Case No. A-19-786962-B

Dept. No.  X1

**STIPULATION AND ORDER TO
CONTINUE HEARING AND
EXTEND BRIEFING SCHEDULE
FOR MOTION FOR PRELIMINARY
INJUNCTION**

Prior Hearing Date: April 22, 2019

New Hearing Date: May 6, 2019

It is hereby stipulated and agreed upon by Plaintiffs Serenity Wellness Center, LLC, L.P., et al., and Defendant-Intervenors Nevada Organic Remedies, LLC, Integral Associates, LLC d/b/a/ Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC, CPCM Holdings, LLC d/b/a/ Thrive Cannabis Marketplace, Commerce Park Medical, LLC, Cheyenne Medical, LLC,

1 and Lone Mountain Partners, LLC (collectively, "Defendant-Intervenors"), by and
2 through their respective counsel as follows:

3 WHEREAS, Plaintiffs Serenity Wellness Center, *et al.* filed a Motion for
4 Preliminary Injunction on March 19, 2019, which was set for hearing on April 22,
5 2019;

6 WHEREAS, the Defendant-Intervenors have recently intervened in this
7 action as defendants;

8 WHEREAS, in order to provide adequate time for the Defendant-
9 Intervenors to file responses to the Motion for Preliminary Injunction, the parties
10 agree that additional time will be necessary;

11 WHEREAS, on March 22, 2019, Nevada Organic Remedies filed a Motion
12 to Strike Plaintiffs' Motion for Preliminary Injunction on the grounds that it
13 exceeded the 30-page limit for motions and that additional parties which may be
14 affected by the Motion for Preliminary Injunction should have the opportunity to
15 be heard.

16 THEREFORE, the parties who have appeared in this case to date stipulate
17 and agree as follows:

- 18 1. The hearing on Plaintiffs' Motion for Preliminary Injunction shall be
19 continued to May 6, 2019, or to a later date according to the Court's
20 availability;
- 21 2. Any Oppositions to the Motion for Preliminary Injunction shall be
22 filed by April 16, 2019;
- 23 3. Any Reply filed by the Plaintiffs shall be filed in accordance with the
24 timing provided by NRCP and EDCR based on the new hearing date;
- 25 4. Nevada Organic Remedies withdraws its Motion to Strike and
26 requests that the hearing set on April 15, 2019 be vacated;
- 27 5. Plaintiffs may file a request to exceed the 30-page limit provided in
28

EDCR 2.20 for their Motion for Preliminary Injunction, with the Court to decide whether such request will be granted.

6. Defendant-Intervenors will not file an opposition to the request to exceed 30 pages.

IT IS SO STIPULATED:

Dated this 2 day of April, 2019


KOCH & SCOW, LLC


David R. Koch
Brody D. Wight
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052

Attorneys for Nevada Organic Remedies, LLC

Dated this ____ day of April, 2019


GENTILE CRISTALLI MILLER
ARMENI SAVARESE


Michael V. Cristalli, Esq.
Vincent Savarese, III, Esq.
410 S. Rampart Blvd., Ste. 420
Las Vegas, NV 89145

Attorneys for Plaintiffs

Dated this ____ day of April, 2019

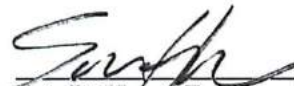
MAIER GUTIERREZ & ASSOCIATES


Joseph A. Gutierrez, Esq.
Joseph Maier, Esq.
8816 Spanish Ridge Ave.
Las Vegas, NV 89148

Attorneys for Defendants Integral Associates, LLC d/b/a/ Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC, CPCM Holdings, LLC d/b/a/ Thrive Cannabis Marketplace, Commerce Park Medical, LLC, Cheyenne Medical, LLC

Dated this 2nd day of April, 2019

H1 LAW GROUP


Eric D. Hong, Esq.
Jamie L. Zimmerman, Esq.
701 N. Green Valley Pkwy Suite 200
Henderson, NV 89074

Attorneys for Lone Mountain Partners, LLC

ORDER

EDCR 2.20 for their Motion for Preliminary Injunction, with the Court to decide whether such request will be granted.

6. Defendant-Intervenors will not file an opposition to the request to exceed 30 pages.

IT IS SO STIPULATED:

Dated this ____ day of April, 2019

KOCH & SCOW, LLC

David R. Koch
Brody D. Wight
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052

Attorneys for Nevada Organic
Remedies, LLC

Dated this ____ day of April, 2019

MAIER GUTIERREZ & ASSOCIATES

Joseph A. Gutierrez, Esq.
Joseph Maier, Esq.
8816 Spanish Ridge Ave.
Las Vegas, NV 89148

Attorneys for Defendants Integral
Associates, LLC d/b/a/ Essence Cannabis
Dispensaries, Essence Tropicana, LLC,
Essence Henderson, LLC, CPCM
Holdings, LLC d/b/a/ Thrive Cannabis
Marketplace, Commerce Park Medical,
LLC, Cheyenne Medical, LLC

Dated this ____ day of April, 2019

GENTILE CRISTALLI MILLER
ARMENI SAVARESE

Michael V. Cristalli, Esq.
Vincent Savarese, III, Esq.
410 S. Rampart Blvd., Ste. 420
Las Vegas, NV 89145

Attorneys for Plaintiffs

Dated this ____ day of April, 2019

H1 LAW GROUP

Eric D. Hone, Esq.
Jamie L. Zimmerman, Esq.
701 N. Green Valley Pkwy Suite 200
Henderson, NV 89074

Attorneys for Lone Mountain Partners,
LLC

ORDER

EDCR 2.20 for their Motion for Preliminary Injunction, with the Court to decide whether such request will be granted.

6. Defendant-Intervenors will not file an opposition to the request to exceed 30 pages.

IT IS SO STIPULATED:

Dated this ____ day of April, 2019

KOCH & SCOW, LLC

David R. Koch
Brody D. Wight
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052

Attorneys for Nevada Organic Remedies, LLC

Dated this 3 day of April, 2019

MAIER GUTIERREZ & ASSOCIATES

Joseph A. Gutierrez, Esq.
Joseph Maier, Esq.
8816 Spanish Ridge Ave.
Las Vegas, NV 89148

Attorneys for Defendants Integral Associates, LLC d/b/a/ Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC, CPCMHoldings, LLC d/b/a/ Thrive Cannabis Marketplace, Commerce Park Medical, LLC, Cheyenne Medical, LLC

Dated this ____ day of April, 2019

GENTILE CRISTALLI MILLER
ARMENI SAVARESE

Michael V. Cristalli, Esq.
Vincent Savarese, III, Esq.
410 S. Rampart Blvd., Ste. 420
Las Vegas, NV 89145

Attorneys for Plaintiffs

Dated this ____ day of April, 2019

H1 LAW GROUP

Eric D. Hone, Esq.
Jamie L. Zimmerman, Esq.
701 N. Green Valley Pkwy Suite 200
Henderson, NV 89074

Attorneys for Lone Mountain Partners, LLC

ORDER

1 The Court, having considered the Stipulation of the parties, and good cause
2 appearing, orders as follows:

- 3 1. The April 22, 2019 hearing on Plaintiffs' Motion for Preliminary
4 Injunction is continued to May 6, 2019 at 90 a.m.;
- 5 2. Any Oppositions to Plaintiffs' Motion for Preliminary Injunction
6 may be filed by April 16, 2019;
- 7 3. Any Reply filed by the Plaintiffs shall be filed in accordance with
8 the timing provided by NRCP and EDCR based on the new hearing
9 date;
- 10 4. Nevada Organic Remedies, LLC's Motion to Strike Plaintiffs'
11 Motion for Preliminary Injunction is withdrawn, and the hearing on
12 April 15, 2019 is vacated; and
- 13 5. If Plaintiffs believe that their Motion for Preliminary Injunction
14 should exceed the 30-page limit provided in EDCR 2.20, they shall file a
15 request to exceed the page limitation with the Court to decide whether
16 the request will be granted.

17
18 **IT IS SO ORDERED.**

19 Dated this 4 day of April, 2019


DISTRICT COURT JUDGE

21
22 Submitted by:

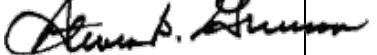
23 KOCH & SCOW, LLC

24 /s/ David R. Koch

David R. Koch

25 *Attorneys for Defendant-Intervenor*

26 Nevada Organic Remedies, LLC
27
28



1 ANAC
AARON D. FORD
2 Attorney General
David J. Pope (Bar No. 8617)
3 Senior Deputy Attorney General
Robert E. Werbicky (Bar No. 6166)
4 Deputy Attorney General
Vivienne Rakowsky (Bar No. 9160)
5 Deputy Attorney General
Office of the Attorney General
6 555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
7 (702) 486-3420 (phone)
(702) 486-3416 (fax)
8 DPope@ag.nv.gov
VRakowsky@ag.nv.gov
9 RWerbicky@ag.nv.gov

10 *Attorneys for Defendant,*
11 *State of Nevada,*
Department of Taxation

12
13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 MM DEVELOPMENT COMPANY, INC., a
Nevada corporation; LIVFREE
16 WELLNESS LLC, dba The Dispensary, a
Nevada limited liability company

17 Plaintiffs,

18 vs.

19 STATE OF NEVADA, DEPARTMENT OF
20 TAXATION; and DOES 1 through 10; and
21 ROE CORPORATIONS 1 through 10,

22 Defendants.

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

ANSWER TO AMENDED COMPLAINT

23 The State of Nevada ex rel. Department of Taxation (the "Department") answers
24 Plaintiffs' Amended Complaint as follows:

25 **I.**

26 **PARTIES & JURISDICTION**

27 1. Answering Paragraph 1, the Department is without sufficient knowledge and
28 information to form a belief as to the truth of the allegations and therefore denies the same.

2. Answering Paragraph 2, the Department is without sufficient knowledge and information to form a belief as to the truth of the allegations and therefore denies the same.

3. Answering Paragraph 3, the Department states that it was created under NRS 360.120 and has certain duties related to the regulation and licensing of marijuana under Nevada law, including NRS 453D and NAC 453D.

4. Answering Paragraph 4, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

II.

GENERAL ALLEGATIONS

5. Answering Paragraph 5, the Department states that this is a legal conclusion to which no response is required.

6. Answering Paragraph 6, the Department states that the August 16, 2018 letter from the Department speaks for itself.

7. Answering Paragraph 7, the Department states that the notice speaks for itself.

8. Answering Paragraph 8, the Department states that the notice speaks for itself.

9. Answering Paragraph 9, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

10. Answering Paragraph 10, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

11. Answering Paragraph 11, the Department admits that the allegation accurately depicts the allocation of some, but not all, of the licenses that were to be allocated during the September 7, 2018, through September 20, 2018, application round.

///

1 12. Answering Paragraph 12, the Department states that because it was not
2 involved with the medical marijuana licensing procedure, it is unable to form a belief as
3 to the truth of the allegations contained in Paragraph 12.

4 13. Answering Paragraph 13, the Department states that because it was not
5 involved with the medical marijuana licensing procedure, it is unable to form a belief as
6 to the truth of the allegations contained in Paragraph 13.

7 14. Answering Paragraph 14, the Department states that because the terms
8 “substantially similar” and “factors” are vague and ambiguous and because the Department
9 was not involved with the medical marijuana licensing procedure, the Department is
10 unable to form a belief as to the truth of the allegations contained in Paragraph 14.

11 15. Answering Paragraph 15, the Department states that because the term “major
12 difference” is vague and ambiguous and because the Department was not involved with the
13 medical marijuana licensing procedure, the Department is unable to form a belief as to
14 the truth of the allegations contained in Paragraph 15.

15 16. Answering Paragraph 16, the Department admits the allegations.

16 17. Answering Paragraph 17, the Department denies that an application was
17 submitted for Elko County and admits the remaining allegations with the addition that an
18 application was submitted for Lyon County.

19 18. Answering Paragraph 18, the Department states that because the term
20 “exceptional ranking” is vague and ambiguous and because the Department was not
21 involved with the medical marijuana licensing procedure, the Department is unable to
22 form a belief as to the truth of the allegations contained in Paragraph 18 except that
23 the Department admits that around December 5, 2018, the Plaintiffs were sent a notice
24 of rejection setting forth the reasons why the Department did not approve their license
25 application.

26 19. Answering Paragraph 19, the Department denies the allegation.

27 20. Answering the allegation contained in Paragraph 20, the Department denies
28 the allegation.

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III.
CLAIMS FOR RELIEF
FIRST CLAIM FOR RELIEF
(Declaratory Relief)

21. Answering Paragraph 21, the Department states that this incorporating reference does not require a response.

22. Answering Paragraph 22, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

23. Answering Paragraph 23, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

24. Answering Paragraph 24, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

25. Answering Paragraph 25, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

26. Answering Paragraph 26, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

27. Answering Paragraph 27, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

28. Answering Paragraph 28, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

29. Answering Paragraph 29, the Department states that this is a legal conclusion

1 to which no response is required. To the extent that a response is required, the Department
2 denies the allegations contained therein.

3 30. Answering Paragraph 30, the Department states that this is a legal conclusion
4 to which no response is required. To the extent that a response is required, the Department
5 denies the allegations contained therein.

6 31. Answering Paragraph 31, the Department states that this is a legal conclusion
7 to which no response is required. To the extent that a response is required, the Department
8 denies the allegations contained therein.

9 **SECOND CLAIM FOR RELIEF**

10 **(Injunctive Relief)**

11 32. Answering Paragraph 32, the Department states that this incorporating
12 reference does not require a response.

13 33. Answering Paragraph 33, the Department states that this is a legal conclusion
14 to which no response is required. To the extent that a response is required, the Department
15 denies the allegations contained therein.

16 34. Answering Paragraph 34, the Department states that this is a legal conclusion
17 to which no response is required. To the extent that a response is required, the Department
18 denies the allegations contained therein.

19 35. Answering Paragraph 35, the Department states that this is a legal conclusion
20 to which no response is required. To the extent that a response is required, the Department
21 denies the allegations contained therein.

22 36. Answering Paragraph 36, the Department states that this is a legal conclusion
23 to which no response is required. To the extent that a response is required, the Department
24 denies the allegations contained therein.

25 37. Answering Paragraph 37, the Department states that this is a legal conclusion
26 to which no response is required. To the extent that a response is required, the Department
27 denies the allegations contained therein.

28 38. Answering Paragraph 38, the Department states that this is a legal conclusion

1 to which no response is required. To the extent that a response is required, the Department
2 denies the allegations contained therein.

3 **THIRD CLAIM FOR RELIEF**

4 **(Violation of Procedural Due Process)**

5 39. Answering Paragraph 39, the Department states that this incorporating
6 reference does not require a response.

7 40. Answering Paragraph 40, the Department states that this is a legal conclusion
8 to which no response is required. To the extent that a response is required, the Department
9 denies the allegations contained therein.

10 41. Answering Paragraph 41, the Department states that this is a legal conclusion
11 to which no response is required. To the extent that a response is required, the Department
12 denies the allegations contained therein.

13 42. Answering Paragraph 42, the Department states that this is a legal conclusion
14 to which no response is required. To the extent that a response is required, the Department
15 denies the allegations contained therein.

16 43. Answering Paragraph 43, the Department states that this is a legal conclusion
17 to which no response is required. To the extent that a response is required, the Department
18 denies the allegations contained therein.

19 44. Answering Paragraph 44, the Department states that this is a legal conclusion
20 to which no response is required. To the extent that a response is required, the Department
21 denies the allegations contained therein.

22 45. Answering Paragraph 45, the Department states that this is a legal conclusion
23 to which no response is required. To the extent that a response is required, the Department
24 denies the allegations contained therein.

25 **FOURTH CLAIM FOR RELIEF**

26 **(Violation of Substantive Due Process)**

27 46. Answering Paragraph 46, the Department states that this incorporating
28 reference does not require a response.

1 47. Answering Paragraph 47, the Department states that this is a legal conclusion
2 to which no response is required. To the extent that a response is required, the Department
3 denies the allegations contained therein.

4 48. Answering Paragraph 48, the Department states that this is a legal conclusion
5 to which no response is required. To the extent that a response is required, the Department
6 denies the allegations contained therein.

7 49. Answering Paragraph 49, the Department states that this is a legal conclusion
8 to which no response is required. To the extent that a response is required, the Department
9 denies the allegations contained therein.

10 50. Answering Paragraph 50, the Department states that this is a legal conclusion
11 to which no response is required. To the extent that a response is required, the Department
12 denies the allegations contained therein.

13 **FIFTH CLAIM FOR RELIEF**

14 **(Equal Protection Violation)**

15 51. Answering Paragraph 51, the Department states that this incorporating
16 reference does not require a response.

17 52. Answering Paragraph 52, the Department states that this is a legal conclusion
18 to which no response is required. To the extent that a response is required, the Department
19 denies the allegations contained therein.

20 53. Answering Paragraph 53, the Department states that this is a legal conclusion
21 to which no response is required. To the extent that a response is required, the Department
22 denies the allegations contained therein.

23 54. Answering Paragraph 54, the Department states that this is a legal conclusion
24 to which no response is required. To the extent that a response is required, the Department
25 denies the allegations contained therein.

26 55. Answering Paragraph 55, the Department states that this is a legal conclusion
27 to which no response is required. To the extent that a response is required, the Department
28 denies the allegations contained therein.

56. Answering Paragraph 56, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

SIXTH CLAIM FOR RELIEF
(Petition for Judicial Review)

57. Answering Paragraph 57, the Department states that this incorporating reference does not require a response.

58. Answering Paragraph 58, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

59. Answering Paragraph 59, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

60. Answering Paragraph 60, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

61. Answering Paragraph 61, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

62. Answering Paragraph 62, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

SEVENTH CLAIM FOR RELIEF
(Petition for Writ of Mandamus)

63. Answering Paragraph 63, the Department states that this incorporating reference does not require a response.

64. Answering Paragraph 64, the Department states that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department

1 denies the allegations contained therein.

2 65. Answering Paragraph 65, the Department states that this is a legal conclusion
3 to which no response is required. To the extent that a response is required, the Department
4 denies the allegations contained therein.

5 66. Answering Paragraph 66, the Department states that this is a legal conclusion
6 to which no response is required. To the extent that a response is required, the Department
7 denies the allegations contained therein.

8 67. Answering Paragraph 67, the Department states that this is a legal conclusion
9 to which no response is required. To the extent that a response is required, the Department
10 denies the allegations contained therein.

11 68. Answering Paragraph 68, the Department states that this is a legal conclusion
12 to which no response is required. To the extent that a response is required, the Department
13 denies the allegations contained therein.

14 **GENERAL DENIALS**

15 The Department denies any and all allegations in the Amended Complaint not
16 specifically admitted in this Answer.

17 The Department denies that Plaintiffs are entitled to any of the relief prayed for in
18 the Amended Complaint.

19 **AFFIRMATIVE DEFENSES**

20 The Department denies any and all liability in this matter and asserts the following
21 affirmative defenses:

- 22 1. Plaintiffs have failed to state a claim for which relief can be granted.
- 23 2. Plaintiffs do not have a property right in a privilege license that they do not
24 have.
- 25 3. Plaintiffs do not have a fundamental right to a privilege license.
- 26 4. Chapter 453D does not provide for a hearing when a retail marijuana license
27 is not issued.

1 5. The Nevada Administrative Procedures Act, NRS Chapter 233B, does not
2 provide for a hearing when a retail marijuana license is not issued.

3 6. The Department's actions were neither arbitrary, capricious, nor an abuse of
4 discretion.

5 7. The Department's interpretation of the statutes and regulations it is
6 authorized to execute is given great deference.

7 8. The Department used an impartial and numerically scored competitive
8 bidding process.

9 9. Plaintiffs did not have a statutory entitlement to a license.

10 10. The U.S. Constitution does not protect the right to engage in a business that
11 is illegal under federal law.

12 11. Plaintiffs do not have standing.

13 12. Plaintiffs have failed to exhaust their administrative remedies.

14 13. The Complaint fails to present a justiciable controversy.

15 14. This Court lacks jurisdiction to hear Plaintiffs' claims.

16 15. The Department is immune from liability pursuant to Nevada Revised
17 Statutes 41.031, et. seq.

18 16. Plaintiff failed to name the Department properly as required by
19 NRS 41.031(2).

20 17. Plaintiffs' claims, including the declaratory and/or equitable claims are barred
21 by the doctrines of waiver, ratification, estoppel, unclean hands and other equitable
22 defenses.

23 18. Plaintiffs' claims are barred by the applicable statute of limitations and/or the
24 doctrine of laches.

25 19. Plaintiffs' claims are barred based on impossibility.

26 20. Plaintiffs' claims have been waived because of the wrongful acts, omissions
27 and conduct of Plaintiffs.

28 21. Plaintiffs would be unjustly enriched if awarded damages.

1 22. The Department has no contractual relationship with Plaintiffs to give rise to
2 any declaratory relief.

3 23. The damages sustained by the Plaintiff, if any, were caused by the acts of
4 unknown third persons who were not agents, servants, or employees of the Department,
5 and who were not acting on behalf of the Department in any manner or form, and, as such,
6 the Department is not liable in any manner to Plaintiff.

7 24. The Department is not legally responsible for the actions and/or omissions of
8 other third parties.

9 25. Plaintiffs fail to name a party necessary for full and adequate relief essential
10 in this action.

11 26. Plaintiffs failed to comply with a condition precedent.

12 27. Plaintiffs have not suffered any damages attributable to the actions of the
13 Department.

14 28. Plaintiffs have failed to timely protect and/or enforce their alleged rights.

15 29. Plaintiffs' claims are barred as Plaintiffs have failed, refused, or neglected to
16 take reasonable steps to mitigate damages, therefore barring or diminishing the ability to
17 recover.

18 30. The Department has an objective good faith belief that it acted reasonably and
19 in good faith and the Department's actions were legally justified.

20 31. The Department substantially complied with NRS and NAC Chapter 453D.

21 32. The Department, at all relevant times, acted with due care and
22 circumspection in the performance of its duties; exercised the degree of skill and learning
23 ordinarily possessed and exercised by members of its profession in good standing,
24 practicing in similar localities and that at all times, used reasonable care and diligence in
25 the exercise of its skills and the application of its learning, and at all times acted according
26 to its best judgment and met the applicable standard of care.

27 33. Plaintiffs' claims for relief are barred as Plaintiff's alleged damages are
28 speculative and cannot be calculated with any certainty or reliability.

1 34. Each purported claim for relief is barred by the doctrines of *res judicata* and/or
2 collateral estoppel.

3 35. Each purported claim for relief is barred as Plaintiffs are estopped from
4 pursuing any claim against the Department in accordance with equitable principles of
5 jurisprudence.

6 36. The Department alleges that the damages, if any, alleged by the Plaintiffs
7 were the result of independent intervening acts, over which the Department had no control,
8 which resulted in the superseding cause of Plaintiffs alleged damages.

9 37. The Department avails itself of all affirmative defenses set forth in and or
10 arising out of NRS Chapter 453D and NRS Chapter 360 and all applicable regulations and
11 subparts.

12 38. All possible affirmative defenses may not have been alleged inasmuch as
13 insufficient facts and other relevant information may not be available after reasonable
14 inquiry and, pursuant to NRCP 11, the Department hereby reserves the right to amend
15 these affirmative defenses as additional information becomes available. Additionally, one
16 or more of these Affirmative Defenses may have been pled for the purposes of non-waiver.

17 Respectfully submitted: April 10, 2019.

18 AARON D. FORD
19 Attorney General

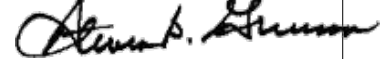
20 By: / s / Vivienne Rakowsky
21 VIVIENNE RAKOWSKY
22 Deputy Attorney General (Bar No. 9160)

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on April 10, 2019, I filed the foregoing document via this Court’s electronic filing system. Parties that are registered with this Court’s EFS will be served electronically.

/s/ Michele Caro
Michele Caro, an employee of the Office of the Nevada Attorney General



MOT
GENTILE CRISTALLI
MILLER ARMENI SAVARESE
DOMINIC P. GENTILE
Nevada Bar No. 1923
Email: dgentile@gcmaslaw.com
VINCENT SAVARESE III
Nevada Bar No. 2467
Email: vsavarese@gcmaslaw.com
MICHAEL V. CRISTALLI
Nevada Bar No. 6266
Email: mcristalli@gcmaslaw.com
ROSS MILLER
Nevada Bar No. 8190
Email: rmiller@gcmaslaw.com
410 South Rampart Blvd., Suite 420
Las Vegas, Nevada 89145
Tel: (702) 880-0000
Fax: (702) 778-9709
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant.

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

**PLAINTIFFS' EX PARTE MOTION FOR
LEAVE TO FILE BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION IN
EXCESS OF THIRTY (30) PAGES IN
LENGTH, OR IN THE ALTERNATIVE,
FOR LEAVE TO FILE AMENDED BRIEF
NOT TO EXCEED THIRTY (30) PAGES
IN LENGTH**

[HEARING REQUESTED]

1 COME NOW the Plaintiffs, Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf Incline
2 Dispensary, LLC, Holistic Medicine, LLC, Tryke Companies SO NV, LLC, Tryke Companies
3 Reno, LLC, Paradise Wellness Center, LLC, GBS Nevada Partners, LLC, FIDELIS
4 HOLDINGS, LLC, GRAVITAS NEVADA, LLC, NEVADA PURE, LLC, and MEDIFARM,
5 LLC, (collectively “Plaintiffs”) by and through counsel their counsel of record, Dominic P.
6 Gentile, Vincent Savarese, Michael V. Cristalli, and Ross Miller and of the law firm of Gentile
7 Cristalli Miller Armeni Savarese, and pursuant to the Fourteenth Amendment to the Constitution
8 of the United States; Article 1, Sections 1 and 8 of the Constitution of the State of Nevada; and
9 Rule 2.20(a) of the Rules of Practice for the Eighth Judicial District Court of the State of
10 Nevada (“EDCR”), hereby respectfully make their ex parte request that this Honorable Court
11 grant them leave to file a brief in support of their Motion for Preliminary Injunction in the above-
12 entitled matter exceeding 30 pages in length (47 pages).

13 IN THE ALTERNATIVE, Plaintiffs respectfully request leave to file an amended brief in
14 support of their Motion for Preliminary Injunction not to exceed 30 pages in length.

15 THIS MOTION is made and based upon the following Memorandum of Points and
16 Authorities; the papers and pleadings already on file herein and supporting exhibits thereto; and
17 any argument the Court may permit at the hearing of this matter.

18 Dated this ____ day of April, 2019.

19 GENTILE CRISTALLI
20 MILLER ARMENI SAVARESE

21 /s/ Vincent Savarese
DOMINIC P. GENTILE
22 Nevada Bar No. 1923
VINCENT SAVARESE III
23 Nevada Bar No. 2467
MICHAEL V. CRISTALLI
24 Nevada Bar No. 6266
ROSS MILLER
25 Nevada Bar No. 8190
410 S. Rampart Blvd., Suite 420
26 Las Vegas, Nevada 89145
27 Tel: (702) 880-0000
Attorneys for Plaintiffs
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 EDCR 2.20(a) provides: “*Unless otherwise ordered by the court*, papers submitted in
3 support of pretrial and post-trial briefs shall be limited to 30 pages, excluding exhibits. Where
4 the court enters an order permitting a longer brief or points and authorities, the papers shall
5 include a table of contents and table of authorities” (emphasis added).

6 As the Nevada Supreme Court, sitting en banc, acknowledged in *Hernandez v. State*, 117
7 Nev. 463, 467, 24 P.3d 767, 770 (2001), like EDCR 2.20(a), “NRAP 28(g)¹ provides: ‘*Except by*
8 *permission of the court*, briefs shall not exceed 30 pages, exclusive of pages containing the table
9 of contents, tables of citations and any addendum containing statutes, rules, regulations, etc. *As*
10 *the rule indicates, we are aware of the need for briefs longer than 30 pages in some cases. . . .*’”
11 (emphasis added). And, as the *Hernandez* Court pointed out, this may be necessary in
12 consideration of “*the seriousness and complexity of th[e] [particular case]*,” (117 Nev. at 468,
13 24 P.3d at 770); in order to ensure that “*no critical issue or fact is omitted*,” 117 Nev. at 468, 24
14 P.3d at 770; and to “provide . . . [litigants in a complex matter] *ample and fair opportunity to*
15 *obtain an adjudication on the merits [of their claims]*.” *Id.* (emphasis added). Thus, in that case,
16 although our Supreme Court denied the appellant’s motion for leave to file a 124 page opening
17 brief on direct appeal, it nonetheless granted him permission to file a brief of not more than 80
18 pages—*50 pages longer than the 30 page limit imposed by the rule*. 117 Nev. at 463, 24 P.3d at
19 768 (emphasis added).

20 Plaintiffs in this matter respectfully request leave to file a brief in support of their Motion
21 for Preliminary Injunction in the above-entitled matter which likewise exceeds the otherwise
22 applicable 30 page limit (albeit to a far lesser extent) for the reasons stated by our Supreme Court
23 in *Hernandez*. And attached hereto is a copy of the 47 page brief at issue containing the Table of
24 Contents and Table of Authorities required of briefs in excess of 30 pages by EDCR 2.20(a).

25 As this Court is aware, in their Motion for Preliminary Imjunction in this matter,
26 Plaintiffs mount a complex, sophisticated and comprehensive statutory and constitutional
27

28 ¹ Nevada Rules of Appellate Procedure

1 challenge upon an administrative regulatory licensing team governing the evolving business of
2 retail marijuana stores and their oversight, involving analysis of a new statutory scheme based
3 upon a recent Ballot Initiative, contending that, in promulgating the subject regulatory scheme
4 and in determining whether to grant or deny licensing applications, the Defendant Nevada
5 Department of Taxation has exceeded and violated the scope of the discretionary authority
6 delegated to it by the Legislature; has violated several key provisions of its own regulation; and,
7 in the process, has arbitrarily and capriciously deprived Plaintiffs of access to what they contend
8 are statutory entitlements to property and liberty interests in state licensing cognizable as such
9 under the Fourteenth Amendment Due Process Clause and the Nevada Constitution. And as the
10 Court is certainly well aware millions of dollars in business revenue is at stake in the
11 determination of this litigation.

12 While lengthy, Plaintiffs’ respectfully contend that the brief in question is nonetheless
13 concisely written and well-organized in addressing a number sophisticated issues of
14 constitutional magnitude, is in no respect repetitive, and that to reduce its scope would deprive
15 Plaintiffs a fair opportunity to address all of the defects both in the promulgation and the
16 administration of the challenged regularory and licensing scheme in view of the textual
17 provisions of the enabling statutory scheme and its constitutional implications.

18 Thus, Plaintiffs respectfully submit that, within the meaning and contemplation of
19 *Hernandez*, “the seriousness and complexity of [this case],” (117 Nev. at 468, 24 P.3d at 770);
20 the interest in ensuring that “no critical issue or fact is omitted” in determining its merits, (117
21 Nev. at 468, 24 P.3d at 770); and the interest in “provide[ing] . . . [litigants in such complex
22 matters] ample and fair opportunity to obtain an adjudication on the merits [of their claims],”
23 (*id.*), justify Plaintiffs’ request to file a lengthy brief in support of their request for preliminary
24 injunctive relief in this case.

25 And in exchange for the concession of undersigned counsel to permit additional time for
26 response to the subject motion and brief, counsel for Intervenor Defendants have agreed to
27 withdraw their motion to strike the same pursuant to stipulation which has been filed with this
28 Court.

Moreover, Plaintiffs' most respectfully suggest that to simply and arbitrarily refuse to consider the last 17 pages of the brief in this case (pp. 31-47) would be wholly inappropriate. And that, at minimum, counsel for Plaintiffs should be given at least the opportunity to amend their brief to one of shorter length. *Middleton v. Warden*, 120 Nev. 664, 668, 98 P.3d 694, 697 (2004) ("To comply with the 80-page limit, Lindsay made no effort to amend the opening brief and chose instead to tear out the final eight pages, abruptly ending the discussion of one issue and completely omitting any discussion of four other issues listed in the brief's table of contents").

CONCLUSION

WHEREFORE, for all the foregoing reasons, Plaintiffs respectfully pray that this Honorable Court grant them leave to file a brief in support of their Motion for Preliminary Injunction in the above-entitled matter exceeding 30 pages in length (47 pages), or, in the alternative, allow them leave to file an amended brief in support of their Motion for Preliminary Injunction not to exceed 30 pages in length.

Respectfully submitted this 10th day of April, 2019.

GENTILE CRISTALLI
MILLER ARMENI SAVARESE

/s/ Vincent Savarese
DOMINIC P. GENTILE
Nevada Bar No. 1923
VINCENT SAVARESE III
Nevada Bar No. 2467
MICHAEL V. CRISTALLI
Nevada Bar No. 6266
ROSS MILLER
Nevada Bar No. 8190
410 S. Rampart Blvd., Suite 420
Las Vegas, Nevada 89145
Tel: (702) 880-0000
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 The undersigned, an employee of Gentile Cristalli Miller Armeni Savarese, hereby
3 certifies that on the ____ day of April, 2019, I served a copy of **PLAINTIFFS' EX PARTE**
4 **MOTION FOR LEAVE TO FILE BRIEF IN SUPPORT OF PLAINTIFFS' MOTION**
5 **FOR PRELIMINARY INJUNCTION IN EXCESS OF THIRTY (30) PAGES IN**
6 **LENGTH, OR IN THE ALTERNATIVE, FOR LEAVE TO FILE AMENDED BRIEF**
7 **NOT TO EXCEED THIRTY (30) PAGES IN LENGTH** in CASE NO.: A-19-786962-B
8
9 DEPT. NO. 11, by electronic service in accordance with Administrative Order 14.2, to all
10 interested parties, through the Court's **Odyssey E-File & Serve**, system addressed to:

11 Aaron Ford, Esq.
12 Attorney General
13 Robert Werbicky, Esq.
14 Deputy Attorney General
15 Office of the Attorney General
16 555 E. Washington Ave., Suite 3900
17 Las Vegas, Nevada 89101
18 Email: rwerbicky@ag.nv.gov

19 *Attorneys for Nevada Department of Taxation*

20 Joseph A. Gutierrez, Esq.
21 Jason R. Maier, Esq.
22 Maier Gutierrez & Associates
23 8816 Spanish Ridge Avenue
24 Las Vegas, Nevada 89148
25 Email: jrm@mgalaw.com
26 jag@mgalaw.com

27 Philip M. Hymanson, Esq.
28 Henry Joseph Hymanson, Esq.
Hymanson & Hymanson
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Email: Phil@HymansonLawNV.com
Hank@HymansonLawNV.com

*Attorneys for Defendants Integral Associates
LLC d/b/a Essence Cannabis Dispensaries,
Essence Tropicana, LLC, Essence Henderson,*

1 *LLC, CPCM Holdings, LLC d/b/a Thrive*
2 *Cannabis Marketplace, Commerce Park Medical,*
3 *LLC, Cheyenne Medical, LLC*

4 Eric D. Hone, Esq.
5 Jamie L. Zimmerman, Esq.
6 Moorea L. Katz, Esq.
7 H1 Law Group
8 701 N. Green Valley Pkwy.
9 Suite 200
10 Henderson, NV 89074
11 Email: eric@h1lawgroup.com
12 jamie@h1lawgroup.com
13 moorea@h1lawgroup.com

14 *Attorneys for Defendant Lone Mountain*
15 *Partnersl, LLC*

16 Jared Kahn, Esq.
17 JK Legal & Consulting, LLC
18 9205 West Russell Road
19 Suite 240
20 Las Vegas, NV 89148
21 Email: jkahn@jk-legalconsulting.com

22 *Attorneys for Helping Hands*
23 *Wellness Center, Inc.*

24 Margaret A. McLetchie, Esq.
25 Alina M. Shell, Esq.
26 McLetchie Law
27 701 East Bridger Ave.
28 Suite 250
Las Vegas, NV 89101
Email: maggie@nvlitigation.com

Attorneys for GreenMart of Nevada
NLV, LLC


An employee of
GENTILE CRISTALLI
MILLER ARMENI SAVARESE

EXHIBIT 1

EXHIBIT 1

1 **MOT**

2 GENTILE CRISTALLI
3 MILLER ARMENI SAVARESE
4 DOMINIC P. GENTILE

5 Nevada Bar No. 1923
6 Email: dgentile@gcmaslaw.com

7 MICHAEL V. CRISTALLI

8 Nevada Bar No. 6266

9 Email: mcristalli@gcmaslaw.com

10 ROSS MILLER

11 Nevada Bar No. 8190

12 Email: rmiller@gcmaslaw.com

13 VINCENT SAVARESE III

14 Nevada Bar No. 2467

15 Email: vsavarese@gcmaslaw.com

16 410 South Rampart Blvd., Suite 420

17 Las Vegas, Nevada 89145

18 Tel: (702) 880-0000

19 Fax: (702) 778-9709

20 *Attorneys for Plaintiffs*

21 **DISTRICT COURT**
22 **CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant.

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

**MOTION FOR PRELIMINARY
INJUNCTION**

MEMORANDUM OF POINTS AND AUTHORITIES

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

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

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

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

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

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

1 municipal jurisdictions and unincorporated areas within a county, rather than on a
2 county-wide basis as textually required by NRS 453D.210;

3 B. NAC 453D.272(1) textually permits the Department to rank applications and
4 allocate conditional licenses based upon arbitrary, irrelevant, vague, ambiguous,
5 undisclosed, and unpublished criteria, rather than criteria “that are directly and
6 demonstrably related to the operation of a marijuana establishment,” as textually
7 required by NRS 453D.200(1)(b) and rather than pursuant to “an impartial and
8 numerically scored competitive bidding process” as textually required by NRS
9 453D.200(2) and NRS 453D.210(6);

10 C. The Regulation does not assign specific numerical point values, or numerical
11 point value ranges, applicable to any of the licensing criteria that are listed in
12 NAC 453D.272(1) and certainly cannot do so with respect to the undisclosed and
13 unpublished, additional criteria referred to therein only as “additional criteria,”
14 and does not require that all such criteria be equally weighted, uniformly and
15 consistently assessed, or scored by adequately trained and qualified personnel, all
16 of which is further inconsistent with the “impartial and numerically scored
17 competitive bidding process” textually required by NRS 453D.200(2) and NRS
18 453D.210(6);

19 D. The Department has failed to issue the number of conditional licenses required by
20 NRS 453D.210(5):

21 E. The Department has engaged in unlawful *ad hoc* rule-making by arbitrarily
22 limiting each applicant to a single conditional license per locality absent
23 legislative authorization by NRS Chapter 453D:

24 F. On information and belief, the Department has failed to conduct the background
25 check required by NRS 453D.200(6) in order to determine that “each prospective
26 owner” has not been convicted of certain felony offenses and has not served as an
27 owner of a marijuana establishment that has had its license revoked, particularly
28 with respect public-company applicants, as textually required by NRS

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

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

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

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

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

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

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

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

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

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

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

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

9 Dated this 18 day of March, 2019.

GENTILE CRISTALLI
MILLER ARMENI SAVARESE


DOMINIC P. GENTILE
Nevada Bar No. 1923
VINCENT SAVARESE III
Nevada Bar No. 2467
MICHAEL V. CRISTALLI
Nevada Bar No. 6266
ROSS MILLER
Nevada Bar No. 8190
410 S. Rampart Blvd., Suite 420
Las Vegas, Nevada 89145
Tel: (702) 880-0000
Attorneys for Plaintiffs

1 **NOTICE OF MOTION**

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

6 Dated this 18 day of March, 2019.

7
8 GENTILE CRISTALLI
MILLER ARMENI SAVARESE

9 
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15 Las Vegas, Nevada 89145
16 Tel: (702) 880-0000
Attorneys for Plaintiffs

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **1.**

19 **INTRODUCTION**

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

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

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

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

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

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

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

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

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

20 **2.**

21 **STATEMENT OF FACTS**

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

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

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

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

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

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

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

15 (Emphasis added.)

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

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

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

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

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

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

28 (Emphasis added.)

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

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

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

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

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

16 (Emphasis added.)

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

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

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

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

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

28 . . .

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

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

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

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

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

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

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

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

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

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

20 **3.**

21 **LEGAL STANDARD**

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

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

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

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

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

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

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

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

11 And 42 U.S.C. § 1983 provides:

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

24 (Emphasis added.)

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

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

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

11 4.

12 ARGUMENT

13 I.

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

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

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

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

6 A.

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

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

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

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

21 (Emphasis added.)

22 That subsection further states:

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

26 (Emphasis added.)

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **B.**

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

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

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

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

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

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

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

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

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

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

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

23 C.

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

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

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

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

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

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

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

12 (c) The property is not located within:

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

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

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

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

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

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

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

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

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

1 locality; and

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

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

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

8 (Emphasis added.)

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

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

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

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

1 D.

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

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

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

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

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

1 those counties was therefore invalid.

2 E.

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

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

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

19 1.

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

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

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

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

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

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

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

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

NAC 453D.272(5) provides:

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

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

(Emphasis added.)

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

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

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

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

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

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

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

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

24 ...

25 ...

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

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

The Department Did Not Fairly And Objectively Score The Applications.

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

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

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

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

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

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

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

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

14 II.

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

17 A.

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

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

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

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

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

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

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

28 ***

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

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

1 process”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (Emphasis added.)

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

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

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

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

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

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

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

24 F.3d at 63–64 (emphasis added).

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

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

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

18 (Emphasis added.)

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

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

34 ...

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

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

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

24 ...

25 ...

26 ...

27 ...

28 ...

1 B.

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

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

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

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

(Emphasis added.)

...

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

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

10 (Emphasis added.)

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

15 C.

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

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

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

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

....

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

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

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

25 II.

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

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

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

14 III.

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

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

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

...

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

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

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

21 (Emphasis added.)

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

...

...

...

...

1 IV.

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

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

8 V.

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

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

19 VI.

20 PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

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

24 ...

25 ...

26 ...

27 ...

28 ...

5.

CONCLUSION

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

DATED this 18 day of March, 2019.

GENTILE CRISTALLI
MILLER ARMENI SAVARESE


DOMINIC P. GENTILE
Nevada Bar No. 1923
MICHAEL V. CRISTALLI
Nevada Bar No. 6266
ROSS MILLER
Nevada Bar No. 8190
VINCENT SAVARESE III
Nevada Bar No. 2467
410 S. Rampart Blvd., Suite 420
Las Vegas, Nevada 89145
Tel: (702) 880-0000
Attorneys for Plaintiffs

EXHIBIT A

EXHIBIT A

INITIATIVE PETITION NO. 1

FEBRUARY 2, 2015

Referred to Committee on Judiciary

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

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

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

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

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



1 **Sec. 2. Preamble.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

15 2. Sections 1 to 18 do not prohibit:

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

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

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

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

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

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

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

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



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



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

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

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

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

15 **Sec. 6. Personal Use and Cultivation of Marijuana.**
16 Notwithstanding any other provision of Nevada law and the law of
17 any political subdivision of Nevada, except as otherwise provided in
18 sections 1 to 18, inclusive, of this act, it is lawful, in this State, and
19 must not be used as the basis for prosecution or penalty by this State
20 or a political subdivision of this State, and must not, in this State, be
21 a basis for seizure or forfeiture of assets for persons 21 years of age
22 or older to:

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

22 (c) The property is not located within:

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

4 1. Marijuana establishments shall:

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

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

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

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

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

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

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

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

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

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



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

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

6 (b) Is guilty of:

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

Ⓢ



EXHIBIT B

EXHIBIT B



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

**STATE OF NEVADA
DEPARTMENT OF TAXATION**

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

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

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

Recreational Marijuana Establishment License Application Recreational Retail Marijuana Store Only

Release Date: July 6, 2018

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

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

For additional information, please contact:

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

marijuana@tax.state.nv.us



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

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APPLICANT INFORMATION

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

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



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1. TERMS AND DEFINITIONS

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

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



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



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



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



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2. APPLICATION OVERVIEW

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

Assembly Bill 422 (AB422):

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

LCB File No. Regulation R092-17:

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

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

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

3. APPLICATION TIMELINE

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

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



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4. APPLICATION INSTRUCTIONS

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

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

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

5. APPLICATION REQUIREMENTS, FORMAT AND CONTENT

5.1. General Submission Requirements

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