

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 09:40 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 8

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 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
2 required, Clear River denies these allegations.

3 79. Answering paragraph 79 and subparagraphs 79(a)-(c) of the Complaint, no
4 response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the
5 extent a response is required, Clear River denies these allegations.
6

7 80. Answering paragraph 80 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, Clear River denies these allegations.

10 **FIFTH CLAIM FOR RELIEF**

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

12 81. Answering paragraph 81 of the Complaint, Clear River hereby repeats and
13 realleges its answers to paragraph 1 through 80 above and incorporates the same herein by
14 reference as though fully set forth herein.
15

16 82. Answering paragraph 82 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, Clear River denies these allegations.

19 83. Answering paragraph 83 and subparagraphs 83(a)-(b) of the Complaint, no
20 response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the
21 extent a response is required, Clear River denies these allegations.
22

23 84. Answering paragraph 84 and subparagraphs 84(a)-(b) of the Complaint, no
24 response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the
25 extent a response is required, Clear River denies these allegations.

26 85. Answering paragraph 85 of the Complaint, no response is required as the
27 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
28

1 required, Clear River denies these allegations.

2 86. Answering paragraph 86 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, Clear River denies these allegations.

5 **GENERAL DENIAL**

6
7 To the extent a further response is required to any allegations set forth in the Complaint,
8 Clear River denies such allegation.

9 **ANSWER TO PRAYER FOR RELIEF**

10 Answering the allegations contained in the entirety of Plaintiffs' prayer for relief, Clear
11 River denies that Plaintiffs are entitled to the relief sought therein or to any relief in this matter.

12 **AFFIRMATIVE DEFENSES**

13 Clear River, without altering the burdens of proof the parties must bear, asserts the
14 following affirmative defenses to Plaintiffs' Complaint, and all causes of action alleged therein,
15 and specifically incorporates into these affirmative defenses its answers to the preceding
16 paragraphs of the Complaint as if fully set forth herein.

17 **FIRST AFFIRMATIVE DEFENSE**

18
19 The Complaint and all the claims for relief alleged therein, fails to state a claim upon
20 which relief can be granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22
23 Plaintiffs have not been damaged directly, indirectly, proximately, or in any manner
24 whosoever by any conduct of Clear River.

25 **THIRD AFFIRMATIVE DEFENSE**

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

1 **FOURTH AFFIRMATIVE DEFENSE**

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

4 **FIFTH AFFIRMATIVE DEFENSE**

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

7 **SIXTH AFFIRMATIVE DEFENSE**

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

11 **SEVENTH AFFIRMATIVE DEFENSE**

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

15 **EIGHTH AFFIRMATIVE DEFENSE**

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

18 **NINTH AFFIRMATIVE DEFENSE**

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

21 **TENTH AFFIRMATIVE DEFENSE**

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

24
25
26
27 ///

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs have no constitutional right to obtain privileged license.

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to declaratory relief because declaratory relief will not give the Plaintiffs the relief they are seeking.

FIFTEENTH 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, Clear River hereby reserves the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

SIXTEENTH AFFIRMATIVE DEFENSE

Clear River adopts and incorporates herein all affirmative defenses by Defendants and other Intervenors in this matter.

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to seek the relief they request.

///

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

NINETEENTH AFFIRMATIVE DEFENSE

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

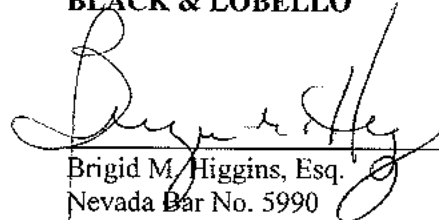
PRAYER FOR RELIEF

WHEREFORE, Clear River prays for judgment as follows:

1. Plaintiffs take nothing by way of their Complaint;
2. The Complaint, and all causes of action alleged against Clear River and Defendants therein be dismissed with prejudice;
3. For reasonable attorney's fees and costs, be awarded to Clear River; and
4. For any such other and further relief, the Court deems just and proper under the circumstances.

DATED this 20 day of May 2019.

BLACK & LOBELLO



Brigid M. Higgins, Esq.
Nevada Bar No. 5990
Rusty J. Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
E-mail: bhiggins@blacklobello.law
*Attorneys for Proposed Intervenor
Clear River, LLC*


///

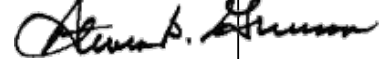
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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of May 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing **CLEAR RIVER, LLC'S ANSWER TO PLAINTIFFS' COMPLAINT** in *Serenity Wellness Center, LLC, et al v. State of Nevada, Department of Taxation, et al*, Clark County District Court Case No. A-19-786962-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.


An Employee of Black & Lobello



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*

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

12 ETW MANAGEMENT GROUP LLC, a
13 Nevada limited liability company; GLOBAL
14 HARMONY LLC, a Nevada limited liability
15 company; GREEN LEAF FARMS
16 HOLDINGS LLC, a Nevada limited liability
17 company; GREEN THERAPEUTICS LLC, a
18 Nevada limited liability company; HERBAL
19 CHOICE INC., a Nevada corporation; JUST
20 QUALITY, LLC, a Nevada limited liability
21 company; LIBRA WELLNESS CENTER,
22 LLC, a Nevada limited liability company;
23 ROMBOUGH REAL ESTATE INC. dba
24 MOTHER HERB, a Nevada corporation;
25 NEVCANN LLC, a Nevada limited liability
26 company; RED EARTH LLC, a Nevada
27 limited liability company; THC NEVADA
28 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.

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,
Applicant in Intervention.

Case No.: A-19-787004-B

Dept. No.: XI

MOTION TO INTERVENE

HEARING REQUESTED

Date: _____

Time: _____

1 GreenMart of Nevada NLV LLC (“GreenMart”), by and through its undersigned
2 counsel, respectfully moves to intervene in the above-captioned case pursuant to Nevada
3 Rule of Civil Procedure 24 and Nev. Rev. Stat. § 12.130.

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

6 DATED this the 7th day of May, 2019.

7
8 /s/ Alina M. Shell

MARGARET A. MCLETSCHIE, Nevada Bar No. 10931

9 ALINA M. SHELL, Nevada Bar No. 11711

10 MCLETSCHIE LAW

701 East Bridger Avenue, Suite 520

11 Las Vegas, NV 89101

12 Telephone: (702) 728-5300

Email: maggie@nvlitigation.com

13 *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 ETW MANAGEMENT GROUP LLC (“ETW”), GLOBAL HARMONY LLC (“Global Harmony”), GREEN LEAF FARMS HOLDINGS LLC (“GLFH”), GREEN THERAPEUTICS LLC (“GT”), HERBAL CHOICE INC. (“Herbal Choice”), JUST QUALITY, LLC (“Just Quality”), LIBRA WELLNESS CENTER, LLC (“Libra”), ROMBOUGH REAL ESTATE INC. dba MOTHER HERB (“Mother Herb”), NEVCANN LLC (“NEVCANN”), RED EARTH LLC (“Red Earth”), THC NEVADA LLC (“THCNV”), and ZION GARDENS LLC (“Zion”) (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* Amended Complaint.) Plaintiffs also seek 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 once another through a ranking system. (*See* Amended Complaint, pp. 15-16.) If granted, this relief (as well as the other relief sought by Plaintiffs) would directly impact the licenses already award to GreenMart. 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.

II. STATEMENT OF RELEVANT FACTS

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

///

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

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

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

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

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

1 extenuating circumstances prevented the marijuana establishment from receiving a final
2 inspection within the period specified in this subsection. *Id.*

3 On January 4, 2019, Plaintiffs filed their Complaint against the Department.
4 Plaintiffs allege primarily that the process used by the Department is unconstitutional under
5 both the Nevada and United States Constitutions. (*See* Complaint, ¶¶ 38-70.) The Complaint
6 seeks damages and declaratory relief stating that (1) the factors used by the Department to
7 determine who would receive a license do not comply with NRS 453D.210(6) because they
8 are not impartial or a competitive bidding process; and (2) the [Department] violated Section
9 80(5) of the Regulations by issuing multiple retail marijuana licenses to the same entity or
10 group of persons. (Complaint, ¶ 80). If the claims were to be granted, particularly the claim
11 for declaratory relief, GreenMart could lose the licenses granted to it.

12 GreenMart wishes to intervene in this action to protect its unique legal interests in
13 the licenses issued to it by the Department. Accordingly, GreenMart respectfully requests
14 that this Court enter an Order allowing GreenMart to intervene in this action as a defendant,
15 and to file the [Proposed] Answer attached hereto as **Exhibit A**. GreenMart has also attached
16 a [Proposed] Order granting GreenMart's Motion to Intervene as **Exhibit B** for the
17 convenience of the Court.

18 Additionally, as this Court is well aware, multiple other cases have been filed in the
19 Eighth Judicial District Court by various dispensaries against the Department with similar
20 allegations regarding the Department's actions in granting and denying the licenses at issue
21 here. These cases include:

- 22 • *Compassionate Team of Las Vegas, LLC v. Nevada Department of Taxation*, Case
23 No. A-18-786357-W
- 24 • *D.H. Flamingo, Inc. v. State ex rel Department of Taxation*, Case No. A-19-
25 787035-W
- 26 • *High Sierra Holistics v. State of Nevada Department of Taxation*, Case No. A-19-
27 787726-C
- 28 • *MM Development Company, Inc., et al. v. State of Nevada, Department of Taxation*,
Case No. A-18-785818-W

- *Nevada Wellness Center, LLC v. State of Nevada, Department of Taxation*, Case No. A-19-787540-W

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

GreenMart, as well as several other dispensaries that were granted licenses, has been named as a defendant in the *DH Flamingo* action. Additionally, this Court recently granted GreenMart’s Motion to Intervene in the *Serenity Wellness* matter. GreenMart is also moving to intervene in several of these other cases. Further, at an April 22, 2019 status check in *Serenity Wellness* regarding the plaintiffs’ Motion for Preliminary Injunction, the Court stated it is coordinating the above-listed cases for the purposes of the hearing on the Motion for Preliminary Injunction because of the similar constitutional and business issues woven throughout the cases.

III. LEGAL ARGUMENT

A. Legal Standard

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

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

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

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

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

1. GreenMart's Motion to Intervene is Timely.

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

1 litigation).

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

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

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

18 GreenMart has a sufficient interest in the litigation's subject matter. While there is
19 no "bright-line" test to determine if a sufficient interest exists, the Supreme Court of Nevada
20 has held that an applicant must make a showing of a "significant protectable interest." *Am.*
21 *Home Assur. Co.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1127 (2006). Whether a proposed
22 intervenor has a significant protectable interest is a "practical, threshold inquiry," and the
23 party seeking intervention need not establish any "specific legal or equitable interest."
24 *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011)
25 (internal quotations omitted) (quoting *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825,
26 837 (9th Cir. 1996)).

27 To meet its burden, a proposed intervenor "must establish that the interest is
28 protectable under some law and that there is a relationship between the legally protected
interest and the claims at issue." *Citizens for Balanced Use*, 647 F.3d at 897 (citation

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

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

As a practical matter, the disposition of this action may impair or impede GreenMart’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 action, [it] should, as a general rule, be entitled to intervene....” *Id.* at 898 (quoting Fed R. Civ. P. 24 advisory committee’s note).

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

4. GreenMart’s Interest May Not Be Adequately Protected.

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

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

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

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

9 **C. GreenMart Should Be Permitted to Intervene Pursuant to Permissive**
10 **Intervention.**

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

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

21 Moreover, allowing GreenMart to intervene in this suit will not unduly delay or
22 prejudice the adjudication of the current parties' rights. If anything, allowing intervention
23 will promote judicial economy and spare the parties from needing to litigate a similar case in
24 another district. *See Dangberg Holdings Nevada, L.L.C.*, 115 Nev. 129, 142, 978 P.2d 311,
25 319 (1999) (where the court found "bringing all of the parties together in one proceeding
26 before one tribunal will foster the principles of judicial economy and finality"); *see also*
27 *Venegas v. Skaggs*, 867 F.2d 527, 531 (9th Cir. 1989) (noting that "judicial economy is a
28 relevant consideration in deciding a motion for permissive intervention"), *aff'd sub nom.*
Venegas v. Mitchell, 495 U.S. 82, 87 (1990); *cf.* Nev. R. Civ. P. 1 (mandating that the Rules

1 of Civil Procedure “should be construed, administered, and employed by the court and the
2 parties to secure the just, speedy, and inexpensive determination of every action and
3 proceeding”). Accordingly, this Court should grant GreenMart’s Motion to Intervene.

4 **IV. CONCLUSION**

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

10 DATED this the 7th day of May, 2019.

11
12 /s/ Alina M. Shell
13 MARGARET A. MCLETSCHIE, Nevada Bar No. 10931
14 ALINA M. SHELL, Nevada Bar No. 11711
15 MCLETSCHIE LAW
16 701 East Bridger Avenue, Suite 520
17 Las Vegas, NV 89101
18 Telephone: (702) 728-5300
19 Email: maggie@nvlitigation.com
20 *Counsel for Proposed Intervenor, GreenMart of Nevada NLV LLC*
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this the 7th day of May, 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 in *ETW Management Group LLC, et al. v. State of Nevada, Department of Taxation, et al.*, Clark County District Court Case No. A-19-787004-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

/s/ Pharan Burchfield

An Employee of McLetchie Law

**INDEX OF EXHIBITS TO MOTION TO INTERVENE ON ORDER
SHORTENING TIME**

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

EXHIBIT A

1 **ANSC**

2 MARGARET A. MCLEITCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLEITCHIE 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 Intervenor Defendant, GreenMart of Nevada NLV LLC*

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

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

Plaintiffs,

vs.

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

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company,
Intervenor Defendant.

Case No.: A-19-787004-B

Dept. No.: XI

DEFENDANT GREENMART OF
NEVADA NLV LLC'S ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT

Intervenor Defendant GreenMart of Nevada NLV LLC, (“Defendant”) by and through its undersigned counsel, McLetchie Law, hereby answers Plaintiffs’ First Amended Complaint as follows:

Defendant denies each and every allegation in the First Amended Complaint (“FAC”) except those allegations which are hereinafter admitted, qualified, or otherwise answered.

PARTIES

1. Answering paragraph 1 of the FAC, 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 FAC, 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 FAC, 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 FAC, 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 FAC, 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 FAC, 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 FAC, 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.

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

4 9. Answering paragraph 9 of the FAC, Defendant is without sufficient
5 knowledge or information as to the truth or falsity of the allegations contained therein, and
6 on that basis denies these allegations.

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

10 11. Answering paragraph 11 of the FAC, Defendant is without sufficient
11 knowledge or information as to the truth or falsity of the allegations contained therein, and
12 on that basis denies these allegations.

13 12. Answering paragraph 12 of the FAC, 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 13. Answering paragraph 13 of the FAC, Defendant is without sufficient
17 knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis denies these allegations.

19 14. Answering paragraph 14 of the FAC, Defendant is without sufficient
20 knowledge or information as to the truth or falsity of the allegations contained therein, and
21 on that basis denies these allegations.

22 **JURISDICTION AND VENUE**

23 15. Answering paragraph 15 of the FAC, no response is required as the
24 allegations contained therein are Plaintiffs' legal conclusions.

25 16. Answering paragraph 16 of the FAC, no response is required as the
26 allegations contained therein are Plaintiffs' legal conclusions.

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II.

GENERAL ALLEGATIONS

17. In response to paragraph 17 of the FAC, Defendant repeats and reasserts all prior responses as though fully set forth herein.

The Statutory Scheme Governing Retail Marijuana Licenses

18. Answering paragraph 18 of the FAC, Defendant admits these allegations.

19. Answering paragraph 19 of the FAC, Defendant admits these allegations.

20. Answering paragraph 20 of the FAC, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or regulations. To the extent a response is requested and the allegations correctly state the laws or regulations referenced therein, Defendant admits these allegations.

21. Answering paragraph 21 of the FAC, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or regulations. To the extent a response is requested and the allegations correctly state the laws or regulations referenced therein, Defendant admits these allegations.

22. Answering paragraph 22 of the FAC, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or regulations. To the extent a response is requested and the allegations correctly state the laws or regulations referenced therein, Defendant admits these allegations.

23. Answering paragraph 23 of the FAC, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or regulations. To the extent a response is requested and the allegations correctly state the laws or regulations referenced therein, Defendant admits these allegations.

The DOT's Adoption of Flawed Regulations that Do Not Comply with Chapter 453D

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

///

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

10 28. Answering paragraph 28 of the FAC, Defendant is without sufficient
11 knowledge or information as to the truth or falsity of the allegations contained therein, and
12 on that basis deny these allegations.

13 29. Answering paragraph 29 of the FAC, Defendant is without sufficient
14 knowledge or information as to the truth or falsity of the allegations contained therein, and
15 on that basis deny these allegations.

16 30. Answering paragraph 30 of the FAC, Defendant is without sufficient
17 knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis deny these allegations.

19 31. Answering paragraph 31 of the FAC, Defendant is without sufficient
20 knowledge or information as to the truth or falsity of the allegations contained therein, and
21 on that basis deny these allegations.

22 32. Answering paragraph 32(a)-(i) of the FAC, 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 33. Answering paragraph 33 of the FAC, 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 34. Answering paragraph 34 of the FAC, 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 35. Answering paragraph 35 of the FAC, 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 ***Plaintiffs Receive Arbitrary Denials of their Applications for Retail Marijuana Licenses***

8 36. Answering paragraph 36 of the FAC, no response is required as the
9 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
10 content of law or regulations. To the extent a response is required and the allegations
11 correctly state the laws or regulations referenced therein, Defendant admits these allegations.

12 37. Answering paragraph 37 of the FAC, Defendant is without sufficient
13 knowledge or information as to the truth or falsity of the allegations contained therein, and
14 on that basis deny these allegations.

15 38. Answering paragraph 38 of the FAC, Defendant is without sufficient
16 knowledge or information as to the truth or falsity of the allegations contained therein, and
17 on that basis deny these allegations.

18 39. Answering paragraph 39 of the FAC, Defendant is without sufficient
19 knowledge or information as to the truth or falsity of the allegations contained therein, and
20 on that basis deny these allegations.

21 40. Answering paragraph 40 of the FAC, Defendant is without sufficient
22 knowledge or information as to the truth or falsity of the allegations contained therein, and
23 on that basis deny these allegations.

24 41. Answering paragraph 41 of the FAC, Defendant is without sufficient
25 knowledge or information as to the truth or falsity of the allegations contained therein, and
26 on that basis deny these allegations.

27 42. Answering paragraph 42 of the FAC, Defendant is without sufficient
28 knowledge or information as to the truth or falsity of the allegations contained therein, and

on that basis deny these allegations.

43. Answering paragraph 43 of the FAC, Defendant is without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis deny these allegations.

44. Answering paragraph 44 of the FAC, Defendant is without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis deny these allegations.

45. Answering paragraph 45(a)-(d) of the FAC, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendant denies these allegations.

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

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

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

FIRST CLAIM FOR RELIEF

Violation of Substantive Due Process

49. Answering paragraph 49 of the FAC, Defendant repeats and realleges its answers to paragraphs 1 through 48 above, and incorporates the same herein by reference as though fully set forth herein.

50. Answering paragraph 50 of the FAC, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content 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 51. Answering paragraph 51 of the FAC, no response is required as the
4 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
5 content 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 52. Answering paragraph 52 of the FAC, no response is required as the
9 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
10 required, Defendant is without sufficient knowledge or information as to the truth or falsity
11 of the allegations contained therein, and on that basis deny these allegations.

12 53. Answering paragraph 53 of the FAC, no response is required as the
13 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
14 required, Defendant is without sufficient knowledge or information as to the truth or falsity
15 of the allegations contained therein, and on that basis deny these allegations.

16 54. Answering paragraph 54 of the FAC, Defendant is without sufficient
17 knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis deny the allegations.

19 55. Answering paragraph 55 of the FAC, 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 56. Answering paragraph 56 of the FAC, no response is required as the
23 allegations contained therein are not factual in nature and/or contain legal conclusions. To
24 the extent a response is required, Defendant denies these allegations.

25 57. Answering paragraph 57(a)-(f) of the FAC, no response is required as the
26 allegations contained therein are not factual in nature and/or contain legal conclusions. To
27 the extent a response is required, Defendant denies these allegations.

28 ///

1 58. Answering paragraph 58 of the FAC, no response is required as the
2 allegations contained therein are not factual in nature and/or contain legal conclusions. To
3 the extent a response is required, Defendant denies these allegations.

4 59. Answering paragraph 59 of the FAC, no response is required as the
5 allegations contained therein are not factual in nature and/or contain legal conclusions. To
6 the extent a response is required, Defendant denies these allegations.

7 60. Answering paragraph 60 of the FAC, no response is required as the
8 allegations contained therein are not factual in nature and/or contain legal conclusions. To
9 the extent a response is required, Defendant denies these allegations.

10
11 **SECOND CLAIM FOR RELIEF**

12 **Violation of Procedural Due Process**

13 61. Answering paragraph 61 of the FAC, Defendant hereby repeats and
14 realleges its answers to paragraphs 1 through 60 above, and incorporates the same herein by
15 reference as though fully set forth herein.

16 62. Answering paragraph 62 of the FAC, no response is required as the
17 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
18 content of laws or regulations. To the extent a response is required and the allegations
19 accurately state the laws or regulations referenced therein, Defendant admits these
20 allegations.

21 63. Answering paragraph 63 of the FAC, no response is required as the
22 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
23 content of laws or regulations. To the extent a response is required and the allegations
24 accurately state the laws or regulations referenced therein, Defendant admits these
25 allegations.

26 64. Answering paragraph 64 of the FAC, no response is required as the
27 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
28 required, Defendant is without sufficient knowledge or information regarding the truth or

1 falsity of the information contained therein, and on that basis deny these allegations.

2 65. Answering paragraph 65 of the FAC, no response is required as the
3 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
4 required, Defendant is without sufficient knowledge or information regarding the truth or
5 falsity of the information contained therein, and on that basis deny these allegations.

6 66. Answering paragraph 66 of the FAC, no response is required as the
7 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
8 content of laws or regulations. To the extent a response is required and the allegations
9 accurately state the laws or regulations referenced therein, Defendant admits these
10 allegations.

11 67. Answering paragraph 67 of the FAC, Defendant is without sufficient
12 knowledge or information as to the truth or falsity of the allegations contained therein, and
13 on that basis denies these allegations.

14 68. Answering paragraph 68 of the FAC, no response is required as the
15 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
16 required, Defendant is without sufficient knowledge or information as to the truth or falsity
17 of the allegations contained therein, and on that basis denies these allegations.

18 69. Answering paragraph 69 of the FAC, no response is required as the
19 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
20 required, Defendant is without sufficient knowledge or information as to the truth or falsity
21 of the allegations contained therein, and on that basis denies these allegations.

22 70. Answering paragraph 70 of the FAC, no response is required as the
23 allegations contained therein are not factual in nature and/or contain legal conclusions. To
24 the extent a response is required, Defendant denies these allegations.

25 71. Answering paragraph 71 of the FAC, no response is required as the
26 allegations contained therein are not factual in nature and/or contain legal conclusions. To
27 the extent a response is required, Defendant denies these allegations.

28

1 72. Answering paragraph 72 of the FAC, no response is required as the
2 allegations contained therein are not factual in nature and/or contain legal conclusions. To
3 the extent a response is required, Defendant denies these allegations.

4
5 **THIRD CLAIM FOR RELIEF**

6 **Violation of Equal Protection**

7 73. Answering paragraph 73 of the FAC, Defendant repeats and realleges its
8 answers to paragraphs 1 through 72 above, and incorporates the same herein by reference as
9 though fully set forth herein.

10 74. Answering paragraph 74 of the FAC, no response is required as the
11 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
12 content of laws or regulations. To the extent a response is required and the allegations
13 accurately state the laws or regulations referenced therein, Defendant admits these
14 allegations.

15 75. Answering paragraph 75 of the FAC, no response is required as the
16 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
17 content of laws or regulations. To the extent a response is required and the allegations
18 accurately state the laws or regulations referenced therein, Defendant admits these
19 allegations.

20 76. Answering paragraph 76 of the FAC, no response is required as the
21 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
22 required, Defendant is without sufficient knowledge or information as to the truth or falsity
23 of the allegations contained therein, and on that basis denies these allegations.

24 77. Answering paragraph 77 of the FAC, no response is required as the
25 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
26 required, Defendant is without sufficient knowledge or information as to the truth or falsity
27 of the allegations contained therein, and on that basis denies these allegations.

28 ///

1 78. Answering paragraph 78 of the FAC, Defendant is without sufficient
2 knowledge or information as to the truth or falsity of the allegations contained therein. To
3 the extent a response is required, Defendant denies these allegations.

4 79. Answering paragraph 79 of the FAC, no response is required as the
5 allegations contained therein are not factual in nature and/or contain legal conclusions. To
6 the extent a response is required, Defendant denies these allegations.

7 80. Answering paragraph 80 of the FAC, no response is required as the
8 allegations contained therein are not factual in nature and/or contain legal conclusions. To
9 the extent a response is required, Defendant denies these allegations.

10 81. Answering paragraph 81(a)-(f) of the FAC, 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 82. Answering paragraph 82 of the FAC, no response is required as the
14 allegations contained therein are not factual in nature and/or contain legal conclusions. To
15 the extent a response is required, Defendant denies these allegations.

16 83. Answering paragraph 83 of the FAC, no response is required as the
17 allegations contained therein are not factual in nature and/or contain legal conclusions. To
18 the extent a response is required, Defendant denies these allegations.

19 84. Answering paragraph 84 of the FAC, no response is required as the
20 allegations contained therein are not factual in nature and/or contain legal conclusions. To
21 the extent a response is required, Defendant denies these allegations.

22
23 **FOURTH CLAIM FOR RELIEF**

24 **Declaratory Judgment**

25 85. Answering paragraph 85 of the FAC, Defendant repeats and realleges its
26 answers to paragraphs 1 through 84 above, and incorporates the same by reference herein as
27 though fully set forth herein.

28 ///

1 86. Answering paragraph 86 of the FAC, no response is required as the
2 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
3 contents of laws or regulations. To the extent a response is required and the allegations
4 accurately state the laws or regulations referenced therein, Defendant admits these
5 allegations.

6 87. Answering paragraph 87 of the FAC, Defendant is without sufficient
7 knowledge or information regarding the truth or falsity of the allegations contained therein,
8 and on that basis denies these allegations.

9 88. Answering paragraph 88 of the FAC, no response is required as the
10 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
11 contents of laws or regulations. To the extent a response is required and the allegations
12 accurately state the laws or regulations referenced therein, Defendant admits these
13 allegations.

14 89. Answering paragraph 89 of the FAC, no response is required as the
15 allegations contained therein are not factual in nature and/or contain legal conclusions. To
16 the extent a response is required, Defendant denies these allegations.

17 90. Answering paragraph 90(a)-(f) of the FAC, no response is necessary as the
18 allegations contained therein are not factual in nature and/or contain legal conclusions. To
19 the extent a response is required, Defendant denies these allegations.

20 91. Answering paragraph 91 of the FAC, no response is required as the
21 allegations contained therein are not factual in nature and/or contain legal conclusions. To
22 the extent a response is required, Defendant denies these allegations.

23 92. Answering paragraph 92 of the FAC, no response is required as the
24 allegations contained therein are not factual in nature and/or contain legal conclusions. To
25 the extent a response is required, Defendant denies these allegations.

26 93. Answering paragraph 93 of the FAC, no response is required as the
27 allegations contained therein are not factual in nature and/or contain legal conclusions. To
28 the extent a response is required, Defendant denies these allegations.

94. Answering paragraph 94 of the FAC, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendant is without sufficient information or knowledge as to the truth or falsity of the allegations contained therein, and on that basis deny these allegations.

95. Answering paragraph 95 of the FAC, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendant denies these allegations.

96. Answering paragraph 96 of the FAC, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendant is without sufficient information or knowledge as to the truth or falsity of the allegations contained therein, and on that basis deny these allegations.

GENERAL DENIAL

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

ANSWER TO PRAYER FOR RELIEF

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

AFFIRMATIVE DEFENSES

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

FIRST AFFIRMATIVE DEFENSE

Defendant expressly reserves the right to amend this answer to bring counterclaims against Plaintiff.

1 **SECOND AFFIRMATIVE DEFENSE**

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

4 **THIRD AFFIRMATIVE DEFENSE**

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

7 **FOURTH 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 **FIFTH 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, if any.

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.

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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 FAC.
2. The FAC, and all causes of action alleged against Defendant therein be

1 dismissed with prejudice.

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

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

5
6 DATED this the ____ day of May, 2019.

7
8
9 MARGARET A. MCLEITCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
MCLEITCHIE LAW
10 701 East Bridger Avenue, Suite 520
11 Las Vegas, NV 89101
12 Telephone: (702) 728-5300
13 Email: maggie@nvlitigation.com
14 *Counsel for Intervenor Defendant, GreenMart of Nevada NLV LLC*

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on this ____ day of May, 2019, pursuant to Administrative
17 Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing DEFENDANT
18 GREENMART OF NEVADA NLV LLC'S ANSWER TO PLAINTIFFS' FIRST
19 AMENDED COMPLAINT in *ETW Management Group, LLC et al. v. State of Nevada,*
20 *Department of Taxation, et al.*, Clark County District Court Case No. A-19-787004-B, to be
21 served electronically using the Odyssey File & Serve system, to all parties with an email
22 address on record.

23
24 An Employee of McLetchie Law

EXHIBIT B

ORDER

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 Intervenor Defendant, GreenMart of Nevada NLV 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; GREEN THERAPEUTICS LLC, a Nevada limited liability company; HERBAL CHOICE INC., a Nevada corporation; JUST QUALITY, LLC, a Nevada limited liability company; LIBRA WELLNESS CENTER, LLC, a Nevada limited liability company; ROMBOUGH REAL ESTATE INC. dba MOTHER HERB, a Nevada corporation; NEVCANN LLC, a Nevada limited liability company; RED EARTH LLC, a Nevada limited liability company; THC NEVADA LLC, a Nevada limited liability company; and ZION GARDENS LLC, a Nevada limited liability company,

Plaintiffs,

vs.

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

GREENMART OF NEVADA NLV LLC, a Nevada limited liability company,
Intervenor Defendant.

Case No.: A-19-787004-B

Dept. No.: XI

**ORDER GRANTING DEFENDANT
GREENMART OF NEVADA NLV
LLC'S MOTION TO INTERVENE**

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

3 IT IS HEREBY ORDERED:

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

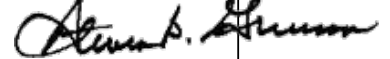
7 The proposed answer attached to the Motion to Intervene as Exhibit A shall be filed
8 in this case.

9
10
11 _____
12 Date

The Honorable Judge Elizabeth Gonzalez

13 Respectfully submitted by:

14
15 _____
16 MARGARET A. MCLETTCHIE, Nevada Bar No. 10931
17 ALINA M. SHELL, Nevada Bar No. 11711
18 MCLETTCHIE LAW
19 701 East Bridger Avenue, Suite 520
20 Las Vegas, NV 89101
21 Telephone: (702) 728-5300
22 Fax: (702) 425-8220
23 Email: maggie@nvlitigation.com
24 *Counsel for Intervenor Defendant, GreenMart of Nevada NLV LLC*
25
26
27
28



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*

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

12 NEVADA WELLNESS CENTER, LLC, a
13 Nevada limited liability company,

14 Plaintiff,

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF
17 TAXATION; and NEVADA ORGANIC
18 REMEDIES, LLC,

19 Defendants.

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

22 Applicant in Intervention.

Case No.: A-19-787540-W

Dept. No.: XVIII

MOTION TO INTERVENE

HEARING REQUESTED

Date: _____

Time: _____

23 GreenMart of Nevada NLV LLC ("GreenMart"), by and through its undersigned
24 counsel, respectfully moves to intervene in the above-captioned case pursuant to Nevada
25 Rule of Civil Procedure 24 and Nev. Rev. Stat. § 12.130.

26 ///

27 ///

28 ///

///

///

///

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 7th day of May, 2019.

/s/ Alina M. Shell

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

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.

Plaintiff Nevada Wellness Center, LLC (“Plaintiff”) 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.) Plaintiff also seeks injunctive relief 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 once another through a ranking system. (*See* Complaint, ¶¶ 35 - 42.) If granted, this relief (as well as the other relief sought by Plaintiff) would directly impact the licenses already award to GreenMart. Thus, GreenMart 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 ///

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

On January 15, 2019, Plaintiff filed its Complaint against the Department. Plaintiff alleges that the Department improperly granted licenses to certain applicants while improperly failing to grant licenses to Plaintiff. Specifically, Plaintiff alleges that the “Department acted arbitrarily and capriciously in [denying Plaintiff’s application because it] lacked substantial evidence to deny the application; and [it] denied the application solely to approve other competing applicants without regard to the merit of Plaintiff’s application.” (Complaint, ¶ 70.)

The Complaint contains numerous claims for relief, including a claim for declaratory relief (*Id.*, ¶¶ 24-34), a claim for injunctive relief (*id.*, ¶¶ 35-42), claims for violation of procedural due process, substantive due process and equal protection rights (*id.*, ¶¶ 43-49, 50-54, 55-60), a petition for judicial review (*id.*, ¶¶ 61-66), and a petition for a writ of mandamus. (*id.*, ¶¶ 67-72.) Plaintiff essentially asks the Court to reverse the granting of licenses to parties such as GreenMart and to grant Plaintiff those licenses.

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

III. LEGAL ARGUMENT

A. Legal Standard

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

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

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

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

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

However, when evaluating whether the requirements for intervention of right are met,
a court generally follows practical and equitable considerations and construes the governing
rule broadly in favor of proposed intervenors. *Wilderness Soc’y v. U.S. Forest Service*, 630
F.3d 1173, 1179 (9th Cir. 2011) (en banc) (quoting *United States v. City of Los Angeles*, 288
F.3d 391, 397 (9th Cir. 2002)). This is because “[a] liberal policy in favor of intervention
serves both efficient resolution of issues and broadened access to the Courts.” *Wilderness*
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 Plaintiff nor the other parties currently involved in this action—including the Department—
9 because the case is in the early stages of litigation. *See Citizens for Balanced Use v. Montana*
10 *Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (finding that the parties would not have
11 suffered prejudice from the grant of intervention at the early stage of litigation).

12 Even though the Department filed an answer to Plaintiff’s Complaint on May 2,
13 2019, it is still very early in litigation. In *Citizens for Balanced Use*, the Ninth Circuit found
14 that a motion filed less than three months after the complaint was filed and less than two
15 weeks after the first filing of an answer to the complaint was timely. *Id.* at 897. The Court
16 reasoned that an intervention so early in the litigation would not cause disruption or delay in
17 the proceedings. *Id.* These are traditional features of a timely motion. *See Nw. Forest Res.*
18 *Council v. Glickman*, 82 F.3d 825, 836 (9th Cir.1996). Similarly, here, there will be no delay
19 resulting from GreenMart’s intervention.

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

26 **2. GreenMart Has a Sufficient Interest in the Litigation’s Subject**
27 **Matter.**

28 GreenMart has a sufficient interest in the litigation’s subject matter. While there is
no “bright-line” test to determine if a sufficient interest exists, the Supreme Court of Nevada

1 has held that an applicant must make a showing of a “significant protectable interest.” *Am.*
2 *Home Assur. Co.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1127 (2006). Whether a proposed
3 intervenor has a significant protectable interest is a “practical, threshold inquiry,” and the
4 party seeking intervention need not establish any “specific legal or equitable interest.”
5 *Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011)
6 (internal quotations omitted) (quoting *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825,
7 837 (9th Cir. 1996)).

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

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

22 **3. The Disposition of This Action May Impair or Impede GreenMart’s**
23 **Ability to Protect Its Interests.**

24 As a practical matter, the disposition of this action may impair or impede
25 GreenMart’s ability to protect its interests. Once a significant protectable interest is
26 established, courts look to whether the proposed intervenor’s ability to protect that interest
27 would be “impair[ed] or impede[ed]” by “the disposition of the action.” *Citizens for*
28 *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 action, [it] should, as a general

rule, be entitled to intervene....” *Id.* at 898 (quoting Fed R. Civ. P. 24 advisory committee's note).

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

4. GreenMart’s Interest May Not Be Adequately Protected.

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

“The most important factor in assessing the adequacy of representation is how the interest compares with the interests of existing parties.” *Citizens for Balanced Use*, 647 F.3d at 898 (internal quotation and citation omitted). Where a proposed intervenor and an existing party “share the same ultimate objective, a presumption of adequacy of representation

arises.” *Id.* (citation omitted). A presumption of adequacy “must be rebutted with a compelling showing.” *Id.* (citation omitted).

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

There are currently no other intervenors in the instant case—even if there were, they would likely not be not adequate representatives of GreenMart’s interests. To obtain any one of the licenses an applicant had to rank higher than other applicants in any given jurisdiction. Thus, all applicants are competing with one another for a limited supply of licenses, and their interests are therefore necessarily divergent. Plaintiff has challenged the entire ranking process, and to the extent that Plaintiff’s challenge is considered, GreenMart will need to defend its licenses against all other applicants, including current license holders. Thus, GreenMart has met its minimal burden of showing that their interests may not be adequately represented.

C. GreenMart Should Be Permitted to Intervene Pursuant to Permissive Intervention.

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

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1 As discussed above, GreenMart’s motion to intervene is timely and will not
2 prejudice any of the parties in the case. Additionally, GreenMart’s defense and anticipated
3 counterclaims present a common question of law and question of fact with the main action.
4 Moreover, allowing GreenMart to intervene in this suit will not unduly delay or
5 prejudice the adjudication of the current parties’ rights. If anything, allowing intervention
6 will promote judicial economy and spare the parties from needing to litigate a similar case in
7 another district. *See Dangberg Holdings Nevada, L.L.C.*, 115 Nev. 129, 142, 978 P.2d 311,
8 319 (1999) (where the court found “bringing all of the parties together in one proceeding
9 before one tribunal will foster the principles of judicial economy and finality”); *see also*
10 *Venegas v. Skaggs*, 867 F.2d 527, 531 (9th Cir. 1989) (noting that “judicial economy is a
11 relevant consideration in deciding a motion for permissive intervention”), *aff’d sub nom.*
12 *Venegas v. Mitchell*, 495 U.S. 82, 87 (1990); *cf.* Nev. R. Civ. P. 1 (mandating that the Rules
13 of Civil Procedure “should be construed, administered, and employed by the court and the
14 parties to secure the just, speedy, and inexpensive determination of every action and
15 proceeding”). Accordingly, this Court should grant GreenMart’s Motion to Intervene.
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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 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 7th day of May, 2019.

/s/ Alina M. Shell

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

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 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 in *Nevada Wellness Center, LLC, et al. v. State of Nevada, Department of Taxation, et al.*, Clark County District Court Case No A-19-787540-W, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

/s/ Pharan Burchfield

An Employee of McLetchie Law

INDEX OF EXHIBITS TO MOTION TO INTERVENE

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

EXHIBIT A

1 **ANSC**
2 MARGARET A. MCLEITCHIE, Nevada Bar No. 10931
3 ALINA M. SHELL, Nevada Bar No. 11711
4 MCLEITCHIE 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 Intervenor Defendant, GreenMart of Nevada NLV LLC*

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

12 NEVADA WELLNESS CENTER, LLC, a
13 Nevada limited liability company,

14 Plaintiff,

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF
17 TAXATION; and NEVADA ORGANIC
18 REMEDIES, LLC,

19 Defendants.

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

22 Intervenor Defendant.

Case No.: A-19-787540-W

Dept. No.: XVIII

DEFENDANT GREENMART OF
NEVADA NLV LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT

23 Intervenor Defendant GreenMart of Nevada NLV LLC, ("Defendant") by and
24 through its undersigned counsel, McLetchie Law, hereby answers the Complaint
25 ("Complaint") filed by Plaintiff Nevada Wellness Center, LLC, as follows:

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

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I.

PARTIES & JURISDICTION

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.

II.

GENERAL ALLEGATIONS

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

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

6. Answering paragraph 6 of the Complaint, Defendant admits these allegations.

7. Answering paragraph 7 of the Complaint, Defendant admits these allegations.

8. Answering paragraph 8 of the Complaint, no response is required as the

1 allegations contained therein are Plaintiff's legal conclusions or statements regarding the
2 contents of laws or regulations. To the extent a response is required and the allegations
3 accurately state the laws or regulations referenced therein, Defendant admits these
4 allegations.

5 9. Answering paragraph 9 of the Complaint, Defendant admits that the
6 Department of Taxation announced it would issue recreational retail store licenses no later
7 than December 5, 2018. Defendant denies these allegations to the extent that it imposes a
8 legal obligation on the Department that is inconsistent or outside of the requirements set forth
9 in Nev. Rev. Stat. § 453D.210.

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

13 11. Answering paragraph 11 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 12. Answering paragraph 12 of the Complaint, Defendant is without sufficient
17 knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis denies these allegations.

19 13. Answering paragraph 13 of the Complaint, no response is required as the
20 allegations contained therein are Plaintiff's legal conclusions or statements regarding the
21 contents of laws or regulations. To the extent a response is required and the allegations
22 accurately state the laws or regulations referenced therein, Defendant admits these
23 allegations.

24 14. Answering paragraph 14 of the Complaint, no response is required as the
25 allegations contained therein are Plaintiff's legal conclusions or statements regarding the
26 contents of laws or regulations. To the extent a response is required and the allegations
27 accurately state the laws or regulations referenced therein, Defendant admits these
28 allegations.

1 15. Answering paragraph 15 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 denies these allegations.

4 16. Answering paragraph 16 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 denies these allegations.

7 17. Answering paragraph 17 of the Complaint, Defendant is without sufficient
8 knowledge or information as to the truth or falsity of the allegations contained therein, and
9 on that basis denies these allegations.

10 18. Answering paragraph 18 of the Complaint, Defendant is without sufficient
11 knowledge or information as to the truth or falsity of the allegations contained therein, and
12 on that basis denies these allegations.

13 19. Answering paragraph 19 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 20. Answering paragraph 20 of the Complaint, Defendant is without sufficient
17 knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis denies these allegations.

19 21. Answering paragraph 21 of the Complaint, Defendant is without sufficient
20 knowledge or information as to the truth or falsity of the allegations contained therein, and
21 on that basis denies these allegations.

22 22. Answering paragraph 22 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 23. Answering paragraph 23 of the Complaint, no response is required as the
26 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
27 required, Defendant denies these allegations.

28 ///

III.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Declaratory Relief)

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

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

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

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

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

29. Answering paragraph 29 of the Complaint, no response is required as the allegations contained therein are Plaintiff's legal conclusions. To the extent a response is required, Defendant denies these allegations.

30. Answering paragraph 30 of the Complaint, no response is required as the allegations contained therein are Plaintiff's legal conclusions. To the extent a response is required, Defendant denies these allegations.

31. Answering paragraph 31 of the Complaint, no response is required as the allegations contained therein are Plaintiff's legal conclusions. To the extent a response is required, Defendant denies these allegations.

1 32. Answering paragraph 32 of the Complaint, no response is required as the
2 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
3 required, Defendant denies these allegations.

4 33. Answering paragraph 33 of the Complaint, no response is required as the
5 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
6 required, Defendant denies these allegations.

7 34. Answering paragraph 34 of the Complaint, no response is required as the
8 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
9 required, Defendant denies these allegations.

10
11 **SECOND CLAIM FOR RELIEF**
12 **(Injunctive Relief)**

13 35. Answering paragraph 35 of the Complaint, Defendant hereby repeats and
14 realleges its answers to paragraphs 1 through 34 above, and incorporates the same herein by
15 reference as though fully set forth herein.

16 36. Answering paragraph 36 of the Complaint, no response is required as the
17 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
18 required, Defendant denies these allegations.

19 37. Answering paragraph 37 of the Complaint, no response is required as the
20 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
21 required, Defendant denies these allegations.

22 38. Answering paragraph 38 of the Complaint, no response is required as the
23 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
24 required, Defendant denies these allegations.

25 39. Answering paragraph 39 of the Complaint, no response is required as the
26 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
27 required, Defendant denies these allegations.

28 40. Answering paragraph 40 of the Complaint, no response is required as the
 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is

1 required, Defendant denies these allegations.

2 41. Answering paragraph 41 of the Complaint, no response is required as the
3 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
4 required, Defendant denies these allegations.

5 42. Answering paragraph 42 of the Complaint, no response is required as the
6 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
7 required, Defendant denies these allegations.

8

9 **THIRD CLAIM FOR RELIEF**
10 **(Violation of Procedural Due Process)**

11 43. Answering paragraph 43 of the Complaint, Defendant repeats and realleges
12 its answers to paragraphs 1 through 42 above, and incorporates the same herein by reference
13 as though fully set forth herein.

14 44. Answering paragraph 44 of the Complaint, no response is required as the
15 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
16 required, Defendant denies these allegations.

17 45. Answering paragraph 45 of the Complaint, no response is required as the
18 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
19 required, Defendant denies these allegations.

20 46. Answering paragraph 46 of the Complaint, no response is required as the
21 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
22 required, Defendant denies these allegations.

23 47. Answering paragraph 47 of the Complaint, no response is required as the
24 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
25 required, Defendant denies these allegations.

26 48. Answering paragraph 48 of the Complaint, no response is required as the
27 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
28 required, Defendant denies these allegations.

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1 49. Answering paragraph 49 of the Complaint, no response is required as the
2 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
3 required, Defendant denies these allegations.

4
5 **FOURTH CLAIM FOR RELIEF**
6 **(Violation of Substantive Due Process)**

7 50. Answering paragraph 50 of the Complaint, Defendant repeats and realleges
8 its answers to paragraphs 1 through 49 above, and incorporates the same by reference herein
9 as though fully set forth herein.

10 51. Answering paragraph 51 of the Complaint, no response is required as the
11 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
12 required, Defendant denies these allegations.

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

22 **FIFTH CLAIM FOR RELIEF**
23 **(Equal Protection Violation)**

24 55. Answering paragraph 55 of the Complaint, Defendant repeats and realleges
25 its answers to paragraphs 1 through 54 above, and incorporates the same herein by reference
26 as though fully set forth herein.

27 56. Answering paragraph 56 of the Complaint, no response is required as the
28 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
 required, Defendant denies these allegations.

1 57. Answering paragraph 57 of the Complaint, no response is required as the
2 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
3 required, Defendant denies these allegations.

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

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

10 60. Answering paragraph 60 of the Complaint, no response is required as the
11 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
12 required, Defend

13 **SIXTH CLAIM FOR RELIEF**
14 **(Petition for Judicial Review)**

15 61. Answering paragraph 61 of the Complaint, Defendant repeats and realleges
16 its answers to paragraphs 1 through 60 above, and incorporates the same herein by reference
17 as though fully set forth herein.

18 62. Answering paragraph 62 of the Complaint, no response is required as the
19 allegations contained therein are Plaintiff's legal conclusions. To the extent a response is
20 required, Defendant denies these allegations.

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

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

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

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

SEVENTH CLAIM FOR RELIEF
(Petition for Writ of Mandamus)

67. Answering paragraph 67 of the Complaint, Defendant repeats and realleges its answers to paragraphs 1 through 66 above, and incorporates the same herein by reference as though fully set forth herein.

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

69. Answering paragraph 69 of the Complaint, no response is required as the allegations contained therein are Plaintiff's legal conclusions. To the extent a response is required, Defendant denies these allegations.

70. Answering paragraph 70 of the Complaint, no response is required as the allegations contained therein are Plaintiff's legal conclusions. To the extent a response is required, Defendant denies these allegations.

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

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

GENERAL DENIAL

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

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1 **ANSWER TO PRAYER FOR RELIEF**

2 Answering the allegations contained in the entirety of Plaintiff's prayer for relief,
3 Defendant denies that Plaintiffs are entitled to the relief sought therein or to any relief in this
4 matter.

5 **AFFIRMATIVE DEFENSES**

6 Defendant, without altering the burdens of proof the parties must bear, asserts the
7 following affirmative defenses to Plaintiff's Complaint, and all causes of action alleged
8 therein, and specifically incorporates into these affirmative defenses its answers to the
9 preceding paragraphs of the Complaint as if fully set forth herein.

10 **FIRST AFFIRMATIVE DEFENSE**

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

13 **SECOND AFFIRMATIVE DEFENSE**

14 Plaintiff has not been damaged directly, indirectly, proximately, or in any manner
15 whatsoever by any conduct of Defendant.

16 **THIRD AFFIRMATIVE DEFENSE**

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

19 **FOURTH AFFIRMATIVE DEFENSE**

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

22 **FIFTH AFFIRMATIVE DEFENSE**

23 Plaintiff's claims are barred because Plaintiff has failed to exhaust administrative
24 remedies.

25 **SIXTH AFFIRMATIVE DEFENSE**

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

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 Plaintiff has failed to join necessary and indispensable parties to this litigation
3 under Nev. R. Civ. P. 19, as the Court cannot grant any of Plaintiff's claims without affecting
4 the rights and privileges of those parties who received the licenses at issue as well as other
5 third parties.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 The claims, and each of them, are barred by the failure of Plaintiff to plead those
8 claims with sufficient particularity.

9 **NINTH AFFIRMATIVE DEFENSE**

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

12 **TENTH AFFIRMATIVE DEFENSE**

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

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 Plaintiff has no constitutional right to obtain privileged licenses.

17 **TWELFTH AFFIRMATIVE DEFENSE**

18 Plaintiff is not entitled to judicial review on the denial of a privileged license.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

23 Declaratory relief will not give the Plaintiff the relief it is seeking.

24 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

1 investigation warrants.

2 **SIXTEENTH AFFIRMATIVE DEFENSE**

3 Defendant expressly reserves the right to amend this Answer to bring counterclaims
4 against Plaintiff.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Defendant prays for judgment as follows:

- 7 1. Plaintiff takes nothing by way of its Complaint.
- 8 2. The Complaint, and all causes of action alleged against Defendant therein
9 be dismissed with prejudice.
- 10 3. For reasonable attorney's fees and costs be awarded to Defendant.
- 11 4. For any such other and further relief the Court deems just and proper under
12 the circumstances.

13
14 DATED this the ____ day of May, 2019.

15
16
17 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
18 ALINA M. SHELL, Nevada Bar No. 11711
19 MCLEATCHIE LAW
20 701 East Bridger Avenue, Suite 520
21 Las Vegas, NV 89101
22 Telephone: (702) 728-5300
23 Email: maggie@nvlitigation.com
24 *Counsel for Intervenor Defendant, GreenMart of Nevada NLV LLC*
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of May, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing DEFENDANT GREENMART OF NEVADA NLV LLC'S ANSWER TO PLAINTIFF'S Complaint in *Nevada Wellness Center, LLC, et al. v. State of Nevada, Department of Taxation, et al.*, Clark County District Court Case No A- 19-787540-W, 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

1 **ORDER**

MARGARET A. MCLEITCHIE, Nevada Bar No. 10931

2 ALINA M. SHELL, Nevada Bar No. 11711

3 MCLEITCHIE LAW

701 East Bridger Avenue, Suite 520

4 Las Vegas, NV 89101

Telephone: (702) 728-5300

5 Email: maggie@nvlitigation.com

6 *Counsel for Proposed Intervenor, GreenMart of Nevada NLV LLC*

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

9 NEVADA WELLNESS CENTER, LLC, a
Nevada limited liability company,

10 Plaintiff,

11 vs.

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

15 Defendants.

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

18 Applicant in Intervention.
19

Case No.: A-19-787540-W

Dept. No.: XVIII

**ORDER GRANTING GREENMART
OF NEVADA NLV LLC'S MOTION
TO INTERVENE**

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

22 IT IS HEREBY ORDERED:

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

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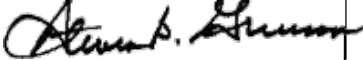
The proposed answer attached to the Motion to Intervene as Exhibit A shall be filed
in this case.

Date

DISTRICT COURT JUDGE

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
Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Counsel for Intervenor Defendant, GreenMart of Nevada NLV LLC



ORD
BLACK & LOBELLO
Brigid M. Higgins, Esq.
Nevada Bar No. 5990
Rusty J. Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
Telephone: (702) 869-8801
Facsimile: (702) 869-2669
E-mail: bhiggins@blacklobello.law
Email: rgraf@blacklobello.law
Attorneys for Intervenor
Clear River, 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, 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,

v.

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

Defendants.

CLEAR RIVER, LLC, a Nevada limited liability
company,

Applicant in Intervention.

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

**ORDER GRANTING CLEAR RIVER, LLC'S
MOTION TO INTERVENE**


BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

1
2
3 The Court, having reviewed the Applicant Clear River, LLC's Motion to Intervene, and
4 no opposition was filed and good cause appearing,

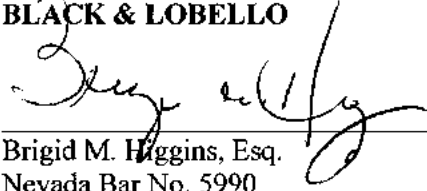
5 IT IS HEREBY ORDERED:

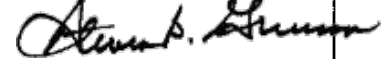
6 Applicant's Motion to Intervene is granted, and Clear River, LLC shall Intervene as a
7 Defendant/Real Party in Interest in the above-captioned case as a necessary party to the action.
8 pursuant to NRCP 24 and NRS 12.130.
9

10
11 
12 DISTRICT COURT JUDGE
13 DATED: May 8, 2019.

14 Respectfully submitted by:

15 **BLACK & LOBELLO**

16 
17 Brigid M. Higgins, Esq.
18 Nevada Bar No. 5990
19 Rusty Graf, Esq.
20 Nevada Bar No. 6322
21 10777 W. Twain Ave., Third Floor
22 Las Vegas, Nevada 89135
23 *Attorneys for Clear River, LLC*
24 *Applicant in Intervention*
25
26
27
28



1 **JOPP**
2 **BLACK & LOBELLO**
3 Brigid M. Higgins, Esq.
4 Nevada Bar No. 5990
5 Rusty J. Graf, Esq.
6 Nevada Bar No. 6322
7 10777 West Twain Avenue, 3rd Floor
8 Las Vegas, Nevada 89135
9 Telephone: (702) 869-8801
10 Facsimile: (702) 869-2669
11 E-mail: bhiggins@blacklobello.law
12 E-mail: rgraf@blacklobello.law
13 *Attorneys for Defendant Intervenor*
14 *Clear River, LLC*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

22 Plaintiffs,

23 STATE OF NEVADA, DEPARTMENT OF
24 TAXATION,

24 Defendant.

25 CLEAR RIVER, LLC, a Nevada limited liability
26 company,

27 Defendant in Intervention

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

**CLEAR RIVER, LLC'S
JOINDER TO NEVADA
ORGANIC REMEDIES, LLC'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

1 Defendant in Intervention Clear River, LLC ("Clear River"), by and through its counsel,
2 Brigid M. Higgins, Esq. and Rusty Graf, Esq. of the law firm of Black & LoBello, hereby
3 submits its Joinder ("Joinder") to Nevada Organic Remedies, LLC's Opposition to Plaintiffs'
4 Motion For Preliminary Injunction ("NOR Opposition").

5
6 Clear River, LLC's Joinder is based upon the pleadings, papers and other records on file,
7 and any further evidence and argument this Court may entertain at the time of hearing on the
8 Plaintiffs' Motion For Preliminary Injunction ("Motion") filed by the Serenity Plaintiffs on
9 March 19, 2019.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 On December 5, 2018, the Department of Taxation issued sixty-one (61) recreational
12 marijuana retail store conditional licenses, including 10 licenses for Unincorporated Clark
13 County, Nevada; 10 licenses for Las Vegas, Nevada; 6 licenses for Henderson, Nevada; 5
14 licenses for North Las Vegas, Nevada; 6 licenses for Reno, Nevada; 1 license for Sparks,
15 Nevada; and 1 license for Nye County, Nevada. Clear River was granted three (3) of these
16 conditional licenses (City of Henderson, City of Las Vegas, and Clark County). See Higgins
17 Declaration, ¶ 5, attached hereto as Exhibit "1."

18
19 In addition to the reasons cited in the NOR Opposition, Clear River further objects to the
20 Motion to the extent the Plaintiffs request that the Court issue an "[o]rder compelling the
21 Department to disclose all applications and scoring information pertaining to each and every
22 applicant for conditional licensure." See Motion, p. 3, ll. 9-10.

23
24 Pursuant to the Application, "Confidential Information" was defined as "any information
25 relating to building or product security submitted in support of a recreational marijuana
26 establishment license". See Application, p. 4 attached as Exhibit B to the Motion (Terms and
27 Definitions). This provision in the Application is set forth in NAC 453D.180 which provides,
28

1 "[e]xcept as otherwise provided in NRS 239.0115 and NAC 453D.185, any information received
2 by the Department related to the security of a marijuana establishment is confidential and must
3 not be disclosed by the Department." NAC 453D.180.

4 In addition, the Application provides that "R092-17, Sec. 242 makes all applications
5 submitted to the Department confidential but that local government authorities, including but not
6 limited to the licensing or zoning departments of cities, towns, or countries, may need to review
7 the application in order to authorize the operation of an establishment under local requirements."
8 See Application (Attachment D), attached to the Motion as Exhibit "B.". This provision in the
9 Application is set forth in R092-17, Sec. 242, NAC 453D.185, which provides:

11 1. Except as otherwise provided in this section and NRS 239.0115, the Department will
12 and any designee of the Department shall maintain the confidentiality of and shall not
13 disclose the name or any other identifying information of any person who facilitates or
14 delivers services pursuant to this chapter or chapter 453D of NRS. Except as otherwise
15 provided in NRS 239.0115, the name and any other identifying information of any person
16 who facilitates or delivers services pursuant to this chapter or chapter 453D of NRS are
17 confidential, not subject to subpoena or discovery and not subject to inspection by the
18 general public.

19 2. Notwithstanding the provisions of subsection 1, the Department or its designee may
20 release the name and other identifying information of a person who facilitates or delivers
21 services pursuant to this chapter or chapter 453D of NRS to:

- 22 (a) Authorized employees of the Department or its designee as necessary to
23 perform official duties of the Department; and
24 (b) Authorized employees of state and local law enforcement agencies only as
25 necessary to verify that a person is lawfully facilitating or delivering services
26 pursuant to this chapter or chapter 453D of NRS.

27 3. Nothing in this section prohibits the Department from providing a local government
28 with a copy of all information and documentation provided as part of an application to
operate a marijuana establishment upon the request of the local government and with the
prior consent of the applicant.

NAC 453D.185.

As the Applications, including the information related to security, as well as identifying
information is confidential and not subject to subpoena or discovery, Clear River hereby objects
to Serenity Plaintiffs' request that the Court order the disclosure of the Applications or scoring

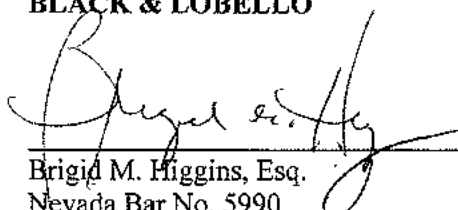
information.¹

CONCLUSION

Clear River respectfully requests that this Court deny the Serenity Plaintiffs' Motion For Preliminary Injunction it is entirety.

DATED this 9th day of May 2019.

BLACK & LOBELLO


Brigid M. Higgins, Esq.
Nevada Bar No. 5990
Rusty J. Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
E-mail: bhiggins@blacklobello.law
*Attorneys for Defendant Intervenor
Clear River, LLC*

¹ In addition, the law firm of Black & LoBello prepared and compiled the Applications for Clear River in which Clear River was successful in obtaining 3 out of the 4 licenses applied for. See Higgins Declaration, ¶ 6, attached hereto as Exhibit "1." Black & LoBello maintains that the Clear River's completed applications constitute its trade secret pursuant to NRS 600A.030(5) as a compilation, method, and/or procedure. *Id.* at ¶ 6. NRS 600A.030(5) provides that a "trade secret":

(a) Means information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that:

- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use; and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) Does not include any information that a manufacturer is required to report pursuant to NRS 439B.635 or 439B.640, information that a pharmaceutical sales representative is required to report pursuant to NRS 439B.660 or information that a pharmacy benefit manager is required to report pursuant to NRS 439B.645, to the extent that such information is required to be disclosed by those sections.

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing **CLEAR RIVER, LLC'S JOINDER TO NEVADA ORGANIC REMEDIES, LLC's OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** in *Serenity Wellness Center, LLC, et al v. State of Nevada, Department of Taxation, et al*, Clark County District Court Case No. A-19-786962-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.


An Employee of Black & Lobello

Exhibit 1

Exhibit 1

AA 001827

BLACK & LOBELLO
Brigid M. Higgins
Nevada Bar No. 5990
Rusty J. Graf, Esq.
Nevada Bar No. 6322
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
Fax: (702) 869-2669
Email: bhiggins@blacklobello.law
Email: rgraf@blacklobello.law
Attorneys for Defendant Intervenor Clear River, 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,
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,

v.

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

Defendants.

CLEAR RIVER, LLC, a Nevada limited liability
company,

Defendant in Intervention.

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

**DECLARATION OF BRIGID M.
HIGGINS, ESQ. IN SUPPORT
OF CLEAR RIVER, LLC'S
JOINDER TO NEVADA
ORGANIC REMEDIES, LLC'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

1 Brigid M. Higgins declares as follows:

2 1. I am an attorney duly licensed to practice before this Court.

3 2. I am counsel for Clear River, LLC, a defendant in intervention in the above-captioned
4 case. As such I am knowledgeable about the facts contained herein and am competent to testify
5 thereto.

6
7 3. On March 19, 2019, Plaintiffs filed their Motion for Preliminary Injunction which is
8 currently set to be heard by this Court on May 24, 2019 at 9:00 a.m.

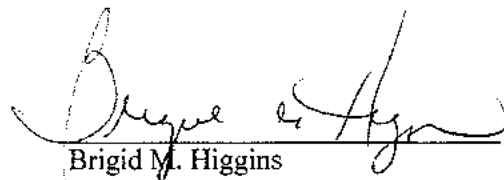
9 4. I am making this declaration in support of Clear River's Joinder to Nevada Organic
10 Remedies, LLC's Opposition to Plaintiffs' Motion For Preliminary Injunction. In the Motion for
11 Preliminary Injunction, Plaintiffs request that the Court issue an "[o]rder compelling the
12 Department to disclose all applications and scoring information pertaining to each and every
13 applicant for conditional licensure." See Motion, p. 3, ll. 9-10.

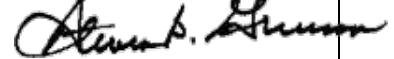
14
15 5. On December 5, 2018, the Department of Taxation awarded Clear River three (3)
16 recreational marijuana retail conditional licenses (City of Henderson, City of Las Vegas, and Clark
17 County).

18 6. The law firm of Black & LoBello assisted in the preparation and compilation of the
19 applications for Clear River related to the recreational marijuana retail licenses in which Clear
20 River was successful in obtaining 3 out of the 4 licenses applied for. Black & LoBello maintains
21 that the Clear River's completed applications constitute its trade secret pursuant to NRS
22 600A.030(5) as a compilation, method, and/or procedure.

23
24 7. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
25 is true and correct.

26 Executed this 9th day of May, 2019.

27
28 
Brigid M. Higgins



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
Attorneys for Defendant-Intervenor
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;

Defendant,

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor.

Case No. A-19-786962-B

Dept. No. 11

**NEVADA ORGANIC REMEDIES,
LLC'S OPPOSITION TO
SERENITY WELLNESS CENTER,
LLC AND RELATED PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Hearing Date: May 24, 2019
Time: 9:00 a.m.

Defendant-Intervenor Nevada Organic Remedies, LLC ("NOR") hereby opposes the motion for a preliminary injunction filed by Serenity Wellness Center, LLC and related plaintiffs ("Plaintiffs"). This Opposition is supported by the following Memorandum of Points and Authorities, the Declaration of Andrew Jolley, the Appendix of Exhibits, and any other materials this Court may wish to consider.

DATED: May 9, 2019

KOCH & SCOW, LLC

By: /s/ David R. Koch
David R. Koch, Esq.
Attorneys for Defendant-Intervenor
Nevada Organic Remedies, LLC

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 Plaintiffs' motion for preliminary injunction is directed at the State of Nevada,
4 Department of Taxation (the "Department"), but the injunction asks the Court to enjoin the
5 use of 64 licenses that have already been granted to a number of licensees. Many of the
6 licensees, including NOR, have intervened in this action because the relief requested would
7 directly affect each of the licensees. The injunctive relief requested could potentially hinder
8 licensees from moving forward to open a marijuana establishment under their approved
9 conditional licenses. Any delay in the process stands to harm NOR and other licensees, as
10 they are each required to obtain a final inspection on a licensed marijuana establishment
11 within 12 months of the licenses being granted. If they do not open within this timeframe,
12 they may lose their licenses. The requested injunction thus stands to cause great harm, as
13 demonstrated by Plaintiffs' own assertion that the right to operate under the licenses may
14 be worth "tens of millions, even hundreds of millions of dollars." (Motion, pg. 9.)

15 As a practical matter, Plaintiffs' requested relief would bring the majority of the
16 marijuana industry—potentially even Plaintiffs' own establishments operating under
17 previously granted licenses—to a grinding halt. The Court should not grant such a
18 motion unless there is overwhelming evidence that Plaintiffs are likely to succeed on the
19 merits and that Plaintiffs would suffer irreparable harm absent the extraordinary relief
20 requested.

21 Plaintiffs' motion fails to provide a factual or legal basis to demonstrate that any
22 of these factors can be satisfied. They have not shown they are likely to succeed on the
23 merits, because they are complaining about items where the Department has great legal
24 deference, they have shown no deprivation of constitutional rights, and they also are
25 legally estopped or otherwise precluded from challenging a process in which they
26 willingly participated with full knowledge of the regulations many months prior to
27 submitting their applications.

1 Plaintiffs also have not shown they will suffer irreparable harm, as they have
2 provided no evidence that they were qualified to receive any licenses let alone that they
3 were wrongfully denied licenses. And Plaintiffs have not even addressed the posting of
4 a bond, as the size of that bond would be enormous based on the harm that the 64
5 licensees will suffer if they cannot go into business. The overly broad Motion should be
6 denied in its entirety, and the parties can move forward with any permitted review of
7 the application process that may be appropriate under the law.

8 Additionally, the Court should be aware that certain aspects of the relief that
9 Plaintiffs seek in this action are currently being considered by the Nevada legislature, as
10 Senate Bill 32 (see draft SB 32 attached as Exhibit 3). This bill addresses specific parts of
11 the licensing process and appears to be aimed at providing additional information
12 regarding the licensing process, which is the primary issue raised in this lawsuit.
13 Plaintiffs' complaints are truly political questions and are best resolved through the
14 political process rather than through the courts. As such, judicial restraint is warranted
15 here, as these issues may be resolved by the legislature rather than through an
16 overreaching injunction.

17 **FACTUAL BACKGROUND**

18 Each Plaintiff in this action allegedly was awarded a privileged license in 2014 to
19 operate a marijuana establishment.¹ Plaintiffs were familiar with the rules that applied to
20 the 2014 process, and each successfully completed a license application in reliance upon
21 the standards and qualifications outlined in the regulations at that time. A true and
22 correct copy of the form 2014 Application that applicants completed and submitted is
23 attached hereto as Exhibit 1.

24 When the legislature determined that additional licenses to operate recreational
25 marijuana establishments would be made available in 2018, it did not reinvent the
26 regulatory wheel. A Task Force established by the Governor recommended that "the

27
28 ¹ To apply for a retail marijuana license in 2018, an applicant was required to already hold a
medical marijuana establishment registration certificate. NRS 453D.210(2).

1 **qualifications for licensure** of a marijuana establishment and the **impartial numerically**
2 **scored bidding process** for retail marijuana stores **be maintained as in the medical**
3 **marijuana program** except for a change in how local jurisdictions participate in selection
4 of locations.” (Ex. 4 at 029.) Using prior regulations as the basis for 2018 applications,
5 the Department of Taxation prepared and promulgated a form 2018 Application similar
6 to the 2014 Application. A true and correct copy of the 2018 Application is attached
7 hereto as Exhibit 2.

8 As stated on the cover, the 2018 Application was released on July 6, 2018 with a
9 defined Application submission period of September 7-20, 2018. NOR is not aware of
10 any formal complaints or legal challenges to the 2018 regulations or Application prior to
11 the September 20, 2018 submission deadline. Based upon the claims asserted by
12 Plaintiffs here, each Plaintiff was able to prepare its Applications and timely submit
13 them to the Department for scoring.

14 The time and expense of preparing the 2018 Application was significant. NOR
15 estimates that its owners, representatives, and employees expended more than 2,000
16 man-hours in preparation of its application, which was over 2,800 pages long. (A. Jolley
17 Decl., ¶9.) The form of the 2018 Application was similar to the 2014 version, but much
18 has changed in the marijuana industry since 2014, and NOR could not simply cut and
19 paste the same information from four years ago into a current application. NOR’s
20 information and qualifications have substantively changed (for the better) since 2014,
21 and substantial work was required to properly detail the information requested in the
22 Application. (See Jolley Decl., ¶¶2-10.)

23 NOR is informed and believes that the Department received numerous
24 applications for licenses in each of the jurisdictions in which NOR applied, which
25 triggered the Department’s obligation to rank all applications within each jurisdiction
26 from first to last in compliance with NRS 453D.210(6) and the Adopted Regulation of the
27 Department of Taxation, LCB File No. R092-17 (“R092-17”). NOR is further informed
28 and believes that the Department, after ranking the applications, issued licenses to the

1 highest-ranked applicants in each jurisdiction until the Department had issued the
2 maximum number of licenses authorized for issuance in each jurisdiction.

3 On December 5, 2018, NOR was notified that it had been awarded a license in
4 seven of the jurisdictions in which it applied. NOR received one license in each of the
5 jurisdictions in which it was awarded.² NOR is informed and believes that the
6 Department issued the conditional licenses to NOR because it scored second highest in
7 six jurisdictions and had the highest score for any applicant in Nye County.

8 With NOR's conditional licenses being approved on December 5, 2018, existing
9 regulations require NOR to obtain a final inspection on each of the marijuana
10 establishments permitted by its licenses by **December 4, 2019**. Five of the twelve months
11 have already passed, and NOR and each of the licensees have limited time to receive a
12 final inspection of each of their licensed establishments.

13 **ARGUMENT**

14 **A. Plaintiffs Do Not Meet the High Bar for a Preliminary Injunction**

15 A preliminary injunction is an "extraordinary remedy," and plaintiffs must pass a
16 high bar of proof in order to obtain a preliminary injunction. *Winter v. Nat. Resources Def.*
17 *Council, Inc.*, 555 U.S. 7, 24 (2008); *V'Guara Inc. v. Dec*, 925 F. Supp. 2d 1120, 1123 (D. Nev.
18 2013). As described in NRS 33.010 and applied by the courts, a plaintiff must establish:
19 "(1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence
20 of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an
21 injunction is in the public interest." *V'Guara Inc.*, 925 F. Supp. 2d at 1123; *Boulder Oaks*
22 *Community Ass'n v. B & J Andrews Enterprises, LLC*, 215 P.3d 27, 31 (Nev. 2009); NRS
23 33.010.³

24 _____
25 ² NOR submitted applications for eight recreational marijuana retail store licenses during the
26 September 2018 application period. The Department conditionally approved NOR's applications
for seven of the jurisdictions: Unincorporated Clark County, City of Las Vegas, City of North Las
Vegas, City of Henderson, City of Reno, Carson City, and Nye County. (A. Jolley Decl., ¶11.)

27 ³ While Nevada Courts usually state that a showing of a likelihood of success on the merits and
28 irreparable harm are required, they have also stated the importance of "weigh[ing] the potential
hardships to the relative parties and others, and the public interest" in evaluating preliminary

1 Several additional circumstances, each of which is present here, raise the bar even
2 higher. Most notably, requests for mandatory injunctions that go beyond maintaining
3 the status quo and would force a party to take specific affirmative steps are “particularly
4 disfavored” by courts. *See LGS Architects, Inc. v. Concordia Homes of Nevada*, 434 F.3d
5 1150, 1158 (9th Cir. 2006). Such injunctions are “subject to a higher standard than
6 prohibitory injunctions,” and parties must show “extreme or very serious” irreparable
7 harm and that “the facts and law clearly favor the moving party” in order to obtain an
8 injunction. *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

9 In the same vein, “[w]hen a plaintiff seeks to enjoin the activity of a government
10 agency, even within a unitary court system, his case must contend with **the well-**
11 **established rule that the Government has traditionally been granted the widest**
12 **latitude in the dispatch of its own internal affairs.”** *Hodgers-Durgin v. de la Vina*, 199
13 F.3d 1037, 1042–43 (9th Cir. 1999) (internal quotations omitted) (emphasis added).

14 Here, Plaintiffs ask the Court for a mandatory injunction to force the Department
15 and current licensees to take steps to reverse the entire months-long application process.
16 They ask for a return to the *status quo ante* prior to the Department’s adoption of NAC
17 453D, which would modify the status quo by reverting to a much earlier status, and also
18 ask the Court to force the Department to affirmatively grant licenses to Plaintiffs
19 (without any demonstration that Plaintiffs would be appropriate recipients of such
20 licenses). They further ask the Court to compel discovery, which is not the proper
21 subject of a preliminary injunction. Plaintiffs are seeking highly disfavored injunctions,
22 and absent an overwhelming demonstration of a valid basis for such relief, there is no
23 reason to consider such drastic preliminary relief.

24 **B. The Injunctive Relief Requested Is Impractical and Improper**

25 The first problem with Plaintiffs’ motion is the long list of requested relief, which
26 takes up nearly an entire page of text and asks for broad and unjustified preliminary

27 _____
28 injunction motions. *U. and Community College System of Nevada v. Nevadans for Sound Govt.*, 100
P.3d 179, 187 (Nev. 2004); *Clark County Sch. Dist. v. Buchanan*, 924 P.2d 716, 719 (Nev. 1996).

1 remedies. Plaintiffs first ask the Court for a complicated order “enjoining the
2 enforcement of the denial of [the Department] of Plaintiffs’ applications for conditional
3 licenses.” (Motion, 2:24-26.) In effect, this request asks the Court to require the
4 Department to issue conditional licenses to all of the Plaintiffs,⁴ without any factual
5 demonstration of the Plaintiffs’ qualifications or right to obtain such privileged licenses.⁵

6 Plaintiffs go on to ask for an order enjoining the enforcement of the conditional
7 licenses already granted to NOR and other licensees. In other words, Plaintiffs ask the
8 Court to take licenses away from the current licensees and give them to Plaintiffs.

9 Then Plaintiffs confusingly ask for an order enjoining the enforcement of NAC
10 453D **in its entirety** including an order to reverse the entire application process and
11 restore the *status quo ante* prior to the Department’s adoption of NAC 453D.

12 All of this requested relief is internally inconsistent as it asks the Court to force
13 the Department to grant licenses to Plaintiffs while simultaneously reversing the entire
14 application process. It is also unjustifiably overbroad, as Plaintiffs’ motion presents no
15 evidence to demonstrate that they have a right superior to NOR and the other licensees
16 to have received conditional licenses, nor do they provide any substantive basis to
17 justify completely overturning the entirety of NAC 453D based solely on allegation and
18 unsupported suspicion of impropriety.

21 ⁴ The only way to “enjoin the enforcement of the denial of [the Department] of Plaintiffs’
22 applications for conditional licenses” would be to order the Department to approve Plaintiffs’
23 applications for conditional licenses.

24 ⁵ A “privileged license” is necessary for certain businesses that “require a higher degree of
25 supervision and . . . more seriously affect the economic, social and moral well-being of the city
26 and its residents.” Las Vegas Municipal Code §6.06.10(A). Marijuana establishments in Nevada
27 are regulated under privileged licenses, as are gaming and liquor establishments. Obtaining and
28 receiving a privileged license requires additional information to be submitted and review to be
conducted based on the municipalities’ determination that the businesses that fall within the
privileged license category. A business with a privileged license, such as a marijuana
establishment, is typically more highly regulated than a standard business, and a business may
lose a privileged license for numerous reasons if they do not uphold standards or fail to comply
with the heightened requirements of using such a license.

1 The remainder of the requested relief in Plaintiffs' motion improperly asks the
2 Court to compel various discovery—such as compelling the Department to disclose
3 confidential licensee applications and the identities, training, and qualifications of
4 scorers—even before this information has been requested through standard discovery.
5 Plaintiffs make no effort to justify such injunctions, and there is already a codified
6 channel for compelling such discovery, if it were necessary, through NRCP 37.

7 On their face, therefore, the multiple forms of relief sought by Plaintiffs are not
8 appropriate and should not be considered in a preliminary injunction context.

9 **C. The Political Question Doctrine Precludes the Relief Sought in the Motion**

10 At its core, Plaintiffs' Motion asks the Court to rewrite existing regulations and
11 statutes. Plaintiffs contend that the regulations at issue are not valid or "violate the plain
12 purpose and intent" of certain statutes (Motion, p. 19) and that certain criteria used by
13 the Department are "irrelevant" and give the Department "unbridled discretion" to
14 consider any factors it desires in scoring applications. (Motion, p. 22.) Plaintiffs
15 essentially argue that this Court should overrule the Department's use and application
16 of codified regulations in favor of a decision by the Court of what the Department
17 should have used as "valid" and "relevant" criteria.

18 But separation of powers is an "essential" feature of the American system of
19 government. *See N. Lake Tahoe Fire v. Washoe Cty. Comm'rs*, 129 Nev. Adv. Op. 72, 310
20 P.3d 583, 586 (2013). In support of this principle, Nevada law precludes certain matters
21 from litigation based on the political question doctrine, which prevents one branch of
22 government from encroaching on the powers of another. *Comm'n on Ethics v. Hardy*, 125
23 Nev. 285, 292, 212 P.3d 1098, 1103 (2009). "Under the political question doctrine,
24 controversies are precluded from judicial review when they 'revolve around policy
25 choices and value determinations constitutionally committed for resolution to the
26 legislative and executive branches.'" *Lake Tahoe*, 310 P.3d at 587 (quoting 16A Am. Jur.
27 2d *Constitutional Law* § 268 (2013)). Thus, matters involving the discretionary actions of
28

1 an executive arm of government cannot be litigated when those actions are within the
2 agency or body's authority. *Id.* at 583.

3 The political question doctrine is especially relevant here, where the Nevada
4 Legislature is currently considering an amendment to statutes at issue, and this
5 amendment may provide certain of the relief requested in Plaintiffs' Motion or render it
6 moot. In the current draft of Senate Bill 32, specific information contained within
7 marijuana establishment applications would be subject to disclosure. (*See* Ex. 3.) As
8 Plaintiffs' primary complaints relate to the alleged opaqueness of the application and
9 scoring process, a new statutory requirement addressing the scope of disclosures speaks
10 exactly to this point. Thus, rather than have this Court determine what information
11 should or should not be disclosed, the Legislature is the proper entity to specifically
12 address and codify the requirements as it believes appropriate, and under the political
13 question doctrine this Court should refrain from reviewing the propriety of the
14 regulations and statutes, especially as they are currently being considered by the
15 legislative branch.

16 **D. Plaintiffs Do Not Demonstrate a Likelihood of Success on the Merits**

17 In considering any request for a preliminary injunction, the Court must consider
18 whether the Plaintiffs have demonstrated a likelihood of success on the merits.
19 Plaintiffs' Motion is deficient in this regard both legally and factually.

20 **1. Plaintiffs Are Precluded from Challenging the Content of the**
21 **Regulations by the Doctrines of Estoppel, Waiver, and Laches**

22 **a. Plaintiffs never complained when they knowingly filled out and**
23 **submitted their applications for a license**

24 The bulk of Plaintiffs' claims challenge the content and scope of regulations as
25 well as the criteria within those regulations. Plaintiffs will not succeed on the merits of
26 these types claims because: (a) they are challenging rules and regulations that were in
27 place for months prior to applications being submitted; (b) Plaintiffs themselves
28 followed the rules and regulations and submitted applications to the Department; and
(c) Plaintiffs did not complain about the rules and regulations at any time prior to

1 decisions being made by the Department. While Plaintiffs now contend that the
2 regulations are improper, they never complained about the regulations at issue when
3 those regulations were approved and promulgated. Moreover, Plaintiffs themselves
4 benefitted from virtually the same regulations when they applied for and received
5 licenses in 2014.

6 Representatives or owners of certain of the Plaintiffs participated in a Task Force
7 established by the Governor prior to adoption of the 2018 regulations to consider the
8 content of the regulations and applications. John Ritter, a manager of Plaintiff TGIG,
9 LLC, was part of the Operations Retail working group and the Task Force that discussed
10 the content of the regulations, the criteria being considered, and any potential changes
11 that might be made to the regulations prior to finalization. (*See* Ex. 4 at 015.) Plaintiffs
12 never complained or protested any of the regulations until after the applications were
13 scored and Plaintiffs did not receive a license. Had Plaintiffs actually received a license,
14 they never would have complained. It is only after the application “contest” concluded
15 that Plaintiffs now argue that the whole process was flawed.

16 The current challenges to codified regulations and standards are similar to a
17 basketball team playing an entire game and only afterward complaining for the first
18 time that the three-point line should have been placed closer to the basket. The team
19 knew where the line was drawn and it applied the same for all players. The team played
20 the game and accepted the rules throughout the game. It would not be permitted to go
21 back and replay the game with new rules when it never challenged the rules in the first
22 place.

23 Here, if Plaintiffs believed the rules of an administrative process were unfair, they
24 cannot go through the entire process following the rules as written, and then wait until
25 after the process concludes to lodge their complaint about the propriety of the rules.
26 NOR and all of the other licensees went through the same process, understood what the
27 rules were, followed the rules, and spent countless hours preparing their applications.

1 There was no guarantee they would receive a license. Waiting until after the process
2 concludes is not the time to first complain about the rules.

3 **b. Legal standards for estoppel, waiver, and laches.**

4 The doctrine of estoppel “functions to prevent the assertion of legal rights that in
5 equity and good conscience should not be available due to a party's conduct.” *In re*
6 *Harrison Living Tr.*, 112 P.3d 1058, 1061–62 (Nev. 2005). It is applied when, (1) the party
7 to be estopped is apprised of the true facts, (2) he intends that his conduct shall be acted
8 upon, (3) the party asserting estoppel is ignorant of the true facts, and (4) that party
9 relied to his detriment on the conduct of the party to be estopped. *In re Harrison Living*
10 *Tr.*, 112 P.3d 1058, 1061–62 (Nev. 2005). The doctrine is “grounded in principles of
11 fairness,” *Hermanson v. Hermanson*, 887 P.2d 1241, 1245 (Nev. 1994), and is “applied to
12 prevent manifest injustice and hardship to an injured party.” *Topaz Mut. Co., Inc. v.*
13 *Marsh*, 839 P.2d 606, 611 (Nev. 1992).

14 Estoppel is typically used to prevent a party from repudiating “positions taken or
15 assumed by him when there has been reliance thereon and prejudice would result to the
16 other party,” *Terrible v. Terrible*, 534 P.2d 919, 921 (Nev. 1975), and is similarly applied to
17 waive a known remedy that is not timely asserted. *See, Adair v. City of N. Las Vegas*, 450
18 P.2d 144, 145–46 (Nev. 1969). This form of estoppel is typically known as estoppel by
19 acquiescence.

20 The doctrine of estoppel by acquiescence “has its basis in election, **ratification,**
21 **affirmance, acquiescence, or acceptance of benefits**, and the principle precludes a party
22 from asserting, to another's disadvantage, a right inconsistent with a position previously
23 taken by him.” *Lueders v. Arp*, 321 F. Supp. 3d 968, 977 (D. Neb. 2018) (emphasis added).
24 “It applies where it would be **unconscionable to allow a person to maintain a position**
25 **inconsistent with one in which he acquiesced, or of which he accepted a benefit.**” *Id.*,
26 *See also, Lemon v. Hagood*, 545 S.W.3d 105, 121 (Tex. App.--El Paso 2017) (emphasis
27 added); *Sparks v. Trustguard Ins. Co.*, 389 S.W.3d 121, 127 (Ky. App. 2012)

1 Similarly, under the doctrine of waiver, a plaintiff may waive a known right
2 “when [it] engages in conduct so inconsistent with an intent to enforce the right as to
3 induce a reasonable belief that the right has been relinquished.” *Nevada Yellow Cab Corp.*
4 *v. Eighth Jud. Dist. Ct. ex rel. County of Clark*, 152 P.3d 737, 740 (Nev. 2007). And the
5 doctrine of laches prevents a party from bringing claims when the party’s delay in
6 bringing those claims “works to the disadvantage of the other [parties], causing a change
7 of circumstances which would make the grant of relief to the delaying party
8 inequitable.” *Miller v. Burk*, 188 P.3d 1112, 1125 (Nev. 2008).

9 Plaintiffs’ agreement to the rules and their acquiescence in the process warrant
10 application of the doctrines of estoppel, waiver, or laches. Plaintiffs were fully aware
11 that the NAC 453D regulations had been approved, and they had plenty of time to
12 review the requirements of the 2018 Application. (*See*, Exhibit 2). Once the 2018
13 Application was released, Plaintiffs knew or should have known every provision of the
14 regulations and every step in the application process. They knew the criteria the
15 Department would use to evaluate the applications, how the licenses would be allocated
16 among jurisdictions within the county, as well as limitations on the number of licenses
17 applicants could receive. If they believed the regulations exceeded the Department’s
18 rule-making ability or were unconstitutional, they should have raised that challenge or
19 sought a preliminary injunction before all applicants spent time and money submitting
20 applications and before the Department went through the entire scoring process.

21 **c. Plaintiffs directly benefitted from essentially the same**
22 **regulations and criteria when they received licenses in 2014/2015**

23 Long before the 2018 Applications were submitted, the Plaintiffs were familiar
24 with the criteria included in the application process. Each of the Plaintiffs had already
25 received a medical marijuana license and complied with the process for completing an
26 application in 2014. The factors and criteria used for the 2018 application process were
27 essentially the same as the prior process. As plaintiff MM Development Company
28 alleges in its own Amended Complaint: “The factors used for the 2015 rankings were

1 substantially similar to the factors to be used by the Department for the 2018 rankings
2 for the allocated licenses. The only major difference between the factors assessed for the
3 2015 rankings and the 2018 rankings was the addition of diversity of race, ethnicity, or
4 gender or applicants (owners, officers, board members) to the existing merit criteria.”
5 (Case A-18-785818-W, Amended Complaint, ¶¶14-15.)

6 The Court can compare the two applications from 2014 and 2018, which are
7 attached as Exhibits 1 and 2. NOR agrees that the only additional criterion added from
8 2014 to 2018 was diversity. Plaintiffs cannot, under the doctrine of estoppel, continue to
9 use and benefit from licenses granted through a prior application process while
10 simultaneously bringing suit challenging the same criteria being used several years later.
11 The Court should therefore disregard Plaintiffs arguments regarding the factors as
12 equitably precluded.

13 **2. Plaintiffs’ Motion Fails to Demonstrate that These Specific Parties**
14 **Suffered Any Injury**

15 Other than challenging the actual regulations themselves, Plaintiffs dedicate the
16 majority of their 47 pages to critiquing theoretical actions the Department may have
17 taken without actually connecting those actions to Plaintiffs’ specific case. These
18 arguments fail to address how Plaintiffs themselves have been wronged and fail to show
19 that the Department acted improperly in granting licenses to parties such as NOR.

20 To succeed on their claims, Plaintiffs would need to prove not only that the
21 Department’s application ranking process was improper, but also that the results would
22 have been different for these Plaintiffs under another process. The Serenity Plaintiffs do
23 not even attempt to demonstrate that they were qualified to receive licenses over other
24 applicants. NOR believes that its applications warranted the rankings received, and
25 there is no evidence or specific reason offered to demonstrate that NOR’s licenses should
26 be held up or transferred to Plaintiffs.
27
28

1 **3. Plaintiffs' Motion Does Not Demonstrate that the Department Acted**
2 **With Favoritism, Improvidence, or Corruption**

3 Woven throughout Plaintiffs' arguments that they could succeed on the merits is
4 the recognition that their arguments depend on a finding that the Department acted
5 with favoritism, improvidence, or corruption or that it acted arbitrarily and capriciously
6 in granting the licenses. Apart from making generalized assertions, however, Plaintiffs
7 have not presented any evidence to show that any impropriety actually exists. Such
8 extraordinary claims of favoritism, corruption, and capriciousness require extraordinary
9 evidence, and where Plaintiffs do not even hint at such evidence, they do not meet the
burden of proving their own likelihood of success on the merits.

10 **4. The Department's Actions and Interpretation of Regulations Are**
11 **Entitled to Great Deference**

12 When tasked with determining the validity of an administrative regulation,
13 courts "must afford great deference to the Department's interpretation of a statute that it
14 is tasked with enforcing when the interpretation does not conflict with the plain
15 language of the statute or legislative intent." *Nuleaf CV Dispensary, LLC V. State Dep't of*
16 *Health & Human Servs., Div. of Publ. & Behavioral Health*, 134 Nev. Adv. Op. 17, 414 P.3d
17 305, 311 (2018); *see also, Nev. Pub. Emps. Ret. Bd. v. Smith*, 310 P.3d 560, 564 (Nev. 2013)
18 ("an administrative agency charged with the duty of administering an act is impliedly
19 clothed with the power to construe the relevant laws and set necessary precedent to
20 administrative action, and the construction placed on a statute by the agency charged
21 with the duty of administering it is entitled to deference."). Agency decisions are given
22 even greater weight when "the legislature fails to repudiate the agency's construction."
Roberts v. State, 752 P.2d 221, 225 (Nev. 1988).

23 Accordingly, a court must give deference "to an agency's reasonable
24 interpretation of the law and facts at issue," otherwise it stands to "usurp the
25 Department's role as well as contravene the Supreme Court's directive" to grant such
26 deference to the interpreting agency. *Malecon Tobacco, LLC v. State ex rel. Dept. of Taxn.*, 59
27 P.3d 474, 477 n. 15 (Nev. 2002); *Brocas v. Mirage Hotel & Casino*, 109 Nev. 579, 582, 854
28

1 P.2d 862, 865 (1993) (“It is well recognized that this court, in reviewing an administrative
2 agency decision, will not substitute its judgment of the evidence for that of the
3 administrative agency.”)

4 In attempting to reverse the entire application process, Plaintiffs do not
5 acknowledge the deference granted to the Department in this matter. Their claims
6 assume the Department is entitled to no deference at all. But in evaluating Plaintiffs’
7 arguments, and the responses set forth below, deference *must* be given to the
8 Department in the administration *and* application of the regulatory process.

9 **a. Licenses were allocated by jurisdictions in compliance with the**
10 **applicable statutes**

11 As provided in NRS 453D.210(6), “When competing applications are submitted
12 for a proposed retail marijuana store within a single county, the Department shall use an
13 impartial and numerically scored competitive bidding process to determine which
14 application or applications among those competing will be approved.” This statute gives
15 the Department discretion in allocating licenses so long as the process they use is
16 “impartial.” As part of that discretion, the Department can certainly consider the
17 location of the establishment and rank by location. Such a consideration is relevant and
18 within the broad purview of the Department. In fact, elsewhere the legislature has
19 expressly stated that the “location of the establishment” is a “criteria of merit” in
20 granting marijuana establishment registration certificates. NRS 453A.328(5).

21 The Department provided advance notice of the specific allocation of the number
22 of licenses among jurisdictions prior to the application period. (Ex. 2.) None of the
23 Plaintiffs challenged this allocation at the time and proceeded with their applications
24 with knowledge of the stated allocations. In fact, when NOR, the Plaintiffs, and all other
25 applicants submitted their applications, they specifically designated the jurisdiction in
26 which they were seeking a license. (Jolley Decl., ¶9.)

27 Despite advance knowledge of and acquiescence to the jurisdictional allocation
28 framework, Plaintiffs only now contend that NAC 453D.272(1) somehow conflicts with

1 NRS 453D.210(6) by permitting allocation of licenses among jurisdictions within a
2 county, rather than solely on a county-wide basis. Plaintiffs' argument not only imposes
3 a requirement of jurisdictional-blindness that does not exist in NRS 453D.210(6), but it
4 also fails to acknowledge the broad discretion granted to the Department and the
5 necessity to rank and issue licenses by jurisdiction.

6 NRS 453D.210(6) is simply a trigger to use a scoring process when multiple
7 competing applications are submitted within a county. And NRS 453D.210(5)(d) puts a
8 cap on the number of licenses within a county based on population. Neither section
9 addresses jurisdictional limitations nor imposes a requirement that allocations must be
10 made on a county-wide basis without consideration of jurisdiction. Considering
11 jurisdictions within a county is a practical necessity. If the Department did not consider
12 jurisdictions within a county, it would be likely that numerous licenses would be
13 granted in prominent localities (e.g., City of Las Vegas) with no licenses in smaller
14 localities. Moreover, because individual jurisdictions have the power to limit the number
15 of establishments in their limits pursuant to NAC 453D.272(1), if the Department did not
16 consider those limits, it could grant a large number of licenses in one jurisdiction that
17 would not be honored, effectively wasting those licenses.

18 And finally, Plaintiffs have not indicated how this claimed statutory violation
19 harmed them in any way. They have once again failed to show they would have
20 received licenses had the allocation been performed without respect to jurisdiction.
21 Accordingly, they have not shown that there is a likelihood of success on the merits of
22 such an argument.

23 **b. The criteria for ranking applications set forth in NAC**
24 **453D.272(1) are valid**

25 Plaintiffs next contend that the criteria set forth in NAC 453D.272(1)(a)-(i) used to
26 rank applications and issue licenses are not "impartial" as required by NRS 453D.210(6)
27 and are not "directly and demonstrably relat[ed] to the operation of a marijuana
28 establishment" as required by NRS 453D.200(1)(b). Once again, the Department is

1 entitled to deference in determining criteria that are “related” to operation of a
2 marijuana establishment, and there is no obvious reason why these criteria would be
3 improper. NOR is unsure what criteria Plaintiffs actually believe would be relevant if
4 not the criteria set forth in NAC 453D.272(1). They have not offered any alternative
5 criteria that they contend should have been used in place of the actual criteria. Nor did
6 Plaintiffs challenge the “relatedness” of the criteria when they were aware of them well
7 ahead of the application period.

8 Plaintiffs claim essentially all of the criteria stated in NAC 453D.272(1) are not
9 impartial and are irrelevant to the operation of a marijuana establishment, but they focus
10 on three criteria:

- 11 ○ The diversity of the owners under subsection (b)
- 12 ○ The amount of taxes paid by the owners and other financial contributions
13 including philanthropic involvement with the State under subsection (f)
- 14 ○ Any other criteria the Department determines to be relevant.

15 In claiming these criteria are improper, the Plaintiffs are asking the Court to
16 impose its own judgment and override the Nevada Legislature’s determination that
17 these criteria are relevant to the operation of a marijuana establishment. NRS 453A.328
18 states that in determining whether to issue medical marijuana establishment registration
19 certificates the Department should consider a detailed list of “criteria of merit” set forth
20 in the statute. And the criteria outlined in NAC 453D.272(1) are virtually identical to the
21 “criteria of merit” set forth in NRS 453A.328, which Plaintiffs never objected to prior to
22 the application process.

23 In particular, NRS 453A.328 states that “diversity on the basis of race, ethnicity, or
24 gender” of the owners is a criterion of merit as is “[t]he amount of taxes paid to, or other
25 beneficial financial contributions made to, the State of Nevada” and “any other criteria
26 of merit that the Department determines to be relevant.” When the legislature has itself
27 already set forth criteria of merit, a party should not be granted a preliminary injunction
28 based on the argument that the legislature’s own codified criteria are not valid.

1 Plaintiffs also reference the final provision in NAC 453D.272(1)(i) that the
2 Department can consider “[a]ny other criteria that the Department determines to be
3 relevant,” as invalid because it would give the Department “unbridled discretion” and
4 does not mandate that the Department reveal the criteria to the public. First, the
5 provision does not, in fact, give the Department unbridled discretion. The regulation
6 specifically states that any criteria used by the Department must be “relevant” to the
7 operation of a marijuana establishment.

8 Second, even if the provision gave the Department unbridled discretion, there is
9 no requirement in NRS 453D that the criteria applied by the Department be available to
10 the public or that all of the criteria that the Department used to rank applications must
11 be laid out and limited by the regulations. In fact, NAC 453D.272(1) was not required to
12 list any criteria at all so long as the Department actually used impartial criteria to rank
13 the applications. It did not even need to exist. NAC 453D.272(1) is only meant to give
14 guidance to the Department in ranking and issuing licenses, and the final, broader
15 provision is necessary to provide the Department with discretion in dealing with specific
16 situations or unforeseen circumstances. That does not mean that the provision gave the
17 Department free license to be partial or that the Department actually used the provision
18 to engage in partiality to rank the licenses. Plaintiffs have not provided any evidence at
19 all that the Department used any partial criteria to rank the applications under this
20 provision. The Court should, therefore, reject Plaintiffs’ arguments concerning the
21 criteria set forth in NAC 453D.272(1).

22 **c. The Department Did Not Act Contrary to Its Regulations or Any**
23 **Statute**

24 The introduction and “statement of facts” sections of Plaintiffs’ motion raise a
25 number of complaints about the Department’s actions, but these complaints are never
26 raised again or addressed at any time later in the motion. Among these one-time
27 complaints that are asserted without factual support are that: (i) the application and
28 grading process lacked transparency; (ii) the Department shut out Nevada residents

1 with perfect records while non-Nevada residents were awarded a significant number of
2 licenses; (iii) the decision-making process for applications was made by temporary
3 Manpower workers; (iv) the Department did not assign specific numerical point values
4 to any of the licensing criteria it lists in NAC 453D.272(1), nor did it require all such
5 criteria to be equally weighted, uniformly and consistently assessed or scored by
6 adequately trained and qualified personnel; (v) the Department has failed to conduct a
7 background check on each prospective owner to determine whether the owner has been
8 convicted of certain felony offenses or has run a marijuana establishment that has had its
9 license revoked as required by NRS 453D.200(6); and (vi) the Department failed to send
10 written rejection notices to un-approved applicants with specific reasons why their
11 licenses weren't granted, as required by NRS 453D.210(4)(b).

12 While these issues are mentioned in the initial part of the Motion, Plaintiffs do not
13 provide any support regarding these allegations as would be required in a request for a
14 preliminary injunction. It should be noted that Plaintiffs do not allege that the vast
15 majority of these actions violated any statutes or constitutional provisions in any way,
16 which makes the complaints irrelevant to the motion. Plaintiffs may wish that the
17 Department were more transparent or that it granted more licenses to Nevada residents
18 or that it did not hire Manpower to evaluate the applications, but these complaints do
19 not create the basis for a preliminary injunction simply because Plaintiffs disagree with
20 the Department. Moreover, Plaintiffs do not explain how these complaints, even if
21 true—such as not sending a list of reasons why an applicant was denied a license—
22 affected the application process or would justify a preliminary injunction barring the use
23 of licenses from current licensees. Therefore, the Court should reject the initial rapid-fire
24 flurry of complaints in the initial portions of the Motion.

25 **5. Plaintiffs' Various Arguments about the Number of Licenses Issued Do**
26 **Not Warrant a Preliminary Injunction**

27 Plaintiffs assert several arguments relating to the number of licenses issued,
28 contending that the Department either did not issue enough licenses or that it

1 miscalculated the allocation of licenses to jurisdictions or entities. None of these
2 arguments justify a preliminary injunction.

3 **a. Allocation of fewer than 80 licenses does not warrant a**
4 **preliminary injunction precluding use of licenses that were**
5 **issued**

6 NRS 453D.210(5)(d) puts a cap on the number of licenses that may be issued
7 within a county based on population. For Clark County, the limit is 80 licenses. *See* NRS
8 453D.210(5)(d)(1). Plaintiffs argue that the Department only allocated 78 or 79 licenses
9 and could have issued one or two more. NOR has no position on this argument, but for
10 purposes of a preliminary injunction, the argument is not relevant. If one or two more
11 licenses could have been issued, the remedy would be to issue one or two more licenses.
12 There is no need for a preliminary injunction to do that and there is no reason to reverse
13 the entire process just to issue one or two more licenses. Moreover, with multiple
14 Plaintiffs vying for the one or two licenses, there is no evidence that these Plaintiffs
15 would be entitled to those one or two licenses.

16 **b. Plaintiffs misconstrue the limitation of licenses per jurisdiction**

17 Plaintiffs also argue that the application rule limiting each applicant to only one
18 license within a jurisdiction amounts to improper *ad hoc* rule making. (Motion, p. 26.)
19 The effect of this provision, however, would only have benefitted Plaintiffs, as they
20 should prefer a one-license-per-jurisdiction limitation. Otherwise, higher-scoring
21 applicants may have received even more licenses within the same jurisdictions, thus
22 further precluding Plaintiffs or other applicants from receiving a license. None of the
23 Plaintiffs are complaining that they were improperly limited to just one license, so this
24 provision does not even come into play here. This provision works to expand the
25 number of applicants that could receive a license, which Plaintiffs should prefer.

26 Additionally, the argument itself is not accurate, as Plaintiffs cite NAC
27 453D.272(5) which states that it is intended “to prevent monopolistic practices” by
28 limiting the number of licenses per applicant to “**the greater of**” either one license per
county **or** no more than 10 percent of the licenses allocable in the county. In Clark

1 County, with 80 licenses available, this would allow for a licensee to receive up to 8
2 licenses in the County. The limit of one license per jurisdiction benefits all applicants
3 and serves to distribute licenses to more applicants than might otherwise receive them.
4 There is no basis to overturn the entire process based on this critique of the
5 Department's one-license-per-jurisdiction rule.

6 **c. The Department did not issue more licenses to a single**
7 **applicant than permitted by NAC 453D.272(5)**

8 Along the same lines, Plaintiffs next argue that at least one entity received more
9 licenses than permitted in Clark County and Washoe County under NAC 453D.272(5).
10 As described above, that regulation states that in a county whose population is 100,000
11 or more, the Department will not issue to any entity the greater of: "(a) One license to
12 operate a retail marijuana store; or (b) More than 10 percent of the licenses for retail
13 marijuana stores *allocable* in the county." (emphasis added).

14 Plaintiffs offer Dr. Amei (an individual who has not been qualified as an expert in
15 this case) to produce a complicated report to determine how many licenses could be
16 allocated to one entity in Clark and Washoe Counties. But no expert report was
17 necessary to conduct the simple math of calculating 10% of a number:

- 18 • Because Clark County has a population greater than 700,000, NRS
19 453D.210(5)(d)(1) states that 80 licenses are allocable in that county.
20 Ten percent of 80 is indisputably eight, so the Department can issue up
21 to eight licenses to a single entity in Clark County.
- 22 • Similarly, Washoe County has a population between 100,000-700,000,
23 so 20 licenses are allocable in that county under NRS 453D.210(5)(d)(2).
24 Ten percent of 20 is two, so the Department can issue two licenses to a
25 single entity in Washoe County.

26 Plaintiffs allege that Essence now holds eight licenses in Clark County and two in
27 Washoe County. Based on these allegations, Essence holds exactly ten percent of the
28

1 allocable licenses in Clark and Washoe County, and its total licenses would not violate
2 NAC 453D.272(5).

3 Even if a single entity were allocated more licenses than permitted, such an action
4 does not justify an extremely broad preliminary injunction. If Essence received too many
5 licenses, this can be dealt with at a micro level. Reversing the whole process for such an
6 aberration would be complete overkill and is not justified.

7 **6. There Is No Evidence That the Department Did Not Fairly and**
8 **Objectively Score Applications by Giving Similar Scores to Multiple**
9 **Applications Filed by the Same Entity.**

10 Plaintiffs speculate that because entities that submitted multiple applications
11 received nearly identical scores on each of their applications, something must have been
12 awry with the licensing process. Relying on Dr. Amei without providing any of the
13 source data that he allegedly opines upon, Plaintiffs argue that it was “statistically
14 impossible” for each of a single entity’s applications to receive a similar or identical
15 score on all of its applications. This argument is a red herring.

16 While NOR does not have full information as to the entire scoring process, it
17 should be no mystery why certain entities received identical scores on their various
18 applications, and the identical scores are certainly not statistically impossible, or even
19 improbable. Since the criteria listed in NAC 453D.272(1) for ranking applications are
20 primarily focused on the qualifications of applicants themselves (which would not
21 change from application to application), rather than the logistical information of the
22 location of establishments (which would change from application to application), each
23 entity should have received an identical or very similar score on each of its applications
24 under an objective scoring system as its qualifications were necessarily uniform across
25 each application. In fact, had a single entity received noticeably divergent scores on each
26 of its applications, then the scores would raise a concern. The Court should give no
27 credence to Plaintiffs’ and Dr. Amei’s misleading assertion that identical scores for one
28 entity’s applications would be statistically impossible, as it is actually highly probable
that the scores should be identical or similar based on the information being considered.

1 **7. The Department Did Not Take Any Action That Violated Plaintiffs’**
2 **Constitutional Rights**

3 Plaintiffs’ arguments that their constitutional rights were violated will not
4 succeed on the merits. While the Department is in the best position to address these
5 arguments, NOR will respond to certain of the issues that have been raised.

6 First and foremost, because Plaintiffs argue that the actions of the Department
7 violated the Federal Constitution, the arguments should be dismissed outright, because,
8 as the Court is well aware, federal law does not permit the sale of recreational
9 marijuana, and Plaintiffs cannot have a federally protected constitutional right to engage
10 in such an activity.

11 Second, Plaintiffs do not consider or address the high bars they must pass in
12 order to succeed on any constitutional claims. They do not come close to meeting any of
13 those high bars to assert a claim for a constitutional violation, nor can they, and the
14 Court should reject all of Plaintiffs’ constitutional arguments.

15 **a. Plaintiffs’ Due Process Claims Are Unsupported**

16 **i. Plaintiffs have no property rights in privileged licenses**
17 **they have not received**

18 To pursue a due process claim for the denial of a license, Plaintiffs first would be
19 required to “demonstrate that [they] were deprived of a constitutionally protected
20 property right.” *Gerhart v. Lake County, Mont.*, 637 F.3d 1013, 1019 (9th Cir. 2011). A
21 government benefit such as a license may, in certain circumstances, be a protected
22 property right, but a plaintiff “clearly **must have more than an abstract need or desire**
23 **for [the license]. He must have more than a unilateral expectation of it.** He must,
24 instead have a **legitimate claim of entitlement** to it.” *Id.* (quoting *Bd. of Regents of State*
25 *Colls. v. Roth*, 408 U.S. 564, 577 (1972)) (emphasis added). In situations, like the present
26 case, where a plaintiff is claiming a property interest in a privileged license it never
27 received, such a party can claim the interest only if (1) the governing statute *compels* the
28 reviewing body to grant the privileged license “upon compliance with certain criteria,
 none of which involve the exercise of discretion by the reviewing body,” and (2) the

1 plaintiff has met those criteria. *Shanks v. Dressel*, 540 F.3d 1082, 1091 (9th Cir. 2008)
2 (quoting *Thornton v. City of St. Helens*, 425 F.3d 1158, 1164 (9th Cir. 2005) (emphasis
3 added).

4 The Ninth Circuit has provided specific guidance for determining whether a
5 statute grants a reviewing body sufficient discretion to destroy any protectable property
6 interest. “At one pole,” the court has held, “a state operating license that can be revoked
7 only ‘for cause’ creates a property interest. At the opposite pole, a statute that grants the
8 reviewing body unfettered discretion to approve or deny an application does not create
9 a property right.” *Thornton v. City of St. Helens*, 425 F.3d 1158, 1164 (9th Cir. 2005). It
10 concluded that an applicant does not have a property interest in a license, “if the
11 reviewing body has discretion to deny [the license] or to impose licensing criteria of its
12 own creation.” *Id.*

13 Although Plaintiffs spend multiple pages describing this doctrine, they
14 misinterpret it. Citing *Thornton* and *Shanks*, they conclude that potential licensees have
15 protectable property interests in all situations other than those where the statute grants
16 the reviewing body *unfettered discretion*. Yet *Thornton* explicitly states that the unfettered
17 discretion statute is not the standard, but the extreme. The standard is to determine
18 whether the reviewing body has any discretion to impose its own criteria.

19 Plaintiffs openly admit that under NRS 453D.200(1)(b), the Department is charged
20 with creating “qualifications for licensure directly and demonstrably related to the
21 operation of a marijuana establishment.” This gives the Department broad discretion in
22 determining what parties qualify for licensure. The Department can use any
23 qualifications it wants so long as the qualifications are “related” to the operation of an
24 establishment, giving the Department close to unfettered discretion. The *Thornton* court
25 expressly stated that no property interests exists where agencies have power to impose
26 such criteria. That fact, in and of itself, upends any argument that Plaintiffs have a
27 property interest at issue.

1 Moreover, the Department was tasked with allocating a limited number of
2 licenses amongst a vast number of potentially qualified applicants. It did not revoke any
3 existing licenses, and since Plaintiffs knew that only a fraction of all applicants would
4 ever receive a license, they had nothing more than a hope or unilateral expectation of a
5 future license. Under these circumstances, there is “no property interest” that could give
6 rise to a due process claim. *See Malfitano v. County of Storey*, 396 P.3d 815 (Nev. 2017) (no
7 property right when no legitimate claim of entitlement shown and no revocation of
8 existing licenses).

9 Even if the Department had no discretion to determine who qualified for a
10 license, all parties that qualified knew they would have to compete with other qualified
11 parties, and no party had an entitlement to a license. As any athlete in the world could
12 explain, no party is entitled to a trophy for winning a competition *until they actually win*
13 *the competition*. And getting a trophy in a past competition does not entitle you to a
14 trophy the next time around. As the court explained in *Malfitano*: “[a] **constitutional**
15 **entitlement cannot be created—as if by estoppel—merely because a wholly and**
16 **expressly discretionary state privilege has been granted generously in the past. ...**
17 Thus, even assuming the Liquor Board has leniently issued liquor licenses in the past,
18 this does not entitle Malfitano to a permanent liquor license.” 396 P.3d at 820 (*citing*
19 *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 465 (1981)) (emphasis added).

20 Further still, Plaintiffs have not provided any evidence that they actually
21 qualified for a license in the first place. So even if the Department had no discretion, and
22 even if the Department was ordered to issue an unlimited number of licenses, Plaintiffs
23 have not shown that they themselves were qualified and entitled to a license for
24 purposes of a preliminary injunction. There are no license property rights to support a
25 due process claim, and Plaintiffs cannot simply create such rights by filing a lawsuit
26 claiming the unilateral expectation of receiving a privileged license.

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1 **ii. Any interference with a right to pursue an occupation was**
2 **not unconstitutional.**

3 Even if Plaintiffs were completely barred from pursuing an occupation in the
4 marijuana business, to succeed on a claim for deprivation of due process, they must
5 show that their inability to pursue their occupation “is due to actions that substantively
6 were ‘clearly arbitrary and unreasonable, having no substantial relation to the public
7 health, safety, morals, or general welfare.’” *Wedges*, 24 F.3d at 65 (quoting *FDIC v.*
8 *Henderson*, 940 F.2d 465, 474 (9th Cir.1991).

9 Similar to the rational basis test described below, this is a high bar for Plaintiffs to
10 pass. Parties are barred from pursuing occupations all the time. For example, unless a
11 person graduates from law school, passes the bar, and continues to comply with
12 multiple licensing requirements, he or she may not pursue an occupation in the law. In
13 fact, if the Department were not able to bar anyone from pursuing an occupation in the
14 marijuana business, Nevada could be overrun with such businesses and owners who
15 would not be subject to any background checks or qualifications.

16 Plaintiffs have not provided any evidence of arbitrariness or unreasonableness,
17 even though it is required to succeed on their motion. Their motion argues that merely
18 showing a bar to their occupation is the end of the analysis. In reality, however, every
19 action taken by the Department was related to the public health, safety, morals, or
20 general welfare of the State, and no action was clearly arbitrary or unreasonable.
21 Accordingly, the Court should reject the argument.

22 **c. The Department Did Not Violate Plaintiffs’ Equal Protection**
23 **Rights**

24 Plaintiffs concede that as a “class of one,” they must show the Department treated
25 them differently than other parties similarly situated *without any rational basis to do so* in
26 order to succeed in an equal protection claim, citing *Grabhorn Inc. v. Metropolitan Service*
27 *District*, 624 F.Supp.2d 1280, 1290 (D. Oregon 2009). Plaintiffs acknowledge this standard
28 yet simply conclude there was no rational basis to deprive them of licensure.

1 But demonstrating that there was “no rational basis” for a government agency’s
2 action is one of the highest bars provided by the law. The U.S. Supreme Court has not
3 minced words about the rational basis test. The standard of review is considered a
4 “paradigm of judicial restraint.” *F.C.C. v. Beach Commun., Inc.*, 508 U.S. 307, 314 (1993).

5 First, the rational basis prong of a “class of one” claim “turns on whether there is
6 a rational basis for the *distinction*” between the parties that received licenses and those
7 like Plaintiffs who did not. *Gerhart v. Lake County, Mont.*, 637 F.3d 1013, 1023 (9th Cir.
8 2011). The logic of legislatures and agencies must be “upheld against equal protection
9 challenge if there is **any reasonably conceivable state of facts that could provide a**
10 **rational basis for the classification.**” *F.C.C.*, 508 U.S. at 313 (emphasis added). Where
11 there are any “plausible reasons” for the agency’s actions, the “inquiry ends.” *Id.*

12 With this “strong presumption of validity” those attacking the distinction
13 between parties “have the burden ‘to negative every conceivable basis which might
14 support [the distinction],’ not just the basis actually used by the agency. *Id.* (quoting
15 *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973)). Moreover, the agency
16 and legislative choice “may be based on rational speculation unsupported by evidence
17 or empirical data.” *Id.* at 314. Further still, “These restraints on judicial review have
18 added force ‘where the [agency] must necessarily engage in a process of line-drawing’”
19 between parties “who have an almost equally strong claim,” as may be the case here. *Id.*
20 at 315.

21 Plaintiffs cannot pass this test, especially in a request for a preliminary injunction.
22 Plaintiffs have not: (1) established the differences in qualifications between them and the
23 parties that actually received licenses, or (2) made a conclusive showing that no party
24 could conceive of a rational basis to grant the licenses to the current licensees and deny
25 the licenses to Plaintiffs. Plaintiffs have not even attempted to make such a showing. Nor
26 have Plaintiffs addressed or considered the fact that restraint on judicial review has
27 added force when the Department must choose between parties in a highly competitive
28

1 application process. There is no basis for an equal protection claim, especially in the
2 context of a preliminary injunction.

3 **E. Plaintiffs Have Not Demonstrated Irreparable Harm Sufficient to Warrant a**
4 **Preliminary Injunction**

5 In order for a plaintiff to establish irreparable harm he must show that he suffered
6 “an invasion of a legally protected interest which is (a) concrete and particularized; and
7 (b) actual or imminent, not conjectural or hypothetical.” *Hajro v. U.S. Citizenship and*
8 *Immig. Services*, 811 F.3d 1086, 1102 (9th Cir. 2016).

9 Plaintiffs have not shown that they are suffering or will suffer irreparable harm
10 because they cannot show an invasion of a concrete and particularized invasion of a
11 legally protected interest. Even if they could show that the Department acted
12 wrongfully, they have not presented any evidence to suggest that *they* are entitled to a
13 license or that they qualify for a license. Instead, their own qualifications are merely
14 assumed throughout their motion. But based on the information presented, the Court
15 cannot even know if Plaintiffs passed the most basic of requirements. Plaintiffs have
16 presented only assertions and conjecture to establish harm, which is the opposite of the
17 concrete and particularized harm that is required.

18 And even if Plaintiffs suffered some type of harm, the injunction they seek is
19 significantly more broad than necessary to protect such interests. They will not suffer
20 irreparable harm by allowing licensees to move forward and open their businesses. They
21 will not suffer irreparable harm by continued enforcement of the regulations or by not
22 compelling discovery at this time. Absent concrete and specific irreparable harm, the
23 Court should deny the motion.

24 **F. A Preliminary Injunction Would Result in Undue Hardship to All Current**
25 **Licensees, and the Balance of Equities Strongly Favors Denying an Injunction**

26 When Plaintiffs address undue hardship in the balance of equities, they focus
27 only on harm to the Department. Plaintiffs fail to address the harm that a preliminary
28 injunction would cause to the public by cutting off significant tax revenue, nor do they
address the hardships that the licensees would suffer. The licensees are the ones who

1 actually have a property right in the licenses that they were awarded and wish to use to
2 open up businesses. As Plaintiffs themselves state, the marijuana industry is “[o]ne of
3 Nevada’s most lucrative emerging industries,” and those property rights may be worth
4 “tens of millions, even hundreds of millions of dollars.” (Motion, pg. 9). If a preliminary
5 injunction were granted, the licensees may not be able to go into business and could lose
6 a significant amount of revenue, especially considering that they have prepared
7 locations and may have to sit on unproductive land for the indefinite future.

8 Additionally, numerous others will suffer, as local jurisdictions will be deprived of tax
9 revenue, landlords will not receive rent, vendors and service providers will not receive
10 revenue or payments for their services, and the hundreds of employees who will be
11 working in these establishments will not have paying jobs while this process is held up.

12 Critically, under NAC 453D.295, if the licensees have not had a final inspection of
13 their establishment within twelve months of receiving the license, they will lose the
14 licenses. By granting an injunction, the Court would prevent the licensees from
15 preparing for the final inspection, which would, in turn, gravely harm the licensees’
16 chances of passing the final inspection within the allotted time. The balance of equities
17 tilts strongly in the direction of denying any preliminary injunction.

18 **G. A Preliminary Injunction is Not in the Public’s Best Interest**

19 Plaintiffs state that an injunction is in the public’s best interest to safeguard
20 against favoritism, improvidence, and corruption. But as stated above, Plaintiffs have
21 not presented any evidence at all that favoritism, improvidence, or corruption had any
22 impact on the application process.

23 To the contrary, an injunction is objectively not in the public’s best interest. If an
24 injunction were granted, 64 licensees would be unable to go into business causing
25 stagnation in the market. Plaintiffs would be preventing the public from enjoying 64
26 legitimate businesses in what the democratic process has determined to be a legally
27 protected market. Moreover, the public would not benefit from the jobs and substantial
28 tax revenue created by those 64 businesses. Rather, the injunction would set a precedent

1 for the public that a losing party in a competitive application process need only file a
2 lawsuit to keep a competitor from being successful.

3 **H. Even if a Preliminary Injunction Were Considered, NRCP 65 Would Require an**
4 **Enormous Bond to Protect Current Licensees**

5 Plaintiffs' motion completely ignores the fact that "[t]he court may issue a
6 preliminary injunction ... only if the movant gives security in an amount that the court
7 considers proper to pay the costs and damages sustained by any party found to have
8 been wrongfully enjoined or restrained." NRCP 65(c). The primary purpose of such a
9 bond is "to safeguard [the parties to be enjoined] from costs and damages incurred as a
10 result of a[n] [injunction] order improvidently issued." *V'Guara Inc. v. Dec*, 925 F. Supp.
11 2d 1120, 1127 (D. Nev. 2013).

12 As stated above, if the Court were to grant a preliminary injunction in this case,
13 the injunction would prevent businesses from exercising 64 licenses worth "tens of
14 millions, even hundreds of millions of dollars" to open establishments in "[o]ne of
15 Nevada's most lucrative emerging industries." Moreover, because the injunction may
16 prevent licensees from perfecting their licenses prior to the deadline, the injunction may
17 prevent licensees from ever using their licenses if they are forced to surrender the
18 licenses due to the passage of time under NAC 453D.295.

19 A bond sufficient to protect the current licensees in this case, holding 64 licenses,
20 would need to be extraordinarily high, easily reaching into the hundreds of millions of
21 dollars. For that reason alone, a preliminary injunction is impractical, and the Court
22 should deny the motion outright.

23 **CONCLUSION**

24 For the reasons set forth above, NOR respectfully requests that this Court deny
25 Plaintiffs' motion for a preliminary injunction in its entirety.

26 **KOCH & SCOW, LLC**

27 By: /s/ David R. Koch
28 *Attorneys for Defendant-Intervenor*
Nevada Organic Remedies LLC

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on May 9, 2019, I caused the foregoing document entitled: **NEVADA ORGANIC REMEDIES, LLC'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** 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)

State of Nevada Department of Taxation:

Traci Plotnick (tplotnick@ag.nv.gov)

Theresa Haar (thaar@ag.nv.gov)

Steven Shevorski (sshevorski@ag.nv.gov)

Ketan Bhirud (kbhirud@ag.nv.gov)

David Pope (dpope@ag.nv.gov)

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)

Helping Hands Wellness Center Inc:

Jared Kahn (jkahn@jk-legalconsulting.com)

GreenMart of Nevada NLV LLC:

Alina Shell (alina@nvlitigation.com)

Margaret McLetchie (maggie@nvlitigation.com)

Clear River, LLC:

Diane Meeter (dmeeter@blacklobello.law)

J. Graf (Rgraf@blacklobello.law)

Joyce Martin (jmartin@blacklobello.law)

Jerri Hunsaker (jhunsaker@blacklobello.law)

Brigid Higgins (bhiggins@blacklobello.law)

Other Service Contacts not associated with a party on the case:

Ali Augustine (a.augustine@kempjones.com)

Nathanael Rulis (n.rulis@kempjones.com)

Alisa Hayslett (a.hayslett@kempjones.com)

Brigid Higgins (bhiggins@blacklobello.law)

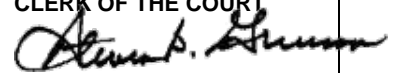
Rusty Graf (rgraf@blacklobello.law)

Cami Perkins, Esq. (cperkins@nevadafirm.com)

Executed on May 9, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh

Andrea Eshenbaugh



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

Defendant,

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor.

Case No. A-19-786962-B

Dept. No. 11

**APPENDIX OF EXHIBITS TO
NEVADA ORGANIC REMEDIES,
LLC'S OPPOSITION TO
SERENITY WELLNESS CENTER,
LLC AND RELATED PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Hearing Date: May 24, 2019
Time: 9:00 a.m.

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APPENDIX

Exhibit	Description
	Declaration of Andrew Jolley
1	Medical Marijuana Establishment Registration Certificate – Request for Applications – Release Date: May 30, 2014
2	Recreational Marijuana Establishment License Application – Recreational Retail Marijuana Store Only – Release Date: July 6, 2018
3	Nevada Senate Bill No. 32 – Committee on Revenue and Economic Development – 80th Session (2019)
4	Final Report of the Governor’s Task Force on the Implementation of Question 2: The Regulation and Taxation of Marijuana Act – Dated: May 30, 2017

DATED: May 9, 2019

KOCH & SCOW, LLC

By: /s/ David R. Koch
David R. Koch, Esq.
Attorneys for Defendant-Intervenor
Nevada Organic Remedies, LLC

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on May 9, 2019, I caused the foregoing document entitled: **APPENDIX OF EXHIBITS TO NEVADA ORGANIC REMEDIES, LLC'S OPPOSITION TO SERENITY WELLNESS CENTER, LLC AND RELATED PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** 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 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
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6 J. Graf (rgraf@blacklobello.law)

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11 Ali Augustine (a.augustine@kempjones.com)

12 Nathanael Rulis (n.rulis@kempjones.com)

13 Alisa Hayslett (a.hayslett@kempjones.com)

14 Brigid Higgins (bhiggins@blacklobello.law)

15 Rusty Graf (rgraf@blacklobello.law)

16 Cami Perkins, Esq. (cperkins@nevadafirm.com)

17 Executed on May 9, 2019 at Henderson, Nevada.

18 /s/ Andrea Eshenbaugh

19 Andrea Eshenbaugh

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1. I am a founder of and corporate officer of Nevada Organic Remedies LLC ("NOR"). I have personal knowledge of the information below and am competent to testify as to the same if called upon by this Court. I make this Declaration in support of NOR's Opposition to Motion for Preliminary Injunction in this action.

3. When Ballot Question 2 was passed by Nevada voters in 2016, the governor established a Task Force to consider and provide proposals for legislative, regulatory, and executive actions that needed to be taken to implement the Regulation and Taxation of Marijuana Act.

5. Among the Task Force members was the manager of TGIG, LLC, one of the plaintiffs in this action.

7. In 2018, the Nevada Department of Taxation (the “Department”) issued notice for an application period within which the Department sought

1 applications from qualified applicants for sixty-four (64) recreational marijuana
2 retail store licenses throughout various jurisdictions in Nevada. The application
3 period for those licenses opened on September 7, 2018 and closed on September
4 20, 2018.

5 8. NOR reviewed the rules and regulations regarding licensing and
6 applications that were promulgated and approved by the Department. Those rules
7 and regulations were public, and any party that desired to apply for a license had
8 access to the rules and regulations well ahead of the application period.

9 9. NOR spent substantial time and effort in preparing its 2018
10 applications. I estimate that NOR spent more than 2,000 man-hours preparing its
11 application, which exceeded 2,800 pages. NOR submitted an application for eight
12 recreational marijuana retail store licenses in the following Nevada jurisdictions:
13 Unincorporated Clark County, City of Las Vegas, City of North Las Vegas, City of
14 Henderson, City of Reno, Nye County, Carson City and City of Sparks.

15 10. We knew and expected that competition for these additional licenses
16 would be strong, and we were extraordinarily careful and diligent in preparing our
17 applications. I am informed and believe that other existing licensees did not spend
18 the same time and effort to prepare their applications, anticipating that their prior
19 receipt of licenses would likely result in their receiving additional licenses during the
20 new application period.

21 11. On December 5, 2018, the Department sent letters to NOR indicating
22 that the Department intended to conditionally approve NOR's applications for
23 licenses in Unincorporated Clark County, City of Las Vegas, City of North Las Vegas,
24 City of Henderson, City of Reno, Carson City and Nye County.

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1 12. I am informed and believe that the Department received numerous
2 applications for licenses in each of the jurisdictions in which NOR applied, which triggered
3 the Department's obligations to rank all applications within each such jurisdiction from
4 first to last based on compliance with NRS 453D and the Adopted Regulation of the
5 Department of Taxation, LCB File No. R092-17 ("R092-17").

6 13. I am further informed and believe that the Department, after ranking the
7 applications, issued licenses to the highest-ranked applicants in each jurisdiction until the
8 Department had issued the maximum number of licenses authorized for issuance in that
9 jurisdiction.

10 14. I am informed and believe that the Department issued NOR seven
11 conditional licenses because NOR scored second highest among overall applicants in six
12 jurisdictions, and NOR had the highest score for any applicant in Nye County.

13 15. Attached hereto as Exhibit 1 is a true and correct copy of the form Marijuana
14 Application from 2014.

15 16. Attached hereto as Exhibit 2 is a true and correct copy of the form Retail
16 Marijuana Store Application from 2018.

17 17. I understand that the Nevada Legislature is currently considering an
18 amendment to certain marijuana licensing statutes and regulations that are at issue in this
19 case. Attached hereto as Exhibit 3 is a true and correct copy of what I believe to be the
20 most current version of Nevada Senate Bill 32, which is a proposed amendment to certain
21 disclosure provisions of the marijuana licensing statutes.

22 I declare under penalty of perjury under the law of the State of Nevada that the
23 foregoing is true and correct.

24 DATED this 8th day of May 2019.

25
26 
27 _____
28 ANDREW JOLLEY

EXHIBIT 1

EXHIBIT 1

STATE OF NEVADA

BRIAN SANDOVAL
Governor

MICHAEL J. WILLDEN
Director



RICHARD WHITLEY, MS
Administrator

TRACEY D. GREEN, MD
Chief Medical Officer

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH**

4150 Technology Way, Suite 300
Carson City, Nevada 89706
Telephone: (775) 684-4200 · Fax: (775) 684-4211

Medical Marijuana Establishment Registration Certificate

Request for Applications

Release Date: May 30, 2014

Accepting Applications Period: August 5 - 18, 2014

(Business Days M-F, 8:00 A.M. - 5:00 P.M.)

For additional information, please contact:

Medical Marijuana Establishment (MME) Program

Division of Public and Behavioral Health

4150 Technology Way, Suite 104

Carson City, NV 89706

Phone: 775-684-3487

Email address: medicalmarijuana@health.nv.gov

STATE OF NEVADA

BRIAN SANDOVAL
GovernorMICHAEL J. WILLDEN
DirectorRICHARD WHITLEY, MS
AdministratorTRACEY D. GREEN, MD
Chief Medical OfficerDEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH4150 Technology Way, Suite 300
Carson City, Nevada 89706

Telephone: (775) 684-4200 · Fax: (775) 684-4211

APPLICANT INFORMATION SHEET FOR MEDICAL MARIJUANA ESTABLISHMENT
APPLICATION

Applicant Must:

A) Provide all requested information in the space provided next to each numbered question. The information provided in Sections 1 through 10 will be used for application questions and updates;

B) Type or print responses; and

C) Include this Applicant Information Sheet in Tab III of the Identified Criteria Response.

1	Company Name		
2	Street Address		
3	City, State, ZIP		
4	Telephone Number		
	Area Code	Number	Extension
5	Facsimile Number		
	Area Code	Number	Extension
6	Toll Free Number		
	Area Code	Number	Extension
7	Contact Person for providing information, signing documents, or ensuring actions are taken as per Section 23 of LCB File No. R004-14A		
	Name:		
	Title:		
	Address:		
	Email Address:		
8	Telephone Number for Contact Person		
	Area Code:	Number:	Extension:
9	Facsimile Number for Contact Person		
	Area Code:	Number:	Extension:
10	Contact Person Signature		
	Signature:		Date:

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1. TERMS AND DEFINITIONS

For the purposes of this Application, the following terms/definitions will be used:

TERMS	DEFINITIONS
<i>Applicant</i>	Organization/individual(s) submitting an application in response to this request for application.
<i>Division</i>	The Nevada Division of Public and Behavioral Health of the Department of Health and Human Services.
<i>Edible marijuana products</i>	As per NRS 453A.101, 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>Electronic funds transfer</i>	Electronic funds transfer (EFT) is the electronic exchange, transfer of money from one account to another, either within a single financial institution or across multiple institutions, through computer-based systems.
<i>Electronic verification system</i>	As per NRS 453A.102, an electronic database that keeps track of data in real time and is accessible by the Division and by registered medical marijuana establishments.
<i>Enclosed, locked facility</i>	As per NRS 453A.103, a closet, display case, room, greenhouse, or other enclosed area that meets the requirements of NRS 453A.362 and is equipped with locks or other security devices which allow access only by a medical marijuana establishment agent and the holder of a valid registry identification card.
<i>Excluded felony offense</i>	As per NRS 453A.104, 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.
<i>Facility for the production of edible marijuana products or marijuana infused products</i>	As per NRS 453A.105, a business that is registered with the Division pursuant to NRS 453A.322, and acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells edible marijuana products or marijuana-infused products to medical marijuana dispensaries.

<i>Identified Response</i>	A response to the application in which information is included, including any descriptive information, that identifies 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). This information includes 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>Identifiers</i>	An 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>Independent testing laboratory</i>	As per NRS 453A.107, a business that is registered with the Division to test marijuana, edible marijuana products and marijuana- infused products. Such an independent testing laboratory must be able to determine accurately, with respect to marijuana, edible marijuana products and marijuana-infused products, the concentration therein of THC and cannabidiol, the presence and identification of molds and fungus, and the presence and concentration of fertilizers and other nutrients.
<i>Inventory control system</i>	As per NRS 453A.108, a process, device or other contrivance that may be used to monitor the chain of custody of marijuana used for medical purposes from the point of cultivation to the end consumer.
<i>Marijuana</i>	As per NRS 453.096, 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.

<i>Marijuana infused products</i>	As per NRS 453A.112, 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, without limitation, topical products, ointments, oils and tinctures.
<i>May</i>	Has the meaning ascribed to it in NRS 0.025.
<i>Medical marijuana dispensary</i>	As per NRS 453A.115, a business that is registered with the Division and acquires, possesses, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to the holder of a valid registry identification card.
<i>Medical marijuana establishment</i>	As per NRS 453A.116, an independent testing laboratory, a cultivation facility, a facility for the production of edible marijuana products or marijuana-infused products, a medical marijuana dispensary, or a business that has registered with the Division and paid the requisite fees to act as more than one of the types of businesses.
<i>Medical marijuana establishment agent</i>	As per NRS 453A.117, an owner, officer, board member, employee or volunteer of a medical marijuana establishment. The term does not include a consultant who performs professional services for a medical marijuana establishment.
<i>Medical marijuana establishment agent registration card</i>	As per NRS 453A.118, a form of identification that is issued by the Division to authorize a person to volunteer or work at a medical marijuana establishment.
<i>Medical marijuana establishment registration certificate</i>	As per NRS 453A.119, a certificate that is issued by the Division, pursuant to NRS 453A.332, to authorize the operation of a medical marijuana establishment.
<i>Medical use of marijuana</i>	As per NRS 453A.120, 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.
<i>Must</i>	Has the meaning ascribed to it in NRS 0.025.
<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 Response</i>	A response to the application in which no information is included or any descriptive information is included that would permit an evaluator to reasonably draw a conclusion as to the identity of 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>Shall</i>	Has the meaning ascribed to it in NRS 0.025.
<i>State</i>	The State of Nevada and any agency identified herein.

2. APPLICATION OVERVIEW

The 2013 Legislature passed Senate Bill 374 relating to medical marijuana, providing for the registration of medical marijuana establishments authorized to test marijuana in a laboratory, cultivate or dispense marijuana or manufacture edible marijuana products or marijuana-infused products for sale to persons authorized to engage in the medical use of marijuana. Senate Bill 374 also provides for the registration of agents who are employed by or volunteer at medical marijuana establishments, setting forth the manner in which such establishments must register and operate, and requiring the Division of Public and Behavioral Health (Division) to adopt regulations. Senate Bill 374 has now been included in the codified NRS 453A.

The regulations provide provisions for the establishment, licensing, operation and regulation of medical marijuana establishments in the State of Nevada. The regulations address this new industry as a privileged industry as outlined in NRS 453A.320.

The Division is seeking applications from qualified applicants in conjunction with this application process for medical marijuana establishment certificates. The resulting establishment certificates will be for an initial term of one (1) year, subject to Section 34 of LCB File No. R004-14A.

3. APPLICATION TIMELINE

The following represents the timeline for this project.

Task	Date/Time
Request for Application Date	5/30/2014
Deadline for Submitting Questions	6/20/2014 2:00 PM
Answers Posted to Website	On or before 7/7/2014
Opening of 10 Day Window for Receipt of Applications	8/5/2014 8:00 AM
Deadline for Submission of Applications	8/18/2014 5:00 PM
Evaluation Period	8/5/2014 - 11/2/2014
Provisional Certificates Issued	On or about 11/3/2014

4. APPLICATION INSTRUCTIONS

The State of Nevada, Division of Public and Behavioral Health, on behalf of the Department of Health and Human Services, is seeking applications from qualified applicants to receive provisional certificates to issue medical marijuana establishment certificates.

The Division anticipates issuing medical marijuana establishment certificates in conjunction with this application process and in compliance with Nevada statutes and regulations. Therefore, applicants are encouraged to be as specific as possible in their application about the services they will provide, geographic location, and submissions for each criteria category.

All questions relating to this application and the application process must be submitted in writing to medicalmarijuana@health.nv.gov no later than 2:00 P.M. on 6/20/2014. Calls should only be directed to the phone number provided in this application. No questions will be accepted after this date. Answers will be posted to the Medical Marijuana Program FAQ section of the Division's website no later than 7/7/2014 at <http://health.nv.gov/MedicalMarijuana.htm>.

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. Each must be submitted in individual 3-ring binders. Applicants must submit their application broken out into the two (2) sections required in a single box or packaged for shipping purposes.
- 5.1.2. The required CDs must contain information as specified in Section 5.4.
- 5.1.3. Detailed instructions on application submission and packaging follows, and 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 separated by clearly marked tabs with the appropriate section number and title as specified.
- 5.1.6. If discrepancies are found between two (2) or more copies of the application, the **MASTER COPY** shall provide the basis for resolving such discrepancies. If one (1) copy of the application is not clearly marked "**MASTER**," the Division may, at its sole discretion, select one (1) copy to be used as the master.
- 5.1.7. For ease of evaluation, the application must be presented in a format that corresponds to and references sections outlined within this submission requirements section and must be presented in the same order. Written responses must be typed and in bold/italics and placed immediately following the applicable criteria question, statement and/or section.
- 5.1.8. 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.
- 5.1.9. In a Non-Identified Criteria response, when a specific person or company is referenced, the identity must be submitted with 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.
- 5.1.10. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the application instructions, responsiveness to the application requirements, and on completeness and clarity of content.
- 5.1.11. Applications must not be printed on company letterhead and/or with any identifying company watermarks. Applicants must submit response using plain white paper.
- 5.1.12. Materials not requested in the application process will not be reviewed or evaluated.

- 5.1.13. The State of Nevada, in its continuing efforts to reduce solid waste and to further recycling efforts, requests that applications, to the extent possible and practical:
- 5.1.13.1. Be submitted on recycled paper;
 - 5.1.13.2. Not include pages of unnecessary advertising;
 - 5.1.13.3. Be printed on both sides of each sheet of paper (except when a new section begins);
 - 5.1.13.4. Follow strict definition of Non-Identified response when directed; and
 - 5.1.13.5. Be contained in re-usable binders as opposed to spiral or glued bindings.
- 5.1.14. For purposes of addressing questions concerning this application, submit questions to **medicalmarijuana@health.nv.gov** no later than 2:00 P.M. on 6/20/2014. Calls must be directed to the phone number provided in this application. No questions will be addressed after this date. Upon issuance of this request for application, other employees and representatives of the agencies identified in the application will not answer questions or otherwise discuss the contents of this application with any other prospective applicants or their representatives.

5.2. PART I – IDENTIFIED CRITERIA RESPONSE

The IDENTIFIED CRITERIA RESPONSE must include:

One (1) original copy marked “MASTER”

Three (3) identical copies

The response must have the tabbed sections as described below:

5.2.1. Tab I – Title Page

The title page must include the following:

Part I – Identified Criteria Response	
Application Title:	A Medical Marijuana Establishment Registration Certificate
Application:	
Applicant Name:	
Address:	
Application Opening Date and Time:	August 5, 2014 8:00 AM
Application Closing Date and Time:	August 18, 2014 5:00 PM

5.2.2. Tab II – Table of Contents

An accurate table of contents must be provided in this tab.

5.2.3. Tab III – Applicant Information Sheet

The completed Applicant Information Sheet with an original signature by the contact person for providing information, signing documents, or ensuring actions are taken as per Section 23 of LCB File No. R004-14A must be included in this tab. (Page 2)

5.2.4. Tab IV – Medical Marijuana Establishment Registration Certificate Application

The completed Medical Marijuana Establishment Registration Certificate Application with original signatures must be included in this tab. (Attachment A)

5.2.5. Tab V – Multi-Establishment Limitation form

If applicable, a copy of the multi-establishment limitation form must be included in this tab. If not applicable, please insert a plain page with the words “**Not applicable.**” (Attachment G).

5.2.6. **Tab VI** – Identifier Legend

A copy of the Identifier legend must be included in this tab. If not applicable, please insert a plain page with the words “**Not Applicable**” (Attachment H).

5.2.7. **Tab VII** – Confirmation that the applicant has registered with the Secretary of State

Documentation that the applicant has registered as the appropriate type of business with the Secretary of State.

5.2.8. **Tab VIII** – Confirmation of the ownership or authorized use of the property as a medical marijuana establishment

5.2.8.1. A copy of property owner’s approval for use form (Attachment F).

5.2.8.2. If the applicant has executed a lease or owns the proposed property, a copy of the lease or documentation of ownership.

A copy of the property owner’s approval for use form and lease or documentation of ownership must be included in this tab.

5.2.9. **Tab IX**– Documentation from a financial institution in this state, or in any other state or the District of Columbia, which demonstrates:

5.2.9.1. That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets; and

5.2.9.2. The source of those liquid assets.

Documentation demonstrating the liquid assets and the source of those liquid assets must be included in this tab.

Please note: If applying for more than one medical marijuana establishment registration certificate; available funds must be shown for each establishment application.

5.2.10. **Tab X** – Evidence of the amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed establishment.

Evidence of taxes paid and other beneficial financial contributions made must be included in this tab.

5.2.11. **Tab XI** – The description of the proposed organizational structure of the proposed medical marijuana establishment and information concerning each Owner, Officer and Board Member of the proposed medical marijuana establishment.

- 5.2.11.1. An organizational chart showing all owners, officers, and board members of the medical marijuana establishment, including percentage of ownership for each individual.
- 5.2.11.2. The owner, officer and board member information form must be completed for each individual named in this application (Attachment C).
- 5.2.11.3. An owner, officer and board member Attestation Form must be completed for each individual named in this application (Attachment B).
- 5.2.11.4. A Child Support Verification Form for each owner, officer and board member must be completed for each individual named in this application (Attachment D).
- 5.2.11.5. A narrative description, not to exceed 750 words, demonstrating the following:
 - 5.2.11.5.1. Past experience working with governmental agencies and highlighting past community involvement.
 - 5.2.11.5.2. Any previous experience at operating other businesses or nonprofit organizations.
 - 5.2.11.5.3. Any demonstrated knowledge or expertise with respect to the compassionate use of marijuana to treat medical conditions.
 - 5.2.11.5.4. A resume, including educational achievements, for each owner, officer and board member must be completed for each individual named in this application.
- 5.2.11.6. A Request and Consent to Release Application Form for Medical Marijuana Establishment Registration Certificate(s) for each owner, officer and board member may be completed for each individual named in this application (Attachment E).
- 5.2.11.7. Documentation that fingerprint cards have been submitted to the Central Repository for Nevada Records of Criminal History.

The organizational chart, owner, officer and board member information form(s), attestation form(s), resume(s), child support verification forms(s), narrative description(s), request and consent to release application form, as applicable, and fingerprint documentation must be included in this tab.

5.2.12. **Tab XII** – A financial plan which includes:

- 5.2.12.1. Financial statements showing the resources of the applicant(s), both liquid and illiquid.
- 5.2.12.2. If the applicant is relying on money from an owner, officer or board member, or any other source, evidence that the person has

unconditionally committed such money to the use of the applicant in the event the Division issues a medical marijuana establishment registration certificate to the applicant.

- 5.2.12.3. Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.

The financial plan must be included in this tab.

- 5.2.13. **Tab XIII** – If a local government in which a proposed medical marijuana establishment will be located has not enacted zoning restrictions or the applicant is not required to secure approval that the applicant is in compliance with such restrictions:

- 5.2.13.1. A professionally prepared survey demonstrating that the applicant has satisfied all the requirements of NRS 453A.322(3)(a)(2)(II).

A professionally prepared survey must be included in this tab. If not applicable, please insert a plain page stating “**Not applicable.**”

- 5.2.14. Included with this packet - the \$5,000.00 application fee as per Section 26(1) of LCB File No. R004-14A

Please note: Cashier’s checks and money orders (made out to the “Nevada Division of Public and Behavioral Health”) will be accepted. All payments of money in an amount of \$10,000 or more must be made by any method of electronic funds transfer of money allowed. The electronic payment must be credited to the State of Nevada on or before the date such payment is due.

5.3. **PART II –NON-IDENTIFIED CRITERIA RESPONSE**

The NON-IDENTIFIED CRITERIA RESPONSE must include:

One (1) original copy marked “MASTER”

Three (3) original copies marked “Non-Identified Criteria Response”

*Please note: The content of this response must be in a **non-identified** format. The **Identifier Legend Form (Attachment H)** must be used to non-identify the content of the response.*

The response must have the tabbed sections as described below:

- 5.3.1. **Tab I** – Title Page

The title page must include the following:

Please note: Title page will be removed for evaluation and does not require non-identification.

Part II –Non-Identified Criteria Response	
Application Title:	A Medical Marijuana Establishment Registration Certificate
Application:	
Applicant Name:	
Address:	
Application Opening Date and Time:	August 5, 2014 8:00 AM
Application Closing Date and Time:	August 18, 2014 5:00 PM

5.3.2. **Tab II** – Table of Contents

An accurate table of contents must be provided in this tab.

5.3.3. **Tab III** – Documentation concerning the adequacy of the size of the proposed medical marijuana establishment to serve the needs of persons who are authorized to engage in the medical use of marijuana, including, without limitation:

*Please note: The content of this response must be in a **non-identified** format*

5.3.3.1. Building and Construction plans with supporting details.

Please note: The size or square footage of the proposed establishment must include the maximum size of the proposed operation per the lease and/or property ownership. The start-up plans and potential expansion must be clearly stated to prevent needless misunderstandings and surrendering of certification.

Non-identified Building and Construction plans with supporting details must be included in this tab.

5.3.4. **Tab IV** – Documentation concerning the integrated plan of the proposed medical marijuana establishment for the care, quality and safekeeping of medical marijuana from seed to sale, including, without limitation:

*Please note: The content of this response must be in a **non-identified** format*

5.3.4.1. A non-identified plan for testing and verifying medical marijuana.

5.3.4.2. A non-identified transportation plan.

5.3.4.3. Non-identified procedures to ensure adequate security including, without limitation, measures for building security.

5.3.4.4. Non-identified procedures to ensure adequate security including, without limitation, measures for product security.

Non-identified plans for testing medical marijuana, transportation, and building and product security must be included in this tab.

5.3.5. **Tab V** – A plan which includes:

*Please note: The content of this response must be in a **non-identified** format*

5.3.5.1. A non-identified description of the operating procedures for the electronic verification system of the proposed medical marijuana establishment for verifying medical marijuana cardholders

5.3.5.2. A non-identified description of the inventory control system of the proposed medical marijuana establishment.

Please note: Applicants must demonstrate a system to include thorough tracking of product movement and sales. The system shall account for all inventory held by an establishment in any stage of cultivation, production, display or sale, as applicable for the type of establishment, and demonstrate an internal reporting system to provide the Division with comprehensive knowledge of an establishment's inventory.

The plan for the operating procedures for the electronic verification system and the inventory control system must be included in this tab and must be in a non-identifying format.

5.3.6. **Tab VI** – Evidence that the applicant has a plan to staff, educate and manage the proposed medical marijuana establishment on a daily basis, which must include, without limitation:

*Please note: The content of this response must be in a **non-identified** format*

5.3.6.1. A non-identified detailed budget for the proposed medical marijuana establishment, including pre-opening, construction and first year operating expenses.

5.3.6.2. A non-identified operations manual that demonstrates compliance with applicable statutes and regulations.

5.3.6.3. A non-identified education plan which must include, without limitation, providing educational materials to the staff of the proposed establishment.

5.3.6.4. A non-identified plan to minimize the environmental impact of the proposed establishment.

The plan to staff, educate and manage the proposed medical marijuana establishment must be included in this tab and must be non-identified.

5.3.7. **Tab VII** – A proposal demonstrating the following:

*Please note: The content of this response must be in a **non-identified** format*

5.3.7.1. The likely impact of the proposed medical marijuana establishment in the community in which it is proposed to be located.

5.3.7.2. The manner in which the proposed medical marijuana establishment will meet the needs of the persons who are authorized to engage in the medical use of marijuana.

The likely impact and how the establishment will meet the needs of persons who are authorized to engage in the medical use of marijuana must be included in this tab and must be non-identified.

5.4. **Part III – CD Response**

The CD portion of the application must include:

5.4.1. Four (4) Identified Criteria Response CDs

5.4.2. Four (4) Non-Identified Criteria Response CDs

5.4.2.1. The electronic files must follow the format and content section for the Identified Criteria Response and Non-Identified Criteria Response

5.4.2.2. All electronic files must be saved in “PDF” format, with the following file names:

5.4.2.2.1. Part I – Identified Criteria Response

5.4.2.2.2. Part II – Non-Identified Criteria Response

5.4.2.3. The CDs must be packaged in a case and clearly labeled as follows:

CDs	
Application	A Medical Marijuana Establishment Registration Certificate
Applicant Name:	
Address:	
Contents:	Part I – Identified Criteria Response Part II – Non-Identified Criteria Response

5.5. APPLICATION PACKAGING

- 5.5.1. If the separately sealed Identified Criteria Response, Non-Identified Criteria Response and CDs marked as required, are enclosed in another container for mailing purposes, the outermost container must fully describe the contents of the package and be clearly marked as follows:

<i>Medical Marijuana Establishment (MME) Program</i> <i>Division of Public and Behavioral Health</i> <i>4150 Technology Way, Suite 104</i> <i>Carson City, NV 89706</i>	
Application:	
Application Opening Date and Time:	August 5, 2014 8:00 AM
Application Closing Date and Time:	August 18, 2014 5:00 PM
For:	A Medical Marijuana Establishment Registration Certificate
Applicant's Name:	

- 5.5.2. Applications must be filed or accepted at 4150 Technology Way, Suite 104. Applications shall be deemed filed or accepted on the date of the postmark dated by the post office on the package in which it was mailed in accordance with NRS 238.100.
- 5.5.3. The Division will not be held responsible for application envelopes mishandled as a result of the envelope not being properly prepared.
- 5.5.4. Email, facsimile, electronic or telephone Applications will **NOT** be considered.
- 5.5.5. The Identified Criteria Response shall be submitted to the Division in a sealed package and be clearly marked as follows:

<i>Medical Marijuana Establishment (MME) Program</i> <i>Division of Public and Behavioral Health</i> <i>4150 Technology Way, Suite 104</i> <i>Carson City, NV 89706</i>	
Application:	A Medical Marijuana Establishment Registration Certificate
Application Component:	PART I – Identified Criteria Response
Application Opening Date and Time:	August 5, 2014 8:00 AM
Application Closing Date and Time:	August 18, 2014 5:00 PM
Applicant's Name:	

- 5.5.6. The Non-Identified Criteria Response shall be submitted to the Division in a sealed package and be clearly marked as follows:

<i>Medical Marijuana Establishment (MME) Program</i> <i>Division of Public and Behavioral Health</i> <i>4150 Technology Way, Suite 104</i> <i>Carson City, NV 89706</i>	
Application:	A Medical Marijuana Establishment Registration Certificate
Application Component:	PART II – Non-Identified Criteria Response
Application Opening Date and Time:	August 5, 2014 8:00 AM
Application Closing Date and Time:	August 18, 2014 5:00 PM
Applicant's Name:	

- 5.5.7. The CDs shall be submitted to the Division in a sealed package and be clearly marked as follows:

<i>Medical Marijuana Establishment (MME) Program</i> <i>Division of Public and Behavioral Health</i> <i>4150 Technology Way, Suite 104</i> <i>Carson City, NV 89706</i>	
Application:	A Medical Marijuana Establishment Registration Certificate
Application Component:	CDs
Application Opening Date and Time:	August 5, 2014 8:00 AM
Application Closing Date and Time:	August 18, 2014 5:00 PM
Applicant's Name:	

6. APPLICATION EVALUATION

6.1. Applications shall be consistently evaluated and scored in accordance with NRS 453A and LCB File No. R004-14A based upon the following criteria and point values:

	Merit Criteria	Descriptive Elements	Points
		<i>Listed below are certain elements that must be included in the response to the respective Merit Criteria. However, applicants should provide additional information that helps to demonstrate how the applicant uniquely meets the specified Merit Criteria in addition to the descriptive elements specified below.</i>	
I	NRS 453A.328(1) The total financial resources of the applicant, both liquid and illiquid	<p>A financial plan which includes:</p> <ul style="list-style-type: none"> Financial statements showing the resources of the applicant(s), both liquid and illiquid. If the applicant is relying on money from an owner, officer or board member, or any other source, evidence that the person has unconditionally committed such money to the use of the applicant in the event the Division issues a medical marijuana establishment registration certificate to the applicant and the applicant obtains the necessary local government approvals to operate the establishment. Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation. <p>Evidence that the applicant has a plan to staff, educate and manage the proposed medical marijuana establishment on a daily basis, which must include:</p> <ul style="list-style-type: none"> A detailed budget for the proposed establishment, including pre-opening, construction and first-year operating expenses. 	40
II	<p>NRS 453A.328(2) The previous experience of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment at operating other businesses or nonprofit organizations</p> <p>453A.328(3) The educational achievements of the persons who are proposed to be owners, officers or board members of the</p>	<p>An organizational chart showing all Owners, Officers and Board Members of the medical marijuana establishment, including percentage of ownership for each individual and a short description of the proposed organizational structure.</p> <p>A narrative description, not to exceed 750 words, demonstrating the following:</p> <ul style="list-style-type: none"> Any previous experience at operating other businesses or nonprofit organizations. Any demonstrated knowledge or expertise with respect to the compassionate use of marijuana to treat medical conditions. 	50

	<p>proposed medical marijuana establishment</p> <p>453A.328(4) Any demonstrated knowledge or expertise on the part of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment with respect to the compassionate use of marijuana to treat medical conditions</p>	<ul style="list-style-type: none"> • A resume, including educational achievements, for each owner, officer and board member. 	
III	<p>453A.328(5) Whether the proposed location of the proposed medical marijuana establishment would be convenient to serve the needs of persons who are authorized to engage in the medical use of marijuana</p>	<p>Evidence that the applicant owns the property on which the proposed medical marijuana establishment will be located or has the written permission of the property owner to operate the proposed medical marijuana establishment on that property as required by NRS 453A.322(3)(a)(2)(IV), on a form prescribed by the Division.</p>	20
IV	<p>453A.328(6) The likely impact of the proposed medical marijuana establishment on the community in which it is proposed to be located</p>	<p>A proposal demonstrating:</p> <ul style="list-style-type: none"> • Past experience working with governmental agencies and highlighting past community involvement. • The likely impact of the proposed medical marijuana establishment in the community in which it is proposed to be located. • The manner in which the proposed medical marijuana establishment will meet the needs of the persons who are authorized to engage in the medical use of marijuana. 	20
V	<p>453A.328(7) The adequacy of the size of the proposed medical marijuana establishment to serve the needs of persons who are authorized to engage in the medical use of marijuana</p>	<p>Documentation concerning the adequacy of the size of the proposed medical marijuana establishment to serve the needs of persons who are authorized to engage in the medical use of marijuana, including, without limitation:</p> <ul style="list-style-type: none"> • Building and Construction Plans with supporting details. 	20
VI	<p>453A.328(8) Whether the applicant has an integrated plan for the care, quality and safekeeping of medical marijuana from seed to sale</p>	<p>Documentation concerning the integrated plan of the proposed medical marijuana establishment for the care, quality and safekeeping of medical marijuana from seed to sale, including, without limitation:</p> <ul style="list-style-type: none"> • A plan for testing and verifying medical marijuana. • A transportation plan. • Procedures to ensure adequate security measures including, without limitation, for building security. • Procedures to ensure adequate security including, without limitation, measures for product security. 	75

		<p>Evidence that the applicant has a plan to staff, educate and manage the proposed medical marijuana establishment on a daily basis, which must include, without limitation:</p> <ul style="list-style-type: none"> • An operations manual that demonstrates compliance with applicable statutes and regulations. • An education plan which must include, without limitation, providing educational materials to the staff of the proposed establishment. • A plan to minimize the environmental impact of the proposed establishment. <p>A plan which includes:</p> <ul style="list-style-type: none"> • A description of the operating procedures for the electronic verification system of the proposed medical marijuana establishment for verifying medical marijuana cardholders. • A description of the inventory control system of the proposed medical marijuana establishment to satisfy the requirements of sub-subparagraph (II) of subparagraph (3) of paragraph (a) of subsection 3 of NRS 453A.322. 	
VII	453A.328(9)The amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions by the applicant or the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment	Evidence of the amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed establishment.	25
Application Total			250
		Review results of background check(s), Applicant has until the end of the 90-day application period to resolve any background check information which would cause the application to be rejected.	Unweighted

- 6.2. Pursuant to subsection 1 of Section 28 of LCB File No. R004-14A, if, within 10 business days after the date on which the Division begins accepting applications in response to a request for applications issued pursuant to Section 25 of LCB File No. R004-14A, the Division receives more than one application and the Division determines that more than one of the applications is complete and in compliance with LCB File No. R004-14A and Chapter 453A of NRS, the Division will rank the applications, within each applicable local governmental jurisdiction for any applicants which are in a jurisdiction that limits the number of a type of medical marijuana establishment and statewide for each applicant which is in a jurisdiction that does not specify a

limit, in order from first to last based on compliance with the provisions of Chapter 453A of NRS and LCB File No. R004-14A and on the content of the applications as it relates to:

- 6.2.1. Evidence that the applicant owns the property on which the proposed medical marijuana establishment will be located or has the written permission of the property owner to operate the proposed medical marijuana establishment on that property as required by sub-subparagraph (IV) of subparagraph (2) of paragraph (a) of subsection 3 of NRS 453A.322
 - 6.2.2. Evidence that the applicant controls not less than \$250,000 in liquid assets to cover the initial expenses of opening the proposed medical marijuana establishment and complying with the provisions of NRS 453A.320 to 453A.370, inclusive as required by sub-subparagraph (III) of subparagraph (2) of paragraph (a) of subsection 3 of NRS 453A.322
 - 6.2.3. Evidence of the amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions by the applicant or the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment as described in subsection 9 of NRS 453A.328 and pursuant to the provisions of subsection 4 of section 26 of LCB File No. R004-14A
 - 6.2.4. The description of the proposed organizational structure of the proposed medical marijuana establishment, and information concerning each Owner, Officer and Board Member of the proposed medical marijuana establishment, including, without limitation, the information provided pursuant to subsections 5 and of Section 26 of LCB File No. R004-14A
- 6.3. Pursuant to subsection 2 of Section 28 of LCB File No. R004-14A, an application that has not demonstrated a sufficient response related to the criteria set forth in 6.2.1, 6.2.2, 6.2.3 and 6.2.4, will not be further evaluated, and the Division will not issue a medical marijuana establishment registration certificate to that applicant.
- 6.4. Pursuant to subsection 3 of Section 28 of LCB File No. R004-14A, if the Division receives any findings from a report concerning the criminal history of an applicant or person who is proposed to be an owner, officer or board member of a proposed medical marijuana establishment that disqualify that person from being qualified to serve in that capacity, the Division will provide notice to the applicant and give the applicant an opportunity to revise its application. If a person who is disqualified from serving as an owner, officer or board member remains on the application as a proposed owner, officer or board member 90 days after the date on which the Division initially received the application, the Division may disqualify the application.
- 6.5. The Division may contact anyone referenced in any information provided for the Owners, Officers and Board Members of the proposed establishment; contact any applicant to clarify any response; solicit information from any available source concerning any aspect of an application; and seek and review any other information deemed pertinent to the evaluation process.
- 6.6. The Division shall issue provisional medical marijuana establishment registration certificates in accordance with NRS 453A.326 (3) and Sections 29, 30 and 31 of LCB File No. R004-14A to the highest ranked applicants up to the designated number of registration certificates the Division

plans to issue.

- 6.7. Pursuant to subsection 2 of Section 29 of LCB File No. R004-14A, if two or more applicants have the same total number of points for the last application being awarded a provisional medical marijuana establishment registration certificate, the Division will select the applicant which has scored the highest number of points as it relates to the proposed organizational structure of the proposed medical marijuana establishment and the information concerning each owner, officer and board member of the proposed medical marijuana establishment, including, without limitation, the information provided pursuant to subsections 5 and 6 of Section 26 of LCB File No. R004-14A.
- 6.8. In accordance with Section 30 of LCB File No. R004-14A, if the Division receives only one response in a specific local governmental jurisdiction which limits the number of a type of establishment to one, or statewide, if the applicant is in a jurisdiction which does not limit the number of a type of medical marijuana establishment, and the Division determines that the application is complete and in compliance with LCB File No. R004-14A and Chapter 453A of the NRS, the Division will issue a provisional medical marijuana establishment registration certificate to that applicant to in accordance with subsection 3 of NRS 453.326.
- 6.9. Pursuant to subsection 1 of Section 31 of LCB File No. R004-14A, the issuance of a medical marijuana establishment registration certificate by the Division is provisional and not an approval to begin business operations, until such time as:
- 6.9.1. The medical marijuana establishment is in compliance with all applicable local governmental ordinances and rules; and
 - 6.9.2. The local government has issued a business license, or otherwise approved the applicant, for the operation of the medical marijuana establishment.
- 6.10. Pursuant to subsection 2 of Section 31 of LCB File No. R004-14A, if the local government for a jurisdiction in which a medical marijuana establishment is located does not issue business licenses and does not approve or disapprove medical marijuana establishments in its jurisdiction, a medical marijuana establishment registration certificate becomes an approval to begin operations as a medical marijuana establishment when the medical marijuana establishment is in compliance with all applicable local governmental ordinances and rules.

7. MEDICAL MARIJUANA ESTABLISHMENT APPLICATION CHECKLIST

This checklist is provided for the applicant's convenience only and identifies documents that must be submitted with each package in order to be considered complete.

Part I - Identified Criteria Response:	Completed
Applicant Information Sheet	
Medical Marijuana Establishment Registration Certificate Application (Attachment A).	

Multi-Establishment Limitation Form; if applicable (Attachment G).	
Identifier Legend (Attachment H)	
Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business.	
<p>Confirmation of the ownership or authorized use of the property as a medical marijuana establishment</p> <ul style="list-style-type: none"> • A copy of Property Owner's Approval for Use Form (Attachment F). • If the applicant has executed a lease or owns the proposed property, a copy of the lease or documentation of ownership. 	
<p>Documentation from a financial institution in this state, or in any other state or the District of Columbia, which demonstrates:</p> <ul style="list-style-type: none"> • That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets. • The source of those liquid assets. <p><i>Please note: If applying for more than one Medical Marijuana establishment certificate; available funds must be shown for each establishment application.</i></p>	
Evidence of the amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be Owners, Officers or Board Members of the proposed establishment.	
<p>A financial plan which includes:</p> <ul style="list-style-type: none"> • Financial statements showing the resources of the applicant, both liquid and illiquid • If the applicant is relying on money from an Owner, Operator or Board Member, or any other source, evidence that such person has unconditionally committed such money to the use of the applicant in the event the Division issues a medical marijuana establishment registration certificate to the applicant. • Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation. 	
<p>\$5,000.00 application fee as per Section 26(1) of LCB File No. R004-14A</p> <p><i>Please note: Cashier's checks and money orders (made out to the "Nevada Division of Public and Behavioral Health") will be accepted. All payments of money in an amount of \$10,000 or more must be made by any method of electronic funds transfer of money allowed. The electronic payment must be credited to the State of Nevada on or before the date such payment is due.</i></p>	
To be included for each Owner, Officer and Board Member of the proposed medical marijuana establishment:	
Owner, Officer, and Board Member Attestation Form (Attachment B).	
Owner, Officer, and Board Member Information Form (Attachment C).	
A narrative description, not to exceed 750 words, demonstrating:	

<ul style="list-style-type: none"> • Past experience working with governmental agencies and highlighting past community involvement. • Any previous experience at operating other businesses or non-profit organizations. • Any demonstrated knowledge or expertise with respect to the compassionate use of marijuana to treat medical conditions. • A resume, including educational achievements. 	
A Request and Consent to Release Form (Attachment E).	
Documentation that fingerprint cards have been submitted to Nevada's Criminal History Repository.	
Part II - Non-Identified Criteria Response: <i>Please note: All of the following must be submitted in a non-identified format.</i>	Completed
Documentation concerning the adequacy of the size of the proposed medical marijuana establishment to serve the needs of persons who are authorized to engage in the medical use of marijuana, including: <ul style="list-style-type: none"> • Building and construction plans with all supporting details 	
Documentation concerning the integrated plan of the proposed medical marijuana establishment for the care, quality and safekeeping of medical marijuana from seed to sale, including: <ul style="list-style-type: none"> • A plan for testing and verifying medical marijuana. • A transportation plan. • Procedures to ensure adequate security measures for building security. • Procedures to ensure adequate security measures for product security. 	
A plan which includes, <ul style="list-style-type: none"> • A description of the operating procedures for the electronic verification system of the proposed medical marijuana establishment for verifying medical marijuana card holders. • A description of the Inventory control system of the proposed medical marijuana establishment 	
Evidence that the applicant has a plan to staff, educate and manage the proposed medical marijuana establishment on a daily basis, which must include: <ul style="list-style-type: none"> • A detailed budget for the proposed establishment, including pre-opening, construction and first year operating expenses. • An operations manual that demonstrates compliance with the applicable statutes and regulations. • An education plan which must include providing educational materials to the staff of the proposed establishment. • A plan to minimize the environmental impact of the proposed establishment. 	
An application demonstrating: <ul style="list-style-type: none"> • The likely impact of the proposed medical marijuana establishment in the community in which it is proposed to be located. • The manner in which the proposed medical marijuana establishment will meet the needs of the persons who are authorized to engage in the medical use of marijuana. 	

STATE OF NEVADA

BRIAN SANDOVAL
Governor

MICHAEL J. WILLDEN
Director



RICHARD WHITLEY, MS
Administrator

TRACEY D. GREEN, MD
Chief Medical Officer

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH**

4150 Technology Way, Suite 300
Carson City, Nevada 89706
Telephone: (775) 684-4200 - Fax: (775) 684-4211

ATTACHMENT A - MEDICAL MARIJUANA ESTABLISHMENT APPLICATION

STATE OF NEVADA

BRIAN SANDOVAL
GovernorMICHAEL J. WILLDEN
DirectorRICHARD WHITLEY, MS
AdministratorTRACEY D. GREEN, MD
Chief Medical OfficerDEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH4150 Technology Way, Suite 300
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MEDICAL MARIJUANA ESTABLISHMENT APPLICATION - (Attachment A)

GENERAL INFORMATION

Type of Medical Marijuana Establishment: <input type="checkbox"/> Independent Testing Laboratory <input type="checkbox"/> Cultivation Facility			
<input type="checkbox"/> Medical Marijuana Dispensary <input type="checkbox"/> Marijuana Infused/Edible Production Facility			
Medical Marijuana Establishment's Name and Proposed Physical Address*: *This must be a Nevada address and cannot be a P.O. Box.			
City:	County:	State:	Zip Code:
Proposed Hours of Operation: <div style="display: flex; justify-content: space-around;"> Sunday Monday Tuesday Wednesday Thursday Friday Saturday </div>			

APPLYING ENTITY INFORMATION

Applying Entity's Name:		
Business Organization: <input type="checkbox"/> Individual <input type="checkbox"/> Corp. <input type="checkbox"/> Partnership		
<input type="checkbox"/> LLC <input type="checkbox"/> Assoc. /Coop. <input type="checkbox"/> Other specify:		
Telephone #:	E-Mail Address:	
State Business License #:	Expiration Date:	
Mailing Address:		
City:	State:	Zip Code:

DESIGNEE INFORMATION

List the name of the individual designated to submit establishment agent registry ID card applications on behalf of the medical marijuana establishment.

Last Name:	First Name:	MI:
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MEDICAL MARIJUANA ESTABLISHMENT OWNER (OR), OFFICER (OF), AND BOARD MEMBER (BM) NAMES

For each Owner, Officer, and Board Member listed below, please fill out a corresponding Establishment Principal Officers and Board Members Information Form.

Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM

The acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing of “medical” marijuana under state law is lawful only if done in strict compliance with the requirements of the State Medical Marijuana Act, NRS 453A, NAC 453A and LCB File No. R004-14A. Any failure to comply with these requirements may result in revocation of the medical marijuana agent identification card or medical marijuana establishment registration certificate issued by the Division.

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The State of Nevada, including but not limited to the employees of the Division, is not facilitating or participating in any way with my acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing of medical marijuana.

If the applicant is issued a medical marijuana establishment provisional registration certificate, the applicant agrees to not operate the establishment until the establishment is inspected and the applicant obtains a medical marijuana establishment registration certificate authorizing operation of the establishment.

I attest that the information provided to the Division for this medical marijuana establishment registration certificate application is true and correct.

Print Name

Title

Signature

Date Signed

Print Name

Title

Signature

Date Signed

STATE OF NEVADA

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**ATTACHMENT B – OWNER, OFFICER, AND BOARD MEMBER ATTESTATION
FORM**

STATE OF NEVADA

BRIAN SANDOVAL
Governor

MICHAEL J. WILLDEN
Director



RICHARD WHITLEY, MS
Administrator

TRACEY D. GREEN, MD
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OWNER, OFFICER, AND BOARD MEMBER ATTESTATION FORM – (Attachment B)

I, _____,

PRINT NAME

Attest that:

I have not been convicted of an excluded felony offense as defined in NRS Chapter 453A;
and,

I agree that the Division may investigate my background information by any means feasible
to the Division; and,

I will not divert marijuana to any individual or person who is not allowed to possess
marijuana pursuant NRS Chapter 453A; and,

All information provided is true and correct.

Signature of Owner, Officer, or Board Member

Date Signed

State of Nevada	
County of _____	
Signed and sworn to (or affirmed) before me on _____ (date)	
By _____ (name(s) of person(s) making statement)	
Notary Stamp	Signature of Notarial Officer

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**ATTACHMENT C – OWNER, OFFICER, AND BOARD MEMBER INFORMATION
FORM**

STATE OF NEVADA

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Governor

MICHAEL J. WILLDEN
Director



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Administrator

TRACEY D. GREEN, MD
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OWNER, OFFICER, AND BOARD MEMBER INFORMATION FORM - (Attachment C)

Provide the following information for each Owner, Officer, and Board Member listed on the Medical Marijuana Establishment application. Use as many sheets as needed.			
Last Name:	First Name:	MI:	<input type="checkbox"/> OR <input type="checkbox"/> OF <input type="checkbox"/> BM
Date of Birth:			
Residence Address:			
City:	County:	State:	Zip:
A short description of the role the individual will serve in for the organization and the responsibilities of the position of the individual:			
Has this individual served as a principal officer or board member for a medical marijuana establishment that has had their establishment registration certificate revoked? <input type="checkbox"/> YES <input type="checkbox"/> NO			
Is this individual a physician currently providing written certifications for qualifying patients? <input type="checkbox"/> YES <input type="checkbox"/> NO			
Is this individual employed by or a contractor of the Division? <input type="checkbox"/> YES <input type="checkbox"/> NO			
Has a copy of this individual's signed and dated Medical Marijuana Dispensary Principal Officer or Board Member Attestation Form been submitted with this application? <input type="checkbox"/> YES <input type="checkbox"/> NO			
If applicable, what is this individual's designated caregiver or dispensary agent registry identification number if issued within the previous six months?			
Has a copy of this individual's fingerprints on a fingerprint card been submitted with this application? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A			
Has a copy of the Request and Consent to Release Application Form been submitted with this application? <input type="checkbox"/> YES <input type="checkbox"/> NO			
Has a copy of this individual's signed and dated Child Support Verification Form been submitted with this application? <input type="checkbox"/> YES <input type="checkbox"/> NO			

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ATTACHMENT D – CHILD SUPPORT VERIFICATION FORM

STATE OF NEVADA

BRIAN SANDOVAL
Governor

MICHAEL J. WILLDEN
Director



RICHARD WHITLEY, MS
Administrator

TRACEY D. GREEN, MD
Chief Medical Officer

DEPARTMENT OF HEALTH AND HUMAN SERVICES
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Carson City, Nevada 89706

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CHILD SUPPORT VERIFICATION FORM – (Attachment D)

You are required to complete this Child Support Statement and return it with your application. Failure to submit a fully completed and signed current Child Support Statement will result in the application for a medical marijuana establishment certificate being denied.

- ☐ I am not subject to a court order for the support of a child.
- ☐ I am subject to a court order for the support of one or more children and am in compliance with the order or am in compliance with a plan approved by the District Attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.
- ☐ I am subject to a court order for the support of one or more children and am not in compliance with the order of a plan approved by the District Attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

Applicant's Name

Applicant's Social Security Number

Applicant's Signature

Date

State of Nevada	
County of _____	
Signed and sworn to (or affirmed) before me on _____ (date)	
By _____ (name(s) of person(s) making statement)	
Notary Stamp	
	Signature of Notarial Officer

STATE OF NEVADA

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Director



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Administrator

TRACEY D. GREEN, MD
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Carson City, Nevada 89706

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ATTACHMENT E – REQUEST AND CONSENT TO RELEASE APPLICATION FORM

BRIAN SANDOVAL
Governor

MICHAEL J. WILLDEN
Director

STATE OF NEVADA



RICHARD WHITLEY, MS
Administrator

TRACEY D. GREEN, MD
Chief Medical Officer

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Request and Consent to Release Application
Form for Medical Marijuana Establishment Registration Certificate(s) - (Attachment E)

I, _____, am the duly authorized designee of

_____ to represent and interact with the Division of Public and Behavioral Health (Division) on all matters and questions in relation to the application for a Nevada Medical Marijuana Establishment Registration Certificate(s). I understand that NRS 453A.700 makes all applications submitted to the Division confidential but that local government authorities including, but not limited to, the licensing or zoning departments of cities, towns or counties may need to review this application in order to authorize the operation of an establishment under local requirements. Therefore, I consent to the release of this application to any local governmental authority in the jurisdiction where the address listed on this application is located.

By signing this Request and Consent to Release Information I hereby acknowledge and agree that the State of Nevada, its subdivisions, including the Division of Public and Behavioral Health and its employees are not responsible for any consequences related to the release of the information identified in this consent. I further acknowledge and agree that the State and its subdivisions cannot make any guarantees or be held liable related to the confidentiality and safe keeping of this information once it is released.

Signature of Requestor/Applicant or Designee

Date: _____

State of Nevada	
County of _____	
Signed and sworn to (or affirmed) before me on _____ date)	
By _____ (name(s) of person(s) making statement)	
Notary Stamp	
	Signature of Notarial Officer

STATE OF NEVADA

BRIAN SANDOVAL
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ATTACHMENT F – PROPERTY OWNER APPROVAL FOR USE FORM

STATE OF NEVADA

BRIAN SANDOVAL
Governor

MICHAEL J. WILLDEN
Director



RICHARD WHITLEY, MS
Administrator

TRACEY D. GREEN, MD
Chief Medical Officer

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PROPERTY OWNER APPROVAL FOR USE FORM – (Attachment F)

TO BE COMPLETED BY THE OWNER OF THE PHYSICAL ADDRESS OF THE PROPOSED MEDICAL MARIJUANA ESTABLISHMENT.			
Name of Individual or Entity Applying for a Medical Marijuana Establishment Registration Certificate:			
Name of Owner of the Physical Address of the Proposed Medical Marijuana Establishment:			
Physical Address and Name of Proposed Medical Marijuana Establishment: <i>*This must be a Nevada address and cannot be a P.O. Box.</i>			
City:	County:	State:	Zip Code:
Legal Description of the Property:			

☐ The individual or entity applying for a Medical Marijuana Establishment Registration Certificate is the owner of the physical address of the proposed Medical Marijuana Establishment.

OR

☐ The owner of the physical address of the proposed Medical Marijuana Establishment gives permission to the individual or entity applying for a Medical Marijuana Establishment Registration Certificate to operate a Medical Marijuana Establishment at the physical address.

PROPERTY OWNER SIGNATURE

DATE SIGNED

PROPERTY OWNER NAME

TITLE

STATE OF NEVADA

BRIAN SANDOVAL
Governor

MICHAEL J. WILLDEN
Director



RICHARD WHITLEY, MS
Administrator

TRACEY D. GREEN, MD
Chief Medical Officer

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH**

4150 Technology Way, Suite 300

Carson City, Nevada 89706

Telephone: (775) 684-4200 - Fax: (775) 684-4211

ATTACHMENT G – MULTI-ESTABLISHMENT LIMITATIONS FORM

STATE OF NEVADA

BRIAN SANDOVAL
GovernorMICHAEL J. WILLDEN
DirectorRICHARD WHITLEY, MS
AdministratorTRACEY D. GREEN, MD
Chief Medical OfficerDEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH4150 Technology Way, Suite 300
Carson City, Nevada 89706
Telephone: (775) 684-4200 - Fax: (775) 684-4211**MULTI-ESTABLISHMENT LIMITATIONS FORM – (Attachment G)**

NRS 453A.324 places a limitation on the total number of certificates that can be issued within each county, and NRS 453A.326 places limitations on the number of medical marijuana dispensaries located in any one governmental jurisdiction and a limitation on the number of certificates issued to any one person. Due to these limitations, please list below all applications submitted from this business organization and/or person as identified in the Medical Marijuana Establishment Owner, Officer, and Board Member names section of Attachment A.

If this business organization were to not receive approval on all applications submitted, would the applicant still want approval on the applications determined by the ranking below? ☐ Yes ☐ No

Please list in order of preference for approval (use as many sheets as needed).

Type of Medical Marijuana Establishment: <input type="checkbox"/> Independent Testing Laboratory <input type="checkbox"/> Cultivation Facility			
<input type="checkbox"/> Medical Marijuana Dispensary <input type="checkbox"/> Marijuana Infused/Edible Production Facility			
Medical Marijuana Establishment's Name and Proposed Physical Address*: *This must be a Nevada address and cannot be a P.O. Box.			
City:	County:	State:	Zip Code:

Type of Medical Marijuana Establishment: <input type="checkbox"/> Independent Testing Laboratory <input type="checkbox"/> Cultivation Facility			
<input type="checkbox"/> Medical Marijuana Dispensary <input type="checkbox"/> Marijuana Infused/Edible Production Facility			
Medical Marijuana Establishment's Name and Proposed Physical Address*: *This must be a Nevada address and cannot be a P.O. Box.			
City:	County:	State:	Zip Code:

Type of Medical Marijuana Establishment: <input type="checkbox"/> Independent Testing Laboratory <input type="checkbox"/> Cultivation Facility			
<input type="checkbox"/> Medical Marijuana Dispensary <input type="checkbox"/> Marijuana Infused/Edible Production Facility			
Medical Marijuana Establishment's Name and Proposed Physical Address*: *This must be a Nevada address and cannot be a P.O. Box.			
City:	County:	State:	Zip Code:

Type of Medical Marijuana Establishment: <input type="checkbox"/> Independent Testing Laboratory <input type="checkbox"/> Cultivation Facility			
<input type="checkbox"/> Medical Marijuana Dispensary <input type="checkbox"/> Marijuana Infused/Edible Production Facility			
Medical Marijuana Establishment's Name and Proposed Physical Address*: *This must be a Nevada address and cannot be a P.O. Box.			
City:	County:	State:	Zip Code:

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH**

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Carson City, Nevada 89706
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ATTACHMENT H – IDENTIFIER LEGEND FORM

BRIAN SANDOVAL
Governor

MICHAEL J. WILLDEN
Director

STATE OF NEVADA



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Administrator

TRACEY D. GREEN, MD
Chief Medical Officer

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DIVISION OF PUBLIC AND BEHAVIORAL HEALTH**

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IDENTIFIER LEGEND FORM – (Attachment H)

In a Non-Identified Criteria response, when a specific person or company is referenced, the identity must remain confidential. A person must be addressed through their position, discipline, 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 (use as many sheets as needed).

Criteria Response Identifier	Actual Person or Company (for Division verification outside the evaluation process)
<i>Example: Owner A</i>	<i>John Smith</i>
<i>Example: Owner B</i>	<i>John Doe</i>
<i>Example: Construction Company A</i>	<i>Acme Construction</i>
<i>Example: Job A</i>	<i>State Senator</i>

EXHIBIT 2

EXHIBIT 2



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Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
Executive Director

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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

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

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

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



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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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JAMES DEVOLLD
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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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Must	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of an application as non-responsive.
NAC	Nevada Administrative Code. All applicable NAC documentation may be reviewed via the internet at: http://www.leg.state.nv.us/NAC/CHAPTERS.HTML
Non-Identified Criteria Response	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.
NRS	Nevada Revised Statutes. All applicable NRS documentation may be reviewed via the internet at: http://www.leg.state.nv.us/NRS/ .
Pacific Time (PT)	Unless otherwise stated, all references to time in this request for applications and any subsequent award of license are understood to be Pacific Time.
Recreational marijuana retail store	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.
Recreational marijuana establishment	Means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.
Recreational marijuana establishment agent	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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Governor
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Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
Executive Director

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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.



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5.2. Part I – General Criteria Response

The IDENTIFIED CRITERIA RESPONSE must include:

- Electronic media (CD-R or thumb drive) containing only the Identified Criteria Response.
- Do not password protect electronic media or individual files.
- The response must contain separate PDF files for each of the tabbed sections as described below.

5.2.1. Tab I – Title Page

The title page must include the following:

Part I – Identified Criteria Response	
Application Title:	A Recreational Marijuana Establishment License
Applicant Name:	
Address:	
Application Opening Date and Time:	September 7, 2018
Application Closing Date and Time:	September 20, 2018

5.2.2. Tab II – Table of Contents

An accurate table of contents must be provided in this tab.

5.2.3. Tab III – Applicant Information Sheet (Page 2)

The completed Applicant Information Sheet signed by the contact person who is responsible for providing information, signing documents, or ensuring actions are taken pursuant to R092-17, Sec. 94 must be included in this tab.

5.2.4. Tab IV – Recreational Marijuana Establishment License Application (Attachment A)

The completed and signed Recreational Marijuana Establishment License Application must be included in this tab.

5.2.5. Tab V – Multi-Establishment Limitations Form (Attachment F)

If applicable, a copy of the Multi-Establishment Limitations Form must be included in this tab. If not applicable, please insert a plain page with the words “**Not applicable.**”

5.2.6. Tab VI – Identifier Legend (Attachment H)

If applicable, a copy of the Identifier Legend must be included in this tab. If not applicable, please insert a page with the words “**Not Applicable**”.



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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

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

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

HENDERSON OFFICE
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

5.2.7. **Tab VII – Confirmation that the applicant has registered with the Secretary of State**
Documentation that the applicant has registered as the appropriate type of business and the Articles of Incorporation, Articles of Organization, Operating Agreements, or partnership or joint venture documents of the applicant must be included in this tab.

5.2.8. **Tab VIII– Documentation of liquid assets**
Documentation demonstrating the liquid assets and the source of those liquid assets from a financial institution in this state or in any other state or the District of Columbia must be included in this tab and demonstrate the following criteria :

5.2.8.1. That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets; and

5.2.8.2. The source of those liquid assets.

Note: If applying for more than one recreational marijuana establishment license, available funds must be shown for each establishment application.

5.2.9. **Tab IX – Evidence of taxes paid; other beneficial financial contributions**
Evidence of the amount of taxes paid and/or other beneficial financial contributions made to the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the establishment must be included in this tab.

5.2.10. **Tab X – Organizational structure and owner, officer or board member information**

The description of the proposed organizational structure of the proposed recreational marijuana establishment and information concerning each owner, officer and board member of the proposed recreational marijuana establishment must be included in this tab and demonstrate the following criteria:

- 5.2.10.1. An organizational chart showing all owners, officers and board members of the recreational marijuana establishment including percentage of ownership for each individual.
- 5.2.10.2. An Owner, Officer and Board Member Attestation Form must be completed for each individual named in this application (Attachment B).
- 5.2.10.3. The supplemental Owner, Officer and Board Member Information Form should be completed for each individual named in this application. This attachment must also include the diversity information required by R092-17, Sec. 80.1(b) (Attachment C).
- 5.2.10.4. A resume, including educational level and achievements for each owner, officer and board member must be completed for each individual named in this application.
- 5.2.10.5. A narrative description not to exceed 750 words demonstrating the following:
- 5.2.10.5.1. Past experience working with government agencies and highlighting past community involvement.



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5.2.10.5.2. Any previous experience at operating other businesses or non-profit organizations, including marijuana industry experience.

5.2.10.6. A Request and Consent to Release Application Form for Recreational Marijuana Establishment License(s) for each owner, officer and board member should be completed for each individual named in this application (Attachment D).

5.2.10.7. A copy of each individual's completed fingerprint submission form demonstrating he or she has submitted fingerprints to the Nevada Department of Public Safety.

5.2.11. **Tab XI– Financial plan**

A financial plan must be included in this tab which includes:

5.2.11.1. Financial statements showing the resources of the applicant, both liquid and illiquid.

5.2.11.2. If the applicant is relying on funds from an owner, officer, board member or any other source, evidence that such person has unconditionally committed such funds to the use of the applicant in the event the Department awards a recreational marijuana establishment license to the applicant.

5.2.11.3. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation.

5.2.12. **Tab XII – Name, signage and advertising plan**

A proposal of the applicant's name, signage and advertising plan which will be used in the daily operations of the recreational marijuana establishment on the form supplied by the Department (Attachment G) must be included in this tab.

Please note: This section will require approval, but will not be scored.

5.2.13. **Application Fee**

5.2.13.1. Include with this packet the \$5,000.00 non-refundable application fee per NRS 453D.230(1).

Please note: Only cash, cashier's checks and money orders made out to the "Nevada Department of Taxation" will be accepted for payment of the nonrefundable application fee.

5.3. **Part II – Non-identified Criteria Response**

The NON-IDENTIFIED CRITERIA RESPONSE must include:

- Electronic media (CD-R or thumb drive) containing only the Identified Criteria Response.
- Do not password-protect electronic media or individual files.



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RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

BRIAN SANDOVAL
Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
Executive Director

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

HENDERSON OFFICE
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- The response must contain separate PDF files for each of the tabbed sections as described below:

5.3.1. Tab I – Title Page

Please note: Title page will not be viewed by Non-Identified Criteria evaluators.

The title page must include the following:

Part II –Non-Identified Criteria Response	
Application Title:	A Recreational Marijuana Establishment License
Applicant Name:	
Address:	
Application Opening Date and Time:	September 7, 2018
Application Closing Date and Time:	September 20, 2018

5.3.2. Tab II – Table of Contents

An accurate table of contents must be provided in this tab.

5.3.3. Tab III – Building/Establishment information

Documentation concerning the adequacy of the size of the proposed recreational marijuana establishment to serve the needs of persons who are authorized to engage in the use of marijuana must be included in this tab. The content of this response must be in a **non-identified** format and include building and general floor plans with all supporting details

Please note: The size or square footage of the proposed establishment should include the maximum size of the proposed operation per the lease and property ownership. The start-up plans and potential expansion should be clearly stated to prevent needless misunderstandings and surrendering of certification.

5.3.4. Tab IV – Care, quality and safekeeping of marijuana from seed to sale plan

Documentation concerning the integrated plan of the proposed recreational marijuana establishment for the care, quality and safekeeping of recreational marijuana from seed to sale must be included in this tab. The content of this response must be in a **non-identified** format and include:

- 5.3.4.1. A plan for verifying and testing recreational marijuana
- 5.3.4.2. A transportation or delivery plan
- 5.3.4.3. Procedures to ensure adequate security measures for building security
- 5.3.4.4. Procedures to ensure adequate security measures for product security

5.3.5. Tab V – System and Inventory Procedures plan



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A plan for the operating procedures for verification system and inventory control system must be included in this tab. The content of this response must be in a **non-identified** format and include:

- 5.3.5.1. A description of the operating procedures for the verification system of the proposed marijuana establishment for verifying age.
- 5.3.5.2. A description of the inventory control system of the proposed recreational marijuana establishment.

Please note: Applicants should demonstrate a system to include thorough tracking of product movement and sales. The applicant shall demonstrate capabilities for an external interface via a secure API to allow third party software systems to report all required data into the State database to allow seamless maintenance of records and to enable a quick and accurate update on demand. The system shall account for all inventory held by an establishment in any stage of cultivation, production, display or sale as applicable for the type of establishment, and demonstrate an internal reporting system to provide the Department with comprehensive information about an establishment's inventory.

5.3.6. **Tab VI– Operations and resources plan**

Evidence that the applicant has a plan to staff and manage the proposed marijuana establishment on a daily basis must be included in this tab. The content of this response must be in a **non-identified** format and include:

- 5.3.6.1. A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses.
- 5.3.6.2. An operations manual that demonstrates compliance with the regulations of the Department.
- 5.3.6.3. An education plan which must include providing training and educational materials to the staff of the proposed establishment.
- 5.3.6.4. A plan to minimize the environmental impact of the proposed establishment.

5.3.7. **Tab VII – Community impact and serving authorized persons in need**

A proposal demonstrating the likely impact on the community and convenience to serve the needs of persons authorized to use marijuana must be included in this tab. The content of this response must be in a **non-identified format** and include:

- 5.3.7.1. The likely impact of the proposed recreational marijuana establishment in the community in which it is proposed to be located.
- 5.3.7.2. The manner in which the proposed recreational marijuana establishment will meet the needs of the persons who are authorized to use marijuana.



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5.4. Electronic Media Requirements

Electronic media submitted as part of the application must include:

- 5.4.1. A separate CD-R or thumb drive which contains only the Identified Criteria Response.
- 5.4.2. A separate CD-R or thumb drive which contains only the Non-Identified Criteria Response.
 - 5.4.2.1. The electronic files must follow the format and content section for the Identified Criteria Response and Non-Identified Criteria Response.
 - 5.4.2.2. All electronic files must be saved in "PDF" format with separate files for each required "Tab". Individual filenames must comply with the naming requirements specified in 5.1.5 of the General Submission Requirements.
 - 5.4.2.3. CD-Rs or thumb drives will be labeled as either Identified or Non-Identified Criteria Response. Identified Criteria Responses and Non-Identified Criteria Responses must not be saved to the same CD-R or thumb drive.
 - 5.4.2.3.1. Part I – Identified Criteria Response
 - 5.4.2.3.2. Part II – Non-Identified Criteria Response
 - 5.4.2.4. Seal the Identified Criteria Response and Non-Identified Criteria Response electronic media in separate envelopes and affix labels to the envelopes per the example below:

CDs or Thumb Drives	
Application	A Recreational Marijuana Establishment License
Applicant Name:	
Address:	
Contents:	Part I – Identified Criteria Response OR Part II – Non-Identified Criteria Response



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Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

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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
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5.5. Application Packaging and Instructions

- 5.5.1. Recreational Marijuana Establishment License Applications may be mailed or dropped off in person at:

Department of Taxation

Marijuana Enforcement Division

1550 College Parkway

Carson City, NV 89706

- OR -

Department of Taxation

Marijuana Enforcement Division

555 E. Washington Ave. Ste 1300

Las Vegas, NV 89101

- 5.5.2. Applications dropped off in person at one of the two Taxation office's must be received no later than **5:00 p.m. on September 20, 2018.**
- 5.5.3. Applications mailed in to one of the two Taxation office's must be postmarked by the United States Postal Service not later than **September 20, 2018.**
- 5.5.4. If an application is sent via a different delivery service (i.e. UPS, FedEx, etc.) and does not arrive at one of the two Taxation offices by **5:00 p.m. on September 20, 2018**, the application will not be considered.
- 5.5.5. If mailing the application, combine the separately sealed Identified and Non-Identified Criteria Response envelopes into a single package suitable for mailing.
- 5.5.6. The Department will not be held responsible for application envelopes mishandled as a result of the envelope not being properly prepared.
- 5.5.7. Email, facsimile, or telephone applications will **NOT** be considered.



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4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
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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

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6. APPLICATION EVALUATION AND AWARD PROCESS

The information in this section does not need to be returned with the applicant's application.

- 6.1. Applications shall be consistently evaluated and scored in accordance with NRS 453D, NAC 453D and R092-17 based upon the following criteria and point values.

Grey boxes are the Identified Criteria Response. White boxes are Non-Identified Criteria Response.

Nevada Recreational Marijuana Application Criteria	Points
The description of the proposed organizational structure of the proposed marijuana establishment and information concerning each owner, officer and board member of the proposed marijuana establishment including the information provided pursuant to R092-17.	60
Evidence of the amount of taxes paid or other beneficial financial contributions made to the State of Nevada or its political subdivisions within the last five years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed establishment.	25
A financial plan which includes: <ul style="list-style-type: none"> Financial statements showing the resources of the applicant, both liquid and illiquid. If the applicant is relying on funds from an owner, officer or board member, or any other source, evidence that such source has unconditionally committed such funds to the use of the applicant in the event the Department awards a recreational marijuana establishment license to the applicant and the applicant obtains the necessary local government approvals to operate the establishment. Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation. 	30
Documentation from a financial institution in this state or in any other state or the District of Columbia which demonstrates: <ul style="list-style-type: none"> That the applicant has at least \$250,000 in liquid assets which are unencumbered and can be converted within 30 days after a request to liquidate such assets. The source of those liquid assets. 	10
Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including: <ul style="list-style-type: none"> A plan for testing recreational marijuana. A transportation plan. Procedures to ensure adequate security measures for building security. Procedures to ensure adequate security measures for product security. <i>Please note: The content of this response must be in a non-identified format.</i>	40
Evidence that the applicant has a plan to staff, educate and manage the proposed recreational marijuana establishment on a daily basis, which must include: <ul style="list-style-type: none"> A detailed budget for the proposed establishment including pre-opening, construction and first year operating expenses. An operations manual that demonstrates compliance with the regulations of the Department. An education plan which must include providing educational materials to the staff of the proposed establishment. A plan to minimize the environmental impact of the proposed establishment. 	30



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RENO OFFICE
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Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

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Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
WILLIAM D. ANDERSON
Executive Director

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

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<i>Please note: The content of this response must be in a non-identified format.</i>	
A plan which includes: <ul style="list-style-type: none"> A description of the operating procedures for the electronic verification system of the proposed marijuana establishment. A description of the inventory control system of the proposed marijuana establishment. <i>Please note: The content of this response must be in a non-identified format.</i>	20
Documentation concerning the adequacy of the size of the proposed marijuana establishment to serve the needs of persons who are authorized to engage in the use of marijuana, including: <ul style="list-style-type: none"> Building and construction plans with supporting details. <i>Please note: The content of this response must be in a non-identified format.</i>	20
A proposal demonstrating: <ul style="list-style-type: none"> The likely impact of the proposed marijuana establishment in the community in which it is proposed to be located. The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to use marijuana. <i>Please note: The content of this response must be in a non-identified format.</i>	15
Application Total	250
Unweighted: <ul style="list-style-type: none"> Review plan for all names and logos for the establishment and any signage or advertisement. Review results of background check(s). Applicant has until the end of the 90-day application period to resolve background check information which may cause the application to be rejected. 	

6.2. If the Department receives more than one application for a license for a retail marijuana store in response to a request for applications made pursuant to R092-17, Sec. 76 and the Department determines that more than one of the applications is complete and in compliance with R092-17, Sec. 78 and Chapter 453D of the NRS, the Department will rank the applications within each applicable locality for any applicants which are in a jurisdiction that limits the number of retail marijuana stores in order from first to last. Ranking will be based on compliance with the provisions of R092-17 Sec. 80, Chapter 453D of NRS and on the content of the applications relating to:

- 6.2.1. Operating experience of another kind of business by the owners, officers or board members that has given them experience which is applicable to the operation of a marijuana establishment.
- 6.2.2. Diversity of the owners, officers or board members.
- 6.2.3. Evidence of the amount of taxes paid and other beneficial financial contributions.
- 6.2.4. Educational achievements of the owners, officers or board members.
- 6.2.5. The applicant's plan for care, quality and safekeeping of marijuana from seed to sale.
- 6.2.6. The financial plan and resources of the applicant, both liquid and illiquid.
- 6.2.7. The experience of key personnel that the applicant intends to employ.
- 6.2.8. Direct experience of the owners, officers or board members of a medical marijuana establishment or marijuana establishment in this State.



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Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
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555 E. Washington Avenue
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- 6.3. Applications that have not demonstrated a sufficient response related to the criteria set forth above will not have additional criteria considered in determining whether to issue a license and will not move forward in the application process.
- 6.4. Any findings from a report concerning the criminal history of an applicant or person who is proposed to be an owner, officer or board member of a proposed recreational marijuana establishment that disqualify that individual from serving in that capacity will also result in the disqualification of the application. The applicant will have the opportunity to resolve such an issue within the 90-day application period.
- 6.5. The Department and evaluation committee may also contact anyone referenced in any information provided for the owners, officers and board members of the proposed establishment; contact any applicant to clarify any response; solicit information from any available source concerning any aspect of an application; and, seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept any application, but shall make an award in the best interests of the State of Nevada per Regulation R092-17 and Chapter 453D of the NRS.
- 6.6. Clarification discussions may, at the Department's sole discretion, be conducted with applicants who submit applications determined to be acceptable and competitive per R092-17, Sec. 77-80 and NRS 453D.210. Applicants shall be afforded fair and equal treatment with respect to any opportunity for discussion and/or written clarifications of applications. Such clarifications may be permitted after submissions and prior to award for the purpose of obtaining best and final ranking of applications. In conducting discussions, there shall be no disclosure of any information derived from applications submitted by competing applicants. Any clarification given for the original application during the clarification discussions will be included as part of the application.
- 6.7. The Department will issue conditional recreational marijuana establishment licenses subject to final inspection in accordance with R092-17, Sec. 87 and subject to local jurisdiction to the highest ranked applicants up to the designated number of licenses the Department plans to issue.
- 6.8. If two or more applicants have the same total number of points for the last application being awarded a conditional license, the Department shall select the applicant which has scored the highest number of points as it is related to the proposed organizational structure of the proposed marijuana establishment and the information concerning each owner, officer and board member of the proposed marijuana establishment.
- 6.9. If the Department receives only one response within a specific jurisdiction; and, if the jurisdiction limits the number of a type of establishment to one; and, statewide, if there is not a limit on the number of a type of establishments to a request for applications for recreational marijuana establishments issued pursuant to R092-17, Sec. 76 (3) within 10 business days after the Department begins accepting responses to the request for applications; and, the



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Department determines that the response is complete and in compliance with the regulations, the Department will issue a conditional license to that applicant to operate a recreational marijuana establishment in accordance with R092-17.

- 6.10. The issuance by the Department of a recreational marijuana establishment license is conditional and not an approval to begin business operations until such time as:
 - 6.10.1. The marijuana establishment is in compliance with all applicable local government ordinances and rules; and
 - 6.10.2. The local government has issued a business license or otherwise approved the applicant for the operation of the establishment.
- 6.11. If the local government does not issue business licenses and does not approve or disapprove marijuana establishments in its jurisdiction, a recreational marijuana establishment license becomes an approval to begin business operations when the marijuana establishment is in compliance with all applicable local government ordinances and rules and has fulfilled all the requirements of the approval to operate by the Department.
- 6.12. Any license resulting from this application shall not be effective until approved by the Department.



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Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

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2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
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ATTACHMENT A RECREATIONAL MARIJUANA ESTABLISHMENT APPLICATION

GENERAL INFORMATION

Type of Marijuana Establishment: <input type="checkbox"/> Recreational Retail Marijuana Store			
Marijuana Establishment's Proposed Physical Address (this must be a Nevada address and cannot be a P.O. Box)			
City:	County:	State:	Zip Code:
Proposed Hours of Operation :			
Sunday	Monday	Tuesday	Wednesday
Thursday	Friday	Saturday	

APPLYING ENTITY INFORMATION

Applying Entity's Name:		
Business Organization: <input type="checkbox"/> Individual <input type="checkbox"/> Corp. <input type="checkbox"/> Partnership <input type="checkbox"/> LLC <input type="checkbox"/> Assoc. /Coop. <input type="checkbox"/> Other specify:		
Telephone #:	E-Mail Address:	
State Business License #:	Expiration Date:	
Mailing Address:		
City:	State:	Zip Code:

DESIGNEE INFORMATION

Name of individual designated to manage agent registration card applications on behalf of the establishment.

Last Name:	First Name:	MI:
------------	-------------	-----

SUPPLEMENTAL REQUESTS

Does the applicant agree to allow the Nevada Department of Taxation (Department) to submit supplemental requests for information? <input type="checkbox"/> Yes <input type="checkbox"/> No
--



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RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
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Governor
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ATTACHMENT A (continued)

Recreational Marijuana Establishment Owner (OR), Officer (OF), Board Member (BM) Names

For each owner, officer and board member listed below, please fill out a corresponding Establishment Principal Officers and Board Members Information Form (Attachment C).

Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM
Last Name:	First Name:	MI:	OR	OF	BM



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ATTACHMENT A (continued)

A marijuana agent identification card or recreational marijuana establishment license issued by the Nevada Department of Taxation (Department) pursuant to R092-17, Sec. 95 does not protect the applicant from legal action by federal authorities, including possible criminal prosecution for violations of federal law for the sale, manufacture, distribution, use, dispensing, possession, etc. of marijuana.

The acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing of “recreational” marijuana under state law is lawful only if done in strict compliance with the requirements of the State Medical & Recreational Marijuana Act(s) & Regulations (NAC- 453, NRS-453D, R092-17). Any failure to comply with these requirements may result in revocation of the marijuana agent identification card or Recreational Marijuana Establishment License issued by the Department.

The issuance of a license pursuant to section 80 of R092-17 of this regulation is conditional and not an approval to begin operations as a marijuana establishment until such time as all requirements in section 83 of R092-17 are completed and approved by the Department by means of a final inspection.

The State of Nevada, including but not limited to the employees of the Department, is not facilitating or participating in any way with my acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing of marijuana.

I attest that the information provided to the Department for this Recreational Marijuana Establishment License application is true and correct.

_____ Print Name	_____ Title
_____ Signature	_____ Date Signed
_____ Print Name	_____ Title
_____ Signature	_____ Date Signed



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ATTACHMENT B

OWNER, OFFICER AND BOARD MEMBER ATTESTATION FORM

I, _____ (PRINT NAME)

Attest that:

I have not been convicted of an excluded felony offense as defined in NRS 453D; and

I agree that the Department may investigate my background information by any means feasible to the Department; and

I will not divert marijuana to any individual or person who is not allowed to possess marijuana pursuant to R092-17, Sec. 94 and 453D of the NRS; and

All information provided is true and correct.

Signature of Owner, Officer or Board Member

Date Signed

State of Nevada	
County of _____	
Signed and sworn to (or affirmed) before me on _____ (date)	
By _____ (name(s) of person(s) making statement)	
Notary Stamp	
	Signature of notarial officer



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ATTACHMENT C OWNER, OFFICER AND BOARD MEMBER INFORMATION FORM

Provide the following information for each owner, officer and board member listed on the Recreational Marijuana Establishment Application. Use as many sheets as needed.			
Last Name:	First Name:	MI:	<input type="checkbox"/> OR <input type="checkbox"/> OF <input type="checkbox"/> BM
Date of Birth:	Race:	Ethnicity:	
Gender:			
Residence Address:			
City:	County:	State:	Zip:
Describe the individual's title, role in the organization and the responsibilities of the position of the individual:			
Has this individual served as a principal officer or board member for a marijuana establishment that has had their establishment license or certificate revoked? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has this individual previously had a medical marijuana establishment agent registration card or marijuana establishment agent registration card revoked <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is this individual an attending provider of health care currently providing written documentation for the issuance of registry identification cards or letters of approval? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is this individual employed by or a contractor of the Department? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has a copy of this individual's signed and dated Recreational Retail Marijuana Store Principal Officer or Board Member Attestation Form been submitted with this application? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is this individual a law enforcement officer? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has a copy of this individual's fingerprints on a fingerprint card been submitted to the Nevada Department of Public Safety? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Has a copy of the Request and Consent to Release Application Form been submitted with this application? <input type="checkbox"/> Yes <input type="checkbox"/> No			



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ATTACHMENT D REQUEST AND CONSENT TO RELEASE APPLICATION FORM RECREATIONAL MARIJUANA ESTABLISHMENT LICENSE

I, _____, am the duly authorized representative of

_____ to represent and interact with the Department of Taxation (Department) on all matters and questions in relation to the Nevada Recreational Marijuana Establishment License(s) Application. I understand that R092-17, Sec. 242 makes all applications submitted to the Department confidential but that local government authorities, including but not limited to the licensing or zoning departments of cities, towns or counties, may need to review this application in order to authorize the operation of an establishment under local requirements. Therefore, I consent to the release of this application to any local governmental authority in the jurisdiction where the address listed on this application is located.

By signing this Request and Consent to Release Application Form, I hereby acknowledge and agree that the State of Nevada, its sub-departments including the Department of Taxation and its employees are not responsible for any consequences related to the release of the information identified in this consent. I further acknowledge and agree that the State and its sub-departments and its employees cannot make any guarantees or be held liable related to the confidentiality and safe keeping of this information once it is released.

Signature of Requestor/Applicant or Designee

Date: _____

State of Nevada	
County of _____	
Signed and sworn to (or affirmed) before me on _____ (date)	
By _____ (name(s) of person(s) making statement)	
Notary Stamp	Signature of notarial officer



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ATTACHMENT E
PROPOSED ESTABLISHMENT PROPERTY ADDRESS

<i>To be completed by the applicant for the physical address of the proposed marijuana establishment.</i>			
Name of Individual or Entity Applying for a Marijuana Establishment License:			
Physical Address of Proposed Marijuana Establishment (must be a Nevada address, not a P.O. Box):			
City:	County:	State:	Zip Code:
Legal Description of the Property:			



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ATTACHMENT F MULTI-ESTABLISHMENT LIMITATIONS FORM

NRS 453D.210 places a limitation on the total number of Recreational Retail Marijuana Store licenses that can be issued within each county, and R092-17, Sec. 80 (5) places limitations on the number of recreational marijuana retail stores located in any one governmental jurisdiction and a limitation on the number of licenses issued to any one person, group or entity. Due to these limitations, please list below all applications submitted from this business organization and/or persons as identified in the recreational marijuana establishment owner, officer and board member names section of Attachment A in the 10-day window of **September 7, 2018 – September 20, 2018**.

If this business organization were to not receive approval on all applications submitted, would the applicant still want approval on the applications determined by the ranking below? ☐ Yes ☐ No

Please list in order of preference for approval (use as many sheets as needed).

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:

Type of Establishment: Recreational Retail Marijuana Store <input type="checkbox"/>			
Recreational Marijuana Establishment's Proposed Physical Address (Must be a Nevada address, not a P.O. Box.):			
City:	County:	State:	Zip Code:



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**ATTACHMENT G
NAME, SIGNAGE, AND ADVERTISING PLAN FORM**

A recreational marijuana establishment must have all advertising plans approved by the Department as a requirement for approval to operate a recreational marijuana establishment. A recreational marijuana establishment shall not use:

- A name or logo unless the name or logo has been approved by the Department; or
- Any sign of advertisement unless the sign or advertisement has been approved by the Department.

Please demonstrate the Name, Signage and Advertising Plans for the proposed marijuana establishment. Additional pages and documents can be included to demonstrate the full advertising plans of the proposed establishment.



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ATTACHMENT H
IDENTIFIER LEGEND FORM

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 be 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 (use as many sheets as needed).

Criteria Response Identifier	Actual Person or Company (for Department verification outside the evaluation process)
Example: Owner A	John Smith
Example: Owner B	John Doe
Example: Construction Company A	Acme Construction



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ATTACHMENT I FACILITY JURISDICTION FORM

Mark the jurisdiction(s) and number of stores in each jurisdiction for which you are applying. Only one application is necessary for multiple jurisdictions and licenses, however, you must submit attachments “A” & “E” for each jurisdiction, location and the appropriate application fee for each of the jurisdictions/locality and number of licenses requested.

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.

<i>Jurisdiction</i>	<i>Indicate Number of Licenses Requested</i>
Unincorporated Clark County	
City of Henderson	
City of Las Vegas	
City of Mesquite	
City of North Las Vegas	
Carson City	
Churchill County	
Douglas County	
Elko County	
Esmeralda County	
Eureka County	
Humboldt County	

<i>Jurisdiction</i>	<i>Indicate Number of Licenses Requested</i>
Unincorporated Washoe County	
City of Reno	
City of Sparks	
Lander County	
Lincoln County	
Lyon County	
Mineral County	
Nye County	
Pershing County	
Storey County	
White Pine County	



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ATTACHMENT J

FEDERAL LAWS AND AUTHORITIES

(Apply outside of NAC 453, NAC 453A, NRS 453A, NRS 453D, R092-17)

The information in this section does not need to be returned with the applicant's application. The following is a list of federal laws and authorities with which the awarded Applicant will be required to comply.

ENVIRONMENTAL:

- Archeological and Historic Preservation Act of 1974, PL 93-291
- Clean Air Act, 42 U.S.C. 7506(c)
- Endangered Species Act 16 U.S.C. 1531, ET seq.
- Executive Order 11593, Protection and Enhancement of the Cultural Environment
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands Farmland Protection Policy Act, 7 U.S.C. 4201 ET seq.
- Fish and Wildlife Coordination Act, PL 85-624, as amended
- National Historic Preservation Act of 1966, PL 89-665, as amended
- Safe Drinking Water Act, Section 1424(e), PL 92-523, as amended

ECONOMIC:

- Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended
- Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans

SOCIAL LEGISLATION:

- Age Discrimination Act, PL 94-135 Civil Rights Act of 1964, PL 88-352
- Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act
- Executive Order 11246, Equal Employment Opportunity
- Executive Orders 11625 and 12138, Women's and Minority Business Enterprise Rehabilitation Act of 1973, PL 93, 112

MISCELLANEOUS AUTHORITY:

- Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646 Executive Order 12549 – Debarment and Suspension

EXHIBIT 3

EXHIBIT 3

Senate Bill No. 32–Committee on Revenue
and Economic Development

CHAPTER.....

AN ACT relating to taxation; revising provisions relating to the confidentiality and privilege of the records and files of the Department of Taxation concerning the administration of certain taxes, fees and assessments and the imposition of disciplinary action; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law makes confidential and privileged certain records and files of the Department of Taxation concerning the administration and collection of certain taxes, fees and assessments. However, existing law authorizes the disclosure of such records and files of the Department under certain circumstances. (NRS 360.255) **Section 1** of this bill makes confidential and privileged the records and files of the Department concerning the imposition of disciplinary action against a person to whom the Department has issued a license, registration, permit or certificate. Under **section 1**, such records and files of the Department are confidential and privileged to the same extent as the records and files of the Department concerning the administration and collections of taxes, fees and assessments. Finally, **section 1**: (1) authorizes the disclosure of the records and files of the Department concerning the administration of taxes, fees and assessments or the imposition of disciplinary action to grand juries, to state and local law enforcement agencies and to local regulatory agencies under certain circumstances; (2) authorizes certain disclosures to any court in this State rather than only to courts of this State; (3) removes the requirement that certain disclosures to federal agencies, state or local law enforcement agencies and local regulatory agencies be made in confidence; and (4) authorizes certain disclosures of information relating to an application to operate a marijuana establishment or a person who is licensed to operate a marijuana establishment, including, without limitation, the identity of an applicant and any owner, officer or board member of an applicant, the methodology used to rank applicants for a license to operate a marijuana establishment and the score assigned to applicants.

Section 2 of this bill makes a conforming change to authorize the Department to disclose information provided to the Department by an applicant for a license, registration, permit or certificate related to medical marijuana, or an affiliate of such an applicant, when such disclosure is authorized by **section 1**.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 360.255 is hereby amended to read as follows:
360.255 1. Except as otherwise provided in this section and
NRS 239.0115 and 360.250, the records and files of the Department
concerning the administration or collection of any tax, fee,



80th Session (2019)
Exhibit 3 001

AA 001952

assessment or other amount required by law to be collected *or the imposition of disciplinary action* are confidential and privileged. The Department, an employee of the Department and any other person engaged in the administration or collection of any tax, fee, assessment or other amount required by law to be collected *or the imposition of disciplinary action* or charged with the custody of any such records or files:

(a) Shall not disclose any information obtained from those records or files; and

(b) May not be required to produce any of the records or files for the inspection of any person or governmental entity or for use in any action or proceeding.

2. The records and files of the Department concerning the administration and collection of any tax, fee, assessment or other amount required by law to be collected *or the imposition of disciplinary action* are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Department and production of records, files and information on behalf of the Department or a person in any action or proceeding before the Nevada Tax Commission, the State Board of Equalization, the Department, *a grand jury* or any court ~~to~~ *in* this State if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a person or his or her authorized representative of a copy of any document filed by the person pursuant to the provisions of any law of this State.

(c) Publication of statistics so classified as to prevent the identification of a particular business or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases, or disclosure ~~in confidence~~ to any federal agency, *state or local law enforcement agency or local regulatory agency* that requests the information for the use of the agency in a federal, *state or local* prosecution or criminal, *civil or regulatory* investigation.

(e) Disclosure in confidence to the Governor or his or her agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Department in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding relating to a taxpayer ~~or~~ *or licensee*, or to any agency of this or any other state charged with the administration or enforcement of laws relating to workers' compensation,



unemployment compensation, public assistance, taxation, labor or gaming.

(f) Exchanges of information pursuant to an agreement between the Nevada Tax Commission and any county fair and recreation board or the governing body of any county, city or town.

(g) Upon written request made by a public officer of a local government, disclosure of the name and address of a taxpayer *or licensee* who must file a return with the Department. The request must set forth the social security number of the taxpayer *or licensee* about which the request is made and contain a statement signed by the proper authority of the local government certifying that the request is made to allow the proper authority to enforce a law to recover a debt or obligation owed to the local government. Except as otherwise provided in NRS 239.0115, the information obtained by the local government is confidential and privileged and may not be used or disclosed for any purpose other than the collection of a debt or obligation owed to that local government. The Executive Director may charge a reasonable fee for the cost of providing the requested information.

(h) Disclosure of information as to amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties to successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested.

(i) Disclosure of relevant information as evidence in an appeal by the taxpayer from a determination of tax due if the Nevada Tax Commission has determined the information is not proprietary or confidential in a hearing conducted pursuant to NRS 360.247.

(j) Disclosure of the identity of a person and the amount of tax assessed and penalties imposed against the person at any time after a determination, decision or order of the Executive Director or other officer of the Department imposing upon the person a penalty for fraud or intent to evade a tax imposed by law becomes final or is affirmed by the Nevada Tax Commission.

(k) *Disclosure of the identity of a licensee against whom disciplinary action has been taken and the type of disciplinary action imposed against the licensee at any time after a determination, decision or order of the Executive Director or other officer of the Department imposing upon the licensee disciplinary action becomes final or is affirmed by the Nevada Tax Commission.*

(l) Disclosure of information pursuant to subsection 2 of NRS 370.257.



(m) With respect to an application for a registration certificate to operate a medical marijuana establishment pursuant to chapter 453A of NRS or a license to operate a marijuana establishment pursuant to chapter 453D of NRS which was submitted on or after May 1, 2017, and regardless of whether the application was ultimately approved, disclosure of the following information:

(1) The identity of an applicant, including, without limitation, any owner, officer or board member of an applicant;

(2) The contents of any tool used by the Department to evaluate an applicant;

(3) The methodology used by the Department to score and rank applicants and any documentation or other evidence showing how that methodology was applied; and

(4) The final ranking and scores of an applicant, including, without limitation, the score assigned to each criterion in the application that composes a part of the total score of an applicant.

(n) Disclosure of the name of a licensee and the jurisdiction of that licensee pursuant to chapter 453A or 453D of NRS, and any regulations adopted pursuant thereto.

3. The Executive Director shall periodically, as he or she deems appropriate, but not less often than annually, transmit to the Administrator of the Division of Industrial Relations of the Department of Business and Industry a list of the businesses of which the Executive Director has a record. The list must include the mailing address of the business as reported to the Department.

4. The Executive Director may request from any other governmental agency or officer such information as the Executive Director deems necessary to carry out his or her duties with respect to the administration or collection of any tax, fee, assessment or other amount required by law to be collected ~~or~~ *or the imposition of disciplinary action*. If the Executive Director obtains any confidential information pursuant to such a request, he or she shall maintain the confidentiality of that information in the same manner and to the same extent as provided by law for the agency or officer from whom the information was obtained.

5. As used in this section:

(a) *“Applicant” means any person listed on the application for a registration certificate to operate a medical marijuana establishment pursuant to chapter 453A of NRS or a license to operate a marijuana establishment pursuant to chapter 453D of NRS.*

(b) *“Disciplinary action” means any suspension or revocation of a license, registration, permit or certificate issued by the*



Department pursuant to this title or chapter 453A or 453D of NRS or any other disciplinary action against the holder of such a license, registration, permit or certificate.

(c) "Licensee" means a person to whom the Department has issued a license, registration, permit or certificate pursuant to this title or chapter 453A or 453D of NRS. The term includes, without limitation, any owner, officer or board member of an entity to whom the Department has issued a license.

(d) "Records" or "files" means any records and files related to an investigation or audit ~~[(b)]~~ or a disciplinary action, financial information, correspondence, advisory opinions, decisions of a hearing officer in an administrative hearing and any other information specifically related to a taxpayer ~~[(b)]~~ or licensee.

~~[(b)]~~ (e) "Taxpayer" means a person who pays any tax, fee, assessment or other amount required by law to the Department.

Sec. 2. NRS 453A.700 is hereby amended to read as follows:

453A.700 1. Except as otherwise provided in this section, NRS 239.0115 *and 360.255* and subsection 4 of NRS 453A.210, the Division and the Department shall not disclose:

(a) ~~[(b)]~~ ~~The contents of any tool used by the Department to evaluate an applicant or its affiliate.~~

~~[(b)]~~ Any information, documents or communications provided to the Department by an applicant or its affiliate pursuant to the provisions of this chapter, without the prior written consent of the applicant or affiliate or pursuant to a lawful court order after timely notice of the proceedings has been given to the applicant or affiliate.

~~[(e)]~~ (b) The name or any other identifying information of:

(1) An attending provider of health care; or

(2) A person who has applied for or to whom the Division or its designee has issued a registry identification card or letter of approval.

➔ Except as otherwise provided in NRS 239.0115 ~~[(b)]~~ *and 360.255*, the items of information described in this subsection are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

2. Notwithstanding the provisions of subsection 1, the Division or its designee:

(a) Shall release the name and other identifying information of a person who has applied for a registry identification card to authorized employees of the Division of Parole and Probation of the Department of Public Safety, if notified by the Division of Parole and Probation that the applicant is on parole or probation.



(b) May release the name and other identifying information of a person to whom the Division or its designee has issued a registry identification card or letter of approval to:

(1) Authorized employees of the Division or its designee as necessary to perform official duties of the Division; and

(2) Authorized employees of state and local law enforcement agencies, only as necessary to verify that a person is the lawful holder of a registry identification card or letter of approval issued to him or her pursuant to NRS 453A.220 or 453A.250.

Sec. 3. This act becomes effective upon passage and approval.

20 ~~~~~ 19



80th Session (2019)
Exhibit 3 006

AA 001957

Exhibit 3 007

Exhibit 3 008

EXHIBIT 4

EXHIBIT 4

Governor's Task Force on the Implementation of Question 2: The Regulation and Taxation of Marijuana Act

**Final Report
May 30, 2017**



Exhibit 4 001

AA 001961

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Letter from the Chairs



STATE OF NEVADA

May 30, 2017

Dear Governor Sandoval:

We hereby deliver to you the final report of the Task Force on the Implementation of Ballot Question 2: The Regulation and Taxation of Marijuana Act.

The Task Force, which you established on November 8, 2016, by Executive Order 2017-02, was given the mission to identify the legal, policy, and procedural issues that need to be resolved and to offer suggestions and proposals for legislative, regulatory, and executive actions that need to be taken for the effective and efficient implementation of the Act. The executive order directed the Task Force to complete its work and issue a report of its recommendations and findings to you by May 30, 2017.

The Task Force was composed of 19 members representing diverse interests, including law enforcement, public health, state agencies, the Nevada Legislature, social services, local government, the marijuana industry, and the public. They began their work on March 3, 2017, and met regularly over the course of ten weeks. In addition to the main Task Force, eight topic-focused working groups—made up of Task Force members, subject matter experts, and affected stakeholders—met weekly. The groups worked tirelessly, deliberating issues from every angle, listening to and incorporating public comment, and thoughtfully crafting their recommendations to be heard by the Task Force. The working groups presented a total of 73 recommendations to the Task Force, where they were further deliberated, amended, and adopted by majority vote for inclusion in this report. Every meeting of the Task Force and working groups was open to the public, and the community proved actively engaged, providing frequent input via public comment.

The members of the Task Force and working groups carried out the mission you gave them with full commitment to the spirit and letter of that mission. As the great State of Nevada moves forward to regulate and tax marijuana, the Task Force members share a sense of pride in having contributed to the framework to accomplish that. We look forward to seeing our recommendations refined through the regulatory, executive, and legislative processes, and foresee a tightly regulated program that considers the needs of industry and protects public health and safety.

Respectfully submitted,

Handwritten signature of Deonne Contine in black ink.

Deonne Contine, Chair
Executive Director
Nevada Department of Taxation

Handwritten signature of Chuck Callaway in black ink.

Chuck Callaway, Vice Chair
Director of Office of Intergovernmental Services
Las Vegas Metropolitan Police Department

Acknowledgements

The work of the Task Force would not have been possible without the support of the hard-working administrative staff led by Tina Padovano, Hector Sepulveda and Heidi Fetic. They booked rooms, scheduled all Task Force and working group meetings, created Public Notices, took the minutes and made copies of the all the agendas and recommendations for the convenience of the public and members. We would also like to thank Stephanie Klapstein for posting all the supporting documents to the Department of Taxation website and leading the communication efforts of the Task Force. Thank you for all your efforts!

It is important to recognize the contributions of the State of Colorado and Rebound Solutions to this effort. Their ground-breaking work on implementing the Retail Marijuana Program in Colorado provided the Task Force with a solid starting point and helped to ensure a thorough effort. Similarly, the work done on the Medical Marijuana Program by the Nevada Division of Public and Behavioral Health provided a strong regulatory framework from which to begin crafting a Retail Program in Nevada.

The Task Force would also like to thank our consulting team from QuantumMark, led by Kelly Jessee with the assistance of Michael Kretch. They oversaw the design and execution of the Task Force’s recommendation form, process and agendas, kept track of the recommendations, and organized and wrote the final report.

Overview of the Task Force

On November 8, 2016, the voters of the State of Nevada approved Ballot Question 2: The Regulation and Taxation of Marijuana Act (the Act). The Act stated that “the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated like other legal businesses.”¹ The Act provided that:

- Marijuana may only be purchased from a business that is licensed by the State of Nevada;
- Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;
- Cultivating, manufacturing, testing, transporting, and selling marijuana will be strictly controlled through state licensing and regulation;
- Selling or giving marijuana to persons under 21 years of age shall remain illegal;
- Individuals must be 21 years of age or older to purchase marijuana;
- Driving under the influence of marijuana will remain illegal; and
- Marijuana sold in the state will be tested and labeled.

The Act directs the Nevada Department of Taxation to adopt all regulations necessary or convenient to carry out the provisions of the Act, including accepting applications and issuing licenses for marijuana establishments, not later than January 1, 2018.

On February 3, 2017, the Governor of the State of Nevada issued Executive Order 2017-02 establishing a Task Force to deliberate on and make recommendations regarding policy, legal and procedural issues that must be considered to implement the Act. The Task Force was to report its findings and recommendations to the Governor by May 30, 2017.

Mission Statement

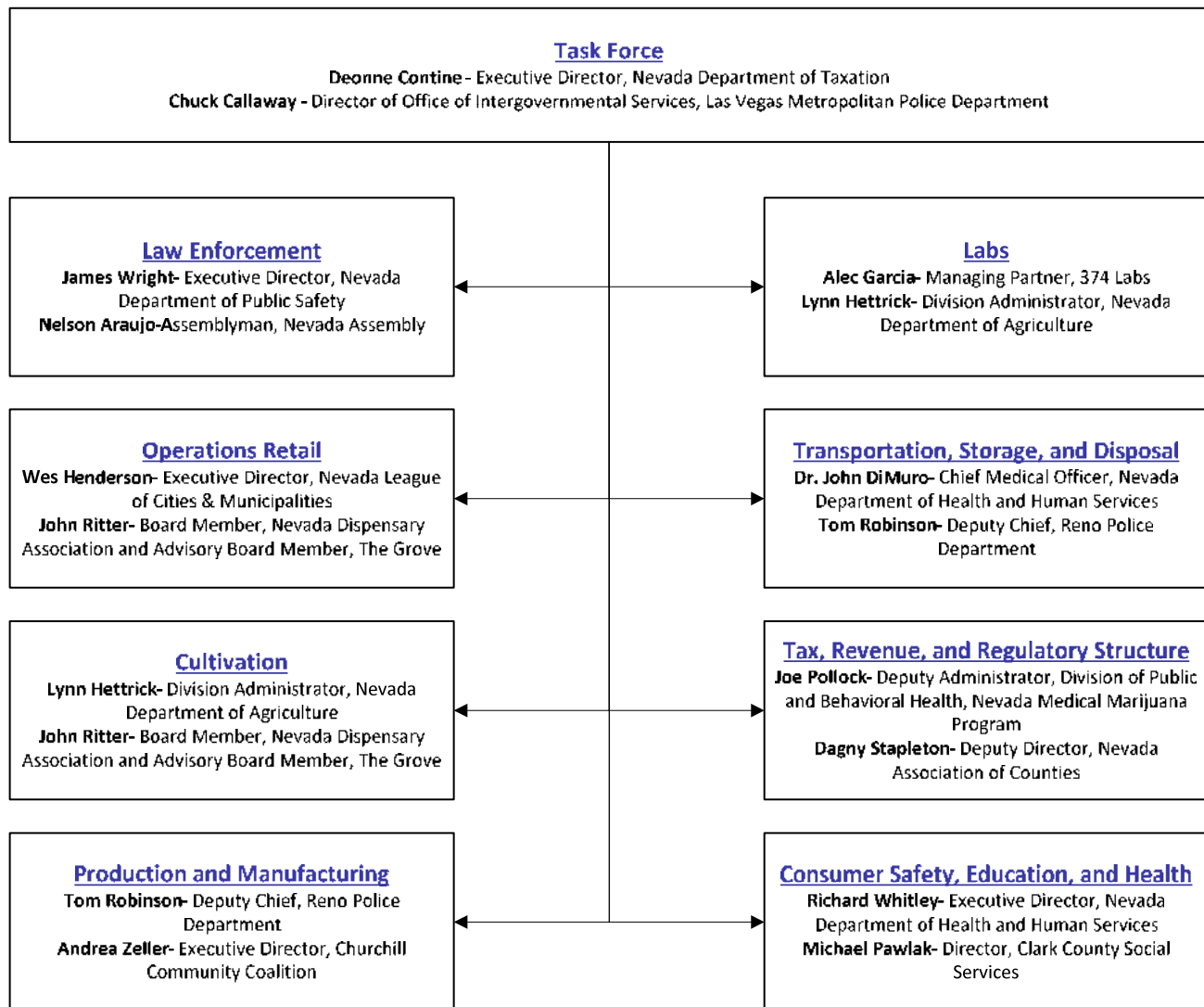
The Task Force’s mission was to identify the legal, policy, and procedural issues that need to be resolved, and to offer suggestions and proposals for legislative, regulatory, and executive actions that need to be taken for the effective and efficient implementation of the Act.

¹ Ballot Initiative Question 2, “Full Initiative Text--Regulate Marijuana Like Alcohol in Nevada”, <https://www.regulatemarijuanainnevada.org/full-initiative-text/>, November 8, 2016.

Guiding Principles and Goals

1. Promote the health, safety, and well-being of Nevada's communities
2. Be responsive to the needs and issues of consumers, non-consumers, local governments and the industry
3. Ensure that youth are protected from the risks associated with marijuana, including preventing the diversion of marijuana to anyone under the age of 21
4. Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome
5. Begin a discussion between the state and local governments regarding the costs of carrying out Question 2
6. Establish regulations that are clear and practical, so that interactions between law enforcement (at the local, state and federal levels), consumers, and licensees are predictable and understandable
7. Take action that is faithful to the text of Question 2

Task Force and Working Group Structure



Roles of The Task Force and Working Groups

Task Force

The Chair

- Issue and amend guidelines for operation of the Task Force
- Form and appoint working groups
- Identify and approve the scope of work
- Assign Task Force members to lead working groups

As a group

- Identify the legal, policy and procedural issues that need to be resolved
- Provide leadership to the working groups
- Review the recommendations from the working groups
- Present recommendations to the Governor

As leaders of working groups

- Facilitate working group meetings
- Assist working groups to prepare recommendations
- Represent the working group at Task Force meetings

Working Groups

- Accept the scope of work as assigned by the Task Force
- Discuss and debate each assigned topic in a group setting
- Participate on breakout teams to conduct research, identify best practices and gather information regarding experiences from other states where a retail marijuana program has already been implemented
- Analyze findings and present to the full working group
- Discuss findings and evaluate alternatives
- Prepare recommendations
- Identify that laws need amending or that new statutes or regulations are required for the recommendations to be implemented
- Present the recommendations to the Task Force

Scope of Work

An initial set of topics was developed through review of the Executive Order of the Governor, regulations from other states where retail marijuana has been legalized, interviews with members of the Department of Taxation and the Division of Public and Behavioral Health. The list was approved at the first Task Force meeting and distributed among the working groups. The topics were then further refined during the working group meetings.

The following table lists the topics considered by each working group.

Working Group	Topics
Law Enforcement	<ul style="list-style-type: none"> • State and local • DUID and testing • ARIDE training • Preventing distribution to minors • Consequences 18-20 years old • Consequences for juvenile possession • Personal transport of marijuana • Open and public consumption • Local civil offenses • Preventing the diversion to other states • Preventing violence and the use of firearms in the cultivation and distribution of marijuana • Amending current laws regarding possession of drug paraphernalia, marijuana and cultivation • Need for new statutes for time, place and manner restrictions for consumption, including conforming to existing non-smoking laws • Possession of marijuana in correctional facilities • Regulation of safety • Crime and public safety • Statutory changes for those under 21 years of age
Operations – Retail Establishments	<ul style="list-style-type: none"> • Dual use medical and retail • Personnel • Security • Tracking sales • Tracking inventory • Purchase by residents • Purchase by visitors

Working Group	Topics
	<ul style="list-style-type: none"> • Ownership interest • Local government involvement • Vending machines • Signage, marketing and advertising • Literature shared with the patient/consumer • Delivery
Operations – Cultivators	<ul style="list-style-type: none"> • Cultivating standards • Handling standards • Tracking inventory • Pesticides • Dual use cultivating and manufacturing • Home cultivation • Advisory group • Outdoor cultivation • Regulatory organizational structure • Security requirements
Operations – Production/Manufacturing	<ul style="list-style-type: none"> • Dual use cultivating and manufacturing • Tracking inventory • Packaging requirements • Ownership interest • Local government involvement • Training requirements • Home production • Inspection requirements • Serving sizes and packaging limitations • Edibles/Other products
Operations – Labs	<ul style="list-style-type: none"> • Operational practices • Accreditation • Tracking inventory • Sample sizes for testing and retention • Ownership interest • Local government involvement • Advisory group • Proficiency testing

Working Group	Topics
	<ul style="list-style-type: none"> • Validation and auditing • Homogeneity testing and adulterants
Transportation/Storage/ Disposal	<ul style="list-style-type: none"> • Commercial transportation and storage • Application process • Ownership interest • Local jurisdiction involvement • Public health and safety • Disposal of marijuana, products and waste • Environmental industry impacts • Delivery • Distribution centers
Taxation/Revenue/ Regulatory Structure	<ul style="list-style-type: none"> • Tax clarification • Sales tax • Wholesale tax • Business licensing • Licensing requirements (residency, ownership interest, suitability requirements for licensees, responsible retailers program) • Single marijuana environment • Financial plan • Operations fees • Regulatory organizational structure • Inspections • Penalties for noncompliance with regulations • Local governments and financial benefits • Impacts to local government • Data collection • Revenue for public safety • Land use • Rating criteria on applications
Consumer Safety/Education/ Health	<ul style="list-style-type: none"> • Signage, marketing and advertising, restrictions on advertising and display • Uniform labeling • Additives

Working Group	Topics
	<ul style="list-style-type: none"> • Adulterants (nicotine/alcohol) • Education for professionals and the public • Research • Oversight and responsible agent training • Health and safety standards for manufacturing, production and cultivation • Preventing drugged driving and the exacerbation of other adverse public health consequences • Education on long term health effects of marijuana use and harmful effects for those under 18 years of age • Preventing marijuana possession or use on federal property • Reconciliation of Nevada and federal laws to prevent prosecution • The effect of the Act on employers, employees and the Nevada economy • Non-consumer safety and education • Workers compensation • Health and safety – medical and clinical issues • Edible marijuana

While the working groups and Task Force addressed many issues pertaining to the regulation, implementation and taxation of marijuana, the groups chose not to make recommendations on some of the topics presented for their consideration. Some issues were not addressed and left to the Department of Taxation to work through in the development of the regulations, including requirements related to record keeping, procedures for the collection of taxes, procedures to establish fair market value and civil penalties for failure to follow the regulations created by the Department.

Methodology

Task Force members included the Nevada State Senate and Assembly and the Nevada Departments of Taxation, Health and Human Services, Public Safety and Agriculture. Members also included the Nevada Chief Medical Officer, representatives from the Nevada League of Cities and Municipalities and the Nevada Association of Counties. There was representation from the Nevada Medical Marijuana Program, law enforcement, social services agencies, the medical marijuana industry and the general public. All members were appointed by the Governor and adopted at the first meeting. See Appendix C for a complete list of Task Force members.

Deonne Contine and Chuck Callaway were appointed as Chair and Vice-Chair, respectively, to lead the Task Force. Prior to the first Task Force meeting, procedural guidelines were drafted for consideration by the Task Force. These included establishing guiding principles, drafting a comprehensive list of topics for consideration by the working groups and developing the procedural workflow for review of recommendations by the Task Force. Six meetings were held between March 3 and May 12.

The Task Force created eight working groups each chaired by two members of the Task Force and composed of persons with subject matter expertise. Five were established to address operational topics related to Production/Manufacturing, Cultivation, Labs, Retail and Transportation/Storage/Disposal. The remaining three addressed issues related to Law Enforcement, Taxation/Revenue/Regulatory Structure, and Consumer Safety/Education/Health. Each working group met once a week for seven weeks.

Between public meetings, the working group members worked independently to conduct research and develop recommendations. Each recommendation was brought to the entire working group during public meetings for review and consideration. This was an iterative process. The advice and opinion of the full working group provided the feedback needed to direct additional work on the topic. This process continued until there was consensus by the working group on the recommendation. In some instances, where topics overlapped, there was collaboration among working groups to develop the recommendation. Dissenting opinions by any group member(s) were captured within the recommendation.

Once a recommendation was approved by a working group it was presented to the Task Force for consideration. If modifications were requested the recommendation was sent back to the working group for changes. The recommendation was then brought to the Task Force for reconsideration.

In total, the working groups presented 73 recommendations to the Task Force. Each was approved by a majority vote of the Task Force and many were unanimous in their approval.

All meetings of the Task Force and working groups were subject to Nevada's Open Meeting Law. The Task Force endeavored to solicit public comment as part of its consideration of the policy, legal and procedural issues that need to be resolved to implement the Act. To the extent it was deemed appropriate, the Task Force incorporated the public input it received into its recommendations.

Full documentation of the Task Force and working group meetings can be found on the website of the Nevada Department of Taxation (https://tax.nv.gov/Boards/Retail_Marijuana/Retail_Marijuana/).

Summary of Task Force Recommendations

Each of the 73 recommendations is summarized herein to provide a quick overview. These summaries are organized into one of the following fourteen topics:

1. Regulatory Structure
2. Taxation and Revenue
3. Application and Licensing Requirements
4. Inventory Tracking
5. Retail Store Operations
6. Cultivation Operations
7. Production/Manufacturing Operational Requirements
8. Laboratory Operations
9. Distribution and Transportation
10. Packaging, Labeling and Potency Limitations
11. Signage, Marketing and Advertising
12. Education and Research
13. Law Enforcement
14. Public Safety

The full text of the recommendations adopted by the Task Force is included in Appendix D. Reviewing the full text will provide the details necessary to understand the merits of the recommendation. Justifications and actual suggestions for changes to statute or regulations are part of the detailed recommendations.

Regulatory Structure

The recommendations grouped in this section aim to create the regulatory foundation and authority to administer the retail marijuana program at the state and local levels. Consideration was given to establishing a Marijuana Control Board and an Advisory Committee to provide advice, guidance and industry input. Other recommendations deal with ownership interest in marijuana establishments and provisions for businesses to engage in both medical and retail marijuana activities.

Regulatory Organizational Structure

The Task Force recommends that Nevada Revised Statute Chapter 453A and Nevada Administrative Code Chapter 453A (medical marijuana) be used as the regulatory foundation for the retail marijuana program, and that the Department of Taxation oversee the administration of both the medical and retail marijuana programs. State statute and regulations will need to be amended to consolidate all marijuana authority under the Department of Taxation.

There was no dissent on the recommendation.

Transfer of Medical Program to Department of Taxation

The Task Force recommends that, to streamline marijuana regulation and oversight, the Nevada Legislature transfer the regulatory responsibility of the medical marijuana program (including duties, responsibilities and budgets) from the Division of Public and Behavioral Health to the Department of Taxation.

There was no Task Force dissent on the recommendation.

There was dissent in the working group that medical marijuana is currently under the Division of Public and Behavioral Health as it is considered a medicine and as such is treated as a public health matter. Therefore, medical marijuana could continue to be regulated in a manner separate from retail marijuana. If the state prefers that medical marijuana and retail marijuana to be co-located under one department, dissenting opinion suggested the creation of an Alcohol and Marijuana Control Board as is done in other states.

Inspection Requirements

The Task Force recommends that one state agency oversees inspecting both medical and retail operations so that there is a single point for inspection and enforcement. This recommendation would ensure overall consistency in enforcement and be less onerous on marijuana establishments holding dual licenses.

There was no Task Force dissent on the recommendation.

There was a concern in the working group that, should the medical and retail marijuana programs not be merged under the Department of Taxation, a single agency performing state inspections for programs administered by different agencies might be infeasible.

Local Government Regulation

The Task Force recommends that regulations be adopted that make it clear that local governments may regulate retail marijuana establishments on zoning, general business license matters, and fire and building code compliance only. The state should occupy the entire regulatory space on matters involving edibles, packaging, concentrates, dosing, potency, serving size limitations, and product types. This recommendation ensures that state and local regulations do not conflict, and guarantee regulatory uniformity for the industry and reduce enforcement costs for local jurisdictions.

There was Task Force dissent on the recommendation. Dissent regarded the role of local governments that do not want to be restricted on regulatory issues regarding marijuana. Some local governments wish to retain the ability to regulate on matters involving edibles, packaging, concentrates, dosing, potency serving size limitations and product types and want the flexibility to make more restrictive regulations than the state may prescribe.

Marijuana Control Board

The Task Force recommends that the Nevada Legislature create, when feasible, a Marijuana Control Board to provide direct oversight and accountability to the retail and medical marijuana industries. The structure and duties of the Marijuana Control Board would be generally based on Nevada Revised Statute Chapter 463 which establishes authority for the licensing and control of gaming.

There was no dissent on the recommendation.

Ownership Interest

The Task Force recommends that retail marijuana ownership interest requirements remain consistent with the medical marijuana program. No person with a direct or indirect interest in a marijuana testing laboratory can have a direct or indirect financial interest in a marijuana retail store, a production/manufacturing establishment, a cultivation facility or a distributor. The Task Force further recommends that marijuana laboratories be exempted from using a distributor to collect and move testing samples.

There was no dissent on the recommendation.

Advisory Committee

The Task Force recommends the Department of Taxation establish an Independent Marijuana Advisory Committee like the Independent Laboratory Advisory Committee (ILAC) under Nevada Administrative Code 453A.666. The Committee's purpose would be to address changes and challenges that the marijuana industry will face as it matures. The membership of the Committee should include representatives of the Nevada marijuana industry and local and state officials. The Committee would provide recommendations to the Department of Taxation regarding all aspects of the Nevada marijuana industry, make suggestions for any changes to Nevada Revised Statute or Nevada Administrative Code chapters relating to marijuana, and assist in creating and updating marijuana policies and procedures for the Department of Taxation.

There was no dissent on the recommendation.

Ancillary Marijuana Business Licensing

The Task Force recommends in addition to the state, local jurisdictions be allowed to license, regulate and collect fees from ancillary marijuana businesses. Ancillary businesses were defined as any person that has not received a registration certificate under Nevada Revised Statute Chapter 453A, has been licensed as a marijuana establishment under Nevada Revised Statute Chapter 453D and that directly profits from onsite adult use or consumption of marijuana or marijuana-infused products. Examples of ancillary businesses include spas, social clubs and music venues. The recommendation also allows for standardized educational materials pertaining to adult use of marijuana to be prominently displayed in such facilities. Examples include current rules and regulations for smoking, vaping, tobacco and alcohol usage in the facility.

There was Task Force dissent on the recommendation concerning whether ancillary businesses should be allowed.

Co-Location

The Task Force recommends allowing the coexistence of marijuana production, cultivation, retail and distribution establishments within the same facility. It further recommends allowing the coexistence of both retail and medical marijuana establishments within the same facility. Legislative changes in Nevada Revised Statute Chapter 453A.350 would be required to allow for shared use of facility types.

There was no dissent on the recommendation.

Dual Use Medical and Retail

The Task Force recommends that the Department of Taxation and any affected local governments enact regulations and ordinances permitting a medical marijuana establishment and a retail marijuana establishment to operate at the same location and to permit a dual licensee to serve patients and retail consumers in the same

retail area without the need to make changes in the design and construction of licensed medical marijuana dispensaries. Statutory changes would be necessary to Nevada Revised Statute Chapter 453A to allow for dual use of facilities for medical and retail marijuana businesses.

There was no dissent on the recommendation.

Taxation and Revenue

Topics of discussion in this section include using revenue to cover the implementation costs of the program at the state and local levels, and help to support common resources such as police and other public services engaged with the retail marijuana industry.

Taxation – 15% Excise Tax

The Task Force recommends that the excise tax on all wholesale marijuana, medical or retail, be 15% as provided for in Question 2 and that it should be administered in a uniform manner. This tax would replace the current tax structure applied to medical marijuana. Taxing all wholesale marijuana at the same rate allows establishments to treat marijuana and marijuana products in a "single stream" designating its use as medical or retail only at the point of purchase. Nevada Revised Statute Chapter 453A would need to be amended to enact this recommendation.

There was no dissent on the recommendation.

Taxation – Retail Tax 10%

Adopting the recommendation from Governor Sandoval's proposed budget, the Task Force recommends an additional 10% tax on retail marijuana at the point of sale. This recommended tax is in addition to the 15% tax collected at the wholesale level and is consistent with an overall target rate of 30% or less total taxation for the retail product. Other states have concluded that the balance between a healthy, regulated industry and a shrinking black market is around 30% total taxation. The tax structure would also create a significant enough difference in the retail price between retail and medical marijuana that medical patients will have a financial incentive to continue participating in the medical marijuana program.

While the Governor recommended that this tax go to education, the Task Force did not recommend how the new tax should be allocated, citing the understanding that there are impacts on local government, law enforcement, communities and agencies that should all be considered when policy makers decide on allocation. Legislation would need to be enacted to adopt this recommendation.

There was no dissent on the recommendation.

Fees – Local Government Share

The Tax Force recommends that local governments receive a share of revenue generated by the retail marijuana industry so that both the state and local governments share in the financial benefits and can mitigate the impacts from marijuana legalization. This recommendation provides revenue for critical local government services and

affirms that the aggregate tax rate at retail should remain low enough to keep the price disparity between legal regulated businesses and illegal black market operators small enough to discourage a significant black market.

There was both Task Force and working group dissent on the recommendation. Dissent was about the wording of the recommendation, not the intent. The recommendation states that local governments should receive revenue from the sale of retail marijuana, but there is no wording for revenue allocation to local governments in Question 2, rather reimbursement for costs was specified.

Application and Licensing Requirements

Recommendations in this section include topics such as the application and evaluation process, allocation of retail marijuana establishment licenses, the impact of ownership interest below 5% and the most effective method for issuing agent cards.

Application Process

The Task Force recommends that the qualifications for licensure of a marijuana establishment and the impartial numerically scored bidding process for retail marijuana stores be maintained as in the medical marijuana program except for a change in how local jurisdictions participate in selection of locations. The Department of Taxation should rank the applicants based on an applicant's qualifications without respect to the planned location of their business. The local governments should be responsible for working with the ranked list of applicants prepared by the Department of Taxation to determine acceptable locations based on requirements within the respective jurisdiction.

If a marijuana establishment is not able to receive local jurisdiction zoning and land use approval within 18 months from the date the Department of Taxation issues the conditional license, the applicant will surrender the license back to the Department for reissuance through another application process.

There was no dissent on the recommendation.

Rating Criteria on Applications

The Task Force recommends that the impartial numerically scored process used by the medical marijuana program be revised for retail marijuana stores to remove consideration of location and focus only on the applicant qualifications for operation of a marijuana establishment. The proposed list of qualifications was ranked in order of importance to give more weight to the most important qualifications.

There was no dissent on the recommendation.

Ownership Issues/ Licensing Requirements

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

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

- Only require owners, officers and board members with 5% or more ownership cumulatively and employees of the company to obtain agent registration cards; and
- Use the marijuana establishment's governing documents to determine who has approval rights and signatory authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory document.

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

Monopolies - Limitations on the Number of Marijuana Establishments

The Task Force recommends that limitations similar to those in the medical marijuana program for granting establishment registration certificates be used for the retail marijuana licensing process. The recommendation applies this limitation specifically to retail marijuana stores not only in a county whose population is 100,000 or more but also in each local jurisdiction within that county. The recommendation is to adopt regulations like Nevada Revised Statute Chapter 453A.326 which places a limitation on the number of licenses issued to any one person. Suggested language includes: "to prevent monopolistic practices, the Department shall ensure, in a county whose population is 100,000 or more, that it does not issue, to any licensee, the greater of:

- One retail store license; or
- More than 10 percent of the retail store licenses allocable in the county along with the same limitation on the local governmental jurisdiction level."

There was no dissent on this recommendation.

Agent Card Requirements

The Task Force recommends that the Department of Taxation revise the current agent card application process for medical marijuana establishments to improve efficiency by allowing potential employees or volunteers to apply directly to the state to obtain registered agent cards, allow them to work while the card is pending, allow agents to obtain one card for each facility type rather than one for each establishment and allow temporary registration of a person as an establishment agent. Changes to the current Nevada Revised Statute Chapter 453A would be required.

There was Task Force dissent on the recommendation. The concern was that by changing the requirements for attaining an agent card, the state could, for a period, allow employment of an agent who did not fulfill the requirements of the program, and therefore, potentially create a less safe environment in the state.

Retail Store Allocation

The Task Force recommends that the retail marijuana store licenses allocated to the counties be distributed to the local jurisdiction(s) within those counties based on the population in the jurisdiction(s). This recommendation assures even distribution of the retail marijuana licenses to meet the needs of consumers, non-consumers, local government and industry while preventing over or under saturation of retail marijuana stores in specific areas. There would need to be adoption of regulation or statute to address this recommendation.

There was no dissent on the recommendation.

Inventory Tracking

This section addresses the need for systems that ensure marijuana establishments follow proper distribution protocols and comply with state regulations. Electronic systems implemented at all marijuana establishments and at the state will track movement from cultivation, production, distribution and retail sale to account for all marijuana at every point in the chain. With comprehensive marijuana tracking software, the state will be able to minimize product loss from potential illegal activities and ensure a safe and effective compliance culture for the state.

Inventory Control

The Task Force recommends each marijuana establishment maintain an electronic perpetual inventory system that adequately documents the flow of controlled inventory through the cultivating, production, distribution and retail sale processes, accessible by state and local regulation authorities and updated daily. This recommendation will allow state and local authorities to effectively monitor the chain of custody of marijuana products within individual establishments, between different industry establishments and from seed to sale in real time.

There was no dissent on the recommendation.

Centralized Inventory Tracking

The Task Force recommends that all marijuana establishments maintain an internal inventory control system and monitor the movement of all controlled substances between establishments. It is further proposed that the state implement a centralized seed-to-sale system to monitor all inventory in the state to aid in the identification of suspicious activity and track business transactions so that fair market values may be established pursuant to Nevada Revised Statute Chapter 453D.

Because inventory control systems are a very important part of how the industry interfaces with regulators, the Task Force recommends that the Department of Taxation work closely with industry to develop system requirements and regulations for a robust system that is not redundant or unduly burdensome on the industry.

There was no dissent on the recommendation.

Inventory Tracking and Separation of Product

The Task Force recommends that dual licensed medical and retail marijuana establishments not be required to designate stock into separate medical and retail product categories for inventory purposes. Although some segregation and delineation may be required based on current tax structures, the Task Force recommends that, to the degree possible, all marijuana products should be inventoried and handled in a uniform manner until the

point of sale to a patient or consumer. This recommendation would allow like products to be stored together thereby aiding in more efficient operations and effective securing of inventory.

There was no Task Force dissent on the recommendation.

There was working group dissent over changing how medical marijuana is currently regulated by the Division of Public and Behavioral Health as a medicinal product. If medical marijuana continues to be viewed by the state as a medical product, regardless of the regulatory department, the product should remain separated from other marijuana products that will be sold to the general public for retail purposes.

Retail Store Operations

These recommendations consider the priorities for serving medical versus retail consumers. They identify areas in the current medical marijuana regulations that must be revised to incorporate retail marijuana sales.

Operations – Service

The Task Force recommends the Department of Taxation include provisions in regulation to give preference in a dual use licensed facility to holders of a medical marijuana card. The inconvenience for medical marijuana patients due to an increase of traffic in dual use license establishments could result in patients having to wait in long lines with retail consumers, thus creating a hardship on those who are ill and rely on marijuana to ease their symptoms.

There was no dissent on the recommendation.

Retail Regulations

The Task Force recommends that the Department of Taxation apply the medical marijuana program regulations to the retail marijuana store program, with an understanding that many of the medical marijuana dispensary transactional requirements do not fit into the retail model or are not compatible or consistent with Question 2. The following topics will need revision through regulation for retail marijuana stores:

- Application to operate the establishment;
- Entry and identification of patients/retail consumers;
- Maintenance of patient records;
- Method of tracking sales;
- Labeling;
- Purchase limits; and
- Agent responsibilities and training requirements.

There was agreement by the Task Force that retail regulations can be no less strict than the medical marijuana regulations.

There was no dissent on the recommendation.

Cultivation Operations

The topics in this group recommend a closer working relationship with the Department of Agriculture to elevate cultivation practices and address outdoor cultivation. A broad variety of subjects were considered including buffer zones and security around outdoor cultivation areas, home cultivation, pesticides and safety, product acquisition, supply management and internal product testing.

Outdoor Cultivation - Buffer Zone

The Task Force recommends that the Department of Taxation through regulation establish a buffer zone of at least five miles between outdoor or indoor marijuana cultivation facilities, unless the Nevada Department of Agriculture grants a variance. This recommendation includes locations for cultivation of marijuana crops and industrial hemp. The recommended buffer zone would limit the possibility of female hemp species with less than 0.3% THC from being pollinated by marijuana plants cultivated for medicinal/adult consumption that contain more than 0.3% THC.

There was no dissent on the recommendation.

Home Cultivation

The Task Force recommends that the Department of Taxation draft applicable Nevada Administrative Code sections to establish clear and practical guidelines for marijuana cultivated for personal use and apply the same safety regulations as marijuana sold by marijuana establishments. Specifically,

- Individuals who cultivate marijuana must be registered with the Department of Taxation;
- Personal use cultivated marijuana is subject to the same quality standards, set forth by the Department of Taxation, as commercially cultivated marijuana, including but not limited to pesticides, heavy metal, microbial and mycotoxin contamination levels; and
- Untested personal use cultivated marijuana that is given or delivered and that has not been tested by an independent laboratory must be clearly labeled: "This marijuana is not tested and may contain harmful pesticides and other contaminants."

If there is a complaint with given or delivered personal use marijuana, an independent laboratory or the Nevada Department of Agriculture may test the product. If the product is found to have levels of contaminants exceeding the limits set forth by the Nevada Department of Agriculture, the Division of Public and Behavioral Health, or any other applicable agency, the Department of Taxation may take reasonable action against the cultivator.

There was no dissent on the recommendation.

Pesticide Application and Worker Protection Standards

The Task Force recommends the Department of Taxation establish regulations that cultivation establishments maintain compliance with Pesticide Worker Protection Standards. It further recommends certification through the Nevada Department of Agriculture Pesticide Certification Program of at least one cultivation facility staff member in the Commercial Greenhouse Category for indoor cultivation and/or the Commercial Agricultural Plant/Animal Category for outdoor cultivation. Random and/or scheduled facility visits should be conducted by NDA inspectors in conjunction with cultivation and pesticide consultations for quality assurance or for cause, such as a complaint.

There was no dissent on the recommendation.

Pesticides

To ensure uniformity, the Task Force recommends the Department of Taxation use existing statutes for pesticide application as well as existing medical marijuana cultivation statutes, regulations and policies for regulating allowable pesticides for outdoor and indoor cultivation of marijuana.

There was no dissent on the recommendation.

Outdoor Cultivation - Security Requirements

To ensure outdoor cultivation is adequately monitored the Task Force recommends that the security requirements for outdoor cultivation be similar to the current medical marijuana cultivation requirements. Additional regulations should include provisions requiring a facility:

- To be located within a 15-minute response time of local law enforcement or as otherwise determined by local law enforcement to be an acceptable response time;
- To install an alarm system and cameras monitored 24 hours a day;
- Construct a double perimeter wall or fence system; and
- Provide a secure block building suitable to dry and store marijuana and marijuana products and with prescribed security requirements as approved by the Department of Taxation.

There was both Task Force and working group dissent on the recommendation. Dissent involved concern that the 15-minute law enforcement response time forces a would-be cultivator into conflict with zoning laws and visibility restrictions and effectively eliminates all rural agricultural land that could otherwise be used for outdoor cultivation. It is not reasonable to add provisions that make it effectively impossible to find a suitable location or make it economically impossible to operate an outdoor cultivation facility. Some of the provisions of the recommendation appear to be too stringent.

Product Acquisition

The Task Force recommends the Department of Taxation adopt regulations similar to medical marijuana for product acquisition, specifying that marijuana establishments should only be able to acquire marijuana, edible marijuana products or marijuana-infused products from:

- Another marijuana establishment;
- A person who holds a valid registry identification card or his or her designated primary caregiver;
- Seeds that are legally purchased pursuant to Nevada Revised Statute Chapter 453D; or
- A home grower registered with the Nevada Department of Agriculture.

The recommendation also requires product acquisition be tracked by establishments in an inventory tracking system.

There was no dissent on the recommendation.

Cultivation Supply Management

The Task Force recommends the Department of Taxation annually evaluate the marijuana market supply to assure market stability. The Task Force recommends approving retail marijuana cultivation establishment requests to existing medical marijuana establishments at a ratio of 1 to 1, giving approved and provisional license holders the opportunity to expand into the new market and create sufficient supply to meet the demand of retail users. The Task Force believes the supply in the long run will meet market demand without the need to approve additional cultivation licenses in the State of Nevada. An oversupply could push wholesale prices down, lowering projected tax revenues for the state, and potentially cause diversion of product to the black market.

There was Task Force dissent on the recommendation. The dissenting perspective is that the recommendation limits free market enterprise, provides a barrier to entry into the marijuana market and limits the ability of local jurisdictions to make the decision to allow additional cultivation facilities in their areas.

Microbial Testing Limits

The Task Force recommends the Department of Taxation consider changing the current microbial testing limits from the American Herbal Pharmacopeia (AHP) to the American Herbal Product Association (AHPA), by adopting the American Herbal Production Association Standards for marijuana cultivation. This recommendation allows cultivators to grow using organic methods and provides more options in using organic bio-pesticides rather than using synthetic pesticides. The recommendation would require changes in current Nevada Administrative Code for medical marijuana cultivation to align with this recommendation for retail marijuana cultivation.

There was no dissent on the recommendation.

Internal Product Evaluation Standards and Procedures

The Task Force recommends allowing cultivators and production/manufacturing establishments to set aside a specific small amount of each lot's inventory to be disseminated at no cost to agents of the cultivation establishment for internal testing. The intent of this recommendation is to allow cultivators to "test" or "sample" their product prior to sale or complete testing by an external entity. New regulations would need to be adopted for this recommendation.

There was no dissent on the recommendation.

Production/Manufacturing Operational Requirements

Marijuana production and manufacturing establishments need to ensure that the workplace is monitored and fully compliant with a set of standards, rules and regulations aimed at creating and maintaining safe facilities. The medical marijuana regulations provide a foundation for the production requirements for the retail market. New recommendations focus on production of marijuana outside of licensed facilities and the proper disposal of marijuana products and waste.

Production Outside of Licensed Facilities

The Task Force recommends that changes be made to Nevada Revised Statutes and Nevada Administrative Code to allow production of concentrated, infused, and/or edible marijuana products outside of licensed facilities, but strictly prohibit the use of any non-edible solvents or chemicals which may be deemed dangerous, volatile or flammable. These solvents and chemicals include but are not limited to butane, propane, hexane and alcohol.

There was Task Force dissent on the recommendation. The dissenting position is that home production of marijuana products is currently illegal in the state and it should remain illegal to process marijuana in the home.

Disposal of Marijuana Products and Waste

The Task Force recommends that the Department of Taxation adopt regulations establishing clear and specific procedures regarding disposal of marijuana products and waste and penalties for failure to abide by the prescribed disposal methods. The Task Force also recommends that, in instances where establishments need to dispose of marijuana products, there should be no allowance for a refund of the excise tax.

There was no dissent on the recommendation.

Laboratory Operations

Topics in this section include recommendations to promote the health and safety of the consumer by vetting laboratories through an accreditation, validation and auditing process, adopting proficiency requirements, and setting requirements for inventory control, sample sizes, homogeneity testing and adulterants.

Accreditation, Validation and Auditing

The Task Force recommends that the Department of Taxation address through regulation enhanced requirements for quality lab results that promote the health and safety of the consumer. The recommendation encompasses five areas:

- Licensing by the state and accreditation to the ISO/IEC 17025 standard of laboratory operations that perform testing of marijuana and marijuana-derived products;
- Auditing and certification of independent testing labs by the Nevada Department of Agriculture;
- Participation of independent testing labs in proficiency testing and Nevada Department of Agriculture round robin events;
- Random collection and testing of equitable surveillance samples by the Nevada Department of Agriculture with the goal of preventing sample tampering by producers and inadvertently or fraudulently inaccurate test results from independent testing labs; and
- A tiered enforcement system to give laboratory compliance enforcement a structure so that repeated violations or exceptionally egregious violations result in actionable enforcement against offending laboratories.

There was no dissent on the recommendation.

Proficiency Testing

The Task Force recommends that the Department of Taxation establish practical guidelines for standardization of testing laboratories. The Department of Taxation should adopt the proficiency requirement from the medical marijuana program and allow the Departments of Taxation and Agriculture to improve the testing program as it moves forward. The Department of Taxation should require independent testing labs, as part of being issued or renewing a medical or retail marijuana establishment registration license, to have already successfully passed the proficiency testing program. Once an independent testing lab is licensed, unsuccessful performance in a proficiency test may result in limitation, suspension or revocation of the medical or retail marijuana establishment registration license.

There was no dissent on the recommendation.