

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 09:57 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 15

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29	Notice of Entry of Order and Order Denying MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction	11/23/19	AA 007127 - AA 007130
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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

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47	Preliminary Injunction Hearing, Defendant's Exhibit 5025 Nevada Organic Remedies, LLC's Organizational Chart	n/a	AA 011576 - AA 011590
47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter	n/a	AA 011591, AA 011592
47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter as Contained in the Application	n/a	AA 011593 - AA 011600
47	Preliminary Injunction Hearing, Defendant's Exhibit 5038 Evaluator Notes on Nevada Organic Remedies, LLC's Application	n/a	AA 011601 - AA 011603
47	Preliminary Injunction Hearing, Defendant's Exhibit 5045 Minutes of ther Legislative Commission, Nevada Legislative Counsel Bureau	n/a	AA 011604 - AA 011633
47	Preliminary Injunction Hearing, Defendant's Exhibit 5049 Governor's Task Force for the Regulation and Taxation of Marijuana Act Meeting Minutes	n/a	AA 011634 - AA 011641
47	Register of Actions for Serenity Wellness Center, LLC v. State of Nevada, Department of Taxation, Case No. A-18-786962-B	n/a	AA011642 - AA 011664
27	Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's 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

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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

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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

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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

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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

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Counsel for GreenMart of Nevada NLV LLC

/s/ David R. Koch

Koch & Scow



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WILLIAM D. ANDERSON
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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 F

AA 003504

APPLICATION CRITERIA POINTS BREAKDOWN		Possible Points	Possible Points	EVALUATION CRITERIA POINTS
ORGANIZATIONAL STRUCTURE		60	60	ORGANIZATIONAL STRUCTURE
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	15.0	1. Element 1: Organizational chart
			10.0	2. Element 2: Previous business experience
			5.0	3. Element 3: Educational achievements
			10.0	4. Element 4: Experience with marijuana in Nevada
			20.0	5. Element 5: Diversity
			40	FINANCIAL
FINANCIAL		40	40	FINANCIAL
A financial plan which includes: <input type="checkbox"/> Financial statements showing the resources of the applicant, both liquid and illiquid. <input type="checkbox"/> 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. <input type="checkbox"/> Proof that the applicant has adequate funds to cover all expenses and costs of the first year of operation. Documentation from a financial institution in this state or in any other state or the District of Columbia which demonstrates: <input type="checkbox"/> 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. <input type="checkbox"/> The source of those liquid assets.		30	10.0	1. Element 1: Financial statements
			20.0	2. Element 2: Adequate first year operating expenses
TAXES AND OTHER CONTRIBUTIONS 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.		10	10.0	3. Element 3: Liquid assets/source of liquid assets
			25	TAXES AND OTHER CONTRIBUTIONS
			10.0	1. Element 1: Taxes paid to the State of Nevada
		25	10.0	2. Element 2: Monetary contributions to NV/political subdivisions
			5.0	3. Element 3: Other contributions to NV/political subdivisions
			20	BUILDING CONSTRUCTION
BUILDING CONSTRUCTION		20	20	BUILDING CONSTRUCTION
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: <input type="checkbox"/> Building and construction plans with supporting details. Please note: The content of this response must be in a non-identified format.		20	10.0	1. Element 1: Building plan details
			10.0	2. Element 2: Building plan regulatory compliance
CARE-QUALITY-SAFEKEEPING		90	90	CARE-QUALITY-SAFEKEEPING

EXHIBIT G

AA 003506

EVALUATOR NAME _____

LIKELY IMPACT ON THE COMMUNITY (NON-IDENTIFIED)

ME ID# _____

APPLICATION EVALUATION – Evaluator’s Guidelines - LIKELY IMPACT ON THE COMMUNITY (NON-IDENTIFIED)

Applications shall be consistently evaluated and scored in accordance with NRS 453D and LCB File No. R092-17

TOTAL POSSIBLE POINTS = 15 Points

The following is intended to assist evaluators in scoring responses to the request for applications for marijuana establishments.

Applying these guidelines using your experience and expertise to the scoring process will ensure that your scoring is consistent and unbiased, which is critical when deciding the points assigned to each individual criteria.

The point range is detailed under each criteria section and points should be assigned based on the evaluators assessment of the response falling into categories of "excellent," "average," or "inadequate."

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
R092-17 Sec. 78 (1) (i) A response to and information which supports any other criteria the Department determines to be relevant, which will be specified and requested by the Department at the time the Department issues a request for applications which includes the point values that will be	The likely impact of the proposed marijuana establishment in which it is proposed to be located.				
	An excellent response would include the following: The criteria response clearly demonstrates how the establishment intends to provide their local community with community benefits and mitigate any nuisance and/or negative impacts that the facility's existence may cause, including any safety related concerns. Applicants demonstrate a commitment to the community and to improving the quality of life of their neighbors through sustainable practices which can be maintained and supported over time.				

EVALUATOR NAME _____ LIKELY IMPACT ON THE COMMUNITY (NON-IDENTIFIED) ME ID# _____

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	An average response would include the following: The criteria response demonstrates how the establishment intends to provide their local community with community benefits and addresses how they will mitigate any negative impacts.				
	An inadequate response would include the following: The criteria response does not demonstrate how the establishment intends to provide their local community with community benefits and does not address any negative impacts.				
	Range 0 - 5 points				

LIKELY IMPACT ON THE COMMUNITY (NON-IDENTIFIED)

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	<p>The manner in which the proposed marijuana establishment will meet the needs of the persons who are authorized to purchase marijuana</p> <p>The establishment will provide information to persons authorized to engage in the use of marijuana in the following ways in order increase education, awareness, and positive community involvement:</p> <ul style="list-style-type: none"> -Providing relevant and appropriate educational materials -Educational materials regarding various strains of marijuana -Fair and consistent costs for the authorized persons -Selling strategies, which could include discounts for volume or combination of product sales -Low income sales strategy -Demonstration of a community program <p>An excellent response will demonstrate the following: The applicant has a comprehensive plan with a timeline that is clear, reasonable and achievable. Materials are included, not just mentioned.</p> <p>An average response will demonstrate the following: The applicant has some of the above attributes of a comprehensive plan with a timeline that is clear, reasonable and achievable.</p> <p>An inadequate response will demonstrate the following: The applicant has no plan with any of the above attributes of a comprehensive plan with a timeline that is clear, reasonable and achievable.</p>				
Range 0 - 10 points					

EVALUATOR NAME _____ LIKELY IMPACT ON THE COMMUNITY (NON-IDENTIFIED)

ME ID# _____

Time Tracking for Evaluation Process	
Evaluator Name	
Start Time:	
End Time:	
Total Time to be charged to applicant:	

Instructions to Evaluators:

- 1) Evaluators enter start time for evaluation
- 2) Evaluator individually scores criteria
- 3) Evaluators completes evaluation and enters end time
- 5) Time calculated is time which will be charged to the applicant

EXHIBIT H

AA 003511

17650RS 117

EVALUATOR NAME _____

ADEQUACY OF SIZE - BUILDING PLANS (NON-IDENTIFIED)

ME ID# _____

APPLICATION EVALUATION – Evaluator's Guidelines - ADEQUACY OF SIZE - BUILDING PLANS (NON-IDENTIFIED)

Applications shall be consistently evaluated and scored in accordance with NRS 453D and LCB File No. R092-17

TOTAL POSSIBLE POINTS = 20 Points

The following is intended to assist evaluators in scoring responses to the request for applications for marijuana establishments.

Applying these guidelines using your experience and expertise to the scoring process will ensure that your scoring is consistent and unbiased, which is critical when deciding the points assigned to each individual criteria.

The point range is detailed under each criteria section and points should be assigned based on the evaluators assessment of the response falling into categories of "excellent," "average," or "inadequate."

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
R092-17 Sec. 78 (f) Documentation concerning the size of the proposed marijuana establishment, including, without limitation, building and general floor plans with supporting details	Documentation concerning the adequacy of the size of the proposed marijuana establishment to serve the needs of persons who are authorized to purchase recreational marijuana. Building Plans with supporting Details				
	Effective and efficient building planning is demonstrated in the response. An excellent response would include all the following elements: The building plan demonstrates a clear definition of work tasks, estimation of required resources and duration for individual tasks. The planning of scheduled activities along with the estimated resources and duration are realistic and achievable within the required 12 months to be fully operational				

EVALUATOR NAME _____

ADEQUACY OF SIZE - BUILDING PLANS (NON-IDENTIFIED)

ME ID# _____

An average response would include the following elements: The building plan does not demonstrate a clear definition of work tasks, estimation of required resources and duration for individual tasks. The planning of scheduled activities along with the estimated resources and duration appear unrealistic and unachievable.				
	An inadequate response would demonstrate no planning in the criteria response			
Range 0 - 10 points				

EVALUATOR NAME _____

ADEQUACY OF SIZE - BUILDING PLANS (NON-IDENTIFIED)

ME ID# _____

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	<p>Building Plans demonstrate necessary regulatory requirements</p> <p>Regulatory requirements include:</p> <ul style="list-style-type: none"> -Have an appearance, both as to the interior and exterior, that is professional, orderly, dignified and consistent with the traditional Nevada retail marijuana stores -Have professional signage that meets the advertising guidelines established by the department. -Have a single, public entrance and demonstrate strict security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana -Is of suitable size, construction and location to facilitate cleaning, maintenance and proper operations -Has adequate space for the orderly placement of equipment and materials to prevent misuse of any component and to prevent contamination 				
	<p>-Demonstration that adequate lighting is provided in all areas of the establishment</p> <p>-Operations of the establishment are performed within separate or defined areas or such other control systems as are necessary to prevent contamination, miscalculation or misuse of any component in any step</p> <p>Evaluators - use the specific criteria by establishment type as follows:</p> <p>Marijuana Retail Store:</p>				

AA 003514

EVALUATOR NAME _____

ADEQUACY OF SIZE - BUILDING PLANS (NON-IDENTIFIED)

ME ID# _____

-Within the product showroom space, plans must reflect that all marijuana products must be stored behind a counter or other barrier to ensure customers have no direct access					
Range 0 - 10 points					

EVALUATOR NAME _____

ADEQUACY OF SIZE - BUILDING PLANS (NON-IDENTIFIED)

ME ID# _____

Time Tracking for Evaluation Process	
Evaluator Name	
Start Time:	
End Time:	
Total Time to be charged to applicant:	

Instructions to Evaluators:

- 1) Evaluators enter start time for evaluation
- 2) Evaluator individually scores criteria
- 3) Evaluators completes evaluation and enters end time
- 5) Time calculated is time which will be charged to the applicant

EXHIBIT I

AA 003517

APPLICATION EVALUATION – Evaluator’s Guidelines - CARE, QUALITY AND SAFEKEEPING (NON-IDENTIFIED)
Applications shall be consistently evaluated and scored in accordance with NRS 453D and LCB File No. R092-17.

TOTAL POSSIBLE POINTS = 90 Points

The following is intended to assist evaluators in scoring responses to the request for applications for marijuana establishments. Applying these guidelines using your experience and expertise to the scoring process will ensure that your scoring is consistent and unbiased, which is critical when deciding the points assigned to each individual criteria.
The point range is detailed under each criteria section and points should be assigned based on the evaluators assessment of the response falling into categories of "excellent," "average," or "inadequate."

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
R092-17 Sec. 80 (a) Whether the applicant has an integrated plan for the care, quality and safekeeping of marijuana from seed to sale	<p>Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including, without limitation:</p> <p>A plan for testing, verifying and promoting marijuana</p> <p>Evaluators - use the specific criteria for recreational marijuana retail store.</p> <p>Each recreational marijuana retail store shall ensure that :</p> <p>-marijuana product has been tested for content, quality and potency and that product is in Metrc and passed all testing requirements and is logged and verified in Metrc.</p> <p>-Demonstrates that no product will be sold until all required quality assurance testing has been completed</p> <p>-Demonstrates responsibility for the content and quality of any product sold or dispensed by the establishment</p> <p>-Demonstrates responsibility that all screening or testing has been performed</p> <p>-Demonstrates that it must disclose the name of the independent testing lab which performed the required quality assurance tests</p>				

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

	<ul style="list-style-type: none"> -Demonstrates the proper labeling requirements as necessary to be included in addition to the label from the independent testing results and / or cultivation or production facility -Defines processes for receipt, identification, storage, handling, segregation of marijuana product before sale. -Defines procedures describing in sufficient detail the receipt, identification, storage, handling, sampling, examination and testing of labeling and packaging materials, containers and closures and that it follows those procedures -Defines that each container or grouping of containers for components, product containers or closures is identified with a metric package number and lot or production run number. Each lot must be appropriately identified as to its status such as quarantined, approved or rejected. -Processes for the disposal or remediation of product. -Defines processes for how the facilities will train employees on how to respond, upon the request of the Department, on providing a sample of marijuana or a marijuana product for random quality assurance compliance checks in a secure manner. -Demonstrates the promotion of marijuana or marijuana product through marketing the laboratory results only on the label and will not promote any other attributes of the products -Demonstration of any other value added services the recreational retail store will offer to consumers. 		
Range 0 - 5 points			

AA 003519

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	<p>A Transportation Plan:</p> <p>The following regulatory requirements should be reflected in the applicant's transportation plan:</p> <ul style="list-style-type: none"> -Demonstrating how marijuana products, paraphernalia, marijuana infused products or marijuana edible products will be transported from the applicant's facility to a consumer or to another recreational marijuana retail store. -Demonstrate that no more than 5 ounces (or equivalent) of marijuana, edible marijuana products or marijuana-infused products, or any combination thereof, may be transported at any one time from an establishment to consumers within a single trip. -Demonstrate before transportation, that the establishment will confirm verbally with the consumer by telephone that the consumer ordered the marijuana or marijuana products -Provide documentation of the sample log which will be made available for inspection by the appropriate law enforcement agency, including customer signatures for delivery -Provide documentation of a sample trip plan which will be used by the facility for deliveries -Provide a description all vehicles which will be used in the transport of marijuana products, ensuring that they contain no identification, and products will not be visible during transportation -Demonstrate what means of communication and communication strategy will be used in the transportation of marijuana products -Identify processes for reporting accidents and any loss or theft of marijuana that occurs during transportation to the appropriate law enforcement agency and the department -Identifies a transportation plan that will deter the loss, theft or diversion of marijuana products 				

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

	<p>An excellent response would include the following: The criteria response clearly demonstrates how the establishment intends to provide transportation of marijuana products, including any necessary information regarding agents who are authorized to transport marijuana products.</p> <p>An average response would include the following: The criteria somewhat demonstrates how the establishment intends to provide transportation of marijuana products, but only somewhat includes any necessary information regarding agents who are authorized to transport marijuana products.</p> <p>An inadequate response would include the following: The criteria does not demonstrate how the establishment intends to provide transportation of marijuana products, and may reference outside delivery services as the transportation plan of choice, which will not be authorized to transport marijuana products</p>		
Range 0 - 10 points			

AA 003521

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	<p>Procedures to ensure adequate security measures including, without limitation, for building security</p> <p>Documentation that the marijuana establishment has a single customer entrance and shall implement strict security measures including security equipment to deter and prevent unauthorized entrance into limited access areas, which should include:</p> <ul style="list-style-type: none"> -Devices to detect unauthorized intrusion -Exterior lighting to facilitate surveillance -24 hour Electronic monitoring, including one call-up monitor, a video printer and video cameras with recording resolution of at least 1920 x 1080 or the equivalent, at a rate of at least 15 frames per second which provides coverage of all areas -A video camera at each point of sale -A method for storing video recordings for at least 30 days -A failure notification system -Sufficient battery backup for video cameras and recording equipment -Immediate notification for law enforcement agencies for unauthorized breach <p>-Procedures for building security, including requirements for the protection by a fully operational security alarm system installed by a professional security firm</p> <p>-Processes for permission for entry for reasonable inspection and authorized access. An inspector conducting an inspection pursuant to this section does not need to be accompanied during the inspection</p> <p>-Demonstrates how the building security plan will describe in detail the enclosed locked facility where marijuana will be stored, including when the location is closed for business, and its security measures, including steps taken to ensure that marijuana is not visible to the public</p>				

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

	<p>-Documentation of the storage requirements-Must be stored in a secure, locked device, display case, cabinet or room within the enclosed, locked facility, which must be protected by a lock or locking mechanism that meets at least the security rating established by Underwriters Laboratories for key locks</p> <p>An excellent plan would include the following: The plan fully demonstrates the building security features and procedures demonstrate the applicant's ability to prevent the theft or diversion of marijuana and how the plan will assist law enforcement and the department . Should include a detailed budget for the proposed establishment that fully shows pre-opening, construction and first year operating expenses.</p> <p>An average plan would include the following: The plan simply demonstrates the building security features and procedures may demonstrate the applicant's ability to prevent the theft or diversion of marijuana and how the plan will assist law enforcement and the department .</p> <p>An inadequate plan would include the following: The plan does not fully demonstrates the building security features and procedures do not fully demonstrate the applicant's ability to prevent the theft or diversion of marijuana or are not addressed in the response. Does not have a detailed budget for the proposed establishment that adequately shows pre-opening, construction and first year operating expenses.</p>		
Range 0 - 10 points			

AA 003523

Merit Criteria Per NRS and R092-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	<p>Procedures to ensure adequate security measures including, without limitation, for product security</p> <p>-The response demonstrates a plan for recordkeeping, tracking and monitoring inventory, quality control and security and other policies and procedures that will discourage unlawful activity</p> <p>-The response demonstrates how the establishment intends to prevent diversion of marijuana and the procedures for preventing minors from purchasing marijuana</p>				
	<p>-Demonstration of how the applicant plan to accept delivery of marijuana to the facility, including procedures on how it is received and documented</p> <p>-Documentation on the proper use of security measures and controls that have been adopted by the marijuana establishment for the prevention of diversion, theft or loss of marijuana</p> <p>An excellent plan would include the following: The plan fully demonstrates the product security plans and the security measures fully demonstrate the applicant's ability to prevent the theft or diversion of marijuana and how the plan will assist law enforcement and the department</p> <p>An average plan would include the following: The plan somewhat demonstrates the product security plans and the security measures somewhat demonstrate the applicant's ability to prevent the theft or diversion of marijuana and how the plan will assist law enforcement and the Department</p> <p>An inadequate plan would include the following: The plan does not fully demonstrate the product security plans and little to no security measures are demonstrated in the response.</p>				
Range 0 - 15 points					

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

Merit Criteria Per NRS and R002-17	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable	Comments
	<p>A detailed budget for the proposed establishment, including pre-opening, construction and first-year operating expenses</p> <p>An excellent response would demonstrate expenses and projected revenue as clearly delineated, reasonable and cover all expenses, including regulatory requirements as follows:</p> <ul style="list-style-type: none"> -An annual financial statement -A report of an audit by a certified public accountant -Excise taxes -Agent card fees -Initial certification fee/renewal -Application evaluation fee -Fee for time and effort for inspection over-sight -Provision for annual physical inventories 				
	<p>An average response would demonstrate expenses and revenue appearing to be reasonable and cover major categories of expenses for a start up operation; a small contingency may or may not be contemplated; some regulatory requirements are missing</p> <p>An inadequate response would demonstrate expenses and revenue are somewhat defined; start up expenses are un-reasonable; no contingency fund; most regulatory requirements are missing</p>				
Range 0 - 10 points					

AA 003525

	An operations manual that demonstrates compliance with applicable statutes and regulations			
	<p>Each recreational marijuana retail store shall ensure that :</p> <p>Governing Documents</p> <ul style="list-style-type: none"> -Mission and Vision Statement, Bylaws, Core Values, Goals and Action Plans <p>Oversight</p> <ul style="list-style-type: none"> -Job Descriptions and Responsibilities, Training and Education, Organizational Chart, Contact Information, Safety Policies, Attendance and Workplace Policies, Wage and Hour Policies and Over-time, Confidentiality, Disciplinary policies, Holidays, Insurance and Benefits <p>Standard Operating Procedures</p> <p>Recordkeeping</p> <ul style="list-style-type: none"> -Electronic verification system, Inventory control system and control, testing and verification procedures, notification of agent status to the department , business records and retention, product acquisition and reporting, sales and dispensing processes and reporting, including recognition of non-resident cards, patient records, and confidentiality and retention <p>Safety and Security</p> <ul style="list-style-type: none"> -Product and Building safety procedures, transportation procedures, public consumption, storage and handling, product disposal, reporting of suspected criminal activity, salvage procedures, building maintenance and cleaning procedures <p>Inspection</p> <ul style="list-style-type: none"> -Procedures on inspection activities, visitor and establishment authorized access, responding to deficiencies, and quality control unit <p>Packaging and Labeling</p> <ul style="list-style-type: none"> -Processes and procedures for packaging and labeling, requirements for edibles, sampling procedures, packaging material examination and contamination procedures <p>Forms</p> <ul style="list-style-type: none"> -Either included as its own section, or incorporated into the relevant sections 			

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

Merit Criteria Per NRS and R09Z-17	Range 0 - 15 points			Individual Scores	Comments	Revised Score if applicable	Comments
	An excellent response would include all the following elements: The operations manual of the applicant reflect all or most of the requirements for a marijuana establishment. The manual has been developed and included.						
	An average response would include all the following elements: The operations manual of the applicant reflect some but not all of the requirements for a marijuana establishment						
	An inadequate response would include the following: The operations manual of the applicant reflect few or none of the requirements for a marijuana establishment						

AA 003527

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

	<p>An education plan which must include, without limitation, providing educational materials to the staff of the proposed establishment</p> <p>The education plans should include the following educational regulatory requirements: Documentation that training for all employees will include the following</p> <ul style="list-style-type: none"> -Training will be provided to a marijuana establishment agent before that person begins work or volunteers -Proper use of security measures and controls which have been adopted by the establishment for the prevention of diversion, theft or loss -Procedures and instructions for responding to an emergency 			
	<ul style="list-style-type: none"> -State and federal statutes and regulations regarding confidentiality of information -Health and cleanliness standards, including the person who will address health conditions <p>The following requirements must be reflected in the education plans of each type of establishment:</p> <p>Marijuana Retail Store:</p> <ul style="list-style-type: none"> -The different strains of marijuana -The different methods of using marijuana -Recognizing signs of abuse or instability in a consumer -Consumer education and support, including: <ul style="list-style-type: none"> -Availability of different strains -Information on effectiveness of methods, forms and routes of administration -Prohibition of smoking in public places <p>An excellent response would include all the following elements: The education plan of the applicant reflects all of the requirements for the marijuana establishment type, and appropriate demonstration or reference to an outside resource to supply the appropriate training is provided. The plan has been developed and included.</p>			

AA 003528

EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

Merit Criteria Per NRS and R092-17	Range 0 - 2.5 points			
	Evaluation Elements	Individual Scores	Comments	Revised Score if applicable
	<p>An average response would include all the following elements: The education plan of the applicant reflects some of the requirements for the marijuana establishment type, and appropriate demonstration or reference to an outside resource to supply the appropriate training may be referenced but not provided</p> <p>An inadequate response would include all the following elements: The education plan of the applicant does not reflect the requirements for the marijuana establishment type, and appropriate demonstration or reference to an outside resource to supply the appropriate training is not provided</p>			

AA 003529

	<p>A plan to minimize the environmental impact of the proposed establishment</p> <p>A plan to minimize the environmental impact of an establishment could include the following:</p> <ul style="list-style-type: none"> -Demonstration that focused energy management is a key strategic initiative for the facility and it is committed to operating a facility that maximizes energy performance while conserving consumption. -Demonstration that the facility will use a clean energy supply, including renewable energy and clean distributed generation, such as combined heat and power to control energy use. -Demonstration of post-consumer waste reduction including a plan to execute the use of recycled-content material, maximization of plastic and paper recycling, reducing paper use by means of electronic data transfer and online document storage. -Demonstration of environmentally friendly product choices, focusing on the way these products are manufactured, the raw materials they utilize, or the way they can be disposed of or recycled. -Inclusion of organic and natural offerings to meet the marijuana needs of their customers -Demonstration of sustainable sources of supply and collaboration that demonstrate strong sustainable practices which minimize the depletion of natural resources. The applicant supports local sources of supply when product availability, food safety, and quality are not compromised. -Documentation that distribution of safe products is a principal objective and commitment to provide high-quality products that meet regulatory specifications and customer expectations is demonstrated. -Demonstration of solutions that enable people who will work for the facility to improve their livelihoods and make environmentally conscious choices. 			
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EVALUATOR NAME _____

CARE, QUALITY SAFEKEEPING (NON-IDENTIFIED)

ME ID# _____

Merit Criteria Per NRS and R09Z-17	An excellent response would include all the following elements: The environmental impact plan of the applicant reflects many elements for reducing waste and maximizing sustainability in the proposed establishment. An average response would include all the following elements: The environmental impact plan of the applicant reflects addresses some elements for reducing waste and maximizing sustainability in the proposed establishment. An inadequate response would include all the following elements: The environmental impact plan of the applicant reflects few elements for reducing waste and maximizing sustainability in the proposed establishment.	Range 0 - 2.5 points	Individual Scores	Comments	Revised Score if applicable	Comments

AA 003531

EXHIBIT J

PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION

LCB File No. T002-17

May 8, 2017

EXPLANATION - Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: NRS 453D.200 authorizes the Department to adopt all regulations necessary or convenient to carry out the provisions of NRS Chapter 453D.

Section 1. Chapter 453D of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 35, inclusive, of this chapter.

Sec. 2. *As used in sections 2 to 35, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, have the meanings ascribed to them in those sections.*

Sec. 3. *“Department” defined. “Department” means the Department of Taxation.*

Sec. 4. *“Division” defined. “Division” means the Division of Public and Behavioral Health of the Department of Health and Human Services.*

Sec. 5. *“Fair Market Value” defined. “Fair Market Value” is the value established by the Department based on the price that a buyer would pay to a seller in an arm’s length transaction for marijuana in the wholesale market.*

Sec. 6. *“Marijuana Establishment” defined. A “Marijuana Establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.*

Sec. 7. *“Marijuana Establishment Agent” defined. A “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 licensed marijuana establishment, or an employee of such an independent contractor.*

Sec. 8. *“Excluded Felony Offense” defined. An “Excluded Felony Offense” has the meaning ascribed to it in NRS 453D.*

Sec. 9. *“Medical Marijuana Establishment Registration Certificate” defined. A “Medical Marijuana Establishment Registration Certificate” has the meaning ascribed to it in NRS 453A.119.*

Sec. 10. *“Marijuana” defined. “Marijuana” has the meaning ascribed to it in NRS 453D.030.*

Sec. 11. *“Medical Marijuana” defined. “Medical Marijuana” means the possession, delivery, production or use of marijuana pursuant to NRS 453A.*

PRODUCTION AND DISTRIBUTION OF MARIJUANA

Temporary licensing of retail marijuana stores, marijuana testing facilities, marijuana product manufacturing facilities, and marijuana cultivation facilities

Sec. 12. Procedures for the issuance and revocation of a temporary license to operate a marijuana establishment.

1. *A medical marijuana establishment that has received a medical marijuana establishment registration certificate and is operating and in good standing, as defined in subsections 7 and 8 of this section, under its medical marijuana establishment registration*

certificate may apply for a marijuana establishment temporary license no later than May 31, 2017.

2. The application must be submitted by the same entity that holds the medical marijuana establishment certificate and must be submitted on a form prescribed by the Department pursuant to NRS 453D.210 and must include, without limitation:

- (a) A one-time, nonrefundable application fee of \$5,000 plus a license fee of:*
 - (1) \$20,000 for a Retail Establishment;*
 - (2) \$30,000 for a Cultivation Facility;*
 - (3) \$10,000 for a Production/Manufacturing Facility; or*
 - (4) \$15,000 for a Testing Facility*
 - (5) \$15,000 for a Marijuana Distributor*
- (b) That the applicant is applying for a temporary marijuana establishment license;*
- (c) The type of temporary marijuana establishment license for which the applicant is applying;*
- (d) The name of the marijuana establishment, as reflected on the registration certificate issued pursuant to NRS 453A and in the articles of incorporation or other documents filed with the Secretary of State;*
- (e) The physical address where the marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;*
- (f) The mailing address of the applicant;*
- (g) The telephone number of the applicant;*
- (h) The electronic mail address of the applicant;*
- (i) Authorization for the Department to review the records of the Division necessary*

to determine if the applicant is in good standing under its medical marijuana establishment registration certificate;

(j) Attestation that the applicant understands its location must be properly zoned in compliance with NRS 453D.210(5)(a)-(c) and NRS 453D.210(5)(e) prior to receiving a temporary marijuana establishment license;

(k) A signed copy of the Request and Consent to Release Application Form for Temporary Marijuana License;

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

(m) The signature of a natural person for the proposed marijuana establishment and the date on which the person signed the application; and

(n) Any other information that the Department may require.

3. The Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a temporary marijuana establishment license. A list of the licensed entities will be posted on the Department's website.

4. Upon receipt of the application by the Department, the Department shall approve the issuance of a temporary marijuana establishment license if:

(a) The applicant holds the same or similar license type under NRS 453A for which it is applying or is applying for a marijuana distributor license;

(b) The applicant is operating and in good standing under its medical marijuana establishment registration certificate; and

(c) The applicant is in compliance with NRS 453D.210 (5)(a)-(f). For purposes of determining compliance with 453D(5)(c) and (e), the Department will not issue the license until the Department receives written notice from the locality that the applicant is in compliance with the distance requirements and zoning and land use rules adopted by the locality.

5. If the proposed marijuana establishment will be located at a location different from the medical marijuana establishment, the Department will not issue a temporary marijuana establishment license until the Department completes an inspection of the proposed marijuana establishment. Such an inspection may require more than one visit to the proposed marijuana establishment.

6. If the temporary marijuana establishment license application is not approved, the license fee will be refunded to the applicant.

7. As used in this section, a medical marijuana establishment is in “good standing” if it is in compliance with NRS 453A and NAC 453A, including but not limited to the following:

(a) For all medical marijuana establishments:

(1) All licenses, certificates and fees are current and paid;

(2) No registration certificate suspension within 6 months of the effective date of the marijuana establishment temporary license for enforcement violations including but not limited to provisions NRS 453A.352, NRS 453A.362, NAC 453A.406, NAC 453A.414, NAC 453A.658, NAC 453A.668, and NAC 453A.672;

(3) The applicant is not delinquent in the payment of any tax administered by the Department or is not in default on a payment required pursuant to a written agreement with the Department, or is not otherwise liable to the Department for the payment of money;

(4) No citations for illegal activity or criminal conduct; and

(5) Plans of correction are in progress or are complete and on time as defined in NRS 453A.330.

(b) If a medical marijuana establishment registration certificate is provisional it is not in good standing pursuant to this section.

8. As used in this section, a medical marijuana establishment is “operating” if it filed a return and paid the tax imposed by NRS 372A.290 prior to or on May 31, 2017.

9. Any application or license fee paid for a temporary marijuana establishment license can be applied toward the fees required for a permanent license.

10. After the application period provided in subsection 1, the Department may accept additional applications for not more than a total of 5 business days. These regulations will apply to any subsequent application period determined by the Department except that the requirement to be operating as provided in subsection 8 will not apply to any subsequent application period.

Sec. 13. Temporary marijuana license except marijuana distributor: Grounds for denial, suspension or revocation.

1. The Department will deny an application for a temporary marijuana establishment license if:

(a) The applicant is not in compliance with NRS 453A, NAC 453A, NRS 453D or this chapter;

(b) The applicant is not in good standing as required by Section 12 of this chapter;

(c) The applicant is not in compliance with NRS 453D zoning requirements; and

(d) The applicant has not paid fees required by NRS 453D.

(e) The marijuana establishment has failed to pay any tax or fee required by NRS 372A or NRS 453D and any other law imposing a tax or fee on the sale of marijuana and marijuana products in this State.

2. The Department will revoke or suspend a temporary marijuana establishment license if:

(a) The marijuana establishment dispenses, delivers or otherwise transfers marijuana to a person under 21 years of age;

(b) The marijuana establishment acquires usable marijuana or mature marijuana plants from any person other than a marijuana establishment agent or another licensed marijuana establishment;

(c) An owner, officer or board member of the marijuana establishment has been convicted of an excluded felony offense;

(d) The Department receives formal notice from the applicable local government that the marijuana establishment has had its authorization to operate terminated;

(e) Any license issued pursuant to NRS 453A is suspended or revoked; or

(f) The marijuana establishment failed to pay any tax or fee required by NRS 372A or NRS 453D and any other law imposing a tax or fee on the sale of marijuana and marijuana products in this State.

Temporary licensing of marijuana distributors

Sec. 14. Applications to operate marijuana establishment – marijuana distributors:

Required provisions.

1. The Department will accept distributor applications from applicants meeting the following criteria:

(a) Persons holding a liquor wholesaler dealer license pursuant to NRS 369;

(1) Person has the meaning ascribed to it in NRS 0.039.

(2) The person holding the wholesaler liquor dealer license must be the person applying for the marijuana distributor license.

(b) Medical marijuana establishments that hold a registration certificate pursuant to NRS 453A.322(5) and are operating and in good standing as provided in Section 12 of this chapter; or

(c) Applicants who are currently in the business of transporting medical marijuana and whose employees hold valid agent cards pursuant to NRS 453A.332

(1) For the applicant and each person who is proposed to be an owner, officer or board member of the entity that is currently in the business of transporting medical marijuana, each must comply with the provisions set forth in NRS 453A.322 and NRS 453.332 regarding fingerprinting and background checks.

2. After the application deadline set forth in Section 15 the Department may determine pursuant to NRS 453D.210(3) that an insufficient number of distributor licenses would result from limiting licenses to persons holding a wholesale dealer license pursuant to chapter 369 of NRS. The determination will be based upon the liquor wholesale dealer applicants' responses to the following considerations:

(a) Whether the applicant has begun the process to secure local zoning and/or special use permits necessary to operate a marijuana establishment;

(b) Whether the applicant owns the building where it will operate its marijuana establishment, and if not, if it has received written permission from the property owner to operate the proposed marijuana establishment;

(c) Whether the applicant has consulted with a contractor about making physical security modifications to the building where it proposes to operate the marijuana establishment to comply with NRS 453D.300, and if so, whether those modifications would be complete by July 1, 2017, or whether the building which the applicant proposes to use complies with the security requirements for marijuana establishments;

(d) Whether the applicant acknowledges that there is a conflict between state and federal law regarding marijuana sales and that being a licensed marijuana establishment may jeopardize the applicant's status as a federally licensed liquor wholesaler and whether the applicant is prepared to enter the marijuana market despite the potential federal licensing issues;

(e) Explain whether the applicant currently serves a variety of geographic markets as a liquor wholesaler or explain how the applicant is prepared to serve different geographic markets in the state.;

(f) Explain what experience the applicant has in serving a variety of retailers as a liquor wholesaler;

(g) Other information included in the application described in Section 15; and

(h) Other information the applicant believes shows that it is prepared to serve the marijuana establishment market on July 1, 2017.

Sec. 15. Temporary marijuana establishment license for marijuana distributor. Procedures for the issuance of a temporary marijuana distributor license for an applicant who does not hold a medical marijuana registration certificate.

1. An application submitted for a temporary marijuana distributor license from an applicant who does not have a medical marijuana establishment registration certificate must

be submitted on or before May 31, 2017 on a form prescribed by the Department pursuant to NRS 453D.210 and must include:

(a) A one-time, nonrefundable application fee of \$5,000; plus a \$15,000 license fee;
and

(b) The name of the proposed marijuana distributor, as reflected in the articles of incorporation or other documents filed with the Secretary of State;

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

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

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

(f) The mailing address of the applicant;

(g) The telephone number of the applicant;

(h) The electronic mail address of the applicant;

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

(j) The signature of a natural person for the proposed marijuana distributor and the date on which the person signed the application;

(k) Documentation from a financial institution in this State, or any other state or the District of Columbia, which demonstrates:

(1) That the applicant has liquid assets that demonstrate the applicant is in a financial condition to operate as a distributor. The funds should be unencumbered and able to be converted within 30 days after a request to liquidate such assets; and

(2) The source of those liquid assets.

(l) A description of the proposed organizational structure of the proposed marijuana distributor, including, without limitation:

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

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

(a) The title of the person;

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

(c) Whether the person has served or is currently serving as an owner, officer or board member of a medical marijuana establishment;

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

(e) Whether the person has previously had a medical marijuana establishment agent registration card revoked;

(f) Whether the person is a law enforcement officer;

- (g) Whether the person is currently an employee or contractor of the Department;*
- (h) Whether the person has an ownership or financial investment interest in a medical marijuana establishment;*
- (i) A signed copy of the Request and Consent to Release Application Form for Temporary Marijuana Distributor License;*
- (j) A complete set of fingerprints and written permission of the owner, officer or board member authorizing either the Department or the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;*
- (1) If required, authorization for the Department to obtain account information from the Division regarding fingerprints and background checks.*
- (k) A signed copy of the Child Support Verification Form; and*
- (l) The completed Driver Verification Form*
- (m) For each owner, officer and board member of the proposed marijuana distributor:*
- (1) An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of an excluded felony offense,*
- (2) An attestation signed and dated by the owner, officer or board member that he or she has not served as an owner, officer, or board member for a medical marijuana establishment that has had its registration certificate suspended or revoked;*
- (3) That the information provided to support the application for a temporary marijuana distributor license is true and correct;*

(4) A narrative description, not to exceed 750 words, demonstrating:

(a) Any previous experience at operating other businesses or nonprofit organizations; and

(b) Qualifications that are directly and demonstrably related to the operation of a marijuana establishment.

(5) A resume.

(n) A financial plan which includes, without limitation:

(1) Financial statements showing the resources of the applicant;

(2) If the applicant is relying on money from an owner, officer or board member, evidence that the person has unconditionally committed such money to the use of the applicant in the event the Department awards a distributor license to the applicant and the applicant obtains the necessary approvals from local governments to operate; and

(3) Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.

(o) Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana distributor on a daily basis, which must include, without limitation:

(1) A detailed budget for the proposed marijuana distributor, including pre-opening, construction and first year operating expenses;

(2) An operations manual that demonstrates compliance with NRS 453D and this chapter;

(3) An education plan which must include, without limitation, providing educational materials to the staff of the proposed marijuana distributor; and

(4) An indication from the proposed marijuana distributor that it is aware that it must comply with all local government enacted zoning restrictions and be in compliance with NRS 453D.210 prior to issuance of a temporary marijuana distributor license.

(p) Any other information the Department may require.

(1) The Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a temporary marijuana establishment license. A list of the licensed entities will be posted on the Department's website.

(2) The Department will not issue a temporary marijuana distributor license until the Department completes an inspection of the proposed marijuana distributor. Such an inspection may require more than one visit to the proposed marijuana distributor.

Sec. 16. Temporary distributor license: Suspension for operational deficiencies; plan of correction.

1. If the Department determines that there are any deficiencies in the operation of a marijuana distributor or in the provision of services by a marijuana distributor, the Department may suspend its temporary marijuana distributor license and request a written plan of correction from the marijuana distributor.

2. A marijuana distributor whose marijuana distributor license has been suspended pursuant to subsection 1 of this section shall develop a plan of correction for each deficiency and submit the plan to the Department for approval within 10 business days after receipt of the statement of deficiencies. The plan of correction must include specific requirements for corrective action, which must include times within which the deficiencies are to be corrected.

3. If the plan submitted pursuant to subsection 2 of this section is not acceptable to the Department, the Department may direct the marijuana distributor to resubmit a plan of correction or the Department may develop a directed plan of correction with which the marijuana distributor must comply.

Sec. 17. Temporary distributor license: Grounds for denial, suspension or revocation of a temporary license to operate as a marijuana distributor to an applicant who does not hold a medical marijuana registration certificate.

1. The Department will deny an application for a temporary marijuana distributor license if:

(a) The applicant for the temporary marijuana distributor license is not in compliance with any provision of this chapter or NRS 453D; or

(b) An owner, officer or board member of the applicant for the temporary marijuana distributor license:

(1) Is an employee or contractor of the Department;

(2) Has an ownership or financial investment interest in an independent testing facility and also is an owner, officer or board member of a marijuana distributor; or

(3) Provides false or misleading information to the Department.

2. The Department will revoke a temporary marijuana distributor license if:

(a) The marijuana distributor engages in any of the following:

(1) Dispensing, delivering or otherwise transferring marijuana to a person under 21 years of age;

(2) Acquiring usable marijuana or mature marijuana plants from any person other than a marijuana establishment agent or another licensed marijuana establishment;

(b) An owner, officer or board member of the marijuana distributor has been convicted of an excluded felony offense; or

(c) The Department receives formal notice from the applicable local government that the marijuana distributor has had its authorization to operate terminated.

3. The Department may revoke or suspend any temporary marijuana distributor license issued or may deny any application under the provisions of this chapter and NRS 453D upon any of the following grounds:

(a) Violation by the marijuana distributor of any of the provisions of this chapter or NRS 453D;

(b) The failure or refusal of a marijuana distributor to comply with any of the provisions of this chapter or NRS 453D;

(c) The failure or refusal of a marijuana distributor to carry out the policies and procedures or comply with the statements provided to the Department in the application of the marijuana distributor;

(d) Operating as a marijuana distributor without a temporary marijuana distributor license;

(e) The failure or refusal to return an adequate plan of correction to the Department within 10 business days after receipt of a statement of deficiencies pursuant to Section 16 of this chapter;

(f) The failure or refusal to correct any deficiency specified by the Department within the period specified in a plan of correction developed pursuant to Section 16 of this chapter; or

(g) The failure or refusal to cooperate fully with an investigation or inspection by the Department;

4. If the Department revokes a temporary marijuana distributor license, the Department must provide notice to the marijuana distributor that includes, without limitation, the specific reasons for the revocation.

5. Before revoking a marijuana distributor license as a result of the actions of an owner, officer or board member of the marijuana distributor pursuant to paragraph (b) of subsection 1 or paragraph (b) of subsection 2 of this section, the Department may provide the marijuana distributor with an opportunity to correct the situation.

Sec. 18. Temporary licensing of a marijuana distributor with a medical marijuana registration certificate.

1. An application submitted for a temporary marijuana distributor license from an applicant that has a medical marijuana establishment registration certificate must be submitted on a form prescribed by the Department pursuant to NRS 453D.210 and must:

- (a) Include a one-time, nonrefundable application fee of \$5,000 plus a \$15,000 license fee;*
- (b) Comply with all provisions of Section 12 of this chapter; and*
- (c) The Department shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a temporary marijuana establishment license. A list of the licensed entities will be posted on the*

Department's website.

Sec. 19. Agents of temporary licensed marijuana distributors required to register with the Department; requirements for registration; establishment required to notify Department if agent ceases to be employed by, volunteer at or provide labor as a marijuana distributor.

1. Except as otherwise provided in this section, a person shall not volunteer or work at, contract to provide labor as, or be employed by a licensed marijuana distributor unless the person is registered with the Department pursuant to this section.

2. A licensed marijuana distributor that wishes to retain as a volunteer or employ a marijuana distributor agent shall submit to the Department an application on a form prescribed by the Department. The application must be accompanied by:

(a) The name, address and date of birth of the prospective marijuana distributor agent;

(b) A statement signed by the prospective marijuana distributor agent pledging not to dispense or otherwise divert marijuana to any person who is not authorized to possess marijuana in accordance with the provisions of this chapter;

(c) A statement signed by the prospective marijuana distributor agent asserting that he or she has not previously had a medical marijuana establishment agent registration card revoked;

(d) A complete set of the fingerprints and written permission of the prospective marijuana distributor agent authorizing either the Department or the Division to forward the

fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

(1) If required, authorization for the Department to obtain account information from the Division regarding fingerprints and background checks.

(e) The application fee, as allowed by law; and

(f) Such other information as the Department may require.

3. A marijuana distributor shall notify the Department within 10 days after a marijuana distributor agent ceases to be employed by, volunteer at or provide labor as a marijuana distributor agent to the marijuana distributor.

4. A person shall not serve as a marijuana distributor agent if he or she:

(a) Has been convicted of an excluded felony offense; or

(b) Is less than 21 years of age.

5. Either the Department or the Division shall submit the fingerprints of an applicant for registration as a marijuana distributor agent to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation to determine the criminal history of the applicant.

6. If an applicant for registration as a marijuana distributor agent satisfies the requirements of this section and is not disqualified from serving as such an agent pursuant to this section or any other applicable law, the Department shall issue to the person and, for an independent contractor, to each person identified in the independent contractor's application for registration as an employee who will provide labor as a marijuana distributor agent, a marijuana distributor agent card. If the Department does not act upon an application for a

marijuana distributor agent card within 30 days after the date on which the application is received, the application shall be deemed conditionally approved until such time as the Department acts upon the application.

Sec. 20. Marijuana distributor duties and responsibilities.

1. A licensed marijuana distributor may transport marijuana and marijuana products between a marijuana establishment and:

(a) Another marijuana establishment;

(b) Between the buildings of the marijuana establishment.

2. A marijuana establishment may only transport marijuana and marijuana products to a retail marijuana store if they hold a marijuana distributor license.

3. A marijuana distributor may not purchase or sell marijuana or marijuana products unless they hold another license that allows for the purchase or sale of marijuana and marijuana products.

4. Before transporting marijuana or marijuana products pursuant to subsection 1 of this chapter, a licensed marijuana distributor must:

(a) Complete a trip plan that includes, without limitation:

(1) The name of the marijuana establishment agent in charge of the transportation;

(2) The date and start time of the trip;

(3) A description, including the amount, of the marijuana or marijuana products being transported along with the unique identification code for the product; and

(4) The anticipated route of transportation including the business names and phone numbers along with the license number of the shipping and receiving licensee.

(b) Provide a copy of the trip plan completed pursuant to paragraph (a) of this section to the marijuana establishment for which he or she is providing the transportation.

(c) Record the trip plan in the inventory control tracking system approved by the Department if such a system is available.

5. During the transportation of marijuana or marijuana products pursuant to subsection 1 of this section, the licensed distributor agent must:

(a) Carry a copy of the trip plan completed pursuant to paragraph (a) of subsection 2 of this section with him or her for the duration of the trip;

(b) Have his or her marijuana distributor agent card in his or her immediate possession;

(c) Use a vehicle without any identification relating to marijuana and which is equipped with a secure lockbox or locking cargo area which must be used for the sanitary and secure transportation of marijuana or marijuana products;

(d) Have a means of communicating with the marijuana establishment for which he or she is providing the transportation; and

(e) Ensure that all marijuana or marijuana products are not visible.

(1) After transporting marijuana or marijuana products pursuant to subsection 1 of this section, a distributor agent must enter the end time of the trip and any changes to the trip plan that was completed pursuant to paragraph (a) of subsection 2 of this section.

6. Each distributor agent transporting marijuana or marijuana products pursuant to subsection 1 of this section, must:

(a) Report any vehicle accident that occurs during the transportation to a person designated by the marijuana distributor to receive such reports within 2 hours after the accident occurs;

(b) Report any loss or theft of marijuana or marijuana products that occurs during the transportation to a person designated by the marijuana distributor to receive such reports immediately after the marijuana distributor agent becomes aware of the loss or theft. A marijuana distributor that receives a report of loss or theft pursuant to this paragraph must immediately report the loss or theft to the appropriate law enforcement agency and to the Department as required by Section 23 of this chapter; and

(c) Report any unauthorized stop that lasts longer than 2 hours to the Department.

7. A marijuana distributor shall:

(a) Maintain the documents required in paragraph (a) of subsection 2 and subsections 4 (a) and (b) of this section; and

(b) Provide a copy of the documents required in paragraph (a) of subsection 2 and subsections 4 (a) and (b) of this section to the Department for review upon request.

8. Each marijuana distributor shall maintain a log of all reports received pursuant to subsection 2 and subsection 4 (a) and (b) of this section.

9. Unless extenuating circumstances exist, a marijuana distributor may not store marijuana or marijuana products overnight for any reason and must make direct delivery. If extenuating circumstances exist, the marijuana distributor must notify the Department of the extenuating circumstances as soon as possible.

Sec. 21. Transportation of marijuana and marijuana products by a marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility

and retail store.

1. A licensed marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility, or retail marijuana store may transport marijuana and marijuana products without a marijuana distributor license as follows:

(a) A marijuana cultivation facility and a marijuana product manufacturing facility may transport marijuana and marijuana products to or from marijuana testing facility, a marijuana cultivation facility or a marijuana product manufacturing facility.

(b) A marijuana testing facility may transport marijuana and marijuana products to or from a testing facility for testing.

(c) A retail marijuana store may transport marijuana and marijuana products to or from a marijuana testing facility.

Sec. 22. Transportation of marijuana and marijuana products prohibited.

1. A marijuana establishment is prohibited from transporting marijuana and marijuana products to or from a retail marijuana store unless the establishment has a marijuana distributor license. This provision does not apply to:

(a) A medical marijuana establishment only transporting marijuana or marijuana product for sale to medical patients;

(b) A marijuana testing facility transporting samples for testing;

(c) A retail marijuana store transporting marijuana to or from a marijuana testing facility; or

(d) A retail marijuana store delivering not more than 10 ounces of marijuana or marijuana product to a consumer. Except that a retail marijuana store is prohibited from

delivering marijuana or marijuana product to a consumer at any location that has been issued a gaming license as defined in NRS 463.015.

(1) When transporting marijuana or marijuana products to a consumer pursuant to subsection 1 of this section, a retail marijuana store agent must:

(a) Before transportation, confirm verbally with the consumer by telephone that the consumer is 21 years of age or older and ordered the marijuana or marijuana products and verify the identity of the consumer;

(b) Enter the details of the confirmation obtained pursuant to paragraph (a) of this section in a log which must be available for inspection by the appropriate law enforcement agency and by the Department; and

(c) Review the government-issued identification to determine the consumer's age when the items are delivered and only leave the items with the consumer whose age and identity was confirmed.

(d) Comply with the requirements in Section 20, subsections 2 through 6 of this chapter.

2. Violation of this provision may result in denial, suspension, or revocation pursuant to Section 13 of this chapter.

Sec. 23. Reporting of loss or theft of marijuana and marijuana product; maintenance of documentation.

1. A marijuana distributor shall:

(a) Document and report any loss or theft of marijuana and marijuana product from the marijuana distributor to the appropriate law enforcement agency and to the Department; and

(b) Maintain copies of any documentation required pursuant Section 20 of this chapter for at least 5 years after the date on the documentation and provide copies of the documentation to the Department for review upon request.

Sec. 24. License Expiration and renewal

1. A marijuana establishment license issued pursuant to this chapter is valid for 90 days after January 1, 2018.

Sec. 25. Applicability of NRS 453A and NAC 453A to the regulations adopted pursuant to this chapter.

1. Relevant provisions in NRS 453A and related regulations adopted pursuant to NAC 453A are applicable herein, including but not limited to:

(a) Requirements for the security of marijuana establishments;

(b) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;

(c) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;

(d) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;

(e) Requirements for record keeping by marijuana establishments;

(f) Reasonable restrictions on signage, marketing, display, and advertising;

(g) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location; and

(h) Procedures and requirements for agent registration cards except those applying as agents of temporary licensed marijuana distributors pursuant to Section 19 of this chapter.

Sec. 26. Civil penalties.

1. The Department may:

(a) Impose a civil penalty of up to \$35,000 on any person who:

(1) Operates a marijuana establishment without a license

(b) Impose a civil penalty of up to \$10,000 on any person who:

(1) Omits, neglects or refuses to:

(a) Comply with any duty imposed up on him or her pursuant to the provisions of this chapter and NRS 453D;

(b) Do or cause to be done any of the things required pursuant to those provisions; or

(c) Does anything prohibited by the provisions of this chapter and NRS 453D

2. In determining the amount of any civil penalty assessed under this Chapter, the Department shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this Chapter and Chapter 453A, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

MARIJUANA TAX

Reporting and Transmittal of Marijuana Taxes

Sec. 27. Applicability of NRS 360.

1. The provisions of NRS 360 relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the excise and sales tax on marijuana.

Sec. 28. Sales and Use Tax Returns Required. Payment of tax; monthly return.

1. Marijuana sold pursuant to NRS 453D is subject to sales tax when it is sold at a retail store. Returns and payments must be submitted as provided in NRS 372.354 through NRS 372.395.

Sec. 29. Excise Tax Returns Required. Payment of tax: monthly return.

1. An excise tax must be collected by the State on the wholesale sales of marijuana at a rate of 15 percent of the fair market value at wholesale of the marijuana.

2. Each marijuana cultivator shall, on or before the last day of the month immediately following each month for which the marijuana is sold, file with the Department a return on a form prescribed by the Department and remit to the Department any tax due for the month covered by the return. A return must be filed whether or not a sale or purchase has occurred.

3. The marijuana cultivation facility shall pay the excise tax to the Department upon the first sale of marijuana to a marijuana retail store, a marijuana product manufacturing facility, or another marijuana cultivation facility.

(a) If a marijuana cultivation facility sells to another marijuana cultivation facility and pays the wholesale excise tax to the Department on the wholesale sale as required by NRS 453D.500, the wholesale excise tax will not be due on any subsequent sales of that product.

(b) A marijuana cultivation facility must keep all supporting documentation for verification that the excise tax was paid on the first sale of the product.

4. Calculation and Payment of Tax.

(a) Calculation of Fair Market Value at Wholesale.

(1) The Department will calculate the Fair Market Value at Wholesale using reported sales or transfer of each category.

(2) Detailed transaction reports shall be submitted by each marijuana cultivation facility to the Department by October 31, 2017. The reports shall be submitted on a form provided by the Department and must include transactions from April 2017 through September 2017.

(3) The Department will determine the best methodology to arrive at the Fair Market Value at Wholesale. The Department may, from time to time, change its method of calculating the Fair Market Value at Wholesale if, in the judgment of the Department, such change is necessary to arrive at the most accurate Fair Market Value at Wholesale given the market conditions.

(b) The tax shall be calculated based on the category of the Marijuana Product (i.e., Bud, Small/Popcorn Bud, Trim, Immature Plant, Wet Whole Plant, or Seeds) being sold.

(1) To set the initial Fair Market Value at Wholesale, the Department will use data collected from current medical marijuana cultivators as well as other data available related to the Fair Market Value at Wholesale

(2) The excise tax for Bud is computed on the total weight of all Bud that is sold. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall not be treated as the sale of Bud.

(3) The excise tax for Trim is calculated on the total weight of all Trim that is sold. Notwithstanding this rule, the inadvertent inclusion of inconsequential amounts of Bud in a sale that is otherwise Trim shall be treated as the sale of Trim.

(4) The excise tax for Immature Plants is calculated on the total number of Immature Plants being sold.

(5) The excise tax for Wet Whole Plants is calculated on the total weight of the entire Marijuana Wet Whole Plant. The weight of the entire plant is subject to tax because the Fair Market Value at Wholesale for Wet Whole Plant already reflects an allowance for water weight and waste. The Wet Whole Plant may not undergo any further processing (i.e., drying the plant and subsequently selling separately the Bud and Trim) prior to being weighed when using the Wet Whole Plant basis.

(a) The Marijuana Wet Whole Plant must be weighed within 2 hours of the batch being harvested and without any further processing, including any artificial drying such as increasing the ambient temperature of the room or any other form of drying, curing, or trimming. Tax must be calculated and paid on the total Wet Whole Plant weight. If the Wet Whole Plant is not weighed within 2 hours of the batch being harvested or is subjected to further processing before being weighed, the excise tax on such plant cannot be calculated and paid on the Wet Whole Plant basis and must instead be calculated and paid at the Bud and Trim rates.

(b) The Marijuana Cultivation Facility must maintain records of the time each batch was harvested and weighed and the weight of each plant. The records must be in writing and created contemporaneously with the harvesting and weighing.

(6) The excise tax for seeds is calculated on the total number of seeds being sold

5. Both the marijuana cultivation facility and the first purchaser shall maintain documentation of the payment of the excise tax. Such evidence may be the purchase invoice, so long as the invoice shows the name and license number of the marijuana cultivation facility, name and license number of first purchaser, the category of product being sold, the date of sale , and the weight of the product being sold.

Sec. 30. Designation of medical marijuana inventory and retail marijuana inventory.

1. Under the current tax provisions in NRS 453D, marijuana sold by a marijuana cultivation facility is subject to a 15% wholesale tax on the fair market value of the transaction. The tax is the responsibility of the cultivator.

2. Under the current tax provisions in NRS 372A, marijuana sold by medical marijuana establishments is subject to a 2% tax at cultivation, a 2% tax at production and 2% tax at the dispensary.

3. Inventory sold by medical marijuana establishments and inventory sold by marijuana establishments must be designated and separated based on the different taxation requirements.

4. Unless legislation is enacted and effective by July 1, 2017, to apply the tax treatment of marijuana sold by marijuana establishments to marijuana sold by medical marijuana establishments, each medical marijuana establishment, except Independent Testing Laboratories must, no later than June 16, 2017, designate a portion of its medical marijuana

inventory as inventory that may be sold as retail marijuana as provided in NRS 453D. The designation must be submitted to the Department and must contain the following:

(a) A list of all inventory within the medical marijuana establishments tracking control system by inventory and tracking control number;

(b) A list of all inventory that the medical marijuana establishment is designating as retail marijuana by inventory and tracking control number; and

(c) A list of all inventory that the marijuana establishment is designating as medical marijuana by inventory and tracking control number.

5. Once inventory is designated as retail marijuana it cannot be sold as medical marijuana. Once inventory is designated as medical marijuana it cannot be sold as retail marijuana.

Sec. 31. Tax treatment of designated inventory.

1. Once inventory is designated as retail marijuana inventory it must be taxed as provided in NRS 453D.500 and any other applicable provisions regarding the taxation of marijuana sold pursuant to NRS 453D or this chapter.

2. Once inventory is designated as medical marijuana inventory it must be taxed as provided in NRS 372A.900 and any other applicable provisions regarding the taxation of marijuana sold pursuant to NRS 453A or NAC 453A.

Sec. 32. Designation of inventory and tax treatment in the event of legislative change.

1. If legislation is enacted and effective by July 1, 2017 to apply the tax treatment of marijuana sold by marijuana establishments as provided by NRS 453D.500 to marijuana sold by medical marijuana establishments, then Sections 30 and 31 of this Chapter are not

applicable. If legislation changes the tax rate of medical marijuana to 15% of the wholesale price, that change becomes effective to all marijuana sold by the cultivator after the legislation's effective date.

Sec. 33. Maintenance and availability of records of taxpayer.

1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of NRS 453D.500.

(b) Preserve those records for 4 years or until any litigation or prosecution pursuant to NRS 453D.500, inclusive, is finally determined, whichever is longer; and

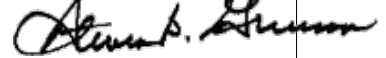
(c) Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.

Sec. 34. Examination of records by Department.

1. To verify the accuracy of any return filed by a taxpayer or, if no return is filed, to determine the amount required to be paid, the Department, or any person authorized in writing by the Department, may examine the books, papers and records of any person who may be liable for the excise tax on marijuana.

Sec. 35. Miscellaneous tax provisions

1. The provisions of NRS 372A.300 through NRS 372A.380 shall be deemed to apply the administration of the tax under NRS 453D.



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15 EIGHTH JUDICIAL DISTRICT COURT

16 CLARK COUNTY, NEVADA

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

21 Plaintiffs,

22 vs.

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

26 Defendants.

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

Intervenor.

Case No. A-18-785818-W

Dept. No. 18

**LONE MOUNTAIN PARTNERS,
LLC'S:**

**(1) OPPOSITION TO PLAINTIFFS'
/COUNTERDEFENDANTS'
MOTION FOR PRELIMINARY
INJUNCTION OR FOR WRIT OF
MANDAMUS; AND**

**(2) REQUEST TO EXCEED PAGE
LIMITS**

Hearing Date: May 24, 2019

Hearing Time: 9:00 a.m.

Location: Dept. XI

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<i>Nuleaf CLV Dispensary, LLC v. State Dep't of Health</i> , 134 Nev. Adv. Op. 17, 414 P.3d 305 (2018).....	15
<i>Okla. Pub. Employees Ass'n v. Okla. Dep't of Cent. Servs.</i> , 55 P.3d 1072 (Okla. 2002).....	17
<i>Private Investigator's Licensing Bd. v. Atherley</i> , 98 Nev. 514, 654 P.2d 1019 (1982).....	27
<i>Ruiz v. Arizona Dept of Corr.</i> , No. 2 CA-CV 2008-0057, 2009 WL 224939, at *2 (Ariz. Ct. App. Jan. 30, 2009).....	11
<i>Shores v. Global Experience Specialists, Inc.</i> , 134 Nev. Adv. Op. 61, 422 P.3d 1238 (2018).....	25
<i>State ex rel. Grimes v. Bd. of Comm'rs of Las Vegas</i> , 53 Nev. 364, 1 P.2d 570 (1931).....	26
<i>State, Dep't of Health and Human Servs. v. Samantha, Inc.</i> , 407 P.3d 327 (Nev. 2017).....	27
<i>Terrible v. Terrible</i> ,	



1	534 P.2d 919 (Nev. 1975).....	21
2	<i>Univ. and Community College System of Nevada v. Nevadans for Sound Govt.</i> , 120 Nev. 712, 100 P.3d 179 (2004)	24
3	Statutes	
	Nevada Revised Statute § 51.035	11
4	Nevada Revised Statute § 51.065	11
	Nevada Revised Statute 453D.030	14
5	Nevada Revised Statutes Chapter 453A	15, 27
	Other Authorities	
6	Administrative Procedures Act	27
	Nevada Administrative Code § 453D.268(3)	21
7	Nevada Administrative Code 453D.413(2)	14
	Nevada Administrative Codes 453D.001 - 453D.155	14
8	Senate Bill No. 32, Committee on Revenue and Economic Development, 80th Session (effective May 10, 2019).....	2
10	Rules	
	Eighth Jud. Dist. Court Rule 2.20(a).....	1
11	Treatises	
9	Eugene McQuillin, <i>The Law of Mun. Corps.</i> , § 26.85 93d ed. rev. 2016)	26
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1 Lone Mountain Partners, LLC (“Lone Mountain”), by and through counsel undersigned,
2 hereby files this Opposition to Plaintiffs’/Counterdefendants’ Motion for Preliminary Injunction
3 or for Writ of Mandamus (the “Motion”) and Plaintiffs’/Counterdefendants’ Supplemental Facts
4 in Support of Motion (the “Supplement”).¹ This Opposition is based upon the record, the
5 following memorandum of points and authorities and the supporting exhibits thereto, and such
6 further argument of counsel as the Court may permit at the hearing on this matter.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 *“[O]ne of our principal owners is married to an American Indian.
9 A real American Indian, not a presidential candidate. And so we
10 thought if anything we should go dramatically up in the ranking.
11 And . . . we didn’t.”*

12 Plaintiffs’ counsel, Will Kemp, Esq.,² explaining the basis for Plaintiffs’ contention
13 diversity was improperly excluded from consideration in licensing.

14 **I. INTRODUCTION**

15 The lengths to which Plaintiffs will go to support their position that they were
16 unconstitutionally deprived a retail marijuana license would be comical, if they were not so
17 injurious to Nevada’s marijuana industry, to the investments of the numerous companies that
18 successfully obtained licenses, and to Nevada’s voters and general public.

19 Plaintiffs initiated this suit because they failed to receive a retail license in an intensely
20 competitive field. Now they seek to find some minor discrepancy in scoring to challenge and
21 call into doubt the entire licensing process. However, the Court cannot infringe upon a co-equal
22 branch of government’s discretionary functions because of the mere fact that Plaintiffs did not
23 subjectively agree with the scoring results where it is clear that Plaintiffs have no evidence of
24 anything improper occurring during the scoring process other than the simple fact that Plaintiffs
25 did not receive a license. Indeed, Plaintiffs’ motion, and Plaintiffs’ supplemental facts, present
26 no evidence to suggest that the Department of Taxation (“Department”) did not engage in a good

27 ¹ While Lone Mountain has made every effort to provide a concise opposition, leave to exceed 30 pages is both
28 reasonable and necessary to respond to Plaintiffs’ Motion (29 pages) and Supplement (14 pages) in this single filing.
Accordingly, pursuant to EDCR 2.20(a), Lone Mountain requests leave to exceed 30 pages.

² Ex. A, Excerpts from Transcript of Proceedings, Motion to Dismiss Hearing (Feb. 21, 2019) (on file herein), at
37:11-17.



1 faith effort to equitably distribute the 64 available licenses in an intensely competitive field,
2 under a new and ground-breaking statutory and regulatory scheme.

3 Plaintiffs' primary argument is that because Plaintiffs received a license for a medical
4 marijuana dispensary in 2014, it must be presumed that only error, or arbitrary and capricious
5 action, could have resulted in Plaintiffs failing to obtain one of the coveted 64 recreational retail
6 licenses in 2018. Plaintiffs argue that even though the 2014 medical marijuana licensing process
7 was carried out by a different state agency, under a different statutory and regulatory regime, the
8 two licensing processes considered many of the same factors, and Plaintiffs therefore should
9 have received a license in 2018 but for some unknowable error on the part of the Department.
10 However, the fact that the two licensing processes considered many of the same factors does not
11 lead to the inevitable conclusion that Plaintiffs should have received a retail license. On the
12 contrary, when one considers the sea change in the marijuana industry between 2014 and 2018,
13 the rise of corporate players in the space, and that the 2018 licensing was twice as competitive as
14 the 2014 licensing process, it is clear that Plaintiffs' claims are without merit. Indeed, whereas
15 199 applications competed for 60 dispensary licenses in 2014; in 2018, by contrast, 462
16 applications were submitted for only 64 available licenses.

17 The majority of Plaintiffs' challenges to the licensing process have been mooted by the
18 Department's May 10, 2019 release of documents and statistics regarding the scoring and
19 ranking of applications.³ The Department released this information pursuant to Senate Bill 32
20 signed by Governor Sisolak on May 10, 2019 to address requests for added transparency in
21 Nevada's marijuana industry. The fact that Plaintiffs have not sought to withdraw their motion
22 in the ten days since this information was released, despite a significant part of their motion now
23 being moot, further evidences Plaintiffs' true, improper motivation in this action: to delay
24

25 ³ See Exhibit B, a true and correct copy of the Department's Release of Nevada Marijuana License Application
26 Information on its website, https://tax.nv.gov/FAQs/Marijuana_License_Application_Information_-_NEW/
27 ("Department's May 10, 2019 Release of Information"). The Department released a substantial amount of
28 information in this release including, but not limited to, the names and scores of all applicants, the process and
personnel involved in the Department's review of applications, and the scoring tools utilized by reviewers in
determining point allocation. The information provided in the Department's May 10, 2019 Release of Information
are judicially noticed facts of which this Court may properly take judicial notice pursuant to NRS 47.130.



1 operation of successful applicants and hold their licenses hostage in an attempt to exert political
2 pressure such that the Legislature might act to create additional licenses.

3 Plaintiffs' remaining complaints regarding the licensing process fail to hold up to even
4 the most modest scrutiny. For example, Plaintiffs claim foul for the mere fact that the
5 Department hired contractors to assist with the licensing review process, a process that requires a
6 thorough review of hundreds of complex and multi-part applications, many of which are
7 thousands of pages, within a 90-day statutory scoring period. Not only is hiring contractors to
8 perform tasks within a government agency's sound discretion, but it is difficult to conceive of a
9 more appropriate way for the Department to have dealt with the statutorily-created excessive
10 workflow during the 90-day scoring period. Most critically, the Department duly sought and
11 obtained explicit approval from the Interim Finance Committee to hire the contractors and has
12 demonstrated that the contractors hired were both adequately vetted and trained.

13 Notably, Plaintiffs fail to cite a single case citation in their 27-page motion, or make any
14 prima facie showing of success on their claims, opting instead to senselessly smear the characters
15 and reputations of duly-hired and credentialed Department contractors by including their
16 headshots and mocking references to their hobbies uncovered by Plaintiffs' Google searches.⁴
17 To say that Plaintiffs are grasping at straws is a drastic understatement.

18 If the Court were to award Plaintiffs the relief they seek, it would infringe upon the
19 property rights of the successful applicants that did receive licenses, parties that have a legally
20 recognized and protectable property interest at stake. Moreover, if the Court were to grant
21 Plaintiffs the requested relief, it would unnecessarily delay execution of a legal scheme created
22 by Nevada voters, the Legislature, and the Department, encroaching on the authority of Nevada's
23 legislative and executive branches of government, and depressing tax revenues. Plaintiffs have
24
25

26 ⁴ For example, Plaintiffs disparage one of the Department's contractors, an individual who has been a professional
27 food safety inspector for the Nevada's Department of Health for a number of years, by mocking him for his personal
28 interest in county music performance.



1 failed to establish any entitlement to a preliminary injunction or mandamus relief against the
2 Department, and the Court should deny Plaintiffs' motion.

3 **II. STATEMENT OF RELEVANT FACTS**

4 Plaintiffs' motion listed eight flaws in the 2018 application scoring process that Plaintiffs
5 believe justify a scoring re-determination of all 462 applications.⁵ In their supplemental brief,
6 Plaintiffs provide additional argument on these alleged flaws and introduce an additional flaw
7 they contend supports their injunctive relief request. Yet, an inspection of Plaintiffs' nine
8 enumerated complaints reveals they are based on unsupported conjecture and, more importantly,
9 are demonstrably untrue.

10 The nine items of which Plaintiffs complain are: (1) "failure to score diversity;"
11 (2) "wildly inconsistent grading of financial plans;" (3) "improper allowance of fraudulent
12 information, trade secrets, 'business plans' and operating procedures of others to be expropriated
13 by winning applicants;" (4) "failure to properly score for educational achievements;" (5) "failure
14 to require the 'physical address' for the proposed dispensary and staggeringly inconsistent
15 grading of physical address-related criteria, such as generic building plans;" (6) "hiring of
16 inexperienced and unqualified temporary workers to grade applications;" (7) "documented bias
17 in favor of certain winning applicants;" (8) "improper allowance of taxes and financial
18 applications from entities other than the applicant;" and (9) "the care-quality-safekeeping scores
19 are inexplicable." Motion at 11; Supplement at 9.

20 As set forth below, Plaintiffs' complaints are meritless.

21 **A. The Department Scored Diversity**

22 **1. Plaintiffs' Motion**

23 Plaintiffs' leading contention is that that the Department failed to consider diversity in the
24 scoring of applications. However, Plaintiffs' purely speculative belief has been directly refuted
25 by the Department's May 10, 2019 Release. Indeed, although Plaintiffs argued that diversity
26

27 ⁵ Because the applications were scored and ranked, the re-determination of any application would necessarily require
28 the re-determination and rank of *all* of the 462 applications.



1 was improperly excluded from consideration, Department documents conclusively demonstrate
2 that diversity was not only considered, but that each application received a score from 0 to 20
3 points based on the diversity of the applicant's owners and managers. *See* Exhibit B,
4 Department's May 10, 2019 Release.

5 Specifically, the Department's score sheets demonstrate that evaluators gave between 0-
6 20 points for "Diversity on the basis of race, ethnicity or gender of the persons proposed to be
7 owners, officers or board members." *See* Exhibit C, Application Scoring Tool – Organizational
8 Structure, at 5. The Department's score sheets further instructed evaluators that:

9 Diversity demographic information from the owner, officer and
10 board member information forms. Diversity factors include race,
11 gender and ethnicity. Points awarded for % of principals which are
12 non-caucasian, female and non-anglo/European American. Must
13 provide proof, may check portal.

14 *Id.*

15 Plaintiffs' mistaken conclusion that diversity was not considered was based on three
16 erroneous and irrelevant claims: (1) Paul Thomas, the owner of unsuccessful applicant ETW
17 Management Group, LLC was told by a representative of the Department that diversity was not
18 considered; (2) Plaintiffs' cherry-picked headshots of certain managers of an affiliated company
19 of successful applicant Lone Mountain Partners⁶ allegedly depict that the company managers are
20 non-Hispanic white males; and (3) since Plaintiffs did not receive higher scores, diversity must
21 not have been considered. *See* Motion at 7, 11-12.

22 At the motion to dismiss hearing in the MM Development matter, Case No. A-18-
23 758818, Plaintiffs provided further insight as to their claim that diversity was not properly
24 considered, namely, that one of the principal owners of MM Development was married to an
25 "American Indian":

26 MR. KEMP: And then – and then when you added in the new
27 factor of diversity, we went down to 40, 45. Okay. And we thought
28 that was unfair, because one of our principal owners is married to an

⁶ Plaintiffs paste the headshots of the board members of Verano Holdings, LLC ("Verano"), a company that is affiliated with successful applicant, and defendant/intervenor, Lone Mountain. Plaintiffs neglect to inform the Court that they included the pictures of a number of individuals who do not manage or own Lone Mountain.



1 American Indian. A real American Indian, not a presidential
2 candidate.

3 And so we thought if anything we should go dramatically up in
4 the ranking. And so we didn't. And I don't know if this other group
5 has a diversity interest like that or if they were rated higher than us
6 under –

7 See Ex. A, Excerpts from Transcript of Proceedings, Motion to Dismiss Hearing, at 37:11-17.

8 Even absent the Department's release of information conclusively showing diversity was
9 scored, Plaintiffs' arguments all fail on their face. When assessing the "diversity" of individuals,
10 cherry-picked headshots prove nothing. Indeed, now that the Department has released the
11 identities of the applicants' owners, officers, and board members, it is easy to confirm that Lone
12 Mountain's diversity score of 8/20 was supported by the two male and one female composition
13 of the ownership and board.⁷

14 Moreover, Plaintiffs' own claim to diversity, i.e., that a principal is "married to an
15 American Indian," would hardly be revealed through a lone headshot of the members of
16 Plaintiffs' boards.⁸

17 2. Plaintiffs' Supplement

18 Having been forced to admit that diversity was indeed scored on the applications and
19 received between 1-20 points on each, Plaintiffs stubbornly pivot on their diversity argument
20 rather than truthfully concede its error.

21 Plaintiffs now argue that diversity was mis-scored because publicly-traded companies
22 improperly received diversity scores even though they by law can have no diversity in
23 ownership. Supplement at 4. ("Outrageously, the Manpower employees actually gave publicly
24 traded companies (which by definition can have no diversity of ownership) the same or higher
25 diversity scores than applicants with true diversity." Plaintiffs' arguments ignore that (1) no

26 ⁷ See Ex. D, Excerpt of List of Current Licensees as of May 1, 2019; Ex. C, Application Scoring Tool – Organizational
27 Structure (showing diversity score of 1/3 is entitled to 8/20 points).

28 ⁸ Notably, Mr. Kemp's reference to an "American Indian" spouse is the *only* indication Plaintiffs have made about the
diversity of Plaintiffs LivFree and MM Development, implicitly acknowledging that their own diversity scores were,
even by their own calculation, in fact, correct.



1 publicly-traded company was an applicant; and (2) the diversity of parent or affiliated companies
2 was not the relevant consideration in the scoring of diversity.

3 The Nevada Administrative Code unambiguously requires consideration of “[t]he
4 diversity of the owners, officers or board members of the proposed marijuana establishment.”
5 NAC 453D.272(1)(b) (emphasis added). Accordingly, regardless of an applicant’s ownership
6 structure, an applicant could still receive points for diversity through diverse officers and board
7 members. Thus, Plaintiffs’ entire argument rests on a faulty premise.

8 Since the ethnicities and races of an applicant’s officers and board members are not
9 publicly available, Plaintiffs have no way of confirming their baseless suspicions of diversity
10 scoring errors. But that certainly does not prevent Plaintiffs from making offensive and
11 presumptuous allegations.

12 Plaintiffs’ unsupported attacks on the diversity scores of other applicants fare no better.
13 Plaintiffs proclaim that Clear River, LLC, for example, is owned by Randy Black, a white male,
14 so it is unfathomable how Clear River received a diversity score of 12. Supplement at 5.
15 However, the Department’s released list of licenses shows that Clear River has numerous female
16 officers that could easily explain its diversity score. Ex. D, Excerpt of List of Current Licensees
17 as of May 1, 2019 (showing Clear River’s Officers include Rita Byorick, Lisa Hardin, Lorraine
18 Hartt, Jade Platt, Saydee Tschanen, among others).

19 Indeed, Plaintiffs continually ignore the relevant inquiry into diversity (i.e., an applicant’s
20 owners, officers, and board members) and simply include internet headshots of white males
21 *associated with* each applicant in their papers. The Court should see through Plaintiffs’
22 unconvincing tactics.

23 Most critically, Plaintiffs fail to allege or show that they received an incorrect score for
24 the diversity category, or that Plaintiffs would have ranked any higher if their diversity factors
25 had been correctly scored. Given that Plaintiffs have received their score breakdown, this
26 omission is telling.

27 Finally, to the extent that Plaintiffs have argued that applicants manipulated the
28 composition of their board or added additional officers to include persons that would increase



1 their diversity scores, Plaintiffs’ argument ignores the fact that encouraging diversity amongst an
2 applicant’s officers and board members—to encourage applicants to diversify their officers and
3 board—was precisely the intent behind this scoring criterion. Plaintiffs’ argument that adding
4 diverse officers is somehow an “improper manipulation” is nonsensical.

5 Plaintiffs have failed to demonstrate any error in the scoring of diversity, and certainly
6 not that which would justify the extraordinary injunction Plaintiffs request the Court to enter.

7 **B. The Department Graded Financial Plans in a Consistent**
8 **Manner**

9 **1. Plaintiffs’ Motion**

10 Plaintiffs’ argument that financial plans were graded in a “wildly inconsistent manner” is
11 likewise untrue. Simply put, Plaintiffs’ faulty analysis is premised on a logical error. Namely,
12 Plaintiffs conflate the concept of net worth of an individual owner or member of an applicant,
13 with the net worth of the applicant itself.

14 Plaintiffs contend that the Department inconsistently graded financial plans and that it has
15 proof of a “glaring mistake” and an “inexplicable blunder” that prevented LivFree from being a
16 winning applicant. Motion at 13-14. Plaintiffs’ arguments are without merit and demonstrate
17 additional misunderstandings on Plaintiffs’ part.

18 Specifically, Plaintiffs take issue with the fact that two centimillionaires’ financials
19 supported LivFree’s application, those of Steve Menzies and Don Forman, whereas only Don
20 Forman’s financials were submitted in support of Natural Medicine’s (“NM”) applications.
21 Motion at 12-13. Plaintiffs argue that “if Manpower had only provided an ‘accountant’ that
22 understood that \$217,812,655.00 is more than \$124,601.651.72 LivFree would have won in
23 Reno, Clark County, North Las Vegas, Lyon County and the City of Las Vegas.” Motion at 14.

24 Plaintiffs’ arguments are readily undone by the plain text of the Nevada Administrative
25 Code, which requires ranking to be based on the financial resources of “the applicant,” not the
26 applicant’s owners or affiliates. NAC 453D.272 clearly provides that the Department will rank
27 the applications based on:

28 (d) The financial plan and resources of the applicant, both liquid
and illiquid;



1 NAC 453D.272(d) (emphasis added). Thus, the net worth of the owners is not the relevant
2 consideration as they are not “the applicant.”

3 Of course, an owner’s wealth could have bearing on the resources of the applicant, which
4 is why the application specifically allowed for submission of “evidence that such person has
5 unconditionally committed such funds to the use of the applicant in the event the Department
6 awards a recreational marijuana establishment license to the applicant.” Exhibit E, Retail
7 Marijuana Store Application at § 5.2.11.2 (emphasis added).

8 Tia Dietz of Bullpen and Griffin Company, who was involved in the preparation of
9 LivFree and NM’s applications, and upon whose declaration Plaintiffs rely, admits that in the
10 NM application she included a “Statement of Commitment and a living trust statement from Mr.
11 Forman showing money for other sources and proof that the applicant has adequate funds.” Ex.
12 7 to Plaintiffs’ Motion, ¶. 7. Specifically, Ms. Dietz affirmed and swore:

13 7. The only differences from the financial section of NM and LF
14 was that NM had a Statement of Commitment and a living trust
15 statement from Mr. Forman showing money from other sources and
16 proof that the applicant has adequate funds. Per application sections
17 5.2.11.2 applicant is relying on funds from an Owner and the Owner
18 has unconditionally committed funds and 5.2.11.3 proof of adequate
funds, which was needed because NM was relying on Mr. Forman’s
funds in the event they were awarded a license whereas LF had
funds available to commit to new licenses, a balance sheet from LF’s
operations showing cash on hand and total assets was included in
LF’s application.

19 *Id.*

20 As Plaintiffs’ mock government contractors for their arithmetic, Plaintiffs fail to
21 appreciate that the financial net worth of an owner who has not unconditionally committed large
22 funds to the applicant was irrelevant in the scoring of the financial plan. It is difficult to dispute
23 the Department’s decision to rank higher those applicants that had unconditional commitments
24 from a centimillionaire than those applicants that simply include a centimillionaire’s financials
25 without an unconditional commitment.

26 **2. Plaintiffs’ Supplement**

27 Plaintiffs’ Supplement argues that the Department’s Release of Information demonstrates
28 that the LivFree financial score was “flat out wrong.” Supplement at 1. Plaintiffs admit that



1 most winning applicants received the full 40 points for the financial resources, whereas LivFree
2 only received 12.67. *Id.* Plaintiffs argue that “[t]here was an obvious error on the 10 points for
3 \$250,000 in liquid assets because LivFree did in fact provide a statement from a financial
4 organization showing that it had over \$250,000 liquid.” *Id.*

5 Notably, Plaintiffs do not provide any proof of their financial submissions in support of
6 their contentions there was a great “bungle” in the scoring of the same. Yet, without reviewing
7 Plaintiffs’ submissions, there is no way to evaluate Plaintiffs’ contention that the scores were
8 incorrect in any way. The Department’s application criteria is clear that an applicant’s mere
9 representation of net worth is insufficient—rather, applicants were required to submit documents
10 from financial institutions demonstrating (1) “that the applicant has at least \$250,000 in liquid
11 assets which are unencumbered and can be converted within 30 days after a request to liquidate
12 such assets;” and (2) “the source of those liquid assets.” Ex. F, Application Criteria Points
13 Breakdown, (DOT000391). Plaintiffs have provided neither.

14 Moreover, Plaintiff LivFree has already demonstrated that it failed to submit an
15 unconditional financial commitment in support of its application as other applicants did. Tia
16 Dietz Decl., Ex. 7 to Plaintiffs’ Motion, ¶ 7 (explaining that LivFree did not submit an
17 unconditional commitment from Mr. Forman as had applicant NM because LivFree believed that
18 it had sufficient funds without an unconditional commitment). If LivFree submitted the same
19 evidence in support of its net worth to the Department as it has done to this Court, it is little
20 wonder why LivFree did not receive more points on the financial section.⁹

21 Finally, Plaintiffs attempt to cast further doubt on financial scoring by arguing that
22 another applicant, Helping Hands Wellness Center, Inc. (“HHWC”) received a 40-point financial
23 score despite its owner having declared bankruptcy. Supplement at 2. This is quite the reach.
24 Whether *one* of HHWC’s owners filed a personal bankruptcy over 20 years ago in no way

25
26
27 ⁹ Moreover, LivFree received consistent scores across the three evaluators who scored its application, which supports
28 the conclusion that it was LivFree’s submission, not a scoring error, that was the cause of LivFree’s low financial
score.



1 precludes HHWC, the entity, from demonstrating financial strength through its assets or those of
2 its collective owners.

3 In sum, Plaintiffs have provided no evidence of any improper scoring on their
4 applications. Accordingly, Plaintiffs have failed to demonstrate any error in the financial scoring
5 of others' applications sufficient to grant their requested injunctive relief to prevent all winning
6 applicants from proceeding with operations.

7 **C. Plaintiffs' Allegations of Winning Applicants Expropriating**
8 **Trade Secrets, "Business Plans" and Operating Procedures of**
Others Are Unsubstantiated

9 Next, Plaintiffs argue that allegations in an unverified complaint that has never even been
10 served in a separate action demonstrates that the Department's entire scoring process was faulty.
11 Again, Plaintiffs' arguments are without merit.

12 It is well-established that "[a]llegations in a complaint filed in a different case are hearsay
13 and, therefore, inadmissible as evidence for a court to consider." *Ruiz v. Arizona Dept of Corr.*,
14 No. 2 CA-CV 2008-0057, 2009 WL 224939, at *2 (Ariz. Ct. App. Jan. 30, 2009). "In addition to
15 being inadmissible as hearsay, unproved allegations of misconduct are not proof of anything."
16 *Dent v. U.S. Tennis Ass'n, Inc.*, 08 Civ. 1533(RJD)(VVP), 2008 WL 2483288, at *3 (E.D.N.Y.
17 June 17, 2008); *see also* NRS § 51.035 (defining hearsay); NRS § 51.065 (hearsay inadmissible
18 unless otherwise excepted).

19 Here, unsubstantiated, unverified allegations in a separate proceeding that has not even
20 been served in the over 120 days since it was filed¹⁰ is a blatant red herring. Certainly, the
21 unsupported allegations in that proceeding cannot support the sweeping injunctive relief sought
22 by Plaintiffs here.

23 ///

24 ///

25

26

27 ¹⁰ The Naturex litigation that the Plaintiffs reference on page 14 of their motion was filed on January 18, 2019, more
28 than 120 days ago. *See Naturex, LLC v. Verano Holdings, LLC*, Case No. A-19-787873-C. Accordingly, the
complaint is subject to dismissal pursuant to NRCP 4(e).



1 **D. Plaintiffs’ Arguments That the Department Erred Concerning**
2 **the Proposed Physical Address Requirement Are Flawed**

3 **1. Plaintiffs’ Complaints Would Not Result in a Change in Scoring**

4 Importantly, the identification of a proposed physical address on the application was not
5 assigned a point value. Moreover, Plaintiffs’ arguments regarding the identification of a
6 proposed physical address on scoring impact on community (15-point value) and building and
7 construction plans (20-point value) are far too tenuous to support a preliminary injunction.

8 Plaintiffs’ argument that the physical address requirement was relevant to the 15 points
9 allocated to community impact is simply nonsensical. Not only is it axiomatic that a specific
10 physical address need not be provided to assess community impact, the Department’s Scoring
11 Tool on this criterion confirms that the lack of an applicant’s proposed physical address would
12 not alter a community impact score. Ex. G, Department’s Application Scoring Tool – Likely
13 Impact on Community. As plainly documented in the Department’s Scoring Tool, 5 of the 15
14 points were allocated towards “the likely impact of the proposed marijuana establishment in
15 which it is proposed to be located.” *Id.* On this point, the Scoring Tool explained that:

16 An excellent response would include the following: The criteria
17 response clearly demonstrates how the establishment intends to
18 provide their local community with community benefits and
19 mitigate any nuisance and/or negative impacts that the facility’s
20 existence may cause, including any safety related concerns.
Applicants demonstrate a commitment to the community and to
improving the quality of life of their neighbors through sustainable
practices which can be maintained and supported over time.

21 *Id.* An applicant need not provide a specific physical address to satisfy these requirements.

22 The remaining 10 of the 15 points for community impact were allocated towards “the
23 manner in which the proposed marijuana establishment will meet the needs of the persons who
24 are authorized to purchase marijuana.” *Id.* On this subject, the Scoring Tool provided specific
25 criterion by which the establishment would “increase education, awareness, and positive
26 community involvement.” *Id.* Moreover, the Scoring Tool explained that “[a]n excellent
27 response will demonstrate the following: The applicant has a comprehensive plan with a
28 timeline that is clear, reasonable and achievable. Materials are included, not just mentioned.”



1 *Id.* Again, a specific physical address need not be provided for an applicant to be awarded all
2 available points in this category.

3 Likewise, Plaintiffs' argument that the Department could not properly evaluate the 20
4 points available for building and construction plans without an applicant's specific physical
5 address is also meritless. On this point, Plaintiffs argue that MM's submission of an already
6 built-out and operational dispensary should trump an applicant's proposed plans. Plaintiffs'
7 arrogance is astounding. Plaintiffs presume that they must be the superior candidates because
8 they operate already built-out medical marijuana dispensaries in Nevada. Plaintiffs could benefit
9 from a little humility and need to accept the fact that others scored higher in the rankings because
10 they figured out how to build a better mousetrap. And, as much as Plaintiffs may wish it were
11 otherwise, the fact that an application operates an already built-out dispensary was irrelevant to
12 the evaluation of an applicant's building plans.

13 Turning to specifics, contrary to Plaintiffs' representations, the Department's Scoring
14 Tool for building plans clearly explains that the Department evaluated applicants' *plans* in both
15 10-point sub-categories:

- 16 • 10 points were allocated towards "effective and efficient building *planning*." Exhibit H,
17 Application Scoring Tool – Adequacy of Size – Building Plans (emphasis added). Here,
the Scoring Tool explained that:

18 An excellent response would include the following elements: The
19 building *plan* demonstrates a clear definition of work tasks,
20 estimation of required resources and duration for individual tasks.
The *planning* of scheduled activities along with the estimated
21 resources and duration are realistic and achievable within required
12 months to be fully operational.

22 *Id.* (emphasis added).

- 23 • 10 points were allocated for "building *plans* demonstrat[ing] necessary regulatory
24 requirements." In this section, applicants were evaluated on numerous criteria including
25 (i) appearance, (ii) signage, (iii) single public entrance with strict security measures, (iv)
suitability of size, construction, and location to facilitate cleaning, maintenance, and
26 operations, (v) adequate space, (vi) adequate lighting, and (vii) separate space for
operations. *Id.*

27 In sum, the sub-categories for scoring that Plaintiffs challenge place the emphasis on the
28 applicant's *plans* for an establishment, not where the proposed establishment is to be located.



1 Lone Mountain and other winning applicants scored higher because they submitted superior
2 plans.

3 **2. The Department Is Entitled to Deference in Its Interpretation and**
4 **Application of the Applicable Statutes and Regulations**

5 Plaintiffs are correct inasmuch as the statutes and regulations do refer to the “physical
6 address where the proposed marijuana establishment will operate.”¹¹ However, it is important to
7 note that “physical address” is not defined anywhere in the applicable statutes and regulations.
8 *See* NRS 453D.030 (definitions); *see also* NAC 453D.001 - 453D.155 (definitions).

9 Additionally, the address of the “proposed marijuana establishment,” as the statute terms
10 it, is necessarily a “proposed address” until the time that a final license is granted and the
11 establishment is operational. Therefore, the statutory text implicitly acknowledges that the
12 “physical address” provided would *always* be a “proposed” physical address.¹²

13
14 ¹¹ *See* NRS 453D.210(5): “The Department shall approve a license application if: . . . (b) *The physical address*
15 *where the proposed marijuana establishment will operate* is owned by the applicant or the applicant has the written
16 permission of the property owner to operate the proposed marijuana establishment on that property” (emphasis
17 added); NRS 453.210(5): “The Department shall approve a license application if . . . (c) The property is not located
18 within: (1) One thousand feet of a public or private school that provides formal education traditionally associated
19 with preschool or kindergarten through grade 12 and that existed on the date on which the application for the
20 proposed marijuana establishment was submitted to the Department; or (2) Three hundred feet of a community
21 facility that existed on the date on which the application for the proposed marijuana establishment was submitted to
22 the Department;” NAC 453D.265: “[A] person who holds a medical marijuana establishment registration certificate
23 may apply for not more than one license for a marijuana establishment of the same type by submitting: . . . (b) An
24 application on a form prescribed by the Department which includes, without limitation: . . . (3) *The physical address*
25 *where the proposed marijuana establishment will be located* and the physical address of any co-owned or otherwise
26 affiliated marijuana establishments.” (emphasis added.)

27 ¹² Moreover, the rules were applied uniformly as the 2018 Application required applicants to provide a “Proposed
28 Physical Address.” *See* Exhibit E, Attachment A. The Department’s identification of the physical address as a
“proposed” physical address contemplates that the address provided by an applicant could potentially be subject to
change. *See also* NAC 453D.413(2) (providing procedure for requesting approval for relocation).

23 Interestingly, it appears that MM may not be entitled to a license under its own argument. On the one hand,
24 Plaintiffs argue that applicants were required to provide a specific physical address of the establishment to be
25 licensed and that such information was necessary to evaluate scoring criterion such as community impact and
26 building plans. Yet, on the other hand, Plaintiffs claim that MM undertook greater effort than required in
27 completing its application by doing just that. Indeed, Plaintiffs represent in their Motion: “MM went much farther.
28 Because MM was moving its existing dispensary to a new location, it put its actual operational dispensary building
in its application as a proposed location.” Motion at 16:11-13. While unclear, this could be interpreted to mean that
MM listed a proposed a location on its application that was not the location that it intended to use for its retail
dispensary. *Id.* If that is the case, Plaintiffs’ arguments actually reveal that MM knowingly provided false
information on its application by listing a physical address of an existing dispensary instead of that where MM
intended to re-locate.



1 The recent decision from the Nevada Supreme Court in *Nuleaf CLV Dispensary, LLC v.*
2 *State Dep't of Health*, 134 Nev. Adv. Op. 17, 414 P.3d 305 (2018) supports the propriety of the
3 Department's actions in considering proposed physical locations. In *Nuleaf*, the Nevada
4 Supreme Court addressed whether a specific statutory requirement that a provisional medical
5 marijuana license would issue "*if*" the applicant had submitted proof of local licensure made
6 proof of local licensure a pre-requisite to obtain a provisional license under NRS Chapter 453A.

7 The Nevada Supreme Court held that Nevada's Department of Health and Human
8 Services was entitled to deference in its interpretation and execution of its discretionary
9 functions, and to its determination that local licensure was not a pre-requisite to a provisional
10 license under NRS Chapter 453A. *NuLeaf*, 414 P.3d at 311 (holding that "we must afford great
11 deference to the Department's interpretation of a statute that it is tasked with enforcing when the
12 interpretation does not conflict with the plain language of the statute or legislative intent").
13 Based on this deference, the Court reversed the district court's issuance of an injunction directing
14 the Department to revoke a license and award it to a different applicant, acknowledging that
15 "[c]ourts ... must respect the judgment of the agency empowered to apply the law to varying fact
16 patterns, even if the issue with nearly equal reason [might] be resolved one way rather than
17 another." *Id.* (quoting *Malecon v. Tobacco, LLC v. State ex rel. Dep't of Taxation*, 118 Nev.
18 837, 841-42 n.15, 59 P.3d 474, 477 n.15 (2002)).

19 Following *Nuleaf*, this Court should reject Plaintiffs' argument that the "proposed"
20 physical address on license applications was a hard and fast requirement. Rather, to the extent
21 the Department may have considered applications where the physical address requirement was
22 blank and awarded provisional licenses to such applicants, the Department is entitled to
23 discretion in its interpretation and application of applicable statutes and regulations in this
24 manner.

25 **E. Educational Achievements Were Consistently Scored**

26 Plaintiffs argue that the "fifth fundamental flaw" necessitating injunctive relief was the
27 "failure to properly score for educational achievements." Motion at 18. Again, Plaintiffs offer
28 no evidence to support this wild conclusion, and no evidence to suggest that educational



1 achievements were scored inconsistently among the applicants. Instead, Plaintiffs rely solely on
2 two discrete anecdotes that members of denied applicants believe they were underscored, simply
3 due to their subjective belief that their contributions to the community were more meaningful
4 than others.

5 Specifically, Plaintiffs argue that Drs. Nick Spirtos and Page Bady testified at a 2019 Tax
6 Commission hearing that they both subjectively believed their educational achievements and
7 community contributions had been underscored during the application process. Motion at 18-19.
8 Notably, Plaintiffs fail to even identify which applicants these doctors were associated with, or
9 what ownership or affiliation they have with those applicants. Plaintiffs also fail to identify the
10 other members or owners of such applicants whose education or contributions might have been
11 less outstanding. Nor have Plaintiffs made any effort to compare Drs. Spirtos and Bady's
12 educations and community impacts with the owners or members of successful applicants—other
13 than labeling Lone Mountain affiliate Verano as “sharp Chicago entrepreneurs.” Motion at 19.
14 Plaintiffs' contention that two individuals—who were not themselves applicants—subjectively
15 believed they had been underscored proves nothing and fails to advance in any way Plaintiffs'
16 contention that educational achievements and community impact were mis-scored.

17 Moreover, plentiful evidence demonstrates that the Department provided specific and
18 articulable standards for the scoring of educational achievements and community impact, and
19 that these factors were indeed appropriately considered in the scoring and ranking of
20 applications. *See* Ex. G, Application Scoring Tool – Likely Impact on Community. Plaintiffs
21 have again failed to demonstrate error or arbitrary and capricious action sufficient to warrant the
22 extraordinary relief of injunctive and mandamus relief.

23 **F. The Department Had Full Authority and Discretion to Use**
24 **Contractors in the License Evaluation Process**

25 Plaintiffs argue *ad nauseum* that the application scoring process was flawed because the
26 Department utilized six Manpower contractors to evaluate retail marijuana license applications.
27 Yet, for Plaintiffs' six pages of unsubstantiated allegations and scathing rhetoric dedicated to this
28 focal point of their motion, it is telling that Plaintiffs do not cite to even a single legal authority



1 to legitimize their complaints concerning the contractors. Nor do Plaintiffs explain how their
2 complaints regarding the contractors' qualifications, even if true, would justify a preliminary
3 injunction barring the use of licenses from current licensees.

4 It is well-established that courts must give deference "to an agency's reasonable
5 interpretation of the law and facts at issue," otherwise it stands to "usurp the Department's role
6 as well as contravene the Supreme Court's directive" to grant such deference to the interpreting
7 agency. *Malecon Tobacco, LLC v. State ex rel. Dept. of Taxn.*, 59 P.3d 474, 477 n.15 (Nev.
8 2002); *Brocas v. Mirage Hotel & Casino*, 109 Nev. 579, 582, 854P.2d 862, 865 (1993) ("It is
9 well recognized that this court, in reviewing an administrative agency decision, will not
10 substitute its judgment of the evidence for that of the administrative agency.").

11 Discretion in the utilization of personnel in performing agency responsibilities is a
12 necessary corollary to the deference that agencies are afforded in the administration and
13 application of the regulatory process. *See, e.g., Massachusetts v. E.P.A.*, 549 U.S. 497, 527
14 (2007) (citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837,
15 842-845 (1984)) ("As we have repeated time and again, an agency has broad discretion to choose
16 how best to marshal its limited resources and personnel to carry out its delegated
17 responsibilities."); *Okla. Pub. Employees Ass'n v. Okla. Dep't of Cent. Servs.*, 55 P.3d 1072,
18 1086 (Okla. 2002) ("[A] state agency [may] exercise internal management discretion and
19 determine to perform its constitutional or statutory duty using an independent contractor" when
20 "the agency possesses express or implied authority to make such a decision."); *Golightly v.*
21 *Molina*, 229 Cal. App. 4th 1501, 1517 (Cal. App. 2014) ("The fact that a third party, whether
22 private or governmental, performs some role in the application and implementation of an
23 established legislative scheme [does not] render the legislation invalid as an unlawful
24 delegation.") (internal quotations omitted); *Mangold v. Analytic Services, Inc.*, 77 F.3d 1442,
25 1448 (4th Cir. 1996) ("If absolute immunity protects a particular government function, no matter
26 how many times or to what level that function is delegated, it is a small step to protect that
27 function when delegated to private contractors, particularly in light of the government's
28 unquestioned need to delegate government functions.").



1 Contrary to Plaintiffs' contentions, there was nothing untoward about the Department's
2 use of Manpower contractors in the license evaluation process. On the contrary, there is now
3 great clarity on this point following the recent passage of Senate Bill 32 and the Department's
4 May 10, 2019 Release of Information.

5 As explained by Executive Director Melanie Young in the Release of Information, the
6 Department was explicitly authorized to use contractors in the license evaluation process, and
7 received approval from the Interim Finance Committee to contract qualified temporary
8 employees to evaluate license applications:

9 Questions have been raised regarding the use of contractors to
10 evaluate license applications. This process has been in place since
11 2015 for marijuana licensing and use of contractors is a common
12 practice to accomplish temporary tasks efficiently for the state. All
13 state agencies are approved by the Department of Administration to
14 use temporary hiring agencies including Manpower. The Marijuana
Enforcement Division does not have full-time staff dedicated to
application evaluation and the Division could not be expected to pull
nearly a quarter of its staff from regular duties regulating the
industry to evaluate applications for three months.

15 In June 2018, the Department was approved by the Interim Finance
Committee to use Manpower as a vehicle for hiring qualified
temporary employees to evaluate license applications. The state
16 hired a small number of highly-qualified individuals with decades
of expertise. This method translated to more consistency and
17 efficiency in the marijuana licensing process to meet legally-
mandated deadlines. Training involved weeks pouring over
18 thousands of documents and intense one-on-one and group
evaluation activities to prepare contractors for scoring applications.

19
20 See Ex. B (emphasis in original).

21 In addition, the Department's May 10, 2019 Release of Information also addresses
22 Plaintiffs' unfounded challenges regarding the Department's decision to use contractors for this
23 specific purpose:

24 **Why were temporary contractors used to evaluate
applications?**

25 State agencies use qualified contractors on a daily basis to efficiently
complete temporary tasks. Contractors are approved for use by the
26 Nevada System of Higher Education, the Court System, The
Legislative Counsel Bureau and all Political Subdivisions within the
27 State. That includes the Department of Taxation. Similar to all other
contract work in other state departments, the Marijuana
28 Enforcement Division identified, hired and trained highly-qualified



contract employees to score applications and administrative assistants to provide support.

* * *

Why didn't the Department use its own employees?

The Marijuana Enforcement Division of the Department of Taxation does not have budgeted full-time positions dedicated to license application evaluation. Staff is dedicated to other statutory and regulation-mandated duties such as auditing, inspecting, and investigating establishments; reviewing advertising and packaging submissions; reviewing and processing ownership transfers; collecting taxes; and processing agent card applications and renewals. Given the volume of applications and workload the Department anticipated for this round of licensing, the Division could not divert staff away from their existing duties to focus on application review. Additionally, by using contract employees to review and score applications, the Department could ensure an objective and independent process carried out by reviewers with no pre-existing relationships to, or insider knowledge, of the applicants.

See Ex. B.

Moreover, the Department's May 10, 2019 Release of Information refutes Plaintiffs' unsubstantiated allegations concerning the qualifications of the contractors:

The Department of Taxation was approved to identify, hire and train highly qualified temporary contractors to evaluate and score applications. The contractors were housed at the Carson City Department of Taxation Office under the supervision of Marijuana Enforcement Division staff. The contractors' qualifications are outlined below.

- Contractor A: Fire Inspector, 20 years
- Contractor B: Real Estate Development/Accounting - 23 years
- Contractor C: Gov. Environmental Health Specialist, 30 Years
- Contractor D: MBA, Project Manager - 18 years
- Contractor E: Government Accounting & IT - 30 Years
- Contractor F: Government Operations & Fiscal Manager - 30 years
- Administrative Assistant II (1 assistant for each team)

* * *

How were the application reviewers "highly qualified"?

The Department sought contract employees with specific skills and experience that directly related to the substance of what they would be evaluating in the applications. The application evaluators met the



1 State of Nevada job specifications for Accountants; Fire & Life
2 Safety Inspector; Marijuana Program Inspector; Personnel Officer
3 and Administrative Assistants. The minimum qualifications of each
4 evaluator are listed above, including information demonstrating that
5 candidates exceeded the qualifications.

6 *See Exhibit B.*¹³

7 In sum, Plaintiffs' baseless complaints concerning the contractors are unwarranted,
8 irrelevant, and do not justify the extraordinary remedy of imposing a preliminary injunction or
9 writ of mandamus in this case.

10 **G. There Is No Evidence of Bias in Favor of Certain Winning**
11 **Applicants**

12 Plaintiffs make a faulty argument of "improper bias" based on their misrepresentation of
13 an unauthenticated email relating to Nevada Organic Remedies, LLC and "rumors" regarding
14 meetings with Department employees. Not only are the allegations made in this argument false,
15 as addressed in further detail by NOR in its Joinder to this Opposition, but the entire argument is
16 based upon nothing more than conjecture and speculation with no facts and no testimony to
17 support it. There is no basis for this spurious claim, and it should be rejected.

18 **H. The Department Properly Considered Taxes and Financial**
19 **Applications from Entities Other Than the Applicant**

20 Plaintiffs' eighth point of contention directly contradicts Plaintiffs' other arguments.
21 While arguing that Plaintiff LivFree's application was underscored because the Department
22 failed to award points for the financial net worth of an affiliated individual, Plaintiffs
23 inconsistently argue that the Department erred by considering the taxes and financials of
24 affiliates of Plaintiffs' competitor applicants. Motion, pp. 25-26. Plaintiffs cannot have it both
25 ways.

26 Plaintiffs quote the applicable regulation governing the review of tax and beneficial
27 contributions, yet inexplicitly fail to acknowledge the language immediately following that
28

¹³ Hiring temporary contractors to evaluate highly-competitive and lucrative license applications rather than permanent Department personnel also protects against undue influence or bias in the evaluation process.



1 which Plaintiffs have highlighted. Plaintiffs quote the following language from Section 80 of the
2 approved regulations governing consideration of taxes paid:

3 f. The amount of taxes paid and other beneficial contributions,
4 including, without limitation, civil or philanthropic involvement
5 with this State or its political subdivisions, **by the applicant or the**
owners, officers, or board members of the proposed marijuana
establishment . . .

6 Motion at 25 (citing “Section 80 of Approved Regulations”) (first emphasis in original).

7 Plaintiffs emphasize that the relevant tax and beneficial contribution are those of the
8 applicant. However, the regulation also explicitly contemplates consideration of the tax and
9 beneficial contributions of by “the persons who are proposed to be owners, officers or board
10 members of the proposed marijuana establishment.” NAC § 453D.268(3). Moreover, nothing in
11 the text of the regulation limits the consideration to individual “owners, officers, or board
12 members,” as Plaintiffs claim.¹⁴ Motion at 25 (“This clearly limited the Nevada taxes paid to
13 [sic] ‘the applicant’ or to [sic] *individuals* that were owners, officers or board members.”)
14 (emphasis added). Thus, contrary to Plaintiffs’ argument, the text of Nevada’s Administrative
15 Code specifically permits the consideration of tax and other beneficial contributions of owners,
16 officers, and board members of applicants, whether they are individuals or entities.

17 Furthermore, Plaintiffs are estopped from challenging the Department’s consideration of
18 the financials of applicant-related individuals and entities given that Plaintiff LivFree itself
19 engaged in the very same behavior of which Plaintiffs complain.¹⁵ Indeed, in support of
20
21

22 ¹⁴ “Where the language of the statute is plain and unambiguous, such that the legislative intent is clear, a court
23 should not ‘add to or alter [the language] to accomplish a purpose not on the face of the statute or apparent from
permissible extrinsic aids such as legislative history or committee reports.’ ” *Maxwell v. SIIS*, 109 Nev. 327, 330,
849 P.2d 267, 269 (1993) (citations omitted).

24 ¹⁵ Estoppel by acquiescence is typically used to prevent a party from repudiating “positions taken or assumed by him
25 when there has been reliance thereon and prejudice would result to the other party,” *Terrible v. Terrible*, 534 P.2d
26 919, 921 (Nev. 1975), and is similarly applied to waive a known remedy that is not timely asserted. *See, Adair v. City*
27 *of N. Las Vegas*, 450 P.2d 144, 145-46 (Nev. 1969). This form of estoppel “applies where it would be unconscionable
to allow a person to maintain a position inconsistent with one in which he acquiesced, or of which he accepted a
benefit.” *Lueders v. Arp*, 321 F. Supp. 3d 968, 977 (D. Neb. 2018); *see also, Lemon v. Hagood*, 545 S.W.3d 105, 121
(Tex. App.—El Paso 2017) (emphasis added).



1 LivFree's application, it submitted the net worth and financials of a related individual, Don
2 Forman, a non-applicant, to support its claim of financial strength on its application. Motion at
3 13. What is more, the individual upon whose finances they relied also submitted his financials in
4 support of applicant NM's application. *Id.* (taking issue with the inconsistent scoring of
5 financials between Plaintiff LivFree and non-party NM, both of which relied upon the financials
6 of Don Forman). Thus, Plaintiffs freely concede that they relied upon the financial strength of an
7 individual who had unconditionally committed funds to another applicant and cannot
8 simultaneously complain that other applicants improperly used their affiliated owners', officers',
9 and board members' tax and beneficial contributions in support of their applications. Nor can
10 Plaintiffs complain that the same violates antimonopoly provisions when Plaintiffs have not
11 identified a single license awarded that was in excess of the statutorily-allowed licenses in the
12 particular jurisdiction.

13 **I. Plaintiffs Have Failed to Show Fault with the Care-Quality-
14 Safekeeping Scores**

15 In their Supplement, Plaintiffs argue that the care-quality-safekeeping scores recently
16 released by the Department are "inexplicable." Supplement at 9. The singular basis Plaintiffs
17 provide for this contention is that some applicants that had not previously operated a Nevada
18 dispensary received a higher score in this category than existing Nevada dispensaries.
19 Supplement at 9. Plaintiffs argue "[t]here is no possible valid explanation for an entity that never
20 operated a dispensary outscoring the 5 leading dispensary operators in Nevada." *Id.* at 10.

21 Of course, there is a valid explanation: the score sheets for care-quality-safekeeping did
22 not award any points for existing operations but instead were based on a subjective evaluation of
23 the applicant's (1) plan for testing, verifying and promoting marijuana; (2) transportation plan;

24
25 Similarly, under the doctrine of waiver, a plaintiff may waive a known right "when [it] engages in conduct so
26 inconsistent with an intent to enforce the right as to induce a reasonable belief that the right has been relinquished."
Nevada Yellow Cab Corp. v. Eighth Jud. Dist. Ct. ex rel. County of Clark, 152 P.3d 737, 740 (Nev. 2007).

27 Lastly, the doctrine of laches prevents a party from bringing claims when the party's delay in bringing those claims
28 "works to the disadvantage of the other [parties], causing a change of circumstances which would make the grant of
relief to the delaying party inequitable." *Miller v. Burk*, 188 P.3d 1112, 1125 (Nev. 2008).



(3) procedures to ensure adequate security measures including, without limitation, for building security and product security; (4) detailed budget for the proposed establishment including pre-opening, construction and first-year operating expenses; (5) operations manual demonstrating compliance with applicable statutes and regulations; (6) education plan to include providing educational materials to the staff of the proposed establishment; and (7) plan to minimize the environmental impact of the proposed establishment. Ex. I, Application Scoring Sheet – Care, Quality & Safekeeping.

Not one of the above criteria is reliant upon existing dispensary operations in Nevada. Moreover, that the scoring criteria specifically consider “pre-opening” and “first-year operating expenses” unquestionably contemplates that existing dispensaries were not intended to receive any additional advantage in this category.¹⁶

Nor do any of the criteria considered by the Department in this category require the evaluators to conduct independent investigation into the operations of the applicants. Rather, as is shown more fully in the Department’s Scoring Tool, this category required scoring of specifically enumerated criteria and no independent investigation was required. *Id.* Further, given the number of applications received by the Department, and the length of those applications, independent investigation into each of the applicants’ operations (as opposed to background and resume checks, which were conducted) was likely not feasible. Accordingly, Plaintiffs’ argument that Nevada Organic Remedies’ score was in error because of a discrete past incident is a nonstarter.

As demonstrated above, all of Plaintiffs’ “factual” contentions are without merit; as demonstrated below, Plaintiffs’ legal contentions (or lack thereof) fare no better.

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¹⁶ That existing dispensaries were not entitled to special favor in the review of the applications is supported by the application periods themselves. Existing Nevada medical marijuana dispensaries already received a special application period through which they could apply for one of the limited retail licenses. Ex. J, May 8, 2017 Temporary Regulations. Existing dispensaries were not afforded any preference with respect to the scores for care-quality-safekeeping scores, as discussed above.



1 **III. LEGAL ARGUMENT**

2 Plaintiffs have neglected to analyze the strength of their legal claims in this action, or
3 proffer any legal authority suggesting that have established a prima facie case as to any of their
4 claims, much less that they are likely to succeed on the merits. This alone is fatal to Plaintiffs'
5 motion.

6 What is more, a review of Plaintiffs' claims demonstrates the obvious reason Plaintiffs
7 declined to address the merits. The five causes of action alleged in Plaintiffs' Amended
8 Complaint are all subject to dismissal on legal grounds. Specifically, the Amended Complaint
9 asserts three constitutional claims—alleged violations of procedural due process, substantive due
10 process, and the equal protection clause. Each of these claims is barred by the precedent in the
11 2017 Nevada case *Malfitano v. Cnty. of Storey*, as discussed further below. Likewise, Plaintiffs'
12 claims for judicial review and for a writ of mandamus are legally untenable such that Plaintiffs
13 could never show a likelihood of success on the merits. Thus, Plaintiffs' motion must be denied.

14 As for irreparable harm, the only parties that stand to be irreparably harmed by the
15 requested preliminary injunction are Lone Mountain and other license holders, not Plaintiffs.
16 Plaintiffs cannot establish irreparable harm, as there is no property right in a license that a party
17 does not hold. Furthermore, the public interest factor of the preliminary injunction analysis
18 weighs heavily in favor of denying Plaintiffs' motion. To mandate that a government agency
19 revoke privileged licenses it has awarded and re-distribute such licenses to other applicants that
20 the agency deemed unworthy encroaches on the functions of other branches of government and
21 creates great doubt and confusion in a burgeoning industry.

22 **A. Legal Standard**

23 While Nevada Courts usually state that a showing of a likelihood of success on the merits
24 and irreparable harm are required for a preliminary injunction, they have also stated the
25 importance of “weigh[ing] the potential hardships to the relative parties and others, and the
26 public interest” in evaluating preliminary injunction motions. *Univ. and Community College
27 System of Nevada v. Nevadans for Sound Govt.*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004);
28 *Clark County Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996).



1 A district court abuses its discretion and commits a reversible error if it grants a
2 preliminary injunction where the party requesting it has not made a prima facie demonstration
3 that it will succeed on the merits, or where a review of the legal authority governing the claims
4 shows the party will be unlikely to succeed. *Shores v. Global Experience Specialists, Inc.*, 134
5 Nev. Adv. Op. 61, 422 P.3d 1238, 1242 (2018); *see also Boulder Oaks Cmty. Ass’n v. B & J*
6 *Andrews Enterprises, LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009).

7 “While the moving party need not establish certain victory on the merits, it must make a
8 prima facie showing through substantial evidence that it is entitled to the preliminary relief
9 requested.” *Shores*, 422 P.3d at 1242 (citing *Finkel v. Cashman Profl, Inc.*, 128 Nev. 68, 72,
10 270 P.3d 1259, 1262 (2012); *see* 43A C.J.S. *Injunctions* § 55 (2014) (“It is necessary and
11 sufficient that the petition make out a prima facie case showing a right to the final relief
12 sought.”)).

13 **B. Plaintiffs’ Motion Must Be Denied Because Plaintiffs Have No**
14 **Likelihood of Succeeding on the Merits of Their Claims**

15 Plaintiffs cannot show a likelihood of success on the merits because their constitutional
16 claims are subject to dismissal, judicial review of the Department’s discretionary ranking is not
17 available, and Plaintiffs have failed to show entitlement to writ relief. Moreover, Plaintiffs
18 cannot obtain a preliminary injunction where they have failed to provide any details regarding
19 the scope and extent of the mandatory injunction they seek. Finally, Plaintiffs’ claims are barred
20 by the equitable doctrines of estoppel, waiver, and laches, which independently requires denial of
21 Plaintiffs’ motion.

22 **1. Plaintiffs’ Constitutional Claims Are Subject to Dismissal**

23 Plaintiffs’ constitutional claims are all barred by the 2017 Nevada case *Malfitano v.*
24 *County of Storey*, 396 P.3d 815 (Nev. 2017).¹⁷ In *Malfitano*, the plaintiff had applied for
25 business and liquor licenses with Storey County, Nevada. *Id.* at 816-17. The county liquor
26

27
28 ¹⁷ Notably, the State argued that Plaintiffs’ claims were subject to dismissal under *Malfitano* in its motion to
dismiss. It is telling that Plaintiffs failed to address *Malfitano* in their opposition to same.



1 board denied the applications, concluding that Malfitano had failed to demonstrate proof of
2 financial standing. *Id.* at 817. Malfitano filed a petition for writ of mandamus arguing that the
3 liquor board acted arbitrarily and capriciously in denying his applications and violated his due
4 process and equal protection rights. *Id.*

5 In affirming the district court’s denial of Malfitano’s writ petition, the Nevada Supreme
6 Court noted that “it is generally recognized that a licensing board has broad discretion in
7 granting or refusing permits ‘where discretion relates to matters within the police regulation and
8 where broad administrative discretion is necessary to protect the public health, safety, morals or
9 general welfare.’” *Id.* at 818 (quoting Eugene McQuillin, *The Law of Mun. Corps.*, § 26.85
10 93d ed. rev. 2016)). The Court went on to explain: “[F]or the carrying on of a business of a
11 character regarded as tending to be injurious, such as dealing in intoxicating liquor, a wide
12 discretion may be given to licensing officers to grant or withhold a license without prescribing
13 definite and uniform rules of action.” *Id.* at 819 (quoting *State ex rel. Grimes v. Bd. of Comm’rs*
14 *of Las Vegas*, 53 Nev. 364, 372, 1 P.2d 570, 572 (1931) (emphasis removed)).

15 Of particular relevance to this case, the Nevada Supreme Court held that Malfitano’s due
16 process and equal protection rights were not violated in the denial of his liquor licenses because
17 he had no property right in discretionary licenses that he had not yet obtained. *Id.* at 820-21.
18 The Court reasoned that because the liquor board had not revoked an existing license and the
19 board had discretion in the award of licenses, “Malfitano had no property interest to which the
20 due process notice requirements could apply.” *Id.* at 821. In response to his equal protection
21 claim, the Court held that, even if Malfitano had been treated differently than other liquor license
22 applicants, mandamus was not appropriate so long as the board had some rational basis for
23 denying his application. *Id.*

24 Here, just as in *Malfitano*, Plaintiffs have no property interest in a discretionary, and
25 highly-competitive license that they have never held. Moreover, so long as the Department had
26 some rational basis for its ranking and scoring of the applications—even if the Department was
27 sloppy or careless, which Defendants in no way concede—Plaintiffs’ equal protection rights
28 were not violated.



1 In sum, *Malfitano* readily disposes of Plaintiffs' three constitutional claims and Plaintiffs
2 have no likelihood, or even possibility, of success on the merits of their claims.

3 **2. Plaintiffs' Claim for Judicial Review Is Subject to Dismissal and**
4 **Barred by the Political Question Doctrine**

5 a. Licensing Applicants Do Not Have a Right to Judicial Review

6 The Nevada Supreme Court has recently held in another marijuana licensing claim that "a
7 disappointed applicant for a medical marijuana establishment registration certificate does not
8 have a right to judicial review under the Administrative Procedures Act ("APA") or NRS
9 Chapter 453A" because "the application process provided by NRS 453A.322 does not constitute
10 a contested case." *See State, Dep't of Health and Human Servs. v. Samantha, Inc.*, 407 P.3d 327,
11 328, 332 (Nev. 2017). Quite simply, if a statute does not require notice and an opportunity to be
12 heard regarding the licensing process, then it is not a contested case under the APA. *See Private*
13 *Investigator's Licensing Bd. v. Atherley*, 98 Nev. 514, 515, 654 P.2d 1019, 1020 (1982).¹⁸

14 Similarly, an applicant for a recreational marijuana license does not have the right to
15 judicial review under either the APA or NRS Chapter 453D.

16 b. The Political Question Doctrine Also Bars Plaintiffs' Claims

17 Separation of powers is an "essential" feature of the American system of government. *N.*
18 *Lake Tahoe Fire v. Washoe Cnty. Comm'rs*, 129 Nev. Adv. Op. 72, 310 P.3d 583, 586 (2013).
19 The political question doctrine prevents one branch of government from encroaching on the
20 powers of another branch. *Comm'n on Ethics v. Hardy*, 125 Nev. 285, 292, 212 P.3d 1098, 1103
21 (2009). Nevada's version of the doctrine derives from Article 3, Section 1 of the Nevada
22 Constitution, which provides that "no persons charged with the exercise of powers properly
23 belonging to [another branch] shall exercise any functions, appertaining to either of the others."

24 "Under the political question doctrine, controversies are precluded from judicial review
25 when they 'revolved around policy choices and value determination constitutionally committed

26 ¹⁸ In 2009, in an unpublished opinion, the Court reaffirmed *Atherley* and found that even when the applicant has had
27 the opportunity to address the board on the licensing matter, it still does not convert into a contested case within the
28 meaning of NRS 233B.032. *Wen Quin Ma v. State*, 281 P.3d 1199, 2009 WL3711938 (2009) (because this is an
unpublished decision it is not being cited as precedent. NRAP 36).

1 for resolution to the legislative and executive branches.” *Lake Tahoe*, 310 P.3d at 587 (quoting
2 16A Am. Jur. 2d *Constitutional Law* § 268 (2013)). Thus, matters involving the discretionary
3 actions of an executive arm of government cannot be litigated when those actions are within the
4 agency or body’s authority. *Id.* at 583.

5 Courts must dismiss a case under the political question doctrine when the issue in
6 question meets any one of these six factors, referred to as the *Baker* factors: (1) “a textually
7 demonstrable constitutional commitment of the issue to a coordinate political department;” (2) “a
8 lack of judicially discoverable and manageable standards for resolving it;” (3) “the impossibility
9 of deciding without an initial policy determination of a kind clearly for nonjudicial discretion;”
10 (4) “the impossibility of a court’s undertaking the independent resolution without expressing lack
11 of the respect due coordinate branches of government;” (5) “an unusual need for unquestioning
12 adherence to a political decision already made;” or (6) “the potentiality of embarrassment from
13 multifarious pronouncements by various departments on one question.” *Lake Tahoe Fire*, 310
14 P.3d at 588. “A determination that any one of these factors has been met necessitates dismissal
15 based on the political question doctrine.” *Id.* (quoting *United States v. Munus-Flores*, 495 U.S.
16 385, 389-90, 110 S. Ct. 1964 (1990); *Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691 (1962)).

17 The Nevada Supreme Court applied the political question doctrine to bar a legal action
18 against the Washoe County Board of County Commissioners. *Lake Tahoe Fire*, 310 P.3d at 588.
19 There, a court ordered the Board to refund excessive property taxes to certain owners, but
20 because the Board lacked sufficient funds to do so, the Board decided to withhold tax
21 distributions normally made to various county taxing entities, including the North Lake Tahoe
22 Fire Protection District (“FPD”). *Id.* The Court dismissed FPD’s suit against the Board,
23 reasoning that the Board had administrative authority to withhold distributions from FPD as part
24 of its discretionary authority to decide the precise manner in which to furnish the tax refunds
25 based on “policy and economics.” *Id.* at 589-590. Thus, hearing this case would require the
26 Court to supplant the Board’s legislative and executive powers—fulfilling both the
27 “impossibility of deciding without an initial policy determination of a kind clearly for
28



1 nonjudicial discretion” and “lack of judicial discoverable and manageable standards” of the
2 political question test.

3 Here, just as in *Lake Tahoe*, the *Baker* factors mandate dismissal of this action. The
4 second *Baker* factor applies because there is “a lack of judicially discoverable and manageable
5 standards for resolving” the issues presented in Plaintiffs’ Complaint. Specifically, this Court
6 would have to make impossible determinations regarding whether the Department should have
7 balanced policy considerations differently and whether they should have hired additional
8 employees or contracted certain work out. There is simply no manageable standard for the
9 judiciary to second-guess the decision-making process of the State executive branch’s decision to
10 delegate certain tasks to third parties in execution of the gargantuan task of reviewing, scoring,
11 and ranking hundreds of lengthy applications on a shortened timeframe.

12 The Nevada Legislature gave the Department broad discretion to effectuate the licensing
13 scheme and it would be impossible for the Court to undertake resolution of Plaintiffs’ myriad
14 and amorphous attacks on the Department’s various policy determinations without undermining
15 the policy decisions of a co-equal branch of government.

16 3. Plaintiffs Have Failed to Show Entitlement to Writ Relief

17 A writ of mandamus can issue only against officials under a “clear” and “specific” duty
18 required by law. *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603, 637 P.2d 534, 536
19 (1981) (“clear”); *Douglas Cty. Bd. of Cty. Comm’rs v. Pederson*, 78 Nev. 106, 108, 369 P.2d
20 669, 671 (1962) (“specific”). “While Mandamus can enforce ministerial acts or duties and to
21 require the exercise of discretion, it will not serve to control discretion, unless the refusal of an
22 application is exercised arbitrarily or through mere caprice.” *Gragson v. Toco*, 90 Nev. 131, 133,
23 520 P.2d 616, 617 (1974); *Kochendorfer v. Board of Co. Comm’rs*, 93 Nev. 419, 566 P.2d 1131
24 (1977) (mandamus not available to control exercise of discretion unless arbitrary or capricious).
25 Furthermore, mandamus cannot issue when there is a nonjusticiable political question. *Lake*
26 *Tahoe*, 310 P.3d at 590.

27 Here, the Department’s Release of information has demonstrated that the criteria
28 considered by the Department in the scoring of applications was highly subjective. Evaluators



1 were directed to consider the quality of the applicants' detailed plans and to assess numerous
2 enumerated criterion. That each application received a multi-hour review from not one, but three
3 separate evaluators, and then the scores in each category were averaged, further shows that the
4 scoring process was highly subjective, and this was accounted for through procedures ensuring
5 numerous independent reviews. Changing any applicant's score on subjective criteria is not a
6 ministerial act, devoid of discretion, such that it could be subject to mandamus.

7 **4. Plaintiffs' Claim for Declaratory Relief Cannot Support an Injunction**

8 Declaratory relief is not available when the party asks the Court to act on the requested
9 interpretation. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 965, 194 P.3d 96, 105 (2008)
10 ("Thus, appellants sought more than a mere determination of their rights under a statute—they
11 sought to void the policy altogether and to obtain damages. Such issues are not appropriate for
12 declaratory relief actions . . ."); *see also Prudential Ins. Co. v. Ins. Comm'r*, 82 Nev. 1, 4-5, 409
13 P.2d 248, 250 (1966) (declaratory relief is appropriate when a party requests a ruling on the
14 meaning of a statute but is inappropriate when an agency's discretionary decisions are required).

15 Here, Plaintiffs do not ask the Court merely to declare their rights, they also request that
16 the Court enter an injunction as the result of such declaration—an injunction to halt an entire,
17 and highly-lucrative industry from operation. Thus, Plaintiffs' requested injunction calls for
18 inconsistent declaratory relief and Plaintiffs' motion must be denied.

19 **5. The Minimal Legal Authority Plaintiffs Rely upon in Their Supplement**
20 **Does Not Alter This Analysis**

21 Plaintiffs' original motion fails to include *any* legal authority and Plaintiffs' motion
22 should be denied for this reason alone.

23 Plaintiffs' supplemental brief, which purports to provide supplemental facts in support of
24 their motion following the Department's May 10, 2019 Release of Information, cites a handful of
25 cases for the proposition that this Court has the authority to change their application scores.
26 Supplement at 3. Not only is Plaintiffs' citation to legal authority inappropriate in a
27 supplemental factual statement, the three meager cases Plaintiffs rely upon do not support the
28 relief requested.



1 As an overarching matter, Plaintiffs' reliance on case law from the public contract
2 bidding context is flawed. Unlike the numerous *subjective* criteria the Department evaluated in
3 scoring license applications, public contracts are awarded based on a single *objective* criterion,
4 i.e., the lowest bid on a contract. It is disingenuous for Plaintiffs to claim that they are merely
5 requesting this Court to "perform simple math." *Id.* In truth, Plaintiffs are requesting the Court
6 to substitute its judgment for that of the Department, to engage in scoring multiple subjective
7 criterion (which was conducted by three evaluators to independently assess all criteria and from
8 which an average score was derived), and to then re-rank applications and award licenses based
9 on the Court's subjective analysis.

10 Even if Plaintiffs' analogy to the public contract bidding process was appropriate in this
11 case, and it is not, the cases Plaintiffs rely upon do not support their request for a preliminary
12 injunction. In *Gulf Oil Corp. v. Clark County*, 94 Nev. 116, 575 P.2d 1332 (1978), the sole
13 Nevada case cited by Plaintiffs, the low bidder on an airport improvement contract filed an
14 action against Clark County. Notably, a motion for preliminary injunction was not before the
15 court in this case. Rather, the procedural posture was summary judgment and the Supreme Court
16 affirmed the district's court order granting summary judgment in favor of Clark County. Most
17 importantly, *Gulf Oil* does not stand for the proposition that the Nevada judiciary is vested with
18 the authority to correct mathematical errors and compel the award of a public contract. Quite the
19 opposite, in footnote 1, the Court states that "[w]hether such relief is available in Nevada is *not*
20 settled." *Id.* at n.1 (emphasis added).

21 Nor do the two cases Plaintiffs rely upon from other jurisdictions fare any better. In both
22 the *Swanson* and *Lametti* cases, the plaintiffs filed actions challenging the propriety of the
23 *government* correcting mathematical errors in bids and then awarding public contracts to the
24 lowest bidder based on those mathematical corrections. *Swanson v. Hilderbrand*, 94 Cal. App.
25 2d 161, 210 P.2d 95 (1949) (city corrected addition error in bid that resulted in change of lowest
26 bidder; corrected low bidder began performance of contract and city's finance commissioner
27 refused to pay for services rendered, contending the city should re-do the entire bidding process;
28 corrected low bidder filed writ of mandate requiring city to pay for services rendered; court



1 granted same); *Lametti & Sons, Inc. v. City of Davenport, Iowa*, 432 F. Supp. 713 (1975) (city
2 corrected multiplication error in bid that resulted in change of lowest bidder; original low bidder
3 filed suit seeking preliminary injunction and declaratory relief; court denied original low bidder's
4 motion for preliminary injunction and granted summary judgment in favor of city). To be clear,
5 the courts were not requested to, nor did they, make mathematical corrections and redetermine
6 the award of contracts in these cases.

7 In sum, Plaintiffs have failed to offer any competent authority for the relief they seek and
8 the Court should deny the instant motion.

9 **C. The Only Parties That Stand to Be Irreparably Harmed Are the**
10 **License Holders**

11 As discussed above, Plaintiffs have no property right in a license they do not have.
12 Accordingly, Plaintiffs cannot successfully claim that they will be irreparably harmed by
13 maintaining the status quo of not holding a license.

14 On the other hand, Lone Mountain and the other license holders would be irreparably
15 harmed if an injunction is issued. *State, Dep't of Bus. & Indus., Fin. Institutions Div. v. Nevada*
16 *Ass'n Servs., Inc.*, 128 Nev. 362, 370, 294 P.3d 1223, 1228 (2012) ("A licensee whose license
17 has been revoked or suspended immediately suffers the irreparable penalty of loss of [license] for
18 which there is no practical compensation"). For this reason, too, the Court should deny
19 Plaintiffs' motion.

20 **D. Awarding Plaintiffs' Injunctive Relief Is against the Public's**
21 **Interest**

22 Plaintiffs' requested injunction is also against the public interest. Nevada voters by
23 resolution enacted law to provide for the regulation and taxation of retail marijuana
24 establishments and the legislature determined that the best manner in which to award licenses
25 was to consolidate marijuana regulation, both medical and recreational, under the authority of
26 Nevada's Department of Taxation and to bestow upon the Department the duty to fashion
27 regulations in furtherance of the same.
28



1 Nevada voters determined it was in the public interest to regulate and tax marijuana, and
2 the Nevada Legislature determined that it was in the public’s best interest to provide a
3 competitive ranking process for the issuance of limited licenses, and that the Department of
4 Taxation was best suited for the task. Notably, the Legislature did not choose a blind lottery for
5 license distribution, as Arizona, for example did. The Legislature instead made the policy
6 determination that the Department would score and rank applications pursuant to a set of criteria
7 it designed after careful deliberation. Neither the Legislature nor the Department provided an
8 avenue for judicial review of the rankings, or a procedure for denied applicants to challenge the
9 Department’s issuance of licenses to other applicants because it would create too much
10 uncertainty over the licenses, discourage investment, and jeopardize the industry. Issuing an
11 injunction under these circumstances would go against the public interest. *See Queen City*
12 *Constr., Inc. v. City of Rochester*, 604 N.W.2d 368, 379 (Minn. Ct. App. 1999) (concluding that
13 the denial of an injunction to prohibit a city from entering into a contractual arrangement served
14 the public interest because the “power to award contracts is entrusted to the city’s discretion, and
15 a court should be wary to interfere” with the exercise of that discretion (citations omitted)); *see*
16 *also Groves v. Dept. of Corr.*, 811 N.W.2d 563, 568 (Mich. Ct. App. 2011) (“Litigation aimed at
17 second-guessing the exercise of discretion by the appropriate public officials in awarding
18 a public contract will not further the public interest; it will only add uncertainty, delay, and
19 expense to fulfilling the contract.” (citations omitted)).

20 Plaintiffs request the Court to supplant its judgment for the state agency statutorily
21 granted the power, and discretion, to award licenses. That thwarts the legislative scheme
22 designed by a co-equal branch of government. Worse, it creates uncertainty over existing
23 licenses which will slow investment into Nevada’s booming retail marijuana industry and lessen
24 tax revenues.

25 **E. A Sufficient Bond Is Not Feasible**

26 There simply is no bond large enough to protect the license holders from the mandatory
27 injunction of the nature and scope sought by Plaintiffs, namely, a “global preliminary
28



injunction. . . stopping all the winning applicants from proceeding [in operations].” Supplement at 12.

By Plaintiffs’ own representations, each of the licenses at issue is worth tens if not hundreds of millions of dollars. Multiply that by 64 licenses. That is the amount that Plaintiffs would need to secure by bond for the Court to grant Plaintiffs’ requested relief. A sufficient bond is simply not feasible and for this reason, too, the Court should deny Plaintiffs’ Motion.

IV. CONCLUSION

Based on the foregoing, Lone Mountain respectfully requests that the Court deny Plaintiffs’ Motion.


Dated this 20th day of May 2019.

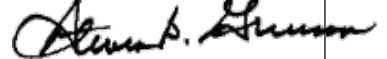
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CERTIFICATE OF SERVICE

The undersigned, an employee of H1 Law Group, hereby certifies that on the 20th day of May 2019, she caused a copy of the foregoing to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court’s Odyssey E-File & Serve system.


Bobbye Donaldson, an employee of
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant.

CASE NO. A-19-786962-B
DEPT. I

**PLAINTIFFS' JOINDER TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION FILED IN
MM DEVELOPMENT COMPANY, INC.,
ET AL. v. STATE OF NEVADA
DEPARTMENT OF TAXATION**

(CASE NO. A-18-785818-W)

1 Please take notice that Plaintiffs, Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf
2 Incline Dispensary, LLC, Holistic Medicine, LLC, Tryke Companies SO NV, LLC, Tryke
3 Companies Reno, LLC, Paradise Wellness Center, LLC, GBS Nevada Partners, LLC, Fidelis
4 Holdings, LLC, Gravitas Nevada, LTD., Nevada Pure, LLC, and Medifarm, LLC, by and
5 through their counsel of record, DOMINIC P. GENTILE, ESQ., VINCENT SAVARESE III,
6 ESQ., MICHAEL V. CRISTALLI, ESQ., and ROSS MILLER, ESQ., of the law firm of Gentile
7 Cristalli Miller Armeni Savarese, hereby files this Joinder to MM Development Company, Inc.
8 and Livfree Wellness LLC, dba The Dispensary Motion for Preliminary Injunction or Writ of
9 Mandamus filed on May 9, 2019 appended hereto.

10 Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf Incline Dispensary, LLC, Holistic
11 Medicine, LLC, Tryke Companies SO NV, LLC, Tryke Companies Reno, LLC, Paradise
12 Wellness Center, LLC, GBS Nevada Partners, LLC, Fidelis Holdings, LLC, Gravitas Nevada,
13 LTD., Nevada Pure, LLC, and Medifarm, LLC, incorporates herein, and on their behalf, the
14 arguments made in MM Development Company, LLC and Livfree Wellness LLC's Motion for
15 Preliminary Injunction or Writ of Mandamus.

16 DATED this 20th day of May, 2019.

17 GENTILE CRISTALLI
18 MILLER ARMENI SAVARESE

19 
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CERTIFICATE OF SERVICE

The undersigned, an employee of Gentile, Cristalli, Miller, Armeni Savarese, hereby certifies that on the 20th day of May, 2019, I caused a copy of the foregoing **PLAINTIFFS' JOINDER TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION FILED IN MM DEVELOPMENT COMPANY, INC., ET AL. v, STATE OF NEVADA DEPARTMENT OF TAXATION** by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's Odyssey E-File & Serve system.

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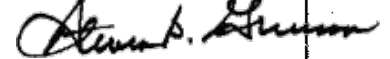
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

13 Plaintiff,

14 vs.

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

18 Defendants.

19 and

20 NEVADA ORGANIC REMEDIES, LLC

21 Defendant-Intervenor.

22 NEVADA ORGANIC REMEDIES, LLC.

23 Counterclaimant,

24 vs.

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

Counter-Defendants

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

**PLAINTIFFS'/COUNTER-
DEFENDANTS' MOTION FOR
PRELIMINARY INJUNCTION OR
FOR WRIT OF MANDAMUS**

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1 NOW APPEAR Plaintiffs/Counter-Defendants MM Development Company, Inc. d/b/a/
2 Planet 13 ("MM") and LivFree Wellness, LLC d/b/a The Dispensary ("LivFree") ("Plaintiffs"),
3 by and through their counsel of record, and hereby move the Court to enter an injunction or
4 issue a writ of mandamus directing the State of Nevada Department of Taxation ("DOT") to
5 stop processing the conditional marijuana licenses issued in December 2018 and requiring the
6 Nevada Tax Commission to consider appeals from the denial of licenses to MM and LivFree.

7 I. STATEMENT OF FACTS

8 A. Arbitrary And Capricious Irregularities In The Grading Process

9 1. Statutory and Regulatory Background

10 Nevada voters first passed a medical marijuana initiative allowing physicians to
11 recommend cannabis for an inclusive set of qualifying conditions and created a limited non-
12 commercial medical marijuana patient/caregiver system. Senate Bill 374, which was enacted in
13 2013, expanded this program and established a for-profit regulated medical marijuana industry.
14 Adult-use legalization passed through the ballot box in November 2016.

15 In 2014, Nevada accepted medical marijuana business applications and a few months
16 later approved 182 cultivation licenses, 118 licenses for the production of edibles and infused
17 products, 17 independent testing laboratories and 55 medical marijuana dispensary licenses.
18 The number of dispensary licenses was then increased to 66 by legislative action in 2015.

19 The Nevada State Legislature then passed a number of bills during the 2017 legislative
20 session that affected the licensing, regulation and operation of recreational marijuana
21 establishments in Nevada. One of those bills, Assembly Bill 422, transferred responsibility for
22 the registration, licensing and regulation of marijuana establishments from the State of Nevada's
23 Division of Health and Human Services ("DHHS") to the DOT.¹

24
25
26
27
28 ¹ The DHHS licensed medical marijuana establishments until July 1, 2017 when the state's
medical marijuana program merged with adult-use marijuana enforcement under the DOT.

1 **2. The 2018 Retail Marijuana Application Process**

2 On August 16, 2018, the DOT announced a competitive application process for retail
3 marijuana store licenses. That application window opened on September 7, 2018 and closed
4 September 20, 2018. Applicants were required to pay a non-refundable \$5,000 application fee
5 for each application.² The licenses awarded in that round were announced on December 5,
6 2018, and remain conditional until the applicant passes all local jurisdictional requirements and
7 passes a final state inspection. The applicants were notified that conditional license holders
8 would have 12 months to become operational, with the understanding that failure to obtain full
9 licensure could result in termination of the conditional license by the DOT.

10 If the DOT received more than one application for a license for a recreational marijuana
11 dispensary and the DOT determined that more than one application was complete and in
12 compliance with R092-17, Sec. 78 and NRS 453D, the DOT was required to grade and rank the
13 applications within each applicable locality in order from first to last. Applications were
14 supposed to be scored (250 points being the highest possible score) on a group of criteria based
15 on compliance with the provisions of R092-17 Sec. 80 (later enacted as NAC 453D) and NRS
16 453D relating to:

- 17 • **Operating experience** at another kind of business by the owners, officers or
18 board members which is applicable to the operation of a marijuana establishment
19 **(60 points)**
- 20 • **Diversity** of the owners, officers or board members
- 21 • Evidence of the amount of **Nevada taxes paid “by the applicant”** and other
22 beneficial financial contributions **(25 points)**
- 23 • A financial plan, which includes **financial statements** showing the resources of
24 the applicant; including \$250,000 liquid **(40 points)**
- 25 • The applicant’s **plan for care, quality and safekeeping** of marijuana from seed
26 to sale **(40 points)**

27 ² DOT employee Steve Gilbert said that the DOT received 462 applications for retail marijuana
28 licenses. **Ex. 1; Gilbert Affidavit.** For 462 applications, the DOT got **\$2,310,000** in non-
refundable application fees.

- The applicant's **staffing plan** and how it was going to manage the proposed marijuana establishment on a daily basis, including a detailed budget for the first year, an operations manual that demonstrated compliance with Department regulations and a plan for educating the staff **(30 points)**
- The **operating procedure plan** for the marijuana establishment and the inventory control system **(20 points)**
- Likely **community impact**, including educational achievements of the owners, officers or board members **(15 points)**
- Detailed building and construction plans **(20 points)**³

There was also an express anti-monopoly provision that prevented the same applicant from winning more than one license in one jurisdiction (e.g., Clark County). According to the Application form released by the DOT, highlighted in all red and all capital letters, "**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.**" Ex. 2, p. 7 (Bold in original).

1. The Prior (2014) Application Process

Prior to the 2018 application process with the DOT, Plaintiffs were previously scored and ranked in the 2014 licensing in conjunction with medical marijuana establishment permit applications. In 2014, MM received a score of 203.58 and was ranked as the fourth-highest applicant for a medical marijuana dispensary in unincorporated Clark County while LivFree was ranked as the highest applicant for Henderson with a score of 208.3; the highest applicant for Reno with a score of 207; and the fifth-highest applicant in unincorporated Clark County with a score of 201.64.

The factors used for the 2014 rankings were substantially similar to the factors to be used by the DOT for the 2018 rankings for the allocated licenses. The only major difference between the factors assessed for the 2014 rankings and the 2018 rankings was the addition of diversity of race, ethnicity or gender of applicants (owners, officers, board members) to the

³ Ex. 2; DOT Recreational Marijuana Establishment Application 7-2-18 (the "Application"), pgs. 17-18.

1 existing merit criteria. MM, for one, figured to have its scores greatly increased by the addition
2 of the diversity consideration as its board members included African-American women, a
3 Hispanic and a disabled veteran. GBS Nevada Partners (dba Showgrow) was 3% owned by
4 African-Americans and had high hopes. NWC, which is **100% owned by African-Americans**,
5 should have enormously benefitted from the addition of diversity as a factor. That, however,
6 was not the result.

7
8 2. The 2018 Results

9 On or about December 5, 2018, despite their prior exceptional ranking, MM and LivFree
10 were informed that all 12 of their applications (6 each) to operate recreational marijuana retail
11 stores were denied. The DOT improperly granted “conditional” licenses to applicants that were
12 ranked substantially lower than Plaintiffs on the 2014 rankings. Based on public information
13 and the Gilbert Affidavit, it appears that the DOT also improperly granted more than one
14 recreational marijuana store license per jurisdiction to certain applicants. For example,
15 according to a December 11, 2018 press release from Essence Cannabis Dispensary: “Essence
16 applied for and was awarded eight licenses total, giving the Company retail expansion across
17 the State, including: Sparks, Carson City, Reno, **Clark County (qty. 2)**, City of Las Vegas,
18 North Las Vegas, and the City of Henderson.” Ex. 3; Essence Press Release.⁴

19 The entire industry was shocked because of the gross disparity between the 2014
20 rankings and the 2018 rankings, and because no one anticipated that any single applicant would
21 get more than 2 or 3 licenses – much less the 11 that Verano got throughout Nevada (5 just in
22 Clark County). To quote the Las Vegas Medical Marijuana Association, “distribution should
23 have been more disbursed.”⁵ Instead, just 4 groups somehow usurped 32 licenses:
24
25

26 ⁴ The Gilbert Affidavit tries to make a distinction between “Essence Henderson LLC” and
27 “Essence Tropicana LLC” but those entities have the same owners. Ex. 1, ¶¶ 16, 18.

28 ⁵ Essence confirmed it was awarded 8 licenses. Ex. 3. The Review Journal also reported on
December 11, 2018 that Tap Roots got 7 licenses and Green Growth 7 licenses. December 11,
2018 Las Vegas Review-Journal, Section B, p. 6B.

<u>Trade Name</u>	<u>Corporate Name</u>	<u>Licenses</u>
Lone Mountain Partners/ Zen Leaf	Verano Holding	11
Essence	Integral Associates, LLC	8
Nevada Organic Remedies/ The Source	Green Growth Brands	7
Greenroots	Tap Root Holdings	6
		Total: 32

In stark contrast, in 2014, the most successful applicant group won only 4 licenses.

B. The DOT Failed To Consider Diversity In Grading And Scoring The Applications

1. Nevada Assembly Bill 422 Requires the DOT Consider “Diversity of Race, Ethnicity, or Gender of Applicants to the Existing Merit Criteria”

The Nevada State Legislature passed a number of bills during the 2017 session which affect the licensing, regulation and operation of marijuana establishments. Assembly Bill 422 required that the DOT shall consider “[t]he diversity on the basis of race, ethnicity or gender of the applicant or the persons who are proposed to be owners, officers or board members” of the proposed marijuana establishment.⁶ A.B. 422, 79th Leg. (Nev. 2017). The DOT applied this mandate from the legislature to the retail marijuana application evaluation criteria by adopting its own set of regulations.

2. The DOT Adopts R092-17, Which Includes Diversity as Part of the Grading of Retail Marijuana License Applications

Applications were supposed to be scored based on a group of application criteria based on compliance with the provisions of R092-17 Sec. 80, NAC 453D.272, NRS 453D and on the content of the applications relating to, among other criteria, “[t]he diversity of the owners, officers or board members of the proposed marijuana establishment.” R092-17 Sec.

⁶ The DOT’s application packet says shall “[i]ndicates a mandatory requirement.” Ex. 2, P. 7.

1 80.1(b) (Bold added); NAC 453D.272(1)(b). Hence, under both state law and the DOT's own
2 regulation, the DOT was explicitly required to consider and rank the applicants, at least in part,
3 based on the diversity of the owners, officers or board members.

4 **3. The DOT Informed All Applicants That Diversity Was to be Considered as**
5 **Part of the Grading and Scoring**

6 In multiple places within the 2018 retail marijuana license application packet that the
7 DOT distributed and required all applicants to utilize (July 6, 2018 release date), the diversity of
8 owners, ownership groups and board members was supposed to be part of the grading criteria.
9 On page 8 of the Application, the DOT acknowledged that legislative changes relevant to this
10 application included:

11 **Assembly Bill 422 (AB422):**

12 **- Adds diversity of race, ethnicity, or gender of applicants (owners, officers,**
13 **board members) to the existing merit criteria for the evaluation of**
14 **marijuana establishment registration certificates.**

15 **Ex. 2, P. 8 (Bold added).** Additionally, on page 11 of the Application, the DOT specified that
16 any applications must include, as part of the Identified Criteria Response:

17 5.2.10.3. The supplemental Owner, Officer and Board Member Information
18 Form should be completed for each individual named in this application. **This**
19 **attachment must also include the diversity information required by R092-**
20 **17, Sec. 80.1(b) (Attachment C).**

21 **Ex. 2, P. 11 (Bold added).** Finally, on page 18 of the Application – for a third time – the DOT
22 informed all applicants that if it had to score the applications:

23 Ranking will be based on compliance with the provisions of R092-17 Sec. 80,
24 Chapter 453D of NRS and on the content of the applications relating to:

25 **6.2.2. Diversity of the owners, officers or board members.**

26 **Ex. 2, P. 18 (Bold added).** The DOT clearly understood that it was required to consider
27 diversity of owners, ownership groups and board members as part of grading the retail
28 marijuana license applications.

1 **4. The DOT Admits That It Did NOT Consider Diversity in Grading the Retail**
2 **Marijuana License Applications**

3 Despite the clear and mandatory requirement that the DOT utilize diversity in the
4 grading of the retail marijuana license applications, DOT employees have confessed that
5 diversity was not considered:

6 7. I personally attended a meeting with the Nevada Department of Taxation
7 ("Department") staff on January 10, 2019. Damon Hernandez attended the
8 meeting as the Department's representative. The purpose of the meeting was to
9 receive information regarding the Company's Application score and to ascertain
10 the score for each individual category.

11 10. **Damon Hernandez informed me that diversity was not taken into**
12 **account by the Department for any application that was submitted.**

13 **Ex. 4; Paul Thomas Aff. (Bold added).** Ditching diversity was a direct violation of AB 422's
14 requirements, the DOT's own regulation R092-17, NAC 453D.272(1)(a), and what it thrice
15 stated in its own application packet. Assembly Bill 422 added race as a "merit criteria." The
16 Legislature did not authorize the DOT to relegate diversity to less than an afterthought as a tie-
17 breaker. Based on its own employees' admissions, the DOT failed to follow clear legislative
18 direction as well as its own adopted regulations.

19 **C. Applications Were Graded By Six Temporary Contractors From Manpower – Not**
20 **By The DOT**

21 The DOT was responsible for reviewing the applications and allocating new licenses to
22 jurisdictions. It was required to rank the applications in accordance with applicable regulations
23 and statutes. The highest-ranking applications were to be awarded licenses. The DOT
24 delegated all ranking and scoring responsibilities to six (6) temporary contractors from an
25 outside employment agency – Manpower (the "Manpower Employees"). In marked contrast,
26 the previous 2014 grading was done by the DHHS and utilized 20 to 25 people (primarily
27 professional-level state employees with college degrees).

28 Until discovered in this litigation, none of the applicants knew who did the 2018 scoring.
While fighting a preservation order sought in this case, the DOT made the stunning revelation

1 that Manpower Employees graded the license applications. Essentially, six temporary workers
2 – with sketchy “qualifications” – went to the DOT offices and reviewed the electronic
3 applications. This haphazard procedure was the substitute for DOT employees doing the
4 grading.

5 The DOT refuses to discuss or provide any information about potential major
6 deficiencies in the process, such as: failure to maintain a control log or hours log for the
7 applications and the review thereof by the Manpower Employees. The DOT absolutely refuses
8 to acknowledge the applicants due process rights and continues to keep secret things like: who
9 worked on each application, was it signed in or checked out when worked on, how long was the
10 review, what were the dates and times of the review, was supplementation of the packets
11 allowed by the DOT to favored applicants after the deadline for the applications.

12 These licenses are likely worth tens of millions of dollars each. They will generate tens
13 of millions in tax revenue over the next few years. Yet the DOT improperly delegated its duty
14 to grade the applications to a temporary agency. The DOT refused to disclose the names or
15 qualifications of the six graders but Plaintiffs gleaned information on their own that raises even
16 more concern. For example, why did the DOT let a former food inspector with absolutely no
17 marijuana experience whatsoever serve as the “Marijuana” specialist that graded complex seed-
18 to-sale plans, staffing plans and operating procedure plans? Why did the DOT let a former
19 sales-person from Office Max grade the financial plans? See Section II(A)(6), *infra*. Why
20 didn’t the DOT apprise the Manpower graders that one of the winning applicants (i.e., Nevada
21 Organic Remedies, which submitted plans for care, quality and safekeeping that were
22 immaculately prepared by well-paid consultants) actually had a poor compliance history and
23 had just been caught selling marijuana to minors? Instead of answering these and other simple
24 questions, the DOT has refused to provide any meaningful information, including the identity,
25 scores and sub-part scores of winning applicants.

26 **D. Failure To Acknowledge The Anti-Monopoly Legislative Intent**

27 The medical marijuana statute states, “To prevent monopolistic practices, the DOT shall
28 ensure ... that it does not issue, to any one person, group of persons or entity, the greater of ...

1 more than 10 percent of the medical marijuana establishment registration certificates otherwise
2 allocable in the county.” NRS 453A.326(2). The DOT attempted to mirror this language in
3 R092-17A, Sec. 80, but now ignores the oligopoly it is creating by giving a select group of
4 applicants an astounding 86% of the new licenses in Nevada in 2018. See also NAC
5 453D.272(5) (“To prevent monopolistic practices, the Department will ensure ... that it does not
6 issue, to any one person, group of persons or entity, the greater of ... more than 10 percent of
7 the medical marijuana establishment registration certificates otherwise allocable in the
8 county.”). Adding insult to injury, the DOT favors 11 licenses being pilfered by the suspect
9 Verano group (a multi-billion-dollar Illinois conglomerate) instead of being given to worthy
10 Nevada businesses.

11 **E. The Lack Of Clarity And Transparency**

12 The DOT is a tax agency, with a set of rules and regulations designed to empower its
13 agents to collect taxes in an efficient manner. Because the DOT was responsible for allocation
14 of highly-valued licenses in which the public has great interest, serious concerns were raised
15 during the public comment period that the proposed framework of the contemplated application
16 process did not adequately address transparency nor allow for a fair allocation of licenses. Ex.
17 5; January 15, 2018 Public Comment Letter from For Fairness in the Cannabis Industry, LLC
18 (“FFCI”). Hence, the DOT has been on notice since January 2018 that the proposed regulations
19 did not give sufficient disclosure of the application scoring standards and would result in a
20 process that was contrary to the public interest.

21 The DOT did nothing to address these potential infirmities. Assigning a tax regulator,
22 acclimated to secrecy, to draft regulations for an award of valuable licenses appears to have
23 conflicted with the public’s interest in transparency and fairness. Even members of the Nevada
24 Tax Commission⁷ announced serious misgivings about the manner in which the DOT bungled
25

26
27 ⁷ The Nevada Tax Commission is the head of and oversees the DOT. NRS 360.120 (2). As
28 Commissioner Kelesis said, “[The Tax Commission] is the head of the Department, and we are
the head of the Division.” Ex. 6, 65:10-12.

1 the application scoring process. **Ex. 6**; Transcript of Jan. 14, 2019 State of Nevada Tax
2 Commission Open Meeting, pp. 61-65. Commissioner George Kelesis criticized “[r]egulations
3 that were applied beyond the scope of the regulation” by the DOT in its grading of the
4 applications. *Id.*, 62:20-21. Commissioner Kelesis also complained about “things that were
5 changed” in the regulations on which the Tax Commission did not rule. *Id.*, 62:21-22. He was
6 specifically disquieted about how the DOT handled and graded announced buyouts by Canadian
7 corporations. *Id.*, 62:23-63:15. He also railed on the indefensible decision to dump the grading
8 on unqualified Manpower Employees, stating:

9 I found probably one of the most distressing parts – and I don’t know if the
10 Commission is aware of this or not, if you are aware of it. But our graders were
hired through Manpower.

11 Now, I checked the Manpower drop-down box. And I’m telling you guys,
12 nowhere in there does it say: “Hire marijuana graders.” It doesn’t say it. So why
13 are we even going to Manpower? I know we budgeted so we could have this
14 Department handle these items. So who trained these people in Manpower?
Who oversaw these people in Manpower?

15 *Id.*, 63:16-64:1. Commissioner Kelesis concluded by lamenting, “**I’m troubled across the**
16 **board with this whole thing.**” *Id.*, 64:6-7 (Bold added). When Commissioner Kelesis finds
17 out that the Manpower accounting contingent was led by a former sales clerk from Office Max
18 and that a retired food safety inspector graded the complex marijuana procedure plans, he will
19 be far more than “troubled.”

20 A multitude of the denied applicants have expressed great consternation regarding how
21 the applications were scored. At the Nevada Tax Commission Meeting on January 14, 2019,
22 some of the denied applicants took the time to extemporize their fears, including that the DOT
23 has repeatedly refused to provide detailed scoring or demonstrate where points were lost for
24 each category to applicants – as required by Section 93 of R097-012. **Ex. 6**, 54:23-56:16.
25 Additional public comments documented the **statistical impossibility** of certain aggregate
26 scores that have been provided to applicants. **Ex. 6**, 56:17-57:6 (in receiving identical scores
27 for differing locations and applications, “this kind of result ... speak to data manipulation and
28 nothing else. If I got this kind of data in a medical journal article that I were to review, I would

1 send it immediately back to investigate fraud.”); 58:12-13 (“scoring from 20 of the 28
2 [applications] were identical to the second decimal place.”). The DOT remains mute.

3 IL ARGUMENT

4 A. Eight Fundamental Flaws In The 2018 Determination Require A Re-Determination

5 There were eight fundamental flaws in the 2018 grading process, any one of which
6 requires a scoring re-determination: (1) failure to score diversity; (2) wildly inconsistent grading
7 of financial plans; (3) improper allowance of fraudulent information, trade secrets, “business
8 plans” and operating procedures of others to be expropriated by winning applicants; (4) failure
9 to properly score for educational achievements; (5) failure to require the “physical address” for
10 the proposed dispensary and staggeringly inconsistent grading of physical address-related
11 criteria, such as generic building plans; (6) hiring of inexperienced and unqualified temporary
12 workers to grade applications; (7) documented bias in favor of certain winning applicants; and
13 (8) improper allowance of taxes and financial applications from entities other than the applicant.
14 Any one of these serious mix-ups requires a scoring re-calculation.

15 1. Diversity Was Not Scored

16 NRS 453D and NAC 453D both required that applications be scored on diversity.
17 Section 80 of the Approved Regulations requires ranking based on numerous categories, the
18 second being “[t]he diversity of the owners, officers, or board members of the proposed
19 marijuana establishment.” The DOT did not give any points for diversity. Ex. 4; Thomas Aff.
20 This substantially prejudiced applicants with abundant diversity (e.g., MM and NWC – Frank
21 Hawkins’ group) and rewarded applicants with absolutely no diversity (e.g., the Verano group
22 that received 11 licenses). Re-determination is required because the DOT blatantly disregarded
23 the express dictate of NRS 453D and Section 80.

24 NWC is a good example of an applicant that got short shrift because of the DOT
25 diversity miscue. NWC is 100% owned by African-Americans. If the legislative dictate to
26 grade on diversity had been followed, NWC should have gotten significantly more points on its
27 2018 evaluation than on its 2014 evaluation. NWC did not – because the DOT did not give any
28 points whatsoever for diversity. This violated the express language of AB 422 and its

legislative history. As Senator Tick Segerblom explained, “this criterion would look at diversifying because currently most of the dispensary owners are **white males** and we are trying to expand this into the community.” S. Daily Journal, 79th Leg., at 240 (Nev. 2017).

The winning applicants have a stunning lack of diversity. For example, Verano won 11 licenses. Verano is owned by Verano Holdings, LLC, a Chicago-based cannabis operator. But there is no diversity across Verano’s management team:



George Archos
 Founder/CEO



Sam Dorf
 Co-Founder/ Chief
 Growth Officer



Ron Goodson
 President/COO



Tim Tennant
 Chief Marketing
 Officer



Anthony Marsico
 Exec. VP Retail



Darren Weiss,
 Esq.
 General Counsel



Chris Fotopoulos
 Exec. VP Legal
 Real Estate



Maria Johnson
 Dir. National Sales



Cary Millstein
 Dir. International
 Markets



Cathy Lindfors
 Dir. Human
 Resources

It is hard to imagine a less diverse group than that assembled by Verano.

2. The Manpower “Accountants” Gave Wildly Inconsistent Grades to Financial Plans

In 2014, LivFree was ranked as the highest applicant for Henderson with a score of 208.3, the highest applicant for Reno with a score of 207 and the fifth-highest applicant for Clark County with a score of 201.64. While reviewing its 2018 ranking, LivFree discovered that it only got a paltry 12.67 out of 40 potential points for its financial plan (30 potential points for the financial statements and 10 more-or-less automatic points for proof of \$250,000 in liquid assets). The grade given to LivFree (12.67) was almost 20 points lower than the **average** grade of 31.5 for all applicants in the jurisdictions where LivFree applied.

The LivFree application that got a 12.67 rating included the financials of **both** Steve Menzies and Don Forman. Ex. 7; Dietz Dec., ¶ 11. Menzies and Forman are both centi-

millionaires.⁸ Only Don Forman's financials supported another application by Natural Medicine ("NM") that got a full 40 points. *Id.*, ¶ 12. NM's "Owner Financials Summary" was \$124,601,651.72. *Id.*, ¶ 3. The total net worth on the LivFree "Owner Financials Summary" was \$217,812,655.00. *Id.*, ¶ 5. Hence, the LivFree net worth was over \$93 million greater than the NM net worth. The Manpower "accountants" rated the financial section of NM, which had a listed net worth of \$124,601,651.72, at 40 points but radically shaved this rating by 27.33 points when evaluating the far greater net worth of LivFree's owners of \$217,812,605.00 (including both NM owner Forman and Menzies). *Ex. 7; Dietz Dec.* Put another way, when you have one centi-millionaire you get 40 points for financial strength, but when you have two you only get 12.67 points. This inexplicable blunder in and of itself prevented LivFree from being a winning applicant because adding another 27.33 points to its grading would have elevated it above the winning applicants in 5 of the 6 jurisdictions where LivFree applied:

Application (by jurisdiction)	LivFree Score w/ faulty 12.67 points	LivFree Score w/ correct 40 points	Lowest Winning Score (per jurisdiction)	Highest Winning Score (per jurisdiction)
Reno (RD 292)	190.50	217.83	213.66	227.84
Unincorporated Clark County (RD 293)	190.17	217.50	210.16	227.84
North Las Vegas (RD 294)	190.54	217.87	214.50	227.17
Lyon County (RD 295)	190.17	217.50	196.49	196.49
Las Vegas (RD 296)	190.17	217.50	208.00	227.84
Nye County (RD 297)	190.50	217.83	222.99	222.99

⁸ A "centi-millionaire" is someone with a net-worth over \$100 million.

1 In other words, if Manpower had only provided an “accountant” that understood that
2 \$217,812,655.00 is more than \$124,601,651.72, LivFree would have won in Reno, Clark
3 County, North Las Vegas, Lyon County and the City of Las Vegas. Now that the DOT has the
4 irrefutable proof submitted herein that LivFree should get 5 licenses if its financial plan had
5 been competently rated, the DOT should tell the Court exactly how it intends to fix this glaring
6 mistake.⁹

7
8 This stunning 27.33-point grading discrepancy between the financial plans of the NM
9 and LivFree applications in and of itself proves that the financial sections were the subject of
10 arbitrary and capricious ratings. There is no possible acceptable explanation for grading a
11 financial plan for owners with a \$124 million net worth at 40 points, then drastically reducing
12 the grade to 12.67 points when the net worth increases by over \$93 million to \$217,812,655.00.
13 There is no other logical conclusion than the financial grading by the Manpower “accountants”
14 was arbitrary and capricious.

15 **3. Improper Allowance of Fraudulent Information, Trade Secrets, “Business**
16 **Plans” and Operating Procedures of Others to Be Attributed to Winning**
17 **Applicants**

18 The third fundamental flaw was the allowance of fraudulent information and trade
19 secrets of others to be attributed to winning applicants. The business partners of Verano (which
20 won 11 licenses) have explicitly claimed that the Verano applications were riddled with fraud.
21 In a recently-filed lawsuit, Naturex, LLC (“Naturex”), owner and operator of the medical and
22 retail marijuana dispensary “Zen Leaf,”¹⁰ laid bare the fraudulent basis on which the DOT
23 awarded 11 licenses to Verano Holdings, LLC (“Verano”) and/or Lone Mountain Partners, LLC
24 (“Lone Mountain”). According to Naturex, Verano controls the business operations of Lone
25 Mountain and, to a certain extent, Naturex. Ex. 8; Naturex, LLC, et al. v. Verano Holdings,

26 ⁹ If the DOT refuses to rectify the arithmetic mistake on the LivFree applications by immediately
27 providing LivFree with 5 conditional licenses, LivFree reserves the right to seek a writ of
28 mandamus compelling it to do so.

¹⁰ See Ex. 8, ¶20.

1 LLC, et al., Case No. A-19-787873-C, Complaint, ¶ 4. On Verano's website, it represents it
2 owns the Nevada dispensary "Zen Leaf", but the dispensary is actually owned by Naturex. Id.

3 Verano was supposed to submit license applications on Naturex's behalf but instead
4 engaged in fraud and subterfuge. Ex. 8, ¶¶41-45. According to Naturex, **Verano and/or Lone**
5 **Mountain's license applications claimed the Zen Leaf dispensary that Verano did not own**
6 **and stole the Naturex "financials, business plans, business designs", etc.** Ex. 8, ¶44.

7 Naturex claims that:

8 47. [Verano/Lone Mountain's] Licenses are premised on the fact they will
9 use the "Zen Leaf" brand for the dispensaries, which is in fact a fictitious firm
10 name belonging to Plaintiff Naturex. On information and belief, **Defendants'**
11 **misappropriated the fictitious firm name "Zen Leaf" for Defendant Lone**
12 **Mountain's Application.**

13 48. On further information and belief, in furtherance of Defendants' Lone
14 Mountain Application submittal, **Defendants' misappropriated, without**
15 **permission, Plaintiffs' trade secrets and proprietary information** belonging
16 to Plaintiff Naturex, such as **Plaintiffs' Standard Operating Procedures**
17 **("SOPs"), financials, business plans, business designs, business models, and**
18 **other personal and confidential financial information** belonging to Plaintiff
19 Naturex (the "Naturex Proprietary Information").

20 Ex. 8, ¶¶47-48 (Bold added). As said above, because the applicant's plan for seed-to-sale care
21 (40 points), operating procedure plan (20 points) and staffing plan (30 points) were potentially
22 worth 90 points out of a possible 250 points (i.e., 36% of the total points), the Naturex
23 allegation that Verano stole its "business plans" and procedures (if true) would require that all
24 11 of the winning Verano conditional licenses be stricken. Plaintiffs emphasize that Verano's
25 long-time business partner, not Plaintiffs, are leveling these damning charges against Verano.

26 The scandalous allegations by Naturex demonstrate more flaws and provide a brief
27 glimpse into the opaque application grading process that the DOT seems bound and determined
28 to keep secret. If an applicant can use stolen business plans and claim a dispensary that is not
its own to become the largest winner (11 licenses), the Manpower graders were obviously
scoring fiction and not reality. The DOT does not care.

1 **4. Processing Applications Without the “Physical Address” Where the**
2 **Proposed Dispensary Will Be Located**

3 A license application submitted pursuant to Section 78 of the Approved Regulations
4 “must include,” among other things, the following:

5 a. The physical address where the proposed marijuana establishment will be
6 located (Section 78(1)(b)(5) of the Approved Regulations);

7 ...

8 c. Proof that the physical address of the prospective marijuana
9 establishment is owned by the applicant or that the applicant has the written
10 permission of the property owner to operate the proposed marijuana
11 establishment on that property (NRSD.210(5)(b)

12 Many applicants (e.g., LivFree) were diligent in obtaining actual locations and providing the
13 “physical address” and/or proof of property owner permission with their applications. MM
14 went much farther. Because MM was moving its existing dispensary to a new location, it put its
15 actual operational dispensary building in its application as a proposed location. This is what
16 MM stated in 5.3.3 Tab III – Building/Establishment Information:

17 **Company has included two sets of plans in this non-identified section. The first**
18 **set of plans is for a leased 4600 sq. ft. facility, already built as shown, and**
19 **has been operated as a fully compliant Nevada licensed marijuana**
20 **dispensary, and has previously passed Nevada Department of Taxation**
21 **inspection and approvals.**

22 **Ex. 9; Relevant Portion of MM Development’s Application (Bold added).** In other words,
23 instead of generic plans and specifications for an as yet-to-be-determined location, MM put in
24 an actual built-out dispensary site that had been operating for years.

25 Directly contradicting its own regulations, the DOT accepted and processed applications
26 from winning bidders that did not have any “physical address” whatsoever. This was
27 effectuated through a “Revised Applications” issued on or about July 30, 2018 (less than 45
28 days before applications would be accepted). This purported “amendment” completely
eliminated requirements a. and c. above. Importantly, neither the Approved Regulations nor
NRS Chapter 453D were properly amended to reflect the changes to the Revised Applications

and applicants were not given proper notice of the revisions (as license applications were due to be submitted to the DOT less than 45 days after the Revised Application was released).¹¹

The DOT's abandonment of the "physical address" requirement precluded graders from realistically evaluating community impact at proposed locations – a key component of the grading. The Application Criteria provided by the DOT states that 15 points will be awarded for the "likely impact of the proposed marijuana establishment in the community in which it is proposed to be located":

<p>A proposal demonstrating:</p> <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. <p><i>Please note: The content of this response must be in a non-identified format.</i></p>	15
--	----

There was no way to differentiate between competing applications if the grader did not know where in "the community" that the proposed establishment was to be. Gutting this requirement by eliminating the required "physical address" penalized applicants such as LivFree and MM (which did in fact include a physical address for its proposed establishment). Again, where winning applicants were separated from losing applicants by less than 1 point, the 15 points assigned to this category in and of itself would have elevated many "losers" into "winners."

The DOT's eradication of the physical address requirement also raises serious questions as to how graders could meaningfully score up to 20 points for "[b]uilding and construction

¹¹ The DOT determination that no address was required is a violation of Nevada law and the promulgated regulations, as it prevented the DOT from performing the necessary statutory checks of requisite permission to operate in the physical address and to ensure the distance from schools and community centers. For example, NRS 453D.210 provides that the DOT may only issue a license if the "physical address where the proposed marijuana establishment will operate" is owned by the applicant or the applicant has landlord approval. NRS 453D.210(5)(b). That statute also requires that any marijuana establishment may not be located within one thousand feet of a school or three hundred feet of a "community facility." NRS 453D.210(5)(c). Additionally, NAC 453D.265(3) requires, as part of any application, "[t]he physical address where the proposed marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments."

plans with supporting details” because building plans cannot be produced with “details” without a specific location. The application criteria awarded 20 points in this category:

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:	20
▪ Building and construction plans with supporting details.	
<i>Please note: The content of this response must be in a non-identified format.</i>	

While the subpart scoring for winning applicants is not yet available, there is convincing evidence that the Manpower graders also acted arbitrarily and capriciously in this area. MM, which submitted an **actual built-out location** instead of non-specific “building and construction plans with supporting details”, only got 15.33 points in this category. There is no way that an actual building at a specific address that already operated as a dispensary for years could honestly be graded lower than generic building plans at unknown locations. If MM had gotten the full 20 points that it deserved in this category for its Clark County application (or even 2 more points), it would have been a winning bidder.

Because the Approved Regulations expressly stated that an application “must include” a proposed address, the DOT did not have discretion to cancel this critical requirement. Plaintiffs are informed and believe that substantially all of the winning applications did not have the “physical address” required by law.

5. Failure to Properly Score Educational Achievements (Community Contributions)

The fifth fundamental flaw was the failure to properly score for educational achievements. The Manpower Employees completely and improperly disregarded this category. The applications by a prestigious group of physicians devoted to the scientific study of marijuana were all rejected. Dr. Nick Spirtos explained why the DOT erred in under-scoring the community impact portion of these applications:

... our group of five physicians has published the absolute only work regarding the successful use of a cannabis product made in Nevada to reduce the chronic opiate injections in patients with chronic pain. We demonstrated a 75 percent reduction in opiate use, presented it at the American Society of Clinical Oncology in June of this last year in Chicago.

And so you understand how bizarre – I’ll use the word “bizarre” the scoring was, **we scored less than the average for our impact on this community.** That, in

1 and of itself, should give you some idea the extent that the application process
2 was not fair, just and unbiased.

3 **Ex. 6, 57:8-20 (Bold added).**

4 Dr. Page Bady also testified at the January 2019 Tax Commission meeting that he – a
5 local physician for 20 years and the former medical director of DaVita Health Care Partners (a
6 publicly-traded \$18 billion-dollar company) – received lower-than-average scores for the
7 “impact on the community” portion of the application. **Ex. 6, 58:24-59:6.** Dr. Bady explained:

8 **We scored lower than average on impact on the community.** I don’t know
9 what’s going on in there. I don’t want to accuse anyone of anything, but it’s
difficult to maneuver.

10 And it had a quality that we used to experience in a publicly-traded company,
11 and I wanted to bring that quality and sophistication into this industry when we
have to fight these kind of obstacles.

12 **Ex. 6, 59:3-59:10 (Bold added).** It is mind-boggling that the Verano group (sharp Chicago
13 entrepreneurs) got 11 licenses while dedicated Nevada doctors like Dr. Spirtos and Dr. Bady
14 were not recognized for the extensive marijuana-related benefits they have bestowed on this
15 community. These grading results demonstrate that Manpower’s scoring of the applications
16 was arbitrary and capricious and in violation of DOT’s own regulations as well as Nevada
17 statutes.¹²

18 **6. Applications Were Graded By Six Manpower Employees That Did Not**
19 **Have Adequate Experience**

20 There were 462 applicants that each paid a \$5,000 filing fee; meaning that the DOT
21 collected \$2,310,000 to grade applications. Unlike the 2014 applications that were competently
22 graded by dozens of permanent DHHS state employees, the DOT farmed out the **entire** grading
23 function to Manpower – a temporary help agency. Manpower than provided six (6) employees
24

25 ¹² The actual scores did not reflect the operational history of Nevada dispensary operators or the
26 compliance history (or lack thereof) that was known to the DOT at the time the applications
27 were submitted. One applicant that was caught selling marijuana to minors was awarded 7 new
28 licenses. See Section II(A)(7), *infra*. Both MM and LivFree have outstanding compliance
records with the DOT. Only the DOT can shed further light on what actions it took, if any, to
adjust the scores of applicants with poor compliance histories.

1 to the DOT who actually did the grading of the applications. While this slapdash evaluation
2 process by inadequate staff was doomed to failure at the outset, the outrageous grading that
3 occurred was also the result of the complete and total lack of experience of the persons actually
4 hired by Manpower.

5 The six Manpower employees are depicted below with their names and the job
6 description provided by the DOT:



7
8
9
10
11 **Tina Banaszak**
12 (Manpower Employee #1)
13 "Accountant" I
14 (former Office Max salesperson)



15
16
17
18 **Donette [Last Name Unknown]**
19 **Manpower Employee #2**
20 "Accountant" I



21
22
23
24 **Manpower Employee #3**
25 "Accountant" I



26
27
28 **Manpower Employee #4**
Personnel Officer I



Duane T. Lemons
(Manpower Employee #5)
Fire & Life Safety Inspector



Richard Elloyan
(Manpower Employee #6)
Marijuana/Health Inspector II
(Country-Western singer)

DOT describes Richard Elloyan as a “marijuana” specialist. **Ex. 10.** In actuality, Elloyan is a former restaurant food inspector that retired from the DHHS in 2015.¹³ While he is an aspiring country western singer,¹⁴ Mr. Elloyan has never owned or operated a marijuana facility and has no known experience whatsoever with marijuana. Some doubt he ever set foot in a marijuana dispensary or marijuana cultivation facility before being hired in this matter.

It is truly outrageous that DOT would allow Manpower to foist a food safety inspector into the key position of the grading process by calling him a “Marijuana” specialist. The catastrophic result is that there was and could be no adequate grading of the highest potential point totals of the applications. More fully, the plan for seed to sale care and quality and safekeeping (40 points), the staffing plan (30 points) and the operating procedure plan (20 points) were all evaluated solely on review of tendered plan documents -- there were no interviews of applicants or inspection of existing facilities. In other words, if an applicant hired a clever consultant that drafted and submitted pretty procedures that would purportedly be followed, it could get sky high ratings in these categories.

The application prepared by the DOT makes it clear that 90 points (36% of the maximum score of 250) could be gained in these three categories:

Documentation concerning the integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including:	40
<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>	

///

///

///

¹³ Mr. Elloyan’s formal title from 2005 to 2009 while working for DHHS was an “Environmental Health Specialist.” He inspected restaurants in Northern Nevada for potential health code violations.

¹⁴ If the Court favors country music, it can hear Mr. Elloyan give several performances by entering “Richard Elloyan” and “YouTube” in its internet search engine. The performance from the 2016 Genoa Cowboy Festival is a good example.

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
--	----

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
---	----

A person that had never worked for the marijuana industry would be completely incompetent to rate these respective plans.

Employing its typical hide the ball tactics, DOT has refused to inform applicants what their **specific** scores were in the 3 above categories and have relegated them to learning only their **combined** score in the 3 categories. Likewise, the DOT refuses to inform applicants of what the grading was for any of the winning applicants in these 3 categories or the combined score of winning applicants in these categories. However, it is glaringly apparent that allowing a food inspector to grade sophisticated marijuana operational plans and procedures created inconsistent grades. For example, the MM and LivFree gradings for these three categories in 2018 appear below:

Applicant	Application Jurisdiction	2018 Score (out of 90)
MM	- All jurisdictions	74.67
	- Reno	82.50
LivFree	- Clark County	82.17
	- Lyon County	82.17
	- City of Las Vegas	82.17
	- Nye County	82.17
	- North Las Vegas	82.20

How two of the best dispensary operators in Nevada could get less than the full 90 points is unfathomable. Giving MM 74.67 when MM operates the largest store in Nevada (i.e., Planet 13, which has about 10% of all Nevada sales) is beyond insulting. As the previous high

1 rankings of MM and LivFree in 2014 prove, when someone that knew something about
2 marijuana did the grading in 2014, MM and LivFree got more points than they were given by
3 “marijuana” specialist Elloyan. These three categories and the pertinent criteria were word-for-
4 word identical in 2014 and 2018 – only the grader changed. The DOT charged \$2,310,000 to
5 the applicants to grade the applications. Plaintiffs respectfully submit that this was ample
6 money to hire someone who knew something about marijuana operations to grade the respective
7 plans as opposed to a food safety inspector.

8 The purported “accountants” provided by Manpower are equally distressing. First, as
9 said in Section II(A)(2), these accountants graded one centi-millionaire’s financial strength at 40
10 points but slashed the financial plan grade to a mere 12.67 points when another centi-millionaire
11 was added to the finances. This eye-opening gaffe probably occurred because none of the
12 Manpower “accountants” were actually CPAs.

13 Manpower Employee #1 has been identified as Tina Banaszak. While listed as an
14 “accountant”, Ms. Banaszak was actually a salesperson at Office Max from July 2010 to May
15 2012. **Ex. 11.** Banaszak is not listed as a Nevada CPA Licensee by the Nevada State Board of
16 Accountancy. Her only accounting experience appears to be as an “Owner/Office
17 Administrator” of a construction firm between September 1997 to November 2008. **Ex. 11.**
18 The fact that the Manpower “accountants” mistakenly rated applicants 27.33 points lower when
19 their net worth was \$93 million higher than applicants rated at 40 points alone calls into
20 question the true skill set of these “accountants.” **Ex. 7; Dietz Dec, ¶¶ 11-12.**

21 **7. Improper Bias**

22 The seventh fundamental flaw was an improper bias in favor of certain winning
23 applicants. For example, one of the applicants that won 7 of the licenses was caught early in
24 2018 selling marijuana to minors. **Ex. 12; 5/2/18 Kara Cronkhite email.** When dedicated DOT
25 investigators launched an inquiry, DOT higher-ups ordered them to stop the investigations and
26 white-wash the violations by removing them from the DOT logs:
27
28

1 Please remove the investigation SODs¹⁵ regarding self-reported incidents of
2 sales to a minor for the following: Integral, Nevada Organic Remedies,
Henderson Organic Remedies.

3 Per Jorge [Pupo], this should be a letter similar to an APOC. It should state
4 something to the effect of:

5 We received your incident report.

6 The corrective actions taken were deemed appropriate (or not).

7 No further action is necessary at this time (or please take the following actions to
8 remedy the issue.)

9 **These investigations should be removed from the log.**

10 Once the new letter is drafted, please send to me [Kara Cronkhite] and Damon
11 [Hernandez] to review.

12 **Ex. 12, (Bold added).** This allowed Nevada Organic Remedies to falsely claim in their
13 applications that they had a fantastic “integrated plan ... for the care, quality and safekeeping of
14 marijuana from seed-to-sale” (40 points) and an “operational manual that demonstrates
15 compliance with the regulations of the Department” (30 points) when Nevada Organic
16 Remedies was actually being investigated for selling marijuana to minors just months earlier.
17 Similarly, by ordering that the May 2018 “investigations should be removed from the log” (i.e.,
18 completely hidden), the DOT concealed the actual negative compliance history of Nevada
19 Organic Remedies from the graders. This allowed Nevada Organic Remedies to get 7 licenses
20 by furnishing graders with pretty plan documents that promised compliance that trumped its
21 actual poor compliance history.¹⁶

22 ¹⁵ “SODs” stands for statements of deficiency. “APOC” stands for a plan of correction.

23 ¹⁶ Rumors are rampant regarding the interactions with the DOT higher-ups and winning bidders,
24 and this will likely be a hot focus of discovery. For now, Plaintiffs only note that the
25 remarkable May 2, 2018 email from Kara Cronkhite ordering a cover-up of sales to minors
26 involved the exact same applicant that was engaged in another questionable incident. In
27 October 2018, while attending the Cannabis World Congress and Business Exposition in
28 Boston, Massachusetts, Kara Cronkhite, Steve Gilbert, and Jorge Pupo reportedly fraternized
with Amanda Connor, Esq. Connor is the attorney that was reportedly paid \$150,000 per
application to prepare the 7 winning Nevada Organic Remedies applications. While it is
unknown whether the pending applications by Nevada Organic Remedies were discussed in
Boston, there is a definite appearance of impropriety for its attorney to interact with DOT
higher-ups at the exact same time that applications were being graded (i.e., the month after their
September 20, 2018 submittal and before the awards on December 5, 2018). Raising more

1 **8. Improper Allowance and Evaluation of Nevada Taxes Paid and Other**
2 **Financial Contributions**

3 The eighth fundamental flaw was the improper allowance and evaluation of the amount
4 of taxes paid and other beneficial financial contributions as purportedly belonging to the
5 applicant when they were not. Section 80 of the Approved Regulations provided that the
6 amount of Nevada taxes and other financial contributions “by the applicant” be scored – not
7 taxes by entities purportedly related to “the applicant”:

8 f. The amount of taxes paid and other beneficial contributions, including,
9 without limitation, civic or philanthropic involvement with this State or its
10 political subdivisions, **by the applicant** or the owners, officers, or board
11 members of the proposed marijuana establishment

12 (Bold added). This clearly limited the Nevada taxes paid to “the applicant” or to individuals
13 that were owners, officers or board members. It did not include Nevada taxes paid by
14 completely different business entities that were purportedly somehow related to the applicant.

15 The winning applicants engaged in gross manipulation (allowed by DOT) to drastically
16 increase the amount of taxes and other financial contributions that the applicants had
17 purportedly paid. This allowed for a drastic inflation of the grades for newly-formed applicants
18 that had actually paid no Nevada taxes whatsoever. This was primarily done by the artifice of
19 having completely separate entities claim taxes and contributions that were actually paid by
20 other entities.

21 Essence is a good example of an applicant shifting other entities’ taxes to a completely
22 separate and distinct entity. Essence is one of the leading dispensaries in the County and is
23 owned and operated by Integral Associates, LLC, which was formed on April 29, 2014. **Ex. 13;**
24 4/29/14 Nev.Sec.State filing. Essence created two brand-new LLCs called Essence Henderson,
25 LLC and Essence Tropicana, LLC on December 29, 2017. **Ex. 14;** 12/29/17 Nev.Sec.State
26 filings. Essence issued a press release on December 11, 2018 proclaiming that it won 8 licenses
27 total, including **two in unincorporated Clark County. Ex. 3.**

28 alarm, Amanda Connor’s dispensary clients received at least 16 conditional licenses in the 2018
application process.

1 When complaints were raised with the DOT that giving Essence more than one license
2 in Clark County blatantly violated the “anti-monopoly” provision that precluded the same
3 applicant from having multiple licenses in one jurisdiction, DOT responded with an affidavit
4 arguing that Essence did not in fact violate this provision because Integral Associates, LLC,
5 Essence Henderson, LLC and Essence Tropicana, LLC were “different” entities. Ex. 1;
6 12/13/18 Gilbert Aff.; ¶¶ 15-16; “The information [that Essence won multiple entities in the
7 same jurisdiction], attributed by MM to ‘press reports’ related to the breakdown of licenses
8 awarded in Clark County, is inaccurate;” and then describing the true winner as Essence
9 Henderson, LLC and Essence Tropicana LLC and not Integral Associates, LLC.

10 Despite proclaiming that these were separate entities for the anti-monopoly provisions,
11 DOT and the Manpower graders took the tax and financial contributions of Integral Associates,
12 LLC, and used it to highly score the financial plan for the purported completely different
13 entities of Essence Henderson, LLC and Essence Tropicana LLC. Because the two new
14 Essence entities were not even formed until the final days of 2017, they could have paid no
15 Nevada taxes whatsoever and made no Nevada financial contribution whatsoever prior to the
16 date that their applications for licenses were filed in 2018. Given the number of points awarded
17 for tax payments and financial contributions (25 points in this subpart), it would have been
18 impossible for these entities to be winning applicants unless they were awarded points for taxes
19 actually paid by Integral Associates, LLC.¹⁷ Hence, applicants are “separate” applicants to the
20 DOT when the “anti-monopoly” provision is applied but the “same” applicant when taxes paid
21 are shuffled from one completely different legal entity to another. This legerdemain allowed
22 winning applicants that had actually paid no Nevada taxes whatsoever to prevail by falsely
23 usurping the taxes paid by other entities.

24
25
26
27 ¹⁷ It would have been “impossible” because MM has been informed it was less than one point
28 away from a winning application in the City of Las Vegas. Hence, if winning applicants merely
lost 1 point, MM would have been a winning applicant (just as it was in 2014).

1 **B. The Tax Commission Has Jurisdiction To Process The Pending Appeals Of**
2 **Denials/Grants Of Retail Marijuana Licenses**

3 MM and LivFree timely submitted recreational marijuana retail store license
4 applications and received rejections on or around December 5, 2018. All of Plaintiffs' license
5 applications were denied. Plaintiffs submitted Appeals and Petitions for Redetermination, dated
6 January 3, 2019, which were emailed (to 'nevadaolt@tax.state.nv.us') and sent via Certified
7 Mail and FedEx to the Department of Taxation.

8 On January 10, 2019, Plaintiffs received correspondence from the DOT, in which the
9 DOT stated: "As there is no allowance for an appeal of the denial of your application for the
10 issuance of a retail marijuana store license, no further action will be taken by the Department on
11 your Notice of Appeal." Ex. 15; Jan. 10, 2019 Correspondence. The Deputy Executive
12 Director of the Marijuana Enforcement Division (who is not an attorney) made this decision
13 that the Nevada Tax Commission had no ability to hear Plaintiffs' appeals. There was no
14 identifiable input from the Tax Commission. But Tax Commissioner Kelesis is 100% correct
15 that Nevada statutes provide for Plaintiffs' appeals and a hearing before the Nevada Tax
16 Commission.

17 NRS 360.245(1)(b) provides that any person or entity, "who is aggrieved" by a decision
18 from the DOT "may appeal the decision by filing a notice of appeal with the Department
19 within 30 days after service of the decision upon that person or business or legal entity."
20 Moreover, "[t]he Nevada Tax Commission, as head of the Department, may review all
21 decisions made by the Executive Director [of the Department] that are not otherwise appealed
22 to the Commission pursuant to this section." NRS 360.245(3). Accordingly, the statutes
23 governing the DOT and the Nevada Tax Commission give the Nevada Tax Commission the
24 authority to hear and consider Plaintiffs' appeals.

25 Multiple Tax Commissioners have already said that they welcome an appeal;
26 Commissioner Kelesis said:

27 And we're going to go from the issuance of the license directly to the court. It's
28 like they're skipping us. Somebody is under the distinct impression that we, as a
Commission, do not have jurisdiction over this. I suggest they read 360 real

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1 close. **We are the head of the Department, and we are the head of the**
2 **Division, and it comes to us.**

3 **Ex. 6, 65:6-12 (Bold added).** Commissioner Kelesis didn't quit with his statements at the
4 January Tax Commission meeting. In March, he said:

5 MEMBER KELESIS: I'm not familiar with how they worded their petitions. But
6 in the past if there is a denial and the appeal of the denial is brought to us and we
7 hear that. And there's nothing in the regulations that says that should be stopped
8 for any reason. **So I'm wondering why we haven't seen any of the appeals.**

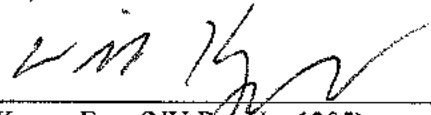
9 **Ex. 16; 3/4/19 Tax Commission Transcript, 107:5-10 (Bold added).** The Nevada Tax
10 Commission believes it should be hearing appeals over the DOT's unpardonable grading. This
11 Court should issue a writ of mandamus directing the DOT to send appeals to the Tax
12 Commission.

13 III. CONCLUSION

14 Press reports suggest that marijuana licenses may be worth as much as \$30 Million or
15 more per license. While the DOT should have appropriately graded applications regardless of
16 their worth, the sloppy, haphazard and unlawful way in which these valuable property interests
17 were dished out to a few favored applicants is stunning. While Plaintiffs believe that the cult-
18 like secrecy of the DOT is concealing many more serious discrepancies, the eight problem areas
19 discussed herein dictate that an injunction and/or writ of mandamus be issued.

20 DATED this 6th day of May, 2019.

21 KEMP, JONES & COULTHARD LLP




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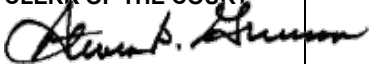
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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 2019, I served a true and correct copy of the foregoing **Plaintiffs'/Counter-Defendants' Motion for Preliminary Injunction or Writ of Mandamus** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.



An employee of Kemp, Jones & Coulthard, LLP



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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

Plaintiff(s),

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

ANSWER TO COMPLAINT

1 vs.

2 THE STATE OF NEVADA, DEPARTMENT
3 OF TAXATION,

4 Defendant(s).

5 and

6 NEVADA ORGANIC REMEDIES, LLC;
7 INTEGRAL ASSOCIATES LLC d/b/a
8 ESSENCE CANNABIS DISPENSARIES, a
9 Nevada limited liability company;
10 ESSENCE TROPICANA, LLC, a Nevada
11 limited liability company; ESSENCE
12 HENDERSON, LLC, a Nevada limited
13 liability company; CPCM HOLDINGS, LLC
14 d/b/a THRIVE CANNABIS
15 MARKETPLACE, COMMERCE PARK
16 MEDICAL, LLC, a Nevada limited liability
17 company; and CHEYENNE MEDICAL,
18 LLC, a Nevada limited liability company;
19 LONE MOUNTAIN PARTNERS, LLC, a
20 Nevada limited liability partnership;
21 HELPING HANDS WELLNESS CENTER,
22 INC., a Nevada corporation; GREENMART
23 OF NEVADA NLV LLC, a Nevada limited
24 liability company; and CLEAR RIVER,
25 LLC,

26 Intervenor(s).

27 The State of Nevada ex rel. Department of Taxation (the "Department") answers
28 Plaintiffs' Amended Complaint as follows:

29 **PARTIES, JURISDICTION, AND VENUE**

30 1. Answering Paragraph 1, the Department is without knowledge or information
31 sufficient to form a belief as to the truth of the allegations set forth therein and, therefore
32 denies the same.

33 2. Answering Paragraph 2, the Department is without knowledge or information
34 sufficient to form a belief as to the truth of the allegations set forth therein and, therefore
35 denies the same.

36 3. Answering Paragraph 3, the Department is without knowledge or information
37 sufficient to form a belief as to the truth of the allegations set forth therein and, therefore
38 denies the same.

1 4. Answering Paragraph 4, the Department is without knowledge or information
2 sufficient to form a belief as to the truth of the allegations set forth therein and, therefore
3 denies the same.

4 5. Answering Paragraph 5, the Department is without knowledge or information
5 sufficient to form a belief as to the truth of the allegations set forth therein and, therefore
6 denies the same.

7 6. Answering Paragraph 6, the Department is without knowledge or information
8 sufficient to form a belief as to the truth of the allegations set forth therein and, therefore
9 denies the same.

10 7. Answering Paragraph 7, the Department is without knowledge or information
11 sufficient to form a belief as to the truth of the allegations set forth therein and, therefore
12 denies the same.

13 8. Answering Paragraph 8, the Department is without knowledge or information
14 sufficient to form a belief as to the truth of the allegations set forth therein and, therefore
15 denies the same.

16 9. Answering Paragraph 9, the Department is without knowledge or information
17 sufficient to form a belief as to the truth of the allegations set forth therein and, therefore
18 denies the same.

19 10. Answering Paragraph 10, the Department is without knowledge or
20 information sufficient to form a belief as to the truth of the allegations set forth therein
21 and, therefore denies the same.

22 11. Answering Paragraph 11, the Department is without knowledge or
23 information sufficient to form a belief as to the truth of the allegations set forth therein
24 and, therefore denies the same.

25 12. Answering Paragraph 12, the Department is without knowledge or
26 information sufficient to form a belief as to the truth of the allegations set forth therein
27 and, therefore denies the same.

28 ...

1 13. Answering Paragraph 13, the Department states that it was created under
2 NRS 360.120 and has certain duties related to the regulation and licensing of marijuana
3 under Nevada law, including NRS 453D and NAC 453D.

4 14. Answering Paragraph 14, the Department is without knowledge or
5 information sufficient to form a belief as to the truth of the allegations set forth therein
6 and, therefore denies the same.

7 15. Answering Paragraph 15, the Department is without knowledge or
8 information sufficient to form a belief as to the truth of the allegations set forth therein
9 and, therefore denies the same.

10 **GENERAL ALLEGATIONS**

11 16. Answering Paragraph 16, the Department admits the Nevada Legislature
12 passed multiple bills governing the licensing, regulation, and operation of recreational
13 marijuana establishments throughout the state, which would become effective after
14 November 2019. The Department further admits Assembly Bill 422 transferred
15 responsibility for the registration, licensing, and regulation of medical marijuana to the
16 Department, but the Department was already responsible for the registration, licensing,
17 and regulation of retail marijuana.

18 17. Answering Paragraph 17, the Department is without knowledge or
19 information sufficient to form a belief as to the truth of the allegations set forth therein
20 because it does not understand what Paragraph 17 is attempting to state. The Department
21 therefore denies the allegations.

22 18. Answering Paragraph 18, the Department admits the allegations.

23 19. Answering Paragraph 19, the Department admits the allegations except for
24 the emphasis provided.

25 20. Answering Paragraph 20, the Department admits the allegations except for
26 the emphasis provided.

27 21. Answering Paragraph 21, the Department admits the allegations.

28 22. Answering Paragraph 22, the Department admits the allegations.

1 23. Answering Paragraph 23, the Department admits the allegations.

2 || 24. Answering Paragraph 24, the Department denies the allegations.

3 25. Answering Paragraph 25, the Department denies the allegations.

4 26. Answering Paragraph 26, the Department denies the allegations.

5 27. Answering Paragraph 27, the Department denies the allegations.

28. Answering Paragraph 28, the Department admits it was to issue conditional licenses to successful applicants by December 5, 2018. The Department denies the remaining allegations.

9 29. Answering Paragraph 29, the Department admits the allegations.

10 30. Answering Paragraph 30, the Department denies the allegations.

11 31. Answering Paragraph 31, the Department admits the allegations.

12 32. Answering Paragraph 32, the Department admits the allegations.

13 33. Answering Paragraph 33, the Department denies the allegations.

14 34. Answering Paragraph 34, the Department denies the allegations.

15 35. Answering Paragraph 35, the Department denies the allegations.

III.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (Violation of Civil Rights)

(Due Process: Deprivation of Property)

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

22 36. Answering Paragraph 36, the Department states that this incorporating
23 reference does not require a response.

24 37. Answering Paragraph 37, the Department denies the allegations.

25 38. Answering Paragraph 38, the Department denies the allegations.

26 39. Answering Paragraph 39, the Department denies the allegations.

27 40. Answering Paragraph 40, the Department denies the allegations.

28 41. Answering Paragraph 41, the Department denies the allegations.

1 42. Answering Paragraph 42, the Department denies the allegations.
2 43. Answering Paragraph 43, the Department denies the allegations.
3 44. Answering Paragraph 44, the Department denies the allegations.
4 45. Answering Paragraph 45, the Department denies the allegations.
5 46. Answering Paragraph 46, the Department denies the allegations.
6 47. Answering Paragraph 47, the Department denies the allegations.
7 48. Answering Paragraph 48, the Department denies the allegations.
8 49. Answering Paragraph 49, the Department denies the allegations.
9 50. Answering Paragraph 50, the Department denies the allegations.
10 51. Answering Paragraph 51, the Department denies the allegations.
11 52. Answering Paragraph 52, the Department denies the allegations.
12 53. Answering Paragraph 53, the Department denies the allegations.
13 54. Answering Paragraph 54, the Department denies the allegations.
14 55. Answering Paragraph 55, the Department denies the allegations.
15 56. Answering Paragraph 56, the Department denies the allegations.
16 57. Answering Paragraph 57, the Department denies the allegations.
17 58. Answering Paragraph 58, the Department denies the allegations.
18 59. Answering Paragraph 59, the Department denies the allegations.
19 60. Answering Paragraph 60, the Department denies the allegations.
20 61. Answering Paragraph 61, the Department denies the allegations.

21 **SECOND CLAIM FOR RELIEF**
22 **(Violation of Civil Rights)**

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

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

25 62. Answering Paragraph 62, the Department states that this incorporating
26 reference does not require a response.

27 63. Answering Paragraph 63, the Department denies the allegations.

28 64. Answering Paragraph 64, the Department denies the allegations.

- 1 65. Answering Paragraph 65, the Department denies the allegations.
2 66. Answering Paragraph 66, the Department denies the allegations.
3 67. Answering Paragraph 67, the Department denies the allegations.
4 68. Answering Paragraph 68, the Department denies the allegations.
5 69. Answering Paragraph 69, the Department denies the allegations.

6 **THIRD CLAIM FOR RELIEF**

7 **(Violation of Civil Rights)**

8 **(Equal Protection)**

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

- 10 70. Answering Paragraph 70, the Department states that this incorporating
11 reference does not require a response.
12 71. Answering Paragraph 71, the Department denies the allegations.
13 72. Answering Paragraph 72, the Department denies the allegations.
14 73. Answering Paragraph 73, the Department denies the allegations.
15 74. Answering Paragraph 74, the Department denies the allegations.

16 **FOURTH CLAIM FOR RELIEF**

17 **(Petition for Judicial Review)**

- 18 75. Answering Paragraph 75 the Department states that this incorporating
19 reference does not require a response.
20 76. Answering Paragraph 76, the Department denies the allegations.
21 77. Answering Paragraph 77, the Department denies the allegations.
22 78. Answering Paragraph 78, the Department admits there is no provision
23 allowing for administrative appeal. The Department denies the remaining allegations.
24 79. Answering Paragraph 79, the Department denies the allegations.
25 80. Answering Paragraph 80, the Department denies the allegations.

26 ...

27 ...

28 ...

FIFTH CLAIM FOR RELIEF
(Petition for Writ of Mandamus)

81. Answering Paragraph 81, the Department states that this incorporating reference does not require a response.

82. Answering Paragraph 82, the Department admits the allegations.

83. Answering Paragraph 83, the Department denies the allegations.

84. Answering Paragraph 84, the Department denies the allegations.

85. Answering Paragraph 85, the Department denies the allegations.

86. Answering Paragraph 86, the Department denies the allegations.

WHEREFORE, the Department prays for relief from this Court as follows

1. That Plaintiffs take nothing by way of this Amended Complaint;
2. That Plaintiffs claims against Defendants be dismissed with prejudice;
3. That Defendants be awarded reasonable attorney fees and costs of suit; and
4. For such other and further relief as this Honorable Court may deem just and proper.

GENERAL DENIALS

The Department denies any and all allegations in the Amended Complaint not specifically admitted in this Answer.

The Department denies that Plaintiffs are entitled to any of the relief prayed for in the Amended Complaint.

AFFIRMATIVE DEFENSES

The Department denies any and all liability in this matter and asserts the following affirmative defenses:

1. Plaintiffs have failed to state a claim for which relief can be granted.
2. Plaintiffs do not have a property right in a privilege license that they do not have.
3. Plaintiffs do not have a fundamental right to a privilege license.
- ...

1 4. Chapter 453D does not provide for a hearing when a retail marijuana license
2 is not issued.

3 5. The Nevada Administrative Procedures Act, NAC Chapter 233B, does not
4 provide for a hearing when a retail marijuana license is not issued.

5 6. The Department's actions were neither arbitrary, capricious, nor an abuse of
6 discretion.

7 7. The Department's interpretation of the statutes and regulations it is
8 authorized to execute is given great deference.

9 8. The Department used an impartial and numerically scored competitive
10 bidding process.

11 9. Plaintiffs did not have a statutory entitlement to a license.

12 10. The U.S. Constitution does not protect the right to engage in a business that
13 is illegal under federal law.

14 11. Plaintiffs do not have standing.

15 12. Plaintiffs have failed to exhaust their administrative remedies.

16 13. The Complaint fails to present a justiciable controversy.

17 14. This Court lacks jurisdiction to hear Plaintiffs' claims.

18 15. The Department is immune from liability pursuant to NRS 41.031, et. seq.

19 16. Plaintiff failed to name the Department properly as required by NRS
20 41.031(2).

21 17. Plaintiffs' claims, including the declaratory and/or equitable claims are barred
22 by the doctrines of waiver, ratification, estoppel, unclean hands and other equitable
23 defenses.

24 18. Plaintiffs' claims are barred by the applicable statute of limitations and/or the
25 doctrine of laches.

26 19. Plaintiffs' claims are barred based on impossibility.

27 20. Plaintiffs' claims have been waived because of the wrongful acts, omissions
28 and conduct of Plaintiffs.

1 21. Plaintiffs would be unjustly enriched if awarded damages.

2 22. The Department has no contractual relationship with Plaintiffs to give rise to
3 any declaratory relief.

4 23. The damages sustained by the Plaintiff, if any, were caused by the acts of
5 unknown third persons who were not agents, servants, or employees of the Department,
6 and who were not acting on behalf of the Department in any manner or form, and, as such,
7 the Department is not liable in any manner to Plaintiff.

8 24. The Department is not legally responsible for the actions and/or omissions of
9 other third parties.

10 25. Plaintiffs fail to name a party necessary for full and adequate relief essential
11 in this action.

12 26. Plaintiffs failed to comply with a condition precedent.

13 27. Plaintiffs have not suffered any damages attributable to the actions of the
14 Department.

15 28. Plaintiffs have failed to timely protect and/or enforce their alleged rights.

16 29. Plaintiffs' claims are barred as Plaintiffs have failed, refused, or neglected to
17 take reasonable steps to mitigate damages, therefore barring or diminishing the ability to
18 recover.

19 30. The Department has an objective good faith belief that it acted reasonably and
20 in good faith and the Department's actions were legally justified.

21 31. The Department substantially complied with NRS and NAC Chapter 453D.

22 32. The Department, at all relevant times, acted with due care and
23 circumspection in the performance of its duties; exercised the degree of skill and learning
24 ordinarily possessed and exercised by members of its profession in good standing,
25 practicing in similar localities and that at all times, used reasonable care and diligence in
26 the exercise of its skills and the application of its learning, and at all times acted according
27 to its best judgment and met the applicable standard of care.

28 ...

33. Plaintiffs' claims for relief are barred as Plaintiff's alleged damages are speculative and cannot be calculated with any certainty or reliability.

34. Each purported claim for relief is barred by the doctrines of *res judicata* and/or collateral estoppel.

35. Each purported claim for relief is barred as Plaintiffs are estopped from pursuing any claim against the Department in accordance with equitable principles of jurisprudence.

36. The Department alleges that the damages, if any, alleged by the Plaintiffs were the result of independent intervening acts, over which the Department had no control, which resulted in the superseding cause of Plaintiffs alleged damages.

37. The Department avails itself of all affirmative defenses set forth in and or arising out of NRS Chapter 453D and NRS Chapter 360 and all applicable regulations and subparts.

38. All possible affirmative defenses may not have been alleged inasmuch as insufficient facts and other relevant information may not be available after reasonable inquiry and, pursuant to NEV. R. CIV. P. 11, the Department hereby reserves the right to amend these affirmative defenses as additional information becomes available. Additionally, one or more of these Affirmative Defenses may have been pled for the purposes of non-waiver.

DATED this 20th day of May, 2019.

AARON D. FORD
Attorney General

By: /s/ Ketan D. Bhirud
 Steve Shevorski (Bar No. 8256)
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 Ketan D. Bhirud (Bar No. 10515)
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 Theresa M. Haar (Bar No. 12158)
 Senior Deputy Attorney General
 David J. Pope (Bar No. 8617)
 Chief Deputy Attorney General
 Robert E. Werbicky (Bar No. 6166)
 Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **ANSWER TO COMPLAINT** with the Clerk of the Court by using the electronic filing system on the 20th day of May, 2019.

I certify that the following participants in this case are registered electronic filing systems users and will be served electronically:

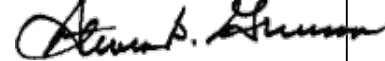
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<i>Marketplace, Commerce Park Medical,</i>	
<i>LLC, and Cheyenne Medical, LLC</i>	

/s/ Traci Plotnick
Traci Plotnick, an employee of the
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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; ZION GARDENS LLC, a Nevada limited liability company; and MMOF VEGAS RETAIL, INC., a Nevada corporation,

Plaintiffs,

v.

STATE OF NEVADA, DEPARTMENT OF TAXATION, a Nevada administrative agency;

CASE NO.: A-19-787004-B

DEPT NO.: XI

SECOND AMENDED COMPLAINT

(Exempt From Arbitration Pursuant to N.A.R. 3(A): Action Seeks Damages in Excess of \$50,000 and Action Seeks Equitable or Extraordinary Relief)

DOES 1 through 20, inclusive; and ROE
CORPORATIONS 1 through 20, inclusive,

Defendants.

AND ALL RELATED MATTERS

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”), ZION GARDENS LLC (“Zion”), and MMOF Vegas Retail, Inc. (“MMOF”) (collectively, the “Plaintiffs”), by and through their undersigned counsel of record Adam K. Bult, Esq., Maximilien D. Fetaz, Esq., and Travis F. Chance, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP, and Adam R. Fulton, Esq., of the law firm of Jennings & Fulton, Ltd., hereby file their Second Amended Complaint against the STATE OF NEVADA, DEPARTMENT OF TAXATION (the “DOT”), DOES 1 through 20 inclusive, and ROE CORPORATIONS 1 through 20, inclusive, alleging and complaining as follows:

PARTIES

1. At all times relevant hereto, ETW is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

2. At all times relevant hereto, Global Harmony is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

3. At all times relevant hereto, GLFH is and was a limited liability company organized and existing under the laws of the State of Nevada and authorized to do business in Clark County, Nevada.

4. At all times relevant hereto, GT is and was a limited liability company organized

1 and existing under the laws of the State of Nevada and authorized to do business in Clark County,
2 Nevada.

3 5. At all times relevant hereto, Herbal Choice is and was a Nevada corporation
4 authorized to do business in Clark County, Nevada.

5 6. At all times relevant hereto, Just Quality is and was a limited liability company
6 organized and existing under the laws of the State of Nevada and authorized to do business in
7 Clark County, Nevada.

8 7. At all times relevant hereto, Libra is and was a limited liability company organized
9 and existing under the laws of the State of Nevada and authorized to do business in Clark County,
10 Nevada.

11 8. At all times relevant hereto, Mother Herb is and was a Nevada corporation and
12 authorized to do business in Clark County, Nevada.

13 9. At all times relevant hereto, NEVCANN is and was a limited liability company
14 organized and existing under the laws of the State of Nevada and authorized to do business in
15 Clark County, Nevada.

16 10. At all times relevant hereto, Red Earth is and was a limited liability company
17 organized and existing under the laws of the State of Nevada and authorized to do business in
18 Clark County, Nevada.

19 11. At all times relevant hereto, THCNV is and was a limited liability company
20 organized and existing under the laws of the State of Nevada and authorized to do business in
21 Clark County, Nevada.

22 12. At all times relevant hereto, Zion is and was a limited liability company organized
23 and existing under the laws of the State of Nevada and authorized to do business in Clark County,
24 Nevada.

25 13. At all times relevant hereto, MMOF is and was a Nevada corporation authorized to
26 do business in Clark County, Nevada.

27 14. At all times relevant hereto, the DOT is and was an agency and political
28 subdivision of the State of Nevada.

15. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants Does 1-20, inclusive, and Roe Corporations 1-20, inclusive, are unknown to Plaintiffs, which therefore sue said Defendants by such fictitious names. Plaintiffs will amend this Second Amended Complaint to state the true names and capacities of said fictitious Defendants when they have been ascertained.

16. Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiffs' damages as herein alleged were proximately caused by Defendants' acts. Each reference in this Complaint to "Defendant" or "Defendants," or a specifically named Defendant refers also to all Defendants sued under fictitious names.

JURISDICTION AND VENUE

17. Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6, § 6, NRS 4.370(2), NRS 30, and because the acts and omissions complained of herein occurred and caused harm within Clark County, Nevada. Further, the amount in controversy exceeds \$15,000.00.

18. Venue is proper in this Court pursuant to NRS 13.020(2)-(3).

GENERAL ALLEGATIONS

19. Plaintiffs incorporate and reallege Paragraphs 1 through 18 as though fully set forth herein.

The Statutory Scheme Governing Retail Marijuana Licenses

20. In or around November 2016, the citizens of the State of Nevada approved a statutory ballot initiative that, *inter alia*, legalized the recreational use of marijuana and allowed for the licensing of recreational marijuana dispensaries.

21. The statutory scheme approved by the voters was codified in NRS Chapter 453D and vested authority for the issuance of licenses for retail marijuana dispensaries in the DOT.

22. NRS 453D.200(1) required the DOT to "adopt all regulations necessary or convenient to carry out the provisions of" that Chapter, including procedures for the issuance of retail marijuana licenses, no later than January 1, 2018.

23. NRS 453D.210(d)(1) limits the number of retail marijuana licenses in Clark County to a total of 80.

24. However, NRS 453D.210(d)(5) provides that Clark County may request that the DOT issue retail marijuana licenses above the limit set forth in NRS 453D.210(d)(5).

25. As mandated by NRS 453D.210(6), “[w]hen competing applications are submitted for a proposed retail marijuana store within a single county, the Department **shall use an impartial and numerically scored competitive bidding process** to determine which application or applications among those competing will be approved.”

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

26. On or around May 8, 2017, the DOT adopted temporary regulations pertaining to, *inter alia*, the application for and the issuance of retail marijuana licenses.

27. The DOT continued preparing draft permanent regulations as required by NRS 453D.200(1) and held public workshops with respect to the same on July 24 and July 25, 2017.

28. On or around December 16, 2017, the DOT issued a Notice of Intent to Adopt permanent regulations pursuant to the mandates of NRS 453D.200(1).

29. On or around January 16, 2018, the DOT held a public hearing on the proposed permanent regulations (LCB File No. R092-17), which was attended by numerous members of the public and marijuana business industry.

30. At the hearing, the DOT was informed that the licensure factors contained in the proposed permanent regulations would have the effect of favoring vertically-integrated cultivators/dispensaries and would result in arbitrary weight being placed upon certain applications that were submitted by well-known, well-connected, and longtime Nevada families.

31. Despite the issues raised at the hearing, on or around January 16, 2018, the DOT adopted the proposed permanent regulations in LCB File No. R092-17 (the “Regulations”). A true and correct copy of the Regulations is attached hereto as **Exhibit 1**.¹

32. Section 80 of the Regulations relates to the DOT’s method of evaluating

¹ The Regulations have been adopted but have yet to be codified in the Nevada Administrative Code.

1 competing retail marijuana license applications.

2 33. Section 80(1) of the Regulations provides that where the DOT receives competing
3 applications, it will “rank the applications...in order from first to last based on compliance with
4 the provisions of this chapter and chapter 453D of NRS and on the content of the applications
5 relating to” several enumerated factors.

6 34. The factors set forth in Section 80(1) of the Regulations that are used to rank
7 competing applications (collectively, the “Factors”) are:

- 8 a. Whether the owners, officers or board members have experience operating
9 another kind of business that has given them experience which is
10 applicable to the operation of a marijuana establishment;
- 11 b. The diversity of the owners, officers or board members of the proposed
12 marijuana establishment;
- 13 c. The educational achievements of the owners, officers or board members of
14 the proposed marijuana establishment;
- 15 d. The financial plan and resources of the applicant, both liquid and illiquid;
- 16 e. Whether the applicant has an adequate integrated plan for the care, quality
17 and safekeeping of marijuana from seed to sale;
- 18 f. The amount of taxes paid and other beneficial financial contributions,
19 including, without limitation, civic or philanthropic involvement with this
20 State or its political subdivisions, by the applicant or the owners, officers or
21 board members of the proposed marijuana establishment;
- 22 g. Whether the owners, officers or board members of the proposed marijuana
23 establishment have direct experience with the operation of a medical
24 marijuana establishment or marijuana establishment in this State and have
25 demonstrated a record of operating such an establishment in compliance
26 with the laws and regulations of this State for an adequate period of time to
27 demonstrate success;
- 28 h. The experience of key personnel that the applicant intends to employ in

operating the type of marijuana establishment for which the applicant seeks a license; and

i. Any other criteria that the DOT determines to be relevant.

35. Aside from the Factors, there is no other competitive bidding process used by the DOT to evaluate competing applications.

36. Section 80(5) of the Regulations provides that the DOT will not issue more than one retail marijuana license to the same person, group of persons, or entity.

37. NRS 453D.210(4)(b) and Section 91(4) of the Regulations requires the DOT to provide the specific reasons that any license application is rejected.

Plaintiffs Receive Arbitrary Denials of their Applications for Retail Marijuana Licenses

38. NRS 453D.210 required the DOT to accept applications and issue licenses only to medical marijuana establishments for 18 months following the date upon which the DOT began to receive applications for recreational dispensaries (the “Early Start Program”).

39. Upon information and belief, the DOT began to accept applications for recreational dispensary licenses on or around May 15, 2017.

40. Beginning upon the expiration of the Early Start Program (or on or around November 15, 2018), the DOT was to receive and consider applications for a recreational dispensary license from any qualified applicant.

41. The DOT released the application package for non-Early Start Program applicants on July 6, 2018 and required those applications to be returned in complete form between September 7 and September 20, 2018. A true and correct copy of the application package is attached hereto as **Exhibit 2**.

42. Each of the Plaintiffs submitted an Application for issuance of a retail marijuana license after the expiration of the Early Start Program during the period specified by the DOT and some Plaintiffs submitted multiple Applications for different localities that contained the same substantive information.

43. Each and every Application submitted by Plaintiffs was full, complete, and contained substantive information and data for each and every factor outlined in the application

1 form.

2 44. Some of the information requested by the form application was “identified,” such
3 that the reviewer would know the identity of the applicant when scoring the same, while some
4 was unidentified, such that the reviewer would not know the identity of the applicant.

5 45. On or around December 5, 2018, each of the Plaintiffs’ Applications was denied
6 by identical written notices issued by the DOT.

7 46. Each of the written notices from the DOT does not contain any specific reasons
8 why the Applications were denied and instead states merely that “NRS 453D.210 limits the total
9 number of licenses that can be issued in each local jurisdiction. This applicant was not issued a
10 conditional license because it did not achieve a score high enough to receive an available
11 license...” Upon information and belief, the DOT utilized the Factors in evaluating each of the
12 Applications, assigning a numerical score to each Factor, but the Factors are partial and arbitrary
13 on their face.

14 47. In addition, the DOT’s review and scoring of each of the Plaintiffs’ Applications
15 was done errantly, arbitrarily, irrationally, and partially because, *inter alia*:

- 16 a. The Applications were complete but received zero scores for some Factors
17 and the only way to receive a zero score is to fail to submit information
18 with respect to that Factor;
- 19 b. The scoring method used by the DOT combined certain Factors into one
20 grouping, effectively omitting certain Factors from consideration;
- 21 c. Plaintiffs that submitted multiple Applications containing the same
22 substantive information and data for different localities received widely
23 different scores for certain Factors; and
- 24 d. The Plaintiffs received much higher scores for the unidentified data and
25 information when compared with the identified data and information
26 submitted.

27 48. Moreover, the highest scored Factor was the organizational structure of the
28 application and the DOT required that Plaintiffs disclose information about the identities of “key

1 personnel” with respect to that Factor, resulting in arbitrary and partial weight being placed upon
2 applications from well-known and well-connected applicants.

3 49. Upon information and belief, the DOT improperly engaged Manpower US Inc.
4 (“Manpower”) to provide temporary personnel for the review and scoring of submitted license
5 Applications without providing them with any uniform method of review to ensure consistency
6 and impartiality, which further contributed to the arbitrary and partial scoring of Plaintiff’s
7 Applications.

8 50. Upon information and belief, the DOT issued multiple licenses to the same entity
9 or group of persons to the exclusion of other applicants, including Plaintiffs, in violation of the
10 DOT’s own Regulations.

11 **FIRST CLAIM FOR RELIEF**

12 **Violation of Substantive Due Process**

13 51. Plaintiffs incorporate and reallege Paragraphs 1 through 50 as though fully set
14 forth herein.

15 52. The Fourteenth Amendment to the United States Constitution provides that “no
16 state [may] deprive any person of life, liberty, or property, without due process of law.”

17 53. Similarly, Article 1, Section 8 of the Nevada Constitution provides that “[n]o
18 person shall be deprived of life, liberty, or property, without due process of law.”

19 54. Plaintiffs are persons within the meaning of the United States and Nevada
20 Constitutions’ guarantees of due process.

21 55. Retail marijuana licenses constitute protectable property interests under the
22 Nevada and United States Constitutions.

23 56. The denials of Plaintiffs’ Applications were based upon the Factors.

24 57. The Factors are arbitrary, irrational, and lack impartiality on their face.

25 58. As a result of the DOT’s use of the Factors in denying Plaintiffs’ Applications,
26 Plaintiffs have been deprived of their fundamental property rights in violation of the substantive
27 due process guarantees of the Nevada and United States Constitutions.

28 59. In addition, the Factors violate due process as applied to Plaintiffs’ Applications

because, *inter alia*:

- a. The Applications were complete but received zero scores for some Factors and the only way to receive a zero score is to fail to submit information with respect to that Factor;
- b. The scoring method used by the DOT combined certain Factors into one grouping, effectively omitting certain Factors from consideration;
- c. Plaintiffs that submitted multiple Applications containing the same substantive information and data for different localities received widely different scores for certain Factors;
- d. The Plaintiffs received much higher scores for the unidentified data and information when compared with the identified data and information submitted;
- e. The DOT placed improper weight upon other applications simply because they were submitted by well-known and well-connected persons; and
- f. The DOT improperly utilized Manpower temporary workers who had little to no experience in retail marijuana licensure to review the Applications and failed to provide those persons with a uniform system of review to ensure consistency and impartiality in the scoring process.

60. As a result of the DOT's arbitrary, irrational, and partial application of the Factors to Plaintiffs' applications, Plaintiffs have been deprived of their fundamental property rights in violation of the substantive due process guarantees of the Nevada and United States Constitutions, as applied.

61. As a direct and proximate result of the DOT's constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

62. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

...

...

SECOND CLAIM FOR RELIEF

Violation of Procedural Due Process

63. Plaintiffs incorporate and reallege Paragraphs 1 through 62 as though fully set forth herein.

64. The Fourteenth Amendment to the United States Constitution provides that “no state [may] deprive any person of life, liberty, or property, without due process of law.”

65. Similarly, Article 1, Section 8 of the Nevada Constitution provides that “[n]o person shall be deprived of life, liberty, or property, without due process of law.”

66. Plaintiffs are persons within the meaning of the United States and Nevada Constitutions’ guarantees of due process.

67. Retail marijuana licenses constitute protectable property interests under the Nevada and United States Constitutions.

68. NRS 453D, in conjunction with the Regulations, govern the application for and the issuance of retail marijuana licenses within the State of Nevada.

69. Under those provisions, the DOT denied Plaintiffs’ Applications for a retail marijuana license without notice or a hearing.

70. The denial notices sent by the DOT did not comply with NRS 453D.210(4)(b) or procedural due process because they do not specify the substantive reasons that Plaintiffs’ Applications were denied.

71. Neither NRS 453D nor the Regulations provide for a mechanism through which Plaintiffs may have their Applications fully and finally determined, either before or after denial of the same.

72. As a result of the denial of Plaintiffs’ Applications without notice or a hearing, Plaintiffs have been denied their right to procedural due process guaranteed by the Nevada and United States Constitutions.

73. As a direct and proximate result of the DOT’s constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

74. Plaintiffs have been forced to retain counsel to prosecute this action and are thus

entitled to an award of attorneys' fees and costs as provided by applicable law.

THIRD CLAIM FOR RELIEF

Violation of Equal Protection

75. Plaintiffs incorporate and reallege Paragraphs 1 through 74 as though fully set forth herein.

76. The Fourteenth Amendment to the United States Constitution provides that no "state [may]...deny to any person within its jurisdiction the equal protection of the laws."

77. Similarly, Article 4, Section 21 of the Nevada Constitution requires that all laws be "general and of uniform operation throughout the State."

78. Plaintiffs are persons within the meaning of the Nevada and United States Constitutions' guarantees of equal protection.

79. Plaintiffs have a fundamental right to engage in a profession or business, including that of retail marijuana establishments.

80. The DOT utilized the Factors when evaluating Plaintiffs' Applications.

81. The Factors violate equal protection on their face because they contain arbitrary, partial, and unreasonable classifications that bear no rational relationship to a legitimate governmental interest.

82. The Factors further violate equal protection on their face because they contain arbitrary, partial, and unreasonable classifications that are not narrowly tailored to the advancement of any compelling interest.

83. In addition, the application of the Factors to Plaintiffs' Applications violates equal protection because it was arbitrary, partial and unreasonable, bearing no rational relationship to a legitimate governmental interest and/or failing to be narrowly tailored to any compelling government interest, to wit:

a. The Applications were complete but received zero scores for some Factors and the only way to receive a zero score is to fail to submit information with respect to that Factor;

b. The scoring method used by the DOT combined certain Factors into one

grouping, effectively omitting certain Factors from consideration;

- c. Plaintiffs that submitted multiple Applications containing the same substantive information and data for different localities received widely different scores for certain Factors;
- d. The Plaintiffs received much higher scores for the unidentified data and information when compared with the identified data and information submitted;
- e. The DOT placed improper weight upon other applications simply because they were submitted by well-known and well-connected persons; and
- f. The DOT improperly utilized Manpower temporary workers who had little to no experience in retail marijuana licensure to review the Applications and failed to provide those persons with a uniform system of review to ensure consistency and impartiality in the scoring process.

84. As a result of the DOT's actions as set forth herein, Plaintiffs' rights to equal protection of the law were violated.

85. As a direct and proximate result of the DOT's constitutional violations, as set forth hereinabove, Plaintiffs have sustained damages in an amount in excess of \$15,000.00.

86. Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

FOURTH CLAIM FOR RELIEF

Declaratory Judgment

87. Plaintiffs incorporate and reallege Paragraphs 1 through 86 as though fully set forth herein.

88. Under NRS 30.010, *et seq.*, the Uniform Declaratory Judgment Act, any person whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

1 89. The DOT enacted the Regulations, including the Factors and Section 80(5) of the
2 Regulations, pursuant to NRS 453D.200 and NRS 453D.210(6).

3 90. NRS 453D.210(6) requires that the Factors be “an impartial and numerically
4 scored competitive bidding process.”

5 91. Plaintiffs contend that the DOT violated NRS 453D.210(6) because the Factors are
6 not impartial and are instead partial, arbitrary, and discretionary, in contravention of NRS
7 453D.210(6).

8 92. Plaintiffs further contend that the DOT applied the Factors to their Applications in
9 an arbitrary and partial manner, including because:

- 10 a. The Applications were complete but received zero scores for some Factors
11 and the only way to receive a zero score is to fail to submit information
12 with respect to that Factor;
- 13 b. The scoring method used by the DOT combined certain Factors into one
14 grouping, effectively omitting certain Factors from consideration;
- 15 c. Plaintiffs that submitted multiple Applications containing the same
16 substantive information and data for different localities received widely
17 different scores for certain Factors;
- 18 d. The Plaintiffs received much higher scores for the unidentified data and
19 information when compared with the identified data and information
20 submitted;
- 21 e. The DOT placed improper weight upon other applications simply because
22 they were submitted by well-known and well-connected persons; and
- 23 f. The DOT improperly utilized Manpower temporary workers who had little
24 to no experience in retail marijuana licensure to review the Applications
25 and failed to provide those persons with a uniform system of review to
26 ensure consistency and impartiality in the scoring process.

27 93. Plaintiffs further contend that the DOT violated NRS 453D.210(6) because the
28 Factor evaluation procedure is not a competitive bidding process, as required by NRS

453D.210(6).

94. Plaintiffs further contend that the DOT violated Section 80(5) of the Regulations because multiple retail marijuana licenses were issued to the same entity or group of persons.

95. Plaintiffs further contend that the denial notices sent by the DOT failed to comply with NRS 453D.210(4)(b) because they do not give the specific substantive reasons for the denial of Plaintiffs' Applications.

96. The DOT contends that that Factors are compliant with NRS 453D.210(6), that all applications it approved were done so in a valid manner, and that the denial notices complied with NRS 453D.210(4)(b).

97. The foregoing issues are ripe for judicial determination because there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

98. Accordingly, Plaintiffs request a declaratory judgment from this Court that: (1) the Factors do not comply with NRS 453D.210(6) because they are not impartial or a competitive bidding process; (2) the DOT applied the Factors to Plaintiffs' Applications in a wholly arbitrary and irrational manner; (3) the DOT violated Section 80(5) of the Regulations by issuing multiple retail marijuana licenses to the same entity or group of persons; and (4) the denial notices did not comply with NRS 453D.210(4)(b).

Plaintiffs have been forced to retain counsel to prosecute this action and are thus entitled to an award of attorneys' fees and costs as provided by applicable law.

WHEREFORE, Plaintiffs pray for relief from this Court as follows:

1. For an award of compensatory damages in an amount to be determined at trial for the DOT's violation of Plaintiffs' substantive due process rights, as set forth herein;
2. For an award of compensatory damages in an amount to be determined at trial for the DOT's violation of Plaintiffs' procedural due process rights, as set forth herein;
3. For an award of compensatory damages in an amount to be determined at

1 trial for the DOT's violation of Plaintiffs' rights to equal protection of the
2 law, as set forth herein;

- 3 4. For relief in the form of a judgment from this Court that: (1) the Factors do
4 not comply with NRS 453D.210(6) because they are not impartial or a
5 competitive bidding process; (2) the DOT applied the Factors to Plaintiffs'
6 Applications in a wholly arbitrary and irrational manner; (3) the DOT
7 violated Section 80(5) of the Regulations by issuing multiple retail
8 marijuana licenses to the same entity or group of persons; and (4) the
9 denial notices did not comply with NRS 453D.210(4)(b);
- 10 5. For an award of attorneys' fees and costs in bringing the instant action as
11 provided by applicable law; and
- 12 6. For any additional relief this Court deems just and proper.

13 DATED this 21st day of May, 2019.

14 BROWNSTEIN HYATT FARBER SCHRECK, LLP

15 /s/ Adam K. Bult

16 ADAM K. BULT, ESQ., Nevada Bar No. 9332
17 MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737
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20 ADAM R. FULTON, Esq., Nevada Bar No. 11572

21 *Attorneys for Plaintiffs*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT** to be submitted electronically for filing and/or service with the Eighth Judicial District Court's Electronic Filing System on the 21st day of May, 2019, to the following:

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EXHIBIT 1

SECRETARY OF STATE
FILING DATA

FILED.NV.SOS
2018 FEB 27 PM2:30



Form For Filing
Administrative Regulations

Agency: Department of Taxation

Permanent Regulation
LCB File No. R092-17

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Governor's signature

Classification: ADOPTED BY AGENCY

Brief description of action: The Nevada Tax Commission adopted LCB File No. R092-17 to establish procedures for the issuance, suspension or revocation of licenses issued by the department of Taxation, provide operating requirements to licensed marijuana establishments, require monthly filing of returns and remittance of tax imposed on the sales of marijuana, require the maintenance of certain records, and provide for the inspection of such records relating to the regulation and taxation of marijuana pursuant to NRS 453D and other matters properly relating thereto.

Authority citation other than 233B: N/A

Notice date: December 16, 2017

Date of Adoption by Agency: January 16, 2018

Hearing date: January 16, 2018

AA 003667

**APPROVED REGULATION OF THE
DEPARTMENT OF TAXATION**

LCB File No. R092-17

Effective February 27, 2018

EXPLANATION – Matter in *italics* is new; matter in brackets ~~(omitted material)~~ is material to be omitted.

AUTHORITY: §§1-21, NRS 453A.370, as amended by section 47 of Assembly Bill No. 422, chapter 540, Statutes of Nevada 2017, at page 3706 and section 48 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3759; §§22-76, 79-81, 83-101, 103-234 and 236-246, NRS 453D.200; §§77, 78, 82 and 102, NRS 453D.200 and 453D.230; §235, NRS 372A.290, as amended by section 9 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3730, and 453D.200.

A REGULATION relating to marijuana; revising requirements relating to independent testing laboratories; providing for the licensing of marijuana establishments and registration of marijuana establishment agents; providing requirements concerning the operation of marijuana establishments; providing additional requirements concerning the operation of marijuana cultivation facilities, marijuana distributors, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores; providing standards for the packaging and labeling of marijuana and marijuana products; providing requirements relating to the production of edible marijuana products and other marijuana products; providing standards for the cultivation and production of marijuana; establishing requirements relating to advertising by marijuana establishments; establishing provisions relating to the collection of excise taxes from marijuana establishments; establishing provisions relating to dual licensees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Department of Taxation to adopt all regulations necessary or convenient to carry out the provisions of chapter 453D of NRS, which exempts a person who is 21 years of age or older from state or local prosecution for possession, use, consumption, purchase, transportation or cultivation of certain amounts of marijuana and requires the Department to begin receiving applications for the licensing of marijuana establishments on or before January 1, 2018.

--1--

Approved Regulation R092-17

AA 003668

Sections 74-102 of this regulation provide for the licensing of marijuana establishments and the registration of marijuana establishment agents. **Section 76** of this regulation requires the Department to determine at least annually whether additional marijuana establishments are necessary to serve the people of this State and, if so, to issue a request for applications. **Sections 77 and 78** of this regulation establish the information that must be submitted with an application for a license for a marijuana establishment. **Sections 77-80** of this regulation establish the procedure for the Department to determine which applicants receive such a license. **Sections 83, 85 and 86** of this regulation prohibit a marijuana establishment from operating without a license and provide for inspections and investigations of marijuana establishments by the Department. **Sections 87 and 88** of this regulation provide for the surrender of a license in certain circumstances. **Section 89** of this regulation provides for the renewal of a license. **Section 94** of this regulation provides for the issuance and renewal of marijuana establishment agent registration cards. **Section 95** of this regulation establishes the categories of marijuana establishment agent registration cards and the requirements for the various categories. **Sections 94 and 102** of this regulation establish various fees relating to licenses and marijuana establishment agent registration cards.

Sections 103-143 of this regulation establish various provisions that apply to all marijuana establishments. **Section 104** of this regulation prohibits a marijuana establishment from selling a lot of usable marijuana or marijuana products until all testing has been completed. **Section 105** of this regulation restricts the persons who may be present at a marijuana establishment. **Sections 108 and 109** of this regulation provide requirements relating to inventory control for marijuana establishments. **Section 111** of this regulation provides requirements relating to the security of a marijuana establishment. **Sections 119-143** of this regulation establish the grounds for disciplinary action and civil penalties against a marijuana establishment and establish a process for hearings.

Sections 144-153 of this regulation provide additional requirements for the operation of retail marijuana stores. **Section 145** of this regulation provides the procedures that a marijuana establishment agent must complete before selling marijuana or marijuana products. **Sections 150-153** of this regulation establish requirements for the delivery of marijuana or marijuana products by a retail marijuana store. **Sections 154-157** of this regulation provide additional requirements for the operation of marijuana cultivation facilities. **Sections 158-179** of this regulation provide additional requirements for the production of marijuana products. **Sections 180-194** of this regulation provide the minimum good manufacturing practices for the cultivation and preparation of marijuana and marijuana products. **Sections 195-210** of this regulation provide additional requirements for the operation of marijuana testing facilities. **Sections 1-21** of this regulation revise existing requirements for independent testing laboratories to correspond with requirements for marijuana testing facilities. **Sections 211-218** of this regulation provide additional requirements for the operation of marijuana distributors. **Sections 219-229** of this regulation provide requirements for the packaging and labeling of marijuana products. **Sections 230 and 231** of this regulation provide requirements for the use of a name, logo, sign, advertisement or packaging by a marijuana establishment. **Sections 232-235** of this regulation

establish provisions relating to the collection and reporting of excise taxes by marijuana establishments. Sections 236-246 of this regulation establish various other provisions relating to marijuana. Section 237 of this regulation establishes the maximum quantity of marijuana and marijuana products that a person who does not hold a registry identification card or letter of approval authorizing the person to engage in the medical use of marijuana may possess at one time. Section 238 of this regulation allows for the Department to limit the amount of marijuana being cultivated within this State. Sections 241 and 242 of this regulation provide for the confidentiality of certain information. Sections 245 and 246 of this regulation establish requirements for the co-location of marijuana establishments and medical marijuana establishments and for the operation of marijuana establishments and medical marijuana establishments by a dual licensee.

Section 1. Chapter 453A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

Sec. 2. *“Analyte” means any compound, element, contaminant organism, species or other substance for which a marijuana sample is tested by an independent testing laboratory.*

Sec. 3. *“CBD” means cannabidiol, which is a primary phytocannabinoid compound found in marijuana.*

Sec. 4. *“Proficiency testing” means the evaluation, relative to a given set of criteria, of the performance, under controlled conditions, of an independent testing laboratory in analyzing unknown samples provided by an external source.*

Sec. 5. *“Proficiency testing program” means the program established by the Department pursuant to NAC 453A.660 to evaluate the proficiency of all independent testing laboratories in this State.*

Sec. 6. *“Proficiency testing provider” means a person accredited to operate a proficiency testing program by an organization which is accredited pursuant to standard ISO/IEC 17011 of the International Organization for Standardization to perform such accreditation.*

Sec. 7. “Proficiency testing sample” means a sample, the composition of which is unknown to the independent testing laboratory, provided to an independent testing laboratory to test whether the independent testing laboratory can produce analytical results within certain criteria.

Sec. 8. “Sampling protocols” means the procedures specified by the Department which are required to be used to obtain samples of marijuana for quality assurance testing.

Sec. 9. 1. When performing potency analysis or terpene analysis pursuant to NAC 453A.654, an independent testing laboratory shall test for and quantify the presence of the following:

(a) Cannabinoids:

- (1) THC;**
- (2) Tetrahydrocannabinolic acid;**
- (3) CBD;**
- (4) Cannabidiolic acid; and**
- (5) Cannabinol; and**

(b) Terpenoids:

- (1) Alpha-bisabolol;**
- (2) Alpha-humulene;**
- (3) Alpha-pinene;**
- (4) Alpha-terpinolene;**
- (5) Beta-caryophyllene;**
- (6) Beta-myrcene;**

- (7) Beta-pinene;*
- (8) Caryophyllene oxide;*
- (9) Limonene; and*
- (10) Linalool.*

2. An independent testing laboratory shall provide the final certificate of analysis containing the results of testing pursuant to this section to the medical marijuana establishment which provided the sample within 2 business days after obtaining the results.

Sec. 10. *1. Except as otherwise provided in subsection 2, an independent testing laboratory shall perform testing to verify the homogeneity of the potency of an edible marijuana product by testing multiple samples from a single production run.*

2. An independent testing laboratory that tests an edible marijuana product which has previously had the homogeneity of the potency of the edible marijuana product verified by an independent testing laboratory and which has not undergone a change in recipe may verify the homogeneity of the edible marijuana product by testing one or more single units or servings from a production run of the edible marijuana product.

3. The independent testing laboratory will verify the homogeneity of the potency of the edible marijuana product only if:

(a) The concentration of THC and weight of each sample is within 15 percent above or below the intended concentration of THC and weight; and

(b) No combination of samples which comprise 10 percent or less of the edible marijuana product contain 20 percent or more of the total THC in the edible marijuana product.

Sec. 11. 1. *A medical marijuana establishment shall only use a pesticide in the cultivation or production of marijuana, edible marijuana products or marijuana-infused products if the pesticide appears on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550.*

2. *When performing pesticide residue analysis pursuant to NAC 453A.654, an independent testing laboratory shall analyze for the pesticides which occur on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 at the detection levels specified by the State Department of Agriculture and for any other substances required by the Department of Taxation. If:*

(a) A pesticide which occurs on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 is detected at a level which exceeds the level specified by the State Department of Agriculture; or

(b) A pesticide which does not occur on the list of pesticides published by the State Department of Agriculture pursuant to NRS 586.550 is detected in any amount which is positively verified,

↪ the pesticide residue analysis is failed.

Sec. 12. 1. *At the request of the Department of Taxation, an independent testing laboratory may be audited or certified by the State Department of Agriculture.*

2. *If the State Department of Agriculture audits or certifies independent testing laboratories, the State Department of Agriculture will perform such technical inspections of the premises and operations of an independent testing laboratory as the State Department of Agriculture determines is appropriate.*

3. If the State Department of Agriculture audits or certifies independent testing laboratories, each independent testing laboratory shall comply with the requirements established by the State Department of Agriculture.

Sec. 13. *1. At the request of the Department of Taxation, the State Department of Agriculture may collect and test random samples from medical marijuana establishments and compare the results of its testing to the results reported by independent testing laboratories.*

2. A medical marijuana establishment shall provide samples to the State Department of Agriculture upon request if the State Department of Agriculture conducts testing pursuant to subsection 1.

Sec. 14. NAC 453A.010 is hereby amended to read as follows:

453A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 453A.020 to 453A.078, inclusive, *and sections 2 to 8, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 15. NAC 453A.650 is hereby amended to read as follows:

453A.650 **1.** Each independent testing laboratory must employ a scientific director who must be responsible for:

- (a) Ensuring that the laboratory achieves and maintains quality standards of practice; and
- (b) Supervising all staff of the laboratory.

2. The scientific director of an independent testing laboratory must have earned:

- (a) A doctorate degree in ~~{chemical or biological sciences}~~ *science* from an accredited college or university and have at least 2 years of post-degree laboratory experience;

(b) A master's degree in ~~[chemical or biological sciences]~~ *science* from an accredited college or university and have at least 4 years of post-degree laboratory experience; or

(c) A bachelor's degree in ~~[chemical or biological sciences]~~ *science* from an accredited college or university and have at least 6 years of post-degree laboratory experience.

3. *If a scientific director is no longer employed by an independent testing laboratory, the independent testing laboratory shall not be permitted to conduct any testing.*

4. *Upon the appointment of a new scientific director by an independent testing laboratory, the independent testing laboratory shall not resume any testing until the Department conducts an inspection of the independent testing laboratory.*

Sec. 16. NAC 453A.652 is hereby amended to read as follows:

453A.652 1. Each independent testing laboratory must:

(a) Follow the most current version of the *Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control* monograph published by the American Herbal Pharmacopoeia . ~~or~~

(b) ~~[Notify the Division of the alternative testing methodology the laboratory is following for each quality assurance test it conducts. The Division may require the independent testing laboratory to have the testing methodology followed pursuant to this paragraph validated by an independent third party to ensure that the methodology followed by the laboratory produces scientifically accurate results before the laboratory may use the methodology when conducting testing services.]~~ *Follow the Recommendations for Regulators -- Cannabis Operations published by the American Herbal Products Association.*

(c) Be accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by an impartial organization that operates in conformance with standard ISO/IEC 17011 of the International Organization for Standardization and is a signatory to the Mutual Recognition Arrangement of the International Laboratory Accreditation Cooperation.

(d) Follow the Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals -- An Aid to the Interpretation of ISO/IEC 17025:2005 (2015) published by AOAC International.

2. Each independent testing laboratory shall become proficient in testing samples using the analytical methods approved by the ~~{Division}~~ *Department* within 6 months after the date upon which the independent testing laboratory is issued a medical marijuana establishment registration certificate.

3. The ~~{Division}~~ *Department* may require an independent testing laboratory to have its basic proficiency to execute correctly the analytical testing methodologies used by the laboratory validated and monitored on an ongoing basis by an independent third-party.

4. Each independent testing laboratory shall:

(a) ~~{Either:~~

~~——(1)}~~ Adopt and follow minimum good laboratory practices which must, at a minimum, satisfy the *OECD Series on Principles of Good Laboratory Practice (GLP) and Compliance Monitoring* published by the Organisation for Economic Co-operation and Development . ~~{or~~

~~——(2)}~~ (b) Become certified by the International Organization for Standardization and agree to have the inspections and reports of the International Organization for Standardization made available to the ~~{Division.~~

~~—(b)~~ *Department.*

(c) Maintain internal standard operating procedures.

~~{(c)}~~ (d) Maintain a quality control and quality assurance program.

5. The ~~{Division}~~ *Department* or an independent third-party authorized by the ~~{Division}~~ *Department* may conduct an inspection of the practices, procedures and programs adopted, followed and maintained pursuant to subsection 4 and inspect all records of the independent testing laboratory that are related to the inspection.

6. *An independent testing laboratory must use, when available, testing methods that have undergone validation by the Official Methods of Analysis of AOAC International, the Performance Tested Methods Program of the Research Institute of AOAC International, the Bacteriological Analytical Manual of the Food and Drug Administration, the International Organization for Standardization, the United States Pharmacopeia, the Microbiology Laboratory Guidebook of the Food Safety and Inspection Service of the United States Department of Agriculture or an equivalent third-party validation study approved by the Department of Taxation. If no such testing method is available, an independent testing laboratory may use an alternative testing method or a testing method developed by the independent testing laboratory upon demonstrating the validity of the testing method to and receiving the approval of the *Department*.*

7. The ~~{Division}~~ *Department* hereby adopts by reference:

(a) The *Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control* monograph published by the American Herbal Pharmacopoeia. A copy of that publication may

be obtained from the American Herbal Pharmacopoeia, P.O. Box 66809, Scotts Valley, California 95067, or at the Internet address <http://www.herbal-ahp.org/>, for the price of \$44.95.

(b) The *OECD Series on Principles of Good Laboratory Practice (GLP) and Compliance Monitoring* published by the Organisation for Economic Co-operation and Development. A copy of that publication may be obtained free of charge from the Organisation for Economic Co-operation and Development at the Internet address <http://www.oecd.org/env/ehs/testing/oecdseriesonprinciplesofgoodlaboratorypracticeglpandcompliancemonitoring.htm>.

(c) *Standard ISO/IEC 17025 published by the International Organization for Standardization. A copy of that publication may be obtained from the American National Standards Institute at the Internet address <https://webstore.ansi.org/RecordDetail.aspx?sku=ISO%2fIEC+17025%3a2005> for the price of \$162.*

(d) *The Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals -- An Aid to the Interpretation of ISO/IEC 17025:2005 (2015)* published by AOAC International. A copy of that publication may be obtained from AOAC International at the Internet address http://www.aoc.org/aoc_prod_imis/AOAC/AOAC_Member/PUBSCF/ALACCCF/ALACC_M.aspx for the price of \$190.

Sec. 17. NAC 453A.654 is hereby amended to read as follows:

453A.654 1. Each independent testing laboratory must use the *sampling protocols and the* general body of required quality assurance tests for usable marijuana, as received, concentrated

cannabis, marijuana-infused products and edible marijuana products set forth in this section. Such tests may include moisture content, potency analysis, foreign matter inspection, microbial screening, pesticide and other chemical residue and metals screening and residual solvents levels. An independent testing laboratory may request additional sample material for the purposes of completing required quality assurance tests ~~(H)~~ *but may not use such material for the purposes of resampling or repeating quality assurance tests.* An independent testing laboratory may retrieve samples from the premises of another medical marijuana establishment and transport the samples directly to the laboratory. *An independent testing laboratory transporting samples may make multiple stops if:*

(a) Each stop is for the sole purpose of retrieving a sample from a medical marijuana establishment; and

(b) All samples remain secured at all times.

2. The tests required pursuant to subsection 1 by an independent testing laboratory are as follows:

Product	Tests Required	
Usable marijuana (H) <i>and crude collected resins</i> , as received, excluding wet marijuana	1. Moisture content 2. Potency analysis 3. Terpene analysis 4. Foreign matter inspection	<i>1. < 15%</i> <i>2. N/A</i> <i>3. N/A</i> <i>4. None detected</i>

Product	Tests Required	
	<p>5. [Microbial screening</p> <p>6.] Mycotoxin screening</p> <p>[7.] 6. Heavy metal screening</p> <p>[8.] 7. Pesticide residue analysis</p> <p>[9.] 8. Herbicide screening</p> <p>[10.] 9. Growth regulator screening</p> <p>10. Total yeast and mold</p> <p>11. Total Enterobacteriaceae</p> <p>12. Salmonella</p> <p>13. Pathogenic E. coli</p> <p>14. Aspergillus fumigatus</p> <p>15. Aspergillus flavus</p> <p>16. Aspergillus terreus</p> <p>17. Aspergillus niger</p> <p>18. Total coliform</p>	<p>5. < 20 µg/kg for the total of Aflatoxins B1, B2, G1 and G2 combined and < 20 µg/kg for Ochratoxin A</p> <p>6. Arsenic: < 2 ppm</p> <p>Cadmium: < 0.82 ppm</p> <p>Lead: < 1.2 ppm</p> <p>Mercury: < 0.4 ppm</p> <p>7. See section 11 of this regulation</p> <p>8. See section 11 of this regulation</p> <p>9. See section 11 of this regulation</p> <p>10. < 10,000 colony forming units per gram</p> <p>11. < 1,000 colony forming units per gram</p>

Product	Tests Required	
		<p><i>12. None detected per gram</i></p> <p><i>13. None detected per gram</i></p> <p><i>14. None detected per gram</i></p> <p><i>15. None detected per gram</i></p> <p><i>16. None detected per gram</i></p> <p><i>17. None detected per gram</i></p> <p><i>18. < 1,000 colony forming units per gram</i></p>
Wet marijuana, as received, which is destined for extraction	<p>1. Potency analysis</p> <p>2. Terpene analysis</p> <p>3. Foreign matter inspection</p> <p>4. Microbial screening</p> <p>5.1 Mycotoxin screening</p>	<p><i>1. N/A</i></p> <p><i>2. N/A</i></p> <p><i>3. None detected</i></p> <p><i>4. < 20 µg/kg for the total of Aflatoxins B1, B2, G1</i></p>

Product	Tests Required	
	[6.] 5. Heavy metal screening [7.] 6. Pesticide residue analysis [8.] 7. Herbicide screening [9.] 8. Growth regulator screening 9. Total yeast and mold 10. Total Enterobacteriaceae 11. Salmonella 12. Pathogenic E. coli 13. Aspergillus fumigatus 14. Aspergillus flavus 15. Aspergillus terreus 16. Aspergillus niger 17. Total coliform	and G2 combined and < 20 µg/kg for Ochratoxin A 5. Arsenic: < 2 ppm Cadmium: < 0.82 ppm Lead: < 1.2 ppm Mercury: < 0.4 ppm 6. See section 11 of this regulation 7. See section 11 of this regulation 8. See section 11 of this regulation 9. < 10,000 colony forming units per gram 10. < 1,000 colony forming units per gram 11. None detected per gram

Product	Tests Required	
		<p>12. <i>None detected per gram</i></p> <p>13. <i>None detected per gram</i></p> <p>14. <i>None detected per gram</i></p> <p>15. <i>None detected per gram</i></p> <p>16. <i>None detected per gram</i></p> <p>17. <i>< 1,000 colony forming units per gram</i></p>
<p>Extract of marijuana (nonsolvent) like kief, hashish, bubble hash, infused dairy butter, <i>mixtures of extracted products</i> or oils or fats derived from natural sources, including concentrated cannabis extracted with CO₂</p>	<p>1. Potency analysis</p> <p>2. Foreign matter inspection</p> <p>3. Microbial screening</p> <p>4. Terpene analysis</p> <p>4. <i>Mycotoxin screening</i></p> <p>5. <i>Heavy metal screening</i></p> <p>6. <i>Pesticide residue analysis</i></p>	<p>1. <i>N/A</i></p> <p>2. <i>None detected</i></p> <p>3. <i>N/A</i></p> <p>4. <i>< 20 µg/kg for the total of Aflatoxins B1, B2, G1 and G2 combined and < 20 µg/kg for Ochratoxin</i></p>

Product	Tests Required	
	<p>7. Total yeast and mold</p> <p>8. Total Enterobacteriaceae</p> <p>9. Salmonella</p> <p>10. Pathogenic E. coli</p> <p>11. Aspergillus fumigatus</p> <p>12. Aspergillus flavus</p> <p>13. Aspergillus terreus</p> <p>14. Aspergillus niger</p>	<p>A</p> <p>5. Arsenic: < 2 ppm</p> <p>Cadmium: < 0.82 ppm</p> <p>Lead: < 1.2 ppm</p> <p>Mercury: < 0.4 ppm</p> <p>6. See section 11 of this regulation</p> <p>7. < 1,000 colony forming units per gram</p> <p>8. < 100 colony forming units per gram</p> <p>9. None detected per gram</p> <p>10. None detected per gram</p> <p>11. None detected per gram</p> <p>12. None detected per gram</p>

Product	Tests Required	
		<p><i>13. None detected per gram</i></p> <p><i>14. None detected per gram</i></p>
Extract of marijuana (solvent-based) made with any approved solvent, including concentrated cannabis extracted by means other than with CO ₂	<p>1. Potency analysis</p> <p>2. Terpene analysis</p> <p>3. Foreign matter inspection</p> <p>4. Microbial screening</p> <p>5.] Residual solvent test</p> <p>5. Mycotoxin screening</p> <p>6. Heavy metal screening</p> <p>7. Pesticide residue analysis</p> <p>8. Total yeast and mold</p> <p>9. Total Enterobacteriaceae</p> <p>10. Salmonella</p> <p>11. Pathogenic E. coli</p> <p>12. Aspergillus fumigatus</p> <p>13. Aspergillus flavus</p> <p>14. Aspergillus terreus</p>	<p><i>1. N/A</i></p> <p><i>2. N/A</i></p> <p><i>3. None detected</i></p> <p><i>4. < 500 ppm</i></p> <p><i>5. < 20 µg/kg for the total of Aflatoxins B1, B2, G1 and G2 combined and < 20 µg/kg for Ochratoxin A</i></p> <p><i>6. Arsenic: < 2 ppm</i></p> <p><i>Cadmium: < 0.82 ppm</i></p> <p><i>Lead: < 1.2 ppm</i></p> <p><i>Mercury: < 0.4 ppm</i></p> <p><i>7. See section 11 of this regulation</i></p>

Product	Tests Required	
	15. <i>Aspergillus niger</i>	8. < 1,000 colony forming units per gram 9. < 100 colony forming units per gram 10. None detected per gram 11. None detected per gram 12. None detected per gram 13. None detected per gram 14. None detected per gram 15. None detected per gram

Product	Tests Required	
Edible marijuana-infused product, including a product which contains concentrated cannabis	1. Potency analysis 2. Terpene analysis 3. Foreign matter inspection 4. Microbial screening Total <i>Enterobacteriaceae</i> 5. <i>Salmonella</i> 6. <i>Pathogenic E. coli</i> 7. Total aerobic count 8. Water activity or pH	1. <i>N/A</i> 2. <i>N/A</i> 3. <i>None detected</i> 4. <i>< 1,000 colony forming units per gram</i> 5. <i>None detected per gram</i> 6. <i>None detected per gram</i> 7. <i>< 100,000 colony forming units per gram</i> 8. <i>Water activity < 0.86 or pH < 4.6</i>

Product	Tests Required	
Liquid marijuana-infused product, including, without limitation, soda or tonic, including a product which contains concentrated cannabis	1. Potency analysis 2. Terpene analysis 3. Foreign matter inspection 4. Microbial screening Total <i>Enterobacteriaceae</i> 5. <i>Salmonella</i> 6. <i>Pathogenic E. coli</i> 7. Total aerobic count 8. Water activity or pH	1. N/A 2. N/A 3. None detected 4. < 1,000 colony forming units per gram 5. None detected per gram 6. None detected per gram 7. < 100,000 colony forming units per gram 8. Water activity < 0.86 or pH < 4.6
Topical marijuana-infused product, including a product which contains concentrated cannabis	1. Potency analysis 2. Terpene analysis	1. N/A 2. N/A

3. *A sample of usable marijuana must be at least 10 grams. A sample of a production run must be the lesser of 1 percent of the total product weight of the production run or 25 units of product. All samples must be homogenized before testing.*

4. A medical marijuana establishment shall not submit wet marijuana to an independent testing laboratory for testing unless the wet marijuana is destined for extraction ~~[-~~
~~—4.]~~ *and weighed within 2 hours after harvest.*

5. As used in this section, “as received” means the unaltered state in which a sample was collected, without any processing or conditioning, which accounts for all mass, including moisture content.

Sec. 18. NAC 453A.656 is hereby amended to read as follows:

453A.656 *1.* An independent testing laboratory shall not handle, test or analyze marijuana unless:

~~[(1)]~~ (a) The laboratory has been issued a medical marijuana establishment registration certificate;

~~[(2)]~~ (b) The laboratory is independent from all other persons involved in the medical marijuana industry in Nevada; and

~~[(3)]~~ (c) No person with a direct or indirect interest in the laboratory has a direct or indirect financial interest in:

~~[(a)]~~ (1) A medical marijuana dispensary;

~~[(b)]~~ (2) A facility for the production of edible marijuana products or marijuana-infused products;

~~[(c)]~~ (3) A cultivation facility;

- ~~{(d)}~~ (4) A ~~{physician}~~ *provider of health care* who provides or has provided written documentation for the issuance of registry identification cards or letters of approval; or
- ~~{(e)}~~ (5) Any other entity that may benefit from the cultivation, manufacture, dispensing, sale, purchase or use of marijuana or marijuana products.

2. An independent testing laboratory is not required to use a marijuana distributor to collect or move samples for testing.

Sec. 19. NAC 453A.658 is hereby amended to read as follows:

453A.658 1. Immediately before packaging:

- (a) Raw marijuana for sale to a medical marijuana dispensary, facility for the production of edible marijuana products or marijuana-infused products or another cultivation facility, a cultivation facility shall segregate all harvested marijuana into homogenized lots of flower and trim, respectively and allow an independent testing laboratory to select a representative sample for testing from each lot the cultivation facility has segregated. The independent testing laboratory which performs the test must collect the samples. *If the cultivation facility has segregated the lot of harvested marijuana into packages or container sizes smaller than the entire lot, the independent testing laboratory must sample and test each package containing harvested marijuana from the lot.*
- (b) Concentrated cannabis, edible marijuana products or marijuana-infused products, a facility for the production of edible marijuana products or marijuana-infused products shall allow an independent testing laboratory to select a random sample from each lot or production run for testing by the independent testing laboratory. The independent testing laboratory performing the testing must collect the samples.

(c) The independent testing laboratory selecting a sample shall, using tamper-resistant products, record the batch, lot or production run number and the weight or quantity of the sample and seal the sample into a container.

2. An independent testing laboratory that receives a sample pursuant to this section shall test the sample as provided in NAC 453A.654.

3. From the time that a lot or production run has been homogenized for sample testing and eventual packaging and sale to a medical marijuana dispensary, facility for the production of edible marijuana products or marijuana-infused products or, if applicable, another cultivation facility until the independent testing laboratory provides the results from its tests and analysis, the facility which provided the sample shall segregate and withhold from use the entire lot or production run, except the samples that have been removed by the independent testing laboratory for testing. During this period of segregation, the facility which provided the sample shall maintain the lot or production run in a secure, cool and dry location so as to prevent the marijuana from becoming contaminated or losing its efficacy. Under no circumstances shall the facility which provided the sample sell the marijuana or edible marijuana products or marijuana-infused products, as applicable, to a medical marijuana dispensary, facility for the production of edible marijuana products or marijuana-infused products or, if applicable, another cultivation facility before the time that the independent testing laboratory has completed its testing and analysis and provided those results, in writing, to the facility which provided the sample.

4. ~~[An]~~ *Except as otherwise provided in subsection 5, an* independent testing laboratory shall immediately return or dispose of any sample received pursuant to this section upon the completion of any testing, use or research. If an independent testing laboratory disposes of a

sample received pursuant to this section, the laboratory shall document the disposal of the sample using its inventory control system pursuant to NRS 453A.356 and NAC 453A.414.

5. *An independent testing laboratory shall keep any sample which fails testing or which is collected by the State Department of Agriculture for confirmation testing for 30 days after failure or collection. A sample which is kept pursuant to this subsection must be stored in a manner approved by the Department of Taxation. A marijuana testing facility shall dispose of a sample kept pursuant to this subsection after 30 days have elapsed after failure or collection.*

6. Except as otherwise provided in NAC 453A.672, if a sample provided to an independent testing laboratory pursuant to this section does not pass the testing required by NAC 453A.654, the facility which provided the sample shall dispose of the entire lot or production run from which the sample was taken and document the disposal of the sample using its inventory control system pursuant to NRS 453A.356 and NAC 453A.414.

~~[6. For the purposes of the microbial test described in NAC 453A.654, a sample provided to an independent testing laboratory pursuant to this section shall be deemed to have passed if it satisfies the standards set forth in Table 9 of the Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control monograph adopted by reference pursuant to NAC 453A.652.]~~

7. ~~[For the purposes of the mycotoxin test described in NAC 453A.654, a sample provided to an independent testing laboratory pursuant to this section shall be deemed to have passed if it meets the following standards:~~

Test	Specification
The total of aflatoxin B₁,	

~~afatoxin B2, aflatoxin G1 and~~

~~aflatoxin G2..... <20 uG/KG of Substance~~

~~Ochratoxin A..... <20 uG/KG of Substance~~

~~8. For the purposes of the heavy metal test described in NAC 453A.654, a sample of marijuana shall be deemed to have passed if it meets the following standards established on the basis of 5 grams of dried marijuana as the daily dose:~~

~~Metal..... Natural Health Products~~

~~..... Acceptable limits in parts per million~~

~~Asbestos..... <2~~

~~Cadmium..... <0.82~~

~~Lead..... <1.2~~

~~Mercury..... <0.4~~

~~9.] If a sample provided to an independent testing laboratory pursuant to this section passes the testing required by NAC 453A.654, the independent testing laboratory shall release the entire lot or production run for immediate manufacturing, packaging and labeling for sale to a medical marijuana dispensary, a facility for the production of edible marijuana products or marijuana-infused products or, if applicable, another cultivation facility.~~

~~{10-}~~ 8. A medical marijuana establishment shall not use more than one independent testing laboratory to test the same lot or production run of marijuana without the approval of the Department.

9. An independent testing laboratory shall file with the ~~{Division,}~~ Department, in a manner prescribed by the ~~{Division,}~~ Department, an electronic copy of ~~{all laboratory test results,}~~ the certificate of analysis for all tests performed by the independent testing laboratory, regardless of the outcome of the test, including all testing required by NAC 453A.654, at the same time that it transmits those results to the facility which provided the sample. ~~{In addition, the}~~ The independent testing laboratory shall ~~{maintain the laboratory test results and make them available to the Division upon request.}~~ transmit an electronic copy of the certificate of analysis for each test to the Department by electronic mail at:

(a) If the test was passed, mmelabpass@tax.state.nv.us; or

(b) If the test was failed, mmelabfail@tax.state.nv.us.

10. An electronic mail message transmitted pursuant to subsection 9 must be formatted as follows:

(a) The subject line of the electronic mail message must be the name of the medical marijuana establishment from which the sample was collected.

(b) The name of the electronic file containing the certificate of analysis must be:

(1) Except as otherwise provided in subparagraph (2) or (3), the four digit identifier assigned by the Department to the independent testing laboratory, followed by an underscore, followed by the four digit identifier assigned by the Department to the medical marijuana establishment from which the sample was collected, followed by an underscore, followed by:

(I) If the sample was from a production run, the production run number; or
(II) If the sample was not from a production run, the batch number, followed by an underscore, followed by the lot number.

(2) If the certificate of analysis is from a retesting of a previously failed sample, an underscore followed by the word "Retest" must be appended to the end of the name of the electronic file.

(3) If the certificate of analysis has been amended, an underscore followed by the word "Amended" must be appended to the end of the name of the electronic file.

(c) If the certificate of analysis has been amended, the electronic copy of the certificate of analysis must state "Amended" in bold red font at the center of the top of the first page of the report and must contain a statement of the reason for the amendment.

11. The ~~[Division]~~ **Department** will take immediate disciplinary action against any medical marijuana establishment which fails to comply with the provisions of this section or falsifies records related to this section, including, without limitation, revoking the medical marijuana establishment registration certificate of the medical marijuana establishment.

12. An independent testing laboratory may subcontract its testing of marijuana, edible marijuana products and marijuana-infused products only to another independent testing laboratory. *A transfer of samples pursuant to such a subcontract must be performed directly by the independent testing laboratories.*

Sec. 20. NAC 453A.660 is hereby amended to read as follows:

453A.660 1. The ~~[Division]~~ **Department** will establish a proficiency testing program for independent testing laboratories. *A proficiency testing program must include, without*

limitation, providing rigorously controlled and standardized proficiency testing samples to independent testing laboratories for analysis, reporting the results of such analysis and performing a statistical evaluation of the collective demographics and results of all independent testing laboratories.

2. Each independent testing laboratory must participate in the proficiency testing program established pursuant to this section.

3. If required by the ~~{Division}~~ *Department* as part of being issued or renewing a medical marijuana establishment registration certificate, the independent testing laboratory must have successfully participated in the proficiency testing program within the preceding 12 months.

4. To maintain continued registration as an independent testing laboratory, a laboratory must participate in the designated proficiency testing program with continued satisfactory performance as determined by the ~~{Division-}~~ *Department*.

5. An independent testing laboratory must analyze proficiency test samples using the same procedures with the same number of replicate analyses, standards, testing analysts and equipment as used for product testing.

6. The scientific director of the independent testing laboratory and all testing analysts that participated in a proficiency test must sign corresponding attestation statements.

7. The scientific director of the independent testing laboratory must review and evaluate all proficiency test results.

8. ~~{An independent testing laboratory must take and document remedial action when a score of less than 100 percent is achieved during a proficiency test. Documentation of remedial action~~

~~must include, without limitation, a review of samples tested and results reported since the last successful proficiency test.~~

~~—9.~~ Successful participation ~~(+)~~ *includes* the positive identification of 80 percent of the target analytes that the independent testing laboratory reports to include quantitative results when applicable. Any false positive results reported will be considered an unsatisfactory score for the proficiency test.

~~(+9.)~~ 9. Unsuccessful participation in a proficiency test may result in limitation, suspension or revocation of the medical marijuana establishment registration certificate of the independent testing laboratory.

10. The Department will select a proficiency testing provider to conduct the proficiency testing program and determine the schedule that the proficiency testing provider will follow when sending proficiency testing samples to independent testing laboratories for analysis.

11. In addition to achieving the standard required pursuant to subsection 8, an independent testing laboratory successfully participates in the proficiency testing program only if the independent testing laboratory:

- (a) Obtains single-blind proficiency testing samples from the proficiency testing provider;*
- (b) Analyzes the proficiency testing sample for all analytes listed in NAC 453A.654 and sections 9, 10 and 11 of this regulation;*
- (c) Reports the results of its analysis to the proficiency testing provider;*
- (d) Analyzes a proficiency testing sample pursuant to the proficiency testing program not less frequently than once each 12 months;*
- (e) Pays the costs of subscribing to the proficiency testing program; and*

(f) Authorizes the proficiency testing provider to submit to the Department the results of any test performed pursuant to this section.

12. The performance of an independent testing laboratory is satisfactory pursuant to subsection 4 if the results of the testing performed pursuant to this section are within the limits of the acceptance range established by the proficiency testing provider. An independent testing laboratory that fails to meet this standard may request that the Department allow the independent testing laboratory to retest a proficiency testing sample once to establish satisfactory performance. If the Department denies the request or if the independent testing laboratory fails to meet the standard on retesting, the Department may limit, suspend or revoke the medical marijuana establishment registration certificate of the independent testing laboratory.

Sec. 21. NAC 453A.664 is hereby amended to read as follows:

453A.664 1. *Each independent testing laboratory must agree to become accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization within 1 year after licensure.*

2. Each independent testing laboratory that claims to be accredited must provide the ~~[Division]~~ Department with copies of each annual inspection report from the accrediting organization, including, without limitation, any deficiencies identified in and any corrections made in response to the report.

~~[2. An independent testing laboratory may not claim to be accredited unless it is accredited by an accrediting organization that is nationally recognized and approved by the Division.]~~

3. Inspection by an accrediting organization is not a substitute for inspection by the

~~[Division]~~ *Department.*

Sec. 22. Chapter 453D of NAC is hereby amended by adding thereto the provisions set forth as sections 23 to 246, inclusive, of this regulation.

Sec. 23. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 24 to 72, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 24. *“Analyte” means any compound, element, contaminant organism, species or other substance for which a marijuana sample is tested by a marijuana testing facility.*

Sec. 25. *“Batch” means the usable flower and trim contained within one or more specific lots of marijuana grown by a marijuana cultivation facility from one or more seeds or cuttings of the same strain of marijuana and harvested on or before a specified final date of harvest.*

Sec. 26. *“Batch number” means a unique numeric or alphanumeric identifier assigned to a batch by a marijuana establishment when the batch is planted.*

Sec. 27. *“CBD” means cannabidiol, which is a primary phytocannabinoid compound found in marijuana.*

Sec. 28. *“Combined marijuana establishment” means a group of marijuana establishments or medical marijuana establishments which:*

- 1. Each share identical ownership; and*
- 2. Are located on the same parcel of real estate.*

Sec. 29. *“Component marijuana establishment” means an individual marijuana establishment or medical marijuana establishment which is part of a combined marijuana establishment.*

Sec. 30. *“Designated primary caregiver” has the meaning ascribed to it in NRS 453A.080.*

Sec. 31. *“Division” means the Division of Public and Behavioral Health of the Department of Health and Human Services.*

Sec. 32. *“Edible marijuana products” has the meaning ascribed to it in NRS 453A.101.*

Sec. 33. *“Enclosed, locked facility” has the meaning ascribed to it in NRS 453A.103.*

Sec. 34. *“Excise tax on marijuana” means any excise tax imposed by chapter 372A or 453D of NRS.*

Sec. 35. *“Extraction” has the meaning ascribed to it in NRS 453.0825.*

Sec. 36. *“Fair market value” means the value established by the Department based on the price that a buyer would pay to a seller in an arm’s length transaction for marijuana in the wholesale market.*

Sec. 37. *“Foreign matter” means:*

1. Any plant matter, other than the marijuana product itself, which is more than 2 millimeters in size and constitutes more than 5 percent of the marijuana product; or

2. Any physical contaminant,

↪ which is included in the marijuana product.

Sec. 38. *“Growing unit” means an area within a marijuana cultivation facility in which growing operations are performed at all stages of growth. The term includes, without*

limitation, multiple rooms or areas that collectively are used to perform growing operations at all stages of growth regardless of whether each individual room or area has the capability to perform growing operations at all stages of growth.

Sec. 39. *“Imminent health hazard” means a situation that requires immediate correction or cessation of operations to prevent injury as determined by the Department pursuant to subsection 5 of section 120 of this regulation.*

Sec. 40. *“Inventory control system” means a process, device or other contrivance that may be used to monitor the chain of custody of marijuana from the point of cultivation to the end consumer.*

Sec. 41. *“Label” means written or printed material affixed to or included with marijuana or a marijuana product to provide identification or other information.*

Sec. 42. *“Letter of approval” has the meaning ascribed to it in NRS 453A.109.*

Sec. 43. *“Lot” means:*

- 1. The flowers from one or more marijuana plants of the same batch, in a quantity that weighs 5 pounds or less;*
- 2. The leaves or other plant matter from one or more marijuana plants of the same batch, other than full female flowers, in a quantity that weighs 15 pounds or less; or*
- 3. The wet leaves or other plant matter from one or more marijuana plants of the same batch used only for extraction, in a quantity that weighs 125 pounds or less within 2 hours of harvest.*

Sec. 44. *“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.

Sec. 45. *“Marijuana establishment agent registration card” means a registration card that is issued by the Department to authorize a person to volunteer or work at a marijuana establishment.*

Sec. 46. *“Medical marijuana establishment” has the meaning ascribed to it in NRS 453A.116.*

Sec. 47. *“Medical marijuana establishment agent registration card” has the meaning ascribed to it in NRS 453A.118, as amended by section 14 of Assembly Bill No. 422, chapter 540, Statutes of Nevada 2017, at page 3680 and section 26 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3744.*

Sec. 48. *“Medical marijuana establishment registration certificate” has the meaning ascribed to it in NRS 453A.119, as amended by section 15 of Assembly Bill No. 422, chapter 540, Statutes of Nevada 2017, at page 3680 and section 27 of Senate Bill No. 487, chapter 541, Statutes of Nevada 2017, at page 3744.*

Sec. 49. *“Medical use of marijuana” has the meaning ascribed to it in NRS 453A.120.*

Sec. 50. *“Multiple-serving edible marijuana product” means an edible marijuana product which is offered for sale to a consumer and contains, within a variance of 15 percent, more than 10 milligrams and not more than 100 milligrams of THC. The term includes an edible marijuana product which contains multiple pieces, each of which contains 10*

milligrams or less of THC, if the edible marijuana product offered for sale contains a total of more than 10 milligrams of THC.

Sec. 51. *“Packaging” means the materials used to wrap or protect goods.*

Sec. 52. *“Pesticide” has the meaning ascribed to it in NRS 586.195.*

Sec. 53. *“Potential total THC” means the sum of the percentage by weight of tetrahydrocannabinolic acid multiplied by 0.877 plus the percentage by weight of THC.*

Sec. 54. 1. *“Potentially hazardous marijuana products and ingredients” means an edible item that is natural or synthetic and that requires temperature control because the item is in a form capable of supporting:*

- (a) The rapid and progressive growth of infectious or toxigenic microorganisms;*
- (b) The growth and toxin production of Clostridium botulinum; or*
- (c) In raw shell eggs, the growth of Salmonella enteritidis.*

2. *The term includes, without limitation:*

- (a) An animal item that is raw or heat-treated;*
- (b) An item of plant origin that is heat-treated or consists of raw seed sprouts;*
- (c) Cut melons and tomatoes;*
- (d) Garlic-in-oil mixtures that are not modified in a way that results in mixtures which prohibit growth; and*
- (e) Whipped butter.*

3. *The term does not include:*

- (a) An ingredient with a value of water activity of not more than 0.85;*
- (b) An ingredient with a pH level of not more than 4.6 when measured at 75°F (24°C); or*

(c) An ingredient, in a hermetically sealed and unopened container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.

Sec. 55. “Premises” means:

1. Any temporary or permanent structure, including, without limitation, any building, house, room, apartment, tenement, shed, carport, garage, shop, warehouse, store, mill, barn, stable, outhouse or tent; or

2. Any conveyance, including, without limitation, any vessel, boat, vehicle, airplane, glider, house trailer, travel trailer, motor home or railroad car,

↪ whether located aboveground or underground and whether inhabited or not.

Sec. 56. “Production run” means:

1. For the extraction of concentrated marijuana by a marijuana establishment, the combination of one or more lots used to make the same product in one homogenous mixture produced using the same method which results in not more than 2.2 pounds of concentrated marijuana.

2. For the production of marijuana products by a marijuana product manufacturing facility, one homogenous mixture produced at the same time using the same method and which may include a combination of concentrated marijuana and other materials for the production of marijuana products.

Sec. 57. “Production run number” means a unique numeric or alphanumeric identifier assigned to a production run by a marijuana product manufacturing facility which accounts for each batch or lot or any concentrated marijuana used in the production run.

Sec. 58. *“Proficiency testing” means the evaluation, relative to a given set of criteria, of the performance, under controlled conditions, of a marijuana testing facility in analyzing unknown samples provided by an external source.*

Sec. 59. *“Proficiency testing program” means the program established by the Department pursuant to section 204 of this regulation to evaluate the proficiency of all marijuana testing facilities in this State.*

Sec. 60. *“Proficiency testing provider” means a person accredited to operate a proficiency testing program by an organization which is accredited pursuant to standard ISO/IEC 17011 of the International Organization for Standardization to perform such accreditation.*

Sec. 61. *“Proficiency testing sample” means a sample, the composition of which is unknown to the marijuana testing facility, provided to a marijuana testing facility to test whether the marijuana testing facility can produce analytical results within certain criteria.*

Sec. 62. *“Public transportation” means:*

- 1. Buses;*
- 2. Trains;*
- 3. Subways; and*
- 4. Other forms of transportation which charge a fare and are available to the public.*

Sec. 63. *“Registry identification card” has the meaning ascribed to it in NRS 453A.140.*

Sec. 64. *“Sampling protocols” means the procedures specified by the Department which are required to be used to obtain samples of marijuana for quality assurance testing.*

Sec. 65. *“Security equipment” means a system of video cameras, monitors, recorders, video printers, motion detectors, exterior lighting, electronic monitoring and other ancillary equipment used for surveillance of a marijuana establishment.*

Sec. 66. *“Seed-to-sale tracking system” means an electronic database which is used to monitor in real time the chain of custody of marijuana from the point of acquisition or planting to the end consumer and which is accessible by the Department and by marijuana establishments.*

Sec. 67. *“Separate operations” means any area in which a component marijuana establishment must maintain legal and operational separation from all other component marijuana establishments within a combined marijuana establishment.*

Sec. 68. *“Single-serving edible marijuana product” means an edible marijuana product which is offered for sale to a consumer and contains not more than 10 milligrams of THC.*

Sec. 69. *“Surveillance” means the capability to observe and record activities being conducted outside and inside a marijuana establishment.*

Sec. 70. *“Taxpayer” means a:*

- 1. Marijuana cultivation facility; or*
- 2. Retail marijuana store.*

Sec. 71. *“THC” has the meaning ascribed to it in NRS 453.139.*

Sec. 72. *“Usable marijuana” has the meaning ascribed to it in NRS 453A.160.*

Sec. 73. *As used in chapter 453D of NRS, the Department will interpret “marijuana” to exclude industrial hemp, as defined in NRS 557.040, which is grown or cultivated pursuant to chapter 557 of NRS.*

Sec. 74. 1. *When a marijuana establishment is required pursuant to this chapter or chapter 453D of NRS to provide information, sign documents or ensure actions are taken, a person identified in this subsection shall comply with the requirement on behalf of the marijuana establishment:*

(a) If a natural person is applying for a license for a marijuana establishment, the natural person;

(b) If a corporation is applying for a license for a marijuana establishment, a natural person who is an officer of the corporation;

(c) If a partnership is applying for a license for a marijuana establishment, a natural person who is a partner;

(d) If a limited-liability company is applying for a license for a marijuana establishment, a manager or, if the limited-liability company does not have a manager, a natural person who is a member of the limited-liability company;

(e) If an association or cooperative is applying for a license for a marijuana establishment, a natural person who is a member of the governing board of the association or cooperative;

(f) If a joint venture is applying for a license for a marijuana establishment, a natural person who signed the joint venture agreement; and

(g) If a business organization other than those described in paragraphs (b) to (f), inclusive, is applying for a license for a marijuana establishment, a natural person who is a member of the business organization.

2. For the purposes of this chapter and chapter 453D of NRS, the following persons must comply with the provisions governing owners, officers and board members of a marijuana establishment:

(a) If a corporation is applying for a license for a marijuana establishment, the officers of the corporation;

(b) If a partnership is applying for a license for a marijuana establishment, the partners;

(c) If a limited-liability company is applying for a license for a marijuana establishment, the members of the limited-liability company;

(d) If an association or cooperative is applying for a license for a marijuana establishment, the members of the association or cooperative;

(e) If a joint venture is applying for a license for a marijuana establishment, the natural persons who signed the joint venture agreement; and

(f) If a business organization other than those described in paragraphs (a) to (e), inclusive, is applying for a license for a marijuana establishment, the members of the business organization.

Sec. 75. 1. Except as otherwise required in subsection 2, the requirements of this chapter concerning owners of marijuana establishments only apply to a person with an aggregate ownership interest of 5 percent or more in a marijuana establishment.

2. If, in the judgment of the Department, the public interest will be served by requiring any owner with an ownership interest of less than 5 percent in a marijuana establishment to comply with any provisions of this chapter concerning owners of marijuana establishments, the Department will notify that owner and he or she must comply with those provisions.

Sec. 76. 1. *At least once each year, the Department will determine whether a sufficient number of marijuana establishments exist to serve the people of this State and, if the Department determines that additional marijuana establishments are necessary, the Department will issue a request for applications to operate a marijuana establishment. The Department will provide notice of a request for applications to operate a marijuana establishment by:*

(a) Posting on the Internet website of the Department that the Department is requesting applicants to submit applications;

(b) Posting a copy of the request for applications at the principal office of the Department, at the Legislative Building and at not less than three other separate, prominent places within this State; and

(c) Making notification of the posting locations using the electronic mailing list maintained by the Department for marijuana establishment information.

2. *When the Department issues a request for applications pursuant to this section, the Department will include in the request the point values that will be allocated to each applicable portion of the application.*

3. *The Department will accept applications in response to a request for applications issued pursuant to this section for 10 business days beginning on the date which is 45 business days after the date on which the Department issued the request for applications.*

4. *If the Department receives an application in response to a request for applications issued pursuant to this section on a date other than the dates set forth in subsection 3, the*

Department will not consider the application and must return the application to the entity that submitted the application.

Sec. 77. 1. *On or before November 15, 2018, a person who holds a medical marijuana establishment registration certificate may apply for not more than one license for a marijuana establishment of the same type by submitting:*

(a) A one-time, nonrefundable application fee of \$5,000 and, for an application for a license for a:

(1) Marijuana cultivation facility, an initial licensing fee of \$30,000.

(2) Marijuana distributor, an initial licensing fee of \$15,000.

(3) Marijuana product manufacturing facility, an initial licensing fee of \$10,000.

(4) Marijuana testing facility, an initial licensing fee of \$15,000.

(5) Retail marijuana store, an initial licensing fee of \$20,000.

(b) An application on a form prescribed by the Department which includes, without limitation:

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

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

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

- (4) The mailing address of the applicant;*
 - (5) The telephone number of the applicant;*
 - (6) The electronic mail address of the applicant;*
 - (7) A signed copy of the Request and Consent to Release Application Form for Marijuana Establishment License prescribed by the Department;*
 - (8) An attestation that the information provided to the Department to apply for the license for a marijuana establishment is true and correct according to the information known by the affiant at the time of signing;*
 - (9) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of section 74 of this regulation and the date on which the person signed the application; and*
 - (10) Any other information that the Department may require.*
- 2. Upon receipt of an application submitted pursuant to subsection 1, the Department will issue a license for a marijuana establishment to the applicant if the applicant:*
- (a) Holds a medical marijuana establishment registration certificate issued pursuant to chapter 453A of NRS of the same type as the license for a marijuana establishment for which the applicant has applied; and*
 - (b) Satisfies the requirements of subsection 5 of NRS 453D.210.*
- 3. If an application submitted pursuant to subsection 1 is not approved, the Department will refund the initial licensing fee included in the application to the applicant.*
- Sec. 78. 1. 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 this regulation, for a marijuana establishment of the same type or for one or more licenses for a marijuana establishment of a different type, and on or after November 16, 2018, a person may apply for one or more licenses for a marijuana establishment by submitting an application in response to a request for applications issued pursuant to section 76 of this regulation which must include:

(a) A one-time, nonrefundable application fee of \$5,000.

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

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

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

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

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

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

- (6) The mailing address of the applicant;*
- (7) The telephone number of the applicant;*
- (8) The electronic mail address of the applicant;*
- (9) A signed copy of the Request and Consent to Release Application Form for Marijuana Establishment License prescribed by the Department;*
- (10) If the applicant is applying for a license for a retail marijuana store, the proposed hours of operation during which the retail marijuana store plans to be available to sell marijuana to consumers;*
- (11) An attestation that the information provided to the Department to apply for the license for a marijuana establishment is true and correct according to the information known by the affiant at the time of signing; and*
- (12) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of section 74 of this regulation and the date on which the person signed the application.*
- (c) Evidence of the amount of taxes paid, or other beneficial financial contributions made, to this State or its political subdivisions within the last 5 years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed marijuana establishment.*
- (d) A description of the proposed organizational structure of the proposed marijuana establishment, including, without limitation:*
 - (1) An organizational chart showing all owners, officers and board members of the proposed marijuana establishment;*

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

(I) The title of the person;

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

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

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

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

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

(VII) Whether the person has previously had a medical marijuana establishment agent registration card or marijuana establishment agent registration card revoked;

(VIII) Whether the person is an attending provider of health care currently providing written documentation for the issuance of registry identification cards or letters of approval;

(IX) Whether the person is a law enforcement officer;

(X) Whether the person is currently an employee or contractor of the Department;

and

(XI) Whether the person has an ownership or financial investment interest in any other medical marijuana establishment or marijuana establishment.

(e) For each owner, officer and board member of the proposed marijuana establishment:

(1) An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of an excluded felony offense, and that the information provided to support the application for a license for a marijuana establishment is true and correct;

(2) A narrative description, not to exceed 750 words, demonstrating:

(I) Past experience working with governmental agencies and highlighting past experience in giving back to the community through civic or philanthropic involvement;

(II) Any previous experience at operating other businesses or nonprofit organizations; and

(III) Any demonstrated knowledge, business experience or expertise with respect to marijuana; and

(3) A resume.

(f) Documentation concerning the size of the proposed marijuana establishment, including, without limitation, building and general floor plans with supporting details.

(g) The integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to sale, including, without limitation, a plan for testing and verifying marijuana, a transportation or delivery plan and procedures to ensure adequate security measures, including, without limitation, building security and product security.

(h) A plan for the business which includes, without limitation, a description of the inventory control system of the proposed marijuana establishment to satisfy the requirements of NRS 453D.300 and section 108 of this regulation.

(i) A financial plan which includes, without limitation:

(1) Financial statements showing the resources of the applicant;

(2) If the applicant is relying on money from an owner, officer or board member, evidence that the person has unconditionally committed such money to the use of the applicant in the event the Department awards a license to the applicant and the applicant obtains the necessary approvals from the locality to operate the proposed marijuana establishment; and

(3) Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.

(j) Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana establishment on a daily basis, which must include, without limitation:

(1) A detailed budget for the proposed marijuana establishment, including pre-opening, construction and first-year operating expenses;

(2) An operations manual that demonstrates compliance with this chapter;

(3) An education plan which must include, without limitation, providing educational materials to the staff of the proposed marijuana establishment; and

(4) A plan to minimize the environmental impact of the proposed marijuana establishment.

(k) If the application is submitted on or before November 15, 2018, for a license for a marijuana distributor, proof that the applicant holds a wholesale dealer license issued pursuant to chapter 369 of NRS, unless the Department determines that an insufficient number of marijuana distributors will result from this limitation.

(l) A response to and information which supports any other criteria the Department determines to be relevant, which will be specified and requested by the Department at the time the Department issues a request for applications which includes the point values that will be allocated to the applicable portions of the application pursuant to subsection 2 of section 76 of this regulation.

Sec. 79. *For the purposes of paragraph (c) of subsection 5 of NRS 453D.210, the distance must be measured from the front door of the proposed marijuana establishment to the closest point of the property line of a school or community facility.*

Sec. 80. 1. *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 section 76 of this regulation and the Department determines that more than one of the applications is complete and in compliance with this chapter and chapter 453D of 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 based on compliance with the provisions of this chapter and chapter 453D of NRS and on the content of the applications relating to:*

(a) Whether the owners, officers or board members have experience operating another kind of business that has given them experience which is applicable to the operation of a marijuana establishment;

(b) The diversity of the owners, officers or board members of the proposed marijuana establishment;

(c) The educational achievements of the owners, officers or board members of the proposed marijuana establishment;

(d) The financial plan and resources of the applicant, both liquid and illiquid;

(e) Whether the applicant has an adequate integrated plan for the care, quality and safekeeping of marijuana from seed to sale;

(f) The amount of taxes paid and other beneficial financial contributions, including, without limitation, civic or philanthropic involvement with this State or its political subdivisions, by the applicant or the owners, officers or board members of the proposed marijuana establishment;

(g) Whether the owners, officers or board members of the proposed marijuana establishment have direct experience with the operation of a medical marijuana establishment or marijuana establishment in this State and have demonstrated a record of operating such an establishment in compliance with the laws and regulations of this State for an adequate period of time to demonstrate success;

(h) The experience of key personnel that the applicant intends to employ in operating the type of marijuana establishment for which the applicant seeks a license; and

(i) Any other criteria that the Department determines to be relevant.

2. The Department will not require proof of zoning or land use approval to be submitted with an application for a license for a marijuana establishment and will not consider such approval when ranking applicants pursuant to subsection 1.

3. The Department will allocate the licenses for retail marijuana stores described in paragraph (d) of subsection 5 of NRS 453D.210 to jurisdictions within each county and to the unincorporated area of the county proportionally based on the population of each jurisdiction and of the unincorporated area of the county. Within each such jurisdiction or area, the Department will issue licenses for retail marijuana stores to the highest-ranked applicants until the Department has issued the number of licenses authorized for issuance. If two or more applicants have the same total number of points for the last application being awarded a license, the Department will select the applicant which has scored the highest number of points as 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, including, without limitation, the information provided pursuant to section 77 or 78 of this regulation. Notwithstanding the allocation of licenses pursuant to this subsection, upon the request of a county government, the Department may issue a license to a retail marijuana store located anywhere within that county if issuing such a license would not exceed the number of licenses authorized for issuance in the county pursuant to paragraph (d) of subsection 5 of NRS 453D.210.

4. After ranking applicants pursuant to subsection 1 and selecting applicants for the issuance of a license pursuant to subsection 3, the Department will notify each locality of the applicants selected to be issued a license within that locality.

5. To prevent monopolistic practices, the Department will ensure, in a county whose population is 100,000 or more, that the Department does not issue, to any person, group of persons or entity, the greater of:

(a) One license to operate a retail marijuana store; or

(b) More than 10 percent of the licenses for retail marijuana stores allocable in the county.

6. If the Department 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 marijuana establishment that disqualify that person from being qualified to serve in that capacity, the Department 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 Department initially received the application, the Department may disqualify the application.

Sec. 81. If, within 10 business days after the date on which the Department begins accepting applications in response to a request for applications issued pursuant to section 76 of this regulation, the Department receives only one application from an applicant:

1. In a specific locality which limits the number of a type of marijuana establishment to one; or

2. Statewide, if the applicant is in a locality which does not limit the number of a type of marijuana establishment,

↪ and the Department determines that the application is complete and in compliance with this chapter and chapter 453D of NRS, the Department will issue a license for a marijuana

establishment to that applicant in accordance with NRS 453D.210 and section 83 of this regulation and notify the locality in which the marijuana establishment will be located.

Sec. 82. 1. *Within 10 days after the issuance of a license pursuant to section 80 or 81 of this regulation, the applicant shall pay the initial licensing fee of:*

- (a) For a marijuana cultivation facility, \$30,000.*
- (b) For a marijuana distributor, \$15,000.*
- (c) For a marijuana product manufacturing facility, \$10,000.*
- (d) For a marijuana testing facility, \$15,000.*
- (e) For a retail marijuana store, \$20,000.*

2. *If an applicant fails to pay the initial licensing fee required by subsection 1 within the 10-day period, the Department will revoke the license.*

Sec. 83. 1. *Except as otherwise provided in subsection 2, the issuance of a license pursuant to section 80 or 81 of this regulation is conditional and not an approval to begin operations as a marijuana establishment until such time as:*

- (a) The marijuana establishment is in compliance with the zoning and land use rules adopted by the locality in which the marijuana establishment will operate or, after notice of the issuance of a license to the marijuana establishment pursuant to section 80 or 81 of this regulation, the locality does not affirm to the Department within a reasonable time that the proposed marijuana establishment will be in violation of zoning or land use rules adopted by the locality;*

(b) The locality has issued a business license for the operation of the marijuana establishment, or otherwise approved the applicant, for the operation of the marijuana establishment; and

(c) The Department completes an inspection of the marijuana establishment.

2. If the locality in which a marijuana establishment is located does not issue business licenses and does not approve or disapprove marijuana establishments in its jurisdiction, a license for a marijuana establishment becomes an approval to begin operations as a marijuana establishment when:

(a) The marijuana establishment is in compliance with the zoning and land use rules adopted by the locality; and

(b) The Department completes an inspection of the marijuana establishment.

Sec. 84. If the Department does not issue to an applicant a license for a marijuana establishment, the Department must provide written notice to the applicant stating that the Department did not issue a license to the applicant as a result of the provisions of sections 80 and 81 of this regulation.

Sec. 85. 1. The Department may, at any time it determines an inspection is needed, conduct an investigation into the premises, facilities, qualifications of personnel, methods of operation, policies and purposes of any marijuana establishment and of any person proposing to engage in the operation of a marijuana establishment. An inspection of a facility may include, without limitation, investigation of standards for safety from fire on behalf of the Department by the local fire protection agency. If a local fire protection agency is not

available, the State Fire Marshal may conduct the inspection after the marijuana establishment pays the appropriate fee to the State Fire Marshal for such inspection.

2. The Department will not issue a license for a marijuana establishment until the Department completes an inspection of the marijuana establishment. Such an inspection may require more than one visit to the marijuana establishment.

3. The Department may conduct a preliminary walk-through of a marijuana establishment, upon request and subject to the availability of inspectors, to assist with questions and identify issues for correction before the inspection of the marijuana establishment. Before requesting a preliminary walk-through, a marijuana establishment must complete all construction and be near completion of all other requirements of the laws and regulations of this State. If the Department conducts a preliminary walk-through at the request of a marijuana establishment, the Department will issue an invoice to the marijuana establishment for the costs of the preliminary walk-through, including, without limitation, travel and inspection activities.

4. In addition to complying with the provisions of chapters 372A and 453D of NRS and chapter 372A of NAC governing the imposition of an excise tax on marijuana establishments, a marijuana establishment may not operate until it has been issued a license from the Department.

5. The Department will not issue a license for a marijuana establishment until the Department has received a satisfactory report of full compliance with and completion of all applicable public safety inspections required by state and local jurisdictions, including,

without limitation, fire, building, health and air quality inspections, except as otherwise provided in section 86 of this regulation.

Sec. 86. 1. *Submission of an application for a license for a marijuana establishment constitutes permission for entry to and reasonable inspection of the marijuana establishment by the Department, with or without notice. An inspector conducting an inspection pursuant to this section does not need to be accompanied during the inspection.*

2. *The Department may, upon receipt of a complaint against a marijuana establishment, except for a complaint concerning the cost of services, a complaint concerning the efficacy of marijuana or a complaint related to consumer service issues, conduct an investigation during the operating hours of the marijuana establishment, with or without notice, into the premises, facilities, qualifications of personnel, methods of operation, policies, procedures and records of that marijuana establishment or any other marijuana establishment which may have information pertinent to the complaint.*

3. *The Department may enter and inspect any building or premises at any time, with or without notice, to:*

- (a) Secure compliance with any provision of this chapter or chapter 453D of NRS;*
- (b) Prevent a violation of any provision of this chapter or chapter 453D of NRS; or*
- (c) Conduct an unannounced inspection of a marijuana establishment in response to an allegation of noncompliance with this chapter or chapter 453D of NRS.*

4. *The Department may:*

- (a) Summon witnesses to appear and testify on any subject material to its responsibilities under this chapter or chapter 453D of NRS. No property owner and no officer, director,*

superintendent, manager or agent of any company or corporation, whose property is wholly in one county, shall be required to appear, without his or her consent, at a place other than the county seat or at the nearest town to his or her place of residence or the principal place of business of such company or corporation. Such summons may be served by personal service by the Executive Director or his or her agent or by the sheriff of the county.

(b) Except as otherwise provided in this paragraph, issue subpoenas to compel the attendance of witnesses and the production of books and papers and may seek to enforce the subpoenas by petition to any court of competent jurisdiction in the manner provided by law. The Department will not issue a subpoena to compel the production of books and papers that contain individually identifiable health information.

5. Any member of the Nevada Tax Commission, the Executive Director or any officer of the Department designated by the Commission or Executive Director may administer oaths to witnesses.

6. The Department and its agents may:

(a) Inspect and examine all premises wherein marijuana is manufactured, sold or distributed;

(b) Inspect all equipment and supplies in, upon or about such premises;

(c) Summarily seize and remove from such premises any marijuana or marijuana products and impound any equipment, supplies, documents or records for the purpose of examination and inspection;

(d) Demand access to and inspect, examine, photocopy and audit all papers, books and records of any applicant or licensee, on his or her premises, or elsewhere as practicable, and

in the presence of the applicant or licensee, or his or her agent, respecting the gross income produced by any marijuana establishment, and require verification of income, and all other matters affecting the enforcement of the policy or any of the provisions of this chapter or chapter 453D of NRS; and

(e) Demand access to and inspect, examine, photocopy and audit all papers, books and records of any affiliate of a licensee whom the Department knows or reasonably suspects is involved in the financing, operation or management of the licensee. The inspection, examination, photocopying and audit may take place on the premises of the affiliate or another location, as practicable, and in the presence of the affiliate or its agent.

7. The Department will enter and inspect at least annually, with or without notice, each building or the premises of a marijuana establishment to ensure compliance with the provisions of this chapter and chapter 453D of NRS. Nothing in this subsection shall be construed to prohibit an appropriate local administrative authority from conducting an inspection of the facilities or operations of a marijuana establishment as provided by the ordinance of a local government.

8. The Department will enter and inspect, with or without notice, any building or premises operated by a marijuana establishment within 72 hours after the Department is notified that the marijuana establishment is operating without a license for the marijuana establishment.

9. The Department will inspect the medical marijuana establishment and the marijuana establishment of a dual licensee at the same time using the same inspection team to ensure consistency and efficiency. The Department will conduct such an inspection in a manner which is not unduly burdensome for the dual licensee.

10. The Department will administer the provisions of this chapter and chapter 453D of NRS for the protection of the public and in the public interest in accordance with the policy of this State.

11. As used in this section, "individually identifiable health information" means information which identifies a natural person, or from which the identity of a natural person may reasonably be ascertained, and which relates to:

- (a) The past, present or future physical or mental health or condition of the person; or*
- (b) The provision of health care to the person.*

Sec. 87. 1. If a marijuana establishment has not received a final inspection within 12 months after the date on which the Department issued a license to the marijuana establishment, the marijuana establishment must surrender the license to the Department. 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.

2. If a marijuana establishment surrenders a license to the Department pursuant to this section, the applicable licensing fee paid by the marijuana establishment is not refundable.

Sec. 88. If a marijuana establishment is closing, the person identified in subsection 1 of section 74 of this regulation for the marijuana establishment must notify the Department of the closing at least 15 days before the marijuana establishment is closed, and the marijuana establishment must surrender its license to the Department immediately upon closing.

Sec. 89. A person or entity that wishes to renew a license for a marijuana establishment must annually submit to the Department:

- 1. Payment of the annual licensing fee for the renewal of the license;*
- 2. An application in the format prescribed by the Department that includes:*
 - (a) The identification number of the marijuana establishment;*
 - (b) The name of the entity applying to renew the license, as reflected in the articles of incorporation or other documents filed with the Secretary of State;*
 - (c) The name of the person designated by the marijuana establishment to provide written notice to the Department when a marijuana establishment agent is employed by, volunteers at or provides labor as a marijuana establishment agent at the marijuana establishment;*
 - (d) A list and description of each of the following which has not been previously reported to the Department:*
 - (1) A conviction of an owner, officer or board member of the marijuana establishment of an excluded felony offense;*
 - (2) A civil penalty or judgment entered against an owner, officer or board member of the marijuana establishment; and*
 - (3) The initiation by a federal, state or local government of an investigation or proceeding against an owner, officer or board member of the marijuana establishment;*
 - (e) If the marijuana establishment is a retail marijuana store, the proposed hours of operation during which the retail marijuana store plans to be available to sell marijuana to consumers;*
 - (f) The number of the marijuana establishment agent registration card issued to each owner, officer or board member of the marijuana establishment;*

(g) For each owner, officer and board member of the marijuana establishment, whether the owner, officer or board member:

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

(2) Is an attending provider of health care currently providing written documentation for the issuance of registry identification cards or letters of approval;

(3) Is a law enforcement officer;

(4) Is an employee or contractor of the Department; or

(5) Has an ownership or financial investment interest in any other medical marijuana establishment or marijuana establishment;

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

(i) The signature of a natural person for the marijuana establishment as described in subsection 1 of section 74 of this regulation and the date on which he or she signed the application;

3. For each person who is an owner, officer or board member of the marijuana establishment, a complete set of the person's fingerprints and written permission of the person authorizing the Department to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report:

(a) If such a person holds 5 percent or less of the ownership interest in any one marijuana establishment or an ownership interest in more than one marijuana establishment of the same kind that, when added together, equals 5 percent or less, once in any 5-year period; and

(b) If such a person holds more than 5 percent of the ownership interest in any one marijuana establishment or an ownership interest in more than one marijuana establishment of the same kind that, when added together, equals more than 5 percent, or is an officer or board member of a marijuana establishment, once in any 3-year period; and

4. If the marijuana establishment is a marijuana testing facility, proof that the marijuana testing facility is accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization.

Sec. 90. 1. *If the Department determines that there are any deficiencies in the operation of a marijuana establishment or in the provision of services by a marijuana establishment, the Department may suspend the license of the marijuana establishment and request a written plan of correction from the marijuana establishment.*

2. A marijuana establishment whose license has been suspended pursuant to subsection 1 shall develop a plan of correction for each deficiency and submit the plan to the Department for approval within 10 business days after receipt of the statement of deficiencies. The plan of correction must include specific requirements for corrective action, which must include times within which the deficiencies are to be corrected.

3. If the plan submitted pursuant to subsection 2 is not acceptable to the Department, the Department may direct the marijuana establishment to resubmit a plan of correction or the

Department may develop a directed plan of correction with which the marijuana establishment must comply.

Sec. 91. 1. *The Department will deny an application for the issuance or renewal of a license for a marijuana establishment if:*

(a) The application or the marijuana establishment is not in compliance with any provision of this chapter or chapter 453D of NRS; or

(b) An owner, officer or board member of the marijuana establishment:

(1) Is an employee or contractor of the Department;

(2) Has an ownership or financial investment interest in a marijuana testing facility and also is an owner, officer or board member of a marijuana cultivation facility, marijuana distributor, marijuana product manufacturing facility or retail marijuana store; or

(3) Provides false or misleading information to the Department.

2. *The Department may revoke a license for a marijuana establishment if:*

(a) The marijuana establishment engages in a category I violation pursuant to section 120 of this regulation;

(b) An owner, officer or board member of the marijuana establishment has been convicted of an excluded felony offense; or

(c) The Department receives formal notice from the applicable locality that the marijuana establishment has had its authorization to operate terminated.

3. *The Department may deny an application for the issuance or renewal of a license for a marijuana establishment or may suspend or revoke any license issued under the provisions of this chapter and chapter 453D of NRS upon any of the following grounds:*

(a) Violation by the applicant or the marijuana establishment of any of the provisions of this chapter or chapter 453D of NRS.

(b) The failure or refusal of an applicant or marijuana establishment to comply with any of the provisions of this chapter or chapter 453D of NRS.

(c) The failure or refusal of a marijuana establishment to carry out the policies and procedures or comply with the statements provided to the Department in the application of the marijuana establishment.

(d) Operating a marijuana establishment without a license.

(e) The failure or refusal to return an adequate plan of correction to the Department within 10 days after receipt of a statement of deficiencies pursuant to section 90 of this regulation.

(f) The failure or refusal to correct any deficiency specified by the Department within the period specified in a plan of correction developed pursuant to section 90 of this regulation.

(g) The failure or refusal to cooperate fully with an investigation or inspection by the Department or its agent.

(h) The failure to comply with the provisions of chapters 372A and 453D of NRS and chapter 372A of NAC governing the imposition of an excise tax on marijuana establishments.

4. If the Department denies an application for issuance or renewal of a license for a marijuana establishment or revokes such a license, the Department will provide notice to the applicant or marijuana establishment that includes, without limitation, the specific reasons for the denial or revocation.

5. Before denying an application for issuance or renewal of a license for a marijuana establishment or revoking such a license as a result of the actions of an owner, officer or board member of the marijuana establishment pursuant to paragraph (b) of subsection 1 or paragraph (b) of subsection 2, the Department may provide the marijuana establishment with an opportunity to correct the situation.

6. The Department will not deny an application to renew a license for a marijuana establishment or revoke a license based on a change in ownership of the marijuana establishment if the marijuana establishment is in compliance with the provisions of this chapter and chapter 453D of NRS.

Sec. 92. 1. *A marijuana establishment may, in accordance with this section and upon submission of a statement signed by a person authorized to submit such a statement by the governing documents of the marijuana establishment, transfer all or any portion of its ownership to another party, and the Department shall transfer the license issued to the marijuana establishment to the party acquiring ownership, if the party who will acquire the ownership of the marijuana establishment submits:*

(a) If the party will acquire the entirety of the ownership interest in the marijuana establishment, evidence satisfactory to the Department that the party has complied with the provisions of NRS 453D.300 for the purpose of operating the marijuana establishment;

(b) For the party and each person who is proposed to be an owner, officer or board member of the marijuana establishment, the name, address and date of birth of the person, a complete set of the person's fingerprints and written permission of the person authorizing the

Department to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and

(c) Proof satisfactory to the Department that, as a result of the transfer of ownership, no person, group of persons or entity will, in a county whose population is 100,000 or more, hold more than one license for a marijuana establishment or more than 10 percent of the licenses for marijuana establishments allocated to the county, whichever is greater.

2. A marijuana establishment shall reimburse the Department for all costs incurred by the Department to determine whether any change in ownership or other change was made to circumvent the provisions of this section which prohibit the transfer of a license for a marijuana establishment or to otherwise review or investigate a change in ownership.

3. A person shall not sell, purchase, assign, lease, grant or foreclose a security interest or otherwise transfer, convey or acquire in any manner whatsoever any interest of any sort whatsoever in or to any marijuana establishment or any portion thereof, whether the license for the marijuana establishment is conditional or not, or enter into or create a voting trust agreement or any other agreement of any sort in connection with any marijuana establishment or any portion thereof, except in accordance with this chapter and chapter 453D of NRS.

4. The owners, officers or board members of a marijuana establishment shall notify the Department on a form prescribed by the Department each time an ownership interest in any amount in the marijuana establishment is transferred.

5. A transfer of an ownership interest in any amount in a marijuana establishment is not effective until the Department has been notified on a form prescribed by the Department of the

intent to transfer an ownership interest in the marijuana establishment and the Department has found that each person to whom an ownership interest is proposed to be transferred is individually qualified to be an owner of the marijuana establishment.

6. A person shall not transfer or convey in any manner whatsoever any interest in or to a marijuana establishment, or any portion thereof, to, or permit any investment therein or participation in the profits thereof by, any person acting as agent or trustee or in any other representative capacity for or on behalf of another person without first disclosing all facts pertaining to such representation to the Department, including, without limitation, a description of the reason for the transfer and any contract or other agreement describing the transaction.

7. A marijuana establishment, or an owner, officer or board member thereof, shall not cause or permit any stock certificate or other evidence of beneficial interest in the marijuana establishment to be registered in the books or records of the marijuana establishment in the name of any person other than the true and lawful owner of the beneficial interest without the written permission of the Department.

8. An ownership interest in a marijuana establishment may only be transferred to a natural person or, if the person receiving an ownership interest is not a natural person, the recipient must disclose the percentage of the ownership interest in the marijuana establishment received by each person who has an ownership interest in the recipient.

9. A request to transfer an ownership interest in a marijuana establishment which holds a conditional license must be accompanied by a notarized attestation, signed by a person authorized to submit such an attestation by the governing documents of the marijuana

establishment, declaring that the prospective owner will build and operate the marijuana establishment at standards that meet or exceed the criteria contained in the original application for the marijuana establishment.

10. The owners of a marijuana establishment may request the transfer of any portion or the entirety of the ownership interest in the marijuana establishment to any existing owner or combination of existing owners of the marijuana establishment by submitting to the Department:

- (a) A completed Transfer of Interest Form prescribed by the Department;*
- (b) All contracts or other agreements which describe the ownership transaction; and*
- (c) Proof satisfactory to the Department that no monopoly will be created.*

11. The owners of a marijuana establishment may request the transfer of any portion or the entirety of the ownership interest in the marijuana establishment to any natural person who holds an ownership interest in another marijuana establishment or any person whose ownership interest is entirely held by natural persons who hold an ownership interest in another marijuana establishment by submitting to the Department:

- (a) A completed Transfer of Interest Form prescribed by the Department;*
- (b) All contracts or other agreements which describe the ownership transaction;*
- (c) Identification of each marijuana establishment in which any person who is proposed to receive an ownership interest in the marijuana establishment which is the subject of the request holds an ownership interest;*
- (d) A proposed organizational chart for the marijuana establishment which is the subject of the request;*

- (e) A copy of any document required to be filed with the Secretary of State, if applicable;*
- (f) A copy of any document required to be revised as a result of the proposed transfer relating to a fictitious name, if applicable;*
- (g) An updated description of all shares issued in the marijuana establishment and the shares issued per owner as a result of the proposed transfer, if applicable;*
- (h) A copy of a business license issued to the marijuana establishment by a locality which is revised to reflect the proposed transfer, if applicable; and*
- (i) Proof satisfactory to the Department that no monopoly will be created.*

12. The owners of a marijuana establishment may request the transfer of any portion or the entirety of the ownership interest in the marijuana establishment to any natural person, regardless of whether the natural person holds an ownership interest in another marijuana establishment, or any person whose ownership interest is not entirely held by natural persons who hold an ownership interest in another marijuana establishment by submitting to the Department:

- (a) A completed Transfer of Interest Form prescribed by the Department;*
- (b) All contracts or other agreements which describe the ownership transaction;*
- (c) A complete set of the fingerprints of each natural person who will receive an ownership interest and written permission of each such person authorizing the Department to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;*
- (d) Proof that a completed application for a marijuana establishment agent registration card has been submitted for each person who will receive an ownership interest;*

- (e) A proposed organizational chart for the marijuana establishment;*
- (f) A copy of any document required to be filed with the Secretary of State, if applicable;*
- (g) A copy of any document required to be revised as a result of the proposed transfer relating to a fictitious name, if applicable;*
- (h) An updated description of all shares issued in the marijuana establishment and the shares issued per owner as a result of the proposed transfer, if applicable;*
- (i) A copy of a business license issued to the marijuana establishment by a locality which is revised to reflect the proposed transfer, if applicable; and*
- (j) Proof satisfactory to the Department that no monopoly will be created.*

13. The Department will conduct such investigation of a request submitted pursuant to subsection 10, 11 or 12 and of each person proposed to receive an ownership interest in a marijuana establishment as a result of such a request as the Department determines is necessary. If the Department, as a result of such an investigation, determines additional information is necessary to complete the investigation, the marijuana establishment shall submit such information to the Department in a timely fashion. Upon completion of the investigation, the Department will:

(a) If the requested change in ownership does not violate any provision of this chapter or chapter 453D of NRS or any other relevant law or regulation:

- (1) Notify the marijuana establishment in writing that the request has been approved;*
- (2) Update its records to reflect the new ownership of the marijuana establishment; and*
- (3) Notify the locality in which the marijuana establishment is located of the change in ownership of the marijuana establishment.*

(b) If the requested change in ownership violates any provision of this chapter, chapter 453D of NRS or any other relevant law or regulation, notify the marijuana establishment in writing that the request has been denied and state the reason for denial.

Sec. 93. 1. *If an applicant for a license for a retail marijuana store wishes to know the score assigned to its application after review by the Department to establish a ranking pursuant to subsection 1 of section 80 of this regulation, the applicant may submit a request for its application score in writing to the Department. Upon receipt of such a request, the Department will provide the score to the applicant in a timely manner.*

2. If an applicant who receives an application score from the Department pursuant to subsection 1 wishes to review the scores assigned to each criterion in the application to generate the application score, the applicant may submit to the Department a request to review scoring information. Such a request must include the name of the owner, operator or board member of the applicant who will review scoring information on behalf of the applicant.

3. Upon receipt of a request to review scoring information pursuant to subsection 2, the Department will designate an employee of the Department to respond to the request and schedule and conduct the review of scoring information. Before conducting the review, the employee designated by the Department shall confirm that the identity of the person attending the review matches the person named in the request and make a copy of a document confirming the identity of the person. During the review, the employee designated by the Department shall allow the person attending the review to review the scores assigned to each criterion in the application of the applicant and a copy of the application for a license for a retail marijuana store submitted by the applicant for a period of not more than 30 minutes.

The person attending the review may take notes on the information provided, but shall not photocopy, scan, record, photograph or otherwise duplicate the information. The employee designated by the Department to conduct the review shall not discuss or comment on the scores, the review of the application by the Department or any other application submitted to the Department.

4. Upon completion of a review of scoring information pursuant to subsection 3, the Department will maintain in the file of the applicant a copy of:

- (a) The scoring information provided during the review;*
- (b) The documentation of identity provided to the employee designated by the Department to conduct the review; and*
- (c) Information establishing the date and time of the review.*

Sec. 94. 1. To obtain or renew a marijuana establishment agent registration card, for a person employed by or contracted with a marijuana establishment or a person who volunteers at a marijuana establishment other than a consultant who performs professional services for the marijuana establishment, the marijuana establishment shall submit to the Department:

- (a) A copy of any valid government-issued identification card of the person which includes a photograph, the current address and the date of birth of the person.*
- (b) A statement signed by the person pledging not to dispense or otherwise divert marijuana to any person who is not authorized to possess marijuana in accordance with the provisions of this chapter and chapter 453D of NRS.*

(c) A statement signed by the person asserting that he or she has not previously had a medical marijuana establishment agent registration card or marijuana establishment agent registration card revoked.

(d) An attestation signed and dated by the person that the person has not been convicted of an excluded felony offense.

(e) A complete set of the person's fingerprints and written permission of the person authorizing the Department to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

(f) Authorization for the Department to obtain any other information necessary to complete a background check of the person.

(g) An application fee of \$75.

(h) Such other information as the Department may require.

2. A person who:

(a) Has been convicted of an excluded felony offense; or

(b) Is less than 21 years of age,

☛ shall not serve as a marijuana establishment agent.

3. If an applicant for registration as a marijuana establishment agent satisfies the requirements of this section and is not disqualified from serving as such an agent pursuant to this section or any other applicable law or regulation, the Department will issue to the person a marijuana establishment agent registration card.

4. *An applicant for registration or renewal of registration as a marijuana establishment agent is deemed temporarily registered as a marijuana establishment agent on the date on which a complete application for registration or renewal of registration is submitted to the Department. A temporary registration as a marijuana establishment agent expires 30 days after the date upon which the application is received. The Department will provide verification of temporary registration to an applicant at the time the Department receives the application.*

5. *Each officer or board member of a marijuana establishment, and each person who holds more than 5 percent of the ownership interest in a marijuana establishment, shall obtain a marijuana establishment agent registration card.*

Sec. 95. 1. *The Department will issue marijuana establishment agent registration cards for each of the following categories:*

- (a) A marijuana cultivation facility;*
- (b) A marijuana distributor;*
- (c) A marijuana product manufacturing facility;*
- (d) A marijuana testing facility;*
- (e) A retail marijuana store; or*
- (f) An independent contractor who provides labor to a marijuana establishment or an employee of such an independent contractor.*

2. *Each marijuana establishment agent registration card issued pursuant to section 94 of this regulation must indicate the applicable category. A person who is employed by or volunteers at a marijuana establishment and to whom a marijuana establishment agent registration card is issued may only be employed by or volunteer at the type of marijuana*

establishment for which he or she is registered. Such a person may hold more than one category of marijuana establishment agent registration card and may volunteer or work at any marijuana establishment in this State for which the category of the marijuana establishment agent registration card authorizes the person to volunteer or work.

3. A marijuana establishment agent registration card issued pursuant to section 94 of this regulation to an independent contractor or an employee of an independent contractor authorizes the independent contractor or employee to provide labor to any marijuana establishment in this State.

4. If a marijuana establishment agent also holds a valid medical marijuana establishment agent registration card, the marijuana establishment agent is authorized to work in any marijuana establishment or dual licensee for which the category of the marijuana establishment agent registration card and medical marijuana establishment agent registration card authorizes the person to volunteer or work.

Sec. 96. 1. A marijuana establishment shall ensure that training is provided to a marijuana establishment agent before that person begins to work or volunteer at or provide labor as a marijuana establishment agent at the marijuana establishment. Such training must include, without limitation:

- (a) The proper use of security measures and controls that have been adopted by the marijuana establishment for the prevention of diversion, theft or loss of marijuana;*
- (b) Procedures and instructions for responding to an emergency; and*
- (c) State and federal statutes and regulations related to the use of marijuana.*

2. In addition to the training set forth in subsection 1, a retail marijuana store shall ensure that instruction is provided to a marijuana establishment agent before that person begins to work or volunteer at or provide labor as a marijuana establishment agent to the retail marijuana store. Such instruction must include, without limitation:

- (a) The different strains of marijuana;*
- (b) The different methods of using marijuana and marijuana products;*
- (c) Learning to recognize signs of marijuana abuse, impairment or instability in the use of marijuana by a consumer;*
- (d) Clinical effects of marijuana on the human body and how THC affects the consumer;*
- (e) Required warnings and literature which must be supplied to the consumer;*
- (f) Methods of refusing entry or sales to prohibited persons, including, without limitation:*
 - (1) Verifying identification and using age verification devices;*
 - (2) Education on the effects of marijuana on persons under 21 years of age; and*
 - (3) Recognition of false or altered identification;*
- (g) Understanding the role of law enforcement in confirming compliance with laws and regulations relating to marijuana;*
- (h) Applicable state and local laws and regulations regarding marijuana;*
- (i) Preventing unlawful consumption of marijuana, including, without limitation, information regarding laws which prohibit open or public consumption of marijuana;*
- (j) Preventing the use of marijuana by persons under the age of 21 years, including, without limitation, laws which prohibit such use and the penalties for the violation of such laws;*

(k) How to prevent and address disturbances; and

(l) The responsibility of the marijuana establishment agent to put into effect strategies adopted by the marijuana establishment to prevent the diversion of marijuana.

3. In addition to the training set forth in subsection 1, a marijuana testing facility shall ensure that instruction is provided to a marijuana establishment agent before that person begins to work or volunteer at or provide labor as a marijuana establishment agent to the marijuana testing facility. Such instruction must include, without limitation:

(a) The good laboratory practices adopted by the marijuana testing facility; and

(b) The standard operating procedures and the quality control and quality assurance programs of the marijuana testing facility.

4. In addition to the training set forth in subsection 1, a marijuana cultivation facility shall ensure that instruction is provided to a marijuana establishment agent before that person begins to work or volunteer at or provide labor as a marijuana establishment agent to the marijuana cultivation facility. Such instruction must include, without limitation:

(a) The methods of cultivation used by the marijuana cultivation facility;

(b) The methods of fertilization used by the marijuana cultivation facility;

(c) Methods for recognizing the signs of insect infestation, pathogens and disease in marijuana plants, and the procedures for eradication and the safe disposal of plants so affected;

(d) The nutritional requirements of marijuana plants at various growth stages, including, without limitation, proper mixing and dispersal of fertilizer, flushing procedures and procedures for postharvest trimming, drying and curing; and

(e) The safe handling of equipment, including, without limitation, high-intensity discharge lamps, electrical ballasts, pumps, fans, cutting implements and other equipment for cultivation.

5. In addition to the training set forth in subsection 1, a marijuana product manufacturing facility shall ensure that instruction is provided to a marijuana establishment agent before that person begins to work or volunteer at or provide labor as a marijuana establishment agent to the marijuana product manufacturing facility. Such instruction must include, without limitation:

(a) Understanding the difference between concentrated marijuana, topical products and marijuana products, as applicable to the operations of the marijuana product manufacturing facility;

(b) The procedures used by the marijuana product manufacturing facility to create concentrated marijuana and marijuana products; and

(c) The proper procedures for handling concentrated marijuana and marijuana products, including, without limitation, the procedures used to prepare, produce, package and store such products as required by the provisions of this chapter and chapter 453D of NRS.

6. In addition to the training set forth in subsection 1, a marijuana distributor shall ensure that instruction is provided to a marijuana establishment agent before that person begins to work or volunteer at or provide labor as a marijuana establishment agent to the marijuana distributor. Such instruction must include, without limitation:

(a) Procedures for the proper handling of marijuana plants, usable marijuana, concentrated marijuana and marijuana products;

(b) Procedures for the proper transportation and storage of marijuana plants, usable marijuana, concentrated marijuana and marijuana products; and

(c) Information regarding the type of driver's license which must be maintained for the loads expected to be transported.

Sec. 97. *An applicant submitting an application for a marijuana establishment agent registration card pursuant to section 94 of this regulation or renewing, amending, changing or replacing a marijuana establishment agent registration card shall submit the application electronically in the format prescribed by the Department.*

Sec. 98. *To make a change to the name or address on a marijuana establishment agent registration card, the marijuana establishment agent must submit to the Department a request for the change, which must include:*

- 1. The name on and the number of the current marijuana establishment agent registration card of the cardholder;*
- 2. The new name or address of the cardholder;*
- 3. The effective date of the new name or address of the cardholder;*
- 4. For a change of the address of the cardholder, the county and state in which the new address is located; and*
- 5. For a change of the name of the cardholder, a copy of any valid government-issued identification card of the cardholder which includes a photograph of the person and the new name and address of the cardholder and documentation of the reason for the change.*

Sec. 99. *To request a replacement marijuana establishment agent registration card that has been lost, stolen or destroyed, the marijuana establishment agent must submit to the*

Department, within 3 working days after the card was lost, stolen or destroyed, a request for a replacement card which must include:

- 1. The name and date of birth of the cardholder;*
- 2. If known, the number of the lost, stolen or destroyed marijuana establishment agent registration card; and*
- 3. If the cardholder cannot provide the number of the lost, stolen or destroyed marijuana establishment agent registration card, a copy of:*
 - (a) Any valid government-issued identification card of the cardholder which includes a photograph of the person; or*
 - (b) A marijuana establishment agent registration card previously issued to the person.*

Sec. 100. *If the Department issues a marijuana establishment agent registration card based on a request pursuant to section 98 or 99 of this regulation, the new marijuana establishment agent registration card must have the same expiration date as the marijuana establishment registration agent card being changed or replaced.*

Sec. 101. 1. *The Department will deny an application for or an application to renew a marijuana establishment agent registration card if the applicant:*

- (a) Does not meet the requirements set forth in section 94 of this regulation; or*
- (b) Previously has had a marijuana establishment agent registration card or a medical marijuana establishment agent registration card revoked.*

2. The Department may deny an application for or an application to renew a marijuana establishment agent registration card if the applicant provides false or misleading information to the Department.

3. *The Department may revoke a marijuana establishment agent registration card if the marijuana establishment agent:*

(a) Sells or otherwise diverts marijuana to a person who is not authorized by law to possess marijuana in accordance with the provisions of this chapter and chapter 453D of NRS;

(b) Has been convicted of an excluded felony offense; or

(c) Engages in a category I violation pursuant to section 120 of this regulation.

4. *The Department may revoke a marijuana establishment agent registration card if the marijuana establishment agent knowingly violates any provision of this chapter or chapter 453D of NRS.*

5. *If the Department denies an application for or an application to renew a marijuana establishment agent registration card or revokes a marijuana establishment agent registration card, the Department will provide notice to the applicant or marijuana establishment agent that includes, without limitation, the specific reasons for the denial or revocation.*

Sec. 102. 1. *Except as otherwise provided in subsection 1 of NRS 453D.230, the Department will charge and collect the following fees:*

<i>For the initial issuance of a license for a retail marijuana store.....</i>	<i>\$20,000</i>
<i>For the renewal of a license for a retail marijuana store.....</i>	<i>6,600</i>
<i>For the initial issuance of a license for a marijuana cultivation facility.....</i>	<i>30,000</i>
<i>For the renewal of a license for a marijuana cultivation facility.....</i>	<i>10,000</i>
<i>For the initial issuance of a license for a marijuana product</i>	<i>10,000</i>

<i>manufacturing facility.....</i>	
<i>For the renewal of a license for a marijuana product manufacturing facility.....</i>	<i>3,300</i>
<i>For the initial issuance of a license for a marijuana testing facility</i>	<i>15,000</i>
<i>For the renewal of a license for a marijuana testing facility</i>	<i>5,000</i>
<i>For the initial issuance of a license for a marijuana distributor</i>	<i>15,000</i>
<i>For the renewal of a license for a marijuana distributor</i>	<i>5,000</i>

2. Each marijuana establishment shall submit the fee required by subsection 1 to the Department annually.

3. For the ongoing activities of the Department relating to the oversight of marijuana establishments, not related to processing an application by a marijuana establishment, the Department will collect an assessment from each marijuana establishment for the time and effort attributed to the oversight of the marijuana establishment that is based upon the hourly rate established by the Department.

4. As used in this section, "license" includes a conditional license.

Sec. 103. A marijuana establishment shall post its license for a marijuana establishment, business license and any other authorization to conduct business in a conspicuous place within the marijuana establishment.

Sec. 104. A marijuana establishment shall not sell or transfer a lot of usable marijuana, concentrated marijuana or marijuana products until all required quality assurance testing has been completed.