

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 10:09 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

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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
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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:

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Question 2, must be deposited in the State Distributive School Account. The proceeds from the state and local sales and use taxes generated on the retail sales of marijuana, marijuana products, and marijuana paraphernalia would be distributed to the state and local governments, including school districts, in the same manner these taxes are currently distributed.

The Department of Taxation and the Fiscal Analysis Division cannot determine the amount of revenue that will be generated for state and local governments, including school districts and the State Distributive School Account, from the application fee, licensee fees, excise tax, and sales and use taxes, because the following factors cannot be estimated with any reasonable degree of certainty:

1. The number of applications that would be received by the Department for marijuana establishment licenses;
2. The number of initial and annual licenses that would be issued by the Department and the amount of the fee that the Department would charge for each initial and annual license issued, if the Department decides to impose the license fees authorized within Question 2;
3. The quantity of marijuana that will be sold by marijuana cultivation facilities and the fair market value that will be established by the Department through the regulatory process that will be subject to the excise tax;
4. The quantity of marijuana, marijuana products, and marijuana paraphernalia and the price of these items that will be sold by retail marijuana stores that will be subject to state and local sales and use taxes.

Additionally, businesses that receive marijuana establishment licenses from the Department may also be subject to additional taxes and fees imposed by the state of Nevada or by local governments, including, but not limited to, the Modified Business Tax, the Commerce Tax, and state and local business license fees, which would increase revenues from these tax sources dedicated to the state or local government entity imposing the tax or fee. However, because the Fiscal Analysis Division cannot estimate the number of licenses that will be issued, the revenue that may be generated by the marijuana establishments, or the wages that may be paid to persons employed by the establishments, the resultant increase in revenues dedicated to the state and local governments cannot be determined with any reasonable degree of certainty.

The Fiscal Analysis Division has identified the following areas that may affect expenditures for state and local governments as a result of Question 2:

1. The Department of Taxation has indicated that it will incur one-time costs for equipment and programming of its computer system totaling approximately \$600,000. The Department has also indicated that it will need an additional 14 positions to implement and administer these provisions, beginning on January 1, 2017, which, along with associated operating costs, would result in a cost of approximately \$637,000 for the last six months of Fiscal Year 2017 (January 1, 2017–June 30, 2017) and approximately \$1.1 million in each

subsequent fiscal year. The Department has estimated that the total costs for implementation and administration of Question 2 would be approximately \$1.2 million in Fiscal Year 2017 (the first year in which the provisions would become effective), and approximately \$1.1 million per fiscal year thereafter.

The Department has indicated that some expenditures will be required before revenue from the excise tax and fees authorized in Question 2 are collected; however, the Fiscal Analysis Division cannot determine how the Department will choose to implement Question 2, the timing of expenditures that will be incurred by the Department, or the method that will be used to fund these initial costs.

2. Question 2 requires the Department of Taxation to conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant. Question 2 also requires the operator of each marijuana establishment to determine the criminal history of each worker or volunteer for suitability of employment as established in Question 2. The Department of Public Safety has indicated that if it will be required to process the background checks, the caseload increase will require one to two additional positions, which would cost approximately \$50,000 to \$100,000 per fiscal year. However, the Fiscal Analysis Division cannot determine the process that the Department of Taxation will choose to conduct these background checks.
3. The provisions of Question 2 that criminalize and decriminalize certain actions related to marijuana will require changes to the Nevada Offense Codes used in the Central Repository for Nevada Records of Criminal History maintained by the Department of Public Safety. The Department of Public Safety has indicated that an independent contractor may be required to implement the changes to the Nevada Offense Codes, which would result in a financial impact of approximately \$10,000 to \$40,000, based on previous contracts for these types of services. The Fiscal Analysis Division has determined that a financial impact on state government may occur only if an independent contractor is used to make the changes to the Nevada Offense Codes.
4. The provisions of Question 2 that criminalize and decriminalize certain actions related to marijuana may increase or decrease the workload of various state and local government agencies with respect to enforcement, investigation, incarceration, probation, and parole. The Fiscal Analysis Division cannot determine the net effect of these provisions on the workload of these agencies with respect to these functions.

The Fiscal Analysis Division cannot determine what actions may be taken by state and local governments to carry out the provisions of Question 2, the amount of expenditures that may be incurred, or how those expenditures would be funded. However, Question 2 specifies that excise tax revenues, fees, or penalties collected must first be used to defray certain costs incurred by the Department of Taxation and counties, cities, and towns, with the excess revenue to be deposited in the State Distributive School Account. Additionally, state and local governments, including school districts, will receive sales and use tax revenue from the retail

sales of marijuana, marijuana products, and marijuana paraphernalia, as well as from other taxes and fees that may be paid by businesses that receive marijuana establishment licenses. Therefore, the Fiscal Analysis Division cannot determine the financial impact upon state or local governments, including school districts and the State Distributive Account, because the revenues and expenditures resulting from Question 2 cannot be estimated with any reasonable degree of certainty.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – August 12, 2016

INITIATIVE TO REGULATE AND TAX MARIJUANA

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. *Sections 1 to 18, inclusive, of this act may be cited as the Regulation and Taxation of Marijuana Act.*

Sec. 2. *In the interest of public health and public safety, and in order to better focus state and local law enforcement resources on crimes involving violence and personal property, the People of the State of Nevada find and declare that the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated similar to other legal businesses.*

The People of the State of Nevada find and declare that the cultivation and sale of marijuana should be taken from the domain of criminals and be regulated under a controlled system, where businesses will be taxed and the revenue will be dedicated to public education and the enforcement of the regulations of this act.

The People of the State of Nevada proclaim that marijuana should be regulated in a manner similar to alcohol so that:

1. Marijuana may only be purchased from a business that is licensed by the State of Nevada;

2. Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;

3. Cultivating, manufacturing, testing, transporting, and selling marijuana will be strictly controlled through state licensing and regulation;

4. Selling or giving marijuana to persons under 21 years of age shall remain illegal;

5. Individuals will have to be 21 years of age or older to purchase marijuana;

6. Driving under the influence of marijuana will remain illegal; and

7. Marijuana sold in the state will be tested and labeled.

Sec. 3. *As used in sections 1 to 18, inclusive, of this act, unless the context otherwise requires:*

1. “Community facility” means a facility licensed to provide day care to children, a public park, a public playground, a public swimming pool, a center or facility the primary purpose of which is to provide recreational opportunities or services to children or adolescents, or a church, synagogue, or other building, structure, or place used for religious worship or other religious purpose.

2. “Concentrated marijuana” means the separated resin, whether crude or purified, obtained from marijuana.

3. “Consumer” means a person who is 21 years of age or older who purchases marijuana or marijuana products for use by persons 21 years of age or older, but not for resale to others.

4. *“Department” means the Department of Taxation.*
5. *“Dual Licensee” means a person or group of persons who possess a current, valid registration certificate to operate a medical marijuana establishment pursuant to chapter 453A of NRS and a license to operate a marijuana establishment under sections 1 to 18, inclusive, of this act.*
6. *“Excluded felony offense” means a conviction of an offense that would constitute a category A felony if committed in Nevada or convictions for two or more offenses that would constitute felonies if committed in Nevada. “Excluded felony offense” does not include:*
 - (a) A criminal offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed more than 10 years ago; or*
 - (b) An offense involving conduct that would be immune from arrest, prosecution, or penalty pursuant to chapter 453A of NRS, except that the conduct occurred before the effective date of chapter 453A of NRS, or was prosecuted by an authority other than the State of Nevada.*
7. *“Locality” means a city or town, or, in reference to a location outside the boundaries of a city or town, a county.*
8. *“Marijuana” means all parts of any plant of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” does not include:*
 - (a) The mature stems of the plant, fiber produced from the stems, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stems (except the resin extracted therefrom), fiber, oil, or cake, the sterilized seed of the plant which is incapable of germination; or*
 - (b) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.*
9. *“Marijuana cultivation facility” means an entity licensed to cultivate, process, and package marijuana, to have marijuana tested by a marijuana testing facility, and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.*
10. *“Marijuana distributor” means an entity licensed to transport marijuana from a marijuana establishment to another marijuana establishment.*
11. *“Marijuana establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.*
12. *“Marijuana product manufacturing facility” means an entity licensed to purchase marijuana, manufacture, process, and package marijuana and marijuana products, and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.*
13. *“Marijuana products” means products comprised of marijuana or concentrated marijuana and other ingredients that are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.*
14. *“Marijuana paraphernalia” means any equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repacking, storing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.*
15. *“Marijuana testing facility” means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.*
16. *“Process” means to harvest, dry, cure, trim, and separate parts of the marijuana plant by manual or mechanical means, such as sieving or ice water separation, but not by chemical extraction or chemical synthesis.*

17. “Public place” means an area to which the public is invited or in which the public is permitted regardless of age. “Public place” does not include a retail marijuana store.

18. “Retail marijuana store” means an entity licensed to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities and retail marijuana stores, and to sell marijuana and marijuana products to consumers.

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

Sec. 4. 1. Sections 1 to 18 do not permit any person to engage in and do not prevent the imposition of any civil, criminal, or other penalty for:

(a) Driving, operating, or being in actual physical control of a vehicle, aircraft, or vessel under power or sail while under the influence of marijuana or while impaired by marijuana;

(b) Knowingly delivering, giving, selling, administering, or offering to sell, administer, give, or deliver marijuana to a person under 21 years of age, unless:

(1) The recipient is permitted to possess marijuana pursuant to chapter 453A of NRS; or

(2) The person demanded and was shown bona fide documentary evidence of the majority and identity of the recipient issued by a federal, state, county, or municipal government, or subdivision or agency thereof;

(c) Possession or use of marijuana or marijuana paraphernalia on the grounds of, or within, any facility or institution under the jurisdiction of the Nevada Department of Corrections;

(d) Possession or use of marijuana on the grounds of, or within, a school providing instruction in preschool, kindergarten, or any grades 1 through 12; or

(e) Undertaking any task under the influence of marijuana that constitutes negligence or professional malpractice.

2. Sections 1 to 18 do not prohibit:

(a) A public or private employer from maintaining, enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under sections 1 to 18, inclusive, of this act;

(b) A state or local government agency that occupies, owns, or controls a building from prohibiting or otherwise restricting the consumption, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana in that building;

(c) A person who occupies, owns, or controls a privately owned property from prohibiting or otherwise restricting the smoking, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana on that property; or

(d) A locality from adopting and enforcing local marijuana control measures pertaining to zoning and land use for marijuana establishments.

3. Nothing in the provisions of sections 1 to 18, inclusive, of this act shall be construed as in any manner affecting the provisions of chapter 453A of NRS relating to the medical use of marijuana.

Sec. 5. 1. Not later than 12 months after the effective date of this act, the Department shall adopt all regulations necessary or convenient to carry out the provisions of sections 1 to 18, inclusive, of this act. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:

(a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;

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

(c) Requirements for the security of marijuana establishments;

- (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;*
- (e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;*
- (f) 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;*
- (g) Requirements for record keeping by marijuana establishments;*
- (h) Reasonable restrictions on signage, marketing, display, and advertising;*
- (i) Procedures for the collection of taxes, fees, and penalties imposed by sections 1 to 18, inclusive, of this act;*
- (j) 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;*
- (k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and marijuana establishments at the same location;*
- (l) Procedures to establish the fair market value at wholesale of marijuana; and*
- (m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any violation of the provisions of section 13 of this act.*

2. The Department shall approve or deny applications for licenses pursuant to section 9 of this act.

3. The Department may by motion or on complaint, after investigation, notice of the specific violation, and an opportunity for a hearing, pursuant to the provisions of chapter 233B of NRS, suspend, revoke, or fine a licensee for the violation of sections 1 to 18, inclusive, of this act or for a violation of a regulation adopted by the Department pursuant to this section.

4. The Department may immediately suspend the license of any marijuana establishment if the marijuana establishment knowingly sells, delivers, or otherwise transfers marijuana in violation of sections 1 to 18, inclusive, of this act, or knowingly purchases marijuana from any person not licensed pursuant to sections 1 to 18, inclusive, of this act or to chapter 453A of NRS. The Department must provide an opportunity for a hearing pursuant to the provisions of NRS 233B.121 within a reasonable time from a suspension pursuant to this subsection.

5. To ensure that individual privacy is protected:

(a) The Department shall not require a consumer to provide a retail marijuana store with identifying information other than government-issued identification to determine the consumer's age; and

(b) A retail marijuana store must not be required to acquire and record personal information about consumers other than information typically acquired in a financial transaction conducted at a retail liquor store.

6. The Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.

7. The Department shall inspect marijuana establishments as necessary to enforce sections 1 to 18, inclusive, of this act or the regulations adopted pursuant to this section.

Sec. 6. *Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, except as otherwise provided in sections 1 to 18, inclusive, of this act, it is lawful, in this State, and must not be used as the basis for prosecution or penalty by this State or a political subdivision of this State, and must not, in this State, be a basis for seizure or forfeiture of assets for persons 21 years of age or older to:*

1. Possess, use, consume, purchase, obtain, process, or transport marijuana paraphernalia, one ounce or less of marijuana other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana;

2. Possess, cultivate, process, or transport not more than six marijuana plants for personal use and possess the marijuana produced by the plants on the premises where the plants were grown, provided that:

(a) Cultivation takes place within a closet, room, greenhouse, or other enclosed area that is equipped with a lock or other security device that allows access only to persons authorized to access the area; and

(b) No more than 12 plants are possessed, cultivated, or processed at a single residence, or upon the grounds of that residence, at one time;

3. Give or otherwise deliver one ounce or less of marijuana, other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana without remuneration to a person provided that the transaction is not advertised or promoted to the public; or

4. Assist another person who is 21 years of age or older in any of the acts described in this section.

Sec. 7. Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, it is not unlawful and shall not be an offense or be a basis for seizure or forfeiture of assets for persons 21 years of age or older to manufacture, possess, use, transport, or purchase marijuana paraphernalia, or to distribute or sell marijuana paraphernalia to a person who is 21 years of age or older.

Sec. 8. Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, except as otherwise provided in sections 1 to 18, inclusive, of this act, or the regulations adopted pursuant to section 5 of this act, it is lawful and must not, in this State, be used as the basis for prosecution or penalty by this State or a political subdivision of this State, and must not, in this State, be a basis for seizure or forfeiture of assets for persons 21 years of age or older to:

1. Possess marijuana and marijuana products, purchase marijuana from a marijuana cultivation facility, purchase marijuana and marijuana products from a marijuana product manufacturing facility, return marijuana or marijuana products to a facility from which they were purchased, transport marijuana and marijuana products to or from a marijuana testing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, or sell marijuana and marijuana products to consumers, if the person conducting the activities described in this subsection has a current, valid license to operate a retail marijuana store or is acting in the person's capacity as an agent of a retail marijuana store.

2. Cultivate, harvest, process, package, or possess marijuana, sell marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store, transport marijuana to or from a marijuana cultivation facility, a marijuana product manufacturing facility, or a marijuana testing facility, use the services of a marijuana distributor to transport marijuana to or from marijuana establishments, or purchase marijuana from a marijuana cultivation facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana cultivation facility or is acting in his or her capacity as an agent of a marijuana cultivation facility.

3. Package, process, manufacture, or possess marijuana and marijuana products, transport marijuana and marijuana products to or from a marijuana testing facility, a marijuana cultivation facility, or a marijuana product manufacturing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, sell marijuana and marijuana products to a retail marijuana store or a marijuana product manufacturing facility, purchase marijuana from a marijuana cultivation facility, or purchase marijuana and marijuana products from a marijuana product manufacturing facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana product manufacturing facility or is acting in his or her capacity as an agent of a marijuana product manufacturing facility.

4. Possess marijuana and marijuana products and transfer and transport marijuana and marijuana products between marijuana establishments, if the person transporting the

marijuana and marijuana products has a current, valid license to operate as a marijuana distributor or is acting in his or her capacity as an agent of a marijuana distributor.

5. Possess, process, repack, transport, or test marijuana and marijuana products if the person has a current, valid license to operate a marijuana testing facility or is acting in his or her capacity as an agent of a marijuana testing facility.

6. Lease or otherwise allow property owned, occupied, or controlled by any person, corporation, or other entity to be used for any of the activities conducted lawfully in accordance with this section.

Sec. 9. It is the public policy of the People of the State of Nevada that contracts related to the operation of marijuana establishments under sections 1 to 18, inclusive, of this act should be enforceable, and no contract entered into by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, or by those who allow property to be used by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, shall be deemed unenforceable on the basis that the actions or conduct permitted pursuant to the license are prohibited by federal law.

Sec. 10. 1. No later than 12 months after the effective date of this act, the Department shall begin receiving applications for marijuana establishments.

2. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall only accept applications for licenses for retail marijuana stores, marijuana product manufacturing facilities, and marijuana cultivation facilities pursuant to sections 1 to 18, inclusive, of this act, from persons holding a medical marijuana establishment registration certificate pursuant to chapter 453A of NRS.

3. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall issue licenses for marijuana distributors pursuant to sections 1 to 18, inclusive, of this act, only to persons holding a wholesale dealer license pursuant to chapter 369 of NRS, unless the Department determines that an insufficient number of marijuana distributors will result from this limitation.

4. Upon receipt of a complete marijuana establishment license application, the Department shall, within 90 days:

(a) Issue the appropriate license if the license application is approved; or

(b) Send a notice of rejection setting forth the reasons why the Department did not approve the license application.

5. The Department shall approve a license application if:

(a) The prospective marijuana establishment has submitted an application in compliance with regulations adopted by the Department and the application fee required pursuant to section 12;

(b) The physical address where the proposed marijuana establishment will operate is owned by the applicant or the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property;

(c) The property is not located within:

(1) 1,000 feet of a public or private school that provides formal education traditionally associated with preschool or kindergarten through grade 12 and that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department; or

(2) 300 feet of a community facility that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department;

(d) The proposed marijuana establishment is a proposed retail marijuana store and there are not more than:

(1) 80 licenses already issued in a county with a population greater than 700,000;

(2) 20 licenses already issued in a county with a population that is less than 700,000 but more than 100,000;

(3) 4 licenses already issued in a county with a population that is less than 100,000 but more than 55,000;

(4) 2 licenses already issued in a county with a population that is less than 55,000;
(5) Upon request of a county government, the Department may issue retail marijuana store licenses in that county in addition to the number otherwise allowed pursuant to this paragraph;

(e) The locality in which the proposed marijuana establishment will be located does not affirm to the Department that the proposed marijuana establishment will be in violation of zoning or land use rules adopted by the locality; and

(f) The persons who are proposed to be owners, officers, or board members of the proposed marijuana establishment:

(1) Have not been convicted of an excluded felony offense; and

(2) Have not served as an owner, officer, or board member for a medical marijuana establishment or a marijuana establishment that has had its registration certificate or license revoked.

6. **Competing applications.** When competing applications are submitted for a proposed retail marijuana store within a single county, the Department shall sue an impartial and numerically scored competitive bidding process to determine which application or applications among those competing will be approved.

Sec. 11. 1. All licenses expire one year after the date of issue.

2. The department shall issue a renewal license within 10 days of receipt of the prescribed renewal application and renewal fee from a marijuana establishment if its license is not under suspension or has not been revoked.

Sec. 12. 1. The Department shall require each applicant for a marijuana establishment license to pay a one-time application fee of \$5,000.

2. The Department may require payment of an annual licensing fee not to exceed:

For the initial issuance of a license for a retail marijuana store	\$20,000
For a renewal license for a retail marijuana store	\$6,600
For the initial issuance of a license for a marijuana cultivation facility	\$30,000
For a renewal license for a marijuana cultivation facility	\$10,000
For the initial issuance of a license for a marijuana product manufacturing facility	\$10,000
For a renewal license for a marijuana product manufacturing facility	\$3,300
For the initial issuance of a license for a marijuana distributor	\$15,000
For a renewal license for a marijuana distributor	\$5,000
For the initial issuance of a license for a marijuana testing facility	\$15,000
For a renewal license for a marijuana testing facility	\$5,000

Sec. 13. In addition to requirements established by rule pursuant to section 5 of this act:

1. Marijuana establishments shall:

(a) Secure every entrance to the establishment so that access to areas containing marijuana is restricted to persons authorized to possess marijuana;

(b) Secure the inventory and equipment of the marijuana establishment during and after operating hours to deter and prevent theft of marijuana;

(c) Determine the criminal history of any person before the person works or volunteers at the marijuana establishment and prevent any person who has been convicted of an excluded felony offense or who is not 21 years of age or older from working or volunteering for the marijuana establishment.

2. All cultivation, processing, and manufacture of marijuana must take place at a physical address approved by the Department and within an area that is enclosed and locked in a manner that restricts access only to persons authorized to access the area. The area may be uncovered only if it is enclosed with security fencing that is designed to prevent unauthorized entry and that is at least 8 feet high.

3. All cultivation, processing, and manufacture of marijuana must not be visible from a public place by normal unaided vision.

4. All cultivation, processing, and manufacture of marijuana must take place on property in the marijuana establishment's lawful possession or with the consent of the person in lawful physical possession of the property.

5. A marijuana establishment is subject to reasonable inspection by the Department, and a person who holds a marijuana establishment license must make himself or herself, or an agent thereof, available and present for any inspection required by the Department. The Department shall make reasonable accommodations so that ordinary business is not interrupted and safety and security procedures are not compromised by the inspection.

Sec. 14. 1. Restrictions on personal cultivation.

(a) Except as otherwise provided in chapter 453A of NRS, any person who:

(1) Cultivates marijuana within 25 miles of a retail marijuana store licensed pursuant to sections 1 to 18, inclusive, of this act, unless the person is a marijuana cultivation facility or a person acting in his or her capacity as an agent of a marijuana cultivation facility;

(2) Cultivates marijuana plants where they are visible from a public place by normal unaided vision; or

(3) Cultivates marijuana on property not in the cultivator's lawful possession or without the consent of the person in lawful physical possession of the property;

(b) Is guilty of:

(1) For a first violation, a misdemeanor punished by a fine of not more than \$600.

(2) For a second violation, a misdemeanor punished by a fine of not more than \$1,000.

(3) For a third violation, a gross misdemeanor.

(4) For a fourth or subsequent violation, a category E felony.

2. A person who smokes or otherwise consumes marijuana in a public place, in a retail marijuana store, or in a moving vehicle is guilty of a misdemeanor punished by a fine of not more than \$600.

3. A person under 21 years of age who falsely represents himself or herself to be 21 years of age or older to obtain marijuana is guilty of a misdemeanor.

4. A person under 21 years of age who knowingly enters, loiters, or remains on the premises of a marijuana establishment shall be punished by a fine of not more than \$500 unless the person is authorized to possess marijuana pursuant to chapter 453A of NRS and the marijuana establishment is a dual licensee.

5. A person who manufactures marijuana by chemical extraction or chemical synthesis, unless done pursuant to a marijuana product manufacturing license issued by the Department or authorized by chapter 453A of NRS, is guilty of a category E felony.

6. A person who knowingly gives marijuana to any person under 21 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 21 years of age is guilty of a misdemeanor.

7. A person who knowingly gives marijuana to any person under 18 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 18 years of age is guilty of a gross misdemeanor.

8. Notwithstanding the provisions of sections 1 to 18, inclusive, of this act, after the effective date of this act, the legislature may amend provisions of this act to provide for the conditions in which a locality may permit consumption of marijuana in a retail marijuana store.

Sec. 15. An excise tax is hereby imposed and must be collected by the State respecting wholesale sales of marijuana in this State by a marijuana cultivation facility at a rate of 15 percent of the fair market value at wholesale of the marijuana. The tax imposed pursuant to this subsection:

1. Is the obligation of the marijuana cultivation facility; and

2. Is separate from and in addition to any general state and local sales and use taxes that apply to retail sales of tangible personal property.

Sec. 16. Any tax revenues, fees, or penalties collected pursuant to sections 1 to 18, inclusive, of this act, first must be expended to pay the costs of the Department and of each

locality in carrying out sections 1 to 8, inclusive, of this act and the regulations adopted pursuant thereto. The Department shall remit any remaining money to the State Treasurer to be deposited to the credit of the State Distributive School Account in the State General Fund.

Sec. 17. *If any provision of this act, or the application thereof to any person, thing, or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.*

Sec. 18. This act shall become effective on October 1, 2015, if approved by the legislature, or on January 1, 2017, if approved by the voters.

STATE QUESTION NO. 3

Amendment to the *Nevada Constitution*

Shall Article 1 of the *Nevada Constitution* be amended to require the Legislature to provide by law for the establishment of an open, competitive retail electric energy market that prohibits the granting of monopolies and exclusive franchises for the generation of electricity?

Yes ☐ No ☐

EXPLANATION & DIGEST

EXPLANATION—This ballot measure proposes to amend the *Nevada Constitution* to require the Legislature to provide by law for an open, competitive retail electric energy market by July 1, 2023. The law passed by the legislature must include, but is not limited to, provisions that reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the granting of monopolies and exclusive franchises for the generation of electricity. The law would not have to provide for the deregulation of the transmission or distribution of electricity.

Approval of this ballot measure would add a new section to the *Nevada Constitution* establishing that every person, business, association of persons or businesses, state agency, political subdivision of the State of Nevada, or any other entity in Nevada has the right to choose the provider of its electric utility service, including but not limited to, selecting providers from a competitive retail electric market, or by producing electricity for themselves or in association with others, and shall not be forced to purchase energy from one provider. The proposed amendment does not create an open and competitive retail electric market, but rather requires the Legislature to provide by law for such a market by July 1, 2023. The law passed by the Legislature cannot limit a person's or entity's right to sell, trade, or otherwise dispose of electricity. Pursuant to Article 19, Section 2, of the *Nevada Constitution*, approval of this question is required at two consecutive general elections before taking effect.

A "Yes" vote would amend Article 1 of the *Nevada Constitution* so that the Legislature would be required to pass a law by July 1, 2023, that creates an open and competitive retail electric market and that includes provisions to reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the granting of monopolies and exclusive franchises for the generation of electricity.

A "No" vote would retain the provisions of Article 1 of the *Nevada Constitution* in their current form. These current provisions do not require the Legislature to pass a law that creates an open and competitive retail electric market and that includes provisions to reduce

costs to customers, protect against service disconnections and unfair practices, and prohibit the granting of monopolies and exclusive franchises for the generation of electricity.

DIGEST—Article 1 of the *Nevada Constitution* contains various rights granted to the people of Nevada. Approval of this ballot measure would add a new section to Article 1 of the *Nevada Constitution* that would require the Legislature to provide by law, no later than July 1, 2023, for an open, competitive retail electric energy market with protections that entitle customers to safe, reliable, and competitively priced electricity. The law passed by the legislature must include, but is not limited to, provisions that reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the granting of monopolies and exclusive franchises for the generation of electricity. This constitutional amendment would have an impact on public revenue; however, the amount of the impact cannot be determined.

Existing law, found in Title 58 of the *Nevada Revised Statutes*, generally authorizes a single utility to provide electric service to customers in each electric service territory in the state. This means that most Nevadans are required to purchase electricity from a single provider. Utility providers are regulated by the Nevada Public Utilities Commission (PUC), which is charged with providing for the safe, economic, efficient, prudent, and reliable operation and service of public utilities, as well as balancing the interests of customers and shareholders of public utilities by providing public utilities with the opportunity to earn a fair return on their investments while providing customers with just and reasonable rates.

ARGUMENT FOR PASSAGE

The Energy Choice Initiative

Vote YES on Question 3, the Energy Choice Initiative.

Nevada has some of the highest electricity rates in the West.¹ In addition, as ratepayers, we are limited in the types of renewable energy we can purchase because most of us are forced to buy energy from a monopoly.² Many businesses, including those who would relocate here and create new jobs, want more renewable energy.³

The problems with the current energy policy are:

- The electricity rates we pay are largely dictated by the Public Utilities Commission, not the free market.⁴ And those rates provide for a guaranteed return (profit) for the utility company.⁵
- There is a legal monopoly in most of Nevada's electricity market and the rates charged to customers are not subject to pressure from competition.⁶
- Without an open market, it is difficult for Nevadans to take advantage of new technologies in energy generation.⁷

- Nevada residents and businesses often cannot choose the specific type of electricity they want—that fueled by renewable resources.⁸

Question 3 is a constitutional amendment that would create a right for Nevadans to purchase energy from an open electricity market. Residents and businesses will be allowed to purchase electricity from a provider of their choice.

A YES vote on Question 3 means you support:

- Eliminating the monopoly on retail power sales.⁹
- Creating a new marketplace where customers and energy providers come together.¹⁰
- Preserving the utility, whether it's NV Energy or another utility, as the operator of the electric distribution grid.¹¹
- Protecting consumers by requiring the Nevada Legislature to enact laws that entitle Nevadans to safe, reliable, and competitively priced electricity that protects against service disconnections and unfair practices.¹²
- Paying rates for electricity that are set by an open and competitive market, not an appointed government agency.¹³
- Allowing energy providers to offer electricity from any source – including renewable sources – without needing the approval of the Commission.¹⁴
- Keeping Nevada's renewable energy portfolio standard in place, along with Nevada's other renewable policies.¹⁵
- Allowing the Commission to continue to regulate Nevada's electricity market, but instead of regulating a single provider, they regulate the competitive market.¹⁶

Many people believe that competition in the electricity market drives prices down and provides more resource options for residents and businesses.¹⁷ To date, 24 states have passed legislation or regulatory orders that will allow some level of retail competition.¹⁸

It's time for Nevadans to have a choice.

Vote YES on Question 3.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Matt Griffin (Chair), Nevadans for Affordable, Clean Energy Choices; and Lucas Foletta, Nevadans for Affordable, Clean Energy Choices. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

¹ *Assessment and Recommendations: Alignment of Nevada Economic Development Policy and Energy Policy*, pages 13-14, Nevada State Office of Energy and Governor's Office of Economic Development (2013), available at <http://www.leg.state.nv.us/interim/77th2013/Committee/StatCom/Energy/Other/19-May-2014/5VBARTHOLETWhitePaper.PDF>.

² NRS 704.330(6).

³ *Las Vegas casinos seek to power their bright lights with renewable energy* (March 7, 2016), The Guardian, <https://www.theguardian.com/environment/2016/mar/07/las-vegas-casinos-solar-power-nevada-energy>; and *Companies Go Green on Their Own Steam* (March 8, 2016), The Wall Street Journal, <http://www.wsj.com/articles/companies-go-green-on-their-own-steam-1457483035>.

⁴ *Things to know on a ballot measure to end NV Energy monopoly* (Apr. 25, 2016), Reno Gazette Journal, <http://www.rgj.com/story/news/2016/04/23/things-know-ballot-measure-end-nv-energy-monopoly/83437680/>.

⁵ *Id.*; *Warren Buffett's Dacey Power Play* (June 10, 2016), Fortune, <http://www.bloomberg.com/news/articles/2016-06-10/buffett-s-power-play-pits-las-vegas-casinos-against-energy-unit>.

⁶ NRS 704.330(6); *Things to know on a ballot measure to end NV Energy monopoly* (Apr. 25, 2016), Reno Gazette Journal, <http://www.rgj.com/story/news/2016/04/23/things-know-ballot-measure-end-nv-energy-monopoly/83437680/>.

⁷ *Clean Power Startups Aim to Break Monopoly of U.S. Utility Giants* (Dec. 12, 2012), Inside Climate News, <https://insideclimatenews.org/news/20121212/renewable-power-startups-georgia-solar-panterra-energy-gen110-distributed-generation-rooftop-solar-hurricane-sandy>.

⁸ *Nevada Switch data centers now 100% renewable-powered* (Jan. 7, 2016), Reno Gazette Journal, <http://www.rgj.com/story/money/reno-rebirth/2016/01/06/switch-supernap-data-centers-100-percent-renewables-green-energy/78318378/>.

⁹ See Energy Choice Initiative.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Lowering Electricity Prices Through Deregulation*, Current Issues in Economics and Finance, The New York Federal Reserve, https://www.newyorkfed.org/medialibrary/media/research/current_issues/ci6-14.pdf; *Green Energy Guide*, Energy Savings, <https://www.energysavings.com/green-energy-guide.html>.

¹⁸ *Energy Deregulation, Overview: What's Changing and Why*, Washington Post, <http://www.washingtonpost.com/wp-adv/specialsales/energy/report/article10.html>.

REBUTTAL TO ARGUMENT FOR PASSAGE

A Constitutional measure to deregulate energy markets in Nevada is unnecessary. No evidence exists that deregulation provides additional choice, advances renewable energy, or creates lower rates.

Nevada's average rates are 44% lower than California's, and 20% lower than the U.S. generally.¹ Deregulation hasn't produced lower prices for residents or businesses in states that have tried it.

Nevada's public policies are advancing renewable energy. Nevada's largest utility ranked 7th nationally for added solar last year.² Customers receive energy from 45 large-scale renewable projects capable of supplying 700,000-plus homes.³ Projects are 100% competitively bid, so customers get the lowest cost. Deregulated markets have not been shown to support renewable energy growth.

Utilities plan 20 years ahead to be there for Nevadans in the long-term, providing safe, reliable service.⁴ Deregulation takes away that safety net, exposing us to unpredictable energy markets.

Supporters of Question 3 say that 24 states allow for some level of deregulation. What they don't tell you is that Nevada is one of them. Implementing more deregulation would take years and cost Nevadans significant money. Nevada has set a clear path for stable energy prices and renewable energy development. Full deregulation would put Nevadans at risk and progress on hold.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee member: Bradley Schrager (Chair), private citizen. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

¹ http://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_5_6_a Table 5.6.A. Average Price of Electricity to Ultimate Customers by End-Use Sector, by State, May 2016 and 2015 (Cents per kilowatt hour).

² <http://www.solarelectricpower.org/discover-resources/solar-tools/2015-solar-power-rankings.aspx>.

³ https://www.nvenergy.com/brochures_arch/RenewablesBrochure.pdf.

⁴ N.A.C. 704.9215.

ARGUMENT AGAINST PASSAGE

Deregulation of the energy market means a loss of control by Nevada's citizens. We allowed the airlines to be deregulated, and today air travel is a nightmare.¹ We allowed the banking system to be deregulated, and the housing and financial crisis followed.² It was deregulation of energy markets in California that allowed the Enron disaster.³ In fact, Nevadans considered deregulating the energy market in the 1990s, but the rolling blackouts and power shortages of the Enron crisis taught us that deregulation was too risky.⁴ We should not forget those lessons now, and this initiative should be defeated.

In state after state over the last three decades, proponents of deregulation across the country have promised that "energy choice" would mean lower costs, but the results have been ever-higher prices for energy, charged by private companies outside the control of state agencies.⁵

In deregulated New York, residential customers wound up paying energy costs 70% above the national average.⁶ In Texas, retail consumers pay fifteen percent higher electricity bills after deregulation than before it.⁷ And in Connecticut, customers of deregulated energy providers saw uncontrollable price jumps with little or no warning, increases the state was unable to stop or limit.⁸ Even this initiative's proponents agree that Nevada will no longer be able to set or secure any certain price or rate structure, and therefore will not be able guard against the same thing happening here. Deregulation of the energy market was supposed to offer consumer

choice and better pricing and services, but it did not, and there is no way to guarantee it will provide any benefit at all to Nevadans.

Currently, Nevada's utility companies are regulated by the state, which approves or rejects any changes to rates and ensures that utilities cannot gouge Nevada customers.⁹ Recent studies show that Nevada consumers enjoyed the second-lowest rates of energy price increase in the country, largely due to the prudent management of the market by public agencies.¹⁰ By contrast, U.S. Department of Energy data shows that electricity prices have risen more steeply in states with energy deregulation programs similar to that proposed by this initiative than in those without.¹¹

Nevada's energy is too important of a public resource to permit the unpredictable and uncontrollable cost increases that this market deregulation initiative would threaten. We should vote "No" on this very flawed ballot measure, and ensure Nevadans can maintain control over the state's energy market.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee member: Bradley Schrager (Chair), private citizen. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

¹ Tom Sgouros, *The Disaster of Deregulation: Airlines*, RI Future, September 18, 2012, <http://www.rifuture.org/the-disaster-of-deregulation-airlines.html>.

² Sewell Chan, *Financial Crisis Was Avoidable, Inquiry Finds*, New York Times, January 25, 2011, http://www.nytimes.com/2011/01/26/business/economy/26inquiry.html?_r=0.

³ California Electricity Crisis, wikipedia.com, https://en.wikipedia.org/wiki/California_electricity_crisis#cite_ref-22.

⁴ Michelle Rindels, *Things to Know on Ballot Measure to End NV Energy Monopoly*, Las Vegas Sun, April 24, 2016, <http://lasvegassun.com/news/2016/apr/24/things-to-know-on-a-ballot-measure-to-end-nv-energy/>.

⁵ Public Sector Consultants, *Electric Industry Deregulation: A Look at the Experience of Three States*, October 2013, <http://www.pscinc.com/LinkClick.aspx?fileticket=IOIAyiNGrwI%3D&tabid=65>.

⁶ H. Carl McCall, New York State Comptroller, *Electric Deregulation in New York State*, February 2001, <http://www.osc.state.ny.us/reports/other/dereg.pdf>.

⁷ Jordan Blum, *Texas Consumers Pay More In Deregulated Electricity Markets*, Houston Chronicle, June 8, 2016, <http://www.houstonchronicle.com/business/energy/article/Texas-consumers-pay-more-in-deregulated-7972017.php>.

⁸ Jennifer Abel, *Deregulated Energy Providers: Are They a Good Deal: Customers of Ambit Energy Decry Unexpected Price Jumps*, Consumer Reports, April 24, 2014, <https://www.consumeraffairs.com/news/deregulated-energy-providers-are-they-a-good-deal-042414.html>.

⁹ Michelle Rindels, *Things to Know on Ballot Measure to End NV Energy Monopoly*, Las Vegas Sun, April 24, 2016, <http://lasvegassun.com/news/2016/apr/24/things-to-know-on-a-ballot-measure-to-end-nv-energy/>.

¹⁰ Texas Coalition for Affordable Power, *Electricity Prices in Texas*, August 2015, p.8, citing United States Energy Information Administration Electricity Data, <http://tcaptx.com/wp-content/uploads/2015/08/TCP-1035-ElectricityPricesinTX-Snapshot-A-Final.pdf>.

¹¹ David Johnston, "Competitively Priced Electricity Costs More, Studies Show," The New York Times, November 6, 2007. <http://www.nytimes.com/2007/11/06/business/06electric.html>.

REBUTTAL TO ARGUMENT AGAINST PASSAGE

In breaking up Bell's telecommunications monopoly, we unleashed advances in technology that revolutionized how we live.¹ New companies entered the market and began competing for business by offering better products and services — and now we have cell phones with internet access, apps, and cameras.² Monopolies have no incentive to lower prices, become more efficient, and offer more services.³ Under Question 3, energy markets will be opened like telecommunications, trucking, railroads, and natural gas.⁴

The opponents are wrong. Under Question 3, the safety, reliability, and quality of Nevada's energy will continue to be regulated by the Legislature, the PUC, and the federal government.⁵ Opponents try to scare people with Enron, without telling you that there are now effective and proven laws against market manipulation.⁶

Energy choice has been a success in other states. New Yorkers have seen electricity prices drop 34%⁷; in Texas it has caused rates to drop below the national average⁸; and in Connecticut, there are more than 24 suppliers offering over 200 different energy choices, some below standard rates by more than 30%.⁹ 22% of those offers are for 100% renewable energy.¹⁰ It's time for us to have choice in energy suppliers – vote yes on Question 3.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Matt Griffin (Chair), Nevadans for Affordable, Clean Energy Choices; and Lucas Foletta, Nevadans for Affordable, Clean Energy Choices. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

¹ What We Can Learn From the History of Deregulation: US Telecommunications, <https://www.bounceenergy.com/articles/texas-electricity/history-of-deregulation-telecommunication>.

² *Id.*

³ Pure Monopoly: Economic Effects, <http://thismatter.com/economics/pure-monopoly-economic-effects.htm>.

⁴ Energy Deregulation, Overview: What's Changing and Why, Washington Post, <http://www.washingtonpost.com/wp-adv/specialsales/energy/report/article10.html>.

⁵ See Energy Choice Initiative.

⁶ Prohibition of Energy Market Manipulation, <http://www.ferc.gov/enforcement/market-manipulation.asp>.

⁷ NY Electricity Prices Have Fallen 34% under Deregulation, June 17, 2015, <http://www.energymanagertoday.com/ny-electricity-prices-have-fallen-34-under-deregulation-0112925/>.

⁸ Electric deregulation cost Texas customers money, but they're beating the nation now, August 12, 2015, <http://www.houstonchronicle.com/business/energy/article/Electric-deregulation-cost-Texas-customers-money-6439943.php>.

⁹ Connecticut Energy Shopping Site Shows Opportunities for Savings, April 27, 2016, <http://www.resausa.org/news-events/connecticut-energy-shopping-site-shows-opportunities-savings>.

¹⁰ *Id.*

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

OVERVIEW

Question 3 proposes to amend Article 1 of the *Nevada Constitution* by adding a new section requiring the Nevada Legislature to provide by law for an open, competitive retail electric energy market no later than July 1, 2023. To ensure that protections are established that entitle customers to safe, reliable, and competitively priced electricity, the law must also include, but is not limited to, provisions that reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the grant of monopolies and exclusive franchises for the generation of electricity.

FINANCIAL IMPACT OF QUESTION 3

If approved by the voters at the 2016 and 2018 General Elections, Question 3 will require the Legislature and Governor to approve legislation creating an open, competitive retail electric energy market between the effective date (November 27, 2018) and July 1, 2023. The Fiscal Analysis Division cannot predict when the Legislature and Governor will enact legislation that complies with the Initiative, nor can it predict how the constitutional provisions proposed within the Initiative will be implemented or which state or local government agencies will be tasked with implementing and administering any laws relating to an open, competitive retail electric energy market. Thus, the financial impact relating to the administration of the Initiative by potentially affected state and local government entities cannot be determined with any reasonable degree of certainty.

Under current law, state and local governments, including school districts, may receive revenue from taxes and fees imposed upon certain public utilities operating within the jurisdiction of that government entity, based on the gross revenue or net profits received by the public utility within that jurisdiction. The Fiscal Analysis Division cannot determine what effect, if any, the open, competitive retail electric energy market created by the Legislature and Governor may have on the consumption of electricity in Nevada, the price of electricity that is sold by these public utilities, or the gross revenue or net profits received by these public utilities. Thus, the potential effect, if any, upon revenue received by those government entities cannot be determined with any reasonable degree of certainty.

Additionally, because the Fiscal Analysis Division cannot predict whether enactment of Question 3 will result in any specific changes in the price of electricity or the consumption of electricity by state and local government entities, the potential expenditure effects on those government entities cannot be determined with any reasonable degree of certainty.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – August 12, 2016

THE ENERGY CHOICE INITIATIVE

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 19. Article 1 of the Nevada Constitution is hereby amended by adding thereto a new section to read as follows:

1. The People of the State of Nevada declare that it is the policy of this State that electricity markets be open and competitive so that all electricity customers are afforded meaningful choices among different providers, and that economic and regulatory burdens be minimized in order to promote competition and choices in the electric energy market. This Act shall be liberally construed to achieve this purpose.

2. Effective upon the dates set forth in subsection 3, every person, business, association of persons or businesses, state agency, political subdivision of the State of Nevada, or any other entity in Nevada has the right to choose the provider of its electric utility service, including, but not limited to, selecting providers from a competitive retail electric market, or by producing electricity for themselves or in association with others, and shall not be forced to purchase energy from one provider. Nothing herein shall be construed as limiting such persons' or entities' rights to sell, trade or otherwise dispose of electricity.

3. (a) Not later than July 1, 2023, the Legislature shall provide by law for provisions consistent with this Act to establish an open, competitive retail electric energy market, to ensure that protections are established that entitle customers to safe, reliable, and competitively priced electricity, including, but not limited to, provisions that reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the grant of monopolies and exclusive franchises for the generation of electricity. The Legislature need not provide for the deregulation of transmission or distribution of electricity in order to establish a competitive market consistent with this Act.

(b) Upon enactment of any law by the Legislature pursuant to this Act before July 1, 2023, and not later than that date, any laws, regulations, regulatory orders or other provisions which conflict with this Act will be void. However, the Legislature may enact legislation consistent with this act that provides for an open electric energy market in part or in whole before July 1, 2023.

(c) Nothing herein shall be construed to invalidate Nevada's public policies on renewable energy, energy efficiency and environmental protection or limit the Legislature's ability to impose such policies on participants in a competitive electricity market.

4. Should any part of this Act be declared invalid, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the remaining provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable. This subsection shall be construed broadly to preserve and effectuate the declared purpose of this Act.

STATE QUESTION NO. 4

Amendment to the *Nevada Constitution*

Shall Article 10 of the *Nevada Constitution* be amended to require the Legislature to provide by law for the exemption of durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for use by a licensed health care provider from any tax upon the sale, storage, use, or consumption of tangible personal property?

Yes ☐ No ☐

EXPLANATION & DIGEST

EXPLANATION—This ballot measure proposes to amend the *Nevada Constitution* to require the Legislature to pass a law that allows for the exemption of durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for human use by a licensed health care provider acting within his or her scope of practice from any tax on the sale, storage, use, or consumption of tangible personal property. The proposed amendment does not create an exemption of durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment from these taxes, but rather requires the Legislature to establish by law for such an exemption. Pursuant to Article 19, Section 2, of the *Nevada Constitution*, approval of this measure is required at two consecutive general elections before taking effect.

A “Yes” vote would amend Article 10 of the *Nevada Constitution* so that the Legislature would be required to pass a law exempting durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for human use by a licensed health care provider from taxation related to the sale, storage, use, or consumption of the equipment.

A “No” vote would retain the provisions of Article 10 of the *Nevada Constitution* in their current form. These provisions do not require the Legislature to pass a law exempting durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for human use by a licensed health care provider from taxation related to the sale, storage, use, or consumption of the equipment.

DIGEST—Article 10 of the *Nevada Constitution* contains provisions relating to taxation. Approval of this question would add a new section to Article 10 of the *Nevada Constitution* to require the Legislature to pass a law that allows for the exemption of durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for human use by a licensed health care provider acting within his or her scope of practice from any tax on the sale, storage, use, or consumption of tangible personal property. This tax exemption would decrease public revenue as this equipment is currently subject to sales and use tax.

ARGUMENT FOR PASSAGE

Medical Patient Tax Relief Act

A YES vote on Question 4 helps sick, injured, and dying patients and their families. It stops the Department of Taxation from imposing unnecessary sales taxes on medical equipment prescribed by physicians, such as wheelchairs, infant apnea monitors, and oxygen delivery devices. It will bring Nevada in line with the vast majority of states which do not tax this type of equipment for home use.¹

A YES vote would relieve the sales tax burden on medical equipment used by patients who require oxygen devices to live, such as those with cancer, asthma, and cardiac disease; babies who need protection from Sudden Infant Death Syndrome; children with cystic fibrosis on home ventilators; and hospice patients in their last weeks of life. Current Nevada law already exempts medicine and prosthetics because we have recognized how vital this relief is for our most vulnerable populations.² Question 4 simply seeks to extend this protection to critical medical equipment.

For insured Nevadans, this tax is contributing to the increasing copays, deductibles, and premium costs that are crippling family finances across the state. For uninsured Nevadans the impact is even worse: Sales tax on medical equipment can reach thousands of dollars for severely disabled patients, and it forces people to forego essential equipment prescribed by their doctors because they simply cannot afford to pay.

Fortunately, while this would have a significant impact on the patients and their families, there would be *very little impact to state tax revenue*. The Department of Taxation, itself, has estimated that a tax exemption on this medical equipment represents approximately 0.025% of the annual state budget.³

Almost all people will need some sort of medical equipment in their lifetimes. Voting YES on Question 4 is the compassionate, and eventually prudent, thing to do. Join over 100,000 Nevadans who signed the petition calling for the end to this tax. It will help hundreds of families today and may help yours tomorrow.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Josh Hicks (Chair), Alliance to Stop Taxes on the Sick and Dying PAC; Doug Bennett, Alliance to Stop Taxes on the Sick and Dying PAC; and Dr. Joseph Kenneth Romeo, private citizen. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact or impact on the public health, safety, and welfare. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

¹<https://www.leg.state.nv.us/App/NELIS/REL/78th2015/ExhibitDocument/OpenExhibitDocument?exhibitId=12642&fileDownloadName=Streamlined%20Sales%20Tax%20Comparison.pdf>.

² NRS 372.283.

³ This percentage was reached by calculating the annual fiscal impact of Senate Bill 334 (2015) – \$931,714 – as a percentage of the State’s fiscal year 2017 budget revenues of approximately \$3,700,000,000. See <http://www.leg.state.nv.us/Session/78th2015/FiscalNotes/5266.pdf> and <http://openbudget.nv.gov/OpenGov/ViewBudgetSummary.aep?amountView=Year2&budgetVersionId=13&version=Leg&type=Rev&view=ObjectType>.

REBUTTAL TO ARGUMENT FOR PASSAGE

The proponents of Question 4 argue that sales tax on durable medical equipment is “unnecessary.” Sales tax funds services such as schools, police, and fire departments, to name a few. Are these services “unnecessary?” If that is true, why are voters in Washoe County being asked to increase their sales tax rate from 7.725% to 8.265% for additional school funding?¹

The proponents say Question 4, “simply seeks to extend this protection to critical medical equipment.” We do not know what this truly means because the language is vaguely worded, and the definitions and exemptions are left to be determined by the Legislature.

The proponents say, “The Department of Taxation, itself, has estimated that a tax exemption on this medical equipment represents approximately 0.025% of the annual state budget.” This begs the question, on what “medical equipment?” Until the relevant Legislative session, how is it possible to estimate the impact of this unknown quantity?

The argument in support states, “Almost all people will need some sort of medical equipment.” What does that have to do with the question before us? Again, you need to question what medical equipment are we talking about and what is the cost to everyday taxpayers?

The above rebuttal was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee member: Ann O’Connell (Chair), private citizen. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact or impact on the public health, safety, and welfare. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

¹ Sales tax increase on ballot this fall in Washoe County, News 4 on Your Side, February 15, 2016, <http://mynews4.com/news/local/sales-tax-increase-on-ballot-this-fall-in-washoe-county>.

ARGUMENT AGAINST PASSAGE

VOTE NO ON QUESTION 4!

Basic budget principles state that when expenses exceed revenues, debt is created. When the law requires state or local government agencies such as schools to be funded, the law expects a set amount of revenue to fund that agency. When a tax exemption reduces the amount of

revenue expected, the agency has no choice but to request a replacement of the lost funding. To do that the agency must depend on the Governor and the Legislature to include the lost funding in the budget.

Sales taxes pay for a myriad of services Nevadans rely on including schools, police, fire departments, libraries, and parks, to name a few.

Question 4 seeks to exempt durable medical equipment from sales tax. On the surface, this exemption seems like a good thing, providing tax relief to those in need. However, this exemption is really a wolf in sheep's clothing:

1. It is vaguely worded without clear definitions of what specific devices will be exempt and who will benefit, leaving such determination to the Legislature;
2. It decreases an unknown amount of revenue from an already strained budget, creating the need for higher taxes in the future; and
3. It uses the law to provide special privileges to a special-interest group at the expense of everyday taxpayers.

Tax exemptions have consequences for the taxpayer; the same consequences as tax subsidies, tax breaks, tax abatements, and tax incentives. The Nevada Department of Taxation's *2013-2014 Tax Expenditure Report* states that Nevada has 243 such tax expenditures that cost taxpayers over \$3.7 BILLION a biennium.¹

Who is footing the bill for all those exemptions? You, the local taxpayer.

You should be mindful of the most recent government "giveaways," such as the approval of \$1.3 BILLION in subsidies to Tesla², \$215 MILLION in tax incentives to Faraday³, and \$7.8 Million in tax abatements to six different companies relocating to Nevada⁴.

Ask yourself, is Question 4 just another "giveaway," and is there any follow-up to see if promises made for these "giveaways" are promises kept?

The question also needs to be asked, isn't this just another burden on Nevada taxpayers? If it isn't, why in 2003 and again in 2015 did our governors go after a BILLION-plus dollars in tax increases⁵?

When the wolf comes huffing and puffing at your door, reject it. Vote NO on Question 4!

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee member: Ann O'Connell (Chair), private citizen. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact or impact on the public health, safety, and welfare. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

¹ Nevada Department of Taxation, 2013-2014 Tax Expenditure Report, http://tax.nv.gov/uploadedFiles/taxnvgov/Content/TaxLibrary/Tax_Expenditure_Report_2013-2014.pdf.

² Editorial: Tesla in the News, Las Vegas Review Journal, July 26, 2016, <http://www.reviewjournal.com/opinion/editorials/editorial-tesla-the-news>.

³ Faraday Future gets OK to begin grading at North Las Vegas site, Las Vegas Review Journal, July 28, 2016, <http://www.reviewjournal.com/business/economic-development/faraday-future-gets-ok-begin-grading-north-las-vegas-site>.

⁴ More tech companies moving to Nevada, Las Vegas Review Journal, July 25, 2016, <http://www.reviewjournal.com/business/more-tech-companies-moving-nevada>.

⁵ Assembly Bill 4, Senate Bill 2, and Senate Bill 8: 20th (2003) Special Session; Senate Bill 483: 78th (2015) Session.

REBUTTAL TO ARGUMENT AGAINST PASSAGE

This is taxation at its worst, targeting the most vulnerable Nevadans. These aren't wealthy people paying sales tax for new cars. These are sick people required to pay taxes on the machines that keep them alive.

The real "wolf in sheep's clothing" is the pro-tax argument, which is misleading in three ways:

1. The proposal is not vague. Durable medical equipment is already defined in Nevada law.
2. The budget won't be hurt. The cities of Las Vegas and Reno both assessed the proposal, concluding that the impact will be immaterial. And, comparing this to the billions in tax breaks for Tesla is irresponsible – the annual impact of Question 4 will be less than one one-thousandth of that amount.
3. Lastly, this only benefits "special-interest groups?" How many of our neighbors need oxygen or a CPAP to breathe, a wheelchair to move, or a nebulizer to treat their child's asthma? How many babies need the protection of apnea monitors in their first weeks of life? Most Nevadans, or their families, will be impacted in their lifetimes.

Vote YES on Question 4 because there are better ways to fund the state than on the backs of our sick, injured, and dying.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Josh Hicks (Chair), Alliance to Stop Taxes on the Sick and Dying PAC; Doug Bennett, Alliance to Stop Taxes on the Sick and Dying PAC; and Dr. Joseph Kenneth Romeo, private citizen. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact or impact on the public health, safety, and welfare. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

OVERVIEW

Question 4 proposes to amend Article 10 of the *Nevada Constitution* by adding a new section, designated Section 7, that would require the Legislature to provide by law for an exemption from the sales and use tax for durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for human use by a licensed provider of health care acting within his or her scope of practice.

FINANCIAL IMPACT OF QUESTION 4

Under current law, the statewide sales and use tax rate is 6.85 percent. Four separate tax rates make up this combined rate:

- The State rate (2 percent), which is deposited in the State General Fund;
- The Local School Support Tax rate (2.6 percent), which is distributed among the state's school districts and to the State Distributive School Account;
- The Basic City-County Relief Tax rate (0.5 percent), which is distributed among counties, cities, and other local government entities through the Consolidated Tax Distribution (CTX) mechanism; and
- The Supplemental City-County Relief Tax rate (1.75 percent), which is distributed among counties, cities, and other local government entities through the CTX mechanism.

In addition, in thirteen of Nevada's seventeen counties (Carson City, Churchill, Clark, Douglas, Elko, Lander, Lincoln, Lyon, Nye, Pershing, Storey, Washoe, and White Pine), additional local sales and use tax rates are levied for specific purposes through legislative authority or by voter approval. The revenue from these tax rates is distributed to the entity or for the purpose for which the rate is levied.

If voters approve Question 4 at the November 2016 and November 2018 General Elections, the Legislature and Governor would need to approve legislation to implement the sales and use tax exemptions specified within the question before these exemptions could become effective. The legislation providing an exemption from the sales and use tax for durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for human use by a licensed provider of health care acting within his or her scope of practice will reduce the amount of sales and use tax revenue that is received by the state and local governments, including school districts, currently entitled to receive sales and use tax revenue from any of the rates imposed, beginning on the effective date of the legislation.

However, the Fiscal Analysis Division cannot determine when the Legislature and Governor will approve the legislation necessary to enact these exemptions or the effective date of the legislation that is approved. Additionally, the Fiscal Analysis Division cannot determine how the terms specified within Question 4 would be defined in the legislation, nor can it estimate the amount of sales that would be subject to the exemption. Thus, the revenue loss to the affected

state and local governments cannot be determined by the Fiscal Analysis Division with any reasonable degree of certainty.

The Department of Taxation has indicated that the implementation and administration of the exemptions specified within Question 4 can be performed using current resources, resulting in no additional financial impact upon state government.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – August 10, 2016

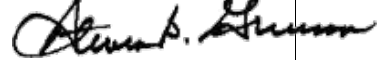
MEDICAL PATIENT TAX RELIEF ACT

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 20. Article 10 of the Nevada Constitution is hereby amended by adding thereto a new section to be designated as Section 7, to read as follows:

Sec. 7. *The legislature shall provide by law for the exemption of durable medical equipment, oxygen delivery equipment and mobility enhancing equipment prescribed for human use by a licensed provider of health care acting within his or her scope of practice from any tax upon the sale, storage, use or consumption of tangible personal property.*



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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/Defendant.

Case No. A-18-785818-W

Dept. No. 18

**LONE MOUNTAIN PARTNERS, LLC'S
POCKET BRIEF REGARDING
INTERPRETATION OF STATUTES
ENACTED BY BALLOT INITIATIVE**

22 Lone Mountain Partners, LLC by and through counsel undersigned, hereby files this
23 Pocket Brief Regarding Interpretation of Statutes Enacted by Ballot Initiative (the "Pocket
24 Brief") pursuant to the Court's request at the preliminary injunction hearing held on May 31,
25 2019.

26 ///

27 ///





I. NEVADA COURTS APPLY STANDARD RULES OF STATUTORY CONSTRUCTION TO STATUTES ENACTED THROUGH BALLOT INITIATIVES

Article 19, Section 2(1) of the Nevada Constitution authorizes ballot initiatives by reserving to the people “the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls.” As the Nevada Supreme Court has held, “the right to initiate change in this state’s laws through ballot proposals is one of the basic powers enumerated in this state’s constitution.” *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247 (2006).

Nevada courts apply standard rules of statutory construction to statutes enacted through voter initiative under which “court[s] must interpret a statute in a reasonable manner, that is, the words of the statute should be construed in light of the policy and spirit of the law, and the interpretation made should avoid absurd results.” *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009) (internal quotations and citations omitted) (applying standard rules of statutory construction to statute enacted through voter initiative). A statute enacted through initiative “should be given its plain meaning and must be construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory.” *See id.* (quoting *Mangarella v. State*, 117 Nev. 130, 133, 17 P.3d 989, 991 (2001)).

In discussing the interpretation of an ambiguous provision of a voter-enacted constitutional amendment, the Nevada Supreme Court has instructed courts to look at similar materials to those consulted when reviewing legislative history, i.e., “the provision’s history, public policy, and reason to determine what the voters intended.” *See Miller v. Burk*, 124 Nev. 579, 595-96, 188 P.3d 1112, 1120 (2008).

Thus, interpretation of the enabling clause found in NRS 453D.200(1), instructing the Department to “adopt all regulations necessary or convenient to carry out” the provisions of NRS chapter 453D, should be interpreted in the same manner as other broadly-worded enabling clauses in statutes enacted by the legislature, that is, affording the Department deference in its interpretation of the statute it is responsible for implementing. *See Nevada Tax Comm’n v. Nevada Cement Co.*, 117 Nev. 960, 968-69, 36 P.3d 418, 423 (2001), *opinion reinstated on reh’g* (Dec. 12,



2001) (“[T]he interpretation by the agency charged with administering a statute is persuasive, and
[] great deference should be given to that interpretation if it is within the language of the statute.”).

In fact, the enabling clause of a voter initiative should arguably bestow even greater
authority on the agency tasked with the duty of implementing the statute given that the public’s
right to pass laws through ballot initiatives under Article 19 of the Nevada Constitution is limited
to only legislative matters and cannot be used to address purely administrative concerns which are
within the appropriate province of regulatory bodies. *See Garvin v. Ninth Judicial Dist. Court ex
rel. Cty. of Douglas*, 118 Nev. 749, 751, 59 P.3d 1180, 1181 (2002) (“[I]nitiative and referendum
powers reserved to the people, although broad, are limited to legislation and do not extend
to administrative matters.”).

Additionally, statutory construction requires that statutes be read in whole, and the meaning
of NRS 453D’s enabling clause should be further informed by the single limitation Nevada voters
placed upon the Department’s authority to prescribe and implement regulations, namely, that the
Department not do so in a manner as to make it “unreasonably impracticable” for applicants. *See*
NRS 453D.200(1). Question 2 specifically defined “unreasonably impracticable” to mean “that
the measures necessary to comply with the regulations require such a high investment of risk,
money, time, or any other resource or asset that the operation of a marijuana establishment is not
worthy of being carried out in practice by a reasonably prudent businessperson.” NRS
453D.030(19). Thus, it is clear that voters intended to bestow broad discretion on the Department
in implementing the new licensing regime, with the sole limitation placed on the Department’s
authority being that the Department not regulate in a manner so as to make licensing “unreasonably
impracticable.”

II. SEVERANCE DOCTRINE AND STATUTES ENACTED THROUGH VOTER INITIATIVE

In considering a challenge to a voter-enacted amendment postelection, the challenger
“bears a heavy burden of persuasion given the presumptive soundness afforded to the vote of the
people.” *Miller v. Burk*, 124 Nev. 579, 595–96, 188 P.3d 1112, 1123 (2008) (addressing voter-
enacted constitutional amendments) (internal quotations and citations omitted). In discussing
constitutional amendments made through voter initiatives, the Nevada Supreme Court stated that



1 “every reasonable presumption, both of law and fact, is to be indulged in favor of the legality of
2 the amendment, which will not be overthrown, unless illegality appears beyond a reasonable
3 doubt.” *Id.* (internal quotations and citations omitted).

4 However, where an initiative contains provisions that are secondary or non-germane to the
5 central purpose of the initiative, a court may sever such secondary provisions if they violate another
6 law without invalidating the entire initiative. *See Heller*, 122 Nev. at 909, 141 P.3d at 1245. In
7 fact, where a portion of an initiative violates another Nevada statute or the Nevada Constitution,
8 the violative portion “*must be severed* to preserve the people’s will.” *Id.* (emphasis added).

9 In *Heller*, the Nevada Supreme Court addressed a voter initiative addressing eminent
10 domain and property rights. 122 Nev. at 909, 141 P.3d at 1245 (2006). Although eminent domain
11 was the primary topic of the initiative, the inclusion of provisions addressing other property rights
12 put the initiative at odds with the single-subject rule, a statutory limitation on voter initiatives in
13 Nevada requiring that each ballot initiative be limited to a single subject. *Id.* at 908; *see also* NRS
14 295.009(1)(a) (single-subject rule). Although past precedent had directed that voter initiatives had
15 to be either upheld in whole, or stricken in whole, the Court distinguished that case law as
16 involving initiatives that were not subject to, or appropriate for, severance. *Id.* at 910-913
17 (distinguishing *Rogers v. Heller*, 117 Nev. 169, 177, 18 P.3d 1034, 1039 (2001), where illegal
18 portion of initiative went to initiative’s primary subject and was incapable of severance). The Court
19 further reasoned that the initiative at issue contained a severability clause, providing that “[a]ny
20 provision contained in this section shall be deemed a separate and freestanding right and shall
21 remain in full force and effect should any other provision contained in this section be stricken for
22 any reason.” *Id.* at 910. The Court concluded that “the initiative petition’s signers have expressed
23 a desire to allow the initiative to proceed even without some sections, and, in severing, this court
24 need not speculate whether the signatories would have signed the petition in its severed form.” *Id.*

25 Three years after *Heller*, the Court again found it appropriate to sever an unconstitutional
26 portion of an initiative so as to preserve the people’s will. *See Flamingo Paradise Gaming, LLC*
27 *v. Chanos*, 125 Nev. 502, 217 P.3d 546 (2009). In *Chanos*, the Court affirmed the severance of
28 the criminal penalty portion of Nevada’s Clean Indoor Air Act (“NCIAA”), which was passed as



1 a ballot measure in 2006, concluding that “[t]he portion severed was not the central component of
2 the statute and the remainder of the statute . . . [could] stand alone.” *Id.* at 557. Further supporting
3 severance was the existence of a severability clause in the NCIAA demonstrating “that the
4 initiative’s proponents contemplated that should a constitutional challenge arise, the offending
5 portion of the statute could be severed and the remaining portion could proceed.” *Id.*

6 Here, Question 2, now codified in NRS chapter 453D, contains a severability clause similar
7 to those at issue in *Heller* and *Chanos*. Specifically, NRS 453D.600 provides:

8
9 **NRS 453D.600 Severability. [This section was proposed by an**
10 **initiative petition and approved by the voters at the 2016**
11 **General Election and therefore is not subject to legislative**
12 **amendment or repeal until after November 22, 2019.]** If any
13 provision of this chapter, or the application thereof to any person,
14 thing or circumstance is held invalid or unconstitutional by a court
15 of competent jurisdiction, such invalidity or unconstitutionality
shall not affect the validity or constitutionality of this chapter as a
whole or any provision or application of this chapter which can be
given effect without the invalid or unconstitutional provision or
application, and to this end the provisions of this chapter are
declared to be severable.

16 (Added to NRS by 2016 initiative petition, Ballot Question No. 2)

17 Accordingly, Nevada voters expressed their will that the provisions of Question 2 proceed
18 even if all of the specific provisions and requirements in the initiative cannot be upheld. Thus, if
19 any such provisions in NRS 453D are found to be illegal, unconstitutional, or impossible to
20 implement, the Court should sever such provisions and preserve the remainder of the provisions
21 contained in Question 2 to preserve the will of Nevada voters.

22 Moreover, additional provisions of Question 2 further demonstrate that Nevada voters
23 desired that any problematic provisions be severed and any impediments to the swift
24 commencement of Nevada’s retail marijuana industry be removed. Again, NRS 453D.200
25 provides that the regulations promulgated by the Department of Taxation pursuant to Question 2’s
26 enabling clause “must not prohibit the operation of marijuana establishments . . . through
27 regulations that make their operation unreasonably impracticable.” NRS 453D.200(1). Question
28



1 2 specifically defined “unreasonably impracticable” to mean “that the measures necessary to
2 comply with the regulations require such a high investment of risk, money, time, or any other
3 resource or asset that the operation of a marijuana establishment is not worthy of being carried out
4 in practice by a reasonably prudent businessperson.” NRS 453D.030(19). Thus, the only
5 limitations Nevada voters imposed on the Department’s authority was to ensure the Department
6 did not prevent or slow the commencement of the retail marijuana industry, demonstrating also
7 that Nevada voters would elect severance over total invalidation.

8 **III. CONCLUSION**

9 Statutes enacted through voter initiatives are subject to the same rules of statutory
10 construction as statutes enacted through the legislative process, with deference afforded to the
11 interpretation of the agency tasked with implementing the statute. To the extent any provisions
12 within a ballot initiative are illegal, unconstitutional or impossible to implement, courts should
13 sever such provisions if the initiative contains a severance provision and the problematic clauses
14 are secondary to the principal object of the initiative.

15 Dated this 11th day of June 2019.

16 H1 LAW GROUP

17 A blue ink signature of Eric D. Hone, written in a cursive style.

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26 Phone 702-608-3720

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28 *Attorneys for Intervenor/Defendant*

Lone Mountain Partners, LLC

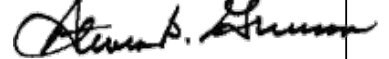


CERTIFICATE OF SERVICE

The undersigned, an employee of H1 Law Group, hereby certifies that on the 11th day of June 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.

A handwritten signature in cursive script, reading "Bobbye Donaldson", written over a horizontal line.

Bobbye Donaldson, an employee of
H1 LAW GROUP



AACC

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Tropicana, LLC, Essence Henderson, LLC,
CPCM Holdings, LLC d/b/a Thrive Cannabis
Marketplace, and Commerce Park Medical L.L.C.,
Cheyenne Medical LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

**DEFENDANTS' ANSWER TO
PLAINTIFFS' COMPLAINT WITH
COUNTERCLAIM**

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

5 Plaintiffs,

6 vs.

7 THE STATE OF NEVADA, DEPARTMENT
8 OF TAXATION,

9 Defendants.

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

22 Defendants in Intervention.

23 And All Related Actions

24 Defendants in Intervention, INTEGRAL ASSOCIATES, LLC d/b/a ESSENCE CANNABIS
25 DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC, CPCM
26 HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, and COMMERCE PARK
27 MEDICAL L.L.C., CHEYENNE MEDICAL LLC (collectively “Defendants”), by and through their
28 attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby answers the Complaint
filed by plaintiffs, SERENITY WELLNESS CENTER, LLC, TGIG, LLC, NULEAF INCLINE
DISPENSARY, NEVADA HOLISTIC MEDICINE, LLC, TRYKE COMPANIES SO NV, LLC,
TRYKE COMPANIES RENO, LLC, PARADISE WELLNESS CENTER, LLC, GBS NEVADA
PARTNERS, LLC, FIDELIS HOLDINGS, LLC, GRAVITAS NEVADA, LLC, NEVADA PURE,
LLC, and MEDIFARM, LLC (collectively “Plaintiffs”), as follows:

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1 Defendants deny each and every allegation in the Complaint except those allegations which
2 are hereinafter admitted, qualified, or otherwise answered.

3 **I.**

4 **PARTIES, JURISDICTION, AND VENUE**

5 1. Answering paragraph 1 of the Complaint, Defendants are without sufficient knowledge
6 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
7 these allegation.

8 2. Answering paragraph 2 of the Complaint, Defendants are without sufficient knowledge
9 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
10 these allegations.

11 3. Answering paragraph 3 of the Complaint, Defendants are without sufficient knowledge
12 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
13 these allegations.

14 4. Answering paragraph 4 of the Complaint, Defendants are without sufficient knowledge
15 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
16 these allegations.

17 5. Answering paragraph 5 of the Complaint, Defendants are without sufficient knowledge
18 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
19 these allegations.

20 6. Answering paragraph 6 of the Complaint, Defendants are without sufficient knowledge
21 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
22 these allegations.

23 7. Answering paragraph 7 of the Complaint, Defendants are without sufficient knowledge
24 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
25 these allegations.

26 8. Answering paragraph 8 of the Complaint, Defendants are without sufficient knowledge
27 or information as to the truth or falsity of the allegations contained therein, and on that basis deny
28 these allegations.

9. Answering paragraph 9 of the Complaint, Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis deny these allegations.

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

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

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

13. Answering paragraph 13 of the Complaint, Defendants admit these allegations.

14. Answering paragraph 14 of the Complaint, Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis deny these allegations.

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

II.

GENERAL ALLEGATIONS

16. Answering paragraph 16 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or regulations. To the extent a response is required and the allegations accurately state the laws or regulations referenced therein, Defendants admit these allegations.

17. Answering paragraph 17 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or

1 regulations. To the extent a response is required and the allegations accurately state the laws or
2 regulations referenced therein, Defendants admit these allegations.

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

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

11 20. Answering paragraph 20 of the Complaint, no response is required as the allegations
12 contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or
13 regulations. To the extent a response is required and the allegations accurately state the laws or
14 regulations referenced therein, Defendants admit these allegations.

15 21. Answering paragraph 21 of the Complaint, no response is required as the allegations
16 contained therein reference a document that speaks for itself. To the extent a response is required and
17 the allegations accurately state the contents of the document referenced therein, Defendants admit
18 these allegations.

19 22. Answering paragraph 22 of the Complaint, Defendants admit these allegations.

20 23. Answering paragraph 23 of the Complaint, Defendants admit these allegations.

21 24. Answering paragraph 24(a)-(h) of the Complaint, no response is required as the
22 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of
23 laws or regulations. To the extent a response is required and the allegations accurately state the laws
24 or regulations referenced therein, Defendants admit these allegations.

25 25. Answering paragraph 25 of the Complaint, no response is required as the allegations
26 contained therein reference a document that speaks for itself. To the extent a response is required and
27 the allegations accurately state the contents of the document referenced therein, Defendants admit
28 these allegations.

1 26. Answering paragraph 26 of the Complaint, no response is required as the allegations
2 contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or
3 regulations. To the extent a response is required and the allegations accurately state the laws or
4 regulations referenced therein, Defendants admit these allegations.

5 27. Answering paragraph 27 of the Complaint, no response is required as the allegations
6 contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or
7 regulations. To the extent a response is required, Defendants deny these allegations.

8 28. Answering paragraph 28 of the Complaint, Defendants admit that the Department of
9 Taxation announced it would issue recreational retail store conditional licenses no later than
10 December 5, 2018. Defendants deny these allegations to the extent that it imposes a legal obligation
11 on the Department that is inconsistent or outside of the requirements set forth in Section 4 of NRS
12 453D.210.

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

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

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

22 32. Answering paragraph 32 of the Complaint, Defendants are without sufficient
23 knowledge or information as to the truth or falsity of the allegations contained therein, and on that
24 basis deny these allegations.

25 33. Answering paragraph 33 of the Complaint, no response is required as the allegations
26 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
27 deny these allegations.

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34. Answering paragraph 34 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

35. Answering paragraph 35 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

III.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Violation of Civil Rights)

(Due Process: Deprivation of Property)

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

36. Answering paragraph 36 of the Complaint, Defendants repeat and reallege their answers to paragraphs 1 through 35 above, and incorporate the same herein by reference as though fully set forth herein.

37. Answering paragraph 37 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis deny these allegation.

38. Answering paragraph 38 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis deny these allegation.

39. Answering paragraph 39 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

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1 40. Answering paragraph 40 of the Complaint, no response is required as the allegations
2 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
3 deny these allegations.

4 41. Answering paragraph 41 of the Complaint, no response is required as the allegations
5 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
6 deny these allegations.

7 42. Answering paragraph 42 of the Complaint, no response is required as the allegations
8 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
9 deny these allegations.

10 43. Answering paragraph 43 of the Complaint, no response is required as the allegations
11 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
12 deny these allegations.

13 44. Answering paragraph 44 of the Complaint, no response is required as the allegations
14 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
15 deny these allegations.

16 45. Answering paragraph 45 of the Complaint, no response is required as the allegations
17 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
18 deny these allegations.

19 46. Answering paragraph 46 of the Complaint, no response is required as the allegations
20 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
21 deny these allegations.

22 47. Answering paragraph 47 of the Complaint, no response is required as the allegations
23 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
24 deny these allegations.

25 48. Answering paragraph 48 of the Complaint, no response is required as the allegations
26 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
27 deny these allegations.

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1 49. Answering paragraph 49 of the Complaint, no response is required as the allegations
2 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
3 deny these allegations.

4 50. Answering paragraph 50(a)-(g) of the Complaint, no response is required as the
5 allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent
6 a response is required, Defendants deny these allegations.

7 51. Answering paragraph 51 of the Complaint, no response is required as the allegations
8 contained therein are not factual in nature and/or contain legal conclusions. To the extent a response
9 is required, Defendants deny these allegations.

10 52. Answering paragraph 52 of the Complaint, no response is required as the allegations
11 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
12 deny these allegations.

13 53. Answering paragraph 53 of the Complaint, no response is required as the allegations
14 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
15 deny these allegations.

16 54. Answering paragraph 54 of the Complaint, no response is required as the allegations
17 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
18 deny these allegations.

19 55. Answering paragraph 55 of the Complaint, Defendants are without sufficient
20 knowledge or information as to the truth or falsity of the allegations contained therein, and on that
21 basis deny these allegations.

22 56. Answering paragraph 56 of the Complaint, Defendants admit these allegations.

23 57. Answering paragraph 57 of the Complaint, no response is required as the allegations
24 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
25 deny these allegations.

26 58. Answering paragraph 58 of the Complaint, no response is required as the allegations
27 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
28 deny these allegations.

1 59. Answering paragraph 59 of the Complaint, no response is required as the allegations
2 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
3 deny these allegations.

4 60. Answering paragraph 60 of the Complaint, no response is required as the allegations
5 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
6 deny these allegations.

7 61. Answering paragraph 61 of the Complaint, no response is required as the allegations
8 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
9 deny these allegations.

10 **SECOND CLAIM FOR RELIEF**

11 **(Violation of Civil Rights)**

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

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

14 62. Answering paragraph 62 of the Complaint, Defendants repeat and reallege their
15 answers to paragraphs 1 through 61 above, and incorporate the same herein by reference as though
16 fully set forth herein.

17 63. Answering paragraph 63 of the Complaint, no response is required as the allegations
18 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
19 deny these allegations.

20 64. Answering paragraph 64 of the Complaint, no response is required as the allegations
21 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
22 deny these allegations.

23 65. Answering paragraph 65 of the Complaint, no response is required as the allegations
24 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
25 deny these allegations.

26 66. Answering paragraph 66 of the Complaint, no response is required as the allegations
27 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
28 deny these allegations.

67. Answering paragraph 67 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

68. Answering paragraph 68 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

69. Answering paragraph 69 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

THIRD CLAIM FOR RELIEF

(Violation of Civil Rights)
(Equal Protection)

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

70. Answering paragraph 70 of the Complaint, Defendants repeat and reallege their answers to paragraphs 1 through 69 above, and incorporate the same herein by reference as though fully set forth herein.

71. Answering paragraph 71 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

72. Answering paragraph 72 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

73. Answering paragraph 73 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

74. Answering paragraph 74 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

1 **FOURTH CLAIM FOR RELIEF**

2 **(Petition for Judicial Review)**

3 75. Answering paragraph 75 of the Complaint, Defendants repeat and reallege their
4 answers to paragraphs 1 through 74 above, and incorporate the same herein by reference as though
5 fully set forth herein.

6 76. Answering paragraph 76 of the Complaint, no response is required as the allegations
7 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
8 deny these allegations.

9 77. Answering paragraph 77 of the Complaint, no response is required as the allegations
10 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
11 deny these allegations.

12 78. Answering paragraph 78 of the Complaint, no response is required as the allegations
13 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
14 deny these allegations.

15 79. Answering paragraph 79(a)-(c) of the Complaint, no response is required as the
16 allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent
17 a response is required, Defendants deny these allegations.

18 80. Answering paragraph 80 of the Complaint, no response is required as the allegations
19 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
20 deny these allegations.

21 **FIFTH CLAIM FOR RELIEF**

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

23 81. Answering paragraph 81 of the Complaint, Defendants repeat and reallege their
24 answers to paragraphs 1 through 80 above, and incorporate the same herein by reference as though
25 fully set forth herein.

26 82. Answering paragraph 82 of the Complaint, no response is required as the allegations
27 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
28 deny these allegations.

1 83. Answering paragraph 83(a)-(b) of the Complaint, no response is required as the
2 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
3 Defendants deny these allegations.

4 84. Answering paragraph 84(a)-(b) of the Complaint, no response is required as the
5 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
6 Defendants deny these allegations.

7 85. Answering paragraph 85 of the Complaint, no response is required as the allegations
8 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
9 deny these allegations.

10 86. Answering paragraph 86 of the Complaint, no response is required as the allegations
11 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
12 deny these allegations.

13 **GENERAL DENIAL**

14 To the extent a further response is required to any allegation set forth in the Complaint,
15 Defendants such allegation.

16 **ANSWER TO PRAYER FOR RELIEF**

17 Answering the allegations contained in the entirety of Plaintiffs prayer for relief, Defendants
18 deny that Plaintiffs are entitled to the relief being sought therein or to any relief in this matter.

19 **AFFIRMATIVE DEFENSES**

20 Defendants, without altering the burdens of proof the parties must bear, assert the following
21 affirmative defenses to Plaintiffs' Complaint, and all causes of action alleged therein, and specifically
22 incorporate into these affirmative defenses their answers to the preceding paragraphs of the Complaint
23 as if fully set forth herein.

24 **First Affirmative Defense**

25 Defendants expressly preserve the right to amend this Answer to bring counterclaims against
26 Plaintiffs.

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Second Affirmative Defense

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

Third Affirmative Defense

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

Fourth Affirmative Defense

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

Fifth Affirmative Defense

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

Sixth Affirmative Defense

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

Seventh Affirmative Defense

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

Eighth Affirmative Defense

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

Ninth Affirmative Defense

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

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Tenth Affirmative Defense

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

Eleventh Affirmative Defense

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

Twelfth Affirmative Defense

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

Fourteenth Affirmative Defense

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

Fifteenth Affirmative Defense

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

Sixteenth Affirmative Defense

Plaintiffs have no constitutional rights to obtain privileged licenses.

Seventeenth Affirmative Defense

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

Eighteenth Affirmative Defense

Plaintiffs are not entitled to Judicial Review on the denial of a license.

Nineteenth Affirmative Defense

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

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1 **Twentieth Affirmative Defense**

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

6 WHEREFORE, Defendants prays for judgment as follows:

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

12 **COUNTERCLAIM**

13 Defendants/Counterclaimants INTEGRAL ASSOCIATES, LLC d/b/a ESSENCE
14 CANNABIS DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC,
15 CPCM HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, and COMMERCE PARK
16 MEDICAL L.L.C., CHEYENNE MEDICAL LLC (collectively "Counterclaimants"), by and through
17 their attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby counterclaim against
18 Plaintiffs/Counterdefendants SERENITY WELLNESS CENTER, LLC, TGIG, LLC, NULEAF
19 INCLINE DISPENSARY, NEVADA HOLISTIC MEDICINE, LLC, TRYKE COMPANIES SO NV,
20 LLC, TRYKE COMPANIES RENO, LLC, PARADISE WELLNESS CENTER, LLC, GBS
21 NEVADA PARTNERS, LLC, FIDELIS HOLDINGS, LLC, GRAVITAS NEVADA, LLC,
22 NEVADA PURE, LLC, and MEDIFARM, LLC (collectively "Counterdefendants"), as follows:

23 **PARTIES**

- 24 1. Defendant/Counterclaimant Integral Associates, LLC is, and at all relevant times was,
25 a Nevada limited liability company conducting business in Clark County, Nevada.
26 2. Defendant/Counterclaimant Essence Tropicana, LLC is, and at all relevant times was,
27 a Nevada limited liability company conducting business in Clark County, Nevada.
28 3. Defendant/Counterclaimant Essence Henderson, LLC is, and at all relevant times was,

1 a Nevada limited liability company conducting business in Clark County, Nevada.

2 4. Defendant/Counterclaimant CPCM Holdings, LLC is, and at all relevant times was, a
3 Nevada limited liability company conducting business in Clark County, Nevada.

4 5. Defendant/Counterclaimant Commerce Park Medical L.L.C is, and at all relevant times
5 was, a Nevada limited liability company conducting business in Clark County, Nevada.

6 6. Defendant/Counterclaimant Cheyenne Medical LLC is, and at all relevant times was,
7 a Nevada limited liability company conducting business in Clark County, Nevada.

8 7. Upon information and belief, Plaintiff/Counterdefendant Serenity Wellness Center
9 LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark
10 County, Nevada.

11 8. Upon information and belief, Plaintiff/Counterdefendant TGIG, LLC is, and at all
12 relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.

13 9. Upon information and belief, Plaintiff/Counterdefendant Nuleaf Incline Dispensary
14 LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark
15 County, Nevada.

16 10. Upon information and belief, Plaintiff/Counterdefendant Nevada Holistic Medicine
17 LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark
18 County, Nevada.

19 11. Upon information and belief, Plaintiff/Counterdefendant Tryke Companies So NV,
20 LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark
21 County, Nevada.

22 12. Upon information and belief, Plaintiff/Counterdefendant Tryke Companies Reno, LLC
23 is, and at all relevant times was, a Nevada limited liability company conducting business in Clark
24 County, Nevada.

25 13. Upon information and belief, Plaintiff/Counterdefendant Paradise Wellness Center
26 LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark
27 County, Nevada.

28 14. Upon information and belief, Plaintiff/Counterdefendant GBS Nevada Partners LLC

1 is, and at all relevant times was, a Nevada limited liability company conducting business in Clark
2 County, Nevada.

3 15. Upon information and belief, Plaintiff/Counterdefendant Fidelis Holdings LLC is, and
4 at all relevant times was, a Nevada limited liability company conducting business in Clark County,
5 Nevada.

6 16. Upon information and belief, Plaintiff/Counterdefendant Gravitas Nevada, LLC is, and
7 at all relevant times was, a Nevada limited liability company conducting business in Clark County,
8 Nevada.

9 17. Upon information and belief, Plaintiff/Counterdefendant Nevadapure, LLC is, and at
10 all relevant times was, a Nevada limited liability company conducting business in Clark County,
11 Nevada.

12 18. Upon information and belief, Plaintiff/Counterdefendant Medifarm, LLC is, and at all
13 relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.

14 19. Jurisdiction is proper in this Court as this Counterclaim is brought in response to an
15 action presently pending before this Court, and pursuant to NRCP 8(a)(1), no new jurisdictional
16 support is needed.

17 **GENERAL ALLEGATIONS**

18 20. On November 8, 2016, Nevada voters passed the Regulation and Taxation of
19 Marijuana Act (the “Act”) (Ballot Question 2).

20 21. The Act legalized the purchase, possession, and consumption of recreational marijuana
21 for adults 21 and older.

22 22. The Department of Taxation (the “Department”) was to adopt regulations necessary to
23 carry out the Act, including regulations that set forth the “[p]rocedures for the issuance, renewal,
24 suspension, and revocation of a license to operate a marijuana establishment” and “[q]ualifications
25 for licensure that are directly and demonstrably related to the operation of a marijuana establishment.”
26 Nev. Rev. Stat. § 453D.200(1)(a)-(b).

27 23. On January 16, 2018, the Nevada Tax Commission unanimously approved permanent
28 regulations (“Approved Regulations”). LCB File No. R092-17.

1 24. The Approved Regulations went into effect on February 27, 2018.

2 25. Thereafter, on August 16, 2018, the Department issued a Notice of Intent to Accept
3 Applications (“Notice”) for sixty-four (64) recreational marijuana retail store licenses, which are to
4 be located throughout various jurisdictions in Nevada.

5 26. The Notice required that all applications be submitted between 8:00 a.m. on September
6 7, 2018 and 5:00 p.m. on September 20, 2018.

7 27. Counterclaimants timely submitted applications for multiple recreational marijuana
8 retail store licenses during the application period.

9 28. Pursuant to section 80 of the Approved Regulations, if the Department received more
10 than one complete and qualified application for a license the Department would rank all applications
11 within each jurisdiction from first to last based on compliance with NRS § 453D and the Approved
12 Regulations. R092-17, Sec. 80.

13 29. The Department thereafter was required to go down the list and issue the highest
14 scoring applicants the available licenses.

15 30. On December 5, 2018, the Department issued sixty-one (61) recreational marijuana
16 retail store conditional licenses, including ten (10) licenses for Unincorporated Clark County, Nevada;
17 ten (10) licenses for Las Vegas, Nevada; six (6) licenses for Henderson, Nevada; five (5) licenses for
18 North Las Vegas, Nevada; six (6) licenses for Reno, Nevada; one (1) license for Sparks, Nevada; and
19 one (1) license for Nye County, Nevada.

20 31. Counterclaimants collectively were granted fourteen (14) of the conditional licenses
21 recreational marijuana retail store conditional licenses.

22 32. Under the Approved Regulations, Counterclaimants have twelve (12) months to
23 receive a final inspection for a marijuana establishment. R092-17, Sec. 87.

24 33. If a marijuana establishment does not receive a final inspection within twelve (12)
25 months, the marijuana establishment must surrender the license to the Department. The Department,
26 however, may extend the period specified in this subsection if the Department, in its discretion,
27 determines that extenuating circumstances prevented the marijuana establishment from receiving a
28 final inspection within the period specified in this subsection.

1 34. Upon information and belief, Counterdefendants were not granted conditional licenses
2 by the Department.

3 35. Counterdefendants now bring this lawsuit in an attempt to manufacture a dispute in the
4 hopes of undermining the rights of Counterclaimants, and other successful applicants, under their
5 recreational marijuana retail store conditional licenses and to hinder or delay their ability from acting
6 on their rights.

7 36. Counterdefendants allegations are factually deficient and have no evidentiary support.

8 37. Counterdefendants have not asserted, nor can they assert, any facts to demonstrate that
9 Counterclaimants should not have received their conditional licenses.

10 38. Counterclaimants intend to proceed with obtaining a final inspection of a marijuana
11 establishment no later than December 4, 2019, in each jurisdiction in which they were awarded
12 licenses.

13 39. Counterdefendants are seeking relief that might limit and/or preclude
14 Counterclaimants from moving forward with final inspections of their marijuana establishments
15 pursuant to the Approved Regulations, which would gravely impact their rights granted to them under
16 their conditional licenses.

17 40. Counterdefendants' lawsuit has attempted to manufacture a dispute to undermine the
18 rights of Counterclaimants and other successful applications in order to prevent any final inspections
19 prior to the twelve (12) month period.

20 41. Therefore, a justiciable controversy exists sufficient to warrant a declaratory judgment
21 that Counterclaimants have valid conditional licenses under the applicable statutes and regulations
22 and may proceed with opening and obtaining a final inspection for a marijuana establishment.

23 **FIRST COUNTERCLAIM**

24 **(Declaratory Relief)**

25 42. Counterclaimants repeat, reallege, and incorporate by reference the foregoing
26 paragraphs as if fully set forth herein.

27 43. A justiciable controversy exists sufficient to warrant a declaratory judgment pursuant
28 to Nevada's Uniform Declaratory Judgments Act, NRS 30.010, et seq.

1 44. Collectively Claimants received fourteen (14) of the sixty-one (61) conditional licenses
2 from the Department to open marijuana establishments.

3 45. Counterdefendants contend that the Department “must” issue conditional licenses to
4 Counterdefendants, which would necessarily deprive Counterclaimants, or other successful
5 applicants, of their conditional licenses.

6 46. Counterdefendants have asserted no facts specific to Counterclaimants that would
7 provide any valid basis to receive the relief requested.

8 47. Counterclaimants request a declaratory judgment to determine their rights, status, or
9 other legal relations under the applicable statutes and regulations with respect to the unfounded dispute
10 brought by Counterdefendants. Such a declaratory judgment will eliminate any false and untenable
11 impediments that might otherwise potentially delay the opening of a marijuana establishments within
12 the specified regulatory time period.

13 48. Counterclaimants have been required to engage the services of an attorney, incurring
14 attorneys’ fees and costs to bring this action, and Counterclaimants are therefore entitled to reasonable
15 attorneys’ fees and costs incurred in this action.

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PRAYER FOR RELIEF

Wherefore, Counterclaimants pray for relief as follows:

1. A declaratory judgment from the Court that Counterclaimants have valid conditional licenses under applicable statutes and regulations and may proceed with opening and obtaining final inspections for recreational marijuana establishments,
2. Costs and fees incurred in bringing and pursuing their claims herein, and
3. Any further and additional relief that the Court may award.

Dated this 14th day of June 2019.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez
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Nevada Bar No. 9046
JASON R. MAIER, ESQ.
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*Attorneys for Defendants/Counterclaimants
Integral Associates, LLC d/b/a Essence
Cannabis Dispensaries, Essence
Tropicana, LLC, Essence Henderson, LLC,
CPCM Holdings, LLC d/b/a Thrive Cannabis
Marketplace, and Commerce Park Medical
L.L.C., Chevenne Medical LLC*

CERTIFICATE OF SERVICE

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

Serenity Wellness Center, LLC – Plaintiff

Tanya Bain tbain@gcmaslaw.com
ShaLinda Creer screer@gcmaslaw.com

State of Nevada Department of Taxation – Defendant

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Theresa M. Haar thaar@ag.nv.gov
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Robert E. Werbicky rwerbicky@ag.nv.gov

Nevada Organic Remedies LLC - Other

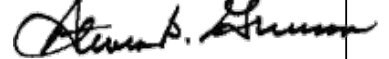
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1 Helping Hands Wellness Center Inc - Intervenor
2
3 Jared Kahn jkahn@jk-legalconsulting.com
4
5 GreenMart of Nevada NLV LLC - Intervenor Defendant
6
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10 Other Service Contacts
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/s/ Brandon Lopipero
An Employee of MAIER GUTIERREZ & ASSOCIATES



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13 *Attorneys for Defendants Integral Associates LLC*

14 *d/b/a Essence Cannabis Dispensaries,*

Essence Tropicana, LLC, Essence Henderson, LLC,

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

Commerce Park Medical, LLC, and Cheyenne Medical, LLC

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 MM DEVELOPMENT COMPANY, INC., a
20 Nevada corporation; LIVFREE WELLNESS
21 LLC, dba The Dispensary, a Nevada limited
liability company,

22 Plaintiff,

23 vs.

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

26 Defendants.

27 INTEGRAL ASSOCIATES LLC d/b/a
ESSENCE CANNABIS DISPENSARIES, a
28 Nevada limited liability company; ESSENCE
TROPICANA, LLC, a Nevada limited liability

Case No. : A-18-785818-W

Dept. No.: XVIII

**DEFENDANTS' ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT AND PETITION FOR
JUDICIAL REVIEW OR WRIT OF
MANDAMUS WITH COUNTERCLAIM**

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

Defendants in Intervention.

And All Related Actions

Defendants in Intervention INTEGRAL ASSOCIATES LLC d/b/a ESSENCE CANNABIS DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC, CPCM HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, COMMERCE PARK MEDICAL, LLC, and CHEYENNE MEDICAL, LLC (collectively “Defendants”), by and through their attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby answers the Complaint filed by plaintiff MM DEVELOPMENT COMPANY, INC. and LIVFREE WELLNESS LLC, dba THE DISPENSARY (collectively “Plaintiff”), as follows:

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

I. PARTIES & JURISDICTION

1. Answering paragraph 1 of the First Amended Complaint, Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis deny these allegations.

2. Answering paragraph 2 of the First Amended Complaint, Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis deny these allegations.

3. Answering paragraph 3 of the First Amended Complaint, Defendants admit these allegations.

4. Answering paragraph 4 of the First Amended Complaint, Defendants are without sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and on that basis deny these allegations.

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1 13. Answering paragraph 13 of the First Amended Complaint, Defendants are without
2 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
3 on that basis deny these allegations.

4 14. Answering paragraph 14 of the First Amended Complaint, Defendants are without
5 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
6 on that basis deny these allegations.

7 15. Answering paragraph 15 of the First Amended Complaint, Defendants are without
8 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
9 on that basis deny these allegations.

10 16. Answering paragraph 16 of the First Amended Complaint, Defendants are without
11 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
12 on that basis deny these allegations.

13 17. Answering paragraph 17 of the First Amended Complaint, Defendants are without
14 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
15 on that basis deny these allegations.

16 18. Answering paragraph 18 of the First Amended Complaint, Defendants are without
17 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis deny these allegations.

19 19. Answering paragraph 19 of the First Amended Complaint, no response is required as
20 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
21 Defendants deny these allegations.

22 20. Answering paragraph 20 of the First Amended Complaint, no response is required as
23 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
24 Defendants deny these allegations.

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1 29. Answering paragraph 29 of the First Amended Complaint, no response is required as
2 the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
3 extent a response is required, Defendants deny these allegations.

4 30. Answering paragraph 30 of the First Amended Complaint, no response is required as
5 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
6 Defendants deny these allegations.

7 31. Answering paragraph 31 of the First Amended Complaint, no response is required as
8 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
9 Defendants deny these allegations.

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

12 32. Answering paragraph 32 of the First Amended Complaint, Defendants repeat and
13 reallege their answers to paragraphs 1 through 31 above, and incorporates the same herein by reference
14 as though fully set forth herein.

15 33. Answering paragraph 33 of the First Amended Complaint, no response is required as
16 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
17 Defendants deny these allegations.

18 34. Answering paragraph 34 of the First Amended Complaint, Defendants are without
19 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
20 on that basis deny these allegations.

21 35. Answering paragraph 35 of the First Amended Complaint, Defendants admit these
22 allegations.

23 36. Answering paragraph 36 of the First Amended Complaint, no response is required as
24 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
25 Defendants deny these allegations.

26 37. Answering paragraph 37 of the First Amended Complaint, no response is required as
27 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
28 Defendants deny these allegations.

1 38. Answering paragraph 38 of the First Amended Complaint, no response is required as
2 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
3 Defendants deny these allegations.

4 **THIRD CLAIM FOR RELIEF**
5 **(Violation of Procedural Due Process)**

6 39. Answering paragraph 39 of the First Amended Complaint, Defendants repeat and
7 reallege their answers to paragraphs 1 through 38 above, and incorporates the same herein by reference
8 as though fully set forth herein.

9 40. Answering paragraph 40 of the First Amended Complaint, no response is required as
10 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
11 Defendants deny these allegations.

12 41. Answering paragraph 41 of the First Amended Complaint, no response is required as
13 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
14 Defendants deny these allegations.

15 42. Answering paragraph 42 of the First Amended Complaint, no response is required as
16 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
17 Defendants deny these allegations.

18 43. Answering paragraph 43 of the First Amended Complaint, no response is required as
19 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
20 Defendants deny these allegations.

21 44. Answering paragraph 44 of the First Amended Complaint, no response is required as
22 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
23 Defendants deny these allegations.

24 45. Answering paragraph 45 of the First Amended Complaint, no response is required as
25 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
26 Defendants deny these allegations.

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FOURTH CLAIM FOR RELIEF
(Violation of Substantive Due Process)

46. Answering paragraph 46 of the First Amended Complaint, Defendants repeat and reallege their answers to paragraphs 1 through 45 above, and incorporates the same herein by reference as though fully set forth herein.

47. Answering paragraph 47 of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

48. Answering paragraph 48 of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

49. Answering paragraph 49 of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

50. Answering paragraph 50 of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

FIFTH CLAIM FOR RELIEF
(Equal Protection Violation)

51. Answering paragraph 51 of the First Amended Complaint, Defendants repeat and reallege their answers to paragraphs 1 through 50 above, and incorporates the same herein by reference as though fully set forth herein.

52. Answering paragraph 52 of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

53. Answering paragraph 53 of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

54. Answering paragraph 54 of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

55. Answering paragraph 55 of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

56. Answering paragraph 56 of the First Amended Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants deny these allegations.

SIXTH CLAIM FOR RELIEF (Petition for Judicial Review)

57. Answering paragraph 57 of the First Amended Complaint, Defendants repeat and reallege their answers to paragraphs 1 through 56 above, and incorporates the same herein by reference as though fully set forth herein.

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

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

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

61. Answering paragraph 61(a)-(c) of the First Amended Complaint, no response is required as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief being sought therein or to any relief in this matter.

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1 62. Answering paragraph 62 of the First Amended Complaint, no response is required as
2 the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
3 Defendants deny these allegations.

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5 **SEVENTH CLAIM FOR RELIEF**
6 **(Petition for Writ of Mandamus)**

6 63. Answering paragraph 63 of the First Amended Complaint, Defendants repeat and
7 reallege their answers to paragraphs 1 through 62 above, and incorporates the same herein by reference
8 as though fully set forth herein.

9 64. Answering paragraph 64 of the Complaint, no response is required as the allegations
10 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
11 deny these allegations.

12 65. Answering paragraph 65(a)-(b) of the Complaint, no response is required as the
13 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
14 Defendants deny these allegations.

15 66. Answering paragraph 66(a)-(b) of the Complaint, no response is required as the
16 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required,
17 Defendants deny these allegations.

18 67. Answering paragraph 67 of the Complaint, no response is required as the allegations
19 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
20 deny these allegations.

21 68. Answering paragraph 68 of the Complaint, no response is required as the allegations
22 contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendants
23 deny these allegations.

24 **GENERAL DENIAL**

25 To the extent a further response is required to any allegation set forth in the Complaint,
26 Defendants such allegation.

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ANSWER TO PRAYER FOR RELIEF

Answering the allegations contained in the entirety of Plaintiffs prayer for relief, Defendants deny that Plaintiffs are entitled to the relief being sought therein or to any relief in this matter.

AFFIRMATIVE DEFENSES

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

First Affirmative Defense

Defendants expressly preserve the right to amend this Answer to bring counterclaims against Plaintiffs.

Second Affirmative Defense

The First Amended Complaint, and all the claims for relief alleged therein, fails to state a claim against Defendants upon which relief can be granted.

Third Affirmative Defense

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

Fourth Affirmative Defense

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

Fifth Affirmative Defense

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

Sixth Affirmative Defense

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

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Seventh Affirmative Defense

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

Eighth Affirmative Defense

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

Ninth Affirmative Defense

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

Tenth Affirmative Defense

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

Eleventh Affirmative Defense

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

Twelfth Affirmative Defense

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

Fourteenth Affirmative Defense

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

Fifteenth Affirmative Defense

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

Sixteenth Affirmative Defense

Plaintiffs have no constitutional rights to obtain privileged licenses.

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Seventeenth Affirmative Defense

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

Eighteenth Affirmative Defense

Plaintiffs are not entitled to Judicial Review on the denial of a license.

Nineteenth Affirmative Defense

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

Twentieth Affirmative Defense

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

WHEREFORE, Defendants prays for judgment as follows:

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

COUNTERCLAIM

Defendants/Counterclaimants INTEGRAL ASSOCIATES, LLC d/b/a ESSENCE CANNABIS DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC, CPCMHOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, and COMMERCE PARK MEDICAL L.L.C., CHEYENNE MEDICAL LLC (collectively “Counterclaimants”), by and through their attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby counterclaim against Plaintiffs/Counterdefendants MM DEVELOPMENT COMPANY, INC. and LIVFREE WELLNESS LLC, dba THE DISPENSARY (collectively “Counterdefendants”), as follows:

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PARTIES

1. Defendant/Counterclaimant Integral Associates, LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.
2. Defendant/Counterclaimant Essence Tropicana, LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.
3. Defendant/Counterclaimant Essence Henderson, LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.
4. Defendant/Counterclaimant CPCM Holdings, LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.
5. Defendant/Counterclaimant Commerce Park Medical L.L.C is, and at all relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.
6. Defendant/Counterclaimant Cheyenne Medical LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.
7. Upon information and belief, Plaintiff/Counterdefendant MM Development Company, LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.
8. Upon information and belief, Plaintiff/Counterdefendant Livfree Wellness LLC, dba The Dispensary is, and at all relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.
9. Jurisdiction is proper in this Court as this Counterclaim is brought in response to an action presently pending before this Court, and pursuant to NRCP 8(a)(1), no new jurisdictional support is needed.

GENERAL ALLEGATIONS

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

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1 12. The Department of Taxation (the “Department”) was to adopt regulations necessary to
2 carry out the Act, including regulations that set forth the “[p]rocedures for the issuance, renewal,
3 suspension, and revocation of a license to operate a marijuana establishment” and “[q]ualifications
4 for licensure that are directly and demonstrably related to the operation of a marijuana establishment.”
5 Nev. Rev. Stat. § 453D.200(1)(a)-(b).

6 13. On January 16, 2018, the Nevada Tax Commission unanimously approved permanent
7 regulations (“Approved Regulations”). LCB File No. R092-17.

8 14. The Approved Regulations went into effect on February 27, 2018.

9 15. Thereafter, on August 16, 2018, the Department issued a Notice of Intent to Accept
10 Applications (“Notice”) for sixty-four (64) recreational marijuana retail store licenses, which are to
11 be located throughout various jurisdictions in Nevada.

12 16. The Notice required that all applications be submitted between 8:00 a.m. on September
13 7, 2018 and 5:00 p.m. on September 20, 2018.

14 17. Counterclaimants timely submitted applications for multiple recreational marijuana
15 retail store licenses during the application period.

16 18. Pursuant to section 80 of the Approved Regulations, if the Department received more
17 than one complete and qualified application for a license the Department would rank all applications
18 within each jurisdiction from first to last based on compliance with NRS § 453D and the Approved
19 Regulations. R092-17, Sec. 80.

20 19. The Department thereafter was required to go down the list and issue the highest
21 scoring applicants the available licenses.

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

27 21. Counterclaimants collectively were granted fourteen (14) of the conditional licenses
28 recreational marijuana retail store conditional licenses.

1 22. Under the Approved Regulations, Counterclaimants have twelve (12) months to
2 receive a final inspection for a marijuana establishment. R092-17, Sec. 87.

3 23. If a marijuana establishment does not receive a final inspection within twelve (12)
4 months, the marijuana establishment must surrender the license to the Department. The Department,
5 however, may extend the period specified in this subsection if the Department, in its discretion,
6 determines that extenuating circumstances prevented the marijuana establishment from receiving a
7 final inspection within the period specified in this subsection.

8 24. Upon information and belief, Counterdefendants were not granted conditional licenses
9 by the Department.

10 25. Counterdefendants now bring this lawsuit in an attempt to manufacture a dispute in the
11 hopes of undermining the rights of Counterclaimants, and other successful applicants, under their
12 recreational marijuana retail store conditional licenses and to hinder or delay their ability from acting
13 on their rights.

14 26. Counterdefendants allegations are factually deficient and have no evidentiary support.

15 27. Counterdefendants have not asserted, nor can they assert, any facts to demonstrate that
16 Counterclaimants should not have received their conditional licenses.

17 28. Counterclaimants intend to proceed with obtaining a final inspection of a marijuana
18 establishment no later than December 4, 2019, in each jurisdiction in which they were awarded
19 licenses.

20 29. Counterdefendants are seeking relief that might limit and/or preclude
21 Counterclaimants from moving forward with final inspections of their marijuana establishments
22 pursuant to the Approved Regulations, which would gravely impact their rights granted to them under
23 their conditional licenses.

24 30. Counterdefendants' lawsuit has attempted to manufacture a dispute to undermine the
25 rights of Counterclaimants and other successful applications in order to prevent any final inspections
26 prior to the twelve (12) month period.

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1 31. Therefore, a justiciable controversy exists sufficient to warrant a declaratory judgment
2 that Counterclaimants have valid conditional licenses under the applicable statutes and regulations
3 and may proceed with opening and obtaining a final inspection for a marijuana establishment.

4 **FIRST COUNTERCLAIM**

5 **(Declaratory Relief)**

6 32. Counterclaimants repeat, reallege, and incorporate by reference the foregoing
7 paragraphs as if fully set forth herein.

8 33. A justiciable controversy exists sufficient to warrant a declaratory judgment pursuant
9 to Nevada’s Uniform Declaratory Judgments Act, NRS 30.010, et seq.

10 34. Collectively Counterclaimants received fourteen (14) of the sixty-one (61) conditional
11 licenses from the Department to open marijuana establishments.

12 35. Counterdefendants contend that the Department “must” issue conditional licenses to
13 Counterdefendants, which would necessarily deprive Counterclaimants, or other successful
14 applicants, of their conditional licenses.

15 36. Counterdefendants have asserted no facts specific to Counterclaimants that would
16 provide any valid basis to receive the relief requested.

17 37. Counterclaimants request a declaratory judgment to determine their rights, status, or
18 other legal relations under the applicable statutes and regulations with respect to the unfounded dispute
19 brought by Counterdefendants. Such a declaratory judgment will eliminate any false and untenable
20 impediments that might otherwise potentially delay the opening of a marijuana establishments within
21 the specified regulatory time period.

22 38. Counterclaimants have been required to engage the services of an attorney, incurring
23 attorneys’ fees and costs to bring this action, and Counterclaimants are therefore entitled to reasonable
24 attorneys’ fees and costs incurred in this action.

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PRAYER FOR RELIEF

Wherefore, Counterclaimants pray for relief as follows:

1. A declaratory judgment from the Court that Counterclaimants have valid conditional licenses under applicable statutes and regulations and may proceed with opening and obtaining final inspections for recreational marijuana establishments,
2. Costs and fees incurred in bringing and pursuing their claims herein, and
3. Any further and additional relief that the Court may award.

DATED this 14th day of June 2019.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
JASON R. MAIER, ESQ.
Nevada Bar No. 8557
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
*Attorneys for Defendants/Counterclaimants
Integral Associates, LLC d/b/a Essence Cannabis
Dispensaries, Essence
Tropicana, LLC, Essence Henderson, LLC,
CPCM Holdings, LLC d/b/a Thrive Cannabis
Marketplace, and Commerce Park Medical
L.L.C., Chevenne Medical LLC*

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, a copy of the **DEFENDANTS' ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND PETITION FOR JUDICIAL REVIEW OR WRIT OF MANDAMUS WITH COUNTERCLAIM** was electronically filed on the 14th day of June 2019 and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List and by depositing a true and correct copy of the same, enclosed in a sealed envelope upon which first class postage was fully prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed as follows (*Note: All Parties Not Registered Pursuant to Administrative Order 14-2 Have Been Served By Mail.*):

State of Nevada Department of Taxation – Defendant

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Danielle Wright	dwright2@ag.nv.gov

Nevada Organic Remedies LLC - Other

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Steven B Scow	sscow@kochscow.com
Brody R. Wight	bwight@kochscow.com

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Eric D Hone	eric@h1lawgroup.com
Moorea L. Katz	moorea@h1lawgroup.com
Jamie L. Zimmerman	jamie@h1lawgroup.com

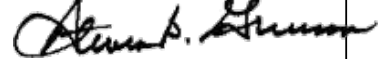
GreenMart of Nevada NLV LLC - Intervenor Defendant

Margaret A McLetchie	maggie@nvlitigation.com
Alina M Shell	alina@nvlitigation.com

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Essence Tropicana, LLC, Essence Henderson, LLC,
CPCM Holdings, LLC d/b/a Thrive Cannabis
Marketplace, Commerce Park Medical, LLC,
and Cheyenne Medical, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

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; ROMOUGH 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

Case No. : A-19-787004-B

Dept. No.: XI

**DEFENDANTS' ANSWER TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT AND COUNTERCLAIM**

company; ZION GARDENS LLC, a Nevada limited liability company; and MMOF VEGAS RETAIL, INC., a Nevada corporation,

Plaintiffs,

vs.

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

Defendants.

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

Defendants in Intervention.

AND ALL RELATED MATTERS

Defendants in Intervention INTEGRAL ASSOCIATES LLC, d/b/a ESSENCE CANNABIS DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC, CPCM HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, and COMMERCE PARK MEDICAL, LLC, CHEYENNE MEDICAL, LLC (collectively “Defendants”), by and through their attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby answers the Second Amended Complaint filed by plaintiffs 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 dba MOTHER HERB, NEVCANN LLC, RED EARTH LLC, THC NEVADA LLC, ZION GARDENS LLC, and MMOF VEGAS REATAIL, INC. (collectively “Plaintiffs”), as follows:

1 Defendants deny each and every allegation in the Second Amended Complaint except those
2 allegations which are hereinafter admitted, qualified, or otherwise answered.

3 **PARTIES**

4 1. Answering paragraph 1 of the Second Amended Complaint, Defendants are without
5 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
6 on that basis deny these allegations.

7 2. Answering paragraph 2 of the Second Amended Complaint, Defendants are without
8 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
9 on that basis deny these allegations.

10 3. Answering paragraph 3 of the Second Amended Complaint, Defendants are without
11 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
12 on that basis deny these allegations.

13 4. Answering paragraph 4 of the Second Amended Complaint, Defendants are without
14 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
15 on that basis deny these allegations.

16 5. Answering paragraph 5 of the Second Amended Complaint, Defendants are without
17 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis deny these allegations.

19 6. Answering paragraph 6 of the Second Amended Complaint, Defendants are without
20 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
21 on that basis deny these allegations.

22 7. Answering paragraph 7 of the Second Amended Complaint, Defendants are without
23 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
24 on that basis deny these allegations.

25 8. Answering paragraph 8 of the Second Amended Complaint, Defendants are without
26 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
27 on that basis deny these allegations.

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1 9. Answering paragraph 9 of the Second Amended Complaint, Defendants are without
2 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
3 on that basis deny these allegations.

4 10. Answering paragraph 10 of the Second Amended Complaint, Defendants are without
5 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
6 on that basis deny these allegations.

7 11. Answering paragraph 11 of the Second Amended Complaint, Defendants are without
8 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
9 on that basis deny these allegations.

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

13 13. Answering paragraph 13 of the Second Amended Complaint, Defendants are without
14 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
15 on that basis deny these allegations.

16 14. Answering paragraph 14 of the Second Amended Complaint, Defendants admit these
17 allegations.

18 15. Answering paragraph 15 of the Second Amended Complaint, Defendants are without
19 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
20 on that basis deny these allegations.

21 16. Answering paragraph 16 of the Second Amended Complaint, Defendants are without
22 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
23 on that basis deny these allegations.

24 **JURISDICTION AND VENUE**

25 17. Answering paragraph 17 of the Second Amended Complaint, no response is required
26 as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
27 required, Defendants are without sufficient knowledge or information as to the truth or falsity of the
28 allegations contained therein, and on that basis deny these allegations.

1 18. Answering paragraph 18 of the Second Amended Complaint, no response is required
2 as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
3 required, Defendants are without sufficient knowledge or information as to the truth or falsity of the
4 allegations contained therein, and on that basis deny these allegations.

5 **GENERAL ALLEGATIONS**

6 19. Answering paragraph 19 of the Second Amended Complaint, Defendants repeat and
7 reallege their answers to paragraphs 1 through 18 above, and incorporate the same herein by reference
8 as though fully set forth herein.

9 20. Answering paragraph 20 of the Second Amended Complaint, Defendants admit these
10 allegations.

11 21. Answering paragraph 21 of the Second Amended Complaint, no response is required
12 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
13 content of laws or regulations. To the extent a response is required and the allegations accurately state
14 the laws or regulations referenced therein, Defendants admit these allegations.

15 22. Answering paragraph 22 of the Second Amended Complaint, no response is required
16 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
17 content of laws or regulations. To the extent a response is required and the allegations accurately state
18 the laws or regulations referenced therein, Defendants admit these allegations.

19 23. Answering paragraph 23 of the Second Amended Complaint, no response is required
20 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
21 content of laws or regulations. To the extent a response is required and the allegations accurately state
22 the laws or regulations referenced therein, Defendants admit these allegations.

23 24. Answering paragraph 24 of the Second Amended Complaint, no response is required
24 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
25 content of laws or regulations. To the extent a response is required and the allegations accurately state
26 the laws or regulations referenced therein, Defendants admit these allegations.

27 25. Answering paragraph 25 of the Second Amended Complaint, no response is required
28 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the

1 content of laws or regulations. To the extent a response is required and the allegations accurately state
2 the laws or regulations referenced therein, Defendants admit these allegations.

3 26. Answering paragraph 26 of the Second Amended Complaint, Defendants are without
4 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
5 on that basis deny these allegations.

6 27. Answering paragraph 27 of the Second Amended Complaint, Defendants are without
7 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
8 on that basis deny these allegations.

9 28. Answering paragraph 28 of the Second Amended Complaint, Defendants are without
10 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
11 on that basis deny these allegations.

12 29. Answering paragraph 29 of the Second Amended Complaint, Defendants are without
13 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
14 on that basis deny these allegations.

15 30. Answering paragraph 30 of the Second Amended Complaint, Defendants are without
16 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
17 on that basis deny these allegations.

18 31. Answering paragraph 31 of the Second Amended Complaint, Defendants are without
19 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
20 on that basis deny these allegations.

21 32. Answering paragraph 32 of the Second Amended Complaint, no response is required
22 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
23 content of laws or regulations. To the extent a response is required and the allegations accurately state
24 the laws or regulations referenced therein, Defendants admit these allegations.

25 33. Answering paragraph 33 of the Second Amended Complaint, no response is required
26 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
27 content of laws or regulations. To the extent a response is required and the allegations accurately state
28 the laws or regulations referenced therein, Defendants admit these allegations.

1 34. Answering paragraph 34(a)-(i) of the Second Amended Complaint, no response is
2 required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding
3 the content of laws or regulations. To the extent a response is required and the allegations accurately
4 state the laws or regulations referenced therein, Defendants admit these allegations.

5 35. Answering paragraph 35 of the Second Amended Complaint, Defendants are without
6 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
7 on that basis deny these allegations.

8 36. Answering paragraph 36 of the Second Amended Complaint, no response is required
9 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
10 content of laws or regulations. To the extent a response is required and the allegations accurately state
11 the laws or regulations referenced therein, Defendants admit these allegations.

12 37. Answering paragraph 37 of the Second Amended Complaint, no response is required
13 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
14 content of laws or regulations. To the extent a response is required and the allegations accurately state
15 the laws or regulations referenced therein, Defendants admit these allegations.

16 38. Answering paragraph 38 of the Second Amended Complaint, no response is required
17 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
18 content of laws or regulations. To the extent a response is required and the allegations accurately state
19 the laws or regulations referenced therein, Defendants admit these allegations.

20 39. Answering paragraph 39 of the Second Amended Complaint, Defendants are without
21 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
22 on that basis deny these allegations.

23 40. Answering paragraph 40 of the Second Amended Complaint, Defendants are without
24 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
25 on that basis deny these allegations.

26 41. Answering paragraph 41 of the Second Amended Complaint, Defendants are without
27 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
28 on that basis deny these allegations.

1 42. Answering paragraph 42 of the Second Amended Complaint, Defendants are without
2 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
3 on that basis deny these allegations.

4 43. Answering paragraph 43 of the Second Amended Complaint, Defendants are without
5 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
6 on that basis deny these allegations.

7 44. Answering paragraph 44 of the Second Amended Complaint, Defendants are without
8 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
9 on that basis deny these allegations.

10 45. Answering paragraph 45 of the Second Amended Complaint, Defendants are without
11 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
12 on that basis deny these allegations.

13 46. Answering paragraph 46 of the Second Amended Complaint, Defendants are without
14 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
15 on that basis deny these allegations.

16 47. Answering paragraph 47(a)-(d) of the Second Amended Complaint, no response is
17 required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response
18 is required, Defendants deny these allegations.

19 48. Answering paragraph 48 of the Second Amended Complaint, no response is required
20 as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
21 required, Defendants deny these allegations.

22 49. Answering paragraph 49 of the Second Amended Complaint, no response is required
23 as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
24 required, Defendants deny these allegations.

25 50. Answering paragraph 50 of the Second Amended Complaint, no response is required
26 as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
27 required, Defendants deny these allegations.

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

4 59. Answering paragraph 59(a)-(f) of the Second Amended Complaint, no response is
5 required as the allegations contained therein are not factual in nature and/or contain legal conclusions.
6 To the extent a response is required, Defendants deny these allegations.

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

10 61. Answering paragraph 61 of the Second Amended Complaint, no response is required
11 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
12 extent a response is required, Defendants deny these allegations.

13 62. Answering paragraph 62 of the Second Amended Complaint, no response is required
14 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
15 extent a response is required, Defendants deny these allegations.

16 **SECOND CLAIM FOR RELIEF**

17 **Violation of Procedural Due Process**

18 63. Answering paragraph 63 of the Second Amended Complaint, Defendants repeat and
19 reallege their answers to paragraphs 1 through 62 above, and incorporate the same herein by reference
20 as though fully set forth herein.

21 64. Answering paragraph 64 of the Second Amended Complaint, no response is required
22 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
23 content of laws or regulations. To the extent a response is required and the allegations accurately state
24 the laws or regulations referenced therein, Defendants admit these allegations.

25 65. Answering paragraph 65 of the Second Amended Complaint, no response is required
26 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
27 content of laws or regulations. To the extent a response is required and the allegations accurately state
28 the laws or regulations referenced therein, Defendants admit these allegations.

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

4 67. Answering paragraph 67 of the Second Amended Complaint, no response is required
5 as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
6 required, Defendants are without sufficient knowledge or information as to the truth or falsity of the
7 allegations contained therein, and on that basis deny these allegations.

8 68. Answering paragraph 68 of the Second Amended Complaint, no response is required
9 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
10 content of laws or regulations. To the extent a response is required and the allegations accurately state
11 the laws or regulations referenced therein, Defendants admit these allegations.

12 69. Answering paragraph 69 of the Second Amended Complaint, Defendants are without
13 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
14 on that basis deny these allegations.

15 70. Answering paragraph 70 of the Second Amended Complaint, no response is required
16 as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
17 required, Defendants deny these allegations.

18 71. Answering paragraph 71 of the Second Amended Complaint, no response is required
19 as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
20 required, Defendants deny these allegations.

21 72. Answering paragraph 72 of the Second Amended Complaint, no response is required
22 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
23 extent a response is required, Defendants deny these allegations.

24 73. Answering paragraph 73 of the Second Amended Complaint, no response is required
25 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
26 extent a response is required, Defendants deny these allegations.

27 74. Answering paragraph 74 of the Second Amended Complaint, no response is required
28 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the

1 extent a response is required, Defendants deny these allegations.

2 **THIRD CLAIM FOR RELIEF**

3 **Violation of Equal Protection**

4 75. Answering paragraph 75 of the Second Amended Complaint, Defendants repeat and
5 reallege their answers to paragraphs 1 through 74 above, and incorporate the same herein by reference
6 as though fully set forth herein.

7 76. Answering paragraph 76 of the Second Amended Complaint, no response is required
8 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
9 content of laws or regulations. To the extent a response is required and the allegations accurately state
10 the laws or regulations referenced therein, Defendants admit these allegations.

11 77. Answering paragraph 77 of the Second Amended Complaint, no response is required
12 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
13 content of laws or regulations. To the extent a response is required and the allegations accurately state
14 the laws or regulations referenced therein, Defendants admit these allegations.

15 78. Answering paragraph 78 of the Second Amended Complaint, no response is required
16 as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
17 required, Defendants are without sufficient knowledge or information as to the truth or falsity of the
18 allegations contained therein, and on that basis deny these allegations.

19 79. Answering paragraph 79 of the Second Amended Complaint, no response is required
20 as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
21 required, Defendants deny these allegations.

22 80. Answering paragraph 80 of the Second Amended Complaint, Defendants admit only
23 insofar as the term Factors, as used by Plaintiffs, accurately comports with those laws and regulations
24 referenced in the definition of the term "Factors."

25 81. Answering paragraph 81 of the Second Amended Complaint, no response is required
26 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
27 extent a response is required, Defendants deny these allegations.

28 82. Answering paragraph 82 of the Second Amended Complaint, no response is required

1 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
2 extent a response is required, Defendants deny these allegations.

3 83. Answering paragraph 83(a)-(f) of the Second Amended Complaint, no response is
4 required as the allegations contained therein are not factual in nature and/or contain legal conclusions.
5 To the extent a response is required, Defendants deny these allegations.

6 84. Answering paragraph 84 of the Second Amended Complaint, no response is required
7 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
8 extent a response is required, Defendants deny these allegations.

9 85. Answering paragraph 85 of the Second Amended Complaint, no response is required
10 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
11 extent a response is required, Defendants deny these allegations.

12 86. Answering paragraph 86 of the Second Amended Complaint, no response is required
13 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
14 extent a response is required, Defendants deny these allegations.

15 **FOURTH CLAIM FOR RELIEF**

16 **Declaratory Judgment**

17 87. Answering paragraph 87 of the Second Amended Complaint, Defendants repeat and
18 reallege their answers to paragraphs 1 through 86 above, and incorporate the same herein by reference
19 as though fully set forth herein.

20 88. Answering paragraph 88 of the Second Amended Complaint, no response is required
21 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
22 content of laws or regulations. To the extent a response is required and the allegations accurately state
23 the laws or regulations referenced therein, Defendants admit these allegations.

24 89. Answering paragraph 89 of the Second Amended Complaint, Defendants are without
25 sufficient knowledge or information as to the truth or falsity of the allegations contained therein, and
26 on that basis deny these allegation.

27 90. Answering paragraph 90 of the Second Amended Complaint, no response is required
28 as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the

1 content of laws or regulations. To the extent a response is required and the allegations accurately state
2 the laws or regulations referenced therein, Defendants admit these allegations.

3 91. Answering paragraph 91 of the Second Amended Complaint, no response is required
4 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
5 extent a response is required, Defendants deny these allegations.

6 92. Answering paragraph 92(a)-(f) of the Second Amended Complaint, no response is
7 required as the allegations contained therein are not factual in nature and/or contain legal conclusions.
8 To the extent a response is required, Defendants deny these allegations.

9 93. Answering paragraph 93 of the Second Amended Complaint, no response is required
10 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
11 extent a response is required, Defendants deny these allegations.

12 94. Answering paragraph 94 of the Second Amended Complaint, no response is required
13 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
14 extent a response is required, Defendants deny these allegations.

15 95. Answering paragraph 95 of the Second Amended Complaint, no response is required
16 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
17 extent a response is required, Defendants deny these allegations.

18 96. Answering paragraph 96 of the Second Amended Complaint, Defendants admit these
19 allegations.

20 97. Answering paragraph 97 of the Second Amended Complaint, no response is required
21 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
22 extent a response is required, Defendants deny these allegations.

23 98. Answering paragraph 98 of the Second Amended Complaint, no response is required
24 as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the
25 extent a response is required, Defendants deny these allegations.

26 **ANSWER TO PRAYER FOR RELIEF**

27 Answering the allegations contained in the entirety of Plaintiffs prayer for relief, Defendants
28 deny that Plaintiffs are entitled to the relief being sought therein or to any relief in this matter.

1 **AFFIRMATIVE DEFENSES**

2 Defendants, without altering the burdens of proof the parties must bear, assert the following
3 affirmative defenses to Plaintiffs' Second Amended Complaint, and all causes of action alleged
4 therein, and specifically incorporate into these affirmative defenses their answers to the preceding
5 paragraphs of the Second Amended Complaint as if fully set forth herein.

6 **First Affirmative Defense**

7 The Second Amended Complaint, and all the claims for relief alleged therein, fails to state a
8 claim against Defendants upon which relief can be granted.

9 **Second Affirmative Defense**

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

12 **Third Affirmative Defense**

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

15 **Fourth Affirmative Defense**

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

18 **Fifth Affirmative Defense**

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

21 **Sixth Affirmative Defense**

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

25 **Seventh Affirmative Defense**

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

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Eighth Affirmative Defense

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

Ninth Affirmative Defense

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

Tenth Affirmative Defense

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

Eleventh Affirmative Defense

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

Twelfth Affirmative Defense

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

Thirteen Affirmative Defense

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

Fourteenth Affirmative Defense

Plaintiffs have no constitutional rights to obtain privileged licenses.

Fifteenth Affirmative Defense

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

Sixteenth Affirmative Defense

Plaintiffs are not entitled to Judicial Review on the denial of a license.

Seventeenth Affirmative Defense

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

1 **Eighteenth Affirmative Defense**

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

6 WHEREFORE, Defendants prays for judgment as follows:

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

12 **COUNTERCLAIM**

13 Defendants/Counterclaimants INTEGRAL ASSOCIATES, LLC d/b/a ESSENCE
14 CANNABIS DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC,
15 CPCM HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, and COMMERCE PARK
16 MEDICAL L.L.C., CHEYENNE MEDICAL LLC (collectively "Counterclaimants"), by and through
17 their attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby counterclaim against
18 Plaintiffs/Counterdefendants ETW MANAGEMENT GROUP LLC, GLOBAL HARMONY LLC,
19 GREEN LEAF FARMS HOLDINGS LLC, GREEN THERAPEUTICS LLC, HERBAL CHOICE
20 INC., JUST QUALITY, LLC, LIBRA WELLNESS CENTER, LLC, ROMBOUGH REAL ESTATE
21 INC dba MOTHER HERB, NEVCANN LLC, RED EARTH LLC, THC NEVADA LLC, ZION
22 GARDENS LLC; and MMOF VEGAS REATAIL, INC. (collectively "Counterdefendants"), as
23 follows:

24 **PARTIES**

- 25 1. Defendant/Counterclaimant Integral Associates, LLC is, and at all relevant times was,
26 a Nevada limited liability company conducting business in Clark County, Nevada.
27 2. Defendant/Counterclaimant Essence Tropicana, LLC is, and at all relevant times was,
28 a Nevada limited liability company conducting business in Clark County, Nevada.

1 3. Defendant/Counterclaimant Essence Henderson, LLC is, and at all relevant times was,
2 a Nevada limited liability company conducting business in Clark County, Nevada.

3 4. Defendant/Counterclaimant CPCM Holdings, LLC is, and at all relevant times was, a
4 Nevada limited liability company conducting business in Clark County, Nevada.

5 5. Defendant/Counterclaimant Commerce Park Medical L.L.C. is, and at all relevant
6 times was, a Nevada limited liability company conducting business in Clark County, Nevada.

7 6. Defendant/Counterclaimant Cheyenne Medical LLC is, and at all relevant times was,
8 a Nevada limited liability company conducting business in Clark County, Nevada.

9 7. Upon information and belief, Plaintiff/Counterdefendant ETW Management Group
10 LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark
11 County, Nevada.

12 8. Upon information and belief, Plaintiff/Counterdefendant Global Harmony LLC is, and
13 at all relevant times was, a Nevada limited liability company conducting business in Clark County,
14 Nevada.

15 9. Upon information and belief, Plaintiff/Counterdefendant Green Leaf Farms Holdings
16 LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark
17 County, Nevada.

18 10. Upon information and belief, Plaintiff/Counterdefendant Green Therapeutics LLC is,
19 and at all relevant times was, a Nevada limited liability company conducting business in Clark County,
20 Nevada.

21 11. Upon information and belief, Plaintiff/Counterdefendant Herbal Choice Inc. is, and at
22 all relevant times was, a Nevada corporation conducting business in Clark County, Nevada.

23 12. Upon information and belief, Plaintiff/Counterdefendant Just Quality, LLC is, and at
24 all relevant times was, a Nevada limited liability company conducting business in Clark County,
25 Nevada.

26 13. Upon information and belief, Plaintiff/Counterdefendant Libra Wellness Center, LLC
27 is, and at all relevant times was, a Nevada limited liability company conducting business in Clark
28 County, Nevada.

14. Upon information and belief, Plaintiff/Counterdefendant Rombough Real Estate Inc dba Mother Herb is, and at all relevant times was, a Nevada corporation conducting business in Clark County, Nevada.

15. Upon information and belief, Plaintiff/Counterdefendant Nevcan LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.

16. Upon information and belief, Plaintiff/Counterdefendant Red Earth LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.

17. Upon information and belief, Plaintiff/Counterdefendant THC Nevada LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.

18. Upon information and belief, Plaintiff/Counterdefendant Zion Gardens LLC is, and at all relevant times was, a Nevada limited liability company conducting business in Clark County, Nevada.

19. Upon information and belief, Plaintiff/Counterdefendant MMOF Vegas Retail, Inc. is, and at all relevant times was, a Nevada corporation conducting business in Clark County, Nevada.

20. Jurisdiction is proper in this Court as this Counterclaim is brought in response to an action presently pending before this Court, and pursuant to NRCP 8(a)(1), no new jurisdictional support is needed.

GENERAL ALLEGATIONS

21. On November 8, 2016, Nevada voters passed the Regulation and Taxation of Marijuana Act (the “Act”) (Ballot Question 2).

22. The Act legalized the purchase, possession, and consumption of recreational marijuana for adults 21 and older.

23. The Department of Taxation (the “Department”) was to adopt regulations necessary to carry out the Act, including regulations that set forth the “[p]rocedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment” and “[q]ualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment.” Nev. Rev. Stat. § 453D.200(1)(a)-(b).

1 24. On January 16, 2018, the Nevada Tax Commission unanimously approved permanent
2 regulations (“Approved Regulations”). LCB File No. R092-17.

3 25. The Approved Regulations went into effect on February 27, 2018.

4 26. Thereafter, on August 16, 2018, the Department issued a Notice of Intent to Accept
5 Applications (“Notice”) for sixty-four (64) recreational marijuana retail store licenses, which are to
6 be located throughout various jurisdictions in Nevada.

7 27. The Notice required that all applications be submitted between 8:00 a.m. on September
8 7, 2018 and 5:00 p.m. on September 20, 2018.

9 28. Counterclaimants timely submitted applications for multiple recreational marijuana
10 retail store licenses during the application period.

11 29. Pursuant to section 80 of the Approved Regulations, if the Department received more
12 than one complete and qualified application for a license the Department would rank all applications
13 within each jurisdiction from first to last based on compliance with NRS § 453D and the Approved
14 Regulations. R092-17, Sec. 80.

15 30. The Department thereafter was required to go down the list and issue the highest
16 scoring applicants the available licenses.

17 31. On December 5, 2018, the Department issued sixty-one (61) recreational marijuana
18 retail store conditional licenses, including ten (10) licenses for Unincorporated Clark County, Nevada;
19 ten (10) licenses for Las Vegas, Nevada; six (6) licenses for Henderson, Nevada; five (5) licenses for
20 North Las Vegas, Nevada; six (6) licenses for Reno, Nevada; one (1) license for Sparks, Nevada; and
21 one (1) license for Nye County, Nevada.

22 32. Counterclaimants collectively were granted fourteen (14) of the conditional licenses
23 recreational marijuana retail store conditional licenses.

24 33. Under the Approved Regulations, Counterclaimants have twelve (12) months to
25 receive a final inspection for a marijuana establishment. R092-17, Sec. 87.

26 34. If a marijuana establishment does not receive a final inspection within twelve (12)
27 months, the marijuana establishment must surrender the license to the Department. The Department,
28 however, may extend the period specified in this subsection if the Department, in its discretion,

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

3 35. Upon information and belief, Counterdefendants were not granted conditional licenses
4 by the Department.

5 36. Counterdefendants now bring this lawsuit in an attempt to manufacture a dispute in the
6 hopes of undermining the rights of Counterclaimants, and other successful applicants, under their
7 recreational marijuana retail store conditional licenses and to hinder or delay their ability from acting
8 on their rights.

9 37. Counterdefendants allegations are factually deficient and have no evidentiary support.

10 38. Counterdefendants have not asserted, nor can they assert, any facts to demonstrate that
11 Counterclaimants should not have received their conditional licenses.

12 39. Counterclaimants intend to proceed with obtaining a final inspection of a marijuana
13 establishment no later than December 4, 2019, in each jurisdiction in which they were awarded
14 licenses.

15 40. Counterdefendants are seeking relief that might limit and/or preclude
16 Counterclaimants from moving forward with final inspections of their marijuana establishments
17 pursuant to the Approved Regulations, which would gravely impact their rights granted to them under
18 their conditional licenses.

19 41. Counterdefendants' lawsuit has attempted to manufacture a dispute to undermine the
20 rights of Counterclaimants and other successful applications in order to prevent any final inspections
21 prior to the twelve (12) month period.

22 42. Therefore, a justiciable controversy exists sufficient to warrant a declaratory judgment
23 that Counterclaimants have valid conditional licenses under the applicable statutes and regulations
24 and may proceed with opening and obtaining a final inspection for a marijuana establishment.

25 **FIRST COUNTERCLAIM**

26 **(Declaratory Relief)**

27 43. Counterclaimants repeat, reallege, and incorporate by reference the foregoing
28 paragraphs as if fully set forth herein.

1 44. A justiciable controversy exists sufficient to warrant a declaratory judgment pursuant
2 to Nevada’s Uniform Declaratory Judgments Act, NRS 30.010, et seq.

3 45. Collectively Claimants received fourteen (14) of the sixty-one (61) conditional licenses
4 from the Department to open marijuana establishments.

5 46. Counterdefendants contend that the Department “must” issue conditional licenses to
6 Counterdefendants, which would necessarily deprive Counterclaimants, or other successful
7 applicants, of their conditional licenses.

8 47. Counterdefendants have asserted no facts specific to Counterclaimants that would
9 provide any valid basis to receive the relief requested.

10 48. Counterclaimants request a declaratory judgment to determine their rights, status, or
11 other legal relations under the applicable statutes and regulations with respect to the unfounded dispute
12 brought by Counterdefendants. Such a declaratory judgment will eliminate any false and untenable
13 impediments that might otherwise potentially delay the opening of a marijuana establishments within
14 the specified regulatory time period.

15 49. Counterclaimants have been required to engage the services of an attorney, incurring
16 attorneys’ fees and costs to bring this action, and Counterclaimants are therefore entitled to reasonable
17 attorneys’ fees and costs incurred in this action.

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PRAYER FOR RELIEF

Wherefore, Counterclaimants pray for relief as follows:

1. A declaratory judgment from the Court that Counterclaimants have valid conditional licenses under applicable statutes and regulations and may proceed with opening and obtaining final inspections for recreational marijuana establishments,
2. Costs and fees incurred in bringing and pursuing their claims herein, and
3. Any further and additional relief that the Court may award.

Dated this 14th day of June 2019.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
JASON R. MAIER, ESQ.
Nevada Bar No. 8557
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Defendants/Counterclaimants

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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, a copy of the **DEFENDANTS’ ANSWER TO PLAINTIFFS’ SECOND AMENDED COMPLAINT AND COUNTERCLAIM** was electronically filed on the 14th day of June 2019 and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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

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

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JMOT
BLACK & LOBELLO
Brigid M. Higgins, Esq.
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Attorneys for Defendant Intervenor
Clear River, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

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

Defendant.

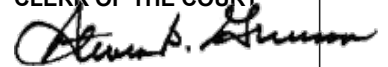
CLEAR RIVER, LLC, a Nevada limited liability
company, ROE CORPORATIONS 1 through 10.

and

NEVADA ORGANIC REMEDIES, LLC

Defendants- Intervenor.

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Steven D. Grierson
CLERK OF THE COURT



Case No. A-18-785818-W
Dept. No. 8

NEVADA ORGANIC REMEDIES, LLC

Counterclaimants,

vs.

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

Counter-Defendants.

and

CLEAR RIVER, LLC, a Nevada limited liability company;

Defendants in Intervention

CLEAR RIVER, LLC'S JOINDER TO DEFENDANT-INTERVENOR LONE MOUNTAIN PARTNERS, LLC'S POCKET BRIEF REGARDING INTERPRETATION OF STATUTES ENACTED BY BALLOT INITIATIVE

Defendant-Intervenor Clear River, LLC ("Clear River"), by and through its counsel, Brigid M. Higgins, Esq. and Rusty Graft, Esq. of the law firm of Black & Lobello, hereby submits their Joinder to Defendant-Intervenor Lone Mountain Partners, LLC's Pocket Brief Regarding Interpretation of Statutes Enacted By Ballot Initiative filed in this matter by Defendant-Intervenor Lone Mountain Partners, LLC, on June 24, 2019 and adopt the arguments and grounds as stated in the Points and Authorities filed in support of said Motion for Summary Judgment, and assert the following argument as to the parties to the petition for judicial review.

///

///

///

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

1 Clear River, LLC's Joinder is based upon the pleadings, papers and other records on file,
2 and any further documentary evidence as may be presented and any oral argument of counsel at
3 the time of the hearing. Defendant expressly adopts and incorporates by reference herein all of
4 the points and authorities set forth in defendant-intervenor Lone Mountain Partners, LLC's
5 Pocket Brief Regarding Interpretation of Statutes Enacted by Ballot Initiative, as it relates to
6 Defendant.
7

8 DATED this 24th day of June 2019.

BLACK & LOBELLO

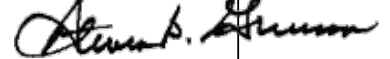
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CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of June 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing **CLEAR RIVER, LLC'S JOINDER TO DEFENDANT-INTERVENOR LONE MOUNTAIN PARTNERS, LLC'S POCKET BRIEF REGARDING INTERPRETATION OF STATUTES ENACTED BY BALLOT INIATIVE** in *Serenity Wellness Center, LLC, et al v. State of Nevada, Department of Taxation, et al*, Clark County District Court Case No. A-19-786962-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

/s/ Diane Meeter
An Employee of Black & Lobello



1 ANSBU
2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
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4 MCLEATCHIE LAW
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7 Telephone: (702) 728-5300
8 Email: maggie@nvlitigation.com
9 Counsel for Intervenor Defendant, GreenMart of Nevada NLV LLC

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

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

Plaintiffs,

vs.

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

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

Case No.: A-19-787004-B

Dept. No.: XI

**INTERVENOR DEFENDANT
GREENMART OF NEVADA NLV
LLC'S ANSWER TO PLAINTIFFS'
SECOND AMENDED COMPLAINT**

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

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

PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

19 14. Answering paragraph 14 of the SAC, Defendant admits the Department of
20 Taxation was and is an agency and political subdivision of the State of Nevada.

21 15. Answering paragraph 15 of the SAC, Defendant is without sufficient
22 knowledge or information as to the truth or falsity of the allegations contained therein, and
23 on that basis denies these allegations.

24 16. Answering paragraph 16 of the SAC, Defendant is without sufficient
25 knowledge or information as to the truth or falsity of the allegations contained therein, and
26 on that basis denies these allegations.

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JURISDICTION AND VENUE

17. Answering paragraph 17 of the SAC, no response is required as the allegations contained therein are Plaintiffs' legal conclusions.

18. Answering paragraph 18 of the SAC, no response is required as the allegations contained therein are Plaintiffs' legal conclusions.

II.

GENERAL ALLEGATIONS

19. In response to paragraph 19 of the SAC, Defendant repeats and reasserts all prior responses as though fully set forth herein.

The Statutory Scheme Governing Retail Marijuana Licenses

20. Answering paragraph 20 of the SAC, Defendant admits these allegations.

21. Answering paragraph 21 of the SAC, Defendant answers that that this is a legal conclusion to which no response is required. To the extent that a response is required, the Department denies the allegations contained therein.

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

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

24. Answering paragraph 24 of the SAC, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the content of laws or regulations. To the extent a response is required and the allegations correctly state the laws or regulations referenced therein, Defendant admits these allegations.

25. Answering paragraph 25 of the SAC, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the

1 content of laws or regulations. To the extent a response is required and the allegations
2 correctly state the laws or regulations referenced therein, Defendant admits these allegations.

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

4 26. Answering paragraph 26 of the SAC, Defendant is without sufficient
5 knowledge or information as to the truth or falsity of the allegations contained therein, and
6 on that basis denies these allegations.

7 27. Answering paragraph 27 of the SAC, Defendant is without sufficient
8 knowledge or information as to the truth or falsity of the allegations contained therein, and
9 on that basis denies these allegations.

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

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

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

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

22 32. Answering paragraph 30 of the SAC, no response is required as the
23 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
24 content of laws or regulations. To the extent a response is required and the allegations
25 correctly state the laws or regulations referenced therein, Defendant admits these allegations.

26 33. Answering paragraph 33 of the SAC, no response is required as the
27 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
28 content of laws or regulations. To the extent a response is required and the allegations

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

2 34. Answering paragraph 34(a)-(i) of the SAC, no response is required as the
3 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
4 content of laws or regulations. To the extent a response is required and the allegations
5 correctly state the laws or regulations referenced therein, Defendant admits these allegations.

6 35. Answering paragraph 35 of the SAC, Defendant is without sufficient
7 knowledge or information as to the truth or falsity of the allegations contained therein, and
8 on that basis denies these allegations.

9 36. Answering paragraph 36 of the SAC, no response is required as the
10 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
11 content of laws or regulations. To the extent a response is required, Defendant states that
12 Section 80(5) of the regulations should be considered in its full context and denies the
13 accuracy of the allegations.

14 37. Answering paragraph 37 of the SAC, no response is required as the
15 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
16 content of laws or regulations. To the extent a response is required and the allegations
17 correctly state the laws or regulations referenced therein, Defendant admits these allegations.

18 ***Plaintiffs Receive Arbitrary Denials of their Applications for Retail Marijuana Licenses***

19 38. Answering paragraph 38 of the SAC, no response is required as the
20 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
21 content of law or regulations. To the extent a response is required and the allegations
22 correctly state the laws or regulations referenced therein, Defendant admits these allegations.

23 39. Answering paragraph 39 of the SAC, Defendant is without sufficient
24 knowledge or information as to the truth or falsity of the allegations contained therein, and
25 on that basis denies these allegations.

26 40. Answering paragraph 40 of the SAC, Defendant is without sufficient
27 knowledge or information as to the truth or falsity of the allegations contained therein, and
28 on that basis denies these allegations.

1 41. Answering paragraph 41 of the SAC, Defendant is without sufficient
2 knowledge or information as to the truth or falsity of the allegations contained therein, and
3 on that basis denies these allegations.

4 42. Answering paragraph 42 of the SAC, Defendant is without sufficient
5 knowledge or information as to the truth or falsity of the allegations contained therein, and
6 on that basis denies these allegations.

7 43. Answering paragraph 43 of the SAC, Defendant is without sufficient
8 knowledge or information as to the truth or falsity of the allegations contained therein, and
9 on that basis denies these allegations.

10 44. Answering paragraph 44 of the SAC, Defendant is without sufficient
11 knowledge or information as to the truth or falsity of the allegations contained therein, and
12 on that basis denies these allegations.

13 45. Answering paragraph 45 of the SAC, Defendant is without sufficient
14 knowledge or information as to the truth or falsity of the allegations contained therein, and
15 on that basis denies these allegations.

16 46. Answering paragraph 46 of the SAC, Defendant is without sufficient
17 knowledge or information as to the truth or falsity of the allegations contained therein, and
18 on that basis denies these allegations.

19 47. Answering paragraph 47(a)-(d) of the SAC, no response is required as the
20 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
21 required, Defendant denies these allegations.

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

25 49. Answering paragraph 49 of the SAC, no response is required as the
26 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
27 required, Defendant denies these allegations.

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1 50. Answering paragraph 50 of the SAC, no response is required as the
2 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
3 required, Defendant denies these allegations.

4
5 **FIRST CLAIM FOR RELIEF**

6 **Violation of Substantive Due Process**

7 51. Answering paragraph 51 of the SAC, Defendant repeats and realleges its
8 answers to paragraphs 1 through 50 above, and incorporates the same herein by reference as
9 though fully set forth herein.

10 52. Answering paragraph 52 of the SAC, no response is required as the
11 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
12 content of laws or regulations. To the extent a response is required and the allegations
13 accurately state the laws or regulations referenced therein, Defendant admits these
14 allegations.

15 53. Answering paragraph 53 of the SAC, no response is required as the
16 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
17 content of laws or regulations. To the extent a response is required and the allegations
18 accurately state the laws or regulations referenced therein, Defendant admits these
19 allegations.

20 54. Answering paragraph 54 of the SAC, no response is required as the
21 allegations contained therein are Plaintiffs' legal conclusions.

22 55. Answering paragraph 55 of the SAC, no response is required as the
23 allegations contained therein are Plaintiffs' legal conclusions.

24 56. Answering paragraph 56 of the SAC, Defendant is without sufficient
25 knowledge or information as to the truth or falsity of the allegations contained therein, and
26 on that basis denies the allegations.

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

1 required, Defendant denies these allegations.

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

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

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

11 61. Answering paragraph 61 of the SAC, no response is required as the
12 allegations contained therein are not factual in nature and/or contain legal conclusions. To
13 the extent a response is required, Defendant denies these allegations.

14 62. Answering paragraph 62 of the SAC, no response is required as the
15 allegations contained therein are not factual in nature and/or contain legal conclusions. To
16 the extent a response is required, Defendant denies these allegations.

17
18 **SECOND CLAIM FOR RELIEF**

19 **Violation of Procedural Due Process**

20 63. Answering paragraph 63 of the SAC, Defendant hereby repeats and
21 realleges its answers to paragraphs 1 through 62 above, and incorporates the same herein by
22 reference as though fully set forth herein.

23 64. Answering paragraph 64 of the SAC, no response is required as the
24 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
25 content of laws or regulations. To the extent a response is required and the allegations
26 accurately state the laws or regulations referenced therein, Defendant admits these
27 allegations.

28 ///

1 65. Answering paragraph 65 of the SAC, no response is required as the
2 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
3 content of laws or regulations. To the extent a response is required and the allegations
4 accurately state the laws or regulations referenced therein, Defendant admits these
5 allegations.

6 66. Answering paragraph 66 of the SAC, no response is required as the
7 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
8 required, Defendant is without sufficient knowledge or information regarding the truth or
9 falsity of the information contained therein, and on that basis denies these allegations.

10 67. Answering paragraph 67 of the SAC, no response is required as the
11 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
12 required, Defendant is without sufficient knowledge or information regarding the truth or
13 falsity of the information contained therein, and on that basis denies these allegations.

14 68. Answering paragraph 68 of the SAC, no response is required as the
15 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
16 content of laws or regulations. To the extent a response is required and the allegations
17 accurately state the laws or regulations referenced therein, Defendant admits these
18 allegations.

19 69. Answering paragraph 69 of the SAC, Defendant is without sufficient
20 knowledge or information as to the truth or falsity of the allegations contained therein, and
21 on that basis denies these allegations.

22 70. Answering paragraph 70 of the SAC, no response is required as the
23 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
24 required, Defendant is without sufficient knowledge or information as to the truth or falsity
25 of the allegations contained therein, and on that basis denies these allegations.

26 71. Answering paragraph 71 of the SAC, no response is required as the
27 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
28 required, Defendant is without sufficient knowledge or information as to the truth or falsity

1 of the allegations contained therein, and on that basis denies these allegations.

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

5 73. Answering paragraph 73 of the SAC, no response is required as the
6 allegations contained therein are not factual in nature and/or contain legal conclusions. To
7 the extent a response is required, Defendant denies these allegations.

8 74. Answering paragraph 74 of the SAC, no response is required as the
9 allegations contained therein are not factual in nature and/or contain legal conclusions. To
10 the extent a response is required, Defendant denies these allegations.

11
12 **THIRD CLAIM FOR RELIEF**

13 **Violation of Equal Protection**

14 75. Answering paragraph 75 of the SAC, Defendant repeats and realleges its
15 answers to paragraphs 1 through 74 above, and incorporates the same herein by reference as
16 though fully set forth herein.

17 76. Answering paragraph 76 of the SAC, no response is required as the
18 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
19 content of laws or regulations. To the extent a response is required and the allegations
20 accurately state the laws or regulations referenced therein, Defendant admits these
21 allegations.

22 77. Answering paragraph 77 of the SAC, no response is required as the
23 allegations contained therein are Plaintiffs' legal conclusions or statements regarding the
24 content of laws or regulations. To the extent a response is required and the allegations
25 accurately state the laws or regulations referenced therein, Defendant admits these
26 allegations.

27 78. Answering paragraph 78 of the SAC, no response is required as the
28 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is

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

3 79. Answering paragraph 79 of the SAC, no response is required as the
4 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
5 required, Defendant is without sufficient knowledge or information as to the truth or falsity
6 of the allegations contained therein, and on that basis denies these allegations.

7 80. Answering paragraph 80 of the SAC, Defendant admits only insofar as the
8 term "Factors," as used by Plaintiffs, accurately comports with those laws and regulations
9 referenced in the definition of the term "Factors."

10 81. Answering paragraph 81 of the SAC, no response is required as the
11 allegations contained therein are not factual in nature and/or contain legal conclusions. To
12 the extent a response is required, Defendant denies these allegations.

13 82. Answering paragraph 82 of the SAC, no response is required as the
14 allegations contained therein are not factual in nature and/or contain legal conclusions. To
15 the extent a response is required, Defendant denies these allegations.

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

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

22 85. Answering paragraph 85 of the SAC, no response is required as the
23 allegations contained therein are not factual in nature and/or contain legal conclusions. To
24 the extent a response is required, Defendant denies these allegations.

25 86. Answering paragraph 86 of the SAC, no response is required as the
26 allegations contained therein are not factual in nature and/or contain legal conclusions. To
27 the extent a response is required, Defendant denies these allegations.

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FOURTH CLAIM FOR RELIEF

Declaratory Judgment

87. Answering paragraph 87 of the SAC, Defendant repeats and realleges its answers to paragraphs 1 through 86 above, and incorporates the same by reference herein as though fully set forth herein.

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

89. Answering paragraph 89 of the SAC, Defendant is without sufficient knowledge or information regarding the truth or falsity of the allegations contained therein, and on that basis denies these allegations.

90. Answering paragraph 90 of the SAC, no response is required as the allegations contained therein are Plaintiffs' legal conclusions or statements regarding the contents of laws or regulations. To the extent a response is required and the allegations accurately state the laws or regulations referenced therein, Defendant denies these allegations.

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

92. Answering paragraph 92(a)-(f) of the SAC, no response is necessary as the allegations contained therein are not factual in nature and/or contain legal conclusions. To the extent a response is required, Defendant denies these allegations.

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

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1 94. Answering paragraph 94 of the SAC, no response is required as the
2 allegations contained therein are not factual in nature and/or contain legal conclusions. To
3 the extent a response is required, Defendant denies these allegations.

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

7 96. Answering paragraph 96 of the SAC, no response is required as the
8 allegations contained therein are not factual in nature and/or contain legal conclusions. To
9 the extent a response is required, Defendant admits these allegations.

10 97. Answering paragraph 97 of the SAC, no response is required as the
11 allegations contained therein are not factual in nature and/or contain legal conclusions. To
12 the extent a response is required, Defendant denies these allegations.

13 98. Answering paragraph 98 of the SAC, no response is required as the
14 allegations contained therein are not factual in nature and/or contain legal conclusions. To
15 the extent a response is required, Defendant is without sufficient information or knowledge
16 as to the truth or falsity of the allegations contained therein, and on that basis denies these
17 allegations.

18 **GENERAL DENIAL**

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

21 **ANSWER TO PRAYER FOR RELIEF**

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

25 **AFFIRMATIVE DEFENSES**

26 Defendant, without altering the burdens of proof the parties must bear, asserts the
27 following affirmative defenses to Plaintiffs' SAC, and all causes of action alleged therein,
28 and specifically incorporates into these affirmative defenses its answers to the preceding

1 paragraphs of the SAC as if fully set forth herein.

2 **FIRST AFFIRMATIVE DEFENSE**

3 Defendant expressly reserves the right to amend this answer to bring counterclaims
4 against Plaintiffs.

5 **SECOND AFFIRMATIVE DEFENSE**

6 The SAC and all the claims for relief alleged therein, fails to state a claim upon
7 which relief can be granted.

8 **THIRD AFFIRMATIVE DEFENSE**

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

11 **FOURTH AFFIRMATIVE DEFENSE**

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

14 **FIFTH AFFIRMATIVE DEFENSE**

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

17 **SIXTH AFFIRMATIVE DEFENSE**

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

20 **SEVENTH AFFIRMATIVE DEFENSE**

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

24 **EIGHTH AFFIRMATIVE DEFENSE**

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

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NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs have no constitutional right to obtain privileged licenses.

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to seek the relief they request.

///
///

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment as follows:

1. Plaintiffs take nothing by way of their SAC.

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

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

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

DATED this the 24th day of June, 2019.

/s/ Alina M. Shell

MARGARET A. MCLETTCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLETTCHIE LAW

701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

Telephone: (702) 728-5300

Email: maggie@nvlitigation.com

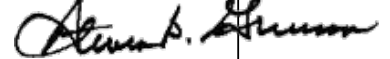
Counsel for Intervenor Defendant, GreenMart of Nevada NLV LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing INTERVENOR DEFENDANT GREENMART OF NEVADA NLV LLC'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT in *ETW Management Group LLC, et al. v. State of Nevada, Department of Taxation, et al.*, Clark County District Court Case No. A-19-787004-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

/s/ Pharan Burchfield

An Employee of McLetchie Law



1 **NEOJ**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLEATCHIE LAW

5 701 East Bridger Avenue, Suite 520

6 Las Vegas, NV 89101

7 Telephone: (702) 728-5300

8 Email: maggie@nvlitigation.com

9 *Counsel for Intervenor Defendant, GreenMart of Nevada NLV LLC*

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

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

Plaintiffs,

vs.

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

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

Case No.: A-19-787004-B

Dept. No.: XI

NOTICE OF ENTRY OF ORDER

TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on the 24th day of June, 2019, an Order Granting Defendant GreenMart of Nevada NLV LLC's Motion to Intervene was entered in the above-captioned action. A copy of the Order Granting Defendant GreenMart of Nevada NLV LLC's Motion to Intervene is attached hereto as **Exhibit 1**.

DATED this the 24th day of June, 2019.

/s/ Alina M. Shell

MARGARET A. MCLETTCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLETTCHIE LAW

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Counsel for Intervenor Defendant, GreenMart of Nevada NLV LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER in *ETW Management Group LLC, et al. v. State of Nevada, Department of Taxation, et al.*, Clark County District Court Case No. A-19-787004-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

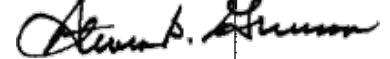
/s/ Pharan Burchfield

An Employee of McLetchie Law

INDEX OF EXHIBITS TO NOTICE OF ENTRY

Exhibit	Description
1	June 24, 2019 Order Granting Defendant GreenMart of Nevada NLV LL's Motion to Intervene

EXHIBIT 1



ORDER

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEATCHIE LAW

701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

Telephone: (702) 728-5300

Email: maggie@nvlitigation.com

Counsel for Intervenor Defendant, GreenMart of Nevada NLV LLC

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

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

Plaintiffs,

vs.

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

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

Case No.: A-19-787004-B

Dept. No.: XI

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


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

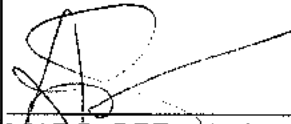
3 IT IS HEREBY ORDERED:

4 GreenMart of Nevada NLV LLC's Motion to Intervene is granted, and GreenMart
5 of Nevada NLV LLC shall intervene as a Defendant in the above-captioned case as a
6 necessary party to the action pursuant to Nev. R. Civ. P. 24 and Nev. Rev. Stat. § 12.130.
7

8 June 24, 2019.
9 Date


The Honorable Judge Elizabeth Gonzalez

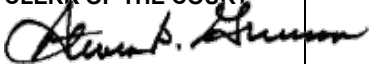
10 Respectfully submitted by:
11

12 
13

14 MARGARET A. MCLETCHIE, Nevada Bar No. 10931
15 ALINA M. SHELL, Nevada Bar No. 11711
16 MCLETCHIE LAW
17 701 East Bridger Avenue, Suite 520
18 Las Vegas, NV 89101
19 Telephone: (702) 728-5300
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22 *Counsel for Intervenor Defendant, GreenMart of Nevada NLV LLC*
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*Attorneys for Defendant State of Nevada
Department of Taxation*

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 RENÓ, LLC, a Nevada
limited liability company, PARADISE
WELLNESS CENTER, LLC, a Nevada
limited liability company, GBS NEVADA
PARTNERS, LLC, a Nevada limited
liability company, FIDELIS HOLDINGS,
LLC, a Nevada limited liability company,
GRAVITAS NEVADA, LLC, a Nevada
limited liability company, NEVADA PURE,
LLC, a Nevada limited liability company,
MEDIFARM, LLC, a Nevada limited
liability company, DOE PLAINTIFFS I
through X; and ROE ENTITY PLAINTIFFS
I through X,

Plaintiff(s),

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

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; CPCMHOLDINGS, 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 **SUPPLEMENT TO POCKET BRIEF REGARDING THE MEANING OF THE**
28 **PHRASE “ALL REGULATIONS NECESSARY OR CONVENIENT TO CARRY OUT**
THE PROVISIONS OF”

29 State of Nevada ex rel. Department of Taxation, by and through its counsel,
30 supplements its pocket brief regarding the meaning of the phrase “all regulations necessary
31 or convenient to carry out the provisions of the initiative known as Ballot Question 2 from
32 the 2016 election.

33 . . .

34 . . .

35 . . .

1 Attached as Exhibit A is a declaration from William Barton, which authenticates an
2 email exchange between he and Ms. Heather Azzi of the Cannabis Trade Federation
3 regarding her participation in the drafting of Question 2.

4 DATED this 24th day of June, 2019.

5 AARON D. FORD
6 Attorney General

7 By: /s/ Steve Shevorski
8 Steve Shevorski (Bar No. 8256)
9 Head of Complex Litigation
10 Ketan D. Bhirud (Bar No. 10515)
11 Chief Litigation Counsel
12 Theresa M. Haar (Bar No. 12158)
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15 Chief Deputy Attorney General
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17 Deputy Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 24th day of June, 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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LLC, Essence Henderson, LLC, CPCM
Holdings, LLC d/b/a Thrive Cannabis
Marketplace, Commerce Park Medical,
LLC, and Cheyenne Medical, LLC*

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9 *Harmony LLC, a Nevada limited liability*
10 *company; Green Leaf Farms Holdings*
11 *LLC, a Nevada limited liability company;*
12 *Herbal Choice, Inc., a Nevada corporation;*
13 *Just Quality, LLC, a Nevada limited*
14 *liability company; Libra Wellnes Center,*
15 *LLC, a Nevada limited liability company;*
16 *Mother Herb, Inc., a Nevada corporation;*
17 *NevCann LLC, a Nevada limited liability*
18 *company; Red Earth LLC, a Nevada*
19 *limited liability company; THC*
20 *Nevada LLC, a Nevada limited liability*
21 *company; and Zion Gardens, LLC, a*
22 *Nevada limited liability company*

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Nye Natural Medicinal Solutions LLC,
d/b/a NuVEDA; Clark NMSD LLC, d/b/a
NuVEDA; and Inyo Fine Cannabis
dispensary L.L.C., d/b/a Inyo fine
Cannabis Dispensary

17 /s/ Traci Plotnick

18 Traci Plotnick, an employee of the
19 Office of the Attorney General
20
21
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EXHIBIT A

EXHIBIT A

- 1
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1. I am an intern in the Nevada Attorney General's Office in the Complex Litigation Division.

3. Ms. Azzi was an author of the Regulation and Taxation of Marijuana Act, otherwise known as Ballot Question 2 in the 2016 General Election in the State of Nevada.

Dated: June 24, 2019

William J. Barton
William J. Barton

EXHIBIT A-1

EXHIBIT A-1: EMAIL CORRESPONDENCE WITH MS. AZZI

From: [Heather Azzi](#)
To: [William J. Barton](#)
Subject: Re: Unofficial Statement Regarding Intent of NRS 453D.200
Date: Tuesday, June 18, 2019 2:53:20 PM

Hello Joe,

Yes, it is okay if you use the email statement.

Heather Azzi
General Counsel
Cannabis Trade Federation

On Jun 12, 2019, at 11:29 AM, William J. Barton <internwb@ag.nv.gov> wrote:

Good Morning Heather,

Attached is a draft of the declaration regarding our emails about the intent of the statute. It is in anticipation of a preliminary injunction hearing. I wanted to send to you to get confirmation that your email statement is alright to be used. We do not plan on calling you as a witness; this is so that you will not need to be called as a witness (although we cannot speak for the other party). Please let me know or call me if you have any questions or comments.

Very Respectfully,

Joe

From: Heather Azzi <heather.azzi@cannabistradefederation.com>
Sent: Tuesday, June 11, 2019 2:45 PM
To: William J. Barton <internwb@ag.nv.gov>
Subject: Re: Unofficial Statement Regarding Intent of NRS 453D.200

Hi William,

Our intent was to give the regulator authority to regulate the cannabis industry. We used language that was consistent with language already used in Nevada Revised Statutes to grant rule making authority to various agencies or departments for other regulatory purposes. We chose the phrase because it's meaning in these other areas was consistent with our intent. I'm sorry that I do not remember any specific code section or sections where we pulled the phrase from.

Heather Azzi, General Counsel
Cannabis Trade Federation
612-275-7638
heather.azzi@cannabistradefederation.com
<https://www.cannabistradefederation.com/>

AA 004887

On Jun 7, 2019, at 1:29 PM, William J. Barton
<internwb@ag.nv.gov> wrote:

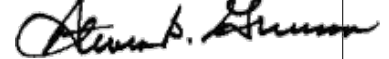
Good Afternoon Ms. Azzi,

Thank you for calling me back. In order to wrap up my project, may I please have a brief (unofficial and unsworn) statement from you regarding the intent of including the "necessary or convenient" language in the statute? As in what you were saying about giving the regulatory agency as much regulatory power as appropriate to regulate the cannabis industry? It can be very short but it would be very helpful in concluding my research. If you have any questions, please feel free to reach out. Thank you!

Very Respectfully,
Joe

William J. Barton
Intern, Complex Litigation
Office of the Attorney General
100 North Carson St
Carson City, NV 89701
P: 775-684-1132
C: 415-450-0844
internwb@ag.nv.gov
<image001.jpg>

<Serenity - Declaration of Joe Barton in Support of Pocket Brief -edited.docx>



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10 Fax: (702) 778-9709
Attorneys for Plaintiffs

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

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

22 Plaintiffs,

23 vs.

24 THE STATE OF NEVADA, DEPARTMENT
25 OF TAXATION,

26 Defendant.

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

FIRST AMENDED COMPLAINT

27 ...

28 ...

1 Plaintiffs, SERENITY WELLNESS CENTER, LLC, a Nevada limited liability company,
2 TGIG, LLC, a Nevada limited liability company, NULEAF INCLINE DISPENSARY, LLC, a
3 Nevada limited liability company, NEVADA HOLISTIC MEDICINE, LLC, a Nevada limited
4 liability company, TRYKE COMPANIES SO NV, LLC a Nevada limited liability company,
5 TRYKE COMPANIES RENO, LLC, a Nevada limited liability company, GBS NEVADA
6 PARTNERS, LLC, a Nevada limited liability company, FIDELIS HOLDINGS, LLC, a Nevada
7 limited liability company, GRAVITAS NEVADA, LLC, a Nevada limited liability company,
8 NEVADA PURE, LLC, a Nevada limited liability company, MEDIFARM IV, LLC, a Nevada
9 limited liability company; DOE PLAINTIFFS I through X; and ROE ENTITIES I through X, by
10 and through their counsel, DOMINIC P. GENTILE, ESQ. and VINCENT SAVARESE III,
11 ESQ., MICHAEL V. CRISTALLI, ESQ., and ROSS MILLER, ESQ., of the law firm of Gentile
12 Cristalli Miller Armeni Savarese, hereby complain and allege against DEFENDANT STATE OF
13 NEVADA, DEPARTMENT OF TAXATION; DOE DEFENDANTS I through X; and ROE
14 ENTITY DEFENDANTS I through X, in their official and personal capacities, as follows:
15
16

17 **I.**

18 **PARTIES, JURISDICTION, AND VENUE**

- 19 1. Plaintiff SERENITY WELLNESS CENTER, LLC, was and is a Nevada limited
20 liability company and does business in Clark County, Nevada.
- 21 2. Plaintiff TGIG, LLC, was and is a Nevada limited liability company and does
22 business in Clark County, Nevada.
- 23 3. Plaintiff NULEAF INCLINE DISPENSARY, LLC, was and is a Nevada limited
24 liability company and does business in Clark County, Nevada.
- 25 4. Plaintiff NEVADA HOLISTIC MEDICINE, LLC, was and is a Nevada limited
26 liability company and does business in Clark County, Nevada.
- 27 5. Plaintiff TRYKE COMPANIES SO NV, LLC was and is a Nevada limited
28 liability company and does business in Clark County, Nevada.

1 6. Plaintiff TRYKE COMPANIES RENO, LLC, was and is a Nevada limited
2 liability company and does business in Clark County, Nevada.

3 7. Plaintiff GBS NEVADA PARTNERS, LLC, was and is a Nevada limited liability
4 company and does business in Clark County, Nevada.

5 8. Plaintiff FIDELIS HOLDINGS, LLC, was and is a Nevada limited liability
6 company and does business in Clark County, Nevada.

7 9. Plaintiff GRAVITAS NEVADA, LLC, was and is a Nevada limited liability
8 company and does business in Clark County, Nevada.

9 10. Plaintiff NEVADPURE, LLC, was and is a Nevada limited liability company and
10 does business in Clark County, Nevada.

11 11. Plaintiff MEDIFARM IV, LLC was and is a Nevada limited liability company
12 and does business in Clark County, Nevada.

13 12. Defendant STATE OF NEVADA, DEPARTMENT OF TAXATION (the
14 “Department”) is an agency of the State of Nevada. The Department is responsible for licensing
15 and regulating retail marijuana businesses in Nevada through its Marijuana Enforcement
16 Division.

17 13. The true names and capacities, whether individual, corporate, association or
18 otherwise of Doe Plaintiffs I through X, Roe Entity Plaintiffs I through X; Doe Defendants I
19 through X; and Roe Entity Defendants I through X, inclusive, are unknown to Plaintiffs at
20 this time, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed
21 and believe, and thereupon allege, that each of the Defendants designated herein as Doe
22 and/or Roe Entities is responsible in some manner for the events and occurrences herein
23 referred to, and in some manner caused the injuries and damages to Plaintiffs alleged herein.
24 And Plaintiffs will ask leave of the Court to amend this Complaint to insert the true names
25 and capacities of all Doe and/or Roe Entity Plaintiffs and Defendants when the same have
26 been ascertained by Plaintiffs, together with the appropriate charging allegations, and to join
27 such parties in this action.

28 14. Both jurisdiction and venue with respect to this action properly lie in this Court

1 pursuant to Nev. Rev. Stat. § 13.040.

2 **II.**

3 **GENERAL ALLEGATIONS**

4 15. The Nevada State Legislature passed a number of bills during the 2017
5 legislative session that affected the licensing, regulation, and operation of recreational marijuana
6 establishments in the state of Nevada. One of those bills, Assembly Bill 422, transferred
7 responsibility for the registration, licensing, and regulation of marijuana establishments from the
8 State of Nevada's Division of Public and Behavioral Health to the Department of Taxation.

9 16. This legislation was added to the voters' approval at the 2016 General Election of
10 2016 initiative petition, Ballot Question No. 2; is known as the "Regulation and Taxation of
11 Marijuana Act"; and is codified at NRS 453D.010, *et seq.* Nevada Revised Statutes ("NRS")
12 pursuant to

13 17. NRS 453D.020 (Findings and declarations) provides:

14 "1. In the interest of public health and public safety, and in
15 order to better focus state and local law enforcement resources on
16 crimes involving violence and personal property, the People of the
17 State of Nevada find and declare that the use of marijuana should
be legal for persons 21 years of age or older, and its cultivation and
sale should be regulated similar to other legal businesses.

18 2. The People of the State of Nevada find and declare that the
19 cultivation and sale of marijuana should be taken from the domain
20 of criminals and be regulated under a controlled system, where
businesses will be taxed and the revenue will be dedicated to
public education and the enforcement of the regulations of this
chapter.

21 3. The People of the State of Nevada proclaim that marijuana
22 should be regulated in a manner similar to alcohol so that:

23 (a) Marijuana may only be purchased from a business that is
licensed by the State of Nevada;

24 (b) Business owners are subject to a review by the State of
Nevada to confirm that the business owners and the business
location are suitable to produce or sell marijuana;

25 (c) Cultivating, manufacturing, testing, transporting and
26 selling marijuana will be strictly controlled through state licensing
and regulation;

27 (d) Selling or giving marijuana to persons under 21 years of
age shall remain illegal;

28 (e) Individuals will have to be 21 years of age or older to
purchase marijuana;

1 (f) Driving under the influence of marijuana will remain
2 illegal; and

3 (g) Marijuana sold in the State will be tested and labeled.”

4 18. NRS 453D.200 (Duties of Department relating to regulation and licensing of
5 marijuana establishments; information about consumers) provides:

6 “1. Not later than January 1, 2018, the Department shall adopt all
7 regulations necessary or convenient to carry out the provisions of
8 this chapter. The regulations must not prohibit the operation of
9 marijuana establishments, either expressly or through regulations
10 that make their operation unreasonably impracticable. The
11 regulations ***shall*** include:

12 (a) Procedures for the issuance, renewal, suspension, and
13 revocation of a license to operate a marijuana establishment;

14 (b) ***Qualifications for licensure that are directly and
15 demonstrably related to the operation of a marijuana
16 establishment;***

17
18 2. The Department ***shall*** approve or deny applications for
19 licenses ***pursuant to NRS 453D.210***” (emphasis added).

20 19. NRS 453D.210 (Acceptance of applications for licensing; priority in licensing;
21 conditions for approval of application; limitations on issuance of licenses to retail marijuana
22 stores; competing applications), in turn, provides, in pertinent part:

23 “4. Upon receipt of a complete marijuana establishment license
24 application, the Department ***shall, within 90 days:***

25 (a) ***Issue the appropriate license if the license application is
26 approved.***

27 5. The Department ***shall approve a license application if:***

28 (a) The prospective marijuana establishment has submitted an
application in compliance with regulations adopted by the
Department and the application fee required pursuant to NRS
453D.2;

6. When 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” (emphasis added).

20. According to an August 16, 2018 letter from the Department, pursuant to
Section 80(3) of Adopted Regulation of the Department of Taxation, LCB File No. R092-17
("R092-17"), the Department was responsible for allocating the licenses of recreational

1 marijuana retail stores "to jurisdictions within each county and to the unincorporated area of
2 the county proportionally based on the population of each jurisdiction and of the
3 unincorporated area of the county."

4 21. The Department issued a notice for an application period wherein the
5 Department sought applications from qualified applicants to award sixty-four (64) recreational
6 marijuana retail store licenses throughout various jurisdictions in Nevada.

7 22. The application period for those licenses, including thirty-one (31) licenses in
8 Clark County, seven (7) licenses in Washoe County and one (1) license in Nye County, opened
9 on September 7, 2018 and closed on September 20, 2018.

10 23. Pursuant to Section 6.2 of the Recreational Marijuana Establishment License
11 Application ("the Application") issued by the Department, as enabled under the above-quoted
12 provisions of NRS 453D.210, if the Department received more than one application for a license
13 for a recreational marijuana retail store and the Department determined that more than one of the
14 applications was complete and in compliance with R092-17, Sec. 78 and NRS 453D, the Department
15 was required to rank the applications within each applicable locality for any applicants in a
16 jurisdiction that limits the number of retail marijuana stores in order from first to last, with ranking
17 being based on compliance with the provisions of R092-17 Sec. 80, NRS 453D and on the content of
18 the applications relating to the following specifically-enumerated and objective published criteria:

- 19 a. Operating experience of another kind of business by the owners, officers or board
20 members that has given them experience which is applicable to the operation of a
21 marijuana establishment.
22 b. Diversity of the owners, officers or board members.
23 c. Evidence of the amount of taxes paid and other beneficial financial contributions.
24 d. Educational achievements of the owners, officers or board members.
25 e. The applicant's plan for care, quality and safekeeping of marijuana from seed to
26 sale.
27 f. The financial plan and resources of the applicant, both liquid and illiquid.
28 g. The experience of key personnel that the applicant intends to employ.

1 h. Direct experience of the owners, officers, or board members of a medical
2 marijuana establishment or marijuana establishment in this State.

3 24. However, no numerical scoring values are assigned to any of the foregoing
4 criteria enumerated in the Application.

5 25. Moreover, Section 6.3 of the Application further provides that “[a]pplications
6 that have not demonstrated a sufficient response related to the criteria set forth above will not
7 have *additional [unspecified, unpublished] criteria* considered in determining whether to issue a
8 license *and will not move forward in the application process*” (emphasis added).

9 26. Thus, by necessary implication, conversely, Section 6.3 of the Application
10 textually subjects an Application which *has* in fact demonstrated a “sufficient” response related
11 to the specific, published criteria set forth above to “*additional [unspecified, unpublished]*
12 *criteria*,” consideration of which by the Department will determine whether or not a license is
13 issued and whether or not a license Application will “*move forward in the application process*,
14 notwithstanding the textual requirement of NRS 453 D. 200.1(b) that the Department shall adopt
15 only regulations that prescribe “[q]ualifications for licensure that are directly and *demonstrably*
16 related to the operation of a marijuana establishment” (emphasis added).

17 27. No later than December 5, 2018, the Department was responsible for issuing
18 conditional licenses to those applicants who score and rank high enough in each jurisdiction to be
19 awarded one of the allocated licenses in accordance with the impartial competitive bidding process
20 mandated by NRS 453D.210.

21 28. The Department allocated ten (10) licenses for unincorporated Clark County,
22 Nevada; ten (10) licenses for Las Vegas, Nevada; six (6) licenses for Henderson, Nevada; five (5)
23 licenses for North Las Vegas, Nevada; six (6) licenses for Reno, Nevada; one (1) license for Sparks,
24 Nevada; and one (1) license for Nye County, Nevada.

25 29. Plaintiffs submitted Applications for licenses to own and operate recreational
26 marijuana retail stores in compliance with the specified, published requirements of Department
27 regulations together with the required application fee in accordance with NRS 453D.210.

28 30. Plaintiffs have been informed by the Department that all of their Applications to

1 operate recreational marijuana retail stores were denied.

2 31. In each instance, Plaintiffs were informed by letter from the Department stating
3 that a license was not granted to the applicant “because it did not achieve a score high enough to
4 receive an available license.”

5 32. On information and belief, Plaintiffs allege that the Department’s denial of their
6 license applications was not properly based upon actual implementation of the impartial and
7 objective competitive bidding process mandated by NRS 453D.210, but rather, was in fact based
8 upon the arbitrary and capricious exercise of administrative partiality and favoritism.

9 33. On information and belief, Plaintiffs allege conversely that that the Department
10 improperly granted licenses to other competing applicants, likewise without actual
11 implementation of the impartial and objective competitive bidding process mandated by NRS
12 453D.210, but rather, based upon the arbitrary and capricious exercise of administrative
13 partiality and favoritism.

14 34. On information and belief, Plaintiffs allege that the Department has improperly
15 granted more than one recreational marijuana store license per jurisdiction to certain applicants,
16 owners, or ownership groups.

17 **III.**

18 **CLAIMS FOR RELIEF**

19 **FIRST CLAIM FOR RELIEF** 20 **(Violation of Civil Rights)**

21 **(Due Process: Deprivation of Property)**

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

23 35. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth
24 herein.

25 36. The provisions of NRS 453D.200.2 and NRS 453D.210.4-6, affirmatively
26 mandating that the Department “shall” approve and issue the appropriate license within a time
27 certain if the prospective establishment submits an Application in compliance with published
28 Department regulations promulgated in accordance with the limitations imposed by NRS 453.

1 D.200.1(b) together with the required application fee; and, in the case of competing
2 Applications, outranks competing applicants in accordance with an objective, impartial and
3 numerically scored competitive bidding process, serve to create, as a matter of legislative intent,
4 a *statutory entitlement* to receipt of the license by applicants who comply with and prevail
5 competitively in accordance with those objective and impartial standards and procedures.

6 37. Such a statutory entitlement constitutes a “property interest” within the meaning
7 and subject to the due process protections of the Fourteenth Amendment to the Constitution of
8 the United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada; and
9 therefore, by definition, may not be denied arbitrarily, capriciously, corruptly or based upon
10 administrative partiality or favoritism.

11 38. However, acting under color of state law, the Department has effectively nullified
12 and rendered illusory the legislative statutory entitlement to licensure of applicants who comply
13 with and prevail competitively in accordance with the objective and impartial standards and
14 procedures prescribed by the provisions of NRS 453D.200.2 and NRS 453D.210.4-6, by
15 textually subjecting an Application which in fact provides “sufficient” responses related to the
16 published, enumerated and specific criteria set forth in the Application to approval pursuant to
17 further, unpublished, unspecified and unascertainable “additional criteria” which are not set forth
18 therein, as a silent supplemental condition of licensure, thereby rendering the administrative
19 regulation governing the Application and licensing process susceptible to *ad hoc*, non-
20 transparent, arbitrary, capricious or corrupt decision-making based upon administrative partiality
21 or favoritism which cannot be discounted; thereby rendering that regulatory scheme
22 unconstitutional on its face.

23 39. On information and belief, Plaintiffs further allege that pursuant to the
24 implementation of the foregoing constitutionally-repugnant licensing process, the denial of their
25 Applications for licensure, were in fact affected by actual arbitrary, capricious or corrupt
26 decision-making based upon administrative partiality or favoritism; and therefore, that that
27 licensing process has thereby been rendered unconstitutional in its application as well as to
28 Plaintiffs.

1 40. Plaintiffs have therefore been deprived of property without due process under
2 color of state law in violation of the Fourteenth Amendment to the Constitution of the United
3 States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada.

4 41. The Constitutional infirmity of the entire licensing process renders the denial of
5 Plaintiffs' Applications for licensure void and unenforceable, and Plaintiffs are entitled to a
6 declaration as to the ineffectiveness thereof and an order enjoining the enforcement of those
7 license denials.

8 42. Plaintiffs are entitled to declaratory relief with respect to the forgoing federal
9 constitutional infirmities of the administrative licensing scheme pursuant to the provisions of
10 Title 42, United States Code ("U.S.C."), Section 1983 and otherwise.

11 43. Plaintiffs are entitled to declaratory relief because a justiciable controversy exists
12 that warrants a declaratory judgment pursuant to Nevada's Uniform Declaratory Judgments Act,
13 codified at NRS 30.010 to 30.160, inclusive.

14 44. Plaintiffs and Defendant have adverse and/or competing interests in that the
15 Department, through its Marijuana Enforcement Division, has denied Plaintiffs' Applications in
16 in violation of Plaintiff's constitutional rights, Nevada law, and state policy.

17 45. The Department's refusal to issue licenses to Plaintiffs affects Plaintiffs' rights
18 under NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

19 46. Further, the Department's improper ranking of other applicants for licensure and
20 subsequent, improper issuance of licenses to such other applicants adversely affects the rights of
21 Plaintiff under NRS 453D, NAC 453D, R09217, and other Nevada laws and regulations.

22 47. The Department's actions and/or inactions also have created an actual justiciable
23 controversy ripe for judicial determination between Plaintiffs and the Department with respect to
24 the construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-17,
25 and Plaintiffs have been harmed, and will continue to be harmed, by the Defendants' actions
26 and/or inactions.

27 48. The Department's actions and/or inactions have further failed to appropriately
28 address the necessary considerations and legislative intent of NRS 453D.210, designed to restrict

monopolies.

49. Accordingly, Plaintiff seeks a declaration from this Court that, *inter alia*:

- a. The Department improperly denied Plaintiffs' license Applications for the operation of a recreational marijuana establishment.
- b. The denial of such licenses to Plaintiffs was void *ab initio*;
- c. The procedures employed in denying Plaintiffs' license Applications violated Plaintiffs' procedural and substantive due process rights and entitlement to equal protection of the law (as set forth *infra*) under the Nevada and United States Constitutions and, therefore, those license denials are void and unenforceable;
- d. The denials are void for vagueness and therefore unenforceable;
- e. Defendant acted arbitrarily and capriciously or in contravention of a legal duty and Plaintiffs are therefore entitled to a writ of mandamus;
- f. Plaintiffs are entitled to judicial review; and
- g. The Department's denial of Plaintiffs' license Applications lacked substantial evidence.

50. Plaintiffs also seek a declaration from this Court that the Department must issue licenses to Plaintiffs for the operation of a recreational marijuana establishment as applied for in that Plaintiffs' would have been entitled to receive said licenses had the Department properly applied the provisions of NRS 453D, NAC Chapter 453D, and R092-17.

51. Plaintiffs contend that a declaratory judgment is both necessary and proper at this time for the Court to determine the respective rights, duties, responsibilities and liabilities of Plaintiffs under NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and regulations.

52. Plaintiffs are also entitled to injunctive relief from the foregoing federal constitutional violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

53. The Department's flawed interpretation of the provisions of NRS 453D, NAC Chapter 453D, and R092-17, and refusal to issue "conditional" licenses in accordance with the

1 law constitute and cause continuing and irreparable harm to Plaintiffs, who have no adequate
2 remedy at law.

3 54. The purpose of this administrative refusal was and is to unreasonably interfere
4 with Plaintiffs' business and cause Plaintiffs to suffer irreparable harm.

5 55. The Department will suffer no harm by following the law with respect to issuing
6 the licenses in question.

7 56. The Department's interpretation of NRS 453D, NAC Chapter 453D, and R092-17
8 is flawed and Plaintiffs are likely to succeed on the merits in this litigation.

9 57. The public interest favors Plaintiffs because in the absence of injunctive relief, the
10 consumers who would have benefitted by Plaintiffs' licensure will have less available options
11 from which they can receive recreational marijuana in accordance with legislative intent.

12 58. Therefore, Plaintiffs are entitled to preliminary injunctive relief, and after a trial
13 on the merits, permanent injunctive relief, ordering the Department to issue the subject licenses
14 to Plaintiffs in accordance with NRS 453D, NAC 453D, and R092-17.

15 59. Plaintiffs are also entitled to damages attributable to the above-identified due
16 process violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

17 60. As the actions of the Department have necessitated that Plaintiffs retain the legal
18 services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action,
19 Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

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

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

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

24 61. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

25 62. The fundamental constitutional right to pursue a lawful occupation constitutes a
26 "liberty interest" within the meaning and subject to the due process protections of the Fourteenth
27 Amendment to the Constitution of the United States and Article 1, Sections 1 and 8 of the
28 Constitution of the State of Nevada; and therefore, by definition, may not be denied arbitrarily,

1 capriciously, corruptly or based upon administrative partiality or favoritism.

2 63. However, acting under color of state law, the Department has effectively nullified
3 and rendered illusory the legislative statutory entitlement to licensure of applicants who comply
4 with and prevail competitively in accordance with the objective and impartial standards and
5 procedures prescribed by the provisions of NRS 453D.200.2 and NRS 453D.210.4-6, by
6 textually subjecting an Application which in fact provides “sufficient” responses related to the
7 published, enumerated and specific criteria set forth in the Application to approval pursuant to
8 further, unpublished, unspecified and unascertainable “additional criteria” which are not set forth
9 therein, as a silent supplemental condition of licensure, in violation of NRS 200.D.1(b) thereby
10 rendering the administrative regulation governing the Application and licensing process
11 susceptible to *ad hoc*, non-transparent, arbitrary, capricious or corrupt decision-making based
12 upon administrative partiality or favoritism which cannot be discounted; thereby rendering that
13 regulatory scheme unconstitutional on its face.

14 64. On information and belief, Plaintiffs further allege that the pursuant to the
15 implementation of the foregoing constitutionally-repugnant licensing process, the denial of their
16 Applications for licensure, were in fact affected by actual arbitrary, capricious or corrupt
17 decision-making based upon administrative partiality or favoritism; and therefore, that that
18 licensing process has thereby been rendered unconstitutional in its application as well.

19 65. Plaintiffs have therefore likewise been deprived of liberty without due process
20 under color of state law in violation of the Fourteenth Amendment to the Constitution of the
21 United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada.

22 66. The Constitutional infirmity of the entire licensing process renders the denial of
23 Plaintiffs’ Applications for licensure void and unenforceable, and, for the reasons set forth supra
24 in Plaintiffs’ FIRST CAUSE OF ACTION at paragraphs 30 through 47, inclusive, Plaintiffs are
25 entitled to a declaration as to the ineffectiveness thereof and an order enjoining the enforcement
26 of those license denials.

27 67. Plaintiffs are also entitled to damages for these due process violations pursuant
28 to the provisions of 42 U.S.C. Section 1983 and otherwise.

68. As the actions of the Department have necessitated that Plaintiffs retain the legal services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action, Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

THIRD CLAIM FOR RELIEF

(Violation of Civil Rights)

(Equal Protection)

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

69. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

70. By improperly denying Plaintiffs' Applications for licensure under the provisions of NRS 453D.200.2 and NRS 453D.210.4-6 while improperly granting the Applications of other applicants under color of state law as set forth *supra* in Plaintiffs' FIRST CAUSE OF ACTION and SECOND CAUSE OF ACTION, the Department has, without justification, disparately treated Plaintiffs' Applications absent rational basis, and has thereby violated Plaintiffs' rights to equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 1 of the Constitution of the State of Nevada.

71. The constitutional infirmity of the entire licensing process and the resulting denial of equal protection renders the denial of Plaintiffs' Applications for licensure void and unenforceable, and, for the reasons set forth supra in Plaintiffs' FIRST CAUSE OF ACTION at paragraphs 30 through 47, inclusive, Plaintiffs are entitled to a declaration as to the ineffectiveness thereof and an order enjoining the enforcement of those license denials.

72. Plaintiffs are also entitled to damages for these equal protection violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

73. As the actions of the Department have necessitated that Plaintiffs retain the legal services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action, Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

FOURTH CLAIM FOR RELIEF

(Petition for Judicial Review)

74. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth

1 herein.

2 75. The Department, in misinterpreting and incorrectly applying the provisions of
3 NRS 453D, NAC 453D and the related Nevada laws and regulations, has exceeded its
4 jurisdiction by improperly issuing licenses to applicants that do not merit licenses under the
5 provisions of NRS 453D, NAC 453D, and R092-17.

6 76. Plaintiffs are aggrieved by the decision of the Department to deny Plaintiffs'
7 Applications without proper notice, substantial evidence, or compliance with NRS 453D, NAC
8 453D, R092-17, and other Nevada state laws or regulations.

9 77. There is no provision in NRS 453D, NAC 453D, or R092-17 allowing for an
10 administrative appeal of the Department's decision, and apart from injunctive relief, no plain,
11 speedy, and adequate remedy for the Department's improper actions.

12 78. Accordingly, Plaintiff petitions this Court for judicial review of the record on which
13 the Department's denials were based, and an order providing *inter alia*:

- 14 a. A determination that the decision lacked substantial evidence;
15 b. A determination that the denials are void *ab initio* for non-compliance with
16 NRS 453D, NAC 453D, R092-17, and other Nevada laws or regulations; and
17 c. Such other relief as is consistent with those determinations.

18 79. As the actions of the Department have necessitated that Plaintiffs retain the legal
19 services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action,
20 Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

21 **FIFTH CLAIM FOR RELIEF**
22 **(Petition for Writ of Mandamus)**

23 80. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

24 81. When a governmental body fails to perform an act "that the law requires" or acts
25 in an arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. Nev.
26 Rev. Stat. § 34.160.

27 82. The Department has failed to perform various acts that the law requires including
28 but not limited to:

1 a. Providing proper pre-hearing notice of the denial; and
2 b. Arbitrarily and capriciously denying the applications for no legitimate reason.
3 83. The Department acted arbitrarily and capriciously in the denial by performing
4 and/or failing to perform the acts set forth *supra*, and because, *inter alia*:
5 a. The Board lacked substantial evidence to deny Plaintiffs' Applications; and
6 b. The Board denied Plaintiffs' Applications in order to approve the Applications
7 of other competing applicants without regard to the merit of Plaintiffs'
8 Applications and the lack of merit of the Applications of other competing
9 applicants.
10 84. These violations of the Defendants' legal duties were arbitrary and capricious
11 actions that compel this Court to issue a Writ of Mandamus directing the Department to review
12 Plaintiffs' Applications on their merits and/or approve them.
13 85. As a result of the Defendants' unlawful and arbitrary and capricious actions,
14 Plaintiff has been forced to retain legal counsel to prosecute this action and is therefore also
15 entitled to its damages, costs in this suit, and an award of attorneys' fees pursuant to NRS
16 34.270.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFFS pray for relief as follows:

- 19 1. For declaratory relief as set forth above;
20 2. For a preliminary and permanent injunction enjoining the enforcement of the
21 denial of their Applications for licensure;
22 3. For judicial review of the record and history on which the denial of those
23 Applications was based;
24 4. For the issuance of a writ of mandamus;
25 5. For compensatory and special damages as set forth herein;
26 6. For attorneys' fees and costs of suit; and
27 7. For all other and further relief as the Court deems just and proper.
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DEMAND FOR JURY TRIAL

Trial by jury is hereby demanded on all claims and issues so triable.

DATED this 3rd day of July, 2019.

GENTILE CRISTALLI
MILLER ARMENI SAVARESE

/s/ Michael V. Cristalli, Esq.
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CERTIFICATE OF SERVICE

The undersigned, an employee of Gentile, Cristalli, Miller, Armeni Savarese, hereby certifies that on the 3rd day of July, 2019, I caused a copy of the foregoing **FIRST AMENDED COMPLAINT** 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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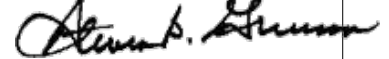
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11
12 **DISTRICT COURT
CLARK COUNTY, NEVADA**

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

23
24 Plaintiffs,

25 vs.

26 THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

27 Defendant.
28

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

**CORRECTED
FIRST AMENDED COMPLAINT**

1 Plaintiffs, SERENITY WELLNESS CENTER, LLC, a Nevada limited liability company,
2 TGIG, LLC, a Nevada limited liability company, NULEAF INCLINE DISPENSARY, LLC, a
3 Nevada limited liability company, NEVADA HOLISTIC MEDICINE, LLC, a Nevada limited
4 liability company, TRYKE COMPANIES SO NV, LLC a Nevada limited liability company,
5 TRYKE COMPANIES RENO, LLC, a Nevada limited liability company, GBS NEVADA
6 PARTNERS, LLC, a Nevada limited liability company, FIDELIS HOLDINGS, LLC, a Nevada
7 limited liability company, GRAVITAS NEVADA, LTD, a Nevada limited liability company,
8 NEVADA PURE, LLC, a Nevada limited liability company, MEDIFARM, LLC, a Nevada
9 limited liability company MEDIFARM IV, LLC, a Nevada limited liability company; DOE
10 PLAINTIFFS I through X; and ROE ENTITIES I through X, by and through their counsel,
11 DOMINIC P. GENTILE, ESQ. and VINCENT SAVARESE III, ESQ., MICHAEL V.
12 CRISTALLI, ESQ., and ROSS MILLER, ESQ., of the law firm of Gentile Cristalli Miller
13 Armeni Savarese, hereby complain and allege against DEFENDANT STATE OF NEVADA,
14 DEPARTMENT OF TAXATION; DOE DEFENDANTS I through X; and ROE ENTITY
15 DEFENDANTS I through X, in their official and personal capacities, as follows:

16
17
18 **I.**

19 **PARTIES, JURISDICTION, AND VENUE**

- 20 1. Plaintiff SERENITY WELLNESS CENTER, LLC, was and is a Nevada limited
21 liability company and does business in Clark County, Nevada.
22 2. Plaintiff TGIG, LLC, was and is a Nevada limited liability company and does
23 business in Clark County, Nevada.
24 3. Plaintiff NULEAF INCLINE DISPENSARY, LLC, was and is a Nevada limited
25 liability company and does business in Clark County, Nevada.
26 4. Plaintiff NEVADA HOLISTIC MEDICINE, LLC, was and is a Nevada limited
27 liability company and does business in Clark County, Nevada.
28 5. Plaintiff TRYKE COMPANIES SO NV, LLC was and is a Nevada limited

1 liability company and does business in Clark County, Nevada.

2 6. Plaintiff TRYKE COMPANIES RENO, LLC, was and is a Nevada limited
3 liability company and does business in Clark County, Nevada.

4 7. Plaintiff GBS NEVADA PARTNERS, LLC, was and is a Nevada limited liability
5 company and does business in Clark County, Nevada.

6 8. Plaintiff FIDELIS HOLDINGS, LLC, was and is a Nevada limited liability
7 company and does business in Clark County, Nevada.

8 9. Plaintiff GRAVITAS NEVADA, LTD, was and is a Nevada limited liability
9 company and does business in Clark County, Nevada.

10 10. Plaintiff NEVADPURE, LLC, was and is a Nevada limited liability company and
11 does business in Clark County, Nevada.

12 11. Plaintiff MEDIFARM, LLC was and is a Nevada limited liability company and
13 does business in Clark County, Nevada.

14 12. Plaintiff MEDIFARM IV, LLC was and is a Nevada limited liability company
15 and does business in Clark County, Nevada.

16 13. Defendant STATE OF NEVADA, DEPARTMENT OF TAXATION (the
17 "Department") is an agency of the State of Nevada. The Department is responsible for licensing
18 and regulating retail marijuana businesses in Nevada through its Marijuana Enforcement
19 Division.

20 14. The true names and capacities, whether individual, corporate, association or
21 otherwise of Doe Plaintiffs I through X, Roe Entity Plaintiffs I through X; Doe Defendants I
22 through X; and Roe Entity Defendants I through X, inclusive, are unknown to Plaintiffs at
23 this time, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed
24 and believe, and thereupon allege, that each of the Defendants designated herein as Doe
25 and/or Roe Entities is responsible in some manner for the events and occurrences herein
26 referred to, and in some manner caused the injuries and damages to Plaintiffs alleged herein.
27 And Plaintiffs will ask leave of the Court to amend this Complaint to insert the true names
28 and capacities of all Doe and/or Roe Entity Plaintiffs and Defendants when the same have

1 been ascertained by Plaintiffs, together with the appropriate charging allegations, and to join
2 such parties in this action.

3 15. Both jurisdiction and venue with respect to this action properly lie in this Court
4 pursuant to Nev. Rev. Stat. § 13.040.

5 II.

6 GENERAL ALLEGATIONS

7 16. The Nevada State Legislature passed a number of bills during the 2017
8 legislative session that affected the licensing, regulation, and operation of recreational marijuana
9 establishments in the state of Nevada. One of those bills, Assembly Bill 422, transferred
10 responsibility for the registration, licensing, and regulation of marijuana establishments from the
11 State of Nevada's Division of Public and Behavioral Health to the Department of Taxation.

12 17. This legislation was added to the voters' approval at the 2016 General Election of
13 2016 initiative petition, Ballot Question No. 2; is known as the "Regulation and Taxation of
14 Marijuana Act"; and is codified at NRS 453D.010, *et seq.* Nevada Revised Statutes ("NRS")
15 pursuant to

16 18. NRS 453D.020 (Findings and declarations) provides:

17 "1. In the interest of public health and public safety, and in
18 order to better focus state and local law enforcement resources on
19 crimes involving violence and personal property, the People of the
20 State of Nevada find and declare that the use of marijuana should
be legal for persons 21 years of age or older, and its cultivation and
sale should be regulated similar to other legal businesses.

21 2. The People of the State of Nevada find and declare that the
22 cultivation and sale of marijuana should be taken from the domain
23 of criminals and be regulated under a controlled system, where
businesses will be taxed and the revenue will be dedicated to
public education and the enforcement of the regulations of this
chapter.

24 3. The People of the State of Nevada proclaim that marijuana
should be regulated in a manner similar to alcohol so that:

25 (a) Marijuana may only be purchased from a business that is
26 licensed by the State of Nevada;

27 (b) Business owners are subject to a review by the State of
28 Nevada to confirm that the business owners and the business
location are suitable to produce or sell marijuana;

1 (c) Cultivating, manufacturing, testing, transporting and
2 selling marijuana will be strictly controlled through state licensing
and regulation;

3 (d) Selling or giving marijuana to persons under 21 years of
age shall remain illegal;

4 (e) Individuals will have to be 21 years of age or older to
purchase marijuana;

5 (f) Driving under the influence of marijuana will remain
illegal; and

6 (g) Marijuana sold in the State will be tested and labeled.”

7 19. NRS 453D.200 (Duties of Department relating to regulation and licensing of
8 marijuana establishments; information about consumers) provides:

9 “1. Not later than January 1, 2018, the Department shall adopt all
10 regulations necessary or convenient to carry out the provisions of
11 this chapter. The regulations must not prohibit the operation of
12 marijuana establishments, either expressly or through regulations
that make their operation unreasonably impracticable. The
regulations ***shall*** include:

13 (a) Procedures for the issuance, renewal, suspension, and
revocation of a license to operate a marijuana establishment;

14 (b) ***Qualifications for licensure that are directly and***
15 ***demonstrably related to the operation of a marijuana***
establishment;

16

17 2. The Department ***shall*** approve or deny applications for
licenses ***pursuant to NRS 453D.210***” (emphasis added).

18 20. NRS 453D.210 (Acceptance of applications for licensing; priority in licensing;
19 conditions for approval of application; limitations on issuance of licenses to retail marijuana
20 stores; competing applications), in turn, provides, in pertinent part:

21 “4. Upon receipt of a complete marijuana establishment license
22 application, the Department ***shall, within 90 days:***

23 (a) ***Issue the appropriate license if the license application is***
approved.

24 5. The Department ***shall approve a license application if:***

25 (a) The prospective marijuana establishment has submitted an
26 application in compliance with regulations adopted by the
Department and the application fee required pursuant to NRS
453D.2;

27 6. When competing applications are submitted for a proposed
28 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” (emphasis added).

1 21. According to an August 16, 2018 letter from the Department, pursuant to
2 Section 80(3) of Adopted Regulation of the Department of Taxation, LCB File No. R092-17
3 ("R092-17"), the Department was responsible for allocating the licenses of recreational
4 marijuana retail stores "to jurisdictions within each county and to the unincorporated area of
5 the county proportionally based on the population of each jurisdiction and of the
6 unincorporated area of the county."

7
8 22. The Department issued a notice for an application period wherein the
9 Department sought applications from qualified applicants to award sixty-four (64) recreational
10 marijuana retail store licenses throughout various jurisdictions in Nevada.

11 23. The application period for those licenses, including thirty-one (31) licenses in
12 Clark County, seven (7) licenses in Washoe County and one (1) license in Nye County, opened
13 on September 7, 2018 and closed on September 20, 2018.

14 24. Pursuant to Section 6.2 of the Recreational Marijuana Establishment License
15 Application ("the Application") issued by the Department, as enabled under the above-quoted
16 provisions of NRS 453D.210, if the Department received more than one application for a license
17 for a recreational marijuana retail store and the Department determined that more than one of the
18 applications was complete and in compliance with R092-17, Sec. 78 and NRS 453D, the Department
19 was required to rank the applications within each applicable locality for any applicants in a
20 jurisdiction that limits the number of retail marijuana stores in order from first to last, with ranking
21 being based on compliance with the provisions of R092-17 Sec. 80, NRS 453D and on the content of
22 the applications relating to the following specifically-enumerated and objective published criteria:

- 23 a. Operating experience of another kind of business by the owners, officers or board
24 members that has given them experience which is applicable to the operation of a
25 marijuana establishment.
26 b. Diversity of the owners, officers or board members.
27 c. Evidence of the amount of taxes paid and other beneficial financial contributions.
28 d. Educational achievements of the owners, officers or board members.

- 1 e. The applicant's plan for care, quality and safekeeping of marijuana from seed to
2 sale.
- 3 f. The financial plan and resources of the applicant, both liquid and illiquid.
- 4 g. The experience of key personnel that the applicant intends to employ.
- 5 h. Direct experience of the owners, officers, or board members of a medical
6 marijuana establishment or marijuana establishment in this State.

7 24. However, no numerical scoring values are assigned to any of the foregoing
8 criteria enumerated in the Application.

9 25. Moreover, Section 6.3 of the Application further provides that "[a]pplications
10 that have not demonstrated a sufficient response related to the criteria set forth above will not
11 have *additional [unspecified, unpublished] criteria* considered in determining whether to issue a
12 license *and will not move forward in the application process*" (emphasis added).

13 26. Thus, by necessary implication, conversely, Section 6.3 of the Application
14 textually subjects an Application which *has* in fact demonstrated a "sufficient" response related
15 to the specific, published criteria set forth above to "*additional [unspecified, unpublished]*
16 *criteria*," consideration of which by the Department will determine whether or not a license is
17 issued and whether or not a license Application will "*move forward in the application process*,
18 notwithstanding the textual requirement of NRS 453 D. 200.1(b) that the Department shall adopt
19 only regulations that prescribe "[q]ualifications for licensure that are directly and *demonstrably*
20 related to the operation of a marijuana establishment" (emphasis added).

21 27. No later than December 5, 2018, the Department was responsible for issuing
22 conditional licenses to those applicants who score and rank high enough in each jurisdiction to be
23 awarded one of the allocated licenses in accordance with the impartial competitive bidding process
24 mandated by NRS 453D.210.

25 28. The Department allocated ten (10) licenses for unincorporated Clark County,
26 Nevada; ten (10) licenses for Las Vegas, Nevada; six (6) licenses for Henderson, Nevada; five (5)
27 licenses for North Las Vegas, Nevada; six (6) licenses for Reno, Nevada; one (1) license for Sparks,
28 Nevada; and one (1) license for Nye County, Nevada.

29. Plaintiffs submitted Applications for licenses to own and operate recreational marijuana retail stores in compliance with the specified, published requirements of Department regulations together with the required application fee in accordance with NRS 453D.210.

30. Plaintiffs have been informed by the Department that all of their Applications to operate recreational marijuana retail stores were denied.

31. In each instance, Plaintiffs were informed by letter from the Department stating that a license was not granted to the applicant “because it did not achieve a score high enough to receive an available license.”

32. On information and belief, Plaintiffs allege that the Department's denial of their license applications was not properly based upon actual implementation of the impartial and objective competitive bidding process mandated by NRS 453D.210, but rather, was in fact based upon the arbitrary and capricious exercise of administrative partiality and favoritism.

33. On information and belief, Plaintiffs allege conversely that that the Department improperly granted licenses to other competing applicants, likewise without actual implementation of the impartial and objective competitive bidding process mandated by NRS 453D.210, but rather, based upon the arbitrary and capricious exercise of administrative partiality and favoritism.

34. On information and belief, Plaintiffs allege that the Department has improperly granted more than one recreational marijuana store license per jurisdiction to certain applicants, owners, or ownership groups.

III.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Violation of Civil Rights)

(Due Process: Deprivation of Property)

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

35. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

1 36. The provisions of NRS 453D.200.2 and NRS 453D.210.4-6, affirmatively
2 mandating that the Department “shall” approve and issue the appropriate license within a time
3 certain if the prospective establishment submits an Application in compliance with published
4 Department regulations promulgated in accordance with the limitations imposed by NRS 453.
5 D.200.1(b) together with the required application fee; and, in the case of competing
6 Applications, outranks competing applicants in accordance with an objective, impartial and
7 numerically scored competitive bidding process, serve to create, as a matter of legislative intent,
8 a *statutory entitlement* to receipt of the license by applicants who comply with and prevail
9 competitively in accordance with those objective and impartial standards and procedures.

10 37. Such a statutory entitlement constitutes a “property interest” within the meaning
11 and subject to the due process protections of the Fourteenth Amendment to the Constitution of
12 the United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada; and
13 therefore, by definition, may not be denied arbitrarily, capriciously, corruptly or based upon
14 administrative partiality or favoritism.

15 38. However, acting under color of state law, the Department has effectively nullified
16 and rendered illusory the legislative statutory entitlement to licensure of applicants who comply
17 with and prevail competitively in accordance with the objective and impartial standards and
18 procedures prescribed by the provisions of NRS 453D.200.2 and NRS 453D.210.4-6, by
19 textually subjecting an Application which in fact provides “sufficient” responses related to the
20 published, enumerated and specific criteria set forth in the Application to approval pursuant to
21 further, unpublished, unspecified and unascertainable “additional criteria” which are not set forth
22 therein, as a silent supplemental condition of licensure, thereby rendering the administrative
23 regulation governing the Application and licensing process susceptible to *ad hoc*, non-
24 transparent, arbitrary, capricious or corrupt decision-making based upon administrative partiality
25 or favoritism which cannot be discounted; thereby rendering that regulatory scheme
26 unconstitutional on its face.

27 39. On information and belief, Plaintiffs further allege that pursuant to the
28 implementation of the foregoing constitutionally-repugnant licensing process, the denial of their

1 Applications for licensure, were in fact affected by actual arbitrary, capricious or corrupt
2 decision-making based upon administrative partiality or favoritism; and therefore, that that
3 licensing process has thereby been rendered unconstitutional in its application as well as to
4 Plaintiffs.

5 40. Plaintiffs have therefore been deprived of property without due process under
6 color of state law in violation of the Fourteenth Amendment to the Constitution of the United
7 States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada.

8 41. The Constitutional infirmity of the entire licensing process renders the denial of
9 Plaintiffs' Applications for licensure void and unenforceable, and Plaintiffs are entitled to a
10 declaration as to the ineffectiveness thereof and an order enjoining the enforcement of those
11 license denials.

12 42. Plaintiffs are entitled to declaratory relief with respect to the forgoing federal
13 constitutional infirmities of the administrative licensing scheme pursuant to the provisions of
14 Title 42, United States Code ("U.S.C."), Section 1983 and otherwise.

15 43. Plaintiffs are entitled to declaratory relief because a justiciable controversy exists
16 that warrants a declaratory judgment pursuant to Nevada's Uniform Declaratory Judgments Act,
17 codified at NRS 30.010 to 30.160, inclusive.

18 44. Plaintiffs and Defendant have adverse and/or competing interests in that the
19 Department, through its Marijuana Enforcement Division, has denied Plaintiffs' Applications in
20 in violation of Plaintiff's constitutional rights, Nevada law, and state policy.

21 45. The Department's refusal to issue licenses to Plaintiffs affects Plaintiffs' rights
22 under NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

23 46. Further, the Department's improper ranking of other applicants for licensure and
24 subsequent, improper issuance of licenses to such other applicants adversely affects the rights of
25 Plaintiff under NRS 453D, NAC 453D, R09217, and other Nevada laws and regulations.

26 47. The Department's actions and/or inactions also have created an actual justiciable
27 controversy ripe for judicial determination between Plaintiffs and the Department with respect to
28 the construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-17,

1 and Plaintiffs have been harmed, and will continue to be harmed, by the Defendants' actions
2 and/or inactions.

3 48. The Department's actions and/or inactions have further failed to appropriately
4 address the necessary considerations and legislative intent of NRS 453D.210, designed to restrict
5 monopolies.

6 49. Accordingly, Plaintiff seeks a declaration from this Court that, *inter alia*:

- 7 a. The Department improperly denied Plaintiffs' license Applications for the
8 operation of a recreational marijuana establishment.
- 9 b. The denial of such licenses to Plaintiffs was void *ab initio*;
- 10 c. The procedures employed in denying Plaintiffs' license Applications violated
11 Plaintiffs' procedural and substantive due process rights and entitlement to
12 equal protection of the law (as set forth *infra*) under the Nevada and United
13 States Constitutions and, therefore, those license denials are void and
14 unenforceable;
- 15 d. The denials are void for vagueness and therefore unenforceable;
- 16 e. Defendant acted arbitrarily and capriciously or in contravention of a legal duty
17 and Plaintiffs are therefore entitled to a writ of mandamus;
- 18 f. Plaintiffs are entitled to judicial review; and
- 19 g. The Department's denial of Plaintiffs' license Applications lacked substantial
20 evidence.

21 50. Plaintiffs also seek a declaration from this Court that the Department must issue
22 licenses to Plaintiffs for the operation of a recreational marijuana establishment as applied for in
23 that Plaintiffs' would have been entitled to receive said licenses had the Department properly
24 applied the provisions of NRS 453D, NAC Chapter 453D, and R092-17.

25 51. Plaintiffs contend that a declaratory judgment is both necessary and proper at
26 this time for the Court to determine the respective rights, duties, responsibilities and liabilities
27 of Plaintiffs under NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and
28 regulations.

1 52. Plaintiffs are also entitled to injunctive relief from the foregoing federal
2 constitutional violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

3 53. The Department's flawed interpretation of the provisions of NRS 453D, NAC
4 Chapter 453D, and R092-17, and refusal to issue "conditional" licenses in accordance with the
5 law constitute and cause continuing and irreparable harm to Plaintiffs, who have no adequate
6 remedy at law.

7 54. The purpose of this administrative refusal was and is to unreasonably interfere
8 with Plaintiffs' business and cause Plaintiffs to suffer irreparable harm.

9 55. The Department will suffer no harm by following the law with respect to issuing
10 the licenses in question.

11 56. The Department's interpretation of NRS 453D, NAC Chapter 453D, and R092-17
12 is flawed and Plaintiffs are likely to succeed on the merits in this litigation.

13 57. The public interest favors Plaintiffs because in the absence of injunctive relief, the
14 consumers who would have benefitted by Plaintiffs' licensure will have less available options
15 from which they can receive recreational marijuana in accordance with legislative intent.

16 58. Therefore, Plaintiffs are entitled to preliminary injunctive relief, and after a trial
17 on the merits, permanent injunctive relief, ordering the Department to issue the subject licenses
18 to Plaintiffs in accordance with NRS 453D, NAC 453D, and R092-17.

19 59. Plaintiffs are also entitled to damages attributable to the above-identified due
20 process violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

21 60. As the actions of the Department have necessitated that Plaintiffs retain the legal
22 services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action,
23 Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

24 **SECOND CLAIM FOR RELIEF**
25 **(Violation of Civil Rights)**

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

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

28 61. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

1 62. The fundamental constitutional right to pursue a lawful occupation constitutes a
2 “liberty interest” within the meaning and subject to the due process protections of the Fourteenth
3 Amendment to the Constitution of the United States and Article 1, Sections 1 and 8 of the
4 Constitution of the State of Nevada; and therefore, by definition, may not be denied arbitrarily,
5 capriciously, corruptly or based upon administrative partiality or favoritism.

6 63. However, acting under color of state law, the Department has effectively nullified
7 and rendered illusory the legislative statutory entitlement to licensure of applicants who comply
8 with and prevail competitively in accordance with the objective and impartial standards and
9 procedures prescribed by the provisions of NRS 453D.200.2 and NRS 453D.210.4-6, by
10 textually subjecting an Application which in fact provides “sufficient” responses related to the
11 published, enumerated and specific criteria set forth in the Application to approval pursuant to
12 further, unpublished, unspecified and unascertainable “additional criteria” which are not set forth
13 therein, as a silent supplemental condition of licensure, in violation of NRS 200.D.1(b) thereby
14 rendering the administrative regulation governing the Application and licensing process
15 susceptible to *ad hoc*, non-transparent, arbitrary, capricious or corrupt decision-making based
16 upon administrative partiality or favoritism which cannot be discounted; thereby rendering that
17 regulatory scheme unconstitutional on its face.

18 64. On information and belief, Plaintiffs further allege that the pursuant to the
19 implementation of the foregoing constitutionally-repugnant licensing process, the denial of their
20 Applications for licensure, were in fact affected by actual arbitrary, capricious or corrupt
21 decision-making based upon administrative partiality or favoritism; and therefore, that that
22 licensing process has thereby been rendered unconstitutional in its application as well.

23 65. Plaintiffs have therefore likewise been deprived of liberty without due process
24 under color of state law in violation of the Fourteenth Amendment to the Constitution of the
25 United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada.

26 66. The Constitutional infirmity of the entire licensing process renders the denial of
27 Plaintiffs’ Applications for licensure void and unenforceable, and, for the reasons set forth supra
28 in Plaintiffs’ FIRST CAUSE OF ACTION at paragraphs 30 through 47, inclusive, Plaintiffs are

1 entitled to a declaration as to the ineffectiveness thereof and an order enjoining the enforcement
2 of those license denials.

3 67. Plaintiffs are also entitled to damages for these due process violations pursuant
4 to the provisions of 42 U.S.C. Section 1983 and otherwise.

5 68. As the actions of the Department have necessitated that Plaintiffs retain the legal
6 services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action,
7 Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

8 **THIRD CLAIM FOR RELIEF**

9 **(Violation of Civil Rights)**

10 **(Equal Protection)**

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

12 69. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

13 70. By improperly denying Plaintiffs' Applications for licensure under the provisions
14 of NRS 453D.200.2 and NRS 453D.210.4-6 while improperly granting the Applications of other
15 applicants under color of state law as set forth *supra* in Plaintiffs' FIRST CAUSE OF ACTION
16 and SECOND CAUSE OF ACTION, the Department has, without justification, disparately
17 treated Plaintiffs' Applications absent rational basis, and has thereby violated Plaintiffs' rights to
18 equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of
19 the United States and Article 1, Section 1 of the Constitution of the State of Nevada.

20 71. The constitutional infirmity of the entire licensing process and the resulting denial
21 of equal protection renders the denial of Plaintiffs' Applications for licensure void and
22 unenforceable, and, for the reasons set forth *supra* in Plaintiffs' FIRST CAUSE OF ACTION at
23 paragraphs 30 through 47, inclusive, Plaintiffs are entitled to a declaration as to the
24 ineffectiveness thereof and an order enjoining the enforcement of those license denials.

25 72. Plaintiffs are also entitled to damages for these equal protection violations
26 pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

27 73. As the actions of the Department have necessitated that Plaintiffs retain the legal
28 services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action,

1 Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

2 **FOURTH CLAIM FOR RELIEF**

3 **(Petition for Judicial Review)**

4 74. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth
5 herein.

6 75. The Department, in misinterpreting and incorrectly applying the provisions of
7 NRS 453D, NAC 453D and the related Nevada laws and regulations, has exceeded its
8 jurisdiction by improperly issuing licenses to applicants that do not merit licenses under the
9 provisions of NRS 453D, NAC 453D, and R092-17.

10 76. Plaintiffs are aggrieved by the decision of the Department to deny Plaintiffs'
11 Applications without proper notice, substantial evidence, or compliance with NRS 453D, NAC
12 453D, R092-17, and other Nevada state laws or regulations.

13 77. There is no provision in NRS 453D, NAC 453D, or R092-17 allowing for an
14 administrative appeal of the Department's decision, and apart from injunctive relief, no plain,
15 speedy, and adequate remedy for the Department's improper actions.

16 78. Accordingly, Plaintiff petitions this Court for judicial review of the record on which
17 the Department's denials were based, and an order providing *inter alia*:

- 18 a. A determination that the decision lacked substantial evidence;
19 b. A determination that the denials are void *ab initio* for non-compliance with
20 NRS 453D, NAC 453D, R092-17, and other Nevada laws or regulations; and
21 c. Such other relief as is consistent with those determinations.

22 79. As the actions of the Department have necessitated that Plaintiffs retain the legal
23 services of Gentile Cristalli Miller Armeni Savarese, and incur fees and costs to bring this action,
24 Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

25 **FIFTH CLAIM FOR RELIEF**

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

27 80. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

28 81. When a governmental body fails to perform an act "that the law requires" or acts

1 in an arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. Nev.
2 Rev. Stat. § 34.160.

3 82. The Department has failed to perform various acts that the law requires including
4 but not limited to:

- 5 a. Providing proper pre-hearing notice of the denial; and
- 6 b. Arbitrarily and capriciously denying the applications for no legitimate reason.

7 83. The Department acted arbitrarily and capriciously in the denial by performing
8 and/or failing to perform the acts set forth *supra*, and because, *inter alia*:

- 9 a. The Board lacked substantial evidence to deny Plaintiffs' Applications; and
- 10 b. The Board denied Plaintiffs' Applications in order to approve the Applications
11 of other competing applicants without regard to the merit of Plaintiffs'
12 Applications and the lack of merit of the Applications of other competing
13 applicants.

14 84. These violations of the Defendants' legal duties were arbitrary and capricious
15 actions that compel this Court to issue a Writ of Mandamus directing the Department to review
16 Plaintiffs' Applications on their merits and/or approve them.

17 85. As a result of the Defendants' unlawful and arbitrary and capricious actions,
18 Plaintiff has been forced to retain legal counsel to prosecute this action and is therefore also
19 entitled to its damages, costs in this suit, and an award of attorneys' fees pursuant to NRS
20 34.270.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFFS pray for relief as follows:

- 23 1. For declaratory relief as set forth above;
- 24 2. For a preliminary and permanent injunction enjoining the enforcement of the
25 denial of their Applications for licensure;
- 26 3. For judicial review of the record and history on which the denial of those
27 Applications was based;
- 28 4. For the issuance of a writ of mandamus;

- 1 5. For compensatory and special damages as set forth herein;
2 6. For attorneys' fees and costs of suit; and
3 7. For all other and further relief as the Court deems just and proper.
4

5 **DEMAND FOR JURY TRIAL**

6 Trial by jury is hereby demanded on all claims and issues so triable.

7 DATED this 3rd day of July, 2019.

8 GENTILE CRISTALLI
9 MILLER ARMENI SAVARESE

10 /s/ Vincent Savarese, III, Esq.
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27
28

CERTIFICATE OF SERVICE

The undersigned, an employee of Gentile, Cristalli, Miller, Armeni Savarese, hereby certifies that on the 3rd day of July, 2019, I caused a copy of the foregoing **CORRECTED FIRST AMENDED COMPLAINT** 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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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;
DOES 1 through 20, inclusive; and ROE

CASE NO.: A-19-787004-B
DEPT NO.: XI

**PLAINTIFFS' ANSWER TO
DEFENDANTS-IN-INTERVENTION'S
COUNTERCLAIM**

CORPORATIONS 1 through 20, inclusive,

Defendants.

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

Defendants in Intervention.

AND ALL RELATED MATTERS

Plaintiffs 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. dba MOTHER HERB; NEVCANN LLC; RED EARTH LLC; THC NEVADA LLC; ZION
GARDENS LLC; and MMOF VEGAS RETAIL, INC. (“Plaintiffs”) file their Answer to
Defendants in Intervention INTEGRAL ASSOCIATES LLC, d/b/a ESSENCE CANNABIS
DISPENSARIES, ESSENCE TROPICANA, LLC, ESSENCE HENDERSON, LLC, CPCM
HOLDINGS, LLC d/b/a THRIVE CANNABIS MARKETPLACE, and COMMERCE PARK
MEDICAL, LLC, CHEYENNE MEDICAL, LLC’s (collectively “Defendants-in-Intervention”)
Counterclaims as follows:

PARTIES

1. Answering Paragraph 1 of Defendants-in-Intervention’ Counterclaim, Plaintiffs
admit the allegations contained therein.

2. Answering Paragraph 2 of Defendants-in-Intervention’s Counterclaim, Plaintiffs
admit the allegations contained therein.

1 3. Answering Paragraph 3 of Defendants-in-Intervention's Counterclaim, Plaintiffs
2 admit the allegations contained therein.

3 4. Answering Paragraph 4 of Defendants-in-Intervention's Counterclaim, Plaintiffs
4 admit the allegations contained therein.

5 5. Answering Paragraph 5 of Defendants-in-Intervention's Counterclaim, Plaintiffs
6 admit the allegations contained therein.

7 6. Answering Paragraph 6 of Defendants-in-Intervention's Counterclaim, Plaintiffs
8 admit the allegations contained therein.

9 7. Answering Paragraph 7 of Defendants-in-Intervention's Counterclaim, Plaintiffs
10 admit the allegations contained therein.

11 8. Answering Paragraph 8 of Defendants-in-Intervention's Counterclaim, Plaintiffs
12 admit the allegations contained therein.

13 9. Answering Paragraph 9 of Defendants-in-Intervention's Counterclaim, Plaintiffs
14 admit the allegations contained therein.

15 10. Answering Paragraph 10 of Defendants-in-Intervention's Counterclaim, Plaintiffs
16 admit the allegations contained therein.

17 11. Answering Paragraph 11 of Defendants-in-Intervention's Counterclaim, Plaintiffs
18 admit the allegations contained therein.

19 12. Answering Paragraph 12 of Defendants-in-Intervention's Counterclaim, Plaintiffs
20 admit the allegations contained therein.

21 13. Answering Paragraph 13 of Defendants-in-Intervention's Counterclaim, Plaintiffs
22 admit the allegations contained therein.

23 14. Answering Paragraph 14 of Defendants-in-Intervention's Counterclaim, Plaintiffs
24 admit the allegations contained therein.

25 15. Answering Paragraph 15 of Defendants-in-Intervention's Counterclaim, Plaintiffs
26 admit the allegations contained therein.

27 16. Answering Paragraph 16 of Defendants-in-Intervention's Counterclaim, Plaintiffs
28 admit the allegations contained therein.

17. Answering Paragraph 17 of Defendants-in-Intervention's Counterclaim, Plaintiffs admit the allegations contained therein.

18. Answering Paragraph 18 of Defendants-in-Intervention's Counterclaim, Plaintiffs admit the allegations contained therein.

19. Answering Paragraph 19 of Defendants-in-Intervention's Counterclaim, Plaintiffs admit the allegations contained therein.

20. Answering Paragraph 20 of Defendants-in-Intervention's Counterclaim, Plaintiffs admit the allegations contained therein.

GENERAL ALLEGATIONS

21. Answering Paragraph 21 of Defendants-in-Intervention's Counterclaim, Plaintiffs admit the allegations contained therein.

22. Answering Paragraph 22 of Defendants-in-Intervention's Counterclaim, to the extent this paragraph contains legal conclusions or statements regarding the content of the laws or regulations referenced, no response is necessary. To the extent the allegations accurately state the laws or regulations referenced, Plaintiffs admit the allegations.

23. Answering Paragraph 23 of Defendants-in-Intervention's Counterclaim, to the extent this paragraph contains legal conclusions or statements regarding the content of the laws or regulations referenced, no response is necessary. To the extent the allegations accurately state the laws or regulations referenced, Plaintiffs admit the allegations.

24. Answering Paragraph 24 of Defendants-in-Intervention's Counterclaim, Plaintiffs admit the allegations contained therein.

25. Answering Paragraph 25 of Defendants-in-Intervention's Counterclaim, Plaintiffs admit the allegations contained therein.

26. Answering Paragraph 26 of Defendants-in-Intervention's Counterclaim, Plaintiffs admit the allegations contained therein.

27. Answering Paragraph 27 of Defendants-in-Intervention's Counterclaim, Plaintiffs admit that the applications period was from September 7, 2018 to September 20, 2018. As to the remaining allegations, the document referred to therein speaks for itself.

28. Answering Paragraph 28 of Defendants-in-Intervention's Counterclaim, Plaintiffs are without sufficient knowledge or information at this time to form a belief as to the truth or falsity of the allegations set forth in said paragraph and, therefore, deny them.

29. Answering Paragraph 29 of Defendants-in-Intervention's Counterclaim, to the extent this paragraph contains legal conclusions or statements regarding the content of the laws or regulations referenced, no response is necessary. To the extent the allegations accurately state the laws or regulations referenced, Plaintiffs admit the allegations.

30. Answering Paragraph 30 of Defendants-in-Intervention's Counterclaim, to the extent this paragraph contains legal conclusions or statements regarding the content of the laws or regulations referenced, no response is necessary. To the extent the allegations accurately state the laws or regulations referenced, Plaintiffs admit the allegations.

31. Answering Paragraph 31 of Defendants-in-Intervention's Counterclaim, Plaintiffs admit the allegations contained therein.

32. Answering Paragraph 32 of Defendants-in-Intervention's Counterclaim, Plaintiffs are without sufficient knowledge or information at this time to form a belief as to the truth or falsity of the allegations set forth in said paragraph and, therefore, deny them.

33. Answering Paragraph 33 of Defendants-in-Intervention's Counterclaim, to the extent this paragraph contains legal conclusions or statements regarding the content of the laws or regulations referenced, no response is necessary. To the extent the allegations accurately state the laws or regulations referenced, Plaintiffs admit the allegations.

34. Answering Paragraph 34 of Defendants-in-Intervention's Counterclaim, to the extent this paragraph contains legal conclusions or statements regarding the content of the laws or regulations referenced, no response is necessary. To the extent the allegations accurately state the laws or regulations referenced, Plaintiffs admit the allegations.

35. Answering Paragraph 35 of Defendants-in-Intervention's Counterclaim, Plaintiffs admit the allegations contained therein.

36. Answering Paragraph 36 of Defendants-in-Intervention's Counterclaim, Plaintiffs deny the allegations contained therein.

1 37. Answering Paragraph 37 of Defendants-in-Intervention's Counterclaim, Plaintiffs
2 deny the allegations contained therein.

3 38. Answering Paragraph 38 of Defendants-in-Intervention's Counterclaim, Plaintiffs
4 deny the allegations contained therein.

5 39. Answering Paragraph 39 of Defendants-in-Intervention's Counterclaim, Plaintiffs
6 are without sufficient knowledge or information at this time to form a belief as to the truth or
7 falsity of the allegations set forth in said paragraph and, therefore, deny them.

8 40. Answering Paragraph 40 of Defendants-in-Intervention's Counterclaim, Plaintiffs
9 admit that they have sought relief that might limit or preclude Defendants-in-Intervention from
10 being able to move forward with obtaining final inspections for marijuana establishments under
11 current regulations. As to the remaining allegations, Plaintiffs deny.

12 41. Answering Paragraph 41 of Defendants-in-Intervention's Counterclaim, Plaintiffs
13 deny the allegations contained therein.

14 42. Answering Paragraph 42 of Defendants-in-Intervention's Counterclaim, Plaintiffs
15 state that this Paragraph contains purported legal conclusions and/or statements or recitations of
16 law, rather than allegations, and as such, no response is necessary. To the extent that a response
17 is necessary, Plaintiffs are without sufficient knowledge or information upon which to form a
18 belief as to the truth of the allegations contained in said paragraph, and therefore deny each and
19 every allegation contained therein.

20 **FIRST COUNTERCLAIM**

21 **(Declaratory Relief)**

22 43. Answering Paragraph 43 of Defendants-in-Intervention's Counterclaim, Plaintiffs
23 reassert and incorporate herein by reference their responses to Paragraphs 1 through 42 as though
24 fully set forth herein.

25 44. Answering Paragraph 44 of Defendants-in-Intervention's Counterclaim, Plaintiffs
26 state that this Paragraph contains purported legal conclusions and/or statements or recitations of
27 law, rather than allegations, and as such, no response is necessary. To the extent that a response
28 is necessary, Plaintiffs are without sufficient knowledge or information upon which to form a

1 belief as to the truth of the allegations contained in said paragraph, and therefore deny each and
2 every allegation contained therein.

3 45. Answering Paragraph 45 of Defendants-in-Intervention's Counterclaim, Plaintiffs
4 are without sufficient knowledge or information at this time to form a belief as to the truth or
5 falsity of the allegations set forth in said paragraph and, therefore, deny them.

6 46. Answering Paragraph 46 of Defendants-in-Intervention's Counterclaim, Plaintiffs
7 deny the allegations contained therein.

8 47. Answering Paragraph 47 of Defendants-in-Intervention's Counterclaim, Plaintiffs
9 deny the allegations contained therein.

10 48. Answering Paragraph 48 of Defendants-in-Intervention's Counterclaim, Plaintiffs
11 deny the allegations contained therein.

12 49. Answering Paragraph 49 of Defendants-in-Intervention's Counterclaim, Plaintiffs
13 deny the allegations contained therein.

14 **AFFIRMATIVE DEFENSES**

15 1. The Counterclaim fails to state a claim against Plaintiffs upon which relief may be
16 granted.

17 2. Defendants-in-Intervention's claim is barred due to the absence of any legitimate
18 controversy between Defendants-in-Intervention and Plaintiffs.

19 3. Defendants-in-Intervention failed to mitigate, minimize, or otherwise avoid their
20 losses, damages, or expenses.

21 4. If Defendants-in-Intervention were injured and damaged as alleged, which is
22 specifically denied, then the injuries and damages were caused, in whole or in part, by the acts or
23 omissions of others, whether individual, corporate or otherwise, whether named or unnamed in
24 the Counterclaim, for whose conduct Plaintiffs are not responsible.

25 5. Defendants-in-Intervention's claim is barred by waiver.

26 6. Defendants-in-Intervention's claim is barred by the doctrine of unclean hands.

27 7. Defendants-in-Intervention are barred from seeking equitable relief because it has
28 adequate legal remedies from any alleged injuries.

8. Defendants-in-Intervention have been unjustly enriched to the injury and detriment of the Plaintiffs, and therefore, are not entitled to any relief by way of Defendants-in-Intervention's claim.

9. In performing the actions complained of, the Plaintiffs acted in the ordinary course of business.

10. Defendants-in-Intervention's claim fails because of intervening and superseding causes for the injury alleged in the Counterclaim.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows

1. The Defendants-in-Intervention take nothing by way of their Counterclaim and that the same be dismissed with prejudice;
2. For costs of suit and reasonable attorneys' fees; and
3. For all other and further relief as the Court deems just and proper.

DATED this 11th day of July, 2019.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

/s/ Adam K. Bult

ADAM K. BULT, ESQ., Nevada Bar No. 9332

MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737

TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

JENNINGS & FULTON, LTD.

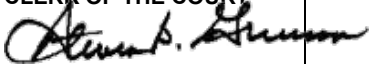
ADAM R. FULTON, ESQ., Nevada Bar No. 11572

Attorneys for Plaintiffs

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 **PLAINTIFFS' ANSWER TO DEFENDANTS-IN-INTERVENTION'S COUNTERCLAIM** to be submitted electronically to all parties currently on the electronic service list on July 11, 2019.

/s/ Wendy Cosby
an employee of Brownstein Hyatt Farber Schreck, LLP



NEOJ

AARON FORD

Attorney General

Ketan D. Bhirud (Bar No. 10515)

Chief Litigation Counsel

Steve Shevorsi (Bar No. 8256)

Head of Complex Litigation

David J. Pope (Bar No. 8617)

Chief Deputy Attorney General

Theresa M. Haar (Bar No. 12158)

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Attorneys for Defendant

State of Nevada of Nevada, Department of Taxation

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; THC NEVADA LLC, a Nevada limited liability company; and ZION GARDENS LLC, a Nevada limited liability company, and MMOF VEGAS RETAIL, INC., a Nevada corporation,

Plaintiffs,

vs.

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

Defendants.

Case No. A-19-787004-B
Dept. No. XI

**NOTICE OF ENTRY OF
ORDER**

1 PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part
2 Motion to Consolidate was entered on the 11th day of July, 2019, a copy of which is attached
3 hereto as Exhibit "A".

4 DATED this 11th day of July, 2019.

5 AARON D. FORD
6 Attorney General

7 By: /s/ Ketan D. Bhirud

Ketan D. Bhirud (Bar No. 10515)
Chief Litigation Counsel
Steve Shevorski (Bar No. 8256)
Head of Complex Litigation
David J. Pope (Bar No. 8617)
Chief Deputy Attorney General
Theresa M. Haar (Bar No. 12158)
Senior Deputy Attorney General

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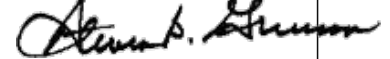
CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **NOTICE OF ENTRY OF ORDER** with the Clerk of the Court by using the electronic filing system on the July 11, 2019. I further certify that I effected service on all parties in the case signed up to receive electronic service.

/s/ Traci Plotnick
Traci Plotnick, an employee of the
Office of the Attorney General

EXHIBIT A

EXHIBIT A



1 **ORDR**
2 AARON FORD
3 Attorney General
4 Ketan D. Bhurud (Bar No. 10515)
5 Chief Litigation Counsel
6 Steve Shevorsi (Bar No. 8256)
7 Head of Complex Litigation
8 David J. Pope (Bar No. 8617)
9 Chief Deputy Attorney General
10 Theresa M. Haar (Bar No. 12158)
11 Senior Deputy Attorney General
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Attorneys for the State of Nevada

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 ETW MANAGEMENT GROUP, LLC, a
15 Nevada limited liability company; GLOBAL
16 HARMONY LLC, a Nevada limited liability
17 company, GREEN LEAF FARMS
18 HOLDINGS, LLC, a Nevada limited
19 liability company; GREEN
20 THERAPEUTICS LLC, a Nevada limited
21 liability company; HERBAL CHOICE INC.,
22 a Nevada corporation; JUST QUALITY,
23 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; THC NEVADA LLC, a Nevada
limited liability company; and ZION
GARDENS LLC, a Nevada limited liability
company,

24 **Plaintiffs,**

25 **vs.**

Case No. A-19-787004-B
Dept. No. 11

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
CONSOLIDATE**

Hearing Date: May 13, 2019
Hearing Time: 9:00 am

1 STATE OF NEVADA, DEPARTMENT OF
2 TAXATION, n Nevada administrative
3 agency; DOES 1 through 20, inclusive; and
4 ROE CORPORATIONS 1 through 20,
5 inclusive,

6 Defendants.

7 and

8 ALL RELATED INTERVENORS.

9 This matter came on for hearing before the Court on May 13, 2019, on the Motion to
10 Consolidate filed by the State of Nevada ex. rel. the Department of Taxation (Department).
11 Steve Shevorski appeared for the Department. Dennis Kennedy appeared for D.H.
12 Flamingo, Inc. Adam Fulton appeared for ACC Enterprises, LLC.

13 The Court having reviewed the motion and the oppositions filed by D.H. Flamingo,
14 Inc. and ACC Enterprises, LLC, and for good cause appearing, makes the following findings
15 and orders:

16 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Department's
17 motion to consolidate on order shortening time is granted in part and denied in part.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the
19 Department's motion is granted to the extent that under Eighth Judicial District Court
20 Rule 2.50(b), the following matters shall be coordinated for purposes of the motion for
21 preliminary injunction being heard by this Court beginning on May 24, 2019:

- 22 • MM Development, A-18-785818-W (8th JD);
- 23 • Compassionate Team of LV, A-18-786357-W (8th JD);
- 24 • ETW Management Group, A-19-787004-B (8th JD);
- 25 • Nevada Wellness Center, A-19-787540-W (8th JD);
- 26 • Serenity Wellness Center, A-19-786962-B (8th JD);
- 27 • High Sierra Holistics, A-19-787726-C (8th JD).

28 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the
Department's motion is denied to the extent that the following matters shall not be
coordinated:

- ACC Enterprises, A-19-786888-J (8th JD);
- D.H. Flamingo, A-19-787035-C (8th JD); and

...

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the
2 Department's request to consolidate any of the above-referenced cases under Eighth
3 Judicial District Court Rule 2.50(a) and/or Nevada Rule of Civil Procedure 42(a)(2) is
4 denied.

5 IT IS SO ORDERED this 2 day of July, 2019.

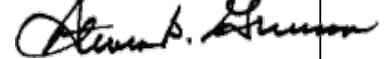
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9 DISTRICT COURT JUDGE

10 Respectfully submitted by:

11 AARON D. FORD
12 Attorney General

13 By: 

14 Ketan D. Bhirud (Bar No. 10515)
15 Chief Litigation Counsel
16 Steve Shevorski (Bar No. 8256)
17 Head of Complex Litigation
18 David J. Pope (Bar No. 8617)
19 Chief Deputy Attorney General
20 Theresa M. Haar (Bar No. 12158)
21 Senior Deputy Attorney General
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1 Will Kemp, Esq. (#1205)
2 Nathanael R. Rulis, Esq. (#11259)
3 n.rulis@kempjones.com
4 KEMP, JONES & COULTHARD, LLP
5 3800 Howard Hughes Parkway, 17th Floor
6 Las Vegas, Nevada 89169
7 Telephone: (702) 385-6000
8 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

13 Plaintiffs,

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 INTEGRAL ASSOCIATES LLC d/b/a
21 ESSENCE CANNABIS DISPENSARIES, a
22 Nevada limited liability company; ESSENCE
23 TROPICANA, LLC, a Nevada limited liability
24 company; ESSENCE HENDERSON, LLC, a
25 Nevada limited liability company; CPC
26 HOLDINGS, LLC d/b/a THRIVE
27 CANNABIS MARKETPLACE, COMMERCE
28 PARK MEDICAL, LLC, a Nevada limited
liability company; and CHEYENNE
MEDICAL, LLC, a Nevada limited liability
company.

Defendants in Intervention.

And All Related Actions

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

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

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

1 Plaintiffs/Counter-Defendants MM Development Company, Inc. (“MM”) and Livfree
2 Wellness, LLC d/b/a The Dispensary (“Livfree”) (collectively, “Plaintiffs” or “Counter-
3 Defendants”) answer the Defendants in Intervention Integral Associates LLC d/b/a Essence
4 Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC, CPCM Holdings,
5 LLC d/b/a Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and Cheyenne
6 Medical, LLC (collectively “Defendants”) Counterclaim (the “Counterclaim”) as follows:
7

8 **PARTIES**

9
10 1. Counter-Defendants admit the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and
11 9 of the Counterclaim.

12 **GENERAL ALLEGATIONS**

13 2. Counter-Defendants admit the allegations in paragraph 10 of the Counterclaim.
14 3. Counter-Defendants admit that the purchase, possession, and consumption of
15 recreational marijuana for adults 21 and older was legalized as alleged in paragraph 11 of the
16 Counterclaim, however, it was legalized with certain limitations.

17 4. As to the allegations in paragraph 12 of the Counterclaim, Nev. Rev. Stat. §
18 453D.200(1)(a)-(b) speaks for itself. Moreover, this paragraph contains legal conclusions or
19 statements regarding the content of the laws or regulations referenced, no response is necessary.
20 To the extent the allegations accurately state the laws or regulations referenced, Plaintiffs admit
21 the allegations.
22

23 5. Counter-Defendants admit the allegations in paragraphs 13 and 14 of the
24 Counterclaim.

25 6. As to the allegations in paragraph 15 of the Counterclaim, Counter-Defendants
26 admit that the Department issued a Notice of Intent to Accept Applications for Marijuana
27
28

1 licenses in August of 2018, the exact date is unclear. As to the remaining allegations in
2 paragraph 15, Counter-Defendants admit.

3 7. As to the allegations in paragraph 16 of the Counterclaim, Counter-Defendants
4 admit that the applications period was from September 7, 2018 to September 20, 2018. As to the
5 remaining allegations, the document referred to speaks for itself.
6

7 8. Counter-Defendants are without sufficient knowledge or information upon which
8 to base a belief as to the truth of the allegations contained in paragraph 17 of the Counterclaim
9 and, therefore, deny them.

10 9. As to the allegations in paragraph 18 of the Counterclaim, to the extent this
11 paragraph contains legal conclusions or statements regarding the content of the laws or
12 regulations referenced, no response is necessary. To the extent the allegations accurately state
13 the laws or regulations referenced, Counter-Defendants admit the allegations.
14

15 10. As to the allegations in paragraph 19 of the Counterclaim, to the extent this
16 paragraph contains legal conclusions or statements regarding the content of the laws or
17 regulations referenced, no response is necessary. To the extent the allegations accurately state
18 the laws or regulations referenced, Counter-Defendants admit the allegations.
19

20 11. Counter-Defendants admit the allegations in paragraphs 20 and 21 of the
21 Counterclaim.

22 12. As to the allegations in paragraph 22 of the Counterclaim, to the extent this
23 paragraph contains legal conclusions or statements regarding the content of the laws or
24 regulations referenced, no response is necessary. To the extent the allegations accurately state
25 the laws or regulations referenced, Counter-Defendants admit the allegations.

26 13. As to the allegations in paragraph 23 of the Counterclaim, to the extent this
27 paragraph contains legal conclusions or statements regarding the content of the laws or
28

1 regulations referenced, no response is necessary. To the extent the allegations accurately state
2 the laws or regulations referenced, Counter-Defendants admit the allegations.

3 14. Counter-Defendants admit the allegations in paragraph 24 of the Counterclaim.

4 15. Counter-Defendants deny the allegations in paragraphs 25, 26, and 27 of the
5 Counterclaim.

6 16. Counter-Defendants are without sufficient knowledge or information upon which
7 to base a belief as to the truth of the allegations contained in paragraph 28 of the Counterclaim
8 and, therefore, deny them.

9 17. As to the allegations in paragraph 29 of the Counterclaim, Counter-Defendants
10 admit that they have sought relief that might limit or preclude Defendants from being able to
11 move forward with obtaining final inspections for marijuana establishments under current
12 regulations. As to the remaining allegations, Counter-Defendants deny.

13 18. Counter-Defendants deny the allegations in paragraph 30 of the Counterclaim.

14 19. As to the allegations in paragraph 31 of the Counterclaim, to the extent this
15 paragraph contains legal conclusions or statements regarding the content of the laws or
16 regulations referenced, no response is necessary. To the extent that a response is necessary,
17 Counter-Defendants are without sufficient knowledge or information upon which to base a
18 belief as to the truth of the allegations contained in paragraph 31 of the Counterclaim and,
19 therefore, deny them.

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23 **FIRST COUNTERCLAIM**

24 **(Declaratory Relief)**

25 20. In response to paragraph 32, Counter-Defendants repeat and reincorporate all
26 previous responses to the Counterclaim.

1 21. In response to paragraph 33, Counter-Defendants admit that the State of Nevada,
2 Department of Taxation's (the "Department") actions and/or inactions have created an actual
3 justiciable controversy ripe for judicial determination between Counter-Defendants and the
4 Department with respect to the construction, interpretation, and implementation of NRS 453D,
5 NAC 453D, and R092-17 as to Counter-Defendants. As to all other allegations in paragraph 33
6 of the Counterclaim, Counter-Defendants are without sufficient knowledge or information upon
7 which to base a belief as to the truth of the allegations and, therefore, deny them.

8
9 22. Counter-Defendants admit the allegations contained in paragraph 34 of the
10 Counterclaim.

11 23. Counter-Defendants deny the allegations in paragraph 35 of the Counterclaim.

12 24. As to the allegations in paragraph 36 of the Counterclaim, Counter-Defendants
13 admit that they did not initially name Defendants as a defendant in this action, however,
14 Counter-Defendants have sought relief that might limit or preclude Defendants from being able
15 to move forward with obtaining final inspections for marijuana establishments under current
16 regulations. As to all other allegations in paragraph 36 of the Counterclaim, Counter-
17 Defendants deny.

18
19 25. Counter-Defendants deny the allegations in paragraphs 37 and 38 of the
20 Counterclaim.

21
22 **AFFIRMATIVE DEFENSES**

23 1. The Counterclaim fails to state a claim against Counter-Defendants upon which
24 relief may be granted.

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

1 3. Counterclaimant failed to mitigate, minimize, or otherwise avoid its losses,
2 damages, or expenses.

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

7
8 5. Counterclaimant's claim is barred by waiver.

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

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

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

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

17
18 10. Counterclaimant's claims fail because of intervening and superseding causes for
19 the injury alleged in the Counterclaim.

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

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Las Vegas, Nevada 89169
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kjc@kempjones.com

PRAYER FOR RELIEF

WHEREFORE, Counter-Defendants pray for judgment as follows:

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

DATED this 12th day of July, 2019.

KEMP, JONES & COULTHARD LLP

/s/ Nathanael Rulis

Will Kemp, Esq. (NV Bar No. 1205)
Nathanael R. Rulis (NV Bar No. 11259)
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Attorneys for Plaintiffs/Counter-Defendants

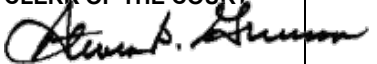
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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of July, 2019, I served a true and correct copy of the foregoing **Plaintiffs'/Counter-Defendants' Answer to Counterclaim** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Alisa Hayslett

An employee of Kemp, Jones & Coulthard, LLP



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Attorneys for Respondent

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, 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, MEDIFARM, IV, 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. XI

**ANSWER TO CORRECTED FIRST
AMENDED 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 as NRS
23 453D.020 speaks for itself.

24 19. Answering Paragraph 19, the Department admits the allegations, except for
25 the emphasis provided, as NRS 453D.200 speaks for itself.

26 20. Answering Paragraph 20, the Department admits the allegations, except for
27 the emphasis provided, as NRS 453D.210 speaks for itself.

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

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

2 || 23. Answering Paragraph 23, the Department admits the allegations.

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

4 24a. Answering Paragraph 24a, the Department denies the allegations.

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

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

7 27. Answering Paragraph 27, the Department admits it was to issue conditional
8 licenses to successful applicants by December 5, 2018. The Department denies the
9 allegations.

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

11 29. Answering Paragraph 29, the Department denies the allegations.

12 30. Answering Paragraph 30, the Department admits the allegations.

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

14 32. Answering Paragraph 32, the Department denies the allegations.

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

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

III.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF **(Violation of Civil Rights)**

(Due Process: Deprivation of Property)

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

23 35. Answering Paragraph 35, the Department states that this incorporating
24 reference does not require a response.

25 36. Answering Paragraph 36, the Department denies the allegations.

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

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

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

1 40. Answering Paragraph 40, the Department denies the allegations.
2 41. Answering Paragraph 41, the Department denies the allegations.
3 42. Answering Paragraph 42, the Department denies the allegations.
4 43. Answering Paragraph 43, the Department denies the allegations.
5 44. Answering Paragraph 44, the Department denies the allegations.
6 45. Answering Paragraph 45, the Department denies the allegations.
7 46. Answering Paragraph 46, the Department denies the allegations.
8 47. Answering Paragraph 47, the Department denies the allegations.
9 48. Answering Paragraph 48, the Department denies the allegations.
10 49. Answering Paragraph 49, the Department denies the allegations.
11 50. Answering Paragraph 50, the Department denies the allegations.
12 51. Answering Paragraph 51, the Department denies the allegations.
13 52. Answering Paragraph 52, the Department denies the allegations.
14 53. Answering Paragraph 53, the Department denies the allegations.
15 54. Answering Paragraph 54, the Department denies the allegations.
16 55. Answering Paragraph 55, the Department denies the allegations.
17 56. Answering Paragraph 56, the Department denies the allegations.
18 57. Answering Paragraph 57, the Department denies the allegations.
19 58. Answering Paragraph 58, the Department denies the allegations.
20 59. Answering Paragraph 59, the Department denies the allegations.
21 60. Answering Paragraph 60, the Department denies the allegations.

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

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

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

26 61. Answering Paragraph 61, the Department states that this incorporating
27 reference does not require a response.

28 62. Answering Paragraph 62, the Department denies the allegations.

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

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

3 65. Answering Paragraph 65, the Department denies the allegations.

4 66. Answering Paragraph 66, the Department denies the allegations.

5 67. Answering Paragraph 67, the Department denies the allegations.

6 68. Answering Paragraph 68, the Department denies the allegations.

7 **THIRD CLAIM FOR RELIEF**

8 **(Violation of Civil Rights)**

9 **(Equal Protection)**

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

11 69. Answering Paragraph 69, the Department states that this incorporating
12 reference does not require a response.

13 70. Answering Paragraph 70, the Department denies the allegations.

14 71. Answering Paragraph 71, the Department denies the allegations.

15 72. Answering Paragraph 72, the Department denies the allegations.

16 73. Answering Paragraph 73, the Department denies the allegations.

17 **FOURTH CLAIM FOR RELIEF**

18 **(Petition for Judicial Review)**

19 74. Answering Paragraph 74, the Department states that this incorporating
20 reference does not require a response.

21 75. Answering Paragraph 75, the Department denies the allegations.

22 76. Answering Paragraph 76, the Department denies the allegations.

23 77. Answering Paragraph 77, the Department admits there is no provision
24 allowing for administrative appeal. The Department denies the remaining allegations.

25 78. Answering Paragraph 78, the Department denies the allegations.

26 79. Answering Paragraph 79, the Department denies the allegations.

27 ...

28 ...

- 1 3. Plaintiffs do not have a fundamental right to a privilege license.
- 2 4. Chapter 453D does not provide for a hearing when a retail marijuana license
3 is not issued.
- 4 5. The Nevada Administrative Procedures Act, NAC Chapter 233B, does not
5 provide for a hearing when a retail marijuana license is not issued.
- 6 6. The Department's actions were neither arbitrary, capricious, nor an abuse of
7 discretion.
- 8 7. The Department's interpretation of the statutes and regulations it is
9 authorized to execute is given great deference.
- 10 8. The Department used an impartial and numerically scored competitive
11 bidding process.
- 12 9. Plaintiffs did not have a statutory entitlement to a license.
- 13 10. The U.S. Constitution does not protect the right to engage in a business that
14 is illegal under federal law.
- 15 11. Plaintiffs do not have standing.
- 16 12. Plaintiffs have failed to exhaust their administrative remedies.
- 17 13. The Complaint fails to present a justiciable controversy.
- 18 14. This Court lacks jurisdiction to hear Plaintiffs' claims.
- 19 15. The Department is immune from liability pursuant to NRS 41.031, *et. seq.*
- 20 16. Plaintiff failed to name the Department properly as required by NRS
21 41.031(2).
- 22 17. Plaintiffs' claims, including the declaratory and/or equitable claims are barred
23 by the doctrines of waiver, ratification, estoppel, unclean hands and other equitable
24 defenses.
- 25 18. Plaintiffs' claims are barred by the applicable statute of limitations and/or the
26 doctrine of laches.
- 27 19. Plaintiffs' claims are barred based on impossibility.
- 28 ...

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

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

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

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

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

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

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

15 27. Plaintiffs have not suffered any damages attributable to the actions of the
16 Department.

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

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

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

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

24 32. The Department, at all relevant times, acted with due care and
25 circumspection in the performance of its duties; exercised the degree of skill and learning
26 ordinarily possessed and exercised by members of its profession in good standing,
27 practicing in similar localities and that at all times, used reasonable care and diligence in
28 . . .

1 the exercise of its skills and the application of its learning, and at all times acted according
2 to its best judgment and met the applicable standard of care.

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

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

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

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

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

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

22 DATED this 15th day of July, 2019.

23 AARON D. FORD
24 Attorney General

25 By: /s/ David J. Pope
26 David J. Pope (Bar No. 8617)
27 Chief Deputy Attorney General
28

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **ANSWER TO CORRECTED FIRST AMENDED COMPLAINT** with the Clerk of the Court by using the electronic filing system on the 15th day of July, 2019.

I certify that the following participants in this case are registered electronic filing systems users and will be served electronically:

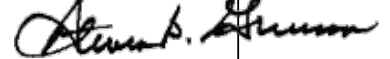
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<i>Marketplace, Commerce Park Medical,</i>	<i>Attorneys for Intervenor</i>
<i>LLC, and Cheyenne Medical, LLC</i>	<i>Clear River, LLC</i>

/s/ Traci Plotnick
Traci Plotnick, an employee of the
Office of the Attorney General



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9 Counsel for Defendant in Intervention, GreenMart of Nevada NLV LLC

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

SERENITY WELLNESS CENTER, LLC, et
al.,

Plaintiffs,

vs.

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

Defendants.

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

Defendant in Intervention.

Case No.: A-19-786962-B

Dept. No.: XI

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

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

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

I.

PARTIES, JURISDICTION, AND VENUE

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

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

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

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

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

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

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

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

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

1 on that basis denies these allegations.

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

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

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

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

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

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

20 **II.**

21 **GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

3 24a.¹ Answering paragraph 24a, Defendant denies these allegations.

4 25. Answering paragraph 25 of the Complaint, no response is required as the
5 allegations therein reference a document that speaks for itself. To the extent a response is
6 required, Defendant denies these allegations.

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

11 27. Answering paragraph 27 of the Complaint, Defendant admits that the
12 Department of Taxation announced it would issue recreational retail store licenses no later
13 than December 5, 2018. Defendant denies these allegations to the extent that it imposes a
14 legal obligation on the Department that is inconsistent or outside of the requirements set forth
15 in Nev. Rev. Stat. § 453D.210.

16 28. Answering paragraph 28 of the Complaint, Defendant admits these
17 allegations.

18 29. Answering paragraph 29 of the Complaint, Defendant is without sufficient
19 knowledge or information as to the truth or falsity of the allegations contained therein, and
20 on that basis denies these allegations.

21 30. Answering paragraph 30 of the Complaint, Defendant is without sufficient
22 knowledge or information as to the truth or falsity of the allegations contained therein, and
23 on that basis denies these allegations.

24 31. Answering paragraph 31 of the Complaint, Defendant is without sufficient
25 knowledge or information as to the truth or falsity of the allegations contained therein, and
26 on that basis denies these allegations.

27 ¹ The Complaint contains two paragraphs numbered 24, the second of which is referred to
28 herein as paragraph 24a.

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

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

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

III.

CLAIMS FOR RELIEF **FIRST CLAIM FOR RELIEF** **(Violation of Civil Rights)**

(Due Process; Deprivation of Property)

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

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

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

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

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

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

1 required, Defendant denies these allegations.

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

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

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

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

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

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

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

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

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

1 49. Answering paragraph 49(a)-(g) of the Complaint, no response is required as
2 the allegations contained therein are not factual in nature and/or contain legal conclusions.
3 To the extent a response is required, Defendant denies these allegations.

4 50. Answering paragraph 50 of the Complaint, no response is required as the
5 allegations contained therein are not factual in nature and/or contain legal conclusions. To
6 the extent a response is required, Defendant denies these allegations.

7 51. Answering paragraph 51 of the Complaint, no response is required as the
8 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
9 required, Defendant denies these allegations.

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

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

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

19 55. Answering paragraph 55 of the Complaint, no response is required as the
20 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
21 required, Defendant denies these allegations.

22 56. Answering paragraph 56 of the Complaint, no response is required as the
23 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
24 required, Defendant denies these allegations.

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

28 ///

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

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

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

10 **SECOND CLAIM FOR RELIEF**
11 **(Violation of Civil Rights)**

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

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**
11 **(Violation of Civil Rights)**

12 **(Equal Protection)**

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

14 69. Answering paragraph 69 of the Complaint, Defendant repeats and realleges
15 its answers to paragraphs 1 through 68 above, and incorporates the same herein by reference
16 as though fully set forth herein.

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

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

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

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

FOURTH CLAIM FOR RELIEF**(Petition for Judicial Review)**

74. Answering paragraph 74 of the Complaint, Defendant repeats and realleges its answers to paragraphs 1 through 73 above, and incorporates the same by reference herein as though fully set forth herein.

75. Answering paragraph 75 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendant denies these allegations.

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

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

78. Answering paragraph 78(a)-(c) of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendant denies these allegations.

79. Answering paragraph 79 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendant denies these allegations.

FIFTH CLAIM FOR RELIEF**(Petition for Writ of Mandamus)**

80. Answering paragraph 80 of the Complaint, Defendant repeats and realleges its answers to paragraphs 1 through 79 above, and incorporates the same herein by reference as though fully set forth herein.

81. Answering paragraph 81 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Defendant denies these allegations.

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

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

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

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

13 **GENERAL DENIAL**

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

16 **ANSWER TO PRAYER FOR RELIEF**

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

20 **AFFIRMATIVE DEFENSES**

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

25 **FIRST AFFIRMATIVE DEFENSE**

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

28 ///

1 **SECOND AFFIRMATIVE DEFENSE**

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

4 **THIRD AFFIRMATIVE DEFENSE**

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

7 **FOURTH AFFIRMATIVE DEFENSE**

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

10 **FIFTH AFFIRMATIVE DEFENSE**

11 Plaintiffs' claims are barred because Plaintiffs have failed to exhaust administrative
12 remedies.

13 **SIXTH AFFIRMATIVE DEFENSE**

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

17 **SEVENTH AFFIRMATIVE DEFENSE**

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

22 **EIGHTH AFFIRMATIVE DEFENSE**

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

25 **NINTH AFFIRMATIVE DEFENSE**

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

28 ///

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs have no constitutional right to obtain privileged licenses.

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment as follows:

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

1 the circumstances.

2
3 DATED this the 17th day of July, 2019.

4
5 /s/ Alina M. Shell

6 MARGARET A. MCLETCHIE, Nevada Bar No. 10931

7 ALINA M. SHELL, Nevada Bar No. 11711

8 MCLETCHIE LAW

9 701 East Bridger Avenue, Suite 520

10 Las Vegas, NV 89101

11 Telephone: (702) 728-5300

12 Email: maggie@nvlitigation.com

13 *Counsel for Defendant in Intervention,*

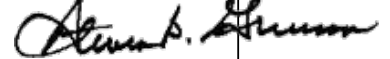
14 *GreenMart of Nevada NLV LLC*

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on this 17th day of July, 2019, pursuant to Administrative
17 Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing GREENMART OF
18 NEVADA NLV LLC'S ANSWER TO PLAINTIFFS' CORRECTED FIRST AMENDED
19 COMPLAINT in *Serenity Wellness Center, LLC, et al. v. State of Nevada, Department of*
20 *Taxation, et al.*, Clark County District Court Case No A-19-786962-B, to be served
21 electronically using the Odyssey File & Serve system, to all parties with an email address
22 on record.

23 /s/ Pharan Burchfield

24 An Employee of McLetchie Law



1 **NEOJ**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLEATCHIE LAW

5 701 East Bridger Avenue, Suite 520

6 Las Vegas, NV 89101

7 Telephone: (702) 728-5300

8 Email: maggie@nvlitigation.com

9 Counsel for Intervenor Defendant, GreenMart of Nevada NLV LLC

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

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

14 Plaintiff,

15 vs.

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

19 Defendants.

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

22 Intervenor Defendant.

Case No.: A-19-787540-W

Dept. No.: XVIII

NOTICE OF ENTRY OF ORDER

23 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:

24 PLEASE TAKE NOTICE that on the 24th day of July, 2019, an Order Granting
25 GreenMart of Nevada NLV LLC's Motion to Intervene was entered in the above-captioned
26 action.

27 ///

28 ///

///

///

///

A copy of the Order Granting GreenMart of Nevada NLV LLC's Motion to Intervene is attached hereto as **Exhibit 1**.

DATED this the 24th day of July, 2019.

/s/ Alina M. Shell

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

CERTIFICATE OF SERVICE

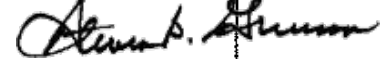
I hereby certify that on this 24th day of July, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER in *Nevada Wellness Center, LLC, et al. v. State of Nevada, Department of Taxation, et al.*, Clark County District Court Case No A- 19-787540-W, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

/s/ Pharan Burchfield

An Employee of McLetchie Law

INDEX OF EXHIBITS TO NOTICE OF ENTRY OF ORDER	
Exhibit	Description
1	July 24, 2019 Order Granting GreenMart of Nevada NLV LLC's Motion to Intervene

EXHIBIT 1



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

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

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

11 Plaintiff,

12 vs.

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

16 Defendants.

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

19 Applicant in Intervention.

Case No.: A-19-787540-W

Dept. No.: XVIII

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

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

22 IT IS HEREBY ORDERED:

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

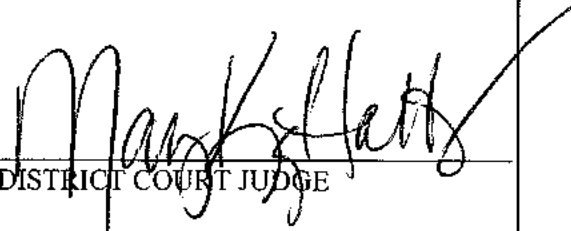
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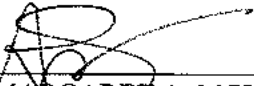
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1 The proposed answer attached to the Motion to Intervene as Exhibit A shall be filed
2 in this case.

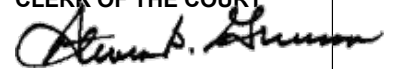
3
4
5 7/24/19
6 Date


DISTRICT COURT JUDGE

7 Respectfully submitted by:

8
9 
10 MARGARET A. MCLETCHIE, Nevada Bar No. 10931
11 ALINA M. SHELL, Nevada Bar No. 11711
12 MCLETCHIE LAW
13 701 East Bridger Avenue, Suite 520
14 Las Vegas, NV 89101
15 Telephone: (702) 728-5300
16 Fax: (702) 425-8220
17 Email: maggie@nvlitigation.com
18 *Counsel for Intervenor Defendant, GreenMart of Nevada NLV LLC*

MCLETCHIE LAW
ATTORNEYS AT LAW
701 EAST BRIDGER AVE., SUITE 520
LAS VEGAS, NV 89101
(702) 728-5300 (T) / (702) 425-8220 (F)
WWW.NVLITIGATION.COM



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

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

22 Plaintiffs,

23 STATE OF NEVADA, DEPARTMENT OF
24 TAXATION,

24 Defendant.

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

27 Defendant in Intervention

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

**CLEAR RIVER, LLC'S
ANSWER TO
PLAINTIFFS'
CORRECTED FIRST
AMENDED COMPLAINT**

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

1 Defendant in Intervention Clear River, LLC ("Clear River"), by and through its counsel,
2 hereby answers to the First Amended Complaint filed by Plaintiffs Serenity Wellness Center,
3 LLC, TGIG, LLC, Nuleaf Incline Dispensary, LLC, Nevada Holistic Medicine, LLC, Tryke
4 Companies So NV, LLC, Tryke Companies Reno, LLC, GBS Nevada Partners, LLC, Fidelis
5 Holdings, LLC, Gravitas Nevada, LLC, Nevada Pure, LLC, Medifarm, LLC, and Medifarm IV,
6 LLC, and (collectively "Plaintiffs"). Clear River states as follows:
7

8 Clear River denies each and every allegation in the complaint except those allegations
9 that are admitted, qualified, or otherwise answered herein.

10 I. PARTIES & JURISDICTION

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

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

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

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

23 5. Answering paragraph 5 of the Complaint, Clear River is without sufficient
24 knowledge or information as to the truth or falsity of the allegations contained therein, and on
25 that basis denies these allegations.
26
27
28

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

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

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

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

13 10. Answering paragraph 10 of the Complaint, Clear River is without sufficient
14 knowledge or information as to the truth or falsity of the allegations contained therein, and on
15 that basis denies these allegations.

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

19 12. Answering paragraph 12 of the Complaint, Clear River is without sufficient
20 knowledge or information as to the truth or falsity of the allegations contained therein, and on
21 that basis denies these allegations.

22 13. Answering paragraph 13 of the Complaint, Clear River admits that the
23 Department of Taxation is an agency of the State of Nevada. Clear River states that the duties of
24 the Department are outlined by applicable law and regulation. Clear River admits the allegations
25
26
27
28

1 in this paragraph only insofar as they accurately reflect these laws and regulations.

2 14. Answering paragraph 14 of the Complaint, Clear River is without sufficient
3 knowledge or information as to the truth or falsity of the allegations contained therein, and on
4 that basis denies these allegations.

5 15. Answering paragraph 15 of the Complaint, no response is required as the
6 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
7 required, Clear River is without sufficient knowledge or information as to the truth or falsity of
8 the allegations contained therein, and on that basis denies these allegations.
9

10 **II. GENERAL ALLEGATIONS**

11 16. Answering paragraph 16 of the Complaint, Clear River states that Assembly Bill
12 422 speaks for itself. No response is required as the allegations in contained therein are
13 Plaintiffs' legal conclusions. To the extent a response is required, Clear River is without
14 sufficient knowledge or information as to the truth or falsity of the allegations contained therein,
15 and on that basis denies these allegations.
16

17 17. Answering paragraph 17 of the Complaint, no response is required as the
18 allegations contained therein are Plaintiffs' legal conclusions and statements regarding the
19 contents of laws or regulations. To the extent a response is required, and the allegations state the
20 laws or regulations referenced therein, Clear River admits these allegations.
21

22 18. Answering paragraph 18 of the Complaint, no response is required as the
23 allegations contained therein are Plaintiffs' legal conclusions and statements regarding the
24 contents of laws or regulations. To the extent a response is required, and the allegations state the
25 laws or regulations referenced therein, Clear River admits these allegations.

26 19. Answering paragraph 19 of the Complaint, no response is required as the
27 allegations contained therein are Plaintiffs' legal conclusions and statements regarding the
28

1 contents of laws or regulations. To the extent a response is required, and the allegations state the
2 laws or regulations referenced therein, Clear River admits these allegations.

3 20. Answering paragraph 20 of the Complaint, no response is required as the
4 allegations contained therein are Plaintiffs' legal conclusions and statements regarding the
5 contents of laws or regulations. To the extent a response is required, and the allegations state the
6 laws or regulations referenced therein, Clear River admits these allegations.
7

8 21. Answering paragraph 21 of the Complaint, Clear River states that the August 16,
9 2018 letter from the Department speaks for itself and no response is required. To the extent a
10 response is required, and the allegations accurately state the contents of the document referenced
11 therein, Clear River admits these allegations.

12 22. Answering paragraph 22 of the Complaint, Clear River admits these allegations.

13 23. Answering paragraph 23 of the Complaint, Clear River admits these allegations.
14

15 24. Answering paragraph 24 and subparagraphs 24(a)-(h) of the Complaint, no
16 response is required as the allegations contained therein are Plaintiffs' legal conclusions and
17 statements regarding the contents of laws or regulations. These laws and regulations speak for
18 themselves. To the extent a response is required, and the allegations state the laws or regulations
19 referenced therein, Clear River admits these allegations.
20

21 24a. Answering duplicate number 24 of the Complaint, no response is required as the
22 allegations therein reference a document that speaks for itself. To the extent a response is
23 required, and the allegations accurately state the contents of the document referenced therein,
24 Clear River admits these allegations.

25 25. Answering paragraph 25 of the Complaint, no response is required as the
26 allegations therein reference a document that speaks for itself. To the extent a response is
27 required, and the allegations accurately state the contents of the document referenced therein,
28

1 Clear River admits these allegations.

2 26. Answering paragraph 26 of the Complaint, no response is required as the
3 allegations contained therein are Plaintiffs' legal conclusions and statements regarding the
4 contents of laws or regulations. To the extent a response is required, and the allegations state the
5 laws or regulations referenced therein, Clear River denies these allegations.
6

7 27. Answering paragraph 27 of the Complaint, Clear River admits that the
8 Department of Taxation announced it would issue recreational retail store licenses no later than
9 December 5, 2018. Clear River denies these allegations to the extent that it imposes a legal
10 obligation on the Department that is inconsistent or outside of the requirements set forth in Nev.
11 Rev. Stat. § 453D.210.

12 28. Answering paragraph 28 of the Complaint, Clear River is without sufficient
13 knowledge or information as to the truth or falsity of the allegations contained therein, and on
14 that basis deny these allegations.
15

16 29. Answering paragraph 29 of the Complaint, Clear River is without sufficient
17 knowledge or information as to the truth or falsity of the allegations contained therein, and on
18 that basis deny these allegations.

19 30. Answering paragraph 30 of the Complaint, Clear River is without sufficient
20 knowledge or information as to the truth or falsity of the allegations contained therein, and on
21 that basis deny these allegations.
22

23 31. Answering paragraph 31 of the Complaint, Clear River is without sufficient
24 knowledge or information as to the truth or falsity of the allegations contained therein, and on
25 that basis deny these allegations.

26 32. Answering paragraph 32 of the Complaint, Clear River is without sufficient
27 knowledge or information as to the truth or falsity of the allegations contained therein, and on
28

1 that basis deny these allegations.

2 33. Answering paragraph 33 of the Complaint, Clear River is without sufficient
3 knowledge or information as to the truth or falsity of the allegations contained therein, and on
4 that basis deny these allegations. Insofar as the allegations pertain to Clear River, Clear River
5 denies these allegations.
6

7 34. Answering paragraph 34 of the Complaint, Clear River is without sufficient
8 knowledge or information as to the truth or falsity of the allegations contained therein, and on
9 that basis deny these allegations. Insofar as the allegations pertain to Clear River, Clear River
10 denies these allegations.
11

12 III.

13 CLAIMS FOR RELIEF 14 FIRST CLAIM FOR RELIEF 15 (Violation of Civil Rights)

(Due Process; Deprivation of Property)

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

16 35. Answering paragraph 35 of the Complaint, Clear River hereby repeats and
17 realleges its answers to paragraph 1 through 34 above and incorporates the same herein by
18 reference as though fully set forth herein.

19 36. Answering paragraph 36 of the Complaint, no response is required as the
20 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
21 required, Clear River denies these allegations.
22

23 37. Answering paragraph 37 of the Complaint, no response is required as the
24 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
25 required, Clear River denies these allegations.

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

1 required, Clear River denies these allegations.

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

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

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

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

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

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

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

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

1 required, Clear River denies these allegations.

2 47. Answering paragraph 47 of the Complaint, no response is required as the
3 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
4 required, Clear River denies these allegations.

5 48. Answering paragraph 48 of the Complaint, no response is required as the
6 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
7 required, Clear River denies these allegations.

8 49. Answering paragraph 49 and subparagraphs 50(a)-(g) of the Complaint, no
9 response is required as the allegations contained therein are not factual in nature and/or contain
10 legal conclusions. To the extent a response is required, Clear River denies these allegations.

11 50. Answering paragraph 50 of the Complaint, no response is required as the
12 allegations contained therein are not factual in nature and/or contain legal conclusions. To the
13 extent a response is required, Clear River denies these allegations.

14 51. Answering paragraph 51 of the Complaint, no response is required as the
15 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
16 required, Clear River denies these allegations.

17 52. Answering paragraph 52 of the Complaint, no response is required as the
18 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
19 required, Clear River denies these allegations.

20 53. Answering paragraph 53 of the Complaint, no response is required as the
21 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
22 required, Clear River denies these allegations.

23 54. Answering paragraph 54 of the Complaint, Clear River is without sufficient
24 knowledge or information as to the truth or falsity of the allegations contained therein, and on
25
26
27
28

1 that basis denies these allegations.

2 55. Answering paragraph 55 of the Complaint, Clear River denies these allegations.

3 56. Answering paragraph 56 of the Complaint, no response is required as the
4 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
5 required, Clear River denies these allegations.
6

7 57. Answering paragraph 57 of the Complaint, no response is required as the
8 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
9 required, Clear River denies these allegations.

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

13 59. Answering paragraph 59 of the Complaint, no response is required as the
14 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
15 required, Clear River denies these allegations.
16

17 60. Answering paragraph 60 of the Complaint, no response is required as the
18 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
19 required, Clear River denies these allegations.
20

21 **SECOND CLAIM FOR RELIEF**

(Violation of Civil Rights)

(Due Process: Deprivation of Liberty)

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

23 61. Answering paragraph 61 of the Complaint, Clear River hereby repeats and
24 realleges its answers to paragraph 1 through 60 above and incorporates the same herein by
25 reference as though fully set forth herein.
26

27 62. Answering paragraph 62 of the Complaint, no response is required as the
28 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is

1 required, Clear River denies these allegations.

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

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

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

11 66. Answering paragraph 66 of the Complaint, no response is required as the
12 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
13 required, Clear River denies these allegations.

14 67. Answering paragraph 67 of the Complaint, no response is required as the
15 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
16 required, Clear River denies these allegations.

17 68. Answering paragraph 68 of the Complaint, no response is required as the
18 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
19 required, Clear River denies these allegations.

20
21
22
23 **THIRD CLAIM FOR RELIEF**

(Violation of Civil Rights)

(Equal Protection)

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

24
25
26 69. Answering paragraph 69 of the Complaint, Clear River hereby repeats and
27 realleges its answers to paragraph 1 through 68 above and incorporates the same herein by
28 reference as though fully set forth herein.

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

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

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

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

FOURTH CLAIM FOR RELIEF

(Petition for Judicial Review)

74. Answering paragraph 74 of the Complaint, Clear River hereby repeats and realleges its answers to paragraph 1 through 73 above and incorporates the same herein by reference as though fully set forth herein.

75. Answering paragraph 75 of the Complaint, no response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is required, Clear River denies these allegations.

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

77. Answering paragraph 77 of the Complaint, no response is required as the

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

3 78. Answering paragraph 78 and subparagraphs 78(a)-(c) of the Complaint, no
4 response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the
5 extent a response is required, Clear River denies these allegations.
6

7 79. Answering paragraph 79 of the Complaint, no response is required as the
8 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
9 required, Clear River denies these allegations.

10 **FIFTH CLAIM FOR RELIEF**

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

12 80. Answering paragraph 80 of the Complaint, Clear River hereby repeats and
13 realleges its answers to paragraph 1 through 79 above and incorporates the same herein by
14 reference as though fully set forth herein.
15

16 81. Answering paragraph 81 of the Complaint, no response is required as the
17 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
18 required, Clear River denies these allegations.

19 82. Answering paragraph 82 and subparagraphs 82(a)-(b) of the Complaint, no
20 response is required as the allegations contained therein are Plaintiffs' legal conclusions. To the
21 extent a response is required, Clear River denies these allegations.
22

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

26 84. Answering paragraph 84 of the Complaint, no response is required as the
27 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
28

1 required, Clear River denies these allegations.

2 85. Answering paragraph 85 of the Complaint, no response is required as the
3 allegations contained therein are Plaintiffs' legal conclusions. To the extent a response is
4 required, Clear River denies these allegations.

5 **GENERAL DENIAL**
6

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

9 **ANSWER TO PRAYER FOR RELIEF**

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

12 **AFFIRMATIVE DEFENSES**

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

17 **FIRST AFFIRMATIVE DEFENSE**
18

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

21 **SECOND AFFIRMATIVE DEFENSE**
22

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

25 **THIRD AFFIRMATIVE DEFENSE**

26 The State of Nevada, Department of Taxation is immune from suit when performing the
27 functions at issue in this case.
28

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

///

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs have no constitutional right to obtain privileged license.

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to seek the relief they request.

///

NINETEENTH AFFIRMATIVE DEFENSE

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

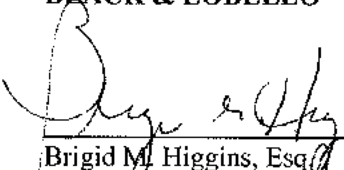
PRAYER FOR RELIEF

WHEREFORE, Clear River prays for judgment as follows:

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

DATED this 25th day of July 2019.

BLACK & LOBELLO



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*Attorneys for Intervenor
Clear River, LLC*

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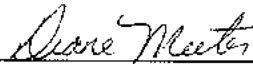
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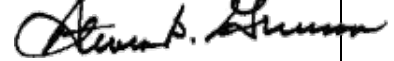
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CERTIFICATE OF SERVICE

I hereby certify that on the 26 day of July 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing **CLEAR RIVER, LLC'S ANSWER TO PLAINTIFFS' CORRECTED FIRST AMENDED COMPLAINT** in *Serenity Wellness Center, LLC, et al v. State of Nevada, Department of Taxation, et al*, Clark County District Court Case No. A-19-786962-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.


An Employee of Black & Lobello



David R. Koch (NV Bar #8830)
Steven B. Scow (NV Bar #9906)
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Attorneys for Defendant-Intervenor
Nevada Organic Remedies, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, et al.,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION;

Defendant

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor.

Case No. A-19-786962-B

Dept. No. 11

**NEVADA ORGANIC REMEDIES,
LLC'S POCKET BRIEF
REGARDING THE
INTERPRETATION OF NRS
453D.200(6) AND THE MANDATE
TO CONDUCT BACKGROUND
CHECKS OF EACH OWNER OF
AN APPLICANT FOR A
RECREATIONAL MARIJUANA
LICENSE**

Defendant-Intervenor Nevada Organic Remedies, LLC ("NOR") hereby files this pocket brief regarding the interpretation of NRS 453d.200(6) and the mandate to conduct background checks of each owner of an applicant for a recreational marijuana license.

INTRODUCTION

One of the primary issues raised in the evidentiary hearing on the motion for a preliminary injunction concerns the Nevada Department of Taxation's (the "Department") decision to apply NAC 453D.255, which limits the requirement for background checks to be performed on proposed owners with an ownership interest of

1 5% or more. As NRS 453D.200(6) states that background checks shall be performed on
2 each prospective owner, officer, and board member of a marijuana establishment license
3 applicant, some have argued during the course of this hearing that NAC 453D.255 is an
4 improper regulation under the statute and would somehow warrant a preliminary
5 injunction.

6 There is no basis for a preliminary injunction relating to this provision for the
7 following reasons: (1) adopting and applying NAC 453D.255 to the requirements of NRS
8 453D.200(6) is a reasonable and correct interpretation of the statute; (2) even if NAC
9 453D.255 were an improper interpretation of NRS 453D.200(6), it would not demonstrate
10 that any Plaintiffs in the coordinated hearing are likely to succeed on the merits, and (3)
11 Plaintiffs are estopped from raising the above issues in this action or have otherwise
12 waived their ability to do so.

13 ARGUMENT

14 **A. The Department's Decision to Conduct Background Checks on Owners of** 15 **Applicants with an Ownership Interest of Five Percent or More is a Proper** 16 **Interpretation of the Requirements of NRS 453D.200(6)**

17 The Department has adopted and applied NAC 453D.255 to NRS 453D.200(6)
18 effectively interpreting the statute, which states that a background check shall be
19 performed on each prospective owner, officer, and board member of an applicant for a
20 marijuana license, to apply only to owners with an ownership interest of 5% or more.
21 The Department's interpretation is a proper interpretation of NRS 453D.200(6), because
22 any interpretation that would require background checks of owners with less than a 5%
23 interest would have been absurd, would have made it impossible for publicly traded
24 companies to comply with the statute, and would have conflicted with other provisions
25 of NRS 453D. Therefore, the Court must give deference to the Department and uphold
26 their interpretation of the statute.