

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

APPELLANT'S APPENDIX – VOLUME 21

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

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47	Preliminary Injunction Hearing, Defendant's Exhibit 5025 Nevada Organic Remedies, LLC's Organizational Chart	n/a	AA 011576 - AA 011590
47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter	n/a	AA 011591, AA 011592
47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter as Contained in the Application	n/a	AA 011593 - AA 011600
47	Preliminary Injunction Hearing, Defendant's Exhibit 5038 Evaluator Notes on Nevada Organic Remedies, LLC's Application	n/a	AA 011601 - AA 011603
47	Preliminary Injunction Hearing, Defendant's Exhibit 5045 Minutes of ther Legislative Commission, Nevada Legislative Counsel Bureau	n/a	AA 011604 - AA 011633
47	Preliminary Injunction Hearing, Defendant's Exhibit 5049 Governor's Task Force for the Regulation and Taxation of Marijuana Act Meeting Minutes	n/a	AA 011634 - AA 011641
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27	Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/30/19	AA 006506 - AA 006508
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27	Serenity Wellness Center, LLC et al.'s Joinder to Nevada Wellness Center, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/7/19	AA 006528 - AA 006538
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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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1 **1. Deference to Agency Interpretation**

2 Under what has become known as *Chevron* deference, agency regulations
3 “promulgated pursuant to an express grant of statutory rulemaking authority” have
4 been given broad deference, and Courts will hold that such regulations are valid “unless
5 they are arbitrary, capricious, or manifestly contrary to the statute.” *Bicycle Trails Council*
6 *of Marin v. Babbitt*, 82 F.3d 1445, 1454 (9th Cir. 1996) (quoting *Chevron, U.S.A., Inc. v. Nat.*
7 *Resources Def. Council, Inc.*, 467 U.S. 837, 844 (1984)). This is especially true when an
8 agency interpretation “represents a reasonable accommodation of conflicting policies
9 that were committed to the agency’s care by the statute” they are tasked with
10 implementing. *Chevron*, 467 U.S. at 845.

11 In Nevada, “[a]n administrative construction which is within the language of a
12 statute should not be lightly disturbed by the courts.” *Oliver v. Spitz*, 348 P.2d 158, 161
13 (Nev. 1960). Nevada courts have further held that an agency’s construction of a statute is
14 of significant “persuasive force” in interpreting a statute. *Alper v. State*, 621 P.2d 492, 495
15 (Nev. 1980); *see also, Nevada Power Co. v. Pub. Serv. Commn. of Nevada*, 711 P.2d 867, 869
16 (Nev. 1986).

17 The role of the Department is no different here – where the statute in question
18 was passed by voter initiative – than it would be if the statute were passed by the
19 legislature. Although the Nevada Constitution places restrictions on *amendments* to voter
20 initiatives, the Constitution does not alter the role of agencies in interpreting statutes.
21 The wording of Section 1, Subsection 3 of Article 19 of the Nevada State Constitution
22 states:

23 If a majority of the voters voting upon the proposal submitted at such
24 election votes approval of such statute . . . [such statute] shall not be
25 amended, annulled, repealed, set aside, suspended or in any way made
26 inoperative except by the direct vote of the people.

27 That provision does not state that a statute passed by a voter initiative should be
28 treated any differently than a statute passed by the legislature. In regards to agency

1 construction, the language of the Nevada Constitution is no more restrictive than limits
2 already present with respect to all statutes. It has long been understood that “[a]
3 regulation may not serve to amend a statute . . . nor add to the statute ‘something which
4 is not there.’” *California Cosmetology Coalition v. Riley*, 110 F.3d 1454, 1460 (9th Cir. 1997)
5 (quoting *United States v. Calamaro*, 354 U.S. 351, 359 (1957)). Agencies have never had the
6 power to amend, annul, repeal, set aside, or suspend a statute. They have only had the
7 power to *interpret* statute, and nothing in the Nevada Constitution or any Nevada case
8 law suggests that an agency should have any less deference in interpreting an initiative
9 than it does any other statute. Therefore, the Court should give the Department its due
10 deference in evaluating its interpretation and construction of NRS 453D.200(6).

11 **2. The Department’s Interpretation of NRS 453D.200(6) is Reasonable**

12 Although the language of NRS 453D.200(6) appears comprehensive on its face, a
13 literal interpretation of the statute would lead to absurd results when applied to many
14 entities – especially publicly traded companies – and there is no indication that this
15 absurd result is what the voters intended in enacting Question 2. Therefore, the
16 interpretation given by the Department, which interprets the statute reasonably and in
17 harmony with surrounding statutes, must be upheld.

18 In Nevada, the “leading rule of statutory construction is to ascertain the intent of
19 the legislature [or in this case the voters] in enacting the statute.” *Dezzani v. Kern &
20 Associates, Ltd.*, 412 P.3d 56, 59 (Nev. 2018) (quoting *McKay v. Bd. of Supervisors of Carson
21 City*, 102 Nev. 644, 650, 730 P.2d 438, 443 (1986)). In ascertaining the legislative intent,
22 courts should “first consider and give effect to the statute’s plain meaning because that
23 is the best indicator of the [voter’s] intent.” *Id.* However, as the U.S. Supreme Court has
24 held, “Looking beyond the naked text for guidance is perfectly proper when the result it
25 apparently decrees is difficult to fathom or where it seems inconsistent with [the voters’]
26 intention, since the plain-meaning rule is ‘rather an axiom of experience than a rule of
27 law, and does not preclude consideration of persuasive evidence if it exists.’” *Pub.*

1 *Citizen v. U.S. Dept. of J.*, 491 U.S. 440, 454–55 (1989) (quoting *Boston Sand & Gravel Co. v.*
2 *United States*, 278 U.S. 41, 48 (1928)).

3 The *Pub. Citizen* Court was explicit in stating that statutes should not be
4 interpreted literally when they would “compel an odd result.” *Id.* The Court quotes
5 Judge Learned Hand as stating:

6 [E]ven though . . . ‘the words used, even in their literal sense, are the
7 primary, and ordinarily the most reliable, source of interpreting the
8 meaning of any writing, . . . it is one of the surest indexes of a mature and
9 developed jurisprudence not to make a fortress out of the dictionary; but to
10 remember that statutes always have some purpose or object to accomplish,
11 whose sympathetic and imaginative discovery is the surest guide to their
12 meaning.’

13 *Id.* (quoting *Cabell v. Markham*, 148 F.2d 737, 739 (2d Cir. 1945). Even the Supreme Court’s
14 most famous textualist, Justice Scalia, agreed that it may be necessary for courts to give
15 “unusual” meaning to words in statutes to avoid absurd results. *U.S. v. X-Citement Video,*
16 *Inc.*, 513 U.S. 64, 82 (1994) (Scalia, J., dissenting).

17 The Nevada Supreme Court has, on a multitude of occasions, agreed with the
18 U.S. Supreme Court in holding that courts should not look beyond the plain meaning of
19 a statute unless it is clear that the plain meaning was not intended. *See, e.g. Seput v.*
20 *Lacayo*, 134 P.3d 733, 735 (Nev. 2006) (“When statutory language is clear and
21 unambiguous, we do not look beyond its plain meaning, and we give effect to its
22 apparent intent from the words used, **unless that meaning was clearly not intended.**”)
23 (emphasis added); *State v. Quinn*, 30 P.3d 1117, 1120 (Nev. 2001) (“If the words of the
24 statute have a definite and ordinary meaning, this court will not look beyond the plain
25 language of the statute, **unless it is clear that this meaning was not intended.**”)
26 (emphasis added); *State v. State of Nevada Employees Ass’n, Inc.*, 720 P.2d 697, 699 (Nev.
27 1986) (“When a statute uses words which have a definite and plain meaning, the words
28

1 will retain that meaning **unless it clearly appears that such meaning was not so**
2 **intended.**") (emphasis added).

3 The Nevada Supreme Court has specifically stated that the literal interpretation
4 of a statute may not be intended when such an interpretation (1) would lead to
5 unreasonable or absurd results, (2) does not harmonize with the broader statutory
6 scheme, or (3) goes against public policy and the general spirit of the law.¹ Because a
7 literal interpretation of NRS 453D.200(6) would lead to all of the above results, the Court
8 should reject a literal interpretation and uphold the Department's interpretation.

9 i. **A Literal Interpretation of NRS 453D.200(6) Leads to Absurd and**
10 **Unreasonable Results**

11 Perhaps no canon of statutory construction has been more prolifically advocated
12 by Nevada courts than the rule that statutes should be interpreted to avoid unreasonable
13 or absurd results **even if it means refusing to uphold the plain language of the statute.**
14 *See, Newell v. State*, 364 P.3d 602, 603–04 (Nev. 2015) (quoting *State v. Friend*, 118 Nev.
15 115, 120 (2002) ("[W]hen the 'literal, plain meaning interpretation' leads to an
16 unreasonable or absurd result, this court may look to other sources for the statute's
17 meaning.")); In fact, at times the Court has gone so far as to state that statutory
18

19
20 ¹ *See, e.g. Dezzani*, 412 P.3d at 59 (quoting *Torrealba v. Kesmetis*, 124 Nev. 95, 101, 178 P.3d
21 716, 721 (2008) ("[I]t is the duty of this court, when possible, to interpret provisions within a
22 common statutory scheme harmoniously with one another in accordance with the general
23 purpose of those statutes and to avoid unreasonable or absurd results, thereby giving effect to
the Legislature's intent."); *In re CityCenter Constr. & Lien Master Litig.*, 310 P.3d 574, 580 (Nev.
2013) (citations omitted) ("We interpret statutes to conform[] to reason and public policy. In so
doing, we avoid interpretations that lead to absurd results. Whenever possible, [we] will
interpret a rule or statute in harmony with other rules or statutes."))

24 ² *See, also, Dezzani*, 412 P.3d at 59; *In re CityCenter*, 310 P.3d at 580; *Rural Tel. Co. v. Pub.*
25 *Utilities Commn.*, 398 P.3d 909, 911 (Nev. 2017) (quoting *Orion Portfolio Servs. 2, LLC v. Cty. of*
26 *Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. 397 (2010). ("[W]e must 'not render any part of the
27 statute meaningless,' or read it **in a way that 'produce[s] absurd or unreasonable results.'**");
28 *Pub. Employees' Ret. System of Nevada v. Gitter*, 393 P.3d 673, 679 (Nev. 2017) (" [A] statute "should
not be read to produce absurd or unreasonable results."); *State v. Harris*, 355 P.3d 791, 792 (Nev.
2015); *Great Basin Water Network v. State Eng'r*, 234 P.3d 912, 918 (Nev. 2010); *Fierle v. Perez*, 219
P.3d 906, 910–11 (Nev. 2009); *Eller Media Co. v. City of Reno*, 59 P.3d 437, 439 (Nev. 2002); *Hunt v.*
Warden, Nevada State Prison, 903 P.2d 826, 827 (Nev. 1995).

1 construction should “**always** avoid absurd result[s].” *State v. White*, 330 P.3d 482, 484
2 (Nev. 2014) (emphasis added).

3 Interpreting statutes to avoid absurd results even if the interpretation runs
4 contrary to the plain meaning of the statute is commonly known as the soft plain
5 meaning rule and is known in the United Kingdom as “the golden rule.” Courts should
6 avoid absurd interpretations because, as Justice Stevens once stated, “If [the legislature
7 or voters] had intended such an irrational result, surely it would have expressed it in
8 straight forward English.” *FMC Corp. v. Holliday*, 498 U.S. 52, 66 (1990) (J. Stevens,
9 dissenting). However, the absurdity canon should not be used as a license to disregard
10 unpopular constructions. It should only be used where it is “impossible” that the
11 enactors of the legislation intended the literal result and “where the alleged absurdity is
12 so clear as to be obvious to most anyone.” *In re Hokulani Square, Inc.*, 776 F.3d 1083, 1088
13 (9th Cir. 2015) (quoting *Public Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 471, 109 S.Ct.
14 2558, 105 L.Ed.2d 377 (1989) (Kennedy, J., concurring)).

15 In this case, a literal interpretation of NRS 453D.200(6) as applied to publicly
16 traded companies would be absurd to anyone. The statute states that a background
17 check shall be performed on each “*prospective* owner, officer, and board member” of an
18 applicant for a recreational license. Nobody could disagree that it was impossible that
19 the voters intended the Department to conduct a background check on each *prospective*
20 owner of a publicly traded company. Since prospective is defined as “relating to or
21 effective in the future,”³ and anybody could purchase stock in a publicly traded
22 company, read literally, NRS 453D.200(6) would require the Department to conduct a
23 background check on *everybody*. Such a result is so absurd that nobody would bat an eye
24 on limiting the definition of prospective to avoid that result.

25 Even if the word prospective were removed entirely, however, the statute read
26 literally would lead to obviously absurd results. As we have heard through the

27 ³ See, <https://www.merriam-webster.com/dictionary/prospective>
28

1 testimony of many witnesses (both from the defense and from Plaintiffs), it is **literally**
2 **impossible** to conduct a background check on each actual owner of a publicly traded
3 company as stocks trade hands by the minute without any way of systematically
4 reviewing and conducting background checks of each owner. Nobody would assume
5 the voters intended the mandate to conduct a background check on each owner would
6 require the Department to conduct a background check each time a stock traded hands
7 as such a result would be absurd and impossible. Therefore, no one would have issue
8 with a nonliteral interpretation of "each owner."

9 The alternative Plaintiffs appear to suggest is that a background check of each
10 owner of a publicly traded company should be conducted at single points in time,
11 maybe once a year or once a month. But this interpretation is already a departure from
12 the plain meaning of the statute and is already an admission that a literal reading of the
13 statute is absurd. By admitting that a literal reading of the statute is absurd, Plaintiffs
14 and the Court must then give due deference to the Department's non-literal
15 interpretation even if the Department's interpretation is not as broad as Plaintiffs may
16 like.

17 Moreover, even Plaintiffs' nonliteral but broad interpretation of the statute is
18 absurd. The voters could not have intended a background check of each owner of a
19 publicly traded company be completed even if the Department were to take a snapshot
20 of ownership at an arbitrary point in time. It would have been prohibitively costly and
21 time consuming to even obtain the names of each owner of a publicly traded company
22 let alone conduct a background check of each owner. We have heard testimony from
23 several sources that stock is often owned in names of brokers or "street names" and
24 getting a hold of all the names of stock owners is quite literally impossible. Further, at
25 least one applicant, a losing applicant, had an estimated 9,000 stockholders at the time of
26 the application. Combined with the testimony from Steve Gilbert that background
27 checks cost \$30.00 to \$40.00 each, conducting background checks on each of those
28 owners, even if they could have been identified, would have cost \$270,000.00 to

1 \$360,000.00 all on an applicant that was not even successful and all within the 90-day
2 window to evaluate licenses. Not to mention, obtaining fingerprints of each of the 9,000
3 owners would have been a logistical nightmare.

4 Since requiring background checks on all stockholders of a publicly traded
5 company is absurd and unworkable, the Department's interpretation of statute to
6 require background checks of ownership of 5% or more is reasonable. It is not even an
7 arbitrary number. It is the same ownership threshold used in NRS 453A, which governs
8 medical marijuana licensing. This same threshold applies in securities regulation, as the
9 SEC requires shareholders who acquire more than 5% of the outstanding shares of a
10 class of stock in a company to file owner reports, which "provid[e] investors and the
11 company with information about accumulations of securities that may potentially
12 change or influence company management and policies."⁴ That threshold is one that
13 affects stockholders who become easy to identify and may begin to have an impact on
14 company policy, and the Department's 5% threshold here falls in line with the SEC
15 requirements. The Department's interpretation is not arbitrary but is a reasonable
16 interpretation of statute that requires background checks on all owners with any
17 influence with the applicants and complies with the intentions of the voters passing NRS
18 453D.200(6).

19 **ii. A Literal Interpretation of NRS 453D.200(6) is Not in Harmony**
20 **with Other Rules and Statutes**

21 When the legislature (and presumably voters) enact a statute, courts "presume[]
22 that [they] do[] so 'with full knowledge of existing statutes relating to the same subject.'"
23 *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 995 P.2d 482, 486 (Nev. 2000) (quoting
24 *City of Boulder v. General Sales Drivers*, 101 Nev. 117, 118–19 (1985)). Therefore, courts will
25 interpret statutes and regulations harmoniously with one another. *See, State, Div. of Ins.*
26 *v. State Farm Mut. Auto. Ins. Co.*, 995 P.2d 482, 486 (Nev. 2000) ("Whenever possible, this

27 _____
28 ⁴ <https://www.sec.gov/smallbusiness/goingpublic/officersanddirectors>

1 court will interpret a rule or statute in harmony with other rules or statutes.”). Courts
2 will do so even if it means departing from the plain language of a statute. *See, Seput v.*
3 *Lacayo*, 134 P.3d 733, 735 (Nev. 2006). In fact, “[w]hen two statutes are clear and
4 unambiguous but conflict with each other when applied to a specific factual situation, **an**
5 **ambiguity is created**” and the interpreter of the statute must reconcile the two statutes.
6 *Szydel v. Markman*, 121 Nev. 453, 457 (2005) (emphasis added). This canon of
7 construction is also well founded in Nevada and stated in almost all of the cases cited on
8 the absurdity canon.

9 Here, the requirements of NRS 453D.200(1) and NRS 453D.200(6) read literally
10 would create a Catch-22 situation for the Department. Section 1 requires the Department
11 to “adopt all regulations necessary or convenient to carry out the provisions of this
12 chapter” that “must not prohibit the operation of marijuana establishments, either
13 expressly or through regulations that make their operation **unreasonably impracticable**.” The
14 literal reading of Section 6 then requires the Department to conduct background checks
15 that make it unreasonably impracticable for publicly traded companies to even apply for
16 a license. The term, “unreasonably impracticable” is defined as regulations that “require
17 such a high investment of risk, money, time, or any other resource or asset that the
18 operation of a marijuana establishment is not worthy of being carried out in practice by
19 a reasonably prudent businessperson.” NRS 453D.030(19). As described above, if
20 publicly traded companies had to disclose all stockholders even those holding stocks in
21 street names and then pay hundreds of thousands of dollars to conduct background
22 checks on those stockholders as part of the licensing process, then applying for a license
23 would be impossible and overly costly, making the process unreasonably impracticable.

24 Since the literal reading of multiple provisions of NRS 453D.200 cannot be read in
25 harmony, the statute creates an ambiguity, and the Department is tasked with
26 reconciling that ambiguity. The Department does so through defining “owner” as an
27 owner having an interest of 5% or more. The Department’s decision not only reconciles
28 the various provisions of NRS 453D.200, but it also brings the recreational marijuana

1 requirements into harmony with those of NRS 453A and the medical marijuana
2 registration requirements, requirements that the voters were assumed to have
3 knowledge of when enacting NRS 453D.

4 **iii. A Literal Interpretation of NRS 453D.200(6) is Against Public**
5 **Policy and the Spirit of the Law**

6 Similar to the canon that states that a statute's interpretation should harmonize
7 with other statutes, Nevada recognizes that a statute should be interpreted in light of the
8 spirit of the law and public policy even if such an interpretation violates the plain
9 language of the statute. Nevada courts have held that if "a statute's language is clear and
10 unambiguous, it must be given its plain meaning, **unless doing so violates the spirit of**
11 **the act."** *Griffith v. Gonzales-Alpizar*, 373 P.3d 86, 87–88 (Nev. 2016) (quoting *D.R. Horton,*
12 *Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007)) (emphasis
13 added); *see also City Plan Dev., Inc. v. Off. of Lab. Com'r*, 117 P.3d 182, 192 (Nev. 2005)
14 ("When interpreting a statute, this court will look to the policy and spirit of the law.");
15 *Desert Valley Water Co. v. State, Engineer*, 766 P.2d 886, 886–87 (Nev. 1988) ("The words
16 of the statute should be construed in light of the policy and spirit of the law, and the
17 interpretation made should avoid absurd results."); *Alper v. State*, 621 P.2d 492, 494 (Nev.
18 1980) ("Statutes should be interpreted, so far as practicable, to carry out the purposes of
19 the legislation and to effectuate the benefits intended to be obtained.").

20 In this case, the spirit of the law created by NRS 453D attempts to balance the
21 goals of: (1) making recreational marijuana available to the public and regulated similar
22 to other legal businesses, especially those involved in the sale of alcohol and (2)
23 protecting the public's health and safety. *See*, NRS 453D.020. Clearly, the requirement to
24 conduct background checks on owners of an applicant for a marijuana license is meant
25 to forward the second goal by ensuring no owners hold licenses that have certain
26 felonies or are otherwise prohibited from obtaining licenses. However, forcing the
27 Department to conduct background checks on each owner of a publicly traded company
28

1 no matter how small of a share in the company they own would not forward the second
2 goal of the statute but would actually interfere with both the first and second goal.

3 Owners with a less than 5% interest in a company are not making decisions on
4 behalf of the company and do not have the ability to control the day-to-day business of
5 the company. In effect, they have extremely minimal to no impact on public health and
6 safety, and a background check on those owners is of virtually no practical value. On the
7 other hand, requiring background checks on those individuals would chill publicly
8 traded companies from applying for licenses. As a result, some of the best qualified
9 candidates who would best protect the public interest may not even apply for a license,
10 and if they did, they could not practically obtain one. Moreover, Nevada residents and
11 guests would be unable to obtain recreational marijuana from those companies with
12 assets sufficient to provide quality product at competitive prices. Marijuana would not
13 be regulated similar to other legal businesses and businesses that fit into an entire
14 category of corporate structure would be excluded from the market. Such a reading goes
15 against the clear spirit of the statute and public policy. Therefore, the Department and
16 the Court cannot read NRS 453D.200(6) literally, as it violates the spirit of the statute
17 and, therefore, would violate the intentions of the voters who passed the statute.

18 **B. If the Department Violated NRS 453D.200(6) by Failing to Conduct**

19 **Background Checks on Each Prospective Owner, a Preliminary Injunction Is**
20 **Still Improper**

21 Even if the Court finds that the Department did violate the statute by failing to
22 conduct the background checks on owners of applicants with less than a 5% interest in
23 the company, that finding still would not justify a preliminary injunction in this matter.
24 The primary question at issue in the preliminary injunction hearing is whether the
25 plaintiffs are likely to succeed on the merits of their claims, and their claims revolve
26 around an overall theory that they were unjustly deprived of a license by not scoring
27 high enough in the application process. Whether or not the Department conducted
28 proper background checks is, at best, incidental to whether or not Plaintiffs are likely to

1 succeed on the merits of their claims, and the Court should not grant a preliminary
2 injunction on that basis.

3 First, the Department has not reached a deadline to conduct background checks
4 and **can still conduct the background checks on the winning applicants** without
5 violating statute. NRS 453D.200(6) only dictates that background checks shall be
6 performed on license applicants; **it does not state *when* the background checks need to**
7 **be performed.** Under NAC 453D.282, none of the applicants who were successful in the
8 application process have a permanent license; they only have conditional licenses until
9 they meet certain criteria in the future pertaining to the physical location of the
10 dispensary. There is nothing in the statute that prevents the Department from
11 conducting background checks on winning applicants during this time. In fact, it would
12 be much more efficient to conduct background checks during the conditional license
13 phase on successful applicants as the Department would not waste time and resources
14 on conducting background checks on potentially thousands of owners who had no shot
15 of obtaining a license in the first place.

16 Second, Plaintiffs have provided no evidence to suggest conducting background
17 checks would change the results of the application process. NRS 453D.200(6) only
18 mandates that the Department conducts background checks, it does not state what the
19 Department must do with the background checks and does not state that the
20 background checks must impact the application process in any way. Presumably, the
21 background checks are designed to sift out owners, officers, and board members with
22 excluded felonies or other qualities that exclude them from having an interest in a
23 marijuana establishment. But even if the background checks rooted out minority owners
24 of winning applicants that should be excluded from ownership, such a finding would
25 not prevent the applicant from obtaining a license. NAC 453D.272(6) states that if a
26 background check reveals that an applicant has an unqualified owner, officer, or board
27 member, **the Department must give the applicant an opportunity to remove the**
28 **unqualified person and amend their application.** Therefore, if the Department had

1 conducted background checks on owners winning applicants with an ownership interest
2 of less than 5 percent and discovered that one of those owners was not qualified, then
3 the applicant would simply need to remove that owner. The applicant's score and
4 license would not be affected. Such a finding would not present an opportunity for the
5 Plaintiffs to grab a license, and the failure to conduct a background check would not
6 make the Plaintiffs likely to succeed on the merits.

7 The Court should keep in mind that a majority of the Plaintiffs were not even
8 close to obtaining a license in this case. Most of the Plaintiffs were ranked far down the
9 list and have no chance of obtaining a license. The two entities that were even close to
10 succeeding in the application process, MM Development and Livfree, are public entities
11 themselves and have the same theoretical background check issue as successful
12 applicants who are publicly. The background check argument is a red-herring, and it is
13 inconsequential to the present litigation, **which is why it was not mentioned in any of**
14 **the Plaintiffs' complaints** and was only mentioned in passing in the introduction of the
15 motion for preliminary injunction. Plaintiffs are now grasping onto the argument in
16 hopes of burning the licensing process to the ground, even though the background
17 check issue is ancillary to the scoring process. The Court should not entertain the
18 argument and should not grant the motion for preliminary injunction based on the
19 background check issue.

20 **C. Plaintiffs Are Precluded from Challenging the Application of NAC**
21 **453D.255 by the Doctrines of Estoppel, Waiver, and Laches**

22 Finally, the fact that Plaintiffs are only now challenging the Department's
23 decision to conduct background checks only on owners of applicants with a 5 percent
24 interest or more under NAC 453D.255 precludes them from making such a challenge
25 under several equitable doctrines, and, on that basis alone, the Court should deny their
26 challenge.

27 As NOR explained in its opposition to the motion for preliminary injunction, the
28 doctrine of estoppel "functions to prevent the assertion of legal rights that in equity and

1 good conscience should not be available due to a party's conduct." *In re Harrison Living*
2 *Tr.*, 112 P.3d 1058, 1061–62 (Nev. 2005). The doctrine is "grounded in principles of
3 fairness," *Hermanson v. Hermanson*, 887 P.2d 1241, 1245 (Nev. 1994), and is "applied to
4 prevent manifest injustice and hardship to an injured party." *Topaz Mut. Co., Inc. v.*
5 *Marsh*, 839 P.2d 606, 611 (Nev. 1992).

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

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

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

1 Here, the 5 percent rule found in NAC 453D.255 was on the books well before any
2 applications in the licensing process were due. Recently, Jorge Pupo testified that he was
3 unaware of anyone at any point prior to this litigation ever complained that
4 NAC453D.255 violated the mandate found in NRS 453D.200(6). Plaintiffs each submitted
5 applications and went through the entire grading process without even so much as
6 hinting that they believed NAC453D.255 was invalid or inappropriate. Many of the
7 Plaintiffs, including MM Development, Livfree, and Serenity Wellness actually
8 benefitted from the 5 percent rule as they were not required to provide information on
9 minority shareholders. In fact, **they are presently benefitting from the 5 percent rule as**
10 **they are currently operating dispensaries without having background checks on**
11 **minority shareholders.**

12 Plaintiffs' silence on the issue until after they filed their motion for preliminary
13 injunction not only proves that their concern about background checks is insincere, it
14 precludes them from now bringing the issue before the Court. Under the doctrines
15 described above, Plaintiff cannot sit on their rights, they cannot use their challenges as a
16 weapon that they are now pulling out only because they lost in the licensing process.
17 NOR submitted its application in this case under the belief that no other party was going
18 to challenge the background check rule. NOR provided all the information requested by
19 the Department without any warning that one day Plaintiffs would challenge the
20 regulations. It would have acted differently had it known about Plaintiffs' challenge.
21 Now, it, and all other license winners will be unfairly prejudiced if this preliminary
22 injunction is granted on the issue of background checks. For those reasons, the Court
23 should deny the motion insofar as it relies on a challenge to the 5 percent rule.

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CONCLUSION

For the reasons set forth above, Plaintiffs are not likely to succeed under a theory that the Department violated NRS 453D.200(6) by conducting background checks only on applicant owners with a 5 percent interest or more, and the Court should deny the motion for preliminary injunction on that issue.

KOCH & SCOW, LLC

By: /s/ David R. Koch
David R. Koch
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Nevada Organic Remedies LLC

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on August 14, 2019, I caused the foregoing document entitled: **NEVADA ORGANIC REMEDIES 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** to be served as follows:

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

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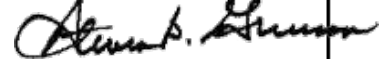
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17 Executed on August 14, 2019 at Henderson, Nevada.

18 /s/ Andrea Eshenbaugh
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendants.

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

**THE ESSENCE ENTITIES' BENCH
BRIEF (CORRECTED)**

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1 INTEGRAL ASSOCIATES LLC d/b/a
2 ESSENCE CANNABIS DISPENSARIES, a
3 Nevada limited liability company; ESSENCE
4 TROPICANA, LLC, a Nevada limited liability
5 company; ESSENCE HENDERSON, LLC, a
6 Nevada limited liability company; CPCM
HOLDINGS, LLC d/b/a THRIVE CANNABIS
MEDICAL, LLC, a Nevada limited liability
company; and CHEYENNE MEDICAL, LLC,
a Nevada limited liability company,

Defendants in Intervention.

8 I. INTRODUCTION

9 Plaintiffs request a preliminary injunction to preclude the Nevada Department of Taxation
10 (the "State") from taking further action on the provisional recreational marijuana licenses it issued
11 in December, 2018, including the licenses it issued to Integral Associates LLC d/b/a Essence
12 Cannabis Dispensaries, Essence Tropicana, LLC, and Essence Henderson, LLC (together
13 "Essence"). There are several problems with the relief Plaintiffs seek, not the least of which is
14 that they lack standing for such an injunction against the State.

15 Plaintiffs have shown no "injury in fact" caused by the State's alleged errors. Plaintiffs
16 have not shown that the supposed errors about which they complain resulted in their applications
17 being unsuccessful, or that they resulted in anyone else's applications being successful,
18 particularly those of Essence. Nor would the purported preliminary injunction that Plaintiffs seek
19 redress their supposed injury. Because Plaintiffs have failed to prove an injury that will be
20 redressed by a preliminary injunction, they lack the required standing for such relief.

21 Besides that, the matters on which Plaintiffs claim error by the State: (1) are neither errors
22 when recognizing the State's broad discretion to implement and reconcile the competing interests
23 of a new law, nor (2) are these procedures for the protection of Plaintiffs' business interests. The
24 State's implementation of the ballot initiative is entitled to great deference and must be construed
25 to advance the will of the people. The law does not elevate the interests of sore-losing
26 competitors over the interests of the public. Plaintiffs are only complaining now because they did
27 not receive licenses, but they did not protest the regulations before the results were announced.

28

1 Plaintiffs cannot come to this Court after the fact to challenge a process in which they voluntarily
2 participated. Plaintiffs' motion fails.

3 **II. ARGUMENT**

4 **A. Plaintiffs Lack Standing for the Preliminary Injunction.**

5 The first problem with Plaintiffs' request for a preliminary injunction is that none of them
6 have the prerequisite standing to enjoin the operation of Essence's licenses. Unless the
7 Legislature has provided a statutory right, Nevada courts require "an actual justiciable
8 controversy as a predicate to judicial relief." *Stockmeier v. Nevada Dep't of Corr. Psychological*
9 *Review Panel*, 122 Nev. 385, 393, 135 P.3d 220, 225 (2006) (quotation marks omitted).¹ Under
10 either the federal or state constitutions, standing is a prerequisite to "an actual justiciable
11 controversy." See *id.* at 392, 135 P.3d at 225. The doctrine of standing is part of the
12 constitutional "case or controversy" or, simply, the "case" requirement. *Id.* at 392-93, 135 P.3d
13 at 225; Nev. Const. art. 6, §§ 4, 6. There is also a "subconstitutional 'prudential' element."
14 *In re Amerco Derivative Litig.*, 127 Nev. 196, 213, 252 P.3d 681, 694 (2011). Standing is central
15 to the separation of powers. Nev. Const. art. 3, § 1. It "is founded in concern about the proper –
16 and properly limited – role of the courts in a democratic society." *Warth v. Seldin*, 422 U.S. 490,
17 498 (1975).

18 To possess standing, a plaintiff must establish three things: (1) injury in fact;
19 (2) causation; and (3) redressability. *Stockmeier*, 122 Nev. at 392, 135 P.3d at 225. "[T]he
20 'irreducible constitutional minimum' of standing requires that a plaintiff has suffered an 'injury in
21 fact' that is not merely conjectural or hypothetical, that there be a causal connection between the
22 injury and the conduct complained of, and that it must be likely, as opposed to merely speculative,
23 that the injury will be redressed by a favorable [court] decision." *Miller v. Ignacio*, 112 Nev. 930,
24 936 n.4, 921 P.2d 882, 885 n.4 (1996) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555,
25 560-61 (1992)).

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28 ¹ Abrogated on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224,
181 P.3d 670 (2008).

1 An "injury in fact" is one involving a "'an invasion of a judicially cognizable interest' that
2 is 'concrete and particularized'" and "'actual or imminent.'" *Grasso v. Umpqua Bank*, 399 P.3d
3 332, 2017 WL 2815091, at *1 (Nev. 2017) (unpublished disposition) (quoting *Bennett v. Spear*,
4 520 U.S. 154, 167 (1997)). "[A] party must show a personal injury and not merely a general
5 interest that is common to all members of the public." *Schwartz v. Lopez*, 132 Nev. Adv. Op. 73,
6 382 P.3d 886, 894 (2016). The plaintiff must have a "special or peculiar injury different from that
7 sustained by the general public in order to maintain a complaint for injunctive relief." *Id.*
8 (parenthetically describing *Blanding v. City of Las Vegas*, 52 Nev. 52, 69, 280 P. 644, 648
9 (1929)).

10 Here, none of the Plaintiffs have shown an "injury in fact" for standing to enjoin a State
11 licensing process. Plaintiffs lack a "judicially cognizable interest" that has been invaded here.
12 Plaintiffs have not won a license and do not have an entitlement to a license. At best, they
13 speculate that if the rules had been different "maybe" they would have received a license rather
14 than some of those who did.² Their purported "injury" is not concrete, particularized, actual, or
15 imminent. There is no evidence that Plaintiffs would have been awarded a license absent the
16 State's alleged errors, nor is there any evidence that Plaintiffs *will be* awarded a license at any
17 future time under the supposed application process that they advance. The record is devoid of any
18 proof that any of these Plaintiffs would *ever* receive a license, regardless of whatever process the
19 State were to employ. Indeed, Plaintiffs have acknowledged that there are not enough licenses for
20 all of them to win even if the State conducted a re-do.

21 Plaintiffs' alleged injuries hinge on the speculation that they *might* obtain a license under a
22 different application system, but they offer nothing more than this self-serving speculation. But
23 the courts have long recognized that such speculative future outcomes – those dependent upon
24 future decisions by third parties – are too conjectural or hypothetical to establish standing. *Little*
25 *v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009) (citing *Simon v. E. Ky. Welfare Rights Org.*,
26 426 U.S. 26, 41 (1976)). Simply put, applicants who hypothesize that they maybe could have

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28 ² Notably, Plaintiffs cannot even pretend that they would have beaten out Essence, with its well-established track record.

1 won a license under a different process lack standing to enjoin the operations of licenses issued to
2 others.

3 And, Plaintiffs that are currently in the cannabis business cannot sidestep this
4 constitutional flaw by referencing their existing licenses and claiming that new competition will
5 diminish their existing business. First of all, Plaintiffs' arguments about "market share" are little
6 more than conclusory lawyer arguments, unsubstantiated by actual evidence of market share or
7 actual evidence of any hypothesized diminution. But even if there were such evidence, the
8 theory fails as a matter of law. Governmental licensing systems are not designed to insulate
9 business from competition, and competitors lack standing to procure an injunction over alleged
10 violations in the granting of licenses to competitors. See *Nat'l Wine & Spirits Corp. v. Indiana*
11 *Alcohol & Tobacco Comm'n*, 945 N.E.2d 182, 187 (Ind. Ct. App. 2011) (affirming dismissal for
12 lack of standing because a liquor licensee has no property interest in the certificate of compliance
13 issued to its competitors); *S. Wine & Spirits of Am., Inc. v. Div. of Alcohol & Tobacco Control*,
14 No. 11-CV-04175-NKL, 2012 WL 123051, at *3 (W.D. Mo. Jan. 17, 2012) ("economic interest in
15 preventing loss of . . . market share is essentially a desire to avoid the competition . . . [s]uch an
16 interest fails to rise to the level of a legally protectable interest, for purposes of standing.").

17 For instance, in *Hauer v. BRDD of Indiana, Inc.*, 654 N.E.2d 316, 319
18 (Ind. Ct. App. 1995), the court reversed a trial court's entry of an injunction against the state fire
19 marshall on behalf of existing fireworks wholesalers. The existing license holders sought and
20 obtained an injunction against the state fire marshall for issuing certificates of compliance to
21 competitors who they alleged were not complying with the law. As the court of appeals explained
22 in reversing and vacating the injunction against the government, the regulatory scheme is "not
23 designed to protect the market share" of existing operators. *Id.* at 319. As the court noted, the
24 criteria under the state's licensing laws is to protect the public from the potential dangers of
25 fireworks, it is not to protect existing operators from competition and thus they have no
26 legally-protected property interest in the certificates issued to competitors. *Id.*

27 Simply put, without a cognizable legally protectable interest that is tangible and
28 immediate, Plaintiffs are indistinguishable from other members of the public that may have a

1 generic interest in a "fair" application process. But such an interest provides no grounds for
2 standing to pursue injunctive relief against government actors, even presupposing that they had
3 acted in some improper fashion. *See Blanding*, 52 Nev. 52, 280 P. at 650 (party whose interest in
4 the right asserted that does not differ from that of the general public lacks standing).

5 Plaintiffs have also failed to establish the causation necessary for standing to exist.
6 Plaintiffs have not proven that the alleged unlawful regulations or purported errors in the
7 application process were the reason that they were unsuccessful. Conversely, they have not
8 shown that the supposedly flawed regulations and process were the reason that Essence won its
9 licenses. After all, to have standing – particularly standing to seek an injunction – the plaintiff
10 must show that the supposed error is what actually caused their claimed harm. Plaintiffs have not
11 remotely done so. By way of example, Plaintiffs have shown no harm by the State's purported
12 failure to do a background check on owners holding less than five percent. Indeed, assuming that
13 such people existed, Plaintiffs have failed to show that any of them would actually fail a
14 background check. The same is true for Plaintiffs' complaints about alleged confusion in terms of
15 listing "locations" for the outlets. Plaintiffs have presented no evidence that this matter had any
16 impact on the outcome of any of their applications, let alone that they would have been chosen
17 over Essence. Contrary to Plaintiffs' apparent wants, it is not sufficient to simply claim that the
18 State committed an error. They have to prove that the error actually mattered.

19 Finally, and perhaps most importantly, Plaintiffs have failed to show that the extraordinary
20 relief of a preliminary injunction bears any relationship to any legally-cognizable harm. The sole
21 role of a preliminary injunction is to protect a plaintiff from imminent irreparable harm that will
22 take place before a trial on the merits occurs. A preliminary injunction preventing Essence from
23 opening and operating will not grant a license to the Plaintiffs. A preliminary injunction will not
24 protect the Plaintiffs from any type of protectable harm pending a trial on the merits, let alone
25 irreparable harm.³ Plaintiffs will be in the exact same position at a trial as they are today, *i.e.*,
26 they will not have a license.

27
28 ³ As discussed previously, their so-called "market share" theory fails as a matter of law
because the State's regulatory system is not designed to protect people from competition.

1 The only thing a preliminary injunction will accomplish at this stage is harm the parties
2 who complied with the State's directives, submitted quality applications, and who were awarded a
3 license. Contrary to the Plaintiffs' way of thinking, success by your competitors is not irreparable
4 harm to you. Similarly, the public's greater access to cannabis – which is what the public wanted
5 with the ballot initiative – is not an irreparable harm to these Plaintiffs. They simply want an
6 injunction so as to impose harm on everyone else and then use that harm as leverage. That is not
7 an appropriate basis for any type of judicial action, let alone preliminary injunctive relief.

8 **B. The Nevada Supreme Court's *Nuleaf* Decision Illustrates the Great Deference**
9 **Owed to the State.**

10 Even if Plaintiffs had presented evidence establishing standing (which they did not), their
11 claims of error by the State require this Court to disregard the broad discretion that the State is
12 accorded in deciding how to best manage the competing policy objectives of the ballot question.
13 In *Nuleaf CLV Dispensary, LLC v. State Department of Health & Human Services, Division of*
14 *Public & Behavioral Health*, 134 Nev. Adv. Op. 17, 414 P.3d 305 (2018), two unsuccessful
15 applications for a medical marijuana certification brought an action seeking a mandatory
16 injunction ordering the State to revoke a competitor's provisional certificate. The parties disputed
17 whether the statutory scheme required all applicants to obtain prior approval from a local
18 government before receiving a registration certificate. *Id.* at 308-09.

19 The relevant provision provided that "not later than 90 days after receiving an application
20 to operate a medical marijuana establishment, the [Department] *shall register . . . and issue a . . .*
21 *registration certificate if . . . [the applicant] has submitted to the [department] all of the*
22 *following:* Proof of licensure with the applicable local governmental authority or a letter from the
23 applicable local governmental authority certifying that the proposed medical marijuana
24 establishment is in compliance with [zoning] restrictions and satisfies all applicable building
25 requirements." *Id.* at 309 (emphasis in original) (quoting NRS 453A.322). The challengers
26 argued that the statute required the applicants to provide proof of local approval before the
27 Department could even consider the application. *Id.* The successful applicant, who did not have
28 prior local approval – and in fact had been denied local approval – asserted that such local

1 approval was merely one factor and the "nothing in the statute prohibits the Department from
2 considering an applicant that fails to meet the requirements." *Id.* at 309-310.

3 The Nevada Supreme Court agreed with the successful applicant. Notwithstanding the
4 ambiguous language of the statute, the Court held that adopting the challengers' reading would
5 produce unreasonable results by precluding otherwise qualified applicants from receiving
6 certificates. *Id.* at 310. The Court emphasized that it "must afford great deference to the
7 Department's interpretation of a statute that it is tasked with enforcing when the interpretation
8 does not conflict with the plain language of the statute or legislative intent." *Id.* at 311.

9 This Court owes that same "great deference" to the State's interpretation of the initiative
10 provisions and statutes at issue here. The Court should not construe the provisions in a manner
11 that would thwart the will of the people and frustrate access to recreational marijuana. Moreover,
12 the State's discretion is at its apex here because the statutory scheme is a new one. Courts
13 recognize that deference to the agency is "heightened where . . . the regulations at issue represent
14 the agency's initial attempt at interpreting and implementing a new regulatory concept." *Texaco,*
15 *Inc. v. Dep't of Energy*, 663 F.2d 158, 165 (D.C. Cir. 1980) (quoting *Atchison, T. & S. F. Ry. Co.*
16 *v. ICC*, 580 F.2d 623, 629 (D.C. Cir. 1978)) (parentheticals removed). After all, administrative
17 agencies are often presented with statutory schemes that contain gaps or contradictions, especially
18 when implementing ballot initiatives. The agency is thus vested with the authority to fill in those
19 gaps and has leeway to reconcile any potential statutory contradictions. *Atwell v. Merritt Sys.*
20 *Prot. Bd.*, 670 F. 2d. 272, 282 (D.C. Cir. 1981) (Agency is empowered to reconcile arguably
21 conflicting statutory provisions, and court's role is limited to ensuring that the agency effectuated
22 an appropriate harmonization within the bounds of its discretion).

23 Here, the State properly exercised its discretion to effectuate the competing policy
24 objectives of the voters' decision to authorize recreational marijuana. On the one hand, the State
25 wants to facilitate access to medical marijuana as the voters directed, but at the same time, it
26 wants to safeguard the public health and welfare. That balancing act is for the State to achieve
27 and implement. It is not subject to second-guessing after the fact, particularly by a group of
28 Plaintiffs who only raised their complaints after they were not selected.

1 **C. Plaintiffs' Challenges to the Regulations are Barred by Laches.**

2 Plaintiffs' request for a preliminary injunction – to now reverse the effect of the State's
3 regulations – is particularly untenable under the equitable doctrine of laches. *See Carson City v.*
4 *Price*, 113 Nev. 409, 412, 934 P.2d 1042, 1044 (1997) (concluding doctrine of laches barred
5 injunctive relief). "Laches is an equitable doctrine which may be invoked when delay by one
6 party works to the disadvantage of the other, causing a change of circumstances which would
7 make the grant of relief to the delaying party inequitable." *Miller v. Burk*, 124 Nev. 579, 598,
8 188 P.3d 1112, 1125 (2008). A post-hoc challenge, like the one brought by Plaintiffs here, is
9 barred by the doctrine of laches when the party inexcusably delayed bringing a challenge,
10 constituting an acquiescence to the condition being challenged, resulting in prejudice to others.
11 *Id.*

12 Plaintiffs' acquiescence to the regulations it now seeks to challenge only after they failed
13 to secure license is the epitome of conduct the doctrine of laches was designed to prevent. For
14 example, in *Miller*, the Court found that a challenge to a ballot question was barred by the
15 doctrine of laches because the claim was ripe for judicial review before the question was
16 presented to the voters. *Id.* As the Court explained, "to acquiesce to the ballot question's
17 language . . . only to challenge now whether it satisfied requirements for placement on the
18 ballot . . . is unconventional . . . [and] . . . prejudicial to the voters who . . . have been relying on
19 the amendment." *Id.*

20 Plaintiffs' conduct here is no different. Plaintiffs voluntarily and eagerly applied to obtain
21 licenses from the State knowing full well the rules and regulations that would apply. Not once
22 did they object or submit any application under protest or file any legal action disputing the
23 legality of the State's process. Instead, Plaintiffs hid in the weeds, waiting to see if they would
24 succeed and, only after failing, did they claim that the State's regulations were unlawful. Had
25 Plaintiffs believed the State's process and regulations were unlawful, they could have and should
26 have made that challenge from the very beginning, before the State and all applicants expended
27 resources in the application process. There is no question that Plaintiffs' inexcusable delay in
28 bringing this suit after licenses were issued has resulted in prejudice to Essence and others. The

1 evidence is uncontroverted that Essence has spent substantial time, effort, and money to prepare
2 for opening. These harms cannot be undone, and the Court cannot return the parties to the *status*
3 *quo* before the application process. The current *status quo* is that Essence won licenses. Plaintiffs'
4 election to not challenge the State's regulations when it could have done so bars those claims now.

5 **III. CONCLUSION**

6 For these reasons, the Court should deny the Motion for Preliminary Injunction and all
7 joinders thereto.

8 DATED this 15th day of August, 2019.

9 PISANELLI BICE PLLC

10
11 By: 

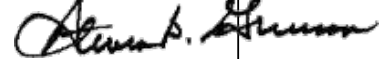
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 15th day of August, 2019, I caused to be served via the Court's e-filing/e-service system true and correct copies of the above **THE ESSENCE ENTITIES' BENCH BRIEF** to all parties listed on the Court's Master Service List.


An employee of Pisanelli Bice PLLC



1 **MEM**

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

12 SERENITY WELLNESS CENTER, LLC, et
13 al.,

Case No.: A-19-786962-B

14 Plaintiffs,

Dept. No.: XI

15 vs.

**DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV,
LLC'S TRIAL MEMORANDUM**

16 STATE OF NEVADA, DEPARTMENT OF
17 TAXATION,

18 Defendant,

19 and

20 NEVADA ORGANIC REMEDIES, LLC, a
21 Nevada limited liability company;
22 GREENMART OF NEVADA NLV LLC, a
23 Nevada limited liability company,

24 Defendants-Intervenors.

25 Defendant-Intervenor GreenMart of Nevada NLV LLC ("GreenMart"), by and
26 through its undersigned counsel, hereby files this trial brief pursuant to EDCR 7.27. This
27 brief is made and based upon the attached memorandum of points and authorities, all papers
28 and pleadings on file in this matter, and any oral argument at the time of hearing.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs have requested that this Court issue a preliminary injunction to preclude the Nevada Department of Taxation (the “Department”) from taking further action on the provisional recreational licenses it issued on December 5, 2018. Plaintiffs, however, are not entitled to this extraordinary relief. This brief addresses key reasons why this Court must deny Plaintiffs’ request for a preliminary injunction. Despite the extensive and broad-ranging nature of the hearing this Court has conducted in the matter, Plaintiffs have not met their heavy burden in establishing entitlement to a preliminary injunction for multiple reasons. First, Plaintiffs lack standing to challenge the Department’s denial of their applications for recreational licenses and granting relief would violate public policy and serve as a violation of the separation of powers doctrine. Second, Plaintiffs have not presented sufficient evidence demonstrate that the Department exceeded the scope of its powers or otherwise acted arbitrary and capricious in implementing the provisions of NRS Chapter 453D. In the absence of such evidence, Nevada Supreme Court precedent requires this Court to defer to the Department’s interpretation of NRS Chapter 453D. Third, and finally, the Department did not exceed the scope of its powers or act arbitrarily or capriciously in its decision to award up to 20 points to applicants based on the diversity of its owners, officers, and board members because—despite some Plaintiffs’ protestations to the contrary—diversity is directly and demonstrably related to the operation of a marijuana establishment. Accordingly, this Court must deny Plaintiffs’ motion.

II. ARGUMENT

A. Plaintiffs Lack Standing to Challenge the Department’s Denial of Their Applications, and Both Public Policy and the Separation of Powers Doctrine Also Bar Relief.

Although their arguments in favor of a preliminary injunction vary wildly from Plaintiff to Plaintiff in this matter, all the Plaintiffs share in the same, unsolvable problem: they lack standing to challenge the Department of Taxation’s (the “Department”) denials of

1 their applications. Nev. Admin. Code § 453D.996(2) authorizes aggrieved parties to “seek
2 judicial review of a final decision of the Nevada Tax Commission in accordance with the
3 provisions of chapter 233B of NRS that apply to a contested case.” However, this is not a
4 “contested case,” which is defined as “a proceeding ... in which the legal rights, duties or
5 privileges of a party ***are required by law to be determined by an agency after an opportunity***
6 ***for hearing***, or in which an administrative penalty may be imposed.” Nev. Rev. Stat. §
7 233B.032 (emphasis added).

8 Here, there was no opportunity for a hearing before the Department determined
9 which applicants would receive a conditional license to operate a retail marijuana store. *See*
10 Nev. Rev. Stat. § 453D.210(6) (mandating an “impartial and numerically scored competitive
11 bidding process”—not an opportunity for hearing—for issuance of licenses); *see generally*
12 Nev. Admin. Code §§ 453D.250-312 (describing application process and rules). Indeed, the
13 only hearings contemplated by Nev. Rev. Stat. § 453D or Nev. Admin. Code § 453D pertain
14 to Department investigations of already-existing marijuana establishments which operate
15 pursuant to already-granted licenses, which Plaintiffs do not have. *See* Nev. Rev. Stat. §
16 453D.200(3)-(4) (authorizing Department to punish licensees for violations after opportunity
17 for hearing); Nev. Admin. Code §§ 453D.940-996 (rules and procedures for Department
18 disciplinary hearings).

19 The application process was not a “contested case” under Nevada law. Thus, it is
20 clear the legislature did not intend for the Department of Taxation’s denial of licensure to be
21 subject to judicial review, and judicial review of the Department of Taxation’s decision in
22 this instance is therefore unavailable to Plaintiffs. *See Nevada DPBH v. Samantha Inc.*, 407
23 P.3d 327, 331-32 (Nev. 2017) (holding that “a disappointed applicant for a medical marijuana
24 establishment registration certificate does not have a right to judicial review under the APA
25 or NRS Chapter 453A” because “the application process provided by NRS 453A.322” was
26 not a “contested case”).¹

27 ¹ In addition to the arguments above, GreenMart hereby joins in the arguments regarding
28 standing raised by Defendant-Intervenors Integral Associates LLC d/b/a Essence Cannabis
Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC, CPCM Holdings, LLC

Moreover, Plaintiffs have not and cannot establish any entitlement to relief. Indeed, many of them scored abysmally badly in the process, demonstrating their lack of fitness to operate marijuana establishments. Others have made clear that they simply wished to sell licenses. Finally, it would violate public policy and the separation of powers doctrine if this Court were to allow for relief that permits non-performing applicants to obtain licenses and to insert its own interpretation and judgment regarding how an application process, in hindsight, should have been administered. *See, e.g., State, Victims of Crime Fund v. Barry*, 106 Nev. 291, 292-93, 792 P.2d 26, 27 (1990).²

Because Plaintiffs lack standing to obtain judicial review of the Department's issuance of licenses and because granting any relief would violate the separation of powers doctrine and the important public policy concerns underlying the application process, this Court must deny Plaintiffs' motion for a preliminary injunction on this ground alone.

B. The Doctrines of Laches and Estoppel Bar Plaintiffs from Challenging the Regulations and the Application.

Evidencing both gamesmanship and hubris, Plaintiffs did not challenge the regulations or the application and only raised concerns once they failed to perform in the application process. Thus, they should not be able to now raise arguments that the regulations or application are invalid. As the Nevada Supreme Court has explained:

Laches is an equitable doctrine which may be invoked when delay by one party works to the disadvantage of the other, causing a change of

d/b/a Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and Cheyenne Medical, LLC's Bench Brief. (*See The Essence Entities' Bench Brief*, pp. 3:4-7:7.)

² Further, granting relief in this case would lead to absurd results because it would upend an intensive process that awarded licenses to applicants that were better qualified. *See Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001) ("Statutes within a scheme and provisions within a statute must be interpreted harmoniously with one another in accordance with the general purpose of those statutes and should not be read to produce unreasonable or absurd results."). For example, some Plaintiffs failed to read the changed application and did not understand its requirements. This does not bode well for an ability to operate compliant businesses. Likewise, many failed to "connect up" the financial information they provided to establish the funds they detailed were for the use of the establishment.

circumstances which would make the grant of relief to the delaying party inequitable.” *Building & Constr. Trades v. Public Works*, 108 Nev. 605, 610-11, 836 P.2d 633, 636-37 (1992). “Thus, laches is more than a mere delay in seeking to enforce one's rights; it is a delay that works to the disadvantage of another.” *Home Savings v. Bigelow*, 105 Nev. 494, 496, 779 P.2d 85, 86 (1989). “The condition of the party asserting laches must become so changed that the party cannot be restored to its former states.

Carson City vs. Price, 113 Nev. 409, 412-43 *Id.*, at 412-13.

C. The Court Must Defer to the Department’s Interpretation of Nev. Rev. Stat. § 453D.200.

Even assuming *arguendo* that Plaintiffs could surmount the enormous issue regarding their standing, Plaintiffs face yet another hurdle: the considerable deference this Court must grant to the Department in adopting the regulations governing the processes for the application for and issuance of conditional licenses. As explained in the Nevada Supreme Court’s decision in *Nuleaf*, this Court must defer to an administrative agency’s interpretation of a statute “unless it conflicts with the constitution or other statutes, exceeds the agency’s powers, or is otherwise arbitrary and capricious.” *See, e.g., Nuleaf CLV Dispensary, LLC v. State Dep’t of Health & Human Servs., Div. of Pub. & Behavioral Health*, 134 Nev. Adv. Op. 17, 414 P.3d 305, 308 (2018) (quoting *Cable v. State ex rel. Emp’rs Ins. Co. of Nev.*, 122 Nev. 120, 126, 127 P.3d 528, 532 (2006)); *see also Desert Aire Wellness, LLC v. GB Scis., LLC*, 416 P.3d 1055 (Nev. 2018) (reversing the district court and finding, consistent with *Nuleaf* that “allowing the Department to issue a provisional registration certificate before an applicant receives local government approval does not supersede local oversight of MMEs and does not conflict with the statute’s plain language or the legislative intent”).

In *Nuleaf*, the Nevada Supreme Court specifically recognized that it “**must afford great deference to the Department’s interpretation of a statute that it is tasked with enforcing** when the interpretation does not conflict with the plain language of the statute or legislative intent.” *Id.* at 311 (emphasis added) (citation omitted).

Despite weeks of testimony and evidence, Plaintiffs have not established the Department exceeded the scope of its powers or otherwise acted arbitrarily or capriciously in limiting background checks of applicants’ prospective owners, officers, and board

members to those with an ownership interest of five percent or more. Accordingly, this Court must defer to the Department and deny Plaintiffs' request for a preliminary injunction.

1. The Court Must Afford the Department Great Deference in Interpreting The Provisions of NRS Chapter 453D.

As the Nevada Supreme Court has explained, an administrative agency charged with the duty of administering a statute "is entitled to receive deference from this court to its interpretations of the laws it administers so long as such interpretations are 'reasonable' and 'consistent with the legislative intent.'" *State Indus. Ins. Sys. v. Miller*, 112 Nev. 1112, 1118, 923 P.2d 577, 581 (1996) (quoting *SIIS v. Snyder*, 109 Nev. 1223, 1228, 865 P.2d 1168, 1171 (1993)); see also *Nuleaf*, 414 P.3d at 311; see also *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002) (acknowledging that "[a]n agency charged with the duty of administering an act is impliedly clothed with power to construe it as a necessary precedent to administrative action [and] great deference should be given to the agency's interpretation when it is within the language of the statute" (alterations in original; internal quotations omitted)).

2. The Department is Entitled to Deference for Its Decision to Limit Background Checks to Prospective Owners, Officers, and Board Members of Applicants With an Ownership Interest of Five Percent or More.

A central issue that has arisen in this case is whether the Department erred in applying NAC 453D.255, which caps the requirement for background checks to those owners, officers, or board members of an applicant with an ownership interest of five percent or more. Some Plaintiffs have argued that this five percent cap runs afoul of Nev. Rev. Stat. § 453D.200(6), which provides that the "Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant." In making this argument, however, Plaintiffs are asking this Court to ignore the broad discretion the Department has in interpreting Chapter 453D.

The Department's broad discretion to interpret the provisions of Chapter 453D is explicitly provided for in the very first provision of Nev. Rev. Stat. § 453D.200:

Not later than January 1, 2018, the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable.

Nev. Rev. Stat. § 453D.200(1). Chapter 453D also provides a definition of “unreasonably impracticable”:

“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.

Nev. Rev. Stat. § 453D.030(19). Under this plain language, the Department was empowered to interpret Nev. Rev. Stat. § 453D.200(6) and craft regulations which would permit it to carry out a primary intent of Chapter 453D: protecting public health and safety by taking the cultivation and sale of marijuana from the domain of criminals and regulating it under a controlled system. Nev. Rev. Stat. § 453D.020(1) and (2) without creating requirements that would effectively make the operation of a recreational dispensaries impossible.

And as several witnesses testified, requiring background checks on *all* owners, officers, and board members of an applicant—particularly when that applicant is owned by a publicly traded company—would be unreasonably impracticable and essentially impossible to comply with. (*See, e.g.*, Trans. Hrg. Day 13, p. 97:4-20 (Deonne Contine’s testimony that requiring background checks of every shareholder of a publicly traded company would be impossible and impractical); *see also* Trans. Hrg. Day 14, p. 159:16-20 (Ms. Contine’s testimony that requiring background checks of all shareholders—which change on minute-by-minute basis—“would basically shut down the ability to operate”); Trans. Hrg. Day 15, p. 18:5 (Testimony of Robert Groesbeck that requiring background checks on the shareholders of publicly traded companies “would potentially have a chilling effect on the industry”).) Thus, the Department decision to limit the background checks required under Nev. Rev. Stat. § 453D.200(6) to the owners, officers, and board members of an applicant with an ownership interest of five percent or more.

///

Further, this Court must avoid reading Nev. Rev. Stat. § 453D.2 in a way that renders any of its provisions nugatory. *See S. Nevada Homebuilders Ass’n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (holding that courts must give the terms of statutes “their plain meaning, considering its provisions as a whole so as to read them in a way that would not render words or phrases superfluous or make a provision nugatory”) (quotation omitted). In insinuating that the Court should apply a literal—and fundamentally unworkable—interpretation of Nev. Rev. Stat. § 453D.200(6), the Plaintiffs are asking the Court to read Nev. Rev. Stat. § 453D.200(1) and Nev. Rev. Stat. § 453D.030(19) out of Chapter 453D.

Moreover, no background check was required as part of the application process as this was not a new application process for non-vetted entities or owners; instead, existing establishments were able to apply for conditional establishments. Thus, this argument raised by the Plaintiffs is not even relevant.

D. Diversity Is Directly and Demonstrably Related to the Operation of a Marijuana Establishment.

Another criticism directed at the Department is that its decision to allocate up to 20 points (out of a possible 250) to applicants based on the diversity of its owners, officers, and board members was improper because diversity is allegedly not “directly and demonstrably related to the operation of a marijuana establishment.” Nev. Rev. Stat. § 453D.200(1)(b). While Plaintiffs such as MM Development’s ownership and management—and conduct at the evidentiary hearing—evidence a lack of concern and respect for diversity, the Department properly considered diversity as part of an establishment’s suitability. Several witnesses have testified that diversity is indeed directly and demonstrably related to the operation of a marijuana establishment. For example, Deonne Contine testified that diversity is integral to the operation of a marijuana establishment because “[i]f you have a diverse group of people in your organization, you might be more willing to operate in a community that is -- you know, has been underserved or has been disserved by the war on drugs or, you know, you have a more friendly face to

1 some communities like that.” (Trans. Hrg. Day 13, p. 212-7.)

2 Additionally, Stacey Dougan, a board member of GreenMart, testified that
3 diversity is important because of the historical underrepresentation of women and people of
4 color in the marijuana industry:

5 Well, it’s been said, and again, this has not been from my research, but it’s
6 been said that the cannabis industry has been a male -- more male-
7 dominated industry, as far as ownership, as far as, you know, control over
8 whether it be the front end or the back end. And so that’s what I mean by
9 disparity. And, of course, being a woman of color, and people of color not
necessarily having the avenues to go in because of, you know, felonies, or
criminal records, or whatever the case may be.

10 (Trans. Hrg. Day 5 Vol. II. p. 147:4-12). Judah Zakalik, a managing member of Zion
11 Gardens, also testified about why diversity is important to the operation of a marijuana
12 establishment:

13 I believe that people of color, black and brown, have been targeted by
14 marijuana laws prior to legalization. I think there’s been a lack of fairness
15 in the imprisonment of people of color, and I think that -- I’ve seen and I
16 continue to see people of color excluded from the legal marijuana industry,
either because lack of finances, maybe criminal backgrounds. And so I
think we see a gentrification of a burgeoning multibillion-dollar industry,
and that bothers me.

17 (Trans. Hrg. Day 16, p. 7:2-10; *see also id.* at p. 8:5-7 (“People from diverse backgrounds
18 are often very valuable in businesses, because they bring different perspectives.”).) Craig
19 Rombough, the president of Mother Herb, also testified that diversity was important to the
20 operation of a marijuana establishment because “[o]ur society’s diverse, people that use the
21 product are diverse, the company should be diverse.” (Trans. Day 16, p. 55:7-8.)

22 Thus, the Department’s decision to allocate up to 20 points to applicants based on
23 the diversity of its owners, officers, and board members was proper because it is directly
24 and demonstrably related to the operation of a marijuana establishment.

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26 ///

27 ///

28



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1 **III. CONCLUSION**

2 The Plaintiffs' Motions for Preliminary Injunction at issue in this consolidated
3 hearing must be denied,

4 DATED this the 15th day of August, 2019.

7 /s/ Alina M. Shell

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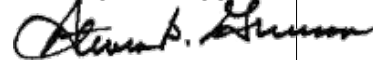
15 *Counsel for Defendant-Intervenor, GreenMart of Nevada*
16 *NLV LLC*

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on this 15th day of August, 2019, pursuant to Administrative
19 Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing DEFENDANT-
20 INTERVENOR GREENMART OF NEVADA NLV, LLC'S TRIAL MEMORANDUM in
21 *Serenity Wellness Center, LLC, et al. v. State of Nevada, Department of Taxation, et al.*,
22 Clark County District Court Case No A-19-786962-B, to be served electronically using the
23 Odyssey File & Serve system, to all parties with an email address on record.

24 /s/ Pharan Burchfield

25 An Employee of McLetchie Law



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EIGHTH JUDICIAL 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, LLC, a Nevada
limited liability company, NEVADA PURE, 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,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant.

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

Intervenor/Defendant.

///

Case No. A-19-786962-B

Dept. No. 11

**LONE MOUNTAIN PARTNERS, LLC'S
SUPPLEMENTAL AUTHORITIES FOR
CLOSING ARGUMENTS**





1 Lone Mountain Partners, LLC (“Lone Mountain”), by and through counsel undersigned,
2 hereby files this Supplemental Authorities for Closing Arguments for the Court’s consideration
3 prior to closing arguments in the consolidated preliminary injunction hearing.

4 **I. INTRODUCTION**

5 The Court provided Plaintiffs with extraordinary latitude in the presentation of their case;
6 yet, in the three months over which this hearing has been extended, with the Court and parties
7 laboring through 18 days of oftentimes wholly duplicative and irrelevant testimony, Plaintiffs
8 have failed to meet their burden of showing any likelihood of success on their claims.

9 The most Plaintiffs have done is identified potential and minor scoring discrepancies in a
10 novel and ground-breaking government program. Plaintiffs express mock outrage that a
11 government licensing program was run without perfect consistency and efficiency. However, if
12 imperfect agency actions were subject to judicial reversals and do-overs, courts would have little
13 time to hear cases other than challenges to agency actions. That is why courts consistently hold
14 that agency actions are entitled to wide deference and are not to be disturbed by the judiciary
15 without a convincing showing of abuse of discretion or arbitrary and capricious action. No
16 licensing process involving any amount of discretion will ever be perfect or lead to uniformly
17 consistent results. Perfection is simply not the appropriate standard of review, despite Plaintiffs’
18 continual insinuations otherwise.

19 When the testimony and evidence is reviewed through the lens of the actual legal claims
20 plead by Plaintiffs, it is clear that Plaintiffs have no likelihood on the success of their remaining
21 causes of action, especially given the Court’s recent summary judgment order disposing of
22 Plaintiffs’ ill-plead constitutional and civil rights claims which constituted the majority of the
23 claims Plaintiffs asserted. Indeed, over the course of this hearing, numerous Department
24 witnesses testified as to the extensive and painstaking processes the Department employed
25 through its implementation of Question 2 and promulgation of regulations under the same. Far
26 from arbitrary and capricious, Department witnesses demonstrated that the Department’s
27 licensing decisions were extensively deliberated and round tabled, and, moreover, that they
28



1 complied with Nevada's Administrative Procedures Act.

2 Additionally, Plaintiffs have failed to demonstrate they could ever be entitled to the
3 sweeping injunction they seek—namely, the revocation of all 64 conditional licenses awarded by
4 the Department. Not only are injunctions against state agencies disfavored, and are required to
5 be narrowly tailored, but, far more importantly, Plaintiffs simply cannot seek to revoke the
6 licenses of numerous non-parties that Plaintiffs have failed to name or join in these actions.
7 Revocation of the licenses of non-parties would violate the due process rights of those non-
8 parties and would run afoul of NRCP 19(a) which requires their joinder in these actions. Finally,
9 Plaintiffs have failed to demonstrate that any of the Plaintiffs or intervening defendants would
10 have been scored or ranked any differently under Plaintiffs' proposed interpretation of NRS
11 chapter 453D. This too is fatal to Plaintiffs' request for an injunction.

12 **II. LEGAL ARGUMENT**

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

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

24 Here, Plaintiffs are not entitled to injunctive relief because they have failed to show a
25 likelihood of success on the merits of their claims, and, moreover, the sweeping injunction
26 Plaintiffs request is not an appropriate or available remedy.

27 ///

28



A. Plaintiffs Have Failed to Show They Are Likely to Succeed on the Merits of Their Remaining Claims

Absent from these extensive proceedings has been any mention or analysis of the causes of action plead in Plaintiffs' various complaints, and whether the litany of witnesses and evidence presented by Plaintiffs in fact has any relevance to the same. However, the Court can only enter a preliminary injunction if the Plaintiffs have shown that they are likely to succeed on the merits of their claims. Despite 18 days of testimony spread over three months, Plaintiffs have failed to show a likelihood to succeed on a single of their claims for relief.

Critically, the Court recently granted summary judgment on most of Plaintiffs' claims for relief, that is, those claims that were based on a constitutional deprivation of property. *See* Hearing Transcript on Motion for Summary Judgment; *see also Malfitano v. County of Storey*, 396 P.3d 815 (Nev. 2017). The Court's summary judgment ruling disposed of the first three of the five causes of action plead in the Serenity Wellness matter,¹ the first three of the four causes of action plead in the ETW matter,² three of the five claims³ plead in the MM Development matter,⁴ three of the six claims⁵ plead in the *Compassionate Team of Las Vegas* matter;⁶ three of the six claims plead in the *Nevada Wellness Center* matter;⁷ and three of the six claims plead in

¹ The five claims plead in the *Serenity Wellness* matter were: (1) Violation of Civil Rights under 42 USC § 1983 and Nevada Constitution for deprivation of property; (2) Violation of Civil Rights under 42 USC § 1983 and Nevada Constitution for deprivation of liberty; (3) Violation of Civil Rights under 42 USC § 1983 and Nevada Constitution-Equal Protection; (4) Petition for Judicial Review; and (5) Petition for Writ of Mandamus.

² The four claims plead in the *ETW* matter were: (1) Violation of Substantive Due Process; (2) Violation of Procedural Due Process; (3) Violation of Equal Protection; and (4) Declaratory Judgment.

³ MM Development filed a claim for "injunctive relief"; however, injunctive relief is a remedy, not a cause of action.

⁴ The six claims plead in the MM Development matter were: (1) Declaratory Relief; (2) Injunctive Relief (3) Violation of Procedural Due Process; (4) Violation of Substantive Due Process; (5) Equal Protection Violation; (6) Petition for Judicial Review; and (7) Petition for Writ of Mandamus.

⁵ Compassionate Team of Las Vegas filed a claim for "injunctive relief"; however, injunctive relief is a remedy, not a cause of action.

⁶ The seven claims for relief plead in the *Compassionate Team of Las Vegas* matter were: (1) Declaratory Relief; (2) Injunctive relief; (3) Violation of Procedural Due Process; (4) Violation of Substantive Due Process; (5) Equal Protection Violation; (6) Petition for Judicial Review; and (7) Petition for Writ of Mandamus.

⁷ The claims plead in the *Nevada Wellness Center* matter were: (1) Declaratory Relief; (2) Injunctive Relief; (3)



1 the *High Sierra Holistics* matter.⁸

2 After summary judgment against Plaintiffs as to their due process and equal protection
3 claims, the only remaining claims for relief are (1) judicial review; (2) writ of mandamus;
4 (3) declaratory relief; and (4) injunctive relief.

5 As an initial matter, injunctive relief is a remedy, not a cause of action, and therefore, the
6 likelihood of merits analysis must focus on Plaintiffs' remaining claims.

7 Thus, the only claims on which Plaintiffs can base their request for a broad injunction
8 enjoining successful applicants from using their licenses and operating a retail marijuana store
9 are (1) judicial review, (2) petition for writ of mandamus, and (3) declaratory relief. As
10 discussed below, Plaintiffs have no likelihood of succeeding on the merits of these claims and
11 their injunction must therefore be denied.

12 **B. Plaintiffs Cannot Succeed on the Merits of Their Claims for Judicial Review**
13 **Because the Nevada Supreme Court Held that Marijuana Licensing**
14 **Decisions Do Not Constitute Contested Cases Under the Administrative**
15 **Procedures Act**

16 The Nevada Supreme Court has recently held in another marijuana licensing claim that "a
17 disappointed applicant for a medical marijuana establishment registration certificate does not
18 have a right to judicial review under the Administrative Procedures Act ("APA") or NRS
19 Chapter 453A" because "the application process provided by NRS 453A.322 does not constitute
20 a contested case." *See State, Dep't of Health and Human Servs. v. Samantha, Inc.*, 407 P.3d 327,
21 328, 332 (Nev. 2017). Quite simply, if a statute does not require notice and an opportunity to be
22 heard regarding the licensing process, then it is not a contested case under the APA. *See Private*
Investigator's Licensing Bd. v. Atherley, 98 Nev. 514, 515, 654 P.2d 1019, 1020 (1982).⁹

23 Violation of Procedural Due Process; (4) Violation of Substantive Due Process; (5) Equal Protection Violation; (6)
24 Petition for Judicial Review; and (7) Petition for Writ of Mandamus.

25 ⁸ The claims plead in the *High Sierra Holistics* matter were: (1) Declaratory Relief; (2) Injunctive Relief; (3)
26 Violation of Procedural Due Process; (4) Violation of Substantive Due Process; (5) Equal Protection Violation;
27 (6) Petition for Judicial Review; (7) and Petition for Writ of Mandamus.

28 ⁹ In 2009, in an unpublished opinion, the Court reaffirmed *Atherley* and found that even when the applicant has had
the opportunity to address the board on the licensing matter, it still does not convert into a contested case within the
meaning of NRS 233B.032. *Wen Quin Ma v. State*, 281 P.3d 1199, 2009 WL3711938 (2009) (because this is an



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

3 “When a party seeks review in the district court of a ruling of an administrative agency
4 not governed by the Administrative Procedure Act, however, an extraordinary writ, such as
5 certiorari, is the proper vehicle for seeking judicial review of the merits of the agency’s actions
6 to determine whether the agency acted arbitrarily and capriciously.” *Washington v. Clark Cty.*
7 *Liquor & Gaming Licensing Bd.*, 100 Nev. 425, 428, 683 P.2d 31, 33-34 (1984). Indeed,
8 Plaintiffs’ only viable claim, and the only claim that might possibly entitle them to an injunction,
9 is their claim for a writ of mandamus. However, a review of the standards governing
10 extraordinary writs demonstrates that Plaintiffs fell woefully short of their burden.

11 **C. Plaintiffs Cannot Succeed on the Merits of the Petition for Writ of**
12 **Mandamus Because They Have Failed to Show the Department’s Actions**
13 **Were Arbitrary and Capricious or an Abuse of Discretion**

14 “When reviewing an agency’s decision, the court is limited to a determination of whether
15 the decision was arbitrary, capricious, or an abuse of discretion.” *Clark Cty. Liquor & Gaming*
16 *Licensing Bd. v. Simon & Tucker, Inc.*, 106 Nev. 96, 97, 787 P.2d 782, 783 (1990). A writ of
17 mandamus can issue only against officials under a “clear” and “specific” duty required by law.
18 *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603, 637 P.2d 534, 536 (1981) (“clear”);
19 *Douglas Cty. Bd. of Cty. Comm’rs v. Pederson*, 78 Nev. 106, 108, 369 P.2d 669, 671 (1962)
20 (“specific”). “While Mandamus can enforce ministerial acts or duties and to require the exercise
21 of discretion, it will not serve to control discretion, unless the refusal of an application is
22 exercised arbitrarily or through mere caprice.” *Gragson v. Toco*, 90 Nev. 131, 133, 520 P.2d 616,
23 617 (1974); *Kochendorfer v. Board of Co. Comm’rs*, 93 Nev. 419, 566 P.2d 1131 (1977)
(mandamus not available to control exercise of discretion unless arbitrary or capricious).

24 “An agency’s actions are arbitrary and capricious when there is an apparent absence of
25 any grounds or reasons for the decision. ‘We did it just because we did it.’” *Tighe v. Von*
26 *Goerken*, 108 Nev. 440, 442-44, 833 P.2d 1135, 1136-37 (1992). Thus, if an agency is able to

27 _____
unpublished decision it is not being cited as precedent. NRAP 36).

28



1 articulate any justifiable reason for its action, it cannot be said to have acted in an arbitrary or
2 capricious manner. *See id.* Moreover, even if there is conflicting evidence as to the rationale or
3 appropriateness of a particular agency decision, “conflicting evidence does not compel
4 interference with the [agency’s] decision so long as the decision was supported by substantial
5 evidence.” *Clark Cty. Liquor & Gaming Licensing Bd. v. Simon & Tucker, Inc.*, 106 Nev. 96,
6 98, 787 P.2d 782, 783 (1990). “Substantial evidence is that which a reasonable mind *might*
7 accept as adequate to support a conclusion.” *Erdun v. Bally Techs.*, No. 68317, 2017 WL
8 417182, at *1 (Nev. App. Jan. 18, 2017) (emphasis added) (internal quotations omitted).

9 Here, the testimony proffered over the course of this hearing, along with the
10 Department’s May 2019 Release of Information have conclusively demonstrated that the criteria
11 considered by the Department in the scoring of applications was highly subjective. Evaluators
12 were directed to consider the quality of the applicants’ detailed plans and to assess numerous
13 enumerated criteria. That each application received a multi-hour review from not one, but three
14 separate evaluators, and then the scores in each category were averaged, further shows that the
15 scoring process was highly subjective, and this was accounted for through procedures ensuring
16 numerous independent reviews. Changing any applicant’s score on subjective criteria is not a
17 ministerial act, devoid of discretion, such that it could be subject to mandamus.

18 Because the Department’s scoring was highly subjective, Plaintiffs can only show
19 entitlement to writ relief if they can show by a preponderance of the evidence that the
20 Department abused its discretion, or acted in an arbitrary and capricious manner. After 18 days
21 of testimony, Plaintiffs failed to introduce any evidence to support this essential element of their
22 claims.

23 Moreover, the Court received testimony from numerous Department witnesses
24 demonstrating that the Department’s role in the licensing process was anything but arbitrary and
25 capricious. Indeed, numerous Department witnesses testified as to the extensive deliberation and
26 planning that went into the drafting of the regulations codified in NAC chapter 453D and into the
27 application drafting and review.

28



1 This testimony, taken together, demonstrates that the Department's actions, while
2 perhaps not perfect in every instance, were certainly not arbitrary and capricious such that the
3 Court should interfere with the discretionary actions of a Nevada agency.

4 **1. No Arbitrary Action or Abuse of Discretion with Respect to 5 Percent**
5 **Ownership Threshold for Background Checks of Owners**

6 Deonne Contine was the Director of Department throughout much of relevant timeframe.
7 Ex. A, Transcript of Proceedings, Evidentiary Hrg. Day 13, Vol. I, at 104:15-22. An attorney
8 with an extensive and impressive legal career, Ms. Contine explained the rationale behind
9 several of the Department's actions challenged by Plaintiffs.

10 With respect to the 5% ownership threshold for background checks, Ms. Contine testified
11 that it was a Task Force recommendation and had been discussed "extensively." Ex. B,
12 Transcript of Proceedings, Evidentiary Hrg. Day 14, at 5:22-6:4. Ms. Contine further explained
13 the extensive review and analysis employed by the Department when arriving at the 5%
14 ownership threshold:

15 There was discussion about the 5 percent both at the working
16 group, the Task Force, the regulation process, and that discussion
17 indicated that it was something that had been working for the
industry. It wasn't unduly burdensome, and it was a way that we
could move forward and implement the program.

18 *Id.* at 6:13-18.

19 We analyzed internally whether we could make that regulation in
20 the recreational under the initiative and we considered whether we
21 had the authority and then whether it would be unduly burdensome
and whether using that 5 percent would also protect the public
safety part.

22 *Id.* at 7:9-13.

23 Ms. Contine explained the Department chose not to background check ownership
24 interests of less than 5 percent in part because with a public company and market, ownership
25 changes all the time such that a vast number of people may come to own a very small portion of
26 a company. *Id.* at 10:21-11:3. The Department considered "conceptually the way markets work,
27 the way that the trading happens there was a general understanding of that and the difficulty of
28



1 obtaining accurate information in real time, and, again, balancing those burdens and the abilities
2 to review . . . all of that with the recognition that we could still protect public health and
3 safety...” *Id.* at 12:15-21. Additionally, the Department believed that less than a 5 percent
4 ownership interest would not lead to any control of business operations. *Id.* at 65:18-21.

5 Furthermore, the Department’s interpretation of the term “each owner,” which is entitled
6 to deference, is further bolstered by Nevada case law which holds that “the word ‘every’ is not
7 always synonymous with the word ‘each.’” *See State v. Nevada N. Ry. Co.*, 48 Nev. 436, 233 P.
8 531, 532 (1925).

9 **2. No Arbitrary and Capricious Action with Respect to the Physical**
10 **Location Requirement**

11 Although Plaintiffs have attempted to raise concerns regarding the physical address
12 disclosure on the applications, Steve Gilbert testified that physical address would be considered
13 at final inspection and if address violated any zoning requirements, Department would not issue
14 the final license for the improper location. Ex. C, Transcript of Proceedings, Evidentiary Hrg.
15 Day 6, at 7:3-8:7. Mr. Gilbert further testified that after obtaining a conditional license, an
16 applicant had 12 months to supply a zoning approval from the local jurisdiction. *Id.* at 11:6-13.
17 Accordingly, the Department has required a physical address prior to issuing a final license;
18 nothing in Question 2 explicitly requires a physical address be provided prior to the award of a
19 conditional license.

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

26 The Nevada Supreme Court held that Nevada’s Department of Health and Human
27 Services was entitled to deference in its interpretation and execution of its discretionary
28



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

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

3. No Arbitrary Action with Respect to Drafting Regulations

As the former Deputy Director, and then the Director of the Department, Ms. Contine shepherded the new marijuana tax scheme and worked on the regulations to implement the various programs in marijuana.

Ms. Contine exhaustively explained the process for a state agency to adopt regulations under a statute, demonstrating her clear expertise in this area and the numerous steps taken, and notice provided, prior to enactment of agency regulations:

So under 233B is the regulatory process, the administrative procedures act for adopting regulations.

There’s three types of regulations: Emergency, temporary and permanent.

Temporary regulations can only be adopted during the – so temporary regulations are for adoption during legislative sessions because there’s a process for legislative review on permanent regulation. So when the legislature is in, there is no legislative



1 review of regulations. So from July 1st of the event-numbered year
2 through June 30th of the odd-numbered year, that's the temporary
3 regulation period. From July 1st of the odd-numbered year through
4 June 30th of the even-numbered year, that's the permanent
5 regulation process.

6 ...

7 The permanent regulatory process is a little bit more
8 involved, and it takes a lot more time, and so by statute you're
9 required to have one public workshop. It's supposed to be 15
10 day's notice. You can or cannot have draft language for review.

11 You take public comment. There's no specific period of
12 public comment, but you would work to have public comment at
13 the hearing. You notice the meeting, and then you can accept
14 public comment after that.

15 Then the regulations – so generally the way it works, you
16 have language, you go to workshop, and then you – after you've
17 cleaned up the language, taken public comment, considered input
18 from different groups, people, you know, and what they have to
19 say about the regulations, thing about it a little bit more, do some
20 analysis, maybe get some legal review. You also have to perform
21 – prepare a small business impact statement and generally discuss
22 how it's going to affect businesses.

23 And then – and then the language will go to the Legislative
24 Counsel Bureau, the legal division, and they – they review the
25 language for statutory intent and to make sure the process has been
26 followed up to that point.

27 Then they put it into the fancy format that you would see if
28 a regulation was adopted, and they send it back to the agency.
That's a process too along the way. So sometimes you'll have
some communication with the legislative counsel, and they'll give
you feedback or say like I don't think you can do this under the
statute, or I don't know if this is the intent. Did you consider this
or look at this? So there's some kind of back and forth along the
way sometimes.

Once the language comes back to the agency, the agency
can – well, once the agency receives the language from LCB and
only when they receive the language from LCB and only when
they receive the language from LCB can they notice it for
adoption, and you have to give 30 days for an adoption hearing.

And then if it's adopted, either depending on whether the
law says you adopt by a board or, you know, sometimes directors
have authority to adopt, but if there's aboard involved, it would go
before the board. The board or commission would adopt the
regulations, and then it goes back to the legislature to be reviewed
by the legislative commission.

The legislative commission is – I think it's a permanent
commission within the legislative structure that – by permanent I
mean not an interim. It meets all year round. They review
regulations and give a final approval, and they also have a
subcommittee for the regulations. So I think they can delegate
some or that work to the subcommittee.

And once the legislative commission reviews the
regulations, then it goes to essentially the Secretary of State for
filing, and then they become.



1 Ex. A, Transcript of Proceedings, Evidentiary Hrg. Day 13, Vol. I, at 109:2-112:8.

2 Ms. Contine further testified that Asher Killian, a lawyer at the Legislative Counsel, was
3 in fact responsible for drafting most of the regulations related to the State's marijuana program,
4 with assistance from Bryan Fernley and Brenda Erdose. *Id.* at 113:9-17.

5 Ms. Contine testified that she became involved with Nevada's marijuana regulatory
6 process as early as 2016, when there was a possibility that the initiative would pass and the
7 Department was attempting to get in front of the process. *Id.* at 115:23-116:5. Ms. Contine was
8 among a group of Nevada regulators and legislators that went on a fact-finding visit to Denver to
9 learn about Colorado's recreational marijuana program, which already existed. *Id.* at 116:6-16.
10 On their trip, they took tours of facilities and met with Colorado regulators and taxation workers
11 on a general fact-finding mission to learn what was working well in Colorado and what was not
12 working. *Id.* at 117:22-118:11.

13 Ms. Contine further testified that she recommended the Governor create the task force to
14 study and propose regulations relating to Question 2 because she believed the task force would
15 give a level of transparency would allow an opportunity for public comment and discussion. *Id.*
16 at 119:15-24. Ms. Contine served as the chair of the task force. *Id.* at 120:2.

17 Ms. Contine testified that when the permanent regulations were drafted under NAC
18 453D, they considered what was working well in Nevada's medical program, what differences
19 existed between the medical program and the requirements of Question 2, and how to plan for
20 key differences between the two programs. *Id.* at 133:17-134:12.

21 **4. No Arbitrary Action in Considering Diversity as Factor**

22 Plaintiffs have repeatedly indicated throughout the hearing (although not in their
23 preliminary injunction briefs which instead complain of a supposed failure to score diversity),
24 that considering diversity as a factor in application scoring was arbitrary and capricious and that
25 diversity has no rational relation to the operation of a marijuana facility.

26 However, the Department did not act in an arbitrary or capricious manner when it
27 determined to award application points for diversity. Instead, the Department based its decision
28



1 on the fact that the Nevada legislature had determined that diversity was a relevant factor to the
2 operation of a marijuana facility when the legislature amended NRS chapter 453A in 2017 to
3 ensure that diversity was considered for medical marijuana licensing. *See* NRS 453A.328. The
4 Department’s decision to include diversity had a rational basis and was not an abuse of discretion
5 or arbitrary and capricious action. Plaintiffs’ Claim for Declaratory Relief Cannot Support an
6 Injunction

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

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

18 **D. An Injunction Is Not an Appropriate Remedy Here**

19 In addition to failing on their merits analysis, Plaintiffs’ requested injunction must be
20 denied because Plaintiffs have failed to join necessary and required parties and the injunction
21 would violate separation of power principles and the political question doctrine. Finally, if the
22 Court departs from the Department’s interpretation and implementation of Question 2 despite the
23 great deference afforded to the Department, then the appropriate remedy is not the sweeping
24 injunction Plaintiffs request, but instead, severance of those requirements in an overly-literal
25 interpretation of Question 2 that were impractical or impossible to carry-out.

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1 **1. Plaintiffs’ Requested Injunction Is Not an Available Remedy Where**
2 **Plaintiffs Failed to Name or Join Current License Holders in These**
3 **Actions**

4 The Court recently ruled that Plaintiffs’ claims were not subject to dismissal because of
5 Plaintiffs’ failure to name the current license holders in their lawsuits. However, even if
6 Plaintiffs’ claims are not subject to outright dismissal for their failure to join all interested
7 parties, due process prohibits any injunction that would prohibit use of non-parties’ licenses
8 where such non-party license holders were not afforded notice and an opportunity to be heard in
9 these proceedings.

10 Pursuant to NRCP 19(a), a person that “claims an interest relating to the subject matter of
11 the action and is so situated that disposing of the action in the person’s absence may . . . as a
12 practical matter impair or impede the person’s ability to protect the interest” is a required party
13 that “must be joined as a party” if the person is subjected to service of process and whose joinder
14 will not deprive the court of subject-matter jurisdiction. NRCP 19(a)(1)(B)(i). If an interest of
15 an absent party “may be affected or bound by the decree, they must be brought before the court,
16 or it will not proceed to a decree.” *Univ. of Nevada v. Tarkanian*, 95 Nev. 389, 395-96, 594 P.2d
17 1159, 1163 (1979). “If there are other persons, not parties, whose rights must be ascertained and
18 settled before the rights of the parties to the suit can be determined. . . [t]her court must cause
19 such persons to be brought in.” *Id.* (quoting *Robinson v. Kind*, 23 Nev. 330, 47 P.1, 47 (1896)).
20 Moreover, joinder of necessary parties is “not a matter of discretion, but of absolute judicial
21 duty.” *Id.* Indeed, even if the parties neglect to raise the issue of joinder of necessary parties, the
22 trial or appellate court may raise the issue sue sponte because such a rule “protects the interest of
23 the courts themselves in the efficacy and integrity of their own proceedings, as well as the
24 interests of the parties.” *Id.*

25 Additionally, Nevada statute explicitly requires that when declaratory relief is sought, as
26 it is here, “all persons shall be made parties who have or claim any interest which would be
27 affected by the declaration, and no declaration shall prejudice the rights of persons not parties to
28 the proceeding.” NRS § 30.130.



1 Here, most parties that will be affected by the injunction sought by Plaintiffs are not even
2 present before the Court, nor have they been served any process or notified that their rights in the
3 conditional licenses they were awarded by the Department are currently subject to judicial
4 review. Although Plaintiffs have indicated that such parties have intentionally decided to wait
5 on the sidelines, there is no evidence to support this is true as to all, or even any, of the current
6 license holders. Moreover, even if it were true, it does not mitigate against the due process
7 concerns raised by revoking licenses without noticing the license holders and offering them an
8 opportunity to be heard. It is entirely reasonable for the license holders to assume that if their
9 licenses were under any threat, they would be served with process and afforded an opportunity to
10 appear. That is especially true where NRS chapter 453D requires notice and hearing prior to a
11 license revocation. *See* NRS 453D.200(3).

12 Without joinder of all license holders that will be affected by the injunction requested by
13 Plaintiffs, i.e., all the license holders whose licenses Plaintiffs seek to revoke, the Court is unable
14 to enter the injunction requested by Plaintiffs and therefore, should summarily deny Plaintiffs'
15 motions.

16 **2. Enjoining the Department Would Infringe Upon a Co-Equal Branch of** 17 **Government's Discretionary Decisions and Violate the Political Question** **Doctrine**

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

25 "Under the political question doctrine, controversies are precluded from judicial review
26 when they 'revolved around policy choices and value determination constitutionally committed
27 for resolution to the legislative and executive branches.'" *Lake Tahoe*, 310 P.3d at 587 (quoting
28



1 16A Am. Jur. 2d *Constitutional Law* § 268 (2013)). Thus, matters involving the discretionary
2 actions of an executive arm of government cannot be litigated when those actions are within the
3 agency or body's authority. *Id.* at 583. Thus, mandamus cannot issue when there is a
4 nonjusticiable political question. *Lake Tahoe*, 310 P.3d at 590.

5 *Lake Tahoe* mandates dismissal of this action. To fashion the relief requested by
6 Plaintiffs, the Court would have to make impossible determinations regarding whether the
7 Department should have balanced policy considerations differently and whether they should
8 have hired additional employees or contracted certain work out. There is simply no manageable
9 standard for the judiciary to second-guess the decision-making process of the State executive
10 branch's decision to delegate certain tasks to third parties in execution of the gargantuan task of
11 reviewing, scoring, and ranking hundreds of lengthy applications on a shortened timeframe.

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

16 **3. The Court Should Invoke the Severance Doctrine If It Concludes the**
17 **Department's Failure to Comply with Overly Literal Statutory**
Requirements That Were Impracticable or Impossible to Carry Out

18 Where a voter initiative contains provisions that are secondary or non-germane to the
19 central purpose of the initiative, a court may sever such secondary provisions if they violate
20 another law without invalidating the entire initiative. *Nevadans for the Prot. of Prop. Rights,*
21 *Inc. v. Heller*, 122 Nev. 894, 909, 141 P.3d 1235, 1245 (2006). In fact, where a portion of an
22 initiative violates another Nevada statute or the Nevada Constitution, the violative portion "*must*
23 *be severed* to preserve the people's will." *Id.* (emphasis added).

24 In *Heller*, the Nevada Supreme Court addressed a voter initiative addressing eminent
25 domain and property rights. 122 Nev. at 909, 141 P.3d at 1245 (2006). Although eminent
26 domain was the primary topic of the initiative, the inclusion of provisions addressing other
27 property rights put the initiative at odds with the single-subject rule, a statutory limitation on
28



1 voter initiatives in Nevada requiring that each ballot initiative be limited to a single subject. *Id.*
2 at 908; *see also* NRS 295.009(1)(a) (single-subject rule). Although past precedent had directed
3 that voter initiatives had to be either upheld in whole, or stricken in whole, the Court
4 distinguished that case law as involving initiatives that were not subject to, or appropriate for,
5 severance. *Id.* at 910-913 (distinguishing *Rogers v. Heller*, 117 Nev. 169, 177, 18 P.3d 1034,
6 1039 (2001), where illegal portion of initiative went to initiative’s primary subject and was
7 incapable of severance). The Court further reasoned that the initiative at issue contained a
8 severability clause, providing that “[a]ny provision contained in this section shall be deemed a
9 separate and freestanding right and shall remain in full force and effect should any other
10 provision contained in this section be stricken for any reason.” *Id.* at 910. The Court concluded
11 that “the initiative petition’s signers have expressed a desire to allow the initiative to proceed
12 even without some sections, and, in severing, this court need not speculate whether the
13 signatories would have signed the petition in its severed form.” *Id.*

14 Three years after *Heller*, the Court again found it appropriate to sever an unconstitutional
15 portion of an initiative so as to preserve the people’s will. *See Flamingo Paradise Gaming, LLC*
16 *v. Chanos*, 125 Nev. 502, 217 P.3d 546 (2009). In *Chanos*, the Court affirmed the severance of
17 the criminal penalty portion of Nevada’s Clean Indoor Air Act (“NCIAA”), which was passed as
18 a ballot measure in 2006, concluding that “[t]he portion severed was not the central component
19 of the statute and the remainder of the statute . . . [could] stand alone.” *Id.* at 557. Further
20 supporting severance was the existence of a severability clause in the NCIAA demonstrating
21 “that the initiative’s proponents contemplated that should a constitutional challenge arise, the
22 offending portion of the statute could be severed and the remaining portion could proceed.” *Id.*

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

25 **NRS 453D.600 Severability. [This section was proposed by**
26 **an initiative petition and approved by the voters at the 2016**
27 **General Election and therefore is not subject to legislative**
28 **amendment or repeal until after November 22, 2019.] If any**
provision of this chapter, 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 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.

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

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

Moreover, additional provisions of Question 2 further demonstrate that Nevada voters desired that any problematic provisions be severed and any impediments to the swift commencement of Nevada's retail marijuana industry be removed. Again, NRS 453D.200 provides that the regulations promulgated by the Department of Taxation pursuant to Question 2's enabling clause "must not prohibit the operation of marijuana establishments . . . through regulations that make their operation unreasonably impracticable." 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, the only limitations Nevada voters imposed on the Department's authority was to ensure the Department did not prevent or slow the commencement of the retail marijuana industry, demonstrating also that Nevada voters would elect severance over total invalidation.

Here, the Court should afford deterrence to the Department's definition of "owner" under NRS chapter 453D as meaning only those owners holding 5 percent or more of a company's value. However, to the extent that the Court determines that Question 2 required the Department to conduct a background check of every owner, even of the most nominal share, of each of the over 400 applicants, the Court should rule that such a requirement was impractical, if not



1 impossible, especially given the 90-day statutory scoring period contained in Question 2. Such a
2 requirement was not central to the purpose or intent behind Question 2 and may be appropriately
3 severed from the statutory scheme. Accordingly, Plaintiffs have failed to demonstrate that
4 failure to conduct a background check on 1 and 2-percent owners of applicants is appropriate
5 cause to issue the sweeping injunction they request.¹⁰

6 **4. If the Court Enters Any Injunction, It Must Be Narrowly Tailored to**
7 **Redress Plaintiffs' Injuries as any Broader Injunction Would Be**
8 **Abuse of Discretion**

8 "Injunctions are to be narrowly tailored to the constitutional violation at issue and
9 portions of challenged legislation that are constitutionally valid, capable of functioning
10 independently, and consistent with the objectives of the legislation must be retained." *Ojeda-*
11 *Enriquez v. Warden, L.C.C.*, No. 69963, 2017 WL 7915501, at *1 (Nev. App. Dec. 14, 2017).
12 Additionally, "injunctive relief should be no more burdensome to the defendant than necessary to
13 provide complete relief to the plaintiffs." *McCormack v. Hiedeman*, 694 F.3d 1004, 1019 (9th
14 Cir. 2012) (quotations and citation omitted). "An overbroad injunction is an abuse of
15 discretion." *Rodriguez v. Robbins*, 715 F.3d 1127, 1133 (9th Cir. 2013).

16 Here, the injunctions requested by Plaintiffs are broad and sweeping. Specifically,
17 Plaintiffs request revocation of all licenses distributed by the Department, and a Court-ordered
18 reassignment of such licenses to themselves. Plaintiffs make no effort to distinguish between
19 those license-holders that would retain their licenses even under Plaintiffs' interpretation of NRS
20 chapter 453D—Plaintiffs simply request a complete do-over of the entire process. Such a broad
21 injunction is not narrowly tailored to any injury suffered by Plaintiffs, especially given Plaintiffs'
22 failure to show that a single party among them would have received a different ranking under
23 Plaintiffs' suggested interpretations of Question 2. Accordingly, granting Plaintiffs the
24 injunction they seek would be an abuse of the Court's discretion, and the Court should therefore
25 deny Plaintiffs' motions.

26
27 ¹⁰ Alternatively, if the Court determines that the Department must background check even owners holding a nominal
28 interest in an applicant, the Court may still order the Department to conduct these background checks without
revoking the licenses awarded by the Department.



1 **III. CONCLUSION**

2 For the foregoing reasons, the Court should deny Plaintiffs' motions.

3 Dated this 15th day of August 2019.

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

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18 **CERTIFICATE OF SERVICE**

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

23 A blue ink signature of Bobbye Donaldson, written in a cursive style.

24 Bobbye Donaldson, an employee of
25 H1 LAW GROUP

EXHIBIT A

AA 005059

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,)
et al.,)
)
Plaintiffs,)
)
vs.)
)
STATE OF NEVADA DEPARTMENT OF)
TAXATION,)
)
Defendant.)

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

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

THURSDAY, JULY, 11, 2019

EVIDENTIARY HEARING - DAY 13

VOLUME I OF II

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

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I N D E X

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1 Nevada?

2 A I'm the director of the Nevada Department of
3 Administration, which is the department that has most of the
4 internal agencies of state government. So there's 11 agencies
5 within the department.

6 Q How long have you been in that position?

7 A Since February 25th of 2019.

8 Q And what are your duties as a director of Department
9 of Administration?

10 A I oversee the HR, IT, state purchasing, public works,
11 the grant office, the state library, fleet services, risk
12 management, the hearings and appeals division. So I'm the kind
13 of point person for the governor and the governor's staff with
14 respect to those agencies.

15 Q And what was your previous position with the State of
16 Nevada?

17 A I've had several previous positions with the State.
18 My most recent previous position was director of the Nevada
19 Department of Taxation. I was also a deputy director at the
20 Nevada Department of Taxation, and I also was a senior deputy
21 Attorney General where I represented the Department of Taxation
22 and other state agencies and other state clients.

23 Q What was the time frame that you were employed as
24 executive director of the Department of Taxation?

25 A I was appointed in November of 2014, and I left in

1 you were trying to do that for a while.

2 Ms. Contine, can you walk us through the steps in how
3 regulations are adopted by the department.

4 A Sure. So I'll go way back and start kind of a big
5 macroview review, and you can just tell me if you don't want
6 this information. I'm not quite sure what you want. So --

7 So under 233B is the regulatory process, the
8 administrative procedures act for adopting regulations.

9 There's three types of regulations: Emergency,
10 temporary and permanent.

11 Temporary regulations can only be adopted during
12 the -- so temporary regulations are for adoption during
13 legislative sessions because there's a process for legislative
14 review on permanent regulation. So when the legislature is in,
15 there is no legislative review of regulations. So from July
16 1st of the even-numbered year through June 30th of the
17 odd-numbered year, that's the temporary regulation period.
18 From July 1st of the odd-numbered year through June 30th of
19 the even-numbered year, that's the permanent regulation
20 process.

21 And emergency regulations are essentially emergency
22 is not defined in the statute. It's often been said that
23 emergency is what the governor says is an emergency because the
24 governor has to sign off on emergency regs, and those can be
25 made at any time, and they're good for 120 days.

1 So the temporary regulations expire. I can't
2 remember the time frame, but they expire. If you make a
3 temporary regulation, they expire after a time period; however,
4 when you go into the permanent regulation process, you can
5 essentially shortcut a little bit of the permanent process by
6 just if there were no changes and you just wanted to make the
7 temporary regulations permanent.

8 The permanent regulatory process is a little bit more
9 involved, and it takes a lot more time, and so by statute
10 you're required to have one public workshop. It's supposed to
11 be 15 day's notice. You can or cannot have draft language for
12 review.

13 You take public comment. There's no specific period
14 of public comment, but you would work to have public comment at
15 the hearing. You notice the meeting, and then you can accept
16 public comment after that.

17 Then the regulations -- so generally the way it
18 works, you have language, you go to workshop, and then you --
19 after you've cleaned up the language, taken public comment,
20 considered input from different groups, people, you know, and
21 what they have to say about the regulations, think about it a
22 little bit more, do some analysis, maybe get some legal review.
23 You also have to perform -- prepare a small business impact
24 statement and generally discuss how it's going to affect
25 businesses.

1 And then -- and then the language will go to the
2 Legislative Counsel Bureau, the legal division, and they --
3 they review the language for statutory intent and to make sure
4 the process has been followed up to that point.

5 Then they put it into the fancy format that you would
6 see if a regulation was adopted, and they send it back to the
7 agency. That's a process too along the way. So sometimes
8 you'll have some communication with the legislative counsel,
9 and they'll give you feedback or say like I don't think you can
10 do this under this statute, or I don't know if this is the
11 intent. Did you consider this or look at this? So there's
12 some kind of back and forth along the way sometimes.

13 Once the language comes back to the agency, the
14 agency can -- well, once the agency receives the language from
15 LCB and only when they receive the language from LCB can they
16 notice it for adoption, and you have to give 30 days for an
17 adoption hearing.

18 And then if it's adopted, either depending on whether
19 the law says you adopt by a board or, you know, sometimes
20 directors have authority to adopt, but if there's a board
21 involved, it would go before the board. The board or
22 commission would adopt the regulations, and then it goes back
23 to the legislature to be reviewed by the legislative
24 commission.

25 The legislative commission is -- I think it's a

1 permanent commission within the legislative structure that --
2 by permanent I mean not an interim. It meets all year round.
3 They review regulations and give a final approval, and they
4 also have a subcommittee for regulations. So I think they can
5 delegate some of that work to the subcommittee.

6 And once the legislative commission reviews the
7 regulations, then it goes to essentially the Secretary of State
8 for filing, and then they become.

9 Q Great. And I want to back up where you said there's
10 a back and forth between the department and LCB --

11 A Yes.

12 Q -- to look for statutory intent.

13 A Yes. Well, they do a review to make sure that the
14 regulations that you're making are within the legal provisions,
15 so whether that be the statute or initiative.

16 Q And when they make that review, do they put like a
17 number, like an I next to the regulation when they send it
18 back? Is there some sort of symbol that shows they did a
19 review?

20 A Yeah. So there's -- if you look at how the
21 regulation has been through the -- I don't know all the -- I
22 don't know all the letters that go in to their numbering system
23 because it's their numbering system. So it'll be LCB file
24 number, and then you'll have various numbers, and then
25 sometimes it'll be just the agency's version. And as it goes

1 through that position -- I'm sorry. As it goes through that
2 process, it will indicate in some way that it had been sent
3 back, and that's the language that's been reviewed by the
4 Legislative Counsel.

5 Q Who were you working with at the Legislative Counsel
6 Bureau for the adoption of the permanent regulations for 453D?

7 A I think Asher Killian [phonetic] or maybe Bryan
8 Fernley [phonetic] and maybe even Brenda Erdose [phonetic].

9 Q Asher Killian. I know that name was mentioned by
10 Kara earlier. Who's that?

11 A He's a -- he's a lawyer at the Legislative Counsel.
12 He's -- he -- I think he's drafted most of the regulations
13 related to the marijuana program.

14 And Bryan Fernley is a tax -- well, he sits with the
15 revenue and taxation committees at the legislature. He's -- so
16 it might have been one or both of them and occasionally maybe
17 Brenda Erdose, who is the director.

18 Q And is Asher the person who actually drafted the
19 regulations, or was there somebody within the department who
20 does that?

21 A No --

22 Q And I'm focusing on --

23 A The agencies -- the agencies submit their draft
24 language, and then the LCB reviews it and changes it and puts
25 in, you know, makes -- you know, does its review, and then

1 there's certain drafting conventions that they are confined to.
2 So they make some of those changes.

3 I mean, sometimes an agency will get back a
4 regulation, and there will be something in the regulation that
5 wasn't in the original regulation, and then you say well,
6 what's the point of this? And then it turns out that it was a
7 drafting error -- or drafting decision made by LCB that it
8 made, you know, that they're trying to -- they're thinking of
9 this regulation in the context of all regulations.

10 Q How are those discussions, those back-and-forth
11 discussions on intent done between the department and LCB? Is
12 it over the phone? Are they made in person? How was that
13 done?

14 A Over the course of my career, both.

15 Q Okay. And the steps that you just outlined for us,
16 those are the steps that were taken when the regulations for
17 the recreational marijuana process were adopted?

18 A Yes.

19 Q Okay. Now, when you're adopting regulations, can you
20 tell us a difference when you're dealing with adopting
21 regulations that are focusing on the ballot initiative versus a
22 legislative amendment?

23 A It's basically the same process. There might be a
24 little bit more legislative intent if you're looking at a
25 statute that was enacted by the legislature, but it may not

1 surprise you to know that sometimes there's no legislative
2 intent. So it's kind of a similar process.

3 Q And when you're adopting regulations that need to
4 comport with the ballot initiative, is it your understanding
5 that there can't be any modification or amendments to those, to
6 that statute?

7 A Well, in the case -- in this case, there's no --
8 there was no ability to make the change to what was Question
9 2 for three years.

10 Q Okay. And that was followed by the department as the
11 department adopted regulations; is that correct?

12 A Well, we weren't -- at the department we weren't
13 making changes to the legislation. I mean, we -- the
14 department didn't ask for any changes to the statute.

15 Q I guess, okay, my question is, in adopting the
16 regulations, is it your understanding that the regulations need
17 to comport with the statute under Ballot Question 2?

18 A Yes.

19 Q Okay. Now, what was your involvement with the 2018
20 process for adopting the regulations for the recreational
21 marijuana process?

22 A So starting at the beginning or starting in 2016?

23 Q Start at the beginning, in the beginning when what
24 were you tasked with in adopting those regulations, and what
25 was your involvement?

1 A So I think the first time that I became involved in
2 kind of what might happen at the State was in the summer of
3 2016 thinking that possibility -- that there was a possibility
4 that the initiative would pass and trying to kind of get in
5 front of what was likely to be a pretty quick process.

6 I went to Denver with on like a fact-finding group,
7 with a group of, you know, regulators and legislators and other
8 people in the state that were interested in the process, just
9 kind of understanding what they're doing and trying to learn as
10 best as I could, as we could about what might be coming our
11 way.

12 And then in one of the concepts that Denver -- or
13 that Colorado had used for legalization was to create this task
14 force. So after the initiative passed, then recommending that
15 we use -- recommending to the governor that we use this, a
16 similar type of process.

17 And then also, you know, when the governor -- there
18 was some discussions between November and January about the
19 revenue picture and what, you know, what that expectation was.
20 So in January, the governor issued the -- you know, did the
21 state of the state where he included revenue from marijuana
22 starting on July 1st and talked about an additional tax, and
23 so that was really kind of the policy. You know, that was the
24 level up for me that meant we're going to go forward and do
25 this now essentially. So starting in -- so basically starting

1 to review the initiative, looking at the language, deciding,
2 kind of comparing it to medical, deciding what we could use and
3 what we couldn't use as we moved forward.

4 Also at this same period of time -- so this is the
5 January, February. This is the early 2017 time period. So the
6 legislation -- the legislature's in session. The work -- the
7 task force is formed. We're working on temporary regulations
8 essentially to get the program going, and I can --

9 Do you want me to briefly talk about each of those,
10 or --

11 Q Yes. Well, we'll walk through those, but back up
12 really quick to your trip to Colorado. When was that? Was
13 that --

14 A June of -- I think it was June or July of 2016.

15 Q And that was in preparation in case the ballot
16 initiative passed?

17 A Yes.

18 Q And who -- when you went to Colorado, was one of your
19 purposes to see how Colorado's system in adopting regulations
20 was implemented, what they looked at and how to improve on
21 that?

22 A Yes. I mean, one of -- it was just to -- I mean,
23 honestly, we knew nothing at that time. So just kind of how
24 to -- so basically what happened was the regulators in Colorado
25 kind of put together a team of people to speak to us. So

1 somebody from taxation, somebody from the regulatory, a
2 legislator. They took us on tours of facilities. You know,
3 just a general fact-finding, like what's going on here? What's
4 working? What's not working? I think one of the things that
5 we discussed specifically at that time was when they went from
6 medical to rec and how they -- how they set that up with, like,
7 separate -- you had to have a separate facility or a separate
8 entrance and what issues came about because of that. So just
9 kind of understanding the transition and how they worked
10 through those issues and some of the things that -- that they
11 have done along the way.

12 Q How long was that trip?

13 A A couple days, two, three days.

14 Q And who was on the trip with you?

15 A Well, with me, there was somebody else from my
16 office. I mean, and then there was a -- do you want a -- I
17 could try to tell you. I think Nelson Araujo, who was an
18 assemblyman, was there. John Ritter was on that trip.

19 I can't remember anybody else.

20 Q Okay.

21 A I mean, but it was a -- it was a -- oh, I think Joe
22 Pollock -- he was from the Department of Public and Behavioral
23 Health -- was on the trip.

24 I'm sure there was a couple of other legislators.

25 Patty Farley. She was a legislator at the time.

1 She's not now. She was on the trip.

2 And Amanda Connor.

3 So it was a broad group of people that went on the
4 trip.

5 Q Okay. And going back to January 2017, the ballot
6 initiative passes, and now the governor has tasked you with
7 moving forward with not permanent -- I'm sorry, temporary, then
8 permanent regulation; is that correct?

9 A Correct. I mean, he tasked me with implementing the
10 program, and then I kind of developed I guess the strategy to
11 do that in the confines of the regulatory structure that we
12 had, and then also in an attempt to have a lot of transparency
13 and to get a lot of input from people by using the task force
14 process.

15 Q So the task force was adopted because that's how
16 Colorado had -- that was one of the things you saw from
17 Colorado that worked for them; is that correct?

18 A I think, yeah. I mean, I recommended that the
19 governor do it because I thought it would give a level of
20 transparency. It would allow a place for people that, you
21 know, wanted to see the program go forward go forward, but
22 also, you know, with all the public meetings people could
23 indicate their concerns, and just it was a place where
24 everybody could be at the table.

25 Q And what was your position with the governor's task

1 force?

2 A I was the chair of the task force.

3 Q What were your duties as chair of the task force?

4 A I guess my main duty was to run the task force
5 meetings.

6 Q Go ahead.

7 A I mean, yeah. Well, I ran the meetings. We
8 developed the agenda, you know, checked in on the process
9 making sure that all of the working groups were assigned, that
10 the working groups were actually working, you know, being --
11 overseeing that process. I mean, I -- we ended up hiring a
12 contractor that helped facilitate. So just making sure that
13 they were doing their -- the things that they were supposed to
14 be doing during the process as well so that when we came to the
15 end we would have the report, a good draft of the report that
16 could be reviewed and sent to the governor.

17 Q And what was -- what was the purpose of the task
18 force? Was one of the purposes to ensure that any regulations
19 adopted were in compliance with the ballot initiative?

20 A I think it was more to be a basis for the
21 regulations. So some of the discussion that occurred within
22 the task force was -- and the various working groups were, you
23 know, what worked in the medical program, what didn't work in
24 the medical program, what were some concerns that people still
25 had or issues that they would like to see addressed during that

1 I, you know, we drafted those internally with some, you know,
2 if we needed -- if we had legal questions, we would ask the
3 attorney general's office or others. They were workshops so
4 that you still have to have a workshop, and they were still
5 adopted by the Nevada Tax Commission, but they don't have to
6 go -- they don't have to do that intermediate review by the
7 legislature.

8 There is a provision, however, that after the
9 regulations were adopted by the agency that the legislative
10 commission has 45 days where they can pull the regulations in
11 to a ledge [phonetic] commission process review. So because of
12 that, I had internal discussions with legislative counsel about
13 the regulations and whether they -- whether the legislative
14 counsel was comfortable, you know, recommending to their bosses
15 that the -- those regulations not be pulled into legislative
16 review.

17 Q Okay. And can you -- how did the medical marijuana
18 regulations help shape what eventually became the permanent
19 regulations under NAC 453D?

20 A Well, they were part of -- so the permanent
21 regulations looked at what -- so the permanent regulations
22 looked at the work of the task force in some ways and also and
23 as that related to the medical. So what is -- what was working
24 in medical? Again, what wasn't, you know, what are some --
25 given the language of the initiative, what's different in the

1 language of initiative in the initiative, you know, and how do
2 we have to plan for that because there were some key
3 differences, provisions that were new that had to be regulated
4 that weren't regulated in -- in the medical program.

5 So basically looking at the language of the
6 initiative, deciding what is the basis that we can start with
7 at least initially and then what can we build off from that as
8 we move forward. So and that involved all those discussions
9 that went into the working group, the regulatory process both
10 in the temporary process, which is the workshop and the
11 adoption hearings and then the permanent process that started
12 after July 1st.

13 Q And let's turn to what's previously been admitted as
14 Exhibit 2009, which is the governor's task force final report?

15 MR. GUTIERREZ: And may I approach?

16 THE COURT: You may.

17 THE CLERK: Mr. Gutierrez, 2009 is at the very bottom
18 of the cart. It should say 2000 onward.

19 BY MR. GUTIERREZ:

20 Q Ms. Contine, I've handed you the final report for the
21 governor's task force dated May 30th, 2017. Do you see that?

22 A Yes.

23 Q Okay. Turn to page 1 of the document.

24 MR. GUTIERREZ: Where it says, Letter from the
25 chairs, May 30th, 2017, Bryan.

EXHIBIT B

AA 005078

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,.
et al.

Plaintiffs

vs.

STATE OF NEVADA DEPARTMENT OF
TAXATION

Defendant
.

CASE NO. A-19-786962-B

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 14

FRIDAY, JULY 12, 2019

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

AA 005079

APPEARANCES:

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NATHANIEL RULIS, ESQ.
ADAM BULT, ESQ.
MAXIMILIEN FETAZ, ESQ.
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DAVID KOCH, ESQ.
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JARED KAHN, ESQ.
JOSEPH GUTIERREZ, ESQ.
PHILIP HYMANSON, ESQ.

1 her the courtesy of answering the question --

2 MR. KEMP: Yes, Your Honor.

3 THE COURT: -- and then we'll keep going. And we
4 may get done next week.

5 MR. KEMP: We may

6 THE COURT: All right. Keep going, Ms. Contine.

7 THE WITNESS: So the physical process of taking all
8 of the ideas and the concepts that we were working with and
9 putting it on a piece of paper was QuantumMark. So they --
10 BY MR. KEMP:

11 Q That's it?

12 A If that's what you consider to be a draft then they
13 drafted putting the pen to paper as you said yesterday.

14 Q Yesterday I was suggesting to you that there was
15 testimony from Mr. Gilbert and others that you just copied the
16 medical marijuana reg, and you disagree with that; right?

17 A I didn't disagree with that. I didn't -- I don't
18 know what you mean by just copied.

19 Q Did the Department not, in fact, simply copy the
20 medical marijuana reg especially with regards to the 5 percent
21 ownership section?

22 A So with respect to the 5 percent ownership section
23 specifically there's testimony, there's written documentation
24 that was a Task Force recommendation. It was discussed
25 extensively at the Task Force based on that recommendation.

1 The consensus, the fact that it was in the -- also part of the
2 medical it was put into that original draft document that the
3 Department of Taxation then workshopped and took input on and
4 then went through with adoption.

5 Q They copied the 5 percent directly from the medical;
6 yes?

7 A Yes.

8 Q Yes?

9 A Yes.

10 Q Okay. So there was no big discussion about whether
11 it should be 5 percent or 3 percent or 7 percent, right, no
12 discussions such as that?

13 A There was discussion about the 5 percent both at the
14 working group, the Task Force, the regulation process, and
15 that discussion indicated that it was something that had been
16 working for the industry. It wasn't unduly burdensome, and it
17 was a way that we could move forward and implement the
18 program.

19 Q Were alternatives such as 3 percent, 7 percent
20 explored?

21 A I don't know.

22 Q Okay. And did you do any studies to focus on the
23 complexities of 5 percent as opposed to the Question 2 mandate
24 of every owner?

25 MR. SHEVORSKI: Objection. Vague.

1 THE COURT: Overruled.

2 THE WITNESS: No. I mean, we didn't do any studies
3 on the 5 percent, because, again, there was a significant
4 consensus around that.

5 BY MR. KEMP:

6 Q So because the industry and whoever was on the study
7 group liked the 5 percent you went with the 5 percent, that
8 was the reason?

9 A We analyzed internally whether we could make that
10 regulation in the recreational under the initiative, and we
11 considered whether we had the authority and then whether it
12 would be unduly burdensome and whether using that 5 percent
13 would also protect the public safety part.

14 Q And unduly burdensome, did you do any studies as to
15 the cost --

16 A No.

17 Q -- of using a different figure other than 5 percent?

18 A No.

19 Q So as we sit here today you can't tell me whether or
20 not in terms of cost there's any undue burden on checking
21 everyone as opposed to 3 percent, 5 percent, 7 percent, you
22 can't tell me?

23 A I can't tell you the difference, no.

24 Q You can't even tell me if there is a difference?

25 A Well, I can tell you what people testified to --

1 Q Okay.

2 A -- in which I think I have.

3 THE COURT: And when you say testify you mean before
4 the Task Force?

5 THE WITNESS: The Task Force --

6 THE COURT: Okay.

7 THE WITNESS: -- all the various public meetings
8 that were conducted.

9 THE COURT: Thank you. We don't use that as
10 testimony as litigators --

11 THE WITNESS: Oh. Okay. Sorry.

12 THE COURT: -- I know that in administrative you do.
13 So I just wanted to make sure we were clear.

14 BY MR. KEMP:

15 Q And are you suggesting that there was testimony that
16 anything less than 5 percent would be unduly burdensome?

17 A I don't recall if there was, but --

18 Q And are you suggesting that there was testimony that
19 requiring a background check of some sort on every owner would
20 be unduly burdensome?

21 A I believe that there was testimony to that
22 effect.

23 Q Okay. And why would that be? Why would that be
24 unduly burdensome --

25 A Well, you mean --

1 Q -- based on the testimony as you understood it?

2 A So my understanding in the examples that I've given
3 previously was that it was difficult with small owners that
4 maybe lived out of the jurisdiction to facilitate operation of
5 the business because of the requirements.

6 Q As I understand, those people were already licensed,
7 because they already had to have a medical license if they
8 were applying in this round; correct?

9 A Yes.

10 Q So these people were already licensed, and you
11 thought it was unduly burdensome to do background checks?

12 A The way that the program had been run up until that
13 point was that every year annually there was a background
14 check requirement. And every time there was a transfer of
15 ownership the information had to be submitted and that that
16 was -- the requirements to have everyone who had any kind of
17 investment in the company to submit to those requirements was
18 difficult to operate the business.

19 Q Basically they had to go and have their fingerprints
20 taken somewhere and then send it to the Department. That's
21 basically what they had to do; right?

22 A Yes, they had to have fingerprints annually.

23 Q Anything else?

24 A They had to file the application -- I can't remember
25 -- or file the renewal. I don't know everything that was on

1 the renewal. I never did the renewal.

2 Q You're not suggesting to me they had to have new
3 fingerprints annually as opposed to some sort of updated form,
4 or are you suggesting that?

5 A They had to have new fingerprints annually.

6 Q That's your understanding?

7 A That's my understanding.

8 Q All right.

9 A In fact, I believe in Assembly Bill 422 in the 2017
10 session the industry had that changed.

11 Q Okay. And Mr. Koch brought up the subject of public
12 companies yesterday. Do you remember that?

13 A Yes.

14 Q And he was implying that there's some extreme
15 difficulty in ascertaining the ownership of a public company.
16 Do you recall those questions?

17 A Yes.

18 Q And do you know how difficult it is for a public
19 company to send a list of shareholders to someone upon
20 request?

21 A I don't know how difficult that is, but I guess I
22 was thinking of it a little differently in that if you're --
23 the way that a public market works the ownership changes all
24 the time with the rules the way that they are if you are
25 required to submit something, you know, if somebody makes a

1 trade right now it could be different than, you know, in an
2 hour from now. So just the vast number of people that would
3 be coming in and out for a really small portion.

4 Q Okay. Before we get to coming in and out let's get
5 to identifying the owners, see how difficult that is. Do you
6 know, as we sit here today, how difficult it is for a public
7 company to identify all of its shareholders?

8 MR. SHEVORSKI: Objection. Vague.

9 THE COURT: Overruled.

10 THE WITNESS: I don't.

11 BY MR. KEMP:

12 Q And have you ever heard of a transfer agent?

13 A No.

14 Q So if told you that most public companies can log
15 in on Odyssey and print out all their shareholders in less
16 than 10 minutes, prepare a list, that'd be news to you?

17 THE COURT: Odyssey or EDGAR?

18 MR. KEMP: It's Odyssey, Your Honor.

19 THE COURT: Okay.

20 MR. KEMP: Well, I guess it depends on which company
21 it is. Okay.

22 THE WITNESS: Yeah. I mean, I've never used a
23 service like that. I wouldn't have -- I wouldn't know about
24 those services .

25 //

1 BY MR. KEMP:

2 Q Okay. Do you think that's an unreasonable burden
3 that someone spends 10 minutes giving their list of
4 shareholders?

5 A But how good is that list? How long is that list
6 good for I guess. That's the question. And, you know, how
7 long is that list good for? How do those people submit the
8 information that's required those types of things. I just, I
9 mean, the process of implementing something like that and the
10 process of getting that information would be.

11 Q In this rhetorical question you just asked me, how
12 long is the list good for. That was not discussed at any time
13 by anyone at the Department of Taxation, right, because you
14 didn't know they could get the list?

15 A Well, I guess just conceptually the way markets
16 work, the way that the trading happens there was a general
17 understanding of that and the difficulty of obtaining accurate
18 information in real time, and, again, balancing those burdens
19 and the abilities to review all of that to get all of that and
20 submit all of that with the recognition that we could still
21 protect public health and safety I think.

22 Q I just told you you could generate the list in 10
23 minutes, and you said there were difficulties in getting that
24 in real time. Is 10 minutes what you consider to be a
25 difficulty?

1 A Yeah. Well, if -- yeah.

2 Q States have an obligation to, do they not?

3 A Well, I think it was some guidance that said if the
4 states do these regulations then the Federal Government is not
5 going to be involved in the business of the state -- at that
6 time.

7 Q And part of those provisions were intended to make
8 sure that criminal elements did not have ownership interest?

9 A Right.

10 Q And so when you expanded the definition from
11 background checking each individual to ownership interest of
12 over 5 percent, you opened the door, didn't you, to that
13 possibility that there could be ownership interest that could
14 trigger federal scrutiny?

15 MR. SHEVORSKI: Objection. Vague. Misstates the
16 law.

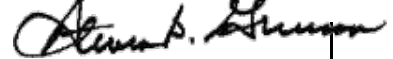
17 THE COURT: Overruled.

18 THE WITNESS: Again, the thinking along those lines
19 was that the interest would be so insignificant that they
20 would not be able to control the business operations, but yes.
21 BY MR. MILLER:

22 Q Did you read that anywhere in the Cole memo, that
23 so long as there might be some criminal elements that had
24 ownership interest that are so insignificant that the federal
25 authorities might not care about that?

EXHIBIT C

AA 005090



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

.

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 6

MONDAY, JUNE 10, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

APPEARANCES:

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JARED KAHN, ESQ.
PHILIP HYMANSON, ESQ.
JOSEPH GUTIERREZ, ESQ.

1 Q In that location I mean.

2 A In that location if it's in violation of the zoning.

3 Q Okay. Even if they've spent tens of thousands or
4 even hundreds of thousands of dollars, if they're within
5 300 feet of a school, they don't get a license.

6 A And, again --

7 Q Excuse me. I said school. I meant 300 feet from a
8 church, 1,000 feet from a school.

9 A So in the situation like that upon the final
10 inspection through that 12-month process we would hope that
11 the applicant or the conditional licensee would be working
12 with us, we'd be able to consult him on it. But if we did run
13 into a situation like that, that would be something that would
14 be evaluated by my superiors before something would be revoked
15 or --

16 Q Well, there's nothing to evaluate, is there? It's
17 state law they have to be 300 feet away from a church and a
18 thousand feet -- there's nothing to evaluate.

19 A That's correct. Right.

20 Q Either they're within the 300 feet or a thousand
21 feet or they're not.

22 A But we would look at the situation, yes. But it is
23 -- that's what the law states.

24 Q Well, you say, we would look at it. You're implying
25 there's some discretion that you could give them a license

1 even if they were within 300 feet of a church? You could let
2 them move; right?

3 A Yes, we could let them move.

4 Q But you couldn't give them a license in a restricted
5 area?

6 A If they're in violation of regulations or the
7 statute, no.

8 Q Okay. Because that's a mandate from state law.
9 It's not optional.

10 A That's correct.

11 Q Okay. Now, as I understand, this is from the
12 legislature. Quote, "The distance must be measured from the
13 front door of the proposed marijuana establishment to the
14 closest point of the property line of a school, community
15 facility," and then it goes on, okay, unquote. Is that your
16 understanding?

17 A Yes, it is.

18 Q So if we have a school or a church, we take the
19 property it's on and we find the closest point to the
20 marijuana facility will measure 300 feet. If it's a church,
21 300 feet; right?

22 A Yes.

23 Q And there's nothing new about this 300 foot. It's
24 been in the statute for years; right?

25 A Yeah. Through the medical days.

1 Q Okay. So let me see if I -- if I see exactly how
2 this works, okay. Let's see if we can make so everyone can
3 see it. Okay.

4 Now, I'm assuming that we have a building here --

5 THE COURT: So where is this information from?

6 MR. KEMP: This is just a drawing to illustrate --

7 THE COURT: This is your hypothetical situation?

8 MR. KEMP: Yes, Your Honor, this is hypothetical.

9 THE COURT: Okay. Just making sure.

10 MR. KEMP: I'll probably mark this for the record
11 when we're done.

12 THE COURT: Lovely.

13 BY MR. KEMP:

14 Q Okay. So let's assume we have three parcels ont
15 other side of the street. Are you with me so far, Mr.
16 Gilbert.

17 A Okay.

18 Q Then we have the street, and then -- I'm just trying
19 to figure out where the forbidden area is, all right. So
20 Parcel Number 3 in Building 3 we have a community facility
21 like a daycare or church, okay. Okay? You got me so far?

22 A Yes.

23 Q And so we would go to the corner of the property
24 line and we would measure 300 feet radius, right --

25 A Yes, sir.

1 Q -- and if the building -- or, excuse me, the front
2 door I think is what the statute says. If the front door is
3 within that 300-foot radius, you can't have a dispensary
4 there; right?

5 A That's correct.

6 Q And in this case Building Number 2 in my example is
7 all within the 300-foot radius; right?

8 A Looks to be in the hypothetical, yes.

9 Q But we could have a dispensary in Building Number 1,
10 because that's over 300 feet in this example; right?

11 A Is that the same parcel of land, just two buildings
12 on the parcels?

13 Q Well, it doesn't really matter if it's the same
14 parcel, because for the dispensary you measure from the front
15 door. You don't measure from the parcel.

16 A That'd be great.

17 Q So Building 1 is okay, but Building Number 2 is
18 illegal; right?

19 A Yeah, based on the drawing that would be correct.

20 Q Okay. Now, I don't know if you're familiar with
21 what they do with taverns, but when someone applies for a
22 tavern there's a distance separation requirement from other
23 taverns. Are you familiar with that in general?

24 A No, I'm not.

25 Q Okay. When they apply for taverns they have

1 professional surveyors fill out portions of the application,
2 like Horizon Surveyor, and they have to certify that this
3 proposed tavern location is X number of feet away from any
4 existing tavern. Are you kind of familiar with that?

5 A Yes.

6 Q Okay. Is there any type of requirement that the DOT
7 has that an applicant has to prove that a dispensary is over a
8 thousand feet from a public school and 300 feet from the
9 property line of a church?

10 A Yes, there is. Part of conditional steps that they
11 need to complete within the 12 months is to supply the
12 professional zoning, a zoning approval from the local
13 jurisdiction.

14 Q Okay. Well, you're not relying on the City of
15 Pahrump and Nye County and places like that to enforce the
16 State's separation requirement, are you?

17 A No, we're not. We will look at the separation
18 requirements and compare them to ours.

19 Q You look at it independently, the DOT does?

20 A Yes.

21 Q So, for example, if the City of Las Vegas just
22 didn't pick up on the fact that they were within 300 feet of a
23 church, that doesn't matter, because they're still in
24 violation of state law; right?

25 A That's correct.

1 understanding?

2 A In the traditional sense I think when these rules
3 were put in place I don't think the Department contemplated
4 the logistical implications of publicly traded companies. MM
5 Development, for example, is a publicly traded company, a
6 plaintiff in this lawsuit. I could go on right now and buy
7 shares of their company; right? So it's impractical to
8 require someone who owns one share of MM to be listed here.
9 So my understanding -- and, you know, maybe it's been, you
10 know, so long that it's just become, you know, part of my
11 understanding, I can't tell you exactly right here as I sit
12 today where it came from. But the rule has always been as far
13 back as I can recall that for publicly traded companies, you
14 know, there's a certain threshold before having to be listed
15 or something like that.

16 THE COURT: So, we're going to break. It's 4:45.
17 I'll see you guys at 9:15.

18 MR. PARKER: Thank you so much, Your Honor.

19 (Court recessed at 4:45 p.m., until the following day,
20 Tuesday, June 11, 2019, at 9:15 a.m.)

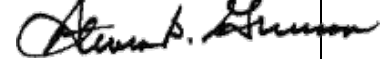
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

28 Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant.

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

**MM DEVELOPMENT COMPANY,
INC.'S AND LIVFREE WELLNESS,
LLC'S BENCH BRIEF REGARDING
COMPLIANCE WITH NRS
453D.200(6)**

Coordinated with for purposes of the
preliminary injunction hearing:

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

Plaintiff,

vs.

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

Defendants.

ALL RELATED MATTERS

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

NOW APPEAR Plaintiffs/Counter-Defendants MM Development Company, Inc. d/b/a/
Planet 13 (“MM”) and LivFree Wellness, LLC d/b/a The Dispensary (“LivFree”) (“Plaintiffs”),
by and through their counsel of record, and hereby file this supplemental brief in support of the
motion for preliminary injunction as a follow-up to the Court’s question about which of the
successful applicants complied with NRS 453D.200(6), as opposed to the State of Nevada,
Department of Taxation’s (“DOT”) administrative change to the statute which limited it to a 5
percent or greater ownership interest.

I.

ARGUMENT

A. Lone Mountain Partners, LLC

As part of its application, Lone Mountain Partners concealed the fact that Verano
Holdings, LLC was an owner. Lone Mountain Partners only lists George Archos, Sam Dorf, and
Debra Ackerman as owners/board members in its September 2018 application. According to a
complaint filed against Lone Mountain Partners (Naturex v. Verano Holdings) those three
individuals are not the owners of Lone Mountain:

4. At all material times herein, Defendant VERANO HOLDINGS, LLC
 (“Verano”) was a limited liability company operating pursuant to the laws of the
 State of Illinois. On information and belief, **Defendant Verano owns or
 maintains an interest and controls the business operations of Defendant Lone**

1 **Mountain**, Defendant Nevada Natural Treatment Solutions, LLC and Naturex.
2 **On Verano’s website, it represents it owns the Nevada dispensary “Zen Leaf”,**
3 **which the dispensary is actually owned by Naturex. Verano further**
4 **represents it owns a marijuana cultivation facility in Nevada, which on**
5 **information and belief, is actually owned by Defendant Lone Mountain**
6 **Partners, LLC.**

7 ...
8
9
10 10. At all material times herein, Defendant CARL ROSEN (“ROSEN”) was,
11 on information and belief, an individual residing in the State of New York and
12 routinely and continuously maintained ownership and operated companies doing
13 business in the State of Nevada, **particularly Defendants Lone Mountain,**
14 **Verano and NNTS.**

15
16 11. At all material times herein, Defendant JULIE NAGLE (“NAGLE”) was,
17 on information and belief, an individual residing in the State of Illinois and
18 routinely and continuously maintained ownership and operated companies doing
19 business in the State of Nevada, **particularly Defendants Lone Mountain,**
20 **Verano and NNTS.**

21 **Exhibit 1, Naturex, LLC, et al. v. Verano Holdings, LLC, et al. (A-19-787873-C) Complaint, pp.**
22 **2-3.**

23 Verano’s ownership and control over Lone Mountain Partners, LLC – rather than Archos
24 and Dorf – is confirmed by documents filed with the Canadian Securities Administrators (“CSA”)
25 through the SEDAR filing system by Harvest Health and Recreation, Inc (“Harvest”).¹ In
26 Harvest’s May 28, 2019

27 ///

28 ///

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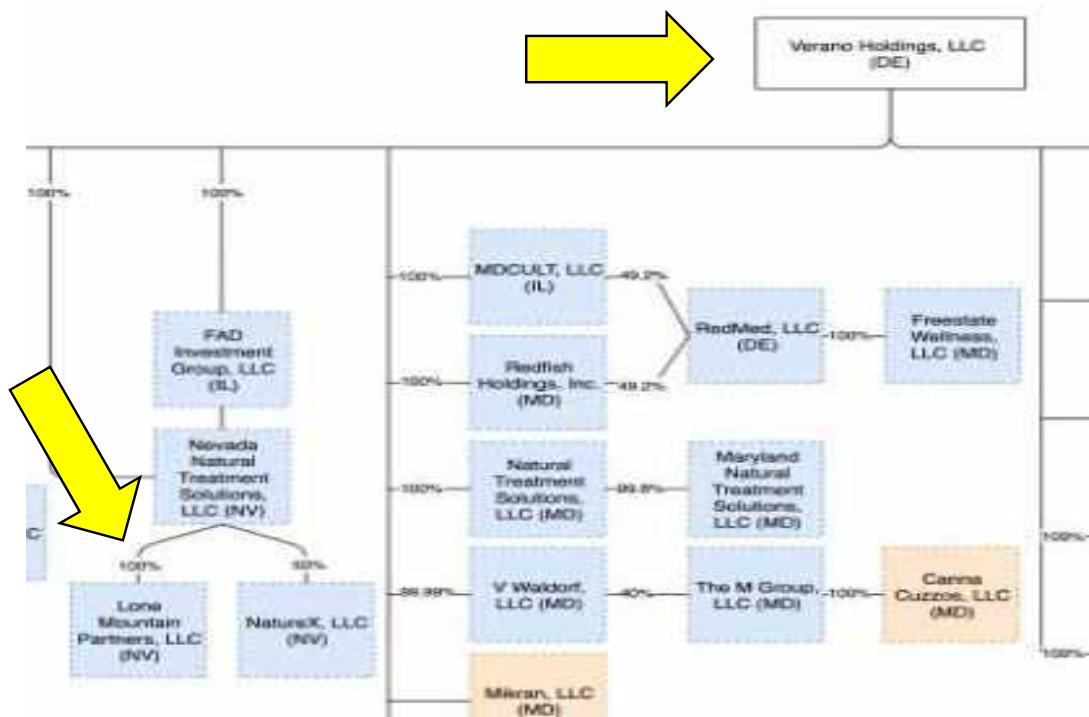
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¹ Harvest recently announced a “Business Combination Agreement” with Verano Holdings by which securityholders of Harvest and Verano will become securityholders in a combined company that will carry on the business of Harvest and Verano. This creates an interesting issue for the DOT, however, as Harvest recently had a renewal application for a medical marijuana cultivation license denied and, thus, the license was revoked by the Pennsylvania Department of Health. This potentially implicates the prohibition against awarding licenses to Lone Mountain/Verano/Harvest under NRS 453D.210(8)(f)(2).

Management Information Circular, the organization chart of Verano is provided. In that chart, it is clear that Lone Mountain Partners is 100% owned and controlled by Verano Holdings, LLC:



See Harvest’s May 28, 2019 Management Information Circular, F-12, attached as **Exhibit 2**. In that same document, there is a chart of “*Verano Licenses in Nevada*” listing all Lone Mountain Partners’ Nevada licenses, which are all identified as 100% owned/controlled by Verano. See Harvest’s May 28, 2019 Management Information Circular, F-43, attached as **Exhibit 3**. Finally, within the Verano Holdings LLC and Subsidiaries Consolidated Financial Statements, the Lone Mountain Partners litigation is listed. See Harvest’s May 28, 2019 Management Information Circular, I-36, attached as **Exhibit 4**.

Verano, the parent company, only submitted background information for 2 (out of 9) of its owners/officers/directors. Those two are George Archos and Sam Dorf. It did not submit background information for the other 7 – Dean Matt, Tim Tenant, Darren Weiss, Anthony Marsico, Chris Fotopoulos, Leonard Mahler, and Cary Millstein. See **Exhibit 5**, SEC Form D (dated 11/13/18), pp 2-4, which gives a complete list of the Verano officers and directors during

1 the application period. Ignoring the fact that Lone Mountain Partners got an inappropriately high
2 diversity grade, it also did not comply with the requirement to have each prospective
3 owner/officer/board member background checked.

4 **B. Nevada Organic Remedies, LLC**

5 Nevada Organic Remedies, LLC (“NOR”), by its own admissions, confirmed that it did
6 not have “each” of its prospective owners, officers, or board members background checked in
7 compliance with NRS 453D.200(6). Andrew Jolley, the corporate representative for NOR,
8 testified that NOR did not list the shareholders for company that actually owned NOR at the time
9 the applications were submitted (Xanthic Biopharma Inc. dba Green Growth Brands (“GGB”)):

10 Q ... It’s true that you did not list all of the owners of Xanthic; right?

11 A Xanthic is a publicly traded corporation and our understanding was that for
12 a publicly registered or publicly traded companies that you’re required to disclose
the officers and board members, which we did.

13 ...

At no point in time was there a requirement to list every shareholder of Xanthic.

14 Jolley Testimony, 6/10/19, 96:19-97:12, relevant excerpts attached as **Exhibit 6**. Mr. Jolley
15 clarified further, that the majority shareholders of Xanthic, which owned 95% of Nevada Organic
16 Remedies, were **not** listed on its applications:

17 Q Okay. And you did not include the major shareholders of Xanthic; correct?

18 A I don’t agree with that statement.

19 Q Okay. All Js Greenspace LLC, have you ever heard that name?

20 A All Jay Green Piece?

21 Q All Js Greenspace LLC.

22 A Not off the top of my head.

23 Q And if I told you they owned 37 million shares of Xanthic, they are 22.5
percent, that’s news to you now?

24 A Can you tell me who the members and managers are of that LLC?

25 Q Earlier you referenced an individual named Schott something?

26 A Schottenstein.

27 Q Yes. So the Schottenstein company is one of the major owners?

28 A As far as I know, yes.

Q And do you know how much they own?

A My recollection was around 30 percent.

Q Okay. And how about GA Opportunities Corp? They own 27 million
shares of Xanthic or 16.5 percent of the company. You didn’t list them
under the organizational chart, did you?

A I believe we listed everyone that the application required us to list.

- 1 Q Okay. I'm not asking if you think you did everything right, I'm asking
2 A GA Opportunities Corp. is not on our application, as far as I can recall.
3 Q And neither was All Js, which by the way is a wonderful name for a
4 A I do not believe we listed All Js.

5 Jolley Testimony, 6/10/19, 97:20-99:4, **Ex. 6**.

6 As Mr. Jolley's testimony made clear, NOR did not comply with the requirement to have
7 each prospective owner/officer/board member background checked.

8 **C. Greenmart of Nevada NLV, LLC**

9 As acknowledged by Greenmart's counsel during this hearing, at the time the applications
10 were submitted Greenmart of Nevada NLV, LLC was owned by MPX Bioceutical Corporation
11 ("MPX"). See 5/30/19 Transcript, Vol. II, 129:17-130:4, relevant excerpts attached as **Exhibit**
12 **7**. Of course, the people that were actually listed on Greenmart's application – the "advisory"
13 board members, like Stacey Dougan, who have never had a meeting, met each other, or provided
14 any advice to the company – were not the same as the owners, officers, and board members of
15 the real owner of Greenmart. MPX, a Canadian publicly-traded company, is the real owner.
16 Differing significantly from the people listed in Greenmart's application, MPX's officers and
17 directors are listed on p. 3 of its Management Information Circular filed with the CSA through
18 the SEDAR filing system in late 2018. See **Exhibit 8**. Those owners, officers, and board
19 members include W. Scott Boyes, David McLaren, Elizabeth Stavola, Michael Arnkvarn, Jeremy
20 Budd, Jonathan Chu, Randy Stafford, Andrew Ryan, Tick Segerblom, Robert Galvin, Dr. Miles
21 Thompson, and Robert Petch. Of MPX's officers and directors, only W. Scott Boyes and
22 Elizabeth Stavola were actually disclosed on Greenmart's application. None of MPX's
23 shareholders were identified. Greenmart, and MPX, did not comply with the NRS 453D
24 background check requirements.

25 **D. Helping Hands Wellness Center**

26 Alfred Terteryan testified on behalf of Helping Hands Wellness Center, Inc. According
27 to his testimony, he is Helping Hands' COO:
28

1 Q All right. So tell me what your role and responsibilities are, then, for
2 Helping Hands?

3 A Chief operating officer. **I'm the one who operates the business.**

4 Terteryan Testimony, 8/14/19, 76:3-6, relevant excerpts are attached as **Exhibit 9**. Although he
5 testified that he is an officer of the company, Mr. Terteryan was not identified as the Chief
6 Operating Officer anywhere in Helping Hands' September 2018 application:

7 Q Good enough. Now, I believe you've testified today to this Court that
8 there are three female owners; is that correct?

9 A That's right.

10 Q Why don't we have a single female owner speaking on behalf of Helping
11 Hands, as opposed to you today?

12 ...
13 THE WITNESS: Because I'm mostly involved with the operation of
14 Helping Hands from the beginning with my wife.

15 BY MR. PARKER:

16 Q Now, let me make sure I'm clear. Because when I looked again through
17 the application of Helping Hands I did not see your name referenced as
18 an owner, a board member, or an officer. Is that also true, sir?

19 A That's right. But isn't it community property, husband and wife?

20 Terteryan Testimony, 8/14/19, 60:4-20, **Ex. 9**; see also DOT-Helping002269, part of Admitted
21 Exhibit 31A. He apparently believed he did not need to be identified in the application because
22 of community property laws. There are no administrative regulations or statutes that allow that.
23 It also raises the question of how many other owners, officers, or board members are there for
24 Helping Hands that were conveniently left off its application and not background checked.
25 Neither the Court, nor the State can be sure because the DOT did nothing to confirm that the
26 information given in the application was complete:

27 Q The Department didn't go out and start looking at websites and
28 performing investigations into what was represented other than
completing a background check; is that right?

29 A Right. And what was provided in the application.

30 Q Right. And so you trusted what the applicants submitted; correct?

31 A Yes.

32 Q And trusted them to tell the truth; is that right?

33 A Yes.

34 Q And you relied upon them?

35 A Yes.

36 Steve Gilbert Testimony, 6/18/19, Vol. II, 83:4-15, relevant excerpts attached as **Exhibit 10**.

1 An additional inconsistency with the Helping Hands application is the failure to disclose
2 to the DOT that the Jamesons – Florence and Gard – were prospective owners. As Admitted
3 Exhibit 5063 makes clear, according to the Jamesons their family “through a related entity, was
4 awarded two provisional dispensary licenses, one in Clark County and one in the City of North
5 Las Vegas.” See Admitted Exhibit 5063. The Jamesons even clarified, stating that “The Jameson
6 dispensaries will be wholly owned by the Jamesons.” Id.

7 **E. Clear River, LLC**

8 The DOT already acknowledged that Clear River, LLC did not comply with identifying
9 the ownership in its applications. In Admitted Exhibit 131, the DOT informed Clear River that it
10 was required to file a Change of Ownership form within 30 days because the ownership structure
11 on file with the DOT did not match those disclosed (and background checked) per its application.
12 Even in the DOT’s most recent list of Marijuana Licensees, Owners, Officers & Board Members
13 (as of August 1, 2019)², Clear River’s listed owners include John Kocer and Norton Arbelez, in
14 addition to Randy Black, Sr. See relevant excerpts, attached as **Exhibit 11**. Clear River’s
15 applications in September 2018 only disclosed Randy Black, Sr. as the owner. These
16 discrepancies show that Clear River did not comply with the NRS 453D background check
17 requirements.

18 **F. Circle S Farms, LLC**

19 Circle S claims to be owned by four women, Stacey Huffman, Brenda Gunsallus, Darlene
20 Davis, and Glenda Shaw.³ DOT035580. Just like Helping Hands, Circle S reportedly has an
21 undisclosed Chief Operating Officer, i.e., Curtis Huffman. Huffman is the husband of one of
22 Circle S’s purported owners, Stacey Huffman, and calls himself her “consultant”. See Qualcan,
23 LLC v. Desert Aire Wellness, LLC, Desert Aire Wellness Pretrial Disclosures, 2:2, dated March

24
25 ² Available on the Nevada Department of Taxation’s website here:
26 https://tax.nv.gov/FAQs/Marijuana_License_Application_Information_-_NEW/

27 ³ Circle S has a sister entity – Desert Aire Wellness – with many of the same owners (e.g., Brenda
28 Gunsallus, Stacey Huffman, and Darlene Davis) that operates the Sahara Wellness dispensary.
See Newman v. Huffman, et al., Complaint and attached exhibits, dated Nov. 28, 2018 (Case No.
A-18-784970-B), attached as **Exhibit 12**.

22, 2019 (Case No. A-15-721086-C), attached as **Exhibit 13**. The Huffmans own Pine Mountain Holdings LLC, which is the landlord for Circle S’s proposed dispensary in the City of Las Vegas. See Ex. 12, 6:4-7; see also Nevada Secretary of State Business Entity Information, attached as **Exhibit 14**. Just like Mr. Terteryan, Mr. Huffman is reportedly instrumental in conducting the business for Circle S and its related entity, Desert Aire. See, e.g., Ex. 12, ¶¶ 24-26. The apparent reason for leaving Curtis Huffman’s name off of Circle S’s application documents is because he was previously charged in North Carolina with operating an illegal sweepstakes business in 2013. See, e.g., Qualcan, LLC v. Desert Aire Wellness, LLC, Third Party Defendants and Third Party Plaintiffs Answer and Counterclaim, 9:28-10:4, dated Aug. 27, 2015 (Case No. A-15-721086-C) attached as **Exhibit 15**; see also Sharon McBrayer, Sweepstakes Parlor Remains Open, Hickory Daily Record, June 25, 2013 (“Curtis Huffman, who owns Circle S in Long View, was one of the people charged with misdemeanors when his sweepstakes parlor on Spring Road in Hickory, Circle S Depot, was closed down Jan. 18. Huffman and employees [...] were charged with operating an illegal sweepstakes business.”) attached as **Exhibit 16**. The fact that Circle S named its marijuana operation after Curtis Huffman’s Circle S sweepstakes parlor is not believed to be coincidental.

II.

CONCLUSION

A minimum of 6 out of the 17 winning applicants did not comply with the NRS453D.200(6) background check requirements. Lone Mountain Partners neither disclosed its 100% owner (Verano) nor 7 of the 9 officers and directors of Verano. NOR did not disclose its owner (GGB Nevada), its parent company (GGB/Xanthic), the shareholders of its parent public company (GGB/Xanthic) or the officers and directors or its parent public company (GGB/Xanthic). Greenmart did not disclose its owner (MPX), the shareholders of this parent public company MPX or the officers and directors of MPX. Helping Hands did not provide any information about its Chief Operating Officer (Alfred Terteryan). Clear River did not list all of its owners – according to the DOT’s records. And just like Helping Hands, Circle S appears to have at least one undisclosed corporate officer – a person charged with a crime in 2013. Hence

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1 the DOT could not have possibly background checked these dozens of individuals. These six
2 winning applicants that did not comply with the background check requirements obtained 29 of
3 the 61 conditional licenses, which demonstrates why the entire process was flawed.

4 DATED this 21st day of August, 2019.

5 **KEMP, JONES & COULTHARD LLP**

6
7 /s/ Nathanael Rulis

8 Will Kemp, Esq. (NV Bar No. 1205)
9 Nathanael R. Rulis (NV Bar No. 11259)
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10 *Attorneys for Plaintiffs*

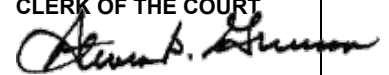
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 2019, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S AND LIVFREE WELLNESS, LLC'S BENCH BRIEF REGARDING COMPLIANCE WITH NRS 453D.200(6)** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Ali Augustine

An employee of Kemp, Jones & Coulthard, LLP



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8 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

28 Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant.

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

**MM DEVELOPMENT COMPANY,
INC.'S AND LIVFREE WELLNESS,
LLC'S APPENDIX IN SUPPORT OF
BENCH BRIEF REGARDING
COMPLIANCE WITH NRS
453D.200(6)**

Coordinated with for purposes of the
preliminary injunction hearing:

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

Plaintiff,

vs.

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

Defendants.

ALL RELATED MATTERS

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

NOW APPEAR Plaintiffs/Counter-Defendants MM Development Company, Inc. d/b/a/ Planet 13 (“MM”) and LivFree Wellness, LLC d/b/a The Dispensary (“LivFree”) (“Plaintiffs”), by and through their counsel of record, and hereby file this appendix to the supplemental brief regarding which of the successful applicants complied with NRS 453D.200(6).

Ex.	Exhibit Description	App. Pages
1	<u>Naturex, LLC, et al. v. Verano Holdings, LLC</u> , et al. (A-19-787873-C) Complaint	001-033
2	Excerpt (F-12) from Harvest Health & Recreation, Inc. May 28, 2019 Management Information Circular	034-035
3	Excerpt (F-43) from Harvest Health & Recreation, Inc. May 28, 2019 Management Information Circular	036-037
4	Excerpts of Verano Holdings, LLC’s Consolidated Financial Statements from Harvest Health & Recreation, Inc. May 28, 2019 Management Information Circular	038-044
5	Verano Holdings, LLC Nov. 13, 2018 SEC Form D	045-053
6	Testimony of Andrew Jolley, 6/10/19	054-060
7	Testimony regarding MPX Bioceuticals, 5/30/19, Vol. II	061-064
8	Excerpts from MPX Bioceutical Corporation Dec. 11, 2018 Management Information Circular	065-072

9	Testimony of Alfred Terteryan, 8/14/19	073-076
10	Testimony of Steve Gilbert, 6/18/19	077-079
11	Clear River, LLC Excerpts of Department of Taxation Licensed Entity – Owners/Officers/Board Members as of: August 1, 2019	080-083
12	<u>Newman v. Huffman, et al.</u> , Complaint without attached exhibits, dated Nov. 28, 2018 (Case No. A-18-784970-B)	084-098
13	<u>Qualcan, LLC v. Desert Aire Wellness, LLC</u> , Desert Aire Wellness Pretrial Disclosures, dated March 22, 2019 (Case No. A-15-721086-C)	099-102
14	Nevada Secretary of State Business Entity Information for Pine Mountain Holdings, LLC	103-106
15	<u>Qualcan, LLC v. Desert Aire Wellness, LLC</u> , Third Party Defendants and Third Party Plaintiffs Answer and Counterclaim, dated Aug. 27, 2015 (Case No. A-15-721086-C)	107-157
16	Sharon McBrayer, <u>Sweepstakes Parlor Remains Open</u> , Hickory Daily Record, June 25, 2013	158-163

DATED this 21st day of August, 2019.

KEMP, JONES & COULTHARD LLP

/s/ Nathanael Rulis

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CERTIFICATE OF SERVICE

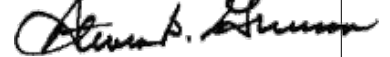
I hereby certify that on the 21st day of August, 2019, I served a true and correct copy of the foregoing **MM DEVELOPMENT COMPANY, INC.'S AND LIVFREE WELLNESS, LLC'S BENCH BRIEF REGARDING COMPLIANCE WITH NRS 453D.200(6)** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Ali Augustine

An employee of Kemp, Jones & Coulthard, LLP

Exhibit 1

APP0001



COMP

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Attorneys for Plaintiffs

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

NATUREX, LLC, a Nevada limited
liability company; and, BB MARKETING,
LLC, a Nevada limited liability company,

Plaintiffs,

vs.

VERANO HOLDINGS, LLC, an Illinois
limited liability company; LONE
MOUNTAIN PARTNERS, LLC, a Nevada
limited liability company; NEVADA
NATURAL TREATMENT SOLUTIONS,
LLC, a Nevada limited liability company;
SCYTHIAN BIOSCIENCES CORP., a
Canadian corporation; GEORGE
ARCHOS, an individual; SAM DORF, an
individual; CARL ROSEN, an individual;
JULIE NAGLE, an individual; DOES I-X;
and ROE COMPANIES I-X;

Defendants.

CASE NO: A-19-787873-C

DEPT NO.: Department 8

COMPLAINT FOR:

- 1. USURPATION OF CORPORATE OPPORTUNITY**
- 2. BREACH OF FIDUCIARY DUTY**
- 3. FRAUD**
- 4. BREACH OF DUTY OF LOYALTY**
- 5. MISAPPROPRIATION OF TRADE SECRETS**
- 6. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
- 7. IMPOSITION OF CONSTRUCTIVE TRUST**
- 8. TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**
- 9. CIVIL CONSPIRACY**
- 10. MISAPPROPRIATION OF CORPORATE ASSETS (EMBEZZLEMENT)**
- 11. DECLARATORY RELIEF**

Arbitration Exemption Claims:

- *Involves Declaratory Relief*
- *Involves Equitable or Extraordinary Relief*
- *Involves Claims in Excess of \$50,000*

1 Plaintiffs NATUREX, LLC, and BB MARKETING, LLC, by and through their
2 Counsel, Jared B. Kahn, Esq., of JK Legal & Consulting, LLC, hereby complains and alleges
3 against Defendants VERANO HOLDINGS, LLC, LONE MOUNTAIN PARTNERS, LLC,
4 NEVADA NATURAL TREATMENT SOLUTIONS, LLC, SCYTHIAN BIOSCIENCES
5 CORP., GEORGE ARCHOS, SAM DORF, CARL ROSEN, and JULIE NAGLE, the
6 following:
7

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

9 1. At all material times herein, Plaintiff Naturex, LLC (“Naturex”) was a limited
10 liability company operating pursuant to the laws of the State of Nevada.

11 2. At all material times herein, Plaintiff BB Marketing, LLC (“BBM”) was a
12 limited liability company operating pursuant to the laws of the State of Nevada.

13 3. Naturex and BBM are collectively referred herein as “Plaintiffs”.

14 4. At all material times herein, Defendant VERANO HOLDINGS, LLC (“Verano”)
15 was a limited liability company operating pursuant to the laws of the State of Illinois. On
16 information and belief, Defendant Verano owns or maintains an interest and controls the
17 business operations of Defendant Lone Mountain, Defendant Nevada Natural Treatment
18 Solutions, LLC and Naturex. On Verano’s website, it represents it owns the Nevada dispensary
19 “Zen Leaf”, which the dispensary is actually owned by Naturex. Verano further represents it
20 owns a marijuana cultivation facility in Nevada, which on information and belief, is actually
21 owned by Defendant Lone Mountain Partners, LLC.
22

23 5. At all material times herein, Defendant LONE MOUNTAIN PARTNERS, LLC
24 (“Lone Mountain”) was a limited liability company operating pursuant to the laws of the State
25 of Nevada.
26

27 6. At all material times herein, Defendant NEVADA NATURAL TREATMENT
28

1 SOLUTIONS, LLC (“NNTS”) was a limited liability company operating pursuant to the laws of
2 the State of Nevada.

3 7. At all material times herein, Defendant SCYTHIAN BIOSCIENCES CORP
4 (“SCYTHIAN”) was a Canadian corporation, and on information and belief, maintained
5 ownership and a controlling interest in Verano, and will financially benefit from the
6 wrongdoings alleged herein.
7

8 8. At all material times herein, Defendant GEORGE ARCHOS (“ARCHOS”) was
9 an individual residing in the State of Illinois and routinely and continuously maintained
10 ownership and operated companies doing business in the State of Nevada, particularly
11 Defendants Lone Mountain, Verano and NNTS.

12 9. At all material times herein, Defendant SAM DORF (“DORF”) was an
13 individual residing in the State of Illinois and routinely and continuously maintained ownership
14 and operated companies doing business in the State of Nevada, particularly Defendants Lone
15 Mountain, Verano and NNTS.
16

17 10. At all material times herein, Defendant CARL ROSEN (“ROSEN”) was, on
18 information and belief, an individual residing in the State of New York and routinely and
19 continuously maintained ownership and operated companies doing business in the State of
20 Nevada, particularly Defendants Lone Mountain, Verano and NNTS.
21

22 11. At all material times herein, Defendant JULIE NAGLE (“NAGLE”) was, on
23 information and belief, an individual residing in the State of Illinois and routinely and
24 continuously maintained ownership and operated companies doing business in the State of
25 Nevada, particularly Defendants Lone Mountain, Verano and NNTS.

26 12. Lone Mountain, Verano, NNTS, Scythian, Archos, Dorf, Rosen and Nagle are
27 referred collectively herein as “Defendants”.
28

1 13. The true names and capacities, whether individual, corporate, association or
2 otherwise of the Defendants DOES I through X and/or ROE COMPANIES I through X,
3 inclusive, are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious
4 names. Plaintiffs are informed and believe, and thereupon allege, that each of the Defendants
5 designated herein as DOES and/or ROE COMPANIES are responsible in the same manner for
6 the events and happenings herein referred to, and in some manner, caused the injuries and
7 damages to Plaintiffs alleged herein. Plaintiffs will seek leave of the Court to amend this
8 Complaint to insert the true names and capacities of said Defendants DOES I through X and/or
9 ROE COMPANIES I through X, inclusive when the same have been ascertained by Plaintiffs,
10 together with the appropriate charging allegations, and to join such Defendants in this action.
11

12 14. All of the acts alleged herein took place in the County of Clark, State of Nevada,
13 where Naturex, BBM, Verano, Lone Mountain, NNTS and the individual Defendants subject of
14 this action conducted their business affairs and caused the harm alleged herein.
15

16 **II. PERTINENT FACTS AND ALLEGATIONS**

17 **a. The Department of Taxation Retail Dispensary Licensing Applications**

18 15. The Department of Taxation, pursuant to Nevada State Legislature Assembly
19 Bill 422, transferred responsibility for the registration, licensing and regulation of marijuana
20 establishments from the State of Nevada's Division of Public and Behavioral Health to the
21 Department of Taxation (the "Department").
22

23 16. Pursuant to Section 80(3) of Adopted Regulation of the Department of Taxation,
24 LCB File No. R092-17, the Department being responsible for allocation the licenses of retail
25 marijuana dispensaries, issued a public notice for an application period wherein the Department
26 sought applications from qualified applicants to award sixty-four (64) retail marijuana
27 dispensary licenses throughout various jurisdictions in Nevada (the "Applications").
28

1 17. The application period for those retail dispensary licenses was only available to
2 existing State of Nevada licensed marijuana entities, which opened on September 7, 2018 and
3 closed on September 20, 2018 (the “Application Period”).

4 18. Despite repeated assurances relied upon by Defendants that Plaintiffs would
5 submit an application on behalf of Naturex during the Application Period, as further detailed
6 below, Defendants instead through a concerted effort nefariously conspired for Naturex to not
7 submit an application, and instead, Defendants submitted an application on behalf of
8 Defendants’ other licensed cultivation entity Lone Mountain.
9

10 19. On December 5, 2018, the Department issued conditional licenses to those
11 applicants who scored and ranked high enough in each jurisdiction. On information and belief,
12 Defendant Lone Mountain was awarded eleven (11) retail dispensary licenses (the “Licenses”).
13

14 **b. The Naturex Ownership and Partnership Between Plaintiffs and Defendants**

15 20. Naturex owns and operates a lawfully licensed medical and retail marijuana
16 dispensary doing business as “Zen Leaf” in Clark County, Nevada.

17 21. Prior to April 2016, Naturex was owned by BBM (or its member entities),
18 Kessler and Wyloge.

19 22. In or around April 2016, pursuant to a Membership Interest Purchase Agreement
20 and for valuable consideration, Defendant NNTS purchased fifty percent (50.0%) of the
21 membership interest in Naturex. Plaintiff BBM and another member comprised of the
22 remaining fifty (50.0%) membership interest of Naturex.
23

24 23. Subsequent to the acquisition by NNTS of the membership interest in Naturex,
25 the Parties acted accordingly and operated the Zen Leaf dispensary collaboratively, particularly,
26 BBM and NNTS each acted as Managers of the entity dividing up operational and managerial
27 duties, acted in concert for the benefit of the entity Naturex, and regularly and routinely
28

1 communicated and agreed upon the decisions in the best interest of Naturex – until the
2 Application Period.

3 24. Until the Application Period, the Managers of Naturex, BBM and NNTS
4 (controlled by Verano), would operate and make business operation decisions together for the
5 benefit of Naturex and its members.
6

7 25. The Membership Interest Purchase Agreement provided for a supply and
8 inventory provision such that the dispensary would be required to purchase inventory, as
9 applicable, from both the BBM affiliated cultivation facility and from the Defendant's affiliated
10 cultivation facility (the "Inventory Purchase Agreement").

11 **c. Defendants' Bad Faith and Fraudulent Conduct in Pursuit of the Licenses**

12 26. During the summer of 2018, it was decided between the Managers of Naturex
13 that Defendants would take the lead on and control the Applications to be submitted on behalf
14 of Naturex.
15

16 27. Defendants hired their own "licensing consultants" known as Sara and Troy, who
17 would be tasked with preparing, compiling and submitting the Naturex Applications.

18 28. On July 31, 2018, Defendants contacted Erin Buckner, who is a licensing and
19 compliance consultant for Plaintiffs, for the purpose of Ms. Buckner providing assistance for
20 compiling the BBM ownership documents necessary for the Applications. The information
21 requested would include personal and financial information of the owners of BBM, for purposes
22 of submitting such information for the Naturex Applications.
23

24 29. In August 2018, Defendants again contacted Ms. Buckner to seek her assistance
25 in obtaining similar personal and financial documents from the remaining owners of Naturex for
26 Defendants to submit the Naturex Applications.

27 30. On September 5, 2018, Defendant Dorf contacted Ms. Buckner and requests she
28

1 start “feeding us the info for the app” and seeking additional inquiries of associations and
2 donations the members of Naturex made.

3 31. On September 7, 2018, Defendant Dorf contacted Ms. Buckner to “run through
4 everything” with Defendants’ application team. Ms. Buckner advised the application team on
5 various matters regarding portions for completing the Applications. Ms. Buckner then created a
6 Dropbox folder to share with the Defendants and their application team. Defendants then
7 tasked Ms. Buckner with completing all parts of the “unidentified portion” of the Applications.
8

9 32. On September 10, 2018, Defendants reveal there are certain ownership issues
10 with Defendants’ ownership structure and membership interests in Naturex, such that certain
11 individuals are not supposed to be owners of Defendants any longer, however, Defendants had
12 not yet taken the appropriate steps to inform the State of Nevada and process a Change of
13 Ownership. Defendant Dorf informs Ms. Buckner he desires to immediately file a Change of
14 Ownership to adjust the ownership interests of the Defendants so it will be pending before the
15 State of Nevada during the review of the Applications. Ms. Buckner is then asked to prepare
16 personal biographies and resumes for the owners of BBM and Naturex – besides Defendants -
17 which Ms. Buckner completes and delivers to Defendants by September 11, 2018. Ms. Buckner
18 also prepares and delivers the Organizational Chart for Plaintiffs necessary for the Applications.
19
20

21 33. On September 11, 2018, counsel for Plaintiffs informs Defendants their
22 ownership predicament cannot be avoided and all current-owners known to and licensed by the
23 State of Nevada listed for Naturex for Defendants’ ownership structure must be submitted for
24 the Naturex Applications.

25 34. On September 12, 2018, Defendant Dorf again contacts Ms. Buckner for
26 assistance preparing Defendants Dorf and Archos’ fingerprint cards, which Ms. Buckner
27 completes such task.
28

1 35. On September 14, 2018, Defendant Dorf contacts Ms. Buckner for assistance to
2 completing proposed “Board Member” information for the Naturex Applications.

3 36. On September 18, 2018, after Defendants repeatedly failed to respond to Ms.
4 Buckner’s repeated email communications seeking information regarding the Defendants to
5 complete the “unidentified portion” of the Naturex Applications, Ms. Buckner delivers a full
6 table of contents for the “unidentified portion” to Defendants with indications of missing
7 information she required from Defendants. Defendants did not respond.
8

9 37. On September 19, 2018, Defendants contacted the principal of BBM to request
10 the principal owner obtain his stepfather’s tax returns and approval to include him on the
11 application as a Board Member of the entity because of his notable financial successes for
12 purposes of improving the Naturex Applications’ financials in order to receive a better score
13 and ranking for the application review. The principal of BBM was unable to acquire his
14 stepfather’s financials for purposes of the Naturex Application nor did the principal of BBM
15 offer such assistance. At the time BBM received the request the day prior to the expiration of
16 the Application Period, Plaintiffs were still of the belief and understanding the Defendants were
17 submitting the Naturex Applications on behalf of Naturex. The Defendants communications the
18 day prior to the expiration of the Application Period never revealed an intent Defendants would
19 not be submitting the Naturex Applications, but in fact, such communications requesting the
20 aforementioned financials indicated to Plaintiffs the Naturex Applications were still be prepared
21 by Defendants for purpose of submitting Naturex Applications.
22

23 38. On the morning of September 20, 2018, the last day for submitting the
24 Applications during the Application Period, Defendants informed Plaintiffs the Defendants
25 would not be submitting the Applications. Defendants claimed the Applications would be
26 incomplete without locations specified in the Application materials – albeit an incorrect analysis
27
28

1 and unsubstantiated excuse proffered by Defendants, to which Plaintiffs reasonably relied on
2 such misrepresentation at the time.

3 39. Defendants receive prior advice from Defendants' personal counsel and
4 corporate counsel for the Plaintiffs informing Defendants that actual locations and land use
5 approvals were not required for the Applications, yet, despite the repeated advice, Defendants'
6 claimed the lack of sufficient locations to identify in the Applications rendered the submittal of
7 the Applications pointless.
8

9 40. Despite the extensive efforts by the Plaintiffs and compliance with all requested
10 items to be completed for the Naturex Applications, and despite the fact locations would not be
11 required for the Applications, Defendants purposefully, with an intent to cause financial harm
12 and to eliminate Plaintiffs from applying for the Applications, instead applied for the
13 Applications through their cultivation facility Lone Mountain with the express and deliberate
14 intent to cut out Plaintiffs from the Licenses.
15

16 41. Defendants had made repeated representations – in hindsight misrepresentations
17 – to Plaintiffs that Defendants would submit the Applications on behalf of Naturex.

18 42. Plaintiffs relied upon the Defendants representations by extensively providing
19 the necessary materials required for the Applications to be submitted on behalf of Naturex, and,
20 relied upon Defendants to submit the Naturex Applications rather than Plaintiffs completing the
21 Naturex Applications and submitting themselves.
22

23 43. As a result of the detrimental reliance upon the Defendants intentional
24 misrepresentations fraudulently inducing Plaintiffs not to submit the Naturex Applications,
25 Plaintiffs did not submit any Applications during the Application Period.

26 44. Instead of submitting the Naturex Applications, Defendants intentionally
27 concealed the fact Defendants instead submitted the Applications on behalf of Lone Mountain
28

1 without including Plaintiffs, yet, on information and belief, the Lone Mountain Application
2 would reference the “Zen Leaf” dispensary actually owned by Naturex.

3 45. Until late-November 2018, Defendants repeatedly communicated to Plaintiffs
4 that Applications were not submitted, and it was not until late-November 2018 that an employee
5 of Defendants informed a co-owner of BBM that Defendants did indeed submit Applications.
6 Upon Plaintiffs confronting Defendants with such information, Defendants acknowledged it
7 submitted Applications on behalf of their cultivation entity Lone Mountain and purposefully did
8 not include Plaintiffs.
9

10 46. Upon discovery of Defendants’ award of the Licenses, Plaintiffs repeatedly
11 confronted Defendants whether they intended to include Plaintiffs in the newly awarded
12 dispensary licenses, to which Defendants refuse.
13

14 47. Defendants’ Licenses are premised on the fact they will use the “Zen Leaf” brand
15 for the dispensaries, which is in fact a fictitious firm name belonging to Plaintiff Naturex. On
16 information and belief, Defendants’ misappropriated the fictitious firm name “Zen Leaf” for
17 Defendant Lone Mountain’s Application.

18 48. On further information and belief, in furtherance of Defendants’ Lone Mountain
19 Application submittal, Defendants’ misappropriated, without permission, Plaintiffs’ trade
20 secrets and proprietary information belonging to Plaintiff Naturex, such as Plaintiffs’ Standard
21 Operating Procedures (“SOPs”), financials, business plans, business designs, business models,
22 and other personal and confidential financial information belonging to Plaintiff Naturex (the
23 “Naturex Proprietary Information”).
24

25 49. As a result of Defendants’ repeated assertions and conduct, Plaintiffs relied upon
26 such representations and did not submit any Applications for Naturex. Naturex is now not
27 eligible to obtain additional recreational dispensary licenses.
28

1 50. On information and belief, subsequent to the Defendants' receipt of the Licenses,
2 Defendants have utilized, at Naturex' cost but without Plaintiffs' approval, certain Naturex
3 employees to perform services for the benefit of Defendants for the Licenses and for
4 Defendants' other businesses, evidencing Defendants' intent to utilize corporate assets for
5 Defendants' own use in furtherance of the usurped corporate opportunity.
6

7 51. Defendants have asserted the value of just the existing Naturex "Zen Leaf"
8 dispensary at Fifteen Million Dollars (\$15,000,000.00). Defendants were awarded, on
9 information and belief, ten (10) new recreational dispensaries, gaining an estimated One
10 Hundred Fifty Million Dollars (\$150,000,000.00) in equity.

11 52. As a result of Defendant's conduct, Plaintiff will suffer damages by losing 50.0%
12 of the \$150,000,000.00 in equity, therefore, the damages are in excess of Seventy-Five Million
13 Dollars (\$75,000,000.00).
14

15 53. As a result of Defendants' conduct, Plaintiffs are entitled to fifty percent (50.0%)
16 of the value of the equity obtained by the awarded Licenses, or otherwise, Plaintiffs are entitled
17 to their respective fifty percent (50.0%) ownership interest in the newly awarded Licenses.

18 54. Pursuant to the Inventory Purchase Agreement, the Zen Leaf dispensary and the
19 dispensaries for the Licenses – had they been submitted as part of the Naturex Application -
20 would ordinarily have been obligated to purchase inventory from BBM's affiliated cultivation
21 entity, however, due to Defendants' usurpation and fraudulent conduct to attempt to evade its
22 obligations due to Plaintiffs, BBM will suffer damages by not having an Inventory Purchase
23 Agreement with the Licenses despite that the dispensary licenses should have been awarded to
24 Naturex. As a result, BBM will suffer damages in excess of Fifty Million Dollars
25 (\$50,000,000.00).
26

27 55. On information and belief, Defendants are attempting to selling one or more of
28

1 the Licenses to third-party purchasers with the intent to exclude Plaintiffs from the proceeds of
2 any such sale.

3 **FIRST CLAIM FOR RELIEF**
4 **USURPATION OF CORPORATE OPPORTUNITY**
5 **(All Defendants)**

6
7 56. Plaintiffs reallege and incorporate herein the allegations of paragraphs 1 through
8 55, inclusive.

9 57. As directors and/or officers of Naturex, including comprising of the purported
10 Board for Naturex as Defendants would propose each of the Defendants would be Board
11 members on the Naturex Applications, each of the Defendants owe fiduciary duties of care,
12 loyalty and good faith to Naturex's members, including Plaintiffs. Defendants' fiduciary duties
13 include obligations to exercise good business judgment, to act prudently in the operation of
14 Naturex's business, to discharge their actions in good faith, to act in the best interests of
15 Naturex and its members, and to put the interests of Naturex before their own.

16
17 58. Defendants breached their fiduciary duty owed to Naturex and its members, by
18 among other things, appropriating for their own use, the opportunity to apply for the
19 Applications, which was an opportunity that should belong to Naturex.

20
21 59. The newly awarded Licenses will be directly competing businesses because the
22 Licenses will be utilized to open additional recreational marijuana dispensaries in direct
23 competition of Naturex and operated to the detriment of Plaintiffs.

24 60. Defendants maintain an interest and expectancy in the Licenses and the
25 competing businesses' opportunity opened thereto with the Licenses because Defendants
26 explicitly applied under Defendant Lone Mountain, which is owned and operated by the
27 Defendants.
28

1 61. Defendants repeated conduct of informing Plaintiffs the Applications would be
2 submitted on behalf of Naturex, obtaining all of the Naturex Proprietary Information, and then
3 utilizing the Naturex tradename Zen Leaf, was a direct exploit of the opportunity available to
4 Naturex, which Naturex relied upon the representations by Defendants the Application would
5 be submitted on behalf of Naturex. Defendants then intentionally and maliciously usurped the
6 opportunity available and belonging to Naturex and instead utilized the Naturex materials for its
7 own entity Defendant Lone Mountain to apply without including Plaintiffs and without
8 informing Plaintiffs of Defendants intended course of action.

10 62. The opportunity to apply for the Licenses belonged to Naturex, the Plaintiffs
11 maintained an expectancy interest in the opportunity to apply for the Licenses, and the equitable
12 interest and expectancy grew out of a pre-existing right of Naturex, therefore, Defendants – as
13 fiduciaries to Plaintiffs – could not keep the opportunity for themselves.

15 63. The proposed activity to apply for the Licenses was developed through Naturex’
16 assets and it is reasonably incident to the Naturex business, therefore, a protected opportunity
17 the Defendants usurped for their own personal benefit for the purposeful exclusion of the
18 Plaintiffs.

19 64. As a direct result of Defendant’s actions to usurp the opportunity belonging to
20 Naturex and instead utilizing the Naturex materials for Defendants to apply for and obtain the
21 Licenses directly caused the Plaintiffs’ damages because Plaintiffs were unable to apply for the
22 Licenses after detrimentally relying on Defendant’s representations the Application would be
23 submitted on behalf of Naturex, when in fact, Defendants did not intend to do so. Instead, it
24 was not until the day of the expiration of the Application Period the Defendants informed
25 Plaintiffs the Application would not be submitted, therefore, making it impossible for Plaintiffs
26 to submit their own Application after detrimentally relying upon Defendants’ course of conduct
27
28

1 and representations the Defendants would prepare and submit the Application for Plaintiffs.

2 65. As a direct result, Plaintiffs were unable to apply for and obtain the Licenses.

3 66. As a result of the usurpation of the corporate opportunity by Defendants,
4 Plaintiffs suffered damages in an amount in excess of \$10,000.00.

5 67. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
6 Licenses, or, entitled to their fifty percent ownership in the Licenses. Plaintiffs are further
7 entitled to an implied trust imposed on the Licenses and interest at the legal rate thereon the
8 profits, which exceed \$75,000,000.00 based upon the Defendants' valuation of the Licenses.

9 68. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
10 Inventory Purchase Agreement that otherwise would have supplied the Licenses' dispensaries,
11 which exceeds \$50,000,000.00 based on the projected sales to the Licenses.

12 69. Plaintiffs are therefore entitled to the proceeds from the sale of any of the
13 Licenses the Defendants are seeking to sell. Furthermore, Plaintiffs are entitled to injunctive
14 relief to prevent the disposal of any such License assets prior to the final adjudication of the
15 Plaintiffs claims.

16 70. As a result of the actions by Defendants, Plaintiffs incurred attorney fees and
17 costs and are entitled to reimbursement pursuant to NRS 18 *et seq.*

18
19
20 **SECOND CLAIM FOR RELIEF**

21 **BREACH OF FIDUCIARY DUTY**

22 **(All Defendants)**

23
24 71. Plaintiffs reallege and incorporate herein the allegations of paragraphs 1 through
25 70, inclusive.

26 72. As directors and/or officers of Naturex, including comprising of the purported
27 Board for Naturex as Defendants would propose each of the Defendants would be Board
28 members on the Naturex Applications, each of the Defendants owe fiduciary duties of care,

1 loyalty and good faith to Naturex's members, including Plaintiffs. Defendants' fiduciary duties
2 include obligations to exercise good business judgment, to act prudently in the operation of
3 Naturex's business, to discharge their actions in good faith, to act in the best interests of
4 Naturex and its members, and to put the interests of Naturex before their own.

5 73. The fiduciary duty existing between Plaintiffs and Defendants requires
6 Defendants to act with a duty for or give advice for the benefit of Plaintiffs upon the matters
7 within the scope of their business relationship.
8

9 74. Defendants breached their fiduciary duty owed to Naturex and its members, by
10 among other things, appropriating for their own use, the opportunity to apply for the
11 Applications, which was an opportunity that should belong to Naturex. Defendants failed to use
12 due care or diligence, failed to act with the utmost faith, exercise ordinary skill, and act with
13 reasonable intelligence in exercising their fiduciary duty to Plaintiffs.
14

15 75. Defendants breached their fiduciary duties of loyalty and good faith by, among
16 other things, intentionally appropriating for their own use the Naturex Proprietary Information,
17 by failing to submit the Naturex Applications, by failing to afford the opportunity in the
18 Applications and Licenses to Plaintiffs, and by purposefully misrepresenting to Plaintiffs'
19 detriment the Naturex Application would be prepared and submitted, when in fact, Defendants
20 instead intended and did submit the Lone Mountain Application to Naturex's detriment.
21

22 76. Plaintiffs have been damaged by the Defendants' breach of their fiduciary duties.

23 77. As a direct result, Plaintiffs were unable to apply for and obtain the Licenses.

24 78. As a result of the Defendants breach of their fiduciary duties, Plaintiffs suffered
25 damages in an amount in excess of \$10,000.00.

26 79. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
27 Licenses, or, entitled to their fifty percent ownership in the Licenses. Plaintiffs are further
28

1 entitled to an implied trust imposed on the Licenses and interest at the legal rate thereon the
2 profits, which exceed \$75,000,000.00 based upon the Defendants' valuation of the Licenses..

3 80. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
4 Inventory Purchase Agreement that otherwise would have supplied the Licenses' dispensaries,
5 which exceeds \$50,000,000.00 based on the projected sales to the Licenses.
6

7 81. Plaintiffs are therefore entitled to the proceeds from the sale of any of the
8 Licenses the Defendants are seeking to sell. Furthermore, Plaintiffs are entitled to injunctive
9 relief to prevent the disposal of any such License assets prior to the final adjudication of the
10 Plaintiffs claims.

11 82. As a result of the actions by Defendants, Plaintiffs incurred attorney fees and
12 costs and are entitled to reimbursement pursuant to NRS 18 *et seq.*
13

14 **THIRD CLAIM FOR RELIEF**

15 **FRAUD**

16 **(All Defendants)**

17 83. Plaintiffs reallege and incorporate herein the allegations of paragraphs 1 through
18 82, inclusive.

19 84. Defendants made false representations or misrepresentations to Plaintiffs when
20 Defendants indicated the Applications would be prepared and submitted on behalf of Naturex.
21

22 85. Defendants knew during the Application Period the Defendants' representations
23 were false and the Naturex Application would not be submitted.

24 86. Defendants intended to induce Plaintiffs to act in reliance on the representations
25 the Applications would be submitted so the Plaintiffs could not submit the Application on
26 behalf of Naturex.

27 87. Plaintiffs justifiably relied upon the Defendants' representations by completing
28

1 the requested sections of the Naturex Application and relying upon Defendants, through their
2 repeated promises and representations Defendants would handle the preparation and submittal
3 of the Application using Defendants' 'application team'.

4 88. Plaintiffs justifiable reliance on the Defendants' representations led to Plaintiffs
5 inability to submit the Application themselves since Defendants only informed Plaintiffs on the
6 last day of the Application Period the Application for Naturex would not be submitted.
7 Defendants did not inform Plaintiffs that Defendants would instead submit an Application for
8 Defendants' own entity Lone Mountain.
9

10 89. The failure to submit the Application on behalf of Naturex, which Plaintiffs were
11 relying upon Defendants to submit, led to financial damages because Naturex was unable to
12 apply for the limited available dispensary licenses. Instead, Defendants were awarded the
13 Licenses, with, on information and belief, Naturex Proprietary Information and trade name "Zen
14 Leaf" utilized for the Lone Mountain Application.
15

16 90. Plaintiffs have been damaged by the Defendants' fraudulent conduct.

17 91. As a direct result, Plaintiffs were unable to apply for and obtain the Licenses.

18 92. As a result of the Defendants fraudulent conduct, Plaintiffs suffered damages in
19 an amount in excess of \$10,000.00.
20

21 93. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
22 Licenses, or, entitled to their fifty percent ownership in the Licenses. Plaintiffs are further
23 entitled to an implied trust imposed on the Licenses and interest at the legal rate thereon the
24 profits, which exceed \$75,000,000.00 based upon the Defendants' valuation of the Licenses.

25 94. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
26 Inventory Purchase Agreement that otherwise would have supplied the Licenses' dispensaries,
27 which exceeds \$50,000,000.00 based on the projected sales to the Licenses.
28

1 95. Plaintiffs are therefore entitled to the proceeds from the sale of any of the
2 Licenses the Defendants are seeking to sell. Furthermore, Plaintiffs are entitled to injunctive
3 relief to prevent the disposal of any such License assets prior to the final adjudication of the
4 Plaintiffs claims.

5 96. As a result of the actions by Defendants, Plaintiffs incurred attorney fees and
6 costs and are entitled to reimbursement pursuant to NRS 18 *et seq.*
7

8 **FOURTH CLAIM FOR RELIEF**
9 **BREACH OF DUTY OF LOYALTY**
10 **(All Defendants)**

11 97. Plaintiffs reallege and incorporate herein the allegations of paragraphs 1 through
12 96, inclusive.

13 98. As directors and/or officers of Naturex, including comprising of the purported
14 Board for Naturex as Defendants would propose each of the Defendants would be Board
15 members on the Naturex Applications, each of the Defendants owe fiduciary duties of care,
16 loyalty and good faith to Naturex's members, including Plaintiffs. Defendants' fiduciary duties
17 include obligations to exercise good business judgment, to act prudently in the operation of
18 Naturex's business, to discharge their actions in good faith, to act in the best interests of
19 Naturex and its members, and to put the interests of Naturex before their own.
20

21 99. The fiduciary duty existing between Plaintiffs and Defendants requires
22 Defendants to maintain, in good faith, Naturex's and its members' best interests over anyone
23 else's interests.
24

25 100. Defendants breached their fiduciary duty owed to Naturex and its members, by
26 among other things, appropriating for their own use, the opportunity to apply for the
27 Applications, which was an opportunity that should belong to Naturex. Defendants failed to use
28

1 due care or diligence, failed to act with the utmost faith, exercise ordinary skill, and act with
2 reasonable intelligence in exercising their fiduciary duty to Plaintiffs.

3 101. Defendants breached their fiduciary duties of loyalty and good faith by, among
4 other things, intentionally appropriating for their own use the Naturex Proprietary Information,
5 by failing to submit the Naturex Applications, by failing to afford the opportunity in the
6 Applications and Licenses to Plaintiffs, and by purposefully misrepresenting to Plaintiffs'
7 detriment the Naturex Application would be prepared and submitted, when in fact, Defendants
8 instead intended and did submit the Lone Mountain Application to Naturex's detriment.
9

10 102. Plaintiffs have been damaged by the Defendants' breach of their fiduciary duties.

11 103. As a direct result, Plaintiffs were unable to apply for and obtain the Licenses.

12 104. As a result of the Defendants breach of their fiduciary duties, Plaintiffs suffered
13 damages in an amount in excess of \$10,000.00.
14

15 105. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
16 Licenses, or, entitled to their fifty percent ownership in the Licenses. Plaintiffs are further
17 entitled to an implied trust imposed on the Licenses and interest at the legal rate thereon the
18 profits, which exceed \$75,000,000.00 based upon the Defendants' valuation of the Licenses.
19

20 106. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
21 Inventory Purchase Agreement that otherwise would have supplied the Licenses' dispensaries,
22 which exceeds \$50,000,000.00 based on the projected sales to the Licenses.

23 107. Plaintiffs are therefore entitled to the proceeds from the sale of any of the
24 Licenses the Defendants are seeking to sell. Furthermore, Plaintiffs are entitled to injunctive
25 relief to prevent the disposal of any such License assets prior to the final adjudication of the
26 Plaintiffs claims.

27 108. As a result of the actions by Defendants, Plaintiffs incurred attorney fees and
28

costs and are entitled to reimbursement pursuant to NRS 18 *et seq.*

FIFTH CLAIM FOR RELIEF

MISAPPROPRIATION OF TRADE SECRETS

(Violation of Nevada Trade Secrets Act NRS 600A *et seq.*)

(All Defendants)

109. Plaintiffs reallege and incorporate herein the allegations of paragraphs 1 through 108, inclusive.

110. Naturex possess a viable trade secret as part of its business, including but not limited to market research, customer lists, customer and product pricing information, formulas, patterns, compilations, programs, devices, methods, techniques, products, systems, processes, designs, prototypes, procedures and computer programming instructions, including the Naturex Proprietary Information, which are extremely confidential and derive independent economic value from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from their disclosure or use.

111. Naturex took adequate measures and maintained the foregoing information and technology as trade secrets, which secrecy was guarded and not readily available to others.

112. On information and belief, Defendants intentionally, and with reason to believe that its actions would cause injury to Plaintiffs, misappropriated and exploited the trade secret information through use and disclosure of the trade secret for Defendants' own use and personal gain when it utilized the Naturex Proprietary Information for the Lone Mountain Application.

113. The misappropriation is wrongful because it was made in breach of an expressed or implied contract that the information would only be used for the Naturex Application, and, by Defendants' who maintained a fiduciary duty not to disclose the trade secret.

1 114. On information and belief, Defendants misappropriated the trade secret
2 information with willful, wanton, or reckless disregard of Plaintiffs' rights for Defendants' Lone
3 Mountain Application instead of utilizing the information for the Naturex Application that was
4 never submitted.

5 115. Plaintiffs have been damaged by the Defendants' misappropriate of trade secrets
6 because Defendants would not have been successful in obtaining the Licenses without the trade
7 secrets, which the Licenses will not be directly competing with Naturex.
8

9 116. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
10 Licenses, or, entitled to their fifty percent ownership in the Licenses, which exceed
11 \$75,000,000.00 based upon the Defendants' valuation of the Licenses. Plaintiffs are further
12 entitled to an implied trust imposed on the Licenses and interest at the legal rate thereon the
13 profits for the effectuation of justice.
14

15 117. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
16 Inventory Purchase Agreement that otherwise would have supplied the Licenses' dispensaries,
17 which exceeds \$50,000,000.00 based on the projected sales to the Licenses.

18 118. Plaintiffs are therefore entitled to the proceeds from the sale of any of the
19 Licenses the Defendants are seeking to sell. Furthermore, Plaintiffs are entitled to injunctive
20 relief to prevent the disposal of any such License assets prior to the final adjudication of the
21 Plaintiffs claims.
22

23 119. As a direct result of the Defendants misappropriation, Plaintiffs suffered
24 damages in an amount in excess of \$10,000.00.

25 120. As a result of the actions by Defendants, Plaintiffs incurred attorney fees and
26 costs and are entitled to reimbursement pursuant to NRS 600A.060.
27

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SIXTH CLAIM FOR RELIEF
BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING

(All Defendants)

121. Plaintiffs reallege and incorporate herein the allegations of paragraphs 1 through 120, inclusive.

122. The Parties entered into that particular Membership Interest Purchase Agreement for the Defendant to purchase fifty percent (50.0%) of the membership interest of Naturex and be partners with Plaintiffs.

123. The Membership Interest Purchase Agreement contains an implied covenant to act in good faith in performance and enforcement of the contract.

124. The Membership Interest Purchase Agreement contained various provisions regarding the management and partnership between the Parties going forward for the operations of the business of Naturex.

125. Plaintiffs maintained a justifiable expectation to receive certain benefits consistent with the provisions of the Agreement, such as a co-manager acting with a duty of loyalty and fiduciary duty to Naturex and the members.

126. Defendants conduct was in violation of or unfaithful to the spirit of the Agreement because Defendants duty of loyalty and fiduciary duty were breached when Defendants failed to submit the Naturex Application and instead usurped the opportunity by only submitting the Lone Mountain Application.

127. Defendants actions were deliberate because Defendants waited until the last day of the Application Period to inform Naturex the Application would not be submitted despite all the while Defendants were preparing and submitted the Lone Mountain Application to the

1 detriment of Plaintiffs.

2 128. Plaintiffs have been damaged by the Defendants' breach of the implied covenant
3 of good faith and fair dealing because Plaintiffs were unable to apply for and obtain the
4 Licenses.

5 129. As a result of the Defendants breach, Plaintiffs suffered damages in an amount in
6 excess of \$10,000.00.
7

8 130. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
9 Licenses, or, entitled to their fifty percent ownership in the Licenses. Plaintiffs are further
10 entitled to an implied trust imposed on the Licenses and interest at the legal rate thereon the
11 profits, which exceed \$75,000,000.00 based upon the Defendants' valuation of the Licenses.

12 131. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
13 Inventory Purchase Agreement that otherwise would have supplied the Licenses' dispensaries,
14 which exceeds \$50,000,000.00 based on the projected sales to the Licenses.
15

16 132. Plaintiffs are therefore entitled to the proceeds from the sale of any of the
17 Licenses the Defendants are seeking to sell. Furthermore, Plaintiffs are entitled to injunctive
18 relief to prevent the disposal of any such License assets prior to the final adjudication of the
19 Plaintiffs claims.
20

21 133. As a result of the actions by Defendants, Plaintiffs incurred attorney fees and
22 costs and are entitled to reimbursement pursuant to NRS 18 *et seq.*, and the Membership
23 Interest Purchase Agreement.

24 **SEVENTH CLAIM FOR RELIEF**

25 **IMPOSITION OF CONSTRUCTIVE TRUST**

26 **(All Defendants)**

27 134. Plaintiffs reallege and incorporate herein the allegations of paragraphs 1 through
28

1 135, inclusive.

2 135. As directors and/or officers of Naturex, including comprising of the purported
3 Board for Naturex as Defendants would propose each of the Defendants would be Board
4 members on the Naturex Applications, each of the Defendants owe fiduciary duties of care,
5 loyalty and good faith to Naturex's members, including Plaintiffs. Defendants' fiduciary duties
6 include obligations to exercise good business judgment, to act prudently in the operation of
7 Naturex's business, to discharge their actions in good faith, to act in the best interests of
8 Naturex and its members, and to put the interests of Naturex before their own.

10 136. The fiduciary duty existing between Plaintiffs and Defendants requires
11 Defendants to maintain, in good faith, Naturex's and its members' best interests over anyone
12 else's interests and was a confidential relationship between the Parties.

14 137. Defendants breached their fiduciary duty owed to Naturex and its members, by
15 among other things, appropriating for their own use, the opportunity to apply for the
16 Applications, which was an opportunity that should belong to Naturex. Defendants failed to use
17 due care or diligence, failed to act with the utmost faith, exercise ordinary skill, and act with
18 reasonable intelligence in exercising their fiduciary duty to Plaintiffs.

19 138. Defendants breached their fiduciary duties of loyalty and good faith by, among
20 other things, intentionally appropriating for their own use the Naturex Proprietary Information,
21 by failing to submit the Naturex Applications, by failing to afford the opportunity in the
22 Applications and Licenses to Plaintiffs, and by purposefully misrepresenting to Plaintiffs'
23 detriment the Naturex Application would be prepared and submitted, when in fact, Defendants
24 instead intended and did submit the Lone Mountain Application to Naturex's detriment.

26 139. Plaintiffs have been damaged by the Defendants' breach of their fiduciary duties.

27 140. As a direct result, Plaintiffs were unable to apply for and obtain the Licenses and
28

1 retention of legal title by Defendants would be inequitable under the circumstances.

2 141. As a result of the Defendants breach of their fiduciary duties, Plaintiffs suffered
3 damages in an amount in excess of \$10,000.00.

4 142. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
5 Licenses, or, entitled to their fifty percent ownership in the Licenses, which exceed
6 \$75,000,000.00 based upon the Defendants' valuation of the Licenses. Plaintiffs are further
7 entitled to an implied trust imposed on the Licenses and interest at the legal rate thereon the
8 profits for the effectuation of justice.

9
10 143. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
11 Inventory Purchase Agreement that otherwise would have supplied the Licenses' dispensaries,
12 which exceeds \$50,000,000.00 based on the projected sales to the Licenses.

13
14 144. Plaintiffs are therefore entitled to the proceeds from the sale of any of the
15 Licenses the Defendants are seeking to sell. Furthermore, Plaintiffs are entitled to injunctive
16 relief to prevent the disposal of any such License assets prior to the final adjudication of the
17 Plaintiffs claims.

18 145. As a result of the actions by Defendants, Plaintiffs incurred attorney fees and
19 costs and are entitled to reimbursement pursuant to NRS 18 *et seq.*

20
21 **EIGHTH CLAIM FOR RELIEF**

22 **TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**

23 **(All Defendants)**

24 146. Plaintiffs reallege and incorporate herein the allegations of paragraphs 1 through
25 145, inclusive.

26 147. Plaintiffs maintained a prospective economic interest to apply for the Licenses.

27 148. Defendants had knowledge of the prospective economic interest.
28

1 149. Defendants intended to harm Plaintiff by preventing the prospective economic
2 interest when Defendants failed to prepare and submit the Application on behalf of Naturex.

3 150. There exists no justification or privilege for Defendants' conduct.

4 151. Plaintiffs have been damaged by the Defendants' tortuous interference with the
5 prospective economic interest.

6 152. As a direct result, Plaintiffs were unable to apply for and obtain the Licenses.

7 153. As a result of the Defendants tortuous interference with the prospective
8 economic interest, Plaintiffs suffered damages in an amount in excess of \$10,000.00.

9 154. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
10 Licenses, or, entitled to their fifty percent ownership in the Licenses, which exceed
11 \$75,000,000.00 based upon the Defendants' valuation of the Licenses. Plaintiffs are further
12 entitled to an implied trust imposed on the Licenses and interest at the legal rate thereon the
13 profits for the effectuation of justice.

14 155. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
15 Inventory Purchase Agreement that otherwise would have supplied the Licenses' dispensaries,
16 which exceeds \$50,000,000.00 based on the projected sales to the Licenses.

17 156. Plaintiffs are therefore entitled to the proceeds from the sale of any of the
18 Licenses the Defendants are seeking to sell. Furthermore, Plaintiffs are entitled to injunctive
19 relief to prevent the disposal of any such License assets prior to the final adjudication of the
20 Plaintiffs claims.

21 157. As a result of the actions by Defendants, Plaintiffs incurred attorney fees and
22 costs and are entitled to reimbursement pursuant to NRS 18 *et seq.*

23 / / /

24 / / /

**NINTH CLAIM FOR RELIEF
CIVIL CONSPIRACY**

(All Defendants)

158. Plaintiffs reallege and incorporate herein the allegations of paragraphs 1 through 157, inclusive.

159. Defendants, through their various entities, officers, board members, and members, intended to accomplish an unlawful objective together by causing the Naturex Application to not be submitted in order to provide Defendants an advantage for the application process.

160. Defendants acted in concert and by agreement of a meeting of the minds to pursue the Lone Mountain Application while purposefully disregarding the Naturex Application and the failure to submit it for review.

161. The Defendants intentions of waiting until the day of the expiration of the Application Period to inform Naturex it would not submit the Naturex Application while contemporaneously concealing the fact Defendants intended to submit an Application on behalf of Lone Mountain instead were to accomplish the unlawful objection of harming Naturex because it would be too late for Naturex to complete and submit its Application.

162. By misappropriating the Naturex Proprietary Information and defrauding Plaintiffs into believing the Application would be submitted based on the repeated promises despite Defendants' intent to submit the Application instead under Lone Mountain, Defendants committed an unlawful act in furtherance of the agreement to harm Naturex.

163. Plaintiffs have been damaged by the Defendants' civil conspiracy setout to cause the Naturex Application to not be submitted.

164. As a direct result, Plaintiffs were unable to apply for and obtain the Licenses.

165. As a result of the Defendants civil conspiracy, Plaintiffs suffered damages in an

1 amount in excess of \$10,000.00.

2 166. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
3 Licenses, or, entitled to their fifty percent ownership in the Licenses, which exceed
4 \$75,000,000.00 based upon the Defendants' valuation of the Licenses. Plaintiffs are further
5 entitled to an implied trust imposed on the Licenses and interest at the legal rate thereon the
6 profits for the effectuation of justice.
7

8 167. Plaintiffs are therefore entitled to their fifty percent profits to be earned from the
9 Inventory Purchase Agreement that otherwise would have supplied the Licenses' dispensaries,
10 which exceeds \$50,000,000.00 based on the projected sales to the Licenses.

11 168. Plaintiffs are therefore entitled to the proceeds from the sale of any of the
12 Licenses the Defendants are seeking to sell. Furthermore, Plaintiffs are entitled to injunctive
13 relief to prevent the disposal of any such License assets prior to the final adjudication of the
14 Plaintiffs claims.
15

16 169. As a result of the actions by Defendants, Plaintiffs incurred attorney fees and
17 costs and are entitled to reimbursement pursuant to NRS 18 *et seq.*

18 **TENTH CLAIM FOR RELIEF**

19 **MISAPPROPRIATION OF CORPORATE ASSETS**

20 **(EMBEZZLEMENT)**

21 **(All Defendants)**

22
23 170. Plaintiffs reallege and incorporate herein the allegations of paragraphs 1 through
24 169, inclusive.

25 171. Naturex possesses certain assets, including its employees, who are financially
26 remunerated by Naturex to perform services for Naturex.

27 172. Naturex assets, including its employees, are not readily available for use by
28

1 others.

2 173. On information and belief, Defendants intentionally, and with reason to believe
3 that its actions would cause injury to Plaintiffs, misappropriated the Naturex assets for
4 Defendants' own use and personal gain when it utilized the Naturex employees for the benefit
5 of the Licenses and for Defendants' other businesses while Defendants' relied upon Naturex to
6 pay for those employees' salaries.
7

8 174. The misappropriation is wrongful because Defendants are utilizing the Naturex
9 assets, without authority nor compensation, while furthering Defendants' improper usurped
10 corporate opportunity by utilizing Naturex assets for Defendants' own use.

11 175. On information and belief, Defendants misappropriated the Naturex assets with
12 willful, wanton, or reckless disregard of Plaintiffs' rights for Defendants' Licenses and other
13 businesses of Defendants.
14

15 176. Plaintiffs have been damaged by the Defendants' misappropriation because
16 Plaintiffs' assets are being utilized without compensation and to further Defendants' corporate
17 opportunity and Licenses that should have belonged to Naturex.

18 177. As a direct result of the Defendants misappropriation, Plaintiffs suffered
19 damages in an amount in excess of \$10,000.00.
20

21 178. As a result of the actions by Defendants, Plaintiffs incurred attorney fees and
22 costs and are entitled to reimbursement pursuant to NRS 18 *et seq.*

23 **ELEVENTH CLAIM FOR RELIEF**

24 **DECLARATORY RELIEF**

25 **(All Defendants)**

26
27 179. Plaintiffs reallege and incorporate herein the allegations of paragraphs 1 through
28 178, inclusive.

1 180. A justifiable controversy exists that warrants a declaratory judgment pursuant to
2 Nevada's Uniform Declaratory Judgments Act, NRS 30.010 to 30.160, inclusive.

3 181. Plaintiffs and Defendants have adverse and/or competing interests pursuant to
4 the Membership Interest Purchase Agreement and the Defendants' conduct of usurping the
5 corporate opportunity by failing to submit the Naturex Application and instead submitting the
6 self-serving Application for Defendant Lone Mountain.
7

8 182. The Defendants' conduct of failing to submit the Naturex Application and then
9 the Licenses awarded to the Defendants affects Plaintiff's rights afforded to it under the
10 Membership Interest Purchase Agreement and the Uniform Trade Secrets Act.

11 183. The Defendants' actions and/or inactions also created an actual justifiable
12 controversy ripe for judicial determination between Plaintiffs and Defendants with respect to the
13 construction, interpretation and implementation of the Membership Interest Purchase
14 Agreement and the fiduciary duties owed between officers, directors and members to Naturex.
15

16 184. Plaintiffs have been harmed, and will continue to be harmed, by Defendants'
17 actions.

18 185. Accordingly, Plaintiffs seek a declaration from this Court that, *inter alia*:

- 19 a. Defendants improperly usurped Naturex's opportunity to obtain the
20 Licenses;
21
22 b. Defendants improperly breached their fiduciary duties owed to Plaintiffs;
23
24 c. Defendants improperly breached their covenants of good faith and fair
25 dealing pursuant to the agreements and partnership between the Parties;
26
27 d. Defendants improperly misrepresented and defrauded Plaintiffs by
28 informing them Naturex would be applying for the Licenses, when
Defendants did not intend to submit the Naturex Application and instead

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were only going to submit a self-serving Lone Mountain Application;

- e. Defendants civil conspiracy to interference with Naturex’s prospective business interests caused financial harm to the Plaintiffs;
- f. Plaintiffs are entitled to their fifty percent profits to be earned from the Licenses;
- g. Plaintiffs are entitled to their fifty percent ownership in the Licenses;
- h. Plaintiffs are entitled to their fifty percent of profits pursuant to the Inventory Purchase Agreement;
- i. Plaintiffs are entitled to injunctive relief enjoining Defendants from continued exclusion from ownership interest in the Licenses;
- j. Plaintiffs are entitled to injunctive relief enjoining Defendants from selling any of the Licenses prior to the relief afforded to Plaintiffs herein.

186. Plaintiffs assert and 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 the Parties.

187. As a result of the actions by Defendants, Plaintiffs incurred attorney fees and costs and are entitled to reimbursement pursuant to NRS 18 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

- 1. For declaratory relief as set forth above.
- 2. For a preliminary and permanent injunction enjoining the Defendants from excluding Plaintiffs from ownership of the Licenses and/or to receive the profits generated by the Licenses, including profits pursuant to the Inventory Purchase Agreement.

- 1 3. For preliminary and permanent injunction enjoining the Defendants from selling
2 or otherwise disposing of the Licenses to the exclusion of Plaintiffs.
3 4. For Judgment on Plaintiffs' First through Tenth Claims for Relief that Plaintiffs
4 are entitled to their fifty percent profits to be earned from the Licenses, or,
5 entitled to their fifty percent ownership in the Licenses.
6
7 5. For compensatory and special damages as set forth herein.
8 6. For attorneys' fees and costs.
9 7. For all other relief the Court deems just and proper.

10 **JURY DEMAND**

11 Plaintiffs hereby demand on all claims and issues to be triable by jury.

12 DATED: January 18, 2019.

13
14 /s/ Jared B. Kahn
15 Jared B. Kahn, Nevada Bar # 12603
16 JK Legal & Consulting, LLC
17 9205 W. Russell Rd., Suite 240
18 Las Vegas, NV 89148
19 (702) 708-2958 Phone
20 (866) 870-6758 Fax
21 jkahn@jk-legalconsulting.com
22 Of Attorneys for Plaintiffs
23
24
25
26
27
28

Exhibit 2

APP0034

Exhibit 3

APP0036

Verano Licenses in Nevada

Lone Mountain Partners, LLC, ("**Lone Mountain**") holds a license to operate a medical and recreational cultivation facility and a medical and recreational production facility in the State of Nevada as described in the table below. Lone Mountain was also awarded 11 additional dispensary licenses in the fall of 2018. In addition, Nevada Natural Treatment Solutions, LLC, controls a medical and recreational dispensary license in the State of Nevada, as indicated in the table below.

Holding Entity	Permit/License	City	Expiration/Renewal Date (if applicable) (MM/DD/YY)	Description	Ownership/Control
Lone Mountain Partners, LLC	22879263582681231312	North Las Vegas, NV	06/30/19	1 Medical Cultivation License	100%
Lone Mountain Partners, LLC	22879263582681200000 78954038908132787261	North Las Vegas, NV	06/30/19	1 Adult-Use Cultivation License	100%
Lone Mountain Partners, LLC	79286894201268135002	North Las Vegas, NV	06/30/19	1 Medical Manufacturing License	100%
Lone Mountain Partners, LLC	38120054593314237201	North Las Vegas, NV	06/30/19	1 Adult Use Manufacturing License	100%
Lone Mountain Partners, LLC	RD590 (Provisional)	Unincorporated Clark County, NV	N/A	1 Retail Dispensary License	100%
Lone Mountain Partners, LLC	RD591 (Provisional)	Las Vegas, NV	N/A	1 Retail Dispensary License	100%
Lone Mountain Partners, LLC	RD592 (Provisional)	North Las Vegas, NV	N/A	1 Retail Dispensary License	100%
Lone Mountain Partners, LLC	RD593 (Provisional)	Reno, NV	N/A	1 Retail Dispensary License	100%
Lone Mountain Partners, LLC	RD594 (Provisional)	Esmerelda County, NV	N/A	1 Retail Dispensary License	100%
Lone Mountain Partners, LLC	RD595 (Provisional)	White Pine County, NV	N/A	1 Retail Dispensary License	100%
Lone Mountain Partners, LLC	RD596 (Provisional)	Lander County, NV	N/A	1 Retail Dispensary License	100%
Lone Mountain Partners, LLC	RD597 (Provisional)	Douglas County, NV	N/A	1 Retail Dispensary License	100%
Lone Mountain Partners, LLC	RD598 (Provisional)	Mineral County, NV	N/A	1 Retail Dispensary License	100%
Lone Mountain Partners, LLC	RD601 (Provisional)	Lincoln County, NV	N/A	1 Retail Dispensary License	100%
Lone Mountain Partners, LLC	RD602 (Provisional)	Eureka County, NV	N/A	1 Retail Dispensary License	100%
Nevada Natural Treatment Solutions, LLC (NatureX, LLC)	46918722962994189103	Las Vegas, NV	6/30/2019	1 Medical Dispensary License	50%
Nevada Natural Treatment	10340862547948454764	Las Vegas, NV	6/30/2019	1 Retail Dispensary License	50%

Exhibit 4

APP0038



VERANO HOLDINGS, LLC AND SUBSIDIARIES

CONSOLIDATED FINANCIAL STATEMENTS AS OF AND FOR THE YEARS ENDED DECEMBER 31, 2018 AND 2017

(Expressed in United States Dollars)

VERANO HOLDINGS, LLC AND SUBSIDIARIES
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Certified
Public
Accountants

Independent Auditor's Report

To the Members of Verano Holdings, LLC and Subsidiaries

Opinion

We have audited the consolidated financial statements of Verano Holdings, LLC and Subsidiaries (the "Company"), which comprise the consolidated statements of financial position as of December 31, 2018 and 2017, and the consolidated statements of operations, changes in members' equity and cash flows for the years then ended, and notes to the consolidated financial statements, including a summary of significant accounting policies.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Company as at December 31, 2018 and 2017, and its consolidated financial performance and its consolidated cash flows for the years then ended in accordance with International Financial Reporting Standards.

Basis for Opinion

We conducted our audits in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Consolidated Financial Statements section of our report. We are independent of the Company in accordance with the ethical requirements that are relevant to our audits of the consolidated financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with those requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Responsibilities of Management and Those Charged with Governance for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with International Financial Reporting Standards and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Company's financial reporting process.

Auditor's Responsibilities for the Audit of the Consolidated Financial Statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements. As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the entity's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Company to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities within the Company to express an opinion on the consolidated financial statements. We are responsible for the direction, supervision and performance of the audit. We remain solely responsible for our audit opinion.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audits and significant audit findings, including any significant deficiencies in internal control that we identify during our audits.

Macias Gini & O'Connell LLP

Los Angeles, California
May 16, 2019

VERANO HOLDINGS, LLC AND SUBSIDIARIES
Notes to Consolidated Financial Statements
For the Years Ended December 31, 2018 and 2017

15. FINANCIAL INSTRUMENTS AND FINANCIAL RISK MANAGEMENT *(Continued)*

Financial Risk Management *(Continued)*

(c) Market Risk

(i) Interest Rate Risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. The Company's financial debts have fixed rates of interest and therefore expose the Company to a limited interest rate fair value risk.

(ii) Price Risk

Price risk is the risk of variability in fair value due to movements in equity or market prices. See Note 5 for the Company's assessment of certain changes in the fair value assumption used in the calculation of biological asset values.

(d) Banking Risk

Notwithstanding that a majority of states have legalized medical marijuana, there has been no change in U.S. federal banking laws related to the deposit and holding of funds derived from activities related to the marijuana industry. Given that U.S. federal law provides that the production and possession of cannabis is illegal, there is a strong argument that banks cannot accept for deposit funds from businesses involved with the marijuana industry. Consequently, businesses involved in the marijuana industry often have difficulty accessing the U.S. banking system and traditional financing sources. The inability to open bank accounts with certain institutions may make it difficult to operate the businesses of the Company and leaves their cash holdings vulnerable.

(e) Asset Forfeiture Risk

Because the cannabis industry remains illegal under U.S. federal law, any property owned by participants in the cannabis industry, which either are used in the course of conducting such business, or are the proceeds of such business, could be subject to seizure by law enforcement and subsequent civil asset forfeiture. Even if the owner of the property was never charged with a crime, the property in question could still be seized and subject to an administrative proceeding by which, with minimal due process, it could be subject to forfeiture.

SUBSEQUENT EVENTS

The Company has evaluated subsequent events through May 16, 2019, which is the date these consolidated financial statements were issued.

(a) Litigation

RedMed, LLC, a subsidiary of Verano Holdings, LLC and its wholly-owned subsidiary Freestate Wellness, LLC, were sued in July 2018, in a suit pending in the Circuit Court for Howard County, Maryland, concerning a dispute over payment to a vendor. The Plaintiff alleges that it is owed in excess of \$1,200,000; since suit was filed, RedMed, LLC, has directly paid Plaintiff's subcontractors over \$250,000, and is actively pursuing an audit of the Plaintiff's billings, believing the same to be overstated. The case has proceeded to discovery. On or about April 8, 2019, the Plaintiff amended its complaint adding as defendants RedMed, LLC, George Archos, and Cary Millstein.

VERANO HOLDINGS, LLC AND SUBSIDIARIES
Notes to Consolidated Financial Statements
For the Years Ended December 31, 2018 and 2017

16. SUBSEQUENT EVENTS *(Continued)*

(a) Litigation *(Continued)*

On or about April 10, 2019, Canna Cuzzos, LLC d/b/a Zen Leaf Waldorf received a Notice of Charge of Discrimination from a former employee in the entity's Jessup, Maryland, dispensary. Canna Cuzzos, LLC, aggressively disputes the veracity of the charge and that any discrimination occurred.

ETW Management Group, LLC, et al. v. Nevada Dep't of Taxation, Case No. A-190787004-B (filed Jan. 4, 2019) (Dept 11: Judge Gonzalez) was filed on behalf of eleven applicants denied retail licenses in the State of Nevada. The case does not name any conditional license holders as defendants and requests the court to declare that the Department of Taxation violated regulations by issuing multiple retail licenses to the same entity or group of persons. Lone Mountain Partners, LLC, recently moved to intervene. Plaintiffs have not filed an opposition to the motion yet, but have opposed fellow license holder Nevada Organic Remedies' motion to intervene. Lone Mountain's motion to intervene was granted at hearing on April 15, 2019. Lone Mountain, the Nevada Department of Taxation, and other license holders are in process of responding to the complaint.

Serenity Wellness Center, LLC, et al. v. Nevada Dep't of Taxation, Case No. A-19-786962-B (filed Jan. 4, 2019) (Dept. 11: Judge Gonzalez) was filed on behalf of twelve applicants that were denied conditional retail licenses in Nevada. The case does not name any of the conditional license-holders as defendants and argues promulgated regulations are unconstitutional and requests an injunction "enjoining the enforcement of the denial of [the Plaintiffs'] Applications for licensure." The Plaintiffs' motion for preliminary injunction was filed March 19, 2019. Lone Mountain has intervened in this matter. Lone Mountain, the Nevada Department of Taxation and other license holders are in process of responding to the complaint. The plaintiff's motion for preliminary injunction has been re-set for hearing on May 24, 2019. Oppositions to the motion are now due May 7, 2019. The Company and Lone Mountain intend to vigorously oppose the requested injunctive relief.

MM Development Company, Inc. v. Nevada Dep't of Taxation, Case No. A-18-785818-W (filed Dec. 10, 2018) (Dept. 18: Sr. Judge Barker) was filed on behalf of the company ranked fourth highest applicant for medical marijuana dispensary in unincorporated Clark County in 2015 but was denied retail license. The case does not name any conditional license holders as defendants and requests the court to order the Department to issue conditional licenses to the plaintiff. The state filed a motion to dismiss the complaint, which was denied by the Court the week of April 1, 2019. The Court indicated its hesitation to rule on the motion to dismiss prior to hearing from the entities that had received licenses, and stated that it may be willing to reconsider the issue once the license holders have intervened in the case. Lone Mountain has moved to intervene in this matter and will engage in motion practice if the state or other interveners determine to ask for reconsideration. MM Development has collectively opposed all intervention motions. Lone Mountain has moved to intervene in this matter and expects to have that motion granted at hearing on Monday, April 22, 2019. The state of Nevada and other license holders are in process of responding to the complaint. The state has decided to not file an appeal related to its motion to dismiss that was previously denied.

On or about May 9, 2019, Lone Mountain Partners, LLC, received a complaint filed by a former employee with the Nevada Department of Business and Industry, Division of Industrial Relations, Occupational Health & Safety Administration, alleging retaliation. Lone Mountain Partners, LLC, vehemently denies the allegations contained in the Complaint and intends to vigorously dispute the same.

Exhibit 5

APP0045

SECURITIES AND EXCHANGE COMMISSION

FORM D

Official notice of an offering of securities that is made without registration under the Securities Act in reliance on an exemption provided by Regulation D and Section 4(6) under the Act.

Filing Date: **2018-11-13**
SEC Accession No. [0001062993-18-004557](#)

([HTML Version](#) on [secdatabase.com](#))

FILER

Verano Holdings, LLC

CIK: [1757626](#) | IRS No.: **000000000** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **D** | Act: **33** | File No.: [021-325642](#) | Film No.: **181177368**

Mailing Address
*214 W. OHIO STREET
CHICAGO IL 60654*

Business Address
*214 W. OHIO STREET
CHICAGO IL 60654
4106350613*

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM D

Notice of Exempt Offering of Securities

OMB APPROVAL

OMB Number: 3235-0076
Expires: June 30, 2012
Estimated average burden hours per response: 4.00

1. Issuer's Identity

CIK (Filer ID Number) [0001757626](#) Previous Name(s) ☒ None Entity Type
☐ Corporation
☐ Limited Partnership
☒ Limited Liability Company
☐ General Partnership
☐ Business Trust
☐ Other

Name of Issuer
[Verano Holdings, LLC](#)

Jurisdiction of Incorporation/
Organization
[DELAWARE](#)

Year of Incorporation/Organization
☐ Over Five Years Ago
☒ Within Last Five Years (Specify Year) 2017
☐ Yet to Be Formed

2. Principal Place of Business and Contact Information

Name of Issuer
[Verano Holdings, LLC](#)

Street Address 1 [214 W. OHIO STREET](#) Street Address 2

City [CHICAGO](#) State/Province/Country [ILLINOIS](#) ZIP/Postal Code [60654](#) Phone No. of Issuer [8334837266](#)

3. Related Persons

Last Name	First Name	Middle Name
ARCHOS	GEORGE	
Street Address 1 214 WEST OHIO ST	Street Address 2	
City CHICAGO	State/Province/Country ILLINOIS	ZIP/Postal Code 60654

Relationship: ☒ Executive Officer ☒ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
DORF	SAM	
Street Address 1 214 WEST OHIO ST	Street Address 2	
City	State/Province/Country	ZIP/Postal Code

CHICAGO

ILLINOIS

60654

Relationship: ☒ Executive Officer ☒ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
MATT	DEAN	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☒ Executive Officer ☒ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
TENNANT	TIM	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☒ Executive Officer ☐ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
WEISS	DARREN	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☒ Executive Officer ☒ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
MARSICO	ANTHONY	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☒ Executive Officer ☐ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
FOTOPOULOS	CHRIS	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☒ Executive Officer ☐ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
MAHLER	LEONARD	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☐ Executive Officer ☒ Director ☐ Promoter

Clarification of Response (if Necessary)

Last Name	First Name	Middle Name
MILLSTEIN	CARY	
Street Address 1	Street Address 2	
214 WEST OHIO ST		
City	State/Province/Country	ZIP/Postal Code
CHICAGO	ILLINOIS	60654

Relationship: ☐ Executive Officer ☒ Director ☐ Promoter

Clarification of Response (if Necessary)

4. Industry Group

- | | | |
|---|---|--|
| <input type="checkbox"/> Agriculture | Health Care | <input type="checkbox"/> Retailing |
| Banking & Financial Services | <input type="checkbox"/> Biotechnology | <input type="checkbox"/> Restaurants |
| <input type="checkbox"/> Commercial Banking | <input type="checkbox"/> Health Insurance | Technology |
| <input type="checkbox"/> Insurance | <input type="checkbox"/> Hospitals & Physicians | <input type="checkbox"/> Computers |
| <input type="checkbox"/> Investing | <input type="checkbox"/> Pharmaceuticals | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> Investment Banking | <input type="checkbox"/> Other Health Care | <input type="checkbox"/> Other Technology |
| <input type="checkbox"/> Pooled Investment Fund | <input type="checkbox"/> Manufacturing | Travel |
| | Real Estate | <input type="checkbox"/> Airlines & Airports |
| <input type="checkbox"/> Other Banking & Financial Services | <input type="checkbox"/> Commercial | <input type="checkbox"/> Lodging & Conventions |
| <input type="checkbox"/> Business Services | <input type="checkbox"/> Construction | <input type="checkbox"/> Tourism & Travel Services |
| Energy | <input type="checkbox"/> REITS & Finance | <input type="checkbox"/> Other Travel |
| <input type="checkbox"/> Coal Mining | <input type="checkbox"/> Residential | |
| <input type="checkbox"/> Electric Utilities | <input type="checkbox"/> Other Real Estate | <input checked="" type="checkbox"/> Other |
| <input type="checkbox"/> Energy Conservation | | |
| <input type="checkbox"/> Environmental Services | | |
| <input type="checkbox"/> Oil & Gas | | |
| <input type="checkbox"/> Other Energy | | |

5. Issuer Size

- | Revenue Range | Aggregate Net Asset Value Range |
|---|---|
| <input type="checkbox"/> No Revenues | <input type="checkbox"/> No Aggregate Net Asset Value |
| <input type="checkbox"/> \$1 - \$1,000,000 | <input type="checkbox"/> \$1 - \$5,000,000 |
| <input type="checkbox"/> \$1,000,001 - \$5,000,000 | <input type="checkbox"/> \$5,000,001 - \$25,000,000 |
| <input type="checkbox"/> \$5,000,001 - \$25,000,000 | <input type="checkbox"/> \$25,000,001 - \$50,000,000 |
| <input type="checkbox"/> \$25,000,001 - \$100,000,000 | <input type="checkbox"/> \$50,000,001 - \$100,000,000 |
| <input type="checkbox"/> Over \$100,000,000 | <input type="checkbox"/> Over \$100,000,000 |
| <input checked="" type="checkbox"/> Decline to Disclose | <input type="checkbox"/> Decline to Disclose |
| <input type="checkbox"/> Not Applicable | <input type="checkbox"/> Not Applicable |

6. Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)

- | | |
|--|--|
| <input type="checkbox"/> Rule 504(b)(1) (not (i), (ii) or (iii)) | <input type="checkbox"/> Rule 505 |
| <input type="checkbox"/> Rule 504 (b)(1)(i) | <input type="checkbox"/> Rule 506 |
| <input type="checkbox"/> Rule 504 (b)(1)(ii) | <input type="checkbox"/> Securities Act Section 4(6) |
| <input type="checkbox"/> Rule 504 (b)(1)(iii) | <input type="checkbox"/> Investment Company Act Section 3(c) |
| | <input type="checkbox"/> Section 3(c)(1) <input type="checkbox"/> Section 3(c)(9) |
| | <input type="checkbox"/> Section 3(c)(2) <input type="checkbox"/> Section 3(c)(10) |
| | <input type="checkbox"/> Section 3(c)(3) <input type="checkbox"/> Section 3(c)(11) |
| | <input type="checkbox"/> Section 3(c)(4) <input type="checkbox"/> Section 3(c)(12) |
| | <input type="checkbox"/> Section 3(c)(5) <input type="checkbox"/> Section 3(c)(13) |
| | <input type="checkbox"/> Section 3(c)(6) <input type="checkbox"/> Section 3(c)(14) |
| | <input type="checkbox"/> Section 3(c)(7) |

7. Type of Filing

- ☒ New Notice Date of First Sale **2018-11-08** ☐ First Sale Yet to Occur

☐ Amendment

8. Duration of Offering

Does the Issuer intend this offering to last more than one year? ☐ Yes ☒ No

9. Type(s) of Securities Offered (select all that apply)

- | | |
|--|---|
| <input type="checkbox"/> Pooled Investment Fund Interests | <input checked="" type="checkbox"/> Equity |
| <input type="checkbox"/> Tenant-in-Common Securities | <input type="checkbox"/> Debt |
| <input type="checkbox"/> Mineral Property Securities | <input type="checkbox"/> Option, Warrant or Other Right to Acquire Another Security |
| <input type="checkbox"/> Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security | <input checked="" type="checkbox"/> Other (describe) |

[Subscription receipts at \\$21.73USD each](#)

10. Business Combination Transaction

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer? ☐ Yes ☒ No

Clarification of Response (if Necessary)

11. Minimum Investment

Minimum investment accepted from any outside investor \$ 0 USD

12. Sales Compensation

Recipient	Recipient CRD Number <input type="checkbox"/> None	
(Associated) Broker or Dealer <input type="checkbox"/> None	(Associated) Broker or Dealer CRD Number	<input type="checkbox"/> None
Street Address 1	Street Address 2	
City	State/Province/Country	ZIP/Postal Code
State(s) of Solicitation (select all that apply)		
Check "All States" or check individual States	<input type="checkbox"/> All States	<input type="checkbox"/> Foreign/non-US

13. Offering and Sales Amounts

Total Offering Amount \$ 12,000,001 USD or ☐ Indefinite

Total Amount Sold \$ 12,000,001 USD

Total Remaining to be Sold \$ 0 USD or ☐ Indefinite

Clarification of Response (if Necessary)

[Subscription receipts at \\$21.73USD each](#)

14. Investors

- ☐ Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors, ☐
 Number of such non-accredited investors who already have invested in the offering
- Regardless of whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering:

15. Sales Commissions & Finders' Fees Expenses

Provide separately the amounts of sales commissions and finders' fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount.

Sales Commissions \$ 0 USD ☐ Estimate

Finders' Fees \$ 0 USD ☐ Estimate

Clarification of Response (if Necessary)

16. Use of Proceeds

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

\$ 0 USD ☐ Estimate

Clarification of Response (if Necessary)

Signature and Submission

Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.

Terms of Submission

In submitting this notice, each Issuer named above is:

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, the information furnished to offerees.
- Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the Issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against it in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.
- Certifying that the Issuer is not disqualified from relying on any Regulation D exemption it has identified in Item 6 above for one of the reasons stated in Rule 505(b)(2)(iii).

Each Issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

For signature, type in the signer's name or other letters or characters adopted or authorized as the signer's signature.

Issuer	Signature	Name of Signer	Title	Date
Verano Holdings, LLC	/s/ George Archos	GEORGE ARCHOS	CHIEF EXECUTIVE OFFICER	2018-11-13

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.

* This undertaking does not affect any limits Section 102(a) of the National Securities Markets Improvement Act of 1996 ("NSMIA") [Pub. L. No. 104-290, 110 Stat. 3416 (Oct. 11, 1996)] imposes on the ability of States to require information. As a result, if the securities that are the subject of this Form D are "covered securities" for purposes of NSMIA, whether in all instances or due to the nature of the offering that is the subject of this Form D, States cannot routinely require offering materials under this undertaking or otherwise and can require offering materials only to the extent NSMIA permits them to do so under NSMIA's preservation of their anti-fraud authority.

Exhibit 6

APP0054

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

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BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 6

MONDAY, JUNE 10, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

APP0055

AA 005168

1 Director of Marketing of NOR, two women; right?

2 A We have an executive team at NOR and we listed all
3 the people who are part of that executive team.

4 Q Including these --

5 A These are the people who actually run the company.

6 Q Including these two women who are not officially on
7 the board of directors of NOR, you listed them; right?

8 A We listed all the key executives that compose the
9 executive team who come into the office every day and run the
10 company.

11 Q Including the two women; right?

12 A Including everyone who's a key executive in the
13 company.

14 Q Okay. Would I be correct that the application
15 required you to list the percentage of ownership of all the
16 owners?

17 A I think --

18 Q Do you want to look at it?

19 A Well, I think where that statement gets murky is
20 when you talk about publicly traded companies.

21 Q Okay. That's where we're going to go in a minute,
22 but would you agree with me that the application requires,
23 quote, "all owners and their percentage of ownership" to be
24 listed?

25 MR. KOCH: Objection. He's pointing to a section of

1 the document. I'd ask him to show it.

2 THE COURT: Overruled.

3 BY MR. KEMP:

4 Q Do you know as you sit here -- I'll show it to you
5 if you want.

6 A Yeah, please.

7 MR. KEMP: Shane, will you pop it up, please?

8 I.T. TECHNICIAN: Sorry, which exhibit?

9 MR. KEMP: It's Exhibit 5, page 11.

10 BY MR. KEMP:

11 Q "And the organizational chart showing all owners,
12 officers and board members of the recreational marijuana
13 establishment, including percentage of ownership of each
14 individual -- for each individual." Right, that's what it
15 says?

16 A Yes.

17 Q Now, counsel asked you some questions about -- I
18 can't remember who it was, someone you listed on the
19 percentage of ownership. It's true that you did not list all
20 of the owners of Xanthic; right?

21 A Xanthic is a publicly traded corporation and our
22 understanding was that for a publicly registered or publicly
23 traded companies that you're required to disclose the officers
24 and board members, which we did.

25 Q Where did you get that understanding?

1 A Well, I've been involved in the industry from the
2 beginning and our legal counsel has been and we had just
3 recently received an approval letter from the Department of
4 Taxation itself approving the 95 percent transfer of
5 ownership.

6 Q Okay.

7 A I'm still going. So I --

8 Q So it was your --

9 A So we did a similar disclosure in our application,
10 listing those same board members and officers. At no point in
11 time was there a requirement to list every shareholder of
12 Xanthic.

13 Q But it was your understanding that you had to list
14 all of the officers and directors of the public company but
15 not the shareholders, is that correct?

16 A That's correct. My understanding was that we had to
17 list the board members and officers in the application, just
18 as we had recently done in the ownership transfer request that
19 we submitted to the State which was recently approved.

20 Q Okay. And you did not include the major
21 shareholders of Xanthic; correct?

22 A I don't agree with that statement.

23 Q Okay. All Js Greenspace LLC, have you ever heard
24 that name?

25 A All Jay Green Piece?

1 Q All Js Greenspace LLC.

2 A Not off the top of my head.

3 Q And if I told you they owned 37 million shares of
4 Xanthic, they are 22.5 percent, that's news to you now?

5 A Can you tell me who the members and managers are of
6 that LLC?

7 Q Earlier you referenced an individual named Schott
8 something?

9 A Schottenstein.

10 Q Yes. So the Schottenstein company is one of the
11 major owners?

12 A As far as I know, yes.

13 Q And do you know how much they own?

14 A My recollection was around 30 percent.

15 Q Okay. And how about GA Opportunities Corp? They
16 own 27 million shares of Xanthic or 16.5 percent of the
17 company. You didn't list them under the organizational chart,
18 did you?

19 A I believe we listed everyone that the application
20 required us to list.

21 Q Okay. I'm not asking if you think you did
22 everything right, I'm asking specifically did you list GA
23 Opportunities Corp. or not?

24 A GA Opportunities Corp. is not on our application, as
25 far as I can recall.

1 Q And neither was All Js, which by the way is a
2 wonderful name for a marijuana company, All Js Greenspace LLC;
3 right?

4 A I do not believe we listed All Js.

5 Q But you did list Liesl -- how do you pronounce her
6 last name?

7 A Liesl Sicz.

8 Q And she only owned .5 percent of NOR through
9 Harvest; right?

10 A Yeah, post 95 percent transaction. I'd have to pull
11 that up again and see, but yeah, it was a smaller percentage.

12 Q Okay. Let's use your 95 percent. So if you use
13 your 95 percent, these two shareholders that own 37 percent of
14 NOR you didn't list, but the woman who only owned, what was
15 it, .5 percent, you did list as an owner; right? Right?

16 A Well, you know --

17 Q I'm just asking what you did.

18 A Yeah. So I don't believe we listed those two
19 entities, you know. You're asking me to make certain
20 assumptions that I frankly don't know as I sit here right now,
21 but I know we did list Liesl Sicz, yes.

22 Q Okay. So why did you list the woman that only owned
23 .5 percent and you didn't list the shareholders that owned 74
24 times as much stock? Why was that?

25 A Well, first of all, Liesl was one of the founding

Exhibit 7

APP0061

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

.

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 5
VOLUME II**

FRIDAY, MAY 30, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

APP0062

AA 005175

1 to Mr. Kemp. Before we get started --

2 MR. KEMP: Your Honor, I don't want her to make any
3 statements of fact in front of the witness, because this is a
4 key point of the examination.

5 MS. SHELL: Okay.

6 MR. KEMP: And I talked to her about it. And if she
7 wants to excuse the witness so we can talk about this --

8 MS. SHELL: Could we --

9 THE COURT: Okay. So, ma'am, I'm going to ask you
10 to go back outside for a minute.

11 THE WITNESS: Can I leave my --

12 THE COURT: Yes. You can leave your stuff if you
13 want.

14 (Witness exited courtroom)

15 THE COURT: All right. Ms. Shell, you had an issue
16 you wanted to raise.

17 MS. SHELL: Yes. And I believe that the -- Mr.
18 Kemp's table has already pulled up the testimony that I wanted
19 to correct -- statements that I wanted to correct.

20 So when we were in court on Wednesday morning on a
21 hearing on the motion for protective order I stated that MPX
22 did not own GreenMart at the time that they applied for the
23 license. Your Honor, that was incorrect. When I went back
24 and -- I'm relatively new to this case, and when I went back
25 -- I thought I knew all the facts. I went back and was

1 preparing last night, and looking through the materials that I
2 had been given by Mr. Kemp in preparation for today's
3 examination of Ms. Dougan, and I realized I had made an error.
4 And I did not want to let that sit on the record.

5 THE COURT: Okay.

6 MR. KEMP: Your Honor, this was a key point in the
7 examination of Mr. Plaskon. And if you recall, I put up the
8 charts of the GreenMart people.

9 THE COURT: I got it. I'm not worried about it.
10 It's an issue I will weigh as part of my deliberative process
11 at some point when I get closer to having more of the
12 evidence.

13 If we could get the witness back in, because we're
14 trying to get the rest of our witnesses done today. Because
15 Mr. Gilbert would like to finish, I think. Although it's
16 unlikely.

17 MR. SHEVORSKI: You might have a point, Your Honor.

18 THE COURT: You want to the over-under on how many
19 more hours?

20 Ms. Dougan, if you'd come on back up. And since
21 we've already sworn you, I'd like to remind you you're still
22 under oath.

23 Mr. Kemp, you're up.

24 BY MR. KEMP:

25 Q Ms. Dougan, can you see the screen there -- or you

Exhibit 8

APP0065



NOTICE OF MEETING

AND

MANAGEMENT INFORMATION CIRCULAR

RELATING TO

THE SPECIAL MEETING OF SECURITYHOLDERS

TO BE HELD ON JANUARY 15, 2019

**The Board of Directors unanimously recommends that you vote
IN FAVOUR
of the Arrangement Resolution**

These materials are important and require your immediate attention. The securityholders of MPX Bioceutical Corporation are required to make important decisions. If you have questions as to how to deal with these documents or the matters to which they refer, please contact your financial, legal or other professional advisor. If you have any questions or require more information with respect to voting your MPX Securities at the Meeting, please contact our proxy solicitation agent:

**Laurel Hill Advisory Group
North American Toll Free: 1-877-452-7184
Collect Calls Outside of North America: 416-304-0211
Email: assistance@laurelhill.com**

THE ARRANGEMENT, THE MPX CONTINUANCE, THE MPX INTERNATIONAL STOCK OPTION PLAN AND THE RELATED SECURITIES DESCRIBED HEREIN HAVE NOT BEEN APPROVED OR DISAPPROVED BY ANY SECURITIES REGULATORY AUTHORITY, INCLUDING WITHOUT LIMITATION ANY SECURITIES REGULATORY AUTHORITY OF ANY CANADIAN PROVINCE OR TERRITORY, THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, OR THE SECURITIES REGULATORY AUTHORITY OF ANY U.S. STATE, NOR HAS ANY OF THEM PASSED UPON THE ACCURACY OR ADEQUACY OF THIS CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENCE.

December 11, 2018

APP0066
MMLF00947

AA 005179

in connection with the Arrangement, provided that the number of such securities sold during any three-month period does not exceed 1% of the then outstanding class of such securities, subject to specified restrictions on the manner of sale, notice requirements, aggregation rules and the availability of current public information about iAnthus or MPX International, as applicable.

Exercise of the iAnthus Replacement Options, the MPX International Options and the MPX Warrants

The iAnthus Replacement Options, the MPX International Options and the MPX Warrants may not be exercised in the United States or by or on behalf of a “U.S. person” (as defined in Rule 902(k) of Regulation S under the U.S. Securities Act), except by a person that qualifies as an “accredited investor” as defined in Rule 501 under the U.S. Securities Act, unless another exemption from registration under the U.S. Securities Act) is available. Prior to the issuance of any shares pursuant to any such exercise, iAnthus or MPX International may require the delivery of an opinion of counsel or other evidence or certifications reasonably satisfactory to iAnthus or MPX (as the case may be) to the effect that the issuance of such shares does not require registration under the U.S. Securities Act. Any such exercise must also comply with applicable state securities laws.

The foregoing discussion is only a general overview of certain requirements of United States Securities Laws applicable to the securities received upon completion of the Arrangement. All holders of such securities are urged to consult with counsel to ensure that the resale of their securities complies with applicable United States Securities Laws.

Fees and Expenses

The aggregate expenses of MPX incurred or to be incurred relating to the Arrangement, including, without limitation, contractual severance obligations, legal, accounting, audit, financial advisory, printing, “tail” policies of directors’ and officers’ liability insurance and other administrative and professional fees, the preparation and printing of this Circular, fees owed to Laurel Hill Advisory Group in connection with the solicitation of proxies for the Meeting and other out-of-pocket costs associated with the Meeting are estimated to be approximately \$11,826,983 in the aggregate.

All expenses incurred in connection with the Arrangement and the transactions contemplated thereby shall be paid by the party incurring such expense.

Interests of Certain Persons in the Arrangement

In considering the recommendation of the MPX Board with respect to the Arrangement, MPX Securityholders should be aware that certain members of MPX’s senior management and the MPX Board have certain interests in connection with the Arrangement that may present them with actual or potential conflicts of interest in connection with the Arrangement.

The table below sets forth the number and percentage of MPX Shares, MPX Options and MPX Warrants that the directors and officers of MPX and any of their respective affiliates and associates beneficially own or exercise control or direction over, directly or indirectly, as of the date hereof. Neither the MPX Convertible Debentures nor the MPX Convertible Loan are owned by any directors or executive officers of MPX or any of their respective affiliates or associates.

Other than the interests and benefits described below, none of the directors or the executive officers of MPX, or to the knowledge of the directors and executive officers of MPX, any of their respective associates or affiliates, has any material interest, direct or indirect by way of beneficial ownership of securities or otherwise in any matter to be acted upon in connection with the Arrangement or that would materially affect the Arrangement.

<u>Name and Position</u>	<u>Number of MPX Shares Beneficially Owned⁽¹⁾</u>	<u>Percentage of MPX Shares⁽²⁾</u>	<u>Number of MPX Options Beneficially Owned</u>	<u>Percentage of MPX Options⁽³⁾</u>	<u>Number of MPX Warrants Beneficially Owned</u>	<u>Percentage of MPX Warrants⁽⁴⁾</u>
W. Scott Boyes, <i>Chairman, Chief Executive Officer and President</i>	3,911,000	0.97%	4,000,000	15.76%	Nil	N/A
David McLaren, <i>Chief Financial Officer</i>	Nil	N/A	1,000,000	3.94%	Nil	N/A
Elizabeth Stavola, <i>Chief Operating Officer and Director</i>	13,380,798	3.3%	3,500,000	13.79%	1,740,000	3.8%
Michael Amkvarn, <i>Executive Vice President Sales & Marketing</i>	3,047,281	0.75%	500,000	1.97%	Nil	N/A
Jeremy S. Budd, <i>Vice President, General Counsel & Corporate Secretary</i>	508,500	0.13%	900,000	3.45%	Nil	N/A
Jonathan Chu, <i>Vice President Accounting</i>	Nil	N/A	1,000,000	3.94%	Nil	N/A
Randy Stafford, <i>Director</i>	270,000	0.07%	1,050,000	4.14%	Nil	N/A
Andrew R. Ryan, <i>Director</i>	1,520,000	0.38%	750,000	2.95%	600,000	1.32%
Richard S. Segerblom, <i>Director</i>	Nil	N/A	750,000	2.95%	Nil	N/A
Robert R. Galvin, <i>Director</i>	1,520,000	0.38%	750,000	2.95%	600,000	1.32%
Dr. Miles D. Thompson, <i>Director</i>	Nil	N/A	750,000	2.95%	Nil	N/A
Robert Petch, <i>Director</i>	Nil	N/A	750,000	2.95%	Nil	N/A

Notes:

- (1) The number of MPX Shares beneficially owned by each MPX Shareholder excludes the MPX Options and MPX Warrants held by each MPX Shareholder, which have been separately listed in the column titled "Number of MPX Options Beneficially Owned" and "Number of MPX Warrants Beneficially Owned".
- (2) The percentage of MPX Shares figures are based on 404,954,040 MPX Shares outstanding on the Record Date.
- (3) The percentage of MPX Options figures are based on 25,387,887 MPX Options outstanding on the Record Date.
- (4) The percentage of MPX Warrants figures are based on 45,768,500 MPX Warrants outstanding on the Record Date.

Directors

The MPX directors (other than directors who are also executive officers) hold, in the aggregate, 3,310,000 MPX Shares, representing approximately 0.82% of the MPX Shares outstanding on the Record Date. The MPX directors (other than directors who are also executive officers) hold, in the aggregate, 4,800,000 MPX Options, representing approximately 18.91% of the MPX Options outstanding on the Record Date. The MPX directors (other than directors who are also executive officers) hold, in the aggregate, 1,200,000 MPX Warrants, representing approximately 2.62% of the MPX Options outstanding on the Record Date. David J. Layman, who ceased to be a Director of MPX on October 30, 2017, holds 399,500 MPX Shares, representing approximately 0.1% of the MPX Shares outstanding on the Record Date. Donald P. Stott, who ceased to be a Director of MPX on October 30, 2017, holds 342,000 MPX Shares, representing approximately 0.08% of the MPX Shares outstanding on the Record Date. All of the MPX Shares, MPX Options and MPX Warrants held by the MPX directors will be treated in the same fashion under the Arrangement as MPX Shares, MPX Options and MPX Warrants held by every other MPX Shareholder, MPX Optionholder and MPX Warrantholder, respectively.

Consistent with standard practice in similar transactions, in order to ensure that the MPX directors do not lose or forfeit their protection under liability insurance policies maintained by MPX, the Arrangement Agreement provides for the maintenance of such protection for six years. See "*The Arrangement — Interests of Certain Persons in the Arrangement — Indemnification and Insurance*" below.

DIRECTORS AND OFFICERS OF MPX INTERNATIONAL

As of the date of the Circular, the directors of MPX International are W. Scott Boyes and Jeremy S. Budd. At the Effective Time, the directors of MPX International are intended to be W. Scott Boyes, Jeremy S. Budd, Alastair Crawford, Robert Petch and Randall G. Stafford. Each of the directors of MPX International will hold office until the next annual general meeting of MPX International Shareholders unless the director's office is earlier vacated in accordance with the articles of incorporation of MPX International or the director becomes disqualified to serve as a director.

The following table sets forth the name, province or state and country of residence, position with MPX International, principal occupation during the previous five (5) years and the pro forma number of voting securities beneficially owned, directly or indirectly, or over which control or direction is exercised, for the proposed directors and executive officers of MPX International after giving effect to the Arrangement.

Name and Municipality of Residence	Principal Occupation during the last five years ⁽¹⁾	Director Since	Position with the Corporation	Number of MPX International Shares Beneficially Owned, Directly or Indirectly, or Over which Control or Direction is Exercised ⁽²⁾
W. Scott Boyes <i>Toronto, Ontario</i>	President & Chief Executive Officer, MPX Bioceutical Corporation Since November 24, 2014 Chairman, MPX Bioceutical Corporation Since October 30, 2017 President, CGX Life Sciences, Inc. June 28, 2013 to January 19, 2017	October 17, 2018	Chairman, President & CEO	391,100
Jeremy S. Budd <i>Toronto, Ontario</i> ⁽⁴⁾	Vice President, General Counsel and Corporate Secretary Since March 1, 2018 Principal The Law Office of Jeremy S. Budd Since November 1, 2013	October 17, 2018	Vice President, General Counsel and Corporate Secretary	50,850
Alastair Crawford <i>London, United Kingdom</i> ⁽³⁾⁽⁴⁾⁽⁵⁾	Chairman of Hooyu Limited (formerly 192.com Limited) Since March, 2012	Proposed Director	-	1,200,000
Robert Petch <i>Cranbrook, Kent, UK</i> ⁽³⁾⁽⁴⁾⁽⁵⁾	Independent Investment Consultant Since June, 2014 Investment Advisor to Private Family Office January, 2010 to June, 2014	Proposed Director	-	Nil
Randall G. Stafford <i>Toronto, Ontario</i> ⁽³⁾⁽⁴⁾⁽⁵⁾	Consultant Since January 15, 2018 Interim Chief Financial Officer, MPX Bioceutical Corporation December 1, 2016 to January 15, 2018 Vice President, Finance Cushman & Wakefield, Inc., June 2014 to July 2016 Realtor, Royal LePage Real Estate Service Ltd., Johnston & Daniel Division, Brokerage November 2013 to June 2014	Proposed Director	-	20,750

Notes:

- (1) All companies noted are still carrying on business as of the date of the Circular unless otherwise noted.
- (2) Assumes 43,437,607 MPX International Shares issued and outstanding after the completion of the Arrangement and the exercise or conversion pursuant to the Plan of Arrangement of: (a) such number of MPX Options and MPX Warrants that the individuals in the table above have indicated they currently intend to exercise; and (b) such number of MPX Convertible Debentures and the MPX Convertible Loan that the individuals in the table above have indicated they currently intend to convert or exercise. The information as to MPX International Shares to be beneficially owned, directly or indirectly, or over which control or direction is exercised, is based upon information furnished to MPX International by its proposed directors and officers as of the date hereof.
- (3) Proposed member of the Audit Committee of the Corporation.
- (4) Proposed member of the Nominating and Corporate Governance Committee of the Corporation.
- (5) Proposed member of the Compensation Committee of the Corporation.

Management of the Corporation

The following is a brief description of the background and experience of each proposed member of the MPX International management team and MPX International Board. Unless otherwise specified, the organizations named in the descriptions below are still carrying on business.

W. Scott Boyes – Director, Chairman, President and Chief Executive Officer / age: 68

W. Scott Boyes is the Chairman, President, Chief Executive Officer and a director of MPX International. Mr. Boyes is a seasoned senior executive with diversified and cross-functional experience, combining MBA credentials with a strong career background in revenue development and general management. Prior to the acquisition of CGX Life Sciences Inc. by MPX, Mr. Boyes was President of CGX Life Sciences Inc. where he focused on general management. Since August 2008, Mr. Boyes has been President of NCD Associates, where he focused his consulting services on financial restructuring, and revenue enhancement and streamlining business processes for distressed or high growth companies. In 2005, Mr. Boyes founded and developed Railcrew Xpress Corporation, a specialized passenger transportation company servicing U.S. railroads, and served as its President until 2008. There, he developed and led the sales and customer service teams, managed the acquisition and integration of three competitor companies and developed and deployed sophisticated dispatch, tracking and reporting technology. From 2000 to 2005, Mr. Boyes served as President and Chief Executive Officer of Halcon Corporation where he was responsible for the senior executive management of the company and its operating subsidiaries. Previously, he served as a Vice President of a large Canadian Bank and Vice President and General Manager of a business unit within a multinational commercial finance company with a focus on marketing and revenue development.

Jeremy S. Budd – Director, Vice President, General Counsel and Corporate Secretary / age: 40

Jeremy S. Budd is the Vice President, General Counsel and Corporate Secretary of MPX International. Mr. Budd has been practicing corporate and securities law, in Toronto, Ontario, since 2007 representing issuers and underwriters in a wide variety of capital market transactions. Mr. Budd obtained his J.D./M.B.A. from Osgoode Hall Law School and the Schulich School of Business at York University in 2005 and holds a Bachelor of Arts in philosophy from Huron University College at the University of Western Ontario.

Alastair Crawford – Proposed Director / age: 49

Alastair Crawford is a proposed director of the Corporation. Mr. Crawford has over 20 years of experience in management, operations and strategic planning. In 1996, Mr. Crawford founded 192.com, the first alternative to British Telecom's phone book as well as i-CD Publishing (UK) Ltd in 1997, which published the UK-info Disk phone book range. In addition, Mr. Crawford founded the German and Spanish social networking site Passado and Mipasado in 2001 and was the original owner of Russian social networking site Odnoklassniki.ru. Most recently, Mr. Crawford is currently the Chairman of Hooyu Limited which is a next generation identity confirmation platform used by individuals and businesses including know-your-client financial account obligations.

Mr. Crawford is an investor and advisor to over 15 companies in various sectors including hi-tech and cannabis.

Mr. Crawford was educated at the Harrow School in northwest London.

David McLaren – Chief Financial Officer / age: 48

David McLaren is the Chief Financial Officer of MPX International. Mr. McLaren brings over 25 years of financial experience, having spent the past 10 years at the chief financial officer level. Prior to joining MPX and MPX International, Mr. McLaren was CFO for Ontario Drive & Gear Limited for the past two years and previously Chief Financial Officer for Belmont Meats Limited, Redpath Sugar Limited and Nealanders International Inc. Mr. McLaren also held senior finance positions with Mother Parkers Tea & Coffee, Weston Bakeries and Loblaw's.

Mr. McLaren is a Chartered Professional Accountant and holds an Honours Bachelor of Commerce degree from McMaster University. In 2012, Mr. McLaren was honored with a Fellowship from the Chartered Professional Accountants Association in recognition of his career achievements and contributions.

Robert Petch – Proposed Director / age: 50

Robert Petch is a proposed director of the Corporation. Mr. Petch brings over 30 years of experience in management, strategic planning and financial analysis. With experience on both the buy-side and sell-side of the investment market, Mr. Petch will be able to greatly assist the Corporation in the execution of its on-going strategy of growth in the international cannabis industry.

Mr. Petch worked for 15 years at Dresdner Kleinwort Benson advising companies on strategy, fund-raising including IPOs where he led a number of successful issues, acquisitions (public and private), disposals and other market-related issues. More recently he spent 4 years assessing investment opportunities for a specialist AIM-listed private equity investment company (including in its structuring and launch) and a further 4 years advising a substantial family office (\$5 billion of asset under management) on its private equity and real estate portfolio before going independent in 2014.

Mr. Petch is a Chartered Accountant, was educated at the Harrow School and earned an honours degree in Engineering Science from Oxford University.

Randall G. Stafford – Proposed Director / age: 57

Randall G. Stafford is a proposed director of the Corporation and a director and former Interim Chief Financial Officer of MPX. Mr. Stafford was the Vice President of Finance, Cushman & Wakefield, Inc., the world's largest privately owned international commercial real estate firm, between June 2014 and July 2016. Previously, Mr. Stafford was a realtor at Royal LePage Real Estate Service Ltd., Johnston & Daniel Division, Brokerage between November 2013 and June 2014 and continues to hold his real estate licence in the Province of Ontario. Mr. Stafford was the Director of Operations and Fulfillment, First Canadian Title, one of Canada's largest providers of title insurance and backend processing operations for residential and commercial real estate transactions, a division of one of the world's largest title insurance providers, First American Title Company, between November 2010 and February 2013.

Mr. Stafford received an MBA from the Rotman School of Business at the University of Toronto, and holds his Certified Management Accountant and Chartered Professional Accountant designations.

Corporate Cease Trade Orders, Bankruptcies, Penalties or Sanctions

Corporate Cease Trade Orders

As at the date of the Circular, other than as set out below, no current or proposed director or executive officer of MPX International is, or within the 10 years prior to the date of the Circular has been, a director, chief executive officer or chief financial officer of any company (including MPX International), that:

Name of Member**Education****Experience**

and Fulfillment, First Canadian Title, one of Canada's largest providers of title insurance and backend processing operations for residential and commercial real estate transactions

Pre-Approval Policies and Procedures

The Audit Committee shall pre-approve all audit and non-audit services not prohibited by law to be provided by the independent auditors of the Corporation.

CORPORATE GOVERNANCE

National Policy 58-201 — *Corporate Governance Guidelines* ("NP 58-201") of the Canadian Securities Administrators sets out a series of guidelines for effective corporate governance (the "**Guidelines**"). The Guidelines address matters such as the constitution and independence of corporate boards, the functions to be performed by boards and their committees and the effectiveness and education of board members. National Instrument 58-101 — *Disclosure of Corporate Governance Practices* ("NI 58-101") requires the disclosure by each listed corporation of its approach to corporate governance with reference to the Guidelines as it is recognized that the unique characteristics of individual corporations will result in varying degrees of compliance.

Set out below is a description of the Corporation's intended approach to corporate governance in relation to the Guidelines.

The Board of Directors

NI 58-101 defines an "independent director" as a director who has no direct or indirect material relationship with the Corporation. A "material relationship" is in turn defined as a relationship which could, in the view of the MPX International Board, be reasonably expected to interfere with such member's independent judgment. At the Effective Time, the MPX International Board is expected to be comprised of five (5) members, three (3) of whom the MPX International Board has determined will be "independent directors" within the meaning of NI 58-101.

At the Effective Time, of the Corporation's proposed five (5) directors, Alastair Crawford, Robert Petch and Randall G. Stafford will be considered independent directors within the meaning of NI 58-101 since they are each independent of management and free from any material relationship with the Corporation. The basis for this determination is that, since the date of incorporation of the Corporation, none of the independent directors have worked for the Corporation, received remuneration from the Corporation or had material contracts with or material interests in the Corporation which could interfere with their ability to act with a view to the best interests of the Corporation. W. Scott Boyes and Jeremy S. Budd are not independent directors since they are also officers of MPX International.

The MPX International Board believes that it will function independently of management. To enhance its ability to act independent of management, the MPX International Board may in the future meet in the absence of members of management or may excuse such persons from all or a portion of any meeting where an actual or potential conflict of interest arises or where the MPX International Board otherwise determines is appropriate.

Directorships

Three (3) of the directors and/or proposed directors of MPX International (W. Scott Boyes, Randy Stafford and Robert Petch) are currently directors of MPX. However, upon completion of the Arrangement one (1) of the directors or proposed directors of MPX International (Robert Petch) will also become a director of iAnthus. Other than as set forth above, none of the directors and/or proposed directors of the Corporation are also current directors of other reporting issuers (or equivalent) in a jurisdiction or a foreign jurisdiction.

Exhibit 9

APP0073

AA 005186

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

.

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 18

WEDNESDAY, AUGUST 14, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

APP0074

AA 005187

1 Q Okay. Good enough. So is that a, no, Mr. Parker, I
2 am not identified with the Secretary of State?

3 A I'm not identified to the Secretary of State.

4 Q Good enough. Now, I believe you've testified today
5 to this Court that there are three female owners; is that
6 correct?

7 A That's right.

8 Q Why don't we have a single female owner speaking on
9 behalf of Helping Hands, as opposed to you today?

10 MS. SHELL: Objection. Relevance.

11 THE COURT: Overruled. You can answer.

12 THE WITNESS: Because I'm mostly involved with the
13 operation of Helping Hands from the beginning with my wife.

14 BY MR. PARKER:

15 Q Now, let me make sure I'm clear. Because when I
16 looked again through the application of Helping Hands I did
17 not see your name referenced as an owner, a board member, or
18 an officer. Is that also true, sir?

19 A That's right. But isn't it community property,
20 husband and wife?

21 Q Well, I don't practice domestic court, so -- but I
22 do remember that.

23 A Well, anything she owns I own, anything I own she
24 owns.

25 Q Yes. But --

1 THE WITNESS: I didn't say I was CEO.

2 BY MR. PARKER:

3 Q All right. So tell me what your role and
4 responsibilities are, then, for Helping Hands?

5 A Chief operating officer. I'm the one who operates
6 the business.

7 Q Okay. So when I look at the organizational chart
8 for Helping Hands it says that the -- it's either Dr. Florence
9 Jameson or a counterpart that is not identified as anyone,
10 it's just chief operations officer, no name whatsoever. Were
11 you aware of that?

12 A I don't -- no, Q I don't remember. Do you have
13 it somewhere?

14 MR. PARKER: Your Honor, can I take a few-minute
15 break?

16 THE COURT: I have to do a conference call at 11:30.
17 Can we go for nine more minutes?

18 At 11:30; right, Jill?

19 THE COURT: Can you go for nine more minutes on
20 something else?

21 MR. PARKER: I could, Your Honor.

22 THE COURT: Great.

23 BY MR. PARKER:

24 Q Did you do any evaluation of community impact as a
25 part of your application?

Exhibit 10

APP0077

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

.

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 8
VOLUME II**

TUESDAY, JUNE 18, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

APP0078

AA 005191

1 O'Neal as part of its team or its board. Does the Department
2 have any problem with that?

3 A No.

4 Q The Department didn't go out and start looking at
5 Websites and performing investigations into what was
6 represented other than completing a background check; is that
7 right?

8 A Right. And what was provided in the application.

9 Q Right. And so you trusted what the applicants
10 submitted; correct?

11 A Yes.

12 Q And trusted them to tell the truth; is that right?

13 A Yes.

14 Q And you relied upon them?

15 A Yes.

16 Q And did you think that was a reasonable thing to do
17 for the Department?

18 A I do.

19 Q Did you go out and conduct any interviews of these
20 individuals to see if they were qualified to be a board
21 member?

22 A No, we did not.

23 Q What if a company listed let's say 10 vice
24 presidents of operations as officers and described their
25 duties there? Would the Department go back and tell that

Exhibit 11

LICENSED ENTITY - OWNERS/OFFICERS/BOARD MEMBERS as of: AUGUST 1, 2019

ID	Licensed Entity	License Type	Establishment Jurisdiction	COUNTY	Last Name	First Name	MI	Owner	Officer	Board Member	Affiliated Entity (1)	Affiliated Entity (2)	Affiliated Entity (3)	Affiliated Entity (4)	Affiliated Entity (5)
RC165	Clark Natural Medicinal Solutions LLC	Rec Cultivation	North Las Vegas	Clark	Vick	Lisa		no	no	BM	NuVeda, LLC	no	no	no	no
RC165	Clark Natural Medicinal Solutions LLC	Rec Cultivation	North Las Vegas	Clark	Wolovek	Trent		no	no	BM	NuVeda, LLC	no	no	no	no
RP108	Clark Natural Medicinal Solutions LLC	Rec Production	North Las Vegas	Clark	Bady	Pejman		Owner	Officer	BM	NuVeda, LLC	no	no	no	no
RP108	Clark Natural Medicinal Solutions LLC	Rec Production	North Las Vegas	Clark	Kennedy	Joseph		Owner	Officer	BM	NuVeda, LLC	no	no	no	no
RP108	Clark Natural Medicinal Solutions LLC	Rec Production	North Las Vegas	Clark	Mohajer	Pouya		Owner	Officer	BM	NuVeda, LLC	no	no	no	no
RP108	Clark Natural Medicinal Solutions LLC	Rec Production	North Las Vegas	Clark	Aslanian	Eddy		no	no	BM	NuVeda, LLC	no	no	no	no
RP108	Clark Natural Medicinal Solutions LLC	Rec Production	North Las Vegas	Clark	Cacioppo	James		no	no	BM	NuVeda, LLC	no	no	no	no
RP108	Clark Natural Medicinal Solutions LLC	Rec Production	North Las Vegas	Clark	Cohen	Joseph		no	no	BM	NuVeda, LLC	no	no	no	no
RP108	Clark Natural Medicinal Solutions LLC	Rec Production	North Las Vegas	Clark	Gerhing	Brooke		no	no	BM	NuVeda, LLC	no	no	no	no
RP108	Clark Natural Medicinal Solutions LLC	Rec Production	North Las Vegas	Clark	Mauff	Erich		no	no	BM	NuVeda, LLC	no	no	no	no
RP108	Clark Natural Medicinal Solutions LLC	Rec Production	North Las Vegas	Clark	Sassano	Michael		no	no	BM	NuVeda, LLC	no	no	no	no
RP108	Clark Natural Medicinal Solutions LLC	Rec Production	North Las Vegas	Clark	Vick	Lisa		no	no	BM	NuVeda, LLC	no	no	no	no
RP108	Clark Natural Medicinal Solutions LLC	Rec Production	North Las Vegas	Clark	Wolovek	Trent		no	no	BM	NuVeda, LLC	no	no	no	no
D186	Clark NMSD LLC	Med Dispensary	Las Vegas	Clark	Bady	Pejman		Owner	Officer	BM	NuVeda, LLC	no	no	no	no
D186	Clark NMSD LLC	Med Dispensary	Las Vegas	Clark	Kennedy	Joseph		Owner	Officer	BM	NuVeda, LLC	no	no	no	no
D186	Clark NMSD LLC	Med Dispensary	Las Vegas	Clark	Mohajer	Pouya		Owner	Officer	BM	NuVeda, LLC	no	no	no	no
D187	Clark NMSD LLC	Med Dispensary	North Las Vegas	Clark	Bady	Pejman		Owner	Officer	BM	NuVeda, LLC	no	no	no	no
D187	Clark NMSD LLC	Med Dispensary	North Las Vegas	Clark	Kennedy	Joseph		Owner	Officer	BM	NuVeda, LLC	no	no	no	no
D187	Clark NMSD LLC	Med Dispensary	North Las Vegas	Clark	Mohajer	Pouya		Owner	Officer	BM	NuVeda, LLC	no	no	no	no
C097	Clear River LLC	Med Cultivation	Unincorporated Clark	Clark	Arbeleaz	Northon	J	Owner	Officer	BM	Arbko, LLC	no	no	no	no
C097	Clear River LLC	Med Cultivation	Unincorporated Clark	Clark	Black, Sr.	Robert	R	Owner	Officer	BM	RSR Black Family 2014 Trust	no	no	no	no
C097	Clear River LLC	Med Cultivation	Unincorporated Clark	Clark	Kocer	John	D	Owner	Officer	BM	Arbko, LLC	no	no	no	no
D087	Clear River LLC	Med Dispensary	Henderson	Clark	Arbeleaz	Northon	J	Owner	Officer	BM	Arbko, LLC	no	no	no	no
D087	Clear River LLC	Med Dispensary	Henderson	Clark	Black, Sr.	Robert	R	Owner	Officer	BM	RSR Black Family 2014 Trust	no	no	no	no
D087	Clear River LLC	Med Dispensary	Henderson	Clark	Kocer	John	D	Owner	Officer	BM	Arbko, LLC	no	no	no	no
D108	Clear River LLC	Med Dispensary	Unincorporated Clark	Clark	Black, Sr.	Robert	R	Owner	Officer	BM	RSR Black Family 2014 Trust	no	no	no	no
D108	Clear River LLC	Med Dispensary	Unincorporated Clark	Clark	Byorick	Rita		no	Officer	no	no	no	no	no	no
D108	Clear River LLC	Med Dispensary	Unincorporated Clark	Clark	Degraff	Christopher	R	no	Officer	no	no	no	no	no	no
D108	Clear River LLC	Med Dispensary	Unincorporated Clark	Clark	Gentile	Anthony	L	no	Officer	no	no	no	no	no	no
D108	Clear River LLC	Med Dispensary	Unincorporated Clark	Clark	Hardin	Lisa	M	no	Officer	no	no	no	no	no	no
D108	Clear River LLC	Med Dispensary	Unincorporated Clark	Clark	Hartt	Lorraine	J	no	Officer	no	no	no	no	no	no
D108	Clear River LLC	Med Dispensary	Unincorporated Clark	Clark	McBride	Thomas	J	no	Officer	no	no	no	no	no	no
D108	Clear River LLC	Med Dispensary	Unincorporated Clark	Clark	Piatt	Jade	N	no	Officer	no	no	no	no	no	no
D108	Clear River LLC	Med Dispensary	Unincorporated Clark	Clark	Tschanen	Saydee	R	no	Officer	no	no	no	no	no	no
D108	Clear River LLC	Med Dispensary	Unincorporated Clark	Clark	Twiddy	Kenneth	M	no	Officer	no	no	no	no	no	no
D108	Clear River LLC	Med Dispensary	Unincorporated Clark	Clark	Black	Tisha	R	no	no	BM	no	no	no	no	no
D108	Clear River LLC	Med Dispensary	Unincorporated Clark	Clark	Williams	Flintie	R	no	no	BM	no	no	no	no	no

APP0081
AA 005194

LICENSED ENTITY - OWNERS/OFFICERS/BOARD MEMBERS as of: AUGUST 1, 2019

ID	Licensed Entity	License Type	Establishment Jurisdiction	COUNTY	Last Name	First Name	MI	Owner	Officer	Board Member	Affiliated Entity (1)	Affiliated Entity (2)	Affiliated Entity (3)	Affiliated Entity (4)	Affiliated Entity (5)
P047	Clear River LLC	Med Production	Unincorporated Clark	Clark	Arbeleaz	Northon	J	Owner	Officer	BM	Arbko, LLC	no	no	no	no
P047	Clear River LLC	Med Production	Unincorporated Clark	Clark	Black, Sr.	Robert	R	Owner	Officer	BM	RSR Black Family 2014 Trust	no	no	no	no
P047	Clear River LLC	Med Production	Unincorporated Clark	Clark	Kocer	John	D	Owner	Officer	BM	Arbko, LLC	no	no	no	no
RC097	Clear River LLC	Rec Cultivation	Unincorporated Clark	Clark	Arbeleaz	Northon	J	Owner	Officer	BM	Arbko, LLC	no	no	no	no
RC097	Clear River LLC	Rec Cultivation	Unincorporated Clark	Clark	Black, Sr.	Robert	R	Owner	Officer	BM	RSR Black Family 2014 Trust	no	no	no	no
RC097	Clear River LLC	Rec Cultivation	Unincorporated Clark	Clark	Kocer	John	D	Owner	Officer	BM	Arbko, LLC	no	no	no	no
RP047	Clear River LLC	Rec Production	Unincorporated Clark	Clark	Arbeleaz	Northon	J	Owner	Officer	BM	Arbko, LLC	no	no	no	no
RP047	Clear River LLC	Rec Production	Unincorporated Clark	Clark	Black, Sr.	Robert	R	Owner	Officer	BM	RSR Black Family 2014 Trust	no	no	no	no
RP047	Clear River LLC	Rec Production	Unincorporated Clark	Clark	Kocer	John	D	Owner	Officer	BM	Arbko, LLC	no	no	no	no
RD229	Clear River LLC	Retail Dispensary	Henderson	Clark	Black, Sr.	Robert	R	Owner	no	no	RSR Black Family 2014 Trust	no	no	no	no
RD229	Clear River LLC	Retail Dispensary	Henderson	Clark	Byorick	Rita		no	Officer	no	no	no	no	no	no
RD229	Clear River LLC	Retail Dispensary	Henderson	Clark	Degraff	Christopher	R	no	Officer	no	no	no	no	no	no
RD229	Clear River LLC	Retail Dispensary	Henderson	Clark	Gentile	Anthony	L	no	Officer	no	no	no	no	no	no
RD229	Clear River LLC	Retail Dispensary	Henderson	Clark	Hardin	Lisa	M	no	Officer	no	no	no	no	no	no
RD229	Clear River LLC	Retail Dispensary	Henderson	Clark	Hartt	Lorraine	J	no	Officer	no	no	no	no	no	no
RD229	Clear River LLC	Retail Dispensary	Henderson	Clark	McBride	Thomas	J	no	Officer	no	no	no	no	no	no
RD229	Clear River LLC	Retail Dispensary	Henderson	Clark	Piatt	Jade	N	no	Officer	no	no	no	no	no	no
RD229	Clear River LLC	Retail Dispensary	Henderson	Clark	Tschanen	Saydee	R	no	Officer	no	no	no	no	no	no
RD229	Clear River LLC	Retail Dispensary	Henderson	Clark	Twiddy	Kenneth	M	no	Officer	no	no	no	no	no	no
RD229	Clear River LLC	Retail Dispensary	Henderson	Clark	Black	Tisha	R	no	no	BM	no	no	no	no	no
RD229	Clear River LLC	Retail Dispensary	Henderson	Clark	Williams	Flintie	R	no	no	BM	no	no	no	no	no
RD230	Clear River LLC	Retail Dispensary	Unincorporated Clark	Clark	Black, Sr.	Robert	R	Owner	no	no	RSR Black Family 2014 Trust	no	no	no	no
RD230	Clear River LLC	Retail Dispensary	Unincorporated Clark	Clark	Byorick	Rita		no	Officer	no	no	no	no	no	no
RD230	Clear River LLC	Retail Dispensary	Unincorporated Clark	Clark	Degraff	Christopher	R	no	Officer	no	no	no	no	no	no
RD230	Clear River LLC	Retail Dispensary	Unincorporated Clark	Clark	Gentile	Anthony	L	no	Officer	no	no	no	no	no	no
RD230	Clear River LLC	Retail Dispensary	Unincorporated Clark	Clark	Hardin	Lisa	M	no	Officer	no	no	no	no	no	no
RD230	Clear River LLC	Retail Dispensary	Unincorporated Clark	Clark	Hartt	Lorraine	J	no	Officer	no	no	no	no	no	no
RD230	Clear River LLC	Retail Dispensary	Unincorporated Clark	Clark	McBride	Thomas	J	no	Officer	no	no	no	no	no	no
RD230	Clear River LLC	Retail Dispensary	Unincorporated Clark	Clark	Piatt	Jade	N	no	Officer	no	no	no	no	no	no
RD230	Clear River LLC	Retail Dispensary	Unincorporated Clark	Clark	Tschanen	Saydee	R	no	Officer	no	no	no	no	no	no
RD230	Clear River LLC	Retail Dispensary	Unincorporated Clark	Clark	Twiddy	Kenneth	M	no	Officer	no	no	no	no	no	no
RD230	Clear River LLC	Retail Dispensary	Unincorporated Clark	Clark	Black	Tisha	R	no	no	BM	no	no	no	no	no
RD230	Clear River LLC	Retail Dispensary	Unincorporated Clark	Clark	Williams	Flintie	R	no	no	BM	no	no	no	no	no
RD231	Clear River LLC	Retail Dispensary	Las Vegas	Clark	Black, Sr.	Robert	R	Owner	no	no	RSR Black Family 2014 Trust	no	no	no	no
RD231	Clear River LLC	Retail Dispensary	Las Vegas	Clark	Byorick	Rita		no	Officer	no	no	no	no	no	no
RD231	Clear River LLC	Retail Dispensary	Las Vegas	Clark	Degraff	Christopher	R	no	Officer	no	no	no	no	no	no
RD231	Clear River LLC	Retail Dispensary	Las Vegas	Clark	Gentile	Anthony	L	no	Officer	no	no	no	no	no	no

APP0082
AA 005195

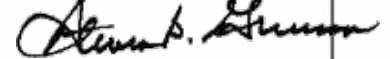
LICENSED ENTITY - OWNERS/OFFICERS/BOARD MEMBERS as of: AUGUST 1, 2019

ID	Licensed Entity	License Type	Establishment Jurisdiction	COUNTY	Last Name	First Name	MI	Owner	Officer	Board Member	Affiliated Entity (1)	Affiliated Entity (2)	Affiliated Entity (3)	Affiliated Entity (4)	Affiliated Entity (5)
RD231	Clear River LLC	Retail Dispensary	Las Vegas	Clark	Hardin	Lisa	M	no	Officer	no	no	no	no	no	no
RD231	Clear River LLC	Retail Dispensary	Las Vegas	Clark	Hartt	Lorraine	J	no	Officer	no	no	no	no	no	no
RD231	Clear River LLC	Retail Dispensary	Las Vegas	Clark	McBride	Thomas	J	no	Officer	no	no	no	no	no	no
RD231	Clear River LLC	Retail Dispensary	Las Vegas	Clark	Platt	Jade	N	no	Officer	no	no	no	no	no	no
RD231	Clear River LLC	Retail Dispensary	Las Vegas	Clark	Tschanen	Saydee	R	no	Officer	no	no	no	no	no	no
RD231	Clear River LLC	Retail Dispensary	Las Vegas	Clark	Twiddy	Kenneth	M	no	Officer	no	no	no	no	no	no
RD231	Clear River LLC	Retail Dispensary	Las Vegas	Clark	Black	Tisha	R	no	no	BM	no	no	no	no	no
RD231	Clear River LLC	Retail Dispensary	Las Vegas	Clark	Williams	Flintie	R	no	no	BM	no	no	no	no	no
C195	Clover Creek Organics LLC	Med Cultivation	Lincoln	Lincoln	Burkhart	Brandon	L	Owner	no	no	no	no	no	no	no
C195	Clover Creek Organics LLC	Med Cultivation	Lincoln	Lincoln	Cox	Natalie		Owner	no	no	no	no	no	no	no
C195	Clover Creek Organics LLC	Med Cultivation	Lincoln	Lincoln	Lancaster	Tammara	L	Owner	no	no	no	no	no	no	no
C195	Clover Creek Organics LLC	Med Cultivation	Lincoln	Lincoln	Northup	Brenda	L	no	Officer	no	no	no	no	no	no
C195	Clover Creek Organics LLC	Med Cultivation	Lincoln	Lincoln	Northup	Jake	I	no	Officer	no	no	no	no	no	no
P142	Clover Creek Organics LLC	Med Production	Lincoln	Lincoln	Burkhart	Brandon	L	Owner	no	no	no	no	no	no	no
P142	Clover Creek Organics LLC	Med Production	Lincoln	Lincoln	Cox	Natalie		Owner	no	no	no	no	no	no	no
P142	Clover Creek Organics LLC	Med Production	Lincoln	Lincoln	Lancaster	Tammara	L	Owner	no	no	no	no	no	no	no
P142	Clover Creek Organics LLC	Med Production	Lincoln	Lincoln	Northup	Brenda	L	no	Officer	no	no	no	no	no	no
P142	Clover Creek Organics LLC	Med Production	Lincoln	Lincoln	Northup	Jake	I	no	Officer	no	no	no	no	no	no
C095	CN Licenseco I Inc	Med Cultivation	North Las Vegas	Clark	Boyajian	Salpy		no	Officer	no	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
C095	CN Licenseco I Inc	Med Cultivation	North Las Vegas	Clark	Fong	Warner	K	no	Officer	BM	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
C095	CN Licenseco I Inc	Med Cultivation	North Las Vegas	Clark	Fox	Karl	K	no	Officer	no	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
C095	CN Licenseco I Inc	Med Cultivation	North Las Vegas	Clark	Kass	Dillon	R	no	Officer	no	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
C095	CN Licenseco I Inc	Med Cultivation	North Las Vegas	Clark	Miachika	Geoffrey		no	Officer	no	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
C095	CN Licenseco I Inc	Med Cultivation	North Las Vegas	Clark	Pulido	Robert		no	Officer	BM	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
C095	CN Licenseco I Inc	Med Cultivation	North Las Vegas	Clark	Sanchez	Elaine		no	Officer	no	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
C095	CN Licenseco I Inc	Med Cultivation	North Las Vegas	Clark	Sargeant	Shatony	A	no	Officer	no	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
C095	CN Licenseco I Inc	Med Cultivation	North Las Vegas	Clark	St. Martin	Jean		no	Officer	no	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
C095	CN Licenseco I Inc	Med Cultivation	North Las Vegas	Clark	Varma	Amit		no	Officer	BM	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
C095	CN Licenseco I Inc	Med Cultivation	North Las Vegas	Clark	Villazor	Kenneth		no	Officer	BM	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
C095	CN Licenseco I Inc	Med Cultivation	North Las Vegas	Clark	Wesley	David	P	no	Officer	BM	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
P066	CN Licenseco I Inc	Med Production	North Las Vegas	Clark	Boyajian	Salpy		no	Officer	no	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
P066	CN Licenseco I Inc	Med Production	North Las Vegas	Clark	Fong	Warner	K	no	Officer	BM	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
P066	CN Licenseco I Inc	Med Production	North Las Vegas	Clark	Fox	Karl	K	no	Officer	no	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
P066	CN Licenseco I Inc	Med Production	North Las Vegas	Clark	Kass	Dillon	R	no	Officer	no	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
P066	CN Licenseco I Inc	Med Production	North Las Vegas	Clark	Miachika	Geoffrey		no	Officer	no	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
P066	CN Licenseco I Inc	Med Production	North Las Vegas	Clark	Pulido	Robert		no	Officer	BM	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no
P066	CN Licenseco I Inc	Med Production	North Las Vegas	Clark	Sanchez	Elaine		no	Officer	no	Cana Nevada Corp.	Flower One Corp (Ontario)	Flower One Holdings, Inc (Canadian Publicly Traded)	no	no

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AA 005196

Exhibit 12



COMPB

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Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

PAULA NEWMAN, on her own behalf,
and derivatively on behalf of DESERT
AIRE WELLNESS., a Nevada limited-
liability company, d/b/a Sahara Wellness;

Plaintiff,

vs.

STACEY O. HUFFMAN, individually and
as Managing Member of Desert Aire
Wellness, LLC, DOES I through X,
inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants,

DESERT AIRE WELLNESS, LLC, a
Nevada limited-liability company,

Nominal Defendant.

A-18-784970-B

CASE NO:

DEPT NO.: Department 11

VERIFIED COMPLAINT

Exemption for Arbitration Requested
(Claims in excess of \$50,000.00;
Declaratory and Equitable Relief)

BUSINESS COURT ASSIGNMENT
REQUESTED PURSUANT TO EDCR
1.61

Plaintiff, PAULA NEWMAN ("Newman" or "Plaintiff"), on her own behalf and
derivatively on behalf of DESERT AIRE WELLNESS, LLC, a Nevada limited- liability company
("Desert Aire"), by and through her counsel, Lee Iglody, hereby complains against Defendant,

LEE IGLODY, ESQ.
2300 W. Sahara Ave., Suite 900.
Las Vegas, Nevada 89102
(702) 425-5366 FAX: (702) 631-7556

1 STACEY O. HUFFMAN ("Huffman"), individually and as Managing Member, and against
2 Nominal Defendant Desert Aire, as follows:

3
4 **I. NATURE OF THE ACTION**

5 1. This action is necessary to remedy the oppressive and otherwise wrongful actions
6 Huffman has taken as the managing member of Desert Aire, which has harmed and threatens to
7 harm both Desert Aire and Newman. Specifically, Huffman refuses to acknowledge Newman's
8 ownership interest and rights in Desert Aire. Further, Huffman has denied Newman access to the
9 books and records of Desert Aire, thus concealing the full extent of Huffman's self-dealing.

10
11 **II. THE PLAINTIFF & DESERT AIRE**

12 2. Plaintiff Newman is a resident of Clark County, Nevada.

13 3. Newman is a founding member of Desert Aire.

14 4. Desert Aire is a Nevada limited-liability company, with its principal place of
15 business in Clark County, Nevada.

16
17 5. Desert Aire filed its initial articles of organization with the Nevada Secretary of
18 State on July 1, 2014.

19 6. Desert Aire is a licensed Nevada Marijuana Establishment that operates a
20 dispensary for medicinal and recreational cannabis products.

21
22 7. Desert Aire conducts business under the fictitious firm name Sahara Wellness.

23 8. Desert Aire, d/b/a Sahara Wellness, operates a dispensary at 420 E. Sahara Avenue,
24 Las Vegas, Nevada, 89104.

25 9. Newman is an authorized owner of Desert Aire, a Nevada Marijuana Establishment.

26
27 10. The initial Nevada Marijuana Establishment license applicants ("founders") for
28 Desert Aire were Newman, Huffman, Brenda Gunsallus, Darlene Davis, Michael Suedkamp, and
Susan Lera.

11. Newman initially owned 25.5% of Desert Aire.

12. Newman now has at least a 17% ownership interest in Desert Aire.

13. The State of Nevada's Nevada Marijuana Enforcement Division has approved and confirmed Newman's 17% ownership interest in Desert Aire.

14. A true and correct copy of the Marijuana Enforcement Division's letter confirming its acknowledgement, dated October 24, 2017, is attached hereto as **Exhibit 1**.

15. Plaintiff brings her claims both on behalf of herself, and derivatively on behalf of Desert Aire.

III. THE DEFENDANT

16. Defendant Huffman is the managing member of Desert Aire.

17. Huffman is a founding member of Desert Aire.

18. Huffman, née Nunn, is married to Curtis Huffman.

19. Upon information and belief, Curtis Huffman is actively involved in the day-to-day management of Desert Aire.

20. The names and capacities, whether individuals, corporate, associate or otherwise of the Defendant named herein as DOE and ROE CORPORATION are unknown or not yet confirmed. Upon information and belief, said DOE and ROE CORPORATION Defendants are responsible for damages suffered by Plaintiff and, therefore, Plaintiff sues said Defendants by such fictitious names. Plaintiff will ask leave to amend this Complaint to show the true names and capacities of each DOE and ROE CORPORATION Defendant at such time as the same has been ascertained.

IV. JURISDICTION AND VENUE

21. Jurisdiction is proper in the courts of this state, and venue is proper in this judicial district, because Desert Aire is a Nevada limited liability company, with its principal place of

1 business in Clark County, Nevada; and Defendant's wrongful acts occurred or arose in Clark
2 County, Nevada, and involves the management of a Nevada limited-liability company.

3 **V. THE DISPUTE**

4 **Desert Aire's History**

5 22. Desert Aire holds a Marijuana Establishment License for medical and recreational
6 cannabis.

7
8 23. Desert Aire's founders initially applied for a Nevada Medical Marijuana License in
9 August 2014.

10 24. Desert Aire subsequently obtained approval to sell recreational cannabis.

11 25. On September 23, 2015, Newman and certain members of Desert Aire entered into
12 a settlement agreement ("2015 Settlement Agreement").

13
14 26. A true and correct copy of the 2015 Settlement Agreement is attached as **Exhibit**
15 2.

16 27. Desert Aire's Amended Operating Agreement was adopted in January 2016.

17 28. The Amended Operating Agreement incorporated by reference the 2015 Settlement
18 Agreement.

19
20 29. A true and correct copy of Desert Aire's Amended Operating Agreement is attached
21 as **Exhibit 3**.

22 30. Desert Aire was widely celebrated in the media for its innovative, woman-owned
23 Marijuana operations.

24
25 31. Attached as **Exhibit 4** is a true and correct copy of an article that appeared in the
26 Las Vegas Sun on February 8, 2016

27 32. Attached as **Exhibit 5** is a true and correct copy of an article that appeared in DTLV
28 on April 21, 2015.

33. Attached as **Exhibit 6** is a true and correct copy of an article that appeared in the Las Vegas Sun on July 27, 2014.

34. All the founders of Desert Aire expended significant time and resources to launching the enterprise.

Oppressive Conduct by Huffman

35. Desert Aire filed a Schedule K-1 for tax year 2015 listing Newman as 25.5% owner.

36. Desert Aire filed a Schedule K-1 for tax year 2016 listing Newman as 17% owner.

37. Desert Aire filed a Schedule K-1 for tax year 2017 listing Newman as 17% owner.

38. Desert Aire has not distributed any of its income to Newman for tax year 2015.

39. Desert Aire has not distributed any of its income to Newman for tax year 2016.

40. Desert Aire has not distributed any of its income to Newman for tax year 2017.

41. Desert Aire is expected to continue to report pass-through income to Newman for tax year 2018.

42. The reporting of significant pass-through income to Newman ("Phantom Income") will create significant tax liability for Newman.

43. Phantom Income to owners is prohibited by the Amended Operating Agreement.

44. Huffman has banned Newman from visiting Desert Aire's facilities.

45. Huffman has refused to allow Newman to inspect, copy and audit Desert Aire's books and records.

46. Huffman has refused Newman any information on the status of Desert Aire, including insider transactions that, upon information and belief, are significantly enriching Huffman and her husband at the expense of the company.

47. For example, upon information and belief, Huffman used an affiliate company, Pine Mountain Holdings LLC, a Nevada limited-liability company, to purchase property adjacent to the Sahara Wellness location, using Desert Aire funds.

48. Pine Mountain Holdings LLC is owned by Huffman and her husband.

49. Pine Mountain Holdings LLC, upon information and belief, draws payments from Desert Aire for use of the property at 430 E. Sahara as a parking facility.

50. As of the date of this complaint, Newman has been effectively shut out of Desert Aire, including refusing to give Newman her state-issued Agent Card.

51. As of the date of this complaint, Newman is liable as a co-owner of Desert Aire to Nevada Marijuana Establishment regulators for both medical and recreational operations.

52. As of the date of this complaint, upon information and belief, Desert Aire's gross income is in excess of \$5 million per annum.

53. Upon information and belief, Huffman, and her co-conspirators, are siphoning significant income from Desert Aire for their own benefit.

54. Upon information and belief, Huffman and her co-conspirators, are falsely reporting Newman's consent in Nevada mandated reports to, among other, the State's Marijuana Enforcement Division, Department of Taxation.

55. Huffman has suggested to Newman that she needs to surrender her ownership interest in Desert Aire to end Phantom Income reporting.

56. Huffman has not held a member meeting for Desert Aire since 2016.

57. Thus, upon information and belief, Huffman's false statements and related actions enumerated above were not taken to benefit Desert Aire, but to benefit Huffman, and her co-conspirators, personally at the expense of Newman.

FIRST CLAIM FOR RELIEF
BREACH OF FIDUCIARY DUTY
(Direct Claim by Paula Newman)

58. Plaintiff incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

59. As managing member of Desert Aire, Huffman has a fiduciary duty to to maintain, in good faith, the best interests of Desert Aire and its members – including Newman’s – over anyone else’s interests.

60. By knowingly making false statements to attempt to induce Newman to surrender her membership interest in Desert Aire, Huffman was not acting in good faith or in the best interests of Desert Aire’s members but was acting in her own personal interest.

61. Accordingly, by knowingly making false statements to induce Newman to surrender her membership interest in Desert Aire, Huffman breached her fiduciary duty to Newman as a member/owner of Desert Aire.

62. By creating Phantom Income to oppress and financially manipulate Newman, Huffman breached her fiduciary duty to Newman.

63. By knowingly making false statements to third-parties and regulators regarding Newman’s status with the actual operations of Desert Aire, Huffman breached her fiduciary duty to Newman, as a member of Desert Aire.

64. As set forth above, Huffman’s breach of fiduciary duty to Newman involved intentional misconduct, fraud, and a knowing violation of law.

65. Huffman’s breach of fiduciary duty has damaged Newman and threatens to cause future damages to Huffman in excess of \$15,000.

66. It has been necessary for Plaintiff to retain the services of an attorney to prosecute this claim, and Plaintiff is therefore entitled to an award of reasonable attorney fees and costs.

SECOND CLAIM FOR RELIEF
BREACH OF FIDUCIARY DUTY
(Derivative Claim on behalf of Desert Aire Wellness, LLC)

67. Plaintiff incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

68. Huffman has breached her fiduciary duties to Desert Aire by entering into insider transactions with affiliate entities, and by appropriating Desert Aire's funds for herself to the detriment of Desert Aire and its members.

69. Further, upon information and belief, Huffman has mismanaged Desert Aire to its detriment, but because Huffman has failed to accede to Newman's demand for the books and records, the full extent of her wrongful actions is unknown.

70. Newman, as a member of Desert Aire, is entitled to bring an action to enforce the rights of Desert Aire.

71. It was not necessary for Newman to make a formal demand on Desert Aire to correct the actions that Newman challenges in this limited-liability member derivative claim before bringing it.

72. Such a demand would have been futile because Huffman, individually and as sole managing member of Desert Aire, refuses to acknowledge Newman's membership rights.

73. In addition, and in the alternative, it was not necessary for Newman to make a formal demand on Desert Aire, because Huffman effectively controls Desert Aire. Huffman is the sole managing member of Desert Aire and its largest interest holder.

74. Through the foregoing bad-faith actions, Huffman breached her fiduciary duty to Desert Aire.

75. As set forth above, Huffman's breach of fiduciary duty to Desert Aire involved intentional misconduct, fraud, and a knowing violation of law.

1 76. Huffman's breach of fiduciary duty has damaged Desert Aire and threatens to cause
2 further damages to it, in an amount in excess of \$15,000.00.

3 77. It has been necessary for Plaintiff to retain the services of an attorney to prosecute
4 this claim against Huffman, and Plaintiff is therefore entitled to an award of reasonable attorney
5 fees and costs.

6
7 **THIRD CLAIM FOR RELIEF**
8 **DECLARATORY JUDGMENT**
9 **(Direct Claim by Newman)**

10 78. Plaintiff incorporates by reference the allegations in the preceding paragraphs as
11 though fully set forth herein.

12 79. Under NRS 30.010 *et seq.*, this Court has jurisdiction and authority to adjudicate
13 the rights, status, and other legal relations of the parties.

14 80. A justiciable controversy exists between Newman, as a member of Desert Aire, and
15 Huffman, regarding Huffman's interest in Desert Aire, and the rights and duties attendant thereto.

16 81. Specifically, a justiciable controversy exists between the parties regarding whether,
17 pursuant to Section 13.17 of the Amended Operating Agreement, Huffman has forfeited her
18 interest in Desert Aire.

19 82. This issue is ripe for judicial determination because it presents an existing
20 controversy as to the parties' rights and obligations as member of Desert Aire.

21 83. Accordingly, Newman is entitled to a declaratory judgment pursuant to NRS 30.010
22 *et seq.* finding that Huffman's actions have resulted in her forfeiture of her ownership interest in
23 Desert Aire.

24 84. It has been necessary for Plaintiff to retain the services of an attorney to prosecute
25 this claim against Huffman, and Plaintiff is therefore entitled to an award of reasonable attorney
26 fees and costs.
27
28

FOURTH CLAIM FOR RELIEF
DECLARATORY JUDGMENT
(Derivative Claim on behalf of Desert Aire Wellness, LLC)

85. Plaintiff incorporates by reference the allegations in the preceding paragraphs as if fully set forth herein.

86. Under NRS 30.010 *et seq.* this Court has jurisdiction and authority to adjudicate the rights, status, and other legal relations of the parties.

87. A justiciable controversy exists between Newman, as a member bringing a derivative claim on behalf of Desert Aire, and Huffman regarding Huffman's interest in Desert Aire, and the rights and duties attendant thereto.

88. Specifically, a justiciable controversy exists between the parties regarding whether Huffman's actions has resulted in forfeiture of her interest in, and management of, Desert Aire.

89. This issue is ripe for judicial determination because it presents an existing controversy as to the parties' rights and obligations vis-à-vis Desert Aire.

90. It was not necessary for Newman to make a formal demand on Desert Aire to correct the actions Newman challenges in this member derivative claim before bringing it for the reasons set forth above.

91. Accordingly, Plaintiff, on behalf of Desert Aire, is entitled to a declaratory judgment pursuant to NRS 30.010 *et seq.* finding that Huffman's membership interest if forfeit to the company, and ordering her to relinquish her claim to any repayments or payments of income on that membership amount against Desert Aire, and to return to Desert Aire any payments of income on that amount that she has wrongfully retained.

92. It has been necessary for Plaintiff to retain the services of an attorney to prosecute this claim, and Plaintiff is therefore entitled to an award of reasonable attorney fees and costs.

FIFTH CLAIM FOR RELIEF
(ACCOUNTING)

93. Plaintiff incorporates by reference the allegations in the preceding paragraphs as though fully set forth herein.

94. Upon information and belief, as Desert Aire's largest membership holder, and as sole managing member, Huffman controls the books and records of Desert Aire.

95. Huffman is required to maintain full and accurate records for Desert Aire, and to make them available for inspection to Newman.

96. Newman has demanded the production or inspection of Desert Aire's financial and corporate records – including an accounting, tax returns, State Reports, and QuickBooks– but Huffman has refused Newman's demand.

97. As a result of Huffman's failure to sufficiently account for Desert Aire's funds and books, reports and records, Newman seeks a Court-ordered accounting of Desert Aire, requiring Huffman, as the sole managing member, to produce the books and records (including but not limited to tax records, QuickBooks, operational reports, and state reports) for Desert Aire to Newman.

98. Such an accounting is necessary in the interest of equity and justice to determine the extent of Huffman's wrongdoing, which has caused Newman and Desert Aire to incur damages in excess of \$15,000.

99. It has been necessary for Plaintiff to retain the services of an attorney to prosecute this claim against Huffman, and Plaintiff is therefore entitled to an award of reasonable attorney fees and costs.

SIXTH CLAIM FOR RELIEF
(APPOINTMENT OF A RECEIVER FOR DESERT AIRE)

100. Plaintiff incorporates the allegations in the preceding paragraphs as though fully set forth herein.

101. A Nevada court may appoint a receiver in a pending action in which parties jointly own or have an interest in particular property and the property is in danger of being lost, removed or materially injured.

102. A court may also appoint a receiver "[i]n all other cases where receivers have heretofore been appointed by the usages of the courts of equity." NRS 32.010(6).

103. Newman seeks appointment of a receiver for Desert Aire because its controlling member, Huffman, has committed fraud against Newman and against Desert Aire, and its members, through her actions, as set forth above.

104. In addition, and in the alternative, Newman seeks appointment of a receiver for Desert Aire, because its controlling member, Huffman, is guilty of misfeasance and malfeasance, as set forth above.

105. In addition, and in the alternative, Newman seeks appointment of a receiver to prevent the threatened conversion and usurpation of Desert Aire's assets.

106. In addition, and in the alternative, Newman seeks appointment of a receiver to prevent the continued self-dealing at the expense of the company by Huffman and her co-conspirators.

107. In addition, and in the alternative, Newman seeks appointment of a receiver for Desert Aire, because the assets of the company are in danger of waste as a result of Huffman's actions, and potentially for other reasons that Huffman cannot know because of Huffman's refusal to provide an accounting of Desert Aire's finances.

SEVENTH CLAIM FOR RELIEF
(FORCED BUYOUT)

108. Plaintiff incorporates the allegations of the preceding paragraphs as though fully set forth herein.

109. A forced buyout of a member's interest in a Nevada limited-liability company, through a fair and reasonable bidding process, is an appropriate remedy in cases such as this one involving oppression of a minority member by the majority members.

110. Specifically, a forced buyout is an appropriate remedy where it is the only practical alternative to dissolution and no lesser remedy will suffice.

111. In this case, dissolution of the company is not a practical remedy because it would threaten the continued existence of Desert Aire, an otherwise successful company, with employees and customers who depend on its continued existence in a highly regulated industry.

112. No other lesser remedy would suffice to ensure that Plaintiff is made whole and that Desert Aire can continue its successful Nevada Licensed Marijuana Establishment.

113. Huffman's conduct, as the largest membership owner and sole managing member, is oppressive.

114. Newman is entitled to a Court supervised buyout of her interest.

WHEREFORE, Plaintiff prays for judgment in its favor and against Defendant as follows:

1. For judgment in favor of Plaintiff in an amount to be determined at trial, in excess of \$15,000;

2. For judgment in favor of Plaintiff, derivatively on behalf of Desert Aire, against Defendant in an amount to be determined at trial, in excess of \$15,000;

LEE IGLODY, ESQ.
2300 W. Sahara Ave., Suite 900.
Las Vegas, Nevada 89102
(702) 425-5366 FAX: (702) 631-7556

3. For an order directing Defendant Huffman and nominal Defendant Desert Aire to produce the books and records (including but not limited to corporate records, tax records and Quickbooks) for Desert Aire to Newman;

4. For appointment of a receiver for Desert Aire, to maintain the business and protect its assets against appropriation by Defendant Huffman during the pendency of this litigation;

5. For injunctive relief;

6. In the alternative, for an order from the Court requiring a buyout of Newman's interest in Desert Aire, through a fair and reasonable bidding process;

7. For an award of reasonable attorney fees and costs;

8. For any such other and further relief as the Court deems just and proper.

IGLODY LAW

By:



Lee I. Igloody, Esq.
Nevada Bar #: 7757
2300 W. Sahara Ave., Suite 900
Las Vegas, NV 89102
Tel: (702) 425-5366
Email: Lee@Igloody.com
Attorney for Plaintiff

VERIFICATION

Under penalties of perjury, the undersigned declares that she has read the foregoing Verified Complaint and knows the contents thereof; that the pleading is true to her best belief, except as to those matters stated on information and belief, and that as to such matters she believes them to be true.

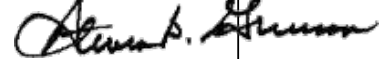
Date

11/21/2018



Paula Newman

Exhibit 13



1 **MPTD**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 CARLY KRYGIER, Nevada Bar No. 14392

4 **MCLEATCHIE LAW**

5 701 E. Bridger Avenue, Suite 520

6 Las Vegas, NV 89101

7 Telephone: (702) 728-5300; Fax (702) 425-8220

8 Email: maggie@nvlitigation.com

9 Counsel for Desert Aire Wellness, LLC

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 QUALCAN, LLC, a Nevada limited liability
13 company,

Case No.: A-15-721086-C

14 Plaintiff,

Dept. No.: II

15 vs.

**DEFENDANT/
COUNTERCLAIMANT'S
PRETRIAL DISCLOSURES**

16 DESERT AIRE WELLNESS, LLC, a
17 Nevada limited liability company;
18 PAUALA NEWMAN, an individual; and
19 SUSAN LERA, an individual,

20 Defendants.

21 AND ALL RELATED CLAIMS.

22 COMES NOW Defendant/Counterclaimant, Desert Aire Wellness LLC, and
23 submits the following pretrial disclosures pursuant to Nevada Rule of Civil Procedure
24 16.1(a)(3)(A):

25 **(i) WITNESSES**

- 26 • Brenda Gunsallus, Manager of the Defendant/Counterclaimant Desert Aire
27 Wellness, LLC;
- 28 • Stacey O. Huffman fka Stacey Nunn, Manager of the
Defendant/Counterclaimant Desert Aire Wellness, LLC;
- Darlene "Alex" Davis, Manager of the Defendant/Counterclaimant Desert Aire

Wellness, LLC;

- Curtis Huffman, consultant to Stacey O. Huffman and Brenda Gunsallus;
- Person Most Knowledgeable, QualCan, Plaintiff/Counterdefendant;
- Paula Newman, Defendant; and
- Susan Lera, Defendant.
- Any and all witnesses named by the other parties in this action, or referenced in documents produced by the other parties on or by March 22, 2019.

(ii) EXHIBITS

Document Description	Bates Nos.
Letter from Black & LoBello dated June 19, 2015	DAW0001-DAW0002
Letter to Black & LoBello dated June 22, 2015	DAW0003-DAW0004
Original July 6, 2014, Operating Agreement of Desert Aire Wellness LLC	DAW0005-DAW0020
Restated Operating Agreement for Desert Aire Wellness LLC dated March 5, 2015	DAW0021-DAW0045
Desert Aire Wellness LLC Consent of Members signed and dated in March 2015	DAW0046
Minutes of the Special Meeting of Managers held on March 31, 2015, wherein Curtis Huffman resigned as Manager of Desert Aire Wellness LLC	DAW0047
Acceptance of Appointment appointing Stacey O. Huffman as a Co-Manager upon the resignation of Curtis Huffman	DAW0048
Assignment of Membership Interest in Desert Aire Wellness LLC dated March 17, 2015, wherein Susan Lera assigned 15.5% interest of her 25% membership interest to Stacey O. Huffman	DAW0049
Assignment of Membership Interest in Desert Aire Wellness LLC dated April 24, 2015, wherein Paula Newman assigned 5% of her 25.5% membership interest to Brenda Gunsallus	DAW0050-DAW0052
Nevada Secretary of State information for Desert Aire Wellness LLC reflecting all actions	DAW0053-DAW0055
Letter to AJ Kung; Esq. regarding the Membership Purchase Agreement between Stacey Huffman and Susan Lera	DAW0056
Limited Liability Company Membership Interest Purchase Agreement dated March 10, 2015 wherein Stacey O. Huffman purchased 15.5% of Susan Lera's 25.5% membership interest for \$200,000.00	DAW0057-DAW0063
Communications regarding and draft versions of an Amended Operating Agreement of Desert Aire Wellness LLC	DAW0064-DAW0238
Affidavit of Susan Lera dated January 31, 2017	DAW0239

Document Description	Bates Nos.
Email Cease and Desist Letter from Susan Lera to Brenda Gunsallus dated December 20, 2014	DAW0240-DAW0241
Text messages and email communications	DAW0242-DAW0470
Defendant/Counterclaimant reserves its right to utilize any documents produced by any other party as exhibits at trial.	TBD

DATED this 22nd day of March, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLETCHIE, Nevada Bar No. 10931

CARLY KRYGIER, Nevada Bar No. 14392

MCLETCHIE LAW

701 E. Bridger Avenue, Suite 520

Las Vegas, NV 89101

Telephone: (702) 728-5300; Fax (702) 728-5300

Email: maggie@nvlitigation.com

Counsel for Desert Aire Wellness, LLC

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 22nd day of March, 2019, I did cause a true copy of the foregoing DEFENDANT/COUNTERCLAIMANT'S PRETRIAL DISCLOSURES in *Qualcan, LLC v. Desert Aire Wellness, LLC*, Clark County District Court Case No. A-15-721086-C, to be served electronically using the Odyssey File & Serve system to all parties with an email address on record.

I hereby further certify that on the 22nd day of March, 2019, pursuant to Nev. R. Civ. P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing DEFENDANT/COUNTERCLAIMANT'S PRETRIAL DISCLOSURES by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Susan Lera
3321 Lacebark Pine
Las Vegas, NV 89129
Pro Se Defendant

/s/ Pharan Burchfield

An Employee of McLetchie Law

Exhibit 14

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

PINE MOUNTAIN HOLDINGS LLC

Entity Number:

E0579382017-5

Entity Type:

Domestic Limited-Liability Company (86)

Entity Status:

Active

Formation Date:

12/14/2017

NV Business ID:

NV20171801002

Termination Date:

Perpetual

Annual Report Due Date:

12/31/2019

Series LLC:

☐

Restricted LLC:

☐

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

MARGARET MCLETCHE

Status:

Active

CRA Agent Entity Type:**Registered Agent Type:**

Non-Commercial Registered Agent

NV Business ID:**Office or Position:****Jurisdiction:****Street Address:**

701 EAST BRIDGER AVENUE, SUITE 520, LAS VEGAS, NV, 89101, USA

Email Address:**Mailing Address:**

701 EAST BRIDGER AVENUE, SUITE 520, LAS VEGAS, NV, 89101

Individual with Authority to Act:**Contact Phone Number:****Fictitious Website or Domain Name:****PRINCIPAL OFFICE ADDRESS****Address:****Mailing Address:****OFFICER INFORMATION**☐ **VIEW HISTORICAL DATA**

APP0105

AA 005218

Title	Name	Address	Last Updated	Status
Manager	STACEY O HUFFMAN	701 EAST BRIDGER AVENUE, SUITE 520, LAS VEGAS, NV, 89101, USA	12/31/2018	Active
Manager	CURTIS HUFFMAN	701 EAST BRIDGER AVENUE, SUITE 520, LAS VEGAS, NV, 89101 - 5300, USA	12/31/2018	Active
Page 1 of 1, records 1 to 2 of 2				
Filing History Name History Mergers/Conversions				

[Return to Search](#)[Return to Results](#)

Exhibit 15

APP0107

AA 005220



CLERK OF THE COURT

AACC

Daniel R. Watkins

Nevada State Bar No. 11881

DW@wl-llp.com

Brian S. Letofsky

Nevada State Bar No. 11836

Brian.Letofsky@wl-llp.com

WATKINS & LETOFSKY, LLP

400 S. Fourth Street, Suite 280

Las Vegas, NV 89101

Office: (702) 385-5191; Fax: (702) 385-7282

ATTORNEYS FOR THIRD PARTY DEFENDANTS

AND THIRD PARTY PLAINTIFFS, SUSAN A.

LERA and PAULA L. NEWMAN

DISTRICT COURT
CLARK COUNTY, NEVADA

QUALCAN, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

DESERT AIRE WELLNESS, LLC, a
Nevada limited liability company,

Defendant.

DESERT AIRE WELLNESS, LLC, a
Nevada limited liability company,

Counterclaimant,

vs.

QUALCAN, LLC, a Nevada limited liability
company,

Counterdefendant.

Case No.: A-15-721086-C

Dept. No.: I

**THIRD PARTY DEFENDANTS AND
THIRD PARTY PLAINTIFFS ANSWER
AND COUNTERCLAIM**

1 DESERT AIRE WELLNESS, LLC, a
2 Nevada limited liability company,

3 Third Party Plaintiff,

4 Vs.

5 PAULA L. NEWMAN, individually;
6 SUSAN LERA, individually; DOE I through
7 X; and ROE CORPORATIONS I through X,
8 inclusive.

9 Third Party Defendants.

10 SUSAN A. LERA; PAULA L. NEWMAN;
11 individuals;THIRD PARTY DEFENDANTS
12 ANDTHIRD PARTY PLAINTIFFS;

13 vs.

14 BRENDA SUE GUNSALLUS, an
15 individual; STACEY OWINGS NUNN
16 HUFFMAN, an individual; CURTIS
17 EDWARD HUFFMAN, an individual;
18 DARLENE ALEXANDRA DAVIS, an
19 individual;MICHAEL H. SINGER, an
20 individual; and ROES 1-50, inclusive;

21 Third Party Defendants.

22 COMES NOW, THIRD PARTY DEFENDANTS and THIRD PARTY
23 PLAINTIFFS,SUSAN A. LERA and PAULA L. NEWMAN(herein "LERA", "NEWMAN" or
24 jointly "THIRD PARTY DEFENDANTS/THIRD PARTY PLAINTIFFS"), by and through their
25 attorneys, WATKINS & LETOFSKY, LLP, file this Answer to Defendant/Counterclaimant's
26 Third Party Complaint and file their own Counterclaim against Third Partiesas follows:

27 **JURISDICTION AND VENUE**

28 1. Answering Paragraph 1, THIRD PARTY DEFENDANTS/THIRD PARTY
PLAINTIFFS admit the allegations contained in paragraph 1.

1 2. Answering Paragraph 1, THIRD PARTY DEFENDANTS/THIRD PARTY
2 PLAINTIFFS admit the allegations contained in paragraph 1.

3 3. Answering Paragraph 1, THIRD PARTY DEFENDANTS/THIRD PARTY
4 PLAINTIFFS admit the allegations contained in paragraph 1.

5 4. Answering Paragraph 1, THIRD PARTY DEFENDANTS/THIRD PARTY
6 PLAINTIFFS admit the allegations contained in paragraph 1.

7 **GENERAL FACTS**

8 5. Answering Paragraph 5, THIRD PARTY DEFENDANTS/THIRD PARTY
9 PLAINTIFFS reallege and incorporate by reference the allegations stated above.

10 6. Answering Paragraph 6, THIRD PARTY DEFENDANTS/THIRD PARTY
11 PLAINTIFFS deny the allegations contained in paragraph 6.

12 7. Answering Paragraph 7, THIRD PARTY DEFENDANTS/THIRD PARTY
13 PLAINTIFFS deny the allegations contained in paragraph 7.

14 8. Answering Paragraph 8, THIRD PARTY DEFENDANTS/THIRD PARTY
15 PLAINTIFFS admit the allegations contained in paragraph 8.

16 **FIRST CLAIM FOR RELIEF**

17 **(Indemnity)**

18 9. Answering Paragraph 9, THIRD PARTY DEFENDANTS/THIRD PARTY
19 PLAINTIFFS reallege and incorporate by reference the allegations stated above.

20 10. Answering Paragraph 10, THIRD PARTY DEFENDANTS/THIRD PARTY
21 PLAINTIFFS deny that an Option was granted by Desert to Qualcan; admit that the purported
22 Option was invalid; deny the legality of any Operating Agreement of Desert; admit the purported
23 Option was invalid under NRS 86.351; admit that none of the other members of Desert were ever
24 advised of the purported Option until being notified of same in late June or early July, 2015; and
25 admit that none of the members of Desert ever agreed to the purported Option.

26 11. Answering Paragraph 11, THIRD PARTY DEFENDANTS/THIRD PARTY
27 PLAINTIFFS admit the allegations contained in paragraph 11.

1 12. Answering Paragraph 12, THIRD PARTY DEFENDANTS/THIRD PARTY
2 PLAINTIFFS deny that Qualcan acquired any rights to membership interests of Desert at any
3 time; admit that Qualcan instituted this action; deny any wrongful acts of THIRD PARTY
4 DEFENDANTS/THIRD PARTY PLAINTIFFS.

5 13. Answering Paragraph 13, THIRD PARTY DEFENDANTS/THIRD PARTY
6 PLAINTIFFS deny the allegations contained in paragraph 13 and NRS 86.361 specifically states
7 "Liability of persons assuming to act as company without authority. All persons who assume to
8 act as a limited-liability company without authority to do so are jointly and severally liable for all
9 debts and liabilities of the company."

10 14. Answering Paragraph 14, THIRD PARTY DEFENDANTS/THIRD PARTY
11 PLAINTIFFS deny Desert should become liable to Qualcan in any capacity; deny that they
12 committed any wrongful acts; deny that they committed any acts with respect to Qualcan in an
13 capacity on behalf of Desert; deny and wrongdoing.

14 **SECOND CLAIM FOR RELIEF**

15 **(Other Damages – Legal Fees)**

16 15. Answering Paragraph 15, THIRD PARTY DEFENDANTS/THIRD PARTY
17 PLAINTIFFS reallege and incorporate by reference the allegations stated above.

18 16. Answering Paragraph 16, THIRD PARTY DEFENDANTS/THIRD PARTY
19 PLAINTIFFS deny Defendants' wrongdoing; deny that Desert has properly and legally engaged
20 the services of Michael H. Singer, Ltd.; admit that someone other than Desert has engaged the
21 services of Michael H. Singer, Ltd. to defend the action instituted by QualCan.

22 17. Answering Paragraph 17, THIRD PARTY DEFENDANTS/THIRD PARTY
23 PLAINTIFFS deny the allegations contained in paragraph 17.

24 **THIRD CLAIM FOR RELIEF**

25 **(Breach of Duty of Good Faith and Loyalty)**

26 18. Answering Paragraph 18, THIRD PARTY DEFENDANTS/THIRD PARTY
27 PLAINTIFFS reallege and incorporate by reference the allegations stated above.

1 19. Answering Paragraph 19, THIRD PARTY DEFENDANTS/THIRD PARTY
2 PLAINTIFFS admit the allegations contained in paragraph 19.

3 20. Answering Paragraph 20, THIRD PARTY DEFENDANTS/THIRD PARTY
4 PLAINTIFFS deny the allegations contained in paragraph 20.

5 21. Answering Paragraph 21, THIRD PARTY DEFENDANTS/THIRD PARTY
6 PLAINTIFFS deny the allegations contained in paragraph 21.

7 **FOURTH CLAIM FOR RELIEF**

8 **(Equitable Relief)**

9 22. Answering Paragraph 22, THIRD PARTY DEFENDANTS/THIRD PARTY
10 PLAINTIFFS reallege and incorporate by reference the allegations stated above.

11 23. Answering Paragraph 23, THIRD PARTY DEFENDANTS/THIRD PARTY
12 PLAINTIFFS deny the allegations contained in paragraph 23.

13 24. Answering Paragraph 24, THIRD PARTY DEFENDANTS/THIRD PARTY
14 PLAINTIFFS deny the allegations contained in paragraph 24.

15 25. Answering Paragraph 25, THIRD PARTY DEFENDANTS/THIRD PARTY
16 PLAINTIFFS deny the allegations contained in paragraph 25.

17 26. Answering Paragraph 26, THIRD PARTY DEFENDANTS/THIRD PARTY
18 PLAINTIFFS deny the allegations contained in paragraph 26.

19 **FIFTH CLAIM FOR RELIEF**

20 **(Additional Claims)**

21 27. Answering Paragraph 27, THIRD PARTY DEFENDANTS/THIRD PARTY
22 PLAINTIFFS reallege and incorporate by reference the allegations stated above.

23 28. Answering Paragraph 28, THIRD PARTY DEFENDANTS/THIRD PARTY
24 PLAINTIFFS deny the allegations contained in paragraph 28.

25 **AFFIRMATIVE DEFENSES**

26 **I.**

27 1. The Complaint of Qualcan, LLC and the Third Party Complaint of DESERT AIRE
28

1 WELLNESS, LLC and each and every purported count and causes of action therein fail to state
2 facts sufficient to constitute a legal cause of action against these answering Third Party
3 Defendants.

4 2. The individual members of Qualcan, LLC and DESERT AIRE WELLNESS, LLC,
5 not LERA and NEWMAN, assert counts and causes of action in the Complaint of Qualcan, LLC
6 and the Third Party Complaint of DESERT AIRE WELLNESS, LLC that are barred in whole or
7 in part by the doctrine of unclean hands.

8 3. The Complaint of Qualcan, LLC and the Third Party Complaint of DESERT AIRE
9 WELLNESS, LLC and each and every purported count and causes of action therein are barred
10 by the doctrine of laches.

11 4. The Complaint of Qualcan, LLC and the Third Party Complaint of DESERT AIRE
12 WELLNESS, LLC and each and every purported count and causes of action therein are barred
13 by the doctrine of waiver.

14 5. The Complaint of Qualcan, LLC and the Third Party Complaint of DESERT AIRE
15 WELLNESS, LLC and each and every purported count and causes of action therein are barred
16 by the doctrine of estoppel.

17 6. Qualcan, LLC and DESERT AIRE WELLNESS, LLC failed to mitigate their
18 damages.

19 7. The Complaint of Qualcan, LLC and the Third Party Complaint of DESERT AIRE
20 WELLNESS, LLC and each and every purported count and causes of action therein are barred
21 by the appropriate statute of limitations.

22 8. The alleged Option in the Complaint of Qualcan, LLC, if any such document exists,
23 lacks consideration.

24 9. The alleged Option in the Complaint of Qualcan, LLC, if any such document exists,
25 was obtained by coercion.

26 10. The alleged Option in the Complaint of Qualcan, LLC, if any such document exists,
27 was obtained by fraud.

28 11. The alleged Option in the Complaint of Qualcan, LLC, if any such document exists,

1 was obtained by duress.

2 12. The alleged Option in the Complaint of Qualcan, LLC, if any such document exists,
3 was obtained by intentional misrepresentation.

4 13. The alleged Option in the Complaint of Qualcan, LLC, if any such document exists,
5 was nothing more than a personal loan to Third Party Defendants, LERA and/or NEWMAN.

6 14. The alleged Option in the Complaint of Qualcan, LLC, if any such document exists,
7 was obtained never presented to, accepted by, ratified by or adopted by DESERT AIRE
8 WELLNESS, LLC.

9 15. The alleged Option in the Complaint of Qualcan, LLC, if any such document exists,
10 never formed a legal and binding contract because there was no meeting of the minds amongst
11 the parties to the Option.

12 16. The alleged Option in the Complaint of Qualcan, LLC, if any such document exists,
13 never formed a legal and binding contract because Third Party Defendants, LERA and
14 NEWMAN were never acting in the capacity of managers of DESERT AIRE WELLNESS, LLC
15 at any time during the negotiations.

16 17. The alleged Option in the Complaint of Qualcan, LLC, if any such document exists,
17 never formed a binding contract because there was not adequate consideration given.

18 18. The alleged Option in the Complaint of Qualcan, LLC, if any such document exists,
19 was obtained never presented to DESERT AIRE WELLNESS, LLC by Third Party Defendants,
20 LERA and NEWMAN for acceptance, ratification or adoption by DESERT AIRE WELLNESS,
21 LLC.

22 19. Defendants hereby incorporate by reference those affirmative defenses enumerated
23 in N.R.Civ.P. 8 as though fully set forth herein, as applicable upon discovery. In the event
24 further investigation or discovery reveals the applicability of any such defenses, Defendants
25 reserve the right to seek leave of court to amend this Answer to more specifically assert any such
26 defense.

20. Pursuant to N.R.Civ.P. 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon filing of this Answer. Therefore Defendants reserve the right to amend this Answer to allege additional affirmative defenses and claims, counter-claims or third-party claims, as applicable, upon further investigation and discovery.

WHEREFORE, THIRD PARTY DEFENDANTS and THIRD PARTY PLAINTIFFS pray that this Court grant the following relief:

- A. Judgment dismissing Defendant/Counterclaimant's Third Party Complaint;
- B. Award THIRD PARTY DEFENDANTS costs; and
- C. Award THIRD PARTY DEFENDANTS such other and further relief as the Court deems just and equitable.

COUNTERCLAIM

COMES NOW, THIRD PARTY DEFENDANTS and THIRD PARTY PLAINTIFFS, SUSAN A. LERA and PAULA L. NEWMAN(herein "LERA", "NEWMAN" or jointly "THIRD PARTY PLAINTIFFS") who file this civil action against THIRD PARTY DEFENDANTS, BRENDA SUE GUNSALLUS, an individual; STACEY OWINGS NUNN HUFFMAN, an individual; CURTIS EDWARD HUFFMAN, an individual; DARLENE ALEXANDRA DAVIS, an individual; MICHAEL H. SINGER, an individual; and ROES 1-20, inclusive, (hereinafter jointly "THIRD PARTY DEFENDANTS") and each of them, for violations of Nevada law, seeking general, special and punitive damages and injunctive relief, and alleges as follows:

1. THIRD PARTY DEFENDANT, BRENDA SUE GUNSALLUS was, at all relevant times mentioned herein, an individual residing in North Carolina and conducting business in the state of Nevada.

2. THIRD PARTY DEFENDANT, STACEY OWINGS NUNN HUFFMAN was, at all relevant times mentioned herein, an individual residing in North Carolina and conducting business in the state of Nevada.

1 3. THIRD PARTYDEFENDANT, CURTIS EDWARD HUFFMAN was, at all
2 relevant times mentioned herein, an individual residing in North Carolina and conducting
3 business in the state of Nevada.

4 4. THIRD PARTYDEFENDANT, DARLENE ALEXANDRA DAVIS was, at all
5 relevant times mentioned herein, an individual residing in North Carolina and conducting
6 business in the state of Nevada.

7 5. THIRD PARTYDEFENDANT, MICHAEL H. SINGER was, at all relevant times
8 mentioned herein, an attorney conducting business in the state of Nevada.

9 6. THIRD PARTY PLAINTIFFS allege that this is the proper court because the
10 facts, allegations and violations of Nevada law took place and occurred in Clark County,
11 Nevada.

12 7. THIRD PARTY PLAINTIFFS are ignorant of the true names and capacities,
13 whether individual, corporate, associate, or otherwise, of ROES 1 through 20, inclusive. The
14 THIRD PARTY PLAINTIFFS are informed and believe and thereon allege that each of the
15 fictitiously named THIRD PARTY DEFENDANTS are in some way responsible for, or
16 participated in, or contributed to, the matters and things complained of herein, and are legally
17 responsible in some manner. THIRD PARTY PLAINTIFF will seek leave to amend this
18 Complaint when the true names, capacities, participation and responsibilities have been
19 ascertained.

20 **STATEMENT OF FACTS**

21 8. While attending an informational meeting at the City of Las Vegas concerning
22 Medical Marijuana Establishments (hereinafter "MME") in April of 2014, THIRD PARTY
23 DEFENDANT, BRENDA SUE GUNSALLUS, (hereinafter individually "GUNSALLUS")
24 approached THIRD PARTY PLAINTIFFS looking for "locals" in the Las Vegas area to start an
25 MME business. GUNSALLUS pushed for her friend/business partner in North Carolina to be
26 the financial backer of the companies. THIRD PARTY PLAINTIFFS later learned that THIRD
27 PARTY DEFENDANTS, CURTIS EDWARD HUFFMAN and STACEY OWINGS NUNN
28 HUFFMAN (hereinafter respectively "CURTIS HUFFMAN" and "STACEY HUFFMAN") own

1 illegal gaming/sweepstakes stores in North Carolina. GUNSALLUS stated the HUFFMANs
2 owned copy and print shops. Also, STACEY HUFFMAN did not disclose she was engaged and
3 getting married the next month to CURTIS HUFFMAN, who has current illegal sweepstake
4 criminal charges against him in North Carolina. GUNSALLUS and THIRD PARTY
5 PLAINTIFFS agreed to file paperwork for an MME cultivation and an MME cultivation
6 business in Clark County. LERA was responsible for doing the paperwork for the County
7 application. As the deadline was nearing for the County paperwork, there was not enough time
8 to complete the application so GUNSALLUS and THIRD PARTY PLAINTIFFS decided to file
9 for MME dispensary and cultivation business licenses with the City of Las Vegas and for MME
10 dispensary and cultivation business licenses with the State of Nevada.

11 9. GUNSALLUS stated that she would provide the majority of the financial
12 requirements for the MME business if LERA and NEWMAN would be the locals and do the
13 required paperwork. GUNSALLUS stated that she had enough funds to file for three MME
14 cultivations and a dispensary. GUNSALLUS, LERA and NEWMAN decided to call their MME
15 business DESERT AIRE WELLNESS, LLC. In May and June of 2014, while in the process of
16 completing the City of Las Vegas application paperwork, LERA and NEWMAN decided they
17 needed assistance from an attorney and went to Jay Brown, Esq. At that time, due to the high
18 attorneys' fees and the amount of money really needed to start up an MME, GUNSALLUS,
19 LERA and NEWMAN jointly decided they would need additional funds from an investor(s).
20 LERA and NEWMAN thought they had one and GUNSALLUS stated she could get two
21 investors from North Carolina. The original idea was that the investors would be paid back their
22 investments, plus a reasonable rate of return and a few percentage points of ownership.

23 10. GUNSALLUS pushed her "friend" STACEY HUFFMAN to become a partner
24 and financial backer. STACY HUFFMAN was originally going to invest \$1,200,000 at a rate of
25 10% per annum and get a 3% ownership in the MME. With this amount of investment money
26 THIRD PARTY PLAINTIFFS did not need to seek an investor at this point.

27 11. On July 1, 2014, Jay Brown, Esq.'s office assisted GUNSALLUS, LERA and
28 NEWMAN with the filing of Articles of Organization for a Limited Liability Company. On the

1 Articles of Organization, the name of the Restricted Limited Liability Company was DESERT
2 AIRE WELLNESS, LLC. LERA, NEWMAN and GUNSALLUS are listed as Managing
3 Members of the LLC and that day they were provided with a Limited Liability Company Charter
4 by the State of Nevada Secretary of State.

5 12. On or about July 23, 2014, LERA, GUNSALLUS and Jay Brown, LLC's assistant
6 drafted an Operating Agreement for DESERT AIRE WELLNESS, LLC. It was signed by
7 LERA, NEWMAN and GUNSALLUS and states above the signatures "IN WITNESS
8 WHEREOF, this Operating Agreement was adopted by a unanimous vote of all the members of
9 this Company at the organization meeting thereof held on July 23, 2014." In the Operating
10 Agreement, the allocation of profits and losses are set forth in Sections 4.1 and 4.2 as follows:
11 26% to STACEY NUNN; 25.5% to NEWMAN, 25.5% to LERA; 8.5% to Michael Suedkamp;
12 7.5% to GUNSALLUS and 7% to THIRD PARTY DEFENDANT, DARLENE DAVIS
13 (hereinafter "DAVIS").

14 13. A few weeks before the City application was due, GUNSALLUS approached
15 THIRD PARTY PLAINTIFFS and stated that she wanted LERA and NEWMAN to be listed as
16 majority owners of the business with 51% (25.5% each), however, GUNSALLUS wanted to
17 enter into a non-disclosed side deal with LERA and NEWMAN only having 18% (9% each).
18 THIRD PARTY PLAINTIFFS stated they would not agree to execute any non-disclosed side
19 deal and refused. LERA was advised that such a non-disclosed side deal was illegal and many of
20 the companies doing such things were ending up in court over the ownership issue.
21 GUNSALLUS then stated that STACEY HUFFMAN wanted more percentage since she was the
22 investor. On the day of filing the MME City application paperwork, GUNSALLUS gave
23 STACEY HUFFMAN the majority of her percentage ownership. The Additional Sheet
24 attachment to the Dispensary Medical Marijuana Compliance Permit, which required
25 information for all individuals or entities that have an ownership interest in the business set forth
26 DESERT AIRE WELLNESS, LLC's ownership interest as follows:

DARLENE DAVIS	7%
BRENDA GUNSALLUS	7.5%

1	SUSAN LERA	25.5%
2	PAULA NEWMAN	25.5%
3	STACEY NUNN	26%
4	Michael Suedkamp	8.5%

5 14. The MME Application paperwork filed with the City of Las Vegas on July 25,
6 2014 for an MME dispensary was very detailed and includes hundreds of pages, including the
7 Operating Agreement, the Articles of Organization and the Dispensary Medical Marijuana
8 Compliance Permit and Additional Sheet among other documents. At the same time and place,
9 the application paperwork for an MME dispensary was filed with the State of Nevada.

10 15. Immediately after the MME City Application paperwork was filed with the City
11 of Las Vegas for an MME dispensary, LERA and NEWMAN were to begin working on the
12 application paperwork for an MME cultivation. DESERT AIRE WELLNESS, LLC paid Jay
13 Brown, Esq. for assistance with filing for a Cultivation and Dispensary license and assured
14 DESERT AIRE WELLNESS, LLC they would get a cultivation. GUNSALLUS informed
15 LERA and NEWMAN that STACEY HUFFMAN did not have the funds to proceed with a
16 cultivation. However, LERA and NEWMAN later found out that STACEY HUFFMAN,
17 GUNSALLUS and ROES15-20 filed for an MME cultivation license in North Las Vegas under
18 the name CIRCLE S FARMS that did not include LERA and NEWMAN in the application.
19 STACEY HUFFMAN, GUNSALLUS and ROES15-20 used Lucy Stewart, Jay Brown's
20 employee, to complete their cultivation paperwork and hid and intentionally concealed that
21 information from LERA and NEWMAN. The attorneys' fees and costs charged by Jay Brown,
22 Esq. for this cultivation paperwork was paid by the funds NEWMAN provided to DESERT
23 AIRE WELLNESS, LLC paid to Jay Brown, Esq.

24 16. At or about this same time, GUNSALLUS was mad that she gave up a large
25 portion of her percentage in the ownership in DESERT AIRE WELLNESS, LLC to STACEY
26 HUFFMAN. LERA and NEWMAN would not agree to the non-disclosed side deal to give up
27 their percentage ownership as stated in the application paperwork filed by DESERT AIRE
28 WELLNESS, LLC. After July 25, 2014, GUNSALLUS first began her intentional non-

1 communication with LERA and NEWMAN. As a result, LERA and NEWMAN were advised
2 by others that GUNSALLUS proceeded with the filing of the State Application for the MME
3 dispensary on or about August 18, 2014. LERA and NEWMAN advised GUNSULLAS that
4 they did not want her to proceed with filing further paperwork with the State of Nevada. LERA
5 and NEWMAN later learned that GUNSULLAS drove to Carson City, Nevada and filed further
6 MME dispensary application paperwork with the State of Nevada. This paperwork was filed
7 without the required signatures and consent of LERA and NEWMAN. This further State of
8 Nevada paperwork, however, did not include any changes to the ownership percentages
9 previously filed.

10 17. Communication ceased between THIRD PARTY PLAINTIFFS and
11 GUNSULLAS, DAVIS and STACEY HUFFMAN(hereinafter all jointly "the PARTIES") for
12 several weeks at a time.

13 18. In October 2014, the City of Las Vegas initially denied the PARTIES' MME
14 dispensary application. But a few weeks later, the State of Nevada approved the MME
15 dispensary application. Thereafter, the City of Las Vegas reheard the PARTIES' application and
16 on December 17, 2014, DESERT AIRE WELLNESS, LLC was awarded a City of Las Vegas
17 Special Use Permit to open an MME dispensary within one year.

18 19. After the application for the Special Use Permit, THIRD PARTY PLAINTIFFS
19 then met with GUNSALLUS and were emphatically threatened and harassed that they needed to
20 enter into an agreement with STACEY HUFFMAN's new husband, CURTIS HUFFMAN. The
21 proposed agreement was for the ownership percentage of GUNSALLUS and DAVIS to be
22 increased and the ownership percentages of LERA and NEWMAN were to be significantly
23 decreased from the application paperwork. If LERA and NEWMAN failed to agree to the
24 proposed agreement, the initial threat given by GUNSALLUS was that GUNSALLUS, DAVIS
25 and STACEY HUFFMAN would not show up at the provisional City hearing. THIRD PARTY
26 PLAINTIFFS did not agree, under any circumstances, to speak to CURTIS HUFFMAN or make
27 any deals or sign any documents changing the ownership percentages. GUNSALLUS, DAVIS
28 and STACEY HUFFMAN showed up at the hearing anyway. Immediately thereafter,

1 GUNSALLUS, DAVIS and STACEY HUFFMAN threatened they would not proceed with the
2 funding of this business which they had sworn to the City of Las Vegas and State of Nevada they
3 would fund. The intentions of GUNSALLUS, DAVIS and STACEY HUFFMAN all along was
4 to do a bait and switch with THIRD PARTY PLAINTIFFS, not wanting or caring what was
5 required by the City of Las Vegas Municipal Code or the laws of the State of Nevada.

6 20. In December, 2014, the PARTIES were served with a lawsuit from GROWBOX
7 SCIENCE naming DESERT AIRE WELLNESS, LLC as a defendant. LERA and NEWMAN
8 needed an attorney and went to see attorney Michael Cristalli. At that time, DESERT AIRE
9 WELLNESS, LLC did not have a bank account or any funding. Mr. Cristalli set LERA and
10 NEWMAN up with his friend/client, who had an MME cultivation who wanted to help them.
11 After discussions, Lorenzo Barracco of QUALCAN offered to provide personal loans to LERA
12 and NEWMAN because he advised that GUNSALLUS, DAVIS and STACEY HUFFMAN were
13 not going to proceed with the funding of DESERT AIRE WELLNESS, LLC. Lorenzo Barracco
14 through QUALCAN, LLC loaned money the LERA and NEWMAN to pay for Mr. Cristalli's
15 attorneys' fees, a rent payment and insurance for DESERT AIRE WELLNESS, LLC. As
16 Lorenzo Barracco became more aware of the financial and personal problems between the
17 members of DESERT AIRE WELLNESS, LLC, he offered finances from QUALCAN, LLC to
18 help LERA and NEWMAN buy out GUNSALLUS, STACY HUFFMAN and DAVIS.
19 QUALCAN, LLC owns an MME cultivation facility and had applied for but did not receive two
20 dispensary licenses. Weeks of settlement and buyout negotiations proceeded to take place
21 between the PARTIES. Once LERA and NEWMAN realized a buyout could not happen
22 pursuant to the City of Las Vegas Municipal Code or the laws of the State of Nevada, they
23 stopped all negotiations. Lorenzo Barracco of QUALCAN, LLC wanted the DESERT AIRE
24 WELLNESS, LLC's dispensary so bad he kept telling LERA and NEWMAN that he would do a
25 hostile takeover of the other members. Lorenzo Barracco and QUALCAN, LLC are the owners
26 of a cultivation and he wanted an ownership interest in DESERT AIRE WELLNESS, LLC to
27 buy product from the cultivation. Lorenzo Barracco has told individuals in Las Vegas that he was
28 the owner of DESERT AIRE WELLNESS, LLC and he also proceeded to meet a Hedge Fund

1 company to sell DESERT AIRE WELLNESS, LLC to them. Lorenzo Barracco kept telling
2 LERA and NEWMAN that he could get them up to three million dollars for their percentage of
3 DESERT AIRE WELLNESS, LLC. At no time did THIRD PARTY PLAINTIFFS agree to sell
4 a percentage ownership to QUALCAN, LLC and at no time did they borrow money on behalf of
5 DESERT AIRE WELLNESS, LLC.

6 21. THIRD PARTY PLAINTIFFS took personal loans from QUALCAN, LLC. In
7 the spring of 2015, LERA sent a letter to Lorenzo Barracco telling him THIRD PARTY
8 PLAINTIFFS did not want to proceed with his business offer. LERA and NEWMAN went to
9 his attorney Trisha Black's office and told her we did not want to proceed with his offers, as it
10 was not legal. Ms. Black drafted documents to potentially transfer ownership interests from
11 LERA and NEWMAN to QUALCAN, LLC but neither LERA nor NEWMAN signed such
12 documents since the City and State laws would not permit such a transfer.

13 22. LERA and NEWMAN then repeatedly attempted to make a payment plan to
14 reimburse Lorenzo Barracco of QUALCAN, LLC the money he loaned them. But Mr. Barracco
15 refused to speak with LERA and NEWMAN. LERA sent a message to Mr. Cristalli to talk to
16 Lorenzo Barracco to make arrangements to pay money back, however Mr. Cristalli stated he did
17 not have anything to do with the money.

18 23. Throughout the negotiation process, besides continuous threats and harassment,
19 by GUNSALLUS and CURTIS HUFFMAN, that they would vote to force LERA and
20 NEWMAN out of the LLC, STACEY HUFFMAN and DAVIS refused to speak with THIRD
21 PARTY PLAINTIFFS. In the spring of 2015, CURTIS HUFFMAN became the spokesman for
22 GUNSALLUS, STACEY HUFFMAN and DAVIS. A few weeks before April 20, 2015, the date
23 for the Grand Opening and start of construction of the MME dispensary facility, all members of
24 DESERT AIRE WELLNESS, LLC were at the facility. CURTIS HUFFMAN was also in
25 attendance with a brown leather satchel. Discussions took place concerning the potential process
26 of the construction and a statement was made that the addresses of all members of DESERT
27 AIRE WELLNESS, LLC was published on the Nevada Secretary of State website. CURTIS
28

1 HUFFMAN took this opportunity to purposefully pull out and show a handgun from his satchel
2 to LERA and NEWMAN and stated "that is why I carry this around."

3 24. On several occasions, CURTIS HUFFMAN expressed to THIRD PARTY
4 PLAINTIFFS that he was the owner of DESERT AIRE WELLNESS, LLC. CURTIS
5 HUFFMAN and GUNSALLUS advised THIRD PARTY PLAINTIFFS that they had met with
6 attorney THIRD PARTY DEFENDANT, MICHAEL H. SINGER (hereinafter "SINGER"), who
7 they appointed as the attorney for DESERT AIRE WELLNESS, LLC. SINGER thereafter
8 drafted a Restated LLC Operating Agreement. This Restated Operating Agreement has never
9 been signed by NEWMAN.

10 25. CURTIS HUFFMAN and GUNSALLUS, believing that putting in capital
11 increases the percentage ownership in the LLC of the members, started several different actions
12 to begin moving the purpose of the LLC forward, including hiring an architect for building out
13 the business facility, hiring contractors, filing documents with the City of Las Vegas and meeting
14 with cultivation companies. GUNSALLUS purposefully blocked LERA and NEWMAN from
15 paying the rent on the business facility. One of the THIRD PARTY DEFENDANTS changed
16 the locks on the business facility. All of the actions were being accomplished without LERA's
17 and NEWMAN's authority as 51% owners of DESERT AIRE WELLNESS, LLC.

18 26. In an effort to reach some sort of resolution so that DESERT AIRE WELLNESS,
19 LLC could be opened and operated, THIRD PARTY PLAINTIFFS conferred with SINGER.
20 LERA met with SINGER and CURTIS HUFFMAN individually. At the time, LERA had been
21 wrongfully terminated from her employment at Hilton Grand Vacations and was desperately in
22 need of money. LERA, after being unduly persuaded that she would be voted out of the LLC if
23 she did not acquiesce to the wishes of GUNSALLUS and CURTIS HUFFMAN, was offered to
24 be a managing member of DESERT AIRE WELLNESS, LLC under the Restated Operating
25 Agreement, LERA signed both the Restated Operating Agreement and a document to give
26 STACEY HUFFMAN 15.5% of her 25.5% share of DESERT AIRE WELLNESS, LLC. This
27 was all done under duress. CURTIS HUFFMAN kept telling LERA that if she could not come
28 up with \$250,000 required in a capital call, she would be liquidated out of the LLC. CURTIS

1 HUFFMAN offered to put in the \$250,000 for LERA in exchange for 15.5% of her ownership
2 percentage and that LERA would thereafter be 100% vested in the LLC forever and be protected
3 by the Restated Operating Agreement. LERA told SINGER the State of Nevada had to
4 investigate and approve the ownership percentage transfer for it to be legal and the City of Las
5 Vegas had to be informed. SINGER told LERA he had already spoken to the State of Nevada
6 and the City of Las Vegas and they knew we were transferring the ownership percentages and
7 that his form was proper. LERA proceed to tell SINGER there is an official form and he did not
8 care. SINGER also told LERA he sent notice for NEWMAN to consent to the ownership
9 percentage transfer and that NEWMAN signed it. When LERA asked for a copy SINGER stated
10 he would email it to LERA. LERA told SINGER she would not proceed with ownership
11 percentage transfer unless all parties agreed. Thereafter, LERA was given a \$50,000 cash loan
12 and was also promised to be funded up to \$200,000 more by CURTIS HUFFMAN towards her
13 capital contribution in DESERT AIRE WELLNESS, LLC.

14 27. LERA informed SINGER that a specific form needed to be filled out and signed
15 in order to transfer any of her ownership percentage per the MME laws and/or Las Vegas
16 Municipal Codes. SINGER disagreed and did not fill out the required form. SINGER also had
17 LERA sign a statement listing SINGER as the attorney for DESERT AIRE WELLNESS, LLC,
18 and had her sign the Restated Operating Agreement listing LERA, GUNSALLUS and CURTIS
19 HUFFMAN as operating managers. CURTIS HUFFMAN was listed as an operating manager of
20 DESERT AIRE WELLNESS, LLC by SINGER even though it is against the MME laws,
21 CURTIS HUFFMAN was not voted in as a manager (there was never a noticed meeting of the
22 members of DESERT AIRE WELLNESS, LLC and no documents have ever been submitted and
23 approved to the City of Las Vegas or State of Nevada listing CURTIS HUFFMAN as a manager
24 or a key employee. SINGER told LERA that NEWMAN had signed the Restated Operating
25 Agreement as well and that he would email her a copy. SINGER recently intentionally and
26 illegally filed documents with the Nevada Secretary of State naming GUNSALLUS, CURTIS
27 HUFFMAN and LERA as the managing members of DESERT AIRE WELLNESS, LLC,
28 specifically taking NEWMAN off of DESERT AIRE WELLNESS, LLC as a manager.

1 28. After several more weeks of harassment by GUNSALLUS and CURTIS
2 HUFFMAN, with comments that NEWMAN would be "liquidated out of the company",
3 NEWMAN met with SINGER. In March, 2015, after many months of being threatened,
4 harassed and told that CURTIS HUFFMAN's attorney was going to blow up the company,
5 NEWMAN agreed to make arrangements to give them some percent so that the PARTIES could
6 proceed with the opening of the business. DESERT AIRE WELLNESS, LLC only has until
7 November 3, 2015 to open for business or the license will be pulled by the City of Las Vegas.
8 NEWMAN was getting scared that all of her hard work, money spent and past effort was going
9 to be wasted. NEWMAN wanted to proceed with moving DESERT AIRE WELLNESS, LLC
10 toward opening and reluctantly agreed to sign over 5% of her 25.5% ownership interest in the
11 business to GUNSALLUS and/or STACEY HUFFMAN. NEWMAN agreed to give up 5%
12 without any legal consideration. NEWMAN also advised SINGER that the document she was
13 signing was not legally effective without additional documents executed, filed and approved with
14 the City of Las Vegas concerning the privileged license. SINGER advised NEWMAN that he
15 had already received approval from the City of Las Vegas for the ownership percentage
16 transfers. THIRD PARTY PLAINTIFFS discovered that SINGER never received approval from
17 the City of Las Vegas or the state of Nevada for the transfer of ownership, thus the reason
18 SINGER did not want THIRD PARTY PLAINTIFFS to sign any official forms. At no time did
19 THIRD PARTY PLAINTIFFS sign the official state forms for transfer of ownership percentages
20 amongst the members of DESERT AIRE WELLNESS, LLC.

21 29. GUNSALLUS and CURTIS HUFFMAN, with the advice from SINGER, being
22 under the belief that they are the managing members under the legally insufficient Restated
23 Operating Agreement, continue to lock LERA and NEWMAN out of the DESERT AIRE
24 WELLNESS, LLC property, continue to move forward with construction of the property, have
25 entered into contracts without approval of the LLC members for the architect and contractors and
26 continuously hold themselves out as the managing members of the LLC. GUNSALLUS and
27 CURTIS HUFFMAN additional have told several different people that LERA and NEWMAN
28 are no longer owners in the LLC. GUNSULLAS has been having individual meetings with

1 cultivators in Nevada and has alleged made deals to buy product on behalf of DESERT AIRE
2 WELLNESS, LLC. On August 12, 2015, LERA had a conversation with Charlie Fox, an owner
3 of a cultivator named Nevada Medical Group. Mr. Fox advised LERA that he has met with
4 GUNSALLUS at least five times and she told him that LERA and NEWMAN were no longer
5 owners of DESERT AIRE WELLNESS, LLC. LERA was also told by Mark Zobrist, an owner
6 of a cultivation company, that GUNSALLUS' friend Vicki Higgins called him and stated that
7 GUNSULLAS wanted to meet with him to buy product. Zobrist asked about LERA and
8 NEWMAN and was told that they were just "the locals on the ticket to cover the State of Nevada
9 requirements". CURTIS HUFFMAN has advised all of his construction employees not to speak
10 with LERA or NEWMAN. On August 12, 2015, LERA called Jeff at Allen Jersky Construction
11 and was told she is not the customer and that the company cannot speak with her. LERA
12 explained she was a manager of DESERT AIRE WELLNESS, LLC and wanted to know the
13 progress of construction, however, the company would not speak with her. Lastly, Richard
14 Gallegos, an architect, has refused to release any architectural plans to LERA and NEWMAN at
15 the direction of CURTIS HUFFMAN. There have been no meetings of the LLC members to
16 discuss, authorize or approve any acts to date by CURTIS HUFFMAN or GUNSULLAS.

17 30. Not until after NEWMAN allegedly signed over 5% of her ownership percentage
18 did LERA and NEWMAN learn from Darcy at the City of Las Vegas that SINGER never
19 received approval from City of Las Vegas or State of Nevada for the exchange of ownership
20 percentages. Neither NEWMAN nor LERA ever signed the official state forms for exchange of
21 ownership percentages amongst members of the MME entity. LERA and NEWMAN were
22 advised that the City of Las Vegas is not allowing ownership percentage transfers at this time.
23 NEWMAN called SINGER in April, 2015 and advised she was not happy that she was lied to
24 and that the City of Las Vegas is not allowing the exchange of ownership percentages. SINGER
25 e-mailed NEWMAN back telling her she was now a minority owner and no longer a manager of
26 the LLC.

27 31. The harassment and threats have continued in the last couple of months. LERA
28 was told by CURTIS HUFFMAN that she was a minority owner and to "sit down and shut up"

1 and CURTIS HUFFMAN, on July 30, 2015, told LERA on a telephone call that "he trusted that
2 LERA would show up to sign any documents he needs her to sign and that he didn't want to
3 have to hurt her."

4 32. GUNSALLUS has continued to state "they do not want to be questioned".
5 GUNSALLUS, to gain leverage in negotiations, had knowledge that the City of Las Vegas
6 wanted DESERT AIRE WELLNESS, LLC to obtain additional parking. GUNSALLUS
7 independently went to the neighbor of the business property and rented the store next to 420 East
8 Sahara and then proceeded to put the lease in her name only and not DESERT AIRE
9 WELLNESS, LLC. GUNSALLUS has never provided LERA and NEWMAN with a copy of
10 the lease and continues to hold out that if LERA and NEWMAN do not cooperate she will not let
11 DESERT AIRE WELLNESS, LLC have the additional parking.

12 33. CURTIS HUFFMAN and SINGER stated to LERA that they did not need
13 NEWMAN to sign the Restated Operating Agreement for it to be legally effective.

14 34. The LLC's business property at 420 East Sahara has been taken apart by CURTIS
15 HUFFMAN and the new construction was to begin on August 10, 2015. LERA has told
16 GUNSALLUS and CURTIS HUFFMAN that there is a high likelihood of asbestos in the tile
17 flooring and that air quality testing is needed. GUNSALLUS and CURTIS HUFFMAN
18 proceeded to change the locks on the building so LERA and NEWMAN could not obtain a
19 contractor to check for asbestos.

20 LEGAL STATEMENTS

21 35. DESERT AIRE WELLNESS, LLC received a temporary privileged license from
22 the City of Las Vegas to open an MME. The members of the LLC filed extensive paperwork
23 required by the Las Vegas Municipal Code Section 6.06.010, et seq., NRS 543A, et seq. and
24 NAC 543A, et seq. LVMC Section 6.95.060 - Permit application contents sets forth the
25 following: "A separate application must be submitted for each license for a medical marijuana
26 establishment. The application for each medical marijuana compliance permit must include: (A)
27 A complete application per LVMC Chapter 6.06 for the applicant and each person with an
28 ownership interest in the proposed medical marijuana establishment. (B) A detailed personal and

1 business financial history per LVMC 6.06.030(B) for each person with an ownership interest in
2 the proposed medical marijuana establishment. ... (N) An acknowledgement that the applicant is
3 seeking a privilege under LVMC Chapter 6.06 and understands that each person with an
4 ownership interest must be found suitable to hold such license by the City Council prior to the
5 issuance of any license; that the applicant understands and acknowledges that the burden of
6 proving qualifications to receive such a permit or license is at all times on the applicant; that the
7 granting of a medical marijuana compliance permit and/or license is at the discretion of the City
8 Council; and that the applicant agrees to abide by the decision.

9 36. LVMC Section 6.95.070 - Director review adds as follows: (A) The Director shall
10 complete a preliminary review of all submitted applications for a medical marijuana compliance
11 permit to determine whether the application is complete. An application shall be deemed
12 complete by the Director only when an application filed prior to the close of the noticed
13 application period contains each of the following: (1) Each application, narrative, plan,
14 rendering, contract and other document required in this section; (2) Proof of compliance with all
15 submittal requirements of NRS 453A and any other regulation or requirement of the State
16 regulating authority; (3) Proof that the proposed location for the medical marijuana establishment
17 is consistent with the requirements of LVMCTitle 19; (4) All fees have been paid; (5) All
18 waivers, acknowledgements, and statements are properly signed and acknowledged by the
19 applicant and every principal and person with an ownership interest; and (6) Each person with an
20 ownership interest has filed complete applications per LVMC Chapter 6.06 and each individual
21 has submitted to fingerprinting and photographing per LVMC Chapter 6.06.

22 37. The ramifications for failing to comply with the LVMC are partially set forth in
23 Section 6.95.220 - Disciplinary actions, suspension and revocation of licenses. "All licenses
24 authorized and issued under the provisions of this Chapter may be subject to immediate
25 suspension by the Director, if the Director finds that: (A) A licensee has violated, or permitted,
26 allowed or caused a violation of any provision of this Chapter, any regulation issued pursuant to
27 this Chapter, any condition of approval imposed upon the issuance of the permit or license, or
28 any State law or regulation relating to the operation; (B) If the State registration certificate has

1 been surrendered, suspended or revoked; (C) Based on ascertainable facts, the operation
2 substantially aggravates the crime problems in the City, makes law enforcement unduly difficult,
3 or is detrimental to the public health, safety or welfare of the City; (D) A licensee has made any
4 fraudulent statements as to a material fact on an application form, as to any other information
5 presented as part of the application process, or in connection with any other information required
6 to be submitted to the Director pursuant to this Chapter;

7 38. Suitability approval is required of each principal member of the company
8 provided with the license. The members are not allowed to provide any control of the company
9 to others not on the license as set forth in LVMC 6.06.190 as follows: "Licensee responsibility
10 for required approvals. A licensee may not employ, allow, permit or suffer to permit a person to
11 exercise any office, authority, control or privilege or perform any act, for the exercise or
12 performance of which a person is required to be approved for suitability, unless such person has
13 been so approved for suitability." LVMC Section 6.06.210 states in pertinent part: "Changes—
14 Approval Required When. Prior approval must be obtained for a licensee or person approved for
15 suitability to do any of the following acts: (A) Convey the license from one person to another or
16 establish the license in a different entity;(B)Transfer any ownership interest or voting control to a
17 person who, because of the transfer, would be required to be approved for suitability;(C)Alter the
18 licensed business operations in a significant way from the operations previously approved; ..."
19 THIRD PARTY PLAINTIFFS allege that giving any control to CURTIS HUFFMAN, an
20 individual that is not a member of DESERT AIRE WELLNESS; LLC is in violation of these
21 LVMC laws. THIRD PARTY DEFENDANTS have seriously placed the provisional privileged
22 license of DESERT AIRE WELLNESS, LLC at risk. In addition, the transfer of ownership
23 interest or voting control from the application documents filed by DESERT AIRE WELLNESS,
24 LLC is not legal without the express prior approval of the City of Las Vegas and State of Nevada
25 as further expressed below. The purported transfers of LERA and NEWMAN are not valid.

26 39. The ownership interest of the members of DESERT AIRE WELLNESS, LLC are
27 still at the percentages stated in paragraphs 12 and 13 of this complaint. Under Las Vegas
28 Municipal Code Section 6.95.020 is states in pertinent part: "Ownership interest" means any

1 principal, person, beneficial owner as defined by 6.50.020, and individual persons holding any
2 ownership or financial interest for each business entity including all businesses organized under
3 or governed by Title 7 of the Nevada Revised Statutes including but not limited to ... limited
4 liability companies, ... ("Business Entities"), ... To the extent that a Business Entity has an
5 ownership interest in a medical marijuana establishment, the term "ownership interest" shall also
6 include all individuals with an ownership interest in such Business Entity. It is the intent of this
7 Chapter that all individuals with a direct or indirect ownership interest in a medical marijuana
8 establishment be disclosed and be subject to the requirements of this Chapter." Any purported
9 oral promises, written agreements, or otherwise alleged to transfer the ownership interest of any
10 of the members of DESERT AIRE WELLNESS, LLC, including promises by CURTIS
11 HUFFMAN of percentages to the contractors, architects, or others are not legal. THIRD
12 PARTY PLAINTIFFS are not aware of any papers filed with the City of Las Vegas or the State
13 of Nevada by anyone trying to transfer an ownership interest of any of the DESERT AIRE
14 WELLNESS, LLC members.

15 40. NAC 453A.306 set forth all of the requirements for the Applications to operate
16 an MME establishment. The members of DESERT AIRE WELLNESS, LLC filed all such
17 paperwork. This included paperwork that the members had "at least \$250,000 in liquid assets as
18 required pursuant to sub-subparagraph (III) of subparagraph (2) of paragraph (a) of subsection 3
19 of NRS 453A.322, which are unencumbered and can be converted within 30 days after a request
20 to liquidate such assets; and(b) the source of those liquid assets. DESERT AIRE WELLNESS,
21 LLC provided this information and which of the members would be responsible for initial
22 capitalization. The documents filed by DESERT AIRE WELLNESS, LLC set forth the
23 ownership percentages despite the capitalization amounts of each member, including "5. A
24 description of the proposed organizational structure of the proposed medical marijuana
25 establishment, including, without limitation: (a) An organizational chart showing all owners,
26 officers and board members of the proposed medical marijuana establishment;(b) A list of all
27 owners, officers and board members of the proposed medical marijuana establishment that
28 contains the following information for each person:(1) The title of the person;(2) A short

1 description of the role the person will serve in for the organization and his or her
2 responsibilities;... and [T]o assist the Division in considering the criterion of merit set forth in
3 subsection 1 of NRS 453A.328, a financial plan which includes, without limitation: (a) Financial
4 statements showing the resources of the applicant;(b) If the applicant is relying on money from
5 an owner, officer or board member, evidence that the person has unconditionally committed such
6 money to the use of the applicant in the event the Division awards a medical marijuana
7 establishment registration certificate to the applicant and the applicant obtains the necessary
8 approvals from local governments to operate the proposed medical marijuana establishment; and
9 (c) Proof that the applicant has adequate money to cover all expenses and costs of the first year
10 of operation.

11 41. The State of Nevada has similar requirements to the LVMC concerning the
12 transfer of ownership percentage as follows: "NAC 453A.326 Registration certificates:
13 Requirements for surrender; change in location of establishment; revocation; costs. (NRS
14 453A.370) 1. A medical marijuana establishment must surrender its medical marijuana
15 establishment registration certificate and reapply for a medical marijuana establishment
16 registration certificate during the next request for applications issued by the Division pursuant
17 to NAC 453A.304:(a) Before all or substantially all of the assets of the medical marijuana
18 establishment or 10 percent or more of the stock of the medical marijuana establishment are
19 transferred; ... 5. If, after investigation, the Division determines that there is cause to believe
20 that a medical marijuana establishment has made changes in ownership or other changes to
21 circumvent the provisions of NRS 453A.334 which prevent the transfer of a medical marijuana
22 establishment registration certificate, the Division will take action to revoke the medical
23 marijuana establishment registration certificate of that medical marijuana establishment.6. A
24 medical marijuana establishment is responsible to the Division for all costs incurred by the
25 Division to determine whether any changes in ownership or other changes were made to
26 circumvent the provisions of NRS 453A.334 which prevent the transfer of a medical marijuana
27 establishment registration certificate. THIRD PARTY DEFENDANTS have placed DESERT
28 AIRE WELLNESS, LLC in serious jeopardy of having its MME registration certificate revoked.

1 42. THIRD PARTY PLAINTIFFS assert that DESERT AIRE WELLNESS, LLC has
2 no Operating Agreement at this time. Neither the Operating Agreement filed with the City of
3 Las Vegas or the State of Nevada with the license approval paperwork, nor the Restated
4 Operating Agreement drafted by SINGER were ever adopted by the unanimous vote or signed by
5 all five members of DESERT AIRE WELLNESS, LLC. Under NRS 86.286 it states in
6 pertinent part as follows: "Operating agreement. 1. A limited-liability company may, but is not
7 required to, adopt an operating agreement. An operating agreement may be adopted only by the
8 unanimous vote or unanimous written consent of the members, which may be in any tangible or
9 electronic format, or by the sole member.

10 43. THIRD PARTY PLAINTIFFS also assert that NRS 86.291, NRS 86.321, NRS
11 86.341 do not apply under the circumstances of an LLC for an MME establishment because of
12 the specific requirements of the Las Vegas Municipal Code Section 6.06.010, et seq., NRS 543,
13 et seq. and NAC 543A, et seq. NRS 86.291 states "Management.1. Except as otherwise
14 provided in this section or in the articles of organization or operating agreement, management of
15 a limited-liability company is vested in its members in proportion to their contribution to its
16 capital, as adjusted from time to time to reflect properly any additional contributions or
17 withdrawals by the members. ... 3. If provision is made in the articles of organization,
18 management of the company may be vested in a manager or managers, who may but need not be
19 members. The manager or managers shall hold the offices, have the responsibilities and
20 otherwise manage the company as set forth in the operating agreement of the company or, if the
21 company has not adopted an operating agreement, then as prescribed by the members." NRS
22 86.321 states: "Contributions to capital: Form. The contributions to capital of a member to a
23 limited-liability company may be in cash, property or services rendered, or a promissory note or
24 other binding obligation to contribute cash or property or to perform services." Additionally,
25 NRS 86.341 states: "Distribution of profits. A limited-liability company may, from time to
26 time, divide the profits of its business and distribute them to its members, and any transferee as
27 his or her interest may appear, upon the basis stipulated in the operating agreement. If the
28 operating agreement does not otherwise provide, profits and losses must be allocated

1 proportionately to the value, as shown in the records of the company, of the contributions made
2 by each member and not returned.” Pursuant to Nevada Administrative Code 453A.300, when a
3 medical marijuana establishment is required pursuant to this chapter or chapter 453A of Nevada
4 Revised Statutes to provide information, sign documents or ensure actions are taken, if a limited-
5 liability company is applying for a medical marijuana establishment registration certificate, a
6 manager or, if the limited-liability company does not have a manager, a natural person who is a
7 member of the limited-liability company, shall comply with the requirement on behalf of the
8 medical marijuana establishment. If a limited-liability company is applying for a medical
9 marijuana establishment registration certificate, the members of the limited-liability company
10 must comply with the provisions governing owners, officers and board members of a medical
11 marijuana establishment.

12 44. Pursuant to NAC 453A.332, the Division will revoke a medical marijuana
13 establishment registration certificate if the medical marijuana establishment engages in an
14 activity set forth in NRS 453A.340, which includes violating a regulation of the Division, the
15 violation of which is stated to be grounds for immediate revocation of a medical marijuana
16 establishment registration certificate. As recent as August 7, 2015, MICHAEL SINGER sent a
17 correspondence to the City of Las Vegas Department of Planning that DESERT AIRE
18 WELLNESS, LLC, anticipates opening before November 3, 2105 and that its final plans have
19 been approved by the City Planning Department. On August 11, 2015, MICHAEL SINGER was
20 sent an e-mail from Darcy Abelbai-Hurd from the City of Las Vegas Department of Planning
21 stating that “You indicated in your letter that the final plans have been approved by the City
22 Planning Department. However, it’s not just the building plans we are speaking of. It’s all of
23 the plans laid out in 6.95 such as the environmental plan, transportation plan, security plan etc.
24 So the final plans have NOT been approved by the City.”

25 **COUNT I - ASSAULT**

26 **(Against THIRD PARTY DEFENDANT CURTIS HUFFMAN only)**

27 45. THIRD PARTY PLAINTIFFS hereby incorporate paragraphs 1 through 44 of this
28 Third Party Complaint as though fully set forth herein.

1 46. Assault is an intentional tort and is defined as intentionally placing another person
2 in reasonable apprehension of immediate bodily harm.

3 47. CURTIS HUFFMAN, in the spring of 2015, purposefully brandished a handgun
4 in front of LERA and NEWMAN.

5 48. CURTIS HUFFMAN, on July 30, 2015, told LERA on a telephone call that "he
6 trusted that LERA would show up to sign any documents he needs her to sign and that he didn't
7 want to have to hurt her."CURTIS HUFFMAN has also stated that he is going to "dispose of"
8 LERA and NEWMAN.

9 49. LERA and NEWMAN reasonably believe that CURTIS HUFFMAN made these
10 gestures and statements with the express intention to scare and put LERA and NEWMAN into
11 fear of immediate bodily harm if they did not acquiesce to his demands and to sign all necessary
12 paperwork for the continued construction and startup of DESERT AIRE WELLNESS, LLC.

13 50. CURTIS HUFFMAN made these gestures and statements with the intent of
14 placing LERA and NEWMAN in immediate and continuing fear of immediate bodily harm and
15 he has accomplished that goal.

16 51. As a result of CURTIS HUFFMAN's statements, LERA and NEWMAN fear
17 immediately bodily harm from CURTIS HUFFMAN or someone hired by him and they have and
18 are continuing to suffer severe emotional distress as a result thereof.

19 52. THIRD PARTY PLAINTIFFS request relief as described in the Prayer for Relief
20 below, including punitive damages to punish and deter CURTIS HUFFMAN from continuing to
21 assault THIRD PARTY PLAINTIFFS and others in the future.

22 **COUNT II – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
23 **(Against THIRD PARTY DEFENDANTS BRENDA SUE GUNSALLUS; STACEY**
24 **OWINGS NUNN HUFFMAN; CURTIS EDWARD HUFFMAN; DARLENE**
25 **ALEXANDRA DAVIS; MICHAEL H. SINGER AND ROES 1-20)**

26 53. THIRD PARTY PLAINTIFFS hereby incorporate paragraphs 1 through 52 of this
27 Third Party Complaint as though fully set forth herein.

28 54. During the times referenced herein, THIRD PARTY PLAINTIFFS wereand
continue to be the subject of numerous incidents of extreme and outrageous conduct via

1 harassment and threats by being shown a handgun, verbal assault, in person screaming
2 arguments, excessive and abusive telephone calls, text messages, e-mails, correspondence from
3 or at the direction of each THIRD PARTY DEFENDANT, including but not limited to, those
4 incidents afore-described throughout the Complaint herein.

5 55. The afore-described conduct on the part of THIRD PARTY DEFENDANTS
6 amounts to unlawful conduct and constitutes intentional extreme and outrageous conduct on the
7 part of THIRD PARTY DEFENDANTS and each of them.

8 56. The afore-described conduct of THIRD PARTY DEFENDANTS exceeds all
9 bounds of decency usually tolerated in a civilized community and amongst co-business owners.

10 57. The afore-described conduct of THIRD PARTY DEFENDANTS and each of
11 them was intentional and malicious and done for the purpose of causing THIRD PARTY
12 PLAINTIFFS to suffer extreme emotional distress, humiliation, mental anguish, and physical
13 distress.

14 58. As a direct, legal and proximate result of the harassing and hostile acts of THIRD
15 PARTY DEFENDANTS, THIRD PARTY PLAINTIFFS have and continue to suffer extreme
16 emotional distress, humiliation, mental anguish, and physical distress.

17 59. THIRD PARTY PLAINTIFFS request relief as described in the Prayer for Relief
18 below, including punitive damages to punish and deter THIRD PARTY DEFENDANTS from
19 continuing to act with such extreme and outrageous tactics against THIRD PARTY
20 PLAINTIFFS and others in the future.

21 **COUNT III – CIVIL CONSPIRACY**
22 **(Against THIRD PARTY DEFENDANTS BRENDA SUE GUNSALLUS; STACEY**
23 **OWINGS NUNN HUFFMAN; CURTIS EDWARD HUFFMAN; DARLENE**
24 **ALEXANDRA DAVIS; MICHAEL H. SINGER AND ROES 1-20)**

25 60. THIRD PARTY PLAINTIFFS hereby incorporate paragraphs 1 through 59 of this
26 Third Party Complaint as though fully set forth herein.

27 61. Civil Conspiracy is defined as two or more persons or entities, who, by some
28 concerted action, intended to accomplish an unlawful objective for the purpose of
harming plaintiff; and plaintiff suffered damages as a result of this act or acts.

1 62. THIRD PARTY PLAINTIFFS allege that THIRD PARTY DEFENDANTS, and
2 each of them, continue to purposefully conspire to use the time, money and effort of THIRD
3 PARTY PLAINTIFFS to gain a privileged license to open an MME dispensary and then to take
4 it over by any method necessary. From the beginning of the relationship between the PARTIES,
5 the THIRD PARTY DEFENDANTS have made false and misleading statements about the facts
6 and law concerning the MME dispensary, and all aspects of DESERT AIRE WELLNESS, LLC,
7 including but not limited to their acts to not abide by the original agreements, to take control of
8 the company and MME dispensary facility (including locking LERA and NEWMAN out of the
9 facility), to begin construction activities under their complete control, all by means of
10 intimidation, gestures by being shown a handgun, aggressive verbal abuse via in person
11 screaming arguments, excessive and abusive telephone calls, text messages, e-mails,
12 correspondence from or at the direction of each THIRD PARTY DEFENDANT, including but
13 not limited to, those incidents afore-described throughout the Complaint herein.

14 63. The afore-described conduct on the part of THIRD PARTY DEFENDANTS
15 constitutes a civil conspiracy on the part of THIRD PARTY DEFENDANTS and each of them.

16 64. The afore-described conduct of THIRD PARTY DEFENDANTS has been
17 intended to accomplish unlawful objectives for the purpose of harming LERA and NEWMAN.

18 65. As a direct, legal and proximate result of the civil conspiracy of THIRD PARTY
19 DEFENDANTS, THIRD PARTY PLAINTIFFS have and continue to suffer damages, including
20 monetary loss, extreme emotional distress, humiliation, mental anguish, and physical distress.

21 66. THIRD PARTY PLAINTIFFS request relief as described in the Prayer for Relief
22 below, including punitive damages to punish and deter THIRD PARTY DEFENDANTS from
23 continuing to act with such malice, oppression and fraud against THIRD PARTY PLAINTIFFS
24 and others in the future.

25
26 **COUNT IV – DEFAMATION**
27 **(Against THIRD PARTY DEFENDANTS BRENDA SUE GUNSALLUS; CURTIS**
28 **EDWARD HUFFMAN; MICHAEL H. SINGER AND ROES 1-20)**

1 67. THIRD PARTY PLAINTIFFS hereby incorporate paragraphs 1 through 66 of this
2 Third Party Complaint as though fully set forth herein.

3 68. Defamation is defined as communications made that tend to harm the reputation of
4 the plaintiff as to lower him/her in the estimation of the community or to deter third persons from
5 associating or dealing with him/her. Words or conduct or the combination of words and conduct
6 can communicate defamation.

7 69. LERA and NEWMAN allege THIRD PARTY DEFENDANTS BRENDA SUE
8 GUNSALLUS; CURTIS EDWARD HUFFMAN and MICHAEL H. SINGER have
9 communicated to others throughout the MME community that THIRD PARTY PLAINTIFFS
10 are no longer managers or owners of DESERT AIRE WELLNESS, LLC to purposefully deter
11 others from associating or dealing with LERA and NEWMAN. SINGER recently intentionally
12 and illegally filed documents with the Nevada Secretary of State naming GUNSALLUS,
13 CURTIS HUFFMAN and LERA as the managing members of DESERT AIRE WELLNESS,
14 LLC, specifically taking NEWMAN off of DESERT AIRE WELLNESS, LLC as a manager.
15 CURTIS HUFFMAN continues to make false and misleading statements that he is a manager, and
16 he is in charge of the construction, has told all the construction related individuals to not speak
17 with LERA and NEWMAN and to keep them away from the facility. GUNSALLUS and
18 CURTIS HUFFMAN additionally have told several different people that LERA and NEWMAN
19 are no longer owners in the LLC. GUNSALLUS has been having individual meetings with
20 cultivators in Nevada and has allegedly made deals to buy product on behalf of DESERT AIRE
21 WELLNESS, LLC. On August 12, 2015, LERA had a conversation with Charlie Fox, an owner
22 of a cultivator named Nevada Medical Group. Mr. Fox advised LERA that he has met with
23 GUNSALLUS at least five times and she told him that LERA and NEWMAN were no longer
24 owners of DESERT AIRE WELLNESS, LLC. LERA was also told by Mark Zobrist, an owner
25 of a cultivation company, that GUNSALLUS' friend Vicki Higgins called him and stated that
26 GUNSALLUS wanted to meet with him to buy product. Zobrist asked about LERA and
27 NEWMAN and was told that they were just "the locals on the ticket to cover the State of Nevada
28 requirements".