

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 10:33 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 27

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INDEX OF APPELLANT'S APPENDIX

VOL.	DOCUMENT	DATE	BATES
24	Amended Notice of Entry of Order Granting Motion for Preliminary Injunction	9/19/19	AA 005907 - AA 005933
7, 8	Clear River, LLC's Answer to Serenity Wellness Center, LLC et al.'s Complaint	5/7/19	AA 001739 - AA 001756
20	Clear River, LLC's Answer to Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint	7/26/19	AA 004981 - AA 004998
27	Clear River, LLC's Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/14/19	AA 006692 - AA 006694
8	Clear River, LLC's Joinder to Nevada Organic Remedies, LLC's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/9/19	AA 001822 - AA 001829
20	Clear River, LLC's Joindr to Lone Mountain Partners, LLC's Pocket Brief Regarding Regulatory Power Over Statutes Passed by Voter Initiative	6/24/19	AA 004853 - AA 004856
8	Clear River, LLC's Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	5/8/19	AA 001820 - AA 001821
11	Compassionate Team of Las Vegas LLC's Joinder to Motions for Preliminary Injunction	5/17/19	AA 002695 - AA 002696
46	Court's Exhibit 3, Email From Attorney General's Office Regarding the successful Applicants' Complainece with NRS 453D.200(6)	n/a	AA 011406, AA 011407
24	CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace's Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/24/19	AA 005991 - AA 005996

VOL.	DOCUMENT	DATE	BATES
27	CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/10/19	AA 006681 - AA 006686
20	ETW Management Group, LLC et al.'s Answer to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Counterclaim	7/11/19	AA 004925 - AA 004937
1, 2	ETW Management Group, LLC et al.'s Complaint	1/4/19	AA 000028 - AA 000342
2, 3	ETW Management Group, LLC et al.'s Errata to First Amended Complaint	2/21/19	AA 000427 - AA 000749
6	ETW Management Group, LLC et al.'s Joinder to Motions for Preliminary Injunction	5/6/19	AA 001355 - AA 001377
27	ETW Management Group, LLC et al.'s Notice of Cross Appeal	10/3/19	AA 006513 - AA 006515
18	ETW Management Group, LLC et al.'s Reply in support of Joinder to Motions for Preliminary Injunction	5/22/19	AA 004307 - AA 004328
18	ETW Management Group, LLC et al.'s Reply in support of Joinder to Motions for Preliminary Injunction	5/22/19	AA 004409 - AA 004496
15	ETW Management Group, LLC et al.'s Second Amended Complaint	5/21/19	AA 003649 - AA 003969
29	Euphoria Wellness, LLC's Answer to First Amended Complaint	11/21/19	AA 007068 - AA 007071
20	GreenMart of Nevada NLV, LLC's Answer to ETW Management Group, LLC et al.'s Second Amended Complaint	6/24/19	AA 004857 - AA 004874
11	GreenMart of Nevada NLV, LLC's Answer to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's First Amended Complaint	5/16/19	AA 002567 - AA 002579

VOL.	DOCUMENT	DATE	BATES
6	GreenMart of Nevada NLV, LLC's Answer to Serenity Wellness Center, LLC et al.'s Complaint	4/16/19	AA 001293 - AA 001307
20	GreenMart of Nevada NLV, LLC's Answer to Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint	7/17/19	AA 004961 - AA 004975
21	GreenMart of Nevada NLV, LLC's Bench Brief	8/15/19	AA 005029 - AA 005038
26	GreenMart of Nevada NLV, LLC's Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/30/19	AA 006361 - AA 006393
27	GreenMart of Nevada NLV, LLC's Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/15/19	AA 006695 - AA 006698
17, 18	GreenMart of Nevada NLV, LLC's Joinder to Lone Mountain Partners, LLC's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/21/19	AA 004248 - AA 004260
16, 17	GreenMart of Nevada NLV, LLC's Joinder to Lone Mountain Partners, LLC's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction, Appendix	5/20/19	AA 003970 - AA 004247
27	GreenMart of Nevada NLV, LLC's Joinder to Lone Mountain Partners, LLC's Opposition to Nevada Wellness Center, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/10/19	AA 006539 - AA 006540
6	GreenMart of Nevada NLV, LLC's Joinder to Nevada Organic Remedies, LLC's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/13/19	AA 002541 - AA 002547

VOL.	DOCUMENT	DATE	BATES
26	GreenMart of Nevada NLV, LLC's Joinder to State of Nevada, Department of Taxation's Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/30/19	AA 006328 - AA 006360
8	GreenMart of Nevada NLV, LLC's Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	5/7/19	AA 001757 - AA 001790
8	GreenMart of Nevada NLV, LLC's Motion to Intervene in Nevada Wellness Center, LLC v. State of Nevada, Department of Taxation Case No. A-19-787540-W	5/7/19	AA 001791 - AA 001819
5	GreenMart of Nevada NLV, LLC's Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/2/19	AA 001094 - AA 001126
20	GreenMart of Nevada NLV, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	6/24/19	AA 004875 - AA 004878
11	GreenMart of Nevada NLV, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's v. State of Nevada, Department of Taxation Case No. A-18-785818-W	5/16/19	AA 002690 - AA 002694
20	GreenMart of Nevada NLV, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in Nevada Wellness Center, LLC v. State of Nevada, Department of Taxation Case No. A-19-787540-W	7/24/19	AA 004976 - AA 004980
6	GreenMart of Nevada NLV, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/16/19	AA 001308 - AA 001312
24	GreenMart of Nevada NLV, LLC's Notices of Appeal	9/19/19	AA 005934 - AA 005949

VOL.	DOCUMENT	DATE	BATES
22	GreenMart of Nevada NLV, LLC's Objection to Court's Exhibit 3	8/26/19	AA 005301 - AA 005304
18, 19	Helping Hands Wellness Center, Inc.'s Answer to Serenity Wellness Center, LLC et al.'s Complaint	6/3/19	AA 004497 - AA 004512
27	Helping Hands Wellness Center, Inc.'s Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/17/19	AA 006699 - AA 006700
18	Helping Hands Wellness Center, Inc.'s Joinder to Lone Mountain Partners, LLC's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/21/19	AA 004261 - AA 004266
23	Helping Hands Wellness Center, Inc.'s Joinder to Nevada Organic Remedies, LLC's Objection to Court's Exhibit 3	8/28/19	AA 005571 - AA 005572
11	Helping Hands Wellness Center, Inc.'s Joinder to Nevada Organic Remedies, LLC's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/13/19	AA 002548 - AA 002563
5	Helping Hands Wellness Center, Inc.'s Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/1/19	AA 001064 - AA 001091
6	Helping Hands Wellness Center, Inc.'s Notice of Entry of Order and Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/15/19	AA 001289 - AA 001292
22	Helping Hands Wellness Center, Inc.'s Objection to Court's Exhibit 3	8/26/19	AA 005305 - AA 005319
20	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCMH Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Answer to ETW Management Group, LLC et al.'s Second Amended Complaint and Counterclaim	6/14/19	AA 004829 - AA 004852

VOL.	DOCUMENT	DATE	BATES
20	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Answer to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's First Amended Complaint and Counterclaim	6/14/19	AA 004809 - AA 004828
20	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Answer to Serenity Wellness Center, LLC et al.'s Complaint and Counterclaim	6/14/19	AA 004785 - AA 004808
18	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Joinder to various oppositions to Motions for Preliminary Injunction	5/23/19	AA 004329 - AA 004394
4	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	3/20/19	AA 000916 - AA 000985
4	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	3/19/19	AA 000879 - AA 000915
6	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Notice of Entry of Order and Order Granting Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	4/22/19	AA 001327 - AA 001332

VOL.	DOCUMENT	DATE	BATES
11	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Notice of Entry of Order and Order Granting Motion to Intervene in MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's v. State of Nevada, Department of Taxation Case No. A-18-785818-W	5/17/19	AA 002697 - AA 002703
5	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Notice of Entry of Order and Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/2/19	AA 001127 - AA 001132
5	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/1/19	AA 001092 - AA 001093
21	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Bench Brief	8/15/19	AA 005018 - AA 005028
24	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Motion to Intervene in Nevada Wellness Center, LLC v. State of Nevada, Department of Taxation Case No. A-19-787540-W	9/20/19	AA 005962 - AA 005983
27	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/4/19	AA 006516 - AA 006527
19	Lone Mountain Partners, LLC's Answer to ETW Management Group, LLC et al.'s Second Amended Complaint	6/7/19	AA 004550 - AA 004563

VOL.	DOCUMENT	DATE	BATES
19	Lone Mountain Partners, LLC's Answer to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's's First Amended Complaint	6/5/19	AA 004527 - AA 004536
19	Lone Mountain Partners, LLC's Answer to Serenity Wellness Center, LLC et al.'s Complaint	6/5/19	AA 004537 - AA 004547
19	Lone Mountain Partners, LLC's Initial Appearance Fee Disclosure	6/7/19	AA 004548 - AA 004549
11	Lone Mountain Partners, LLC's Joinder to Nevada Organic Remedies, LLC's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/13/19	AA 002564 - AA 002566
23	Lone Mountain Partners, LLC's Joinder to Nevada Organic Remedies, LLC's Court's Exhibit 3	8/27/19	AA 005533 - AA 005534
5	Lone Mountain Partners, LLC's Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	3/28/19	AA 001035 - AA 001063
4, 5	Lone Mountain Partners, LLC's Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	3/25/19	AA 000991 - AA 001021
23	Lone Mountain Partners, LLC's Motion to Strike MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's's Objection to Court's Exhibit 3	8/28/19	AA 005573 - AA 005578
26	Lone Mountain Partners, LLC's Notice of Appeal	9/27/19	AA 006324 - AA 006327
6	Lone Mountain Partners, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	4/23/19	AA 001333 - AA 001337

VOL.	DOCUMENT	DATE	BATES
5	Lone Mountain Partners, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/4/19	AA 001133 - AA 001137
22	Lone Mountain Partners, LLC's Objection to Court's Exhibit 3	8/26/19	AA 005320 - AA 005322
15	Lone Mountain Partners, LLC's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/20/19	AA 003565 - AA 003602
14, 15	Lone Mountain Partners, LLC's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction, Appendix	5/20/19	AA 003445 - AA 003564
27	Lone Mountain Partners, LLC's Opposition to Motion to Nevada Wellness Center, LLC's Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/10/19	AA 006541 - AA 006569
20	Lone Mountain Partners, LLC's Pocket Brief Regarding Regulatory Power Over Statutes Passed by Voter Initiative	6/11/19	AA 004778 - AA 004784
21	Lone Mountain Partners, LLC's Supplemental Authorities for Closing Arguments	8/15/19	AA 005039 - AA 005098
1	MM Development Company Inc. and LivFree Wellness, LLC's Affidavit/Declaration of Service of Summons and Complaint	12/21/18	AA 000026 - AA 000027
20	MM Development Company Inc. and LivFree Wellness, LLC's Answer to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Counterclaim	7/12/19	AA 004941 - AA 004948
5	MM Development Company Inc. and LivFree Wellness, LLC's Answer to Nevada Organic Remedies, LLC's Counterclaim	4/5/19	AA 001138 - AA 001143

VOL.	DOCUMENT	DATE	BATES
1	MM Development Company Inc. and LivFree Wellness, LLC's First Amended Complaint and Petition for Judicial Review or Writ of Mandamus	12/18/18	AA 000013 - AA 000025
6	MM Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/6/19	AA 001378 - AA 001407
6, 7	MM Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction, Appendix 1	5/6/19	AA 001408 - AA 001571
7	MM Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction, Appendix 2	5/6/19	AA 001572 - AA 001735
24, 25	MM Development Company Inc. and LivFree Wellness, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/24/19	AA 005997 - AA 006323
27	MM Development Company Inc. and LivFree Wellness, LLC's Notice of Cross Appeal	10/3/19	AA 006509 - AA 006512
23, 24	MM Development Company Inc. and LivFree Wellness, LLC's Notice of Errata to Appendix to Objection to Court's Exhibit 3	8/28/19	AA 005579 - AA 005805
7	MM Development Company Inc. and LivFree Wellness, LLC's Notice of Filing Brief in Support of Motion for Preliminary Injunction	5/6/19	AA 001736 - AA 001738
22, 23	MM Development Company Inc. and LivFree Wellness, LLC's Objection to Court's Exhibit 3	8/26/19	AA 005496 - AA 005509
22	MM Development Company Inc. and LivFree Wellness, LLC's Objection to Court's Exhibit 3, Appendix	8/26/19	AA 005323 - AA 005495
28	MM Development Company Inc. and LivFree Wellness, LLC's Opposition to Nevada Organic Remedies, LLC's Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	10/24/19	AA 006833 - AA 006888

VOL.	DOCUMENT	DATE	BATES
21	MM Development Company Inc. and LivFree Wellness, LLC's Pocket Brief Regarding Background check Requirement	8/21/19	AA 005099 - AA 005109
21-22	MM Development Company Inc. and LivFree Wellness, LLC's Pocket Brief Regarding Background check Requirement, Appendix	8/21/19	AA 005110 - AA 005276
28	MM Development Company Inc. and LivFree Wellness, LLC's Reply in Support of Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction	10/23/19	AA 006817 - AA 006826
11	MM Development Company Inc. and LivFree Wellness, LLC's Supplement to Motion for Preliminary Injunction	5/16/19	AA 002580 - AA 002689
1	MM Development Company Inc.'s Complaint and Petition for Judicial Review or Writ of Mandamus	12/10/18	AA 000001 - AA 000012
29	Nevada Organic Remedies, LLC's Amended Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	11/21/19	AA 007072 - AA 007126
4	Nevada Organic Remedies, LLC's Answer to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's's First Amended Complaint and Counterclaim	3/15/19	AA 000754 - AA 000768
27	Nevada Organic Remedies, LLC's Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	10/10/19	AA 006570 - AA 006680
20, 21	Nevada Organic Remedies, LLC's Bench Brief	8/14/19	AA 004999 - AA 005017
27	Nevada Organic Remedies, LLC's Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and Lone Mountain Partners, LLC's Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/11/19	AA 006687 - AA 006691

VOL.	DOCUMENT	DATE	BATES
18	Nevada Organic Remedies, LLC's Joinder to Lone Mountain Partners, LLC's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/21/19	AA 004267 - AA 004306
2	Nevada Organic Remedies, LLC's Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	1/25/19	AA 000376 - AA 000400
2	Nevada Organic Remedies, LLC's Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	1/25/19	AA 000401 - AA 000426
5	Nevada Organic Remedies, LLC's Motion to Strike Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	3/26/19	AA 001023 - AA 001030
6	Nevada Organic Remedies, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	4/26/19	AA 001338 - AA 001341
3, 4	Nevada Organic Remedies, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's v. State of Nevada, Department of Taxation Case No. A-18-785818-W	3/18/19	AA 000750 - AA 000753
4	Nevada Organic Remedies, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	3/22/19	AA 000986 - AA 000990
24	Nevada Organic Remedies, LLC's Notices of Appeal	9/19/19	AA 005950 - AA 005961
23	Nevada Organic Remedies, LLC's Objection to Court's Exhibit 3	8/26/19	AA 005510 - AA 005532

VOL.	DOCUMENT	DATE	BATES
8	Nevada Organic Remedies, LLC's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/9/19	AA 001830 - AA 001862
8-10	Nevada Organic Remedies, LLC's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction, Appendix	5/9/19	AA 001863 - AA 002272
29	Nevada Organic Remedies, LLC's reply in Support of Amended Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	12/6/19	AA 007154 - AA 007163
23	Nevada Organic Remedies, LLC's Response to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's's Objection to Court's Exhibit 3	8/27/19	AA 005535 - AA 005539
5	Nevada Wellness Center, LLC's Affidavit of Service of the Complaint on the State of Nevada, Department of Taxation	3/25/19	AA 001022
2	Nevada Wellness Center, LLC's Complaint and Petition for Judicial Review or Writ of Mandamus	1/15/19	AA 000360 - AA 000372
29	Nevada Wellness Center, LLC's Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's's Opposition to Nevada Organic Remedies, LLC's Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	12/6/19	AA 007167 - AA 007169
11	Nevada Wellness Center, LLC's Joinder to Motions for Preliminary Injunction	5/10/19	AA 002535 - AA 002540
24	Nevada Wellness Center, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/13/19	AA 005806 - AA 005906
26	Nevada Wellness Center, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/30/19	AA 006394 - AA 006492

VOL.	DOCUMENT	DATE	BATES
29	Nevada Wellness Center, LLC's Notice of Appeal	12/6/19	AA 007164 - AA 007166
26, 27	Nevada Wellness Center, LLC's Reply in Support of Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/30/19	AA 006493 - AA 006505
27, 28	Nevada Wellness Center, LLC's Reply in Support of Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/17/19	AA 006701 - AA 006816
2	Nevada Wellness Center, LLC's Summons to State of Nevada, Department of Taxation	1/22/19	AA 000373 - AA 000375
28, 29	Nevada Wellness Center, LLC's Supplement in Support of Reply in Support of Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/30/19	AA 006955 - AA 007057
29	Notice of Entry of Order and Order Denying MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction	11/23/19	AA 007127 - AA 007130
23	Notice of Entry of Order and Order Granting Motion for Preliminary Injunction	8/28/19	AA 005544 - AA 005570
29	Notice of Entry of Order and Order Regarding Nevada Wellness Center, LLC's Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction	11/6/19	AA 007058 - AA 007067
20	Order Granting in Part Motion to Coordinate Cases for Preliminary Injunction Hearing	7/11/19	AA 004938 - AA 004940
22	Order Granting Preliminary Injunction (Findings of Fact and Conclusions of Law)	8/23/19	AA 005277 - AA 005300
46, 47	Preliminary Injunction Hearing, Defendant's Exhibit 2009 Governor's Task Force Report	n/a	AA 011408 - AA 011568
47	Preliminary Injunction Hearing, Defendant's Exhibit 2018 List of Applicants for Marijuana Establishment Licenses 2018	n/a	AA 011569 - AA 011575

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

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

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

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

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

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

CERTIFICATE OF SERVICE

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

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

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

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

Office of the Attorney General

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The State of Nevada Department of Taxation

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Margaret A. McLetchie, Alina M. Shell

McLetchie Law

Counsel for Appellant,

Counsel for GreenMart of Nevada NLV LLC

/s/ David R. Koch

Koch & Scow

1 110 Nev. 1, 10 (1994). "Innocence cannot deflect the appearance of impropriety." Id. (reversing the
2 district court and reinstating the opinion of the Nevada Commission on Ethics because architects
3 obtained an unfair advantage over competitors by virtue of insider information).

4 Here, all applicants were not given equal access to information, or even access to the same
5 application, as evidenced by multiple communications between DoT and certain applicants over
6 others. The failure of DoT to follow the voters' mandate, and failure to consistently provide
7 information to all applicants, undeniably amounts to an erosion of the integrity of the process.
8 Favoritism and bias governed this process, and grading of the applications was partial to those the
9 DoT staff favored. Notwithstanding, government has a strong desire to prevent opportunities for –
10 and suspicion of – fraud or favoritism; "neither favoritism nor fraud is necessary to invalidate non-
11 compliance with a request for bidding...". Gamewell, 216 F.2d at 937; Hannan v. Board of
12 Education, 107 P. 646 (OK 1909). Here, the failure to provide all information to all applicants,
13 failing to abide by the terms of the bid (by changing the physical location requirement), and the
14 insider communications that were ongoing and abundant) warrant preventing the issuance of any
15 permanent licenses as the competitive process, by virtue of DoT's improper actions, was unsound,
16 flawed, biased and favored the connected few.

17 **E. Physical Location and Other Material Irregularities Cannot be Waived**

18 Material irregularities may not be waived, Blount, Inc. v. U.S., 22 Cl.Ct. 221, 227 (1989).
19 A bid which contains a material nonconformity must be rejected as nonresponsive. Blount citing
20 Honeywell, Inc. v. United States, 16 Cl. Ct. 173, 181 (1989), rev'd on other grounds, 870 F.2d 644
21 (Fed. Cir. 1989). Material terms and conditions of a solicitation involve price, quality, quantity, and
22 delivery. Id. The rule is designed to prevent bidders from taking exception to material provisions
23 of the contract in order to gain an unfair advantage over competitors and to assure that the
24 government evaluates all bids on an equal basis.

25 The violations allowed by the DoT cannot be considered "minor irregularities." First and
26 foremost, the DoT has allowed applicants to violate the mandatory provision of NRS 453D.
27 Specifically, NRS 453D.210 provides that a applicant "must include" the names of prospective
28 owners, officers, board members and physical addresses of the proposed entities. See e.g., Blaine

1 Equip. Co. v. State, 122 Nev. 860, 866, 138 P.3d 820, 823 (2006) (the district court may not rely on
2 its equitable power to disregard the mandatory language of a statute). "When the language of a
3 statute is plain and unambiguous, a court should give that language its ordinary meaning and not go
4 beyond it." *Id.* citing City Council of Reno v. Reno Newspapers, 105 Nev. 886, 891, 784 P.2d 974,
5 977 (1989). Minor irregularities may be waived but violations of Statutes and Regulations can not.
6 Therefore, all applications not complying with Nevada Statutes and/or Regulations must be rejected.

7 **F. Violation of Nevada Open Meeting Laws/Communication Methods**

8 The DoT is a public body subject to NRS Chapter 241 open meeting laws.

9 NRS 241.020 provides:

10 "Meetings to be open and public; limitations on closure of meetings; notice of meetings;
copy of materials; exceptions.

11 "1. Except as otherwise provided by specific statute, all meetings of public bodies must be
open and public, and all persons must be permitted to attend any meeting of these public
12 bodies. A meeting that is closed pursuant to a specific statute may only be closed to the
extent specified in the statute allowing the meeting to be closed. All other portions of the
13 meeting must be open and public, and the public body must comply with all other provisions
of this chapter to the extent not specifically precluded by the specific statute. Public officers
and employees responsible for these meetings shall make reasonable efforts to assist and
14 accommodate persons with physical disabilities desiring to attend.

15 "2. Except in an emergency, written notice of all meetings must be given at least 3 working
days before the meeting. . . ."

16
17 The DoT's late decision to delete the physical address requirement on some application
18 forms while not modifying those portions of the application that were dependent on a physical
19 location (i.e. floor plan, community impact, security plan, and the sink locations) after the repeated
20 communications by an applicant's agent; not effectively communicating the revision; and, leaving
21 the original version of the application on the website, is evidence of conduct that is a serious issue.

22
23 The DoT's arbitrary and improper communication with applicants and their
24 representatives/attorney violated NRS chapter 241. DoT's actions violated the statute and made the
25 grading process unfair by allowing some applicants the benefit of inside information when other
26 applicants were not afforded the same opportunity.

27 NRS 241.036 Action taken in violation of chapter void. The action of any public body taken
in violation of any provision of this chapter is void.
28

1 The Court's related findings:

2 The DoT utilized a question and answer process through a generic email account at
3 marijuana@tax.state.nv.us to allow applicants to ask questions and receive answers
4 directly from the Department, which were not consistent with NRS 453D, and that
information was not further disseminated by the DoT to other applicants.
See Exhibit A ¶ 20

5 In addition to the email question and answer process, the DoT permitted applicants and
6 their representatives to personally contact the DoT staff about the application process.
See Exhibit A ¶21

7 The DoT by its actions precluded all applicants from competing on equal terms. All actions
8 taken by the DoT following DoT's violation of NRS chapter 241, should be declared void pursuant
9 NRS 241.036.³ The DoT's action in issuing marijuana establishment licenses after it violated NRS
10 Chapter 241 should be voided. Accordingly the preliminary injunction should apply to all marijuana
11 establishment licenses issued.

12 **G. The Court's Finding of Fact and Conclusion of Law Found Irreparable Harm**

13 DoT argues in its opposition that NWC ignores the irreparable harm analysis. (See DoT Opp.
14 6:6-8.) In the court granting the TRO and FFCL, this Court necessarily concluded that Plaintiffs'
15 demonstrated a likelihood of irreparable harm. (See FFCL ¶ 62-90.⁴ NWC Motion is to amend
16 Findings of Fact and Conclusion of Law to add additional findings of fact and conclusions of law.
17 The Court has already made a finding of irreparable harm.

18 ///

19 ///

20 ///

21
22
23 ³ See NRS 241.037(2) Any person denied a right conferred by this chapter may sue in the district court of
24 the district in which the public body ordinarily holds its meetings or in which the plaintiff resides. A suit may seek to
25 have an action taken by the public body declared void, to require compliance with or prevent violations of this
chapter or to determine the applicability of this chapter to discussions or decisions of the public body. The court may
order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this
subsection.

26
27 ⁴ See FFCL ¶62-90. ¶62- In City of Sparks v. Sparks Mun. Court, the Supreme Court explained, "[a]s a
28 constitutional violation may be difficult or impossible to remedy through money damages, such a violation may, by
itself, be sufficient to constitute irreparable harm." 129 Nev. 348, 357, 302 P.3d 1118, 1124 (2013).

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III.

CONCLUSION

Based upon the foregoing, NWC pursuant to NRCP 52 respectfully requests this Court amend its Findings of Facts and Conclusions of Law dated August 23, 2019, and enjoin the State from conducting a final inspection on any of the conditional licenses issued in or about December of 2018 and deeming the entire scoring/application process invalid or at a minimum enjoying all applicants that did not comply with Nevada Statutes 453D and Nevada Administrative Code 453D.

DATED this 30th day of September, 2019.

PARKER, NELSON & ASSOCIATES, CHTD.

/s/Theodore Parker, III, Esq.
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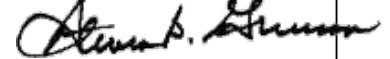
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of the law office of PARKER,
3 NELSON & ASSOCIATES, CHTD., and that on this 30th day of September, 2019, I served a true
4 and correct copy of the foregoing **REPLY IN SUPPORT OF NEVADA WELLNESS CENTER,**
5 **LLC, MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
6 **ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52** on the party(s) set forth below by:

- 7 ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the
8 United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.
- 9 ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26,
10 by faxing a true and correct copy of the same to each party addressed as follows:
- 11 ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set
12 forth below on this date before 5:00 p.m.
- 13 ☒ By EFC: by electronic filing with the Court delivering the document(s) listed above via E-file & E-
14 serve (Odyssey) filing system in all related cases A-19-786962-B, A-18-785818-W; A-19-787004-B,
15 A-18-786357-W; and A-19-787726-C.

16 
17 An employee of PARKER, NELSON & ASSOCIATES, CHTD.
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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, NUIEAF
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, 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.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant.

And coordinated cases.

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

**JOINDER TO MM DEVELOPMENT
COMPANY, INC'S AND LIVFREE
WELLNESS, LLC'S MOTION TO ALTER
OR AMEND FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Coordinated for purposes of preliminary
injunction hearing with:

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

Case No.: A-19-787004-B
Dept. No.: XI

Case No.: A-19-787540-W
Dept. No.: XVIII

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiffs in A-19-786962-B hereby join in and incorporate by reference plaintiffs MM
3 Development Company, Inc.'s and Livfree Wellness, LLC's Motion to Alter or Amend Findings
4 of Fact and Conclusions of Law filed in case no. A-18-785818-W on September 24, 2019. This
5 joinder is made and based upon the papers and pleadings on file herein, such other documentary
6 evidence as may be presented and any oral argument of counsel at the time of the hearing.
7 Plaintiffs expressly incorporate and adopt by reference herein all of the points and authorities set
8 forth in the Motion to Alter or Amend Findings of Fact and Conclusions of Law.

9 Dated this ____ day of September, 2019.

10 CLARK HILL PLLC

11 By: 
12 _____

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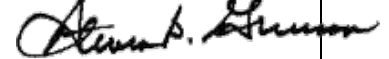
27 Fax: (702) 862-8400

28 *Attorneys for Plaintiffs*

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1. *Journal of the American Medical Association*, 273, 1995, 1025-1026.

I here



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8 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

13 Plaintiffs,

14 vs.

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

18 Defendants.

19 COMPASSIONATE TEAM OF LAS VEGAS
20 LLC, a Nevada Limited Liability Company;

21 Plaintiff,

22 vs.

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

26 Defendants.

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

NOTICE OF CROSS-APPEAL

Coordinated for purposes of preliminary
injunction with:

Case No.: A-18-786357-W
Dept. No.: XIV

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1	SERENITY WELLNESS CENTER, LLC, et al.,	Case No.: A-19-786962-B
2	Plaintiffs,	Dept. No.: XI
3	vs.	
4	STATE OF NEVADA, DEPARTMENT OF	
5	TAXATION,	
6	Defendant.	
7	ETW MANAGEMENT GROUP LLC, et al.,	Case No.: A-19-787004-B
8	Plaintiffs,	Dept. No.: XI
9	vs.	
10	STATE OF NEVADA, DEPARTMENT OF	
11	TAXATION, a Nevada administrative agency;	
12	and DOES 1 through 20; and ROE	
13	CORPORATIONS 1 through 20, inclusive	
14	Defendants.	
15	HIGH SIERRA HOLISTICS, LLC,	Case No.: A-19-787726-C
16	Plaintiff,	Dept. No.: XIV
17	vs.	
18	STATE OF NEVADA, DEPARTMENT OF	
19	TAXATION; DOES 1-10 and ROE	
20	CORPORATIONS 1-10,	
21	Defendants.	
22	NEVADA WELLNESS CENTER, LLC, a	Case No.: A-19-787540-W
23	Nevada limited liability company,	Dept. No.: XVIII
24	Plaintiff,	
25	vs.	
26	STATE OF NEVADA, DEPARTMENT OF	
27	TAXATION,	
28	Defendants.	

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3800 Howard Hughes Parkway
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1 NOTICE is hereby given that Plaintiffs MM DEVELOPMENT COMPANY, INC. and
2 LIVFREE WELLNESS LLC, hereby cross-appeal to the Supreme Court of Nevada from the
3 following:

- 4 1. Findings of Fact, Conclusions of Law and Order Granting Preliminary Injunction
5 entered on August 28, 2019¹; and
- 6 2. All other orders and rulings made appealable from the foregoing.

7 DATED this 3rd day of October, 2019.

8 KEMP, JONES AND COULTHARD, LLP

9
10 /s/ Nathanael Rulis

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12 NATHANAEL R. RULIS, ESQ. #11259
13 3800 Howard Hughes Parkway, 17th Floor
14 Las Vegas, NV 89169
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17 Attorneys for Plaintiffs

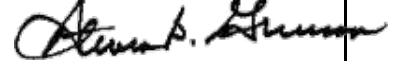
18
19
20
21
22
23
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25
26
27 ¹ The Findings of Fact, Conclusions of Law and Order Granting Preliminary Injunction were
28 previously appealed by Greenmart of Nevada NLV, LLC and Nevada Organic Remedies. See
Nevada Supreme Court Case No. 79670.

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October, 2019, I served a true and correct copy of the foregoing **NOTICE OF CROSS-APPEAL** 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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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative agency;

CASE NO.: A-19-787004-B

DEPT NO.: XI

NOTICE OF CROSS-APPEAL

DOES 1 through 20, inclusive; and ROE
CORPORATIONS 1 through 20, inclusive,

Defendants.

AND ALL RELATED MATTERS

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that Plaintiffs ETW Management Group LLC, Global Harmony LLC, Green Leaf Farms Holdings LLC, Green Therapeutics LLC, Herbal Choice Inc., Just Quality, LLC, Libra Wellness Center, LLC, Rombough Real Estate Inc. dba Mother Herb, NEVCANN LLC, Red Earth LLC, THC Nevada LLC, Zion Gardens LLC, and MMOF Vegas Retail, Inc. (collectively, "ETW Plaintiffs") hereby appeal to the Supreme Court of the State of Nevada from the "Findings of Fact and Conclusions of Law Granting Preliminary Injunction" (the "FFCL") entered in the above titled action on the 23rd day of August, 2019, with notice of entry entered on the 28th day of August, 2019.¹ This appeal follows the respective appeals of Nevada Organic Remedies, LLC, GreenMart of Nevada NLV LLC, and Lone Mountain Partners, LLC's Notices of Appeal and Case Appeal Statements filed on September 19, 2019.

DATED this 3rd day of October, 2019.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

/s/ Adam K. Bult

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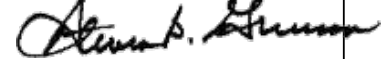
Attorneys for Plaintiffs

¹ The FFCL was also entered in the following cases and appeal is also taken in those matters: (1) *Serenity Wellness center, LLC et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-786962-B; (2) *MM Development Company, Inc. et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-785818-W; and (3) *Nevada Wellness Center v. State of Nevada, Department of Taxation*, Case No. A-19-787540-W.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF CROSS-APPEAL** to be submitted electronically to all parties currently on the electronic service list on October 3, 2019.

/s/ Wendy Cosby
an employee of Brownstein Hyatt Farber Schreck, LLP



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Essence Tropicana, LLC, Essence Henderson, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.
THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendants.

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

Plaintiffs,

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

**THE ESSENCE ENTITIES' OPPOSITION
TO MM DEVELOPMENT COMPANY
INC.'S AND LIVFREE WELLNESS LLC'S
MOTION TO ALTER OR AMEND
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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

1 vs.

2 STATE OF NEVADA, DEPARTMENT OF
3 TAXATION; and DOES 1 through 10; and
4 ROE CORPORATIONS 1 through 10.
Defendants.

5
6 **I. INTRODUCTION**

7 Plaintiffs¹ reargue the same legal issues and evidence without demonstrating any manifest
8 error of law or fact to justify altering the preliminary injunction's scope. Plaintiffs do not point to
9 any new evidence or intervening change in law. Instead, they repeat the same complaints that the
10 Essence Entities² were individually awarded conditional licenses without identifying a fixed
11 location on their applications. But, as the State correctly concluded, separately incorporated
12 limited liability companies are considered distinct entities for purposes of NAC 453D.272(5), just
13 as they are elsewhere in the law. The State's interpretation is entitled to great deference. As
14 separately chartered companies, none of the Essence Entities were awarded more than one
15 conditional license and none of the entities control more than 10% of the licenses in Clark
16 County.

17 The Essence Entities' respective applications were also complete and compliant. The State
18 is vested with the discretion to determine whether an application is complete and it is within the
19 province of the agency to grade applications as the State deems appropriate. Neither the Plaintiffs
20 nor the Court can second guess or "rescore" the winners' applications. The structure of the ballot
21 initiative and statutory scheme—in addition to the Nevada Supreme Court's *Nuleaf* decision—
22 indicate that applicants can satisfy the address requirement if they possess a suitable location prior
23 to final inspection and the issuance of a final license. Any other interpretation would lead to
24 absurd results and have negative public policy consequences. Because this Court did not commit

25 ¹ MM Development Company, Inc, LivFree Wellness LLC, Nevada Wellness Center, LLC,
26 and any Plaintiff filing a joinder are referred collectively as "Plaintiffs."

27 ² Defendants in Intervention Integral Associates LLC d/b/a Essence Cannabis Dispensaries,
28 Essence Tropicana, LLC, and Essence Henderson, LLC are referred to collectively as
"the Essence Entities."

1 any legal or factual error, all motions to alter or amend the preliminary injunction should be
2 denied.

3 **II. ARGUMENT**

4 **A. Plaintiffs Do Not Satisfy NRCP 52(b).**

5 Nevada Rule of Civil Procedure 52(b) allows a party ask the Court to amend its findings
6 or make additional finding within 28 days of service of the written notice of entry of judgment.
7 NRCP 52(b). The purpose of a motion to amend is to give the court an opportunity to correct
8 manifest errors of law or fact. *United States v. Local 1804-1, Int'l Longshoremen's Ass'n*, 831 F.
9 Supp. 167, 169 (S.D.N.Y. 1993). "Recognized grounds for a motion to alter or amend findings
10 include (1) that the trial court has made a manifest error of fact or law, (2) that there is newly
11 discovered evidence, or (3) that there has been a change in the law." *Renfro v. City of Emporia,*
12 *Kan.*, 732 F. Supp. 1116, 1117 (D. Kan. 1990) (internal quotations omitted). "[A] party who
13 realizes, with the acuity of hindsight, that he failed to present his strongest case at trial, is not
14 entitled to a second opportunity by moving to amend a finding of fact or a conclusion of law."
15 *Local 1804-1, Int'l Longshoremen's Ass'n*, 831 F. Supp. at 169.

16 Rule 52 is not a vehicle to simply reargue previously rejected contentions. Yet, that is
17 what Plaintiffs seek to do here. They are rearguing the same points with the same facts regarding
18 the address issue, overlapping ownership, and purported scoring errors that the Court rebuffed
19 already. Plaintiffs demonstrate no manifest error of law or fact, the law has not been changed,
20 and Plaintiffs do not present any new evidence. The Motion fails.

21 **B. The Essence Entities Do Not Violate NAC 453D.272, as the State Determined.**

22 Plaintiffs assert that the Essence Entities violated NAC 453D.272(5) because the separate
23 entities have overlapping owners even though they separately incorporated and chartered. (Mot. at
24 6:6-7.) NAC 453D.272(5) states: "To prevent monopolistic practices, the Department will ensure,
25 in a county whose population is 100,000 or more, that the Department does not issue, to any
26 person, group of persons or entity, the greater of: (a) One license to operate a retail marijuana
27
28

1 store; or (b) More than 10 percent of the licenses for retail marijuana stores allocable in the
2 county.”³

3 However, it is axiomatic that separate corporate entities are considered distinct even
4 though the owners, members, or managers are the same. “The authorities hold that the mere fact
5 that the stockholders in two or more corporations are the same, or that one corporation exercises a
6 control over the other through ownership of its stock or through identity of its stockholders, does
7 not make either the agent of the other nor does it merge them into one ... where each corporation
8 is separately organized under a distinct charter.” *Dregne v. Five Cent Cab Co.*, 40 N.E.2d 739,
9 744 (Ill. App. Ct. 1942), *aff’d*, 46 N.E.2d 386 (1943); *see also Page v. Walser*, 46 Nev. 390, 213
10 P. 107, 112 (1923) (“It is the general rule that real or personal property and choses in action,
11 conveyed to or acquired by a corporation, are in law the property of the corporation as a distinct
12 legal entity, and not in any sense the property of its members or stockholders. 14 C. J. § 7, p. 54; 1
13 Cook on Stock and Stockholders, § 6, p. 9.”).

14 Nevada has long recognized that corporations are generally to be treated as separate legal
15 entities. *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 902, 8 P.3d 841, 845 (2000); *see also*
16 *Gardner on Behalf of L.G. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 133 Nev. 730,
17 733, 405 P.3d 651, 654 (2017) (discussing limited liability companies). The Nevada Supreme
18 Court has “emphasized that ‘[t]he corporate cloak is not lightly thrown aside.’” *LFC Mktg. Grp.,*
19 *Inc.*, 116 Nev. at 903-04, 8 P.3d at 846 (quoting *Baer v. Amos J. Walker, Inc.*, 85 Nev. 219, 220,
20 452 P.2d 916, 916 (1969)). The corporate form can only be disregarded in a narrow set of
21 circumstances, such as piercing the corporate veil under an alter ego theory. *See Id.* at 903-04, 8
22 P.3d at 846 (stating that “the alter ego doctrine is an exception to the general rule recognizing
23 corporate independence.”); *Gardner*, 133 Nev. at 736, 405 P.3d at 656.

24
25
26 ³ The so-called anti-monopolistic intent behind the *medical* marijuana *statutes* is not the
27 same as the intent behind the *recreational* marijuana *regulations*. (compare Mot. at 5:21-6:5). For
28 the first 18 months, the recreational marijuana establishment application process was restricted to
businesses already “holding a medical marijuana establishment registration certificate.” NRS
453D.210(2).

1 Here, each of the Essence Entities is a separate and distinct legal entity. Each is separately
2 incorporated with its own governing documents. Each filed separate recreational marijuana
3 applications and each was individually awarded a conditional license. After reviewing their
4 ownership structures and applications, the State determined that each entity is distinct for
5 purposes of NAC 453D.272. (*See, e.g.,* Admitted Ex. 86; Mot. at 6:20-27). The State's
6 determination is entitled to deference. *See State v. Tatalovich*, 129 Nev. 588, 590, 309 P.3d 43, 44
7 (2013) (courts defer to agency factual findings).⁴ Because they are separate companies, none of
8 the Essence Entities was individually awarded more than one conditional license and none control
9 10% or more of the retail marijuana licenses in Clark County. *See* NAC 453D.272(5).

10 Plaintiffs present no evidence even hinting that Essence Entities' respective corporate
11 forms should be disregarded. Plaintiff complain about how the State graded the respective
12 Essence Entities' financial conditions but, again, scoring is within the State's discretion. *See*
13 *Douglas Cty. Bd. of Cty. Comm'rs v. Pederson*, 78 Nev. 106, 108, 369 P.2d 669, 671 (1962)
14 (rejecting lowest bidder's request for mandamus where the State had the discretion to determine
15 the lowest "responsible" bidder); *Reno Water, Land & Light Co. v. Osburn*, 25 Nev. 53, 56 P.
16 945, 946 (1899) ("the provision of the charter that the bidder offering to furnish the best system of
17 water supply for the least number of bonds shall be deemed the lowest or best bidder *commits to*
18 *the council a discretionary power to determine which system is the best, and introduces an*
19

20
21 ⁴ The Essence Entities also repeat their prior objection that the Plaintiffs necessarily lack
22 standing to seek or obtain any form of preliminary injunctive relief. *Stockmeier v. Nevada Dep't*
23 *of Corr. Psychological Review Panel*, 122 Nev. 385, 393, 135 P.3d 220, 225 (2006). Plaintiffs
24 have not shown an "injury in fact" stemming from any alleged error because there is no evidence
25 that Plaintiffs *would have* received licenses absent the alleged errors or that Plaintiffs will receive
26 a license in the future. Plaintiffs have not demonstrated that any alleged error on the results of the
27 Essence Entities' applications *caused* the State to reject Plaintiffs' applications. And Plaintiffs'
28 purported injury (*i.e.* lack of licenses) cannot and will not be redressed by any preliminary
injunction. (The Essence Entities' Bench Brief, filed Aug. 14, 2019 in Case No. A-19-786962-B);
Instead, the Plaintiffs simply seek to weaponize an injunction to try and gain leverage against
competition, something which the law does not permit. *See also Hauer v. BRDD of Indiana, Inc.*,
654 N.E.2d 316, 319 (Ind. Ct. App. 1995) (Parties lack standing to obtain preliminary injunction
against licenses issued to a competitor, because the State's regulatory system does not exist to
protect a competitor's market share or suppress competition).

1 *element inconsistent with competitive bidding* upon plans and specifications previously adopted.”)
2 (emphasis added).

3 There is no suggestion that the Essence Entities have abused the corporate form. The best
4 that Plaintiffs muster is that the “Court may simply look at how these entities have appeared in
5 this case.” (Mot. at 7 n.4). But there is nothing unusual about multiple companies appearing with
6 the same attorneys to conserve resources. Under Plaintiffs’ standard, MM Development and
7 LivFree themselves would violate NAC 453D.272(5) because *they’ve* hired the same law firm.
8 Nor do Plaintiffs present any proof that their respective owners did not also apply for multiple
9 licenses through different entities in the covered jurisdictions. Like their now abandoned
10 arguments related the State’s 5% background check threshold, Plaintiffs cannot obtain relief when
11 they would flunk their very own test.

12 **C. A Final Address is not a Prerequisite for the Application.**

13 Plaintiffs repeat the same argument that “the ballot initiative ... and the Department’s
14 adopted regulations ... absolutely required any approved applications must include physical
15 address where the proposed marijuana establishment will be located.” (Mot. at 9:8-10). They
16 disregard this Court’s recognition that the State “has only awarded conditional licenses which are
17 subject to local government approval[s] ... [and thus] the public safety aspects of the failure to
18 require an actual physical address *can be cured prior to the award of a final license.*” (FFCL ¶
19 75) (emphasis added).

20 But the Court’s ruling accords with Nevada Supreme Court precedent involving the
21 medical marijuana licensing process. In *Nuleaf CLV Dispensary, LLC v. State Department of*
22 *Health & Human Services, Division of Public & Behavioral Health*, 134 Nev. Adv. Op. 17, 414
23 P.3d 305 (2018), two unsuccessful applications for a medical marijuana certificate brought an
24 action seeking a mandatory injunction ordering the State to revoke a competitor’s provisional
25 certificate. The parties disputed whether the statutory scheme required all applicants to obtain
26 prior zoning and building approval from a local government before receiving a registration
27 certificate. *Id.* at 306-09.

1 The relevant provision provided that "not later than 90 days after receiving an application
2 to operate a medical marijuana establishment, the [Department] *shall register* . . . and issue a . . .
3 registration certificate *if* . . . [the applicant] ***has submitted to the [department] all of the***
4 ***following:*** Proof of licensure with the applicable local governmental authority or a letter
5 from the applicable local governmental authority certifying that the proposed medical marijuana
6 establishment is in compliance with [zoning] restrictions and satisfies all applicable building
7 requirements." *Id.* at 309 (emphasis in original) (quoting NRS 453A.322).

8 As with Plaintiffs here, the challengers argued that the statute required the applicants to
9 provide proof of local approval before the Department could even consider the application. *Id.*
10 The successful applicant, who did not have prior local approval – and in fact was denied local
11 approval – asserted that such local approval was merely one factor and that "nothing in the statute
12 prohibits the Department from considering an applicant that fails to meet the requirements." *Id.* at
13 309-310.

14 The Nevada Supreme Court agreed. Notwithstanding the language of the statute, the
15 Court explained that adopting the challengers' reading would produce unreasonable results by
16 precluding otherwise qualified applicants from submitting applications. *Id.* at 310. The Court
17 held that "nothing in the statute prohibits the Department from considering an applicant ***that fails***
18 ***to meet the requirements.***" *Id.* (Emphasis added). Just like the conditional licenses at issue here,
19 the medical marijuana certificates were provisional, and the businesses could not operate until the
20 establishment receives all local land use approvals. *Id.* Again, as the Court emphasized, there is
21 nothing in the statute which precludes the State from issuing a provisional license, even though
22 the applicant had not yet completed the local land use process, including because the statute
23 specifically authorizes a successful applicant the opportunity to change locations.

24 The same is true here for recreational marijuana. Nothing in NRS 453D forbids the State
25 from considering otherwise qualified applicants who require State approval *before* obtaining a
26 permanent address. The licenses are conditional until final inspection and approval. As long as the
27 conditional licensee has a permanent address (and complies with local zoning requirements)
28 before the State grants the final license, then NRS 453D.210(5)(b) is satisfied.

1 Just as the Supreme Court found in *Nuleaf*, Plaintiffs' interpretation would lead to the
2 absurd result that, just to apply, applicants had to obtain (and tie up) permanent locations without
3 knowing whether they would ever be awarded a provisional license. No prudent business person
4 would enter into expensive purchase contract or sublease without assurance that the State would
5 grant them a license. And no rational property owner would give "written permission ... to
6 operate the proposed marijuana establishment on the property" without certainty as to knowing
7 whether the tenant had State approval. *See* NRS 453D.210(5)(b). Property owner permission
8 without a conditional license would be tantamount to approving a potentially illegal act.

9 Plaintiffs cite to competitive bidding cases but those cases support the State's process. The
10 Nevada Supreme Court has held that, in the competitive bidding context, "it is well-established
11 that the terms of the advertisement and the terms of the bid or contract do not need to be
12 identical." *Orion Portfolio Servs. 2 LLC v. Cty. of Clark ex rel. Univ. Med. Ctr. of S. Nevada*, 126
13 Nev. 397, 407, 245 P.3d 527, 534 (2010) (citing *Bud Mahas Const. v. Clark County School Dist.*,
14 767 F. Supp. 1045, 1048 (D. Nev.1991) ("[M]inor variations from the specifications are not a
15 basis to reject the bid....")). The bid is valid if it substantially complies with the request and does
16 not materially differ from the invitation to bid. *Id.* at 406, 245 P.3d at 533.

17 Here, given the conditional nature of the licenses and *Nuleaf*, applicants substantially
18 comply with the statutory requirements to apply, and do not materially differ from the ballot
19 initiative, when they possess a permanent address before final inspection and approval. The State
20 has the discretion to determine when an application is "complete" and to decide whether the
21 applicant complied with the address requirement for purposes of a conditional license. *See* NRS
22 453D.210(4) ("Upon receipt of a complete marijuana establishment license application"). The
23 State's determination was proper. *Nuleaf CLV Dispensary*, 134 Nev. Adv. Op. 17, 414 P.3d at
24 311.

25 For instance, in *Redl v. Secretary of State*, 120 Nev. 75, 81, 85 P.3d 797, 801 (2004), the
26 plaintiff challenged the revival of a corporation's charter. The relevant statute required the
27 corporation's application to include "a list of its president, secretary and treasurer and all of its
28 directors." *Id.* at 81, 85 P.3d at 800. There, a corporation only filed a list with its president,

1 secretary, and treasurer, but omitted any directors. *Id.* at 81-82, 85 P.3d at 801. The Nevada
2 Supreme Court affirmed the Secretary of State’s decision to revive the corporation because “the
3 Secretary of State has discretion to accept applications for revival that substantially comply with
4 pertinent statutory provisions.” *Id.* at 78, 85 P.3d at 798; *id.* at 81, 85 P.3d at 800 (“The Secretary
5 of State thus has the discretion to accept applications that substantially comply with NRS
6 78.730.”).

7 In this case, the State has discretion to determine whether applicants without a permanent
8 address prior to final licensure substantially complied with the application process. The Essence
9 Entities complied with the essential elements, as confirmed by the State. The Court’s ruling was
10 correct under *Nuleaf*. The State lawfully issued conditional licenses and location or building
11 issues, if any, can be addressed before final licenses issue.

12 **D. The Testimony of Agency Employees Cannot be Considered to Reweigh the**
13 **Process.**

14 Plaintiffs highlight snippets of State employee testimony that supposedly bolster their
15 claims of error. (Mot. at 6:6-16, 11:19-12:4). But it has long been recognized that an agency
16 decisionmaker’s mental processes are generally irrelevant to evaluating the legality of agency
17 action. *See Morgan v. United States*, 304 U.S. 1, 18 (1938) (“we agree with the Government’s
18 contention that it was not the function of the court to probe the mental processes of the Secretary
19 in reaching his conclusions if he gave the hearing which the law required.”)

20 For example, in *United States v. Morgan*, 313 U.S. 409 (1941), the plaintiffs challenged
21 an administrative order setting certain agency rates. During the litigation, the court permitted the
22 challengers to take the Secretary of Agriculture’s deposition. *Id.* at 422. Similar to the State
23 employees at the evidentiary hearing, “[h]e was questioned at length regarding the process by
24 which he reached the conclusions of his order, including the manner and extent of his study of the
25 record and his consultation with subordinates. ... Much was made of his disregard of a
26 memorandum from one of his officials who, on reading the proposed order, urged considerations
27 favorable to the market agencies.” *Id.*

1 The Supreme Court held that “the Secretary should never have been subjected to this
2 examination.” *Id.* The Court compared the agency decision making process to the judicial
3 process. It reasoned “[j]ust as a judge cannot be subjected to such scrutiny, so the integrity of the
4 administrative process must be equally respected.” *Id.* (internal citations omitted). The State
5 employees should not have been compelled to give testimony and any statements that conflict
6 with the statutes or regulations cannot be considered.

7 The process of ranking applications is a matter left to the State agency. There is no
8 mechanism by which courts are permitted to substitute their evaluation of the merits of more than
9 400 applications.

10 **E. Alleged Open Meeting Law Violations Cannot Support Amending the**
11 **Preliminary Injunction.**

12 In its Joinder, Nevada Wellness Center asserts that purported open meeting law violations
13 require the Court to amend its preliminary injunction findings. It asserts that the “DoT’s arbitrary
14 and improper communication with applicants and their representatives/attorney violated NRS
15 chapter 241 ... and made the grading process unfair” (NV Wellness Joinder at 12:12-14.) But
16 the applications individually, and licensing processes in its entirety, were not “public meetings”
17 conducted by “public bodies” within NRS Chapter 241. The Court found no open meeting law
18 violation or “material irregularities.”

19 On the contrary, the Court determined that “[t]he few instances of clear mistakes” made
20 by the temporary employees who conducted the scoring “*do not, in and of themselves, result in*
21 *an unfair process as human error occurs in every process.*” (FFCL ¶50; *see also id.* at ¶¶78-
22 79)(emphasis added). Plaintiffs do not present any new or different evidence warranting an
23 alteration or amendment to the preliminary injunction.

24 ...

25 ...

26 ...

1 **III. CONCLUSION**

2 For these reasons, the Essence Entities respectfully request that Court deny all motions to
3 alter or amend the preliminary injunction.

4 DATED this 4th day of October, 2019.

5 PISANELLI BICE PLLC

6
7 By: /s/ Todd L. Bice
8 James J. Pisanelli, Esq., Bar No. 4027
9 Todd L. Bice, Esq., Bar No. 4534
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400 South 7th Street, Suite 300
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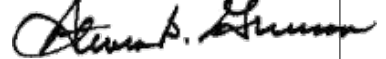
10 *Attorneys for Defendants in Intervention,*
11 *Integral Associates LLC d/b/a Essence Cannabis*
12 *Dispensaries, Essence Tropicana, LLC, Essence*
13 *Henderson, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 4th day of October, 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' OPPOSITION TO MM DEVELOPMENT COMPANY INC.'S AND LIVFREE WELLNESS LLC'S MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW** to all parties listed on the Court's Master Service List.

/s/ Shannon Dinkel

An employee of Pisanelli Bice PLLC



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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

SERENITY WELLNESS CENTER, LLC, a
Nevada limited liability company, TGIG, LLC, a
Nevada limited liability company, NULEAF
INCLINE DISPENSARY, LLC, a Nevada
limited liability company, NEVADA HOLISTIC
MEDICINE, LLC, a Nevada limited liability
company, TRYKE COMPANIES SO NV, LLC,
a Nevada limited liability company, TRYKE
COMPANIES RENO, LLC, a Nevada limited
liability company, 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, MEDIFARM IV, LLC, a Nevada
limited liability company, DOE PLAINTIFFS I
through X; and ROE ENTITY PLAINTIFFS I
through X.

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant.

And coordinated cases.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiffs hereby join in and incorporate by reference Nevada Wellness Center, LLC's

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

**JOINDER TO NEVADA WELLNESS,
LLC'S MOTION TO AMEND FINDINGS
OF FACT AND CONCLUSIONS OF LAW
ISSUED ON AUGUST 23, 2019
PURSUANT TO NRCP 52**

Coordinated for purposes of preliminary
injunction hearing with:

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

Case No.: A-19-787004-B
Dept. No.: XI

Case No.: A-19-787540-W
Dept. No.: XVIII

1 Motion to Amend Findings of Fact and Conclusions of Law filed in this case on September 30,
2 2019. This joinder is made and based upon the papers and pleadings on file herein, such other
3 documentary evidence as may be presented and any oral argument of counsel at the time of the
4 hearing. Plaintiffs expressly incorporate and adopt by reference herein all of the points and
5 authorities set forth in the Motion to Amend Findings of Fact and Conclusions of Law.

6 Dated this 7th day of October, 2019.

7 CLARK HILL PLLC

8
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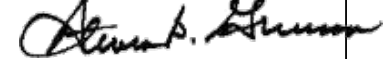
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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October, 2019, I served a true and correct copy of the foregoing **JOINDER TO NEVADA WELLNESS CENTER LLC’S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW** 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/ Tanya Bain

An employee of Clark Hill PLLC
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*Attorneys for Defendants in Intervention,
Integral Associates LLC d/b/a Essence Cannabis Dispensaries,
Essence Tropicana, LLC, Essence Henderson, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendants

NEVADA WELLNESS CENTER, LLC, a
Nevada Limited Liability Company,

Plaintiffs.

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

**THE ESSENCE ENTITIES' OPPOSITION
TO NEVADA WELLNESS CENTER,
LLC'S MOTION TO AMEND FINDINGS
OF FACTS AND CONCLUSIONS OF
LAW ISSUED ON AUGUST 23, 2019,
PURSUANT TO NRCP 52**

HEARING DATE: October 28, 2019

HEARING TIME: 9:00 a.m

Case No.: A-19-787540-W
Dept. No.: XVIII

1 vs.

2 STATE OF NEVADA, DEPARTMENT OF
3 TAXATION; and DOES I through X; and ROE
4 CORPORATIONS I through X.

5 Defendants.

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

8 Intervenor Defendant.

9 **I. INTRODUCTION**

10 Nevada Wellness Center, LLC (“Nevada Wellness”) moves (again) asking this Court to
11 change its conclusion that successful applicants for conditional licenses can satisfy the address
12 requirement before final inspection. Nevada Wellness presents the very same arguments
13 previously made. It offers nothing new. Nevada Wellness does not demonstrate any manifest
14 error of law or fact—particularly on this evidentiary record—and does not show a change in law
15 or evidence. This Court’s ruling is consistent with the Nevada Supreme Court’s recent *Nuleaf*
16 decision and Nevada Wellness provides no basis to ignore that decision.

17 **II. ARGUMENT**

18 **A. Nevada Wellness’s Motion is Untimely.**

19 A party's motion to amend the court's findings must be filed "no later than 28 days after
20 service of written notice of entry of judgment." NRCP 52(b); *see also* NRCP 59(e) ("A motion to
21 alter or amend a judgment must be filed no later than 28 days after service of written notice of
22 entry of judgment."). A district court is without jurisdiction to consider an untimely motion to
23 alter or amend. *Oelsner v. Charles C. Meek Lumber Co. of Carson City*, 92 Nev. 576, 577, 555
24 P.2d 217, 217 (1976) (motion to amend "was not filed within the required...period; therefore, the
25 district court was without jurisdiction to consider it."). Indeed, the rule expressly provides that
26 "[t]he time for filing the motion cannot be extended under Rule 6(b)." NRCP 52(b).

27 Here, Nevada Wellness initially filed its Motion in the wrong case. It acknowledges that
28 the other motion “was originally timely filed September 13, 2019, in case number A-19-787540-

1 W” (Mot. 3:7-9). But Nevada Wellness’s current Motion in the correct case is untimely.
2 Notice of Entry of the Court’s Preliminary Injunction was entered August 28, 2019. Accordingly,
3 September 25, 2019 was the deadline to file a motion to alter or amend. Nevada Wellness filed
4 the present Motion on September 30, 2019, five days late. As a result, the Court does not have
5 jurisdiction to entertain it.

6 **B. Nevada Wellness Fails to Satisfy NRCP 52(b).**

7 Nevada Rule of Civil Procedure 52(b) allows a party ask the Court to amend its findings
8 or make additional finding within 28 days of service of the written notice of entry of judgment.
9 NRCP 52(b). The purpose of a motion amend is to give the court an opportunity to correct
10 manifest errors of law or fact. *United States v. Local 1804-1, Int'l Longshoremen's Ass'n*, 831 F.
11 Supp. 167, 169 (S.D.N.Y. 1993). “Recognized grounds for a motion to alter or amend findings
12 include (1) that the trial court has made a manifest error of fact or law, (2) that there is newly
13 discovered evidence, or (3) that there has been a change in the law.” *Renfro v. City of Emporia,*
14 *Kan.*, 732 F. Supp. 1116, 1117 (D. Kan. 1990) (internal quotations omitted). “[A] party who
15 realizes, with the acuity of hindsight, that he failed to present his strongest case at trial, is not
16 entitled to a second opportunity by moving to amend a finding of fact or a conclusion of law.”
17 *Local 1804-1, Int'l Longshoremen's Ass'n*, 831 F. Supp. at 169.

18 Rule 52 is not a vehicle to simply reargue previously rejected contentions. Yet, that is
19 what Nevada Wellness seeks to do here. It is rearguing the same points with the same facts
20 regarding the address issue that were already addressed in this Court's Order. The Court
21 committed no manifest error of law or fact, the law has not been changed, and Nevada Wellness
22 does not present any new evidence. The Motion should be denied.

23 **C. A Final Address is not a Prerequisite for the Application.**

24 Nevada Wellness asserts that “all applications without physical locations should have been
25 deemed incomplete and rejected, not approved or scored by the DoT.” (Mot. 10:7-9). It disregards
26 this Court’s recognition that the State “has only awarded conditional licenses which are subject to
27 local government approval[s] ... [and thus] the public safety aspects of the failure to require an
28

1 actual physical address *can be cured prior to the award of a final license.*” (Pl’s Ex. A ¶ 75)
2 (emphasis added).

3 However, the Court’s ruling accords with Nevada Supreme Court precedent involving the
4 medical marijuana licensing process. In *Nuleaf CLV Dispensary, LLC v. State Department of*
5 *Health & Human Services, Division of Public & Behavioral Health*, 134 Nev. Adv. Op. 17, 414
6 P.3d 305 (2018), two unsuccessful applications for a medical marijuana certification brought an
7 action seeking a mandatory injunction ordering the State to revoke a competitor's provisional
8 certificate. The parties disputed whether the statutory scheme required all applicants to obtain
9 prior zoning and building approval from a local government before receiving a registration
10 certificate. *Id.* at 306-09.

11 The relevant provision provided that "not later than 90 days after receiving an application
12 to operate a medical marijuana establishment, the [Department] *shall register . . . and issue a . . .*
13 *registration certificate if . . . [the applicant] has submitted to the [department] all of the*
14 *following:* Proof of licensure with the applicable local governmental authority or a letter
15 from the applicable local governmental authority certifying that the proposed medical marijuana
16 establishment is in compliance with [zoning] restrictions and satisfies all applicable building
17 requirements." *Id.* at 309 (emphasis in original) (quoting NRS 453A.322).

18 As with Nevada Wellness here, the challengers argued that the statute required the
19 applicants to provide proof of local approval before the Department could even consider the
20 application. *Id.* The successful applicant, who did not have prior local approval – and in fact was
21 denied local approval – asserted that such local approval was merely one factor and the "nothing
22 in the statute prohibits the Department from considering an applicant that fails to meet the
23 requirements." *Id.* at 309-310.

24 The Nevada Supreme Court agreed. Notwithstanding the language of the statute, the
25 Court explained that adopting the challengers' reading would produce unreasonable results by
26 precluding otherwise qualified applicants from submitting applications. *Id.* at 310. The Court
27 held that “nothing in the statute prohibits the Department from considering an applicant *that fails*
28 *to meet the requirements.*” *Id.* (Emphasis added). Just like the conditional licenses at issue here,

1 the medical marijuana certificates were provisional, and the businesses could not operate until the
2 establishment receives all local land use approvals. *Id.* Again, as the Court emphasized, there is
3 nothing in the statute which precludes the State from issuing a provisional license, even though
4 the applicant had not yet completed the local land use process, including because the statute
5 specifically authorizes a successful applicant the opportunity to change locations.

6 The same is true here for recreational marijuana. Nothing in NRS 453D forbids the State
7 from considering otherwise qualified applicants who require State approval *before* obtaining a
8 permanent address. The licenses are conditional until final inspection and approval. As long as the
9 conditional licensee has a permanent address (and complies with local zoning requirements)
10 before the State grants the final license, then NRS 453D.210(5)(b) is satisfied.

11 Just as the Supreme Court found in *Nuleaf*, Nevada Wellness’s interpretation would lead
12 to the absurd result that, just to apply, applicants had to obtain (and tie up) permanent locations
13 without knowing whether they would ever be awarded a provisional licence. No prudent business
14 person would enter into expensive purchase contract or sublease without assurance that the State
15 would grant them a license. And no rational property owner would give “written permission ... to
16 operate the proposed marijuana establishment on the property” without certainty as to knowing
17 whether the tenant had State approval. *See* NRS 453D.210(5)(b). Such permission without a
18 conditional license would be tantamount to approving a potentially illegal act.

19 Nevada Wellness analogizes to competitive bidding cases but those cases support the
20 State’s process and the Court’s finding. The Nevada Supreme Court has held that, in the
21 competitive bidding context, “it is well-established that the terms of the advertisement and the
22 terms of the bid or contract do not need to be identical.” *Orion Portfolio Servs. 2 LLC v. Cty. of*
23 *Clark ex rel. Univ. Med. Ctr. of S. Nevada*, 126 Nev. 397, 407, 245 P.3d 527, 534 (2010) (citing
24 *Bud Mahas Const. v. Clark County School Dist.*, 767 F. Supp. 1045, 1048 (D. Nev.1991)
25 (“[M]inor variations from the specifications are not a basis to reject the bid....”). The bid is valid
26 if it substantially complies with the request and does not materially differ from the invitation to
27 bid. *Id.* at 406, 245 P.3d at 533.

28

1 Here, given the conditional nature of the licenses and *Nuleaf*, applicants substantially
2 comply with the statutory requirements to apply, and do not materially differ from the ballot
3 initiative, when they possess a permanent address before final inspection and approval. The State
4 has the discretion to determine when an application is “complete” and to decide whether the
5 applicant complied with the address requirement for purposes of a conditional license. *See* NRS
6 453D.210(4) (“Upon receipt of a complete marijuana establishment license application”). The
7 State’s determination is entitled to great deference. *Nuleaf CLV Dispensary*, 134 Nev. Adv. Op.
8 17, 414 P.3d at 311.

9 For instance, in *Redl v. Secretary of State*, 120 Nev. 75, 81, 85 P.3d 797, 801 (2004), the
10 plaintiff challenged the revival of a corporation’s charter. The relevant statute required the
11 corporation’s application to include “a list of its president, secretary and treasurer and all of its
12 directors.” *Id.* at 81, 85 P.3d at 800. There, a corporation only filed a list with its president,
13 secretary, and treasurer, but omitted any directors. *Id.* at 81-82, 85 P.3d at 801. The Nevada
14 Supreme Court affirmed the Secretary of State’s decision to revive the corporation because “the
15 Secretary of State has discretion to accept applications for revival that substantially comply with
16 pertinent statutory provisions.” *Id.* at 78, 85 P.3d at 798; *id.* at 81, 85 P.3d at 800 (“The Secretary
17 of State thus has the discretion to accept applications that substantially comply with NRS
18 78.730.”).

19 Here, the State has discretion to determine whether applicants without a permanent
20 address prior to final licensure substantially complied with the application process. The Essence
21 Entities complied with the essential elements, as confirmed by the State. The Court’s ruling was
22 correct under *Nuleaf*. The State lawfully issued conditional licenses and location or building
23 issues, if any, can be addressed before final licenses issue.

24 **D. Alleged Open Meeting Law Violations Cannot Support Amending the**
25 **Preliminary Injunction.**

26 Next, Nevada Wellness makes an altogether new contention, asserting that purported open
27 meeting law violations require the Court to amend its preliminary injunction findings. It asserts
28 that the “DoT’s arbitrary and improper communication with applicants and their

1 representatives/attorney violated NRS chapter 241...and made the grading process unfair”
2 (Mot. 12:12-14). But the applications individually, and licensing processes in its entirety, were
3 not “public meetings” conducted by “public bodies” within NRS Chapter 241. The Court found
4 no open meeting law violation or “material irregularities.” Instead, the Court determined that
5 “[t]he few instances of clear mistakes” made by the temporary employees who conducted the
6 scoring “*do not, in and of themselves, result in an unfair process as human error occurs in*
7 *every process.*” (Pl.’s Ex. A ¶50; *see also id.* at ¶¶78-79). Nevada Wellness concedes that “minor
8 irregularities,” if any, do not entitle it to amended findings. (*See* Mot. 19:19). Nevada Wellness
9 has not demonstrated any manifest error of law or fact and is not entitled to amended findings.

10 **III. CONCLUSION**

11 For these reasons, the Essence Entities respectfully request that the Court deny Nevada
12 Wellness’s Motion to Amend Findings of Fact and Conclusions of Law Issued on August 23,
13 2019, Pursuant to NRCP 52.

14 DATED this 10th day of October, 2019.

15 PISANELLI BICE PLLC

16 By: /s/ Todd L. Bice
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18 Todd L. Bice, Esq., Bar No. 4534
19 Jordan T. Smith, Esq., Bar No. 12097
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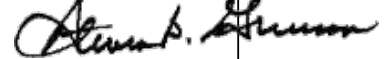
20 *Attorneys for Defendants in Intervention,*
21 *Integral Associates LLC d/b/a Essence Cannabis*
22 *Dispensaries, Essence Tropicana, LLC, Essence*
23 *Henderson, LLC*
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27
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 10th day of October, 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' OPPOSITION TO NEVADA WELLNESS CENTER, LLC'S MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52** to all parties listed on the Court's Master Service List.

/s/ Shannon Dinkel

An employee of Pisanelli Bice PLLC



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3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLEATCHIE LAW

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9 Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

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

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

15 Plaintiffs,

16 vs.

17 STATE OF NEVADA, DEPARTMENT OF
18 TAXATION,

19 Defendant,

20 and

21 NEVADA ORGANIC REMEDIES, LLC, a
22 Nevada limited liability company;
23 GREENMART OF NEVADA NLV LLC, a
24 Nevada limited liability company,
25 INTEGRAL ASSOCIATES LLC d/b/a
26 ESSENCE CANNABIS DISPENSARIES, a
27 Nevada limited liability company; ESSENCE
28 TROPICANA, LLC, a Nevada limited liability
company; ESSENCE HENDERSON, LLC, a
Nevada limited liability company; CPCM
HOLDINGS, LLC d/b/a THRIVE
CANNABIS MARKETPLACE,
COMMERCE PARK MEDICAL, LLC, a
Nevada limited liability company; and
CHEYENNE MEDICAL, LLC, a Nevada
limited liability company,

Defendants-Intervenors.

Case No.: A-19-786962-B

Dept. No.: XI

DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S JOINDER TO LONE
MOUNTAIN PARTNERS, LLC'S
OPPOSITION TO NEVADA
WELLNESS CENTER, LLC'S
MOTION TO AMEND FINDINGS
OF FACT AND CONCLUSIONS OF
LAW ISSUED ON AUGUST 23, 2019,
PURSUANT TO NRCP 52

Hearing Date: October 28, 2019

Hearing Time: 9:00 a.m.

Defendant-Intervenor GreenMart of Nevada NLV LLC, by and through its undersigned counsel, McLetchie Law, hereby joins the Opposition to Nevada Wellness Center, LLC's Motion to Amend Findings of Fact and Conclusions of Law Issued on August 23, 2019, Pursuant to NRCP 52 filed in this matter by Defendant in Intervention Lone Mountain Partners, LLC on October 10, 2019 and adopts the arguments and grounds as stated in the Points and Authorities filed in support of said Opposition on October 10, 2019.

DATED this the 10th day of October, 2019.

/s/ Alina M. Shell

MARGARET A. MCLECHIE, Nevada Bar No. 10931

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MCLECHIE LAW

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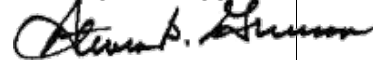
Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing DEFENDANT-INTERVENOR GREENMART OF NEVADA NLV LLC'S JOINER TO LONE MOUNTAIN PARTNERS, LLC'S OPPOSITION TO NEVADA WELLNESS CENTER, LLC'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52 in *Serenity Wellness Center, LLC, et al. v. State of Nevada, Department of Taxation, et al.*, Clark County District Court Case No A-19-786962-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

/s/ Lacey Ambro

An Employee of McLetchie Law



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13 *Attorneys for Intervenor/Defendant*

14 *Lone Mountain Partners, LLC*

15
16 EIGHTH JUDICIAL DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 SERENITY WELLNESS CENTER, LLC, a

19 Nevada limited liability company, TGIG, LLC,

20 a Nevada limited liability company, NULEAF

21 INCLINE DISPENSARY, LLC, a Nevada

22 limited liability company, NEVADA

23 HOLISTIC MEDICINE, LLC, a Nevada limited

24 liability company, TRYKE COMPANIES SO

25 NV, LLC a Nevada limited liability company,

26 TRYKE COMPANIES RENO, LLC, a Nevada

27 limited liability company, GBS NEVADA

28 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 ENTITIES

I through X,

Plaintiffs,

vs.

THE STATE OF NEVADA, DEPARTMENT

OF TAXATION,

Defendant.

Case No.: A-19-786962-B

Dept. No.: XI

**LONE MOUNTAIN PARTNERS, LLC'S
OPPOSITION TO NEVADA
WELLNESS CENTER, LLC'S MOTION
TO AMEND FINDINGS OF FACT AND
CONCLUSIONS OF LAW ISSUED ON
AUGUST 23, 2019, PURSUANT TO
NRCP 52**

Hearing Date: October 28, 2019

Hearing Time: 9:00 a.m.





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

3 Intervenor/Defendant.

4 ETW MANAGEMENT GROUP LLC, a
5 Nevada limited liability company; GLOBAL
6 HARMONY LLC, a Nevada limited liability
7 company; GREEN LEAF FARMS HOLDINGS
8 LLC, a Nevada limited liability company;
9 GREEN THERAPEUTICS LLC, a Nevada
10 limited liability company; HERBAL CHOICE
11 INC., a Nevada corporation; JUST QUALITY,
12 LLC, a Nevada limited liability company;
13 LIBRA WELLNESS CENTER, LLC, a Nevada
14 limited liability company; ROMBOUGH REAL
15 ESTA TE INC. dba MOTHER HERB, a Nevada
16 corporation; NEVCANN LLC, a Nevada limited
17 liability company; RED EARTH LLC, a Nevada
18 limited liability company; THC NEVADA LLC,
19 a Nevada limited liability company; ZION
20 GARDENS LLC, a Nevada limited liability
21 company; and MMOF VEGAS RETAIL, INC.,
22 a Nevada corporation,

23 Plaintiffs,

24 vs.

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

Defendants.

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

31 Intervenor/Defendant.

Case No.: A-19-787004-B
Dept. No.: XI

32 Lone Mountain Partners, LLC (“Lone Mountain”), by and through counsel undersigned,
33 hereby files this Opposition to Nevada Wellness Center, LLC’s Motion to Amend the Findings
34 of Fact and Conclusions of Law Issued on August 23, 2019 Pursuant to NRCP 52 (the



1 “Motion”). This Opposition is based upon the record, the following memorandum of points and
2 authorities and the supporting exhibits thereto, and such further argument of counsel as the Court
3 may permit at the hearing on this matter.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 I. INTRODUCTION

6 Nevada Wellness Center, LLC (“NWC”)’s motion to amend the Findings of Fact and
7 Conclusions of Law Issued on August 23, 2019 (“FFCL”) must be denied. First and foremost,
8 the motion was filed after three appeals of the FFCL had been noticed and the Court therefore
9 has been divested of jurisdiction to modify or amend the FFCL. Second, NWC’s motion was
10 filed 33 days after notice of entry of the FFCL was served, and thus is untimely under NRCP
11 52(b) which requires that motions to amend be filed within 28 days of notice of entry of order.
12 Third, the relief NWC seeks—altering factual findings in the FFCL and broadening the scope of
13 the injunction—well exceeds the narrow bounds of amendment permitted under NRCP 52(b).

14 Additionally, even if this Court were able to reach the merits of NWC’s motion, which it
15 should not do given the jurisdictional and procedural bars stated herein, it should nevertheless
16 deny the motion. NWC’s theory of unfair competitive bidding is undone by the fact that the
17 public contracting cases cited by NWC are wholly inapplicable to marijuana licensing which is
18 governed by an entirely unrelated statutory code and *Nuleaf* prohibits any expansion of this
19 Court’s preliminary injunction. Finally, NWC has failed to state any claim supporting a
20 violation of Nevada’s Open Meeting Law as NWC never alleges that the Department of Taxation
21 acted with a quorum of its members present.

22 Accordingly, the Court should deny NWC’s motion.

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1 **II. RELEVANT PROCEDURAL HISTORY**

2 ***Entry of FFCL and Three Appeals¹ Taken***

3 The FFCL was entered by this Court on August 23, 2019. On September 19, 2019,
4 Defendant-Intervenors Nevada Organic Remedies, LLC (“NOR”) and GreenMart of Nevada
5 NLV LLC (“GreenMart”) both filed Notices of Appeal. *See Exhibit 1*, NOR Notice of Appeal
6 (Sept. 19, 2019); *Exhibit 2*, GreenMart’s Notice of Appeal. On September 27, 2019, Lone
7 Mountain Partners filed its appeal. *See Exhibit 3*, Lone Mountain’s Notice of Appeal.

8 ***Motions to Amend FFCL Filed After***
9 ***Multiple Appeals Noticed***

10 On September 24, 2019, after two appeals of the Court’s preliminary injunction order had
11 been noticed and filed, non-parties in this action, MM Development and LivFree Wellness
12 (plaintiffs in similar proceedings pending in Department 8) filed a Motion to Alter or Amend
13 Findings of Fact and Conclusions of Law in this action. Then, on September 30, 2019, exactly
14 33 days after the notice of entry of the FFCL was served, NWC filed the instant motion to amend
15 the FFCL. NWC’s motion was thus filed after three appeals had been taken on the very order
16 that NWC’s requests that this Court amend.

17 **III. LEGAL ARGUMENT**

18 NWC requests that the Court modify its FFCL pursuant to NRCP 52(b). However, the
19 Court has been divested of jurisdiction to consider the issues raised by NWC by the filing of
20 three separate appeals prior to NWC filing its motion. Additionally, NWC filed its motion to
21 amend 33 days after the notice of entry of the FFCL was served, and therefore, its motion is
22 time-barred. Furthermore, NWC is seeking to use Rule 52(b) as a vehicle to reargue the merits
23 of the case, alter the facts as found in the FFCL, and to broaden the scope of the injunction. The
24 relief sought clearly exceeds the narrow bounds of amendment permitted under NRCP 52.

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27 ¹ Cross appeals were also filed by Plaintiffs MM Development Company, Inc. and LivFree Wellness LLC in
28 Department 8 and by Plaintiffs in ETW Management Group LLC *et al.* in this Department.



1 Even if this Court were able to reach the merits of NWC’s arguments, which it cannot,
2 NWC’s arguments are wholly inapposite as public contracting cases are governed by an entirely
3 separate statutory scheme than that which governs marijuana licensing. Moreover, *Nuleaf*
4 prohibits expansion of the Court’s preliminary injunction as requested by NWC, and NWC has
5 failed to identify any open meeting law violations.

6 **A. NWC’s Motion Raises Issues Currently Outside of the Court’s Jurisdiction,**
7 **Is Time-Barred, and Seeks Relief Unavailable Under NRCP 52(b)**

8 The Court should decline to reach the merits of NWC’s motion because the issues raised
9 by NWC are currently pending appeal and this Court therefore lacks jurisdiction to consider the
10 same without first complying with the *Huneycutt* procedure and certifying an intent to grant the
11 motion with the Nevada Supreme Court. Additionally, NWC’s motion was filed outside the time
12 period allowed for filing a motion under NRCP 52(b) and must be denied as time-barred.
13 Finally, the relief sought by NWC’s motion is outside of that permitted by NRCP 52(b) and the
14 motion should be summarily denied for this reason as well.

15 **1. The Court Is Divested of Jurisdiction to Consider Issues Pending**
16 **Appeal**

17 After a timely appeal is taken of a district court’s preliminary injunction order, the district
18 court lacks jurisdiction to modify the preliminary injunction. *See Finkel v. Cashman Prof’l, Inc.*,
19 128 Nev. 68, 76 n.3, 270 P.3d 1259, 1265 n.3 (2012). That is because “a timely notice of appeal
20 divests the district court of jurisdiction to act and vests jurisdiction in” the appellate court.
21 *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006) (citing *Rust v. Clark*
22 *Cty. School District*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987); *Smith v. Emery*, 109 Nev.
23 737, 740, 856 P.2d 1386, 1388 (1993); *Huneycutt v. Huneycutt*, 94 Nev. 79, 80, 575 P.2d 585,
24 585 (1978)). “When an appeal is filed, the district court is divested of jurisdiction and can only
25 enter orders on matters that are purely collateral to the appeal, ‘i.e., matters that in no way affect
26 the appeal’s merits.’” *Patraw v. Growth*, 127 Nev. 1165, 373 P.3d 949 (Table) (2011) (quoting
27 *Mack-Manley v. Manley*, 122 Nev. at 855, 138 P.3d at 529-30).

28 If a district court wishes to grant a motion on an issue that is on appeal, “it must certify its
inclination to grant the motion to [the Nevada Supreme Court], and then the moving party must



1 request [the Nevada Supreme Court] remand the issue so that the district court can address it,” a
2 process referred to as the “*Huneycutt* procedure.” *Id.*

3 Here, the FFCL was appealed by NOR and GreenMart on September 19, 2019 and by
4 Lone Mountain on September 27, 2019. The instant motion to amend the FFCL was not filed
5 until September 30, 2019—after three separate appeals were filed. Accordingly, this Court has
6 been divested of its jurisdiction to modify the FFCL and can only enter orders that are “collateral
7 to” and that “in no way affect the appeal’s merits.” Certainly, the Court cannot amend the FFCL
8 and Preliminary Injunction Order as requested by NWC without first certifying its intent to do so
9 with the Nevada Supreme Court. For the reason alone, NWC’s motion must be denied.

10 **2. NWC’s Motion Is Time-Barred Under NRCP 6(b) and 52(b)**

11 NWC moves to amend the Court’s FFCL pursuant to NRCP 52(b) yet NWC ignores that
12 its motion is time-barred under the very rule under which it seeks relief. Specifically, Rule 52(b)
13 makes clear that a motion to amend findings of fact and conclusions of law must be made within
14 28 days of notice of entry of order, *with no exceptions*:

15 **Rule 52. Findings and Conclusions by the Court; Judgment on
Partial Findings**

16 ...

17 (b) **Amended or Additional Findings.** On a party’s motion *filed*
no later than 28 days after service of written notice of entry of
judgment, the court may amend its findings — or make additional
18 findings — and may amend the judgment accordingly. *The time for*
filing the motion cannot be extended under Rule 6(b). The motion may
19 accompany a motion for a new trial under Rule 59.

20 ...

NRCP 52(b) (emphasis added).

21 **Rule 6. Computing and Extending Time; Time for Motion Papers**

22 ...

(b) **Extending Time.**

23 (1) **In General.** When an act may or must be done within a
specified time:

24 (A) the parties may obtain an extension of time by stipulation
if approved by the court, provided that the stipulation is submitted to the
court before the original time or its extension expires; or

25 (B) the court may, for good cause, extend the time:

26 (i) with or without motion or notice if the court acts, or if
a request is made, before the original time or its extension expires; or

27 (ii) on motion made after the time has expired if the party
failed to act because of excusable neglect.



(2) **Exceptions.** *A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(c)(1), and must not extend the time after it has expired under Rule 54(d)(2).*

NRCP 6 (emphasis added).

The Nevada Rules of Civil Procedure make clear that Rule 52(b) motions must be made within 28 days of notice of entry of order and that the Court cannot extend this time.

Accordingly, NWC's motion to amend pursuant to Rule 52(b), which was filed 33 days after notice of entry of order, is time-barred and cannot be considered by this Court. As NRCP 6(b) makes clear, the Court is without discretion to modify this deadline. Accordingly, the Court must deny NWC's motion as time-barred.

3. NWC Impermissibly Seeks to Relitigate the Issues, Which Is Not a Legitimate Basis for Amendment under NRCP 52(b)

NWC filed the instant motion to amend the FFCL pursuant to NRCP 52(b), but the relief it seeks—altering (and reversing) certain factual findings in the FFCL and broadening the scope of the injunction—well exceeds the narrow bounds of amendment permitted under NRCP 52. The motion must be denied.

Rule 52(b) permits a party to request amendment of a court's findings or to make additional findings. The Nevada Supreme Court has explained: "Rule 52(b) merely provides a method for amplifying and expanding the lower court's findings, and is not intended as a vehicle for securing a re-hearing on the merits." *Matter of Estate of Herrmann*, 100 Nev. 1, 21, 677 P.2d 594, 607, n.16 (1984); *see id.* ("A party who failed to prove his strongest case is not entitled to a second opportunity by moving to amend a finding of fact and a conclusion of law.") (quoting 9 Wright & Miller, Federal Practice and Procedure 722 § 2582).

Of particular relevance to NWC's requests to substantively alter the FFCL in the instant motion, it must be clarified that: "The Rule does *not* provide for a reversal of the judgment or for a denial of the facts as found, which is what the plaintiff requests at present." *Herrmann*, 100 Nev. at 21, 677 P.2d at 607, n.16 (quoting *Matyas v. Feddish*, 4 F.R.D. 385, 386 (M.D. Pa. 1945)) (emphasis added).



Here, NWC is not requesting that the Court amplify and expand on certain of its findings as authorized by Rule 52(b). Rather, NWC is seeking to use Rule 52 as a vehicle to reargue the merits of the case, alter the facts as found in the FFCL, and to broaden the scope of the injunction. This is clearly not permitted under Rule 52(b). *See Hermann*, 100 Nev. at 21, 677 P.2d at 607 (noting that NRCP 52(b) is not the proper vehicle to seek a re-trial or a re-hearing); *see also Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1220 (5th Cir. 1986) (“Blessed with the acuity of hindsight, [a party] may now realize that it did not make its initial case as compellingly as it might have, but it cannot charge the District Court with responsibility for that failure through [a] Rule 52(b) motion.”); *U.S. v. Local 1804-1, Int’l Longshoremen’s Ass’n*, 831 F. Supp. 167, 169 (S.D.N.Y. 1993). (“[A] party who realizes, with the acuity of hindsight, that he failed to present his strongest case at trial, is not entitled to a second opportunity by moving to amend a finding of fact or a conclusion of law.”)

In sum, the Court should deny NWC’s motion because the relief requested exceeds the narrow bounds of amendment permitted under NRCP 52.

B. Even If the Court Reaches the Merits, NWC’s Motion Must Be Denied Because Public Contracting Cases Are Inapposite, *Nuleaf* Prevents the Broadening of the Injunction, and NWC Fails to Show Any Violation of Nevada’s Open Meetings Laws

In the event the Court decides to reach the merits of NWC’s motion, which it should not for the reasons explained above, it should nevertheless deny NWC’s motion. The numerous public contracting cases cited by NWC are wholly inapposite as public contracts are governed by NRS Chapter 338, whereas retail marijuana licenses are governed by NRS Chapter 453D. Additionally, the Court should deny NWC’s motion because *Nuleaf* prevents the expansion of the preliminary injunction requested by NWC and NWC has failed to identify any open meeting law violations.

1. Public Contracting Cases Are Governed by an Incomparable Statutory Scheme and Are Inapposite

NWC relies on several cases about the competitive bidding process for awarding public contracts. *See* Motion, p. 18-19 (citing *Spiniello Const. Co. v. Town of Manchester*, 189 Conn.



1 539, 544, 456 A.2d 1199, 1202 (1983); *A.A.B. Elec., Inc. v. Stevenson Pub. Sch. Dist. No. 303*,
2 491 P.2d 684, 685 (1971); *Blount, Inc. v. United States*, 22 Cl. Ct. 221, 227 (1990); and
3 *Honeywell, Inc. v. United States*, 16 Cl. Ct. 173, 181, rev'd, 870 F.2d 644 (Fed. Cir. 1989)).

4 These competitive bidding cases are not applicable to the DOT's process for awarding licenses at
5 issue in this case.

6 **2. Competitive Bidding Is Governed by an Entirely Separate and**
7 **Complex Statutory Scheme Than NRS 453D and NAC 453D**

8 First, Nevada's competitive bidding process for public contracts is governed by a unique
9 and complex statutory scheme. NRS 338.1373 *et seq.* (general procedures for awarding public
10 contracts); NRS 338.1385, 338.1389 (containing detailed requirements for competitive bidding
11 process when awarding public contracts).² Some of the elements of the competitive bidding
12 process for public contracts include advertising for bids; awarding the contract "to the lowest
13 responsive and responsible bidder"; determining who is a "qualified bidder"; and certificates of
14 eligibility to receive a preference. NRS 338.1385, 338.1389.

15 Further, this process is exclusive, and no other criteria may be considered when
16 determining whether to approve or deny an application for qualifying as a bidder. NRS
17 338.1379 ("the Division shall not use any criteria other than criteria adopted by regulation
18 pursuant to NRS 338.1375 in determining whether to approve or deny an application.").

19 At no time did DOT ever choose to initiate a competitive bidding process for the
20 recreational marijuana licenses. At no time did the DOT operate under NRS Chapter 338.
21 Moreover, it was impossible for DOT to operate under NRS Chapter 338—which does not allow
22 consideration of outside criteria—and also consider the language of NRS 453D and NAC
23 453D—which is the basis of NWC's complaints. Because the competitive bidding process is not
24 applicable to this case, the Court should reject NWC's arguments.

25 _____
26 ² Insofar as NWC argues that a different competitive bidding process applies, Nevada also has complex statutory
27 schemes dictating the competitive bidding process for purchases and sales by local governments and States. NRS
28 332.045 *et seq.* (Local Government Purchasing Act outlining competitive bidding process for purchases and sales by
local governments); NRS 333.250 *et seq.* (statutes outlining competitive bidding process for purchases and sales by
the State).



1 **3. Competitive Bidding Process Applies to Public Contracts, Not**
2 **Licenses**

3 NWC's competitive bidding cases are also inapplicable because competitive bidding for
4 public contracts is based in contract law. *See Nevada Comm'n on Ethics v. JMA/Lucchesi*, 866
5 P.2d 297, 301 (1994) ("A bid is no more than an offer to contract.") (citing *A.A.B. Elec., Inc.*,
6 491 P.2d at 686); *Blount*, 22 Cl. Ct. at 226 (competitive bidding claim was a "contract claim").

7 In contrast, it is foundational to Nevada law, and has long been held, that state licenses
8 are not contracts. *Wallace v. City of Reno*, 73 P. 528, 529 (1903) ("[L]icenses to sell liquors are
9 not contracts between the state and the person licensed, ...but are merely temporary permits to
10 do what otherwise would be an offense"); *Fidelis Holdings, LLC v. Hand*, No. 2:15-CV-00147-
11 GMN, 2015 WL 4997318, at *6-7 (D. Nev. Aug. 19, 2015) ("[A] state-issued license does not
12 create a contract....") (holding that applicant for medical marijuana license did not have
13 contractual relationship with the State). Thus, NWC's competitive bidding cases for public
14 contracts are inapplicable because this case involves state licenses, not state contracts.

15 **4. Material Deviations in Bids Only Applies to Contracts, Not Licenses**

16 In the competitive bidding process, bids which contain material deviations from the
17 invitation to bid must be rejected. *Orion Portfolio Servs. 2 LLC v. Cty. of Clark ex rel. Univ.*
18 *Med. Ctr. of S. Nev.*, 245 P.3d 527, 534 (2010). NWC argues that this should also apply to
19 recreational marijuana licenses: that applications with material deviations from NRS 453D
20 should also be rejected. Motion, p. 19. However, NWC's reasoning is flawed.

21 The materiality requirement in competitive bidding arises from principles of contract law.
22 In *Orion*, the Nevada Supreme Court explained:

23 If the invitation to bid and the contract differ materially, then the contract
24 is void. It is void, not voidable, because the local government exceeded its
25 authority and was not authorized to make such a contract...The local
26 government must act within the limits of its power when forming
contracts, and contracts whose terms materially differ from the terms of
the invitation to bid exceed the local government's authority and are void.
245 P.3d at 534.

27 As previously stated, recreational marijuana licenses are not contracts. *See Wallace*, 73 P.
28 at 529; *Fidelis*, 2015 WL 4997318, at *6-7. Therefore, DOT's authority to issue such licenses is



1 not bound by principles of contract law such as materiality. Moreover, NWC has provided no
2 authority to establish materiality as an element that the DOT was required to consider when
3 interpreting NRS 453D and administering NAC 453D. This is because materiality is not an
4 element of statutory construction and is thus inapplicable to this case.

5 **C. NWC Fundamentally Misunderstands and Misconstrues *Nuleaf*, Which Bars**
6 **Its Requested Relief**

7 NWC errantly argues that *Nuleaf CLV Dispensary, LLC v. State Dep't of Health*, 134
8 Nev. Adv. Op. 17, 414 P.3d 305 (2018) is inapplicable because, in that case, the Nevada
9 Supreme Court addressed a requirement under NRS Chapter 453A governing medical marijuana
10 licensing not NRS Chapter 453D governing retail marijuana licensing. NWC misses the point.

11 *Nuleaf* is directly applicable and controlling of the issue here. In *Nuleaf*, the Nevada
12 Supreme Court addressed whether a specific statutory requirement that a provisional medical
13 marijuana license would issue “*if*” the applicant had submitted proof of local licensure made
14 proof of local licensure a formal pre-requisite to obtain a provisional license under NRS Chapter
15 453A.

16 The Nevada Supreme Court held that Nevada’s Department of Health and Human
17 Services was entitled to deference in its interpretation and execution of its discretionary
18 functions, and to its determination that local licensure was not a pre-requisite to a provisional
19 license under NRS Chapter 453A even though the statutory language suggested that local
20 licensure was a necessary pre-condition to receiving a license. *NuLeaf*, 414 P.3d at 311. Based
21 on this deference, the Court reversed the district court’s issuance of an injunction directing the
22 Department to revoke a license and award it to a different applicant, acknowledging that
23 “[c]ourts ... must respect the judgment of the agency empowered to apply the law to varying fact
24 patterns, even if the issue with nearly equal reason [might] be resolved one way rather than
25 another.” *Id.* (quoting *Malecon v. Tobacco, LLC v. State ex rel. Dep't of Taxation*, 118 Nev.
26 837, 841-42 n.15, 59 P.3d 474, 477 n.15 (2002)).

27 Indeed, the very same arguments that NWC asserts, namely, that listing a physical
28 location was a pre-requisite to a complete application and the Department lacked discretion to



1 deviate—was argued but ultimately rejected in *Nuleaf* with respect to the statutory pre-requisite
2 of proof of local licensure. Accordingly, under *Nuleaf*, the Court must defer to the Department’s
3 decision to treat listing of “*proposed* physical location” as not a pre-requisite to a conditional
4 license, but rather, something that must be provided before a final inspection and final license
5 was issued.

6 **D. NWC Fails to Identify Any Open Meeting Law Violations**

7 NWC incorrectly contends that the Department violated Nevada’s Open Meeting Laws
8 “with regard to dissemination of information related to the recreational marijuana licensing
9 applications and associated requirements.” Motion at 10. NWC profoundly misunderstands
10 Nevada’s Open Meeting Laws.

11 “[T]he Open Meeting Law is not intended to prohibit every private discussion of a public
12 issue. Instead, the Open Meeting Law only prohibits collective deliberations or actions where a
13 quorum is present.” *Dewey v. Redevelopment Agency of City of Reno*, 119 Nev. 87, 94–95, 64
14 P.3d 1070, 1075 (2003). “Discussions with less than a quorum are not deliberations within the
15 meaning of the act.” *Id.* at 98, 64 P.3d at 1077. Thus, “[w]hen less than a quorum is present,
16 private discussions and information gathering do not violate the Open Meeting Law.” *Id.* at 99,
17 64 P.3d at 78. Moreover, even a public agency’s “private, back-to-back staff briefings” do not
18 violate Nevada’s Open Meeting Law unless there is a showing of “substantial evidence” that a
19 quorum was present and that the public body took “action” or formally deliberated towards an
20 action. *Id.*

21 Notably, Nevada’s Open Meeting Law defines “action” to mean a “decision,”
22 “commitment or promise made,” or, “an affirmative vote” taken, by “a majority of the members
23 present, whether in person or by means of electronic communication, *during a meeting of a*
24 *public body.*” NRS 241.015(1)(a), (b), (c) (emphasis added). “Meeting,” in turn, is defined as
25 “[t]he gathering of members of a public body *at which a quorum is present*, whether in person or
26 by means of electronic communication, to deliberate toward a decision or to take action on any
27 matter over which the public body has supervision, control, jurisdiction or advisory power.”
28 NRS 241.015(3)(a)(1) (emphasis added).



1 Here, no evidence suggests that a quorum of the Department was present at the informal
2 meetings and “information dissemination” referred to in NWC’s motion. In fact, NWC does not
3 even argue that there was quorum, and instead, appears to suggest that it was only one or two
4 Department members meeting with various individuals potentially affiliated with various
5 applicants and in informal, social settings, or having “discussions.” *See* Motion at 11-12.

6 A member of a public body can dine with or have a “discussion” with a member of
7 industry without violating open meeting laws and NWC has failed to cite any authority to the
8 contrary. To the extent that NWC insinuates that discussions between members of the
9 Department and the public were improper, NWC would be asserting a claim under the ethics in
10 government provisions that prohibit conflicts of interest. However, noticeably, NWC has
11 declined to make such an assertion, presumably because it realizes that its factual allegations do
12 not rise to the level of any breaches of ethics in government provisions.

13 The testimony elicited at the hearing was that Department members were taking
14 significant attempts at public outreach and information dissemination and were attempting to be
15 open and transparent during the roll out of a new and ground-breaking state program. As Jorge
16 Pupo testified, all applicants had “the same opportunity to request clarification,” the same
17 “access to the Department,” the same “opportunity to attend 70-plus public meetings and
18 workshops” regarding the regulations at issue.” *See* Exhibit G to NWC’s Motion, Trial
19 Transcript Excerpts from June 19, 2019 Vol. 11, at 58. Discussions with applicants that
20 specifically requested clarification on application requirements do not violate open meeting laws
21 as a matter of law.

22 In sum NWC has failed to identify any basis for the Court to amend the FFCL.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Lone Mountain respectfully requests that the Court deny
3 NWC's motion.

4 Dated this 10th day of October 2019.

5 H1 LAW GROUP

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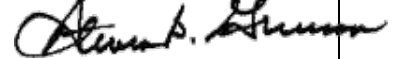
14 **CERTIFICATE OF SERVICE**

15 The undersigned, an employee of H1 Law Group, hereby certifies that on the 10th day of
16 October 2019, she caused a copy of the foregoing to be transmitted by electronic service in
17 accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey**
18 **E-File & Serve** system.

19 

20 Bobbye Donaldson, an employee of
21 H1 LAW GROUP

EXHIBIT 1



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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, 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.

STATE OF NEVADA, DEPARTMENT OF
TAXATION;

Defendant

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor

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

**NEVADA ORGANIC REMEDIES,
LLC'S NOTICE OF APPEAL**

1 Notice is hereby given that Nevada Organic Remedies, LLC appeals to the Supreme
2 Court of Nevada from the Findings of Fact and Conclusions of Law Granting Preliminary
3 Injunction issued on August 23, 2019 (as modified on August 29, 2019) by Judge Elizabeth
4 Gonzalez in the following cases:

5 (1) *Serenity Wellness center, LLC et. al. v. State of Nevada, Department of Taxation,*
6 Case No. A-19-786962-B;

7 (2) *ETW Management Group, LLC et. al. v. State of Nevada, Department of*
8 *Taxation,* Case No. A-19-787004-B;

9 (3) *MM Development Company, Inc. et. al. v. State of Nevada, Department of*
10 *Taxation,* Case No. A-19-785818-W;

11 (4) *Nevada Wellness Center v. State of Nevada, Department of Taxation,* Case No.
12 A-19-787540-W.

13
14
15 **KOCH & SCOW, LLC**

16 By: /s/ David R. Koch
17 David R. Koch
18 Attorneys for Defendant-Intervenor
19 Nevada Organic Remedies LLC
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on September 19, 2019, I caused the foregoing document entitled: **NEVADA ORGANIC REMEDIES, LLC'S NOTICE OF APPEAL** to be served as follows:

- ☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and /or;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and /or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and /or
- ☐ 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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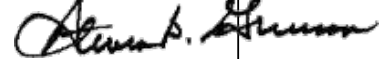
Monice Campbell (monice@envision.legal)

27 Theresa Mains, Esq. (theresa@theresamainspa.com)

28 Executed on September 19, 2019 at Henderson, Nevada.

/s/ _____
Andrea Eshenbaugh

EXHIBIT 2



1 **NOAS**

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3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLEATCHIE LAW

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6 Las Vegas, NV 89101

7 Telephone: (702) 728-5300

8 Email: maggie@nvlitigation.com

9 Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

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

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

16 Plaintiffs,

17 vs.

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

21 Defendants,

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

24 Defendant-Intervenor.

25 SERENITY WELLNESS CENTER, LLC, et
26 al.,

27 Plaintiffs,

28 vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant,

and

GREENMART OF NEVADA NLV LLC, a
Nevada limited liability company, et al.

Defendants-Intervenor.

ETW MANAGEMENT GROUP LLC, a
Nevada limited liability company; GLOBAL
HARMONY LLC, a Nevada limited liability
company; GREEN LEAF FARMS
HOLDINGS LLC, a Nevada limited liability

Case No.: A-18-785818-W

Dept. No.: VIII

DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL

Case No.: A-19-786962-B

Dept. No.: XI

DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL

Case No.: A-19-787004-B

Dept. No.: XI

DEFENDANT-INTERVENOR

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

Plaintiffs,

vs.

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

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

COMPASSIONATE TEAM OF LAS VEGAS LLC, a Nevada Limited Liability Company;

Plaintiff,

vs.

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

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

HIGH SIERRA HOLISTICS, LLC,
Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF

**GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL**

Case No.: A-18-786357-W

Dept. No.: XIV

**DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL**

Case No.: A-19-787726-C

Dept. No.: XIV

**DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV**

TAXATION; DOES 1-10 and ROE
CORPORATIONS 1-10,
Defendants.

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

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

vs.

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

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

LLC'S NOTICE OF APPEAL

Case No.: A-19-787540-W

Dept. No.: XVIII

**DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S NOTICE OF APPEAL**

PLEASE TAKE NOTICE that Defendant-Intervenor GreenMart of Nevada NLV LLC, by and through its attorneys of record, Margaret A. McLetchie and Alina M. Shell, of the law firm McLetchie Law, pursuant to Nevada Rule of Appellate Procedure 4(b)(1), hereby timely appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order entered in the following cases on August 28, 2019:¹

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

(2) *MM Development Company, Inc. et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-785818-W;

(3) *ETW Management Group, LLC et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-787004-B;

///

¹ On September 19, 2019, GreenMart of Nevada NLV, LLC also filed an Amended Notice Of Entry of the Court's August 23, 2019 Findings of Fact, Conclusions of Law and Order which, in compliance with EDCR 2.50(b)(2), lists all six matters coordinated pursuant to the Court's order entered July 11, 2019. Regardless, this does not affect the timeliness of GreenMart of Nevada NLV, LLC's Notice of Appeal.

(4) *Nevada Wellness Center v. State of Nevada, Department of Taxation*, Case No. A-19-787540-W;

(5) *Compassionate Team of Las Vegas LLC v. Nevada Department of Taxation*, Case No. A-18-786357-W; and

(6) *High Sierra Holistics LLC v. State of Nevada Department of Taxation*, Case No. A-19-787726-C.

DATED this the 19th day of September, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLETCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

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Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

CERTIFICATE OF SERVICE

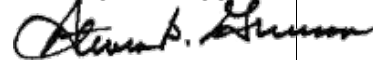
I hereby certify that on this 19th day of September, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing DEFENDANT-DEFENDANT-INTERVENOR GREENMART OF NEVADA NLV LLC'S NOTICE OF APPEAL in *Serenity Wellness Center, LLC, et al. v. State of Nevada, Department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

This document applies to Case No. A-19-786962-B; Case No. A-19-785818-W; Case No. A-19-787004-B; Case No. A-19-787540-W; Case No. A-18-786357-W; and Case No. A-19-787726-C.

/s/ Pharan Burchfield

An Employee of McLetchie Law

EXHIBIT 3



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*Attorneys for Intervenor/Defendant
Lone Mountain Partners, LLC*

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
NOTICE OF APPEAL**





1 Notice is hereby given that Lone Mountain Partners, LLC appeals to the Supreme Court of
2 Nevada from the Findings of Fact and Conclusions of Law Granting Preliminary Injunction issued
3 by Judge Elizabeth Gonzalez, notice of which was entered on August 28, 2019.¹

4 Dated this 27th day of September 2019.

5 H1 LAW GROUP

6 
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14 *Attorneys for Intervenor/Defendant*

15 *Lone Mountain Partners, LLC*

16
17
18
19
20
21
22 ¹ The Amended Notice of Entry of Order filed on September 19, 2019 identifies the following six matters coordinated
23 for the purposes of the preliminary injunction hearing pursuant to the Court's July 11, 2019 Order regarding same:

- 24 1) *MM Development Company, Inc. et. al. v. State of Nevada, Department of Taxation*, Case No. A-18-785818-W;
25 2) *Compassionate Team of Las Vegas LLC v. State of Nevada, Department of Taxation*, Case No. A-18-786357-W;
26 3) *Serenity Wellness Center, LLC et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-786962-B;
27 4) *ETW Management Group, LLC et. al. v. State of Nevada, Department of Taxation*, Case No. A-19-787004-B;
28 5) *Nevada Wellness Center v. State of Nevada, Department of Taxation*, Case No. A-19-787540-W; and
6) *High Sierra Holistics, LLC v. State of Nevada, Department of Taxation*, Case No. A-19-787726-C.




CERTIFICATE OF SERVICE

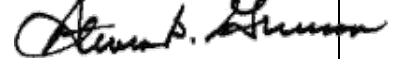
The undersigned, an employee of H1 Law Group, hereby certifies that on the 27th day of September 2019, she caused a copy of the foregoing **Notice of Appeal**, to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system.

<p><i>Serenity Wellness Center LLC; TGIG, LLC; Nuleaf Incline Dispensary, LLC; Nevada Holistic Medicine, LLC; Tryke Companies SO NV, LLC; Tryke Companies Reno, LLC; Paradise Wellness Center, LLC; GBS Nevada Partners, LLC; Fidelis Holdings, LLC; Gravitas Nevada, LLC; Nevada Pure, LLC; and Medifarm, LLC:</i> Dominic P. Gentile (dgentile@clarkhill.com) Vincent Savarese III (vsavarese@clarkhill.com) Michael V. Cristalli (mcristalli@clarkhill.com) Ross J. Miller (rmiller@clarkhill.com) ShaLinda Creer (screer@clarkhill.com) Tanya Bain (tbain@clarkhill.com)</p>	<p><i>ETW Management Group, LLC; Global Harmony, LLC; Green Leaf Farms Holdings, LLC; Green Therapeutics, LLC; Herbal Choice, Inc.; Just Quality, LLC; Libra Wellness Center, LLC; Rombough Real Estate, Inc. dba Mother Herb; NevCann, LLC; Red Earth, LLC; THC Nevada, LLC; Zion Gardens, LLC; and MMOF Vegas Retail, Inc.:</i> Adam K. Bult (abult@bhfs.com) Maximillen Fetaz (mfetaz@bhfs.com) Travis Chance (tchance@bhfs.com) Adam Fulton (afulton@jfnvlaw.com) Jared Jennings (jjennings@jfnvlaw.com) Vicki Bierstedt (vickib@jfnvlaw.com) Norma Richter (nrichter@jfnvlaw.com) Logan Willson (Logan@jfnvlaw.com) Paula Kay (pkay@bhfs.com)</p>
<p><i>MM Development Company, Inc. and LivFree Wellness, LLC</i> William S. Kemp Nathaniel R. Rulis (n.rulis@kempjones.com) Patricia Stoppard (p.stoppard@kempjones.com) Ali Augustine (a.augustine@kempjones.com)</p>	<p><i>Nevada Wellness Center, LLC.</i> Theodore Parker ('tparker@pnalaw.net)</p>
<p><i>State of Nevada Department of Taxation:</i> Aaron Ford Steven Shevorski (sshevorski@ag.nv.gov) David J. Pope(dpope@ag.nv.gov) Robert E. Werbicky (rwerbicky@ag.nv.gov) Ketan Bhirud (kbhirud@ag.nv.gov) Traci Plotnick (tplotnick@ag.nv.gov) Theresa Haar (thaar@ag.nv.gov) Mary Pizzariello (mpizzariello@ag.nv.gov) Barbara Fell (bfell@ag.nv.gov)</p>	<p><i>Clear River, LLC:</i> Brigid Higgins (bhiggins@blacklobello.law) Jerri Rusty J. Graf (Rgraf@blacklobello.law) Hunsaker (jhunsaker@blacklobello.law) Diane Meeter (dmeeter@blacklobello.law) Joyce Martin (jmartin@blacklobello.law)</p>



<p>GreenMart of Nevada NLV LLC: Margaret McLetchie (maggie@nvlitigation.com) Alina Shell (alina@nvlitigation.com)</p>	<p>Helping Hands Wellness Center Inc: Jared Kahn (jkahn@jk-legalconsulting.com)</p>
<p>Integral Associates, LLC d/b/a Essence Cannabis Dispensaries; Essence Tropicana, LLC; Essence Henderson, LLC: James Pisanelli (lit@pisanellibice.com) Todd Bice (tlb@pisanellibice.com) Jordan Smith (jts@pisanellibice.com) MGA Docketing (docket@mgalaw.com) Shannon Dinkel (sd@pisanellibice.com) Joseph Gutierrez (jag@mgalaw.com) Jason R. Maier (jrm@mgalaw.com) Philip M. Hymanson (phil@hymansonlawnv.com) Henry J. Hymanson (hank@hymansonlawnv.com)</p>	<p>CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace: Dennis M. Prince (dprince@thedplg.com) Kevin T. Strong (kstrong@thedplg.com) Joseph Gutierrez (jag@mgalaw.com) Jason R. Maier (jrm@mgalaw.com) Philip M. Hymanson (phil@hymansonlawnv.com) Henry J. Hymanson (hank@hymansonlawnv.com)</p>
<p>Nevada Organic Remedies: David R. Koch (dkoch@kochscow.com) Steven B. Scow (sscow@kochscow.com) Brody R. Wight (bwight@kochscow.com) Daniel G. Scow (dscow@kochscow.com) Andrea Eshenbaugh - Legal Assistant (aeshenbaugh@kochscow.com)</p>	<p>Other Service Contacts not associated with a party on the case: Daniel Simon (lawyers@simonlawlv.com) Alisa Hayslett (a.hayslett@kempjones.com) Cami Perkins, Esq. (cperkins@nevadafirm.com) Thomas Gilchrist (tgilchrist@bhfs.com) Lisa Lee (llee@thedplg.com) Eservice Filing (eservice@thedplg.com) Monice Campbell (monice@envision.legal) Theresa Mains, Esq. (theresa@theresamainspa.com) Rebecca Post (rebecca@connorpllc.com)</p>


Bobbye Donaldson, an employee of
H1 LAW GROUP



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Steven B. Scow (NV Bar #9906)
Brody R. Wight (NV Bar #13615)
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sscow@kochscow.com

Attorneys for Defendant-Intervenor/Counterclaimant
Nevada Organic Remedies, LLC

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

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

Plaintiff,

vs.

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

Defendants,

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor.

NEVADA ORGANIC REMEDIES, LLC,

Counterclaimant,

vs.

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

Counter-Defendants

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

**APPLICATION FOR WRIT OF
MANDAMUS TO COMPEL STATE
OF NEVADA, DEPARTMENT OF
TAXATION TO MOVE NEVADA
ORGANIC REMEDIES, LLC INTO
"TIER 2" OF SUCCESSFUL
CONDITIONAL LICENSE
APPLICANTS**

HEARING REQUESTED

1 Defendant-Intervenor and Counterclaimant Nevada Organic Remedies, LLC
2 (“NOR”) hereby applies to this Court for the issuance of a writ of mandamus pursuant
3 to NRS 34.160 to compel the State of Nevada, Department of Taxation (the
4 “Department”) to move NOR into the Department-created “Tier 2” of successful
5 applicants for recreational marijuana licenses. This Application is supported by the
6 following Memorandum of Points and Authorities and exhibits attached thereto, the
7 Declarations of Brody R. Wight and Brandon Wiegand, the pleadings and papers on file
8 herein, and any other materials this Court may wish to consider.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. INTRODUCTION**

11 This lawsuit centers on the application process for obtaining licenses to operate
12 recreational marijuana establishments in the State of Nevada. NOR applied for several
13 recreational marijuana licenses in September 2018, and in December 2018, the
14 Department notified NOR that its applications were successful, and it was awarded
15 conditional licenses to open seven establishments. The unsuccessful applicants filed this
16 and other lawsuits claiming that they should have received licenses or that the
17 application process was unfair. NOR has filed a counterclaim for declaratory relief
18 seeking a determination that its conditional licenses were properly obtained and that it
19 should be permitted to open its stores.

20 On August 26, 2019, District Court Judge Elizabeth Gonzalez issued a Preliminary
21 Injunction and made certain determinations, including a legal finding that the
22 Department’s adoption of NAC 453D.255(1)—which set a 5% threshold for ownership to
23 be considered by the Department—was “arbitrary and capricious” and constituted an
24 “impermissible deviation” from Ballot Question 2, the voter initiative permitting
25 recreational marijuana in Nevada. (Ex. 2.) In connection with that Injunction, Judge
26 Gonzalez asked the Department to review and confirm which successful applicants had
27 listed “each prospective owner, officer, and board member” in their applications, so that
28

1 a background check could be performed pursuant to NRS 453D.200(6) for each owner,
2 officer, and board member of the applicant.

3 The Department followed Judge Gonzalez's instruction and attempted to
4 determine which applicants had in fact listed "each prospective owner, officer, and
5 board member" when applications were submitted in September 2018. In completing
6 this task, the Department ultimately created three "Tiers" of successful applicants.
7 These Tiers included:

8 "Tier 1" – applicants who did not intervene in this litigation, and which the
9 Department automatically deemed to have listed their full ownership
10 without checking further.

11 "Tier 2" – intervenors which the Department decided it could confirm had listed
12 "each prospective owner, officer, and board member" in their
13 applications. This Tier included five of the intervenors.

14 "Tier 3" – intervenors for which the Department "could not eliminate a question
15 as to the completeness of their applications" with respect to the list of
16 owners, officers, and board members. Four intervenors were included in
17 this tier, including NOR. (Exhibit 1).

18 After being notified of these Tiers, Judge Gonzalez ordered that the Department
19 could conduct final inspections for Tier 1 and Tier 2 applicants, thereby allowing those
20 applicants to move forward to open recreational marijuana establishments using their
21 conditional licenses. But for Tier 3 applicants, Judge Gonzalez enjoined the Department
22 from conducting a final inspection for these applicants until such time that the
23 Department could confirm that each prospective owner, officer, and board member had
24 been listed on the application.

25 NOR was one of four applicants included in Tier 3 when the Department made its
26 initial review. After this initial determination was made, NOR provided additional
27 information to the Department to make it clear that NOR had in fact listed "each
28 prospective owner, officer, and board member" of NOR on its applications. The

1 Department, however, has failed to reassess its initial assignment of the Tiers, and it has
2 taken the position that the mere existence of a “question” would preclude any change
3 even if the law or the facts demonstrated that its initial determination was incorrect. As
4 a result, although it fully complied with the law and provided the information required
5 by the statute at issue, NOR is now stuck in legal limbo, as the Department will not take
6 further action to correct the initial Tier determination for NOR, and NOR cannot move
7 forward to obtain a final inspection for each of its marijuana establishments as is
8 necessary to open its doors.

9 The Department’s designation of NOR in Tier 3 is also confounding because the
10 Department has already approved NOR’s ownership structure in an application for a
11 transfer of ownership that was submitted and approved prior to applications for
12 recreational licenses being submitted. By suddenly reversing course and changing its
13 position on the matter without explanation after NOR has detrimentally relied on the
14 Department’s own statements and approvals, the Department is acting arbitrarily and
15 capriciously.

16 Accordingly, NOR now applies to this Court for the issuance of a writ of
17 mandamus directing the Department to move NOR into Tier 2 of the applicants. Doing
18 so will allow NOR to move forward to open establishments with its approved licenses
19 just as numerous other licensees with similar ownership structures have been permitted
20 to do. This relief is necessary and warranted on an expedited basis, as NOR currently
21 has a deadline of December 4, 2019, to have final inspections completed for each
22 establishment or otherwise its conditional licenses may be canceled.

23 **II. LEGAL AND FACTUAL BACKGROUND**

24 **A. The Application Process**

25 The initiative to legalize recreational marijuana, Ballot Question 2 (“BQ2”), was
26 approved by Nevada citizens in 2016. BQ2 was enacted and codified as NRS 453D. As
27 the government agency charged with the implementation of the Nevada recreational
28 marijuana program pursuant to NRS 453D.200, the Department accepted and graded

1 applications for licenses to operate recreational marijuana establishments across the state
2 of Nevada from applicants between September and December 2018. Because the
3 Department received more applications than licenses available, the Department scored
4 the applications and awarded conditional licenses to the highest-ranking applicants in
5 each jurisdiction pursuant to NRS 453D.210. NOR was a successful applicant that
6 received seven conditional licenses.

7 After the Department announced the successful applicants for recreational
8 marijuana establishment licenses in December 2018, a number of unsuccessful
9 applicants, including Plaintiffs MM Development and LivFree Wellness, brought
10 lawsuits against the Department claiming that the licensing process was flawed and
11 requesting that they be awarded licenses even though they had not received enough
12 points to merit a license. NOR and several other successful applicants intervened into
13 various of the lawsuits as Defendant-Intervenors.

14 **B. Judge Gonzalez Grants a Preliminary Injunction on Limited Grounds**

15 In May 2019 Judge Gonzalez coordinated four of the licensing cases solely for the
16 purpose of conducting an evidentiary hearing on motions for preliminary injunctions
17 filed by the plaintiffs. The motions for preliminary injunction contained a broad array of
18 scattershot arguments attempting to prevent successful applicants from opening for
19 business. The motions argued that the Department violated NRS Chapter 453D or
20 violated the plaintiffs' constitutional rights by doing everything from including diversity
21 among the grading criteria to using outside contractors to grade the applications. The
22 motions led to a four-month, pre-discovery evidentiary hearing where plaintiffs of the
23 various lawsuits combed through every decision the Department made in attempt to
24 find some problem in the process.

25 At some point during the many weeks of the evidentiary hearing, the
26 Department's mandate under NRS 453D.200(6) to "conduct a **background check of each**
27 **prospective owner, officer, and board member** of a marijuana establishment license
28

1 applicant” began to be part of the discussion. This issue was not part of any complaint
2 in the various actions, nor has any party amended their complaint to add this issue.

3 With respect to the requirement that the Department background check “each
4 prospective owner,” in January 2018 the Department adopted a regulation in NAC
5 453D.255(1) providing that the application of NRS 453D would “only apply to a person
6 with an aggregate ownership interest of 5 percent or more in a marijuana establishment”
7 (the “5% rule”). As discussed in the preliminary injunction hearing, the 5% rule was
8 already part of the medical marijuana regulatory framework (NAC 453A.302(1) already
9 had the same 5% limitation), and the 5% rule was specifically requested by the industry
10 and recommended by the Governor’s Task Force. (See Ex. 3.) Even though the 5% rule
11 was not mentioned in any of the motions for preliminary injunction, Judge Gonzalez
12 expressed a concern that the regulation may not comply with NRS 453D.200(6), because
13 it did not require the Department to conduct a background check for “each prospective
14 owner.”

15 Despite the fact that none of the plaintiffs to the various lawsuits had ever
16 complained about the 5% rule—not before submitting applications, not in their
17 complaints, not even in their motions for preliminary injunctions—Judge Gonzalez
18 found in her Findings of Fact and Conclusions of Law that the Department’s decision “to
19 not require disclosure on the application and to not conduct background checks on
20 persons owning less than 5% prior to award of a conditional license is an impermissible
21 deviation from the mandatory language of...NRS 453D.200(6),” which therefore
22 supported a preliminary injunction preventing the Department from conducting final
23 inspections of any applicants where there was any question about complete ownership
24 being listed in an application. (FFCL, ¶ 82). Judge Gonzalez granted the preliminary
25 injunction on that single legal issue.

26 In conjunction with her Findings of Fact and Conclusions of Law, Judge Gonzalez
27 asked the Department to determine which successful applicants it could definitively
28 confirm had listed “each prospective owner, officer, and board member” at the time they

1 filed their applications. The Department, through the Attorney General's office, then
2 sent the Court an email in response preliminarily placing all successful applicants into
3 one of the three Tiers described above. (Ex. 1.)

4 Judge Gonzalez thereafter determined that the preliminary injunction would only
5 prevent the Department from conducting final inspections only for those applicants that
6 were designated to be in "Tier 3."

7 **C. The Department Was Directed to Redesignate Applicants by Tier When**
8 **Warranted, but It Has Failed to Do So**

9 The initial determination of applicant Tiers was not intended to be final. Judge
10 Gonzalez expressly stated that the Department could move applicants between Tiers, if
11 warranted, after reviewing the information that the applicants had submitted to the
12 Department. Judge Gonzalez stated that she was "merely seeking to exclude applicants
13 who filed applications in compliance with NRS 453d.200(6) at the time the applications
14 were filed from the injunctive relief that I have granted...Any issues should be directed
15 to the Department for you to resolve based upon the information that was in your
16 applications at the time." (Ex. 4 at 56:27-57:16.) NOR filed a "Response to the
17 Department's Statement Regarding Completeness of Applications with Reference to
18 NRS 453D.200(6)" which clearly laid out the ownership structure of NOR in its
19 application and once again explained that each and every owner had been listed, even
20 those with less than a 5% ownership interest in NOR. (Ex. 5.) As explained in this
21 Response, NOR did in fact list each and every owner of the applicant in its September
22 2018 application. The Department did not oppose or take any position with respect to
23 this Response, but it also did not take any action to correct its earlier designation of NOR
24 in Tier 3.

25 NOR has subsequently corresponded with and met with the Department to
26 continue to ensure that the Department had complete and accurate information
27 regarding the content of NOR's September 2018 applications. NOR has requested on
28 numerous occasions that the Department correct its erroneous determination of NOR

1 being placed in Tier 3, but as of this writing the Department has not taken any action to
2 correct its miscategorization of NOR. The Department has not made any statement
3 either way as to its position on NOR's ownership listing. At present, it appears that the
4 Department will not take any action to correct its miscategorization unless it is
5 compelled to do so by this court.

6 **III. ARGUMENT**

7 **A. Standard for Writ of Mandamus Relief**

8 Pursuant to NRS 34.160, a district court may issue a writ of mandamus "to
9 compel the performance of an act which the law especially enjoins as a duty resulting
10 from an office, trust or station; or to compel the admission of a party to the use and
11 enjoyment of a right or office to which the party is entitled and from which the party is
12 unlawfully precluded by such inferior tribunal, corporate, board or person."

13 A writ of mandamus will issue when the respondent "has a clear, present legal duty to
14 act." *Round Hill Gen. Imp. Dist. v. Newman*, 637 P.2d 534, 536 (Nev. 1981). When "factual
15 issues are critical in demonstrating the propriety of a writ of mandamus, the writ should
16 be sought in the district court." *Id.* at 536.

17 Writs of mandamus are available to compel government agencies such as the
18 Department to perform "an act that the law requires as a duty or to control an arbitrary
19 or capricious exercise of discretion." *Gumm ex rel. Gumm v. Nevada Dept. of Educ.*, 113
20 P.3d 853, 856 (Nev. 2005) (holding that a writ of mandamus is the proper vehicle to
21 challenge the Nevada Department of Education's compliance with the Individuals with
22 Disabilities Education Act). In fact, the Nevada Supreme Court has recently held that
23 parties may utilize mandamus to challenge agency decisions regarding marijuana
24 licensing. *See, State Dept. of Health and Human Services, Div. of Pub. and Behavioral Health*
25 *Med. Marijuana Estab. Program v. Samantha Inc.*, 407 P.3d 327, 332 (Nev. 2017) (noting that
26 the Department of Health and Human Services, the agency then tasked with issuing
27 medical marijuana registration certificates, had itself acknowledged that mandamus
28 may be available to challenge licensing decisions).

1 Under the recreational marijuana statutory framework, the Department is
2 required to approve a license if the requirements of the application process have been
3 met. NRS 453D.210(5) imposes a mandatory requirement that “the Department **shall**
4 **approve** a license application” if the listed criteria are satisfied. The Department may
5 therefore be compelled by the issuance of a writ of mandamus to take action to move
6 NOR to Tier 2 pursuant to the terms of the statute.

7 **B. This Court Should Compel the Department to Move NOR into Tier 2**

8 NOR fully complied with the requirements of NRS 453D.200(6) to provide
9 complete information to allow the Department to “conduct a background check of each
10 prospective owner, officer, and board member of [the] marijuana license applicant.”
11 This is true even without applying the limitation of the 5% rule set forth in NAC
12 453D.255(1), which Judge Gonzalez found to be improper. While NOR believes that the
13 5% limitation is a proper exercise of the Department’s discretion and a reasonable
14 interpretation of the ownership requirements in the application,¹ that issue can be set
15 aside for purposes of this Application, as it has no bearing on NOR’s requested relief
16 here.

17 NOR does not understand the Department’s initial determination to include NOR
18 within Tier 3. The Department has not provided a definitive answer as to why NOR was
19 placed in Tier 3. The Department has only stated that it “could not determine whether
20 there were shareholders who owned a membership interest in the applicant at the time
21 the application was submitted, but who were not listed [in the application].” (Ex. 1.) In
22 doing so, the Department has failed to follow its own interpretation of the very statute at
23 issue in the Preliminary Injunction.

24 In considering NRS 453D.200(6)’s requirement for the Department to conduct a
25 background check of “each prospective owner, officer, or board member of a marijuana
26

27 ¹ NOR and multiple additional parties have filed an Appeal of Judge Gonzalez’s Preliminary
28 Injunction, as they contend Judge Gonzalez was not correct in finding the 5% limitation to be an
“impermissible deviation” from BQ2. Plaintiffs in this case, MM Development and LivFree,
have also filed a Cross-Appeal of that injunction.

1 license applicant,” the terms of the statute should first be examined. The “marijuana
2 license applicant” here is NOR itself, so the Department must look to the owners of NOR
3 to determine whether each owner was listed in NOR’s application.

4 The statute does not provide any definition of “owner,” nor does it provide any
5 method to determine the “owner” of an applicant. If the Legislature had “independ-
6 dently defined [a] word or phrase contained within a statute,” then the court “must
7 apply that definition wherever the Legislature intended it to apply....” *Knickmeyer v.*
8 *State ex. Rel. Eighth Judicial Dist. Ct.*, 133 Nev. 675, 679 (2017). But where no definition is
9 provided, the court must give the words “their plainest and most ordinary meaning
10 unless the Legislature clearly used them differently, or the words are used in an
11 ambiguous way.” *Id.*

12 The term “owner” is not defined in NRS 453D, so the Court must give the word
13 its plain and ordinary meaning. NOR is a limited liability company, and NRS Chapter
14 86 provides that “members” of the LLC are the “owner[s] of a member’s interest in a
15 limited-liability company.” NRS 86.081. In accordance with this statutory construct,
16 NOR’s application listed every owner of any membership interest of NOR, including
17 owners with less than a 5% membership interest in the company. The Organizational
18 Chart provided in NOR’s applications lists “each owner” and provides the percentage of
19 ownership of each owner at the time of the application. GGB Nevada, LLC owned 95%
20 of NOR, Andrew Jolley owned 2.2%, Stephen Byrne owned 1.7%, Patrick Byrne owned
21 0.5%, Harvest Dispensaries owned 0.5%, and Darren Petersen owned 0.1%. (Ex. 6).

22 This same ownership structure was provided to the Department well before the
23 application time period, and **the Department issued a Notice of Transfer of Interest**
24 **Approval letter clearly stating that NOR’s ownership of interest was “reviewed and**
25 **APPROVED.”** (Exhibit 7).

26 Prior correspondence and discussion with the Department further demonstrates
27 that the list NOR provided in its application was proper. NOR specifically asked how to
28 list its owners, officers, and board members with respect to transfer of interest forms

1 submitted to the Department, and the Department confirmed that the proposed list was
2 correct. (Ex. 8.) Additionally, during the preliminary injunction hearing, Steve Gilbert
3 confirmed that when considering “owners” of limited liability company applicants, the
4 Department looked to the “members” of the LLC.² (Ex. 9 at 84:3-15.)

5 In submitting its ownership list, NOR therefore relied not only on the terms of the
6 statutes and regulations but also express upon direction and approval from the
7 Department. The Department’s own correspondence indicated not only that it was
8 defining the owners of NOR as NOR’s members, but also confirmed that NOR had
9 disclosed its full ownership. It is therefore improper and arbitrary and capricious for the
10 Department to unfairly change its position and claim that it now has an unanswered
11 “question” that precludes it from allowing NOR to move forward with its conditional
12 licenses. The Department has given guidance and approval that NOR has relied upon,
13 and the Department is estopped and must be required to comply with its own prior
14 guidance and approval in this very matter.

15 **D. Subsequent Ownership of a Parent Company Is Not Relevant under the Statute**

16 The Department’s apparent “question” regarding NOR’s ownership arises from a
17 new idea that because one of NOR’s owners, GGB Nevada, LLC, is in turn owned by a
18 parent company, Xanthic Biopharma, Inc., there may be certain shareholders of Xanthic
19 that were not listed as owners of NOR. Such a construction or interpretation of an
20 “owner” would directly contradict the statute itself and would also contradict the prior
21 direction and approval from the Department.

22 Xanthic Biopharma is specifically listed on the Department’s own register of
23 owners, officers, and board members as an “affiliated entity,” because it is a parent
24 company of the GGB Nevada, LLC entity. (Exhibit 10.) This is consistent with how the
25 Department handled establishments such as NOR and many other companies with
26

27 ² The transcript of Gilbert’s testimony states that the Department looked to the statute to
28 determine owners, and provided that owners are defined for each entity: “Corporations are
officers, partnerships are partners, and are members.” The transcript appears to have left a
blank space for “LLC”, but this was the statement made during the hearing and reflects the
terms of the applicable regulation.

1 similar ownership structures, including MM Development and LivFree. The
2 Department does not list eventual parent companies of owners of the applicant as direct
3 “owners” of the applicant. There was no need to list all the eventual shareholders of a
4 parent company like Xanthic, because Xanthic and its shareholders are not members of
5 NOR and do not have any direct ownership of NOR. Nothing in the application, the
6 statute, or Judge Gonzalez’s Preliminary Injunction requires the Department to trace
7 down every layer of ownership or require applicants to further break down ownership
8 of its constituent owners. Once NOR provided the Department with the information
9 necessary to confirm ownership and to conduct a background check on each owner—
10 which NOR did provide—the Department had sufficient information to comply with the
11 requirements of NRS 453D.200(6) whether or not the 5% rule applied.

12 But apparently the Department is independently interpreting the statute beyond
13 its express terms to raise a “question” as to whether any shareholders of a parent
14 company would be the indirect “owners” of an applicant or legal entities, such as LLCs.
15 The Department apparently has decided that if an applicant has any owner that is
16 owned even in part by a company that is publicly traded, then the Department may be
17 required to conduct a background check of every owner of every share of the publicly
18 traded company. This would be an absurd interpretation and is contrary to the
19 Department’s previously held position.

20 Such an interpretation would be in direct conflict with existing regulations
21 governing medical marijuana establishments, which already have the same 5%
22 ownership limitation. *See* NAC 453A.302. Moreover, each applicant for recreational
23 marijuana licenses in this lawsuit is already operating a medical or a recreational
24 marijuana establishment (applicants for recreational licenses were required by statute to
25 already have a medical marijuana license), and any concern about background checks
26 for “each owner” would and could have already been addressed for existing
27 establishments, as the ownership is identical for the ongoing operations of the currently
28 operating and existing establishments.

1 **E. NOR Is Suffering Serious Irreparable Harm as a Result of the Department's**
2 **Failure to Act**

3 Since receiving its seven conditional licenses, NOR has been working to secure
4 locations, receive local permits, hire employees, obtain inventory, and prepare for the
5 final inspections on those locations across all of the jurisdictions where it has obtained a
6 license. (Declaration of Brandon Wiegand, ¶ 3). As of the date of this Application, NOR
7 has received special permits, business licenses, and other necessary jurisdictional
8 approvals required to open dispensaries in the City of Las Vegas at 1725 S. Rainbow
9 Blvd., Suite 21; City of Reno at 5270 Longley Lane, Suite 103; and Town of Pahrump at
10 2370-2380 Homestead Road. It has secured specific locations in those jurisdictions,
11 performed necessary Tenant Improvements, purchased security systems, signed
12 agreements for operations systems, and has hired and trained employees, NOR is, in all
13 respects, ready to open the doors to these locations after obtaining a final inspection
14 from the Department. (*Id.* at ¶ 4). It is also moving forward in the other locations. In
15 North Las Vegas, NOR has secured a location and has been paying rent since early 2019.
16 In Clark County, NOR has already lost a highly desirable location that it had secured
17 and was ready to move forward but could not do so because of the Department's
18 inaction in moving NOR to the proper Tier. (*Id.* at ¶ 5).

19 The Department's failure to move NOR into Tier 2, which precludes the
20 completion of final inspections on specified applicants, is causing tremendous damage
21 to NOR, which will only increase in the coming weeks, as locations are lost and
22 employees are laid off. Based on its currently operating locations and the demographics
23 of the locations where NOR would open its new dispensaries, NOR projects that it
24 would see \$27.5MM in annual gross profits from the five locations closest to opening for
25 business. (*Id.* at ¶ 7). And the damages NOR stands to suffer if the injunction is not
26 suspended include much more than profits. NOR stands to lose all of the work it has put
27 into the process to this point. It will likely lose its special permits, its employees, and all
28 other work it has put into opening a viable business.

1 There is also a significant threat that NOR could be required to surrender its
2 existing conditional licenses if final inspections are not completed before the appeal can
3 be heard. Under NAC 453D.295, NOR only has until December 4, 2019 to receive final
4 inspections, and once the injunction is lifted, it will take NOR months to obtain all
5 necessary permits and prepare for final inspections in those jurisdictions. (*Id.* at ¶ 6) It
6 has been stated in open court that the Department will be extending that date six
7 months, but there has been no formal confirmation of that extension.

8 The Department should be required to solve this problem by taking the correct
9 steps to confirm that NOR did in fact listed each owner of the applicant in its
10 applications. Five other similarly situated intervenors have been permitted to move
11 forward by the Department by being placed into Tier 2, and there is no meaningful or
12 defensible basis to preclude NOR from doing the same.

13 IV. CONCLUSION

14 A writ of mandamus is necessary and appropriate to compel the Department to
15 comply with the statute and confirm that NOR did list each owner of NOR in its
16 application. The Department must also be compelled to move NOR into “Tier 2” of
17 applicants so that it may move forward with opening its stores under its conditional
18 licenses.

19
20 DATED: October 10, 2019

KOCH & SCOW, LLC

21 By: /s/ David R. Koch
22 David R. Koch, Esq.
23 *Attorneys for Counterclaimant*
Nevada Organic Remedies, LLC

24 25 DECLARATION OF BRODY WIGHT IN SUPPORT OF OPPOSITION TO 26 PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

27 I, Brody R. Wight, make this declaration in support of Defendant-Intervenor and
28 Counterclaimant Nevada Organic Remedies, LLC’s (“NOR”) Application to this Court
for the issuance of a writ of mandamus pursuant to NRS 34.160 to compel the State of

1 Nevada, Department of Taxation (the “Department”) to move NOR into the
2 Department-created “Tier 2” of successful applicants for recreational marijuana licenses:

3 1. I am an attorney licensed to practice law in the State of Nevada and an
4 associate at the law firm of Koch & Scow, LLC, and we are the attorneys of record for
5 Nevada Organic Remedies, LLC (“NOR”) in the matter entitled *MM Development*
6 *Company, Inc. et. al. v. State of Nevada, Department of Taxation et. al.*, Case No. A-18-785818-
7 W, filed in the Eighth Judicial District Court, Clark County, Nevada (the “Lawsuit”).

8 2. I am competent to testify to the matters asserted herein, of which I have
9 personal knowledge, except as to those matters stated upon information and belief. As to
10 those matters stated upon information and belief, I believe them to be true.

11 3. Attached as Exhibit 1 to the Application is a true and correct copy of the
12 email the State of Nevada, Department of Taxation (the “Department”) sent to Judge
13 Gonzalez’s chamber and to counsel for the parties to the Lawsuit. The tiers referred to in
14 the attached email are those that Judge Gonzalez referred to in issuing the Findings of
15 Fact and Conclusions of Law regarding the motion for preliminary injunction issued
16 against the Department in the Lawsuit, and the email has been admitted as Court’s Exhibit
17 3.

18 4. Attached as Exhibit 2 to the Application is a true and correct copy of the
19 Findings of Fact and Conclusions of law filed by Judge Gonzalez, granting, in part, the
20 preliminary injunction, and enjoining the Department from conducting final inspections
21 on NOR’s marijuana establishments.

22 5. Attached as Exhibit 3 to the Application is a true and correct copy of select
23 portions of the Governor’s Task Force on the Implementation of Question 2: The
24 Regulation and Taxation of Marijuana Act recommending the implementation of the
25 regulation requiring background checks only on owners with a 5% interest or more in the
26 applicants for marijuana establishment licenses.

27 6. Attached as Exhibit 4 to the Application is a true and correct copy of select
28 portions of the Hearing on Objections to State’s Response, Nevada Wellness Center’s

1 Motion Re Compliance Re Physical Address, and Bond Amount Setting from August 29,
2 2019.

3 7. Attached as Exhibit 5 to the Application is a true and correct copy of NOR's
4 Response to the Department's Statement Regarding Completeness of Applications with
5 Reference to NRS 453D.200(6).

6 8. Attached as Exhibit 6 to the Application is a true and correct copy of the
7 organizational chart found in NOR's applications for licenses to open marijuana
8 establishments that it submitted to the Department in September 2018.

9 9. Attached as Exhibit 7 to the Application is a true and correct copy of the
10 letter NOR received from the Department approving the transfer of ownership of NOR
11 on August 20, 2018.

12 10. Attached as Exhibit 8 to the Application is a true and correct copy of the
13 emails between Amanda Connor, counsel for NOR, and Steve Gilbert from the
14 Department wherein Mr. Gilbert confirmed what information NOR was required to place
15 in its transfer of ownership request.

16 11. Attached as Exhibit 9 to the Application is a true and correct copy of select
17 portions of the transcripts of Preliminary Injunction Evidentiary Hearing- Day 5 Volume
18 II, held on May 31, 2019.

19 12. Attached as Exhibit 10 to the Application is a true and correct copy of the
20 list of owners and affiliated entities of NOR as of May 1, 2019, as found on the
21 Department's website, which can be found at the URL
22 [https://tax.nv.gov/uploadedFiles/taxnvgov/Content/FAQs/CURRENTLICENSEESM](https://tax.nv.gov/uploadedFiles/taxnvgov/Content/FAQs/CURRENTLICENSEESMAY12019.pdf)
23 [AY12019.pdf](https://tax.nv.gov/uploadedFiles/taxnvgov/Content/FAQs/CURRENTLICENSEESMAY12019.pdf).

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

26 Executed this 10th day of October, 2019.

27
28

/s/ Brody R. Wight
BRODY R. WIGHT, ESQ.

1
2 **DECLARATION OF BRANDON WIEGAND**

3 I, Brandon Wiegand, declare and state as follows:

4 1. I am the Regional General Manager of Nevada Organic Remedies and am
5 responsible for the operation and opening of licensed marijuana establishments for the
6 company in the State of Nevada. I have personal knowledge of the facts stated in this
7 Declaration and could testify competently thereto.

8 2. On December 5, 2018, NOR was notified that it had been awarded seven
9 conditional licenses by the Department of Taxation. Since December 5, 2018, NOR has
10 been diligently acting to ensure that its stores can be inspected by the Department of
11 Taxation and open for business no later than December 4, 2019.

12 3. NOR has leased locations, hired employees, worked with city and county
13 governmental bodies to obtain approvals and permits, and has expended hundreds of
14 hours and hundreds of thousands of dollars to ensure that it will be able to open its
15 stores within the defined timeframe.

16 4. NOR has received special permits, business licenses, and other necessary
17 jurisdictional approvals required to open dispensaries in the City of Las Vegas at 1725 S.
18 Rainbow Blvd., Suite 21; City of Reno at 5270 Longley Lane, Suite 103; and Town of
19 Pahrump at 2370-2380 Homestead Road. It has secured specific locations in those
20 jurisdictions, performed necessary Tenant Improvements, purchased security systems,
21 signed agreements for operations systems, and has hired and trained employees, NOR
22 is, in all respects, ready to open the doors to these locations after obtaining a final
23 inspection from the Department.

24 5. NOR is also moving forward in the other locations. In North Las Vegas,
25 NOR has secured a location and has been paying rent since early 2019. In Clark County,
26 NOR had obtained a highly desirable location located at the intersection of Flamingo
27 and Paradise to open a marijuana establishment, but it has already lost this location due
28 to the subject litigation causing uncertainty in the minds of Clark County elected

1 officials.

2 6. NOR has been informed and believes that it will not be able to move
3 forward at a local level in either Clark County or the city of North Las Vegas until the
4 injunction is lifted, and once the injunction is lifted, it will take NOR months to obtain all
5 necessary permits and prepare for final inspections in those jurisdictions.

6 7. Based on its currently operating locations and the demographics of the
7 locations where NOR would open its new dispensaries, NOR projects that it will see
8 \$27.5MM in annual gross profits from the five locations closest to opening for business.

9 I declare under penalty of perjury that the foregoing is true and correct to the
10 best of my knowledge.

11
12 Date: October 10, 2019

/s/ Brandon Wiegand
BRANDON WIEGAND

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on October 10, 2019, I caused the foregoing document entitled:

to be served as follows:

- ☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and / or;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and / or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and / or
- ☐ 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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Executed on October 10, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh

EXHIBIT 1

EXHIBIT 1

From: Steven G. Shevorski SShevorski@ag.nv.gov
Subject: RE: A786962 Serenity - Response to Judge's Question on NRS 453D.200(6)
Date: August 21, 2019 at 3:23 PM

SS

To: Meriwether, Danielle LC Dept11LC@clarkcountycourts.us, Michael Cristalli mcristalli@gcmaslaw.com, Vincent Savarese vsavarese@gcmaslaw.com, Ross Miller rmiller@gcmaslaw.com, Ketan D. Bhirud KBhirud@ag.nv.gov, Robert E. Werbicky RWerbicky@ag.nv.gov, David J. Pope DPope@ag.nv.gov, Theresa M. Haar THaar@ag.nv.gov, jag@mgalaw.com, rgraf@blacklobello.law, bhiggins@blacklobello.law, alina@nvlitigation.com, Work maggie@nvlitigation.com, Eric Hone, Esq. (eric@h1lawgroup.com) eric@h1lawgroup.com, jamie@h1lawgroup.com, moorea@h1lawgroup.com, jkahn@jk-legalconsulting.com, dkoch@kochscow.com, sscow@kochscow.com, Bult, Adam K. ABult@bhfs.com, tchance@bhfs.com, a.hayslett@kempjones.com, Nathanael Rulis, Esq. (n.rulis@kempjones.com) n.rulis@kempjones.com, tparker@pnalaw.net, Fetaz, Maximilien MFetaz@bhfs.com, phil@hymansonlawnv.com, shane@lasvegaslegalvideo.com, joe@lasvegaslegalvideo.com, Pat Stoppard (p.stoppard@kempjones.com) p.stoppard@kempjones.com, jdelcarmen@pnalaw.net, Kutinac, Daniel KutinacD@clarkcountycourts.us, ShaLinda Creer screer@gcmaslaw.com, Tanya Bain tbain@gcmaslaw.com, Karen Wiehl (Karen@HymansonLawNV.com) Karen@hymansonlawnv.com, Kay, Paula PKay@bhfs.com, Dennis Prince (dprince@thedplg.com) dprince@thedplg.com, tlb@pisanellibice.com, JTS@pisanellibice.com
Cc: Kutinac, Daniel KutinacD@clarkcountycourts.us

Case : A-19-786962-B
Dept. 11

Danielle,

The Department of Taxation answers the Court's question as follows:

Court's Question: Which successful applicants completed the application in compliance with NRS 453D.200(6) at the time the application was filed in September 2018?

Answer: The Department of Taxation answers the Court's question in three parts.

First, there were seven successful applicants who are not parties to the coordinated preliminary injunction proceeding. These entities are Green Therapeutics LLC, Eureka NewGen Farms LLC, Circle S Farms LLC, Deep Roots Medical LLC, Pure Tonic Concentrates LLC, Wellness Connection of Nevada LLC, Polaris Wellness Center LLC, and TRNVP098 LLC. Accepting as truthful these applicants' attestations regarding who their owners, officers, and board members were at the time of the application, these applications were complete at the time they were filed with reference to NRS 453D.200(6).

Second, there were five successful applicants who are parties to this coordinated preliminary injunction proceeding whose applications were complete with reference to NRS 453D.200(6) if the Department of Taxation accepts as truthful their attestations regarding who their owners, officers, and board members were. These applicants were Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and Commerce Park Medical LLC.

Third, there were four successful applicants who are parties to this proceeding regarding whom the Department of Taxation could not eliminate a question as to the completeness of their applications with reference to NRS 453D.200(6). These applicants were Helping Hands Wellness Center Inc., Lone Mountain Partners LLC, Nevada Organic Remedies LLC, and Greenmart of Nevada NLV LLC.

AA 006591

With respect to the third group, the Department of Taxation could not eliminate a question as the completeness of the applications due to the following:

1. **Helping Hands Wellness Center, Inc.** – The Department of Taxation could not eliminate a question a question regarding the completeness of the applicant’s identification of all of its officers on Attachment A in light of Mr. Terteryan’s testimony that he is the Chief Operating Officer and was not listed on Attachment A. The Department of Taxation does note, however, that Mr. Terteryan has been the subject of a completed background check.
2. **Lone Mountain Partners, LLC** – The Department of Taxation could not eliminate a question regarding the completeness of the applicant’s identification of all of its owners because the Department could not determine whether Lone Mountain Partners, LLC was a subsidiary of an entity styled “Verona” or was owned by the individual members listed on Attachment A.
3. **Nevada Organic Remedies, LLC** - The Department of Taxation could not eliminate a question regarding the completeness of the applicant’s identification of all of its owners because the Department could not determine whether there were shareholders who owned a membership interest in the applicant at the time the application was submitted, but who were not listed on Attachment A, as the applicant was acquired by a publicly traded company on or around September 4, 2018.
4. **Greenmart of Nevada NLV, LLC** - The Department of Taxation could not eliminate a question regarding the completeness of the applicant’s identification of all of its owners. The Department could not determine whether the applicant listed all its owners on Attachment A because a subsidiary of a publicly traded company owned a membership interest in the applicant at the time the applicant submitted its application.

In creating this answer, the Department of Taxation sought to answer the Court’s question in a neutral fashion based on the information available to it from the applications themselves, testimony given at the hearing (without reference to issues of admissibility, which an affected party may raise), and information publicly available from a government website (the Canadian Securities Exchange website), which was submitted by the applicant or information submitted about the applicant by an entity claiming an affiliation to the applicant. The Department of Taxation expects that Helping Hands Wellness Center Inc., Lone Mountain Partners LLC, Nevada Organic Remedies LLC, and Greenmart of Nevada NLV LLC may explain why they believe they submitted complete applications in compliance with the provisions of NRS 453D.200(6).

Best regards,

Steve Shevorski

Steve Shevorski
Head of Complex Litigation
Office of the Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
702-486-3783

From: Meriwether, Danielle LC <Dept11LC@clarkcountycourts.us>
Sent: Wednesday, August 21, 2019 10:11 AM
To: Steven G. Shevorski <SShevorski@ag.nv.gov>; 'Michael Cristalli' <mcristalli@gcmaslaw.com>; 'Vincent Savarese' <vsavarese@gcmaslaw.com>; 'Ross Miller' <rmiller@gcmaslaw.com>; Ketan D. Bhirud <KBhirud@ag.nv.gov>; Robert E. Werbicky <RWerbicky@ag.nv.gov>; David J. Pope <DPope@ag.nv.gov>; Theresa M. Haar <THaar@ag.nv.gov>; 'jag@mgalaw.com' <jag@mgalaw.com>; 'rgraf@blacklobello.law' <rgraf@blacklobello.law>; 'bhiggins@blacklobello.law' <bhiggins@blacklobello.law>; 'alina@nvlitigation.com' <alina@nvlitigation.com>; 'Work' <maggie@nvlitigation.com>; 'Eric Hone, Esq. (eric@h1lawgroup.com)' <eric@h1lawgroup.com>; 'jamie@h1lawgroup.com' <jamie@h1lawgroup.com>; 'moorea@h1lawgroup.com' <moorea@h1lawgroup.com>; 'jkahn@jk-legalconsulting.com' <jkahn@jk-legalconsulting.com>; 'dkoch@kochscow.com' <dkoch@kochscow.com>; 'sscow@kochscow.com' <sscow@kochscow.com>; 'Bult, Adam K.' <ABult@bhfs.com>; 'tchance@bhfs.com' <tchance@bhfs.com>; 'a.hayslett@kempjones.com' <a.hayslett@kempjones.com>; 'Nathanael Rulis, Esq. (n.rulis@kempjones.com)' <n.rulis@kempjones.com>; 'tparker@pnalaw.net' <tparker@pnalaw.net>; 'Fetaz, Maximilien' <MFetaz@bhfs.com>; 'phil@hymansonlawnv.com' <phil@hymansonlawnv.com>; 'shane@lasvegaslegalvideo.com' <shane@lasvegaslegalvideo.com>; 'joe@lasvegaslegalvideo.com' <joe@lasvegaslegalvideo.com>; 'Pat Stoppard (p.stoppard@kempjones.com)' <p.stoppard@kempjones.com>; 'jdelcarmen@pnalaw.net' <jdelcarmen@pnalaw.net>; Kutinac, Daniel <KutinacD@clarkcountycourts.us>; 'ShaLinda Creer' <screer@gcmaslaw.com>; 'Tanya Bain' <tbain@gcmaslaw.com>; 'Karen Wiehl (Karen@HymansonLawNV.com)' <Karen@hymansonlawnv.com>; 'Kay, Paula' <PKay@bhfs.com>; 'Dennis Prince (dprince@thedplg.com)' <dprince@thedplg.com>; 'tlb@pisanellibice.com' <tlb@pisanellibice.com>; 'JTS@pisanellibice.com' <JTS@pisanellibice.com>
Cc: Kutinac, Daniel <KutinacD@clarkcountycourts.us>
Subject: RE: A786962 Serenity - Request for 1 day extension to respond to Judge's Question on NRS 453D.200

Mr. Shevorski,

Judge said she understands and asks that you please get us an answer as soon as you can.

Thank you,

Danielle M. Meriwether, Esq.
Law Clerk to the Honorable Elizabeth G. Gonzalez
District Court, Department XI
D. (702) 671-4275

AA 006593

P: (702) 671-4375
F: (702) 671-4377

From: Meriwether, Danielle LC

Sent: Tuesday, August 20, 2019 4:06 PM

To: 'Steven G. Shevorski'; Michael Cristalli; Vincent Savarese; Ross Miller; Ketan D. Bhirud; Robert E. Werbicky; David J. Pope; Theresa M. Haar; jag@mgalaw.com; rgraf@blacklobello.law; bhiggins@blacklobello.law; alina@nvlitigation.com; Work; Eric Hone, Esq. (eric@h1lawgroup.com); jamie@h1lawgroup.com; moorea@h1lawgroup.com; jkahn@jk-legalconsulting.com; dkoch@kochscow.com; sscow@kochscow.com; Bult, Adam K.; tchance@bhfs.com; a.hayslett@kempjones.com; Nathanael Rulis, Esq. (n.rulis@kempjones.com); tparker@pnalaw.net; Fetaz, Maximilien; phil@hymansonlawnv.com; shane@lasvegaslegalvideo.com; joe@lasvegaslegalvideo.com; Pat Stoppard (p.stoppard@kempjones.com); jdelcarmen@pnalaw.net; Kutinac, Daniel; ShaLinda Creer; Tanya Bain; Karen Wiehl (Karen@HymansonLawNV.com); Kay, Paula; Dennis Prince (dprince@thedplg.com); tlb@pisanellibice.com; JTS@pisanellibice.com

Cc: Kutinac, Daniel

Subject: RE: A786962 Serenity - Request for 1 day extension to respond to Judge's Question on NRS 453D.200

Mr. Shevorski,

Thank you for your email. I will inform Judge.

Danielle M. Meriwether, Esq.

Law Clerk to the Honorable Elizabeth G. Gonzalez

District Court, Department XI

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From: Steven G. Shevorski [<mailto:SShevorski@ag.nv.gov>]

Sent: Tuesday, August 20, 2019 4:03 PM

To: Meriwether, Danielle LC; Michael Cristalli; Vincent Savarese; Ross Miller; Ketan D. Bhirud; Robert E. Werbicky; David J. Pope; Theresa M. Haar; jag@mgalaw.com; rgraf@blacklobello.law; bhiggins@blacklobello.law; alina@nvlitigation.com; Work; Eric Hone, Esq. (eric@h1lawgroup.com); jamie@h1lawgroup.com; moorea@h1lawgroup.com; jkahn@jk-legalconsulting.com; dkoch@kochscow.com; sscow@kochscow.com; Bult, Adam K.; tchance@bhfs.com; a.hayslett@kempjones.com; Nathanael Rulis, Esq. (n.rulis@kempjones.com); tparker@pnalaw.net; Fetaz, Maximilien; phil@hymansonlawnv.com; shane@lasvegaslegalvideo.com; joe@lasvegaslegalvideo.com; Pat Stoppard (p.stoppard@kempjones.com); jdelcarmen@pnalaw.net; Kutinac, Daniel; ShaLinda Creer; Tanya Bain; Karen Wiehl (Karen@HymansonLawNV.com); Kay, Paula; Dennis Prince (dprince@thedplg.com); tlb@pisanellibice.com; JTS@pisanellibice.com

Cc: Kutinac, Daniel

Subject: A786962 Serenity - Request for 1 day extension to respond to Judge's Question on NRS 453D.200

To the Honorable Judge Gonzales,

The Department of Taxation needs until tomorrow to submit the email responding to your query. My office needs a little more time to confer with the DOT on the answer to your question. I also have to leave work early due to a medical circumstance involving my wife's family, which requires my wife to attend to her mother in the hospital and I have the charge of my two children.

AA 006594

I apologize for the delay. The DOT requests an additional day to provide its response, if possible.

Steve Shevorski
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702-486-3783

From: Meriwether, Danielle LC <Dept11LC@clarkcountycourts.us>

Sent: Thursday, August 15, 2019 8:23 AM

To: Michael Cristalli <mcristalli@gcmaslaw.com>; Vincent Savarese <vsavarese@gcmaslaw.com>; Ross Miller <rmiller@gcmaslaw.com>; Ketan D. Bhirud <KBhirud@ag.nv.gov>; Robert E. Werbicky <RWerbicky@ag.nv.gov>; David J. Pope <DPope@ag.nv.gov>; Steven G. Shevorski <SShevorski@ag.nv.gov>; Theresa M. Haar <THaar@ag.nv.gov>; jag@mgalaw.com; rgraf@blacklobello.law; bhiggins@blacklobello.law; alina@nvlitigation.com; Work <maggie@nvlitigation.com>; Eric Hone, Esq. (eric@h1lawgroup.com) <eric@h1lawgroup.com>; jamie@h1lawgroup.com; moorea@h1lawgroup.com; jkahn@jk-legalconsulting.com; dkoch@kochscow.com; sscow@kochscow.com; Bult, Adam K. <ABult@bhfs.com>; tchance@bhfs.com; a.hayslett@kempjones.com; Nathanael Rulis, Esq. (n.rulis@kempjones.com) <n.rulis@kempjones.com>; tparker@pnalaw.net; Fetaz, Maximilien <MFetaz@bhfs.com>; phil@hymansonlawnv.com; shane@lasvegaslegalvideo.com; joe@lasvegaslegalvideo.com; Pat Stoppard (p.stoppard@kempjones.com) <p.stoppard@kempjones.com>; jdelcarmen@pnalaw.net; Kutinac, Daniel <KutinacD@clarkcountycourts.us>; ShaLinda Creer <screer@gcmaslaw.com>; Tanya Bain <tbain@gcmaslaw.com>; Karen Wiehl (Karen@HymansonLawNV.com) <Karen@hymansonlawnv.com>; Kay, Paula <PKay@bhfs.com>; Dennis Prince (dprince@thedplg.com) <dprince@thedplg.com>; tlb@pisanellibice.com; JTS@pisanellibice.com

Cc: Kutinac, Daniel <KutinacD@clarkcountycourts.us>

Subject: A786962 Serenity - Bench Briefs Received

Counsel:

I am emailing to confirm the receipt of the following briefs:

1. MM & LivFree (Kemp)
2. CPCM/Thrive (Gutierrez)
3. NOR (Koch)
4. Essence (Bice)
5. Greenmart (Shell)
6. Clear River (Graf)

Thank you,

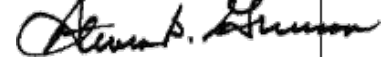
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AA 006595

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EXHIBIT 2

EXHIBIT 2



1 FFCL

2
3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

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

27 Plaintiff(s),

28 vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant(s).

and

29 NEVADA ORGANIC REMEDIES, LLC;
30 INTEGRAL ASSOCIATES LLC d/b/a
31 ESSENCE CANNABIS DISPENSARIES, a
32 Nevada limited liability company; ESSENCE
33 TROPICANA, LLC, a Nevada limited liability
34 company; ESSENCE HENDERSON, LLC, a
35 Nevada limited liability company; CPCM
36 HOLDINGS, LLC d/b/a THRIVE CANNABIS
37 MARKETPLACE, COMMERCE PARK
38 MEDICAL, LLC, a Nevada limited liability
company; and CHEYENNE MEDICAL, LLC, a
Nevada limited liability company; LONE
MOUNTAIN PARTNERS, LLC, a Nevada

Case No. A-19-786962-B

Dept. No. 11

FINDINGS OF FACT AND
CONCLUSIONS OF LAW GRANTING
PRELIMINARY INJUNCTION

CLERK OF THE COURT

REC'D
AUG 23 2019

1 limited liability partnership; HELPING HANDS
2 WELLNESS CENTER, INC., a Nevada
3 corporation; GREENMART OF NEVADA
4 NLV LLC, a Nevada limited liability company;
5 and CLEAR RIVER, LLC,

6
7 Intervenor.

8 This matter having come before the Court for an evidentiary hearing on Plaintiffs' Motion for
9 Preliminary Injunction beginning on May 24, 2019, and occurring day to day thereafter until its
10 completion on August 16, 2019;¹ Dominic P. Gentile, Esq., Vincent Savarese III, Esq., Michael V.
11 Cristalli, Esq., and Ross J. Miller, Esq., of the law firm Gentile Cristalli Miller Armeni Savarese,
12 appeared on behalf of Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf Incline Dispensary, LLC,
13 Nevada Holistic Medicine, LLC, Tryke Companies SO NV, LLC, Tryke Companies Reno, LLC,
14 Paradise Wellness Center, LLC, GBS Nevada Partners, LLC, Fidelis Holdings, LLC, Gravitas Nevada,
15 LLC, Nevada Pure, LLC, Medifarm, LLC (Case No. A786962-B) (the "Serenity Plaintiffs"); Adam K.
16 Bult, Esq. and Maximilien D. Fetaz, Esq., of the law firm Brownstein Hyatt Farber Schreck, LLP,
17 appeared on behalf of Plaintiffs ETW Management Group LLC, Global Harmony LLC, Green Leaf
18 Farms Holdings LLC, Green Therapeutics LLC, Herbal Choice INC., Just Quality, LLC, Libra
19 Wellness Center, LLC, Rombough Real Estate Inc. dba Mother Herb, NevCann LLC, Red Earth LLC,
20 THC Nevada LLC, Zion Gardens LLC, and MMOF Vegas Retail, Inc. (Case No. A787004-B) (the
21 "ETW Plaintiffs"); William S. Kemp, Esq. and Nathaniel R. Rulis, Esq., of the law firm Kemp, Jones
22 & Coulthard LLP, appeared on behalf of MM Development Company, Inc. and LivFree Wellness LLC
23 (Case No. A785818-W) (the "MM Plaintiffs"); Theodore Parker III, Esq., of the law firm Parker
24 Nelson & Associates, appeared on behalf of Nevada Wellness Center (Case No. A787540-W)
25 (collectively the "Plaintiffs"); Steven G. Shevorski, Esq., Ketan D. Bhirud, Esq., and Theresa M. Haar,
26 Esq., of the Office of the Nevada Attorney General, appeared on behalf of the State of Nevada,
27 Department of Taxation; David R. Koch, Esq., of the law firm Koch & Scow LLC, appeared on behalf

28
¹ Although a preservation order was entered on December 13, 2018, in A785818, no discovery in any case was done prior to the commencement of the evidentiary hearing, in part due to procedural issues and to statutory restrictions on disclosure of certain information modified by SB 32 just a few days before the commencement of the hearing. As a result, the hearing was much longer than anticipated by any of the participating counsel. In compliance with SB 32, the State produced previously confidential information on May 21, 2019. These documents were reviewed for confidentiality by the Defendants in Intervention and certain redactions were made prior to production consistent with the protective order entered on May 24, 2019.

1 of Nevada Organic Remedies, LLC; Brigid M. Higgins, Esq. and Rusty Graf, Esq., of the law firm
2 Black & Lobello, appeared on behalf of Clear River, LLC; Eric D. Hone, Esq., of the law firm H1 Law
3 Group, appeared on behalf of Lone Mountain Partners, LLC; Alina M. Shell, Esq., of the law firm
4 McLetchie Law, appeared on behalf of GreenMart of Nevada NLV LLC; Jared Kahn, Esq., of the law
5 firm JK Legal & Consulting, LLC, appeared on behalf of Helping Hands Wellness Center, Inc.; and
6 Joseph A. Gutierrez, Esq., of the law firm Maier Gutierrez & Associates, and Philip M. Hymanson,
7 Esq., of the law firm Hymanson & Hymanson; Todd Bice, Esq. and Jordan T. Smith, Esq. of the law
8 firm Pisanelli Bice; and Dennis Prince, Esq. of the Prince Law Group appeared on behalf of Integral
9 Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson,
10 LLC, CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and
11 Cheyenne Medical, LLC (the "Essence/Thrive Entities"). The Court, having read and considered the
12 pleadings filed by the parties; having reviewed the evidence admitted during the evidentiary hearing;
13 and having heard and carefully considered the testimony of the witnesses called to testify; having
14 considered the oral and written arguments of counsel, and with the intent of deciding the Motion for a
15 Preliminary Injunction,² makes the following preliminary findings of fact and conclusions of law:

16 ***PROCEDURAL POSTURE***

17 Plaintiffs are a group of unrelated commercial entities who applied for, but did not receive,
18 licenses to operate retail recreational marijuana establishments in various local jurisdictions throughout
19 the state. Defendant is Nevada's Department of Taxation ("DoT"), which is the administrative agency
20 responsible for issuing the licenses. Some successful applicants for licensure intervened as Defendants.

21 The Serenity Plaintiffs filed a Motion for Preliminary Injunction on March 19, 2019, asking for
22 a preliminary injunction to:

- 23 a. Enjoin the denial of Plaintiffs applications;
24 b. Enjoin the enforcement of the licenses granted;
25 c. Enjoin the enforcement and implementation of NAC 453D;

26
27 ² The findings made in this Order are preliminary in nature based upon the limited evidence presented after very
28 limited discovery permitted on an expedited basis and may be modified based upon additional evidence presented to the
Court at the ultimate trial of the business court matters.

- 1 d. An order restoring the *status quo ante* prior to the DoT's adoption of NAC 453D;
2 and
3 e. Several orders compelling discovery.

4 This Court reviewed the Serenity Plaintiffs' Motion for Preliminary Injunction and at a hearing on
5 April 22, 2019, invited Plaintiffs in related cases, not assigned to Business Court, to participate in the
6 evidentiary hearing on the Motion for Preliminary Injunction being heard in Department 11 for the
7 purposes of hearing and deciding the Motions for Preliminary Injunction.³

8 **PRELIMINARY STATEMENT**

9 The Attorney General's Office was forced to deal with a significant impediment at the early
10 stages of the litigation. This inability to disclose certain information was outside of its control because
11 of confidentiality requirements that have now been slightly modified by SB 32. Although the parties
12 stipulated to a protective order on May 24, 2019, many documents produced in preparation for the
13 hearing and for discovery purposes were heavily redacted because of the highly competitive nature of
14 the industry and sensitive financial and commercial information being produced.

15 All parties agree that the language of an initiative takes precedence over any regulation that is in
16 conflict and that an administrative agency has some discretion in determining how to implement the
17 initiative. The Court gives deference to the agency in establishing those regulations and creating the
18 framework required to implement those provisions in conformity with the initiative.

19
20
21 ³ The complaints filed by the parties participating in the hearing seek declaratory relief, injunctive relief and writs of
22 mandate, among other claims. The motions and joinders seeking injunctive relief which have been reviewed by the Court in
conjunction with this hearing include:

23 A786962-B Serenity: Serenity Plaintiffs' Motion for Preliminary Injunction filed 3/19/19 (Joinder to Motion by
Compassionate Team: 5/17; Joinder to Motion by ETW: 5/6 (filed in A787004); and Joinder to Motion by Nevada
Wellness: 5/10 (filed in A787540)); Opposition by the State filed 5/9/19 (Joinder by Essence/Thrive Entities: 5/23);
Opposition by Nevada Organic Remedies: 5/9 (Joinder by Lone Mountain: 5/13; Joinder by Helping Hands: 5/21; and
Joinder by Essence/Thrive Entities: 5/23). Application for TRO on OST filed 5/9/19 (Joinder by Compassionate Team:
5/17; and Joinder by ETW: 5/10 (filed in A787004)); Opposition by Nevada Organic Remedies: 5/9 (Joinder by Clear River:
5/9); Opposition by Essence/Thrive Entities: 5/10 (Joinder by GreenMart: 5/10; Joinder by Lone Mountain: 5/11; and
Joinder by helping Hands: 5/12).

27 A785818-W MM Development: MM Plaintiffs' Motion for Preliminary Injunction or Writ of Mandamus filed 5/9/19
(Joinder by Serenity: 5/20 (filed in A786962); Joinder by ETW: 5/6 (filed in A787004 and A785818); and Joinder by
Nevada Wellness: 5/10 (filed in A787540)).

1 The initiative to legalize recreational marijuana, Ballot Question 2 ("BQ2"), went to the voters
2 in 2016. The language of BQ2 is independent of any regulations that were adopted by the DoT. The
3 Court must balance the mandatory provisions of BQ2 (which the DoT did not have discretion to
4 modify);⁴ those provisions with which the DoT was granted some discretion in implementation;⁵ and
5 the inherent discretion of an administrative agency to implement regulations to carry out its statutory
6 duties. The Court must give great deference to those activities that fall within the discretionary
7 functions of the agency. Deference is not given where the actions of the DoT were in violation of BQ2
8 or were arbitrary and capricious.

9 FINDINGS OF FACT

10 1. Nevada allows voters to amend its Constitution or enact legislation through the initiative
11 process. Nevada Constitution, Article 19, Section 2.

12 ⁴ Article 19, Section 2(3) provides the touchstone for the mandatory provisions:

13 An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or
14 suspended by the Legislature within 3 years from the date it takes effect.

15 ⁵ NRS 453D.200(1) required the adoption of regulations for the licensure and oversight of recreational marijuana
16 cultivation, manufacturing/production, sales and distribution, but provides the DoT discretion in exactly what those
17 regulations would include.

18 . . . the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter.
19 The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations
20 that make their operation unreasonably impracticable. The regulations shall include:

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

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

25 (c) Requirements for the security of marijuana establishments;

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

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

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

(g) Requirements for record keeping by marijuana establishments;

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

(i) Procedures for the collection of taxes, fees, and penalties imposed by this chapter;

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

(k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and
marijuana establishments at the same location;

(l) Procedures to establish the fair market value at wholesale of marijuana; and

(m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any
violation of the provisions of NRS 453D.300.

1 2. In 2000, the voters amended Nevada's Constitution to allow for the possession and use
2 of marijuana to treat various medical conditions. Nevada Constitution, Article 4, Section 38(1)(a). The
3 initiative left it to the Legislature to create laws "[a]uthoriz[ing] appropriate methods for supply of the
4 plant to patients authorized to use it." Nevada Constitution, Article 4, Section 38(1)(e).

5 3. For several years prior to the enactment of BQ2, the regulation of medical marijuana
6 dispensaries had not been taken up by the Legislature. Some have argued in these proceedings that the
7 delay led to the framework of BQ2.

8 4. In 2013, Nevada's legislature enacted NRS 453A, which allows for the cultivation and
9 sale of medical marijuana. The Legislature described the requirements for the application to open a
10 medical marijuana establishment. NRS 453A.322. The Nevada Legislature then charged the Division of
11 Public and Behavioral Health with evaluating the applications. NRS 453A.328.

12 5. The materials circulated to voters in 2016 for BQ2 described its purpose as the
13 amendment of the Nevada Revised Statutes as follows:
14

15 Shall the *Nevada Revised Statutes* be amended to allow a person, 21 years old or older, to
16 purchase, cultivate, possess, or consume a certain amount of marijuana or concentrated
17 marijuana, as well as manufacture, possess, use, transport, purchase, distribute, or sell marijuana
18 paraphernalia; impose a 15 percent excise tax on wholesale sales of marijuana; require the
19 regulation and licensing of marijuana cultivators, testing facilities, distributors, suppliers, and
20 retailers; and provide for certain criminal penalties?

21 6. BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.⁶

22 7. BQ2 specifically identified regulatory and public safety concerns:

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

25 (a) Marijuana may only be purchased from a business that is licensed by the State of
26 Nevada;

27 (b) Business owners are subject to a review by the State of Nevada to confirm that the
28 business owners and the business location are suitable to produce or sell marijuana;

 (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly
controlled through State licensing and regulation;

⁶ As the provisions of BQ2 and the sections NRS 453D currently in effect (with the exception of NRS 453D.205) are identical, for ease of reference the Court cites to BQ2 as enacted by the Nevada Legislature in NRS 453D.

- (d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;
- (e) Individuals will have to be 21 years of age or older to purchase marijuana;
- (f) Driving under the influence of marijuana will remain illegal; and
- (g) Marijuana sold in the State will be tested and labeled.

NRS 453D.020(3).

8. BQ2 mandated the DoT to “conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.” NRS 453D.200(6).

9. On November 8, 2016, by Executive Order 2017-02, Governor Brian Sandoval established a Task Force composed of 19 members to offer suggestions and proposals for legislative, regulatory, and executive actions to be taken in implementing BQ2.

10. The Task Force’s findings, issued on May 30, 2017, referenced the 2014 licensing process for issuing Medical Marijuana Establishment Registration Certificates under NRS 453A. The Task Force recommended that “the qualifications for licensure of a marijuana establishment and the impartial numerically scored bidding process for retail marijuana stores be maintained as in the medical marijuana program except for a change in how local jurisdictions participate in selection of locations.”

11. Some of the Task Force’s recommendations appear to conflict with BQ2.⁷

⁷ The Final Task Force report (Exhibit 2009) contained the following statements:

The Task Force recommends that retail marijuana ownership interest requirements remain consistent with the medical marijuana program. . . .
at 2510.

The requirement identified by the Task Force at the time was contained in NAC 453A.302(1) which states:

Except as otherwise required in subsection 2, the requirements of this chapter concerning owners of medical marijuana establishments only apply to a person with an aggregate ownership interest of 5 percent or more in a medical marijuana establishment.

The second recommendation of concern is:

The Task Force recommends that NRS 453A be changed to address companies that own marijuana establishment licenses in which there are owners with less than 5% ownership interest in the company. The statute should be amended to:

*Limit fingerprinting, background checks and renewal of agent cards to owners officers and board members with 5% or less cumulatively of the company to once every five years;

*Only require owners officers and board members with 5% or more cumulatively and employees of the company to obtain agent registration cards; and

1 12. During the 2017 legislative session Assembly Bill 422 transferred responsibility for the
2 registration, licensing, and regulation of marijuana establishments from the State of Nevada Division of
3 Public and Behavioral Health to the DoT.⁸

4 13. On February 27, 2018, the DoT adopted regulations governing the issuance, suspension,
5 or revocation of retail recreational marijuana licenses in LCB File No. R092-17, which were codified in
6 NAC 453D (the "Regulations").

7 14. The Regulations for licensing were to be "directly and demonstrably related to the
8 operation of a marijuana establishment." NRS 453D.200(1)(b). The phrase "directly and demonstrably
9 related to the operation of a marijuana establishment" is subject to more than one interpretation.
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18 *Use the marijuana establishments governing documents to determine who has approval rights and signatory
19 authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory
documents.

20 There was Task Force dissent on the recommendation. The concern with this recommendation was that by
21 changing the requirements on fingerprinting and background checks, the state would have less knowledge of when
an owner, officer, and board member commits an offense not allowed under current marijuana law, potentially
creating a less safe environment in the state.
22 at 2515-2516.

23 ⁸ Those provisions (a portion of which became NRS 453D.205) are consistent with BQ2:

24 1. When conducting a background check pursuant to subsection 6 of NRS 453D.200, the Department may
25 require each prospective owner, officer and board member of a marijuana establishment license applicant to submit
a complete set of fingerprints and written permission authorizing the Department to forward the fingerprints to the
Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation
for its report.

26 2. When determining the criminal history of a person pursuant to paragraph (c) of subsection 1 of NRS
27 453D.300, a marijuana establishment may require the person to submit to the Department a complete set of
fingerprints and written permission authorizing the Department to forward the fingerprints to the Central
Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its
report.
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1 15. A person holding a medical marijuana establishment registration certificate could apply
2 for one or more recreational marijuana establishment licenses within the time set forth by the DoT in
3 the manner described in the application. NAC 453D.268.⁹
4

5 ⁹ Relevant portions of that provision require that application be made

6 . . . by submitting an application in response to a request for applications issued pursuant to NAC 453D.260 which
7 must include:

8 ***

9 2. An application on a form prescribed by the Department. The application must include, without limitation:

10 (a) Whether the applicant is applying for a license for a marijuana establishment for a marijuana cultivation
11 facility, a marijuana distributor, a marijuana product manufacturing facility, a marijuana testing facility or a retail
12 marijuana store;

13 (b) The name of the proposed marijuana establishment, as reflected in both the medical marijuana establishment
14 registration certificate held by the applicant, if applicable, and the articles of incorporation or other documents filed
15 with the Secretary of State;

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

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

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

22 (f) The mailing address of the applicant;

23 (g) The telephone number of the applicant;

24 (h) The electronic mail address of the applicant;

25 (i) A signed copy of the Request and Consent to Release Application Form for Marijuana Establishment License
26 prescribed by the Department;

27 (j) If the applicant is applying for a license for a retail marijuana store, the proposed hours of operation during
28 which the retail marijuana store plans to be available to sell marijuana to consumers;

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

(l) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of NAC
453D.250 and the date on which the person signed the application.

3. Evidence of the amount of taxes paid, or other beneficial financial contributions made, to this State or its
political subdivisions within the last 5 years by the applicant or the persons who are proposed to be owners, officers
or board members of the proposed marijuana establishment.

4. A description of the proposed organizational structure of the proposed marijuana establishment, including,
without limitation:

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

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

(1) The title of the person;

(2) The race, ethnicity and gender of the person;

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

(4) Whether the person will be designated by the proposed marijuana establishment to provide written notice to
the Department when a marijuana establishment agent is employed by, volunteers at or provides labor as a
marijuana establishment agent at the proposed marijuana establishment;

(5) Whether the person has served or is currently serving as an owner, officer or board member for another
medical marijuana establishment or marijuana establishment;

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

1 NRS 453D.210(6) mandated the DoT to use "an impartial and numerically scored competitive bidding
2 process" to determine successful applicants where competing applications were submitted.

3 16. NAC 453D.272(1) provides the procedure for when the DoT receives more than one
4 "complete" application. Under this provision the DoT will determine if the "application is complete and

5 (7) Whether the person has previously had a medical marijuana establishment agent registration card or
6 marijuana establishment agent registration card revoked;

7 (8) Whether the person is an attending provider of health care currently providing written documentation for the
8 issuance of registry identification cards or letters of approval;

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

10 (10) Whether the person is currently an employee or contractor of the Department; and

11 (11) Whether the person has an ownership or financial investment interest in any other medical marijuana
12 establishment or marijuana establishment.

13 5. For each owner, officer and board member of the proposed marijuana establishment:

14 (a) An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of
15 an excluded felony offense, and that the information provided to support the application for a license for a
16 marijuana establishment is true and correct;

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

18 (1) Past experience working with governmental agencies and highlighting past experience in giving back to the
19 community through civic or philanthropic involvement;

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

21 (3) Any demonstrated knowledge, business experience or expertise with respect to marijuana; and

22 (c) A resume.

23 6. Documentation concerning the size of the proposed marijuana establishment, including, without limitation,
24 building and general floor plans with supporting details.

25 7. The integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana
26 from seed to sale, including, without limitation, a plan for testing and verifying marijuana, a transportation or
27 delivery plan and procedures to ensure adequate security measures, including, without limitation, building security
28 and product security.

8. A plan for the business which includes, without limitation, a description of the inventory control system of the
proposed marijuana establishment to satisfy the requirements of NRS 453D.300 and NAC 453D.426.

9. A financial plan which includes, without limitation:

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

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

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

10. Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana establishment on a
daily basis, which must include, without limitation:

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

(b) An operations manual that demonstrates compliance with this chapter;

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

(d) A plan to minimize the environmental impact of the proposed marijuana establishment.

11. If the application is submitted on or before November 15, 2018, for a license for a marijuana distributor,
proof that the applicant holds a wholesale dealer license issued pursuant to chapter 369 of NRS, unless the
Department determines that an insufficient number of marijuana distributors will result from this limitation.

12. A response to and information which supports any other criteria the Department determines to be relevant,
which will be specified and requested by the Department at the time the Department issues a request for
applications which includes the point values that will be allocated to the applicable portions of the application
pursuant to subsection 2 of NAC 453D.260.

1 in compliance with this chapter and Chapter 453D of NRS, the Department will rank the applications . .
2 . in order from first to last based on the compliance with the provisions of this chapter and chapter
3 453D of NRS and on the content of the applications relating to . . .” several enumerated factors. NAC
4 453D.272(1).

5 17. The factors set forth in NAC 453D.272(1) that are used to rank competing applications
6 (collectively, the “Factors”) are:

- 7 (a) Whether the owners, officers or board members have experience operating another kind
8 of business that has given them experience which is applicable to the operation of a marijuana
9 establishment;
10 (b) The diversity of the owners, officers or board members of the proposed marijuana
11 establishment;
12 (c) The educational achievements of the owners, officers or board members of the proposed
13 marijuana establishment;
14 (d) The financial plan and resources of the applicant, both liquid and illiquid;
15 (e) Whether the applicant has an adequate integrated plan for the care, quality and
16 safekeeping of marijuana from seed to sale;
17 (f) The amount of taxes paid and other beneficial financial contributions, including, without
18 limitation, civic or philanthropic involvement with this State or its political subdivisions, by the
19 applicant or the owners, officers or board members of the proposed marijuana establishment;
20 (g) Whether the owners, officers or board members of the proposed marijuana establishment
21 have direct experience with the operation of a medical marijuana establishment or marijuana
22 establishment in this State and have demonstrated a record of operating such an establishment in
23 compliance with the laws and regulations of this State for an adequate period of time to
24 demonstrate success;
25 (h) The (unspecified) experience of key personnel that the applicant intends to employ in
26 operating the type of marijuana establishment for which the applicant seeks a license; and
27 (i) Any other criteria that the Department determines to be relevant.

28 18. Each of the Factors is within the DoT’s discretion in implementing the application
process provided for in BQ2. The DoT had a good-faith basis for determining that each of the Factors
is “directly and demonstrably related to the operation of a marijuana establishment.”

19 19. The DoT posted the application on its website and released the application for
20 recreational marijuana establishment licenses on July 6, 2018.¹⁰

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27 ¹⁰ The DoT made a change to the application after circulating the first version of the application to delete the
28 requirement of a physical location. The modification resulted in a different version of the application bearing the same
“footer” with the original version remaining available on the DoT’s website.

1 20. The DoT utilized a question and answer process through a generic email account at
2 marijuana@tax.state.nv.us to allow applicants to ask questions and receive answers directly from the
3 Department, which were not consistent with NRS 453D, and that information was not further
4 disseminated by the DoT to other applicants.

5 21. In addition to the email question and answer process, the DoT permitted applicants and
6 their representatives to personally contact the DoT staff about the application process.

7 22. The application period ran from September 7, 2018 through September 20, 2018.

8 23. The DoT accepted applications in September 2018 for retail recreational marijuana
9 licenses and announced the award of conditional licenses in December 2018.

10 24. The DoT used a listserv to communicate with prospective applicants.

11 25. The DoT published a revised application on July 30, 2018. This revised application was
12 sent to all participants in the DoT's listserv directory. The revised application modified a sentence on
13 attachment A of the application. Prior to this revision, the sentence had read, "Marijuana
14 Establishment's proposed physical address (this must be a Nevada address and cannot be a P.O. Box)."
15 The revised application on July 30, 2018, read: "Marijuana Establishment's proposed physical address
16 if the applicant owns property or has secured a lease or other property agreement (this must be a
17 Nevada address and not a P.O. Box). Otherwise, the applications are virtually identical.

18 26. The DoT sent a copy of the revised application through the listserv service used by the
19 DoT. Not all Plaintiffs' correct emails were included on this listserv service.

20 27. The July 30, 2018 application, like its predecessor, described how applications were to
21 be scored. The scoring criteria was divided into identified criteria and non-identified criteria. The
22 maximum points that could be awarded to any applicant based on these criteria was 250 points.

23 28. The identified criteria consisted of organizational structure of the applicant (60 points);
24 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant
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1 in the last 5 years (25 points); a financial plan (30 points); and documents from a financial institution
2 showing unencumbered liquid assets of \$250,000 per location for which an application is submitted.

3 29. The non-identified criteria consisted of documentation concerning the integrated plan of
4 the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to
5 sale (40 points); evidence that the applicant has a plan to staff, educate and manage the proposed
6 recreational marijuana establishment on a daily basis (30 points); a plan describing operating
7 procedures for the electronic verification system of the proposed marijuana establishment and
8 describing the proposed establishment's inventory control system (20 points); building plans showing
9 the proposed establishment's adequacy to serve the needs of its customers (20 points); and, a proposal
10 explaining likely impact of the proposed marijuana establishment in the community and how it will
11 meet customer needs (15 points).
12

13 30. An applicant was permitted to submit a single application for all jurisdictions in which it
14 was applying, and the application would be scored at the same time.
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16 31. By September 20, 2018, the DoT received a total of 462 applications.

17 32. In order to grade and rank the applications the DoT posted notices that it was seeking to
18 hire individuals with specified qualifications necessary to evaluate applications. The DoT interviewed
19 applicants and made decisions on individuals to hire for each position.

20 33. When decisions were made on who to hire, the individuals were notified that they would
21 need to register with "Manpower" under a pre-existing contract between the DoT and that company.
22 Individuals would be paid through Manpower, as their application-grading work would be of a
23 temporary nature.
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25 34. The DoT identified, hired, and trained eight individuals to grade the applications,
26 including three to grade the identified portions of the applications, three to grade the non-identified
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1 portions of the applications, and one administrative assistant for each group of graders (collectively the
2 "Temporary Employees").

3 35. It is unclear how the DoT trained the Temporary Employees. While portions of the
4 training materials were introduced into evidence, testimony regarding the oral training based upon
5 example applications was insufficient for the Court to determine the nature and extent of the training of
6 the Temporary Employees.¹¹

7 36. NAC 453D.272(1) required the DoT to determine that an Application is "complete and
8 in compliance" with the provisions of NAC 453D in order to properly apply the licensing criteria set
9 forth therein and the provisions of the Ballot Initiative and the enabling statute.

10 37. When the DoT received applications, it undertook no effort to determine if the
11 applications were in fact "complete and in compliance."

12 38. In evaluating whether an application was "complete and in compliance" the DoT made
13 no effort to verify owners, officers or board members (except for checking whether a transfer request
14 was made and remained pending before the DoT).

15 39. For purposes of grading the applicant's organizational structure and diversity, if an
16 applicant's disclosure in its application of its owners, officers, and board members did not match the
17 DoT's own records, the DoT did not penalize the applicant. Rather the DoT permitted the grading, and
18 in some cases, awarded a conditional license to an applicant under such circumstances, and dealt with
19 the issue by simply informing the winning applicant that its application would have to be brought into
20 conformity with DoT records.

21 40. The DoT created a Regulation that modified the mandatory BQ2 provision "[t]he
22 Department shall conduct a background check of each prospective owner, officer, and board member of
23 a marijuana establishment license applicant" and determined it would only require information on the

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28 ¹¹ Given the factual issues related to the grading raised by MM and LivFree, these issues may be subject to additional
evidentiary proceedings in the assigned department.

1 application from persons "with an aggregate ownership interest of 5 percent or more in a marijuana
2 establishment." NAC 453D.255(1).

3 41. NRS 453D.200(6) provides that "[t]he DoT shall conduct a background check of each
4 prospective owner, officer, and board member of a marijuana establishment license applicant." The
5 DoT departed from this mandatory language in NAC 453D.255(1) and made no attempt in the
6 application process to verify that the applicant's complied with the mandatory language of the BQ2 or
7 even the impermissibly modified language.

8 42. The DoT made the determination that it was not reasonable to require industry to
9 provide every owner of a prospective licensee. The DOT's determination that only owners of a 5% or
10 greater interest in the business were required to submit information on the application was not a
11 permissible regulatory modification of BQ2. This determination violated Article 19, Section 3 of the
12 Nevada Constitution. The determination was not based on a rational basis.

13 43. The limitation of "unreasonably impracticable" in BQ2¹² does not apply to the
14 mandatory language of BQ2, but to the Regulations which the DoT adopted.

15 44. The adoption of NAC 453D.255(1), as it applies to the application process is an
16 unconstitutional modification of BQ2.¹³ The failure of the DoT to carry out the mandatory provisions
17 of NRS 453D.200(6) is fatal to the application process.¹⁴ The DoT's decision to adopt regulations in
18 direct violation of BQ2's mandatory application requirements is violative of Article 19, Section 2(3) of
19 the Nevada Constitution.

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22 ¹² NRS 453D.200(1) provides in part:

23 The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations
24 that make their operation unreasonably impracticable.

25 ¹³ For administrative and regulatory proceedings other than the application, the limitation of 5% or greater ownership
26 appears within the DoT's discretion.

27 ¹⁴ That provision states:

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

1 45. Given the lack of a robust investigative process for applicants, the requirement of the
2 background check for each prospective owner, officer, and board member as part of the application
3 process impedes an important public safety goal in BQ2.

4 46. Without any consideration as to the voters mandate in BQ2, the DoT determined that
5 requiring each prospective owner be subject to a background check was too difficult for
6 implementation by industry. This decision was a violation of the Nevada Constitution, an abuse of
7 discretion, and arbitrary and capricious.

8 47. The DoT did not comply with BQ2 by requiring applicants to provide information for
9 each prospective owner, officer and board member or verify the ownership of applicants applying for
10 retail recreational marijuana licenses. Instead the DoT issued conditional licenses to applicants who
11 did not identify each prospective owner, officer and board member.¹⁵

12 48. The DoT's late decision to delete the physical address requirement on some application
13 forms while not modifying those portions of the application that were dependent on a physical location
14 (i.e. floor plan, community impact, security plan, and the sink locations) after the repeated
15 communications by an applicant's agent; not effectively communicating the revision; and, leaving the
16 original version of the application on the website, is evidence of conduct that is a serious issue.

17 49. Pursuant to NAC 453D.295, the winning applicants received a conditional license that
18 will not be finalized unless within twelve months of December 5, 2018, the licensees receive a final
19 inspection of their marijuana establishment.
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25 ¹⁵ Some applicants apparently provided the required information for each prospective owner, officer and board
26 member. Accepting as truthful these applicants' attestations regarding who their owners, officers, and board members were
27 at the time of the application, these applications were complete at the time they were filed with reference to NRS
28 453D.200(6). These entities are Green Therapeutics LLC, Eureka NewGen Farms LLC, Circle S Farms LLC, Deep Roots
Medical LLC, Pure Tonic Concentrates LLC, Wellness Connection of Nevada LLC, Polaris Wellness Center LLC, and
TRNVP098 LLC, Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and
Commerce Park Medical LLC. See Court Exhibit 3 (post-hearing submission by the DoT).

50. The few instances of clear mistakes made by the Temporary Employees admitted in evidence do not, in and of themselves, result in an unfair process as human error occurs in every process.

51. Nothing in NRS 453D or NAC 453D provides for any right to an appeal or review of a decision denying an application for a retail recreational marijuana license,

52. There are an extremely limited number of licenses available for the sale of recreational marijuana.

53. The number of licenses available was set by BQ2 and is contained in NRS 453D.210(5)(d).

54. Since the Court does not have authority to order additional licenses in particular jurisdictions, and because there are a limited number of licenses that are available in certain jurisdictions, injunctive relief is necessary to permit the Plaintiffs, if successful in the NRS 453D.210(6) process, to actually obtaining a license, if ultimately successful in this litigation.

55. The secondary market for the transfer of licenses is limited.¹⁶

56. If any findings of fact are properly conclusions of law, they shall be treated as if appropriately identified and designated.

CONCLUSIONS OF LAW

57. "Any person...whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." NRS 30.040.

58. A justiciable controversy is required to exist prior to an award of declaratory relief. *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986).

¹⁶ The testimony elicited during the evidentiary hearing established that multiple changes in ownership have occurred since the applications were filed. Given this testimony, simply updating the applications previously filed would not comply with BQ2.

1 59. NRS 33.010 governs cases in which an injunction may be granted. The applicant must
2 show (1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving
3 party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is
4 an inadequate remedy.

5 60. Plaintiffs have the burden to demonstrate that the DoT's conduct, if allowed to continue,
6 will result in irreparable harm for which compensatory damages is an inadequate remedy.

7 61. The purpose of a preliminary injunction is to preserve the *status quo* until the matter can
8 be litigated on the merits.
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10 62. In *City of Sparks v. Sparks Mun. Court*, the Supreme Court explained, "[a]s a
11 constitutional violation may be difficult or impossible to remedy through money damages, such a
12 violation may, by itself, be sufficient to constitute irreparable harm." 129 Nev. 348, 357, 302 P.3d
13 1118, 1124 (2013).

14 63. Article 19, Section 2 of the Constitution of the State of Nevada provides, in pertinent
15 part:
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17 "1. Notwithstanding the provisions of section 1 of article 4 of this constitution, but subject to the
18 limitations of section 6 of this article, **the people reserve to themselves the power to propose,**
19 **by initiative petition, statutes and amendments to statutes and amendments to this**
20 **constitution, and to enact or reject them at the polls.**

21 ...

22 3. If the initiative petition proposes a statute or an amendment to a statute, the person who
23 intends to circulate it shall file a copy with the secretary of state before beginning circulation
24 and not earlier than January 1 of the year preceding the year in which a regular session of the
25 legislature is held. After its circulation, it shall be filed with the secretary of state not less than
26 30 days prior to any regular session of the legislature. The circulation of the petition shall cease
27 on the day the petition is filed with the secretary of state or such other date as may be prescribed
28 for the verification of the number of signatures affixed to the petition, whichever is earliest. The
secretary of state shall transmit such petition to the legislature as soon as the legislature
convenes and organizes. The petition shall take precedence over all other measures except
appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted
or rejected by the legislature without change or amendment within 40 days. If the proposed
statute or amendment to a statute is enacted by the legislature and approved by the governor in
the same manner as other statutes are enacted, such statute or amendment to a statute shall
become law, but shall be subject to referendum petition as provided in section 1 of this article.

1 If the statute or amendment to a statute is rejected by the legislature, or if no action is taken
2 thereon within 40 days, the secretary of state shall submit the question of approval or
3 disapproval of such statute or amendment to a statute to a vote of the voters at the next
4 succeeding general election. If a majority of the voters voting on such question at such election
5 votes approval of such statute or amendment to a statute, it shall become law and take effect
6 upon completion of the canvass of votes by the supreme court. **An initiative measure so
approved by the voters shall not be amended, annulled, repealed, set aside or suspended
by the legislature within 3 years from the date it takes effect.**

7 (Emphasis added.)

8 64. The Nevada Supreme Court has recognized that “[i]nitiative petitions must be kept
9 substantively intact; otherwise, the people’s voice would be obstructed. . . . [I]nitiative legislation is not
10 subject to judicial tampering-the substance of an initiative petition should reflect the unadulterated will
11 of the people and should proceed, if at all, as originally proposed and signed. For this reason, our
12 constitution prevents the Legislature from changing or amending a proposed initiative petition that is
13 under consideration.” Rogers v. Heller, 117 Nev. 169, 178, 18 P.3d 1034, 1039-40 (2001).

14 65. BQ2 provides, “the Department shall adopt all regulations necessary or convenient to
15 carry out the provisions of this chapter.” NRS 453D.200(1). This language does not confer upon the
16 DoT unfettered or unbridled authority to do whatever it wishes without constraint. The DoT was not
17 delegated the power to legislate amendments because this is initiative legislation. The Legislature itself
18 has no such authority with regard to NRS 453D until three years after its enactment under the
19 prohibition of Article 19, Section 2 of the Constitution of the State of Nevada.

20 66. Where, as here, amendment of a voter-initiated law is temporally precluded from
21 amendment for three years, the administrative agency may not modify the law.

22 67. NRS 453D.200(1) provides that “the Department shall adopt all regulations necessary or
23 convenient to carry out the provisions of this chapter.” The Court finds that the words “necessary or
24 convenient” are susceptible to at least two reasonable interpretations. This limitation applies only to
25 Regulations adopted by the DoT.
26
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28

1 68. While the category of diversity is not specifically included in the language of BQ2, the
2 evidence presented in the hearing demonstrates that a rational basis existed for the inclusion of this
3 category in the Factors and the application.

4 69. The DoT's inclusion of the diversity category was implemented in a way that created a
5 process which was partial and subject to manipulation by applicants.

6 70. The DoT staff provided various applicants with different information as to what would
7 be utilized from this category and whether it would be used merely as a tiebreaker or as a substantive
8 category.
9

10 71. Based upon the evidence adduced, the Court finds that the DoT selectively discussed
11 with applicants or their agents the modification of the application related to physical address
12 information.

13 72. The process was impacted by personal relationships in decisions related to the
14 requirements of the application and the ownership structures of competing applicants. This in and of
15 itself is insufficient to void the process as urged by some of the Plaintiffs.
16

17 73. The DoT disseminated various versions of the 2018 Retail Marijuana Application, one
18 of which was published on the DoT's website and required the applicant to provide an actual physical
19 Nevada address for the proposed marijuana establishment, and not a P.O. Box, (*see* Exhibit 5), whereas
20 an alternative version of the DoT's application form, which was not made publicly available and was
21 distributed to some, but not all, of the applicants via a DoT listserv service, deleted the requirement that
22 applicants disclose an actual physical address for their proposed marijuana establishment. *See* Exhibit
23 5A.
24

25 74. The applicants were applying for conditional licensure, which would last for 1 year.
26 NAC 453D.282. The license was conditional based on the applicant's gaining approval from local
27
28

1 authorities on zoning and land use, the issuance of a business license, and the Department of Taxation
2 inspections of the marijuana establishment.

3 75. The DoT has only awarded conditional licenses which are subject to local government
4 approval related to zoning and planning and may approve a location change of an existing license, the
5 public safety aspects of the failure to require an actual physical address can be cured prior to the award
6 of a final license.

7 76. By selectively eliminating the requirement to disclose an actual physical address for
8 each and every proposed retail recreational marijuana establishment, the DoT limited the ability of the
9 Temporary Employees to adequately assess graded criteria such as (i) prohibited proximity to schools
10 and certain other public facilities, (ii) impact on the community, (iii) security, (iv) building plans, and
11 (v) other material considerations prescribed by the Regulations.

12 77. The hiring of Temporary Employees was well within the DoT's discretionary power.

13 78. The evidence establishes that the DoT failed to properly train the Temporary
14 Employees. This is not an appropriate basis for the requested injunctive relief unless it makes the
15 grading process unfair.

16 79. The DoT failed to establish any quality assurance or quality control of the grading done
17 by Temporary Employees.¹⁷ This is not an appropriate basis for the requested injunctive relief unless it
18 makes the grading process unfair.

19 80. The DoT made licensure conditional for one year based on the grant of power to create
20 regulations that develop "[p]rocedures for the issuance, renewal, suspension, and revocation of a
21 license to operate a marijuana establishment." NRS 453D.200(1)(a). This was within the DoT's
22 discretion.

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28 ¹⁷ The Court makes no determination as to the extent which the grading errors alleged by MM and Live Free may be
subject to other appropriate writ practice related to those individualized issues by the assigned department.

1 81. Certain of DoT's actions related to the licensing process were nondiscretionary
2 modifications of BQ2's mandatory requirements. The evidence establishes DoT's deviations
3 constituted arbitrary and capricious conduct without any rational basis for the deviation.

4 82. The DoT's decision to not require disclosure on the application and to not conduct
5 background checks of persons owning less than 5% prior to award of a conditional license is an
6 impermissible deviation from the mandatory language of BQ2, which mandated "a background check
7 of each prospective owner, officer, and board member of a marijuana establishment license applicant."
8 NRS 453D.200(6).
9

10 83. The argument that the requirement for each owner to comply with the application
11 process and background investigation is "unreasonably impracticable" is misplaced. The limitation of
12 unreasonably impracticable applied only to the Regulations not to the language and compliance with
13 BQ2 itself.

14 84. Under the circumstances presented here, the Court concludes that certain of the
15 Regulations created by the DoT are unreasonable, inconsistent with BQ2 and outside of any discretion
16 permitted to the DoT.
17

18 85. The DoT acted beyond its scope of authority when it arbitrarily and capriciously
19 replaced the mandatory requirement of BQ2, for the background check of each prospective owner,
20 officer and board member with the 5% or greater standard in NAC 453.255(1). This decision by the
21 DoT was not one they were permitted to make as it resulted in a modification of BQ2 in violation of
22 Article 19, Section 2(3) of the Nevada Constitution.
23

24 86. As Plaintiffs have shown that the DoT clearly violated NRS Chapter 453D, the claims
25 for declaratory relief, petition for writ of prohibition, and any other related claims is likely to succeed
26 on the merits.

27 87. The balance of equities weighs in favor of Plaintiffs.
28

1 88. "[N]o restraining order or preliminary injunction shall issue except upon the giving of
2 adequate security by the applicant, in such sum as the court deems proper, for the payment of such
3 costs and damages as may be incurred or suffered by any party who is found to be wrongfully enjoined
4 or restrained." NRCp 65(d).

5 89. The DoT stands to suffer no appreciable losses and will suffer only minimal harm as a
6 result of an injunction.

7 90. Therefore, a security bond already ordered in the amount of \$400,000 is sufficient for
8 the issuance of this injunctive relief.¹⁸
9

10 91. If any conclusions of law are properly findings of fact, they shall be treated as if
11 appropriately identified and designated.

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27 ¹⁸ As discussed during the preliminary injunction hearing, the Court sets a separate evidentiary hearing on whether to
28 increase the amount of this bond. That hearing is set for August 29, 2019, at 9:00 a.m.

ORDER

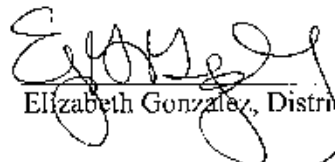
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

The State is enjoined from conducting a final inspection of any of the conditional licenses issued in or about December 2018 who did not provide the identification of each prospective owner, officer and board member as required by NRS 453D.200(6) pending a trial on the merits.¹⁹

The issue of whether to increase the existing bond is set for hearing on August 29, 2019, at 9:00 am.

The parties in A786962 and A787004 are to appear for a Rule 16 conference September 9, 2019, at 9:00 am and submit their respective plans for discovery on an expedited schedule by noon on September 6, 2019.

DATED this 23rd day of August 2019.


Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, this Order was electronically served, pursuant to N.E.R.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.


Dan Kutinac

¹⁹ As Court Exhibit 3 is a post-hearing submission by the DoT, the parties may file objections and/or briefs related to this issue. Any issues related to the inclusion or exclusion from this group will be heard August 29, 2019, at 9:00 am.

EXHIBIT 3

EXHIBIT 3

Governor's Task Force on the Implementation of Question 2: The Regulation and Taxation of Marijuana Act

**Final Report
May 30, 2017**



Letter from the Chairs



STATE OF NEVADA

May 30, 2017

Dear Governor Sandoval:

We hereby deliver to you the final report of the Task Force on the Implementation of Ballot Question 2: The Regulation and Taxation of Marijuana Act.

The Task Force, which you established on November 8, 2016, by Executive Order 2017-02, was given the mission to identify the legal, policy, and procedural issues that need to be resolved and to offer suggestions and proposals for legislative, regulatory, and executive actions that need to be taken for the effective and efficient implementation of the Act. The executive order directed the Task Force to complete its work and issue a report of its recommendations and findings to you by May 30, 2017.

The Task Force was composed of 19 members representing diverse interests, including law enforcement, public health, state agencies, the Nevada Legislature, social services, local government, the marijuana industry, and the public. They began their work on March 3, 2017, and met regularly over the course of ten weeks. In addition to the main Task Force, eight topic-focused working groups—made up of Task Force members, subject matter experts, and affected stakeholders—met weekly. The groups worked tirelessly, deliberating issues from every angle, listening to and incorporating public comment, and thoughtfully crafting their recommendations to be heard by the Task Force. The working groups presented a total of 73 recommendations to the Task Force, where they were further deliberated, amended, and adopted by majority vote for inclusion in this report. Every meeting of the Task Force and working groups was open to the public, and the community proved actively engaged, providing frequent input via public comment.

The members of the Task Force and working groups carried out the mission you gave them with full commitment to the spirit and letter of that mission. As the great State of Nevada moves forward to regulate and tax marijuana, the Task Force members share a sense of pride in having contributed to the framework to accomplish that. We look forward to seeing our recommendations refined through the regulatory, executive, and legislative processes, and foresee a tightly regulated program that considers the needs of industry and protects public health and safety.

Respectfully submitted,

Handwritten signature of Deonne Contine in black ink.

Deonne Contine, Chair
Executive Director
Nevada Department of Taxation

Handwritten signature of Chuck Callaway in black ink.

Chuck Callaway, Vice Chair
Director of Office of Intergovernmental Services
Las Vegas Metropolitan Police Department

Application and Licensing Requirements

Recommendations in this section include topics such as the application and evaluation process, allocation of retail marijuana establishment licenses, the impact of ownership interest below 5% and the most effective method for issuing agent cards.

Application Process

The Task Force recommends that the qualifications for licensure of a marijuana establishment and the impartial numerically scored bidding process for retail marijuana stores be maintained as in the medical marijuana program except for a change in how local jurisdictions participate in selection of locations. The Department of Taxation should rank the applicants based on an applicant's qualifications without respect to the planned location of their business. The local governments should be responsible for working with the ranked list of applicants prepared by the Department of Taxation to determine acceptable locations based on requirements within the respective jurisdiction.

If a marijuana establishment is not able to receive local jurisdiction zoning and land use approval within 18 months from the date the Department of Taxation issues the conditional license, the applicant will surrender the license back to the Department for reissuance through another application process.

There was no dissent on the recommendation.

Rating Criteria on Applications

The Task Force recommends that the impartial numerically scored process used by the medical marijuana program be revised for retail marijuana stores to remove consideration of location and focus only on the applicant qualifications for operation of a marijuana establishment. The proposed list of qualifications was ranked in order of importance to give more weight to the most important qualifications.

There was no dissent on the recommendation.

Ownership Issues/ Licensing Requirements

The Task Force recommends that Nevada Revised Statute Chapter 453A be changed to address companies that own marijuana establishment licenses in which there are owners with less than 5% ownership interest in the company. The statute should be amended to:

- Limit fingerprinting, background checks and renewal of agent cards to owners, officers and board members with 5% or less cumulatively of the company to once every five years;

- Only require owners, officers and board members with 5% or more ownership cumulatively and employees of the company to obtain agent registration cards; and
- Use the marijuana establishment's governing documents to determine who has approval rights and signatory authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory document.

There was Task Force dissent on the recommendation. The concern with this recommendation was that by changing the requirements on fingerprinting and background checks, the state would have less knowledge of when an owner, officer or board member commits an offense not allowed under current marijuana law, potentially creating a less safe environment in the state.

Monopolies - Limitations on the Number of Marijuana Establishments

The Task Force recommends that limitations similar to those in the medical marijuana program for granting establishment registration certificates be used for the retail marijuana licensing process. The recommendation applies this limitation specifically to retail marijuana stores not only in a county whose population is 100,000 or more but also in each local jurisdiction within that county. The recommendation is to adopt regulations like Nevada Revised Statute Chapter 453A.326 which places a limitation on the number of licenses issued to any one person. Suggested language includes: "to prevent monopolistic practices, the Department shall ensure, in a county whose population is 100,000 or more, that it does not issue, to any licensee, the greater of:

- One retail store license; or
- More than 10 percent of the retail store licenses allocable in the county along with the same limitation on the local governmental jurisdiction level."

There was no dissent on this recommendation.

Agent Card Requirements

The Task Force recommends that the Department of Taxation revise the current agent card application process for medical marijuana establishments to improve efficiency by allowing potential employees or volunteers to apply directly to the state to obtain registered agent cards, allow them to work while the card is pending, allow agents to obtain one card for each facility type rather than one for each establishment and allow temporary registration of a person as an establishment agent. Changes to the current Nevada Revised Statute Chapter 453A would be required.

There was Task Force dissent on the recommendation. The concern was that by changing the requirements for attaining an agent card, the state could, for a period, allow employment of an agent who did not fulfill the requirements of the program, and therefore, potentially create a less safe environment in the state.

Ownership Issues/ Licensing Requirements

1. Working group name:

Taxation/Revenue/Regulatory Structure Working Group

2. Individual sponsor(s):

*John Ritter, Advisory Board Member for TGIG, LLC, The Grove
David Goldwater, Inyo Fine Cannabis Dispensary*

3. Describe the recommendation:

The Taxation/Revenue/Regulatory Structure Working Group recommends that the following changes relative to recreational marijuana establishment licensee ownership issues be made from the current medical marijuana establishment rules.

a) Require only Owners with 5% or more cumulatively (please see below for a definition of cumulatively), Officers and Board members of the company(s) holding the license(s) to be fingerprinted, be required to undergo a background check and resubmit a new application for license renewal.

[IN ORDER TO MAKE THE MEDICAL PROGRAM CONSISTENT NEED TO CHANGE NRS 453A.332 PARAGRAPH 5]

b) Require all Owners, regardless of ownership, to be fingerprinted, be required to undergo a background check and resubmit a new application only every five years whether for a renewal or not.

[IN ORDER TO MAKE THE MEDICAL PROGRAM CONSISTENT NEED TO CHANGE NRS 453A]

c) Only require Owners with 5% or more ownership cumulatively, Directors and Officers of the company(s) holding the license(s) and employees of the company to obtain agent registration cards.

[FOR MEDICAL: Officers and Board members must obtain agent cards under 453A.410 (2) (a). An Owner with less than 5% interest, that is not an Officer or Board member, does not need to obtain an agent card pursuant to NAC 453A.302.]

d) For the purposes of signing ownership transfers, applications and any other appropriate legal or regulatory documentation, the Department shall look to the governing documents of the company that holds the license to assess who has approval rights and signatory authority. If the documents require a vote to establish that authority then the Department shall have the right to request documentation evidencing that a vote has taken place.

[IN ORDER TO MAKE THE MEDICAL PROGRAM CONSISTENT NEED TO CHANGE NRS 453A]

"Cumulatively" shall mean the cumulative ownership any particular natural person holds in any Nevada company(s) that owns licensed recreational marijuana establishments.

4. Which guiding principle(s) does this recommendation support?

Guiding Principle 2 - Be responsive to the needs and issues of consumers, non-consumers, local governments, and the industry.

Guiding Principle 4 - Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome.

5. What provision(s) of Question 2 does this recommendation apply to?

Section 2 (b) of IP1 states that "Business owners are subject to a review by the State of Nevada to confirm that the business owners ... are suitable to produce or sell marijuana;"

Section 5 paragraph 1 of IP1 states that "The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impractical."

6. What issue(s) does the recommendation resolve?

To allow companies that own marijuana establishment licenses in which there are multiple Owners that own less than 5%, in some cases far less, to be able to operate practically and efficiently. To allow companies that own marijuana establishment licenses to function based on their governing documents as companies are allowed to do in other industries.

7. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

No dissent.

8. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?


There would need to be adoption of a regulation to address this recommendation.

9. Additional information (cost of implementation, priority according to the recommendations, etc.).

None

EXHIBIT 4

EXHIBIT 4



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

**HEARING ON OBJECTIONS TO STATE'S RESPONSE,
NEVADA WELLNESS CENTER'S MOTION RE COMPLIANCE
RE PHYSICAL ADDRESS, AND BOND AMOUNT SETTING**

THURSDAY, AUGUST 29, 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.

APPEARANCES:

FOR THE PLAINTIFFS:

DOMINIC P. GENTILE, ESQ.
WILLIAM KEMP, ESQ.
NATHANIEL RULIS, ESQ.
ADAM BULT, ESQ.
MAXIMILIEN FETAZ, ESQ.
THEODORE PARKER, ESQ.

FOR THE DEFENDANTS:

STEVE SHEVORSKI, ESQ.
THERESA HAAR, ESQ.
RUSTY GRAF, ESQ.
BRIGID HIGGINS, ESQ.
ERIC HONE, ESQ.
DAVID KOCH, ESQ.
ALINA SHELL, ESQ.
JARED KAHN, ESQ.
JOSEPH GUTIERREZ, ESQ.
TODD BICE, ESQ.
DENNIS PRINCE, ESQ.

1 judgment if this matter should proceed. And based upon the
2 limited information that was provided to the parties through
3 disclosures as part of the injunctive relief hearing we've had
4 a hearing based upon what I would characterize as extremely
5 limited information.

6 I am not granting any affirmative relief to Clear
7 River as requested, because that was not the purpose of this
8 hearing. I have previously made a determination that I was
9 going to exclude applicants who properly completed the
10 applications in accordance with NRS 453D.200(6) at the time
11 the application was filed in September 2018.

12 The applicants who fit into that category based upon
13 the State's email to me are those in the first and second tier
14 as identified by the State. While I certainly understand the
15 arguments by the parties that certain other information was
16 available that may not be within the scope of my question, my
17 question was limited for a reason. Those who are in the third
18 category will be subject to the injunctive relief which is
19 described on page 24 the findings of fact and conclusions of
20 law. Those who are in the first and second category will be
21 excluded from that relief.

22 Any request for modifications by the State based
23 upon the State's review of the applications that were
24 submitted by the applicants during the application period will
25 be submitted by motion by the State, and then all of you will

1 have an opportunity to submit any briefs and any argument you
2 think is appropriate.

3 I am not precluding the State from making any other
4 determinations related to this very flawed process the State
5 decides to make related to the application process. That's
6 within the State's determination as to how they handle any
7 corrections to this process. And I'm not going to determine
8 what that is. I was merely seeking to exclude applicants who
9 filed applications in compliance with NRS 453D.200(6) at the
10 time the applications were filed from the injunctive relief
11 that I have granted in order that was filed last Friday on
12 page 24.

13 Does anybody have any questions about the tiers?
14 Any issues should be directed to the Department for you to
15 resolve based upon the information that was in your
16 applications at the time.

17 I am not going to do the goose-gander analysis that
18 was urged upon me by one of the parties under the Whitehead
19 decision.

20 Okay. That takes me to the bond. Anybody want to
21 talk about a bond?

22 MR. KEMP: Judge, on the bond just some logistics
23 that you should be aware of. Mr. Gentile's expert is
24 available on the 16th or 17th.

25 THE COURT: That's why I'm doing the hearing today,

EXHIBIT 5

EXHIBIT 5



David R. Koch (NV Bar #8830)
Steven B. Scow (NV Bar #9906)
Brody R. Wight (NV Bar #13615)
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Attorneys for Intervenor
Nevada Organic Remedies, LLC

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

SERENITY WELLNESS CENTER, LLC, et al.,

Plaintiffs,

vs.

STATE OF NEVADA, DEPARTMENT OF
TAXATION;

Defendant

and

NEVADA ORGANIC REMEDIES, LLC

Defendant-Intervenor

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

**NEVADA ORGANIC REMEDIES'
RESPONSE TO THE DEPARTMENT
OF TAXATION'S STATEMENT
REGARDING COMPLETENESS OF
APPLICATIONS WITH REFERENCE
TO NRS 453D.200(6)**

Date: August 29, 2019
Time: 9:00 a.m.

Defendant-Intervenor Nevada Organic Remedies, LLC ("NOR") hereby responds to the post-hearing submission from the State of Nevada Department of Taxation (the "Department") regarding completion of applications in accordance with NRS 453D.200(6), which has been admitted as the Court's Exhibit 2. As shown in this Response, NOR fully complied with the statute and applicable regulatory guidance, and based on the information NOR has provided, the Department should have no "question" regarding the ownership of NOR, which was accurately presented in its applications in September 2018.

1 **I. RESPONSE TO THE DEPARTMENT’S SUBMISSION**

2 NOR’s ownership was fully disclosed in the Notice of Transfer of Interest letter
3 issued by the Department of Taxation (Hearing Exhibit 5026, attached here as Exhibit A)
4 and in the Organizational Chart (Hearing Exhibit 5025, attached here as Exhibit B), both
5 of which were submitted by NOR to the Department with its application in September
6 2018. As stated in those documents, the “Organizational Chart shows all owners,
7 officers, and board members of Nevada Organic Remedies, LLC.” (Ex. 5025 at DOT-
8 NVOrganic 001427).

9 As listed in the Organizational Chart submitted to the Department, NOR – the
10 Applicant – was owned by several listed individuals and by GGB Nevada LLC. Every
11 owner of NOR was expressly listed. GGB Nevada LLC is then in turn owned by Xanthic
12 Biopharma, Inc., but GGB Nevada LLC is the only entity that actually owns a portion of
13 NOR.

14 The Department already approved this ownership structure in the Notice of
15 Transfer of Interest approval letter that the Department prepared (Ex. A) It cannot now
16 come back and say that it has an unanswered “question,” when it has already given its
17 approval at the time that applications were submitted, and it has demonstrated its prior
18 knowledge of the approved ownership structure that was listed in NOR’s application.

19 Even MM Development’s own rogue pocket brief (now reclassified as an
20 “objection”) admits that NOR is owned by GGB Nevada LLC when it wrongly contends
21 that, “NOR did not disclose its owner (GGB Nevada)...” (MM Dev. Brief at pg. 9:21-24.)
22 Thus, even MM Development understands that GGB Nevada is an owner of NOR, and
23 its faulty claim regarding disclosure is directly contradicted by NOR’s Organizational
24 Chart and Transfer of Interest approval letter contained in the application. (See Exs. A
25 and B.) Accordingly, NOR provided all necessary information necessary in its
26 application, and it fully complied with all statutory and regulatory guidance provided in
27 NRS 453D.200(6) and accompanying regulations.

1 **A. NOR Fully Disclosed Its Ownership on Its Application**

2 The Department states in its disclosure that it “could not eliminate a question”
3 regarding the completeness of NOR’s application regarding the identification of its
4 owners. NOR believes that the Department should be the entity that addresses and
5 answers this question now, as the information provided and attested to by NOR answers
6 the Department’s question, but the Department has refused to answer the question as it
7 has done for each of the other successful applicants, including those who did not even
8 intervene here and presumably provided no additional information for the Department
9 to consider in sending its post-hearing submission.

10 The Department is expressly tasked with processing “complete” applications and
11 to determine whether applications are “complete and in compliance” with the applicable
12 regulations. *See* NRS 453D.210(4) and NAC 453D.272(1). It is therefore up to the
13 Department to consider the information submitted and attested to by NOR, and NOR
14 contends that the information submitted answers the Department’s question and fully
15 complies with the statute. The fact that the Department has already approved this
16 information with its Notice of Transfer of Interest letter demonstrates that the
17 Department has considered the information to be complete. In its application, NOR
18 expressly stated that “this ownership structure was approved by the Department of
19 Taxation on August 20, 2018....[and] the Department was provided notice of the officers
20 of the Company on August 31, 2018 and September 7, 2018.” (Ex. B at DOT-NVOrganic
21 001427). For the Department to have received and approved the ownership information
22 and now to state that there is a “question” about the information nearly one year later is
23 improper.

24 NRS 453D.200(6) provides that the Department “shall conduct a background
25 check of each prospective owner, officer, and board member of a marijuana
26 establishment license applicant.” NOR’s Organizational Chart (Ex. B), provides a
27 complete list of the entire ownership interest in NOR sufficient for the Department to
28

1 conduct such background checks. NOR is a limited liability company and as such, **it is**
2 **owned by its “members.”** See, NRS 86.081.

3 The chart provided in NOR’s applications lists all owners/members of NOR and
4 even provides the percentage of ownership of each owner at the time of the application.
5 GGB Nevada, LLC owned 95% of NOR, Andrew Jolley owned 2.2%, Stephen Byrne
6 owned 1.7%, Patrick Byrne owned 0.5%, Harvest Dispensaries owned 0.5%, and Darren
7 Petersen owned 0.1%. As indicated, NOR fully disclosed all ownership of NOR, even
8 including owners of less than 5% of the company even though the regulations at issue
9 did not require the listing of these minor owners. Moreover, NOR provided all
10 information necessary for the Department to fulfill its duties to conduct background
11 checks of all NOR’s owners by providing agent cards for all the individual owners and
12 by providing the corporate structure of GGB’s corporate parent, Xanthic Biopharma,
13 Inc., in compliance with NAC 453D.250(2).

14 Nothing in the application, the statute, or the Court’s order filed on August 23,
15 2019, suggested that NOR was required to further break down the ownership of NOR’s
16 member owners if those owners were corporate entities. Nothing required NOR to break
17 down ownership of companies that owned portions of parent companies, or the
18 companies that own portions of those companies that owned portions of parent
19 companies. If such were the requirement, the cascade of ownership checks could be
20 endless.

21 This interpretation of ownership was adopted by all applicants, as multiple
22 plaintiffs in this proceeding provided exactly the same information with respect to their
23 structure. For example, MM Development’s organizational chart provides the names of
24 the companies owning MM Development, their officers and board members, as well as
25 the individuals with major ownership interests in the company. (See Hearing Exhibit 20,
26 at DOT-MM000787, attached here as Exhibit C.) After identifying MM Development
27 Company, Inc. as “THIS ENTITY APPLYING FOR LICENSES”, it goes on to show that
28 the applicant is owned by Planet 13 Holdings, Inc., which is in turn owned by

1 unidentified "Investors, Public Stockholders (none > 5% individually) 29.2453%." MM
2 Development listed its direct owner and did not list minor stockholders of the
3 subsequent parent company, as it also was not required to do so.

4 Plaintiffs Serenity Wellness Center LLC was in the same boat. As demonstrated
5 during the hearing, Serenity's organizational structure in its application showed that it
6 was owned by "Alternative Solutions LLC", which was then owned in turn by "CLS
7 Holdings USA, Inc." (Hearing Ex. 5033, attached here as Ex. D.) Serenity then
8 submitted a list of ownership that only "included information from a few significant
9 stockholders that were part of the previous ownership group." (Hearing Ex. 5035,
10 attached here as Ex. E.) Serenity has never claimed that it submitted every owner of
11 each of these parent entities for background checks. That's because it did not. These
12 parties followed the same process and made the same disclosures, and thus, any claim of
13 irreparable harm for parties such as these is invalid. Plaintiffs cannot claim prejudice or
14 harm based upon the Department's usage of a standard that the Plaintiffs' themselves
15 relied upon in submitting applications.

16 If the Court interprets the language of the statute literally, as it has chosen to do
17 in the context of requiring background checks of "each owner," then this literal
18 interpretation must also be applied to the "owner" of the applicant, which can only go
19 up one level and not result in subsequent subjective determinations of how many levels
20 of ownership above the immediate owner would be reviewed. If additional ownership
21 were checked, this would violate the statute, which does not define "owner" and does
22 not identify majority, partial, or full subsequent ownership as a condition.

23 NOR's application thus fully complied by providing all information necessary for
24 the Department to conduct background checks in compliance with the law. Were the
25 Department to require any further information, NOR would have provided that
26 information. As it stands, NOR provided everything that was necessary and fully
27 complied with the statute and regulation.

1 **B. The Department Is Tasked with Compliance with NRS 453D.200(6), Not**
2 **Applicants**

3 NRS 453D.200(6) mandates that the Department conduct background checks on
4 the prospective owners, officers, and board members of applicants for a marijuana
5 establishment. That statute does not mandate that an applicant take any action, and it
6 does not state what information must be included in an application. Under no
7 circumstances can an applicant fail to “comply” with NRS 453D.200(6). Once
8 information is submitted, the Department can conduct background checks, and if it
9 needs additional information, it can request such information from the applicant. If
10 there is an issue with a background check of an owner, officer, or board member that is
11 performed, the Department is required to “provide notice to the applicant and give the
12 applicant an opportunity to revise its application.” NAC 453D.272(6).

13 NOR objects to any allusion in the Department’s submission, the objections of
14 any other parties, and of the Court’s August 23, 2019 Order that suggests that NOR
15 failed to comply with NRS 453D.200(6) or that NOR submitted an incomplete
16 application for failure to comply with NRS 453D.200(6). NOR followed the instructions
17 given to it. Any failure of compliance is solely the fault of the Department. NOR should
18 not be placed in a position where it is treated any differently than any other applicant in
19 regard to the injunction because it acted no differently than any other applicant.

20 **C. The Requirement for “Prospective” Owners to Be Background Checked**
21 **Precludes Freezing an Ownership Date as of the Date of Applications**

22 NOR further objects to the Court’s recent request that the Department provide
23 only information of ownership frozen on the application date, as the statute expressly
24 states that the Department is to conduct background checks of each “prospective
25 owner.” When an applicant is already underway with a transaction to sell the company,
26 “prospective” (*i.e.*, “future”) owners are certainly being contemplated. In the last few
27 days of the preliminary injunction hearing, when it appeared as though the Court was
28 concerned about the background check issue, certain of the defendant-intervenors

1 explained that even though they are now owned by publicly-traded companies, they
2 were not yet owned by the publicly-traded companies when submitting their
3 application. The implication in this argument is that there was no need to disclose their
4 prospective owners in the application in order for the Department to have the
5 information necessary to comply with NRS 453D.200(6). The Department appears to
6 have improperly accepted this false construction in its submission by accepting a list of
7 owners only as of the date of the application, when “prospective owners” were clearly
8 required to be provided at the time of the application.

9 If “public safety” is the concern that background checks are meant to address,
10 then it would be absurd to allow a company to freeze its ownership list as of the date of
11 the application when it has a deal in place to sell itself to criminals who will take over
12 the business immediately upon the license being awarded. To decide otherwise would
13 effectively result in the same nightmare scenario that plaintiffs have waxed on about
14 during the hearing, e.g., if the Sinaloa cartel were to become an “owner” after
15 applications are due without any ability to check the backgrounds of these new owners.
16 Such a result would be absurd and contravene the entire purpose of the statute.

17 For the record, NOR does not believe any other successful applicant acted in any
18 way other than in full compliance with the requirements of the application and the law,
19 as it believes the Departments adoption of NAC 453D.255 was an appropriate
20 interpretation of the ownership statute, but NOR should not be treated any differently
21 than other applicants now owned by publicly-traded companies just because of the
22 timing of the transfer of ownership.

23 **D. The Defendant-Intervenors Should Not Be Treated Any Differently Than**
24 **Conditional Licensees That Did Not Intervene**

25 Finally, throughout the months’ long hearing on the motion for preliminary
26 injunction, the applications and ownership structure of all the defendant-intervenors
27 have been heavily scrutinized, and, as a result, the Department’s disclosures erroneously
28 indicated that there was some question as to the ownership of certain defendant-

1 intervenors such as NOR. There were, however, several successful applicants that did
2 not intervene, and the Department has apparently made *no attempt* to re-scrutinize
3 those applications of non-intervening parties. At no point in the hearing has any party
4 seen any portion of those applicants' applications, and no party has any idea whether or
5 not they actually listed all their owners, officers, and board members in their
6 applications.

7 As a result, the winning applicants that did not intervene are now being treated
8 much differently than those who chose to intervene. In effect, the non-intervenors have
9 been given a free pass and none will face the prospect of an injunction. The result is
10 inequitable and punishes parties such as NOR for electing to intervene to protect their
11 rights. Not only have the non-intervenors received a free ride from those actually willing
12 to defend the application process, but they ended up facing no risk from their free ride.
13 NOR objects to the disparate treatment as inequitable and improper.

14 II. CONCLUSION

15 For the reasons set forth above, NOR provided all information required by NRS
16 453D at the time it submitted its applications in September 2018, and the Department
17 should be permitted to move forward with conducting final inspections for NOR's
18 establishments.

19
20 **KOCH & SCOW, LLC**

21 By: /s/ David R. Koch
22 David R. Koch
23 *Attorneys for Defendant-Intervenor*
24 *Nevada Organic Remedies LLC*
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on August 26, 2019, I caused the foregoing document entitled: **NEVADA ORGANIC REMEDIES' RESPONSE TO THE DEPARTMENT OF TAXATION'S STATEMENT REGARDING COMPLETENESS OF APPLICATIONS WITH REFERENCE TO NRS 453D.200(6)** to be served as follows:

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

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

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

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

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

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

Executed on August 26, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh

EXHIBIT A

EXHIBIT A



BRIAN SANDOVAL
Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
BILL ANDERSON
Executive Director

STATE OF NEVADA
DEPARTMENT OF TAXATION

Web Site: <https://tax.nv.gov>

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Building L, Suite 235
Reno, Nevada 89502
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Fax: (775) 688-1303

HENDERSON OFFICE
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Henderson, Nevada 89074
Phone: (702) 488-2300
Fax: (702) 486-3377

August 20, 2018

Ms. Amanda Connor
Nevada Organic Remedies, LLC
710 Coronado Center Dr. Suite 121
Henderson, NV 89052

State of Nevada Application ID Number:	MME Certificate	C094 – 88242054656300627601
	ME License	# 1018539646-002-CUL
	MME Certificate	D152 – 02441426022753521200
	ME License	# 1018539646-001-DIP
	MME Certificate	P063 – 72792951478780009507
	ME License	# 1018539646-002-PRO
	ME License	T056 # 1018539646-002-DIT

Subject: MME Ownership Change

Dear Ms. Connor,

Your Notice of Transfer of Interest pertaining to the ownership of the above referenced MME(s) has been reviewed and APPROVED. Effective immediately, your MME(s) and ownership Schedule of Interest is recorded as follows:

Name

GGB Nevada, LLC

Xanthic Biopharma, Inc.

Board Members:

- Jean Schottenstein
- Peter Horvath
- Stephen Stoute
- Carli Posner, Chairman
- Timothy Moore, CEO
- Igor Galitsky, President
- Marc Lehmann, Board Member
- David Bhumgara, CFO

% Held

95.00%

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

DOT-NVOrganic000096

5.2.7. Tab VII - Page 48 of 49

AA 006645

Officers:

- Igor Galitsky
- Timothy Moore, CEO
- David Bhungara, CFO
- Carli Posner, Chairman

Andrew M. Jolley	2.20%
Stephen J. Byrne	1.70%
Patrick G. Byrne	0.50%
Harvest Dispensaries, Cultivation & Kitchen Consultants, LLC	0.50%
Liesl Sicz	
Darren C. Petersen	<u>0.10%</u>
Total	100.00%

Please feel free to contact us at marijuana@tax.state.nv.us if you have any questions.

Sincerely,



Steve Gilbert, Program Manager II
Department of Taxation, Marijuana Enforcement Division

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

DOT-NVOrganic000097

5.2.7. Tab VII - Page 49 of 49

AA 006646

EXHIBIT B

EXHIBIT B

the+source

5.2.10.1

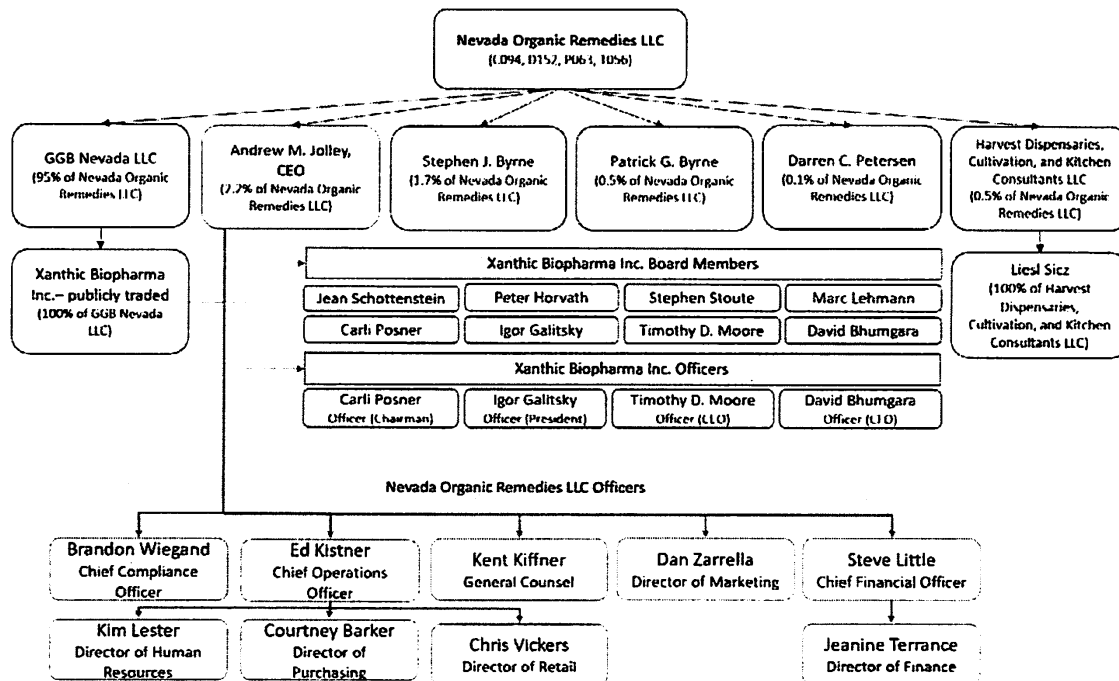
ORGANIZATIONAL CHARTS

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY DOT-NV-Organic001426

AA 006648

5.2.10.1. An organizational chart showing all owners, officers, and board members of the recreational marijuana establishment, including percentage of ownership for each individual.

The following Organizational Chart shows all owners, officers and board members of Nevada Organic Remedies LLC (“NOR”).¹ This chart is also provided in larger size in *Exhibit A: Organizational Chart and Ownership Structure*.



NOR is a robust organization with oversight, governance and support provided by owners, board members and officers. Due to the size of the organization, multiple charts have been provided in this section in an effort to clearly illustrate not only the Company’s ownership, but the operational structure of the company leadership team and the retail store organizational structure. Collectively, these sub-sections and exhibits provide a wholistic view of the Company’s ownership and operational structure and are referenced here for clarity:

1. Organizational Chart and Ownership Structure. This section and the associated exhibit (*Exhibit A: Organizational Chart and Ownership Structure*) outline NOR’s organizational

¹ Please note this ownership structure was approved by the Department of Taxation on August 20, 2018 (see attached letter Exhibit E). Please note the Department was provided notice of the officers of the Company on August 31, 2018 and September 7, 2018 (see attached letters Exhibit E).

Exhibit A: Organizational Chart and Ownership Structure

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY 5211 Hwy 688 24 of 403
DOT-INV-Organic001448

AA 006650

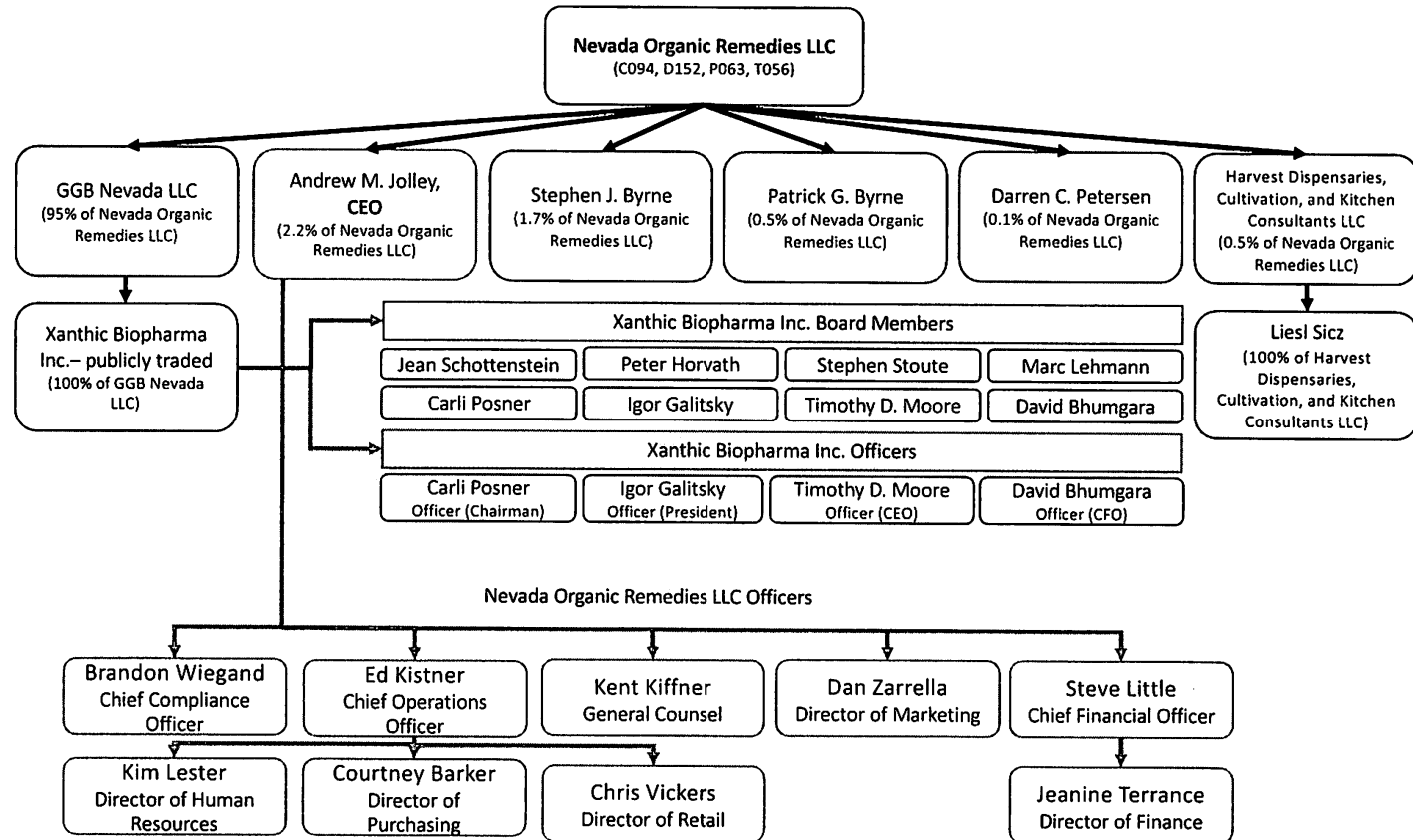
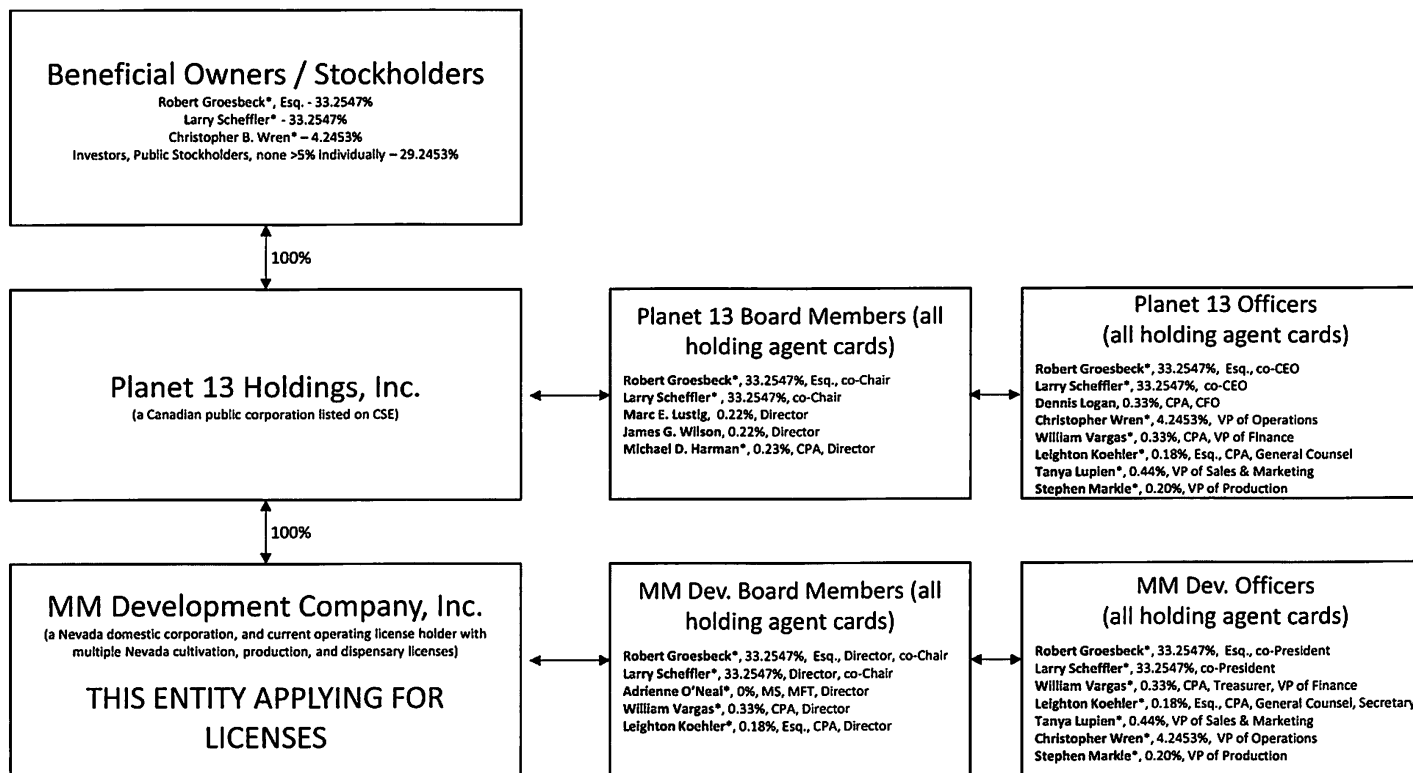


EXHIBIT C

EXHIBIT C



Note: * is inserted to designate Nevada residents
~~HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY~~

DOT-MM000787

EXHIBIT D

EXHIBIT D

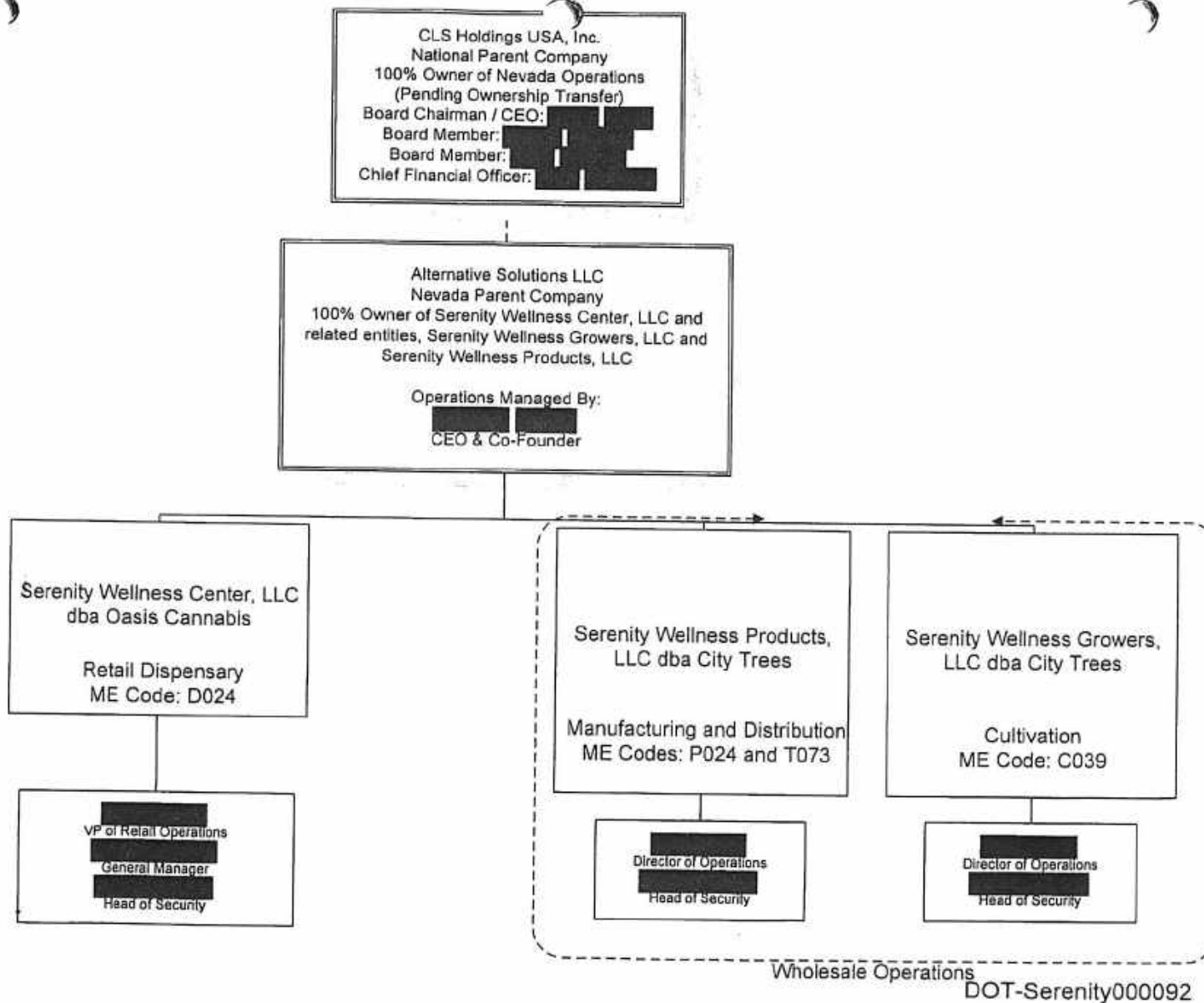


EXHIBIT E

EXHIBIT E

5.2.3 Tab III - Applicant Information Sheet



Serenity Wellness Center LLC
DBA Oasis Cannabis
1800 Industrial Road, Suite 180
Las Vegas, NV 89102
702- [REDACTED]

September 13, 2018

Nevada Department of Taxation
555 E Washington Avenue #1300
Las Vegas, NV 89101

Re: Pending Ownership Transfer During Retail Store Application Period

Dear Madam or Sir:

CLSH Holdings USA, Inc., a publicly traded company listed as CLSH on the OTCQB exchange, recently acquired 100% of the membership interests in Serenity Wellness Center, LLC DBA Oasis Cannabis. The ownership transfer request has been submitted to the Department of Taxation in accordance with applicable laws and procedures, but it was still pending review when this application was submitted. Please note that the application was submitted as if the pending transfer had already been approved, in expectation that the transfer will be completed prior to or at the time of the final scoring and ranking of retail store applications.

All the former owners and founders of Oasis Cannabis are now stockholders in CLSH, and together they own about 29% of the outstanding shares of the public company. We have included information from a few significant stockholders that were part of the previous ownership group. The stockholders who were included are [REDACTED] and [REDACTED]. The remaining owner information contained in this application relates to officers and board members.

CLSH retained me, [REDACTED] the CEO and Co-Founder of Oasis Cannabis, when they appointed me as the CEO of their newly acquired Nevada operations. I will serve in the same capacity as the primary operator in Nevada, overseeing all aspects of the dispensary, cultivation, and production operations. CLSH also retained the team of 60+ employees and managers that currently work for the organization.

Respectfully,

[REDACTED]

CEO / Co-Founder
Oasis Cannabis

DOT-Serenity000005

AA 006657

EXHIBIT 6

EXHIBIT 6

the+source

5.2.10.1

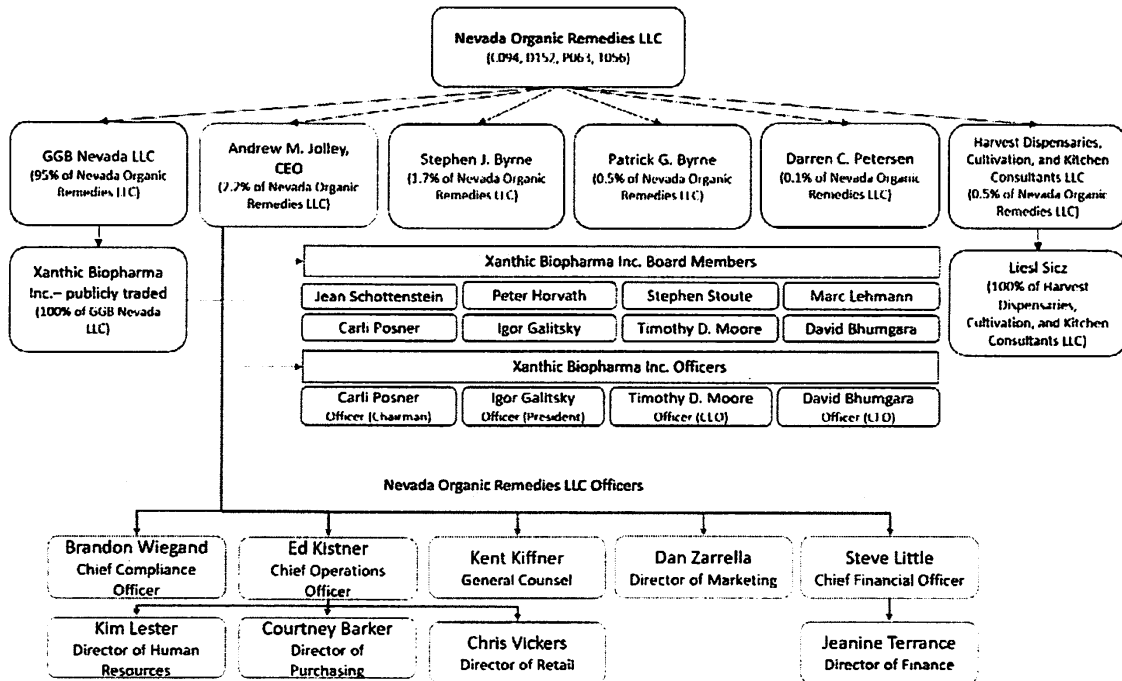
**ORGANIZATIONAL
CHARTS**

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY DOT-NV-Organic001426

AA 006659

5.2.10.1. An organizational chart showing all owners, officers, and board members of the recreational marijuana establishment, including percentage of ownership for each individual.

The following Organizational Chart shows all owners, officers and board members of Nevada Organic Remedies LLC (“NOR”).¹ This chart is also provided in larger size in *Exhibit A: Organizational Chart and Ownership Structure*.



NOR is a robust organization with oversight, governance and support provided by owners, board members and officers. Due to the size of the organization, multiple charts have been provided in this section in an effort to clearly illustrate not only the Company’s ownership, but the operational structure of the company leadership team and the retail store organizational structure. Collectively, these sub-sections and exhibits provide a wholistic view of the Company’s ownership and operational structure and are referenced here for clarity:

1. Organizational Chart and Ownership Structure. This section and the associated exhibit (*Exhibit A: Organizational Chart and Ownership Structure*) outline NOR’s organizational

¹ Please note this ownership structure was approved by the Department of Taxation on August 20, 2018 (see attached letter Exhibit E). Please note the Department was provided notice of the officers of the Company on August 31, 2018 and September 7, 2018 (see attached letters Exhibit E).

Exhibit A: Organizational Chart and Ownership Structure

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY 5211 Hwy 688 24 of 403
DOT-INV-Organic001448

AA 006661

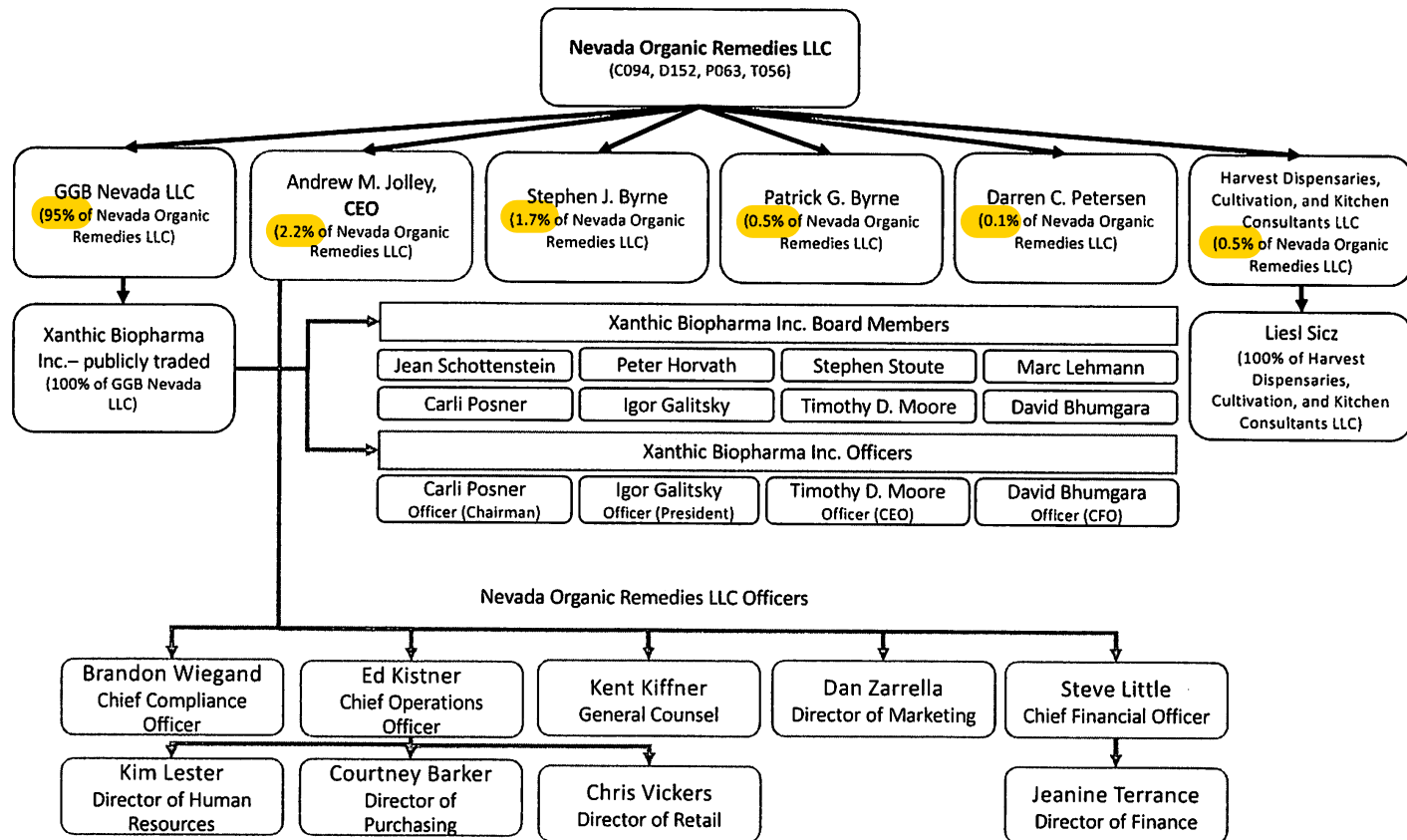


EXHIBIT 7

EXHIBIT 7



BRIAN SANDOVAL
Governor
JAMES DEVOLLO
Chair, Nevada Tax Commission
BILL ANDERSON
Executive Director

**STATE OF NEVADA
DEPARTMENT OF TAXATION**

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

August 20, 2018

Ms. Amanda Connor
Nevada Organic Remedies, LLC
710 Coronado Center Dr. Suite 121
Henderson, NV 89052

State of Nevada Application ID Number:	MME Certificate	C094 – 88242054656300627601
	ME License	# 1018539646-002-CUL
	MME Certificate	D152 – 02441426022753521200
	ME License	# 1018539646-001-DIP
	MME Certificate	P063 – 72792951478780009507
	ME License	# 1018539646-002-PRO
	ME License	T056 # 1018539646-002-DIT

Subject: MME Ownership Change

Dear Ms. Connor,

Your Notice of Transfer of Interest pertaining to the ownership of the above referenced MME(s) has been reviewed and APPROVED. Effective immediately, your MME(s) and ownership Schedule of Interest is recorded as follows:

<u>Name</u>	<u>% Held</u>
GGB Nevada, LLC	95.00%
Xanthic Biopharma, Inc.	
Board Members:	
- Jean Schottenstein	
- Peter Horvath	
- Stephen Stoute	
- Carli Posner, Chairman	
- Timothy Moore, CEO	
- Igor Galitsky, President	
- Marc Lehmann, Board Member	
- David Bhungara, CFO	

Officers:

- Igor Galitsky
- Timothy Moore, CEO
- David Bhungara, CFO
- Carli Posner, Chairman

Andrew M. Jolley	2.20%
Stephen J. Byrne	1.70%
Patrick G. Byrne	0.50%
Harvest Dispensaries, Cultivation & Kitchen Consultants, LLC	0.50%
Liesl Sicz	
Darren C. Petersen	<u>0.10%</u>
Total	100.00%

Please feel free to contact us at marijuana@tax.state.nv.us if you have any questions.

Sincerely,



Steve Gilbert, Program Manager II
Department of Taxation, Marijuana Enforcement Division

EXHIBIT 8

EXHIBIT 8

From: **Steve F. Gilbert** <sfgilbert@tax.state.nv.us>
Date: Tue, Mar 26, 2019 at 12:59 PM
Subject: Re: Transfer of Ownership forms
To: Amanda Connor <amanda@connorpllc.com>
Cc: Ruth Del Rio <rdelrio@tax.state.nv.us>, Rebecca Post <rebecca@connorpllc.com>, Melanie Lopez <melanie@connorpllc.com>, Jorge Pupo <jpupo@tax.state.nv.us>

Hi Amanda
You're correct. It must be officers and board members of the publicly traded company.

Sent from my iPhone

On Mar 25, 2019, at 2:20 PM, Amanda Connor <amanda@connorpllc.com> wrote:

Steve

I just wanted to follow up the question below. I would appreciate guidance on who would need to sign the transfer forms.

Sincerely

Amanda N. Connor Esq.

Connor & Connor PLLC.

710 Coronado Center Dr., Suite 121

Henderson, NV 89052

(702) 750-9139; (702) 749-5991 (fax)

amanda@connorpllc.com

On Mar 12, 2019, at 6:31 PM, Amanda Connor <amanda@connorpllc.com> wrote:

AA 006667

Steve

No the license holder is a Nevada LLC that would be owned 100% by XYZ LLC. DEF Inc is a publicly traded Canadian company. DEF Inc is the sole shareholder of ABC Inc. ABC Inc is a foreign corporation but I am unsure what state.

Thank you

Amanda N. Connor Esq.

Connor & Connor PLLC.

710 Coronado Center Dr., Suite 121

Henderson, NV 89052

(702) 750-9139; (702) 749-5991 (fax)

amanda@connorpllc.com

On Mar 12, 2019, at 6:15 PM, Steve F. Gilbert <sfgilbert@tax.state.nv.us> wrote:

Amanda.

Let me make sure I understand this structure.

Is DEF a domestic corporation? If yes, Nevada?

Where is ABC located?

Is XYZ a license holder in Nevada?

From: Amanda Connor [<mailto:amanda@connorpllc.com>]

Sent: Tuesday, March 12, 2019 10:28 AM

To: Steve F. Gilbert; Ruth Del Rio

Cc: Rebecca Post; Melanie Lopez

Subject: Transfer of Ownership forms

Good morning,

I have a quick question, for a transfer of interest, if the proposed new owner is to be an LLC that is 100% owned by a corporation that is 100% owned by a publicly traded corporation, who should sign the transfer of interest forms? It is my understanding that it needs to be the officers and board members of the publicly traded company and cannot be signed by an officer of the LLC without tracing back to the publicly traded company. Can you please confirm that is correct?

AA 006668

Here is the structure we are discussing:

License Holder

100% owned by XYZ, LLC (with an officer)

ABC Inc (owns 100% of XYZ, LLC)

DEF, Inc publicly traded (sole shareholder of ABC, INC)

- board members and officers of DEF, Inc.

Based on this structure it is my understanding that the board members and officers of DEF, Inc. need to sign the transfer of interest forms and that the transfer forms could not be signed by the officer of XYZ, LLC. Is that correct?

I appreciate your prompt attention to this question.

Thank you,

Amanda N. Connor Esq.

Connor & Connor Pllc.

710 Coronado Center Dr., Suite 121

Henderson, NV 89052

(702) 750-9139; (702)749-5991 (fax)

amanda@connorpllc.com

The unauthorized disclosure or interception of e-mail is a federal crime. See 18 U.S.C. Sec. 2517(4). This e-mail is intended only for the use of those to whom it is addressed and may contain information which is privileged, confidential and exempt from disclosures under the law. If you have received this e-mail in error, do not distribute or copy it. Please return it immediately to the sender with attachments, if any, and notify me by calling (702) 750-9139.

AA 006669

EXHIBIT 9

EXHIBIT 9

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 31, 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:

FOR THE PLAINTIFFS:

DOMINIC P. GENTILE, ESQ.
MICHAEL CRISTALLI, ESQ.
ROSS MILLER, ESQ.
WILLIAM KEMP, ESQ.
NATHANIEL RULIS, ESQ.
ADAM BULT, ESQ.
MAXIMILIEN FETAZ, ESQ.
THEODORE PARKER, ESQ.

FOR THE DEFENDANTS:

KETAN BHIRUD, ESQ.
STEVE SHEVORSKI, ESQ.
THERESA HAAR, ESQ.
RUSTY GRAF ESQ.
BRIGID HIGGINS, ESQ.
ERIC HONE, ESQ.
DAVID KOCH, ESQ.
ALINA SHELL, ESQ.
JARED KAHN, ESQ.
PHILIP HYMANSON, ESQ.
JOSEPH GUTIERREZ, ESQ.

ALSO PRESENT:

CHRISTIAN BALDUCCI, ESQ.
For Stacey Dougan

1 you put it into the scoring tool?

2 A Yes.

3 Q All right. So -- okay. Let's talk about owners.
4 If I'm a shareholder in a corporation, am I an owner of that
5 company from the way you used owner in the process here?

6 A For corporations we like to have the officers of the
7 corporation for, you know, vetting them for background checks
8 and diversity purposes, or what was listed in the application
9 on Attachment A and C, I think it was.

10 Q What does the statute say with regard to owner?
11 What are you supposed to do with owners? Who's supposed to
12 file an application?

13 A I think the statute breaks it down, if I'm correct,
14 from corporation and partnerships and s. Corporations are
15 officers, partnerships are partners, and are members.

16 Q Sir, isn't it accurate that with regard to filing an
17 application all owners, officers, and board members have to
18 file the application?

19 A Yes.

20 Q All right.

21 THE COURT: I'm going to hand you the statute book,
22 because sometimes Mr. Gentile's asking you what the statute
23 says, and I'm going to let you have the opportunity to look in
24 the pocket part, if you want to, which is the very back part,
25 because I know that some of the things he's asking you may be

EXHIBIT 10

EXHIBIT 10

LICENSED ENTITY - OWNERS/OFFICERS/BOARD MEMBERS as of: May 1, 2019. *An affiliated entity may be a parent company, subsidiary, an organization that controls another entity, is controlled by another entity or under common control alongsid*

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)
RP063	Nevada Organic Remedies LLC	Rec Production	Las Vegas	Clark	Schottenstein	Jean	R	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RP063	Nevada Organic Remedies LLC	Rec Production	Las Vegas	Clark	Stoute	Stephen	J	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD152	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Jolley	Andrew	M	Owner	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD152	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Byrne	Patrick	G	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD152	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Byrne	Stephen	J	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD152	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	GGB Nevada LLC			Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD152	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Peterson	Darren	C	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD152	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Sicz	Liesl	M	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	Harvest Dispensaries, Cultivation & Kitchen	no	no
RD152	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Bhumgara	David	W	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD152	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Galitsky	Igor	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD152	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Moore	Timothy	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD152	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Posner	Carli		no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD152	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Horvath	Peter	Z	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD152	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Schottenstein	Jean	R	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD152	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Stoute	Stephen	J	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Byrne	Patrick	G	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	GGB Nevada LLC			Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Sicz	Liesl	M	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	Harvest Dispensaries, Cultivation & Kitchen	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Barker	Courtney	D	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Bhumgara	David	W	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Galitsky	Igor	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Kiffner	Kent	C	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Kistner	Edward	J	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Lester	Kimberly	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Little	Steven	J	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Moore	Timothy	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Posner	Carli		no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Terrance	Jeanine	N	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Vickers	Christopher	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Wiegand	Brandon	M	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Horvath	Peter	Z	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Lehmann	Marc	E	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Schottenstein	Jean	R	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD215	Nevada Organic Remedies LLC	Retail Dispensary	Unincorporated Clark	Clark	Stoute	Stephen	J	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Jolley	Andrew	M	Owner	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no

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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)
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Byrne	Patrick	G	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Byrne	Stephen	J	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	GGB Nevada LLC			Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Peterson	Darren	C	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Sicz	Liesl	M	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	Harvest Dispensaries, Cultivation & Kitchen	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Barker	Courtney	D	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Bhumgara	David	W	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Galitsky	Igor	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Kiffner	Kent	C	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Kistner	Edward	J	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Lester	Kimberly	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Little	Steven	J	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Moore	Timothy	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Posner	Carli		no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Terrance	Jeanine	N	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Vickers	Christopher	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Wiegand	Brandon	M	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Horvath	Peter	Z	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Lehmann	Marc	E	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Schottenstein	Jean	R	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD216	Nevada Organic Remedies LLC	Retail Dispensary	Las Vegas	Clark	Stoute	Stephen	J	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Jolley	Andrew	M	Owner	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Byrne	Patrick	G	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Byrne	Stephen	J	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	GGB Nevada LLC			Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Peterson	Darren	C	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Sicz	Liesl	M	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	Harvest Dispensaries, Cultivation & Kitchen	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Barker	Courtney	D	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Bhumgara	David	W	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Galitsky	Igor	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Kiffner	Kent	C	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Kistner	Edward	J	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Lester	Kimberly	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Little	Steven	J	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Moore	Timothy	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no

AA 006677

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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)
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Posner	Carli		no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Terrance	Jeanine	N	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Vickers	Christopher	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Wiegand	Brandon	M	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Horvath	Peter	Z	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Lehmann	Marc	E	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Schottenstein	Jean	R	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD217	Nevada Organic Remedies LLC	Retail Dispensary	North Las Vegas	Clark	Stoute	Stephen	J	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Jolley	Andrew	M	Owner	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Byrne	Patrick	G	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Byrne	Stephen	J	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	GGB Nevada LLC			Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Peterson	Darren	C	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Sicz	Liesl	M	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	Harvest Dispensaries, Cultivation & Kitchen	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Barker	Courtney	D	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Bhumgara	David	W	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Galitsky	Igor	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Kiffner	Kent	C	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Kistner	Edward	J	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Lester	Kimberly	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Little	Steven	J	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Moore	Timothy	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Posner	Carli		no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Terrance	Jeanine	N	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Vickers	Christopher	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Wiegand	Brandon	M	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Horvath	Peter	Z	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Lehmann	Marc	E	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Schottenstein	Jean	R	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD218	Nevada Organic Remedies LLC	Retail Dispensary	Henderson	Clark	Stoute	Stephen	J	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Jolley	Andrew	M	Owner	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Byrne	Patrick	G	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Byrne	Stephen	J	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	GGB Nevada LLC			Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Peterson	Darren	C	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no

AA 006678

LICENSED ENTITY - OWNERS/OFFICERS/BOARD MEMBERS as of: May 1, 2019. *An affiliated entity may be a parent company, subsidiary, an organization that controls another entity, is controlled by another entity or under common control alongsid*

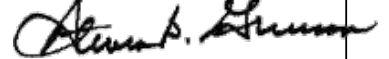
ID	Licensed Entity	License Type	Establishment Jurisdiction	COUNTY	Last Name	First Name	MI	Owner	Officer	Board Member	Affiliated Entity (1)	Affiliated Entity (2)	Affiliated Entity (3)	Affiliated Entity (4)	Affiliated Entity (5)
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Sicz	Liesl	M	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	Harvest Dispensaries, Cultivation & Kitchen	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Barker	Courtney	D	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Bhumgara	David	W	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Galitsky	Igor	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Kiffner	Kent	C	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Kistner	Edward	J	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Lester	Kimberly	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Little	Steven	J	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Moore	Timothy	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Posner	Carli		no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Terrance	Jeanine	N	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Vickers	Christopher	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Wiegand	Brandon	M	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Horvath	Peter	Z	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Lehmann	Marc	E	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Schottenstein	Jean	R	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD219	Nevada Organic Remedies LLC	Retail Dispensary	Reno	Washoe	Stoute	Stephen	J	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Jolley	Andrew	M	Owner	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Byrne	Patrick	G	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Byrne	Stephen	J	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	GGB Nevada LLC			Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Peterson	Darren	C	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Sicz	Liesl	M	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	Harvest Dispensaries, Cultivation & Kitchen	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Barker	Courtney	D	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Bhumgara	David	W	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Galitsky	Igor	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Kiffner	Kent	C	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Kistner	Edward	J	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Lester	Kimberly	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Little	Steven	J	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Moore	Timothy	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Posner	Carli		no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Terrance	Jeanine	N	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Vickers	Christopher	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Wiegand	Brandon	M	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no

AA 006679

LICENSED ENTITY - OWNERS/OFFICERS/BOARD MEMBERS as of: May 1, 2019. *An affiliated entity may be a parent company, subsidiary, an organization that controls another entity, is controlled by another entity or under common control alongsid*

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)
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Horvath	Peter	Z	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Lehmann	Marc	E	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Schottenstein	Jean	R	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD221	Nevada Organic Remedies LLC	Retail Dispensary	Nye	Nye	Stoute	Stephen	J	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Jolley	Andrew	M	Owner	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Byrne	Patrick	G	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Byrne	Stephen	J	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	GGB Nevada LLC			Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Peterson	Darren	C	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Sicz	Liesl	M	Owner	no	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	Harvest Dispensaries, Cultivation & Kitchen	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Barker	Courtney	D	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Bhumgara	David	W	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Galitsky	Igor	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Kiffner	Kent	C	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Kistner	Edward	J	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Lester	Kimberly	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Little	Steven	J	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Moore	Timothy	D	no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Posner	Carli		no	Officer	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Terrance	Jeanine	N	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Vickers	Christopher	A	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Wiegand	Brandon	M	no	Officer	no	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Horvath	Peter	Z	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Lehmann	Marc	E	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Schottenstein	Jean	R	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
RD222	Nevada Organic Remedies LLC	Retail Dispensary	Carson City	Carson City	Stoute	Stephen	J	no	no	BM	GGB Nevada, LLC	Xanthic Biopharma, Inc	no	no	no
D009	Nevada Wellness Center LLC	Med Dispensary	Las Vegas	Clark	Hawkins	Frank		Owner	Officer	no	no	no	no	no	no
D009	Nevada Wellness Center LLC	Med Dispensary	Las Vegas	Clark	Mack	Luther		Owner	Officer	no	no	no	no	no	no
D009	Nevada Wellness Center LLC	Med Dispensary	Las Vegas	Clark	Rhodes	Andre		Owner	Officer	no	no	no	no	no	no
RD009	Nevada Wellness Center LLC	Retail Dispensary	Las Vegas	Clark	Hawkins	Frank		Owner	Officer	no	no	no	no	no	no
RD009	Nevada Wellness Center LLC	Retail Dispensary	Las Vegas	Clark	Mack	Luther		Owner	Officer	no	no	no	no	no	no
RD009	Nevada Wellness Center LLC	Retail Dispensary	Las Vegas	Clark	Rhodes	Andre		Owner	Officer	no	no	no	no	no	no
T005	Nevada Wholesalers LLC	Distributor	Reno	Washoe	Adams	Michael		Owner	no	no	no	no	no	no	no
T005	Nevada Wholesalers LLC	Distributor	Reno	Washoe	Aramini	Eliene		Owner	no	no	no	no	no	no	no
T005	Nevada Wholesalers LLC	Distributor	Reno	Washoe	Coward	Jeanine		Owner	no	no	no	no	no	no	no

AA 006680



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Attorneys for Defendant in Intervention, CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace

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.

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

**THRIVE'S JOINDER TO ESSENCE
ENTITIES' OPPOSITION TO NEVADA
WELLNESS CENTER, LLC'S MOTION
TO AMEND FINDINGS OF FACTS AND
CONCLUSIONS OF LAW ISSUED ON
AUGUST 23, 2019, PURSUANT TO NRCP
52**

1 LLC, a Nevada limited liability company,
2 FIDELIS HOLDINGS, LLC, a Nevada limited
3 liability company, GRAVITAS NEVADA,
4 LLC, a Nevada limited liability company,
5 NEVADA PURE, LLC, a Nevada limited
6 liability company, MEDIFARM, LLC, a Nevada
7 limited liability company, DOE PLAINTIFFS I
8 through X; and ROE ENTITY PLAINTIFFS I
9 through X,

10 Plaintiffs,

11 vs.

12 THE STATE OF NEVADA, DEPARTMENT
13 OF TAXATION,

14 Defendants.

15 INTEGRAL ASSOCIATES, LLC d/b/a
16 ESSENCE CANNABIS DISPENSARIES, a
17 Nevada limited liability company; ESSENCE
18 TROPICANA, LLC, a Nevada limited liability
19 company; ESSENCE HENDERSON, LLC, a
20 Nevada limited liability company; CPCM
21 HOLDINGS, LLC d/b/a THRIVE CANNABIS
22 MARKETPLACE, COMMERCE PARK
23 MEDICAL L.L.C., a Nevada limited liability
24 company; and CHEYENNE MEDICAL LLC, a
25 Nevada limited liability company; a Nevada
26 limited liability company.

27 Defendants in Intervention.

28 AND ALL RELATED ACTIONS

Hearing Date: October 28, 2019

Hearing Time: 9:00 AM

19 Intervening Defendant CPCM HOLDINGS, LLC d/b/a THRIVE CANNABIS
20 MARKETPLACE (“Thrive”), by and through its attorneys of record, the law firm MAIER GUTIERREZ
21 & ASSOCIATES, HYMANSON & HYMANSON, hereby joins in defendant-intervenor Integral Associates
22 LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson, LLC’s
23 Opposition to Nevada Wellness Center, LLC’s Motion to Amend Findings of Facts and Conclusion
24 of Law Issued on August 23, 2019, Pursuant to NRCP 52 filed on October 10, 2019.

25 This joinder is made and based upon the papers and pleadings on file herein, such other
26 documentary evidence as may be presented and any oral argument of counsel at the time of the
27 hearing. Thrive expressly adopts and incorporates by reference herein all of the points and authorities
28 set forth in defendant-intervenor Integral Associates LLC d/b/a Essence Cannabis Dispensaries,

1 Essence Tropicana, LLC, Essence Henderson, LLC's Opposition to Nevada Wellness Center, LLC's
2 Motion to Amend Findings of Facts and Conclusion of Law Issued on August 23, 2019, Pursuant to
3 NRCP 52 filed on October 10, 2019.

4 DATED this 10th day of October 2019.

5 Respectfully submitted,

6 **MAIER GUTIERREZ & ASSOCIATES**

7 /s/ Joseph A. Gutierrez

8 JOSEPH A. GUTIERREZ, ESQ.

9 Nevada Bar No. 9046

JASON R. MAIER, ESQ.

10 Nevada Bar No. 8557

8816 Spanish Ridge Avenue

11 Las Vegas, Nevada 89148

Attorneys for Defendants in Intervention

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, a copy of the **THRIVE'S JOINDER TO ESSENCE ENTITIES' OPPOSITION TO NEVADA WELLNESS CENTER, LLC'S MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52** was electronically filed on the 10th day of October 2019 and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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17			
18	Steven B Scow	sscow@kochscow.com	
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21	Integral Associates, LLC - Intervenor Defendant		
22	Todd L Bice	tlb@pisanellibice.com	
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24	Shannon Dinkel	sd@pisanellibice.com	
25			
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27			
28	James J Pisanelli	lit@pisanellibice.com	
	Jordan T Smith	jts@pisanellibice.com	
	Lone Mountain Partners, LLC - Intervenor Defendant		
	Bobbie Donaldson	bobbie@h1lawgroup.com	

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Alina M Shell alina@nvlitigation.com

Clear River, LLC - Intervenor Defendant

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



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Nevada Organic Remedies, LLC

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, 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.

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant;

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

**NEVADA ORGANIC REMEDIES,
LLC'S JOINDERS TO:**

**1) THE ESSENCE ENTITIES'
OPPOSITION TO NEVADA
WELLNESS CENTER LLC'S
MOTION TO AMEND
FINDINGS OF FACTS AND
CONCLUSIONS OF LAW
ISSUED ON AUGUST 23, 2019,
PURSUANT TO NRCP 52;**

AND

**2) LONE MOUNTAIN
PARTNERS, LLC'S
OPPOSITION TO NEVADA
WELLNESS CENTER, LLC'S
MOTION TO AMEND
FINDINGS OF FACTS AND
CONCLUSIONS OF LAW
ISSUED ON AUGUST 23, 2019,
PURSUANT TO NRCP 52**

1 NEVADA ORGANIC REMEDIES, LLC

2 Applicant for Intervention

3 Defendant Nevada Organic Remedies, LLC ("NOR"), hereby joins in the following
4 oppositions:

5 (1) THE ESSENCE ENTITIES' OPPOSITION TO NEVADA WELLNESS
6 CENTER LLC'S MOTION TO AMEND FINDINGS OF FACTS AND
7 CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019,
PURSUANT TO NRCP 52; and

8 (2) LONE MOUNTAIN PARTNERS, LLC'S OPPOSITION TO NEVADA
9 WELLNESS CENTER, LLC'S MOTION TO AMEND FINDINGS OF
FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23,
10 2019, PURSUANT TO NRCP 52

11 and hereby incorporates by reference as though fully set forth herein the facts and
12 legal arguments set forth in those oppositions.

13
14 KOCH & SCOW, LLC

15 By: /s/ David R. Koch

16 David R. Koch, Esq.

17 Steven B. Scow, Esq.

18 Brody R. Wight, Esq.

19 Daniel G. Scow, Esq.

20 11500 S. Eastern Ave., Suite 210

21 Henderson, Nevada 89052

22 *Attorneys for Intervenor*

23 *Nevada Organic Remedies*

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 October 11, 2019, I caused the foregoing document entitled: **NEVADA ORGANIC REMEDIES, LLC'S JOINDERS TO: 1)THE ESSENCE ENTITITES' OPPOSITION TO NEVADA WELLNESS CENTER LLC'S MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52; AND LONE MOUNTAIN PARTNERS, LLC'S OPPOSITION TO NEVADA WELLNESS CENTER, LLC'S MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52** 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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17 Alina Shell (alina@nvlitigation.com)

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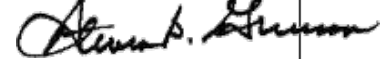
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9 Executed on October 11, 2019 at Henderson, Nevada.

10 /s/ Andrea Eshenbaugh
Andrea Eshenbaugh



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Clear River, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

STATE OF NEVADA, DEPARTMENT OF
TAXATION,

Defendant,

CLEAR RIVER, LLC, a Nevada limited liability
company,

Applicant in Intervention

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

**CLEAR RIVER, LLC'S
JOINDER TO THE ESSENCE
ENTITIES OPPOSITION TO
NEVADA WELLNESS CENTER,
LLC'S MOTION TO AMEND
FINDINGS OF FACTS AND
CONCLUSIONS OF LAW
ISSUED ON AUGUST 23, 2019,
PURSUANT TO NRCP 52**

**HEARING DATE: October 28, 2019
HEARING TIME: 9:00 A.M.**

**CLEAR RIVER, LLC'S JOINDER TO THE ESSENCE ENTITIES' OPPOSITION TO
NEVADA WELLNESS CENTER, LLC'S MOTION TO AMEND FINDINGS OF FACTS
AND CONCLUSIONS OF LAW ISSUED ON
AUGUST 23, 2019, PURSUANT TO NRCP 52**

Defendant-Intervenor Clear River, LLC ("Clear River"), by and through its counsel, Brigid M. Higgins, Esq. and Rusty Graf, Esq. of the law firm of Black & LoBello, hereby submits their Joinder to Defendant-Intervenor The Essence Entities' Opposition to Nevada Wellness Center, LLC's Motion To Amend Findings of Facts and Conclusions of Law Issued on August 23, 2019, Pursuant to NRCP 52 filed in this matter by Defendant-Intervenor The Essence Entities, on October 10, 2019 and adopt the arguments and grounds as stated in the Points and Authorities filed in support of said Opposition.

Clear River, LLC's Joinder is based upon the pleadings, papers and other records on file, and any further documentary evidence as may be presented and any oral argument of counsel at the time of the hearing. Defendant expressly adopts and incorporates by reference herein all of the points and authorities set forth in Defendant-Intervenor The Essence Entities, as it relates to Defendant-Intervenor's Opposition to Nevada Wellness' Motion to Alter or Amend Findings of Fact and Conclusions of Law issued by the Court on August 23, 2019, Pursuant to NRCP 52.

DATED this _____ day of October 2019.

BLACK & LOBELLO

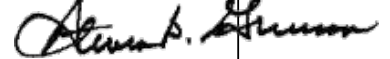
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October 2019, pursuant to Administrative Order 14-2 and N.E.C.R. 9, I did cause a true copy of the foregoing **CLEAR RIVER, LLC'S JOINER TO DEFENDANT-INTERVENOR THE ESSENCE ENTITIES OPPOSITION TO NEVADA WELLNESS CENTER, LLC'S MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52**, in *Serenity Wellness Center, LLC, et al v State of Nevada, Department of Taxation, et al*, Clark County District Court Case No. A-19-786962-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

/s/ Diane Meeter
An Employee of Black & Lobello



1 **JOPP**

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9 Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

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

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

15 Plaintiffs,

16 vs.

17 STATE OF NEVADA, DEPARTMENT OF
18 TAXATION,

19 Defendant,

20 and

21 NEVADA ORGANIC REMEDIES, LLC, a
22 Nevada limited liability company;
23 GREENMART OF NEVADA NLV LLC, a
24 Nevada limited liability company,
25 INTEGRAL ASSOCIATES LLC d/b/a
26 ESSENCE CANNABIS DISPENSARIES, a
27 Nevada limited liability company; ESSENCE
28 TROPICANA, LLC, a Nevada limited liability
company; ESSENCE HENDERSON, LLC, a
Nevada limited liability company; CPCM
HOLDINGS, LLC d/b/a THRIVE
CANNABIS MARKETPLACE,
COMMERCE PARK MEDICAL, LLC, a
Nevada limited liability company; and
CHEYENNE MEDICAL, LLC, a Nevada
limited liability company,

Defendants-Intervenors.

Case No.: A-19-786962-B

Dept. No.: XI

DEFENDANT-INTERVENOR
GREENMART OF NEVADA NLV
LLC'S JOINDER TO THE
ESSENCE ENTITIES' OPPOSITION
TO NEVADA WELLNESS CENTER,
LLC'S MOTION TO AMEND
FINDINGS OF FACT AND
CONCLUSIONS OF LAW ISSUED
ON AUGUST 23, 2019, PURSUANT
TO NRCP 52

Hearing Date: October 28, 2019

Hearing Time: 9:00 a.m.

1 Defendant-Intervenor GreenMart of Nevada NLV LLC, by and through its
2 undersigned counsel, McLetchie Law, hereby joins the Opposition to Nevada Wellness
3 Center, LLC's Motion to Amend Findings of Fact and Conclusions of Law Issued on August
4 23, 2019, Pursuant to NRCP 52 filed in this matter by Defendant in Intervention Essence
5 Entities' on October 10, 2019 and adopts the arguments and grounds as stated in the Points
6 and Authorities filed in support of said Opposition.

7 In their Opposition, the Essence Entities correctly note that Nevada
8 Wellness's motion is untimely, and that the Court therefore does not have jurisdiction to
9 entertain it. (*See* Opposition, pp. 2:18-3:5.) Court is also divested of jurisdiction to rule on
10 Plaintiff's motion during the pendency of the multiple appeals filed by Defendant Intervenor
11 in this matter. Under Nevada law, a timely notice of appeal divests the district court of
12 jurisdiction to act and vests jurisdiction in the Nevada Supreme Court. *See, e.g., Rust v.*
13 *CCSD*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987); *accord Mack-Manley v. Manley*,
14 122 Nev. 849, 855, 138 P.3d 525, 529 (2006). Once an appeal is perfected, the district court
15 is divested of jurisdiction to revisit issues that are pending before the Supreme Court. *Mack-*
16 *Manley*, 122 Nev. at 855, 138 P.2d at 529-30.

17 At most, a district court retains jurisdiction "to enter orders that are collateral to and
18 independent from the appealed order; i.e., matters that in no way affect the appeal's merits."
19 *Mack-Manley*, 122 Nev. at 855, 138 P.2d at 529-30 (citations omitted); *see also Chemlawn*
20 *Servs. Corp. v. GNC Pumps, Inc.*, 823 F.2d 515, 518 (Fed. Cir. 1987) ("[O]n interlocutory
21 orders, a notice of appeal divests the District Court of jurisdiction over all matters involved
22 in the appeal. In those circumstances, the District Court may proceed only with matters not
23 involved with the appeal."); *accord Aevoe Corp v. A.E. Tech. Co., Ltd.*, 2013 WL 12129860
24 at *1 (D. Nev. Aug. 26, 2013).

25 If a district court wishes to grant a motion regarding an issue pending appeal, "it may
26 certify its inclination to grant the motion to [the Nevada Supreme Court]. At that point, the
27 moving party would file a motion in [the Nevada Supreme Court] for remand to the district
28

court.” Mack-Manley, 122 Nev. 849, 855–56, 138 P.3d 525, 530 (citing *Huneycutt v. Huneycutt*, 94 Nev. 79, 80-81, 575 P.2d 585, 586 (1978)).

Here, the Court’s August 23, 2019 Findings of Fact and Conclusions of Law (“FFCL”) was appealed by GreenMart and Nevada Organic Remedies on September 19, 2019.¹ Plaintiff filed the instant motion on September 25, 2019—six days after GreenMart’s and NOR’s appeals were filed. Thus, this Court was divested of jurisdiction to alter or amend the FFCL well before Plaintiff filed its motion. Even if the Court were inclined to alter or amend the FFCL—which, for the reasons stated in the Department’s Opposition it should not—it cannot do so without first certifying its intent to do so with the Nevada Supreme Court. Accordingly, the Court should deny Plaintiff’s motion.

DATED this the 15th day of October, 2019.

/s/ Alina M. Shell

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MCLEATCHIE LAW

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Counsel for Defendant-Intervenor, GreenMart of Nevada NLV LLC

¹ Defendant in Intervention Lone Mountain Partners, LLC also filed a notice of appeal on September 27, 2019.



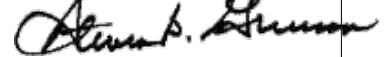
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2019, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing DEFENDANT-INTERVENOR GREENMART OF NEVADA NLV LLC'S JOINDER TO THE ESSENCE ENTITIES' OPPOSITION TO NEVADA WELLNESS CENTER, LLC'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52 in *Serenity Wellness Center, LLC, et al. v. State of Nevada, Department of Taxation, et al.*, Clark County District Court Case No A-19-786962-B, to be served electronically using the Odyssey File & Serve system, to all parties with an email address on record.

/s/ Lacey Ambro

An Employee of McLetchie Law



JOIN

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Attorneys Helping Hands Wellness Center, Inc.

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

SERENITY WELLNESS CENTER, LLC,)
et al.,)
Plaintiff,)

vs.)

THE STATE OF NEVADA,)
DEPARTMENT OF TAXATION,)
Defendants.)

and,)

HELPING HANDS WELLNESS)
CENTER, INC.,)
Defendant-Intervenor.)

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

**HELPING HANDS WELLNESS
CENTER, INC.'S JOINDERS TO:**

**1. THE ESSENCE ENTITIES'
OPPOSITION TO NEVADA
WELLNESS CENTER LLC'S MOTION
TO AMEND FINDINGS OF FACTS
AND CONCLUSIONS OF LAW
ISSUED ON AUGUST 23, 2019,
PURSUANT TO NRCP 52;**

AND,

**2. LONE MOUNTAIN PARTNERS,
LLC'S OPPOSITION TO NEVADA
WELLNESS CENTER, LLC'S
MOTION TO AMEND FINDINGS OF
FACT AND CONCLUSIONS OF LAW
ISSUED ON AUGUST 23, 2019,
PURSUANT TO NRCP 52**

Defendant-Intervenor Helping Hands Wellness Center, Inc., ("HHWC") by and through
its counsel, Jared Kahn, Esq., hereby joins in the following oppositions:

1. THE ESSENCE ENTITIES' OPPOSITION TO NEVADA WELLNESS CENTER LLC'S MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52; and,

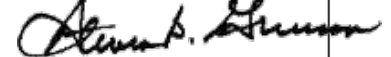
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2. LONE MOUNTAIN PARTNERS, LLC’S OPPOSITION TO NEVADA
WELLNESS CENTER, LLC’S MOTION TO AMEND FINDINGS OF FACT
AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019, PURSUANT
TO NRCP 52

HHWC incorporates herein, and on its behalf, those arguments made therein the
Oppositions.

DATED: October 17, 2019.

/s/ Jared B. Kahn
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*Of Attorneys for Defendant-Intervenor
Helping Hands Wellness Center, Inc.*



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Attorneys for Plaintiff

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 ENTITIES I through X,

Plaintiffs,

v.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,
Defendant.

Defendants.

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

DATE OF HEARING: October 28, 2019
TIME OF HEARING: 9:00 am

NEVADA WELLNESS CENTER, LLC,
REPLY IN SUPPORT OF MOTION TO
AMEND FINDINGS OF FACTS AND
CONCLUSIONS OF LAW ISSUED ON
AUGUST 23, 2019, PURSUANT TO
NRCP 52

1 NEVADA WELLNESS CENTER, LLC, a
2 Nevada limited liability company,
Plaintiff,

CASE NO.: A-19-787540-W
DEPT. NO.: XVIII

3
4 STATE OF NEVADA, DEPARTMENT OF
TAXATION; and DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

5
6 Defendants.

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

CASE NO.: A-18-785818-W
DEPT. NO.: VIII

9 Plaintiffs,

10 v.

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

12
13 Defendants

14 ETW MANAGEMENT GROUP LLC, a
15 Nevada limited liability company; GLOBAL
HARMONY LLC, a Nevada limited liability
company; GREENLEAFFARMS HOLDINGS
16 LLC, a Nevada limited liability company;
GREEN THERAPEUTICS LLC, a Nevada
limited liability company; HERBAL CHOICE
17 INC., a Nevada corporation; JUST QUALITY,
LLC, a Nevada limited liability company;
18 LIBRA WELLNESS CENTER, LLC, a Nevada
limited liability company; ROMBOUGH
19 REAL ESTATE INC. dba MOTHER HERB, a
Nevada corporation; NEVCANN LLC, a
20 Nevada limited liability company; RED
EARTH LLC, a Nevada limited liability
21 company; THC NEVADA LLC, a Nevada
limited liability company; ZION GARDENS
22 LLC, a Nevada limited liability company; and
MMOF VEGAS RETAIL, INC., a Nevada
23 corporation,

CASE NO.: A-19-787004-B
DEPT. NO.:

24 Plaintiffs,

25 v.

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

1
2 **REPLY IN SUPPORT OF NEVADA WELLNESS CENTER, LLC, MOTION TO AMEND**
3 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019,**
4 **PURSUANT TO NRCP 52**

5 COMES NOW, Plaintiff, NEVADA WELLNESS CENTER, LLC (hereinafter "NWC"), by
6 and through its attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER,
7 NELSON & ASSOCIATES, CHTD., and files this Reply in Support of Motion to Amend the
8 Findings of Facts and Conclusions of Law issued August 23, 2019, pursuant to NRCP 52 **which was**
9 **originally timely filed September 13, 2019, in case number A-19-787540-W and files this**
10 **Motion A-19-786962-B, for all consolidates and related cases.**

11 This Reply is made and based upon the pleadings and paper on file herein, the points and
12 authorities included herewith, the exhibits attached hereto and such oral argument as the Court may
13 entertain at the time this matter is heard.

14 DATED this 16th day of October, 2019.

15 **PARKER, NELSON & ASSOCIATES, CHTD.**

16 /s/ Theodore Parker, III, Esq.

17 THEODORE PARKER, III, ESQ.
18 Nevada Bar No. 4716
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128

19 *Attorneys for Plaintiff*

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I.**

22 **INTRODUCTION**

23 Following lengthy hearings, on August 23, 2019, this Court issued Findings of Fact and
24 Conclusions of Law Granting Preliminary Injunction. (See Findings of Fact and Conclusions of Law
25 Granting Preliminary Injunction, filed August 23, 2019, a true and correct copy attached hereto as
26 Exhibit "A".) As stated in NWC's Motion to Amend the Findings of Facts and Conclusions of Law
27 issued August 23, 2019, pursuant to NRCP 52 the Motion of originally timely filed September 13,
28 2019, in case number A-19-787540-W and files this Motion A-19-786962-B. for all consolidates

1 and related cases. (See Exhibit 1). The matter was scheduled to be heard on October 25, 2019, but
2 was subsequently continued.

3 **II.**

4 **ARGUMENT**

5 **A. Nevada Wellness' Motion is Timely**

6 Here, the Notice of Entry of Order on the August 23, 2019 Findings of Fact and Conclusions
7 of Law (hereinafter "FFCL"), was filed on August 28, 2019. NRCP 52(b) provides that a party has
8 28 days to file a motion to request the Court amend its findings. On September 13, 2019, well within
9 28 days, NWC filed its NRCP 52 Motion. Likewise, on September 24, 2019, well within 28 days,
10 MM Development Company filed its NRCP 52 Motion.

11 **B. Motions to Amend Findings of Fact and Conclusion of Law Toll the Time to
12 Appeal**

13 Pursuant to NRAP 4(a)(4), the time to file an appeal of the FFCL is tolled under the entry of
14 an order on the NRCP 52 Motion. On September 13, 2019, well within 28 days, NWC filed its
15 NRCP 52 Motion to Amend Findings of Fact and Conclusion of Law in case A-19-787540-W, which
16 is consolidated with A-19-786962-C for the purposes of the Preliminary Injunction. Likewise, on
17 September 24, 2019, well within 28 days, MM Development Company filed its NRCP 52 Motion.
18 Both motions tolled the time for the respective parties to file and appeal.

19 **C. NWC and MM Development and LiveFree Wellness Motions to Amend
20 Findings of Fact and Conclusion of Law were filed Before Appeals Making the
21 Appeals Premature and Thus Does not Divest of Jurisdiction**

22 As stated above, on September 13, 2019, well within 28 days, NWC filed its NRCP 52
23 Motion to Amend Findings of Fact and Conclusion of Law in case A-19-787540-W, which is
24 consolidated with A-19-786962-C for the purposes of the Preliminary Injunction. Likewise, on
25 September 24, 2019, well within 28 days, MM Development Company filed its NRCP 52 Motion.
26 Both motions tolled the time for the respective parties to file and appeal. While unpublished, the
27 Nevada Supreme Court has made clear how it would decide such an issue. McKinley v. McClellan,
28 2017 Nev. Unpub. LEXIS 292; 2017 WL 1438592; 393 P.3d 665; Docket No. 72294 (April 21,
2017) (unpublished disposition). The filing of a timely motion that tolls the time to appeal renders

1 the notice of appeal filed before the resolution of said motion, premature. Thus, jurisdiction never
2 transferred to the Nevada Supreme Court and the instant Court was never divested of jurisdiction.

3 II.

4 DISCUSSION

5 A. LEGAL AUTHORITIES

6 1. Motions to Amend Findings of Fact and Conclusions of Law

NRCP 52 provides in pertinent part:

7 (a) Findings and Conclusions.

8 (1) In General. In an action tried on the facts without a jury or with an
9 advisory jury, the court must find the facts specially and state its conclusions
10 of law separately. The findings and conclusions may be stated on the record
after the close of the evidence or may appear in an opinion or a memorandum
of decision filed by the court. Judgment must be entered under Rule 58.

11 (b) Amended or Additional Findings. On a party's motion filed no later than
12 28 days after service of written notice of entry of judgment, the court may
13 amend its findings — or make additional findings — and may amend the
judgment accordingly. The time for filing the motion cannot be extended
under Rule 6(b). The motion may accompany a motion for a new trial under
Rule 59.

NRCP 65 states in relevant part:

14 (a) Preliminary Injunction.

15 (1) Notice. The court may issue a preliminary injunction only on notice to the adverse
16 party.

17 (2) Consolidating the Hearing With the Trial on the Merits. Before or after beginning the
18 hearing on a motion for a preliminary injunction, the court may advance the trial on the
19 merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence
that is received on the motion and that would be admissible at trial becomes part of the trial
record and need not be repeated at trial. But the court must preserve any party's right to a jury
trial.

20 (b) Temporary Restraining Order.

21 (1) Issuing Without Notice. The court may issue a temporary restraining order without
22 written or oral notice to the adverse party or its attorney only if:

23 (A) specific facts in an affidavit or a verified complaint clearly show that immediate
and irreparable injury, loss, or damage will result to the movant before the adverse
party can be heard in opposition; and

24 (B) the movant's attorney certifies in writing any efforts made to give notice and the
reasons why it should not be required.

25 (2) Contents; Expiration. Every temporary restraining order issued without notice must
26 state the date and hour it was issued; describe the injury and state why it is irreparable; state
27 why the order was issued without notice; and be promptly filed in the clerk's office and
entered in the record. The order expires at the time after entry — not to exceed 14 days —
28 that the court sets, unless before that time the court, for good cause, extends it for a like
period or the adverse party consents to a longer extension. The reasons for an extension must
be entered in the record.

1 **A. NCW File Timely Pursuant NRCP 52(b) and the Court's Consolidation and**
2 **Are Not Time Barred.**

3 NRCP 52(b) provides that a party has 28 days to file a motion to request the Court amend
4 its findings. On September 13, 2019, well within 28 days, NWC filed its NRCP 52 Motion.
5 Likewise, on September 24, 2019, well within 28 days, MM Development Company filed its NRCP
6 52 Motion. NWC refiled its Motion to Amend Findings of Fact and Conclusions of Law in case A-
7 19-7869962-B, on September 30, 2019. however, the court consolidated the cases. Accordingly,
8 NWC initial Motion filed on September 13, 2019 was timely.

9 **B. Motions to Amend Findings of Fact and Conclusion of Law Toll the Were Filed**
10 **Before Any Time to Appeals**

11 Pursuant to NRAP 4(a)(4), the time to file an appeal of the FFCL is tolled under the entry of
12 an order on the NRCP 52 Motion. On September 13, 2019, well within 28 days, NWC filed its
13 NRCP 52 Motion to Amend Findings of Fact and Conclusion of Law in case A-19-787540-W, which
14 is consolidated with A-19-786962-C for the purposes of the Preliminary Injunction. Likewise, on
15 September 24, 2019, well within 28 days, MM Development Company filed its NRCP 52 Motion.
16 Both motions tolled the time for the respective parties to file and appeal. NWC refiled its Motion
17 to Amend Findings of Fact and Conclusions of Law in case A-19-7869962-B, on September 30,
18 2019. however, the court consolidated the cases so the initial Motion filed on September 13, 2019
19 was timely

20 **C. NWC and MM Development and LiveFree Wellness Motions to Amend**
21 **Findings of Fact and Conclusion of Law were filed Before Appeals Making the**
22 **Appeals Thereafter Premature and Thus Does not Divested This Court of**
23 **Jurisdiction of Jurisdiction**

24 As stated above, on September 13, 2019, well within 28 days, NWC filed its NRCP 52
25 Motion to Amend Findings of Fact and Conclusion of Law in case A-19-787540-W, which is
26 consolidated with A-19-786962-C for the purposes of the Preliminary Injunction. Likewise, on
27 September 24, 2019, well within 28 days, MM Development Company filed its NRCP 52 Motion.
28 Both motions tolled the time for the respective parties to file and appeal. While unpublished, the
Nevada Supreme Court has made clear how it would decide such an issue. McKinley v. McClellan,
2017 Nev. Unpub., LEXIS 292; 2017 WL 1438592; 393 P.3d 665; Docket No. 72294 (April 21,

1 2017) (unpublished disposition). The filing of a timely motion that tolls the time to appeal renders
2 the notice of appeal filed before the resolution of said motion, premature. Thus, jurisdiction never
3 transferred to the Nevada Supreme Court and the instant Court was never divested of jurisdiction.

4 **D. Nevada Wellness Center's Motion Satisfies NRCP 52(b) Based Upon Law and**
5 **Fact**

6 I. Motions to Amend Findings of Fact and Conclusions of Law

7 NRCP 52 provides in pertinent part:

8 (b) Amended or Additional Findings. On a party's motion filed no
9 later than 28 days after service of written notice of entry of judgment,
10 the court may amend its findings — or make additional findings —
and may amend the judgment accordingly. The time for filing the
motion cannot be extended under Rule 6(b). The motion may
accompany a motion for a new trial under Rule 59.

11 On September 13, 2019 NWC properly and timely moved to amend the court's August 23,
12 2019, findings of fact and conclusion of law, pursuant to NRCP 52(b). NWC's motion to amend
13 is justified in fact, law and equity and requests the court amend specific findings of law and fact.
14 NWC's motion points to specific facts, recreational marijuana licencing regulations, recreational
15 marijuana licencing laws and opening meeting laws that were overlooked in the court's earlier
16 opinion. Based upon manifest errors in the bidding process and violations of the applicable laws and
17 regulations NWC properly moved to amend the Court August 23, 2019 Findings of Facts and
18 Conclusions of Law.

19 **E. Nevada Wellness Center is not Making the Same Challenge as the Nuleaf**
20 **Challengers regarding the Zoning Approval by the Local Agency**

21 In the case at bar, unlike the Nuleaf challengers, NWC is NOT challenging DoT failure to
22 comply with applicable local and governmental zoning requirements before the applicant received
23 a registration certificate for a medical marijuana establishment, as alleged by Essence. (See
24 Opposition at 4:3-8) The court in the Nuleaf case considered the local governments restrictions and
25 the timing required to approve zoning .

26 NWC is challenging applicants that failed to comply with the requirement to list a **physical**
27 **address on the initial application** as required by NRS 453D.210(5)(b).
28

Specifically NRS 453D.210(5)(b) provides:

"5. The Department shall approve a license application if:

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

F. The Plain Language of NRS 453D.210 Require All Applications Provide a Physical Location as Prerequisite to Being Deemed a Complete Application and Only Complete Applications may be Approved by DoT.

The plain language of NRS 453D.210 clearly specifies **conditions for approval of application** and clearly states the DoT is only to consider **completed applications**. There is no similar language in NRS 453A.322(3)(a)(5), and thus the Nuleaf Court found NRS 453A.322(3)(a)(5) was open to interpretation. Accordingly, the Nuleaf case has no application to this case.

Essence Entities' opposition fails to address the additional language and requirements of NRS 453D.210 which were not at issue or addressed by the Nuleaf Court.

NRS 453D.210(4) provides:

"Acceptance of applications for licensing; priority in licensing; **conditions for approval of application**; limitations on issuance of licenses to retail marijuana stores; competing applications. [This section was proposed by an initiative petition and approved by the voters at the 2016 General Election and therefore is not subject to legislative amendment or repeal until after November 22, 2019.]

4. **Upon receipt of a complete** marijuana establishment license application. . . . (a) Issue the appropriate license if the license application is approved...." (*Emphasis added*)

Here, NRS 453D.210 has *additional language* making the plain language of the statute clear and unambiguous. The Court in the Nuleaf case could not have considered a statute governing recreational marijuana licensing because the statute was not in existence at the time of the Nuleaf case. Similarly, the court overlooked the additional language and conditions that were not applicable in the Nuleaf case when it issued its Findings of Facts and Conclusions of Law regarding the physical location requirements.

As is the case at bar, when the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it." City Council of Reno v. Reno Newspapers, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989). The court should give that language of NRS 453D.210 its ordinary meaning and not go beyond it. *Id.* The plain language of NRS 453D.210 requires conditions for approval of all applications. The plain language requires all applicants to

1 provide a **complete** application which requires a **physical location** for approval of the application.
2 NRS 453D.210 requires that only **upon receipt of a complete** marijuana establishment license
3 application shall the DoT Issue the appropriate license. Therefore, DoT had no discretion to
4 determine whether applicants without a **physical address** listed on the application received a license
5 because licenses could upon be issued upon receipt of a complete application, which required a
6 physical location.

7 Former DoT Executive Deonne Contine confirmed the DoT required a real physical location
8 be provided on all applications. In fact, she stated that “applications that did not have a real physical
9 address should not have even been considered.”¹ In addition, DoT Deputy Executive Jorge Pupo
10 testified that the DoT expected a physical location to be included on all applications. He confirmed
11 that applications without a physical location are incomplete.² Additionally, NAC 453D.272(1)
12 provides the procedure for when the DoT receives more than one “complete” application. Under this
13 provision the DoT will determine if the “application is complete and compliance with this chapter
14 and Chapter 453D of NRS, the Department will rank the applications . . .” (See FFCL ¶ 16.)

15 Lone Mountain Partners LLC argues that NWC misses the point, while Essence Entities
16 argues that the issues before the Nuleaf court were the same, but both fail to address the additional
17 language included in NRS 453D.210 that was not considered by the Nuleaf Court. The additional
18 language makes the requirement of physical location clear and unambiguous. According to the plain
19 and unambiguous language of NRS 453D.210(4) and 453D.210(5)(b), as affirmed by DoT
20 Executive and DoT Deputy Executive, all applications without a physical location are incomplete
21 and should have been rejected, not approved and/or scored/ranked or issued a conditional license
22 by the DoT. Lone Mountain Partners argues that deference is given to the DoT. Unlike the Nuleaf
23 case, here, the DoT has affirmed the clear and unambiguous language of 453D.210(4) and
24 453D.210(5)(b), which requires a physical address on the applicants application.

26 ¹ See Exhibit B attached to Motion, Trial Transcript Excerpts from July 12, 2019 P48:L15-49:16.

27 ² See Exhibit C attached to Motion, Trial Transcript Excerpts from June 20, 2019 Volume II, P:19:L21-
28 P:20:L11.

1 Still, the DoT unlawfully issued conditional licenses to applicants who submitted incomplete
2 applications without a physical address. This is not the case of final approval by the local
3 government, but rather a failure by certain applicants to provide a complete applications.
4 Accordingly the preliminary injunction should apply to all applications that failed to provide a real
5 physical location or otherwise submitted an incomplete application.

6 **G. The DoT has no Discretion to Issues Licenses to Applicants with Incomplete**
7 **Applications Pursuant to the Plain Meaning of NRS 453D.210.**

8 Essence opposition alleges the competitive bidding cases cited in NWC's motion support
9 "the State's process and the Court's finding." (See Opp. 5:4-5) To support this claim Essence relies
10 on *Redl v. State of Nevada*, 120 Nev. 75, 81, 85 P.3d 797, 801 (2004). The Redl court interpreted
11 the plain meaning of NRS § 78.730. The plain meaning of NRS § 78.730 is that the five-year
12 limitation applies only to reinstatement, not revival. The Court found that although a corporation
13 cannot be reinstated after five years, there is no provision under § 78.730 that prevents a corporate
14 revival after five years. Thus the Court found the Nevada Secretary of State has the discretion to
15 revive a revoked corporate charter after any amount of time. *Redl v. State of Nevada*, 120 Nev. 75,
16 76, 85 P.3d 797, 797 (2004).

17 In this case, as outlined above, the plain meaning of of NRS 453D.210 requires conditions
18 for approval of all applications. The plain meaning meaning of NRS 453D.210 prevents the DoT
19 from approving incomplete applications and provides that only upon receipt of a complete
20 marijuana establishment license application including a physical address shall the Dot Issue the
21 appropriate license. Thus, the DoT has no discretion to issues licenses to applicants with incomplete
22 applications.

23 **H. NRS 453D.210(6) Mandates the Use of a Competitive Bidding Process**

24 NRS 453D.210(6) mandates the DoT to use "an impartial and numerically scored
25 competitive bidding process" to determine successful applicants where competing applications were
26 submitted. (See FFCL ¶ 15.) Lone Mountain Partner's LLC attempt to argue that the competitive
27 bidding process is not applicable to this case is contradicted by this Court's FFCL as well as the
28 mandates of NRS 453D.210(6).

1 i. **Judicial Relief is Warranted Because the DoT's Action Amounts to an**
2 **Erosion on the Integrity of the Competitive Bidding Statute**

3 The purpose of a competitive application or bidding process "is to secure competition, save
4 public funds, and to guard against favoritism, improvidence and corruption." *Gulf Oil Corp. v. Clark*
5 *City.*, 94 Nev. 116, 118-19, 575 P.2d 1332, 1333 (1978); see also *City of Boulder City v. Boulder*
6 *Excavating, Inc.*, 124 Nev. 749, 758, 191 P.3d 1175, 1181 (2008) (same). The statutes and
7 regulations that govern these competitive processes "are deemed to be for the benefit of the
8 taxpayers" and "are to be construed for the public good." *Gulf Oil*, 94 Nev. at 118-19.

9 In addition, NRS 453D.210(6) mandated the DoT to use "an impartial and numerically scored
10 competitive bidding process" to determine successful applicants where competing applications were
11 submitted. (See FFCL ¶ 15.)

12 Essence opposition alleges the competitive bidding cases cited in NWC's motion support
13 "the State's process and the Court's finding." (See Opp. 5:4-5) Essence's opposition and the court's
14 FFCL overlooks the requirements of NRS 453 and underlying purpose of the competitive bidding
15 process to "guard against favoritism, improvidence and corruption." *Gulf Oil*, 94 Nev. at 118-19.

16 As outlined in NWC's motion the competitive bidding process for recreational marijuana
17 was so rife with errors, subject to corruption, including favoritism and inappropriate sharing of
18 information, lunches, dinners and drinks between DoT staff and certain privileged applicants, and
19 improper changes to the process that amount violations and undermine the purpose of the
20 competitive bidding process. The errors in the process include, but are not limited to:

- 21 1. The DoT failed to provide a single point of contact for all applicants;
- 22 2. The DoT allowed applicants to ask questions and receive answers directly from the
23 Department, without disseminating the same information to all applicants;
- 24 3. The DoT modified the application without informing all applicants the application
25 was modified;
- 26 4. The DoT failed to disseminate the modified application to all applicants;
- 27 5. The DoT removed the requirement of a physical location from the application
28 without informing all applicants the physical location requirement was removed;

- 1 6. The DoT removed compliance from the grading process and failed to inform all
- 2 applicants of the removal of compliance;
- 3 7. The DoT failed to investigate sell of marijuana to minors; and
- 4 8. The DoT Executives held private meetings including lunches and dinner with
- 5 applicants/representatives/attorneys.

6 When as is the case here, insider information is provided to some, but not all applicants, it
7 precludes all applicants from competing on equal terms. Spiniello Constr. Co. V. Manchester, 189
8 Conn 539, 544 (Conn. 1983). In Spiniello, while the Court recognized the City's actions were done
9 in good faith to obtain the best result for residents, the Court still found that "judicial relief is
10 warranted where the municipal action amounts to an erosion on the integrity of the bidding statute." Id.
11 at 545. "One of the essentials to competitive bidding is that bidders **shall have the opportunity**
12 **to bid on the same thing.**" Gamewell Co. V. Phoenix, 216 F.2d 928, 934 (9th Cir. 1954) (emphasis
13 added). "The requirement is that specifications be such that **all parties can familiarize themselves**
14 **with the details.** Id. (emphasis added). Not only did the DoT give certain information to a privileged
15 few applicants but additionally made two different applications available during the application
16 process, removed physical location requirements in violation of NRS 453, removed compliance from
17 scoring and halting investigations into the sale of marijuana to minors.

18 It is appropriate for a Court to intervene when the process established by a governmental
19 agency "destroys the very principles of public policy that form the underlying basis of competitive
20 bidding." Weinder v. City of Reno, 88 Nev. 127, 494 P.2d 277, 281 (1972). "[C]ourts should
21 scrutinize the conduct of the bidding process by any governmental agency when it appears that a
22 violation of the public trust may be involved." Id. "Public confidence should be maintained at all
23 costs, even at the expense of those who errors are inadvertent." Comm'n on Ethics v. JMA/Lucchese,
24 110 Nev. 1, 10 (1994). "Innocence cannot deflect the appearance of impropriety." Id. (reversing the
25 district court and reinstating the opinion of the Nevada Commission on Ethics because architects
26 obtained an unfair advantage over competitors by virtue of insider information).

27 Here, all applicants were not given equal access to information, or even access to the same
28 application, as evidenced by multiple communications between DoT and certain applicants over

1 others. The failure of DoT to follow the voters' mandate, and failure to consistently provide
2 information to all applicants, undeniably amounts to an erosion of the integrity of the process.
3 Favoritism and bias governed this process, and grading of the applications was partial to those the
4 DoT staff favored. Notwithstanding, government has a strong desire to prevent opportunities for --
5 and suspicion of -- fraud or favoritism; "neither favoritism nor fraud is necessary to invalidate non-
6 compliance with a request for bidding...". Ganewell, 216 F.2d at 937; Hannan v. Board of
7 Education, 107 P. 646 (OK 1909). Here, the failure to provide all information to all applicants,
8 failing to abide by the terms of the bid (by changing the physical location requirement), and the
9 insider communications that were ongoing and abundant) warrant preventing the issuance of any
10 permanent licenses as the competitive process, by virtue of DoT's improper actions, was unsound,
11 flawed, biased and favored the connected few.

12 **ii. Physical Location and Other Material Irregularities Cannot be Waived**

13 Material irregularities may not be waived, Blount, Inc. v. U.S., 22 Cl.Ct. 221, 227 (1989).
14 A bid which contains a material nonconformity must be rejected as nonresponsive. Blount citing
15 Honeywell, Inc. v. United States, 16 Cl. Ct. 173, 181 (1989), rev'd on other grounds, 870 F.2d 644
16 (Fed. Cir. 1989). Material terms and conditions of a solicitation involve price, quality, quantity, and
17 delivery. *Id.* The rule is designed to prevent bidders from taking exception to material provisions
18 of the contract in order to gain an unfair advantage over competitors and to assure that the
19 government evaluates all bids on an equal basis.

20 The violations allowed by the DoT cannot be considered "minor irregularities." First and
21 foremost, the DoT has allowed applicants to violate the mandatory provision of NRS 453D.
22 Specifically, NRS 453D.210 provides that a applicant "must include" the names of prospective
23 owners, officers, board members and physical addresses of the proposed entities. *See e.g., Blaine*
24 *Equip. Co. v. State*, 122 Nev. 860, 866, 138 P.3d 820, 823 (2006) (the district court may not rely on
25 its equitable power to disregard the mandatory language of a statute). "When the language of a
26 statute is plain and unambiguous, a court should give that language its ordinary meaning and not go
27 beyond it." *Id.* citing City Council of Reno v. Reno Newspapers, 105 Nev. 886, 891, 784 P.2d 974,
28 977 (1989). Minor irregularities may be waived but violations of Statutes and Regulations can not.

1 Therefore, all applications not complying with Nevada Statutes and/or Regulations must be rejected.

2 **H. Violation of Nevada Open Meeting Laws/Communication Methods**

3 The DoT is a public body subject to NRS Chapter 241 open meeting laws.

4 NRS 241.020 provides:

5 " Meetings to be open and public; limitations on closure of meetings; notice of meetings;
6 copy of materials; exceptions.

7 "1. Except as otherwise provided by specific statute, all meetings of public bodies must be
8 open and public, and all persons must be permitted to attend any meeting of these public
9 bodies. A meeting that is closed pursuant to a specific statute may only be closed to the
10 extent specified in the statute allowing the meeting to be closed. All other portions of the
11 meeting must be open and public, and the public body must comply with all other provisions
12 of this chapter to the extent not specifically precluded by the specific statute. Public officers
13 and employees responsible for these meetings shall make reasonable efforts to assist and
14 accommodate persons with physical disabilities desiring to attend.

15 2. Except in an emergency, written notice of all meetings must be given at least 3 working
16 days before the meeting. . . ."

17 The DoT by its actions precluded all applicants from competing on equal terms. All actions
18 taken by the DoT following DoT's violation of NRS chapter 241, should be declared void pursuant
19 NRS 241.037. The DoT's action in issuing marijuana establishment licenses after it violated NRS
20 Chapter 241 should be voided. Accordingly the preliminary injunction should apply to all
21 marijuana establishment licenses issued.

22 Former DoT Director Deonne Contine testifies that the collective made decisions and took
23 actions regarding changes to the application and scoring process substantial affecting the outcome
24 thereof. In addition, Jorge Pupo directed DoT investigators not to consider the sale of marijuana
25 to minors by a certain applicant thereby impacting the compliance section of application scoring.
26 Specifically, Mr. Pupo and Ms. Contine testified that they held meetings including lunch, dinner
27 and drinks with certain applicants and/or their representatives. Karalin Cronkhite DoT Chief
28 Investigator testified that Mr. Pupo took action and made the decision not to include non
compliance involving the sale of marijuana to minors by certain facilities. Mr. Gilbert, testified
that Mr. Pupo and Deone Contine took action and made the decision on applying the percentage

1 and break down of points to certain categories. Mr. Gilbert testified that it was Mr. Pupo's decision
2 not to employ QuantumMark for the 2018 application process. Mr. Pupo confirmed that he
3 decided to take the action and remove the physical location as a scoring item from the application.
4 Mr. Pupo and Ms. Contine through multiple actions violating Nevada Open Meeting laws
5 manipulated the application and scoring process.
6

7 Pursuant to NRS 241.036 DoT actions taken in violation of any provision of this chapter are
8 void. The DoT's action in issuing marijuana establishment licenses after it violated NRS Chapter
9 241 should be voided. Accordingly the preliminary injunction should apply to all marijuana
10 establishment licenses issued.

11 III.

12 CONCLUSION

13 Based upon the foregoing, NWC pursuant to NRCP 52 respectfully requests this Court
14 amend its Findings of Facts and Conclusions of Law dated August 23, 2019, and enjoin the State
15 from conducting a final inspection on any of the conditional licenses issued in or about December
16 of 2018 and deeming the entire scoring/application process invalid or at a minimum enjoining all
17 applicants that did not comply with Nevada Statutes 453D and Nevada Administrative Code 453D.

18 DATED this 17th day of October, 2019.

19 **PARKER, NELSON & ASSOCIATES, CHTD.**
20 /s/ Theodore Parker, III, Esq.

21 THEODORE PARKER, III, ESQ.
22 Nevada Bar No. 4716
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128

23 *Attorneys for Plaintiff*
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25
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of the law office of PARKER,
3 NELSON & ASSOCIATES, CHTD., and that on this 17th day of October, 2019, I served a true and
4 correct copy of the foregoing **NEVADA WELLNESS CENTER, LLC, REPLY IN SUPPORT**
5 **OF MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED**
6 **ON AUGUST 23, 2019, PURSUANT TO NRCP 52** on the party(s) set forth below by:

- 7 ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the
8 United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.
- 9 ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26,
10 by faxing a true and correct copy of the same to each party addressed as follows:
- 11 ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set
12 forth below on this date before 5:00 p.m.
- 13 ☒ By EFC: by electronic filing with the Court delivering the document(s) listed above via E-file & E-
14 serve (Odyssey) filing system in all related cases A-19-786962-B, A-18-785818-W;
15 A-19-787004-B; A-19-787540-W, A-18-786357-W; and A-19-787726-C.

16 
17 _____
18 An employee of PARKER, NELSON & ASSOCIATES, CHTD.
19
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EXHIBIT A



1 MTN
2 THEODORE PARKER, III, ESQ.
3 Nevada Bar No. 4716
4 PARKER, NELSON & ASSOCIATES, CHTD.
5 2460 Professional Court, Suite 200
6 Las Vegas, Nevada 89128
7 Telephone: (702) 868-8000
8 Facsimile: (702) 868-8001
9 Email: tparker@pnalaw.net

10 *Attorneys for Plaintiff*

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 NEVADA WELLNESS CENTER, LLC, a
14 Nevada Limited Liability Company,

15 Plaintiff,

16 v.

17 STATE OF NEVADA, DEPARTMENT OF
18 TAXATION; and DOES I through X,
19 inclusive; and ROE CORPORATIONS I
20 through X, inclusive,

21 Defendants.

CASE NO.: A-19-787540-W
DEPT. NO.: XVIII

NEVADA WELLNESS CENTER, LLC,
MOTION TO AMEND FINDINGS OF
FACTS AND CONCLUSIONS OF LAW
ISSUED ON AUGUST 23, 2019,
PURSUANT TO NRCP 52

[Hearing Requested]

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

26 Plaintiffs,

27 v.

28 STATE OF NEVADA, DEPARTMENT OF
TAXATION; and DOES I through 10; and
ROE CORPORATIONS I through 10,

Defendants.

CASE NO.: A-18-785818-W
DEPT. NO.: VIII

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

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

1 COMPANIES SO NV, LLC a Nevada limited
2 liability company, TRYKE COMPANIES
3 RENO, LLC, a Nevada limited liability
4 company, PARADISE WELLNESS
5 CENTER, LLC, a Nevada limited liability
6 company, GBS NEVADA PARTNERS, LLC,
7 a Nevada limited liability company, FIDELIS
8 HOLDINGS, LLC, a Nevada limited liability
9 company, GRAVITAS NEVADA, LLC, a
10 Nevada limited liability company, NEVADA
11 PURE, LLC, a Nevada limited liability
12 company, MEDIFARM, LLC, a Nevada
13 limited liability company; DOE PLAINTIFFS
14 I through X, and ROE ENTITIES I through
15 X,

16
17 Plaintiffs,

18 v.

19 THE STATE OF NEVADA, DEPARTMENT
20 OF TAXATION,

21 Defendants.

22 ETW MANAGEMENT GROUP LLC, a
23 Nevada limited liability company; GLOBAL
24 HARMONY LLC, a Nevada limited liability
25 company; GREEN LEAF FARMS
26 HOLDINGS LLC, a Nevada limited liability
27 company; GREEN THERAPEUTICS LLC, a
28 Nevada limited liability company; HERBAL
CHOICE INC., a Nevada corporation; JUST
QUALITY, LLC, a Nevada limited liability
company; LIBRA WELLNESS CENTER,
LLC, a Nevada limited liability company;
ROMBOUGH REAL ESTATE INC. dba
MOTHER HERB, a Nevada corporation;
NEVCANN LLC, a Nevada limited liability
company; RED EARTH LLC, a Nevada
limited liability company; THC NEVADA
LLC, a Nevada limited liability company;
ZION GARDENS LLC, a Nevada limited
liability company; and MMOF VEGAS
RETAIL, INC., a Nevada corporation,

29
30 Plaintiffs,

31 v.

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

CASE NO.: A-19-787004-B
DEPT NO.: XI

1 inclusive,

2 Defendants.

3
4 COMES NOW, Plaintiff, NEVADA WELLNESS CENTER, LLC (hereinafter "NWC"), by
5 and through its attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER,
6 NELSON & ASSOCIATES, CHTD., and moved the Court seeking to Motion to Amend the
7 Findings of Facts and Conclusions of Law issued August 23, 2019, pursuant to NRCP 52.

8 This motion is made and based upon the pleadings and paper on file herein, the points and
9 authorities included herewith, the exhibits attached hereto and such oral argument as the Court may
10 entertain at the time this matter is heard.

11 DATED this 17th day of September, 2019.

12 PARKER, NELSON & ASSOCIATES, CHTD.

13 

14 THEODORE PARKER, III, ESQ.
15 Nevada Bar No. 4716
16 2460 Professional Court, Suite 200
17 Las Vegas, Nevada 89128

18 *Attorneys for Plaintiff*
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1 NOTICE OF MOTION

2 TO: ALL INTERESTED PARTIES and

3 TO: ITS COUNSEL OF RECORD:

4 YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the
5 above and foregoing Motion to Amend Findings of Facts and Conclusions of Law date August 23,
6 2019, pursuant to NRCP 52. on for hearing, before the above-entitled Court in Department No. XI
7 on the ____ day of _____, 2019 at ____ a.m./p.m.

8 DATED this 13th day of September, 2019.

10 PARKER, NELSON & ASSOCIATES, CHTD.

11 
12 THEODORE PARKER, III, ESQ.
13 Nevada Bar No. 4716
14 2460 Professional Court, Suite 200
15 Las Vegas, Nevada 89128

16 *Attorneys for Plaintiff*

17 MEMORANDUM OF POINTS AND AUTHORITIES

18 I.

19 INTRODUCTION

20 Following lengthy hearings, on August 23, 2019, this Court issued Findings of Fact and
21 Conclusions of Law Granting Preliminary Injunction. (See Findings of Fact and Conclusions of Law
22 Granting Preliminary Injunction, filed August 23, 2019, a true and correct copy attached hereto as
23 Exhibit "A".) NWC now moves to amend those findings pursuant to NRCP 52. As shown below,
24 the entire selection process was so flawed, and conducted in such degradation of NWC's
25 constitutional rights, that the previous results must be discarded and the process redone in order to
26 arrive at impartial and fair results, as contemplated under the applicable laws and regulations.
27 Specifically, that the State must be enjoined from conducting a final inspection on any of the
28 conditional licenses issued in or about December of 2018 because the process was so rife with errors,
subject to corruption, including inappropriate sharing of information, lunches, dinners and drinks

1 between DoT staff and certain privileged applicants, and improper changes to the process which
2 amounted to DoT's refusal to follow the will of Nevada voters and therefore the entire process must
3 be deemed invalid.

4 II.

5 DISCUSSION

6 A. LEGAL AUTHORITIES

7 1. Motions to Amend Findings of Fact and Conclusions of Law

8 NRCP 52 provides in pertinent part:

9 (a) Findings and Conclusions.

10 (1) In General. In an action tried on the facts without a jury or with an
11 advisory jury, the court must find the facts specially and state its conclusions
12 of law separately. The findings and conclusions may be stated on the record
after the close of the evidence or may appear in an opinion or a memorandum
of decision filed by the court. Judgment must be entered under Rule 58.

13 (b) Amended or Additional Findings. On a party's motion filed no later than
14 28 days after service of written notice of entry of judgment, the court may
15 amend its findings — or make additional findings — and may amend the
judgment accordingly. The time for filing the motion cannot be extended
under Rule 6(b). The motion may accompany a motion for a new trial under
Rule 59.

16
17 NRCP 65 states in relevant part:

18 (a) Preliminary Injunction.

19 (1) Notice. The court may issue a preliminary injunction only on notice to the adverse
20 party.

21 (2) Consolidating the Hearing With the Trial on the Merits. Before or after beginning the
22 hearing on a motion for a preliminary injunction, the court may advance the trial on the
23 merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence
24 that is received on the motion and that would be admissible at trial becomes part of the trial
25 record and need not be repeated at trial. But the court must preserve any party's right to a jury
26 trial.

27 (b) Temporary Restraining Order.

28 (1) Issuing Without Notice. The court may issue a temporary restraining order without
written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate
and irreparable injury, loss, or damage will result to the movant before the adverse
party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the
reasons why it should not be required.

1 (2) Contents; Expiration. Every temporary restraining order issued without notice must
2 state the date and hour it was issued; describe the injury and state why it is irreparable; state
3 why the order was issued without notice; and be promptly filed in the clerk's office and
4 entered in the record. The order expires at the time after entry — not to exceed 14 days —
5 that the court sets, unless before that time the court, for good cause, extends it for a like
6 period or the adverse party consents to a longer extension. The reasons for an extension must
7 be entered in the record.

2. Violations of the Public Trust Warrant Voiding Results from a Flawed Process

8 Invitations to bid are akin to requests for applications for licenses. As the Nevada Supreme
9 Court has stated, “[a]n awarding board has a duty to reject any bid materially varying from bid
10 specifications.” Faust v. Donrey Media Grp., 95 Nev. 235, 237 (1979). This is done to “preserve the
11 competitive nature of bidding by preventing unfair advantage to any bidder, or other conditions
12 undermining the necessary common standard of competition” and to “save public funds and guard
13 against favoritism, improvidence and corruption. Id. at 238, fn 1 and Richardson Constr. V. Clark
14 Cty. Sch. Dist., 123 Nev. 61, 66 (2007). It was with these principles in mind, that the Nevada
15 Supreme Court declared that a “contract is void if it materially differs from the contents of the
16 invitation to bid.” Orion Portfolio Servs. 2, LLC v. County of Clark ex rel. Univ. Med. Ctr., 126
17 Nev. 397 (2010). Likewise, applications for licenses that fail to conform to the standards and
18 requirements issued by DoT in DoT’s request for applications, should be deemed void on their face.

19 Ms. Contine provided sworn testimony that the physical locations were required under the
20 regulations she created and should have been a part of the application.

21 Further, when insider information is provided to some, but not all applicants, it precludes all
22 applicants from competing on equal terms. Spiniello Constr. Co. V. Manchester, 189 Conn 539, 544
23 (Conn. 1983). In Spiniello, while the Court recognized the City’s actions were done in good faith
24 to obtain the best result for residents, the Court still found that “judicial relief is warranted where the
25 municipal action amounts to an erosion on the integrity of the bidding statute.” Id. at 545. “One of
26 the essentials to competitive bidding is that bidders shall have the opportunity to bid on the same
27 thing.” Gamewell Co. V. Phoenix, 216 F.2d 928, 934 (9th Cir. 1954) (emphasis added). “The
28 requirement is that specifications be such that all parties can familiarize themselves with the
details. Id. (emphasis added). Not only did the DoT give certain information to a privileged few

1 applicants but additionally made two different applications available during the application process.

2 It is appropriate for a Court to intervene when the process established by a governmental
3 agency "destroys the very principles of public policy that form the underlying basis of competitive
4 bidding." Weinder v. City of Reno, 88 Nev. 127, 494 P.2d 277, 281 (1972). "[C]ourts should
5 scrutinize the conduct of the bidding process by any governmental agency when it appears that a
6 violation of the public trust may be involved." Id. "Public confidence should be maintained at all
7 costs, even at the expense of those who errors are inadvertent." Commission on Ethics v. JMA/Lucchesi,
8 110 Nev. 1, 10 (1994). "Innocence cannot deflect the appearance of impropriety." Id. (reversing the
9 district court and reinstating the opinion of the Nevada Commission on Ethics because architects
10 obtained an unfair advantage over competitors by virtue of insider information).

11 Here, all applicants were not given equal access to information, or even access to the same
12 application, as evidenced by multiple communications between DoT and certain applicants over
13 others. The failure of DoT to follow the voters' mandate, and failure to consistently provide
14 information to all applicants, undeniably amounts to an erosion of the integrity of the process.
15 Favoritism and bias governed this process, and grading of the applications was partial to those the
16 DoT staff favored. Notwithstanding, government has a strong desire to prevent opportunities for –
17 and suspicion of – fraud or favoritism; "neither favoritism nor fraud is necessary to invalidate non-
18 compliance with a request for bidding...". Ganewell, 216 F.2d at 937; Hannan v. Board of
19 Education, 107 P. 646 (OK 1909). Here, the failure to provide all information to all applicants,
20 failing to abide by the terms of the bid (by changing the physical location requirement), and the
21 insider communications that were ongoing and abundant) warrant preventing the issuance of any
22 permanent licenses as the competitive process, by virtue of DoT's improper actions, was unsound,
23 flawed, biased and favored the connected few.

24 B. FINDINGS OF FACT

25 1. Removal of Physical Location

26 It is an indisputable the DoT failed to comply with the physical location requirement. The
27 DoT's arbitrary and improper elimination of the physical address requirement, as required by
28 NRS453D.210(5)(b), NAC 453D.265(1)(b), and NAC 453D.268(2)(c), made the grading process

1 unfair. Because winning applicants should not have received a license but for their manipulation of
2 the DoT's unfair process, the Court's preliminary injunction should also apply to those winning
3 applicants that did not provide actual physical addresses for the proposed marijuana establishments
4 (e.g., those that listed UPS stores or P.O. boxes). Former DoT Director Deonne Contine explicitly
5 testified that applications without a real physical address should have been summarily rejected.

6 The Court's related findings:

7 The Task Force's findings, issued on May 30, 2017, referenced the 2014 licensing process
8 for issuing Medical Marijuana Establishment Registration Certificates under NRS 453A. The
9 Task Force recommended that "the qualifications for licensure of a marijuana establishment
10 and the impartial numerically scored bidding process for retail marijuana stores be
11 maintained as in the medical marijuana program except for a change in how local
12 jurisdictions participate in selection of locations. (See Exhibit "A" at p. 10.)

13 The DoT made a change to the application after circulating the first version of the application
14 to delete the requirement of a physical location. The modification resulted in a different
15 version of the application bearing the same "footer" with the original version remaining
16 available on the DoT's website. The DoT's late decision to delete the physical address
17 requirement on some application forms while not modifying those portions of the
18 application that were dependent on a physical location (i.e. floor plan, community impact,
19 security plan, and the sink locations) after the repeated communications by an applicant's
20 agent; not effectively communicating the revision; and, leaving the original version of the
21 application on the website, is evidence of conduct that is a serious issue. P75

22 By selectively eliminating the requirement to disclose an actual physical address for each and
23 every proposed retail recreational marijuana establishment, the DoT limited the ability of the
24 Temporary Employees to adequately assess graded criteria such as (i) prohibited proximity
25 to schools and certain other public facilities, (ii) impact on the community, (iii) security, (iv)
26 building plans, and (v) other material considerations prescribed by the Regulations. P76"

27 NWC provided a physical address for each desired jurisdiction and was graded incorrectly.
28 The graders seemed to only understand floor plans and deducted points for actual building plans and
inspection of NWC's location which was approved by the DoT on September 18, 2018.

2. This Case is Distinguishable from the Nuleaf Case

23 This motion to amend is based upon the failure of applicants to provide a physical location
24 in order for the DoT to even approve an application for a retail marijuana stores. Applications
25 submitted without a physical address were incomplete and should have been rejected. The Nuleaf
26 case is easily distinguishable from this case.

27 In Nuleaf, an injunction was sought due to applicants failure to comply with applicable local
28 and governmental zoning requirements before the applicant received a registration certificate for

1 a medical marijuana establishment. Nuleaf CLV Dispensary, LLC v. State Dep't of Health & Human
2 Servs., 414 P.3d 305, 306, (2018). The Court in Nuleaf was tasked with determining whether NRS
3 453A.322(3)(a)(5) required applicants compliance with applicable local and governmental zoning
4 requirements before a applicant can receive a registration certificate. Specifically NRS
5 453A.322(3)(a)(5) states:

6 “ (5) If the city, town or county in which the proposed medical marijuana establishment will
7 be located has enacted zoning restrictions, proof of licensure with the applicable local
8 governmental authority or a letter from the applicable local governmental authority certifying
that the proposed medical marijuana establishment is in compliance with those restrictions
and satisfies all applicable building requirements; and”

9 NRS 453A.322(3)(a)(5) requires proof of licensure with the applicable local governmental
10 authority or a letter from the applicable local governmental authority certifying that the proposed
11 medical marijuana establishment is in compliance with zoning restrictions and satisfies all applicable
12 building requirements.

13 Nuleaf **did not** address NRS 453A.322 requirement that a physical location be provided in
14 the application. Rather, the issue was an applicants failure to obtain licensure from applicable local
15 governmental authority certifying that the proposed medical marijuana establishment is in
16 compliance with zoning restrictions and satisfied all applicable building requirements.

17 In the case at bar, NWC is seeking injunctive relief because other applicants failed to comply
18 with the requirement to list a physical address on the initial application as required by NRS
19 453D.210(5)(b).

20 Specifically NRS 453D.210(5)(b) provides:

21 “5. The Department shall approve a license application if:

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

23 According to plain unambiguous language of NRS 453D.210(5)(b) the DoT shall only
24 approve a completed license application that includes a physical address. Consequently, all
25 applications without physical locations should have been deemed incomplete and rejected, not
26 approved or scored by the DoT. Unlike the Nuleaf case, here the court is asked to determined
27 whether the clear language of 453D.210(5)(b) applications to include a physical address where the
28 proposed marijuana establishment will operate in order for the DoT to approve a completed license

1 application. Stated a different way, pursuant to NRS 453D.210(5)(b) applications without physical
2 addresses were incomplete and should have been rejected.

3 Unlike this case, the issue in Nuleaf was applicants obtaining approval or proof of licensure
4 with the applicable local governmental authority. Furthermore, the Court in Nuleaf found the statute
5 at issue ambiguous. Here, the plain language of NRS 453D.210 clearly specifies **conditions for**
6 **approval of application** and clearly states the DoT is only to consider **completed applications**.
7 There is no similar language in NRS 453A.322(3)(a)(5), and thus the Nuleaf Court found NRS
8 453A.322(3)(a)(5) was open to interpretation. Here, NRS 453D.210 has additional language making
9 the plain language of the statute clear and unambiguous. When the language of a statute is plain and
10 unambiguous, a court should give that language its ordinary meaning and not go beyond it." City
11 Council of Reno v. Reno Newspapers, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989).

12 NRS 453D.210(4) provides:

13 "Acceptance of applications for licensing; priority in licensing; **conditions for approval of**
14 **application**; limitations on issuance of licenses to retail marijuana stores; competing
15 applications. [This section was proposed by an initiative petition and approved by the voters
16 at the 2016 General Election and therefore is not subject to legislative amendment or repeal
17 until after November 22, 2019.]

18 4. **Upon receipt of a complete** marijuana establishment license application. . . . (a) Issue
19 the appropriate license if the license application is approved...." (*Emphasis added*)

20 The court should give that language of NRS 453D.210 its ordinary meaning and not go
21 beyond it. *Id.* The plain language of NRS 453D.210 requires conditions for approval of all
22 applications. The plain language requires all applicants to provide a **complete** application which
23 requires a **physical location** for approval of the application. Former DoT Executive Deonne Contine
24 confirmed the DoT required a real physical location be provided on all applications. In fact, she
25 stated that "applications that did not have a real physical address should not have even been
26 considered."¹ In addition, DoT Deputy Executive Jorge Pupo testified that the DoT expected a
27 physical location to be included on all applications. He confirmed that applications without a
28 physical location are incomplete.² Thus according to the plain and unambiguous language of NRS

¹ See Exhibit B, Trial Transcript Excerpts from July 12, 2019 P48:L15-49:16.

² See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P:19:L21-P:20:L11.

1 453D.210(4) and 453D.210(5)(b), as affirmed by DoT Executive and DoT Deputy Executive, all
2 applications without a physical location are incomplete and should have been rejected, not approved
3 and/or scored by the DoT. Accordingly the preliminary injunction should apply to all applications
4 that failed to provide a real physical location.

5 2. Violation of Nevada Open Meeting Laws/Communication Methods

6 The Nevada Open Meeting Law (OML) was enacted in 1960 to ensure that the actions and
7 deliberations of public bodies be conducted openly. The OML is set forth in chapter 241 of the
8 Nevada Revised Statutes (NRS). The DoT is a public body subject to NRS Chapter 241.

9 NRS 241.020 provides:

10 "Meetings to be open and public; limitations on closure of meetings; notice of meetings;
copy of materials; exceptions.

11 "(1) Except as otherwise provided by specific statute, all meetings of public bodies must be
open and public, and all persons must be permitted to attend any meeting of these public
12 bodies. A meeting that is closed pursuant to a specific statute may only be closed to the
extent specified in the statute allowing the meeting to be closed. All other portions of the
meeting must be open and public, and the public body must comply with all other provisions
13 of this chapter to the extent not specifically precluded by the specific statute. Public officers
and employees responsible for these meetings shall make reasonable efforts to assist and
14 accommodate persons with physical disabilities desiring to attend.

15 "2. Except in an emergency, written notice of all meetings must be given at least 3 working
days before the meeting. . . ."

16 The DoT failed to comply with the open meeting laws with regard to dissemination of
17 information related to the recreational marijuana licensing application and associated requirements.
18 The application process for a license to sell recreational marijuana, unlike the application process
19 for a license to sell medical marijuana, did not contain any information on how or where to submit
20 questions regarding the application.³ Steve Gilbert testified that he did not know why this was the
21 case. (Id.) Mr. Gilbert further confirmed that while there was an email address to send questions to,
22 the questions and responses were not provided to all applicants.⁴ Compounding this with the fact
23 that the scoring criteria was deliberately kept secret from applicants, DoT's conduct raises red flags.⁵
24 The DoT permitted applicants and their representatives to personally contact the DoT staff about

25
26 ³See Exhibit D, Trial Transcript Excerpts from May 30, 2019, P:218:22-25.

27 ⁴ See Exhibit E, Trial Transcript Excerpts from May 30, 2019 Volume II, P207:L8-P209:9.

28 ⁵See Exhibit F, Trial Transcript Excerpts from June 19, 2019 Volume I, P120:L5-8.

1 the application process.

2 Unfortunately, DoT went a step further than merely carelessly failing to share all pertinent
3 information with all applicants; Mr. Pupo actively discussed the regulations with some applicants'
4 counsel on his personal cell phone. Mr. Pupo was aware before the applications were released that
5 there was confusion regarding some of the criteria.⁶ Yet, Mr. Pupo took "no corrective action" to
6 clarify the rule for the rest of the industry. (*Id.*) Mr. Pupo was offered a job by the same applicants
7 he spoke with on his personal cell phone and dined.⁷ In Mr. Pupo's own words "everyone had the
8 same opportunity to request clarification..."⁸)

9 Mr. Pupo's purported belief – that all applicants had the same opportunity to contact DoT
10 and obtain the same clarification, – is belied by Mr. Pupo's own testimony. Mr. Pupo admits to
11 speaking with the owners of some of the applicants personally *during the application process*.⁹ Mr.
12 Pupo met these applicants after DoT was charged with implementing the scoring procedure for
13 recreational marijuana.¹⁰ Mr. Pupo further had multiple dinners and lunches with certain owners.
14 ¹¹ Moreover, DoT itself refused to answer questions for applicants with which they were personally
15 unfamiliar.¹² Mr. Pupo could not explain why some applicants were simply denied information by
16 DoT. (*Id.*) However, Mr. Pupo could confirm he did not go out to dinners or lunches, or speak with,
17 NWC or its owners during the application process.¹³

20 ⁶ See Exhibit G, Trial Transcript Excerpts from June 19, 2019 Volume II, P46:L21-P48:L25.

21 ⁷ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P83:L8-P:84:L21.

22 ⁸ See Exhibit G, Trial Transcript Excerpts from June 19, 2019 Volume II, P58:L1-12.

23 ⁹ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P9:L15-25

24 ¹⁰ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P12:L1-15.

25 ¹¹ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P12:L1-15.

26 ¹² See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P72:L22-P74:L20.

27 ¹³ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P47:L14-P:48:L2.

1 As Mr. Pupo was the final decision maker on the scoring criteria the buck stops here -.¹⁴
2 It appears Mr. Pupo manipulated the application process to award licenses to select applicants. This
3 violated the trust of the voters of Nevada and NRS 241. Pursuant to NRS 241.020 private meetings
4 by the DoT are prohibited. Since there is no statutory exception specifically providing public bodies
5 with the privilege to meet in private just because they have their attorneys present, such meetings are
6 prohibited. *McKay v. Board of County Comm'rs*, 103 Nev. 490, 746 P.2d 124, 1987 Nev. (Nev.
7 1987).

8 The DoT's arbitrary and improper communication with applicants and their
9 representatives/attorney violated NRS chapter 241. DoT's actions violated the statute and made the
10 grading process unfair by allowing some applicants the benefit of inside information when other
11 applicants were not afforded the same opportunity.

12 The Court's related findings:

13 The DoT utilized a question and answer process through a generic email account at
14 marijuana@tax.state.nv.us to allow applicants to ask questions and receive answers
15 directly from the Department, which were not consistent with NRS 453D, and that
information was not further disseminated by the DoT to other applicants.
See Exhibit A ¶ 20

16 In addition to the email question and answer process, the DoT permitted applicants and
17 their representatives to personally contact the DoT staff about the application process.
See Exhibit A ¶ 21

18 The DoT conducted the following in violation of Nevada OML/NRS chapter 241:

- 19 1. Failed to provide a single point of contact for all applicants;
- 20 2. Allowed applicants to ask questions and receive answers directly from the
21 Department, without disseminating the same information to all applicants;
- 22 3. Modified the application without informing all applicants the application was
23 modified;
- 24 4. Failed to disseminate the modified application to all applicants;
- 25 5. Removed the requirement of a physical location from the application without
26 informing all applicants the physical location requirement was removed;

27
28 ¹⁴ See Exhibit F, Trial Transcript Excerpts from June 19, 2019 Volume I, P118:L25-P119:3.

1 6. Removed compliance from the grading process and failed to inform all applicants
2 of the removal of compliance; and

3 7. DoT Executives held private meetings with applicants/representatives/attorneys.

4 The DoT by its actions precluded all applicants from competing on equal terms. All actions
5 taken by the DoT following DoT's violation of NRS chapter 241, should be declared void pursuant
6 NRS 241.037.¹⁵ The DoT's action in issuing marijuana establishment licenses after it violated NRS
7 Chapter 241 should be voided. Accordingly the preliminary injunction should apply to all marijuana
8 establishment licenses issued.

9 **3. DoT Deputy Executive Jorge Pupo Actions**

10 Most alarming, are the actions of DoT Deputy Executive Jorge Pupo. Mr. Pupo exhibited
11 favoritism with certain applicants, made significant changes to the application and scoring process
12 substantial affecting the outcome thereof, and directed DoT investigators not to consider the sale
13 of marijuana to minors by a certain applicant thereby impacting the compliance section of
14 application scoring. Mr. Pupo's actions so infected the integrity of the application and scoring
15 process that it impacted NWC's right to just and fair application scoring process.

16 Specifically, Mr. Pupo explicitly testified that he had lunch, dinner and drinks with certain
17 applicants and/or their representatives.¹⁶ Karalin Cronkhite DoT Chief Investigator testified that
18 Mr. Pupo directed her not to include non compliance involving the sale of marijuana to minors by
19 certain facilities.¹⁷ Mr. Gilbert, testified that Mr. Pupo was responsible for applying the percentage
20
21
22

23 ¹⁵ See NRS 241.037(2) Any person denied a right conferred by this chapter may sue in the district court of
24 the district in which the public body ordinarily holds its meetings or in which the plaintiff resides. A suit may seek to
25 have an action taken by the public body declared void, to require compliance with or prevent violations of this
26 chapter or to determine the applicability of this chapter to discussions or decisions of the public body. The court may
27 order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this
28 subsection.

27 ¹⁶ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P:13:L7-15.

28 ¹⁷ See Exhibit H, Trial Transcript Excerpts from July 11 Volume I, 2019, P:78:L23-25.

1 and break down of points to certain categories.¹⁸ Mr. Gilbert testified that it was Mr. Pupo's decision
2 not to employ QuantumMark for the 2018 application process.¹⁹ Mr. Pupo confirmed that he decided
3 to remove the physical location as a scoring item from the application.²⁰ Mr. Pupo through multiple
4 actions was able to manipulate the application and scoring process. Consequently, the Court's
5 preliminary injunction should also apply to the entire process. Accordingly, the Court's Findings of
6 Fact and Conclusion of Law should be amended and the preliminary injunction should also apply
7 to the entire process.

8 4. Former DoT Director Deonne Contine Actions

9 Former DoT Director Deonne Contine's actions also exhibited favoritism with certain
10 applicants. Mrs. Contine's actions affected the integrity of the application and scoring process
11 impacting NWC's right to a just and fair application scoring process.

12 Specifically, Mrs. Contine explicitly testified that she had lunch, dinner and drinks with
13 certain applicants and/or their representatives, and that certain applicants called her on her cellular
14 telephone.²¹ She also testified that after leaving the DoT she received campaign contributions when
15 she ran for Nevada State Assembly from applicants and/or their representatives.²² Mrs. Contine
16 through multiple actions taken along side Mr. Pupo was able to manipulate the application and
17 scoring process infecting the integrity of the application and scoring process. Consequently, the
18 Court's preliminary injunction should also apply to the entire process.

19 C. ARGUMENT

20 I. Competitive Bidding Process

21 The purpose of a competitive application or bidding process "is to secure competition, save
22 public funds, and to guard against favoritism, improvidence and corruption." *Gulf Oil Corp. v. Clark*

23 ¹⁸ See Exhibit I, Trial Transcript Excerpts from June 11, 2019, P:98:L12-16.

24 ¹⁹ See Exhibit I, Trial Transcript Excerpts from June 11, 2019, P:96:L5-10.

25 ²⁰ See Exhibit C, Trial Transcript Excerpts from June 20, 2019 Volume II, P:14:L19-P15:L11.

26 ²¹ See Exhibit B, Trial Transcript Excerpts from July 12, 2019, P:99:L21-P:100:L17.

27 ²² See Exhibit B, Trial Transcript Excerpts from July 12, 2019, P:101:L4-P:102:L8.

1 City., 94 Nev. 116, 118-19, 575 P.2d 1332, 1333 (1978); see also *City of Boulder City v. Boulder*
2 *Excavating, Inc.*, 124 Nev. 749, 758, 191 P.3d 1175, 1181 (2008) (same). The statutes and
3 regulations that govern these competitive processes "are deemed to be for the benefit of the
4 taxpayers" and "are to be construed for the public good." *Gulf Oil*, 94 Nev. at 118-19.

5 **a. DoT's Violation of Nevada Open Meeting**
6 **Laws/Communication Methods**

7 By permitting applicants to submit applications with inside information when other
8 applicants were not afforded the same opportunity, the DoT precluded the other applicants from
9 competing on equal terms. See *Spiniello Const. Co. v. Town of Manchester*, 189 Conn. 539, 544,
10 456 A.2d 1199, 1202 (1983). By giving some applicants information that was not available to others,
11 the DoT defeated the objectivity and integrity of the competitive application process by exhibiting
12 favoritism. *Spiniello*, 189 Conn. 544-545. In that situation, an injunction was appropriate. *Id.*

13 **b. Violation of Initiative Ballot, NRS 453D.210(4) and (5), and**
14 **NAC 453D Requirements for Physical Address**

15 Under the marijuana ballot initiative, as codified in NRS 453D.210(4) and (5), the DoT shall,
16 within 90 days of receipt of applications, approve a license application if the prospective marijuana
17 establishment has submitted an application in compliance with regulations adopted by the
18 Department' and: (b) The physical address where the proposed marijuana establishment will operate
19 is owned by the applicant or the applicant has the written permission of the property owner to operate
20 the proposed marijuana establishment on that property; NRS 453D.210(5)(b). As the statute requires
21 the DoT to determine whether an application was submitted "in compliance with the regulations,"
22 the regulations likewise require that any application submitted must have the physical address in it:

- 23 1. On or before November 15, 2018, a person who holds a medical marijuana
24 establishment registration certificate may apply for not more than one
25 license for a marijuana establishment of the same type by submitting:
(b) An application on a form prescribed by the Department which includes, without
26 limitation:
(3) The physical address where the proposed marijuana establishment will be
27 located and the physical address of any co-owned or otherwise affiliated marijuana,

28 The application submission period began on September 7, 2018 and closed on September
20, 2018. The DoT, pursuant to statute, had until December 5, 2018 to complete its compliance
review. NAC 453D.265()(b)(3) (bold added). As if stating it once in the regulations was not

1 enough to be clear, NAC 453D.268(2)(e) also requires that "[t]he] application must include, without
2 limitation."

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

5 Both the Ballot Initiative (which was enacted as NRS 453D) and the DoT's adopted
6 regulations (NAC 453D) absolutely required all applications to be complete and approved
7 applications to include physical address where the proposed marijuana establishment will be located.
8 But the DoT only informed certain applicants (those that had direct access to DoT employees), that
9 real physical addresses were not required and would not be graded at all. The selective disclosure
10 of information by DoT employees about the grading and the need for a real physical address
11 impacted the entire process:

12 48. The DoT's late decision to delete the physical address requirement on some
13 application forms while not modifying those portions of the application that were
14 dependent on a physical location (i.e. floor plan, community impact, security plan,
and the sink locations) after the repeated communications by an applicant's agent;
not effectively communicating the revision; and, leaving the original version of the
application on the website, is evidence of conduct that is a serious issue.

15 71. Based upon the evidence adduced, the Court finds that the DoT selectively
16 discussed with applicants or their agents the modification of the application related
to physical address information.

17 76. By selectively eliminating the requirement to disclose an actual physical
18 address for each and every proposed retail recreational marijuana establishment, the
19 DoT limited the ability of the Temporary Employees to adequately assess graded
20 criteria such as (i) prohibited proximity to schools and certain other public facilities,
(ii) impact on the community, (iii) security, (iv) building plans, and (v) other
material considerations prescribed by the Regulations.
(See Exhibit "A".)

21 The DoT's failure to require an actual physical address, its failure to confirm whether actual
22 addresses were provided, and its failure to consider those addresses as part of the evaluation and
23 grading resulted in an unfair process. The DoT's unfair process allowed winning applicants to take
24 advantage of inside information to which they were privy and it permitted winning applicants to
25 manipulate their scoring for graded categories like (i) impact on the community, (ii) security, and
26 (iii) building plans, among others. An example of the resulting unfairness is shown by the fact that
27 the highest graded building scores were given to those applicants (e.g., Thrive) that did not have an
28 actual physical address and were able to submit fairy-tale building plans because they were not

1 bound by reality and an actual location. Currently, NWC provided physical addresses, building
2 plans, and parking plans of an existing building. The NWC building was inspected by DoT on
3 September 18, 2018 and approved.²³

4 Former DoT Director Deonne Contine testified that applications that did not have a real
5 physical address should not have even been considered:

6 Q You couldn't use a UPS Store, because that's not a real physical address; right?

7 A I don't think -- I don't think that it would be allowed.

8 Q Okay. And if you'd been the director at the time, you would have disqualified
those applications?

9 A I wouldn't have even reviewed the applications.²⁴

10 Q Your staff would have been instructed that if they didn't have a physical address
apart from a Post Office box or a UPS Store that that application should not be
accepted; right?

11 A I think that would be the direction.

12 Q Okay. So the answer to my question is yes?

13 A Yes.

14 I mean, the reason for your position is because the statute says that?

15 A Right.²⁵

16 Because applicants would not have received a license but for their manipulation of the DoT's
17 unfair process, NWC believes that the Court's preliminary injunction should also apply to those
18 winning applicants that did not provide actual physical addresses for the proposed marijuana
19 establishments (e.g., those that listed UPS stores or P.O. boxes). In order to determine which of the
20 winning applicants failed to provide actual physical addresses for the proposed marijuana
21 establishments, the Court should order the DoT to identify which of winning applicants did not
22 comply with NRS 453D.210(5)(b), NAC 453D.265(1)(b), and NAC 453D.268(2)(e).

23 By comparison, NRS 333 (State Purchasing Chapter) provides:

24 "A contract may not be awarded to a bidder who does not comply with the
25 requirements set forth in the request for proposal".

26 NRS 333.311

27 ²³ See Exhibit J, A copy of the inspection result.

28 ²⁴ See Exhibit B, Trial Transcript Excerpts from July 12, 2019, P:48-L15-21.

²⁵ See Exhibit B, Trial Transcript Excerpts from July 12, 2019, P49:L2-16.

c. **Violation of Integrity of the Application and Scoring Process that it Impacting NWC's Interest in a Just and Fair Competitive Bidding Process**

Mr. Pupo and Mrs. Contine's actions in meeting with certain applicants and providing information permitting applicants to submit applications with inside information when other applicants were not afforded the same opportunity, the DoT precluded the other applicants from competing on equal terms. See Spiniello Const. Co. v. Town of Manchester, 189 Conn. 539, 544, 456 A.2d 1199, 1202 (1983). Moreover, Mr. Pupo and Mrs. Contine by and through their actions defeated the objectivity and integrity of the competitive application process. Spiniello, 189 Conn. 544-545. Mr. Pupo exhibited favoritism with certain applicants by making significant changes to the application and scoring process, including physical location and scoring breakdown and percentages, substantially affecting the outcome thereof. In addition, Mr. Pupo directed DoT investigators not to investigate the sale of marijuana to minors by certain facilities thereby impacting the compliance grading section of those applicants applications. Mr. Pupo made the decision to not consider any deficiencies or violations committed by the applicant in violation of NAC 453D.272(i)(g). Mr. Pupo's totality of actions infected the integrity of the application and scoring process, thereby impacted NWC's interest in a just and fair application scoring process. In that situation, an injunction is appropriate. Id.

d. **The DoT May Not Waive Material Irregularities**

A government entity may waive minor irregularities with the bid documents as mere informalities, see AAB. Elec., Inc. v. Stevensen Public School Dist. No. 303, 491 P.2d 684, 685 (Wash. 1971).²⁶ Material irregularities may not be waived, Blount, Inc. v. U.S., 22 Cl.Ct. 221, 227 (1989). A bid which contains a material nonconformity must be rejected as nonresponsive. Blount citing Honeywell, Inc. v. United States, 16 Cl. Ct. 173, 181 (1989), rev'd on other grounds, 870 F.2d

²⁶The test of whether or not a nonconformity or irregularity is material is whether or not it gives a bidder a substantial advantage or benefit not enjoyed by the other bidders. Id. Irregularities are minor or immaterial only if they do not affect price, quantity, or delivery of the overall supplies or services to be contracted. George & Benjamin General Contractors v. Government of the Virgin Islands Dept. of Property and Procurement, 921 F. Supp. 304,309 (V.I. 1996). See also 48 C.F.R. § 14.301(a) ("to be considered for award, a bid must comply in all material respects with the invitation for bids. Such compliance enables all bidders to stand on an equal footing and maintains the integrity of the sealed bidding system.").

1 644 (Fed. Cir. 1989). Material terms and conditions of a solicitation involve price, quality, quantity,
2 and delivery. *Id.* The rule is designed to prevent bidders from taking exception to material
3 provisions of the contract in order to gain an unfair advantage over competitors and to assure that
4 the government evaluates all bids on an equal basis.

5 The violations allowed by the DoT cannot be considered "minor irregularities." First and
6 foremost, the DoT has allowed applicants to violate the mandatory provision of NRS 453D.
7 Specifically, NRS 453D.210 provides that a applicant "must include" the names of prospective
8 owners, officers, board members and physical addresses of the proposed entities. *See e.g., Blaine*
9 *Equip. Co. v. State*, 122 Nev. 860, 866, 138 P.3d 820, 823 (2006) (the district court may not rely on
10 its equitable power to disregard the mandatory language of a statute). "When the language of a
11 statute is plain and unambiguous, a court should give that language its ordinary meaning and not go
12 beyond it." *Id.* citing *City Council of Reno v. Reno Newspapers*, 105 Nev. 886, 891, 784 P.2d 974,
13 977 (1989). Minor irregularities may be waived but violations of Statutes and Regulations can not.
14 Therefore, all applications not complying with Nevada Statutes and/or Regulations must be rejected.

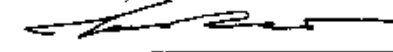
15 III.

16 CONCLUSION

17 Based upon the foregoing, NWC pursuant to NRCP 55 respectfully requests this Court
18 amend its Findings of Facts and Conclusions of Law dated August 23, 2019, and enjoining the State
19 from conducting a final inspection on any of the conditional licenses issued in or about December
20 of 2018 and deeming the entire scoring/application process invalid or at a minimum enjoining all
21 applicants that did not comply with Nevada Statutes 453D and Nevada Administrative Code 453D.

22 DATED this 13th day of September, 2019.

23 PARKER, NELSON & ASSOCIATES, CHTD.

24 
25 THEODORE PARKER, III, ESQ.
26 Nevada Bar No. 4716
27 2460 Professional Court, Suite 200
28 Las Vegas, Nevada 89128

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of the law office of PARKER, NELSON & ASSOCIATES, CHTD., and that on this 23rd day of September, 2019, I served a true and correct copy of the foregoing **NEVADA WELLNESS CENTER, LLC, MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52** on the party(s) set forth below by:

- ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.
- ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, by faxing a true and correct copy of the same to each party addressed as follows:
- ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.
- ☒ By EFC: by electronic filing with the Court delivering the document(s) listed above via E-file & E-serve (Odyssey) filing system.

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State of Nevada, Department of Taxation*


An employee of PARKER, NELSON & ASSOCIATES, CHTD.

EXHIBIT “A”

Steven D. Grierson

DISTRICT COURT

CLARK COUNTY, NEVADA

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

FINDINGS OF FACT AND
CONCLUSIONS OF LAW GRANTING
PRELIMINARY INJUNCTION

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,

Plaintiff(s),

vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant(s).

and

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

CLERK OF THE COURT

ADJ 23 2019

1 limited liability partnership; HELPING HANDS
2 WELLNESS CENTER, INC., a Nevada
3 corporation; GREENMART OF NEVADA
4 NLV LLC, a Nevada limited liability company;
5 and CLEAR RIVER, LLC,

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Intervenors.

29 This matter having come before the Court for an evidentiary hearing on Plaintiffs' Motion for
30 Preliminary Injunction beginning on May 24, 2019, and occurring day to day thereafter until its
31 completion on August 16, 2019;¹ Dominic P. Gentile, Esq., Vincent Savarese III, Esq., Michael V.
32 Cristalli, Esq., and Ross J. Miller, Esq., of the law firm Gentile Cristalli Miller Armeni Savarese,
33 appeared on behalf of Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf Incline Dispensary, LLC,
34 Nevada Holistic Medicine, LLC, Tryke Companies SO NV, LLC, Tryke Companies Reno, LLC,
35 Paradise Wellness Center, LLC, GBS Nevada Partners, LLC, Fidelis Holdings, LLC, Gravitas Nevada,
36 LLC, Nevada Pure, LLC, Medifarm, LLC (Case No. A786962-B) (the "Serenity Plaintiffs"); Adam K.
37 Bult, Esq. and Maximilien D. Fetaz, Esq., of the law firm Brownstein Hyatt Farber Schreck, LLP,
38 appeared on behalf of Plaintiffs ETW Management Group LLC, Global Harmony LLC, Green Leaf
39 Farms Holdings LLC, Green Therapeutics LLC, Herbal Choice INC., Just Quality, LLC, Libra
40 Wellness Center, LLC, Rombough Real Estate Inc. dba Mother Herb, NevCann LLC, Red Earth LLC,
41 THC Nevada LLC, Zion Gardens LLC, and MMOF Vegas Retail, Inc. (Case No. A787004-B) (the
42 "ETW Plaintiffs"); William S. Kemp, Esq. and Nathaniel R. Rulis, Esq., of the law firm Kemp, Jones
43 & Coulthard LLP, appeared on behalf of MM Development Company, Inc. and LivFree Wellness LLC
44 (Case No. A785818-W) (the "MM Plaintiffs"); Theodore Parker III, Esq., of the law firm Parker
45 Nelson & Associates, appeared on behalf of Nevada Wellness Center (Case No. A787540-W)
46 (collectively the "Plaintiffs"); Steven G. Shevorski, Esq., Ketan D. Bhirud, Esq., and Theresa M. Haar,
47 Esq., of the Office of the Nevada Attorney General, appeared on behalf of the State of Nevada,
48 Department of Taxation; David R. Koch, Esq., of the law firm Koch & Scow LLC, appeared on behalf

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1 of Nevada Organic Remedies, LLC; Brigid M. Higgins, Esq. and Rusty Graf, Esq., of the law firm
2 Black & Lobello, appeared on behalf of Clear River, LLC; Eric D. Hone, Esq., of the law firm H1 Law
3 Group, appeared on behalf of Lone Mountain Partners, LLC; Alina M. Shell, Esq., of the law firm
4 McLetchie Law, appeared on behalf of GreenMart of Nevada NLV LLC; Jared Kahn, Esq., of the law
5 firm JK Legal & Consulting, LLC, appeared on behalf of Helping Hands Wellness Center, Inc.; and
6 Joseph A. Gutierrez, Esq., of the law firm Maier Gutierrez & Associates, and Philip M. Hymanson,
7 Esq., of the law firm Hymanson & Hymanson; Todd Bice, Esq. and Jordan T. Smith, Esq. of the law
8 firm Pisanelli Bice; and Dennis Prince, Esq. of the Prince Law Group appeared on behalf of Integral
9 Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson,
10 LLC, CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and
11 Cheyenne Medical, LLC (the "Essence/Thrive Entities"). The Court, having read and considered the
12 pleadings filed by the parties; having reviewed the evidence admitted during the evidentiary hearing;
13 and having heard and carefully considered the testimony of the witnesses called to testify; having
14 considered the oral and written arguments of counsel, and with the intent of deciding the Motion for a
15 Preliminary Injunction,² makes the following preliminary findings of fact and conclusions of law:

16 *PROCEDURAL POSTURE*

17 Plaintiffs are a group of unrelated commercial entities who applied for, but did not receive,
18 licenses to operate retail recreational marijuana establishments in various local jurisdictions throughout
19 the state. Defendant is Nevada's Department of Taxation ("DoT"), which is the administrative agency
20 responsible for issuing the licenses. Some successful applicants for licensure intervened as Defendants.

21 The Serenity Plaintiffs filed a Motion for Preliminary Injunction on March 19, 2019, asking for
22 a preliminary injunction to:

- 23 a. Enjoin the denial of Plaintiffs applications;
- 24 b. Enjoin the enforcement of the licenses granted;
- 25 c. Enjoin the enforcement and implementation of NAC 453D;

26
27 ² The findings made in this Order are preliminary in nature based upon the limited evidence presented after very
28 limited discovery permitted on an expedited basis and may be modified based upon additional evidence presented to the
Court at the ultimate trial of the business court matters.

- 1 d. An order restoring the *status quo ante* prior to the DoT's adoption of NAC 453D;
2 and
3 e. Several orders compelling discovery.

4 This Court reviewed the Serenity Plaintiffs' Motion for Preliminary Injunction and at a hearing on
5 April 22, 2019, invited Plaintiffs in related cases, not assigned to Business Court, to participate in the
6 evidentiary hearing on the Motion for Preliminary Injunction being heard in Department 11 for the
7 purposes of hearing and deciding the Motions for Preliminary Injunction.³

8 PRELIMINARY STATEMENT

9 The Attorney General's Office was forced to deal with a significant impediment at the early
10 stages of the litigation. This inability to disclose certain information was outside of its control because
11 of confidentiality requirements that have now been slightly modified by SB 32. Although the parties
12 stipulated to a protective order on May 24, 2019, many documents produced in preparation for the
13 hearing and for discovery purposes were heavily redacted because of the highly competitive nature of
14 the industry and sensitive financial and commercial information being produced.

15 All parties agree that the language of an initiative takes precedence over any regulation that is in
16 conflict and that an administrative agency has some discretion in determining how to implement the
17 initiative. The Court gives deference to the agency in establishing those regulations and creating the
18 framework required to implement those provisions in conformity with the initiative.

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21 ³ The complaints filed by the parties participating in the hearing seek declaratory relief, injunctive relief and writs of
22 mandate, among other claims. The motions and joinders seeking injunctive relief which have been reviewed by the Court in
conjunction with this hearing include:

23 A786962-B Serenity: Serenity Plaintiffs' Motion for Preliminary Injunction filed 3/19/19 (Joinder to Motion by
24 Compassionate Team: 5/17; Joinder to Motion by ETW: 5/6 (filed in A787004); and Joinder to Motion by Nevada
25 Wellness: 5/10 (filed in A787540)); Opposition by the State filed 5/9/19 (Joinder by Essence/Thrive Entities: 5/23);
26 Opposition by Nevada Organic Remedies: 5/9 (Joinder by Lone Mountain: 5/13; Joinder by Helping Hands: 5/21; and
Joinder by Essence/Thrive Entities: 5/23). Application for TRO on OST filed 5/9/19 (Joinder by Compassionate Team:
5/17; and Joinder by ETW: 5/10 (filed in A787004)); Opposition by Nevada Organic Remedies: 5/9 (Joinder by Clear River:
5/9); Opposition by Essence/Thrive Entities: 5/10 (Joinder by GreenMart: 5/10; Joinder by Lone Mountain: 5/11; and
Joinder by Helping Hands: 5/12).

27 A785818-W MM Development: MM Plaintiffs' Motion for Preliminary Injunction or Writ of Mandamus filed 5/9/19
28 (Joinder by Serenity: 5/20 (filed in A786962); Joinder by ETW: 5/6 (filed in A787004 and A785818); and Joinder by
Nevada Wellness: 5/10 (filed in A787540)).

1 The initiative to legalize recreational marijuana, Ballot Question 2 ("BQ2"), went to the voters
2 in 2016. The language of BQ2 is independent of any regulations that were adopted by the DoT. The
3 Court must balance the mandatory provisions of BQ2 (which the DoT did not have discretion to
4 modify);⁴ those provisions with which the DoT was granted some discretion in implementation;⁵ and
5 the inherent discretion of an administrative agency to implement regulations to carry out its statutory
6 duties. The Court must give great deference to those activities that fall within the discretionary
7 functions of the agency. Deference is not given where the actions of the DoT were in violation of BQ2
8 or were arbitrary and capricious.

9 FINDINGS OF FACT

10 I. Nevada allows voters to amend its Constitution or enact legislation through the initiative
11 process. Nevada Constitution, Article 19, Section 2.

12 ⁴ Article 19, Section 2(3) provides the touchstone for the mandatory provisions:

13 An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or
14 suspended by the Legislature within 3 years from the date it takes effect.

15 ⁵ NRS 453D.200(1) required the adoption of regulations for the licensure and oversight of recreational marijuana
16 cultivation, manufacturing/production, sales and distribution, but provides the DoT discretion in exactly what these
17 regulations would include.

18 . . . the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter.
19 The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations
20 that make their operation unreasonably impracticable. The regulations shall include:

- 21 (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana
22 establishment;
- 23 (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana
24 establishment;
- 25 (c) Requirements for the security of marijuana establishments;
- 26 (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21
27 years of age;
- 28 (e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-
resistant packaging;
- (f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana
establishments including a numerical indication of potency based on the ratio of THC to the weight of a product
intended for oral consumption;
- (g) Requirements for record keeping by marijuana establishments;
- (h) Reasonable restrictions on signage, marketing, display, and advertising;
- (i) Procedures for the collection of taxes, fees, and penalties imposed by this chapter;
- (j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another
qualified person and to enable a licensee to move the location of its establishment to another suitable location;
- (k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and
marijuana establishments at the same location;
- (l) Procedures to establish the fair market value at wholesale of marijuana; and
- (m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any
violation of the provisions of NRS 453D.300.

1 2. In 2000, the voters amended Nevada's Constitution to allow for the possession and use
2 of marijuana to treat various medical conditions. Nevada Constitution, Article 4, Section 38(1)(a). The
3 initiative left it to the Legislature to create laws "[a]uthoriz[ing] appropriate methods for supply of the
4 plant to patients authorized to use it." Nevada Constitution, Article 4, Section 38(1)(e).

5 3. For several years prior to the enactment of BQ2, the regulation of medical marijuana
6 dispensaries had not been taken up by the Legislature. Some have argued in these proceedings that the
7 delay led to the framework of BQ2.

8 4. In 2013, Nevada's legislature enacted NRS 453A, which allows for the cultivation and
9 sale of medical marijuana. The Legislature described the requirements for the application to open a
10 medical marijuana establishment. NRS 453A.322. The Nevada Legislature then charged the Division of
11 Public and Behavioral Health with evaluating the applications. NRS 453A.328.

12 5. The materials circulated to voters in 2016 for BQ2 described its purpose as the
13 amendment of the Nevada Revised Statutes as follows:
14

15 Shall the *Nevada Revised Statutes* be amended to allow a person, 21 years old or older, to
16 purchase, cultivate, possess, or consume a certain amount of marijuana or concentrated
17 marijuana, as well as manufacture, possess, use, transport, purchase, distribute, or sell marijuana
18 paraphernalia; impose a 15 percent excise tax on wholesale sales of marijuana; require the
19 regulation and licensing of marijuana cultivators, testing facilities, distributors, suppliers, and
20 retailers; and provide for certain criminal penalties?

21 6. BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.⁶

22 7. BQ2 specifically identified regulatory and public safety concerns:

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

- 25 (a) Marijuana may only be purchased from a business that is licensed by the State of
26 Nevada;
27 (b) Business owners are subject to a review by the State of Nevada to confirm that the
28 business owners and the business location are suitable to produce or sell marijuana;
 (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly
 controlled through State licensing and regulation;

⁶ As the provisions of BQ2 and the sections NRS 453D currently in effect (with the exception of NRS 453D.205) are identical, for ease of reference the Court cites to BQ2 as enacted by the Nevada Legislature in NRS 453D.

- (d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;
- (e) Individuals will have to be 21 years of age or older to purchase marijuana;
- (f) Driving under the influence of marijuana will remain illegal; and
- (g) Marijuana sold in the State will be tested and labeled.

NRS 453D.020(3).

8. BQ2 mandated the DoT to "conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant." NRS 453D.200(6).

9. On November 8, 2016, by Executive Order 2017-02, Governor Brian Sandoval established a Task Force composed of 19 members to offer suggestions and proposals for legislative, regulatory, and executive actions to be taken in implementing BQ2.

10. The Task Force's findings, issued on May 30, 2017, referenced the 2014 licensing process for issuing Medical Marijuana Establishment Registration Certificates under NRS 453A. The Task Force recommended that "the qualifications for licensure of a marijuana establishment and the impartial numerically scored bidding process for retail marijuana stores be maintained as in the medical marijuana program except for a change in how local jurisdictions participate in selection of locations."

11. Some of the Task Force's recommendations appear to conflict with BQ2.⁷

⁷ The Final Task Force report (Exhibit 2009) contained the following statements:

The Task Force recommends that retail marijuana ownership interest requirements remain consistent with the medical marijuana program. . . .
at 2510.

The requirement identified by the Task Force at the time was contained in NAC 453A.302(1) which states:

Except as otherwise required in subsection 2, the requirements of this chapter concerning owners of medical marijuana establishments only apply to a person with an aggregate ownership interest of 5 percent or more in a medical marijuana establishment.

The second recommendation of concern is:

The Task Force recommends that NRS 453A be changed to address companies that own marijuana establishment licenses in which there are owners with less than 5% ownership interest in the company. The statute should be amended to:

*Limit fingerprinting, background checks and renewal of agent cards to owners officers and board members with 5% or less cumulatively of the company to once every five years;

*Only require owners officers and board members with 5% or more cumulatively and employees of the company to obtain agent registration cards; and

1 12. During the 2017 legislative session Assembly Bill 422 transferred responsibility for the
2 registration, licensing, and regulation of marijuana establishments from the State of Nevada Division of
3 Public and Behavioral Health to the DoT.⁸

4 13. On February 27, 2018, the DoT adopted regulations governing the issuance, suspension,
5 or revocation of retail recreational marijuana licenses in LCB File No. R092-17, which were codified in
6 NAC 453D (the "Regulations").

7 14. The Regulations for licensing were to be "directly and demonstrably related to the
8 operation of a marijuana establishment." NRS 453D.200(1)(b). The phrase "directly and demonstrably
9 related to the operation of a marijuana establishment" is subject to more than one interpretation.
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18 *Use the marijuana establishments governing documents to determine who has approval rights and signatory
19 authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory
documents.

20 There was Task Force dissent on the recommendation. The concern with this recommendation was that by
21 changing the requirements on fingerprinting and background checks, the state would have less knowledge of when
an owner, officer, and board member commits an offense not allowed under current marijuana law, potentially
creating a less safe environment in the state.
at 2515-2516.

22 ⁸ Those provisions (a portion of which became NRS 453D.205) are consistent with BQ2:

23 1. When conducting a background check pursuant to subsection 6 of NRS 453D.200, the Department may
24 require each prospective owner, officer and board member of a marijuana establishment license applicant to submit
a complete set of fingerprints and written permission authorizing the Department to forward the fingerprints to the
25 Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation
for its report.

26 2. When determining the criminal history of a person pursuant to paragraph (c) of subsection 1 of NRS
27 453D.300, a marijuana establishment may require the person to submit to the Department a complete set of
fingerprints and written permission authorizing the Department to forward the fingerprints to the Central
28 Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its
report.

15. A person holding a medical marijuana establishment registration certificate could apply for one or more recreational marijuana establishment licenses within the time set forth by the DoT in the manner described in the application. NAC 453D.268.⁹

⁹ Relevant portions of that provision require that application be made

... by submitting an application in response to a request for applications issued pursuant to NAC 453D.260 which must include:

2. An application on a form prescribed by the Department. The application must include, without limitation:

- (a) Whether the applicant is applying for a license for a marijuana establishment for a marijuana cultivation facility, a marijuana distributor, a marijuana product manufacturing facility, a marijuana testing facility or a retail marijuana store;
- (b) The name of the proposed marijuana establishment, as reflected in both the medical marijuana establishment registration certificate held by the applicant, if applicable, and the articles of incorporation or other documents filed with the Secretary of State;
- (c) The type of business organization of the applicant, such as individual, corporation, partnership, limited-liability company, association or cooperative, joint venture or any other business organization;
- (d) Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business, and the articles of incorporation, articles of organization or partnership or joint venture documents of the applicant;
- (e) The physical address where the proposed marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments;
- (f) The mailing address of the applicant;
- (g) The telephone number of the applicant;
- (h) The electronic mail address of the applicant;
- (i) A signed copy of the Request and Consent to Release Application Form for Marijuana Establishment License prescribed by the Department;
- (j) If the applicant is applying for a license for a retail marijuana store, the proposed hours of operation during which the retail marijuana store plans to be available to sell marijuana to consumers;
- (k) An attestation that the information provided to the Department to apply for the license for a marijuana establishment is true and correct according to the information known by the affiant at the time of signing; and
- (l) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of NAC 453D.250 and the date on which the person signed the application.

3. Evidence of the amount of taxes paid, or other beneficial financial contributions made, to this State or its political subdivisions within the last 5 years by the applicant or the persons who are proposed to be owners, officers or board members of the proposed marijuana establishment.

4. A description of the proposed organizational structure of the proposed marijuana establishment, including, without limitation:

- (a) An organizational chart showing all owners, officers and board members of the proposed marijuana establishment;
- (b) A list of all owners, officers and board members of the proposed marijuana establishment that contains the following information for each person:
 - (1) The title of the person;
 - (2) The race, ethnicity and gender of the person;
 - (3) A short description of the role in which the person will serve for the organization and his or her responsibilities;
 - (4) Whether the person will be designated by the proposed marijuana establishment to provide written notice to the Department when a marijuana establishment agent is employed by, volunteers at or provides labor as a marijuana establishment agent at the proposed marijuana establishment;
 - (5) Whether the person has served or is currently serving as an owner, officer or board member for another medical marijuana establishment or marijuana establishment;
 - (6) Whether the person has served as an owner, officer or board member for a medical marijuana establishment or marijuana establishment that has had its medical marijuana establishment registration certificate or license, as applicable, revoked;

1 NRS 453D.210(6) mandated the DoT to use "an impartial and numerically scored competitive bidding
2 process" to determine successful applicants where competing applications were submitted.

3 16. NAC 453D.272(1) provides the procedure for when the DoT receives more than one
4 "complete" application. Under this provision the DoT will determine if the "application is complete and

5 (7) Whether the person has previously had a medical marijuana establishment agent registration card or
6 marijuana establishment agent registration card revoked;

7 (8) Whether the person is an attending provider of health care currently providing written documentation for the
8 issuance of registry identification cards or letters of approval;

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

10 (10) Whether the person is currently an employee or contractor of the Department; and

11 (11) Whether the person has an ownership or financial investment interest in any other medical marijuana
12 establishment or marijuana establishment.

13 5. For each owner, officer and board member of the proposed marijuana establishment:

14 (a) An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of
15 an excluded felony offense, and that the information provided to support the application for a license for a
16 marijuana establishment is true and correct;

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

18 (1) Past experience working with governmental agencies and highlighting past experience in giving back to the
19 community through civic or philanthropic involvement;

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

21 (3) Any demonstrated knowledge, business experience or expertise with respect to marijuana; and

22 (c) A resume.

23 6. Documentation concerning the size of the proposed marijuana establishment, including, without limitation,
24 building and general floor plans with supporting details.

25 7. The integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana
26 from seed to sale, including, without limitation, a plan for testing and verifying marijuana, a transportation or
27 delivery plan and procedures to ensure adequate security measures, including, without limitation, building security
28 and product security.

8. A plan for the business which includes, without limitation, a description of the inventory control system of the
proposed marijuana establishment to satisfy the requirements of NRS 453D.300 and NAC 453D.426.

9. A financial plan which includes, without limitation:

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

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

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

10. Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana establishment on a
daily basis, which must include, without limitation:

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

(b) An operations manual that demonstrates compliance with this chapter;

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

(d) A plan to minimize the environmental impact of the proposed marijuana establishment.

11. If the application is submitted on or before November 15, 2018, for a license for a marijuana distributor,
proof that the applicant holds a wholesale dealer license issued pursuant to chapter 369 of NRS, unless the
Department determines that an insufficient number of marijuana distributors will result from this limitation.

12. A response to and information which supports any other criteria the Department determines to be relevant,
which will be specified and requested by the Department at the time the Department issues a request for
applications which includes the point values that will be allocated to the applicable portions of the application
pursuant to subsection 2 of NAC 453D.260.

1 in compliance with this chapter and Chapter 453D of NRS, the Department will rank the applications
2 in order from first to last based on the compliance with the provisions of this chapter and chapter
3 453D of NRS and on the content of the applications relating to . . . " several enumerated factors. NAC
4 453D.272(1).

5 17. The factors set forth in NAC 453D.272(1) that are used to rank competing applications
6 (collectively, the "Factors") are:

- 7 (a) Whether the owners, officers or board members have experience operating another kind
8 of business that has given them experience which is applicable to the operation of a marijuana
9 establishment;
10 (b) The diversity of the owners, officers or board members of the proposed marijuana
11 establishment;
12 (c) The educational achievements of the owners, officers or board members of the proposed
13 marijuana establishment;
14 (d) The financial plan and resources of the applicant, both liquid and illiquid;
15 (e) Whether the applicant has an adequate integrated plan for the care, quality and
16 safekeeping of marijuana from seed to sale;
17 (f) The amount of taxes paid and other beneficial financial contributions, including, without
18 limitation, civic or philanthropic involvement with this State or its political subdivisions, by the
19 applicant or the owners, officers or board members of the proposed marijuana establishment;
20 (g) Whether the owners, officers or board members of the proposed marijuana establishment
21 have direct experience with the operation of a medical marijuana establishment or marijuana
22 establishment in this State and have demonstrated a record of operating such an establishment in
23 compliance with the laws and regulations of this State for an adequate period of time to
24 demonstrate success;
25 (h) The (unspecified) experience of key personnel that the applicant intends to employ in
26 operating the type of marijuana establishment for which the applicant seeks a license; and
27 (i) Any other criteria that the Department determines to be relevant.

28 18. Each of the Factors is within the DoT's discretion in implementing the application
process provided for in BQ2. The DoT had a good-faith basis for determining that each of the Factors
is "directly and demonstrably related to the operation of a marijuana establishment."

19 19. The DoT posted the application on its website and released the application for
20 recreational marijuana establishment licenses on July 6, 2018.¹⁰

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28 ¹⁰ The DoT made a change to the application after circulating the first version of the application to delete the
requirement of a physical location. The modification resulted in a different version of the application bearing the same
"footer" with the original version remaining available on the DoT's website.