

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 10:34 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 29

David R. Koch (NV Bar #8830)
Brody R. Wight (NV Bar #13615)
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Telephone: (702) 318-5040
Email: dkoch@kochscow.com, bwight@kochscow.com
Attorneys for Appellant Nevada Organic Remedies, LLC

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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
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CERTIFICATE OF SERVICE

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

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

Counsel for Respondents,

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

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

Office of the Attorney General

Counsel for Respondent,

The State of Nevada Department of Taxation

David R. Koch, Steven B. Scow, Daniel G. Scow, and Brody R. Wight

Koch & Scow, LLC

Counsel for Appellant,

Nevada Organic Remedies, LLC

Margaret A. McLetchie, Alina M. Shell

McLetchie Law

Counsel for Appellant,

Counsel for GreenMart of Nevada NLV LLC

/s/ David R. Koch

Koch & Scow

judgment, GB sought a "declaration and mandatory injunction requiring that the Provisional License originally issued to Nuleaf should be revoked, and re-issued to [GB Sciences]." (*Id.* at APP000169.) GB requested that the District Court enter a mandatory injunction to put the parties in the position they would have been had the statute been followed in GB's eyes. (*Id.* at APP00173.) In doing so, GB argues that the District Court would be maintaining the status quo as of November 3, 2014, a date long past.

GB's relief reaches far beyond the declaratory relief sought if its compliant. Under NRS 30.040, "[a]ny person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute, . . . and obtain a declaration of rights, status or other legal relations thereunder." Declaratory relief merely announces the respective rights of the parties. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 965, 194 P.3d 96, 105 (2008). In fact, declaratory relief is inappropriate when the party asks the court to take action. *Id.* ("Thus, appellants sought more than a mere determination of their rights under a statute -- they sought to void the policy altogether and to obtain damages. Such issues are not appropriate for declaratory relief actions . . .").

2. No Mandatory Injunction is Proper Against State Government.

In its December 14, 2015 Order, the District Court stated "this Court has the authority to issue mandatory injunctions 'to restore the status quo, to undo wrongful conditions.' *Leonard v. Stoebling*, 102 Nev. 453, 728 P.2d 1358 (1986)" (App. Vol. III, APP00495.) While mandatory injunctions have been entered in the past, these cases relate to matters such as water rights (see *Memory Gardens of Las Vegas v. Pet Ponderosa M.G.*, 88 Nev. 1, 492 P.2d 123 (1972)), reconstruction of roadways, (see *City of Reno v. Matley*, 79 Nev. 49, 378 P.2d 256 (1963)), and maintaining a view (see *Leonard v. Stoebling*, 102 Nev. 453, 728 P.2d 1358 (1986). Even then, "a court should exercise restraint and caution in providing this type of equitable relief." *Leonard*, 102 Nev. at 551, 728 P.2d at 1363.

What neither GB nor the District Court could cite is any case law that would support the extreme remedy of a mandatory injunction in combination with a request for declaratory relief against a government body like the Division. If GB and the District Court believed that the Division had taken action in violation of the law, then the appropriate claim and remedy is one for extraordinary writ under NRS Chapter 34.⁴ Of course, GB would then have to show an entitlement to such

⁴ GB knew this because it had asserted such relief in its action against the Division concerning its failure to obtain a certificate in unincorporated Clark County. But without explanation, it failed to pursue any such relief in this case.

extraordinary writ relief and the District Court would have to enter an appropriate order which is subject to further review.

But here, GB did not seek or assert any form of writ relief against the Division, like it had in the action involving its unsuccessful application in unincorporated Clark County. Instead, it sought declaratory relief. It tried to make up for that failure in its motion for summary judgment by throwing in a request for "mandatory injunction." The District Court acknowledged that at no point was GB awarded a registration certificate because the Division determined it was not as well qualified to operate a medical marijuana dispensary. GB presented no claim which would entitle the District Court to order the Division to revoke Nuleaf's certificate and affirmatively compel the Division to issue a new certificate to another. As if there were any debate, the District Court confirmed its disregard for the proper legal process by ordering its unprecedented remedy.

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IV. CONCLUSION

The District Court erred in its interpretation and application of NRS 453A by failing to recognize the significant deference given to the Division by both the statute and case law. Additionally, the District Court improperly issued a mandatory injunction, compelling the Division to act. Therefore, Nuleaf respectfully requests that the District Court's judgment be reversed and this matter be remanded for trial.

DATED this 14th day of September 2016.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
Todd L. Bice, Esq., Bar No. 4534
Dustin H. Holmes, Esq., Bar No. 12776
400 South 7th Street, Suite 300
Las Vegas, NV 89101

Attorneys for Appellant Nuleaf CLV Dispensary, LLC

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2007 in size 14 font in Times New Roman.

I further certify that I have read this brief and it complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains approximately 7,172 words.

Finally, I hereby certify that to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 14th day of September 2016.

PISANELLI BICE PLLC

BY: /s/ Todd L. Bice
Todd L. Bice, Esq., Bar No. 4534
Dustin H. Holmes, Esq., Bar No. 12776
400 South 7th Street, Suite 300
Las Vegas, NV 89101

Attorneys for Appellant Nuleaf CLV Dispensary, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 14th day of September 2016, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing **APPELLANT'S OPENING BRIEF** properly addressed to the following:

James E. Shapiro, Esq., Bar No. 7907
Sheldon A. Herbert, Esq., Bar No. 5988
SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
Tel.: (702) 214-2100

Attorneys for GB Science Nevada LLC

Mark E. Ferrario, Esq., Bar No. 1625
Moorca L. Katz, Esq., Bar No. 12007
GREENBERG TRAURIG, LLP
3773 Howard Hughes Pkwy, Suite 400
North
Las Vegas, NV 89169
Tel.: (702) 792-3773

Attorneys for Intervener Acres

Adam P. Laxalt, Esq.
Attorney General
Linda C. Anderson, Esq.
Chief Deputy Attorney General
555 E. Washington Ave., #3900
Las Vegas, NV 89101
Tel.: (702) 486-3420

Attorneys for The State of Nevada

SERVED VIA HAND-DELIVERY

The Honorable Eric Johnson
Eighth Judicial District Court
Dept. XX
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

EXHIBIT 4

IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

NULEAF CLV DISPENSARY, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,
vs.
THE STATE OF NEVADA DEPARTMENT OF
HEALTH AND HUMAN SERVICES, DIVISION
OF PUBLIC AND BEHAVIORAL HEALTH;
ACRES MEDICAL, LLC; AND GB SCIENCES,
LLC, A NEVADA LIMITED LIABILITY
COMPANY,
Respondents.

GB SCIENCES, LLC, A NEVADA LIMITED
LIABILITY COMPANY,
Cross-Appellant,
vs.
THE STATE OF NEVADA DEPARTMENT OF
HEALTH AND HUMAN SERVICES, DIVISION
OF PUBLIC AND BEHAVIORAL HEALTH;
ACRES MEDICAL, LLC; AND NULEAF CLV
DISPENSARY, LLC, A NEVADA LIMITED
LIABILITY COMPANY,
Cross-Respondents

Supreme Court No. 69909
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STATE RESPONDENT'S ANSWERING BRIEF

**ATTORNEYS FOR THE STATE OF NEVADA,
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH**

Adam Paul Laxalt
Attorney General
LINDA C. ANDERSON, ESQ.
Chief Deputy Attorney General
Nevada Bar No. 4090
555 E. Washington Avenue, Ste. 3900
P: (702) 486-3077
Email: landerson@ag.nv.gov

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SUMMARY OF ARGUMENT

The Division of Public and Behavioral Health (hereinafter "the Division") has no interest in any particular medical marijuana establishment receiving a registration as a dispensary in the City of Las Vegas so the Division awaits a final determination by this Court to resolve this litigation. When the Nevada Legislature allowed for the registration of medical marijuana dispensaries in Chapter 453A of the Nevada Revised Statutes, they clearly intended to create a limited and expedited process to meet the needs of the community. Unfortunately, all parties to this litigation have contributed to the delay which has resulted in the City of Las Vegas having less than the allotted twelve dispensaries in operation.

Both the legislative scheme and the Division failed to address the unique circumstances in the City of Las Vegas where the local entity enacted zoning ordinances but did not complete the local review until after the applications for registration were submitted with the Division. The Division attempted to comply with all of the requirements set forth by the Nevada Legislature in this initial application process and is entitled to deference. If this Court finds fault with the process used by the Division in ranking the dispensary applications in the City of Las Vegas, the Division can either open up a new application period or proceed with the final registrant as ordered by the Court.

ARGUMENT

I. DIVISION IS ENTITLED TO DEFERENCE

The Division does not “license” and instead has the authority to issue certificates of registration for medical marijuana establishments pursuant to NRS 453A.322. The purpose of registration is set forth in NRS 453A.320 as follows:

The purpose for registering medical marijuana establishments and medical marijuana establishment agents is to protect the public health and safety and the general welfare of the people of this State. Any medical marijuana establishment registration certificate issued pursuant to NRS 453A.322 and any medical marijuana establishment agent registration card issued pursuant to NRS 453A.332 is a revocable privilege and the holder of such a certificate or card, as applicable, does not acquire thereby any vested right.

The Nevada Legislature provided that this “revocable privilege” does not implicate any property rights for due process concerns. The Nevada Legislature specified that the Division could accept applications only for ten business days once a calendar year as described in NRS 453.324(4). Further, the Legislature directed the Division to issue all resulting registrations within 90 days according to NRS 453A.322(3). The registration of dispensaries was a competitive process because Clark County was limited to 40 dispensaries with the Clark County Commission allocating 12 to the City of Las Vegas pursuant to NRS 453A.324 and NRS 453A.326.

The Division relied solely on the applications submitted in their determination and the final scores for each section were the ~~result of a~~ comparison

of similar applicants by a consistent team of reviewers. (App. 256-300) The Division issued registrations during the prescribed 90-day time period which ended on November 3, 2014, and only issued registration to the top twelve dispensaries in the City of Las Vegas. (App. 332-333) In areas where a local government issued business licenses such as the City of Las Vegas, any registration was deemed provisional by law until the establishment was in compliance with local requirements according to NRS 453A.326(3).

Although the application form for a medical marijuana establishment as described in NRS 453A.322(3) did not include evidence of approval by the local authority of compliance with zoning restrictions, the Nevada Legislature required in NRS 453A.322(3)(a)(5) that the applicant submit to the Division the following:

If the city, town or county in which the proposed medical marijuana establishment will be located has enacted zoning restrictions, proof of licensure with the applicable local 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.

Therefore, any applicant was on notice that they needed to submit authorization from the local governmental authority to the Division or the application could be disqualified. The scoring and ranking by the Division focused on the criteria set forth by the Nevada Legislature in NRS 453A.328 rather than zoning issues which would remain in the realm of the local authority.

The City of Las Vegas enacted zoning restrictions for these establishments in May and June of 2014. (App. 208-218 and 221-252) The Division released its application on May 30, 2014 and accepted application from August 5-18, 2014. (App. 256) Therefore, the final ordinance was amended after the application had been announced and released by the Division but prior to the ten day period when applications were submitted to the Division. However, the City of Las Vegas did not complete its review of any location or issue any documentation of compliance at the time of the submission of applications to the Division. (App. 316-321) Therefore, no applicant was able to submit either proof of licensure or a letter from the City of Las Vegas at the time of the application because the City of Las Vegas had not completed their process. Instead, the City of Las Vegas notified the Division of those applicants who were in compliance in a letter dated October 30, 2014 (which was the last working day due to the Nevada Day holiday before the 90 day period ended on November 3, 2014). (App. 3316-321)

In the proceedings below, the Division did not dispute that the Division did not make any changes in the scoring or ranking of the dispensaries based on the notification by the City of Las Vegas. Instead, the Division only considered the information contained in the applications which had been submitted within the ten day period. The Division did not consider local zoning approval because this

information was not provided in the application. Instead, the Division relied on NRS 453A.326(3), which provides the following:

In a local governmental jurisdiction that issues business licenses, the issuance by the Division of a medical marijuana establishment registration certificate shall be deemed to be provisional until such time as:

- (a) The establishment is in compliance with all applicable local governmental ordinances or rules; and
- (b) The local government has issued a business license for the operation of the establishment.

Therefore the Division anticipated that the local authority would provide the final approval for operation and the Division could revoke a registration if any establishment failed to meet all applicable governmental ordinances or rules.

The District Court found the Division was in error in issuing a registration to Nuleaf CLV Dispensary after the Division had received notice of a denial from the City of Las Vegas. The Nevada Legislature did not address these circumstances or process if the local authority with zoning restrictions provided evidence of approval after the ten day application period but before the 90-day review period had run for a determination by the Division. The underlying premise of the ruling of the District Court is that the Division was not entitled to deference in its interpretation of NRS 453A.322(3)(a)(5) and NRS 453A.326(3). This Court has confirmed that:

[a]n agency charged with the duty of administering an act is impliedly clothed with power to construe it as a necessary precedent to administrative action [and] great deference should be given to the agency's interpretation when it is within the language of the statute.

City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002) citations omitted. Therefore, this Court must determine whether the Division is entitled to deference in this inaugural application review when the Division limited their review to the applications submitted and did not consider the communication from the City of Las Vegas in their ranking of dispensaries.

II. DIVISION UNABLE TO PROVIDE A REMEDY

GB Sciences Nevada, LLC filed a timely challenge to the practices of the Division on December 5, 2014, by filing a complaint and motion for preliminary injunction. (App. 1-29 and 76-153) However, after the Court denied that motion at a hearing on December 31, 2014, Plaintiff GB Sciences Nevada, LLC took no further action until they changed counsel and filed a motion for summary judgment on September 18, 2015. (App. 76-173 and 160-176) Defendant NuLeaf CLV Dispensary, LLC did not file an answer until October 5, 2015, when they opposed the motion for summary judgment. (App. 364-376 and 377-419)

The intervenor Acres Medical LLC did not challenge the practices of the Division in scoring their application until they filed and served an amended petition for writ of mandamus on June 16, 2015, which was granted by another court on October 6, 2015. (App. 426-429) The Division filed notice of the

decision by Judge Cadish in this matter on October 15, 2015. (App. 420-429) Acres Medical LLC filed their motion to intervene in the present action on October 19, 2015, followed by their complaint in intervention filed on November 17, 2015. (App. 430-445 and 458-484) In an Order filed on December 15, 2015, the District Court granting GB Science Motion for Summary Judgment but awarded the registration to the intervenor Acre Medical LLC even though Acres had not challenged the registration of NuLeaf CLV Dispensary until a year later. (App 506-515) Because no stay was issued in this matter, Acres Medical, LLC currently has been issued the registration as directed by the Court but GB Sciences Nevada LLC contests that ruling in a cross-appeal.

The Nevada Legislature only authorized the Division to issue registration certificates “not later than 90 days after receiving an application to operate a medical marijuana establishment“ as set forth in NRS 453A.322(3). The Division did not have statutory authority to advance the applicants from the 2014 application pool after the 90-day period had run as of November 3, 2014. The Legislature affirmed this interpretation in the last session when they established a “one time extension period opened by the Division in calendar year 2014 for the purpose of issuing eleven additional registrations by September 1, 2015” in Section 5 of Senate Bill 276. (App. 362). Therefore, if this Court concludes that the registration of Nuleaf CLV Dispensary was properly rescinded, the Division must

either open up a new application period to fill the vacant slot or abide by a decision of the Court as to whether either GB Sciences Nevada LLC or Acre Medical LLC should have a registration.

CONCLUSION

Again, no property interest exists for the plaintiff or any registrant in this matter and the Division does not have an interest in any particular establishment receiving a registration. The Division should be entitled to deference in the process it used to score and rank medical marijuana dispensaries. However, if this Court concludes that the Division should not have registered Nuleaf CLV dispensary, the Division can either accept new applications or abide by any determination of this Court and issue or revoke registrations as ordered.

Dated: October 12, 2016.

ADAM PAUL LAXALT
Attorney General

By: /s/ Linda C. Anderson
Linda C. Anderson
Chief Deputy Attorney General

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the type face requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in proportional spaced typeface using Microsoft Word 2010 in Times New Roman in 14 point font size. I further certify that his brief complies with the page or type volume limitations of NRAP 32(a)(7) because excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed thirty (30) pages. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P.28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: October 12, 2016.

ADAM PAUL LAXALT
Attorney General

By: /s/ Linda C. Anderson
Linda C. Anderson
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing by using the electronic filing system on the 12th day of October, 2016. The following participants in this case are registered electronic filing system users and will be served electronically:

Todd L. Bice, Esq.
Dustin H. Holmes, Esq.
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, NV 89101

James E. Shapiro
Sheldon A. Herbert, Esq.
SMITH & SHAPIRO PLLC
2520 St. Rose Parkway, Suite 220
Henderson NV 89074

Mark E. Ferrario, Esq.
Moorea L. Katz, Esq.
GREENBERG TRAURIG LLP
3773 Howard Hughes Parkway, Suite 400
Las Vegas, NV 19169

/s/ Linda Aouste
Linda Aouste
Employee of the Office of the Attorney General

EXHIBIT 5

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 69909
District Court Case No. A-14-710597-C

Electronically Filed
Jan 04 2017 01:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

NULEAF CLV DISPENSARY, LLC, A NEVADA LIMITED LIABILITY
COMPANY

Appellant,

v.

THE STATE OF NEVADA DEPARTMENT OF HEALTH AND HUMAN
SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH; ACRES
MEDICAL, LLC; AND GB SCIENCES, LLC, A NEVADA LIMITED
LIABILITY COMPANY,

Respondents.

APPELLANT'S REPLY

Appeal from the Eighth Judicial District Court, Clark County
The Honorable Eric Johnson, Department XX
District Court Case No. A-14-710597-C

Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
Dustin H. Holmes, Esq., Bar No. 12776
DHH@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101

Attorneys for Appellant

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that Justices of this Court may evaluate possible disqualification or recusal.

Appellant, Nuleaf CLV Dispensary, LLC, is a Nevada limited liability company which is neither owned nor affiliated with any publicly traded corporation. The law firm whose partners or associates have or are expected to appear for Nuleaf CLV Dispensary, LLC are PISANELLI BICE PLLC.

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

The District Court's application of NRS Chapter 453A failed to accord the "great deference" due the Department of Health and Human Services (the "Division") to best reconcile competing public policy objectives as well as conflicting statutory mandates. The District Court further infringed on the Division's authority when it granted a mandatory injunction, directing the Division to revoke Nuleaf's license and instead issuing it to a party that had just filed a last-minute and untimely motion to intervene.

Respondent/Cross Appellant GB Sciences' ("GB") and Acre Medical LLC's ("Acres") double down on the untenable assertion that since Nuleaf CLV Dispensary LLC ("Nuleaf") did not have all its local land use and building approvals, it was ineligible to even apply let alone receive a provisional certificate from the Division. But of course, their argument ignores that no applicant could or possessed all such local approvals – as though that is what NRS 453A.322 somehow required – including themselves. Thus, if the Division's handling of Nuleaf's application violated NRS 453A.322, as they allege, then so too did GB and Acres who seek to be substituted in at Nuleaf's position, despite the Division's determination that they were some of the least qualified for such a privileged license.

Of course, the Division recognized this reality which is why it appropriately graded all applicants and proceeded to award provisional certificates, giving each of the successful applicants time to satisfy all local requirements, including land use and building approvals. The District Court's contrary ruling is itself contradictory: it simultaneously holds that the statute is mandatory as to the requirements for Nuleaf to have its application processed, but simultaneously discretionary as to the requirements for others. And, that is precisely why the District Court's ruling -- one that substitutes the court's preferred policy choices in reconciling competing policy objectives with that of the Division -- should not stand.

II. ARGUMENT

A. The Proper Standard of Review is De Novo.

Cognizant of the District Court's error, GB attempts to change the standard of review, on the mistaken belief that doing so will allow the District Court's erroneous decision to stand. GB's citations to other jurisdictions is unavailing. This Court has consistently determined that a district court order's summary judgment ruling is reviewed de novo. *Cable v. State ex rel. its Employers Ins. Co. of Nevada*, 122 Nev. 120, 124, 127 P.3d 528, 531 (2006). Likewise, this Court reviews a district court's interpretation of a statute is de novo. *Cable v. State ex rel. its Employers Ins. Co. of Nevada*, 122 Nev. 120, 124, 127 P.3d 528, 531 (2006).

Of course, under NRS Chapter 453A, the Division is authorized to regulate the distribution of medical marijuana. "Because [the Division] is charged with administering [NRS Chapter 453A, the Division] has the implied power to construe the statute." *United States v. State Eng'r*, 117 Nev. 585, 589, 27 P.3d 51, 53 (2001). Thus, "great deference should be given to the [administrative] agency's interpretation when it is within the language of the statute." *Pyramid Lake Paiute Tribe of Indians v. Washoe Cty.*, 112 Nev. 743, 748, 918 P.2d 697, 700 (1996) (quoting *State v. State Engineer*, 104 Nev. 709, 713, 766 P.2d 263, 266 (1988)). Furthermore, the Division's "decision shall be presumed correct, and the party challenging the decision has the burden of proving error." *United States v. State Eng'r*, 117 Nev. at 589, 27 P.3d at 53.

B. The District Court Improperly Denied Deference to the Division and Substituted its Judgment.

GB's and Acres' responses fail to address the issue at the heart of the appeal. The District Court's interpretation of NRS Chapter 453A is contradictory and fails to accord proper deference to the Division. Even pretending that the District Court's interpretation was itself not contradictory, its substitution of judgment for that of the Division's was improper. *Brocas v. Mirage Hotel & Casino*, 109 Nev. 579, 582, 854 P.2d 862, 865 (1993) ("It is well recognized that this court, in reviewing an administrative agency decision, will not substitute its judgment of the

evidence for that of the administrative agency.").

The need to heed deference is heightened here, where the statute does not offer a resolution to every potential pitfall in the registration and regulatory process, including the diversion that occurred here due to the last-minute maneuvering of a local government. In the case of such local governmental delay, the Division is tasked with best resolving any regulatory contradictions so as to best achieve public policy.

In *State v. Rosenthal*, the district court declared licensing provisions of the Nevada Gaming Control Act unconstitutional for lack of standards. 93 Nev. 36, 39, 559 P.2d 830, 832 (1977). This Court reversed, reasoning that, if the standards set out by the Legislature were inadequate, where application of a privileged license was at issue, the implementing agency legitimately served to cure the defect. *Id.* On the other hand, this Court concluded that the statute was indeed adequate because the Gaming Commission's reasonable action was required in light of the public interest. And "[i]t is entirely appropriate to lodge such wide discretion in the controlling administrative agency when a privileged enterprise is the subject of the legislative scheme." *Id.*

Akin to *Rosenthal*, here, the Division governs the privileged medical marijuana industry and must be given the leeway to address legislative gaps using its broad discretion. See NRS 453A.370 (empowering the Division to "[a]ddress

such other matters as may assist in implementing the program of dispensation contemplated by NRS 453A.320 to 453A.370, inclusive"); NRS 453A.320 ("Any medical marijuana establishment registration certificate issued pursuant to NRS 453A.322 . . . *is a revocable privilege* and the holder of such a certificate or card, as applicable, does not acquire thereby any vested right.").

The legislature specifically gave the Division the authority to interpret and implement NRS Chapter 453A, and its interpretation therefore entitled to wide discretion. Rather than heading that discretion, the District Court improperly substituted its own judgment as to how best reconciled the competing terms and policies identified in NRS 453A.320.

1. The Division's Application Is Reasonable and Not Contrary to the Plain Language.

Only in such circumstances where an administrative agency's interpretation is unreasonable under the circumstances or contrary to law should its interpretation and application be denied its usual deference. *State Indus. Ins. Sys. v. Miller*, 112 Nev. 1112, 1118, 923 P.2d 577, 581 (1996) (providing that an agency's interpretation must be given deference so long as such interpretations are reasonable); *Jerry's Nugget v. Keith*, 111 Nev. 49, 54, 888 P.2d 921, 924 (1995) (stating that an agency's implementation of a statute cannot contradict the statute). Here, the Division's issuance of provisional registration certificates without consideration of the City's 11th-hour letter was both reasonable and consistent with

the plain language of the statute.

First, the Division's interpretation cannot conflict with plain language that does not exist. The statute does not provide prescription in case a local government entity fails to provide all local approvals in time for the application deadline. *See generally* NRS 453A.322. Although the City's letter attempts to partially approve and deny certain applicants, the City's own letter confirms its inadequacy on its face. As it states, the City had not yet instituted all the requisite ordinances. *See* NRS 453A.322(3)(a)(5) (requiring a local government letter to certify compliance with local zoning restrictions and satisfy all applicable building requirements at the time of submission). In particular, the City offers:

During proceedings, it was noted that current definitions in the land use code restrict production and cultivation facilities from being located within a structure which houses any other type of use. Therefore, you will note on the attached lists for production and cultivation that several applications were tabled by the Council until such time as the Council can deliberate on a change in our land use code to allow the co-location of such facilities. Please do not consider a "table" item as an approval or denial.

(App. Vol. II, APP00316.) Confirming that the City would approve other applicants at a later date, the City most certainly saw its approval/denial process as extending beyond the Division's issuance of provisional certificates. And the Division saw it the same way, necessarily. If the statute were interpreted the way GB and Acres misconstrue it, the "tabled applicants" also did not receive a letter of compliance, and therefore could not have received a provisional certificate, as a

simple function of the City's last-minute inconsistencies.

With regard to the City ordinances that were established at the time the applications were due to the Division, the City had not yet begun reviewing nor approving any of them. As a result, none of the applicants received city approval in time for the application submission deadline. *See App. Vol. III, APP00534* (confirming that the Division interprets the statute as requiring licensure or a letter of compliance prior to the application deadline and that no applicant met this deadline).

And, GB's attempt at ducking this problem – suggesting that the City's deadline to submit a compliance notice by letter was not until the Division's 90-day review window closed – is absurd. GB's proposed interpretation of the statute's procedural mandate is unworkable, illogical, and inconsistent with legislative intent. If the Legislature set out to allow the local government to submit compliance letters – incomplete ones at that -- at any time within the 90-day consideration period, then the City could, as it did here, always bombard the Division with compliance letter(s) the day before the 90-day deadline.

The Division would then be required to process the City's results and send out its issuance letters within one business day. Constraining the Division to a 1-day turnaround is absurd, one in which the Legislature should not be presumed to have intended. *Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001)

("Statutes within a scheme and provisions within a statute must be interpreted harmoniously with one another in accordance with the general purpose of those statutes and should not be read to produce unreasonable or absurd results.").

In light of the circumstances surrounding the statute's implementation, the Division's approach in how to best achieve the statutory objectives was reasonable. Despite the City's untimeliness, the Division issued provisional registration certificates to the most qualified applicants, subject to local government approval. The Division's letters to provisional certificate recipients instructed that the provisional certificates could be revoked if local government approval was not thereafter achieved. (App. Vol. I, APP00069-70.) Thus, NRS 453A.322(3)(a)(5), requiring local government approval, did not lose its meaning, and any perceived procedural misstep was meaningless. *See Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 255 P.3d 1275, 1278 (2011) (providing that "[s]ubstantial compliance may be sufficient 'to avoid harsh, unfair or absurd consequences'" and that in determining whether it is the appropriate standard to the rejection of strict compliance, courts ask whether the statute can be adequately served without technical compliance with the statutory language.)

Furthermore, GB and Acres confirmed their lack of legal substance when they cannot reconcile their position with the actual terms of NRS 453A.322(3)(a)(5). After all, that section not only references zoning/land use

approvals, but also requires the letter to state that the applicant has satisfied "*all applicable building requirements*." NRS 453A.322(3)(a)(5) (emphasis added). As the Division itself recognized, no applicant could have satisfied these requirements at the time of its deadline to select the winners of the provisional certificates. (App. Vol. II, APP00350.) And, the City's letter – on which GB and Acres hang their case – is tellingly silent on this point. Thus, all they can argue is that the "all building requirements" aspect of this section is somehow not mandatory for consideration of *their applications* but the land use approval aspect – contained in the exact same sentence – was magically mandatory for consideration of *Nuleaf's application*. (GB's Ans. at 15-16; Acre's Ans. at 16-17.)

Respectfully, the District Court's embrace of this contradictory and nonsensical interpretation is just the type of improper judicial intervention in the administrative decision process that the law forbids. The Division correctly resolved these competing regulatory requirements and implemented the statute in a reasonable approach so as to achieve legislative objective of safe and efficient provision of medical marijuana.

The legal gymnastics undertaken by GB and Acres in attempting to defend the District Court's interference in the Division's reasonable approach speaks volumes. They must resort to claiming that the statute is simultaneously permissive – as applied to their obligations – but simultaneously a mandatory

prerequisite when it comes to Nuleaf's application. The law is not so absurd.

2. *The Division's Application of the Statute Is Most Consistent with Public Policy Concerns.*

Where there is an absence of clear statutory intent, policy concerns should fill the void. *Rivero v. Rivero*, 125 Nev. 410, 426, 216 P.3d 213, 225 (2009). "The purpose for registering medical marijuana establishments . . . is to protect the public health and safety and the general welfare of the people of this State." NRS 453A.320. Based on this statutory mandate, the Division worked with experts to create an objective scoring and ranking system "focused on public health and public safety as it relates to the use of marijuana for medical purposes" (App. Vol. II, APP00411-12.) Nuleaf was ranked third overall of the City of Las Vegas' applicants. (*Id.* at APP00332.) Thus, the Division considered Nuleaf a top applicant in meeting the public health and safety goals of NRS Chapter 453A.

If the City is allowed to pigeonhole the Division into determining which applicants meet the statute's public policy goals, the purpose of the statute will be lost. Quite distinct from Nuleaf's high safety and health ranking, the Division ranked GB 13th in meeting its stated public policy goals. (*Id.* at APP00329-30.) GB would have the third ranked applicant replaced by the applicant ranked 13th. And in so doing, the District Court will unnecessarily subject the public to lower safety standards based on local government ordinances, rather than give deference

to the safety qualifications enunciated by the agency tasked with evaluating safety standards.

It is clear that the Legislature vested the Division with primary authority to lead the registration process, and for local government ordinances to supplement the process. "A person who wishes to operate a medical marijuana establishment must submit to *the Division* an application on a form prescribed by *the Division*." NRS 453A.322(2) (Emphasis added). If the Legislature intended local governments to lead, it would have said so explicitly; It said the opposite.

Because the Division implemented a reasonable interpretation of NRS Chapter 453A that does not contradict the law and enforces public policy concerns, the Division's deference should be enforced. A strict interpretation of the statute leaves all applicants without a certificate of registration, requiring that the process begin anew. This result would be absurd in light of the financial and time commitments the law imposes for an applicant.

C. The Procedural Posture of this Case Does Not Warrant the District Court's Extreme Remedy.

The ease in which the District Court was willing to substitute its policy choices for that of the Division is confirmed by its unprecedented remedy: entering a "mandatory injunction that ordered the Division to cancel Nuleaf's provisional certificate and award that certificate to a last-minute intervenor despite the fact that the statutory window for Division to award provisional certificates had long since

closed."¹ Although, as Acres argue, a district court has the authority to direct an agency to correct its actions, the district court acted outside its discretion by awarding a mandatory injunction. And, contrary to the assertions of GB and Acres, the District Court did not grant any writ relief to either of them. It simply entertained a motion for summary judgment on declaratory relief and then tacked on to that a mandatory injunction. (App. Vol. III, APP00495-6.) See NRS 34.160 (providing for writ relief to compel a government official to perform an act that the law requires).

Again, the District Court subverted the proper legal process by ordering this extraordinary relief. Nor did GB present any other claim for relief which would entitle the District Court to order the Division to revoke Nuleaf's certificate and compel the Division to issue a new certificate outside of the statutorily-created 90-day window that the legislature imposed. Respectfully, the District Court simply abandoned its judicial role and took over the Division's responsibility for a how-to-best regulate and control the distribution of a controlled substance.

¹ Tellingly, in its cross-appeal, GB takes the District Court to task over its improper summary handling of Acres' last-minute intervention and disposal of the claims between Acres and GB. While Nuleaf is not a party to that dispute, it must note that the District Court's summary handling of that matter further evidences the ease by which it substituted its judgment for the commonly-accepted rules of law and evidence just as it did in summarily disregarding the appropriate deference due to the Division.

III. CONCLUSION

The District Court failed to afford the Division the "great deference" owed, as specifically provided in NRS Chapter 453A and supported in caselaw. The Division's interpretation was not unreasonable or contrary to law, and thus the District Court's denial of deference was unfounded. To the contrary, it is the District Court's interpretation that is contradictory on its face. Additionally, the District Court erred in ordering the Division to revoke Nuleaf's provisional certificate, as the procedural posture in this case demonstrates such a remedy was unavailable. As the record readily confirms, the District Court had no basis for substituting its judgment for that of the Division and its judgment should be reversed. Nuleaf is the party entitled to judgment in its favor.

DATED this 3rd day of January 2017.

PISANELLI BICE PLLC

BY: /s/ Todd L. Bice
Todd L. Bice, Esq., Bar No. 4534
Dustin H. Holmes, Esq., Bar No. 12776
400 South 7th Street, Suite 300
Las Vegas, NV 89101

Attorneys for Appellant Nuleaf CLV Dispensary, LLC

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2007 in size 14 font in Times New Roman.

I further certify that I have read this brief and it complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains approximately 2,935 words.

Finally, I hereby certify that to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 3rd day of January 2017.

PISANELLI BICE PLLC

BY: /s/ Todd L. Bice
Todd L. Bice, Esq., Bar No. 4534
Dustin H. Holmes, Esq., Bar No. 12776
400 South 7th Street, Suite 300
Las Vegas, NV 89101

Attorneys for Appellant Nuleaf CLV Dispensary, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 3rd day of January 2017, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing **APPELLANT'S REPLY** properly addressed to the following:

James E. Shapiro, Esq., Bar No. 7907
Sheldon A. Herbert, Esq., Bar No. 5988
SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
Tel.: (702) 214-2100

Attorneys for GB Science Nevada LLC

Mark E. Ferrario, Esq., Bar No. 1625
Moorea L. Katz, Esq., Bar No. 12007
GREENBERG TRAURIG, LLP
3773 Howard Hughes Pkwy, Suite 400
North
Las Vegas, NV 89169
Tel.: (702) 792-3773

Attorneys for Intervener Acres

Adam P. Laxalt, Esq.
Attorney General
Linda C. Anderson, Esq.
Chief Deputy Attorney General
555 E. Washington Ave., #3900
Las Vegas, NV 89101
Tel.: (702) 486-3420

Attorneys for The State of Nevada

SERVED VIA HAND-DELIVERY

The Honorable Eric Johnson
Eighth Judicial District Court
Dept. XX
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

EXHIBIT 6

134 Nev., Advance Opinion 17
IN THE SUPREME COURT OF THE STATE OF NEVADA

NULEAF CLV DISPENSARY, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH;
ACRES MEDICAL, LLC; AND GB
SCIENCES, LLC, A NEVADA LIMITED
LIABILITY COMPANY,
Respondents.

GB SCIENCES, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Cross-Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH;
ACRES MEDICAL, LLC; AND NULEAF
CLV DISPENSARY, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Cross-Respondents.

No. 69909

FILED

MAR 29 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Appeal and cross-appeal from a final judgment in an action concerning entitlement to a medicinal marijuana dispensary provisional license. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Affirmed in part, reversed in part, and remanded.

18-12048

Pisanelli Bice PLLC and Todd L. Bice and Dustun H. Holmes, Las Vegas,
for Appellant/Cross-Respondent Nuleaf CLV Dispensary, LLC.

Adam Paul Laxalt, Attorney General, and Linda C. Anderson, Deputy
Attorney General, Carson City,
for Respondent/Cross-Respondent The State of Nevada Department of
Health and Human Services, Division of Public and Behavioral Health.

Greenberg Traurig, LLP, and Tami D. Cowden, Mark E. Ferrario, and
Moorea L. Katz, Las Vegas,
for Respondent/Cross-Respondent Acres Medical, LLC.

Smith & Shapiro, LLC, and Sheldon A. Herbert and James E. Shapiro,
Henderson,
for Respondent/Cross-Appellant GB Sciences, LLC.

BEFORE THE COURT EN BANC.

OPINION

By the Court, PARRAGUIRRE, J.:

NRS 453A.322 governs the registration process for medical marijuana establishments in Nevada. Specifically, NRS 453A.322(3)(a)(5) provides that an applicant seeking to obtain a medical marijuana establishment registration certificate must obtain approval from the local government where the establishment is to be located certifying that the applicant is in compliance with applicable zoning restrictions and building requirements. In this appeal, we are asked to determine whether NRS 453A.322(3)(a)(5)'s requirement must be satisfied before an applicant can receive a registration certificate. We conclude that it does not and that the registration certificate is deemed provisional until the applicant is able to

satisfy NRS 453A.322(3)(a)(5). We therefore affirm in part, reverse in part, and remand.

I.

Respondent, the Division of Public and Behavioral Health of Nevada's Department of Health and Human Services (Department), is tasked with carrying out the provisions of NRS 453A.320-.370 regarding the production and distribution of medical marijuana.¹ NRS 453A.370. In particular, NRS 453A.322 governs the registration process for those seeking to operate medical marijuana establishments and imposes a duty on the Department to register the establishment and issue medical marijuana establishment registration certificates. A "[m]edical marijuana establishment registration certificate" is "a registration certificate that is issued by the [Department] pursuant to NRS 453A.322 to authorize the operation of a medical marijuana establishment." NRS 453A.119 (internal quotation marks omitted).

Each year, the Department accepts applications for registration certificates over the course of ten business days and must evaluate and rank the applicants pursuant to certain criteria set forth in NRS Chapter 453A and NAC Chapter 453A. See NRS 453A.322; NRS 453A.324; NRS 453A.328; NRS 453A.370. "[N]ot later than 90 days after receiving an application to operate a medical marijuana establishment," the Department must issue registration certificates to qualifying applicants. NRS 453A.322.

¹The Legislature amended NRS Chapter 453A effective July 2017. Unless otherwise specified, this opinion refers to the 2014 version of NRS Chapter 453A. 2013 Nev. Stat., ch. 547, § 10, at 3695-3729.

Pursuant to NRS 453A.322(3)(a)(5), an applicant must submit "proof of licensure with the applicable local governmental authority or a letter from the applicable local governmental authority certifying that the proposed medical marijuana establishment is in compliance with [zoning] restrictions and satisfies all applicable building requirements." Accordingly, the City of Las Vegas (City) enacted Las Vegas Municipal Code (LVMC) 6.95.080, which requires the City to notify the Department when a "proposed location has been found in conformance with land use and zoning restrictions" pursuant to NRS 453A.322(3)(a)(5).

In August 2014, the Department accepted applications, and its 90-day prescribed deadline to issue registration certificates fell on November 3, 2014. One business day before the conclusion of the Department's 90-day-review period, the City issued a letter to the Department under LVMC 6.95.080. The Department did not consider the City's letter and timely released its rankings the following business day. Pursuant to the Department's rankings of Las Vegas applicants, appellant Nuleaf CLV Dispensary, LLC (Nuleaf) ranked third, respondent/cross-appellant GB Sciences, LLC (GB) ranked thirteenth, and respondent/cross-respondent Acres Medical, LLC (Acres) ranked in the thirties. With regard to Clark County dispensaries, the Department can issue up to 40 certificates, but only 12 of those certificates can be allotted to dispensaries located in the City. NRS 453A.116(4) (defining a medical marijuana establishment to include a medical marijuana dispensary); NRS 453A.324(1)(a); NRS 453A.326(1). Thus, only Nuleaf ranked high enough to receive a certificate.

However, despite Nuleaf receiving a registration certificate, Nuleaf had been denied a request for a compliance permit by the City in its

letter issued to the Department pursuant to LVMC 6.95.080. As such, GB brought the underlying suit against the Department and Nuleaf, alleging that the Department should have disqualified Nuleaf due to its failure to obtain approval from the City under NRS 453A.322(3)(a)(5). While GB's suit was pending, Acres filed a separate suit against the Department, seeking a writ of mandamus to compel the Department to recalculate its score because the Department had inadvertently omitted certain points while totaling Acres' score. The district court granted Acres' petition, and Acres moved up to thirteenth place while GB moved down to fourteenth place. The Department then filed a notice of entry of order regarding Acres' new ranking in the underlying suit.

Thereafter, GB moved for summary judgment on its declaratory judgment claim and sought a mandatory injunction requiring the Department to revoke Nuleaf's certificate and reissue it to GB. Nuleaf filed a counter-motion for summary judgment, arguing that the Department correctly interpreted NRS Chapter 453A's statutory scheme to permit an applicant to receive a provisional certificate pending its ability to receive approval from the applicable local government. While the summary judgment motions were pending, Acres moved to intervene in the underlying suit, arguing that the Department should reissue Nuleaf's registration certificate to Acres instead of GB due to Acres' new score and adjusted ranking. The district court issued an order concluding that the application requirement enumerated under NRS 453A.322(3)(a)(5) was an absolute prerequisite for receiving a provisional registration certificate and that Nuleaf should have been disqualified for failing to do so. The district court further concluded that Acres, as opposed to GB, was entitled to receive the registration certificate due to its corrected score. Accordingly, the

district court (1) granted in part GB's motion for summary judgment requesting a declaration that Nuleaf was improperly issued a certificate pursuant to NRS 453A.322(3)(a)(5), (2) denied in part GB's motion for summary judgment requesting that the Department reissue a certificate to GB, (3) issued an injunction directing the Department to revoke Nuleaf's certificate and reissue the certificate to Acres, and (4) denied Nuleaf's counter-motion for summary judgment.

II.

As an initial matter, we consider whether declaratory relief was an available form of judicial relief in this matter. We recently held that "a disappointed applicant for a medical marijuana establishment registration certificate does not have a right to judicial review under the APA or NRS Chapter 453A" because "the application process provided by NRS 453A.322 does not constitute a contested case." *See State, Dep't of Health and Human Servs. v. Samantha Inc.*, 133 Nev., Adv. Op. 100, 407 P.3d 327, 328, 332 (2017). Nonetheless, we also acknowledged that our holding did not preclude an applicant from seeking "other forms of judicial relief, including but not limited to . . . declaratory relief." *Id.* at 332. Specifically, declaratory relief is available under NRS 30.040, which provides, in relevant part, that any person "whose rights, status or other legal relations are affected by a statute, . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations thereunder." Here, GB sought a judicial determination regarding the proper construction of NRS 453A.322(3)(a)(5) and a declaration of the parties' rights with respect to the provisional registration certificate that was issued to Nuleaf. Accordingly, we conclude that GB properly sought declaratory relief as a form of judicial

relief in the district court, and we next consider whether the district court erred in granting summary judgment on GB's request for declaratory relief.

III.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.*

In addition, "[t]his court's role in reviewing an administrative agency's decision is identical to that of the district court. Although we defer to an agency's findings of fact, we review legal issues de novo, including matters of statutory interpretation." *Poremba v. S. Nev. Paving*, 133 Nev., Adv. Op. 2, 388 P.3d 232, 235 (2017) (citation omitted). An agency's interpretation of a statute that it is authorized to execute is entitled to deference "unless it conflicts with the constitution or other statutes, exceeds the agency's powers, or is otherwise arbitrary and capricious." *Cable v. State ex rel. Emp'rs Ins. Co. of Nev.*, 122 Nev. 120, 126, 127 P.3d 528, 532 (2006).

In light of the district court's order granting summary judgment on GB's declaratory judgment claim, the parties dispute the proper construction of NRS 453A.322(3)(a)(5) regarding whether an applicant must obtain prior approval from a local government to receive a registration certificate. GB and Acres argue that NRS 453A.322(3)(a)(5) plainly provides that an applicant must provide proof of local licensure or a letter certifying compliance with all relevant requirements from the applicable

local government before the Department's 90-day statutory deadline for issuing certificates. Nuleaf argues that an applicant's failure to satisfy NRS 453A.322(3)(a)(5)'s requirement merely renders any registration certificate provisional until the applicant is able to do so. We agree with Nuleaf.

A.

"When the language of a statute is plain and subject to only one interpretation, we will give effect to that meaning and will not consider outside sources beyond that statute." *Nev. Attorney for Injured Workers v. Nev. Self-Insurers Ass'n*, 126 Nev. 74, 84, 225 P.3d 1265, 1271 (2010). Conversely, "when the statute is ambiguous and subject to more than one interpretation, we will evaluate legislative intent and similar statutory provisions" and "constru[e] the statute in a manner that conforms to reason and public policy." *Id.*

In determining whether NRS 453A.322 is ambiguous, there are three interrelated statutes to consider: NRS 453A.322 itself, NRS 453A.326, and NRS 453A.328. First, NRS 453A.322 provides, in relevant part:

3. Except as otherwise provided in NRS 453A.324, 453A.326, 453A.328 and 453A.340, not later than 90 days after receiving an application to operate a medical marijuana establishment, the [Department] shall register the medical marijuana establishment and issue a medical marijuana establishment registration certificate . . . if:

(a) The person who wishes to operate the proposed medical marijuana establishment has submitted to the [Department] all of the following:

....

(5) . . . proof of licensure with the applicable local governmental authority or a letter from the applicable local governmental authority certifying that the proposed medical marijuana

establishment is in compliance with [zoning] restrictions and satisfies all applicable building requirements.

(Emphases added.) Second, NRS 453A.326(3) provides as follows:

3. In a local governmental jurisdiction that issues business licenses, the issuance by the [Department] of a medical marijuana establishment registration certificate *shall be deemed to be provisional* until such time as:

(a) The establishment is in compliance with all applicable local governmental ordinances or rules; and

(b) The local government has issued a business license for the operation of the establishment.

(Emphasis added.) Third, NRS 453A.328 provides, in relevant part, that “[i]n determining whether to issue a medical marijuana establishment registration certificate pursuant to NRS 453A.322, the [Department] shall, *in addition to the factors set forth in that section*, consider [this section’s] criteria of merit.” (Emphasis added.)

Here, the plain language of the three interrelated statutes is ambiguous as to whether the Department can issue a certificate for an applicant who fails to satisfy NRS 453A.322(3)(a)(5)’s requirement. Consistent with GB and Acres’ interpretation, NRS 453A.322(3) may be interpreted to require applicants to provide proof of local approval before they can be considered for the Department’s ranking system under NRS 453A.328. See NRS 453A.322(3)(a)(5) (providing that the Department “shall register the medical marijuana establishment . . . if . . . [t]he person who wishes to operate the proposed medical marijuana establishment has submitted” proof of local approval). Conversely, Nuleaf’s interpretation is also reasonable in that NRS 453A.328’s language suggests that NRS

453A.322(3)'s requirements are merely "factors" for the Department to consider in issuing a certificate. See NRS 453A.328 (stating that "[i]n determining whether to issue a . . . registration certificate pursuant to NRS 453A.322, the [Department] shall, in addition to the factors set forth in that section, consider the following criteria of merit"). Furthermore, while NRS 453A.322(3)(a) states that the Department "shall" register a medical marijuana establishment when it has satisfied that subsection's requirements, nothing in the statute prohibits the Department from considering an applicant that fails to meet the requirements. Therefore, we conclude that NRS 453A.322(3)(a)(5) is ambiguous, and we turn to both NRS 453A.322's "legislative history and our rules of statutory interpretation." *Leven v. Frey*, 123 Nev. 399, 404, 168 P.3d 712, 716 (2007).

B.

We conclude that NRS 453A.322's legislative history provides little guidance in resolving the pertinent ambiguities of the statute; however, in applying established statutory construction principles, we conclude that NRS 453A.322 permits the Department to issue a provisional certificate until the applicant is able to satisfy all applicable zoning and building requirements.

Here, all of the parties agree that NRS 453A.322 plainly requires the Department to issue registration certificates no later than 90 days after receiving an application. However, NRS Chapter 453A imposes no such time requirement on local governments in submitting letters to the Department pursuant to NRS 453A.322(3)(a)(5). In light of the time requirement imposed on the Department, and lack thereof for applicable local governments, adopting GB and Acres' interpretation of NRS 453A.322(3)(a)(5) would produce unreasonable results. *Leven*, 123 Nev. at

405, 168 P.3d at 716 (providing that "[w]hen construing an ambiguous statutory provision," this court should avoid rendering any part of a statute meaningless, "and a statute's language should not be read to produce absurd or unreasonable results" (internal quotation marks omitted)). For example, under GB and Acres' interpretation, local governments may (1) interject last minute and effectively force the Department to readjust its applicant rankings and potentially violate its statutorily mandated deadline for issuing certificates, or (2) preclude otherwise qualified applicants from receiving certificates for that calendar year by simply failing to notify the Department pursuant to NRS 453A.322(3)(a)(5).

Here, the City submitted its letter pursuant to LVMC 6.95.080(D) just one business day before the Department's 90-day limit to release the rankings of the applicants and issue certifications. The Department explained that it had 519 applications to review, score, and rank accordingly. As such, requiring the Department to consider the City's last-minute letter by disqualifying applicants who failed to obtain approval and readjust its ranking would have likely caused the Department to violate its 90-day deadline for issuing certificates. Similarly, if the City had failed to notify the Department before the 90-day deadline, the Department would have been forced to disqualify all applicants seeking to operate in the City. Thus, we conclude that adopting the district court's interpretation of NRS 453A.322(3)(a) would produce unreasonable results.

Nonetheless, GB and Acres argue that Nuleaf's interpretation of NRS 453A.322 would disrupt the crucial interplay between the Department and local authorities in overseeing the medical marijuana establishment registration process. We disagree.

The Department specifically recognizes that “the issuance of a medical marijuana establishment registration certificate by the [Department] is provisional and not an approval to begin operations as a medical marijuana establishment until” the establishment (1) complies with all applicable local governmental ordinances and rules, and (2) receives a business license or approval from the applicable local government to commence operation. NAC 453A.316. In the instant case, Nuleaf’s establishment must satisfy all relevant Las Vegas municipal codes before commencing operation. See LVMC 6.95.020; LVMC 6.95.040; LVMC 6.95.080; LVMC 6.95.090. Moreover, “[i]f a medical marijuana establishment is not fully operational within 18 months after the date on which the [Department] issued the medical marijuana establishment registration certificate, the [Department] may revoke the medical marijuana establishment registration certificate.” NAC 453A.324. Accordingly, we conclude that the Department’s ability to issue provisional registration certificates does not supersede local governmental approval for the operation of medical marijuana establishments.

Finally, we must afford great deference to the Department’s interpretation of a statute that it is tasked with enforcing when the interpretation does not conflict with the plain language of the statute or legislative intent. See *Meridian Gold Co. v. State ex rel. Dep’t of Taxation*, 119 Nev. 630, 635, 81 P.3d 516, 519 (2003) (noting “courts generally give great deference to an agency’s interpretation of a statute that the agency is charged with enforcing” (internal quotation marks omitted)); see also *City of Reno v. Reno Police Protective Ass’n*, 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002) (acknowledging that “[a]n agency charged with the duty of administering an act is impliedly clothed with power to construe it as a

necessary precedent to administrative action [and] great deference should be given to the agency's interpretation when it is within the language of the statute" (alterations in original) (internal quotation marks omitted)). This holds true in light of GB and Acres' competing interpretation of NRS 453A.322. See *Malecon Tobacco, LLC v. State ex rel. Dep't of Taxation*, 118 Nev. 837, 841-42 n.15, 59 P.3d 474, 477 n.15 (2002) (acknowledging that "[c]ourts . . . must respect the judgment of the agency empowered to apply the law to varying fact patterns, even if the issue with nearly equal reason [might] be resolved one way rather than another" (alterations in original) (internal quotation marks omitted)).

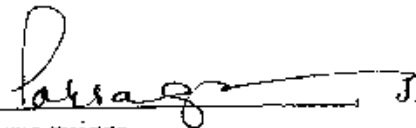
Accordingly, we conclude that the Department has the authority to issue registration certificates to applicants who have not satisfied NRS 453A.322(3)(a)(5)'s requirement and that a certificate is deemed provisional until the applicant obtains proper approval by the applicable local government. Thus, we reverse the district court's order to the extent that it relied on an erroneous interpretation of NRS 453A.322.²

IV.


For the reasons set forth above, we (1) affirm the district court's order denying in part GB's summary judgment motion seeking mandatory injunction; (2) reverse the district court's order (a) granting in part GB's summary judgment motion seeking declaratory relief, (b) directing the Department to reissue the registration certificate to Acres, and (c) denying

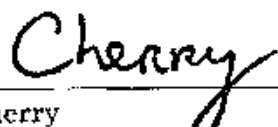
²In light of this conclusion, we need not reach Nuleaf's remaining arguments concerning the district court's ability to direct the Department to revoke Nuleaf's registration certificate and reissue it to Acres. We further need not reach GB and Acres' arguments on cross-appeal regarding entitlement to Nuleaf's registration certificate.

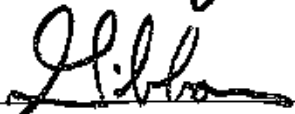
Nuleaf's countermotion for summary judgment; and (3) remand for further proceedings consistent with this opinion.



Parraguirre J.

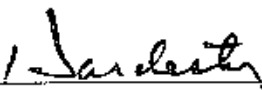
We concur:

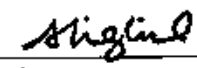

Douglas C.J.

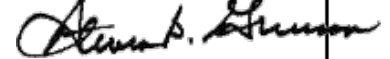

Cherry J.


Gibbons J.


Pickering J.


Hardesty J.


Stiglich J.



1 **NOTC**
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 **SERENITY WELLNESS CENTER, LLC, a**
14 **Nevada limited liability company, TGIG, LLC,**
15 **a Nevada limited liability company, NULEAF**
16 **INCLINE DISPENSARY, LLC, a Nevada**
17 **limited liability company, NEVADA**
18 **HOLISTIC MEDICINE, LLC, a Nevada**
19 **limited liability company, TRYKE**
20 **COMPANIES SO NV, LLC a Nevada limited**
21 **liability company, TRYKE COMPANIES**
22 **RENO, LLC, a Nevada limited liability**
23 **company, PARADISE WELLNESS CENTER,**
24 **LLC, a Nevada limited liability company, GBS**
25 **NEVADA PARTNERS, LLC, a Nevada**
26 **limited liability company, FIDELIS**
27 **HOLDINGS, LLC, a Nevada limited liability**
28 **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

NOTICE OF ENTRY OF ORDER
REGARDING 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 WELLNESS CENTER, LLC, a
2 Nevada Limited Liability Company,
3 Plaintiff,

CASE NO.: A-19-787540-W
DEPT. NO.: XVIII

4 STATE OF NEVADA, DEPARTMENT OF
5 TAXATION; and DOES I through X; and ROE
6 CORPORATIONS I through X, inclusive,

7 Defendants.

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

CASE NO.: A-18-785818-W
DEPT. NO.: VIII

12 Plaintiffs,

13 v.

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

17 Defendants

18 ETW MANAGEMENT GROUP LLC, a
19 Nevada limited liability company; GLOBAL
20 HARMONY LLC, a Nevada limited liability
21 company; GREENLEAF FARMS HOLDINGS
22 LLC, a Nevada limited liability company;
23 GREEN THERAPEUTICS LLC, a Nevada
24 limited liability company; HERBAL CHOICE
25 INC., a Nevada corporation; JUST QUALITY,
26 LLC, a Nevada limited liability company;
27 LIBRA WELLNESS CENTER, LLC, a Nevada
28 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,

CASE NO.: A-19-787004-B
DEPT. NO.:

Plaintiffs,

v.


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

1
2
3 **NOTICE OF ENTRY OF ORDER REGARDING NEVADA WELLNESS CENTER,**
4 **LLC'S MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
5 **ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52**

6 PLEASE TAKE NOTICE that an **ORDER REGARDING NEVADA WELLNESS**
7 **CENTER, LLC'S MOTION TO AMEND FINDINGS OF FACTS AND CONCLUSIONS OF**
8 **LAW ISSUED ON AUGUST 23, 2019, PURSUANT TO NRCP 52,** a true and correct copy of
9 which is attached hereto, was entered to the Court on the 5th, day of November, 2019.

10 DATED this 11 day of November, 2019.

11 **PARKER, NELSON & ASSOCIATES, CHTD.**

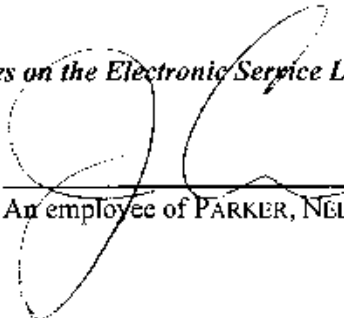
12 
13 **THEODORE PARKER, III, ESQ.**
14 Nevada Bar No. 4716
15 **PARKER, NELSON & ASSOCIATES, CHTD.**
16 2460 Professional Court, Suite 200
17 Las Vegas, Nevada 89128
18 Telephone: (702) 868-8000
19 Facsimile: (702) 868-8001
20 Email: tparker@pnalaw.net
21 *Attorneys for Plaintiff*

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 1st day of November, 2019, I served a true
4 and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER REGARDING NEVADA**
5 **WELLNESS CENTER, LLC'S MOTION TO AMEND FINDINGS OF FACTS AND**
6 **CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019, PURSUANT TO**
7 **NRCP 52** on the party(s) set forth below by:

- 8
- 9 ☐ 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.
- 10 ☐ Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26,
11 by faxing a true and correct copy of the same to each party addressed as follows:
- 12 ☐ By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set
13 forth below on this date before 5:00 p.m.
- 14 ☒ By EFC: by electronic filing with the Court delivering the document(s) listed above via E-file & E-
15 serve (Odyssey) filing system.

16 *(All Parties on the Electronic Service List)*

17
18 
19 An employee of PARKER, NELSON & ASSOCIATES, CHTD.
20
21
22
23
24
25
26
27
28



1 **ORD**
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
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9 Email: tparker@pnalaw.net

10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 SERENITY WELLNESS CENTER, LLC, a
14 Nevada limited liability company, TGI, LLC,
15 a Nevada limited liability company, NULEAF
16 INCLINE DISPENSARY, LLC, a Nevada
17 limited liability company, NEVADA
18 HOLISTIC MEDICINE, LLC, a Nevada
19 limited liability company, TRYKE
20 COMPANIES SO NV, LLC a Nevada limited
21 liability company, TRYKE COMPANIES
22 RENO, LLC, a Nevada limited liability
23 company, PARADISE WELLNESS CENTER,
24 LLC, a Nevada limited liability company, GBS
25 NEVADA PARTNERS, LLC, a Nevada
26 limited liability company, FIDELIS
27 HOLDINGS, LLC, a Nevada limited liability
28 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

**ORDER REGARDING 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 WELLNESS CENTER, LLC, a
2 Nevada Limited Liability Company,
3 Plaintiff,

CASE NO.: A-19-787540-W
DEPT. NO.: XVIII

4 STATE OF NEVADA, DEPARTMENT OF
5 TAXATION; and DOES I through X; and ROE
6 CORPORATIONS I through X, inclusive,

7 Defendants.

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

CASE NO.: A-18-785818-W
DEPT. NO.: VIII

12 Plaintiffs,

13 v.

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

17 Defendants

18 ETW MANAGEMENT GROUP LLC, a
19 Nevada limited liability company; GLOBAL
20 HARMONY LLC, a Nevada limited liability
21 company; GREENLEAF FARMS HOLDINGS
22 LLC, a Nevada limited liability company;
23 GREEN THERAPEUTICS LLC, a Nevada
24 limited liability company; HERBAL CHOICE
25 INC., a Nevada corporation; JUST QUALITY,
26 LLC, a Nevada limited liability company;
27 LIBRA WELLNESS CENTER, LLC, a Nevada
28 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; THIC NEVADA LLC, a Nevada
limited liability company; ZION GARDENS
LLC, a Nevada limited liability company; and
MMOF VEGAS RETAIL, INC., a Nevada
corporation,

CASE NO.: A-19-787004-B
DEPT. NO.:

Plaintiffs.

v.

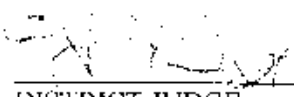
STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative agency;
DOES 1 through 20, inclusive; and ROE
CORPORATIONS 1 through 20, inclusive,
Defendants.

1
2 **ORDER REGARDING NEVADA WELLNESS CENTER, LLC'S MOTION TO AMEND**
3 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW ISSUED ON AUGUST 23, 2019,**
4 **PURSUANT TO NRCP 52**

5 Plaintiff, NEVADA WELLNESS CENTER, LLC (hereinafter "NWC") having filed an
6 Motion to Amend the Findings of Facts and Conclusions of Law issued August 23, 2019, pursuant
7 to NRCP 52, good cause appearing, it is hereby ORDERED, ADJUDGED and DECREED as
8 follows:

9 ORDERED that Motion is Denied.

10 DATED this 4 day of November, 2019.

11 
12 _____
13 DISTRICT JUDGE

14 Respectfully submitted by:

15 **PARKER, NELSON & ASSOCIATES, CHTD.**

16
17 
18 **THEODORE PARKER, III., ESQ.**

19 Nevada Bar No. 4716

PARKER, NELSON & ASSOCIATES, CHTD.

20 2460 Professional Court, Suite 200

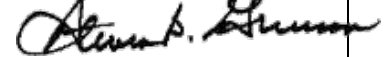
Las Vegas, Nevada 89128

Telephone: (702) 868-8000

Facsimile: (702) 868-8001

Email: tparker@pnalaw.net

22 *Attorneys for Plaintiff*
23
24
25
26
27



1 **ANAC**
Nicole E. Lovelock, Esq.
2 Nevada State Bar No. 11187
Georlen, K. Spangler Esq.
3 Nevada State Bar No. 3818
JONES LOVELOCK
4 6675 S. Tenaya Way, Suite 200
Las Vegas, Nevada 89113
5 Telephone: (702) 805-8450
Fax: (702) 805-8451
6 Email: nlovelock@joneslovelock.com
Email: jspangler@joneslovelock.com

7 *Attorneys for Defendant/Respondent*
8 *Euphoria Wellness, LLC*

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

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

22 Plaintiffs,

23 v.

24 STATE OF NEVADA, DEPARTMENT OF
TAXATION,

25 Defendant,

26 And

27 CLEAR RIVER, LLC, a Nevada limited liability
company,

28 Applicant in Intervention.

Case No.: A-19-787035-C

Consolidated with:

A-19-787004-B
A-18-785818-W
A-18-786357-W
A-19-786962-B
A-19-787540-W
A-19-787726-C
A-19-801416-B

☐ Effects All consolidated Case Nos.

Case No.: A-19-786962-B

Dept. No. 13

☐ Effects this Case No.

**EUPHORIA WELLNESS, LLC'S
ANSWER TO FIRST AMENDED
COMPLAINT AND PETITION FOR
JUDICIAL REVIEW AND/OR
WRITS OF CERTIORARI,
MANDAMUS, AND PROHIBITION**

JONES LOVELOCK
6675 S. Tenaya Way, Suite 200
Las Vegas, NV 89113

1	ETW MANAGEMENT GROUP, LLC, a Nevada limited liability company; GLOBAL HARMONY LLC, a Nevada limited liability company; GREEN LEAF FARMS HOLDINGS, LLC a Nevada limited liability company; GREEN THERAPEUTICS LLC, a Nevada limited liability company; HERBAL CHOICE, INC., a Nevada corporation; JUST QUALITY, LLC, a Nevada limited liability company; LIBRA WELLNESS CENTER, LLC, a Nevada limited liability company; ROMBOUGH REAL ESTATE, INC., dba MOTHER HERB, a Nevada corporation; NEVCANN LLC, a Nevada limited liability company; THC NEVADA LLC, a Nevada limited liability company; and ZION GARDENS, LLC, a Nevada limited liability company,	Case No.: A-19-787004-B Dept. No. 13 <input type="checkbox"/> Effects this Case No.
2		
3		
4		
5		
6		
7		
8	Plaintiffs,	
9	v.	
10	STATE OF NEVADA, DEPARTMENT OF TAXATION; a Nevada administrative agency; DOES 1 through 20; inclusive; and ROE CORPORATION 1 through 20, inclusive,	
11		
12	Defendants.	
13		
14	NEVADA WELLNESS CENTER, LLC, A Nevada Limited Liability Company,	Case No.: A-19-787540-W Dept. No. 13 <input type="checkbox"/> Effects this Case No.
15	Plaintiff,	
16	v.	
17	STATE OF NEVADA DEPARTMENT OF TAXATION; and DOES I through X; and ROE Corporations I through X, inclusive,	
18		
19	Defendants.	
20	DH FLAMINGO, INC., et al, a Nevada corporation,	Case No.: A-19-787035-C Dept. No. 13 <input checked="" type="checkbox"/> Effects this Case No.
21	Plaintiffs,	
22	v.	
23	STATE EX REL DEPARTMENT OF TAXATION	
24	Defendants.	
25	MM DEVELOPMENT COMPANY, INC., a Nevada corporation; LIVFREE WELLNESS LLC, dba The Dispensary, a Nevada limited liability company,	Case No.: A-18-785818-W Dept. No. 13 <input type="checkbox"/> Effects this Case No
26		
27	Plaintiffs,	
28	v.	

1	STATE OF NEVADA, DEPARTMENT OF TAXATION; and DOES 1 through 10; and ROE CORPORATIONS 1 through 10.	
2		
3	Defendants.	
4	COMPASSIONATE TEAM OF LAS VEGAS LLC, a Nevada limited liability company,	Case No.: A-18-786357-W Dept. No. 13
5	Plaintiff,	<input type="checkbox"/> Effects this Case No
6	v.	
7	STATE OF NEVADA, DEPARTMENT OF TAXATION; and DOES 1 through 10; and ROE CORPORATIONS 1 through 10.	
8		
9	Defendants.	
10	HIGH SIERRA HOLISTICS, LLC, a Nevada limited liability Company,	Case No.: A-19-78776-C Dept. No. 13
11	Plaintiff,	<input type="checkbox"/> Effects this Case No
12	v.	
13	STATE OF NEVADA, DEPARTMENT OF TAXATION; and DOES 1 through 10; and ROE CORPORATIONS 1 through 10.	
14		
15	Defendants.	
16	QUALCAN, LLC, a Nevada limited liability company,	Case No.: A-19-801416-B Dept. No. 13
17	Plaintiff,	<input type="checkbox"/> Effects this Case No
18	v.	
19	STATE OF NEVADA, DEPARTMENT OF TAXATION; and DOES 1 through 10; and ROE CORPORATIONS 1 through 10.	
20		
21	Defendants.	

**EUPHORIA WELLNESS, LLC’S ANSWER TO FIRST AMENDED COMPLAINT
AND PETITION FOR JUDICIAL REVIEW AND/OR WRITS OF CERTIORARI,
MANDAMUS, AND PROHIBITION**

Defendant/Respondent Euphoria Wellness, LLC (“Euphoria”), by and through its attorney of record, Nicole E. Lovelock, Esq., of the law firm of Jones Lovelock, and hereby answers the First Amended Complaint and Petition for Judicial Review and/or Writs of Certiorari, Mandamus, and Prohibition (“First Amended Complaint”) filed by Plaintiffs/Petitioners D.H. Flamingo, Inc. d/b/a

1 The Apothecary Shoppe, Clark Natural Medicinal Solutions LLC d/b/a NuVeda, Nye Natural
2 Medicinal Solutions LLC d/b/a NuVeda, Clark NMSD LLC d/b/a NuVeda, Inyo Fine Cannabis
3 Dispensary L.L.C. d/b/a Inyo Fine Cannabis Dispensary, and Suterra Holdings, Inc. (collectively
4 “Plaintiffs”) as follows:

5 1. With respect to the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
6 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38,
7 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66,
8 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93,
9 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114,
10 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134,
11 135, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155,
12 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175,
13 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195,
14 196, 179, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215,
15 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235,
16 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255,
17 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 271, 272, 273, 274, 275, 276,
18 277, 279, 280, 281, 282, 284, 285, 286, 288, 289 and 290 of Plaintiffs’ First Amended Complaint,
19 Euphoria is without knowledge or sufficient information to form a belief as to the truth of the
20 allegations and therefore, Euphoria denies the allegations contained therein.

21 2. With respect to the allegations contained in paragraph 46 of Plaintiffs’ First Amended
22 Complaint, Euphoria admits that it is a limited liability company doing business in Nevada and denies
23 the remainder of the allegations contained in paragraph 46.

24 3. As to Euphoria, only, Euphoria admits that allegations contained in paragraph 136 of
25 Plaintiff’s First Amended Complaint. Euphoria is without knowledge or information sufficient to
26 form a belief as to the truth of the remaining allegations contained in paragraph 136, and therefore
27 denies the same.

1 4. In response to paragraph 270 of Plaintiff's First Amended Complaint, Euphoria
2 repeats and realleges its responses to paragraphs 1 through 269 as though fully set forth herein.

3 5. In response to paragraph 278 of Plaintiff's First Amended Complaint, Euphoria
4 repeats and realleges its responses to paragraphs 1 through 277 as though fully set forth herein.

5 6. In response to paragraph 283 of Plaintiff's First Amended Complaint, Euphoria
6 repeats and realleges its responses to paragraphs 1 through 282 as though fully set forth herein.

7 7. In response to paragraph 287 of Plaintiff's First Amended Complaint, Euphoria
8 repeats and realleges its responses to paragraphs 1 through 286 as though fully set forth herein.

9 8. With respect to any allegation contained in Plaintiffs' First Amended Complaint that
10 is not specifically identified and responded to by Euphoria, Euphoria expressly denies the allegations.

11 **AFFIRMATIVE DEFENSES**

12 The following affirmative defenses are alleged on information and belief by Euphoria, and
13 except as expressly stated otherwise, each defense applies to the entire Plaintiffs' First Amended
14 Complaint and to each purported cause of action or claim for relief therein. Euphoria reserves the
15 right to amend or withdraw any or all defenses or to raise any and all additional defenses as or after
16 they may become known during or after the course of investigation, discovery, or trial. Euphoria
17 reserves the right to seek leave to amend this Answer to specifically assert any such defense. Such
18 defenses are herein incorporated by reference for the specific purpose of not waiving any such
19 defense.

20 **FIRST AFFIRMATIVE DEFENSE**

21 Plaintiffs' have named Euphoria as a nominal defendant in this matter pursuant to the
22 requirements of Nevada law, and Plaintiffs do not seek relief from Euphoria for their claimed
23 damages.

24 **SECOND AFFIRMATIVE DEFENSE**

25 Any and all damages, if any, sustained by Plaintiffs are the result of a third party or parties
26 over whom Euphoria has no control.

27 ///

THIRD AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to any equitable relief as against Euphoria.

FOURTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, as amended, all possible affirmative defense may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer, and therefore, Euphoria reserves the right to amend its Answer to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE, Euphoria prays as follows:

1. That Plaintiffs takes nothing by virtue of Plaintiffs' First Amended Complaint herein against Euphoria;
2. For costs of suit and fees herein incurred to defend this matter; and
3. For such other relief as this Court deems just and proper.

DATED this 21st day of November 2019.

JONES LOVELOCK

By: /s/ Nicole Lovelock, Esq.

Nicole Lovelock, Esq.
Nevada State Bar No. 11187
Georlen, K. Spangler Esq.
Nevada State Bar No. 3818
6675 S. Tenaya Way, Suite 200
Las Vegas, Nevada 89113

*Attorneys for Defendant/Respondent Euphoria
Wellness, LLC*

///

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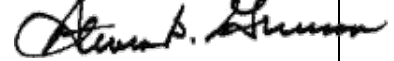
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JONES LOVELOCK
6675 S. Tenaya Way, Suite 200
Las Vegas, NV 89113

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of November 2019, a true and correct copy of the foregoing **EUPHORIA WELLNESS, LLC’S ANSWER TO FIRST AMENDED COMPLAINT AND PETITION FOR JUDICIAL REVIEW AND/OR WRITS OF CERTIORARI, MANDAMUS, AND PROHIBITION** was served by electronically submitting with the Clerk of the Court using the electronic system and serving all parties with an email-address on record.

By /s/ Lorie A. Januskevicius
An Employee of JONES LOVELOCK



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

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

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

IN RE DOT

AND ALL CONSOLIDATED CASES.

CASE NO.: A-19-787004-B (Lead Case)

A-18-785818-W (Sub Case)
A-18-786357-W (Sub Case)
A-19-786962-B (Sub Case)
A-19-787035-C (Sub Case)
A-19-787540-W (Sub Case)
A-19-787726-C (Sub Case)
A-19-801416-B (Sub Case)

DEPT. 11

**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**

Defendant-Intervenor and Counterclaimant Nevada Organic Remedies, LLC ("NOR") hereby amends its application to this Court for the issuance of a writ of mandamus pursuant to NRS 34.160 to compel the State of Nevada, Department of Taxation (the "Department") to move NOR into the Department-created "Tier 2" of successful applicants for recreational marijuana licenses. This Amended Application is supported by the following Memorandum of Points and Authorities and exhibits

1 attached thereto, the Declarations of David R. Koch and Brandon Wiegand, the
2 pleadings and papers on file herein, and any other materials this Court may wish to
3 consider.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. PRELIMINARY STATEMENT**

6 NOR originally filed this Application for Writ of Mandamus in *MM*
7 *Development Company, Inc. v. State of Nevada, Department of Taxation*, Case No. A-
8 18-785818-W in front of Department 8. NOR believed at the time that the
9 marijuana licensing cases were likely to be consolidated in front of that
10 department. Since filing the Application, the cases have been consolidated in
11 front of this Court, and the Application is now set to be heard on December 8,
12 2019.

13 NOR is filing this Amendment to the Application due to the events that
14 have unfolded since filing the original Application. The Amended Application
15 still asks for the same relief for the same reasons, but the Amended Application
16 is tailored to this Court, which has significantly more knowledge about the
17 relevant events than Department 8 had available to it. Therefore, NOR directs the
18 Court's attention to the Amended Application in preparing for the hearing on
19 December 8.

20 **II. INTRODUCTION**

21 In connection with this Court's Preliminary Injunction issued August 26, 2019, the
22 Court instructed the Department to determine which successful applicants had listed all
23 owners on their respective applications. NOR's application listed the owners of 100% of
24 the membership interests of the applicant, even down to the owners of 0.1% of the
25 company. As stated in the application at the time it was submitted:

- 26 • GGB Nevada, LLC owned **95%** of the membership interests of NOR
- 27 • Andrew Jolley owned **2.2%** of the membership interests of NOR
- 28 • Stephen Byrne owned **1.7%** of the membership interests of NOR

- Patrick Byrne owned **0.5%** of the membership interests of NOR
- Harvest Dispensaries owned **0.5%** of the membership interests of NOR
- Darren Petersen owned **0.1%** of the membership interests of NOR

(Ex. 3.) The total of these ownership percentages is **100%**. There was no additional membership interest owned by any person or entity.

The Department expressly approved this ownership list in August 2018, weeks before the application period opened. But despite the complete listing of every single owner of any membership interest of the applicant, and despite the Department's express acknowledgement and approval of NOR's listed ownership, the Department changed course one year later in August 2019 and stated that it now "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." (Ex. 4.)

The Department provided no support or explanation of this change of course regarding the ownership of NOR membership interests. Even when NOR specifically requested the Department to clarify or explain what it believes NOR should have listed in its application, the Department has not provided any explanation nor stated any grounds or reasons for its vaguely worded statement. NOR has subsequently met in person with the Department and again walked through all of the ownership interests of the applicant at the time of the application, and while the Department received the information, it has not corrected its designation or provided any explanation or response as to its failure to move NOR to Tier 2.

The Department's continued designation of NOR in Tier 3 is an arbitrary and capricious action, as it has not provided a basis for doing so, and this Court should compel the Department to redesignate NOR into Tier 2 of the applicants. Doing so will allow NOR to move forward to open establishments with its approved licenses just as numerous other licensees with similar ownership structures have been permitted to proceed by the Department and this Court.

1 **III. LEGAL AND FACTUAL BACKGROUND**

2 **A. The Department Approves NOR's Ownership Structure Prior to NOR**
3 **Submitting Its Application**

4 Pursuant to NRS 453D.200, the Department accepted recreational marijuana
5 establishment license applications in September 2018. Months **prior to the application**
6 **period**, NOR had submitted to the Department a transfer of ownership request with an
7 ownership list that **included all owners of any membership interest in NOR**, no matter
8 how small. In preparing this list, NOR specifically asked the Department for
9 confirmation on how the ownership should be properly listed under Department
10 regulations and guidelines. The Department provided a response of how the ownership
11 should be listed to comply with applicable laws and regulations. (Ex. 1.)

12 NOR submitted its ownership list, and the Department reviewed and **approved**
13 **the ownership list** on August 20, 2018, several weeks **before applications were**
14 **submitted**. (Ex. 2.) The list specified that the membership interests of NOR were owned
15 by GGB Nevada, LLC 95%, Andrew Jolley 2.2%, Stephen Byrne 1.7%, Patrick Byrne
16 0.5%, Harvest Dispensaries 0.5%, Darren Petersen 0.1%. (*Id.*) The total of these
17 ownership percentages is 100%, and there were no additional membership interest
18 owned by any entity.

19 The Department's own ownership register was updated to include this full list of
20 NOR owners in August 2018. This **same list of owners** continues to be listed on the
21 Department's register to this day. (Ex. 4.) The **same list of owners** was included in
22 NOR's applications for recreational marijuana licenses in September 2018. NOR's
23 application expressly referenced the Department's approval, stating that "this
24 ownership structure was approved by the Department of Taxation on August 20,
25 2018....[and] the Department was provided notice of the officers of the Company on
26 August 31, 2018 and September 7, 2018." (Ex. 3 at DOT-NVOrganic 001427.)

27 ///

28 ///

1 **B. The Preliminary Injunction Is Issued Regarding Background Checks of**
2 **Owners, Officers, and Board Members**

3 At some point during the many weeks of the evidentiary hearing on plaintiffs'
4 motions for preliminary injunction, the Department's mandate under NRS 453D.200(6)
5 to "conduct a background check of each prospective owner, officer, and board member
6 of a marijuana establishment license applicant" began to be part of the discussion. This
7 issue was not part of any complaint in the various actions and was not argued in the
8 motions for preliminary injunction that were filed.

9 In January 2018, the Department adopted NAC 453D.255(1) providing that the
10 application of NRS 453D would "only apply to a person with an aggregate ownership
11 interest of 5 percent or more in a marijuana establishment" (the "5% rule"). As discussed
12 in the preliminary injunction hearing, the 5% rule was already part of the medical
13 marijuana regulatory framework (NAC 453A.302(1) included the same 5% limitation
14 since 2014), and the 5% rule was specifically requested by the industry and
15 recommended by the Governor's Task Force. Though the 5% rule was not mentioned in
16 any motion for preliminary injunction, this Court determined that the 5% rule did not
17 comply with NRS 453D.200(6), because the Department's decision "to not require
18 disclosure on the application and to not conduct background checks on persons owning
19 less than 5% prior to award of a conditional license is an impermissible deviation from
20 the mandatory language of...NRS 453D.200(6)." (FFCL, ¶ 82).

21 In conjunction with its Findings of Fact and Conclusions of Law, this Court asked
22 the Department to determine which successful applicants it could confirm had listed
23 "each prospective owner, officer, and board member" at the time they filed their
24 applications. The Department, through the Attorney General's office, sent an email in
25 response preliminarily placing each successful applicant into one of three Tiers,
26 including "Tier 2" for successful applicants that had all owners listed in their
27 applications and "Tier 3" for successful applicants that did not list all owners. (Ex. 5.)
28

1 The Court decided that the preliminary injunction would prevent the Department from
2 conducting final inspections only for those applicants designated to be in Tier 3.

3 **C. The Court Directs the Department to Redesignate an Applicant's Tier When**
4 **Warranted. The Department Has Failed to Do So.**

5 The initial assessment of applicant Tiers was not intended to be set in stone. This
6 Court expressly stated that the Department should move applicants between Tiers, if
7 warranted, after reviewing the information that the applicants had submitted to the
8 Department. The Court stated that it was "merely seeking to exclude applicants who
9 filed applications in compliance with NRS 453D.200(6) at the time the applications were
10 filed from the injunctive relief that I have granted...**Any issues should be directed to**
11 **the Department for you to resolve based upon the information that was in your**
12 **applications at the time.**" (Ex. 6 at 57: 3-16.)

13 On August 26, 2019, NOR filed a "Response to the Department's Statement
14 Regarding Completeness of Applications with Reference to NRS 453D.200(6)" which set
15 forth the ownership structure of NOR in its application and confirmed that each and
16 every owner had been listed in its September 2018 application (even those with less than
17 a 5% ownership interest). The Department did not oppose or take any position with
18 respect to this Response, but it also did not take the action required to correct its earlier
19 designation of NOR in Tier 3.

20 NOR has subsequently corresponded with and met with representatives from the
21 Department to provide any additional necessary information to resolve any questions
22 the Department had regarding the content of NOR's September 2018 applications.
23 (Koch Decl., ¶ 9.) Since August 26, 2019, NOR has requested on several occasions that
24 the Department correct its erroneous determination of NOR in Tier 3, but as of this
25 writing the Department has not taken any action to correct its miscategorization of NOR.
26 Nor has the Department made any statement to NOR as to why it has not moved NOR
27 to Tier 2. To this day, the Department has not made any specific statement to explain its
28 lack of action or reasoning with respect to NOR's ownership listing. At present, it

1 appears that the Department will not take any action to correct its miscategorization
2 unless it is instructed to do so by this Court.

3 IV. ARGUMENT

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

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

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

14 Writs of mandamus are available to compel government agencies such as the
15 Department to perform “an act that the law requires as a duty or to control an arbitrary
16 or capricious exercise of discretion.” *Gumm ex rel. Gumm v. Nevada Dept. of Educ.*, 113
17 P.3d 853, 856 (Nev. 2005) (holding that a writ of mandamus is the proper vehicle to
18 challenge the Nevada Department of Education’s compliance with the Individuals with
19 Disabilities Education Act). A government action will be deemed arbitrary and
20 capricious “when it denies a license without any reason for doing so” and “is most often
21 found in an **apparent absence of any grounds or reasons for the decision**. ‘We did it
22 just because we did it.’” *City Council of City of Reno v. Irvine*, 721 P.2d 371, 372-373 (Nev.
23 1986)

24 The Nevada Supreme Court has recently held that parties may utilize mandamus
25 to challenge agency decisions regarding marijuana licensing. *See, State Dept. of Health and*
26 *Human Services, Div. of Pub. and Behavioral Health Med. Marijuana Estab. Program v.*
27 *Samantha Inc.*, 407 P.3d 327, 332 (Nev. 2017) (noting that the Department of Health and
28 Human Services, the agency then tasked with issuing medical marijuana registration

1 certificates, had itself acknowledged that mandamus may be available to challenge
2 licensing decisions).

3 Under the recreational marijuana statutory framework, the Department is
4 required to approve a license if the requirements of the application process have been
5 met. NRS 453D.210(5) imposes a mandatory requirement that “the Department *shall*
6 *approve* a license application” if the listed criteria are satisfied. The issuance of a writ of
7 mandamus is therefore appropriate to challenge the Department’s determination of an
8 applicant being included in Tier 3 and to compel the Department to move NOR into the
9 Tier 2 group.

10 **B. The Department’s Failure to Recategorize NOR into Tier 2 Is Arbitrary and**
11 **Capricious**

12 NOR’s recreational marijuana establishment applications complied with the
13 requirement to provide the information necessary to allow the Department to fulfill its
14 obligation under NRS 453D.200(6) to “conduct a background check of each prospective
15 owner, officer, and board member of [the] marijuana license applicant.” This is true
16 even without applying the limitation of the 5% rule set forth in NAC 453D.255(1), which
17 this Court found to be improper. While NOR considers the 5% rule to be a valid exercise
18 of the Department’s discretion,¹ that issue can be set aside for purposes of this
19 Application, as the 5% rule has no bearing on NOR’s requested relief here.

20 NOR indisputably listed **every owner** of a membership interest in the applicant.
21 NOR’s applications list every “owner”—even those with less than 5% ownership—and
22 provides the percentage of ownership of each owner at the time of the application. As
23 stated in the application when it was submitted: GGB Nevada, LLC owned 95% of the
24 membership interests of NOR, Andrew Jolley owned 2.2%, Stephen Byrne owned 1.7%,
25 Patrick Byrne owned 0.5% of the membership interests of NOR, Harvest Dispensaries
26 owned 0.5%, and Darren Petersen owned 0.1%. (Ex. 3.) The total of these ownership
27

28 ¹ NOR and additional parties have filed an Appeal of the Preliminary Injunction, and certain
plaintiffs in this case, including MM Development and LivFree, have filed a Cross-Appeal.

1 percentages is 100%. **There is no additional membership interest owned by any**
2 **person or entity.**

3 Despite the complete accounting for 100% of NOR's membership interests, the
4 Department has vaguely stated that it "could not determine whether there were
5 shareholders who owned a membership interest in the applicant at the time the
6 application was submitted, but who were not listed [in the application]." (Ex. 5.)
7 (emphasis added).) To this day, the Department has never explained what this
8 statement means, nor has it provided a specific explanation of its inclusion of NOR
9 within Tier 3. NOR does not know why the Department states that it has an
10 "unanswered question" regarding ownership, because the owners of all membership
11 interests are included. The Department has never explained what it believes should have
12 been listed in the application if it perceives any shortcoming in the application. In failing
13 to do so, the Department has violated the law and failed to comply with the directive of
14 this Court.

15 In making its vague statement, the Department appears to be introducing a
16 definition of "owner" that is not included in the statute. NRS 453D does not define
17 "owner," nor does it provide any method to determine the "owner" of an applicant. If
18 the Legislature had "independently defined [a] word or phrase contained within a
19 statute," then the court "must apply that definition wherever the Legislature intended it
20 to apply...." *Knickmeyer v. State ex. Rel. Eighth Judicial Dist. Ct.*, 133 Nev. 675, 679 (2017).
21 But when no definition is provided, the court must give the words "their plainest and
22 most ordinary meaning unless the Legislature clearly used them differently, or the
23 words are used in an ambiguous way." *Id.*

24 Neither this Court nor the Department have ever defined the term "owner" in the
25 context of the statutory scheme. The only place where "owner" is addressed is in the
26 regulations interpreting the statute. NAC 453D.250(2) states that "the following persons
27 must comply with the provisions governing **owners**, officers and board members of a
28 marijuana establishment: ... (c) If a **limited-liability company is applying** for a license

1 for a marijuana establishment, **the members of a limited-liability company**" (emphasis
2 added). This provision aligns with NRS Chapter 86, which provides that "members" of
3 an LLC are the "owner[s] of a member's interest in a limited-liability company." NRS
4 86.081. And during the preliminary injunction hearing, Department representative Steve
5 Gilbert confirmed that when the Department considered "owners" of limited liability
6 company applicants, it determined the owners to be the "members" of the LLC. (Ex. 9 at
7 84:3-15.)²

8 In compliance with this statutory and regulatory framework, NOR's application
9 listed every owner of any membership interest in NOR, including owners with less than
10 a 5% membership interest. This fact is undisputed, yet the Department has failed to
11 explain why it believes there may be other membership interests that were not listed on
12 the application, as there are no other members of NOR that were not listed.

13 Even before the Department approved the ownership list, NOR asked the
14 Department how it should list its owners, officers, and board members on its transfer of
15 interest forms. The Department confirmed that NOR's proposed list was correct, and
16 this same ownership structure was provided to the Department well before the
17 application time period. In response to NOR's submission, the Department issued a
18 Notice of Transfer of Interest Approval letter expressly stating that **NOR's ownership**
19 **list was "reviewed and APPROVED."** (Ex. 2.) This same ownership list has been
20 included in the Department's register of owners maintained by the Department since
21 before the time that applications were submitted. This same list was in place prior to the
22 application period, and the same list is still available on the Department's website. (Ex.
23 4.) In submitting its ownership list, NOR therefore relied not only on the terms of the
24 statutes and regulations but also upon direction and express approval from the
25 Department. The Department's own correspondence indicated that it defined the
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", which was Gilbert's statement made during the hearing and reflects the
terms of the applicable regulation.

1 members of NOR to be the owners and further confirmed that NOR had properly
2 disclosed its full ownership.

3 For the Department to now flip-flop and say it has an “unanswered question” or
4 that it “cannot determine” whether the list was correct, is the epitome of arbitrary and
5 capricious action. *See State v. Dist. Ct.*, 127 Nev. 927, 931-932 (2011) (board acts arbitrarily
6 and capriciously “when it denies a license without any reason for doing so”). The
7 Department gave specific approval, and the Department cannot now change course with
8 no basis for doing so. The Department is estopped based on its previous action and
9 approvals, and it must be required to maintain consistency with its own prior approval
10 in this very matter.

11 **D. Subsequent Ownership by a Parent Company Is Not Relevant under the**
12 **Statute**

13 Any purported “question” regarding NOR’s ownership appears to arise from a
14 new idea that because one of NOR’s owners, GGB Nevada, LLC, is in turn owned by a
15 parent company, Xanthic Biopharma, Inc., there may be shareholders of Xanthic that
16 were not listed as owners of NOR. Such a construction or interpretation of an “owner”
17 would directly contradict applicable regulations and would contradict the prior
18 direction and approval from the Department.

19 As a parent company of the GGB Nevada, LLC entity, Xanthic Biopharma is listed
20 on the Department’s own register of owners, officers, and board members as an
21 “affiliated entity.” (Exhibit 3.) This is consistent with how the Department handled
22 establishments such as NOR and many other companies with similar ownership
23 structures, including MM Development and LivFree and now companies such as
24 Essence, which have parent companies that are publicly owned. The Department does
25 not list up-the-ladder parent companies that may have some interest in the owner of an
26 applicant as direct “owners” of the applicant. There is no statutory or regulatory
27 provision to do so, and this Court has not issued such a directive, as it would be
28 improper to do so.

1 There was no need to list shareholders of a parent company like Xanthic, because
2 Xanthic and its shareholders **are not members of NOR** and **do not own any**
3 **membership interest of NOR**. Nothing in the application, the statute, or this Court’s
4 Preliminary Injunction requires the Department to trace down every layer of ownership
5 or require applicants to further break down ownership of its constituent owners. Once
6 NOR provided the Department with the information necessary to confirm ownership
7 and to conduct a background check on each owner—which NOR did provide—the
8 Department had sufficient information to comply with the requirements of NRS
9 453D.200(6), whether or not the 5% rule applied.

10 Moreover, each applicant for recreational marijuana licenses in this lawsuit is
11 already operating a medical or a recreational marijuana establishment (applicants for
12 recreational licenses were required by statute to already have a medical marijuana
13 license), and any concern about background checks for “each owner” would and could
14 have already been addressed for existing establishments, as the ownership is identical
15 for the ongoing operations of the currently operating and existing establishments.

16 **E. NOR Is Suffering Serious Harm as a Result of the Department’s Failure to Act**

17 Since receiving its seven conditional licenses, NOR has worked to secure
18 locations, receive local permits, hire employees, obtain inventory, and prepare for the
19 final inspections on those locations across all of the jurisdictions where it has obtained a
20 license. (Declaration of Brandon Wiegand, ¶ 3). As of the date of this Application, NOR
21 has received special permits, business licenses, and other necessary jurisdictional
22 approvals required to open dispensaries in the City of Las Vegas, the City of Reno, and
23 the Town of Pahrump. It has secured specific locations in those jurisdictions, performed
24 necessary tenant improvements, purchased security systems, signed agreements for
25 operations systems, and has hired and trained employees, NOR is, in all respects, ready
26 to open the doors to these locations after obtaining a final inspection from the
27 Department. (*Id.* at ¶ 4). It is also moving forward in the other locations. In North Las
28 Vegas, NOR has secured a location and has been paying rent since early 2019. In Clark

1 County, NOR has already lost a highly desirable location that it had secured and was
2 ready to move forward but could not do so because of the Department's inaction in
3 moving NOR to the proper Tier. (*Id.* at ¶ 5).

4 The Department's failure to move NOR into Tier 2, which precludes the
5 completion of final inspections on specified applicants, is causing tremendous damage
6 to NOR, which will only increase in the coming weeks, as locations are lost and
7 employees are laid off. NOR stands to lose all of the work it has put into the process to
8 this point. It will likely lose its special permits, its employees, and all other work it has
9 put into opening a viable business.

10 Under NAC 453D.295 and the extension recently granted by the Department,
11 NOR only has until June 5, 2020 to receive final inspections. Once the injunction is lifted,
12 it will take NOR months to obtain all necessary permits and prepare for final inspections
13 in those jurisdictions. (*Id.* at ¶ 6).

14 The Department should be required to address this issue by confirming that NOR
15 did in fact listed each owner of the applicant in its applications. Five other similarly
16 situated intervenors have been permitted to move forward by the Department by being
17 placed into Tier 2, and there is no defensible basis to preclude NOR from doing the
18 same.

19 **F. The Pending Appeal Is Not an Adequate Remedy**

20 NOR has filed an appeal of this Court's Preliminary Injunction. The focus of that
21 appeal is the validity of the 5% rule in NAC 453D.255(1). The Department's separate
22 determination here that NOR is in Tier 3 is not the subject of that appeal. To be sure, if
23 the Nevada Supreme Court determines that the 5% rule is valid and reverses the
24 issuance of the Preliminary Injunction, then the determination of Tiers will likely be
25 moot, but the appeal will not correct the Department's independent act in determining
26 the Tiers of applicants.

27 Accordingly, NOR's pending appeal is not a "plain, speedy, and adequate
28 remedy in the ordinary course of the law." *See, State v. Dist. Ct. (Armstrong)*, 127 Nev.

1 927, 931 (2011). The Department's categorization of applicant Tiers was not performed
2 by this Court, and the Supreme Court will not be addressing the Department's
3 determinations on this issue. The existence of the appeal is not an adequate alternative
4 to the mandamus remedy requested here.

5 **V. CONCLUSION**

6 A writ of mandamus is necessary and appropriate to compel the Department to
7 comply with the statute and confirm that NOR did list each owner of NOR in its
8 application. The Department must be compelled to move NOR into "Tier 2" of
9 applicants so it may move forward with opening its stores under its conditional licenses.

10
11 DATED: November 21, 2019

KOCH & SCOW, LLC

12 By: /s/ David R. Koch
13 David R. Koch, Esq.
14 *Attorneys for Defendant-Intervenor,*
Counterclaimant
Nevada Organic Remedies, LLC

DECLARATION OF DAVID R. KOCH

I, David R. Koch, declare and state as follows:

1. I am an attorney licensed to practice law in the State of Nevada and am attorney of record for Nevada Organic Remedies, LLC ("NOR") in this matter. I have personal knowledge of the facts stated herein and make this declaration in support of NOR'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.

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

3. Attached as Exhibit 1 to the Amended Application is a true and correct copy of the emails between Amanda Connor, counsel for NOR, and Steve Gilbert from the Department wherein Mr. Gilbert confirmed what information NOR was required to place in its transfer of ownership request.

4. Attached as Exhibit 2 to the Amended Application is a true and correct copy of the letter NOR received from the Department approving the transfer of ownership of NOR on August 20, 2018.

5. Attached as Exhibit 3 to the Amended Application is a true and correct copy of the organizational chart found in NOR's applications for licenses to open marijuana establishments that it submitted to the Department in September 2018.

6. Attached as Exhibit 4 to the Amended Application is a true and correct copy of the list of owners and affiliated entities of NOR as of May 1, 2019, as found on the Department's website, which can be found at the URL <https://tax.nv.gov/uploadedFiles/taxnvgov/Content/FAQs/CURRENTLICENSEESMAY12019.pdf>.

7. Attached as Exhibit 5 to the Amended Application is a true and correct copy of the email the State of Nevada, Department of Taxation (the "Department") sent to Judge

1 Gonzalez's chamber and to counsel for the parties to the Lawsuit. The tiers referred to in
2 the attached email are those that Judge Gonzalez referred to in issuing the Findings of
3 Fact and Conclusions of Law regarding the motion for preliminary injunction issued
4 against the Department in the Lawsuit, and the email has been admitted as Court's Exhibit
5 3.

6 8. Attached as Exhibit 6 to the Amended Application is a true and correct copy
7 of select portions of the Hearing on Objections to State's Response, Nevada Wellness
8 Center's Motion Re Compliance Re Physical Address, and Bond Amount Setting from
9 August 29, 2019.

10 9. After the State of Nevada Department of Taxation (the "Department") sent
11 an email placing NOR in what it deemed "Tier 3" because it had questions regarding
12 whether NOR included all of its owners in its applications for licenses to operate
13 marijuana establishments, I, along with other representatives of NOR, have subsequently
14 corresponded with and met with representatives from the Department to provide any
15 additional necessary information to resolve any questions the Department had regarding
16 the content of NOR's September 2018 applications.

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

19 Executed this 21st day of November, 2019.

20
21 /s/ David R. Koch
22 David R. Koch
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1 **DECLARATION OF BRANDON WIEGAND**

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

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

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

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

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

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

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

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

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

10
11 Date: November 21, 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 November 21, 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 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:

ETW Management Group LLC:

Adam Fulton (afulton@jfnvlaw.com)
Jared Jennings (jjennings@jfnvlaw.com)
Vicki Bierstedt (vickib@jfnvlaw.com)
Norma Richter (nrichter@jfnvlaw.com)
Adam Bult (abult@bhfs.com)
Travis Chance (tchance@bhfs.com)
Maximillen Fetaz (mfetaz@bhfs.com)
Logan Willson (Logan@jfnvlaw.com)
Emily Dyer (edyer@bhfs.com)
William Nobriga (wnobriga@bhfs.com)

Nevada Dept of Taxation:

Traci Plotnick (tplotnick@ag.nv.gov)
Theresa Haar (thaar@ag.nv.gov)
Steven Shevorski (sshevorski@ag.nv.gov)
Robert Werbicky (rwerbicky@ag.nv.gov)
Mary Pizzariello (mpizzariello@ag.nv.gov)
Ketan Bhirud (kbhirud@ag.nv.gov)
David Pope (dpope@ag.nv.gov)
Barbara Fell (bfell@ag.nv.gov)
Victoria Campbell (vcampbell@ag.nv.gov)

Nevada Organic Remedies LLC:

David Koch (dkoch@kochscow.com)
Steven Scow (sscow@kochscow.com)

Integral Associates LLC:

Todd Bice (tlb@pisanellibice.com)
Debra Spinelli (dls@pisanellibice.com)
Dustun Holmes (dhh@pisanellibice.com)
MGA Docketing (docket@mgalaw.com)
Philip Hymanson (Phil@HymansonLawNV.com)
Henry Hymanson (Hank@HymansonLawNV.com)
James Pisanelli (lit@pisanellibice.com)
Jordan Smith (jts@pisanellibice.com)
Shannon Dinkel (sd@pisanellibice.com)
Calendaring Hymanson (Assistant@HymansonLawNV.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)
Karen Morrow (karen@h1lawgroup.com)

GreenMart of Nevada NLV LLC:

Alina Shell (alina@nvlitigation.com)
Margaret McLetchie (maggie@nvlitigation.com)

Clear River, LLC:

Marsha Stallsworth (mstallsworth@blacklobello.law)

D H Flamingo Inc:

Joshua Dickey (jdickey@baileykennedy.com)
Sarah Harmon (sharmon@baileykennedy.com)
Kelly Stout (kstout@baileykennedy.com)
Dennis Kennedy (dkennedy@baileykennedy.com)
Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)
Stephanie Glantz (sglantz@baileykennedy.com)

Euphoria Wellness LLC:

Justin Jones (jjones@joneslovelock.com)
Nicole Lovelock (nlovelock@joneslovelock.com)
Alison Anderson (aanderson@joneslovelock.com)
Lorie Januskevicius (ljanuskevicius@joneslovelock.com)

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

Peter Christiansen (pete@christiansenlaw.com)
Whitney Barrett (wbarrett@christiansenlaw.com)
R. Todd Terry (tterry@christiansenlaw.com)
Eloisa Nunez (enunez@pnalaw.net)
David Koch (dkoch@kochscow.com)
Steven Scow (sscow@kochscow.com)
Brody Wight (bwight@kochscow.com)
Jonathan Crain (jcrain@christiansenlaw.com)

Mariella Dumbrique (mdumbrique@blacklobello.law)
Brigid Higgins (bhiggins@blacklobello.law)
Patricia Stoppard (p.stoppard@kempjones.com)

1 Ali Augustine (a.augustine@kempjones.com)
Nathanael Rulis (n.rulis@kempjones.com)
2 Andrea Eshenbaugh - Legal Assistant (aeshenbaugh@kochscow.com)
Theodore Parker III (tparker@pnalaw.net)
3 Alicia Ashcraft (ashcrafta@ashcraftbarr.com)
Daniel Scow (dscow@kochscow.com)
4 Michelle Harrell (harrellm@ashcraftbarr.com)
Diane Meeter (dmeeter@blacklobello.law)
5 J. Graf (Rgraf@blacklobello.law)
Daniel Simon (lawyers@simonlawlv.com)
6 Alisa Hayslett (a.hayslett@kempjones.com)
Cami Perkins, Esq. (cperkins@nevadafirm.com)
7 Joyce Martin (jmartin@blacklobello.law)
Joseph Gutierrez (jag@mgalaw.com)
8 Tanya Bain (tbain@gcmaslaw.com)
9 ShaLinda Creer (screer@gcmaslaw.com)
Dominic Gentile (dgentile@gcmaslaw.com)
10 Vincent Savarese (vsavarese@gcmaslaw.com)
Michael Cristalli (mcristalli@gcmaslaw.com)
11 Ross Miller (rmiller@gcmaslaw.com)
Jared Kahn (jkahn@jk-legalconsulting.com)
12 Rusty Graf (rgraf@blacklobello.law)
Thomas Gilchrist (tgilchrist@bhfs.com)
13 Lisa Lee (llee@thedplg.com)
Eservice Filing (eservice@thedplg.com)
14 Anna Karabachev (a.karabachev@kempjones.com)
15 Krystal Saab (KSaab@nvorganicremedies.com)

16
17 **DH FLAMINGO – A-19-787035-C SERVICE LIST**

18 **D H Flamingo Inc:**

18 Joshua Dickey (jdickey@baileykennedy.com)
19 Sarah Harmon (sharmon@baileykennedy.com)
Kelly Stout (kstout@baileykennedy.com)
20 Dennis Kennedy (dkennedy@baileykennedy.com)
Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)
21 Stephanie Glantz (sglantz@baileykennedy.com)

22 **Helping Hands Wellness Center Inc:**

23 Jared Kahn (jkahn@jk-legalconsulting.com)7777

24 **Greenmart of Nevada NLV LLC:**

24 Alina Shell (alina@nvlitigation.com)
25 Margaret McLetchie (maggie@nvlitigation.com)

26 **Clear River LLC:**

27 Tisha Black (tblack@blacklobello.law)
Bridget Higgins (bhiggins@blacklobello.law)
Diane Meeter (dmeeter@blacklobello.law)
28 J. Graf (Rgraf@blacklobello.law)
Joyce Martin (jmartin@blacklobello.law)

1 Mark Lounsbury (mlounsbury@blacklobello.law)

2 **Circle S Farms LLC:**

Amy Reams (areams@naylorandbrasterlaw.com)

3 John Naylor (jnaylor@naylorandbrasterlaw.com)

Jennifer Braster (jbraster@naylorandbrasterlaw.com)

4 Andrew Sharples (asharples@naylorandbrasterlaw.com)

5 **Pure Tonic Concentrates LLC:**

Heather Motta (hmotta@mcllawfirm.com)

6 Rick Hsu (rhsu@mcllawfirm.com)

7 **Agua Street LLC:**

8 Jarrod Rickard (jlr@skrlawyers.com)

Christopher Kircher (cdk@skrlawyers.com)

9 Olivia Kelly (oak@skrlawyers.com)

Lawrence Semenza, III (ljs@skrlawyers.com)

10 Teresa Beiter (tnb@skrlawyers.com)

Angie Barreras (alb@skrlawyers.com)

11 Katie Cannata (klc@skrlawyers.com)

12 **Bioneva Innovations of Carson City LLC:**

13 Amber Handy (amber@handelinlaw.com)

Steven Handelin (steve@handelinlaw.com)

14 Kristalei Wolfe (kristalei@handelinlaw.com)

15 **Blue Coyote Ranch LLC:**

Charles Vlastic (cvlastic@cv3legal.com)

16 **Compassionate Team of Las Vegas LLC:**

17 Daniel Simon (lawyers@simonlawlv.com)

18 **DP Holdings Inc:**

19 Daniel Simon (lawyers@simonlawlv.com)

20 **Euphoria Wellness LLC:**

Justin Jones (jjones@joneslovelock.com)

21 Nicole Lovelock (nlovelock@joneslovelock.com)

Alison Anderson (aanderson@joneslovelock.com)

22 Lorie Januskevicius (ljanuskevicius@joneslovelock.com)

23 **Franklin Bioscience NV LLC:**

24 Jeffrey Barr (barrj@ashcraftbarr.com)

25 **Good Chemistry Nevada LLC:**

Kenneth Ching (ken@argentumnv.com)

26 Mia Hurtado (mia@argentumnv.com)

27 **Green Life Productions LLC:**

28 Cary Domina (cdomina@peelbrimley.com)

Rosey Jeffrey (rjeffrey@peelbrimley.com)

Terri Hansen (thansen@peelbrimley.com)

Amanda Armstrong (aarmstrong@peelbrimley.com)
Jeremy Holmes (jholmes@peelbrimley.com)

Greenleaf Wellness Inc:

Diana Wheelen (dwheelen@fclaw.com)

Kindibles LLC:

Charles Vlastic (cvlastic@cv3legal.com)

LVMC C and P LLC:

William Urga (wru@juwlaw.com)

Linda Schone (ls@juwlaw.com)

Natural Medicine LLC:

Jeffery Bendavid (jbendavid@bendavidfirm.com)

Stephanie Smith (ssmith@bendavidfirm.com)

Leilani Gamboa (lgamboa@bendavidfirm.com)

Nevada Wellness Center LLC:

Eloisa Nunez (enunez@pnalaw.net)

Theodore Parker III (tparker@pnalaw.net)

Qualcan LLC:

Peter Christiansen (pete@christiansenlaw.com)

Whitney Barrett (wbarrett@christiansenlaw.com)

R. Todd Terry (tterry@christiansenlaw.com)

Jonathan Crain (jcrain@christiansenlaw.com)

RG Highland Enterprises Inc:

Amy Sugden (amy@sugdenlaw.com)

Rural Remedies LLC:

Gail May (Gail@ramoslaw.com)

Strive Wellness of Nevada LLC:

Jeffery Bendavid (jbendavid@bendavidfirm.com)

Stephanie Smith (ssmith@bendavidfirm.com)

Leilani Gamboa (lgamboa@bendavidfirm.com)

Twelve Twelve LLC:

Chase Whittemore (chase@argentumnv.com)

Mia Hurtado (mia@argentumnv.com)

WSCC Inc:

Heather Motta (hmotta@mcllawfirm.com)

Rick Hsu (rhsu@mcllawfirm.com)

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

David Koch (dkoch@kochscow.com)

Steven Scow (sscow@kochscow.com)

1 Brody Wight (bwight@kochscow.com)
2 Todd Bice (tlb@pisanellibice.com)
3 Debra Spinelli (dls@pisanellibice.com)
4 Dustun Holmes (dhh@pisanellibice.com)
5 MGA Docketing (docket@mgalaw.com)
6 Ali Augustine (a.augustine@kempjones.com)
7 Nathanael Rulis (n.rulis@kempjones.com)
8 Andrea Eshenbaugh - Legal Assistant (aeshenbaugh@kochscow.com)
9 Adam Bult (abult@bhfs.com)
10 Travis Chance (tchance@bhfs.com)
11 Maximillen Fetaz (mfetaz@bhfs.com)
12 Daniel Scow (dscow@kochscow.com)
13 James Pisanelli (lit@pisanellibice.com)
14 Cami Perkins, Esq. (cperkins@nevadafirm.com)
15 Desiree Staggs (dstaggs@kcnvlaw.com)
16 Jordan Smith (jts@pisanellibice.com)
17 Thomas Gilchrist (tgilchrist@bhfs.com)
18 Shannon Dinkel (sd@pisanellibice.com)
19 Julia Diaz (jd@juwlaw.com)
20 L Rose (lcr@juwlaw.com)
21 Rebecca Post (rebecca@connorpllc.com)

22 Executed on November 21, 2019 at Henderson, Nevada.

23 /s/ Andrea Eshenbaugh
24 Andrea Eshenbaugh
25
26
27
28

EXHIBIT 1

EXHIBIT 1

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 007097

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 007098

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

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AA 007099

EXHIBIT 2

EXHIBIT 2



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

STATE OF NEVADA DEPARTMENT OF TAXATION

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

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

RENO OFFICE
4800 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

HENDERSON OFFICE
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 3

EXHIBIT 3

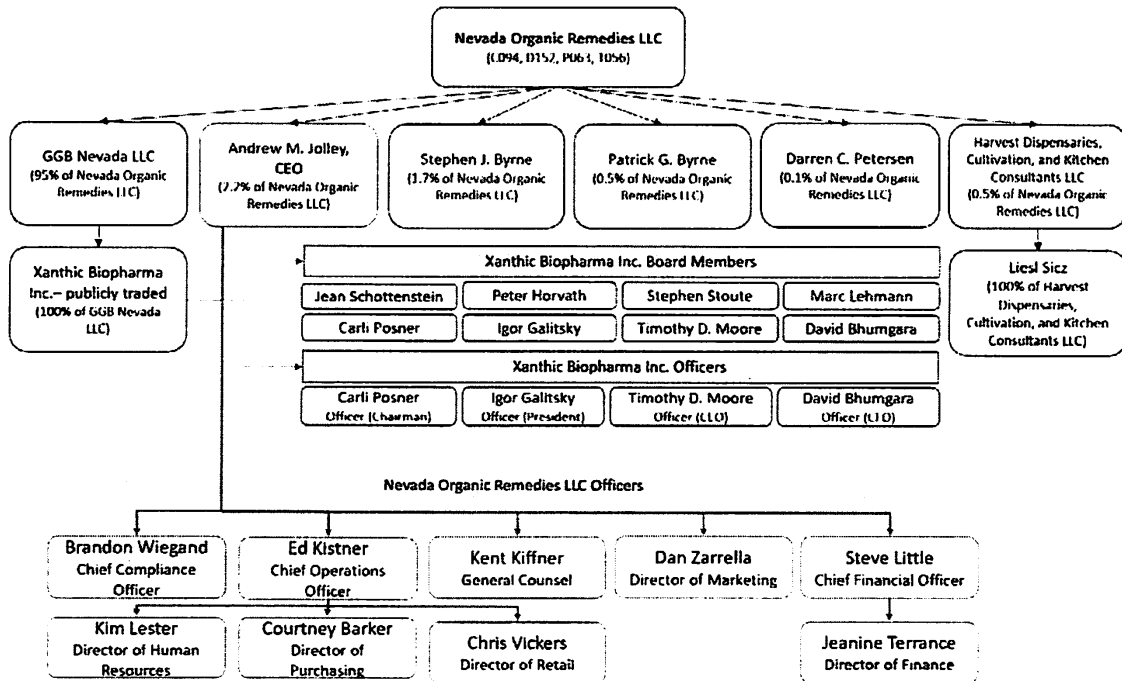
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ORGANIZATIONAL CHARTS

AA 007105

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 007107

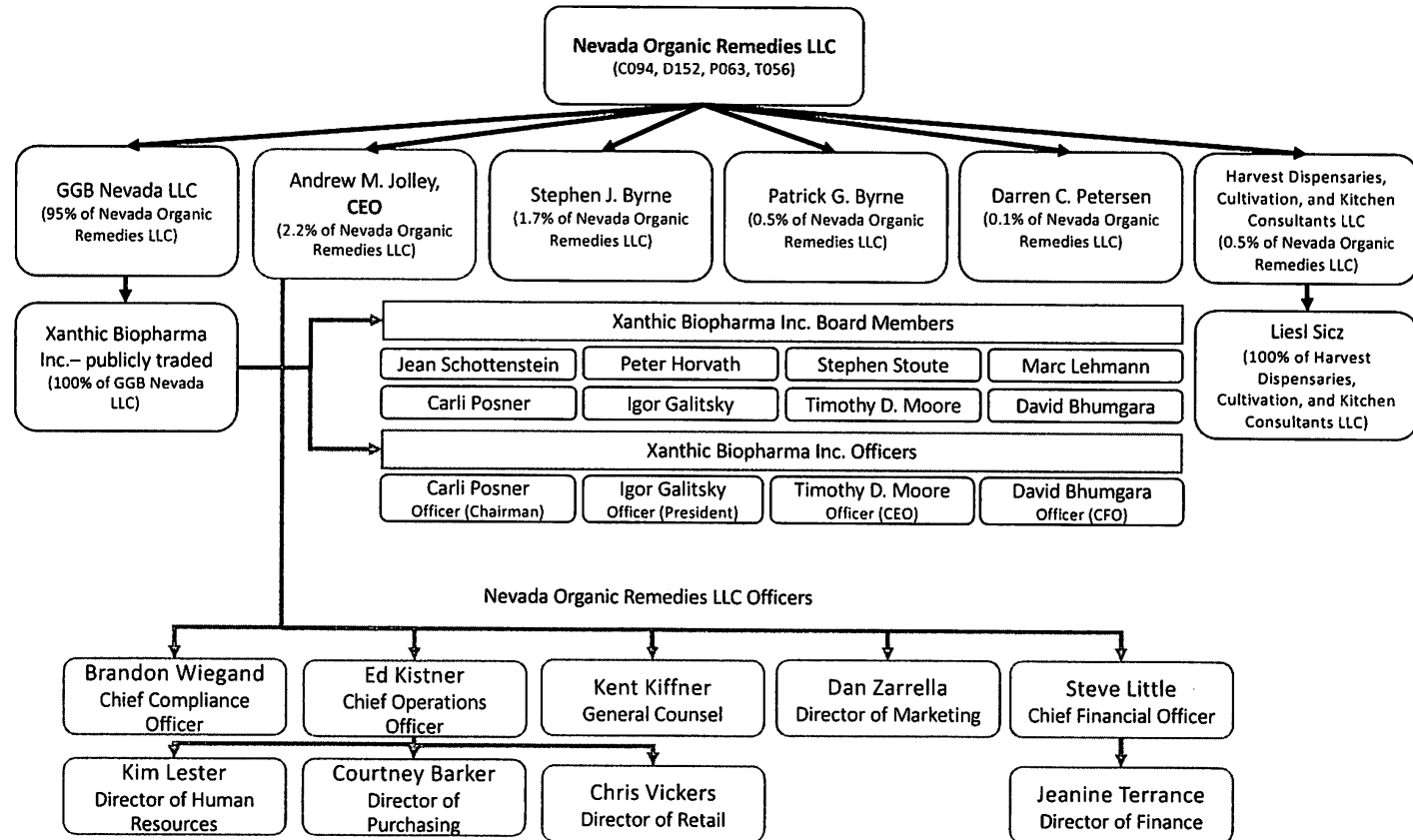


EXHIBIT 4

EXHIBIT 4

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

AA 007110

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)
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 007111

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)
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 007112

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 007113

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 007114

EXHIBIT 5

EXHIBIT 5

From: Steven G. Shevorski SShevorsk @ag.nv.gov

Subject: RE: A786962 Seren ty - Response to Judge s Quest on on NRS 453D.200(6)

Date: August 21, 2019 at 3:23 PM

To: Mer wether, Dan e e LC Dept11LC@c arkcountycourts.us, Mchae Cr sta mcr sta @gcmas aw.com, V ncent Savarese vsavarese@gcmas aw.com, Ross M er rm er@gcmas aw.com, Ketan D. Bh rud KBh rud@ag.nv.gov, Robert E. Werb cky RWeb cky@ag.nv.gov, Dav d J. Pope DPope@ag.nv.gov, Theresa M. Haar THaar@ag.nv.gov, jag@mga aw.com, rgraf@b ack obe o. aw, bh gg ns@b ack obe o. aw, a na@nv t gat on.com, Work magg e@nv t gat on.com, Er c Hone, Esq. (er c@h1 awgroup.com) er c@h1 awgroup.com, jam e@h1 awgroup.com, moorea@h1 awgroup.com, jkahn@jk- ega consu t ng.com, dkoch@kochscow.com, sscow@kochscow.com, Bu t, Adam K. ABu t@bhfs.com, tchance@bhfs.com, a.hays ett@kempjones.com, Nathanae Ru s, Esq. (n.ru s@kempjones.com) n.ru s@kempjones.com, tparker@pna aw.net, Fetaz, Max m en MFetaz@bhfs.com, ph @hymanson awnv.com, shane@ asvegas ega v deo.com, joe@ asvegas ega v deo.com, Pat Stoppard (p.stoppard@kempjones.com) p.stoppard@kempjones.com, jde carmen@pna aw.net, Kut nac, Dan e Kut nacD@c arkcountycourts.us, ShaL nda Creer screer@gcmas aw.com, Tanya Ba n tba n@gcmas aw.com, Karen W eh (Karen@HymansonLawNV.com) Karen@hymanson awnv.com, Kay, Pau a PKay@bhfs.com, Denn s Pr nce (dpr nce@thedp g.com) dpr nce@thedp g.com, t b@p sane b ce.com, JTS@p sane b ce.com

Cc: Kut nac, Dan e Kut nacD@c arkcountycourts.us

SS

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 007116

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
P. 702.671.4275

AA 007118

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

P: (702) 671-4375

F: (702) 671-4377

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 007119

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

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: 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,

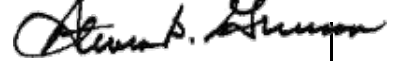
Danielle M. Meriwether, Esq.
Law Clerk to the Honorable Elizabeth G. Gonzalez
District Court, Department XI
P: (702) 671-4375

AA 007120

F: (702) 671-4377

EXHIBIT 6

EXHIBIT 6



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,



1 Will Kemp, Esq. (#1205)
2 Nathanael R. Rulis, Esq. (#11259)
3 n.rulis@kempjones.com
4 KEMP, JONES & COULTHARD, LLP
5 3800 Howard Hughes Parkway, 17th Floor
6 Las Vegas, Nevada 89169
7 Telephone: (702) 385-6000
8 *Attorneys for Plaintiffs*
9 *MM Development Company, Inc. &*
10 *LivFree Wellness, LLC*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9
10 IN RE D.O.T. Litigation

Case No.: A-19-787004-B

Dept. No.: IX

11 CONSOLIDATED WITH:

12 A-18-785818-W

13 A-18-786357-W

14 A-19-786962-B

15 A-19-787035-C

16 A-19-787540-W

17 A-19-787726-C

18 A-19-801416-B

19 **NOTICE OF ENTRY OF ORDER DENYING MM DEVELOPMENT COMPANY,**
20 **INC.'S AND LIVFREE WELLNESS, LLC'S MOTION TO ALTER OR AMEND**
21 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

22 TO: All parties herein; and

23 TO: Their respective counsel;

24 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order Denying
25 MM Development Company, Inc.'s and Livfree Wellness, LLC's Motion to Alter or Amend

26 ///

27 ///

28 ///

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kic@kempjones.com

1 Findings of Fact and Conclusions of law was entered in the above entitled matter on November
2 22, 2019.

3 A copy of said Order is attached hereto.

4 Dated this 22th day of November, 2019.

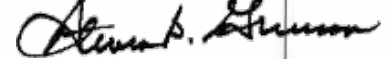
5 KEMP JONES & COULTHARD, LLP

6 /s/ Nathanael Rulis
7 Will Kemp, Esq. (#1205)
8 Nathanael R. Rulis, Esq. (#11259)
9 3800 Howard Hughes Parkway, 17th Floor
10 Las Vegas, Nevada 89169
11 *Attorneys for Plaintiff*

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on the 22nd day of November, 2019, the foregoing **NOTICE OF**
14 **ENTRY OF ORDER DENYING MM DEVELOPMENT COMPANY, INC.'S AND**
15 **LIVFREE WELLNESS, LLC'S MOTION TO ALTER OR AMEND FINDINGS OF**
16 **FACT AND CONCLUSIONS OF LAW** was served on all parties by electronic submission
17 via the court's e-filing system.

18
19 /s/ Ali Augustine
20 An employee of Kemp, Jones & Coulthard, LLP



1 Will Kemp, Esq. (#1205)
2 Nathanael R. Rulis, Esq. (#11259)
3 n.rulis@kempjones.com
4 KEMP, JONES & COULTHARD, LLP
5 3800 Howard Hughes Parkway, 17th Floor
6 Las Vegas, Nevada 89169
7 Telephone: (702) 385-6000
8 Attorneys for Plaintiffs
9 MM Development Company, Inc. &
10 LivFree Wellness, LLC

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DISTRICT COURT
CLARK COUNTY, NEVADA

IN RE D.O.T. Litigation

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

CONSOLIDATED WITH:
A-18-785818-W
A-18-786357-W
A-19-786962-B
A-19-787035-C
A-19-787540-W
A-19-787726-C
A-19-801416-B

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

Date of Hearing: Oct. 28, 2019
Time of Hearing: 9:00 a.m.

Plaintiffs, MM Development Company, Inc. ("MM Development") and LivFree Wellness LLC, dba The Dispensary ("LivFree"), filed a Motion to Alter or Amend Findings of Fact and Conclusions of Law (the "Motion") on September 24, 2019, which came on for hearing on October 28, 2019. After reviewing the papers and pleadings on file herein, and hearing the arguments of counsel, the Court finds and orders as follows:

///

///

///


KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
kjc@kempjones.com

1 Plaintiffs' Motion to Alter or Amend Findings of Fact and Conclusions of Law is
2 DENIED.

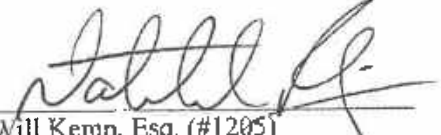
3 IT IS SO ORDERED.

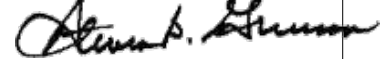
4 DATED this 22 day of November, 2019

5
6 
7 ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

8 Respectfully Submitted by:

9 KEMP, JONES & COULTHARD, LLP

10 
11
12 Will Kemp, Esq. (#1205)
13 Nathanael R. Rulis, Esq. (#11259)
14 3800 Howard Hughes Parkway, 17th Floor
15 Las Vegas, Nevada 89169
16 Attorneys for Plaintiff



1 **ACOM**
CLARK HILL PLC
2 DOMINIC P. GENTILE
Nevada Bar No. 1923
3 Email: dgentile@clarkhill.com
ROSS MILLER
4 Nevada Bar No. 8190
Email: rmiller@clarkhill.com
5 JOHN A. HUNT
Nevada Bar No. 1888
6 Email: dhunt@clarkhill.com
3800 Howard Hughes Parkway, Suite 500
7 Las Vegas, Nevada 89169
Tel: (702) 862-8300
8 Fax: (702) 862-8400
Attorneys for Plaintiffs

9
10 **DISTRICT COURT
CLARK COUNTY, NEVADA**

11 SERENITY WELLNESS CENTER, LLC, a
Nevada limited liability company, TGIG, LLC, a
12 Nevada limited liability company, NULEAF
INCLINE DISPENSARY, LLC, a Nevada
13 limited liability company, NEVADA HOLISTIC
MEDICINE, LLC, a Nevada limited liability
14 company, TRYKE COMPANIES SO NV, LLC,
a Nevada limited liability company, TRYKE
15 COMPANIES RENO, LLC, a Nevada limited
liability company, GBS NEVADA PARTNERS,
16 LLC, a Nevada limited liability company,
FIDELIS HOLDINGS, LLC, a Nevada limited
17 liability company, GRAVITAS NEVADA, LTD,
a Nevada limited liability company, NEVADA
18 PURE, LLC, a Nevada limited liability company,
MEDIFARM, LLC, a Nevada limited liability
19 company, MEDIFARM IV, LLC a Nevada
limited liability company, DOE PLAINTIFFS I
20 through X; and ROE ENTITY PLAINTIFFS I
through X,

21 Plaintiffs,

22 vs.

23 THE STATE OF NEVADA, DEPARTMENT
24 OF TAXATION, CHEYENNE MEDICAL,
LLC, CIRCLE S. FARMS, LLC, CLEAR
25 RIVER, LLC, COMMERCE PARK MEDICAL
L.L.C., DEEP ROOTS MEDICAL LLC,
26 ESSENCE HENDERSON LLC, ESSENCE
TROPICANA, LLC, EUREKA NEWGEN
27 FARMS LLC, GREEN THERAPEUTICS, LLC,
GREENMART OF NEVADA, LLC, HELPING
28 HANDS WELLNESS CENTER, INC., LONE

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

SECOND AMENDED COMPLAINT

1 MOUNTAIN PARTNERS LLC, NEVADA
2 ORGANIC REMEDIES, LLC, POLARIS
3 WELLNESS CENTER, L.L.C., PURE TONIC
4 CONCENTRATES LLC, TRNVP098, and
5 WELLNESS CONNECTION OF NEVADA,
6 LLC,

Defendants.

7 Plaintiffs, SERENITY WELLNESS CENTER, LLC, a Nevada limited liability company,
8 TGIG, LLC, a Nevada limited liability company, NULEAF INCLINE DISPENSARY, LLC, a
9 Nevada limited liability company, NEVADA HOLISTIC MEDICINE, LLC, a Nevada limited
10 liability company, TRYKE COMPANIES SO NV, LLC a Nevada limited liability company,
11 TRYKE COMPANIES RENO, LLC, a Nevada limited liability company, GBS NEVADA
12 PARTNERS, LLC, a Nevada limited liability company, FIDELIS HOLDINGS, LLC, a Nevada
13 limited liability company, GRAVITAS NEVADA, LTD, a Nevada limited liability company,
14 NEVADA PURE, LLC, a Nevada limited liability company, MEDIFARM, LLC, a Nevada
15 limited liability company MEDIFARM IV, LLC, a Nevada limited liability company; DOE
16 PLAINTIFFS I through X; and ROE ENTITIES I through X, by and through their counsel,
17 DOMINIC P. GENTILE, ESQ. and VINCENT SAVARESE III, ESQ., MICHAEL V.
18 CRISTALLI, ESQ., and ROSS MILLER, ESQ., of the law firm of Gentile Cristalli Miller
19 Armeni Savarese, hereby complain and allege against DEFENDANT STATE OF NEVADA,
20 DEPARTMENT OF TAXATION; DOE DEFENDANTS I through X; and ROE ENTITY
21 DEFENDANTS I through X, in their official and personal capacities, as follows:

24 **I.**

25 **PARTIES, JURISDICTION, AND VENUE**

26 1. Plaintiff SERENITY WELLNESS CENTER, LLC, was and is a Nevada limited
27 liability company and does business in Clark County, Nevada.

1 2. Plaintiff TGIG, LLC, was and is a Nevada limited liability company and does
2 business in Clark County, Nevada.

3 3. Plaintiff NULEAF INCLINE DISPENSARY, LLC, was and is a Nevada limited
4 liability company and does business in Clark County, Nevada.

5 4. Plaintiff NEVADA HOLISTIC MEDICINE, LLC, was and is a Nevada limited
6 liability company and does business in Clark County, Nevada.

7 5. Plaintiff TRYKE COMPANIES SO NV, LLC was and is a Nevada limited
8 liability company and does business in Clark County, Nevada.

9 6. Plaintiff TRYKE COMPANIES RENO, LLC, was and is a Nevada limited
10 liability company and does business in Clark County, Nevada.

11 7. Plaintiff GBS NEVADA PARTNERS, LLC, was and is a Nevada limited liability
12 company and does business in Clark County, Nevada.

13 8. Plaintiff FIDELIS HOLDINGS, LLC, was and is a Nevada limited liability
14 company and does business in Clark County, Nevada.

15 9. Plaintiff GRAVITAS NEVADA, LTD, was and is a Nevada limited liability
16 company and does business in Clark County, Nevada.

17 10. Plaintiff NEVADPURE, LLC, was and is a Nevada limited liability company and
18 does business in Clark County, Nevada.

19 11. Plaintiff MEDIFARM, LLC was and is a Nevada limited liability company and
20 does business in Clark County, Nevada.

21 12. Plaintiff MEDIFARM IV, LLC was and is a Nevada limited liability company
22 and does business in Clark County, Nevada.

23 13. Defendant STATE OF NEVADA, DEPARTMENT OF TAXATION (the
24 “Department”) is an agency of the State of Nevada. The Department is responsible for licensing
25 and regulating retail marijuana businesses in Nevada through its Marijuana Enforcement
26 Division.

27 . . .

28 . . .

**Parties Who Received Conditional Recreational Retail Marijuana Establishment
Licenses (“Defendant Applicants”)**

14. Upon information and belief, Defendant CHEYENNE MEDICAL, LLC is a Nevada limited liability company doing business under the fictitious names Thrive Cannabis Marketplace, Thrive, and/or Cheyenne Medical.

15. Upon information and belief, Defendant CIRCLE S FARMS, LLC is a Nevada limited liability company doing business under the fictitious firm names Canna Straz, and/or Circle S.

16. Upon information and belief, Defendant CLEAR RIVER, LLC is a Nevada limited liability company doing business under the fictitious names United States Marijuana Company, United States Medical Marijuana, Nevada Medical Marijuana, Clear River Wellness, Clear River Infused, Nevada Made Marijuana, Greenwolf Nevada, Farm Direct Weed, Atomicrockz, and/or Giddystick.

17. Upon information and belief, Defendant COMMERCE PARK MEDICAL L.L.C. is a Nevada limited liability company doing business under the fictitious names Thrive Cannabis Marketplace, LivFree Las Vegas, and/or Commerce Park Medical.

18. Upon information and belief, Defendant DEEP ROOTS MEDICAL LLC is a Nevada limited liability company doing business under the fictitious name Deep Root Harvest.

19. Upon information and belief, Defendant ESSENCE HENDERSON LLC is a Nevada limited liability company doing business under the fictitious name Essence Cannabis Dispensary.

20. Upon information and belief, Defendant ESSENCE TROPICANA LLC is a Nevada limited liability company doing business under the fictitious name Essence.

21. Upon information and belief, Defendant EUREKA NEWGEN FARMS LLC is a Nevada limited liability company doing business under the fictitious name Eureka NewGen Farms.

22. Upon information and belief, Defendant GREEN THERAPEUTICS LLC is a Nevada limited liability company doing business under the fictitious name Provision.

1 23. Upon information and belief, Defendant GREENMART OF NEVADA LLC is a
2 Nevada limited liability company doing business under the fictitious name Health for Life.

3 24. Upon information and belief, Defendant HELPING HANDS WELLNESS
4 CENTER, INC. is a Nevada corporation doing business under the fictitious names Cannacare,
5 Green Heaven Nursery, and/or Helping Hands Wellness Center.

6 25. Upon information and belief, Defendant LONE MOUNTAIN PARTNERS LLC
7 is a Nevada limited liability company doing business under the fictitious names Zenleaf, Siena,
8 Encore Cannabis, Bentley Blunts, Einstein Extracts, Encore Company, and/or Siena Cannabis.

9 26. Upon information and belief, Defendant NEVADA ORGANIC REMEDIES LLC
10 is a Nevada limited liability company doing business under the fictitious names The Source
11 and/or The Source Dispensary.

12 27. Upon information and belief, Defendant POLARIS WELLNESS CENTER L.L.C.
13 is a Nevada limited liability company doing business under the fictitious name Polaris MMJ.

14 28. Upon information and belief, Defendant PURE TONIC CONCENTRATES LLC
15 is a Nevada limited liability company doing business under the fictitious names Green Heart
16 and/or Pure Tonic.

17 29. Upon information and belief, Defendant TRNVP098 LLC is a Nevada limited
18 liability company doing business under the fictitious names Grassroots and/or Taproot Labs.

19 30. Upon information and belief, Defendant WELLNESS CONNECTION OF
20 NEVADA LLC is a Nevada limited liability company doing business under the fictitious name
21 Cultivate Dispensary

22 31. The true names and capacities, whether individual, corporate, association or
23 otherwise of Doe Plaintiffs I through X, Roe Entity Plaintiffs I through X; Doe Defendants I
24 through X; and Roe Entity Defendants I through X, inclusive, are unknown to Plaintiffs at
25 this time, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed
26 and believe, and thereupon allege, that each of the Defendants designated herein as Doe
27 and/or Roe Entities is responsible in some manner for the events and occurrences herein
28 referred to, and in some manner caused the injuries and damages to Plaintiffs alleged herein.

1 And Plaintiffs will ask leave of the Court to amend this Complaint to insert the true names
2 and capacities of all Doe and/or Roe Entity Plaintiffs and Defendants when the same have
3 been ascertained by Plaintiffs, together with the appropriate charging allegations, and to join
4 such parties in this action.

5 32. Both jurisdiction and venue with respect to this action properly lie in this Court
6 pursuant to Nev. Rev. Stat. § 13.040.

7 II.

8 GENERAL ALLEGATIONS

9 33. The Nevada State Legislature passed a number of bills during the 2017
10 legislative session that affected the licensing, regulation, and operation of recreational marijuana
11 establishments in the state of Nevada. One of those bills, Assembly Bill 422, transferred
12 responsibility for the registration, licensing, and regulation of marijuana establishments from the
13 State of Nevada's Division of Public and Behavioral Health to the Department of Taxation.

14 34. This legislation was added to the voters' approval at the 2016 General Election of
15 2016 initiative petition, Ballot Question No. 2; is known as the "Regulation and Taxation of
16 Marijuana Act"; and is codified at NRS 453D.010, *et seq.* Nevada Revised Statutes ("NRS")
17 pursuant to

18 35. NRS 453D.020 (Findings and declarations) provides:

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

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

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

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

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

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

5 (d) Selling or giving marijuana to persons under 21 years of
age shall remain illegal;

6 (e) Individuals will have to be 21 years of age or older to
purchase marijuana;

7 (f) Driving under the influence of marijuana will remain
illegal; and

8 (g) Marijuana sold in the State will be tested and labeled.”

9 36. NRS 453D.200 (Duties of Department relating to regulation and licensing of
10 marijuana establishments; information about consumers) provides:

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

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

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

18

19 2. The Department ***shall*** approve or deny applications for
licenses ***pursuant to NRS 453D.210***” (emphasis added).

20 37. NRS 453D.210 (Acceptance of applications for licensing; priority in licensing;
21 conditions for approval of application; limitations on issuance of licenses to retail marijuana
22 stores; competing applications), in turn, provides, in pertinent part:

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

24 (a) ***Issue the appropriate license if the license application is
approved.***

25 5. The Department ***shall approve a license application if:***

26 (a) The prospective marijuana establishment has submitted an
27 application in compliance with regulations adopted by the
Department and the application fee required pursuant to NRS
453D.2;

28 6. When competing applications are submitted for a proposed

1 retail marijuana store within a single county, the Department ***shall***
2 use an ***impartial and numerically scored competitive bidding***
3 ***process*** to determine which application or applications among
those competing will be approved” (emphasis added).

4 38. According to an August 16, 2018 letter from the Department, pursuant to
5 Section 80(3) of Adopted Regulation of the Department of Taxation, LCB File No. R092-17
6 ("R092-17"), the Department was responsible for allocating the licenses of recreational
7 marijuana retail stores "to jurisdictions within each county and to the unincorporated area of
8 the county proportionally based on the population of each jurisdiction and of the
9 unincorporated area of the county.”

10 39. The Department issued a notice for an application period wherein the Department
11 sought applications from qualified applicants to award sixty-four (64) recreational marijuana
12 retail store licenses throughout various jurisdictions in Nevada.

13 40. The application period for those licenses, including thirty-one (31) licenses in
14 Clark County, seven (7) licenses in Washoe County and one (1) license in Nye County, opened
15 on September 7, 2018 and closed on September 20, 2018.

16 41. Pursuant to Section 6.2 of the Recreational Marijuana Establishment License
17 Application (“the Application”) issued by the Department, as enabled under the above-quoted
18 provisions of NRS 453D.210, if the Department received more than one application for a license
19 for a recreational marijuana retail store and the Department determined that more than one of the
20 applications was complete and in compliance with R092-17, Sec. 78 and NRS 453D, the Department
21 was required to rank the applications within each applicable locality for any applicants in a
22 jurisdiction that limits the number of retail marijuana stores in order from first to last, with ranking
23 being based on compliance with the provisions of R092-17 Sec. 80, NRS 453D and on the content of
24 the applications relating to the following specifically-enumerated and objective published criteria:
25
26
27

28 a. Operating experience of another kind of business by the owners, officers or board

- 1 members that has given them experience which is applicable to the operation of a
2 marijuana establishment.
- 3 b. Diversity of the owners, officers or board members.
- 4 c. Evidence of the amount of taxes paid and other beneficial financial contributions.
- 5 d. Educational achievements of the owners, officers or board members.
- 6 e. The applicant's plan for care, quality and safekeeping of marijuana from seed to
7 sale.
- 8 f. The financial plan and resources of the applicant, both liquid and illiquid.
- 9 g. The experience of key personnel that the applicant intends to employ.
- 10 h. Direct experience of the owners, officers, or board members of a medical
11 marijuana establishment or marijuana establishment in this State.
- 12 42. However, no numerical scoring values are assigned to any of the foregoing
13 criteria enumerated in the Application.
- 14 43. Moreover, Section 6.3 of the Application further provides that "[a]pplications that
15 have not demonstrated a sufficient response related to the criteria set forth above will not have
16 ***additional [unspecified, unpublished] criteria*** considered in determining whether to issue a
17 license ***and will not move forward in the application process***" (emphasis added).
- 18 44. Thus, by necessary implication, conversely, Section 6.3 of the Application
19 textually subjects an Application which *has* in fact demonstrated a "sufficient" response related
20 to the specific, published criteria set forth above to "***additional [unspecified, unpublished]***
21 ***criteria***," consideration of which by the Department will determine whether or not a license is
22 issued and whether or not a license Application will "***move forward in the application process***,
23 notwithstanding the textual requirement of NRS 453 D. 200.1(b) that the Department shall adopt
24 only regulations that prescribe "[q]ualifications for licensure that are directly and ***demonstrably***
25 related to the operation of a marijuana establishment" (emphasis added).
- 26 45. No later than December 5, 2018, the Department was responsible for issuing
27 conditional licenses to those applicants who score and rank high enough in each jurisdiction to
28 be awarded one of the allocated licenses in accordance with the impartial numerically scored

1 competitive bidding process mandated by NRS 453D.210.

2 46. The Department allocated ten (10) licenses for unincorporated Clark County,
3 Nevada; ten (10) licenses for Las Vegas, Nevada; six (6) licenses for Henderson, Nevada; five (5)
4 licenses for North Las Vegas, Nevada; six (6) licenses for Reno, Nevada; one (1) license for Sparks,
5 Nevada; and one (1) license for Nye County, Nevada.

6 47. Plaintiffs, each of whom were already operating licensed recreational retail
7 marijuana stores and possessed a share of the retail recreational marijuana market in their
8 jurisdictions at the time, submitted Applications for licenses to own and operate additional
9 recreational marijuana retail stores and thereby to retain their market share in a highly
10 competitive industry, in compliance with the specified, published requirements of Department
11 regulations together with the required application fee in accordance with NRS 453D.210.

12 48. Plaintiffs have been informed by the Department that all of their Applications to
13 operate recreational marijuana retail stores were denied.

14 49. In each instance, Plaintiffs were informed by letter from the Department stating
15 that a license was not granted to the applicant “because it did not achieve a score high enough to
16 receive an available license.”

17 50. On information and belief, Plaintiffs allege that the Department’s denial of their
18 license applications was not properly based upon actual implementation of the impartial and
19 numerically scored competitive bidding process mandated by NRS 453D.210, but rather, was in
20 fact based upon the arbitrary and capricious exercise of administrative partiality and favoritism.

21 51. On information and belief, Plaintiffs allege conversely that that the Department
22 improperly granted licenses to other competing applicants, likewise without actual
23 implementation of the impartial and numerically scored competitive bidding process mandated
24 by NRS 453D.210, but rather, based upon the arbitrary and capricious exercise of administrative
25 partiality and favoritism.

26 52. On information and belief, Plaintiffs allege that the Department of Taxation has
27 unlawfully, and in a manner resulting in a deprivation of the legal protections to which the
28 Plaintiffs are entitled:

1 A. granted more than one conditional recreational marijuana store license per
2 jurisdiction to certain favored applicants, owners, or ownership groups in violation of the
3 administration of an impartial and numerically scored competitive bidding process;

4 B. granted conditional licenses to applicants who benefitted from information not made
5 available to all applicants, but rather conveyed to these favored applicants or their attorneys or
6 agents, by Department of Taxation personnel themselves in a manner designed to give these
7 favored applicants an advantage in the scoring process over other applicants in obtaining a
8 license or licenses to purportedly be awarded pursuant thereto, and thereby destroying the
9 mandated impartiality of the competitive bidding process;

10 C. granted conditional licenses to applicants who were known by the Department of
11 Taxation to have violated the criminal laws of the State of Nevada by having sold marijuana to
12 minors and nonetheless, at the behest of these applicants, their attorneys and/or agents made the
13 supervisory Department of Taxation personnel in charge of the licensing process, and at said
14 supervisory personnel's direction, had that information deliberately suppressed from law
15 enforcement, removed from the administrative files and eliminated from the collection of
16 information made available to and forming the base of knowledge of those scoring the
17 Applications, an express component of which was to evaluate the prior compliance record of
18 applicants who were already operating licensed retail recreational marijuana establishments;

19 D. granted conditional licenses to applicants who, after receiving information not
20 available to all applicants, failed to disclose the true addresses of the locations at which they
21 proposed to open a retail recreational marijuana store, the Department of Taxation thereby totally
22 abdicating the requirement that the Application be impartially numerically scored with regard to
23 the impact that it was likely to have on the community in which it would operate;

24 E. granted conditional licenses to applicants who failed to disclose each of their owners,
25 the Department of Taxation thereby totally abdicating the requirement of a background check
26 into their historical behavior and associations and ignoring the mandate that retail sales of
27 marijuana be removed from the criminal element in society;

28 F. granted conditional licenses to applicants who impermissibly amended Applications

1 after they were purportedly “complete and in compliance” when submitted;

2 G. granted conditional licenses to applicants without investigating discrepancies between
3 the owners, officers and directors listed on the application where they were different from those
4 officially listed with the Nevada Secretary of State;

5 H. granting conditional licenses to applicants who benefitted from the Department of
6 Taxation implementing in a manner that was partial and subject to manipulation, the awarding of
7 points for diversity, resulting in the abdicating its mission to conduct an impartial numerically
8 scored competitive bidding process;

9 I. failed to train the temporary employees hired to performing the impartial numerically
10 scored competitive bid process and/or put in place, adequately supervise and/or maintain quality
11 assurance and/or quality control over the process which, in turn, rendered the grading process
12 inconsistent and unfair to Plaintiffs;

13 J. granted conditional licenses to applicants in direct contravention of the legislative and
14 regulatory mandate to operate the impartial numerically scored competitive bidding process in a
15 manner that will prevent monopolistic practices in a county with a population of 100,000 or
16 more;

17 K. granted conditional licenses to applicants in other unlawful manners to be further
18 developed at trial.

19 **III.**

20 **CLAIMS FOR RELIEF**

21 **FIRST CLAIM FOR RELIEF**

22 **(Violation of Civil Rights)**

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

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

25 53. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

26 54. Pursuant to the enactment of NRS 598A.030 it has become the stated policy of the
27 laws of Nevada to
28

1 (a) Prohibit acts in restraint of trade or commerce, except where properly regulated as
2 provided by law, and

3 (b) Preserve and protect the free, open and competitive nature of our market system, and

4 (c) Penalize all persons engaged in such anticompetitive practices to the full extent
5 allowed by law

6 55. Such prohibited acts in restraint of trade or commerce include, among others,

7 A. monopolization of trade or commerce in this State, including, without
8 limitation, attempting to monopolize or otherwise combining or conspiring to monopolize trade
9 or commerce in this State, and,

10 B. consolidation, conversion, merger, acquisition of shares of stock or other
11 equity interest, directly or indirectly, of another person engaged in commerce in this State or the
12 acquisition of any assets of another person engaged in commerce in this State that may:

13 (1) Result in the monopolization of trade or commerce in this State or would
14 further any attempt to monopolize trade or commerce in this State; or

15 (2) Substantially lessen competition or be in restraint of trade.

16 56. Pursuant to NRS 598A.040, the above protection of a free, open and competitive
17 market system do not apply where contravened by conduct which is expressly authorized,
18 regulated or approved by

19 (a) statute of this State or of the United States;

20 (b) An ordinance of any city or county of this State, except for ordinances relating to
21 video service providers; or

22 (c) An administrative agency of this State or of the United States or of a city or county of
23 this State, having jurisdiction of the subject matter.

24 57. NRS 598A.210, in providing a cause of action for injunctive relief and/or
25 damages, represents a recognition under Nevada law and policy that a business's sales and the
26 resulting value of its market share are a property interest entitled to protection by the courts.

27 58. Such a statutorily recognized "property interest" is within the meaning and
28 subject to the due process protections of the Fourteenth Amendment to the Constitution of the

1 United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada; and
2 therefore, by definition, may not be denied arbitrarily, capriciously, corruptly or based upon
3 administrative partiality or favoritism, as when present as in the instances complained of herein,
4 none of those trigger the exemption set out in NRS 598A.040.

5 59. Here, while acting under color of state law, the Department has effectively
6 nullified and rendered illusory the legislative statutory entitlement which all applicants have to
7 an impartial numerically scored competitive bidding system for licensure of applicants who
8 comply with and prevail competitively in accordance with the objective and impartial standards
9 and procedures prescribed by the provisions of NRS 453D.200.2 and NRS 453D.210.4-6.

10 60. Plaintiffs further allege that pursuant to the implementation of the foregoing
11 constitutionally-repugnant licensing process, the denial of their Applications for licensure, when
12 coupled with the issuing of conditional licenses to their competitors pursuant to a constitutionally
13 invalid and corrupt process infected by actual arbitrary, capricious or corrupt decision-making
14 based upon administrative partiality or favoritism, has and will continue cause a diminution of
15 Plaintiffs sales and market share values as a direct result of the conduct of the Department of
16 Taxation issuing the conditional licenses and the business operations conducted pursuant thereto
17 by the beneficiaries of that unconstitutional licensing process.

18 61. Plaintiffs have therefore been and will continue to be deprived of property without
19 due process under color of state law in violation of the Fourteenth Amendment to the
20 Constitution of the United States and Article 1, Sections 1 and 8 of the Constitution of the State
21 of Nevada.

22 62. Plaintiffs are entitled to declaratory relief with respect to the forgoing federal
23 constitutional infirmities of the administrative licensing scheme pursuant to the provisions of
24 Title 42, United States Code ("U.S.C."), Section 1983 and otherwise.

25 63. Plaintiffs are entitled to declaratory relief because a justiciable controversy exists
26 that warrants a declaratory judgment pursuant to Nevada's Uniform Declaratory Judgments Act,
27 codified at NRS 30.010 to 30.160, inclusive.

28 64. Plaintiffs and Defendant have adverse and/or competing interests in that the
14 of 23

1 Department, through its Marijuana Enforcement Division, has denied Plaintiffs' Applications in
2 in violation of Plaintiff's constitutional rights, Nevada law, and state policy.

3 65. The Department's refusal to issue licenses to Plaintiffs affects Plaintiffs' rights
4 under NRS 453D, NAC 453D, R092-17, and other Nevada laws and regulations.

5 66. Further, the Department's improper ranking of other applicants for licensure and
6 subsequent, improper issuance of licenses to such other applicants adversely affects the rights of
7 Plaintiff under NRS 453D, NAC 453D, R09217, and other Nevada laws and regulations.

8 67. The Department's actions and/or inactions also have created an actual justiciable
9 controversy ripe for judicial determination between Plaintiffs and the Department with respect to
10 the construction, interpretation, and implementation of NRS 453D, NAC 453D, and R092-17,
11 and Plaintiffs have been harmed, and will continue to be harmed, by the Defendants' actions
12 and/or inactions.

13 68. The Department's actions and/or inactions have further failed to appropriately
14 address the necessary considerations and legislative intent of NRS 453D.210, designed to restrict
15 monopolies.

16 69. Accordingly, Plaintiff seeks a declaration from this Court that, *inter alia*:

- 17 a. The procedures employed in evaluating license Applications and granting
18 conditional licenses violated Plaintiffs' procedural and substantive due
19 process rights and entitlement to equal protection of the law (as set forth *infra*)
20 under the Nevada and United States Constitutions and, therefore, those
21 conditional licenses awarded are void and unenforceable;
- 22 b. Defendant acted arbitrarily and capriciously or in contravention of a legal duty
23 and Plaintiffs are therefore entitled to a writ of mandamus;
- 24 c. Plaintiffs are entitled to judicial review; and

25 70. Plaintiffs also seek a declaration from this Court that the Department must issue
26 licenses to Plaintiffs for the operation of a recreational marijuana establishment as applied for in
27 that Plaintiffs' would have been entitled to receive said licenses had the Department properly
28 applied the provisions of NRS 453D, NAC Chapter 453D, and R092-17.

1 71. Plaintiffs contend that a declaratory judgment is both necessary and proper at
2 this time for the Court to determine the respective rights, duties, responsibilities and liabilities
3 of Plaintiffs under NRS 453D, NAC Chapter 453D, R092-17, and other Nevada laws and
4 regulations.

5 72. Plaintiffs are also entitled to injunctive relief from the foregoing federal
6 constitutional violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

7 73. The Department's flawed interpretation of the provisions of NRS 453D, NAC
8 Chapter 453D, and R092-17, and refusal to issue "conditional" licenses in accordance with the
9 law constitute and cause continuing and irreparable harm to Plaintiffs, who have no adequate
10 remedy at law.

11 74. The purpose of this administrative refusal was and is to unreasonably interfere
12 with Plaintiffs' business and cause Plaintiffs to suffer irreparable harm.

13 75. The Department will suffer no harm by following the law with respect to issuing
14 the licenses in question.

15 76. The Department's interpretation of NRS 453D, NAC Chapter 453D, and R092-17
16 is flawed and Plaintiffs are likely to succeed on the merits in this litigation.

17 77. Therefore, Plaintiffs are entitled to preliminary injunctive relief, and after a trial
18 on the merits, permanent injunctive relief, ordering the Department to issue the subject licenses
19 to Plaintiffs in accordance with NRS 453D, NAC 453D, and R092-17.

20 78. Plaintiffs are also entitled to damages attributable to the above-identified due
21 process violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

22 79. As the actions of the Department have necessitated that Plaintiffs retain the legal
23 services of Clark Hill PLLC, and incur fees and costs to bring this action, Plaintiffs are also
24 entitled to an award of attorneys' fees and costs of suit.

25 ...

26 ...

27 ...

28 ...

SECOND CLAIM FOR RELIEF
(Violation of Civil Rights)

(Due Process: Deprivation of Liberty)

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

80. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

81. The fundamental constitutional right to pursue a lawful occupation constitutes a “liberty interest” within the meaning and subject to the due process protections of the Fourteenth Amendment to the Constitution of the United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada; and therefore, by definition, may not be denied arbitrarily, capriciously, corruptly or based upon administrative partiality or favoritism.

82. However, acting under color of state law, the Department has effectively nullified and rendered illusory the legislative statutory entitlement to licensure of applicants who comply with and prevail competitively in accordance with the objective and impartial standards and procedures prescribed by the provisions of NRS 453D.200.2 and NRS 453D.210.4-6, by textually subjecting an Application which in fact provides “sufficient” responses related to the published, enumerated and specific criteria set forth in the Application to approval pursuant to further, unpublished, unspecified and unascertainable “additional criteria” which are not set forth therein, as a silent supplemental condition of licensure, in violation of NRS 200.D.1(b) thereby rendering the administrative regulation governing the Application and licensing process susceptible to *ad hoc*, non-transparent, arbitrary, capricious or corrupt decision-making based upon administrative partiality or favoritism which cannot be discounted; thereby rendering that regulatory scheme unconstitutional on its face.

83. On information and belief, Plaintiffs further allege that the pursuant to the implementation of the foregoing constitutionally-repugnant licensing process, the denial of their Applications for licensure, were in fact affected by actual arbitrary, capricious or corrupt decision-making based upon administrative partiality or favoritism; and therefore, that that licensing process has thereby been rendered unconstitutional in its application as well.

84. Plaintiffs have therefore likewise been deprived of liberty without due process

1 under color of state law in violation of the Fourteenth Amendment to the Constitution of the
2 United States and Article 1, Sections 1 and 8 of the Constitution of the State of Nevada.

3 85. The Constitutional infirmity of the entire licensing process renders the denial of
4 Plaintiffs' Applications for licensure void and unenforceable, and Plaintiffs are entitled to a
5 declaration as to the ineffectiveness thereof and an order enjoining the enforcement of those
6 license denials as well as those conditionally granted.

7 86. Plaintiffs are also entitled to damages for these due process violations pursuant
8 to the provisions of 42 U.S.C. Section 1983 and otherwise.

9 87. As the actions of the Department have necessitated that Plaintiffs retain the legal
10 services of Clark Hill PLLC, and incur fees and costs to bring this action, Plaintiffs are also
11 entitled to an award of attorneys' fees and costs of suit.

12 **THIRD CLAIM FOR RELIEF**

13 **(Violation of Civil Rights)**

14 **(Equal Protection)**

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

16 88. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

17 89. By improperly denying Plaintiffs' Applications for licensure under the provisions
18 of NRS 453D.200.2 and NRS 453D.210.4-6 while improperly granting the Applications of other
19 applicants under color of state law as set forth *supra*, the Department has, without justification,
20 disparately treated Plaintiffs' Applications absent rational basis, and has thereby violated
21 Plaintiffs' rights to equal protection of the law as guaranteed by the Fourteenth Amendment to
22 the Constitution of the United States and Article 1, Section 1 of the Constitution of the State of
23 Nevada.

24 90. The constitutional infirmity of the entire licensing process and the resulting denial
25 of equal protection renders the denial of Plaintiffs' Applications for licensure void and
26 unenforceable, and, for the reasons set forth, *supra*, Plaintiffs are entitled to a declaration as to
27 the ineffectiveness thereof and an order enjoining the enforcement of those license denials as
28 well as those conditionally granted.

91. Plaintiffs are also entitled to damages for these equal protection violations pursuant to the provisions of 42 U.S.C. Section 1983 and otherwise.

92. As the actions of the Department have necessitated that Plaintiffs retain the legal services of Clark Hill PLLC, and incur fees and costs to bring this action, Plaintiffs are also entitled to an award of attorneys' fees and costs of suit.

FOURTH CLAIM FOR RELIEF

(Petition for Judicial Review)

93. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

94. The Department, in misinterpreting and incorrectly applying the provisions of NRS 453D, NAC 453D and the related Nevada laws and regulations, has exceeded its jurisdiction by improperly issuing licenses to applicants that do not merit licenses under the provisions of NRS 453D, NAC 453D, and R092-17.

95. Plaintiffs are aggrieved by the decision of the Department to deny Plaintiffs' Applications without proper notice, substantial evidence, or compliance with NRS 453D, NAC 453D, R092-17, and other Nevada state laws or regulations.

96. There is no provision in NRS 453D, NAC 453D, or R092-17 allowing for an administrative appeal of the Department's decision, and apart from injunctive relief, no plain, speedy, and adequate remedy for the Department's improper actions.

97. Accordingly, Plaintiffs petition this Court for judicial review of the record on which the Department's denials were based, and an order providing *inter alia*:

- a. A determination that the decision lacked substantial evidence;
- b. A determination that the denials are void *ab initio* for non-compliance with NRS 453D, NAC 453D, R092-17, and other Nevada laws or regulations; and
- c. Such other relief as is consistent with those determinations.

98. As the actions of the Department have necessitated that Plaintiffs retain the legal services of Clark Hill PLLC, and incur fees and costs to bring this action, Plaintiffs are also

1 entitled to an award of attorneys' fees and costs of suit.

2 **FIFTH CLAIM FOR RELIEF**

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

4 99. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

5 100. When a governmental body fails to perform an act "that the law requires" or acts
6 in an arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. Nev.
7 Rev. Stat. § 34.160.

8 101. The Department has failed to perform various acts that the law requires including
9 but not limited to:

10 a. Providing proper pre-hearing notice of the denial; and

11 b. Arbitrarily and capriciously denying the applications for no legitimate reason.

12 102. The Department acted arbitrarily and capriciously in the denial by performing
13 and/or failing to perform the acts set forth *supra*, and because, *inter alia*:

14 a. The Board lacked substantial evidence to deny Plaintiffs' Applications; and

15 b. The Board denied Plaintiffs' Applications in order to approve the Applications
16 of other competing applicants without regard to the merit of Plaintiffs'
17 Applications and the lack of merit of the Applications of other competing
18 applicants.

19 103. These violations of the Department's legal duties were arbitrary and capricious
20 actions that compel this Court to issue a Writ of Mandamus directing the Department to review
21 Plaintiffs' Applications on their merits and/or approve them.

22 104. As a result of the Department's unlawful and arbitrary and capricious actions,
23 Plaintiffs have been forced to retain legal counsel to prosecute this action and is therefore also
24 entitled to their damages, costs in this suit, and an award of attorneys' fees pursuant to NRS
25 34.270.

26 **FIFTH CLAIM FOR RELIEF**

27 **(Declaratory Relief)**

28 105. Plaintiffs repeat and re-allege all prior paragraphs as though fully set forth herein.

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

107. Defendant Applicants received conditional recreational retail marijuana establishment licenses issued by the Department.

108. Plaintiffs contend that they are entitled to the same conditional licenses, which contention would/could deprive Defendant Applicants of their conditional licenses.

109. Plaintiffs request a declaratory judgment to determine their rights, status, or other legal relations under the applicable statutes and regulations with respect to this dispute brought by Plaintiffs. A declaratory judgment will eliminate any dispute over the conditional recreational marijuana establishment licenses issued by the Department.

110. Plaintiffs have been forced to retain legal counsel to prosecute this action and is therefore also entitled to their damages, costs in this suit, and an award of attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for relief as follows:

1. For declaratory relief as set forth above;
2. For a preliminary and permanent injunction enjoining the enforcement of the denial of their Applications for licensure;
3. For judicial review of the record and history on which the denial of those Applications was based;
4. For the issuance of a writ of mandamus;
5. For compensatory and special damages as set forth herein;
6. For attorneys' fees and costs of suit; and
7. For all other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Trial by jury is hereby demanded on all claims and issues so triable.

DATED this 26th day of November, 2019.

CLARK HILL PLC

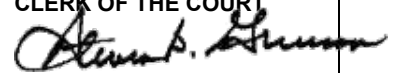
/s/ Dominic P. Gentile
DOMINIC P. GENTILE
Nevada Bar No. 1923
Email: dgentile@clarkhill.com
ROSS MILLER
Nevada Bar No. 8190
Email: rmiller@clarkhill.com
JOHN A. HUNT
Nevada Bar No. 1888
Email: dhunt@clarkhill.com
VINCENT SAVARESE III
Nevada Bar No. 2467
Email: vsavarese@clarkhill.com
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Tel: (702) 862-8300
Fax: (702) 862-8400
Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
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CERTIFICATE OF SERVICE

The undersigned, an employee of Clark Hill PLLC, hereby certifies that on the 26th day of November, 2019, I caused a copy of the foregoing **SECOND AMENDED COMPLAINT** by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system.

/s/ Tanya Bain
An Employee of Clark Hill



David R. Koch (NV Bar #8830)
Brody R. Wight (NV Bar #13615)
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, Nevada 89052
Telephone: 702.318.5040
Facsimile: 702.318.5039
dkoch@kochscow.com
sscow@kochscow.com

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

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

IN RE D.O.T. LITIGATION

CASE NO.: A-19-787004-B (Lead Case)

A-18-785818-W (Sub Case)
A-18-786357-W (Sub Case)
A-19-786962-B (Sub Case)
A-19-787035-C (Sub Case)
A-19-787540-W (Sub Case)
A-19-787726-C (Sub Case)
A-19-801416-B (Sub Case)

DEPT. 11

**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**

HEARING DATE: DEC. 9, 2019

Defendant-Intervenor and Counterclaimant Nevada Organic Remedies, LLC
("NOR") hereby replies in support of its amended application for the issuance of a writ
of mandamus pursuant to NRS 34.160 to compel the State of Nevada, Department of

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

3 **A. A Writ of Mandamus Is Necessary as the Department Has Unjustifiably “Flip-**
4 **Flopped” Regarding the Disclosure of NOR’s Ownership**

5 In its opposition to NOR’s amended application for writ of mandamus, the
6 Department argues that mandamus is not proper because the Department has never
7 “flip-flopped” on its position regarding NOR’s ownership disclosures—but that is
8 exactly what the Department has done by placing NOR in Tier 3, and that is exactly why
9 a writ of mandamus is proper here. In 2018, NOR expressly asked the Department how
10 it should disclose and list its proposed ownership. The Department told NOR how to
11 disclose its ownership and, NOR disclosed its ownership in line with the Department’s
12 instructions. The Department approved the ownership in its letter approving NOR’s
13 transfer of ownership, and this same list of ownership was carried over to the
14 applications NOR submitted.

15 But when this Court asked the Department for a list of all applicants that
16 complied with NRS 453D.200(6), the Department turned around and unjustifiably stated
17 that it now had unspecified “questions” regarding NOR’s ownership. This change in
18 position could not be called anything other than a “flip-flop” and is an arbitrary and
19 capricious action that has harmed NOR in the extreme. The principles of law and equity
20 laid out in NOR’s amended application justify a writ of mandamus to prevent the
21 Department from changing its position without justification.

22 In its Opposition, the Department contends that it had justification to change its
23 position due to this Court’s ruling regarding the 5% rule found in NAC 453D.255(1). This
24 argument misses the key point of NOR’s amended application, which is that **the 5% rule**
25 **never played any role in the Department’s original approval of NOR’s ownership—**
26 **because all owners, even less-than-5% owners were listed.** This Court’s ruling on the
27 5% rule should not have affected the Department’s position regarding NOR’s ownership
28 disclosure in any way. NOR cannot stress this point enough, as it seems to have been

1 lost in the confusion surrounding other aspects of the licensing litigation.

2 NOR clearly listed 100% of its ownership in its applications by listing every last
3 one of NOR's members. The shareholders of one of the parent companies of one of its
4 owners were not listed, as they were not required to be, and this never had anything to
5 do with the 5% rule. Shareholders of a parent company were not listed, because neither
6 NOR nor the Department considered those shareholders to be "owners" of NOR in the
7 first place. Those shareholders were not members of NOR and had no direct interest in
8 NOR, so the Department did not believe those shareholders should be listed.

9 This Court's preliminary injunction order did not comment on the Department's
10 definition of "owner," nor has this Court ever defined "owner" for purposes of listing
11 ownership in the applications. Nor has the Court challenged or struck down any
12 definition of "owner" that the Department applied in accepting applications. As such,
13 the Department had no justifiable reason to suddenly change its position regarding the
14 definition of owner and NOR's disclosure, and the change in the email to this Court
15 placing NOR in Tier 3 was, therefore, arbitrary and capricious.

16 **B. NOR Has No Other Adequate Remedy at Law**

17 NOR has appealed this Court's preliminary injunction order, but that appeal
18 addresses whether this Court correctly found that the Plaintiffs in these cases are likely
19 to succeed on the merits of their claims and whether they would have suffered
20 irreparable harm without the injunction. The Department's subsequent decision
21 regarding Tiers is not part of this Court's direct order and is not the subject of the appeal.
22 The central question presented to this Court in NOR's amended application—whether
23 the Department improperly changed position regarding NOR's ownership disclosure—
24 has not been before this Court until NOR filed its amended application. There is no way
25 to remedy the Department's capricious change in policy except through a writ of
26 mandamus. Therefore, the writ is properly before the Court.

1 **C. Conclusion**

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

6
7 DATED: December 6, 2019

KOCH & SCOW, LLC

8 By: /s/ David R. Koch
9 David R. Koch, Esq.
10 Attorneys for Defendant-Intervenor,
11 Counterclaimant
12 Nevada Organic Remedies, LLC
13
14
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16
17
18
19
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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 December 6, 2019, I caused the foregoing document entitled: **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** 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:

ETW Management Group LLC:

Adam Fulton (afulton@jfnvlaw.com)
Jared Jennings (jjennings@jfnvlaw.com)
Vicki Bierstedt (vickib@jfnvlaw.com)
Norma Richter (nrichter@jfnvlaw.com)
Adam Bult (abult@bhfs.com)
Travis Chance (tchance@bhfs.com)
Maximillen Fetaz (mfetaz@bhfs.com)
Logan Willson (Logan@jfnvlaw.com)
Emily Dyer (edyer@bhfs.com)
William Nobriga (wnobriga@bhfs.com)

Nevada Dept of Taxation:

Traci Plotnick (tplotnick@ag.nv.gov)
Theresa Haar (thaar@ag.nv.gov)
Steven Shevorski (sshevorski@ag.nv.gov)
Robert Werbicky (rwerbicky@ag.nv.gov)
Mary Pizzariello (mpizzariello@ag.nv.gov)
Ketan Bhirud (kbhirud@ag.nv.gov)
David Pope (dpope@ag.nv.gov)
Barbara Fell (bfell@ag.nv.gov)
Victoria Campbell (vcampbell@ag.nv.gov)

Nevada Organic Remedies LLC:

David Koch (dkoch@kochscow.com)
Steven Scow (sscow@kochscow.com)

Integral Associates LLC:

Todd Bice (tlb@pisanellibice.com)
Debra Spinelli (dls@pisanellibice.com)
Dustun Holmes (dhh@pisanellibice.com)
MGA Docketing (docket@mgalaw.com)
Philip Hymanson (Phil@HymansonLawNV.com)
Henry Hymanson (Hank@HymansonLawNV.com)
James Pisanelli (lit@pisanellibice.com)
Jordan Smith (jts@pisanellibice.com)
Shannon Dinkel (sd@pisanellibice.com)
Calendaring Hymanson (Assistant@HymansonLawNV.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)
Karen Morrow (karen@h1lawgroup.com)

GreenMart of Nevada NLV LLC:

Alina Shell (alina@nvlitigation.com)
Margaret McLetchie (maggie@nvlitigation.com)

Clear River, LLC:

Marsha Stallsworth (mstallsworth@blacklobello.law)

D H Flamingo Inc:

Joshua Dickey (jdickey@baileykennedy.com)
Sarah Harmon (sharmon@baileykennedy.com)
Kelly Stout (kstout@baileykennedy.com)
Dennis Kennedy (dkennedy@baileykennedy.com)
Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)
Stephanie Glantz (sglantz@baileykennedy.com)

Euphoria Wellness LLC:

Justin Jones (jjones@joneslovelock.com)
Nicole Lovelock (nlovelock@joneslovelock.com)
Alison Anderson (aanderson@joneslovelock.com)
Lorie Januskevicius (ljanuskevicius@joneslovelock.com)

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

Peter Christiansen (pete@christiansenlaw.com)
Whitney Barrett (wbarrett@christiansenlaw.com)
R. Todd Terry (tterry@christiansenlaw.com)
Eloisa Nunez (enunez@pnalaw.net)
David Koch (dkoch@kochscow.com)
Steven Scow (sscow@kochscow.com)
Brody Wight (bwight@kochscow.com)
Jonathan Crain (jcrain@christiansenlaw.com)

Mariella Dumbrique (mdumbrique@blacklobello.law)
Brigid Higgins (bhiggins@blacklobello.law)
Patricia Stoppard (p.stoppard@kempjones.com)
Ali Augustine (a.augustine@kempjones.com)
Nathanael Rulis (n.rulis@kempjones.com)
Andrea Eshenbaugh - Legal Assistant (aeshenbaugh@kochscow.com)
Theodore Parker III (tparker@pnalaw.net)
Alicia Ashcraft (ashcrafta@ashcraftbarr.com)
Daniel Scow (dscow@kochscow.com)
Michelle Harrell (harrellm@ashcraftbarr.com)
Diane Meeter (dmeeter@blacklobello.law)
J. Graf (Rgraf@blacklobello.law)
Daniel Simon (lawyers@simonlawlv.com)
Alisa Hayslett (a.hayslett@kempjones.com)
Cami Perkins, Esq. (cperkins@nevadafirm.com)
Joyce Martin (jmartin@blacklobello.law)
Joseph Gutierrez (jag@mgalaw.com)
Tanya Bain (tbain@gcmaslaw.com)
ShaLinda Creer (screer@gcmaslaw.com)
Dominic Gentile (dgentile@gcmaslaw.com)
Vincent Savarese (vsavarese@gcmaslaw.com)
Michael Cristalli (mcristalli@gcmaslaw.com)
Ross Miller (rmiller@gcmaslaw.com)
Jared Kahn (jkahn@jk-legalconsulting.com)
Rusty Graf (rgraf@blacklobello.law)
Thomas Gilchrist (tgilchrist@bhfs.com)
Lisa Lee (llee@thedplg.com)
Eservice Filing (eservice@thedplg.com)
Anna Karabachev (a.karabachev@kempjones.com)
Krystal Saab (KSaab@nvorganicremedies.com)

DH FLAMINGO – A-19-787035-C SERVICE LIST

D H Flamingo Inc:

Joshua Dickey (jdickey@baileykennedy.com)
Sarah Harmon (sharmon@baileykennedy.com)
Kelly Stout (kstout@baileykennedy.com)
Dennis Kennedy (dkennedy@baileykennedy.com)
Bailey Kennedy, LLP (bkfederaldownloads@baileykennedy.com)
Stephanie Glantz (sglantz@baileykennedy.com)

Helping Hands Wellness Center Inc:

Jared Kahn (jkahn@jk-legalconsulting.com)7777

Greenmart of Nevada NLV LLC:

Alina Shell (alina@nvlitigation.com)
Margaret McLetchie (maggie@nvlitigation.com)

Clear River LLC:

Tisha Black (tblack@blacklobello.law)
Brigid Higgins (bhiggins@blacklobello.law)

1 Diane Meeter (dmeeter@blacklobello.law)
J. Graf (Rgraf@blacklobello.law)
2 Joyce Martin (jmartin@blacklobello.law)
Mark Lounsbury (mlounsbury@blacklobello.law)

3 **Circle S Farms LLC:**

4 Amy Reams (areams@naylorandbrasterlaw.com)
John Naylor (jnaylor@naylorandbrasterlaw.com)
5 Jennifer Braster (jbraster@naylorandbrasterlaw.com)
Andrew Sharples (asharples@naylorandbrasterlaw.com)

6 **Pure Tonic Concentrates LLC:**

7 Heather Motta (hmotta@mcllawfirm.com)
8 Rick Hsu (rhsu@mcllawfirm.com)

9 **Agua Street LLC:**

10 Jarrod Rickard (jlr@skrlawyers.com)
Christopher Kircher (cdk@skrlawyers.com)
Olivia Kelly (oak@skrlawyers.com)
11 Lawrence Semenza, III (ljs@skrlawyers.com)
Teresa Beiter (tnb@skrlawyers.com)
12 Angie Barreras (alb@skrlawyers.com)
Katie Cannata (klc@skrlawyers.com)

13 **Bioneva Innovations of Carson City LLC:**

14 Amber Handy (amber@handelinlaw.com)
15 Steven Handelin (steve@handelinlaw.com)
Kristalei Wolfe (kristalei@handelinlaw.com)

16 **Blue Coyote Ranch LLC:**

17 Charles Vlastic (cvlastic@cv3legal.com)

18 **Compassionate Team of Las Vegas LLC:**

19 Daniel Simon (lawyers@simonlawlv.com)

20 **DP Holdings Inc:**

21 Daniel Simon (lawyers@simonlawlv.com)

22 **Euphoria Wellness LLC:**

23 Justin Jones (jjones@joneslovelock.com)
Nicole Lovelock (nlovelock@joneslovelock.com)
24 Alison Anderson (aanderson@joneslovelock.com)
Lorie Januskevicius (ljanuskevicius@joneslovelock.com)

25 **Franklin Bioscience NV LLC:**

26 Jeffrey Barr (barrj@ashcraftbarr.com)

27 **Good Chemistry Nevada LLC:**

28 Kenneth Ching (ken@argentumnv.com)
Mia Hurtado (mia@argentumnv.com)

Green Life Productions LLC:

1 Cary Domina (cdomina@peelbrimley.com)
Rosey Jeffrey (rjeffrey@peelbrimley.com)
2 Terri Hansen (thansen@peelbrimley.com)
Amanda Armstrong (aarmstrong@peelbrimley.com)
3 Jeremy Holmes (jholmes@peelbrimley.com)

4 **Greenleaf Wellness Inc:**

Diana Wheelen (dwheelen@fclaw.com)

5 **Kindibles LLC:**

6 Charles Vlastic (cvlastic@cv3legal.com)

7 **LVMC C and P LLC:**

8 William Urga (wru@juwlaw.com)

9 Linda Schone (ls@juwlaw.com)

10 **Natural Medicine LLC:**

Jeffery Bendavid (jbendavid@bendavidfirm.com)

11 Stephanie Smith (ssmith@bendavidfirm.com)

12 Leilani Gamboa (lgamboa@bendavidfirm.com)

13 **Nevada Wellness Center LLC:**

Eloisa Nunez (enunez@pnalaw.net)

14 Theodore Parker III (tparker@pnalaw.net)

15 **Qualcan LLC:**

Peter Christiansen (pete@christiansenlaw.com)

16 Whitney Barrett (wbarrett@christiansenlaw.com)

R. Todd Terry (tterry@christiansenlaw.com)

17 Jonathan Crain (jcrain@christiansenlaw.com)

18 **RG Highland Enterprises Inc:**

19 Amy Sugden (amy@sugdenlaw.com)

20 **Rural Remedies LLC:**

21 Gail May (Gail@ramoslaw.com)

22 **Strive Wellness of Nevada LLC:**

Jeffery Bendavid (jbendavid@bendavidfirm.com)

23 Stephanie Smith (ssmith@bendavidfirm.com)

Leilani Gamboa (lgamboa@bendavidfirm.com)

24 **Twelve Twelve LLC:**

25 Chase Whitemore (chase@argentumnv.com)

26 Mia Hurtado (mia@argentumnv.com)

27 **WSCC Inc:**

Heather Motta (hmotta@mcllawfirm.com)

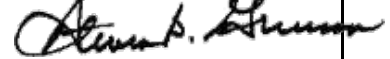
28 Rick Hsu (rhsu@mcllawfirm.com)

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

David Koch (dkoch@kochscow.com)
Steven Scow (sscow@kochscow.com)
Brody Wight (bwight@kochscow.com)
Todd Bice (tlb@pisanellibice.com)
Debra Spinelli (dls@pisanellibice.com)
Dustun Holmes (dhh@pisanellibice.com)
MGA Docketing (docket@mgalaw.com)
Ali Augustine (a.augustine@kempjones.com)
Nathanael Rulis (n.rulis@kempjones.com)
Andrea Eshenbaugh - Legal Assistant (aeshenbaugh@kochscow.com)
Adam Bult (abult@bhfs.com)
Travis Chance (tchance@bhfs.com)
Maximillen Fetaz (mfetaz@bhfs.com)
Daniel Scow (dscow@kochscow.com)
James Pisanelli (lit@pisanellibice.com)
Cami Perkins, Esq. (cperkins@nevadafirm.com)
Desiree Staggs (dstaggs@kcnvlaw.com)
Jordan Smith (jts@pisanellibice.com)
Thomas Gilchrist (tgilchrist@bhfs.com)
Shannon Dinkel (sd@pisanellibice.com)
Julia Diaz (jd@juwlaw.com)
L Rose (lcr@juwlaw.com)
Rebecca Post (rebecca@connorpllc.com)

Executed on December 6, 2019 at Henderson, Nevada.

/s/ Andrea Eshenbaugh
Andrea Eshenbaugh



1 **NOAS**
2 THEODORE PARKER, III, ESQ.
3 Nevada Bar No. 4716
4 MAHOGANY TURFLEY, ESQ.
5 Nevada Bar No. 13974
6 **PARKER, NELSON & ASSOCIATES, CHTD.**
7 2460 Professional Court, Suite 200
8 Las Vegas, Nevada 89128
9 Telephone: (702) 868-8000
10 Facsimile: (702) 868-8001
11 Email: tparker@pnalaw.net
12 mturfley@pnalaw.net
13 *Attorneys for Plaintiff,*
14 *Nevada Wellness Center, LLC*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 In Re: D.O.T. Litigation,

Case No.: A-19-787004-B

Consolidated with:

A-18-785818-W
A-18-786357-W
A-19-786962-B
A-19-787035-C
A-19-787540-W
A-19-787726-C
A-19-801416-B

Dept. No.: XI

18 **NOTICE OF APPEAL**

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 NOTICE IS HEREBY GIVEN Plaintiff, NEVADA WELLNESS CENTER, LLC
21 (hereinafter "Plaintiff"), by and through its attorney of record, THEODORE PARKER, III, ESQ.
22 of the law firm of PARKER, NELSON & ASSOCIATES, CHTD., and hereby appeal to the
23 Supreme Court of the State of Nevada from the "Findings of Fact and Conclusions of Law Granting
24 Preliminary Injunction" (the "FFCL") entered in the above consolidated titled actions on the 23rd
25 day of August, 2019, with notice of entry entered on the 28th day of August, 2019. This appeal
26 follows the notice of entry order regarding Nevada Wellness Center LLC's Motion to Amend
27 Findings of Fact and Conclusions of Law of August 23, 2019 filed on November 6, 2019 as well
28 MM DEVELOPMENT COMPANY, INC's ("MM") Motion to Amend Findings of Fact and

1 Conclusions of Law of August 23, 2019 filed on November 22, 2019.¹

2 This appeal follows the respective appeals of Nevada Organic Remedies, LLC, GreenMart
3 of Nevada NLV LLC, and Lone Mountain Partners, LLC's Notices of Appeal and Case Appeal
4 Statements filed on September 19, 2019. As well as ETW Management Group LLC, Global
5 Harmony LLC, Green Leaf Farms Holdings LLC, Green Therapeutics LLC, Herbal Choice Inc.,
6 Just Quality, LLC, Libra Wellness Center, LLC, Rombough Real Estate Inc. dba Mother Herb,
7 NEVCANN LLC, Red Earth LLC, THC Nevada LLC, Zion Gardens LLC, and MMOF Vegas
8 Retail, Inc. (collectively, "ETW Plaintiffs") cross appeal statement filed on October 3, 2019.²
9 Thereafter on October 26, 2019 Chief Judge Linda Bell consolidated A-19-786962-B,
10 A-18-785818-W, A-18-786357-W, A-19-787004-B, A-19-787035-C, A-19-787540-W,
11 A-19-787726-C, and A-19-801416-B.

12 DATED this 6th day of December, 2019.

13 **PARKER, NELSON & ASSOCIATES, CHTD**

14 /s/Mahogany Turfley, Esq.
15 THEODORE PARKER, III, ESQ.
16 Nevada Bar No. 4716
17 MAHOGANY TURFLEY, ESQ.
18 Nevada Bar No. 13974
19 2460 Professional Court, Suite 200
20 Las Vegas, Nevada 89128
21 Attorneys for Plaintiff,
22 Nevada Wellness Center, LLC
23

24 ¹ NWC files this notice of appeal within 30 days of Notice of Entry of Order of NWC entry of order
25 disposing of tolling motion of both NWC and MM. Prior to filing this Notice of Appeal NWC filed a notice of entry
26 order under the consolidated cases as well on December 5, 2019.

27 ² This Supreme Court filed an Order to Show Cause on November 21, 2019, as to why the appeals and
28 cross appeals should not be dismissed in docket numbers 79671, 79672, 79673, 79669, and 79670. The Supreme
Court noted NWC's tolling motion resulting in docket number 79673 being premature. NWC agrees. As such, NWC
files this Notice of Appeal.

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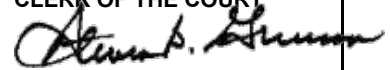
CERTIFICATE OF SERVICE

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 6th day of December, 2019, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** 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.

(All Parties on the Electronic Service List)

/s/Jeanne L. Calix
An employee of Parker, Nelson & Associates, Chtd.



1 **JOIN**
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 *Nevada Wellness Center, LLC*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 In Re: D.O.T. Litigation,

15 **Case No.:** A-19-787004-B

16 **Consolidated with:**

17 A-18-785818-W
18 A-18-786357-W
19 A-19-786962-B
20 A-19-787035-C
21 A-19-787540-W
22 A-19-787726-C
23 A-19-801416-B

24 **Dept. No.:** XI

25 **PLAINTIFF, NEVADA WELLNESS CENTER, LLC'S JOINDER TO MM**
26 **DEVELOPMENT COMPANY, INC.'S AND LIVEFREE WELLNESS, LLC'S**
27 **OPPOSITION TO NEVADA ORGANIC REMEDIES, LLC'S APPLICATION FOR**
28 **WRIT OF MANDAMAS**

COMES NOW, Plaintiff, NEVADA WELLNESS CENTER, LLC (hereinafter "Plaintiff" and/or "NWC"), by and through its attorney of record, THEODORE PARKER, III, ESQ. of the law firm of PARKER, NELSON & ASSOCIATES, CHTD., and files this Joinder pursuant to EDCR 2.20 to MM Development Company, Inc.'s and Livefree Wellness, LLC's Opposition to Nevada Organic Remedies, LLC's Application for Writ of Mandamas, e-filed on October 24, 2019.

NWC hereby adopts and incorporates by reference the Memorandum of Points and Authorities submitted with to MM Development Company, Inc.'s and Livefree Wellness, LLC's Opposition to Nevada Organic Remedies, LLC's Application for Writ of Mandamas, e-filed on October 24, 2019.

///

1 If for any reason the opposition October 24, 2019, becomes moot or is withdrawn, this
2 Joinder shall serve as its own stand-alone Opposition. This Joinder is made based on the pleadings
3 and papers on file herein, and any oral argument of counsel, which may be heard at the time of the
4 hearing.

5 DATED this 6th day of December, 2019.

6 **PARKER, NELSON & ASSOCIATES, CHTD.**

7 /s/Theodore Parker, III, Esq.

8 THEODORE PARKER, III, ESQ.

9 Nevada Bar No. 4716

10 2460 Professional Court, Suite 200

11 Las Vegas, Nevada 89128

12 *Attorneys for Plaintiff,*

13 *Nevada Wellness Center, LLC*


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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 6th, day of December, 2019, I served a true and correct copy of the foregoing **PLAINTIFF, NEVADA WELLNESS CENTER, LLC’S JOINDER TO MM DEVELOPMENT COMPANY, INC.’S AND LIVEFREE WELLNESS, LLC’S OPPOSITION TO NEVADA ORGANIC REMEDIES, LLC’S APPLICATION FOR WRIT OF MANDAMAS** on all parties currently on the electronic service list as 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.

/s/Jeanne L. Calix
An employee of PARKER, NELSON & ASSOCIATES, CHTD.



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 .

**CORRECTED
Transcript
Of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 1

FRIDAY, MAY 24, 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.
MAXIMILLIEN 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.

1 LAS VEGAS, NEVADA, FRIDAY, MAY 24, 2019, 9:11 A.M.

2 (Court was called to order)

3 THE COURT: Is there anybody here other than the
4 Department of Taxation litigation that thinks they're on my
5 calendar this morning? Because that was the only thing I
6 thought I had till 1:00 o'clock.

7 All right. If we could start with the issues
8 related to the exhibits. Do the plaintiffs have an exhibit
9 list that has been circulated with exhibits being given to the
10 defendants yesterday as we discussed?

11 MR. RULIS: Your Honor, I don't know where Mr. Kemp
12 went, but yes.

13 THE COURT: Here's here in the building.

14 MR. RULIS: Right. He asked me --

15 THE COURT: You handle this part, Mr. Rulis.

16 MR. RULIS: We circulated a exhibit list to
17 everybody. We had flash drives that I believe Ms.
18 McMcletchie's office and Mr. Hone's office came and picked and
19 picked from us with those exhibits or at least the exhibits
20 that we had that we could give them on that.

21 I believe we got a copy to Dulce of our exhibit list
22 last night. We do have three more that we're adding to it,
23 but that's stuff that just got produced last night, which
24 would be a log of Steve Gilbert's phone, [inaudible] phone
25 that we'd be asking [inaudible]. And then I think there's

1 some voice mails. Those got produced last night, so that's
2 why they weren't on the log.

3 THE COURT: Okay. I appreciate you guys doing that.

4 So from those of you who are defendants and
5 defendants in intervention, are there any exhibits on the list
6 that currently contains Numbers 1 through 107 that you can
7 stipulate to? Not asking objections, only stipulations.

8 MR. KOCH: Your Honor, I don't believe we've had --

9 THE COURT: There's got to be at least one.

10 MR. KOCH: I'm sure there will be. I don't know
11 that we have had the opportunity to review each of the
12 documents. We've been busily trying to put together our own
13 documents. Happy to stipulate as we proceed. I believe the
14 State has several documents that will likely be subject to
15 stipulation that they have produced to the plaintiffs'
16 production.

17 THE COURT: So I'm going to ask the same question
18 for the defendants'. Then I'm going to take a break and you
19 guys are going to do the homework that you're required to do
20 before you show up.

21 So the State, I think, has produced a list that is
22 2001 through 2018. Are there any of those exhibits that can
23 be stipulated to?

24 MR. KEMP: Yes, Your Honor. I think we can
25 stipulate to all of them.

1 THE COURT: Any objections from the defendants in
2 intervention?

3 MR. KOCH: None.

4 THE COURT: So 2001 through 2018 are admitted.
5 (Defendants' Exhibits 2001 through 2018 admitted)

6 THE COURT: I'm going to take a short break, and
7 when I come back we will then ask the question again as to
8 whether any of the defendants in intervention or the
9 defendant, the State, can stipulate to the exhibits that
10 currently bear the numbers 1 through 107.

11 MR. KOCH: Your Honor, one intervenor submitted a
12 handful exhibits this morning. We provided a copy to the
13 plaintiffs.

14 THE COURT: Do I have an exhibit list?

15 MR. KOCH: We provided it to the clerk. I don't
16 have an electronic app. They can get that to the clerk, but
17 it's part of the book.

18 THE COURT: Hold on. Let me see if that one has a
19 copy. Because I want to have you guys caucus and look at
20 them all at one time so I don't have to continue to take
21 breaks.

22 MR. KEMP: Sounds like a plan. Your Honor, can I
23 approach with the original protective order which I haven't
24 signed yet?

25 THE COURT: Yes. I'd be happy to. Thank you.

1 Mr. Kemp, Mr. Rulis, here you go.

2 MR. BULT: Your Honor, can I approach with a motion
3 on OST? I was going to give it to your law clerk. But while
4 you're taking a break if you wanted to take a look at it.

5 THE COURT: You could give me whatever you'd like.

6 For the record, when I saw Franny last night I told
7 her she could not tell me any stories about Frank Hawkins.
8 She wanted to tell me what the representation was. I told her
9 I didn't care, I'd care after this hearing was over, though.

10 So did you get a list for the defendants in
11 intervention? Because I only got two lists.

12 So, Counsel, your book doesn't have a list in it.
13 Oh. There it is.

14 So are there any stipulations to the exhibits that
15 defendants in intervention have provided which are numbered
16 5001 through 5017?

17 MR. KEMP: Judge, we have no objection.

18 THE COURT: So those will all be admitted, as well.

19 (Defendants' Exhibits 5001 through 5017 admitted)

20 THE COURT: I'm going to make a copy of this, then
21 I'll bring it back.

22 So I'm going to take a short break, Mr. Koch, for
23 you and your folks to look at the plaintiffs' list again and
24 identify those to which you can stipulate. See you in a few
25 minutes.

1 (Court recessed at 9:16 a.m., until 9:35 a.m.)

2 THE COURT: Can you stipulate to any?

3 MR. KOCH: Many.

4 THE COURT: Lovely. Can you tell me ones you can
5 stipulate to.

6 MR. KOCH: 101 -- or, sorry, let's start with Number
7 1. 1 to 27.

8 THE COURT: 1 to 27 will be admitted.

9 (Plaintiffs' Exhibits 1 through 27 admitted)

10 MR. KOCH: 41 to 60

11 THE COURT: 41 to 60 will be admitted.

12 (Plaintiffs' Exhibits 41 through 60 will be admitted)

13 MR. KOCH: 72.

14 THE COURT: 72 will be admitted.

15 (Plaintiffs' Exhibit 72 admitted)

16 MR. KOCH: 80 to 86.

17 THE COURT: 80 to 86 will be admitted.

18 (Plaintiffs' Exhibit 80 through 86 admitted)

19 MR. KOCH: 89 to 90.

20 THE COURT: 89 to 90 will be admitted.

21 (Plaintiffs' Exhibits 89 and 90 admitted)

22 MR. KOCH: 92 to 96.

23 THE COURT: 92 to 96 will be admitted.

24 (Plaintiffs' Exhibits 92 through 96 admitted)

25 MR. KOCH: 99 to 104.

1 THE COURT: 99 to 104 will be admitted.

2 (Plaintiffs' Exhibits 99 through 104 admitted)

3 MR. KOCH: 106 and 107.

4 THE COURT: 106 and 107 will be admitted.

5 (Plaintiffs' Exhibits 106 and 107 will be admitted.

6 MR. KOCH: Then we'll go up to the 200s, 201 to 218.

7 THE COURT: 201 to 218 --

8 MR. KOCH: Right.

9 THE COURT: -- will be admitted.

10 (Plaintiffs' Exhibits 201 through 218 admitted)

11 MR. KOCH: And 401 through 413.

12 THE COURT: 401 to 413 will be admitted.

13 (Plaintiffs' Exhibits 401 through 413 admitted)

14 THE COURT: Now, Allen, do you have the exhibit
15 lists for the 200 series and the 400 series?

16 THE CLERK: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. KOCH: And I believe the State's exhibits have
19 all been admitted, defendant intervenors' proposed exhibits
20 have all been admitted at this point. That should cover it.

21 THE COURT: On the defendant intervenors and the
22 defendants does anyone disagree with the stipulations that
23 were stated by Mr. Koch?

24 MR. HYMANSON: No, Your Honor.

25 MR. GUTIERREZ: No, Your Honor.

1 MR. PARKER: No, Your Honor.

2 THE COURT: Those of you in the box?

3 MR. SAVARESE: No, Your Honor.

4 MR. BULT: No, Your Honor, from the State.

5 THE COURT: Okay. All right. Before I ask the next
6 question I'm going to have you all identify yourselves for
7 those who are here participating as counsel of record for a
8 party or an intervenor so that Allen can try and keep up
9 today, since he has not been here for all of the earlier
10 proceedings.

11 I'm going to start in the box with Mr. Hymanson.
12 Phil, that means you're supposed to say what your name is.

13 MR. HYMANSON: Phil Hymanson with Mr. Gutierrez,
14 Your Honor.

15 MR. GUTIERREZ: Your Honor, were representing
16 Essence and Thrive. With us today on behalf of Essence Brian
17 Greenspun, on behalf of Thrive [inaudible], and [inaudible].

18 THE COURT: Thank you.

19 MR. PARKER: Good morning, Your Honor. Theodore
20 Parker and [unintelligible] on behalf of Nevada Wellness
21 Center. And I believe Mr. Hawkins will be joining us today,
22 as well.

23 THE COURT: Okay.

24 MR. BULT: Good morning, Your Honor. Adam Bult and
25 Max Fetaz here on ETW Management plaintiffs, et al.

1 MR. SAVARESE: Good morning, Your Honor. Vincent
2 Savarese on behalf of the Wellness -- Serenity Wellness
3 plaintiffs.

4 MR. MILLER: 'Morning, Your Honor. Ross Miller on
5 behalf of Serenity Wellness.

6 MR. GENTILE: 'Morning, Your Honor. Dominic Gentile
7 on behalf of the Serenity Wellness plaintiffs.

8 MR. KEMP: Your Honor, Will Kemp on behalf of MM
9 Development and Livfree. And on behalf of MM Development we
10 have general counsel Layton Kohler right back there.

11 THE COURT: Okay. Mr. Cristalli.

12 MR. KEMP: We've got Mr. Menzies sometime today.

13 THE COURT: Thank you.

14 Mr. Cristalli.

15 MR. CRISTALLI: Good morning, Your Honor. Mike
16 Cristalli here on behalf of plaintiffs Serenity, et al.

17 MR. RULIS: 'Morning, Your Honor. Nate Rulis on
18 behalf of the MM Development and Livfree Wellness Center
19 plaintiffs.

20 THE COURT: Mr. Shevorski.

21 MR. SHEVORSKI: Good morning, Your Honor. Steven
22 Shevorski of the Office of the Attorney General on behalf of
23 the Department of Taxation. Along with me is Theresa Haar and
24 Ketan Bhirud.

25 MR. KOCH: 'Morning. David Koch and Brody White

1 here for Nevada Organic Remedies, also Crystal Saab [phonetic]
2 from the Nevada Organic Remedies entities.

3 MR. KAHN: Good morning, Your Honor. Jared Kahn for
4 Helping Hands Wellness Center.

5 MR. HONE: Good morning, Your Honor. Eric Hone on
6 behalf of Lone Mountain Partners.

7 MR. GRAF: 'Morning, Your Honor. Rusty Graf on
8 behalf of Clear River.

9 MS. HIGGINS: 'Morning, Your Honor. Brigid Higgins
10 on behalf of Clear River.

11 MS. SHELL: Good morning, Your Honor. Alina Shell
12 on behalf of [inaudible] Nevada.

13 THE COURT: Did I miss anyone who is appearing as
14 counsel of record today in this preliminary injunction
15 hearing?

16 All right. Would any of the plaintiffs or those who
17 are participating in our preliminary injunction from other
18 cases in which you are a plaintiff like to make an opening
19 statement?

20 MR. KEMP: No, Your Honor.

21 MR. GENTILE: Your Honor, just very briefly. Very
22 brief. Is the screen working?

23 (Pause in the proceedings)

24 THE COURT: Some of the monitors on the desks
25 didn't work in our last trial because the plugs had come

1 undone. So hopefully somebody plugged them back in this
2 morning.

3 You may continue.

4 PLAINTIFFS' OPENING STATEMENT

5 MR. GENTILE: Okay. You've read everything. I
6 don't need to regurgitate that. But in essence, just to
7 capture the essence of this lawsuit and what's going to be
8 presented to you, it commenced with a ballot question. A
9 ballot question is governed by the Nevada Constitution, and
10 among the things the Constitution says is that you cannot mess
11 with it for three years. That ballot question was adopted
12 wholesale, textually verbatim by NRS 453B when the legislature
13 enacted that.

14 This case is about cutting square corners. On the
15 left you will see a chart that basically says that that
16 statute delegated to the Department of Taxation what the
17 statute said. And the regulations and any application process
18 and any scoring process had to comport with the ballot
19 question and the legislation.

20 On the right you see a multi-sided bottom-heavy
21 graphic that expands what the ballot question said. And what
22 you're going to see here is that the delegation verbatim from
23 the statute to the Department of Taxation was exceeded, was
24 expanded, and power was usurped by the Department of Taxation
25 in enacting the regulations.

1 To go further, the application itself and the
2 questions and categories that it contained further expanded
3 the legislative and constitutional mandate from the ballot
4 question.

5 And then finally, the scoring went even further.
6 And so what we have here is a direct constitutional attack
7 based on the Nevada Constitution.

8 Separately from that we have federal constitutional
9 issues. That's what the touchstone of relevance is.

10 Thank you, Judge.

11 THE COURT: Thank you.

12 Any of the other parties participating as a
13 plaintiff in this or other cases wish to make an opening
14 statement?

15 Does the defendant State want to make an opening
16 statement?

17 MR. SHEVORSKI: Very briefly, Your Honor. Thank you
18 for the opportunity.

19 DEFENDANT STATE'S OPENING STATEMENT

20 MR. SHEVORSKI: Steven Shevorski for the Department
21 of Taxation, Your Honor.

22 What you just saw was a perfect illustration of why
23 this case is about administrative law and not constitutional
24 law. When we're talking about constitutional law we're not
25 talking about whether the Department has misinterpreted its

1 enabling power from the statute. That is a question of
2 administrative law. When we're talking about constitutional
3 law we're asking independent of the statute, independent of
4 the regulation did the Department, for example, in the context
5 of procedurally process deprive a person of a liberty or
6 property right.

7 My friend Mr. Gentile never argued to Your Honor
8 that that quintessential element has been met. My friend Mr.
9 Gentile never described why substitute process would apply
10 here, why procedural due process would apply, why equal
11 protection would apply here in this context with that
12 argument, because that is an argument about administrative
13 law, that the Department misinterpreted an enabling power from
14 the statute. That is an argument of administrative law, Your
15 Honor.

16 And so as a matter of law the State with the
17 constitutional theories, whether they're under the State
18 Constitution or under the federal Constitution, simply fail.
19 Because it's apples and oranges.

20 Secondly, Your Honor, one thing that was missing
21 from my friend Mr. Gentile's argument is the great deference
22 that the Nevada Supreme Court has stated is applicable to the
23 Department's interpretation of its power to interpret the
24 statute and say what are we to do. The statute empowers the
25 Department to do what is necessary and appropriate. That is a

1 broad delegation of power, and the Department is entitled to
2 great deference in its interpretation of the grant of power to
3 the Department.

4 Finally, Your Honor, I'd like to talk about some of
5 the people you're going to be introduced to who are going to
6 appear without subpoena. In the briefing there's been quite a
7 lot of talk about Damon Hernandez or Lara Cronkhite. They're
8 going to -- if the plaintiffs want to call them, they're going
9 to appear before Your Honor. I hope you'll be convinced that
10 these are fair, honest people who work for the Department and
11 worked their tail off and did their level best to ensure that
12 the people on this side of the table were treated fairly, and
13 the same on this side of the table.

14 At the end of the day, Your Honor, what I think the
15 plaintiffs are asking for you to do is rescore applications
16 and substitute your judgment for the judgment of people who
17 scored and weighed the evidence and have a reweighing of the
18 evidence. Your Honor knows that is inappropriate. I hope
19 you'll deny the motion for preliminary injunction.

20 THE COURT: Thank you.

21 Would any of the defendants in intervention or other
22 participants as defendants wish to make an opening statement?

23 MR. KOCH: Yes, Your Honor.

24 THE COURT: Mr. Koch.

25 INTERVENOR DEFENDANTS' OPENING STATEMENT

1 MR. KOCH: Your Honor, sitting at the plaintiffs'
2 table are a host of attorneys all representing different
3 clients with, frankly, varying interests. We have the
4 Serenity Wellness plaintiffs who filed this preliminary
5 injunction motion first claiming that, well, they're so far
6 down the list, they're forty-sixth, they're forty-seventh on
7 the list of the rank applicants that we should just blow the
8 whole process up, the regulations were bad, they're
9 unconstitutional, we should have never considered these
10 things.

11 Sitting next to them is MM Development, those
12 plaintiffs, who say rules and regulations, they're great, we
13 love 'em, they just scored us wrong and, Judge, you should be
14 fourth scorer in the room and look over the shoulders of those
15 scorers that have already completed the process that Mr.
16 Shevorski's already described, to overrule, to change the
17 points, to move those points around. And that's completely
18 inappropriate.

19 Represented by the same attorney for MM is Livfree,
20 which it appears did not submit part of its application, is
21 arguing had we had that part considered we would have scored
22 higher so let's do it over and resubmit our applications,
23 apparently.

24 And then we've got ETW and those plaintiffs who,
25 again, they're even further down the list than the Serenity

1 plaintiffs, so they're asking to blow the whole thing up.
2 They're asking for damages from the State. Everybody's got
3 their own theory of what should be happening here and what
4 went wrong. But the only thing that these parties have in
5 common is that in 2014 and 2015 they got a medical marijuana
6 license. And they said, we scored higher then, we should have
7 scored high now. That's not the basis for a preliminary
8 injunction, certainly not the basis for the lawsuit that is
9 being brought here today.

10 And we will see evidence, as Mr. Shevorksi said, of
11 the work that the State did. Frankly, when SB32 was signed
12 into law two weeks ago today and the Department released its
13 information on the Website I was surprised by the level of
14 detail, pleased to see how much work the Department had done
15 to disclose the process that it had used, the scorers, the
16 process for hiring those scorers, they released the score
17 sheets. Everything that it was entitled and obligated to
18 produce under the statute, they produced that information.
19 And after that was produced the parties here. MM in
20 particular, who had a lot of claims about diversity not being
21 scored and all these things that supposedly weren't done
22 shifted course, filed supplements, and have now changed their
23 arguments. Instead of relying upon what was disclosed, it
24 asks this Court to change what was done by the Department.
25 That's in essence what's being argued here, is that the

1 Department didn't do it right, so, Judge, you should change
2 those scores so that MM, which really was on the cusp, was
3 close, it would like to scratch out a few more points to be
4 put up into that license category.

5 But the words that this Court throughout this
6 proceeding needs to keep in mind are "arbitrary" and
7 "capricious." That's the standard. The State is the party
8 that has been brought in. The intervenors have simply joined
9 because our potential rights as licensees are being threatened
10 by these plaintiffs. Plaintiffs -- frankly, this is an
11 indication to us this process is about delay. One of the
12 aspects of these licenses is they're conditional and
13 conditional on opening or being -- receiving final approval
14 and inspection within 12 months. And for all the parties
15 sitting here that means December 4th, 2019. Moving toward
16 that. But this lawsuit is an attempt to delay that process.

17 Mr. Kemp recently said, well, statute has an
18 extenuating circumstance carve out. I know that he's going to
19 go testify before the Department on that basis. I'm not
20 counting on it, but really that's what this is about. There's
21 no basis for preliminary injunction here when the State, as
22 we've clearly seen, did not act arbitrarily and capriciously.
23 It acted carefully. And in the scoring of 462 applications
24 are there going to be a mistake here, a mistake there, some
25 aspect of human error perhaps? Sure. That's why you have

1 three scorers. That's why you look at the applications, put
2 those together, tabulate them so you have confirmation. We'll
3 see the State's training materials, the process. Extremely
4 detailed. And that's what the Court should be looking at, not
5 these nitpicks about that score and this score and whether
6 this was done properly or not. Because that's not the
7 province of this Court.

8 Ultimately, as was seen in the motions, there's a
9 lot of speculation, a lot of rumors that are being bandied
10 about to try to support the motions and support the arguments
11 that are being made. But there's nothing in the way of facts.
12 The arguments that will be presented and we anticipate the
13 evidence that will be shown to the Court will demonstrate that
14 State completed its process properly and there's no basis for
15 a preliminary injunction and these motions should be denied.
16 Thank you.

17 THE COURT: Thank you, Mr. Koch.

18 Do any of the other intervenors' counsel wish to
19 make an opening statement?

20 Seeing none, your first witness.

21 MR. MILLER: Plaintiffs call Dr. Paul Seaborn.

22 THE COURT: Does anyone wish to have the
23 exclusionary rule invoked in this preliminary injunction
24 hearing? I typically don't do that, but if someone wants,
25 I'll have a discussion with you about it.

1 //

2 PAUL SEABORN, PLAINTIFFS' WITNESS, SWORN

3 THE CLERK: Please be seated.

4 THE COURT: Please state your name. Give me a
5 second.

6 Ms. Shell.

7 MS. SHELL: Thank you, Your Honor. I don't know if
8 Your Honor received a copy of it, but last night we filed
9 objections to the testimony of plaintiffs' witnesses.

10 THE COURT: We'll get there in just a minute. After
11 he states his name I'll do the objection.

12 MS. SHELL: Thank you, Your Honor.

13 THE COURT: But I've got to state the name first. I
14 didn't get anyone who wanted me to discuss the exclusionary
15 rule, so I'm going to go to the next step.

16 Sir, could you please state your name and spell your
17 last name for us, please.

18 THE WITNESS: Paul Seaborn, S-E-A-B-O-R-N.

19 THE COURT: Sir, you will notice there is a pitcher
20 of water there by you. There should be some M&M dispensers
21 behind you, and there are also a series of exhibits that
22 counsel may refer you to.

23 You may proceed. Gotta get the name first.

24 MS. SHELL: Thank you, Your Honor. Did Your Honor
25 receive a copy of the motion?

1 THE COURT: I did.

2 MS. SHELL: Okay. Well, I won't belabor the points,
3 but we object to the admission of this testimony on first the
4 grounds that it's prejudicial to the defendants because we
5 don't have a report from him. We didn't actually know
6 Professor Seaborn's name until yesterday morning. So it is
7 very prejudicial to the defendants. We are not able to
8 adequately prepare cross-examination of this witness because
9 of the untimely disclosure.

10 Second, and I think even more importantly, I believe
11 that -- although I don't know what Mr. Seaborn's testimony is
12 going to be, I anticipate that there will be testimony
13 elicited from him about his interpretation of Nevada law. And
14 obviously that -- determining what the law is is the province
15 of the fact finder, the Court, not of an expert witness.

16 THE COURT: Thank you.

17 Mr. Miller, anything you want to add?

18 MR. MILLER: No, Your Honor, other than, you know, I
19 think we all understand the [unintelligible] timeline we've
20 been expected to operate under here, that Dr. Seaborn is an
21 expert on the business of marijuana nationally. He's
22 certainly aware of the components within a Nevada application,
23 has reviewed them and the statutes, but also can offer
24 comparisons to other states. Certainly to the extent that we
25 ask him in his experience to evaluate whether or not the

1 criteria that the State of Nevada applied here and whether or
2 not that met the statute. It's not meant to override your
3 judgment, and you can give it whatever weight that you deem
4 appropriate.

5 THE COURT: Thank you. The motion is denied because
6 in this expedited proceeding we did not have any deadlines for
7 the disclosure of expert witnesses, nor were there any
8 requirements of expert disclosures. As a courtesy I did
9 require that the plaintiffs identify the witnesses they were
10 planning to call. I did not require that reports be provided.
11 So the objection is overruled.

12 You may proceed.

13 DIRECT EXAMINATION

14 BY MR. MILLER:

15 Q Dr. Seaborn, can you briefly describe your
16 background and experience, including your education.

17 A Yeah. I'm an assistant professor at the University
18 of Denver in Denver, Colorado. My educational background, I
19 have an undergraduate degree in mathematics and business. I
20 worked in technology strategy consulting for eight years, and
21 then I did a Ph.D. at the University of Toronto in strategic
22 management with a focus on business government issues and
23 public policy.

24 I joined the University of Denver in 2011, which was
25 just at the time that a formal licensed, regulated medical

1 marijuana industry was starting in the state of Colorado.
2 Since that time I've both studied and taught on the subject.
3 So I've created what I believe was the first business of
4 marijuana course at any accredited university in the United
5 States. That was approved for teaching in 2016. I've taught
6 it since 2017, and I also have conducted some research looking
7 at the licensing process for our Colorado industry in terms of
8 the licenses issued and the trends that are taking place
9 around that, as well.

10 Q And as part of that analysis have you also looked at
11 other jurisdictions in terms of the applications that they put
12 forward in order to regulate marijuana, the statutes that may
13 apply, and the underlying policy objectives?

14 A Yeah. So as a key component of the course that I
15 teach to our students at the University of Denver has to do
16 with the history, the legal status, and the regulation of the
17 marijuana industry not specific to Colorado, but across other
18 jurisdictions, other states, the country of Canada, and other
19 places that have a legal industry. And so in that process we
20 do look at regulation and licensing processes across multiple
21 jurisdictions.

22 Q Okay. And have you authored articles or papers on
23 this topic?

24 A Yeah. So I published, again, what I believe to be
25 the first business case looking at a marijuana industry issue,

1 that was in 2014, regarding their advertising in the City of
2 Denver. And then I circulated, and it's available, my
3 "Colorado Market Report," which analyzes the licensing -- the
4 population of licenses within the Colorado market, as well.

5 Q Okay. And as part of this research you stay
6 apprised of the continuing developments in terms of states
7 [unintelligible] approach the regulation and licensing of
8 marijuana?

9 A I do.

10 Q Okay. All right. So in that review can you briefly
11 describe the state of marijuana regulation in this state and,
12 in fact, since you mentioned Canada, in North America, as
13 well.

14 A Yes. I think we can make the observation that this
15 is a very unique industry. It has some similarities to
16 alcohol, tobacco, pharmaceutical, gaming, but certainly none
17 of those are a direct perfect comparison. So it's a unique
18 industry, and furthermore I would say it's unique within every
19 jurisdiction. So as I'm sure we'll discuss, there are
20 differences between Colorado and Nevada in the way that the
21 industry operates between those two states and other states,
22 between those jurisdictions and the country of Canada or
23 provinces. So it's unique at each of those jurisdictions.

24 And I think the biggest and most unique factor of
25 this industry broadly is that the substance that we're

1 regulating here, marijuana, is a Schedule I substance at the
2 federal level in the U.S. So the DEA has deemed it to have --
3 the definition is no accepted medical value, high risk in
4 terms of use, and, you know, not to be -- not even safe under
5 medical supervision. So it's on a list with things like
6 heroin, LSD, ecstasy. And so that puts a different level of
7 certainly risk and scrutiny on the industry in all these
8 jurisdictions, and I think it has implications for businesses
9 who are operating in terms of their risk, their tax treatment,
10 banking, intellectual property, inability to transfer the
11 product across state lines. We could go on. But it also, I
12 think, puts a different weight on the role of regulation,
13 because we're seeing states legalize this industry and then
14 the regulator has a responsibility to vet and approve any
15 participants knowing, again, that they're in this situation of
16 a disconnect between federal status and state status.

17 Q Okay. So that's one reason that might underlie the
18 policy reasons for the implementation and regulation of
19 marijuana state to state; is that correct?

20 A Yeah. The federal Department of Justice over recent
21 years at times has given some guidance around how they viewed
22 they viewed state industries on marijuana. They have various
23 memos, the Cole Memo [phonetic] and others. I believe that
24 that Cole Memo no longer in effective at the federal level.
25 But in that guidance, you know, they set expectations for

1 states that regulate and allow legal marijuana around
2 potential diversion to the black market, access by youth, you
3 know, safety, you know, et cetera. So it's clear that there's
4 a higher expectation for this industry.

5 Q But is there generally across these states a policy
6 consideration that would consider public health and public
7 safety as an underlying consideration for the appropriate
8 regulation of marijuana?

9 A Yeah. I think you've seen in the majority of the
10 ballot initiatives that had led to legalization or in the
11 legislative process, for example, in Canada. Primarily you
12 don't see these initiatives framed around the creation of a
13 commercial industry. First and foremost I think there's a
14 recognition of public safety and those considerations first,
15 and then, you know, secondarily things around in the
16 commercial operation.

17 Q Okay. And looking specifically about the initiative
18 in Nevada, did you have a chance to review the initiative that
19 was passed that dealt with recreational marijuana in Nevada?

20 A The recreational initiative?

21 Q Yes.

22 A Yes, I did.

23 Q Okay. And in the preamble itself does it not cite
24 that in the interests of public health and public safety the
25 people in the state of Nevada declare that marijuana should be

1 regulated similar to alcohol?

2 A Yes.

3 Q Okay. All right. So within that context are there
4 differences in the different operations that they regulate
5 between retail and cultivation? Can you explain sort of that
6 general framework and how states treat that.

7 A Yes. I think another key point in looking at the
8 industry is that those aspects you mentioned, the cultivation
9 of marijuana, the manufacturing or production of some sort of
10 processed product and the retail are very different in many
11 ways. I think you'd make the analogy of, you know, an
12 agricultural business, maybe farming versus operating a
13 restaurant and have some of the same product going through
14 that chain, but a very different skill set. And so I think as
15 a result you'll see pretty well and in all jurisdictions
16 licenses that are issued specifically for various functions,
17 whether it's cultivation, manufacture and production, retail.
18 In some jurisdictions you may have testing licenses,
19 transportation, et cetera. But there's a recognition that
20 these are very unique tasks, and it's possible in some cases
21 permitted for the same business to operate in multiple phases,
22 in some jurisdictions it's not. You know, they prohibit
23 vertical integration between cultivation, retail, for example.

24 Q And is there also a distinction between how they
25 regulate or treat medical marijuana, as opposed to

1 recreational?

2 A Yeah, there is. And I think there's two aspects of
3 it. One is the majority of jurisdictions have started with
4 legalization of medical marijuana and then later in time come
5 to legalization for recreational. So obviously Nevada falls
6 into that category. Colorado has a similar history of medical
7 before recreational. Canada as a country and a variety of
8 other states, the differences in practice I think get more
9 significant as you move towards the retail end of the process.
10 So when you're growing the plant the plant doesn't know
11 whether it's intended for a medical patient or a recreational
12 patient. And, you know, you may have identical plants in that
13 process. At the manufacturing stage you may be manufacturing
14 the product in a similar manner for either audience. Even --
15 the majority of operations of a retail facility would look
16 similar until you get to the point of the end customer
17 purchasing or that you usually have differences there in terms
18 of there may be different age requirements. You know, in
19 Colorado we have 21 for recreational, 18 for medical. There's
20 a requirement in most jurisdictions, some sort of proof of
21 medical need, whether it's a card or a doctor indication.
22 Taxation may be different. You know, potency or the nature of
23 the product that can be sold. And so when you get to the
24 retail piece I would say that where you have the biggest
25 difference, but still it's primarily, you know, a similar

1 retail process with some of the differences. The end customer
2 on the other side is a very restricted group in the medical
3 world, I think, you know, a small percentage of the population
4 typically, as opposed to everyone over 21 including, you know,
5 out-of-state residents.

6 Q All right. And if you look at the different
7 licensing approaches the states have adopted, is there a broad
8 framework that you can to establish in terms of the approach
9 that states have taken?

10 A Yeah. So when we look at -- with my students we
11 generally talk about two general approaches to licensing. One
12 would be what I would describe as an open licensing model,
13 where the state or other jurisdiction sets some sort of
14 minimum standard for obtaining a license and for whatever
15 criteria they deem suitable. Any applicant who meets that
16 standard would then be eligible to receive the license without
17 any sort of predetermined cap or number.

18 The other model generally speaking I would consider
19 more of a limited license model. So either in a ballot
20 initiative or in legislation or in the regulation at some
21 level you would be defining some sort of limit as to the
22 number of licenses. Typically you would still have some
23 minimum recommend for anyone to obtain such license. And then
24 you have a choice. Do you want to have a merit-based process,
25 some sort of ranking to determine who gets those limited

1 licenses. You could a lottery. We've seen that in some
2 jurisdictions where anyone who meets the standard is put in
3 the lottery and then we just find the recipients. So those
4 are the two general models. And I think you can see the key
5 difference in that. There's no ranking or no need to
6 establish the best applicant on the open side. That becomes
7 part of the necessity on the limited side.

8 Q Okay.

9 THE COURT: Could we pause for a second.

10 Mr. Koch, you have an objection?

11 MR. KOCH: Your Honor, I object to this witness
12 being proffered as an expert, first of all. I'm sure he does
13 a great job teaching his class. It sounds like we're for a
14 survey of 50 states' laws on marijuana, which is not what
15 we're here for. That's not helpful to the Court, nor has this
16 witness testified that he has any expertise regarding this
17 particular knowledge that he's testifying about, namely,
18 Nevada's laws, which we all can read. Probably everyone in
19 this room can get up and tell you what Nevada's laws are. So
20 whether Colorado's laws say something or anyone else's laws
21 say something, irrelevant. I don't think this witness is an
22 expert who should testify on this subject.

23 THE COURT: Objection [sic]. You may proceed.

24 MR. HYMANSON: Your Honor, may I voir dire? May I
25 voir dire?

1 THE COURT: Could you stand up so I could see you.
2 Because I've got this screen.

3 MR. HYMANSON: Yeah. I apologize. Can I voir dire
4 the witness?

5 THE COURT: Sure.

6 MR. HYMANSON: Thank you.

7 THE COURT: And I haven't declared him an expert.
8 I've just said we can do the background stuff, which is what
9 we're on so far, because remember, I'm not supposed to declare
10 anybody an expert anymore.

11 MR. HYMANSON: That's why I jumped in when I did,
12 Your Honor.

13 THE COURT: Okay.

14 VOIR DIRE EXAMINATION

15 BY MR. HYMANSON:

16 Q Professor, how are you?

17 A Very good.

18 Q Very quickly, do you have prior to this assignment
19 any experience with the application process for marijuana in
20 the state of Nevada?

21 A In terms of personal experience applying or
22 participating in the licensing process?

23 Q That -- let's start with that, sure.

24 A No.

25 Q All right. How about as a professor, have you

1 taught it in a class, have you discussed it? Have you made
2 the distinctions between Colorado, Washington, Canada and
3 Nevada?

4 A Yes. And I think our students at the University of
5 Denver come from a variety of locations and they graduate and
6 go out to a variety of locations, so to me that seemed
7 important in my study of the industry. And I think
8 conveniently for us, you know, much of this information is
9 available to me as a professor and our students and we can
10 look at application forms, we can look at the published lists
11 of license recipients. There's a fair bit of information that
12 we can obtain, even from our location in Denver.

13 Q Is it fair to say that you are primarily focusing on
14 the business of marijuana, not the licensing?

15 A My personal view would be that those two things
16 cannot be separated, so I would say I have no role or interest
17 in having any opinion on the medical aspects of this plant or
18 substance. Similarly, you know, on the social work or other
19 aspects. But as a management professor in Business School, I
20 focus on the business and I think for this industry or other
21 highly regulated industries, licensing is part of the
22 business. It's a starting point, in fact, along with
23 accounting and finance and other things.

24 Q That's my question, Professor. In 2017 you started
25 teaching classes. You've done that in '18.

1 A And '19.

2 Q I understand you're moving to Virginia.

3 A I am, yes, to the University of Virginia.

4 Q Congratulations. And during that time everything
5 I've looked at, and I've only had a few hours to look at it,
6 but everything that relates to you and your press conferences,
7 your articles, with the exception of one discussion in Orlando
8 on diversity, seems to be about the business of marijuana. Is
9 that fair?

10 A Yeah. The title of the course is the Business of
11 Marijuana. Yes. And so -- yes.

12 Q Have you ever looked at the legislative intent for
13 the laws in Nevada, the Nevada legislative intent?

14 A In terms of reading the text of the initiative, yes.

15 Q Have you looked at the Legislative Counsel -- have
16 you spoken with anyone at the Legislative Counsel Bureau in
17 Nevada?

18 A No, I have not.

19 THE COURT: Mr. Hymanson, I think we are now beyond
20 voir dire.

21 MR. HYMANSON: Okay.

22 THE COURT: If you'd like to go back to your seat.

23 MR. HYMANSON: I will do that, Your Honor.

24

25 THE COURT: Thanks.

1 Mr. Miller, would you like to continue?

2 Are you going to give Ross your notes now?

3 MR. HYMANSON: This was a really good one, Judge.

4 THE COURT: So because Mr. Hymanson was our first
5 offender, all of you need to remember you have to stay very
6 close to the microphone so that the record can be complete
7 when the transcript is made for wherever you go after this
8 hearing.

9 MR. MILLER: That's a problem for me, Judge.

10 THE COURT: I'm not worried about you, Mr. Miller.

11 MR. MILLER: I'm a chronic mumblor.

12 DIRECT EXAMINATION (Continued)

13 BY MR. MILLER:

14 Q I think the question was asked as to whether or not
15 you started teaching in 2017, but didn't you testify that you
16 started in 2011? Is that right?

17 A Yes. So prior to teaching the Business of Marijuana
18 course, I taught other courses in the University of Denver in
19 which I brought in guest speakers from the business side of
20 the industry, regulators, industry associations. You know,
21 the case I mentioned was proposing coordination with an
22 industry association and as recently as last week I had guest
23 speakers in my course from the regulatory side, from the
24 industry side, from all sides. And the report I referenced
25 has been published over a number of years.

1 Q So turning back to the two licensing approaches that
2 you identified, an open model and then a limited license
3 model, you indicated that with an open model it is generally
4 an attempt to require minimum standards in that but then you
5 don't rank them; right? And what other criteria? I mean, do
6 you typically see that they require property approvals and
7 zoning to take place for the granting language in an open
8 model?

9 A Yes. And I think that's a key distinction. With
10 the open licensing model the only question for an applicant is
11 whether they will be deemed suitable by the standard. And so
12 in Colorado and other jurisdictions you will often see a
13 greater expectation that the applicant has a full plan in
14 place. That could include the physical address, in some cases
15 the suitability of the facility itself. There's less
16 uncertainty over whether that license will be received because
17 really there's nothing standing in the way of receiving it
18 other than meeting the standard.

19 If you shift to the limited license model where you
20 have some sort of a lottery, for example, or a ranking system,
21 to expect the equivalent level of preparation, a physical
22 address, facility, etcetera, it's certainly still possible and
23 I think within the rights of the regulator, but it creates an
24 issue in terms of how much is expected of that applicant
25 before the -- it's kind of a chicken and egg situation. Do

1 you have the facility, you know, staff hired, everything in
2 place and wait for the license, or do you get the license
3 based on some plans and preliminary information and then
4 follow through, you know, once you have the license.

5 So, I mean, I think both approaches have merit, but
6 you see less of a high bar on the limited license model for
7 that uncertainty.

8 Q And how do these -- how do you typically see the
9 approach as it deals with transfers of ownership in both the
10 open model versus the limited license model, or are they the
11 same?

12 A So I think across pretty well all jurisdictions some
13 sort of background check or screening of the applying team or
14 individuals is present, whether it's open license or not. So
15 that would be consistent on both sides. Whatever other
16 experience or characteristics of the applicants are being
17 considered would also be, I think, present on both sides.
18 The challenge would become if it was unclear whether the
19 person applying at the time of the application was changing
20 during the application process. So certainly in the Colorado
21 application process for a retail marijuana license there's a
22 stipulation that no transfers or changes to ownership or
23 personnel are permitted during the application process, even
24 in the open licensing model because the evaluation has to do
25 with the identity of these individuals. And so if they're

1 changing during the process, I would assume it would be
2 difficult to make that evaluation.

3 You would expect to see a similar concern on the
4 limited licensing model. Again, you often see requirements
5 that are on the individuals who are participating as part of
6 the evaluation, and so you would want to have a knowledge of
7 who those individuals are over entities.

8 Q Okay. And under a limited license model, which is
9 the model that Nevada has adopted, is that correct?

10 A Yes.

11 Q How do they typically treat initial applicants and
12 what criteria do they typically weigh most heavily in their
13 evaluation?

14 A Yeah. So as we talked about this being a unique
15 industry, I think experience is a key factor. And so when
16 someone is applying initially for a license in any
17 jurisdiction based under either model, you don't have as much
18 information as a regulator as to their track record and
19 experience, right. In fact, the first round of applications
20 in any state, everyone is applying without any in-state
21 experience, and so it changes the nature of what you can use
22 for evaluation when there's a first time applicant. You can
23 ask for experience in other jurisdictions, perhaps, related to
24 marijuana. You can ask for related and applicable experience
25 within the state, other criteria, but you don't have any sort

1 of history of have they been compliant, have they had
2 violations, have they had licenses withdrawn because
3 presumably they're a first time applicant and they've never
4 been in the system.

5 So the process for vetting a first time applicant
6 or, you know, broadly when a state is doing a first round of
7 applications it's going to have less ability to evaluate
8 hands-on direct applicable experience and having to look at
9 other things. The difference, then, if you're doing a renewal
10 or someone is applying for a second or a subsequent license,
11 you have -- you can still ask for all the same information you
12 would as a new applicant; you also as a regulator would have
13 access to their track record of compliance and operational --
14 inspections, whatever due diligence the regulator does. And
15 so there's a greater set of information available typically if
16 it's not a first time applicant.

17 Q Okay. But is it fair to say that as you look at the
18 different criteria that states consider in terms of how they
19 grade an application and what weight is given to it,
20 experience is typically the most heavily weighted and given
21 the most consideration in a limited license model?

22 A In a limited license model. So again, if we're in
23 an open license world, I want to as a regulator do some sort
24 of background screening, you know, maybe assess financial
25 resources to operate and clearly some sort of plan around

1 operations. But, you know, experience is not as essential
2 because, you know, it's an open license model, you know, we
3 may not have a certain threshold. In a limited license model,
4 more of a competition model, yes, I would see experience being
5 a key factor. And that could fall into direct experience in
6 the type of license in which one is applying, you know, retail
7 to retail, cultivation to cultivation. Absent that or in
8 addition, applicable experience from other areas. You may
9 have experience that's directly relevant to this license
10 application and it may or may not be in the marijuana
11 industry.

12 Q Have you had an opportunity to review the general
13 legalization of marijuana in Nevada, how it's evolved and the
14 regulatory framework that we have established?

15 A I have, yes.

16 Q Okay. Can you briefly walk us through that,
17 beginning with the initiative that went before the people in
18 the state of Nevada that dealt with the medical, the
19 legalization of medical marijuana in the state?

20 A Yes. Again, as I mentioned, there's some
21 similarities between Colorado and Nevada on these initiatives.
22 So both started with a medical legalization process through
23 ballot initiative, but at the same time both did not create a
24 license industry through those initiatives. There was no
25 details in either state around who would operate a retail

1 establishment, licensing procedures, etcetera. And I think in
2 both states we saw it took a long time before that actually
3 came to bear. So the ballot initiatives on medical were
4 primarily legalization without a real framework for a licensed
5 operating industry.

6 Q Okay. And that remained the state of legalization
7 in Nevada for some period of time up until 2013, is that
8 correct?

9 A Yes.

10 Q When the Legislature adopted a regulatory framework
11 to deal with medical licenses?

12 A Yes. So all the rules that Nevada has in place
13 around who receives a license for medical operation did not
14 come from the ballot initiative, as you mentioned, they come
15 from legislation that came years later, which I think does a
16 nice job of laying out requirements and criteria and also some
17 typical things that you would want of a regulated industry.

18 Q Okay. And then the next step in Nevada was the
19 initiative that's in question here, Question 2, where the
20 retail component, recreational was legalized in 2017, is that
21 correct?

22 A That's correct.

23 Q Okay. And you're familiar with those provisions,
24 that that's an authority that was granted by the Nevada
25 Constitution, it went before the people and then was adopted

1 with a similar regulatory framework by the Legislature as a
2 mandate following that initiative petition, is that correct?

3 A Yes. So at the time that Colorado legalized
4 recreational there were only two states, Washington and
5 Colorado. That was it, there were no others, but Nevada was a
6 state that followed shortly after. So it was of great
7 interest to people like me who study the industry and I think
8 to industry participants in Colorado and generally speaking.
9 So, yes, I was aware at the time and have looked again more
10 recently at the ballot initiative, which I think in contrast
11 to Colorado laid out a much more detailed legislative basic
12 ready to go framework that immediately became law.

13 We didn't have that equivalent in Colorado. It was
14 a constitutional amendment. And so Amendment 64, which
15 created legal recreational marijuana in Colorado didn't have
16 the same level of detail around procedures and licensing
17 criteria, etcetera. That was left to the legislation later.
18 And I would say that's a key difference that I observed in the
19 Nevada situation is that Question 2 was accompanied by a fair
20 amount of detail that really specified with a lot of breadth
21 what exactly was going to be legalized. So the voters had
22 more information in front of them than they did in Colorado.

23 Q Okay. But in Colorado the general framework was
24 that they put forth an initiative petition to the people that
25 established a broad regulatory framework and the legislature

1 was expected to fill in the gaps. Is that right?

2 A That's correct.

3 Q Whereas in Nevada the initiative petition was really
4 intended to establish the entirety of the regulatory framework
5 for the State to move forward with recreational licenses?

6 A Yes. So in the initiative text I saw reference to
7 counties and quantity of licenses, population counts. You
8 know, that level of detail did not exist in the Colorado
9 equivalent.

10 Q Okay. And have you seen that in other states?

11 A There's a range, right. I think the majority of
12 states have followed this path of ballot initiatives leading
13 to legalization. There's very few states that have gone
14 successfully with the legislative process. So generally I
15 would say the more recent ballot initiatives tend to have more
16 detail. I think they are able to learn from past experiences.
17 Those first few in Washington and Colorado were pretty high
18 level, maybe because they were the first.

19 Q Okay. And following the passage of recreational
20 marijuana in 2017, there's a program that's been referred to
21 as the Early Start Program. Can you describe a little bit
22 about what that was supposed to accomplish and what the
23 criteria was?

24 A Yes. So my understanding of the Nevada Early Start
25 Program is that at the time that Question 2 was being

1 implemented there were already licensed medical license
2 holders through the legislation we referred to, and so the
3 State made a decision to offer the opportunity for a
4 recreational license to those license holders. They had
5 already gone through the background checks and other screening
6 requirements. Early Start basically allowed only those
7 license holders to have first opportunity at a recreational
8 license and that was what was put into place. There's an
9 exact equivalent in Colorado where after Amendment 64 for the
10 first nine months of legal recreational sale only prior
11 medical license holders had the opportunity to apply, if they
12 wished, for a recreational license. After nine months then
13 they had other options for obtaining licenses. So not on
14 Early Start because it happened at the date that was specified
15 in the constitutional amendment, but a priority to medical
16 license holders prior to anyone else entering.

17 Q Okay. And the criteria for participating in that
18 program was that you had a medical marijuana dispensary
19 license, as you mentioned, that you were in good standing and
20 that you had paid your taxes; right?

21 A Yes. I'm pretty sure of this, but I think I failed
22 to mention the second two in my discussion. So if someone had
23 had a license and it had been revoked or there had been some
24 issue, yeah, they clearly would not have been eligible for
25 Early Start.

1 Q Okay. And when the people passed the initiative
2 petition in 2017, they outlined criteria that the Department
3 could use in order to determine the qualifications; right?

4 MR. KOCH: Objection, Your Honor. Leading. I'm
5 pretty sure we're trying to get through this, but if he's an
6 expert, Mr. Miller doesn't need to tell him what the law is.

7 THE COURT: Your objection is sustained.

8 Could you rephrase your question, please.

9 MR. MILLER: That's all right. We'll get to it,
10 Judge.

11 BY MR. MILLER:

12 Q All right. So following the Early Start Program,
13 are you aware broadly of the Governor's Task Force that was
14 implemented in 2017?

15 A Yes. And I think, again, typical to many states
16 that there's some sort of multi-stakeholder process to inform
17 implementation following these ballot initiatives.

18 Q Okay. And what was that intended to accomplish?

19 A I think there were still questions to be answered
20 around the details of implementing the text that was approved
21 in Question 2 or there was still some question around
22 timelines, you know, scale of a roll out, how applicants would
23 be selected, because, as I mentioned, there were specific
24 limits in the recreational legalization around how many
25 licenses per county. And so presumably there was a need for

1 some criteria that would then determine who receives those
2 licenses. So I saw and have reviewed the recommendations of
3 the Task Force, particularly on that topic, given its
4 relevance here, and not necessarily all the other Task Force
5 committees or areas.

6 Q Okay. And then thereafter the Department adopted
7 temporary and then permanent regulations, is that correct?

8 A Yes. And so we can look in the regulation both for
9 -- they call it required elements, so those are sort of
10 minimum criteria, and then there's also a list of ranking
11 criteria, so the regulation provides for both.

12 Q Okay. And then the Department ultimately put forth
13 applications and began accepting those in September of 2018,
14 is that correct?

15 MR. KOCH: Objection. Leading.

16 MS. SHELL: Objection. Leading, Your Honor.

17 THE COURT: Can you rephrase your question?

18 MR. MILLER: Sure.

19 BY MR. MILLER:

20 Q What was the next step in the process once the
21 regulations had been adopted? Did the Department ultimately
22 open up the process for licensure?

23 MR. KOCH: Same objection.

24 THE COURT: Overruled. You can answer.

25 THE WITNESS: Yes. So to my knowledge there was

1 public communication that an application process would be
2 opened, and my understanding is that only applicants who
3 already held a Nevada medical marijuana license were -- or a
4 marijuana license, I guess, so Early Start, they would have
5 both, but you could not participate in this open process
6 unless you were a license holder in the marijuana industry in
7 Nevada. There was a time period, you know, criteria, for
8 application forms, etcetera.

9 BY MR. MILLER:

10 Q Okay. Since this is part of the examination of
11 what we're going to be digging in deep here over the next few
12 days, I want to bring your attention to the application and
13 get Exhibit Number 5. If we can pull that up.

14 THE COURT: Five?

15 MR. MILLER: Yes.

16 THE COURT: Thank you.

17 MR. MILLER: Previously admitted by stipulation of
18 the parties.

19 BY MR. MILLER:

20 Q Professor, do you recognize the first page of this
21 document at Exhibit Number 5? You've had an opportunity to
22 review this application?

23 A I have, yes, and I do.

24 Q Okay.

25 MR. SHEVORSKI: Just for the record, Your Honor, I

1 think it's MM5.

2 MR. MILLER: MM5.

3 THE COURT: So you guys have series numbers that
4 start in the thousands. Theirs is the first group's and
5 they're only 5.

6 MR. SHEVORSKI: Perfect. I apologize, Your Honor.

7 THE COURT: It's okay.

8 MR. MILLER: Oh, so it starts in the thousands. I
9 was a little worried because I heard that one of them was
10 5,002.

11 THE COURT: No, yours start -- they're not --

12 MR. MILLER: I thought there were a lot of exhibits
13 I hadn't reviewed.

14 THE COURT: Not today.

15 MR. SHEVORSKI: That comes later, Ross.

16 BY MR. MILLER:

17 Q So this is just the cover sheet and I want to sort
18 of go page by page. It's fair to say that there are six
19 sections in this application, along with attachments, is that
20 correct?

21 A That's correct.

22 Q If we flip to the next page there, it's just some
23 applicant information. Go to the next page, table of contents.
24 The next page, terms and definitions. If you could just give
25 a brief description of what these next following pages

1 provide.

2 A Including the terms and definitions?

3 Q Yeah, just -- not specifically, but do they
4 generally outline terms that might have ambiguity to them that
5 they want to provide further clarity to?

6 A Yeah. As you see here, there's a term and a
7 definition. I think because of the unique nature of the
8 industry some of these terms have a very specific meaning.
9 And so it's just I think intended to give applicants enough
10 knowledge that they can accurately answer these requested
11 forms and fields.

12 Q Okay. So I believe that's three pages or so. We'll
13 skip to the next section which is the application overview.
14 This section would just provide -- well, tell me what this
15 section would provide in terms of what would be -- information
16 that would be related to a potential applicant?

17 A So it's describing the legislative mandate for the
18 process right at the top in terms of the legislation passed in
19 the session, a particular bill that adjusted the
20 responsibility for who's executing the process in terms of
21 assigning it to the Department of Taxation. Another
22 adjustment in terms of adding a new criteria and then finally
23 just some -- yeah, that's much better to read -- the piece
24 that I already referenced. So only persons who hold a medical
25 marijuana establishment registration may apply. So there are

1 no totally new applicants here that are not familiar to the
2 regulator. These are existing license holders applying for an
3 additional license in a retail category.

4 Q Okay. It's making reference to the Assembly bill
5 and some regulations that were adopted that are applicable of
6 the regulation, is that right?

7 A Yeah. And then there's this note in red --

8 MR. KOCH: Your Honor, objection. The document
9 speaks for itself. The Court can read the document.

10 THE COURT: Overruled. Thank you.

11 Will you keep going.

12 THE WITNESS: Okay. So the text in red indicates
13 that there's a limit as to the number of licenses to be
14 awarded per jurisdiction, unless there's not enough applicants
15 to fulfill the quantity mandated. And I think as it was
16 referenced by someone in the opening statement, there's a time
17 limit as to which a recipient has to get into operation, so
18 they have a 12-month deadline after receiving their license.

19 BY MR. MILLER:

20 Q Okay. But that specific -- the criteria is outlined
21 in red and highlighted on the screen that no applicant may be
22 awarded more than one retail license store in a jurisdictional
23 category unless there are less applicants. Did you have an
24 opportunity to review that requirement to see if you could
25 find it in any of the statutes or the regulations that apply

1 to the regulation of marijuana here?

2 A Yes. So the sources that I would have looked to to
3 find justification, that would either be the initiative itself
4 and its text or the regulations that came out of it. I did
5 not see it. I don't know if I missed it, but I didn't see any
6 reference to that as a specific item.

7 Q The next section that we'll jump to is just the
8 application timeline that would outline the dates, is that
9 right, that the packets have to be submitted and the timelines
10 that would apply. Jump to number six. Next. The application
11 instructions, is that generally just general submission
12 requirements and identified criteria?

13 A Yes. There's a lot of instructions here as to how
14 you should provide information and what format, etcetera. I
15 think these are very important and kind of well described
16 instructions, just to make sure all applicants understand what
17 process they're taking.

18 Q But there's nothing in any of these sections that
19 deals specifically with the criteria that the applicants are
20 expected to provide that would be weighted and scored by the
21 Department, is that correct?

22 A No. My understanding is that's in Section 6, which
23 follows Section 5.

24 Q Okay. So let's jump there. Okay. So looking at
25 Section 6, can you describe for us generally what this section

1 shows to the applicants and what it's asking from them?

2 A What we learn here is the process has created a
3 point system for ranking applicants. The highest possible
4 score is 250 points. That 250 is broken down into categories
5 that are listed here. There's no distinction made in this
6 section between minimum requirements versus anything else, so
7 these are all ranking criteria. There's a note at the bottom
8 of a couple things that are non-ranked, I think after the
9 entire table is finished. Yeah, so unweighted would be names
10 and logos. The Department takes no position on whether that
11 affects the best applicants. And also the background check,
12 as we discussed, is a very common minimum standard. So you
13 pass it or you don't. It doesn't affect your rating in terms
14 of the scoring out of 250. So that's for every applicant.
15 And your applicants would include owners, directors and board
16 members, so all those individually are going through a
17 background check.

18 Q Okay. So let's turn to the top of the first
19 category there that the Department has identified, asking for
20 certain criteria and providing a weight. Can you read that
21 for us, along with the points that --

22 THE COURT: So let's not go through and read every
23 one of the descriptions. If he wants to tell me why he thinks
24 it's important or consistent with the ballot initiative,
25 great, but I can read it.

1 MR. MILLER: That's fine. You got it. Sure.

2 BY MR. MILLER:

3 Q Generally what does that category provide?

4 A So through the process it's described as the
5 organizational structure category. This is your best
6 indication of experience of the applicant principals. We're
7 basically being asked who is affiliated with this application,
8 owner, officer, board member, so we can evaluate the
9 experience and qualifications of the applying team. And this
10 has the largest weight of any of any category, 60 out of 250.

11 Q And that's the entirety of the description that the
12 applicants were provided in terms of the guidance that they
13 were given about the information that had to be provided, is
14 that correct?

15 A It is. So in the prior section they asked for all
16 sorts of information about principals, but all we're told is
17 that they will evaluate the organizational structure in some
18 way.

19 Q Okay. And as part of your preparation today, did
20 you also have a chance to review the ultimate evaluation
21 scoring sheets that were given to the evaluators and used by
22 the evaluators in order to score that criteria?

23 A I did.

24 MR. MILLER: Could you pull up Exhibit Number 7,
25 which is the organizational structure scoring sheet.

1 //

2 BY MR. MILLER:

3 Q Now, can you describe what this document is?

4 A This document provides more detail on how that 60
5 points we just referenced has been subdivided and how each of
6 those subdivisions will be evaluated. It refers to the
7 motivating regulation as to why certain criteria are listed.
8 And then it also provides for the graders a description of
9 what an excellent response, average response, inadequate
10 response would be. It doesn't directly tell you how many
11 points excellent is worth versus average, so I think there's
12 a responsibility to the grader to figure out from zero to ten,
13 for example, is average five or whatever. We don't know
14 exactly how that works numerically, but they provide guidance,
15 excellent, average, inadequate for each of these subcategories
16 that add up to 60. And this is going to be similar for the
17 other categories we look at, but this is obviously the biggest
18 points with the most weight overall.

19 Q Okay. And if you'll turn to that specific category,
20 it's broken down into a number of evaluation elements, is it
21 not?

22 A Yes. And so rather than 60 points as one
23 assessment, we have points for non-marijuana experience,
24 marijuana experience, diversity, education. All those areas
25 are falling under organizational structure.

1 Q Okay. And --

2 A And the organizational chart. My apologies. The
3 organizational chart.

4 Q Right. So the first one that they're evaluating is
5 inclusive of the organizational chart, is that right?

6 A Uh-huh.

7 Q Can you give us an indication of the criteria that
8 they're including in the organizational chart as to how they
9 evaluated that, what an excellent response would be relative
10 to one that they determined to be non-responsive?

11 A Yes. So my only knowledge of that is what I read
12 here. I have no other knowledge of that. But you can see at
13 the bottom of this page it's displayed. An excellent
14 response, which would get you closer to 15 points, has a
15 description of all or most of the above expectations where
16 were there, are reasonable, rational and logical. And for
17 each key personnel, their experience, roles and duties are
18 included. So I think this is the only place where non owners,
19 directors and board members factor into the evaluation.
20 Personnel, employees would only be referenced in this section
21 in terms of the org chart. All the other categories we'll
22 look at will refer to owners, directors and board members.

23 Q Okay. And so the evaluation of that part would have
24 been worth 15 points, is that right?

25 A Yes.

1 Q And that wouldn't have been known as to the actual
2 breakdown of the overall 60 points for the broader criteria to
3 the applicant, is that correct?

4 A It's not in the application form. The application
5 form just states 60 points.

6 Q So turn, I guess, to the next evaluation element.
7 What is that intended to cover?

8 A So this is the section on non-marijuana experience.
9 And so I believe a recommendation of the Task Force in this
10 area was that experience should be -- direct experience should
11 be very heavily weighted and that other relevant experience
12 applicable to operating this type of license should be also
13 heavily weighted. And so what we see here to operationalize
14 that is a range of zero to ten points, which is 4 percent of
15 the application scoring. The definition -- again, my
16 knowledge is based on reading this, "Any previous experience
17 at operating other businesses or non-profit organizations."
18 So unlike the regulation, there's no qualification that the
19 experience be relevant to the license being applied for or
20 relevant to the marijuana industry broadly. So by the time
21 we get to the scoring rubric, it's any previous experience at
22 operating other businesses or non-profit organizations, no
23 stipulation around applicable.

24 Q Just to back up so it's clear, the instructions that
25 would have been given to an applicant in order to determine

1 whether or not they would meet this criteria are outlined in
2 6.2.1, is that correct? If we can jump back to that page,
3 which would be --

4 A In the application form.

5 THE COURT: So that's Exhibit 5.

6 MR. MILLER: On page 18 of the application. Pull
7 that up.

8 THE WITNESS: Yes. This is drawn from the
9 regulation verbatim. Operating experience of another kind of
10 business by the owners, officers and board members -- so
11 personnel are not included here -- that is given, the
12 experience is applicable to the operation of a marijuana
13 establishment. And that's establishment broadly across I
14 guess cultivation and processing; retail.

15 BY MR. MILLER:

16 Q And just based on the evaluation, if we can go ahead
17 and pull that up, does the evaluation criteria mirror that
18 language that's in the instructions if it's brought directly
19 from the regulations?

20 A So it stops at other business or non-profit
21 organizations. Full stop. Yeah, it doesn't proceed to add
22 anything about applicable to operation of a marijuana
23 establishment.

24 Q And so how do you view the distinction or the
25 difference between those two?

1 A The breadth is much wider. So I guess any
2 experience in a non-profit, you know, whether it was an animal
3 rescue or operating any sort of business is going to qualify
4 equally here. There's no priority to more applicable, no
5 omissions or categories that are not considered valid. Any
6 experience in operating a business or non-profit. So it
7 doesn't seem consistent to me with the regulation that you
8 just had on the screen.

9 Q As you looked at and I think testified to the scope
10 and the weight of the criteria that could be evaluated in this
11 jurisdiction and in others, the heaviest weight being given to
12 experience, is there a distinction between offering just
13 broad, general experience and experience that would relate
14 directly to the experience of marijuana?

15 A So what we've done here is we've allocated 10 points
16 for any experience, business or non-profit. The following
17 section will allocate 10 points for marijuana experience. And
18 I guess we can talk about that secondly. So the total of
19 experience is 20 out of 240 points in the overall -- sorry,
20 250 points; 20 out of 250 points in the overall ranking, so
21 that's 8 percent, I believe.

22 Q And does that weighting seem appropriate to you?

23 A Again, this is not a first round of applications.
24 Like when Nevada was having its initial round of medical
25 applications, no one had direct legal marijuana experience in

1 the state of Nevada by definition. Now this later round we
2 have operators. In fact, every applicant has an active
3 license. So it surprises me that the weight is so low. Only
4 20 points across the two experience, 8 percent, when the Task
5 Force I think had emphasized those criteria as being most
6 heavily weighted, experience and active licenses. So, no, it
7 does not seem consistent with what I would have expected.

8 Q Okay. Overall, do you think that that -- if you
9 look at the criteria for the direct -- what is the criteria
10 that the statute itself established in the initiative petition
11 that they felt was appropriate for the criteria that should be
12 weighted and scored in reviewing those applications?

13 MR. KOCH: Objection, Your Honor. Legal conclusion.
14 He just asked him what the statute says.

15 THE COURT: Overruled. You can answer.

16 THE WITNESS: So the initiative which created
17 legislation has one item referring to criteria and that item
18 refers to criteria that are directly and demonstrably related
19 to the operation of a marijuana establishment.

20 BY MR. MILLER:

21 Q Just to be clear, again I think we asked this but
22 maybe it wasn't teed up. So the information that we are
23 reviewing here was the information that was just provided to
24 the evaluators, is that correct?

25 A Yeah. These are guiding the team that was

1 evaluating each application. I believe there were three
2 reviewers looking at each application. And so this is their
3 rubric for how they should score each category. So I believe
4 their instruction would be to look within this box to make
5 their evaluation, as opposed to some other source.

6 Q Okay. Presumably the applicants, at least on the
7 face of the application, didn't have this information
8 available to them, is that correct?

9 A Not to my knowledge, no.

10 Q Okay. So you testified that -- as to the standard,
11 that it needs to be directly and demonstrably related to the
12 experience in running a marijuana establishment. Does this
13 seem to be a fair criteria that should be considered?

14 A So I think in the regulation, as we just looked at
15 previously, the text is more closely matched to direct and
16 demonstrably related. It says applicable to the operation of
17 a marijuana business. Here there's no restriction on the type
18 of experience. So I can't see how any business experience or
19 non-profit organizational experience would be directly and
20 demonstrably related to operation. I mean, this is a unique
21 industry and so to say that every and any experience is
22 directly and demonstrably to me that would not be true.

23 Q Okay. Let's jump to the next criteria just briefly
24 so that we're aware of the other criteria.

25 MR. GENTILE: Is Your Honor planning on taking a

1 break this morning?

2 THE COURT: Are you asking for a biological break
3 for personal convenience, Mr. Gentile?

4 MR. GENTILE: One could infer that.

5 THE COURT: Oh. Ladies and gentlemen -- if it's
6 okay with you, Doctor, we're going to take a break. This is a
7 requested break under the Bright Star Coyote Springs case.
8 Ten minutes, Mr. Gentile? Fifteen, given the number of you
9 guys all trying to get to the restroom.

10 (Court recessed from 10:44 a.m. until 11:01 a.m.)

11 (Court was called to order)

12 THE COURT: Please be seated.

13 Mr. Miller, you can continue.

14 MR. MILLER: Thank you. Can we pull up the previous
15 slide that was the rating criteria. It's Exhibit 209.

16 BY MR. MILLER:

17 Q So just to be clear again, this was the evaluation
18 elements that were provided to the evaluators that was not
19 made available, at least to our knowledge, to the applicants,
20 is that correct?

21 A To my knowledge, yeah.

22 Q So when you looked overall at this category and the
23 points that they gave it and the weighting that they assigned
24 within the broader category and they gave 60 points, what
25 points did they assign to this?

1 A So this experience outside of the marijuana industry
2 and any other business or non-profit has 10 points, so it's 4
3 percent of the total.

4 Q And that is experience, at least according to the
5 rank, that was related to marijuana, is that correct?

6 A That's the way it's described in the regulation,
7 yes.

8 Q When you look at experience with other businesses
9 that relates directly to marijuana, does 10 points out of 250
10 seem an appropriate weight to give to an application in this
11 type of licensing structure?

12 A So I'll answer in two parts. I think for an initial
13 applicant who hasn't had the chance to operate in the industry
14 or for an initial round of applications, maybe when the
15 industry is starting, you would actually probably want to put
16 quite a bit of weight on other experience. There's just not
17 going to be a pool of applicants who have direct marijuana
18 experience until they have that chance. But this application
19 process was from all experienced license holders, so I
20 wouldn't be putting a large weight on it regardless. And when
21 you broaden the definition to any business or non-profit
22 organization --

23 Q Well, before we get there, let's just look broadly
24 at how it was defined in the regulation and the instructions.

25 A Uh-huh.

1 Q Would you weight that appropriate -- does 10 points
2 seem like a fair weight to give to that category?

3 A Under the definition of applicable to marijuana, in
4 that case I would give it a greater weight, yes, because if
5 you said experience is the most valuable strength that an
6 applicant can bring, it's one that is important to the legal
7 operation and the reputation of not just the applicant but the
8 entire program. And so, yeah, experience I would expect to be
9 weighted heavily, but in this example we're basically taking
10 any experience at any business or non-profit, so in that case
11 it doesn't seem nearly as directly related.

12 Q Okay. And the Governor's Task Force, they looked at
13 criteria, also, right, and made recommendations as to the
14 appropriate weight that should be given to those criteria, is
15 that correct?

16 A Yeah. I believe they sorted from very heavily
17 weighted, heavily weighted, medium weighted. They had some --
18 not specific numbers, but some sort of priority indication
19 because, you know, the challenge is that there are no
20 weightings indicated in the ballot initiative. The ballot
21 initiative just says directly and demonstrably related to the
22 operation of marijuana establishments, so at that point you
23 have no guidance on weighting. And even in the regulation you
24 just have a list of criteria. There's also no guidance in the
25 regulation on weighting, so the only document I've seen that

1 spoke to weighting before we got to these internal grading
2 documents was the Task Force that the Governor appointed and
3 they specified very heavily weighted, heavily weighted,
4 medium, etcetera.

5 MR. MILLER: Okay. Do we have our exhibits at this
6 point? Do you have them digitally? Can you pull up Exhibit
7 213?

8 THE COURT: Which one? 213?

9 MR. MILLER: Yes.

10 MR. KOCH: Is it the Task Force?

11 MR. MILLER: Yeah, the Governor's Task Force. I'll
12 skip ahead just for the purpose of efficiency -- [inaudible].

13 MR. KOCH: The Task Force is 2009.

14 MR. MILLER: 2009. Okay. Do you have 2009? Oh, he
15 doesn't have that, either. All right.

16 THE COURT: Sir, there are so many binders behind
17 you.

18 THE WITNESS: Yes.

19 THE COURT: You're in a worst place than most
20 people. I do not know where 2009 would be in this group. No,
21 it would probably be -- so do we just have --

22 MR. SHEVORSKI: It should be the State's, Your Honor.

23 THE CLERK: It's on the bottom shelf. Is there a
24 black binder?

25 THE COURT: Is there a black binder on the bottom

1 shelf? Alan, why don't you come see if you can help him.

2 (Pause in the proceedings)

3 THE COURT: And, sir, you may know the term Bates
4 numbers from the old machine that they used. They have alpha-
5 numeric designations within the exhibits. Counsel may refer
6 you to a page number. We'll see.

7 THE WITNESS: Okay.

8 THE COURT: Mr. Miller, it starts on 2487.

9 MR. MILLER: It was a lot cleaner when we had the
10 page numbers, Judge, under a digital format, but we're
11 experiencing some difficulties with that.

12 THE COURT: Do you want us to switch to the ELMO?

13 Thank you, Alan.

14 THE WITNESS: 2608, I believe.

15 BY MR. MILLER:

16 Q Yes. They're the -- Bates stamp 609. Do you
17 recognize this as provisions of the final report issued by the
18 Governor's Task Force on the Implementation of Question 2?

19 A Yes, exactly.

20 Q Okay. Can you find in there the criteria that would
21 relate to the business experience that would be related to --
22 other business experience that would be related to the
23 operation of a marijuana establishment?

24 A Uh-huh. So you have to look at Item Number 7.
25 Owners, officers and board members having experience operating

1 another kind of business that has given them applicable
2 experience to running a marijuana establishment in the state
3 of Nevada. And the weight recommended is medium weighted.
4 And the weight recommended is medium weighted.

5 Q And does that weighting seem appropriate to you in
6 an evaluation of whether or not this applicant would have
7 direct and demonstrable experience relating to a marijuana
8 establishment?

9 A It does. I think medium weight would put it below
10 direct marijuana experience of the type of license being
11 applied for but above other categories that might be even more
12 far removed from direct operations. So to me a medium
13 weighting seems reasonable for other experience, but I would
14 prioritize direct marijuana experience over that Item Number
15 7.

16 Q But that's not in fact what was described in the
17 evaluation elements that was given to the evaluators, is that
18 correct?

19 A I guess it depends on the definition of medium
20 weighting, but they've given it 10 out of 250.

21 Q No, no, not the scoring. That's not in fact the
22 criteria that was provided in terms of the explanation that
23 was given to the evaluators in terms of -- they weren't asked
24 whether or not it was business experience related to a
25 marijuana establishment, is that correct?

1 A No. They were asked for any other business
2 experience, or non-profit experience was added as well.

3 Q So what other examples, if you were going to
4 interpret that, as to what else that could include?

5 A I guess -- if I think of what I teach in my course,
6 the Business of Marijuana course, and what all the other
7 topics that we cover in a Business School and all the other
8 types of businesses that exist, it would be included in all
9 those, including the non-profit, government, other areas, I
10 suppose. So I just -- an all-encompassing definition.

11 Q But the business of marijuana is unique; right? You
12 see unique criteria in terms of experience that would relate
13 to marijuana?

14 A Yes. So I guess that -- the applicable experience
15 piece, we see that here, we see it in the regulation as well.

16 Q Okay. But if you were just going to look at the
17 evaluation elements that were given to the evaluators or you
18 were just looking at it broadly, business experience, running
19 a business or a non-profit, does the weighting seem
20 appropriate in that context if it wasn't specific to business
21 experience that related to the operation of a marijuana
22 establishment?

23 A Yeah. I think that's a challenge. As soon as you
24 move away from applicable, it's hard to see how you can
25 connect any experience directly to a very specific, very

1 unique role, which is operating a retail marijuana
2 establishment. You know, that's a pretty unique license type
3 and we're not really making the connection here directly at
4 all.

5 Q All right. Turning next to the next subcategory
6 that they provided under organizational structure, they're
7 looking for educational experience, is that right?

8 A Yes. I don't have that in front of me, but.

9 Q Okay. So it will be back at Exhibit 7. Exhibit 7
10 at page -- so here do you want to briefly describe what
11 they're looking for there and whether or not it relates to the
12 direct and demonstrable experience in running a marijuana
13 establishment?

14 A So we're still looking within the 60 points for
15 organizational structure. Five of the 60 are for educational
16 achievements of owners, officers, board members. It's given a
17 weighing of 5 points, as I said. And the grading instructions
18 are that if we see college degrees, excellent. If we see some
19 college degrees, average. If we don't see college degrees,
20 maybe some related work, inadequate. So again, we've set a
21 very broad definition. There's no specificity around
22 educational achievements that are applicable or related to the
23 operation of a marijuana establishment of the type being
24 applied for. So it's pretty similar to the last criteria,
25 just a broad definition. And I think as a professor I don't

1 mind the recognition of college degrees, but I don't see a
2 direct and demonstrable connection to the operation piece
3 because, again, it could be any degree. It could be art
4 history, it could be social work, it could be a variety of
5 things. We're not specifying anything specific to business or
6 operation of a marijuana establishment or a retail
7 establishment.

8 Q Okay. So you don't see much relation at all to
9 direct and demonstrable experience in operation of a marijuana
10 establishment there?

11 A No. I think you would want to make a more specific
12 definition that would make it direct and demonstrable, to look
13 for a specific education that relates.

14 Q And the weighting, 5 points out of the 250, does
15 that seem appropriate to you?

16 A If you were going to provide a rating, I think,
17 yeah, 5 points seems about right because, you know, we want to
18 privilege more applicable experience and direct experience,
19 you know, the other categories, so 5 points is a pretty small
20 portion and that seems fine to me, between zero and five.

21 Q All right. So then the next subcategory they've
22 identified, Element Number 4, experienced with marijuana in
23 Nevada. Describe for us there what is outlined to the
24 evaluators as to the criteria they're looking for and whether
25 or not that comports with the instructions of the statutes

1 that were given to the applicants.

2 A Yes. So I think I'll just read for my benefit and
3 everybody else's. "Demonstrated knowledge or experience with
4 respect to direct experience with the operation of a medical
5 marijuana establishment or a marijuana establishment in this
6 state and have demonstrated a record of operating such
7 establishment in compliance with the laws and regulations of
8 the State for an adequate period of time to demonstrate
9 success." And then there's some text that I don't believe was
10 intended to be here. It may have been left over from some
11 sort of medical form or something.

12 Q You're speculating; right?

13 A Yeah. I don't know.

14 Q Just read it for us so we know what's in there.

15 A Yeah. "An adequate period of time to demonstrate
16 success. The compassionate use of marijuana to treat
17 conditions."

18 Q But that last clause, does that seem appropriate at
19 all to be given to evaluators to help evaluate whether or not
20 someone has got experience that relates to a recreational
21 marijuana establishment?

22 A It would appear to make more sense in a medical
23 context than in a recreational context.

24 Q Okay. But taking out that portion which you say may
25 have been left on there, how would you evaluate this criteria

1 and the information that they're looking for in terms of the
2 overall weight and the importance that might be given to an
3 applicant's qualifications?

4 Q So, to me, like I said, direct experience I would
5 see as the most important criteria, right. We have a set of
6 applicants who are in some way licensed already in the
7 industry but we're wanting to evaluate which have the most
8 experience. The two concerns I have with how this is laid
9 out, one is contrary to the Task Force recommendations or as
10 we talked about earlier there's no distinction between which
11 type of marijuana establishment that I can see here. So we're
12 back to someone with cultivation experience being treated
13 equally to someone who has direct retail experience or
14 manufacturing.

15 And so I'm trying to think of the right analogy, but
16 I guess if you were the -- if you manufactured the poker chips
17 or the playing cards, you know, you're in the gaming industry,
18 but you would be deemed having the same experience as someone
19 who's operating a casino when we're allocating casino
20 operation licenses, right. Or you're a farmer and then you're
21 applying for a retail restaurant or something. So we've lost
22 the distinction which was in the Task Force recommendation
23 again about the specific type of license being retail and just
24 staying at the general marijuana experience.

25 Q Let me switch over to the ELMO so I can pull the

1 Task Force recommendation up again. Again, this is the final
2 report from the Governor's Task Force in the section that
3 deals with rating criteria on applications. Can you identify
4 for us which number would potentially relate to this provision
5 of the criteria of the evaluation criteria?

6 A So these are sorted in order of priority. The very
7 heavily weighted are listed first. Item 1, having an existing
8 temp. license in good standing. Item 2, having not a
9 temporary but a medical operational license in good standing.
10 Those speak indirectly to experience. I think they would be a
11 minimum.

12 Then Item 3 speaks directly to this. So, owners,
13 officers, management team having direct experience in a
14 medical or recreational establishment for the specific type of
15 marijuana establishment license they are seeking. And also --
16 and so there's two parts -- demonstrates a track record of
17 operating that establishment in a way that complies with the
18 requirements. Experience in a Nevada marijuana establishment
19 is preferred. So there's a lot in there in the Task Force
20 recommendations that it should be specific to the type of
21 license. Nevada experience preferred; again because each
22 state is unique in its legalized industry. And also this idea
23 of a track record, that there's some sort of I guess time
24 component. And the recommendation is very heavily weighted
25 for that.

1 Even number 4 would to some extent relate back
2 because we have Item 4 that says a track record of paying
3 taxes generated specifically by a medical or recreational
4 marijuana establishment. Very heavily weighted. And so I
5 guess you could argue that's experience of a different aspect
6 in terms of your experience in the tax payment side of the
7 operation.

8 Q Okay. But again, what weight, if we turn back to
9 Exhibit 7 and go to the weighting criteria and evaluation
10 score sheet that was applied to experience related to
11 marijuana did the Department choose to assign to that
12 category?

13 A So again, we're operating within the 60 points that
14 applicants knew about for organizational structure, but we
15 funded that 10 points out of 250, so 4 percent of the overall
16 evaluation comes from any sort of marijuana experience and it
17 doesn't specify whether we are direct to the type of license
18 being applied for. So again, it depends on your definition of
19 very heavily weighted, but it would not seem to be very
20 heavily weighted at all.

21 Q And again, it's not clear through this process what
22 information applicants were given, right, but this presumably
23 was not part of the application and it wasn't part of the
24 information that applicants would have been made aware of that
25 direct experience with marijuana was only given 10 points of

1 the 60 or 10 points of the overall 250. Is that right?

2 A To my knowledge, yes. So the applicants included a
3 personal profile and a resume, but it wasn't clear in what way
4 those materials were used. And it would appear that they were
5 reviewed here to assess a score between zero and ten.

6 Q And does that weighting overall seem appropriate to
7 you?

8 A No. In fact, because this is not a first ever
9 application in the state or the first ever application for an
10 applicant, you know, I could imagine a scoring system when we
11 say very heavily weighted that might be half or more of the
12 total points for the experience and track record. Ten points
13 out of 250 to me just is almost as low as we have in the
14 scoring criteria overall, so it puts it below a number of
15 other categories and it's clearly not a large percentage, 10
16 out of 250.

17 Q And in fact it's the same scoring criteria -- it's
18 the same weight that was given to business experience that may
19 relate to marijuana but wasn't direct experience in the
20 industry, is that right? They're both worth 10 points?

21 A So the two experience categories are only worth 10
22 points. They're equal. But I think you misspoke in that the
23 non-marijuana experience was just -- there was no reference to
24 applicable to the industry. So any experience is just equally
25 valuable to this category, which was intended to be specific

1 experience in this state.

2 The other issue I guess we should note is the bold
3 text above says, "in this state," but the instructions to
4 graders for excellent, average and inadequate make no
5 reference to whether the experience or knowledge is specific
6 to Nevada. So an excellent response would be extensive
7 knowledge of the industry -- I presume broadly -- and prior
8 experience running marijuana establishments. There's no
9 reference to in the state of Nevada. Average response
10 actually does not require any experience whatsoever. So you
11 can get an average score with just having knowledge. And then
12 an inadequate score would be neither experience or knowledge.
13 So the broad instructions at the top reference to in the state
14 but the criteria for excellent, average and inadequate do not
15 as well.

16 Q Okay. And you referenced before this Early Start
17 Program where before even this application process started
18 that there were some individuals that were operating retail
19 with dispensary locations; right?

20 A Yes.

21 Q I mean, would you expect that the experience that
22 they obtained through that program would relate to this
23 criteria?

24 A Yes. And in fact, that was the number one item in
25 the Task Force recommendation. If an applicant has an

1 existing temporary recreational marijuana established license
2 that's operational and in good standing, that alone should be
3 heavily weighted. So the Task Force was looking for
4 recognition of those Early Start license holders. Secondly,
5 medical license holders. Thirdly, the experience of officers
6 and directors. All those are captured in this one 10-point
7 category and there's no distinction around recreational being
8 more relevant than medical or direct to the type of experience
9 being more important than general or that in state is more
10 important than any. So to me there's a gap in the regulation
11 and the Task Force guidance versus the operational grading
12 criteria and their weighting.

13 Q If we can jump to the next category, subcategory
14 within organizational structure, diversity. If we can start
15 with the application itself, if we can pull that back up. And
16 go to 6.2.2, which is going to be on page 18. What does 6.2.2
17 provide to the applicants?

18 A So this comes from the regulation and it identifies
19 diversity as a potential criteria for ranking. So the
20 diversity of an application would be a factor in evaluating
21 the applications.

22 Q Okay. And where does this language come from,
23 6.2.2? I think you just said it.

24 A I believe it got into the regulations through -- I
25 think it was AB422. There was actually legislative procedures

1 that added this as a criteria. So as we've talked about a
2 number of times, there were no specific criteria listed in the
3 ballot initiative nor in the operationalization of that that
4 said -- spoke to direct and demonstrably related to the
5 operation. But subsequently there was a legislative action
6 that added diversity as a potential criteria.

7 Q Okay. And that language is taken directly from that
8 regulation, is that correct?

9 A I believe so, yes.

10 Q All right. And so in the context of the application
11 is there any other definitions or clarification that's given
12 to the applicants that would further define the diversity of
13 owners or the other officers that they have identified there?

14 A So in terms of the criteria, if you look above in
15 the previous page where the point totals are identified,
16 there's no mention of diversity as a criteria; certainly not
17 as a separate criteria. You can look through those. And
18 similarly, I think in the Section 5, which is the instructions
19 of what to provide, there's a request for a profile of each
20 individual. That profile form has fields where you kind of
21 write in your response for some demographic information. So
22 that would be -- in one of the appendices to the form there
23 was a request for demographic information. And that would be
24 the source, I suppose, of evaluating diversity.

25 Q And in places that you might otherwise look, if we

1 turn to page -- I believe it's 3 on the definitions that are
2 provided on the application. That would be page 4 through 7.
3 Those are defined terms. Do you see diversity defined
4 anywhere in there?

5 A I believe they're alphabetical, so if we go back to
6 the first page, no, we don't see any definition of diversity.

7 Q Race or how that might be categorized --

8 A No.

9 Q -- any further definitions that would apply to that
10 category? Was that a no?

11 A No.

12 Q Okay. And similarly, was this broad category
13 included anywhere in the Governor's Task Force?

14 A So, yeah, if we go back to that, they provided eight
15 recommendations for criteria and weighting. As I look through
16 them, I don't see any that refer to the demographic
17 composition of the principals. You know, we have one to three
18 related to experience, taxes for marijuana, employment, giving
19 back through the community, other business experience and then
20 finally a business plan. So, yeah, they're not listed there.

21 Q Okay. Do you sense that this is a qualification
22 that would be direct and demonstrably related to the operation
23 of marijuana?

24 A I do not. I think if you look across jurisdictions,
25 whether it's Colorado, Maryland, Ohio or other places, there

1 are a variety of programs that seek to enhance the diversity
2 of the industry, but I have not seen any of them make an
3 argument that the inclusion of diversity is directly related
4 to the operation of the business. I think there are a variety
5 of policy goals that would -- are highlighted for those
6 programs, not necessarily the operation and that diversity
7 directly leads to operational abilities.

8 Q Okay. And yet of the 60 points that was disclosed
9 to the applicants that would be awarded to the broad category
10 of organizational structure, when we look at the individual
11 breakdown on the evaluation sheets, what weight was assigned
12 to the category of diversity?

13 A Diversity was given 20 points, so that's 20 out of
14 250. And then they have a rubric for evaluating diversity as
15 basically a percentage of principles listed on the
16 application.

17 Q And how appropriate does that overall weighting
18 scheme of providing 20 points out of the possible 250 or 20
19 points out of the 60 given an organizational structure which
20 includes experience directly related to marijuana, how
21 appropriate does that seem to you?

22 A So, I mean, if the starting is that the criteria
23 should be directly and demonstratively related to the
24 operation of a marijuana establishment, I think you would
25 expect zero points. You would expect that this is not a

1 criteria for operation, but maybe some factor in some other
2 program or some other initiative. So once you include it I
3 guess it's a question of weighting. And so this has been
4 deemed more heavily weighted than direct experience. I can
5 make that observation, I guess. It's 20 versus the 10 that we
6 previously talked about.

7 Q Okay.

8 A So it's received a fairly high weight relative to
9 the experience and also relative to education. Education is
10 5, and this is 20.

11 Q Okay. And as you look at the evaluation description
12 that was provided to the evaluators but not made available to
13 -- on the application, can you identify what's the find there
14 and how it may differ from the instructions and the
15 regulations that were provided to the applicants?

16 A Yeah. So again there are three factors, race,
17 gender, and ethnicity, and there's a definition for that
18 below, "non-Caucasian female, non-Anglo European American."
19 So in this situation we're evaluating diversity based on the
20 identities of the applicants who are part of the application
21 form, owners, officers, and board members. I think that's an
22 approach that can be used. Other approaches I've seen have to
23 do with the community from which applicants are applying,
24 whether it's a disadvantaged area. In some cases the criminal
25 background relating to cannabis offenses is something I've

1 seen in other states where you would be looking to use that as
2 a criteria. So, I mean, there are a wide range of things that
3 could be used. You know, often gender is not included in
4 certain states' programs, other times it is. But in this case
5 we've chosen the three, race, gender, and ethnicity.

6 Q In terms of the information that was provided on the
7 application and the regulation itself this provision, points
8 awarded for percentage of principals which are non-Caucasian,
9 female, and non-Anglo European American, does that appear
10 anywhere in the application or the regulation?

11 A In terms of a point value or a formula --

12 Q No. Just in terms of the definition, the
13 information that they're provided so that they would
14 understand what was being evaluated?

15 A Yeah. I believe diversity was not defined, no. So
16 other than having fields on the individual profile form which
17 is in the appendix that asks for race, gender, and ethnicity.
18 That was the only reference that existed in the application
19 form.

20 Q Okay. And so are you familiar with the instructions
21 that were provided to applicants as to the process that they
22 could have undertaken if they had questions or clarifications
23 about what any of this meant? Did the Department provide them
24 information about what process they could go through?

25 A So my knowledge of the process is the application

1 form. There's an applications instructions. To my knowledge
2 I didn't see any procedure for submission of questions nor for
3 some sort of dissemination of answers to the applicants. So
4 in this particular form I didn't see any discussion of that.
5 It could have been provided in other venues or individually.
6 But in the form itself I didn't see any process for
7 clarification there.

8 Q Okay. And as you reviewed other applications and
9 other processes that regulate this area what's the typical
10 process that you would go through if you had a competitive bid
11 and a license process? How would you go about if applicants
12 had questions that they needed the Department to respond to?

13 MR. KOCH: Objection. Beyond the scope of this
14 witness's testimony and also just vague as to what he's having
15 him opine about.

16 THE COURT: Overruled. You can answer.

17 THE WITNESS: Can you ask the question again,
18 please.

19 BY MR. MILLER:

20 Q Sure. You know, in other contexts that you've seen
21 where, you know, applicants may have questions of the
22 regulatory authority as to what a specific term may mean,
23 what's being evaluated, or seeking additional clarification,
24 do you see a typical process, and what do you typically see in
25 -- when they're trying to run a fair process that would be